Al-Ahkam Istinbaṭ Method in the FATWA of Yusuf AL-Qaraḍawi for the Reform of Islamic Law

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Abstract: The research is concerned with the steps, methods, and strategies of istinbat Akham (cultivation of Islamic law) of Yusuf Al-Qaradawi in an effort to reform the Islamic law by means of doctrinal qualitative method. Data collection instruments are documentary studies of the works of al-Qaradawi, such as; Hady Al-Islam Fatawa Mu‘ṣirah consisting of three volumes, Al-Fataawa as-Syazzaah, Dirasah Fi Maqasid Fiqh as-Shari‘a, Fiqh Al-Waṣṭiyawya wa at-tajdid fi al-Islam, al-Ijtihadu fi as-Syari‘ ah al-Islamiyya and other books. Historical approach, comparative approach and conceptual approach with the science of ushul fiqh are applied in this research. The research results show that the concept of Islamic Law by Yusuf al-Qaradawi is, first, ijtihad, back to the source and objective of Islamic law, and second, modernization. The ijtihad here is ijtihad at-tarjīhi al-intiqā‘i and ijtihad al-ibdā‘i al-insyā‘i.

Keywords: Istinbat al-Ahkam Method, Fatwa, Reform of Islamic Law

1. Introduction

Society as a structure and a system will undergo changes as one of its subsystems also changes. Laws in the community would also face a reform. Law will continually evolve as long as the running of the world life, having rules, logic and theory of its own (Fuady, 2011: 57-126)

In sociology, law is described as community change relationship with the law. Laws could ratify the changes occurring in society (social controlling) and also change the society towards a better one (law as a tool of social engineering). (Dirjosisworo, 1983: 1-6) The norm changes resulting in a change of community will have a logical consequence of the changes towards the law. Manan states that that legal changes may occur if triggered by a variety of legal transcription factors happening in the community. (Manan, 2009: 57) Laws can undergo a change owing to factors modifying the law. (Soekanto, 2013: 8)

The problems that arise with regard to changes in laws and society is, whether Islamic law also changes with the changes in society or not; revelation as a source of law has been suspended from Allah to His Messenger Muhammad Saw since he died or not, while the problems faced by people and legal events keep growing in accordance with the development of society. At the present time, a mujtahid who continues to organize fatwa is Yusuf al-Qaradawi. He has issued modern fatwas entitled Hadya al-Islam Fatāwī Mu’āṣirahyang consisting of three volumes having three hundred fatwas. He also published a book about ijtihad of the modern times entitled al-Ijtihādu fi al-Shari‘ah Nazarātin Mu’a al-Islamiyya al-ijtihad Tahfilihyyatin fi al-Mu’āṣirdan and other books.

2. Research Method

Type of Method
Theoretically, this research is a qualitative research aiming to describe, summarize a variety of conditions, situations, or variables that arise in the community as an object of research, and to emerge the feature or a description of the condition, situation or specific variables (Bungin 2007: 48). Qualitative research aims to understand the phenomenon of what is experienced by research subjects, such as behavior, perception, motivation, action and others. (Moleong, 2002: 6). In this study, the researcher will explain the attitude committed by Al-Qaradawi to produce fatwas and his thoughts on the reform of Islamic law.

Source of Research
The research source consists of two sources: the primary and the secondary sources. The primary research sources are books written by Al-Qaradawi,: Hady Al-Islam fatawa Mu‘ṣirah consisting of three volumes, Dirasah fi ash-Syari‘iyah Maqasid Fiqh, al-ijtihad al-Mu‘āṣirah Baina al-Indibat wa al-infirād, Al-Fataawa as-Syazzaah, Fiqh Al-Waṣṭiyawya wa at-Tajjudīd fi al-Islam, al-Ijtihad al-Mu‘āṣirah Baina al-Indibat wa al-infirād, al-Ijtihādu fi as-Syari‘ ah al-Islamiyyahadand other books. While the secondary sources are all books of Islamic law relating to the problems in this study, such as usūl fiqh, legal sociology books, legal philosophy books and some others.

Research Approach
According to Peter Marzuki, there are several approaches in legal research, and by the approaches, the researchers will obtain information on various aspects of the issue for the problems. (Marzuki2005: 93). To answer and discuss the issues in this study, historical, comparative, and conceptual approaches are applied.

3. Theoretical Framework

Istinbāṭ al-Ahkām Model
Istinbāṭ al-Ahkām is an attempt of a mujtahid to find a law against a legal event based on the nas. In carrying out istinbāṭ al-Ahkām, a mujtahid refers to the revelation contained in the Qur‘an and Hadith. To reach istinbāṭ al-Ahkām, a mujtahid must master qawā’id lughatiyyah and qawā’id maknawiyyah. In the science of ushul fiqh there are
fifth, fourth, syari'ah Maqāsid syarī'ah, (Syatibi 2006: Juz II, 265). At the present time, based on the method of istinbāt al-Ahkam owned by a mujtahid it sometimes gives various opinions (aqwāl) among mujtahid on a legal event causing propositional contention (ta'āru ad-dillah) that could ultimately confuse the people. When there is a proposition conflict (ta'āru adillah) then tarjih is done. In the books of usul fiqh, tarjih always refers to sanad dan mutan of revelation: How far is the revelation accuracy to the recipient; the extent of the meaning of revelation to be accepted, either in verse or hadith. This has always been a reference in doing tarjih to obtain the opinions of rājiḥ and marjāḥ.

In the study of Islamic law, the grouping of legal events with the same and compatible lines emerge causing the same law. In terms of Islamic law this is called qawa’id fiqhîyyah. The use of qawa’id fiqhiyyah as a proportion causing a debate among the mujtahids, but they then make qawa’id fiqhiyyah to be agreed (mutattafaq) and this can be used as a proposition because the base is the revelation of the Qur’an and Hadith. Balaji states the necessity of qawa’id fiqhiyyah in ijtihad and fatwa at the present time. (Balaji, 2007: 291) Understanding qawa’id fiqhiyyah can help a mujtahid to draft a law on new legal events by incorporating them to the problems of the existing fiqhiyyah. (Azzam, 2001: 15).

Islamic law must bring a benefit and reject any form of vice, known as maqāṣid syarī’ah. The purpose of Islamic law should be recognized and realized by every mujtahid. The question then arising is how to cope a benefit contrary to the nas. In this case a concept states that nas should be given priority and the other benefit. As-Syatibi has explains that maslahah consists of three levels: darāri, hājī and tahsinī. A mujtahid should know the extents of the problems. (As-Syatibi 2006: Juz II, 265).

Al-Buti clearly explains about the terms of beneficiary as maqāṣid syarī’ah, to be based on five principles: first, Al-Maslahah should be in accordance with the maqāṣid syarī’ah, second, and not in contradiction with Alquran, third Al-Maslahah should not be contrary to the Sunnah, fourth, Al-Maslahah should not be contrary to qiyas, and fifth, Al-Maslahah should not be contrary to a higher Al-Maslahah (Al-Buti: 1973, 12).

The use of the theory of istinbāt al-aḥkām is concluded by Abubakar with three norms of istinbāt al-aḥkām: qawa’id lughawiyah, qawa’id ta’līyyah and qawa’id ta’līyyah istislahiyyah. Reasoning for this law appears when there is or not nas to set a legal event to obtain the norm. (Abubakar 2011: 80).

4. Fatwa

The word Fatwa derives from the word Ijtâ meaning description. However, it can simply be formulated that Ijtâ is an attempt to provide an explanation of the laws of syara’ by experts to people who do not know or are in need of explanation. (Qorib: 1997:272).

There are four elements in a fatwa: a mustafī (one asking for a fatwa), istifta’ (job asking for fatwa), mufti (one giving fatwa) and fatwa. From the process perspective Fatwa is one of the oldest products of Islamic law. Fatwa appears when someone asks for (mustafī) a legal event to mufti, then, the mufti will be thinking of the matter, having istinbāt so he understands the question and the law to be applied. At the time of understanding the issue and finding the law he will bear a fiqh and ultimately he will answer the question termed fatwa (legal advisory opinion) (Lubis, 2000: 19).

Fatwa as a form of Islamic law is more realistic than the other legal forms. Fatwa will not appear unless a legal event has occurred and thereby faced by the muslims. So it is reasonable when Ibnu al Qayyim states that fatwa undergoes changes adapted to progress of times, places, situations, conditions, intentions and other factors. (Ibn al-Qayyim al-Jawziyya, 1973, the Section II, 425).

Mufti is the one who must understand the law and birthplace of the law (Al-Juwaini; 1418 H, the Section II, 869) and because of this it is sometimes difficult to distinguish mufti, qādī, mujtahid and fāqiḥ. As his duty is to fit description of the Prophet and the guidance of Allah a mufti must meet the requirements of ijtihad. Mufti, qādī, mujtahid and fāqiḥ must all conform to the terms of ijtihad. A mufti must have two understandings according to Ibnu al Qayyim al-Jawziyya, the understanding of the legal events in question to him and understanding of exploring the laws of nas (fahm al-nas wa al-fiqh). A mufti who has met the requirements will not facilitate unlawful law. Therefore, preferably at the end of fatwa, a mufti should pray to Allah, reciting that Allah the Omniscient (wa billahi at-tafiaq, wallahu a’lam, wallahu al-muwafiq). While mustafī should pray for mufti to be able to help him by giving the right answer. (Ibn al-Qayyim al-Jawziyya 1973: Juz I, 37-87).

5. Reform of Islamic Law

Reform in the Arabic term is known as tajdid. As an instrument of Islamic legal reform, tajdid / reform has two meanings, first, when viewed in terms of the objectives, base, and fixed source, then reform means to restore everything to its origin. Secondly, reform means modernization, if the targets of tajdid are on things that do not have a base, and changeable source, such as a method, system, technique, strategy and others to be adapted to the circumstances of time and space. (Djamil: 1995, 6).
In terms of methods applied, reform can be grouped into four major categories: first using ta'liq method by combining two or more schools of thoughts in fiqh, either views combined between popular schools of thoughts or personal views of certain figures. Second, using takhyur method, choosing and selecting one of the views of a figure, called mazhab iman, more adopted according to need. Third, using siyasa syariah. Fourth, attempting to interpret the nas text suited to the needs and demands of modernity.

According Muzdhar, legal reform basically consists of two kinds: First, Intra doctrinal reform, the Islamic family law reforms undertaken by combining the opinions of several schools of thoughts or mazhab or taking another opinion out of the primary mazhab adopted. Second, extra-doctrinal reform, the reform law by providing a completely new interpretation of the existing nas. (Muzdhar and Nasution: 2003, 3-4).

6. Research Result

1) Law Reform Concept in the View of Yusuf Al-Qaradawi

In the view of Al-Qaradawi, a reform (tadjid) is a reversion to originality, so that something will look new again, by means of strengthening all its parts, repairing the worn-out and damaged, so it seems, or at least close to its original shape. Reform does not mean changing the character of the previous one or to something new, because such a thing cannot be called a reform. (Al-Qaradawi, 1994: 41). Reform means the ways how Islam firstly comes and grows and progresses and this is the real meaning of reform. (Al-Qaradawi, 2012: 198). In the view of Al-Qaradawi, the meaning of reform is tadjid (modernization) not tagrib (westernization), so he refuses to say if the Islamic legal reform is Westernized (Al-Qaradawi, 2012: 198).

When linked with the reform of Islamic law, Al-Qaradawi is of an idea that Islamic law reform needs ijtihad to provide a proportional solution to solve various problems in life (Al-Qaradawi, 1994: 53).

Ijtihad today is not only limited to the scope of the recent problems, but more than that, reviewing the study of the legacy of fiqh from the modern perspective and needs of people today to choose opinion, râijih and more feasible to realize maqâsid syari'ah and masâlih al-halq. According to Al-Qaradawi, if ijtihad is needed in every age, so our era badly needs ijtihad compared to the needs in the previous ages, due to a rapid change of life compared to that of previous eras. (Al-Qaradawi, 2012: 107)

For the reform of Islamic law, Al-Qaradawi offers two forms of ijtihad: ijtihad at-tarjihî al-intiqâ'î and ijtihad al-ibdâ'î al-insyâ'î. He states we are in the XV century of Hijrijah requiring the reforms of thought, broad and deep culture; back to the reform of ijtihad in its real form and activities in new two forms, namely yaitu ijtihad at-tarjihî al-intiqâ'î and ijtihad al-ibdâ'î al-insyâ'î. Ijtihad will eliminate all the difficulties faced by the Muslim community today by the Islamic rules and Ijtihad will give effective medical treatments to the Muslim community in Islamic perspective, without having to take materialistic and eastern- atheist Western products. (Al-Qaradawi, 2012: 65)

Al-Qaradawi explains that the moderate Islamic legal reform in conducting fatwa has its own criteria: first, Islamic law rejecting complicated attitude. Second Islamic law does not interfere with but does good as obliged by Allah to all His followers on everything; third not neglecting the Islamic hudud or law of Allah and the pillars and the terms of charity (Al-Qaradawi, 2012: 168). Thus, the concept of reform of Islamic law offered by Al-Qaradawi is in accordance with what is written by Djamil, namely tajdidyangle having two meanings; first, when viewed in terms of objectives, base, and unchangeable source, then the reform means to restore everything to originality. Second, reform means modernization, if the targets of tajdid are about things that do not have a, base, and changing source, such as a method, system, technique, strategy and others to be adapted to the circumstances of time and space (Djamil, 1995: 6).

Al-Qaradawi states that the meaning of ijtihad at-tarjihî al-intiqâ'î is to choose one opinion (qawwâl) that is made maqal in the books of turâs fiqih prepared for fatwa or qaḍâ’, where he shortly makes tarjih of one opinion (aqwal) among the existing opinions (Al-Qaradawi, 2012: 115). In this ijtihad, mujtahid concentration is to choose the opinion in the books turâs to be adapted to current needs. The steps taken by Al-Qaradawi for ijtihad at-tarjihî intiqâ’î ijtihad are as follows:

a) Understanding Mustaﬁf questions
b) Showing opinions of former Mujtahid scholars, along with the proportion.
c) Conducting Tarjih
d) Giving Verdict
e) Explaining sense
f) Submitting his opinion to Allah.

While the second form of ijtihad is needed to reform Islamic law, that is, ijtihad al-ibdâ'î al-insyâ'î. According to Al-Qaradawi, this ijtihad is the istinbat law against a problem among the existing problems. This happens because there is no former mujtahid ever discusses these issues, either the pre-existing problem or new ones (Al-Qaradawi, 2012: 126). The steps taken by Al-Qaradawi to conduct ijtihad al-ibdâ'î al-insyâ’î ijtihad are as follows:

a) Understanding a legal event in question
b) Looking for an expert’s opinion on legal events in question.
c) Noting the need and time of society
d) Ascertain if whether the question in question is in the corridor of ijtihâdi or not.
e) Providing the principles of Islamic law.
f) Deciding fatwa.
g) Showing sense
h) Submitting his opinion to Allah

When analyzed, the difference of steps of *ijtihad* lies on two forms, based on the use of proposition and understanding of legal events. The thing needed in *ijtihad at-tarjīhi al-intiqāṭ* is an understanding of the arguments used by the former mujtahid to be applied on the current legal event, so that it sounds modern with clear arguments; while for *ijtihad al-ibdāʾī al-insyāʾī* a mujtahid must truly understand the legal event earlier, before seeking the right proposition for a legal event that has not been discussed by the former mujtahid. If there is a nas setting a legal event then the ability for istinbāṭ al-ahkām with qawāʾid lafziyyah is indispensable. If there is no explicit nas, the ability of istinbāṭ al-ahkām by using qawāʾid maknawiyyah is needed.

3) **Strategy of Yusuf Al-Qaraḍāwī in Fatwa**

After explaining the steps taken by Al-Qaradawi in *fatwa* in the form of *ijtihād at-tarjīhi al-intiqāṭ* and *ijtihād al-ibdāʾī al-insyāʾī* in order to reform Islamic law, it can be explained the strategy (manāḥij) of Al-Qaradawi in *fatwa*. There are six strategies to be taken to reform Islamic law:

1) No fanaticism and no Taqāḍī (lā ḵaṣabīyyah wa lā taqāḍī)
2) Making things simple not complicated (yassirū wa lā tuʾissirū)
3) Talking to people with language of their time (mukhātab an-Nās bi lughat asl-ʾAsr)
4) Turning from Something Not useful.
5) Being Flexible.
6) Priving the right of *Fatwa* in the form of description and explanation (Al-Qaradawi, 2000: Volume I: 8-31).

The above six strategies formulated by Al-Qaradawi is very supportive to reform Islamic law. One of the basic strategies to reform Islamic law is not to be fanatic and talīd (lā ḵaṣabīyyah wa lā taqāḍī). Fanatical and dogmatic nature will lead to stagnation causing laziness to *ijtihad*, while one way to solve a problem is by means of *ijtihad* as a condition for Islamic law reform.

The distinctive quality of Al-Qaradawi is that he is not bound to any one of the school of thought or mazhab. He just takes the knowledge and methodology adopted by his teachers (Al-Qaradawi, 1992: 4). To reach this stage, one should certainly read a lot of books that have been written by the former mujtahid and understand the steps taken by them. Al-Qaradawi attends to the Hanafi mazhab in *istikhsān*, in Maliki in mṣlaḥah mursalāh, Syāfiʾi in qiyās and Hanbali in nāṣirusunnah. Al-Qaradawi also cites qawel of the companions, and also the opinions of Ibnu Hazm and Syiʾah in certain things that have a strong argument.

The second strategy carried out by Al-Qaradawi is to simplify and not to complicate things that are *ijtihādi*. This, according to Al-Qaradawi is based on two reasons. The first is that the law is built on simplification and eliminating difficulties for people. The second is feature of ever changing characteristics of age that requires good and simple practice of Islamic law. Simplification in this matter does not mean violating the laws of mukām and qatʿī.

The third strategy is to talk to people with the language of their time, a language that is easily understood by beneficiaries of *fatwa*. There are a few things to be known by a mufti in connection with the problem of language acquisition including: First, to speak rationally and not excessively. Second, not to use terms that are difficult to understand, and the third is to expose laws accompanied by wisdom and *īllat* in accordance with the principles of Islamic law.

The fourth strategy is not to make oneself busy in society except for something useful. A mufti often gets questions that are not serious, and even tending to be ridiculous to test the ability of a mufti. The questioners who want to ask mufti to get involved in hopeless debate, usually act as if they know everything, and they only wish to humiliate mufti. They want to drag mufti to something vicious just to satisfy themselves in spreading revenge and slander among humans. Therefore, a mufti must be smart in understanding the questions given to him.

The fifth strategy is moderate, that is between tafrīth (mitigating) with iftīrāt (aggravating) and between groups of slave changes (abīd at-taṭāwur) and a group of people who are old-fashioned and rigid in *fatwa* (al-muṭazzammin ʿālī ʾfatwā). A mufti should be in the middle between aggravating and mitigating, and between supporting changes without strong arguments and rigid old-fashioned or *jumūd* in *fatwa*.

Each time facing the questioners and answering their questions, Al-Qaradawi always thinks of himself as a mufti, teacher, muslih, doctors and counselors. Therefore, a mufti should be aware that his task he is making the foolish understand, the forgetful aware, the doubtful satisfied, the smart getting smarter and the believe getting better in faith.. One of the ways is by providing a clear *fatwa* clearly to the petitioner or mustaṭī without making him more confused than before (Ibnul Qayyim al-Jauziyyah 1973: Juz IV, 187).

4) **Istinbāṭ al-Ahkām Method by Yusuf Al-Qaraḍāwī in facing the reality of people**

The form of *ijtihād* offered by Al-Qaraḍāwī to reform Islamic law, as well as the steps and strategies faced will affect istinbāṭ al-ahkām method he has done. Basically there are two studies on legal events that will be born of *fatwa* by Al-Qaradawi: the first legal event is in term of the presence or absence of review by the former mujtahid and second legal event with the presence or absence of the nas directly governing the law in question.

The steps taken by Al-Qaradawi against the legal events that have been reviewed by the former mujtahid is choosing (takhayyur) between the available opinion (qawel) by reviewing the arguments used by the mujtahid. Towards the arguments used by the mujtahid, there are two possibilities: the proposition of nas and ghirṣa nas. When the proposition used is nas, Al- Qaraḍāwī gives an approach with qawāʾid lughawiyyah, whereas if the proposition used is not in the form of direct nas, then Al- Qaraḍāwī gives an approach with qawāʾid maknawiyyah.
Towards the studies that have been done by the former mujtahid using nas. Al-Qaradawi then uses the theory of ushu fiqh on istinbāt al-akhkām. (AbūZahrah: 1958, 115-135). In the ijtihād at-tarjīḥ al-intiqāʾ of Al-Qaradawi will examine the propositions put forward by the mujtahid by an approach of qawāʿid lughawiyyah on the proposition relating to the nas. He constantly sees the five norms of language (Al-Khan, 2003: 121-375), the first, to see the level of clarity (al-alfāz al-wādīḥ) in the form of mufakkan, muftasāar, nas and zāhir and obscurity (al-alfāz gair al-wādīḥ) in the form of khaft, muskīl, mujmāl, and mutasayyib. Second, Al-Qaradawi sees the appointment towards the meaning (turāq ad-dillālāh āla al-maʿna) that is like nas, Nas isyārat nas, dillālāh nas, and iqtīdāʾ nas. Third, Al-Qaradawi sees the scope of alfatāz and range of its dalālāh in the form of ām and khāṣ, muftaṣār and muqayyad. Fourth, Al-Qaradawi examines whether the nas has intrinsic meaning or magaṣir or sarīḥ or kīnāyāh. Al-Qaradawi remains to qawāʿid lughawiyyah in doing istinbāt al-ahkāmīdari nas.

In ijtihād at-tarjīḥ al-intiqāʾ, Al-Qaradawi has succeeded in formulating methods of tarjīḥ with the new standard. He is not only bound to the sanad and matan nas, but he also views from two perspectives: hujjah strength (aqwā hujjah) and the strength of the proposition (arjah dalīlān). On the side of qawāʿ hujjah, Al-Qaradawi will see from the standpoint of the strength of legal sources and methods of istinbāt al-akhkām. When researching qawāʿ hujjah, Al-Qaradawi has a principal to precede Alqurān than the Sunnah, Sunnah shābīhah than ijtihād zannī, wādīḥ dalālāh than ghairu wādīḥ dalālāh, than iysārat, iqtīdāʾ and dalālāh, mantāq than mafthūm. This can be seen clearly when Al-Qaradawi making opinion of tarjīḥ that the trustee shall ask for permission to girls who are under guardianship in time of getting married. . This is done by Al-Qaradawi because of ‘ibārat nasārāj or dalālāh nas, or mantāq arjah or mafthūm. For example, the fatwa on thalāq dropped by a drunken husband, Al-Qaradawi is of an idea that the thalāq is unlawful and cancelled because there is the proposition from the hadith of the Prophet (Al-Qaradawi, 2000: Volume I, 550-556). Al-Qaradawi will still cling to prioritize strong hujjah rather than weak one.

If qawāʿ hujjah is not possible, the next step is to choose proposition of rājīḥ (arjah dalīlān) between the existing aqwāl. The standard of tarjīḥ is usually in the book of usūl always following the norms of kađah lughawiyyah and sanad and matan in the hadith. Al-Qaradawi has successfully developed the standards of tarjīḥ:
1) Selecting the most feasible idea for us at the present time (alyaq bi zamānīn). Al-Qaradawi chooses a more feasible idea to be applied in our time.
2) Choosing a more human opinion (arfaq bi an-Nās). Al-Qaradawi will choose among the existing aqwāl based on the nature of humanity. A more human opinion will be seeded by Al-Qaradawi.
3) Choosing opinion closer to the ease of syariāt (aqråbū lā lā yusrī as-Syari′i).This is consistent with the strategy adopted by Al-Qaradawi over the fatwa.
4) Choosing a more mainstream opinion to realize the maqāsid syari′i and benefits of beings (masālih al-khalq) and refuses expediency from beings. Al-Qaradawi realizes that the goal of Islamic law is to gain benefits and reject expediency (Al-Qaradawi, 2012: 117).

In the view of Al-Qaradawi, choosing the existing opinion should be according to the needs not talīf. He states that talīf is lapsing an opinion with another without the proposition, while tarjīḥ done is based on the proposition (Al-Qaradawi, 2012: 117). Talīf dan tarjīḥ are different from the standpoint of the proposition and argument. Al-Qaradawi also explains that ijtihād at-tarjīḥ al-intiqāʾ is may be out of the four schools or muḥzāb to choose one opinion of fuqahā’ of the friend Tabi’in or anyone after them from Ṣalaḥ Imam (Al-Qaradawi, 2012: 118 ). Therefore, according to Al-Qaradawi in doing tarjīḥ, muḥfīṣ is not to be bound by the opinion of the four schools, or muḥzāb but he must restore to the opinions of friend, or tabi’in or imam ṣalaf having strong propositions and clear arguments. This is proved, done by Al-Qaradawi himself, in which he argues whether a Muslim may inherit from his non-Muslim parents and vice versa. This is taken by Al-Qaradawi from the opinions of the companions and tābi’in, namely Muawwiyyah and Ibn Masrūq and others who agree with this (Al-Qaradawi, 2000: Juz III, 693). Al-Qaradawi also argues that the grandchildren should receive inheritance by waṣaṣ̱ waḥiḥah, or practicing the verses instructing to distribute the inheritance to any person present or under the laws of finance the descents. An uncle is obliged to finance his nephew whose father has died earlier. Al-Qaradawi does not use the law of fara′id so that the grandchildren could inherit from his grandfather whose father has died earlier, but Al-Qaradawi uses another proposition (Al-Qaradawi, 2000: Juz I, 538-542).

When there is no nas governing textually against a legal event, Al-Qaradawi also refers to the norms of makanawiyyah already existing in the books of ushu fiqh, such as ḳīmā’, Qiyās, Fatwā as-Sakāhī, Iṣṭiḥsān, Al-Urf, Al-Musāliḥ al-Mursalā, Az-Zarā’i, Iṣṭiḥsāh, and Syar’u man Qablana. All these norms are basically used by Al-Qaradawi in istinbāt al-ahkām. This is understandable because in ijtihād at-tarjīḥ al-intiqāʾ the former mujtahid has already used these rules earlier.

While in ijtihād al-ibdāʾi al-īnṣyāʾi, Al-Qaradawi more frequently uses qiyāsān qawāʿi’d fiqhīyyah, for example in the issues of bank interest and narcotics. Al-Qaradawi makes qiyās of bank interest to ribā by equation of ‘illat that is increasing (liziyādah) without effort. According to Al-Qaradawi this is included in qiyās aulād more dangerous than the usury that exists at the time of ḳahiliyyah. Whereas in the case of drugs, Al-Qaradawi also makes qiyās on drugs to wine as the ‘illat eliminates consciousness, causing weakness and narcotics is included into bad nutrients. (khābāʾiš). (Al-Qaradawi, 2000: Juz II, 613 -616). When a law cannot be applied to certain legal events owing to certain specified circumstances then, Al-Qaradawi istinbāt al-ahkām by istiḥsān method, in which Al-Qaradawi turned from qiyās jālī to qiyās khaft or from laws of kullī to juzʿī. (Khallal, 1978: 58). For example in the purchase of a house with banking usury service and a Muslim working on usurious bank in Europe.
According to Al-Qaradawi, a house is very important for the Muslims in Europe to protect his family and preaching, while he does not have the cash to buy a house. He is able to buy a house in installments using the service of the bank, but because there is no syari’ah bank he uses usury banking service. At this situation, according to Al-Qaradawi he may use the usury banking service to buy a house. (Al-Qaradawi, 2000: Juz III, 645-650). Similarly, a young man who has been looking for work, but has not got it except working in a usury bank. According to Al-Qaradawi he is allowed to work in the bank because he needs a job, he needs the cost of living, and not all the operation of banks are in the form of usury as there are payment services, general services and also safety box and others. And if the Muslim youth does not work on usurious bank, it is predicted that the bank later will be dominated by non-Muslims. On that basis, Al-Qaradawi allow the youth to work at the usurious banks (Al-Qaradawi, 2000: Juz I, 646-649). This is the method of istihsans.

Meanwhile, if seen from the methods used, reforming Islamic law can be grouped with takhayyur method, that is by choosing and selecting one of the views mazhab imam more in line with current needs. He says he is not taqlif because he understands the legal arguments (dalil).

In order to reform Islamic law, Al-Qaradawi keeps referring to the Qur’an and the Hadith for istinbath al-ahkâm. This principle becomes clear when he writes the book of Kitâba Nataʿāmalu Maʿal Qurʾānīndan Kitâba Nataʿāmalu Maʿa as-Sunnah an-Nabawiyyah. In these two books he explains that the Qur’an and Sunnah are the two sources of Islamic law. Only Al-Qaradawi uses nas qatʿi as a proposition that cannot be denied, while zamanı becomes the line of ijithad. Nasqat´i al-wurûd wa dalâlah becomes the main source, while zamanal-wurud wa dalâlah becomes ijithad to realize maqasid syari’ah that is jalbu al-masâlih wa dar’u al-maṣâlih.

Based on the research carried out, Al-Qaradawi differs from some other scholars in that he dares to leave hadîs ahâd which according to one group is sahib but he says it is not sahib because it conflicts with maslahah. This is seen when he argues that Muslims can inherit non-Muslims, although in hadîs ahâd, it is explained in the mannters of zâhir that people of different religions do not inherit each other. In the view of Al-Qaradawi, this hadith is contrary to the existing beneficiaries. The outlook of Al-Qaradawi on hadîs ahâd is very clear. He uses hadîs ahâd as a proposition if it meets the requirements of hadîs maqmîl. When the hadith is contrary to the welfare, Al-Qaradawi prioritize benefit. This statement is expressed by Al-Qaradawi that there is no qat’i syariat law which violates the human benefit of qat’i. For that, an idea that qat’i benefit would get contradiction is hypothetical theory, not reality. However, if there is qat’i benefit contrary to nas zamanı then qat’i benefit should be prioritized. (Al-Qaradawi, 2006: 149). In fact, according to Al-Qaradawi refusing hadîs ahâd is not included in then non-Muslims or kafr. People reject parts of hadîs ahâd narrated by Bukhârî and Muslim, or one of them because they think that the tradition is contrary to dalîlah al-Qur’âna al-wardîlah, or contrary to the hadîths believed to be mutawawir or contrary to science of qat’i’ or the hadith is contrary to historical fact. (Al-Qaradawi, 1994: 185-186). Al-Qaradawi also explains that it is allowed to reject hadîs sahibâpa if contradicting Alqur, or contrary to aqal and science or the hadith is contrary to another hadith (al-Qaradawi, 1996: 131-133).

Thus, if it is linked with the view of Wael B. Hallaq about the response of Muslim thinkers to reform Islamic law there are two, that he calls religious utilitarianism and religious liberalism. According to the writer, Al-Qaradawi includes in the school religious utilitarianism, as he does not get rid of the understanding of textual literature and still refers to old literature (turāz). He does not dare to depart from the free thought so that he is included in religious leberalism (Hallaq, 1997: 214-231).

Compared with the theory of Islamic legal reform by Muzdhar, the Islamic legal reform carried out by Al-Qaradawi is included in intra doctrinal reform, namely the legal reforms undertaken by combining the opinions of several schools or mazhab or taken from other opinions out of the primary mazhab adopted.

7. Closing

The concept of Al-Qaradawi of Islamic legal reform is ijithad. He offers two forms of renewal of ijithad to Islamic law, those are ijithad at-tarjihi al-intiqa’i and ijithad al-ibdâli al-insya’i. These two forms of ijithad affect the ijithad steps he takes and so the reform of Islamic law is realized. In ijithad at-tarjihi al-intiqa’i, Al-Qaradawi does tarjihi with two standards, namely aqwâ hujjah and arjah dalîlan.

At the stage of arjah dalîlan, Al-Qaradawi formulates four standards to reform the Islamic law, first choosing the most viable opinion for our period (alyaqq bi zamanînâ), second choosing an opinion tending to humanity (aryaqq bi an-Nâs), third choosing opinion closer to the ease of syariat (aqrobu ilâ yusri as-Syarî’ah) and fourth choosing the more mainstream opinion to realize maṣâlih syari’ah for the welfare of the people (maṣâlih al-khalq) and refusing bad things from beings.
References


[22] Al-Qaraḍawī, ‘Āmus, Al-Mar’a iyyah al-‘Ulyāfī al-‘Īlām li al-Qur’ānīwa as-Sunnah; Dawābiṭ wa Muḥāzir fī al-

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