

INCoH 2017
The Second International Conference on Humanities

**THE USED OF WEAK HADITH IN MALAYSIAN FATWA ON
MUSLIM'S INHERITANCE**

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Abstract

Hadith derived from God revelation to the Prophet and it stand as the second authoritative arguments in Syarak after the Quran. Therefore, the reference of Hadith in the fatwa process is very essential. Even though the demised of the Prophet Muhammad (PBUH) have reach more than 1,400 years ago but legitimacy of hadith were carefully secured by hadith scholars through the resilient chains of narrators (*sanad*). Through the *sanad*, we could distinguish an authentic from a weak hadith. Hence, the knowledge of hadith in general and the *sanad* in particular, are part and parcel in the methodology of fatwa and should be attained by hadith scholars. As a result, a scholar who was appointed as Mufti or as fatwa committee member have to acquire the wisdom in order to assure the authenticity of the Hadith that was referred during the reasoning process (*istinbat*). Otherwise, such fatwa become as weak as the hadith denoted. Therefore, this study aims to identify fatwas that have used weak hadiths in their arguments (*istidlal*) especially in the Muslims inheritance dispute (*faraid*). This research was conducted qualitatively by doing contents analysis on the books of fiqh, hadiths, law provisions, as well as on the current fatwa. The results showed that there are weak hadith that have being used in the fatwa of inheritance under the subject of *dhu arham*. Thus, the study suggested that the fatwa should be reviewed in terms the reliability of the hadith, as it has connoted to the weak fatwa.

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Keywords: Weak hadith, fatwa, *faraid*, inheritance, mufti.



1. Introduction

The Fatwa is an *ijtihad* to evaluate current issues from the perspective of its syarak legal status. Under legal term, *fatwa* only issued by official institution which is headed by the *mufti* who organises the affairs of *fatwa*. Mufti has a high position in the society due to his knowledge in the *ijtihad* of Islamic law (Rahimin, Ismail, & Dahlal, 2009). In the practice of *ijtihad*, other than the Quran a mufti as well as *ulama* have to refer to *hadith*. Therefore, according to al-Ghazali (2015), one of the requirements of a *mufti* is to master the knowledge of *hadith*, such as understanding *hadith dirayah*, which is grasping about status of narrators, category of authentic as well as broken hadiths, and *hadiths* that used in arguments or vice versa. Likewise, there is a need to be conscious on *hadiths* which are of *nasikh* (abrogating) and *mansukh* (abrogated), as well as knowledge on the existence background (*wurud*) of *hadith* (al-Qaradawi, 1996; Asri, 2006). This knowledge is significant as *fatwa* will imposed a ruling on Muslims, and thus, the decision must be clamp on strong and sturdy references.

2. Problem Statement

According to Asni (2017), in his study found that the official fatwa makers in Malaysia differed in views when interacting with the hadith evidence where some accepted the *da'if* hadith when the *istinbat hukm* and some of them did not accept it.

3. Research Questions

Does the Syarak justify arguing with the *daif* hadith during the *istinbat hukm*? Is there a fatwa on Muslim's inheritance in Malaysia that argues with the *daif* hadith?

4. Purpose of the Study

The purpose of this study is to find out the use of *daif* hadith in fatwa on Muslim's inheritance in Malaysia. The study also examines the views of the hadith scholars on the status of the *da'if* hadiths involving Islamic legal affairs. The study also examines the fatwa on Muslim's inheritance in Malaysia

5. Research Methods

Through a library study, researchers have collect information on the *daif* hadith methodology in the *istinbat hukm* through books and journals. In addition, researchers also collect information on *istidlal* method and fatwa on Muslim's inheritance through relevant circulars, official fatwa, official websites, journals and books. Then, the collected data were analyzed using the content analysis method. According to Smith (2015), document analysis is a method of obtaining relevant information from printed material in the form of documents. Researchers also conducted field study by unstructured interviews to mufti and fatwa committee members to get their perspective on the *daif* hadith's argument in *istinbat hukm* and information about the fatwa on Muslim's inheritance.

6. Findings

6.1. The Referral of Daif Hadith in Fatwa

Mardud (rejected) hadith occurred due to breaching of one of the conditions or several conditions of *sahih* hadith such as discontinuity of *sanad*, defect in the hadith or others (al-Salah, 2015). Generally, a hadith becomes weak due to two main factors, that is, the drop of narrator from *sanad* and the narrator have been criticized (al-Tahhan, 2004). The weakness level of a hadith varies based on light or heavy of the *daif* characteristics of a narrator. According to al-Salah (2015), among features of light *daif* is poor memorisation, *ikhtilat* (mixed up hadith), *munqati'* (broken), *mursal* (hurried), *tadlis* (concealing), *mu'dal* (perplexing), *syadh* (irregularity), *wahm* (delusion), defect, *mudtarib* (shaky). Meanwhile, the typical of a heavy *daif* is *munkar* (denounced), *matruk* (chain with a known liar), *matruh* (contradicts direct evidence), and *maudu'* (fabricated or forged).

The hadith scholars have three different opinions on the argument of *daif* hadith. The first opinion is that one may argue using *daif* hadith, which is not too severe in all matters such as halal and haram, virtues, *targhib* (encouragement) and *tarhib* (threat). However, in case of severe *daif*, they unanimously reject the hadith. Nevertheless, in case of *daif* hadith that is neither contrary to *sahih* hadith nor contrary to Quran, it will be recognized. This is because *daif* hadith is stronger in argument than the human reasoning. Abu Hanifah, Malik, al-Syafi'i (1354H), and Ahmad were among the scholars who voiced this opinion (al-Jauziyyah, 2013).

However, the first opinion is infirm since the view that said coming from the four Imams is not accurate (al-Syatibi, 2017). Meanwhile, Hanbali's (1379H) claim that *daif* hadith have preference over *qiyas* is also mistaken because what Hanbali meant was *hasan* hadith, since in those days there were only the term *sahih* and *daif* hadith. *Hasan* hadith appeared in the later era that pioneered by al-Tirmidhi (al-Jauziyyah, 2013). The submission of Ahmad bin Muhammad al-Siddiq who claimed that the imams referred to *daif* hadith is inaccurate as the hadith already evaluated to upper level (al-Khudair, 1425H). Likewise, it happened to al-Syafi'i (2018), that the *daif* hadith that he referred is then acknowledged by al-Nawawi (2018) that the *sanad* is *daif*.

The second opinion says that the *daif* hadith cannot be used in the *hukm* affairs of but can argue in the affairs of the advantages, motivations (*targhib*) and threats (*tarhib*). This group argued that matters concerning virtues, encouragement to do good and restraint from evil can be based on uncertain *nas*, that is, as said by the Prophet Muhammad, which means, "Whoever receives the reward of practice from me, then practice it to obtain the good of it, although I never call for it (al-Barr, n.d.)." However, this opinion is infirm because the hadith that was referred to is of the status of *mawdu'*. The majority of Islamic scholars, such as, al-Nawawi (2018), Ibn Qudamah (2015), al-Barr (n.d.), Sufiyan al-Thauri, Abdullah bin Mubarak, Abd al-Rahman bin Mahdi, Sufiyan bin 'Uyainah, and Abu Zakariyya al-Anbari had voiced this opinion (al-Qasimi, 2016).

On the other side, this view is overruled because *sunat* and *istihbab* is within the ambit of the Islamic law that must be linked to strong *dalil* (evidence). Nevertheless, al-Nawawi (2014) claimed in contrary that Islamic scholars had unanimously (*ijma'*) agreed on accepting *daif* hadith in matters of *fadail a'mal*. The argument on the existence of *ijma'* was a mistake as there was Ibn al-'Arabi who disagreed and disallowed any argument based on *daif* hadith (al-Syabarkhiti, 2018). The study found out

al-Nawawi have made inaccuracy in claiming *ijma'*, such as happened in the matter of raising both hands during prayer (al-Nawawi, 2014; al-Nawawi, 2016).

Moreover, the view on accepting light *daif* hadith in the case of *fadail a'mal* only is difficult to put into practice. For instance, it is hard to measure whether a particular hadith have an element of too *daif* and the other on a contrary and ultimately left the Muslim in conflicts practising on the weak source of law (al-Albani, 2015). The second state that opined to accept *daif* hadith which must be based on the result of existing law, makes no sense as at the very beginning the Islamic law itself must be established on the Quran and *sahih* hadiths. Thus, there is no meaning in referring to *daif* hadith as were said since it actually means referring to the *nas* of other shara' (al-Maliki, 2014). Even al-'Asqalani (2017) had set rule to prevent spreading of the hadith to evade Muslims from holding on *daif* hadith and then assuming it as shari'a (Islamic law). In a meantime, to avoid from misleading of some oblivious people by considering it as *sahih* hadith. Hence, based on this situation, it is thus very difficult to adopt the second opinion that deprived of the robustness of the evidence and truthful.

Meanwhile, the third view opined that one cannot argue with *daif* hadith absolutely, whether in matters of jurisprudence, *fadail a'mal*, encouragement (*targhib*) or threats (*tarhib*). This group argued that *daif* hadith leads to assumptions, and thus, it is doubtful and disallowed. Allah SWT has rejected assumption as He had said, meaning, "But most of them follow nothing but assumption: truly assumption can be no avail against truth." (Yunus: 36) Another word of Allah SWT said, means, "They follow nothing but conjecture", as well as Prophet Muhammad's word which means, "Beware you of doubts because doubts are as big as fraud in conversation" (al-Bukhari, no. 5143, 2018). In line with the view were Ibn Taimiyyah (2014), Ibn Hazm (2016), Yahya bin Ma'in, al-Bukhari, Muslim, al-Naisaburi, Abu Zur'ah, Abu Hatim al-Razi, Ibn Hibban, and al-Qadi Abu Bakr Ibn al-'Arabi (al-Ya'mura, 1996; al-Qasimi, 2016; al-Khudair, 1425H; al-Maliki, 2016). The third view is more accurate and preferable (*rajih*) as the hadith scholars resolved that the hadith is in the category of discarded hadith (*marudud*) on the reason of doubtful and indefinite which far from truth.

6.2. The Analysis of Daif Hadith in Fatwa On Muslim's Inheritance in Malaysia

There are three inheritance issues in Malaysian fatwa, that is, issue on the rights of *dhu arham* (maternal heirs), issue of nominee from the Employees Provident Fund (EPF) and status of remuneration money, compensation as well as consolation. Having analysed the three categories of fatwas above, it is found that the fatwa on the rights of *dhu arham* heirs is based on *daif* hadiths.

6.3. The Rights of Dhu Arham Heirs

Most of the state fatwa in Malaysia deprived the rights of *dhu arham* heirs, such as Selangor (Kamos, M. personal communication, 21.12.2015), Kelantan (Shukri, M. S. S. personal communication 25.02.2016) and Perak (Kamaruddin, A. personal communication, 23.12.2015) which decided that the states' *baitulmal* (treasury) is competent to inherit and receive surplus of the *faraid* compared to the *dhu al-arham* heirs (al-'Imrani, 2014). The fatwa was resolved based on the opinion of Shafi'iyah. The decision is alike with the opinion of Malikiyyah (al-Kisynawi, 1416M). However, the fatwa was concluded based on *mursal* hadith, which is *Tabien* reported hadith straight away to the Prophet without

mentioning Sahaba. The hadith said, “The Prophet SAW was asked about the inheritance of paternal aunt and maternal aunt.” The Prophet SAW said, “I did not know until Jibril came to me.” Then he said, “Where is the man who asked about the inheritance of paternal aunt and maternal aunt,” Then the man said that the Prophet SAW said, “There is nothing for them.” (al-Daruqutni, no. 4159, 2004). This hadith by Abu Hurairah is narrated by Daruqutni through Isma‘il bin al-Hatani. Al-Daruqutni (2014) alleged that the hadith was *mursal* as there was a drop of narrator after *tabi'in* (al-Tahhan, 2004). Hence, Mas‘adah bin al-Yasa‘ al-Bahili evaluated the hadith as *daif*.

Daruqutni also reported the same hadith through different track of narrator, that is from Ibrahim bin Hammad and al-Naisaburi (no. 4160, 2004), as well as through Abu Bakr al-Naisaburi (no. 4100, 2004). Furthermore, the same hadith also narrated by al-Bayhaqi through *sanad* Sharik bin Abi Namir (no. 12204, 2014). Meanwhile, al-Naisaburi had also narrated the same hadith through Abu Bakr bin Ishaq (no. 7997, 2014). The above hadith were alike even though their *sanad* were from different path (*turuq*). All of those *sanad* were found to be via two track of sources, that is, Abu Hurairah and al-Harith bin ‘Abdillah.

The chain of narrator that reported by Abu Hurairah is on continuous narration (*muttasil*) (Abadi, 2009). However, there was a narrator in the chains that is Mas‘adah bin al-Yasa‘ al-Bahili who had been evaluated as unacceptable, *daif* al-hadith and liar (Abadi, 2009) by Al-Jurjānī, (2014), al-Daruqutni (2014), Ahmad bin Hanbal, and Abu Daud (al-‘Asqalani, 2017). Thus, the *sanad* is apparently very *daif*.

Meanwhile, it is found that *sanad* which was narrated through al-Harith bin ‘Abdillah is *mursal* since he had narrated the hadith directly from the Prophet SAW without going through the Companions, though he had not even met the Prophet SAW. In addition, he was also accused of being *al-tasyayyu'* (pro Shi'ite) (Al-‘Ajli, 1984). Al-Bukhari, Ibn Abi al-Khathimah and Ibn al-Madini said that al-Harith was a liar (Al-Bukhari, 1977). To add, many hadith figures had also criticised him such as Abu Hatim, Abu Zur‘ah, al-Nasa‘i, Ibn ‘Adi, and Muhammad bin Sa‘ad (Al-‘Aini, 2006; Al-Dhahabi, 2018). Thus, the *sanad* of hadith is concluded as *da'if* by reason of two factors, that is, the *sanad* is *mursal* and narrator (al-Harith bin ‘Abdillah) is *da'if*. Therefore, the overall *sanad* appears to be very *daif*. In this case, the Islamic scholars have a consensus that the stage of very *daif* is neither fit to be referred nor to establish any ruling (al-Jauziyyah, 2013).

The second hadith which supported the former is also *mursal*. The hadith narrated that the Messenger of Allah, SAW had rode down to Quba’ to seek for an answer (from Allah SWT) regarding the inheritance of paternal aunt and maternal aunt. Thus, the answer was revealed to the Messenger of Allah, SAW that it is not an inheritance for them. According to Abu Daud (no. 361, 1408H), it means that there is no inheritance for both of them, but the heirloom is passed on to the heirs.

Commenting on the connexion of narration, Abu Daud, al-Daruqutni (no. 4156, 2014), al-Naisābūri (no. 7998, 2014), al-Baihaqi (no. 2302, 1989) reported that the hadith is *mursal*. However, al-Baihaqi has narrated the same hadith on second lane (no. 12204, 2014) which having continuous *sanad* (*mausul*). Generally, there are two lanes narration of the said hadith. The first narration is found to be *mursal*. The narrator named ‘Ata’ bin Yasar has narrated directly from the Prophet SAW without mentioning the name of the Companions, whilst he was a *Tabi'in* who had never met the Prophet SAW. Therefore, the hadith is *daif* because the *sanad* is disconnected. Meanwhile, the second *sanad* is found to be *mausul* but the narrator named Abu Nu‘aim Dirar bin Surad is found to be *daif* who had been accused

as liar and swindler, and thus, his narration is excluded (al-Nasa'i (1396M), Ibn Hibban (1396M), Al-Jurjānī, (2014), al-Daraqutni (2013), and Ibn al-Jauzi (1406M). As a conclusion, both of the sanad of the hadith are considered heavy daif hence, unfit to be referred (al-Jauziyyah, 2013).

7. Conclusion

The authentic and trustworthy source of *hadith* is very important in fatwa because it would establish a sturdy ruling in Islamic law. The lack of those elements may lead the *fatwa* insecure and weak. This will cause confusion among publics regarding the ruling of certain fatwa. Thus, the solution to overcome the issue is that the responsible parties must undertake a serious study to identify the authentic source of jurisprudence especially on hadith. A solid ruling must be based on a robust source which cannot be argue as well as contend by anyone. Therefore, study on the reliability of the source of Islamic jurisprudence is very essential in the process of *istinbat* (producing *hukm*) to ensure the ruling is trustworthy and benefit the society at whole.

References

- Abadi, M. U. (2009). *Mu'jam Mustalahat al-Hadith wa 'Ulumihi wa Asyhar al-Musanifin fih*. Amman: Dar al-Nafais.
- Abu Daud, S. A. (1408 H). *al-Marāsīl*. Beirut: Muassasah al-Risalah.
- Al-'Aini, M. A. (2006). *Maghanī al-Akhyar fi Syarh Asāmi Rijal Ma'ānī al-Athar*. Beirut: Dar al-Kutub al-'Ilmiyah.
- Al-'Ajlī, A. (1984). *Tarikh al-Thiqāt*. Riyad: Dar al-Rusyd.
- Al-'Asqalani, H. (2017). *Lisan al-Mizān*. Beirut: Dar al-Bashair.
- Al-'Imrani, A. H. (2014). *Al-Bayan Fi Madhhab Al-Syafi'i*. Jiddah: Dar al-Minhaj.
- Al-Albani, M. N. (2015). *Sahih al-Jami' al-Saghir*. Al-Sa'udiyyah: Dar al-Sadiq.
- Al-Baihaqi, A. (1989). *al-Sunan al-Ṣughra*. Pakistan: Jāmi'ah al-Dirāsāt al-Islamiyah.
- Al-Baihaqi, A. H. (2014). *al-Sunan al-Kubra*. Beirut: al-Faruq al-Hadīthah.
- Al-Barr, A. U. (t.t.). *Jami' Bayan al-'Ilm wa Fadlihi*. Mesr: Idarah al-Tiba'ah al-Muniriyyah.
- Al-Bukhari, M. I. (1977). *al-Tarikh al-Awsaṭ*. Qahirah: Dar al-Wa'iy.
- Al-Bukhari, M. I. (2018). *Sahih al-Bukhari*. Beirut: Maktabah al-Syuruq.
- Al-Dāruqutni, A. U. (2013). *al-Ḍu'afā' al-Matrūkīn*. Beirut: Maktabah al-Syuruq.
- Al-Daruqutni, A. U. (2013). *al-Ḍu'afā' wa al-Matrūkūn*. Al-Qahirah: al-Faruq al-Hadīthah.
- Al-Dāruqutni, A. U. (2014). *Sunan al-Dāruqutni*. Beirut: Dar Ibn Hazm.
- Al-Dhahabi, M.A. (2018). *Siyar A'lām al-Nubala'*. Dimasyq: Dar Ibn Kathir.
- Al-Ghazali, A. H. (2015). *al-Mustasfa fi 'Ilm al-Usul*. Beirut: Muassasah al-Risalah.
- Al-Jauziyyah, M. (2013). *I'lam al-Muwaqqi'in*. Beirut: Dar Ibn Hazm.
- Al-Jurjānī, A. (2014). *al-Kāmil fi Ḍu'afā' al-Rijal*. Riyad: Maktabah al-Rusyd.
- Al-Khudair, A. K. (1425H). *al-Hadīth al-Da'if*. al-Riyad: Dar al-Minhaj.
- Al-Kisynawi, A. H. (1416h). *Ashal al-Madarik Syarh Irsyad al-Salik*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Al-Maliki, A. A. (2014). *al-Minhal al-Latif fi Ahkam al-Ḥadīth al-Da'if*. Beirut: Dar al-Kutub.
- Al-Maliki, A. B. (2016). *Ahkam al-Quran*. Saudi: Dar Ibn al-Jawzi.
- Al-Naisābūri, M. A. (2014). *al-Mustadrak 'ala al-Sahihayn*. Beirut: Dar al-Kutub al-'ilmiah.
- Al-Nasā'ī, A. S. (1396 H). *al-Ḍu'afā' wa al-Matrūkūn*. Halab: Dar al-Wa'iy.
- Al-Nawawi, A. Z. (2014). *al-Majmu'*. Beirut: al-Maktabah al-'Asriyyah.
- Al-Nawawi, A. Z. (2016). *Sahih Muslim bi Syarh al-Nawawi*. Dimasyq: dar al-Mustasfa.
- Al-Nawawi, A. Z. (2018). *Al-Azkar*. Al-Qahirah: Dar al-Salam.
- Al-Qaradawi, Y. (1996). *al-Ijtihad fi al-Syari'ah al-Islamiyah*. Kuwait: Dar al-Qalam.
- Al-Qasimi, J. D. (2016). *Qawa'id al-Tahdith min Funun Mustalah al-Hadis*. Beirut: Muassasah al-Risalah.

- Al-Salah, U. (2015). *'Ulum al-Hadis*. Dimasyq; Dar al-Fikr.
- Al-Syabarkhiti, I. M. (2018). *al-Futuh al-Wahbiyyah*. Al-Qahirah: Dar Kasyidah.
- Al-Syafi'i, M. I. (2018). *al-Risalah*. Saudi: Dar Ibn al-Jawzi.
- Al-Syatibi, I. A. (2017). *al-I'tisam*. Saudi: Dar Ibn al-Jawzi.
- Al-Tahhan, M. (2004). *Taisir Mustalah al-Hadis*. al-Riyad: Maktabah al-Ma'arif.
- Al-Ya'mura, A. F. (1996). *'Uyun al-Athar*. Al-Qahirah: Dar al-Hadith.
- Asni, F. A. H. M. (2017). The Practices Of Weak (Daif) Hadiths In Production Of Islamic Law From The Perspectives Of Hadith Studies And Fatwa Legislators In Malaysia. *Al-Qanadir: International Journal of Islamic Studies*, 7(1), 1-9.
- Asri, Z. A. (2006). *Sabab Wurud al-Hadith: Dawabit wa Ma'ayir*. Dar al-Kutub al-'Ilmiyyah.
- Ibn Hazm, A. B. A. (2016). *Al-Muhalla*. Beirut: Dar Ibn Hazm.
- Ibn Hibban, M. (1396 H). *al-Majrūhīn min al-Muhaddithin wa Dhu'afā' wa al-Matrūkīn*. Halab: Dar al-Wa'īy.
- Ibn Qudamah, A. A. (2015). *Al-Mughni*. Beirut: Dar 'Alam al-Kutub.
- Ibn Taimiyyah, T. A. (2014). *Qa'idah Jalilah fi al-Tawassul wa al-Wasilah*. Al-Qahirah: Dar al-Basirah.
- Kamaruddin, A. (December 23, 2015). Personal Interview.
- Kamos, M. (December 21, 2015). Personal Interview.
- Rahimin, A. A. R., Ismail, P., & Dahlal, N. H. M. (2009). Ijtihad Dalam Institusi Fatwa Di Malaysia: Satu Analisis. *Shariah Journal*, 17(1), 195-222.
- Shukri, M. S. S. (December 25, 2015). Personal Interview.
- Smith, J. A. (Ed.). (2015). *Qualitative psychology: A practical guide to research methods*. London: Sage.