

## **An Analysis of *Fiqh al-Waqi`* (An Understanding of Contemporary Problems) on the Ruling of Compulsory Boycott of KFC (Malaysia)**

**Anas bin Mohd Yunus**

Faculty of Islamic Contemporary Studies  
Universiti Sultan Zainal Abidin, Kampus Gong Badak,  
21300 Kuala Terengganu, Terengganu, Malaysia

**Anisah binti Ab. Ghani (Ph.D)**

Academy of Islamic Studies  
University of Malaya  
50603 Kuala Lumpur, Malaysia

**Saadan bin Man (Ph.D)**

Academy of Islamic Studies  
University of Malaya,  
50603 Kuala Lumpur, Malaysia

**Mahani binti Mohamad**

Faculty of Languages and Communication  
Universiti Sultan Zainal Abidin, Kampus Gong Badak  
21300 Kuala Terengganu, Terengganu, Malaysia

**Wan Mohd Yusof bin Wan Chik (Ph.D)**

Faculty of Islamic Contemporary Studies  
Universiti Sultan Zainal Abidin, Kampus Gong Badak,  
21300 Kuala Terengganu, Terengganu, Malaysia

### **Abstract**

*The fatwa of compulsory boycott of Israeli goods has been issued by the ruling bodies and scholars. Yet it is often questionable from a practical standpoint and ability of its implementation in the context of the open and global economy especially when involving American products. Among the brands included in the list of businesses to be boycotted is Kentucky Fried Chicken Holding (KFCH) Malaysia, which in fact also involved and contribute to Muslims' economic and finance in Malaysia. The demand of Islamic law, the practicality of the business world and the reality of the Muslim world should be considered. Hence this paper has been compiled with the aim of analyzing the wise approach of KFCH Malaysia on how to apply the demand of boycotting Israeli and goods. To achieve the objective, this study inductively and deductively analyses information gathered through documents and literature reviews within the framework of *Fiqh al-Waqi`* (*Fiqh based on reality*). The study found that this boycott is not practical in Malaysia and should be evaluated based on factors that would be an advantage or ease and not detrimental or difficult to the Muslim community.*

**Key words:** Boycott, KFC (Malaysia), *Fiqh al-Waqi`*, Palestine

### **1. Introduction**

It is said that the boycott movement against Israel began in the 1920s. There is also a view that it began in the early 1950s after the Arab League members meet in Damascus in 1957. But a more clear evidence shows that is founded in the early 1940's when the Arab League introduced Standing Boycott Committee officially declaring "boycott declaration" which asserts that Jewish products were unwanted in Arab countries.

Thus, all institutions, organizations, merchants, commission agents and Arab individual were urged to not deal, distribute or use any Zionist product.(Jack G. Kaikati, 1978)

A special resolution entitled "The Boycott of Zionist Goods and Products" is issued after a 7 members of the Arab League meeting on March 22, 1945. The resolution expressly states that any Jewish product shall be regarded as unwanted in the Arab countries and all Arab citizens whether institutions, organizations, entrepreneurs, agencies and individuals must refuse to deal, distribute or use Zionist products. In 1948, the Arab League has issued an additional resolution to strengthen the 1945 resolution. It is stated:

1. No member country may import goods or services originate in Israel, known as the Primary Boycott.
2. No government, individual, company, or organization in a member country may engage in business with any entity that engages in business in Israel, known as the Secondary Boycott.
3. No government, individual, company, or organization in a member country may engage in business with any entity that engages in business with any entity that engages in business in Israel, known as the tertiary Boycott.(Adam B. Cordover, 2007)

The forms or types of prohibited transactions are detailed, covering:

1. granting an Israeli company technical assistance or know-how;
2. granting rights, patents or royalties to any Israeli citizen or company;
3. representing an Israeli company in Israel or abroad; and
4. supporting any Israeli cause or having "Zionist sympathizers" in executive positions or on the boards of a company. (Adam B. Cordover, 2007)

However, export of goods to Israel is not deemed as inclusive of the boycott campaign as it may be a contributing factor to the deficit economy of Israel.

In May 1951, the Arab League has established Central Boycott Office in Damascus for coordinating mechanism and boycott activity. Any company involved with Israel or its' company, will be given a warning by the CBO. Next, they are given 3 months to end the transaction. If not, it will be blacklisted and cannot enter the Arab market. (Constance A. Hamilton, 1994) The effect is very significant when it affected the Israeli economy due to market factors and regional resources. Israel expresses its objection to the United Nations (UN) and fortunately with the help of the Jewish world, especially from the United States and later the West Germany offered assistance that help to sustain and expand the Israel's economy.(Fred John Khouri, 1985)

Boycott campaign continues to run thereafter. Unfortunately is not consistent. Often, it is merely a reactive action on arising issues. The Zionists continued violence since their occupation of Palestinian land in the 1948 C.E (Ismail Ibrahim, n.d.), the only getting hot when there are big issues hitting Palestine. For example, the boycott resulted by the outbreak of the intifada in Palestine was a spontaneous reaction to the killing of four Palestinians at the entrance to the Gaza Strip by Israeli soldiers. It was attended by nearly all Palestine citizens, regardless of groups as a manifestation of resistance to the Israeli occupation objectively and the built-up of consensus among the various Palestinian groups subjectively.(Phyllis Bennis & Neal Cassidy, 1990) Large-scale attack on Gaza (Aris Hazlan & Riduan Mohamad Nor, 2009) has caused the boycott campaign of Israeli goods back ablaze with Israel feel the impact.(www.guardian.co.uk, 13<sup>th</sup> January, 2012)

To ensure that the boycott efforts run continuously, a handbook entitled "From Boycott To Economic Corporation: The Political Economy of Arab" have recorded the principles used by the CBO in 1977 as a guideline for institutions or individuals who will be boycotted. These principles are as follows:

Boycott of any firm happens when:

1. Own a plant or a branch in Israel.
2. Own a component that is installed in Israel.
3. Own an office in Israel for its operations in the Middle East.
4. Grant permission to use company name or license in Israel.
5. Own shares in Israel.
6. Provide services and consultancy to Israel.

7. Bias toward Israel in terms of import-export goods when refusing to promote Arab good but instead promoting Israeli goods of similar quality and price.
8. Engaged in the exploration of natural resources.
9. Failure to answer questions from the Arab authority. (Gill Feiler, 1998)

Besides inconsistency, this boycott is also inhibited by the actions of countries that withdraw the boycott, for example, Egypt (1979), Jordan (1993) and the Palestinian Authority (Palestinian Authority) (1994). Mauritania has also initiated diplomatic relations with Israel in 1999, although they do not involved in the boycott agreement. Algeria, Morocco and Tunisia do not enforce the boycott in 1994. In addition, in 1994 some Gulf countries like Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates declared performs only primary Boycott actions and in 1996 admitted that the boycott is necessary to terminate the peace process and economic development. (Martin A. Weiss, 2006) The retraction of the boycott, in reality shows that there is no cooperation among Muslims and the differences of interest among Muslims countries.

There are several factors that led to this boycott policy. There was pressure from the point of law from the countries that have commercial importance and impact on their economy. Some countries like the United States have issued orders through the tax act in 1975 for not providing tax incentives for any company involved in the boycott movement. Similarly, in 1975, the United States of America prohibited any party to deal with any parties involved with the movement to boycott Israel. United States of America uses some act to defend Israel from the movement, such as Section 535 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, through the World Trade Organization and the U.S. Anti-boycott Laws. (Martin A. Weiss, 2006) Canada has also issued the Canadian Bill of Rights Act on March 13, 1975 that prohibits any party to conduct commercial business if they do business on the basis of race, national origin, colour, religion or gender, whether in Canada or outside Canada. Even the Minister of Industry, Trade and Commerce Canada, Donald Jamieson stressed the adherence to the boycott campaign driven by the Arab states are not accepted. (Jack G. Kaikati, 1978)

The Pressure to boycott and implementation of it, if reviewed more subtlety is really the impact of Israel cunning strategy to use its influence to press on the Arab countries involved, through its Foreign Ministry. In 1960 they were investigating the companies involved with the boycott and lobbying world countries to make particularly the West to boycott the companies involved. It has affected the business of international companies belongs to Arabs and affected the economy of the country itself. In addition, trade agreements between Arab countries and other countries like the United States of America does not allow them to take risks to do the boycott. It's like Bahrain and Saudi Arabia that have signed free trade agreements (WTO) with the United States. (Mughowari Shalabi, 2010)

In conclusion, despite the boycott campaign having its' impact but it is failed to be and implemented as a policy of Arab states togetherness or unity. The pressure from Israel through his supporters often makes Arab governments feel that their interests are being threatened. Morally, most Arab countries support this movement, especially after the intifada and the Israeli attacks on Lebanon and Gaza. Yet the campaign and the boycott persisted explicitly within the Muslim community and the world community concerned with the humanitarian tragedy in Palestine.

## ***2. The Fatwa of Boycotting Israeli Goods***

A large number of educational organizations and Islamic scholars have issued the fatwa to boycott Israel up to the obligatory. Fatwa from the Rabitah of Palestinian scholars state that it is a national and religious duty to fight in any lawful manner that is required to fight the enemy, including boycotting Israeli goods and his minions led by the United States. Any purchase will contribute to the bullets that killed the Palestinian people. The purchase of any goods and products from them is a great sin and forbidden in the authority of Islamic law. (Jabhah Ulama al-Filastin, 2011) Dr. Husin Shahatah, a professor of the University of Azhar stressed that this boycott is a religious duty and obligatory as an obedience to Allah and His Messenger and it has been issued by scholars. Every Muslim who believes in Allah as the Lord and Islam as a religion must take a stand that the boycott is a worship done for the sake of God the Almighty and the stand he himself and his position with God. (Husin Shahatah, 2011)

Dr. Yusuf al-Qaradawi (2011) states that Muslims are commanded to fight the enemies of the religion and state with all its strength, whether with authority, orally, heart, and also through the boycott. Anything that can weaken the enemy and subjugate them must be implemented. Every individual Muslim must accept the responsibility with their best ability and they cannot protect and assist the enemy whether Jews, nationalists nor others. Act to help the disbelievers has led to a form of apostasy. A Muslim must strive hard to boycott if they are not able to take up arms. It is because without the boycott, it helps the economic growth and their business materially when every penny given to them means sponsoring for every bullet that penetrated the chests and hearts of Muslims. This is the starting point for the American Jews using the slogan “Your money donation means you kill Arabs” in their fund-raising effort in America. Even the liberation of any Islamic country from the enemy is obligatory on the people of that country and the Muslim countries in the vicinity especially when it involves the first Qibla of Muslims, Al-Aqsa Mosque. This jihad is obligatory on Muslims from east to west.(al-Qaradawi, 2007)

Shaykh `Abd al-Rahman al-Sa`di (2011) in turn stressed that the boycott is one of the major tenets of jihad in the form of peace and war. Dr. Sa`id Ramadan al-Buti stressed that the ruling of boycotting food and goods from the U.S.A. and Israel is a mandatory on every individual Muslims. It is easy form of jihad for Muslims to face the enemies, Israel and its supporters. (al-Buti, 2011) Shaykh Salman al-`Udah (2011) stressed that no one can prevent the boycott made by the people or the Muslim community by their selection of products from Arab companies and Muslim, or at least not products of the United States and Israel. No one can force the public to buy certain items or work with a particular company or display those items.

Shaykh `Abd al-Rahman al-Sahim (2011) stressed that if Muslims cannot afford to buy ammunition for the Palestinian people, then do not provide any money to buy bullets for Jews. Do boycott them because they kill us with our money. Shaykh Hamud `Uqala` al-Shu`aybi (2011) said that Muslims now do not have superior weaponry against the enemy as Muslim rulers are not united, played down the calls for jihad and in close working relationship with the infidel. The only option left is to boycott their products and companies that can be done. This fatwa is also supported by Shaykh Salih Lahidan (2011) stating the boycott of American, Britain and Australian goods is a part of jihad. Boycott is also stipulated as mandatory by Shaykh `Abd al-`Aziz Rajihi (2011).

The above rulings are later reconstructed by some recent scholars in a more dynamic and comprehensive manner. Shaykh al-`Akkam (2011) for example, offers another perspective, a more far-reaching view that besides the duty to boycott American products, it does not stop there. Instead, Muslims should boycott all goods except their own. More appropriately, the Muslims must produce their own goods, and this is the real meaning of the boycott. The situation is the same whether American policies or any others are changed or not. Similarly, Shaykh HabÊb `Ali (2011) has stressed that the boycott is not just that but must be oriented towards the construction of Islamic society and beyond with production of own goods as an alternative or substitute to their products. Shaykh Muhammad Hasan al-Dari`i (2011) explains that Muslims must carry out the boycott with all their souls and convictions in supporting the prohibition by behavioural boycott not following their lifestyle and economic boycott by not doing any transaction with them in terms of accepting of goods, buying, distributing, advertising and facilitating any transaction.

In conclusion, although there are a few scholars who are based in Saudi Arabia said that boycott can only be carried out by order of the government, but the majority of scholars support the boycott as one of the appropriate action in confronting the Zionist terrorism in Israel. Therefore, the boycott ruling from the Islamic law argument is mandatory. But in the context of implementation, it needs to be done properly taking into consideration current socio-economic status and the real ability of Muslims globally or locally. This will be the focus of the article to consider the reality of the socio-economic demographics of Muslims in Malaysia. The considerations are based on the wisdom of fiqh or the understanding of the concept of ‘grounding law’ taking into consideration that the comprehensive advantage should be a priority. This law is at the implementation stage, particularly in Malaysia but also it should require the aspects of *al-takyif* (adaptation) throughout the Muslim world, to avoid a greater harm to the Muslims against the resulted comprehensive advantage (Mahmud Zuhdi, 2012). This is the outline for guided logic based on evidence and Islamic method called *Fiqh al-Waqi'* (an understanding of contemporary problems).

### 3. *Fiqh al-Waqi'*

*Fiqh al-Waqi'* is generally discussed in the discipline of *Usul Fiqh* (Principles of Islamic Jurisprudence). It is implemented by the *Fiqh* (Islamic Jurisprudence) scholars in their *ijtihad* (interpretative judgement) and *fatwa* (ruling). Recognising that the element of *fiqh al-waqi'* is quite missing from some of recent fatwa and *ijtihad*, Dr. Yusuf al-Qaradawi in (1997) tries again to disseminate its' significance. He cited the *Fiqh al-Waqi'* as a knowledge to identify gains and losses of things. In fact, he argued that the change of law can happen because of the changes of circumstances. In a more detailed definition, Dr. Nasir al-'Umar (n.d) states that *Fiqh al-Waqi'* is a discipline that discusses the current state of jurisprudence in terms of factors that affect the community, state, thoughts that provokes the deviation of faith and also about ways to protect the Muslims people and Muslims community's progress at the present and future.

*Fiqh al-Waqi'* was discussed indirectly by *Fiqh* scholars early in their writings. Al-Ghazali for example, described the obligation to provide maintenance to the wife, for instance are based on two principles. The fundamental principles are derived from the evidence and consensus and the second is from the amount of maintenance that is estimated by supposition (*Zann*). The supposition is based on the couple's circumstances. From here, we can ensure that the second principle known as *Tahqiq al-Manat* represent what is known as *Fiqh al-Waqi'*. (Wan Mohd Yusof bin Wan Chik, 2009)

Al-Shatibi explains this *Fiqh* through:

The assessment in terms of the original purpose of an act whether or not to meet the required Islamic law

According to him, a cleric should examine in depth the action of an obligated person evaluating it from the aspects of goodness (*maslahah*) and harmfulness (*mafsadah*) and also refers to the intention for his actions whether they are permitted by Islamic law or otherwise. (Abd al-Rahman al-Kaylani, 2000) The boycott ruling is originally to be *'azimah* that is mandatory but will change in the context of its implementation into *rukhsah* (flexible) when confronted with situations of *darurat* (basic needs according to the Islamic Law) and *hajat* (needs) that is *darurat*. Thus, the implementation of the Islamic law is not necessarily viewed from the aspect of the law alone but need to look at the capability of the implementation in the real situation and its' impact on the *taklif* (obligation). When such a situation where this capability is met then the implementation of Islamic law becomes mandatory. This does not mean denying the Islamic law or implementing it half way (*juz'i*), but it refers to the implementation of the law in the comprehensive way by taking into the consideration involving the various dimensions. Thus, the gaps and opportunities can be identified for its' implementation of the law. (Ahmad Bu'ud, 2006) Therefore, the *Fiqh al-Waqi'* causes the real situation as the point of view that will guide the stages and procedures in implementing the required Islamic law.

In reviewing the ruling to boycott Israel and U.S.A goods as well as the countries or companies that are to be boycotted in Malaysia as a whole by taking into account the *Fiqh al-Waqi'*, some aspects should be considered because it could affect the legal status of the ruling in different situations.

### 4. *Identifying and categorizing the Target of Boycott*

In principle, Islam does not prevent interaction with the non-Muslims, including Jews. Even the interactions with non-Muslim in reality, are regarded as a duty to propagate Islam and a mercy in Islam. However when there is persecution against Islam, the Muslims and non Muslims, then in practical, the harm of the persecution must be removed. Perhaps this is conceptually understood in the word of God:

Allah does not forbid you to do good and to be fair to the people that do not fight you for (your) Faith, nor drive you out of your homes for Allah loveth the equitable. (al-Mumtahanah, v.8)

In the reality, implementing this ruling to boycott necessitate the efforts to identify and categorize the level of support provided by a company for the Zionist regime of Israel either by the owners or shareholders and it must be done carefully. This case should be brought up for reconciliation between the *fasad* (harmfulness or damages) contributed and the associated advantages from the association for the Muslim people either locally or globally. In addition, the implementation of the boycott necessarily bound to the principles of priority (*al-awlawiyyat*) in *fiqh*.

Thus the process of reconciliation in the Malaysian context, among the elements needed to be referred to understood are the policies and underlying framework of foreign direct investment (FDI) in Malaysia. Referring to FDI, in principle, foreigners should not hold more than 70% equity in Malaysian companies while the remaining 30% shall be held by the *Bumiputra* (which is the original inhabitants of Malaysia). For corporations that have a vested national interest such as water and energy supply, broadcasting, defence and security, foreign interest is usually limited to 30%. In essence, the above guidelines have been relaxed gradually and usually 100% equity interest permitted in certain circumstances. These include the following:

1. New manufacturing company;
2. Company granted Malaysia MSC status
3. Company granted with the International Procurement Company (IPC) status, Operational Headquarters (OHQ) status and Regional Distribution Centre (RDC) status (iskandarmalaysia, 2011)

## 5. KFCH Case<sup>1</sup>

In cases involving the commercial entities that are not clear and with a minimum contribution or found to offer a large-scale benefit to Muslims though they support the Zionist regime of Israel, a closer examination is necessary. An example of products that support the Zionist regime of Israel but issued by local companies is KFCH and others through franchise system. Therefore, for foreign brands especially from American companies supporting the Israeli regime but with local franchise ownership, there are many considerations to be made in imposing the boycott. Among the basic implementation of the action to be taken is based on *mafhum mukhalafah* method (Inverse Method):

What cannot be taken as a whole, not all are left out

By applying the *Mafhum mukhalafah* method (Inverse Method):

What cannot be left out as a whole, not all are taken.

With this method, the purchase and consumption of any goods from the producers or manufacturers holding the franchise of foreign companies that sponsor the Zionist regime should be minimized and avoided, but that which is necessary.

For the holder of the franchise companies, they need to gradually find alternative to replace it with other businesses or take over the ownership of the company as was done by the Johor Corporation through shareholding in its subsidiary Kulim.

Kulim has a 57.77 percent stake in QSR, which in turn has a 50.64 percents take in KFCH, the largest fast food chains in Southeast Asia with more than 540 branches in Malaysia, Singapore and Brunei. Second largest shareholder in KFCH is in the possession of Lembaga Tabung Haji 22.62 per cent stake in the company.(pmr, 2011) The company is only required to pay fees to the owner of the brand franchise company YUM Brands Inc.

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<sup>1</sup>KFCH ialah Kentucky Fried Chicken Holding, the franchisee of the KFC chain of restaurants in Malaysia, Singapore, Brunei, Cambodia and India. KFC is part of Yum! Brands, Inc., the world's largest restaurant system with more than 38,000 KFC, Pizza Hut, Taco Bell, Long John Silver, A&W and WingStreet restaurants in more than 110 countries. KFCH operates the home-grown RasaMas chain of restaurants, the Ayamas kiosks, and the Kedai Ayamas chain of convenience stores. KFCH also active in poultry production and processing and a variety of ancillary businesses. KFC is part of Yum! Brands, Inc., the world's largest restaurant system with more than 38,000 KFC, Pizza Hut, Taco Bell, Long John Silver, A&W and WingStreet restaurants in more than 110 countries.

Figure 2 : Kulim Shareholdings in QSR Brands Bhd in Food Industry

|   |                   |   |
|---|-------------------|---|
| 58%                                       | QSR Brands Berhad |   |
|   | 100%              | Pizza Hut Holdings (Malaysia) Sdn Bhd           |
|   |                   | 100% Pizza Hut Restaurants Sdn Bhd              |
|   |                   | 100% Multibrand QSR Holdings Pte Ltd            |
|   |                   | 100% Pizza Hut Singapore Pte Ltd                |
|   | 55%               | Kampuchea Food Corporation Limited              |
|   | 51%               | KFC Holdings (Malaysia) Berhad                  |
|   |                   | 100% Ayamas Integrated Poultry Industry Sdn Bhd |
|   |                   | 100% KFC India Holdings (M) Sdn Bhd             |
|   |                   | 100% Paramount Holdings (M) Sdn Bhd             |
|   |                   | 100% Paramount Management Sdn Bhd               |
|   |                   | 100% Tepak Marketing Sdn Bhd                    |
|   |                   | 100% KFC Restaurants Holdings Sdn Bhd           |
|   |                   | 100% Roaster's Chicken Sdn Bhd                  |
| 100% Ayamas Food Corporation Sdn Bhd      |                   |   |
| 100% Region Food Industries Sdn Bhd       |                   |   |
| 100% Intergrated Poultry Industry Sdn Bhd |                   |   |

Source: <http://www.kulim.com.my/html/>

According to Tan Sri Hashim Ali, KFC's return is 94% and only 6% is paid to the franchise owner. Thus, the boycott is to be done wisely and with the right information. This is because KFC provides opportunities in terms of jobs, businesses and sources of supply that are fully owned by locals. (Mohamad Ali Hashim, 2012)<sup>2</sup>

Despite the inclusion of fixed franchise fee contributing to American companies, but it is obviously benefit the consumers particularly to Muslims that make fast food premises as a destination for their food needs. More so, the yield backs to the Muslim company and provide job opportunities for them.

In the case of KFC, while consolidating the Muslim economy and providing jobs' opportunities to more than 30,000 people, it can ensure *halal* (permitted) food sources more effectively. (businessjihad, 2011)<sup>3</sup> This action is based on the method :

If present the conflict between the *maslahah* (benefits) and the *mafsadah* (damages), select one that is the better option

However, on December 21, 2011 the latest development is that Johor Corporation has accepted an offer of purchase for KFC from QSR Brands and KFC Holdings for the privatization of the KFC from the company that it established Massive Equity Sdn. Bhd. in which Johor Corporation have a 51% stake, while 49% are controlled by CVC Capital Partners (an international investment and consultancy company). (bernama, 2012)

The Malaysia Malay Chamber of Commerce (DPMM) contended that action and offered a higher bid price for the purchase of these shares. (bernama, 2012) However, Chief Minister of Johor & Chairman of the Johor Corporation (JCorp) Datuk Abdul Ghani Othman stressed the company did not consider other offers. (bernama, 2012)

Even if the acquisition and massive capital occurs, the permissibility of law is still valid even if it is not so strong as the share of foreign companies (CVC Capital Partners) (cvc, 2012), which holds 49% equity of Massive Equity Sdn Bhd. This is because it involves a source of income for Muslim workers and Muslim holdings are still exist. Once again, the method :

If present the conflict between the *maslahah* (benefits) and the *mafsadah* (damages), select one that is the better option

<sup>2</sup> ex CEO of Johor Corporation.

<sup>3</sup> <http://www.businessjihad.com> (11 November, 2011)

is being applied here. But this is the one thing that definitely should be avoided in the effort to strengthen the Muslim economy especially when there are other alternatives in the sale of these shares, more so DPMM is offering to buy the shares at higher prices.

However, the flexibility of the boycott ruling that is given here is not to say that Muslims in Malaysia are can simply let the fate of Palestinian people on their own. The lenience of the ruling that generate the income of the company and the employees means more responsibility to help the Palestinian in terms of moral, financial or any other necessary assistance especially in terms of humanitarian aid.

### **Conclusion**

The obligation for Muslim to boycott Israeli goods is in general a status recognized within the Islamic law and its importance in helping the Muslims to fight for their rights in Palestine. But more importantly is that it can be translated into actions that are appropriate to the socio-economic condition of Muslims locally and globally. The opportunity and ability to realize this boycott is not the same among individuals, organizations, communities or countries because each entity has different strengths and opportunities. Thus the status of Islamic law to boycott Israeli goods must be wisely implemented by analysing the complementary situation and reality of the surroundings as required in the discipline of *Fiqh al-Waqi'*. In the Malaysian context, the boycott on KFCH is not appropriate, in accordance with the financial ability of Muslims in Malaysia and the benefit gained from the business. Wisdom is indeed the pursuit of every Muslims community of believers in every phase of their lives.

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