JUSTICE (AL-ADL) IN BUYING AND SELLING FROM SYEIKH DAUD AL-FATANI'S PERSPECTIVE

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ABSTRACT

This paper aims to explore the figure of Syeikh Daud Abdullah al-Fatani (1720-1879CE) who is a Malay scholar during the transitional period of 18M - 19M century and has been a leading Nusantara scholar who produced a lot of Jawi's books (kitab turāth) in various Islamic disciplines. The study will be focusing on the discussion of the justice concept found in Syeikh Daud al-Fatani's writings in particular, his masterpiece work, Furu 'al-Masā'il. It is specifically referred to many discussion associated with buying and selling or al-Bay'. This article uses content analysis methods to analyze the subjects from the text covering the principles and concepts related to trading business. Text theory and aesthetics are also employed to understand his messages, thoughts and ideas. The concept of justice is analyzed based on fiqh Syafii and the results depict the opinion of Syeikh Daud al-Fatani which emphasizes and prioritizes the concept of justice in executing buying and selling contract; it is seen as a very relevance methods and it has been widely implemented among current Muslim societies.

Key words: Syeikh Daud al-Fatani, Furū' al-Masā'il, Justice

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1. INTRODUCTION

The discussion of *Muamalat* (Islamic transaction) related to buying and selling in most *fiqh* (Islamic jurisprudence) books including *Furū' al-Masā'il* (branches of religious issues) begins with a discussion on basic transaction, concept and rationale behind its implementation. This basic transaction is recognized to be the common transaction made within human society including everyday life activities without much of the procedural and ethical requirements to be followed. These transactions are often associated with exchange transactions because most

trading involves the exchange of goods between buyers and sellers. With this actuality of human-trading activity, and marketing, it will be able to avoid stealing, confiscating and consuming property with deceit. More importantly, human transactions based on wisdom, good attitude and halal would bring justice and peace (Mirza Tabrani, 2016). Due to the significance of buying and selling activities in Islamic transaction or *muamalat* as a mechanism in the community, *Furū 'al-Masā'il* was referred to as important guideline suitable within the context of Malay Muslim transaction by highlighting the sale transaction as the first transaction, as well as discussing some issues related to buying and selling activities in a more global scope.

2. SYEIKH DAUD AL-FATANI AND *FURU' AL-MASA'IL*

His full name is Syeikh Daud Bin Abdullah Bin Adris al-Jawi al-Fathoni al-Melayuwi (Ahmad Fathy, 2002). He is better known in Patani as "Tok Sheikh Daud Fatani. He also received other titles such as "*al'Alim al-'Allamah al-'Arif al-Rabbani*", "*Sheikh Daud Waliyullah*", "*Sheikh Daud Keramat*" and "*Sheikh Daud Pengarang Kitab*". He was born in the Kerisik or Sungai Kerisik in Pattani Province of Southern Thailand, around the year 1131AH/1720CE. Sheikh Daud was born in Sungai Marhum Village. However, other sources stated that Syeikh Daud al-Fatani was born in Parit Sungai Kerisik Village. The village of Parit is located on both sides of the street as separated by the Pattani-Narathiwat road that has an Islamic cemetery named Parit Marhum, while on the other side is called Sungai Kerisik Parit, believed to be the birthplace of Syeikh Daud bin Abdullah al- Fatani.

In the traditional education system, every child used to study with their family at the very early age. Sheikh Daud therefore, received his early education from his own family, his father and grandfather. He also got the opportunity to study under the local scholars of his time who come from the Middle East or Yemen. Later, he went for study at Aceh for two years before traveling to the Hijaz. He then continued his studied in Mecca for 30 years and in Medina for another 5 years. He died and was buried in Ta'if Saudi Arabia believed to be in 1879. Syeikh Daud bin Abdullah al-Fatani was a person with continuous excellence throughout his life regarding his knowledge of Islam and spread it into education, teaching and principles that are still relevant in the universal contemporary education system. He was always seen as the pioneer in the writing of Malay Jawi book throughout the 19th century (Mohd Faisal Mohamed, 2019).

Furū 'al-Masā'il is also recognized to be among the greatest and most famous masterpiece of the *fiqh* works in the Malay Archipelago in the 18th and 19th centuries. The book was written since 1254H / 1838M and completed in 1257H / 1841M. This work is described as "The great work on law and dogma ", a *fiqh* book introducing a new writing method that explains *fiqh* problems with interesting and effective approaches. The book *Furū 'al-Masā'il* discusses about 28 Islamic transaction or *muamalat* based on the Syāfiī sect and covers almost all *muamalat* discussions practiced by the Islamic community while emphasizing the values of social justice in *muamalat* systems and Islamic economics as well. (Ahmad Sharifuddin et.al, 2018)

3. METHODS

Data for this study are derived from qualitative research design involving content analysis of primary and secondary data, coupled with interviews with selected key informants. The study aims to see concept of justice that is found in the Syeikh Daud al-Fatani's perspective in particular related to buying and selling activities. All the data are analyzed following *fiqh* Syafii school of thought according to few selected themes relevant to the study's objectives.

4. RESULTS AND DISCUSSIONS

4.1. The Concept of Redha (Mutual Agreement) and Agreement in Business Trading

Appreciation is the key factor in dealing with buying and selling contract; a willingness is an implicit need to act as an indication of willingness. This action is named as *sighah* which includes the offer (*ījāb*) of the seller and the consent (*qabūl*) from the buyer showing both parties's agreement on the goods sold.

According to the Sheikh Daud al-Fatani, *ījāb* is the word that permits the transfer of property or goods to the buyer. The purpose of the *ījāb* and *qabūl* is to give birth to the two parties who are under the contract. Therefore, every word, writing and signal for the mute is judged as *ījāb* and *qabūl*. The important thing in the sale and purchase contract is *redha* (mutual agreement) that is translated with *sighah ijāb and qabūl*. Syeikh Daud al-Fatani mentions that the wisdom of pronouncing *ījāb* and *qabūl* is to avoid conflicts in the future. If one claims that he does not *redha* with the contract while he had pronounced *ījāb* and *qabūl*, then as stated in law, his denial cannot be adhered because his utterance of *ījāb* and *qabūl* already indicates that he had *redha* on the transaction. On the other hand, there is a sale and purchase contract that only interchange activities without *ījāb* and *qabūl*, known as *bay' al-mu'atāt*. (Daud al-Fatani, n.d)

Sheikh Daud al-Fatani's perspective on *bay' al-mu'atāt* is based on the Syafī school of thought which argues that *ījāb* and *qabūl* are two pillars in selling. Contracts which do not comply with the rules are considered invalid, as well as it is sinful to run a *fasid* (damaged) contract. However, Sheikh Daud al-Fatani also acknowledged that this is a *khilaf* (different opinion among Muslim scholars) because there are scholars who allowed such contract, for example Imam Nawawī and some scholars of *al-Syafīyah* especially on the low-priced items.

Apart from *ījāb* and *qabūl*, one more thing that also has been the issue of the discussion in sale and purchase contract is the selling price. The selling price is often associated with the approval of the *redha* and willingness between the seller and the buyer. Islam does not fix the profit rate in the business. Profits in the business can be determined depending on supply and demand and are not rated as domination or oppression of consumers. In addition to consumer needs, local market prices are also assessed to determine whether the goods are expensive or not. The profit in trading and business is discussed based on the hadith of the Prophet (pbuh) as below;

From 'Urwah al-Bāriki, he said: Rasulullah SAW. gave me (delegate) with one dinar so I bought him a sheep. Then I bought with him two sheep, so I sold one of them with the price of one dinar and I brought back to the Prophet. with a sheep and a dinar and I told him what had happened, he said "May Allah bless you in your lucky sale and purchase (al-Bukhāri No. 4614, Sunan al-Tirmizī No.1257 and Sunan Abī Daud No. 3384).

4.2. Selling Property and Pricing Criteria

Sheikh Daud al-Fatani asserted that the merchandise and its price were important in the sale and purchase transactions. Consequently, he sets the object and sales pricing criteria as one of the conditions in a sale and purchase contract. Both must meet the requirements, namely (Daud al-Fatani, n.d):

4.2.1. Selling Property (al-mabi') must be property valued according to the Islamic law (sharia)

Property (al-mabi') is judged according to Islamic perspectives not according to evaluation or human development. Everything that is categorized as unclean and which is prohibited by the Islamic law is illegal trading, such as alcohol, carcass, blood and others. Included in this

category are items that are unclean and cannot be washed for example vinegar, milk, oil etc., The Prophet (pbuh) said;

"Allah and His Messenger have forbidden the sale of wine, carcasses, pigs and idols. Then someone said "O Messenger of Allah, what do you say about fat carcass, indeed it is used to paint a ship, it is applied to the skin and people are lighting a lamp with it". He replied "No, it's illegal" (al-Bukhari No. 2,121 and Muslim No.1,581)

Islam came to exterminate idolatry, and hence it could not allow trade of idols and worshiped statues. As regards things that are forbidden such as haram food, evidently a Muslim has nothing to do with them, and he cannot be allowed to serve them to other people. So far the words of the hadith are quite in consonance with the spirit of Islam.

According to Syeikh Daud al-Fatani, the selling of property must be something of benefits, things that comes with internal value of Sharia such as books, cars, houses and so on. Everything that is not beneficial in a good way is not to be permitted for sale for example insects that lay on the earth and animals that have poisons like snakes and scorpions, wild beasts like tiger and all the *haram* musical instruments (Daud al-Fatani. n.d).

4.2.2. The property or goods for sale must be known by partner in contract

In a sale and purchase contract, the buyer must acknowledge the existence and presence of the property or goods for sale first before executing the contract either by viewing it or by collecting information of the properties specification to avoid the element of uncertainty which may lead to *gharār*. By seeing or being informed of the property or goods for sale, the buyer can decide and has the option to either buy it or not. Therefore, Sheikh Daud al-Fatani banned the sale of tubers, turmeric; ginger that are still in the ground, because it can lead to fraud and argument in the future.

(Suila Radhiyallah hu 'Anhu) What is the law of the person who buys the onions and all the tubers in the soil, is not seen, only seen the tree and turmeric and ginger, legally purchased before being digarapinya or not. (so he answered) buy all the tubers before digging and see the contents, no valid. (Daud al-Fatani, n.d).

Based on the text, Sheikh Daud al-Fatani is very concerned about honesty and maintaining the buyer's interest especially when there is a risk in the sale and purchase.

4.2.3. The properties or goods for sale must be able to be delivered by the seller to the buyer

Sheikh Daud al-Fatani as discussed as *Furū 'al-Masāil* claims that properties or goods for sale (*al-mabī'*) must be able to be handed over by the seller to the buyer or in other words, the seller has to physically have the power to submit the goods for sale directly to the buyer. It is illegal to sell a bird that is flying in the air even at the habit of the bird will return to its nest. Similarly, selling fish in the water, except in the little water as in a cage or pond that can clearly be seen. This ban is based on the specific hadith of Rasulullah SAW. He says;

لَا تَسْتَرُوا السَّمَكَ فِي الْمَاءِ؛ فَإِنَّهُ غَرَرٌ

"Do not sell fish in water, because it is really gharār"

(Abi Syaibah and Imam Ahamad)

However, Sheikh Daud al-Fatani accepts the fish in a small cage or pool that can be seen clearly and also can be captured for the buyer. This perspective of Sheikh Daud al-Fatani is supported by contemporary scholars and Egyptian Fatwa Council, fatwa no. 4340, on February 8. 2018 that state it should sell fish in the little water as done at a restaurant around the world, as it can be seen clearly and easily handed over to the buyer. In addition, the *Fuqaha' al-Syāfi'iyyah* such as al-Māwardi states that it is legitimate to sell fish in a little water

and can be seen clearly and fish that are deep in water can also be sold if it can be caught without using any catching tool. In the view al-Mawardi, any transaction that would bring and maintain the principles of public interest and encouragement on a balance must always be the primary concern of community (Jaelani, Ann. 2016). While Syeikh Abu Ishak al-Syirāzi al-Syāfi'ī argues that fish should be sell in the water if it is easy to be caught and same goes to the flying birds locked in a building.

4.2.3. The Properties or Goods for Sale Must Exist During the Execution of The Contract

Sheikh Daud al-Fatani prohibits the sale of property that does not exist at the moment of making the contract and also are not known of it physical appearance and quantity, as he said;

"So it is not lawful to buy 'Asbul al-Fahli and sell Hablu al-Hablah and bay' al-Malakih and Mulamasah ". (Daud al-Fatani, n.d)

Based on the text above, Syeikh Daud al-Fatani lists several forms and types of sales that are prohibited by Islam and are considered invalid according to *Jumuhur ulama'* or majority of Muslim Jurist, such as selling *asbul al-fahli* (sell the sperm upright by way of intercourse) and *hablu al-hablah* (is selling a child candidate from the fetus his mother conceived) and *al-Malakīh* (is the sale of a camel still in his mother's womb) and *Mulamasah* (It sells by touching of material such as a seller carrying a garment to sell it in a fold or in a dark place, the buyer touched it and the seller said to him, "I sell this garment to you provided you do not have to see it enough by just touching it). Based on a hadith from *Ibn Umar*, the Prophet Muhammad said;

"Indeed, the Messenger of Allah SAW prohibited from selling sperm which is still in the male sulbi, and the child who is still in the womb of his mother and sell the child candidate from the fetus his mother conceived" (Ibn al-Bazār No. 7785 and Ibn Majah No. 2196)

Sheikh Daud al-Fatani prohibits any form of the above sale transaction, as it leads to *gharar* (uncertainty) such as the sale of unclear things that create and lead to risk. This is because of the possibility that the animal does not give birth or child will die after being born and has not yet been handed over to the buyer. This contract is banned according to Mazhab Syafi'ī for selling something that are not in possession, not knowing the nature and do not have the ability to surrender to the buyer (Mohd Faisal Mohamed, 2019). Islam determines that property for sale (*al-mabi'*) must exist when making the trading contract. Invalid property for sale that are not owned or is absent during the contract is based on the hadith of Prophet Muhammad from *Judaiz bin Hizam RA*, he said:

I have said "O Rasululllah, a man came to me and asking about buying and selling things, while I did not have anything I wanted to sell to him. Then I bought the item in the market. "He said:" Do not sell anything that is not with you" (Imam Ahamad and Ashabu al- Sunan Arba'ah)

The above hadith has indicates that the Messenger of Allah prohibited selling some things which were not in the possession of the seller like selling sperm, child that is still in the mother's womb and so on. One more thing in which was discussed in the same category is *bay' al-mulāmasah*, due to selling and buying transaction, the buyer is obliged to check the material first before making decisions to buy it or not, they can't simply touch without seeing the real thing because it can lead to fraud and frustration in the later day.

5. CONCEPT OF KHIYĀR (OPTION)

Sheikh Daud al-Fatani determined that the *khiyār* method was created to facilitate the parties to either continue the contract or terminate it. Sheikh Daud al-Fatani only discusses three types of *khiyār*, namely *khiyār majlīs*, *khiyār syart* and *khiyār 'ayb*. There are more than 6 or 7 types of *khiyar* applicable in Muslim trading transactions. *Khiyār majlīs* is conducted to

give freedom to two parties whether to continue selling or not as long as they are in the contract or as long as they have not yet separated, as for *khiyār syart* is meant the condition is one of the parties or both parties stipulate the condition that he has the right to clarify the right to cancel the contract over a certain period. The last one is *khiyār 'ayb* that mean the both parties have the right to cancel the contract or to continue it when there is a defect on any of the exchange items.

Syeikh Daud al-Fatani's opinion has the characteristics of freedom and social justice in the *muamalat* system, because sometimes the sale happens without thinking about whether the purchased goods are useful for him or not, the materials purchased are defective or not, the materials purchased are really original or not and the aim of *muamalat* in Islam is to foster a culture of cooperation that fulfill the needs and demands of one's society which includes rules, ethics, values and self-awareness in executing human relationships and God. For social justice exists once there is human liberation intellectually and emotionally from the instinct of servitude to and worship to any but Allah. There is a complete equality of all human beings, and social solidarity in the sense that one can gain complete access to Allah without any feeling of fear of life or fear of someone's strength (Asyraf, 2012).

The concept of *khiyār* is a function emphasizing *redha* (mutual consent) in the buying and selling activities as Allah said;

إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ

“Except there be trading by your mutual agreement” (*al-Nisa: 29*)

6. TRUST IN THE BAY' AL-MURĀBAHAH

Murābahah in a fiqh perspective is one of the sales and purchases form of trust (*bay 'al-amānah*) because the seller is required to notify the original price honestly. This sale is different from the buying and selling of *musawamah* made in bargaining. *Murābahah* also means an activity of selling goods by calculating the profits and capital that have made known and agreed between the seller and the buyer. The buyer can be qualified in the event of any fraud or manipulation of the original materials price. Sheikh David defines bay '*al-murābahah* as:-

He bought something at one hundred and said to someone "I sell to you the things I buy and I want the profit of a dirham for every ten dirhams"

(*Daud al-Fatani*)

This definition includes mentioning the cost of buying and profit to be taken and also its relevance with the meaning that is given by Ibn Qudāmah (1972) who defines it as a form of trade that sells an item at a capital price and increases its known profit. In the view of Syeikh Daud al-Fatani, one of the pillars for *al-murābahah* is the price. Thus, the price must be informed, whether the principal price at the time of purchase and the profit agreed upon by the seller and buyer. If the seller acquires something not by way of purchase as obtained from the estate or receives a gift or charity from a certain individual, then he shall fix the price of the materials according to the current market. The important thing in *bay' murābahah* is the price of capital and profit. This Sheikh Daud al-Fatani's opinion was in line with many contemporary transaction that claims “The purchase price statement in the *bay' al-murābahah* is a condition for the valid sale and buy agreement, as the buyer knows the original price of the materials is one of the wisdoms of *murābahah*”

7. CONCLUSION

The aim of justice (*al-Adl*) in Islamic transaction or *muamalat* is to form a united, cooperative, tolerance and sermon in cultivating a harmonious society based on principles

such as helping for charity and generating *taqwa* (fear of God) to Allah SWT while maintaining and upholding integrity, honesty and trust, respecting the freedom of individual rights and so on. This value was discussed by Sheikh Daud al-Fatani in *Furū' al-Masā'il* as the element that needs to be applied in *muamalat*. Sheikh Daud al-Fatani's opinion contain the value of justice and freedom in executing trading contract, where buyers can accept or reject purchases if the price of goods is overpriced or that they are manipulating the price of materials. Buyers may also choose for *khiyār* (option) and return items back to the seller if they disagree with the new price notified to him, while the old price is lower than the new price.

In conclusion, the social justice value expressed by Sheikh Daud al-Fatani in *Furū' al-Masā'il* includes the importance of mutual agreement of both seller and buyer known as *ijāb* and *qabūl* in the sale and purchase, sales items must be able to be handled in the event of the contract as it can lead to fraud and inflicting risk in the contract, some of the traits that must be in the contract of sale and purchase such as honesty, trust, responsibility, freedom of choice, absence of *gharār* and fraud.

REFERENCES

- [1] Holy Quran.
- [2] Asyraf H.A R., Wan Ibrahim W.A, Nooraihan A (2012). Islamic Concept of Social Justice in the Twentieth Century. *Advances in Natural and Applied Sciences*, 6(8): 1423-1427.
- [3] Ahmad Sharifuddin Mustapha, Abdul Karim Ali, Nur Zainatul Nadra Zainol (2018). Sheikh Daudal-Fatani as Scholar in Malay Archipelago: Overview on his Writings. *Int. Journal of Engineering & Technology*. 7:2.29. 332-337.
- [4] Ibn Qudāmāh, Muwafiquddin (1997). *The Enricher- Al-Mughni*. Saudi Arabia: Dar °Ālim al-Kutub.
- [5] al-Fatani, Ahmad Fathy (2001). *Great Muslim Scholar from Fatani*. (trans).Bangi: Universiti Kebangsaan Malaysia.
- [6] Daud bin Abdullah (n.d). *Furū' Masā'il wa Usūlu al-Wasā'il*. (Branches of Religious Issues). Pattani: Maktabah wa Matba'ah Muhammad al-Nahdi wa Awlāduhu.
- [7] Jaelani, Aan (2016). Economic Philosophy of al-Mawardi: Economic Behavior in Adab al-Dunya wa-al-Din and al-Ahkam al-Sulthaniyah. (Online) at <https://mpa.ub.uni-muenchen.de/70339/> MPRA Paper No. 70339, posted 29 Mar 2016 15:49 UTC.
- [8] Mirza Tabrani, Marlizar (2016). The Marketing Concept in Islamic Perspective: A Literature Review. *AFEBI Islamic Finance and Economic Review*. 1:01. 20-37.
- [9] Mohd Faisal Mohamed, Mualimin Mochammad Sahid (2019). Syeikh Daud al-Fatani's Economic Thought Regarding the Concept of Gharar in the Book of Fiqh Jawi (*Sullam al-Mubtadi*): Focusing on Akad Mua'wadah. *Malaysian Journal of Syariah and law*. 7:1 (June). 25-31.