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## Constitutional Rules and Islamic Religious Revenues

Abdul Ghafar Ismail<sup>1</sup>

### Abstract

This study asks five questions. How does the constitution define the framework for its governance and the principles under which it must operate? How do the provisions lay out the core public finance matters? How are Islamic religious defined? How could we interpret the provisions in the constitution? How does the Islamic religious revenues affect the socioeconomic development? Based on the analysis of these questions, this study will try to explain the choice of alternative sets of legal-institutional-constitutional rules that constrain the choices and activities of economic and political agents (government). In particular, this study will prove that the constitution is the result of preferences of both conventional and Islamic scholars. The constitutional rules lead to the introduction of Islamic religious revenues as the sources of government revenues. Furthermore, in Malaysia, the constitutional economics also provide another view which treat Islamic religious revenues as the tools for socio-economic development.

*Keywords:* fiscal policy, economic development, Islamic religious revenues, multilevel governance, federalism  
*JEL classifications:*H72, H77, K40, O23, P43,

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## 1. Introduction

Government has never operated at a single level. Many countries, both today and historically, have had several layers of subnational government. Countries usually have a level of government beneath the state and one or more above. The number of government levels for most people living today is 3-7, of which 1-national state and one or two at a larger regional or local scale. In providing the public goods and services (hereafter public goods), government depend on the sources of revenues. Normally, the sources are clearly stated in the constitution. It comes mainly from the taxes and non-taxes.

In Malaysia, there are three layers of government, namely federal, state and local government. The constitution provides the framework within which revenue systems operate. The constitution also determines the extent of a nation's revenue raising authority, what type of revenues and how they are to be collected and distributed. In general, there are three categories of revenues which are tax revenue, non-tax revenue and non-revenue receipts.

A scheme for the distribution of revenues between the federal and the states is laid down in the constitution. The proceeds of all the entertainment duty, licenses, rents, treasure trove and Islamic religious revenue<sup>2</sup> by the state are fully retained by the concerned states themselves while revenues axes in the federal list may be in part allowed to the states.

The above discussion shows that the relevant of the following subject matters, which are derived from Buchanan (1990), and subsequently by Voigt (1997, 2017), i.e., constitutional rules and the procedures that lead to the establishment of constitution, constitutional rules as the result of preferences and restrictions, constitutional rules channeling constitutional change (see an example of Bangladesh, Islam, Ebrahim and Yasin (2019)), and the economic effects of constitutional rules; in establishing the theory of constitutional economics.<sup>3</sup>

The research on the above subject has expanded in many areas such as public choice in selecting the constitutional rules (Buchanan and Tullock (1962), Brennan and Buchanan (1980) and Muller (1989)), scholars' views (such as classical and Keynesian) embedded in constitutional rules (Burnham, W. (1982) and McKenzie (1984)), institutional analysis, that is, based on the level of government (Buchanan (1987) and Vanberg (2005)).

Therefore, in this study, we will try to explain the choice of alternative sets of legal-institutional-constitutional rules that constrain the choices and activities of economic and political agents (government). In particular, the constitution is the result of preferences of both conventional and Islamic scholars.<sup>4</sup> The constitutional rules lead to the introduction of Islamic religious revenues as the sources of government revenues. Furthermore, in Malaysia, the constitutional economics also provide another view which treat Islamic religious revenues as the tools for socio-economic development.

The discussion will be organized into several sections. Section 2 will highlight several related discourses to constitutional economics. Section 3 will discuss the Islamic religious revenues as part of the financial provisions in the constitution of Malaysia. As discussed in Section 3, we will prove that there are two contrasting views in interpreting the provisions in the constitution. The interpretation of constitutional provisions may have an implicit economic logic. Hence, it will be explained in Section 4. The efficiency of government revenue depends on the heterogeneous preferences of individuals. The heterogeneous might be due to socio and economic background. Therefore, the effect of Islamic religious revenues on socioeconomic development will be examined in Section 5. Section 6 presents the conclusions.

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<sup>2</sup> Refer further in Zaenal et al. (2013)

<sup>3</sup> McCormick and Tollison (1981) was among the pioneers in suggesting this theory. He suggested that public choice has an impact on the pattern of real institutional development. Subsequently, in 1990, the journal *Constitutional Political Economy* first appeared.

<sup>4</sup> Ulamas' (or Islamic scholars) views are taken care of in drafting the constitution, then the role of ulama is appreciated in decision making process

## 2. Constitutional Economics Discourse

In this section, we will highlight several related discourses to constitutional economics – who first introduce the subject of constitutional economics; the different school of thoughts; and branches of constitutional economics.

Many authors agree that both Buchanan and Tullock (1962) are the first authors who visualize the constitutional economics as a discipline in economics. Later, their view is known as public choice school. The school offer three elements which include constitutional political economy, an analysis of different voting-rights regimes, and an understanding of human and property rights (as a result of government failure *as well as* market failure).

Then, Muller (1989) extent further that the process of (political and market) decision (or public choice) may lead to certain constitutional rules. However, Brennan and Buchanan (1980) argue that early public choice-models put too much emphasis on the median-voter determining the actions of politicians. Those models would thus be almost entirely determined by the demand side, leading to a kind neglect of the supply side. They argue that the discretionary powers of politicians would not be adequately restricted by the median voter (i.e., on the process level) but on the level of constitutional rules.

Later scholars such as McKenzie (1984) and Aras and Öztürk (2011) say that constitutional rules are also proposed by the views of scholars. They said that constitutional rules entertains the fiscal, monetary, and regulatory powers of the government. These powers will put the constraints on the government activities. It shows that the Keynesian views are embedded in the constitutional rules. For an economist, it seems obvious to analyze the relationship between the constitutional rule-system and the rate of economic growth. It also shows that the Founding Fathers, as noted in McGuire and Ohsfeldt (1989), were not motivated by some conception of the common good but simply by their own economic interests (i.e., follow a certain school of economic thoughts). In the case of Germany, as reported in Streit (1992), her economic constitution is largely based upon the reflections of the Freiburg School of Law and Economics. Both examples suggest that the classical political economy is used as foundation for the constitutional rule system.

Other scholars such as Buchanan (1987) and Vanberg (2005) explicitly use an institutional analysis, that is, based on the level of government. For example, in United State of America, as reported in Hayek (1960), the whole concept of constitutionalism was developed in the wake of the movement towards an independent nation and the creation of a federal state. It shows that the branches of constitutional economics are not only limited to the subject of public choice, economics of property rights, law and economics, and political economy of regulation, but also cover the new institutional economics, and the new economic history.

A well designed institutions, as argued in Elster (1995), Person and Tabellini (2004), and Akee, Jorgensen, and Sunde (2012), can have a relationship with economic performance. The relationship can be explained in four different ways. *First*, social rights - it can be obtained by the exercise of political rights. The impact of social rights on economic security seems to be a more straightforward. If the constitution contains provisions about the right to work, the minimum wage, job security; unemployment benefits and the right to free health care and education provisions, then it can affect the economy of a nation.

*Second*, economic rights – there are a number of ways that economic rights can be exercised such as the freedom of contract, the waqf of land, the freedom of ownership. *Third*, rights and efficiency - the impact of civil and political rights on economic efficiency raises an issue on the relationship between democracy and constitutional commitment. Policymakers may want to pledge themselves to a specific course of action for a number of reasons. Therefore, they seldom deviate from that course of action without considerable political cost.

*Fourth*, government structure and efficiency. Many economists such as Martinez-Vazquez and McNab (2001) and Jin and Zou (2002), and Ismail, Hamzah and Ritonga (2004) have suggested the effectiveness of the government's role in public service provision and created a presumption in favor of reducing the size of the public sector by giving more power to sub-national governments. Hence, fiscal decentralization is seen as a mechanism to control the growth of the public sector. Both also argue that the increased interest on fiscal decentralization appears to be fueled by their belief that fiscal decentralization is an effective tool to produce an efficient governance, macroeconomic stability, and adequate economic growth. In addition, the rush to decentralize can also be seen as a reaction to the failure of many centralized economies in developing and

transition countries. Here, decentralization is seen as a way to break the central government's grip on the economy by shifting fiscal authority to sub-national governments.

The above discussion recognizes a simple fact points directly toward an 'economic' theory of constitutions. It becomes the starting point of constitutional economics. It shows that constitutional economics basically tries to explain the selection of constitutional rules limiting the choices and activities of economic and political agencies.

### **3. Islamic Religious Revenues as Provided in Constitution**

The constitution of a nation contain three main parts: a bill of rights, a set of provisions regulating the machinery of government, and a set of procedures for amending the constitution itself. The set of constitutional rights can be classified in many ways. The most useful typology is a tripartite division of rights into civil and political, social, and economic.

In the social category, the rights are: intermediate between the right to the pursuit of happiness and the fight to happiness itself, namely rights that ensure the provision of goods that tend to promote happiness. These include the right to work and to job security, the right to a fair or adequate income, the right to unemployment and pension benefits, and the right to education and health care. In the economic category are provisions that guarantee freedom of property, exchange, and contract.

The rights in Malaysia are partly provided in the financial provisions, as mentioned in Part VII of the Constitution of Malaysia. It covers the articles 96 to 112. However, as shown in Table 1, this section will only highlight the articles 96 to 99 and 108.

Table 1: Financial Matters in Constitution

| Provision   | Matter About                                      | Description  |
|-------------|---|--|
| Article 96  | Tax   | Imposed by the Federal Government  |
| Article 97  | (a) Federal Consolidated Fund                     | Revenues and money received such income tax, stamp duty, export duty   |
|             | (b) State Consolidated Fund                       | Revenues and money received such as land tax, revenues from water and other mineral resources  |
|             | (c) Islamic Religious Fund                        | Zakat, Fitrah, Bait-ul-Mal or similar Islamic religious revenue  |
| Article 98  | Charges on Federal Consolidated Fund (Expenses)   | <ul style="list-style-type: none"> <li>• Pension, compensation and gratuity</li> <li>• Debt charges (e.g. interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt</li> <li>• moneys required to satisfy any judgment, decision or award against the Federation</li> </ul> |
| Article 99  | Statements of estimated receipts and expenditures | Budget to be presented at the House of Representatives   |
| Article 108 | Establishment of National Finance Council (NFC)   | Duty of NFC: <ul style="list-style-type: none"> <li>• grants to the States;</li> <li>• annual loan requirements of the Federation and the States</li> <li>• making of loans to any of the States;</li> <li>• making of development plans</li> </ul>  |

The constitution provides the framework within which revenue systems operate. The constitution determines the extent of a nation's revenue raising authority, what type of revenues and how they are to be collected.

**Federal Constitution** – Fiscal matters, as shown in Table 1, are discussed under Article numbers 97-112 of the constitution. In general, the federal government has been given a power on the following aspects. *First*, budget planning for a given period, usually for a fiscal year, as mentioned in Article 99. The budget shows what its revenues are (row 3, Table1), and how they will be generated and used over the fiscal period. The revenue would come in the form of taxes, levies, fees and other charges. In Malaysia, as shown in row 5, Table 1, the revenues also include Zakat, Fitrah, Baitulmal and other Islamic revenues. These revenues are used by the states as key instruments for promoting its socio-economic objectives.<sup>5</sup>

<sup>5</sup> As spell out in the Islamic Religious Administration Enactment of each state.

*Second*, budget formulating – the appropriations, revenue or public debt shall originate in the parliament. The form, content and manner of preparation of the budget are also described in the constitution. In Malaysia, as provided by article 99 (shown in row 7, Table 1), the estimated amount of revenues and expenditure needs to be tabled at Parliament before the commencement of that fiscal year.

*Third*, restrictions on budgeting (Article 102) - the elected government has exclusive right to propose a budget. However, the parliament can only reduce or reallocate appropriations in the proposed budget.

*Fourth*, accounting and auditing (Articles 106 and 107) – the federal budget shall be recorded, classified, and summarized, in a significant manner and in terms of money, transactions and events which are, in part at least of a financial character and interpreting the results thereof. The primary function is to measure and communicate financial data as it gives meaning to economic reports by explaining the results of transactions in terms of current financial positions.

While, auditing on the other hand, is the examination of information by auditor general office with the intention of establishing its reliability, and the reporting of the results of this examination with the expectation of increasing the usefulness of the information to the user. Therefore, the auditor general office has the power, authority and duty to examine, audit and settle all accounts and expenditures of the funds and properties of the state government. Towards that end, it has the exclusive authority to define the scope, techniques and methods of its auditing and examination procedures. It also may prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties.

**Other State Revenue-Raising Authority<sup>6</sup>** – The ability of government (at state or local level, hereafter we will refer it as state government) to raise taxes (such as land tax) and other revenues (such as revenues from natural resources) is affected by their status as either “home rule”<sup>7</sup> or “Dillon’s rule” government.<sup>8</sup> In states that allow home rule, state government is granted constitutional and statutory powers to provide services to their residents, raise taxes and other revenues to fund them, and issue debt for various public purposes, subject only to specific prohibitions.<sup>9</sup> In states where Dillon’s rule is in effect, local government is granted authority to operate through statute and no authority is granted through the state constitution.

Countries such as Malaysia, as shown in Table 2, has granted home rule to their state governments. However, home rule is a matter of degree. The state government is granted home rule authority, the extent of their powers varies widely. The states may also make a distinction between the powers granted to city and county governments, with some providing greater authority to states than cities. Local laws give the responsibilities of certain local government officials.

Generally, like federal government, state government has been given power to set up the consolidated fund. For example, as reported in Table 2, item 37 (in Johor), item 29 (in Sabah), item 29(1) (in Sarawak) and item 85 (in Selangor) show that consolidated fund comprises revenues and moneys raised or received and spent by the state.

The state constitution also recognizes the existence of the Islamic Religious Fund. In Johor (Item 38(3)), and Selangor (Item 86(2)), zakat, fitrah, Baitulmal or similar Islamic religious revenues are the items discussed in the provisions as Islamic Religious Fund. This provision is then further refined in the respective law. For example, in Malaysia (as reported in Table 3), State Islamic Religious Council Enactment is given the power to manage the Islamic Religious Fund. This enactment clarifies that the results and money of these revenues are known as the Islamic Religious Fund. The provision also explains that income generated from it are part of the fund.

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<sup>6</sup> Depending on the system of government. The federalism system such as Malaysia defines the relationship between the federal government at the national level and its constituent units at the state or local levels. While the unitary system of government is a sovereign state governed as a single entity such as Indonesia. The federal government is supreme, and the administrative divisions exercise only powers that the federal government has delegated to them.

<sup>7</sup> Home rule is the power of a constituent part (administrative division) of a state to exercise such of the state's powers of governance within its own administrative area that have been decentralized to it by the federal government.

<sup>8</sup> John Forest Dillon, for whom the Dillon Rule is named, was the Chief Justice of the Iowa Supreme Court approximately in 1867. The Dillon Rule is used in interpreting law when there is a question of whether or not a local government has a certain power.

<sup>9</sup> Local government such as Pasir Gudang and Putrajaya in Malaysia were allowed to issue sukuk to finance their activities. Refer to Ismail (2018)

Table 2: State Law and Government Revenues

| States          | Sources                                    | Section                         | Provision   |
|-----------------|--|---------------------------------|---|
| <b>Johor</b>    | Law of the State of Johore 1895            | Finance                         | <b>37(1)</b> - Items shall be charged on the Consolidated Fund<br><b>38(1)</b> – Estimated receipts and expenditure for that year<br><b>38(3)</b> – Estimated receipts do not include Zakat, Fitrah and Baitulmal or similar Islamic religious revenues   |
| <b>Sabah</b>    | Constitution of the State of Sabah 1964    | Part III - Financial Provisions | <b>Item 29</b> - Consolidated Fund comprises revenues and moneys raised or received and spent by the State<br><b>Item 30</b> - estimated receipts and expenditure of the State shall be laid before the commencement of that year for that year and be presented at the Legislative Assembly  |
| <b>Sarawak</b>  | Constitution of the State of Sarawak 1941  | Part III – Financial Provisions | <b>Item 29(1)</b> - Consolidated Fund comprises revenues and moneys raised or received and spent by the State<br><b>Item 30(1)</b> - estimated receipts and expenditure of the State shall be laid before the commencement of that year and be presented at the Dewan Undangan Negeri   |
| <b>Selangor</b> | Constitution of the State of Selangor 1959 | Chapter 6 - Finance             | <b>Item 85</b> - Consolidated Fund comprises revenues and moneys raised or received and spent by the State<br><b>Item 86(1)</b> - estimated receipts and expenditure of the State shall be laid before the commencement of that year and be presented at the Legislative Assembly<br><b>Item 86(2)</b> – estimated receipts and expenditure does not include zakat, fitrah, Baitulmal or similar Muslim revenue |



By looking at several sample such as State of Johor, Sabah, Sarawak and Selangor (Table 3), we observe the following findings. First, the Enactment generally agrees on: establishment of Baitulmal Fund (in Sabah it is only known as Fund) and how do they manage property belongs to State Religious Council.<sup>10</sup> Second, the estimated revenue and expenditure of this fund need to be presented to Sultan or King before the commencement of that year. Third, the type of revenues is only limited to zakat, fitrah, waqf and khairat collection plus property belongs to State Religious Council. However, in the case of Federal Territory, Baitulmal Fund does not include zakat and fitrah. Fourth, the collection is generally aimed to collect money or other contributions for any charitable purpose to support and promote the religion of Islam or for the benefit of Muslims in accordance with shariah law. Fifth, the Enactment does not define what is Islamic religious revenues?

**Table 3: Enactment of the Administration of the Religion of Islam in Malaysia**

| States   | Sources   | Section  | Provision  |
|----------|---|--|--|
| Johor    | Enactment No. 16 Of 2003: Administration Of The Religion Of Islam (State Of Johor) Enactment 2003     | PART VI - Baitulmal and Financial Procedure of the Majlis                        | <b>Section 81</b> - Establishment of Baitulmal<br><b>Section 82</b> - Estimates of income and expenditure to be submitted to the Ruler-in-Council, not later than the 31 st day of October in each year                          |
| Sabah    | Enactment No. 5 Of 2004: Majlis Ugama Islam Negeri Sabah Enactment 2004                               | PART III –Financial Procedure of the Majlis                                      | <b>Section 45</b> - Establishment of the Fund<br><b>Section 46</b> - Estimates of income and expenditure should be delivered to the Majlis not less than one month before the commencement of each financial year                |
| Sarawak  | Chapter 41: Majlis Islam Sarawak Ordinance 2001   | PART V - Establishment of Lembaga Baitulmal Dan Wakaf, Baitulmal, Wakaf and Nazr | <b>Section 43</b> - Establishment of Lembaga Baitulmal dan Wakaf<br><b>Section 71</b> - Estimates of income and expenditure shall be prepared and submitted to the Minister not later than the 31st day of October in each year  |
| Selangor | Enactment A25: Administration Of The Religion Of Islam (State Of Selangor) (Amendment) Enactment 2011 | PART VI: Baitulmal and Financial Procedure of the Majlis                         | <b>Section 81</b> - Establishment of Baitulmal<br><b>Section 82</b> - Estimates of income and expenditure shall be prepared and submitted to His Royal Highness the Sultan, not later than the 30th day of November in each year |

Sources: Jabatan Kehakiman Syariah Malaysia, E-Syariah Official Portal

<sup>10</sup> In Sabah, zakat and fitrah are managed under the Zakat and Fitrah Enactment (1993) ([http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen/State\\_Enact\\_Ori.nsf/f831ccddd195843f48256fc600141e84/36afdd65a822f7b3482570ed0021d4d2?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen/State_Enact_Ori.nsf/f831ccddd195843f48256fc600141e84/36afdd65a822f7b3482570ed0021d4d2?OpenDocument))

In summary, the constitutional provisions has clearly defined the *framework* for its governance and the principles under which it must operate. The provisions lay out the core public finance matters. They cover both revenues or expenditure sides (or fiscal instruments) that are allocated across different tiers of government. From the legal side, public finance (or fiscal) matters concern about the division of public sector functions and finances among different tiers of government.

#### 4. Constitutional Provisions – An Economic Interpretation

As discussed in Section 3, it shows that there are two contrasting views in interpreting the provisions in the constitution. The interpretation of constitutional provisions may have an implicit economic logic. One view argues that the public goods and services (hereafter public goods) are provided via government revenues and borrowing. Another view argues that the public goods are provided via Islamic religious revenues. The former and later are related to Keynesian and Abu Ubaid views, respectively. It also shows that the conventional view and Islamic economic view are embedded in the constitution. How Islamic is the constitution? More importantly, it seems to make sense to analyze the choice of rules from an economic perspective. Rules that comes from the economists or ulama.

Keynesian view represents a new way of looking at spending, output, and inflation. In his seminal book, *The General Theory of Employment, Interest, and Money* and other works, he argue that during recessions, structural rigidities and certain characteristics of market economies would exacerbate economic weakness and cause aggregate demand to plunge further. If the government cut welfare spending and raised taxes to balance the national books. Keynes said this would not encourage people to spend their money, thereby leaving the economy unstimulated and unable to recover and return to a successful state. Instead, he proposed that the government spend more money, which would increase consumer demand in the economy. This would, in turn, lead to an increase in overall economic activity, the natural result of which would be recovery and a reduction in unemployment.

The multiplier effect is one of the chief components of Keynesian countercyclical fiscal policy. According to Keynes's theory of fiscal stimulus, an injection of government spending eventually leads to added business activity and even more spending. This theory proposes that spending boosts aggregate output and generates more income. If workers are willing to spend their extra income, the resulting growth in the gross domestic product (GDP) could be even greater than the initial stimulus amount. In this way, one ringgit spent in fiscal stimulus eventually creates more than one ringgit in growth. This appeared to be a coup for government economists, who could provide justification for politically popular spending projects on a national scale.

However, the government spending is also catalyzed by higher borrowing that may lead to higher interest rate. Increasing interest rates, however, does not always lead directly to economic improvement. But, Keynesian economists always believe that a lower interest rates as a solution to economic woes, but they generally try to avoid the zero-bound problem. As interest rates approach zero, stimulating the economy by lowering interest rates becomes less effective because it reduces the incentive to invest rather than simply hold money in cash or close substitutes like short term Treasuries. Interest rate manipulation may no longer be enough to generate new economic activity if it cannot spur investment, and the attempt at generating economic recovery may stall completely. This is known as a liquidity trap.

On the other hand, Abu Ubaid argue that government spending via Islamic religious revenues (without borrowing) may lead to balance and just growth.<sup>11</sup> Therefore, balance and just growth tend to make a simplifying distinction between “distortionary” taxes that impact on investment decisions and Islamic religious revenues that have little impact on investment. While financing expenditure (via borrowing) carries costs to economic growth, some types of government expenditure are beneficial to economic performance. Some government expenditure is a prerequisite for a functioning market economy, such as a legal system to protect private property rights.

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<sup>11</sup> This term is introduced here, because the Islamic religious revenues do not create a deficit in spending and hence, it will generate a just growth

Beyond this foundational level, expenditure initiatives may lift long-run growth rates by increasing investment in physical capital, knowledge, human capital, research and development or public infrastructure. For example, government investment in human capital (via *fi sabilillah*) could boost long-run economic growth if investment stimulates technological progress or if the productivity of businesses is boosted from others investment or innovation (such as knowledge spillovers). In addition, tax may discourage work and investment in human capital but they appear to have a relatively minor impact on the long-run determinants of growth, such as investment, education or technical progress.

The above view lead us to get the answer on the following issues: (i) which view is more efficient – Keynes or abu Ubaid; (ii) government structure and efficiency – revenues at federal or state levels.

In the context of efficiency, it may lead us to ask, if it is efficient, hence the impact of government revenues would have a positive impact on the socio-economic development. Here, the efficiency is normally referred to the idea that a policy should be allocated to the government that is able to produce the policy at the lowest cost and to encompass all individuals experiencing positive or negative effects of that policy. In the case of zakat, by limiting the cost of allocating the zakat to not more than 12.5% of the total revenues, it may lead to lower cost and hence, technically it is more efficient.

The answer for the second issue - we should make a call on the interjurisdictional efficiency, because the creation of government structure that lead to the power given in collecting different types of revenues. The concern is on the cost of coordinating policy making among governments. These costs can be reduced by limiting the number of government levels, and therefore the number of governments that negotiate with each other, or by limiting the overlap between the functions carried out by individual jurisdictions. A reform that increases interjurisdictional efficiency may decrease technical or allocative efficiency.

From the economic interpretation, it concern about the theory of public goods provisions by different levels of government. The provision shows the preferences of lawmakers in shaping the provision in the constitution i.e a mixed of Keynesian and Abu Ubaid Views.

## 5. What would be the Impact on Socioeconomic Development

As discussed in section 4, the efficiency of government revenue depends on the heterogeneous preferences of individuals. The heterogeneous might be due to socio and economic background. Meaning that individuals may require different needs to overcome their social and economic needs.

Generally, individuals need an improvement in three areas. First, at basic level, individuals need an improvement in the conditions and quality of life. Higher levels of wealth, technological advancement, and public policies permit individuals to live better, to consume more, to feed themselves better, and to get sick less frequently. This idea of social development is inextricably linked to the idea of economic and material advance of human society.

Second, individuals also look at the distribution of the wealth that they generate. Here, the economic dimension still constitutes a powerful factor in determining social development. For example, the inter-generational transfer via inheritance (or *faraidh*) (Ismail, Possumah and Kadir (2014)) occupies in the distributive sphere.

Third, a less normative or economic perspective on social development identifies the latter with the processes of social differentiation and social complexity associated with the capitalist and industrial transformations that gave rise to the modern world. However, Islam has proven that its economic institution has proven its ability to create a balance and just growth. Because, in Islam, social development means investing in people who know the Creator.

Individuals also economically want to transform themselves from individuals who have very limited resources and choices to ones in which they have much bigger resources and choices. It is clearly mentioned in Chapter Ali Iman verse 14, Allah said that *The love of desires, of women and sons and hoarded treasures of gold and silver and well bred horses and cattle and tilth, is made to seem fair to men; this is the provision of the life of this world; and Allah is He with Whom is the good goal (of life).*

Currently, there is a growing need for material, water and energy because of both population growth and increased demand by infrastructure, industry and consumers in our economy. According to Marc de Wit et al (2018), circular economy activities have the potential to address a significant share of this need – dampening or possibly, reversing the raise in resource use and in turn reducing resource depletion, climate change and the pollution of natural resources.

Therefore, a circular economy is introduced. Products are designed for durability, reuse and recyclability, and materials for new products come from old products. As much as possible, everything is reused, remanufactured, recycled back into a raw material, used as a source of energy, or as a last resort, disposed of. Consequently, this would lead to the emergence of more sustainable production and consumption patterns, and could thus provide opportunities for Malaysia to achieve economic growth and inclusive and sustainable economic development in line with the maqasid shariah. Hence, the circular economy that link up the Creator, planet and people should become the agenda of socioeconomic development.

How far the above agenda be translated into the provision under the state constitution. The enactment of Islamic Religious Council in Malaysia, literally make a provision that give the right of government to collect the religious funds and hence to distribute to the dedicated purposes. In particular, as stipulated in the enactment, the duty of state government is to propagate the economic and social development of Muslims. For example, Section 7 of Enactment No. 16 of 2003 Administration of the Religion of Islam (State of Johor).<sup>12</sup> The duty of Islamic Religious Council is to promote, stimulate, facilitate and undertake the economic and social development (hereafter economic development) of the Muslim community in the State consistent with Shariah Law (and hence the maqasid shariah).

As mentioned in several sections, as sections 4, 5 and 7 of this enactment, as presented in Table 3, it shows that the activities of socioeconomic development (column 3) are directed towards partially in achieving the maqasid shariah (column 4).

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<sup>12</sup> Refer to Section 7 of ENACTMENT NO. 16 OF 2003 ADMINISTRATION OF THE RELIGION OF ISLAM (STATE OF JOHOR). Other states also have a similar provision.

**Table 4: Enactment of Administration of the Religion of Islam in Johor**

| Section    | Matters  | Socioeconomic Activities  | Impact on Maqasid Shariah                                       |
|------------|--|---|---|
| Section 4  | Establishment of Majlis  | Giving advise His Majesty in matters relating to the Religion of Islam  | Having a clear governance in preserving deen                    |
| Section 5  | Legal Identity and Functions   | Corporate body  | May sue and be sued – preserving deen                           |
|            |  | Power to act as executor of a will or as an administrator of the estate of a deceased person or as trustee of any trust | Economic agent in preserving wealth                             |
| Section 7  | To promote, stimulate, facilitate and undertake Socio-economic development | The establishment of commercial and industrial enterprises to carry on all activities                                   | Preserving wealth   |
|            |  | The establishment or expansion of other bodies or persons to carry on all activities                                    | Preserving wealth   |
|            |  | Partnership with the departments or authorities of the Federal or State Government                                      |   |
|            |  | To invest in any authorised investment  |   |
|            |  | To establish any scheme for the granting of loans (from Baitulmal) to Muslim individuals for education purposes         | Preserving aqal by helping for those who want acquire knowledge |
|            |  | To establish and maintain Islamic schools and training and learning institutions  | Preserving deen and aqal via literacy and human capital         |
|            |  | To establish, maintain and manage welfare home for orphans and muallaf  | Preserving deen and lineage                                     |
| Section 81 | Establishment of Baitulmal   | To manage the Baitulmal Fund (limited to zakat, fitrah, waqf, nazr and charitable trust)                                | Preserving deen and wealth                                      |

Source: Enactment No. 16 of 2003 Administration of the Religion of Islam (State Of Johor)

The enactment has identified the types of religious revenues and what would be the impact on socio-economic development and in particular the maqasid shariah. It shows that the enactment also look at the impact on preserving the deen, wealth, lineage and aqal.

## 6. Conclusion

In this study, we will try to explain the choice of alternative sets of legal-institutional-constitutional rules that constrain the choices and activities of economic and political agents (government). Based on the analysis of the previous studies and provisions in the constitution. We find that, first, articular, the constitution is the result of preferences of both conventional and Islamic scholars.<sup>13</sup> Furthermore, in Malaysia, the constitutional economics also provide another view which treat Islamic religious revenues as the tools for socio-economic development. This study find that first, The above discussion recognizes a simple fact pints directly toward an 'economic' theory of constitutions. It becomes the starting point of constitutional economics. The theory tries to explain show that the selection of constitutional rules limiting the choices and activities of economic and political agencies. Second, the constitutional rules lead to the introduction of Islamic religious revenues as the sources of government revenues and also its role in public finance finance matters. Third, from the legal side, public finance (or fiscal) matters concern about the division of public sector functions and finances among different tiers of government. Fourth, from the economic interpretation, it concern about the theory of public goods provisions by different levels of government. The provision shows the preferences of lawmakers in shaping the provision in the constitution i.e a mixed of Keynesian and Abu Ubaid Views. Fifth, the constitution identifies the types of religious revenues and what would be the impact on socio-economic development and in particular the maqasid shariah. The findings would lead toward the exploitation of Islamic religious revenues to support the Islamic economic system.

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<sup>13</sup> Ulama's (or Islamic scholars) views are taken care of in drafting the constitution, then the role of ulama is appreciated in decision making process

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