

POLEMIC OF ACCEPTANCE AND REJECTION OF IMAM AL-SYAFEI RELATED TO *SADD AL-DHARA'I* (BLOCKING THE MEANS) AS A SOURCE OF ISLAMIC JURISPRUDENCE IN IJTIHAD COMPARED TO THE ACCEPTANCE OF JUMHUR FUQAHA'

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Abstract

This paper is looking at the position of *sadd al-dhara'ic* in the legal reasoning (*ijtihad*), its objectivity as the source of *ijtihad*, the acceptance and the rejection of Imam al-Syafei and the fuqaha'. The situation of this acceptance and rejection by Imam al-Syafei becomes a polemic and the impact on his actual perception. The objective of this research is to investigate and understand the approach of *ijtihad* through *sadd al-dhara'ic*, unravel his stand and to justify his stand as compared to other fuqaha' who accepted it. This research is using the library research method which is the main source of information by evaluating the documents related to the use of *sadd al-dhara'ic* by Imam al-Syafei and the fuqaha'. By critically analysing the position of *sadd al-dhara'ic* through the discussion of the mujtahid and Imam al-Syafei's perception who accepted and rejected as well as the differences of each others' opinions, it is found that he accepted *sadd al-dhara'ic* as the source of law. However, the acceptance is not comprehensive, it is only based on *al-dhara'ic* or the means which hold the certain (*qatei*) characteristics and it is confidently leads to harm (*mafsadah*) only. Nevertheless, it is found that the example of it's application has already been applied indirectly in Imam al-Syafei's fiqh. Therefore, the invention of the legal ruling (*hukum*) through the *ijtihad* process using the *sadd al-dhara'ic* should not be regarded as rejected by al-Syafei. It is also in line with the importance of the use of the mind and the wisdom of the mind based on legal text (*nass*) in the process of *istinbat* or deducing an Islamic law from it's sources which is regarded as very important especially in this modern times because there is a need for the law to be scrutinized in detail which has not been elaborated thoroughly by *nass* of the al-Quran and al-Sunnah.

Keywords: *sadd al-dhara'ic*, *ijtihad*, al-Syafei, mazhab.

Introduction

The current *usul fiqh* ulama opine that *sadd al-dhara'ic* is a way to make an effort in producing a law. This has given a different perspective on its concept that some of them reject the use in Islamic Sharia.

Therefore, to look into this matter, this research is going to focuss on two important aspects. The first is related to the basic concept of *sadd al-dhara'ic*. It covers the definition, terms used by the ulama and the division.

The second aspect is about the position of *sadd al-dhara'ic* in Islamic Law from the perspective of the *usul fiqh* scholars. From this also, there will be a discussion and *tarjih* on thoughts and point of view of al-Imam al-Syafei's and the scholars of the four sects.

DEFINITION OF SADD AL- DHARA'IF

Sadd al-dhara'if consists of a combination of two separated words which are *sadd* and *al-dhara'if*. They are combined to make one specific meaning. Therefore, to find out the exact meaning of *sadd al-dhara'if* there is a need to define both words separately. Then, the definition of the combined words will follow.

Definition of *Sadd*

Etimologically, the meaning of *sadd* means *al-radm* which means “closed”. Whereas terminologically it means “to close”. (Ibn Manzūr t.th).

Definition of *al-Dhara'if*

al-Dhara'if is a plural of *al-dharā'ah*. It has several different meanings, however, the intended meaning in the title of this discussion is for each medium or path that leads to a certain subject, or a connector that connects it with something (Ibn Manzūr t.th).

From the definition of scholars of *usul al-fiqh*, the Islamic scholars give the word *al-dharā'ah* a myriad of meanings. This situation happens based on their different understanding of the combination of the words *al-sadd* and *al-dhara'if*. For those who perceive the word *al-dhara'if* which means “connector” in a very wide and general sense, which can happen whether on the subject which are directed or prohibited, thus, they put aside the word *al-sadd* (to close) as the topic of their discussion. As for those who look at the meaning “connector” is only used specifically on the prohibited matter and not on the ones that are directed, so they will maintain the word (*sadd*) in their discussion.

Therefore, in defining the word *al-dharā'ah*, the ulama have different opinion to give the exact meaning for this word. The difference can be concluded as:

Firstly: Those who opined that *al-dharā'ah* is something that becomes a connector of something whether towards something prohibited or allowed (in Islamic laws). This opinion is founded by al-Imam Ibn Qayyim (1968/1388H) and al-Qarāfiyy (1393H/1973). When debating this topic, al-Qarāfiyy described it as

الذريعة هي الوسيلة للشئ

Meaning: “*al-Dharā'ah* is a path (means) of something” (al-Qarāfiyy 1393H/1973).

Secondly: This group opined that it is something that the initial rule is permissible but becomes the means or medium to something prohibited. This opinion was put forth by al-Imām al-Shātibiy (2001/1422H), al-Bājiyy (1407H/1986), al-Qurtubiyy (1387H/1967), Ibn Rushd (1988) and others. This is proven by the saying of Ibn Rushd:

هي الأشياء التي ظاهرها الإباحة ويتوصل بها إلى فعل محظور

Definition: “*al-Dharā'ah* is something that on the surface is permissible and at the same time it leads to something prohibited” (Ibn Rushd 1988)

Thirdly: This opinion was mentioned by Shaykh al-Islām Ibn Taymiyyah (1414H/1993) in his book:

الذريعة ما كان وسيلة وطريقا إلى الشئ لكنها صارت في عرف الفقهاء عبارة عما أفضت إلى فعل محظور

Definition: “*al-Dharā'ah* is the connector or a path towards something, but it is more known by the *urf* of the Islamic jurists (*fuqaha*) as something that can lead to something prohibited”.

After looking at the discussion of the scholars while defining the terminology of the word *al-dharā'ah*, it can be concluded that the most accurate definition for this word is something that from the originally permissible, but

due to some strong factors it can be something that is prohibited. This definition is accurate when it is based on the word *sadd* which means to close.

Therefore when the words *sadd* and *al-dhara'ic* are combined, they meant “to close” or prohibiting from doing something which is initially permissible but due to some strong reason, factor and assumption it can lead to something prohibited. In other words, the prohibition of *wasīlah* (connector) that leads to *mafsadah*.

THE BASIC COMPONENT OF AL-DHARA'IC

The basic component or can be regarded as the commandment of *al-dhara'ic* is taken based on the early definition which is an action that on the surface is permissible but with a strong notion it becomes something that is prohibited. *al-Dhara'ic* has three basic components which is *al-Wasīlah* that is an action which is permissible at first, but can be a connector to the prohibited, *al-Ifda'* or a strong notion that can be a cause to a prohibited act and *al-Mutawassal ilayh* which is the prohibited act as its impact or the result of this (al-Burhāniyy 1999/1420H).

The component of *al-Wasīlah*

It is the component or the basic commandment for *al-dhara'ic* because the second and third component are based on its existence. An action which externally permissible is referred to some matters such as the act itself sometimes is done because there is other intention and not because it is done due to its initial intention. For example, one who sells a merchandise for RM100 but the payment is delayed and then buys it for RM80 and pays cash for the item. The contract of this purchase initially is permissible but becomes the opposite when it is as if he borrows RM80 cash and the payment of RM100 is delayed. Whereas, the item which was purchased in the contract, as if does not exist and was never intended in the contract when it is returned to the owner. Therefore this process is called “*ayn riba'* (the source of usury) which is prohibited. Therefore, the act of buying and then selling is not initially done for the purpose of to follow the contract but has become a clear connector that leads to something which is considered as prohibited.

This act also sometimes is done for its initial purpose but unintentionally it leads to something not permissible. So it is also considered as a connector or *al-wasīlah* to this prohibited act. This is the same when a person degrades or bad-mouthing the idols of the non-believer due to his strong love for Allah and the truth as well as the rage towards the heathens, minus the intention to cause the heathens to degrade Allah s.w.t in return. Thus, as a result, those non-believers throw verbal abuse towards Allah s.w.t. as a vengeance. Even though the Muslims do not anticipate this outcome, this act is still prohibited because it is regarded as a path towards this unwanted act.

Component of *al-Ifda'*

It is an essential element referred to as causation, which leads to something illegal with a strong foundation. It is this element that connects the other two pillars of *al-dhara'ic*, namely *al-wasīlah* and *al-mutawassal ilayh*. Its characteristics can be seen from two aspects as it is a *ma'nawiyy* (invisible) thing that exists either after it actually causes an event to occur with the result of *al-mutawassal ilayh* such as adultery after looking at a non-mahram woman and chatting with her excessively, or only through anticipation i.e. which is only expected to be the cause of an event but not definite.

For the forms that the existence is through anticipation, there are a few visual depictions such as, the perpetrator has intention upon an action (*al-wasīlah*), to reach the other conclusion (*al-mutawassal ilayh*) through the existing passage. For example someone who marries a woman with the intention of making her *halal* for the first husband (*nikah al-muhalil*) or someone who digs a hole behind house door so that whoever enters will fall into that hole.

The doer does not have any plans to use the action (*al-wasīlah*) to reach a bad ending (*al-mutawassal ilayh*), but from the standpoint of a custom, it is a path or a cause to that ending. Like a person who sells two items for RM200

in a month, and buys one of the items for RM100 cash. So we assume he intentionally mixes up sales and delays concurrently, although he has no intention to do so (Ibn Rushd 1416H/1996).

The perpetrator did not mean to use the action to reach a bad ending. However, on its own becomes a factor by another party to reach that ending. To illustrate, the act of verbally abusing the idols of the non-Muslims. This can lead to them saying bad things about Allah s.w.t or Prophet s.a.w. Hence this action is prohibited even though the perpetrator does not want to receive negative comments from the non-Muslims.

The performer or anyone else do not mean to use this action to arrive to a bad ending, but it naturally causes that to happen. Thus, the foundation used here are assumptions and expectations to judge it as permissible or otherwise. Like someone who sprays pesticide on vegetations to exterminate insects. The intention of this act is permissible for the doer. However, it is prohibited because it is possible for the poison to kill someone. If such assumption does not exist, then the act is permissible.

The ability to achieve certain strength until it can be used as a foundation (as a cause) to come up with the creation of a law that prohibits. That strength can be determined through its large number or its extreme risk rate. So it can be understood that the evaluation for something to become *al-ifda'*, not only that it is an expectation but it must have the power to be inhabited by the law of prohibitions.

Component of *al-Mutawasal Ilayh*

It is a prohibited act which is the impact or result of the first commandment. Based on this commandment there are few features that can be seen which are something prohibited and is able to be done by a *mukallaf* and it is possible to materialize.

The impact of this action is *mafsadah* or dangerous. It is because this is an important foundation to determine the strength and the weakness of *al-ifda'*. Hence, it is not only a high rate that becomes a determining factor to that strength. But the danger and the position as a *mafsadah* also plays an important role in classifying the strength. In this situation, it also celebrates a crucial principle in the order of *al-maqasid al-sharī'ah* such as damage to religion is more dangerous than life, damage to life is more dangerous than the mind, the mind is more dangerous than possession and so on.

From a different perspective, the damage that will happen to a big crowd is considered worse than a small crowd. The damage that is premeditated and intended is graver than the unpremeditated one.

Therefore, in the case of *sadd al-dhara'ī'* is heavily concerned upon by the ulama and they give specific attention towards the use in prohibiting elements that can lead to something prohibited from a faith and religious standpoint. This can be seen through their writing on witchery, diverted teaching, *bid'ah* and others.

DIVISION OF *AL-DHARAI'*

Ulama have different opinions and ways of dividing *al-dhara'ī'*. The difference in division is based on their observation on law, level of harm, and what will happen from the action of *al-dhara'ī'* itself. To ease the understanding, here the writer only brings on the division which is done by Imam al-Qarafiyy and al-Shatibiyy where al-Qarafiyy divided it based on law of *al-dhara'ī'*. While al-Shatibiyy divided it by seeing it from the level of harm and the consequences.

Division of *Al-Dharai'* by Al-Qarafiyy

Imam al-Qarafiyy divided *al-dhara'ī'* into three parts (al-Qarafiyy 1344H):

The *Ijma'* act that prohibits it: That is an act that has become *Ijma'* of Muslim community so that it will be barred and banned such as the prohibition to dig a well in the path used by the Muslims., it becomes a connector (al-

wasīlah) that leads to their destruction. This is just like adding poison to their food, use abusive words on their idols by a person who knows the situation that leads to Allah s.w.t being abused too.

The act of *Ijma^c* which is not banned: This means that this act is not prohibited without error even if it is *al-dhara'ī^c*, like planting grapes, the act is not prohibited even if it is worried it has the possibility to be processed to make alcoholic drinks (*al-khamr*).

The Act That Becomes an Error : This is an act (*al-dhara'ī^c*) that becomes a dispute among the scholars whether it is banned or otherwise, like a purchase which is put on hold or *buyu^c al-ajal*. This is a term for a purchase which is only used by the *fuqaha'* of Mālikiyy sect. Whereas other sects call it *bay^c al-^cīnah*. This word means the sell and purchase that can lead to usury, which is lawful on the surface, but leads to slander that leads to hidden unlawful act. This type of sell and purchase are plenty and some of them are *bay^c al-^cīnah*, *al-salaf*, *al-qard*, others (Nazyah Hammād 1415H/1995).

Division of *Al-Dhara'ī^c* by Al-Shatibiyy

Imam al-Shatibiyy divided *al-dhara'ī^c* into four classes. The classification is assessed by the outcome of certain acts. He then specify a decree for each category (al-Shātibiyy 2001/1422H):

An act based on *Qat'īyy* (*definitely*) leads to *Mafsadah* : It means a *mukallaḥ* action which is confirmed can lead towards *mafsadah* and destruction, like digging a well or a hole behind unlit house's door, where when a person enters the house will definitely fall into it. This act and what related to it is forbidden because *mafsadah* which leads to a definite outcome.

A rare action causes *Mafsadah*: This is like digging a well at a place where no one will fall into it. It remains as an act which contextually permissible. This is because the benefit form this act is far greater than the harm it may cause as the side effect of this action.

An Action With a Strong Assumption (*ghalabat al-zann*) leads to *Mafsadah* : this is like selling grapes to wine maker (*al-khamr*). In this situation, the strong assumption equates an assurance. Therefore the selling of the grapes is considered illegal from the point of view of ulama of Malikiyyah and Hanbaliyyah, for them, allowing this act to take place is similar to helping out in committing a forbidden act or going against the law (al-Maqḍisiyy t.th).

Action That presumably Leads to *Mafsadah*: This is the action that most of the time leads to *mafsadah* but does not reach the level of strong assumption or even the level of assurance like the adjourned sell and purchase (*buyu^c al-ajal*). It can lead to *mafsadah* or usury, but the assumption does not lead to an assurance. The ulama have different opinions regarding this. Is the sell and purchase considered as *al-dhara'ī^c* that leads to *mafsadah* that *aqd* (tasarruf) or transaction is void, and the act is forbidden or it is not void by holding on to the initial ruling, that is the sell and purchase activity that is allowed by Syarak. The explanation about this kind of transaction will be explained in the coming chapter.

THE ULAMA'S STAND ON THE USE OF *SADD AL-DHARA'ī^c* IN *IJTIHAD*

This discussion covers the ulama's stand on the position and the use of *sadd al-dhara'ī^c* as a reference when doing the *ijtihād* and the cause of the differences in opinion among them.

Through ulama's writing, the divergence of opinions amongst them can be concluded into two groups, the one who accepted *sadd al-dhara'ī^c* as Syarak deliberation whether directly or otherwise and the other that totally rejected it (Mahmūd Hāmid ^cUthmān 1417H/1996).

The Group That Accepts (Jumhur Fuqaha')

This group opines that *sadd al-dhara'ic* generally can be used as the source of law or one of the resources in the *ijtihad* stage of Syarak law. This opinion was initiated by *jumhur fuqaha* of the four sects that are Hanafiyy, Malikiyy, Shafi'iy and Hanbaliyy.

The Group That Rejects

This group clearly rejects *sadd al-dhara'ic* to be used as source of law or a method while doing the *ijtihad* in any circumstances because the use is included in the *ijtihad bi al-ra'y* category. This opinion is initiated by Ibn Hazm and his followers which was known as the al-Zahiriyyah sect. This sect is called by the name based on their beliefs that rejected law of *isthinbat* except with the *zahir nass* al-Quran and al-Sunnah and rejected *ijtihad* that was based on *'illah nass* or the causes of *nass* (Ibn Hazm t.th; Muhammad Abu Zahrah 1997).

Explanation on Acceptance of Jumhur Fuqaha *Sadd AL-Dharai'* as Syarak Argument

Nonetheless, the acceptance was not wholly accepted among them, in certain circumstances, they had different opinions on how it should be used in certain law problem. For example Malikiyy and Hanbaliyy sects hold forth that *bay' al-'inah* is prohibited based on *sadd al-dhara'ic*, whereas Shafi'iy sect opines that *bay' al-'inah* is permissible and totally rejects the use of *sadd al-dhara'ic* in this situation.

The explanation on the way they accepted *sadd al-dhara'ic* for this *jumhur* group can be looked at as follows:

Abu Hanifah's, Imam Malik's Dan Imam Ahmad's Acceptance.

To begin with, Imam Abu Hanifah did not use *sadd al-dhara'ic* as the base of *ijtihad (usul al-ijtihad)*. However, that did not show that this sect totally deny *sadd al-dhara'ic* in their *ijtihad*. This is due to in certain condition, the concept of *sadd al-dhara'ic* is used indirectly. This can be proven from certain examples like the source of *al-Istihsan* law that becomes one of the *ijtihad* components of this sect is included in the group that argued based on *maslahah*. Thus, it is similar to *sadd al-dhara'ic* which also used the same basic which the intention is to protect the *maslahah*. The differences that exists did not involve a big gap between these two concepts except only in naming angle (al-Burhāniyy 1999/1420H).

Imam Malik accepted it widely in *ijtihad* and makes it one of the *usul* or base for Malikiyy (Muhammad Abu zahrah, 1997). This is in line with this sect that uses *maslahah* (the benefits which is directed by al-Shari' the all Wise to His servants in the form of protecting the religion, soul, decendant, and their possession) and a society's custom in forming a certain *fiqh* regulation (al-Butiyy 1402H/1987). Imam Ahamad ibn Hanbal also agreed with Imam Malik in accepting *sadd al-dhara'ic* as one of the sources in determining a regulation.

The Argument of Those Who Accepts

Some of the ulama from this group explained that the fundamental of the acceptance of *sadd al-dhara'ic* is looking at the outcome and impact of an action. In this case, the determination of a ruling that is made on that particular action (*al-dhari'ah*) always follows the provision of the ruling that is made on the act itself. According to him, the action that leads to something forbidden is forbidden. Therefore the fundamental of acceptance *sadd al-dhara'ic* as a source of regulation that is the evaluation towards the impact of certain deeds. When a deed is permissible, but leads to a bigger *mafsadah* than *maslahah*, thus it is banned as to prevent that from leading to something forbidden.

Hence, to use *sadd al-dhara'ic*, the evaluation is not limited to only focussing on the intention of the perpetrator only, in fact, the result and negative implication from an act is the one that is acknowledged. An action which is

accepted or rejected as well as praised or belittled depends on the impact. Even if the doer has good intention (Mustafa Ahmad al-Zarqa 1988/1408H).

In this matter, Shaykh Muhammad Abu Zahrah said that the basis of using certain *al-dhara'ic* as the foundation of the Islamic law, is by looking at the impact of an act. An action that becomes a connector, to determine the ruling based on the precondition of the act whether it is hoped to happen or not (Muhammad Abu Zahrah 1997).

To show that it is permissible to perform an act with *al-dhara'ic*, this set has presented some evidence to strengthen their arguments. According to explanation by Ibn Qayyim al-Jawziyyah, he presented ninety nine evidence that applied the *sadd al-dhara'ic* method whether in general or specific (Ibn Qayyim 1968/1388H). However here only a few evidence are given that specified the use as follows:

Allah s.w.t. said:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

Meaning: "And do not cuss their God that been begging from other than Allah s.w.t, definitely they will cuss Allah as an act of hostility without any knowledge" (al-Quran, al-An'am 6:108).

Imam al-Qurtubiyy, when explaining this verse said that this verse is a proof that it is compulsory to use *sadd al-dhara'ic* when determining a ruling whereby from this verse, one who has the right on certain thing but in certain circumstances he is forbidden to use his rights when it can lead to adversity towards the religion (al-Qurtubiyy 1968/1387H). The same topic is also verified by Ibn al-^cArabiyy (Ibn al-^cArabiyy 1967/1387H). Here, the use of *sadd al-dhara'ic* is clearly seen when Allah s.w.t. forbids the Muslims from insulting or cussing the heathens' idols or those who pray to other than Allah s.w.t. This is to prevent them from cussing Allah s.w.t., cussing or verbally abusing the heathens' idols initially was permissible and an act of polytheism is wrong, but the impact of insulting them is far worse that they will insult Allah s.w.t. Therefore, insulting their idols is prohibited as to prevent the *al-dhar^cah*.

Proof from Hadith on Prohibiting the cutting of a thief's hand during war so that he will not betray and join the musyrikin. Rasulullah s.a.w said:

لا يقطع الأيدي في الغزو

Meaning: "The hand of a thief will not be cut off in a war" (al-Tirmidhiyy, 1400H/1980, chapter (20) Ma ja' ann la yuqta^c al-aydiyy fi al-ghaju).

Therefore, military leaders are forbade from applying hudud law in war because it may cause severe adversity.

Rasulullah s.a.w also did not kill the hypocrites around him, even is they appear among the muslims and spread slanders among the Muslims who were facing this adversity. This is because his action as a preventive measure (*dhara'ic*) for the general public to accuse Muhammad s.a.w had murdered his companions (Ibn Qayyim 1968/1388H).

Arguments form *ijmak ulama* said that there were many problems that emerged during the time of the companions had been resolved through their consensus based on *sadd al-dhara'ic*. To illustrate, the event where *mushaf* was collected.

Sayyidina ^cUthman r.a had collected the *mushaf* to one *harf* from seven *ahruf* of al-Quran that had been sent down. The purpose for this was to avoid any disputes amongst the *qari* experts in their readings which may lead to the disputes of the content of the al-Quran al-Karim.

Hence, to apply the *sadd al-dhara'ic* step to prevent slander and disagreements, Sayyidina ^cUthmān ordered that *mushaf* to be collected and made into one style and the rest of the others were burnt. The companions agreed to his decision. This is an *ijma^c* among them (Ibn Qayyim 1968/1388H).

The companions had also consensually agreed on implementing the capital punishment on a group who murdered one person. This *ijma^c* happened even if in that particular case there was no similarity in the number that is used

as the base of *qisas* ruling. The purpose of this ruling is to prevent a scheme to murder someone. This is because, if there is no such ruling, anybody who plans to murder a person will gather a group of people without any remorse because they know that they will not be charged for the murder. Moreover they will only be asked to pay a fine for the crime (Ibn Qayyim 1968/1388H).

Imam al-Shafei and His Acceptance Polemic

Imam al-Shafei accepted *sadd al-dhara'ic* only in certain circumstances. Nevertheless, ulama have different opinions on Imam al-Shafei's true stand. This is because there are some of his statements which sometimes accepting and at the same time it was the opposite. This can be seen in the situation below:

Imam al-Shafei's Situation That Rejects

This situation is concluded based on Imam al-Shafei statements in his writing (Mahmūd Hāmid ʿUthmān 1417H/1996). Some of his statements in “al-Umm” book (al-Shāfiʿiyy 1403H/1983), in the Meaning: “The rulings only follows what is obvious (*zahir*), only Allah s.w.t knows what cannot be seen. Those whoever punishes among humans based on *al-izkan*, therefore he is involving himself with what is forbidden by Allah s.w.t and His Rasul, because truthfully only Allah s.w.t who can reward or punish things related to the unseen matter. No one else but Him who has the knowledge about that matter...”

In solving the matter related to agreement (*akad*) Imam al-Shafi'iyy stressed that in the meaning: “ Verily an agreement (*akad*) will not be broken forever except with what will happen on the agreement (*akad*) itself. It also will not be impaired by something before or after the *akad*, also it does not depend on what is assumed or the customary. Also the same goes to all other causes, they cannot be taken as the causes to rule out that the *akad* is damaged other than what is caused by the *akad* itself. We cannot say that the sell and purchase is rejected just because it is said as a path and intention towards something ruthless” (al-Shāfiʿiyy 1403H/1983).

Imam al-Syafei's Position That Accepts

There are ulama who opined that Imam al-Syafei has accepted *sadd al-dhara'ic* in general. This opinion was voiced out by al-Shatibiyy (2001/1422H) dan al-Qarafiyy (1393H/1973). They explained that the rejection from Imam al-Syafei only happened at *al-dhara'ic* in which the purpose was unclear and still suspected that it can lead to forbiddance. However, for *al-dhara'ic* which is obviously clear and there is no doubt about its purpose that can lead to forbiddance, so there is no uncertainty regarding this.

They proved that the statement via few samples, like the consensus of Imam al-Syafei together with *jumhur* on the matter of the forbiddance of idols degradation. Also in the case of usury and *bay' al-ʿinah* where it cannot be said that Imam al-Syafei permitted the action that leads to usury, he in fact forbad it but what happened was that he did not accuse (or made a ruling) on anyone who has vague intention to do what is forbidden (al-Shatibiyy 2001/1422H).

Abu al-ʿAbbas ibn Rifʿah (al-Zarkashiyy 1414H/1994) tried to prove the acceptance of Imam al-Syafei towards *sadd al-dhara'ic* based on the sayings of Imam al-Syafei (1403H/1983) in *Ihya' al-Mawat* chapter in his book *al-Umm*:

أنه ليس لأحد أن يمنع فضل مانه وإنما يمنع فضل رحمة الله بمعصية الله

Meaning : “Anyone does not have the rights to obstructing the irrigation for vegetation because obstructing it means obstructing Allah's blessing and also because this act is immoral”.

He further said which meaning:

And the type of prohibition upon those who obstructing water on vegetation (is being useful) by the community (whereas it is a blessing from Allah s.w.t) can be characterized as universal. It carries two connotations, one of it is things or path that leads to prohibiting what Allah s.w.t permits is forbidden. Also same goes to the opposite, that is the ruling of permitting what Allah s.w.t has forbidden.

Imam al-Shafei further said:

والحرام فإن كان هذا هكذا ففي هذا ما يثبت أن النرائع إلى الحلال والحرام تشبه معانى الحلال

Meaning: “Due to this matter, therefore, it is associated that the paths towards what is lawful or unlawful is akin to the meaning (of rules) that are truly lawful and unlawful” (al-Shafei 1403H/1983).

This is followed by a few other examples of ruling of an action in a sect that applies the *ijtihad* used by Imam al-Shafie was found practising *sadd al-dhara'ic* not on purpose. Among others is the prohibition on selling weapons to the (*harbiyy*) heathens because it is actually a path to destruction (al-Nawawiyy t.th). Those who are excused from performing the Friday prayer due to an ailment, travelling or any other related matters, they can perform the zohor prayer whether congregationally or alone. In this affair Imam al-Shafei encouraged them to perform it in isolation, as a way to adhere to *sadd al-dhara'ic* or to avoid from slander due to not performing the Friday prayer (al-Nawawiyy t.th). Same goes to the ruling of those who break fast during Ramadhan due to an ailment or travelling, they are encouraged to do it discreetly, far from those who do not know their situation. This is a way to apply the *sadd al-dhara'ic* and to inhibit others from accusing them of performing an immoral act (al-Shirāziyy, t.th).

Deduction on Imam al-Shafei's and Jumhur Fuqaha's Disputes

Based on both rejecting and accepting situations above, it can be concluded here that the acceptance of *sadd al-dhara'ic* by Imam al-Shafei in a way is very broad and limited to the acts that definitely leaning towards something forbidden which is an act that by *Qat'iyy* (certainty) can cause *mafsadah* and destruction. He rejected the use of *sadd al-dhara'ic* in the action that definitely suspected causing *mafsadah*, but the act does not reach to a strong presumption or the level of certainty.

Even though the were disputes between Imam al-Shafei and Jumhur Fuqaha on the use of *sadd al-dhara'ic* in derivation process (*ijtihad*), but basically they agreed in some issues (al-Zuhayliyy 1998/1418):

It is forbidden to help each other in sinful activities and that lead to degradation and adversity to Muslims. Also, anything that becomes a link to virtuosity is permitted.

Every deed or action that with all certainty (*qat'iyy*) lead to *mafsadah*, the ulama consensually agreed they are strictly forbidden. The difference here is the method and way that are used to rule them forbidden.

Next is not obstructing a path on acts that rarely leads to destruction. The subject that caused disputes among them was the ruling that need to be imposed on deeds that obviously permissible but in many aspects lead to destruction and adversity. Something that should be agreed here is *buyu' al-ajal* or delayed sell and purchase play an important role in causing this dispute (al-Shātibiy 2001/1422H).

This dispute is also referred to the assessment of an act that becomes the connector, is it only assessed from the point of view of pronouncement or something that is obvious, or is it taking into account the intention and an act that can be visible on the performed act.

Imam al-Shafei assessed it from the point of view of pronouncement and also something that externally and not from the intention or *qasad* of the performer. He also rejected the ruling of matters that do not have any evidence (*dalil*) that shows the intention and the *qasad* clearly. Otherwise, if the *qasad* is obvious and followed by *qarīnah*, then only *sadd al-dhara'ic* is practised. From this angle, it is clear that the acceptance, even the use of *sadd al-dhara'ic* as the source of Syarak law by Imam al-Syafei is the *al-dhara'ic* or connector that can be characterised as *qatei* and is convinced only brought around *mafsadah* only as explained by al-Qarafiyy and al-Shātibiy in the division of *al-dhara'ic*.

Jumhur fuqaha that consists of Imam Malik and Ahmad Bin Hanbal perceived the intention and something that will emerge after that is taken into account when setting the law on the act. It is to protect the *maslahat* (convenience/benefit) that is demanded and prevent it from being used as a way that leads a person to *mafsadah* (al-Shātibiy 2001/1422H).

After looking at the contention and perception by Imam al-Shafei whether those accepting or rejecting in relation to *sadd al-dhara'ic* as one of the sources in *ijtihad* obviously to say that he rejected it is not true, because there are clear evidence and argument that mentioned about the acceptance and permissibility.

Even though there is a minor difference in Imam al-Shafei's statement of accepting and rejecting from the application of *sadd al-dhara'ic* point of view in the certain *furūc* law, this does not affect his consent in accepting *sadd al-dhara'ic* as a source of *ijtihad* in general.

Conclusion

From the previous discussion, it is apparent that *sadd al-dhara'ic* is recognized as one of the *ijtihad* sources for Imam al-Shafei. However, the recognition and the acceptance is not as a whole or total. This is to show Imam al-Shafei's meticulousness in his *ijtihad* on certain problems. This is because the use of *sadd al-dhara'ic* in *ijtihad* does not steer away from the general basic mode that calls out for the upkeep of *maslahah* in this world or hereafter and also as prevention from adversity and destruction. It is also aligned with the importance or using the mind and intellectual capacity based on *nass* in the process of producing a law or rule. There is a need for this especially in these modern times, because there are areas which require details in law which are not dealt with in a clear and detailed manner by *nass* from the al-Quran and al-Sunnah. Consequently, the creation of law form the *ijtihad* process that used *sadd al-dhara'ic* should be regarded as being rejected by Imam al-Shafei, because *ijtihad's* role is not to support new law which alien from the demand of al-Quran and al-Sunnah. Rejecting *sadd al-dhara'ic* is a loss because it can lead to the inactivity of the sources of Islamic law references.

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