



## Criteria Sadd Al-Dhari'Ah on Epistemology Islamic Law

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### ABSTRACT

The establishment of law with the sadd al-dhari'ah-style caused controversy because it was considered subjective, even accused of stepping over the shari'a. However, the existence of sadd al-dhari'ah can't be denied so that clear criteria are needed to avoid subjectivity. Therefore, this study is focused on answering the criteria of sadd al-dhari'ah. In general, this scientific study is a literature research, in the form of qualitative research that is normative-descriptive. However, to answer this issue, this study is conducted by system theory approach, where sadd al-dhari'ah is seen as a method of conscious value determination to be part of legal system entity. The usuliyin opinions about sadd al-dhari'ah are circulated to complementary. The theory used to highlight is the theory of maqasid wasa'il from Ibn 'Asyur. The results concluded that, sadd al-dhari'ah is a method of applying values to deeds containing of mafsadat. Sadd al-dhari'ah is applied if the mafsadat meets the criteria of hajiyyat or daruriyyat, definite or near definite, is general and related to the public interest. Axiological sadd al-dhari'ah is aimed at applying legal norms, but here needs government involvement.

**KEYWORDS:** saddal-dhari'ah, epistemology, Islamic law

### INTRODUCTION

Sadd al-dhari'ah is a preventive measure<sup>1</sup> by prohibiting actions that have a negative impact.<sup>2</sup> However, its existence is controversial, even prone to causing accusations of deviating from the text. For example, the fatwa of the Muhammadiyah Tarjih Council regarding interfaith marriages between Muslim men and *ahl al-kitāb* women (Christians and Jews). Although the Qur'an is quite clear that it allows (Q.S. al-Ma'idah: 5), the fatwa of the Muhammadiyah Tarjih Council in 1989 actually forbids it on the grounds of preserving religion (*hifz al-dīn*). It is feared that the child born from this marriage will follow his mother's religion. So this is called *haram li sadd al-dhari'ah*, which is to prevent something that is feared to happen.

This fatwa of the Muhammadiyah Tarjih Council was criticized, among others, by Rumadi on the grounds of defeating a verse that already mentioned the permissibility of marrying *ahl al-kitāb* women. According to Rumadi, this is an extraordinary way of thinking, because *sadd al-dhari'ah* is used as an argument to close the explicit sound of a text. In this case, the Muhammadiyah Tarjih Council was considered

too brave to carry out *naskh al-nusūs bi sadd al-dhari'ah*.<sup>3</sup> This criticism shows that *saddal-dhari'ah* is prone to subjective accusations so that measurable criteria are needed so that the results can be justified.

This problem inspired the author to conduct a study entitled *Sadd al-Dhari'ah Criteria in the Epistemology of Islamic Law*. Given that this problem is so complex, the study is carried out holistically with a systems approach.<sup>4</sup> The theory used is the formulation of Ibn 'Āsyūr as stated below:

ءاضتقالا يف رظنلاب مكحلا طانم قيقحت وه :لأمل رابتع  
لوصح شيح نم ؛هل يزنن دنع هيلع نوكي يذلا يعبتلا  
ءاضتقالا كذا هيعدتسي ام يلع انبال او ،دصقم

For me (*saddal-dhari'ah*) is nothing but moderation between reality in the form of its benefit value on the one hand, and ideality in the form of its mafsadat effect on the other. So this problem returns to the rules of conflict between *maslahat* and *mafsadat*.<sup>5</sup>

3 Rumadi, Metode Istinbath Muhammadiyah, NU dan MUI, The Wahid Institute (online), www.wahidinstitute.org.

4 Jasser Auda sees it as an analytical system, where the analytical entity is assumed to be a system. Jasser Auda, Maqasid al-Shariah as Philosophy of Islamic Law; A System Approach (London: IIIT, 2007), 33. Systems analysis is based on the definition of system itself, i.e., the analyst assumes that the analysed entity is 'a system.'

5 Muhammad al-Tāhir ibn 'Āsyūr, Maqāsīd al-Syarī'at al-Islāmiyyah (Kairo: Dār al-Salām, 2005), 113.

1 Alaidin Koto, Ilmu Fiqh dan Ushul Fiqh; Sebuah Pengantar (Jakarta: RajaGrafindo Persada, 2006), 114.

2 Satria Effendi M. Zein, Ushul Fiqh, cet. II (Jakarta: Kencana, 2008), 172-3.



The author's interest deepens when he sees that *saddal-dharī'ah* has a close relationship with *al-maslahatal-mursalah*.<sup>6</sup> Even according to Yūsuf 'Abd al-Rahmān al-Furat, *saddal-dharī'ah* is the operational means (*al-tawassul*) of *al-maslahat al-mursalah*.<sup>7</sup> Therefore, the question in the study of *maslahat* as *maqasid* also applies to *sadd al-dharī'ah*. First, is it known under the category of *taklīfī* law? This means that it is seen from the form (*syakl*) in the form of a command or prohibition. Second, judging from the material subject (*mawdū'*) in the form of empirical reality, what is assessed is the level or degree of benefit or *mafsadat*.<sup>8</sup> These two things affect the determination of the criteria for the application of *sadd al-dharī'ah*.

Meanwhile, the significance of this research lies in the attempt to explain *sadd al-dharī'ah* from two approaches. First, an academic approach that will contribute to the theoretical foundation for academics, practitioners of Islamic law and the general public about *sadd al-dharī'ah*. Second, a practical approach, namely to explain the criteria for *sadd al-dharī'ah* in the epistemology of Islamic law. This problem needs to be answered so that it becomes input, especially for organizations engaged in fatwas. These organizations include Muhammadiyah, the Indonesian Council of Religious Scholars (MUI), and the National Sharia Council (DSN). From that the researchers asked the following research questions:

1. What is the nature (ontology/*māhiyyah*) of *sadd al-dharī'ah*?
2. How to arrange the criteria in forming the *sadd al-dharī'ah* formula?
3. How is the application of the *sadd al-dharī'ah* criteria in solving legal problems?

## SADDAL-DHARĪ'AHIN THE EPISTEMOLOGICAL FRAMEWORK OF ISLAMIC LAW

*Sadd al-dharī'ah* is a sentence in the form of a phrase (*idāfah*) which is composed (*murakkab*) of two words, namely *sadd* and *al-dharī'ah*.<sup>9</sup> Each of these words before being compiled into the name of a particular object (*'alammu'ayyan*) in the science of *usūl al-fiqh*, each word has its own meaning.

6 Amir Syarifuddin, *Ushul Fiqh*, jld.II, cet. IV (Jakarta: Kencana Prenada Media Group, 2008), 396. *Sadd al-dharī'ah* is directly related to maintaining the benefit and at the same time avoiding *mafsadat*. Maintaining *maslahat* in various levels, including the objectives prescribed by law in Islam (*maqāsīd al-syarī'ah*). Fathurrahman Djamil, *Filsafat Hukum Islam*, cet. III (Jakarta: Logos Wacana Ilmu, 1999), 144-5.

7 Yūsuf 'Abd al-Rahmān al-Furat, *al-Tatbīqāt al-Mu'āsirah li Sadd al-Dharī'ah*, cet. I (Kairo: Dār al-Fikr al-'Arabī, 2003), 39.

8 Jamāl al-Dīn al-'Atiyyah, *Nahw Taf'īl al-Maqāsīd al-Syarī'ah* (Beirut: Dār al-Fikr, 2003), 59.

9 Su'ūd ibn Mullūh Sultān al-'Anzī, *Sadd al-Dharī'ah* "ind al-Imām Ibn Qayyim al-Jawziyyah, cet. I (Oman: al-Dār al-Athariyyah, 2007), 38.

The arrangement of the two is called *murakkabidāfī*.<sup>10</sup> Therefore, it is necessary to know in advance the meaning of the words "*sadd*" and "*al-dharī'ah*," only then to know their terminological meaning in the discipline of *usūl al-fiqh*.

The *usūliyyūn* understand *sadd al-dharī'ah* in two senses, namely a general understanding and a special understanding. The general meaning is linguistic understanding (*lughah*) and the special meaning is the understanding used by the *usūliyyūn* when they mention the term *sadd al-dharī'ah*.<sup>11</sup> According to some scholars, *sadd al-dharī'ah* is applied to actions that are basically in the form of benefit but result in *mafsadat*.<sup>12</sup> Referring to the understanding put forward by al-Syātībī, *sadd al-dharī'ah* is applied to actions that are permissible (permissible) but lead to things that are prohibited.<sup>13</sup>

Based on the understanding of this version of al-Syātībī,<sup>14</sup> it can be seen that *sadd al-dharī'ah* contains similarities with *al-hīlah*. However, Yūsuf 'Abd al-Rahmān al-Furat firmly stated that the two are different, because *al-hīlah* is related to intention (*al-qasd*), while *sadd al-dharī'ah* is related to the effect of an action (*i'tibār mā'alāt*).<sup>15</sup> Considering various opinions, the author defines *sadd al-dharī'ah* as an effort to close a path that is strongly suspected of being able to plunge a person into actions that are prohibited by *syarak*, even though in *zāhir* it is permissible.

## Sadd al-dharī'ah within the framework of the legal system

Legal stipulation is a series of analytical activities that must be viewed holistically. The unity of all these entities is an

10 Murakkab idāfī are two words arranged into one.

11 Muhammad ibn Husayn al-Jizānī, *I'māl Qā'idah Sadd al-Dharī'ah* fi Bāb al-Bid'ah (Riyad: Maktabah Dār al-Minhāj, 1428 H), 9.

12 Rachmat Syafe'i, *Ilmu Ushul Fiqh*, cet. I (Bandung: Pustaka Setia, 1999), 132. Nazar Bakry, *Fiqh & Ushul Fiqh*, cet. IV (Jakarta: RajaGrafindo Persada, 2003), 243-4.

13 In his work *al-Muwāfaqāt*, al-Syātībī states that *sadd al-dharī'ah* is rejecting something that is permissible (*jā'iz*) so as not to lead to something that is prohibited (*mamnū'*). Ibrāhīm ibn Mūsā al-Lakhmī al-Gharnātī al-Mālikī al-Syātībī, *al-Muwāfaqāt fi Usūl al-Fiqh*, juz III (Beirut: Dār al-Ma'rifah, t.t.), 257-8.

14 Here it appears that al-Syātībī is more strict and narrow in giving the meaning of *sadd al-dharī'ah*, when compared to the understanding given by Ibn Qayyim al-Jawziyyah, 'Abd al-Karīm Zaydān and Muhammad Hasbi ash-Shiddieqy. Because according to the three *sadd al-dharī'ah* is closing any path (something) that leads to the forbidden or causes harm and damage or crime. Meanwhile, according to al-Syātībī, closing the road that initially contains benefits, then behind it contains *mafsadat*.

15 Al-Furat, *al-Tatbīqāt*..., 39.

analytical system, so the analytical entity itself is assumed to be a system.<sup>16</sup> On the other hand, the analytical entity is seen as a system that acts as a method, or procedure that is prescriptive. According to Amirin, this is what is known as the systems approach. This approach assumes that there are many causes for things to happen, so the systems approach tries to recognize the complexity in most things, so as to avoid viewing them as overly simple or even mistaken.<sup>17</sup>

Regarding the discovery of Islamic law, Jasser Auda assumes *usūl al-fiqh* as a system used to conduct analysis. For Auda, *usūl al-fiqh* as a systems approach must fulfill the following six characteristics, 1) able to adapt naturally (cognitive nature of systems); 2) are holistic (wholeness); 3) is open (openness); 4) the hierarchy is interconnected (interrelated hierarchy); 5) is multi-dimensional; 6) have a purpose (purposefulness).<sup>18</sup>

In addition to the above characteristics, it is necessary to understand several theoretical aspects of the system which generally talk about the following: 1) unity; 2) system organization and structure; 3) determinism of the system structure; 4) connectedness and structural coupling; 5) circularity; 6) novelty features (emergent properties).<sup>19</sup>

These six theoretical frameworks can be understood in the study of contemporary *usūliyyūn* related to what is referred to as *al-ijtihād al-maqāsidi*. According to al-Khādīmī, the *maqāsidi* approach is doing charity with *maqāsidi al-syar'ah*, making it a reference, and taking it into account in conducting *fiqh ijtiḥād*.<sup>20</sup> Then when applied, the *maqāsidi* approach begins with the value discovery step which in *usūl al-fiqh* science is called *takhrīj al-manāt*, then the application of the value called *tahqīq al-manāt*.<sup>21</sup>

These two steps in the operationalization of *al-ijtihād al-maqāsidi* show the connectedness between the surface structure and the deep structure of the analysis system. The inner structure is the values found by the *takhrīj al-manāt* method, while the surface structure is the application of values that is carried out by the *tahqīq al-manāt* method.

16 Auda, Maqāsidi..., 33. Systems analysis is based on the definition of system itself, i.e., the analyst assumes that the analysed entity is 'a system.'

17 Tatang M. Amirin, Pokok-pokok Teori Sistem, cet. VIII (Jakarta: Rajawali Pers, 2003), 7.

18 Auda. Maqāsidi..., 45.

19 Husni Muadz, M., Anatomi Sistem Sosial: Rekonstruksi Normalitas Relasi Intersubektivitas dengan Pendekatan Sistem (Mataram: IPGH, 2014), 58.

20 Nūr al-Dīn ibn Mukhtār al-Khādīmī, al-Ijtiḥād al-Maqāsidi; Hujjiyatuhu, Dawābituhu wa Majālātuhu (Qatar: Wizārat al-Awqāf wa Syu'ūn al-Islāmiyyah, 1998), 39.

21 'Abd al-Rahmān al-Zaydī, al-Ijtiḥād bi Tahqīq al-Manāt fi al-Fiqh al-Islāmī (Kairo: Dār al-Hadīth, 2005), 174.

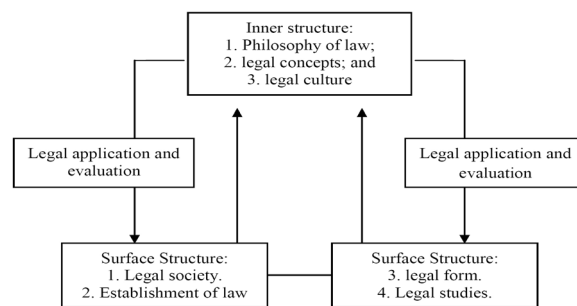
As a system of analysis, these two methodological steps are circularly related.<sup>22</sup>

In the circular relationship above, *sadd al-dharī'ah* acts as a method of determining values in particular cases. So the type of *wasā'il* that is not determined by *al-Syārī'* is discussed in the context of *wasā'il* specifically, namely *al-dharī'ah*. It is called so, because *al-Syārī'* does not stipulate the law of the act in a textual way. From that, the scholars differed on the applicability of *al-dharī'ah*.<sup>23</sup> But basically they agree on the applicability of the *maqāsidi* law to *wasā'il*. So the legal status of *wasā'il* determined based on *sadd al-dharī'ah* is still *syar'iyyah*, because it follows the legal status of *maqāsidi*.

Legal stipulation here is *akhlāqīso* it is necessary to involve the government in positivizing values into legal norms. To understand more deeply, this analysis system must be placed within the legal system. According to Lili Rasjidi, the legal system consists of nine entities, namely: 1) the legal community; 2) legal culture; 3) legal philosophy; 4) legal science; 5) legal concepts; 6) the establishment of law; 7) legal form; 8) application of law; and 9) legal evaluation.<sup>24</sup>

The nine entities above can be grouped into the legal system structure, namely a deep structure consisting of three entities: 1) legal philosophy; 2) legal concepts; and 3) legal culture. Furthermore, the surface structure consists of the following four entities: 1) legal community; 2) the establishment of law; 3) legal form; and 4) legal science.

Meanwhile, between the two system structures, there is a legal system entity that acts as a liaison and at the same time maintains the consistency of the relationship between the internal structure and the surface structure. The entity in question is the application of the law; and legal evaluation. The structure of the legal system as discussed above can be described as follows:



22 The word circular in English (circle, circular) means circular motion, its Arabic equivalent is *mustadīr* or *dā'irī*. Munīr al-Ba'albakī, al-Mawrid; Qāmūs Inklīzī-'Arabī, sixth edition (Beirut: Dār al-'Ilm li al-Malāyīn, 1973), 179.

23 Mustafā ibn Karāmat Allāh Makhdūm, Qawā'id al-Wasā'il fi al-Syarī'at al-Islāmiyyah; Dirāsāt Usūliyyah fi Dū' al-Maqāsidi al-Syarī'ah (Riyad: Dār Isybiilya, 1999), 369. According to Mustafā ibn Karāmat Allāh Makhdūm, this difference is only at the level of terminology, not substance. Because what the Maliki scholars call *sadd al-dharī'ah*, is called by the Shafī'iyyah scholars as *tahrīm al-wasīlah*.

24 Lili Rasjidi dan Wiyasa Putra, Hukum sebagai Sebuah Sistem, cet. II (Bandung: Mandar Maju, 2003), 149.



In the structure of this legal system, *sadd al-dharī'ah* which is axiologically aimed at finding laws for new cases, is on the surface structure, namely as an entity forming law. Thus, *sadd al-dharī'ah* is not the only law-forming entity. In other words, it is part of the formation of the law that works with its own role. In this case, the role of *sadd al-dharī'ah* is to assign a value to the new case, so the ontology is a method. However, certain criteria are needed so that the determination of values does not become subjective, namely based on *i'tibār al-mā'alāt*. *Usūliyyūn* defines it as follows:

ءاضتقالا يف رظنلاب مكحلا طانم قيقحت وه :لأما رابتع  
لوصح شيح نم ؛هل يزنت دنع هيلع نوكي يذلا يعبتل  
ءاضتقالا لفلذ هيعدتسي ام ىلع ءانبال او ،محصقم

*I'tibār al-mā'alāt* is doing *taḥqīq manāt al-hukm* by paying attention to heteronomous demands (*al-tab'ī*) when a case occurs. This is seen from the point of view of realizing the goal (*maqāsid*) and is built based on the needs of the demands.<sup>25</sup>

Starting from this definition, it is clear that *sadd al-dharī'ah* is based on *i'tibār al-mā'alāt*, namely the effects it can cause.<sup>26</sup> According to Bin Zaghībah, the effect in one case can be united between those who realize the benefit and the effect of mafsadat, and there are times when they are equal so they have to choose. There are times when maslahat is superior to mafsadat so there are two possibilities; whether prioritizing the realization of benefit, or prioritizing the rejection of mafsadat. If the focus is on the rejection of mafsadat (*sadd al-dharī'ah*), then the heteronomous effect can be divided into three possibilities; 1) the mafsadat effect is definite; 2) rarely has a mafsadat effect; 3) its mafsadat effect is known to have occurred in many cases.<sup>27</sup>

Of these three possibilities,<sup>28</sup> two of them are indicators of *sadd al-dharī'ah*. First if the effect of mafsadat is believed to be certain, second if most cases or habits show the emergence of mafsadat. These two categories of mafsadat effects can occur in permissible acts and actions recommended by the Shari'a,

25 'Abd al-Rahmān ibn Mu'ammār al-Sanūsī, *I'tibār al-Mā'alāt wa Murā'at Natā'ij al-Tasarrufāt; Dirāsah Muqāranah fī Usūl al-Fiqh wa Maqāsid al-Syarī'ah* (Arab Saudi: Dār Ibn al-Jawzī, 2002), 19.

26 Husayn Hāmid Hassān, *Nazariyyat al-Maslahah fī al-Fiqh al-Islāmī* (Kairo: Dār al-Nahzat al-'Arabīyyah, 1971), 242.

27 'Izz al-Dīn ibn Zaghībah, *al-Maqāsid al-Āmmah li al-Syarī'at al-Islāmiyyah* (Kairo: Dār al-Safwah, 1996), 329.

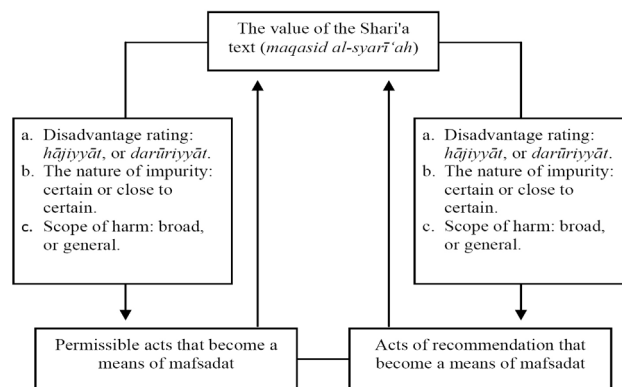
28 According to Mustafa Karamah Allah, the path that is conveyed to mafsadat is sometimes certain, or probability, or rare. If it is certain, then the scholars agree to close the road and prevent it. As for if it rarely happens, such as someone planting grapes that they fear to make wine, then the scholars also agree not to forbid the act. Al-Syātībī gives the reason that if there is benefit in the ordinary, then it is not considered to rarely exist in its penetration. Because usually there is no benefit apart from total damage. Mustafā Karāmat Allāh, *Qawa'id al-Wasa'il...*, 370.

whether the effects of mafsadat are broad or limited.<sup>29</sup> But in actions that rarely cause mafsadat, considering the levels of benefits, it actually causes difficulties and is contrary to the nature of sharia *samāhah*.<sup>30</sup> From that, it is concluded that the level of benefit-mafsadat effect can be weighed by taking into account the following three things:<sup>31</sup>

- Mafsadat reaches the level of *hājiyyāt* or *darūriyyāt* so that it results in narrowness and difficulties.
- Mafsadat is certain or close to certain so it is impossible to avoid it without leaving the act.
- Mafsadat is general (not just certain aspects) and concerns the interests of many people (not individuals).

The points above are criteria for the application of *sadd al-dharī'ah*. In other words, the points above become the mechanism that applies in the analysis system so that the value of an action can be determined. Just as the legal system consists of a deep structure and a surface structure, so is an analytical system. The three criteria of *sadd al-dharī'ah* mentioned above are the link between values as an inner structure, and actions as a surface structure. The value formulated from the shari'a texts in an *istiqrā'i* way (called *maqāsid al-syarī'ah*) also applies as the identity of the system.<sup>32</sup> When values are applied to actions, *sadd al-dharī'ah* as a method of determining values plays a role in maintaining the consistency and integration of values with actions.

The *sadd al-dharī'ah* criteria mentioned by the author also function as a mechanism that regulates the pattern of the relationship between values and actions. When represented by a mechanical model, *sadd al-dharī'ah* becomes part of a system that determines the relational relationship between a certain action and a certain value. It also maintains consistency, why certain values are relevant to certain actions. Here's an illustration:



29 Muhammad Hisyām al-Burhānī, *Sadd al-Dharā'i' fī al-Syarī'at al-Islāmiyyah* (Damaskus: Dār al-Fikr, 1995), 207-10.

30 Ibn 'Āsyūr, *Maqāsid...*, 113.

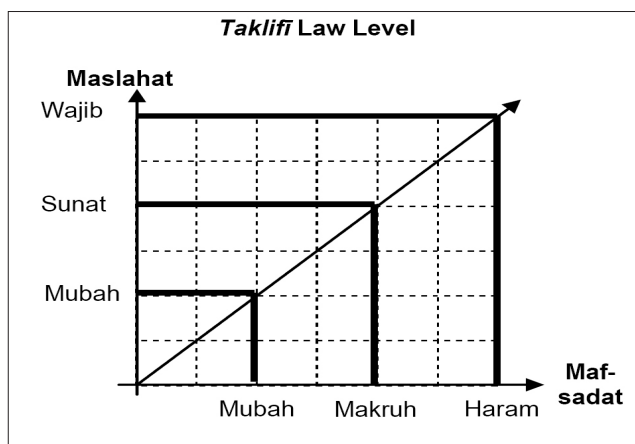
31 Al-Burhānī, *Sadd al-Dharā'i'...*, 210-29.

32 Husni Muadz, M., *Anatomi Sistem Sosial...*, 159. System identity is determined by the pattern of relationships between system entities.

This illustration illustrates how *sadd al-dharī'ah* becomes a method in weighing the levels of *maslahat-mafsadat* on the origin and effect of an action. This level of benefit-mafsadat becomes the basis for determining the right value for the act so that the law can be decided. However, this process is not simple, even complex because it involves normative and empirical factors from a complex legal system.

### Determination of value based on *sadd al-dharī'ah*

Most *usūliyyūn* do not pay attention to this problem so it seems to think it is simple. Whereas the question of whether the law is based on *taklif* for the level of *maslahat-mafsadat* is closely related to the essence of *sadd al-dharī'ah* itself. For example, the attitude of al-Qarāfī, was criticized by Ibn 'Āsyūr for not discussing the criteria that require *sadd al-dharī'ah* to be accepted.<sup>33</sup> As a result, *sadd al-dharī'ah* is too open, immeasurable, and establishes the law from the start as illustrated below:



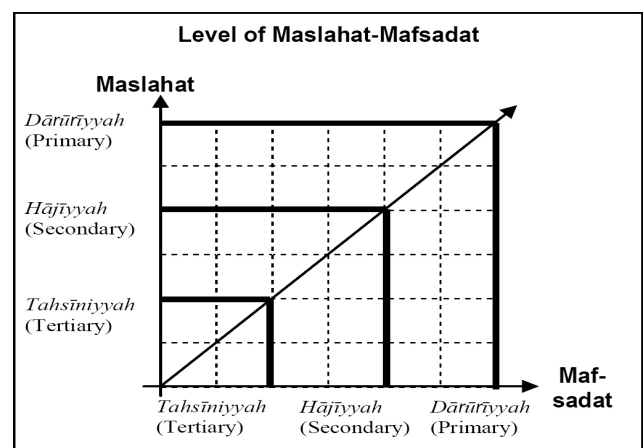
It can be seen in this picture that an act whose legal status is obligatory can be a means for actions that are unlawful or makruh. And vice versa, actions that are unlawful can be a means for actions that are circumscribed or even obligatory. The same can be continued for circumscription and makruh.

This illustration shows that an open perspective raises the assumption that unlawful acts are included in *fath al-dharī'ah*, because they can lead to permissible actions. Whereas the prohibition itself is a rejection of certain means so that it cannot be accepted as a means for right action. So stealing for family income is not justified, as is gambling for alms, or lying to sell goods.<sup>34</sup>

In addition, in cases where the effect of *mafsadat* increases, it seems that the sharia law has changed. Like the law of makruh not giving greetings, it becomes haram if it can break the relationship, even though *taklif* cannot be changed. Because in one action it is impossible to have two different *taklif*, logically this is a contradiction. This is the reason why *sadd al-dharī'ah* needs to be limited as a method of determining values that specifically applies to the aspect of closing the door of *mafsadat* only. But on the other hand, this shows that

the determination of values based on the legal category of *taklifi* is not compatible with the essence of *sadd al-dharī'ah* itself. Then what about the determination of the value of *sadd al-dharī'ah* based on the level of *maslahat-mafsadat*?

According to Ibn 'Āsyūr, the *mafsadat* effect of an action which was originally in the form of benefit, can only be known after the act is fully realized. So the attention of the Shari'a to reject *mafsadat* in that case can only be declared valid after it appears that the dominant side of *mafsadat* effects over the side of the original benefit.<sup>35</sup> Thus, the benefit at the origin remains valid until it is clear that the meaning of the effect is clear. So it is illogical if the *taklif* law was applied to him from the start (not through *tarjih*). Therefore, in accordance with the essence of *sadd al-dharī'ah*, the determination of the value is carried out based on the actual level of benefit-mafsadat in certain cases. Only then is it given its legal status by referring to the category of sharia law according to the *mafsadat* rank. The ranking range can be illustrated as follows:



Ranks in the general rules of the Shari'a are useful as a basis for determining values. Then *tarjih* is done by looking at the probability of the effect and its general or specific scope, broad or narrow. All of these are criteria for *sadd al-dharī'ah* that must be applied. These value criteria can be seen in each category which is mapped as follows:<sup>36</sup>

### Tertiary ranking (*kamāliyyāt/tahsīniyyāt*):

- 1) Tertiary benefit (*kamāliyyāt*) which conveys to tertiary *mafsadat* (*kamāliyyāt*). Generally, this category applies free choice based on moral values. However, if there is a conflict between benefits and *mafsadat*, *tarjih* is carried out on a narrow and general basis, especially in scope. In accordance with the rules of *fiqhīyyah*, the rejection of *mafsadat* with a broad/general scope is prioritized over *mafsadat* with a narrow/special scope. But if both are equal, *sadd al-dharī'ah* is considered based on the dominance of one of the two. If there is a conflict between the tertiary *mafsadat* of the individual and the group, it must be considered between fulfilling the right or aborting the right. Judging from the aspect of fulfilling rights, individuals are prioritized over groups, especially

33 Ibn 'Āsyūr, *Maqāsid*...,113.

34 Al-Burhānī, *Sadd al-Dharā'ī'*..., 205.

35 Ibn 'Āsyūr, *Maqāsid*...,113.

36 Al-Burhānī, *Sadd al-Dharā'ī'*..., 206-7.

when it comes to matters of the afterlife. As for the aspect of aborting rights, the moral value of prioritizing others (*ithār*) becomes the basis when it comes to worldly affairs.

a) Example of special tertiary mafsadat effects:

- The individual tertiary benefit is covering the head in prayer for men, in the event that there is not enough head covering for the entire congregation. In the context of the togetherness of a special congregation, if it is used by one person, then the others experience tertiary mafsadat. So in this case, the mafsadat of the crowd is more important to prevent.

b) Example of common tertiary mafsadat effects:

- Stopping the wicked king in conditions that do not cause slander. In this case, there is a conflict between the two mafsadat which has a wide scope. It is possible that the mafsadat effect of a wicked king's leadership is greater than the mafsadat arising from impeaching him. Or it could be impeaching him actually causing a bigger mafsadat. So in this case, the priority is to prevent a bigger mafsadat.

2) Tertiary benefit (*kamāliyyāt*) which can be conveyed to secondary mafsadat (*hājiyyāt*). In this case *sadd al-dharī'ah* is certain to apply, both the effect of mafsadat is narrow (individual) and broad (communal). The reason is that matters at the secondary level (*hājiyyāt*) must take precedence over tertiary matters (*kamāliyyāt/tahsīniyyāt*).

a) Example of special secondary mafsadat effects:

- The individual tertiary benefit is staying at home during the idah period for women who have lost their husbands. But mafsadat occurs if there is no one to help meet the needs of his life. So rejecting secondary mafsadat should take precedence.

b) Example of common secondary mafsadat effects:

- The individual tertiary benefit is telling the truth. But in conditions that result in the leaking of the secrets of the Muslims to the enemy, or undermining the honor of Muslims, the emergence of hostility and hatred, then secondary mafsadat must be prevented.

3) Tertiary benefit (*kamāliyyāt*) which can be delivered to the primary level mafsadat (*darūriyyāt*).

a) Example of special primary mafsadat effects:

- Individual tertiary benefits maintain religious symbols in ihram by dressing without sewing. But in conditions that cause a person to fall ill, or get sick, such as in life-threatening extreme weather, then primary mafsadat prevention should take precedence.

b) Example of common primary mafsadat effects:

- It is beneficial to change the function of land that has been specially prepared to build a mosque, hospital, or madrasa to become a garden, or a field, for example. If it causes hospitals, mosques or madrasas to be unable to be built, it means that the mafsadat effect is primary. In this case, primary mafsadat must be prevented.

### Secondary rank (*hājiyyāt*)

1) The secondary benefit (*hājiyyāt*) which is conveyed to the tertiary mafsadat (*kamāliyyāt*) does not apply *sadd al-dharī'ah*. This is because the rules agreed upon by scholars are to prioritize secondary (*hājiyyāt*) from tertiary (*kamāliyyāt*), both with individual and communal effects.

a) Example of special tertiary mafsadat effects:

- Individual secondary benefits lengthen the reading in prayer, but if it is too long it will have a mafsadat effect because time is out.

b) Example of common tertiary mafsadat effects:

- The benefit of praying for rain (*istisqā'*), which is circumcised (*hājiyyāt*) for the benefit of the people. But going to the prayer creates a tertiary mafsadat (*kamālī*) because of discomfort. Rule: leave the good for the better, and leave the important for the more important.

2) The secondary benefit (*hājiyyāt*) can be conveyed to the secondary mafsadat (*hājiyyāt*). Generally, this category applies free choice based on moral values. However, if there is a conflict between maslahat and mafsadat, the tarjih is carried out on a narrow and general basis, especially the scope of the mafsadat effect.

3) Secondary benefit (*hājiyyāt*) which can convey the effect of primary mafsadat (*darūriyyāt*).

a) Example of special primary mafsadat effects:

- Cutting off the hands of the thief, or the punishment of whipping the accused of adultery, if both punishments can threaten the life of the convicted person.

b) Example of common primary mafsadat effects:

- The benefit of extending the reading when leading the prayer at a certain time. But at other times it can lead to secondary, even primary, mafsadat if in most cases it is proven that it can cause slander for the congregation so that they no longer want to attend congregational prayers.

### Primary rank (*darūriyyāt*)

1) Primary benefit (*darūriyyāt*) which conveys to tertiary mafsadat (*kamāliyyāt*). Here *sadd al-dharī'ah* does



not apply, because the agreed rules prioritize primary (*darūriyyāt*) from tertiary (*kamāliyyāt*).

a) Example of special tertiary mafsadat effects:

- The benefits of eating in life-threatening conditions of starvation. But what is eaten belongs to those who do not need that food.

b) Example of common tertiary mafsadat effects:

- The benefit of exposing punishment is to provide a deterrent effect for others. But if the convict belongs to a respectable family, this can lead to tertiary mafsadat, namely feeling ashamed.

2) The primary benefit (*darūriyyāt*) which is conveyed to the secondary mafsadat (*hājiyyāt*), does not apply *sadd al-dharī'ah*. Because it is agreed to prioritize the primary (*darūriyyā*) from the secondary (*hājiyyāt*), both with regard to public and individual benefits.

a) Example of special secondary mafsadat effects:

- Individual primary benefits in marriage which are believed to fall into adultery. In the case of marriage with a woman who has been proposed to someone else who is not afraid of falling into adultery. Here there is a secondary mafsadat, namely delaying the marriage of people who are not feared to fall into adultery. In this case, the primary benefit (*darūriyyāt*) should take precedence over the secondary (*hājiyyāt*).

b) Example of common secondary mafsadat effects:

- The benefit of exposing punishment is to provide a deterrent effect for others. But if the condemned is a character who has many followers, a general secondary mafsada can arise.

3) The primary benefit (*darūriyyāt*) which conveys the general mafsadat does not apply *sadd al-dharī'ah*. However, if there is a conflict between the two, the recitation is carried out on a broader mafsadat.

The example above shows that the determination of the value of *al-dharī'ah* follows the level of mafsadat on the effect. So substantively, this mode is the tarjih of maslahat-mafsadat on its origin and effect. Then the primary, secondary or tertiary rankings are converted to the *taklīfī* legal category. So this is not the application of *taklīf* to actions, because the original law that is permissible or mandatory for circumcision remains in effect. If it is assumed that *taklīf* applies, then there is a legal dualism that denies each other. Logically, the existence of two *taklīf* so as to produce conflicting laws is impossible.

If analyzed more deeply, the substance of *sadd al-dharī'ah* is composed of actions and temporal values in a certain space and time. This means that it is related to certain particular cases that are different from the general condition. While the law of *taklīfīs* generally universal and independent

of space and time. This is what Ibn 'Āsyūr criticized by pointing out the fact that Imam Malik established *sadd al-dharī'ah* hypothetically (*mutahammah*).<sup>37</sup> That is, the value is determined not based on *taklīf*, but based on factual, casuistic, and temporal maslahat-mafsadat. Then the legal status is determined by converting it, which refers to the legal categorization of *taklīfī*.

### Criteria for *sadd al-dharī'ah* in the context of *tahqīqal-manāt*

Referring to the theoretical aspects of the organization and structure of the system, it is known that the structure of the system limits the role of system entities.<sup>38</sup> Thus, *sadd al-dharī'ah* as a legal system entity cannot work outside the role in the form of determining the relational relationship between a certain action and a certain value. Here, *sadd al-dharī'ah* is tied to ijthad *tahqīq al-manāt*.<sup>39</sup>

According to 'Abd al-Rahmān al-Zaydī, this method is an observation of effects (*al-mā'al*) as well as an observation of reality (*al-wāqī'*). The observed reality is the state (*al-hāl*), time (*al-zamān*), place (*al-makān*), and humans as individuals and society (*al-ashkhās*).<sup>40</sup> From that, *sadd al-dharī'ah* in the form of a method of determining the value of actions can be seen from two points of view: 1) from the point of view of observing reality (*al-wāqī'*); 2) observation of effects (*al-mā'al*). For example, AbūZahrah, he looked at the point of view of the effect (*al-mā'al*), whether the legal reason must be the way (means) in certain cases so that it was decided to be prevented (*sadd al-dharī'ah*). From the point of view of reality (*al-wāqī'*), some scholars see the nature of *al-dharī'ah* as an exception to certain cases from the scope of general law. This is because in terms of the occurrence of mafsadat as an effect of enforcing the general law.<sup>41</sup>

37 Ibn 'Āsyūr, Maqāsīd...,113.

38 Husni Muadz, M., Anatomi Sistem Sosial..., 209. The behavior of a component is determined by the structure of the system, not by the system outside it.

39 Al-Syātībī, al-Muwāfaqāt..., jld. I,363. According to Al-Syātībī, ijthad is divided into two: 1) ijthad in extracting the law from the texts; 2) ijthad applies the law of kullīto reality. It is further added that the existence of the first category of ijthad may end in the absence of the mujtahids. However, unlike ijthad *tahqīq al-manāt*, it will always exist as long as humans exist on this earth.

40 Al-Zaydī, al-Ijthād bi Tahqīq al-Manāt..., 196.

41 Isām Subhī Sālih Syarīr, Tahqīq al-Manāt wa Atharuhu fī Ikhtilāf al-Fuqahā' (Gaza: al-Jāmi'ah al-Islāmiyyah, 2009), 141-42. Therefore, the usūliyyūn use the rules of *al-dharī'ah* to adjust the conditions (environment) that cannot be predicted by the conditions that settle on him, where there is a chance to find 'illat law which is then accompanied by legal conclusions that are in accordance with practice. Thus, Islamic law is not only determined through the rules of thought, without considering social values to it, but also makes a general source and the most basic purpose and then makes exception rules to maintain these social values.

The point of view of effect (*al-mā'al*) arises from the operation of natural causality.<sup>42</sup> In this case, natural empirical reality such as the nature of drunkenness in alcohol applies heteronomously (nature) so that it is believed to be certain (scientifically exact). *Tahqīq al-manāt* was carried out in the laboratory on the chemical content of arak, as well as research on its effects on the human body medically. So drinking a little wine is agreed to be a means of mafsadat, because its addictive nature leads to drinking in intoxicating levels. Here *sadd al-dharī'ah* is easy to agree on, and there is no need to review the intentions of the perpetrator.

This is different from the point of view of reality (*al-wāqi'*). It arises from the validity of moral causality<sup>43</sup> related to human behavior, free choice and probability.<sup>44</sup> If the behavior of nature is fixed, human behavior and social reality are always in motion of change. According to Muhammad Qāsim al-Mans, it can be divided into changes in habits (*al-'urf*), changes due to difficult conditions and needs (*al-masyaqqahwa al-hājah*), changes due to emergency conditions (*al-darūrah*), and changes in the human condition.<sup>45</sup> Therefore, *sadd al-dharī'ah* against an action can only be applied after ensuring two things: *First*, the general practice shows that an act is done to cause mafsadat. *Second*, many cases show that certain actions are carried out to cause harm to others.<sup>46</sup>

These two things show that *tahqīq al-manāt* provides a basis for consideration for the application of *sadd al-dharī'ah*. *First*, on the aspect of the probability of free choice, where the actor's goal to create mafsadat is believed to be based on habit. So the intention of the perpetrator which is impossible to know can be claimed to be coherently true. *Second*, the probability of harmful effects of actions is demonstratively proven based on factual cases that have occurred before. So *sadd al-dharī'ah* can be applied firmly because it is believed that the probability of the mafsadat effect is quite high.

So far, it can be concluded that the criteria for *sadd al-dharī'ah* previously formulated were realized after *tahqīq*

*al-manāt* was performed. Thus, *tahqīq al-manāt* becomes a requirement for the operationalization of *sadd al-dharī'ah* as a method of determining values.

## CONCLUSION

After examining various written data relating to the criteria of *sadd al-dharī'ah*, the authors draw the following conclusions:

1. *Sadd al-dharī'ah* ontology is a method of determining values for actions that can be a means of mafsadat.
2. Basically *sadd al-dharī'ah* is a practical application of *maqāsidiyyah* rules. Therefore, *sadd al-dharī'ah* can be applied by fulfilling the following criteria:
  - a. The harm reaches the level of *hājīyyāt*, or *darūriyyāt* so that it results in the emergence of narrowness and difficulties.
  - b. The harm is certain or close to certain so that it is impossible to avoid without leaving the act.
  - c. The damage is general (not just certain aspects) and concerns the interests of many people (not individuals).
3. In the context of *tahqīq al-manāt*, it is known that the rules of *al-dharī'ah* are agreed upon as a whole. As for what is different among *usūliyyūnis* in *al-'illah* (*al-manāt*), which is definitely a means of mafsadat. That is, the scholars agree to adhere to the rules of *al-dharī'ah*, but they differ in applying legal reasons (*al-'illah*) to cases (*juz'iyyah*). This shows that *sadd al-dharī'ah* is the application of *tarjih maslahat-mafsadat* in reality based on a certain space and time. In this case, the value of an action is determined based on the rank of harm, namely primary, secondary or tertiary by looking at the broad-narrow and general-specific effects.

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42 Saeful Anwar, Filsafat Ilmu al-Ghazali: Dimensi Ontologi dan Aksiologi (Bandung: Pustaka Setia, 2007), 160. Natural causality is the principle, or general law of the causal relationship of natural events, that effective causes produce effects. So objectively and constantly, the same cause is seen to produce the same effect.

43 Saeful Anwar, Filsafat Ilmu Al-Ghazali..., 160. Moral causality is the law of cause and effect of human moral-creative actions, that it must arise from certain causes and cause certain effects. Likewise, the same cause is considered to have the same effect.

44 Jujun S Suriasumantri, Filsafat Ilmu; Sebuah Pengantar Populer (Jakarta: Pustaka Sinar Harapan, 2005), 73.

45 Muhammad Qāsim al-Mansī, Taghayyur al-Zurūf wa Atharuh fī Ikhtilāf al-Ahkām fī Syarī'at al-Islāmiyyah (Kairo: Dār al-Salām, 2010), 155.

46 Bin Zaghībah, al-Maqāsīd al-Āmmah..., 330.



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