ORIGINAL ARTICLE

The Dependence on Shafi’i Sect in Determining Rulings (Fatwas) on Tithe in Terengganu Malaysia From the Years 2000 to 2005

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ABSTRACT

The practice of al-Shafi’i sect had dominance amongst the Malays especially in Terengganu, since the first spread of Islam, through its preachers and local religious teachers. Among the examples of this are several decided rulings issued by the Terengganu Mufti and the Committee of Ruling from the years 2000 to 2005 on tithe. Nevertheless, is the Shafi’i sect still influencing the edicts or has there been an application of the views of other sects including the contemporary Muslim scholars, in light of the changing times and situations now? The main method used in this article is via field study and an analysis of existing/early written materials. The information obtained was then formulated and analysed qualitatively. Hence this paper will take the position of the Shafi’i sect in rulings issuance in Terengganu on tithe as a focus of study. Based on the analysis of the rulings, the study found that some views of the Mufti and the Committee of Ruling in Terengganu seemed to be open to accepting the views outside of the sect they are suitable with the current situation and are not against public interest.

Key word: The Dependence, Shafi’i Sect, Determining Rulings, Terengganu.

Introduction

Just as the position and practice of rulings in states of Malaysia are sourced from the views of the Shafi’i sect, this was also the position in Terengganu. Further the rulings issuance practice in Terengganu had strengthened this position. According to the provision of the Administration of Syariah Rules Enactment No. 4 in 1955, rulings that had been issued by the Mufti and the Terengganu Committee of Islamic Ruling and Malay Customs must be in accordance with the final decision of the Shafi’i sect, and if it conflicts with public interest, then the views of the other three sects must be used. If all four sects conflict with public interest, then the Mufti and the Committee can issue its own rulings without being tied to the four sects.

Based on what was stated in the enactment above, it is clear that there are opportunities to accept the opinions and views of other sects without referring to the “da’if” (weak) view in the Shafi’i sect, if found to be against the public interest. This therefore gives the Mufti and the Committee of Ruling a freer hand in which to practice and apply the views of other sects.

Hence this paper will analyse how strong the influence of the Shafi’i sect is, in rulings that was produced through minutes of meetings, as well as the clarification of rules put forward by the Committee of Ruling/State Mufti of Terengganu from the years 2000 to the year 2005 A.D. The rulings can be obtained from e-ruling, rulings that had been decided through minutes of meetings held by the Terengganu Committee of Islamic Ruling and Malay Customs or through the collection of books and newspaper clippings during that time.

Among the books, documents, quotes and files which relates to rulings and clarification of rules by the Mufti and the Terengganu State Committee of Ruling between the years 1953 to 2005 are Fatwa-Fatwa Mufti Kerajaan Negeri Terengganu (daripada tahun Hijrah 1372-1389 bersamaan tahun Masehi 1953-1970) or The Rulings of the Terengganu State Mufti (from the Hejira years 1372 to 1389 equivalent to 1953 to 1970 A.D.) by Syed Yusuf b. 'Ali al-Zawawi, Fatwa Mufti (The Mufti’s Ruling) by Dato’ Indra Guru Hj. Wan Abdul Manan b. Wan Ya’kub, Himpunan Jawapan Kemusykilan-Kemusykilan Agama (Collection of Answers to Religious
The dependence to a sect shall be measured in two ways, by identifying the reference source used during the discussion to determine the rulings and by looking at the reference of the sect selected to determine the rulings. This study used a qualitative method to identify the reference and adjustments made towards the rulings mentioned. The inductive and comparative methods were then used to analyse the fuqaha’ views especially from the four sects in addition to the contemporary ulemas in determining the final opinion.

Before the writer elaborates on the influence of the Shafi’i sect in making rulings relating to tithe, the development of the sect in Terengganu will first be set out, following which the writer will argue on the extent of the Shafi’i sect in issuance of rulings by the Committee of Ruling or the Mufti, on tithe, around the years 2000 to 2005.

The Practice of Rulings Issuance in Terengganu:

The influence of the Shafi’i sect in Terengganu cannot be ascertained without looking back on the history and background of the Islamisation in Terengganu. This can be seen from the aspect of acceptance and arrival of preachers, local Muslim clerics, their works, the legal practice during the time of Sultan Zainal Abidin III, the contents of the Administration of Syariah Rules Enactment of Terengganu 1955, education and practice of rulings (Wan Zulkifli. 2009).

In the practice of Rulings in Terengganu, a Mufti appointed by the Sultan will usually refer to the books of fiqh (jurisprudence) from the Shafi’i sect. Among the evidences that rulings issued in Terengganu had used references based on the Shafi’i sect, was an answer from the Terengganu Mufti to a letter sent by the Federation of Islam Singapore to him. In his answer, the Mufti seemed to have sought the opinion of the Shafi’i sect, through the book Asna al-Matalib Syarh Rawd al-Talib Syeikh al-Islam Abu Yahya Zakariyya al-Ansari (Suk Trg. 90/1336, “pinta fatwa al-mufti suatu soal perkara yang berkarenan dengan syariah Muhammadiyah” or request for a rulings /decision from the Mufti on a matter relating to Muhammadiyah syariah).

One of the other evidences of how the practice of issuance of rulings in Terengganu refers to the views of Shafi’i sect, is the provisions contained in the Administration of Syariah Laws Enactment No. 40 in the year 1955, section 21(1) which stated:

“when making and issuing any rulings on any problems on syara’ rulings or texts according to the ways stated above, the Mufti shall commonly use the final decisions/qaul in the Shafi’i sect”

In the above Enactment, the Shafi’i sect was made the official sect in the institution of rulings in Terengganu. However, there are provisions which allow the rulings decision or interpretation of rules to be made based on the other sets. This allowance can be implemented if the Shafi’i opinions in certain issues are against or interferes with public interest. As an example, Section 26(1) of Terengganu Administration of Islamic Affairs Enactment (1986) had mentioned:

“Except for the purpose of problems and welfare of the Muslims, it is permitted to issue rulings or interpretation of meaning, based on any of the four sects or sects which are thought to be appropriate by the rulings committee”.

An Analysis of the Dependence on the Shafi’i Sect in the Rulings Relating to Tithe in Terengganu:

The question on tithe is one that is often asked by the community. This shows that the rulings on tithe are important and required by the Muslim community especially when faced with new problems which require clarification of the rule by the Mufti and the Committee of Ruling. The analysis refers to the decisions of rulings and clarification of rules by the Mufti and the Committee of Ruling on the tithe, which have been collected from the years 2000 to 2005.

1) Tithe on Women’s Accessories Worn or Owned by Men:

One of the clarification on the rules which omitted to mention the source of reference and views from any fuqaha’ (Muslim jurists), is that to the question put to the Dato’ al-Syeikh Abdul Halim, on the rule of tithe payable by men who own ladies accessories. In this issue, the Mufti explained that Islam forbids men to use gold accessories and silk. If a man owns gold which fulfilled the ratio conditions of tithe, he would then need to pay tithe on the gold (News clipping "Warta Darul Iman", 26 Rabiuwal 1423H / 8 June 2002 A.D., No. 48).
However, there is actually a debate among the fuqaha' on this matter. The majority of the fuqaha’ opinion have stated that no tithe is payable on women’s common accessories.

According to one of the Shafi’i ulema, al-Syarbini (undated), the gold and silver accessories on which tithe must be paid are those accessories which are meant to be kept, made as a water container, women’s accessories used by men, gold nuggets which are made into accessories, women accessories which exceed the limit i.e. reached 200 mithqal (about half a kilo). This is the same for accessories the use of which is strongly discouraged by Islam (Makruh) such as to put on a water container a lot of gold or adding smaller pieces of gold for decorative purposes.

According to the strongest (the most prominent) opinion in the Shafi’i sect, tithe is not payable on decorative items that are permitted to use, such as bracelet, necklace and others items permitted for use. Its status (position) is similar to that of farm animals used for working (al-Syarbini. Undated).

In the meantime, according to Hanbali ulema, Ibn Qudamah (1405H) and al-Buhuti (1402H), accessories on which payment of tithe is compulsory are those used for business, accessories which are forbidden for women to use, accessories of men which women are forbidden to use, such as sword accessories, belts, anklets, gold rings, decorative items for chariots, horses’ battle accessories, such as bridle, and saddle, vehicle accessories, mirror, comb, eyeliner container, eyeliner, fans, cups and others; or accessories which have been prepared for rental, to be kept or for spending when required, or decorative items which do not have any specific purpose.

Whereas Maliki ulema, that is, al-Dardir (undated) was of the view that decorative items on which tithe is payable, are those made available for business. The calculation depends on the weight and not on the quality of make. Similarly, it is also compulsory to pay tithe on container of burning flames, eyeliner container and all those made from silver and gold, even though they are for women’s use. This is also applicable if the accessories are kept as savings for use in hard times and not to be used as accessories.

In the views of Hanafi ulema, however, tithes are made compulsory on accessories both for women or men, whether sculpted or not, or whether in water container form or not, as gold and silver are assets that can grow. Therefore, the owner must pay tithe on it whatever form they may take (Ibn al-Humam. 1970).

In connection with the ratio of amount of tithe payable for the gold and silver owned, the ulema had several views on this subject. According to other non-Shafi’i sects, the ratio for accessories whether gold or silver on which tithe is payable, is based on the weight and not the price (al-Kasani. 1982). Nevertheless, the Hanbali ulema had exempted accessories for trade as they must clearly be valued on price. Hence the tithe will be payable if the value of gold or silver meets the ratio for tithe, as in this case tithe depends on the value. On the other hand, if the accessories are for trade purpose, then tithe is payable on the essence of business (Ibn Qudamah. 1405H).

This is different from the views of the ulema from the Shafi’i sect, such as al-Nawawi (1997) who said that if a decorative item or accessory is made compulsory to pay tithe on it, when in fact its value and weight differs, then the factor to be considered is the value and not the weight. However the rule is different for accessories which are forbidden such as water container. In this case, what would be considered would be the weight and not the value.

In the meantime, the rulings issued by the Mufti relating to the rate of calculation (kadar nisab) which needs to be used in relation to ladies’ accessories which are being kept, also did not state any views from any fiqih book. However, according to the writer’s analysis, the rulings above fits into the views of the fiqih majority, including the Shafi’i sect which stated that the tithe ratio for gold was 20 mithqal, that was, 20 dinar (Ibn Qudamah. 1405H; Ibn Hazm. 1968; Ibn Humam. 1970; al-Syafi’i. 1393H; al-Syarbini. 1415H).

The Mufti’s determination of the rate of gold as above was, according to Wahbah al-Zuhayli (1997) based on the decision on the ratio for tithe that occurred in his time. This is because in the determination of gold ratio, one must take into consideration the nisab ratio calculation as recognized by Syarak (Islamic Law) without looking at the price of gold or silver at the time tithe is paid, as ratio is calculated at the time tithe is paid. This also occurred in respect of the use of money in the time of Rasulullah (p.b.u.h. /peace be upon him), and for the residents of Mecca, this was based on the use of mithqal (gold) during their times.

Nevertheless, the Syarak only limit values to two equal values, based on the weightage referred to in a hadith by Rasulullah (p.b.u.h.), using mithqal weightage, being 20 mithqal and 200 dirham. According to al Qaradawi (1420H), one mithqal is equivalent to 4.231 gram. Therefore, 20 mithqal is equivalent to 84.620 grammes or we can say that it is equivalent to 85 gram.

There are views from Abu al-Hasan al- Basri and the majority of supporters of Dawud al-Zahiri which stated that a person is not charged any tithe on gold until it reached 40 dinar. Whereas other views stated that tithe is not chargeable on gold until the ratio is 200 dirham. The measurement of 200 dirham is 20 dinar more or less but not exceeding 40 dinar (Ibn Rushd. Undated).
Based on the explanation above, generally the Mufti had, in answering the queries put forward, been guided by the majority fuqaha' views including the fuqaha' from the Shafi‘i sect, even though he did not include any views from any fuqaha' and did not list any reference source from books of fiqh.

2) **Tithe on Accessories Kept Away Other Than Gold and Silver:**

A question was put forward to the Mufti Dato' al-Syeikh Abdul Halim b. Abdul Kadir on the tithe payable on accessories that are kept, other than gold and silver, such as diamonds. In answering, the Mufti stated that diamond accessories which are kept, are not charged any tithe as tithe is only chargeable only on silver and gold. However, if the accessories from diamond are traded, then it will fulfil the conditions for business tithe is chargeable. (Clipping from "Warta Darul Imman", 6 Safar 1424H/April 8, 2003 A.D., No. 68).

The clarification on the ruling as given by the Mufti did not include any reference or views from any fuqaha’. However, upon closer analysis, the rulings above can be linked to several fuqaha’. According to al-Nawawi (1997), a person who owns diamond accessories and others, and wishes to trade them and not just own them, then it will become compulsory for business tithe to be payable once all conditions are met.

The views forwarded by the Mufti above is in line with the views of other ulema in Hanafi sect, who thought that accessories other than gold or silver will be charged tithe if they are traded by their owner (al-Sarakhsi. Undated). Similarly, the views put forward by the Hanbali sect make it compulsory for tithe to be payable on anyone having accessories other than in gold or silver which are made into tradeable items (al-Buhuti. 1402H; Ibn Qudamah. Undated).

From the above explanation, it is clear that the rulings given by the Mufti above was still bound by the views given by fuqaha’, including the Shafi‘i sect’s fuqaha’.

3) **Distribution of Tithe Funds to Students Among the Well to Do (Wealthy) Families:**

In addition, there were questions asked to the Mufti Dato’ al-Syeikh Abdul Halim on distribution of tithe aid to students from well to do families. In relation to the above, the Mufti stated that giving tithe to students is a fi sabillalah provision (for God) and it does not affect any other areas provided for by Syarak. Therefore, any student can apply for help under the provision of fi sabillalah without any consideration of his background. However if the families are wealthy, then it would be better if the student did not accept the aid (Newspaper clipping from "Warta Darul Imman", 12 Sya’ban 1424H/October 8, 2003 A.D., No. 80).

The above answer categorises students in the asnaf fi sabillalah group even though they may be from well to do families. This also does not affect the portion for other asnaf-asnaf (tithe recepients/needy) in the distribution of tithe. The answer also stated that it is better to the students do not take the allocation.

In giving an answer mentioned, the Mufti did not provide any source of reference from any book, neither did he take any views from any fuqaha’. Nevertheless in the above issue, the fuqaha’ especially the fuqaha’ of the four sects, discussed the meaning of sabillalah.

According to the writer’s analysis, students being categorised as asnaf sabillalah (sabillalah recipients) is only clearly found in the views of Hanafi sect. In the Hanafi sect, several views are found on the meaning of sabillalah which are required by the al-Quran (al-Hasfaki. 1386H; Zayn al-Din Ibn Nujaym. Undated).

Nonetheless, they are all of the same views that being destitute and without any resources the main conditions of those to be categorized as sabillalah. They are also united in saying that tithe is a personal right and cannot be given for the purpose of building mosques, repairing roads, pilgrimage (hajj), jihad (struggle /effort) or such other purposes without the element of ownership. (al-Hasfaki. 1386H; Zayn al-Din Ibn Nujaym. Undated).

Meanwhile, according to the Maliki sect, sabillalah is a matter which relates to jihad war (self sacrificing) or those like it, such as army headquarters and others. This differs from the views of the Hanafi sect towards the concept of jihad, pilgrimage (hajj), students and taqarrub activities to Allah the Almighty. The Maliki sect also thought that the allocation of sabillalah tithe can also be distributed to soldiers and officers on the borders of Islamic countries even though they may be rich. This view differs from the Hanafi sect which makes being poor a condition in all circumstances. The majority of ulama from Maliki sect allows the provision of sabillalah tithe for the purpose of jihad such as weapons, horses, trenches and such like. They did not specifically allow the tithe distribution to personal use for those who are in war, as was the condition in the Hanafi sect (al-Dardir. Undated).

In the Shafi‘i sect, it clearly did not categorize students as part of the asnaf sabillalah. This is because the views of the Shafi‘i sect is not that much different from that held by Maliki sect, in specifying it to jihad and soldiers at war as well as for equipment and needs for those in jihad situations, even though they may be rich. Although in this case, the views of the Shafi‘i sect differs from those held by the Maliki sect in two ways i.e. firstly, that the Shafi‘i sect makes it a condition for the voluntary soldiers on the battlefront to not receive any
pay or fixed salaries from the ruler, and secondly, that the soldiers cannot have their portion exceed that provided for the poor and destitute. (al-Nawawi. 1405H).

The Hanbali sect on the other hand, had the same view as the Shafi’i sect from the aspect of meaning of sabiliillah, that is, volunteers on the battlefront without fixed pay or salary from the government, or those who do receive pay but is not sufficient to go to war. Thus it is permitted to allocate the portion of tithe to those soldiers for them to meet the needs of war even though they may be rich. This also applies to those who preserve the borders (al-Buhuti. 1402H; Ibn Qudamah. Undated).

According to the Hanbali sect also, the authority (not the property owner) can use the allocation of tithe to fulfil the needs and equipment of war such as horses ships, and others, for the purpose of jihad, as well as other matters which are considered for general prosperity (al-Buhuti. 1402 H; Ibn Qudamah. Undated).

Whereas in the matters of performing the hajj, two narrations from the Imam Ahmad bin Hanbal exists. Firstly, the narration that has the same view with the Hanafi sect, that is, that hajj is also included in the category of sabiliillah which is given to the poor to do their compulsory hajj. Whereas the second narration states that it is not included in the category of sabiliillah (Ibn Qudamah. Undated).

Back to the answer by the Mufti, which had categorized students as one of the meanings of sabiliillah, this seems to be consistent with the Hanafi sect as in the opinion of the Maliki, Shafi’i and Hanbali, no mention had been made of students being included in the sabiliillah category. Nevertheless, the mufti’s answer which did not make it a condition for the family of the student to be hardcore poor, before he can actually receive the tithe, seem to be inconsistent with the views of Hanafi sect.

In the meantime, a number of ulemas, both then and now, had expanded the meaning of the word sabiliillah. The interpretations given not only limit it to jihad or others equivalent to it, but also relate it to all other matters involving benefits, taqarrub (self approach) and other good deeds. This is because, according to al-Qaradawi (2000), jihad in Islam is not only limited to war and battles using weapons, but also jihad using properties, verbal, thoughts, energy and others which also can be included in the meaning of sabiliillah. Therefore, in his view, if the meaning of jihad is not included in the explanation of nas or quranic text, then one must use the al-qiyas (measuring by/comparing with/analogy) to incorporate the meaning of the jihad.

From the explanation above, it can be concluded that it is better for Muslims to allocate the provisions of tithe towards various activities that can elevate the Islamic way (sabiliillah) including for students (whether poor or rich) gathering beneficial knowledge voluntarily for the sake of Islam.

With this, if the dependence to the Shafi’i sect forms the basis, then the rule decided could not have taken into consideration other views which had expanded on the meaning of sabiliillah and other views which allow the payment of tithe towards volunteers of war even though they may be rich. Hence the views of the Mufti above, appears to indicate that the ruling made was reasonable and can be applied for modern times now.

4) To Delegate to the Amil Who Then Forgets to Distribute Zakat al-Fitr (Zakat Fitrah) at Appropriate Time:

A question was also put forward to the Mufti Dato’ Abdul Halim in relation to a delegation to an amil, who then forgets to distribute the tithe at the appropriate times. Did the person who delegated commit a sin and must he then pay his personal tithe as soon as he knows of the fact, after a few days celebrated the Eid?

The Mufti in answering the question had stated that a person may delegate to any officer or amil or any other Muslim to pay his personal tithe, for him and his dependants, if the amil or the selected persons agree to accept the delegation in this matter. If then he forgets to pay the personal tithe, then the person who delegates, is not considered to have committed a sin. As this tithe for him and his dependants are considered not to have been paid when required, he then must pay this tithe as soon as he knows of the fact that the tithe has not been paid (Newspaper clippings of “Warta Darul Iman” 15 Zulkaedah 1424H/January 8, 2004 A.D., No. 86).

The Mufti’s answer to this issue above did not include the reference source or the views of any fuqaha’. Nevertheless, this issue had been discussed by the fuqaha’ under the topic of delegating the distribution of tithe to others.

The fuqaha’ counsel including from the Shafi’i sect are united in declaring that it is permitted for a person to delegate to another the distribution of the tithe to those who desire them, on condition that the person delegating or the person issuing the tithe must first have the intention, although the fuqaha’ had a difference of opinion in the aspect of the time to make the intention (niat). Hence if the tithe delegated is then distributed to the hardcore poor without any intention, will be considered as valid as the distribution of tithe is included in the category of property rights (al-Kasani. 1982; Ibn Hajar al-Haytami. Undated; Ibn Qudamah. Undated).

The statement above shows that delegation of the management of tithe distribution to others is permitted and valid if the person accepting the duties perform the duties as directed by the person delegating. Hence the rulings issued by the Mufti can be adjusted to the views of the Shafi’i ulema and also a part of the views of the fuqaha’ of other sects.

According to the analysis of the writer, the mufti’s answer stating that it is compulsory for the person delegating (al-muwakkil) to pay the personal tithe as soon as he finds out that his personal tithe has not been
paid, because the person receiving the task (al-wakil) had forgotten to perform his duties, is in line with the views of the fuqaha' in the sects of Hanafi, Maliki, Shafi'i and Hanbali. To them, a person (including a delegate) who did not perform the obligation of tithe payment because of forgetfulness and ignorance, will not be committing a sin, however, he must replace or rectify the obligation. (al-Suyuti. 1990).

In the Shafi'i sect therefore, the distribution of tithe assets which are done by its owner or by giving them to the manager of the assets, to those deserving, is better than to delegate to a person. This is as if a delegate betrays the trust by not carrying out his responsibility to distribute the tithe as had been instructed, then the obligation of tithe has not been fulfilled and is still imposed on the owner of the assets (al-Nawawi. 1997).

5) **Profit Sharing/Hibah (Saving Investment) Through the Tithe Accounts:**

There are questions on the rule of tithe in respect of the profit sharing or hibah gained from the saving investment in the tithe accounts. In responding to the question, the Committee of Ruling had met and decided that the profit sharing or hibah from such saving which is obtained through the tithe accounts, form part of the tithe funds. And hence, according to the Committee of Ruling, this money must be returned to the tithe accounts and spent exclusively towards the interest of the asnafs (tithe recipients) only (Minutes of the 8th Meeting, 5th Term, 1 Zulhijjah 1421 equivalent to February 25, 2001).

In respect of the issue of tithe funds being invested in financial institutions or investment institutions, there are several commentaries from the fuqaha' that can relate to the issues.

According to the Imam Malik (undated), the zakat properties cannot be trade or sold as this had never been done by the sahabah (companions). Imam al- Nawawi (1997) once discussed this issue in his book *al-Majmu'* which explained that there are differences of views among the Shafi'i ulema on the trading or investment of tithe properties. According to a large number of the Shafi'i ulemas, the action of selling the tithe properties is one that is forbidden without any urgent needs/essential (daruri) and instead the distribution must actually reach to those who deserve them in the form of things which have been given as tithe, as the people who pay tithe are mature and cannot be controlled or treated freely. Hence the government cannot simply sell the tithe properties without first asking for their consent.

However, Imam al-Bughawi as written by al-Nawawi (1405H) had a different view to the above. This is because, in his view, a ruler is entitled to manage the tithe properties collected from those who are able to pay, and decide whether to sell or otherwise. If a ruler decides to sell, then he should be entitled to distribute the tithe payment in the form of price obtained and not in the form of the property (i.e. the original state of the tithe paid).

The well known view in the Hanbali sect appears to be in line with what has been stated by a majority of the Shafi'i ulemas, who said that property tithe cannot be traded. There are however, a few ulemas from the Hanbali sect who shared the view that trade is allowed if there is benefit to it.

With the explanation and clarification of the ulemas as above, it can be said that rulings issued by the Mufti had also been influenced by the views of the fuqaha’ including fuqaha’ in the Shafi’i sect.

6) **Utilisation of Tithe Funds to Accommodate the Administrative Expenses of the Terengganu Islamic Mortgage Body (Muassasah Gadaian Islam Terengganu):**

Aside from the above, a question was also put forward by the management of the Terengganu Islamic and Malay Customs Council (MAIDAM) to the Committee of Ruling on the proposal to use the tithe funds to support the administrative expenses of the Muassasah Gadaian Islam Terengganu (Terengganu Islamic Mortgage Body).

In answering the question above, the Committee of Ruling met and decided against the proposal and they had recommended to MAIDAM to reconsider the rules of the Muassasah (Body) that gives free service to its customers, by perhaps charging a small fee, in order to pay for the administration costs (Minutes of the 9th Meeting, 5th Term, 21 Safar 1422 equivalent to May 15, 2001).

The rulings decided by the Committee of Ruling on the question above also did not include any reference to books of fiqh or opinions of fuqaha’. However, to the writer’s observation, the rule resolved can be referred to the discussion of the *fuqaha’* counsel in the issues of tithe distribution made by the ruler and those who are responsible for the administration matters in an Islamic state.

The Ruling issued above can be adjusted to conform to the views of various ulema of Shafi’i sect. This is because, according to the views of Imam al-Nawawi (1997) in the Shafi’i sect, through the book *al-Majmu’*, it is explained that a ruler and those who handle matters relating to the administration of a state, other than amil zakat (tithe collectors) are not entitled to take any allocation from any tithe *asnaf* as they had already been given pay and allowances from the state funds such as Baitulmal or the State Treasury.

The views of Imam al-Nawawi above are in line with the views of the ulema in the Hanafi sect such as al-Kasani (1982) which had emphasized that the allowances of the rulers, the *khadi*, the *mufti*, the officers and all
matters relating to the interests and benefits of the public, must be taken from the kharaj (tax sources) and not from tithe funds. The above views are in line with what has been put forward by the ulema in Maliki sect, who stated that the tithe allocation cannot be distributed to those who are involved in the administration of the country, such as ulema, khadi, mufti and others, as they had already been given other allowances from Baitulmal (al-Dusuqi. Undated).

Nevertheless some of the ulema can be seen to have a more lenient view, and take the view that among those who can receive tithe allocation are the khadi and those who carry out such duties which involve the general benefit and interests of the Muslim community (Ibn Rushd. Undated).

Based on the above clarification, it is clear that the ruling issued by the Committee of Ruling above considered the fuqaha’ opinion including that from the ulemas of the Shafi’i sect especially Imam Nawawi’s views, in his book the al-Majmu’ which can be linked to the ruling decision above.

7) Utilisation of Tithe Funds for Payment Expenses of the Salaries of Employees of the Terengganu Islamic Mortgage Body (Muassasah Gadaian Islam Terengganu):

Something similar had also occurred when MAIDAM suggested the use of tithe funds for the purpose of paying salary to employees of the Terengganu Islamic Mortgage Body. Following the request, the Committee of Ruling met and discussed and decided that the suggestion recommended by the MAIDAM administration body as above, could not be carried out and instead recommended to MAIDAM’s administration to obtain the payment of salary from another source, in particular from Baitulmal (The Minutes of the 8th meeting, 5th Term, 1 Zulhijjah 1421 equivalent to February 25, 2001).

The ruling decided by the Committee of Ruling on this issue, had not included the reference from other books of fiqh and fuqaha’ views. However according to the writer’s analysis, the final rule decided could be said to be consistent with that which had been discussed by the fuqaha’ in addressing the issue of “Utilisation of Tithe Funds to Accommodate the Administrative Expenses of the Terengganu Islamic Mortgage Body (Muassasah Gadaian Islam Terengganu)”.

8) Utilisation of Tithe Funds from the Sinf Fisabilillah to Pay the Salaries of Employees of the Terengganu Islamic and Malay Customs Council (MAIDAM):

Among the rulings that are almost similar to the above issue is the application to the suggestion of using tithe funds from the sinf fi sabillah funds to pay salaries of MAIDAM staff. In connection with this, the Committee of Ruling had studied this issue in depth and decided that the tithe funds from the sinf fi sabillah should not be used to pay the salaries of MAIDAM staff. The Committee then resolved not to agree to the proposal forwarded as above (Minutes of the 3rd Meeting, 3rd Term, 23 Zulkaedah 1423 equivalent January 26, 2003).

The ruling decided by the Committee of Ruling in response to this question, also did not include any reference to books of fiqh or the opinion of the fuqaha’. However, this issue is seen to be similar to the issues that had been previously discussed.

9) Way to Perform the Salary Tithe Intention (Niyyat):

There was an application for a ruling relating to the way to implement the intention (niyyat) in paying the salary tithe, as contained in the relevant forms, which state “... this is a part of my tithe monies for this year, for the amount of _____________ (this year) in the name of Allah the Almighty” (to form this intention when filling in the form).

In responding to the above question, the Committee of Ruling had met and agreed to adopt the way and recitation of niat (intention) as is currently practised, as contained in the form above (Minutes of the 7th Meeting, 5th Term, 29 Syawal 1421 equivalent to January 14, 2001).

The determination of ruling as decided by the Committee of Ruling above on the issue discussed, also did not include any reference to the fiqh books or to the views of the fuqaha’. However, according to the writer’s analysis, the resolution of this rule can be referred to the discussions of fuqaha’ when discussing intention in performing tithe practice.

The majority of fuqaha’ are of the view that having intention is a critical condition in discharging the obligation of tithe as it is a deed of worship and thus not valid unless with intent, although they had different views on the salary tithe. Nevertheless, in the opinion of al-Awza’i, intention will not determine the validity of the tithe, as he equated it to payment of a debt (Zayn al-Din Ibn Nujaym. Undated ; ‘Ali Abu Hassan al-Maliki, 2007; Ibn Hajar. Undated ; al-Mardawi. Undated; Ibn Qudamah. 1405 Hejira).
In discussing the mode of forming one’s intention while discharging the duty to pay tithe as put forward in the form, the writer sees that it only contain the word “zakat” (tithe) without stating that it is tithe that has been made compulsory (fardhu) to all Muslims. Similarly, the form sets out the asset and amount that is to be given in tithe, the year of payment and that the payment is made in the name of Allah the Almighty. In relation thereto, upon deeper analysis, the method of making intention in the payment of tithe as applied now, can be seen to be consistent with the views of the fuqaha’ including the Shafi’i sect’s fuqaha’ even though there may be slight differences in the implementation.

In the opinion of Ibn ‘Abidin (Undated), a Hanafi ulema, one is not required to pay tithe unless having an intention to do so, to provide for the poor and destitute, even from the aspect of the rules. An example is a person making a donation to the poor without any intention to do so as payment of tithe, who then later decides to give it as tithe, when the assets are already in the hands of the poor.

Amongst the views of the Shafi’i’s fuqaha’ that can be incorporated into the ruling above was as explained by Ibn Hajar about the way of making intention, while paying tithe. According to him, those who give tithe must actually say “this is my property tithe.” There is no harm to not mention the word “fardhu” as paying tithe is indeed an obligatory. He went on to say that it is possible for a person to say “this is my obligation on my property” and “this is the compulsory donation (sadaqah) indeed an obligatory.” Ibn ‘Abidin (Undated) even stated that it is possible for a person to make a donation to the poor without any intention to do so as payment of tithe, who then later decides to give it as tithe, when the assets are already in the hands of the poor.

The Mufti’s ruling as above appears to be in line with the views put forward by the ulema of the Hanbali sect on the payment of tithe. According to them, the intention of tithe will not occur if a person only intends to donate absolutely without stating which property, even if he had decided to donate his entire estate. Hence according to them, the intention to give as tithe occurs when one has the intention to donate specific assets, or if he makes a compulsory donation (al-Mardawi. Undated). The Multi’s ruling as above appears to be in line with the views put forward by the ulema of the Hanbali sect on the payment of tithe.

In providing its answer, the Committee of Ruling then met and agreed that on principle, it had no objection to using the sinf ’amilin tithe funds to pay the salaries of the staff of Division of Tithe. Similarly, for fi sabillillah tithe funds was utilised to pay the allowances of the missionaries by considering other fi sabillillah interests (Minutes of the 8th Meeting, 5th Term, 1 Zulhijjah 1421 equivalent to February 25, 2001). The ruling decision made by the Committee on the above issue also did not include the reference to fiqh books and opinions of the fuqaha’. However, to this writer’s analysis, the resolution of the rules can be referred to in discussion of the fuqaha’ in the issue of tithe distribution to asnaf ‘amilin and fi sabillillah.

On the issue of using the sinf’ amilin tithe funds to pay the salaries of the staff from the Division of Tithe, it had been clearly mentioned in the books of fiqh, based on the words of Allah the Almighty, that those who work as amil, whether they collect, compile, record, distribute or do other duties related to amil or management of tithe, can be given an allocation from the tithe funds if they were not already paid by Baitulmal. This problem is consistent with the discussion on the said ruling, in relation to “Utilisation of Tithe Funds to Accommodate the Administrative Expenses of the Terengganu Islamic Mortgage Body”.

In respect of the Committee of Ruling’s answer which had categorized missionaries within the “asnaf fi sabillillah”, the fuqaha’ of the four sects had discussed at length the meaning of sabillillah. This issue is also discussed in the discussion of the issue of the “Distribution of Tithe Funds to Students Among the Well to Do (Wealthy) Families” as herein before mentioned.

To the writer’s analysis, missionaries or mubaligh are included as an asnaf sabillillah because they carry out their duties in the name of Allah the Almighty (fi sabillillah) to elevate the status of Islam by spreading the teaching of Islam to the society. Ulemas in the four sects agree unanimously to say that jihad is included in the scope of fi sabillillah even though they disagree on the meaning of the type of jihad that can be so included. This matter was discussed in relation to the distribution of tithe aid to students of well-to-do background. Nevertheless, the fuqaha’ allows the use of tithe property by all those working for the peace and benefit of the Muslim (Ibn Rushd. 1995). Meanwhile there are ulemas, then and now, who expanded the meaning of “sabillillah”: The meaning put forward by them is not limited only to jihad and matters related to it but also to all that involve harmony, taqarrub and good deeds. This is because, according to Dr Yusuf al-Qaradawi (2000), jihad in Islam is not only...
limited to war and battles using weapons but *jihad* using property, verbally, thoughts, energy and others are also included in the meaning of *sabilillah*. Hence, according to him if the meaning of *jihad* does not conform with the interpretation of the texts, then one must use *al-qiyas* to connect the two.

Following the above clarification, we can thus conclude that it is better for Muslims to distribute the tithe provisions to various activities that can go towards elevating the status and standing of Islam (*sabilillah*) including the missionaries who use words, mind and thoughts to teach and to preach towards Islam.

The final decision of the rule then took into account the views of those who had expanded on the meaning of *sabilillah* and the opinions allowing the tithe to be given to missionaries despite them not being expressly mentioned in the category of *sinf fi sabilillah*. The decision on the rule made by the Mufti then appeared to be reasonable and can be applied in today’s circumstances.

11) **Utilisation of Sinf Fi Sabilillah Tithe Funds to Pay Salaries of Syariah Enforcement Contract Officers of the Terengganu Department of Islamic Affairs (JHEAT):**

The discussion of the Committee of Ruling which allowed the giving of tithe funds to the missionaries is seen to have similarities to the issues raised by MAIDAM on the use of *sinf fi sabilillah* tithe funds to pay the salaries of the of Syariah Enforcement Contract Officers JHEAT.

In determining the answer to the foregoing question, the Committee of Ruling had studied and considered the request (for ruling) issued by MAIDAM. They met to discuss and agreed to approve the use of tithe funds from the *sinf fi sabilillah* for the purpose of payment of the said salaries (Minutes of the 4th Meeting, 6th term, 19 Jamadil Awal 1424 equivalent to August 17, 2003).

There are similarities between the answers of the Committee of Ruling above with their answers on the issue on the giving of allowances to the missionaries through *fi sabilillah* tithe allocation. This is because the work of the Syariah Enforcement Contract Officers, JHEAT is to defend and protect the purity and honour of the Islamic syariah.

**Conclusion:**

The practice under the Shafi’i sect is seen to be inseparable from the lives of the Muslim community in Malaysia including in Terengganu since the first acceptance of Islam. This sect not only influenced the performance of worship, it had also established a firm footing in the tradition of education, writing, law and the practice of ruling. In addition, the appearance of several prominent leaders further expanded the growth of the sect’s influence in Malaysia especially in Terengganu. In the writer’s opinion, the Mufti and the Committee of Ruling tended to favour and refer to the books of the Shafi’i sect, in determining ruling, as even though they had not clearly mentioned the reference source when determining a particular ruling or in the explanation of a certain rule. This is as they acknowledged the practice of following the sect locally, and also the books of Shafi’i sect had long been used in the tradition of education and legal practice in Terengganu. Although the views of the Shafi’i sect dominated the ruling issued by the Committee of Ruling or the Mufti, in a short time there are rulings which could be said to be consistent with the views of other sect and views from some of the contemporary ulemas whose views on the rules were different than the Shafi’i’s view.

**Reference**


Minutes of the 3rd Meeting, 6th Term, 23 Zulkaedah 1423 equivalent to January 26, 2003.

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Minutes of the 8th Meeting, 6th Term 1 Zulfijjah 1424 equivalent to 25 February 2001.

Minutes of the 9th Meeting, 5th Term 21 Safar 1424 equivalent to May 15, 2001.


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Suk Trg. 90/1336, "request for Mufti to clarify on one question relating to syariah Muhammadiah”’”pinta fatwa al-mufti suatu soal perkara yang berkenaan dengan syariah Muhammadiah”.


Terengganu, The Laws on Administration of Syarah Rules, 1955 (1357) (Laws no . 4 Year 1955), Clause 21 (1).


