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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, strategies, and methods of istinbat Ahkam (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 documentation studies of the works of al-Qaradawi, such as; Hady Al-Islam Fatawa Mu'aṣirah consisting of three volumes, Al-Fataawa as-Syazzah, Dirasah Fi Maqasid Fiqh as-shari'a, Fiqh Al-Waṣṭiyyah 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'ī 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). (Dirdjosisworo, 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 *Hadyu al-Islam Fatāwi 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-Shariah Nazarātin Ma'a al-Islamiyya al-ijtihad Taḥlīliyyatin fi al-Mu'āsirdan* 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'āṣirah* consisting of three volumes, *Dirasah fi ash-Syar'iyyah Maqasid Fiqh, al-ijtihad al-Mu'āshirah Baina al-Indibat wa al-infirād, Al-Fataawa as-Syāżżah, Fiqh Al-Waṣṭiyyah wa at-Tajadid fi al-Islam, al-Ijtihad al-Mu'ashirah Baina al-Indibat wa al-infirad, al-Ijtihādu fi as-Syari 'ah al-Islāmiyyahdan* and other books. While the secondary sources are all books of Islamic law relating to the problems in this study, such as *uṣūl 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-Aḥkām* Model**
Istinbāṭ al-Ahkam is an attempt of a *mujtahid* to find a law against a legal event based on the *nas*. In carrying out *istinbāṭ al-Ahkam*, a *mujtahid* refers to the revelation contained in the Qur'an and *Hadith*. To reach *istinbāṭ al-Ahkam*, a mujtahid must master *qawa'id lughaiwiyyah and qawa'id maknawiyyah*. In the science of ushul fiqh there are

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five *qawa'id lughaiwiyyah*; the is first, look at the level of clarity (*al-Alfaz al-wāḍiḥah*) in the forms of *muhkam*, *mufasaar*, *nas* and *zahir* and ketidakjelasannya (al-Alfaz gairu al-Wadih) in the form of silent, abstruse , mujmal and *mutasyabih*. Second, meaning reference (*turuq ad-Ala al-ma'nā dilalah*), namely *ibārat naṣ, isyārat naṣ,* , and *iqtiḍā' nas*. Third, the scope of *lafaz* and range of *dalalah* in the forms of *'am* and *khas*, *mutlaq* and *muqayyad*). Fourth, the shape of *sighat* whether *taklīfiamar* or *nahyu*. Fifth, the use of *lafaz* to its meaning, *hakiki* or *majazi* or *sarīḥ* or *kināyah*.

Whereas if there is no *nas* governing a legal event, a *mujtahid* uses *qawa'id maknawiyyah*, covering *Ijma ', Qiyas, Fatwa al-Sahabi, Istihsan, Al-urf, Al-Maṣāliḥ al-Mursalah, Az-Zarā'i' , Istiṣhāb, and Syar'u man Qablana.* Thus, the mujtahid does *istinbāṭ al-Ahkam* always refering to both norms, namely *lughaiwiyyah* and *qawa'id maknawiyyah.*

At the present time, based on the method of *istinbāṭ al-Ahkam* owned by a *mujtahid* it sometimes gives various opinions (aqwāl) among *mujtahid* on a legal event causing propositional contention (*ta'āruḍ adillah*) that could ultimately confuse the people. When there is a proposition conflict (*ta'āruḍ adillah*) then *tarjih* is done. In the books of *ushul fiqh*, *tarjih* always refers to *sanad* dan *matan* 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 *tarjīḥ* to obtain the opinions of *rājiḥ* and *marjūḥ*.

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 fiqhiyyah*. 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 (*muttafaq*) 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: *ḍarūrī, hājī* and *taḥsinī*. A *mujtahid* should know the extents of the problems. (As-Syatibi 2006: Juz II, 265).

Al-Buti clearly explains about the terms of beneficiaries as *maqāsid syarī'ah,* to be based on five principles,: first, *Al-Maṣlahah* should be in accordance with the *maqāsid 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 *istinbāṭ al-aḥkām* is concluded by Abubakar with three norms of *istinbāṭ al-aḥkām*: *qawā'id lughawiyyah, qawā'id ta'liliyyah* and *qawā'id ta'liliyyah istiṣlāhiyyah.* 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 *Iftā* meaning description. However, it can simply be formulated that *Iftā* 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 *mustaftī* (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 (*mustafti*) a legal event to *muftī*, then, the *mufti* will be thinking of the matter, having *istinbaṭ* 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 Ibnul Qayyim states that *fatwa* undergoes changes adapted to progess 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 *muftī, qāḍi, mujtahid* and *fāqih.* As his duty is to fit description of the Prophet and the guidance of Allah a *mufti* must meet the requirements of *ijtihad*. *Muftī, qāḍi*, *mujtahid* and *fāqih* must all conform to the terms of *ijtihad*. A *mufti* must have two understandings according to Ibnul Qayyim al-Jawziyya, the understanding of the legal events in question to him and understanding of exploring the laws of *nas* (*fahm al-wāqi'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 is the Omniscient (*wa billahi at-taufiq, wallahu a'lam, wallahu al-muwafiq*). While *mustaftī* should pray for *muftī* 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).

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In terms of methods applied, reform can be grouped into four major categories: first using *talfīq* 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 imam*, more adopted according to need. Third, using *siyasah 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 Yūsuf Al-Qaraḍāwī

In the view of Al-Qaradawi, a reform (*tajdīd*) 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 *tajdīd* (modernization) not *tagrīb* (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).

Itihad 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, *rājiḥ* and more feasible to realize *maqāṣid syarī'ah* and *maṣāliḥ 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*: *ijtihād at-tarjīhī al-intiqā'ī* and *ijtihād al-ibdā'i al-insyā'i.* He states we are in the XV century of Hijriah 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 *jtihād at-tarjīhī al-intiqā'ī* and *ijtihād al-ibdā'i al-insyā'i*. *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 offerd by Al-Qaradawi is in accordance with what is written by Djamil, namely *tajdīd*yang 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).

2) Steps of Yūsuf Al-Qaraḍāwī to Conduct Istinbāṭ al-Ahkām in his Fatwas

In conducting *fatwa*, Al-Qaradawi is not separated from the form of *ijtihad* he offers for Islamic law reform: *ijtihād at-tarjīhī al-intiqā'ī* dan *ijtihād al-ibdā'ī al-insyā'ī.* Based on the results of a study of 12 units of the above analysis, each form of *ijtihad* requires different steps but in one frame to the Islamic legal reform in accordance with *maqāṣid syarī'ah*, that is to realize the benefit and refuse the unlawfulness for the people.

Al-Qaradawi states that the meaning of *ijtihād at-tarjīhī al-intiqā'ī* is to choose one opinion (*qawl*) that is made *nuqil* in the books of *turās fiqhī* prepared for *fatwa* or *qaḍā"*, where he shortly makes *tarjīḥ* 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 *turas* to be adapted to current needs. The steps taken by Al-Qaradawi for *ijtihād at-tarjīḥī intiqā'i* ijtihad are as follows:

a) Understanding *Mustaftī* questions
b) Showing opinions of former *Mujtahid* scholars, along with the proportion.
c) Conducting *Tarjīḥ*
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, *ijtihād al-ibdā'i al-insyā'ī.* 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 *ijtihād al-ibdā'i al-insyā'ī*ni 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) Ascertaining whether the issue in question is in the corridor of *ijtihadi* or not.
e) Providing the principles of Islamic law

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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 *ijtihād at-tarjīhī al-intiqā'ī* is an understanding of the arguments used by the former *munjtahid* to be applied on the current legal event, so that it sounds modern with clear arguments; while for *ijtihād al-ibdā'ī al-insyā'ī* 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-aḥkām* with *qawā'id lafziyyah* is indispensable. If there is no explicit *nas*, the ability of *istinbāṭ al-aḥkām* by using *qawā'id maknawiyyah* is needed.

3) Strategy of Yūsuf Al-Qaraḍāwī in Fatwa

After explaining the steps taken by Al-Qaradawi in *fatwa* in the form of *ijtihād at-tarjīhī al-intiqā'ī* and *ijtihād al-ibdā'ī al-insyā'ī* in order to reform Islamic law, it can be explained the strategy (*manāhij*) of Al-Qaradawi in *fatwa*. There are six strategies to be taken to reform Islamic law:

1) No fanaticism and no *Taqlid* (*lā 'Aṣabiyyah wa lā taqlīd*)
2) Making things simple not complicated (*yassirū wa lā tu'assirū*)
3) Talking to people with language of their time (*mukhātab an-Nās bi lughat asl-'Asr*)
4) Turning from Something Not useful.
5) Being flexible.
6) Priving the right of *Fatwa* in the form of description and explanation (Al-Qaraḍāwī, 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 *talid* (*lā 'Aṣabiyyah wa lā taqlīd*). 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 *mahzab*.. 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 *istiḥsān*, in Maliki in *maṣlaḥah mursalah*, Syafi'i in qiyās and Hanbali in *nāṣirusunnah*. Al-Qaradawi also cites *qawl* of the companions, and also the opinions of Ibnu Hazm and Syi'ah in certain things that have a strong argument.

The second strategy carried out by Al-Qaraḍāwī is to simplify and not to complicate things that are *ijtihadi*. 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 *muhkam* and *qaṭ'ī*.

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 '*illat* in accordance with the principles of Islamic law.

The fourth strategy is not to make oneself busy in society except for something useful. A *muftī* 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 *tafrith* (mitigating) with *iftrat* (aggravating) and between groups of slave changes (*abīd aṭ-taṭawwūr*) and a group of people who are old-fashioned and rigid in *fatwa* (*al-mutazammitūn fī al-fatwā*). A mufti should be in the middle between aggravating and mitigating, and between supporting changes without strong arguments and rigid old-fashioned or *jumud* 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 hesitant steady, the arrogant humble, 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 *mustafi* without making him more confused than before (Ibnul Qayyim al-Jauziyah 1973: Juz IV, 187).

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

The form of *ijtihad* 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 (*qawl*) by reviewing the arguments used by the *mujtahid*. Towards the arguments used by the *mujtahid*, there are two possibilities: the proposition of *nas* and *ghairu naṣ*. When the proposition used is *nas*, Al- Qaraḍāwī gives an approach with *qawa'id lughawiyyah*, whereas if the proposition used is not in the form of direct *nas*, then Al- Qaraḍāwī gives an approach with *qawaid maknawiyyah*.

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Towards the studies that have been done by the former *mujtahid* using *nas*, Al- Qaraḍāwī then uses the theory of *ushul fiqh* on *istinbāṭ al-ahkām*. (AbūZahrah: 1958, 115-135). In the *ijtihād at-tarjīhī al-intiqā'ī,* Al- Qaraḍāwī will examine the propositions put forward by the *mujtahid* by an approach of *qawā'id 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-wāḍiḥah*) in the form of *muhkam*, *mufasaar*, *nas* and *zāhir* and obscurity (*al-alfāz gairu al-wāḍiḥ*) in the form of *khafī*, *musykil*, *mujmal*, and *mutasyabih*. Second, Al- Qaraḍāwī sees the appointment towards the meaning (*turūq ad-dilālah āla al-ma'nā*), that is 'like *nas*, Nas *isyārat naṣ* , *dilālah naṣ*, and *iqtiḍā' naṣ*. Third, Al- Qaraḍāwī sees the scope of *lafaz* and range of its *dalālah* in the form of *ām* and *khāṣ*, *muṭlaq* and *muqayyad*). Fourth, Al-Qaraḍāwīmelihat form sighat whether taklīfiamar or nahyu. Fifth, Al- Qaraḍāw examines whether the *nas* has intrinsic meaning or *majazi* or *sarīḥ* or *kināyah*. Al-Qaraḍāwī remains to *qawaid lughawiyyah* in doing *istinbāṭ al-aḥkām*dari *naṣ*.

In *ijtihād at-tarjīhī al-intiqā'ī*, Al- Qaraḍāwī has succeeded in formulating methods of *tarjīḥ* with the new standard. He is not only bound to the *sanad* and matan *naṣ*,, but he also views from two perspectives: *hujjah* strength (*aqwa hujjah*) and the strength of the proposition (*arjah dalilan*). On the side of *aqwā hujjah*, Al- Qaraḍāwī will see from the standpoint of the strength of legal sources and methods of *istinbāṭ al-ahkām*. When researching *aqwā hujjah*, Al-Qaraḍāwī has a principal to precede Alquran than the *Sunnah*, *sunnah ṣaḥiḥah* than *ijtihād zannī*, *wāḍiḥ dalālah* than *ghairu wāḍiḥ dalālah*, than *isyārat*, *iqtiḍā'* and *dalālah*, *mantūq* than *mafhūm*. This can be seen clearly when Al-Qaraḍāwī 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- Qaraḍāwī because of '*ibārat naṣarjāḥ* or *dalālah naṣ*, or *mantūq arjāḥ* or *mafhūm*. For example, the *fatwa* on *thalaq* dropped by a drunken husband, Al- Qaraḍāwī is of an idea that the thalaq is unlawful and cancelled because there is the proposition from the *hadith* of the Prophet (Al-Qaradawi, 2000: Volume I, 550-556). Al- Qaraḍāwī will still cling to prioritize strong *hujjah* rather than weak one.

If *aqwā hujjah* is not possible, the next step is to choose proposition of *rājīh* (*arjaḥ dalīlan*) between the existing *aqwāl*. The standard of *tarjīḥ* is usually in the book of *uṣūl* always following the norms of kaedah *lughawiyyah* and *sanad* and matan in the *hadith*. Al- Qaraḍāwī has successfully developed the standards of *tarjīḥ*:

1) Selecting the most feasible idea for us at the present time (*alyaqu bi zamaninā*). Al- Qaraḍāwī chooses a more feasible idea to be applied in our time.
2) Choosing a more human opinion (*arfaqu bi an-Nās*). Al-Qaraḍāwī will choose among the existing *aqwal* based on the nature of humanity. A more human opinion will be seeded by Al- Qaraḍāwī.
3) Choosing opinion closer to the ease of syariat (*aqrabu ilā yusri as-Syarī'ah*).This is consistent with the strategy adopted by Al- Qaraḍāwī over the *fatwa*.
4) Choosing a more mainstream opinion to realize the *maqāṣid syarī'ah* and benefits of beings (*maṣālih al-khalq*) and refuses expediency from beings. Al-Qaraḍāwī realizes that the goal of Islamic law is to gain benefits and reject expediency (Al-Qaradawi,

In the view of Al- Qaraḍāwī, choosing the existing opinion should be according to the needs not *talfīq*. He states that *talfīq* is lapping an opinion with another without the proposition, while *tarjīḥ* done is based on the proposition (Al-Qaradawi, 2012: 117). *Talfīq* dan *tarjīḥ* are different from the standpoint of the proposition and argument. Al-Qaraḍāwī also explains that *ijtihād at-tarjīhī al-intiqā'ī* may be out of the four schools or *mahzab* to choose one opinion of *fuqahā'* of the friend Tabi'īn or anyone after them from *Salaf* Imam (al-Qaradawi, 2012: 118). Therefore, according to Al- Qaraḍāwī in doing *tarjīh, muftī* is not to be bound by the opinion of the four schools, or *mahzab* but he must restore to the opinions of friend, or *tabi'in* or *imam salaf* having strong propositions and clear arguments. This is proved, done by Al- Qaraḍāwī himself, in which he argues whether a Muslim may inherit from his non-muslim parents and vice versa. This is taken by Al- Qaraḍāwī from the opinions of the companions and *tābi'īn*, namely *Muawwiyah* and *Ibnu Masruq* and others who agree with this (Al-Qaradawi, 2000: Juz III, 693). Al-Qaradawi also argues that the grandchildren should receive inheritance by *waisat wajibah*, 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- Qaraḍāwī does not use the law of *fara'id* so that the grandchildren could inherit from his grandfather whose father has died eaarlier, but Al- Qaraḍāwī uses another proposition (Al-Qaradawi, 2000: Juz I, 538-542).

When there is no *nas* governing textually against a legal event, Al- Qaraḍāwī also refers to the norms of *maknawiyyah* already existing in the books of *ushul fiqh*, such as *Ijmā', Qiyās, Fatwā aṣ-Saḥābī, Istiḥsān, Al-'Urf, Al-Maṣāliḥ al-Mursalah, Az-Zarā'i', Istiṣhāb,* and *Syar'u man Qablana.*. All these norms are basically used by Al-Qaraḍāwī in *istinbāṭ al-ahkām*. This is understandable because in *ijtihād at-tarjīhī al-intiqā'ī* the former *mujtahid* has already used these rules earlier.

While in *ijtihād al-ibdā'i al-insyā'i*, Al- Qaraḍāwī more frequently uses *qiyās*dan *qawā'id fiqhiyyah*, for example in the issues of bank interest and narcotics. Al- Qaraḍāwī makes *qiyas* of bank interest to *ribā* by equation of *'illat* that is increasing (*liziyādah*) without effort. According to Al- Qaraḍāwī this is included in *qiyās aulā* more dangerous than the usury that exists at the time of *jahiliyyah*. Whereas in the case of drugs, Al- Qaraḍāwī also makes *qiyas* on drugs to wine as the '*illat* eliminates consciousness, causing weakness and narcotics is included into bad nutrients. (*khabā'iṡ*). (Al-Qaradawi, 2000: Juz II, 613 -616). When a law cannot be applied to certain legal events owing to certain specified circumstances then, Al- Qaraḍāwī *istinbāṭ al-ahkām* by *istiḥsān* method, in which Al- Qaraḍāwī turned from *qiyās jalī* to *qiyās khafī* or from laws of *kullī* to *juz'ī*. (Khallaf, 1978: 58) .For example in the purchase of a house with banking usury service and a Muslim working on usurious bank in Europe.

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According to Al- Qaraḍāwī, 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- Qaraḍāwī 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- Qaraḍāwī 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-Qaraḍāwī allow the youth to work at the usurious banks (Al-Qaradawi, 2000: Juz I, 646-649). This is the method of *istiḥsān*.

Meanwhile, when a legal event can be grouped into certain *furū* Al- Qaraḍāwī then uses *qawā'id fiqhiyyah*, such as using a usurious bank services of usury to buy a house as needed. The norms used are *aḍ-darūratu tubīḥu al-mahzurāt* (emergency, allowing all the forbidden) and *aḍ-darūratu tuqaddaru bi qadriha* (emergency should only be in the range of emergency). In smoking fatwa, Al- Qaraḍāwī uses the norm of *aḍ-ḍararu yuzālu* (all the exacerbating must be eliminated, Al-Qaradawi, 2000: Juz I, 694-710), and in the case of body organ transplantation, Al- Qaraḍāwī uses the norm of *al-aṣl fī al-asyā'i al-ibāḥah hattā yadulla ad-dalīl 'alā taḥrimihā* (every thing is allowed as long there is a proposition forbidding) and the norm of *al-hājatu tanzilu manzilah aḍ-ḍarūrah* (needs can be an emergeny, Al-Qaraḍāwī, 2000: Juz II , 583-594)

In order to reform Islamic law, al- Qaraḍāwī keeps referring to the Qur'an and the *Hadith* for *istinbāṭ al-āḥkām.* This principle becomes clear when he writes the book of *Kaifa Nata'āmalu Ma'al Qur'āni*dan *Kaifa Nata'āmalu Ma'a 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 *naṣ qaṭ'ī* as a proposition that cannot be denied, while *zannī* becomes the line of *ijtihad*. *Naṣqaṭ'ī al-wurūd wa dalālah* becomes the main source, while *zannīal-wurūd wa dalālah* becomes *ijtihad* to realize *maqāṡid syarī'ah* that is *jalbu al-maṣāliḥ wa dar'u al-mafāṡid.*

Based on the research carried out, Al- Qaraḍāwī differs from some other scholars in that he dares to leave *hadīṡ aḥād* which according to one group is *ṣaḥīḥ* but he says it is not *ṣaḥīḥ* because it conflicts with *maṣlaḥah*. This is seen when he argues that Muslims can inherit non-Muslims, although in *hadīṡ aḥād*, it is explained in the mannters of *zāhir* that people of different religions do not inherit each other. In the view of Al- Qaraḍāwī, this *hadith* is contrary to the existing beneficiaries. The outlook of Al- Qaraḍāwī on *hadīṣ aḥād* is very clear. He uses *hadīṣ ahād* as a proposition if it meets the requirements of *hadīṡ maqbūl*. When the *hadith* is contrary to the welfare, Al- Qaraḍāwī prioritize benefit. This statement is expressed by Al- Qaraḍāwī that there is no *qaṭ'ī* syariat law which violates the human benefit of *qaṭ'ī*. For that, an idea that *qaṭ'ī* benefit would get contradiction is hypothetical theory, not reality. However, if there is qaṭ'ī benefit contrary to *naṣ zannī* then *qaṭ'ī* benefit should be prioritized. (Al-Qaradawi, 2006: 149). In fact, according to Al- Qaraḍāwī refusing *hadīṣ aḥād* is not included in then non-Muslims or *kafir*. . People reject parts of *hadīṣ aḥād* narrated by Bukhārī and Muslim, or one of them because they think that the tradition is contrary to *dalālah al-Qur'ān al-waḍiḥah*, or contrary to the *hadiths* believed to be *mutawatir* or contrary to science of *qaṭ'ī* ' or the *hadith* is contrary to historical fact. (Al-Qaradawi, 1994: 185-186). Al- Qaraḍāwī also explains that it is allowed to reject *hadīṡ ṣaḥīḥ*apa if contradicting Alquran, 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- Qaraḍāwī includes in the school *religious utilitarianism*, as he does not get rid of the understanding of textual litearture and still refers to old literature (*turāṡ*). He does not dare to depart from the free thought so that he is included in *religious leberalism* (Hallaq, 1997: 214-231).

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 *talfīq* because he understands the legal arguments (*dalīl*).

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

7. Closing

The concept of Al- Qaraḍāwī of Islamic legal reform is *ijtihad*. He offers two forms of renewal of *ijtihad* to Islamic law, those are *ijtihād at-tarjīhī al-intiqā'ī* and *ijtihād al-ibdā'ī al-insyā'ī.* These two forms of *ijtihad* affect the *ijtihad* steps he takes and so the reform of Islamic law is realized. In *ijtihād at-tarjīhī al-intiqā'ī,* Al- Qaraḍāwī does *tarjīḥ* with two standards, namely *aqwā hujjah* and *arjah dalīlan*.

At the stage of *arjah dalīlan*, Al- Qaraḍāwī formulates four standards to reform the Islamic law, first choosing the most viable opinion for our period (*alyaqu bi zamaninā*), second choosing an opinion tending to humanity (*arfaqu bi an-Nās*), third choosing opinion closer to the ease of syariat (*aqrabu ilā yusri as-Syarī'ah*) and fourth choosing the more mainstream opinion to realize *maāṣid syarī'ah* for the welfare of the people (*maṣālih al-khalq*) and refusing bad things from beings.

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