

Insurance of Zakat: A Comparative Jurisprudence Study Dr. Salahuddin Talab Faraj*

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ملخص البحث:

هذا البحث المعنون بـ: (التأمين على الزكاة- دراسة فقهية مقارنة) يتطرق بالدراسة المعمقة لمدى مشروعية التأمين على فريضة الزكاة لدفعها عن وجبت في ذمته ومات قبل أدائها لمستحقيها؛ وذلك من خلال بيان حقيقة التأمين على الزكاة ومقاصده، وتوضيح التكييف الفقهي له، وبيان تحت أي أنواع العقود يمكن إدراجه، ثم الكشف عن حكمه الشرعي، وبيان الأثر المترتب على القول بجوازه من حيث براءة ذمة الميت أم لا.

الكلمات المفتاحية: التأمين، التأمين على الزكاة، الزكاة.

Abstract:

This research titled “Insurance of Zakat: A Comparative Jurisprudence Study” investigates in depth the legislative status of insurance with respect to the Zakat duty. In this case Zakat is paid on behalf of a dead person who initially had to pay it before his/her death, yet he/she didn't do so. The study carries out this investigation through clarification of the concept of Zakat insurance, its purposes, jurisprudence status, and under which kind of contracts it should be appended. The study also reveals the Islamic ruling in this regard, and the resulting effect of classifying Zakat insurance as an allowable acton the financial responsibility clearance of the dead person.

Keyword: Insurance; Zakat insurance; Zakat.

Introduction

Praise be to Allah, the Lord of all worlds. May peace and blessings be upon His Messenger Muhammad, and upon his family, Companions, and whoever follows them until the Day of Resurrection. The wisdom of Allah Almighty necessitates the perfection and comprehensive ness of Sharia to encompass all aspects of human life and relationships. This is in addition to the rights related to these relationships, which includes man's relationship with his God Almighty. Sharia has characterized the rights of Allah with sacredness. Thus, it is forbidden to underestimate them. Zakat is one of these rights. However, anyone is subjected to bankruptcy or inability to pay it. Thus, is it allowed for him/her to insure against this case?

This study titled “Insurance of Zakat: A Comparative Jurisprudence Study”

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comes within this context. It aims to clarify the reality and purposes of the insurance of Zakat, in addition to its status with regard to Sharia rulings.

Research Problem

The research problem aims to answer a question related to what has been stated by the *jomhour* (majority of scholars) that if anyone dies before paying his/her due Zakat, then this Zakat should be paid even after his/her death. Based on that, the question that arises is that “is it allowed for a *mukallaf* (religiously accountable man or woman) to insure against the inability to pay a due Zakat for any compelling excuse such as bankruptcy or any financial crises?”

Research Importance

Research importance is expressed in the following points:

- It deals with a contemporary issue of insurance.
- It contributes to clarifying the effect of bankruptcy and financial crises on the worship of Zakat.

Research Questions

- What is the reality of the insurance of Zakat?
- What are the purposes of the insurance of Zakat?
- What is the jurisprudential position of Zakat insurance, and what is the Islamic ruling on it?

Research Objectives

- To clarify the reality of Zakat insurance.
- To highlight the purposes of Zakat insurance.
- To explain the jurisprudential position of Zakat insurance in *Fiqh* in order to arrive at the Islamic ruling on it.

Previous Studies

After careful research, the author did not find any book in the field of Zakat insurance. However, two preceding studies were found in the field of debt insurance. These are summarized below.

The first study is titled “Debts Insurance in Islamic Jurisprudence” by Prof. Mohammed Al-Zuhaily. This study is presented in the first *Witfaq* conference on *Takaful* (solidarity) insurance held in Kuwait in the 1st of Muharram 1427 A.H. (2th of Feb. 2006). This study discusses the reality of debt insurance, and its need in the Islamic financial institutes in order to enable these institutes paying off their debts. This helps solving the problem of unpaid debts due to debtor financial inability or delay to pay the debt, or even due to selling the debt. The study discussed the relevant procedures in this regard in addition to the cost of insurance certificate and many other related issues.

The second study is titled “Debts Insurance: A Jurisprudential and Economic Study” and was also presented in the above-mentioned conference. The study discussed the concept of debt insurance and its

Islamic status. It clarified the need of Islamic banks and finance institutes for this kind of insurance, and its effect on the expected profits of investors and contributors. It also investigated the role of this policy as a possible solution of the unpaid debts in the Islamic finance institutes.

It is possible to notice that the above-mentioned studies have discussed debts insurance, which is an individual right, and its potential effect on unpaid debts and expected profits. However, scope of the current study is to discuss Zakat insurance, considering that Zakat is a right of Allah Almighty. The study also aims to clarify the effect of this insurance on the clearance of financial responsibility of the *mukallaf* (religiously accountable man or woman).

Research Plan

The study consists of the previous introduction in addition to two topics as follows:

- Topic ١: The reality and purposes of Zakat insurance. This contains two subtopics:
 - The reality of Zakat insurance.
 - The purposes of Zakat insurance.
- Topic ٢: The jurisprudential status of Zakat insurance and its effect on the *mukallaf* financial responsibility. This contains three subtopics:
 - The jurisprudential status of Zakat insurance.
 - The Islamic ruling on the insurance of Zakat.
 - The expected effect of Zakat insurance.
- Conclusion: in which the author lists the most important results and recommendations.

Topic ١: The reality and purposes of Zakat insurance

١,١ The reality of Zakat insurance

To understand the concept of Zakat insurance, it is required firstly to introduce the reality of insurance as realized by early and recent scholars of *Fiqh*. This is explained below.

١,١,١ Insurance as regarded by the scholars of Fiqh Insurance was

Insurance was not known as a term in the early *Fiqh* literature with the exception of what is mentioned in the *Hanafi* fatwa by Imam Ibn Aabdeen in his book “Rad Al-Muhtar”. In this fatwa he said: “It is a common practice that when traders hire a boat from a *Harbi* man (a disbeliever who is not under treaty with Muslims) then they pay him the due fees. They also pay a defined amount of money (called *Sawkarah*) to a *Harbi* man residing in his homeland under the condition that whatever damage occurred to the boat due to fire, drowning, robbery, etc., then the *Harbi* man should guarantee it in exchange for the money he received.”^١

Some recent scholars of *Fiqh* defined insurance as “A contract in which the debtor is ought to pay the insured entity (the beneficiary) an amount of

money (at once or as a regular payment), or any other compensation in the case of the occurrence of any accident or damage as stated in the insurance contract. This is return of a payment or financial installment paid by the insured entity to the insurer.”^۱

Considering the above-mentioned definition, it is possible to conclude the pillars of insurance as flows:

A. The contracting entities: These are the insurer and the insured entity. The insurer is a group or company that pays the compensation in the event of damage or accident as described in the insurance contract. The insured entity is the party that pays a money installment against that compensation.

B. The payment: This is the money paid by the insured entity. It is called the insurance installment.

C. The financial compensation: This is the amount paid by the insurer to the insured entity against any damage caused by an accident happened to him. This should be in accordance with the insurance contract. This compensation is called the insurance amount.

D. The risk: This is the accident or damage that may occur in the future. This forms the main reason for the establishment of the insurance contract in order to support the affected party. This should be in accordance with the insurance contract under the condition that the damage was not a result of any dereliction by the insured party.

۱, ۱, ۲ The reality of Zakat and its kinds

A. The technical definition of Zakat

Scholars reported several technical definitions of Zakat. Some of these definitions are: “An obligatory right in the wealth”^۲, and “An obligatory right in specific kinds of wealth that should be paid to specific kinds of people in a specific time.”^۳ Zakat could also be defined as “A specific right in specific kinds of wealth to specific kinds of people in a specific time.” It is called a “specific right” because Zakat is of three kinds as is explained below. The phrase “specific kinds of wealth” is mentioned because Zakat is only due in some types of wealth. The phrase “specific time” is mentioned because Zakat is due on annual basis. The phrase “specific kinds of people” is mentioned to limit Zakat to the eight categories of people who are eligible to receive it. Finally, the specific conditions are ownership, and immediate payment according to some scholars.

B. Types of Zakat

Zakat has three types:

- Zakat of souls: i.e. purifying them from sins and bad behaviors. This is understood from the verse “And [by] the soul and He who proportioned it. And inspired it [with discernment of] its wickedness and its righteousness. He has succeeded who purifies it.”^۴
- Zakat of bodies: which is Zakat Al-Fitr in Ramadan. This is ordered in a hadith narrated by Al-Bukhari that the Prophet (peace and blessing of Allah be upon

- him) enjoined the payment of one Sa' of dates or one Sa' of barley as Zakat Al-Fitr on every Muslim slave or free, male or female, young or old..."¹
- Zakat of wealth: including money, properties, crops and fruits, and livestock. This is ordered in the hadith of Muath bin Jabal (may Allah be pleased with him) when the Prophet (peace and blessing of Allah be upon him) he sent him to Yemen and said to him: "... and if they obeyed you (i.e. regarding the obligation of prayer), tell them that Allah has enjoined on them Zakat of their properties and it is to be taken from the rich among them and given to the poor..."²

١,١,٣ The reality of Zakat insurance

According to the above discussion, it can be concluded that the term Zakat insurance refers to "the cooperation of a group of people exposed to a common risk in order to protect their responsibility from that risk by paying an amount of many as a donation according to a contract between them. Then, the Islamic insurance companies shall be in charge of investing that money on their behalf for a predefined share of the profits considering that these companies are authorized to invest that money or through the practice of *mudharaba*."

Considering the previous definition it is possible to conclude the issue discussed in this study as follows:

- Insurance parties: These are the insurer and the insured entity. The insurer is the insurance company that pays the debt on behalf of a person in the case of death or bankruptcy. The debt here is the due Zakat that has not been paid to the deserving people. The insured entity is the *mukallaf*, i.e. accountable person, who pays a money installment.
- The risk: This is the risk that one will face in the Hereafter as a result of not paying a due Zakat.
- The payment: This is the money taken by the insurer (insurance company) for investing the money paid by the insured people.

Based on the above discussion, the situation presented in this study has a high likelihood in our life especially for the traders and wealthy people. For example, if Zakat was due from one of them but he/she faced a bankruptcy situation or a financial crisis, or couldn't secure cash to pay the due Zakat, and this situation lasted till his/her death, then shall the insurance company pay the Zakat after his/her death? This is what is discussed in the following topic.

١,٢ The purposes of Zakat insurance

The above-mentioned scope of Zakat insurance has great and virtuous purposes that could be summarized in the following sections:

١,٢,١ Acquitting responsibility of the accountable people

This means that one would meet his/her Lord with a clear responsibility with regard to the rights of Allah Almighty. The Prophet (May peace and blessings of Allah be upon him) that the debt of Allah is more eligible to be

paid. Narrated Ibn Abbas (may Allah be pleased with him and his father) that a woman from the tribe of Khath'am asked the Prophet (May peace and blessings of Allah be upon him) saying: "O Messenger of Allah! The ordinance regarding pilgrimage made obligatory by Allah for His servants found my father a very old man unable to sit firmly on a riding camel, shall I perform a pilgrimage on his behalf?" He said, "Yes."¹⁴ Al-Ainy (May Allah have mercy upon him) said: "This is evidence that whoever died before performing hajj then his *wali* is ought to delegate someone to do so and to cover the required cost in this regard. The *wali* should also pay his debts. Imam Shafi'y adopted this evidence as well" This is in agreement with what was mentioned by Imam Al-Shatibi that Sharia is based on the fulfillment of the benefits of people in the future and the present¹⁵.

١,٢,٢ Guarding the Deen

This is among the greatest aims of Sharia. It means that *Oboudeyyah* (being true slaves of Allah) should be absolutely directed to Allah. Ibn Taymeyyah (May Allah have mercy upon him) said: "Knowing Allah is the ultimate knowledge, worshipping Him is the most honorable purposes, and arriving at His acceptance is the most virtuous aims."¹⁶

Guarding the deen is based on two pillars: protecting its existence by establishing its pillars and bases, and preventing what contradicts it with the expected implications.

Scholars of Islamic fundamentals stated that guarding the deen by protecting its existence is achieved by knowing its rulings and implanting them through doing the obligations and avoiding the forbidden matters. They considered this as the minimum status that nobody has any excuse to abandon it.

Topic ٢: The jurisprudential status of Zakat insurance and its effect on the mukallaf responsibility

٢,١ The jurisprudential status of Zakat insurance

Before explaining the jurisprudential status of Zakat insurance, it is essential to clarify an essential issue which is: Is Zakat due from the *mukallaf* immediately or it could be delayed? It is also essential to clarify the ruling on whoever passed away before he/she pays a due Zakat to the deserving people. Finally, the jurisprudential status of Zakat insurance is clarified based on the investigation of the previous issues.

٢,١,١ The obligation of Zakat: Is it an immediate or delayed obligation?

This is a controversial issue among scholars. There are two opinions in this regard:

The first: is the *mathhab* of the majority of *Fiqh* scholars (*jomhour*) including *Malikies*, *Shafi'ies*, and *Hanbalies*. They said that Zakat is due immediately and couldn't be delayed.¹⁷

The second: is the *mathhab* of *HanafiesFiqh* scholars. They said that Zakat is not due immediately and could be delayed. This delay means that there is

no specific time of Zakat payment. However, if one died before paying a due Zakat, he/she is considered a sinner.

Evidences of the *jomhourmathhab*: The majority mentioned several evidences from Quran, Sunnah, and reasoning.

A. Evidences from the Noble Quran: They mentioned the following verses: “Then strive together (as in a race) towards all that is good”^{١٦}; “and be quick in the race for forgiveness from your Lord, and for a Garden whose width is that (of the whole) of the heavens and of the earth, prepared for the righteous”^{١٧}. The evidence in the text is the clear urge to perform right deeds quickly in their due time without any delay, which is applicable to paying Zakat to the deserving people.^{١٨}

Evidences from the Noble Quran also include the following verse: “Eat of [each of] its fruit when it yields and give its due [Zakah] on the day of its harvest.”^{١٩}

Evidence in this verse is that the absolute order in the verb “give” indicates immediacy. This is an evidence that delay in this regard is forbidden and a reason of punishment. Assuming that delay is allowable, then it should be one of two cases: delay to specified time, which contradicts the above-mentioned order; and unlimited delay, which has no evidence on it.^{٢٠}

B. Evidences from Sunnah: the hadith that the Prophet (May Allah’s peace and blessings be upon him) said: “I left at home a piece of gold which was from the charity and I disliked to let it remain a night in my house, so I got it distributed”^{٢١}. The evidence in this hadith is that the Prophet (May Allah’s peace and blessings be upon him) refused to keep an amount of charity in his house overnight. Rather, he rushed to divide and distribute it to the needy. This is clear evidence that Zakat should be paid immediately, and that delaying it is forbidden. Imam Ibn Otheymeen commented on this hadith saying: “it is forbidden to delay Zakat payment as long as there are people eligible for it.”^{٢٢}

C. Reasoning evidence: this is based on the fact that the need of poor people is immediate, which necessitates the immediate payment of Zakat in order to respond to that need. The delay of Zakat contradicts the optimum goal of its obligation.^{٢٣}

Evidences of the *Hanafimathhab*: they argued that allowing the delay of Zakat payment could be concluded by reasoning. They said that the mere order of payment doesn’t necessitate immediacy. Thus, it is allowed for a *mukallaf* to delay its payment since it is required eventually to pay it without any time frame.^{٢٤} However, the opinion that has the strongest evidence is that the mere order necessitates neither immediacy nor delay. But the immediacy here is understood from the order to pay Zakat to the needy people who have urgent need. The delay of Zakat in this context contradicts the optimum goal of its obligation.^{٢٥}

The *Rajeh* opinion: Considering the above discussion, the researcher concluded that the majority, *jomhour* opinion is the one that has the strongest evidence, which implies that Zakat payment is obligated immediately. This is because of the following:

- Evidences mentioned by *jomhour* (the majority of scholars) are more conclusive with no valid objections.
- Opinion of the majority is supported by the Sharia mission to support the needy.
- Immediate payment of Zakat ensures clearance of one's responsibility.
- Scholars agreed that whoever delayed Zakat till death is a sinner.^{١١}

Based on the above-mentioned discussion:

Hanafi Imams who said that payment of Zakat could be delayed stated that whoever delayed its payment, yet he was able to do so, then his/her inheritors have to be it from the inheritance even if he/she didn't mention that in the will. Ibn Mufleh said: "Zakat obligation is not dropped by death. It should be taken from the inheritance even if this is not mentioned in the will"^{١٢}

However, that traders and business men don't usually have cash money, and that their business is subjected to financial crises or sudden bankruptcy. The question that arises: is it allowed that a group of traders make a deal in which everyone pays an agreed amount of money as a donation, even if it unequal, so that the total amount that one pays could be used to be his/her delayed due Zakat after death? And what is the jurisprudential status of this case or assumption?

٢, ١, ٢ The jurisprudential status of Zakat insurance

The researcher believes that Zakat insurance is categorized under the cooperative insurance, which is based on cooperation in righteousness rather than investment and profit. In this case, a group of business men cooperate to avoid a possible risk related to the hereafter, which is their financial responsibility to pay Zakat. Every individual of them is committed to pay an amount as a donation called installment or prescription where insurance companies invest this money on behalf of the insured traders. This investment should be done in accordance with Sharia, where the insurance company takes a defined share of the profits as a *mudharaba* party, or as a delegate of the insured group.

Considering the above, it is possible to say that the jurisprudential status of Zakat insurance is a deal in which four kinds of contracts are implemented as follows:

- A. A social insurance contract: this is clear in the cooperative nature of the agreement held between the council of the insured people. Those people have a relationship based on their financial responsibility to pay Zakat.
- B. A grant contract: this is because the insured people pay their installments to the insurance company as a donation. If any of them died and needed the insurance company to pay his/her Zakat, then this is done as a donation to him/her as well.
- C. A *wakalah* (power of attorney) contract: this is a contract between the insurance company (*wakil*, the agent) and the insured people (*muwakkal*, grantor of the power). Based on this contract, the insurance company manages the insurance process on behalf of the insured people.

E. A *mudharaba* contract: in this contract, the insurance company (the *mudhareb*, investor) invests the money available from the installments paid by the insured people (capital providers). The company then divides the profits between them as agreed upon, without any violation of the Sharia principles.

٢,٢,٢ Islamic ruling on the insurance of Zakat

In order to understand the Islamic ruling on the insurance of Zakat, it is essential firstly to illustrate the ruling on the one who had a due Zakat, yet he/she died before paying it: is it possible to pay this Zakat on his/her behalf?

٢,٢,١ The ruling on whoever died before paying a due Zakat

In fact, whoever died before paying a due Zakat that he/she was able to pay is a sinner. The majority of the scholars of *Fiqh* including Malik, Al-Shafe'y, and Ahmad said that whoever died before paying a due Zakat, and then this Zakat remains due from him/her. It should be paid from his/her inherited wealth because it is a right of Allah, which is considered as a debt.^{٧٤} The majority of scholars (*jomhour*) mentioned the following evidences in this regard:

A. Narrated Ibn Abbas (may Allah be pleased with him and his father) that a woman from the tribe of Khath'am asked the Prophet (May peace and blessings of Allah be upon him) saying: "O Messenger of Allah! The ordinance regarding pilgrimage made obligatory by Allah for His servants found my father a very old man unable to sit firmly on a riding camel, shall I perform a pilgrimage on his behalf?" He said, "Yes."^{٧٥} Al-Ainy (May Allah has mercy upon him) said: "This is evidence that whoever died before performing hajj then his *wali* is ought to delegate someone to do so and to cover the required cost in this regard. The *wali* should also pay his debts."^{٧٦}

B. Ibn Abbas (May Allah be pleased with both of them) reported: A woman came to the Messenger of Allaah (May Allah's peace and blessings be upon him) and said: My mother has died, and fasts of a month are due from her. Thereupon he said: "Don't you see that if debt was due from her, would you not pay it?" She said: Yes (I would pay on her behalf). Thereupon he said: "The debt of Allaah deserves its payment more than (the payment of anyone else)."^{٧٧} Imam Nawawi said "this is evidence that whoever died and left behind him a debt due to Allah and a debt due to a man, then the debt due to Allah is given priority."^{٧٨}

٢,٢,٢ The ruling on Zakat insurance and its evidence

The above discussion reveals that hajj and fast, which are bodily worships, should be made up on behalf of the dead Muslim. Zakat in this regard is more entitled to be made up since it is a financial worship. This supports the opinion that allows Zakat insurance based on the hadith of the people of Ash'ari. The Prophet (May Allah's peace and blessings be upon him) said: "When the people of Ash'ari tribe ran short of food during the holy battles, or the food of their families in Medina ran short, they would collect all their

remaining food in one sheet and then distribute it among themselves equally by measuring it with a bowl. So, these people are from me, and I am from them."^{۱۲۲}

Evidence in this hadith is that the people of Ash'ari tribe supported each other in hard situations and poverty times. Everyone among them would bring an amount of food different from the others. They then mixed up the food and invite everyone to take a share that satisfies his needs. This is similar to the idea of Zakat insurance, which is based on the partnership of a group of people to protect their responsibility against the inability of paying Zakat. Those people pay their money shares to the insurance company to dismantle this risk, so that Zakat would be paid on behalf of any of them who pass away before paying a due Zakat due to any financial hardship such as bankruptcy or unavailability of cash money. Although Zakat is considered a right of Allah, people have a right in this Zakat too because its essence is based on paying money to the eligible categories of Zakat.

۲.۳ The expected effect of Zakat insurance

The opinion that insurance of Zakat is allowed necessitates the clearance of the financial responsibility of the *mukallaf* insurer who passed away prior to paying a due Zakat. This is because Zakat in this case is considered a debt that is attached to his/her financial responsibility. This responsibility could only be acquitted by paying off the debt to the deserving people. The evidence on this is the Hadith of Salamh bin Al-Akwa' (may Allah be pleased with him) that a dead man was brought for funeral prayer. The Prophet (May Allah's peace and blessings be upon him) said "Is he in debt?" The people replied in the negative. So, he led his funeral prayer. Another dead man was brought. The Prophet (May Allah's peace and blessings be upon him) said "Then pray for your (dead) companion." Abu Qatada said, "O Allah's Messenger (peace be upon him) Lead his funeral prayer, and I will pay his debt." So, he led the prayer^{۱۲۳}. The previous Hadith is also narrated by Abu Shaibah with additional statement in which the Prophet (peace be upon him) said to Abu Qatada "the debtor bears responsibility and the dead is acquitted of it, i.e. the debt"^{۱۲۴}. Imam Shawkani said: "This is evidence that the dead person was acquitted of the debt responsibility."^{۱۲۵}

Conclusion

The main findings of the study are listed below.

First: Conclusions

۱. Debt insurance is a consolidation of a group of people whose financial responsibility is exposed to risk with the intention of keeping this responsibility acquitted. This is achieved through paying an amount of money as a collective donation controlled by an agreement between the insured people. An Islamic insurance company then takes responsibility of investing this money on their behalf for a predefined share of the profits.
۲. Zakat insurance is allowed with the intention of paying off the right of Allah

Almighty, which is here a Zakat that was due before one's death. This is a *Qiyas* based on the comparison with the bodily worships such as fast and hajj.

٢. In the contract of Zakat insurance, the insurance company is considered as a representative of the insured people with regard to insurance management, money investment (*mudharabah*), and dividing profits in accordance with the insurance agreement.
٤. Financial responsibility of the insured person with regard to Zakat shall be acquitted after the insurance company pays Zakat on his/her behalf.

Second: Recommendation

١. Students of knowledge are recommended to devote more research effort in the field of Zakat insurance considering its significant Islamic advantage for the payer and the people of Zakat.
٢. The study recommends that Islamic rulings on debts insurance in general, and Zakat insurance in specific should be introduced to business and rich men.
٣. The study recommends educating these rulings to students at all branches of Islamic sciences in institutes and faculties.

Footnotes:

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