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SUSTAINABLE FINANCIAL INCLUSION: A FIQH ANALYSIS OF ZAKAT–BASED MICROFINANCE SCHEME

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Abstract:
Sustainability has remained one of the most significant challenges facing microfinance industry in general and Islamic microfinance in particular. With the advent of Islamic microfinance and Islamic microinsurance the need for Sharīʿah compliance is indispensable. Such need poses another additional challenge for Islamic microfinance practitioners. Many practitioners have argued that in practice Sharīʿah compliance should be sacrificed for profitability so that Islamic microfinance industry could achieve sustainability and competitiveness in the global microfinance market. However, not a few researchers and Sharīʿah scholars argued that the industry risk identity loss by trading Sharīʿah compliance for any other benefit no matter how lofty – be it profit or otherwise. They are of the opinion that Sharīʿah, being the backbone of Islamic financial system must be abided by in all Islamic finance instruments and models and compromising it cannot be an option. The controversy on whether sustainability and Sharīʿah compliance could be regarded as mutually exclusive has been very intense and unabated especially among the regulators, industry players and academicians. Based on the foregoing, this paper sets out to investigate achieving both Sharīʿah compliance and sustainability through zakat-based microfinance scheme. Inductive qualitative methods were adopted as instruments to conduct the research. Data were also gathered from both primary and secondary sources of Sharīʿah. This paper finds that Sharīʿah compliance and sustainability in microfinance operations could be achieved pari passu through the zakat-based microfinance scheme and as such both factors are not necessarily mutually exclusive.

Keywords: *Sharīʿah compliance, zakat, sustainability, microfinance, financial inclusion*

INTRODUCTION

Microfinance is an Islamic form of micro insurance designed to provide protection for low income and underserved people against risks and misfortunes. The fundamental philosophical underpinnings of microfinance are the extension of financial services to the poor and underserved segment in society. Islamic microfinance scheme therefore forms an integral part of Sharīʿah compliant schemes of financial inclusion system through which delivery of financial services at affordable costs to the needy and poor and low-income segments of society.

The microfinance scheme is a social mission aiming to ensure social welfare and protection of financially excluded households. It uses two approaches to penetrate the market and expand positive impacts. They are social based and market-based approaches. Microfinance scheme just like other inclusive financial sectors faces two main challenges namely, keeping funds available always and ensuring sustainability of the funds.

This paper investigates the nature and the role of zakat in socio-economic development and how zakat and the microfinance can be synchronized to further strengthen the social wellbeing and economic development especially for underserved people in community.

Overview of Microfinance

Microfinance is a concept aiming primarily to have a world in which as many very poor, poor and low-income households as possible would have permanent access to an appropriate range of high-quality financial services, including not just credit but also savings, insurance, and fund transfers (Christen, 2004). This corroborates El-Zoghbi (2013) that says poor people want safe places to save money, affordable means to transfer it and safety net to insure themselves in the event of misfortune such as health crisis. The fundamental philosophy behind microfinance services is the promotion of financial inclusion of the hard-core poor purposely called 'unbankables' in the formal financial services industry. It unfolds avenues for prompt access to financial services to alleviating poverty and spurring more entrepreneurial skills and activities to support economic growth of a nation. However, achieving these noble goals has not been easy over the years.

One of the main conundrums facing this lofty aim is how to achieve a delicate balance between the social roles of microfinance products aiming at reaching financially excluded population and sustainability of the microfinance industry. Many financial experts and researchers have opined that the two are mutually exclusive and so a trade-off can only be achieved (Mersland & Strom 2010; Hermes et al., 2011; Hartarska, et al., 2013). Their position is buttressed by the recent microfinance crises in Andhra Pradesh, a state in southeastern coast of India, where highly-indebted microfinance borrowers resorted to suicides which then provoked 'debt-strikes' (http://www.meltv.com). This illustrates the innate contradiction between achieving financial sustainability and the social outreach mission of the microfinance industry (Taylor 2011, Field et al., 2012). Moreover, Mersland et al. (2012) demonstrated that Catholic microfinance institutions recorded low financial performance due to its low interest rates which according to them also establishes a trade-off between maintaining a strict financial discipline and achieving the social outreach objectives. However, some argue that achieving both is quite possible as the duo could be complimentary and not necessarily a trade-off. They suggest various legal approaches under which microfinance institutions could be structured to offer a balance between social mission and financial sustainability.

As a fallout of the difficulty to achieve a balance between sustainability and social mission, diverse opinions emerge regarding the target population of the microfinance institutions (Chao-Beroff, 1997; Hulme, 2000). Though there is a consensus that the general goal of any microfinance programme is to reach the poor (Elizabeth Rhyne, 1999), the need for sustainability raises the germane question: how poor should people be to be entitled to become recipients of microfinance packages?

In answering this question, two groups can be identifiable; proponents of targeting the poorest and proponents of inclusion of the vulnerable non-poor.

The proponents of targeting the poorest argue that the primary focus of microfinance programme is to reach the poorest in the society. Emphasizing profitability in a bid to achieve sustainability is therefore a distraction that will eventually lead to 'mission drift'. They maintain that prioritizing quick profitability of microfinance institutions will result to the marginalization of the poorest for the more credit worthy group (Chao-Beroff, 1997). During its inception in 1995, the Consultative Group to Assist the Poorest (CGAP) established a principle that for any self-respecting microfinance institution, sustainability is very crucial and of paramount importance. But since 1999, CGAP has tilted more towards addressing poverty by deepening outreach. The advocates of 'targeting the poorest' further claim that experience has shown that the non-poor pose greater risk for microfinance institutions as they have inferior repayment history (Gibbons, 1992). They corroborated their argument with the high default rates in the microfinance agricultural credit in 1970s and 1980s. Due to their access to political power, non-poor will likely have more alternatives that will encourage them to default. This shows that achieving sustainability remains fundamental issue to microfinance schemes.

In the opinion of the advocates of inclusion of the vulnerable non-poor in this group, contrary to the sentiment expressed by the 'targeting the poorest' group, the unavailability of alternatives to the non-poor drives repayment (Otero & Rhyme, 1994; Wright 2000). The absence of financial access to the non-poor exposes them to vulnerability and substantially minimizes their capabilities for resilience in the time of crisis. More so, poverty is not a static phenomenon but rather a very dynamic one (Hulme and Mosley 1996). A non-poor household may rapidly become the poorest household when hit by a great crisis such as natural disaster, theft, fire and chronic illness (Hulme & Mosley, 1996). Based on these arguments, these advocates canvass for inclusion of every individual who does not have access to financial services from the formal sector. This will support the vulnerable group to develop and maintain a robust household financial portfolio. Microfinance services should be comprehensive enough to cover both the 'poorest of the poor' and the 'vulnerable non-poor'.

The very poor, by their nature, will unlikely take large enough financing to sustain the microfinance institutions. And the larger the clientele, the more the cost. Therefore, a mix with the non-poor will minimize the marginal cost of serving the very poor. This will support the microfinance institutions to achieve sustainability and in turn be able to reach more ‘poorest of the poor’ in future. For this, inclusion of the vulnerable non-poor will ensure a win-win scenario.

Islamic micro finance industry is not excepted from the sustainability challenge. Some literature studies have proposed that the socially minded institutions - Islamic or conventional- need external resources for their sustainability and availability of funds to accomplish their social mission. Therefore, in the context of Islamic micro finance, it is timely to make use of zakat and other socially responsible funds in Sharīʿah to support microfinance products and services. This does not prevent government and its agencies from playing their roles in support of this mission. For example, bayt al-māl (Islamic treasury) may be used as back-up for Islamic microfinance services in case of default.

Research Methodology

This paper adopts qualitative research approach by using content analysis in examining documents and textual materials. Multiple methods of data collection used included focus group discussion (FGD). The focus group which formed primary data involved representatives from different stakeholders such as representatives of Malaysia Takaful Association (MTA), Takaful Operators (TOs) and Zakat institutions such as Centre for Zakat Collection (Pusat Pungutan Zakat (“PPZ”), Lembaga Zakat Selangor (LZS), Zakat Division (Bahagian Zakat (BZ)) under the National Islamic Religious Council in Johor (Majlis Agama Islam Negeri Johor) for first hand expert opinions on the possibility of adopting zakat based microfinance scheme. The secondary data are classical and contemporary juristic books, journal articles and conference proceedings and others. Relevant documents in the context of mutual relation of zakat and society are critically examined in the content analysis.

The paper used both primary and secondary sources of Sharīʿah where necessary. The primary sources are Qurʾān, Sunnah and the secondary sources used are Sharīʿah resolutions of internationally recognised Sharīʿah bodies such as International Fiqh Academy of Organisation of Islamic Cooperation (IFA-OIC), Islamic Fiqh Academy of World Muslim League (IFA-WML), Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) and other relevant Sharīʿah authorities. This approach offers an understanding of the conceptual framework of zakat as well as microfinance operations and sheds light on the prescribed and prospective role of the zakat instrument in socio-economic development.

NATURE OF ZAKAT AND SCOPE OF KIFĀYAH (SUFFICIENCY) IN REFERENCE TO MICROFINANCE SCHEME

AAOIFI (2015) defines zakat as a right which becomes due in certain types of wealth and distributable to specific categories of recipients. The obligation of zakat is not attached to individuals rather it is in rem duty when its conditions are satisfied. Zakat is due on six items namely gold, silver, currencies, trade articles, livestock (camels, cows and goats), agricultural produce, minerals and rikāz (treasures) (AAOIFI, 2015, p. 873).

Prophet Muhammad (peace and blessing be upon him) said:

> “Almighty Allah enforces zakat on their wealth (of rich) which shall be taken from the rich people and be given to the poor” (al-Asqalānī, 2001: 3/307, ḥadīth no 1363).

This ḥadīth shows that zakat is one of the fundamental solutions to solve poverty challenges. However, zakat could be more judiciously used than just to feed the needy and poor within few days or giving them a sum of money for a while after which they will end up seeking for aid again. Classical Muslim scholars have had extensive conversations on the threshold of zakat asset that can be given to each category of the zakat recipients (aṣnāf). Their views can be broadly classified into two.

First is Ḥanafī view that holds giving each zakat recipient and member of his family a minimum threshold from zakat asset. The second view which is held by the Mālikīs, majority of Ḥanbalīs and some Shāfiʿīs states that each zakat recipient is entitled to be given zakat asset what is sufficient for one year (Al-Nawawī, 2002: 318-320; Ibn Rushd, 1995, 2: 654; Ibn Quddāmah, 1983, 2: 707).

The term kifāyah (sufficiency) is relative in reference to people, places and time. There is no specified amount to be given as it is to be determined by zakat management based on the circumstances and the degrees of need which varies from one recipient to another. The second view is the preferred view of Zakat House of Kuwait in its 8th symposium on contemporary issues of zakat commenced up between 29 to 30 March 2010 in Lebanon (Zakat house, 2010, p.16-17).

The concept of kifāyah in zakat disbursement is not just confined to provision of foods, drinks and clothing but could be extended to some other natural needs of man such as provision of sufficient amount for wedding and other associated expenses for a poor in need of nikāḥ (marriage) (Zakat House, 2016, p. 147).

In a similar vein, classical scholars unanimously agreed that zakat could be given to students of knowledge. This is because the public will benefit from the impact of his knowledge and because protection of intellect is among the five fundamental values under maqāṣid al-Sharīʿah. On that note, Al-Nawāwī (2002, p.313) and Al-Tayyār (2012: 2/117) held a view that a student of knowledge without means for work during the period of study deserves to be given zakat and also someone who want to buy books regardless whether on Islamic related subject or other sciences, is allowed to collect zakat.

Furthermore, Imām Shāfiʿī held a view that the poor and destitute can be given zakat for most part of their lifespans. The implied meaning of this view is that poor could be given what is enough for daily needs and throughout the lifespan to actualize kifāyah (sufficiency). Zakat recipient would not have cause for begging except in an unusual circumstance. Therefore, al-Nawawī (2002, p.320) said: Shāfiʿī fellows from Iraq and many fellows from Khurāsān said maximum limit of zakat disbursement is what is permanently enough (kifāyah al-ʿumur). Further, Shāfiʿī viewed that zakat recipients with certain crafts or business should be given some portions from their zakat entitlements to support their works in addition to the portions for daily consumptions. As for those without handcraft or business, zakat entitlement should be permanent and sufficient (al-Nawawī, n.d.: 6/193-194). The Sharīʿah committee of the Zakat House allowed the purchase of the equipment and machines for zakat recipients during the training designed for their empowerment. The Zakat House in its 3rd symposium on contemporary issues in zakat allowed the establishment of investment project from zakat funds dedicated solely to zakat recipients. Such a project is owned by them and would be administered either by them or by engaging an agent on their behalf and streams of the return go back to the zakat recipients (Zakat House, 2016). Moreover, relying on the statements of Caliph ʿUmar:

> "Whenever you give (zakat), enrich the recipients from it" (Abū ʿUbayd, n.d.: 1/676, athar no 1778).

Some scholars hold the opinion of enriching zakat recipients from zakat funds. Abū ʿUbayd agreed to this opinion and has quoted several evidences from athar (reports) and reasons to support his position. Then he said:

> "All these āthār (reports) are evidences that what to give needy from zakat has no limit which is prohibited by law [Sharīʿah] to exceed, in fact it also involves love and passion." (Abū ʿUbayd, n.d.: 1/677, athar no 1787).

Islamic history is replete with several reports that affirm poverty eradication through the judicious implementation of zakat. It serves as a tool for social security against unexpected events such as calamity, permanent disability, death, disaster.

JURISTIC VIEWS ON THE ALLOCATION OF ZAKAT FUND

It should be noted that there is no documented juristic discussion among the contemporary scholars on the use of zakat fund specifically for microfinance scheme. However, there are some discussions on the allocation of zakat funds for investments and general purposes that serve the interest of zakat recipients. In fact, al-Shubayli (2012) and Fawzān, S. (2012) stated that takaful policy is one of the areas of allocation of zakat funds. This paragraph discusses scholars' views on allocation of zakat with a greater emphasis on the position of internationally recognized Sharīʿah bodies on this matter.

The discussion on the allocation of zakat funds here examines three categories namely allocation of zakat fund by

1. zakat payers;
2. government or zakat agencies;
3. zakat recipients.

Furthermore, on the first category classical scholars expressed wide disagreements and most contemporary scholars followed suit. However, the second and third categories above can be applied to the following three scenarios: i) allocation of zakat fund to complement evolving needs of the poor and vulnerable non-poor; ii) allocation of zakat fund to finance their needs and; iii) allocation of zakat to finance establishment of microfinance company.

Allocation of Zakat Fund by Zakat Payers

The classical fiqh scholars are of two broad views regarding allocation of zakat fund by zakat payers themselves:

The first view is that of impermissibility because zakat is due with immediate effect. This is the position of Ḥanafī, Mālikī, Shāfiʿī and Ḥanbalī (Ibn Quddāmah, 1983, 2/541; al-Nawawī, 2002, p. 267; Ibn Juziy, 2013, p. 183). Evidences to support this view are:

1) The Qurʾānic verse:

"and give its due [zakat] on the day of its harvest" (Qurʾān, 6:141).

The scholars of this view assert that the communication in this verse is expressed in an imperative statement which requires immediate action by zakat payers. Delaying it is an act of disobedience which may subject such zakat payers to being blamed and punished.

1) Ḥadīth, Aisha (may Allah be pleased with her) reported that the Prophet (peace and blessing of Allah be upon him) said:

"If zakat due is mixed up with other wealth it will destroy it" (al-Mubārakfūrī, 1984: 6/64, ḥadīth no. 1807).

Scholars explain the meaning of mixing up zakat in this context to entail delaying its payment as and when due (Al-Shawqānī, n.d., 4/167, ḥadīth no. 1565).

3) It was narrated by ʿUqbah ibn al-Ḥārith, that: The time for ʿAṣr came up, and the Prophet (peace and blessing of Allah be upon him) stood up and rushed back home for a while and came out saying: "I left back gold nuggets from zakat and disliked delaying it tonight and decided to disburse it." (Al-Bukhārī, ḥadīth no 1363).

4) The need of poor is outright, thus, the obligation to give out zakat is immediate without delay (Ibn Quddāmah, n.d., 3/289; al Shawkānī, n.d. 3/655).

5) Making the obligation analogous to as-Ṣalāh (five daily prayers) and as-Ṣawm (fasting the month of Ramadān) as it is continuous obligation every year as such it is not allowed to delay it like as-Ṣalāh and as-Ṣawm.

Second view: The obligation of zakat is attached to lifespan. As such its obligation does not attract immediate effect. This is the view of Ḥanafī and the view of Abū Bakr al-Jaṣṣāṣ. As for the meaning of 'no immediate effect' Al-Kāsānī (1986: 2/3) al-Zaylaʿī (1313: 1/250) argued that the obligation is absolute without specific timeframe. Anytime one pays zakat he has discharged the obligation of zakat and if he fails to pay zakat until the last minute of his life, it becomes incumbent upon him, if he did not pay until he passed away, he has committed sins.

They also argued that, if someone is among zakat payers and his zakatable asset was totally wiped out after the zakat due but before being able to pay, such a person is no longer liable to pay zakat.

The preferred view, considering evidences above, is the view of most scholars which outweighs the view of Ḥanafī in terms of strength and definitiveness of their evidences. Thus, the obligation of zakat implies immediate effect. As several textual authorities re-emphasise zakat obligation should not be delayed as and when due. The original rule of imperative statement used in the Qurʾān verses as quoted above, indicates an immediate effect. It is presumed that this rule stays valid until proofed otherwise. Ḥadīth Uqbah as reported by al-Bukhārī corroborated this inference. On that note, it is not allowed for zakat payers to allocate it directly as it is tantamount to delaying zakat payment when it is due. Then it would lead to denial of the qualified zakat recipients to receive their rights.

Allocation of Zakat Fund by Zakat Agencies (Government or Non-Government)

This scenario is different from the above as the zakat obligation has been discharged by zakat payer without any delay. At this juncture, zakat fund remains under the custody of either the government or non-governmental agencies managing zakat fund for the benefit of zakat recipients. There are two views of scholars regarding allocation of zakat for financial inclusion like establishment of micro enterprise, Small and Medium Enterprises (SMEs), guarantee fund and takaful company for protection of SMEs, zakat recipients and others.

The first view of scholars and Fatwa bodies said it is impermissible. This is the position of IFA-WML, Fatwā Council of Saudi Arabia and al-Zuḥaylī, Alwānī, Taqi Usman viewed that it is not allowed (al-Fawzān, S. 2012, p.93; al-Shubaylī, 2012, p.51). This view is premised on the argument that the allocation or investment of zakat fund will delay the disbursement of zakat to zakat recipients whom are in compelling immediate needs of zakat fund. Moreover, investment of zakat fund may deprive the ownership right of zakat recipients which contravenes the view of most scholars who said the ownership right is a condition for zakat disbursement as Allah has indicated that zakat belongs to aṣnāf (eight categories of people known as zakat recipients). Zakat disbursement to the aṣnāf has been decided in Qurʾān and investment of zakat is not of part of the disbursement areas. In addition, investing zakat exposes it to loss and damage or reduction in value as it will incur additional administrative expenses.

The second view said it is allowed. This is the view of IFA-OIC in its Resolution No 15 (3/3); The Zakat House in Kuwait in its third (3rd) symposium on contemporary issues on zakat; The Sharīʿah Committee of Kuwait Finance House (Zakat House, 2016, p.162; al-Fawzān, S. 2012, p.92). Their arguments are as follows:

1) An analogy is drawn from investment of zakat fund. As it is established that the Prophet (peace and blessing of Allah be upon him) and His Companions subject livestock i.e. camels, cows and sheep from zakat assets to corral. This was to produce milk for zakat recipients. This also is corroborated by Ḥadīth of Anas pertaining to influx of ʿUraynah people in Madīnah and the Prophet permitted them to eat from milk of camels of zakat and they violated the trust and crossed the line by killing the herder and sold the camels, and then the Prophet ordered their arrest…")al-ʿAsqalānī, 2001: 3/428-429, ḥadīth no 1468 and 1469). Therefore, if zakat asset can be invested, even though the investment will subject it to profit and loss, the allocation of zakat fund for the interest of zakat recipients should be given greater reason for permissibility.
2) Allocation of zakat fund to support or complement evolving needs of poor does not take zakat away from the zakat recipients. Rather it has been channeled for the good use of zakat recipients.
3) Allocation of zakat fund to finance the needy and poor or to support their needs like micro takaful plan, microfinancing scheme actualises one of the very objectives of zakat which is protection of the poor and needy.

The preferred view is the permissibility of allocation of zakat fund due to the following:

The line of arguments of the contemporary scholars who disallowed allocation of zakat fund by zakat authorities can be summarized into two: The first is the delay of zakat disbursement and the second is the denial of zakat recipients their entitlement to zakat fund. However, the response to the first argument is the issue of delay of zakat disbursement does not arise because zakat authorities are legal proxies of zakat recipients Al-Nawāwī (2002, p. 269) and Ibn Quddāmah (1983: 2/689). If zakat payers pay their zakat obligations to the authorities the obligation of zakat has been discharged. As for the denial of the rights of zakat recipients, it is established that the allocation of zakat fund is for the welfare and benefit of zakat recipients. The Islamic legal maxim says:

"Act of those with authority over people must take into account the interests of the people" (Laldin et al., 2013, p.171). With that, the two issues are no longer a concern as far as authority is concerned.

Allocation of Zakat Fund by Zakat Recipients

Most past and present scholars hold the permissibility of the recipients to invest zakat assets after taking possession as they have got full ownership right over the asset. This view is held by Fiqh Academy of Lucknow in its Resolution in the 13th session, al-Fawzān, S. (2012); Shubayr (1426). The proponents of this view substantiate their position with several narrations from the classical books of Shāfiʿī.

> "Shāfiʿī and Ahmad in a report allowed giving poor and destitute from zakat fund for investment. As such, a person who runs handcraft will be given from zakat to purchase a machine to make income that is enough for his standard of living" (al-Nawawī, n.d.: 6/193-194; Shubayr, 1426H).

The Allocation of Zakat Fund to Establish Microfinance Scheme

Like other microfinance institutions, Islamic microfinance is structured to cater for social mission by extending financial support to the excluded people under former financial institutions. Islamic microfinance is a mechanism to provide Sharīʿah-compliant micro products for low- or non-income households in a society. As part of Islamic microfinance, various risks or events are covered by micro takaful products including death, critical illness, property, group personal accident and default in microfinance financing facilities (Brugnoni, 2013). The key point for effective impact of microfinance is to make its products, procedures and policies simple as well as making the participants' contributions in micro takaful plan low with efficient administration and innovative distributional channels (Kwon, 2010).

Islamic microfinance including micro takaful plays crucial roles in the Muslim world although the industry lacks empirical work concerning specific studies (Altunas et al., 2011; Kwon, 2007). For example, Patel (2011) asserts that takaful has potentials to provide better services than that of conventional insurance. He further explained that pro-poor institutions established in semi-formal structure recorded success and revealed the interest of poor to save and store. Thus, helping the poor must be with products that suit their social status which may be different from one person to another. Zakat as a Sharīʿah tool for socio economic systems if rejuvenated could be a supporting instrument to actualize this aspiration (Hassan, M.K., 2010 and Kahf, M., n.d.).

Scopes of Allocation of Zakat Fund in Microfinance Scheme

In the light of the above discussions on allocation of zakat fund, zakat agencies and zakat recipients are allowed from Sharīʿah perspective to allocate zakat fund for social mission and financial inclusion. This permissibility forms the basis for considering allocation of certain portions of zakat fund for microfinance scheme as a form of social welfare and security. As highlighted above, allocating zakat fund in microfinance scheme can be captured in three scenarios which will be discussed in the following.

The first is the allocation of zakat fund to complement evolving needs of poor and needy. For example, zakat fund can be used to support either microfinancing, micro savings, and micro takaful plan, where the Islamic microfinance institutions such as Islamic microfinance banks or takaful operators collaborate with social organization such as Malaysian National Cooperative Movement (Angkatan Koperasi Kebangan Malaysia (ANKASA)) and the Domestic Helpers Affairs Programme commonly known as Helpers. Thus, zakat fund can be channeled to those customers provided they satisfy conditions and attributes of zakat recipients (aṣnāf) to support their contribution and increase their microfinance benefits. In this scenario, ANKASA may act as an agent of zakat agency that provides the fund, while complimentary fund extended to member of ANKASA may use mushārakah or muḍārabah mode of financing.

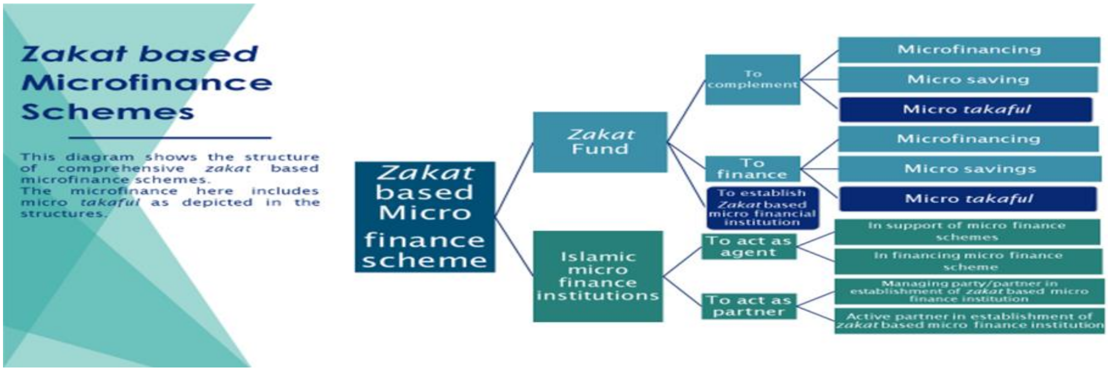
The use of mushārakah mode of financing is eminent because the productive recipient also comingles portion of the business capital. Further, qarḍ-based micro credit, or sale-based mode of financing may also be applied.

The second is the allocation of zakat fund to finance microfinancing, micro savings, micro credit and micro takaful plan. The management of both Islamic microfinance bank and takaful operator can form alliance with zakat management to develop a comprehensive microfinance scheme which involves microfinancing, micro savings and micro takaful to provide financing, saving and protection for low and non-income people and needy in society. As for the contractual arrangement between zakat management and Islamic microfinance institutions, the agency agreement may be arranged. Thus, the contribution of the micro takaful participants for both participant investment fund (PIF) and participant risk fund (PRF) which is called tabarru' fund will be provided by zakat management. Equally, Islamic micro finance banks play the same role in providing micro financing and micro saving to develop micro businesses. The main role of Islamic microfinance institutions is to act as agent to manage the fund for the benefit of zakat recipients.

Muḍārabah mode of financing may be applied in capital investment and working capital, because the source of capital comes solely from zakat fund, not capital injection from the recipient. However, if working capital required is to procure plant or equipment, ijārah or murābaḥah or other sale or fee-based mode of financing may be engaged in their financial arrangement.

The third is the allocation of zakat fund to establish microfinance institution. It is quite difficult to assume zakat recipients possess enough capital base to set up this kind of institution without the support or partnership of other social finance institutions i.e. waqf and micro finance institutions. In this scenario, a group of zakat recipients or zakat management may form alliance and partner with other social finance institutions to establish a microfinance institution to provide social financing for the poor and low and non-income households. The institution, whether established by zakat recipients or zakat management, is owned by zakat recipients. As zakat management acts on behalf of zakat recipients. The board with representatives of zakat recipients, if the alliance is formed with zakat agencies, to employ individuals with requisite knowledge and skills in fund management to form the management for day to day activities of the zakat based financial inclusion institution. The institution will be designed to offer various Sharīʿah compliant services and products to cater for a range of changing economic and social requirements of zakat recipients. In this respect, the targeted population of such microfinance institution may not be confined to zakat recipients to attract wide range of participants including individuals running micro enterprises. The mode of financing can be either profit and loss sharing or sale-based contracts and qarḍ depending on assessment of the recipients. Diagram no 1 below depicts the structure of zakat-based microfinance scheme.

Diagram 1: Structure of Zakat Based Microfinance Scheme



Source: authors' own.

Sharīʿah Issues Relating to Using Zakat Based Microfinance Scheme

Allocating zakat funds in the three scenarios has raised some Sharīʿah issues. One of such issues is relating to the distribution of zakat funds. Is it mandatory to disburse zakat funds to all aṣnāf in the microfinance scheme or could the recipients be prioritized in accordance with the level of needs and urgency? Is there at-tashrīk (inclusiveness) in the texts related to distribution of zakat wealth or not? This is significant because not all the categories of zakat recipients are always present at all the time in any society. In some cases, al-ʿāmilūn (zakat collectors) and ar-riqāb (slaves) may not be present every time in every place. However, other four categories of the recipients are most likely available in every place. The other two categories namely al-ghuzāh and al-mukātabūn are present in some countries but not in the others (al-Gazālī, Iḥyā', n.d. p. 252).

Second, whether the contribution made on behalf of poor and needy by zakat management to the microfinance scheme is considered as their right in their capacity as zakat recipients from zakat fund or not? Many scholars who allowed giving zakat fund to either complement or finance microfinancing, micro savings and micro takaful or establish microfinance institution in partnership with management company, argued that such allocated portion of the zakat fund should be meant for the benefit of recipients (al-Shubayli, 2012). Therefore, the contribution paid on behalf or for the micro takaful benefit is owned by the specified participants in the underwriting such participants are equally qualified to be zakat recipients.

The micro takaful plan may involve general micro takaful business plan and family micro takaful business plan. The entitlement from the family plan account solely belongs to the participants. As such, in the event of death of any of the participant, the fund under this account is subject to conditional hibah. This is based on the decision of the Shariah Advisory Council of the Central Bank of Malaysia (SAC-BNM) at its 165th meeting. After the death of the participant, the amount accruable to the tabarruʿ fund or savings and investment funds would be given to the nominee based on conditional hibah. The basis for this Resolution is that the intention of micro takaful participants and micro takaful operators is to provide protection by giving the micro takaful benefit to the nominee. Alternatively, the Sharīʿah Committee of micro takaful operators (MTOs)may decide that the savings and investment funds be subject to the rules of Islamic law of inheritance (al-mīrāth) if the participant did not mention any nominee.

Regarding general micro takaful business plan, the tabarruʿ fund which is a dedicated risk fund for the participant is subject to conditional hibah or the policy of the micro takaful model as approved by the Sharīʿah committee of MTOs. Thus, in the event of death claim, the claim may be given to nominee if any or dependents or estate executors with the proof of dependency or letter of administration, and supporting documents such as death certificate or burial permit etc.

Third, it is noteworthy that classical scholars like Al-Nawawī, 2002, p. 269; and Ibn Quddāmah, 1983, vol. 2, p. 689 categorised zakat recipients in terms of ownership into two. The first category are those recipients who receive zakat with full ownership right. This category involves the first four asnaf namely the poor, the needy, people whose hearts are to be reconciled to Islam and zakat collectors and distributors.

The second are zakat recipients with contingent ownership without full right to zakat money. This is because they are given the zakat money to cater for circumstantial cases, therefore, the Quran did not use particle "lam" which indicates full ownership right as their needs is not permanent. Their ownership is not absolute it is restricted to specific purposes namely to free captive, to settle debts, in course of Allah, to assist wayfarer. Zakat money received should be applied solely for the underlying purposes, the remaining if any should be returned (Mikail et al., 2017).

The productive zakat recipients can be treated in two ways; first is to be treated like the first category of asnaf. They would have full ownership right to the zakat money disbursed. This disbursement would be for consumption. The second is to be treated like the second category of asnaf as explained above. Thus, the zakat money disbursed to support or finance their micro business would be maintained for that purpose.

Shafiʿī scholars opined that the ownership of this category of asnaf is contingent and restricted for the purposes specified, they allow them to invest the zakat money they receive. For example, a debtor can invest the zakat money he received to make up for the shortfall of his debt obligation.

Furthermore, the application of the concept of qalb (conversion of) contract may be sought where a productive zakat recipient first received zakat money based on qarḍ, or ijārah, or murābaḥah contract. If the micro business incurs losses and he is unable to pay back the qarḍ, the money may be totally waved by creditor in view that he [borrower] falls within the category of zakat recipients. Further, Patmawati, 2009, Matthew, 2010 and Patmawati, I. and Ruziah, G., 2014, raised another conundrum facing zakat agencies in terms of the low performance of zakat micro finance (ZMF) in their efforts to provide financial supports to cater for the needs for capital investment and working capital by productive zakat recipients.

CONCLUSION AND RECOMMENDATIONS

The paper initiated the discussion on fundamental challenges facing all micro finance institutions be Islamic or conventional. It is a groundbreaking discussion on the need to have external sources for Islamic microfinance institutions to achieve both social responsibility and sustainability. Followed by the study on the nature of zakat and the concept of scope of kifāyah (sufficiency) in reference to portions of each zakat recipients in zakat disbursement. The paper identified three scenarios; the first is giving zakat fund to complement microfinancing, micro savings, micro credit and micro takaful, the second is using zakat fund to finance microfinance services and the third is establishment of zakat-based microfinance services institutions through collaboration with Islamic microfinance institutions. In addition, the paper studied various Sharīʿah issues and views of scholars towards adoption of zakat for microfinance scheme. The paper recommends the following:

1) The disbursement of zakat fund may not necessary to cover all zakat recipients;
2) Certain low and non-income households may be shortlisted for zakat in a financial year to be the zakat recipients;
3) Productive zakat recipients may be given two portions, namely basic consumption and microbusiness portions;
4) The use of zakat fund to complement microfinancing, micro savings and the participants' contribution in micro takaful plan through collaboration with social finance institution like cooperative societies, micro finance banks, development banks, crowdfunding and others who act as distributional agents to offer microfinance services to low and non-income households;
5) The use of zakat fund to finance microfinancing, micro saving and micro takaful plan as investment capital, working capital, microcredit and takaful contributions paid directly from zakat agencies. The microfinance services providers disburse it to zakat recipients to cater for their evolving needs;
6) The use of zakat to establish microfinance institution carries independent legal personality registered under relevant authorities and managed by managing partner with technical expertise to deliver microfinance services to the poor and low and non-income households in an effective manner;
7) The attributes of scope or limit of kifāyah (sufficiency) can be applied to different levels of financial needs:

i) Life-cycle events such as birth, marriage, death, home building, old age, education, festivals; ii) Emergency needs such as sickness, injury, death of bread winner, the loss of job, theft, calamity i.e. earthquake, land slide, flood, tornado etc.; iii) Investment opportunity such as investment in business, land or household assets, micro businesses, micro enterprises.

8) Collaboration or partnership between zakat agencies and Islamic microfinance institutions is indispensable for zakat-based microfinance;

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