

SADDU AL-DZARIAH, DHARAR IN TRANSACTIONS AND FIQH PRINCIPLES

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Abstract: This research aims to discuss Saddu Al-dzariah in the transactional activities of the Muslim community, as well as a case study on Sharia Financial Fatwas, and the concept of dharar in the daily activities of the Muslim community and its relation to fiqh principles. This research method is a literature review. (library research). This type of research is qualitative. This method conducts an in-depth study of the object being researched. The approach used in this research is a descriptive analytical approach, which aims to describe or depict the current state of the research object based on the facts evident in the literature. The result of this research indicates that in credit transactions (baiy'al-ajal), it is important to consider the purpose or consequences, which may lead to actions that contain elements of usury, even if the nature of such actions is merely a strong presumption (galadah azh-zhann). This is because Islamic law often determines rulings based on strong presumptions. Additionally, a cautious attitude is necessary. (ihtiyat). There are many prohibitions against actions that are fundamentally permissible, but are forbidden in order to prevent harm. Harm is the experience of pain, even taking the form of difficulties that significantly affect human existence. If it is not resolved, it can threaten religion, life, lineage, property, and human dignity. Harm protects life from destruction or from a very detrimental position, so in such circumstances, harm allows for actions that are otherwise prohibited. This means that this substance falls into the first classification, where its substance is very urgent and influential to the existence and continuation of human life. Meanwhile, the Fatwa DSN NO:75/DSN-MUI/IV/2009 regarding PLBS (Sharia Multi-Level Marketing), the implementation of several companies that call themselves PLBS or Sharia MLM in practice should be carefully observed and monitored again, as it could lead to psychological and sociological impacts within the community; therefore, it would be better to abandon it.

INTRODUCTION

Along with the development of the times and the social demands of society in carrying out activities in life, this has encouraged scholars to develop and implement principles that were previously not systematically addressed in a specific manner in the Quran and the Hadith of the Prophet. That is the development of a principle as Islamic law that will realize the welfare of the community and avoid harm. (mafsadah). Dan observes the increasing development of society, which leads to a growing human need for space, such as fulfilling the needs of households as a means to complement and meet those needs that can be achieved through cashless transactions. One of these is the sale and purchase transaction on credit, where the management of these needs does not violate religious law as long as it meets the conditions and adheres to religious regulations.

According to Al-Qarafi (n.d.:46) and Ibn al-Qayyim al-Jauziyyah, if an action that has not yet been performed is strongly suspected to cause harm (mafsadah), then anything that leads to that action is prohibited. The legal method (Nurdhin Baroroh, 2017) is what is then known as sadd adz-dzari'ah, or in other words, Saddu al-Dzari'ah is a method of legal decision-making (istinbath al-hukm) in Islam aimed at preventing anything that could cause harm. (al-mafsadah). The word "adzari'ah" itself means, purpose, and path. Then, dharar, yes. Al-dharar is a legal principle in Islamic jurisprudence that means "bringing about benefit or preventing harm." Etymologically, al-dharar is the opposite of al-naf'u (benefit) and can be interpreted as any form of adverse condition, deficiency, difficulty, and misfortune.

The principle of Ad Dharar is to carry out an action that can endanger others or put oneself at risk. Humans are in a state of benefit to avoid harm. Al Dharar refers to actions that can harm others as a retaliation for similar actions. Meanwhile, Yuzal means to be prevented or removed. We must eliminate damage from the lives of Muslims because this is in accordance with existing regulations. Harm must be eradicated, and we should not engage with any form of damage or harm. This principle... The author of this research is motivated by the phenomenon observed in the field, where buying and selling transactions often occur that can lead to losses and involve usury, which is not well understood by the community, especially among

Muslims, in conducting buying and selling transactions. Generally, these transactions are conducted on credit, which later violates the terms and conditions, resulting in usury that is unknowingly incurred by business actors, both producers and consumers. Additionally, there are activities that the community is unaware of that can lead to harm and damage, both for ourselves and for others. The implementation of Saddu Al-Dzariah in the case study of sadd Al-dzariah.

Problem formulation

1. How does Saddu Al-Dzariah apply in the transactions of the Muslim community and its implementation?
2. How does Dharar manifest in the lives of Muslims and their daily activities, and what is its relationship with fiqh principles?
3. How does Saddu Al-Dzariah relate to the study of the status of Sharia Financial Fatwas?

Research Objectives:

1. To understand Saddu Al-Dzariah in Muamalah within the transactional activities of the Muslim community and its implementation.
2. To understand dharar in the lives of Muslims and daily activities and its relationship with fiqh principles.
3. How does Saddu Al-Dzariah relate to the study of the status of Sharia Financial Fatwas?

RESEARCH METHODS

This research is a literature review. (library research). This type of research is qualitative. This method conducts an in-depth study of the object being researched. The approach used in this research is a descriptive analytical approach, which aims to describe or depict the current state of the research object based on the facts evident in the literature. In this discussion, the researcher attempts to explore knowledge about Saddu Al-Dzariah, harm in transactions, and the principles of Islamic jurisprudence.

RESULTS AND DISCUSSION

Saddu Al-Dzari'ah

According to al-Qarafi, *sadd adz-dzari'ah* is about cutting off the path to corruption (*mafsadah*) as a way to avoid that corruption. Even if an action is free from elements of corruption (*mafsadah*), if that action serves as a means or pathway to the occurrence of corruption (*mafsadah*), then we must prevent that action. In a similar expression, according to asy-Syaukani (2004:295), *adzdzari'ah* is an issue or matter that is permissible in its outward appearance but will lead to actions that are prohibited. (*al-mahzhur*).

In his work *al-Muwafat*, asy-Syatibi states that *sadd adz-dzari'ah* is the act of rejecting something permissible (*jaiz*) to prevent it from leading to something prohibited (*mamnu'*). According to Mukhtar Yahya and Fatchurrahman (1986:347), *sadd adzdzari'ah* is the act of eliminating or closing off the paths that lead to prohibited actions. According to Ibn al-Qayyim *al-Jauziyyah*, the means or intermediaries can take the form of both prohibited and permissible things. From the various definitions above, it appears that some scholars, such as asy-Syathibi and asy-Syaukani, narrow down *adz-dzariah* as something that was initially permitted. However, al-Qarafi and Mukhtar Yahya mention *adz-dzari'ah* in general and do not limit it solely to something that is permitted.

Objects Saddu Al-Dzari'ah

From the perspective of the objects or aspects of the consequences that arise, Ibn al-Qayyim (2010: 496) classifies *adz-dzari'ah* into four types, namely:

- a. Actions that inherently will certainly cause harm. (*mafsadah*). This, for example, includes consuming alcoholic beverages that can lead to intoxication and acts of adultery that create uncertainty about the lineage.
- b. Actions that are fundamentally permitted or recommended (*mustahab*), but are intentionally used as a means to bring about something harmful. (*mafsadah*). For example, marrying a woman who has been divorced three times so that she can be married again. (*attahlil*). Another example is engaging in buying and selling in a certain way that results in the emergence of elements of usury.
- c. Actions that are fundamentally permissible but unintentionally lead to some harm (*mafsadah*), and generally, that harm occurs even if it is unintentional. The potential

harm (mafsadah) that may occur is greater in consequence than the good (masalahah) that is achieved. An example is cursing the idols worshipped by the polytheists.

d. Actions that are fundamentally permissible but can sometimes lead to harm. (mafsadah). The benefits that arise are greater than the consequences of the drawbacks. For example, observing a woman being courted and criticizing a tyrannical leader.

From the perspective of scholarly consensus, al-Qarafi (n.d., 6:319) and asy-Syatibi (n.d., 2:390) categorize adz-dzari'ah into three types, namely:

a. Consensus that it is not prohibited even though it may serve as a pathway or mean to the occurrence of a forbidden act. For example, planting grapes, even though there is a possibility of turning them into wine; or living next to neighbors, even though there is a possibility of committing adultery with them.

b. An agreement to refrain from actions, such as cursing idols, for those who know or strongly suspect that the idol worshippers will retaliate by cursing God immediately in response. Another example is the prohibition against digging a well in the middle of the road for someone who knows that the road is commonly used and could endanger others.

c. Something that is still disputed regarding whether it should be prohibited or allowed, such as looking at women because it could lead to adultery; and futures trading due to concerns about the presence of usury.

The implementation of Saddu Al-dzari'ah in transactions

Involves credit sales (baiy al-ajal) that may lead to the occurrence of riba. There is a difference of opinion among scholars. According to Imam Shafi'i and Abu Hanifah, the sale is permitted because the conditions and pillars of the transaction have been fulfilled. Meanwhile, Imam Malik and Ahmad Ibn Hanbal pay more attention to the consequences arising from such buying and selling practices, namely the emergence of usury. Thus, such a means is not permitted. There are three reasons put forward by Imam Malik and Imam Ahmad Ibn Hanbal in expressing their opinions. In credit sales (baiy' al-ajal), it is important to pay attention to the purpose or consequences, which may lead to actions that contain elements of usury, even if the nature of such actions is merely a heavy presumption (galadah azh-zhann). This is

because Islamic law often determines rulings based on heavy presumption. In addition, a cautious attitude is necessary. (ihtiyat). Thus, an act that is suspected to lead to harm can be used as a basis to prohibit an action, such as baiy al-ajal, based on legal principles (Tajuddin, 1991, 1:105). It means:

"Preventing all forms of harm takes precedence over pursuing benefits."

a. In the case of baiy al-ajal, there are two conflicting principles: the validity of the sale due to the presence of conditions and pillars, versus protecting an individual from harm. Imam Malik and Ahmad Ibn Hanbal emphasize the importance of safeguarding against harm, as this form of sale clearly leads to detrimental outcomes.

b. In the texts, there are many prohibitions against actions that are fundamentally permissible, but are forbidden in order to prevent harm, such as the hadith narrated by Bukhari and Muslim that a man should not associate with a woman who is not a mahram, and a woman is prohibited from traveling for more than three days without a mahram, among others. The prohibited actions are actually based solely on assumptions, but the Prophet Muhammad (peace be upon him) forbade them because such actions often lead to corruption.

Saddu Al-dzari'ah in the case study of Islamic financial fatwas

Fatwa DSN NO: 75/DSN-MUI/IV/2009 regarding PLBS (Sharia-Compliant Multi-Level Marketing), includes twelve (12) points of requirements for Sharia MLM (Multi-Level Marketing);

- a. There must be a real transaction object being sold in the form of goods or services. Where in practice there are several companies that claim to be MLM industries but do not sell any products or services, some state that what they sell is a business right, and there are even those who claim that what they pay is a form of charity.
- b. The goods or services traded must not be something that is forbidden or used for something forbidden.
- c. The transactions in the trade must not contain elements of gharar, maysir, riba, dharar, dzulm, or maksiat.
- d. There should be no excessive mark-up in prices/costs that harms consumers because it is not commensurate with the quality/benefit obtained.

- e. The commission given by the company to members, both in amount and form, must be based on actual work performance directly related to the volume or value of sales of goods or services, and must be the main income for business partners in PLBS.
- 1) To investigate whether an MLM implements this point 5, we can look at the marketing plan or the bonus distribution system that applies in that company. Among the indicators is whether members who register later have the opportunity to receive a larger bonus compared to those who registered earlier, and whether downlines can surpass uplines. If the answer is YES, then it is highly likely that the MLM applies the concept of pay according to effort. However, if the answer is NO, then it is highly likely that the MLM does not meet this requirement.
 - 2) The MLM not only focuses on recruiting new members but also cares deeply about the development of existing members and emphasizes product sales. Because with the obligation to nurture their downline and the duty to sell, they must work continuously; it's different if they can earn a large bonus just by recruiting, as recruitment can then be done with promises that may be difficult to fulfill.
- f. The bonus given by the company to members (business partners) must have a clear amount at the time of the transaction (contract) in accordance with the sales targets of goods and/or services set by the company.
- g. There should be no commissions or bonuses earned passively on a regular basis without conducting training and/or selling goods and/or services.
- h. The granting of commissions or bonuses by the company to members (business partners) should not lead to *ighra*'.
- i. There should be no exploitation or injustice in the distribution of bonuses between the first member and subsequent members.

Explaining that exploitation can be identified from the marketing plan. One of the benchmarks is if the marketing plan offers opportunities for every member who registers earlier to receive a larger bonus, then this is a form of exploitation that is prohibited. There is a significant possibility that the MLM in question cannot comply with this ruling, thus it cannot yet be categorized as a Sharia-compliant MLM industry.

- j. The membership recruitment system, forms of rewards, and ceremonial events conducted do not contain elements that contradict faith, sharia, and noble morals, such as polytheism, cults, immorality, and others. Every business partner that recruits members is obligated to provide guidance and supervision to the members they have recruited.
- k. Not engaging in money games. In the reality of implementation, it turns out that; That in practice there are indeed many money games disguised as MLM, they only prioritize recruiting new members and then leave those members to fend for themselves. This is partly because the company only requires a registration fee from each member who joins; the company may not sell real products, so there is no need for guidance.

Dharar

1. Definition of dharar

Etymologically, the word dharar is the antonym or opposite of benefit (*khilaf al-naf'i*). So, if drinking water is an activity that benefits the body's health, then the act of avoiding drinking water for days is considered harmful because it goes against something beneficial, namely drinking water. In terms of terminology, quoting the explanation of Fakhr al-Din al-Razi, dharar is a feeling of pain or discomfort that arises in the heart. It is called a feeling of pain because when it befalls us, the heart feels hurt, and it is referred to as discomfort because both physical and psychological (soul) aspects will experience unease when faced with such danger. A. Djazuli in his book quotes that dharar, in terms of terminology according to scholars, has several meanings, including:

- a. According to Al-Dardiri, dharar is to protect oneself from death or from extreme hardship.
- b. According to some scholars from the Maliki school, dharar is to be concerned for oneself from death based on conviction or merely a suspicion.
- c. According to Al-Suyuti, dharar is a person's position at a limit where if they do not consume something that is prohibited, they will perish or come close to perishing. Based on the opinions above, it can be concluded that dharar is the

experience of pain, even manifesting as difficulties that significantly determine human existence, because if it is not resolved, it will threaten religion, life, lineage, wealth, and human honor. The interpretation of harm in this way will include all forms of harm that eliminate it, adjusted according to the capacity of the related harm. Similarly, the classification of dharar into dharar khas (personal harm) and dharar 'am (collective harm) is an elaboration that certainly considers the nature of the effects of dharar and will influence whether it is prioritized for elimination or not.

The ability to do or refrain from something due to harm is to fulfill the rejection of danger; in other words, rejecting harm takes precedence even if the benefit is not found other than in the act of rejecting harm. Preventing harm protects life from destruction or from a very detrimental position, so in such circumstances, the harm allows for something that is prohibited. This means that this substance falls into the first classification, where its substance is very urgent and influential to the existence and continuation of human life. Muhammad Shidqi believes that eliminating harm in this principle means removing the desire to retaliate against the wrongdoing of others that is solely motivated by the intent to cause pain. (intiqaam). Revenge will only add harm or cause the suffering initially experienced by a few individuals to spread to many. Someone, even if it is done on the basis of balance or revenge. It is not permissible to inflict harm on others. This prohibition applies whether the harm inflicted is used as a justification for the actions taken or when it is purely the main objective. I can take actions that endanger others only in conditions where there are absolutely no other options but that.

As a small example, someone whose belongings have been damaged by another person is not justified in retaliating by damaging the perpetrator's property. This foolish action will only complicate the problem and will lead to even greater harm. The suffering that should only be experienced by him will spread to others without any benefit at all. The most appropriate and wise action, as outlined, is to demand compensation for the damaged goods according to their value. It is different when it comes to the consequences related to criminal acts of homicide and other criminal actions, which in Sharia must be compensated with an equivalent retribution.

(qishash). The taking of life certainly cannot be eradicated from the face of the earth, except with a punishment that is commensurate with the act. By implementing qisas, the minimum achievement is expected to reduce other criminal actions in the future.

2. Evidence of the Fundamental Principle

This principle is derived from verses of the Qur'an and Hadith, both in their textual form and in their meanings. Among the verses used as evidence and sources for this principle is verse 173 of Surah Al-Baqarah.

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ
وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

The meaning is: Whoever is compelled (to eat it) while he does not desire it and does not exceed the limits, then there is no sin for him. Indeed, Allah is the Most Forgiving and the Most Merciful. (QS. Al-Baqarah [2]: 173)

The evidence that serves as the basis and source of this principle is a hadith narrated by Ahmad and Ibn Majah, which is

الضرر والضرار

The meaning is: One must not cause harm to oneself or to others. (HR. Ahmad dan Ibnu Majah dari Ibnu Abbas). The words "dharar" and "dharar" at the linguistic level have the same meaning but refer to different objects. Dharar is defined as an act performed alone and is harmful only to oneself, while dharar is understood as an act that is interrelational and can be harmful to both oneself and others. From the perspective of sentence structure in this hadith text, which uses indefinite sentences, it is understood that dharar and dharar have a very broad scope and possess differences in substance and form.

CONCLUSION

In credit sales (baiy'al-ajal), it is important to pay attention to the purpose or consequences, which may lead to actions that contain elements of usury, even if the nature of this is merely a strong presumption (galadah azh-zhann), because Islamic law

itself often determines rulings based on strong presumptions. In addition, a cautious attitude is necessary. (ihtiyat). There are many prohibitions against actions that are fundamentally permissible, but are forbidden in order to prevent harm. Harm is the experience of pain, even in the form of difficulties that significantly determine human existence. If it is not resolved, it can threaten religion, life, lineage, wealth, and human dignity. Harm protects life from destruction or from a position that is extremely detrimental. Therefore, in such situations, the harm allows for something that is normally prohibited. This means that this substance falls into the first classification, where its substance is very urgent and influential to the existence and continuation of human life. Meanwhile, the Fatwa DSN NO:75/DSN-MUI/IV/2009 regarding PLBS (Sharia Multi-Level Marketing), the implementation of several companies that call themselves PLBS or Sharia MLM in practice should be carefully observed and monitored again, as it could lead to psychological and sociological impacts among the community; therefore, it is better to be abandoned.

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