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## THE SIGNIFICANCE OF INTENT ON ZAKATABLE REAL ESTATE: A JURISTIC ANALYSIS

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### Abstract

Real estate remains one of the most significant properties for personal use and investment purposes. Individual institutions and corporate bodies operate on real estate properties. In recent times, there have been several concerns among zakatable individuals and organizations on the shariah criteria for identifying zakatable real estate properties because of the difference between assets for personal use and commercial purposes. There is '*arūd tijārah*' (commodities for sale) such as real estate, land, car, and goods in real estate investment. On the other hand, '*arūd quniyyah*', (durable properties) are intended for personal use such as a private house, private car, private vacation home. This study aims to conceptually analyze the concept of intention in Islam and its juristic interpretations to distinguish between zakatable and non-zakatable real estate properties. This study relies on the inductive approach in gathering and arranging data from classical and modern literature. It also uses the descriptive method in explaining the basic terms in the research. The study found that real estate owners' intent influences the asset's zakat status. First, '*arūd quniyyah*' (real estate) are durable assets, meant for personal use, are Zakat free, while the real '*arūd tijārah*' (estate commercial assets) are subject to Zakat. The commercial assets can also be for sale and rental. The study finally suggests that zakat calculations of zakatable real estate should be subjected to supervision and validation of competent contemporary Shariah scholars to ascertain juristic position on the distinctions between zakatable and non-zakatable assets.

**Keywords:** *Intention, Real Estate, Zakat, 'Arūd Quniyyah, 'Arūd Tijārah*

## Introduction

Zakat on real estate is one of the new inquiries many working-class will like to ask scholars because the owners' intent drives the Zakatability of real estate. The intention of asset acquisition is a significant factor in categorizing the zakatable and non-zakatable real estate assets. Real estate can be residential property, commercial buildings, industrial estate, and landed properties (National Zakat Foundation, 2020). However, investing in real estate housing has experienced a sharp increase in 2020 as many people now recognized the importance of having accommodation, especially during the COVID-19 lockdown (Ullah & Sepasgozar, 2020).

Moreover, the NASDAQ 2020 report shows a rise in the new housing start as more people are willing to have their own houses for personal and family use. On the other hand, housing for rental and income from real estate rents dropped sharply in 2020 due to demand for moratorium late payment and reduced rental resulting from covid19 lockdown. Nevertheless, different kinds of real estate investment have witnessed various changes during the covid 19 lockdowns due to acquisition intention (DELMENDO, 2020). Brumer (2020) explains that despite the impact of covid19 lockdown on business, the market experienced a 50% increase in real estate industry sales while multifamily, office use, and rental real estate properties fell between a volume of 35% and 45% in the year 2020. Therefore, an acquisition's intent is a significant factor in categorizing real estate investment. However, considering the status of real estate properties for Zakat requires administering its purpose between personal use and commercial purposes. Moreover, real estate property for personal use and family use like land, housing private vacation home, is considered '*arūd quniyyah*, (durable properties) while those for industrial, the commercial rental purpose is categorized as '*arūd tijārah* (commodities for sale) (Salahi, 2007).

Real estate acquisition intention is the fundamental determinant of its Zakatability. The owner's intent qualifies a particular real estate as Zakat free while the other is Zakatable, all things being equal. The relationship between Zakat on real estate and the owner's intention seems significant to the researcher spurring the need to analyze this significance of Intent in Islamic jurisprudence and its effects on the Zakatability of real estate properties. The remaining part of this study has five sections. The first section delves into the concept of Intention in Islamic Law and the second section illustrates the meaning of real estate and its kinds while third highlights the Juristic analysis of Zakatable and non Zakatable real estate. The fourth section encapsulates discussion of research findings and its implications. The final section concludes the study with suggestions and recommendations for further study.

## Literature Review

Several studies have analyzed *Muzakkī* (donor) intention among the zakat recipient towards payment of the obligatory due. The empirical studies of Muhammad & Saad, (2016), Andam & Osman, (2019) suggest that attitude and moral reasoning influences donor toward paying Zakat in Kano state, Nigeria. Although Zakat is a religious obligation on every individual that fulfills the criteria hence, past studies imply that the transparency and reputation of the zakat institutions have a significant influence on the intention to pay the obligation alms (Abror & Hudayati, 2020; Mukhibad et al., 2019; Sani Adamu & Ram Al Jaffri, 2016). Moreover, different studies have argued the significant influence of subjective and moral norms on the intention to pay Zakat. While the research of (Andam & Osman, 2019) suggests, the descriptive, subjective, and moral norms positively correlate with donors' intention towards paying Zakat. However, Bidin et al., 2009; Heikal &., 2014; Huda et al., 2012, suggest otherwise that subjective norms do not significantly influence the intention of zakat payer somewhat control, and perceived behavior does. Also, there is a positive associated relationship between trained action and choice to pay Zakat based on the fact that the donors' knowledge and understanding significantly influence the intention to pay the obligatory alms (Dandago et al., 2016; Yusfiarto et al., 2020).

Apart from the studies mentioned above, which are mainly quantitatively based, a very related study of Hamdan, (2011) explores the influence of subjective norms on land sales in Saudi Arabia. According

to Dar Ifta Masriyyah, (2021), the Intention remains the fundamental requirement for paying zakat as an act of *Ibādah* and the third pillar of Islam. Nevertheless, there is a distinction in paying zakat and *sadaqah*; the former is obligatory while the other is voluntary. The institution argued that it is not permissible to combine intention between obligatory (zakat) as an act of worship and voluntary (*sadaqah*) in one single donation. Moreover, a recent and relevant report by the kingdom of Saudi Arabia's social security agency focuses on the Zakatable year's regulations, fund, and personality. Hence, this zakat's social report did not discuss the concept of intention towards distinguishing between durable property for personal use and those for business purposes (General Authority of Zakat & Tax, 2020).

### The intention in Islamic Law

Definition of Intention: Intention "*Al-Niyyat*" literarily means the determination in mind to do something, and the heart's commitment to acting with certainty (Al-Qala'ajī, 2010). The Intention is the heart's work toward an action. Hence, every effort is precipitated by intention *ab initio* (Al- Azharī, 2001). According to Ibnu Nujaīm, (1999), Intention in Shariah means the will towards action for the sake of Allah and in accordance to Shariah rulings. However, other regular human activities such as eating, drinking, and sleeping can attract rewards in shariah if they are intended to seek the pleasure of Allah are categorized as *Ibāḥah* (permissible) and non-compulsory act Shariah (Al-Zuhailī, 1985).

The Justification of Intention from the Quran: Several verses in the Quran emphasize the importance of intention for Allah's sake. But what you give in zakah, desiring the countenance of Allah - those are the multipliers. [Al- Rum:39] The exegesis of Imam al-Qurtubi explains that there are three categories of intent in giving charity; first charity intent for the sake of Allah, second is charity intent for the sake of the people and third is charity intent for the sake of beneficiaries. Hence, Allah SWT will only accept and rewards meant for seeking His countenance and obedience (Al-Qurtubi, 1964). Any charity you give shall be for the sake of God. Any charity you give will be repaid to you in full, and you will not be wronged. [Al-Baqarah: 272]. Ibn Kathīr explicates that charity given with an intention to seek the pleasure of Allah will find its reward for the sake of Allah (Ibn Kathīr, 1997). And the likeness of those who spend their substance, seeking to please Allah and to strengthen their souls, is as a garden, high and fertile: heavy rain falls on it but makes it yield a double increase of harvest, and if it receives not Heavy rain, light moisture sufficeth it. Allah seeth well whatever ye do. [Al-Baqarah: 265]. Imam Qurtubi explains that "*Ibtigaha*" "seeking to please" means: an object of intention of the donor. The actual intention of doing charity is to seek the countenance of Allah in this world and hereafter (Al-Qurtubi, 1964).

The intent of Zakat should be for the sake of Allah and not for worldly benefit and claims against the personality of the beneficiaries. Allah says in the Quran thus: "Those spend their wealth in the way of Allah, and do not follow up their gifts with reminders of their generosity or injury, their reward is with their Lord. There is no fear on them and they shall not grieve" [Al-Baqarah: 262]. The donor for *fi-sabilillah* (path of Allah) is oblige to be conscious of words and actions with the beneficiaries in relationship to the donations since it is done of the sake of Allah SWT (Ibn Jarīr at-Ṭabarī, n.d.).

The Justification of Intention from Sunnah: "Actions are according to intentions, and everyone will get what was intended. Whoever migrates with an intention for Allah and His messenger, the migration will be for the sake of Allah and his Messenger. And whoever migrates for worldly gain or to marry a woman, then his migration will be for the sake of whatever he migrated for." (Al-Bukhari, 1994, no 6689).

The Justification of Intention in zakat from Islamic Legal Maxims: *Al-Umūru bi Maqāsidiḥā* (Matters are determined according to intention) is an essential Islamic legal maxim that stressed the importance of an intention in *ibādah* (worship) and *mu'āmalāt* (transactions). *Al-'Umūru* is every action while

*Maqāsidiḥā* is the responsible person's associated Intention (Azzām, 2005). Therefore, the Intent of *Muzakkī* (donor) of Zakat must be for the sake of Allah and compliance with the regulation of Sharī'ah. The acceptance of worship in Islam is perpendicular to the intention, and its congruence to the *Maqāsidi* (higher objectives) of the lawgiver (Allah).

The position of intention for zakat is primarily at the heart just like other act of worship. The payer must be conscious in mind the purpose of payment as the debt relating to wealth acquired (Ibn Qudāmah, 1997). Intention for zakat is for the payer to be conscious of the purpose of the payment that it is an obligatory command from Allah. Similarly, the payer on behalf is oblige with the intention to payment of zakat on behalf of another person such as minor, and mentally challenged person (Al-Qaradāwī, 1973).

Maqāsidi Shariah and Zakat: The Intent of the lawgiver is the wisdom behind Islamic law rules and regulation. The lawgiver's intent is mainly known to Allah; however, human intention to perform an act of worship is required to be for obedience and compliance with Islam's injunction.

The fundamental act of worship in the pillars of Islam are based on the intention toward obedience and compliance with shariah rulings. Quran states that: "Say: "Truly, my prayer and my service of sacrifice, my life, and my death, are (all) for Allah, the Cherisher of the Worlds: [Al-An'ām: 162].

For this study, there is evidence that specifies the Maqāsidi Shariah of Zakat from the Quran and sunnah. One of the wisdoms in the obligation of zakat is based on purification and cleansing of the self and the wealth.

"Take the obligatory charity from their wealth, by which you may cleanse them and make them pure, and pray in their favor; indeed your prayer is the contentment of their hearts, and Allah is All Hearing, All Knowing" [At-Taubah: 103].

Similarly, the lawgiver's other intent on zakat regulation is maintaining socio-economic distributive justice among the people such that wealth will not remain with few while the rest are in dire need. "so that wealth may not merely circulate among your rich" [Al-Ḥashr: 7].

The Prophet (PBUH) was reported to have said that "To take from their rich and returned to their poor" (Al-Bukhari, 1994) was one of the intents of Zakat and other Islamic social funds is to enhance socio-economic equity between the rich and the poor in the society.

Ibn Ashur, (2013) also contends that distributive justice and socio-economic equity in the community is a higher objective of shariah to promote and protect the public interest.

## **Real estate and its kinds**

Real estate represents the landed property and all structures on the land. Additional natural or human-made properties on the land, such as houses, water, trees, minerals, and fences, are included in real estate. Real estate has represented a significant portion of wealth in humans' history. In recent times, real estate has yielded intangible assets with the emergence of several modern wealth portfolios and wealth managers (Ariyawansa, 2018; Garay, 2019). Real estate has remained attractive in the current time because of its benefit in securing socio-economic security and stability in society. Real estate has the potential of absolute return on investment over a long period. Apart from serving the purpose of housing and accommodation, real estate has the potential to hedge against inflations, investment diversification against capital market businesses. Real estate owner usually has the right to occupy, use, enjoy and transfer to others through sales, gifts, and inheritance (Ariyawansa, 2018).

This study has two distinct categories: private use and commercial purpose. The residential or housing real estate is intended for personal and family and usually in single-family homes, townhouses, condominiums, and apartment housing. On the other hand, commercial real estate properties are office buildings, industrial centers, retail malls, shopping malls, stalls, and business outlets (Garay, 2019).

### **Juristic Analysis on Zakatable and non-Zakatable Real Estate**

*Arūd* literarily means commodity. They are potential commodities available for an offer by the owner. In essence, '*Arūd* in Islamic jurisprudence are goods that have the potential for sale and purchase (Al-Qahtānī, 2008). On the other hand, the term *tijārah* in this context means sale, while *Quniyyah* literarily means to earn something like a commodity (Umar, 1986).

In zakat consideration, there is a difference between (a) '*arūd tijārah* (commodities for sale) and (b) '*arūd quniyyah*, (durable properties). '*arūd tijārah* are commodities own and intended for sale and purchase such as real estate, land, car, goods (Umar, 1986). '*arūd quniyyah*, (durable properties) are commodities owned that has the potential for sale and purchase but the owner intention is for personal use such as a private house, personal car, private vacation home, (Al-Nawawi, 1930).

Commodity for sale is generally zakatable upon the wealth, properties, money or goods that reached zakat threshold (*nisāb*) and withheld for a moon year (*ḥawl*). The zakat due is calculated based on gold and silver worth (Al-Mu'ālī, 2004). There are three primary purposes for the acquisition of real estate properties. Firstly, a person can acquire real estate for personal use, such as family accommodations, vacation homes, and easing children's marriage in the future. Secondly, a person can acquire real estate for investment, such as buy now and sell later for a profit. Thirdly, a person can acquire real estate for business purposes such as rental services and immediate sales (Garay, 2019; Ullah & Sepasgozar, 2020).

However, the real estate is categorized in Islamic jurisprudence as '*arūd quniyyah* (durable goods) with zakat free because the owner's intent is for personal use. This is evident thus: "Allah says in the Quran: (Oh you who have believed, spend from the good things which you have earned." [Al-Baqarah: 267]. The exegeses of Ibn Kathīr (774H) illustrate that this verse refers to the payment of Zakat on earnings and works intended for earning.

According to the tradition of the Prophet (Pbuh): "*Laysa 'alā al-Muslim fī 'abdihi wala Farasihi Sadaqah*" (A Muslim is not obliged to pay Zakat on his servant and horse ride) (Muslim 2006, no: 1697). Ibnu Daqīq 'Id (702H) clarifies that the hadith mentioned above distinguishes between the property's values and nature. When the servant and horse are for sale, then it has a market value (*Al-qīmah*) and subject to zakat, but when its personal use it has asset value (*Al-'Ain*) and zakat free until the purpose changes and its offer for sale (Al-'īd, 1987). Therefore, based on the famous hadith, "actions shall be judged according to intentions" (Al-Bukhari, 1994). The owner's intent in the acquisition of real estate property has significant influences in determining zakatable real estate between the intention for personal use and commercial purposes.

The intent of acquiring real estate for investment such as; buy now and sell later is obliged the owner to pay Zakat yearly if the total asset is up to *nisāb* because the underlying intent is for-profit and keeping the asset to appreciate signifies '*arūd tijārah* (business commodities). According to Al-Qaradāwī, (1973), Zakat on real estate property for personal and family use has zakat relief based on the interpolation upon the evidence that every commodity for sale and for generating income when other conditions such as *nisāb* and *ḥawl* are fulfilled.

On the other hand, the intent for acquiring real estate for rental services will be treated like the case of farmland whereby the farmer pays only on-farm produce (*far'u*) and not the land (*aslu*) because the underlying asset is zakatable until it is offer for sale. The real estate properties intended for rental services are categorized as *mustagalāt* (rental) services which are subject to Zakat payment. The Zakat

on real estate property for rental is transposed on money generated from transactions (Al-Qaradāwī, 1973). The difference between the second category (intended for sale) and the third category (intended for rental) is that the former is considered a commodity for the asset's sale. Simultaneously, the latter is categorized as income generated from proceeds and not the main investment (As-Shawkanī, 2004).

Zakat on income from rental of real estate is based *nisāb* (threshold) and *hawl* (moon year) based on the Hadith of the prophet PBUH "*Man istafāda mālan falā zakatah fī mālin ḥatā yaḥūlu 'alayhi al-ḥawl*" (Whoever earn from rental no zakat on the money until it reaches a year) (At-Tirmidhī, 1996, no. 632). The real estate rental income is transposed on money's own because the income is potentially zakatable until it is realized by the owner as it follows the same criteria explained by Al-Quddāmah (1997); "Whoever rent an apartment and received the payment, there is no zakat until it reaches a year". Nevertheless, if the owner wishes to sell the farmland or building, then the Zakat of real estate for sale is applicable.

Expenses on the real estate for rental: In real estate, there are usually overhead expenses like maintenance cost, agency fee, and other, which implies such overhead expenses should be deducted from the generated real estate rental income Zakat (Al-Qaradāwī, 1973).

**Summary of Zakat on Real Estate based on Intent of the Owner**

Property	Intent	Zakatability	Justification
Real Estate for Personal and Family Use	The intention for an acquisition is personal use which is categorized as <i>'Arūd quniyyah</i>	zakat Exemption	A Muslim is not obliged to pay Zakat on his servant and horse ride, (Muslim, 2006, no: 1697)
Real Estate for Sale	The intention for an acquisition is (commodity for sale) <i>'Arūd tijārah.</i>	Zakat due on the commodity for sale	Samrah bin Jundub reported that the prophet PBUH, used to order us to give alms charity (Zakat) from commodities prepare for sale (Abu Dāwūd, 2009, no.1562)
Real Estate for Rental	The intent for providing real estate rental to yield income considered as ( <i>māl</i> ) money	Zakatable on the rental realized and not the asset	Allah says in the Quran: (Oh you who have believed, spend from the good things which you have earned." [Al-Baqarah: 267].

**Discussion**

The significance of intention as a prerequisite in every act of *ibādah* cannot be overemphasized. Sufficient in this regard is the Hadith of the Prophet (PBUH) "*Innamal a'malu bin niyyat*" (action shall be judged according to the intention) and the Islamic legal maxims: "*Al-Umūru bi Maqāsidihā*" (Matters are determined according to intention). Since Zakat is one of Islam's pillars, the primary intent of the responsible person (*Al-Mukallaf*) should be for worship and obedience of Allah SWT. The intention of the payer is a conditional requirement for observing the duty of Zakat as an act of *ibādah* like *Solat* (worship). The majority of the jurists are unanimous that intent is a condition in Zakat since it is an obligation from Allah, however, an intention is required to differentiate obligatory zakat from other recommended or voluntary acts. However, there are conditions and criteria for zakat. Considering real estate properties, the owner's intent in acquisition influences its status under the zakat ruling. The general principle on real estate it is zakat free until proven otherwise based on the intent of acquisition such as property for commercial purposes, industrial use, retail centers, and rentals. Under construction, real estate, uncompleted building, and machinery for business purposes are under commercial purpose. If the nature of the asset cannot be sold or leased out except after completion, then the asset is zakatable upon completion of the construction. Similarly, if the nature of the asset can be sold or leased out under construction, during construction, and after construction, then it is zakatable once it's up to *nisāb* (threshold) and *ḥawl* (moon year).

It is important to note that real estate property with the intent of personal use is Zakat exempted even if it is kept for a long time except when the intention changes from personal use to commercial purposes. The Islamic legal maxim, "*Al-Ḥukm yadūru ma'a 'illatihī*" (The judgment revolves with its causative effect) indicates that the status of the real estate Zakatability varies in proportion to the variant of the intent of the owner (Al-Zarqa, 1989), that is, whenever the causative effect changes in a matter, the ruling shift and vice versa.

It also worth mentioning that regardless of whether the intention of the acquirer personal property was present at the time of purchase, or it became apparent thereafter, merely having the intention to keep the real estate for personal use considered it Zakat free, even if it is kept for many years, so long as the owner's intention does not change as property acquired for personal use.

Another important implication of intention on zakatable real estate is that the real estate owner might have mixed purposes, partly for use and partially for rent; this requires fatwā from competent shariah scholars after determining the intention for acquisition ab initio. Also, in the transfer of intention for personal use to commercial purposes influences the zakatability rule of the asset. For instance, buying an asset initially for personal use but later changes to commercial purposes automatically change the rule from zakat free to zakatable real estate and vice versa! However, in a scenario where a person decided to sell a real estate intended for personal use to buy a new estate in another location because of individual need. Similarly, the owners change in intention with a decision to sell a real estate meant for personal use for the purpose of settling immediate personal needs requires the juristic interpretation of what shariah considered as basic needs in a particular environment. *Al 'ādah mu'hakkamah* "Custom is Arbitrary."

## Conclusion

Real estate is one of the means which people own assets either for personal or commercial purposes. The intent of acquisition of real estate like landed property, housing, industrial and commercial buildings, determines the exact zakat position on the asset. The study found three main attached intention for acquiring real estate and properties. The first intent of acquiring real estate for personal use is zakat relieved or zakat exempted or zakat free based on the evidence above. The second intent of acquiring real estate for investment such as; buy now and sell later is obliged the owner to pay zakat yearly if the total asset is up to *nisāb* because the underlying intent is for-profit and keeping the asset to appreciate signifies *'Arūd tijārah* (business commodities). The third intent for acquiring real estate for rental services will be treated as the case of farmland whereby the farmer pays only on-farm produce (*far'u*) and not the land (*aslu*). If the owner wishes to sell the farmland or building, then the zakat of real estate for sale is applicable. This study suggests the need for further research into the analysis of the status of the real estate when the owner intends sale in the future but decides to use now until a buyer shows interest. There also a dire need for advance study on the application of the concept of zakatable intent of real assets like building and machinery of corporate companies used as underlying assets for making regular profits. Finally, it is necessary for the zakat institutions to clarify their position in determining the intent of zakat payers on real estate properties.



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