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Tutasting@Rawi Nordin, Noraini Saro, Rozman Md Yusof

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## Profiling of 'Urf Zakat on Gold Jewelry in Malaysia

Tutasting@Rawi Nordin, Noraini Saro, Rozman Md Yusof  
Center for Islamic Philanthropy and Social Finance Universiti Teknologi MARA, Malaysia

### Abstract

'Urf is one of the secondary sources of Islamic law. 'urf is the common practice among the Muslim community as their common habit or a'ada. The Quran on several occasions has asked the Muslims to decide the cases in accordance with the usage of their age if they are not against the Quran and Sunnah. Besides that, 'urf is the matter on which a community of people agrees in the course of their daily life. It is also a common usage to refer specific actions that are repeatedly performed by individuals and community. Zakat on gold is mandatory similar to Zakat al-mal for all Muslims which is to be charged over the total amount of gold owned by a person if it exceeds a certain quantity. The quantity over which the zakat is applicable to be paid is known as nisab. However, for zakat on gold jewellery, majority institution zakat practice with 'urf. This paper is an attempt to show the profiling of 'urf on zakat gold jewellery in Malaysia.

### Introduction

Profiling is a activity of collecting information about someone, especially a criminal, in order to give a description of them. In this paper, profiling means the gathering of information for the use of 'urf in zakat on gold jewellery. 'urf (custom) and adah (usage) are very ancient and important sources of Islamic law. As the pre-Islamic Arabs had no written documents or script, their social systems were regulated by custom and tradition. In Arabic there are two terms for legal custom 'urf and adah. 'urf and adah are two technical terms of Islamic jurisprudence. Literally and technically, these terms differ but in usage in society they overlap each other. Zakat on gold has two categories, namely gold/silver jewellery kept for storage only and also gold/silver jewellery kept for personal use. This paper will describe the use of 'urf in gold zakat jewellery in Malaysia. Gold jewellery intended for usage is only obligated for Zakat if the weight of a piece of the gold jewellery has reached the haul and 'urf. Zakat is then based on 2.5% of the total weight of gold from the piece of gold jewellery. Information was obtained based on field research, particularly through interviews with the management officers at the national centers of the country (Pusat-Pusat Zakat Negeri). It was also taken through the official documents obtained during field study sessions conducted during the review period.

### Conditions of Valid “Urf

Mohammad Hashim Kamali lists four requirements for a valid form of “urf from which Islamic law may be derived:

1. Custom must be a common and recurrent occurrence. It must be dominant to the point that it is upheld in most of the cases to which it applies, otherwise, it does not hold any authority. Also, the practice of a few people in a large community is not sufficient; rather, it must be a regular occurrence among the masses.
2. In contracts and commercial transactions, custom must still be in existence at the time of the conclusion of the transaction.
3. Custom must not violate a clear stipulation of an agreement. Contractual agreements take preference over custom. Latter will only be resorted to in absence of the former.
4. Custom must not go against the definitive principles (nass) of Islamic law. If it does so, custom will be given no consideration. In case “the custom opposes only certain aspects of the text, then custom is allowed to act as a limiting factor on the text.”

### The View That Zakat Is Payable On Gold and Silver Jewelry

Abu Hanifah and Ibn Hazm hold that zakat is compulsory on gold and silver jewelry provided they constitute a *nisab*. 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: Next is the strongest view is the opinions of ‘Jumhur Fuqaha’, strengthened by Syeikh 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;

- 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.

### The View That Zakat Is Not Payable On Gold and Silver Jewelry

Malik, Shafi'i and Ahmad ibn Hanbal hold that there is no zakat on women's jewelry regardless of its value. Bayhaqi relates that Jabir ibn Abdullah was once asked if jewelry was subject to zakat. He replied that it was not, even if its value exceeded one thousand dinars. Bayhaqi also narrates the case of Asma: "Asma bint Abu Bakr used to adorn her daughters with gold. Although its value was around fifty thousand dinars, she did not pay zakat on it."

However, the strongest view is the opinions of „Jumhur Fuqaha“, strengthened by Syeikh 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;

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.

Therefore gold jewellery is originally not subject to zakat payment. This is based on several hadith of Prophet Muhammad SAW:

لَيْسَ فِي الْحُلَى زَكَاةٌ.

Which means: "There is no zakat in jewellery."

Similarly, in another hadith narrated by Imam Malik in Al-Muwatta':

أَخْبَرَنَا مَالِكٌ عَنْ عَبْدِ الرَّحْمَنِ بْنِ قَاسِمٍ عَنْ أَبِيهِ : أَنَّ عَائِشَةَ كَانَتْ تَلِي بَنَاتِ أَخِيهَا يَتَامَى فِي حِجْرِهَا لَهُنَّ حُلَى فَلَا تَخْرُجُ مِنْ حُلِيِّهِنَّ الزَّكَاةَ

Which means : Aisyah RA had put on gold jewellery on her orphaned nieces, and she never paid zakat for these gold jewelleryes.

### Determination of 'Urf in Zakat Institutions Malaysia

State	Year (Start)	Use Of 'urf (Old)	'urf (Imposed)		Change			Use Of 'urf (Current)
			Adequate of 'urf	Excess Of 'urf	Year	Cause	'urf	
Kedah	2010	85 Gram	-	✓	-	-	-	85 gram
Perak	2004	500 Gram	✓	-	-	-	-	500 gram
Pulau Pinang	N.A	165 Gram	-	✓	-	-	-	165 gram
Selangor	2000	500 Gram	✓	-	2004	Field Research	800 Gram	800 gram
Negeri Sembilan	2000	850 Gram	✓	-	2009	Field Research	200 Gram	200 gram
Melaka	2011	200 Gram	-	✓	2016	Current changes	180 Gram	180 gram
Johor	N.A			✓				
Pahang	2010	200 Gram	-	✓	2015	Field Research	500 Gram	500 gram
Kelantan	2016	85 Gram	There is no 'urf, just using the nisab rate of zakat gold					
Terengganu	N.A							
Wilayah Persekutuan	1991	150 Gram	(1991) ✓	✓	2017	Fatwa	800 Gram	800 Gram
Sabah	2009	152Gram	✓	✓		-	-	152 Gram
Sarawak	2000	775 Gram	✓	✓				775 Gram

Note Sources: FRGS questionnaire 2017

The table above shows the determination of zakah according to 'urf in zakah Institution of Malaysia. There are 13 of zakah institutions that using different method or 'urf. The above schedule also shows the determination of the use of 'urf in zakat institutions in detail such as, the beginning 'urf in zakah, the previous 'urf rate, the types of 'urf zakah imposed according to institution, changes in the use of 'urf and the latest 'urf rate.

Year for implementation of 'urf in zakah institution is varies at the beginning. Referring to the table above, the Federal Territory was the earliest institution in implementing this 'urf, in 1991 with 'urf rate (150 gram). The use of 'urf began in 2000 in Selangor (500 gram), Negeri Sembilan (850 gram) and Sarawak (775 gram). In 2004, the state of Perak initiated the use of 'urf by (500 gram). In 2009, the state of Sabah also started using 'urf (152 gram), followed by Pahang (200 gram) and Kedah (85 gram) in 2010. Meanwhile, the state of Melaka (200 grams) started its 'urf use in 2011, followed by Kelantan (85 grams) in 2016.

Next, refer to the types of 'urf imposed according to zakah institution in Malaysia. Referring to the table above there are two types of 'urf imposed which are adequate of 'urf and excess of 'urf. This 'urf is based on the institution of zakat itself, it is the same as the provision of 'urf. The imposition of this 'urf is important because it is the determinant of the value of zakah of gold. Referring to the table above there are 3 states that use adequate 'urf which is Perak, Selangor and Negeri Sembilan. Meanwhile, other 7 institutions zakat uses excess 'urf which are Kedah, Penang, Pahang, Malacca, Sabah and Sarawak.

The implementation of 'urf in zakah of gold is contemporary issue that still in research. The above table also shows that there are several states which had changes in the provision of 'urf such as the state of Selangor, Pahang, Melaka, Federal Territories and Negeri Sembilan. The factors of changes in the provision of 'urf are research by institutions and influenced by current condition and fatwa issued. The changes which have led to the new rate for the provision of zakat imposed by the institution as clear stated in the table above.

This study summarizes the two elements used in the determination rate of wearing gold jewellery. These elements can be identified in some writing that has been done spotlight. Theoretically the element is;

1. Elements of individual wealth and surrounding communities. By identifying these elements can be it is concluded that society in a place is rich and able to have gold jewellery.
2. Elements of usage concept. This element is important and completes the first element. That is although the wealthy community does not become a community of cultures gold usage. In addition, it is necessary to identify the forms of community use whether the use is temporary, kept for official purpose or besides.

### **Method of Calculation 'Urf Zakat on Gold Jewellery in Malaysia**

Zakat entails giving 2.5% of total savings in a lunar year. These savings include cash in hand, income earned on investments, funds currently in bank accounts and precious metal objects such as gold, silver and jewellery. Gold and silver are, as far as Zakat is concerned, considered an investment for the future and as such, they need to be taken into account when working out your annual Zakat. Jewellery is somewhat tricky to calculate because it falls under two categories.

- 1) Gold/silver jewellery kept for storage only
- 2) Gold/silver jewellery kept for personal use

Any jewellery kept for storage or investment purposes is Zakat-able. The reason being because it falls under the category of an investment. However, if the jewellery is kept for personal use then it depends on which school of thought you follow. If you follow the Hanafi Madhhab, you have to pay Zakat just as you would if you were using jewellery for storage and investment purposes. Other schools in Islam regulate the any gold and silver used for personal purposes as exempt from Zakat.

The calculation rate is as follows:

Adequate of 'urf	Excess of 'urf
<p><b>Weight of gold owned = 300 Grams</b>  <b>'urf = 180 gram</b>  <b>Price of gold = RM 160.00</b>            The rate of zakat (gold weight) x (price / gram)            x 2.5% : 180('urf) x 160 (Price on gold) x 2.5%            (Nisab) = <b>RM 72,000</b></p>	<p><b>Weight of gold owned = 300 Grams</b>  <b>'urf = 180 gram</b>  <b>Price of gold = RM 160.00</b>  <b>300 Grams (Owned) – 180 Grams('urf)</b>  <b>= <u>120 Grams</u></b>            The rate of zakat (gold weight) x (price / gram) x            2.5% : 120 ('urf) x 160 (price on gold) x            2.5%(nisab) = <b>RM 48,000</b></p>

*(based on Imposed of 'urf )*

The table above shows the calculations for the gold zakat jewellery practiced at Malaysian zakat institutions. In general, the society only looks at the difference in the use of the 'urf only, but in reality there is a difference in the rate of appropriation of zakat on gold jewellery that have been determined by Zakat institution of Malaysia. As can be seen in the above table, the 'urf is divided into two that is adequate 'urf and excess of 'urf.

For the imposition adequate of 'urf , the value of obligatory zakat is fix according to the use of 'urf in the institution. Meanwhile, for the imposition excess of 'urf , the obligatory zakat value does not fix, because it depends on the yield of the excess of 'urf obtained.

### 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. Determination of urf use in Malaysia depends on zakat institution. 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. The dissimilarity in the use of 'urf is one of the contemporary issues in

Malaysia. The use of different *'urf* has an impact on the Muslim community, as well as the different *'urf* impression on zakat of gold jewellery has impact on the value of obligatory zakat.

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### Corresponding Author

Noraini Saro, Center for Islamic Philanthropy and Social Finance Universiti Teknologi MARA, Malaysia, Email: ainisaro175@gmail.com

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