



GOVERNMENT REVENUE IN THE EYES OF ABU UBAID – AN ANALYSIS

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ABSTRACT

The aim of this paper is to revisit Abu Ubaid's view. There has been a scarcity public finance studies which attempt to analyse Abu Ubaid's view, but several interesting findings from these few sources might lead us to revisit his view. Among the findings are: firstly, Abu Ubaid uses the Quran, al-Hadith, Athar and his ijihad in debating about government revenues. Abu Ubaid also refers to many government policies in the era of Caliph Umar al-Khattab and Caliph Umar Abdul Aziz in the debate about the results of the state revenue. With these findings, we believe that his view can be used as a basis in dealing with the state revenue.

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1. INTRODUCTION

According to al-Nadim (n.d), among the books produced by Abu Ubaid al-Qasim bin Salam bin Miskin bin Zaid (157 H / 774 M - 224 H / 838 M) is al-Amwal. (Abu Ubaid al – Qasim, 2006), states that Kitab al-Amwal was written by Abu Ubaid around the year 220 H/835 M and 221 H/836 M in Baghdad that was before he went on pilgrimage to Mecca. Yahaya and Ahmad (1993) stress that, this indicates that the book was written at the time of completion of the government under the rule of the Abbasid caliph al-Mu'tasim (218-227 H / 833-842 M). According to Abu Ubaid al – Qasim (1989), he died while he was in Mecca.

It is also emphasised that his book is relevant to the public finance field. The book has also been used as references in discussing Islamic economic thought. For example, the syllabus in several universities shows that it has been a popular topic at undergraduate and post-graduate

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levels.¹ Why is it that the book has such popular view? The reason has never been discussed before. However, now, there is not even a single state which practises his view. Therefore, it is the aim of this paper to revisit Abu Ubaid's view. Our focal point is on the analysis of several subjects which are related to state revenues. Even though in a Muslim state it would normally have its own revenue such as zakah, there are other resources that can be used as revenues such as *fai*' property. We need to know the extent to which the country is in need of the *fai*' property in order to collect revenue even though zakah is already one of the existing revenues that can be used to develop the state. The debate about *fai*' property will touch on many branches like *jizya*, *kharaj* and *ushur* taxes which equally bring revenue to the Islamic state.

The remaining discussion of this paper will be divided into three sections. Section 2 will provide a brief thought on Abu Ubaid's view. Then, section 3 will produce the analysis on different revenues for the state. Section 4 shall highlight the conclusions.

2. A BRIEF THOUGHT ON ABU UBAID' VIEW

The studies which seek to examine Abu Ubaid's works are very limited. So far, we manage to get only few studies which specifically raise a number of debatable issues of the book on the premise of public finance field. One of them is by Kallek (1998). He makes a study entitled the Economic Views of Abu Ubaid. His study shows in general that Abu Ubaid's view on public finance can be implemented in the state. He also discusses in general what is outlined in the book of al-Amwal which covers Abu Ubaid's biodata; topics covered and the format used by Abu Ubaid in his book; the methodology used by Abu Ubaid and his views on the economy. Suharto (2005) in his book titled Kitab al-Amwal: Abu Ubaid's Concept of Public Finance has made an interesting compilation of Abu Ubaid's view on public finance. In the book contains all of Abu Ubaid's view on public finance. But it is still different with this essay due this study will be touched about government revenue from *fai*' property based on Abu Ubaid's view.

Similarly, the study made by Andreas (2003) entitled *Das Kitab al-Amwal des Abu Ubaid al-Qasim b. Sallam: Entstehung und Uberlieferung eines fruh – Islamischen Rechtswerkes* argues that al-Amwal is a book related to tax law. He emphasizes the history of Abu Ubaid in reviewing and explaining the methodology of Abu Ubaid in proposing his view. In another study done by John (1989) entitled Abu Ubaid al-Qasim bin Sallam's K. al-nasikh wa al-mansukh, he has found more information in al-Amwal, which shows the practice based on the early history of Islam in connection with Sadaqah and Zakah. He states that in al-Amwal there is a discussion of the obligatory charity, and this is a form of payment that will provide a valuable insight to future generations. One of these obligatory charities is tax. In spite of the fact that there is a scarcity of studies which concentrate on analysing the book, the following finding might lead us to revisit Abu Ubaid's view. (Kallek, 1998) mentions that the finding rests in Abu Ubaid's unique methodology. He uses the Quran, al-Hadith, Athar² and his *ijtihad* in debating about government revenues. Abu

¹ See for example Umm Al-Qura University, Universiti Kebangsaan Malaysia and Karachi University

² According to the explanations given by Imam al-Nawawi, al-athar was the *hadis mauquf*, the word of *sahabah* and something narrated from his companions. Rosmawati Ali @ Matzin (1997).

Ubaid also refers to many government policies at the time of Caliph Umar al-Khattab and the Caliph Umar Abdul Aziz in the debate about the results of state revenue. He also discusses that the sources of state revenue are derived from the *fai'* property namely *jizya*, *kharaj* and *ushur*. In discussing the science of Fiqh such as [Abi Bakr Ahmad bin 'Ali bin Thabit al-Khatib al-Baghdadi \(n. d\)](#) also states that Abu Ubaid also refers to the schools of Imam Malik and Imam al-Shafi'i. He takes their opinions, testimony, evidence and also the Hadiths that they had narrated.

Our view is that this book is still relevant in dealing with public finance on the following ground. The book was written during the rule of the Abbasid. The sources of the state revenue were generated from *fai'* which was linked with *jizya*, *kharaj* and *ushur*. We believe that his view can be used as a basis in dealing with the state revenue.

3. THE ANALYSIS

The above findings lead us to revisit Abu Ubaid's view. Our focus will be on the analysis of several subjects which are related to state revenue. The subjects are the concept of *fai'* property and the revenue from *jizya*, *ushur* and *kharaj*.

3.1. The Concept of *Fai'* Property

The early debate in Abu Ubaid's book on *al-Amwal* starts with a discussion on the property dedicated personally to Rasulullah s.a.w. It shows that other people are not entitled to the property. This property is called the *fai'* property. The property is known as *fai'*³ because it is gained without war from the *musyrikin*. This is due to the "peace deal" that the *musyrikin* had sealed with the Rasulullah s.a.w on the land and wealth that belong to them.

According to Abu Ubaid, although the term is used to represent *fai'* as property acquired by Muslims from their enemies without war, according to [Abi al-Hasan Ali bin Muhammad bin Habib bin al-Basri al-Baghdadi al-Mawardi \(450 H\)](#), *fai'* property also includes all properties acquired from the *musyrikin* without war, such as *ushur* (trade tax) and *kharaj* (land tax). Then the property becomes the source of revenue for the state. In addition, he also argues that *zakah* becomes part of the revenue for the state. But, the difference between *fai'* and *Zakah* is seen from the acquisition of the property where the *fai'* property originates from the idolaters, while *Zakah* is derived from the Muslims.

According to [Muhammad Abdul Mun'im al-Jammal \(2000\)](#) *Fai'* property also differs in terms of the division with the *zakah* property. The division of *zakah* property is based on *shariah*, i.e., *zakah* property can be divided by the owner to any person that is entitled to have the property (the *asnaf*). Division of *fai'* property is based on the *ijtihad* of the *mujtahid* and *fai'* property also cannot be divided by the owners of the property itself but must be divided or managed by the authority.

The legitimacy of *fai'* according to Abu Ubaid's view is that the *fai'* property is a tax imposed on persons who do not want to convert to Islam based on the offer made by the Rasulullah s.a.w to the enemies of Islam. In this case, the Prophet s.a.w gave the *musyrikin* three things to choose from. Firstly, he invited the unbelievers to know more about Islam. Secondly, they were subject to

³ The literal definition of *fai'* means return.

tax if they refuse to embrace Islam. Meanwhile, the third is to seek help from Allah and finally, Muslims have to fight them if they do not want to accept the first and second.⁴ If they refused to convert to Islam, they should agree to be taxed as laid down by the Muslims. However, [Muhammad Abdul Mun'im al-Jammal \(2000\)](#) also stresses that, when Rasulullah s.a.w died, the property taken away to be allocated has raised the debate among the jurists on the question of his right to such property. Abu Thur had the opinion that the property belonged to the country's current leader. Imam Abu Hanifah is of the view that the provisions of Rasulullah s.a.w expired with his death.

Meanwhile, Imam Shafi'i states that the provisions of the Rasulullah s.a.w shall be allocated for the benefit and interest of the Muslims such as to pay for soldier' salaries; purchase and make tools and weapons of war equipment; build garrisons; build bridges; to pay for the salaries of judges and the imams of mosques; and other things that involve the interests of Muslims.

3.2. Revenue from Jizya

According to [Che Mat \(2007\)](#) Jizya is what is required from the property of ahl al-dzimmah⁵. In terms of language, [Muhammad \(2002\)](#) has defined ahl al-dzimmah as an agreement and protection. Ahl al-dzimmah also indicate the non-Muslims who live in countries under Islamic rule. Abu Ubaib states that the jizya is included in the category of *fai*' property. Among the arguments brought by Abu Ubaid is based on the hadith Rasulullah s.a.w when he gave his advice during his appointing of the war lords. Rasulullah s.a.w stated:

Fight in the name of Allah, in the way of Allah and fight the disbelievers of Allah. Do not fraudulent, do not cheat and do not kill the children. When you meet with an enemy from among the musyrikin, then ask them to one of this three things. When they want to receive any one of it, then accept their offer and do not fight them, engage them into Islam. If they agreed, then accept and do not fight them. Ask then they moved from their land to domestic migration. Tell them that if they do so, they have the same rights and obligations like muhajirin. If they refused to move, and then tell them that they had the status of Bedouin Arab Muslims. But they must obey the entire Allah obligation same with the Muslims. And they cannot get the ghanimah and fai' property even a bit, unless they fought together with the Muslims. If they refuse to do so, then ask about the payment of the jizya. If they want to listen to calling you, take it and stop the war against them. If they refuse, seek the help of Allah and fight them⁶.

⁴ Sanad of this hadis has been narrated by 'Abdul al-Rahman ibn Mahdi said that was told to us by Sufian ibn Sa'id from Alqamah bin Marthad, from Sulaiman bin Buraidah, from his father Buraidah. [Abu Ubaid al – Qasim \(1989\)](#).

⁵ Ahl al-dzimmah members are non-muslims living in muslim countries and enjoy all the right and responsibilities contained in the syariah. The people also have certain rights and responsibilities laid down by Islam. Property and their lives must be protected. [Che Mat \(2007\)](#).

⁶ Sanad of this hadis has been narrated by 'Abdul al-Rahman ibn Mahdi said that was told to us by Sufian bin Alqamah bin Marthad, from Sulaiman bin Buraidah, from his father Buraidah. [Abu Ubaid al – Qasim \(1989\)](#).

(Al-Mawardi, 459 H) also strengthens the above view about *jizya* by bringing out *nas* from al-Quran which means:

Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the jizya with willing submission, and feel themselves subdued⁷.

The debate about who will be obligated or not, to pay the *jizya* was also discussed by Abu Ubaid, where he said only male was required to pay *jizya*. Abu Ubaid's deal with the payment of *jizya* is based on the practice of Umar: 4 dinars for gold traders and 40 dirham for silver traders.

These revenues were used for Muslim salaries and for guest meals for three days. Zaki Ibrahim (1998) states that the *jizya* rate is not specifically predetermined. However, during the time of 'Umar al-Khattab different rates for the population in Sham and Yemen had been set. The rate determined by 'Umar al-Khattab is different from the rate practised by Rasulullah s.a.w.

The opinion of Abu Ubaid in this case is that if 'Umar al-Khattab knew the *jizya* rate set by the Rasulullah s.a.w, then, of course, he would not determine the proportion of *jizya* differently from that decided by Rasulullah s.a.w. Umar al-Khattab imposed a higher rate of *jizya* to the population in Sham compared to the population in Yemen. This rate difference is determined based on the wealth and physical strength.

It is further argued by various other scholars such as Taqyudin an-Nabhani (1996) that Imam al-Bukhari narrated from Ibn Abi Najih who has said that, I asked Mujahid about the reason why is the *jizya* rate for the people of Sham 4 Dinars while Yemen is only 1 dinar? Mujahid said that it is just to simplify. Zaki Ibrahim (1998) has stressed that if they cannot afford to pay the *jizya* due to poverty, the *jizya* will be dropped. There are some reports that 'Umar al-Khattab has provided assistance to the old non-Muslims using Baitulmal funds because he met an old man once and at the same time the old man was begging from door to door.

In another occasion, Abu Ubaid argued that not all the ahl al-dzimmah were obligated to pay the *jizya*. Likewise the zakah, where not all the muslims were obligated to pay zakah and for people who do not pay zakah they only have to meet specific criteria. Meanwhile, the people who do not have to pay the *jizya* are children and women, and Zaki Ibrahim (1998) also argues that the ahl al-dzimmah cannot afford to pay *jizya*.

3.3. Revenue from *Kharaj*

Some scholars in the early era of the Abbasiyah government such as Abu Yusuf al-Yahya bin Adam Khasaf had made a conclusion from the hadith of the Rasulullah s.a.w and later came up with the regulations on *kharaj*. According to Muhammad Abdul Mun'im al-Jammal (2000) during that time, *kharaj* created a problem, and after the majority of the people in the states converted to the religion of Islam as a whole, then the *kharaj* payments had been excluded from them and gradually they decided that they only had to pay *ushur* tax only. Finally, the application of the

⁷Al-Quran, al-Taubah

kharaj system was to be cancelled. This means that the people who have converted to Islam also have to pay *ushur*.⁸

According to Muhammad (2002), generally, the word *kharaj* means tax collected from non-Muslims in Muslim countries. Specifically, *kharaj* means quit rent. Since the beginning of the first century of Hijrah, *kharaj* tax specifically means the tax that is collected from land ownership. According to *Abi al-Hasan Ali bin Muhammad bin Habib bin al-Basri al-Baghdadi al-Mawardi (450 H)*, *kharaj* is a system based on *ijtihad*. Similarly, the rate determined based on *ijtihad* and *kharaj* is also taken from both the non-Muslim and Muslims.

To determine the rate of *kharaj*, Abu Ubaid looked at the initiatives done by 'Umar al-Khattab, who determined the *kharaj* rate based on the land area and the types of business done. This can be seen on an ash-Sya'bi history of the state when al-Khattab Umar had sent Ibn Hunaif to sawad. The messenger has made it mandatory upon them to pay *Kharaj*, the following obligations: (i) for 1 hectare of wheat, the tax is 4 dirhams; (ii) for 1 hectare of sugarcane, the tax is 6 dirhams, (iii) for 1 hectare of palm, the tax is 8 dirhams; (iv) for 1 hectare of cabbage the tax is 10 dirhams; (v) for 1 hectare of olive, the tax is 12 dirhams.

(Muhammad Abdul Mun'im al-Jammal (2000) states that the opinion from Abu Yusuf suggests that *kharaj* is the *fai*' property. According to Abu Ubaid, *Kharaj* is a tax collected from the proceeds of the land conquered by the Muslims either by force or by peaceful means. He also held that the taxes collected from the produce of the land conquered by Islam by force is also said to be *kharaj*. The opinion of Abu Ubaid is based on the situation of Muslims who settled the land of the black community where in this case, the soldiers had stated to 'Umar al-Khattab as follows:

Divide it between us because we have to grab it with the struggle. So 'Umar al-Khattab refused and said, what about the people who come after you from the Muslims? I fear when I put it, then you will fight each other in cultivating the land. So the blacks are already submitting their land to the Muslims, and required jizya to them and their lands subject to tax (kharaj) and it is not divided among them.

For the purchase of seized land, the government set it as *kharaj* as argued by Abu Ubaid based on the explanation of the law of Athar that the purchase of *kharaj* land is *makruh*. This is due to the fact that *kharaj* is the only tax to Muslims and hence *kharaj* is a humiliation to its members. When the owner of the seized land pays *kharaj*, then the question is whether they are set for paying both *ushur* and *kharaj*, or otherwise.

The argument put forward by Abu Ubaid suggests that the owner of the land is not exempted from *ushur* and *kharaj*. This is based on the saying of the Rasulullah s.a.w, which means "*those who turn the dead land, then into its possession*". Based on this hadith it shows that there is an obligation to pay *ushur* and *kharaj* to the land owner. Abu Ubaid did not discuss like other scholars who assert that there should be no *ushur* for the Muslims to the *kharaj* land, because they interpreted the words of Umar al-Khattab and Ali, who did not require *jizya* to a Persian woman who converted to Islam. Abu Ubaid states that, this is the opinion of Abu Hanifah and his

⁸The combination of *kharaj* land and the specific land for zakah is known as *ushur* land. Abu Yusuf states that the *ushur* land is from *kharaj* land that the owner of the land convert to Islam. So it's call *ushur* land. Muhammad (2002).

followers. Abu Ubaid views that the meaning of the hadith indicates that when the land becomes the property, it does not mean that *ushur* and *kharaj* are lost. However, (Muhammad Abdul Mun'im al-Jammal (2000) states that if a person has converted to Islam, in the era of Khalifah Umar al-Khattab, it does not fall *kharaj* of the seized land by force.

3.4. Revenue from Tax *Ushur*

According to (Muhammad (2002) *ushur* is a tax levy on merchandise entering a Muslim country or internal merchandise coming from the Islamic country itself. The *Ushur* system began in the era of Umar al-Khattab, based on the principles and norms of justice. This means the *ushur* system is not used during the time of the Rasulullah s.a.w and Abu Bakr. Thus, Abu Ubaid said several hadiths relating to tax law in taking *ushur* is makruh. Similarly, there are several hadiths showing the prohibition relating to the practice because the practice is common for the jahiliyyah community. Among the hadiths are:

Rasulullah s.a.w said, which means: From 'Uqbah bin' Amir, that he has been saying: the tax collectors do not go to heaven.⁹

He said again, which means: From Abul Khair, that ruwaiifa 'bin Thabit, Mohammed heard saying: the tax collector in the hell.¹⁰

Umar bin Abdul Aziz informed that he had sent a letter to 'Adli bin Artha'ah, which contents are as follows:

Let the man a fidyah payment. Leave on food for mankind. No ushur tax charged on mankind because it is not tax ushur alone, but it's may make others loss¹¹ based on the word of Allah, which means: And do not commit mischief in the land causing corruption¹².

The discussion of Abu Ubaid about *ushur* goes further in relation to the imposition of tax on non-Muslims based on a history of Abdurrahman bin Ma'qil who has stated that:

I had asked Ziyad bin Hudair about who among you have to collect taxes ushur?, He said, we never impose taxes to the Muslims and mu'ahid. Then I asked who the person was liable to pay tax? Then he said, we impose tax ushur on the Harbi traders as they taxing on us when we entered and came to their land.¹³

Rasulullah s.a.w said which means:

There is no obligation to pay taxes ushur on the Muslims. But it only applies to the Jewish and Christians only.¹⁴

⁹ Sanad of this hadis has been narrated to us by Abu Ubaid, he said that Yazid bin Harun was told of Muhammad bin Ishak, from Yazid bin Abi Habib, from 'Abd al-Rahman bin Syumasah al-Tujibi... Abu Ubaid al – Qasim (1989).

¹⁰ Sanad of this hadis states that Yahya bin Bukair was told of ibn lahai'ah, from Yazid bin Abi Habib... *ibid*.

¹¹ Sanad of this hadis it's said that Hassan bin 'Abdullah from Ya'qub bin Abd al-Rahman al-Qari, from his father said... *ibid*.

¹² Al-Quran, Huud 11, 85.

¹³ Sanad of this hadis stating that 'Abd al-Rahman was told of Sufian, from 'Abdullah bin Khalid al-'Absi... Abu Ubaid al – Qasim (1989).

¹⁴ Sanad of this hadis states that 'Abbad bin 'Ibad, was told of 'Asim al-Ahwal... *ibid*.

So in this case, Abu Ubaid said that when a person has to take payment over the course of zakah, it has taken a charity not based on the rights. Thus, Ibn 'Umar, was once quoted to have said:

Did you know that Umar took tax ushur from the Muslims? He answered: no, I do not know exactly about this matter.

However, what happened that `Umar al-Khattab took tax *ushur* is 1/10 of the merchandise and he did not consider it as a zakah. This was not only done by Umar alone, but it was also done by the other Caliphs in which tax funds were used as payments of salaries.

According to (Muhammad Abdul Mun'im al-Jammal (2000) *ushur* tax law on the recruitment of Muslims¹⁵ can be seen in the practices that had been done by 'Umar. If it is forbidden by Islam, 'Umar probably will not do it. Abu Ubaid did not find anyone among scholars of Hijaz, Iraq, Syrians and others to ban the collection of tax and they never denied the importance of the collection of the tax.

Abu Ubaid found that the ahl al-dzimmah are not Muslims who have to pay for zakah and nor Harbi who has to pay the tax. Based on Umar that the Muslim is imposed with zakah and for Harbi is imposed with taxed *ushur* 1/10 of their trade as they impose a trade tax on Muslims. However, it is not mentioned about what should be taken from the ahl al-dzimmah. Thus, Abu Ubaid's view based on the hadith, has stated clearly that the ahl al-dzimmah has a peace treaty with the Muslims. So based on the peace agreement, ahl al-dzimmah members are required to pay *jizya* and *kharaj*.

The rate of tax *ushur* imposed to members of ahl al-dzimmah by Abu Ubaid is based on the event that the messenger of 'Umar' sent Ammar Ibn Uthman Ibn Mas'ud and Hunaif to the state of Kufa. Uthman was to measure the land for the ahl al-dzimmah and has set its tax with a certain amount. He also set the property tax rate for the ahl al-dzimmah that the subject of debate for a long time that are 1 Dirham for every 20 dirhams. While the *jizya* was 24 Dirham and it was excluded from the women and children. Upon completion of the work directed by Umar, then Uthman bin Hunaif had sent a letter to Umar and informed him what he had done in Kufa in relation to the tax rate. Umar then agreed with what has been done by Uthman bin Hunaif.¹⁶

The opinion of Abu Ubaid that *ushur* is the tax imposed on the ahl al-dzimmah is based on a peace treaty. Of course *ushur* tax rate is the right for the Muslims to decide, as the words of Malik bin Anas have proven this:

Peace agreement that was agreed by member's ahl al-dzimmah a plea agreement with respect to sovereignty in their land. If they bring goods into the territory of the Muslims, ushur tax will be levied on their goods every time they enter the area of the Muslims.

From the above discussion, Abu Ubaid has formed his opinion about the source of revenue drawn from *fai*' property. In the discussion about *fai*' property, Abu Ubaid discussed the three topics of taxation, namely *jizya*, *kharaj* and *ushur*. *Jizya* is a tax imposed on the ahl al-dzimmah in the form in which the *jizya* is the protection tax, it will be fall if the member of ahl al-dzimmah had

¹⁵ Ushur tax obligated to the muslim traders only from the muslim traders who come from the non-muslim countries and they are citizens of that country.

¹⁶ Sanad of this hadis said that al-Ansori was told of Sa'id bin Abi 'Arubah, from Qatadah... Abu Ubaid al - Qasim (1989).

embraced Islam. However, after the ahl al-dzimmah embraces Islam, then he is obliged to pay zakah if it reaches the rate. Similarly, the *jizya* will be waived if the members of ahl al-dzimmah are poor and cannot afford to pay. This is also reflected in the practice of Umar that he had been using Baitulmal funds to help the poor ahl al-dzimmah. This is happen to the poor and needy Muslims where they also will get help through zakah.

While *Kharaj* is the tax that is imposed on the land, Abu Ubaid saw that it was still imposed on the ahl al-dzimmah even if they had embraced Islam. *Kharaj* and *jizya* are different in terms of their implementation. *Jizya* is a tax protection imposed on the ahl al-dzimmah based on the practice of Rasulullah s.a.w while *kharaj* is based on ijihad. So if we look at Abu Ubaid's view clearly it shows that *kharaj* is a practical alternative for a state to raise revenue to cover expenses for public needs. In this case the state can determine whether to impose *kharaj* or otherwise. Similarly, the *kharaj* rate imposed either at higher or lower rate is dependent on the will of the state through ijihad. The state can also determine whether it is to be collected *kharaj* or otherwise.

Abu Ubaid also discusses the trade tax imposed on Muslims and non Muslims. Abu Ubaid brings some hadiths which prohibit the imposition of tax on Muslims. In this case Abu Ubaid saw that the practice was done by 'Umar al-Khattab that imposes the trade tax on Muslims who come from non-Muslim countries and become citizens of the country is practical. According to Abu Ubaid if what was being done by 'Umar al-Khattab is prohibited in Islam, then Umar might not want to do it.

4. LAND TAX PRACTICE IN MALAYSIA

The analysis of this topic is related with Abu Ubayd view on the current implication. According to Abu Ubayd, Caliph Umar al-Khattab was determinant the tax rates according to the type of crop and land area. This study is to examine is the reality of the tax rates of agricultural land in Malaysia and its relation with Abu Ubayd view. According to [Ridzuan \(1994\)](#), Malaysia is a federal country with 13 states, there are Perak, Negeri Sembilan, Pahang, Johor, Kedah, Perlis, Kelantan, Terengganu, Penang, Malacca, Sabah and Sarawak. He said before the establishment of the Federation of Malaysia on 16 September 1963 or before the Federation of Malaya achieved independence on 31 August 1957, all the states were under the auspices of the British colonialists. Thus, whether directly or indirectly, the administration was also under British protection.

About the law adopted in Malaya, ([Salleh \(2010\)](#)) states that the Islamic law and Malay custom make up the basis of land law in Malaya. He also argues that the law in Pahang is also based on Shafi'i school before the existence of the Torrens system. According to [Jomo \(1988\)](#), in pre-colonial times, the collection of one-tenth of agricultural produce in some states of Malaya had already existed. He adds that during the era, the practice of head tax was commonplace. He also adds that the controls and the imposition of taxes on trade surplus are the kinds of important collections of the Malay rulers in the era.

According to [Ridzuan \(1994\)](#), the Torrens system had propelled the state of the Peninsula Malay to adopt a legal system based on the same land law in January 1966. However, the Torrens system was introduced in the Malay Peninsula in 1864. The Torrens system comes from South Australia and was brought into the Federation of Malaya through Fiji. It is undeniable that the

Torrens system does have its pros and cons if analysed by the legal aspects from the Islamic land law. He adds on that not all features of the Torrens system were included in the National Land Code 1965 which came into force on January 1, 1966. Still, there is also space for improvement from time to time for the faulty allocation and conflict with the Islamic law.

According to Yidris (2003), generally the State and District Land Administration is responsible for implementing some important tasks or activities as follows:

- (i) Manage the land application;
- (ii) Collect land revenue;
- (iii) Handle the registration of title;
- (iv) Manage the land development application, and
- (v) Enforce the law of the land.

He states that more than 70% of the revenue in many states comes from the land tax. Most of the State revenue loss is due to the officers who are not so well-versed on the laws relating to premiums, permits and the collection of land revenue. One of the problems that should not be underestimated concerns with the fact that the tax rate is not imposed accordingly.

Determination of the rent rate of land in Malaysia is subject to Section 96 of the National Land Code namely rent calculation. For section 96 (1) NLC decides that "for the purpose of calculation of the rent payable in respect of any land, whether in connection with lender-owned under this Act, or in connection with any subdivision, consolidation or other transactions after the initial requirement in this Act, or in connection with what's revision or other actions by the State Authorities under section 3 (revision of rent)".

In chapter 3 that is under section 101 (1) NLC of "subject to the provisions of subsection (5) of the NLC, the State Authority may from time to time revise in accordance to the following provisions of this section, the rent payable in respect of alienated land in the state. This means that the State Authority has the power to initiate provisions as may be necessary to the state as provided for in section 445 NLC. Then, this explains why every state has a tax rate and why the manner in which the tax is imposed differs from one state to another.

An amendment to the land tax rate is also often done for every state. This is to ensure that the purpose of the tax payments has been fulfilled for each state. If looking at the Selangor Land Rules (Amendment) 2005, Negeri Sembilan Land Rules (Tax Riview 2006) 2005, Pahang Land Rules (Amendment) 2007, Kelantan Land Rules 1966, Johor Land Rules (Amendment) 2002, Perlis Land Rules 1987, Penang Land Rules 1965, Kedah Land Rules 1966 and Terengganu Land Rules 1966, each has their respective method and different amounts of tax. Table below shows the different tax rates per district:

The Differences of Agricultural Land Tax Rates in a number of districts In Malaysia

State	Area / District	Land Category	Type of Agricultural	Immensity of Land	Period (Year)	Tax Rate (Rm)
Selangor		Town / Village Land	Agricultural Lots	1 hectare	1	226.60
				1 acre	1	91.74
			Rubber, Oil Palm, Coconuts	> 5 hectare	1	33.66 / hectare
						<i>Continue</i>

	Petaling and Gombak	Country Lands	or Cocoa	< 5 hectare	1	27.59 / hectare
				> 5 acre	1	13.45 / acre
				< 5 acre	1	11.17 / acre
			Padi, nipah or sago.	1 hectare	1	9.90
				1 acre	1	3.99
			Other form of cultivation	1 hectare	1	13.79
Negeri Sembilan	Seremban	Town Land – Group A	<i>Homestead</i>	1 hectare	1	2000.00
			Long-term crop	< 4 hectare	1	69.00 / hectare
				4 – 10 hectare	1	84.00 / hectare
				>10 hectare	1	95.00 / hectare
			Short-term crop	1 hectare	1	42.00
Pahang	Kuantan, Bentong, Temerloh and Cameron Highlands	Town Land	Agricultural	1 hectare	1	150.00
	Jerantut, Lipis, Maran, Raub, Pekan, Bera and Rompin	Town Land	Agricultural	1 hectare	1	125.00
Kelantan		Country Land	Agricultural (Class A)	1 hectare	1	Not less 500.00
			Agricultural (Class B)	1 hectare	1	Not less 300.00
			Agricultural (Class C)	1 hectare	1	Not less 300.00
			Agricultural (Class D)	1 hectare	1	Not less 50.00
			Agricultural (Class E)	1 hectare	1	Not less 50.00
			Agricultural (Class F)	1 hectare	1	Not less 100.00
Johore			Agricultural	< 1 hectare	1	100.00
				1 – 2 hectare	1	200.00
				2 – 4 hectare	1	300.00
				>4 hectare	1	400.00
Perlis		Country Land (Premium)	Land not for the time being planted with rubber or oil palm	1 hectare	1	1500.00
			Rubber or Oil Palm	1 hectare	1 - 3	1750.00
			Rubber or Oil Palm	1 hectare	3 - 6	2000.00
			Rubber or Oil Palm	1 hectare	> 6	2500.00
			Sugar Cane	1 hectare	1	3000.00
			Padi	1 hectare	1	1300.00 – 1500.00
		All Classes of Land	Rubber	1 hectare	1	48.00
			Oil Palm	1 hectare	1	32.00
			Cocoa	1 hectare	1	32.00
						<i>Continue</i>

			Coconut, Coffee and Tea	1 hectare	1	32.00	
			Fruit Trees	1 hectare	1	32.00	
			Sugar cane	1 hectare	1	64.00	
			Padi	1 hectare	1	24.00 (within MADA area)	
				1 hectare	1	20.00 (Outside MADA area)	
Penang	Country Lands	Rubber	<6 acre	1	10.00 per acre		
			>6 acre	1	12.00 per acre		
		Oil Palm	<6 acre	1	10.00 per acre		
			>6 acre	1	15.00 per acre		
		Coconuts, Fruit Trees, Coffee, Tea, Cocoa or Nutmeg	<6 acre	1	6.00 per acre		
			>6 acre	1	8.00 per acre		
		Sugar Cane, Pineapple, Tapioca, Ragi, Groundnuts, Maize, Tobacco, Pepper, Vegetables, Gambir, Banana and Papaya	<6 acre	1	4.00 per acre		
			>6 acre	1	7.00 per acre		
		Padi, Sago or Nipah	<6 acre	1	2.00 per acre		
			>6 acre	1	2.00 per acre		
		Orchids or Nursery	<6 acre	1	10.00 per acre		
			>6 acre	1	12.00 per acre		
		Other Purposes	<6 acre	1	2.00 per acre		
			>6 acre	1	7.00 per acre		
Kedah	Country Lands	Rubber and Coconut	1 acre	<6	3.00 (Higher Rate)		
				>6	12.00 (Higher Rate)		
				>50 acre	<6	3.00 per acre (Higher Rate)	
					>6	15.00 per acre (Higher Rate)	
			1 acre	<6	3.00 (Lower Rate)		
				>6	9.00 (Lower Rate)		
				Oil Palm	1 acre	<4	3.00 (Higher Rate)
						>4	12.00 (Higher Rate)
		1 acre	<4		3.00 (Lower Rate)		
			>4		3.00 (Lower Rate)		
							<i>Continue</i>

			Fruit Trees, Dusun, Kampung, Coffee, Tea and Cocoa	1 acre	<6	2.00 (Higher Rate)
					>6	9.00 (Higher Rate)
					<6	2.00 (Lower Rate)
					>6	6.00 (Lower Rate)
			Sugar Cane, Pineapple, Tapioca, Ragi, Groundnuts, Maize, Tobacco, Black Pepper and Gambir	1 acre	<6	6.00 (Higher Rate)
					>6	9.00 (Higher Rate)
					1	6.00 (Lower Rate)
			Padi (a) Gazetted double cropping are and chargeable with irrigation rate.	1 acre	1	6.00 (Higher Rate)
						4.00 (Lower Rate)
			Padi (b)For areas other than those mentioned in (a)	1 acre	1	4.50 (Higher Rate)
						3 (Lower Rate)
			Terengganu		Town Land	Agricultural
Village Land	Agricultural	1 hectare			1	40.00
Country Land within Local Authority Area	Rubber	1 hectare			<6	15.00
					>6	20.00
	Oil Palm	1 hectare			<4	20.00
					>4	30.00
	Coconut	1 hectare			<6	8.00
					>6	12.00
	Cocoa	1 hectare			<4	12.00
					>4	24.00
	Other Crops (Fruit Plantation)	1 hectare			1	8.00
	Padi	1 hectare			1	5.00
Mengkuang, Kercut, Pandan and Nipah	1 hectare	1	7.00			
Other types of agricultural use	1 hectare	1	8.00			

Source: Selangor Land Rules (Amendment) 2005, Negeri Sembilan Land Rules (Tax Riview 2006) 2005, Pahang Land Rules (Amendment) 2007, Kelantan Land Rules 1966, Johore Land Rules (Amendment) 2002, Perlis Land Rules 1987, Penang Land Rules 1965, Kedah Land Rules 1966, Terengganu Land Rules 1966.

The difference is seen in the land immensity, the area or district and also the kind of crop made. Of course, of any changes made to the tax rate are based on the interests of each state. Section 14 NLC has been allocated to the State Authority to make rules.

Subsection (1) (e) of this Act provides that the State Authority may make provision for the rate (which is the rate per hectare or the other a small unit area) where rent and premium (if any) are to be imposed in respect of alienation, in that this Act on the ground from where which class or type is subject to this Act are counted. Similarly, subsection (1) (g) of this Act dictates that the State Authority may provide for the fees or levies to be paid in connection with any matter arising under this Act.

Based on the table above, the kind of crop such as rubber, coconut, oil palm, padi, cocoa, sago, palm and others. The important thing to note that each plant has the same tax rate for some areas and there are also different tax rate for some area. This situation also occurs at the time of Caliph Umar al-Khattab, as has been reported by Abu Ubayd.

(Salleh, 1993) stated that to determining the tax rate for agricultural land, the State Authority has been considering by economic factor, environmental factors and political interests as the basis for determining the tax rate.

This means that the State Authority took into account the type of crop and land area. For example, in the above table shows that the tax rate for padi cultivation has different tax rates between the districts.

This indicates that land fertility factors are also taken into account in determining the tax rate for padi cultivation and so on. (Hanin Mahamud Azaki @ Marzuki (2002) states that at the time of Caliph Umar al-Khattab, the determining of tax rate is based on the type of land, fertility and type of crops. Abu Ubayd also stated that Caliph Umar al-Khattab also consider the immensity land factor in determining the tax rate of agricultural land.

According to Arifin (2010), what is taken into account in determining the tax rate refers to the property accumulated by the parties of the authorities to provide services to residents. Thus, it may be said that every change in tax rates as it occurs in the states in Malaysia would take into account the citizens' interests.

This is due to the fact that the needs of the citizen are constantly changing in line with the rising inflation crisis. Then, based on these factors, amendments to the tax rates in particular lands for agricultural purposes are inevitable.

5. CONCLUSION

Following the above discussion, the results show that: firstly, Abu Ubaid has compiled a detailed concept of *fai*' property, which can be used as a framework for creating a model for the governmental revenue derived from the property of non-Muslims. As a result, there is a form of justice between Muslims and non-Muslims.

Although the *jizya* is imposed on the ahl al-dzimmah, and Muslims are not imposed the *jizya*, the Muslims are still subject to zakah. Second of all, the collection of revenue from the *fai*' property is appropriate when viewed in the context of justice. This is because Muslims have been subject to zakah and at the same time, zakah does not apply to non-Muslims. In the current situation, there are non-Muslims living in Muslim countries.

The government also has the responsibility to protect the populace. The people also need to have access to the basic facilities for their daily lives. In this case, it is easy to see that the

government must spend to meet their needs. They cannot receive the zakah, because the zakah revenue is distributed only to the Muslim asnaf who have been determined in the shariah. Therefore the government must take steps to impose taxes on them to finance their needs.

Thirdly, the collection of the *jizya* tax as mentioned in the preceding discussion is imposed on male, while payment rates also vary according to the ruling of *ijtihad* to determine. However, for *kharaj*, although it is collected from non-Muslims as *fai*’ property, then according to Abu Ubaid, *kharaj* remains payable when a *ahl al-dzimmah* embraces Islam.

Following the practice of 'Umar al-Khattab, he still imposed *kharaj* against anyone who converted to Islam, but with his property seized by force.

This is consistent with the view of al-Mawardi in which he points out that *kharaj* is imposed on both non-Muslims and Muslims. This is because *kharaj* is a system based on *ijtihad* and thus, the payment rate is determined based on *ijtihad*. *Kharaj* is also imposed on the Muslims based on the requirement that the government should have to pay for economic development. This is due to the limited use of Zakah.

Thus, the government can ensure that *kharaj* is imposed on Muslims. Fourthly, it is possible to understand that the quit rent that still exists today, as imposed on non-Muslims is something that could be classified as *fai*’ property.

Based on our understanding, in the context of the present government, quit rent can be imposed on Muslims by the Muslims themselves and this is called *maslahah*. Meanwhile for the trade tax, the then-ruling party will determine the tax rate that is to be imposed on the non-Muslims.

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