



Sexual Deviation in Ushul Fiqh Perspective; A Critical Study of National Condomization Week in Indonesia According to *Sadd al-Dhari'ah* Theory

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ABSTRACT

Commemoration of World AIDS Day in Indonesia on December 1st, 2013 ago caused controversy. This incident happened when the commemoration which was directed to the campaign to fight the disease caused by HIV infection was accompanied with the National Condomization Week. The controversy arose because the National Condomization Week, which was held from December 1st-7th, 2013, was filled with events for distributing condoms to campuses and schools. This immediately received criticism from several groups. After the author analyzes in various literatures, it turned out that the National Condomization Week, which was launched by the Indonesian Ministry of Health at that time, was motivated by concerns about the increasing number of cases of HIV AIDS transmission and the number of abortions among young people due to pregnancies out of wedlock. The program aims to prevent the development of this dangerous disease and also the very high abortion rate. Viewed from the perspective of sadd al-dhari'ah theory, the condomization week must be stopped forever because it will lead to greater malfesance, namely free sex behavior among young people or adolescents as well as adults. This is because the distribution of condoms is carried out freely to campuses and schools.

KEYWORDS: Sexual Deviation, Ushul Fiqh Perspective, National Condomization Week, *Sadd al-dhari'ah* Theory

INTRODUCTION

Commemoration of World AIDS Day on December 1st, 2013 ago caused controversy. This incident happened when the commemoration which was directed to the campaign to fight the disease caused by HIV infection was accompanied with the National Condomization Week. The controversy arose because the National Condomization Week, which was held from December 1st-7th, 2013, was filled with events for distributing condoms to campuses and schools. This immediately received criticism from several groups. The Indonesian Ulama Council (MUI), Islamic organizations, student organizations, and national figures intervened to criticize the program. Even a community organization gave the title to the Indonesian Minister of Health at that time, Nafsiah Mboya as "Queen of Condoms" because they were considered to support the program. Apart from criticism, there have been protests manifested in demonstrations on campuses, some of them are marked by physical collision. The estuary of criticism is that the chosen step is the same as legalizing free sex.¹

1 SINDO newspaper, Kondomisasi, National Column, Friday Edition, December 6th 2013, in <http://nasional.sindonews.com>, accessed on February 3rd 2016.

Those who support the program, including the National AIDS Commission (KPAN), believe there is nothing wrong with the program. Apart from believing that condoms can be useful in preventing the transmission of HIV/AIDS, they also reasoned that the campaign on campuses and schools is part of a comprehensive anti-AIDS campaign program. However, the criticisms that arise can also be understood and have some truth in them. Sharing condoms has the potential to promote free sex among teenagers. Just like distributing candy to children, giving out condoms can be an invitation to try them. This potential is very likely to occur if the recipients are those who do not have good morals. The distribution of condoms among students is also not on target. In fact, the campaign should go straight to its target, namely to those who have the potential to be infected with HIV/AIDS through sexual intercourse. If it is necessary to campaign on campus, the method is not by distributing condoms, but through educational programs such as discussions or spiritual guidance.²

In addition, the reason for the Minister of Health to distribute condoms to teenagers is to reduce the abortion rate, which

2 Ibid.



annually reaches 2.3 million teenagers according to data from the BKKBN. The Minister of Health sees that this number shows that many teenagers experience unwanted pregnancies. He emphasized that the Child Protection Law states that every child conceived until born must be given their rights in accordance with the Child Protection Law. Therefore, making it easier for teenagers to access condoms is expected to reduce the number of abortions and unwanted pregnancies. Of course, this may be met with opposition from certain groups who think that giving condoms to teenagers can trigger free sex. But the minister of health thinks that if adolescent's understanding of reproductive health is good enough, there is no need to worry that this will result in free sex.³

Meanwhile, those who rejected the condomization program included the Muhammadiyah Regional Leader (PWM) of South Sulawesi, Dr. Furqan Naiem when conveying the teachings of the Prophet Muhammad on the concept of *rahmatan lil 'alamin*. According to him, the condomization program when we loudly reject, it is also in the context of *rahmatan lil 'alamin*. This was conveyed at the end of the year discussion with the theme "The Position of Muhammadiyah and NU in the Social, Cultural, Economic, and Political Dynamics of South Sulawesi" at the East Tribune Editorial, Cendrawasih Street. No. 430, Makassar, Wednesday (12/30/2015). So, he also asked to be firm in preaching in order to spread the understanding of *rahmatan lil 'alamin*.⁴

Seeing the two phenomena above, namely the purpose of distributing condoms to suppress the spread of the HIV/AIDS virus and reducing the number of unwanted pregnancies among teenagers, the condomization program is certain to trigger sexual deviation⁵ among teenagers as well as adults. This makes sense because they are no longer worried about the spread of the deadly virus and also about unwanted pregnancies. Therefore, this paper is focused on the study of sharia law reviewed according to ushulfiqh with a critical analysis based on *sadd al-dhari'ah* theory to see the actual legal provisions regarding the National Condomization Week which was launched by the Ministry of Health at that time, whether the program should be continued or discontinued.

3 Deny Firmansyah, Mengkritisi Program Kondomisasi, in <http://kampusfhku.blogspot.co.id/> December 13th 2013, accessed on February 3rd 2016.

4 Hasim Arfah, PW Muhammadiyah Kritik Program Kondomisasi, Tribun Timur Journalist Reportin <http://makassar.tribunnews.com/> December 31st 2015, accessed on February 4th 2016.

5 What is meant by sexual deviation is the fulfillment of biological desires in ways and forms that deviate from the Shari'a, human nature, and common sense (Farhan, 2002), as quoted by Suparyanto, Penyimpangan Seksual/Sexual Deviation, in <http://dr-suparyanto.blogspot.co.id/2010/09/>, accessed on September 8th 2016.

DISCUSSION

Condomization Week as a Indonesian Ministry of Health Program

In 1994 the government/president issued a presidential decree (Keppres) No. 36/1994: concerning the Establishment of the AIDS Commission (KPA). This presidential decree was later updated with Presidential Regulation (Perpres) RI Number 75 of 2006 concerning the National KPA.⁶ In this Presidential Regulation Number 75 there is a composition of the National KPA committee (found in Article 4) with the secretary, Dr. Nafsiah Ben Mboi (minister of health when National Condomization Week was launched in 2013). Based on Article 5: The implementation of the National AIDS Commission's daily tasks is assisted and carried out by the Implementing Team. The Implementation Team is chaired by the Secretary of the National KPA (Dr. Nafsiah Ben Mboi). From here then we can see the link why Dr. Nafsiah Ben Mboi when he was appointed Minister of Health immediately distributed free condoms.⁷

In 2013, the Ministry of Health collaborated with the National AIDS Committee (KPAN) to organize a National Condom Week. It is planned from December 1st to December 7th, because December 1st is World AIDS Day, as reported by many mass media. The Minister of Health, Nafsiah Mboi, said that condoms were not prohibited items and should therefore be prohibited from being distributed. He said the distribution of condoms has been around since the 1970s. After all, he said, the aim was not to promote free sex, but to prevent the transmission of HIV/AIDS. The Ministry of Health held a National Condom Week to coincide with AIDS Day, December 1st, 2013. The goal is to reduce the transmission of HIV/AIDS cases in Indonesia.⁸

From 1987 to 2005, the number of people who entered the AIDS stage was more reported than those newly infected with HIV. Meanwhile, from 2006 to 2012, more people were infected with HIV and had not yet entered the AIDS stage. Based on data from the Ministry of Health, in 2012 there were 21,511 HIV cases and 5,686 AIDS cases. Based on the risk factors for HIV transmission from 1987 to December, the highest risk factors for HIV transmission were heterosexuals (58.7 percent); Injecting Drug Users (IDU) as much as 17.5 percent; perinatal distribution as much as 2.7 percent and homosexuals as much as 2.3 percent. Meanwhile, data in 2011, recorded 21,031 HIV sufferers and 5,686 AIDS sufferers. In 2010, there were 21,591 people with HIV and 6,845 with

6 <http://www.presidentri.go.id/DokumenUU.php/243.pdf>.

7 Imani Prokami, Menyikapi Pekan Kondom Nasional Ke-7 Tahun 2013, in <http://www.imani-prokami.or.id/>, accessed on April 5th 2016.

8 Sururudin, 1 Desember Hari Aids Sedunia, in <https://sururudin.wordpress.com/2011/03/15/oligarki>, accessed on August 22nd 2016.

AIDS. In 2009, there were 9,793 people with HIV and 5,483 people with AIDS. Meanwhile, in 2008, 10,362 people were recorded with HIV and 4,943 people with AIDS.⁹

The Minister of Health stated that the condomization program was aimed at preventing or reducing the risk of the spread of HIV/AIDS getting worse and uncontrollable. In an article in the *Republika Daily*, it was stated that the largest contributor to the spread of the HIV/AIDS virus was free sex, which reached 77 percent. The rest is from needles and heredity. While the pores of the condom when not in use only reach 1/60 micron and can expand 10 times when used. While the size of the HIV virus is about 1/250 micron. So the effectiveness of using condoms in preventing the spread of the HIV virus is very small. This ineffectiveness has been stated many times by several experts who have started research on the benefits of condoms since 1990. Not to mention if condom leaks occur due to damage and so on.¹⁰

So, what is the purpose of promoting the condomization program whose funds reach tens of billions, if it turns out that condoms are scientifically powerless to prevent the spread of the HIV virus through sexual intercourse? In the United States, after the government socialized the use of condoms for "safety sex", more and more teenagers and young people aged 18-35 years who have free sex because they feel safe. This means that more people are at risk of contracting the HIV AIDS virus, because condoms are not effective at preventing transmission of the virus.

Or it could be that the Ministry of Health's campaign aims to get more people interested or demanded to use condoms so that condom sales increase. Most of the condoms circulating in Indonesia are foreign products such as silk, fiesta and durex brands, where most consumers are 18-35 years old on average. Recently, condom sales in Indonesia alone reached 190 million condoms for all brands, which means that 1 condom costs IDR. 10,000, the turnover of condom trade in Indonesia reaches 1.3-1.9 trillion. Extraordinary. This exceeds state revenues from the mining sector. The huge potential of the condom market in this Muslim-majority country certainly tempts the condom business. All means will be taken to increase the number of condoms. Business people do not care whether the consumer is a married couple or not.

Based on the development of cases that increased significantly, Nafsiah Mboi, Minister of Health at that time, launched a program entitled National Condomization Week in commemoration of World AIDS Day on December 1-7 2013. However, his actions were misguided by distributing

9 Sururudin, HIV/AIDS dan Solusinya, in <https://sururudin.wordpress.com/March 15th 2011>, accessed on August 22nd 2016.

10 Deny Firmansyah, Mengkritisi Program Kondomisasi, in <http://kampusfhku.blogspot.co.id/>, December 13th 2013, accessed February 3rd 2016.

condoms freely to campuses and schools through cars that had condom advertisements on it's wall, raised pros and cons from various circles at that time. Until finally the program had to be stopped before the time had come.

Condomization Week According to *Sadd al-Dhari'ah* Theory

Definition of Sadd al-Dhari'ah

Sadd al-dhari'ah is a sentence in the form of a phrase (*idafah*) which is composed (*murakkab*) of two words, namely *sadd* and *al-dhari'ah*.¹¹ Each of these words before being compiled and became a name for a certain object (*'alam mu'ayyan*) in the science of *usul al-fiqh*, each word has its own meaning. The arrangement of the two is called *murakkab idafi*.¹² This arrangement is impossible to know except by knowing its parts (the two words). Therefore, it is necessary to know in advance the meaning of the words "*sadd*" and "*al-dhari'ah*," only then to know the definition after the two words are compiled and become the name for an object in the discipline of *usul al-fiqh*. The *usuliyyun* understand *sadd al-dhari'ah* in two senses, namely the general understanding and the specific understanding. The general understanding is the linguistic understanding (*lughah*) and the special understanding is the understanding used by the *usuliyyun* when they mention the term *sadd al-dhari'ah*.¹³

Sadd al-dhari'ah in the general sense

The word *sadd* linguistically means; inhibit (*al-radm*)¹⁴ because it will hinder something. It also means preventing/making a wall (*hajiz*)¹⁵ between two things, as Allah says:

... عَلَىٰ أَنْ تَجْعَلَ بَيْنَنَا وَبَيْنَهُمْ سَدًّا (الكهف: 94)

...in order that thou mightest erect a barrier between us and them? (QS. al-Kahfi: 94).

The word *sadd* also means to close, that is to close the door by locking it.¹⁶ The word *sadd* in the term of the ulama is the key, because the word *sadd* when it is based (*idafah*) on the word *al-dhari'ah*, it means to lock all doors that can lead to damage (*mafsadah*) and hinder the way to it. Therefore,

11 Su'ud ibn Mulluh Sultan al-'Anzi, *Sadd al-Dhari'ah* 'ind al-Imam Ibn Qayyim al-Jawziyyah, I printing (Amman: al-Dar al-Athariyyah, 2007), page 38.

12 *Murakkabidafi* are two words that are arranged into one.

13 Muhammad ibn Husayn al-Jizani, *I'mal Qa'idah Sadd al-Dhari'ah* fi Bab al-Bid'ah (Riyad: Maktabah Dar al-Minhaj, 1428 H), page 9.

14 Ibn Manzur, *Lisan al-'Arab* fi al-Lughah, juz. III (Cairo: Dar al-Hadith, 2003), page 1969.

15 Al-Razi, *Mukhtar al-Sihah* (Beirut: Dar al-Mu'ajim, without year), page 292.

16 Ibrahim 'Abd al-Fattah, *al-Qamus al-Qawim lil-Qur'an al-Karim*, juz. I (Cairo: Majma' al-Buhuth al-Islamiyyah, 1983), page 307.

every action that avoids damage (*mafsadah*) but when it is done will lead to damage (*mafsadah*), then all the doors are locked and prevented from doing it.¹⁷

The word *al-dhari'ah* is the singular form (*mufrad*) of *al-dhara'i'*. Linguistically, it means the way to something. According to Ibn Manzur,¹⁸ *al-dhari'ah* is a way that conveys someone to something and that path is an intermediary. *al-dhari'ah* can also mean the cause, or the target (circle) of people learning archery. This last meaning is strengthened by the first meaning, namely the way, because the target (circle) becomes the way to learn archery. It can also mean a shield, namely a she-camel as a barrier between the hunter and his prey so that he can get the prey. This is because the she-camel will graze with the game so that the wild animal becomes tame with her. Once tame, the hunter approaches by taking cover behind the she-camel, then releases arrows or other hunting tools so that he can get his prey easily. Thus, the she-camel becomes a shield (*al-dhari'ah*) to get game. According to Ibn Manzur, the plural form of the word *al-dhari'ah* is *al-dhara'i'*.¹⁹

As for terminology, according to al-Qarafi, the word *al-dhari'ah* means the way to something. He said: "You should know that *al-dhari'ah* as required to be closed (*sadd*) must also be opened (*fath*), whether it is *makruh*, *sunat*, or *mubah*, because *al-dhari'ah* is the way. Just as the path that is forbidden is *haram*, so the path that is obligatory is *wajib*, such as going to perform the Friday prayers and Hajj."²⁰ Likewise, according to Ibn Qayyim, *al-dhari'ah* is something that can be used as an intermediary and a way to something else.²¹ This is in a general sense because *al-dhari'ah* is anything that

17 Al-Syatibi, *al-Muwafaqat fi Usul al-Fiqh*, juz. IV (Beirut: Dar al-Ma'rifah, without year), page 199. Al-Qarafi, *Al-Furuqwa Anwar al-Buruq*, juz. II, I printing (Beirut: Dar al-Kutub al-'Ilmiyyah, 1998), page 32.

18 He is one of the most pious imams in the field of *lughah* (language). His full name was Jamal al-Din Abu al-Fadl Muhammad ibn Mukarram ibn 'Ali ibn Ahmad ibn Manzur al-Andari al-Afriqi al-Misri and continued his lineage with Ruwayfi' ibn Thabit al-Andari al-Sahabi, one of the companion who narrated a lot of hadith, very pious, and expert in the field of language, also a judge in Tarabilis. His works are very numerous and even reach five hundred pieces and the most monumental is *Lisan al-'Arab fi al-Lughap*. He was born in 630 H and died in 711 H, was buried in Egypt. See Muqaddimah *Lisan al-'Arab...*, juz I, p. 7.

19 Ibn Manzur, *Lisan al-'Arab ...*, p. 1498.

20 Al-Qarafi, *Syarh Tanqih al-Fusul*, tahqiq: Taha 'Abd al-Ra'uf (Cairo: Maktabah al-Kulliyah al-Azhariyyah, 1992), p. 338, dan 449. See also: Al-Qarafi, *Anwar al-Buruq ...*, p. 33.

21 Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, juz III (Beirut: Dar al-Fikr, without year), p. 120.

الذريعة: ما كان وسيلة وطريقا إلى الشيء.

mediates and leads to something else, both in the form of benefit and damage (*mafsadat*).²²

Based on the opinion above, it can be understood that the notion of *al-dhari'ah* is anything that is used as a path to something else by using the power of reason on that path, whether that path is allowed or prohibited. Based on this understanding, *al-dhari'ah* can be formulated into four types, that is:

1. Something that comes down to something else, like going for Friday prayers and getting married to keep the *farj*.
2. Something that comes to something that is prohibited, such as buying and selling during the Friday call to prayer. Buying and selling is an act that is recommended by the Shari'a, but if it is done during the Friday call to prayer, it will prevent someone from going to the Friday prayer, so buying and selling at that time is prohibited.
3. Prohibitions that extend to other prohibitions, such as pitting against one another which causes murder.
4. Prohibition that comes down to orders, like lying that causes others to be spared from murder.

The four types show that *al-dhari'ah* is not only limited to preventing (*sadd*), but also ordering (*fath*). According to *usuliyun*, this is based on the understanding of *al-dhari'ah* in general and linguistically (*lughah*). From that, it can be concluded that *al-dhari'ah* is generally understood to have the same meaning as *al-wasa'il*, namely a means that intermediaries for the existence of something, both *sadd* and *fath*.

Sadd al-dhari'ah in the specific sense

In the term of *ofusuliyun*, there is a difference of opinion on the use of the word *sadd* when making the definition. Ulama who argue that *al-dhari'ah* is not only oriented to prohibited affairs, then they do not use the word *sadd*. Meanwhile, ulama who argue that *al-dhari'ah* is only oriented to prohibited matters, they use the word *sadd* so that it becomes *sadd al-dhari'ah*, then there are three kinds of opinions.

22 Al-Jizani, *I'malQa'idahSadd al-Dhara'i'...*, p. 9. See also: 'Iyad ibn Nami al-Sulami. *Usul al-FiqhAlladhi la Yasa' al-Faqih Jahlah* (Riyad: Dar al-Tadmuriyyah, 2005), p. 211. According to Muhammad Hisham al-Burhani, from the understanding of *al-Dhari'ah* in the general sense there are four forms; 1) transfer from something that is permissible to that which is also permissible; 2) the transfer from something that is haram to something that is also haram; 3) moving from something that is permissible to something that is haram; 4) the transfer from something that is haram to something that is permissible. Of the four forms there is something called *fath al-dhari'ah* and there is something called *sadd al-dhari'ah*. That is, everything that leads a person to every good is justified and everything that leads someone to bad or damage (*mafsadah*) is prohibited. Muhammad Hisham al-Burhani, *Sadd al-Dhara'i' fi al-Shari'ah al-Islamiyyah* (Damaskus: Dar al-Fikr, 1995), p. 69.

الذريعة كل ما كان وسيلة وطريقا إلى الشيء، مصلحة كان أو مفسدة.

The first opinion, *al-dhari'ah* is a way that conveys to something, both ordered and prohibited. Among other things put forward by al-Qarafi al-Maliki²³ and by Ibn Qayyim al-Jawziyyah who was of the Hanbali school of thought (Hanbali *mazhab*).²⁴

The second opinion, *al-dhari'ah* is a way that conveys something that is forbidden (*haram*). This is the opinion of al-Qadi 'Abd al-Wahhab,²⁵ al-Syatibi,²⁶ al-Baji,²⁷ Ibn al-'Arabi,²⁸ and Ibn Rusyd.²⁹ According to these figures, what is meant by *al-dhari'ah* is

23 He is an imam who is highly knowledgeable, an expert in the field of usulfiqih of Maliki School of thought. His name was Shihab al-Din Abu al-'Abbas Ahmad ibn Idris ibn 'Abd al-Rahman al-Misri al-Maliki, who was popularly known as al-Qarafi. The mention of Al-Qarafi is linked to al-Qarafah, the name of a place close to the grave of Imam al-Shafi'i. He was born in 626 H and died in 684 H in Cairo. Among his most popular works are *Tanqih al-Fusul fi al-Usul*, *al-Dakhirah fi al-Fiqh*, and *al-Ahkam fi al-Farqbayn al-Fatawawa Ahkam*. See: Ibn Farhun, *al-Dibaj al-Madhhab fi Ma'rifah A'yan al-Madhhab*, tahqiq: Muhammad al-Ahmadi Abu al-Nur (Cairo: Dar al-Turath, 1974), p. 62. See also: al-Maraghi, *al-Fath al-Mubin fi Tabaqat al-Usuliyin*, juz II (Cairo: Maktabat al-Kulliyah al-Azhariyyah, 1999), p. 89.

24 He is an imam who is highly knowledgeable, an expert in the field of usulfiqih of Hanbali School of thought. His name was Syams al-Din Abu 'Abd Allah Muhammad ibn Abu Bakr ibn Ayyub bin Sa'd al-Zar'i al-Dimsyqi. He was a student of Shaykh al-Islam Ibn Taymiyyah. He was also the one who spread the thoughts of Ibn Taymiyyah so that it was known to people. He is known as Ibn Qayyim al-Jawziyyah. He is a prolific writer, among his works are *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* and *al-Turuq al-Hukmiyyah fi al-Siyasat al-Syar'iyyah*. He was born in 691 H and died in 751 H. Al-Hafiz ibn Hajar, *al-Durar al-Kaminah fi A'yan al-Mi'ah al-Thaminah*, juz III (Cairo: Matba'ah al-Madani, 1378 H), p. 400. See also: Ibn Kathir, *al-Bidayah wa al-Nihayah*, juz XIV (Beirut: Dar al-Kutub al-'Ilmiyyah, 1977), p. 234. Ibn al-'Imad, *Syadharat al-Dhahab fi Akhbar min Dhahab*, juz VI (Beirut: Dar al-Fikr, 1409 H), p. 168.

25 He is an imam who is highly knowledgeable, an expert in the field of usulfiqih of Maliki School of thought. His name was Abu Muhammad al-Qadi 'Abd al-Wahhab ibn 'Ali ibn Nasr al-Tha'labi al-Baghdadi. He was born in Baghdad in 362 H then wandered to Sham (Syria) and Egypt until he died there (Egypt) in 422 H. after a few months of arriving there. He is very productive in writing so that he has produced many works, including: *al-Ma'unahandal-Adillah fi Masa'il al-Khilaf*, both are books in usul al-fiqh. Al-Syirazi, *Tabaqat al-Fuqaha'*, tahqiq: Dr. Ihsan 'Abbas (Beirut: Dar al-Ra'id al-'Arabi, 1997), p. 143. See: Ibn Kathir, *al-Bidayah...*, juz XII, p. 32. See also: al-Maktabi, *Fawat al-Wafayat*, juz II, tahqiq: Dr. Ihsan 'Abbas (Beirut: Dar al-Thaqafah, without year), p. 21.

26 He is an imam who is highly knowledgeable, an expert in the field of usulfiqih of Maliki School of thought. His name was Abu Ishaq Ibrahim ibn Musa al-Gharnati Al-Maliki, ya who is popularly known as Abu Ishaq al-Syatibi. He is very productive in writing so that he gave birth to many works, including *al-Muwafaqat fi Usul al-Fiqhandal-I'tisam fi al-Hawadithwa al-Bida'*. He died in 790 H. See: Syaykh Makhlaf, *Syjarah al-Nur al-Dhakiyah fi Tabaqat al-Malikiyyah* (Cairo: al-Maktabah al-Salafiyah, 1294 H), p. 230. See: al-Maraghi, *Al-Fath al-Mubin...*, p. 212.

Another version, his full name is Abu Ishaq Ibrahim ibn Musa ibn Muhammad al-Lakhmi al-Syatibi, born in Granada, year unknown, died in Shakban year 790, coinciding with August 1388 H. See: 'Abd al-Salam, *al-Imam al-Syatibi* (Cairo: Maktabah al-Islamiyyah, 2001), p. 7. Al-Syatibi grew up in Granada and was educated in the capital of the Nasr kingdom. Al-Syatibi's youth coincided with the reign of Sultan Muhammad V al-Ghani bi Allah, a glorious period for Granada. The city of Granada has become a center that attracts scholars from all corners of North Africa.

Al-Syatibi began studying with Abu 'Abd Allah Muhammad ibn 'Ali al-Fakhkhar al-Ilbiri, an expert in nahw. He lived with his teacher until his teacher died in 754 AH/ 1353 AD. His second teacher in the field of nahw was Abu al-Qasim al-Sharif al-Sabti (d. 760 AH/ 1358 AD), an interpreter, and had served as a Qadi. Grand Granada. In the field of jurisprudence, al-Syatibi studied with Abu Sa'id ibn Lubb who began teaching at the Nasriyyah Madrasa in 754 H/1353 AD replacing al-Fakhkhar. In addition, he also studied with Abu 'Abd Allah al-Maqqari. In the field of philosophy and kalam, al-Syatibi studied with Abu 'Ali Mansur al-Zawawi who came to Granada in 753 H/1352 AD, and was expelled in 765 H/1363 AD.

Al-Syatibi was very interested in studying Usul al-Fiqh, which indeed very few people like to study in Granada. This interest arose because he felt the weakness of fiqh in terms of its methodology and philosophy in dealing with social change. Al-Syatibi had a number of students, among them Ibn 'Asim who had been the Great Qadi of Granada, and was famous for his book entitled *Tuhfat al-Hukkam*. This book is a collection of fiqh rules intended for qadis. He also wrote a summary of al-Syatibi's *sal-Muwafaqat*.

Al-Syatibi was accused of *bid'ah* for opposing the practice of the jurists. One of the issues he opposed was mentioning the name of the sultan in the Friday sermon, and praying for him towards the end of the prayer. Al-Syatibi called this practice a *bid'ah*. This act shook the very foundations of the religious elite's political power so that it was opposed by all the qadi in Spain and North Africa, and by the higher-ups holding government posts.

Al-Syatibi did not leave many works, including: *Syarh 'alá al-Khulasah fi al-Nahw*, *'Unwan al-Ittifaq fi 'Ilm al-Isytiqaq*, *Kitab Usul al-Nahw*, *al-Ifadatwa al-Insyadat/al- Insha'at*, *Kitab al-Majalis*, *al-Muwafaqat*, *al-I'tisam*, and one medical paper. Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law* (Malaysia: Islamic Book Trust, 2000), p. 69, etc. See also: Muhammad Khalid Masud, *Filsafat Hukum Islam: Studitentang Hidup dan Pemikiran Abu Ishaq al-Syatibi*, trans. Ahsin Muhammad, I printing (Bandung: Pustaka, 1996), p. 108, etc.

an act that is outwardly permissible (*mubah*), but can plunge the perpetrator into actions that are forbidden by sharia.³⁰ So, when *usuliyyun*—as well as *fuqaha*—use the term *al-dhari'ah*, then what is meant is this understanding. Thus, the notion of *sadd al-dhari'ah* is every permissible act (*mubah*) which if it becomes a way to lead to an unlawful act (*haram*), then *al-Shari'* forbids that path. Even though the road is not meant for a *haram* destination, but because it usually leads to a *haram* path, it must be closed tightly.³¹

According to al-Qadi 'Abd al-Wahhab, *al-dhari'ah* is something that is outwardly permissible, but is feared (with strong suspicion) will plunge someone into prohibited acts.³² According to al-Syatibi, the essence of *al-dhari'ah* is to convey something that initially contains benefits to damage (*mafsadah*).³³ Similarly, according to al-Baji, *al-dhari'ah* is a problem that is outwardly permissible, but can plunge a person into prohibited actions.³⁴ In another book, al-Baji said that *al-dhari'ah* is something that can convey a person to all prohibited transactions, both in terms of strengthening the contract or releasing it.³⁵

According to Ibn al-'Arabi, *al-dhari'ah* is an act that is outwardly permissible, but can plunge a person into prohibited acts.³⁶ According to al-Syawkani,³⁷ *al-dhari'ah* is a matter that is outwardly permissible but can plunge a person into prohibited

27 He is an imam who is highly knowledgeable, an expert in the field of usulfikih of Maliki School of thought. His name was Abu al-Walid Sulayman ibn Khalf al-Baji al-Qurtubi. He is a narrator of hadith, he traveled to the Hejaz, Baghdad, Dimsiyq (Damascus), and Halb. Was a judge in Andalusia. He was born in Bajah, Andalusia (Spain) in 403 H and died in Ribat in 474 H. He is also a prolific writer who gave birth to many works, including Ahkam al-Fudul fi Ahkam al-Usul, Isyarah fi Ma'rifat al -Usul, and al-Muntaqá fi Syarh al-Muwatta'. See: Ibn Farhun, al-Dibaj al-Madhab..., p. 120. Ibn 'Asakir, Tahdhib Tarikh Dimsiyq al-Kabir, juz VI, II printing (Beirut: Dar al-Masirah, 1979), p. 248. Ibn al-'Imad, Syadharat al-Dhahab..., juz III, p. 244.

28 He is an imam who is very knowledgeable, an expert in the field of fiqh and tafsir. His name was Abu Bakr Muhammad ibn 'Abd Allah ibn Ahmad, his popular name is Ibn al-'Arabi, a judge and expert in the Maliki School of jurisprudence. He is also a prolific writer who gave birth to many works and his monumental work is Ahkam al-Qur'an. He died in 543 H. See: Ahmad ibn Muhammad ibn Abu Bakr ibn Khalikan, Wafiyat al-A'yan, juz IV, tahqiq: Muhammad Muhy al-Din 'Abd al-Hamid, I printing (Cairo: Matba'ah al-Sa'adah, 1942), p. 296.

29 He is a philosopher and scholar of the Maliki school of jurisprudence. His name was Abu al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Ahmad ibn Rushd al-Qurtubi al-Andalusi, his popular name was Ibn Rushd al-Hafiz. He translated the philosophical works of Aristotle into Arabic and added the necessary explanations. He was accused by his political opponents of being a hypocrite (*zindiq*) and an atheist (*ilhad*), so that some of his works were burned. He is a judge in Qurtubah (Cordova). Born in 520 H and died in 595 H. Among his most valuable works is Bidayat al-Mujtahid wa Nihayat al-Muqtasid in fiqh. Furthermore, Tahafut al-Tahafut fi al-Falsafah to refute al-Ghazali's accusations. Al-Dhahabi, Siyar'Alam al-Nubala', juz XXI, tahqiq: Muhy al-Din al-'Umuri, I printing (Beirut: Dar al-Fikr, 1997), p. 307.

Al-Jizani, I'malQa'idah Sadd al-Dhara'i'..., p. 9. According to Muhammad Hisham al-Burhani, the definition of al-Dhari'ah in a special sense is an act that is basically not prohibited, but is likely to lead to unlawful acts. Al-Burhani. Sadd al-Dhara'i'..., p. 80.

30 Al-Jizani, I'malQa'idah Sadd al-Dhara'i'..., p. 9. According to Muhammad Hisham al-Burhani, the definition of al-Dhari'ah in a special sense is an act that is basically not prohibited, but is likely to lead to unlawful acts. Al-Burhani. Sadd al-Dhara'i'..., p. 80. فعل محظور عبارة عن أمر غير ممنوع لنفسه، قويت التهمة في أدائه، إلى

31 Al-Jizani, I'malQa'idah Sadd al-Dhara'i'..., p. 10.

32 Al-Qadi 'Abd al-Wahhab, al-Isyraf 'alá Masa'il al-Khilaf, juz I (Beirut: Dar Ibn Hazm, 1999), p. 275.

الذرائع: هي الأمر الذي ظاهره الجواز إذا قويت التهمة في التطرق به إلى الممنوع

33 Al-Syatibi, al-Muwafaqat..., p. 199. حقيقة الذرائع: التوصل بما هو مصلحة إلى مفسدة

34 Al-Baji, al-Isyarah fi Ma'rifat al-Usul wa al-Wijazat fi Ma'ná al-Dalil, tahqiq: Muhammad Farkus, I printing (Beirut: Dar al-Basya'ir al-Islamiyyah, 1996), p. 113. الذرائع: هي المسألة التي ظاهرها الإباحة ويتوصل بها إلى فعل المحظور

35 Al-Baji, Kitab al-Hudud (Beirut: Mu'assasah al-Zaghbi, without year), p. 68. الذرائع: ما يتوصل به إلى محظور العقود من إبرام عقد أو حله

36 Ibn al-'Arabi, Ahkam al-Qur'an, juz II, ta'liq: Muhammad 'Abd al-Qadir 'Ata', I printing (Beirut: Dar al-Kutub al-'Ilmiyyah, 1988), p. 331. الذريعة: كل عمل ظاهره الجواز يتوصل به إلى محظور

37 He is an imam who is highly knowledgeable, an expert in the field of usulfiqh, science of hadith, dan tafsir. His name was Abu 'Ali Badr al-Din Muhammad ibn 'Ali ibn Muhammad ibn 'Abd Allah ibn al-Hasan al-Syawkani. He became a mujtahid follower of the Zaydiyyah School. Born in SyawkanSan'a' in 1173 H and died in 1250 H. His works are many, among others Nayl al-Awtar Syarh al-Muntaqá al-Akhbar fi al-Hadith, Irsyad al-Fuhul fi al-Usul, Fath al-Qadir fi al-Tafsir, al-Qawl al-Mufid fi Adillat al-Ijtihad wa al-Taqlid. See: al-Syawkani, al-Badr al-Tali' fi Mahasin min Ba'd al-Qurn al-Sabi', juz II (Cairo: Matba'ah al-Sa'adah, 1348 H), p. 214.

actions.³⁸ According to al-Qurtubi, *al-dhari'ah* is every thing that is not essentially prohibited but people who do it are feared that they will fall into prohibited acts.³⁹

All of the understandings that have been put forward by the researcher above synergize in a definition, that *isal-dhari'ah* is a path that reaches something that is prohibited. Therefore, all of the *usuliyun* who have quoted their opinions regarding the meaning of *al-dhari'ah* above, they focus on the *idafi* understanding (composition of two words), that is *sadd al-dhari'ah*.

The third opinion, namely the opinion of Ibn Taymiyyah.⁴⁰ According to him, *al-dhari'ah* is something that becomes a way to something else. But what applies to *fuqaha* custom is something that plunges into forbidden acts.⁴¹ Ibn Taymiyyah's opinion seems to unite the two previous meanings when it is defined by *al-dhari'ah* with the above definition. He also associates *al-dhari'ah* in another definition with forbidden acts. In essence, Ibn Taymiyyah's opinion is his last opinion, that is *al-dhari'ah* defined by *sadd al-dhari'ah*.

In summary, Ibn Taymiyyah's opinion regarding the meaning of *al-dhari'ah* is that *al-dhari'ah* has a general definition and a specific definition. The general definition includes *sadd al-dhari'ah* and *fath al-dhari'ah*. While the special definition is only meant by *sadd al-dhari'ah*. From the various definitions above, the researcher concludes as follows:

- a. *Al-Dhari'ah* is sometimes opened (*fath*) and sometimes closed (*sadd*). Therefore, the required path is sometimes *wajib*, *sunat*, or *mubah*, and is required according to the level of need. This is called *fath al-dhari'ah*. While the path that is forbidden is *haram*. Something that leads to damage (*mafsadat*) is closed. This is called *sadd al-dhari'ah*. The latter is the focus of the researcher's discussion here.
- b. Actions that fall into the *sadd al-dhari'ah* category are any actions that are permissible but usually lead to damage (*mafsadat*). However, in this act there are several criteria, that is:
 1. The act may be done but leads to damage (*mafsadat*), then *al-Shari'* prevents and forbids it according to the rules:

درء المفسد مقدم على جلب المصالح

*Rejecting harm is better than bringing benefit.*⁴²

2. The damage is equal to or stronger than the benefit in the actions that can be done. If the benefit of the deed is stronger than the damage, then *al-dhari'ah* is not closed. For example, giving property to infidels as a ransom for prisoners of war. Redeeming captives is an act that is permissible, even recommended. In this case, the benefit is greater than the harm of giving wealth to the disbelievers.⁴³
3. The actions that can be done usually lead to damage (*mafsadat*). For example, buying and selling of futures or credit transactions (*buyu 'al-ajal*),⁴⁴ on the side of the Malik school of thought (*al-Malikiyyah mazhab*), usually buying and selling like this will plunge the perpetrators into usury which is forbidden.

38 Al-Syawkani, *Irsyad al-Fuhul fi al-Usul*, juz I (Beirut: Dar al-Kutub al-'Ilmiyyah, t.t.), p. 217.

هي الأشياء التي ظاهرها الإباحة ويتوصل بها إلى فعل المحظور الذرائع

39 Al-Qurtubi, *al-Jami' li Ahkam al-Qur'an*, juz II (Beirut: Dar al-Fikr, 1995), p. 57.

ممنوع لنفسه يخاف من ارتكبه الوقوع في الممنوع الذريعة: أمر غير

40 He is an imam who is highly knowledgeable, an expert in the field of usul fiqh, science of hadith dan tafsir. He is a scholar of the Hanbali school of thought. His name was Abu 'Abbas Taqi al-Din Ahmad ibn 'Abd al-Halim ibn 'Abd al-Salim ibn Abu al-Qasim ibn al-Hasr ibn Taymiyyah, and his popular name was Ibn Taymiyyah. His works are many, including *al-Fatawa' al-Kubra fi al-Fiqh*, *al-Siyasah al-Syar'iyah fi Islah al-Ra'wa' al-Ra'iyah*. Born in 661 H and died in Damascus in 728 H. Ibn Khalkan, *Wafiyat...*, p. 35.

41 Ibn Taymiyyah, *al-Fatawa' al-Kubra*, juz III (Beirut: Dar al-Ma'rifah, without year), p. 139.

الذريعة كل ما كان وسيلة وطريقا إلى الشيء لكنها صارت في عرف الفقهاء عبارة عما أفضت إلى فعل محرم

42 Al-Suyuti, *al-Asybah al-Naza'ir fi Qawa'id wa Furu' Fiqh al-Syafi'iyah*, tahqiq: 'Abd al-Karim al-Fuhayli, I printing (Beirut: Maktabah al-'Asriyyah, 2001), p. 118.

43 Al-Qarafi, *Anwar al-Buruq...*, p. 33. Al-Syatibi, *al-Muwafaqat...*, juz II, p. 352.

44 The purpose of buying and selling futures or credit transactions (*buyu 'al-ajal*) is to generate usury and arrive at acts that are prohibited by sharia, so *fuqaha* call this transaction an essentially prohibited transaction. It is called *al-ajal* because the transaction is always in a futures state (until it is paid off). Sa'di Abu Jayb, *al-Qamus al-Fiqhi*, II printing (Beirut: Dar al-Fikr, 1998), p. 280.

Criticizing the Condomization Program Based on *Sadd al-Dhari'ah* Theory

On December 1st, 2013, in commemoration of World AIDS Day, the Minister of Health of the Republic of Indonesia, namely Dr. Nafsiah Mboi created a program entitled "National Condom Week". Week means seven days. So for seven days, since December 1st, there will be distribution of free condoms in several places. The purpose of this activity is to reduce the transmission of HIV/AIDS cases in Indonesia. According to him, the Ministry of Health has an obligation to reduce the transmission of HIV. In risky sexual behavior, HIV transmission can be prevented by using condoms. Of course, avoiding risky sexual behavior is much more advisable. The condomization itself was carried out after they concluded that the fact that the transmission of the HIV AIDS virus had increased to 60%, while transmission through needles had decreased.⁴⁵

The campaign program intended by the Minister of Health to reduce the prevalence of HIV/AIDS and abortion cases today contains even more dangerous side effects. The program, which is said to be also intended to educate risky sexual behavior, is actually at risk. It is like when the Minister of Health wants to treat a disease, but instead worsens another disease. Whereas the disease being treated is a hereditary disease of the real disease. HIV/AIDS is generally caused by free sex behavior. So what needs to be treated is not HIV/AIDS, but free sex. Because logically, when free sex has been treated, then HIV/AIDS will automatically be treated too.⁴⁶

If the circulation of condoms in the market is very large and easy to find, when condoms change from private goods to public goods, when condoms change from items that are considered taboo by teenagers to become commonplace goods, it will be possible for condoms to occupy the same position as cigarettes. If we look at the current case of cigarettes, cigarettes are no longer an item consumed by adults, but cigarettes have been transformed into the consumption of various groups including young people and even children who are still at elementary school age. Smoking behavior was initially started because they wanted to try, so it is possible for this condom case to make teenagers including minors try to use condoms too, so that free sex is unavoidable for some young people, such as what is happening in the case of cigarettes at this time.

We hope that the Ministry of Health will take a policy in this case by following the jargon of one of the skin health products, namely "*Remove the fungus from the root*". The condomization program does not reflect that. It's as if this program only aims to remove the fungus on the surface, but the roots are still there. So in this context, it seems as if the Minister of Health only wants to reduce HIV/AIDS, but allows the root of the problem, namely free sex, to proliferate. Moreover, this condomization policy cannot guarantee 100% that it will eliminate cases of HIV/AIDS. In fact, it is possible that cases of HIV/AIDS will continue to grow, although not now, but in the future. As a wise man, the Minister of Health should be able to apply the First Best Choice, namely prioritizing the best choice. The best option in this case is to campaign for evil and prohibit free sex instead of campaigning for the use of condoms.

Among the methods of applying the law developed by the scholars is *sadd al-dhari'ah*⁴⁷ which is an effort to implement preventive measures⁴⁸ by prohibiting actions that have a negative impact.⁴⁹ According to Hasbi ash-Shiddieqy, *sadd al-dhari'ah*

45 Adi Victoria, Program Pekan Kondom Nasional = Program Legalisasi Zina, in <http://hizbut-tahrir.or.id/2013/12/03>, accessed on September 10th 2016.

46 Azizon bin Jamaan, Kebijakan "Kondomisasi"; Solusi yang Tak Solutif, in <https://azizonbinjamaan.wordpress.com/2012/06/20>, accessed on September 10th 2016.

47 Some scholars only refer to the term *al-dhari'ah* and specialize its meaning with something that leads to prohibited acts and contains harm. However, this opinion was opposed by other *ushul* scholars, including Ibn Qayyim al-Jawziyyah who stated that *al-dhari'ah* does not only involve something that is prohibited, but also something that is recommended. Thus, it is more appropriate if *al-dhari'ah* is divided into two, namely *sadd al-dhari'ah* (which is prohibited), and *fath al-dhari'ah* (which is recommended). See: Rachmat Syafe'i, *Ilmu Ushul Fiqh*, I printing (Bandung: Setia Pustaka, 1999), p. 132. Amir Syarifuddin prefers to use the term *al-dhari'ah* only in his discussion of *sadd al-dhari'ah*. See: Amir Syarifuddin, *Ushul Fiqh*, Chapter II, IV printing (Jakarta: Kencana Prenada Media Group, 2008), p. 398-404.

48 According to Alaidin Koto, the purpose of establishing law through the *sadd al-dhari'ah* method is to facilitate the achievement of benefits and prevent the possibility of damage. In short, this method can be referred to as a preventive method, preventing before something unwanted happens. Alaidin Koto, *Ilmu Fiqh dan Ushul Fiqh; Sebuah Pengantar* (Jakarta: Raja Grafindo Persada, 2006), p. 114.

49 Satria Effendi M. Zein, *Ushul Fiqh*, II printing (Jakarta: Kencana, 2008), p. 172-173. According to 'Abd al-Karim Zaydan, as quoted by Satria Effendi, *sadd al-dhari'ah* means closing the road that leads to destruction. As for the actions that are the *wasilah* (path) to destruction, they are divided into two kinds. First, an act that is haram is not only because it is a *wasilah* for something that is forbidden, but the essence of the act itself is haram. Therefore, the prohibition of such acts is not included in the study of *sadd al-dhari'ah*. Second, actions that are essentially *mubah* (permissible), but the act allows it to be used as a *wasilah* to something that is forbidden, so things like this are the study of *sadd al-dhari'ah*.

is preventing something that is a path of damage with the aim of rejecting damage, or blocking the path that leads someone to damage. If an action that is free from damage can become a way to damage, then we are prohibited from doing that action. According to him, it is well-known among ushul experts that the only one who adheres to this *sadd al-dhari'ah* basis is Malik himself. But according to the reinforcement of al-Qarafi, all schools adhere to the basis of *sadd al-dhari'ah*. As a result, *sadd al-dhari'ah* is an act that is not prevented by syarak if it is seen that it can result in the perpetrator to a law that is clearly prohibited by sharia.⁵⁰

While fundamentally, among the scholars there is still a discussion about *sadd al-dhari'ah* as an independent source of law. Some scholars accept it, namely scholars from the Maliki school and the Hanbali school. Some other scholars use it in certain cases, namely from the Hanafi school and the Shafi'i school. There are also some scholars who flatly reject the use of *sadd al-dhari'ah*, namely the Zahiri school. This happens because they hold fast to the Book of Allah and the Sunnah of the Prophet in a literal sense. In other words, all actions must be decided based on the outward text and outward action. However, despite the controversy among the schools of thought, it is almost certain that the four schools (*mazhab al-arba'ah*) agreed to use it as a theory of extracting law (legal *istinbat*).

Apart from all that, of the many rules of life that apply in today's society, sometimes in the end it causes damage (*mafsadah*). For example, the National Condomization Week (PKN) which was launched by the Ministry of Health nationally for one week, from 1st to 7th of December 2013, by distributing free condoms to the general public, even to campuses, was feared that it could trigger their abuse among young people. They will freely use it for premarital sexual intercourse because there is no concern of getting pregnant out of wedlock. Meanwhile, for people with HIV/AIDS, there is no fear of contracting this very dangerous disease due to using condoms when having sex. Therefore, the program must be revoked or canceled using the *sadd al-dhari'ah* method.

Because if the program continues to run, it will cause a very powerful social upheaval (*mafsadah*) in every corner of the region. Because the condomization program will pave the way for rampant disobedience. This happens because every couple who wants to have premarital sex only thinks of avoiding two kinds of risks, that is contracting venereal disease or HIV/AIDS for sufferers and getting pregnant out of wedlock which is highly undesirable for every couple. Therefore, by using the *sadd al-dhari'ah* method, the condomization program must be stopped for good.

50 Muhammad Hasbi ash-Shiddieqy, *Pengantar Hukum Islam* (Semarang: Pustaka Rizki Putra, 1997), p. 220. Teungku Muhammad Hasbi ash-Shiddieqy, *Falsafah Hukum Islam*, I printing, II ed, (Semarang: Pustaka Rizki Putra, 2001), p. 307 and 311-312.

CLOSING

After examining various sources of written data that the author has collected, the authors draw the following conclusions:

1. National Condomization Week (PKN) became a program of the Indonesian Ministry of Health in 2013 because it was based on the concern that more Indonesians were infected with HIV AIDS and also abortions among teenagers due to unwanted pregnancies. Therefore, the program that reaped many pros and cons was launched by the Minister of Health at that time, Nafsiah Mboi, with the aim of reducing the rate of transmission of a very dangerous disease and also reducing the number of abortions due to premarital sex.
2. Viewed from the *sadd al-dhari'ah* theory, the program must be stopped forever because it can trigger other more severe social ills, that is free sex among teenagers and adults. This is because the distribution of condoms is done freely to young people who of course are not yet married. By distributing condoms freely to campuses, it will pave the way for *mafsadah*. Likewise *mafsadah* for adult couples without marriage ties, both at risk and because they do not want to get pregnant.

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