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Judgment on Taxation in Islam

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Abstract

This study deals with the judgment on taxation in Islam. The significant of this study lies in its review of a very important issue in light of the development and progress taking place in contemporary financial systems. Its importance also stems from the fact that it highlights the views of ancient and contemporary jurists on this issue. The study objective of this study is to identify the concept of tax in Sharia terminology and to clarify the judgment of Sharia in imposing it in Islamic countries. To achieve the objectives of the study, the researcher adopts the descriptive analytical approach. Among the most important results reached by the researcher in the study are: first, that there is no Sharia text, neither in Quran nor in the Sunnah, that explains the meaning of tax in Islam. Second, Sharia jurists are divided into two parts on the issue of the permissibility of taxation, some allow and some forbid. Third, the most preponderant opinion is that it is permissible to impose it within provisions. The study concludes with a set of recommendations, the most important of which is that the researcher recommends the need to observe the provisions of Islamic jurisprudence when approving tax legislations in Islamic countries, the researcher also recommends the concerned tax authorities in the Islamic world to increase the pace of cooperation with various bodies and organizations in order to approve tax rules based on the provisions of Sharia, and take into account the interests of the people.

Keywords: Concept of Tax, Tax Provisions, Tax in Islam.

Introduction

The Islamic state was established in the seventh century AD in Medina. Mohammed, the Messenger of Allah (peace be upon him) built a system based on justice, preservation of rights, non-violence, and regulation of all issues of the people, including individual issues. Islam reveals an inclusive economic system by which zakat and other taxes can be collected (Zallum, 1988). The Mohammedan Sharia considers zakat to be one of the pillars of Islam that it is obligatory to perform and imposes punishment on those who deny and evade it. Zakat has been imposed on three types of crops and products. These types are represented in agricultural crops, camels, and capital. Sharia has established for each type its own

percentage of zakat. In addition to zakat, the glorious Sharia has approved other methods such as *fay'*, land tax (*kharaj*), *jizya*, and the tithe (*usher*) tax that was imposed on goods entering the Islamic State (Al-Dahla, 2003, p. 18). Taxation is rooted in Islamic social theory that abide by Islamic laws. There are even Islamic legislative guidelines that regulate taxation in from an Islamic perspective (Katterbauer, 2022).

In the era of the Umayyad and Abbasid states, taxes and the ways of spending them varied. Ibn Taymiyyah clarified the details and forms of tax, some of which were stipulated in the Quran, Sunnah, or what was approved by the Rightly-Guided Caliphs, some were stipulated according to the efforts (*ijtihad*) of the Muslim scholars, and some of them were *ijtihad* but were issued due to misunderstanding or shortcoming from the *mujtahid* because his opinion is affected by his sentiment. As for the fourth form, it is represented in a pure undoubted disobedience by abandoning an obligation or doing a forbidden act (Zaher, 2019, p. 355).

In the Ottoman era, taxes varied and names and characters of sources differed from one place to another. For example, in Damascus, the number of tax fees at the beginning of the Ottoman era was estimated at ninety-seven tax fees. The most important tax of these were the bag tax, bad tax the profession tax. The tax was known in the Ottoman era as the *iltizam* system. This *iltizam* began in the seventeenth century. In the nineteenth century, the Ottoman state introduced general reforms, entrusting the collection of taxes to the public treasury. In fact, the Ottoman era established two types of taxes, the first is the Sharia amounts stipulated in the Quran and Sunnah, and the other are the worldly ones that were imposed by the sultan when needed (Saban, 2000, p. 35). Through this study, we review the judgment on taxation in Islamic Sharia. The objective of the study is to recognize the concept of tax and the Sharia judgment on taxes imposed by the rulers and sultans in the Islamic state. In order to achieve the objective of the study, the researcher adopts the descriptive analytical approach.

One of the most important studies in the field of this research is the Al-Dahla study (2004), entitled: "Tax Systems between Contemporary Financial Thought and Islamic Financial Thought, an analytical study". It highlights the presence of paradoxes between tax systems in contemporary and Islamic financial thoughts. This study shows the most important characteristics and advantages of each system separately, it also demonstrates the types and forms of different taxes. The researcher uses the comparative analytical descriptive approach. The study reaches a number of results, the most important of which is that there is a similarity between the Islamic tax and the tax in man-made laws. Among the similarities are the united tax rules and the objectives and elements for each of them. The study reaches the result that the Islamic tax differs from the legal tax in many aspects, including the source of its legislation, its quorum and its outlets. The study concludes with a number of recommendations, the most important of which is the need to work to spread awareness and Islamic culture among citizens of the existence of an Islamic tax system that is comprehensive and based on justice and that is able to achieve the state's social and economic goals, and it can be an alternative system to man-made systems.

Al-Masry (2012), entitled: "The Ruler's Authority in Taxation", discusses the urgent need to collect financial resources for the benefit of the state through taxes, which have become the basis on which states depend to meet their public needs. The importance of this study stems from the fact that taxation is a violation of the individuals' ownership of money, and that some countries impose taxes in amounts that burden the citizens, some of which are right and some are not. The researcher clarifies that the importance of this topic appears in

its demonstration of the greatness of Islamic Sharia in reconciling the interest of the state and the interest of individuals. She explains that there is several reasons that pushed her to work on this topic, the most important of these is that most of the governments in the Islamic nation are subject to economic occupation with American and Western domination of their natural resources, which has caused an economic suffocation in the Islamic world. In the research plan, the study contains three chapters. The introductory chapter is about the financial resources of the Islamic state and the right of the ruler to determine them. In the first chapter, she discusses the concept of taxes, their reasons and characteristics. In the second chapter, she highlights the provisions and regulations of taxation. The researcher relies on the inductive approach. She reaches a set of results, the most prominent of which is that if the resources of the Islamic state fail to meet all the requirements of life and achieve the general interests of individuals, then the Muslim ruler has the right to interfere in determining the state's resources, either by increasing the tax of the land or borrowing from wealthy individuals or imposing some financial burdens on individuals. Contemporarily, it also can be used neuroscience and physiological tools to study several topics (see Alsharif et al., 2021a; 2021b, 2021c; 2021d; 2021e; 2022; 2022), for example but not limited to the influence of Taxes on the individual in Islam. The study concludes with a set of recommendations, the most prominent of which is the need to rationalize the state's consumption of money so that it does not need to impose taxes.

This study highlights the judgment on taxation according to what is decided by Sharia jurists based on the sources of legislation, each according to his *ijtihad*. The researcher presents an explanation of the concept of tax, and then reviews the opinions of the jurists regarding taxation in Islamic countries, as follows:

The concept of Tax in Sharia Terminology

Islam pays attention to the concept and implementation of Zakat which is a form of taxation (Lorenz, 2013). However, there is no sharia text that explains the meaning of tax in Islam, so the nation's scholars have worked hard to define the concept of tax, and this is what made them differ in their definitions of tax, even though they all seem to revolve around one concept. In this context, we refer to the most important of these definitions; Imam Al-Ghazali defined it as: "What the imam imposes on the rich according to what he deems sufficient when the treasury is empty" (Al-Ghazali, 1971, p. 236). Through Imam Al-Ghazali's definition of the tax, we find that he stipulated two unambiguous conditions for collecting the tax, the first condition is that the taxpayer should be from the rich and the wealthy class, it is not imposed on the poor people. The second condition is that the Muslims' treasury shall be empty of money.

Imam al-Juwayni defined it as: "What the imam takes from the well-endowed and rich classes of people according to what he sees as a necessity (Al-Juwayni, 1401 AH, p. 274). The observer of the definition of Imam Al-Juwayni concludes that it is close to the definition of Imam Al-Ghazali, although there is a difference in the expression of the definition. Both stipulate that the tax shall not be imposed except to meet the public need.

Modern Muslim scholars such as Dr. Yusuf Ibrahim define it as: what the state imposes in addition to zakat and other duties specified in the Quran and Sunnah, according to the conditions of the Islamic society. These taxes are distinguished by the fact that they are temporary in the circumstances for which they were imposed, and they can be called "exceptional taxes" (Ibrahim, 1980, p. 23). From the previous definition, we find that the jurist Dr. Yusuf Ibrahim suggests that tax in Islam differs from zakat and other duties approved by

Sharia. It is a temporary exceptional case that disappears with the disappearance of its reason, which may be the emptiness of Muslim treasury of money or the existence of a general need for the state for which huge budgets shall be provided.

Ahmed Shalabi defines it as: "What is paid for services and commitments undertaken by the state for the benefit of the community, such as defense, police and education" (Shalabi, 1990, p. 174). The researcher believes that the Shalabi's definition is general and does not relate to an exceptional case, and it indicates the permanence of the tax, and that it is obligatory on all, the poor and the rich alike. It also suggests that it is in return for the services provided by the state. This definition may contain a bit of an exaggeration.

Al-Faqih Enaya defines tax as: "the financial deductions, both in kind and in cash, that the Islamic state forcibly and permanently deducts from the money of individuals without having a certain conditional benefit in return and is allocated to cover public expenditures. At the same time, its imposition is based on the overall provisions and rules of Islamic sharia (Enaya, 1990: p. 307).

It is noted from this definition that the concept of tax is close to the appropriation or deduction of the private right for the public interest, especially that it suggests that in kind deduction is one the forms of tax from the money of the individuals, even if it is restricted by necessity, need, and the preservation of private property and other general rules of Sharia. The researcher believes that this definition contains a bit of confusion and exaggeration, and what lies in the context of the definition does not fall within the clear concept of tax.

In summary, the researcher believes that the tax can be defined from a sharia perspective as the estimated and fixed value money that the state imposes on the wealthy and the owners of companies to pay to the state to meet public expenditures on an exceptional basis and for an urgent and temporary necessity based on the rules and provisions of the general Sharia, and there is no condition that there shall be a special benefit in return for payment.

The Judgment on Taxation in Islam

The discussion of taxation is not up-to-date or from contemporary jurisprudential calamities, yet there is an urgent need to clarify the opinions of jurists on taxation at a time of growth and development in the international tax system. Islam used to collect some forms of taxes that are different to contemporary taxation in the positive law, such as the Kharaj tax (Fadl, 1992). In fact, Sharia jurists are divided into two groups regarding taxation, some of them permit it with restrictions and provisions, and some forbid it at all. The origin of the dispute in this is the question of whether there is a right to money other than zakat or not. So, those who say that there is a right other than zakat believe that it is permissible to impose tax with restrictions, and those who do not believe that there is a right in money other than zakat reject the tax and do not allow it (Fakher, 2019, p. 8), this is what this study explains in detail as follows:

- **Tax legalizers**

This is the opinion of some ancient and contemporary scholars, and they set a number of conditions and provisions to impose it (Zaher, 2019, p. 358). The imams of the four schools (madhabs) are among those who said that it is permissible to impose tax. For example, Hanafi school sees that it is permissible to impose taxes on people whenever need arises, i.e., at the time of disasters (Al-Barakti, 1986, p. 535). The Maliki school believes that the imam can impose taxes for special circumstances. In this regard, Imam Al-Qurtubi says: The scholars

agreed that if the Muslims had a need after paying the zakat, then the money shall be spent on it (Zaki, p. 29).

As for the Shafi'i school, it affirms the legality of taxes on the rich if the imam needs it in order to achieve the public interest. Imam Al-Ghazali says in this context that if the hands are empty of money, and there is no money to satisfy the military's expenditures, and if the soldiers disperse and get preoccupied with earning, there would be a fear that the enemy may evade the homes of the Muslims, or there may be eruption of sedition in the Islamic lands, it is permissible for the imam to impose on the rich the amount that meet the needs of the soldiers (Ibn Abidin, 1992, p. 330).

The Hanbali school permits taxation and called it the royal duties and included it within the section of jihad with money. Regarding this point, Ibn Taymiyyah says in his fatwas: if something is asked from them, it shall be taken from their money and their heads, like the royal duties that are placed on all of them, either on the number of their heads, or on the number of their animals, or on more than the tax required by Sharia, or on the duties that occurred in other than the sharia aspects (Ibn Taymiyyah, 1995, p. 41).

Ibn Hazm Al-Dhahiri believes that it is permissible to impose public taxes if there is an interest and necessity, and this is taken from his opinion: It is obligatory on the rich people of every country to help the poor people, the sultan compels them to do so if the zakat is not paid (Al-Shatibi, 1999, p. 619). From the previous opinions, we find that the Hanafi school permits taxation if there is a need calling for it, while the Maliki school believes that it is permissible in special circumstances, the Shafi'i school acknowledges that it is permissible for the rich only, and the Hanbali school considers it to be a form of jihad with money. Ibn Hazm Al-Dhahiri believes that it is permissible to impose it in public taxes whenever there is a necessity.

In fact, the ancients inferred the permissibility of taxation with a set of evidences from the Quran and the Sunnah and the traces reported from the Companions and the Followers, and also from rationales thinking. Their evidence from the Holy Quran is what the Almighty's Allah says: "Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask [for help], and for freeing slaves; [and who] establishes prayer and gives zakat; [those who] fulfill their promise when they promise; and [those who] are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous" (Al-Baqarah, 177).

The evidence in the abovementioned verse is that almighty Allah differentiates between giving zakat and giving money to relatives, orphans and the needy. The legalizers depend on the fact that this differentiation confirms that giving money is not the same as zakat, even if there are opinions regarding that. Therefore, if the zakat is not sufficient to meet the needs of the poor, they permit the ruler to impose on the wealth of the rich a tax that satisfies the need of the poor or the public interest (Al-Ajl, 2006, p. 201).

As for their evidence from the Sunnah, it is what was narrated about Fatima bint Qais, who said: The Prophet, may Allah bless him and grant him peace, was asked about zakat, and he said: There is a right in money other than zakat. Then he recited "Righteousness is not that you turn your faces toward the east or the west." Al-Qurtubi says: Even if the hadith is argumentative, a meaning in the same verse indicates its authenticity, since what is meant by giving money is other than zakat (Zahir, 2019, p. 360).

They also cited the hadith of Abu Sa'id al-Khudri, which he narrates from the Prophet, may Allah bless him and grant him peace, that he said: "He who has surplus of provisions should give them to him who has no provisions" (Sahih Muslim, Sharh Al-Nawawi, No. 12/33).

The hadith of Ali, may Allah be pleased with him, in which he narrates that the Messenger of Allah, may Allah's prayers and peace be upon him, said: Allah has enjoined upon the wealthy Muslims to give from their wealth as much as needed by the poor. The poor will not be hungry and naked except because of what the rich do, Allah will hold them accountable and punish them severely" (Sunan Abi Dawood, Hadith No. 1/522).

The evidence from the previous hadiths is that they call for solidarity among the members of the Muslim community. The hadith of Fatima bint Qais confirms that the poor have a right to the wealth of the rich Muslims other than zakat. In the hadith of Abu Saeed al-Khudri, he urged solidarity with, and assistance to, the poor, while the hadith of Ali is in an order style, where our honorable Messenger obliges the rich to fulfill the rights of the poor in their money. Thus, the legalizers of tax infer that insufficient zakat requires imposing what meets the needs of the poor.

Those who authorized the imposition of tax infer that from the traces reported on the companions and followers, may Allah be pleased with them, including what was reported on Al-Farooq Omar Ibn al-Khattab (may Allah be pleased with him) when he said: "If I can return to the past, I would take the surplus money of the rich and divide it among the poor" (Al-Akkad, 2010, p. 154).

This is an evidence of the permissibility of the ruler, caliph, or the imam to impose an amount of money as a tax on the rich to meet the needs of the poor, provided that it is not zakat.

This is what Ibn Omar, Abu Huraira, Ibn Abbas, Abu thar and Aisha, may Allah be pleased with them, said. It has been proven in the tradition of Al-Sha'bi, Mujahid, Ataa, and Tawus among other followers, may Allah be pleased with them, that they said that there is a right in money other than zakat, and this is a consensus among them on the permissibility of imposing tax other than zakat (Al-Zahiri, p. 283).

As for their evidence from the intellect on the permissibility of taxation, they consider the principle of social solidarity between the individual and society, and the principle of brotherhood between individuals (Fakher, 2019, p. 9), in addition to their use of reason in interpreting the universal rules, especially the rule of "warding off corruptions/evils takes precedence over bringing benefits", and the rule of "caring for interests", and the rule of (bear private harm to ward off public harm) (Ibn Najim, 1999, p. 177).

Among the most prominent contemporary jurists who approves what the ancient imams said about the permissibility of imposing tax on those who are able when needed and the occurrence of necessity in addition to zakat is the Sheikh of Al-Azhar: Abdul Halim Mahmoud (may Allah have mercy on him), who said that society is responsible for the needy people in it, and it shall help them meet their needs, it shall also preserve his right in zakat. If zakat does not fulfill that, the society shall impose a tax on the wealth of the rich to cover the needs of the poor. Among the legalizers is the eminent Sheikh: Mahmoud Shaltout, Sheikh of Al-Azhar (may Allah have mercy on him), who demonstrate that zakat is a financial worship, not a tax that shall be paid, whether there is a need for it or not, and it is a permanent resource for the poor and needy. As for taxes, they are set by the ruler when needed, and one of them does not replace the other, and accordingly taxes shall be paid. He says: If the ruler who represents the nation does not find something to achieve the general interests of the nation, such as establishing educational bodies, paving roads, digging canals and establishing factories, and

preparing equipment for defending the country, and he sees that the nation's rich people do not give money, and do not provide him with donations and aid, he may, or even shall, impose a tax on them to achieve those interests without being overburdened (Zaki, p. 38).

- **Taxation Forbidders**

Those who implement this view believe that the only right that is obligatory in money is zakat, so whoever pays it has fulfilled his obligation, and it is not permissible after that to take from the money that he possesses. He may not be obliged to pay any tax unless he volunteers to do so in seek of Allah's reward (Al-Qaradawi, 1973, p. 1089).

Those who hold this opinion have inferred evidence from the Holy Quran and the Sunnah of the Prophet. As for the evidence from the words of the almighty Allah, Allah says: "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful." (Surah An-Nisa, vers No. 29), and "And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]." (Surat Al-Baqarah, vers No: 188). The evidence from the previous verses is that the almighty Allah forbids consuming people's money unjustly. The forbidders consider that assigning people to do what Allah does not command from their money is one of the ways of consuming their money unlawfully (Al-Salihin, 2011, p.196).

As for their evidence from the Sunnah, it is what is narrated by Abu Huraira, may Allah be pleased with him, that a Bedouin came to the Messenger of Allah, may Allah's prayers and peace be upon him, and said: "direct me to a deed by which I may be entitled to enter Paradise. Upon this he (the Holy Prophet) remarked: You worship Allah and never associate anything with Him, establish the obligatory prayer, and pay the Zakat which is incumbent upon you, and observe the fast of Ramadan. He (the Bedouin) said: By Him in Whose hand is my life, I will never add anything to it, nor will I diminish anything from it. When he (the Bedouin) turned his back, the Prophet (may peace be upon him) said: He who is pleased to see a man from the dwellers of Paradise should catch a glimpse of him. (Fath al-Bari, No. 1395).

The evidence from this hadith is that the Bedouin does not wish to increase or decrease the obligatory zakat. The Messenger of Allah, peace and blessings be upon him, assumed that he is one of the people of Paradise (Al-Ajl, 2006, p. 198). They also cite the hadith of Abu Hurairah that the Prophet, may Allah bless him and grant him peace, said: "If you pay the zakat of your money, you have paid what you owe" (Al-Tirmidhi). The meaning of this hadith is that as long as the individual Muslim has fulfilled his obligations, he does not have any other right to his money and shall not be demanded or obliged to pay anything else. Those who hold this view said that the texts that establish a right to money other than zakat is on the basis of desirability and not as a matter of obligation (Zahir, 2019, p. 362).

- **The Opinion we Prefer**

After reviewing the evidence of both groups, as previously stated, I tend to favor the imposition of taxes according to conditions and provisions that shall be met. If they are achieved, it is permissible to impose tax. Otherwise, there may be fear of injustice and oppression from the sultan or the one who assumes the task of taxation. The researcher tends to the permissibility of taxes after reviewing the evidence presented by the legalizers as being stronger and compatible with the purposes of Islamic Sharia and identify with the reasonable

judgment. Among the regulations that can be observed when imposing the tax, what was decided by the Islamic Research Academy in its second round, which was held in 1965, where a number of regulations were approved, namely:

1. Being fair and just, not exhausting.
2. The state treasury should be empty, otherwise it may not be imposed.
3. It should be for emergency, exceptional and temporary cases.
4. It shall be spent on the real interests of the nation (Daghi, 2010, p. 54).
5. It shall be approved by the people of opinion and shura (consultation) in the nation. This is a regulation that was approved only by Sheikh Yusuf al-Qaradawi (Al-Qaradawi, 1973, p. 1088).

Discussion and Conclusion

The study concludes that there is no sharia text, neither in the Quran nor in the Sunnah, that explains the meaning of tax in Islam. The study also concludes by defining tax as: the estimated and fixed value of money that the state imposes on the wealthy and the owners of companies to pay to the state to meet public expenditures, on an exceptional basis and for an urgent and temporary necessity based on the rules and provisions of the general Sharia, and there is no condition that there shall be a special benefit in return for payment.

The study concludes that the jurists of Sharia are divided on the issue of the permissibility of imposing tax into two parts, including those who allow and those who forbid. The researcher concludes that the most correct opinion in this matter is the permission of taxation in accordance with conditions and regulations, the most important of which is that the state treasury shall be empty, it shall be imposed to meet emergency, exceptional and temporary cases, it shall be spent on the real interests of the nation, and that the people of opinion and consultation in the nation approve it, and in In conclusion, the study concludes with a set of recommendations, the most important of which are:

1. The researcher recommends the necessity of observing the provisions of Islamic jurisprudence when approving tax legislations in Islamic countries.
2. The researcher recommends the tax authorities in the Islamic world to increase the pace of cooperation with various bodies and organizations in order to approve tax rules based on the provisions of Sharia, and take into account the interests of the people.
3. The researcher recommends the entities in charge of the financial system in Islamic countries to increase the awareness and culture of individuals about the importance of tax and the danger of avoiding it.

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