

# REGULATING CHARITABLE ORGANIZATIONS IN MALAYSIA; ISSUES AND PROPOSAL

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# Aims and Objectives

- *Aim of this paper*
  - i) *is to outline the various types of charitable trusts and*
  - ii) *examine to what extent, these organisation or forms of charitable trust are regulated under the Malaysian law.*
  - iii) *include Muslim charitable trust as well as the trust governed by the civil law.*
- Objectives of this paper
  - i) **to propose for uniformity of laws, procedures relating to charitable organizations and**
  - ii) **Recommend for the establishment of a single and competent body to deal with matters exclusively within the scope of charity aligned with local legislation, society and customs prevailing in Malaysia.**

# What is charity



No exact definition

Direct giving,

Public

Donation Donors have no say after that

# Features & SCOPE of Charity

- Charities in Malaysia are governed either by the civil law or Shariah, depending on the types of charities initiated by the parties
- **SCOPE OF CHARITY** : need to examine from both, Civil Law and Shariah perspectives
  - a) Civil : from latin word caritas' which means 'love

# Civil Law

- originated from English Law the concept and purposes of charity originated from the Preamble to Charitable Uses Act 1601.
- there are four classifications of charitable purposes. Lord MacNaughten in Pemsel's case.
  - i) the relief of poverty,
  - ii) the advancement of education
  - iii) the advancement of religion and lastly,
  - iv) other purposes beneficial to the community.
- Statutory Provisions on charity in Malaysia scattered from statutes.
- No single regulator

# Islam

- The Quran clearly prescribes reward and punishment for doing good deeds and abhors any act of mismanaging properties.
- In addition, there are many hadith in which the Prophet Muhammad SAW propagates the importance of charity and emphasizes about the impact on the people in this world and the reward for the donor in the hereafter :

# Classification of Charity in Islam

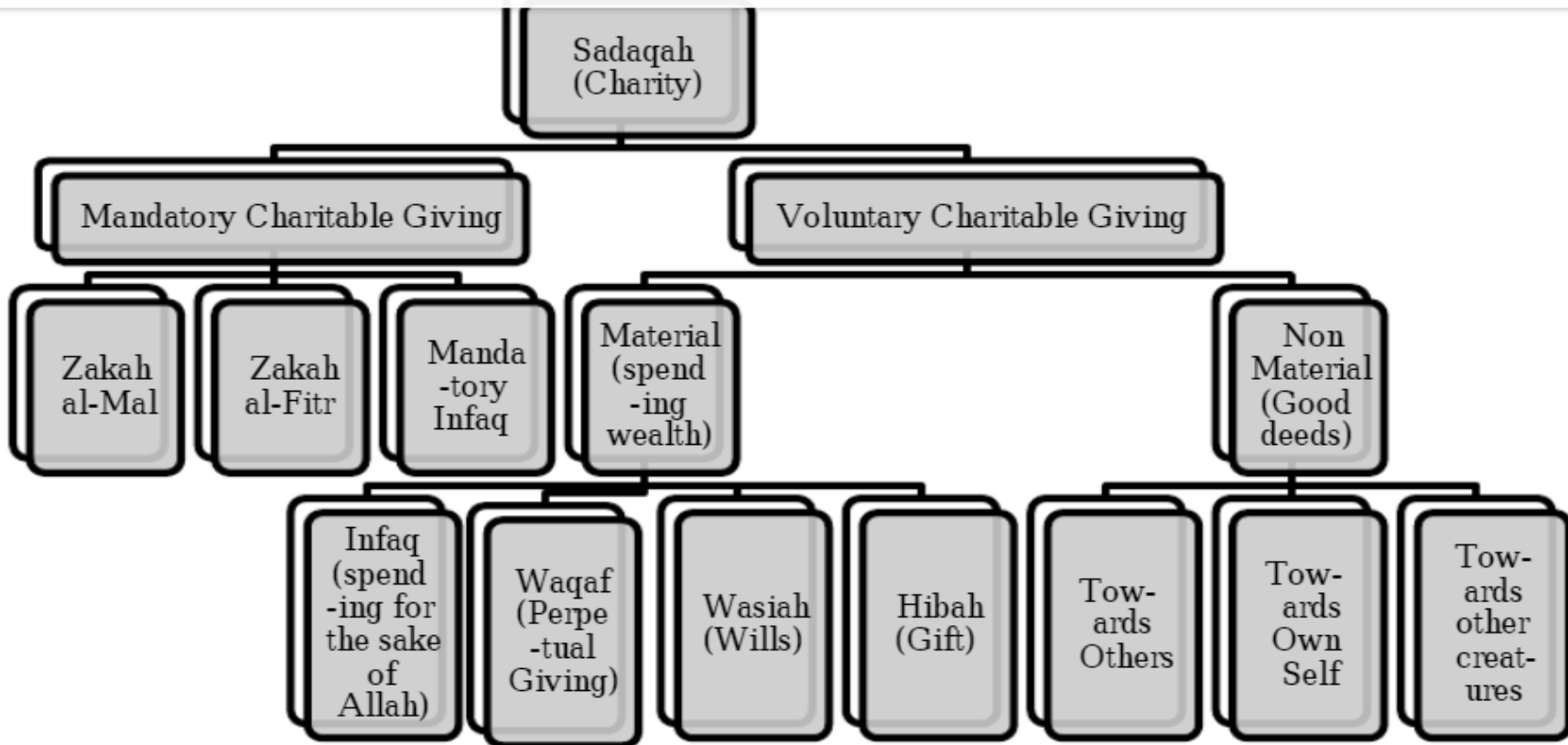


Figure 1: Classification of Charitable Giving

# Legal Framework of Charity in Malaysia

- There is no single or comprehensive statute that governs charity, in particular non-Shariah based charity.
- In most cases that were brought to the civil courts, references have been made to the English principles of charitable trusts.
- the Ninth Schedule of the Federal Constitution of Malaysia, matters relating to charities and charitable institutions; charitable trusts and trustees (excluding *wakafs* and Hindu endowments) are within the Federal list.
- All the general laws have provisions for giving power to certain agencies or authority to give permission or issue a license to collect funds.
- Nonetheless, the laws lack provision with regards to the detailed management of the funds as well as the power to investigate and charge the offender but refers instead to other legislations such as the Penal Code.
- In other words, there is no single regulatory body that is assigned to monitor the movement or administration of charitable organizations in Malaysia.



# Advantages of Charitable Organization

## 1) FISCAL ADVANTAGES



INLAND REVENUE BOARD MALAYSIA



INCOME TAX ACT 1967 section 34



adjusted income from business that can be deducted from tax.

# Advantages

- AG is the protector of charitable trust



Section 9(1) of the Government Proceedings Ordinance 1966

# Available Law on Charity that related to breaches

- Cheating, involving acting in disguise of certain authorized personnel to collect donation under section 419 of the Penal Code. If found guilty, the accused can be jailed up to 7 years or fined or both.
- A specific Act to regulate public donations under the House to House and Street 1947 Act (Section 3(2)). If found guilty, the accused can be fined not more than RM5000.00 or a maximum of 2 years jail or both.
- In addition to that, a person who is found illegally or collecting donation without permission of the State Islamic Religious Council or Majlis may be charged under the Criminal Offences Act for example, the Criminal Offences Act (Act 559) (Federal Territory) 1997.

# Monitoring Bodies in Malaysia : Registrar of Societies

- Responsible in the establishment of any society or organization.
- Governed by the Societies Act 1966.
- The office of Registrar of Societies in Malaysia is a department under the Home Minister, handling non-governmental organizations and political parties
- section 2 of this Act, society refers to any club, company, partnership or association of seven or more persons whatever its nature or object, whether temporary or permanent.

# Divisions under ROS

Religious	Advancement of Religion
Trade related societies	Depends on objective
Political	NA
Environment	Other beneficial purpose
Consumer	May come under other beneficial purpose
International Friendship	Other beneficial purpose

# Tasks

- To ensure that all societies comply with the established society policies, rules and procedures the mission
  - Illegal societies
  - Investigation
- Complaints from public

NOT TO



ensure or declare as to whether this societies are charitable in nature

# Monitoring Bodies In Malaysia)

## Companies Commission of Malaysia

- Prior to CCM : Registrar of Businesses (ROB) & Registrar of Companies (ROC)
- Merged ROC and ROB : CCM
- CCM @ SSM was established under the Ministry of Domestic Trade and Consumer Affairs.
- The Commission has the power to regulate companies and business in Malaysia and to administer any law, which confers functions and the powers of the Commission.
- The intention is to equip the Commission to efficiently and effectively carry out its functions in a corporate sector that is growing bigger in number, sophistication and dynamism.

# Function of CCM

- Agent of the Government
- Regulate matters on corporations, companies and business.
- Encourage and promote proper conduct among corporate players in accordance with established norms of good corporate governance
- CCM is an agency to register foundations including foundations that are established for charitable purposes.
- The foundations shall be registered as a company limited by guarantee and the authorized share capital required is RM 1 million



# Monitoring Bodies in Malaysia Legal Affairs Department in the PM Department

- Responsible to manage the establishment of non profit organization under the Trustee Incorporation Act 1952 which include non profitable foundation and company
- 371 NPOs that are registered under the Trustees Incorporation Act 1952 and the number shows an increasing trend. I
- In 2014, there was a total of RM 1.3 billion tax exemption given to these NPOs. This data definitely supports the call for monitoring of the NPOs to strengthen the integrity of these charitable organizations .
- The main problem is the Legal Affairs Division is not given the full authority to act as the main regulator in order to ensure all activities and funds collected and donated are used solely for charitable purposes and non others.

# Charity Commission in England and Wales

- The Charity Commission was established under the Charitable Trust Acts 1853, 1855 and 1860.
- For the past fifty years the power of monitoring given to the Commission have been further expanded and strengthened.
- Charity Commission is an independent regulator, non-ministerial government department which is accountable to the Home Secretary.

# Charity Commission in England and Wales

- Charities under English Law applies the Charities Act 2011.
- originated from the Preamble to the English Statute of Charitable Uses Act 1601 which laid down the basic foundation or useful guidance as to what can be considered as charitable
  - establishment of the Charity Commission under the Charitable Trust Acts 1853, 1855 and 1860.
  - For the past fifty years, , the power of monitoring given to the Commission have been further expanded and strengthened in the followings enactments of Charities Act 1960, 1993, 2005 and the latest 2011

# Charity Commission in England and Wales

- an independent regulator, non ministerial government department which is accountable to the Home Secretary. but cant give direction & no parliamentary question : only responsible to the court
- It's functions are to promote the effective use of charitable resources by encouraging better methods of administration, by giving charity trustees advice and by investigating and checking abuse
- a few objectives set out in the statute, namely the public confidence, the public benefit, compliance, charitable resources and the accountability objectives.
- The public confidence objective is to increase public trust and confidence; whilst public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement the public confident, the public benefit, compliance, charitable resources and the accountability objectives

## ENGLAND & WALES



The need to have a regulatory body in England and Wales has been solved by the existence of the Charity Commission.

# Compare UK & Malaysia

- No single statute on charity & no single definition of charity
- Charitable organizations are governed by different statute.
- No proper monitoring on charitable organization

# Conclusion

- a) A single regulator in monitoring charitable organizations is of utmost importance : to obtain the confidence and trust of members of the public to participate in charitable programs and social finance.
- b) the need for a specific regulator is vital for both, charity under Shariah and civil law
- c) There is clear urgency to monitor nonprofit organizations (NPO) in order to ensure there is no profit-making business deals or self-benefit tantamount to mismanagement or breach of trust.