

URF ZAKAT GOLD JEWELLERY: PRACTICES IN MALAYSIA

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ABSTRACT: Apart from the obligation of zakat for gold in the form of saving, it also involves zakat imposed in the form of jewellery. In Malaysia, the obligation of zakat for gold jewellery considers the aspect of local urf. In conjunction with this, the establishment of zakat towards gold jewellery is based on the difference of urf in different of states. However, there are some states in Malaysia that did not have urf on the wearing of gold jewellery, but still will be imposed as zakat, of which the calculations of the zakat for the gold that is nisab of 2.5%. This article uses library research, information collected through official documents from the zakat' institution, and also interviews with the zakat manager, as its main sources. The objective of this article is to look how far does the practice of urf on zakat for gold imposed in Malaysia. This discovery shows that an upturn in the implementation of urf on zakat for gold jewellery give impacts to the increase in the amount of zakat-for-gold collection in Malaysia

1. INTRODUCTION

In Malaysia, urf of zakat for gold jewellery is not something new, but its existence and use is still not known publicly. Most of the people are still confused with the determination of varying urfs in Malaysia.

There were two studies on urf of zakat for gold in Malaysia. The first study was conducted by 'Jawatankuasa Kajian Uruf Emas Perhiasan Negeri Pahang' in 2008. This research was conducted on Islamic women in Pahang state, to obtain the custom rate or urf for gold jewellery. A total of 1500 questionnaires had been distributed to the respondents to obtain valid data. This data was the basis for 'Pusat Kutipan Zakat Pahang' in determining the urf rate applied in the state.[1]

The second study was the study of the determination of the rate of gold wearing among Muslim women in the states of all Malaysia. This study was conducted by consultants from UKM in collaboration with JAWHAR in 2014. This study involved all Malaysians to obtain appropriate urf rates according to their respective states. A total of 3000 respondents had been targeted in this study, as well as the Focus Group Discussion (FGD) methods were also conducted for direct information gathering.[2]

2. DEFINITION OF GOLD JEWELLERY

In Arabic, the jewellery is "al-holy", while the plural is "al-huliy", which means something that is made as a jewellery from the forging of precious minerals and gems. [3,4]

As the word of Allah SWT:

وَلَوْلَا لَهُمْ جَنَاتٌ عَدْنٌ تَجْرِي مِنْ تَحْتِهِمُ الْأَنْهَارُ يُحَلَّوْنَ فِيهَا مِنْ أَسَاوِرَ مِنْ ذَهَبٍ وَيَلْبَسُونَ ثِيَابًا خُضْرًا مِنْ سُنْدُسٍ وَإِسْتَبْرَقٍ مُتَّكِنِينَ فِيهَا عَلَى الْأَرَائِكِ نِعْمَ الثَّوَابُ وَحَسُنَتْ مُرْتَفَعًا

(Al-Kahf 18:31)

3. URF AS A SOURCE OF LAW

Urf is one of the sources of law in Islam. It is based on the methods of fiqh "al 'adatu muhakkamah" مُحَكَّمَةٌ الْعَادَةُ (Custom is made as law). Due to that, Islam takes into consideration on the particular surrounding to determine the law. Anyhow, urf is not contradicting with syarak, as, it brings benefit to ummah.

In addition, uruf is not used to prescribe allegations that have been clearly found in the Quran and Hadith.

Similarly, he cannot justify what is illegal and prohibits the lawful things that are set forth in Islamic law. [5]

Uruf is one of the sources of law held by the Hanafi and Maliki schools, and it is the form of mu'amalah which has become customary and has occurred among the people.[6]

The literal meaning of „urf, according to Ibn al-Fāris, is:

“„Arafa (عرف) takes its origin from „ain, rā and fā. It is employed in two senses: [7]arrival of two things – one followed by the other attached and peace and tranquillity." According to Imām Rāghib al-Isfahānī: "„Urf refers to knowing something because of its effect, and it is more general in scope than knowledge." Ibn „Ābidīn states: “„Urf or „ādah is a state which is firmly established in hearts and appeals one logically. Besides, pious natures embrace them. Urf and „ādah rise to the level of authenticity in society, because these guiding principles are based on equity, sympathy and easiness. In the English jurisprudence custom is a primary source of law. Islamic jurisprudence also gave recognition to them. „Urf comprises customs which people practise voluntarily – and their unbroken practice dates back years and even centuries. For instance, a knock on a door is deemed a token of seeking permission, which is binding for entering a place. If somebody's home catches fire, to protect their goods or safeguard their lives, no permission is sought. Normal practice in society dictates that seeking permission is not needed here because this is what sympathy and public interest demand. Included in this usage is the matter of guests who are allowed to utilize all the household articles which one generally utilizes, and the guests are not supposed to ask for permission. If seeking permission was stipulated as a condition in everyday issues, people would needlessly suffer, and the business of life would descend to chaos. The Islamic law, therefore, recognizes the great need of the masses and regards it as a source of law, as was the routine in olden days

Types of 'Urf

Looking at 'Urf (from different perspectives, it can be classified into different types:[8]

One: AI-'Urf Al-Qawly: This means statements which the People or group of people are used to. For instance, the word walad in the Arabic language means a child male or female. However, it is customarily used to refer to a male child.

Two: AI-'Urf AI-'Amaly: This refers to practices which the people or group of people are used to. For instance, it is the custom of the Egyptians and the Sudanese to circumcise their daughters, while this is repugnant in the Syrian culture.

Three: AI-'Urf AI-'Aamm: This refers to a custom that is generally believed in by the people be it a statement or practice, For instance, the use of international passports bearing the visa of the country which one intends to enter is a common practice among the countries of the world.

Four: AI-'Urf AI-Khaass: This is a custom that is common among a group of people in the society e.g. doctors, farmers, tribes etc. For instance, it is common among the Ijaw or Urhobo men to put on wrappers.

Five: AI-'Urf AI-Faasid: This refers to the custom that contradicts the Shar'i texts or the objectives of the Shari'ah. This may also be a statement or practice; it may also be general or specific to a group of people in the society such as traders. For instance, it is a general practice by the people to get loans from ribaa banks.

A similar 'urf al-faasid is the custom of organising condolence sitting if somebody dies.

Six: AI-'Urf As-Saheeh: This is the custom that fulfils the Shariah requirements by not contradicting any Shar'i evidence or objective. For instance, the use of ATM has become the practice of the people in the society, which does not contradict the Shari'ah.

The fuqaha' fully understood the need to reconcile the space-time requirements of the Shari'ah. They developed elaborate methods of ijihad that provided a great deal of flexibility within Islam's normative framework. As a result, ijihad acted as a mechanism for engendering continuous progress and development in all spheres of life. This practice arose in order to cope with existing realities and due, to Islam's emphasis on development and progress and opposition to inertia and stagnation. The fuqaha' defined 'urf as a recurring practice that has been established among the people and is acceptable to those of sound nature (al tabiah al salimah) and used it as a guiding principle in their deliberations. These customary principles were seen as secondary, as opposed to primary, sources of law that could be applied only when the primary sources had nothing to say about the issue in question. Several others were also used as synonyms: 'adah, ta'amul, and'amal. The fuqaha' laid down several conditions that had to be met if the 'urf in question was to be acceptable: a) It must not contradict and violate any nass (text). For example, usury or the drinking of wine, even if found throughout a given society, can never be legally valid. The fuqaha' do not consider such 'urf when they are formulating the rules; b) It should exist at the time of contract or commercial transaction. If it came later, it cannot be considered; and c) It should be general and universal instead of belonging to a particular locality or people ('urf al khass). This last condition is subject to dispute, for Abu Yusuf and some Hanafi fuqaha' regarded it as authoritative.

4. URF OF GOLD JEWELLERY IN SHAFI'I MADH'HAB

According to Shafi'I Madh'hab, gold that is worn as jewellery is not imposed as zakat. However, if it exceeds the wastage limit, thus it is imposed as zakat. The wastage limit is specified with not wearing more than Urf and if it exceeds urf so it is imposed as zakat. Urf is a habit of wearing gold for women in a local place. Anyhow, there is no scholar's provision in determining the form of Urf that is used in the wearing of gold jewellery. This is also one of the opinions in Hanafi Madh'hab.

5. SCHOLAR'S OPINION TOWARDS ZAKAT FOR GOLD JEWELLERY

Scholars have agreed that jewellery made of other metals from gold and silver, even though the price is more expensive than gold and silver (such as nickel, platinum, copper and so forth, as well as jewels of precious stones such as gems, emeralds and so on) are not obliged to issue

as zakat whether worn by a man or woman. There are two views on the jewellery gold worn by women: [9]

a) According to Imam Abu Hanifah; zakat is required of all kinds of gold and silver, which are made of jewellery that women should wear (bracelets, chains, earrings and so on). Their view is based on the report of Amr ibn Shu'ayb from his father from his grandfather: "Two women with gold bracelets on their wrists came to the Prophet. The Prophet said: 'Do you want Allah to make you wear bracelets of fire on the Day of Judgement?' They answered: 'No.' He said: 'Then pay the zakat which is due to what you wear on your wrists.'" [Narrated by Tirmidhi, who alluded to a weakness in his two chains, while Ahmad narrates it through two stronger chains in his *Musnad* (2:204, 5:378), and both al-Nasa'i and Abu Dawud with another two good chains in their *Sunan*, Book of Zakat.

In the same way, Asma bint Yazid reported: "My aunt and I, while wearing gold bracelets, went to the Prophet. He asked: 'Did you pay their zakat?' She related that they had not. The Prophet said: 'Do you not fear that Allah will make you wear a bracelet of fire? Pay its zakat.'" [Narrated by Ahmad (6:461) with a good chain, as Haythami declared in *Majma' al-zawa'id* (3:67).

Aisha narrated: "The Messenger of Allah came to me and saw me wearing silver rings, whereupon, he asked: 'What is this, Aisha?' I replied: 'I made them to adorn myself for you, O Messenger of Allah.' He said: 'Did you pay their zakat?' I said: 'No, or what Allah wishes.' Then he said: 'Their punishment in Hell is enough for you.'" [Narrated by Abu Dawud in his *Sunan* with a strong chain (Zakat), Daraqutni in his *Sunan*, and Bayhaqi in his *Sunan* (4:140)]

b) According to 'Jumhur Ulama' (Imam Malik, Syafie and Ahmad); zakat is not obligatory on gold and silver made to be worn by women.

However, the strongest view is the opinions of 'Jumhur Fuqaha', strengthened by Syekh Dr. Yusuf al-Qardhawi in his 'Fiqh Zakat' book, as well as the Egyptian fatwa and fatwas of the states in Malaysia. So, gold and silver worn by women as jewellery are not obligatory to issue zakat, except in two circumstances; [10]

a) Gold and silver jewellery made not for worn only, but to be kept (as a saving asset), obliged to issue zakat on it because its purpose has shifted from jewellery to savings.

b) If the possession of jewellery is too much, yet fall into excessive categories and exceeds the rates commonly used by local women (local urf rate), it is obligatory to issue zakat.

6.6. THE PRACTICE OF FATWA ZAKAT FOR GOLD JEWELLERY IN MALAYSIA

No.	States	Fatwa decision
1	Kelantan	2012 Fatwa (not announced): Decided Kelantan won't be imposed urf on zakat for gold jewellery.
2	Melaka	2010 Fatwa (announced 2011): Decided that zakat for gold jewellery will only be imposed if it exceeds the limit urf.
3	Negeri Sembilan	2009 Fatwa (not announced): Decided that gold worn is obliged to issue zakat, when it exceeds the limit urf.
4	Pulau Pinang	The establishment on the zakat only for worn gold jewellery, no establishment on urf, only based on estimation.

5	Perak	1990 Fatwa (not announced): No fatwa was decided, the only general method based on Quranic verses and hadith, the obligation of zakat on gold jewellery.
6	Perlis	Fatwa has decided that the paying rate of the zakat for gold jewellery is based on nisab that is 85g, and not based on urf rate (pronounced by Fatwa in Perlis on 1998 – not announced)
7	Wilayah Persekutuan	No fatwa decision on zakat for gold jewellery, but there is establishment on urf rate for those who wants to pay (http://www.zakat.com.my)
8	Kedah	No fatwa decision on zakat for gold jewellery, but zakat is imposed when an individual possess gold weight as much as 170g and above.
9	Terengganu	2010 Fatwa (not announced): Decided that women who wears gold jewellery exceed the urf rate, are obliged to issue zakat.
10	Pahang	2015: The urf rate on the wearing of gold jewellery is 500g.
11	Sabah	2009: <i>Majlis Ugama Islam Sabah</i> had decided that the urf rate is 152g. (http://www.zakat.sabah.gov.my)
12	Selangor	2005 Fatwa (announced): The urf rate for gold jewellery is 800g, obliged to be issued zakat when exceed the appointed urf rate.
13	Johor	Gold that is worn either once or throughout the whole year is not issued for zakat, except when it is exceeding the urf. (http://www.maij.gov.my)

Source:Kajian Penentuan Kadar Uruf Pemakaian Emas Di Kalangan Wanita Islam Di Negeri-Negeri Seluruh Malaysia[11]

7. THE WEARING OF URF IN GOLD JEWELLERY

According to the Shafi'i Madh'hab, the gold that is used as a women's jewellery is not obligatory for zakat. However, this law is not absolute, because some scholars believe that gold jewellery is still obliged to be issued zakat if it exceeds the limit, is the urf rate set in place. For the determination of the obligatory zakat of gold jewellery, is the urf rate set at a place.[12] This view became an important platform in the implementation of the law relating to zakat for gold jewellery especially in the context of Malaysia.

8. THE USAGE OF URF OF ZAKAT FOR GOLD IN STATES IN MALAYSIA

States	Urf for gold jewellery (old)	Urf for gold jewellery (new)
Perak	500g	500g
Kedah	170g	170g
Pulau inang	165g	165g
Perlis	170g	170g
Selangor	800g	800g
Wilayah ersekutuan	150g	150g
Negeri Sembilan	850g	200g

Melaka	Rm5000	180g
Johor	800g	850g
Pahang	200g	500g
Terengganu	850g	850g
Kelantan	-	-
Sabah	Rm5000	125g

Source: Borang kaji selidik uruf zakat emas perhiasan 2017[13]

9. THE PRACTICE OF ZAKAT FOR GOLD CALCULATION IN MALAYSIA

Zakat for Gold Saving	Zakat for Gold Jewellery
Formula: [Weight of gold x current price x 2.5% = total zakat] Consider; 100g x RM144.38 = RM14,438 x 2.5% = RM360.95	Formula: [(Weight of gold - Urf) x current price x 2.5% = total zakat] Consider; (900g – 800g) x RM144.38 = RM 14,438 X 2.5% = RM360.95

Source:<http://www.zakatselangor.com.my>[14]

10. URF OF GOLD JEWELLERY – ISSUES IN ZAKAT INSTITUTION

One of the important aspects in determining the success of an zakat management is its efficiency and effectiveness. In this case, the researchers found that the handling of gold jewellery is quite loose where in the existing system there is no division whether it is zakat for gold savings or gold jewellery. Most zakat centres include zakat collections from gold sources either saving or jewellery under one category, which is zakat for gold only. Thus, to ensure that these two aspects are taken into consideration, there is a need of method that can divide the portion of the gold saving and gold jewellery. In the context of gold jewellery, it must be based on the provisions of the urf set by the states in Malaysia.

11. CONCLUSION

Based on this study, it is found that the urf for gold jewellery is imposed perfectly by the zakat management according to the states in Malaysia. However, there is still few people who is still confused with the difference in usage of urf in different states and there is also who have no information in urf of zakat for gold jewellery that is deemed obligatory.

Religious lecture plays an important role in preaching and explaining to Muslim community and yet, it is still relevant to be used in this current time. However, the zakat management need to use different methods that is more efficient to fulfil the demands of Da'wah to society, and this indirectly increases the collection of zakat for gold jewellery which is not so much emphasized when undergo the collection of zakat for wealth. An improvement from the relevant parties for a more efficient implementation of zakat for gold urf will also improve the understanding, awareness of the people regarding the urf of zakat for gold jewellery at present. Furthermore, it can also increase the amount of existing zakat for gold collection.

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