

Analysis of the Use of *Daif Hadith* in the Fatwa on Islamic Inheritance Law (*Faraid*) in Malaysia

Analisis Penggunaan *Hadis Daif* dalam Fatwa Undang-Undang Pusaka Islam di Malaysia

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ABSTRACT

This study examines the status of hadith that can be used as an argument in fatwa involving legal (hukm) affairs and evaluates the status of the hadiths used in the fatwas of Islamic inheritance law (faraid) issued by state Mufti departments. This study was conducted based on recorded previous studies on the use of daif hadith in fatwa related to the issue of will (wasiat), and its significant effect in violating the principles of fatwa and causing differences in fatwas on the same issues. The methodology of this study is qualitative, by which the data were collected through library research and field studies. The library research was done by examining books of usul al-fiqh, hadith, articles, enactments, and related circulars, while field studies were conducted using unstructured interview method with selected Muftis. The findings show three decided fatwas on faraid issues by state Mufti departments; the issue of inheritance to dhu arham heirs; the issue of nominee status in EPF; and the issue of remuneration, compensation, and consolation status in faraid. However, only the issue of inheritance to dhu arham heirs used arguments from the hadith. The study also found three out of five Mufti departments argued with daif hadith in the fatwa on issue of inheritance to dhu arham heirs, while the other two state Mufti departments argued on the authenticity (sahih) of the hadith in the issue of the matter.

Keywords: Daif Hadith; fatwa; inheritance; dhu arham; faraid

ABSTRAK

Kajian ini adalah untuk mengkaji status hadith yang boleh dijadikan hujah dalam fatwa yang melibatkan hal ehwal hukum serta menilai status hadith-hadith yang dijadikan hujah dalam fatwa-fatwa mengenai isu faraid yang diputuskan oleh jabatan-jabatan mufti negeri. Kajian ini dilakukan bertitik tolak daripada kajian lepas yang direkodkan bahawa terdapat penggunaan hadith daif dalam fatwa yang berkaitan dengan isu wasiat yang boleh membawa kesan yang signifikan di antaranya ialah menyalahi teori fatwa dan menyebabkan perbezaan fatwa dalam isu yang sama. Metodologi kajian ini adalah kualitatif, di mana data dikumpulkan melalui kajian kepustakaan dan kajian lapangan. Penyelidikan kepustakaan dilakukan dengan mengumpul data-data daripada buku-buku usul al-fiqh, hadith, artikel, undang-undang, dan pekeliling yang berkaitan, sementara kajian lapangan dilakukan dalam metode temubual tidak berstruktur dengan mufti-mufti terpilih. Hasil kajian menunjukkan bahawa terdapat tiga fatwa mengenai isu faraid yang diputuskan oleh jabatan-jabatan mufti negeri iaitu isu perwarisan harta pusaka kepada waris dhu arham, isu status penama dalam KWSP dan isu status wang imbuhan, pampasan dan sagu hati. Walau bagaimanapun, hanya isu pewarisan harta pusaka kepada waris dhu arham yang menggunakan hujah daripada dalil hadith. Kajian juga mendapati bahawa daripada lima jabatan mufti yang dikaji, tiga jabatan mufti berhujah dengan hadith-hadith daif dalam fatwa mengenai isu perwarisan harta pusaka kepada waris dhu arham, sementara dua lagi jabatan mufti negeri yang dikaji berhujah dengan hadith-hadith sahih dalam masalah tersebut.

Kata kunci: Hadith daif; fatwa; harta pusaka; dhu arham; faraid

INTRODUCTION

In Malaysia, fatwa institution is fundamental to all levels of Muslim society as it is the highest legal reference of Islamic law. Each issued fatwa has the

authority and they are referred to by Shariah courts. Mufti is an individual appointed based on his high knowledge and expertise in the field of Shariah, and assisted by a religious organisation consisting of mufti assistants, officers, secretaries, fatwa

committees and administrative assistants. Expertise in Shariah knowledge is essential in ensuring fatwa of high quality can be produced, based on an excellent *istinbat* process (Salleh et al. 2017; Asni & Sulung 2017b).

However, in a study by Asni et al. (2017), it was found that there were *daif* hadiths used as arguments in the fatwa on will (*wasiat*). This is contrary to the theory which stated that in the field of Islamic law, arguments cannot be made using *daif* hadith. This is because knowledge of hadith is the primary source of Islamic legal reference after the Qur'an when issuing a fatwa or *ijtihad*. According to al-Ghazali (1997), the requirement of becoming a mufti is to master the knowledge of hadith as it is one of the sources of Shari'ah. Such knowledge of hadith includes an understanding of hadith *dirayah* that defines the status of a narrator, separating authentic hadith from damaged hadith, and separating the acceptable hadith from the rejected hadith (al-Qaradawi 1996).

Further, according to Asni and Sulung (2017c), issuing a fatwa based on an argument of *daif* hadith may cause fatwa diversity in Malaysia. With the existence of 14 official mufti departments in Malaysia, fatwa diversity may leave a negative impact and cause confusion among the public due to the different fatwa between states on the same issue (Oseni 2017). According to Ahmad (2017), resolving *faraid* issue that does not take into account the wellbeing of heirs can bring problems into the *faraid* system.

REFERENCE TO DAIF HADITH IN FATWA

Daif hadith fall into the category of *mardud* (rejected), and Islamic scholars have divided their opinions under Islamic law into three views. The first opinion allows for arguments with *daif* hadith, as long as the *daif* hadith status is not too weak, such as in affairs of lawfulness (*halal*) and illegality (*haram*), advantage, motivation (*targhib*) and threat (*tarhib*). For *daif* hadith that are just too weak, the Islamic scholars unanimously agree to reject them as an argument. Furthermore, the *daif* hadith should not have any contradiction with the *sahih* hadith or the Qur'an. This is because the *daif* hadith is stronger in its argument than the human's mind. This opinion is shared by some Islamic scholars such as Abu Hanifah, Malik, al-Shafi'i and Ahmad (Al-Jauziyyah 1973).

However, this opinion is weak as it is only claimed by the views of four Imams of the sect (Al-Shatibi, n.d.). Hanbali's claim on the *daif* hadith is superior to *qiyas* is actually mistaken because the meaning that Hanbali refers to is actually the *hasan* hadith. At that time, the only terms that were available were *sahih* and *daif* hadith (Ibn Muflih, 1379H). The term *hasan* hadith only emerged later, during the time of and pioneered by al-Tirmidhi (Al-Jauziyyah, 1973). The *daif* hadith that was argued by the Imams is incorrect because some traditional scholars (*mutaqaddimin*) stated that *daif* hadith might have made mistakes in assessing the narrators in the *sanad* (Al-Khudair 1425H). This happened to al-Shafi'i (1358H) in his book of *al-Risalah*, where he argued with a hadith that says, "The beginning of time is the pleasure of Allah and the end of the forgiveness of Allah." However, this hadith was filtered by al-Nawawi, who states the hadith as *daif* (Al-Nawawi n.d. b).

The second opinion argues that *daif* hadith cannot be an argument in the field of Islamic law, but it can be argued in terms of the benefits of a practice, impulses (*targhib*) and threats (*tarhib*). It states that the advantages, the encouragement to do good and cause detriment to evil can be based on the uncertain argument that is based on the hadith of the Prophet (PBUH), "Whoever attains to him the merit of practice, then practice it for the benefit even though I have never called it (al-Barr n.d.)." However, this view is weak because the hadith that been referred to is *maudu'* by its status (Al-Albani 1992). The majority of scholars who shared this opinion include Ibn Qudamah (1405H), al-Nawawi (n.d.(a), Sufiyan al-Thauri, Abdullah bin Mubarak, Abd al-Rahman bin Mahdi, Sufiyan bin 'Uyainah, and Abu Zakariyya al-Anbari (Al-Qasimi 1380H).

On the other hand, this opinion can be rejected because *istihbab* (desirability) is within the purview of Islamic law, which must be convicted as persuasive arguments. However, al-Nawawi (n.d. (a) and al-Qari (1391H) claimed otherwise, where the Islamic scholars had agreed on the acceptance of the *daif* hadith in the benefits of the practice. The debate on the existence of this *ijma'* argument is rejected because some Islamic scholars such as Ibn al-'Arabi disagreed with it by firmly rejecting the arguments that are supported by *daif* hadith (Al-Shabarkhiti 1374H). There is evidence that al-Nawawi (1929) was at ease in claiming *ijma'*, but in fact, it was a mistake in the matter of raising both hands in prayer.

Furthermore, the conditions imposed by the second opinion in accepting *daif* hadith as an argument for the benefit of practice are difficult to be implemented. For example, the requirement that the *daif* hadith is not too weak indicates that it is necessary to know the weak condition of hadith in order to practice it. This is important to avoid the practice of *daif* hadith that is too weak (Al-Albani 1988). The second condition of saying that *daif* hadith must be supported by strong arguments either from the Qur'an and the *sahih* hadith renders the standalone *daif* hadith as worthless because the basis of the practice must be based on the source of the Qur'an and the *sahih* hadith. Therefore, there is no value in referring to *daif* hadith (Ibn 'Abbas, 2010). Even Ibn Hajar (1971a) laid down the condition for not spreading *daif* hadith because he does not want Muslims to practice that and consider *daif* hadith as Shariah practice, or have some ignorant people regard them as *sahih* hadiths. Therefore, based on this description, it is too complicated to adopt the second opinion based on the conditions that are presented.

The third opinion states that any argument should not use *daif* hadith in the field of Shariah law, benefits of a practice, impulse (*targhib*) and threat (*tarhib*), or put a prosecution with *daif* hadith in the uncertain (*zan*) argument. The act is rejected due to its weakness. Allah SWT has rejected uncertainty (*zan*) as He says in Surah Yunus verse 36 and Surah Al-An'am verse 116 as well as the hadith of the Prophet (PBUH) which means, "be careful of yourself and avoid doubt because doubt is a major deception in conversation" (al-Bukhari 1422H). This opinion is agreed to by Yahya bin Ma'in, al-Bukhari and Ibn Hibban (al-Qasimi 1380H; al-Khudair 1425H).

This third opinion is more accurate (*rajih*) because the hadith scholars agreed to the classification of *mardud* category of *daif* hadith, given it as a doubtful proposition that is uncertain. Therefore, everything that cannot be trusted cannot represent the truth. However, these criticisms do not mean that *daif* hadiths will be rejected altogether. *Daif* hadith is only rejected in terms of their argument, but such hadith can also be used as an argument that helps to strengthen uncertain meanings. By the word of Allah SWT (Qur'an, 4: 3) which means, "but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice (*ta'ulu*)."

The word *ta'ulu*, as in the abovementioned text, can be attributed to two meanings: either "does not increase your family" or "does not commit injustice". In interpreting it, al-Jauziyyah (1391H) allowed arguing the hadith of 'Aishah that is *daif* for its status, which means, "The Prophet said about the meaning of the word of Allah SWT, which means, "that will be more suitable, to prevent you from doing injustice." In another hadith, it says "that you may not be prejudiced" (Ibn Kathir, 1422H), and the third party also accepts this view (Al-Jauziyyah, 1391H).

METHODOLOGY

RESEARCH DESIGN, SELECTING THE RESPONDENTS, DATA MANAGEMENT AND ANALYSIS

This study uses a cross-sectional narrative review using qualitative data collection methods of semi-structured interviews. The interview method was used to gain a deeper understanding of the subject matter of the study, as well as the element that has been used in previous studies (Robertson, & Samy 2015; Gunarathne & Senaratne 2017).

The researchers used a purposive sampling method in the interview technique by interviewing experienced and knowledgeable respondents about the objective of the study (Etikan 2016). In this regard, the researchers interviewed five interviewees comprising state muftis to represent and chair their respective state fatwa committee members. These respondents were selected because they are the chairs of the fatwa committee that issues an official fatwa for a state. Therefore, they are experts in the process of fatwa production, especially in the use of hadith as arguments, which is the most important source of fatwa production.

The interviews were conducted to find out the method applied in the application of hadith as arguments in the production of fatwa, especially in *faraid* issues. This is because the method is challenging to find in resolution reports or paperwork. The interviews were recorded through audio recording methods and manual writings in notebooks as additional storage so that if the audio recordings were damaged or destroyed, the manual records would still be available for reference. The responses were then transcribed to obtain the emerging themes through a methodology suggested by Huberman and Miles (2011).

Qualitative data study involves three linked sub-processes, which are data reduction, data display and concluding (Huberman and Miles, 2011). Specifically, the stories that were told during the interviews were written by the researchers and subsequently transcribed. Further, in line with Huberman and Miles (2011), matrices and templates summarising the themes by each interview were developed to display the core issues that emerged from the coding process, and both aided to identify the cross-case patterns in the data, with the

predominant ones is becoming a partial evident by mapping the relative incidence of different codes. Subsequently, a secondary analysis of the theme was conducted to study the method in the use of hadith as arguments in the production of fatwa, especially in *fara'id* issues.

For the respondent profiles, five muftis represented their respective states. To safeguard the respondents' information, their names are encrypted upon their requests. The interviewees' details are stated in Table 1.

TABLE 1. The list of interviewees

Interviewees	Position	Purpose
Interviewee 1, 2, 3, 4, 5 (IV1, IV2, IV3, IV4, IV5)	Mufti/the chairman of the fatwa committee	This group was selected because it represents the highest authority for the interpretation of fatwa affairs in Malaysia.

RESULTS

Based on the interviews conducted in the mufti departments, there were three issues of *fara'id* discussed in the fatwa that involves the issue of inheritance to *dhu arham's* heirs, the issue of nominee status for EPF, and the issue of remuneration, compensation and consolation status in *fara'id*. The findings from the interviews show that issues regarding the nominee status for EPF and the issue of remuneration, compensation and consolation status in *fara'id* are not based on references from hadith due to their status as new issues. This has led to differences in the interpretation of the fatwa on the status of the nominee for EPF, and whether the nominee is a *wasi* (administrator) or a beneficiary of *wasiat*. Besides, there are differences in the interpretation of the fatwa on the issue of remuneration, compensation and consolation status in *fara'id* as to whether they are considered as inheritance or not. However, on the issue of inheritance to *dhu arham's* heirs, there is the use of hadith-based arguments in the production of the fatwa.

Based on the results of the interviews with the five mufti departments on submissions with *sahih* hadith in the process of fatwa production, all five mufti departments stated that they only accepted *sahih* hadith as arguments when profiling the laws (IV1; IV2; IV3; IV4; IV5). This is stated by one of the respondents (IV1),

In the process of Islamic law enforcement, we only emphasise the argument from a *sahih* hadith. For example, in the event of a dispute over a *fiqh* issue, we will take the *tarjih* process by taking into account all the arguments presented. When it is

found that one party argues with a *sahih* hadith and the other does not, then we will choose a view based on a *sahih* hadith.

(Informant IV1)

Based on the findings of the interviews on the issue of inheritance to *dhu arham's* heirs, three of the mufti departments determined that fatwa on the issue was based on the *muktamad* opinion of the Shafi'i sect as well as the arguments used by the al-Shafi'i sect (IV1; IV2; IV3). This is stated by one of the respondents (IV2):

For the fatwa on the issue of inheritance to *dhu arham's* heirs, the mufti department decided the ruling based on the *muktamad* opinion of the al-Shafi'i sect and argued that the arguments held by the al-Shafi'i sect state that the Baitulmal was the rightful heir to receive *fara'id* surplus property against the heirs of *dhu al-arham*. This is based on the hadith narrated by Abu Hurairah which means, "Abu Hurairah said that the Prophet (PBUH) had been asked about inheritance for an aunt from the father's side (father's sister) and an aunt from the mother's side (mother's sister), so he said, "I did not know until Gibril came to me". Then the Prophet (PBUH) said, "Where is the man who inquired about the inheritance for an aunt from the father's side (father's sister) and aunt from the mother's side (mother's sister)?" Then the man who asked the question came to the Prophet (PBUH). So the Prophet (PBUH) said, "Gibril has whispered to me that there is no inheritance for them both.

(Informant IV2)

The respondent went on by stating the second argument of the hadith:

From 'Ata', he said that the Prophet (PBUH) had once ridden (his vehicle) to Quba', he sought an answer (from Allah SWT) on the inheritance for an aunt from the father's side (father's sister) and an aunt from the mother's side (mother's sister). Then came the answer to the Prophet (PBUH) that there is no inheritance for both of them.

(Informant IV2)

Meanwhile, the two other mufti departments decided that the fatwa on the issue of inheritance to *dhu arham*'s heirs can be inherited (IV4 & IV5). This is similar to the statement given by the IV5,

The mufti department has ruled that the heirs of the *dhu al-arham* will inherit if no other heirs are entitled to the estate or the estate has subdivided but still have balance. If the estate remains after the allotment of the heirs of *dhu al-arham*, then the estate will be given to Baitulmal. This fatwa is not in line with the *muktamad* opinion of the al-Shafi'i sect by taking into account the Hanafi and Hanbali sects and the arguments presented by the sects. Among the arguments that had been argued was the hadith narrated by al-Miqdam that the Prophet said, "The uncle from mother's side (mother's brother) is the heir to the non-heir so that he can inherit." Then there is also the Prophet's hadith, which means, "The uncle from the mother's side (mother's brother) is the heir to the non-heir." There is also a hadith from al-Sha'bi that says that the father's aunt replaces the brother, the mother's aunt replaces the sister, and the inheritance is given to the father's aunt by two-thirds and the mother's aunt by one third.

(Informant IV5)

DISCUSSION

THE FATWA ISSUE OF INHERITANCE TO DHU ARHAM'S HEIRS BASED ON DAIF HADITH

In the issue of inheritance to *dhu arham*'s heirs, there was a fatwa dispute between the states, whereby three mufti departments decided the fatwa based on the *muktamad* opinion in the Shafi'i sect. The fatwa states that Baitulmal in Malaysia is heir that entitled to *faraid* surplus property compared to *dhu al-arham* beneficiaries.

From the terminology, *dhu al-arham* is the heir of the female genealogy. He/she is a relative who has a family relationship with the deceased besides *ashab al-furud* and *ashab' asabah* (heirs of the male genealogy) (al-Jurjani 1405H). In the *fiqh* debate, the Islamic scholars differed in the opinion of the heir of *dhu al-arham* due to the absence of a *qat'i* argument on it.

The decisions made by the three mufti departments are in line with the views of the Shafi'i sect, which are stated as the main reference in the respective Islamic religious administration enactments (Asni & Sulong 2017c). This decision is also in line with the opinions of Zaid bin Thabit, Ibn Umar, Umar, al-Zuhri, al-Auza'i, Sa'id al-Musayyib, Sa'id bin Jubair, Abu Thaur, Ibn Jarir, Malik and Shafi'I (Al-Shanqiti 1426H).

Based on the source of the hadith as stated by the respondents, this fatwa was decided based on the *mursal (daif)* hadith argument (al-Daruqutni 2004),

"Isma'il bin 'Ali al-Hatani has told us, he said, Musa bin Ishaq al-Ansari has told us, he said, al-Rabi' bin Tathlab has told us, he said, Mas'adah bin al-Yasa' al-Bahili has told us, from Muhammad bin 'Amr, from Abu Salamah, from Abu Hurairah that he said, the Prophet (PBUH) had been asked about inheritance for an aunt from the father's side (father's sister) and an aunt from the mother's side (mother's sister), so he said, "I did not know until Gibril came to me". Then the Prophet (PBUH) said, "Where is the man who inquired about the inheritance for an aunt from the father's side (father's sister) and an aunt from the mother's side (mother's sister)?" Then the man who asked the question came to the Prophet (PBUH). So the Prophet (PBUH) said, "Gibril has whispered to me that there is no inheritance for them both."

This hadith, which narrated by Abu Hurairah is a hadith narrated by al-Daruqutni through the *sanad* of Isma'il bin 'Ali al-Hatani. Al-Daruqutni (2004) criticised this hadith as *mursal* and considered Mas'adah bin al-Yasa' al-Bahili as a *daif* narrator. Al-Daruqutni (2004) then has decided this hadith as *daif*.

Al-Daruqutni (2004) also narrated a similar hadith by another *sanad* from Ibrahim bin Hammad and al-Naisaburi. In addition to al-Daruqutni, al-Baihaqi (2003) also narrated the same hadith through the *sanad* of Sharik bin Abi Namir. Al-Naisaburi (1990) also narrated the same hadith through the *sanad* of Abu Bakr bin Ishaq. Based on the hadiths that have the same meaning but with multiple of *sanad*, all of these hadith were found through two main *sanad*, namely Abu Hurairah and al-Harith bin 'Abdillah.

The *sanad* hadith of Abu Hurairah is *muttasil*, as per stated by al-Daruqutni (2004). Although the *sanad* hadith is *muttasil*, there is a narrator named Mas'adah bin al-Yasa' al-Bahili who has been criticised by many scholars of the hadith including Ahmad bin Hanbal, as he was the one who called Mas'adah as *Laisa bi Shai'*. Ahmad also said that Mas'adah's narration was not accepted for a long time and was less valid (al-Jurjani, 1997). Ahmad bin Hanbal's statement indicates that Mas'adah's narration is rejected. Al-Jurjani (1997) also mentioned Mas'adah as *daif* al-hadith. Al-Daruqutni (2004) also considered Mas'adah as *daif*. Even Abu Daud condemned him as a liar, as Ibn Hajar (1971b) proclaimed in *Lisan al-Mizan*. At the same time, the hadith narrated by Abu Hurairah above was narrated only through the Mas'adah's narration. Therefore, this *sanad* is punishable and classified as too *daif*.

Meanwhile, the narration of al-Harith bin 'Abdillah found in all *sanads* are *mursal* because he narrated the hadith from the Prophet (PBUH) without narrating it through the Companions, whereas he did

not meet the Prophet. In addition to his narration of being *mursal*, he was also accused as *al-Tashaiyu'* (Abu Zaid 1987). Al-Bukhari (1977), who cited al-Sha'bi's opinion in *al-Tarikh al-Awsaṭ* claimed al-Harith as a liar, Abu Ishaq on the other hand did not hear the hadith from him, but from four hadiths. Ibn Abi al-Khaithamah and Ibn al-Madini also condemned him as a liar. Abu Hatim criticised him as *Laisa bi al-Qawi*, and among the hadith scholars who have criticised him are Abu Zur'ah, al-Nasa'i, Ibn 'Adi and Muhammad bin Sa'ad (Al-Dhahabi 2006). Although Ibn Hibban included him in *al-Thiqāt*, it was denied by Ibn Hajar (1326H). Although there were scholars of hadith who defended him, the majority refused him and even punished him with harsh punishments. Therefore, the *sanad* hadith is *daif* due to two factors; it is *mursal*, and al-Harith bin 'Abdillah is the disputed narrator. When assessing both the above hadith either from Abu Hurairah and al-Harith bin 'Abdillah, both hadith do not strengthen each other since the hadiths are too *daif*. Therefore, the hadith cannot be applied as a statement for an argument (Al-Jauziyyah 1973).

Next, the second hadith used as an argument is a *mursal* (Abu Daud 1408H),

“Abdullah bin Maslamah has told us, he said, ‘Abd al-'Aziz is Ibn Muhammad, from Zaid is Ibn Aslam, from 'Ata', he said that the Prophet (PBUH) had once ridden (his vehicle) to Quba', he sought an answer (to Allah SWT) on the inheritance for an aunt from the father's side (father's sister) and an aunt from the mother's side (mother's sister). Then came the answer to the Prophet (PBUH) that there is no inheritance for both of them.”

In addition to Abu Daud, al-Daruqutni (2004), al-Naisābūri (1990) and al-Baihaqi (1989) also narrated the same hadith. Al-Baihaqi (2003) narrated the same hadith as well, but through a *mausul sanad*. Although there are several *sanads* submitted by the narrators of the hadith, there are generally two main *sanads*. The first *sanads* are *mursal*. All the *sanads* of the *mursal* met the narrator named 'Ata' bin Yasar who narrated the hadith from the Prophet (PBUH) without mentioning the Companion, and he was a Tabi'in who had never met the Prophet. Therefore, this hadith is *daif* because the *sanads* are disconnected. Meanwhile, the second *sanads* are *mausul*. All the *sanads* of the *mausul* met the narrator named Abu Nu'aim Dirar bin Surad, who caused the hadith to be too weak. This is because the narrator was rejected and criticised by the scholars of the hadith as a liar, a thief of hadith, thus his narrations are mostly abandoned. Among

the scholars of the hadith who criticised the narrator are al-Nasa'i (1396H), Ibn Hibban (1396H) and Ibn al-Jauzi (1406H). In conclusion, all these hadith *sanads* are judged as too *daif*. Therefore, the scholars agreed that the too *daif* hadiths are not qualify to be a source of Islamic law, especially in fatwa (Al-Jauziyyah 1973).

Apart from the hadith evidence presented, a disagreement over the distribution of inheritance to the heirs of *dhu arham* happened when they debated on the origin of giving the inheritance to the heirs, by stating it as an action based on the Shari'ah text which is certain (*qat'i*) guided by the Qur'an and Sunnah. In this case, there is not a single clear text stating the right of the heir of *dhu arham* as the recipient of the inheritance. Thus, when the distribution of inheritance to the heirs takes place, then their rights are based on vague propositions. Such a thing in the determination of Islamic law is not acceptable (Musa 2017).

THE SETTLEMENT OF THE FATWA ON INHERITANCE TO THE HEIRS OF DHU ARHAM BASED ON THE SAHIH HADITH

However, a fatwa produced by the other two state mufti departments stated that the heirs of *dhu al-arham* would inherit if there are no other heirs entitled to the inheritance or the subdivided estate still has balance. If the estate remains after the allotment of the heirs of *dhu al-arham*, then the estate will be given to Baitulmal. This decision is in line with the opinions of Umar al-Khattab, Ali bin Abi Talib, Abdullah bin Mas'ud, Abu 'Ubaidah bin al-Jarrah, Muaz bin Jabal, Abu Darda', Shuraih, Umar bin Abd al-'Aziz, 'Ata', Thawus, 'Alqomah, Masruq, Hanafiyyah and Hanabilah; however, it was not the *muktamad* opinion of the Malikiyyah and Shafi'iyyah (Al-Shanqiti, 1426H).

Among the arguments of the hadith to be argued is the *sahih* hadith of al-Miqdam bin Ma'di (Ibn Majah, 2009):

“Hafs bin Umar has reported to us, reported to us Shu'bah from Badil, from Ali, from Abu Talhah, from Rashid bin Sa'd, from Abu 'Amir, from al-Miqdam that the Prophet (PBUH) said, “the uncle from the mother's side (mother's brother) is the heir to the non-heir, so he can inherit.”

The text (*matn*) and the *sanads* of the hadith have been validated by the hadith scholars such including al-Shaukani (1933), al-Shanqiti (1426H) and al-Albani (1985). This hadith also shows that the mother's uncle can be a heir in the absence

of *fard* or *'asabah* heirs. As the mother's uncle is considered as *dhu arham*, then he is more entitled to the inheritance than others, including Baitulmal (al-Shanqiti, 1426H).

It also argues with the *sahih* hadith of Abu Umamah bin Sahl bin Hanif (Ibn Majah 2009);

"Bundar has told us, told us Abu Ahmad al-Zubair, told us Sufyan, from 'Abd al-Rahman bin al-Harith, from Hakim bin Hamim bin 'Abbad bin Hanif, from Abu Umamah bin Sahl bin Hanif has said that Umar bin al-Khattab wrote to Abu 'Ubaidah that the Prophet said, "the uncle from the mother's side (mother's brother) is the heir to the non-heir." The text and the narrators of the hadith have been validated by Shu'ib al-Arna'ut.

Also, here is a hadith narrated from al-Sha'bi (al-Baihaqi, 2003);

"Abu al-'Abd Allah al-Hafiz has told us, told us Abu al-'Abbas Muhammad bin Ya'qub, told us Yahya bin Abi Talib, told us Yazid bin Harun, I am Daud bin Abi Hind, from Sha'bi that he said, "the father's aunt replaces the brother, the mother's aunt replaces the sister, and the inheritance is given to the father's aunt by two-thirds and the mother's aunt by one third." The text and the narrators of the hadith have been validated by al-Albani (1985).

All of the submitted arguments stated that Shariah has allocated the inheritance to the heirs of *dhu al-arham* in the absence of the heirs of *al-fard* and *'asabah*. This is the opinion of the Companions, and they are the best reference who know and understand Islamic law (Ibn Qudamah, 1405H). They also justified that the heirs of *dhu al-arham* have two strong ties to the deceased, which are religious ties and blood ties, whereas the tie with Baitulmal is only a religious one. This is also supported by the hadith of Prophet (PBUH) which means,

"The charity of the poor will receive one reward, while the charity of the family will receive two rewards, namely the reward of charity and the reward of being family-related (al-Nasa'i 1986)."

The text and the narrators of the hadith have been validated by al-Albani (1999). Besides, the heirs of *dhu al-arham* inherit the inheritance based on their duties in family affairs such as the priority of the heirs of *dhu al-arham* in managing the burial, worship and expenditure (Sulong 2011).

Based on the arguments of the hadith presented, the researchers support the ruling that the *dhu al-arham's* heirs are more entitled to inheritance than Baitulmal. This is because the second opinion is stronger in terms of the argument and in line

with the *sahih* hadith, and it is the opinion of the Companions, as compared to the first opinion which solely holds on *daif* hadith.

The selected fatwa has a positive impact on creating benefits for both the public and the individual. The benefit to the public refers to the strength of family ties that can create a good society, whereas the meaning of individual benefits is the benefit of the property owner and his relatives. Among these benefits is that the relatives of the deceased can take advantage of his property (Muhammad Daud & Azahari 2019). According to IV5, the allocation of the inheritance to the heirs of *dhu arham*, especially if they are in a difficult condition, is better and more beneficial than giving it to Baitulmal. This is because Baitulmal is a large entity with a million-ringgit fund. Other effect is, it can maintain the quality of a fatwa when it uses arguments made from *sahih* hadith, as well as not arguing with the hadith that are disputed.

The researchers also want to suggest the fatwas that leads to the decision making of prohibiting the heirs of *dhu arham* from receiving the inheritance, as there is a need to re-evaluate the arguments used in their fatwa and to avoid using the *daif* hadiths. This is in line with the views held by Ibn Hazm, al-'Arabi, Ibn Taimiyyah, Yahya bin Ma'in, al-Bukhari, Muslim, al-Naisaburi, Abu Zur'ah, Abu Hatim al-Razi and Ibn Hibban, where it is prohibited for anyone, including the mufti, to argue with the *daif* hadith in the field of Shariah law (al-Qasimi, 1380H). In addition to this issue, there are arguments that are based on *sahih* hadith as stated in the fatwas decided by the two mufti departments.

Moreover, according to al-Shafi'i (1358H), Shariah law cannot argue with a *daif* hadith if the *daif* hadith is opposed to a *sahih* hadith. Therefore, in the issue of inheritance to *dhu arham's* heirs, it is not possible to use the *daif* hadith because there is the *sahih* hadith in the issue. According to al-Khudair (1425H), those who could argue with the *daif* hadith laid down a condition that the issue must also be derived from the *sahih* hadith. However, in the issue of inheritance to *dhu arham's* heirs, the *sahih* hadith argument is contrary to the *daif* hadith. According to al-Khudair (1425H), those who argue with the *daif* hadith are required to not apply that particular hadith in the field of Shariah law, even though the issue of inheritance to *dhu arham's* heirs is posited in the field of Shariah law. Therefore, in view of the conditions of the party that is authorising the argument with the *daif* hadith, it is

not possible to argue with the *daif* hadith in the issue of inheritance to *dhu arham's* heirs. Therefore, if all the mufti departments argue with the *sahih* hadith on this issue, it will have a positive effect when there are no fatwa differences, and the standardisation of the fatwas among the states involving the issue of inheritance to *dhu arham's* heirs can be implemented. The standardisation of the fatwa is supported by Asni and Sulong (2017a/2017c).

CONCLUSION

The argument with the *sahih* hadith is a key fundamental and an essential parameter in determining the quality of a fatwa. Lack of attention to this problem can lead to an error in making *daif* hadith the source of argument. This will cause the fatwas to be fragile, unstable and weak, and even lead to confusion among the public. This is in line with the accurate (*rajih*) opinion, which states that *daif* hadith cannot be an argument in the field of Shariah law.

Based on the analysis of the fatwas regarding *faraid* in Malaysia, there is a fatwa that argues with the proposition of hadith, specifically on the fatwa concerning inheritance to *dhu arham's* heirs. Based on the interviews with five mufti departments, the study found that three mufti departments have decided the ruling of the inheritance to *dhu arham's* heirs as based on arguments from *daif* hadith. Meanwhile, the two other mufti departments then issued fatwa on the same issue by using arguments from *sahih* hadith. The study chose the fatwa based on *sahih* hadith because it was appropriate to the theory that fatwa in Shariah law cannot argue with the *daif* hadith. The selected fatwa also has several positive effects, where it can strengthen the fatwa production process, strengthen family relationships, provide assistance to relatives in difficulty, and standardise the fatwas in Malaysia. Hence, this study is expected to be a significant reference to the state mufti departments in Malaysia for them to strengthen the fatwa production process through submissions from *sahih* hadiths, especially for issues related to *faraid* area.

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