Dziauddin & Norizah, "The Methodology of Comparative School of Thought on *al-Rahn*," *Afkār* Special Issue 1 (2020): 47-78

THE METHODOLOGY OF COMPARATIVE SCHOOL OF THOUGHT ON *AL-RAHN* DISCUSSION: A REFERENCE TO THE SELECTED ISLAMIC JURISPRUDENCE CLASSICAL BOOKS

Dziauddin Sharif**, Norizah Mohamed @ Haji Daud, Wan Noor Hazlina Wan Jusoh, Amal Hayati Ishak, Fadhilah Adibah Ismail

Academy of Contemporary Islamic Studies. MARA University of Technology (UiTM). 78000. Alor Gajah. Melaka. Malaysia.

Email: *dziau646@uitm.edu.my

DOI: https://doi.org/10.22452/afkar.sp2020no1.3

Abstract

This study discusses the methodology used by the *fuqaha'* from various schools in studying *al-rahn* issues. In this methodology, research focuses on the comparisons of ideas and views that are often used in the analysis of diverse and graded data. The comparison between these data should start with the selection of *fiqh* books that are relevant to the objectives of the study to be done. The selection of books should be justified to reinforce the methodology used throughout the study. This study focuses on six *fiqh* books that are valid and elaborating the justification for the selection of the six books based on the power of the book's authority in their respective sects as well as the extent of their methodological suitability in meeting the objectives of the study. This study found that the *fuqahā*' presented a critical analysis by considering the views of different jurists of sectarian flow. Preferential views do not necessarily come from the same school, but other views of the school will be referenced as appropriate to their methodology. As a result, the *fuqahā*' can analyse the information from different sources apart from the view of their own sect. It can therefore be concluded that the writing of these six

selected books contributed greatly in influencing the determination of a *fiqh* law especially in the *al-rahn* issue because the legal analysis was still relevant for today's use.

Keywords: Methodology of comparative school of thought; *fiqh* books; Islamic jurisprudence; *Fiqh* sect; *al-Rahn*.

Khulasah

Kajian ini membincangkan tentang metodologi yang digunakan oleh para fuqaha dari pelbagai mazhab dalam mengkaji isu al-Rahn. Dalam metodologi ini, kajian menumpukan perbandingan pemikiran dan pandangan yang seringkali digunapakai dalam penganalisaan data-data yang pelbagai dan berencam. Perbandingan antara data-data yang berencam ini harus bermula dengan pemilihan kitab-kitab fiqh yang bersesuaian dengan objektif kajian yang akan dilakukan. Pemilihan buku harus diberikan justifikasi bagi mengukuhkan metodologi yang digunakan sepanjang kajian. Kajian ini menumpukan enam buah buku fiqh yang muktabar dan menghuraikan justifikasi terhadap pemilihan enam buah buku tersebut adalah berdasarkan kepada kekuatan autoriti buku dalam mazhab masing-masing dan juga sejauh mana kesesuaian metodologinya dalam menepati objektif kajian. Kajian ini mendapati bahawa para fuqaha mengemukakan analisis yang kritikal dengan mengambil kira pandangan dari para fuqaha yang berlainan aliran mazhab. Pandangan yang diutamakan tidak semestinya datang dari mazhab yang sama, malah pandangan mazhab yang lain akan dijadikan rujukan jika metodologi mereka bersesuaian. Hasilnya, para fuqaha dapat menganalisis maklumat daripada pelbagai sumber yang berbeza secara adil selain dari pandangan mazhab aliran mereka sendiri. Maka dapat disimpulkan bahawa penulisan enam buah buku yang terpilih ini memberi sumbangan besar dalam mempengaruhi penentuan sesuatu hukum fiqh

terutamanya dalam bidang al-rahn kerana analisis hukum yang dilakukan masih relevan untuk digunakan pada masa kini.

Kata kunci: Metodologi perbandingan aliran pemikiran; karya fiqh; Usul Fiqh; mazhab fiqh; *al-Rahn.*

Introduction

The book of the Islamic jurisprudence's selection is important in determining the matter to be investigated. Since the period of one specific study has its limitation, the focus on several major books of Islamic jurisprudence for each school is necessary. The selection of the book to be used as the main reference will not deny the role of other authentic references. The process of determining the objectives of the study must be compatible with the references to be used. There is a required criterion in selecting precise books as main references in one certain study. Reference used are authentic and became the main reference in their schools. This can be found in many latest books and are often encoded in their debate. It has also been endorsed by other jurists of different schools thought.

The style of debate and discussion in the book is characteristically comparative jurisprudence. This facilitates a researcher to get an overview and justification of the whole issues resulted from various views in one time. This comparison is not limited to differences in views within the schools, but other schools of thought as well. Thus, the accuracy of the information can be crossed validity.

Based on such criteria, six books representing four schools of thought has been chosen, as the main reference of the study. The books are listed below:

1. *Al-Mabsūṭ* of Sarakhsī in Ḥanafī School.
2. *Ḥāshiyah Rad al-Mukhtār li Ibn 'Ābidīn 'ala al-Dur al-Mukhtār li al-Ḥaṣkafī* in Ḥanafī School.

3. *Bidāyah al-Mujtahid wa Nihāyah al-Muqtasid* of Ibn Rushd in Mālikī School.
4. *Ḥāshiyah al-Duṣūqī 'ala Sharḥ al-Kabīr* in Mālikī School.
5. *Al-Majmūʿ* of al-Nawawī in Shāfiʿī school.
6. *Al-Mughnī* of Ibn Qudāmah in Ḥanbalī school.

Methodology of *al-Mabsūṭ*

Al-Mabsūṭ is the main reference of the Ḥanafī School. This book covers all the chapters of *fiqh*, and its approaches were simple and the words used were clear. Unlike other books of *fiqh*, *al-Mabsūṭ* rarely uses certain terms to state an opinion. When we read books that have a lot of terms in it, of course, it requires us to read the methodology of the book before us being able to comprehend it. This is proven when a lot of terms are used to explain the level of the opinion. Among them are "*aṣaḥ*" (أصح), "*muqābil aṣaḥ"* (مقابل أصح), "*ṣaḥīḥ*" (صحيح), "*mashhūr*" (مشهور), "*gharīb*" (غريب) and others. In addition, there are books of *fiqh* that use abbreviations like the letter "*shin*" (ش), "*mim*" (م) or "*ra"*"(ر) to refer to a particular opinion of a scholar, which certainly requires the reader to investigate referencing.

This book also explains in detail about the law (*al-aḥkām*), the evidences (*al-adillah*), and discussion by comparing to other schools, particularly Shāfiʿī and Mālikī schools. Sometimes, the discussions are refered to Imām Aḥmad, Ẓāhirī, and at times even the Shīʿah schools. The comparison to Shāfiʿī can be seen through this statement[1]:

وَعَلَى قَوْلِ الشَّافِعِيِّ (– رَحِمَهُ اللَّهُ –) : مُوجَبُهُ مَا هُوَ مُوجَبُ سَائِرِ الْوَثَائِقِ كَالْكَفَالَةِ، وَالْحَوَالَةِ، وَهُوَ أَنْ تَزْدَادَ الْمُطَالَبَةُ بِهِ فَيَثْبُتَ بِهِ لِلْمُرْتَهِنِ حَقُّ الْمُطَالَبَةِ بِإِيفَاءِ الدَّيْنِ

[1] Shams al-Dīn Abū Bakr Muḥammad bin Abū Sahl al-Sarakhsī, *al-Mabsūṭ* (Bayrūt: Dār al-Fikr, 2000), 113.

مِنْ مَالِيَّتِهِ، وَذَلِكَ بِالْبَيْعِ فِي الدَّيْنِ، وَلَكِنَّا نَقُولُ: الْكَفَالَةُ، وَالْحَوَالَةُ عَقْدُ وَثِيقَةِ مَا لَزِمَهُ، وَالذِّمَّةُ مَحِلٌّ لِالْتِزَامِ الْمُطَالَبَةِ فِيهَا، فَيَكُونُ الثَّابِتُ بِهِمَا بَعْضَ مَا ثَبَتَ لِحَقِيقَةِ الْتِزَامِ الدَّيْنِ وَهُوَ الْمُطَالَبَةُ.

> “According to Shāfiʿī school, the goal of *al-rahnis* similar with the other security contracts (which is the existence of guarantee and security elements) such as *kafālah* and *ḥawālah* contracts; ie to increase the chances of a claim (to the debt provided). Therefore, the right of claims has been given to the creditor in implementing (meeting) the claim of the debt (loans) that have been given by him from his wealth. This (right) has also applied (in the contract) in debt trading. However, according to Ḥanafī, *kafālah* and *ḥawālah* contracts are differed from *al-rahn* contract. (This is because in) ensuring the pledge is safe in possession is a commitment on the claims (of the debt), while the last two contracts (*kafālah* and *ḥawālah*) only fulfil a part of the element of commitment in claiming (the debt)”

The comparison to Ẓāhirī can be seen while interpreting the verse of al-Qur’ān in which it talks about the permissibility of *al-rahn*. Sarakhsī wrote[2]:

أَنَّ الرَّهْنَ جَائِزٌ فِي الْحَضَرِ وَالسَّفَرِ جَمِيعًا، فَإِنَّهُ رَهَنَهُ – صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ – بِالْمَدِينَةِ فِي حَالِ إقَامَتِهِ بِهَا بِخِلَافِ مَا يَقُولُهُ أَصْحَابُ الظَّوَاهِرِ: أَنَّ الرَّهْنَ لَا يَجُوزُ

[2] *Ibid.*, 114.

إِلَّا فِي السَّفَرِ لِظَاهِرِ قَوْله تَعَالَى {: وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ}.

"*Al-rahn* contract can be carried out in the state of residence and travel (on a journey). This is because the Prophet (pbuh) had to pawn goods in Madīnah when Prophet resided there. This is contrary to the opinion of Ẓāhirī School that adheres to the outer meaning of the verse as Allah says "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging)."

However, Sarakhsī does not let the differences end without giving a justification for it. The justification for such differences is described in the following statement[3]:

وَالتَّعْلِيقُ بِالشَّرْطِ يَقْتَضِي الْفَصْلَ بَيْنَ الْوُجُودِ، وَالْعَدَمِ، وَلَكِنَّا نَقُولُ لَيْسَ الْمُرَادُ بِهِ الشَّرْطَ حَقِيقَةً بَلْ ذِكْرُ مَا يَعْتَادُهُ النَّاسُ فِي مُعَامَلَاتِهِمْ، فَإِنَّهُمْ فِي الْغَالِبِ يَمِيلُونَ إلَى الرَّهْنِ عِنْدَ تَعَذُّرِ إمْكَانِ التَّوَثُّقِ بِالْكِتَابِ وَالشُّهُودِ، وَالْغَالِبُ أَنْ يَكُونَ ذَلِكَ فِي السَّفَرِ، وَالْمُعَامَلَةِ الظَّاهِرَةِ مِنْ لَدُنْ رَسُولِ اللَّهِ – صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ – إلَى يَوْمِنَا هَذَا، فَالرَّهْنُ فِي الْحَضَرِ، وَالسَّفَرِ دَلِيلٌ: عَلَى جَوَازِهِ بِكُلِّ حَالٍ.

"(For Ẓāhirī) And the reason of the condition requires a separation between exist and absence (means the words '*safar*' is become the condition of the practices of *al-rahn* since

[3] *Ibid.*, 115.

> the word '*safar*' is exist, if not so, the word '*safar*' is not state...) But for us (Ḥanafī), we say that the condition is not really the matter, but the common practice of a society in *muʿāmalāt*. So, they usually tend to practice *al-rahn* when there is no documentation can be made such the writing and the witnessing (of a debt). And this situation normally happens during travelling. The real *muʿāmalāt* (of *al-rahn*) has been practiced by the Prophet p.b.u.h and it is continuing until now. So, the situation of *iqāmah* or *musāfir* is the evidence of the permissibility of practicing *al-rahnin* whatever situation."

The clarification of the differences between these two views is being expressed in the Ẓāhirī and Ḥanafī's rims. Ẓāhirī looked upon the explicit text of *al-rahn* and found that the text clearly states about the requirement of the pawning contract, and that it can only be exercised when someone is on a journey. While Ḥanafī looks at it through a different lens, beyond the mere words of the verse. They look at the common act of pawning activities practiced by man and consider it due to the absence of witnesses or the writer. These absences normally happened during a journey, where the witness and the writer are very difficult to find. Thus, in this situation, the requirements of state of journey need not to be applied.

The interesting part of this book is that Sarakhsī does not just make a determining preference about a scholar of the Ḥanafi School, but he acknowledges the view of many scholars of the Shāfiʿī and Mālikī schools of thought. In addition, Sarakhsī often reinforces his arguments with the cause of evidence. This approach can be witnessed in the

discussion on the perishing collateral. Sarakhsī has noted in his book as follows[4]:

إِلَى أَنْ أَحْدَثَ الشَّافِعِيُّ (– رَحِمَهُ اللَّهُ –) قَوْلًا رَابِعًا أَنَّهُ أَمَانَةٌ، وَلَا يَسْقُطُ شَيْءٌ مِنْ الدَّيْنِ بِهَلَاكِهِ، وَاسْتَدَلَّ فِي ذَلِكَ بِحَدِيثِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ – رَضِيَ اللَّهُ عَنْهُ – أَنَّ النَّبِيَّ – صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ – قَالَ: «لَا يَغْلَقُ الرَّهْنُ، لِصَاحِبِهِ غُنْمُهُ، وَعَلَيْهِ غُرْمُهُ» ، وَفِي رِوَايَةٍ: «الرَّهْنُ مِنْ رَاهِنِهِ الَّذِي رَهَنَهُ، لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ» ، وَزَعَمَ أَنَّ مَعْنَى قَوْلِهِ: – صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ – " لَا يَغْلَقُ الرَّهْنُ " لَا يَصِيرُ مَضْمُونًا بِالدَّيْنِ فَقَدْ فُسِّرَ ذَلِكَ بِقَوْلِهِ: الرَّهْنُ مِنْ رَاهِنِهِ الَّذِي رَهَنَهُ أَيْ: مِنْ ضَمَانِ رَاهِنِهِ.

“al-Shāfiʿī hold the fourth opinion that pawning is a trust (responsibility) to the debtor and the debt will not expire (or less) due to damage (of the pawning). Their judgment is based on ḥadīth of Zuhrī r.a. in which the Prophet had said: "The pledge is not owned (by the creditor), the debtor (chargor) on these profits and losses". In another narration: "The collateral does not become property of the creditor, and the pawning debtor retains rights for its output and obligations for its expenses" Some think that is meant by the Prophet is no guarantee against the debt, and then explained that the pledge is owned by the debtor who

[4] *Ibid*., 116.

> pledges, that means: it is the obligation of the debtor."

Although, Ḥanafī jurists agreed that the debtor should give the compensation for the perishing pawned goods by concluding with three opinions;[5] this view did not prevent Sarakhsī from adding the fourth opinion from the Shāfiʿī School of thought. The view stated that the debtors do not have to pay compensation, on the basis that the creditor is a trustee rather than a guarantor for the item. Although, it is clearly contrary to the three views held by the Ḥanafī School, Sarakhsī still provides an explanation and evidence for the view maintained by the Shāfiʿī School.

Sarakhsī also gathers evidences from the Ḥanafī and other schools of thought in an astute manner. This can be witnessed when the evidences are gathered and discussed. He did not emphasize on the disagreement of the issue, rather he strives to harmonize the views that walk the different ways. It can be grasped from the statement between Imām Mālik, Imām Abū Yūsuf, and Ḥanafī scholar about the needs of receivable pawned goods.[6]

Methodology of *Ḥashiyah Radd al-Mukhtār li Ibn 'Ābidīn ʿAla al-Dur al-Mukhtār li al-Ḥaṣkafī*[7]

It is written by Muḥammad Amīn ibn ʿUmar ibn ʿAbd al-ʿAzīz ibn ʿĀbidīn, born in the year 1198H/1784 in Damascus, who firstly studied the Shāfiʿī law and later Ḥanafī law, due to which he became one of the most distinguished scholars of his time. He died in Damascus in the year 1258/1842. His best-known work is a

[5] The three views are:
  i. Creditor replace with a lower rate than the value of pledge and debt.
  ii. Creditor replaces the similar rate with the total debt.
  iii. Creditor replaces the similar rate with the value of the pledge.

[6] al-Sarakhsī, *al-Mabsūṭ*, 122.

[7] Can be translated as "An Answer to the Perplexed: An Exegesis of The Choicest Gems".

commentary on the *Radd al-Muḥtār of al-Ḥaṣkafī* (d. 1088/1677); published in Cairo in 1299; and in Istanbul in 1307).[8]

Ibn ʿĀbidīn is also known as the final verifier (*muḥaqqiq*) of the Ḥanafī School. His legacy, *Radd al-Muḥtār* (also known as *Ḥashiyah Ibn ʿĀbidīn*), in most cases, is the final word on most legal issues. He did a prodigious job in clarifying the relied position of the school, and it is regarded as the central reference for *fatwa* in the Ḥanafī School.

This is the most comprehensive and the most authoritative book on Ḥanafī *fiqh* in the world today. It has been published many times: the Būlāq edition of 1272AH in five volumes, and later in 1276AH and 1299AH; the Maymaniyyah edition in 1307AH; and the Istanbul edition in 1307AH. Once again in 1323AH, there was a Maymaniyyah edition; and later in 1323AH, the Bābi al-Ḥalabi edition; and Istanbul edition in eight volumes along with the Takmalah (the completion), which has been printed a number of times.[9] However, this study holds 2000AD printed version and published by Dār al-Fikr, Bayrūt.[10]

This book is the footnote writing style in discussing the commentaries of Muḥammad bin ʿAlī bin Muḥammad bin ʿAlī bin ʿAbd al-Raḥmān bin Muḥammad al-Ḥaskafī, towards the book of *Tanwīr al-Abṣār*, written by Muḥammad bin ʿAbd Allāh bin Aḥmad al-Tamartashī al-Ghazzī. In this book, Ibn ʿĀbidīn discussed the Islamic jurisprudence in-depth. The methodology used in the book

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[8] P. Bearman et. al. ed., "Ibn ʿĀbidīn", in *Encyclopaedia of Islam*, Second Edition, consulted online on 22 November 2019, http://dx.doi.org/10.1163/1573-3912.

[9] Shams al-Dīn Muḥammad bin Aḥmad bin ʿUthmān al-Dhahabī, *Siyar Aʿlām al-Nubalā' li al-Dhahabī* (Bayrūt: Mu'assasah al-Risālah, 1981).

[10] Shams al-Dīn Muḥammad bin Aḥmad bin ʿUthmān al-Dhahabī, *Siyar Aʿlām al-Nubalā' li al-Dhahabī* (Bayrūt: Dār al-Fikr, 2000).

is by firstly debating the literal meaning of the word before bringing the Islamic evidences from the *Qur'ān, al-Ḥadīth*, the view of *ṣaḥābah* (companion), and the prominent jurists of the schools. The forty-nine (49) pages of discussion about *al-rahn* in the book display a detailed discussion, especially in relation to the things that should or should not be in *al-rahn* contract.

In addition to the commentary made on the book of Ḥaskafī, he lists various problems related to *al-rahn*, which includes individuals who are bound with the *al-rahn* contract. His writing also emphasized the conditions and functions of the creditor in the contract, as the contract is considered a charity and cannot be forced.

Methodology of *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid* of Ibn Rushd

The author's full name is Abū al-Walīd Muḥammad bin Aḥmad bin Muḥammad bin Aḥmad bin Rushd al-Qurṭūbī, and he was known as Ibn Rushd al-Ḥafīd and '*al-Ḥafīd*', which means 'the grandson' so as to differentiate him from his grandfather, who had a similar name.

Based on the general background of Ibn Rushd, he can be considered as the most dominated man in the knowledge of multidisciplinary. Besides being known in the field of jurisprudence through his book title *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, he was also known as a philosopher, medical scholar, and an astronomer. The diversity of disciplines that he dominated can be seen through the books written by him such as *The Philosophy of Ibn Rushd* (in Philosophy); *al-Ḍarūrī* (in *Manṭiq*); *al-Taḥṣīl* (disagreement between fiqh scholars); *Sharḥ Arjuzah Ibn Sīnā* and *al-Kuliyyāt* (in Medicine); *Ḥarakah al-Fulk* (in astronomy); and many more. It is estimated that he wrote about 50 books.[11]

[11] Abū al-Walīd Muḥammad bin Aḥmad bin Muḥammad bin Aḥmad ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid* (Cairo: Maṭbaʿah Muṣṭafā al-Bābi al-Ḥalabi wa Awlāduh, 1975), 272.

Bidāyah al-Mujtahid is one of the most important books, which focuses on the *fiqh* differences of the four schools of thought. Although, the content of *al-rahn* in this book is quite brief, yet the discussion on the *fiqh* matters is fundamental, precise, and structured. This condition is rarely found in other books of the similar age. A simple but solid and structured approach can be seen in the initial discussions about *al-rahn*. He clearly divided the topics he planned to cover in the very first paragraph, which makes it easier for the reader to organize their understanding about *al-rahn*. He wrote[12]:

وَالنَّظَرُ فِي هَذَا الْكِتَابِ: فِي الْأَرْكَانِ، وَفِي الشُّرُوطِ، وَفِي الْأَحْكَامِ.وَالْأَرْكَانُ هِيَ النَّظَرُ فِي الرَّاهِنِ، وَالْمَرْهُونِ، وَالْمُرْتَهِنِ، وَالشَّيْءِ الَّذِي فِيهِ الرَّهْنُ، وَصِفَةِ عَقْدِ الرَّهْنِ.

> "This book will look at the pillars, rules and laws. The pillars will be discussed, including the pillars of the debtor, the collateral, the creditor, the matters related to *al-rahn* and the feature of the contracts"

The book shows the similarities and differences regarding the opinions during the discussion and explains it in the light of various schools. For instance, when someone is in the condition of bankruptcy, both Imām Mālik and Imām al-Shāfiʿī agreed that the person will not be allowed to enter a pawning contract, while Imām Abū Ḥanīfah believed that it is possible.[13]

Similarly, the problem regarding the collateral that is shared by two or more owners, the original text stated:[14]

[12] *Ibid*.
[13] *Ibid*.
[14] *Ibid*., 273.

وَاخْتَلَفُوا فِي رَهْنِ الْمُشَاعِ: فَمَنَعَهُ أَبُو حَنِيفَةَ، وَأَجَازَهُ مَالِكٌ، وَالشَّافِعِيُّ. وَالسَّبَبُ فِي الْخِلَافِ: هَلْ تُمْكِنُ حِيَازَةُ الْمُشَاعِ أَمْ لَا تُمْكِنُ؟

> According to Abū Ḥanīfah, it is forbidden, but Mālik and al-Shāfiʿī maintained that it is possible: Is the property shared by many owners may be dealt with (getting the consent from each of the owner or to make sure any conflicts didn't occur in the future) when the property is used as collateral?"

What is interesting in dealing with the difference of opinions is to find the point of difference. Here we realize Ibn Rushd stating the reason why the great scholars involved in discussion upholding different views. The reason is centred on the question.

When the rationale of difference is specified, it becomes easy to digest and understand the situation. This condition could absolutely upsurge the veneration for all views held by them, since the researcher comprehends the reasons behind of their views. Besides sharing the reasons for such different views, Ibn Rushd also clarified the meaning of the whole text, which was necessary for him to explain in an easier way. He used the word "أعني" to describe his further clarification.

For example, we can see the statement that was discussed under the topic of the bankrupt debtor. He wrote[15]:

وَاتَّفَقَ مَالِكٌ، وَالشَّافِعِيُّ عَلَى أَنَّ الْمُفْلِسَ لَا يَجُوزُ رَهْنُهُ. وَقَالَ أَبُو حَنِيفَةَ: يَجُوزُ. وَاخْتَلَفَ قَوْلُ مَالِكٍ فِي الَّذِي أَحَاطَ الدَّيْنُ بِمَالِهِ هَلْ يَجُوزُ رَهْنُهُ؟ (أَعْنِي: هَلْ يَلْزَمُ أَمْ لَا

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[15] Ibn Rushd, *Bidāyah al-Mujtahid*, 272.

يَلْزَمُ؟) : فَالْمَشْهُورُ[16] عَنْهُ أَنَّهُ يَجُوزُ (أَعْنِي: قَبْلَ أَنْ يُفْلِسَ).

> "Mālik and al-Shāfiʿī have agreed that a bankrupt person cannot enter into the pawning contract, while Abū Ḥanīfah permitted it. (However) The word of Mālik[17] is different in the matter of the debt amount exceeds his (debtor) property, is this (situation) permissible or not? (I mean: is this situation binding or not?[18]). Thus, the *mashhūr* (famous) view of him is permissible (I mean, before he became a bankrupt)"

This situation shows the difference in opinion regarding the possibilities of conducting the contract when the amount of debt exceeds the value of the collateral (when someone is in bankruptcy). Ibn Rushd clarified the question that he raised (هَلْ يَجُوزُ رَهْنُهُ), with a further clarification: (أَعْنِي: هَلْ يَلْزَمُ أَمْ لَا يَلْزَمُ؟). Precisely, it means, "Is *al-rahn* possible?" by this further meaning, "Is *al-rahn* already bounded or not?" Similarly, the following statements (أَعْنِي: قَبْلَ أَنْ يُفْلِسَ) is a further explanation for the condition of the permissibility of the total debt exceeds the pawned value.

Ibn Rushd always relates his talks to the opinion of Imām Mālik in clarifying certain debated issues. This is may be due to his cautious attitude in having his own

[16] In Māliki Schools, the term *mashhūr* has different views, especially among the latter scholars. The first view shows the strength of evidence, while others refer to the many people who said the matter. For Ibn Khuwayz, he is more inclined towards the first view. See Ibn Rushd, *Bidāyah al-Mujtahid*, 272.

[17] Views that do not require the bankrupt entered the pledge contract.

[18] Binding with Imam Mālik's opinion regarding the impermissibility of a bankrupt in a pledge contract.

opinions. Furthermore, the relation to Imām Mālik could be a strong view as he was the founder of the Mālikī School. This can be known as Ibn Rushd often use words such as "for Mālik" (عند مالك) or "Mālik's word" (قول مالك), in issuing a ruling or in explaining a matter. However, it should be understood, that Ibn Rushd is not ignoring the other great Mālikī scholars such as Imām Ṣahnūn.[19]

In discussing the problems of *fiqh*, he cited the words from distinguished scholars and always avoided from being obsessed by a specific scholar. In fact, he warned about the attitude of ignoring the view of certain scholars or only holding upon certain scholars. For him, each view has their own judgment and evidence, even if it is contrary to his own views.

Methodology of *Ḥāshiyah al-Dusūqī ʿalā al-Sharḥ al-Kabīr*

This book was selected to further stimulate the discussions pertaining to *al-rahn* in the Mālikī School. This book is a reviewer of the book written by his teacher, Shaykh Dardīr Aḥmad bin Muḥammad (d.1201H), which explains the original book named *Mukhtaṣar al-Khalīl*. This book seems to converse from the perspective of three books at once, namely *Mukhtaṣar* of Imām Ishāq Khalīl, *Sharḥ al-Kabīr* of Dardīr, and *Ḥāshiyah al-Dusūqī* of al-Dusūqī.

Although the explanations in this book are quite long, it reflects the sharpness of the author in explaining the words of Shaykh Khalīl and his commentaries done by his

[19] Ṣaḥnūn ibn Saʿīd ibn Ḥabīb at-Tanūkhī (c. 776-7 – 854-5) (160 AH – 240 AH) was a jurist in the Mālikī school from Qayrawān in modern-day Tunisia. 'Ṣaḥnūn' was a nickname given to him, meaning a type of sharp bird. This is said to have referred to his quickness of mind. His father was a soldier from Homs, Syria. The family claimed descent from Tanukh, a tribal confederation that originated in the south of the Arabian Peninsula. M. Talbi, "Saḥnūn", in *Encyclopaedia of Islam*, 2nd ed. P. Bearman et. al., consulted online on 22 November 2019, http://dx.doi.org/10.1163/1573-3912_islam_SIM_6476.

teacher. By using the approach of 'clarification of the explanation', one will know more clearly about the pattern of thought and argument submitted by each author. However, a rigorous reading is essential in understanding the matters raised. This is because the discussions are very deep and involve other aspects of knowledge. But when one masters it, it is worth it.

Surprisingly, the discussions of *Sharḥ al-Kabīr* does not lead straight to the main idea of the topic but rather talks about the writing style of the main author (Shaykh Khalīl). However, this is not a sign of the weaknesses that exist in this book, but rather to increase the value added in the knowledge itself. This also reflects on a very careful attitude of the author towards the style of Khalīl's writing. This situation can be seen while commenting on Khalīl's definition about *al-rahn*. The words of Khalīl are as below[20]:

الرَّهْنُ: بَذْلُ مَنْ لَهُ الْبَيْعُ مَا يُبَاعُ أَوْ غَرَرًا وَلَوْ اشْتَرَطَ فِي الْعَقْدِ وَثِيقَةً بحق كولي ومكاتب ومأذون وآبق وَكِتَابَةٍ وَاسْتَوْفَى مِنْهَا أَوْ رَقَبَتِهِ إنْ عَجَزَ.

> "The pawning: The holding (of something) by those who is eligible in selling (transaction) and anything that can be sold or that have uncertainty; even stipulated in the contract; as a guarantee of the right such as a guardian, slave, approved, a running slave, a slave to a coming independence. And it can be fulfilled from it or his necks if can't."

Dardīr explained Shaykh Khalīl's writing style from another aspect, more towards the grammar, rather than to make the content simpler. His review of the word (الرَّهْنُ:

[20] Khalīl bin Isḥāq bin Mūsā Ḍiyā' al-Dīn al-Jundī, *Mukhtaṣar Khalīl,* vol. 1 (Cairo: Dār al-Ḥadīth, 2005), 166.

بَذْلُ), by categorizing it as the *al-Maṣdarī* style. This is explained more by al-Dusūqī through his notes. To see how the explanation has been broadened, below is the process on how al-Dusūqī has done it. Khalīl word: الرَّهْنُ: بَذْلُ Dardir explained it at first (in language aspect): كَمَا قَالَ وَعَرَّفَهُ الْمُصَنِّفُ - رَحِمَهُ اللَّهُ تَعَالَى - بِالْمَعْنَى الْمَصْدَرِيِّ بِقَوْلِهِ Then al-Dusūqī further clarifies it (still in language aspect)[21] :

(قَوْلُهُ وَعَرَّفَهُ الْمُصَنِّفُ بِالْمَعْنَى الْمَصْدَرِيِّ) أَيْ بِنَاءً عَلَى الِاسْتِعْمَالِ الْقَلِيلِ، وَأَمَّا ابْنُ عَرَفَةَ فَعَرَّفَهُ بِالْمَعْنَى الِاسْمِيِّ بِنَاءً عَلَى الِاسْتِعْمَالِ الْكَثِيرِ.

Consequently, it is not surprising when we see Ḥāshiah al-Dusūqī three times longer, or more in term of the content than the original book. However, the reason for the selection of this book lies in three: the strength of the reviews, the books used for comments, and the simplicity in delivering his understandings.

Firstly, al-Dusūqī only chose books that are authored by the Imām and renowned experts and certified by the majority and Mālikī scholars. It is not surprising to find that most of the books he reviewed were also reviewed by other scholars. In fact, al-Dusūqī himself has several books in *ḥāshiah* style, such as *Ḥāshiyah ʿalā al-Saʿad al-Taftāẓānī*; and *Ḥāshiyah 'alā al-Sanūsī Sharḥ Muqaddimah li Umm al-Barāhīn*.

In addition, he focused on preferring the final views from the Mālikī jurists, which can be a competent evidence for a legal ruling in the school. Great scholars such as Ibn ʿArafah[22] and Ibn Ḥajib[23] are quoted by him to

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[21] Muḥammad bin Aḥmad bin 'Arafah al-Dusūqī, *Ḥāshiyah al-Dusūqī 'ala al-Sharḥ al-Kabīr,* vol. 3 (Damascus: Dār al-Fikr, n.d), 231.

[22] His full name is Abū ʿAbd Allah Muḥammad bin Muḥammad bin Muḥammad bin Muḥammad bin ʿArafah al-Wuraghamī (d. 803H). He was great in fiqh, a scholar of tafsir and one of his books in tafsir is known as *Tafsīr Ibn ʿArafah.*

support a certain ruling in the Mālikī School. Here are two examples in which these scholars are quoted to support the Mālikī's view. Ibn ʿArafah defines *al-rahn* as besieged or obstructed:[24]

(قَوْلُهُ فِي الرَّهْنِ) أَيْ فِي ذِكْرِ حَقِيقَتِهِ، وَقَوْلُهُ وَمَا يَتَعَلَّقُ بِهِ أَيْ فِي الْمَسَائِلِ (قَوْلُهُ اللُّزُومُ وَالْحَبْسُ) قَالَ تَعَالَى {كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ} [المدثر: 38] أَيْ مَحْبُوسَةٌ (قَوْلُهُ كَمَا قَالَ) أَيْ ابْنُ عَرَفَة.

Ibn Ḥajib to support the word '*qabḍ*' in the contract is sufficient for only saying *ījāb* and *qabūl,* and do not have to surrender the collateral at the appointed time of contract:[25]

وَاعْتَرَضَهُ الْوَانُّوغِيُّ بِأَنَّهُ لَا يَشْمَلُ مِنْ الرَّهْنِ إلَّا مَا هُوَ مَقْبُوضٌ فَظَاهِرُهُ أَنَّ غَيْرَ الْمَقْبُوضِ لَا يُسَمَّى رَهْنًا وَلَيْسَ كَذَلِكَ إذْ لَا خِلَافَ فِي الْمَذْهَبِ أَنَّ الْقَبْضَ لَيْسَ مِنْ حَقِيقَةِ الرَّهْنِ وَلَا شَرْطًا فِي صِحَّتِهِ وَلَا لُزُومِهِ بَلْ يَنْعَقِدُ وَيَصِحُّ وَيَلْزَمُ بِمُجَرَّدِ الْقَوْلِ، ثُمَّ يَطْلُبُ الْمُرْتَهِنُ الْإِقْبَاضَ قَالَ ابْنُ الْحَاجِبِ يَصِحُّ الرَّهْنُ قَبْل الْقَبْضِ وَلَا يَتِمُّ إلَّا بِه.

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[23] His full name is Abū ʿAmrū ʿUthmān bin ʿUmar bin Abī Bakr bin Yūnus al-Kurdī al-Duwaynī. He is a distinguished scholar in fiqh, usūl fiqh, linguistic, an editor and an author of *al-Muktaṣarāt al-Mufīdah al-Mashhūṛah.*

[24] Al-Dusūqī, *Hashiyah al-Dusūqī,* 231.

[25] *Ibid*.

> "Al-Wānughiy[26] argued that *al-rahn* is incomplete except the process of taken possession (the collateral is surrendered) and thus, the absence of taken possession apparently cannot be called *al-rahn*. But this is not that (collateral possession) what is agreed in the schools (Mālikī). The acceptance (of collateral) not merely *al-rahn* is all about, and also is not a valid condition of it or conditions that bind it (*ar-rahn*) but it is sufficient when the occurrence of *al-rahn* by the word (*ijāb* and *qabūl*) then the creditor can demand the acceptance (of the collateral). Ibn Ḥājib said *al-rahn* is valid even before the possesion (of collateral), and (it is) not completed (transaction) unless with it (collateral possession)".

Al-Dusūqī's approach in explaining the words of Khalīl and his teacher's (Dardīr) explanation is quite structured. This can be seen when he made the words of Khalīl in the bracket '( )', and then explained Dardīr's words whenever needed. Below is an example of a statement which shows a part of Khalīl's word regarding *al-rahn*. Khalīl wrote:

الرَّهْنُ: بَذْلُ مَنْ لَهُ الْبَيْعُ مَا يُبَاعُ أَوْ غَرَرًا.

> "The holding (of something) by those who is eligible in sale (transaction) and anything that can be sold or that have uncertainty;"

Then Dardīr explained a little bit further in his book below:[27]

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[26] Al-Wānughiy real name is Yūsuf bin Ibrāhim al-Wānughiy al-Maghrībī (d. 839H).

[27] The words in the bracket shows Khalīl's words, the bold and underlined sentences show the Dardīr explanation.

وَعَرَّفَهُ الْمُصَنِّفُ – رَحِمَهُ اللَّهُ تَعَالَى – بِالْمَعْنَى الْمَصْدَرِيِّ
بِقَوْلِهِ (الرَّهْنُ بَذْلُ) أَيْ إعْطَاءُ (مَنْ لَهُ الْبَيْعُ) صِحَّةً
وَلُزُومًا (مَا يُبَاعُ) مِنْ كُلِّ طَاهِرٍ مُنْتَفَعٍ بِهِ مَقْدُورٍ عَلَى
تَسْلِيمِهِ مَعْلُومٍ غَيْرِ مَنْهِيٍّ عَنْهُ، وَدَخَلَ فِيهِ رَهْنُ الدَّيْنِ
فَيَجُوزُ مِنْ الْمَدِينِ وَغَيْرِهِ وَانْظُرْ تَفْصِيلَ الْمَسْأَلَةِ فِي
الْأَصْلِ، وَلَمَّا كَانَ قَوْلُهُ مَا يُبَاعُ يُخْرِجُ مَا فِيهِ غَرَرٌ مَعَ أَنَّهُ
يَجُوزُ رَهْنُهُ عَطَفَهُ عَلَيْهِ بِقَوْلِهِ (أَوْ غَرَرًا) أَيْ ذَا غَرَرٍ

"The author defines it (*al-rahn*) by using the structure of *maṣdarī* (compound nouns) as his word shows (*al-rahnis* an effort) a giving of (done by someone who has the qualifications to carry out the sale and purchase contract) a good and true thing (what could be exchanged) from a thing that fitted, useful, and the ability to hand over, known, unprohibited; including mortgaging a debt..."

While al-Dusūqī quotes both, he makes his clarification more detailed:[28]

(قَوْلُهُ وَعَرَّفَهُ الْمُصَنِّفُ بِالْمَعْنَى الْمَصْدَرِيِّ) أَيْ بِنَاءً عَلَى
الِاسْتِعْمَالِ الْقَلِيلِ، وَأَمَّا ابْنُ عَرَفَةَ فَعَرَّفَهُ بِالْمَعْنَى الِاسْمِيِّ
بِنَاءً عَلَى الِاسْتِعْمَالِ الْكَثِيرِ (قَوْلُهُ مَنْ لَهُ الْبَيْعُ) أَيْ مَنْ
فِيهِ أَهْلِيَّةُ الْبَيْعِ صِحَّةً وَهُوَ الْمُمَيِّزُ وَلُزُومًا وَهُوَ الْمُكَلَّفُ
الرَّشِيدُ فَمَنْ يَصِحُّ بَيْعُهُ يَصِحُّ رَهْنُهُ، وَمَنْ لَا يَصِحُّ بَيْعُهُ

[28] The bracket shows Khalīl's words, the underlined sentences show the Dardīr explanation and lastly the bold font shows al-Dusūqī commentaries.

لَا يَصِحُّ رَهْنُهُ فَلَا يَصِحُّ مِنْ مَجْنُونٍ وَلَا مِنْ صَبِيٍّ لَا مَيْزَ لَهُ وَيَصِحُّ مِنْ الْمُمَيِّزِ وَالسَّفِيهِ وَالْعَبْدِ وَيَتَوَقَّفُ عَلَى إجَازَةِ وَلِيِّهِمْ أَيْ إنْ اشْتَرَطَ فِي صُلْبِ عَقْدِ الْبَيْعِ أَوْ الْقَرْضِ وَإِلَّا فَهُوَ تَبَرُّعٌ بَاطِلٌ كَمَا قَالَ شَيْخُنَا وَيَلْزَمُ مِنْ الْمُكَلَّفِ الرَّشِيدِ كَالْبَيْعِ، فَإِنْ قُلْت الْمَرِيضُ يَصِحُّ بَيْعُهُ دُونَ رَهْنِهِ فَلَا يَتِمُّ مَا قَالَهُ الْمُصَنِّفُ قُلْتُ مَا قَالَهُ الْمُصَنِّفُ مَحْمُولٌ عَلَى مَا فِي الْوَثَائِقِ الْمَجْمُوعَةِ مِنْ جَوَازِ بَيْعِ الْمَرِيضِ.

In conclusion, *Ḥāshiyah al-Dusūqī `ala al-Sharḥ al-Kabīr* comprises abundant content of explanation through useful comments, a portrayal of clear picture of the issues in jurisprudence.

Methodology of *al-Majmūʿ* of al-Nawawī

This book is the most reliable reference in Shāfiʿī School. It is commentaries from the original book named, *al-Muhadhdhab* of Abū Isḥaq al-Shirāzī (d.476H). The original book of *al-Muhadhdhab* is considered a masterpiece in the Shāfiʿī School where the scholars have given attention to that reference. This can be noticed from the reviews and commentaries made by many scholars on the original book, one of the most important book reviews is the one wrote by Imām al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*. Imām al-Suyūṭi once said in *al-Ḥāwī* that al-Nawawī, who wrote *al-Majmūʿ*, has adopted a similar approach with *al-Mughnī* of Ibn Qudāmah and it is said that when these two books are combined, it will produce amazing systematic writing's work.[29]

[29] His full name was Abū al-Fadl ʿAbd al-Raḥmān ibn Abī Bakr, Jalāl al-Dīn al-Suyūṭī (c. 1445–1505 AD) also known as Ibn al-Kutub

For some observers, al-Nawawī has exceeded the efforts of Ibn Qudāmah in many cases, especially in determining the status of *ḥadīth*; and this is not surprising, as al-Nawawī is also known as a *ḥadīth* scholar. Thus, he has used the information appropriately in providing commentary on the related *ḥadīth* in his book of jurisprudence. Summary of the *manhāj* can be seen at the beginning of his book when he said[30]:

"أذكر فيه ان شاء الله تعالى جملا من علومه الزاهرات وابين فيه أنواعا من فنونه المتعددات فمنها تفسير الآيات الكريمات والاحاديث النبويات والآثار الموقوفات والفتاوي المقطوعات والاشعار الاستشهاديات والاحكام الاعتقاديات والفروعيات والأسماء واللغات والقيود والاحترازات وغير ذلك من فنونه المعروفات وأبين من الاحاديث صحيحها وحسنها وضعيفها مرفوعها وموقوفها متصلها ومرسلها ومنقطعها ومعضلها وموضوعها مشهورها وغريبها وشاذها ومنكرها ومقاربها ومعللها ومدرجها وغير ذلك من اقسامها مما ستراها ان شاء الله تعالى في مواطنها....."

(son of books) was an Egyptian writer, religious scholar, juristic expert and teacher whose works deal with a wide variety of subjects in Islamic theology. He was precocious and was already a teacher in 1462. In 1486, he was appointed to a chair in the mosque of Baybars in Cairo. He adhered to the Shāfiʿī School and is one of the latter-day authorities of the Shāfiʿī School, considered to be one of the *Aṣḥāb al-Naẓar* (Assessors) whose degree of *Ijtihād* is agreed upon.

[30] Abū Zakariyya Muḥy al-Dīn Yaḥya bin Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab* (Jeddah: Maktabah al-Irshād, n.d), 3.

> “I will mention in it (*al-Mabsūṭ*) Insya Allah, the verses from His shining knowledge. I will explain it a kind of all the various arts. Among them is the interpretation of the Qur’ān, the ḥadīth of the Prophet, *Athar al-Mawqūfāt*, authoritative *fatwā*, the vital information, the laws to be held, the details, the names, the language, the barriers, the precautions, etc. from various well-known arts. And I will explain it in terms of *ṣaḥīḥ*, its *ḥasan*, *ḍaʿīf*, *marfūʿ*, *mawqūf*, *muttaṣil*, *mursal*, *munqaṭiʿ*, *muʿaḍḍal*, *mawḍūʿ*, *mashhūr*, *gharīb*, *shādh*, *munkar*, *muqārib*, *muʿallal* and position and others from the division that you will see it (*insha’ Allāh*) is in the position”.

Al-Nawawī clarified the words of Imām al-Shirāzī at first by explaining the language that he used. Then he explained the *ḥadīth* by stating the level of the *ḥadīth* in terms of its authentication (*saḥīḥ* or *ḍaʿīf*). Later, he came up with the related *fiqh* problems, and stated the determining preferences of the Shāfiʿī School.

Specifically, the effort of explanation has been made on the language and words used by al-Shirāzī. He used the definition of several terms in jurisprudence that al-Shirāzī did not touch. He mentioned the status of a *ḥadīth* whether they were authentic (*ṣaḥīḥ*), good (*ḥasan*), weak (*ḍaʿīf*) or *marfūʿ*. Similarly, he did not avoid discussing the *sanad* of the *ḥadīth*. This can be comprehended when he presented the *sanad* of a *ḥadīth* as mentioned below:[31]

وقوله: عند يهودى هو أبو الشحم كما بينه الشافعي

والبيهقي من طريق جعفر ابن محمد عَنْ أَبِيهِ " أَنَّ النَّبِيَّ

[31] *Ibid.*, 177

صَلَّى اللَّهُ عَلَيْهِ وسلم رهن درعا عند أبى الشحم اليهودي رجل من بنى ظفر.

"And he said: (charged) to the Jews who is known as Abu al-Shaḥm as explained by al-Shāfiʿī and al-Bayhaqī by the chain of Jaʿfar ibn Muḥammad from his father, "Verily, the Prophet (peace be upon him) had pawned to Abu al-Shaḥm an armour, a Jew from the Banī Ẓafar".

He further improved the explanations in a comprehensive way, which includes detailing the contents; making conclusions; adding commentaries to the existing content; the application of rules of jurisprudence; as well as its parameters. While mentioning how much barley the Prophet used to get from the Jews, Muṭīʿī has given several options. Interestingly, the answer he gave was based on a variety of authoritative sources[32]:

وفى الحديث الذى روته عائشة رضى الله عنها عند البخاري ومسلم ولاحمد والنسائي وابن ماجه مثله " توفى صلى الله عليه وسلم ودرعه مرهونة عند يهودى بثلاثين صاعا من شعير " في رواية الترمذي والنسائي من هذا التوجه " بعشرين " وقال في فتح الباري: لعله كان دون الثلاثين.

"In a *ḥadīth* narrated by ʿĀ'ishah (ra) as reported by al-Bukhārī, Muslim, Aḥmad, al-Nasā'ī and Ibn Mājah, "He (the prophet) is dead and his armour into a collateral at a Jew in exchange for 30 *ṣāʿ* of barley while in the

[32] *Ibid*.

narration of al-Tirmīdhi and al-Nasā'ī that means 20 *ṣā*ʿ and in the book *Fatḥ al-Bārī*: it may not exceed 30 *ṣā*."

Similarly, it is calculated in the currency as stated by Muṭīʿī in his citation of the book *al-Bayān* by al-ʿImrānī[33]:

قال العمراني في البيان: دليلنا على جوازه في الحضر مَا رُوِيَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أنه اقترض من أبي الشحم اليهودي ثلاثين صاعا من شعير لاهله بعد ما عاد من غزوة تبوك بالمدينة، ورهن عنده درعه فكانت قيمتها أربعمائة درهم.

"Al-ʿImrānī has said in *al-Bayān*: Our basis about the permissibility of (pawning) when residing is as reported: The Prophet (peace be upon him) had borrowed from the Abī al-Shaḥm, a Jew with a 30 *sā*ʿ of barley for his family after returning from the battle of Tabūk in Madīnah and then he pawned his armour and is worth a total of 400 dirhams."

His ability to determine the parameters of an issue was significantly acceptable, which is evident through his conclusion based on several evidences he presented. One of them is about the issue of the permissibility of pawning when residing[34]:

ففى هذا الخبر فوائد(منها) جواز الرهن لان النبي صلى الله عليه وسلم رهن. (ومنها) جواز الرهن في الحضر، لان ذلك كان بالمدينة وكانت موطن النبي صلى الله عليه

[33] *Ibid*., 178.
[34] *Ibid*.

وسلم.(ومنها) أنه يجوز معاملة من في ماله حلال وحرام إذا لم يعلم عين الحلال والحرام، لان النبي صلى الله عليه وسلم عامل اليهودي، ومعلوم أن اليهود يستحلون ثمن الخمر ويربون.(ومنها) أن الرهن لا ينفسخ بموت الراهن، لان النبي صلى الله عليه وسلم مات ودرعه مرهونة.(ومنها) أن الابراء يصح وأن يقبل المبرأ، لِأَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمْ يعدل عن معاملة مياسير الصحابة رضى الله عنهم وأرضاهم مثل عثمان وعبد الرحمن رضى الله عنهما.

He determined the views agreed by the majority of Shāfiʿī scholars, and views which were relatively isolated among them. However, he is committed to display the preferred and decisive view of the school. Surely, this will lead to differences among the four schools of Islamic law. For example, the disagreement among the four schools occurred in determining the priority of the contract of loan and the pawning. In this situation, al-Shirāzī agreed that the contract of pawning should be done after the loan contract is executed. It is based on the method of 'الرهن تابع للدين' (the pawning is a supportive to the debt). This method shall further project through *ījāb* and *qabūl*. Although, Abū Ḥanīfah and Mālik did not agree on the matter, Muṭīʿī argued that the debt is binding to the debtor while the collateral is not.

This is a similar situation with the case of witness and guarantee. Muṭīʿī said[35]:

[35] *Ibid*., 182.

دليلنا أنه وثيقة بحق فلم يجز أن يتقدم عليه كالشهادة
بأن تقول: اشهدوا أن له على ألفا أقترضها منه غدا

> "Our evidence is the actual documents that can secure the right. Then it should not be advanced before it (the loan) like (the case of) testimony by saying: "bear witness that I will borrow a total of 1000 from him tomorrow".

When a view is considered *mashhūr* (well-known), or if it comes from *jumhūr* (majority of the scholars), he would not determine the name of the scholars who made such judgment. This is logical and acceptable since there are too many scholars talking about it, thus, it is understood that such view has reached the status of 'consensus' or 'well known'.

In contrast, al-Nawawī had stated the name of a person who issued a rather odd view, which later became a minority among scholars such as Mujāhid, Ḍaḥḥāk, Dāwūd and Dhāhirī. This may encourage researcher to examine the background of the view based on individual and certain environment that might have influenced the view. The example is these names (Mujāhid, Ḍaḥḥāk, Dāwūd and Dhāhirī) - are mentioned while talking about the permissibility of pawning during residing time as they always opposed the view of the majority. Similarly, Ibn Ḥazm only allows the pawning within the district when it was a form of *tabarruʿ*. This is not surprising since they only adhered to the explicit meaning of the verse.

In addition, he facilitated the view with their evidences and answers by conveying the doctrines of the four schools. He depends on such way by referring to two books: *al-Ishrāf 'alā Madhāhib Ahl al-ʿIlm*, and *al-Ijmāʿ*, which were written by Ibn al-Manẓūr (d.306H). Al-Nawāwī could only assist the 1/4 of the book and the rest of it was finalized by al-Subkī (d.756H) with three

volumes; later joined by al-Ḥaḍramī and al-‘Iraqī, where the last part of it was managed by Najīb al-Muṭīʿī (d.1406H)

Methodology of *al-Mughnī* of Ibn Qudāmah

Al-Mughnī of Ibn Qudāmah is among the masterpiece of Islamic jurisprudence. It brings the method of comparative jurisprudence (*fiqh muqāran*) between schools of thought by making *fiqh* of Imām Aḥmad bin Ḥanbal as a priority. This book is in line with the works of other comparative jurisprudence. Ibn Qudāmah, who is the author, presented comprehensive discussions and debates between the schools of jurisprudence together with the evidences, and then enclosed them in the most accurate conclusions based on his *ijtihād*.

He also presented differences in opinion that occurred and grew among the *Ḥanbalī* scholars in a variety of arguments and evidences. Then he compared the opinions of other schools’ scholars such as Mālikī, Ḥanafī and Shāfiʿī including some schools which were rarely known such as that of Imām al-Ḥasan al-Baṣrī, ʿAṭā', Sufyan al-Thawrī, and several others. He also included the opinion of the companions (*ṣaḥābah*) and the successors (*tābiʿīn*).

Undoubtedly, al-*Mughnī* became the main reference of the jurists during the *salaf* period that have been served in the format of comparative jurisprudence and knowing that it was a very rare to find such book during that time. Therefore, the scholars who came from various schools would look into this book with a full view of appreciation and respect and would consider it as one of the premier references in its category.

Like other books of *fiqh,* this book begins with a discussion of religious jurisprudence like purity (الطهارة); ablution; bathing (الغسل); prayer (الصلاة) desirable prayers (النافلات); funeral rites (الجنازة); pilgrimage and *‘umrah* (الحج و العمرة); *zakāh* (الزكاة); fasting (الصيام); until the other

detail matters in the various branches of jurisprudence, such as slaughter (الذبائح), hunting (الصيد), marriage (النكاح), sale-purchase (البيوع), bequest (الوصايا), lost property (اللقطة), debts (الديون), jihad (الجهاد), war (الحرب), the ruling (القضاء) and many others.

This book of ten volumes has addressed 1479 main issues regarding *fiqh*, which covers 69 major topics. This does not include the division of issues into a detailed discussion. The detail discussion is estimated over hundred thousand clauses at least, which covered every aspect of the main issue. For instance, the topic of pawning was in the 9th topic of the list. From the topic of pawning, the book had discussed about twenty-three related issues and most of them have been extended into a detail explanation. In providing clarification regarding the issue of the acceptance of collateral, a total of thirty-two clauses were organized. Among them is related to the *mukātab*[36] (Kuwait, 1404-1427H: 12:219); seized items; collateral, which has many owners; pawning an unknown characteristic; and so forth.[37] In understanding how the content is so thorough and comprehensive, we can see the divisions and the subdivisions below:

Table 1: A part of content page in *al-Mughnī* of Ibn Qudāmah

No.	Topic	No.	Issue	No.	Clauses
9	Pawning	9	Acceptance of the pawning	1	Pawning shares of immovable property
				2	The acceptance of a house as a collateral is the debtor to empty the house

[36] The slave who has a contract of manumission.

[37] The Ministry of Waqf and Islamic Afffairs, Kuwait, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah* (Egypt: Maṭābiʿ Dār al-Ṣafwah, 1427H), 219.

	3	Collateral which is the property in the hands of creditors, whether by loan, deposit, or seizure
	4	A pawning was a guarantee like seizure, loan, acceptance of illegal trading
	5	The creditor delegate a person to receive the collateral
	6	Declaration of debtor or creditor in the acceptance
	7	Pawning two items but one of them perishes prior the receipt

The table 1 above is only one out of the nine issues, and only seven out of the thirty-two clauses that have been discussed, which clearly demonstrates its comprehensiveness.

Reviewing the facts, it is not hard to say that it is a source of Ḥanbalī School of *fiqh* with the most completed stage of the references in Islamic jurisprudence. 'Izz al-Dīn bin ʿAbd al-Salām al-Shāfiʿī said, "I have never seen a reference on Islam which had the quality like that of the book *al-Muḥalla* and *al-Majalla* of Ibn Ḥazm, as well as the book of *al-Mughnī* of Shaykh Muwāfaq al-Dīn (Ibn Qudāmah)."[38]

[38] Ibn Qudāmah, ʿAbd Allāh bin Aḥmad bin Muḥammad, *al-Mughnī* (Bayrūt: Dār al-Fikr, 1405H).

Conclusion

Methodology used by Islamic scholars in studying *al-rahn* in many ways was applied comparatively jurisprudence where the thoughts were compared between different sects. The study uses these six references in view of the strength of references in Islamic jurisprudence. These six classical books were also becoming references which is often referred and used by other studies that relates in similar field particularly *al-rahn*.

This study derives a conclusion that these classical books adopted comparative thought by clarifying the cause of dissent between scholars in *fiqh* issues. Example, Ibn Rushd breaks the boundaries of the different schools and presents a critical analysis of many opinions of the famous Muslim jurists' methodology. He is a Mālikī jurist but sometime prioritizes other views of other schools by justifying the difference respectfully and he was done it objectively. The classical jurists always incorporated information from many different resources including their thought of schools and other school of thought.

In conclusion, these six classical books are perfectly resourceful and completely descriptive that leads to understand the matters of *al-rahn* holistically. The writing style that resulted from the comparative thought of the jurists is very important in understanding the root of the matter, and thus could develop the way of determining the precise jurisdiction of *al-rahn*.

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