Qard-based Zakat Financing: A *Fiqhi* Analysis

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The COVID-19 pandemic has resulted in the emergence of a new segment of vulnerable people who have been exposed to microcredit by loan sharks. They have either lost their jobs, been forced to take unpaid leave, or had to temporarily close their businesses due to Movement Control Orders (MCO) imposed by the government. This situation is expected to persist even after the pandemic has ended, and thus requires financial intervention.

Zakat, the third pillar of Islam, serves as a wealth redistribution system that is expected to address poverty issues and social inequality so that "… wealth is not circulated solely among the rich" (Qur'an, 59:7). In the long run, a *mustahiq* (zakat-eligible recipient) should be able to escape poverty and eventually become a *muzakki* (zakat payer).

On the other hand, the pandemic crisis has affected the amount of zakat collection. Some states in Malaysia and other countries have reported a deficit in zakat funds due to a decrease in zakat collection and an increase in zakat distribution.

Against this backdrop, there is a need to develop a zakat ecosystem that ensures the long-term viability of zakat funds, one of which is through a microfinancing mechanism. In this regard, zakat funds are offered as financing via *qard* (benevolent loan), which requires repayment from the *asnaf* (zakat eligible categories), rather than an immediate and simple cash transfer.

Contemporary shariah scholars hold two different views on the use of zakat funds for financing. The first group of shariah scholars holds the view that the distribution of zakat funds in the form of financing is impermissible, as supported by the following arguments:

First, the Qur'anic verse (9:60) lists eight categories of people who deserve zakat: the poor (*lil-fuqara'*); the needy (*al-masakin*); zakat collectors; those whose hearts are being reconciled (with Islam); freeing war captives; persons in debt; those who are in the path of Allah; and the wayfarers. According to the Shafi'i school, the letter '*lam*' in *lil-fuqara'* signifies the meaning of *tamlik* (transfer of ownership). Therefore, the majority of shariah scholars require *tamlik* in the distribution of zakat. According to them, *qard* does not fulfill the definition of *tamlik*.

Second, the provision of a loan violates the fundamental principle of zakat distribution, which is intended to meet the *asnaf*'s basic and immediate needs. The majority of shariah scholars from the Maliki, Shafi'i, and Hanbali schools, as well as al-Karkhi from the Hanafi school, held the view that zakat is a religious obligation that requires an immediate fulfilment (*fauri*) for meeting people's immediate needs. The distribution of zakat in the form of a loan does not serve that immediate purpose. However, the popular opinion (*mashur*) in the Hanafi school is that the payment of zakat is an extendable obligation (*wajib muwassa'*) that can be delayed or deferred due to the absence of an explicit text which requires otherwise.

Third, zakat distribution through loan was never practised at the time of the Prophet, his companions, or successors.

Fourth, the prohibition against using zakat as a loan facility is based on the consideration of *sadd al-dzara'i* (blocking the means). This is so because if the borrower is unable to pay, the zakat funds will be vulnerable to deficit exposure, effectively eliminating the rights of other *asnaf* who are higher in ranking.

This position is adopted by the majority of Muslim jurists and some contemporary prominent shariah scholars, including Sheikh Utsaimin, Ahmad bin Humayd, Rafiq Yunus al-Misri, Abdullah al-Faqih, Hisam al-Din Afanah and the former Grand Imams of al-Azhar, Sheikh Jad al-Haqq and Sheikh Muhammad Sayyid al-Tantawi. Some *fatwa* issuing bodies such as Lajnah Ifta' Awqaf Kuwait, Fatwa al-Lajnah al-Da'imah, Fatwa Wilayah Persekutuan Malaysia, and Jawatankuasa Fatwa Negeri Pulau Pinang (2009) have also adopted this approach.

The second group of shariah scholars, on the other hand, are of the opinion that zakat distribution in the form of a loan facility is permissible based on *qiyas awla* (superior analogy): if zakat includes *gharimin* (persons in debt) under the qualified zakat categories (*asnaf*) and zakat funds can be used to settle their debt, it is permissible to use it as a loan. This is due to the fact that a person looking for a loan facility will eventually become a debtor (*bi i'tibari ma sayakunu*), making him a zakat beneficiary. Moreover, according to the Shafi'i school, the zakat institution/state, in its capacity as *'amil* (zakat manager), is given full authority to determine the appropriate zakat distribution mechanism based on *maslahah* (public benefit), *hajah* (need), and *maqasid 'ammah* (the general objectives of shariah).

The proponents of this viewpoint also claim that the Qur'anic verse (9:60) does not explicitly require direct ownership transfer (*tamlik*) in zakat distribution. Even if it does, some shariah scholars believe that loans fulfill the definition of *tamlik*.

Finally, one of the main objectives of zakat distribution is to empower the *asnaf*, which can be accomplished by giving zakat in a productive form. The Shafi'i and Hanbali schools allow zakat distribution for working capital. The use of zakat as a loan facility will benefit the *asnaf* by encouraging their entrepreneurial spirit while keeping them away from usury (*riba*).

Some contemporary shariah scholars and fatwa issuing bodies support this view, including Yusuf al-Qardhawi, Abu Zahrah, Khallaf and Hasan, Abd al-Sattar Abu Ghuddah, Muhammad Zuhaily, Jawatankuasa Fatwa Selangor (1998), and Jawatankuasa Fatwa Melaka (2011).

Despite differing opinions among shariah scholars on this issue, the author believes that the second approach is preferable based on *maqasid ammah*, *hajah* and *maslahah*. In addition, no decisive legal texts (*qat'i*) prohibit the distribution of zakat in the form of *qard*. The texts (*nusus*) do not specifically mention the mechanism for distributing zakat. In this regard, the zakat institution or government has the authority to determine an appropriate zakat distribution method. Also, the distribution of zakat in the form of loan facilities benefits both the *asnaf* and the zakat funds: it may foster the asnaf's entrepreneurial spirit, avoid usurious transactions, and ensure the sustainability of zakat funds.

Some countries have already used zakat funds for microfinance. For example, Kuwait Zakat House provides zakat as an interest free loan to *asnaf* and students. In Indonesia, Baitul Qiradh Baznas and Dompet Dhuafa offer zakat as a form of microfinance based on *qard* to the poor and needy. Similarly, Baitul Mal Aceh distributes zakat funds for working capital based on *qard* and *mudharabah* for business, livetock and agriculture. In Malaysia, Lembaga Zakat Kedah allocated a portion of *'amil* for house financing based on *qard*. Johor also introduced zakat financing for medical education based on *qard.*

Based on the preceding discussion, this article concludes that it is permissible to use zakat funds to finance *asnaf* affected by the COVID-19 pandemic based on *qard*. Nevertheless, the study recommends the following parameters (*dhawabith*):

a. The purpose of financing does not violate shariah principles (*al-thuruq al-masyru'ah*).
b. Zakat financing based on *qard* is offered and managed by zakat institutions, rather than individual zakat payers. In this regard, the zakat institutions should put in place proper control and monitoring mechanisms to ensure the repayment of zakat funds.
c. *Qard*-based zakat financing should be managed and monitored by the institutions that have expertise and experience in managing financing products.

d. *Qard*-based zakat financing should be used for productive purposes and done over the short term.
e. *Qard*-based zakat financing is not offered to *asnaf* who are genuinely in need of meeting their necessities.
f. *Qard*-based zakat financing should not preclude the rights of other *asnaf* who should be prioritised.

Notes

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