# Islamic Building Regulations Based on Fatwa of Qadhi Al-Jamaah Ibn Abd Rafi' (D 733h)

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**ABSTRACT**

Fiqh rulings on built environment are not new in the classical Islamic architectural literature as the previous scholars had outlined specific hukm and guidelines relating to it. Nevertheless, limited literature is available on Islamic built environment at present, particularly on the issues relating to the maxim of '*La Dharar Wa La Dhirar*.' This paper is therefore aimed at analyzing the fundamental rulings on built environment in the context of '*La Dharar Wa La Dhirar*'. This study employed qualitative methodology via translation and content analysis from a selected classical Islamic book, namely '*Mu'in Al-Hukkam'* by Qadhi Al-Jamaah Ibn Abd Rafi'. It is hoped that this study would eventually facilitate more understanding and awareness towards addressing issues of the built environment from Islamic perspectives. Furthermore, perhaps this exhibition will provide salient indicators or benchmark towards the improvement of built environment development in the future.

**Keywords**: Built Environment, Islamic Perspectives, Islamic Rulings

## 1. Introduction

Islam as a perfect and comprehensive Deen (a way of life) has its system covers all facets of human life including built environment. Its Shariah rulings have been outlined in the primary sources of the Qur'an and Sunnah, and the discussions are extended by scholars through ijtihad as

recorded in ijma', qiyas and other secondary sources (Etim.E Okon, 2012). The everlasting method of ijtihad has been used to cater the upcoming issues that eventually could resolve many contemporary problems. In the area of the built environment, many scholars have discussed the issues relevant to it. One particular scholar named Qadhi Al-Jamaah Ibn Abd Rafi had discussed built environment in relation to the maxim of *La Dharar wa la Dhirar* (Neither Harm Nor Reciprocating Harm)**.**

This maxim is highly relevant particularly today as people are more and more advanced in especially building technology where high-rise buildings are being built almost everywhere to meet the need of the rising population and fulfill the greed in capitalist economic development (H. Xue, B. Xu, J. Wu, Y. Wei, 2007). With a more scantly available space for the buildings, the principle of Neither Harm Nor Reciprocating Harm is even more relevant as developers are squeezing their buildings close to one another, causing congestion and difficulties to the residences (Jianlei Niu, 2004). Some high-rise buildings block the airflows, causing for intense heat and humidity (Jianlei Niu, 2004). Not to mention about high-rises which are unsuitable for kids due to security issues. To date, many cases of kids fell from high-rises have been reported by the news with many ended up dead (Chen Haitao, Lou Leilei, Qiu Jiuzi, 2012).

On that point are also examples of residential areas being established very close to communication towers or high-voltage electric transmission lines that are risky to human wellness (Jianlei Niu, 2004). Some are being built on reclaimed lands, i.e., deserted mines or even reclaimed garbage landfills, which according to experts, are very unhealthy physically and environmentally (Jianlei Niu, 2004). Some others are built very near to industrial plants, causing for the nearby residences to shut their windows all the times to avoid smelly and hazardous debris and particles released from the plants (Outi Ilvonen, 2013). While security is an issue that needs due attention, the rights of the residences in any dwellings are another issue that needs even serious attention. Many are being taken off their rights to a healthy environment, fresh air, spacious living areas, secure infrastructures, peaceful ambiance and much more (Outi Ilvonen, 2013).

Realizing the importance of the built environment to human life, this paper aimed at analysing the fundamental rulings on the built environment in the context of *La Dharar Wa La Dhirar*.

## 2. Methodology

This study employed qualitative methodology via translation and content analysis from the great classical Islamic book selected, namely *Muin Al-Hukkam* by Qadhi Al-Jamaah Ibn Abd Rafi'. The justification behind selecting this book is due to its discussion on the concept of *Dharar* and *Dhirar*, which is vital and relevant in providing the understanding of the concepts and practice of Islamic building regulations for contemporary urban planning and developments. There has been no translation of the book, to the best judgment of the authors. The discussion on the issues in the book is then translated and analyzed.

## 3. Islamic Building Regulations Based on Fatawa of Qadhi Al-Jamaah Ibn Abd Rafi' Discussion

### 3.1 Brief Background

He is Abu Ishaq Ibrahim bin Ali bin Abdul-Rafi al Rub'ei al Tunisi. According to Ibn Jabir, his disciples, Abu Ishaq was born in 639H/1241 AD and died in 733 H / 1332 AD. He is the longest serving Qadi al-Jamaah of Tunis during the Hafsid dynasty (AD1230-1574). The Hafsid, named after their founder Muhammad bin Abu Hafs ruled Ifriqiyya from 1230-1574. (Ibn Abd Rafi', 1989)

He authored several books, namely: *Muin al-Hukkam*, and *Forty Hadith*, and *al-Badi fi Syarh Li Ibn al Jullab*, and *al-Radd ala Ibn Hazm*. According to some historian, he died in (733 AH-1332 AD).

### 3.2 Concept of *La Dharar Wa La Dhirar*

The maxim of harm (*dharar*) is derived from the Saying of the Prophet '*La Dharar Wa La Dhirar*' (Neither Harm Nor Reciprocating Harm) Ahmad & Ibn Majah (Hakim, 1986: 2007). *Dharar*; refers to the meaning of Do not harm others or yourself, and others should not harm you or themselves. In fact, dharar implies the wrong action which is not beneficial to the doer (Hakim, 1986). For example, someone's act of opening the door facing into the neighbour's house may intrude their privacy and regarded as harm, eventhough the action may not benefit anything to the doer (Akbar, 1988). Jurists divided harm into two types, namely (i) damage that should be avoided and prevented at all cost like a hazardous smoke from a cigarette, and (ii) damage that is unavoidable

and excusable such as sounds of activities performed by a blacksmith (Hakim, 1986).

In contrast, *Dhirar* refers to you harm yourself by committing a violation so that others are harmed unwittingly. Contrary to *dharar*, this wrong action may benefit the doer (Akbar, 1988). For instance, when an individual changes his dwelling to a mill, his action may benefit his business, but the acoustical harm produced may affect the neighbours (Akbar, 1988). In short, it is clear that any harmful action is prohibited in Islam, irrespective of whether or not it would benefit the doers.

Two examples will illustrate the Hanafi stand on the freedom to utilise one's property and the recourse available to the neighbour or victim. A man came to Abu Hanifah complaining about his neighbour accumulating frozen ice (*mujammadah*) on their party wall. Abu Hanifah asked him to build a furnace (*tanur*) on his side to melt away his neighbour's frozen ice. The second example concerns a man who came to Abu Hanifah protesting about his neighbour who had dug a well too close to the wall separating their houses (Mohd Dani, 2007). Abu Hanifah asked him to construct wastewater drainage near the well, thereby contaminating it and forcing the neighbour to seal it. However, the later Hanafi scholars restricted the near-absolute freedom of owners in utilizing their property; their freedom remained as long as it did not cause excessive damage to their neighbours. Al-Hamawi pointed out the two different opinions between the early and the later Hanafis in a case pertaining to a bakery (*hanut li al-tabakh*) operating among cloth merchants (*bazzazin*). Al-Hamawi said that Abu Hanifah did not prevent such activities since the man operating the bakery was inside his own property although his trade caused damage to others (Mohd Dani, 2007).

However, the later Hanafis had a different opinion since the smoke from a bakery could cause excessive damage to cloth merchants; therefore the bakery owner is prevented from operating his trade among cloth merchants. All later judgments were based on this fatwa that any excessive damage must be prevented at all cost (Mohd Dani, 2007).

This principle reveals the importance to prevent from harm in the built environment either for the sake of one’s own safety or others. This principle is in line with the concept of maslahah and mafsadah (good and evil) applied by the Muslim jurists in traditional built environment (Mortada, 2003). The community would face many challenges in their daily lives, particularly in the areas related to the built environment. The implementation of *la dharar wa la dhirar* is crucial in preventing the society from causing harm to others, especially their neighbours.

Consequently, on that point should be efforts of the individual, the society or associated parties to make a safe and secured neighbourhood environment to be occupied (Ismawi Zen, 2008 & Mohammed & Mahmoud, 2013).

The following discussions will explain and analyse few selected issues on Islamic building regulations based on fatawa of Qadhi Al-Jamaah Ibn Abd Rafi' in his book *Muin Al-Hukkam.* The themes include the sources of damage (auditory, olfactory, visual and physical damage), ownership, utilising and harms related to wall, encroachment on the public and private street, usage of water supply and objection of harm.

### 3.3 Sources of Damage

The sources of damage are varied, consisting of auditory, olfactory, visual, or physical which may give negative impacts to themselves, the neighbours, assets or even dignity (Mohd Dani, 2007).

***a) Auditory Damage***

Ibn Ar-Rami classified auditory damage into two conditions which are linked up to vibration and sound (Mohd Dani, 2007). The sound is not regarded as damage by most Muslim jurists (Hakim, 1986). In his book, Ibn Abd Rafi' also mentions the same view as given by a majority of Muslim jurists like Ibn Rushd regarding this issue. He said that sounds from blacksmith or cotton carder are not prevented by unanimity as viewed by Ibn Habib and Murattaf, narrated by Malik (Ibn Abd Rafi', 1989). The justifications for not prohibit such activities is due to the less harmful caused compared to the priority in earning their living (Hakim, 1986).

Unlike for vibration such as sound caused from mills and a blacksmith forge, Ibn Abd Rafi' consent with the views from most jurists that it should be prevented as it cause harm to neighbours (Ibn Abd Rafi', 1989 & Mohd Dani, 2007). The followings are two interesting cases quoted from Mohd Dani (2007) in his thesis regarding the damage caused by vibration solved by judge Ibn Abd Rafi':

One was concerning a way to determine the damage caused by vibration to a man's wall of his neighbour's new mill. Ibn Abd al-Rafi' asked him (Ibn al-Rami) to take a rectangular piece of paper with thread connected to its four corners and hang it from the four corners of the ceiling that rests on the partition wall between the mill and the house. Several dried coriander seeds were placed on the paper while the mill was

operating. If the seeds moved then, the factory should stop operating, simply if the germs were still there; the neighbour's objection was rejected.

In Islamic building principles, it is vital to respect others, especially with neighbours. Therefore, all acoustically offensive such as the obvious sound of the stable is regarded as harm and must be removed as it creates a nuisance and discomfort to others (Hakim, 1986).

***b) Olfactory Damage***

According to Ibn Abd Rafi (1989), it is a consensus among jurists that an offensive odor from leather tanning is prevented. His opinion is parallel to what has been mentioned by Mortada (2003) that smoke from public baths, bakeries, mills in houses is prohibited due to the harm caused. The sources of such unpleasant smell like construction of toilet near a house should be avoided (Hakim, 1986).

In one case, the judge Ibn Abd al-Rafi' sought the advice of the expert (*ahl-al-ma'rifah*) on a case of smoke from a frying pan (*sinfaj and tawajin*). The expert recommended that olfactory damages have to cease since the neighbouring parties have complained. Therefore, appropriate actions should be taken to minimise the olfactory damage to neighbours (Mohd Dani, 2007).

***c) Visual damage***

Islam emphasises the importance of mutual respect and preservation of privacy which strongly correlates with the concept of awrah as highlighted previously (Sharifah, 2015). Based on the opinion of Ibn Abd Rafi' (1989), the encroachment of neighbour's visual privacy resulted from the door or window opening and the hole should be prevented if it is recent harm as it disturbs the neighbours.

The openings or hole is considered to be harm if it provides the opportunity to a standee in viewing inside when he is standing up facing his neighbour's door or hole (Ibn Abd Rafi', 1989; Mortada, 2003). However, some jurists view that the door opening is not considered as sources of visual damage. Therefore, it is a responsibility of other parties (neighbours) to place the screen for example, in order to preserve their own privacy and *'awrah.*

All madhahib except Maliki agreed that it is the responsibility of a person to set the possible effort in keeping off the visual damage (Mohd Dani, 2007). Among possible initiatives to be performed to preserve from

visual intrusion as suggested by Ibn Abd Rafi' is by closing or removing the openings.

Ibn Abd Rafi' stated Ibnul Qassem's view that the placement of doors facing the street is permitted. However, it should be slightly away from a neighbour's house. Otherwise, the road should be wide enough where no one can directly see the person inside (Ibn Abd Rafi', 1989). The suitable width of the street which may hinder the invasion of privacy as proposed by Hathloul (1996) and Hakim (1986) is seven cubits, based on the tradition of the Prophet PBUH: ''If you disagree about the width of a street, make it seven cubits." (Muslim via Abu Hurairah).

***d) Physical Damage***

Physical damage which would affect neighbour's property could be from many activities. Among the activities that may cause physical damage and should be prevented, as discussed by Ibn Abd Rafi', is the building of toilets or grinders which will affect the wall (Sharifah, 2015). It is prohibited as mentioned by Ibn Qassem and Ibn Nafi'' Ibn Abu Rafi', 1989). In contrast, Judge Ibn Rushd stated that it was not forbidden (Ibn Abu Rafi', 1989). The building of stable, mills or forge-bellows near to neighbour's house also must be stopped as animal urination will cause harm and its motions would disrupt neighbours' sleep (Ibn Abd Rafi, 1989; Sharifah, 2015). According to Ibn Attab, all harm must be removed except something beneficial like building wall, to prevent wind blowing, sunlight and the like, unless it is proven to be deliberately cause harm to the neighbours (Ibn Abu Rafi', 1989).

Regarding the overgrown trees encroaching onto the neighbour's property, it is considered as a nuisance which may lead to a conflict between neighbours (Mohd Dani, 2007). Ibn Abd Rafi' mentioned that the tree from a man's house which harms his neighbours cannot be cut down if it is older than the house. The exemption is only given for new branches grown up after the building of the wall as viewed by Mutarraf, Ibn Majashun and Asbagh (Ibn Abd Rafi', 1989). The stand given by Ibn Abd Rafi' is similar to the general opinions of majority jurists.

In a situation where an individual dig a well in his house and his neighbour objected with a justification that the action may affect the water in his well, jurist viewed that the objection is valid and permitted. Therefore, all work progress must be stopped if the ground is soft and affect the well. Instead, the digging could proceed if the land is solid (Ibn Abd Rafi', 1989). In Islam, the property owner has the freedom and rights towards his belonging as long as it does not give negative impact to

others.

### 3.4 The Wall

***a) Ownership of the wall***

Ibnu Ar-Rami provides a detail explanation of the method of identifying the ownership of the wall.There are six elements to be considered including the wall bond (the joints), the door in the wall, the recess in the wall, wooden beams inserted into the wall, building on top of the wall and the facade (front and back) of the building (Hakim, 1986). In resolving the conflict between neighbours regarding the ownership of a party wall, Ibn Abd Rafi' classified it into few categories which are:

1) For a wall which separates between two neighbours and both claim as theirs, the ownership depends on to whom the house is the wall connected or attached to.
2) In a situation where there is no attachment or connection to any houses, Ibn Abd Rafi' stated that the wall belongs to those who perform the oath (Ibn Abd Rafi', 1989). In a situation where both of the neighbours were reluctant to perform the oath, therefore, the wall belongs to both of them.
3) The number of beams inserted into the wall is likewise seen as essential in placing the ownership. According to Sahnun, the ownership is regarded based on the compositions of wood that they belong to. In a case of unitary of them inserted nine pieces of wood while another individual simply has one piece of wood only. Therefore, the wall belongs to the former except the part of others' beam (Ibn Abd Rafi', 1989). However, the wall will be regarded as a joint party wall if one fixed ten beams and the other three (Mohd Dani, 2007).
4) Ibn Abd Rafi' stated that the ownership of the wall also depends on the number of planks owned by both parties. For example, if there are three positions of the planks for one of them and another plank on the other side, therefore the wall will be belong to both of them, depanding on how many planks they have.

***b) Utilizing of the wall***

In a case of a shared wall, Ibn Abd Rafi' viewed that a person does not have the right to prevent his neighbour from utilizing a jointly owned wall, similar to his neighbour also cannot stop him from doing the same (Ibn Abd Rafi', 1989). If there is a possibility of harm to be occurring resulted from the poor condition of a wall, referring to Ibnul Qassem in Alu'tbeiyah, Ibn Abd Rafi' highlighted about the power of the authorities in resolving the disputes about a wall. The authorities may dictate the owner to demolish the wall if there are complaints from his neighbours about the fear of damage that could affect them. The directive must therefore be complied by the owner.

Another issue raised is whether the wall owner has the responsibility to rebuild the collapsed wall since the wall preserve privacy for the others. In this circumstance, Ibn Abd Rafi' stick to the most popular opinion that the wall owner cannot be forced to rebuild the wall even though the demolition may affect the privacy of his neighbour. Instead, his neighbour should find other means to preserve the privacy such as installing blinds, planting trees or even building his own wall. Never the less, the neighbour should not construct his wall at the same spot of the damaged wall, but he should build if on his land. This view is contradict to Sahnun and Ibn Al-Majishun where both of them mentioned that it is an obligation of all to rebuild the wall as they acquired privacy from the building (Ibn Abd Rafi', 1989).

If the damaged wall collapsed and resulting in death or harm to humans, animals or the neighbouring houses, the wall owner has to pay compensation for the damage upon complaints by others to the authorities. The compensation will still be imposed eventhough no complaint is received by the authorities so long as there is someone who disputes him and the person has witness (Ibn Abd Rafi', 1989). Based on the view from Ashhab and Sahnun, the wall owner must compensate the harm despite the absence of the complainant and witness (Ibn Abd Rafi', 1989).

Al-Wansharisi brought several cases that deal with the use of party walls shared by two neighbouring houses. In the first case, the owner of one of the houses rebuilt the wall after it had collapsed without obtaining the permission of his neighbour in advance, and then asked his neighbour to pay his share of the expenses. The neighbour protested to a mufti, who ruled that he was not required to pay. In a similar case, Ibn Rushd (d. 520/1126) issued a fatwa in which he held that an individual who wants to build on an existing wall belonging to his neighbour could not do so

without his permission. In a third case, a mufti issued a fatwa in which he argued that a man who wants to paint his wall may do so in spite of his neighbour's protest. The mufti stated that the painting of the wall would not create any damage and conferred no benefit upon the painter. In another case, Ibn Arafah (d.803/1400) was asked about a man who was granted permission by his neighbour to use the latter's wall to support a wooden beam (*khashbah*). Subsequently, the wall fell down. Ibn Arafah answered that if the cause of the collapse was unrelated to what the man had built on it then he had the right to reposition the beam. However, if the converse was true, then he did not have the right to use the wall to support the beam. The consensus opinion in all mazhab is that a partner cannot benefit from the shared wall without the permission of the other (Ibn Abd Rafi', 1989).

### 3.5 Public and Private Road

***a) Concept of public and private road***

In general, Islam characterized different features and regulations for two types of streets which are public and private streets (Mohd Dani, 2007). Public streets refer to various names like *Shari'* and *Tariq Nafidh* (Hakim, 1986). It is also known as *Tariq Al-Muslimin*, even if it is opened to all Muslim and Non-Muslim (Hakim, 1986; Akbar, 1988; Al-Hathloul, 1996). It is referred as a public street since the passers-by are countless (Hakim, 1986; Akbar, 1988; Mohd Dani, 2007).

As a public street, it is open and integrates the residential area with the surrounding public facilities and services such as mosques and souq (market) (Hakim, 1996; Asiah Abdul Rahim, 2008).

Indirectly, this indicates that an inaccessible, isolated streets on the outskirts of towns are excluded from the definition of public street (Akbar, 1988). In the traditional neighbourhood, public street is commonly formed after the development of residential areas (Bagaeen, 2010). This execution is a contrast to the current practice in most nations, including Malaysia, where the streets, usually put down earlier than the housing development itself.

The second type is the private street. Numerous names were given to the private street, including *Zanqah, Za'ighah, Darb, Tariq Munsadat, Sikka Ghayr Nafidha* (dead-end street) (Hakim, 1986; Akbar, 1988). Other names for the private street are *Tariq Ghayr Nafidh, Zuqaq* (Al-Hathloul, 1996). This street is typically surrounded by a few clusters of closed neighbourhoods with no exit access to be shared by the abutters

(Hakim, 1986; Abu-Ghazzeh, 1994a). This concept of dead-end street in the traditional settlement is significant for safety reason as it creates its self-patrolling system.

The Islamic jurists agree that public street is owned and controlled by Muslims collectively (Akbar, 1988: 2002). Based on this ownership, all users including Non-Muslims (The Christians/ Jews) can complain for any dissatisfaction with the use of the street (Akbar, 1988). Islam emphasizes that traffic system should be easily accessed and provide convenience to the users. No temporary or permanent obstruction should be there on the public and private street (Hakim, 1986: 2008). Therefore, planting trees, building dividers and extension of projections are prohibited as they may disturb the flow of traffic and cause distress to the users (Hakim, 1986; Al-Hathloul, 1996; Mortada, 2003).

There is likewise some other opinion regarding the ownership of public street. According to Akbar (1988), some major streets of big cities were in the traditional built environment like Cairo and Damascus not belong to the collective Muslim users but the authority.

***b) Accessibility on Public and Private Road***

The concept of accessibility in Islam specifically related to the rights of way or rights of passage. It refers to one's right to reach his house or land using other people's land either via the public or private access. However, the allowance to use the street or land is different depending on the type of streets as explained in the preceding discussion.

In Islam, everyone holds the right to access the public street without any restriction because it is collectively owned by the public (Akbar, 1988). Muhammad and Abu Yusuf, the scholar from Hanafiyyah viewed that everyone is entitled to make an exit from the public street. The permission, however, is subject to the approval from the authority and no harm caused to others (Hakim, 1986; Akbar, 1988). Meanwhile, Imam Hanbali and Syafi'e stated that no approval is required from the authority (Al-Zuhaily, 1996; Mohd Dani, 2007). However, according to Abu Hanifah, the permission from the authority is required only if the action may cause harm on others.

Meanwhile, the right to use the private street is limited to the abutting residents only and not open to the public (Abu-Lughod, 1971; Hakim, 1986; Abu Ghazzeh, 1994b). Outsiders are not allowed to enter and exit from a private street unless with permission from the owner (Az-Zuhaily, 1996). Thus, Ibn Abd Rafi' viewed that encroachment on others

private land, such as to build a track or road is prohibited without permission from the proprietor.

***c) Encroachment on Public and Private Road***

Some jurists view that an encroachment over the public street is prohibited in Islam (Akbar, 1988; Al-Hathloul, 1996; Mohd Zakiul, 2004; Mohd Dani, 2007). However, this view does not represent the view of all jurists (Al-Hathloul, 1996). According to Al-Hathloul (1996), Malik did not prohibit the encroachment on public street if it does not cause any harm like narrowing or blocking the traffic system. Similarly there is no prohibition for small encroachment on any wide street (Al-Hathloul, 1996). The judgment on any encroachment case is usually conducted on individual basis, depending on certain circumstances (Al-Hathloul, 1996). According to Ibn Abd Rafi', encroachment on public road with purpose to extend a house such as building a room or courtyard is permissible.

In fact, the most important aspect to consider is not the encroachment itself, but the effect of the encroachment on the right of the public to pass through. As long as there is adequate space, convenience and easy access to the public; there is no issue of public encroachment (Al-Hathloul, 1996). Moreover, the encroachment of the street is a typical scenario in a traditional environment such as in Tunis (Abu-Lughod, 1971; Akbar, 1988; Al-Hathloul, 1996).

As for the private streets, it is not merely concerned about the danger caused by the invasion, but also dispense with the acquiescence from all abutters (Hakim, 1983). The encroachment on dead end street is prohibited except with the consent from all residents. Accordingly, any changes on a lane or cul-de-sac (private street) such as to project a cantilever or constructing an additional place known as the annex without consent from all abutters is regarded as an encroachment towards others (Hakim, 1986; Akbar, 1988). The rationale behind the needs of consent from all neighbours is due to the potential of future disputes resulting from the encroachment (Mortada, 2003). To prevent the disturbance and hindrance on the road, Ibn Abd Rafi' also emphasizes the importance of consensus from all neighbours.

To Ibn Abd Rafi', an attempt to block the entrance or change it to other position in dead end street is allowed if no harm caused to the neighbour. If the opening of entrance in a cul-de-sac is opposed by the abutter due to the harm caused, then it should be avoided. If it is otherwise, the approval should be obtained from all the residents. In a

case where some of the occupants living at the end of cul-de-sac who always by-pass the entrance under question agree and others disagree, there are two opinions;

a) All occupants have to agree to be able to open the entrance in a cul-de-sac.
b) If the occupants who agree live at the end of the cul-de-sac and always by-pass the proposed entrance, then it can be opened regardless of others who refused (Hakim, 1986).

### 3.6 Water Supply

Regarding the right to water, there are four significant rights to be highlighted. Namely; the right to drink (Haqq al-shafa), the right to irrigate (haqq al-shirb), the right to have a water canal for irrigation purpose (Haqq al-majra) and the right to discharge waste water (haqq al-masil).

In his book, Ibn Abd Rafi' said that if a person has given permission to someone to use its water supply to irrigate a plant, then he could not prevent that person afterward since the Prophet SAW has reminded that water must be shared for drinking and irrigation (Besim, 1986). If the owner still insisted on stopping the water supply, then he has the responsibility to compensate with certain agreed payment. However, notification must be given in advance if he insists on cutting the water supply from his neighbour.

In a case where someone uses the water supply to irrigate the plant without permission from the owner who arbitrarily silenced before this, he can still make an objection by an oath. Thus, the user should find his alternative to fix the water supply rather than encroach others' right (Mohd Dani, 2007).

### 3.7 The Objection of Harm

According to Ibn al-Rami, the dharar (damage) can be classified into two based on the time frame which is old (pre-existing) and new damage (Hakim, 1986 & Akbar, 1993). Referring to Sahnun, when there is a dispute on whether the harm is old or new, Ibn Abd Rafi' will regard it as old until proven to be new. His opinion contradict to Ibnul Hindi and Ibn Ziad. If a person opposes the building of something which many case harm upon its completion, he is responsible for performing an oath

declaring that his action does not mean the consent to such building (Ibn Abd Rafi', 1989).

Furthermore, the owner of bathroom and ovens, the threshing floor dust, tanners stink or others should be informed to prevent or eradicate the damage caused by his property. In Muin al Hukkam of Ibn Abd Rafi', there is a statement from Ibn Qassem and Ibn Attar, who stated that if a person is aware about the damages (either auditory, olfactory, visual or physical damages) that affected him, but he did not raise any objections within ten years, no objection is allowed after this period. Other scholars provide different opinions regarding the right to protest and its duration. For example, Ibn Ar-Rami Ibn Sahl stated that he loses the right if no objection made while Ibn Sahal provided fifteen years and Sahnun (d. 201/854) only give the maximum period of four to five years (Mohd Dani, 2007).

## 4. Conclusion

In general, it can be said that most of the views expressed by Ibn Abd Rafi' in the cases discussed are in line with the majority view of the scholars. Ibn Abd Rafi' explained of the actual situation or issue in built environment and its solution according to Islamic practice. His judgment and views were based on the reference to the expert or Qadi in his day. Ibn Abd Rafi' gave emphasis on removing dharar a priority and creating harmony for the benefit of the neighbourhood. The views expressed by Ibn Abd Rafi' are reliable and convincing as he had an authority and experience in handling cases on built environment.

In sum, we may say that the writing of Ibn Abd Rafi' is informative and significant in enriching the knowledge on dharar and dhirar in built environment.The book is relevant to be one of the additional references to address the contemporary issues in built environment. The preceeding discussion provides an understanding of how the Islamic perspectives functioned in built environment, specifically in the past. The traditional practices give significant lessons to be learnt and adapted to modern build environments. The spiritual consciousness of the social and physical aspects will ensure that the Muslims will manage the environment, according to Allah's commands for sustainable Islamic built environment in the future.

## 5. References

Abu-Ghazzeh, Tawfiq. (1994a). Human Purposes and the Spatial Formation of Open Spaces Al-Khallaf, Saudi Arabia. Journal; Architecture and Compartment/ Architecture and Behavior, Vol.10.

Abu-Ghazzeh, Tawfiq. (1994b). Built form and religion: Underlying structures of Jeddah Al-Qademah, traditional dwellings, and settlements review. Vol. 2. Berkeley: University of California, Center for Environmental Design Research.

Akbar, Jamel. (2002). Learning from tradition: land provision and population growth - the case of Saudi Arabia. Journal of King Saud University. Vol.14.

Akbar, Jamel. (1988). Crisis in the built environment; The case of the Muslim city. Singapore: A Mimar Book Concept Media.

Akbar, Jamel. (1984). Responsibility and the traditional Muslim built environment. Doctor Philosophy in Architecture. Art and environment studies, Massachusetts Institute of Technology, Cambridge.

Al-Hathloul, Saleh. (1996). The Arab-Muslim City: Tradition, continuity, and change in the physical environment. Riyadh: Dar Al Sahan.

Asiah Abdul Rahim. (2008). Housing from the Islamic perspective. Kuala Lumpur: IIUM.

Az-Zuhaily, Wahbah, Ahmad Shahbani (trans) (1996). Fiqh dan perundangan Islam. Jilid V. Kuala Lumpur: Dewan Bahasa dan Pustaka.

Bagaeen, Samer & Uduku, Ola. Eds. (2010). Gated communities: Social sustainability in contemporary and historical gated developments. London; Earthscan Publications.

Chen Haitao, Lou Leilei, Qiu Jiuzi. (2012). Accident Cause Analysis and Evacuation Countermeasures on the High-Rise Building Fires. Procedia Engineering. Volume 43, 2012, Pages 23-27. International Symposium on Safety Science and Engineering in China, 2012.

Etim E. Okon. (2012). The sources and schools of Islamic jurisprudence American Journal of Social and Management Sciences. Ph.D. Department of Religious/Cultural Studies, University of Calabar – Nigeria.

H. Xueˈ, B. Xu, J. Wu, Y. Wei. (2007). Prediction of temperature rise near condensing units in the confined space of a high-rise building. Building and Environment Journal. Volume 42, Issue 7, July 2007. 2480–2487.

Hakim, Besim Selim. (1986). Arabic-Islamic Cities; Building and planning principles. England: Routledge and Kegan Paul.

Ibn, A. -R. I. H., & Bin, A. M. Q. (1989). Muʻīn al-ḥukkām ʻalá al-qaḍāyā wa-al-aḥkām. Bayrūt, Lubnān: Dār al-Gharb al-Islāmī.

Ismawi Zen, Azila Ahmad Sarkawi & Alias Abdullah. Eds. (2008). Vision of an Islamic city: Urban planning; An Islamic perspective. Kuala Lumpur: Arah Publications

Mohd Dani Mohamad. (1997). Partial translation with critical introduction; Notes and selected commentaries on Ibnu Al-Rami's Kitab Al-I'lan Bi Ahkam Al-Bunyan. Doctor of Philosophy, International Islamic University Malaysia, Kuala Lumpur.

Mohammed, G.T. & Mahmoud, N. (2013). The edge environment in Cairo: An approach to reading the social pattern language of the Middle Eastern built environment. International Journal of Sustainable Built Environment.

Mortada, Hisham. (2003). Traditional Islamic Principles of Built Environment. London: RoutledgeCurzon.

Sharifah Fadylawaty binti Syed Abdullah. (2015). Assessment on the implementation of Islamic principles by gated communities in Shah Alam, Selangor. Master of Science in Built Environment. Kulliyah of Architecture and Environmental Design, International Islamic University Malaysia.