

ABŪ ISHĀQ IBRĀHĪM IBN MŪSĀ AL-SYĀTHIBĪ AND HIS OPINION ON THE DICHOTOMY OF 'IBĀDĀT AND 'ĀDĀT IN ISLAMIC LAW

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Abstrak:

Abū Ishāq Ibrāhīm ibn Mūsā al-Syāthibī (w. 790/1388) atau yang biasa dikenal dengan nama al-Syāthibī, adalah salah seorang *fuqahā'* aliran Malikī yang paling masyhur. Pada saat hidup di Granada pada abad ke-13, ia menghadapi perubahan sosial, ekonomi, dan budaya yang luas. Pada saat yang sama, pengajaran dan praktik tasawwuf memberikan pengaruh terhadap kecenderungan pemikiran hukum Islam. Perubahan besar yang terjadi mendorongnya untuk membuat kerangka filsafat hukum Islam. *Mashlahah* (*mashālih*), sebagai tujuan utama *maqāshid al-syarī'ah* merupakan konsep utama pemikiran hukum Islam yang dirancangnya. Pemisahan antara ibadah dan adat mengandung gambaran aspek baku yang di satu sisi merupakan ajaran ritual dan di sisi yang lain merupakan bagian dinamis dari hukum Islam. Ibadah menuntur ketaatan sejati dari hamba melalui jalan yang telah ditentukan Tuhan. Sedangkan adat dapat menerima berbagai kemungkinan perubahan.

Abstract:

Abū Ishāq Ibrāhīm ibn Mūsā al-Syāthibī (d. 790/1388), or who is known as al-Syāthibī, is one of the most famous *fuqahā'* in Maliki sect. When he was living in Granada in the thirteenth century, he faced a wide scale of social, economic, and cultural changes. At the same time, the teaching and practice of tasawwuf influenced the tendency of thinking of Islamic law. The big change supported him to formulate his philosophy of Islamic law. *Mashlahah* (*mashālih*), as the main purpose of *maqāshid al-syarī'ah*, is the main concept of philosophy thinking in Islamic law that he built. The dichotomy of 'ibādāt and 'ādāt contains the representation of fixed aspects which in one side is the teaching of worships (rites), and on the other side is the dynamic aspect from the Islamic law. 'Ibādāt asked for a pure obedience from a

human with the way has been specified by the God, while *'âdât* can receive any possible changes.

Key Words:

Social Changes, Philosophy Of Islamic Law, *Mashlahah (Mashâlih)*, *'Ibâdât*, *'Âdât*

Introduction

Generally Islamic law is religious, sacred, and therefore it is immortal. Whereas the empirical facts show that the social changes always ask for suitable power of a law provision. Therefore claim at the absolute and immortal Islamic law always experience changes and modernization which always happen in the society. Many experts and law experts have different opinions dealing with the problem. The first opinion said that in his concept, which is suitable with its development and methodology, Islamic law is immortal and therefore cannot be adapted to social change.¹ Whereas the second opinion said that the existence of law principles such as affairs considerations, the flexibility of practices in Islamic law, and suggestion try to show clearly that Islamic law can be adapted to social change.²

¹ Bergtrasser, Hurgronje, dan Schacht who stated that Islamic law immunity comes from three things. First, the absolute and transcendence (from the God) characteristic have closed the possibility of changes to the concept and its institution. The second, from its history, the establishment of the Islamic law is separated from social institution and the existing law (country and courts). The third, it is caused by the failure of *syarî'ah* to create an adequate methodology to the law changes, so the law immunity which finally comes.

² The supporters of this opinion is Subhî Mahmashânî, 'Abd al-Razzâq al-Sanhûrî, Y. Linant de Bellefond, Van den Berg, dan Morand. According to them, at least three fifth of *syarî'ah* content is based on the reasoning, so it has to be recognized that *syarî'ah* can be the means of development in human's life. Whereas Qur'an and Sunnah is absolute (immutable), the interpretation to both sources can change based on the knowledge and experience level. Further explanation about both opposition groups dealing with the absolute and relational Islamic law can be seen in Muhammad Khalid Masud, *Filsafat Hukum Islam: Studi tentang Hidup dan Pemikiran Abu Ishaq Al-Syatibi*, trans. Ahsin Muhammad, First edition (Bandung: Pustaka, 1996), 1-2; S.E. Rayner, *The Theory of Contracts in Islamic Laws: A Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain, and the United Arab Emirates*, first edition, (London/Dordrecht/Boston: Graham and Trotman, 1991), 43-44.

When we analyze, the different point of view actually based on their religious' understanding of Islamic law which actually has two characteristics that seem contradictory. In one side they see the existence of some certain laws with sacred, absolute, and taken for granted characteristics; while in another side, they also get many laws with profane, relational and situational characteristics. Therefore it is true if we said that Islamic law has an absolute characteristic to some certain aspects and also relational characteristic in another side at once. It has an absolute characteristics in some certain aspects and also relational in another aspect at the same time. The problem is how we can differentiate absolute law materials to situational law materials. In the way of Islamic thinking there some theories emerged to differentiate law subjects with absolute and immortal law subjects in one hand and relative and situational law subjects in another hand, such as *'ibādāt* and *mu'āmalāt* dichotomy, *qath'ī* and *zhannī* dichotomy, *syarī'ah* and *fiqh* dichotomy, and *ta'abbudī* and *ta'aqqulī* dichotomy.

Here, *bipolar concept* of *'ibādāt* and *mu'āmalāt* refers to a wide category of *bipolar-concept* known in Islamic law. *'ibādāt* refers to law subjects contained religious with *unintelligible* characteristics, so that to Indonesian Moslems, this kind of subject should be received (taken for granted) and it should be maintained as the way it is in a life time. Subjects about pray, fasting and hajj, for instance, are the law belong to *'ibādāt* category so it is believed to be stiff and should be done forever as the way it is without any changes. While *mu'āmalāt* is the law teaching related to the human being in general so it has *intelligible* characteristic and possible to change which is suitable with the year and place. Trading, renting, criminal and court are some examples of law subjects of this category.

Temporary analysis of the writer shows that Abū Ishāq Ibrāhīm ibn Mūsā al-Syāthibī (d. 1388 M) is the first person who conceptually and critically stated the difference of *'ibādāt* and *mu'āmalāt*, in his book entitled *al-Muwāfaqāt fī Ushūl al-Ahkām*³ and also *al-I'tishām*.⁴ But the

³ In some edition of books *al-Muwāfaqāt* is different one another. This is caused by the existence of *muhāqqiq* (commentator) who are also different. The above title, for example, the *muhāqqiq* is Muhammad Muḥy al-Dīn 'Abd al-Ḥamīd. Another edition mentioned a different title, such as *al-Muwāfaqāt fī Ushūl al-Syarī'ah* whose *muhāqqiq* is 'Abd Allāh Darrāz and friends.

term he used in those two books is *'âdât* (*'âdiyât*),⁵ not *mu'âmalât*. So from al-Syâthibî's perspective of *bipolar concept* is *'ibâdât-'âdât*, not *'ibâdât-mu'âmalât*, although the meaning is actually the same. Al-Syâthibî's great thinking which tries to differentiate the fields of Islamic law into two fields is said by Muhammad Khalid Masud as the step forwarding to the positivism law, where he tries to differentiate law (*fiqh*) from theology and sufi's morality.⁶

This writing will focus on the analysis about *bipolar concept* or the difference of *'ibâdât* and *'âdât* in Syâthibî's way of thinking, especially dealing with the boundaries of two concepts above and also the functionalism in legal law.

The Figure of al-Syâthibî

There is a few data that can be found dealing with al-Syâthibî's biography although he is a famous figure of Malikî sect. Among writers in his era, Lisân al-Dîn al-Khathîb and Ibn Khaldûn, no one mentioned al-Syâthibî, although we believed that they knew him. Ibn al-Khathîb has the same teachers and also friends as al-Syâthibî, even one source described Ibn al-Khathîb as a student of al-Syâthibî, while Ibn Khaldûn has written paper as a response to al-Syâthibî's question to bachelors in west. Among the Malikî sect's writers of *thabaqât*⁷, Ibn

⁴ Al-Ghazâlî (d. 505/1111), an expert of Islamic law before al-Syâthibî, has also had an idea which tends to differentiate *'ibâdât* and *mu'âmalât* in his *Ihyâ'*, although it is not as sensitive as al-Syâthibî. According to al-Ghazâlî the laws of *'ibâdât* be based on the God's rights, such as *thahârah*, shalat/ pray, zakat, and others; whereas *'âdât* laws are based by the creatures rights which is divided into two, they are changing transaction (*mu'âmalât*), such as trading, renting, hibah, and others; and contract (*mu'âqadah*), such as marriage, divorce, bondage, and others. See M. Bernand, "Mu'âmalât" in *The Encyclopaedia of Islam*, eds. C. E. Bosworth, et. al. (Leiden: E.J. Brill, 1993), VII: 256.

⁵ Abû Ishâq Ibrâhîm ibn Mûsâ al-Syâthibî, *al-Muwâfaqât fî Ushûl al-Ahkâm*, (Kairo: Muḥammad 'Alî Shabîḥ wa Awlâduh, t.t.), II: 166. These both terms often used in turn and generally have the same meaning. *'Âdât* is a plural form of *âdah*, whereas *'âdiyyât* is a plural form of *'âdiyyah*.

⁶ Masud, *Filsafat Hukum Islam*, 27 and 356. Law positivism is a modern west law knowledge which excluded morality and justice consideration of law from the concept and the definition of law obligation. Although they admit that law rules may be founded in the morality and justice values, but this does not block the obligation of law to separate him from morality in the application of actual law.

⁷ Just like an encyclopedia containing a short biography of experts in certain field which is chronologically arranged (based on the arrangement of their life time). Malikî school's

Farhûn (d. 799/1396)⁸ is a figure who lived in the same era as al-Syâthibî, but he did not mention him. Likewise Badr al-dîn al-Qarâfî (d. 1008/1599),⁹ the writer of *thabaqât* after Ibn Farhûn, also did not mention him. Maybe the book written by Ahmad Baba (d. 1036/1626), *Nayl al-Ibtihâj*, is the first book which quoted biographical notes of al-Syâthibî. Almost all bachelors after him, including today's bachelor dependent on Ahmad Baba's note.¹⁰

Al-Syâthibî's full name is Abû Ishâq Ibrâhîm ibn Mûsâ ibn Muḥammad al-Lakhmî al-Syâthibî al-Gharnâthî. No one knows his family background and his first life. He grew and took all knowledge in Granada, which is the capital city of Nashr kingdom, until he was dead on 790/1388. His youngster happened coincidentally in the Sultan Muḥammad V al-Ghânî bi Allâh governmental period, a bright period to Granada. This town has a very big attraction to be visited by bachelors from North Africa, including Ibn al-Khathîb dan Ibn Khaldûn.¹¹

Although he was famous as ushul fiqh's expert,¹² but he was also good at other knowledges, such as language, translation, fiqh and debate. He studied language from Abû 'Abd Allâh ibn 'Alî al-Fakhkhâr al-Albîrî (d. 754/1353) and Abû al-Qâsim al-Sabtî (760/1358), studied tafsir/ translation to Abû 'Abd Allâh al-Balansî and al-Khathîb Abû Ja'far al-Shaqwarî, studied fiqh to Abû Sa'îd ibn Lubb (famous fiqh's expert from Andalusia), and also studied ushul fiqh to Abû 'Alî Manshûr ibn Muḥammad al-Zawâwî and Abû 'Abd Allâh al-Maqqârî al-Jadd (759/1357).¹³ The last two names are people who increase al-Syâthibî's interest to ushul fiqh and *kalâm*. Meanwhile, the last name, al-Maqqârî, has already introduced

thabaqât means a kind of ensiclopedia containing a short biography of Maliki school's experts since the one who created the school to the *thabaqât* present time.

⁸ Book writer of *al-Dîbâj al-Muhadzdzab*.

⁹ His book entitled *Tawshîh al-Dîbâj* (the complement of *al-Dîbâj*).

¹⁰ Muhammad Khalid Masud, *Filsafat Hukum Islam: Studi tentang Hidup dan Pemikiran Abu Ishaq al-Syatibi*, trans. Ahsin Muhammad, Fisrt edition (Bandung: Pustaka, 1996), 104-106.

¹¹ *Ibid.*, 108.

¹² C. E. Bosworth, et. al. (eds), *The Encyclopaedia of Islam* (Leiden: E.J. Brill, 1997), IX: 364, under the entry of "al-Shâthibî".

¹³ Both are people who quoted *Mukhtashar al-Muntahâ* book by Ibn Hâjib. The content of the book is based on *al-Mahshûl* book by Fakhr al- Dîn al-Râzî, see *ibid.*

Tasawwuf to al- Syâthibî through special way. Abû 'Abd Allâh al-Tilimsânî¹⁴ (d. 771/1369), an expert of 'ulûm 'aqliyyah¹⁵ is also his teacher.¹⁶

Al-Maqqârî known as someone who has reached *muḥaqqiq*¹⁷ level in Maliki sect. He is the one who has introduced *Raziism* to al-Syâthibî in ushul fiqh. He made a summary of book by Fakhr al-Dîn al-Râzî¹⁸ entitled *al-Muḥashshal*, and also made a conclusion of tafsir book by Ibn Hâjib which introduces *Raziism*¹⁹ to ushul fiqh in Maliki sect. According to al-Zawawî, al-Râzî in his tafsir Qur'an he dependent himself on four books written by people from Mu'tazilah, which is two books by Abû al-Husayn al-Bashrî entitled *Kitâb al-Dalâ'il* (in *ushûl al-dîn* field), and *al-Mu'tamad* (in ushul fiqh field), *Kitâb al-Tafsîr* by al-Qâdlî 'Abd al-Jabbâr (in tafsir field), and *al-Kasysyâf* by al-Zamakhsyarî (in philosophy and letters field). Al-Zawawî thought that *Raziisme* as a continuation of *kalâm* Mu'tazilah.²⁰

While studying to some famous experts, al-Syâthibî also develops his knowledge autodidact. As famous expert and ulama who always have students who will continue their point of view, al-Syâthibî has also had some famous students, such as Abû Bakr ibn 'Âshim, the writer of law compilation book *Tuhfah al-Hukkâm* which becomes reference of judges in Granada. He also writes a summary of *al-Muwâfaqât* book. Meanwhile another student is Abû Yahyâ ibn

¹⁴ The writer of *Miftâḥ al-Ushûl 'alâ Binâ' al-Furû' 'alâ al-Ushûl* book.

¹⁵ 'Ulûm 'aqliyyah means pure knowledge is based on rationality, such as philosophy etc, in contrary 'ulûm naqliyyah which means knowledge with religious aspects (Qur'an, Hadiths, fiqh) as the main object. Bosworth, *The Encyclopaedia*, IX: 364.

¹⁶ Abû Ishâq Ibrâhîm ibn Mûsâ al-Syâthibî, *al-I'tishâm* (Riyâdl: Maktabah al-Riyâdl al-Hadîtsah, t.t.), I: 10-11; Asafi Jaya Bakri, *Konsep Maqashid Syari'ah Menurut al-Syatibi*, cet. 1 (Bandung: Raja Grafindo Persada, 1996), 22-23; Bosworth, *The Encyclopaedia*, IX: 364.

¹⁷ Means people who are experts in applying general principles of Mazhab in specific cases. So al-Maqqârî here is an expert in applying law principles in Mazhab Maliki to specific cases.

¹⁸ Al-Râzî book here entitled *al-Maḥshûl* contained usul fiqh. This book basically combined two quite popular books from the earlier generation, which is *al-Mu'tamad* (by Abû al-Husayn al-Bashrî, a Mu'tazilah figure) and *al-Mustashfâ* (by al-Ghazâlî, the follower of Asy'ariyyah). But the effect of *al-Mu'tamad* is more dominant than *al-Mustashfâ*. See Masud, *Falsafah Hukum Islam*, 168-169.

¹⁹ Nisbah to Fakhr al-Dîn al-Râzî (d. 606/1209), the writer of the famous tafsir book *Mafâtîḥ al-Ghayb* and *al-Tafsîr al-Kabîr*. The tafsir is in rational style.

²⁰ *Ibid.*, 109-111.

‘Âshim (a brother of Abû Bakr ibn ‘Âshim) and Abû ‘Abd Allâh al-Bayânî.²¹

In Andalusia, fiqh is a popular and beneficial subject, but the interest to it is very rare. Al-Syâthibî himself was interested to ushul fiqh because of his understanding of this urgent knowledge. Based on his opinion, the weakness of fiqh in facing the challenge of social change is because of the insufficiency of methodology and philosophy which is the base of it. This weakness is already known since his early education. Besides the use of *murâ’ât al-khilâf*²² principle in Mazhab Maliki makes the problem more complicated. He thinks that the life has no soul anymore and its formalism will still be taken aside in reality as long as the law is not been analyzed yet. His monumental writing, *al-Muwâfaqât*, is dedicated for this purpose.²³

While being known as the initiator of *al-mashâlih al-mursalâh* in the theory of decision in Islamic law (ushul fiqh)²⁴ he is also famous with his effort to clean the Islamic practices from some strayed elements (bid’ah). One of his writings, *al-I’tishâm*, is dedicated for this purpose. His critics to some strayed religious aspects, but has been grown fast in the society tradition, even he is accused for the initiator of bid’ah. One of the religious aspects which is called bid’ah is saying the name of “sultan” in khutbah Jum’at and pray for him in the end of the shalat. His attitude is said to be harmful to political forces of religious figures (*fuqahâ*). He was objected by qadi in Spain and North Africa and also by some governmental officials.²⁵

Beside that, al-Syâthibî has also worried about the influence of tasawuf to fiqh and ushul fiqh. He did not oppose some sufi practice some cases if they do it individually or as a tasawuf learning. But something that he opposed is the attitude of the sufi or fukaha who are under the tasawwuf influence to oblige certain practices in fiqh, such as the obligation of make our soul free from others except Allah

²¹ Ibid., 113; Bakri, *Konsep Maqashid*, 24-25; al-Syâthibî, *al-I’tishâm*, I: 12.

²² Means that the various opinion is usual in the world of thinkers, moreover in the Fiqh field (Islamic Law), being much appreciated and all of his opinion is said to be true. Based on this principle the various opinion is preserved proudly.

²³ Masud, *Filsafat hukum Islam*, page. 111-112.

²⁴ Bosworth, *The Encyclopaedia*, IX: 364.

²⁵ Masud, *Filsafat hukum Islam*, 114-115.

in the pray and totally resigned to syaikh.²⁶ The bravery to state different opinion with the present general opinion is based on his stiff attitude to defend the truth which is believed and supported by his broad and deep knowledge.

The broad knowledge of al-Syâthibî can be seen in the variety of his writings which is seen in some knowledge. Unfortunately there are only some of his writings which are published in the form of book, the rest are only known through notes from other writers or still in the form of manuscript. Generally, al-Syâthibî's writings divided into two main fields, which are language-Arabic grammar, and fiqh-ushul fiqh. His writings that have been published are *al-Muwâfaqât fi Ushûl al-Syarî'ah*²⁷, *al-I'tishâm*, and *al-Ifâdât wa al-Insyâdât*, those three books are about the analysis of fiqh and ushul fiqh (Islamic law thinking). While other writings which are not published generally about the analysis of language, such as *Syarh Alfîyyah Ibn Mâlik*, '*Unwân al-Ittifâq fi 'Ilm al-Isytiqâq*, and *Kitâb Ushûl al-Nahw*.²⁸ As known that the first two writings, *al-Muwâfaqât* and *al-I'tishâm*, are the most famous in Islamic world. By his writings, especially *al-Muwâfaqât*, al-Syâthibî got his fame until now, although his background is not clearly known.

Moslems scholars in the XX century gave a high appreciation to al-Syâthibî's way of thinking, such as Muhammad 'Abduh, Muhammad Rashid Rida, Muhammad Iqbal, Abu al-A'la al-Mawdudi, Fazlur Rahman, and Ziauddin Sardar. According to Rahman, for instance, al-Syâthibî is a bright law expert who tries to

²⁶ Ibid., 117. So al-Syâthibî cursed the certain ritual practices which is based on two things, first those practices are bid'ah, and second they made it as religious obligation, which actually the God the one who should give an obligation. And the practices that he cursed are, except things mentioned above, is reciting *Yasin* together when people are cleansing the corpse, praying together after shalat (the obliged shalat), trying hard to finish Qur'an in the fasting/Ramadhan month, saying takbir loudly in the night of Ied, shaking hand and giving hug each other after the Ied shalat, and adding some words/sentences in the Adzan. See *ibid.*, 132-133.

²⁷ There are some book editions which say that *al-Muwâfaqât* is different from the other. This is so because there are different *muhaqqiq* (commentator) which are also different. The above title, for instance, the *muhaqqiq* is 'Abd Allâh Darrâz and friends. (Beirut: Dâr al-Kutub al-'Ilmiyyah, t.t.). Another edition said the title differently, for instance *al-Muwâfaqât fi Ushûl al-Ahkâm* whose *muhaqqiq* is Muhammad Muhy al-Dîn 'Abd al-Hamîd.

²⁸ Ibid., 119-122; Bosworth, *The Encyclopaedia*, IX: 364; Bakri, *Konsep Maqashid*, 25.

create rational, moral and spiritual foundation in the Islamic law system. While Sardar, the moslems futurology, said al-Syâthibî as a law expert who focused his attention on the Islamic sustainability and change, where for him social changes and law changes are related each other.²⁹ Many Ulama and Islamic law experts in Indonesia has based their thoughts to al-Syâthibî's opinion, such as Ahmad Hassan (w. 1958) and T.M. Hasbi Ash Shiddieqy (w. 1975). The opinion on differentiating Islamic law to 'Ibâdât and 'âdât (*mu'âmalât*) varies the way of thinking in Islamic law from those two figures.³⁰

Historical Context

Understanding on the historical context of al-Syâthibî's life made us review the moslems history in Spain. As we know that the moslems power in Spain had happened for about more than eight centuries (711-1492 M) which started in the al-Walid ibn 'Abd al-Mâlik governmental period (705-715 M). Spain has become Islamic area legally after the successful *futûhât* (expansion) and when Roderik king had been defeated by moslems. One by one the important cities were defeated by moslems, including Cordova which finally became the capital city of Islamic Spain. Eight centuries were not a short time for moslems in Spain. Moslems got many achievements and they also seldom had declining achievement. In the al-Nâshir's governmental period (912-929 M) for instance, Spain got its highest point of achievement and Cordova became one of the central knowledge in Islam besides Baghdad dan Kairo.³¹

²⁹ Bakri, *Konsep Maqasid*, 30-31.

³⁰ See the example, Ahmad Hassan, "Wiping forehead after the last greeting (salam) in shalat" in *Soal Jawab Masalah Agama* (Bangil: Percetakan Persatuan, 1985), I: 167; idem, "Law in catching and selling the snake's skin" in *Soal Jawab*, I: 343-344; idem, "Language in Khutbah" in *Soal Jawab*, II: 522-523; idem, "Bid'ah (divide Bid'ah into five parts)" in *Soal Jawab*, II: 833-844; idem, "Talqin's problem", in *Soal Jawab*, IV: 1439-1440; idem, "selling and promising to buy it back" in *Soal Jawab*, IV: 1522; idem, "al-Fatihah and wal Ashri" in *Soal Jawab*, IV: 1695; idem, "Hukum Asal" in *al-Furqan* (Tafsir Qur'an), cet. 1 (Bangil: Percetakan persatuan, t.t.), XXV; and idem, *Riba*, cet. 1 (Bangil: Percetakan Persatuan, 1975), 60; T.M. Hasbi Ash Shiddieqy, *Pengantar Ilmu Fiqih*, Cet. 8 (Jakarta: Bulan Bintang, 1993), 22; Idem, *Pengantar Hukum Islam*, cet. 6 (Jakarta: Bulan Bintang, 1981), II: 91.

³¹ Bakri, *Konsep Maqashid*, 13-14.

But of course the triumph of people may have their own turning point. As the time changes, the power of moslems became weaker and weaker. It can be because the internal conflict or the external one, even in the last years of moslems' existence in Spain. In this last period there is Granada kingdom³² which became the last moslems' power in Spain. This kingdom could defend his authority for about two and a half centuries (1232-1492 M). Its area stretched out from the south of Andalusia to the middle sea and Gibraltar strait. The kingdom's region consisted of green hills and mountainous area which was rich of valuable mine materials. This geographical condition became a high economical support to the kingdom so that it could survive for a long time and could reach a marvelous development.³³

Generally the fortieth century was a silent period to Islamic world after the turmoil happened in the earlier centuries. This political stability gave the peace that was hoped by intellectual activities. To experts group, changes that happened either in the individual or collective scale will give a deep impression to their thoughts. Therefore we can understand why some big works emerged at that time which was dedicated to the purpose of reanalyzing, systemizing, and adjusting the tradition again. In the North Africa came Ibn Khaldûn (784/1382) who famous with its historical philosophy, in Syria Ibn Taymiyyah (728/1328) came with all his critics to the political tradition and law theory, in Persi al-Ājî (756/1355) re-systemized to Sunni theology, and in Spain al-Syâthibî emerged with his law philosophy.³⁴

Granada experienced important changes in that time. According to the history writers al-Syâthibî lived in the era of Ismâil ibn Farrâj (713/1312), Muḥammad ibn Ismâ'îl (734/1333), and Muḥammad V al-Ghânî bi Allâh (755/1354).³⁵ Political power consolidation by Sultan Muḥammad V influenced the growth and development of almost all social institutions in Granada. *Fuqahâ'*'s role is also influenced and therefore affected the syarî'ah's status and role. The new educational

³² Is established by Muḥammad ibn Yûsuf ibn Ahmad al-Khazrajî al-Ansârî. This name is given to a friend of the prophet, Sa'd ibn 'Ubâdah, who also the leader of Khazrâj tribe in Madinah. He also called as Ibn al-Ahmar.

³³ Ibid., 15-16.

³⁴ Ibid., 38-39.

³⁵ Ibid., 17.

system, the courts' structure, sufi penetration, and also the spread of liberal thinking, are factors that affect intellectual activities of the people in Granada. Economical construction at that time was very important so that it could determine the history of the region. The rising of middle sea trading, the shifting from village economy to the urban economy, the introduction of yellow Dinar money, and other factors with the similar characteristics which highly affects the lifestyle in Granada. Some forms of trade union, contract, and new transaction which ask for the changes in methodology of law analysis which becomes the basic of law philosophy.³⁶

Granada political structure at that time consisted of three main officials who were responsible to the sultan, they are *shaykh al-ghuzzât*³⁷, *wazîr*³⁸, and *qâdlî al-jamâ'ah*.³⁹ The last official mentioned above gives *fuqahâ'* (law experts) political power, because they are seen to judge and decide some cases authoritatively. Beside that they also had power to control educational institution, free thinking movement, and tasawwuf (tarekat) which could threaten political and economic system. At that time *fuqahâ'* cursed philosophy and people who study it as the bid'ah maker as the case happened to *wazîr* Ibn al-Khathîb.⁴⁰

At that case tasawwuf which was rejected by Maliki sect in the twelfth century, it can be more received in the next century. At the thirtieth century, together with the existence of Maliki sect, tasawwuf had a strong influence. Realizing this situation many *fuqahâ'* then accommodate their wish to stay on their syariah's provisions. Accommodative attitude to tasawwuf then emerge some fiqh experts who were also the followers of tasawwuf such as Abû 'Abd Allâh al-Maqqârî (w. 758 H). With the compromise the *fuqahâ'* release its opposition side to tasawwuf.⁴¹

³⁶ Ibid., 37-38.

³⁷ Such as warlord

³⁸ Such as Prime Minister

³⁹ Such as Chief Justice. See *ibid.*, 47-50.

⁴⁰ Sultan Muhammad V and Qâdlî al-Nubâhî and Ibn Zumurûk's conspiracy is successful to give allegations to him as the bid'ah initiator in Banu Mârin palace. Then he was killed in the prison and burned. See *ibid.*, 60.

⁴¹ *Ibid.*, 63-70.

Finally it can be summarized that in al-Syâthibî's era, Maliki fiqh must face a basic change, either in social, economic, political and cultural field. Those changes are not only analyzed by accommodating them in a law prediction but ask for a reanalysis of the methodology and its general principles. Here al-Syâthibî played a vital role. His law philosophy was a total effort to face the changes in the society of Granada.⁴²

The Main Thoughts of al-Syâthibî

Al-Syâthibî is always identical with his thought of *maqâshid al-syarî'ah* (syara' law purposes). His attention is so big to *maqâshid al-syarî'ah* seen in his *master piece*, *al-Muwâfaqât*, where there is a big portion to the analysis on that theme. According to him, laws are made for the goodness of people. This means the content of *maqâshid al-syarî'ah* or its purpose is the human goodness. Nased on his analysis on some ayat⁴³ inductively he concluded that *maqâshid al-syarî'ah*, in the meaning of goodness, existed in some law provisions in a whole. When there is an unclear law for goodness, it can be analyzed through *maqâshid al-syarî'ah* by seeing the soul of syariat and general purpose of *hanîf* Islam.⁴⁴

Whereas the meaning of goodness by al-Syâthibî⁴⁵ is everything related to the human life condition, the effort to fulfill their needs, and the fulfillment needs to what the emotional and intellectual quality demands for in the absolute understanding.⁴⁶ He saw goodness from two different sides, there are *maqâshid al-Syâri`* (God's purpose) and *maqâshid al-mukallaf* (law's purpose to *mukallaf* or law subject). According to him, there are four reasons of God's purpose in deciding law, they are for the goodness of human in the world and in the life

⁴² Ibid., 89-90.

⁴³ Some of the are Q.S. al-Nisa' 4: 165, Q.S. Hud 11: 7, Q.S. al-Anbiya' 21: 107, Q.S. al-Dhariyat 51: 56, Q.S al-Mulk 67: 2. Whereas the one who directly related to the law are Q.S. al-Ma'idah 5:5, Q.S. al-Baqarah 2: 179, Q.S. al-Hajj 22: 39, dan Q.S. al-Ankabut 27: 45. In Q.S. al-Hajj 22: 39, For instance. It is stated "it is allowed to go to a war to whom they are attacked because they have been persecuted. In the context of *maqâshid al-syarî'ah*, is said the law to go to war when they want to defend themselves or to stop the unfair things and this kind of purposes is of course intended to human goodness.

⁴⁴ al-Syâthibî, *al-Muwâfaqât*, II: 3-4; Bakri, *Konsep Maqashid*, 64-68.

⁴⁵ The real term is actually *mashlahah* and its plural form is *mashâlih*.

⁴⁶ Ibid., 16-17; Masud, *Filsafat Hukum Islam*, 244.

after the death, to understand, to be done, and to place human under the law protection.⁴⁷ The last three aspects basically are supporting aspect of the first as its purpose. The three aspects have a strong relationship and cannot be separated each other in order to gain the first purpose, the goodness in the world and the life after the death.⁴⁸

According to al-Syâthibî the goodness then can be embodied in five main elements which can be guaranteed its existence, they are religion, soul, brain, descendants and treasure.⁴⁹ There are three levels in *maqâshid al-syarî'ah* in order to manifest and keep these five main elements, they are *dlarûrî*, *hâjî*, dan *tahsînî*.⁵⁰ *Maqâshid dlarûriyyah* are intended to keep the five main elements's existence which must be there in the human soul. When the purpose is not reached it can damage or threaten the human life in the world and the world after the death. *Maqâshid hâjiyyah* has a purpose to keep five main elements well. Ignoring it can result on the difficulties in someone's life (*mukallaf*) although it does not mean damaging all of his life. While *maqâshid tahsîniyyah* is intended to complete human basic needs to the five main elements to gain a perfect and happy life. Underestimating it cannot make a fatal effect or make his life difficult. In short, *hâjî* level is the complement of *dlarûrî* level, and *tahsînî* level becomes a complement to *hâjî* level.⁵¹

In its relation to the understanding and Islamic law dynamic, the above stratification of *maqâshid al-syarî'ah* is then differentiated into two big groups, they are fieldrelated to the life on earth (*al-mashâlih al-dunyawiiyyah*) and the life after the death (*al-mashâlih al-ukhrawiiyyah*).⁵² But this differentiation is not intended to make a line to make boundaries sharply between these two Islamic law fields, because actually both fields cannot be separated. Stratification and also sorting of *maqâshid al-syarî'ah* can give direction to the content and priority scale in developing the law. Besides, it can also help to

⁴⁷ Al-Syâthibî, *al-Muwâfaqât*, II: 3.

⁴⁸ Bakri, *Konsepsi Maqashid*, 70.

⁴⁹ Those five elements then known as *al-mashâlih al-khamsah* (five goodness).

⁵⁰ These three levels maybe can be aligned with three level of priority in completing needs which are primer, secondary, and tertiary.

⁵¹ Further explanation can be seen in al-Syâthibî, *al-Muwâfaqât*, II: 4-7; differentiate with *ibid.*, 71-72.

⁵² See *ibid.*, II: 16, 23, and 26.

draw a clear line between the law field which can develop itself through *ijtihād* or the one which cannot.⁵³

The Dichotomy of 'Ibādāt and 'Ādāt in Islamic Law

The division of *maqāshid al-syarī'ah* into two groups, the world and the life after death, lead us to al-Syāthibī's thinking and effort to divide Islamic law into two things, they are 'ibādāt and 'ādāt. According to him, syara's law is divided into two kinds, they are laws which belong to 'ibādāt⁵⁴ category and laws which belong to 'ādāt ('ādiyāt) category. Basically, 'ibādāt has *ta'abbudī* characteristic which application is based only on the people (*mukallaf*) obedience to his God without analyzing the reasons or *mashlahah* commanded (*ghayr ma'qūliyyah al-ma'nā*), such as wudu, tayammum, salat, fasting, and hajj. While 'ādāt, its laws are based on the reason and the goodness which can be known rationally (*ma'qūliyyah al-ma'nā*). For instance it can be seen in the law provisions related to trading, renting, marriage and many kinds of criminal law forms.⁵⁵

In some reasons that were proposed by al-Syāthibī dealing with the sorting of 'ibādāt and 'ādāt is the first, from the analysis on Syara' law inductively can be concluded that provisions such as *thahārah* and *tayammum*, which belong to 'ibādāt category, it's hard to explain its meaning unless in *ta'abbud* terms. Second, we cannot broaden the scope of 'ibādāt in *ta'abbud*. Therefore the obligation is only limited on specific commands on it. This is the reason why there is no explicit reason that can be given in such commands. In contrary, in 'ādāt field, the broaden of the rules is the purpose. So *Syāri'* explains the reasons ('*ilal*) or the advantages of the law rules that are commanded.⁵⁶

There are two criterion developed by al-Syāthibī to differentiate 'ibādāt from 'ādāt. First, *mashāliḥ* 'ibādāt is only known by God and second, 'ibādāt belongs to *ta'abbud* area (the meaning of the rules are not yet known rationally). But both criterion are easy to become unclear. In reality, there are many obligations which generally known

⁵³ Bakri, *Konsep Maqashid*, 73-74.

⁵⁴ 'Ibādāt is a plural form of 'ibādah. This term tends to point at a categorizing law which generally related to religious rites in Islam. In Islamic lesson structure 'ibādah belongs to fiqh field (Islamic law).

⁵⁵ Al-Syāthibī, *al-Muwāfaqāt*, II: 222 and 225; Masud, *Filsafat Hukum Islam*, 333.

⁵⁶ Al-Syāthibī, II: 222-223; bandingkan Masud, *Filsafat Hukum Islam*, 297.

as 'ibâdât, Qur'an explicitly mentioned their *mashâliḥ* and 'illah. As an example a devotion is *mashlahah* of fasting.⁵⁷ In contrary, there are many law provisions which actually do not belong to 'ibâdât category thus it is also not known its *mashlahah*, such as zakat measurement.⁵⁸ Those things show the weaknesses or the lacks of his opinion about the sorting of 'ibâdât-'âdât which actually has unclear boundaries which divide them and also on the role and its significances in the body of Islamic law theory.

As a result of thinking, the sorting of 'ibâdât-'âdât in the context is of course imperfect yet. But it must be recognized that basically the idea of sorting out is very important in understanding and developing Islamic law subjects which are so broad either the one which is related to God or the relationship between humans. Some reviewers even state that the sorting of 'ibâdât-'âdât is a beginning step to positivism law in Islamic law, where law (*fiqh*) is separated from theology and sufi's morality.⁵⁹

Closing

The thought of al-Syâthibî as has been described above seems to be influenced very much by the social condition of Granada's society in his lifetime. In another side he saw Islamic law facing basic change in life, either economy, social and politic so it also demands for law paradigm changes from its formal and rigid characteristics to philosophic and dynamic paradigm. In this context, he offered his opinion about *maqâshid al-syarî'ah* with its concept about *mashlahah*. In another side, he also see the influence of tasawwuf or tarekat to Islamic law (*fiqh*) which is so strong in the society that makes the religious rites contaminated by bid'ah that is there in the lessons.

⁵⁷ Masud, *Filsafat Hukum Islam*, 356.

⁵⁸ al-Syâthibî, *al-Muwâfaqât*, II: 223. Another laws such as, *zhuhâr*, *li'ân*, and *qasâmah*, by some experts is also said irrational (*ghayr ma'qûliyyah al-ma'nâ*). Whereas those laws do not belong to 'ibâdât category. See Joseph Schacht, *An Introduction to Islamic Law*, (Oxford: Oxford University Press, 1971), 202-203.

⁵⁹ Masud, *Filsafat Hukum Islam*, 27 and 356. Law Positivism is one side in modern west law knowledge which excluding morality and justice considerations from concept and definition of law obligations. Although they recognize that Law rules might be founded in the morality and justice values, but this will not block the law obligations to separate itself from morality in applying actual law.

Therefore he stressed on the importance to do worship as the way syara' said.

Because he saw some aspects of Islamic law having a dynamic characteristics in the goodness boundaries which becomes its purpose, and some others have a stiff characteristics, because the characteristic of *ghayr ma'qûliyyah al-ma'nâ*, so he needs to make separation in these two groups. Here then he came with an opinion of separation Islamic Law to 'ibâdât field with stiff characteristics (*taken for granted*) and 'âdât (*mu'âmalât*) field which is dynamic and open to any changes.

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