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## Theory and Application of *Sadd al-Dhara'i'* (Blocking the Means) in Shafi'iyya School

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### Abstract

This paper discusses on the position of *sadd al-dhara'i'* (blocking the means), its justification as a source of *ijtihad* (the process of deriving the law of Sharia from its source) as well as its application in *mazhab* Shafi'i (Shafi'i school) previously and current. The objective of this study is to invite Muslims to understand and the approach of *ijtihad* (the process of deriving the law of Sharia from its source) through *sadd al-dhara'i'* so that the perfection of *fiqh* (Islamic jurisprudence law) not seen as narrow. By analyze it critically the position of *sadd al-dhara'i'* through discussions of *mujtahid* (jurist) who accepted and rejected it as well as comparison of their arguments, yield that the model it has been practiced indirectly since the time of Prophet Muhammad (Peace Be Upon Him) and his Companions. The *fuqaha'* (scholars) that have differences view in accepting it as a source of law has affected the laws generally. This study finds that it has becomes the foundation and source in the determination of some laws and practice in the *mazhab* Shafi'i. This paper attempts in giving picture of the *sadd al-dhara'i'* usage examples in current issue problems.

**Keywords:** Blocking the Means, Shafi'i School, Islamic Jurisprudence Law

### INTRODUCTION

*Sadd al-dhara'i'* (blocking the means) practice is accepted method by majority of scholars in their legislation. This is because of this method already *thabit* (fixed) with so many *nas* (injunctions), where it is generally suitable to be the source of Islamic legislation. Does not all laws in overall lead to goodness and *maslahat* (public interest) as well all preventing from evil and bad? Thus, the meaning of practicing *sadd al-dhara'i'* (blocking the means) is to maintain public interest (*maslahat*) which it is part of its practice. This is because of the *sadd al-dhara'i'* practice ended with leading to the

*maslahat* and blocking the destruction and damage. However, practicing *maslahat* is only limited to keep the method of *sadd al-dhara'i'* according to *fiqh* (Islamic jurisprudence) with limited understanding, as it is included in the field of others like *masalih al-mursalah* (consideration of public interest) or *qiyas* (process of deductive analogy) which in the end lead to the *maslahah*. As an example, Imam al-Shafi'i when give a *fatwa* (decide a point of law) in a murdered case that committed by many, he obliged to killed all the involved killers. This *fatwa* we may conclude that he sourced from the following legislations (Hasan 2000, 2:283):

1. Views of companion, as following *fatwa* 'Umar ibn al-Khattab and his practiced.
2. *Ijma'* (consensus of legal opinion) of Companion, where there was no dispute between companions, has been explained by al-Zarkashi and others also *ijma'* according to *mazhab* (school) of Hanafi.
3. Practice according to *masalih al-mursalah* where no particular *nas* indicate to it or vice versa.
4. *Sadd al-dhara'i'* as if it is not being controlled by a group of people who killed a person then all human will make a pact with each other to commit in murder crime in order to be freed from *qisas* sentence.

If review all Islamic legislation practice in the *mazhab* (school) of Shafi'i we find that he using different methods but the fact is similar with been practiced by other schools. Imam Shafi'i using *masalih al-mursalah*, *sadd al-dhara'i'* as a part of the *qiyas* method (Hasan 2000, 2:284). When debating the *sadd al-dhara'i'* as one of the method as well as a way to *istinbat* (inference) a law, scholar gave different views on the concept till some of them rejecting the use in the Islamic law.

Therefore, to elaborate this issue, this article will focus on two important aspects. First aspect is to introduce to the basic concept of *sadd al-dhara'i'* which includes definition and division. Second aspect is about the position of *sadd al-dhara'i'* in the *Shar'* (Islamic jurisprudence) according to the ulema of Shafi'i. *Sadd al-dhara'i'* pairing with two different words: *sadd* (preventing or blocking) and *al-dhara'i'* (leading to certain end either beneficial or harmful). It in unite form to create a particular meaning. Therefore, to know the meaning of *sadd al-dhara'i'* precisely it is necessary to define both words separately. Then followed by definition in pairing. Hence, studies relating to the excellence of contemporary issues in Islamic jurisprudence and shariah studies are also assayed by local scholars, covering various issues such as discussion of *halal* pharmaceuticals (Halim et al. 2015), the establishment of shariah supervisory committee in hospital (Samsudin et al. 2015), the principles of the use of *haram* sources in food processing (Kashim et al. 2015), the baitulmal's potential as trustee for unclaimed moneys of Muslims (Ahmad et al. 2017), as well as the issue of *istihalah* and its effects on food from the Islamic perspective (Kashim et al. 2018).

### LINGUISTIC AND IDIOMATIC DEFINITIONS OF SADD (PREVENTING OR BLOCKING)

The origin of word *sadd* from the word (*sadda*, *yashuddu*, *saddan*) brings to the meaning of *al-radhm* means cover or block. Meanwhile, in terminology, it also gives meaning covering or blocking defects, fractures or cracks (Ibn Manzur 1998, 4:190). *Al-Dhara'i'* in the term of Arabic language is a *jam'* (plural) for *al-dhari'ah*. It has many different meaning but the chosen meaning in the discussion topic

is every intermediary matter or ways that bring to the existence of something either it is *mafsadah* (harmful) or *maslahah* (interest), either by acts or words (Ibn Manzur 1998, 8:96). In the terminology of *usul al-fiqh* (jurisprudence fundamentals) scholars, they give various of difference meaning of *al-dhari'ah* word. This situation occurs based on their different understanding on pairing the both word of *al-sadd* and *al-dhara'i'*. For those who sees the word *al-dhara'i'* means relative in the general and comprehensive form, which can occur either on the *Shariat* (Islamic law) matter or prohibited, hence they abandoning the *al-sadd* word as their topic of discussion. Meanwhile, for those who sees the meaning is 'relativa' for only particular use on what is prohibited and not in what is being ordered, for this reason the pairing the word *sadd* in their discussion. Therefore, in defining the word *al-dhari'ah*, scholars are dispute in their opinion to give a specific meaning for this word. The dispute may be inferred as following:

1. The group has opinion that *al-dhari'ah* is an intermediary to something either toward to the prohibited matter or permitted. This opinion pioneered by al-Imam Ibn Qayyim (1968, 3:135) and al-Qarafi (1973: 448). During the discussing of this topic, al-Qarafi defines it as "*al-Dhari'ah* is each way (intermediary) to something".
2. This group has opinion that it is a matter where the origin of the law is permissible but become relative or intermediary to a prohibited matter. This opinion expressed by al-Imam al-Shatibi (2001, 4: 143), al-Baji (d.690), al-Qurtubi (1967, 2:57), Ibn Rushd and others. This been proved by the words of Ibn Rushd (1988, 2:39): "*al-Dhari'ah* is a matter that on the surface is permissible at the same time it leads to the prohibited act".
3. This opinion expressed by Shaykh al-Islam Ibn Taymiyyah in his book as following: "*al-Dhari'ah* is a connector or a way leads to a matter, but it more recognizable in '*urf* (custom) and among scholars as something leading to the prohibited matter".

After reviewing the discussion of contemporary scholars on the word *al-dhari'ah* from the point of the term, it can be concluded here that the most appropriate definition for this word is: "Something its origin is permissible, but because of strong reasons and factors it may lead to the prohibited matter". This definition seen precisely when it relies to the word *sadd* which means 'block'. Therefore, when it is being defined in pairing with *sadd* and *al-dhara'i'*, then it brings to the meaning of "close or blocking from doing a matter that originally is permissible but because of strong reason, factor and presumption it may lead to the something prohibited". In other words: prohibiting a *wasilah* (intermediary) that lead to the *mafsadah* (destruction). Hence, prohibiting on doing a matter that allowed will lead to the something *haram* (prohibited) or blocking a way that lead to the prohibited act called *sadd al-dhara'i'*.

### **AL-DHARA'I' DIVISION**

Scholars have different views and on ways in structuring *al-dhara'i'* division. These division differences are based on their reviewable on the *hukm* (law), the stage of harm and consequence that will happen from the act of *al-dhara'i'*. To simplify the understanding, the author brings the division made by Imam al-Qarafi, al-Shatibi and Ibn al-Qayyim where divided it based on the law matter of *al-dhara'i'*. Meanwhile, al-Shatibi divided it by seeing from the point of harm stages and

consequence. Furthermore, Ibn Qayyim sees the intention, purpose and will of the intention rather than the actions and work of a *mukallaf*.

### Division by al-Qarafi

Imam al-Qarafi (1973, 2:32) divided *al-dhara'i'* into three divisions as following:

1. The act that prohibited by *ijma'* (consensus). It is the act that already became *ijma' ummah* (national consensus) to be prevented and prohibited such as digging a well (hole) on a road or Muslims path, it is intermediary that bring to destruction. As well as put poison in their food, teasing their idols by knowing in reverse Allah SWT (The Most Glorified, The Highest) will also be scond.
2. The act that permissible by *ijma'*. It is means that this act not prohibited without any dispute even it is *al-dhara'i'*, like planting grapes, the act is not prohibited even if feared to become a link to be processed to be liquor.
3. The act that becomes disputation. It is the act of *al-dhara'i'* that becomes a dispute among scholars either prevent it or otherwise such as *buyu' al-ajal* (deferred payment sale). This term only been used by *mazhab* of Maliki scholars. Meanwhile, other *mazhab* named it as *bay' al-'inah* (sale with immediate repurchase). They mean that from this word means purchasing transaction that lead to *mu'amalah* (transaction) of *riba* (usury), meaning purchasing contract on the surface, but lead to the damnation toward hidden prohibited matter. Plenty of this kind of purchasing examples namely, *bay' al-'inah*, *al-salaf* (purchase of a commodity for deferred delivery in exchange for immediate payment), *al-qard* (credit) and others (Hammad 1995: 103).

### Division by al-Shatibi

Imam al-Shatibi divided *al-dhara'i'* into four divisions. The divisions are seen from the point of consequence toward an act. Henceforth, he provides law for each part of it (al-Shatibi 2001, 2:264):

1. *Qat'i* (definitive) act leads to *mafsadah* (destruction or damage). *Mafsadah* is something that lead to the harmness or something contradiction with *maslahah* (public interest) (Abu Jayb 1998: 286). It means that the act of *mukallaf* (religiously responsible or accountable) will to lead to the *mafsadah* such as digging a well or holes behind door in a dark house, which anyone who enters the house surely will fall into the well or hole. This act and alike are prohibited as *mafsadah* outcome is something decisively.
2. *Nadir* (infrequently) act leads to *mafsadah*. Digging a well at a place where normally will not because people fall into it. It is static in the context of permissible act. This is because the advantages which is obtained from the act greater than damages that might occur as side-effect from the act.
3. *Ghalabat al-zann* (Preponderance of belief) act leads to *mafsadah*. *Zann* (suspect) is an information or knowledge that close to the confident. In other word is a belief or clear knowledge even there is the opposite possibility (Qal'ahji 1996: 267). As an example selling grapes to *al-khamr* (a liquor) maker. In this circumstances a strong presumption equally with an assurance. Therefore, the sales of grapes counted as *haram* based on the view of Malikiyyah and Hanabilah

scholars as well as the transaction is permissible as this is the same circumstances by helping act of sin or violation of law (Ibn Qudamah 1993, 5:303-304).

4. Prejudgement act leads to the *mafsadah*. Action that most cases lead to the *mafsadah* but does not reach to the level of strong assumption like *buyu' al-ajal*. It can lead to the *mafsadah* such as *riba*, but this prejudgement does not reach to the level of assurance. Dispute among scholars on this issue. Is this transaction counted as *al-dhara'i'ah* which lead to the *mafsadah* in the *'aqd* (contract) or contract cancellation, and the act is *haram* or it is legitimate by sticking to the origin law which the purchase is allowed by Islamic law)?

### Division by Ibn Qayyim

Ibn Qayyim divided *al-dhara'i'* into four section:

1. *Wasilah* that leads to *mafsadah*. Examples drinking liquor leads to the *mafsadah* because of drunk, adultery leads to the *mafsadah* of mixing descent and others. However, this division been criticized by Imam Abu Zahrah stated that: "This first division is not come under *al-dhara'i'ah* but it is under *maqasid* (objectives) as liquor, adultery, *riba*, *qazaf* (an offence of making an accusation of *zina*, being an accusation incapable of being proved by four male witnesses), taking others property, hijack, steal is *mafasid* on those acts not *dhara'i'* or *wasilah*". This critic is suitable and appropriate on what has been expressed by Imam al-Qarafi that *maqasid* are differ than *wasail* (means) (al-Burhani 1985: 72 & 192; al-Qarafi 1973, 2:33).
2. *Wasilah* or relational normally lead to virtue but intended or motivated to convey to the destruction or worsen. This is like a woman who is marry just in purpose to be divorced in order to go back to her previous husband. Purchase something just to gain *riba* and others.
3. The origin of relational is permissible and does not has any motive for any benefits, but normally lead to the benefits and the *mafsadah* more than the *maslahat*. As examples a person praying *sunat* (optional prayer) in the forbidden time, insulting a *kafir* (unbeliever) leader among them or a woman in *'iddah* (waiting period) due to the death of her husband by revealing her beauty when the *'iddah* has not complete yet.
4. The relational has good motive and permissible and sometimes lead to the *mafsadah* and the *maslahah* is bigger than *mafsadah* such as have a look at his fiance, witnessing on something and others.

The conclusion from these divisions by scholars above is:

1. All the divisions are similar or alike even the numbers are different and various details.
2. Imam al-Shatibi looks at the outcome of the act and word of a *mukallaf*, meanwhile Ibn Qayyim looks at the intention, objective and desire from the act and word of a *mukallaf*. Because of this, both of them are very different, Imam al-Shatibi judged on the *zahir* (surface) meanwhile Ibn Qayyim judged based on the intention and the objective is consistent with the practice of *mazhab* of Hanbali together with proof of *hadith* (utterance) about intention.
3. Ibn Qayyim prohibited *buyu' al-ajal*, *muhallil* marriage (a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry)

because of prevention and blocking that raise from the both cases. Imam al-Shatibi also explained the dispute cases between *mazhab* of Maliki and Shafi'i according to their argument and his opinion is acceptable in the case.

4. Ibn Qayyim has mixed between *maqasid* and *wasilah*. This can be seen in his division giving examples in the first division: drinking liquor, *qazaf*, adultery, whereas it is from *maqasid* not from *wasilah* because of the act is prohibited not the origin it is permissible then followed leads that bring to the bad and evil.
5. Here we concluded that Imam al-Qarafi has explained that Islamic legislation divided into two namely: *maqasid* and *wasilah*.
6. The division by Imam al-Qarafi is almost same as Imam al-Shatibi. The differ only on the harmful matter that lead to the *qat'i* and *zanni* (speculative) (al-Fart 2003: 61-62).
7. There are many more divisions been made by scholars which are not detailing here namely: Ibn al-Rifah, Ibn-al-Subki, Imam al-Qurtubi, al-Sawi, al-Tufi and others (Babkar 2003, 3:216).

### Acceptance by Imam al-Shafi'i

Imam al-Shafi'i accepts *sadd al-dhara'i'* only in a few circumstances. However, scholars have different views on the real standpoint of Imam al-Shafi'i. This is because of there is a statement belongs to him that sometimes accept and at the other time otherwise. This matter can be seen in these two situation as following:

1. Situation where Imam al-Shafi'i reject. This situation is concluded based on the statements from the Imam al-Shafi'i in his writing. Among the statements of Imam al-Shafi'i in his book, *al-Umm*: "Laws only follow what is on *zahir*, only Allah SWT knows the unseen. Whoever punishes among mankind based on the *al-ghayb* (unseen), then he engaged himself with what has been prohibited by Allah SWT as only Him has the right to decide the good retaliation or punishment in unseen matters. No one knows the unseen except him..." (al-Shafi'i 1983, 7:42). Imam al-Shafi'i stated in the issue of contract:

"Indeed, a contract cannot be broken forever unless with what applies in the contract itself. As well as damage with anything which are contained before or after the contract nor by following assumption or habit. According to all reasons, cannot be a reason to presumption the contract is damaged unless with the reason of the contract itself. We cannot say that the transaction is damage because of it is been said as a way and toward bad intention" (al-Shafi'i 1983, 7:32).

2. Situation where Imam al-Shafi'i accept. There are scholars giving opinion that Imam al-Shafi'i accepted using *sadd al-dhara'i'* generally. This opinion has been expressed by Imam al-Shatibi (2001, 2: 256) and al-Qarafi (1992: 33). They explained that the rejection from Imam al-Shafi'i only applies on the *al-dhara'i'* which the purpose is not clear and still doubtful and it will lead to *haram*. But for *al-dhara'i'* clearly and unquestioned its purpose which will lead to *haram*, there is no dispute in this case. They proving the statement through several examples, such as Imam al-Shafi'i agreed together with majority of scholars on *haram* disgrace idols. As well as *riba* and

*buyu' al-ajal* cases which cannot claim that Imam al-Shafi'i allowed an act that leads to *riba*, even he prohibited but on what happen is he does not accuse (or sentence) faulty to someone who is not clear his intention to do forbidden matter (al-Shatibi 2001, 2:256).

Abu al-'Abbas al-Riffah (al-Zarkashi 1994, 8:93) try to prove the acceptance of Imam al-Shafi'i toward *sadd al-dhara'i'* based on the himself statement in his book, *al-Umm*, chapter *ihya' al-mawat* (reviving barren land): "There is no one has the rights to insulate the overage water as by insulate it means he preventing the grace of Allah SWT and also the act falls under immoral act" (al-Shafi'i 1983, 4:50).

He added more (al-Shafi'i 1983, 4:51): "And the form of the prohibition against people who insulate water from plants (utilized) by public (whereas it is the grace from Allah SWT is general feature. It gives in two meanings, one of them is a circumstance or a way that lead to defy Allah SWT on what that have been allowed, it is *haram*. As well as, a matter has been considered as justifies what is forbidden by Allah SWT". Imam al-Shafi'i (1983) stated more: "Because of this was like this, he stipulates that the ways in the direction of *halal* (permissible) and *haram* (prohibited) resemble the meaning of (law) of the case which is truly lawful and unlawful".

This is followed by the presence of several practical examples in the *mazhab* of Shafi'i being found practicing *sadd al-dhara'i'* indirectly, which are: the prohibition of selling weapons to the infidels because lead to the path of destruction (al-Nawawi 1996, 9:432). People who is given excuse to leave their Friday prayer because of sick, travelling and alike, they can perform Zuhr prayer congregation or solitude. In this case, al-Shafi'i encouraged them to perform furtively, as taking the path of *sadd al-dhara'i'* or condemnation because of unable to perform Friday prayer (al-Nawawi 1996, 4:363).

As well as, legislation for people who breaks their fast in Ramadan because of sickness or travelling is *sunnah* (tradition of Prophet) to hide during daylight breakfast around people who does not have any clue on their true condition. This is *sadd al-dhara'i'* practice and to prevent condemnation from people taught they doing immoral act (al-Shirazi 2006, 1:178).

Based on the both situation above, may be inferred that the acceptance of *sadd al-dhara'i'* by Imam al-Shafi'i indirectly more general and limited to the acts believed lead to more *mafsadah*, but the acts was not go to the level strong presumption as well as to the confident level.

Al-Imam Muhammad Abu Zahra (1997: 313 & 318; al-Shafi'i 1983, 4:41) explained that, "Certainly Imam Shafi'i stands with his interpretation toward the Islamic legislation and *istinbat* (inference) from legislation sources related problems by following the surface of the *nass*, so that he rejecting *istihsan* (juristic preference) as its only blemishing the soul of a *faqih* (jurist) and soul of *shari'ah* (Islamic law) as well as the favor of a scholar in *fiqh*.

It is true that Imam al-Shafi'i is the founder of the *usul al-fiqh* science. It was he who compiled the methods, outlined the features of each branches, but he did not spend much of his time to discuss

about *al-dhara'i'* which other *usul al-fiqh* scholars assumed it is been practiced and method for *masalih al-mursalah*, and it been listed under *istihsan*, even he present the proofs to reject *istihsan* in his book, *Ibtal al-Istihsan*, and he explained that, "all matter that *halal* and *haram* are more priority to be discussed than *istihsan* as *istihsan* is to perfect it". He and explained that, "it is prohibited on someone stated with *istihsan* while the *istihsan* is contradiction with *hadith*", and he stated that, "those who been appointed to be a judge or *mufti* then not allow for him to sentence and giving *fatwa* by using *istihsan*".

The main reason Imam al-Shafi'i rejected *istihsan* because of his firm statement defiling a figure as a *faqih* or defiling the spirit of Islamic law and the taste of a pious. Henceforth, he explained that the basis of Islamic legislation is based on the al-Qur'an, *Sunnah*, companion views and *Qiyas*. However, Imam al-Shafi'i rejection toward *istihsan* does not mean that he rejects the acceptance of *al-dhara'i'* entirely, in fact we find that he accepts in some cases and rejects other cases. Among the cases that he rejected firmly is the deferred payment sale that been practiced by *mazhab* of Maliki stated that it is to block and cover the path that lead *mu'amalat* to the prohibited *riba*.

There is no doubt that his stands on the issue of the law of *buyu' al-ajal* refer to the surface and form of a contract between the seller and buyer, but this based on the he is the founder of *usul al-fiqh* science and very important for someone to put the basis, method is needed for the surface matter that clear and parallel. All of that is to build the basis of the methods and summary of his theory. Meanwhile, issues related to the inner situation, intention then it is not parallel and unclear to formulate certain methods (al-Burhani 1985: 275-501). This shows that the main reason Imam al-Shafi'i rejecting *sadd al-dhara'i'* in *mu'amalat* contract because of the contract condition has two issues: (a) surface issue, it contains pronounce like *ijab* (offer) and *qabul* (acceptance); and (b) inner issue, it contains hidden intentions for both sellers and buyers. It cannot be known except Allah SWT, hence he rejected the permissible of the contract based on the surface issue.

This has been explained Hassan (2003; in Hasan 2000: 411) that the secret of practicing *sadd al-dhara'i'* toward *buyu' al-ajilah* (deferred payment sale) leads to the legitimate transaction of the contract according to *fatwa* or laws, but according to the religion perspective it is *haram*. The *dalil* (proof) is *sadd al-dhara'i'* method means give assumption is a law for the alleged. When the law of intention is invalid in a contract is *haram* not canceled in the point of view of Imam al-Shafi'i. This is practice to the *sadd al-dhara'i'* method and ignoring the function of it practice.

Classical and contemporary scholars stating that Imam al-Shafi'i also used *sadd al-dhara'i'*, although he did not separate this method in another chapter between in his basis legislation. Thus, we find that a large number of *mazhab* of Shafi'i scholars explaining this method with details like Ibn al-Rif'ah, Ibn al-Subki, al-Zarkhasi, 'Izz al-Din 'Abd al-Salam. Ibn al-Rif'ah has divided *sadd al-dhara'i'* into three categories: (a) something has been confirmed that it leads to the *haram* then it is prohibited; (b) something has been decided that it does not bring to *haram* but mixed between *halal* and *haram*, so to maintain and block the forbidden way is prohibited; and (c) something with assumption and not

confirm and it has different level and the truth of the practice. The study wants to bring the practice of *sadd al-dhara'i'* in the *mazhab* of al-Shafi'i as following:

1. Imam al-Shafi'i practiced the *sadd al-dhara'i'* method has been described in his book, *al-Umm*, by his words: "In the condition of blocking water sources from the growth of the grass which it is a gift from Allah SWT and the legislation in *lafaz 'am* (general feature) and giving two meaning: firstly, it is a way that prevents what has been justified by Allah SWT is prohibited, as well as what causes to legalize what is prohibited by Allah SWT something that leads to *halal* and *haram* matters is the same as things that are meant for *halal* or *haram*. With this method, Imam al-Shafi'i uses the *sadd al-dhara'i'* method in each case that has similarity.
2. Imam 'Izz al-Din 'Abd al-Salam also practiced *sadd al-dhara'i'*. Ibn 'Abd al-Salam (n.d., 1:170) explained: "*Wasilah* or a path to the lowest *maqasid* is the lowest path, path of murder is lower than adultery, path of adultery is more dishonorable than the path of taking property without rights, committing to a homicide than not helping is more dishonorable than showing something to it, looking at *ajnabi* (stranger) is prohibited as it will lead to the adultery, and living under one roof without marriage contract is more harm than looking, that is how the level of the different path with the strength of the acts lead to mischief".
3. Those who are weak from performing the Friday prayer like sick person, travelling allowed to pray together or alone has been decided by majority of scholars. Imam al-Shafi'i explained that it is *sunnat* (act of worship for which the doer is rewarded, and the person who does not do it is not punished) for those praying congregation or alone do it secretly so that they will not be damned by a matter (al-Nawawi 1996, 2:40).
4. Paying property to the infidels if any Muslims been detained by infidels and Muslims not able to defeat them, thus can freed them with paying property as the custody in their grip very dangerous to compare with spending property for the purpose of emancipation (al-Suyuti 1992: 78).
5. Matter that *haram* to be taken also *haram* given to anyone else such as *riba*, disobedient dowry, bribery and others. Exception toward bribe cases against government intended.
6. Preventing people who break their fast because of concession in front of people who fast which does not know the concession as blocking the way of meanness or doing sin (al-Nawawi 1996, 2:371-372; al-Nawawi 1993, 6:288).
7. Guarantee from booking item producer. Imam al-Shafi'i views that there is no guarantee except with the case which they themselves do (al-Shafi'i 1983, 3:264; al-Shafi'i 1983, 7:88). This is to prevent them from obliterate or taking others property in the wrong way (al-Shafi'i, 1983, 3:264; al-Shafi'i 1983, 7:88).
8. Guarantee from swimming coach if child drowning so that they will not ignore their responsibility (Al-Nawawi 1996, 2:192).

#### SEVERAL CURRENT ACTS OF *SADD AL-DHARA'I'*

It undeniable that *sadd al-dhara'i'* currently been practiced continually in line with the passage of time and attached here some of the current acted of *sadd al-dhara'i'* with description either practically or not with *Shar'* basis (al-Fart 2003: 85-118):

1. Bombing huge Buddha statue in Afghanistan. Taliban tribe in Afghanistan has shocked the world on the of 27<sup>th</sup> February 2001 by destroying all statues in the historical area, especially the huge Buddha statue in the middle of Afghanistan city. This leads to a deep impression on politics and culture as it was historical monuments in mankind civilization. There are more than 300 000 million people are Buddhist in the world scattered in Japan, China, Myanmar, Thailand, Philippines, Malaysia and Sri Lanka. All Buddhist in the world strongly condemned the Taliban action including Middle East countries. Taliban tribe and Afghanistan scholars when issuing *fatwa* to destroy all the statues, included the huge Buddha statue giving picture that when the statues are destroyed, then clearly to public that there is no god but Allah SWT. They claimed that those actions are based on the method of *sadd al-dhara'i'* that will lead to infidel or world and certain bodies take lightly to them even the ruled almost five years covering 90% of Afghanistan. This decision has been taken based on their scholar's *fatwas*, high council of Afghanistan and other agencies that taking side with Mulla Omer tribe by bombing which the culminated on Friday 9 March 2001 after the holiday of Eid Adha holiday against the largest carved statue at 55-meter-high that aged over 1500 years old. Their actions were contrasted with Islamic legislation and caused negative impact toward Muslims. Since beginning, when countries that had been opened by Islamic government they did not destroy the idols and historical civilization of the past. This is proven by what have been done by the commanders of Islam since the era of The Messenger of Allah PBUH until now. Allah SWT said:

“And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge. Thus We have made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do” (al-An'am: 108).

2. Controlling the number of pilgrims. Undeniable, pilgrim is the fifth pillar of Islam and becomes an obligation to every Muslim. Lately, there have been crowded by pilgrims during performing *Hajj* (pilgrim) at *Baitullah al-Haram*, till all those three *jamrah* (three stone towers) cause death to others. This matter lead to the destruction and hardship for pilgrims and necessity to government to block or prevent this matter from happen again. The Kingdom of Saudi Arabia has taken a decision to limit the number of pilgrims so that they can perform better the worship and perfect. The priority will be given to those who never performed the pilgrim as maintaining the *maslahat* of pilgrims and this is a form of *sadd al-dhara'i'* toward destruction and public interest. This regulation does not mean to prevent the desire of Muslims or blocking their way to the holy land, furthermore this regulation all nations must adhere to it to ensure the universal peace. We witness wealthy people always wanted to implement the pilgrims (*hajj* and *'umrah*) repeatedly every year. They do not know that *jihad* (a struggle or fight against the enemies of Islam) for Allah SWT is greater reward than pilgrims. Why they do not spend their wealth to help needy group, against zionism in Palestine, against Christianity in Indonesia or Bangladesh, south Thailand and any nations in Asia as well as Africa, establish Islamic centers, printing, translating books related to Islam and others. Allah SWT explained that *jihad* is greater than pilgrim. Allah SWT said:

“Have you made the providing of water for the pilgrim and the maintenance of *al-Masjid al-Haram* equal to (the deeds of) one who believes in Allah and the Last Day and strives in the cause of Allah? They are not equal in the sight of Allah. And Allah does not guide the wrongdoing people. The ones who have believed, emigrated and striven in the cause of Allah with their wealth and their lives are greater in rank in the sight of Allah. And it is those who are the attainers (of success). Their Lord gives them good tidings of mercy from Him and approval and of gardens for them wherein is enduring pleasure” (al-Tawbah: 19-21).

3. Organ transfer process. In the evolution of medical science and experimental success and also clinical treatment, surgical techniques as well as discovery of medicines that may help to ever last the organ transfer to a body brought the first glory in the history of organ transplant in 1954 at Peter Bent Brigham Hospital, Boston, United State of America. Since the glory, this treatment growing rapidly. Organ transfer is to save a human or patients and it is a form of *sadaqah jariyah* (ceaseless charity). Islam vastly caring toward maintaining human life and encourage patients to find cure and treat the illness. Saving human life is responsibility of kindness to all Muslims. Human being ordered to try to treat every illness and donate organ either alive or dead is a noble deeds and ceaseless action as a servant of Allah SWT to save a human that suffering with pain to live. This is based on the *sadd al-dhara'i'* method that will be rewarded by Allah SWT.

## CONCLUSION

*Sadd al-dhara'i'* included in the sources of law which uses high intellectual of jurist's mind and it among disputed in purpose to be used in the process of *ijtihad*. Law determination through *sadd al-dhara'i'* is counting the impact and outcome from an act when it has been done and not only look at the motive or *qasad* (intention) of the doer. Therefore, if an act leads to something that becomes *mafsadah* and disadvantage to mankind, then it is prohibited as practicing the Islamic jurisprudence method namely decline the harm is more important. By going through the process of *sadd al-dhara'i'* finds that its actually based on the al-Qur'an and al-Sunnah, even it acts in supporting to translate the general *nass* as well as outward an effort towards maintaining *maqasid al-Shari'ah* (objectives of Sharia). Using *sadd al-dhara'i'* also shining the wisdom of Islamic laws which does not limit the prohibition to something by only sees on the features but also counting the method that lead to it. On the basis of majority of scholars including Imam al-Shafi'i acknowledge *sadd al-dhara'i'* as one of the source of *ijtihad*, even there are small dispute and its name its only about the form or how to use it, and it does not change their accord in the general form.

## REFERENCES

Abu Jayb, S. (1998). *al-Qamus al-Fiqhi Lughatan wa Istilahan*. Damascus: Dar al-Fikr.

Abu Zahrah, M. (1997). *al-Shafi'i*. Cairo: Dar al-Fikr al-'Arabi.

Ahmad, M.Y., Mohamed, N.H., Jamsari, E.A., Zakaria, Z., Omar, A.F. & Taib, M.S.M. (2017). Baitulmal's potential as trustee for unclaimed moneys of Muslims. *International Journal of Civil Engineering and Technology* 8(12), 593-599.

Al-baji, s.k. (1986). *Ihkam al-fusul fi ahkam al-usul*. Beirut: dar al-gharb al-islami.

Al-burhani, m.h. (1985). *Sadd al-dhara'i' fi al-shari'ah al-islamiyyah*. Ph.d thesis. Faculty of dar al-'ulum, university of cairo.

Al-fart, y.a.r. 2003. *Al-tatbiqat al-mu'asirah li sadd al-dhara'i'*. Cairo: dar al-fikr al-'arabi.

*Al-mu'jam al-wasit*. (1972). Istanbul: dar al-da'wah.

Al-nawawi, m.s. (1993). *Al-majmu'*. Jeddah: dar al-irshad.

Al-nawawi, m.s. (1996). *Rawdat al-talibin*. Beirut: dar al-kutub al-'ilmiyyah.

Al-nawawi, m.s. (2001). *Al-majmu' sharh al-muhadhdhab*. Jeddah: maktabat al-irshad.

Al-qarafi, a.i. (1973). *Sharh tanqih al-fusul fi ikhtisar al-mahsul fi al-usul*. Beirut: dar al-fikr.

Al-qarafi, a.i. (1992). *Al-furuq*. Mecca: dar ihya' al-kutub al-'arabiyyah.

Al-qurtubi, m.a. (1967). *Al-jami' li ahkam al-qur'an*. Cairo: dar al-katib al-'arabi.

Al-shafi'i, m.i. (1983). *Al-umm*. Beirut: dar al-fikr.

Al-shatibi, i.m. (2001). *Al-muwafaqat fi usul al-shari'ah*. Beirut: dar al-kutub al-'ilmiyyah.

Al-shirazi, i.a. (2006). *Al-muhadhdhab fi fiqh al-imam al-shafi'i*. Cairo: matba'at 'isa al-babi al-halabi.

Al-suyuti, j. (1992). *Al-ashbah wa al-naza'ir*: beirut: dar al-kitab al-'arabi.

Al-zarkashi, m.b. (1994). *Al-bahr al-muhit*. Beirut: dar al-kutub al-'ilmiyyah.

Babkar, K. (2003). *Sadd al-Dhara'i'*. Cairo: Majma' al-Fiqh al-Islami.

Halim, M.A.A., Kashim, M.I.A.M., Salleh, M.M.M., Nordin, N. & Husni, A.M. 2015. Halal pharmaceuticals. *The Social Sciences* 10(4): 490-498.

Hammad, N. (1995). *Mu'jam al-Mustalahat al-Iqtisadiyyah fi Lughat al-Fuqaha'*. Riyadh: al-Dar al-'Alamiyyah li al-Kitab al-Islami.

Hasan, M.B. (2000). *Manahij al-tashri' al-Islami fi al-qarn al-thani al-hijri*. Ph.D thesis. Faculty of Darul al-'Ulum, University of Cairo.

Hassan, H.H. (2003). *Nazariyyat al-Maslahah fi al-Fiqh al-Islami*. Cairo: Maktabat al-Mutanabi.

Ibn 'Abd al-Salam, I.. (n.d.). *Qawa'id al-Ahkam fi Masalih al-Anam*. n.pl.: n.pb.

Ibn Manzur, M.M. (1998). *Lisan al-'Arab*. Beirut: Dar al-Sadir.

Ibn Qayyim, M.A.B. (1968). *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*. Cairo: Maktabat al-Kulliyat al-Azhariyyah.

Ibn Qudamah, M.A.A. (1993). *al-Mughni wa al-Sharh al-Kabir*. Cairo: Dar al-Hadith.

Ibn Rushd, M.A. (1988). *al-Muqaddimat al-Mumahhidat li al-Bayan ma Iqtadathu Rusum al-Mudawwanah*. Beirut: Dar al-Gharb al-Islami.

Kashim, M.I.A.M., Alias, M.N., Zin, D.M.M., Said, N.L.M., Zakaria, Z, Salleh, A.D & Jamsari, E.A. (2018). *Istihalah* and its effects on food: An Islamic perspective. *International Journal of Civil Engineering and Technology* 9(1), 755-762.

Kashim, M.I.A.M., Majid, L.A., Adnan, A.H.M., Husni, A.M., Nasohah, Z., Samsudin, M.A. & Yahaya, M.Z. (2015). Principles regarding the use of *haram* (forbidden) sources in food processing: A critical Islamic analysis. *Asian Social Science* 11(22), 17-25.

Qal'ahji, M.R. (1996). *Mu'jam Lughat al-Fuqaha'*. Beirut: Dar al-Nafa'is.

Samsudin, M.A., Yahaya, M.Z., Kashim, M.I.A.M., Laluddin, H., Ismail, A.M., Khalid, R.M., Sobri, I.M. & Sulaiman, S.A.S. (2015). Establishment of shari'ah supervisory committee in hospital: An analysis from perspective of public interest. *Asian Social Science* 11(4), 43-47.