

BLOCKING THE MEANS (*SADD AL-DHARA'I*)

- Definition
- Types of permissible acts which lead to an evil and position of Muslim jurists
- Proof of blocking the means as a source of Islamic law
- Its relationship with *maslahah*

Definition

- It composes of two words i.e. *sadd* and *dhara'i*
- Literally *sadd* means preventing or blocking.
 - *Dhara'i* is the plural of *dhari'ah* signifies the means which leading to certain end either beneficial or harmful.
- Technically, *sadd al-dhara'i* means blocking the permissible acts which lead to an evil.

Types of permissible acts which lead to an evil

- 1) Permissible acts which are rarely leading to an evil. For example, cultivating grapes, travelling by plane.

Muslim jurists agree that this type of permissible act is not to be blocked. Since the benefit is prevalent.

- 2) Permissible acts which most likely leading to an evil. Selling of grapes to wine maker, renting out a premise for the purpose of gambling or prostitution.

Muslim jurists are in agreement that, this type of permissible act is to be blocked.

Types of permissible acts continue...

- 3) Permissible acts which are taken as a mean not for the purpose of what has been legalized.
- E.g., *Inah* sale
It is a sale and buy back agreement. For instance, A sells a car for RM20,000 to B payable at a future date (deferred payment) and later A buys it back from B for RM15,000 payable at once (for cash).
 - *Tahlil* marriage: Marrying a woman with the intention of divorce her so as to enable her to remarry her previous husband.

Types of permissible acts continue...

- Muslim jurists agree that if the unlawful intention is apparent, such act is to be blocked. If not, it is not to be blocked.
- But they differ with regard to the indication that manifests such intention.
- Shafi'i jurists look into formation of a contract or transaction. If the contracting parties expressly state in their contract of unlawful intention, such contract is prohibited. And if they do not expressly state, such contract is not prohibited.

Types of permissible acts continue...

- Maliki and Hanbali not only look at the formation but also circumstantial evidence surrounding, and consequence of such transaction.
- Hanafi agree with the Maliki and Hanbali but they stipulate that there shall be a strong circumstantial evidence.

Position and proof of blocking the means as a source of law

- The Muslim jurists do not differ among themselves on the authority of *sadd al-dhara'i* as a source of law but their difference is with respect to the scope of the application of this source.
- Its application in Maliki and Hanbali is wider and followed by Hanafi.
- Meanwhile in Shafi'i school, it is strictly applied.

Proof of *sadd al-dhara'i* as a source of Islamic law

- Proof of *sadd al-dhara'i* is established by the Qur'an and Sunnah.
- The Qur'an;
- “And do not abuse those whom they call upon besides Allah, lest exceeding the limits they should abuse Allah out of their ignorant.” (al-An'am: 108)
- In this verse Allah prohibits the Muslims from cursing objects that worshipped by non-Muslim, so to block the means to curse Allah.

Proof *continue...*

- The Sunnah;
- The Messenger of Allah prohibits a creditor to accept a gifts from debtor so as not to be a mean of taking interest and taking gifts instead of interest.

Its relationship with *maslahah*

- *Sadd al-dhara'i* is complementary to *maslahah* as the removal of hardship is a type of *maslahah*.
- Thus the position of *sadd al-dhara'i* as a source of law is the same position as *masalih mursalah*.