THE CONCEPT OF AL- S ? IB AL-TA ’ ? WA AL- TAJI ? : Scientific Faith and Methodology Solution to Legal Istba ? 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 ‘ aru ? wa al- tarj ? adalah metodologi yang ditawarkan oleh al- S ? ibi untuk mengatasi masalah yang sering muncul dalam fikih yang dihadapi oleh umat Islam.


Maka dari itu, mujtahid tidak perlu terburu-buru untuk melakukan ist ? al- ? ukm (pengambilan hukum) yang berasal dari argumen-argumen kontradiktif ? ahir . 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.


This study is a descriptive literature study (library research) aims to determine how the concept of al-Ta’ aru? wa al- tarj? offered, with fahm al-na methods that exist in its al- Vol. XII No. 1, Juni 2018 106 Farkhani, Elviandi, Sigit Sapto Nugroho. To al-, no at-ta’ a ru? (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 ist? al-? ukm (taking out the law) which originated from the ? ahir contradictory arguments. A depth and universal study toward contradictive 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 tarj? method, looking for the most powerful arguments, and then serving them as the basis to take a single ist? al-? ukm. Keywords: ta’ aru?, tarj?, istinbatal-? ukm, al- S? ibi, Islamic law methodology A. Introduction Al-Kindi has made al- S? ibi a definite genre of u? u fiqh named Sbih 1, apart from the two major streams of u? ul -fiqh i.e.

Shafi’ites and Hanafites, not even follow the Maliki school of law. Bids which he gave to his monumental work ” al- Muw ” indicates that he does not want to fall on ta’ a? ub efforts in u? ul l -fiqh paradigm that has been established previously, sometimes in the era of the struggling reality of u? ul -fiqh thought it has driven the conflict between one another.

The jurists have even stated that the magnum opus of S? ibi is able to bridge between the school of Malikites and Hanafites. Study or theory on u? ulal -fiqh with its al- Muw 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 ul-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- Muw, S? ibi combines theory of ul-fiqh with maqal- syari’ah as
solution effort that is not confined within the text as a practice happened in the
past. The tenet of S? ibi 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 ‘i bad ). The
acceleration of life development and needs of human life reveals the real signal
that the laws contained the and h adi th still cause problems when paired with a
variety of needs and development of human life, even detailed laws in the
Quranot y. is that 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 il (the connection between muslims and Allah the Creator) and
syar’insanah (muslim brotherhood in the society). Improving problems of many
human lives in detail has been untouched Qur’an SThis problem gave birth to a
variety of fiqh Vol. XII No.

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human behavior should not be away from the guidance of il (God) and nubuwah
(prophetics). Here the scholars of fiqh play important role in the birth of a variety
of methodologies in ijhad 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 both unnah Qur’an em 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 istinb a t by
which is different from the mujtahid. Al- S? ibi is one of the scholars who took an

His magnum opus contains various offered methodologies of ist - ? umk to parse
fiqh growing problem in his time and become a methodological reference for the
future. One bid of istinb hukmi methodology offered in his book is al- ta ‘ a
rud wa al- tarj ?. This paper seeks to explain how the methodological concept of
al- ta ‘ a rud wa al- tarj ? influences the development of methods of usul al-fiqh
after his time.
This paper uses descriptive approach 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-S?ib and the Situation of Fiqh during His Time


He was born in Granada in 730 H and died in 790 H in the same place. Al-S?ibi, the popular name behind his full name, is the hometown of his family birthplace. Al-S?ibi’s family originally lived in yatia, because of the political situation at the time forced the family of al-S?ibi not to stay in Sba. 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-S?ibi ally not Sba, city of the family birth.

Al-S?ibi was predicted staying in Granada during the reign of Isma Faj ruled 713 As bAbu al-Afjan, 4 S?ibi’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-S?ibi did not recede to study so that he became famous in the field of Fiqh (jurisprudence or law). During his childhood, al-S?ibi had shown his interest in the world of science, especially the Islamic sciences. Diligently, he learned Arabic to the scholars, exe, ’Abd Muhammad Ibn Abd al-Biri akkhkar Vol. XII No.

1, Juni 2018 108 Farkhani, Elviandi, Sigit Sapto Nugroho (d. 754 H Ahmad (d. 760H), Ahmad al- knowledge of the hadiths was from Ibn - His kalam (theology) was I- Mansur (d. 770 H). Meanwhile, he obtained this knowledge that would later made him famous through his monumental work in the field of u - fiqh , al- and al-l’ti Muhammad Ibn Ahmad al-Miqarri (d. Ibn Ahmad al- H). S?ibi taught various fields of science, especially fiqh and u? ul - fiqh .

Many scholars of that time became his fellows, especially as students, for exe, YahIb’Ashim, Bakr al- Qadzand ‘ Abd Allah al- Ba 8 The name of the latter is a scholar who has held the post of qa? i (judge) in that period, a high position in a Granada caliphate. One of the books written by al- Bani, y Tu ? fah al- ? ukkam " 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. 9 u ? u l al-fiqh, MuhannMakhluf himat 16th in the level of jurisprudents of Malikiyah at Andalusia branch. His follower is Abu Ishaq.

Al- S ? ibi 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- S ? ibi was a scientist who had mastered various disciplines comprehensively. According to al -Ajfan, al- S ? ibi 's competencies toward those various knowledge was because he had mastered the method of 'al -W asa' a' Ulum al-Maqasyid or the essence and the nature method. His monumental work, al- Muw , was his magnum opus. But, he also wrote several books on Arabic grammar, books of fiqh and hadith.

's works that can be traced in some classic literatures. His works that cover the field of Arabic literature and Jurisprudence are: Syarh Jal al-Khulasah f al-Nahw, 'Unw a n al-Ittiff a q f i 'Ilm -Isytiq a q, Kit a b al -Nahw, al-If a d a t wa al- Irsy a d a t/ a t, Kit a b al-Majlis, Kit a b al- 'I t'i a m, Fat a w a , and Syarh Alfiyah Ibn M a lik.

11 fiqh who never reported out of Andalusia, of course, al- S ? ibi 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- S ? ibi , there were many legal opinion conflicts between the people. Those conflicts were then analyzed by al- S ? i that later formulated conclusions that the disagreement between scholars occurred because of three things: Firstly, the existence of mutasyabih verses in the Qursey, r ijtihad (legal interpretation) of the scholars is used as al- shar‘ (law), and thirdly, a different result of the truth claim against Vol. XII No. 1, Juni 2018 The Concept of al- S ? ib al- 109 the mujtahids (jurists), C.

Al-Ta ‘ a ru ? wa al- Tarji ? According to al- S ? iban Inluce toward the Development of U ? u al-Fiqh It is undeniable that the birth of one methodology of isnba ? al-hukm contained in the al- Muw in the era where fiqh and u ? ul -fiqh faced deep textual preoccupation was important (Ages 8H). In this period, the jurists did not have the courage to disagree with ijtihad performed by previous ulama.
Even at that time there were scholars who then made works of those ijtihad to be sacred corpus and closed from criticism. U?ul-fiqh that had the opportunity to improve more was struggling on establishing methods of u?ul from ijtihad that already existed. S?ibi in al-Muw inspired many Islamic thinkers to break the textual fixation, started y amaluddin al-Afy H), who reopened the doors of ijtihad that had been closed for more than seven centuries - 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 ijtihad, it was never being discussed by some scholars in the time before al- S?ibi. One example is the dialogue between Ibnu ’ Aqil, from Hanabil with unncleriof Hanafites school. The point was Ibnu ’ Aqil 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. ijtihad. Logically this situation raised the intellectual restlessness among Islamic thinkers. Later, this led to the awareness toward the importance of reopening the door of ijtihad.

“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. ijtihad 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 (mukhtara r) 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 Vol. XII No. 1, Juni 2018 110 Farkhani, Elviandri, Sigit Sapto Nugroho unbendingness was
caused by as follow: 1) The fiqh scholars no longer took the law from the main sources, namely the Qur 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 text(Qur 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 iftā'i). 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 'a qida) 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 ul 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-Sībi--was born that contributed to break the text fixation by offering mindset and methods on ul al-fiqh which he believed could break the thinking stagnation of the people at that time. Al-Ta’
aru? wa al-Tarji? method is one of technical methodology created by al-S? ibi 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. S? ib in theorizing (methodology) the matter is based on the word of God, especially in Sura al-Nis a’ verse 82, ” if only the Qur’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 Qurthat e 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 Vol. XII No. 1, Juni 2018 The Concept of al-S? ib al-111 (musytarak) and nasi- mansukh (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 hadith 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’aru? means contradiction. Word al-adillah is the plural form of the word dal i l (proposition), which means argument, reason, and propositions. The study of ta` al-adillah is specifically addressed in the science of u? ul-fiqh when there is a conflict between two equally strong arguments in demonstrating the law.

In terms, the definition of ta‘aru? 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. ta‘aru? (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.

ta‘aru? is contradictory between two texts or arguments with similar strength. ta‘aru? and tanaqu? . According to him, the latter is a clash of two propositions that causes the cancellation of one of those two, while ta‘aru? only blocks
enactment of the law without aborting the existence of the argument.

From those above definitions, the core of ta’aru? 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 sha arguments. Ta’aru? or contradiction between the shari’a arguments only occur in mujtahid point of views.

On this basis, ta’aru? 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-Sibi.

Similarly, the views of ul ul-fiqh scholars whether they were muta’ akhiri (ul ul-fiqh scholars who follow the Syafi’ite) or Hanafite scholars agree that the nature of ta’aru? in Islamic law is a collection of impossible arguments of law whether the contradiction between the argument of qa’i and qani. The ta’aru? is not only about qa’i and qani.

Today’s ta’aru? is something ta’aru? a hiri (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 qa’i and qani. On that time, a proposition might be substituted or being replaced as it was impossible to translate qa’i arguments. Vol. XII No. 1, Juni 2018 112 Farkhani, Elviandri, Sigit Sapto Nugroho (in details) when two arguments are indicated of having ta’aru?. However, other faqah a’ 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’aru? (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’aru? 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’an and Hadith designations because the Qur’an’s designation is as aqa’i proposition, while the Hadith is asanni proposition. In the event of a conflict between the arguments of qaf’i and anni, then automatically the proposition of qaf’i takes precedence. If the proposition of qaf’i and anni confront and meet the conditions, then it is called ta’aru’. 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’aru’. Of impossibility of contradiction between the propositions, it possibly occurs also between mujtahids. Al- ta’aru’ theory only happens in mujtahids’ point of views. mujtahids.

Furthermore, al-S?ib? 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 (in general) proposition with khash (specific) one. 2. Understand the mu?laq (absolute) proposition with muqayyad (limited) one.

This firm and clear statement of al-S?ibi 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) tarh, 3) jam’u wa Vol. XII No. 1, Juni 2018 The Concept of al-S?ibi al-113, or 4) (using Shafi’ites method), namely; 1) jam’u wa 2) naskh (abrogated), 3) 4) and 5) tawaqquf.

-al-S?ibi get involved in theory or basic concepts of ‘adamu al-ta’aru’ al-dala’ 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-S?ibi, the dispute (err) is only at the level of nullification (al-nafyu) and determination (al-?ub u t).
If this happens then the solution is the use of tarj ? method. Tarji ? 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 ( asbab ), such as a woman who is not ma ? ram is forbidden to touch but it is allowable after the wedding. 4. The difference in the requirements ( syuru ? ), such as the obligation to execute the command of God when a person becomes bali (adult). The syahadah (forgiveness) is as an independent full sentence. Thus, there is no penalty if there is syahadah.

al- al- with method exists; epistemological limitations will sentence to what is meant by method. derives from the word rajja a yurajji u an, which means taking something stronger. , by definition, is strengthening one of the two ? ann i arguments in order to do well to those already confirmed. Literally, tarj ? ( ? ) 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- tauf. The boosted proposition is called by raji ? , while the attenuated proposition is called marju ?. In terms, there are two definitions put forward by u ? ulal -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 ? ann i arguments to be put intrpcti ed These scholars restrict the canon only into ? anni course, because this issue is not included in the definitive issues (qa ? ‘i ) and is not also between ? anni and qa ? ‘i . Mostly Muslim scholars ( jumhur’ulam ) of u ? ul -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. Vol. XII No. 1, Juni 2018 114 Farkhani, Elviandri, Sigit Sapto Nugroho From some of definitions of tarj ?, although al- S ? ibi already insisted there is no contradiction between the propositions, there are still many scholars who provide tarj ? definition by pointing to the contradiction for proposition.

It seems to be the justification for the al- S ? ibi ’ s theory that to understand this theory relies on the accuracy and intelligence on each mujtahid (jurist). According to al- S ? ibi , tarj ? 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 haram rsal) except to implement qi ? a ? (particular). According to al- S ? i 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 h s or the difference in the two qiyas .

In this position, al- S ? ibi did not agree on the use of tarj method which resulted in the abandonment of one proposition to be carried out, except for mans u kh, there is no doubt in the validity of sanad (the hadit transmission) and matan (the content). When the position is at the same level, then the proposition should not use tarj 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 ( ? aru riyah) and liabilities of ? aharah (ablution ritual) as tahsiniyah. d. The occurrence of a single contention on both sides, such as: the prayer is invalid except reciting al- Fatih based on the hadit” the prayer leader ’ s reading is the congregations’ readings “ .

In the first hadith, the congregations shall read al- Fatih 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- Ibthal (cancelling one proposition by examining the chain of transmission/sanad, the content/matan, or the intention of the argument).

Basically there is no absolute cancellation except following the concept of and
mans kh. Looking on the theory of al-\(\text{S}\) ibi about al-\(\text{ta} \ '\ \text{aru} \ ?\ \text{wa} \ \text{al-} \ \text{tarj} \ ?\), as if al-\(\text{S}\) ibi gave warnings to mujtahids (jurists) not to be reckless in conducting ist\(\text{-}\ \text{ukm}\) which originated from the \(\text{ahir}\) 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 (\(\text{maqa} \ ?\ \text{id}\-\text{al-syari'}\)). Methodological solution on al-\(\text{ta} \ '\ \text{aru} \ ?\) offered by al-\(\text{S}\) ibi is to select the most suitable \(\text{ijtih\text{a}d}\) in order to break the deadlock contradiction, by which the \(\text{ys ffd y yafi ites}\) and Hanafites are absent to solve the Vol. XII No. 1, Juni 2018 The Concept of al-\(\text{S}\) ib al-115 problem.

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 quf (\(\text{ta} \ ?\ \text{a qu} \ ?\ \text{al-dal i lain}\)) but not touching or leaving the apparent contradictions. Some scholars stated that before they left the two arguments they had opportunities to do takhyir method (choose) by selecting one of the desired proposition without considering a conflict between the existing proposition.

Taw a quf (\(\text{ta} \ ?\ \text{a qu} \ ?\ \text{al-dal i lain}\)) 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, taw a quf method is not made as the choice by al-\(\text{S}\) ibi to 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-\(\text{S}\) ibi himself. Some of the methods offered by earlier fiqh scholars could be used, but for al-\(\text{S}\) ibi tarj ? method is seen as the best method to solve the problem of al-\(\text{ta} \ '\ \text{a ru} \ ?\ \text{al-adillah}\).

In this study, al-\(\text{S}\) ibi truly shows that this method is the easiest and the lowest method of \(\text{ist}\ ?\ \text{ukm}\) especially those in the issue of al-\(\text{ta} \ '\ \text{a ru} \ ?\ \text{al-adillah}\). Al-\(\text{S}\) ibi 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 (\(\text{? ali kulla zaman}\)).

Conclusion Al-\(\text{ta} \ '\ \text{aru} \ ?\ \text{wa} \ \text{al-} \ \text{tarj} \ ?\) is a methodology of \(\text{u}\ ?\ \text{ul-fiqh}\) offered by al-\(\text{S}\) ibi in his magnum opus al-\(\text{Muw}\). In this method, al-\(\text{S}\) ibi would like to
emphasize that there is no contradiction between the propositions in an attempt for taking out the law (legal reasoning) or ista' al-?u?m. To be noted, the arguments' sources come from an adh?th, 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 tarji? method, to search for the most powerful arguments and then to serve them as the basis of departure to take an ista' al-?u?m.

End Notes: 1 There are four schools in the world of u?u'fi?qh: mutaklimin, with the main character of S?is; Hanafites, with Imam al-?Hanafi as the main reference in this stream; al-?Jam' i (the combination between mutaklimun and Hanafites), Takhrij al-Fur ' al aa I-?u I, see Maman Suherman "Aliran U?u'fi?qh dan Maqasid Sydney Al-Mashlahah Jurnal Hukum dan Pranata Islam, Vol. 2 No. 4 (July, 2014), p. 354. 2 Vol. XII No. 1, Juni 2018 116 Farkhani, Elviandri, Sigit Sapto Nugroho 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, 3rd edition (Jakarta: Ghalia Indonesia, 1999), p. 63-64.

3 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.


32. 11 Abul alil, aqidal - Si’ah Al- Syathibi (Sebuah Upaya untuk Menyingkap Tujuan Asasi Formulasi Hukum Islam) Al- Ihkâm, Vol. VI, No. 1, June 2011, p. 31. 12 Ibid., p. 13


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