

## THE DYNAMISM IN THE IMPLEMENTATION OF *AL-KHARĀJ* DURING THE ISLAMIC RULE (634-785AD)

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### ABSTRACT

*This article discusses the implementation of al-kharāj or land tax in the Islamic ruling era. The focus of our analysis and discussion is on the dynamism of past Islamic leaders of between 634-785AD in managing and implementing al-kharāj. Our discussion centres around the philosophy behind the terminologies and the theory that underlies the implementation of al-kharāj, the dynamics of its policy changes and the rationale behind the reduction in tax rates, the policy of affordable taxes and the changes in types of taxes (to prevent it from becoming a burden) and the collection policy. The final part of this study describes the principle that had guided the rulers between 634-785AD. This was mostly during the time of Caliph 'Umar al-Khaṭṭāb (634-644AD), Abū Ja'far al-Manṣūr (754-775AD) and al-Mahdī (775-785AD). They placed great importance on the 'ability' of taxpayers to pay taxes and this is evident each time there was change in policy.*

**Keywords:** *al-Kharāj, land tax, Islamic taxation policy*

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## INTRODUCTION

*Al-Kharāj* is defined as taxes<sup>1</sup>, revenue<sup>2</sup>, revenue obtained from human property<sup>3</sup>, tribute<sup>4</sup>, rental<sup>5</sup>, income<sup>6</sup>, general property<sup>7</sup>, a public's revenue or revenue from land<sup>8</sup>, and sometimes it is defined as a rates.

*Al-Kharāj* is an Arabic word of Greek origin<sup>9</sup> and also said take from literary official language of Rome, Byzantine<sup>10</sup> and Ancient Greek<sup>11</sup> which generally means 'tax'<sup>12</sup>. However, throughout the history of Islam it was used to refer to land tax<sup>13</sup>.

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<sup>1</sup> Al-Firuzabādī, Muḥammad Ibn Ya'qūb (n.d), *al-Qāmūs al-Muḥīt*, al-Qāhirah: Mu'assasah al-Ḥalabī wa al-Sharikah, Vol.1, p. 184. Refer also: Muḥammad Thābit al-Fandī (n.d), *Dā'irat al-Ma'ārif al-Islāmiyyah Naqalaha ilā al-Lughah al-'Arabiyyah*, al-Qāhirah: Maṭba'ah Muṣṭafā al-Bābī al-Ḥalabī, vol. 8, p. 280.

<sup>2</sup> Means: الضريبة tax or revenue that is compulsory to non-Muslim in the Islamic State. Refer: Muḥammad Thābit al-Fandī (n.d), *op.cit*, p. 280. الضريبة الراضی means land tax, refer: Idris Abdullah (1992) *Kamus Istilah Ekonomi dan Perdagangan: Melayu-Arab*, Kuala Lumpur: Kintan Sdn. Bhd, p. 38.

<sup>3</sup> Jamāl al-Dīn Muḥammad bin Mukarram Ibn Manzūr (1990), *Lisān al-'Arab*, Beirut: Dar Sadr, vol. 2, p. 251.

<sup>4</sup> Mahayudin Yahya (2001), *Tamadun Islam*, Selangor : Fajar Bakti, p. 278.

<sup>5</sup> Abū Ubayd al-Qāsim b. Salām (1986), *Kitāb al-Amwāl*, Muḥammad Khalīl Ḥarās (*taḥqīq wā ta'liq*), Beirut: Dār al-Kutub al-Ilmiyyah, p.75. *Al-Kharāj* means الكراء والغلة refer: 'Auf Muḥammad al-Kafrawī (1993), *al-Māl al-'Ammah fī al-Islam: Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, Iskandariyah : al-Intisar Press, p. 37. الكراء والغلة means rental and income, refer to: Idris Marbawi (n.d), *Kamus Idris Marbawi: Arab-Melayu*, Kuala Lumpur: Darulfikir, p. 182.

<sup>6</sup> *Ibid*, p. 65.

<sup>7</sup> Means: راد الدولة according to Idris Marbawi (n.d) is revenue or public revenue. *Ibid*, p. 232.

<sup>8</sup> Muhammad Ḍiyā' al-Dīn al-Raīs (1969), *al-Kharāj wa al-Nuḥum al-Māliyyah li Dawlah al-Islamiyyah*, Mesir: Dār al-Ma'ārif, p. 8.

<sup>9</sup> *The Encyclopaedia of Islam* (1997), Vol. IV, Edisi 2, Netherland : E.J. Brill. Leiden, p. 1030.

<sup>10</sup> Muhammad Thābit al-Fandī (n.d), *op.cit*, p. 280; refer also : *Ensiklopedia Islam* (1998), Kuala Lumpur: Pusat Penyelidikan Ensiklopedia Malaysia, p. 35.

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid*. Refer also : *The Encyclopaedia of Islam* (1997), *op.cit*, p. 1030.

<sup>13</sup> 'Auf Muḥammad al-Kafrawī (1993), *op.cit*, p.37; refer also: Muhammad Thābit al-Fandī (n.d), *op.cit*, p. 280; *The Encyclopaedia of Islam* (1997), *op.cit*, p. 1030; *Ensiklopedia Islam* (1998), *op.cit*, p. 35.

Taxation systems that had been implemented in Islamic countries were land tax (*al-kharāj*), protection tax (*ṣulh al-jizyah*), poll tax (*jizyah al-ru'ūs*) and commerce tax (*al-'usyr*)<sup>14</sup>. *Al-Kharāj* represents a specific percentage of income obtained from land or property and it includes land obtained from war or by peaceful means<sup>15</sup>. *Al-Kharāj* was implemented early in the Islamic rule in Khaibar when the Jews requested for the land that Muslims had conquered to remain as theirs because they were very good farmers. The prophet p.b.u.h. consented to the request on condition that they surrender half the revenue obtained from the land as tax *al-kharāj*; in accordance with the *al-muzāra'ah* principle<sup>16</sup>. Initially *al-kharāj* included in *ghanimah*'s type of asset, which should be divided among the Muslim soldiers but Caliph 'Umar felt that the practice was a waste for Muslims of that time as well as the future if the land in Iraq and Syam were divided among Muslim soldiers. So he proposed that the land remained the owners' on condition that they pay *kharāj*<sup>17</sup>.

The scope of the study is situated between the years 634-785 AD because throughout this period there were a lot of *ijtihād* and evolution that took place in *al-kharāj* taxation system. These later formed the rationale behind the Islamic taxation, even though the system had originated from the practice of emperors prior to Islam. Throughout this period also the views of the *fuqaha*' became the basis for decision and reference for the Islamic leaders of the past. What was interesting was, the leaders had made the effort to fully understand the *naṣṣ* and Islamic jurisprudence before attempting to apply them in the administration of the country. According to Mahmood Zuhdi Ab. Majid<sup>18</sup>, right from the beginning, the *fuqahā*' had not restricted their views to mere literal (*ḥarfī*) interpretation. On the contrary, they studied the *naṣṣ* in its social reality and in terms of the people's thinking. Thus, although the *naṣṣ* is fixed and never change, *fiqh* or the product of Syariah enquiry continued to experience changes to reflect the current thinking and lifestyle of a dynamic society.

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<sup>14</sup> Hailani Muji Tahir (1986), *Pengenalan Tamadun Islam Dalam Institusi Kewangan*, Kuala Lumpur: Dewan Bahasa dan Pustaka, p. 19.

<sup>15</sup> Abū Yūsuf Ya'qūb (1981), *Kitāb al-Kharāj*, (*taḥqīq wa ta'līq*) Muḥammad Ibrāhīm al-Bannā, Egypt: Dār al-Iṣlāh, p. 67.

<sup>16</sup> Abū Ubayd al-Qāsim Salam (2006), *The Book of Finance*, Noor Muhammad Ghiffari (trans.), New Delhi: Adam Publishers, p. 69.

<sup>17</sup> *Ibid*, pp. 68-69.

<sup>18</sup> Mahmood Zuhdi Ab. Majid (1997), "Pengajian Syariah: Satu Pentakrifan", in Mahmood Zuhdi Ab. Majid (ed.) *Dinamisme Dalam Pengajian Syariah*, Kuala Lumpur: Berita Publishing Sdn. Bhd., p. 10.

According to Abdullah @ Alwi Hassan<sup>19</sup>, implementation and role of *ijtihad* and harmonization of Syariah law with the current situation should not need to localized everything as solitary local legislation or national, because it is a global system without boundary, time limit and certain condition. However, some or a part from this syariah law, has to have local characteristic to be adapted to the current situation, place and humanity's need as in the constitutional law, administration, self need and others. Rahimin Affandi Abdul Rahim et. al<sup>20</sup> agreed that *ijtihad* are a concepts, methods and applications that are extremely important in the Islamic legislation system to be considered in implementing Syariah law in the context of the current situation.

When referring specifically to land tax, Mahmud Saedon Awang Othman & Muhammad Arifin<sup>21</sup> suppose that the ruling party can impose additional taxes on the public with regard to 'just and fair' as the element of that tax characteristic and the most important criteria is that the tax revenue must be spent for the benefit of the public as a whole. This opinion is supported by Naziruddin Abdullah<sup>22</sup> said that, it assumes that the government be it the Federal Government or State Government are merely administrators which act as Allah's representative on earth and are accountable as *Khalīfatullāh*. The Government nominated by the *ummah* is no more than Allah's trustee who is responsible in the administration and management on the basis of "good practice" namely efficiency, proactively and productivity for each goods and services entrusted by Allah to be enjoyed by the public, as stated in sūrah al-Mā'idah (5) : verse 49. Before further exploring the dynamism of the implementation of *al-kharāj* throughout the period, let us first put forth the theory behind the formation of the term *al-kharāj*.

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<sup>19</sup> Abdullah @ Alwi Haji Hassan (2007), "Ijtihad dan Peranannya dalam Pengharmonian Undang-Undang Syariah di Dunia Islam Masa Kini", *Jurnal Syariah*, vol. 15, no. 2, p. 19.

<sup>20</sup> Rahimin Affandi Abdul Rahim, Paizah Ismail and Nor Hayati Mohd Dahlal (2009), "Ijtihad Dalam Institusi Fatwa di Malaysia: Suatu Analisis", *Jurnal Syariah*, vol. 17, no. 1, p. 215.

<sup>21</sup> Mahmud Saedon Awang Othman & Muhammad Arifin (1999), "Percukaian Tanah Menurut Perspektif Islam", *Jurnal Syariah*, vol. 7, no. 1, Januari 1999, pp. 43-56.

<sup>22</sup> Naziruddin Abdullah (2005), "Polisi Pentadbiran dan Pengurusan Tanah : Analisa Perbandingan antara Kanun Tanah Negara dan Hukum Islam", dalam *Jurnal Syariah*, vol.13, no. 2, p.131.

## THE THEORY BEHIND THE DEVELOPMENT OF THE TERM *AL-KHARĀJ*

### The Word *al-Kharāj* In The Quran

*Al-Kharāj* and *kharj* are used in the Quran but not to mean land tax<sup>23</sup>. The words generally means a gift/income as in Sūrah al-Mu'minūn verse 72:

أَمَرْتَسْأَلُهُمْ خَرْجًا فَخَرَّاجُ رَبِّكَ خَيْرٌ وَهُوَ خَيْرُ الرَّزُقِينَ ﴿٧٢﴾

“Or is it that thou askest them for some recompense? But the recompense of thy Lord is best: He is the Best of those who give sustenance”.

(Sūrah al-Mu'minūn, 23:72)

According to Subhi Salih<sup>24</sup>, *al-kharāj* as used in the verse above means to ‘withdraw’; as if a portion is taken out from a whole (taxable item) in order to fulfil an obligation<sup>25</sup>; as is meant in the verse below:

قَالُوا يَنْدَا الْقَرْنَيْنِ إِنَّ يَأْجُوجَ وَمَأْجُوجَ مُفْسِدُونَ فِي الْأَرْضِ

فَهَلْ يُجْعَلُ لَكَ خَرْجًا عَلَىٰ أَنْ تَجْعَلَ بَيْنَنَا وَبَيْنَهُمْ سَدًّا ﴿٩٤﴾

They said: “O Zul-qarnain! the Gog and Magog (People) do great mischief on earth: shall we then render thee tribute in order that thou mightest erect a barrier between us and them?”

(Sūrah al-Kahfi, 18:94)

According to al-Mawardi<sup>26</sup>, *al-kharāj* is the fee imposed on land ownership and it is the kind of obligation that has to be fulfilled. In the Quran, the description for tax is different from that of *jizyah*. Therefore, the imposition of taxes has been left entirely to the *ijtihād* of imams. Based on the verse in the

<sup>23</sup> S.M.Hasanuz Zaman (1981), *Economic Functions of an Islamic State: The Early Experience*, Karachi: International Islamic Publishers, p. 197.

<sup>24</sup> Subhi Salleh (1983), *Sistem Ekonomi dan Kewangan Dalam Islam*, Osman Khalid (trans.), Kuala Lumpur: Bahagian Hal Ehwal Islam Jabatan Perdana Menteri, p. 33.

<sup>25</sup> *Ibid*, p. 34.

<sup>26</sup> Al-Mawardi (2000), *al-Aḥkām al-Sultāniyyah: Prinsip-Prinsip Negara Islam*, Fadhi Bahri (trans.), Jakarta: Darul Falah, p. 261.

Quran from sūrah al-Mu'minūn, 23: verse 72, there are two interpretations of Allah's verse "Am tas' aluhum kharjan"; and they are:

- 1) The word *kharāj* refers to wages
- 2) The word *kharāj* refers to benefit.

There are also two interpretations of "Fakhrāju rabbika khayrun":

- 1) God's bounties in this world is better. This is al-Kalbi's interpretation.
- 2) Reward from God in the hereafter is far better. This is also al-Kalbi and al-Hassan's interpretation Abū Amr bin al-Ala' said "the difference between *al-kharju* and *al-kharāj* are *kharju* (wages) is tied to a person whereas *al-kharāj* (taxes) is tied to land." the word *al-kharāj* (taxes) in Arabic however, refers to rental or revenue<sup>27</sup>.

Apart from *kharāj* there are other terms associated with the term revenue which is *fay'* and *ghanimah* which have been mentioned extensively in the Quran and they are associated with war and conquest<sup>28</sup>. Three other specialised terminologies stressed in the Quran in discussions on fiscal and public finance are referred to as *anfāl* (Sūrah al-Anfāl 8:1), *khums* (Sūrah al-Anfāl, 8:41) and *jizyah* (Sūrah al-Tawbah 9:24).

Based on the Quranic verifications above, we can now say that in terms of fiscal and public finance, Allah has not stipulated how it should be managed. Allah has merely reminded people that when wealth is redistributed, one should ensure that the redistribution is done as widely as possible and that wealth is not meant to benefit a selected group only. This was stressed in Sūrah al-Ḥasyr verse 7:

مَا آفَاءَ اللَّهِ عَلَىٰ رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي  
الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةَ بَيْنَ  
الْأَغْنِيَاءِ مِنْكُمْ وَمَا أَتاكمُ الرُّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ  
فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٧﴾

"What Allah has bestowed on His messenger (and taken away) from the people of the townships,- belongs to Allah,- to

<sup>27</sup> Ibid.

<sup>28</sup> Ugi Suharto (2005), *Kitāb al-Amwāl: Abu 'Ubayd's Concept of Public Finance*, Kuala Lumpur: Islamic Thought and Civilization (ISTAC), p. 88.

*His messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah. for Allah is strict in punishment”.*

(Sūrah al-Ḥasyr, 59:7)

This verse stresses the importance of spreading wealth among various communities and that it does not remain among the rich only.

### **The Constitution of *al-Khums* as a Method for Distribution, Became an Inspiration for the Conception of *al-Kharāj***

Although there is no mention of the *al-kharāj* taxation in the Quran, nevertheless, Allah has given general guidelines on the practise of taxation in the constitution of *al-khums* as a method of distributing taxes. This became a source of inspiration for Muslim leaders in redistributing the country's wealth according to Sūrah al-Anfāl verse 41:

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِّن شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ  
وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ إِن كُنْتُمْ  
ءَامَنْتُمْ بِاللَّهِ وَمَا أُنزَلْنَا عَلَىٰ عَبْدِنَا يَوْمَ الْفُرْقَانِ يَوْمَ التَّقَىٰ  
الْجَمْعَانِ ۗ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ﴾

*“And know that out of all the booty that ye may acquire (in war), a fifth share is assigned to Allah,- and to the messenger, and to near relatives, orphans, the needy, and the wayfarer;- if ye do believe in Allah and in the revelation We sent down to Our servant on the day of testing,- the day of the meeting of the two forces. For Allah hath power over all things”.*

(Sūrah al-Anfāl, 8:41)

Based on the meaning of the verse, Allah shows how a public's revenue should be distributed. Eventhough there is no clear command on how taxes are to be imposed on a community, Allah has shown how wealth or what had been collected is to be redistributed to the rightful parties (the stress here is on redistribution).

### ***Al-Kharāj Tax According to al-Fay' In The Quran***

Abū Yūsuf<sup>29</sup> in his book “*Kitāb al-Kharāj*” said that al-fay’ is kharāj and kharāj is al-fay’<sup>30</sup> meanings that al-fay’ is nothing else but al-kharāj<sup>31</sup>. He does not distinguish between al-fay’ and al-kharāj as land tax. Here al-fay’ refers to spoils obtained from a party that surrenders to the Muslim soldiers peacefully, in order to avoid confrontation<sup>32</sup>. Abū Yūsuf refers to the Quran of Sūrah al-Ḥasyr verse 6:

وَمَا أَفَاءَ اللَّهُ عَلَىٰ رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ مِنْ خَيْلٍ وَلَا  
رِكَابٍ وَلَكِنَّ اللَّهَ يُسَلِّطُ رُسُلَهُ عَلَىٰ مَنْ يَشَاءُ ۗ وَاللَّهُ عَلَىٰ كُلِّ  
شَيْءٍ قَدِيرٌ ﴿٦﴾

“What Allah has bestowed on His messenger (and taken away) from them - for this ye made no expedition with either cavalry or camelry: but Allah gives power to His apostles over any He pleases: and Allah has power over all things”.

(Sūrah al-Ḥasyr, 59: 6)

Abū Yūsuf<sup>33</sup> further added that what he meant by *al-fay'* refers to land, *al-kharāj* (الأرض خراج), which are territories which Muslims obtained in a peaceful manner from non- Muslims in expanding their sphere of influence. *Kharāj* land can be divided into 5 parts: the first fifth is given to Rasulullah p.b.u.h and the remaining is to be given out to his family members, orphans, the poor and wayfarers who run out of money. The remaining (four fifths) initially was divided amongst Muslim soldiers so that they could equip themselves better but during Caliph ‘Umar’s time he set up divisions or departments that determined the amount of wages the soldiers were to receive<sup>34</sup>.

<sup>29</sup> Abū Yūsuf (1981), *op.cit*, p.67.

<sup>30</sup> *Al-Fay'* as literal meaning is ‘return’. Refer: Şubhī Şāliḥ (1968), *al-Nuẓum al-Islāmiyyah: Nashātuhā wa Taṭawwuruhā*, Beirut: Dar al-‘Ilm Li al-Malayīn, p. 368.

<sup>31</sup> Ugi Suharto (2005), *op.cit*, p. 139.

<sup>32</sup> *Ibid*, p. 368.

<sup>33</sup> Abū Yūsuf (1981), *op. cit*, p. 67.

<sup>34</sup> Şubhī Şāliḥ (1968), *op.cit*, p. 368, Refer also Şubhī Şāliḥ (1983), *op.cit*, p. 45.



Abū ‘Ubayd<sup>35</sup> in his *Kitāb al-Amwāl* mention in his *athār* no.40 that after the prophet p.b.u.h era, the property turned into three groups, namely *fay’*, *khums* and *zakat*. Hence, in the past-prophetic period *fay’* simply means public revenue comprising various types of income as evolved in the history of Islam and these are includes : 1) *Jizyah* from *Ahl al-Dhimmah* according to the peace treaty agreed by them, 2) *Kharāj* from the countries which are conquered by force, 3) *Tasq* which is specified by the head of the state, 4) *Kharāj al-Wazīfah*, a fixed tribute from the country conquered by peace treaty, and 5) ‘*Usyur* ; tax collected from traders among *Ahl al-Dhimmah*, or import duties from traders of a non-Muslim country (*Ahl al-Ḥarb*)<sup>36</sup>. *Al-Kharāj* here means a part of the portion of *al-fay’* and the public revenue as whole.

### ***Al-Kharāj* as an Official Government Document and Its Methodology of Writing**

A system of taxation is part of the code of law for business and it often undergoes constant changes from time to time<sup>37</sup>. Nevertheless, Muslim leaders were always mindful in their efforts to formulate a policy for *al-Kharāj*. A few Caliphs after the times of the Khulafa’ al-Rasyidin had instructed the nations’s Qadi to compile the code of practice of *al-kharāj* from time to time. For instance, the *Risālah fī al-kharāj* was written and compiled by Qadi Abū Yūsuf b. Ya‘qūb on the orders of Caliph Harūn al-Rashīd (786-809AD)<sup>38</sup>.

According to Ben Shemesh<sup>39</sup>, there were twenty one<sup>40</sup> known separate writings on *kharāj*; written throughout the rule of the early Caliphs. All were

<sup>35</sup> Abū ‘Ubayd al-Qāsim b. Salām (1986), *op.cit*, p. 21.

<sup>36</sup> Ugi Suharto (2005), *op.cit*, pp. 138-139.

<sup>37</sup> Mahmood Zuhdi b. Abdul Majid (1992), *Sejarah Pembinaan Hukum Islam*, Kuala Lumpur: Dewan Bahasa dan Pustaka. p. 16.

<sup>38</sup> Yaḥyā b. Adam (1958), *Taxation in Islam: Yaḥyā Ben Adam’s Kitāb al-Kharāj*, A. Ben Shemesh, (trans.), Leiden: E.J. Brill, vol. 1, p. 4.

<sup>39</sup> *Ibid*, pp. 3-6.

<sup>40</sup> The cronology of the 21 writers and books are as follows: 1) Mu‘āwiyah b. ‘Ubayd Allāh b. Yasār al-Ash‘arī (w. 170/786), *al-Kharāj*. 2) Hafasawiya (n.d), *al-Kharāj*. 3) Abū Yūsuf , *Risālah fī al-Kharāj*. 4) Yaḥyā b. Ādam (d. 203H/818 M), *Kitāb al-Kharāj*. 5) Abu ‘Ali, Ḥasan b. Ziyād al-Lu‘lū’ (d. 204 H/ 819), *Kitāb al-Kharāj*. 6) Abū ‘Uthmān, ‘Amr b. Bahr b. Mahbūb al-Jāḥiẓ (d. 255H/869M), *Kitāb Risālat Abī al-Nijm bi al-Kharāj*. 7) Qadi Ahmad b’Umar al-Syaybāni al-Khassāf (d. 261H/875M), *Kitāb al-Kharāj lil Muhtadi*. 8) Abū ‘Abbās, Aḥmad b. Muḥammad b. Sulaymān b. Bishār al-Kātib (d. 270H / 884M), *Kitāb al-Kharāj Kabir*. 9) Abū ‘Abbās, Aḥmad b. Muḥd b. ‘Abd al-Karīm (d.270H/884M), *Kitāb al-Kharāj*. 10)

on the same topic, i.e. “*Kitāb al-Kharāj*” or “*Kitāb Risālah fī al-Kharāj*”. However, only three of them exist either in manuscript or original document form till today<sup>41</sup>. The three books are “*Kitāb al-Kharāj*” by Abū Yūsuf, “*Kitāb al-Kharāj*” by Yaḥyā b. Adam and “*Kitāb al-Kharāj*” by Qudāmah b. Ja’far. They are now the main sources of reference for Islamic taxation. These books have also been recompiled and even translated into various languages as they are referred to by academics all over the world.

Ben Shemesh<sup>42</sup> while doing translation on *Kitāb al-Kharāj* by Abū Yūsuf, he found that the methodology of writing are more on a report on the state of the religious precepts dealing with taxation problems, with his recommendations and legal opinions. Abū Yūsuf wrote the *Kitāb al-Kharāj* as an answer to Caliph Harūn al-Rashīd’s requests and questions on certain issues of taxation problems. Ahamed Kameel Mydin Meera and Syed Nazmul Ahsan<sup>43</sup> later explained that Abū Yūsuf’s work included issues on the tax on the farming system and the harsh treatment of the taxpayers which probably existed during his time. His work was more judicial in nature since he frequently supports his arguments with authority from the Holy Quran and the Holy Prophet’s Tradition. Ben Shemesh<sup>44</sup> also interprets that through the writing, Abū Yūsuf visualizes this documenting works as not an easy task. Careful manner and the firmness in writing also shows in his writing as indicated by his concern for accuracy, through constant usage of the phrase “*Wallāhu ‘Alam*” (والله علم) right after he elaborated a certain fact or thought.<sup>45</sup>

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Abū Sulaymān, Dāwūd b. Khalaf al-Iṣfahāni (d.270H/884M), *Kitāb al-Kharāj*. 11) Qudāma b. Ja’far b. Qudāma al-Kātib, *Kitāb al-Kharāj*. 12) Abū al-Qāsim, ‘Ubayd Allāh b. Aḥmad b. Muḥd al-Kaludhānī, *Kitāb al-Kharāj*, 1<sup>st</sup> ed. on 326H and 2<sup>nd</sup> ed. on 336H. 13) Abū al-Ḥasan, ‘Alī b. al-Ḥasan (n.d), *Kitāb al-Kharāj Latīf*. 14) Abū al-Ḥasan, ‘Alī b. Wāsīf al-Kātib Hashkamanja (n.d), *Kitāb al-Afṣāh Wa al-Tathqīf fil Kharāj Wa Rusāmihi*. 15) ‘Abd al-Raḥmān b. ‘Isā, Wazīr to al-Mundaqī (330/940-333/943), *Ahl al- Kharāj*. 16) Ishāq b. Yaḥyā b. Sariḥ al-Nasrāni al-Kātib (337), *Kitāb al-Kharāj*. 17) Nasr b. Mūsa al-Rāzi al-Ḥanafī. 18) ‘Abd Allāh b. ‘Armaram Abū al-Qāsim, *Kitāb al- Kharāj*. 19) Muḥd b. Aḥmad b. ‘Alī b. Khiyār al-Kātib, *Kitāb al- Kharāj*. 20) ‘Alī b. Aḥmad b. Bistām, *Ṣāḥib al- Kharāj*. 21) Abū Nadr, Muḥammad b. Mas’ūd al-Ayyāshi, *Kitāb al-Jizya wal Kharāj*. Refer: Yaḥyā b. Adam (1958), *op.cit*, p. 3.

<sup>41</sup> *Ibid*.

<sup>42</sup> Abū Yūsuf (1969), *Taxation in Islam: Abū Yūsuf Kitab al-Kharāj*, A. Ben Shemesh (trans.), Leiden : E.J. Brill, vol. III, p. 13.

<sup>43</sup> Ahamed Kameel Mydin Meera dan Syed Nazmul Ahsan (1992), *op.cit*, p. 205.

<sup>44</sup> Abū Yūsuf (1969), *op.cit*, p. 13.

<sup>45</sup> Meaning: “only Allah knows best”.

According to Cengiz Kallek<sup>46</sup>, Yaḥyā's *Kitāb al-Kharāj* is not a book written by Yaḥyā, it is merely a collection of traditions on the subject of land taxation, with some explanations added by Yaḥyā while its primary references are the Qur'an and the Prophetic Sunnah. Ahamed Kameel Mydin Meera and Syed Nazmul Ahsan<sup>47</sup> state that *Kitāb al-Kharāj* by Yaḥyā b. Adam is more of a compilation of hadiths on the relevant subject and was done during the reign of al-Ma'mun (813-833AD). The methodology in his writing revolve on the collection of traditions, anecdotes, legal precepts and aphorisms arranged according to the different issues. Among others, this book deals with problems and laws of land taxation holding, cultivation and the position of non-Muslims. The interesting part between *Kitāb al-Kharāj* by Abū Yūsuf and Yaḥyā shows that, Abū Yūsuf's strength was in his analysis and ability to derive legal rules whereas according to Yaḥyā, hadith authentic collections and completeness were the most important things. However only fourthy of Yaḥyā's traditions are to be found in the six authority collections of traditions, that is, those by al-Bukhārī, Muslim, Abū Dawūd, Nasā'ī, Tirmīdhī and Ibn Mājah<sup>48</sup>.

Ahamed Kameel Mydin Meera and Syed Nazmul Ahsan futher mention that Qudāmah's work was done in the first quarter of the fourth century Hijrah. This period was considered as the beginning of the decline of the Abbasid's Caliphs when Qudāmah served as a Qadi. There had been numerous allegations that the existing *Kharāj* was not in line with the religion precepts. Hence, Qudāmah wrote his book to prove that the existing laws of taxation were in fact based on religious precepts and to refute the allegations of *Kātibs* that they were not performing their tasks in accordance with the Shariah. Qudāmah seemed to have done a great deal of research especially into the earliest sources to write his book. His source, as quoted by him, was *Kitāb al-Amwāl* by Abū 'Ubayd al-Qāsim b. Sallām al-Azdī (d. 224H /838C.E), a work which probably came after Abū Yūsuf's and Yaḥyā's. However, Abū Yūsuf and Yaḥyā were also cited in his work<sup>49</sup>.

Interestingly, Ugi Suharto<sup>50</sup> in his analysis, state that the *Kitāb al-Amwāl* of Abū 'Ubayd, although containing a lot of a *ḥadīth*, is not categorized by early Muslim scholars as a book of *ḥadīth*, but a book of *fiqh*. *Kitāb al-Amwāl*

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<sup>46</sup> Cengiz Kallek (2001), "Yahya ibn Adam's Kitab al-Kharadj: Religious Guidelines for Public Finance", *Journal of the Economic and Social History of the Orient*, Vol. 44, (2), (2001), pp. 103-122.

<sup>47</sup> Ahamed Kameel Mydin Meera dan Syed Nazmul Ahsan (1992), *op.cit*, p. 205.

<sup>48</sup> *Ibid*.

<sup>49</sup> *Ibid*, p. 206.

<sup>50</sup> Ugi Suharto (2005), *op.cit*, pp. 8-9.

is not merely a collection of traditions similar to the work of Yaḥyā b. Adam as alleged by Ben Shemesh, since in addition to the traditions he has collected almost 2000, as on top of that, Abū ‘Ubayd also presents his own views on *ḥadīth*, *tafsīr*, *fiqh*, the Arabic language etc. He sometimes criticizes the *ḥadīth* on its *isnād* and *matn*, explains difficult Arabic words (*gharīb al-ḥadīth*), and gives his own independent views on certain issues of *fiqh*.

### **The Word *al-Kharāj* Is Used To Mean Ministry of Finance and Revenue From Tax**

The term *al-kharāj* was also used to name the ministry in charge of finance or taxation revenue during the Islamic rule. It was called *Dīwān al-Kharāj* (Ministry of Finance)<sup>51</sup>. Collection of all types of taxes from all over of the empire (except the one for *al-birr*) was deposited here. Branches of *al-kharāj* was also set up at every region. These bureau were assigned with evaluating, collecting and surrendering tax revenue to *Dīwān Bayt al-māl*. Due to its importance, *Dīwān al-Kharāj* was chaired and managed by the viceroy. Heads of bureaus in the regions and *Ṣāhib al-Kharāj* was also responsible for duties other than collection, like identifying other sources of revenue for the nation<sup>52</sup>. All forms of payments at the regions, and salary for government officers, soldiers, public works expenses, including all other government expenses are made by this ministry<sup>53</sup>.

In the modern world, the function of the *dīwān* is carried out by *Wizārah al-Māliyyah* or the Finance Ministry. All the bureaus in the other ministries are responsible for the collection of taxes. Normally the main *dīwān* will have a record of all the regional *dīwāns* and each region would have a representative of a particular *dīwān* in Baghdad. These representatives serve to link the regional *dīwāns* with that at the centre. However, when Caliph al-Mu’tadid restructured his administration, he combined all these *dīwāns* to form *Dīwān al-Dār al-Kabīr*<sup>54</sup>.

An important bureau in this department functions to audit. Its head is called *mushrif* or *nāzīr*. Together with the assistance from his subordinates,

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<sup>51</sup> Abdul Malik A. al-Sayed (1995), *Etika Sosial Dalam Islam*, Syed Putra Syed Ahmad (trans.), Kuala Lumpur: Dewan Bahasa dan Pustaka, p. 192.

<sup>52</sup> *Ibid*, pp. 192-193.

<sup>53</sup> *Ibid*, p. 193.

<sup>54</sup> *Ibid*. Refer also *Encyclopedia of Islam* (1930), International Union of Academics Leiden: E.J. Brill, Vol. 2, p. 87.

he audits the coffers and act as an agent for accounting for *Dīwān al-Zimām*<sup>55</sup>. Bureaus under the *Dīwān al-Kharāj* at the regions function as regional offices that maintained records on taxation rates and the cadastral method used at the various regions<sup>56</sup>.

At the regional level, *Dīwān al-Kharāj* receives all revenues from *al-kharāj*, *jizyah* and tithes. The main bureau within *Dīwān al-Kharāj*, *Dīwān al-Ushr* receives one tenth of all revenue called '*ushr*'<sup>57</sup>. However, in the absence of *Dīwān al-Birr wa al-Ṣadaqah*, tithes would be collected by *Dīwān al-Ushr*. In that case, collection from tithes, has to be divided and distributed according to the breakdown specified. The governors, '*āmil*, *walī* or *amīr* or each region are required to remit excess revenue in the form of money or items to the central *al-kharāj*. Meanwhile, the centre in Baghdad is responsible to check and make up for the shortage in the collection at the regions. When the amount collected did not match the amount required for administrative expenses. The main duty of this *dīwān* is not as a bursar, but more for the purpose of collecting all forms of taxes and other revenue. After deducting the amount needed to cover expenses, the remainder will be given to *Dīwān Bayt al-māl*, the nation's treasury<sup>58</sup>.

### ***Al-Kharāj* Is Used In More Than One Sense**

In the hadith the word *al-kharāj* is repeatedly used to mean returns, reward and gift. Even the term *al-jizyah* and *al-kharāj* are used interchangeably in hadiths and throughout the history of Islam. *Al-kharāj* is also used for another meaning. For instance the prophet Muhammad in his hadith conveyed by Abū Dāwūd, one proposed that the *al-kharāj* rates for Abū Tiba be reduced<sup>59</sup> and the term *al-kharāj* here is used as levy imposed on employers on their slaves. In addition, al-Baladhūri reported that the prophet Muhammad instructed two Najrani priests to take a vow (*mubāhala*) but instead they opted to pay *kharāj*. Here *kharāj* is used to mean poll tax<sup>60</sup>.

<sup>55</sup> Abdul Malik A. al-Sayed (1995) *op.cit*, p. 193.

<sup>56</sup> *Ibid*.

<sup>57</sup> *Ibid*, p. 194. *Encyclopedia of Islam* (1930), *op.cit*, p. 325.

<sup>58</sup> Abdul Malik A. al-Sayed (1995), *op.cit*, p. 194.

<sup>59</sup> S.M. Hasanuz Zaman (1991), *Economic Functions of an Islamic State*, Karachi: The Islamic Foundation, p. 197.

<sup>60</sup> *Ibid*.

### *Al-Kharāj as Ijtihad By Caliphs ‘Umar*

In the matter of redistribution of the nation’s revenue, Caliph ‘Umar did not concede to idea that the agricultural land conquered in Iraq and Persia falling into the “*khums*” category where the redistribution method has been clarified in sūrah al-Anfal verse 41<sup>61</sup>. As far as Caliph ‘Umar could determine, *ghanīmah* does not include fixed property like those agricultural lands but it refers strictly to non-fixed items only<sup>62</sup>. According to him further, if the land was divided up according to the principle of *ghanīmah*, the nation would lose a potential source of income from it in the form of taxes paid by the land owners. In addition, Caliph ‘Umar felt the land should be frozen for the benefit of future generations as they are useful for defence<sup>63</sup>.

When Sawād (fertile land full of vegetation) was conquered, Caliph ‘Umar held discussions with the people. Most of them were of the opinion that the Sawād land should be distributed. Bilāl bin Rabāḥ was among those who strongly felt that way<sup>64</sup>. The Muslim soldiers did not agree with Caliph ‘Umar who wanted to freeze the land in Iraq and Persia as the nation’s asset as they felt it was against Allah’s command in Sūrah al-Anfāl verse 41. They held discussions on this for three nights<sup>65</sup>.

On the third night, Caliph ‘Umar revealed to them the Quran verse that supports his view that spoils from war need not be treated as *ghanīmah*; that there is a method called *al-fay’* of managing spoils<sup>66</sup>, as in Sūrah al-Ḥasyr verse 6-7:

وَمَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ مِنْ خَيْلٍ وَلَا  
رِكَابٍ وَلَكِنَّ اللَّهَ يُسَلِّطُ رُسُلَهُ عَلَىٰ مَنْ يَشَاءُ ۗ وَاللَّهُ عَلَىٰ كُلِّ  
شَيْءٍ قَدِيرٌ ﴿٦﴾ مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ

<sup>61</sup> Mahmood Zuhdi Abdul Majid (1992), *op.cit*, p. 81.

<sup>62</sup> Abū Yūsuf (1969), *op.cit*, pp. 78-79.

<sup>63</sup> *Ibid*, p. 82. Abū Yūsuf (1981), *op.cit*, p.67. Refer also Muhammad Firdaus Nurul Huda (2002), *Kesan Perubahan Sosial Terhadap Hukum Islam*, Selangor: Thinker’s Library Sdn. Bhd., p. 164.

<sup>64</sup> *Ibid*, p.165.

<sup>65</sup> Mahmood Zuhdi Abdul Majid (1992), *op.cit*, p. 82. Refer also: Abū Yūsuf (1981), *op.cit*, p. 68.

<sup>66</sup> *Ibid*.

وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا  
يَكُونَ دُولَةٌ بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ ۗ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا  
نَهَاكُمْ عَنْهُ فَانْتَهُوا ۗ وَاتَّقُوا اللَّهَ ۗ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٦٧﴾

*“What Allah has bestowed on His Messenger (and taken away) from them - for this ye made no expedition with either cavalry or camelry: but Allah gives power to His apostles over any He pleases: and Allah has power over all things. What Allah has bestowed on His Messenger (and taken away) from the people of the townships,- belongs to Allah,- to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah. for Allah is strict in punishment”.*

(Sūrah al-Ḥasyr, 59:6-7)

When Caliph ‘Umar was further pestered by those wanting a share in the loot, he showed them a verse from the Quran:

لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ  
فَضْلًا مِّنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ ۗ أُولَٰئِكَ هُمُ  
الصَّادِقُونَ ﴿٦٨﴾

*“(Some part is due) to the indigent Muhajirs, those who were expelled from their homes and their property, while seeking grace from Allah and (His) good pleasure, and aiding Allah and His Messenger....”*

(Sūrah al-Ḥasyr, 59:8)

Then, he gave them a verse from the Quran, from which he concluded:

وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ يَقُولُونَ رَبَّنَا اغْفِرْ لَنَا وَلِإِخْوَانِنَا  
الَّذِينَ سَبَقُونَا بِالْإِيمَانِ وَلَا تَجْعَلْ فِي قُلُوبِنَا غِلًّا لِلَّذِينَ آمَنُوا  
رَبَّنَا إِنَّكَ رءُوفٌ رَّحِيمٌ ﴿٦٩﴾

“And those who came after them say: “Our Lord! Forgive us, and our brethren who came before us into the faith, and leave not, in our hearts, rancour (or sense of injury) against those who have believed. Our Lord! Thou art indeed full of kindness, Most Merciful”.

(Sūrah al-Ḥasyr, 59:10)

He pleaded with them asking how he could possibly divide the land amongst them without a thought to those that come after them who may be left with nothing. So in the end the dispute was peacefully settled by letting the land remain in the hands of the original owners but on condition that they pay *jizyah* (individual tax) and *kharāj* on their land<sup>67</sup>.

As soon as they heard the verse, the Muslim soldiers immediately agreed with Caliph ‘Umar r.a. ever since that incident, *al-kharāj* became a major source of income for the country during the rule of Caliph ‘Umar bin al-Khaṭṭāb (13-23H/634-644AD). He had not only implemented *al-kharāj* fairly but he even made some adjustments to the original practice which dated back to the pre Islamic times, which he found no longer suitable for his time. All the time he made sure he kept as closely to the original practice as long as it was found to be fair to the people. *Al-Kharāj* imposed by Caliph ‘Umar was able to relieve the strain on the farmers compared to the taxes they had to pay during the Roman and Persian rule. In addition to that, *al-kharāj* was able to benefit and contribute to the nation’s treasury with its contribution to *Bayt al-mal* (Public Treasury)<sup>68</sup>. In terms of implementation, *al-kharāj* was imposed on land that had been taken by Muslim soldiers but which was not divided amongst them. Instead the soldiers were given other property in place of the land they had taken over. The land the soldiers won over remained with the owners albeit they had *kharāj* imposed on them. For Muslims, *kharāj* was not imposed on them but instead they paid tithes (*zakāt*). Similarly, land that had been divided and given out to the soldiers were not imposed with *kharāj* but the soldiers merely paid 1/10 of the value in taxes<sup>69</sup>.

In conclusion, the *ijtihād* and wisdom of Caliph ‘Umar in obtaining approval from the *Ṣaḥābah* in the issue of land acquired through war was clearly not in contravene any proof from al-Quran or al-Sunnah from Rasulullah. In fact, *ijtihād* and wisdom is encouraged in Islam because it allows the *Ulil Amri* a wider scope to determine the law whilst taking the time and the general good

<sup>67</sup> Abū Yūsuf (1969), *op.cit.*, p. 94.

<sup>68</sup> Mahayudin Yahya (2001), *op.cit.*, p. 278.

<sup>69</sup> Ismail Hamid (1985), *Pengantar Sejarah Umat Islam*, Kuala Lumpur: Heinemann (M’sia) Sdn. Bhd., p. 47.



of the population into consideration. In other words it was incumbent upon the *Ūlil Amri* to exercise wisdom and discretion<sup>70</sup>.

### **The Word *al-Kharāj* is Used to Mean Taxes in General**

The word *al-Kharāj* has been popularly used by the '*ulamā*'. For instance, the three famous writers Abū Yūsuf Ya'qūb, Yaḥyā bin Adam and Qudāmah bin Ja'far used *al-kharāj* as a title for their writings that discussed revenue or a country's taxes. According to Ben Shemesh<sup>71</sup>, *kharāj* as used in the titles originated from the Aramaic root word '*halak*' and it was used in the Persian empire to refer to 'taxes' in general. Although at times, it was used to refer to taxes on landed property, in contrast with the per head/individual tax (*jizyah*). We have found that Muslim writers used the term according to its original meaning in general to refer to all forms of taxes. Yaḥyā b. Adam often used it to mean 'land tax'. He also used it to mean taxes in general. Abū Yūsuf, Abū 'Ubayd, Qudāmah, Khaṭīb and Yaḥyā also used '*tasq*', '*usyr*', '*jizya*' and '*kharāj*' to mean the same thing<sup>72</sup>. According to Muḥammad Ḍiyā' al-Dīn al-Raīs<sup>73</sup> the word *al-kharāj* has two meanings; a general and a specific meaning. *Al-Kharāj* in general terms refers to public property or government revenue.

### ***Al-Kharāj* As Land Tax**

*Al-Kharāj* is a tax imposed on the owner of a piece of land that had been conquered by Muslim soldiers in a war or peacefully. When Iraq was taken over by Muslim soldiers during Caliph 'Umar's rule, there were two categories of conquered land: land with owners and land without owners. The former refers to land that was owned by someone and the owner or owners have surrendered to the soldiers; while the latter refers to land where the owners have absconded or was killed during the war. Both types of land are considered *kharāj* land and are taxed, unless if the owner becomes a Muslim, then zakat is imposed. This is in the case of land with an owner. As for land without owners, they remain *kharāj* land eventhough the person who manages the land is a Muslim. It was customary then for land without owners to be managed by the local residents since they were skilled farmers compared to the Arabs. However,

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<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid*, pp. 3-6.

<sup>72</sup> *Ibid*, p. 6.

<sup>73</sup> Muḥammad Ḍiyā' al-Din al-Rais (1980), *al-Kharāj wa al-Nuzum al-Māliyyah li Daulah al-Islamiyyah*, Kaherah: Dar al-Thurat, p. 8.

where general administration like work division, setting of rate of tax and the distribution was concerned, these still reside in the hands of the Arab army generals<sup>74</sup>. As for unowned or abandoned lands, Caliph ‘Umar instructed that these land cannot be sold off or divided, but instead should collectively belong to all Muslims<sup>75</sup>.

*Al-Kharāj* became the main contributor to the nation’s revenue at that time because the Muslim nation then were largely an agrarian society. Initially the tax was imposed on land owned by non-Muslims, but when the majority of the society submit to the new ruler and the people embraced Islam, the government then began to impose it on all the people. In other words, all land owners were subject to *al-kharāj*<sup>76</sup>. According to Muhammad Diyā’ al-Dīn al-Rāis<sup>77</sup> this went on until a point when the meaning of *al-kharāj* evolved to mean land tax exclusively.

### ***Al-Kharāj As Rent***

Abū ‘Ubayd in his *Kitāb al-Amwāl* wrote about Caliph ‘Umar’s implementation of *al-kharāj* here he had set a fixed rate. In this sense *kharāj* was like rental. For that purpose, Caliph ‘Umar rented land for one dirham and one *qafiz* per *jarib* annually. That does not include the farms and date orchards. This shows that he did not impose taxes on trees<sup>78</sup>. *Al-Kharāj* in reality means rental like that implemented in Syria and Egypt because the land was government property like land where their owners die without leaving anyone to inherit the land<sup>79</sup>. Ziaul Haque<sup>80</sup> commented in referring to Abū ‘Ubayd’s definition, in Arabic, *kharāj* means lease, rental, revenue or product (*ghallah*): the Arabs refer to products of land, house or slaves as *kharāj* in the sense of income. In a hadith this was referred to as income that is accompanied by responsibility (*ann al-kharāja bi al-damān*).

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<sup>74</sup> Mahayudin Yahya (2001), *op.cit*, p. 278.

<sup>75</sup> *Ibid*, p. 279.

<sup>76</sup> Abdul Malik A. al-Sayed, (1995), *op.cit*, p. 190.

<sup>77</sup> Muhammad Diyā’ al-Dīn al-Rais (1980), *op.cit*, p. 8.

<sup>78</sup> Abū Ubayd al-Qāsim Salam (2006), *op.cit*, p. 63.

<sup>79</sup> S.A. Siddiqi (1975), *Public Finance in Islam*, Lahore: SH Muhammad Ashraf Kashmiri Bazar, p. 67.

<sup>80</sup> Ziaul Haque (1984), *Landlord and Peasant in Early Islam*, Islamabad: Islamic Research Institute Islamabad (Pakistan), p. 286.

### ***Al-Kharāj*: Taxes Imposed On *Dhimmi* Remained As Land Tax**

As for *al-kharāj* for the *dhimmi*s, if one of them embraces Islam, then he is regarded a free Muslim and therefore exempt from (*jizya* per head)<sup>81</sup>. However, where land is concerned, one has a choice. They either pay *al-kharāj* (like before) or surrender the land to the government for the use of all Muslims and the land in the control of the Persia's authority as before<sup>82</sup>. *Kharāj* was imposed on every piece of land that remained theirs (as *ahl-dhimmah*)<sup>83</sup>.

“*Dhimmah*” is word which means agreement, assurance and protection. Further to what this means is, they have been assured by Allah and the prophet, as well as indirectly, other Muslims that they have been given the right to live under the rule and protection of the Muslim community. They lived in peace and harmony. Based on the agreement, they are free to live under the protection and assurance of the Muslims<sup>84</sup>.

### ***Al-Kharāj*: Tax Exempt For Residential Land**

According to Abū ‘Ubayd, a fiqh principle that could be deduced from *kharāj* as practiced by Caliph ‘Umar is that he only imposed *kharāj* on land that could grow grains and fruit regardless of whether they were grown or not. In other words, *kharāj* was imposed on the productive potential of the land. Further according to him, Caliph ‘Umar exempted land on which there were dwellings and residences from *kharāj*<sup>85</sup>.

## **DYNAMISM IN THE POLICY AND THE RATIONALE FOR SETTING THE RATE OF *AL-KHARĀJ***

In outlining the policy and rationale for the setting of the rate for *al-kharāj*, based on the descriptive data collected from secondary sources, three main features were identified in the formulation of policy and the rationale behind the setting of the tax rate. Firstly, the reduction in the tax rate policy and secondly, the affordable taxes policy and thirdly adjustments in taxes to avoid it from becoming a burden.

<sup>81</sup> Qudāmah b. Ja‘far (1965), *op.cit.*, p. 38.

<sup>82</sup> Hadits / tradition no. 25, Yaḥyā b. Ādam (1958), *op.cit.*, p. 27.

<sup>83</sup> Yusof al-Qardawi (1985), *Kedudukan Non-Muslim Dalam Negara Islam*, Mat Saat Abd. Rahman (trans.), Kuala Lumpur: Bahagian Hal Ehwal Islam, Jabatan Perdana Menteri, p.31.

<sup>84</sup> *Ibid*, p. xiv.

<sup>85</sup> Abū Ubayd al-Qāsim b. Salam (2006), *op.cit.*, p. 65.

### The Reduction In The Tax Rate Policy

There was a flexibility in the implementation of *al-kharāj*. Discretion could be exercised by the rulers. One example was a policy for reduction in the amount of tax to be paid by the people for the purpose of easing their burden. This was exercised by Caliph ‘Umar during his rule between 634-644AD as soon as he gained control of Iraq (Sawād and Jazīrah). He reduced the rate for *kharāj* from 27 dirham (in practice before the coming of Islam) to a mere 1 dirham for every *jarib* land per *qafiz* of wheat or barley or its equivalent, regardless whether the land was used or unused but watered annually<sup>86</sup>.

Caliph ‘Umar appointed ‘Uthman b. Ḥunayf and Ḥudhaifah b. al-Yaman to measure land and issue tax on land watered by the Euphrates dan Tigris<sup>87</sup>. according to Abū ‘Ubayd in his *Kitab al-Amwāl*, *Ḥunayf* measured Sawād and set 10 dirham for every *jarib* of grapes, 5 dirham for every *jarib* of dates, 6 dirham for every *jarib* of sugar cane, 4 dirham for every *jarib* of wheat and 2 dirham for every *jarib* of barley<sup>88</sup>. This is supported by *athār* by ‘Affan, Maslama b. ‘Alqamah, Dāwud b. Ani Hind, al-Sha’bi who said: “Caliph ‘Umar entrusted the management of Sawād to Ibn Ḥunayf who was responsible for administering *kharāj* for the region. He had set 2 dirham for every *jarib* of barley, and 4 dirham for every *jarib* of wheat, and 6 dirham for every of *jarib* sugar cane, and 8 dirham for every *jarib* of dates, and 10 dirham for every *jarib* of grapes and 12 dirham for every *jarib* olives”<sup>89</sup>. There were however, discrepancies in the reports for the rate for *kharāj* imposed on Sawād, Iraq. These discrepancies were reported by Irfan Mahmud Ra’ana (1970) in his study entitled “*Economic System Under ‘Umar The Great*” and they are as follows:

Table 1: Rates for Al-Kharāj in Sawad, Iraq (for every 1 jarib)

No	Type of Crop	Abū Yūsuf	Yaqut in Mu’jam al-Buldān	Sibli Nu’mani	‘Uthmān bin Ḥunayf
1	Grapes	10 dirham	6 dirham	19 dirham	10 dirham
2	Dates	8 dirham	8 dirham	8 dirham	5-8 dirham

<sup>86</sup> Abū Yūsuf (1969), *op.cit*, p. 99.

<sup>87</sup> Irfan Mahmud Ra’ana (1970), *Economic System Under Umar The Great*, Lahore: SP. Muhammad Ashraf, p. 83.

<sup>88</sup> Abū ‘Ubayd al-Qāsim Salam (2006), *op.cit*, p. 62.

<sup>89</sup> *Ibid*.

3	Sugar cane	6 dirham		6 dirham	6 dirham
4	Wheat	4 dirham	4 dirham	4 dirham	4 dirham
5	Barley	2 dirham	2 dirham	1 dirham	2 dirham
6	Cotton	5 dirham		5 dirham	
7	Orchard			10 dirham	
8	Sesame			8 dirham	
9	Vegetables			3 dirham	
10	Olives				12 dirham
11	Uncultivated land			1 dirham: 2 <i>jarib</i>	

Source: Adapted from Ifran Mahmud Ra'ana (1970), *Economic System Under 'Umar The Great*, Lahore : SP. Muhammad Ashraf, p. 84, Abū 'Ubayd al-Qāsim (2006), *The Book of Finance*, Noor Muhammad Ghiffari (trans.), New Delhi: Adam Publishers, p.62.

### Affordable Tax Policy

One of the policies of *al-kharāj* states that taxes must be set at a level that is affordable and bearable to the land owner. Caliph 'Umar al-Khaṭṭāb set a fixed amount of money or a certain quantity of grain and he did not apply the tax system *al-muqāsamah*, not because he was not in a position to reduce taxes but because he was satisfied with the report from his representatives Ḥudhayfah and 'Uthmān who assured him that taxpayers found the rate affordable<sup>90</sup>. Caliph 'Umar himself cautioned them not to impose taxes that are burdensome to the people, as reported in this athār:

*"Ḥusayn b. 'Abd al-Raḥmān from 'Amr b. Maymūn al-Awḍi: I saw Caliph 'Umar b. al-Khaṭṭāb about three or four days before he was stabbed, asking Ḥudhayfah b. al-Yaman dan 'Uthmān bin Ḥunayf: "Have you imposed taxes on land at a rate the people find too high? 'Uthmān replied: I set taxes on their land that is at a level affordable to them and I can easily raise it." Ḥudhayfah said : I impose taxes on land that the people can afford and not only that, they still have plenty left after tax." Caliph 'Umar finally said: "Be mindful and ensure that you don't set taxes at a level that cannot be born by the land.""*<sup>91</sup>

<sup>90</sup> *Ibid*, p. 103.

<sup>91</sup> *Ibid*, p. 98.

## Change In Type Of Tax To Avoid Burdening The People Policy

The policies set by Caliph ‘Umar was continued by the following Caliphs until the times changed and again the dynamism of *al-kharāj* was seen again. The dynamism *al-kharāj* can be observed from the rationale behind the changing the form of tax from *al-waḏīfah* / *al-misāḥah* to *al-muqāsamah*. As far as land tax is concerned, the Abbasiyyah caliphs showed a keen attention to farmers and sympathy with the problem faced by them. Khalifah Abū Ja‘far al-Manṣūr (754-775AD) abolished taxes on wheat which was paid by money and introduced *al-muqāsamah* system. This meant that tax was paid in the form of the crop itself and a certain percentage was determined. The fruit and date orchard was placed under this system. When payment was made with currency, the whole ripened harvest was valued and then verification from the farmer is sought on his agreement to the quantum of payment. Apart from that, the farmer is free to manage his farm as he liked<sup>92</sup>.

Changes were made because the fixed rate tax (*al-waḏīfah* / *al-misāḥah*) were too heavy. The factors that contributed to the change to the *al-muqāsamah* tax was low price of crops. Abū ‘Ubayd Allāh, Mu‘āwiyah b. ‘Ubayd Allāh as secretary (*wazir*) to Khalifah al-Mahdī wrote to him detailing the strife and difficulties faced by *kharāj* payers under the *kharāj al-misāḥah* system<sup>93</sup>. In addition to that, there was not a standard method for measuring the size of a piece of land<sup>94</sup>. The dynamism of the *kharāj* policy in the switch to *al-muqāsamah* was meant to reduce the burden on land owners following the instability of price of crops in the light of fixed *al-kharāj* rates under the *al-waḏīfah* / *al-misāḥah* system. At the same time it was meant to increase the nation’s revenue. This incident demonstrated that the principle of ensuring taxes did not become a burden continued to be stressed by the caliphs after Caliph ‘Umar.

The above system was open to abuse and can be used to oppress. In order to avoid undesirable incidents, Caliph al-Mahdi (775-785AD) issued an official directive outlining only certain amount of produce that was equivalent to the rate of tax crops should be collected from the total harvested crops. In a case where the land was indeed fertile, and does not require labour, then the farmer

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<sup>92</sup> Kamis Ismail (1996), *Dīwān al-Kharāj (Kementerian Kewangan) Dalam Pemerintahan Khalifah Harun al-Rashid*, Selangor: Tinta Image, p. 9.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*, p. 12. Refer also: Ḥasan Aḥmad Maḥmūd & Aḥmad Ibrāhīm al-Sharīf (1996), *al-‘Ālam al-Islāmī fī al-‘Aṣr al-‘Abbāsī*, cet.1, Kaherah : Dār al-Fikr al-‘Arabī, p.189.

was required to set aside half the produce. In a situation where the farmer had to irrigate the land on his own effort, which was difficult and costly, he was only required to part with 1/3 of the total harvest. If however, the farmer owns extremely problematic land, he only needs to give out 1/5 in taxes<sup>95</sup>. According to S.B. Samadi, another name for this system is ‘a reverse or productive rate system’, which clearly was different from the previous system which was based on measuring the land area (*muḥāsabah*). Abū Ja‘far al-Manṣūr (754-775AD) was the first to implement *al-muqāsamah* system; switching it from the system of *al-Misāḥah*. The new system was fully implemented during the rule of Caliph al-Mahdi (775-785AD)<sup>96</sup> as seen on the table 2 as follows:

Table 2: Rates for Kharāj al-Muqāsamah During the Era of Caliph al-Mahdi (775-785AD)

No	Condition of Land	Rate of tax
1	Fertile land that does not require labour	1/2
2	Land that requires manual irrigation which is laborious and costly	1/3
3	Problematic soil	1/5

Source: Kamis Ismail (1996), *Dīwān al-Kharāj (Kementerian Kewangan) Dalam Pemerintahan Khalīfah Hārūn al-Rashīd*, Selangor: Tinta Image, p.10.

### Collection Policy

Concerning the collection policy in the *al-kharāj* taxation system, the main policy implemented during the administration of Caliph ‘Umar 634-644AD (in early stages of *al-kharāj*) he did not modify or change *ṣāḥib al-kharāj*<sup>97</sup> drastically. Rather, he allowed *ṣāḥib al-kharāj* to be maintained among the local staff who spoke Persian, Greek and Coptic. The pre Islamic machinery was also maintained because they were experienced in managing finance and monitoring accounts<sup>98</sup>. Fairness in the collection of *kharāj* was greatly stressed.

<sup>95</sup> Kamis Ismail (1996), *op.cit*, p. 10. Refer also: Samadi, S.B (1971), “Some Aspects of the Theory of the State and the Administration Under the Abbasids”, *Islamic Culture*, Vol. XXIX, New York: Johnson Reprint Corporation, p. 136.

<sup>96</sup> Ḥasan Aḥmad Maḥmūd & Aḥmad Ibrāhīm al-Sharīf (1996), *op.cit*, p.189.

<sup>97</sup> Abdul Malik A. al-Sayed (1995), *op.cit*, pp. 192-193.

<sup>98</sup> S.M. Hasanuz Zaman (1991), *Economic Functions of an Islamic State*, Karachi: The Islamic Foundation, p. 204.

Caliph ‘Umar was reported to have instructed an oath of loyalty from his staff that they will follow the administrative agreement to ensure that collection was done fairly. Whenever an officer refuses to take an oath, and he found that there was a complaint against the officer, he would immediately sack him<sup>99</sup>. Because of the fact that *al-kharāj* was administered by an officer that went around collecting taxes directly from the people, it was imperative that ethical officers were employed. They were known as *ṣāhib al-kharāj*<sup>100</sup>.

The characteristics or conditions imposed on tax collectors that was stressed at that time was firstly, they are not allowed to get physical on taxpayers. Secondly *al-‘afw*<sup>101</sup>, in collection dirhams, do not flog anyone nor sell his provisions, his winter or summer garments, nor the beasts he works with, and never let a man stand (in the sun) in order to collect dirhams<sup>102</sup>. Thirdly, ensure that tax collectors were kind and fair in their judgement and not to impose taxes on a community beyond what is affordable to them<sup>103</sup>. Fourthly, they should be flexible whilst bearing in mind the social term for taxes is *ṣadaqah*. For instance, tax should not be collected from dates grown on *ba’l* land because very little dates is produced on this infertile land compared to dates grown on fertile agricultural land that was irrigated<sup>104</sup>.

Fifth, *al-kharāj* tax collectors should possess the *ṭayyib* (good and with integrity) quality and *iḥsān* as directed by Caliph ‘Umar ‘Abd ‘Azīz (717-720AD) when he wrote to his governor: “the spirit of Islam in economy are ‘*adl* (fairness) and *iḥsān* (integrity), and study the land, make your evaluation and do not burden fertile land or otherwise. Taxes on infertile land should be just as much as the farmer can bear”. He had forbidden farming equipment from being sold for the purpose of settling taxes<sup>105</sup>.

<sup>99</sup> *Ibid*, pp. 203-204.

<sup>100</sup> Abdul Malik A. al-Sayed (1995), *op.cit*, pp. 192-193.

<sup>101</sup> Explained by meaning of الفضل : ḥadīth no. 233 in : Yaḥyā b. Ādam (D. 203H), *Kitāb al-Kharāj*, (Syarah) Aḥmad Muḥammad Syakir (D.1377H), Mesir: Maṭba‘ah al-Salafiyyah wa Maktabatuhā, p. 70. Refer also: S.M. Hasanuz Zaman (1991), *op.cit*, p. 203. Being explained with the meaning of ‘favour’ in: Yaḥyā bin Adam (1958), *op.cit*, p. 60.

<sup>102</sup> Yaḥyā bin Ādam (D. 203H), *op.cit*, p. 70. Refer also Yaḥyā bin Ādam (1958) *op.cit*, p.60. Refer also : M.J. Kister (1960), “The Social and Political Implications of Three Traditions in the Kitab al-Kharadj, *Journal of the economic and Social History of The Orient*, vol. III, Leiden, pp. 326-335. Refer also S.M. Hasanuz Zaman (1991) *op.cit*, p. 204.

<sup>103</sup> *Ibid*, p. 202.

<sup>104</sup> Yaḥyā bin Ādam (1958), *op.cit*, p. 89.

<sup>105</sup> S.M. Hasanuz Zaman (1981), *op.cit*, p. 203.



Sixth, an unfair tax collector would be replaced. For instance during the administration of Caliph Mu'āwiyah (661-680AD), a governor reported on the injustice practice of a Muslim tax collector. He was promptly replaced by a local officer.

Seventh, a tax collector should be flexible and mild mannered and not too strict with taxpayers. He cannot coerce them into selling their grains or livestock for the sake of paying taxes. In the case of Ḥajjāj who was shocked at the reduction in the amount of taxes collected in Iraq, asked Caliph 'Abd Malik (685-705AD) if he could raise taxes. Caliph 'Abd al-Malik turned down the request and advised him to be thankful with what was collected and not to be greedy. He also advised Ḥajjāj "to leave something behind for the farmers so they too can enjoy a comfortable life<sup>106</sup>."

Eighth, tax collection must be done firmly but kindly because it has to be done in accordance with the law free of any adjustments by the administrator. The administrator must set their own opinions aside because they are expected to be fair to all parties. This is so that those who are present and those far away, the aristocrats or ordinary citizens get to enjoy the same rights and treatment<sup>107</sup>. The appointed tax collectors should be assisted by a group of people from the local armed forces so who are loyal to the Caliph. Their monthly salary is paid by the authority to ensure that they don't illegally help themselves to the tax money. Not only that, if a taxpayer offers to give them some money, they should politely but firmly refuse the money<sup>108</sup>.

Apart from outlining desirable characteristics of tax collectors, some prerequisites were also stressed. In fact they are the same prerequisites as for becoming a *faqīh*<sup>109</sup>. The qualifying criteria for becoming a tax collector are a person of good character, *taqwā* and honest<sup>110</sup>. An individual of good character is describes as someone not involved in bribery, and who does not collect taxes for selfish reasons. Appointed officers must be people who are well versed with the religion, wise, logical and patient, not known for a flaw in their character, one who places priority on rewards in the hereafter<sup>111</sup>. The individual's religious practices and social life would have to be checked out

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<sup>106</sup> *Ibid*, p.203.

<sup>107</sup> Abdul Malik A. Al-Sayed (1982), *op.cit*, p. 197.

<sup>108</sup> Qudamah B. Jaafar (1965), *Taxation in Islam*, A. Ben Shemesh (trans.), Leiden : E.J. Brill, p. 76.

<sup>109</sup> Abdul Malik A. Al-Sayed (1982), *op.cit*, p. 196.

<sup>110</sup> Qudamah B. Jaafar (1965), *op.cit*, p. 75.

<sup>111</sup> Abdul Malik A. Al-Sayed (1982), *op.cit*, p. 196.

first just like they do for someone aspiring for the role of a judge<sup>112</sup>. If the individual is found to be unfair and untrustworthy, the job of collecting taxes cannot be given to him<sup>113</sup>.

The collection policy also took discretion and flexibility of collection into account. Discretion is based on some Islamic taxation principles practised by past Muslim leaders. Among them were the amount of tax imposed was up to that which is affordable to the taxpayer<sup>114</sup>, tax on infertile land was abolished<sup>115</sup>, and taxpayers were not forced to sell of their stock for the sole purpose of paying taxes<sup>116</sup>, and ensuring that farmers enjoy a comfortable life with the appropriate taxes<sup>117</sup>. In addition to that, climatic factors were also taken into consideration like when the water level of River Nile (in Egypt) was considered before deciding on the rate of tax for every district<sup>118</sup>, evaluating the fertility of land from those considered fertile right to those which were totally infertile<sup>119</sup>, while considering the type of crop able to grow on each type of land so that land owners are not victimised<sup>120</sup>. Farmers were exempted from tax when there was a period of long draught. Outbreak of disease or other factors beyond the control of humans. In these cases *kharāj* was exempted or postponed until conditions have improved<sup>121</sup>.

## CONCLUSION

In conclusion, the dynamism of the tax system *al-kharāj* began with the *ijtihad* by Caliph ‘Umar al-Khaṭṭāb and hence it evolved its own philosophy of terminology. This was a system that was retained from the past practise through a dynamic revolution based on Islamic principles that was maintained by past leaders. Studies have also shown that the principle of affordable tax and ethical practise of tax collectors were stressed based on the changes in policies. Based on this, it is recommended that whatever policy applied in the

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<sup>112</sup> *Ibid*, p. 197.

<sup>113</sup> *Ibid*, p. 196.

<sup>114</sup> S.M. Hasanuz Zaman (1981), *op.cit*, p. 203.

<sup>115</sup> Yaḥyā bin Ādam (1958), *op.cit*, p. 89.

<sup>116</sup> S.M. Hasanuz Zaman (1981), *op.cit*, p. 203

<sup>117</sup> *Ibid*.

<sup>118</sup> Richard S. Cooper (1976), “The Assessment and Collection of *Kharāj* Tax in Medieval Egypt”, *Journal of The American Oriental Society*, vol. 96, p. 366.

<sup>119</sup> *Ibid*

<sup>120</sup> Al-Mawardi (2000), *op.cit*, p. 264.

<sup>121</sup> Hailani Muji Tahir (1988), *op.cit*, p. 29.

current system of taxation in general and in Malaysia specifically should be more dynamic in nature by taking into account the affordability factor and a rate that is not a burden to taxpayers and Malaysians in general like that done by Muslim leaders in the past.

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