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## 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

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### ABSTRACT

Economic thought is defined as research, theory and economic troubleshooting methods for ideas and efforts from Islamic scholars based on the benefits and *syara*'. The flourish of the Islamic economic thought discussion began since the early period of Prophet Muhammad SAW because one of the aspects in the al-Quran and al-Sunnah is about economy. With the expansion of Islamic civilization, the discussion regarding economy was flourish as well, especially with the emergence of the fiqh scholars and the sects of fiqh. Fiqh scholars were one of the people who played vital roles in expressing ideas based on *naqli* and *aqli* propositions, in addition of arranging discussions in regard to economics. Conservative scholars in the Malay Archipelago such as Syeikh Daud al-Fatani had also played the same role in the Malay World. Thus, this study aims at analyzing the economic thought regarding the concept of *gharar* in one of his work (the text of *Sullam al-Mubtadi*) using content analysis method. The focus of the research is on the *Mua'wadah* contract.

**Keywords :** *Gharar, Syeikh Daud al-Fatani, Sullam al-Mubtadi.*

### Introduction

Economics is a social science. What to produce, how to produce, and for whom to produce are the main questions of economics. Each economic system provides different solutions to these problems. There are several schools of thought on how these questions are answered or how these functions are carried out. The prevailing economic systems neglect the moral dimension of human existence and feature aggressive opportunism, dishonesty, and mistrust. For example, corruption and cheating remain terrible problems of our economic lives. They altogether form a vicious circle and cannot be eliminated completely. Islamic economics is presented as a superior alternative to existing economic doctrines and systems. It proposes a certain set of moral and institutional reforms based on the traditional sources of Islam and these reforms are designed to overhaul the existing economic systems. Therefore, it is clear that Islamic economics against one of unethical aspects which always circulate in economic activities and transactions namely *gharar* (uncertainty). Since the emergence of Islamic laws this element was emphasized by early Muslim scholars in their works. In fact, according to them the presence of *gharar* elements makes most of the transactions unlawful.

### The Meaning of *Gharar*

Free of *gharar* and obscurity is one of the main concepts in Islamic economy. Unlike the other economic system, Islam emphasizes on a real business, with no hidden elements and none of obscurity (Ahmad Hidayat Buang, 2000). This is to ensure the fairness and prosperity of the community in conducting economic activities. The word "*gharar*" is derived from the root word

*gharra* which has two literal meanings, "*khatar*", means danger, peril or risk which is hidden or concealed (Ibn Manzur, 1300H). It is also defined literally as deceit, fraud, uncertainty, danger, peril, delusion, or hazard that might lead to destruction or loss. Syafi'i scholars have described it as "something which in its manner and its consequence is hidden, while Hanafi scholars have defined *gharar* as "something which its consequence is undetermined." Terminologically, *gharar* refers to any transaction of probable items whose existence or characteristics are not certain, due to lack of information, ignorance of essential elements in the transaction to either party, or uncertainty of the ability of one party to honor the contract. According to Afzalur Rahman a *gharar* contract is undertaking of anything blindly without sufficient knowledge or to risk oneself in a venture without knowing exactly what will be the outcome or to rush headlong into a peril without regard for the consequences. He concludes that every contract of an open-ended nature contains some elements of *gharar* (Rahman, 1979). *Gharar* is divided into two types: *gharar fahish* (major or excessive *gharar*) and *gharar yasir* (light *gharar*). *Gharar yasir*, which means small in amount or trivial is the uncertainty that is always present in all contracts and conducts, thus its existence is tolerated. On the other hand, *gharar fahish* is not tolerated and may result in contract voidability. Examples of *gharar fahish* in contracts are plenty as shown in jurisprudential text such as sale of a stray animal, sale of a fetus or a baby animal still in the mother's womb, sale of olive fruit for olive oil or sale of sesame for sesame oil or fat for ghee. There are twelve occasions where *gharar* can appear in a contract, they are:

- 1- Nonexistence of the subject matter.
- 2- Non-ownership of the subject matter.
- 3- The subject matter is not in the possession of the vendor.
- 4- Inability to deliver the subject matter.
- 5- The subject matter is unknown.
- 6- The absence of the subject matter at the time of the contract.
- 7- The measurement and amount of the subject matter are unknown.
- 8- The characteristic of the subject matter is unknown.
- 9- The character of the price is unknown.
- 10- The amount of the price is unknown.
- 11- The date of delivery and payment are unknown.
- 12- A condition of unknown future date. (Atikullah Abdullah, 2013)

### **The Negative Impact of *Gharar***

The prohibition of *gharar* is designed to prevent the weak from being exploited and, thus, a zero-sum game in which one gains at the expense of another is not sanctioned. Gambling and derivatives such as futures and options, therefore, are considered un-Islamic because of the prohibition of *gharar*. Most of the contemporary scholars are against forwards, futures and options contracts because these are always settled in price differences only. Therefore, these are used more as tools of gambling than as tools of risk management. Although little settlement risk exists in both forwards and futures but it is significant only in forwards (Obaidullah, M, 2005). Kamali said about gambling which is one of the branches of *gharar*, "Gambling destroys cooperation and fraternity in favor of combativeness and the desire to win, and it has no harmony with the normal processes that are important to civilization. It is characterized as a morally unclean activity, which sows the seeds of enmity and hatred among fellow human beings, as well as creating a barrier to piety, spiritual awareness, and the remembrance of God" (Kamali, Mohammad Hashim, 2000). In other words, *gharar* is unjust as it leads to uncertainty. It can destroy cooperation between communities when people lose focus on what is important in life (worthy activities) and creates hatred and anger between members in the society. Allah encourages trade to be held by mutual consent between the parties involved where it can only be achieved through clear unambiguous acceptance.

## Biography of Syeikh Daud al-Fatani

Syeikh Daud is one of the greatest Muslim scholars in the Malay Archipelago who once brought up the name of the Malays among Islamic countries until this moment. He was born in Keresik Fatani in Southern Thailand as son of Sheikh Wan Abdullah bin Sheikh Wan Idris al-Fatani. His birth year was uncertain as there was disagreement among researchers about it. In the records of some of the writers who acquired this information regarding his birth year from Syeikh Daud's relatives' families it was probably 1720-1770 M or 1133 H, 1153 H and 1183 H. He was likewise a famous scholar actively involved as a teacher of Jawi students for the hajj in Mecca. Besides, he learned and underwent practice as a student of Islamic knowledge in Fatani, Malaysia, Indonesia and Mecca for a few years (Engku Ibrahim Ismail, 1992). Among his teachers are:

1. Syeikh Muhammad Saleh Bin 'Abdul Rahman al-Fatani
2. Shaykh Muḥammad Ṣāliḥ Bin Ibrāhīm al-Ra'īs
3. Shaykh 'Aṭa' Allāh Bin Aḥmad al-Azharī al-Makkī
4. Shaykh al-Islām Muḥammad Bin Sulaymān al-Kurdī
5. Shaykh Muḥammad As'ad Bin Shaykh Muḥammad Sa'īd Ṭāhir
6. Shaykh Muḥammad Bin 'Abd al-Karīm Sammān al-Madanī
7. Shaykh 'Isā Bin Aḥmad al-Barrāwī
8. Shaykh al-Sayyid al-Sharīf al-Marzūqī
9. Shaykh Muḥammad Bin 'Alī al-Shanawānī
10. Syeikh 'Ali Bin Ishaq al-Fatani
11. Shaykh Sulaymān Bin Yahyā Bin 'Umar Maqbūl al-Aḥdal
12. Syeikh Muhammad Nafis Bin Idris Bin Hussain al-Banjari
13. Shaykh 'Abd Allāh Bin Hijāzī al-Sharqāwī
14. Shaykh Ibrāhīm Bin Muḥammad al-Ra'īs al-Zamzamī al-Makkī
15. Muḥammad Sa'īd Bin Muḥammad Ṣafar al-Madanī al-Ḥanafī. (Anida Hassan, 2013)

Since childhood, he was seen as having a huge academic potential and well known with his ability to learn quickly in all fields of knowledge. In the end he became a teacher, translator and writer with the knowledge given by Allah as the base for him to become a well-known scholar in South-east Asia. He trained and educated a lot of people to become his followers (Engku Ibrahim Ismail, 1992). Among his students are:

1. Syeikh 'Abdul Halim Kelantan
2. Hj. Jamaluddin Bin Lebai Muhamad Kelantan
3. Syeikh 'Ali Bin Ishaq al-Fatani
4. Syeikh Wan Hassan Bin Ishaq Besut al-Fatani
5. Syeikh Muhammad Zain Bin Mustafa al-Fatani
6. Syeikh Wan Musa al-Fatani
7. Hj. Muhammad Saleh Khatib al-Fatani
8. Syeikh Abdul Ṣamad Pulai Condong Kelantan
9. Syeikh Abdul Malik Bin 'Isa Terengganu
10. Syeikh Zainuddin Aceh
11. Syeikh Ahmad Khatib Bin Abdul Ghafar Sambas
12. Syeikh Abdul Qadir Bin Abdul Rahman al-Fatani
13. Syeikh Muhammad Bin Ismail Daud al-Fatani
14. Syeikh Muhammad Zainuddin Bin Muhammad al-Badawi Sumbawi
15. Raja Haji Ahmad Bin Raja Haji Riau
16. Raja 'Ali Haji Riau
17. Raja Haji 'Abdullah @ Marhum Mursyid Riau
18. Syeikh Ismail Bin 'Abdullah Minangkabau
19. Syeikh Muhammad Saleh Bin Murid Al-Rawa
20. Muhammad Saleh Bin Sunan Maulana Qadi @ Tengku Tembusai
21. Sultan Muhamad Safiyuddin Sambas
22. Lebai Din Bin Long al-Fatani

23. Syeikh Wan ‘Abdullah Bin Muhammad Amin Terengganu. (Anida Hassan, 2013)

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. As a prolific writer, his involvement in writing was regarded as the most productive in producing books in Jawi as a discipline in Islamic knowledge such as Tauhid, Fiqh, Tasawuf and more, until today they were still published and become references and research materials for scholars, researchers, students and others (Engku Ibrahim Ismail, 1992). Among his works and writings are:

1. Bughyah al-Tullab li Murīd Ma‘rifah al-Aḥkām bi al-Ṣawāb
2. Ṣayd al-Dhabā’ih
3. Risālah al-Masā’il
4. Kayfīyah Ṣalāh al-Tarāwīh, tanpa tarikh.
5. Tuḥfah al-Rāghibīn fī Sulūk al-Muttaqīn
6. Ghāyah al-Taqrīb fī al-Irth wa al-Ta’sīb
7. Bulūgh al-Marām Pada Bicara Kaifiat Muqāranah Takbīr al-Ihrām,
8. Ghāyah al-Marām atau Manāsik al-Ḥajj wa al-‘Umrah
9. Munyah al-Muṣallī
10. Sullam al-Mubtadī fī Ma‘rifah Ṭarīq al-Muhtadī
11. Hidāyah al-Muta‘allim wa ‘Umdah al-Mu‘allim
12. Īdāh al-Bāb li Murīd al-Nikāh bi al-Ṣawāb
13. Fath al-Mannān
14. al-Jawāhir al-Sanīyyah
15. Furū‘ al-Masā’il wa Uṣūl al-Wasā’il
16. Al-Bahjah al-Mardīyyah
17. Qismah al-Zakāh Bayn al-Aṣnāf
18. Fatwa Berjual Beli dengan Orang Kafir
19. Hukum Ḥayḍ dan Istihādah
20. Nubdhah fī Bayān Shurūṭ al-Jumu‘ah
21. Ta’līq al-Laṭīf atau Ḍiyā’ al-Lam‘ah
22. Jawab bagi Soal yang Datang dari Fatani Darussalam
23. Ḍiyā’ al-Murīd fī Ma‘rifah Kalimah al-Tawḥīd
24. Al-Bahjah al-Sanīyyah fī ‘Aqā’id al-Sanīyyah atau Taḥṣīl Nayl al-Marām li Bayān Sharḥ ‘Aqīdah al-‘Awwām
25. Sifat Dua Puluh
26. Kifāyah al-Mubtadī’ fī Uṣūl I’tiqād al-Murshidīn
27. Risālah al-Ta‘alluq bi Kalimah al-Īmān
28. Al-Durr al-Thamīn fī ‘Aqā’id al-Mu‘minīn
29. Nahj al-Rāghibīn
30. ‘Iqdah al-Jawāhir
31. Ward al-Zawāhir li Ḥill Alfāz ‘Iqd al-Jawāhir
32. Farā’id Fawā’id al-Fikr fī al-Imām al-Maḥdī
33. Sharḥ Qasīdah Ibn al-Wara
34. Waṣāyā al-Abrār wa Mawā’iz al-Akhyār
35. Tarjamah Bidāyah al-Hidāyah
36. Manhal al-Ṣāfi fī Bayān Ramz Ahl al-Ṣūfi
37. Bishārah al-Ikhwān bi Asbāb al-Mawt ‘alā al-Īmān
38. Al-Qurb ilā Allāh
39. Muqaddimah al-Kubrā
40. Minhāj al-‘Ābidīn ilā Jannah Rabb al-Ālamīn
41. Kanz al-Minan
42. Sharḥ Matn al-Ḥikām li ‘Allāmah Ibn Ruslān al-Dimashqī
43. Al-Tanbīh
44. Risālah Ṭarīqah al-Shaṭṭārīyyah wa al-Samānīyyah

45. Qiṣṣah Nabī Yūsuf 'Alayh al-Salām
46. Hikayat Laki-laki yang Soleh
47. Tārīkh al-Faṭānī
48. Kifāyah al-Muḥtāj fī al-Isrā' wa al-Mi'rāj
49. Al-Muswaddah
50. Jam' al-Fawā'id wa Jawāhir al-Qalā'id
51. Sharḥ Mawlid Sharf al-Anām
52. Kashf al-Ghummah
53. Kayfīyah Khatam al-Qur'ān
54. Tanbīh al-Ghāfilīn
55. Kifāyah al-Jāwīyyah
56. Jihāyah al-Takḥṭub
57. Mudhākarah al-Ikhwān
58. Risalah Kelebihan Basmalah
59. Risalah Kelebihan Ḥamdalah
60. Al-Bahjah al-Wardīyyah
61. Tuḥfah al-Ikhwān fī Niṣf al-Sha'bān
62. Hikayat Wali Allah Syeikh 'Abdul Rahman Pauh Bok Al-Faṭāni
63. Risālah Mudhākarah
64. Saudagar Miskin. (Anida Hassan, 2013)

### ***Gharar* concept analysis in the text of Kitab *Sullam al-Mubtadi***

Concept of *gharar* is seen as one of the main concepts that Syaikh Daud al-Fatani had emphasized on in discussion regarding *Mu'awadah* contract. Syaikh Daud stated a few types of businesses that had been prohibited due to the existence of *gharar* elements and obscurity, such as the following:

- 1- The selling of an item without any certainty that the seller could deliver.
- 2- Buying and selling of young fruits on the trees which are still unripe without the requirement of cutting them. This contract is usually known in today's society as '*pajak pokok*'.
- 3- Buying and selling without specifying the selling item specifically. (Daud bin Abdullah al-Fatani, n.d.)

Other than that, emphasis on *gharar*-free concept by Syaikh Daud is real and clear with one of the requirements of *al-Bay'* and *al-Ijarah* contract which is the subject in sale whether as a benefit or physical item must have the specification known from the perspective of the features, properties, size and amount (Daud bin Abdullah al-Fatani, n.d.). Subject in sale that had been solemnized with uncertain specification contains the *gharar* elements, uncertainty and obscurity can be perceived as not fulfilling the requirement of contracts thus causing the contract to become null and void. This requirement becomes a standard and measurement in deciding the status of *Bay' al-Salam* contract. As debated earlier, even though it is required because of one's wish, *Bay' al-Salam* is seen as conflicting with the requirement given by Syaikh Daud in the *al-Bay'* contract due to the involvement of the *gharar* element which is the business involving item that had not been possessed or existed yet. Necessarily, item that has not yet exist can't be seen by the buyer to fulfill the satisfaction of the buyer. However, this risk can be minimized with the focus on this requirement. Even though the item in sale has not yet exist, it could be specified with details until the elements of obscurity can be minimized. With that reasoning, in stating the necessity of *Bay' al-Salam* contract, Syaikh Daud has put on two important requirements which are the item of sale that will exist must be something that can be specified and both parties in contract need to fix the features, size, properties and specification of the said item as best as they can. (Daud bin Abdullah al-Fatani, n.d.)

## Conclusion

The early scholars of Malay Archipelago such as Syeikh Daud al-Fatani has not only produced literary works which contributed towards the development of knowledge in the Malay World, and further analysis of fiqh books which he had written, but also put forward the ideas pertaining to economy. Thus, writers of fiqh books such as him should not just be known as the pioneering fiqh scholars in the Malay world, but more than that, he should be known as the pioneering thinkers of economy in the Malay world. One of the concepts contained in the economic thoughts of Syeikh Daud is concerning the free-*gharar* concept. One of the methods that can be summarized from the discussion about the *al-Mua'wadah* contract inside the classic literature of mazhab al-Syafi'i such as the text of *Sullam al-Mubtadi*, each contract with the elements of *gharar* is forbidden and void. Unlike a contract that fulfills its requirements and pillars, nevertheless containing the elements of oppression, then it is illicit but still valid as contained in the literatures of al-Syafi'i fiqh. Thus, according to the discussion on Syeikh Daud regarding *al-Mua'wadah* contract, elements of *gharar* turns the contract void and it is forbidden, while elements of oppression still renders the contract valid, but it is still illicit.

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