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

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Abstract

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

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

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

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

Keywords Waqf, zakāh, micro-takāful, financial inclusion

Paper type Research paper

Introduction

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

**Research objectives**

This study aims to realise the following objectives:

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

**Research methodology**

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

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

**Sharī‘ah issues related to the zakāh- and waqf-based micro-takāful model**

*Sharī‘ah issues in the use of zakāh funds*

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

*Sharī‘ah issues in zakāh allocation in micro-takāful*

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

1. zakāh allocation by zakāh payers;
2. zakāh allocation by a zakāh authority; and
3. zakāh allocation by zakāh recipients.

Classical scholars have two different views on zakāh allocation by zakāh payers. The first view, held by Mālikī, Shafī‘ī and Ḥanbalī scholars as well as the majority of Ḥanafīs, disallows it, as zakāh funds are meant to be used immediately (Ibn Qudāmah, 1983: 2/541;
al-Nawawi, 2002, p. 267; Ibn Juzay, 2013, p. 183). The second view, held by some Ḥanafī scholars such as Abū Bakr al-Jašṣās, is that zakāh payers have their whole lifetime to meet their obligations of zakāh, and payment of zakāh is not restricted to a specific period. The nature of this extended obligation (wajib muawassa) does not require immediate payment of zakāh, as opposed to the first viewpoint (al-Kaşāni, 1986: 2/3). The authors of this paper, however, prefer the first view due to the strong supporting evidence from the Qur’ān and Sunnah, as well as its consistency with the rule regarding the default meaning of the imperative form (الامر) in the Arabic language.

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

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

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

Shafi‘ī and Ahmad in a report allowed giving the poor and destitute zakāh funds for investment.

As such, a person who makes handicrafts would be given zakāh funds to purchase a machine to make income that is sufficient to maintain a decent standard of living (al-Nawawi n.d.: 6/193-194).

**Sharī‘ah issues related to the operation of the zakāh-based micro-takāfud model**

Sharī‘ah issues arise in the distribution of zakāh funds. This triggers the following questions: Is it compulsory to disburse zakāh funds to all zakāh recipients in the micro-takāfud plan, or is it allowed to prioritise in accordance with the level of need and urgency? Does the latter alternative violate the concept of tashrik (inclusiveness) implied in the relevant Qur’ānic texts? There is an incidental question to address before addressing these questions: Is it necessary to have all the categories of zakāh recipients in one place at the same time? The response to this question came from Imām al-Ghazālī when he categorised the zakāh recipients into three major categories. The first category refers to al-mu‘allafah (those inclined towards Islam) and al-‘āmilān (zakāh collectors). The second category
involves *al-ghuzah* (those fighting for Allah’s cause) and *al-mukātabān* (slaves). The third category includes the remaining *zakah* recipients (al-Ghazālī, n.d.).

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

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

> إن الله افترض عليهم صدقة في أموالهم تؤخذ من أغنيائهم فترد على فقراءهمٔ

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

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

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

*Sharīʿah* issues related to the use of *waqf* funds for micro-*takāfūl*
Acceptance of *waqf* donations by beneficiaries requires further discussion on how to relate it to micro-*takāfūl*. The consent of prospective *waqf* beneficiaries, if the *waqf* donor specifies the beneficiaries in a *waqf*, is crucial to conclude the *waqf* contract. The same goes for a situation where *waqf* is made as a source for a micro-*takāfūl* plan. Before proceeding with the micro-*takāfūl* policy agreement between the *waqf* management and the micro-*takāfūl* operator, the *waqf* management may first need to have the consent and acceptance of the *waqf* beneficiary. Similarly, in the underwriting policy, micro-*takāfūl* participants are required to stipulate a nominee. The question is whether the failure of the nominee to give consent would affect the policy? The reply to this question may be attempted from two perspectives. First, the views of classical scholars in respect to acceptance and possession of
specified beneficiaries in a *waqf* contract may be considered. The majority of scholars allow conclusion of a *waqf* contract without the acceptance of the beneficiaries; the same goes for the nominee in a micro-*takāfūl*. Therefore, the *waqf*-based micro-*takāfūl* plan can be concluded without the acceptance of the nominee. Second, the issue of *waqf* does not come into the picture. Although the contribution comes from a *waqf*, it is no longer a *waqf*. This is because micro-*takāfūl* participants are the *waqf* beneficiaries. Their entitlement to claim from micro-*takāfūl* risk funds represents their portion in *waqf* funds, which they are fully authorised to give to those whom they want, e.g. their nominees or heirs as agreed in the micro-*takāfūl* policy and endorsed by the relevant Shari‘ah scholars. Also, the payment of micro-*takāfūl* benefits follows the policy agreed between the micro-*takāfūl* participants and the micro-*takāfūl* operator, which has been duly approved by the relevant Shari‘ah committee, and it is not subject to *waqf* rules.

**Conclusion and recommendations**

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

The paper makes the following recommendations:

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

**References**


**Further readings**


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