

PRACTICE OF *ZAKĀH* DISTRIBUTION OF MAIWP:AN
ANALYTICAL JURISTIC STUDY

BY

MUSTAFA YASAR

A dissertation submitted in fulfilment of the requirement for
the degree of Master of Islamic Revealed Knowledge and
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AbdulHamid AbuSulayman Kulliyah of Islamic Revealed
Knowledge and Human Sciences
International Islamic University Malaysia

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ABSTRACT

Majlis Agama Islam Wilayah Persekutuan (Islamic Religious Council of the Federal Territory) collected RM823.579 million *zakāh* in 2021 and distributed 90 percent of it. This is one of the highest *zakāh* collection rates among State Islamic Religious Councils in Malaysia, and it is evidence of the efficiency of *zakāh* management by MAIWP. Even though there have been several studies about MAIWP in the past, studies about MAIWP's *zakāh* management from a *fiqh* perspective are in short supply. Therefore, there is a need to examine this issue. Accordingly, this research aims to study the management of *zakāh* by MAIWP from a juristic perspective, particularly its *zakāh* distribution practices. This will include, *inter alia*, MAIWP's redefinition of *zakāh* recipients, various means of *zakāh* distribution, companies and institutions that carry out assistance schemes on MAIWP's behalf, and selected juristic issues concerning *zakāh* distribution. The research has adopted a qualitative approach consisting of data collection and analysis from MAIWP's website, MAIWP and PPZ's annual reports, *fatwās* issued by various Islamic countries, as well as the writings of both classical and contemporary jurists. A semi-structured interview was also conducted with officials in the MAIWP's relevant departments and academicians. The study revealed that MAIWP is the pioneering State Islamic Religious Council to establish PPZ, a corporation solely dedicated to *zakāh* collection. Moreover, a significant portion of MAIWP's *zakāh* distribution in 2020 was carried out through assistance schemes such as welfare, economy, medicine, preaching and community development, protection, and education. The study found that it is permissible to delay *zakāh* distribution for reasons such as benefit (*maṣlaḥah*) or necessity (*ḍarūrah*), as well as to invest *zakāh*, provided that the conditions stipulated by scholars are adhered to. In addition, the research also suggested a broadened understanding of *tamlīk* beyond individual ownership, allowing for collective ownership. It is hoped that this research will give a better understanding of the matter at hand and assist MAIWP and concerned authorities in improving and developing *zakāh* administration in accordance with Islamic law.

ملخص البحث

مجلس الشؤون الإسلامية بالولاية الفيدرالية (MAIWP) جمع مبلغ ٨٢٣.٥٧٩ مليون رينغيت ماليزي كزكاة في عام ٢٠٢١ وقام بتوزيع ٩٠ في المائة منها. يُعتبر هذا واحداً من أعلى معدلات جمع الزكاة بين مجالس الشؤون الإسلامية في الولايات الماليزية، وهو دليل على كفاءة إدارة الزكاة من قبل MAIWP. على الرغم من وجود العديد من الدراسات حول MAIWP في الماضي، إلا أن الدراسات حول إدارة الزكاة من قبل MAIWP من منظور فقهي قليلة. ولذلك، هناك حاجة إلى دراسة هذه المسألة. بناءً على ذلك، تهدف هذه الرسالة إلى دراسة إدارة الزكاة من قبل المجلس من منظور فقهي، ولا سيما ممارسات توزيع الزكاة. سيشمل ذلك، بين أمور أخرى، دراسة إعادة تعريف المجلس للأصناف الثمانية، والوسائل المختلفة لتوزيع الزكاة، والشركات والمؤسسات التي تنفذ برامج المساعدة نيابة عن MAIWP، وقضايا فقهية مختارة تتعلق بتوزيع الزكاة. وقد اعتمد البحث منهجاً نوعياً يتكون من جمع البيانات وتحليلها من خلال الموقع الإلكتروني للمجلس، والتقارير السنوية التي تنشرها MAIWP و PPZ، والفتاوى الصادرة عن مختلف البلدان الإسلامية، بالإضافة إلى ومؤلفات الفقهاء القدماء والمعاصرين. كما تم إجراء مقابلة شبه منظمة مع المسؤولين في الأقسام ذات الصلة في MAIWP والأكاديميين. وكشفت الدراسة أن المجلس هو أول مجلس الشؤون الإسلامية الذي بادر إلى تأسيس "مركز جباية الزكاة" (PPZ)، مؤسسة مخصصة بجمع الزكاة. علاوة على ذلك، قام المجلس بتوزيع جزء كبير من الزكاة لعام ٢٠٢٠ من خلال برامج المساعدة مثل الرعاية الاجتماعية والاقتصاد والطب والدعوة وتنمية المجتمع والحماية والتعليم. وتوصلت الدراسة إلى جواز تأخير توزيع الزكاة إذا كانت هناك مصلحة أو ضرورة، وكذلك جواز استثمار أموال الزكاة، بشرط الالتزام بالشروط التي نص عليها أهل العلم. بالإضافة إلى ذلك، اقترحت الرسالة فهماً موسعاً للتملك يتجاوز الملكية الفردية، مما يسمح بالملكية الجماعية. ومن المأمول أن تقدم هذه الدراسة فهماً أفضل للمسألة المطروحة، وتساعد MAIWP والسلطات المعنية في تحسين وتطوير إدارة الزكاة وفقاً للشريعة الإسلامية.



APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage in Fiqh and Usul al-Fiqh.

.....
Khairul Fahmi Bin Jamaludin
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage in Fiqh and Usul al-Fiqh.

.....
Mustafa Bin Mat Jubri Shamsuddin
Internal Examiner

.....
Mohd Fuad Md Sawari
Internal Examiner (Alt)

This dissertation was submitted to the Department of Fiqh & Usul al-Fiqh and is accepted as a fulfilment of the requirement for the degree of Master of Islamic Revealed Knowledge and Heritage in Fiqh and Usul al-Fiqh.

.....
Mohd Fuad Md Sawari
Head, Department of Fiqh and Usul
al-Fiqh

This dissertation was submitted to the AbdulHamid AbuSulayman Kulliyah of Islamic Revealed Knowledge and Human Sciences and is accepted as a fulfilment of the requirement for the degree of Master of Islamic Revealed Knowledge and Heritage in Fiqh and Usul al-Fiqh.

.....
Shukran Abd Rahman
Dean, AbdulHamid AbuSulayman
Kulliyah of Islamic Revealed
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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Amidst the ongoing perpetration of crimes against humanity, this dissertation is dedicated to the glorious and brave people of Gaza and its freedom fighters, who are resisting the Israeli occupation and refusing to bow to the occupiers despite the atrocities and the genocide.

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CHAPTER ONE

INTRODUCTION

1.1 RESEARCH BACKGROUND

As one of the five pillars of *Islām*, *zakāh* constitutes a crucial part of Islamic teachings, which led to its mention with the distinguishing mark of *Islām*, the prayer in various locations in the *Qur'ān* and *Sunnah*. Nevertheless, what distinguishes *zakāh* from the other devotional pillars of *Islām* is that it is not only a kind of pure worship (*ta'abbud mahḍ*), but also an efficient social security tool and is considered one of the primary sources for the Islamic financial and economic system.¹

Due to its significance and unique role in contributing and enhancing the community's economy as well as reviving the spirit of cooperation among Muslims, *zakāh* was collected by the State rather than individual initiatives. This can be seen in the practice during the period of Prophet Muhammad ﷺ where he employed some of his companions for this specific purpose and sent them inside and outside of Madinah.² This practice persisted until it was eventually abandoned. However, recently, several countries, such as Saudi Arabia, Iran, Kuwait, Malaysia, Jordan, Indonesia, Pakistan, and Egypt, have begun to manage *zakāh* through institutions or competent government departments and bodies.³

Following the year 1990, Malaysia made significant strides in institutionalising *zakāh*. The first step taken for this purpose was the foundation of a private company by Majlis Agama Islam Wilayah Persekutuan (MAIWP)⁴ called Pusat Pungutan Zakat (PPZ)⁵. While PPZ is in charge of collecting *zakāh* in the Federal Territory, the

¹ Yūsuf Al-Qarāḍāwī, *Fiqh al-Zakāh Dirāsah Muqāranah li Ahkāmihā wa Falsafatihā fī Daw'i al-Qur'ān wa al-Sunnah*, (Bayrūt, Lubnān: Resalah Publishers, 1st edn. 2014), 9.

² Unal Kilic, "Hz. Peygamber Doneminde Zekat Uygulamaları" in *Tarihte ve Gunumuzde Zekat Uygulamaları*, edited by Ismail Kurt and Seyit Ali Tuz (Istanbul: Ensar Nesriyat, 2017), 57.

³ Murat Aydin, "Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muessesesi: Turkiye Icin Malezya Modeli Ornegi," (Ph.D. thesis, Usak University, 2018), 77–78.

⁴ Federal Territories Islamic Religious Council.

⁵ Zakat Collection Centre.

responsibility of distributing *zakāh* funds is assumed by the Baitulmal Division within MAIWP.⁶

According to some researchers like Olgun, Malaysia has a unique and efficient *zakāh* management system compared to the other countries that collect *zakāh* with public authority, and MAIWP, which is in charge at the Federal Territory, is one of the most successful *zakāh* managing bodies.⁷ It is stated that the Federal Territory is one of the two states in Malaysia that collect the highest amount of *zakāh*.⁸ The number of people who pay *zakāh* increases every year, and as a result, the *zakāh* fund grows exponentially. With the advancement of technology and the diversity of financial instruments that followed, MAIWP encountered new juristic challenges, established a posture based on decisions taken by the relevant committees within the Council,⁹ and continued on its path in this manner.

Having several dimensions that cannot be included in such brief research, a thorough study should be made on MAIWP's *zakāh* management not only from the distribution practices aspect but also from *fiqhī* and *uṣūlī* perspective that might highlight several issues that are very important in *zakāh* practices today. This study is believed to be necessary to ensure *zakāh* management practices are evaluated and reviewed based on *Sharī'ah* principle. In this way, this study will contribute to *zakāh* management in Malaysia and pave a juristic way for countries that are eager to establish such *zakāh* administration institutions.

1.2 PROBLEM STATEMENT

While PPZ is responsible for *zakāh* collection in the Federal Territory, the distribution of *zakāh* funds is undertaken by MAIWP. In carrying out this distribution, MAIWP

⁶ Mervan Selcuk and Sakir Gormus, *Zekatin Kurumsallasmasi Dunya Uygulamalari ve Turkiye Icin Model Onerisi*, (Istanbul: Iktisat Yayinlari, 2019), 122.

⁷ Omer Faruk Olgun, "Malezya Kurumsal Zekat Uygulamasinda Zekatin Toplanma Usulu ve Sarf Yerlerinin Fikhi Acidan Degerlendirilmesi," (Master thesis, Recep Tayyip Erdogan University, 2021), 34.

⁸ Rusni Hassan and Nur I'ffah binti Muhammad Nasir, "Prioritization of Zakat Distribution in Selangor and the Federal Territory of Malaysia: Are They Following the Right Distribution Principles According to Shariah?," *Intellectual Discourse*, Special Issue (2016): 4.

⁹ Federal Territories Islamic Religious Council (MAIWP).

engages in various practices that need to be evaluated from a *Sharī'ah* perspective. The research problem addressed in this study is the lack of a comprehensive analysis of MAIWP's zakah distribution practices, their juristic (*fiqhī*) and jurisprudential (*uṣūlī*) bases, and an assessment of their compliance with *Sharī'ah* principles. There is a need to critically examine MAIWP's redefinition of *zakāh* recipients, distribution methods, involvement of external entities, and other key issues related to *zakāh* distribution from a rigorous juristic standpoint.

Based on the premise of clarifying and analysing MAIWP's practices and *fiqh* preferences, this research is undertaken to explore in detail the Council's redefinition of *zakāh* recipients, the criteria considered in this redefinition, various means of *zakāh* distribution, and companies and institutions that carry out assistance schemes on MAIWP's behalf. The study is also undertaken to examine some selected juristic issues concerning *zakāh* distribution such as the immediate performance of the *zakāh* obligation, the transfer of ownership of *zakāh* (*tamlīk*) to the recipients, and the investment of *zakāh* funds from a *Sharī'ah* standpoint.

1.3 RESEARCH QUESTIONS

The following research questions are formulated to help guide the researcher in obtaining effective results:

1. What is the history of *zakāh* administration in Malaysia and how does MAIWP manage *zakāh*?
2. How does MAIWP redefine *zakāh* recipients?
3. What are the juristic bases for MAIWP's redefinition?
4. What are the *zakāh* distribution practices of MAIWP?
5. What are the important juristic issues related to MAIWP's *zakāh* distribution and their rulings?

1.4 RESEARCH OBJECTIVES

The study aims to achieve the following objectives:

1. To study the history of *zakāh* administration in Malaysia and explore MAIWP's *zakāh* management.
2. To examine MAIWP's redefinition of *zakāh* recipients
3. To determine the juristic bases of MAIWP's redefinition.
4. To investigate *zakāh* distribution practices of MAIWP.
5. To address some important juristic issues related to MAIWP's *zakāh* distribution and their rulings.

1.5 SIGNIFICANCE OF THE STUDY

The importance of this research is reflected in the following points:

1. This study is expected to contribute to the understanding of the application aspect of Islamic law in the field of *zakāh*, taking into account the needs of the century without contradicting Islamic sources.
2. The study aims to assist MAIWP and concerned authorities in improving and developing *zakāh* administration per Islamic law.
3. The study's findings can also guide other *zakāh* organisations in their poverty eradication strategies in the Muslim world in general and Malaysia in particular.

1.6 RESEARCH METHODOLOGY

This research will adopt a qualitative approach as it provides a deeper understanding of analysing MAIWP's *zakāh* distribution practices juristically and jurisprudentially. It involves two methods: data collection and data analysis.

Data collection will be executed through library research and interviews.

Library research: Data will be gathered from primary sources such as the Holy *Qur'ān* and the Sunnah of the Prophet ﷺ, the websites of the MAIWP and the other relevant institutions as well as the writings of classical jurists from the *madhhabs*. Apart from that, the study will also use *fatwās* issued by councils in various Islamic nations, contemporary jurists' writings, laws, relevant books, articles, and journals as secondary sources.

Interview: A semi-structured interview will be conducted with officials in the MAIWP's relevant departments and academicians specialized in the field. It will concentrate on different aspects of *zakāh* distribution practices by the Council as well as the efficiency of the *zakāh* management. The data obtained will be analyzed and used in the relevant sections of the study.

Data analysis: The data collected regarding MAIWP's *zakāh* distribution practices will be analysed to determine the juristic and jurisprudential bases of the practices of the Council. Accordingly, *zakāh* distribution practices of the Council will be reviewed in the light of *Sharī'ah* based on the views of the *fiqh madhhabs*, contemporary jurists' opinions, and principles of Islamic jurisprudence.

1.7 LITERATURE REVIEW

The researcher had access to a set of English, Arabic, and Turkish studies. Among the most significant contemporary studies pertinent to the research subject that might be cited are as follows:

In his doctoral thesis, entitled "*Jibāyatu Amwāl al-Zakāh wa Ṣarfuhā fī Mālīzyā*,"¹⁰ ʿAzmān bin ʿAbd al-Raḥmān introduced *zakāh* institutions and Baitulmal, including how they were set up and the way they are currently functioning in Malaysia, with a focus on the Lembaga Zakat Selangor (LZS). Next, the traditional and modern tools employed by *zakāh* providers in *zakāh* payment were described and discussed from an Islamic law standpoint. Thereafter, the researcher investigated some issues

¹⁰ ʿAzmān ʿAbd Raḥmān Sulaymān, "*Jibāyah Amwāl al-Zakāh Wa-Sarfuhā Fī Mālīzyā: Hay'ah Zakāh Selānghūr Namūdhajan*," (Ph.D. thesis, Kuala Lumpur, International Islamic University Malaysia, 2010).

arising from the collection and distribution of *zakāh* funds, citing juristic regulations for such issues and the attitude of the Lembaga Zakat Selangor (LZS) on the matter. Although the issues covered in the above work on *zakāh* distribution are similar to those included in the study, this study will focus on the Federal Territory, whereas that work discussed only the practices in the state of Selangor. The researcher of this study will also try to find out the jurisprudential (*uṣūlī*) basis of some issues overlooked by that study.

*“Zakat Investment in Malaysia: A Study of Contemporary Policy and Practice in Relation to Sharī‘ah”*¹¹ is a work by Wan Marhaini Ahmad. Giving an overview of *zakāh* investment by clarifying its meaning and providing some samples from Muslim countries regarding the investment of *zakāh* funds, she traced in the third chapter the overall history of *zakāh* investment, including Malaysia. Subsequently, the researcher explained *Maqāṣid al-Sharī‘ah* and its relationship with *zakāh* investment, followed by an examination of Islamic legal issues in the management and financing of *zakāh* funds. Lastly, Wan Marhaini completed her work setting up two chapters for *zakāh* investment in Malaysia. That work, in which the researcher dealt with the topic of *zakāh* investment in a multidimensional and extensive manner, will serve as a resource for the relevant section of the thesis. However, this research will differ from previous work in that it will address many other issues that Wan Marhaini did not consider in her study, by focusing only on MAIWP’s practices.

Norazlina Abd Wahab, in her Ph.D. thesis titled *“Efficiency and Governance of Zakat Institutions in Malaysia,”*¹² researched the efficiency and governance of *zakāh* management between 2003 and 2007 in institutions in Malaysia. The study provided policymakers with further insight into achieving optimal capacity utilisation, improving management skills, efficient allocation of scarce resources, and the most productive scale of operation of *zakāh* organisations. Despite the fact that Norazlina addressed the incorporated Malaysian *zakāh* institutions into her thesis, she adopted an economic and financial approach, whereas its *fiqhī* and *uṣūlī* perspectives will define this research.

¹¹ Wan Marhaini Wan Ahmad, “Zakat Investment in Malaysia: A Study of Contemporary Policy and Practice in Relation to Sharī‘a,” (Ph.D. thesis, the University of Edinburgh, 2012).

¹² Norazlina Abd Wahab, “Efficiency and Governance of Zakat Institutions in Malaysia,” (Ph.D. thesis, International Islamic University Malaysia, 2013).

Halil Akbayrak, in his master thesis titled “*Zekat Verilecek Yerler Baglaminda “Fî Sebîlillâh” (“Fî Sabîl Allah” In the Context of Places to Give Zakāh)*”¹³ explicated the *fî sabîl Allāh* group among the *zakāh* receivers, sharing a wide range of perspectives from both classical and contemporary scholars regarding how they define *fî sabîl Allāh* and the way this category is perceived in some Islamic countries’ *zakāh* management practices, including Malaysia. Therefore, under the relevant subtitle, the research will benefit from that thesis. On the other hand, this research will involve a broad range of additional issues concerning *zakāh* distribution.

In addition, “*Administration of Baitulmal of Federal Territories: Its Practices and Challenges*”¹⁴ is another piece of research conducted by Liyana Al-Hany Binti Abdul Halim. The researcher explained the notion of Baitulmal, its legal basis, and historical development from the period of the Prophet Muhammad ﷺ to the Baitulmal in the Federal Territory. While she did examine the administration of Baitulmal in the Federal Territory concerning its legal status and constraints, this research will investigate the Council’s practices and decisions from a juristic point of view based on *Sharī’ah* rulings.

Muhsin Nor Paizin, in his article titled “Pelaksanaan Zakat di Wilayah Persekutuan: Satu Pemerhatian Terhadap Operasi Kutipan & Agihan Zakat” (*Zakāh Implementation in Federal Territory: An Observation on Zakāh Collection and Distribution Operations*)¹⁵, discussed the operation and implementation of the collection and distribution of *zakāh* in the Federal Territory based on observations. The study also came up with some suggestions for improvement, such as the efforts to campaign for *zakāh* payment should be intensified and the distribution activity must be more beneficial to the recipients and comprehensive. Although the study addressed *zakāh* collection and distribution in the Federal Territory, its focus was on operational and

¹³ Halil Akbayrak, “Zekat Verilecek Yerler Baglaminda “Fî Sebîlillâh”,” (Master thesis, Recep Tayyip Erdogan University, 2013).

¹⁴ Liyana Al-Hany binti Abdul Halim, “Administration of Baitulmal of Federal Territories: Its Practices and Challenges,” (Master thesis, International Islamic University Malaysia, 2014).

¹⁵ Muhsin Nor Paizin, “Pelaksanaan Zakat di Wilayah Persekutuan: Satu Pemerhatian Terhadap Operasi Kutipan & Agihan Zakat”, *Jurnal Hadhari*, vol.6 no.2 (2014): 97-111.

financial aspects, whereas this study will be defined by its *juristic* and *jurisprudential* perspectives.

In their article titled “*Prioritization of Zakat Distribution in Selangor and the Federal Territory of Malaysia: Are They Following the Right Distribution Principles According to Shariah?*”¹⁶, Rusni Hassan and Nur I’ffah binti Muhammad Nasir studied the fact that within recent years, the *fi sabīl Allāh* group constitutes the highest percentage as compared to other groups of *zakāh* recipients in both the Federal Territory and Selangor, questioning whether this prioritizing is right according to relevant *Sharī’ah* principles. Discussing the opinions of classic jurists, they concluded that MAIWP and LZS implement the preferred opinion of the scholars in the *zakāh* distribution principle, which allows *zakāh* to be distributed to any group of recipients that is deemed to have the highest needs of the *zakāh* based on research and investigation. Conversely, this study will encompass a vast array of additional matters pertaining to *zakāh* distribution and narrow its attention to *zakāh* distribution management in MAIWP.

An article by Emrullah Dumlu titled “*Zekatin Sarf Yerleri Modern Tartışmalar ve Yeni Yorumlar*” (Modern Controversies and New Interpretations of *Zakāh* Distribution Places)¹⁷ expounded on modern controversies and new interpretations regarding *zakāh* recipients. The research, considering the way *zakāh* recipients are presented in the *Qur’ān*, concluded that the *tamlīk* condition (the transfer of ownership of *zakāh* to the recipients) should be considered for the first four groups (*Fuqarā*, *Masākīn*, *‘Āmilūn* and *al-Mu’allaḥah Qulūbuhum*), but the “*maṣlaḥah* principle” is essential for the remaining four. Additionally, it cited that *al-fuqarā* and *al-masākīn* are reserved for those in need of social security, and anyone poor, regardless of religion, can be considered one of them. Also, it was cited that the condition of “being poor” is not sought for the last six groups among the *zakāh* recipients. Despite the research’s relevance to one of the chapters in this study about the redefinition of *zakāh* recipients,

¹⁶ Rusni Hassan and Nur I’ffah binti Muhammad Nasir, “Prioritization of Zakat Distribution in Selangor and the Federal Territory of Malaysia: Are They Following the Right Distribution Principles According to Shariah?”, *Intellectual Discourse* 24 (2016): 435-457.

¹⁷ Emrullah Dumlu, “Zekatin Sarf Yerleri: Modern Tartışmalar ve Yeni Yorumlar” in *Tarihte ve Günümüzde Zekat Uygulamaları*, edited by Ismail Kurt and Seyit Ali Tuz (Istanbul: Ensar Nesriyat, 2017), 765–806.

this study will deal with *zakāh* distribution in a more comprehensive way that will involve many other topics.

In his research titled “*Malezya Kurumsal Zekat Uygulamasında Zekatin Toplanma Usulü ve Sarf Yerlerinin Fikhi Acidan Degerlendirilmesi*” (The Juristic Evaluation of Collection Methods and the Zakat Recipients in Malaysia’s Institutional Zakat Practice)¹⁸, Omer Faruk Olgun outlined the history of *zakāh* as an institution stretching from the Prophet Muhammad ﷺ era to the present day. Later, Olgun reviewed “*zakāh* on income” within the scope of *al-māl al-mustafād*, followed by the investigation of *zakāh* distribution processes in both the Federal Territory and Selangor as well as related matters. The researcher provided some examples of contemporary usage styles of *zakāh* in Malaysia. Though his study has common subtitles with those included in this research regarding *zakāh* distribution practices, this research will be restricted to MAIWP’s practices, while the aforementioned study was about general *zakāh* administration in Malaysia. Additionally, the jurisprudential (*uṣūlī*) bases that underpin the topics ignored by that study will be included in the research.

In his master thesis entitled “*Islam Hukukunda Zekât Mallarının Nemalandirilmesi* (Investment of Zakat Funds in Islamic Law)”¹⁹, Muhammet Fatih Kirenci dealt with the investment of *zakāh* funds issue from the perspective of both Islamic jurisprudence and its principles, comprising *fatwās* issued by the most essential councils and institutions all over the world. Following that, Kirenci examined the primary methods for investing *zakāh* funds and clarified the main conditions of such an investment. The thesis also provided samples of *zakāh* investment practices in some countries, such as Algeria, Sudan, Malaysia, and Turkey. Nevertheless, *zakāh* investment is simply one of the subjects that will be addressed in this study, which will also cover various other *zakāh* distribution-related topics.

The researcher was able to find the above studies on the research subject. Although this research is similar to existing studies in some aspects, it differs from each

¹⁸ Omer Faruk Olgun, “*Malezya Kurumsal Zekat Uygulamasında Zekatin Toplanma Usulu ve Sarf Yerlerinin Fikhi Acidan Degerlendirilmesi*,” (Master thesis, Recep Tayyip Erdogan University, 2021).

¹⁹ Muhammet Fatih Kirenci, “*Islam Hukukunda Zekat Mallarının Nemalandirilmesi*,” (Master thesis, Hitit University, 2021).

study by one or more following points. Firstly, this research is confined to MAIWP's *zakāh* practices. Secondly, it covers several subjects pertaining to *zakāh* distribution in a comprehensive way, including some aspects that are overlooked by some other studies. Thirdly, it deals with the issues from the Islamic jurisprudence point of view, while some of the studies mentioned above dealt with the topic from other perspectives. Lastly, it seeks to find the *uṣūlī* bases of the issues, not contenting itself with discussing them only within the framework of the jurists' opinions.

1.8 PROPOSED CHAPTER OUTLINE

CHAPTER ONE: INTRODUCTION

- 1.1 Research Background
- 1.2 Problem Statement
- 1.3 Research Questions
- 1.4 Research Objectives
- 1.5 Significance of the Study
- 1.6 Limitations of the Study
- 1.7 Research Methodology
- 1.8 Literature Review
- 1.9 Proposed Chapter Outline

CHAPTER TWO: *ZAKĀH* ADMINISTRATION IN MALAYSIA AND MAIWP'S *ZAKĀH* MANAGEMENT

- 2.1 *Zakāh* Administration in Malaysia
- 2.2 MAIWP's *Zakāh* Management
- 2.3 Conclusion

CHAPTER THREE: MAIWP'S REDEFINITION OF *ZAKĀH* RECIPIENTS AND ITS ANALYSIS

- 3.1 *Zakāh* Recipients and Their Interpretation by Jurists
- 3.2 Analysis and Discussion of MAIWP's Redefinition of *Zakāh* Recipients
- 3.3 Conclusion

CHAPTER FOUR: *ZAKĀH* DISTRIBUTION PRACTICES OF MAIWP AND RELATED JURISTIC ISSUES

- 4.1 *Zakāh* Distribution Practices of MAIWP
- 4.2 Juristic Issues Related to *Zakāh* Distribution
- 4.3 Conclusion

CHAPTER FIVE: CONCLUSION



CHAPTER TWO

***ZAKĀH* ADMINISTRATION IN MALAYSIA AND MAIWP'S *ZAKĀH* MANAGEMENT**

The first part of this chapter will examine the administration of *zakāh* in Malaysia. In this context, the history of the *zakāh* administration, its legal framework, and its weaknesses and drawbacks will be explored. In the second part, MAIWP's and its *zakāh* collection agency, i.e., PPZ's *zakāh* management, along with their *zakāh* collection and distribution statistics for recent years, will be addressed.

2.1 *ZAKĀH* ADMINISTRATION IN MALAYSIA

Before the researcher begins to discuss *zakāh* administration in Malaysia, it would be useful to briefly introduce Malaysia. This information is essential for understanding the roles of the king and the rulers in *zakāh* management, the legal framework of *zakāh* administration, and related topics covered later. Malaysia is a federal country in Southeast Asia, divided into eastern and western parts, composed of 13 states and a federal territory. Out of the 13 states, 11 are located in Peninsular Malaysia, and 2 are located in East Malaysia. There are three federal districts in the country, which consist of Kuala Lumpur, Putrajaya, and Labuan. Kuala Lumpur is the official capital of the country, while Putrajaya is the administrative capital, and the island of Labuan serves as the international financial and free trade centre. Malaysia practices parliamentary democracy with a constitutional monarchy, where even though the King of Malaysia /Yang di-Pertuan Agong (YDPA) is the Head of the country, the power to make and pass legislation still resides with the Parliament.

Nine states¹ are headed by Sultans² (the traditional Malay Rulers). On the other hand, Penang, Malacca, Sabah, and Sarawak (states without a ruler) are led by Yang di-Pertua Negeris (the governors). As for Yang di-Pertuan Agong (the King of Malaysia),

¹ States with hereditary monarchies.

² Except for Perlis and Negeri Sembilan. For the ruler of the former is entitled Raja, while that of the later is called Yang di-Pertuan Besar.

his royal highness is elected among the nine rulers of the states every five years in the Conference of Rulers.³ Each ruler of the nine states is the head of his state and the head of Islam. Additionally, the King is the Head of Islam in the four states without a ruler, the Federal Territory, and his state.

2.1.1 The History of *Zakāh* Administration in Malaysia

In light of the changes and developments in *zakāh* management, the history of *zakāh* and its management in Malaysia will be discussed under three headings. These phases are the pre-colonial, colonial, and post-colonial periods.

2.1.1.1 *Zakāh* in Pre-Colonial Times

The arrival of Islam to the Malay Archipelago occurred in early times, in the 13th century, via Arab Muslim and Tamil Indian Muslim traders. During this century, Islam began to seize control of the population via mass conversion as it penetrated the Malay palaces. By then, the sultanates that governed the Malay states were deemed Islamic states, and the sultans, as the administrators of this autocratic system, were recognised as the heads of the religion. Given that *zakāh* is one of the five pillars of Islam, that date has indirectly marked the beginning of *zakāh* in this country.⁴ On the other hand, historical records indicate that legislation mandating the payment of *zakāh* has been in place within some Malay sultanates since the 16th century. Two of the first documented instances of *zakāh* enforcement were the Pahang Laws implemented by Sultan Abdul Ghafur Muhiuddin Shah (1592-1614) and the Kedah Law of 1667. These laws mandated the collection of *zakāh*, specifically from rice (paddy).⁵ Some scholars speculated that the institution of Baitulmal was practised during Malaya's pre-colonial era, sometime after the emergence of Islam in Malaya and, more specifically, after the advent of Islam in the Malacca Sultanate. However, there is no evidence that *zakāh* was managed through a formal institute that used a specific framework at that time.

³ Look Article 32, the Constitution of Malaysia.

⁴ Sulaymān, "Jibāyah Amwāl al-Zakāh", 26.

⁵ Mohd Nasir Azhar, "Development of Secular and Religious Taxation in Peninsular Malaysia," (Ph.D. thesis, the University of Edinburgh, 1999), 176–79.

The researchers indicated two methods of *zakāh* payment. The first method was that local *zakāh* payers identified the beneficiaries who were in need of *zakāh* and paid their *zakāh* to them directly without the help of any middlemen.⁶ The second customary method of payment and distribution, which is mentioned extensively, was that the goods were delivered to pondok⁷ (madrasah) teachers, or imams in the mosque or *surau*⁸, who would subsequently distribute them based on *zakāh* recipients' availability.⁹ Furthermore, such a practice may have been perceived as an honorarium to religious leaders like the imam, *siak*, and *khaṭīb*¹⁰ for directing the community towards Islamic principles.¹¹

To sum up, the pre-colonial period took its place in history as a period in which the state authority and the administration of *zakāh* did not intersect.¹² During this particular time, the collection of *zakāh* mainly focused on paddy, which served as the primary staple crop for the Malays. Based on the Malays' agrarian lifestyle, and their reliance on subsistence farming, and the localised nature of *zakāh* collection within small groups, it is reasonable to infer that *zakāh* contributions at this period were likely low in scale. At the state level, the primary economic means of support for the Malay Rulers consisted of secular taxes on production and commerce, and services obtained from slaves, bondsmen, and *kerah*¹³ levies. This suggests that *zakāh* was not acknowledged or regarded as a substantial public revenue source then.

⁶ Hairunnizam Wahid, "Localization of Malaysian Zakat Distribution: Perceptions of Amils and Zakat Recipients," (Ph.D. thesis, University of Malaya, 2014), 31.

⁷ It is the earliest traditional Islamic learning centre in Malaysia.

⁸ A place of worship that is relatively smaller in size when compared to a mosque.

⁹ Azman Ab Rahman, Mohammad Haji Alias, and Syed Mohd Najib Syed Omar, "Zakat Institution in Malaysia: Problems and Issues", *Global Journal Al-Thaqafah*, vol. 2, no.1 (2012): 37.

¹⁰ A *siak* is the individual responsible for overseeing a mosque or *surau*. A *khaṭīb* is the individual responsible for delivering Friday sermons, but the imam commonly also delivers these sermons.

¹¹ Ab Rahman, Alias, and Syed Omar, "Zakat Institution in Malaysia", 37.

¹² Wahab, "Efficiency and Governance of Zakat Institutions in Malaysia", 72.

¹³ *Kerah* is the Malay word for tasks and labour performed as a duty towards the rulers, without any payment.

2.1.1.2 *Zakāh Administration During the British Colonial Era*

After the colonisation of Malaya by the Portuguese (1511) and Dutch (1641), Malaya was colonized by the British in 1824 via an agreement called the Anglo-Dutch Treaty.¹⁴ The British government influenced how Malay rulers governed their people and interfered with their administration through the advice of the British Resident and Advisor.¹⁵ During this time, religion, customs, and mundane issues were separated. The British held complete authority except the religion of Islam and Malay customs, which were entirely under the authority of the Sultans. The Sultan was in charge of all matters pertaining to Islam and Malay traditions while he was deprived of his legislative and political power. The remainder fell within the jurisdiction of the British civil and criminal legal systems.¹⁶ Accordingly, the issues related to *zakāh* were managed by the mufti or imam, whom the Sultan appointed.¹⁷ Following this concept, the imam would be given authority over *zakāh*-related matters, and a portion of *zakāh* collected would be offered to the state government to be used for Islamic concerns.¹⁸ In this regard, a portion of the funds was used to construct Islamic schools, mosques, pondoks, and suraus.¹⁹

Kelantan was reportedly the first state to establish a council for Islamic affairs²⁰ named Majlis Ugama Islam dan Adat Istiadat Melayu Kelantan (Kelantan Council of Islamic Religion and Malay Custom) in 1915²¹. The council was established as an autonomous entity, theoretically distinct from the state government, with the legal authority to advise and assist the Sultan of Kelantan on all matters pertaining to Islam and Malay traditions. The council was given the authority to devise and implement policies and laws regarding the practise and performance of the religion, subject to the

¹⁴ This colonization lasted until 1957, except for the Japanese occupation of Malaysia between 1941 and 1945.

¹⁵ Abdul Halim, "Administration of Baitulmal of Federal Territories", 56.

¹⁶ Nik Mustapha bin Hj Nik Hasan, "Zakat in Malaysia- Present and Future Status", *International Journal of Economics, Management and Accounting*, vol. 1, no.1 (1987): 52.

¹⁷ Abdullah Alwi Haji Hassan, "Development of Administration of Islamic Law in Kelantan," (Ph.D. thesis, University of Kent, 1979): 29.

¹⁸ Ab Rahman, Alias, and Syed Omar, "Zakat Institution in Malaysia", 38.

¹⁹ Abdul Aziz Bin Muhammad, *Zakat and Rural Development in Malaysia* (Kuala Lumpur: Berita Publishing, 1993), 111.

²⁰ Some argue that it was Terengganu to be the first state in this regard in 1914. Look Zazli bt Zainuddin, "The Management of Funds of Zakat, Sadaqat and Awqaf and Their Contributions Toward Muslim Educational Purposes in Malaysia," (Master thesis, International Islamic University Malaysia, 1998), 5.

²¹ Wahab, "Efficiency and Governance of Zakat Institutions in Malaysia", 77.

ruler's ultimate approval.²² Since *zakāh* was the primary source of revenue for the Majlis Ugama Islam dan Adat Istiadat Melayu Kelantan, a specialised department was established to oversee its collection and distribution. The Department of Zakat and Fitrah at the council was responsible for general administration of *zakāh* collection, maintenance of Muslim graveyards, commerce and trade, construction of rental properties, and offering various industries.²³ This led to the effective management of *zakāh* in the state by implementing rules and regulations related to the collection, distribution,²⁴ and violations of non-payment of *zakāh*. This served as a template for other states to establish their Islamic councils, which would be referred to as Majlis Agama Islam Negeri (MAIN).²⁵ These councils, in the forthcoming years, reduced the role of Islamic teachers (imams) in the village. The main goal of the foundation of the MAINs throughout Malaysia was to centralize Islamic religious activities at the state level.²⁶ Pahang, Perlis, Johor, and Kedah were among the first to create their MAINs in 1930, 1934, and 1936, respectively, after Kelantan did so in 1922.

In the meantime, Baitulmal Notice was issued by Kelantan State in 1926, and this was followed by the creation of Baitulmal in Johor and Terengganu through the Baitulmal Enactments of 1934 and 1937, respectively. Accordingly, Baitulmal was founded in all states in accordance with the rules set by the respective state's sultan.²⁷ By 1957, all Peninsular Malaysian states had, to some extent, centralised their *zakāh* collection and distribution, with authority to collect and distribute *zakāh* generally entrusted to the MAIN. This meant that the *zakāh* management has been transformed into a systematic administration and organisation governed by the MAIN of the State. However, even though this period witnessed the institutionalisation of *zakāh* at the state level under the administration of the MAINs, the full potential of *zakāh* as a source for

²² William R. Roff, "The Origins and Early Years of the Majlis Ugama" in *Kelantan Religion, Society and Politics in a Malay State*, edited by William R. Roff (Kuala Lumpur: Oxford University Press, 1974), 101–3.

²³ Hassan, "Development of Administration of Islamic Law in Kelantan", 111.

²⁴ After the council was established in Kelantan, imams were required to register with the council and deliver 7/8 of the *zakāh* they collected to the council. In the following period, in 1938, it was decided to deliver the entire *zakāh* collected to the council, and it was enacted that Imams receive their shares officially.

²⁵ State Islamic Religious Council (SIRC).

²⁶ Mohd Shahril Ahmad Razimi, Abd Rahim Romle, and Muhammad Farid Muhammad Erdris, "Zakat Management in Malaysia: A Review", *American-Eurasian Journal of Scientific Research*, vol. 11, no.6 (2016): 454.

²⁷ Abdul Halim, "Administration of Baitulmal of Federal Territories", 58.

the improvement and welfare of the Muslim community had yet to be realised, given its infancy and the small quantity of *zakāh* collected. Furthermore, despite the emergence of new sources of wealth such as tin, palm oil, cocoa, and rubber in the colonial period, the practice of *zakāh* was not renewed, and it was primarily taken from paddy as well as *zakāh al-fiṭr*. This mentality, which continued until the 1990s after independence, can be construed as a sign that *zakāh* was considered as a religious ritual and its economic effects were not considered sufficient.²⁸

2.1.1.3 Zakāh Administration During the Post-Colonial Era (After Independence)

The post-colonial situation of *zakāh* administration in Malaysia can be divided into two periods, before the 1990s and after the 1990s, based on the progress and advancements made in *zakāh* administration.

2.1.1.3.1 Before the 1990's

It has been stated that Baitulmal fund was founded in each MAIN, which consists of all movable and immovable possessions and money accrued under Islamic law.²⁹ Starting from the Independence Day of Malaysia to the present, the Baitulmal has been managed by the MAINs.³⁰ Consequently, this body had authority and control over the financial aspects of state religious activities. Moreover, MAINs were receiving assistance in their everyday operations from the Jabatan Agama Islam Negeri (JAINs).

It is important to indicate that the amount of *zakāh* was very low in those years.³¹ There were several reasons for this. Firstly, priority was given to the payment of *zakāh* from paddy output and *zakāh al-fiṭr*, but collecting of *zakāh* from private property, companies, and income was severely neglected as during the colonial times. Secondly, the duty of the *ʿāmil*, or *zakāh* collector, was considered temporary and seasonal. *Zakāh*

²⁸ Ismail Yalcin, "Malezya Kamusal Zekat Uygulaması Üzerine", *Cumhuriyet İlahiyat Dergisi*, vol. 20, no.2 (December 2016): 246.

²⁹ Administration of Islamic Law Act (Federal Territories) 1993, Section 60, (1).

³⁰ Abdul Halim, "Administration of Baitulmal of Federal Territories", 54.

³¹ Ab Rahman, Alias, and Syed Omar, "Zakat Institution in Malaysia", 38.

was traditionally collected during the month of *Ramaḍān* and the harvesting season, as the administration of *zakāh* adhered to an established practise in which *zakāh* was given personally to *‘āmil*s, who would then distribute the proceeds gathered to the appropriate beneficiaries. Another reason for the inadequate amount of *zakāh* collection was the high volume of work, in addition to tasks that were not correctly designated. For instance, an officer was given responsibility for all issues pertaining to baitulmal, such as *zakāh*, estates, *waqf* (endowment), and other such topics. All these caused the *zakāh* administration to work inefficiently and fail to reach the desired levels in that period.³²

2.1.1.3.2 After the 1990's

Malaysia witnessed an Islamic revivalism led by different religious movements, organizations, and communities in the early 70s such as Angkatan Belia Islam Malaysia³³ (ABIM), Jamaat Tabligh, and Darul Arqam. This period triggered the phase that can be called the “Islamization process” in the administration and institutions of Malaysia. In response to the political circumstances of the time, the government launched a variety of Islamization programmes in the early 1980s, a period that can be considered the beginning of the post-Islamic revival era. This move was critical in demonstrating that the ruling government was highly Islamic in order to attract devout Muslims and push out the opposition. The government’s Islamization efforts included the expansion and strengthening of several Islamic institutions, including the Institute of Islamic Understanding Malaysia, Pusat Islam (Islamic Centre), the International Islamic University Malaysia, and *zakāh* institutions.³⁴ The social change throughout the era resulted in the *zakāh* becoming one of the institutions that the government was eager to improve in the subsequent decades.

This period is seen as the beginning of the period in which *zakāh* management became more systematic and effective. Before the 1990s, any religious issue at the MAINs was handled by a different council division, such as the *zakāh* division or unit

³² Aydin, “Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muessesesi: Turkiye Icin Malezya Modeli Ornegi”, 73.

³³ Muslim Youth Movement of Malaysia.

³⁴ Suhaili Sarif, Nor Aini Ali, and Nor ’Azzah Kamri, “The Advancement of Zakat Institution in Malaysian Post Islamic Revivalism Era”, *Journal of Al-Tamaddun*, vol. 15, no.2 (2020): 71–72.

within the Baitulmal department. This unit or division was further subdivided into smaller units or divisions that managed the administration, collection, and distribution of *zakāh*. From 1990 onwards, the structure of the *zakāh* administration grew more diverse as some of the MAINs began to incorporate their *zakāh* collection and distribution units by setting up subsidiaries to oversee their *zakāh* collection, or both the collection and the distribution. Creating a designated entity with a mandate to collect, or collect-and-distribute all forms of *zakāh* systematically and effectively has added a fresh dimension to *zakāh* administration.³⁵ This was also the time when a computerized *zakāh* management system was first implemented, and new sources of *zakāh* were identified. In this regard, there is now *zakāh* on income, business, savings, assets, and other types that did not exist before.

In this regard, Pusat Pungutan Zakat (PPZ) was the first corporation to be established in Federal Territory in 1991 by MAIWP.³⁶ This was followed by the foundation of both Lembaga Zakat Selangor (LZS) and Pusat Urus Zakat Pulau Pinang (ZPP) in 1994³⁷, Pusat Kutipan Zakat Pahang (PKZ) in 1995, Pusat Zakat Negeri Sembilan (PZNS) in 1998, both Pusat Zakat Melaka (PZM) and Tabung Baitulmal Sarawak in 2001, and Pusat Zakat Sabah (PZS) in 2007.³⁸

The privatization of *zakāh* management brought along with it officials dealing only with *zakāh* affairs, *zakāh* offices and expert staff in calculating *zakāh*. Privitisation has several advantages including the ability to bypass bureaucratic red tape, access state-provided infrastructure, utilize computer technology effectively, and create an institutional infrastructure.³⁹ Additionally, privatization can lead to more efficient collection and distribution of *zakāh* such as the opportunity to introduce new systems to the public, better protection of employee rights, the ability to recruit experienced staff, and the establishment of specialized departments such as marketing, finance, and research and development. Classifying the various organizational structures applied by

³⁵ Abdul Latiff, 40.

³⁶ Ataina Hidayati and Achmad Tohirin, "Management of Zakah: Centralised vs Decentralised Approach" in *Seventh International Conference–The Tawhidi Epistemology: Zakat and Waqf Economy*, (Bangi, 2010), 362.

³⁷ Nazifah Binti Mustaffha, "Zakāt Disbursement Efficiency – a Comparative Study of Zakāt Institutions in Malaysia," (Master thesis, International Islamic University Malaysia, 2007), 21.

³⁸ Ab Rahman, Alias, and Syed Omar, "Zakat Institution in Malaysia", 38; Razimi, Romle, and Muhamad Erdris, "Zakat Management in Malaysia", 454.

³⁹ Razimi, Romle, and Muhamad Erdris, "Zakat Management in Malaysia", 455.

states regarding the administration of *zakāh* into one of three overarching groups is feasible.

Full Public Model (Non-Corporatized)

This model refers to the *zakāh* collection and distribution processes carried out by the Baitulmal unit within the MAIN⁴⁰ of the relevant state without any privatization or corporatization. The model is implemented in 6 states, namely Perlis, Kedah, Perak, Johor, Terengganu, and Kelantan.⁴¹ In the states where this model is applied, *zakāh* revenues are lower compared to other regions. It is claimed that the most important reason for this is the lack of privatization.⁴²

Semi-Public Model (Partially Corporatized)

In states that adopt this model, an entity tasked with collecting *zakāh* is established as a subsidiary of MAIN. The duty and purpose of this entity is only to collect *zakāh*. After it receives a predetermined amount of the share of *ʿāmil* from the *zakāh* fund collected, the company transfers the remainder to the MAIN for distribution. The distribution process is carried out by the relevant division within the MAIN. The aforementioned model is implemented in four states: the Federal Territory (Wilayah Persekutuan), Pahang, Negeri Sembilan, and Melaka.⁴³ It is observed that *zakāh* incomes are higher in this model compared to the first.⁴⁴

⁴⁰ Zakah administration offices, under their separate Islamic Councils of each state, are generally known by various titles such as Zakat and Baitulmal Office, Zakat Committee, Zakat Unit or Zakat Department.

⁴¹ Wan Ahmad, "Zakat Investment in Malaysia", 250.

⁴² Aydın, "Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muessesesi: Türkiye İcin Malezya Modeli Ornegi", 77.

⁴³ Hassan and Muhammad Nasir, "Prioritization of Zakat Distribution in Selangor and the Federal Territory of Malaysia", 436.

⁴⁴ Aydın, "Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muessesesi: Türkiye İcin Malezya Modeli Ornegi", 82.

Fully Privatized Model (Fully Corporatized)

This latest model covers the states of Selangor, Penang, Sarawak, and Sabah.⁴⁵ In this model, *zakāh* management is entirely under the authority of the private sector. An organised and professional body undertakes the duties of collecting *zakāh* and delivering it to the beneficiaries. In the meantime, since the MAINs and the state government are the shareholders or trust-holders, the corporations continue to be governed and inspected by their respective MAINs.⁴⁶ This model is seen as the most efficient with the highest amount of *zakāh* collection.⁴⁷ Aside from the history of *zakāh* administration in Malaysia and the varying *zakāh* management practices of states, the legal framework under which *zakāh* administration is carried out should also be explored.

2.1.2 Legal Framework of *Zakāh* Administration

The Malaysian Constitution, also known as the Federal Constitution, is the country's supreme law. In accordance with the ninth schedule of the Constitution, the Islamic laws that apply only to Muslims, such as matrimonial law, charitable endowments (*waqf*), *zakāh*, bequests, inheritance, and offences against religion, are to be regulated by state Islamic law enactments⁴⁸ including the Federal Territory. The authority to legislate on these affairs is entrusted in the state legislators and the Sultans.⁴⁹ Consequently, these laws are only applicable in the respective state and are implemented by a court system distinct from the Federal Courts, whose constitution, structure, and procedures fall within state jurisdiction. Accordingly, as enactments fall under state jurisdiction, in cases where there are conflicts between the federal law and a state enactment, the federal law takes precedence, and the state law that is inconsistent will no longer be valid.⁵⁰

⁴⁵ Wahid, "Localization of Malaysian Zakat Distribution: Perceptions of Amils and Zakat Recipients", 34.

⁴⁶ Wan Ahmad, "Zakat Investment in Malaysia", 246.

⁴⁷ Aydin, "Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muessesesi: Turkiye Icin Malezya Modeli Ornegi", 85.

⁴⁸ Independent *zakāh* enactments are only present in the states of Kedah and Sabah. These enactments are more systematic in their substance and bring better enforcement facilities for *zakāh* than the provisions of *zakāh* under the administration of Islamic law enactments.

⁴⁹ Hidayati and Tohirin, "Management of Zakah", 361.

⁵⁰ It is declared that: "If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void." Look Article 75, the Federal Constitution of Malaysia.

According to the legislation, in each state, a council, commonly known as the Majlis Agama Islam Negeri (MAIN), is founded and granted extended jurisdiction over the management of religious affairs, except matters concerning the issuance of *fatwās* and the adjudication of Islamic laws.⁵¹ These two duties are designated to the Jabatan Mufti (Office of the Mufti) and the Mahkamah Syariah (*Sharī'ah* Court), respectively.⁵² The MAINs, however, continue to be the major authority in Islamic religious affairs in the name of His Royal Highness, the Yang Di-Pertuan Agong, for the Federal Territories, and the Sultan or Raja for each state. Accordingly, this body is required to be consulted regarding any issues concerning Islamic affairs, with the ability to set fundamental policies and regulate mechanisms for their implementation.⁵³ It is also authorised to manage the financial aspects of state religious activities. As a result, the council administers the Baitulmal funds as it sees fit, including the discretion to sell, realise, or dispose of any investment, asset, or money vested in the council and to reinvest any revenues from such activities. Besides, since the assets entrusted to the council are religious funds, any economic operations done and financed by these funds must adhere to *Sharī'ah* principle.⁵⁴

Since *zakāh* is among the wealth accrued at the Baitulmal, the MAIN is the only entity with *zakāh* administration rights in each state. It is the only authority to collect and disburse *zakāh*, to establish rules for its collection, administration, and distribution, to appoint *ʿāmil*, and to impose penalties for non-payment or inappropriate payment of *zakāh*.⁵⁵ Additionally, because Islamic law enactments vary from one state to another, the regulations on administering *zakāh* affairs, including the organisational structure, zakatable goods, and punishments for certain *zakāh*-related offences, also differ between states.⁵⁶ In addition to the MAINs, two federal departments also oversee and provide assistance with *zakāh* administration: the Jabatan Kemajuan Islam Malaysia (Department of Islamic Development Malaysia), known as JAKIM, and the Jabatan

⁵¹ See for example, Administration of Islamic Law (Federal Territories) Act 1993, Section 4, (1).

⁵² Wan Ahmad, "Zakat Investment in Malaysia", 241.

⁵³ Ibid., 241.

⁵⁴ See for example, Administration of Islamic Law Enactment (Selangor) 2003, Section 81.

⁵⁵ Wan Ahmad, "Zakat Investment in Malaysia".

⁵⁶ Mohd Daud Bakar, "The Malaysian Zakat System: Law and Policy Reform" in Seminar on Zakah and Taxation, Organized by Kulliyah of Economics and Management, International Islamic University Malaysia, 8-9 June, 1998, 20–22.

Wakaf, Zakat dan Haji (Department of Wakaf, Zakat and Pilgrimage), known as JAWHAR.⁵⁷

Additionally, *fatwās* also serve as fresh decisions on new cases of Islamic law, and upon publishing in the official gazette, they become obligatory for every Muslim living in that state. There are also *fatwās* issued by the responsible authority that are not gazetted but serve as religious guidelines for the general public and, in some instances, the MAINs administration. The *fatwās* are essentially new additions to the Islamic laws codified in the preceding enactments, as they reflect the most up-to-date and relevant legal views based on the requirements of the society as it evolved and changed at a given time. As previously stated, the Jabatan Mufti in each state is given the power to publish and issue a *fatwā*. The Muftis and Legal Committees must generally adhere to the accepted views of *Shāfiʿī madhhab* (*al-qawl al-muʿtamad*) when issuing a *fatwā*, but when the public interest so dictates, the *fatwā* may be declared in accordance with the views of other schools of Islamic law. The *Shāfiʿī madhhab* of Islamic law is the predominant school of Islamic law in the country; thus, even if there are instances when other schools of Islamic law were also embraced, it has a strong impact on the *fatwās* that are issued.⁵⁸ Although Malaysia has a positive international reputation for *zakāh* administration, Malaysian *zakāh* administration still has several flaws, which should be examined by researchers and improved or at least alleviated by the respective authorities.

2.1.3 Malaysian *Zakāh* Management's Weaknesses and Drawbacks

Despite Malaysia's well-deservedly successful portrait of *zakāh* administration around the world⁵⁹, Malaysian *zakāh* management has certain weaknesses. Some are authority-

⁵⁷ Wan Ahmad, "Zakat Investment in Malaysia", 242.

⁵⁸ Sec. 39, Administration of Islamic Law Act (Federal Territories) 1993 reads, "(1) In issuing any *fatwa* or certifying any opinion, the Mufti shall ordinarily follow the accepted views of the Mazhab Syafie. (2) If the Mufti considers that the accepted view of the Mazhab Syafie will lend to a situation which is repugnant to public interest, the Mufti may follow the accepted view of the Mazhab Hanafi, Maliki, or Hanbali. (3) If the Mufti considers that none of the *qaul muktamad* of the four Mazhab may be followed without leading to a situation which is repugnant to public interest, the Mufti may then resolve the question according to his own judgement without being bound by the *qaul muktamad* of any of the Mazhabs."

⁵⁹ Mohd Saiful Hafiz Vijia, Islamic Affairs Officer in MAIWP, also supports this idea declaring that: "Even though we have a roughly 67 percent Muslim community in Malaysia, when we talk about the

originated and some are caused by the public, an issue that has been expressed by some researchers. Undoubtedly, removing these flaws is vital for the effectiveness and prospects of Malaysian *zakāh* management. Some of these weaknesses are as follows.

Firstly, although the Malaysian *zakāh* administration has a centralized structure at the state level, it lacks unity in the federal sense.⁶⁰ As a result, there are 14 different *zakāh* systems, and each state implements different strategies and laws regarding the administration of *zakāh*. Generally, there is no transfer of *zakāh* funds between the states. Hence, any state with a high surplus cannot transfer its surplus to the deficit state.⁶¹ This affects the poverty alleviation function of *zakāh* in Malaysia negatively. Also, it is more appropriate for the goal and philosophy of *zakāh* to provide *zakāh* in a way that will cover the poor, regardless of the different states. Moreover, because *zakāh* is not managed by a single national *zakāh* organization throughout Malaysia, companies operating in more than one state face challenges in paying *zakāh* and benefiting from tax reductions properly.⁶²

Indeed, the concept of a centralised *zakāh* authority can be traced back to the early 1960s. Scholars and academicians proposed several ways in order to form a centralised *zakāh* authority. Some proposed establishing a national secretariat for *zakāh* under the auspices of the Conference of Malay Rulers (the Majlis Raja-raja Melayu), with the representation of the religious authorities from each state. In the 1968 Persidangan Alim Ulama Malaysia, Abdullah, a presenter at the conference, suggested appointing the Majlis Amanah Rakyat (MARA) as the fund trustee who would collect the capital from MAINs. The board would administer the fund, and each religious

zakāh institution, Malaysia is now a leading country, and it has been studied by other countries how the *zakāh* is managed so fluently by Malaysia. Many countries have so far visited Malaysia to know how the institutions of *zakāh* are run.” Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

⁶⁰ Hidayati and Tohirin, “Management of Zakah”, 371.

⁶¹ However, it should be noted that there are some exceptions to this. For example, Mohd Saiful Hafiz has stated that “Even we sometimes help schools and tahfiz centres outside of the Federal Territory when they ask for it. For example, we provide a tahfiz school in Pulau Besar island in Malacca with funds from *zakāh*. Also, we give *zakāh* to some schools in Perak, Kedah, and Kelantan, although they have their own councils. Because we know that their *zakāh* collection is not as much as ours.” Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

⁶² Aydin, “Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muessesesi: Türkiye İcin Malezya Modeli Örneği”, 101.

authority would own a proportional share of the fund based on their contributions. Tadin, another presenter, proposed the formation of an agency comprised of all MAINs' chiefs (Yang Dipertua Majlis), the governor of the national bank, and representatives from both Bank Bumiputra and MARA. During the early 1990s, the government made efforts to consolidate the collection of *zakāh* by using its taxation agency, the Inland Revenue Department (IRD). Additionally, in 1991, many federal agencies put forward a proposal to form the National Zakat Foundation (Yayasan Zakat Kebangsaan). The most significant initiative to centralize *zakāh* administration was the 1993 budget proposal to establish a federalized *zakāh* management entity called the Zakat Council of Malaysia (Lembaga Urusan Zakat Malaysia, LUZAM). Each of the MAINs would serve as representatives of the council, but it would function as a federal agency, with the collection process being controlled by the machinery of the IRD. The *zakāh* funds received will be deposited into an account at Bank Negara and thereafter distributed to the MAINs based on their respective capital contributions. Despite numerous attempts and suggestions to establish a centralised *zakāh* authority and fund, these proposals never materialised.⁶³ Mohd Saiful Hafiz Vija noted that this may have been influenced by the reluctance of states that collect large amounts of *zakāh* to share it with other states.⁶⁴

However, the fact that all these efforts were inconclusive does not diminish the importance of the need for a national *zakāh* organization that will gather all MAINs' efforts regarding *zakāh* management under one roof. With *zakāh* managing bodies centralised,⁶⁵ coordination between a national *zakāh* organization and the fiscal policy maker might be simpler. This way, the *zakāh* can be implemented into the government's fiscal policy.⁶⁶ That is why scholars still propose alternative ways. For example, to solve the problem emerging from different authorities managing *zakāh* JAWHAR, which was established under the Prime Minister Department, can play an intermediary role between the states on behalf of the federal government, thus facilitating cooperation among the *zakāh* institutions in Malaysia. If this happens, JAWHAR is likely to enable

⁶³ Wan Ahmad, "Zakat Investment in Malaysia", 92–97.

⁶⁴ Mohd Saiful Hafiz Vija Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

⁶⁵ The unification of the pilgrimage organizations in the country under Lembaga Tabung Haji (TH) is a good example in this sense.

⁶⁶ Hidayati and Tohirin, "Management of Zakah", 372.

technology sharing between institutions and conduct common training programs, which will offer an opportunity for institutions to benefit from one another and help *zakāh* become a part of the fiscal policy system as a mainstream Islamic institution.⁶⁷

Secondly, another problem experienced in the management of *zakāh* in Malaysia is the weakness of authorities in tracking, determining, and contacting *zakāh* payers. According to a 2010 PPZ/MAIWP report, even though there were over 2 million Muslims in Selangor, the number of *mukallaḥs* who paid their *zakāh* was only about 160,000. One of the main reasons for this is the absence of a structured follow-up system.⁶⁸

Thirdly, *zakāh* is distributed in response to applications and occasionally based on public reports or actions undertaken by the *zakāh* organisation. The authority establishes guidelines to ensure that *zakāh* is directed to the proper recipients. Nevertheless, there are public complaints that the intended recipients do not receive the *zakāh* due to a lack of promotion by the authority or ignorance on the side of the community.⁶⁹ In addition, the person who wants to receive *zakāh* must provide the necessary documents and attend an interview after applying. This method may offend the person concerned and cause those in need who do not want to experience this process to stand back.⁷⁰

Fourthly, one of the concerns that causes all operations relating to *zakāh* to slow down and take longer is excessive bureaucracy. For instance, it can take years for some students to receive funding from a *zakāh* institution for education assistance. As a result, these students are obliged to apply for education loans before getting *zakāh*.⁷¹

Fifthly, another criticism about the Malaysian *zakāh* system is that 1/8, i.e., 12.5%, to be paid to private companies that are in the position of the *‘āmil*, is considered

⁶⁷ Wahab, “Efficiency and Governance of Zakat Institutions in Malaysia”, 228–29.

⁶⁸ Razimi, Romle, and Muhamad Erdris, “Zakat Management in Malaysia”, 456.

⁶⁹ Ab Rahman, Alias, and Syed Omar, “Zakat Institution in Malaysia”, 39.

⁷⁰ Aydin, “Makro-Ekonomik ve Sosyal Yonleriyle Zekat Muesesesi: Turkiye Icin Malezya Modeli Ornegi”, 102.

⁷¹ Razimi, Romle, and Muhamad Erdris, “Zakat Management in Malaysia”, 455. Mustaffha, “Zakāt Disbursement Efficiency”, 32.

relatively high by the public and causes discomfort for those who pay *zakāh*.⁷² It is pointed out that the tax collection cost is at most 2 percent in the world and even below 1 percent in developed countries.

Sixthly, the insufficiency of the legal infrastructure for *zakāh* is another weakness identified by scholars regarding the administration of *zakāh* in Malaysia.⁷³ Therefore, *zakāh* practices, whose legal infrastructure is not clear enough, open the door to abuse allegations. While tax, as a public law area, is regulated by federal law, it is evident that leaving *zakāh*, which is closely related to the central policies of the state such as social security, employment, and unemployment, and the underprivileged sections that should be supported first, as a state issue with insufficient legal infrastructure, may cause problems. This is because the differences within the same country will likely undermine feelings of trust and justice among the citizens.⁷⁴

Seventhly, for a long time, there was no standardised formula for calculating *zakāh*, which posed challenges for companies that operate in more than one state when calculating the *zakāh* that should be provided. The consensus to adopt a standardised method for computing *zakāh* on business was reached at the National Zakat Convention held in Putrajaya, Malaysia, on September 18-19, 2001.⁷⁵ Additionally, some researchers also claimed that the tax reduction applied to companies that pay their *zakāh* will not increase the incentive to give *zakāh* since there is no full tax refund.⁷⁶ The outcome of this is that non-Muslim businessmen are only responsible for paying taxes, whereas Muslim businessmen are required to pay both taxes and *zakāh*, resulting in a situation where Muslim taxpayers have to make two payments, facing a form of double taxation.

Eightly, according to Mohd Saiful Hafiz Vijia, the management of *zakāh* in Malaysia experienced another problem which is as follows:

⁷² Hairunnizam Wahid and Radiah Abdul Kader, "Localization of Malaysian Zakat Distribution: Perceptions of Amil and Zakat Recipients", 2010, 473.

⁷³ It was mentioned earlier that independent *zakāh* enactments are only present in the states of Kedah and Sabah.

⁷⁴ Yalcin, "Malezya Kamusal Zekat Uygulamasi Uzerine", 260–61.

⁷⁵ Wan Ahmad, "Zakat Investment in Malaysia", 101.

⁷⁶ Presently, *zakāh* paid by companies to the authorities is refundable up to a limit of 2.5% of total income.

“Some recipients do not share their real income. Finding out where the real poor are is one of the challenges in Malaysia and also in the Federal Territory. This is because we simply take the information from them depending on what they declare by taking their handwriting or whatever. For instance, they declare that: I am a faqīr, and my income for the month or year is soever. So, we depend on that. We have no strong real system to find out these people’s financial situation.” However, he indicated that they are working on this problem and that it is supposed to be solved at the beginning of 2024.⁷⁷

Other studies on *zakāh* management in such organisations revealed inefficiencies such as understaffing,⁷⁸ an out-of-date database of beneficiaries, the absence of an internal control system, including coordination between collection and distribution divisions, a flawed accounting system, a lack of transparency⁷⁹, and a communication gap between managers and *zakāh* receivers.⁸⁰

2.2 MAIWP’S *ZAKĀH* MANAGEMENT

In this second part of the chapter, the researcher will investigate the MAIWP, an entity that holds significant prominence among the MAINs in Malaysia with regard to *zakāh* administration. In this context, the MAIWP's and its *zakāh* collection agency PPZ's history, objectives and visions, as well as the *zakāh* collection and distribution statistics of recent years, will be addressed.

2.2.1 History of the MAIWP (‘s *Zakāh* Management)

Majlis Agama Islam Wilayah Persekutuan⁸¹ (MAIWP) was founded on the same date that Kuala Lumpur was declared as a Federal Territory on February 1, 1974. It was

⁷⁷ “*But inshā’Allāh the government will start by next year, 2024, I think in February, to introduce a system provided by the government that links departments, including zakāh institutions in 14 states, along with treasury, charity departments, and some others, to share information about the included people in the system. So, it can be found out what the real income of these people is. So, with this new system, people will not be able to make false declarations about their income since we will be able to see from the system their income, from where they earn it, the name of the department, and so on.*” Mohd Saiful Hafiz Vija Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

⁷⁸ Wahid, “Localization of Malaysian Zakat Distribution: Perceptions of Amils and Zakat Recipients”, 42.

⁷⁹ Norazlina Abd Wahab and Abdul Rahim Abdul Rahman, “A Framework to Analyse the Efficiency and Governance of Zakat Institutions”, *Journal of Islamic Accounting and Business Research*, (2011): 49.

⁸⁰ Wan Ahmad, “Zakat Investment in Malaysia”, 218.

⁸¹ The Federal Territory Islamic Religious Council.

established to supervise Islamic matters in the Federal Territory of Kuala Lumpur, which had previously fallen under the authority of the Selangor state government and its respective MAIN. Upon the declaration of Labuan and Putrajaya as Federal Territories on April 16, 1984, and February 1, 2001, respectively, MAIWP became responsible for overseeing the religious affairs of Muslims in these regions.⁸² MAIWP's establishment is in accordance with the Administration of Islamic Law (Territory).⁸³

There shall be a body to be known as the “Majlis Agama Islam Wilayah Persekutuan” to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam.⁸⁴

The Majlis shall aid and advise the Yang di-Pertuan Agong in respect of all matters relating to the religion of Islam within the Federal Territories...⁸⁵

Meanwhile, Baitulmal Division was established in 1974 at the same time as the foundation of MAIWP which is in accordance with the Islamic Law Act.⁸⁶

1) A Fund to be known as Baitulmal is hereby established. The Fund shall consist of all moneys and properties, movable or immovable, which by Islamic Law or under the provisions of this Act or rules made thereunder, accrue, or which are contributed by any person to the Fund.

(2) All moneys and properties in the Fund shall be vested in the Majlis which shall administer all such moneys and properties in accordance with rules made under this Act: Provided that any investments of assets and funds vested in the Majlis may be sold, realised and disposed of, and the proceeds thereof may be invested from time to time in any investments authorized by any written law for the time being in force for the investment of trust funds.

(3) Subject to the provisions of this Act, the Majlis, with the approval of the Yang di-Pertuan Agong, may make rules for the collection, administration and distribution of all properties of the Fund.⁸⁷

⁸² See <https://www.maiwp.gov.my/i/index.php/en/mengenai-kami/sejarah-penubuhan> (accessed 01 May, 2023).

⁸³ Raja Norhanani Raja Norabidin Shah and Rusni Hassan, “Zakāh Collection and Distribution Framework in Federal Territory of Kuala Lumpur: A Study on Selected Islamic Banking Institutions”, *International Journal of Management and Applied Research*, vol. 4, no.1 (2017): 4.

⁸⁴ Administration of Islamic Law (Federal Territories) Act 1993, Section 4, (1).

⁸⁵ Administration of Islamic Law (Federal Territories) Act 1993, Section 31.

⁸⁶ Mohammed B. Yusoff, “Zakat Distribution and Growth in the Federal Territory of Malaysia”, *Journal of Economics and Behavioral Studies*, vol. 4, no.8 (2012): 449.

⁸⁷ Administration of Islamic Law (Federal Territories) Act 1993, Section 60, (1-3).

Baitulmal encompasses *zakāh*, *waqf*, *ṣadaqah*, *zakāh al-fīṭr*, *fidyah* (a fine for abandoning the mandatory fast for particular reasons or even intentionally missing the alternative fast (*qaḍā'*) of the month of *Ramaḍān*), *infāq*, *kaffārah* (atonement), non-*sharī'ah*-compliant money (property possessed or earned via *wasīlah* that is not allowed by *Sharī'ah*, such as lottery winnings, bribes, gambling, confiscation, robbery, earnings from the sale of stolen properties, usury deals, traditional insurance coverage, and so on), *luqṭah* (the goods that have been found by someone), and *nadhr*: (a commitment to spend or sacrifice a specific object or amount of money for *Allāh*'s pleasure if a given wish is granted.), rental money (revenue generated from items that the MAIWP rents to a person or business, etc.), investment (investment gains earned by the Council) and the like.⁸⁸

As one of the most important income items of Baitulmal, the collection and distribution of *zakāh* were under the complete management of the Baitulmal division within MAIWP. Following that, as a reflection of the government's policy of Islamisation of the state administration and institutions, as mentioned before, Dato' Haji Abdul Rahim Abu Bakar submitted a proposal to the Chairman of the Islamic Religious Council of the Federal Territory (MAIWP), Tan Sri Dato' Dr. Mohd Yusof Noor, regarding the establishment of an organization that manages *zakāh* corporately. This was the outcome of the awareness that the *zakāh* collection mechanism at the time had numerous flaws. Weaknesses included the poor organization of the *zakāh* administration system, the lack of a clear explanation on how to calculate *zakāh* on property when the focus is solely on *zakāh al-fīṭr*, and the absence of payment options and facilities for the *zakāh* payer.

In the year 1989, MAIWP conducted research to explore the feasibility of establishing a corporate-oriented collection system for *zakāh*. After receiving positive feedback from Coopers and Lybrand, a consulting firm commissioned to assess the feasibility of the proposal, MAIWP formed a working committee in December 1989. The objective of this committee was to set up a corporate collection company that would employ the principles of collective and professional *‘āmilūn*, drawing from diverse educational backgrounds. Additionally, the committee aimed to implement a novel

⁸⁸ See <https://ebaitulmal.maiwp.gov.my/web/#> (accessed 02 January, 2024).

information and technology system.⁸⁹ Following a thorough investigation and planning by the task force committee headed by Dato' Haji Abdul Rahim Abu Bakar, a company named Hartasuci Sdn. Bhd., which used the brand name Pusat Pungutan Zakat (PPZ), was founded on December 27, 1990, under the Companies Act 1965. PPZ was the first *zakāh* institution in Malaysia to introduce a systematic and structured corporate governance style based on the corporatization process that had been done, and it was also the first in the world to practice the method of operating *zakāh* utilizing computerized technology. In this regard, online *zakāh* counters have been set up exclusively to serve *zakāh* payers.⁹⁰ The institution of *zakāh* also made history since, for the first time, the concept of *ʿāmil* collecting *zakāh* independently was replaced with the idea of *ʿāmil*s working together as a single enterprise. Furthermore, the institution consisted of not only *ʿāmil*s but also experts in accounting, computers, administration, marketing, and secretariat. Additionally, PPZ raised *zakāh* collection in Wilayah Persekutuan by more than 2.36 times and the number of *zakāh* payers by more than 2.07 times in the first three years of operation.

On March 8, 1991, YAB Prime Minister Dato' Seri (Tun) Dr. Mahathir Mohammad launched PPZ-MAIWP, expressing his hope that PPZ would usher in a new era in *zakāh* administration. Dr Mahathir indicated that it was essential to shift the focus of *zakāh* from the poorest class to those with solid incomes, such as salaried employees and entrepreneurs.⁹¹ Since 1991, Hartasuci has implemented numerous further reforms for the PPZ-MAIWP administration. These reforms were possible because the company structure and system are free of bureaucracy and customer-focused, providing an environment that stimulates innovation, creativity, and proactiveness.⁹² PPZ introduced various *zakāh* payment methods and channels as one of the significant improvements brought about by the new era of *zakāh* management. For example, in its 2021 annual report, PPZ included salary deduction, PPZ/bank/post or university counters, majlis events, collection agents, mailing post, Auto Debit, MYEG, and Shopee as some of the main *zakāh* payment channels. PPZ counters accept various *zakāh* payment methods, including cash, cheque, Islamic credit card, and debit card. For the 2021 salary

⁸⁹ PPZ, Laporan Zakat 2001, 69.

⁹⁰ Hudayati and Tohirin, "Management of Zakah", 362.

⁹¹ Ibid., 362.

⁹² See <https://www.zakat.com.my/info-ppz/sejarah/> (accessed 02 January, 2024).

deduction, PPZ-MAIWP counters and the PPZ-MAIWP portal were the most preferred channels for *zakāh* payment.⁹³

2.2.2 Objectives, Vision, and Mission of the MAIWP and PPZ

When the websites of MAIWP and PPZ are investigated, the following information about the goals, vision, and mission of both the Council and the Centre stands out:

2.2.2.1 MAIWP's Core Commitments (Road Map)

Vision: Taking the reins in the development and well-being of the community as a whole.

Mission: Realizing the community development agenda in a systematic and thorough manner.

Objectives

1. Forming and creating a dynamic and progressive Islamic community that seeks *Allāh*'s pleasure at all times.
2. Nurturing faith and promoting Islamic brotherhood among Muslims in the Federal Territory in particular and Malaysia in general in order to achieve ummah unity.
3. Improving charitable efforts and combating evil in Islamic society.
4. Implementing efforts to increase MAIWP's assets through investments and other *ḥalāl* initiatives for the benefit of the public.⁹⁴

Strategy

1. Providing adequate religious education facilities for the needs of Muslims.

⁹³ PPZ MAIWP, Annual Report 2021, 42.

⁹⁴See <https://www.maiwp.gov.my/i/index.php/en/mengenai-kami/objektif-visi-misi> (accessed 02 January, 2024).

2. Expanding and increasing the quality of religious services and welfare.
3. Expanding *da'wah* activities, including assisting and guiding the activities of *da'wah* bodies.
4. Improving *zakāh* collection activities.
5. Enforcing all aspects of Islamic religious administration laws.⁹⁵

Slogan: Driving the Glory of the Ummah

2.2.2.2 PPZ's Core Commitments (Road Map)

Vision: To be a premier *zakāh* organisation not only in Malaysia but also among Islamic countries, with *zakāh* institutions becoming one of the primary means of improving the socio-economic status of the Muslim community.

Mission: Making every Muslim who deserves to pay *zakāh* aware of his *zakāh* responsibility and facilitating the performing of *zakāh* for all Muslims.

Objective: To be an outstanding *zakāh* institution and one of the core socio-economics of Muslims based on the following principles: quality service, stable and viable corporate management, utilization of cutting-edge technology, procurement and human resource development, and close relationship with all parties.⁹⁶

Main Activity

Carrying out *da'wah* and promotion activities to increase Muslims' awareness of the obligation to give *zakāh*. Additionally, collecting *zakāh* on behalf of the Islamic Religious Council of the Federal Territory (MAIWP).⁹⁷

Moral Values: PPZ commits to considering and abiding by a set of moral rules. These are: Hormat (Respect), Amanah (Trust), Responsif (Responsiveness), Telus

⁹⁵See <https://www.maiwp.gov.my/i/index.php/en/mengenai-kami/objektif-visi-misi> (accessed 02 January, 2024).

⁹⁶ See <https://www.zakat.com.my/info-ppz/maklumat-korporat/> (accessed 02 January, 2024).

⁹⁷ See <https://www.zakat.com.my/info-ppz/maklumat-korporat/> (accessed 02 January, 2024).

(Transparency), Akauntabiliti (Accountability), Senyum (Debonairness), Ukhuwwah (Brotherhood), Cekap (Efficiency) and Ihsan (Benevolence).⁹⁸

Goals:

1. Increasing the amount of *zakāh* collected and the number of *zakāh* payers.
2. Conveying the da'wah of *zakāh* to all levels of society.
3. Improving professional management capabilities based on integrity, transparency, and accountability.
4. Creating a working atmosphere based on Islamic values.
5. Empowering the quality management system via continuous improvements in *zakāh* administration.⁹⁹

Moto: Making *Zakāh* Payment Easy¹⁰⁰

2.2.3 *Zakāh* Collection and Distribution Statistics of MAIWP

The Federal Territory and Selangor are the biggest contributors to the collection of *zakāh* in Malaysia. These two states have been collecting the highest amount of *zakāh* in Malaysia since the early 1990s. During the same period, the total *zakāh* income at these institutions accounted for roughly half of the entire *zakāh* revenue in the country. After the corporatization of *zakāh* management that started in the Federal Territory and spread to many states in Malaysia, *zakāh* collection rates in Malaysia and, more specifically, in the Federal Territory showed an increasing trend year by year. The amount of *zakāh*, which was RM 130 million in 2005, showed significant increases yearly and reached RM 600 million in 2016. For the years 2018, 2019, 2020, and 2021, the amounts of *zakāh* collected by PPZ and distributed by the Baitulmal unit within MAIWP, as well as the proportional relationship between these collection and distribution figures, are as follows:¹⁰¹

⁹⁸ PPZ, 'Kod Tatalaku Dan Etika Perniagaan', 2018, 4–5.

⁹⁹ Ibid., 2.

¹⁰⁰ Ibid., 2.

¹⁰¹ PPZ-MAIWP, Annual Report 2021, 21.

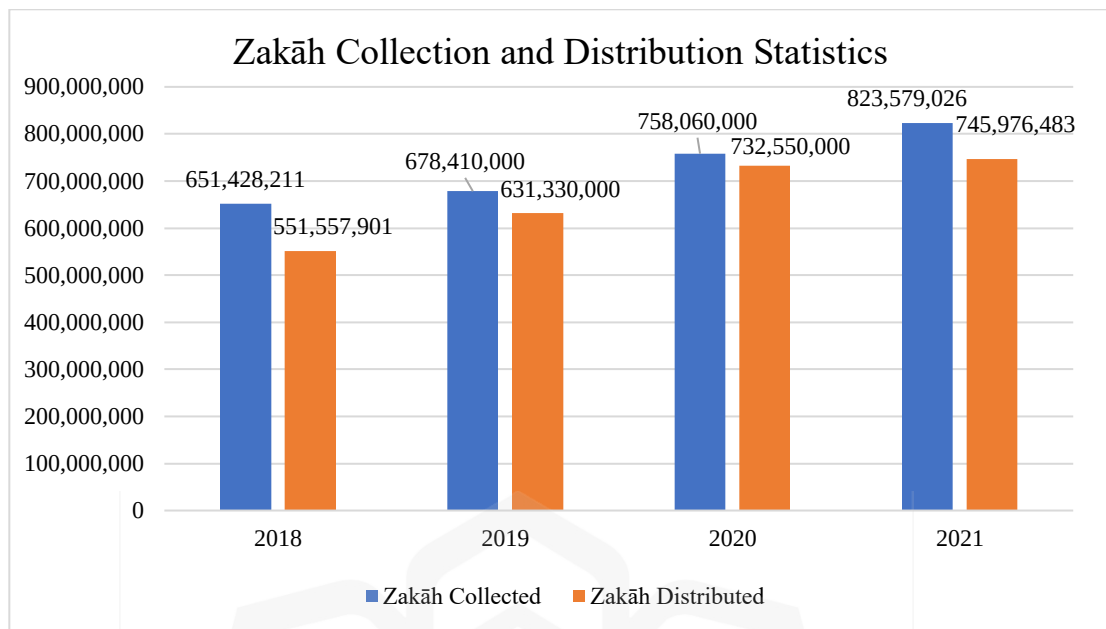


Figure 2.1 Zakah Collection and Distribution

When the *zakāh* collection and distribution figures of the federal territory between 2018 and 2021 are examined, it seems that there is a constant increase in the amount of *zakāh* collected, and the ratio of the amount of *zakāh* distributed to the amount collected is 84.63%, 93.06%, 96.63%, and 90.5%, respectively. These four-year distribution rates can be considered a reasonable amount, given that *zakāh* is collected towards the end of the year and distribution is a longer-term task that requires more planning than collection.

2.3 CONCLUSION

The history of *zakāh* in Malaysia dates back to the 13th century when Islam first arrived in the Malay peninsula. Muslim people paid their *zakāh* during this time either by giving it to those in need directly or by entrusting it to *pondok* teachers, who would then distribute it on their behalf. During the British Colonial Era, from 1824 to independence, Sultans were granted the power to oversee matters related to Malay customs and the religion of *Islām*. Within this framework, imams and religious leaders undertook the collection and distribution of *zakāh* based on the authority given by the Sultan.

During this time, each state established a State Islamic Religious Council, often known as MAIN, the first of which was the Kelantan Religion and Malay Customs Council. These councils handled all issues related to Islam, including *zakāh*. This marked the start of the *zakāh* administration system, which MAINs oversaw and has maintained to this day with remarkable improvements. Yet, despite the emergence of new sources of wealth during the colonial era, like cocoa, palm oil, tin, and rubber, the practice of *zakāh* was not renewed and was restricted to paddy rice and *zakāh* fitrah.

After the colonial period, similar practices in *zakāh* administrations continued until the 1990s. Priority was given to the payment of *zakāh al-fiṭr* and *zakāh* from paddy output, and the volume of work for *zakāh* officers was too high, resulting in a low amount of *zakāh* collected. During this period, with the declaration of Kuala Lumpur as a Federal Territory in 1974, MAIWP was established to manage the religious affairs in the Federal Territory, and the Baitulmal division was founded within the MAIWP to control the financial matters related to the religion.

Meanwhile, the Malay government entered a process known as the Islamization of state administration and institutions as a result of the Islamic revivalism sparked by religious movements in the early 1970s. One of the innovations made in this context was the handover of *zakāh* collection operations in the Federal Territory to PPZ, a company established as a subsidiary of MAIWP. As a result, PPZ started collecting *zakāh*, whereas Baitulmal-MAIWP handled its distribution.

In the ensuing period, corporatization of *zakāh* collection, or both collection and distribution, was practiced by many states. As a result, different styles of *zakāh* management emerged in various states of Malaysia, which can be named “fully corporatized,” “partially corporatized,” and “non-corporatized” models. The first model is implemented in Selangor, Penang, Sarawak, and Sabah, while the second is practiced in the Federal Territory, Pahang, Negeri Sembilan, and Melaka. The rest of the states adhere to the “non-corporatized” model.

As for the legal framework, state enactments regulate the Islamic laws that apply exclusively to Muslims, including matrimonial law, charitable endowments (*waqf*), *zakāh*, bequests, inheritance, and offences against religion, and the state legislators and

the Sultans have the authority to legislate on these matters. In other words, such matters are under the purview of state jurisdiction. Each state establishes a council known as MAIN, which is granted broad authority over religious affairs on behalf of His Majesty the Yang Di-Pertuan Agong for the Federal Territories and the Sultan or Raja for each state. Accordingly, the only entity with *zakāh* administration rights is MAIN. It is the sole authority to gather and disburse *zakāh*, to set rules for its collection, management, and distribution, to designate *‘āmil*, and to impose fines for non-payment or inappropriate payment of *zakāh*. JAKIM and JAWHAR are two federal departments that oversee and provide assistance with *zakāh* administration in addition to the MAINs.

Despite Malaysia’s successful portrait of *zakāh* administration around the world, *zakāh* management in Malaysia has certain weaknesses, some of which are as follows:

1. *Zakāh* administration lacks nationwide unity.
2. It lacks a structured follow-up system to determine *zakāh* payers.
3. There are public complaints that the *zakāh* is not reaching the intended recipients.
4. There is excessive bureaucracy.
5. The share of *‘āmil* that is paid to companies is considered relatively high by the public.
6. The legal infrastructure for *zakāh* is insufficient, which can open the door to abuse.
7. There is no full tax refund regarding the companies that make their *zakāh* payment.

Meanwhile, *zakāh* collection rates in the Federal Territory have been increasing almost every year since the corporatization. According to the last annual report shared by PPZ-MAIWP, while the amount of *zakāh* collected in 2021 reached 821,740 million, the amount distributed was 732,445 million, with a rate of 89 percent.

CHAPTER THREE

MAIWP'S REDEFINITION OF *ZAKĀH* RECIPIENTS AND ITS ANALYSIS

Zakāh consists of two processes: collection and distribution. The first step of the *zakāh*-distribution process, which is the subject of the research, is the identification of *zakāh* recipients. This chapter will discuss who the *zakāh* recipients are, how jurists and scholars perceive them, how MAIWP redefines these recipients in today's conditions, and how MAIWP's redefinition is examined and analysed from a *fiqhī* and *uṣūlī* perspective. In this context, the first two questions will be discussed in the first part of this chapter, while the third and fourth questions will be addressed in the second.

3.1 *ZAKĀH* RECIPIENTS AND THEIR INTERPRETATION BY JURISTS

The *Qur'ān* names the Zakah recipients through the relevant verse, which is Verse 60 of *Sūrah al-Tawbah*. The groups determined by the verse were interpreted by Muslim scholars, especially jurists; the scope of the concepts used to articulate these recipients was determined and the distribution of *zakāh* was carried out in light of the *fatwās* issued by the scholars. In this part, the relevant verse will be briefly discussed, and the interpretations of both classical and modern jurists regarding the recipients of *zakāh* will be examined in detail.

3.1.1 *Zakāh* Recipients according to Verse 60 of *Sūrah al-Tawbah*

Some rulings of Islam are established by the legislator (*Shāriʿ*) gradually.¹ One of these rulings is *zakāh*. The expression of *zakāh* began to find a place in the *Qurān* in the middle of the Meccan period.² For this reason, the Meccan period can be considered a period when Muslims were prepared for the *zakāh* obligation by the legislator (*Shāriʿ*). As for the Medinan period, it was a new stage for *zakāh*, when it was made mandatory

¹ Better known as *al-tadrīj fī al-tashrīʿ*.

² Look *al-Aʿrāf*:156; *Maryam*: 31 and 55; *al-Anbiyāʾ*: 73; *al-Muʿminūn*: 4; *al-Naml*: 3; *al-Rūm*: 39; *Luqmān*: 4; *Fuṣṣilat*: 7.

and assumed its final form. While some scholars cited the second year of *hijrah* specifically as the year when *zakāh* was made obligatory, it can be claimed that approximately in this year, *zakāh* became an obligation (*farḍ*) whose *niṣāb*³ and rates were established. However, at that time, a verse identifying and addressing the recipients of *zakāh* (*aṣnāf*) had not been revealed yet.⁴

By the ninth of the *Hijrah*, the spread of Islam had accelerated, and many tribal delegations from across the Arabian Peninsula came to *Madīnah* to announce that their people had converted to Islam. During this period, stability and security has been ensured in *Madīnah* and its surroundings. Thus, it was possible to transport the collected *zakāh* safely. At this point, *zakāh* has been governed entirely by state power, and officials have been appointed to deal with it. This has led to the accumulation of wealth that hasn't been seen in the Arabian Peninsula before. Under the disguise of Muslims, hypocrites who were excessively fond of the world and wealth naturally desired to obtain the largest possible share of this property. However, the Prophet ﷺ could not be expected to offer a share from *zakāh* to those who did not deserve it. For this reason, the hypocrites, who were unable to get what they desired, alleged that the Prophet ﷺ was unfair and took sides in the distribution of *zakāh*.⁵ In the 58th and 59th verses of *Sūrah al-Tawbah*, Allāh described the situation of the hypocrites and urged them to consent to the distribution of *zakāh*, while in the 60th verse of the *Sūrah*, he named *zakāh* recipients (*maṣārīf al-zakāh*) one by one in a manner that prevented all kinds of abuse.

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

The alms are only for the poor, and the needy, and for those employed for it, and those whose hearts are (to be) reconciled, and in the cause of the slaves and the debtors, and in the way of Allāh, and for the traveler: an obligation from Allāh. And Allah is Knowing Wise.

³ The minimum quantity of wealth a Muslim must possess to be required to pay *zakāh*.

⁴ Beytullah Aktas, "Tevbe Suresi 60. Ayet Baglaminda Zekâtin Sarf Yerleri", *Diyanet Ilmi Dergi*, vol. 51, no.2 (2015): 69–70.

⁵ Abū al-Fidā' Ismā'īl ibn 'Umar Ibn Kathīr, *Tafsīr Al-Qur'ān al-'Azīm*, ed. Sāmī ibn Muḥammad al-Salāmah (Dār Ṭaybah li al-Nashr wa al-Tawzī', 2nd edn., 1999), 4:165.

Apart from the *zakāh* recipients mentioned, there are some notable expressions and prepositions in the verse. The exegetes (*mufasssirūn*) and jurists (*fuqahā'*) interpreted the verse with the help of these expressions and prepositions.

3.1.1.1 The Preposition “Innamā” (إنما)

The verse begins with the preposition “*innamā*.” This preposition is an expression formed by the combination of “*inna*,” which expresses emphasis (*ta'kīd*) and affirmation (*taḥqīq*), and redundant (*zā'idah*) “*mā*.” The concept as a whole connotes limitation and restriction (*ḥaṣr*), which requires the items listed after it to be fixed and the items other than these to be excluded from the ruling mentioned. Therefore, the preposition “*innamā*” in this verse indicates that *zakāh* should be given only to these eight groups.⁶ It is important to confine *zakāh* to the eight classes listed in the verse, as history has witnessed various types of taxes that are collected and spent according to the wishes of the kings and administrators, whether the people want it or not. By limiting the places where *zakāh* can be spent, the above verse did not allow arbitrary practices by rulers. Thus, *Shāri'* prevented them from spending on their relatives as they wished and prevented other greedy individuals from coveting these ready-made goods in the future.

3.1.1.2 The Concept of “Ṣadaqah” and Its Relation with Zakāh

The word charity (*ṣadaqah*), which was used in the verse in its plural form *ṣadaqāt*, is derived from the root *sidq*. *Sidq* denotes the truth, which is the opposite of *kidhb* (lie).⁷ Linguists report that the letters in the word “ṣ d q” (ص-د-ق), from which the word *ṣadaqah* derived, also indicate trueness, validity (*ṣiḥḥah*) and completion (*kamāl*). A friend is referred to as “*ṣadīq*” because he is true in his love, and a *mahr* is called “*ṣadāq*” because a marriage contract is completed with it. *Shāri'* called *zakāh* as “*ṣadaqah*” because the wealth found validity and completion with it. *Ṣadaqah* is called by this

⁶ Muḥammad ibn ʿUmar Fakhrudḍīn al-Rāzī, *Mafātīḥ al-Ghayb*, (Bayrūt: Dār Ihyā' al-Turāth al-ʿArabī, 3rd edn., 1420 hijrī), 16:81.

⁷ Abu al-Faḍl Muḥammad bin Mukrim Ibn Manẓūr al-Anṣārī, *Lisān al-ʿArab*, (Bayrūt: Dār Ṣādir, 3rd edn., 1414 hijrī), 10:193.

name either because it is a reason for the completion and perfection (*kamāl*) of the goods or because it shows that the servant is faithful and true in his faith. Another remarkable point is that there is no use of the word *ṣadaqah* in the age of ignorance. In this case, it can be assumed that the word “*ṣadaqah*” came into use with the *Qurān* and gained vitality.⁸

The concept of “*ṣadaqah*” appeared in the *Qurān* only in the chapters revealed during the Medinan period. Examining its usage in these chapters, it can be stated that the concept of *ṣadaqah* is used to refer to absolute charity, including both obligatory (*farḍ*) and recommended (*nāfilah*) charities, and to refer to only recommended (*nāfilah*) charities. As for verse 60 of the chapter *al-Tawbah*, it is collectively accepted that the concept of *ṣadaqah* in this verse is obligatory (*farḍ*) *ṣadaqah*, so this term is used there instead of *zakāh*. The fact that the preposition “*innamā*” at the beginning of the verse limits *zakāh* to only eight classes listed in the verse and the expression *farīḍatan min Allāh* (a duty/obligation from God) at the end of the verse are strong evidences showing that what is meant in this verse is obligatory *ṣadaqah*. Nowadays, it is customary that *ṣadaqah* is used only for voluntary donations and non-mandatory charities. Furthermore, the word *ṣadaqah* is used in the sense of *zakāh* in some other verses and *hadīths* in addition to the above-mentioned verse.⁹ Based on the above-mentioned verse, *zakāh* recipients include the poor (*fuqarā*), the needy (*masākīn*), *zakāh* officers, those whose hearts are reconciled, the slaves, the debtors, for the cause of Allah, and the wayfarers.

3.1.2 Jurists’ Interpretation of *Zakāh* Recipients

In verse 60 of the *Sūrah al-Tawbah*, *zakāh* recipients are classified into 8 categories, and it is stated that *zakāh* is only available to these groups and cannot be given to anyone else. Here are the groups and the scholars’ interpretations and understandings of them:

⁸ Mustafa Ozturk, ““Sadaka” Kavraminin Kur’an’daki Anlam Cercevesi: Semantik Bir Tahlil Denemesi”, *Ondokuz Mayıs Üniversitesi İlahiyat Fakültesi Dergisi*, vol. 12, no.12–13 (1 April 2001): 463.

⁹ Aktas, “Tevbe Suresi 60. Ayet Bağlamında Zekâtın Sarf Yerleri”, 71–72.

3.1.2.1 The Poor (*Fuqarā'*) and The Needy (*Masākīn*)

Fuqarā' is the plural form of *faqīr*, which is the adjective form of the verb *faqr*. *Faqr* is the opposite of *al-ghinā*, which means richness and wealthiness. Accordingly, *faqr* means poverty, while *faqīr* means the poor individual who is in need. On the other hand, the word *faqīr* may derive from the word “*faqār*,” which means “spine, backbone” in Arabic. In this context, *faqīr* refers to a person with a broken spine. As the person with a broken spine is unable to carry out any work and relies on others’ financial aid to survive, this term was coined to refer to all weak persons in need.¹⁰ Regarding the word *masākīn*, it is the plural form of *miskīn* which is derived from the root s-k-n (س-ك-ن). This root indicates being calm and not moving. In this context, the opposite of *ḥarakah* (movement) is called *sukūn*.¹¹ From this point of view, needy people were called *miskīn* because neediness limited their range of motion and rendered them immobile, or they were labelled *miskīn* because the need pushes the poor into perpetual silence and inaction towards others.¹² Although these two terms are often used interchangeably today, classical jurists and scholars, including the four *madhhab*s, have disagreed on the meaning of these two terms in this verse and, therefore, on the scope of *faqīr* and *miskīn* as *zakāh* receivers.

Some scholars, such as *Abū Yūsuf*, *Ibn al-Qāsim al-Mālikī*, and *Imām al-Shāfiʿī*, according to one of his views, consider these two concepts, *faqīr* and *miskīn*, as synonyms. According to those who hold this opinion, as a result of Allah’s mercy, these two classes were united under the common denominator of “being in need”, and thus, 2/8 of the total *zakāh* revenues were allocated for people in need, based on two different names, while other groups have a claim for only 1/8 of the *zakāh*.¹³

¹⁰ Ibn Manẓūr, *Lisān al-ʿArab*, 5:62.

¹¹ Ibid., 13:221.

¹² Beytullah Aktas, “Zekâtin Harcama Kalemlerinden Fakir ve Miskin Kavramlarının Kur’an Bağlamında Yeniden Tanımlanması”, *Harran Üniversitesi İlahiyat Fakültesi Dergisi*, no.33 (June 2015): 109.

¹³ Abū ʿAbd Allah Muḥammad bin Aḥmad Al-Qurtūbī, *Al-Jāmiʿ li Aḥkām al-Qurʾān*, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī (Bayrūt: Muʾassasah al-Risālah, 2nd edn., 2006), 10:248; Fakhruddīn al-Rāzī, *Mafātīḥ al-Ghayb*, 16:82; Shihāb al-Dīn Aḥmad ibn Idrīs Al-Qarāfī, *Al-Dhakhīrah*, ed. Muḥammad Ḥijjī, Saʿīd Aʿrāb, and Muḥammad Abū Khibzah (Bayrūt: Dār al-Gharb al-Islāmī, 1st edn., 1994), 3:144; Abū al-Walīd Muḥammad ibn Aḥmad Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, (Dār al-Maʿrifah, 6th edn., 1982), 1:277.

As for the *Ḥanafī* and *Mālikī* jurists, they define the *faqīr* as a person who is better off than the *miskīn*. Accordingly, they define the *faqīr* as someone who lacks sufficient wealth and income but tries to make a living, whereas *miskīn* is someone who has nothing.¹⁴

Contrary to the second viewpoint, *Shāfiʿī* and *Hanbalī madhabs*, along with *Zāhirī* and *Imāmī* scholars, regard *faqīr* as someone who has no wealth and cannot meet his needs, while *miskīn* is someone who has some riches that enable him to meet some of his needs.¹⁵ Accordingly, the *faqīr* is more needy and destitute than the *miskīn*. According to these *madhabs*, the fact that *fuqarāʾ* are mentioned first in the 60th verse of the *Sūrah al-Tawbah* indicates that they are more needy than *masākīn*. Furthermore, according to these scholars, the use of the term *miskīn* in *Sūrah al-Kahf* for those who possessed a ship that *al-Khiḍr* protected from being seized implies that *miskīn* is in a better condition than *faqīr* because *miskīn* can have a ship. Similarly, the Prophet's ﷺ wish to live and die as *miskīn* while taking refuge in *Allāh* from *faqr* is another argument put forward in support of this view.¹⁶

According to *ʿUmar ibn al-Khaṭṭāb* and the famous exegete *ʿIkrimah*, *faqīr* refers to the needy among Muslims, while *miskīn* is an expression used for the needy among non-Muslims.¹⁷ Citing the linguistic basis of this view, *Muḥammad Ḥamīdullah* states that the word *miskīn* in Semitic languages and the laws of Hammurabi refers to a foreigner who has settled in another country. However, examining the use of these two concepts in the *Qurʾān* reveals that whereas *faqīr* is used only for Muslims, it does not appear possible to argue that *miskīn* is used exclusively for non-Muslims in all the

¹⁴ Alī ibn Abū Bakr Al-Marghīnānī, *Al-Hidāyah fī Sharḥ Bidāyah al-Mubtadī*, ed. Tallāl Yūsuf (Bayrūt, Lubnān: Dār Ihyāʾ al-Turāth al-ʿArabī, n.d.), 1:110; Ibn Rushd, *Bidāyah al-Mujtahid*, 1:37.

¹⁵ Beytullah Aktas, “Kurʾan’a Gore Zekâtin Harcama Kalemleri” (Ph.D. thesis, Istanbul University, 2013), 64; Muwaffaq al-Dīn ʿAbd Allāh ibn Aḥmad Ibn Qudāmāh, *Al-Kāfī*, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī (Dār Hījr li al-Ṭibāʿah wa al-Nashr, 1998), 2:196; Muḥammad ibn Idrīs Al-Shāfiʿī, *Al-Umm*, ed. Rifʿat Fawzī al-Muṭṭalib (Dār al-Wafāʾ, 2001), 3:182.

¹⁶ Olgun, “Malezya Kurumsal Zekat Uygulamasında Zekatin Toplanma Usulu ve Sarf Yerlerinin Fikhi Acidan Degerlendirilmesi”, 66.

¹⁷ Aktas, “Zekâtin Harcama Kalemlerinden Fakir ve Miskin Kavramlarının Kurʾan Baglamında Yeniden Tanımlanması”, 113; Muḥammad ibn Jarīr al-Ṭabarī, *Jāmiʿ al-Bayān ʿan Taʾwīl Āy al-Qurʾān*, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī (Dār Hījr li al-Ṭibāʿah wa al-Nashr, 1st edn., n.d.), 11:513–14. ʿAbd al-Raḥmān Ibn Muḥammad Ibn Abī Ḥātam, *Tafsīr al-Qurʾān al-ʿAẓīm*, ed. Asʿad Muḥammad al-Ṭayyib (Maktabah Nizār Muṣṭafā al-Bāz, 1419 hijrī), 6:1817.

relevant verses. Likewise, in the *hadīths*, the concept of *miskīn* is sometimes used for Muslims as well.

Some scholars, such as *Mujāhid* and *Ḥasan al-Baṣrī* and some exegetes, such as *Muqātil ibn Sulaymān*, *Ṭabarī* and *al-Rāzī* defined *faqīr* as the one who conceals his need and does not want from others, and *miskīn* as a person who expresses his need and begs. ‘*Abd Allāh ibn ‘Abbās* and exegete *Ferrā’* expressed another view similar to this viewpoint. According to them, *fuqarā’* are people of *Ahl al-Ṣuffah* who seek benevolence during the day and take shelter in the Prophet’s ﷺ mosque at night, and *masākīn* are those who go from door to door for their needs.¹⁸ However, since begging is not welcomed by our religion, the definition of *miskīn* as a beggar and the inclusion of those who beg in the *zakāh* recipients open this view to debate. Moreover, the mention of *sā’ilīn* (beggars) along with *masākīn* in verse 177 of *Sūrah al-Baqarah* makes us think that *miskīn* is someone other than beggars.

According to Qatādah, while *faqīr* is a sick or disabled person in need, *miskīn* is a healthy needy.¹⁹ On the other hand, it is narrated that according to *Jābir ibn ‘Abd Allāh*, *fuqarā* are the needy who migrated (*muhājirūn*) and *masākīn* are the needy who did not migrate.²⁰ Although it is possible to identify *fuqarā* as the needy immigrants based on the 8th verse of *Sūrah al-Ḥashr*, there is no evidence to support the definition of *masākīn* as those who did not migrate.

In general, there is a wide range of interpretations among the jurists regarding *fuqarā’* and *masākīn*, some of which are opposite. The researcher opines that scholars who interpret *fuqarā’* and *masākīn* based on being Muslim, beggars, or immigrants lack sufficient arguments to support their claims. Furthermore, explaining these two concepts with reference to “migration” may lead to confusion between the scope of *fuqarā’* and *ibn al-sabīl* groups. In the same way, the *Ahl al-Ṣuffah* concept is not wide enough to explain the concept of *faqīr* completely, since they constituted only a part of the poor at that time. It is quite possible that the exegetes mentioned *Ahl al-Ṣuffah* as an

¹⁸ Aktas, “Zekâtın Harcama Kalemlerinden Fakir ve Miskin Kavramlarının Kur’an Bağlamında Yeniden Tanımlanması”, 115.

¹⁹ Ibid., 115.

²⁰ Fakhruddīn al-Rāzī, *Maḥāṭib al-Ghayb*, 16:85.

example for the poor rather than as a definition of them in a juristic sense. Accordingly, it seems more appropriate to make a choice among the first three views mentioned about *fuqarā'* and *masākīn*. Based on the arguments, some of which have been briefly mentioned above, the researcher believes that the view of *Shāfi'ī* and *Hanbalī madhabs*, who regard *faqīr* as more needy than *miskīn*, would be a more appropriate one.

3.1.2.2 Zakāh Officers (ʿĀmilūna ʿalayhā)

ʿĀmil is defined in the dictionary as a person who undertakes works related to a person's business, property, or possessions. The persons tasked with collecting and distributing *zakāh* were named ʿāmilūn (plural form of ʿāmil) in the *Qur'ān*.²¹ In *hadīths*, in addition to this concept, words such as *qāsim*, *khāzin*, *sāʿī*, and *muṣaddiq* are also used to express *zakāh* officers.²² *Shāriʿ* included ʿāmil among the recipients of *zakāh*, pointing out that *zakāh* obligation is not a favour and donation left to individuals' discretion but rather an obligatory duty to be fulfilled under the control and administration of the state. Moreover, this situation ensures that a self-financing system carries out *zakāh* collection and distribution affairs and that *zakāh* work is not interrupted under any circumstances. In this regard, the Prophet ﷺ appointed and sent separate *zakāh* collectors for each region. As with other categories, there are some debates among jurists regarding the scope of the ʿāmil category and some relevant rulings.

According to the majority of *Ḥanafī* scholars, ʿāmil is the only class that can receive *zakāh* even if they are rich. The wages of ʿāmil should be moderately sufficient for them. However, this amount cannot exceed half of the total *zakāh* that an ʿāmil collected, and if the collected *zakāh* is wasted, ʿāmil will not receive anything.²³

According to *Shāfi'īs*, if the *zakāh* payer distributes his *zakāh* himself, ʿāmil share will be omitted. If the state undertakes the collection and distribution of *zakāh*, it should start the distribution from ʿāmil as they get paid for their work. However, the

²¹ Ibn Manẓūr, *Lisān al-ʿArab*, 11:174.

²² Celal Yeniceri, *Islam'da Devlet Butcesi* (Istanbul: Samil Yayinlari, 1984), 73–81.

²³ Muḥammad Amīn ʿUmar Ibn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, ed. ʿAlī Aḥmad Muʿawwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd (Riyāḍ: Dār ʿĀlem al-Kutub, 2003), 3:284.

share they deserve should not exceed 1/8 of the *zakāh* collected to ensure that other groups also receive their share. Moreover, even if the *zakāh* they collect is wasted, they are still paid.²⁴ *Mālikīs* also argue that among the eight categories, *ʿāmil*s must be paid for first. Furthermore, they hold the view that it is possible for an *ʿāmil* to be rich but not a non-Muslim.²⁵

Ḥanbalīs stated that the *zakāh* officer would receive a predetermined wage that he deserves. However, if the fee has not been determined specifically, *ʿāmil* will receive a prevalent, equivalent wage (*ajr al-mithl*). Additionally, according to one view of *Aḥmad ibn Ḥanbal*, *ʿāmil* cannot be a disbeliever, whereas according to another narration, he can be.²⁶

Significantly, *zakāh* officers (*ʿāmil*s) are ranked third among *zakāh* recipients. The first two categories (*faqīr* and *miskīn*) exemplify the classes that should not be neglected even in places and times where *zakāh* is not institutionalized and, therefore, *mukallaḥ*s pay their *zakāh* individually. According to Aktas, the remaining classes are mentioned after *ʿāmil*, as if these remaining classes are to receive *zakāh* through an institutional structure.²⁷ In brief, it is possible to assert that there is not much controversy about the scope of *ʿāmil*, except for the issue of whether non-Muslims can be *ʿāmil* or not. Since *zakāh* is not just a tax but rather a form of worship (*ʿibādah*), it is more appropriate not to involve non-Muslims in its performance and distribution. Regarding whether an *ʿāmil* can be rich or not, the researcher is of the opinion that since *ʿāmil* is not a primary needy group targeted by *zakāh*, but rather a *wasīlah* group to assure the performance of the *zakāh*, there is no harm in *ʿāmil*'s being rich.

²⁴ Muḥyī al-Dīn Yaḥyā ibn Sharaf Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, ed. Muḥammad Najīb Al-Muṭṭī (Jiddah: Maktabah al-Irshād, n.d.), 6:167–68.

²⁵ Al-Qarāfi, *Al-Dhakhīrah*, 3:145–46.

²⁶ Muwaffaq al-Dīn ʿAbd Allāh ibn Aḥmad Ibn Qudāmah al-Maqdisī, *Al-Mughnī*, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī (Riyāḍ: Dār ʿĀlem al-Kutub, 1997), 4:107.

²⁷ Aktas, “Kur’an’a Gore Zekâtin Harcama Kalemleri”, 82.

3.1.2.3 Those Whose Hearts are Reconciled (*Al-Mu'allafah Qulūbuhum*)

In general, *al-mu'allafah qulūbuhum* refers to those who are allocated a share of *zakāh* to soften their hearts towards *Islām*, to warm them up, and to convince them to believe in it. Jurists take different approaches to whether *al-mu'allafah* still exists and who belongs to this class.

Some companions and successors (*tābi'ūn*) along with *al-Ḥasan al-Baṣrī*, *ʿĀmir al-Shaʿbī*, the majority of *Ḥanafīs*, some *Mālikīs*, and *Imām al-Shāfiʿī*²⁸, in one of the views attributed to him, believe that *al-mu'allafah* group is no longer available after the Prophet's ﷺ death since Muslims have grown stronger and no longer need to reconcile anyone's heart to *Islām*.²⁹ Moreover, these scholars hold on to the narration that *Abū Bakr* had allocated funds for two people from the *al-mu'allafah* category during his caliphate. However, *ʿUmar* opposed the allocation because Islam had spread and Muslims were getting stronger, so there was no need for reconciling those people's hearts. Some also claimed that there was a consensus (*ijmāʿ*) on this issue among the companions that the *al-mu'allafah* category was abrogated.³⁰ According to *Ibn Ḥazm*, if the state is responsible for collecting and distributing *zakāh*, all eight classes will receive *zakāh*, while if a person pays *zakāh* himself, two *aṣnāfs* do not receive *zakāh*: *ʿāmil* and *al-mu'allaf*.³¹ As for the *Ḥanbalī madhhab*, the predominant view is that the rule on providing *al-mu'allafah* with *zakāh* is not abrogated and continues.

Addressing this issue, *Ibn Qudāmah* asserts that an interpretation based on *ʿUmar*'s practice cannot be a basis for the claim of abrogation (*naskh*), since abrogation cannot be proved based on mere interpretive probability (*al-iḥtimāl*). Moreover, stating that no claim of abrogation can be made after the death of the Prophet ﷺ, *Ibn Qudāmah* criticizes the fact that some of the opponents hold on to the *fatwā* of some companions, which, he indicates, cannot be accepted as a source in *fiqh*. Consequently, the Prophet ﷺ and *Abū Bakr* supplied *al-mu'allafah* with *zakāh* and it is not permissible to oppose

²⁸ Ibn Qudāmah, *Al-Mughnī*, 4:124; Al-Qaraḍāwī, *Fiqh al-Zakāh*, 503.

²⁹ Wan Ahmad, "Zakat Investment in Malaysia", 178.

³⁰ Muḥammad ibn ʿAbd al-Wāḥid Kamāl al-Dīn Ibn al-Humām, *Sharḥ Faṭḥ al-Qadīr ʿalā al-Hidāyah Sharḥ Bidāyah al-Mubtadī* (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn., 2003), 2:265.

³¹ ʿAlī ibn Aḥmad Ibn Ḥazm, *Al-Muḥallā bi al-Āthār*, ed. Aḥmad Muḥammad Shākir (Egypt: Al-Maṭbaʿah al-Muniriyyah, 1352), 6:143–44.

and abandon the *Qur'ān* and *Sunnah* without proof. 'Umar ceased giving *zakāh* not because this class disappeared completely but because Muslims did not need them at that time. Accordingly, if any need arises, *Ibn Qudāmah* states that *zakāh* can be given to them again.³²

Here, it is possible to consider 'Umar's practice as a special *ijtihād* regarding the persons of *al-Aqrā' ibn Hābis* and 'Uyaynah ibn Ḥiṣn, who were the subject of the aforementioned practice. 'Umar concluded that giving these two people the share of the *al-mu'allafah* category was far from achieving the intended *maqāṣids* and that such people only constituted a financial burden on the Islamic state. Therefore, the fact that the share of *zakāh* given to these people was cut off, with the thought that their hearts would not reach the desired point, does not mean that the share designated in verse for the *al-mu'allafah* category will be completely stopped from being practiced.³³

Regarding who belongs to *al-mu'allafah* class, there were contradictory opinions among some jurists about whether non-Muslims were included in *al-mu'allafah*. According to *al-Shāfi'īyyah*, unbelievers are not included in the category of *al-mu'allafah* to which *zakāh* is given. They claim that if non-Muslims are to be provided with any financial aid, this should be from other *baytalmāl* incomes, not *zakāh*.³⁴ Al-Qaraḍāwī states that *al-mu'allaf* includes both Muslims and non-Muslims by counting up to seven categories, such as warming to Islam, increasing devotion to it, enabling non-Muslims to help Muslims, or repelling possible harm from them to Muslims.³⁵ It is also important to mention that even rich *mu'allafs* can receive *zakāh* just like 'āmil, because providing them with *zakāh* is not based on need.

In conclusion, the category of *al-mu'allafah qulūbuhum* has not been abrogated, despite the claims of certain *Mālikīs* and the majority of *Ḥanafīs*. Likewise, contrary to the opinion expressed by the *Shāfi'īs*, the researcher prefers the opinion that non-

³² Ibn Qudāmah, *Al-Mughnī*, 4:125.

³³ Rashīd Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm: Tafsīr al-Manār*, (Dār al-Manār, 2nd edn., 1947), 10:576; Hamidullah Muhammed and Salih Tug, *Islam Peygamberi*, (Istanbul: Irfan Yayinlari, 1991), 2:973.

³⁴ Abū Ishaq Ibrahīm ibn 'Alī al-Shīrāzī, *Al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'ī*, ed. Zakariyyā 'Umayrāt (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1st edn., 1995), 1:315.

³⁵ Al-Qaraḍāwī, *Fiqh al-Zakāh*, 499–501.

Muslims can also be *al-mu'allafah*. Furthermore, *mu'allafs* can receive *zakāh* even if they are wealthy because providing them with *zakāh* is not based on their needs.

Before moving on to the next group, which is slaves (*fī al-riqāb*), it is important to note that in verse 60 of *Sūrah al-Tawbah*, where *zakāh* recipients are mentioned, the preposition *lām* is used for the first four groups discussed so far. For the other four groups, the preposition *fī* was used for slaves (*fī al-riqāb*) and the way of *Allāh* (*fī sabīl Allāh*) categories, and it is cited that the debtors (*ghārimūn*) and travellers (*ibn al-sabīl*) were joined (ʿaṭf) with these two via a conjunction particle *wāw*. Nonetheless, it has been voiced by some scholars that *ghārimūn* and *ibn al-sabīl* in the verse have been attributed to the first four groups in which the proposition *lām* was included. Scholars deal with this issue because they believe that the change of proposition in the verse necessitates a change in meaning and a different rule. Some of the views of scholars on this issue are as follows:

According to *Hanafīs* and *Mālikīs*, the preposition “*lām*” in the verse is not used for *al-tamlīk* (the transfer of ownership), but rather for *al-takhṣīṣ* and *al-tabayīn* (explaining the recipients of *zakāh*). According to the *Shāfiʿīs*, on the other hand, the preposition “*lām*” at the beginning of the verse expresses *al-tamlīk* and covers all eight categories.

In his *tafsīr* work *al-Kashshāf*, *al-Zamakhsharī* interprets the change in preposition from “*lām*” to “*fī*” as the last four classes, which come after the “*fī*” that expresses *ẓarfiyyah* (insideness), are more rooted in deserving *zakāh*.³⁶

Ibn al-Munayyir, on the other hand, asserts that the first four classes mentioned with the preposition *lām*, which signifies *al-tamlīk* (the transfer of ownership), will receive *zakāh* as their property. However, the last four classes will not have complete ownership of the *zakāh* provided to them; instead, it must be spent for a benefit related to them. For instance, the *zakāh* offered to a slave does not remain in the hands of the slave but is given to the master to free him. Similarly, *zakāh* is given to their creditors

³⁶ Jār Allāh Maḥmūd ibn ʿUmar al-Zamakhsharī, *Al-Kashshāf ʿan Haqāʾiq Ghawāmiḍ al-Tanzīl wa ʿUyūn al-Aqāwīl fī Wujūh al-Taʾwīl*, ed. ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Aḥmad Muʿawwaḍ (Riyāḍ: Maktabah al-ʿAbīkan, 1st edn., 1998), 3:60–61.

in order to save the debtors from their obligations. Again, similar comments can be made for the “in the way of *Allāh*” and “traveller” categories. *Fakhr al-Dīn al-Rāzī* made similar comments.³⁷

Rashīd Riḍā and *Maḥmūd Shaltūt*, on the other hand, make a different division by evaluating the two classes with the preposition “*fī*” (slaves and the way of *Allāh*) separately from the other six classes. According to them, in two classes with the preposition “*fī*” at the beginning, it is necessary to consider the interests (*maṣlaḥah*) of recipients, and there is no personal ownership, whereas the other six categories own the *zakāh* they receive.³⁸

3.1.2.4 In the Cause of the Slaves (*Fī al-Riqāb*)

Riqāb is the plural form of *raqabah*, which means neck in Arabic. However, it is used metaphorically for the person’s entire body which is known in the art of rhetoric as “naming something by its part’s name” (*tasmiyah al-shay’ bi ba’ḍihi*). Accordingly, the term *raqabah* refers to the slave and the one who is owned by the others.³⁹ The person who was acquired as a slave was referred to as “*raqabah*”, since slavery is associated with the captive with a tie around his neck. Besides *raqabah*, the terms *‘abd*⁴⁰, *amah*⁴¹, *mā malakat aymānukum*⁴² and *fatayāt*⁴³ are also used to refer to slaves in the *Qur’ān*. However, in the verses in which the releasing of slaves was mentioned, only the word *raqabah* was used.⁴⁴

It is controversial among jurists which types of freeing slaves will be put into practice with the *zakāh* fund belonging to the slaves. *Abū Ḥanīfah*, *al-Shāfi‘ī* and *al-Layth ibn Sa‘d* opined that it should be done by giving from the *zakāh* fund to *mukātab* slaves the amount that they agreed on with their owners and enabling them to pay their

³⁷ Al-Qaraḍāwī, *Fiqh al-Zakāh*, 514–15.

³⁸ Riḍā, *Tafsīr al-Manār*, 10:587.

³⁹ Ibn Manẓūr, *Lisān al-‘Arab*, 1:427–28.

⁴⁰ Qur’ān, al-Baqarah:178.

⁴¹ Qur’ān, al-Nūr: 32.

⁴² Qur’ān, al-Nisā’:3.

⁴³ Qur’ān, al-Nūr: 33.

⁴⁴ Aktas, “Kur’an’a Gore Zekâtin Harcama Kalemleri”, 91.

debt and gain freedom.⁴⁵ However, another way, which is to purchase slaves from the owners with *zakāh* funds and then set them free, was suggested. Those who stated that the *zakāh* share allocated to the slave category should be used according to this second way are *Mālik* and *Ishāq*.⁴⁶

The question of whether the liberation of Muslims in captivity can be equated with freeing slaves is another controversial issue. In other words, is the prisoner or captive also included in the scope of the expression *raqabah* or not? *Aḥmad ibn Ḥanbal* and *Ibn Ḥabīb* from *Mālikiyyah* consider it permissible for the captive to be set free with the money spent from the *zakāh* fund, just like the slave.⁴⁷

On the other hand, contemporary scholars *Rashīd Riḍā* and *Maḥmūd Shaltūt* came up with the term “liberation of nations” (*ḥurriyyah al-shu‘ūb*) as well as the “liberation of individuals” (*ḥurriyyah al-afrād*). They assert that with the abolition of individual slavery, the mass slavery of nations took its place as a result of colonial activities. These scholars state that under the name of *raqabah*, expenditures can be made from the *zakāh* fund in order for these nations to regain their freedom and sovereignty. However, al-Qaraḍāwī states that such an interpretation would contradict the meaning of the word *raqabah* and mean an assertion to broaden the meaning of a word without relying on any evidence. Instead, he states that expenditures can be made for the freedom struggle of such nations from the share allocated to the “in the way of *Allāh*” category.⁴⁸

To sum up, because slavery in its traditional sense has ended, the researcher considers the view of *Aḥmad ibn Ḥanbal* and *Ibn Ḥabīb* from *Mālikiyyah*, which includes the prisoners or captives in the scope of *raqabah*, preferable and appropriate. Additionally, the researcher believes that the concepts of “liberation of nations” and “liberation of individuals” put forward by *Rashīd Riḍā* and *Maḥmūd Shaltūt* are valuable in terms of reinterpreting slavery in light of modern life.

⁴⁵ Al-Marghīnānī, *Al-Hidāyah*, 1:110; Al-Shāfi‘ī, *Al-Umm*, 3:183; Al-Nawawī, *Al-Majmū‘*, 6:184.

⁴⁶ Al-Qarāfi, *Al-Dhakhīrah*, 3:146; Ibn Rushd, *Bidāyah al-Mujtahid*, 1:277; Al-Qaraḍāwī, *Fiqh al-Zakāh*, 517.

⁴⁷ Burhān al-Dīn Ibrāhīm ibn Muḥammad Ibn Muflīh, *Al-Mubdi‘ Sharḥ al-Muqni‘*, (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1st edn., 1997), 2:409; Al-Qaraḍāwī, *Fiqh al-Zakāh*, 520.

⁴⁸ Al-Qaraḍāwī, *Fiqh al-Zakāh*, 521.

3.1.2.5 The Debtors (*Al-Ghārimūn*)

Scholars have different perspectives regarding who the debtor is and what types of debt make one eligible for *zakāh*. Some opinions are as follows:

Ḥanafī madhhab determines *ghārim* to whom *zakāh* can be given as a person who has a debt to pay and does not have any wealth that exceeds this debt and reaches *niṣāb* amount. In addition, they consider providing the debtor with *zakāh* better than giving it to a poor person who is not in debt.⁴⁹

According to *Mālikīs*, a debtor is a person who lacks the financial resources to repay his debt. Some *Mālikīs* stipulate that the debt must be of the kind that will lead to imprisonment if not paid. Therefore, a person who has a debt to *Allāh*, like expiation (*kaffārah*) or *zakāh* debt, cannot receive *zakāh* for such a reason, as this is not a kind of debt that will result in imprisonment.⁵⁰

According to *Shāfiʿī* and *Ḥanbalī madhhab*s, debtors are divided into two categories: those who borrow for themselves and those who owe for the benefit of society. According to this view, both classes receive *zakāh* under the category of *ghārim*. In addition, the wealth and affluence of individuals who borrow money for the benefit of society, such as reconciling two persons or groups⁵¹, do not prevent them from receiving *zakāh* to cover the debt in question.⁵² Evaluating the issue of borrowing for the benefit of society, *al-Qaraḍāwī* states that the debts of people who borrow in order to perform a social charity service such as establishing orphanages, child welfare institutions, health centres for a free examination and treatment of the poor, mosques, schools, and similar can be paid from the *zakāh* fund in this context.⁵³

On the other hand, a person who is in debt for his needs is a person who has fallen into debt due to personal or family needs such as providing food and clothing,

⁴⁹ Ibn ʿĀbidīn, *Radd al-Muḥtār*, 3:289.

⁵⁰ Al-Qarāfī, *Al-Dhakhīrah*, 3:147; Aktas, “Kur’an’a Gore Zekâtin Harcama Kalemleri”, 102.

⁵¹ Even if these groups are from *ahl al-dhimma*.

⁵² Al-Shāfiʿī, *Al-Umm*, 3:183–84; Abū al-Ḥasan Alī ibn Muḥammad Al-Māwardī, *Al-Aḥkām al-Sulṭāniyyah*, ed. Aḥmad Mubārak Al-Baghdādī, (Al-Kuwayt: Maktabah Dār al-Qutaybah, 1st edn., 1989), 157; Ibn Qudāmah, *Al-Kāfī*, 2:200.

⁵³ Al-Qaraḍāwī, *Fiqh al-Zakāh*, 529.

treating his patient, getting married or marrying his child, purchasing a house and household goods, or due to a sudden disaster. Furthermore, such debtors are not required to sell the items they need to satisfy their debts. It is reported that ʿUmar ibn ʿAbd al-ʿAzīz instructed the debtors to be paid out of *zakāh* income even though they had a house, servant, horse, and household goods.⁵⁴ Also, according to *Mālikī*, *Shāfiʿī* and *Ḥanbalī* jurists, if the debt is taken for debauchery, waste, and sin, the debt cannot be paid off with *zakāh* unless the person repents.

It has also been a matter of debate whether the debts of those who died as debtors could be paid from the *zakāh* fund. According to *al-Nakhaʿī*, *Abū Ḥanīfah* and *Aḥmad ibn Ḥanbal*, the debt of a deceased person cannot be paid from the *zakāh* fund, while *Abū al-Thawr* and *Mālik* claim that it can be paid out of the *zakāh* fund. As for the *Shāfiʿī madhhab*, some support each of the views. *Al-Qaraḍāwī* also argues that since *ghārim* is one of the four groups mentioned with the preposition *fī*, *al-tamlīk* is not a condition, and therefore, the debt of the deceased can be paid off from the *zakāh*.⁵⁵

According to some scholars, benevolent lending (*al-qarḍ al-ḥasan*), that is, the interest-free loan given to enable a person to do his/her job or meet a need, can be provided from the *zakāh* fund. In this case, *zakāh* is not paid by redeeming an existing debt but directly turns into the debt itself. While *Abū Zahrah*, *Khallāf* and *al-Qaraḍāwī* are among the scholars who permitted this based on *al-qiyās al-awlā* (*qiyās* of higher order), *Muḥammad Ḥamīdullāh* stated that providing *al-qarḍ al-ḥasan* from *zakāh* is permissible because it is already within the scope of *ghārim*.⁵⁶

In summary, a debtor is a person who lacks sufficient money to pay his loan back. Moreover, considering that *zakāh* is a means of preserving social ties and strengthening solidarity, the view of *Shāfiʿī* and *Ḥanbalī madhhabs* that those who borrow for the benefit of society are likewise included in the *al-ghārimūn* category seems reasonable. Contemporary scholars such as *Abū Zahrah*, *al-Qaraḍāwī*, and

⁵⁴ Al-Qāsim ibn Salām Abū ʿUbayd, *Kitāb al-Amwāl*, ed. Khalīl Muḥammad Harās (Bayrūt: Dār al-Fikr, n.d.), 666.

⁵⁵ Al-Qaraḍāwī, *Fiqh al-Zakāh*, 531.

⁵⁶ Ibid., 532.

Muḥammad Ḥamīdullāh suggested providing benevolent lending to those in need from *zakāh* funds.

3.1.2.6 In the Way of Allāh (*Fī Sabīl Allāh*)

The original meaning (*al-maʿnā al-waḍʿī* or *al-ḥaqīqah al-waḍʿiyyah*) of this expression is every virtuous action that takes the path of drawing closer to *Allāh*. It includes all individual or collective good deeds. However, the predominant meaning of the word and what is understood from it at the time of its release (*al-ḥaqīqah al-ʿurfiyyah*) is *jihād* in the way of *Allāh*, so it became as if it was used extensively in it. As a result of the conflict between *al-ḥaqīqah al-waḍʿiyyah* and *al-ḥaqīqah al-ʿurfiyyah* of the expression, there has been a disagreement among scholars regarding the scope of the *fī sabīl Allāh* category. Despite the widespread agreement that the second meaning, *jihād* in the way of *Allāh*, is within the scope of *fī sabīl Allāh*, it has been debated whether other good deeds and actions that bring the servant closer to *Allāh* are also within the scope.

Abū Yūsuf, from the *Ḥanafīs*, asserts that the concept of *fī sabīl Allāh* includes the *mujāhid* soldiers who left behind the army because they lacked the means to join the *jihad*, while *Abū Muḥammad* states that this expression means the remaining pilgrims from the caravan. According to another view, seekers of knowledge (*ṭalabah al-ʿilm*) are also included in this category. Despite the above differences of opinion, *Ḥanafī* scholars have unanimously agreed that these people must be poor and needy in order to receive a share from *zakāh*. Since *Ḥanafīs* see *al-tamlīk* as a condition in *zakāh*, which will be addressed in the next chapter, they claim that *zakāh* cannot be given on any issue that does not involve the transfer of ownership to the rightful person, such as building mosques, bridges, canals, dams, and city walls.⁵⁷

Mālikī madhhab limit “*fī sabīl Allāh*” to *jihād* or to keeping watch (*ribāṭ*) within the boundaries, which can be regarded as a form of *jihād*. However, they do accept that *zakāh* can be given to *mujāhid* and *murābiṭ* even if they are rich. In addition, *Mālikīs* do

⁵⁷ Al-Marghīnānī, *Al-Hidāyah*, 1:111; Ibn ʿĀbidīn, *Radd al-Muḥtār*, 3:291.

not consider the transfer of *zakāh* to individuals as a condition for the *fī sabīl Allāh* category, and they state that it is permissible to spend *zakāh* on the procurement of necessary tools for *jihād* such as weapons, warships, and fortifications.⁵⁸

Shāfi'īs also accept that *fī sabīl Allāh* is confined to *jihād* and *mujāhids*, and that *zakāh* can be offered to *mujāhids* regardless of their wealth. According to the *madhhab*, expenses can be made from this share for the travelling and returning expenses of the soldiers and the supply of weapons and other tools necessary for the war. However, according to the *madhhab*, for the *mujāhids* to receive *zakāh*, they must be volunteer soldiers who do not receive a salary from the state.⁵⁹

According to *Ḥanbalīs*, what is meant by “*fī sabīl Allāh*” is *mujāhids* who do not receive a salary from the state or whose salary is insufficient for them. His son reports from *Aḥmad bin Ḥanbal* an opinion relating that *hajj* is also included in this category alongside *jihād*. The jurists belonging to the *madhhab* conveyed two views, one positive and the other negative, regarding the inclusion of *hajj*.⁶⁰

As can be seen, with the exception of some opinions about pilgrimage/pilgrims and seekers of knowledge, the *fī sabīl Allāh* category has generally been limited to *jihād* and *mujāhids* in four *madhhabs*, and other virtuous deeds performed in the way of *Allāh* are not included in the category. *Ibn Ḥazm* holds a similar view. According to him, all virtuous deeds done are in the way of *Allāh*, but it is an undisputed point that what *fī sabīl Allāh* means in the verse, which specifies the *zakāh* receivers, does not include all good deeds. Therefore, what is intended by *fī sabīl Allāh* is *jihād*.⁶¹

However, some gave a broader meaning to the concept of “*fī sabīl Allāh*” and included all the virtuous and good deeds done for the sake of *Allāh* in this term. *Al-Rāzī* states that the concept of “*fī sabīl Allāh*” is used more specifically for *jihād* in the *Qur'ān*, but it is not necessary to confine this concept to Muslims who fight for the cause of *Allāh*. In this context, he relates that jurists like *al-Qaffāl* argued that *zakāh*

⁵⁸ *Al-Qurṭubī, Al-Jāmi' li Ahkām al-Qur'ān*, 10:271; *Al-Qarāfi, Al-Dhakhīrah*, 3:148.

⁵⁹ *Al-Nawawī, Al-Majmū'*, 6:198; *Al-Shāfi'ī, Al-Umm*, 3:190.

⁶⁰ *Ibn Muflīh, Al-Mubdi' Sharḥ al-Muqni'*, 2:411–12; *Ibn Qudāmah, Al-Kāfi*, 2:201.

⁶¹ *Ibn Ḥazm, Al-Muḥallā*, 6:151.

funds belonging to the *fi sabīl Allāh* category could be spent on charitable purposes such as shrouding the dead, constructing castles, and renovating mosques.⁶²

According to *al-Shī'ah al-Imāmiyyah madhhab*, the scope of “*fi sabīl Allāh*” includes all forms of *maṣlaḥah* (public interest) and charity, such as helping pilgrims, paying the debts of the dead or the living, building mosques, tombs, and bridges, as well as *mujāhids* and *murābiṭs*.⁶³

According to *Shaltūt*, everything related to religion and state interests falls within the purview of *fi sabilillah*, the priority being all kinds of preparations for war. In this sense, raising invitees who will reveal the beauties and tolerance of Islam, working to preserve the *Qur'ān* and building a mosque in underserved areas can be considered within this scope.⁶⁴ *Al-Qaraḍāwī* also adopts a similar view, but he comes up with the same result by interpreting the concept of *jihad* widely instead of interpreting the expression *fi sabīl Allāh* as others do. *Sayyid Quṭub*, *Rashīd Riḍā*, *Aḥmad Muṣṭafā al-Marāghī*, *Muḥammad Asad*, and *Hamīdullāh* share similar views, albeit with some minor differences.⁶⁵

Briefly, with the exception of some views about pilgrims and seekers of knowledge, the *fi sabīl Allāh* category has essentially been restricted to *jihād* in four *madhhabs*, and other good deeds carried out for the sake of *Allāh* have not been included in this category. *Al-Shī'ah al-Imāmiyyah madhhab* and *al-Qaffāl*, on the other hand, approved the use of this group's *zakāh* shares for some *maṣlaḥah* forms, such as renovating mosques or constructing castles or bridges. It is possible to argue that contemporary jurists generally share the same opinion, as some were already mentioned above.

⁶² Fakhruddīn al-Rāzī, *Maḥāṣin al-Ghayb*, 16:87.

⁶³ Aktas, ‘Kur'an'a Gore Zekâtin Harcaması Kalemeleri’, 114.

⁶⁴ Maḥmūd Shaltūt, *Al-Fatāwā: Dirāsah li Mushkilāt al-Muslim al-Mu'āṣir fi Ḥayātih al-Yawmiyyah wa al-ʿĀmmah*, (al-Qāhirah: Dār al-Shurūq, 18th edn., 2001), 111.

⁶⁵ Sayyid Quṭub, *Fī Zilāl al-Qur'ān*, (al-Qāhirah: Dār al-Shurūq, 26th edn., 1997), 3:1670; Riḍā, *Tafsīr al-Manār*, 10:585; Aḥmad Muṣṭafā Al-Marāghī, *Tafsīr al-Marāghī*, (Egypt: Maktabah wa Maṭba'ah Muṣṭafā al-Bābī al-Ḥalabī wa Awlādh, 1st edn., 1946), 10:145.

3.1.2.7 The Traveller (*Ibn al-Sabīl*)

Ibn al-Sabīl is one of the *aṣṇāf* (*zakāh* recipients) who was allocated a share from the *zakāh*. It literally means “son of the road” and is used for a traveller away from his home because the traveller has become inseparable from the road. Arabs refer to something that becomes inseparable from something else as “its son”. For this reason, the poor are called *ibn al-faqr* (the son of poverty), and the rich are called *ibn al-ghinā* (the son of wealth).⁶⁶ The concept of *ibn al-sabīl*, which is mentioned in eight places in the *Qur’ān*, is among the categories that are mentioned to receive *zakāh*⁶⁷, *fay*⁶⁸ and *ghanīmah*⁶⁹, and is also mentioned as a subject of *al-infāq*,⁷⁰ *al-ṭiā*⁷¹ and *al-iḥsān*⁷².

According to *Ḥanafī madhhab*, a traveller is a person who has been cut off from his wealth because he is far away. Those who cannot reach their assets because they are far from their homeland are included in this category, as are those who are in their homeland but become needy because they cannot collect their debts from their creditors. In addition, it is considered better for travellers who have a wealth of their own in their homeland but are stranded on the road and unable to reach that wealth to borrow money to pay when they return than to receive *zakāh*. However, it is also permissible for them to receive *zakāh*, and if they have anything left over from *zakāh*, they do not have to return it or donate it as *ṣadaqah*.⁷³

According to *Shāfi‘ī madhhab*, a traveller can be stuck on the road, someone who has just started the journey, or someone who intends to depart. In addition, according to the *madhhab*, for *zakāh* to be given, the journey must not be undertaken for an immoral purpose, and those who intend to set off must not have the means to reach their destination without any financial help.⁷⁴

⁶⁶ Abū Bakr Muḥammad ibn Aḥmad al-Sarakhsī, *Al-Mabsūt*, (Bayrūt: Dār al-Ma‘rifah, 1st edn., 1989), 3:10.

⁶⁷ Qur’ān, al-Tawbah: 60.

⁶⁸ Qur’ān, al-Ḥashr: 7.

⁶⁹ Qur’ān, al-Anfāl: 41.

⁷⁰ Qur’ān, al-Baqarah: 215.

⁷¹ Qur’ān, al-Baqarah: 177.

⁷² Qur’ān, al-Nisā’: 36.

⁷³ Ibn ‘Ābidīn, *Radd al-Muḥtār*, 3:290.

⁷⁴ Al-Nawawī, *Al-Majmū‘*, 6:203.

According to *Mālikīs*, *ibn al-sabīl* is a person who has been stranded during his journey, even if he is rich in his hometown, as long as his journey is not for sin. Those who become stranded during the pilgrimage are also included in this group.⁷⁵

According to *Ḥanbalī madhhab*, *ibn al-sabīl* is a traveller with no property left to return to his homeland. In order to be eligible for *zakāh*, a person's journey must not be motivated by immorality.⁷⁶ There are also those in the *madhhab* who believe that *ibn al-sabīl* people are beggars.

On the other hand, *al-Marāghī* claimed that although it was difficult for people to access their wealth in their hometown in the past, this class has disappeared in this modern era as transportation and money transfers have become much simpler.⁷⁷ However, it is a fact that these situations may occur, albeit more rarely than before.

According to *Ḥamīdullāh*, what should be understood from this term is to show hospitality to foreigners who set out, and in a broader sense, the term includes all services that foreign tourists will benefit when visiting a country. Accordingly, it includes activities such as the construction and maintenance of roadways, the construction of hotels, the safety and security of roads, and the establishment of facilities that ensure the health of passengers.⁷⁸ *Rashīd Riḍā* asserts that the missing children can be evaluated within the scope of *ibn al-sabīl*.⁷⁹ Again, according to *al-Qaraḍāwī*, refugees who were forced to leave their homeland and can no longer access the possessions they left behind can also be considered in this category. In addition, *al-Qaraḍāwī* stated that since *ibn al-sabīl* is joined via *wāw* (a conjunction particle) with *fī sabīl Allāh*, which is preceded by the preposition *fī*, a public interest rather than personal *tamlīk* can be taken into account in this category. In this context, he argues that this fund can be spent on people such as experts, artists, masters, and students who need to be sent abroad to acquire experience in a productive job or to specialise in a useful science so that the benefit will return to religion and the *ummah*. Regarding these

⁷⁵ Al-Qarāfī, *Al-Dhakhīrah*, 3:149; Sahnūn ibn Sa'īd Al-Tanūkhī, *Al-Mudawwanah al-Kubrā*, (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn., 1994), 1:299.

⁷⁶ Ibn Qudāmah, *Al-Kāfī*, 2:202; Ibn Mufliḥ, *Al-Mubdi' Sharḥ al-Muqni'*, 2:13.

⁷⁷ Al-Marāghī, *Tafsīr al-Marāghī*, 18:39.

⁷⁸ Muhammed and Tug, *Islam Peygamberi*, 2:978.

⁷⁹ Riḍā, *Tafsīr al-Manār*, 5:93–94.

individuals as *ibn al-sabīl* while they have not set out yet, *al-Qaraḍāwī* holds on to the view in the *Shāfiʿī madhhab* that the person who intends to set out is also considered *ibn al-sabīl*.⁸⁰

Regarding *ibn al-sabīl*, it appears that the condition that the journey should not be made to commit sin is commonly highlighted by the *madhhabs*. Additionally, including those who have not begun a journey yet but intend to do so in the scope of *ibn al-sabīl* by *Shāfiʿīs* is noteworthy. As for the contemporary jurists, there are various interpretations regarding this group, such as considering lost children, refugees, or experts sent abroad to gain experience in their works as *ibn al-sabīl*. The views discussed in this first part of the chapter are a fundamental reference for understanding how *aṣnāf* were perceived and interpreted by *madhhabs* and jurists in general. This discussion is the backbone of this chapter and will be the part that the researcher will refer to when evaluating and analyzing MAIWP's interpretation and perception of *aṣnāf* hereafter.

3.2 ANALYSIS AND DISCUSSION OF MAIWP'S REDEFINITION OF *ZAKĀH* RECIPIENTS

In this second part of the chapter, the researcher will review the redefinitions of *aṣnāf* by MAIWP, analyze them from a juristic (*fiqhī*) point of view, and finally try to associate them with a jurisprudential (*uṣūlī*) concept known as *ithbāt al-asmā' bi al-qiyās*.⁸¹ The researcher posits that this concept, which has not been covered and addressed in the previous studies on the topic, can serve as a *uṣūlī* basis for these redefinitions.

⁸⁰ Al-Qaraḍāwī, *Fiqh al-Zakāh*, 573.

⁸¹ Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazzālī, *Al-Mustaṣfā min ʿIlm al-Uṣūl*, (Dimashq: Resalah Publishers, 1st edn., 2012), 2:11.

3.2.1 MAIWP's Redefinition of *Zakāh* Recipients and Its Analysis from *Fiqh* Perspective

In this part of the research, MAIWP's redefinition of *aṣnāf* will be examined and discussed primarily in terms of *fiqh*. In this context, which scholars' and *madhhab*s' views in the *fiqh* literature have been preferred by the Council while making these definitions will be addressed and analyzed. With respect to MAIWP's definition of *aṣnāf*, *zakāh* recipients are introduced on the official website of the Council as follows:

Faqīr: A person who does not have any property or job or has an income but that income does not account for 50 percent of the *kifāyah*⁸² limit for the basic needs of a modestly living individual and his dependents.

Miskīn: A person with a job or income that exceeds 50 percent of his needs but falls short of the *kifāyah* threshold and covers only a part of his and his dependents' basic needs.⁸³

MAIWP defines *faqīr* as someone with no income or whose income is less than 50 percent of his and the dependents' needs, and *miskīn* as someone who has a higher income but still cannot meet all the needs. This definition of the concepts of *faqīr* and *miskīn* made by MAIWP is in line with the views of *Shāfi'ī*, the predominant *madhhab* in Malaysia, *Hanbalī*, and even *Zāhirī* and *Imāmiyyah madhhab*s, who consider *faqīr* as needier than *miskīn*.⁸⁴ Accordingly, there is no redefinition of MAIWP regarding these recipients. Likewise, as advocated in the *Shāfi'ī* *madhhab*, MAIWP adopted *kifāyah* as the criterion for poverty rather than *niṣāb*. However, as the *ḥadd al-kifāyah*⁸⁵ is based on *al-ʿurf*, the criteria that the Council considers regarding *ḥadd al-kifāyah* have also changed as a result of the fact that the living standards and the current cost of living have changed significantly compared to the past. In this regard, protection, food, clothing, medicine, education, and transportation, in their modern forms, are the needs

⁸² It is the minimum level of necessity required by a household to sustain daily needs, or it is a standard of living or adequacy to live a decent life based on the current cost of living.

⁸³ See <https://www.maiwp.gov.my/i/index.php/en/2015-11-20-07-49-26/takrif-asnaf> (accessed 03 January, 2023).

⁸⁴ Al-Shāfi'ī, *Al-Umm*, 3:182; Ibn Qudāmah, *Al-Kāfi*, 2:196; Ibn Muflīh, *Al-Mubdi' Sharḥ al-Muqni'*, 2:403; Ibn Ḥazm, *Al-Muḥallā*, 6:151; Ābū Ja'far Muḥammad ibn al-Ḥasan ibn ʿAlī al-Ṭūsī, *Al-Mabsūṭ Fī Fiqh al-Imāmiyyah* (Ṭahrān: Al-Maṭba'ah al-Ḥaydariyyah, 1378 hijrī), 1: 246-247.

⁸⁵ It literally means the limit of sufficiency.

that the Council considered and set certain limits based on the cost of living and *aṣnāf* 's special conditions.⁸⁶

Āmil: Those appointed directly by the government and *ūlū al-amr*, whether individuals or organizations, to manage and administer *zakāh* affairs, including collection, distribution, financial management and so on.⁸⁷

Regarding the definition of *āmil* made by MAIWP, it is noted that companies, which have legal personalities in law, are added to the definition of *āmil* and individuals. Moreover, the duties of *āmil* are not limited only to the collection and distribution of *zakāh*; rather, financial management and other similar responsibilities are also included in the purview of *āmil*. In short, it seems conceivable to include all the works carried out in the whole process, from the collection of *zakāh* from the *zakāh* payers to its delivery to the rightful beneficiaries, within the scope of *āmil*'s task description. Also, on the website of MAIWP, it is stated that the share of *āmil* is proportional to the work they perform, and it is more reasonable to allocate 1/8 or a similar share to them. It is also indicated that the idea that the *zakāh* share of *āmil* would be determined according to the workload and the hardship they face, which the Council adopts, is shared by most scholars.⁸⁸ However, MAIWP occasionally allocates PPZ a portion of *zakāh* exceeding the 1/8 limit set for *āmil* in the *Shāfiʿī madhhab*⁸⁹ and by MAIWP itself, presumably for workload reasons. Nevertheless, it seems logical to claim that MAIWP should be more delicate in this regard, particularly given that the *āmil* category is not the primary group targeted by *zakāh* but rather a *wasīlah* group⁹⁰ to ensure the functioning of the *zakāh* as a self-financing system.

Likewise, the MAIWP states that non-Muslims cannot be *āmil*, based on the view that non-Muslims should not control the affairs of Muslims.⁹¹ In this sense, the Council did not adopt the view attributed to *Aḥmad ibn Ḥanbal* that non-Muslims could

⁸⁶ See <https://www.maiwp.gov.my/i/index.php/en/had-al-kifayah> (accessed 06 February, 2023).

⁸⁷ See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 06 February, 2023).

⁸⁸ See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 06 February, 2023).

⁸⁹ Al-Nawawī, *al-Majmūʿ*, 6:167–68.

⁹⁰ This is because, unlike other groups, the only reason for the *āmil*s to receive a share from *zakāh* is to ensure that the collection and distribution of *zakāh* is carried out properly.

⁹¹ See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 06 February, 2023).

be *āmil* of *zakāh*. However, no restrictions were placed on women, and it was stated that they could undertake this job just like men.

***Mu'allaf*:** Those whose hearts have been reconciled, those who are expected to be inclined to accept Islam or those who have embraced Islam (but have not yet firmly established it). *Mu'allaf* are divided into two categories:

a) Muslims: consisting of new converts to Islam, people who embraced Islam but their faith is still weak, Muslim leaders who have a good relationship with non-Muslim leaders who are of the same level, Muslim leaders whose faith is still weak but they are still obeyed by the people under their leadership, and Muslims who live on the border near the enemy country.

b) Non-Muslims: consisting of those who can be convinced to convert to Islam, leaders of non-Muslim groups who have good relationships with Muslim leaders, indigenous communities who can be persuaded to embrace Islam, and those who can be convinced not to harm Muslims.

It is observed that MAIWP believes there is no abrogation regarding *al-mu'allaf* category. In addition, it seems that the Council prefers a definition that includes various segments of Muslims and non-Muslims, unlike the *Shāfi'ī madhhab*, which does not include non-Muslims in this category.⁹² In this regard, a *fatwā* was also issued in 2007 by the National Council of Islamic Religious Affairs Malaysia⁹³ regarding giving *zakāh* to non-Muslims.

Muzakarah decided that Muslims should be given priority in the distribution of *zakāh* according to the *aṣnāfs* that have been set. However, the government is also required to give *zakāh* to non-Muslims based on wisdom and *ḥikmah* for the purpose of preaching.⁹⁴

***Al-Riqāb*:** Muslims who are shackled or exploited in aspects of thought, possessions, power, and freedom and are unable to free themselves from these shackles. According

⁹² Abū Ishāq al-Shīrāzī, *Al-Muhadhdhab*, 1:315.

⁹³ Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia (MKI).

⁹⁴ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/10168> (accessed 06 February, 2023).

to MAIWP, many groups that should be freed from their shackles are categorized under *aṣṇāf al-riqāb*. Here are some of them:

- a. **Fighting deviations in faith** such as apostasy, heresy, and concepts that are contrary to the beliefs of members of the *ahl al-Sunnah wa al-Jamā'ah* such as liberalism, orientalism, and others, as well as cursing, insulting, or challenging the religion or Islamic Institutions.
- b. **Fighting decency-related mistakes** such as rescuing or protecting women or men from falling into immoral activities, combating prostitution activities, and the LGBT+⁹⁵ lobby.
- c. **Combating drug-related offences**, such as fighting drug habits and drug dealing, and providing aid in the recovery process. Also, other addictive activities such as pil kuda (horse pills), ecstasy, and the like are included in this category.
- d. **Suffering from chronic illnesses** such as Aids, HIV, and TIBI is also considered a kind of shackle from which one should be liberated.
- e. **Protecting and caring for individuals who are left behind** and have no one to rely on, such as abandoned infants, homeless people, and elderly citizens with no family.
- f. **Loss of shelter due to being evicted by a rental landlord** or long-standing debt that threatens the safety of life, self-respect, and family are also cases that are included in *aṣṇāf al-riqāb* ⁹⁶

Since slavery has been over for a long time and does not exist in the modern world in its traditional sense, the Council revised the definition of *al-riqāb* in a wide range that involves all kinds of physical, economic, health, and mental slavery. However, the 88th Federal Territories Shariah Law Consultation Committee meeting that convened on November 19, 2014, discussed and made a decision under the title “Expanding the Definition of Aṣṇāf Al-Riqāb as a Recipient of *Zakāh* Assistance in the Islamic Religious Council of the Federal Territory”:

⁹⁵ Lesbian, gay, bisexual, transgender, and plus people.

⁹⁶ See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 24 February, 2023).

The Committee is of the view that the interpretation of *aṣnāf al-riqāb* is eternal as it is written in the Qur'ān and hadīth. However, the committee is of the view that for women who are caught up in immorality and those who are involved in drug abuse, it can be considered that the distribution of *zakāh* is channelled under *aṣnāf al-faqīr* or *al-miskīn*.⁹⁷

The researcher thinks that the committee's decision to include women who are caught up in immorality and those who are involved in drug abuse in the *faqīr* and *miskīn* categories is not sufficient for the struggle to be made on those issues. This is because these people, especially drug addicts, do not only consist of the poor and needy segments of society. In this context, women caught up in immorality and drug addicts must be counted as *al-riqāb* in order to fund the associations to be established, civil initiatives to be undertaken, and informative seminars to be given to all drug addicts and women caught up in immorality, regardless of whether they are poor or not. As can be observed from the information on MAIWP's website, it seems that despite the above *fatwā*, MAIWP continues to interpret the *al-riqāb* group broadly, which can be considered more appropriate.

***Al-Ghārimūn*:** Those who are in debt to meet the basic needs for the benefit of themselves, their families, and their dependents, or the community, and individuals afflicted with misfortune and debt as permitted by Islamic law.⁹⁸

The definition shared by MAIWP regarding *al-ghārimūn* is parallel to *al-Shāfi'ī* and *al-Ḥanbalī madhhabs'* approaches, which divide the debtors included in *al-ghārimūn* category into two categories: those who borrow for themselves and those who borrow for the benefit of society. In a *fatwā* issued by the Mufti Office, the person who is a guarantee for a debtor was also added to *al-ghārimūn* category as a third group. Likewise, those in debt for the benefit of the public, such as those who founded orphanages, public hospitals, mosques, and other charitable works so that the benefits flow to the public, are given *zakāh*, being included in the second group.

⁹⁷ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/12443> (accessed 24 February, 2023).

⁹⁸ See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 24 February, 2023).

Additionally, victims of natural disasters are also included in *al-ghārimūn* based on the opinion of *Mujāhid* and *Yūsuf al-Qaraḍāwī* as mentioned in that *fatwā*.⁹⁹ Moreover, Mohd Saiful Hafiz Vijia stated that:

We sometimes help some non-Muslims in case of *muṣībah* (disasters and calamities). For example, if there is a community consisting of both Muslims and non-Muslims and they are hit by a *muṣībah* such as a flood or fire that covers houses, in this case, we do not want non-Muslims to have negative feelings, so we also help them with *zakāh* funds. This is when the community is mixed of Muslims and non-Muslims. But if the community hit by *muṣībah* consists only of non-Muslims, then we help them with charity money, not *zakāh*.¹⁰⁰

This view is in line with the views of *ʿUmar ibn al-Khaṭṭāb* and *ʿIkrimah*, who, as mentioned earlier when discussing the jurists' opinions about *fuqarā'* and *masākīn*, are reported to have argued that non-Muslims can be given from *zakāh* funds.¹⁰¹

Fī sabīl Allāh: Any person or party who engages in religious activity, defends and propagates the religion of Islam and its welfare.¹⁰²

The definition given by MAIWP concerning *fī sabīl Allāh* is quite different from the traditional view in the four *madhhabs*, which identifies *fī sabīl Allāh* with *jihād* and partially with pilgrimage and seeking knowledge. The main reason for this is that after the abolition of the caliphate in 1924, there was no reliable state governed by religious principles, and therefore, the concept of *jihād* was largely abandoned, except in exceptional cases such as the Palestinian cause. In this regard, MAIWP provides several NGOs in the Federal Territory with *zakāh* funds under this category to enable them to run their aid and other programs.¹⁰³ Furthermore, the Federal Territory mufti stated, in the *fatwā* he issued in response to a question asked, that students can receive *zakāh* according to four *madhhabs*, and this can be done within the framework of the *fī*

⁹⁹See <https://www.muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/1234-irsyad-al-fatwa-ke-131-al-gharimin-di-dalam-asnaf-zakat> (accessed 24 February, 2023).

¹⁰⁰ Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

¹⁰¹ Aktas, "Zekātin Harcama Kalemlerinden Fakir ve Miskin Kavramlarının Kur'an Bağlamında Yeniden Tanımlanması", 113; Ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān 'an Ta'wīl Āy al-Qurān*, 11:513–14. Ibn Abī Ḥātam, *Tafsīr al-Qur'ān al-ʿAẓīm*, 6:1817.

¹⁰² See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 24 February, 2023).

¹⁰³ Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

sabīl Allāh category. He based this on a quote from *al-Mawsū'ah al-Fiqhiyyah al-Kuwaytiyyah*.¹⁰⁴ Also, the Mufti Office was asked whether orphans are eligible to receive *zakāh* under this category. Here are some important parts of the *fatwā* published in response:

... After we learned about the 8 *aṣnāfs* of *zakāh*, it became evident to us that orphans are not among those who are given *zakāh*. This indicates that the mere fact that a person is an orphan does not make him one of the recipients of *zakāh*. However, if the orphan is a poor person, then in this situation, the orphan can receive *zakāh*. As for aiming to provide the orphanage with *zakāh* directly, it is necessary to ascertain first whether the orphanage accommodates poor orphans or not.

However, the Mufti Office also added a statement which indicates that the issue is at the discretion of the *baytalmāl*:

However, there are also opinions that expand the meaning of *fi sabīl Allāh* so that it can be understood that what is meant by *fi sabīl Allāh* is not just war and *jihād*. We can observe this when al-Imām al-Rāzī in his commentary, *Mafātīḥ al-Ghayb* brought an opinion that al-Qaffal raḥimahullāh stated that some jurists allow that the *zakāh* is given for all things that lead to goodness, such as shrouding the dead, building a fort, and beautifying a mosque under the category of *fi sabīl Allāh*. This makes using *zakāh* for the development of orphanages also allowed. Therefore, we recommend that you contact the relevant Baytalmāl Office to obtain the necessary information.¹⁰⁵

Ibn al-Sabīl: It is defined by MAIWP as any person on a journey or just about to embark on a journey from any state or country with a purpose permitted by *Sharī'ah* and needs help to continue the journey until he reaches the destination.¹⁰⁶ In this definition, it is observed that the Council includes both people who have started the journey and those who want to start but do not have the necessary property within the scope of *ibn al-sabīl*. Therefore, it is clear that MAIWP adopted the view of the *Shāfi'ī madhhab*, which includes those who want to start a journey in the *ibn al-sabīl* category.

¹⁰⁴See <https://www.muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/3902-irsyad-al-fatwa-siri-ke-349-hukum-menggunakan-dana-zakat-untuk-program-motivasi-anak-anak-asnaf-dan-kakitangan-bank> (accessed 24 February, 2023).

¹⁰⁵See https://www.muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/1215-irsyad-al-fatwa-ke-137-hukum-memberi-zakat-kepada-anak-yatim#_ftn1 (accessed 14 March, 2023).

¹⁰⁶ See <https://www.maiwp.gov.my/i/index.php/en/bz> (accessed 14 March, 2023).

In summary, an analysis of MAIWP's definition of *aṣnāf* demonstrates that it defines some categories of *aṣnāf* in parallel with the *Shāfi'ī madhhab*'s approach, the predominant *madhhab* in Malaysia. Examples include defining *faqīr* as poorer than *miskīn* and classifying debtors as those who borrow for themselves and those who borrow for the benefit of society. Similarly, MAIWP's inclusion of a person about to embark on a journey within the scope of *ibn al-sabīl* is another definition that is in line with the *Shāfi'ī madhhab*. For some other categories of *aṣnāf*, MAIWP adopts definitions that are contrary to the *Shāfi'īs*' views, such as the consideration of non-Muslims as *mu'allaf* or providing non-Muslims who live with Muslim communities hit by a disaster with *zakāh* under the category of *al-ghārimīn*. Therefore, it is possible to claim that MAIWP benefited not only from the *Shāfi'ī madhhab* but also from other *madhhabs* when interpreting *zakāh* recipients. In the meantime, as a result of the developments of the modern era, MAIWP redefined slavery broadly and gave it a contemporary meaning that encompasses all Muslims who are shackled or exploited in aspects of thought, possessions, power, and freedom and are unable to free themselves from these constraints. Thus, all forms of physical, economic, health, and mental slavery were considered reasons for being regarded as *al-riqāb*. A similar situation applies to the *fi sabīl Allāh* and partly to *al-ghārimīn* groups since all engagements in religious activities, including defending the religion of Islam and propagating it, were regarded by MAIWP in the scope of *fi sabīl Allāh*.

Overall, it is possible to state that MAIWP has redefined the eight groups of *aṣnāf* by drawing from classical scholars' and *madhhabs*' views and the views of modern Islamic jurists. At this point, the researcher believes that it would be useful to examine MAIWP's definitions from a *uṣūlī* perspective in order to determine whether it is technically proper to interpret such concepts in a broader sense, as in the case of *al-riqāb* and *fi sabīl Allāh*, other than the meanings they were used in the early periods.

3.2.2 MAIWP's Redefinition from *Uṣūlī* Perspective

Given the topics covered so far, it is feasible to argue that the scope of *zakāh* recipients, which is stated in verse 60 of the chapter *al-Tawbah*, has expanded over time. MAIWP also, by including drug addicts, prostitutes, and people with chronic diseases such as

AIDS in the *al-riqāb* category and by expanding the scope of the *fi sabīl Allāh* group, unlike the classical periods when *fi sabīl Allāh* was mostly perceived as *jihad*, developed a similar behaviour. In the previous parts of the study, the juristic (*fiqhī*) foundations of the aforementioned interpretations of the MAIWP were revealed by sharing the opinions of the jurists and *madhhabs* who shared the relevant views. Regarding the jurisprudential (*uṣūlī*) basis of these interpretations and redefinitions, the researcher thinks that there are two alternative options.

The first method is to argue that new segments of society are included in *zakāh* recipients by comparing them to one of the eight groups mentioned. In other words, what happens here is that a *Sharī'ah* ruling (*ḥukm*) is extended from an original case (*al-aṣl*) to a new case (*al-far'*) because the latter has the same effective cause (*'illah*) as the former. The original case is regulated by a *Qur'anic* text (*naṣṣ*), and analogical reasoning (*qiyās*) is utilised to extend the same textual ruling to the new case. However, the researcher claims that the preposition “*innamā*” at the beginning of the *aṣnāf* verse in *Sūrah al-Tawbah*, which connotes limitation and restriction (*ḥaṣr*), indicates that *zakāh* should be given only to these eight classes. Therefore, any person or group other than the ones mentioned cannot be included in *zakāh* recipients via *qiyās*, as this will contradict the *ḥaṣr* that “*innamā*” connotes.

Regarding *qiyās*, there is an attempt to make people or groups not included in the content of the relevant verse about *zakāh* subject to the ruling by comparing them to those mentioned in the verse. However, the preposition “*innamā*” prevents this. Instead of performing a *qiyās* between the groups mentioned in the verse and those who did not, it would be more appropriate to expand the meaning of the concepts used for the eight groups mentioned in the verse. For this reason, the researcher argues that the functionality of another concept can be used here as an alternative second way. This concept is mainly described as *ithbāt al-asmā' bi al-qiyās* (attributing name/word to something via *qiyās*) in *uṣūl al-fiqh* literature.¹⁰⁷

According to *Abū Ishāq al-Shīrāzī*, there are four sources that *al-asmā'* (the names) can be derived from. These are language (*al-lughah*), which means *al-waḍ'* here,

¹⁰⁷ Al-Ghazzālī, *al-Mustasfā*, 2:11.

custom (*al-ʿurf*), religion (*al-sharʿ*) and analogical reasoning (*al-qiyās*).¹⁰⁸ These are also referred to as parts of the literal (*ḥaqīqī*) in other *uṣūl al-fiqh* works. *Al-waḍʿ* means assigning and attributing a word to something initially in such a way that this word was not used for any other thing in that language before, which can be referred to as the dictionary meaning of the word. An example is the word *asad* (lion), which was initially used for that predatory animal.

As for *al-ʿurf*, it occurs when the community starts to attribute to a word a new meaning distinct from its first meaning. When this new meaning begins to be recognised by the whole community, it is called the general custom (*al-ʿurf al-ʿāmm*). However, when it is a customary use among a particular profession or group within the community, it is then called the special custom (*al-ʿurf al-khāṣṣ*). For example, the word *dābbah*, which, according to its dictionary definition, refers to all living things that move on the earth's surface, has acquired a distinct meaning by the general custom, namely, a four-legged animal. On the other hand, an example of special custom is the Arabic words *rafʿ* (nominative) and *naṣb* (accusative), as both have come to have a specific technical meaning that is understood by linguists and grammarians and are different from the dictionary meaning. On the other hand, *al-sharʿ* is described as a word utilised for a juridical meaning that the lawgiver (*shārīʿ*) has given it. For instance, the word *ṣalāh*, while etymologically denoting supplication, has acquired a specific religious meaning as a distinct mode of worship. Likewise, the term *zakāh* carries the literal connotation of purification; however, in a juridical sense, it refers to a specific form of charity whose specifics are outlined in the *Sharīʿah*.

As mentioned before, the fourth source from which the name can be derived is *al-qiyās*. What is meant here by *al-qiyās*, the study's primary concern, is to name something after something else based on a common cause (*ʿillah*), which the Arabs named the latter based on. For example, early Arabs named grape-based alcoholic beverages *khamr*. The reason and relationship between this word and the substance named by it is that *khamr* means to cover and encase something, which metaphorically points out that intoxicating drinks dominate the brain of the person who drinks them and cover his mind, preventing it from functioning properly. The point to be noted here

¹⁰⁸ Abū Ishāq Ibrāhīm ibn ʿAlī Al-Shīrāzī, *Al-Lumaʿ fī Usūl al-Fiqh*, (Dār al-Kutub al-ʿIlmiyyah, 2nd edn., 2003), 9.

is that the Arabs used this word only for alcoholic beverages derived from grapes but not for those obtained from other products. Here, some scholars stated that alcoholic beverages obtained from barley, honey, dates, and other substances are also included in the scope of *khamr*, since the meaning of “covering” the mind, which is expressed via the word *khamr*, is also valid for these alcoholic beverages. This is called *ithbāt al-asmā` bi al-qiyās*. In classical *qiyās*, which is one of the primary sources of Islamic law, the same ruling (*ḥukm*) is given to different things or concepts due to a common *‘illah*, while in *ithbāt al-asmā` bi al-qiyās*, the scope of one concept is expanded to include things it did not include initially, based on the *‘illah* which was considered when this concept was attributed to something first. Among those who accept establishing names through *qiyās* are *Abū al-‘Abbās*, *Abū ‘Alī ibn Abū Hurayrah*,¹⁰⁹ *al-Qāḍī al-Shīrāzī*¹¹⁰ and *Ibn Surayj*.¹¹¹ On the other hand, *al-Ghazzālī*,¹¹² *Ibn al-Sā‘ātī*¹¹³ and *al-Sarakhsī*¹¹⁴ are among the scholars who argue that it would not be correct to establish names via *qiyās*.

Likewise, the scholars who defend attributing a name/word to something via *qiyās* stated that even though *al-zinā* was used by Arabs for illegitimate intercourse only between a man and a woman, *liwāṭ* (male-male intercourse) can also be included in the scope of *zinā*. Because the illegitimate intercourse between a man and a woman was called *zinā*, based on the meaning of *zinā*, which is penetration (*wulūj*), and this meaning also exists in *liwāṭ*. A similar approach is shown in the inclusion of *nabbāsh* (a plunderer or stripper of the dead) in the concept of *sāriq* (thief).¹¹⁵

Returning to the subject, the inclusion of drug addicts, prostitutes, and people with sexual deviations such as LGBT+ within the scope of *al-riqāb*, as well as the inclusion of all individuals or groups involved in religious activities within the scope of *fī sabīl Allāh* by MAIWP, is possible by expanding the scope of the concept of *al-riqāb* and the concept of *fī sabīl Allāh* or *jihād* by applying *ithbāt al-asmā` bi al-qiyās* as

¹⁰⁹ Ibid., 11.

¹¹⁰ He is *Abū Ishāq al-Shīrāzī*.

¹¹¹ Muẓaffar al-Dīn Aḥmad ibn ‘Alī Ibn al-Sā‘ātī, *Badī‘ al-Niẓām al-Jāmi‘ Bayn Kitāb al-Bazdawī wa al-Iḥkām*, ed. Muḥammad ‘Abd al-Dāyīm ‘Alī, (Makkah: Jami‘ah Umm al-Qurā, 1997), 1:79.

¹¹² Al-Ghazzālī, *al-Mustasfā*, 2:11–12.

¹¹³ Ibn al-Sā‘ātī, *Badī‘ al-Niẓām*, 1:80.

¹¹⁴ Abū Bakr Muḥammad ibn Aḥmad al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafā al-Afghānī (Bayrūt: Lajnah Iḥyā’ al-Ma‘ārif al-Nu‘māniyyah bi Ḥaydar Ābad bi al-Hind, n.d.), 2:157.

¹¹⁵ Al-Ghazzālī, *al-Mustasfā*, 2:11–12.

suggested by the researcher. MAIWP's broad definition of the concept of slavery, including all mental and physical slaveries while defining *al-riqāb*, is a kind of *ithbāt al-asmā` bi al-qiyās*, although it is not named as such.

3.3 CONCLUSION

Verse 60 of *Sūrah al-Tawbah* is the verse where *zakāh* recipients are mentioned individually. The preposition “*innamā*” at the beginning of the verse connotes limitation and restriction (*haṣr*), which requires that *zakāh* should be given only to the eight groups mentioned in the verse. Also, it is collectively accepted by scholars that the word charity (*ṣadaqah*), which was used in the verse in its plural form *ṣadaqāt*, is obligatory (*farḍ*) *ṣadaqah*, so the term is used instead of *zakāh*.

Scholars have various interpretations and understandings of the concepts used to describe the groups mentioned in the verse. Scholars such as *Abū Yūsuf* and *Ibn al-Qāsim al-Mālikī* regard the concepts of *faqīr* and *miskīn* synonymous. According to *Ḥanafī* and *Mālikī* jurists, *faqīr* is a person who lacks sufficient wealth and income but tries to make a living, while *miskīn* is someone who has nothing. On the contrary, *Shāfi`ī* and *Hanbalī madhabs*, along with *Zāhirī* and *Zaydī* scholars, perceive the *miskīn* as a person who is better off than the *faqīr*. According to MAIWP, a person is *faqīr* if he has no income at all or if his income covers less than 50 percent of his and the dependents' needs, or *miskīn* if he has a higher income but is still unable to satisfy all the needs. MAIWP's definition of *faqīr* and *miskīn* is in line with the views of *Shāfi`iyyah*, the predominant *madhhab* in Malaysia.

As for the *zakāh* officers, the majority of *Ḥanafī* scholars opine that *ʿāmil* is the only class that is eligible for *zakāh*, regardless of their wealth. While *Ḥanafī* scholars argue that *ʿāmil* will not receive anything if the *zakāh* that he collects is wasted, *Shāfi`īs* think that *ʿāmil* is still paid in this case. Furthermore, according to one view of *Aḥmad ibn Ḥanbal*, the *ʿāmil* cannot be a disbeliever, whereas according to another narration, he can be. According to MAIWP, non-Muslims cannot be *āmil* since non-Muslims should not have control over the affairs of Muslims. In this regard, the Council did not

adopt the view attributed to *Aḥmad ibn Ḥanbal* that non-Muslims might be *āmil* of *zakāh*.

In general, *al-mu'allafah* refers to people who are designated a portion of *zakāh* to soften their hearts towards the religion of Islam, to warm them up, and persuade them to believe in it. Certain companions and successors, along with *al-Ḥasan al-Baṣrī*, *ʿĀmir al-Shaʿbī*, the majority of *Ḥanafīs*, and some *Mālikīs* believe that *al-mu'allafah* group is no longer available after the Prophet's ﷺ death because Muslims have become more robust and no longer need to reconcile anyone's heart to Islam. Regarding who belongs to *al-mu'allafah* class, *Shāfiʿiyyah* excludes unbelievers from *al-mu'allafah* category. They contend that if non-Muslims are to get any financial assistance, it should be from sources other than *zakāh*. *Al-Qaraḍāwī* indicates that *al-mu'allaf* includes both Muslims and non-Muslims by counting up to seven categories. These categories include warming a person to Islam, enhancing devotion to it, encouraging non-Muslims to assist Muslims, or repelling possible harm from them to Muslims. It is also crucial to note that wealthy *mu'allaf*s can receive *zakāh* just like *ʿāmil*s can because providing them with *zakāh* is not dependent on their needs. MAIWP prefers a definition encompassing different segments of Muslims and non-Muslims in the *al-mu'allafah* category, unlike the *Shāfiʿī madhhab*, which excludes non-Muslims.

It is controversial among jurists which methods of releasing slaves will be implemented using the *zakāh* funds belonging to the slave category. According to *Abū Ḥanīfah*, *al-Shāfiʿī*, and *al-Layth ibn Saʿd*, the *zakāh* fund should be used to provide *mukātab* slaves with the amount of money that they agreed upon with their owners, allowing them to redeem their debt and gain freedom. *Mālik* and *Ishāq*, on the other hand, asserted that slaves would be purchased with *zakāh* funds from the masters and subsequently released. Modern scholars such as *Rashīd Riḍā* and *Maḥmūd Shaltūt* coined the terms “liberation of nations” (*ḥurriyyah al-shuʿūb*) and “liberation of individuals” (*ḥurriyyah al-afrād*). They propose that, under the name of *raqabah*, *zakāh* money can be used to help the colonized nations reclaim their freedom and sovereignty. Since slavery is no longer practiced in the modern world in its traditional sense, MAIWP revised the definition of *al-riqāb* to include all kinds of physical, economic, health, and mental slavery.

According to *Ḥanafī madhhab*, a person who has a debt to pay but lacks wealth that exceeds his debt and reaches *niṣāb* amount is considered *ghārim* to whom *zakāh* can be given. Furthermore, they maintain that giving *zakāh* to a debtor is preferable to giving it to a needy person who is not in debt. Some *Mālikīs* stipulate that the debt must be of the kind that failure to pay it will result in imprisonment. According to *Shāfiʿī* and *Ḥanbalī madhhabs*, debtors are divided into two groups: those who owe for themselves and those who borrow for the benefit of society. According to this view, both groups will receive *zakāh* under the category of *ghārim*. Additionally, *Mālikī*, *Shāfiʿī*, and *Ḥanbalī* jurists hold that *zakāh* cannot be used to pay off debts incurred for debauchery, waste, or sin unless the debtor repents. According to *Abū Zahrah*, *Khallāf*, *Muḥammad Ḥamīdullāh* and *al-Qaraḍāwī*, *zakāh* fund can be used as benevolent lending (*al-qarḍ al-ḥasan*), which is the interest-free loan provided to assist someone to do his/her job or meet a need. The way MAIWP defines *al-ghārimūn* is similar to *al-Shāfiʿī* and *al-Ḥanbalī madhhabs'* approaches, which categorise the debtors into two groups: those who borrow for their benefit and those who borrow for the sake of society. Additionally, based on the opinions of *Mujāhid* and Dr. *Yūsuf al-Qaraḍāwī*, the Council also includes the victims of natural calamities in *al-ghārimūn* category.

Abū Yūsuf claims that the term *fī sabīl Allāh* refers to the *mujāhid* soldiers who were unable to join the army because they did not have the necessary means, while *Abū Muḥammad* asserts that this concept means the pilgrims left behind the caravan. *Mālikīs* do not consider the transfer of *zakāh* to individuals as a condition for the *fī sabīl Allāh* group. Accordingly, it is acceptable for them to spend *zakāh* on the procurement of necessary tools for *jihad*, such as weapons, warships, and fortifications. According to *Shāfiʿīs*, *mujāhids* can only receive *zakāh* if they are volunteer soldiers without a salary from the state. In summary, the *fī sabīl Allāh* category has generally been limited to *jihād* and *mujāhids* in four *madhhabs*, except some opinions about pilgrimage/pilgrims and seekers of knowledge. Nevertheless, some expanded the concept of “*fī sabīl Allāh*” and included all the righteous and good deeds performed for the sake of *Allāh* in this term. In this regard, scholars like *al-Qaffāl*, *Shaltūt*, *al-Qaraḍāwī*, *Sayyid Quṭub*, *Rashīd Ridā*, *Aḥmad Muṣaṭafā al-Marāghī*, *Muḥammad Asad*, and *Hamīdullāh* can be cited as examples. MAIWP’s definition of *fī sabīl Allāh* as “any person or party who engages in religious activity and defends or propagates the religion of Islam and its welfare” aligns with the views of these scholars.

A traveller, as defined by *Ḥanafī madhhab*, has lost access to his wealth because he is far away. Those in their home country but become destitute because they cannot collect their debts from their creditors are also regarded as travellers. *Shāfiʿī madhhab* defines a traveller as someone who is stranded on the road, someone who has just started his journey, or someone who plans to depart. Additionally, *Shāfiʿīs*, *Mālikīs*, and *Ḥanbalīs* believe that the journey must not be undertaken for an immoral reason. On the other hand, *al-Marāghī* claimed that although it was once challenging for people to access their wealth in their hometown, this class has vanished in this modern era due to the advancements in transportation and money transfers. According to *Rashīd Riḍā*, the missing children can be included within the scope of *ibn al-sabīl*. *Al-Qaraḍāwī*, on the other hand, contends that this fund can be used to support experts, artists, masters, and students who need to be sent abroad to gain and acquire experience in a productive job or to specialise in relevant science, thereby benefiting the religion and the *ummah*. The Council includes people who have already begun the journey and those who wish to start but lack the required property under the scope of *ibn al-sabīl*. This position aligns with the *Shāfiʿī madhhab*'s perspective on *ibn al-sabīl*.

For the *uṣūlī* basis of MAIWP's interpretation of *zakāh* recipients, based on the above discussion of both previous scholars' opinions as well as MAIWP's redefinition of *aṣnāf*, the researcher thinks that the term "*ithbāt al-asmā' bi al-qiyās*" can be utilized instead of classical *qiyās* (analogical reasoning).

CHAPTER FOUR

ZAKĀH DISTRIBUTION PRACTICES OF MAIWP AND RELATED JURISTIC ISSUES

In the first part of this chapter, MAIWP's *zakāh* distribution practices, the assistance schemes it implements, and the subsidiaries of MAIWP that it benefits from in the context of providing services to *aṣnāf* will be discussed. Then, in the second part, three selected juristic issues related to the distribution of *zakāh* will be examined and discussed.

4.1 ZAKĀH DISTRIBUTION PRACTICES OF MAIWP

As mentioned earlier, while PPZ collects *zakāh* in the Federal Territory, MAIWP is responsible for distributing it. In this context, MAIWP distributes the collected *zakāh* in different ways. Mohd. Fuad Sawari stated that it is possible to classify these ways into two groups: “direct distribution” of *zakāh* and “indirect distribution.” Direct distribution of *zakāh* is giving a determined amount of *zakāh* to a poor person either in cash or by transfer to his bank account number. MAIWP’s *zakāh* distribution for 2021 can be a good example of this kind of distribution. Since the *zakāh* distribution for 2021 took place under the shadow of the COVID-19 pandemic, it was mostly carried out in the form of cash assistance directly to the *zakāh* recipients. The 2021 MCO¹¹⁶ ban, which covered most of 2021, is likely to have influenced MAIWP's decision to distribute aid in this way. In this context, some of the cash assistance provided to recipients was as follows: RM1,750,000 to 3500 taxi drivers; RM2,005,000 to 4010 disabled people; RM1,200,000 to 2400 entrepreneurs and school canteen workers; RM2,500,000 to 5,000 night market traders; and RM10,000,00 to 20,000 people affected by COVID-19.¹¹⁷

¹¹⁶ Movement Control Order.

¹¹⁷ MAIWP, Laporan Tahunan 2021, 16-17.

Indirect distribution of *zakāh* includes ways other than giving money directly to those in need. In this regard, the research will focus on MAIWP's *zakāh* distribution in 2020, allowing us to address the many forms of indirect *zakāh* distribution.

4.1.1 MAIWP's *Zakāh* Distribution For 2020

The amount of *zakāh* collected constitutes a large part of MAIWP's annual revenues. In this context, as stated in MAIWP's 2020 Report, MAIWP recorded an income of RM 1,023,543.995 in 2020, where *zakāh* collection made up approximately 74% of the total income.¹¹⁸ This percentage corresponds to RM 758,060 million. Of the RM 758,060 million total *zakāh*, RM 732,560 million, or 96.63 percent, was spent and distributed by MAIWP in the same year.¹¹⁹ The remaining RM 25.5 million surplus was kept on hold for distribution in 2021.¹²⁰ In this context, MAIWP stated that it spent and distributed RM732,56 million *zakāh* in 2020 in the following ways:

Table 4.1 MAIWP'S *Zakāh* Distribution Ways For 2020

MAIWP'S ZAKĀH DISTRIBUTION WAYS FOR 2020	
WAYS	RM/RATES
Wakalah	RM 87,174 million (11.9%)
Education and Welfare Institutions	RM 21,244 million (2.9%)
Infrastructure of Muslims	RM 82,779 million (11.3%)
Amil Wages	RM 47,616 million (6.5%)
Managing	RM 75,453 million (10.3%)
Assistance Schemes	RM 417,341 million (56.97%)
TOTAL	RM 732,558,910

¹¹⁸ MAIWP, Lapuran Tahunan 2020, 14.

¹¹⁹ PPZ-MAIWP, Annual Report 2021, 21.

¹²⁰ MAIWP, Lapuran Tahunan 2020, 32.

Here is a description of some of the *zakāh* distribution ways mentioned in the table:

1. Wakalah: It is the mechanism by which MAIWP returns a portion of the *zakāh* payments it collects back to the entity or individual that made the payment for distribution to eligible recipients. The Wakalah scheme is a product specified and tailored to:

- a. Attract new and existing payers to make *zakāh* payment continuously.
- b. Provide additional value to the payers (who fulfil the conditions of applying wakalah) and a chance for them to get hands-on experience in distributing the *zakāh*.

In terms of implementation, the application categories are separated into 4, which are individual, company or organisation, employer, and higher education institutes, and a minimum value of *zakāh* payment is set as a qualification for them to apply.¹²¹ Once they fulfil the criteria of minimum *zakāh* payment, they could apply directly to PPZ-MAIWP for wakalah on *zakāh* distribution and would be briefed on the how-tos before receiving the allocated percentages. They would be briefed on the timeline, the dos and don'ts, the period during which they have to settle the wakalah expenditures, and also the documentation to be presented at the end of each wakalah period. In determining the *zakāh* recipients, it is always advised for them to double-check if they are unsure of their target recipients, and guidance will always be provided in case they have any inquiries. However, in the end, it is up to them to choose whom they want to give their *zakāh* to.¹²²

2. Education and Welfare Institutions: MAIWP has many education and welfare institutions, as will be addressed later. *Zakāh* funds are used to fund these institutions so that they operate properly and continue providing service to recipients.

¹²¹ Individuals could apply to have up to 50% of *zakāh* payments returned if they paid a minimum of RM20,000 in *zakāh* on wealth/income in the current year. Companies/Organizations could apply for up to 50% of *zakāh* payments to be returned if they paid a minimum of RM10,000 in business *zakāh* in the current year. Employers can apply for a return of up to 37.5% of employees' salary *zakāh* deductions if a minimum of RM100,000 was paid. Lastly, higher education institutes can apply for the return of up to 50% of employees' salary *zakāh* deductions, with no minimum payment requirement.

¹²² Mohd. Fuad Sawari, Assoc. Prof. Dr. at Department of Fiqh and Usul al-Fiqh and the Head of Department, IIUM, Interview by researcher, Gombak, 13 December 2023.

3. Infrastructure Muslims: *Fī sabīlillāh* funds that are used for community education, medicine, engineering, and construction of Muslim infrastructure such as mosques¹²³ and schools and used for the purpose of preaching and developing the teachings of Islam.¹²⁴ Additionally, the *zakāh* that is offered to NGOs and NPOs to run their assistance programmes is included in Infrastructure Muslim.¹²⁵

4. Amil Wages and Managing: Amil Wage is what MAIWP offers to the Zakat Collection Centre, PPZ, in return for the task of collecting *zakāh* that it performs. This wage includes salaries, operational expenses, office rents, and other things related. On the other hand, the Managing category refers to the expenses incurred by MAIWP in managing the *zakāh* funds and distributing them, such as administrative expenses, office rental, and other expenses related to the management of *zakāh*.¹²⁶ For instance, this *zakāh* fund covers contract staff's salaries in MAIWP, while permanent staff's salaries are covered by the government, as stated by Mohd Saiful Hafiz.¹²⁷

5. Assistance Schemes: As can be seen in the table, RM 417,341 million was distributed by implementing "Assistance Schemes". These schemes consist of several categories, such as welfare, economy, medicine, preaching and community development, protection, and education.

Here are some of the Baitulmal *Zakāh* Assistance Schemes applied by MAIWP:

1. Monthly Financial Assistance
2. Debt Settlement Assistance¹²⁸

¹²³ Mohd Saiful Hafiz Vijia declared that *zakāh* funds are only used for repairing the mosques and suraus, not building them. Furthermore, MAIWP provides this money to JAWI, and JAWI manages the process. Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

¹²⁴ Mohd. Fuad Sawari, Assoc. Prof. Dr. at Department of Fiqh and Usul al-Fiqh and the Head of Department, IIUM, Interview by researcher, Gombak, 13 December 2023.

¹²⁵ Mohd Saiful Hafiz Vijia declared that MAIWP provides NGOs and NPOs with *zakāh* under *fī sabīl Allāh* and *al-ghārimīn* categories. Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

¹²⁶ Mohd. Fuad Sawari, Assoc. Prof. Dr. at Department of Fiqh and Usul al-Fiqh and the Head of Department, IIUM, Interview by researcher, Gombak, 13 December 2023.

¹²⁷ Mohd Saiful Hafiz Vijia Bin Abdullah, Islamic Affairs Officer at Zakat Distribution Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

¹²⁸ MAIWP, Lapuran Tahunan 2020, 142.

3. Monthly House Rent & Deposit Assistance
4. Medical Assistance
5. Aid for Agriculture/ Fisheries/ Animal Husbandry¹²⁹
6. Motorcycle Assistance for Persons with Disabilities
7. Rent/Buy Taxi Deposit Assistance¹³⁰ and School Van/Bus Deposit Assistance:¹³¹
8. Marriage Help¹³²
9. Fare Assistance and Personal Needs (*Ibn al-Sabīl*)¹³³
10. Disaster Relief ¹³⁴
11. Aid to Encourage *Al-Qur'ān* Memorization ¹³⁵
12. Tuition Assistance for PICOMS¹³⁶ and KPBKL¹³⁷ Students ¹³⁸
13. General School Assistance and Clothing and School Equipment Assistance
14. Assistance to Welfare Agencies (NGOs) and Educational Institutions¹³⁹ and Assistance for Missionary & Charity Activities¹⁴⁰
15. Assistance to Tahfiz Institutions ¹⁴¹

¹²⁹ Helping to develop and advance the economic level of the *aṣnāf* who have agricultural/fishing/breeding enterprises.

¹³⁰ Helping *aṣnāf* who are financially unstable rent or buy taxis to improve their socio-economic status.

¹³¹ Helping *aṣnāf* who works in the field of transportation for schools buy vans or school buses to generate income. See <https://www.maiwp.gov.my/i/index.php/en/jenis-skim-bantuan-zakat/bantuan-deposit-van-bas-sekolah> (accessed 05 May, 2023).

¹³² Helping couples who are considering getting married during and after their marriage. MAIWP, Lapuran Tahunan 2020, 143.

¹³³ Helping *aṣnāf* who face problems while traveling to any place for reasons permitted by *Sharī'ah* by providing ticket and travel warrant requirements as well as various other personal needs during the travel period.

¹³⁴ Helping ease the burden of victims who are affected by disasters such as natural disasters, accidents, theft, and robbery.

¹³⁵ MAIWP, Lapuran Tahunan 2020, 144.

¹³⁶ Kolej Antarabangsa Sains Perubatan PUSRAWI.

¹³⁷ Kolej Profesional Baitulmal Kuala Lumpur.

¹³⁸ This assistance is channelled to the students of PICOMS and KPBKL on a monthly basis, which will be entered directly into the account. See <https://www.maiwp.gov.my/i/index.php/en/jenis-skim-bantuan-zakat/bantuan-pelajar-kolej-antarabangsa-sains-perubatan-pusrawi-picoms> (accessed 07 May, 2023).

¹³⁹ Providing financial resources to NGOs and educational institutions that need financial funds. See <https://www.maiwp.gov.my/i/index.php/en/jenis-skim-bantuan-zakat/bantuan-kepada-agensi-agensi-kebajikan-ngo-institusi-pendidikan?boxed=1> (accessed 07 May, 2023).

¹⁴⁰ Offering financial resources to preaching and charity institutions to carry out preaching and welfare activities.

¹⁴¹ Provide financial resources to tahfiz institutions that operate in the Federal Territory to carry out their annual activities. There are also some other schemes such as Takaful *Aṣnāf* Assistance, Aidilfitri Assistance, Help to Build/ Repair House, Business Assistance, *Sharī'ah* Legal Assistance, Emergency Help, IPT Preparation Assistance & General Assistance for IPT Lessons Tuition Assistance and Special Incentive Scholarship for Outstanding Students.

The ratios of the RM 417,341 million zakāh distributed according to the schemes and the number of *zakāh* beneficiaries are as follows:¹⁴²

Table 4.2 Zakāh distributed according to the schemes and the number of zakāh beneficiaries

NO	CATEGORY	SCHEME	TOTAL DISTRIBUTION	RECEIVERS
1	Welfare	Monthly Financial Assistance	105,852,000.00	26,239
2		Ramaḍān / ʿĪd al-Fiṭr Help	12,183,498.35	24,252
3		Debt Settlement Assistance	1,923,170.55	1,204
4		Marriage Help	1,030,000.00	401
5		Sharīʿah Legal Assistance	167,120	111
6		Emergency Help	44,245,538.00	82,867
7		Fare Assistance & Personal Needs	269,932.75	315
8		Disaster Relief	655,981.35	661
9		Charity Help to Aṣnāf	331,500.00	208
Total Welfare Category			166,658,741.00	136,258
10	Economy	Business Assistance	2,573,194.00	561
11		Aid for Agriculture / Animal Husbandry / Fisheries	20,450.00	4
12		Taxi Rental Deposit Assistance	15,000	3
13		Deposit Assistance for School Bus/Van	-	-
14		Deposit Assistance for Buying Disabled Motorcycles	26,980	3
Total Economy Category			2,635,624.00	571
15	Medicine	General Medical Assistance	12,255,930.77	2,180
16		Hemodialysis Assistance	12,707,292.82	579
17		Health Equipment Assistance	1,853,304.05	698
18		Special Assistance for Disabled Children	413,760.00	95
Total Medical Category			27,230,287.64	3,552

¹⁴² MAIWP, Lapuran Tahunan 2020, 33-34.

19	Preaching & Community Development	Assistance to Welfare Agencies (NGO) & Educational Institutes	143,629,412.69	553
20	Development	Aid to the Tahfiz Institute	252,000.00	33
Total Preaching & Community Development Category			143,881,412.69	586
21	Protection	House Rent Deposit Assistance and Monthly House Rent	9,494,830.00	4,283
22		Home Building/Repair Assistance	351,766.38	15
23		Low Cost Home Purchase Deposit Assistance	7,000.00	2
Total Protection Category			9,853,596.38	4,300
24	Education	General School Assistance / Boarding School Preparation	16,528,100.00	27,691
25		School Equipment and Clothing Assistance	7,027,174.97	20,003
26		General Assistance for IPT Lessons/ IPT Preparation	12,503,323.61	5,283
27		Scholarships / Special Incentives for Outstanding Students Domestically and Abroad	1,847,135.67	283
28		Tuition Assistance (Labuan Only)	-	-
29		Assistance for Students of University College of MAIWP International (UCMI)	13,887,771.40	1,411
30		Assistance for Students of Kolej Profesional Baitulmal Kuala Lumpur	15,287,967.74	1,841
31		Aid to Encourage <i>al-Qur’ān</i> Memorization	-	-
32		Industrial Skills Training Assistance	-	-
33		Assistance for Strengthening the Islamic Religion	-	-
Total Education Category			76,081,473.39	56,512

TOTAL AMOUNT (RM)	417,341,135.10	201,779
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As shown in the table above, MAIWP's Assistance Program covers many schemes ranging from welfare to economy, from medicine to preaching and community development, and from protection to education. In this sense, “welfare” and “preaching and community development” stand out as the schemes where the highest amount of money is spent, while “education” and “welfare” schemes stand out as the schemes with the highest number of people benefiting from them.

4.1.2 Companies and Institutions Under MAIWP

There is a group of companies owned by MAIWP and some institutions operate under the supervision of MAIWP. These companies and institutions integrated with MAIWP's *zakāh* assistance activities towards *aṣṇāf* and their families. MAIWP carries out a good part of its assistance schemes and provides many services to *aṣṇāf* through these companies and institutions. Therefore, it is important to briefly introduce these institutions and companies, some of which are also referred to in the Assistance Schemes mentioned above.

4.1.2.1 Companies and Foundations Owned by MAIWP

Among the companies and foundations owned by MAIWP, some companies help meet *aṣṇāf* families' educational, health, and grocery-related needs or contribute by working with MAIWP. These companies are as follows:

1. Hospital PUSRAWI Sdn. Bhd.: It was established in 1984 and outpatient services were started at Wisma Baitulmal, Jalan Ipoh, Kuala Lumpur. In line with the development, PUSRAWI Hospital began operations in Kuala Lumpur on January 16, 2006. The hospital is a wholly-owned subsidiary of MAIWP and has a capacity of 164

beds and a hemodialysis centre. PUSRAWI MAIWP Hospital offers a range of specialist services from all disciplines to all groups, regardless of race and religion.¹⁴³

2. University College MAIWP International (UCMI): UCMI is entirely owned by MAIWP under the Ministry in the Prime Minister's Department. Its history dates back to 1993 when it was founded as the Nursing School under Hospital PUSRAWI. In 2003, the institution offered only the Diploma in Nursing Sciences Course. In 2010, an entirely new administration was appointed to alter the whole scenario for the institution. Beginning with a single program, UCMI offers 32 programs ranging from Post Basic/Certificate, Diploma, Degree, Master to Ph.D. levels. In 2018, UCMI achieved university college status, marking a new milestone in the institution's history. It is now known as University College MAIWP International across the nation. The university has more than 4000 active students and over 7500 alumni in various programs who are now serving in various sectors locally and globally.

3. MAIWP Healthcare Sdn. Bhd.: MAIWP Healthcare Sdn Bhd was founded on October 20, 2016 to administer PUSRAWI clinics¹⁴⁴ in Jalan Ipoh, Taman Permata, and Anjung Felda, which were administered by Hospital PUSRAWI itself. At present, MAIWP Healthcare has almost 10 branches of Pusrawi Clinic and these clinics offer 15 types of clinic services.¹⁴⁵ A total of 22,057 patients sought treatment at these clinics throughout the year 2021.¹⁴⁶

4. MAIWP Trade Sdn. Bhd.¹⁴⁷: MAIWP Trade was established on September 27, 2011, with the establishment of MAIWP Mart as part of the efforts of MAIWP to create intermediate mediums for *aṣṇāf* entrepreneurs to market their products.¹⁴⁸ This mart prioritises social responsibility and is not solely profit-oriented. Establishing it can somewhat reduce the burden on the surrounding residents because the prices offered are

¹⁴³ See <https://pusrawi.com.my/en/about-us/> (accessed 14 May, 2023).

¹⁴⁴ Klinik Pusrawi.

¹⁴⁵ See <https://maiwphealthcare.my/index.php/tentang-kami> (accessed 07 May, 2023).

¹⁴⁶ MAIWP, *Laporan Tahunan 2021*, 86.

¹⁴⁷ MAIWP Dagang Sdn Bhd.

¹⁴⁸ However, the establishment of MAIWP Mart is not only focused on *aṣṇāf* products but also includes various other products for the convenience of the local community in the purchase of groceries with a guaranteed low price compared to other retail stores through Maiwp Mart.

very reasonable and affordable. Currently, MAIWP Trade has 2 branches, namely MAIWP Mart in Precinct 5 Putrajaya and MAIWP Mart in Precinct 9.¹⁴⁹

5. The Federal Territory Taqwa Foundation¹⁵⁰: Yayasan Taqwa Wilayah Persekutuan Berhad was incorporated under the Companies Act 1965 by MAIWP as a limited company by guarantee. The word “Berhad” was approved to be dropped at the end of Yayasan Taqwa on June 12, 2008.¹⁵¹ As a foundation that is not profit-oriented, the Taqwa Foundation plays a role in helping Muslims through three cores: education, welfare, and preaching. Overall, as much as RM17.78 million was distributed by Yayasan Taqwa, covering the core of education and virtue.¹⁵²

6. Kolej Professional Baitulmal Kuala Lumpur (KPBKL): Institut Profesional Baitulmal Sdn. Bhd. was established on April 23, 1992, to produce Muslim professionals and improve the economic status of Muslims. Institut Profesional Baitulmal is managing KPBKL, which is a private educational institution fully owned by MAIWP and offers professional courses. Every proactive and dedicated individual is eligible to apply for the positions offered.¹⁵³ The total number of students at KPBKL in 2020 was 2,453 people, whereas in 2021, it was 2068.¹⁵⁴ Diploma in Halal Industry Management, Diploma in Zakat & Waqf Management, Diploma in Financial Mathematics, Diploma in Entrepreneurial Information Technology, Diploma in Islamic Counseling, UiTM Business Studies Diploma, UiTM Accounting Diploma, and UiTM Pre-Commerce/Trade are some of the diplomas offered by KPBKL within the scope of the Joint Venture Program with UiTM and the Homegrown Program.¹⁵⁵

4.1.2.2 Human Development Institutions Under MAIWP

These institutions, which are called Human Development Institutions,¹⁵⁶ provide education and protection to *zakāh* recipients, their families, or children in an integrated

¹⁴⁹ See <https://www.maiwpdagang.com/mengenai-kami/sejarah-penubuhan> (accessed 14 May, 2023).

¹⁵⁰ Yayasan Taqwa Wilayah Persekutuan.

¹⁵¹ See <https://www.ytwp.com.my/kenali-kami/sejarah-penubuhan/> (accessed 14 May, 2023).

¹⁵² MAIWP, Laporan Tahunan 2020, 61.

¹⁵³ See <https://www.kpbkl.edu.my/kerjaya/> (accessed 16 May, 2023).

¹⁵⁴ MAIWP, Laporan Tahunan 2021, 71.

¹⁵⁵ MAIWP, Laporan Tahunan 2020, 53-54.

¹⁵⁶ MAIWP, Laporan Tahunan 2020, 42.

manner with the assistance schemes implemented by MAIWP, as well as serving the community as a whole. These institutions are as follows:

1. Darul Ilmi: It was originally established as Dar Assakinah, but the name was later changed to Darul Ilmi. It is an institution that provides intensive religious education according to the pondok system for elderly women who are interested in learning about religion. This centre teaches Islamic studies in the form of pondoks that provide accommodation and is not in the concept of a care centre for the elderly. The study is for 2 years. Darul Ilmi started operating on March 12, 2012, with a total of 5 residents, and until now, the maximum number of residents has reached 20 people.¹⁵⁷

2. Dar Assaadah: Darul Islah Protection Centre, or Dar Assaadah, was established in 1988 with the aim of protecting women who are facing problems such as having children out of wedlock, being abused, or being stuck in social problems. Then it was officially changed to the Dar Assaadah Complex in 2001. This complex can accommodate 60-80 trainees at any time, while the number of trainees in 2021 was 10. Dar Assaadah trainees are provided with religious education that includes *fard 'ayn* and *fard kifayah* as well as skills courses. Trainees who perform well can continue their studies at the Baitulmal Skills Institute, which offers recognized skills courses. The mission of the institution is expressed as providing a conducive temporary shelter and perfect educational facilities to the target group to produce Muslim individuals with noble character and skills.¹⁵⁸

3. Darul Kifayah: It was established in 1983. It aims to safeguard the well-being of orphans, children of the poor, and *mu'allaf* people by providing temporary housing, religious and moral guidance, and perfect educational facilities. One of the application requirements is being between 11 and 17 years old and MAIWP bears all costs of food, accommodation, education, and necessities.¹⁵⁹ There were 267 residents at Darul Kifayah in 2021.¹⁶⁰

¹⁵⁷ See <https://www.maiwp.gov.my/i/index.php/en/institusi-perlindungan> (accessed 16 May, 2023).

¹⁵⁸ See <https://www.maiwp.gov.my/i/index.php/en/institusi-perlindungan> (accessed 16 May, 2023).

¹⁵⁹ MAIWP, Laporan Tahunan 2020, 40.

¹⁶⁰ MAIWP, Laporan Tahunan 2021, 52.

4. Darul Hannan Nursery¹⁶¹: MAIWP emphasizes education, considering it a starting point for human capital development. In this regard, to give birth to its targeted generation called *Ulū al-Albāb*, MAIWP is executing nurturing and early childhood education for early ages 2-4 via Darul Hannan Nursery by taking a religious approach as a theoretical and practical basis for forming a Muslim personality. At the beginning of its establishment in 1996, Darul Hannan Nursery was placed under the management of JAWI¹⁶² and then handed over to MAIWP in 2008.¹⁶³ MAIWP agreed to establish another Darul Hannan Nursery at Masjid Wilayah Persekutuan, which became operational in July 2009.¹⁶⁴

5. Baitulmal Skills Institute¹⁶⁵ (IKB): IKB was established in 1991 as one of MAIWP's efforts to eradicate poverty among the Muslim community in the Federal Territory in particular and in Malaysia in general by providing them with the opportunity to undergo skills training at an organized skill institute so that the trainees can be independent and ready to venture into the business field after completing the courses. At the beginning of its establishment, IKB was known as *Faqīr & Miskīn* Training Centre and later changed to Baitulmal Skills Training Centre. With the development of the courses and certification levels offered, the name was changed to IKB in 1995.¹⁶⁶ There were 170 trainees at IKB in 2021, and 90 students have completed their 2-year studies at IKB. In this respect, the institute provides Electrical Engineering Courses, Food Service and Presentation Courses, Fashion Design and Manufacture of Men's and Women's Clothing Courses, Painting and Design Courses, and Building Construction Technology Courses.¹⁶⁷

6. MAIWP Religious Secondary School¹⁶⁸ (SMA-MAIWP): According to MAIWP, the objective of establishing this school is to provide an opportunity for students who took the Religious Primary School Assessment Test¹⁶⁹ to continue their studies at the

¹⁶¹ Taska Darul Hannan.

¹⁶² The Federal Territory Islamic Religious Department.

¹⁶³ See <https://www.maiwp.gov.my/i/index.php/en/institusi-pendidikan/taska-darul-hannan#custom-tab-0-5de56124c5> (accessed 20 May, 2023).

¹⁶⁴ See <https://www.masjidwilayah.gov.my/index.php/fasiliti/2014-09-22-15-12-45/taska-darul-hannan> (accessed 20 May, 2023).

¹⁶⁵ Institut Kemahiran Baitulmal.

¹⁶⁶ See <https://www.maiwp.gov.my/i/index.php/en/institusi-pendidikan> (accessed 26 May, 2023).

¹⁶⁷ MAIWP, *Laporan Tahunan 2020*, 39.

¹⁶⁸ Sekolah Menengah Agama Majlis Agama Islam Wilayah Persekutuan (SMA-MAIWP)

¹⁶⁹ Ujian Penilaian Sekolah Rendah Agama (UPSRA)

secondary level as a continuation of religious education in religious primary schools. SMA-MAIWP KL started operating in 2007. Later, the Labuan branch of SMA-MAIWP was established to serve the citizens of Labuan, Sabah, and Sarawak. SMA-MAIWP Labuan is also the first Full Boarding Religious Secondary School¹⁷⁰ in Labuan. Furthermore, in 2010, MAIWP signed a memorandum of understanding with the Malaysian Ministry of Education, making SMA-MAIWP a Government Aided Religious School¹⁷¹ (SABK).¹⁷² In 2021, 627 students studied at SMA-MAIWP KL, while the number of those who studied at SMA-MAIWP Labuan was 238.¹⁷³

7. Science & Tahfiz Integration Secondary School¹⁷⁴ (SMISTA): SMISTA started operating on January 3, 2011, in a temporary building that shared the building of SMA-MAIWP in Kuala Lumpur. MAIWP states that the establishment of SMISTA is to meet the demands and wishes of the community, which has long wanted to see the existence of a science and tahfiz integration religious school at the Federal Territory level, especially in Kuala Lumpur. Among the objectives of SMISTA is to give birth to a generation of *Ulū al-Albāb* who understand and always appreciate the demands of *al-Qur'ān* in all aspects of life. MAIWP signed a memorandum of understanding with the Malaysian Ministry of Education to make SMISTA a Government Aided Religious School. Currently, the number of SMISTA students is 363, while the number of teachers is 50, and there are 8 staff.¹⁷⁵

8. Al-'Abaqirah Modern Pondok¹⁷⁶ (PMA): PMA officially started operating on August 16, 2015, at Darul Hidayah Institute, with 44 students. Later, it moved to the Darul Kifayah Complex. PMA students have 205 people who are following study classes in year 1, year 2, and year 3. This pondok was called Al-'Abaqirah, based on the word *al-'abqarī* in Arabic, which means genius or extremely intelligent person. The hope is that students who go through the learning system at this pondok will be able to become Islamic scholars who are genuinely geniuses and wise.¹⁷⁷

¹⁷⁰ Sekolah Menengah Berasrama Penuh Aliran Agama.

¹⁷¹ Sekolah Agama Bantuan Kerajaan (SABK).

¹⁷² See <https://www.maiwp.gov.my/i/index.php/en/institusi-pendidikan> (accessed 26 May, 2023).

¹⁷³ MAIWP, Laporan Tahunan 2021, 44-45.

¹⁷⁴ Sekolah Menengah Integrasi Sains Tahfiz (SMISTA).

¹⁷⁵ See <https://www.smista-maiwp.edu.my/index.php/profil/berkaitan-smista/pengenalan> (accessed 26 May, 2023)

¹⁷⁶ Pondok Modern Al-'Abaqirah (PMA).

¹⁷⁷ See <https://www.maiwp.gov.my/i/index.php/en/institusi-pendidikan> (accessed 26 May, 2023)

9. Sunnah Nabawiyah Centre¹⁷⁸ (MSN): The original idea of the establishment of MSN was sparked by the Mufti of the Federal Territory, Datuk Dr. Zulkifli Bin Mohamad Al-Bakri, at that time as a result of community requests and his desire to produce Islamic scholars who are experts in *hadīth*. As a result of the visits and consultations made with Islamic scholars from Madinah, Pakistan, and Malaysia, MSN was established and became operational. The centre is the first school in the Federal Territory to carry out studies based on *hadīth*. There were 27 students receiving education in the centre for the year 2021.¹⁷⁹

10. Islamic Kindergarten¹⁸⁰: At the same time, 79 Islamic kindergartens are directly administered by MAIWP, including 68 in Kuala Lumpur, 7 in Putrajaya, and 4 in Labuan. These kindergartens implement a preschool education program for children aged 5 to 6 years.¹⁸¹ A total of 5,300 students attended preschool education in these kindergartens in 2021.¹⁸² There were 7,629 students and trainees in 11 Human Development Institutions under the MAIWP's supervision in 2020.¹⁸³ However, despite these various institutions, several issues related to *zakāh* distribution need to be discussed.

4.2 JURISTIC ISSUES RELATED TO *ZAKĀH* DISTRIBUTION

Many juristic issues arise as a result of *zakāh* distribution practices. Among these issues, three selected issues will be covered and addressed by the study. The issues to be examined include whether *zakāh* should be paid and distributed immediately (*fawr*), if the transfer of ownership (*tamlīk*) of *zakāh* to the beneficiaries is necessary for *zakāh* payment and distribution, and whether it is permissible to use *zakāh* funds as investment tools. In short, *fawr*, *tamlīk*, and the investment of *zakāh* issues would be covered. However, since the first two concerns are closely related to the investment of *zakāh* and directly affect the ruling on that subject, they will be discussed within the subject of *zakāh* investment while maintaining their independent titles. Within this framework, in

¹⁷⁸ Markaz Sunnah Nabawiyyah (MSN).

¹⁷⁹ MAIWP, Laporan Tahunan 2021, 50.

¹⁸⁰ Tadika Islam.

¹⁸¹ MAIWP, Laporan Tahunan 2020, 39.

¹⁸² MAIWP, Laporan Tahunan 2021, 43.

¹⁸³ MAIWP, Laporan Tahunan 2020, 38.

the first section of this second part of the chapter, the researcher will explore the definition of *zakāh* investment, its history, and MAIWP's *zakāh* investment activities. Subsequently, in the second section, the researcher will share the *fatwās* on *zakāh* investment and address the issues of the immediate performance of *zakāh* and the transfer of ownership of it to the beneficiaries. Lastly, the researcher will return to the subject of *zakāh* investment one more time, discussing the arguments of both sides - those who allow *zakāh* investment and those who do not- along with the researcher's preferred stance.

4.2.1 History of Investment of *Zakāh* and MAIWP's *Zakāh* Investment Activities

Investment generally refers to any action that increases the prospective income of tomorrow.¹⁸⁴ From an economic standpoint, investment refers to activities involving capital expenditures that forego present consumption in exchange for potential future returns. The yield of an investment may consist of tangible assets, such as production outputs and income, as well as intangibles, such as education, health, development, etc.¹⁸⁵ Moreover, real investment involves tangible assets, such as land, machinery, or factories. On the other hand, financial investment refers to investments involving contracts written on pieces of paper that carry the liabilities of others in providing returns, such as bank deposits, common shares, and loans. There is also human capital investment, which involves investing in people to enhance their capabilities through education, training, and health care.¹⁸⁶ Within the context of medieval Islamic jurisprudence, the concept of investment, known as *namā'* in Arabic, refers to the fact that the goods subject to *zakāh* are *nāmī*, that is, they are considered to have an increasing feature. Also, the concept of *namā'* is encountered while making the juristic evaluation of the proliferation that occurs in the property that is the subject of preemption (*shuf'ah*), inheritance (*mīrāth*), or usurpation (*ghaṣb*) through transactions such as sale (*bay'*), mortgage (*rahn*), grant (*hibah*), and cost-plus financing (*murābaḥah*). Therefore, it is possible that *namā'* and other terms that convey a similar sense to investment could be identified in the discourse around loaning (*al-qirāḍ*), profit

¹⁸⁴ Theodore Morgan, "Investment Versus Economic Growth", *Economic Development and Cultural Change* vol.17, no.3 (1969): 394.

¹⁸⁵ GJ Alexander, JV Bailey, and W.F Sharpe, *Investments* (New Jersey: Prentice Hall, 1999), 1.

¹⁸⁶ Morgan, "Investment Versus Economic Growth", 392-94.

and loss sharing (*al-muḍārabah*), partnership (*al-shirkah*), cost-plus financing (*murābahah*), and advance payment against deferred delivery of goods (*al-salam*) at that time.¹⁸⁷

Regarding the investment of *zakāh*, Muslim scholars have defined it as an action that involves the use of *zakāh* funds with the objective of enhancing the future benefits received by *zakāh* recipients. *Al-Fawzān* defines *zakāh* investment as any transaction that cultivates *zakāh*, contributes to its growth, and ultimately benefits the intended receivers.¹⁸⁸ *Shubayr* and *Muḥammad Farah* provide similar definitions, with the exception that they mention that the use of *zakāh* in any investment activity must adhere to Sharī'ah-compliant growth principles and methods in general and the principles of *zakāh* in particular.¹⁸⁹ Accordingly, usury (*ribā*), uncertainty (*gharar*), and gambling (*maysir*) prohibitions must be absent from investment activities funded by *zakāh*. In brief, *zakāh* investment is an investment wherein *zakāh* funds are utilised to finance the investment. This encompasses investment initiatives that are financed entirely or partially by *zakāh* funds. It also includes initiatives that receive initial funding from alternative sources but are subsequently paid for or purchased with *zakāh* funds.¹⁹⁰

On the basis of the preceding definition of *zakāh* investment, it can be concluded that any investment activities involving *zakāh* can involve both tangible and intangible assets. Therefore, the term “investment of *zakāh*” is not limited to only financial investment but can also include development projects like the establishment of educational institutions and healthcare facilities, as the objective of *zakāh* extends beyond financial assistance to the receivers, encompassing social and educational dimensions as well. There are several Arabic words used today to refer to *zakāh* investment, such as *tanmiyah*, *istighlāl*, *istithmār*, *intifā'*, and *tawzīf al-amwāl*.¹⁹¹

¹⁸⁷ Ṣāliḥ ibn Muḥammad Fawzān, *Istithmār Amwāl al-Zakāh wa Mā Fī Ḥukmihā min Al-Amwāl al-Wājibah Ḥaqqan Lillāh Ta'ālā* (Riyād: Ṣundūq al-Khayr li Nashr al-Buḥūth wa al-Rasā'il al-ʿIlmiyyah, 2005), 45–47.

¹⁸⁸ Ibid., 62–63.

¹⁸⁹ Muḥammad ʿUthmān Shubayr, “Istithmār Amwāl Al-Zakāh Ru'yā Fiqhiyyah Mu'āṣirah”, in *Abḥāth Fiqhiyyah Fī Qaḍāyā Al-Zakāh al-Mu'āṣirah*, edited by Muḥammad Sulaymān Al-Ashqar (ʿAmmān: Dār al-Nafā'is, 2nd edn., 2000), 2:506.

¹⁹⁰ Muḥammad Farah, *Al-Tawjīh al-Istithmārī li al-Zakāh: Dirāsah Iqtisādiyyah Fiqhiyyah Taḥlīliyyah Muqāranah* (Dubai: Maṭba'ah Bank Dubay al-Islāmī, 1997), 20.

¹⁹¹ Fawzān, *Istithmār Amwāl al-Zakāh wa Mā Fī Ḥukmihā min Al-Amwāl*, 50–56.

4.2.1.1 History of Investment of Zakāh

There have been cases where *zakāh* has been invested throughout Islamic history, dating back to the Prophet's ﷺ time. An example of this is *Anas*' description of a group of people from *Uraynah* arriving in *Madīnah* in poor health due to an illness. The Prophet ﷺ advised them to drink from the milk and urine of camels that had been given as *zakāh*.¹⁹² The *hadīth* demonstrates that *zakāh* can be given to beneficiaries (in this case, they are *ibn al-sabīl*) not only in the form of assets but also in the form of benefits or usufructs (in this situation, it is the camel's milk). Rearing camels for their benefits is a type of investment because the assets are used to generate additional benefits.¹⁹³ This narration, along with some others from the time of the Prophet ﷺ and the caliphs, will be discussed later.

Even though ways of *zakāh* distribution were the subject of exhaustive discussion among the classical jurists, the investment of *zakāh* was not recognised as a distinct subject or considered a stand-alone issue of *fiqh* at that time. The most likely explanation for this is that the main focus of the discussion during that time was on ensuring that the responsibility to give *zakāh* was carried out as required by Islamic law, as *zakāh* was primarily regarded as an act of worship.¹⁹⁴ Therefore, *zakāh* investment was not on the agenda of the scholars of that time. Undoubtedly, the existence of many income sources for the state other than *zakāh* and the relatively small population of Muslim subjects compared to the conquered lands and wealth acquired from them also contributed to the state's being less dependent on such voluntary contributions as *zakāh*.¹⁹⁵ It is important to note that while *zakāh* investment as a distinct issue of *fiqh* was not explicitly addressed during the time of the Prophet ﷺ and the classical jurists, there exists a wealth of rules pertaining to the distribution of *zakāh* that are relevant to its investment. These principles would thereafter serve as the criteria contemporary

¹⁹² Abū 'Abd Allāh Muḥammad ibn Ismā'īl Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Muṣṭafā Dīb Al-Bughā (Dimashq: Dār Ibn Kathīr, 5th edn., 1993), Bāb isti'māl ibl al-Ṣadaqah wa albāniḥā li abnā' al-Sabīl, vol.2, Ḥadīth 1430, 546.

¹⁹³ Fawzān, *Istithmār Amwāl al-Zakāh wa Mā fī Ḥukmihā min Al-Amwāl*, 118–21.

¹⁹⁴ Even though some classical texts externally referred to *zakāh* as a financial duty (*ḥaqq māliyy*), this was merely an explanation of the eligible payers' financial obligation to the rightful recipients.

¹⁹⁵ In some situations, there were no recipients of *zakāh* due to the economic prosperity of the population, such as during the reign of 'Umar ibn al-Khaṭṭāb, when a part of *zakāh* collected in *Yaman*, where it was in excess, was transferred to *Madīnah*.

scholars' utilise in deciding whether *zakāh* investment is in accordance with Islamic jurisprudence.

Regarding modern times, conferences dedicated to the field of Islamic economics gained prominence during the 1960s, occurring on an annual or even more frequent basis and attracting participation from Muslim intellectuals and states. One of the earliest works found that offered specific suggestions about the utilisation of *zakāh* as a means of investment for the socio-economic advancement of Muslims can be traced back to a paper and a report presented during the First Regional Conference of Muslims from South East Asia and the Far East, held in Kuala Lumpur from January 31 to February 6, 1964. In his paper titled "A Socio-Economic Force for the Development and Progress of the Muslim Community," Jamil insisted that *zakāh*, a significant socio-economic factor for the Muslim community, should be used for productive purposes and not just as minimal individual financial aid.¹⁹⁶ Later on, Islamic economists got interested in the issue of whether investing *zakāh* was permissible according to the *Sharī'ah*. Muslim scholars took part in various forums and discussions to examine the issues. In the 1980s and 1990s, as a consequence of these discussions, several resolutions or *fatwās* (religious verdicts) were published.¹⁹⁷

As for the genesis and development of *zakāh* investment in Malaysia, the concept of *zakāh* as a source of Muslim development began to emerge in the late 1950s, paralleling the expansion of Islamic economic thought in the Middle East and Indo-Pakistan at the same time. "Falsafah Rukun Islam, Bertali kepada Politik - Ekonomi – Sosial" (The Philosophy of the Pillars of Islam, in Relations to Politics–Economics–Social Life), written by Budiman Radhi in 1958, is one of the earliest publications in Malaysia to propose this idea. Budiman suggested that *zakāh* should not be distributed only in the form of food, drink, and clothing but also be utilized for the education and training of *zakāh* recipients.¹⁹⁸

In February 1968, the concept of using *zakāh* as a source of Muslim economic development reached its peak when it became the primary objective of the 1st

¹⁹⁶ Wan Ahmad, "Zakat Investment in Malaysia", 72–73.

¹⁹⁷ *Fatwās* issued by these councils and *fatwā* boards will be discussed later.

¹⁹⁸ Wan Ahmad, "Zakat Investment in Malaysia", 86–87.

Persidangan Alim Ulama Malaysia held in Kuala Lumpur. The Congress agreed in principle that *zakāh* should be invested to maximise its economic returns for the economic advancement of Muslims. At that time, the MAINs had already engaged in certain types of *zakāh* investments. Surpluses from the collection were already invested in the acquisition of financial assets and the purchase of real estate, which generated rents for the MAINs. *Zakāh* has also been used to fund the spread of Islam and the advancement of Muslims' education through scholarships and the establishment of religious education institutions. Given the low amount of *zakāh* collected and the poor performance of *zakāh* administrators, the congress concluded that the scope and technique of investment executed were extremely limited and ineffective for achieving the goal of Muslim development. The Congress proposed expanding the scope of investment to include not only *zakāh* surpluses and initiatives for the spread of Islam but also initiatives that directly enhance economic well-being of recipients. Among these were investments in establishing and maintaining training and rehabilitation centres, as well as residential housing for students, and the acquisition of land in urban areas to construct homes and shop lots that could be rented out to Muslims at affordable costs. It also included the acquisition of land for livestock breeding and agricultural farming, as well as offering working tools, fertilisers, seeds, and livestock for beneficiaries' entrepreneurial endeavours and the construction of venues for recipients' employment, such as shops, kiosks, and factories.¹⁹⁹

As for the legal status of *zakāh* investment in Malaysia, there is a lack of specific regulations on *zakāh* investment under the Islamic administrative enactments of the states. However, there are several enactments that provide clues supporting the assumption that *zakāh*, as one of the Islamic religious properties administered by the MAIN, can be invested if the MAINs so desire.²⁰⁰

Also, there are enactments that assign the MAINs the duty of fostering and advancing the Muslim populations' social and economic welfare, giving them the authority to invest *zakāh* if they decide to do so.²⁰¹ In comparison to such administrative enactments, a greater number of *fatwās* pertaining to *zakāh* investments exist. Given the

¹⁹⁹ Ibid., 88–90.

²⁰⁰ Administration of Islamic Law (Federal Territories) Act 1993, Section 60, (2).

²⁰¹ Administration of Islamic Law Act (Federal Territories) Act 1993, Section 7, (1) & (2).

nature of a *fatwā*, which usually serves as a reply to a specific issue, the *zakāh* investment-related *fatwās* tend to be more state-specific and have less in common in terms of content.

4.2.1.2 MAIWP's *Zakāh* Investment Activities

MAIWP has the authority to invest according to the Administration of Islamic Law (Federal Territories) Act 1993. In Section 7 Subsection 2(d), it states that “*The Majlis shall have power to invest in any authorized investment as defined by the Trustee Act 1949 [Act 208], and to dispose of the same on such terms and conditions as the Majlis may determine.*”

Regarding the first time MAIWP invested *zakāh* funds, Mohd Fauzi Bin Ahmad stated that: “*We have no data, but it is quite rational to claim that MAIWP has been investing since its establishment (1974) since it has the authority to invest since that time.*”²⁰² Furthermore, it is known that through its corporate construction subsidiary, Baitulmal Wilayah Sendirian Berhad, MAIWP has invested *zakāh* in several economic enterprises since the 1980s. The company has been engaged in constructing properties that have been rented to needy entrepreneurs while also ensuring consistent rental revenue for the *zakāh* fund. Through another of its subsidiaries, Baitulmal Kancil, MAIWP was also involved in food production. With a rise in the *zakāh* collection, MAIWP broadened its investment attempts in the 1990s to encompass Kolej Kejururawatan Pusrawi and Institut Profesional Baitulmal Sendirian Berhad. Also, the Baitulmal Skills Institute (Institut Kemahiran Baitulmal), which was founded in 1991 to offer free training for *fuqarā'*, *masākīn*, and *al-mu'allafah qulūbuhum* after its four-story building was completed in 1994, was able to offer additional courses to poor Muslim students.²⁰³

MAIWP invests *zakāh* primarily in two distinct ways. One is the investment funded by the surplus of *zakāh* revenue after distribution. These investments are

²⁰² Mohd Fauzi Bin Ahmad, Accountant at Finance and Investment Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

²⁰³ Azhar, “Development of Secular and Religious Taxation in Peninsular Malaysia”, 277.

financed by *zakāh* funds that remained after the distribution of main shares to the recipients and have not yet been distributed to the recipients. This kind of investment is referred to as a pre-distribution investment. In 2008, an amount of RM43,9 million in *zakāh* funds remained undistributed by MAIWP, out of a total of RM211,4 million. MAIWP, as the *zakāh* administrator, invests such an undistributed quantity of *zakāh* in its name, and any resulting profits from these investments are directed back into the *zakāh* fund. *Zakāh* is invested in both financial and real estate in this sort of investing. Investments in financial assets are made in a variety of ways. In this regard, Mohd Fauzi stated that:

MAIWP currently invests only in fixed deposits²⁰⁴ (FD) with Sharī'ah compliances. The process is this: when we decide to apply for FD, we send a proposal to all institutions and banks, and we try to get the best return on our investment. Accordingly, we invest where the best offer is made. We also have Amanah Hartanah Berhad unit trust for investment.

Based on this, it is clear that MAIWP invests in banking investment deposits and unit trusts. Mohd Fauzi also emphasised that MAIWP considers liquidity as well as the amount of returns that are gained from the investment when investing *zakāh* funds.²⁰⁵ MAIWP prefers more liquid investments. Also, MAIWP invested in its own subsidiaries. Pusat Rawatan Islam²⁰⁶, Baitulmal Zenith Battery Sdn Bhd²⁰⁷, and Baitulaml Wilayah Sang Kancil²⁰⁸ are examples of these subsidiaries.²⁰⁹ MAIWP still invests in its subsidiaries, but this money is used only for incorporation. Mohd Fauzi declared that:

Additionally, we invest in subsidiaries like Hospital Pusrawi, UCMI, and PPZ by providing initial capital for them. In other words, we use *zakāh*

²⁰⁴ An Islamic term deposit based on the contract of Commodity Murabahah.

²⁰⁵ “We have *zakāh* investments in fixed deposits. The criterion of the investment depends on liquidity. If it is more liquid we can invest more. When we invest in banks, we just invest for five months. Five months commitment. Let say if it is more what will happen if you cannot collect *zakāh*?” Mohd Fauzi Bin Ahmad, Accountant at Finance and Investment Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

²⁰⁶ It is today known as Hospital PUSRAWI as mentioned before.

²⁰⁷ This company specialized in manufacturing and exporting car batteries and components and was officially initiated on November 20, 1982. Baitulmal used to own 95% of its share, while the original Zenit company held the remaining 5%. Unfortunately, the investment in the company ended in failure.

²⁰⁸ It specialised in manufacturing and marketing pasta in the Kuala Lumpur territory. It was first established under the name “Usaha Jaya Sang Kancil Sdn Bhd” in 1981 and was later given its current name in 1983.

²⁰⁹ Abdul Bari Awang, “Istithmār Amwāl al-Zakāh wa Taṭbīqātuhu Fī Bayt al-Māl Bi Mālīzyā”, *Al-Tajdīd*, vol.15, no.29 (2011): 163–64.

money for incorporation. Accordingly, the company is established with zakāh fund. PPZ, for instance, is responsible for zakāh collection on behalf of MAIWP. After it collects the zakāh, it will be sent to MAIWP to distribute it to the recipients. Another subsidiary is Hospital Pusrawi. We use the same method with it as well. We incorporate the hospital with zakāh money. Regarding the profits it makes, every year there would be a clear dividend for MAIWP. We distribute these profits to recipients one more time.²¹⁰

MAIWP also engages in real estate investments, encompassing various types of properties such as land, residential dwellings, flats, and commercial premises.²¹¹ Regarding the investment in financial assets, it is stated in MAIWP's 2020 Report that 1.8 percent of the Council's income for 2020 came from investment. On the other hand, 5.3 percent of MAIWP's income of RM1,023,543,995 for 2020 was spent for investment purposes. Notably, these are the investments made in fixed deposits or unit trusts.

Second are the investments financed by *zakāh* that have already been assigned to designated receivers of *zakāh*, known as post-distribution investments. In this investment model, *zakāh* would be offered to designated recipients. However, the recipients can consist of either individuals or institutions that offer the individuals various forms of support and services. For 2020, out of the total RM758,060 million *zakāh*, RM732,560 million, or 96.63 percent, was spent and distributed by MAIWP.²¹² MAIWP stated that it spent and distributed this RM732,56 million *zakāh* in the following ways: Wakalah (11.9%), Educational and Welfare Institutions (2.9%), Infrastructure of Muslims (11.3%), Amil wages (6.5%) and Managing (10.3%). The remaining RM 417,341,135 (56.97%) was distributed by implementing "Assistance Schemes" consisting of several categories such as welfare, economy, medicine, preaching and community development, protection, and education.

As can be observed from the data shared, MAIWP, by spending 2.9 percent of the *zakāh* on the educational and welfare institutions and 11.3 percent on the

²¹⁰ He added: "For sure, not all the profits they make is returned to MAIWP but MAIWP has a dividend like let me say 30% or whatsoever. We cannot take all the profits because the company will need them also in order to operate." Mohd Fauzi Bin Ahmad, Accountant at Finance and Investment Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

²¹¹ Wan Ahmad, "Zakat Investment in Malaysia", 272–74.

²¹² PPZ-MAIWP, Annual Report 2021, 21.

infrastructure Muslims, has spent a significant amount of *zakāh* on institutions that provide individuals with various forms of support and services. Additionally, the biggest share of *zakāh*, RM417,341 million, was spent on individuals via aid programs called “assistance schemes”, as mentioned before.

It is important to highlight that within MAIWP, the investment of *zakāh* is meant only for the *zakāh* fund invested in financial instruments, as in the first way, with the potential to generate a profit. While *zakāh* allocated for development projects that ensure the recipients’ long-term well-being is considered an investment activity by modern Muslim scholars, MAIWP does not regard it as an investment endeavour but rather perceives it as a form of *zakāh* distribution.²¹³ According to the previous manager of the Baitulmal Division within MAIWP, Muhammad Yamin, “*Operationally, we [MAIWP] invest zakāh funds in unit trusts and muḍārabah investment accounts. We distribute zakāh as business capital for the poor, but we consider this as zakāh assistance and not zakāh investment.*”²¹⁴

As for the process of making and implementing any investment decision by MAIWP, it is as follows: the Finance and Investment Section prepares a proper investment proposal. The investment proposal is then presented to the investment committee. After receiving approval from the investment committee, it should be presented to the *Sharī'ah* committee for approval. Finally, if the *Sharī'ah* committee agrees, approval should be sought from the board of MAIWP at their meeting. Then, the investment can be made.²¹⁵

Considering the pre-distribution *zakāh* investments made by MAIWP, notably those involving banking investment certificates, the risk of loss may not materialise because the government primarily guarantees it. For other alternative forms of investments, such as unit trusts, shares in its subsidiaries and other companies, etc., the loss is always a possibility, and there were multiple instances where MAIWP suffered investment losses, like the loss of RM2 million in a publicly listed company, Petronas

²¹³ The important thing here is that such a practice is carried out by MAIWP, rather than how it is named.

²¹⁴ Wan Ahmad, “Zakat Investment in Malaysia”, 267.

²¹⁵ Mohd Fauzi Bin Ahmad, Accountant at Finance and Investment Section, Baitulmal Division of MAIWP, Interview by researcher, Chow Kit, Kuala Lumpur, 22 December 2023.

Dagangan Berhad, in 1994.²¹⁶ On the other hand, MAIWP adopts a variety of techniques to mitigate the risk of failure in post-distribution investments conducted through development projects and assistance schemes. For instance, in order to be accepted, applicants for business capital assistance must satisfy specific eligibility requirements. In addition, they must also complete the essential entrepreneurial courses in order to be competent enough to run the businesses successfully. In summary, MAIWP has demonstrated its commitment to implementing suitable strategies to minimise the potential risks related to *zakāh* investments. The implemented steps primarily aim to mitigate, if not entirely prevent, any anticipated losses. Nevertheless, there is not yet a known mechanism or policy implemented by MAIWP to assure appropriate compensation for the losses experienced by investment projects utilising pre-distribution *zakāh*.²¹⁷

4.2.2 Investment of *Zakāh* from *Fiqh* and *Uṣūlī* Perspectives and Its Discussion

Since *zakāh* investment is a relatively current issue, the researcher will not reference classical *fiqh* literature and *madhhabs* while discussing this issue. Instead, the researcher will share the *fatwās* published on the subject by several *fatwā* boards and councils in different countries of the Islamic world, which are also an example of collective *ijtihād*. In this context, *fatwās* published in Malaysia will also be shared. Then, the issues of *tamlīk* (transfer of ownership of *zakāh* to the beneficiaries) and *fawr* (immediate performance of *zakāh*), which are at the heart of the subject of the investment of *zakāh*, along with the arguments of those who allow *zakāh* investment and those who do not, will be examined and discussed. The opinion that is believed to be more accurate regarding *zakāh* investment will be mentioned.

4.2.2.1 *Fatwās Published About the Investment of Zakāh*

After the 1960s, when the idea of investing *zakāh* funds was first introduced, the subject came up on the agenda of *fiqh* and *fatwā* councils and boards. In this regard, *fatwā*

²¹⁶ Azhar, “Development of Secular and Religious Taxation in Peninsular Malaysia”, 331–32.

²¹⁷ Wan Ahmad, “Zakat Investment in Malaysia”, 284.

councils debated the topic, and several *fatwās* were issued. Here, the researcher will present these *fatwās* in table form. In this context, the researcher will share the following information: the date of issuance of the *fatwā*, the council and board that issued it, brief information about the content of the *fatwā*, and finally, whether the *fatwā* permits *zakāh* investment or not.

Before sharing the table, it should be noted that some *fatwās* dealt with the issue in detail, citing both the permissible and impermissible cases of *zakāh* investment. Therefore, at first glance, this confuses the reader in determining whether the *fatwā* in question permits *zakāh* investment. In this context, the researcher's main criterion for determining whether a *fatwā* permits *zakāh* investment or not is whether the *fatwā* in question requires the transfer of ownership of *zakāh* to the recipients (known as *tamlīk*). If a given *fatwā* requires the transfer of ownership of *zakāh* funds or the projects funded with *zakāh* money to the recipients, then it will be categorized as a *fatwā* that does not permit *zakāh* investment. Accordingly, a *fatwā* that states that it is permissible to invest *zakāh* provided that the *tamlīk* condition is realized will be considered a *fatwā* that does not allow investment. If, on the other hand, a *fatwā* allows investment of *zakāh* without stipulating the condition of *tamlīk*, then it will be considered to be in the category of *fatwās* that permit *zakāh* investment. This is because, as will be discussed later, all the scholars agree on the permissibility of the investment of *zakāh* assets after their rightful beneficiaries own them. The controversial issue is the type of *zakāh* investment where the *tamlīk* has not taken place. Therefore, some of the *fatwās* on the subject of *zakāh* investment are as follows in chronological order:

Table 4.3 Fatwās on the subject of zakāh investment

No	Date	Council/ Board	Content of the <i>Fatwā</i>	Ruling
1	1970 ²¹⁸	Perlis State Mufti Department ²¹⁹	<i>“Title: Can the zakāh money be put into investments? Decision: According to Islamic law, zakāh money should be distributed among the eight groups of aṣnāf, ensuring that each group holds independent ownership of the allocated share with no balance remaining... This is also indicated by the hadīth of the Prophet ﷺ, which states that the Prophet ﷺ used to distribute zakāh to eight classes without leaving any balance. Regarding the investments made from zakāh money so far, the committee is of the opinion that (sins) can be forgiven if not repeated, based on the verses of al-Qur’ān which means: “Allah forgives past sins.”²²⁰</i>	Does not Permit
2	1986 ²²¹	The International Islamic Fiqh Academy ²²²	<i>“It is permissible, in principle, to invest zakāh funds in investment projects that end with the ownership of those who are entitled to zakāh (the recipients) or to be affiliated with the legal authority responsible for collecting and distributing zakāh²²³, provided that this is after meeting the immediate and urgent needs of the beneficiaries and taking all the necessary measures to avoid losses during the investment.”²²⁴</i>	Permits
3	1992	Shariah Board of	The board issued several <i>fatwās</i> at different times. In these <i>fatwās</i> ²²⁶ , it is stated that the investment of zakāh is generally permissible under certain conditions. The following are some of the conditions stipulated:	

²¹⁸ This *fatwā* is, as far as can be determined, the first *fatwā* in the world issued on the issue of investment of zakāh. Based on this *fatwā*, it can easily be claimed that the idea of utilizing zakāh assets for investment purposes dates back to before 1970. The fact that the above-shared *fatwā* refers to the activities that were carried out before the issue of the *fatwā* shows that the investment of zakāh was not just an idea but an activity implemented in the 1960s. Therefore, it can be suggested that the practice of investment of zakāh funds has a roughly 60-year history.

²¹⁹ Jabatan Mufti Negeri Perlis.

²²⁰ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/main1/fatwa/pr/11102> (accessed 04 Sept, 2023).

²²¹ The session titled “The Use of Zakāh in Profit-Getting Projects without Individual Ownership (*Tamlīk*) of the Beneficiaries” at the 3rd Term Meeting of the Academy held in Amman, the capital of the Hashemite Kingdom of Jordan, on October 11-16, 1986.

²²² *Majma‘ al-Fiqh al-Islāmī al-Duwalī* is a Jeddah, Saudi Arabia-based international Islamic institution for the advanced study of Islamic jurisprudence and law. It was established in June 1981. Its members are jurists, academicians, and intellectuals in various disciplines of jurisprudence, culture, science, and economics from different regions of the Islamic world.

²²³ The expression “or to be affiliated with the legal authority responsible for collecting and distributing zakāh” reveals that the transfer of ownership to the recipients is not necessary.

²²⁴ See <https://iifa-aifi.org/ar/1657.html> (accessed 02 September, 2023).

²²⁶ Some of these *fatwās* refer to the aforementioned *fatwā* of the International Islamic Fiqh Academy on the subject, dated 1986.

		Zakat House Kuwait ²²⁵	<i>“a. There should not be any urgent needs of <i>aṣnāf</i> that require the <i>zakāh</i> to be distributed immediately.</i> <i>b. Investment activity must be carried out in fields that are considered legitimate by Sharī‘ah.</i> <i>c. All benefits and proceeds from investments should be considered <i>zakāh</i> and accordingly distributed to <i>aṣnāf</i>.</i> <i>d. In case of any emergency or need, it should be possible to liquidate invested assets.</i> <i>e. Avoiding engagement in projects prone to loss or significant market fluctuations whenever possible.”</i>²²⁷	Permits
4		Kuwait Finance House ²²⁸	In the book titled “<i>al-Fatāwā al-Shar‘iyyah fī al-Masāil al-Iqtisādiyyah</i>”, which includes the <i>fatwās</i> published by the <i>fatwā</i> committee of KFH, there is a <i>fatwā</i> on the use of <i>zakāh</i> funds as an investment tool. In this <i>fatwā</i>, it is stated that the investment of <i>zakāh</i> is permissible. Also, it has been cited that although it is more cautious to compensate for possible losses, if the necessary effort is made to avoid the loss, it is not obligatory to compensate.²²⁹	Permits
5		Fatwa Committee of the Kuwait Ministry of Awqaf ²³⁰	The committee stated that it is permissible to use <i>zakāh</i> money as an investment tool. However, the share of <i>zakāh</i> assets invested in this project should be considered <i>zakāh</i> and the profits obtained from the projects should not be spent on anybody other than those who are eligible for <i>zakāh</i>.²³¹	Permits
6	1996	The Permanent Committee for Scholarly Research and Iftā ²³²	It was asked if it is permitted to invest <i>zakāh</i> funds if the feasibility studies have been carried out, and it is assured that the principal invested can be withdrawn if any need arises. “Answer: It is not permissible for charity representatives to use <i>zakāh</i> for investment purposes. It is obligatory to offer <i>zakāh</i> to its determined recipients by giving it to the recipients who deserve it. Because the purpose of <i>zakāh</i> is to	Does not Permit

²²⁵ The original name is *al-Hay‘ah al-Shar‘iyyah li Bayt al-Zakāh fī Kuwayt*. The law establishing Zakat House as a public entity with an independent budget and legal identity, subject to the control of the Minister of Awqaf and Islamic Affairs, was released on January 16, 1982.

²²⁷ Maktab al-Shu‘ūn al-Shar‘iyyah, *Aḥkām wa Fatāwā al-Zakāh wa al-Ṣadaqāt wa al-Nudhūr wa al-Kaffārāt* (Maktab al-Shu‘ūn al-Shar‘iyyah, 2009), 169–73.

²²⁸ KFH (*Bayt al-Tamwīl al-Kuwaytī*) is regarded as a pioneer in the Islamic Finance or *Sharī‘ah* Compliant Banking. KFH was the first Islamic bank to be founded by the State of Kuwait in 1977, and it is now one of the world’s leading Islamic financial organizations.

²²⁹ Bayt al-Tamwīl al-Kuwaytī, *Al-Fatāwā al-Shar‘iyyah fī al-Masāil al-Iqtisādiyyah*, (Bayt al-Tamwīl al-Kuwaytī, 1st edn., n.d.), 1:215–17.

²³⁰ Fatwa Committee of the Kuwait Ministry of Awqaf and Islamic Affairs (*Lajnah al-Fatāwā bi Wizārah al-Awqāf wa al-Shu‘ūn al-Islāmiyyah al-Kuwaytiyyah*).

²³¹ The *fatwā* was an answer to the Islamic Dawa Organization in Africa, which consulted the Ministry regarding the ruling of using *zakāh*, *ṣadaqah*, and one-third bequest funds for investment purposes. Kirenci, ‘Islam Hukukunda Zekat Mallarinin Nemalandirilmesi’, 118.

²³² *Al-Lajnah al-Dā‘imah li al-Buḥūth al-‘Ilmiyyah wa al-Iftā’* is an Islamic organization in Saudi Arabia established by the King in 1971 that issues rulings in *fiqh* and prepares research papers for the Council of Senior Scholars (*Hay‘ah Kibār al-‘Ulamā’*), which advises the king on religious matters. The committee’s members are drawn from the Council of Senior Scholars.

			<i>meet the needs of the poor and pay the debts of debtors (and so on). However, using zakāh as an investment tool deprives zakāh recipients of these rights or delays the recipients from benefiting from them.”</i> ²³³	
7	1997	Sudanese Zakat Chamber ²³⁴	This <i>fatwā</i> is an answer given by the Fatwa Committee of the Sudanese Zakat Chamber to the question about the use of <i>zakāh</i> assets in agricultural and social projects. The Committee stated that it is permissible, provided that the <i>zakāh</i> recipients need these projects to be carried out and the income is transferred to them. ²³⁵	Permits
8	1998 ²³⁶	The Islamic Fiqh Council ²³⁷	“ <i>Zakāh must be paid immediately upon becoming obligatory on al-mukallaf. And this is done by transferring the ownership of zakāh to those entitled to it, whom God has appointed in verse 60 of Sūrah al-Tawbah. Therefore, it is not permissible to invest zakāh money for the benefit of any of the recipients, such as the poor, because it entails multiple legal prohibitions, including breaching the obligation to pay the zakāh immediately, making it impossible for the recipients to own it at the time of its being obligatory on al-mukallaf, and harming the recipients by doing so.</i> ” ²³⁸	Does not Permit
9	2001 ²³⁹	Islamic Fiqh Academy (India) IFA ²⁴⁰	The academy permitted the following: “a. It is permissible for a poor person to invest the <i>zakāh</i> whose full ownership is granted to him, engage in trade, or purchase shares in order to benefit from it in the future. b. If machinery or workshop vehicles suitable for the occupations and professions of the <i>zakāh</i> recipients were purchased with <i>zakāh</i> money or shops whose	

²³³ Aḥmad ibn ʿAbd al-Razzāq al-Darwīsh, *Fatāwā al-Lajnah al-Dāʿimah li al-Buḥūth al-ʿIlmiyyah wa al-Iftāʾ*, (Riyāḍ: Dār al-ʿĀsimah, 1st edn., 1996), 9:454–55.

²³⁴ *Dīwān al-Zakāh al-Sūdānī*.

²³⁵ Kirenci, “Islam Hukukunda Zekat Mallarinin Nemalandirilmasi”, 123.

²³⁶ It was at the council’s fifteenth session, held in Mecca on October 31, 1998.

²³⁷ The Islamic Fiqh Council (*Al-Majmaʿ al-Fiqhī al-Islāmī*) is a Muslim World League (*Rābiṭah al-ʿĀlam al-Islāmī*) affiliate with its own legal identity. It was established in 1966 in Mecca by a resolution of the Constituent Council and is comprised of a select group of Muslim jurists and scholars who meet on a regular basis to discuss serious issues affecting the Muslim Ummah and to issue appropriate rulings based on the texts of the Holy *Qurʾān* and the *Sunnah*. At its establishment, the council was formed as a board, including the names of leading scholars of the Islamic world at that time, such as *Abū al-Ḥasan al-Nadwī*, *al-Mawdūdī* and *ʿAbd Allāh ibn Bāz*.

²³⁸ *Rābiṭah al-ʿĀlam al-Islāmī al-Majmaʿ al-Fiqhī al-Islāmī*, *Qarārāt al-Majmaʿ al-Fiqhī al-Islāmī bi Makkah al-Mukarramah*, (*Rābiṭah al-ʿĀlam al-Islāmī al-Majmaʿ al-Fiqhī al-Islāmī*, 3rd edn., n.d.), 323–24.

²³⁹ It was at the academy’s thirteenth juristic symposium on April 13-16, 2001, in Malihabad, in the state of Uttar Pradesh.

²⁴⁰ *Majmaʿ al-Fiqh al-Islāmī* (al-Hind), IFA, is a *fiqh* organization established in 1988 in New Delhi under the guidance of *Mujāhid al-Islām al-Qāsimī*. The primary objective of the academy is to address contemporary issues and challenges faced by Muslims in light of the principles and methodology of Islamic jurisprudence, following the middle path and collective *ijtihād*.

			full ownership is delegated to the recipient were established, this is permissible.” On the contrary, the following were not permitted: “a. It is not permissible if dwellings or shops were established with <i>zakāh</i> money and handed over to the poor to live in or trade in, but the ownership was not conveyed to them. b. It is not permissible to place <i>zakāh</i> funds in investment projects such as establishing factories and companies to distribute their profits among those who are entitled to <i>zakāh</i>, whether that is done by the <i>muzakkīs</i> (<i>zakāh</i> payers) themselves or by the legal authorities responsible for collecting and distributing <i>zakāh</i>. Because <i>zakāh</i> funds, in this way, do not reach those who deserve them, and there is a fear that losses may occur in such companies, which may result in the loss of a large amount of <i>zakāh</i>.”²⁴¹	Does not Permit
10	2001	Terengganu State Mufti Department ²⁴²	Title: Profits/Grant money through <i>zakāh</i> account Decision: The meeting agreed that profit from savings accounts obtained through special <i>zakāh</i> accounts is part of the <i>zakāh</i> pool. Therefore, the money should be returned to the <i>zakāh</i> account and spent for the benefit of the <i>zakāh</i> beneficiaries only.²⁴³	Permits
11	2003	Indonesian Ulema Council ²⁴⁴	The Council allowed utilizing <i>zakāh</i> funds for investment purposes by putting forward certain conditions. Two of these conditions are that the relevant authorities’ permission for <i>zakāh</i> investment should be sought, and in case of loss or bankruptcy, the responsibility for compensating the funds invested in the project must belong to the state.²⁴⁵	Permits
12	2009	Malacca State Mufti Department ²⁴⁶	In principle, the <i>zakāh</i> fund should not be invested. However, if the distribution of <i>zakāh</i> has been made perfectly to all the <i>aṣṇāf</i> and it is found that there is still a surplus, then it is permissible to invest the <i>zakāh</i> fund for the benefit of the general public, as long as the following conditions are met: “a. Malacca Islamic Religious Council²⁴⁷ (MAIM) should be able to provide a written guarantee that the <i>zakāh</i> fund invested will remain as <i>zakāh</i>, and its	Permits (<i>zakāh</i> excess to

²⁴¹ Majma^c al-Fiqh al-Islāmī (al-Hind), *Qarārāt wa Tawṣiyāt Majma^c al-Fiqh al-Islāmī bi al-Hind* (Majma^c al-Fiqh al-Islāmī (al-Hind), 2023), 153–54.

²⁴² Jabatan Mufti Negeri Terengganu.

²⁴³ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/11680> (accessed 04 Sept, 2023).

²⁴⁴ Majelis Ulama Indonesia, MUI was established on July 26, 1975, in Jakarta. The council is made up of numerous Indonesian Muslim organizations. The role of the council is described as guiding the public on issues pertaining to religion and social life, giving advice and *fatwās*, acting as a bridge between *‘ulamā’* (religious leaders) and *umarā’* (political leaders) inside the country, and fostering Muslim unity.

²⁴⁵ See <https://mui.or.id/baca/fatwa/penggunaan-dana-zakat-untuk-istitsmar-investasi> (accessed 17 December, 2023).

²⁴⁶ Jabatan Mufti Negeri Melaka.

²⁴⁷ Majlis Agama Islam Melaka.

			profits will be returned to the zakāh account to be spent on the appropriate <i>aṣnāf</i>. b. There should be a written guarantee that, in case of any loss in the investment, MAIM is ready to compensate the entire amount. c. There should be a written guarantee that the zakāh property used as investment capital can be liquidated at any time when there is a sudden need for the zakāh property to be distributed. d. The investment must be handled by a special committee consisting of those who are experienced in the field of investment and are trustworthy.”²⁴⁸	be invested) ²⁴⁹
13	2011	Egypt’s Dar Al-Ifta ²⁵⁰	“It is permissible to carry out investment projects with zakāh funds under the following conditions: a. The investment of zakāh funds must achieve a genuine and preponderant interest (<i>maṣlaḥah ḥaqīqīyyah rājiḥah</i>) for the beneficiaries, such as securing a permanent source of income that provides them with a decent life. b. The zakāh money must be removed from the ownership of its payer, and such projects must be fully owned by the zakāh recipients; otherwise, it becomes an endowment (<i>waqf</i>) and not a zakāh. c. All measures must be taken to ensure the success of the projects after they are owned by zakāh beneficiaries, and the proceeds should not be disbursed to anybody except to them.”²⁵¹	Does not Permit
14	2012 ²⁵²	Sarawak State Mufti Department ²⁵³	This <i>fatwā</i> is similar to the Malacca <i>fatwā</i> published in 2009, but more detailed conditions have been put forward. Some of these conditions are as follows: a. The fund to be used for the investment should be the zakāh that remained in excess after being distributed to all classes. b. Detailed research should be conducted before zakāh money is invested in a project. c. The investment of the zakāh fund must be safe, and in this respect, it must provide real income/return.	Permits (zakāh excess to be invested)

²⁴⁸ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/12059> (accessed 06 Sept, 2023).

²⁴⁹ This will be discussed in detail when dealing with the issue of methods of *zakāh* investment.

²⁵⁰ Egypt’s Dar Al-Ifta (*Dār al-Iftā’ al-Miṣriyyah*) is one of the earliest pioneering institutions to issue *fatwās* across the Islamic world. It was established and affiliated with the Ministry of Justice in 1895 by Khedive Abbas Helmi's senior command. Initially, the organization was a department of the Egyptian Ministry of Justice. Since its establishment, Egypt’s Dar Al-Ifta has been actively involved in religious guidance, the imposition of death sentences, and other legal matters addressed to the institution seeking the Grand Mufti's opinion.

²⁵¹ See <https://www.dar-alifta.org/ar> (accessed 03 September, 2023).

²⁵² The *fatwā* began with the phrase “21st Sarawak State Fatwa Board Meeting on September 25, 2012, unanimously accepted the following decision:”.

²⁵³ Jabatan Mufi Negeri Sarawak.

			<i>d. Any loss that may occur in the investment process should be compensated to the zakāh account by the Sarawak Islamic Council.</i> ²⁵⁴	
15	2014	Mufti's Office of the Federal Territory ²⁵⁵	<i>Title: Using Zakāh Money in the MAIWP's Current Account at an Islamic Bank for Short-Term Investments</i> <i>Decision: The 86th Sharī'ah Law Management Committee Meeting (Mesyuarat Jawatankuasa Pengurusan Hukum Syarak), which convened on July 18, 2014, has agreed to the proposal to use zakāh money in the MAIWP current account at Bank Islam for short-term investment.</i> ²⁵⁶	Permits
16	2016 ²⁵⁷	Libyan Fatwa House ²⁵⁸	<i>As for the zakāh recipients, they are mentioned in Verse 60 of Sūrah al-Tawbah. Accordingly, if there is an immediate and urgent need of one of the eight groups mentioned in the verse, it must be satisfied, and it is not permissible to delay it by investing zakāh in a project that will benefit some of the zakāh recipients at a later time. However, if there is no immediate need, it is permissible for you to invest zakāh in what you mentioned, except for building mosques, provided that sufficient measures are taken, along with strictness in auditing and the honesty of the investment manager by not being complacent about the issue.</i> ²⁵⁹	Permits

As can be seen from the previously referenced *fatwās*, many *fiqh* councils, mufti departments, and academies²⁶⁰ allow *zakāh* investment. However, as detailed in some of these *fatwās*, this is not absolute permission; instead, certain conditions have been stipulated for investment to be permitted. Based on the content of the short *fatwā* issued by the Mufti's Office of the Federal Territory in 2014, it is clear that the Federal Territory Mufti's Office is included among the authorities that allow *zakāh* investment.

²⁵⁴ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/15946> (accessed 06 Sept, 2023).

²⁵⁵ Pejabat Mufti Wilayah Persekutuan, PMWP.

²⁵⁶ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/10698> (accessed 06 Sept, 2023).

²⁵⁷ This *fatwā* numbered 836 was published in the name of Prof. Dr. 'Alī Jumū'ah Muḥammad.

²⁵⁸ Libyan Fatwa House (*Dār al-Ifṭā' al-Lībiyyah*) was established in 1951 and performed its duty uninterrupted until it was closed for a certain period of time during the Muammar Gaddafi regime. In 2011, it took office again as an independent institution affiliated with the president. Today, it actively serves as a national *fatwā* authority.

²⁵⁹ *Dār al-Ifṭā' al-Lībiyyah, Fatāwā Dār al-Ifṭā' al-Lībiyyah li 'Ām 1438 Hijrī* (Dār al-Ifṭā' al-Lībiyyah, 2020), 43–43.

²⁶⁰ Such as the International Islamic Fiqh Academy, Shariah Board of Zakat House Kuwait, Indonesian Ulema Council, Libyan Fatwa House and some others.

On the flip side, some other councils²⁶¹ strictly prohibit *zakāh* investment and even consider investments made in the previous period as a sin.²⁶² An examination of the *fatwās* issued by these councils, which prohibit *zakāh* investment, reveals that the stated rationale for not permitting *zakāh* investment is that the investment causes delays in the distribution of *zakāh* and impedes the transfer of ownership of *zakāh* shares to the beneficiaries. Hence, before discussing *zakāh* investment by addressing the arguments of both sides, it is necessary to address these two concerns. In this context, the issue of whether the command (*al-amr*) on *zakāh* requires and implies immediate (*fawr*) or delayed performance (*tarākhī*), one of the topics associated with *uṣūl al-fiqh*, will be discussed. Then, whether the transfer of ownership of *zakāh* to the recipients (*al-tamlīk*) is compulsory will be assessed. In addition to their relevance to *zakāh* investment, these two issues also stand out as the two *fiqhī* and *uṣūlī* issues that are related to the distribution of *zakāh* in general.

4.2.2.2 The Implication of the Command on Zakāh (*Dalālah al-Amr*)

When the studies on the investment of *zakāh* are examined, it seems that the views on the ruling (*ḥukm*) of investment activity focus on the issue of the implication of absolute command (*dalālah al-amr al-muṭlaq*). Those who oppose investing *zakāh* assets state that *zakāh* command implies immediate performance (*fawr*). Therefore, they state that *zakāh* should be paid to the beneficiaries as soon as possible. However, because of the investment activity, *zakāh* distribution is delayed, and therefore the investment is not permissible. There are differences of opinion in *uṣūl al-fiqh* literature as to whether the absolute command, which means obligation (*wujūb*), should be executed immediately or over time. There are three views on the subject in *uṣūl al-fiqh* books that deal with the subject. The first view argues that the absolute command implies immediate performance (*fawr*), the second view argues that the absolute command indicates delayed performance (*tarākhī*), and the third view argues that the absolute command signifies neither *fawr* nor *tarākhī* but its performance must be determined in the light of indications and surrounding circumstances (*al-qarā'in*).²⁶³

²⁶¹ Such as the Islamic Fiqh Council, Sudanese Zakat Chamber, Perlis State Mufti Department and some others.

²⁶² Such as the *fatwā* issued by Perlis State Mufti Department in 1970.

²⁶³ Al-Ghazzālī, *al-Mustasfā*, 2:88.

According to the first group, a command's requirement must be fulfilled as soon as possible, and if it is delayed, the accountable person (*mukallaf*) will be sinful. This view is held by some early *Ḥanafīs*²⁶⁴, including *Abū Yūsuf*, *Ḥākim al-Shahīd*, *Karkhī*, and *al-Caṣṣās*,²⁶⁵ and by some *Shāfi'īs* such as *al-Ṣayrafi*, *al-Qādī Abū Ḥāmid Al-Marwazī*, *Abū Bakr Daqqāq*,²⁶⁶ and by the majority of *Ḥanbalīs*,²⁶⁷ and the majority of *Mālikīs* except for *Maghribī Mālikīs*²⁶⁸ as well as by the *Zāhirīs*.²⁶⁹

The second group of scholars thinks that the absolute command indicates delayed performance (*tarākhī*) unless there is a *qarīnah*. Therefore, the action required by the command can be delayed by *al-mukallaf*. It should be noted here that the idea that the absolute command implies *fawr* means that it must be performed immediately, while the idea that it indicates *tarākhī* does not mean that the performance must be delayed but means that it “can” be delayed. The scholars of the *Ḥanafī madhhab* other than the early *Ḥanafīs*,²⁷⁰ the majority of the *Shāfi'ī madhhab*,²⁷¹ *Maghribī Mālikīs*,²⁷² some *mutakallimūn* scholars such as *Bāqillānī* and *al-Ghazzālī*,²⁷³ and *Mu'tazilah*²⁷⁴ hold this view. According to these scholars, a person will not become a sinner by

²⁶⁴ There is information in many *uṣūl al-fiqh* works that the majority of *Ḥanafīs* argue that the absolute command indicates *fawr*. However, when looking at *Ḥanafī* sources chronologically, it becomes clear that the situation is different and that the view that the absolute command indicates *fawr* is encountered in some early *Ḥanafīs*. However, after *al-Caṣṣās*, there are *Ḥanafī uṣūlīs* who adopt the view that the absolute commandment indicates *tarākhī*. Look at Muḥammad ibn 'Abd al-Wāḥid Kamāluddīn Ibn al-Humām, *Fath al-Qadīr 'Alā al-Hidāyah*, (Dimashq: Dār al-Fikr, 1st edn., 1970), 2:156; al-Sarakhsī, *Uṣūl Al-Sarakhsī*, 1:26; 'Alā'uddīn 'Abd al-'Azīz Aḥmad Al-Bukhārī, *Kashf al-Asrār 'An Uṣūl Fakhr al-Islām al-Bazdawī*, (Istanbul: Shirkah al-Ṣaḥāfah al-'Uthmāniyyah, 1st edn., n.d.), 1:254.

²⁶⁵ Aḥmad ibn 'Alī Abū Bakr al-Jaṣṣās, *Al-Fuṣūl Fī al-Uṣūl*, (Wizārah al-Awqāf al-Kuwaytiyyah, 2nd edn., 1994), 105–7; Ibn al-Humām, *Fath al-Qadīr 'Alā al-Hidāyah*, 2:156; Al-Bukhārī, *Kashf al-Asrār*, 1:254.

²⁶⁶ 'Alī ibn 'Abd al-Kāfi Taqīyuddīn al-Subkī and 'Abd al-Wahhāb ibn 'Alī Tajuddīn al-Subkī, *Al-Ibhāj Fī Sharḥ al-Minhāj*, (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1st edn., 1984), 2:59; Abū Ishāq Ibrāhīm ibn 'Alī al-Shīrāzī, *Al-Tabṣīrah Fī Uṣūl al-Fiqh*, ed. Muḥammad Ḥasan Hītū (Dimashq: Dār al-Fikr, 1st edn., 1980), 52–53.

²⁶⁷ Muḥammad ibn al-Ḥusayn al-Farrā' Abū Ya'ālā al-Ḥanbalī, *Al-'Uddah Fī Uṣūl al-Fiqh*, ed. Aḥmad ibn 'Alī al-Mubārakī (2nd edn., 1990), 1:281–82; Maḥfūz ibn Aḥmad ibn al-Ḥasan al-Kalwadhānī, *Al-Tamhīd Fī Uṣūl al-Fiqh*, ed. Mufīd Muḥammad Abū 'Amshah and Muḥammad ibn 'Alī Ibn Ibrāhīm (Markaz al-Baḥth al-'Ilmī wa lḥyā' al-Turāth al-Islāmī, 1st edn., 1985), 1:215.

²⁶⁸ Abū al-Walīd Sulaymān ibn Khalaf al-Bājī, *Al-Ishārah Fī Uṣūl al-Fiqh*, ed. Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1st edn., 2003), 57.

²⁶⁹ 'Alī ibn Aḥmad Ibn Ḥazm, *Rasā'il Ibn Ḥazm*, ed. Iḥsān 'Abbās (Bayrūt: Al-Mu'assasah al-'Arabiyyah Li al-Dirāsāt wa al-Nashr, 4th edn., 1983), 412.

²⁷⁰ Ibn al-Humām, *Fath al-Qadīr 'Alā al-Hidāyah*, 2:156; al-Sarakhsī, *Uṣūl Al-Sarakhsī*, 1:26; Al-Bukhārī, *Kashf al-Asrār*, 1:254.

²⁷¹ Maṣṣūr ibn Muḥammad Al-Sam'ānī, *Qawāfi' al-Adillah Fī al-Uṣūl*, ed. Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1st edn., 1999), 1:75.

²⁷² Al-Bājī, *Al-Ishārah*, 57.

²⁷³ Ibid., 57; Al-Ghazzālī, *Al-Mustasfā*, 2:88.

²⁷⁴ Abū Ya'ālā al-Ḥanbalī, *Al-'Uddah*, 1:282.

delaying the commanded action. However, there is a dispute as to whether the person will be a sinner if he dies without fulfilling the commanded action.

According to the third group, the implication of an absolute command is delayed unless there are indications and surrounding circumstances (*al-qarā'in*) that help the scholar decide whether the command in question is for *fawr* or *tarākhī*. In this context, *al-qarā'in* determines what the command implies. This view is called *al-tawaqquf* or *al-waqf*, which means the researcher or scholar admits to having insufficient reason to justify an opinion concerning a specific matter. *Al-Māturīdī*,²⁷⁵ *al-Juwaynī*,²⁷⁶ *Fakhruddīn al-Rāzī*,²⁷⁷ *Sayfuddīn al-Āmidī*²⁷⁸ and *Sayyid Murtaḍā*,²⁷⁹ one of the *Shī'ah* scholars, hold this view. Within the view of *tawaqquf*, there is a disagreement about the nature of *tawaqquf*. According to the majority of scholars who think of *tawaqquf*, if a command with a prescribed time is performed at the beginning of the time prescribed (immediate performance), it is ruled that *mukallaf* has performed the obligation directed to him properly. However, if *mukallaf* performs it at times other than the beginning (delayed performance), *tawaqquf* shows up. However, another group of scholars who adopt the view of *tawaqquf* claim that even if the command is performed immediately, it cannot be claimed that the obligation has been fulfilled; instead, the *tawaqquf* is applied. *Al-Ghazzālī* called those who hold the second interpretation of *tawaqquf* excessives (*ghālūn*).²⁸⁰

Views on the implication of absolute command have produced important results on understanding the commands of *al-Shāri'c*. According to the first group, if performing the commands is delayed, the *mukallaf* is considered a sinner, while according to the second group, the *mukallaf* is not considered a sinner. It is important to note that the above discussion is not about any specific commandment but the absolute commandments encountered in the *Qur'ān* and *Sunnah*. However, indications and

²⁷⁵ 'Alā'uddīn Abū Bakr Muhammad al-Samarqandī, *Mizān al-Uṣūl Fī Natā'ij al-'Uqūl*, (Qatar: Maṭābi' al-Dawḥah al-Ḥadīthah, 1st edn., 1984), 212.

²⁷⁶ 'Abd al-Malik ibn 'Abd Allāh al-Juwaynī, *Al-Burhān Fī Uṣūl al-Fiqh*, ed. Ṣalāḥ ibn Muḥammad Ibn 'Uwayḍah (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1st edn., 1997), 1:175.

²⁷⁷ Muḥammad ibn 'Umar Fakhruddīn al-Rāzī, *Al-Maḥṣūl*, ed. Ṭāhā Jābir Fayyāḍ al-'Ulwānī (Mu'assasah al-Risālah, 3rd edn., 1997), 2:113.

²⁷⁸ 'Alī ibn Muḥammad al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*, ed. 'Abd al-Razzāq 'Afīfī (Bayrūt, 2nd edn., 1981), 4:32.

²⁷⁹ 'Alī ibn al-Ḥusayn al-Mūsawī al-Sharīf al-Murtaḍā, *Al-Dharī'ah Ilā Uṣūl al-Sharī'ah*, ed. Al-Sayyid 'Alī Ridā al-Madadī (Mashhad: Mu'assasah al-Ṭab' wa al-Nashr, 1st edn., 2020), 1:369–70.

²⁸⁰ Al-Ghazzālī, *Al-Mustaṣfā*, 2:88.

surrounding circumstances (*al-qarā'in*) determine whether a particular commandment in sources implies *fawr* or *tarākhī*. For this reason, it becomes important to examine how *madhhabs* understood and perceived the command of *zakāh*, which is the primary concern of the research.²⁸¹

According to the *Shāfi'ī madhhab*, although the absolute command implies *tarākhī* according to the general view, the specific command about *zakāh* obligation is for *fawr*. In this context, after one lunar year (*ḥawl*) passes, the person becomes obliged to pay *zakāh*. Accordingly, if the *zakāh* is not paid after one lunar year has passed and the *zakāh* property is destroyed before it is paid, *mukallaḥ* is not exempt from the *zakāh*, therefore it must be compensated. *Mālikīs* and *Ḥanbalīs* also share this view.²⁸²

Since *zakāh* investment causes a delay in the distribution of *zakāh*, at first glance, it may be thought that utilizing *zakāh* for investment is not permissible for those who adopt that *zakāh* command is for *fawr*. However, in the above-mentioned *madhhabs*, delaying the payment of *zakāh* was sometimes allowed. For example, *Al-Ramlī*, one of the *Shāfi'ī* jurists, mentions in his work *Nihāyah al-Muḥtāj* that *zakāh* can be delayed in order to find people who need *zakāh* more or to give it to relatives and neighbours.²⁸³

²⁸¹ It is worth mentioning here that the issue of the performance of the *zakāh* command was often dealt with in the classical *fiqh* literature based on whether the *mukallaḥ* paid it or postponed the payment. As a result of the literature review, the researcher has not come across a study that deals with the issue from the standpoint of the state's distribution of *zakāh* as a distinct topic. Nonetheless, according to the researcher, the issue of the delay in payment of *zakāh* by the *mukallaḥ* and the distribution of it can be addressed together. This is because the command to pay *zakāh* covers not only the payment of *zakāh* by the *mukallaḥs* but also the entire process, including the state's delivery of *zakāh* to those in need. Therefore, the discussion of whether the command of *zakāh* is for *fawr* or for *tarākhī* includes the state's distribution of *zakāh* to the recipients as well as the payment of it by *mukallaḥ*. For this reason, the payment and distribution of *zakāh* would be examined here together without any distinction. Moreover, *al-Ramlī's fatwā*, which will be shared subsequently, that *zakāh* can be delayed in order to find people who need *zakāh* more or to give it to relatives and neighbours clearly shows that the payment and distribution of *zakāh* are addressed altogether. In addition, *Ibn Qudāmah's* statement that it is permissible to postpone paying *zakāh* as long as doing so serves the interest (*maṣlahah*) of the poor is additional evidence that the topic being discussed encompasses the distribution of *zakāh* as well as its payment.

²⁸² ʿAbd al-Malik ibn ʿAbd Allāh Al-Juwaynī, *Nihāyah al-Maṭlab Fī Dirāyah al-Madhhab*, ed. ʿAbd al-ʿAzīm Maḥmūd Al-Dīb (Dār al-Minhāj, 1st edn., 2007), 3:103–4; Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazzālī, *Al-Wasīṭ Fī al-Madhhab*, (al-Qāhirah: Dār al-Salām, 1st edn., 1997), 2:442; ʿAbd al-Raḥmān ibn Ibrāhīm al-Maqdisī, *Al-ʿUddah Sharḥ al-ʿUmdah Fī Fiqh Imām al-Sunnah Aḥmad ibn Ḥanbal*, ed. Aḥmad Ibn ʿAlī (al-Qāhirah: Dār al-Ḥadīth, 2003), 152; Al-Qāḍī ʿAbd al-Wahhāb Al-Baghḍādī, *Al-Maʿīnah ʿAlā Madhhab ʿĀlim al-Madīnah*, ed. Ḥamish ʿAbd al-Ḥaqq (Makkah: Al-Maktabah al-Tijāriyyah, n.d.), 1:367.

²⁸³ Shamsuddīn Muḥammad ibn Abī ʿAbbās al-Ramlī, *Nihāyah al-Muḥtāj Ilā Sharḥ al-Minhāj*, (Bayrūt: Dār al-Fikr, 1984), 3:135.

Some Hanbali jurist also repeated a similar opinion.²⁸⁴ Furthermore, in *Mālikī madhhab*, it is stated that the ruler (*imām*) has the authority to postpone the distribution of *zakāh* until a second lunar year (*ḥawl*).²⁸⁵ Also, *Ibn Qudāmah* mentioned that it is permissible to delay *zakāh* payment if delaying its payment is for the interest (*maṣlahah*) of the poor.²⁸⁶ Considering all these opinions, it is possible to argue that the issue of *zakāh* investment, which was not discussed in classic *fiqh* literature because there was no such practice then, can be excluded from the prohibition of postponing *zakāh* just like the above-mentioned cases. In this sense, both what *Ibn Qudāmah* mentioned about the interest (*maṣlahah*) of the poor and the authority given to the ruler by some *Mālikīs* regarding postponing the distribution of *zakāh* until a second lunar year can be taken as references.

As for the *Ḥanafī madhhab*, the general view²⁸⁷ is that the absolute commandment indicates *tarākhī*. Therefore, there is no problem with *mukallaf's* delaying the payment of *zakāh*. However, supposed a person is of the opinion that he is old or has reached the end of his life for any reason. In that case, the payment of *zakāh* turns to *al-wajib al-muḍayyaq* (an obligation that has a narrow time limit), and the person is considered a sinner if death comes before he pays the *zakāh*.²⁸⁸

As a result, according to the general opinion in the *Ḥanafī madhhab*, it is possible to postpone *zakāh* payment/distribution. However, according to other *madhhabs*, unless there is any benefit (*maṣlahah*) or necessity (*ḍarūrah*), *zakāh* should be delivered to those in need immediately without any delay. Nevertheless, those who consider it permissible to invest *zakāh* funds claim that there is a presumption of *maṣlahah* for those in need in the investment of *zakāh* and therefore it is permissible to postpone

²⁸⁴ Maṣṣūr ibn Yūnus al-Bahūtī, *Kashshāf al-Qannāʿ ʿAn al-Iqnāʿ*, ed. Lajnat Mutkhaṣṣiṣah Fī Wizārah al-ʿAdl (Saudi Arabia: Wizārah al-ʿAdl Fī al-Mamlakah al-Saʿūdiyyah, 1st edn., 2000), 5:78.

²⁸⁵ Muḥammad ibn Muḥammad al-Ḥaṭṭāb al-Ruʿaynī, *Mawāhib al-Jalīl Fī Sharḥ Mukhtaṣar Khalīl*, (Bayrūt: Dār al-Fikr, 3rd edn., 1992), 2:363; ʿAlī ibn ʿAḥmad al-ʿAdawī, *Ḥāshiyah al-ʿAdawī ʿAlā Sharḥ Kifāyah al-Ṭālib al-Rabbānī*, ed. Yūsuf al-Shaykh Muḥammad al-Buqāʿī (Bayrūt: Dār al-Fikr, 1994), 1:509.

²⁸⁶ ʿAbd Allāh ibn Muḥammad al-Ṭayyār, *Wabāli al-Ghamāmah Fī Sharḥ ʿUmdah al-Fiqh Li Ibn Qudāmah*, (Riyād: Dār al-Waṭan Li al-Nashr wa al-Tawzīʿ, 1st edn., n.d.), 2:75.

²⁸⁷ Early *Ḥanafī* jurists have different opinions on this issue. According to a narration from *Abū Ḥanīfah*, postponing *zakāh* is *makrūh taḥrīmī*. It is also reported that there was a difference of opinion between *Abū Yūsuf* and *Muḥammad*, as it was attributed to the former *fawr* view and the later *tarākhī*. Look Ibn al-Humām, *Fath al-Qadīr ʿAlā al-Hidāyah*, 2:411; al-Bukhārī, *Kashf al-Asrār*, 1:249.

²⁸⁸ Abū Bakr ibn Masʿūd al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ Fī Tartīb al-Sharāʾiʿ*, (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1edn., 1912), 2:3; al-Samarqandī, *Mizān al-Uṣūl*, 212.

zakāh distribution. Based on this, if this presumption of benefit is thought to be a real benefit (*maṣlahah haqīqiyyah*), there should not be anything wrong with using *zakāh* in income-generating projects according to *madhhabs* other than the *Ḥanafī* as well.

4.2.2.3 The Issue of Transfer of Ownership of Zakāh (Al-Tamlīk)

The idea of using *zakāh* assets in profit-generating investment projects has brought about some problems. One of these problems is whether the *tamlīk* is a condition for valid *zakāh* distribution and, accordingly, whether the investment of *zakāh* violates the concept of *tamlīk* in *zakāh*. Scholars who oppose the investment of *zakāh* have objected to this idea by citing the issue of *tamlīk* as well as the issue of whether the *zakāh* command is for *fawr* or *tarākhī*.²⁸⁹ The reference to the condition of *tamlīk* in the meetings held and *fatwās* issued by the boards and councils regarding utilizing *zakāh* funds for investment purposes shows that *tamlīk* is a key concept in the ruling of the investment of *zakāh*.

Tamlīk is a verbal noun of “*malaka*” and implies transferring ownership of something to another person. Ownership of a property grants the possessor the right to dispose of it or use its usufruct.²⁹⁰ In the context of *zakāh* payment, *tamlīk* refers to the payment of *zakāh* to the recipient, who receives full ownership²⁹¹ rights over the *zakāh* and is therefore free to dispose of it as he pleases. Numerous instances of full payment of *zakāh* to individual recipients that were common during the classical era and the

²⁸⁹ The latter has been discussed under the preceding title.

²⁹⁰ Ibn Manẓūr, *Lisān al-ʿArab*, 10:492–93.

²⁹¹ Based on *maḥall al-ʿaqd*, there are two distinct forms of ownership recognised by Islamic law as a result of an exchange: full ownership of the *maʿqūd ʿalayh* (subject matter) and restricted ownership, also referred to as beneficial ownership. Full possession grants the possessor complete control and dominion over the asset, including the ability to dispose of it without being subjected to contestation or opposition from other parties. Beneficial ownership provides the owner only with the right to utilize the usufruct rights over the assets since he does not actually own the asset.

absence of discussion regarding relative²⁹² and beneficial ownerships of *zakāh*²⁹³ indicate that the obligation of *tamlīk* also entails granting full ownership of *zakāh* to individual recipients.

The opinions of classical jurists differed regarding the requirement of *tamlīk* in *zakāh* distribution. The majority of jurists hold that the payment of *zakāh* to recipients must involve *tamlīk*. The jurists' refusal to permit the payment of *zakāh* for the construction of mosques, bridges, or aqueducts, as well as the restoration of roads, demonstrates their unwillingness to grant anything other than individual ownership.²⁹⁴ The viewpoint is based on the term *ītā'* (إيتاء), which means to give and it appears in many Quranic verses on *zakāh*.²⁹⁵ The employment of *lām al-tamlīk*, a preposition used to imply transfer of ownership, found at the beginning of the list of recipients specified in the relevant verse of the *Qur'ān* that describes the designated beneficiaries of *zakāh*, also implies the requirement of *tamlīk* in the payment of *zakāh*. It is possible to classify the approach of classical jurists on this issue into three main views.

First View: These are the jurists who stipulate *tamlīk* as a condition for all recipients of *zakāh*. In this context, although there are some differences in the details, in general, the *Ḥanafī*, *Shāfi'ī* and *Ḥanbalī madhhabs* consider *tamlīk* as a condition for all *zakāh* recipients. According to *Ḥanafī madhhab*, *tamlīk* is considered obligatory for *zakāh* obligation to be fulfilled properly. While some of the *Ḥanafī* jurists described

²⁹² Based on the owner of an asset, ownership can be classified as specific or general. In specific ownership, ownership can be possessed by a single individual (known as individual ownership) or shared among multiple owners (known as joint ownership). In both of these ownerships, each owner's share of ownership is clearly defined. However, in a general ownership, the owners' shares are not explicitly defined, and access to the ownership rights depends on certain attributes and characteristics. Collective and common ownership are the two different categories of general ownership. Common ownership is a form of ownership in which all members of the public have a claim to and entitlement to its benefits. In collective ownership, the owners are restricted to a group of individuals with similar attributes, such as being recipients of *zakāh*. Typically, the owner of a general ownership is an entity other than a human that is granted juristic personality so that it can represent and act on behalf of the ownership's beneficiaries. The term for this type of ownership is relative ownership (*ʿtibārī*). Islamic jurists consider relative ownership to be valid ownership, as indicated by the concept of *dhimmah* attributed to non-human entities such as endowment (waqf), *bayt al-māl*, hospitals, mosques, and other charitable organisations.

²⁹³ The absence of debate on relative ownership in *zakāh* in the classical period is more pronounced when compared to another sort of charity, endowment (waqf).

²⁹⁴ Ibn Qudāmah, *Al-Mughnī*, 4:125–26.

²⁹⁵ *Qur'ān*, al-Baqarah: 43, 277 and al-Ḥajj: 78.

tamlīk as a pillar (*rukn*) of *zakāh* distribution,²⁹⁶ others considered it a condition (*shart*) for the performance of the *zakāh*.²⁹⁷ Accordingly, *Ḥanafīs* prohibited spending *zakāh* on charitable causes such as building mosques, fountains, and shrouding the dead. They also declared that giving general permission to the poor to take food (known as *ibāḥah al-ṭaʿām*) cannot be counted as *zakāh*. Paying off the debt of the dead and even the poor neighbour without his permission is also not a proper way to pay *zakāh* as the *tamlīk* condition is not met. *Ḥanafīs* also prohibited payment of *zakāh* to the father of the poor person or to his son instead of him. Because even if the poor benefit from this kind of charity, there is no full ownership, which is, according to *Ḥanafīs*, an obligatory condition to be met.²⁹⁸

Shāfiʿī and *Ḥanbalī* madhhabs also consider *tamlīk* as a condition like *Ḥanafīs*. However, they divide the *zakāh* recipients into two groups: those mentioned after *lām al-tamlīk* and those after *fī al-ẓarfīyyah*. According to them, the first group, which includes the poor, the needy, *zakāh* officers, and those whose hearts are reconciled, is affixed with *lām al-tamlīk*, which necessitates a complete conference of rights for these recipients. This *lām* has the connotation of an “absolute *tamlīk*” because it refers to wealth that can be owned, and the recipient is someone who can own wealth. Furthermore, an absolute *tamlīk* offers the new owner complete control over the good received, implying that he is entirely capable of using the good and its usufructs or products²⁹⁹ as he sees fit, and disposing of the property³⁰⁰ without being challenged by others. The second category, which includes the slaves, the debtors, the warriors, and the travellers, is appended with a separate preposition known as *fī al-ẓarfīyyah*. According to the *Shāfiʿīs* and *Ḥanbalīs*, this preposition signifies that ownership is restricted only for certain purposes. Though *zakāh* provided to these groups must be properly received and owned by them, it must be utilised for each group for a defined purpose that makes them eligible for receiving *zakāh*, such as paying a debt for a debtor or freeing slaves. This kind of “restricted ownership” implies that if there is any surplus

²⁹⁶ Al-Marghīnānī, *Al-Hidāyah*, 1:111.

²⁹⁷ ʿAbd Allāh ibn Maḥmūd al-Mawṣilī, *Al-Ikhtiyār Li Taʿlīl al-Mukhtār*, (al-Qāhirah: Maṭbaʿah al-Ḥalabī, 1937), 1:121.

²⁹⁸ Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 2:39.

²⁹⁹ What is bred by or arises from a good, such as a calf born to a cow.

³⁰⁰ Such as selling or granting it.

after the *zakāh* money has been spent for the specified purpose, the surplus must be returned to the ruler or his appointed representatives.³⁰¹

It is important to draw attention to the following important issue: although *Shāfi'īs* consider *tamlīk* as a necessary condition, they have made broad interpretations from time to time, as in the case of the *zakāh* to be given to the poor and the needy from one side and to the *fi sabīl Allāh* group from another side. *Shāfi'īs'* view regarding the *zakāh* given to the poor and the needy is that those who have a profession or craft among the poor and the needy would be provided with tools and equipment, no matter how expensive, that will enable them to do their profession, or if they are tradesmen, they would be given sufficient capital to launch a business. Nevertheless, if the poor is a person that cannot generate income via any profession or craft, he, according to the *al-aṣaḥḥ* in the *madhhab*, would be provided with the economic sufficiency (*al-kifāyah*) for the predominant lifespan (*al-ʿumr al-ghālib*)³⁰² of an individual. But, *al-Ramlī* states, he will not be given cash that will suffice him for that period; instead, a property will be purchased for him by the ruler, upon whose income he can make a living. Here, it is evident that *Shāfi'ī madhhab* resorted to the practice of purchasing property and offering its income to the poor, which is one of the forms of investment practice. However, to prevent any violation of the *tamlīk condition*, it is stated that the ownership of this purchased property would be transferred to the poor person and that the property would pass to his heirs after his death.³⁰³

On the other hand, there is a passage in the book *Mughnī al-Muḥtāj* about how *zakāh* can be offered to the category of *fi sabīl Allāh*. This passage, surprisingly, seems to allow the violation of the condition of *tamlīk*. *Al-Shirbīnī* states that the ruler can buy horses and weapons from the *zakāh* share belonging to the *fi sabīl Allāh*, endow (*waqf*) these items in the way of *Allāh*, and lend (*iʿārah*) them to the warriors for use on the condition that they must be returned at the end of the war.³⁰⁴ The *tamlīk* requirement is violated here. Therefore, even though *tamlīk* is generally regarded as a condition in the

³⁰¹ Muḥammad ibn Muḥammad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj Ilā Maʿrifah Maʿānī Alfāz al-Minhāj*, (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn., 1994), 4:173; Al-Bahūtī, *Kashshāf al-Qannāʿ*, 5:154.

³⁰² Which is sixty lunar years.

³⁰³ Al-Ramlī, *Nihāyah al-Muḥtāj*, 6:161–62.

³⁰⁴ Al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj*, 4:187.

Shāfiʿī madhhab, in cases of need and based on the *ijtihād* of the ruler, some practices that may violate the *tamlīk* condition are allowed in the *madhhab*. This is especially true for the group of *fi sabīl Allāh* that is mentioned above.

Second View: These scholars consider *tamlīk* a condition for the first four groups³⁰⁵ but do not regard it as a requirement for the remaining groups. In this context, it is possible to state that *Ibn Taymiyyah* and *Malikīs* share this approach, although slightly different. *Ibn Taymiyyah*, when stating that it is permissible to pay the dead person's debt with *zakāh* fund, mentioned that this is permissible because the relevant verse did not use the term *li al-ghārimīn* but mentioned *ghārim* without *lām al-tamlīk*. Moreover, for this reason, he added, *tamlīk* is not a requirement for *ghārim*.³⁰⁶ He also stated clearly in *al-Fatāwā al-Kubrā* that *tamlīk* is obligatory for the first four since *lām al-tamlīk* was mentioned before them. However, for the places where *ḥarf al-ẓarf*, that is, *fi al-ẓarfīyyah*, was used, such as slaves, debtors, and in the way of *Allāh*, he asserted that there is no requirement of *tamlīk*.³⁰⁷

As for *Mālikīs*, they also share a similar opinion with *Shāfiʿīs* and *Ḥanbalīs* that if *zakāh* is provided to the first four groups, they will have absolute ownership, whereas if offered to the last four, they will only have a restricted right on how to use that money. In this context, if the debtor becomes rich before paying his debt with the *zakāh* money due to inheritance, for example, or if the *mujāhid* leaves the battlefield and *jihād*, the *zakāh* will be taken back from them. However, *Mālikīs* hold that *tamlīk* is only necessary for the first four groups of receivers, along with *ibn sabīl* (the traveller). On the contrary, *fi al-ẓarfīyyah* attached to the other categories (the slaves, the debtors, and in the way of *Allāh*) indicates that the owner is not obligated to distribute the *zakāh* directly to the recipients when paying it. A payment is adequate to meet these recipients' needs and requirements, even if paid to a third party. Accordingly, *Mālikīs* permitted, as *Ibn Taymiyyah* does, payment of *zakāh* directly to the creditor to satisfy the debt of a debtor who is entitled to *zakāh* or paying off the debt left from the dead.³⁰⁸ It is also permitted

³⁰⁵ As it is going to be stated later, *Mālikīs* also add the traveller (*ibn sabīl*) group to the first four.

³⁰⁶ Aḥmad ibn ʿAbd al-Ḥalīm Ibn Taymiyyah, *Majmūʿ al-Fatāwā*, ed. ʿAbd al-Raḥmān ibn Muḥammad Ibn Qāsim (Al-Madīnah al-Munawwarah: Majmaʿ al-Malik Fahd Li Ṭibāʿah Muṣḥaf al-Sharīf, 2004), 25:80.

³⁰⁷ Aḥmad ibn ʿAbd al-Ḥalīm Ibn Taymiyyah, *Al-Fatāwā al-Kubrā*, (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn., 1987), 4:201.

³⁰⁸ Even some mentioned that the debt of the dead is more worthy to be paid than the debt of the living.

for the ruler to buy slaves with *zakāh* money and free them. Likewise, *Mālikīs* stated that weapons could be purchased for warriors with *zakāh* property. Furthermore, it is narrated by *Ibn ʿAbd al-Ḥakam*, contrary to what is well-known in the *Mālikī madhhab*, that it is permitted to build walls with *zakāh* to protect the Muslims’ territory or to establish fleets for war.³⁰⁹

Third View: These scholars do not consider *tamlīk* as a mandatory condition for any group of recipients. Regarding those who defend this view, *al-Shawkānī*’s name comes to the fore. *Al-Shawkānī* permits the payment of *zakāh* without *tamlīk*. In this regard, he permits the use of *zakāh* funds to entertain the *faqīr* and contends that there is no proof that *tamlīk* is required for *zakāh* payment. Contemporary jurists such as *Aḥmad Muḥammad Jamāl* hold similar views, claiming that the verse itself does not depict the necessity of a transfer of ownership because the preposition “*lām*” in question was intended to refer to specific groups eligible to receive *zakāh*. Therefore, according to *Jamāl*, *tamlīk* is not required for *zakāh* payment.³¹⁰ Zayas also contends that there is no evidence or indication that a real transfer of ownership of *zakāh* is required in every situation for the act of *zakāh* to be legitimate. It is sufficient in distributing *zakāh* that the legitimate recipients receive or benefit from the *zakāh* funds according to their needs.³¹¹

Some other contemporary jurists argue that *tamlīk* in the payment of *zakāh* should not be confined to the grant of complete *zakāh* ownership to individual beneficiaries but should be reconsidered and expanded to include relative (*ʿtibārī*) and beneficial ownerships. Based on the above *Mālikī* scholars’ view, jurists such as *Rūḥān Imbāy* argue that given that *zakāh* for the last four groups of recipients can be paid through a third party other than the recipients, the *zakāh* institutions are then permitted exclusively to invest the portions of the last four groups, the benefits of which are channelled to the recipients’ specific purposes.³¹² *Al-Āṣifī*³¹³ agrees with this view,

³⁰⁹ Muḥammad ibn Yūsuf Abū ʿAbd Allāh al-Muwāq, *Al-Tāj wa al-Iklīl Li Mukhtaṣar Khalīl*, (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1st edn., 1994), 3:231–34.

³¹⁰ Wan Ahmad, “Zakat Investment in Malaysia”, 170.

³¹¹ Farisha G Zayas, *The Law and Institution of Zakāt* (Kuala Lumpur: The Other Press, 2003), 302.

³¹² Rūḥān Imbāy, “Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rīḥ Bilā Tamlīk Fardī Li al-Mustaḥiqq”, *Majallah Majmaʿ al-Fiqh al-Islāmī al-Tābiʿ Li Munazzamah al-Muʿtamar al-Islāmī Bi Jiddah*, no.3 (1987): 83–84.

³¹³ *Al-Āṣifī* (2015) was a *Shīʿī* scholar and cleric at Najaf and a political activist in Iraq. He was a scholar of *fiqh*, *uṣūl al-fiqh*, the exegesis of the *Qurʾān* and Islamic philosophy. *Al-Āṣifī* was actively engaged

claiming that the phrase “*fī*” affixed to the last four groups in the verse refers to collective possession and use of *zakāh* by groups rather than individual ownership.³¹⁴ Jurists like *Ibn Bayyah* and *al-Zuhaylī* opine that only the share belonging to the *fī sabīl Allāh* group can be used for investment purposes, based on the existence of broader interpretations attributed to some classic jurists regarding the *fī sabīl Allāh* group, such as *Malikīs* and *al-Qaffāl* from *Shāfi‘īs*.³¹⁵

Some modern jurists, such as *al-Zarqā*, *Abū Zahrah*, and *al-Mawdūdī*, believe that collective ownership among *zakāh* recipients should be permitted, as *zakāh* under the group of *fī sabīl Allāh* is permitted to be distributed to schools, hospitals, based on the necessity of public interest. Such foundations and institutions are held by the state or its representative as a relative owner, and the recipients are only conferred beneficial ownership rights. Their viewpoint is also founded based on the existence of institutions such as the *bayt al-māl*, which is responsible for receiving payment from eligible owners where the rights granted to them are equivalent to those granted to collectors.³¹⁶ Meanwhile, *‘Abd al-Salām al-‘Abbādī* tries to explain collective ownership by claiming that it is identical to individual ownership in that both grant ownership to the recipients. The only distinction is that collective ownership is characterised by general (*shā‘i‘*) ownership, where the owner is the poor, generally, not a particular person.

Other contemporary jurists, such as *al-Qaraḍāwī*, *al-Amīn*, and *Shubayr*, contend that the recognition of relative and beneficial ownership in the *zakāh* payment has become a necessity in ensuring that *zakāh* objectives are met.³¹⁷ According to *Shubayr*, if it is determined that beneficial ownership is proved to be more effective

in political activism against the *Ba‘th* regime in Iraq, and was a prominent member of Islamic Da‘wa Party (*Ḥizb al-Da‘wā al-Islāmiyyah*) for a while. He participated in religious and social activities in Iran and Kuwait, and after the fall of *Ba‘th* regime, he returned to Iraq.

³¹⁴ Muḥammad Maḥdī al-‘Aṣīfī, *Al-Niẓām al-Mālī wa Tadāwul al-Tharwah Fī al-Islām* (Bayrūt: Dār Al-Ghadīr, 1973), 59–60.

³¹⁵ Ibn Bayyah, “Tawẓīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlik Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 86.

³¹⁶ Muṣṭafā al-Zarqā, “Tawẓīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlik Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 74–77.; Abū al-A‘lā Al-Mawdūdī, *Fatāwā al-Zakāh*, trans. Riḍwān Aḥmad Al-Fallāḥī (Jāmi‘ah al-Malik ‘Abd al-‘Azīz, 1st edn., 1985), 54–55.

³¹⁷ Yūsuf al-Qaraḍāwī, “Tawẓīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlik Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 63–65; Hasan ‘Abd Allāh al-Amīn, “Tawẓīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlik Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 54–56.

than absolute ownership in accomplishing the objectives of *zakāh* for beneficiaries, then *zakāh*-funded initiatives that provide only beneficial ownership to recipients should not be denied. This is particularly true when the investment projects are large and need enormous financial outlays, such as the construction of factories, large farms, commercial premises, etc. Given the project's cost and administration complexities, which necessitate the oversight of a more organised institution, it is hazardous to grant the recipients joint ownership of the project, where ownership is granted to a group of recipients individually.³¹⁸

Overall, it was demonstrated that the majority of classical jurists see the complete transfer of ownership to individual *zakāh* recipients as a requirement in the distribution of *zakāh*. However, for the last four groups of recipients, the requirement that *tamlīk* be satisfied in the payment of *zakāh* is less rigorous.

On the other hand, modern jurists tend to advocate for more flexible ownership for all types of recipients. Even though, in general, they concur with classical jurists that the transfer of ownership to the recipients is necessary in the payment of *zakāh*, they dispute the level of ownership that should be conferred on the beneficiaries. According to jurists such as *al-Qaraḍāwī*, *al-Amīn*, and *Shubayr*, the recipient's ownership of *zakāh* is not necessarily confined to absolute individual ownership. The most essential thing is to guarantee that the investment's benefits reach the intended beneficiaries. Similar trends are observed at MAIWP practices, where the distribution of *zakāh* is strictly limited to the eight groups of recipients, and even though *zakāh* is utilised in numerous investment projects, the investment returns must ultimately be channelled back to these recipients.

4.2.2.4 Discussion of Investment of Zakāh

In general, there are two basic ways to invest *zakāh* funds: the investment of *zakāh* by the *zakāh* recipients and the investment of it by the ruler or his representative, such as

³¹⁸ Muḥammad ʿUthmān Shubayr, “Mabda’ al-Tamlīk wa Madā Iʿtibārihi fī Ṣarf al-Zakāh”, in *Abḥāth Fiqhiyyah Fī Qaḍāyā al-Zakāh al-Muʿāṣirah*, edited by Muḥammad Sulaymān al-Ashqar (ʿAmmān: Dār al-Nafāʾis, 2nd edn., 2000), 2:415.

the *zakāh* institutions. Regarding the first way, the jurists have agreed that it is permissible for the beneficiaries to invest *zakāh* money after receiving it, as *zakāh* after being received by them becomes their property. Therefore, it is permissible for them to dispose of it as the complete owners of the property. Accordingly, they have the right to establish investment projects and buy craft tools. As for the *Shāfi'īs*, although they opine that the ownership of *zakāh* funds received by the last four *aṣṇāf* is restricted to be utilised for or by each group for a defined purpose that makes them eligible for receiving *zakāh* (such as paying a debt for a debtor or freeing slaves)³¹⁹, *Shāfi'īs* allowed these *aṣṇāf* to invest the *zakāh* money that they received. In this regard, it was stated that it is permissible for a *mukātab*³²⁰ slave to trade with the share he has taken from *zakāh* to increase it or collect the repayment of his debt. Additionally, *al-Rāfi'ī* states that the debtor is like *mukātab* in this regard.³²¹ However, to be compatible with the *madhhab*'s opinion on this issue, it can be suggested that the income and the profit from the investment should be used for the same purposes that made them eligible for receiving *zakāh*. In brief, it is possible to claim that jurists in general argue that *zakāh* is fully owned by the rightful owner. Therefore, the *zakāh* recipient, as the property owner, can utilize the *zakāh* he has received as an investment tool by himself or through institutions appointed by him as a proxy.

The second is the investment of *zakāh* funds by the ruler or his representative, such as the *zakāh* institution or Baitulmal departments within State Islamic Religious Councils. Discussions around *zakāh* investment are generally related to this second way, that is, the investment of *zakāh* by institutions administering and managing *zakāh* affairs. In this regard, many aspects of the issue were discussed in the meetings held by *fatwā* councils and committees on the subject of investing *zakāh* assets. As a result of the discussions, different opinions were put forward among those who permitted the investment of *zakāh* regarding the methods by which this investment activity would be carried out. Here, the methods recommended and permitted by scholars regarding *zakāh* investment will be shared in general.

³¹⁹ Al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj*, 4:154.

³²⁰ The slave who acquired from his master the privilege of freedom on payment of an agreed-upon price.

³²¹ Al-Nawawī, *Al-Majmū'*, 6:204.

4.2.2.4.1 Methods of Zakāh Investment

The scholars suggest various ways and methods in the context of the *zakāh* investment issue, reflecting their perspectives on the matter. The following are some of these methods and ways:

1. As mentioned under the previous titles, some scholars have considered *tamlīk* and *fawr* (the distribution of *zakāh* immediately) as necessary conditions that must be fulfilled. These scholars argue that *zakāh* can only be used as an investment tool after the *zakāh* assets are fully transferred to the rightful beneficiaries. Therefore, such scholars who usually do not permit *zakāh* investment do not see it as problematic to invest the *zakāh* after its ownership is transferred to the rightful beneficiaries. The point that should not be forgotten is that scholars who do not see *tamlīk* as a condition will also find this investment style appropriate. Thus, it is possible to claim that all contemporary scholars agree on the permissibility of investment of *zakāh* assets after they are owned by their rightful beneficiaries, as stated before. Among the scholars who advocate that the only way to invest *zakāh* assets is to transfer their ownership to the rightful recipients and then invest them are *‘Alī Muhyiddīn al-Qurahdāghī*, *Taqiyy al-‘Uthmānī*³²², *Nāṣiḥ ‘Ulwān*³²³, and Mustafa Bulent Dadas³²⁴. Also, from the *fatwās* and decisions published by The Islamic Fiqh Council (*Al-Majma‘ al-Fiqhī al-Islāmī*) of the Muslim World League (*Rābiṭah al-‘Ālam al-Islāmī*) in 1998, The Permanent Committee for Scholarly Research and Ifta (*Al-Lajnah al-*

³²² Taqiyy al-‘Uthmānī, “Tawzīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlīk Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 66.

³²³ ‘Abd Allāh Nāṣiḥ ‘Ulwān, *Aḥkām Al-Zakāh ‘Alā Daw’ al-Madhāhib al-Arba‘ah*, (Dār al-Salām, 1st edn., 1978), 53–54.

³²⁴ Mustafa Bulent Dadas, “Zekatin Tenmiyesinin Fikhi Imkanlari”, *Diyanet Ilmi Dergi*, vol. 53, no.1 (2017): 97. Some others are: *Ādam Shaykh*, *Khalīl Muhyiddīn al-Mīs*, *Aḥmad al-Khalīlī* and Ahmet Yaman. Look respectively at *Ādam Shaykh Abd Allāh ‘Alī*, “Tawzīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlīk Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 53; *Khalīl Muhyī al-Dīn al-Mīs*, “Tawzīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlīk Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 69; *Aḥmad ibn Ḥamd al-Khalīlī*, “Tawzīf al-Zakāh Fī Mashārī‘ Dhāt Rī‘ Bilā Tamlīk Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 80; and Kirenci, “Islam Hukukunda Zekat Mallarinin Nemalandirilmesi”, 124.

Dā'imah li al-Buḥūth al-ʿIlmiyyah wa al-Iftā') before 1996, the Fatwa Committee of the Sudanese Zakat Chamber (*Dīwān al-Zakāh al-Sūdānī*) in 1997, Islamic Fiqh Academy (India) in 2001, Egypt's Dar Al-Ifta (*Dār al-Iftā' al-Miṣriyyah*) in 2011 and Perlis State Mufti Department (Jabatan Mufti Negeri Perlis) in 1970³²⁵ it is understood that it is permissible to benefit from the *zakāh* fund in investment projects after they pass into the *zakāh* recipients' possession. The investment of *zakāh* assets after the rightful beneficiaries own them can be done in two ways:

First, investment activity can be realized by dividing the shares of the project, the subject of investment, among the *zakāh* beneficiaries and transferring the ownership to them. For example, when a business is to be established using *zakāh* funds, the *zakāh* institution meets with a group of people they choose among the *zakāh* recipients. It explains that such a business will be established in order to provide the recipients with a permanent income. Subsequently, if the recipients agree, the business shares are transferred to these people before or after the establishment of the business, and the business becomes wholly owned by the beneficiaries. However, in order to prevent rights holders from selling the shares they have acquired and slowing down the development and profit-making processes of a newly established business or opening the door to abuses, a legal provision can be made stating that the shares cannot be sold for a certain period of time when they are transferred to *zakāh* recipients. Thus, the rights of both the business and other shareholders are protected. However, this situation is still contrary to the understanding of *tamlīk* to *zakāh* recipients in the classical period and is a kind of violation of *tamlīk*, since there is a restriction on their ownership rights.

Second, *zakāh* assets can be utilized in projects that the *zakāh* institution will completely own by obtaining power of attorney or consent from the beneficiaries. For example, when it is decided to implement an investment project, the beneficiaries to whom the project's benefits are planned to be transferred are selected. Then, meetings are held to inform these right holders about the relevant investment project. Beneficiaries are given the

³²⁵ For all these *fatwās* look at “*Fatwās Published About the Investment of Zakāh*”.

right to choose whether they will receive their *zakāh* shares depending on their needs or whether their *zakāh* shares will be used in investment projects to provide them with a continuous income. The power of attorney or consent is obtained from those who accept the use of *zakāh* money to which they are entitled in investment projects, in accordance with the relevant legal processes. Thus, the *tamlīk* representing the full disposal rights of the beneficiaries will be realized, and the *zakāh* assets will be used in investment projects in line with the beneficiaries' consent and approval.

Investing *zakāh* assets by transferring the investment projects' ownership to the *zakāh* recipients is not considered possible in terms of the success of investment projects in the service sector. Transferring the ownership of projects such as hospitals, schools, and health centres after opening them to the *zakāh* recipients will negatively affect the success of the projects. For example, beneficiaries may want to sell their shares or tools in the project. Likewise, many things related to administration are needed for the investment to be successful in projects such as factories, hospitals, workshops, animal farms, agricultural lands, and greenhouse works. For such investment projects to be successful, professional teams consisting of experts, a strong trade network, and opportunities such as advertising and R&D studies are needed. Leaving these large organizations entirely to the *aṣnāf* by dividing the shares among them- otherwise, *tamlīk* condition will not be met - makes it difficult for the projects to succeed.³²⁶

2. It has been deemed permissible by some scholars and *fatwā* committees to invest the *zakāh* fund without performing *tamlīk* for the beneficiaries. Among these scholars, *Muṣṭafā al-Zarqā*, *Abd al-Laṭīf Farfūr*, *Ḥasan ʿAbd Allāh al-Amīn*, *ʿAbd al-ʿAzīz al-Khayyāt*, *Aḥmad Muḥammad Jamāl*, *Muḥammad ʿAbduh ʿUmar*³²⁷, *Muḥammad Zuḥaylī*, *Khālīd ʿAbd al-Razzāq*

³²⁶ Kirenci, “Islam Hukukunda Zekat Mallarinin Nemalandirilmesi”, 127.

³²⁷ For these scholars views, look respectively at *Muṣṭafā al-Zarqā*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rī*”, 74–77; *Muḥammad ʿAbd al-Laṭīf al-Farfūr*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rī Bilā Tamlīk Fardī Li al-Mustaḥiqq*”, *Majallah Majmaʿ al-Fiqh al-Islāmī al-Tābiʿ Li Munazzamah al-Muʿtamar al-Islāmī Bi Jiddah*, no.3 (1987): 67–68; *Ḥasan ʿAbd Allāh al-Amīn*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rī*”, 54–56; *ʿAbd al-ʿAzīz al-Khayyāt*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rī Bilā Tamlīk Fardī Li al-Mustaḥiqq*”, *Majallah Majmaʿ al-Fiqh al-Islāmī al-Tābiʿ Li Munazzamah al-Muʿtamar al-Islāmī Bi Jiddah*, no.3 (1987): 58–59; *Aḥmad Muḥammad Jamāl*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rī Bilā Tamlīk Fardī Li al-Mustaḥiqq*”, *Majallah Majmaʿ al-Fiqh al-Islāmī al-Tābiʿ Li Munazzamah al-Muʿtamar al-Islāmī Bi Jiddah*, no.3 (1987): 81; *Muḥammad ʿAbduh ʿUmar*, “*Tawzīf al-Zakāh Fī*

*al-ʿĀnī*³²⁸, ʿAbd Allāh ibn Manṣūr al-Ghufaylī, Ṣāliḥ ibn Muḥammad al-Fawzān³²⁹, Muḥammad ʿUthmān Shubayr³³⁰, ʿAbd al-Fattāḥ Muḥammad Farāḥ, ʿAbd al-Hādī Yaʿqūb, Muḥammad Ashqar, ʿUjayl al-Nashmī and Ali Ozek³³¹. The *fatwā* committees that allowed investment of *zakāh* without individual *tamlīk* are the International Islamic Fiqh Academy (*Majmaʿ al-Fiqh al-Islāmī al-Duwalī*), Shariah Board of Zakat House Kuwait (*Al-Hayʾah al-Sharʿiyyah li Bayt al-Zakāh fi Kuwayt*), Kuwait Finance House (*Bayt al-Tamwīl al-Kuwaytī*), Fatwa Committee of the Kuwait Ministry of Awqaf and Islamic Affairs (*Lajnah al-Fatāwā bi Wizārah al-Awqāf wa al-Shuʿūn al-Islāmiyyah al-Kuwaytiyyah*), Indonesian Ulema Council (Majelis Ulama Indonesia, MUI), Libyan Fatwa House (*Dār al-Iftāʾ al-Lībiyyah*) and Federal Territory Mufti Office (Pejabat Mufti Wilayah Persekutuan, PMWP).³³²

Of course, the fact that these scholars gave a *fatwā* on *zakāh* investment without requiring the condition of *tamlīk* does not mean that all kinds of investments are in compliance with *Sharīʿah*, and thus they can be made with *zakāh* funds. In this context, some conditions have been put forward to ensure these investments are in compliance with *sharīʿah*.

- a. While *zakāh* assets are invested, *aṣnāf* must not have any urgent needs such as food, clothing, or medicine. If there are any urgent needs, they should be met first. While the recipients of *zakāh* need food to eat, water to drink, clothes to wear, a place to stay, and medicine to regain their health, it is not permissible to postpone meeting these needs by using the funds allocated for investment activities.³³³

Mashārīḥ Dhāt Rīʿ Bilā Tamlīk Fardī Li al-Mustaḥiqq”, *Majallah Majmaʿ al-Fiqh al-Islāmī al-Tābiʿ Li Munazzamah al-Muʿtamar al-Islāmī Bi Jiddah*, no.3 (1987): 82–83.

³²⁸ Khālīd ʿAbd al-Razzāq Al-ʿĀnī, *Maṣārīf al-Zakāh wa Tamlīkūhā Fī Ḍawʾ al-Kitāb wa al-Sunnah*, (ʿAmmān: Dār Usāmah li al-Nashr wa al-Tawzīʿ, 1st edn., 1999), 541.

³²⁹ Fawzān, *Istithmār Amwāl al-Zakāh wa Mā fī Ḥukmihā min Al-Amwāl*, 147–48.

³³⁰ Shubayr, “Istithmār Amwāl Al-Zakāh Ruʾyā Fiqhiyyah Muʿāṣirah”, 3–40.

³³¹ Ali Ozek, “Zekatin Nemalandirilmesi”, in *Bir Sosyal Güvenlik Kurumu Olarak Kurʾan ve Sunnette Zekat* (Istanbul: Ensar Nesriyat, 2008), 361–69; Kirenci, “Islam Hukukunda Zekat Mallarının Nemalandirilmesi”, 128.

³³² It is important to state that the *fatwā* issued by Federal Territory Mufti Office was about short-term investment of *zakāh* funds.³³² For all the *fatwās* mentioned look at “*Fatwās Published About the Investment of Zakāh*”.

³³³ Muḥammad ʿAbd al-Raḥmān al-Ḥifzāwī, “Aḥkām Istithmār Amwāl Al-Zakāh Wa Taṭbīqātuḥu”, *Dossiers de Recherches En Économie et Gestion*, vol. 2, no.1 (2013): 155.

- b. There should be a presumption that is closer to certainty (*ẓann al-ghālib*) that there will be a genuine and preponderant interest (*maṣlahah ḥaqīqiyah rājiḥah*) for the *zakāh* recipients in the investment of *zakāh* assets. In this regard, if the investment project is a school or hospital, there must be certainty that *aṣnāf* needs these institutions in terms of education and health and that the institutions in question have the capacity to meet this deficiency.³³⁴
- c. When *zakāh* funds are invested, there is a possibility of making a profit but also a possibility of loss. For this reason, when making an investment decision, it is not considered permissible to choose investment opportunities where the probability of loss is high or where the probability of loss and profit are equal. Accordingly, the investment should be made in fields where there is a presumption closer to certainty (*ẓann al-ghālib*) that the possibility of loss is small. Regarding the use of orphan money for commercial purposes, some jurists stated that orphan money should be invested in safe trade places without endangering the principal. Likewise, it is necessary to be careful and act responsibly when investing *zakāh* assets, as when trading with orphans' assets.³³⁵
- d. Investment activity must be carried out in fields that are considered legitimate by *sharī'ah*. One should not trade in *ḥarām* businesses on the grounds of *maṣlahah*. Therefore, *zakāh* funds cannot be used as an investment tool in prohibited activities such as interest-based banking and financial leasing, factoring, or in religiously illegitimate fields such as those including alcoholic beverages, games of chance, gambling, and pork.³³⁶
- e. Investment activities must be carried out under the permission and supervision of the ruler or the persons or institutions authorized by the ruler. Only legal authorities can act on behalf of *zakāh* beneficiaries and dispose of *zakāh* funds for their benefit. Accordingly, it should not be possible for any intermediary institution to engage in investment

³³⁴ Ibid., 156.

³³⁵ Al-Bahūtī, *Kashshāf al-Qannāʿ*, 8:388.

³³⁶ Al-ʿĀnī, *Maṣārīf al-Zakāh wa Tamlikuhā Fī Daw' al-Kitāb wa al-Sunnah*, 551.

activities with *zakāh* funds unless permission is obtained from official authorities.³³⁷

- f. According to some scholars, the rights of the *zakāh* institution should be protected by legal contracts. In addition, the *zakāh* institution must ensure that the profits must be delivered to the rightful owners and that all funds collected or invested within the scope of the *zakāh* will be offered only to the places where *zakāh* should be spent.³³⁸
- g. In order to predict the profit/loss possibilities in investment projects, the committee that will carry out the investment activity must consist of trustworthy, reliable, and experts in their field. It is deemed more appropriate to include jurists besides the economic experts and investment consultants in this committee to supervise the investment of the *zakāh* from a *Sharī'ah* compliance perspective.
- h. Before initiating the investment, all necessary reports must be prepared by the experts in the committee responsible for the investment to ensure the success of investment projects, such as conducting feasibility studies and field research. Likewise, all necessary precautions must be taken to avoid losing the principal used in the investment activity and the profits that are likely to be obtained. Accordingly, buildings constructed or properties purchased within the framework of investment projects can be secured, for example, through takaful (Islamic) insurance. Additionally, unanimity among the committee members may be required when making investment decisions. Also, to prevent unexpected losses during the investment activity, the committee members may be required to act as legal guarantors for their decision and have compensation responsibilities in case of any negligence during the feasibility studies or decision process.³³⁹
- i. In case of emergency or need, it should be possible to sell the businesses or properties purchased within the framework of *zakāh* investment projects, quickly liquidate them, and deliver them to the beneficiaries. Again, in case of any emergency, it should be possible to

³³⁷ Ibid., 549; Al-Ḥifzāwī, “Aḥkām Istithmār Amwāl Al-Zakāh Wa Taṭbīqātuhu”, 156.

³³⁸ Al-ʿĀnī, *Maṣārīf al-Zakāh wa Tamlikuhā Fī Daw' al-Kitāb wa al-Sunnah*, 550–51.

³³⁹ Fawzān, *Istithmār Amwāl al-Zakāh wa Mā fī Ḥukmihā min Al-Amwāl*, 168–69.

withdraw the *zakāh* money invested in institutions such as Islamic banks as soon as possible.³⁴⁰

- j. All benefits and proceeds from investments should be used exclusively for *aṣnāf*. For example, if hospitals and schools are established within the scope of *zakāh* investment, these projects' benefits must reach only the *zakāh* beneficiaries. For sure, in these institutions that will serve the public interest, other citizens, as well as *zakāh* beneficiaries, will receive similar services. However, everyone who receives services other than *zakāh* recipients should be provided with the relevant service for a fee. Then, the profits must be returned to the *zakāh* fund and delivered to the rightful *aṣnāf*.³⁴¹
 - k. If the ownership of shares of the investment project is transferred to *aṣnāf*, a legal provision must be made stating that the allocated shares cannot be sold, or their ownership cannot be transferred for a certain period. Thus, the possibility of preventing the success of the investment project by selling shares by *aṣnāf* will be eliminated.³⁴²
3. Among the scholars who allow the investment of *zakāh* funds, some suggest that the permission regarding the *zakāh* shares that would be used for investment does not comprise all *zakāh* recipients. Only some recipients' shares can be utilized for this purpose. In this context, three approaches can be mentioned regarding *aṣnāf* whose shares can be used as investment tools.
- a. The first group is those who argue that the shares of six groups other than the poor and the needy can be utilized for investment. *Aḥmad Bazī' al-Yāsīn*, *Ādam Shaykh 'Abd Allāh*, and *Tījānī Ṣābūn Muḥammad* are among the scholars who opine as the above.³⁴³ In this sense, two methods are recommended. The first is to invest funds and shares belonging to the six classes and leave the shares belonging to the poor

³⁴⁰ Khitām 'Ārif Ḥasan 'Amāwī, "Dawr al-Zakāh Fī al-Tanmiyah al-Iqtisādiyyah" (Master thesis, An-Najah National University, 2010), 96–97.

³⁴¹ Kirenci, "Islam Hukukunda Zekat Mallarinin Nemalandirilmesi", 138.

³⁴² Al-'Ānī, *Maṣārīf al-Zakāh wa Tamlikuhā Fī Daw' al-Kitāb wa al-Sunnah*, 551.

³⁴³ For their opinions, look respectively at Aḥmad Bazī' al-Yāsīn, "Tawzīf al-Zakāh Fī Mashārī' Dhāt Rī' Bilā Tamlik Fardī Li al-Mustaḥiqq", *Majallah Majma' al-Fiqh al-Islāmī al-Tābi' Li Munazzamah al-Mu'tamar al-Islāmī Bi Jiddah*, no.3 (1987): 62–63; Ādam Shaykh, "Tawzīf al-Zakāh Fī Mashārī' Dhāt Rī' Bilā Tamlik Fardī Li al-Mustaḥiqq", 73–74; Tījānī Ṣābūn Muḥammad, "Tawzīf al-Zakāh Fī Mashārī' Dhāt Rī' Bilā Tamlik Fardī Li al-Mustaḥiqq", *Majallah Majma' al-Fiqh al-Islāmī al-Tābi' Li Munazzamah al-Mu'tamar al-Islāmī Bi Jiddah*, no.3 (1987): 82.

and the needy to be distributed to them. The second is to distribute *zakāh* directly to the poor and the needy without classifying *zakāh* as shares belonging to eight groups and then to invest what is left over and remains after this distribution.

- b. The second group is those who divide the *zakāh* recipients into the first four groups and the last four groups, based on the order of mention in the relevant verse and do not allow the *zakāh* share of the first four groups to be used for investment purposes, while allowing this for the *zakāh* share of the second four groups. In the decision taken by the Kuwait Zakat Institution at the *zakāh* congress dated 1992, it was stated that there is no *tamlīk* requirement for the last four classes. For this reason, some contemporary scholars, such as *Rūḥān Imbāy*, state that the investment of *zakāh* assets is permissible provided that it is made from the funds belonging to the last four classes, not from the funds belonging to the first four classes.³⁴⁴ In brief, the argument for this view is that in the verse where the recipients of *zakāh* are mentioned, the first four classes are mentioned with the preposition “*lām*,” while the last four classes are mentioned with the preposition “*fī*.” While “*lām*” is interpreted to mean *tamlīk*, “*fī*” means *ẓarfīyyah*, which does not require any transfer of ownership. Accordingly, the shares belonging to the last four can be used for the benefit of these groups without any transfer of ownership of the shares to them. Undoubtedly, the investment of shares belonging to these groups is one of the ways of using the shares for the benefit of these groups.
- c. A third group of scholars, including *Wahbah al-Zuhaylī*³⁴⁵ and *Ibn Bayyah*³⁴⁶, argued that only the *zakāh* share belonging to the *fī sabīl Allāh* group can be used for investment purposes. The fact that the condition of *tamlīk* was made more flexible for *fī sabīl Allāh* compared to other groups in classical *fiqh* works may have been effective, in the opinions of these scholars. Likewise, it should not be overlooked that

³⁴⁴ *Rūḥān Imbāy*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rīḥ*”, 83–84.

³⁴⁵ *Wahbah al-Zuhaylī*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rīḥ Bilā Tamlīk Fardī Li al-Mustaḥiqq*”, *Majallah Majmaʿ al-Fiqh al-Islāmī al-Tābiʿ Li Munazzamah al-Muʿtamar al-Islāmī Bi Jiddah*, no.3 (1987): 78–79.

³⁴⁶ *Ibn Bayyah*, “*Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rīḥ*”, 86.

although some contemporary scholars, such as *Yūsuf al-Qaradāwī*, limit *fi sabīl Allāh* to *jihād*, they interpret the concept of *jihād* itself broadly.³⁴⁷

4. A group of scholars, like *Muḥammad ‘Aṭā al-Sayyid*, stated that *zakāh* should be distributed to all *aṣṇāf* first and that if there is excess, the remaining funds can be used for investment purposes. According to *al-Sayyid*, only this surplus can be utilized for investment purposes.³⁴⁸ On the other hand, scholars like *Aḥmad ibn Ḥamd al-Khalīlī* claim that poverty will never end in today’s conditions and that even if there is no need in one region, *zakāh* should be delivered to the beneficiaries in another region. Therefore, no surplus funds will be left, it will not be possible to use *zakāh* for investment.³⁴⁹ However, it is known that surplus *zakāh* funds are used in investment projects in countries such as Malaysia, which adopt the view of the locality of *zakāh* and do not send *zakāh* to places other than the state where it is collected.³⁵⁰ Additionally, in the *fatwā* issued by the Malacca State Mufti Department, it is stated that:

In principle, the *zakāh* fund should not be invested. However, if the distribution of *zakāh* has been made perfectly to all the *aṣṇāf* who have the right to own it and it is found that there is still a surplus, then it is permissible to invest the *zakāh* fund for the benefit of the general public, as long as the following conditions are met...

Accordingly, it is possible to classify this *fatwā* with those who suggest that only the excess *zakāh* fund can be utilized for the investment.³⁵¹ Also, in the *fatwā* issued by the Sarawak State Mufti Department, one of the conditions was that the fund to be used for the investment should be the *zakāh* that remained in excess after being distributed to all classes.³⁵²

³⁴⁷ Al-Qaradāwī, *Fiqh al-Zakāh*, 551–53.

³⁴⁸ Muḥammad ‘Aṭā al-Sayyid, “Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rīḥ Bilā Tamlik Fardī Li al-Mustaḥiqq”, *Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu’tamar al-Islāmī Bi Jiddah*, no.3 (1987): 62.

³⁴⁹ Aḥmad ibn Ḥamd al-Khalīlī, “Tawzīf al-Zakāh Fī Mashārīḥ Dhāt Rīḥ”, 80.

³⁵⁰ Awang, “Istithmār Amwāl al-Zakāh wa Taṭbīqātuḥu Fī Bayt al-Māl Bi Mālīzyā”, 162–63.

³⁵¹ See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/12059> (accessed 15 October, 2023).

³⁵² See <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/15946> (accessed 06 October, 2023).

5. In these modern times, it is clear that not all *zakāh* can be distributed at once, and a certain period is needed for *zakāh* institutions to deliver *zakāh* to the rightful recipients. Since the identification of *aṣnāf*, following certain procedures for *zakāh* distribution, starting and ending dates of the aid campaigns organized in accordance with the legal procedure, and making the distribution gradually to those in need due to some difficult conditions such as war, disaster, and epidemic diseases are required, it is not possible to deliver *zakāh* to the rightful beneficiaries at once. The fact that the *zakāh* fund, which reaches high amounts during this period, is left idle and succumbed to constantly changing economic dynamics, exchange rate fluctuations, and inflation creates a disadvantage for the beneficiaries. For this reason, some jurists have suggested investing these *zakāh* funds that are waiting to be distributed. Moreover, investing the *zakāh* and increasing it by the time it is planned to be delivered to the beneficiaries does not include any violation of *tamlīk* or *fawr* for those who consider them as necessary conditions. In this case, the *zakāh* fund is not distributed earlier to the beneficiaries due to an excuse, but it has already been planned to be delivered to the beneficiaries when the specified period for distribution comes.

It is possible to suggest here that the *zakāh* funds that MAIWP uses for investment are generally the funds that remain after all *aṣnāf* have been offered their share and their basic needs have been met. In this respect, MAIWP's *zakāh* investment can be categorized under the method described in point four above, which is the investment of excess and remaining funds of *zakāh*. Additionally, it is also highly likely that MAIWP also used the funds awaiting distribution for short-term investments. In other words, it is very likely that there are also investment practices that fall within the method described in point five. In light of the aforementioned perspectives on *zakāh* investment, the researcher will now present the arguments of all parties using a binary classification: those who allow *zakāh* investment and those who do not. Subsequently, viewpoints will be concisely analysed, followed by the researcher's preferred stance.

4.2.2.4.2 The Arguments of Those Who Do Not Allow Zakāh Investment

Jurists who do not consider *zakāh* investment permissible have put forward some arguments to justify their view. The arguments will be shared and discussed together with the objections raised by the opponents.

1. Investing *zakāh* money in industrial, agricultural, or commercial projects leads to postponing the distribution of *zakāh* due to the nature of such projects until the expected profits are made. However, this situation means a violation of the immediate distribution of *zakāh* (*fawr* condition), which was deemed necessary by most of the classical jurists since, in this case, *zakāh* is not immediately distributed to those in need.³⁵³ The following *ḥadīth* is mentioned to justify this view:

‘Uqbah ibn Ḥārith said: Once I performed the ‘Aṣr prayer behind the Prophet ﷺ at al-Madīnah. He got up hurriedly after finishing the prayer with Taslīm, and crossing the rows of the people, went to one of the dwellings of his wives. The people were startled at his speed, and when he came back and saw their astonishment at his urgency he said, “I recalled that there was left with me a piece of gold which was meant for charity; I did not like it to divert my attention from Allāh's worship, so I have ordered that it should be distributed.”³⁵⁴

The immediate distribution of *zakāh*, relied upon by those who do not allow *zakāh* investment, was previously examined under the relevant title.³⁵⁵ The researcher concluded that according to the *Ḥanafī madhhab*, the order of *zakāh* implies *tarākhī*, which means it is allowed to postpone *zakāh* distribution.³⁵⁶ On the other hand, although the *Shāfi‘ī*, *Mālikī*, and *Ḥanbalī madhhabs* have declared that *zakāh* should be delivered to the rightful owners immediately,³⁵⁷ the delay of *zakāh* distribution was allowed in some cases, such as if there is a benefit (*maṣlahah*) or a necessity (*ḍarūrah*). Based on this, if this presumption of benefit is thought to be a real benefit

³⁵³ ‘Ulwān, *Aḥkām Al-Zakāh ‘Alā Ḍaw’ al-Madhāhib al-Arba‘ah*, 53–54.

³⁵⁴ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Bāb man ṣallā bi al-nās fa dhakara ḥājah fa takhaṭṭāhum, vol.1, Ḥadīth 813, 291.

³⁵⁵ Look at the title “The Implication of the Command on Zakāh (Dalālah al-Amr)”.

³⁵⁶ Al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 2:3; Al-Samarqandī, *Mīzān al-Uṣūl*, 212.

³⁵⁷ Al-Juwaynī, *Nihāyah al-Maṭlab*, 3:103–4; al-Ghazzālī, *Al-Wasīṭ*, 2:442; Al-Maqdisī, *Al-‘Uddah*, 152; Al-Baghdādī, *Al-Ma‘ūnah*, 1:367.

(*maṣlahah haqīqiyyah*), there should not be anything wrong with using *zakāh* in income-generating projects according to *madhhabs* other than the *Ḥanafī* as well. In response, it is also argued that the immediate performance of *zakāh* is a condition for the payment, not the distribution. Accordingly, individuals should pay their *zakāh* to the state or the relevant institution immediately. However, the state or the relevant institutions are not obliged to distribute *zakāh* to the *aṣnāf* immediately.

2. The use of *zakāh* as an investment tool also results in the ownership of *zakāh* assets not being transferred to *zakāh* recipients individually. This means that the condition of individual ownership of *zakāh* by the recipients, which most scholars consider a condition, is violated, and therefore, the investment is not permissible.³⁵⁸

The individual ownership of *zakāh* by the recipients is another issue that has already been discussed under the relevant title.³⁵⁹ In this context, some classical jurists, such as those in the *Mālikī madhhab*, do not consider *tamlīk* as a mandatory condition for the last four groups of *zakāh* recipients. However, some argue that *tamlīk* is compulsory for all groups except for *fī sabīl Allāh*, based on the *fatwā* of Al-Shirbīnī. According to him, the ruler can buy horses and weapons from the *zakāh* share belonging to the *fī sabīl Allāh*, endow (*waqf*) these items in the way of *Allāh*, and lend (*i‘ārah*) them to the warriors for use on the condition that they are returned at the end of the war.³⁶⁰ Accordingly, as mentioned in the section on the methods of *zakāh* investment,³⁶¹ while some scholars suggest that the shares of the last four groups can be used for investment, others claim that only the shares belonging to the *fī sabīl Allāh* group can be utilised for investment since the *tamlīk* is not a compulsory condition for them. Furthermore, even if it is accepted that the condition of *tamlīk* is valid for all classes, it can be suggested that the head of state and the legal authorities are not required to enforce the condition based on the presumptions of *maṣlahah* and necessity. Additionally, considering the modern period, it was also argued that the

³⁵⁸ Ādam Shaykh, “Tawzīf al-Zakāh Fī Mashārīc Dhāt Rīc”, 53.

³⁵⁹ Look at “Al-Tamlīk (The Transfer of Ownership of Zakāh)”.

³⁶⁰ Al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj*, 4:187.

³⁶¹ Look at “Discussion of Investment of Zakāh”.

tamlīk should be considered as collective ownership, where it is guaranteed that all the benefits from investment activities will only be distributed to the *aṣṇāf*.³⁶²

3. *Zakāh* is a right granted only to *aṣṇāf*, and accordingly, it is entrusted to the ruler or institutions as his representatives. The scope of the trust is to protect the *zakāh* and deliver it to the rightful *aṣṇāf*. Therefore, since *zakāh* assets are considered to be in trust (*amānah*) with the ruler, the ruler or his representatives have no right to invest or dispose of them before distributing them to *aṣṇāf*.³⁶³

The proponents of the investment of *zakāh* argue against this evidence by pointing out that the ruler is a legal guardian (*waliyy*), not an agent (*wakīl*), in the collection and distribution of *zakāh*.³⁶⁴ Therefore, the state or the legal authorities have the right to make decisions about the investment of *zakāh* without being subject to the permission of the beneficiaries, based on their guardianship authority and their right to act according to the public interest. In addition, these scholars also state that even if the ruler is to be considered an agent and not a *waliyy*, this agency is an unrestricted agency (*al-wakālah al-muṭlaqah*), and therefore the state has the authority to dispose of the *zakāh* fund in light of benefits and necessities.

4. When *zakāh* funds are used in investment activities, there exists the potential for profit and loss. If there are economic losses, neither the *mukallaf*, the institution, nor the state will be responsible for compensation. For this reason, it is not permissible to embark on such a dangerous adventure with the entrusted *zakāh* monies. Moreover, it is possible that such losses might potentially result in bad connotations in the minds of Muslims, undermine the significance of *zakāh*, and induce hesitancy and reluctance among Muslims to pay *zakāh* to *zakāh*-administering institutions.³⁶⁵

However, as discussed earlier, the jurists have already put forward some conditions for the investment to be permissible. In this context, conditions

³⁶² Shubayr, “Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh”, 415.

³⁶³ Sulaymān, “Jibāyah Amwāl al-Zakāh”, 231.

³⁶⁴ Ibn Qudāmah, *Al-Mughnī*, 4:94; al-Sarakhsī, *Al-Mabsūt*, 2:162.

³⁶⁵ Ādam Shaykh, “Tawzīf al-Zakāh Fī Mashārīc Dhāt Rī”, 53.

have also been set to protect the invested *zakāh* fund from possible losses. Some of these conditions are that the field to be invested in should have a low probability of loss, that the committee that will carry out the investment activity should consist of reliable and expert members, and that the necessary reports should be prepared and feasibility studies should be conducted for the field to be invested in. Moreover, buildings constructed or properties purchased within the framework of investment projects can be secured, for example, through *takaful* (Islamic) insurance. Also, it was argued that the investment committee members should be legal guarantors for their decisions and liable for compensation in the event of possible negligence.

5. Investment activity aims to solve the problem of poverty in the future. However, *zakāh* is a form of social welfare that aims to solve the current poverty problem. For this reason, it is not permissible to invest *zakāh* while the essential needs of the current poor are waiting to be met.³⁶⁶

First, it should be noted that the jurists who allowed *zakāh* investment in order to prevent any possible victimization of the needy imposed the condition that while *zakāh* assets are invested, *aṣnāf* must not have any urgent needs such as food, clothing, or medicine. If there are any urgent needs, they should be met first.³⁶⁷ Therefore, it is not permissible to invest *zakāh* before the basic needs of the poor have been met. Moreover, in this modern time, when the concepts of poverty and need have undergone great changes, poverty covers a wide range of fields, from food to education, shelter to health care, and transportation to communication. What is important at this time is not to focus on meeting existing needs but to provide continuous, stable, and sustainable assistance and to provide deep-rooted solutions to poverty, not to alleviate it with temporary dressings or interventions. Increasing *zakāh* through investment and establishing institutions that provide education, vocational training, etc. to the poor will ensure this permanent improvement. In this way, the poor will no longer be dependent on monthly aid, and many of them will likely become *zakāh* payers after establishing their own businesses. Accordingly, interventions

³⁶⁶ Al-ʿĀnī, *Maṣārīf al-Zakāh wa Tamlikuhā Fī Dawʾ al-Kitāb wa al-Sunnah*, 547.

³⁶⁷ Al-Ḥifzāwī, “Aḥkām Istithmār Amwāl Al-Zakāh Wa Taṭbīqātuḥu”, 155.

that are slightly later but effective and fundamental are more in line with the *maqāsid al-zakāh* than early but short-lived interventions.

6. The investment of *zakāh* will cause a lot of administrative costs in the investment process, which will be paid out of the *zakāh* wealth. Thus, the beneficiaries will receive less than the amount of *zakāh* that they are expected to receive and thus suffer a kind of loss of rights. For this reason, it is not permissible for *zakāh* money to be used for investment.³⁶⁸

This argument was mentioned by *Taqiyy al-ʿUthmānī*. However, *ʿAbd al-ʿAzīz Khayyāt*, who was present at the same meeting, countered this argument by recalling the class of “*zakāh* officers” as one of the *zakāh* recipient groups and stated that it is possible to cover the administrative costs of *zakāh* investment from the funds allocated for *zakāh* officers.³⁶⁹ In addition, administrative costs can also be met from the state treasury or incomes from other charities and donations instead of the *zakāh* funds.

7. The rich, who are not entitled to *zakāh*, will also receive services from projects, such as hospitals, schools, etc., established as part of the investment of *zakāh*. In this case, although it is necessary that the *zakāh* fund be allocated to those who are entitled to it, wealthy people will also get services from projects established with *zakāh* funds, thus violating the divine command.³⁷⁰

This evidence is not a valid proof that can be used against those who allow the investment of *zakāh*. This is because they have already stipulated that all benefits and proceeds from investments should be limited to *aṣnāf*. For sure, in these institutions that will serve the public interest, other citizens, as well as *zakāh* beneficiaries, will receive similar services. However, those who receive services other than *zakāh* recipients should pay for these services. Afterward, the gains must be returned to the *zakāh* fund and distributed to the *aṣnāf* from there.³⁷¹

8. When the idea of using *zakāh* for investment purposes is proposed, the objectives are mentioned as developing the *zakāh* fund through investment,

³⁶⁸ Taqiyy al-ʿUthmānī, “Tawzīf al-Zakāh Fī Mashārīʿ Dhāt Rīʿ”, 67.

³⁶⁹ ʿAbd al-ʿAzīz al-Khayyāt, “Tawzīf al-Zakāh Fī Mashārīʿ Dhāt Rīʿ”, 72.

³⁷⁰ Al-ʿĀnī, *Maṣārīf al-Zakāh wa Tamlikuhā Fī Ḍawʾ al-Kitāb wa al-Sunnah*, 548.

³⁷¹ Kirenci, “Islam Hukukunda Zekat Mallarinin Nemalandirilmesi”, 138.

increasing employment opportunities, reducing poverty, and thus supporting the economic development of Islamic countries. However, it is possible to achieve all of these goals through charity and donation funds other than *zakāh*. Therefore, there is no need to use *zakāh* for such purposes.³⁷²

Of course, there is no harm in utilizing charity and donations in this sense. However, it is important to remember that charity and donation funds do not have the same potential as *zakāh* funds. *Zakāh* is a compulsory form of charity and is given regularly every year. However, charity and donation funds do not have a specific obligation or regular payments. Therefore, they do not have the same potential as *zakāh*, and it is safe to assume that in many Islamic countries, there will not be enough charity and donations to fulfil the above-mentioned objectives.

4.2.2.4.2 The Arguments of Those Who Allow Zakāh Investment

Those who claim that *zakāh* funds can be used for investment purposes have proposed some arguments to support their view. In this context, some *ḥadīths* of the Prophet ﷺ and narrations from the period of the caliphs and later periods have been brought as evidence on the subject.

1. Narrated by Anas, “Some people from ‘Uraynah tribe came to Madīnah and its climate did not suit them, so Allah’s Messenger ﷺ allowed them to go to the herd of camels (given as *Zakāh*) and drink from their milk and urine (as medicine).”³⁷³

The shared part of *ḥadīth* demonstrates that *zakāh* can be given to beneficiaries (in this case, they are *ibn al-sabīl*) not only in the form of assets but also in the form of benefits or usufructs (in this situation, it is the camel’s milk). Rearing camels for their benefits is a type of investment where the assets are used to generate additional benefits. Accordingly, as

³⁷² Ibid., 84.

³⁷³ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Bāb isti‘māl ibl al-ṣadaqah wa albāniḥā li abnā’ al-sabīl, vol.2, Ḥadīth 1430, 546.

can be seen from this *ḥadīth*, investing *zakāh* is not a contemporary issue since it was also invested during the Prophet's ﷺ time. On the other hand, those who claim that the investment is not permissible interpreted the *ḥadīth* as the Prophet ﷺ wanted to keep *zakāh* camels in a certain pasture until they were delivered to *aṣnāf*. The purpose was not to invest and increase the *zakāh* wealth but to preserve and protect the animals until distribution. When the rightful beneficiaries came out, the *zakāh* camels would be taken from the pastures and delivered to the beneficiaries. During this process, it was natural for the animals to be milked and reproduce, and this should not be interpreted as an investment activity.

However, even though it could be argued that the camels were not intended for investment but rather for distribution, the *ḥadīth* clearly states that investment using *zakāh* assets could still be performed while the *zakāh* assets await distribution. In addition, it is understood from the *ḥadīth* that the Prophet ﷺ did not immediately distribute the *zakāh* animals to the beneficiaries. Based on this, it can be concluded that the ruler has the discretion to distribute the *zakāh* funds according to the needs of the beneficiaries, and until the funds are distributed, various activities can be carried out to protect and multiply them according to the conditions of the period.

2. *Zayd ibn Aslam* narrated from his father that

‘Abd Allāh and ‘Ubayd Allāh, the sons of ‘Umar ibn Khaṭṭāb went out with the army to ‘Irāq. On the way home, they passed by Abū Mūsā al- Ash‘arī who was the amīr of Baṣrah. ... Then he said, “There is some of the property of Allāh which I want to send to the Amīr al-Mu’minīn, so I will lend it to you, and you can buy wares from Iraq and sell them in Madīnah. Then give the principal to the amīr al-mu’minīn, and you keep the profit.” They said that they would like to do it, and so he gave them the money and wrote to ‘Umar to take the money from them. When they came to sell, they made a profit, and when they paid the principal to ‘Umar he asked, “Did he lend everyone in the army the like of what he lent you?” They said, “No.” ‘Umar said, “He made you the loan because you are the sons of me, so pay the principal and the profit.” ‘Abd Allāh was silent. ‘Ubaydullāh said, “You do not need to do this, amīr al-mu’minīn. Had the principal decreased or been destroyed, we would have guaranteed it.” ‘Umar said, “Pay it.” ‘Abd Allāh was silent, and ‘Ubaydullāh repeated it. A man who was sitting with ‘Umar said,

“Amīr al-mu’minīn, better that you make it a qirād.” ‘Umar said, “I have made it qirād.” ‘Umar then took the principal and half of the profit, and ‘Abd Allāh and ‘Ubayd Allāh, the sons of ‘Umar took half of the profit.”³⁷⁴

From this narration, it is clear that the caliph ‘Umar approved of the investment of the property belonging to *Bayt al-Māl*, which was called in by the narrator as “the property of *Allāh*”. Undoubtedly, the property belonging to *Allāh* includes the *zakāh* wealth. In this example, the trading activity plied by ‘Umar’s sons was for the benefit of his sons and the *bayt al-māl*, not the *zakāh* beneficiaries. However, since this investment and trading activity by the sons of ‘Umar was considered to be valid, so must be the profit-generating activities that are in the interest of the beneficiaries and whose profits are returned to them.

Those who oppose this argument claim that what is meant here by “the property of *Allāh*” is not *zakāh* but other revenues belonging to *bayt al-māl*. Also, there are narrations that ‘Umar did not approve of the transfer of *zakāh*. For example, when *Mu‘ādh* wanted to send the *zakāh* he collected in *Yaman* to *Madīnah*, ‘Umar said: “I did not charge you to collect *zakāh* or *jizyah* (and come with to *Madīnah*), but I sent you to take from their rich people and return it to their poor.”³⁷⁵, which means that the property sent from *Baṣrah* to *Madīnah* was not *zakāh* property. In response to this objection, the proponents of *zakāh* investment say that what is meant by “the property of *Allāh*” in the *hadīth* is *zakāh*. In fact, *al-Ṭabarī* states that the phrase “the property of *Allāh*” (*māl Allāh*) in verse 33 of *Sūrah al-Nūr* refers to *zakāh*. Moreover, even if it is assumed that *zakāh* is not included in “the property of *Allāh*”, the investment of the wealth belonging to the *bayt al-māl*, which is the right of *Allāh* (*haqq Allāh*), still constitutes evidence by *qiyās* for the investment of *zakāh*, which is also the right of *Allāh*. The objection that ‘Umar did not consider the transfer of *zakāh* permissible is also not established since the narration, which was cited as evidence, goes on to say that *Mu‘ādh* stated that there was no one left in

³⁷⁴ Malik ibn Anas, *Al-Muwatta’*, ed. Muḥammad Muṣṭafā Al-A‘zamī (Abu Ḥabīb: Mu’assasah Zāyid ibn Sulṭān ‘Āl Niḥyān Li al-A‘māl al-Khayriyyah Wa al-Insāniyyah, 1st edn., 2004), Bāb mā jā’a fī al-qirād, vol.4, Ḥadīth 2534, 992.

³⁷⁵ Al-Qāsim ibn Salām Abū ‘Ubayd, *Kitāb al-Amwāl*, ed. Khalīl Muḥammad Harās (Bayrūt: Dār al-Fikr, n.d.), 710.

Yaman to receive *zakāh* and that he continued to send *zakāh* to *Madīnah* that year and the following years.³⁷⁶

3. *Ibn Ḥajar al-ʿAsqalānī* mentioned that it is narrated from *Ibn Abī Shaybah* with an authentic chain of transmission that *ʿUmar* declared *al-Rabadhah* as a protected site (*ḥimā*) to be used for (the grazing of) *zakāh* camels.³⁷⁷
4. Also *Zayd ibn Aslam* said,

ʿUmar ibn al-Khaṭṭāb drank some milk, which he liked, and he asked the man who had offered him the water, “Where did this milk come from?” The man told him that he had come to a watering place, which he named, and had found grazing livestock from the *zakāh* watering there. He was given some of their milk, which he then put into his water-skin, and that was the milk in question. ʿUmar then put his hand into his mouth to make himself vomit.”³⁷⁸

Based on these two narrations, it is evident that the practice of not immediately distributing the *zakāh* animals and letting them graze in the pastures and benefiting from their products in the time of the Prophet ﷺ continued in the time of ʿUmar. Therefore, it is possible to claim that the investment of *zakāh* is not a contemporary issue. On the contrary, it is an activity that was practiced and deemed permissible even during the reign of the Rightly-Guided Caliphs.³⁷⁹

5. *Abū ʿUbayd* in his book *Kitāb al-Amwāl*, shares the edict of ʿUmar ibn ʿAbd al-ʿAzīz regarding *aṣnāf*. In this context, the following is mentioned about *Ibn al-Sabīl*:

The share of *Ibn al-Sabīl* is divided into each road according to the number of people who take it and pass through it. It is for every wayfarer who has no shelter or family to seek refuge with, so he is given food until he finds a home or relieves himself. (The shares of *ibn al-sabīl* are) to be placed in well-known places at the hands of trustees. No wayfarer passes by them with a need unless they take him in, feed him, and feed his animals, until what is in their hands is exhausted, God willing.³⁸⁰

³⁷⁶ Abū ʿUbayd, 710.

³⁷⁷ Aḥmad ibn ʿAlī Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī Bi Sharḥ al-Bukhārī*, (Egypt: Al-Maktabah al-Salafiyyah, 1st edn., 1380), 5:45.

³⁷⁸ Malik ibn Anas, *Al-Muwaṭṭaʾ*, māb mā jāʾa fī akhdh al-ṣadaqāt wa al-tashdīd fihā, Vol.2, Ḥadīth 924, 379.

³⁷⁹ Fawzān, *Istithmār Amwāl al-Zakāh wa Mā fī Ḥukmihā min Al-Amwāl*, 129–30.

³⁸⁰ Abū ʿUbayd, *Kitāb Al-Amwāl*, n.d., 690.

‘Umar ibn ‘Abd al-‘Azīz organized *zakāh* share of the traveller class according to their needs. The travellers are in need of food and shelter. For this reason, he ordered that the *zakāh* funds allocated to them be placed in “well-known places”, i.e., the caravanserai authorities, to meet the food and shelter needs of travellers. Using these funds, the authorities are tasked with providing food and overnight shelter for the travellers themselves and their mounts. In this case, it is clear that the ownership of *zakāh* was not transferred to the travellers individually, but *zakāh* was delivered to them in the form of benefit. As a result, there is no harm in carrying out projects such as establishing schools, hospitals, guesthouses, health centres, etc. from the *zakāh* fund, taking into account the benefit of the *zakāh* beneficiaries. These projects will provide the beneficiaries with the opportunity to benefit from the services provided by these foundations free of charge. Simultaneously, the *zakāh* fund will also be moisturized with the fees to be collected from those who want to benefit from such foundations other than the beneficiaries, and the profits will be returned to the beneficiaries.

6. There is also a narration that ‘Umar ibn ‘Abd al-‘Azīz ordered the marriage of single people from the *bayt al-māl* money:

When ‘Abd al-Ḥamīd ibn ‘Abd al-Raḥmān, the governor of ‘Irāq, informed ‘Umar ibn ‘Abd al-‘Azīz that there was a surplus of money in the *bayt al-māl*, ‘Umar wrote in reply: “Look at every single who has no wealth and wants you to marry him, so marry him and give dower (*mahr/ṣadāq*) on his behalf.” So, ‘Abd al-Ḥamīd wrote to him back: “I have married off everyone I find, and there is still money left in the treasury of the Muslims...”³⁸¹

However, it can be argued that the practice of marrying singles mentioned in this narration was carried out from the *bayt al-māl* fund other than *zakāh* and that the *zakāh* funds were not used for this purpose. The fact that *Abū ‘Ubayd* recorded this narration under the title “Chapter of expediting the distribution of *fay*’ (booties without battle) and dividing it among its

³⁸¹ Ibid., 319.

people”³⁸² strengthens this possibility. The scholars who suggest that it is permissible to invest *zakāh* money have also relied on some *hadīths* that encourage work and production, and some others that encourage endowment (*waqf*) and ongoing charity (*ṣadaqah jāriyah*).

7. Narrated by *Anas ibn Mālik* that:

A man of the Anṣār came to the Prophet ﷺ and begged from him. The Prophet ﷺ asked: Have you nothing in your house? He replied: Yes, a piece of blanket part of which we cover ourselves with and part we spread (on the ground), and a bowl from which we drink water. He said: Bring them to me. So, he brought these articles to him and The Messenger of Allāh ﷺ took them in his hands and asked: Who will buy these two? A man said: I shall buy them for one dirham. He said twice or three times: Who will offer more than one dirham? A man said: I shall buy them for two dirhams. He gave them to him and took the two dirhams. Giving them to the Anṣārī, he said: Buy food with one of them and hand it to your family and buy an axe with the other and bring it to me. He then brought the axe to him. The Messenger of Allāh ﷺ fixed a handle on it with his own hands and said: Go and gather firewood and sell it, and do not let me see you for fifteen days. The man went away, gathered firewood, and sold it. When he had earned ten dirhams, he came to him and bought a garment with some of them and food with the others. The Messenger of Allāh ﷺ then said: This is better for you than coming with begging (appearing) as a spot on your face on the Day of Judgement...³⁸³

Two important inferences regarding the topic can be drawn from this *hadīth*. First, the Prophet ﷺ found a radical solution to the begging man's poverty rather than providing him with temporary aid. In this sense, he encouraged him to start his new profession by fixing the handle of the axe with his own hands. In this way, the man began to earn his own livelihood and even had hopes of becoming a *zakāh* payer in the future. Following the example of the Prophet ﷺ, it is possible to buy suitable tools and equipment from *zakāh* funds for the poor who can do business, or to open businesses with *zakāh* funds and employ such needy people there. In this sense, the establishment and development of microfinance projects from *zakāh* funds is in line with

³⁸² *Bāb Taʿjīl Ikhrāj al-Fay' wa Qismatuh Bayna Ahlih.*

³⁸³ Abū Dāwud Sulaymān ibn al-Ashʿath al-Sijistānī, *Sunan Abī Dāwud*, ed. Muḥammad Muḥyī al-Dīn ʿAbd al-Ḥamīd (Bayrūt: Al-Maktabah al-ʿAṣriyyah, n.d.), Bāb mā tajūz fihī al-masʿalah, vol.2, Ḥadīth 1641, 120.

the meaning of the *hadīth*. Secondly, the Prophet ﷺ ensured the investment of the beggar's property by selling the goods in his hands, in this case a piece of blanket and a wooden bowl, and using the money obtained to enable the beggar to start a profession from which he could earn an income. This action of the Prophet ﷺ, who had the status of head of the state, indicates that it is permissible for the ruler or his representative to invest the *zakāh* funds for the benefit of the beneficiaries.

8. *Abū Hurayrah* reported *Allāh's* Messenger ﷺ as saying:

When a man dies, his acts come to an end, but three, ongoing charity, or knowledge (by which people) benefit, or a pious son, who prays for him (for the deceased).³⁸⁴

The Messenger of *Allāh* ﷺ especially encouraged charities to be *jāriyah*, that is, to be ongoing. In this context, it is more in line with the objectives of the *Sharī'ah* to use *zakāh*, which is a mandatory form of charity, in the establishment of projects that will provide the poor with a permanent income and provide them with job opportunities so that they will not be dependent on anyone for the rest of their lives. In response, it has been argued that the ongoing charity mentioned by the Prophet ﷺ applies to non-mandatory charity and does not include *zakāh*. In addition to the evidence shared so far, a number of analogical reasonings (*qiyās*) have been made as arguments that *zakāh* investment is permissible. Some of them will be discussed here.

9. As mentioned before, the investment of *zakāh* funds by the beneficiaries after they receive their shares to provide a continuous profit for themselves and their family or increase their monthly living is permissible. In comparison to this ruling, it should also be permissible for institutions with the legal authority to invest *zakāh* funds and establish industrial or agricultural projects that generate permanent revenue for the beneficiaries,

³⁸⁴ *Abū al-Husayn Muslim ibn al-Ḥajjāj, Ṣaḥīḥ Muslim*, ed. Aḥmad ibn Rif'at Al-Qurrah Ḥiṣārī, Muḥammad 'Izzat Al-Za'farānī, and Abū Ni'matullāh Muḥammad Shukrī (Turkiye: Dār al-Ṭibā'ah al-Āmirah, 1918), Bāb mā yalḥaq al-insān min al-thawāb ba'd wafātihi, vol.5, Ḥadīth 1631, 73.

which is spent on their needs and provides them with permanent jobs commensurate with their potential and abilities.³⁸⁵

Those who oppose the investment characterize this argument as an analogy with a discrepancy (*qiyās maʿa al-fāriq*). This is because after the *zakāh* property is delivered to the beneficiary, he can dispose of it as he wishes. However, when the authorized bodies carry out the investment activity, the investment is made before the *tamlīk* takes place, which is not acceptable. In response to this objection, the proponents of investment argue that there are different opinions as to whether the *tamlīk* is a condition or not. However, even if *tamlīk* is considered a condition, in investment activities it appears as a collective ownership, where it is guaranteed that all the benefits from investment activities will only be distributed to the *aṣṇāf*.

10. The investment of *zakāh* funds has also been compared to the permissibility of investing and trading with the orphans' property by their guardians (*waṣiyy*) based on the *ḥadīth*:

The Prophet ﷺ addressed the people and said: As for one who is the guardian of an orphan who owns property, then let him trade with it and not leave it (saved and unused) until it becomes consumed by charity (*zakāh*)³⁸⁶

If it is permissible for guardians to invest the property of orphans, it should also be permissible for the *zakāh* assets to be invested for the benefit of the beneficiaries by the *zakāh* institutions, which are in a sense like the guardians. *Zakāh* property is no less valuable than orphan property, so it is best to increase it so that it is not subjected to possible inflation and is delivered to more people.

Objections have been raised that this *qiyās* is also an analogy with a discrepancy. In this context, it has been argued that *zakāh* property cannot be used for investment since *fawr* is a necessary condition for *zakāh* distribution, while orphan property can be traded with because it is not required to deliver it to the orphan until he reaches the age of maturity

³⁸⁵ Sulaymān, “Jibāyah Amwāl al-Zakāh”, 234.

³⁸⁶ Abū ʿĪsā Muḥammad ibn ʿĪsā Al-Tirmidhī, *Sunan al-Tirmidhī*, ed. Bashshār ʿAwād Maʿrūf (Bayrūt: Dār al-Gharb al-Islāmī, 1st edn., 1997), Bāb mā jāʾa fī zakāh māl al-yatīm, vol.2, Ḥadīth 641, 25.

(*rushd*). Likewise, the reason why the guardian is allowed to trade with orphan property is because the orphan is not mature enough (*rashīd*). However, the recipients of *zakāh* are already mature. Therefore, it is not permissible to dispose of the property to which the beneficiaries are entitled without their permission.

11. Just as it is permissible to invest *waqf* property (endowment), it should also be permissible to invest *zakāh* property. This is because just as the beneficiaries of *waqf* have a right to the *waqf* property, so do the beneficiaries of *zakāh* property. Accordingly, if it is permissible for the trustees to dispose of or invest *waqf* property for the benefit of the *waqf* beneficiaries, it should also be permissible for the institutions as legal authorities to dispose of and invest *zakāh* property for the benefit of the *aṣṇāf*.³⁸⁷

As an objection, it was stated that the purpose of endowment is to enable the beneficiaries to benefit from the usufructs (*manfaʿah*) of the property being endowed in such a way that the asset (*ʿayn*) remains. Therefore, it is permissible to increase the benefits and income obtained from the *waqf* by investing it, as there is no condition of *tamlīk al-ʿayn* (transfer of the asset's ownership). In the case of *zakāh*, however, it is required that both the *zakāh* property and its benefits are fully transferred to the beneficiary. Therefore, *zakāh* and endowment cannot be compared.³⁸⁸

12. Taking into account the interests of the Muslims, the Caliph *ʿUmar* left the conquered land of *Sawād* in *ʿIrāq*, which was normally considered as spoil and should have been distributed among the warriors to the local people in return for the payment of a certain portion of the produce to the state as *kharāj*.³⁸⁹ This is the use of *Sawād* land for investment purposes because the owners would cultivate the land, produce, and pay taxes to the state. Therefore, since it is permissible for the head of state to make this choice regarding the conquered lands, taking into account the interests of Muslims, it should also be permissible for the *zakāh* assets to be utilized in investment

³⁸⁷ ZakatHouse, “Al-Munāqashāt”, in *Abḥāth Wa Aʿmāl Al-Nadwah al-Thālithah* (Kuwait: ZakatHouse, 1992), 70.

³⁸⁸ Ibid., 71–72.

³⁸⁹ A type of individual Islamic tax on agricultural land and its produce.

projects by the legal authorities, where the benefits will be delivered to the beneficiaries.³⁹⁰

13. As mentioned earlier, some jurists have interpreted *fi sabīl Allāh* broadly. What *Rāzī* narrated in his book *Maḥāṭib al-Ghayb* based on the *tafsīr* of *al-Qaffāl* that there are scholars who suggest that *fi sabīl Allāh* refers to all charitable deeds such as shrouding the dead, building fortresses, and constructing mosques³⁹¹, or *Mālikīs'* and *Al-Shirbīnī*³⁹²'s permission that the ruler can buy horses and weapons from the *zakāh* share belonging to the *fi sabīl Allāh*, endow (*waqf*) these items in the way of *Allāh*, and lend (*i'ārah*) them to the warriors for use on the condition that they are returned at the end of the war are some examples of this broad interpretation.³⁹³ Based on these views from classical jurists, contemporary scholars who consider the investment of *zakāh* funds permissible argue that if the ruler has the authority to purchase weapons or build fortresses from the *fi sabīlillāh* fund without seeking permission from the *aṣṇāf*, then he also should have the authority to use it for the investment for the benefit of the *aṣṇāf* without individual ownership (*tamlīk*).³⁹⁴ This is a strong argument, especially for those who argue that only *zakāh* funds belonging to the *fi sabīlillāh* group can be used for investment purposes. However, by conducting a *qiyās* with the *fi sabīlillāh* group, the same argument can be mounted for the funds belonging to other groups, although not as strong as the first one.
14. Some jurists have stated that it is not permissible, in principle, to invest *zakāh* funds. However, they also claimed that due to the large number of people who are in need today, the political and economic difficulties in Islamic countries, the increase in income inequality in society, the formation of class differences, and high unemployment rates, *zakāh* investment, which is not permissible in principle, should be exempted from the rule and considered permissible based on *istiḥsān* (juristic preference). By

³⁹⁰ Muḥammad ʿUthmān Shubayr, “Istithmār Amwāl Al-Zakāh”, in *Abḥāth Wa Aʿmāl Al-Nadwah al-Thālithah* (Kuwait: ZakatHouse, 1992), 39–40.

³⁹¹ Fakhruddīn al-Rāzī, *Maḥāṭib al-Ghayb*, 16:87.

³⁹² One of the *Shāfiʿī* scholars.

³⁹³ Al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj*, 4:187; Abū ʿAbd Allāh al-Muwāq, *Al-Tāj wa al-Iklīl*, 3:231–34.

³⁹⁴ Shubayr, “Istithmār Amwāl Al-Zakāh”, 31.

increasing the *zakāh* assets, financing the projects that are in the best interest of the beneficiaries, and ensuring that the beneficiaries have a regular monthly income, they claim, such problems can be alleviated.³⁹⁵

On the other hand, the opponents of this view argue that *istiḥsān* is “excluding a certain issue from a general rule and maxim (*al-qāʿidah al-ʿāmmah*) due to strong evidence”, but for the investment of *zakāh*, there is no evidence strong enough to lead us to resort to *istiḥsān*.

As for the preferred view and opinion on the subject, based on both the issued *fatwās* that do not allow *zakāh* investment and other studies on the subject, the researcher believes that those who prohibit *zakāh* investment basically emphasize the issues of immediate performance of *zakāh* (*al-fawr*) and the transfer of ownership of *zakāh* (*tamlīk*), apart from other supporting side arguments. However, after addressing these subjects in detail under the relevant titles, the researcher came to the conclusion that the immediate performance of *zakāh* is not a condition in the *Ḥanafī madhhab*. Furthermore, in the other *madhhabs*, the delay of *zakāh* distribution is allowed in some cases, such as if there is a benefit (*maṣlaḥah*) or a necessity (*ḍarūrah*). Given today’s realities, the researcher believes that it is at the discretion of institutions administering *zakāh* to conclude whether there is enough degree of *maṣlaḥah* or *ḍarūrah* to permit *zakāh* investment. If they do so, then *al-fawr* in *zakāh* ceases to be a juristic problem for the investment of *zakāh* funds. A similar situation applies to the condition of *tamlīk*. Firstly, there are jurists in classical times, like *Malikīs* and *Ibn Taymiyyah*, who do not regard *tamlīk* as obligatory for the last four groups of recipients. Furthermore, *al-Shawkānī*’s name comes forward as a scholar who does not consider *tamlīk* as a mandatory condition for any group of recipients. Additionally, a significant number of modern jurists reinterpret *tamlīk* and hold the view that it should be understood as beneficial ownership instead of individual ownership. The researcher believes that the view of these jurists is one that should be taken into account, especially in our age of significant changes in the perception and practice of economics and ownership.

³⁹⁵ Ibid., 32.

Based on all these and the arguments of those who allow *zakāh* investment that were discussed earlier, the researcher concludes that *zakāh* investment is permissible and that there is nothing wrong with the investment from a juristic perspective. What is important to note is that during the investment, the conditions set forth by those who permitted the investment are fulfilled. In this context, it is concluded that MAIWP's practice as an institution that invests *zakāh* is not contrary to the *Sharī'ah*. However, it is clear that MAIWP should be more transparent about its *zakāh* investment and should provide more detailed information about the investment in its annual reports.

4.3 CONCLUSION

MAIWP collected RM 758,060 million *zakāh* in 2020 and distributed 96.63 percent of it in the same year. It followed the following ways in *zakāh* distribution: wakalah, educational and welfare institutions, infrastructure Muslims, *‘āmil*'s wages, managing, and assistance schemes. MAIWP's assistance schemes involve various categories, including welfare, economy, medicine, preaching and community development, protection, and education. In this context, the schemes where the highest amount of *zakāh* money was spent are “welfare” and “preaching & community development”, whereas the schemes that benefitted the greatest number of *aṣṇāf* are “education” and “welfare”.

Additionally, MAIWP owns a number of companies as well as several institutions that operate under its control. These companies and institutions are functioning in an integrated manner with MAIWP's *zakāh* assistance activities towards *aṣṇāf* and their families. Through these companies and institutions, MAIWP implements a substantial part of its aid and offers several services to *aṣṇāf*. Hospital PUSRAWI MAIWP, University College MAIWP International, MAIWP Healthcare Sdn Bhd, and Institut Profesional Baitulmal Sdn Bhd are some of the companies and foundations owned by MAIWP. Also, Darul Ilmi, Dar Assaadah, Al-'Abaqirah Modern Pondok, and MAIWP Religious Secondary School are some of the institutions called

Human Development Institutions that provide a wide range of services to *aṣṇāf* in an integrated manner with the assistance schemes implemented by MAIWP.

Three juristic issues related to the distribution of *zakāh* were addressed in the fourth chapter. The issues include the immediate performance of the *zakāh* obligation, the transfer of ownership of *zakāh* to the recipients, and the use of *zakāh* monies for investment. Nonetheless, as the first two issues are strongly connected to the third one and impact the ruling on that matter, they were covered under the *zakāh* investment while preserving their own independent titles. Regarding the immediate performance of *zakāh*, the researcher concluded that, according to the general opinion in the *Ḥanafī madhhab*, it is permissible to delay *zakāh* payment. Although other *madhhabs* maintain that the *zakāh* should be given to the rightful recipients immediately, there are some cases in which delaying the distribution of *zakāh* is allowed, such as when there is a benefit (*maṣlahah*) or a necessity (*ḍarūrah*). Based on this, those who consider it appropriate to invest *zakāh* funds contend that there is a presumption of *maṣlahah* for the *aṣṇāf* in the investment of *zakāh*, and hence it is allowed to delay *zakāh* distribution. Therefore, there shouldn't be anything wrong with utilizing *zakāh* in income-generating projects according to *madhhabs* other than the *Ḥanafī* as well, provided that this presumption of benefit is deemed to be a real benefit (*maṣlahah haqīqiyyah*).

Another problem covered under the relevant title is the individual ownership of *zakāh* by the recipients. In this context, the majority of classical jurists consider a full transfer of ownership to *zakāh* receivers as a requirement in *zakāh* distribution. However, *Mālikī madhhab* does not regard *tamlīk* as a requirement for the last four groups of recipients. As for contemporary jurists, they tend to advocate for more flexible ownership for all *zakāh* recipients. In this sense, they suggested that the recipient's ownership of *zakāh* is not necessarily confined to absolute individual ownership and instead collective beneficial ownership can replace it. At the end of the day, the most essential thing is to ensure that only intended beneficiaries receive the profits from the investment. Similar patterns are observed at MAIWP practices, where *zakāh* distribution is strictly limited to the eight recipient categories, and, although *zakāh* is utilised in many investment projects, the investment gains must eventually go back to these recipients.

Regarding the investment of *zakāh*, jurists in general hold that the *zakāh* recipient, as the owner of the property, has the right to use the *zakāh* he received as an investment tool personally or through entities authorised by him as a proxy. However, discussions regarding *zakāh* investment are mostly related to the investment of *zakāh* assets by the ruler or his representative, such as *zakāh* institutions or relevant departments within MAINs. In this context, it is observed that various aspects of the topic were discussed in the meetings conducted by *fatwā* boards and councils regarding the subject of investing *zakāh* money. Whereas several *fiqh* councils, mufti departments, and academies permit *zakāh* investment stipulating certain conditions, there are some other councils that strictly forbid *zakāh* investment.

Additionally, different opinions were put forward among those who approved the *zakāh* investment with respect to the methods by which this investment activity would be carried out. When it comes to MAIWP, the *zakāh* funds that MAIWP employs for investment are often what is left over after all *aṣnāf* have been offered their share and their essential needs have been satisfied. In this sense, the *zakāh* investment made by MAIWP can be classified as an investment of the excess and remaining funds of *zakāh*. Furthermore, it is also quite likely that MAIWP utilised the funds awaiting distribution for short-term investments. After addressing various other methods of investment and the arguments put forward by the proponents and opponents of *zakāh* investment, the researcher concluded that *zakāh* investment is permitted and that there is nothing wrong with the investment from a juristic standpoint. What is important is that during the investment, the conditions set forth by those who allowed the investment are met.

CHAPTER FIVE

CONCLUSION

The main objectives of this research, as indicated in Chapter 1, are as follows: (i) to study the history of *zakāh* administration in Malaysia and explore MAIWP's *zakāh* management (ii) to examine MAIWP's redefinition of *zakāh* recipients and juristic bases of MAIWP's redefinition (iii) to investigate *zakāh* distribution practices of MAIWP (iv) to address some important juristic issues related to MAIWP's *zakāh* distribution along with their rulings. Based on the stated objectives, the pertinent findings and conclusions that the study reached will be presented in this final chapter. Additionally, a list of recommendations pertaining to various aspects of *zakāh* distribution in general and MAIWP's distribution practices in particular will also be put forward.

5.1 FINDINGS

The main conclusions and findings of the research are as follows:

The Islamic revivalism witnessed by Malaysia in the early 1970s triggered a phase called the "Islamization process" in the administration and institutions of Malaysia. The government's Islamization efforts included the expanding and strengthening several Islamic institutions, including *zakāh* management. The social change throughout the era resulted in the *zakāh* becoming one of the institutions that the government was eager to improve in the subsequent decades.

Each of the 14 Malaysian states operates a separate, distinct, and independent *zakāh* administration. However, the organizational structures employed by these states for *zakāh* administration can be classified into three primary models: the Full Public Model (Non-Corporatized), the Semi-Public Model (Partially Corporatized), and the Fully Privatized Model (Fully Corporatized). The states of Perlis, Kedah, Perak, Johor, Terengganu, and Kelantan adhere to the Full Public Model; the Federal Territory,

Pahang, Negeri Sembilan, and Melaka adopt the Semi-Public Model, while the Fully Privatized Model is implemented in Selangor, Penang, Sarawak, and Sabah.

MAIWP stands out as the foremost and leading state Islamic religious council in *zakāh* management in Malaysia. It is also the first MAIN to establish a corporation dedicated to *zakāh* management by founding PPZ in 1991 with the mandate of *zakāh* collection. This initiative marks the beginning of the corporatization process for *zakāh* collection, or both collection and distribution, in other Malaysian states.

PPZ employs salary deduction, PPZ/bank/post or university counters, majlis events, collection agents, mailing post, Auto Debit, MYEG, and Shopee as some of the main *zakāh* payment channels. PPZ counters accept a variety of *zakāh* payment methods, including cash, cheque, Islamic credit card, and debit card. For the 2021 salary deduction, PPZ-MAIWP counters and the PPZ-MAIWP portal were the most preferred channels for *zakāh* payment.

MAIWP has redefined the eight groups of *aṣṇāf* by drawing on both the views of classical scholars and *madhhabs* and the opinions of modern Islamic jurists. In this context, it is possible to state that especially the *al-riqāb* and *fī sabīl Allāh* groups have been redefined by MAIWP with a modern approach. This is because MAIWP considered all forms of physical, economic, health, and mental shackles as a kind of slavery and thus included drug addicts, prostitutes, and people with sexual deviations, such as LGBT+, within the scope of *al-riqāb*. Additionally, all engagements in religious activities, including defending the religion of Islam and propagating it, were regarded as within the scope of *fī sabīl Allāh*.

Regarding the jurisprudential (*uṣūlī*) basis of the redefinitions of MAIWP, the researcher opines that the preposition “*innamā*” at the beginning of the *aṣṇāf* verse, which connotes limitation and restriction (*haṣr*), indicates that *zakāh* should be given only to the eight classes mentioned. Therefore, any person or group other than the ones mentioned in the verse, such as drug addicts, prostitutes, and religious activities, cannot be included in *zakāh* recipients via analogical reasoning (classical *qiyas*), as this will contradict the *haṣr* that “*innamā*” connotes. Instead, the researcher concluded, the

concept of *ithbāt al-asmā' bi al-qiyās* can be utilized since it makes it possible to expand the scope of concepts used in the verse, such as *al-riqāb* and *fī sabīl Allāh*.

MAIWP distributed and spent RM732,55 million *zakāh* in 2020 in the following ways: wakalah (11.9%), educational and welfare institutions (2.9%), infrastructure Muslims (11.3%), amil wages (6.5%), managing (10.3%), and assistance schemes (56.97%). Assistance schemes consist of several categories, such as welfare, economy, medicine, preaching & community development, protection, and education. The total RM distributed in assistance schemes in 2020 was RM417,341,135, while the number of recipients who benefited from these aids was 201,779.

A group of companies owned by MAIWP and some institutions operate in an integrated manner with MAIWP's *zakāh* assistance activities towards *aṣṇāf* and their families. MAIWP carries out a good part of its assistance schemes and provides many services to *aṣṇāf* through these companies and institutions. Hospital PUSRAWI MAIWP, University College MAIWP International, MAIWP Healthcare Sdn Bhd, and Institut Profesional Baitulmal Sdn Bhd are some of the companies and foundations owned by MAIWP. Also, Darul Ilmi, Dar Assaadah, Al-'Abaqirah Modern Pondok, and MAIWP Religious Secondary School are some of the institutions called Human Development Institutions that provide a wide range of services to *aṣṇāf*.

MAIWP only considers the *zakāh* funds invested in financial instruments to generate a profit as the investment of *zakāh*. While *zakāh* allocated for human development projects that ensure the recipients' long-term well-being is considered an investment activity by modern Muslim scholars, MAIWP does not regard it as an investment endeavour but instead perceives it as a form of *zakāh* distribution. However, the researcher concluded that *zakāh* allocated for human development projects should also be considered as *zakāh* investment when addressing the investment of *zakāh* issue. This is because, from an economic standpoint, the yield of an investment may consist of tangible assets, such as production outputs and income, as well as intangibles, such as education, health, development, etc.

Scholars held different opinions regarding the implication of the *zakāh* command, namely whether the immediate performance of *zakāh* is obligatory or not.

The researcher, based on the *Ḥanafī madhhab*, which permits postponing *zakāh* payment, and some views in both the *Shāfiʿī* and *Mālikī madhhabs* that imply that *zakāh* payment can be delayed in some cases reached the conclusion that it is possible to delay *zakāh* if there is a benefit (*maṣlaḥah*) or necessity (*ḍarūrah*).

Scholars' opinions differed regarding whether the transfer of ownership of *zakāh* individually (*tamlīk*) is mandatory or not. Although the majority of classical jurists see *tamlīk* as a requirement, there are scholars who hold that *tamlīk* is not necessary for the last four groups of recipients. Based on this and contemporary scholars' views, the researcher concluded that *tamlīk* should not be confined to absolute individual ownership and instead collective beneficial ownership can replace it. Accordingly, the most essential thing is to guarantee that the investment's benefits reach the rightful beneficiaries, not others.

The jurists have agreed that it is permissible for the beneficiaries to invest *zakāh* money after receiving it, as *zakāh* after being received by them becomes their own property, and therefore it is permissible for them to dispose of it as the owners of the property.

The researcher, after addressing the arguments of those who allow *zakāh* investment and those who do not, concluded that *zakāh* investment is permissible from a juristic perspective. What is important to note is that during the investment, the conditions set forth by scholars who permitted the investment are fulfilled.

5.2 RECOMMENDATIONS

Based on the study's research findings, there are several suggestions and recommendations for future consideration by relevant authorities and academicians.

The legal infrastructure for *zakāh* across the majority of Malaysian states is insufficient. Independent *zakāh* enactments are only present in the states of Kedah and Sabah. Such enactments are more systematic in their substance and provide better enforcement facilities for *zakāh* than the provisions of *zakāh* under the administration

of Islamic law enactments. On this basis, it is suggested that other states also legislate independent *zakāh* enactments.

The “fully privatized model” is considered the most efficient model for *zakāh* management, with the highest amount of *zakāh* collected. Based on this premise, the researcher recommends that states that implement the full public model privatize the administration of *zakāh*, since it has proven successful and the rate of collection of *zakāh* funds has greatly increased through it.

Although the Malaysian *zakāh* administration has a centralized structure at the state level, it lacks unity in the federal sense. As a result, there are 14 separate *zakāh* systems, and each state implements different strategies and laws pertaining to the administration of *zakāh*. In this respect, the researcher believes that a national *zakāh* organization that will consolidate all MAINs’ efforts regarding *zakāh* management under one roof ought to be established. Alternatively, JAWHAR, which was established under the Prime Minister Department, can play an intermediary role between the states on behalf of the federal government, thus facilitating cooperation among the *zakāh* institutions in Malaysia.

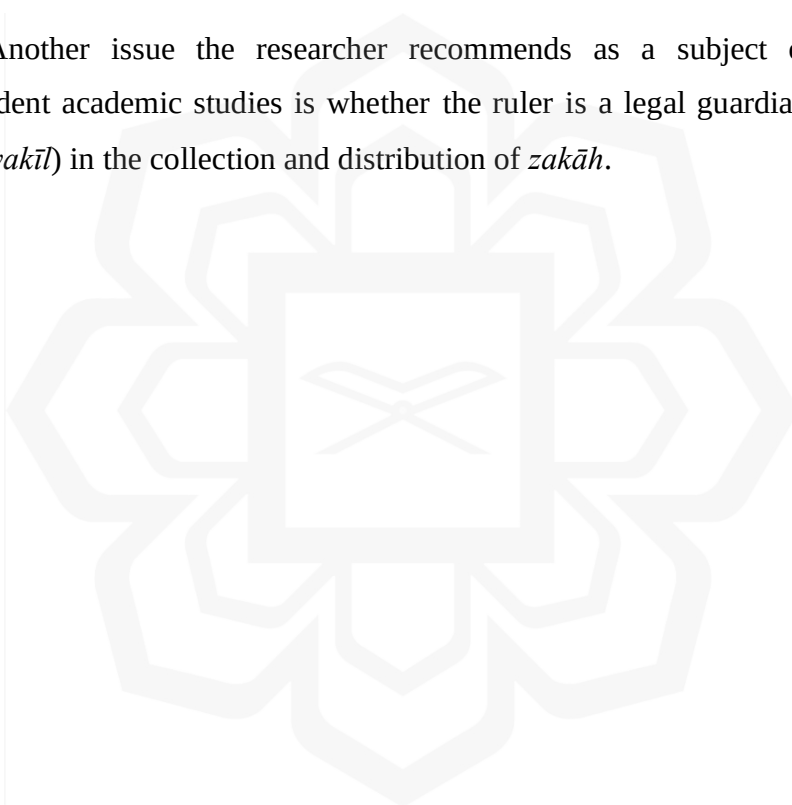
One of the concerns that causes all operations relating to *zakāh* to slow down and take longer time is excessive bureaucracy. For instance, it might take years for some students to receive funding from a *zakāh* institution for education assistance. As a result, these students are obliged to apply for education loans before getting *zakāh*. Therefore, the study suggests that MAIN’s and other relevant institutions make the necessary regulatory changes to reduce this heavy bureaucracy.

It is recommended that MAIWP’s annual reports be more detailed and transparent. For example, it is notable that there is an ambiguity in these financial statements about the specific amount of *zakāh* allocated for investment. This is because MAIWP’s annual income is shared in a general manner, including non-*zakāh* incomes and the amount designated for investment purposes from this aggregate rate is given as a percentage. Furthermore, the issuance of annual reports has been noticeably delayed, particularly in recent years.

There is not yet a known mechanism or policy implemented by MAIWP to assure appropriate compensation for the losses experienced by investment projects utilising *zakāh* funds. Considering the scholars who opine that MAIWP ought to bear liability for compensation in case of negligence during the feasibility studies or decision-making process of *zakāh* investment, a relevant mechanism should be established.

The researcher believes that more detailed and independent academic studies should be conducted on the *tamlīk* (transfer of ownership) condition in *zakāh*.

Another issue the researcher recommends as a subject of detailed and independent academic studies is whether the ruler is a legal guardian (*waliyy*) or an agent (*wakīl*) in the collection and distribution of *zakāh*.



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APPENDIX I

INTERVIEW QUESTIONS

1. Do you think that the institutional management of *zakāh* in Malaysia in general and MAIWP in particular has had positive outcomes? In this sense, what are the merits and demerits of *zakāh* administration in Malaysia and the Federal Territory in particular?
2. Can you describe generally how MAIWP and its *zakāh* collection company, PPZ, work, their responsibilities and tasks, as well as their significance for the federal district?
3. How does MAIWP redefine *zakāh* recipients? Are there any contemporary interpretations that take into account the new social classes that emerged in the modern era?
4. Which groups receive a larger share from *zakāh* than the others? What do you think about MAIWP's offering more shares to certain *zakāh* recipients? What is the criterion taken into account in this regard?
5. According to the 2020 Report of MAIWP, 6.5% of the zakat was spent on the "Amil Wages" category and 10.3 percent on "Managing". How do you evaluate this? What exactly is the difference between these two categories? Do not you find these rates to be excessive?
6. In what ways does MAIWP distribute *zakāh*? What are the methods employed? What role do companies, foundations, and human development institutions under MAIWP play in the context of *zakāh* distribution?
7. 11.9 percent of *zakāh* in 2020 was distributed via Wakalah. How is Wakalah implemented by MAIWP? For example, does MAIWP determine the

recipients to whom *zakāh* should be offered by the *zakāh* payer (*mukallaf*) or is it up to the discretion of the *mukallaf*?

8. What is meant by “Infrastructure Muslims”, which was allocated RM82,948,642 (11.3 %) from *zakāh* in 2020? Could you share some details in this context?
9. How long has MAIWP practiced *zakāh* investment? What types of investments and financial instruments does MAIWP utilise? Are MAIWP's investments made solely with the *zakāh* fund, or are other sources of income for MAIWP also utilised for this purpose? If they are also used, how is the amount of income from the investment that would be used as *zakāh* again determined?
10. Have any of the MAIWP's investments with the *zakāh* fund so far failed? In case If it occurred, would MAIWP or the relevant authorities be responsible for compensation?