ORIGINAL ARTICLE

The Sustainability of *Fiqh* in Critical Fatwas (Jurictic Rulings) Concerning *Zakat* In Terengganu

Wan Zulkifli Wan Hassan, Hasnan Kasan, Azwira Abdul Aziz, Zulkifli Mohamad, Jamsari Alias, M. Sabri Haron & Luqman Abdullah

ABSTRACT

This article discusses the sustainability of the law of *fiqh* in critical fatwas (jurictic rulings) concerning tithe in Terengganu. Sole reliance of the fatwas on the As-Shafi’i teachings alone may cause difficulties to society. Henceforth, fatwas that are appropriate to current needs and general interest should be properly sustained. The issue of tithe is one of the matters which require sustainability as it is one of the key instruments in the development and economic prosperity of a nation. Nevertheless, can these fatwas on tithe, deemed critical, resolve the many problems of the society and government in order to ensure that the economic and social circumstances of the Muslim society will be enhanced in line with the requirements of *syarak* (Islamic Law)? Do the said fatwas, either influenced by the Shafi’i sect or views from other sects, including contemporary scholars, take into account the changes in situations and time? This article will study the sustainability of tithe in critical fatwas on tithe in Terengganu as a research material. The research results will show that there is indeed sustainability of *fiqh* in the decision of a particular fatwa on tithe, in overcoming an issue, and it is considered to be appropriate to current times and public interest.

**Key words:** Sustainability of *Fiqh*, Critical Fatwas, the Tithe

Introduction

There are several fatwas on *zakat* which are deemed critical for discussion in this article. This was due to the frequent problems faced over the passage of time particularly in the management and procedures of the tithe in its collection and disbursement. These problems arose from there being assets which had not been in existence in the past, such as salaried income, Employee Provident Fund (EPF) assets, investment assets of the tithe, self-pay tithe and many others. The management and administration of tithe funds also require change and modernisation from time to time. Realising this situation, a discussion on the rules of the tithe should necessarily be held by those qualified in such matters. Moreover, it is one of the sources of government income which must be managed properly for either collection or distribution.

In the formulation of a rule especially by a fatwa-establishing institution, Yusuf Al-Qaradawi (1990) stressed that *muftis* or fatwa committees should have the expertise in establishing the laws contained in texts (*nas*) as well as having a mechanism of research for consensus as outlined by Islamic scholars. In this manner, each fatwa issued will ensure general benefit and wellbeing for the Muslim community without breaching the laws that had been clearly stated in al-Quran and al-Sunnah. Hence, the fatwa institution must play an important role in ensuring each fatwa passed is determined fairly and meets the objectives of Islamic rules and is suitable with current times and needs.

To achieve the need for modern fatwas regarding aspects of the tithe, muftis and those given authority in fatwa institutions should rightly utilise various mechanisms of *ijtihad* (personal interpretation) in their effort to provide validated responses upon incidents and problems which occurred with regard to the rules. Hence, are fatwas which are deemed critical in tithe matters, capable of resolving the problems of the state and community in order to improve the economy and the Islamic social standing, in keeping with Islamic rules? Should these *fatwas* be influenced by the Shafi’i sect or should they consider the perspectives of other denominations including opinions of contemporary scholars by taking into account in the changes over time and situation? Hence, this study would scrutinise the extent of the sustainability of the *fiqh* in critical fatwas which were put
forward by Mufti and the Fatwa Committee of the Terengganu State Government from 1953 to 2005 with particular reference to the fatwas of the tithe. The choice of research on these aspects of the tithe was timely for there were many new features which required complete explanation of the rules which were flexible and not tied to one set of teaching.

This study focuses on the sustainability of fiqh in critical fatwas on the tithe in Terengganu based on secondary data collected. According to Syed Arabi (1992), secondary data is defined as data gleaned from sources elsewhere for the purpose of formulating new interpretations of a particular subject matter. Secondary analysis was utilised to research documents in Malay, Arabic and English which touched upon various critical fatwas of the tithe. According to Bailey (1992) secondary analysis was defined as the analysis of documents or data collected or written based on the description from those indirectly involved but had received important information in order to arrange them by reading the principle documents.

The Importance of Fiqh Sustainability:

Dependence of rules on a particular sect is not unique or localized for it is a global phenomenon in today’s world. Nevertheless, Islamic law allow muftis to confer in determining a fatwa using the element of ijtihad for precedents are limited and not all rules are strictly interpreted. A fatwa passed by a mufti in the past may not necessarily be able to solve current problems and queries. Hence, many fatwas require sustainable of the fiqh to match modern needs. This is important because there were doubts within the Muslim community itself on the adequacy of fiqh and of Islamic thought in solving various problems of this dynamic and global era.

Ibn Al-Qayyim (Undated) explained that Islamic law could be categorised into two. The first are permanent rules (thabit) which are set and with no possibility of changes nor can any conferences (ijtihad) be done on them. The second are rules which could accept changes (mutaghayyir) and in accordance with the principles of usefulness, current needs and localized.

An example of an issue where fiqh sustainability is evident is on the tithe institution. The tithe is the third pillar of Islam and is one of the commandments from Allah the Almighty which affected the rights of Allah and the rights of human. In addition, the tithe is also among the important national revenue source and needed to be managed in the best possible way be it from the aspect of collection or disbursement. It needs to be given serious and firm attention in a systematic manner, as had occurred in the beginning of Khulafa’ al-Rashidin Caliph, Abu Bakr al-Siddiq r.a’s administration, for example when he faced a group which refused to submit to the payment of the tithe, and decided to wage war on them, even though he was not supported by some of the companions (al-Khudari. 1965).

The religious practice of paying tithe has regulations and accounting methods which had been formulated and periodically improved to remain relevant to current conditions and needs. For example, some types of assets on which tithe is imposed had to be revalued, as they may be unsuitable during Khulafa’ al-Rashidin’s time but can attract tithe in the period thereafter. Hence, the determination of the rules regarding the tithe, whether in the form of fatwas or through some other decree was necessary to avoid confusion in Islamic society (Hailani. 2006).

Therefore, the choice of this topic of discussion (tithe aspect) was appropriate because there were many new aspects which required deliberation of the rules in a flexible manner without being tied to one Islamic denomination only.

Critical Fatwas Concerning The Tithes:

There were several issues on fatwas deemed critical concerning the tithe in the effort to sustain the fiqh thoughts in the institution of tithe for them to be accepted and utilised by society regardless of the changes in time and place. Among the issues of critical fatwas on the tithe which were frequently found to have caused problems to the government and society were:

The First Issue: Zakat on Illegitimate Properties:

The society had queried on the rule of extracting tithe from illegitimate properties revenue such as from lotteries, gambling and others. In providing a reply, Mufti Shaykh Sayyid Yusuf b. 'Ali al-Zawawi declared that illegitimate properties funds must be returned to their owners and it is not compulsory for that person to pay tithe and instead it becomes compulsory for the original owner to pay it (Terengganu Department of Islamic Affairs. Undated).

The Mufti’s reply above illustrated the importance he placed on the use of assets whether for religious deeds or for other purposes. The Mufti insisted that illegitimate properties gains must not be used for payment of tithe despite the intention of some of the Muslim community wanting to pay tithe from the proceeds of activities prohibited in Islam. The Mufti’s response was due to his application of views which had been
unanimously accepted by the ulemas including those from the al-Shafi’i sect. This fatwa was clearly based on the view of al-Ghazali (1968) an al-Shafi’i scholar whose opinion was as follows:

Whomever clearly possesses illegitimate properties (haram) assets, it is not compulsory on him to perform the Hajj, and not compulsory to settle kaffarah (penance) involving his assets, for he is deemed bankrupt and tithe is not chargeable, as tithe is an obligatory requirement, for example of 2.5% when on the other hand it is obligatory for him to either return the assets to the owner, if known, or spend it towards the poor, if not.

This statement by Imam al-Ghazali was summarized by al-Nawawi (Undated) in his book Al-Majmu’ as follows:

Al-Ghazali was of the opinion that if a man has nothing but obvious illegitimate properties assets in his possession, he is barred from performing the Hajj pilgrimage and does not have to pay the tithe.

On this issue, there are hadith from Rasulullah p.b.u.h. which can be used as a basis of law. One such hadith is (al-Bukhari Muhammad b. Ismail. 1987):

Allah shall not accept any alms (sadaqah) unless it came from a good source.

Based on this hadith, Ibn Hajar al-Asqalani (1993) commented on the tithe from illegitimate properties assets or of people giving donations from illicit gains. He emphasised that the hadith demonstrated that each act of charity and tithe proceeds taken from illegitimate properties funds will not be accepted by Allah the Almighty.

An ulema from the Hanafi sect, such as Ibn ’Abidin (1966) had also touched on this issue. According to them a person who wishes to pay tithe must cleanse his asset from any illegitimate properties elements. However, there are some of them who hold the view that if a person can extract a lawful asset from an unlawful asset, then he can pay tithe on the former.

One of the ulema from the Maliki sect, al-Dardir (Undated) had said that tithe is made compulsory on those who had reached the requisite nisab (the amount one's net worth must exceed for the Muslim owner to be obligated to give tithe), it is not made obligatory on those who has not met the required ratio, such as those who seize the property of others, and those who have been entrusted to take care of the properties of others.

This is similar to the views held by Ibn Qudamah (Undated) and Muhammad b. Munifh al-Maqdisi (1418H) among the ulemas of Hanbali sect, which said that the administration of assets by a person who had seized the assets over those assets are illegitimate properties, and not valid, such as taking ablution with seized water, praying with seized clothes or at a seized place. This applies in giving tithe and doing the hajj, with properties that have been seized as well as the transactions conducted upon the assets such as sale and purchase, hire and others.

With this, the fatwa that is issued by the Mufti clearly shows the intention of the Mufti to reject and prevent (sadd al-dhara’i’) the Muslim community from falling prey to using properties that are illegitimate properties, when in fact religious deeds are supposed to make one closer to Allah the Almighty. Although the original aim of tithe is to help the needy, Islam will not allow tithe to be sustained in any manner not permitted by Allah the Almighty.

The Second Issue: Tithe on Savings in Employees Provident Fund (EPF):

Issues had arisen relating to the rule on payment of tithe, on monies saved in accordance to the regulations of the Employee Provident Fund (EPF). The Mufti Sayyid Yusuf b. ’Ali al-Zawawi asserted that it is obligatory to pay tithe on the provident fund savings which have been deducted from salary, once that savings reach a certain amount on which tithe will be obligatory, and the savings had been kept for a whole year. This is because the monies are actually the properties of the depositors (Terengganu Department of Islamic Affairs. Undated).

The answer given by the Mufti above did not however make it clear on which portion of the monies would tithe be payable. Will the tithe be counted once the depositor receives dividend on it, or is tithe obligatory before the monies are received?

In the above case, the Mufti appears to favour the opinion of the fuqaha’ which stated that the savings can be equated with a debt payable. This is because the Mufti was of the view that the managers of the provident fund can be considered as guarantors to the depositors and the depositors can be considered as a creditor. In relation to the tithe of a creditor, the fuqaha’ had differences in their views, with the majority of them taking the view that once the debt is included as a debt that can be repaid, then it becomes obligatory on the creditor to pay the tithe on his assets or the other assets that he has, if he had not yet received the payment of the debt (Yusuf al-Qaradawi. 2000).

Hence, the depositor or creditor must pay tithe on completion of hawl, using the monies available to him, even though the savings is yet to be given to him. Among the reasons that the Mufti gave for taking the view that tithe is obligatory on monies saved in provident fund are that the monies have the potential to grow, and the depositor can actually enjoy the growth of the monies. Therefore the depositor cannot try to find excuses not to
pay tithe. The Mufti’s preference of the fuqaha’ majority view is therefore apt and appropriate with the current cases being discussed and can sustain the institution of tithe.

The Third Issue: Tithe on Salary:

One of the examples of sustainability of practices of fatwa, can be seen through the fatwa of tithe on salaries. This is based on the answers provided by the Mufti and the Fatwa Committee which had clearly included modern references in solving the above issue. After the meetings were held and it was decided that wage and income tithe are compulsory on those who are qualified to pay tithe, with references made to the fatwa of Fadilah al-Imam al-Akbar Shaykh Sayyid al-Tantawi Syeikh al-Azhar and the view within the book al-Fiqh al-Islami wa Adillatuh by Wahbah al-Zuhayli (Minutes of 5th Meeting, 4th Term, 9 August 1997).

Based on the fatwa issued by the Mufti and the Fatwa Committee above, it is clear that they do consider the views of ulema and modern writings. The book clearly mentioned that it is compulsory to pay tithe on the result of work, including wage, taking into consideration the views of some of the companions such as Ibn ‘Abbas, Ibn Mas’ud, Mu’awiyah, and some tabi’in such as al-Sadiq, al-Baqir, al-Nasir, Dawud al-Zahiri, ‘Umar ‘Abd al-‘Aziz, al-Hasan, al-Zuhri and al-Awza’i (Wahbah al-Zuhayli. 1997).

Al-Qaradawi (Undated) stated, the wage and income tithe are tithe on acquired assets (al-mal al-mustafad) that is, tithe arising out of wage and professional fees. Wage and income tithe including revenue or returns as a consideration for services such as wage, bonus, dividends, rental, royalty, gifts, allowances, compensation, seasonal business and other forms of acquisition whether during life, on pension, or in death and career based income or as a professional.

Even though the fatwa clearly referred to the views of ulema outside the Shafi’i sect, based on what was said by al-Qaradawi, the writer thinks that it can still be adapted to the Shafi’i sect, if viewed from the perspective of salary sourced income which can be considered an acquired asset. In the Shafi’i sect, the tithe properties are limited to that which had been mentioned in the hadith of Rasulullah p.b.u.h. Hence, some assets are imposed a tithe and others are not. Not all assets attract tithe as tithe is included in the category of ibadah (religious deeds) as important as praying, fasting and performing hajj in the pillars of Islam. In matters involving religious deeds and must be completely obeyed, it cannot be equated with others as it is an absolute right of Allah the Almighty (al-Shafi’i. 1999; al-Ghazali. 1998).

This is as according to al-Qaradawi (2000), the four sects had decided that acquired assets will not attract tithe until they reach the required ratio and hawl. However, according to Imam Shafi’i no tithe is payable on acquired assets if measured from the perspective of the hawl condition imposed. This differs from the views of other ulemas not from Shafi’i sect which say that all assets which are kept will attract tithe if they meet the ratio, notwithstanding that the hawl period is not yet over.

References to sources other than the Shafi’i sect in respect of not imposing the condition of hawl on acquired asset, is almost an indication of leniency towards accepting the views of ulema not within the Shafi’i sect, if this is what is necessary for public interest.

This is seen as important as making it compulsory to pay tithe in the above example will benefit the Muslim community whereas not making it obligatory will lead to a loss to the Muslim community. If reliance on the Shafi’i sect was made a basis then the fatwa issued would not have been so decided as it clearly contradicts the views that were put forward by the Shafi’i fuqaha’ in making hawl a condition for acquired assets arising out of wage, after the ratio for it to be a tithe asset is reached. The decision of the fatwa that has been issued was taken based on current needs and proved the openness of thinking towards rules in the 1980s. In addition, new reference materials from outside, both in Arabic and English whether in original form or translated was rapidly entering the market and spread widely, being widely read and studied by all levels of society (Rahimin Affandi Abdul Rahim. 2000).

Hence a fatwa that makes it compulsory to pay tithe on income is an important step in preserving the interest (istislah) of Muslims and is not the view of those who prioritise worldly interests. The obligation of fatwa on income had in fact been seriously debated by the fuqaha’ around the world. The fuqaha’ was not interested in fulfilling their own interest but instead wished to sustain the tithe institution and deeply concerned towards the plight of the asnaf (tithe recipients) around the world who would need help from the tithe.

The Fourth Issue: Tithe and Income Tax or Land Revenue Tax:

There are also two queries on tithe that had been raised by those who have paid income tax or land revenue tax to the government. The questions relate to whether it is sufficient to deduct the payment of income tax or land revenue tax as replacement for tithe payment.

In giving his answer, the Mufti Shaykh Sayyid Yusuf b. ‘Ali al-Zawawi appeared to differentiate the tithe and tax from land revenue tax as tithe is made obligatory by Allah the Almighty. Whereas, tax is an obligation
imposed by the government on the society to finance the society’s needs. This is as the government will need to
tax the people in its efforts to grow the economy and fulfil the society needs.

Hence, the Mufti had emphasised that tax payable to the government in any form is not deductible from the
amount of tithe payable and the obligation to pay the tithe cannot be said to have fulfilled by paying the taxes.
This is because payment of tithe is a religious obligation being one of the five pillars of Islam, whereas tax is a
social obligation (Terengganu Department of Islamic Affairs. Undated).

The Mufti further added that tithe cannot be combined with the payment of tax imposed by the government
on the people as the revenue received by the government will assist it to plan the management and governing of
the state, and improve the society’s welfare. Both has different roles and are not interchangeable (Terengganu
Department of Islamic Affairs. Undated).

Although the Mufti’s answer did not include the opinion of any fuqaha’ or references to any books of fiqh,
the above issue had been discussed before by the ulema in the case of tithe and kharaj (land tax). The majority
of fuqaha’ views including the fuqaha’ within the Shafi’i sect had stated that tithe and government collected tax
such as kharaj (land tax) and other taxes such as ‘ushur (commerce tax) and jizyah (head tax) are made
compulsory on the Muslim to pay the tithe if all conditions are met. Tithe and tax are two different obligations.
Kharaj tax is imposed on the use of land, whereas tithe is subject to the produce of the land. Whereas the
government tax is imposed to meet the needs of the public such as community development, military, defence
and others (al-Nawawi (Undated), al-Majmu‘; al-Ghazali (1971); al-Juwayni, Imam al-Haramyn (1979M; Ibn
Qudamah, (Undated)).

Additionally, according to Yusuf Al Qaradawi (2000) paying tithe is a duty or obligation which had been
set by Islamic laws, whereas tax is an obligation which had been determined by the government. Further, tithe is
a permanent obligation whereas tax is temporary.

Whereas al-Kasani (1982) one of the Hanafi ulema, had a different view to the majority of fuqaha’. They
had said that it is compulsory to pay kharaj if the land is a “kharaj” land and “ushur” (tax) is not compulsory on
the revenue received. This is because, they said, ushur and kharaj cannot be put together onto one piece of land.

This clearly shows that the views of the mufti’s above are still bound to the doctrine held by the majority of
fuqaha’ including the fuqaha’ from the Shafi’i sect such as Imam Al Nawawi, al-Ghazali and Imam al-
Haramayn. The selection of the majority view in the Mufti’s fatwa above shows clearly the Mufti’s sustainable
thinking and his concern to the needs of the government and the people to ensure that their obligation towards
Allah and government is not neglected. In this manner, the government becomes entitled to impose whatsoever
tax that is necessary and seen as able to benefit the people whether Muslim or not. The tax will not hinder the
obligation of a Muslim to pay tithe on his agricultural produce to cleanse his assets and fulfil the commands of
the al-Quran and sunnah.

The Fifth Issue: The Tithe on Shareholders’ Dividends:

There is a fatwa issued in response to a numbered question which touched on the rule of tithe on dividends
paid by a company to its shareholders who had invested in the company, such as MARA, EPF and others. In the
question, the Mufti explained that the dividends paid to the Company to the shareholders upon completion of a
year (hawl) must be added to the original shares in the company, and must be paid tithe upon reaching the
required ratio (Terengganu Department of Islamic Affairs. Undated).

The Mufti also explained that if a person intends to invest in the business of a company and others, then it is
obligatory for him to pay business tithe or the monies will in any event be saved and he must pay tithe on them
as in both forms the monies are asset to the owner. In addition, it is not an excuse to say that it is not compulsory
to pay tithe on the monies just because it is not immediately accessible.

The Mufti added further, each amount that is invested and owned and saved in the name of a person
whether in the form of MARA shares, EPF savings or others, when given to another to manage or to do
business, will attract the obligation of tithe once the ratio is reached and the hawl is completed unless it is
monies given for business. The Mufti had also said that if the monies are a debt, then it becomes obligatory to
pay tithe according to the rules and if the monies are used for the purpose of trading, then it is compulsory to
pay business tithe (Terengganu Department of Islamic Affairs. Undated).

Analysing the answer by the Mufti above, he does not appear to have mentioned any views from any
fuqaha’ and neither did he mention any source of reference from any books of fiqh. This is because the classical
books did not contain any direct reference to the issue of tithe arising from dividends paid by companies to its
shareholders. However, based on the writer’s observation although the concept of business partnership as put
forward by the fatwa is thought to be different from the concept of farm animals, the concept of animal mixing
can be applied, as there exists the growth of property from the said partnership.

Based on the research done, the Mufti’s fatwa can be integrated into the views of the Shafi’i sect and other
ulemas, including the fuqaha’ of Hanafi, Maliki and Hanbali sects. According to them, tithe is obligatory on
shares as they have equated shares to gold and silver in their discretion and they further agreed that what made it compulsory is the ability to grow the asset (al-Zuhayli. 1997; Ahmad 'Abd al-'Aziz al-Mazini. 1989).

The majority of ulemas has taken the view that tithe for partnership property must be calculated together as one ratio. One ulema from the Maliki sect had touched on this as follows (al-Gharnati. Undated):

The fifth issue in discussing the mixed tithe and how mixing animals can affect tithe, two people who are sharing must pay the tithe by one owner.

Shafi’i ulema such as Imam al-Nawawi (Undated) once said that tithe for company’s property must be calculated together as if owned by one owner. His statement can be seen as below which means:

Partnership will influence the obligatory payment of tithe. It turns the property of two or more persons into the property of one only, hence it becomes compulsory on them whatever is compulsory on the property of a sole person.

Whereas the Hanbali ulema such as al-Buhuti (1402H) had once mentioned this in his book Kashshaf al-Qina’ which means as follows:

This is a clause (in reference to mixing) where the annotation on “kha” means partnership (in farm animal) and not other property, to affect the obligation of tithe from the perspective of obligation and revocation of obligation, and from the perspective of weightage (and so those assets become treated as one).

Based on the views above, the joint mixing makes tithe compulsory as the person who is sharing must pay one tithe. Hence, the mixing of property will give rise to the implication of either lightening the duty to pay tithe or otherwise. However, according to Maliki and Hanbali sects, this mixture only involves tithe on animals and not other tithes (al-Gharnati. Undated; al-Buhuti. 1402H). This is different from the views of Shafi’i sect which state that the mixture can occur for animals and other properties (al-Shirazi. 1976).

The owner of the property is required to pay tithe on the capital and on its profit. Whereas the employee pays tithe only on the profit portion. In this matter, al-Sarakhsi (1978), a Hanafi sect ulema took the view that the owner of the property and the worker must pay tithe according to the respective shares and profit for each year. This is because according to them the property is deemed to not have any effect as the calculation will still be made based on the individual property separately.

In the meantime, Ibn Qudamah (1982) one of the Hanbali ulema, had the view that the owner (provider of capital) must pay tithe on the capital and also on the profits received because the hawl for business profit is in accordance with the hawl for capital. Whereas the worker is not obliged to pay tithe on their portion (shares) until the profit is apportioned. After that date, the hawl begins. The worker is not obliged to pay tithe as the ownership is incomplete. However, if the worker had apportioned the property with the capital provider, then the worker must pay tithe on the completion of hawl, which commence from the time of apportionment.

In the Shafi’i sect there had been a discussion on tithe chargeable on profit from a contract of partnership which occurs when a person provides the capital (ra’s al-mal) to a worker to be managed (al-‘amal) and traded, and the profit is to be divided between the two. One of the al-Shafi’i ulema, al-Sharbini (1958) said that the owner of the property must pay tithe on the capital and also on the profit arising as he owns both of them. Whereas the worker will be required to issue tithe on the portion of the profits as he can acquire that on apportionment. Hence, it is similar to a debt that must be settled immediately by the person who can afford to pay. Hawl on the profit portion starts from the time profit is gained. In the meantime, the worker needs not to pay tithe before the apportionment is made.

In this matter, Imam Shafi’i (1393H) had once said, which means:

On the chapter setting out the tithe on capital investment (Imam Shafi’i r.a had said) that when a person hands over 1000 dirhams to another as an investment, then consequently that person buys an item that is equivalent to 2 thousand dirhams and an entire hawl has passed before that item is sold, then in this matter, there are two views (qawlayn). One of which is that, the item needs to be paid tithe on the whole as it belongs to the owner, there is no one to work it, until such time that he hands over the capital provider and such capital is distributed based on the agreement between them. (Imam Shafi’i further said) and that also applies to when he sells it after hawl or before hawl but without the distribution of the assets until hawl actually passes, and (he further said) if he sells it before hawl and delivering the capital to the owner of the assets and shares the profit and consequently hawl is completed, then the tithe is chargeable on the capital for the owner and also on the profit. But tithe will not be charged on the worker’s portion as he receives the assets during the time when hawl is not completed (Imam Shafi’i said further) and similarly if capital is given to him (worker) and profit is not distributed until hawl occurs, then the owner of the asset must pay tithe on the capital and on the profit, while the portion belonging to the worker does not attract tithe even though he had been in partnership with the owner, as the asset is in the custody of the worker, while hawl has not occurred.

According to Maliki ulema, when the mudarabah (profit sharing) assets are located in the country where the owner (capital provider) resides, even though in principle only, by finding out its location in his absence, then it is compulsory for him to pay tithe such as idarah tithe (traders who are nomadic, who sell and buy irrespective of time and not being bound by hawl). While a worker must pay tithe from his profit portion after
the process of cleansing for one year (al-Gharnati. Undated; al-Imam Malik, Abu 'Abd Allah Malik b. Anas. Undated; al-Dirdir (Undated); al-Zuhayli, Wahbah. 1997).

Hence, this writer observes that from the several views of the fuqaha’ garnered above, the Mufti’s fatwa shows that he gave his attention to this case to ensure that company tithe is paid in the name of the company to prevent any attempted trickery to avoid paying tithe. In fact the Mufti’s fatwa actually preserved the tithe formulation and is seen as appropriate with the contemporary fatwa issued by the ulema of al-Azhar, Egypt, on tithe that involves shares and trading by way of sharing. Reference in respect of this view can be made to Fatawa al-Azhar as follows which means (Hasan Ma'mun. 1957);

For shares of companies which are bought where the shares become part of the company’s capital, for example a steel or wood company which profit and loss will be distributed to the shareholders, these are considered as items of trade on which tithe is obligatory. The compulsory rate on traded goods and the profits thereon, is 2.5%.

The Sixth Issue: Public/Non-Governmental Appointed ‘Amil:

In addition, there had been questions asked about payment of tithe without receiving a receipt from the authorised ‘amil when they run out of receipts. In this matter, the Mufti Shaykh Sayyid Yusuf b. ‘Ali al-Zawawi said that tithe which is paid to any ‘amil must be given a receipt for the payment, to avoid any confusion in tithe administration, and diminish properties of Allah the Almighty. According to the Mufti, this is because the official receipt from management of tithe can be kept and used as evidence when submitting deductions of income tax if payment is imposed on him (Terengganu Department of Islamic Affairs. Undated).

In the issue of receipts by the payee of tithe from the management of tithe, in this writer’s view, the Mufti’s fatwa stating that tithe has to be paid to authorised government appointed ‘amil, has had its reference source clarified (Terengganu Department of Islamic Affairs. Undated).

Furthermore, this is a measure by the authorities to ensure that tithe management is implemented in a more efficient and systematic manner. This is as according to al-Mawardi, an ‘amil plays an important role and it is the most trusted position in the management of tithe, to the extent that the Islamic law will accept the ‘amil’s declaration that he had received the tithe and had distributed it to those deserving, even though there may be objections from the party entitled to tithe (al-Mawardi. Undated).

In the meantime, according to the strongest view in the Shafi’i sect, the payment of tithe to the ‘amil is better if compared to the payment by the owner of the property himself. This is because the government will be in the best position to know which category of people are the most deserving of tithe allocation and their level of needs as well as when they should get their allocation (al-Nawawi. Undated).

It is therefore clear that the rulings issued by the Mufti are considered suitable and reasonable for the current situation as the government is best placed to ensure harmony and sustainability of the institution of tithe which is based on needs, in the administration of tithe. This is because in Malaysia the income tax was introduced after the Second World War through the Income Tax Ordinance 1947 (Sim Ewe Eong. 1981). The Federal Constitution which was enforced in the year 1957 had outlined the taxes under the purview of the Federal government (the Legal Research Board. 1990). In 1967, the Malaysian parliament approved the Income Tax Act 1967 (Act 53). The Act 53 had abolished the previous taxes and introduced a uniform income tax throughout Malaysia (Website, http://www.parlimen.gov.my, 16 March 2009).

The Seventh Issue: Public/Non-Governmental Appointed ‘Amil:

There had been questions put forward about ‘amils who are appointed by general consensus without being appointed by the religious office, who then receive zakat al-fitr (charity (sadaqah) that is obligatory at the time of breaking the fast of Ramadaan) from the public notwithstanding that they then distribute the tithe to those deserving of tithe as had been determined by the laws.

In responding to the above question, it appears that the Mufti Shaykh Sayyid Yusuf b. ‘Ali al-Zawawi had considered the public harmony and interest at that time. This is because according to Muhammad Abu Bakar (1991) in the 1960s there were a part of the Muslim community who had made known their lack of faith in the government in managing politics and religion, including tithe distribution. To calm matters, the Mufti had declared the rule as invalid as there was already an ‘amil appointed and those who receive the tithe distribution would be committing a sin for going against the Sultan’s edict and doing so will invite slander and discord in the society (Terengganu Department of Islamic Affairs. Undated).

This fatwa did not include any reference to any fuqaha’ nor does it mention its source of reference from any fiqh books. In this matter, according to the observation of the writer, the answer in this fatwa is compatible to the majority of fuqaha’ view including the Shafi’iyyah which had stressed that tithe collectors or ‘amils must be from those on whom tithe is obligatory. In this matter, the ‘amil that are authorised by the government to collect tithe, are those who are more knowledgeable in matters on tithe, for the sake of the stability and general
harmony. Syarik rules dictate that the government appoint ‘amil amongst them who are knowledgeable in fiqh, are trustworthy and can resolve the issues of tithe.

Al-Shirazi (1976) had stated in his book al-Muhaddhab which means:

“This is a clause on the appointment of ‘amil to collect tithe. And it is compulsory for the government to send an ‘amil to collect tithe as the Prophet p.b.u.h. and subsequent caliphs had done so and there are those among men who owns property when he himself is unaware of what is made compulsory on him. In addition, there are other men who are considered tight-fisted (selfish). And it is therefore necessary to send someone who can collect and one can only send those who are free, fair and trustworthy. This is as the post requires responsibility and trust. Whereas among the slaves and the enslaved, those are not included as people who are trustworthy or responsible. In addition, one cannot send an ‘amil unless he is aware of fiqh issues as he must know what can and cannot be collected. Meanwhile, the ‘amil must engage in consultation on any issues presented to him on matters of tithe and the rules.”

The Hanafi ulema’s view is also in line with the views of the Shafi’i ulema that the responsibility of the ‘amil is one appointed by the government to collect tithe especially the physical zakat. This statement is made by Zayn al-Din Ibn Nujaaym (Undated) as follows:

On the surface, the ruler, his assistants, and those tasked to collect and compile tithe properties have the authority to do so based on the verse that said; “Take alms out of their property” in Surah at-Touba (al-Tawbah) verse 103, and the government is entitled to delegate the task to collect tithe to the ‘amils.

The opinions of the Shafi’i ulema above appear to be similar to those of the Hanbali ulema among those as expressed by Ibn Qudamah (Undated) which means:

It is compulsory on the government to send ‘amils to collect tithe as the Prophet p.b.u.h. and the Caliphs after him had done this, and there are also those who have not paid or lack knowledge on what is compulsory on them. Thus this carelessness may lead to the tithe obligation being neglected.

In the Maliki sect, a fair government is entitled to appoint a person who will collect alms or tithe from those on whom tithe is made compulsory. In fact, according to the Shafi’i sect, the government are entitled to reject those who claim that they have indeed paid tithe. This statement of Imam Malik (Undated) clarified as follows:

(I say) What do you think of a person who when he has been prepared (appointed) to collect alms (tithe) from man, who then met with the owner of farm animals on whom tithe is obligatory, who then declared that he had indeed paid tithe to the poor. (Imam Malik then answered) that it is not permitted for a just government to accept his words, and unreasonable for the man to avoid the payment of tithe levied on him (I say) is this personal view of Imam Malik himself? He said; Yes and it is similar to that held by ‘Umar b. ‘Abd al-Aziz...

The Mufti’s fatwa as above, can be seen to be compatible with the views of al-Habib ‘Abd Allah al-Haddad (1997), one of the ulema from the Shafi’i sect. He had once said that it is compulsory for a person to surrender the tithe to a just government when asked to do so. In fact, he said that the obligation exists even when the government exhibits unfair behaviour, for the sake of preserving harmony and unity and avoid slander.

Based on the analysis put forward by the fuqaha’ including the Shafi’i ulema as above, it is thus clear that the view which had been set up by the Mufti above was still largely influenced by similar views of the ulema from the Shafi’i sect and the fuqaha’. At the same time, the rule which was submitted by the Mufti as above, was a preventive measure (sadd al-dhara’i’) to preserve peace and political stability as best as can.

The Eighth Issue: Accepting and Utilising Zakat al-Fitr by a Person who is not an ‘Amil:

In addition, there have been questions on the conduct of an ‘amil who had not been appointed by the government, but still carries on his duty and taking the fitrah tithe. In his answer to this question, the Mufti Shaykh Sayyid Yusuf b. ‘Ali al-Zawawi stated that it is allowed for a person, who is not an ‘amil to carry out the task, if he was one of the deserving asnafs (tithe recipients) (Terengganu Department of Islamic Affairs. Undated).

To the observation of this writer, the Mufti’s answer is based on the fuqaha’ opinion including from the Shafi’i sect. This is as according to them, tithe can be distributed to one of the eight asnaf mentioned in the al-Quran as deserving to receive tithe, whether property zakat fitr (al-Shafi’i. 1393H; al-Zayla’i. 1313H; al-Gharnati. 1985; Ibn Qudamah. Undated).

Imam Shafi’i (1393H) had once said that the post of an ‘amil is one that is appointed by the government and a person is not allowed to appoint himself as an ‘amil without the permission of the government. This is because the ‘amil who receives tithe allocation is one that has been mandated by the government to collect and distribute the tithe. It is not sufficient for him if he wants to help the tithe collection task, when his help is not needed by the government.

From the scrutiny of several views of uleemas, including the Shafi’i ulemas and Imam Shafi’i himself it appears clear that the mufti’s views is very much bound by the doctrine of the majority fuqaha’ view including Shafi’iyyah ulema. His answer shows that the Mufti was concerned about and took into account the philosophical aspects of tithe distribution and the correct way of distributing the tithe to the deserving. In
In the issue of transfer of *zakat* property, the Mufti Shaykh Sayyid Yusuf b. 'Ali al-Zawawi had submitted the differing opinions amongst the ulemas if the giver of *tith* himself did the distribution of the *tith*. However, if the government takes it on himself to distribute the asset then according to Imam al-Rafi'i, it should be transferred as the government is more aware of interests and benefit in distributing the *tith* (Terengganu Department of Islamic Affairs. Undated). The Mufti’s answer clearly has taken on the views of Shafi'i ulema, Imam al-Rafi'i, whose views can be found in the *al-Majmu’* book which stated (al-Nawawi. Undated):

And know that, what the author had written, clearly carried the meaning that the *tith* can be transferred by the government and those collecting the *tith* properties ('amil). Whereas, the debate that is known to be occurring among the ulema in connection with the *tith* transfer specifically concerns the transfer of the owner of the property and this is the strongest view. At the same time, according to al-Rafi'i, the sayings of the Shafi'iyyah ulema may mean to avoid conflict in the issue of governing and the 'amil and can mean that it is allowed for the government and 'amil to transfer the *tith* by dividing it as they see fit based on the public harmony. He said, it is similar and is supported and is more appropriate with the meanings of the hadiths of Rasulullah p.b.u.h.

In addition, the Mufti incorporated the view from Imam Shafi’i in his book of *al-Umm* in reviewing the opinions of certain ulemas that the *tith* assets are one of the assets of Allah the Almighty which is apportioned to those deserving according to the determined *asnaf* for the sake of the welfare of Allah the Almighty. Hence, the government has to study carefully on the transfer and has the discretion to transfer the portions to those deserving where so ever they may be according to *ijtihad* (consensus) and the view of the government whether they be near or far (Terengganu Department of Islamic Affairs. Undated).

In the Mufti’s answer above, it was clearly based on the view of the Imam Shafi’i himself who had elaborated on the role of a government dividing the *tith* assets to those who deserve them. Imam Shafi’i (1393H) had stressed that:

Indeed the *tith* asset is one of the properties belonging to Allah the Almighty which is to be distributed to those who deserve them according to the predetermined *asnaf* for the sake of the welfare of His subjects. Hence, the government has to study carefully on the transfer and has the discretion to transfer the portions to those deserving where so ever they may be according to *ijtihad* (consensus) and the view of the government whether they be near or far.

Even though the views of the Shafi’i sect appears to dominate the Mufti’s clarification of the fatwa, the fatwa actually also incorporated the views of other sects which conclusion of the rules varied only slightly from that of the Shafi’i sect. This statement is not only stating the various views of other sects, but also seen as the open approach taken by the Mufti. The views of other sects can be seen to expand the power of the government in managing *tith* asset in the name of harmony and stability of the Muslim community.

Hence, the Mufti explained the views in other sectors to clarify that the deciding power is left to the government or those authorised to distribute *tith*. This is for the purpose of generating benefit to the Muslims as they are held to be one body by Rasulullah p.b.u.h. In connection therewith the Mufti also included the views of other sectors as follows (Terengganu Department of Islamic Affairs. Undated):

i The Hanafi sect had allowed the transfer of *tith* but there are *gawl* (statement) which said that it is *makhruh* to do so other than for the purpose of giving to family members who face hardship or to a group which has the highest need for the *tith*, more than the residents of the country (in which the *tith* is to be distributed originally) or if the transfer will lead to more benefits given to Muslims or the *tith* assets is transferred from a non Islamic country to an Islamic country, or to students, or if the *tith* is paid before the time requirement or *hawl* is met (al-Zayla'i. 1313H).

ii According to Imam Malik (Undated), it is not necessary to move the *tith* unless the residents of a country is enduring hardship then the Imam (Leader) or the government must transfer the *tith* to them, in their discretion and wisdom.

iii According to Ibn Qudamah (1981), from the Hanbali sect, if a person who takes out the *tith* is deviant (i.e., not paying *tith* in his country) and transfers it then as a substantial number of ulema said, the obligation of *tith* is no longer imposed on him.

The clarification of the rules by the Mufti above demonstrated a paradigm shift and open approach as well as leniency towards accepting views other than the Shafi’i sect in his fatwa, if it involves the public interest. In addition, the fatwa can sustain the *tith* institution and encourage more Muslims to pay *tith*.

The Tenth Issue: Investment of Zakat Properties:

In addition, the fatwa is not too rigid as it allows those who deserve to receive tithe monies to take the tithe monies subject to going through the government. This seems to show that the fatwa issued by the mufti was appropriate to the case brought by.

The Ninth Issue: Transfer of Zakat Properties:
In the matter of investing tithe assets, the Mufti and the Fatwa Committee had studied and considered and in the end agreed to stay that it is not necessary for the tithe monies to be invested in financial institutions or investment centres as for those who had paid tithe, it is considered valid when the tithe monies reach those who deserve to receive them. The wali al-amr power delegated to the Religious Department only relates to carrying out the trust (yad amanah) that is to collect tithe from the owner and to distribute them to the deserving of tithe. If the tithe monies are invested that would mean that the tithe monies paid by the owner would be stuck in the hands of the middleman and not distributed to the deserving (Minutes of Meeting. 1997).

The rule decided by the Mufti and Committee of Fatwa on the issue above did not state the source of reference or views of the fuqaha’ even thought the fatwā did contain Arabic terms ‘wali’ and ‘yad amanah’, which implies that they had quoted from books of fiqh.

In relation to the investment of tithe monies either in financial or investment institution, there are several commentators from the fuqaha’ that can be related to the issue. Generally, there are three types of investment, firstly; investment of tithe property which had been developed further by those deserving of tithe (mustahiq) after they receive the tithe allocation and it formed part of their assets. In this matter, the ulema agrees that Islamic law allows the investment on those property as they rightfully belong to the owners and thus the owners are free to do as they wish to the assets (al-Shirazi. 1976; al-Ramli Shams al-Din. 1984, Abu Muhammad ‘Izz al-Din b. ‘Abd al-Salam. Undated).

Secondly, the investment of tithe asset which had been developed by the owner of the asset before the tithe is paid on it. In this matter, the ulama agree that Islamic law will not allow this sort of investment because the tithe must be paid as soon as possible and distributed quickly to the mustahiq. In conclusion, the ulema emphasised that the owner of the assets must immediately pay tithe on his property once the conditions are met and is not allowed make any type of investment on the property (al-Sarakhsi. 1978; Malik b. Anas. Undated; al-Sawi. Undated; al-Nawawi. 1405H; al-Ansari Zakariyya. 1948; Muhammad b. Muflih al-Maqdisi Abu ‘Abd Allah. Undated; al-Nawawi. 1418H).

Thirdly, the investment of tithe asset by the government or ‘amil or any other bodies which manages the tithe assets. In this case, previous ulema had not actually discussed it directly or made any resolutions on it. However, in the decision of the Majma‘ al-Fiqh al-Islami (1992) current ulema have discussed and made the determination. They are divided into two categories, one; the category which insist that tithe cannot be invested. This view was put forward by Dr. Wahbah al-Zuhayli, Dr. ‘Abd Allah Ilwan, Dr. Muhammad ‘Ata’ al-Sayyid and Shaykh Muhammad Taqi al-Uthmani. The second category stated that tithe assets can be invested and must be invested. They are Dr. Yusuf al-Qaradawi, Dr. ‘Abd al-Aziz al-Khayyat, Dr. Salam al-‘Ubadi. Shaykh ‘Abd al-Fattah Abu Ghaddah, Dr. Muhammad Solh al-Farfur, Dr. Hasan ‘Abd Allah al-Amin and Dr. Muhammad Faruq al-Nabhani.

Nevertheless, at the end of the discussion of Majma‘ al-Fiqh al-Islami (1992) the ulema had agreed to say that while in principle the tithe properties cannot be invested but for the welfare of the community, the tithe assets can be invested subject to the following terms:

i When immediate subsistence distribution of the tithe monies no longer need to be made.

ii The investment must be made properly, that is, in accordance with the syariah rules.

iii It must be guaranteed that the original tithe asset invested remains as tithe asset, and that includes the profit.

iv When there are urgent needs requiring immediate distribution of the tithe assets, then the said tithe asset which had been invested must be easy to liquidate.

v A proper and details study must be done on the investment of the tithe monies which is proposed to ensure that the investment or business is safe and easy to liquidate.

vi Must obtain consent or approval from the government or any other parties responsible on tithe properties.

This is to ensure that the syariah policies and investment must be administrated by a body or a special committee which comprise of people who are experienced in the field of investment and who are more importantly, trustworthy.

According to the writer analysis, the debate on investment of tithe monies by the government can be linked to the ulema’s discussion on tithe properties which are traded. Imam al-Nawawi takes the view that there are differences in opinion amongst the Shafi‘i ulema about trading with tithe properties. According to a substantial number of the Shafi‘i ulama, the act of the government or those involved in the management of tithe properties to sell the tithe properties is a forbidden act, unless there is an urgency to do so (daruri). In fact, the distribution must have been made to those who deserve to receive in the form that was given as tithe as those who made the payment of tithe are mature and cannot be forced to do anything against their will. Hence, the government cannot then sell the tithe properties without their prior consent. Imam al-Nawawi (Undated) had once made a statement on this issue in his book al-Majmu’, as follows:

Our ulemas had said; it is not necessary for the government and those who are in charge of managing tithe to sell part of the tithe properties without there being an urgent need for it, and in fact it must be distributed in
the same form it was given as tithe, to those who deserve them, as those making the payment of tithe are qualified and are mature and have free will, and therefore their assets cannot be sold without their consent.

In the al-Rawdah book, al-Nawawi (1405H) also was given a clear explanation of this issue, including as follows:

It is not necessary for a government or whomsoever is tasked to manage the distribution of tithe, to sell part of the tithe property in fact the tithe need to be delivered straight to those who are deserving unless there occurred a darurah (emergency that cannot be avoided) …then only can it be sold.

This view from a portion of the Shafi’iyyah scholars differs from the view of Imam al-Bughawi which state that a government has the right to manage the tithe properties collected from those who qualify to pay tithe, including to sell or otherwise. If the government decides to sell the tithe property then the government has the right to distribute the tithe in the form of monies received and not in its original form of tithe given (al-Nawawi. 1405H). This view is seen to reach the same conclusion of rules with a portion of the Hanbali ulema, which had said that trade is allowed if in the public interest (‘Ali b. Sulayman al-Mardawi Abu al-Hasan. Undated).

In relation to the views of the Mufti and the Fatwa Committee which stated that the task of the Religious Department is that of a person entrusted as a trustee or “yad amanah” which holds the responsibility entrusted can be seen from several statements of the fuqaha’ from several sects including that from the Shafi’i sect.

For example, in the book of al-Muhadhdab written by Imam al-Shirazi (1976), one of the ulema of Shafi’i sect had mentioned that the task carried out by the government and ‘amil in the effort to collect tithe and thereafter distribute the tithe asset to the deserving, is a trust. This can be seen by the quotation in the book, as follows:

And an ‘Amil will not be sent unless he is free, fair and trustworthy, as it is a form of control and trust.

The view of Hanbali sect is seen to be similar to that held by the Shafi’i sect above. They explained that the ‘amil, as one entrusted by the government to carry the duties of managing the tithe asset, must be selected from those who are trustworthy even though some of them may be non-Muslims and fasiq (someone who violates Islamic law) they can still be elected as an ‘amil as long as they are trustworthy (‘Ali b. Sulayman al-Mardawi Abu al-Hasan. Undated).

The fatwa’s reference to the above view therefore shows that consideration of several other aspects was taken in particular relating to the philosophy of tithe as a religious practice and also public interest. In addition, in the year 1997 saw the financial crisis and a serious slowdown of the Malaysian economy. This affected the Malay Muslim community as some of them faced hardship and hoped for financial help from the government (Just Faaland and Rais b. Saniman. 2000). In this matter, if the view that tithe asset can be invested and traded without having to be distributed to those deserving, this can reduce the hardship and poverty amongst the Muslim community. Hence, the above fatwa displayed the Mufti and Fatwa Committee forward thinking in solving this critical issue.

Conclusion:

After discussing several issues relating to several critical tithes concerning tithe in Terengganu, it appears that the Mufti and Fatwa Committee are forward thinking in resolving issues arising out of tithe. The solutions proposed by them appear to be in line with the change in time and place to the extent that the tithe institution can grow and be proactive in the areas of Syarak. The credibility of a particular fatwa about tithe can elevate the mufti’s by trying to identify the proof and referral source on which the Mufti relied in justification of rule. The approach taken by modern Mufti now in sustaining fatwa relating to tithe occasionally is forced to accept the fatwa by the previous imam, or tend to prefer to taking and analysing the fatwa and the opinion of the fuqaha’ in the treasury of fiqh.

Reference


Minutes of the 2nd Meeting, 4th Term (ii), 10 Ramadhan 1417 equivalent to 19 January 1997.

Minutes of the 5th Meeting, 4th Term, 8 dan 17 Rejab 1418 equivalent to 9 August 1997.


