

Implementation of the Concept of Sadd Al-Dzari'ah in Islamic Law (Perspective of Ibn Al-Qayyim Al-Jauziyah and Ibn Hazm)

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Abstract: The study of science fiqh in Islamic law is one of the products of the thoughts of Muslim scientists whose sources are the al-Qur'an, hadith, Ijma' and qiyas so as to produce a rule that is made into law in accordance with the objectives of Islamic law for the benefit of mankind which is increasingly develop in line with the changing circumstances of the times. The Ulama and the roots of Islamic law are required to always be sensitive to the problems of social life in the midst of society. In addition, in formulating a law that can be accepted by humans, it cannot be separated from the differences in the socio-cultural background of the scholars and legal thinkers that cause differences of opinion between them in establishing a legal product. These differences are of course caused by differences in thoughts and interpretations in the verses of the Qur'an and hadith, giving rise to pros and cons in establishing Islamic law. As was done in the thinking between Ibn al-Qayyim and Ibn Hazm in the theory of sadd al-dzari'ah as the concept of establishing Islamic law. In the concept of Ibn al-Qayyim's perspective that sadd al-dzari'ah can be used as a proposition in Islamic law. According to Ibn al-Qayyim's perspective, the theory or concept of sadd al-dzari'ah cannot be used as a postulate of Islamic law, because the sadd al-dzari'ah theory only provides information and motivates to always ijtihad, because the door to ijtihad is always open at any time and condemns to people following without reason or imitating and obeying without evidence (taklid). Ibn al-Qayyim always had to think rationally so as not to be fixated on the textual arguments in the Qur'an and hadith. Thus, Ibn al-Qayyim is more lax in establishing the basics of Islamic law even though there are no texts that specifically acknowledge the validity of the sadd al-dzari'ah concept. An example is buying and selling on a tempo and then the seller buys the item again in cash at a cheaper price. In this case, if approached with sadd al-dzari'ah, then this transaction is haram because the practice of buying and selling is oriented to the practice of usury which is forbidden. Meanwhile, according to Ibn Hazm, buying and selling is not prohibited because it is in accordance with the provisions of syara'.

Keywords: Sadd Al-Dzari'ah, Islamic Law Arguments, Proof of Evidence, IbnuQayyim, Ibnu Hazm

1. Introduction

After the Prophet's death, Islamic law developed. New problems cannot be solved only by relying on the existing texts of the verses of the Qur'an al-Hadith. The Companions were no longer able to directly ask the Prophet. One of the solutions that they do is ijtihad, both personally and collectively, so that what know is known as a mutual agreement. [1] In the following century, the methods used to establish laws developed over time. In the second century, a scientific discipline was formed, namely the theory of ushulfiqh which

discussed the istinbath methods of Islamic law. [2] In the realm of methodology the scholars have different opinions. The implication is that the laws produced will not be uniform.

The Islamic law to be explored is still abstract [3]. The task of the mujtahids is to express Islamic law which is still abstract. To do this, of course, a process is needed. The process that must be carried out is ijtihad [4], ahkam verses, namely the Qur'an and al-Sunnah which can lead to the law to be explored. In the discipline of ushulfiqh, there are several arguments other than the Qur'an and al-Sunnah that are used by scholars to produce laws. Among them are ijmâ',

qiyās, istihsan, istishāb, 'urf, maslahahmursalah, sadd al-dzarī'ah, and others. [5]

The proposition that is still controversial among scholars is sadd al-dzarī'ah. disagreement among those who use the concept of sadd al-dzarī'ah as a legal argument because there is no definite backing from the Qur'an and hadith in its evidence. even the concept of Sadd al-dzarī'ah can lead to mafsadat (damage). in the modern era and in today's technology, there are a lot of legal engineering to legalize something that is prohibited. For Islamic law experts, they must have arguments to answer the problems of the people, especially in this modern era, especially contemporary problems.

Ibn al-Qayyim al-Jauziyah is one of the scholars of fiqh and ushulfiqh among the fuqaha. His thoughts gave rise to new ideas in the istimbat of Islamic law with the concept of sadd al-dzarī'ah. He often ijtiḥad and even explicitly refused to close the door of ijtiḥad, thus providing a special space for the concept of sadd al-dzarī'ah as one of the methods of ijtiḥad in Islamic law. different from IbnHazzam who is included in the classical scholars and his thoughts are still traditional who are always careful so that the concept of sadd al-dzarī'ah can be a postulate of Islamic law. Of the two ulama' above, both have the concept of sadd al-dzarī'ah as a proposition of Islamic law, of course there is a difference between the two [6].

Therefore, the purpose of writing this article is to examine, examine and examine more deeply the thoughts of IbnQayyim al-Jauzy and IbnHazzam about the concept of sadd al-dzarī'ah as Islamic law so that researchers can find the difference between the two. Thus, it is important to conduct this research entitled "Sadd al-dzarī'ah as a postulate of Islamic law (Comparative Study of Ibn Al-Qayyim Al-Jauziyah and IbnHazzam). This research method uses a qualitative approach because the data collected is about two scholars' thoughts, namely about the concept of sadd al-dzarī'ah which was founded by legal experts in the fields of fiqh and ushulfiqh. In general, the concept of sadd al-dzarī'ah as evidence in Islamic law by Ibn al-Qayyim al-Jauziyah in his work I'lam al-Muwaqqi'in and andIbnHazzam in his work Al-Ihkam fi Uhsul Al-Ahkam.

This type of research is library research. namely examining the thoughts of Islamic law experts written in his book. The method presented is descriptive analysis. In reviewing and reviewing several sources using written tools, books, books, journals and other sources related to the theme of this research, namely works in the field of fiqh and ushulfiqh [7]. Thus, it is quite relevant to analyze how the thoughts of Ibn al-Qayyim al-Jauziyah and IbnHazzam regarding the concept of sadd al-dzarī'ah as Islamic Law, while the two Ulama' are representations of scholars with rational and traditional typologies.

2. Discussion

2.1. Theory of Islamic Law as Shari'ah

The argument is a legal guide taken from the Qur'an by

interpreting the texts of the Qur'anic verses that are qot'i (definite) or dhonni (alleged). Abi al-Hasan Ali bin Muhammad al-Jurjani is of the opinion that the proposition is something that can be known by means of research taken from the text of the Qur'anic verse [8]. Imam al-Subki gave the opinion that the proposition is something that can be reasoned by reason correctly and precisely to lead to something that is sought which is news [9].

From the above opinion, it can be understood that the proposition in law is very important for the roots of Islamic law, at least that the argument serves to show the object being sought. To be able to know the object, of course, the proposition requires several processes between it; the designation of the proposition to the object is called dalālah. [10] WahhabKhalaf, said that there are several kinds of arguments that are used as the basis of Islamic law.

2.2. The Level of Validity of the Arguments of Islamic Law According to the Scholars'

There are four foundations of Islamic law as evidence, namely; The first is the Qur'an, the proof of the Qur'an. What is being debated among scholars is the interpretation and meaning of the Qur'an, thus giving rise to various interpretations and different meanings. Second, the Sunnah is the second source of law. Sunnahare all the words, deeds, and determinations of the Prophet Muhammad. Third, Ijma' is the agreement of the mujtahids in deciding an Islamic law. Ijma' is divided into two kinds of ijma', namely Ijma' Sharh, namely the agreement of the mujtahids in deciding cases, either in the form of fatwas or decisions. And ijma' sukūti, namely some mujtahids agree on their opinion, while others do not issue an agreement in deciding a law. Fourth, as a proof to equate and explain in the Qur'an with cases because there are similarities in 'illat. In the evidence of qiyās there are still groups who deny it, including the sy'ah, al-nadhdhām, al-dhāhiriyah, and a group of Baghdad Mu'tazilah. the group that denies the truth of qiyās is called nufāt al-Qiyās. However, the arguments they put forward are unacceptable [11].

2.3. The Level of Blasphemy of the Islamic Law Arguments Debated by Scholars

In addition to several arguments that are agreed upon by the scholars, there are several arguments whose validity is disputed, namely: First, Ihtisn, scholars have different opinions regarding istihsan. However, in general, istihsan is divided into two, namely qiyāsaly over qiyāskhafi because there is a reason that crosses the mind of the mujtahid or excludes partial cases that should be covered by general law. Example: the first to qiyās-kanwaqf by buying and selling is called qiyāsaly. Being qiyās-kanwaqf with ijarah called qiyāskhafi. By holding on to istihsan, then qiyāskhafi is used and ignores qiyāsaly. The second example is the permissibility of salām, ijarāh, istishnā' contracts. In fact, these contracts are classified as transactions with ma'dūm goods which should not be valid. The contracts mentioned

above include exceptions called *istihsan*. Second, *Maslahahal-mursalah* or what can be called *istishlâh* [12], *al-Munâsib* *al-Mursal* *al-Mulâim*, or *al-Istidlâl* *al-Mursal* is a benefit for which there is no evidence from the *syara'* that confirms or ignores it. For example, collecting *al-Qur'ân* into one manuscript, making prisons, printing currency, and others [13]. Third, *Istishhâb* indicates a change in law or makes the existing law still valid until there is a proposition that replaces it. For example, the original law of a woman is still a virgin. So, she was judged to be a virgin so that there is evidence that confirms that she is no longer a virgin [14]. Four '*Urf* is something that is already known and runs in general in society, either in the form of words or deeds [15]. Five, *syar'u man qablana* are laws that have been prescribed to the people before us that were conveyed to us [15]. Sixth, the *sahabimadhab* is the opinion of one of the companions narrated to us in a particular case for which there is no explanation from the *Qur'an* or *hadith*, either in the form of a *fatwa* or decision. Seventh, *Sadddzari'ah* is closing the intermediary that leads to *hara* [16]. Eight, *Istiqra'* is postulated by looking at the existing law in a partial case to determine the law in general [17]. Nine, taking the opinion of the least example, if there is a difference of opinion between four, five, or six. In this case, it means that all four can be confirmed. While the addition of one or two numbers that is the difference [18].

3. The Concept of Sadda Al-Dzarā'ah Perspective of Ibn Al-Qayyim Al- Jauziyah and Ibn Hazm

3.1. Thoughts of Ibn Al-Qayyim Al-Jauziyah

Ibn al-Qayyim's thoughts are mostly in works, namely "*I'lâm al-Muwaqqi'în*" and "*al-Thuruq al-Hukmiyah*". In this book, Ibn al-Qayyim discusses at length about *ijtihād* and the method of *ijtihād*. According to him, *ijtihād* always develops with changing times. The law must be relevant to situations and conditions in various places and times. This thought was a reflection and at the same time a reaction to the general opinion among Muslims at that time who had the view that the door to *ijtihād* had been closed. Therefore, he divides *ijtihād* through reason (*ra'yu*) into three forms, namely *al-ra'yu al-bâtilbilâraibin* (bin Abi Bakr ibn al-Qayyim t.t.: 67–69)¹, *al-ra'yu al-shahîh*, *al-ra'yu al-musytabih*.

In the development of Islamic law must be in accordance with *maqâshid al-syar'ah*, using several methods of *ijtihād*. The methods that can be used are *ijmâ'*, *qiyâs*, *al-maslahah al-mursalah*, *istishhâb*, '*urf*, and *al-dzarî'ah*. Among the

ushûlfiqh thoughts of Ibn al-Qayyim, the most prominent is about '*urf* and *sadd al-dzarî'ah*. As the rules of *fiqh* say, it means:[19] "Changes in law according to changes in times, places, and conditions"

This rule has a broad meaning in various aspects of *fiqh* science, because Islamic law has always looked at the benefit of humans which is tied to the conditions of the place, time, and environment in which humans live. Ibn al-Qayyim's thoughts on *sadd al-dzarî'ah* will be discussed in more depth in the following review [20].

3.2. Ibn Al-Qayyim Al-Jauziyah's Concept of Sadd Al-Dzarî'ah

According to him, the concept of *al-dzarî'ah* can be a medium for something else in accordance with the desired legal will as long as it does not conflict with Islamic law. In several of his works, Ibn al-Qayyim popularized the concept of *al-dzarî'ah* 'one of the legal arguments. in his thoughts on *al-dzariyahdalay* it is thought as follows [21]:

"Every goal will not be achieved without going through the causes and media that mediate. Media that serves as an introduction is a must that cannot be ignored. Therefore, the introduction has the same legal status as the goal to be achieved. Therefore, to determine the legal status of *al-dzarî'ah*, one must look at the goals to be achieved. If the purpose is good, then it must be opened for the benefit of mankind. If it leads to damage, the concept of *al-dzarî'ah* must be closed and cannot be implemented for many people. this is called *sadd al-dzarî'ah*" [22].

In his work, Ibn al-Qayyim notes that *sadd al-dzarî'ah* can be applied if it does not conflict with needs and benefits. If there is a conflict between *sadd al-dzarî'ah* and *maslahat*, then the favored benefit In *I'lâm al-Muwaqqi'în*, Ibn al-Qayyim also mentions that Ibn al-Qayyim asserts that *sadd al-dzarî'ah* cannot be determined as benefit or give rise to a larger *mafsadat*. For example, seeing women is forbidden because it can lead to heinous acts. but this prohibition does not apply if there is a need (intention) and problems to see, for example to propose, transact, testify, and so on. The *sunnah* prayer at the time that is prohibited is *haram* because it can be considered as resembling the disbelievers who worship the sun. but when there is a certain benefit, then it is not forbidden to pray at the forbidden time. The prohibition of wearing silk for men based on *sadd al-dzarî'ah*, is permissible for women and for men for certain benefits, for example for people who have itching, the temperature is too hot. *Riba al-Fadl* is forbidden in order to close the possibility of usury *nasî'ah* [23], but the practice of usury *Fadl* [24] is allowed in the sale and purchase of '*arâya* [25], because there is a need. many cases were judged on the basis of *sadd al-dzarî'ah*. Therefore, Ibn al-Qayyim stated that *sadd al-dzarî'ah* is a quarter *taklif*. Because, *taklif* consists of commands and prohibitions. Thus, something that becomes aware of the prohibition is a quarter of religion [26].

In the concept of *sadd al-dzarî'ah*, Ibn al-Qayyim expressly *hîlah* (manipulating the law) is forbidden, because it allows something that is lawful. The law does engineer the law which

1 According to Ibn al-Qayyim, what is included in the category of *al-ra'yu al-batil* are: opinions that contradict the texts, opinions about religion based on assumptions accompanied by haphazard actions in understanding and interpreting the law from texts, opinions that ignoring God, His attributes and His actions, opinions that give rise to heresy and change the teachings of the Prophet (*sunnah*). Shams al-DnAbiAbdillah Muhammad bin AbiBakribn al-Qayyim, *Zâd al-Ma'âdJuz I*, pp. 67-69.

aims to pave the way for prohibition by means of engineering [27]. Ibn al-Qayyim asserted that *sadd al-dzarī'ah* contradicts *hilah* [28]. Because *Sadd al-dzarī'ah* is determined to anticipate the occurrence of sin. Meanwhile, *hilah* is oriented towards several attempts to legalize something that is sinful. In fact, even though someone does not mean to lose, but his actions lead to losses, it must be anticipated and prevented. This is the principle of *sadd al-dzarī'ah* [29].

3.3. Ushl Fiqh Ibn Hazm Thoughts

Ibn Hazm is better known as a thinker with a literalist-textual pattern because his thoughts are more dominant in following the text in a literal way. In fact, he rejects the freedom of *ijtihad* by solely relying on reason. The most prominent thoughts of Ibn Hazm's *sushūlfiqh* include [30]:

- (1) *Laws that are expressly stipulated in the Qur'an, hadith and ijma' companions are obligatory, haram, and permissible. There is no room for reason to be directly involved in the formation of law. Therefore, the legal arguments that can be used as sources and support for establishing the law, namely the Qur'an, hadith, ijma' friends, and dhâhir texts which have only one meaning.*
- (2) *Ibn Hazm rejected ijtihad bi al-ra'y (ijtihad solely relies on ratios). For this opinion, Ibn Hazm put forward several arguments, including, Al-Qur'ân, Al-Sunna, Statements of Companions.*
- (3) *Ibn Hazm is of the opinion that the words (aqwâl) of the Messenger of Allah and the decrees (taqrîrât) of the Prophet are unquestionable evidence, while the actions (af'âl) of the Messenger of Allah cannot be used as evidence unless accompanied by an explanation from the Apostle himself. For example, the prayer movement taught by the Apostle through deeds is strengthened by his saying: Pray as I pray.*
- (4) *The most prominent difference between Ibn Hazm's thought and the majority of ushûly scholars is about ta'lîl al-nushûsh (the existence of 'illat for texts). In Ibn Hazm's view, the existing texts do not contain an 'illat which is used as a reason for qiyas with other cases that have the same 'illat. Nash is only to establish the law of something stated in the text. Meanwhile, cases that are not mentioned in the text cannot be sentenced to the same.]*

3.4. Ibn Hazm's Concept of Sadd Al-Dzarī'ah

The concept of *sadd al-dzarī'ah* is not recognized by Ibn Hazm as an *ahkam* argument. In his book, *al-Ihkâm fî Ushl al-Ahkâm*, Ibn Hazm uses *ihtiyâth*, *qath al-dzarâi* 'or *al-musytabih*. In this book, Ibn Hazm reveals that there is a group of scholars who do not allow something to rely on *ihtiyâth* (prudence) and worry that it can lead to *haraam*. This opinion is supported by a hadith narrated by a friend of Nu'man bin Basyr that the Messenger of Allah said: [31]

"Indeed, what is lawful is clear, and what is unlawful is clear. Between the two there is something that is still vague that most people don't know about. Whoever keeps himself

from doubtful things means that he is free from his religion and pride. Whoever falls into doubt, it will fall into the forbidden like the person who shepherds around the forbidden land which is almost certain to enter it. Verily every king has a forbidden land. Meanwhile, the land that Allah has forbidden is forbidden."

According to scholars who recognize the existence of *ihtiyâth* (*sadd al-dzarī'ah*) this hadith conveys the message that we are prohibited from doing something that is still doubtful (it is not clear whether it is *halal* or *haram*) in order to be careful not to fall into *haram*. According to Ibn Hazm this hadith does not explain the prohibition of something that is doubtful. In fact, the hadith states that something surrounding the forbidden land is not the forbidden land. In contrast to something that is clearly forbidden. Likewise, the hadith narrated by Ibn 'Aun from al-Sha'bi' [32].

"Indeed, what is lawful is clear, and what is unlawful is clear. Between the two there are things that are still vague. I will make you an example. Allah decreed a prohibition on a forbidden land. Meanwhile, Allah's forbidden land is something He has forbidden. Indeed, the one who shepherds around the forbidden land is almost certain to play in it and the one who mixes with doubts, it is almost certain that he is carrying on the immorality"

From the narration of this hadith, it is concluded by Ibn Hazm that what is feared to fall into doubt is if the person commits to the prohibition. For example, there are two waters, both of which are questionable, but one of them is believed to be unclean. If the two waters are used to perform ablution and then pray, then it is one hundred percent that the person is praying with uncleanness. An example like this is what is forbidden because it is believed to fall into the forbidden. Another hadith submitted by scholars who argue that there is *sadd al-dzarī'ah*. The hadith is [33].

"A servant will not reach the group of people who are pious so that he leaves something that does not contain danger for fear of falling into danger" (HR. Hakim)

There is a hadith proposed by scholars who recognize *sadd al-dzarī'ah*, namely:

Narrated from al-Nuwwâs bin Sam'ân al-Anshary said: I asked the Messenger of Allah about goodness and sin, then he said: goodness is good character while sin is something that affects your soul while you do not like to be known. many people" (HR. al-Dârimi) [34]

According to Ibn Hazm this hadith cannot be used as evidence to forbid something that is still doubtful because what is called sin is something that can have an influence on our hearts. If what is used as the standard of *halal* and *haram* is something that is turbulent in the soul, then the law will not be stable because the human soul has different desires, so that it can produce different laws. However, the group that argues that *ihtiyâth* can be used as an argument does not stipulate *haram* in the two cases above. This opinion is contrary to their own concept of *ihtiyâth* or *sadd al-dzarī'ah*.

Scholars who consider *sadd al-dzarī'ah* to be used as evidence and evidence as stated by Ibn Hazm, there is a clear argument to reject the opinion that scholars forbid something

based on ihtiyâth, namely in the Qur'an which reads.

"And do not say against what your tongues falsely say, This is lawful and this is unlawful", to invent lies against Allah. (Surat al-Nahl 116)

According to IbnHazm, actually the application of the concept of ihtiyâth can result in the determination of the law based on unjustified suspicions. Such as canceling the testimony of a just person who testifies for his father, children, wife, or friends because they are suspected of giving false testimony. Strictly speaking, IbnHazm stated that the madhhab that recognizes ihtiyâth is the most corrupt madhhab on this earth because it can invalidate everything that is true [35].

4. Arguments of Ibn Hazam and Ibn Qoyyim Sadd al-Dzari'ah as Islamic Law

The difference of opinion in deciding a law between the two scholars is a natural thing, because each has a different background from socio-cultural life so that it influences his thinking in understanding the text of the Qur'an and Hadith. Kadalm concept of sadd al-dzarî'ahIbn al-Qayyim and IbnHazm have different views [36]. These differing views include:

4.1. Differences in Saddal-dzarî'ah Orgumentî Terms

Ibn al-Qayyim classified sadd al-dzarî'ah into four. First, something that from the beginning contains mafsadat. Second, something that was originally permissible but was intended to achieve mafsadat. Third, something that is initially permissible and is not intended to achieve mafsadat, but is more dominant tends to lead to mafsadat. Fourth, something that is initially permissible and is not intended to achieve mafsadat, and there is the possibility of leading to mafsadat, but the benefit side is prioritized. Of these four classifications, the first, second, and third parts can be used as evidence or arguments for establishing a law called sadd al-dzarî'ah. While the fourth part, Ibn al-Qayyim did not set it as a proof because it is contrary to the benefit. In his book, Ibn al-Qayyim explains if sadd al-dzarî'ah is contrary to benefit or intent, then sadd al-dzarî'ah is defeated, so it cannot be determined as evidence [37].

Meanwhile, IbnHazm did not provide a classification of sadd al-dzari'ah as a postulate of Islamic law. In fact, he absolutely rejects the truth of sadd al-dzari'ah. According to him, berhujjah with sadd al-dzarî'ah the same as determining the law without any basis from texts. He is of the opinion that deciding the law without the support of the Qur'an, Al-Sunnah, Ijma 'Shobat cannot be justified [38].

4.2. Differences in Sadd al-Dzarî'ah Proof of Arguments

Differences of opinion about the kehujjahsadd al-dzarî'ah he certainly has arguments to support his opinion. After examining their arguments, it can be concluded that the

evidence of sadd al-dzari'ah between Ibn al-Qayyim and IbnHazm is contradictory.

Ibn al-Qayyim who stated that sadd al-dzarî'ah can be used as evidence because there are many in the Qur'an and hadith and the opinions of friends who practice the concept of sadd al-dzarî'ah. Even in the book I'lam al-Muwaqqi'in mentions there are ninety-nine texts, both from the Qur'an and hadith. With the many legal provisions in the Qur'an and hadith that are in line with the sadd al-dzarî'ah concept, this means that a form of legalization of the sadd al-dzarî'ah evidence can be used as a legal basis [39].

Meanwhile, the opinion of IbnHazm, sadd al-dzarî'ah is not allowed to set the law without any backing from the texts. The Qur'an is considered sufficient in answering all the problems of the people as stated in the Qur'an Surah al-Anâm: 38: "We have not forgotten anything in the Book".

When the verses of the Qur'an have answered all the problems of the people, then there is no need for evidence other than texts. If you use a proposition other than the Qur'an and it is not legalized by the Qur'an, it means that you have made up the law. While the concept of sadd al-dzarî'ah is tantamount to forbidding something which is basically permissible only because it relies on caution and fear of falling into haram. IbnHazm stipulates that everything is permissible as long as there is no evidence from the texts that forbid it. Establishing the prohibition of a law only based on caution or concern about falling into the prohibition is not legalized by the texts. So, according to IbnHazm, berhujjah with sadd al-dzarî'ah means setting the law only relying on allegations that are not supported by the texts [40].

Thus, it can be understood that the difference in the arguments expressed by the two is that Ibn al-Qayyim established the validity of sadd al-dzarî'ah as a consequence of preventing the prohibition of al-dzarî'ah because it looked at its ghayah side (its goal), mafsadat. So he thought that sadd al-dzarî'ah could be used as a legal proposition. Meanwhile, IbnHazm looked at his wasâil side. becausewasâil is basically something permissible. Therefore, this permissible law cannot be changed unless there is a text that changes its legal provisions. In addition, there are no texts that explicitly support the truth of sadd al-dzarî'ah [41].

4.3. Implementation of IbnQoyyim Al-Jauzy and IbnHazm's View on Sadd Al-Dzarî'ah as the Basis of Islamic Law

Differences in paradigms result in the emergence of different views. The views of Ibn al-Qayyim al-Jauziyah and IbnHazm regarding sadd al-dzarî'ah are indeed different. Although there are differences of opinion between the two regarding sadd al-dzarî'ah, this difference does not have implications for the certainty of differences in legal products in a case. In some cases, there are similarities in legal products produced by Ibn al-Qayyim and IbnHazm, although from different legal arguments. In other cases, there are legal differences, due to differences in the arguments used. Examples of cases that were judged the same by Ibn al-Qayyim and IbnHazm were insulting idols in front of

polytheists, praying at times that were forbidden, drinking a little khamr, being allowed to see women who were going to be *khitbah*. In these cases, Ibn al-Qayyim and Ibn Hazm set the same law. Although Ibn al-Qayyim used the *sadd al-dzari'ah* proposition while Ibn Hazm did not use *sadd al-dzari'ah* [42].

One example of the difference in legal products between Ibn al-Qayyim and Ibn Hazm is buying and selling with *tempo* or with *bai' al-'inah*. For example, someone sells a bicycle for 500,000 at a time, then the seller buys another bicycle from the buyer at a price of 250,000 in cash.

From this case, it can be determined that if using *sadd al-dzari'ah* the practice of buying and selling above is forbidden, because there are strong indications that this practice is to legalize usury, which is actually the main purpose of this practice is that the seller gives a debt of 250,000 to be paid 500,000 with engineered to sell his bicycle for 500,000 in *tempo*. With this sale means that the buyer has a debt of 500,000, then the seller buys his bicycle again at a price of 250,000. It's like he gave 250,000 to get his 500,000 debt. While the bicycle is only an intermediary to legalize the practice of usury. Because it can lead to the unlawful practice of usury, this practice is prohibited.

Meanwhile, according to Ibn Hazm who does not recognize the validity of *sadd al-dzari'ah*, this practice is not prohibited. The reason is, there is no explanation from the *syara'* about the prohibition of this practice. Meanwhile, indications for legalizing the practice of usury are considered to be allegations that have no legal consequences. This is because people who carry out the practice of buying and selling above cannot be ascertained to be aiming to practice usury.

Another case; There is a difference of opinion between the scholars who use *sadd al-dzari'ah* and the scholars who reject it. For Ibn al-Qayyim who uses *sadd al-dzari'ah* as a proposition, he cannot accept the testimony of parents against children or testimony of children against parents as a form of anticipation of non-objective testimony. The testimony of parents against their children contains great suspicion. Every parent will almost certainly defend their child as much as possible. Therefore, by relying on *sadd al-dzari'ah*, so that there is no false testimony, the testimony of parents against their children cannot be accepted [43].

In contrast to Ibn Hazm who rejected *sadd al-dzari'ah*. According to him, the testimony of parents against their children can be accepted if it is fair. The condition for an acceptable witness is that it lies on the side of justice. Even against his own son, if he is a just person, then he will give true testimony. While the possibility that he will defend his son with false testimony is still speculative and cannot be ascertained [44].

In contemporary *waqi'iyah* issues, such as nepotism, there should be no prohibition. However, because nepotism is an indication of unfair and detrimental actions to other people or institutions concerned, it is prohibited. The prohibition of nepotism is based on *sadd al-dzari'ah*, because this prohibition is to close the possibility of actions that can harm other people or the institution concerned.

Prohibition of using mobile phones in certain institutions, such as Islamic boarding schools. In fact, there is no prohibition against using mobile phones. However, in certain institutions, because the use of mobile phones is an indication of committing violations, it is prohibited. This prohibition is based on *sadd al-dzari'ah*. In both cases, following an opinion that does not legalize *sadd al-dzari'ah* means that there is no prohibition.

5. Conclusion

Difference of opinion is a necessity. Diversity of opinion is not a problem to be avoided. Precisely with the existence of this difference proves that the wealth of thought and freedom of opinion are really upheld in Islam. Ibn al-Qayyim has a different view from Ibn Hazm regarding *sadd al-dzari'ah*. This difference is motivated by differences in social settings, and typology of *ushulfiqh* thought. It is not surprising that in his view of *sadd al-dzari'ah*, he stipulates *sadd al-dzari'ah* as a legal proposition. Although the *sadd al-dzari'ah* evidence is not supported by the text in a *sharh* manner. The role of reason must be used optimally in producing law. Because, the law must always be relevant to the time, place and conditions.

Departing from this typology of thought, he rejects the validity of *sadd al-dzari'ah* because *sadd al-dzari'ah* is not legalized by the text which is understood from the *dhâhirlafadz*. So, it can be concluded that the background of the different conceptions of *sadd al-dzari'ah* between Ibn al-Qayyim and Ibn Hazm, has a rationalist pattern, while Ibn Hazm's thinking tends to be literalist. Therefore, the conception of Ibn al-Qayyim which legalizes *sadd al-dzari'ah* as the *ahkam* argument is rational thought. Ibn al-Qayyim did not understand the textual texts of the Qur'an and hadith. Therefore, he considers the laws contained in the Qur'an which are in line with the *sadd al-dzari'ah* concept as legalizing this proposition. Meanwhile, the background behind Ibn Hazm's conception is his textual thought which only looks at the meaning of *dhâhir* and does not recognize the existence of *ta'lîl al-hukmi*. Therefore, he will not stipulate the law if it is not supported by a text that is clearly understood.

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