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An Investigation into Goodness of Zakat Laws in Selected Countries

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Title: An Investigation into Goodness of Zakat Laws: A Global Comparison

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Abstract

Zakat as an annual flow of charity funds has received increasing attention of financial regulators and policy makers. Unlike other forms of Islamic philanthropy, zakat is mandated and compulsorily levied on every high-net-worth Muslim. Its primary goal is to serve as a tool to provide for the basic needs of the poor and the needy. Traditionally, most Muslim societies have viewed zakat as a purely religious matter. In such countries, zakat is managed entirely by the state apparatus dealing with religious affairs of its people. In some other countries with secularism as the avowed policy, the state sees no role for itself in religious matters and leaves the same to individuals and non-state actors. In yet another set of countries, the state sees the importance of a proactive role for itself in zakat management even while the task of zakat collection and distribution remains in the private domain. These countries have witnessed an increasing integration of zakat with the financial system. This paper hypothesizes that the regulatory framework for zakat management has an important bearing upon the mobilization of such funds and their utilization for alleviation of poverty. Using the concept of “goodness of laws” it undertakes a comparative analysis of the 29 sets of zakat laws as they exist in eight countries across the globe and seeks to delineate the “core principles” that should form the basis of legal and regulatory reforms that are necessary to strengthen the sector

Keywords: Philanthropic, Zakat, Regulation, Governance, Taxation

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An Investigation into Goodness of Zakat Laws: A Global Comparison

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1. Introduction

Zakat is an institution of philanthropy embedded in Islam. It is mandated by faith. It may also be seen as a compulsory levy on every believing and practicing high-net-worth Muslim. From a macroeconomic perspective, zakat is a source of recurring annual flow of funds. With growing Islamic fervor in Muslims societies, zakat has received increasing attention of financial regulators and policy makers. Since Islamic law restricts the allocation of zakat funds to eligibility of beneficiaries that primarily include the poor and the needy, zakat is potentially a major tool of poverty alleviation. Traditionally, most Muslim societies have viewed zakat as a purely religious matter. In such countries, zakat is managed entirely by the state apparatus dealing with religious affairs of its people. In some other countries with secularism as the avowed policy, the state sees no role for itself in religious matters and leaves the same to individuals and non-state actors. In yet another set of countries, the state sees the importance of a proactive role for itself in zakat management even while the task of zakat collection and distribution remains in the private domain. These countries have sought to create an enabling environment for zakat management and its integration with the financial system.

Zakat laws across the globe display wide variation. They vary in their goodness. They vary with respect to clarity, coherence and complexity. Goodness of the laws is about the content of laws, their architecture, their language and their accessibility. While it is not surprising that zakat laws and their subordinate regulations may be complex there is no reason why the degree of difficulty associated with them should be considered either inevitable or acceptable. Excessive complexity hinders efficient and effective mobilization and utilization of zakat resources, creating burdens for individuals, businesses and communities. Clear and effective zakat legislation is essential to good zakat management. It gives effect to policy, translating abstract principles and very specific provisions into legal remedies, while mediating between the (often) conflicting objectives, views and expectations of legislators and users.

The purpose of this paper is to answer two simple but important policy questions. First, how complex are the zakat laws world-wide? Second, how does the complexity of laws of zakat affect the mobilization of such funds and their utilization for alleviation of poverty? There seem to be two key dimensions to the problem of complexity in laws: the volume of the laws and the quality of the laws. We, therefore, study complexity of global zakat laws by undertaking a comparative analysis of their volume and quality. We examine a set of zakat laws for 29 countries/ provinces, the list of which is provided in Appendix I. Our analysis does not seek a judgement on the substantive merits and objectives of the laws or any assessment of the political and ideological considerations that lie behind them. We will instead consider the confluence of factors that affect users' experience of laws, including aspects related to volume, quality and perception of disproportionate complexity. In Section 2 we examine the volume of zakat laws as they exist in difference countries and provinces and

¹The views expressed in this paper are those of the authors and should not be attributed to the Islamic Development Bank, to their respective Managements.

seek to explore if they have any relationship with the effectiveness of laws measured in terms of the level and growth in zakat funds mobilized. In Section 3 we seek to define “goodness” of zakat laws in terms of quality and complexity by applying “coherence” principle to the zakat laws. This involves delineating the “core” principles that should govern a zakat regulatory framework in a country. In Section 4, we analyze the zakat laws in terms of the “core” principles in countries where zakat payment is mandatory. We undertake a similar exercise in Section 5 for countries with voluntary zakat payment. Finally, in Section 6, we present a summary of “goodness” of zakat laws in the countries under study.

2. Volume of Laws

We initially hypothesize that higher volume of laws makes them more complex. Wordiness is linked to volume and is often seen to be an indicator of complexity. Wordiness essentially implies taking more words than necessary to make one’s point. It may take the form of redundant expressions or phrases, though at times, longer expressions may be appropriate to avoid ambiguity. We begin with the number of sections and word-count of the 29 sets of zakat laws. The following table shows the wide variation in the volume of zakat laws across different countries. For Malaysia and Nigeria there are no national zakat laws, but laws at the provincial levels. Therefore, in order to facilitate an inter-country comparison, we consider the law in the Capital Territories in Malaysia and the law in Zamfara State in Nigeria as representative laws for these countries.

Table 1: Volume of Zakat Laws across Countries

Country	Indonesia	Singapore	Malaysia (Capital Territory)	Sudan	Nigeria (Zamfara State)	Pakistan
No. of Chapters	11	-	-	7	-	6
No. of Sections/ Articles	47	3	4	52	33	30
Word Count	2514	332	306	5337	3996	14766
Characters	13301	1846	1705	30731	19198	73210

In terms of volume of zakat law, Pakistan tops the list of sampled countries, followed by Sudan and Nigeria. Next, we relate the volume of the laws to the performance as measured by the annual zakat collected in these countries as per the latest available figures. However, since the size of the Muslim population is also an important determinant of zakat collected, we also present population figures to analyze performance.

Figure 1: Volume of Zakat Laws across Countries

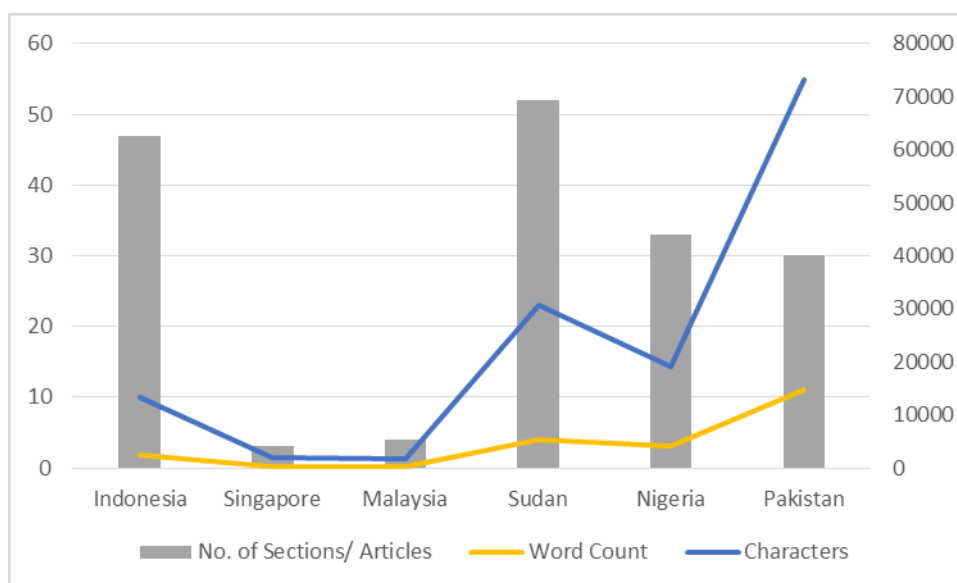


Table 2: Size of Annual Zakat Collected, Population & Volume of laws in Selected Countries

Country	Indonesia	Singapore	Malaysia	Sudan	Nigeria	Pakistan
Word Count	2514	332	306	5337	3996	14766
Zakat Collected*	231.6	20.4	642.7	228.8	3.1	105
Muslim Population**	215.4	0.8	18.4	35.5	62.5	172.5
PM 1	1.08	25.50	34.93	6.45	0.05	0.61
PM 2	92.12	61.45	2100.33	42.87	0.78	7.11
PM 3	0.43	76.81	114.15	1.21	0.01	0.04

*Zakat Collected: Latest available figures in million USD

**Muslim Population in million

*** Volume for Maldives refer to the draft law prepared by IRTI

PM1 (Performance Measure 1) = Annual Total Zakat Collected in million USD/ Muslim Population in million

PM2 (Performance Measure 2) = Annual Total Zakat Collected in thousand USD/ Word count

PM3 (Performance Measure 3) = Per Capita Zakat Collected in thousand USD/ Word count

The annual per capita zakat collected (PM1) shows Malaysia and Singapore to be far ahead of others in terms of efficiency in collection. The high per capita zakat mobilization is also accompanied by an extremely simple legal framework. It is interesting to note that while the total annual zakat collected in Sudan is in the same range as Indonesia, the former excels

in terms of per capita measure as it has a much smaller Muslim population². Both countries have been quite proactive in the past in the matter of designing and implementing an enabling legal and regulatory framework for zakat management. The legal framework in Sudan is however, more complex than in Indonesia, giving rise to the possibility that a more elaborate legal framework, may perhaps be more desirable in terms of mobilization efficiency, especially where zakat payment is mandated by state as compulsory. In contrast zakat payment is voluntary in Indonesia.

It must be noted here that absolute volume of annual zakat is not necessarily the best indicator of mobilization efficiency. If we compare historical growth rates in zakat as the measure of performance, different winners emerge. From the historical data available in Islamic Social Finance Report 2014 and 2015, it is observed that:

- Zakat mobilized increased by over 32 times over 10 years in Indonesia.
- Zakat mobilized increased by 40 percent (as collected by Government agency) over 3 years in Pakistan.
- Zakat mobilized increased by 20.2 percent over 3 years in Singapore.
- Zakat mobilized increased by 7 times over last 12 years and 37 times over 22 years in Malaysia
- Zakat mobilized increased by 4.8 times over last 9 years Sudan.

Clearly, Indonesia and Malaysia outshine others in terms of growth in zakat mobilization. In order to further analyze the relationship between volume and mobilization performance, we seek a better comparison between two “similar” legal environments – say, between Sudan and Pakistan – that provide for compulsory zakat payments. The Sudanese law (5337 words) comprises 1400 words on organization and infrastructure, 300 words on financial provisions (accountability and governance), 60 words on fatwa, power to regulate etc. 2176 words on zakatability of assets: conditions, definitions, 398 words on asnaf, 265 words on penalties (for non-payment by muzakki) and 268 words on incentivizing zakat payment in various ways. In contrast, the Pakistan law is far more voluminous with 14766 words. It devotes as many as 2383 words to introduction and definitions, 1949 words on zakatability conditions, 268 words on zakat fund, 282 words on zakat utilization, 712 words on disbursement procedures, 5131 words on infrastructure/committees/ subcommittees, 248 words on fiscal incentives and 3470 words on rates for financial assets. Therefore, making the law more complex, almost three times in size, as in Sudan, has clearly not paid off in Pakistan.

Countries like Malaysia and Nigeria may have their own peculiarities with highly federal structure and separate sets of laws for their provinces. For instance, in Malaysia, the 13 provinces and capital territory have respective legislations³ pertaining to zakat. In Nigeria, out of 12 provinces with significant Muslim population that have adopted Shari’ah as the source of their legislation 9 have already implemented the laws. Kaduna has already drafted the law and will be the 10th province to have a zakat law shortly. Sokoto as the 11th such province has initiated the process for enactment. Gombe is the only province that is yet to take any step in this regard. Of all, only two provinces - Borno and Yobe – have enacted

² The percentage of muzakki population is expected not to vary much either, indicating higher mobilization efficiency in Sudan

³ Collected from e-syriah database; the state of Kedah is missing from the database.

regulations and rules to facilitate zakat management. In search of further insights into the relationship between volume and mobilization efficiency, we analyze provincial data. Tables 3 and 4 and Figures 3 and 4 present the volume of laws in the states/provinces in Malaysia and Nigeria respectively, juxtaposed with the amount of annual zakat collected according to latest figures available for 2013.

Figure 2: Size of Annual Zakat Collected, Population and Volume of laws in Selected Countries

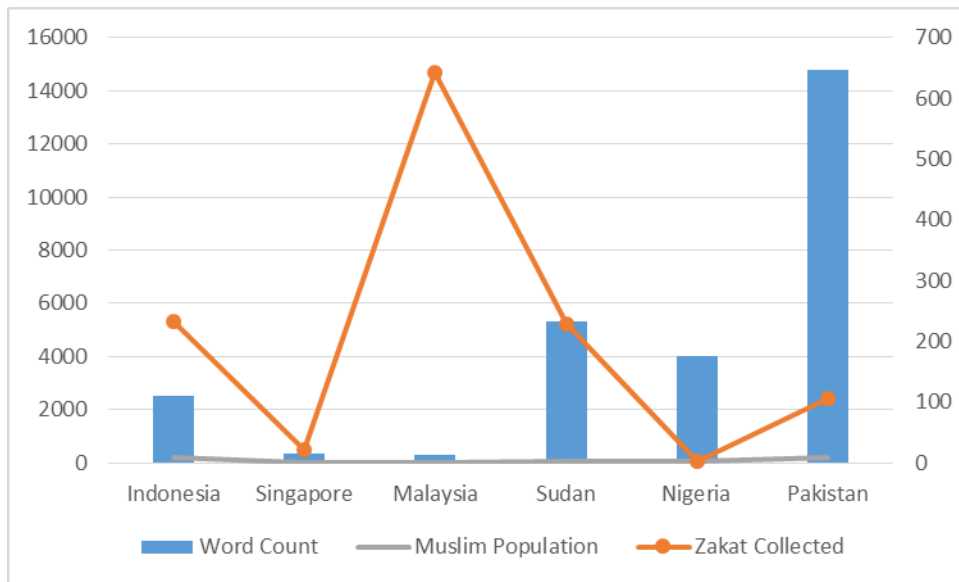
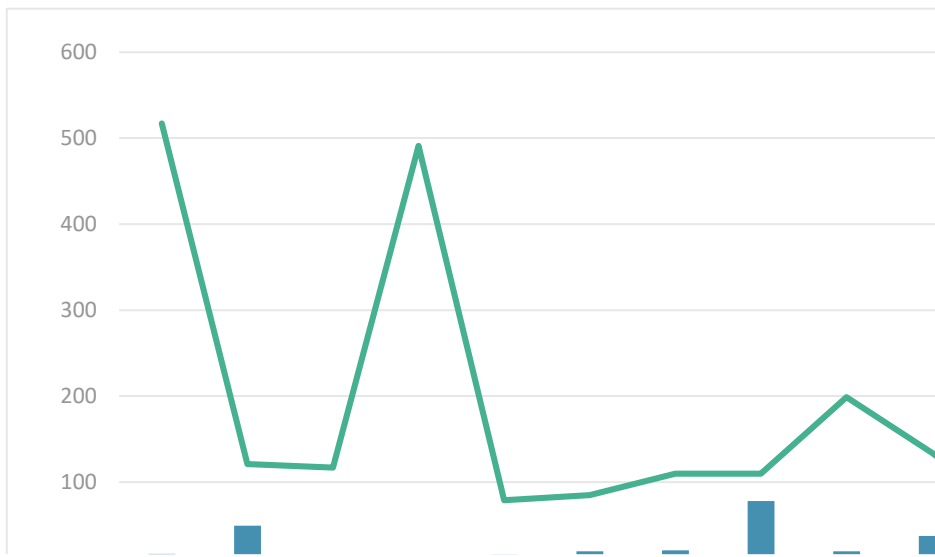


Table 3: Volume of Zakat Laws and Mobilization of Zakat across Provinces in Malaysia

Province	Sel	Terg	Perl	Fed Ter	Neg Sem	Pen	Perk	Pahg	Joh	Kel	Malc	Sar	Sab
Chapter/ Part	-	-	-			-			-	-	-	-	10
Sec/ Art	5	13	3	4	4	6	7	9 + 10	6	11	2 + 18	3 + 21	84
Words	440	131 3	263	306	427	51 8	555	779+ 1300	526	100 3	251 +141 1	398 + 133 8	1383 1
Total Zakat	517	121	117	491	79	85	110	110	199	134	60	69	49

* The states of Pahang, Malacca and Sarawak have additional regulations/ rules that have been clubbed together with the laws for comparative analysis of volume.

Figure 3: Volume of Zakat Laws and Mobilization of Zakat across Provinces in Malaysia

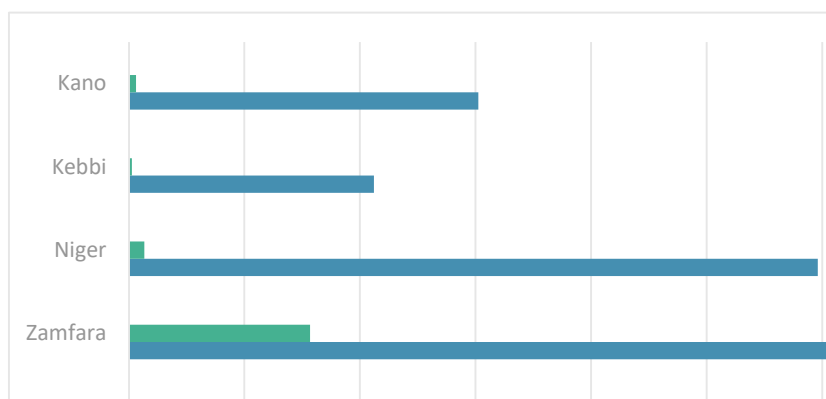


An analysis of the above reveals that a lengthy legal framework as in Sabah for example, is not necessarily associated with more zakat mobilization. The Federal Territory, though with a miniscule legislation reported much higher mobilization.

Table 4: Volume of Zakat Laws and Mobilization of Zakat across Provinces in Nigeria

Province	Bauchi	Zamfara	Niger	Jigawa	Kano	Katsina	Borno	Yobe	Kebbi
Chapters/Parts	-	-	6	-	-	8			
Sections/Articles	23	33	37	10	26	29	2 + 17	4 Sec+ 18 rules	22
Word Count	2260	3996	2981	558	1512	2659	99 + 1252	338 + 548	1060
Annual Zakat	96.3	784	66.8		31.3	-	-	-	12.99

Figure 4: Volume of Zakat Laws and Mobilization of Zakat across Provinces in Nigeria



The analysis of provincial laws in Nigeria and the associated mobilization figures does not indicate any clear link between the two, even while the Zamfara state with the largest volume of law (not large by international standards though) reported highest mobilization. In this case the high mobilization is perhaps linked to the “age” of the legislation. The mobilization is more due to a “deepening” of zakat awareness among the public, since Zamfara was the earliest among the provinces to go for zakat enactment and the law has since been modified to remove anomalies and ambiguities. While volume is an indicator of complexity, we may not read too much into the size and volume of the law. A better indicator of complexity needs to be found. In order to examine the complexity of laws, the second dimension, i.e. quality of the laws may be put under scrutiny.

3. Quality of Laws

There is hardly an exhaustive and agreed definition of “high quality” law. The characteristics of a good law essentially are combinations of the following features:

- it addresses Shari’ah objectives
- it addresses political objectives
- it addresses social objectives
- it addresses legal objectives
- it operates as efficiently as is practicable
- it is intra vires (the lawmaker has sufficient legal authority to make the legislation)
- it is consistent with (or effective in overriding) identified basic principles
- it is sound in substance: a well-thought-out, full and harmonious scheme
- it is clear, as simple as possible, and well-integrated with other laws
- it is consistent with current legislative drafting styles and best practice
- it has been produced in time and efficiently (without using excessive resources).

The law book may indeed be an ever-evolving network of complex information that expands organically and is extremely difficult to map. Nevertheless this paper seeks to undertake this task with utmost objectivity, the starting point of which is an enunciation of basic and Shari’ah principles governing zakat management and then mapping them onto the relevant legal provisions in the enactments.

Excessively complex legislation is believed to be any one or more of the following - ineffective, inaccessible, disjointed, unclear and unnecessary.

- It is ineffective when (1) its implementation is too problematic and/or it generates substantial negative outcomes; (2) laws are fragmented and idiosyncratic implementation/ delivery and (3) it does not achieve intended policy objectives.
- It is inaccessible when (1) there is lack of adequate guidance/ explanatory materials; (2) the language, style and structure are not "user-friendly" and (3) it is difficult to identify and access up-to-date versions of legislation.
- It is disjointed when (1) there is overlapping regulation and over-complicated commencement provisions; (2) enforcement powers and implementation approach are inconsistent with existing delivery mechanisms.

- It is unclear when it contains (1) ambiguous or contradictory provisions; (2) layered and heavily amended provisions and (3) unclear commencement and different legal jurisdiction.
- It is unnecessary when (1) legislation is redundant and/or generates unnecessary burdens to the economy or society and (2) there are no practical objectives and/or targets are not achievable.

In analyzing the complexity of zakat laws, we follow the coherent principles approach.

3.1 The Coherent Principles Approach

The coherent principles approach aims to present the law in a series of operative rules, that are principled statements about what the law is intended to do, rather than details about the mechanism that gets it there.⁴

Coherence in this context means that the principle:

- Helps the reader make sense and order out of the law;
- Captures the essence of the intent of the law – so that it is clear on first approach;
- Is drafted in a plain, non-technical style, avoiding the use of expressions that can only be understood by referring to definitions or other lower level rules; and
- Is intuitive or obvious to someone who understands its intent and context.

But, unlike some general principles approaches, the coherent principles approach can accommodate detailed or specific rules, when needed, by incorporating a plan for unfolding the principles and providing details of their application in particular cases. At times that additional detail will appear in the law itself. But at other times it will appear in the Explanatory Memorandum or in subordinate legislation (including regulations).

The benefits with the coherent principles approach are that the law will be simpler and shorter, more flexible, more stable, more certain, and because the draft law will be conceptually simpler, it will apparently provide a better basis for consultation.

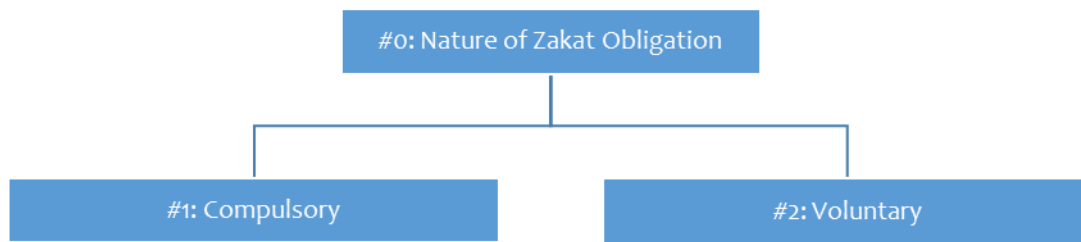
3.2 Hierarchy of Core Principles

In seeking to evaluate the existing zakat laws using the coherent principles approach, we begin with developing the hierarchy of core principles of zakat management which form the normative basis for enactment of zakat laws. In terms of expediency, the statements used are of three types. The statements containing “must”, “should” and “may” reflect the order of importance of the concerned principles. The base level principle relates to nature of zakat obligation and consistency in its application and may be stated as follows.

⁴ Bentley, Duncan (2004) "Tax law drafting: the principled method," *Revenue Law Journal*: Vol. 14: Iss. 1, Article 1. Available at: <http://epublications.bond.edu.au/rlj/vol14/iss1/1>

#0. Zakat may be either compulsory (#1) or voluntary (#2) in a given jurisdiction

Chart 1:



There exists divergence of views on whether zakat and other provisions of Islamic law should be compulsorily enforced by the state. Given that the classical “Islamic state” no longer exists while pluralistic societies are more common place, zakat may be realistically seen as a compulsory levy from the standpoint of religious compliance alone, on believing and practicing Muslims. It may be seen as voluntary charity from the standpoint of legal compliance.⁵

Zakat is compulsory in all the provinces in Malaysia, Sudan and Pakistan. It is voluntary in Indonesia, Singapore, Brunei Darussalam and Bangladesh. In Nigeria, of the 9 provinces, Bauchi, Zamfara, Niger and Jigawa States have made zakat payment compulsory, while Kano, Katsina, Borno, Yobe and Kebbi states make zakat payment a voluntary act. A question arises therefore: is this not a source of ambiguity and confusion for the zakat payers in Nigeria?

4. Quality of Laws: Zakat (Compulsory)

In this section, we analyze the quality of laws that mandate zakat to be compulsory.

The Sudanese law unambiguously asserts that “zakat shall be obtained from every person who is (a) a Sudanese, but Muslim who owns, inside or outside Sudan, funds that mandate zakat, provided that, zakat settlement is not duplicated, and (b) a non-Sudanese, but Muslim who works or resides in Sudan where he owns funds that mandate zakat, if he is not bound by the law of his country to pay Zakat, or has actually paid the same, or probably exempted subject to the agreement that prohibit double payment of zakat. (Sec 16-1) The law, thus, captures another fundamental principle that zakat obligation/ payment will not be duplicated. Section 36 of the Sudanese law adds that if the individual liable for zakat is not present, then the person responsible for managing the funds or its legitimate agent is liable. In case of death of the individual liable for zakat, then zakat shall be levied on the assets prior to distribution among heirs. Similar provisions are present in section 18 of Bauchi law and section 28 of Zamfara law. The Nigerian laws however clearly stipulate that only a Muslim “resident” is required to pay zakat (Sec. 13 of Zamfara law and Sec.4 of Bauchi law).

When zakat payment is compulsory, the way to ensure compliance will be much stricter and use both “carrots-and-sticks” as compared to “carrots-only” policy in a voluntary regime.

⁵ Also in conformity with the principle: “There is no compulsion in religion”.

4.1 Provisions for Deterrence

The logic behind principles of deterrence to follow will be:

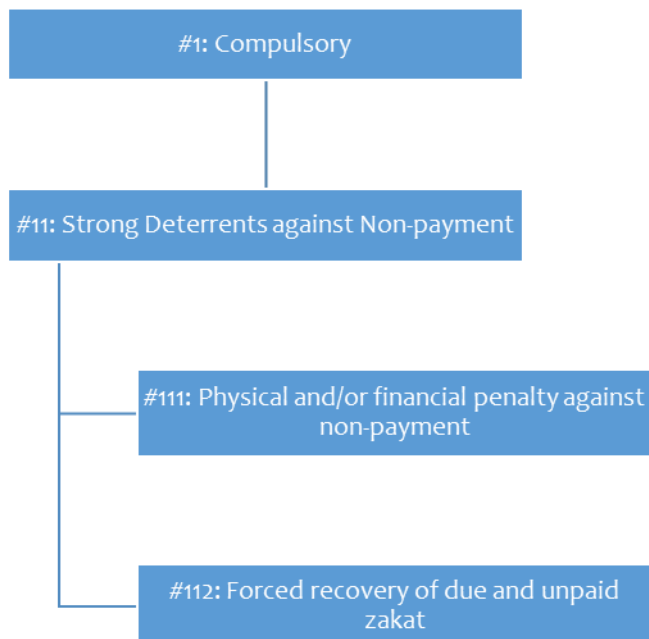
#1. If zakat payment is compulsory, then

#11. There must be strong deterrents against non-payment

#111. Law may prescribe physical and/or financial penalty against non-payment

#112. Law may provide for forced recovery of due and unpaid zakat

Chart 2:



Considering “sticks” first, in Malaysia several states have the Syariah Criminal Offences Enactment, which are based on the above principles. For example, in Selangor Sec 21 of the Act provides in case of non-payment of zakat, fine not exceeding RM5K or imprisonment for a term not exceeding 03 years or to both. Similar provisions exists in laws of 08 other states. Further, zakat must be paid to the agencies of State Islamic Religious Councils. Payment of zakat to any other body is illegal and punishable. In Terengganu for example, sec.41 of the Act deems illegal payment of zakat as an offence liable on conviction to a fine not exceeding RM1K or to imprisonment for a term not exceeding 06 months or to both. Similar provisions exists in laws of 07 other states. It must be noted here that the above provisions in law are seldom enforced for a variety of reasons, primary among them is perhaps the reluctance to enforce Syariah law in a population marked by great religious and cultural diversity. *In this sense, the above provisions of the law are “ineffective” as their implementation is problematic; and somewhat “inaccessible” as there is lack of adequate guidance/ explanatory materials.*

Sudanese law does not impose any physical penalty on defaulters, but provides for forced recovery of due and unpaid zakat. Section 42 of the law asserts that any person who provides misleading information, evades or abstains from payment of mandatory zakat, shall

be penalized for an amount that should not exceed the value of such zakat. The zakat shall forcefully be taken from him by the Diwan, which may issue an order to attach his funds in the banks, provided that execution is carried out by a competent court. The next section 43 imposes a penalty of 10 percent of zakat liability on any person who objects to forward any under-taking, document or statement, demanded by the Diwan.

The laws in Nigeria however provide for punishment as deterrent against non-payment. Section 3 subsection 2 (g) of the Bauchi state zakat law provides for prosecution through the office of the Attorney-General or with his consent through any legal practitioner of its choice such persons who are eligible but refuse to pay zakat or any person that commits any other offence punishable by this law. Section 22 (1) of the law asserts “Whoever cheats, evades or refuses to pay zakat due from him shall be made to pay the zakat due, and in addition shall be punished with fine not exceeding half of what is payable as zakat or three months imprisonment in default or not exceeding 20 lashes of the cane or both.” Similarly Zamfara zakat law provides in Section 34 “Whoever cheats, evades or refuses to pay zakat due from him shall be punished with fine not exceeding the total amount of zakat assessed and payable by him or six months imprisonment in default, and the court shall order such person to pay the amount of zakat due.” Further, “the court may attach any property movable or immovable to enforce payment of zakat due.” Interestingly, these apparently harsh laws are found to be grossly “ineffective” in enhancing mobilization efficiency. Zakat mobilization in the country remains at much below its potential; it is the lowest among the sampled countries in this study.

An example of an “ineffective” law is the zakat law in Pakistan that actually provides legal ways to evade zakat while making payment compulsory. First, it leaves out zakat on non-financial assets and incomes for voluntary zakat payment. Second, it makes zakat deduction on financial assets at source compulsory, but with caveats. Section 3 of the law states, “In respect of a person who may believe that the whole or any part of the recoveries effected from him in the manner laid down in this Ordinance are not according to his belief, such recoveries shall nevertheless be made, but shall be deemed to be contribution to Zakat Fund on the part of that person; provided that no zakat or ushr shall be charged or collected on compulsory basis in respect of the assets or the produce of person who, not less than thirty days preceding the Valuation Date in the case of zakat, and at any time before the valuation date of ushr, files with the Deducting Agency, or with the local Committee in the case of ushr declaration, or an attested copy thereof, in the prescribed form, sworn by him before a magistrate, an Oath Commissioner, a notary public, or any other person authorized to administer Oath, in the presence of two witness who identify him, to the effect that he is a Muslim and followers of the recognized fiqhs, which he shall specify in the declaration, and that his faith and the said fiqh do not oblige him to pay the whole or any part of zakat or ushr in the manner laid down this ordinance.” It is not surprising therefore, that the government zakat agency is seen to be grossly inadequate in mobilization of zakat and a large part of zakat in the country is mobilized privately by individuals and institutions. *This is clearly, an example of an “ineffective” provision in the law whose implementation is problematic.*

4.2 Incentive Provisions

Incentivizing zakat payment may also involve “carrots” in the form of tax benefits. The related principles will be:

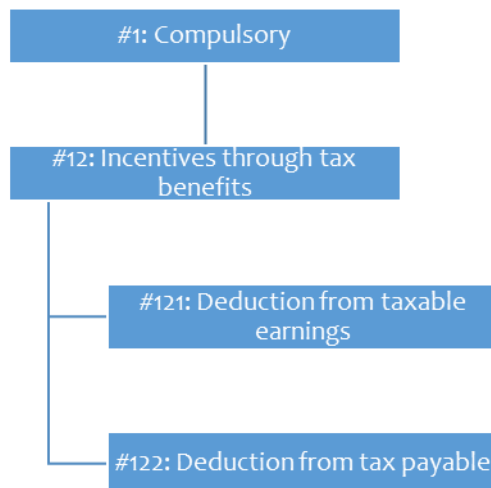
#12. State should incentivize zakat payment through tax benefits.

This may take two forms:

#121. State should permit deduction of zakat paid from taxable earnings.

#122. State should permit deduction of zakat paid from tax payable.

Chart 3:



Malaysia provides huge tax benefits on zakat payments. For individual zakat and tax payers, zakat payment attracts full tax rebate under Section 6A(3-4) of the Income Tax Act, 1967; which means for every one ringgit of zakat given to the SIRC, the tax payable by the zakat payer is reduced by one ringgit during the same assessment year. Rebate is a deduction from tax payable. If zakat paid is less than tax payable then the balance must be paid to IRB. However, if zakat paid is more than tax payable then the difference cannot be claimed from IRB. Zakat also attracts tax benefits if paid by corporates. However, only offshore companies enjoy the benefit of tax rebate, similar to individuals. Zakat on business income paid by the Labuan offshore companies is given a rebate equivalent to the amount of business zakat paid to the religious authority. It is subject to a maximum of 3% of net profit or RM20,000. For onshore companies, there is no rebate admissible. They however, enjoy the benefit of treating zakat paid as a tax-deductible expense. The tax-deduction allowed is subject to a maximum of 2.5% of the aggregate income, according to Section 44(11A) of the Income Tax Act. In order to accord equal tax treatment between companies and trust bodies, zakat settled by cooperatives, trust bodies, societies as well as the limited-liability-partnership (LLP) companies are allowed as a tax deduction up to 2.5% of the aggregate income.

In Pakistan where zakat is compulsory only on financial assets, the fiscal benefits are less. Section 25 (c) of the Income Tax Ordinance, 1979 (XXXI of 1979) asserts that “in determining the tax liability of an assessee for an assessment year, his total income shall be reduced by the amount paid by him to a Zakat Fund, during the income year relevant to that assessment year.” In other words, the state allows deduction of zakat paid from one’s taxable earnings and not from tax payable as a rebate. This is apparently to prevent “revenue leakages”, since private sector also have a role in zakat mobilization.

It should be noted that in the above cases, the tax benefits accrue to the zakat payer due to income tax laws and have little to do with zakat laws. There is little coordination between inland authorities and zakat agencies.

The Sudanese legal provision with respect to tax benefits provides an example of “unclear” legislation. It has an interesting history of ambiguity in interpretation. Section 48-1 of the law states “when the income tax of any person is assessed, the zakat paid by him shall be deducted from his property assessed for income tax, provided that, zakat deduction shall not be duplicated.” The ambiguity in the provision stems from the different implications of the two components of the provision for the zakat-payer. The first component – deduction of zakat from property assessed for income tax – implies a tax benefit equal to tax-rate times the zakat paid. The second component – non-duplication of zakat deduction – implies a tax rebate equal to the zakat paid. It is documented that the confusion surrounding the issue (assumption of tax-rebate) led to a significant fall in tax revenues. This subsequently, led to a clarification by authorities that zakat payment would actually imply a corresponding deduction from taxable income and not from tax payable. The latter type of benefit or tax-rebate is permissible only under Section 35 dealing with zakat liability on wages and salaries, bonuses, pensions, dividends, incomes of self-employed people and craftsmen. It makes all such income subject to zakat at 2.5 percent; and permits “deduction of this amount from the tax imposed under any other law. (Sec.35-2). For purpose of calculation of zakatable income, a standard deduction is also allowed reflecting the “original estimated need to spend on food and drink, clothing, housing and healthcare” and that is determined by a technical committee set up under the provisions of Article 11.”

A similar tax incentive on zakat payment on salaries and wages and other incomes was provided in the early versions of laws in Zamfara and Niger states. Following the Sudanese example, zakat was levied on incomes and the amount of zakat was permitted as tax rebate under section 27 of the 2000 version of the laws. The entire section (including zakat liability on income) was abolished in the 2003 version of the laws. It may be noted that Bauchi law enacted in 2003 also does not impose zakat liability on salaries and wages and similar incomes.

4.3 *Zakat Infrastructure*

In a state where zakat is compulsory, there must be a state agency for zakat management. The related principles will be:

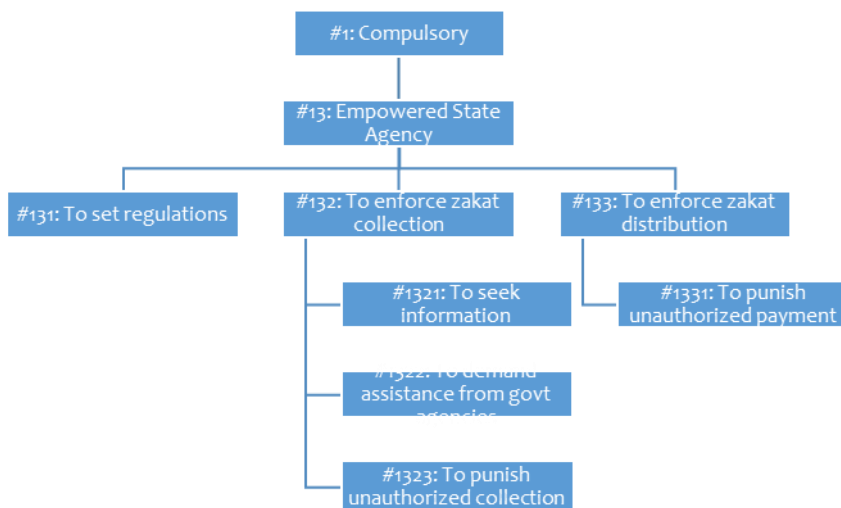
- #13. State agency for zakat management must be in place.
- #131. Agency must be empowered to set regulations.
- #132. Agency must be empowered to enforce zakat collection.
- #1321. Agency must be empowered to seek any information from any individual or entity for determination of zakat liabilities of muzakkis.
- #1322. Agency must be empowered to demand any kind of assistance from other state agencies that is deemed necessary for effective zakat collection.
- #1323. Agency must be empowered to punish unauthorized collection.
- #133. Agency must be empowered to enforce zakat distribution.
- #1331. Agency must be empowered to punish unauthorized payment.
- #134. Rules and criteria for membership and executive positions in the apex agency should be in place.

- #135. A Shari’ah body should be constituted for advising the Agency in matters that require formulation of new regulations and rules and that have Shari’ah implications.
- #136. Financial provision should be made for Agency to cover its expenditure.
- #1361. State should provide finance to cover operational expenditure of the apex zakat body; or
- #1362. Zakat body should be permitted to use part of zakat collected (subject to a cap) to absorb operational expenditure.
- #137. There should be provision of appeal by muzakki against a wrong decision by Agency officials.

In Malaysia with its federal structure of government, all matters pertaining to Islam including zakat fall directly under the Sultan of the province/state. Under him, the Majlis or Islamic Religious Council is the sole entity empowered to collect and distribute zakat. The Majlis authorizes individuals and institutions to act as its agents and collect zakat. It may be noted that income tax being in the hands of the federal government creates a dual structure of payment involving great deal of ambiguity.

As indicated earlier, Pakistan has dual system of zakat management. For certain types of zakatable wealth and income, the muzakki is mandatorily required to pay zakat to state. For others, zakat may be paid to the state (Department of Zakat under Ministry of Religious Affairs) as well as to the multitude of private zakat bodies at the discretion of the muzakki. The latter include individual and institutional zakat collectors and social organizations. *The zakat laws in Pakistan therefore, are a good example of containing “ineffective” provisions. They tend to defeat the intended policy objectives.*

Chart 4:



In Sudan, chapter 2 of the Zakat Act 2001 defines the role, powers and functions of Diwan Zakat as the apex zakat body and its relationship with the state apparatus. Section 4 provides for the establishment of the Diwan as an independent corporate body (Sec.4.1). The Diwan has the right to undertake all necessary measures to assess zakat liability and collect the same through the mechanisms prescribed by the regulations. It is also solely responsible for distribution of zakat among eligible beneficiaries in compliance with Shari’ah and with a view to realizing the social objectives of zakat. It is also responsible for creating public

awareness about the institution of zakat (Sec. 5). The Diwan will carry out its functions under the supervision of the High Zakat Board of Trustees (Sec.4.2), which is the supreme authority in the matter. The mandate of the Board includes setting policies and guidelines pertaining to zakat collection (e.g., defining nisab) and distribution (Sec.8). The Secretary General of the Board shall be the link between the Board and the Diwan. The interesting aspect of the Sudanese zakat management framework is that the entire structure is repeated at the level of states with establishment of Zakat Board of Trustees (Sec.14), Diwan (Sec.13), Secretary (Sec.16) and Complaints Committee (Sec.12) for each state with similar powers and functions, but restricted to the state concerned. Thus, Sudanese law is a good example of containing “clear” provisions with respect to the zakat infrastructure.

In Nigeria, however, there is a lot of variation with respect to the zakat infrastructure in the states. In Bauchi state, for instance, Section 3 of the law establishes a Commission for the purpose of zakat collection and distribution. In Zamfara state section 3 of the law has established the Zakat Collection (Distribution) and Endowment Board (that) as a body corporate with perpetual succession and a common seal (and that) may sue and be sued in its name. Both the bodies have constituted emirate level, district level and village level committees for zakat management. In Niger state, the law is similar in all respects to the Zamfara law. In Jigawa state, however, the government preferred a decentralized structure unlike the centralized bodies as above and established Zakat Committees at Emirate levels, leaving zakat management in the respective Emirs’ domain.

Power to set regulations

Section 52-2 of the Sudanese law empowers the Board, with the consent of the Minister to make such regulations as may be necessary for implementation of the provisions of this Act. Similarly in the Nigerian states of Zamfara, Niger, Bauchi and Jigwa, law clearly empowers the apex body to make policies, plans, rules and regulations necessary for the conduct of its affairs and the realization of its objectives.

Power to enforce zakat collection:

According to section 6-c of the Sudanese law, the powers and functions of the Diwan include “collection of zakat as entitled through the means and methods prescribed by the regulations.”

The Nigerian states in contrast, provide for partial collection of zakat due by state agency. *This perhaps has the effect of introducing an element of uncertainty in assessment of zakat due to the state.* In Bauchi State, the law in section 3 subsection 2 (b) requires the Board “to collect zakat due from those who are eligible to pay zakat in accordance with the rules of Islamic law; provided that the Commission may leave 30% of what is due as zakat to the person paying zakat to share it to those he was used to giving before the coming into force of this law or to his relations who are entitled.” However, both in Zamfara and Niger States sections 5 (b) of the law requires “to collect up to 60 percent of the zakat due, leaving 40 percent to the payer to be distributed to his close relations who are entitled.” According to section 5-i of Zamfara and Niger laws, the Board can exercise such other powers necessary for the due discharge of its functions in accordance with the provisions of Shari’ah. This includes a provision for “zakat officers to conduct physical assessment of zakat owners on farm products or livestock.”

Power to seek information; to demand assistance from other agencies:

According to section 6 d-e-f of the Sudanese law, the Diwan is empowered (i) to request and accept declarations of zakat payers and endorse the same (ii) to enter places, inspect and check records for the purpose of fixing the right assessment of zakat and (iii) to seek attachment of all types of property to such extent, as may guarantee payment of zakat that has failed settlement at its due time, with no advanced acceptable explanations. The same may be sold in auction subject to the ruling of the regulations.

A mechanism in the Sudanese law to enforce compliance is contained in Section 49 that makes a range of commercial and financial transactions contingent upon presentation of a zakat compliance certificate. Section 49 states:

“Notwithstanding any provisions in any other law, the concerned authorities shall not grant any documents or facilities which confer rights or financial privileges save after the applicant produces a certificate testifying settlement of zakat, issued by the Secretary General or State Secretary, as the case may be, in respect with the following matters,

- a. Payments from the government treasury, states governments, institutions of local council, treasuries of public organizations and institutions, or companies to which the government contributes with any proportion of shares in consideration of commodities and services as the Minister may prescribe.
- b. Registration, in companies, co-ownership, business names and trade marks register.
- c. Registration, or renewal of registration in the register for importers and exporters.
- d. Registration of ownership of real estates.
- e. To participate in government auctions.
- f. Procedures of obtaining licenses, renewal and transfer of ownership thereof with respect to commercial and rental vehicles, harvesters and tractors.
- g. Procedures of obtaining and renewal of trading licenses.
- h. Procedures of seeking approval of erecting multi-story buildings.
- i. Any other procedures as the Secretary General may prescribe vide an order to be issued by him, that a certificate of payment of the zakat, is a must, before completion of any other procedures.”

Another provision with a similar intent is section 51 that confers a privileged status on zakat funds. It asserts that “the zakat funds are privileged over any other funds that the person is indebted to.”

The above provisions apparently, provide enormous strength to the Sudanese law in terms of enforceability of zakat. However, the sweeping coverage of the provision itself raises questions regarding its practicality, as its enforcement requires a high degree of cooperation by and coordination with other government agencies.

Power to punish unauthorized collection

This power finds a place in the Malaysian laws alone, which prescribe punishment to be meted out by State Islamic Religious Councils to unauthorized collectors of zakat.

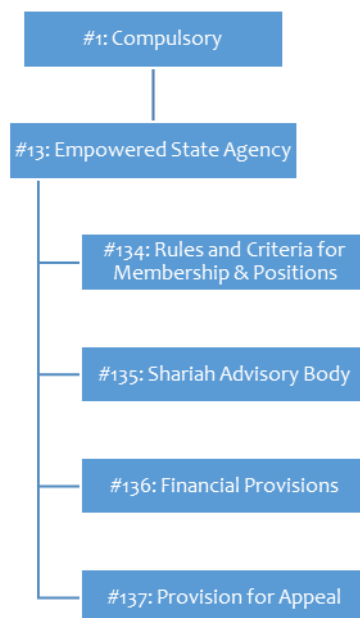
Power to enforce zakat distribution

According to section 6 of the Sudanese law, the Diwan is empowered to spend zakat on the legitimate prescribed items of expenditure on such bases as may be laid down by the Board, and to endeavor to provide the poor and destitute with means of living. According to the Nigerian laws also (where zakat is compulsory), the apex bodies are entrusted with zakat distribution.

Power to punish unauthorized payment

With the exception of Malaysian laws, none of the laws prescribes any punishment for unauthorized zakat payment. Nor do they empower the apex zakat body to punish erring individuals and institutions.

Chart: 5



Rules and criteria for membership and executive positions:

Section 6 a-b of Sudanese law states that the Diwan is empowered to organize its administrative and financial affairs and all other activities and appoint employees, determine conditions of their service subject to the organizational structure and service regulations as may be approved by the Board of Trustees in conformity with the requirements of work in the Diwan. Under section 3-2-d of Bauchi law, the commission is empowered “to set up proper administrative and accounting machinery for the administration, collection and distribution of zakat and endowment funds.” Section 5(a) of Zamfara and Niger laws have similar provisions.

Provision for Shari’ah advisory body:

Section 11 of the Sudanese law provides for establishment of an Ifta Committee comprising individuals well informed in Fiqh (jurisprudence) and widely concerned with Islamic and Muslims affairs. The regulations shall determine the functions and manner as how to organize

their business. Further, according to section 50 the Board or the Secretary General may seek a fatwa from Islamic jurisprudence Academy Council on any matter, which requires the same, and the Fatwa made thereof, shall be binding.

Financial provision for Agency:

In Sudan, section 39-3 of the law states that the Board of Trustees shall prescribe the percentage of zakat share to the main Diwan as well as to the Diwans in the states. Section 40 requires an independent budget to be prepared for the main Diwan and also to the Diwans at the states levels, subject to sound accounting principles and the budget must be ratified by the Board. One of the unique features of the Sudanese law is the emphasis it lays on sound planning. Part 5 of the law deals entirely with how financial resources of the zakat management bodies will be raised and each body meticulously prepares an annual budget of how and how much zakat is going to be mobilized, shared among them and distributed.

In Zamfara and Niger, sections 32-33 of the laws deal with all the above issues including the preparation, submission, approval and implementation of budgets, adherence to sound accounting norms, regular periodic and independent audit. Such provisions are not present in Bauchi law.

Zigwa state presents an interesting contrast in this regard and rules out use of zakat funds for covering the expenditure of the Committee. Section 8 (1) of the law stipulates that “the funds of the Committee shall include grants from the state government, local government of the Emirate which will be provided at the ratio of 40:60 percent of the budget of the Committee. Subsection (2) asserts that “funds from any other lawful source could be part of the fund but shall not include the zakat collected by the Committee.”

Provision of appeal by muzakki against a wrong decision by Agency officials:

Section 6-h of the Sudanese law states that the Diwan can constitute Complaints Committees, the number, functions and powers shall be prescribed by the regulations. Section 12 states that in the main Diwan as well as in each state-level Diwan, there shall be established a High Complaints Committee, composed of knowledgeable, just and competent individuals to be appointed by the Board or State Boards of Trustees as the case may be, and the resolutions of such committees shall be final. Under section 3-2-d of Bauchi law, the commission can set up committees “for the determination of issues and complaints on zakat matters generally.” Similar provision exist under section 5(d) of Zamfara and Niger law.

4.4 Zakat Collection Rules

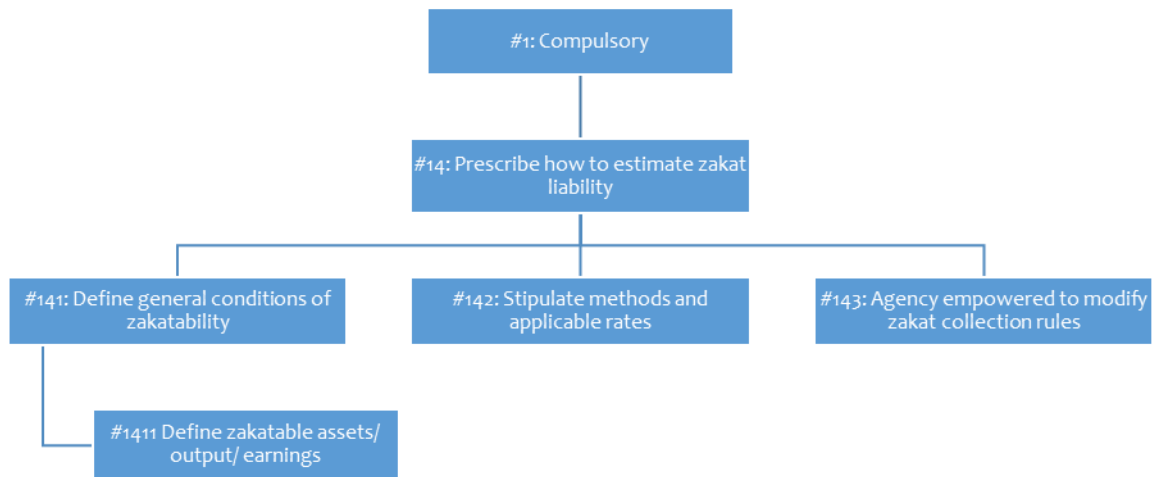
Sudanese law is the only piece of legislation that comprehensively provides all rules pertaining to collection of zakat.

General conditions relating to zakatability

Section 17-1 of the Sudanese law provides the general conditions e.g. possession of lawful nisab, elapement of hawl where applicable, non-personal use, deduction of debt as may be prescribed by the regulations. Section 17-2 says that in case of mixed ownership of a single asset, zakat shall be levied on the property as a whole when it reaches the nisab, as in the case

of partnerships, community and family ownership (17-3). Sudanese law clearly stipulates that the Nisab is determined from time to time by the Board (8-e).

Chart 6:



Methods of estimation of zakat base and applicable rates of levy:

The definition and treatment of zakatable items under Sudanese laws are presented in table below.

Table 5. Definition and Treatment of Zakatable Items under Sudanese Laws

Section	Name of Zakatable Item	Method and Applicable Rates
18	Minerals and Metals	Nisab proportionate to gold; at 2.5 percent of value upon extraction
19	Merchandize	Nisab proportionate to gold; deductions (debt etc.) to be defined by regulations; at 2.5 percent
20	Gold & silver	Nisab 85g of gold; 595g of silver; at 2.5 percent
21	Monetary assets	Nisab proportionate to gold; at 2.5 percent
22	Debts, stolen and extorted property	Only for one year even if the asset remain with debtor or extorter for more than one year
23	Buried treasure	20 percent upon extraction
24	Crops and fruits	Nisab 653 kgs; zakatable when matured and harvested; at 10 percent when naturally irrigated and 5 percent when artificially irrigated
25		Types and kinds to be grouped together for nisab
26		Zakatable even after act of sale or donation after maturity; buyer/ donee liable if sold/ donated before

		maturity
28	Livestock	To be collected at pastures and water places; male and female, young and adult all grouped together for nisab
29-31		Nisab and rates based on headcount of camels, cows and sheep
32	Combination of assets	Assets short of nisab should be combined and subjected to zakat if combined value exceeds nisab
33	Exploited assets	Net returns zakatable similar to cash
35	Salaries, wages, fees and other earned incomes	Net of deductions zakatable similar to cash; zakat paid to be deducted from any other tax under any other law

Assets/ output/ earnings exempt from zakat:

The assets, output and earnings that are exempt from zakat under Sudanese laws are presented in table below.

Table 6: Exemptions from Zakat under Sudanese laws

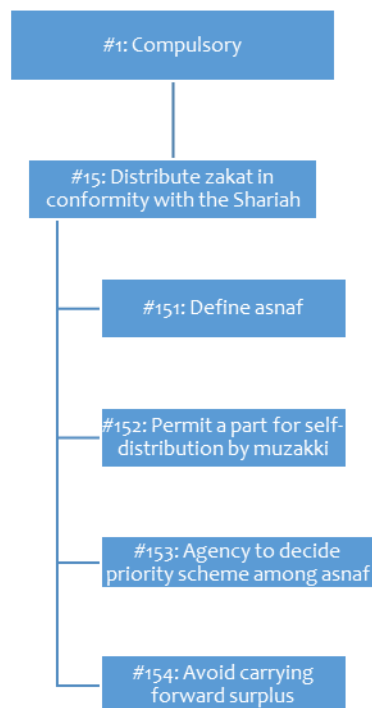
Section	Name of Zakatable Item	What is exempted
17-C	Properties	Any property for personal consumption as defined by regulations
27	Crops and fruits	Consumption by owner of farm, passer-by
27	Livestock	Animals used for plough
33	Exploited assets	Costs on maintenance and others as determined by regulations
35	Salaries, wages, fees and other earned incomes	Expenditure required for basic necessities to be determined from time to time
37	Properties	a. Public property if not put for investment b. Alms property, voluntarily spent on benevolent or charity purposes c. Funds regarded as endowment put to continuous charity activities

Modification of Rules

As a good legal principle, the Agency should be empowered to modify the list of zakatable assets, the conditions and methods of zakat estimation from time to time. However, there is no explicit provision in the laws under consideration.

4.5 Zakat Distribution Rules

Chart 7:



Distribution in conformity with Shari'ah

A clear concern for conforming to Shari'ah in matters of distributions is captured in section 21 of the law in Bauchi state, which states: "Nothing in this law shall preclude the application of other rules or principles of Shari'ah pertaining to zakat not mentioned in this law (21-1). Any rule of Shari'ah held to be applicable pursuant to subsection (1) above shall be deemed to have been provided for by this law even though same is not expressly mentioned by the law."

Defining the asnaf:

Section 38-1 of Sudanese law clearly stipulates that "zakat shall be spent forth with, unless necessity requires otherwise, on the following lawful aspects subject to Shari'ah: the fuqara (poor), masakin (needy), aminin alaiha (zakat collectors), mualafatul quloob (those whose hearts are inclined), fi-riqab (in bondage), gharimin (insolvent and indebted), fi-sabilillah (for cause of Allah) and ibn-sabil (wayfarers)."

Section 1 defines the above eight categories in the following manner:

Asnaf	Description
Faqir (poor)	One who does not own food enough for one year; a head of a family who does not have source of income; a student who fails to meet his school fee related needs

Miskeen (needy)	One who does not own food for one day; one who cannot earn due to permanent handicap; a patient who can not meet cost of his/her medical treatment; a victim of calamities
Aamilin alaiha (zakat employee)	Employee in the central or state Diwan and with the contributors
Mualafatul quloob (whose hearts are inclined)	One who has recently accepted Islam or inclined towards Islamic faith and expected to accept the faith
Fi-riqab (in bondage)	One who is war prisoner (zakat to be spent for release)
Gharimin (insolvent and indebted)	One who is indebted to others on lawful debts that he/she is unable to settle on the specified period; this does not include legal person or body corporate
Fi-sabeel Allah (for cause of Allah)	One who defends religion and the state; this includes dissemination of Islamic knowledge and Daawa (propagation).
Ibn-sabil (wayfarer)	A traveler on route unable to meet the cost of travel to his/her destination

Self-distribution by Muzakki

As indicated earlier, the Nigerian laws permit a part of the zakat to be retained by the muzakki and distribute the same among asnaf from his near and dear ones. In Bauchi State, the law in section 3 subsection 2 (b) requires the Board “to collect zakat due from those who are eligible to pay zakat in accordance with the rules of Islamic law; provided that the Commission may leave 30% of what is due as zakat to the person paying zakat to share it to those he was used to giving before the coming into force of this law or to his relations who are entitled.” However, both in Zamfara and Niger States sections 5 (b) of the law requires “to collect up to 60 percent of the zakat due, leaving 40 percent to the payer to be distributed to his close relations who are entitled.”

Priority scheme for distribution:

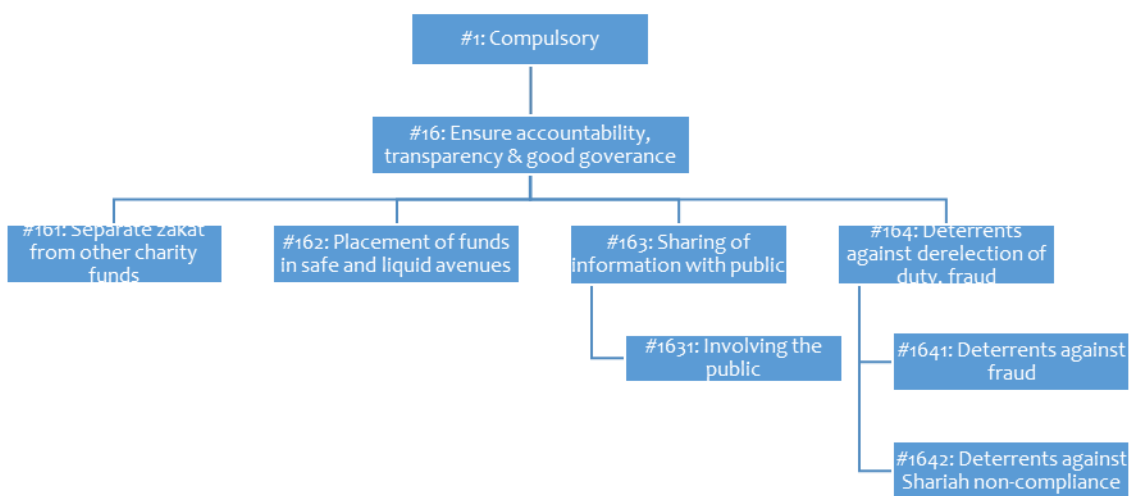
Section 38-2 of Sudanese law articulates a clear priority for the poor and the needy as well as on local distribution. It states “despite the provisions of Section 1 above, the share of poor and needy shall not be tempered with or transferred to any other head.” Further, “the central and the state Diwans, as the case may be, shall locally disburse the funds to the legitimate beneficiaries.” With non-zakat charity contributions however, there are no such restrictions and these may be spent on any desirable charitable and beneficial activity (Sec. 38-3). Further, section 38-4 asserts that the regulations shall specify jurisdictions and priorities of expenditure. According to 38-5, the zakat paid by Sudanese abroad, shall be spent in accordance with the priorities determined by the Board. In Bauchi State, the law in section 20 defines the asnaf and goes on to stipulate that the Commission shall have the power to make regulations on the priorities of the expenditure. Similar provision exists under Zamfara and Niger law (Sec.29 - 2).

Carrying undistributed surplus:

Section 5 (f) of laws in Zamfara and Niger states however, takes a more liberal view in the matter and empowers the Board “to invest zakat and endowment funds or the surplus of zakat funds in ways that will meet the objectives of the Board and serve the purposes of zakat and endowments.” Interestingly, in Bauchi law, the term “zakat” has been dropped.

4.6 *Accountability, Transparency and Governance*

Chart 8:



Transparency:

Section 41-1 of Sudanese law stipulates that the main Diwan as well as the state-level Diwans shall keep proper books of accounts in conformity with the sound accounting principles. It shall also keep special records that may be needed.

The institution of Diwan enjoys certain privileges too. Section 45 asserts that the property of the main Diwan and the state Diwans, are regarded as public property for the purposes of the Penal Code or Criminal Law. Further these are exempted from all types of taxes and fees, including custom duties (Section 47). In Zamfara and Niger laws, both provisions are present in section 36.

Separation of zakat funds from other forms of charity funds:

Zakat bodies in Sudan and Nigeria are empowered to collect other forms of charity funds in addition to zakat. Further, in Nigeria, there is a single body for zakat and awqaf. However, there is no explicit provision in the laws to segregate zakat funds from other forms of charity, e.g. sadaqa, infaq and waqf.

Placement of funds in safe and liquid avenues:

In Sudan, Section 6-g requires the Diwan to deposit zakat funds with the Bank of Sudan or with any other bank specified by the High Zakat Board or the State Board of Trustees as may be the case. In Bauchi state, section 3-2(h) requires the Commission to maintain account(s) with bank(s) into which zakat and endowment funds shall be paid where appropriate to exercise such other power(s) that may be necessary in the discharge of its functions in accordance with the rules of Shari'ah. Section 5 (h) of Zamfara and Niger laws has similar provisions.

Accountability to public:

As a principle of good governance, the apex agency should share information about zakat collection and utilization with the public with utmost transparency and in a spirit of sharing on a continuous basis. However, none of the laws under discussion have any explicit provision regarding this. Again as a principle of good governance, the apex agency should be open to suggestions from the community regarding zakat management. However, none of the laws under discussion have any explicit provision regarding this.

Deterrents against dereliction of duty, fraud, dishonesty on the part of zakat officials:

As a principle of good governance, law should provide for strong deterrents in the form of financial penalty and/or physical punishments for dereliction of duty, fraud, dishonesty on the part of zakat officials. Dereliction of duty by zakat officials may take several forms, such as, the violation of confidentiality of information provided by zakat payers. In Sudan, the Diwan is held fully accountable for ensuring confidentiality of the information provided by the individuals and businesses. According to section 46-1, all statements pertaining to zakat and spending thereof are regarded confidential and shall not be disclosed, save for the purposes of executing provisions of this Act. (Sec 36-1 under Zamfara and Niger law and 23-1 under Bauchi law)

Under Section 46-2 of Sudanese law, whoever deliberately discloses such statements shall commit a crime penalized under the Criminal Law, particularly if he is a temporary or permanent employee of the Diwan who exploits his office with the intention of harming the person in connection with such statements. Zamfara law goes on to prescribe punishment for such a crime as imprisonment for a term not exceeding three months or a fine of N10, 000 or both. (Sec 36-2). Under Bauchi law (Sec 23-2) and Niger law (Sec 35-2), the imprisonment is for not exceeding one year or with a fine or both.

Sections 9-12 of Zamfara and Niger laws seek to provide for good governance. Under section 9, a member of the Board including its chairman may be removed from office by the Governor on grounds of incapacity, disability, misconduct or failure to discharge his functions or responsibilities. However, according to section 11, the Chairman and any member of the Board shall not be personally liable for any act, omission or default by the Board so long as the act, omission or default is done in good faith and for the due discharge of his duty under this law. Further, the remuneration for the Chairman and members of the Board, will be by way of allowances determined by the Governor (Sec 10). Similarly, the salary of the Secretary and other staff of the Board shall be determined by the Governor (Sec 12).

Zakat laws in other countries, e.g. Indonesia (with voluntary zakat payment) provide for strict deterrents in the form of financial penalty and/or physical punishments against fraud, dishonesty and misappropriation of zakat funds. There are also strict deterrents in the form of financial penalty and/or physical punishments against Shari'ah non-compliance. As principles of good governance, such deterrents should be explicitly provided in the law. However, none of the laws under discussion have any explicit provision regarding this.

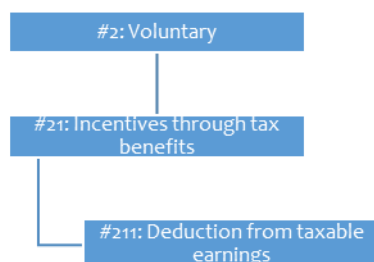
5. Quality of Laws: Zakat (Voluntary)

Zakat payment is voluntary in most countries. Not all of them have dedicated laws. Those with dedicate laws include Indonesia, Singapore, Brunei Darussalam, Bangladesh, five states in Nigeria. E.g. Kano, Borno, Krebbi, Katsina and Yobe. Fewer of them have good laws. A country that has been very proactive in reforming its zakat laws is Indonesia. In what follows, we will mostly subject the Indonesian law to scrutiny.

5.1 *Incentivizing Zakat Payment*

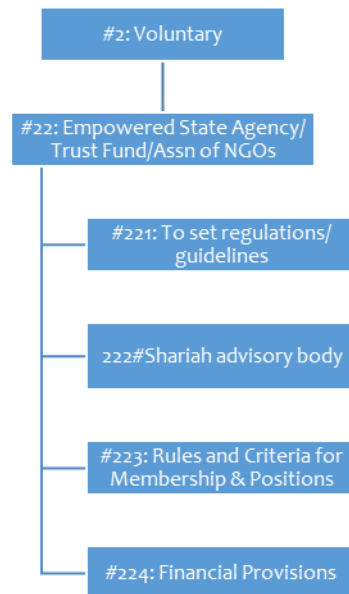
Most of the countries across the globe provide some form of fiscal incentive, e.g. tax deductibility of donations made for philanthropic and benevolent objectives. This should naturally extend to zakat as well. As a legal principle, therefore, one would expect that the states where zakat payment is voluntary should incentivize the same through similar tax benefits. However, none of the Nigerian laws make a mention of any such incentive for zakat payer. Most countries treat zakat at par with charity contributions made to voluntary organizations and provide tax relief in the form of allowing the same as a deduction to taxable income. In Indonesia, Article 22 of the Act provides for tax relief to the muzakki by treating zakat paid to BAZNAS as deductible to taxable income. Further, BAZNAS or LAZ provide receipt of zakat payments to each muzakki that then is used to deduct zakat from taxable income.(Art.23)

Chart 9:



5.2 Infrastructure

Chart 10:



As a sound legal principle, in a country with voluntary zakat payments, an apex body for zakat management should be created which may be (i) a state agency or (ii) an association/ committee of voluntary institutions.

Indonesia offers the most recent example of regulatory reforms in the field of zakat management with the Zakat Act 2011 replacing the Zakat Act 1999. The Zakat Act, 2011 aims to create a national institutional infrastructure for zakat management that aims to “improve the effectiveness and efficiency of the management of zakat services, and optimize the benefits of zakat for public welfare and poverty alleviation.”(Art.3) The apex body in this infrastructure is the Badan Amis Zakat Nasional (BAZNAS) created by the government for the sole objective of zakat management. (Art 6) It is an independent body responsible to the President through the Minister of Religious Affairs. (Art 5.3) Its functions include planning, implementation, controlling the process of collection, distribution and utilization of zakat and reporting the operational performance of zakat management. (Art 7) Its executive committee includes members who are non-political, responsible and competent members from the community. (Art.11) It is supported by a Secretariat (Art.14) and has a network of offices in provinces, districts and cities where it forms zakat collecting units (UPZ) to assist the process of zakat collection. (Art.15-16) The second tier in the zakat management infrastructure involves private community initiative and comprises Amil Zakat Institutions (LAZ). Such community organizations must be registered not-for-profit legal entities with adequate competencies and programs of social welfare. These institutions additionally must have Shari'a supervisory boards and must undergo Shari'ah and financial audit periodically. These must be duly authorized by the government based on recommendation of BAZNAS. (Art.17-18). Further, these are required to report their audited performance to BAZNAS (Art.19).

Singapore follows a regulatory framework similar to Malaysia, even though zakat payment is considered a voluntary act. The Administration of Muslim Law Act governs religious matters pertaining to Muslims including zakat. Similar to Malaysia, the state-created

Majlis Ugama Islam Singapura (MUIS) is the sole entity empowered to collect and distribute zakat. (Art.68) The Majlis, with the approval of the Minister, makes rules for and regulates all matters in connection with the collection, administration and distribution of zakat and fitrah. It also provides for the method by which zakat and fitrah shall be collected; appoints agents and officers for the collection of zakat and fitrah; and provide penalties for the collection or payment of zakat and fitrah by or to unauthorized persons. (Art.69)

Brunei Darussalam follows a regulatory framework similar to Singapore. The Laws of Brunei, 1/1984, Religious Council and Kadi Courts, Chapter 77, Section 114 governs religious matters pertaining to Muslims including zakat. Similar to Singapore, the state-created Majlis Ugama Islam Brunei (MUIB) is the sole entity empowered to collect and distribute zakat. Zakat collection is undertaken by MUIB representatives in the four districts of the country, through Amils in mosques and banks.

In Kano state, section 3 of the law provides for establishment of the Kano State Zakat and Hubusi Commission. It is a corporate body which may sue and be sued in its corporate name, hold, own and dispose of property and operate bank accounts. The law provides for a decentralized structure with agencies at state and village levels. Section 7 provides for establishment in each Local Government Area in the State a Local Zakat and Hubusi Council Further, section 9 provides for a Village Zakat and Hubusi Committee in each village. Both are required to administer zakat, hubusi and other related issues as directed by the Commission. Section 6 empowers the Commission to establish such number of departments as may be desirable for the smooth running of its activities with the approval of the Governor.

Katsina state provides an interesting contrast in terms of the infrastructure for zakat management. The zakat system owes its origin to an agreement between the government and related stakeholders to establish an independent non-government zakat and awqaf institution. The constitution of this institution provides the legal framework for zakat management in the state. It provides for establishment of a body called Katsina State Zakat and Endowment Trust Fund, which is a body corporate with perpetual succession and a common seal, and which may sue or be sued in its corporate name, and may acquire, hold and dispose of movable and immovable property (Section 1-1). In Kebbi state, section 3 of the Kebbi State Zakat and Sadaqat (Collection and Distribution) Board Law, 2000 establishes a body “known as the Kebbi State Zakat and Sadaqat Collection and Distribution Board which shall be a body corporate with perpetual succession and a common seal, with power to sue and be sued in its corporate name” for management of zakat. Section 6 provides for a State Zakat and Sadaqat Collection and Distribution Committee and a Local Government Zakat and Sadaqat Collection and Distribution Committee in each Local Government Area of the State.

In all countries with an apex body establish by the government for zakat management, such body is usually empowered to regulate all matters relating to zakat. The law provides in detail the role of Shari’ah advisory, the rules and criteria for membership and positions.

Financial provisions

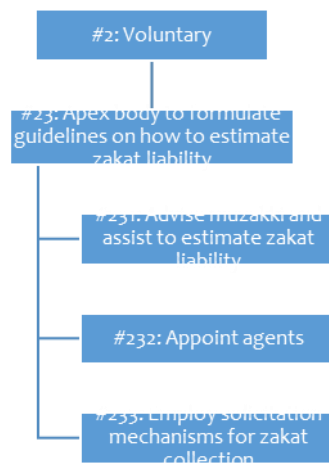
As a sound legal principle, adequate provision of finance to cover operational expenditure of the apex zakat body should be in place; (i) through budgetary allocation and/or (ii) through contribution of a part of zakat collected by the zakat institutions towards covering its operational expenditure. Laws in many countries explicitly deal with the issue of meeting

operational and administrative expenditure related to zakat collection and distribution. The Indonesian law does not stipulate any maximum limit (such as, one-eighth) for utilization of zakat proceeds to cover administrative expenses of zakat collector (*amilin alaihi*), it permits the same. While BAZNAS is required to cover its expenditure both by State budgetary allocation and part of zakat collection (Art.30), LAZ is also entitled to take parts of zakat collection to finance its operations. (Art.32) In Brunei Darussalam, operational expenses are met through budgetary allocation by government covers the salaries of MUIB staff, while expenses for Amils are allocated from zakat collection based upon standard formula.

5.3 Zakat Collection

Good practices in zakat management demand that where zakat payment is voluntary, then the apex zakat body in consultation with Shari’ah scholars and other stakeholders (e.g. zakat institutions, professional bodies in accounting, financial planning, inland revenue authorities, community leaders) should formulate guidelines for estimation of zakat liability of individuals and businesses.

Chart 11:



Article 4.2 of the law in Indonesia identifies various zakatable assets as: gold, silver, and other precious metals; cash and other securities; trade inventories, produce from agriculture, horticulture, and forestry; livestock and fisheries; mining; industry; revenues and services, and rikaz. Law recognizes both individuals and business entity as muzakki (Art.4.3). It refrains from providing the applicable rates and method of calculating zakat liability and merely asserts that the terms and method of zakat calculation should be in accordance with Islamic law. (Art.4.4).

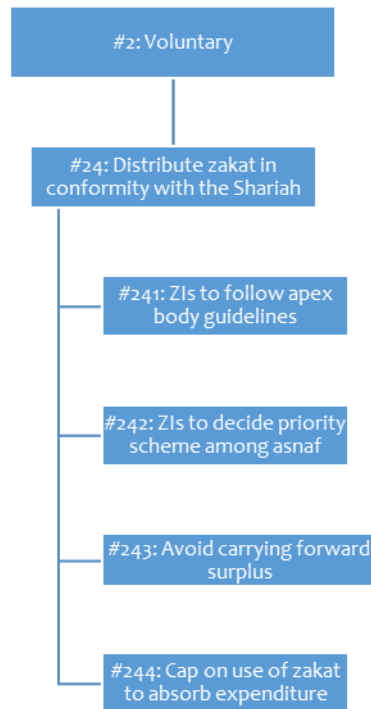
Good practices in zakat management recommend that zakat institution (ZIs) should advise and assist the muzakki in estimating their zakat liabilities in conformity with the guidelines. ZIs may appoint agents for collection of zakat against payment of commission and may undertake zakat mobilization campaigns and use other solicitation mechanisms for creating awareness about zakat. In Indonesia, a muzakki may do self-calculation of its zakat obligation or seek the help BAZNAS to calculate zakat obligation. (Art.21)

It should be mentioned however that the five states in Nigeria where zakat payment is voluntary, the law does not provide for any role of voluntary organizations in zakat management. It is the state created body that is responsible for collection of zakat, the

payment of which of course is voluntary. The body however, seeks the involvement of state and local committees in the process.

5.4 Zakat Distribution

Chart 12:

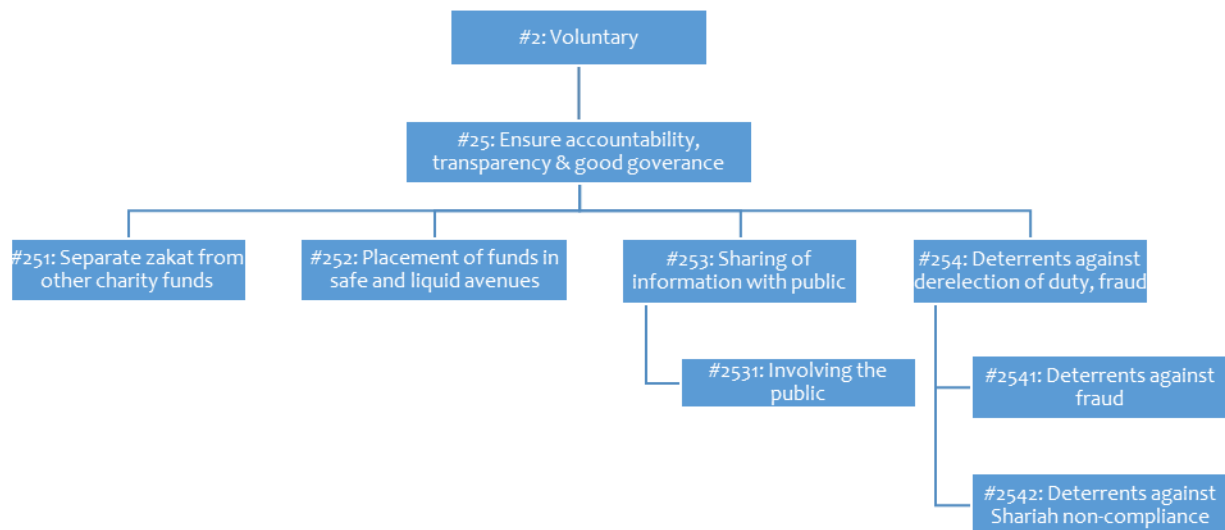


Good practices in zakat management demand that zakat bodies must distribute zakat among asnaf in conformity with Shari’ah. Where zakat payment is voluntary and there are ZIs in the voluntary sector, they should follow the guidelines issued by the apex zakat body for definition of the asnaf and the methods for their determination. They may decide on a priority scheme for distribution of zakat among asnaf. They should seek distribution of all zakat collected during the same lunar year and avoid carrying undistributed surplus. Further, while they may be permitted to absorb part of zakat to cover their operational expenditure, this should be subjected to a cap.

Indonesian Zakat Act prescribes zakat to be distributed to mustahik in accordance with Islamic law (Art.25) and based on priority after considering the principles of equity, justice, and territorial proximity. (Art.26) It remains short of providing objective and quantitative criteria for distribution of zakat among the various categories mandated by Shari’ah, but clearly stipulates that zakat can be utilized for productive activities in order to handle the poverty and to improve the quality of life, but only after fulfilling the basic needs of the mustahik. (Art.27.1-2) In no other country, laws deal with the issue of prioritization in zakat distribution. For example, the Singaporean law leaves the matter to the Majlis. It merely states that “any zakat or fitrah collected shall be disposed of by the Majlis in accordance with the Muslim law. (Art 68-4)

5.5 Accountability, Transparency & Governance

Chart 13:



Separation of zakat funds from other forms of charity funds collected

The law in Indonesia permits the zakat institutions: LAZ and BAZNAS to collect other forms of charity funds, such as, infaq and sadaqa. (Art.28-1) However, these must also ensure that the utilization of such funds is in conformity with Shari’ah as also with the intention of the donor(s) (Art.28-2). Further, given the Shari’ah constraint regarding the nature of zakat beneficiaries, there is a need to ensure that zakat funds are not commingled with other forms of charity funds. The Act (Art.28-3) rightly stipulates that all non-zakat charity funds must be recorded in a separate book. No other law takes care of this important Shari’ah as well as governance related issue.

In Kano Section 4 (e) act permits the Commission (in addition to its zakat collection function) “to act as a trustee of all funds, wealth and property entrusted in the Commission including, but not limited, to orphan children’s property, charity funds, alms and lost items.” In Katsina, too, section 5 (1) empowers the Trust Fund to receive donations, grants, gifts, charities and endowments from governments, corporate bodies or individuals. The laws however, fail to explicitly provide for any safeguards against commingling of zakat with other funds.

Placement of funds in short-term safe and liquid schemes of IFIs

In Kano, interestingly, section 4(d) empowers the Commission “to invest, in accordance with Islamic jurisprudence such resources at the disposal of the Commission, not immediately required for its purposes in such securities as may be approved by the Governor, and to dispose of such securities.” In Katsina too, section 5-1(i) empowers the Trust Fund “to administer and where applicable invest its financial resources in accordance with the provisions of Shari’ah”. While the concern for prudence in parking of funds is quite sound, the explicit permission to “invest” the resources runs contrary to the concern among scholars regarding the need to dispose of all zakat funds during the year of collection itself.

In Borno, section 7 (xvi) empowers the Board to invest idle funds subject to the Governor's approval.

In Yobe, law does not provide for any investment of zakat. Rather it states that "where there are surpluses of zakat collections as compared to recipients, the District Committee or the Emirate Committee or the State Board of Trustees is allowed to transfer the surplus to areas of serious deficits (Sec. 9.16)."

Accountability to public

ZIs must at regular intervals disclose the figures of zakat collection and utilization by them to the community with utmost transparency and in a spirit of sharing. In Indonesia, the law meticulously provides for mandatory reporting requirements for all zakat institutions at all levels in addition to their wide dissemination through all forms of media. While BAZNAS itself is required to produce and file detailed reports regularly to government – provincial and central, the LAZ in the voluntary sector is required to produce and file detailed reports to both BAZNAS and the government. The Act also requires flow of information at all levels within BAZNAS and government. (Art.29)

As a principle of good governance, the apex agency should be open to suggestions from the community regarding zakat management. In Indonesia, the law seeks to ensure wider public participation in the functioning of BAZNAS and LAZ (Act.35). It is rightly based on the assumption that such participation will result in greater public awareness about the need to strengthen these institutions through acts of giving and acts of vigilance against mismanagement. This is also sought to be ensured by laws in most other countries stipulating nomination of respectable members from the community to state agencies entrusted with zakat management.

According to constitution of Katsina Trust Fund (section 16 - c) the Board of Trustee is mandated to circulate to members (who are residents of the state), the annual audited accounts of the affairs of the Trust Fund not less than 30 days before the annual General Assembly. Further, section 5-1(g) requires the Trust Fund to "co-operate with Government and non-governmental organisations having similar functions, aims and objectives in the advancement of zakat and endowments in the State."

In Borno section 7 (x) requires the Board "to submit annual returns on its activities to the State Council of Ulama; (xi) to render annual accounts to the public through the Council of Ulama; and (xii) to make and submit to the Council of Ulama annual budgetary estimates."

In Yobe, section 9 of the law provides for involvement of the public. Subsection 10 requires a public announcement of all collections and disbursements including names of payers and recipients as well as the amount paid and the amount given out to each recipient.

Penalties and Sanctions

As a principle of good governance, law should provide for strong deterrents in the form of financial penalty and/or physical punishments for dereliction of duty, fraud, dishonesty on the part of zakat officials. The Indonesian law provides for administrative sanctions in the form of warning, temporary suspension of activities and even revocation of license for zakat institutions (Art.36), should they violate specific provisions (e.g. Art.19, 23-1, 28-2, 28-3, 29)

relating to timely reporting to BAZNAS and non-compliance with Shari'ah and/or donor's wishes. The Act prohibits individuals from owning, pledging, granting, selling, and / or diverting zakat, infaq and other religious social funds that exist in its management. (Art. 37) Any person who willfully and unlawfully violates this shall be punished with imprisonment of 5 (five) years and / or a maximum fine of five hundred million rupiahs. (Art.40) The Act also prohibits one from deliberately acting as amil zakat undertake the collection, distribution, or utilization of zakat without the consent of authorities. (Art.38) Any person who willfully and unlawfully violates this provision shall be punished with imprisonment for a maximum of 1 (one) year and / or a maximum fine of fifty million rupiahs. (Art 41) Further, Article 39 stipulates that any person who intentionally did unlawfully distribute zakat according to provisions of Article 25 shall be punished with imprisonment of 5 (five) years and / or a maximum fine of five hundred million rupiahs.

Law in Brunei also provide for deterrents against frauds in the form of financial and physical punishment.

In contrast, Singapore law leaves the power to provide penalties for the collection or payment of zakat by or to unauthorized persons with the Majlis itself. (Art.69). They are less stringent elsewhere, e.g. in Pakistan where zakat law is very elaborate in terms of organization and management of central, provincial, district, sub-division and local committees, but provide very little in terms of penalties and punishments, except the possibility of removal of an erring member.

As per Kano law, section 5.4 says, "Notwithstanding the provision of subsection (2) of this section, the Governor may revoke the appointment of any member whose conduct is unsatisfactory. Unsatisfactory conduct includes: i. absenting himself from the meetings of the Commission for three consecutive periods without leave of the Chairman; ii. bankruptcy; iii. insanity; and iv. gross misconduct."

In Katsina section 15 of the constitution of the trust asserts that a member of the Board of Trustees may hold office for life, but shall cease to hold office if he/she is convicted of a criminal offence involving dishonesty by a court of competent jurisdiction (subsection - e); or is removed on grounds of misconduct or incapacity as a result of ill-health or inability to discharge the functions of his office (subsection - e).

In Krebbi, the only deterrent exists in the possibility of removal of members from the Board or Committees. Section 14 states that "the Board members may be removed by the Governor if they cannot discharge their functions by reason of dishonesty, ill health or insanity, or if they are declared bankrupt or found guilty of committing an offence by a court of law, or are absent from three consecutive meetings without permission or genuine reason."

The provision is similar as above in Borno, where as stated earlier, the Chairman as well as the members of the Board may be removed from position by the Governor on the recommendation of the State Council of Ulama for misconduct (Sec.12).

6. Conclusion

The purpose of this paper is to answer two simple but important policy questions. First, how complex are the zakat laws world-wide? Second, how does the complexity of laws of zakat affect the mobilization of such funds and their utilization for alleviation of poverty? There

seem to be two key dimensions to the problem of complexity in laws: the volume of the laws and the quality of the laws. We, therefore, study complexity of global zakat laws by undertaking a comparative analysis of their volume and quality. We initially hypothesize that higher volume of laws makes them more complex. Wordiness is linked to volume and is often seen to be an indicator of complexity. We begin with the number of sections and word-count of the 29 sets of zakat laws and relate them with the actual level and growth in zakat in the corresponding provinces/ countries. We fail to find any significant relationship. We then seek to explore complexity or quality of the laws using the coherence principle. Since a good law must be coherent, we seek to develop a hierarchy of “core principle” of zakat regulation. Broadly, we seek to delineate two branches in the hierarchy based on whether zakat payment is mandatory or voluntary in the province/country.

The study throws up some interesting results. If we consider goodness as a continuum, Sudanese law may be observed to score high in terms of coherence, completeness and quality among all countries where zakat payment is compulsory. It has been effective too, though it did contain certain provisions, e.g. relating to tax incentives, that were a source of ambiguity and resulted in low zakat mobilization. However, a proactive approach to zakat reforms paid off by removing the anomalies. Malaysian law is found to be too short and leaves out many dimensions, even while zakat mobilization has been reasonably successful, perhaps because of tax incentives and non-legal factors, such as, large-scale corporatization. Pakistan law perhaps scores the least in terms of goodness. It is wordy, devoting too many words to organizations aspects with little in terms of provision that would ensure better enforceability, transparency and good governance. Among countries where zakat payment is voluntary, the Indonesian Act may be considered an ideal example that covers all aspects of “core principles” in a coherent manner. It is an excellent example of a “good” law. Nigerian laws are examples of good laws, yet they do not seem to have delivered in terms of zakat mobilization, perhaps because of their newness and wide inter-state diversity.

Appendix I: List of Zakat Laws Covered in the Study

- 1) The Zakat Act, 2011, Indonesia
- 2) The Zakat Fund Ordinance, 1982, Bangladesh
- 3) Zakat and Ushr Ordinance, 1980, Pakistan
- 4) Zakat Act 2001, Sudan
- 5) Administration of Muslim Law Act, Singapore
- 6) Laws of Brunei, 1/1984, Religious Council and Kadi Courts

Malaysia

- 7) Syariah Criminal Offences (Federal Territories) Act 1997
- 8) Majlis Ugama Islam (State of Sabah) Enactment 2004 & Zakat And Fitrah Enactment 1993
- 9) Majlis Islam Sarawak Ordinance 2001, Zakat and Fitrah Regulations 1966 (Sarawak)
- 10) Syariah Civil Enactment (State of Melaka), 1991 and Regulations of zakat and fitrah and wakaf 1982, Melaka
- 11) Council of the Religion of Islam and Malay custom (State of Kelantan) Enactment 1994
- 12) Administration of the Religion of Islam (State of Johor), Enactment 2003 & Syariah Criminal Offences Enactment 1997

- 13) Administration of the Religion of Islam (State of Selangor), Enactment 2003 & Syariah Criminal Offences Enactment 1995
- 14) Administration of the Islamic Affairs (State of Terengganu), Enactment 2001 & Syariah Criminal Offences Enactment 2001
- 15) Administration of the Islamic Law Enactment (State of Pahang), 1991, Administration of the Religion of Islam and the Malay Custom (State of Pahang), 1982
- 16) Administration of the Religion of Islam (State of Perlis) Enactment 2006
- 17) Administration of the Religion of Islam (State of Penang), Enactment 2004 & Syariah Criminal Offences Enactment 1996
- 18) Administration of the Religion of Islam (Perak) Enactment 2004 & Syariah Criminal Offences Enactment 1992
- 19) Administration of the Religion of Islam (State of Negeri Sembilan), Enactment 200X & Syariah Criminal Offences Enactment 199X
- 20) Zakat Regulations Kedah 1982

Nigeria

- 21) Bauchi State Zakat and Endowment Fund Collection, Administration and Distribution Law, 2003
- 22) Zamfara State Zakat (Collection And Distribution) and Endowment Board Law, 2000
- 23) Niger State Zakkat (Collection and Distribution) and Endowment Board Law, 2001
- 24) Zakat Collection and Distribution Committee Law 2000
- 25) Kano State Zakat and Hubusi Commission Law 2003
- 26) Katsina State Sharia Commission Law, 2000
- 27) Borno State Zakat and Endowment Board Law, 2001
- 28) Yobe State Religious Affairs Board 2001
- 29) Kebbi State Zakat and Sadaqat (Collection and Distribution) Board Law, 2000

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