

IS PTPTN LIABLE TO PAY ZAKAT?

By

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The Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN) was established under the Perbadanan Tabung Pendidikan Tinggi Nasional Act, 1997 (Act 566) which came into force on 1 July 1997. PTPTN commenced operations on 1 November 1997.

Briefly, section 3 (1) of Act 566 established a fund called the "Tabung Pendidikan Tinggi Nasional". Section 3 (2) states that the Fund shall consist of such moneys as may be allocated by the Government as well as from other sources.

Section 4 specifies for what purpose the Fund will be spent. The main purpose is the granting of educational loans to students in higher educational institutions and the granting of financial assistance to such students, other than by way of educational loans.

Section 5 (1) established PTPTN which shall be responsible for the management of the Fund. Section 5 (2) empowers PTPTN to sue and be sued in its name. Section 5 (3) empowers PTPTN to enter into contracts, own and manage its properties, movable (money) and immovable (land).

Recently, PTPTN has paid zakat amounting to RM1 million to the Kedah Islamic Religious Council. This article questions whether PTPTN is obliged to pay zakat.

PTPTN was incorporated (established) by Parliament for certain purposes and given certain powers. In comparison, Tabung Haji was also incorporated by Parliament. However, there is a difference between Tabung Haji and PTPTN. Tabung Haji has contributors (shareholders) who are Muslims, but PTPTM does not. Thus, when Tabung Haji pays zakat, it is said to pay the zakat on behalf of its contributors, who are all Muslims. The argument is clearly not applicable to PTPTN which has no contributors.

So, when PTPTM pays Zakat, it could only be its own zakat, which is obligatory on it just like a Muslim (a believer). So, the question is, is PTPTN "a Muslim" or a "believer"?

Of course, a "believer" (Muslim) who is free (not a slave), adult, of sound mind, is obligated to pay zakat if the conditions are met. That obligation, like any other *ibadah*, is not meant to be extended to non-human beings be they animals, trees, robots and legal entities created by law (first by common law and later, those principles are adopted and enacted by Parliament) for a particular purpose.

I do not think there is any dispute that Allah s.w.t. has sent prophets to human beings and that religion is for human beings because human beings are able to believe or disbelieve, accept or reject faith. Prophet Muhammad s.a.w also did not preach to other than human beings. The Quran is also addressed to human beings. Hence we find many verses that begin with "O people" and others that begin with "O you who have believed"

When human beings accept Islam as their religion, they are bound by some obligations, the simplest example is what is called the "Pillars of Islam" consisting of *shahadah*, daily prayers, fasting, zakat and pilgrimage.

Regarding fasting, for example, the Qur'an says:

"O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous". Al-Baqarah 183.

Regarding zakat, the following verse was relied on by National Fatwa Committee and Selangor State Fatwa Committee to issue the opinion/ruling that a (limited) company is liable to pay zakat:

"O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth". - Al-Baqarah 267.

Note that both verses are addressed to "believers". Certainly "believers" means human beings who are capable of believing.

The following verse sums up the position:

"Indeed, those who believe and do righteous deeds and establish prayer and give zakah will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve." - Al-Baqarah 277.

These are among the obligations of Muslims or believers. But, they have to be believers (Muslims) first. Humans beings are able to become believers by believing in the Pillars of Faith (Rukun Iman). How is a corporation like PTPN going to believe in Allah as the only God, the angels, the holy books, the prophets, the day of judgment and in God's predestination. If a corporation is unable to believe, then it cannot be a "believer" or "a Muslim". It also cannot be an infidel because it is incapable rejecting faith either.

It is like a robot. There is no Muslim or non-Muslim robot. The difference between PTPTN and a robot is that, although PTPTN is not visible like a robot, PTPTN is recognized by law as a legal entity capable of making contracts and own property in its name and so on. Its powers and obligations are only to the extent given and fixed by Parliament.

Parliament does not create a human being capable of believing or disbelieving. Parliament has no power to do so. Only Allah s.w.t. who has such power. So, the religious obligations (ibadah) imposed by Allah s.w.t. on His human creations who are capable of accepting or rejecting faith, but have chosen to accept it, cannot be extended to a corporation like the PTPTN.

In this short article, I will not discuss the decisions of the National Fatwa Committee and the decision of the Selangor Fatwa Committee because the deliberations of the

committees were regarding limited companies with shareholders comprising of Muslims and non-Muslims.

As mentioned earlier, PTPTN has no shareholder. Hence, the decisions of the committees are not applicable to PTPTN.

If a corporation is obliged to pay zakat, then, the Inland Revenue Board and the Majlis Agama Islam, to give just two examples, will also have to pay zakat. Is the Majlis Agama Islam paying its zakat?

The PTPTN issue is just the tip of the iceberg. It all begins with the mistake in applying the Quranic verse referred to above without proper analysis and failure to distinguish the difference between a non-human legal entity (a corporation) created by Parliament and human beings created by Allah s.w.t himself, who are able to accept or reject faith. Certainly, Allah s.w.t. knows that His law is meant for His creations.

In conclusion, in my opinion, PTPTN is not obliged to pay zakat. If it is not obligatory to pay zakat, then the payment of RM1 million purportedly as the zakat of PTPTN is a misappropriation of the PTPTN Fund. It should be replaced. Or, the Kedah Islamic Religious Council which accepted it as an "obligatory zakat of PTPTN" should return it to PTPTN, it as it was wrongly paid.

Whoever wants to explore this issue further may read my articles and speeches on the subject which are available on my websites. They are, Obligation of Companies to Pay Zakat: Issues Arising From Effects of Separate Legal Entity (18 07 2012); Obligation of Companies to Pay Zakat: Summary of My Findings and My Views (18 07 2012); Obligation of Companies to Pay Zakat: Issues Arising from Effects of Separate Legal Entity (2012 LR 481); Obligation of Companies to Pay Zakat: Issues Arising From Effects of Separate Legal Entity (MLCC 03 07 2013); Critical Appraisal of the Companies' Obligations to Pay Zakat in the Malaysian Context (International Company and Commercial Law Review, 2013 ICCLR 375) (19 10 2013); Kewajipan Syarikat Membayar Zakat: Isu-isu Yang Berbangkit Daripada Prinsip Entity Berasingan di Sisi Undang-undang (10 03 2016).

This is only my opinion, based on the arguments I have put forward. Arguments to the contrary are welcome, preferably if written in the form of an article. However, it should be noted that this is an academic discussion based on shariah and law. Any opinion or argument should not be motivated by or based on gain and loss consideration to the Federal Treasury or the State Islamic Religious Councils.

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