



INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



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To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v12-i6/14030> DOI:10.6007/IJARBSS/v12-i6/14030

Received: 17 April 2022, **Revised:** 19 May 2022, **Accepted:** 28 May 2022

Published Online: 15 June 2022

In-Text Citation: (Asni et al., 2022)

To Cite this Article: Asni, F., Ramle, M. R., Yasin, D.H. F., Ahmad, K. A., & Abd Rahman, B. H. (2022). Analysis of Hadith and Athar Arguments in Bay' 'Inah Contract Based on The Tarjih Method. *International Journal of Academic Research in Business and Social Sciences*. 12(6), 1733 – 1746.

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Vol. 12, No. 6, 2022, Pg. 1733 – 1746

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INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



www.hrmars.com

ISSN: 2222-6990

Analysis of Hadith and Athar Arguments in Bay' 'Inah Contract Based on The Tarjih Method

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Abstract

This study was conducted to analyse hadith and *athar* arguments in *bay' 'inah* contract based on the *tarjih* method. The study is based on the differences of opinion among Islamic scholars on the *bay' 'inah* contract on it authorise. Thus, the arguments from the disputing parties need to be analysed to determine the accurate opinion based on the *tarjih* method. This study is qualitative, starting with the library research, which collects secondary data from books and journals to form the research theory. Then all the arguments put forward by the scholars regarding the *bay' 'inah* contract were identified. Then the data were analysed using the content analysis method. The results of the study show two opinions on the *bay' 'inah* contract that the majority of scholars argue that the *bay' 'inah* contract is illegal. In contrast, the minority of scholars argue that the *bay' 'inah* is legal. The study also found that the opinion of the majority of scholars is *rajih* (accurate) after being analysed using the *tarjih* method that is because of the strength of hadith and *athar* arguments which specifically prohibits the *bay' 'inah* contract compared to the use of general (*'umum*) *qiyas* argument used by the minority.

Keywords: Bay' 'Inah, Hadith, Athar, Tarjih, Khilaf

Introduction

The difference of scholars on an issue is not a foreign matter in the treasures of Islamic fiqh (Asni & Sulong, 2019; Asni, 2021). Differences of opinion involving Islamic law have occurred since the time of the Companions and continued by the scholars among the *tabi'in* and *tabi' tabi'in*, especially among the scholars of the sect (Abd Majid, 2004; Asni & Sulong, 2021). According to al-Khafif (1916), the dispute involves several factors, among them is due to differences in the acceptance of evidence among the *mujtahid* scholars, the *mujtahids* accept hadith, but they are not convinced or do not acknowledge its validity, so they ignore it, the *mujtahids* accept the evidence, and they understand it, but they disagree in determining the

law from the proposition. In addition, the differences of scholars on an issue in part have brought a positive effect on the development of the interpretation of the main propositions, namely the Qur'an and hadith, especially in resolving a problem according to the current context (al-'Uthaimin, 1428H; Ishak & Asni, 2020; Asni & Sulong, 2018).

However, the differences of scholars on an issue are partly challenging to determine which opinion is *rajih*, while in some issues, it is effortless to decide on the *rajih* idea through *tarjih* method. The *tarjih* method is an authoritative method that is compiled by scholars to provide guidance in determining the *rajih* opinion if it involves two or more views on the same issue (Al-Hajji, 2015; Asni, 2020). According to al-Khudari (2001); Asni et al (2021), the majority of scholars of *usul al-fiqh* oblige to choose a *rajih* opinion if there is a contradiction between two propositions. Thus, finding an accurate view is a must in Shariah.

The status of Shariah law involving the *bay' 'inah* contract also does not escape the issue of disputes among the scholars where some scholars allow it and some scholars forbid it. Therefore, based on these problems, this study will be conducted to analyse the issue of disputes in the *bay' 'inah* contract and determine the *rajih* opinion according to the method of *tarjih*.

Literature Review

The concept of Tarjih according to the Usul al-Fiqh scholars

Tarjih from a linguistic point of view means giving strength to something until it becomes firm. While the meaning of *tarjih* in *istilah* according to al-Zarkashi (2010), is to strengthen one of the two propositions because its strength is apparent. According to al-Najjar (1993), *tarjih* is to strengthen one of the two propositions based on certain clues. *Tarjih* is the process of strengthening one of the propositions that conflict with each other in an issue of shariah law. A mutual clash between two propositions is termed *ta'arud al-adillah* by the scholars of *usul al-fiqh* (Asni, 2018).

Ta'arud al-adillah can occur in three situations: (1) the clash between the *qat'i* proposition and the *zanni* proposition. According to Al-Asnawi (2009); Al-Shaukani (2000); Al-Amidi (2010), if there is a clash between *qat'i* and *zanni* propositions, then *qat'i* propositions should be given priority. This is because the *qat'i* proposition is believed to be specific, while the *zanni* proposition is less confident. (2) the clash between two *qat'i* propositions. If there is a clash between two propositions that are equally strong, then it should be seen whether the propositions collide in terms of the status of the *sanad* (chain) such as *mutawatir* and *ahad*, then the hadith that is *mutawatir* should be given priority (Al-Shaukani, 2000). However, if the strength of a proposition cannot be determined, then both propositions should be practised. According to al-Amidi (2010), *tarjih* can also be done from the point of view of the text, that is, the prohibition is preceded by the order, rejecting *mafsadah* is more essential to bring benefits, and the words that have actual meaning come first over the words that are *majaz* (figurative use of a word).

Similarly, the determination of *rajih* opinion by referring to external matters such as prioritising evidence closer to *ihtiyat* (careful) and relinquishing responsibility (*bara'ah al-dhimmah*). This is because it is closer to bringing *maslahah* and rejecting damage, prioritising the propositions included once with the interpretation of the narrator, deeds, and even his

speech on the propositions. This is because the narrator knows more about the hadith he narrates than others (Al-Shaukani, 2000). (3) the clash between two *zanni* propositions. Similarly, when there is a clash involving two propositions that *zanni*, then the concept of *tarjih* as occurs in the process of *tarjih* if it collides with two propositions that *qat'i* can be practised is like examining the external factors of the proposition (Al-Amidi, 2010).

Hadith Maqbul dan Mardud (Daif)

There are many clashes of Shariah law involving hadith arguments, so the debate on hadith *maqbul* and *mardud* needs to be detailed so that hadith *maqbul* is always preferred to be practised over hadith *mardud*. The acceptance of a hadith depends on its *sanad*. *Sanad* is a narrators' chain of a hadith from the collectors of a hadith to the Prophet (PBUH). The hadith scholars have emphasised the importance of *sanad* in Islamic sciences, especially in the hadith knowledge such as Sufiyan al-Thawri, Sufiyan' Uyainah, al-Zuhri, Ibn al-Mubarak and Yazid bin Zurai' (Al-Athir, 1389H; Muslim, 2006; Murshid, 2000; Asni, 2017). *Sanad* serves to differentiate between the authentic hadith and the others. As a result, the hadith scholars have divided the hadith into two parts, namely *maqbul* (accepted) and *mardud* (rejected) (Asni, 2017).

The hadith of *maqbul* is a hadith that fulfils all the conditions of acceptance, which are the *sanad* is not broken, the justice of the narrator, the accuracy of the narrator, no *shadh* and *'illah* (al-Qari, 1327H; al-Salah, 1386H). The *sahih* hadith is divided into two; the *sahih* hadith of *lidhatihi* and the *sahih* hadith of *lighairihi*. Besides, the *hasan* hadith is accepted. The *hasan* hadith is divided into two: *hasan* hadith of *lidhatihi* and *hasan* hadith of *lighairihi*. The *hasan* hadith fulfils all the conditions of the *sahih* hadith, with only slightly different in terms of the accuracy of the narrator of the hadith in which the *hasan* hadith has slightly less accuracy of the narrator (al-Qari, 1327H; Ismail & Asni, 2018). The Islamic scholars agree (*ijma'*) that the *sahih* and *hasan* hadiths are obliged to be argued in Shariah law, either *mutawatir* or *ahad* hadiths (al-Khudair, 1425H).

Whereas the hadith of *mardud* occurs because of the fall of one or some of the validity conditions of a *sahih* hadith such as unconnected *sanad*, defect in the hadith or others (al-Salah, 1386H). In general, the status of a hadith is weak due to two significant factors; the abortion of a narrator from the *sanad* and there is a criticism to the narrator (Al-Tahhan, 2004). The abortion of a narrator from the *sanad* is defined as disconnecting the chain of narrators with the fall of a narrator from the *sanad*, whether intentionally or not. It occurs in a part of the narrative either from the beginning, the middle or the end of the *sanad*, and the abortion can occur in both clear or hidden way (Al-Khudair, 1425H).

The fall of a narrator in the *sanad* occurs when the narrator does not meet the previous narrators either because the narrator is not contemporary, or contemporary but can not be met (Al-Qari, 1327H). The fall of a narrator in the *sanad* is divided into four categories, namely *al-mu'allaq*, *al-mursal*, *al-mu' dal* and *al-munqati'*. Generally, the concept of *mu'allaq* is the whole *sanad* disposed of and then said by the Prophet (PBUH), or the whole *sanad* is disposed of except the Companion or the Companion and the *tabi'in* (al-Salah, 1386H). The concept of *mursal* is the fall of the narrator after the *tabi'in* (Al-Naisaburi, 1385H). The concept of *mu' dal* is based on two successive narrators who fall on the *sanad* (Al-Salah, 1386H; Al-Qari, 1327H). The concept of *munqati'* is the hadith *sanad*, which is not linked with any angle (Al-Baghdadi, n.d.). Meanwhile, the hidden fall of the *sanad* narrator is divided into two categories: *mudallas*

and *khafiy mursal*. Generally, the concept of *tadlis* is to hide the shame in the *sanad* by enhancing its outward (Al-Tahhan, 2004). The *al-Mursal al-Khafiy* concept is a hadith narrated by a contemporary narrator, but there is no meeting between them (Al-'Iraqi, 1354H).

On the other hand, the meaning of criticism of the narrator is that there is criticism from the point of justice, religion or memory. There are ten criticisms of the narrator; five are related to justice, while the other five are related to accuracy (*dabit*). Criticisms of justice are a lie, accused of lying, wickedness, *bidaah* and unknown (*jahalah*) while criticisms of accuracy are the wrongness in narrating the hadith, bad remembrance, negligence, confusion and contradiction with other narrators (Al-Tahhan, 2004).

The level of hadith *daif* is different according to the weight or lightness of the level of *daif* narrator. According to Ibn Salah (1386H), the lightweight of *daif* narrator is a bad reminder, *ikhtilat* (*ikhtilat* because of old age, lost sight or loss of writing due to burning), *munqati'*, *mursal*, *tadlis*, *mu' dal*, *shadh*, *wahm*, disability, and *mudtarib*. Whereas, the characteristics of heavy *daif* hadith are *munkar*, *matruk*, *matruh* and *maudu'*.

The Concept of Bay' 'Inah Contract

The introduction of *al-'inah* in terms of language is derived from the Arabic word *al-'ain* which means cash. According to the *lisan al-'arab*, *bay' 'inah* refers to the situation where the seller sells the asset in instalments, then the seller buys back the asset at a price higher than the original price in cash (Ibn Manzur, 1990).

From the meaning of the term, there are several terms put forward by the scholars of the sect. According to the Hanafi sect, *bay' 'inah* is the seller selling an asset at a low cash price to the buyer to settle his debt. Then the seller repurchases the asset from the buyer at a higher price in instalments (al-Zila'i, 1997).

While *bay' 'inah* according to the Maliki sect is that a seller buys an asset that his customer wants from another seller at a certain price. Then the seller sells the asset to the customer interested in the item at a higher price (Ibn Rushd, 2004). Whereas according to al-Shafi'i sect, *bay' 'inah* is the seller selling the asset to the buyer in instalments and handing over the asset to the buyer. Then the seller repurchases the asset in cash at a lower price than the first transaction (Al-Nawawi, 1985). The Hanbali sect's definition of *bay' 'inah* is the same as al-Shafi'i's sect (Ibn Qudamah, 1405H).

Based on the definitions put forward by the scholars of *bay' 'inah*, it can be concluded that they agree that *bay' 'inah* is a sale contract that involves two stages of transaction that involve two parties, namely the seller and the buyer. The sale of *'inah* is made to make a profit by the seller, while on the buyer's side is to earn cash or vice versa.

Scholars' Views on the Bay' 'Inah

From the point of view of Shariah law on the *bay' 'inah* contract, there are two opinions among the scholars. The first opinion states that the law of practising *bay' 'inah* is forbidden by Shariah. It is the view of most scholars among the Companions and *tabi'in* namely Ibn 'Abbas, 'Aishah, al-Hasan, Ibn Sirin, al-Sha'bi, al-Nakha'i, al-Zinad, Rabi'ah, 'Abd al-'Aziz bin Abi Salmah, al-Thawri, al-Awza'i and Ishaq (Al-Mughni, 1405H). While among the *Tabi' Tabi'in* are al-Hanafiyyah (Ibn al-Humam, n.d.; Ibn 'Abidin, 1386H), Malikiyyah (Anas, n.d.), Hanabilah (al-Mughni, 1405H) and al-Zaidiyyah (Al-Ghurnati, 1988).

While the party that allow the contract of *al-'inah* are composed of minorities, namely Abu Yusuf (Ibn 'Abidin, 1386H); Al-Shafi'iyah (Al-Shafi'i, 1990; Al-Nawawi, 1985); Al-Zahiriyyah (Ibn Hazm, n.d.) and al-Hadawiyyah (Al-Shaukani, 1993). However, the party that allows stipulates that in the *bay' 'inah* contract there is no planned agreement whether it is the intention, promise or condition to buy or resell the *'inah* asset because they want to celebrate the principle and purpose of the sale, that is, not to carry out the sale by illusion or trick.

Methodology

Through the library research, the researchers have collected information on the method of *tarjih* and the concept of *bay' 'inah* contract through books and journals. In addition, the researchers also collected all the information on the arguments of the *bay' 'inah* contract among the scholars. Then the collected data were analysed using the content analysis method. According to Smith (2012), document analysis is a method of obtaining relevant information from printed materials in the form of documents.

Result and Discussion

Among the propositions brought by the majority is from the hadith of the Prophet PBUH which means, "When people are very stingy with dinars and dirhams, and deal in *al-'inah* and they hold on to the tail of an ox (busy with livestock), then leave *jihad fi sabilillah*, surely Allah will send a plague on them and He will not lift it from them until they return to their religion (Ibn Hanbal, 2001)." The status of this hadith is judged *sahih* (authentic) by Ibn al-Qattan, Ibn al-Qayyim (1973) and judged *hasan* by Ibn Taimiyyah (Al-Shaukani, 1993).

Based on the above hadith, it is clear that the Prophet PBUH forbade trading *al-'inah*. Thus, the word *al-nahyu* as in the hadith implies *haram* law, so other indications state that the meaning of *al-nahyu* refers to the law of *makruh*. However, the illegal law is permanent because no Shariah proposition excludes it. *Al-'Inah* is forbidden because from its implicit point of view it contains an element of *riba* which is covered by the image of buying and selling. In addition, the illegal law is heavy because Allah SWT promises punishment and can remove a person from the religion of Islam, namely apostasy (Al-Shaukani, 1993).

However, the minority refutes this hadith to refrain from *bay' 'inah* because there is criticism of the narrators of the *sanad* namely Abu 'Abd al-Rahman and Ata' al-Khurasani (Al-Qurtubi, 1964). Answer the majority that there is a disagreement among the scholars of hadith against the narrator named Ishaq bin Ashad (Abu 'Abd al-Rahman) al-Khurasani as stated by Al-Zila'i (1997) that is al-Bazzaz stated that Abu' Abd al -Rahman I mean this is Ishaq bin 'Abd Allah bin Abi Furwah where he *layyin al-hadith* (one of the characteristics of *da'if* hadith).

While according to Abu al-Qattan, al-Bazzaz as in his previous testimony, was mistaken. This is because, the actual name of the narrator is Ishaq bin Ashad Abu 'Abd al-Rahman al-Khurasani, who narrated from 'Ata', which was narrated from him Abu' Abd al-Rahman by Haiwah bin Shuraih. That is not what is meant by Ishaq bin Furwah. Although there are differences in evaluating the narrator named Ishaq bin Ashad Abu 'Abd al-Rahman, but there is a better *sanad* that is narrated by Imam Ahmad in the book of *al-Zuhd* that is the chain of narrators from the path of Aswad bin 'Amir, Abu Bakr bin 'Iyyash , al-A'mash, 'Ata' bin Abi Rabah and Ibn 'Umar. According to Al-Zila'i (1997), the *sanad* is authentic because all the narrators are judged trustworthy (*thiqah*).

According to Ibn Taimiyyah (1987), the two *sanads* that narrate this hadith are accepted through the path of Ahmad and Abu Dawud where the two paths of *sanad* reinforce each other. Although the *sanad* in Ahmad's narration contained famous scholars, it is suspected that al-A'mash did not hear the hadith from 'Ata' or 'Ata' never heard from Ibn 'Umar. While the second *sanad*, the narration of Abu Dawud from 'Ata' al-Khurasani from Nafi' from Ibn 'Umar, is acceptable because 'Ata' al-Khurasani and Haiwah bin Shuraih are *thiqah*. While Ishaq bin 'Abd al-Rahman, the Egyptian scholars narrated from him such as Haiwah bin Shuraih, al-Laith bin Sa'ad and others. According to Ibn Taimiyyah (1987), the third chain of narrators narrates this hadith which is the hadith of al-Sirri bin Sahl al-Junaid Saburi with a popular and high-value chain which is from Laith, 'Ata' and from Ibn 'Umar. Ibn al-Qayyim (1973) evaluated the authenticity of the chain of transmission from Abu Dawud, namely from Haiwah bin Shuraih, Ishaq bin 'Abd al-Rahman al-Khurasani, 'Ata' al-Khurasani, Nafi' and Ibn 'Umar.

The minority denies that *dalalah al-iqtiran* implies a *da'if* (weak) law to punish all the things mentioned in one text with the same rule (Al-Shaukani, 1993). Answer the majority, although *dalalah al-iqtiran* leads to a weak law according to the majority of *usul* scholars, but it can be a strong argument that if separated the things mentioned in the text and other texts exclude the law from the law mentioned in the text. Yet if it cannot be proved with other clues, then the matters mentioned in one text can be punished by the same law (Al-Shaukani, 1993). Moreover, the minority states that the promise of reinforcements stated in the text does not refer to unlawful law (Al-Shaukani, 1993). Answer the majority, it is not accurate to say that the promise of reinforcements does not refer to illegal acts. This is because, the punishment revealed by Allah SWT came down as a result of the deeds that have been specified in the text, proving that Allah is angry with those deeds. Thus, punishment refers to the commission of a major sin that causes the perpetrator to apostatise (Al-Shaukani, 1993).

The majority also argues with the *athar* of 'Aishah r.a. which means, "has said 'Abd al-Razzaq, has narrated to us Ma'mar and al-Thawri, from Abi Ishaq al-Sabi'i, from his wife (al-'aliyyah binti Aifa' bin Shurhabil) that she had met 'Aishah (and entered with her Umm Walad Zayd bin Arqam) and said, "O Umm al-Mukminin, I have a slave, indeed I have sold it to Zayd bin Arqam for 800 dirhams in installments, and I then repurchased it for 600 dirhams in cash." So 'Aishah said to him, "That is as bad as the trading you have done". Then the woman asked again to 'Aishah that is, "what is your opinion if I only take the capital and do not take the rest?" then 'Aishah recited the words of Allah which means, "So whoever has come to a reminder from his god and then he stopped (left it) then for him is his capital and his affairs are handed over to Allah (Al-Baqarah, 275; Al-Razzaq, 1970)."

Based on this *athar*, it clearly shows that *bay' 'inah* transaction is prohibited by Shariah. This is because, 'Aishah condemned Zayd's actions so that it could cause his reward of jihad with the Prophet PBUH to be nullified. 'Aishah would not have said something unseen unless she heard for herself from the Prophet PBUH about the prohibition of the transaction (Ibn Qudamah, 1405H). Thus, among the things that can invalidate deeds is apostasy because it legalises *riba* (Ibn al-Qayyim, 1973).

However, the minority refutes the above argument, namely, al-'aliyyah bint Aifa' bin Shurhabil is an unknown woman (*majhul*) and her narration is rejected. Moreover, in the

narration of al-Daruqutni through the *sanad* of Dawud bin al-Zibriqani from Ma'mar bin Rashid, from Abi Ishaq al-Sabi'i, from his wife, there is a problem with the narrator named Dawud bin al-Zibriqani where he was sentenced as *da'if*. Yahya ibn Mu'in said Dawud was worthless (*da'if*) (al-Nawawi, n.d). According to 'Ali al-Madini, Dawud was a very *da'if* narrator (al-Nawawi, n.d). According to al-Jurjani, Dawud was a liar (*kadhdhab*) (al-Nawawi, n.d). According to Abu Zur'ah, the narration by Dawud was abandoned (*matruk*) (al-Nawawi, n.d).

Answer the majority, according to Al-Zila'i (1997), the narrator named al-'Aliyyah bint Aifa' bin Shurhabil is a known woman (*ma'ruf*), she is mentioned in al-Tabaqat by Ibn Sa'ad (1960) with says al-'Aliyyah bint Aifa' bin Shurhabil was the wife of Abi Ishaq al-Sabi'i (Her name was 'Amru bin 'Abd Allah bin Dhi Yuhmad, from the group of *al-Tabi'in*, born in 33H, Sheikh al-Kufah and Muhaddith, died in 128H (Al-Dhahabi, 1985)) and he had heard from 'Aishah r.a (Al-Zila'i, 1997). According to al-Turkumani (1344H), al-'Aliyyah bint Aifa' bin Shurhabil was a well-known woman whose narration was narrated by her husband and son who was an imam and Ibn Hayyan recognised her as *thiqah*, also narrated a hadith from her is al-Thawri, al- Awza'i, Abu Hanifah and his companions, Malik, Ibn Hanbal and al-Hasan bin Salih. With regard to the superiority of the hadith because there is a narrator named Dawud bin al-Zibriqani, it does not distort the hadith narrated by al-'Aliyyah bint Aifa' bin Shurhabil because there are different and safe *sanad* taken from al-Thawri, al-Awza'i, Abu Hanifah and his companions, Malik, Ibn Hanbal and al-Hasan bin Salih where they judged the authenticity of this hadith chain (Al-Burhani, 1985).

The minority objected further by saying that according to al-Shafi'i (1990), if this hadith is convicted, it may be that what 'Aishah meant was that the instalment payment period was not knowingly determined not that 'Aishah meant the two-stage transaction as mentioned in the hadith. But the majority replied, 'Aishah condemned the first sale because it could lead to illegal things when the second sale took place, where the two transactions could ruin the entire contract because it is the same as the concept of *riba*.

The reason is also reinforced by the question of al-'Aliyyah bint Aifa' bin Shurhabil to 'Aishah that is, "what is your opinion if I only take the capital and leave the rest?" Then 'Aishah answered with a verse in surah al-Baqarah verse 275 related to the *riba* verse. This shows that 'Aishah equated the sale with the concept of *riba*, as well as correcting the sale by taking capital only as in the concept of debt (*qard hasan*) (Al-Zila'i, 1997).

The minority also stated that 'Aishah's statement was an *ijtihad* and not based on the views of the other Companions such as the sale transaction in the hadith made by a Companion named Zaid bin Arqam. Therefore, it is not *ijma'*, so it is possible to turn to another source, *qiyas*, where the sale is valid because they have fulfilled the pillars (Al-Shafi'i, 1990). Answer the majority, if it is said *ijtihad* by the Companions, *ijtihad* cannot determine the unseen unless it is announced by revelation. 'Aishah stated that the retribution of Zaid bin Arqam's actions could nullify the reward of his jihad was because he heard from the Prophet PBUH because he was very close to 'Aishah. Moreover, there is no evidence that after 'Aishah's criticism, Zaid bin Arqam met with 'Aishah to discuss it because of differences of *ijtihad*, otherwise, it is possible that Zaid accepted the statement issued by 'Aishah. *Athar* 'Aishah was also found that none of the Companions objected to it, even Zaid bin Arqam until it was considered *ijma' sukuti*. If Zaid bin Arqam's act is alleged according to the argument of *qiyas* it is inaccurate because there is the authentic hadith that prohibits the transaction of *bay' inah* more clearly

as narrated by Ibn 'Umar and also other hadith. The level of hadith proposition is higher than the *qiyas* proposition (Al-Shaukani, 1993).

The minority objected by saying, 'Aishah's claim as in the hadith may have meant that the sin of the act was so great that it could outweigh the reward of jihad. Thus, if the rate of reward and sin are the same, then it does not bring good to the practice of jihad. Therefore, if it is a matter of *ijtihad* from 'Aishah, then it is not permissible to invalidate the reward of jihad and tell Zaid to repent because in the method of *usul al-fiqh* there is a method that means, "*ijtihad (faqih)* cannot invalidate other *ijtihad (faqih)*". Thus, in this matter, there are two opinions among the Companions (Ibn al-Qayyim, 1973). The majority replied, the method is true because it coincides with the hadith of the Prophet PBUH which means, "when a *mujtahid* performs *ijtihad*, then his *ijtihad* is correct, then he gets two rewards. If a *mujtahid* makes *ijtihad*, then his *ijtihad* is wrong, then he gets a reward (Al-Bukhari, 1422H)." However, *ijtihad* is limited to things that are not in the text. However, *ijtihad* on the matter contained in the text, then the *ijtihad* or view of the intellect is rejected (Al-Burhani, 1985; Al-Maliki, 1988).

The majority also argues with the hadith of the Prophet PBUH which means, "Whoever makes a transaction of two sales in one transaction, then for him a loss or usury (Abu Dawud, 2009)." The scholars have two interpretations of the hadith (al-San'ani, 1407), first; the seller sells an asset to the buyer at two prices, namely in cash at 10 dirhams or 20 dirhams in instalments. Second; the seller sells an asset for 100 dirhams in installments for a year to the buyer. Then the seller repurchases the asset from the buyer for 80 dirhams in cash.

The first interpretation is not in line with the prohibition of the hadith above because the sale and purchase do not have the element of *riba*. It also does not refer to two sales, but refers to one sale by stating one of the prices, i.e. if the buyer agrees to the cash price for one sale and purchase transaction, then the instalment price is no longer involved (Al-San'ani, 1407).

While the second interpretation is *rajih* and accurate with the meaning of the hadith. This is because, when there is an increase in the second sale and purchase, then it is usury. Meanwhile, if there is a price equation between the first and second sale and purchase, then it only brings losses to the party who made the contract. The second transaction, similar to *bay' al-'inah* also carries the impression that there are two transactions in one transaction, i.e. collecting cash and deferred transactions in one sale and purchase transaction. In fact, this sale and purchase aim to sell money in cash by earning more money in instalments that align with the concept of *riba* (Al-Shaukani, 1993).

The majority also argues with the hadith of the Prophet PBUH which means, "The Prophet PBUH forbade (from combining *salaf* (debt)) and sale and purchase (in one transaction), two conditions of *salam* in one transaction and (gaining) profit from what he is not guaranteed (Abu Dawud, 2009)." Based on this hadith, in *bay' 'inah* contains all the features of prohibition mentioned in the hadith. Also based on the hadith of the Prophet PBUH which means, "There will come to mankind a time where they legalise usury through sale and purchase that is *al-'inah* (Ibn al-Qayyim, 1973)." According to Ibn al-Qayyim (1973), although the status of this hadith is *mursal*, but it can be for *i'tidadu bihi* (used as a backup) and *istishhad bihi* (used as an argument) to forbid *bay' 'inah*. The understanding from this hadith is that the

Prophet PBUH forbade anything that could lead to engaging in riba. Therefore, *bay' 'inah* is a way to riba.

According to an *athar* from Ibn 'Abbas, he said, "Ibn 'Abbas was asked about a person who sold silk for 100 and repurchased it for 50. Ibn 'Abbas replied, the transaction of dirhams with more dirhams, then among them is *harirah (al-'inah)* (Ibn Abi Shaybah, 1409H)." Al-'Uthaymeen (1413H) said this hadith is endorsed. According to Ibn 'Abbas, *bay' al-'inah* is forbidden by Allah and the Prophet PBUH. The understanding of this *athar* is that *harirah* is the item used as an intermediary in the transaction of added debt, as is the case in the sale and purchase of *al-'inah*. Apart from the argument of the text from the hadith, it is also reinforced by the testimony of the Companions of the Prophet PBUH. Therefore, the Companions' words are arguments in Shariah law as long as they do not conflict with the other companions (Ibn Taimiyyah, 2005).

While the minority put forward an argument from the verse of the Qur'an which means, "Allah has permitted trading (business) and forbidden usury (al-Baqarah: 275)." Also based on Allah SWT's word, "Allah has explained to you one by one what He has forbidden to you (al-An'am: 119)." In these two verses, Allah SWT has legalised all types of buying and selling, that is, fulfilling *ijab* and *qabul* as well as other conditions according to its appearance, as well as not taking into account the element of intention that is internal.

The minority argues from the hadith of the Prophet PBUH which means, "From Abi Hurairah r.a., that the Prophet PBUH appointed a Companion as an officer in Khaibar. The Companion brought a date called (*janib*). The Prophet PBUH asked the Companion, "Are all Khaibar dates like this?" The Companion replied: "By God, no, O Messenger of Allah. We buy this date one *sa'* with the reward of this date as much as two *sa'* and if we buy this date two *sa'* with the reward of this date three *sa'*". The Prophet PBUH said: "Do not do that. But sell all the dates with dirhams, then buy with the dirham dates *janib* (Al-Bukhari, 1422H). "The evidence, the Prophet PBUH did not require that the sale and purchase involve the same or different buyers or sellers, but the Prophet PBUH signaled to avoid usury which involves the exchange of *tamar* with *tamar* which should be done with the method of sale and purchase if you want a different type of *tamar* (al-Nawawi, n.d.). According to al-Nawawi (1392H), based on this hadith, the sale of *al-'inah* is permissible, it is only a trick done to avoid engaging in usury transactions.

However, the majority replied that the real meaning of the hadith is that there should be a sale with the real purpose of transferring goods to the buyer and taking advantage of it, not a sale based on *hilah*, illusion and *'inah*. In addition, the meaning of the hadith of the Prophet PBUH, "Sell all your *tamar* with dirhams and buy the *tamar* you want with dirhams", the sale and purchase must take place in essence, that is, the seller gets the money and the buyer can take advantage of the goods purchased. Then newly executed other transactions involve different buyers or sellers without involving the first transaction (Ibn al-Qayyim, 1973). It is the wisdom prescribed for sale and purchase by Allah SWT, but if each one wants money either in cash or in instalments through the intermediary of goods, then it can damage the purpose of sale and purchase. Thus, Bilal's action as instructed in the hadith is in line with the requirements of Shariah which is when he sells his *tamar* to get money and the buyer enjoys the *tamar*. Then, when the first transaction is completed, a new transaction is made: to buy

tamar with the money to enjoy the *tamar* bought and the new seller can enjoy the money from Bilal. Therefore, buying and selling are carried out in two separate transactions. The purpose of the sale will be damaged when the contract in the first transaction is involved in the second transaction so that it can be involved in a usurious transaction. Apart from that, the majority also stated that the sale and purchase transaction in the hadith is meant to be a sale and purchase in *tawarruq fiqhi*, i.e. the first and second transactions do not involve the same party, namely Bilal sells *tamar* to buyer A, then Bilal buys *tamar* from seller B. Buyer A and seller B has no relationship (Ibn al-Qayyim, 1973).

The minority states that the *ijma'* of the scholars in allowing the transaction of sale and purchase with the first seller. This is because, every sale and purchase transaction is valid if it meets the conditions, even if it involves the same seller or buyer. For example, if a person sells money with the same amount of money in instalments for a month, it is not permissible because he is selling *ribawi* goods. However, if a person gives a debt to someone and has to repay the same amount after one month, then the transaction is allowed. Although the concept is the same, the course of the contract is different in terms of pronunciation, where the first contract is sale and purchase, while the second contract is *qard*. Thus, *al-'inah* transaction is different from *riba* transactions although the concept is almost the same (Al-San'ani, 1407H; Ibn Rushd, 2004). The majority replied, that linking the argument of *ijma'* in the issue of *bay' 'inah* transaction is not correct, but if *ijma'* refers to a sale and purchase transaction by fulfilling the pillars and conditions, it is correct. This is because, a valid sale and purchase transaction through the *'inah* mechanism can damage the sale transaction based on the argument already mentioned (Ibn al-Qayyim, 1973).

The minority also brings the *qiyas* argument that there is no problem in selling goods to other than the initial seller at the same price, more or less as long as the sale and purchase transaction goes smoothly to allow the transfer to take place. Likewise, there is no problem selling the same goods to the initial seller at the same price, more or less, as long as the sale transaction is done perfectly (Ibn Qudamah, 1405H). The majority replied that the *qiyas* argument was *qiyas ma'a al-fariq* because transfer of ownership through *'inah* transaction is a trick, not based on actual sale and purchase. Although the transfer process takes place, it cannot be based on methods prohibited by Shariah. Therefore, if the minority only considers the element of intention, such a view can cause the door of usury to open wide. Thus, the *sadd al-dhari'ah* method should be considered so that the path toward usury transactions can be avoided (Ibn al-Qayyim, 1973).

Based on the arguments presented by both parties, then the researchers chose the view of the majority of scholars that *bay' 'inah* is forbidden because it is based on authentic hadith evidence, *athar* of the Companions, *sadd al-dhari'ah* method, *maqasid al-shari'ah* and *ma'alat al-af'al* where in short *al-'inah* is the path to *riba*, contrary to the objective of buying and selling and carries the same implications as the concept of *riba*. While the minority only looks at the evidence of *qiyas* without taking into account the evidence of hadith, *athar* of the Companions, the method of *sadd al-dhari'ah*, *maqasid al-shari'ah* and *ma'alat al-af'al*.

The *rajih* view is in line with the *tarjih* method, prioritising the hadith proposition over the *qiyas* proposition (Asni & Sulong, 2019). In addition, it is also in line with the method of prioritising the prohibition of *bay' 'inah* which is based on the hadith proposition rather than

the view that allows it because it takes the *qiyas* proposition in general (al-Razi, 1997). It is also in line with the method of prioritising specific hadith propositions over general propositions as in the problem of *'inah*, i.e. prohibition is mentioned in the hadith propositions, but those who allow only use of the proposition of the sale and purchase in general (al-'Attar, t.t.). This view of *rajih* is also in line with the method of *tarjih*, which prioritizes specific *nas* propositions over general *nas* propositions, that is, although the generality of *nas* requires any form of general sale and purchase, there are specific *nas* propositions on sale and purchase in the form of *'inah* is prohibited by Shariah (Al-'Attar, t.t.). This selection of opinions is also in line with the view of Majma' Fiqh Al-Islami as an international body that bans *bay' al-'inah* because it is a usury trick (IIFA, 2006).

Conclusion

This study was conducted to analyse the arguments on the *bay' 'inah* contract dispute based on the *tarjih* method. This study is based on the differences of opinion among the scholars on the *bay' 'inah* contract regarding its status. Thus, an analysis of the arguments from the dissenting parties should be conducted in order to determine the selected opinion based on the *tarjih* method.

The result of the study shows that there are two opinions on the *bay' 'inah* contract, i.e. the majority of scholars opined that *bay' 'inah* is prohibited by Shariah, while the minority of scholars opined that *bay' 'inah* is permissible. The study also found that the opinion of the majority of scholars is *rajih* (more accurate) after being analysed using the method of *tarjih* that is because the strength from the point of view of hadith and *athar sahih* which specifically prohibits *bay' 'inah* compared to the use of the general argument of *qiyas* used by the minority.

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