

**THE CONCEPT OF AL-SYĀṬIBĪ'S AL-TA'ĀRUḌ WA AL-TARJĪH:  
Scientific Faith and Methodology Solution to Legal *Istinbāt***

**Farkhani**

*Faculty of Syari'ah of IAIN Salatiga  
Jalan Lingkar Salatiga, Pulutan, Sidorejo, Kota Salatiga, Jawa Tengah  
Email: farkhani\_76@yahoo.com*

**Elviandri**

*Faculty of Law of Universitas Muhammadiyah Riau  
Jl. KH. Ahmad Dahlan No. 88, Sukajadi, Kota Pekanbaru, Riau  
Email: elviandri.2010@gmail.com*

**Sigit Sapto Nugroho**

*Faculty of Law of Universitas Merdeka Madiun  
Jl. Serayu No.79, Pandean, Kota Madiun, Jawa Timur  
Email: sigit.nugroho26@gmail.com*

**Abstrak**

*Al-Ta'āruḍ wa al-tarjīh* adalah metodologi yang ditawarkan oleh al-Syāṭibī untuk mengatasi masalah yang sering muncul dalam fikih yang dihadapi oleh umat Islam. Penelitian ini merupakan studi literatur deskriptif (*library research*) yang bertujuan untuk mengetahui bagaimana konsep *al-ta'āruḍ wa al-tarjīh* yang ditawarkan, dengan metode *fahm al-naṣṣ* yang ada dalam kitab al-Muwāfaqāt. Bagi al-Syāṭibī, tidak ada *al-ta'āruḍ* (kontradiksi) dalam *naṣṣ*, tetapi kontradiksi ada di antara para mujtahid dalam memahami *naṣṣ* tersebut. Maka dari itu, mujtahid tidak perlu terburu-buru untuk melakukan *istinbāt al-ḥukm* (pengambilan hukum) yang berasal dari argumen-argumen kontradiktif *ẓāhir*. Sebuah studi mendalam dan universal terhadap postulat kontradiktif tampaknya diperlukan oleh mujtahid baik menggunakan ketelitian maupun kecerdasan (intelijensi) mereka. Karena ketepatan dan intelijen mujtahid yang bervariasi, hal itu menyebabkan munculnya konflik antara mujtahid dalam melihat argumen. Untuk mendapatkan solusi bagi masalah ini, tawarannya adalah penggunaan metode *tarjīh*, mencari argumen yang paling kuat, dan kemudian menetapkan sebagai dasar untuk mengambil satu *istinbāt al-ḥukm*.

**Kata kunci:** *ta'āruḍ, tarjīh, istinbāt al-ḥukm*, al-Syāṭibī, metodologi hukum Islam

**Abstract**

*Al-Ta'āruḍ wa al-tarjīh* is a methodology offered by al-Syāṭibī to overcome problems that often arise in fiqh issues faced by the people. This study is a descriptive literature study (*library research*) aims to determine how the concept of *al-Ta'āruḍ wa al-tarjīh* offered, with *fahm al-naṣṣ* methods that exist in its *al-*

*Muwāfaqāt*. To al-Syātibī, no *at-ta'āruḍ* (contradiction) in texts but there is a contradiction among *mujtahids* (Muslim jurists) in understanding the texts. Then, the *mujtahids* (jurists) should not be in a hurry to do *istinbāt al-ḥukm* (taking out the law) which originated from the *ẓāhir* contradictory arguments. A depth and universal study toward contradictory postulates seems needed by *mujtahid* both using their precision and intelligence. Because of the precision and intelligence *mujtahids* are varying, it causes the appearance of a conflict between *mujtahids* in looking at the arguments. To find a solution to the problem, the offer is the use of *tarjīh* method, looking for the most powerful arguments, and then serving them as the basis to take a single *istinbāt al-ḥukm*.

**Keywords:** *ta'āruḍ*, *tarjīh*, *istinbāt al-ḥukm*, al-Syātibī, Islamic law methodology

## A. Introduction

Al-Kindi has made al-Syātibī a definite genre of *uṣūl al-fiqh* named Syātibiyyah<sup>1</sup>, apart from the two major streams of *uṣūl al-fiqh* i.e. Shafi'ites and Hanāfites, not even follow the Maliki school of law. Bids which he gave to his monumental work "*al-Muwāfaqāt*" indicates that he does not want to fall on *ta'āsub* efforts in *uṣūl al-fiqh* paradigm that has been established previously, sometimes in the era of the struggling reality of *uṣūl al-fiqh* thought it has driven the conflict between one another. The jurists have even stated that the magnum opus of Syātibī is able to bridge between the school of Malikites and Hanafites.

Study or theory on *uṣūl al-fiqh* with its *al-Muwāfaqāt* is not entirely new, but it was stringing variety of pre-existing theory into a structured, systematic and applicable theory. The assumptions used in the school of Shafi'ites, pedestal rationality promoted by Hanafites and practices of the Medina experts which often favored by Malikites made *uṣūl al-fiqh* scattered into a variety of theories and approaches so as to make the product (*fiqh*) to be diverse as well, and make the design of

*fiqh* become fragmented and fragile. In *al-Muwāfaqāt*, Syātibī combines theory of *uṣūl al-fiqh* with *maqāsid al-syarī'ah* as solution effort that is not confined within the text as a practice happened in the past. The tenet of Syātibī and other experts hold is that the law is made by God for the welfare of His servants (*al-hukmu wudi'a maslahah li al-'ibād*).

The acceleration of life development and needs of human life reveals the real signal that the laws contained in the Qur'ān and hadīth still cause problems when paired with a variety of needs and development of human life, even detailed laws in the Qur'ān are not many. This shows that at every period of human life, there are always new things. Everything new that emerges in the life to be achieved must be in harmony with the sublime religious norms that have been used and be a reference for Muslims in *syar'iyyah ilāhiyyah* (the connection between muslims and Allah the Creator) and *syar'iyyah insāniyyah* (muslim brotherhood in the society).

Improving problems of many human lives in detail has been untouched in Qur'ān or Sunnah. This problem gave birth to a variety of *fiqh*

methodology that bridges that human behavior should not be away from the guidance of *ilāhiyah* (God) and *nubuwwah* (prophetics). Here the scholars of *fiqh* play important role in the birth of a variety of methodologies in *ijtihad* as coral breaker in human social life.

Another problem, at first glance, is that there are arguments served as a guide or reference to Islamic law in both Sunnah and Qur'ān seem contradictory. This problem is if it is not dissipated it will add another problem for the discovery and establishment of law in human life. This will be complicated if the arguments imply *musytarak* (having more than one meaning) that clearly bore *istinbāt* by which is different from the mujtahid.

Al-Syātibī is one of the scholars who took an active role in matters of *fiqh* methodology in his book *al-Muwāfaqāt*. His magnum opus contains various offered methodologies of *istinbāt al-hukm* to parse *fiqh* growing problem in his time and become a methodological reference for the future. One bid of *istinbāt al-hukmi* methodology offered in his book is *al-ta'arud wa al-tarjih*.

This paper seeks to explain how the methodological concept of *al-ta'arud wa al-tarjih* influences the development of methods of *usūl al-fiqh* after his time. This paper uses descriptive approach<sup>2</sup> to the study of literature (library reasearch)<sup>3</sup> by compiling various main and supporting library materials related to the focus of the problem to obtain a general nature and relatively thorough on the concept of *al-ta'arud wa al-tarjih* of al-Syātibī. To collect the needed information, the authors also gain knowledge of the surface level on various parts of specific issues.

## B. A Glance of al-Syātibī and the Situation of Fiqh during His Time

Al-Syātibī's full name is Abū Ishāq Ibrāhīm Ibn Mūsa al-Garnatī al-Syātibī. He was born in Granada in 730 H and died in 790 H in the same place. Al-Syātibī, the popular name behind his full name, is the hometown of his family birthplace. Al-Syātibī's family originally lived in Syātiba, but because of the political situation at the time forced the family of al-Syātibī not to stay in Syātiba. They were forced to leave for Granada. As it is known that Syātiba during the period was hit by internal political struggles of Muslims which resulted in the shift of power from Islam to Christianity so that al-Syātibī allegedly was not born in Syātiba, the city of the family birth.

Al-Syātibī was predicted staying in Granada during the reign of Ismā'il Ibn Farraj who ruled in 713 H. As quoted by Abū al-Afjan,<sup>4</sup> the domestic political life of Granada during al-Syātibī's stay was unstable due to endless internal friction. The clash of power among Muslims could not seem unstoppable and denied the future of Islam in the future. Internal conflict conditions of Muslims had provided fresh air for the other groups, especially Christians who had long wanted to dominate Granada from the hands of the Muslims.

Though the political situation was turbulent, al-Syātibī did not recede to study so that he became famous in the field of *Fiqh* (jurisprudence or law). During his childhood, al-Syātibī had shown his interest in the world of science, especially the Islamic sciences. Diligently, he learned Arabic to the scholars, for example, Abū 'Abd Allāh Muhammad Ibn Abd al-Birī Fakhkhār

(d. 754 H), Qāsim Abū Muhammad Ibn Ahmad (d. 760H),<sup>5</sup> and Abū Ja'far Ahmad al-Syarqāwī (d. 762 H). His knowledge of the hadiths was from Ibn Abū Qāsim Bina and Shams al-Dīn at-Tilimsāni (d. 781 H).<sup>6</sup>

His *kalam* (theology) was obtained from Abū al-Zawāwī Alī Mansur (d. 770 H). Meanwhile, he obtained this knowledge that would later made him famous through his monumental work in the field of *uṣūl al-fiqh*, *al-Muwāfaqāt fī Usul al-Ahkām* and *al-I'tisām*, from Abū 'Abd Allāh Muhammad Ibn Ahmad al-Miqarri (d. 761 H) and Abū 'Abd Allāh Muhammad Ibn Ahmad al-Syarīf at-Tilimsāri (d. 771 H).<sup>7</sup>

Al-Syātibī taught various fields of science, especially *fiqh* and *uṣūl al-fiqh*. Many scholars of that time became his fellows, especially as students, for example, Abū Yahyā Ibn 'Āshim, Abū Bakr al-Qādzī and Abū 'Abd Allah al-Bayānī.<sup>8</sup> The name of the latter is a scholar who has held the post of *qāḍī* (judge) in that period, a high position in a Granada caliphate. One of the books written by al-Bayānī, namely "*Tuhfah al-Hukkām*" is a book that is quite known among the judges at the time as the reference book for judges in resolving the issues raised by citizens.<sup>9</sup> Because of his expertise of *uṣūl al-fiqh*, Muhammad Makhlūf put him at the 16th in the level of jurists of Malikiyah at Andalusia branch. His follower is Abu Ishaq.

Al-Syātibī spent his entire life in his native land; no historian testified that he never went for scientific expedition as being done by others or for *hajj* (pilgrimage). Al-Syātibī was a scientist who had mastered various disciplines comprehensively. According to Abū al-Ajfan, al-Syātibī's

competencies toward those various knowledge was because he had mastered the method of '*Ulūm al-Wasā'il wa' Ulum al-Maqāsyid* or the essence and the nature method.

His monumental work, *al-Muwāfaqāt*, was his magnum opus. But, he also wrote several books on Arabic grammar, books of *fiqh* and hadith.<sup>10</sup> Here is the list of al-Syātibī's works that can be traced in some classic literatures. His works that cover the field of Arabic literature and Jurisprudence are: *Syarh Jalīl 'alā al-Khulasah fī al-Nahw*, '*Unwān al-Ittifāq fī 'Ilm al-Isyiqāq*, *Kitāb Usūl al-Nahw*, *al-Ifādāt wa al-Irsyādāt/Insya'āt*, *Kitāb al-Majlis*, *Kitāb al-I'tisām*, *Fatāwā*, and *Syarh Alfīyah Ibn Mālik*.<sup>11</sup>

As a scholar of *fiqh* who never reported out of Andalusia, of course, al-Syātibī understood well the progress of Islamic law in the country. Among the legal problems arise were the strength of local traditions that affect the application of the law in Andalusia. This caused serious problems that had emerged different opinions in law by which then legitimized formally by the authorities, including scholars, both in Andalusia itself as well as in other Islamic regions. Here, the moral responsibility of the law was frequently neglected. In essence, at the time of al-Syātibī, there were many legal opinion conflicts between the people.

Those conflicts were then analyzed by al-Syātibī that later formulated conclusions that the disagreement between scholars occurred because of three things: Firstly, the existence of *mutasyābihāt* verses in the Qur'ān, secondly, the result of *ijtihad* (legal interpretation) of the scholars is used as *al-shar'ī* (law), and thirdly, a different result of the truth claim against

the *mujtahids* (jurists),<sup>12</sup> which makes the scholars removed from the legal school of the state.

### C. *Al-Ta'arud wa al-Tarjih According to al-Syātibī and Its Influence toward the Development of Uṣūl al-Fiqh*

It is undeniable that the birth of one methodology of *istinbāt al-hukm* contained in the *al-Muwāfaqāt* in the era where *fiqh* and *uṣūl al-fiqh* faced deep textual preoccupation was important (Ages 8H). In this period, the jurists did not have the courage to disagree with *ijtihād* performed by previous *ulama*. Even at that time there were scholars who then made works of those *ijtihād* to be sacred corpus and closed from criticism. *Uṣūl al-fiqh* that had the opportunity to improve more was struggling on establishing methods of *uṣūliyah* from *ijtihād* that already existed.<sup>13</sup>

Initial thought of al-Syātibī in *al-Muwāfaqāt* inspired many Islamic thinkers to break the textual fixation, started by Jamāluddin al-Afghāny (12 H), who reopened the doors of *ijtihād* that had been closed for more than seven centuries<sup>14</sup>. Ismāīl Rāzy al-Farūqī<sup>15</sup> who was a modern Islamic thinker added that the changing conditions and circumstances of human life, which in turn, require the readiness of law to meet the achievement of lasting goal. The Shari'ah is divine and eternal, not in a literal sense but in its soul.

With regard to the closing debate or keeping to open the door of *ijtihād*, it was never being discussed by some scholars in the time before al-Syātibī. One example is the dialogue between Ibnu 'Āqil, a scholar from Hanābilah with an unnamed cleric of Hanafites school. The point was Ibnu 'Āqil thought against fanaticism that

causes the underdevelopment schools of *fiqh*. However, because the movement was so strong, especially in the 6th century of Hijrah (Islamic year) has driven the efforts made by the opponents fanaticism displaced their views.<sup>16</sup> For the time being, the development of progressive Islamic law eventually led to the closing of the doors of *ijtihād*. Logically this situation raised the intellectual restlessness among Islamic thinkers. Later, this led to the awareness toward the importance of reopening the door of *ijtihād*.

“Failure” in breaking down the fanaticism that took place during that time resulted in stagnant jurisprudence (stopped/undeveloped), leads to the need for *taqlid*, a term that is generally interpreted as an acceptance without reserve on the established doctrines.<sup>17</sup> This certainly affects the scientific spirit of Muslim scholars. The impact of the closing door of *ijtihād* to *fiqh*, making the study of *fiqh* books dwelled on old scripts and seemed difficult to find new original book of the latest thoughts. Study of *fiqh* became as follow:

- 1) The study of *fiqh* was limited only to the content in the books of *fiqh* authored by old great scholars.
- 2) The study of *fiqh* was stacked in summarizing project (*mukhtaṣār*) of problem branches (*furu'*) in a brief description of the books written by previous leading scholars. Thus, small books compiled only to facilitate students in studying the work of great scholars before; or
- 3) The study of *fiqh* reproduced commentary (explanation) and suppositions of certain problems, giving notes on of the main book that makes the book was getting thicker.

The period of *fiqh*



unbendingness was caused by as follow:

- 1) The *fiqh* scholars no longer took the law from the main sources, namely the Qur'an and Hadith. They preferred to directly refer to the opinions of the Islamic school leaders. Even the thought was outrageous by putting their opinions with sacred texts (Qur'an and Hadith) that cannot be changed and replaced.
- 2) Excessive inferiority attitude of *fiqh* scholars against the thoughts of previous scholars and only had willingness to research and study the scholars from similar schools.
- 3) Laziness of the *fiqh* clerks who had assumed that the previous scholars (the founders of a school and the fellows) were productive and creative. These lazy scholars then thought that there was no longer space for them to do *ijtihād* even for matters that had not been elaborated (*fiqh iftrādī*). This attitude shows that the scholars of *fiqh* during the unbendingness time have no good capability that directly drove them to be lazy and inferior as being stated before.
- 4) And other factors caused by political reason, such as intervention and imposition of only one schools (*fiqh* and / or '*aqidah*') by the authorities, lack of support from the government for the development of science, and provocative power of the politicians at the time.

Fixation or textual stagnation in *fiqh* in essence is the deprivation of the freedom on opinion among muslims, especially for the jurists. This circumstance made them not free to make creation and / or innovation of knowledge in the field of *fiqh* and *uṣūl al-fiqh*, forced them either consciously

or unconsciously following the opinions of the previous scholars of the school of law. They engaged more in teaching but not doing critical thinking and doing new *ijtihād* to reform Islamic law. This led to a textual and rigid understanding for *fiqh* products that later these failed in answering to meet the challenges of the changing times with a variety of development and the problems of people's life. Due to this thinking stagnation, this then encouraged people to pursue other fields, and history had recorded that this stagnation drove to Sufism thoughts and behavior among Muslims.

Every time there was a deadline. In the middle of this period, a cleric-- al-Syātibī --was born that contributed to break the text fixation by offering mindset and methods on *uṣūl al-fiqh* which he believed could break the thinking stagnation of the people at that time. *Al-Ta'ārūḍ wa al-Tarjīḥ* method is one of technical methodology created by al-Syātibī for enlightenment and awakening of *fiqh*. The fundamental view in this method is that there may be no conflict (contradictions) proposition within shari'a texts but there will be paradigm conflict between the *mujtahids*.<sup>18</sup>

The author believes that the preposition of al-Syātibī in theorizing (methodology) the matter is based on the word of God, especially in Sura al-Nisā' verse 82, "if only the Qur'an did not come from the (revelation) of Allah, you will find a wide contradiction there in". From the verse, it is impossible for the arguments in the Qur'an that the entire narrations expressed by scholars will create conflict between the paragraphs. Issues relating to this case is usually solved by a method of understanding the meaning of words

(*musytarāk*) and *nāsikh-mansūkh* (changed literally) or *'am* (in general) and *khas* (in particular). And for the basis of prophet sayings is guaranteed in *Surah al-Najm* 3, “and it is not he (Muhammad) who spoke on the foundation of his own lust, which come out of no other revelation that is revealed to him”. Because the writing of a new hadīth occurs massively and systematically carried out on a century after the death of Muhammad SAW, using a superb narration methodology for correcting the validity and invalidity, this might leave room for the proposition contradiction if the narration was differently written.

Literally, the word *ta'āruḍ* means contradiction. Word *al-adillah* is the plural form of the word *dalīl* (proposition), which means argument, reason, and propositions. The study of *ta'āruḍ al-adillah* is specifically addressed in the science of *uṣūl al-fiqh* when there is a conflict between two equally strong arguments in demonstrating the law.

In terms, the definition of *ta'āruḍ al-adillah* is a content conflict between one of the two arguments by which are equal with the content of another proposition. Thus, consequently the opposite propositions may not be used at once.<sup>19</sup> Hasbi Ash-Shiddieqy interprets *ta'āruḍ (al-adillah)* is a conflict between two proposition. In other words, the proposition that applied the law at the same time against another one that later violated the law desired by another preposition.<sup>20</sup> To Abdul Wahab Khallaf, *ta'āruḍ* is contradictory between two texts or arguments with similar strength.<sup>21</sup> Wahbah warned other jurists not to equate between *ta'āruḍ* and *tanāquḍ*. According to him, the latter is a clash of two propositions that

causes the cancellation of one of those two, while *ta'āruḍ* only blocks enactment of the law without aborting the existence of the argument.

From those above definitions, the core of *ta'āruḍ al-adillah* is a contradiction between the two shari'a proposition which has the same rank or degree in discussing the same issues. According to Abdul Karim Zaidan, principally there may not be a conflict between the shari'a arguments.<sup>22</sup> *Ta'āruḍ* or contradiction between the shari'a arguments only occur in *mujtahid* point of views. On this basis, *ta'āruḍ* certainly only happens on a surface level not at the real realm as this is only about how *mujtahid* views on the texts. Sometimes some *mujtahids* assess the arguments as it relates to understanding power of *mujtahid* concerned about the contained intentions in a proposition. Abdul Karim Zaidan's point of view is exactly similar to al-Syātibī. Similarly, the views of *uṣūl al-fiqh* scholars whether they were *muta'akhirīn* (*uṣūl al-fiqh* scholars who follow the Syafi'ite) or Hanafite scholars agree that the nature of *ta'āruḍ* in Islamic law is a collection of impossible arguments of law whether the contradiction between the argument of *qaṭ'ī* and *ẓannī*. The *ta'āruḍ* is not only about *qaṭ'ī* and *ẓannī*. Today's *ta'āruḍ* is something *ta'āruḍ ẓāhiri* (on surface contradiction) caused by differences in methods of scholars in understanding the arguments of law. It is also coupled with the limitations of human to understand the arguments of *qaṭ'ī* and *ẓannī*. On that time, a proposition might be substituted or being replaced as it was impossible to translate *qaṭ'ī* arguments.<sup>23</sup>

In his magnum oppus, al-Syātibī did not explain the requirement

(in details) when two arguments are indicated of having *ta'arud*. However, other *faqahā'* provide indicators as follows:

- 1) These two contradictory propositions differ in determining the law.
- 2) Both propositions are in a conflicted law for a single issue. When the two conflicting arguments were different in representing the law, then there was no *ta'arud* (contradiction).
- 3) Between the conflicting propositions must occur within a period in determining the law. When the time is different in the designation of the law, then those arguments did not show contradiction. When there *ta'arud* occurred but a legal designation was different, then the verses can be put together. Like wine in the early days of Islam was permissible, but when it came down verses that showed that wine was forbidden, automatically the legal designation for those two arguments do not indicate opposition.
- 4) Both these postulates are in the same degree for legal designation. There is no contradiction between the Qur'ān with Hādith Āḥād, because the Qur'ān in its legal designation is as *qaṭ'i* proposition, while the Hādith is at *ẓannī* proposition. In the event of a conflict between the arguments of *qaṭ'i* and *ẓannī*, then automatically proposition of *qaṭ'i* takes precedence.

If the proposition of *qaṭ'i* and *ẓannī* confront and meet the conditions, then it is called *ta'arud*. Of all the conditions must also be met. When the argument only meets several requirements, and there is still an unmet

requirement, this is not *ta'arud*.<sup>24</sup> The faith of al-Syātibī toward the emergence of impossibility of contradiction between the propositions, it possibly occurs also between *mujtahids*. Al-Syātibī *ta'arud* theory only happens in *mujtahids*' point of views.<sup>25</sup> Thus, this is about clash of opinions between *mujtahids*.

Furthermore, al-Syātibī said that the opposition did not absolutely occur between *mujtahids*, but it was naturally happen between them. If *mujtahids* endeavored to see a proposition by trying to understand it based on location (time), it is possible to combine the arguments using methods below:

1. Understand the *'ām* (in general) proposition with *khāsh* (specific) one.
2. Understand the *muṭlāq* (absolute) proposition with *muqayyad* (limited) one.<sup>26</sup>

For example: Will you tell me about the best witness? They are those who give testimony before being requested. Another hadīth states "someone who spreads lies and being noticed and witnessed by others (before he makes lie) who makes the testament". According to al-Syātibī, both hadīth have no contradiction if the first hadīth is perceived as general provision (provision of God) while the second one should be received as human's duty to respond to the lies. Thus, the process does not show either any *ta'arud* nor *tarjīh*.

This firm and clear statement of al-Syātibī demands *mujtahids* (jurists) establish the right method to break the legal issues, which physically seems contradictory. This caused the appearance for methodological solutions such as using Hanafites method; 1) *naskh* (abrogated), 2) *tarjīh*, 3) *jam'u wa*



*taufiq*, or 4) *tasāqut al-dalālain* (using Shafi'ites method), namely; 1) *jam'u wa tawfiq*, 2) *naskh* (abrogated), 3) *tarjih*, 4) *takhyir* and 5) *tawaqquf*.<sup>27</sup>

In al-Muwāfaqāt, al-al-Syātibī get involved in theory or basic concepts of 'adamu al-ta'arud al-dalā'il (impossible contradiction between the arguments) which did not stop at the boundaries of theory, he turned out to be responsible also in providing a sign to support his theory and methodological solutions.

Furthermore, according to al-Syātibī, the dispute (err) is only at the level of nullification (*al-nafyu*) and determination (*al-subūt*). If this happens then the solution is the use of *tarjih* method. *Tarjih* method will be used when it occurs in:

1. The difference in the setting up the arguments that lead to differences in the legal provisions.
2. The difference in preposition in a glance is alike but is different in laws. Such as the wealth we have in fact belongs to the Lord.
3. The difference in cause (*asbāb*), such as a woman who is not *maḥram* is forbidden to touch but it is allowable after the wedding.
4. The difference in the requirements (*syūrūt*), such as the obligation to execute the command of God when a person becomes *baligh* (adult). The *syahādah* (forgiveness) is as an independent full sentence. Thus, there is no penalty if there is *syahādah*.<sup>28</sup>

The solution offers for problem solving as if the *al-ta'arud al-dalā'il* with *tarjih* method exists; epistemological limitations will sentence to what is meant by *tarjih* method. *Tarjih* derives from the word "*rajjaḥa–yurajjiḥu–tarjiḥan*", which means taking

something stronger. *Tarjih*, by definition, is strengthening one of the two *ẓannī* arguments in order to do well to those already confirmed.

Literally, *tarjih* (ترجيح) means spending. This concept arises when the opposition happens between the opponent arguments which level are equal and cannot be solved by *al-jam'u wa al-tawfiq*. The boosted proposition is called by *rājiḥ*, while the attenuated proposition is called *marjūḥ*.

In terms, there are two definitions put forward by *uṣūl al-fiqh* experts, the first one is according to Hanafites scholars, namely: "prove the existence of extra weight on one of the two arguments of the same (or equivalent), but this extra does not stand alone". According to them, the contradictory arguments must be in the same quality, as the opposition between propositions. Then, an additional supporting argument does not stand alone. This means that the supporting argument is not separate from the conflicting arguments, because if there is another standing proposition, it can be used to establish law but not the conflicting propositions.

Second, mostly Muslim scholars define: "reinforcing one indicator from *ẓannī* arguments to be put into practice (applied)". These scholars restrict the canon only into *ẓannī* course, because this issue is not included in the definitive issues (*qaṭ'ī*) and is not also between *ẓannī* and *qaṭ'ī*. Mostly Muslim scholars (*jumhūr 'ulamā'*) of *uṣūl al-fiqh* agreed that if it had happened agreement for proposition, the boosted proposition shall be carried out. The reason is because the agreements and practices have been taken by the Companions in reinforcing a certain proposition from another in many cases.

From some of definitions of *tarjih*, although al-Syātibī already insisted there is no contradiction between the propositions, there are still many scholars who provide *tarjih* definition by pointing to the contradiction for proposition. It seems to be the justification for the al-Syātibī's theory that to understand this theory relies on the accuracy and intelligence on each *mujtahid* (jurist).

According to al-Syātibī, *tarjih* can be done by:

1. *Al-Jam'u* (combining two conflicting arguments). *Al-Jam'u* can be done in ways as follow:
  - a. Viewing generally from both universal and particular proposition, such as: lie (universal) is forbidden except lying as efforts in mediating husband and wife (particular); or killing Muslims is *harām* (universal) except to implement *qiyās* (particular). According to al-Syātibī these postulates are not contradictory. Both can be carried out according to the context.
  - b. The occurrence of contention on both sides of the problem (particular) to see it as a whole (universal), as the opposition of two *hādīths* or the difference in the two *qiyās*. In this position, al-Syātibī did not agree on the use of *tarjih* method which resulted in the abandonment of one proposition to be carried out, except for *mansūkh*, there is no doubt in the validity of *sanad* (the chain of *hādīth* transmission) and *matan* (the content). When the position is at the same level, then the proposition should not use *tarjih* method.
  - c. The opposition of the two sides

where one part and another cannot be merged because both have its own guidance. For example, the obligation of prayer (*ḍarūriyah*) and liabilities of *ṭahārah* (ablution ritual) as *tahsiniah*.

- d. The occurrence of a single contention on both sides, such as: the prayer is invalid except reciting *al-Fātiha* based on the *hādīth* "the prayer leader's reading is the congregations' readings". In the first *hādīth*, the congregations shall read *al-Fātiha* while the second describes the reading of the congregations suffice only for them. Here, there is no contradictory proposition but it is only the choice of taking the proposition.
2. *Al-Ibthāl*<sup>29</sup>(cancelling one proposition by examining the chain of *hādīth* transmission/*sanad*, the content/*matan*, or the intention of the argument). Basically there is no absolute cancellation except following the concept of *nāsikh* and *mansūkh*.

Looking on the theory of al-Syātibī about *al-ta'arūḍ wa al-tarjih*, as if al-Syātibī gave warnings to *mujtahids* (jurists) not to be reckless in conducting *istinbāt al-hukm* which originated from the *ẓāhir* and contradictory arguments. A depth and universal study to the contradictory postulates must be done carefully using serious competencies and intelligences that the legislation will not deviate the basic values of Shariah (*maqāṣid al-syarī'ah*).

Methodological solution on *al-ta'arūḍ* offered by al-Syātibī is to select the most suitable *ijtihād* in order to break the deadlock contradiction, by which the ways offered by Syafi'ites and Hanafites are absent to solve the

problem. Syafī'ites and Hanafites only give the option of free way to select the possible one to break the deadlock contradiction. Even, the two streams of schools provide options for *tawāquf* (*taṣāquṭ al-dalīlain*) but not touching or leaving the apparent contradictions. Some scholars stated that before they left the two arguments they had opportunities to do *takhyīr* method (choose) by selecting one of the desired proposition without considering a conflict between the existing proposition.

*Tawāquf* (*taṣāquṭ al-dalīlain*) on an urgent issue to be resolved would be dangerous; it could create anxiety for certain aspects of life of debated issues. Believers can seek their own ways that result in a conflict at the level of ideas or of legal thought, but it could go down to aspect that led to clashes and splits. Therefore, *tawāquf* method is not made as the choice by al-Syātibī as it will drive the jurists to the period of stagnation. Here, the *fiqh* world will get stuck in the fanaticism for certain school as in the past and being experienced by al-Syātibī himself.

Some of the methods offered by earlier *fiqh* scholars could be used, but for al-Syātibī *tarjīh* method is seen as the best method to solve the problem of *al-ta'arud al-adillah*. In this study, al-Syātibī truly shows that this method is the easiest and the lowest method of

*istinbāt al-ḥukm* especially those in the issue of *al-ta'arud al-adillah*. Al-Syātibī also insisted to show that the results of previous *mujtahids*/jurists (including founder of schools) will not be ignored. He just wanted to create a theory or method that can be applied in any condition and age and remains compatible in time and place (*ṣāliḥ li kulli makān wa zamān*).

#### D. Conclusion

*Al-ta'arud wa al-tarjīh* is a methodology of *uṣūl al-fiqh* offered by al-Syātibī in his magnum opus *al-Muwāfaqāt*. In this method, al-Syātibī would like to emphasize that there is no contradiction between the propositions in an attempt for taking out the law (legal reasoning) or *istinbāt al-ḥukm*. To be noted, the arguments' sources come from Qur'ān and Hadīth, two authoritative books as the main references of Islamic law for Muslim society. The picture of contradictory proposition is viewed seemingly, and then the *mujtahids* (jurists) should see the arguments precisely and use their intelligences. Because the precision and intelligence of *mujtahids* are varying, these may cause conflict in looking at the arguments. To find a solution to the problem, the offer is to use *tarjīh* method, to search for the most powerful arguments and then to serve them as the basis of departure to take an *istinbāt al-ḥukm*.

#### End Notes:

<sup>1</sup> There are four schools in the world of *uṣūl al-fiqh* : *mutaklimin*, with the main character of Shafī'ites; Hanafites, with Imam al-Hanafī as the main reference in this stream; *al-Jam'i* (the combination between *mutaklimun* and

Hanafites), *Takhrij al-Furū' 'alā al-Uṣūl*, see Maman Suherman "Aliran Uṣūl al-Fiqh dan Maqasid Syari'ah", *Al-Mashlahah Jurnal Hukum dan Pranata Islam*, Vol. 2 No. 4 (July, 2014), p. 354.

<sup>2</sup> Descriptive analytical research method is a method that examines problems, applied ordinances and specific situations in the community, including on relationships, activities,

attitudes, views, ongoing processes and effects of the phenomenon. Descriptive research aims to create a systematic, factual, and accurate description or picture about the facts, nature, and the relationship between the phenomena under this study. Moh. Nazir, *Metode Penelitian*, 3<sup>rd</sup> edition (Jakarta: Ghalia Indonesia, 1999), p. 63-64.

<sup>3</sup> Library research or literature research according to Subagyo is research that makes library data the underlying theory to be studied and analyzed in obtaining hypothesis or conception to obtain objective results. In this study, information can be taken fully to determine the scientific action as a research instrument to meet the standards of supporting research. Subagyo, Joko P. *Metode Penelitian: Dalam Teori dan Praktek* (Jakarta: Rineka Cipta, 1999), p. 109. Compare to Mardalis who states that library research aims to collect data and information with the help of various materials in the library, such as books, magazines, documents, records and tales of history and others. Mardalis, *Metode Penelitian (Suatu Pendekatan Proposal)* (Jakarta: Bumi Aksara, 1999), p. 28.

<sup>4</sup> Abū al-Afjan, *Min Arā Fuqahā al-Andalus: Fatāwā al-Imām al-Syātibī* (Tunis: Matba'ah al-Kawāki, 1985), p. 28.

<sup>5</sup> Muhammad Khalid Masood, *Islamic Legal Philosophy: A Study of Abū Ishāq al-Shatibi's Life and Thought* (Islamabad: Islamic Research Institute, 1977), p. 100.

<sup>6</sup> Abū al-Afjan, *Min Arā Fuqahā*, p. 36.

<sup>7</sup> Mustāfā al-Marāghī, *Fatḥ al-Mubīn fī Ṭabaqāt al-Uṣūliyyīn* (Beirut: Muhammad Amīn Ramj wa Syirkah, 1974), II: 182-183.

<sup>8</sup> Al-Syātibī, "Tarjamah al-Mu'allif", in *al-I'tisām* (al-Iskandariyah: Dar al-Aqeedah, 2008), p. 8.

<sup>9</sup> Muhammad Khalid Masood, *Islamic Legal Philosophy*, p. 103.

<sup>10</sup> Duski Ibrahim, *Metode Penetapan Hukum Islam Membongkar Konsep al-Ma'nawi al-Syatibi* (Yogyakarta: Arruz Media, 2008), p. 32.

<sup>11</sup> Abdul Jalil, "Maqāsid al-Syarī'ah Al-Syathibi (Sebuah Upaya untuk Menyingkap Tujuan Asasi Formulasi Hukum Islam)", *Al-Ihkām*, Vol. VI, No. 1, June 2011, p. 31.

<sup>12</sup> *Ibid.*, p. 13

<sup>13</sup> See more evidents in Mun'im A. Sirry, *Sejarah Fiqh Islam Sebuah Pengantar* (Surabaya: Risalah Gusti, 1995), p. 4.

<sup>14</sup> See Farkhani, "Meretas Kebangkitan Fiqh di Tengah Keterpakuan Tekstual", *Jurnal Ijtihad*, Vol. 10, No. 2 (Desember 2010), p. 241.

<sup>15</sup> See Ismāil Rāzy al-Farūqī and Luis Lamya al-Faruqī, *Atlas Budaya Islam*, terj. Ilyas Hasani (Bandung: Mizan, 2001), p. 298.

<sup>16</sup> See Wael B. Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Burlington: Ashgate, 1994).

<sup>17</sup> Moh. Hefni, "Rekonstruksi Maqāshid al-Syarī'ah (Sebuah Gagasan Hasan Hanafi tentang Revitalisasi Turāṣ)", *Jurnal al-Ihkām*, Vol. 6, No. 2, Desember 2011, p. 163.

<sup>18</sup> Abū Ishāq Ibrāhīm Ibn Mūsā al-Syātibī, *Al-Muwāfaqāt fī Uṣūl al-Syarī'ah* (Egypt: Maṭba'ah Mustafā Muḥammad, t.t.), IV: 294.

<sup>19</sup> Mukhtar Yahya and Fatchurrahman, *Dasar-Dasar Pembinaan Hukum Fiqih Islam* (Bandung: Al-Ma'rif, 1993), p. 417.

<sup>20</sup> Teungku Muhammad Hasbi Ash-Shiddieqy, *Pengantar Hukum Islam* (Semarang: Pustaka Rizki Putra, 2001), p. 275.

<sup>21</sup> Syarifudin, *Uṣūl al-Fiqh* (Jakarta: Logos Wacana Ilmu, 1997), I: 204.

<sup>22</sup> Abdul Wahhab Khallaf, *Kaidah-Kaidah Hukum Islam* (Jakarta: Rajawali Press, 1993), p. 383.

<sup>23</sup> Teungku Muhammad Hasbi Ash-Shiddieqy, *Pengantar Hukum Islam*, p. 276.

<sup>24</sup> See more clearly on Djazuli and Nurol Aen, *Uṣūl al-Fiqh: Metodologi Hukum Islam* (Jakarta: Raja Grafindo Persada, 2000), p. 228-230.

<sup>25</sup> Abdul Wahhab Khallaf, *Kaidah-Kaidah Hukum Islam* (Jakarta: Rajawali Press, 1993), p. 383.

<sup>26</sup> al-Syātibī, *al-Muwāfaqāt*, IV: 295.

<sup>27</sup> Duski Ibrahim, *Metode Penetapan Hukum*, p. 152.

<sup>28</sup> al-Syātibī, *al-Muwāfaqāt*, IV: 297.

<sup>29</sup> *Ibid.*, p. 299.

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