

## THE CONCEPT OF *IKHTILĀF* IN THE BOOK *TAWDĪḤ AL-AḤKĀM* AND ITS RELEVANCE TO MARRIAGE LAW IN INDONESIA

Parlindungan Simbolon<sup>1</sup>, Hidayatullah Ismail<sup>2</sup>, Hendri. K<sup>3</sup>

<sup>1</sup>Sekolah Tinggi Agama Islam (STAI) Al- Kifayah Riau

<sup>23</sup>Universitas Islam Negeri Sultan Syarif Kasim Riau

abukhofifah06@gmail.com, hismail@uin-suska.ac.id, hendrika@uin-suska.ac.id

▪ Received: 01-12-2022

▪ Revised: 19-06-2023

▪ Accepted: 20-06-2023

### **Abstract**

*The difference of scholar's opinions in establishing laws in furu'iyah will always occur in every circumstance. The differences in the methods they use in establishing the laws of the Qur'an and hadith. Sometimes these differences lead to division and debate among the public. In avoiding disputes in society, an appropriate approach is needed to compromise (al-jam'u) these differences. Among the contemporary scholars that discuss this issue is 'Abdullah bin 'Abdurrahmān al-Bassām in the book of Tawḥ al- al-Aḥkām. It is one of the verses of Ibn Hajar al-Asqalani's book of Bulūgh al-Marām. Among the main points of his discussion is explaining ikhtilaf ulama related to various issues. The problem in this study is how the concept of ikhtilaf in Tawḍīḥ al al-Aḥkām and its relevance to marriage law in Indonesia? This research is aimed to examine the ikhtilaf issues in the Kitab al-Nikah in the book of Tawḍīḥ al-Aḥkam and how al-Bassām's method resolving them and its relevance to the law of marriage in Indonesia. This study is a qualitative descriptive study involving documentation methods. The data in this study were analyzed by using the content analysis method. The results of this study show that there are six marriage-related ikhtilaf issues in the book Tawḍīḥ al-Aḥkam. Al-Bassām solved the problem using three methods, namely 'Ard al-Aqwal, Munaqasyah al-Adillah and al-Tarjih. The Tarjih performed by al-Bassām is in accordance with the marriage law in Indonesia as stipulated in the Compilation of Islamic Law.*

**Keywords:** *Ikhtilāf, al-Bassām, Tawḍīḥ al-Aḥkām, Marriage in Indonesia*

### **Abstract**

Perbedaan pendapat ulama dalam menetapkan hukum yang sifatnya *furu'iyah* akan selalu terjadi pada setiap zaman. Ini disebabkan terjadinya perbedaan metode yang mereka gunakan dalam menetapkan hukum dari al-Qur'an dan hadis. Terkadang perbedaan pendapat tersebut mengakibatkan perpecahan dan perdebatan di tengah masyarakat. Untuk menghindari perpecahan di tengah masyarakat diperlukan pendekatan yang tepat untuk mengkompromikan (*al-jam'u*) perbedaan-perbedaan tersebut. Di antara ulama kontemporer yang membahas permasalahan ini adalah 'Abdullah bin 'Abdurrahmān al-Bassām dalam kitab *Tawḍīḥ al-Aḥkām*. Kitab ini merupakan salah satu syarah dari kitab *Bulūgh al-Maram* karya Ibn Hajar al-'Asqalani. Di antara poin utama pembahasannya adalah menjelaskan *ikhtilaf* ulama berkaitan dengan berbagai macam persoalan. Permasalahan dalam penelitian ini adalah bagaimana konsep *ikhtilāf* dalam kitab *Tawḍīḥ al-Aḥkām* dan relevansinya dengan hukum perkawinan di Indonesia?. Penelitian ini bertujuan untuk meneliti persoalan-persoalan *ikhtilāf* pada *Kitab al-Nikah* dalam kitab *Tawḍīḥ al-Aḥkam* dan bagaimana metode al-Bassām dalam menyelesaikannya serta relevansinya dengan hukum Pernikahan di Indonesia. Penelitian ini merupakan penelitian deskriptif kualitatif dengan melibatkan metode dokumentasi. Data-data dalam penelitian ini dianalisis dengan menggunakan metode *content alysis* (analisis isi). Hasil Penelitian ini menunjukkan bahwa terdapat enam permasalahan *ikhtilaf* berkaitan pernikahan dalam kitab *Tawḍīḥ al-Aḥkam*. Al-Bassām menyelesaikan persoalan tersebut dengan menggunakan tiga metode, yaitu 'Ard al-Aqwal, *Munaqasyah al-Adillah* dan *al-Tarjih*. Tarjih yang dilakukan al-Bassām sesuai dengan undang-undang perkawinan di Indonesia

sebagaimana telah diatur dalam Kompilasi Hukum Islam.

**Kata kunci:** *Ikhtilāf, al-Bassām, Tawdīh al-Aḥkām*, Perkawinan di Indonesia

## INTRODUCTION

Al-Bassām was a contemporary scholar who contributed considerable thought to the development of the Syarah Hadith. This was proved by his work of *Tawdih al-Ahkam*, which recited the book of *Bulugh al-Maram* by Ibn Hajar al-'Asqalani. The five distinctive features of al-Bassam's discussion in the book of *Tawdih al-Ahkam* are *darajah al-hadis*, *mufradat*, *istibat al-ahkam* and *ikhtilaf*. One of the characteristics of al-Bassam's hadith in the book of *Tawdīh al-Ahkam* is the issue of *ikhtilaf*, or the so-called difference in scholarship. This point gives a special explanation marked with "*khilaf al-'ulama*".

Al-Bassam presented legal issues that differ among schools of thought. The meaning of *ikhtilaf* in this study is differences of opinion arose among scholars in establishing the law. The *ikhtilaf* problem in the book of *Tawdih al-Ahkam* focuses on the *Kitab al-Nikah* or related to marriage such as the existence of a guardian being a legal requirement for marriage, triple divorce, *khalwah*, etc. Then the legal term of al-Bassam related to the matter will explain its relevance to marriage law in Indonesia.

The three problems that must be solved in this study are the problems of *ikhtilaf* in the book of *Tawdih al-Ahkam*? And how is al-Bassam's *istinbat* method of resolving it and its relevance to marriage law in Indonesia?

This study was conducted to examine the issue of *ikhtilaf* in the *Kitab al-Nikah* in the book of *Tawdih al-Ahkam* and its method of settlement and relevance to marriage law in Indonesia. The results of this study were used as a guide in dealing with differences of opinion in Indonesia not only on marriage issues but also on other issues.

## METHODS

This study is a study of library research (*maktabi*), which is based on studies of libraries such as books, encyclopedias, journals, magazines and other documents related to research. This study is qualitative, where data presentation is not performed using statistics as usual in quantitative research. Methodologically, the method of expressing a person's thoughts or views of a group of people uses qualitative research. Among the approaches to qualitative methods is content analysis. It means that a researcher is directly dealing with the text that is

the object of the study. This approach was used in this study. The primary ingredient in this study is the hadiths in the *Kitab al-Nikah* in the book of *Tawdīh al-Ahkām*. While the subject matter is books, magazines, newspapers and websites through internet access.

Once the data and information are obtained through the process of the above data collection methods, they are analyzed and studied using content analysis techniques, a scientific analysis method aimed at the material or text that is data in the study.<sup>1</sup> In another sense content analysis is a technique used to derive conclusions through attempts to discover characteristics of messages performed objectively and systematically.<sup>2</sup>

## LITERATURE REVIEW

There have been several studies conducted by earlier researchers regarding the methods of *ikhtilaf* and legal terminates. Among them is a study conducted by Muammar Bakry under the title "*Development of Tolerant Characters in Ikhtilaf of Madzhab Fikih*". This study deals with the development of tolerant character in addressing the differences between *madzhab fikih* which consists of four characters, namely, sports, sports, and sports. While the author's research discusses the concept of *ikhtilaf* and its method of completion in the book *Tawdih al-Ahkam*.

Furthermore, research was conducted by Anwar Sadat under the title "*Ikhtilaf among al-mujtahidin*". This study describes the factors causing *ikhtilaf* and the solutions proposed by scholars in resolving *ikhtilaf*. This study generally deals with the issue of *ikhtilaf* and the author's research specifically examines the concept of *ikhtilaf al-Bassam* related to marriage in the book of *Tawdih al-Ahkam*.

Later, research was conducted by Parlindungan Simbolon under the title "*Method of Istinbat in the Book of Tawdih Al-Ahkam Min Furugh Al-Maram* By Al-Bassam (1346-1423 H). The focus of this study is on the methods used by al-Bassam in prescribing the laws of hadiths found in the book of *Tawdih al-Ahkam*. Meanwhile, this study discusses the concept of *ikhtilaf* and its completion in the *Kitab al-Nikah* in the book of *Tawdih al-Ahkam* and its relevance to marriage law in Indonesia.

Based on the research done, this is the only study that is close to the author's study. However, the focus of the discussion differs from the object of the study that the author is

---

<sup>1</sup> Noeng Muhadjir, *Metode Penelitian Kualitatif* (Yogyakarta: Rakesarasin, 1996).

<sup>2</sup> Soedjono, *Bentuk Penelitian : Suatu Pemikiran Dan Penerapan* (Jakarta: Rineka Cipta, 1999).

conducting. His study focused on al-Bassam's method of resolving marriage-related *ikhtilaf* issues in the book of *Tawdīh al al-Ahkam* and its relevance to marriage law in Indonesia.

## RESULTS AND DISCUSSION

### A. General Review of *Ikhtilāf*

The word of *ikhtilaf* literally means strife.<sup>3</sup> In the Indonesian Dictionary, the word *ikhtilaf* is interpreted as a difference of opinion or disagreement of mind. the antonym of the word *ikhtilaf* is *ittifaq* (agreement). The term *ikhtilaf* is a distinction that occurs among scholars or mujtahids in understanding the text of the Quran and hadith.<sup>4</sup> Thus, between definitions by language and terms there is no noticeable difference, even conformity. So the error between the people is that there is no difference between hem.<sup>5</sup> Classical Sunni scholars claimed that *ikhtilaf* or dissent among scholars in establishing the law is a mercy for Muslims if properly addressed.<sup>6</sup> However, an *ikhtilaf* would be bad when not well understood and would inevitably cause division and blame.<sup>7</sup>

### B. Biography of Al-Bassām

Al-Bassam's full name was Abu 'Abdirrahman Syeikh 'Abdullah bin 'Abd al-Rahmān bin Ṣaliḥ al-Bassām. Al-Bassam was born and raised in the city of Unaizah, Qāim, Saudi Arabia in 1346 H. Al-Bassam was a Muslim scholar who attended the Mazhab Hanbali in fiqh and had the faith of Ahl al-Sunnah wa al-Jam'ah.<sup>8</sup>

Al-Bassam had a family originating from the Banu Tamim tribe who were very famous for their love in science. His family was well known in neighbore countries for caring deeply for the underprivileged. His father was Abd al-Rahman ibn al-Bassam, he was a prominent scholar and businessman in 'Unaizah.

The large family of al-Bassam always provided a place for travellers. Because of this kindness the al-Bassam family often received praise from the public. The al-Bassam

---

<sup>3</sup> Ahmad Deski, "Asbab Al Ikhtilaf," *AL-FURQAN* 5 (2020): 5, <https://ejournal.staidapayakumbuh.ac.id/index.php/alfurqan/article/view/6/3>.

<sup>4</sup> Abu Ubaidah Yusuf, "Fiqh Ikhtilaf," *Pagani, Samule*, n.d.

<sup>5</sup> Yusuf.

<sup>6</sup> Samule Pagani, "The Meaning of The Ikhtilāf Al-Madhāhib In 'Abd Al-Wahhāb Al-Sha'rānī's Al-Mīzān Al-Kubrā," n.d.

<sup>7</sup> Saadan Man, "The Development Of Ikhtilaf And Its Impact On Muslim Community In Contemporary Malaysia," *Jurnal Syariah, Jil 16*, n.d., 497–521.

<sup>8</sup> 'Abdullah bin 'Abdurrahman al-Bassam, *Taudhih Al-Ahkam Min Bulugh Al-Maram* (Makkah: Maktabah al-Asadi, 1423).

family was well known for its love of science and collected a wide variety of classical books mainly related to history.<sup>9</sup>

Every living will die. Al-Bassam died on Thursday, coinciding with the 27th duhul Qa'dah prayer of 1423 H or 10 February 2002 at the age of 77 due to heart disease. Janazah al-Bassam was consecrated after Friday prayers at al-āarmm Mosque and buried in *al-'adl* cemetery, one of the burial sites in Mecca.

### C. *Istinbāṭ al-Bassam Against the Ikhtilāf Problem*

In the first volume of the introduction, al-Bassam stated that in establishing the law in *Ikhtilaf al-Bassam's* issues were neither *ta'assub* nor inclined towards a particular school. However, al-Bassam adhered to the arguments and opinions of stronger scholars. There are three methods used by al-Bassam to solve the *ikhtilaf* problem, namely expressing the opinions of scholars (*'arḍ al-aqwāl*), arguing the arguments used by each group (*munaqasyah al-adillah*) and *tarjih* or choosing one of these stronger opinions. This explanation will answer and prove whether al-Bassam was a panatic school cleric. There are several issues of *ikhtilaf* in the *Kitab al-Nikah* in the book of *Taudīḥ al al-Aḥkām* as described in the following explanation:

The first marry a woman who is in another's *khitbah*. A *khitbah* is a request from a male to a female for the purpose of marriage whose law is annihilated in Islam.<sup>10</sup> When a woman has been owned by a man, she shall no longer receive another man's ear until the permission of the first man is granted. However, this issue occurred among the scholars as explained by al-Bassam in the book of *Tawdih al-Ahkam* when he directed the following hadith:

عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- « لَا يَخْطُبُ أَحَدُكُمْ عَلَى خِطْبَةِ  
أَخِيهِ وَلَا يَبِيعُ عَلَى بَيْعِ أَخِيهِ إِلَّا بِإِذْنِهِ » . رواه مسلم

“From Ibn ‘Umar ra. He said: The Messenger of Allah. He said: "Do not ask women who are being groomed by other men nor sell anything that is in transaction with others without permission”.

According to Al-Bassam, scholars have agreed on the illegality of betraying women who are in other men's *khitbah* without direct permission. However, the scholars

<sup>9</sup> al-Bassam.

<sup>10</sup> Fathonah K. Daud, “Urgensi *Khitbah* Pada Era Kontemporer: Kajian Tafsir Fiqh Dalam Surat Al-Baqarah [2]: 235,” *Al Fikrah* 3, no. 2020 (n.d.): 56–79, <https://www.jurnal.alhamidiyah.ac.id/index.php/al-fikrah/article/view/64>.

disagree regarding the status of the second applicant's marriage contract. One opinion states that the second applicant's marriage is invalid. This is the opinion found by Imam Malik and his followers. Meanwhile, the second opinion is that the second man's marriage is legal, but it is sinful and mandatory to sanction because it has violated the rules. This is the opinion expressed by Imam Hanaf, Imam al-Syafi'i dan and Imam Ahmad bin Hanbal. According to the three priests of this school who were forbidden in the hadith above were his actions not his marriage contracts.

On this issue, al-Bassam explained that if a man wants to marry and marry a woman who is still in another man's khitbah, his marriage contract is considered valid. Al-Bassam emphasized that the hope in this issue did not mean a marriage contract. The purpose of prohibition that is illegal in hadith is that the perpetrator must receive religious punishment. Al-Bassam said:

“If you want to marry and marry a woman whose status is still under the management of another man, then the marriage is not cancelled, because it is not a contract”.<sup>11</sup>

This statement of al-Bassam is the same as the opinion expressed by three imams of madzhab, namely Imam Hanafi, Imam al-Syafi'i and Imam Ahmad bin Hanbal. The above statement is also the same as the khitbah stipulated in the 12th Compilation of Islamic Law. It means that in Indonesia it is also prohibited to do khitbah to a woman who is still in the hands of others even though her marriage is still valid according to Islamic law.<sup>12</sup>

The next issue of ikhtilaf was the existence of a witness who served as one of the legal requirements of marriage. This arose when al-Bassam directed the hadith below:

عَنْ عَامِرِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : أَعْلَنُوا  
النِّكَاحَ. رَوَاهُ أَحْمَدُ

“From 'Amir ibn 'Abdullah ibn al-Zubair ra. From his father, the Prophet. Say: Tell the wedding. Imam Ahmad ibn Hanbal”.

There are two differences in the opinion of the cleric regarding the existence of the witness as one of the legal requirements in the marriage contract. The first opinion was expressed by Imam Abu Hanfah, Imam al-Syafi'i and Imam Ahmad ibn Hanbal. These three priests had the opinion that the existence of witnesses was a legitimate requirement

<sup>11</sup> al-Bassam, *Taudhih Al-Ahkam Min Bulugh Al-Maram*.

<sup>12</sup> <https://bantuanhukum-sbm.com/artikel-persiapan-perkawinan-peminangan>

for marriage. In fact, in Madzhab al-Syafi'i the witness became one of the reconciliation of marriage (*min arkan al-nikah*). For example, the hadith qauli Rasulullah SAW below:

عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: "لَا نِكَاحَ إِلَّا بِوَلِيِّ، وَشَاهِدَيْنِ  
عَدْلٍ. رواه الطبراني

“From Abu Hurairahra. He said, "The Messenger of Allah. He said: "The marriage will not be valid unless there is a guardian and two just witnesses (*wasyahiday 'adl*. H.R Imam al-Tabranī”.

The second opinion was found by Imam Malikl. Imam Malik said that the presence of witnesses was not a requirement for marriage. He said that the hadith above was illegitimate. This opinion was strengthened by Ibn Taimiyah and Taqy al-Din. Taqy al-Din said: No legitimate hadith was found that explained the existence of a witness during the marriage contract. Taqy al-Din's opinion regarding the status of hadith above is not completely correct. Based on research conducted by the authors, it was found that hadiths used by the majority of scholars were above the level of *hasan sahih*.<sup>13</sup>

Al-Bassam's statement regarding the matter is as follows:

“Marriage is invalid without the presence of two witnesses who are fair and have been denied”.<sup>14</sup>

Al-Bassam's opinion is in line with the majority of scholars' opinions (*jumhūr al-'ulamā*) that witnesses should present in marriage contracts of marriage. In Indonesia as stipulated in the Compilation of Islamic Law, the 14th chapter of the existence of two just witnesses becomes reconciled in marriage. That's why marriage isn't legal without witnesses.

The third a guardian as a legal requirement of marriage. This is explained by al-Bassam when he hadith:

“From ‘Ā’isyah ra. He said: The Messenger of Allah. He said: a woman who got married but didn't get her guardian's permission then the marriage contract was invalid. When *jima'* occurs, he is entitled to a dowry. If the guardian does not want to marry, then the judge who has the right to be the guardian for women who do not have a guardian. Abu Dawud and al-Turmuī.<sup>15</sup>

The existence of guardians during marriage contracts also occurred among scholars. Imam Malik, Imam al-Syafi'i and Imam Ahmad ibn Hanbal (*al-a'immah al-*

<sup>13</sup> Muḥammad Nāṣir al-Dīn Al-Albānī, *Al-Taliqāt Al-Hisān 'Alā Ṣāliḥ Ibn Hibbān* (Jeddah: Dar Bawazir, 1424).

<sup>14</sup> al-Bassam, *Taudhih Al-Ahkam Min Bulugh Al-Maram*.

<sup>15</sup> Yahya bin 'Isa al-Tirmidzi, *Sunan Al-Tirmidzi* (Beirut: Dar al-Kutub al-'Ilmiyah, n.d.).

*salalsah*) argued that the existence of a guardian in a marriage contract was one of the legal requirements. In fact, the Syafi'i guardian school became one of the pillars of marriage.<sup>16</sup>

Meanwhile, the guardian does not become a legal requirement in the marriage contract is the opinion expressed by Imam Hanafi. The Madzhab Hanafi adherents annotated marriage by sale. According to them, a woman is free to sell whatever she has, including marrying herself. He can marry himself to the man he loves without depending on the guardian.<sup>17</sup> This opinion received a response from other scholars. The first is that these qiyas compare with nash. It should not and should not be considered a legitimate qiyas. Second, in the study of ushul fiqh qiyas there must be an equation between the two laws. While between marriage and sale there's nothing in common. Marriage is a contract in which there must be a commitment so that it requires a thought and knowledge of the consequences. While buying is a very simple contract.<sup>18</sup>

Al-Bassam's statement regarding the above issue is the same as the opinion of the majority of scholars. He said that guardianship is one of the conditions for a valid marriage contract. Al-Bassam stated: The presence of a guardian is one of the conditions for a valid marriage, therefore marriage is invalid without a guardian. From this statement it can be understood that marriage is invalid without a guardian. Al-Bassam's statement is in accordance with the provisions of marriage in the 14th article of the Compilation of Islamic Law in Indonesia. But not as a condition but as a pillar of marriage as well as the presence of two witnesses. Thus, both as a condition and as a pillar of the presence of a guardian is an important part of marriage.

While the fourth divorce Three in a single time. The scholars has different opinions regarding the triple divorce that the husband gives in one speech as al-Bassam explained when he directed the following hadith sahih:

“From Ibn ‘Abbas ra. He said: ‘The divorce was done during the Prophet’s time. The reign of Umar ibn al-Khattab and the reign of the khalifah Abu Bakr and the two years of khalifah ‘Umar ibn al-Khattab, the three-year-old divorce was counted as one. ‘Umar said, 'Indeed, men are apt to rush into what they should be careful of. HR. Imam Muslim.’”<sup>19</sup>

---

<sup>16</sup> Muhammad Syatha al-Dimyati, *I'annah Al-Thalibin* (Semarang: Hikmah Keluarga, n.d.).

<sup>17</sup> Rosmita, “The Position of the Guardian in Marriage Perspective of the Hanafi and the Al-Shafi'i Madhhab,” *Mazahibuna: Jurnal Perbandingan Mazhab* 4 (2022): 152–72, file:///C:/Users/User/Downloads/30969-Article Text-99418-1-10-20221202.pdf.

<sup>18</sup> al-Bassam, *Tawdhih Al-Ahkam Min Bulugh Al-Maram*.

<sup>19</sup> Muslim bin al-Hajjaj, *Sahih Muslim*, 1472.



On this issue also, scholars disagree on whether the divorce fell by three so that a husband no longer lives with his wife before marriage and divorces someone else or counts for just one. The scholars of the four schools argued for a triple divorce which was pronounced and fell by three. They put forth the hadith's argument:

عَنْ عَائِشَةَ قَالَتْ طَلَّقَ رَجُلٌ امْرَأَتَهُ ثَلَاثًا فَتَزَوَّجَهَا رَجُلٌ ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا فَأَرَادَ زَوْجَهَا الْأَوَّلُ أَنْ يَتَزَوَّجَهَا فَسُئِلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ فَقَالَ « لَا حَتَّى يَذُوقَ الْآخِرُ مِنْ عُسَيْبَتِهَا مَا ذَاقَ الْأَوَّلُ. رواه أبوودود

“From ‘Ā’isyah ra. that a person divorces his wife and then divorces her, and then the Prophet. asked if he was lawful for his first husband? His Majesty the Prophet. Answer: No, so the second husband enjoys his honey (mulamasah) just as the first husband enjoys. H. Imam al-Nasa’i”.

Followers of this opinion give an argument, if the divorce three at the same time, then the prophet does not prohibit the mention of the Hadith above. They say that a third divorce with a single sentence does not take place except a single divorce. Their argument is the following hadith:

“From Ibn Ṭaus from his father that Abū al-Sahbā’ came to Ibn ‘Abbās and said: O Ibn ‘Abbās: Don't you know that the triple divorce delivered in one word in the time of the Prophet SAW, Abu Bakr and at the beginning of Umar’s reign was counted one? Ibn Abbas replied: yes. HR. Imam Muslim”.<sup>20</sup>

According to this opinion, the Hadith of the ‘Ā’isyah which most scholars use as the basis cannot be used as an argument. This is because it is not possible that the term of the three hadith is the term of divorce is the termination of divorce. They put forward a rule which states that if there is a likelihood, then the *istidlal* is null.<sup>21</sup>

In this regard, al-Bassam stated that the hadith which explains Rukānah third divorce to his wife is an argument held by the number of triple divorce clerics who are both a Ba’in Kubra divorce. If that is the case, the husband is not allowed to refer to his wife before marriage and divorce with another man and do the jima’. Al-Bassam states: Riwayat “*ṭallaqaha al-battah*” in Rukanah’s hadith is an argument held by jumhur ulama that the third divorce, as well as the divorce of ba’in kubra, should not be referred to his wife except after marriage, feels pleasure and divorce from another man.<sup>22</sup>

<sup>20</sup> al-Hajjaj.

<sup>21</sup> al-Bassam, *Taudhih Al-Ahkam Min Bulugh Al-Maram*.

<sup>22</sup> al-Bassam.

The fifth the husband says to his wife “*anti ‘alayya haram*”. *Ikhtilaf* ulama in this issue was explained by al-Bassam during the following hadith:

“From Ibn Abbas ra. He said, "If a husband speaks ill of his wife, it is an oath and must pay a fine. Muttafaq ‘Alaih”.

The scholars differed on this issue. There are at least three differences in opinion. That is the first: This is an oath, so the perpetrator is required to pay a fine. This is the opinion expressed by the three Imams of Madzhab, namely, Imam Malik bin Anas, Imam Hanafī and Imam al-Syafi’i. Second: Depends on the intention of the speaking person. Whether it be a divorce or a vow. Third, it is a zihar and is obliged to pay a fine of zihar. This was the opinion chosen by the Amadmad ibn ananbal school.

The opinion of al-Bassam regarding the above is the first opinion of *yamin mukfira*h. According to him, the meaning of hadith someone said to his wife ‘*anti ‘alayya haram*’ is not unlawful in the sense of divorce, but as an oath that the perpetrator is obliged to pay the kaffarah. Al-Bassam said: The husband said to his wife: You are forbidden to divorce me, but you are obligated to pay the kaffarah<sup>23</sup>. The above words contain multiple interpretations such as the opinions put forward by the scholars above. However, if it is understood as zihar<sup>24</sup> (equal to a female mahram) then the legal sanction is to pay kaffarah or a fine, namely freeing slaves, fasting two consecutive months and feeding sixty poor people. This regulation also applies among Indonesian Muslim communities who are predominantly Syafi’i.<sup>25</sup>

The sixth issue is meaning of the word *Qar*’. This problem arose when al-Bassam directed the following hadith:

“From ‘Ā’isyah ra. she said: Indeed, the word *aqra*’ is sacred. HR. Imam Malik”.<sup>26</sup>

The iddah of a woman who is divorced by her husband if she is not pregnant is three *qurū*’. Regarding the meaning of *qurū*’, there is a difference of opinion among scholars. The first opinion states that the meaning of the word *qurū*’ is holy. This is the opinion expressed by Imam Malik bin Anas and Imam al-Syafi’i. Malik bin Anas stated: I have not met any expert on jurisprudence except to say this. The meaning is the words of

<sup>23</sup> al-Bassam.

<sup>24</sup> Arif Munandar, “Zihar Dalam Tafsir Fi Zhilal Al-Qur’an Dan Tafsir Al-Mishbah,” *Tafse: Journal of Qur’anic Studies* 3 (2018): 17–29.

<sup>25</sup> Ahmad Sarwat, *Ahmad Sarwat, Ensiklopedia Fikih Indonesia Pernikahan* (Jakarta: Gramedia, 2019).

<sup>26</sup> Malik bin Anas, *Muwaththa’ Malik*, n.d.

'A'isyah which explains the meaning of the word *aqra* ' is *aṭhār*<sup>27</sup>. They use the following hadith as evidence:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تَخْرُجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا.

“O Prophet! If you divorce your wife, then you should divorce them when they can face their iddah naturally”. Q.S. al-Ṭalāq: 1.”

Hadith from ‘Ā’isyah ra: ‘Ā’isyah said: The meaning of *aqrā* ' is holy.<sup>28</sup>

According to Imam Mālik, the command to drop divorce in the verse above was done during the sacred time, not during menstruation (*al-amr bi al-ṭalāq fī al-ṭuhr lā fī al-ḥaiḍ*). Meanwhile, the hadith narrated by ‘Ā’isyah above clearly shows the meaning of *qar* ' is sacred. Based on the words of ‘Ā’ishah, Imam Malik believes that the meaning of the word *qar* ' is sacred.

The second opinion states that the meaning of *qurū* ' is menstruation. So that a woman's iddah is considered complete if she does not bleed the third menstruation. This opinion is popular among the mazhab Ḥanābila. The evidence they use is the following two hadiths:

“From ‘Ā’isyah that Umm Ḥabībah was having menstrual bleeding, then asked Rasulullah SAW., and Rasulullah SAW. ordered her to leave the prayer during menstruation. HR. Imam Abu Dawud”.<sup>29</sup>

عن عائشة رضي الله عنها : ( أَنَّ فَاطِمَةَ بِنْتَ أَبِي حُبَيْشٍ: سَأَلَتِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ: إِنِّي أُسْتَحَاضُ فَلَا أَطْهَرُ، أَفَادَعُ الصَّلَاةَ؟ قَالَ: لَا، إِنَّ ذَلِكَ عِرْقٌ، وَلَكِنْ دَعِيَ الصَّلَاةَ قَدَرَ الْأَيَّامِ الَّتِي كُنْتِ تَحِيضِينَ فِيهَا، ثُمَّ اغْتَسَلِي وَصَلِّي. رواه أبو داود

“From ‘Ā’isyah, Fatimah binti Abī Ḥubaisy informed him that he had asked and complained to the Prophet Saw. regarding blood, Prophet said: This is sweat. Then see, when your blood comes out, do not pray, and when it stops, pray. HR. Imam Abu Dawud”.

The most powerful opinion on this issue according to al-Bassam is the mazhab hanabilah, the *qar* ' in the sense of menstruation. Al-Bassam said: The most common opinion regarding the meaning of *al-qar* ' is menstruation.

<sup>27</sup> Anas.

<sup>28</sup> al-Bassam, *Taudhih Al-Ahkam Min Bulugh Al-Maram*.

<sup>29</sup> Abu Dawud Sulaiman bin Al-Asy'ats, *Sunan Abu Dawud* (Kairo: Dar al-Ta'shil, 2015).

In the Compilation of Islamic Law this issue is not specifically described because it is included in the problem of differences in interpretation. However, with regard to women's iddah, it is explained in detail in the Compilation of Islamic Law chapter 153 paragraphs 1 to 6. One of the points of discussion is the iddah or waiting period for a woman to cleanse her husband three times if divorced, her husband is not pregnant and is still menstruating.

## CONCLUSION

Based on the above research, the conclusion can be made that in *Kitāb al-Nikaḥ* in the *Tawdih al-Ahkām* there are six issues of *ikhtilāf*, namely the marriage of a man to a woman under the influence of others, the status of a witness in marriage, the status of a guardian in marriage, the husband to his wife, "*anti'alayya harām*", divorce three at a time and meaning *qar'*. In solving the *ikhtilāf* al-Bassam using three methods: '*arḍ al al-aqwāl, munaqasyah al-adillah* and *al-tarjīh*. The legal term of al-Bassam against the six issues of *ikhtilāf* is in accordance with the marriage law in Indonesia as described in the Compilation of Islamic Law. It means that the legal term of al-Bassam after performing *tarjih* is in accordance with the majority opinion of scholars, one of which is the opinion of Imam Syafi'i which is generally followed by Muslim communities in Indonesia.

Among the causes of division and conflict among Muslims today is the rigidity in understanding and responding to the issue of *ikhtilāf*. Therefore, discussions related to the jurisprudence of *ikhtilāf* need to be developed and conveyed to the Islamic community, especially with regard to the jurisprudence of worship in order to increase their knowledge and broaden their horizons so that they do not feel that they are most right in their own opinion and tend to mislead the opinions of others.

## REFERENCES

- Al-Albānī, Muḥammad Nāṣir al-Dīn. *Al-Talīqāt Al-Hisān 'Alā Ṣāliḥ Ibn Ḥibbān*. Jeddah: Dar Bawazir, 1424.
- Al-Asy'ats, Abu Dawud Sulaiman bin. *Sunan Abu Dawud*. Kairo: Dar al-Ta'shil, 2015.
- al-Bassam, 'Abdullah bin 'Abdurrahman. *Taudhih Al-Ahkam Min Bulugh Al-Maram*. Makkah: Maktabah al-Asadi, 1423.
- al-Dimyati, Muhammad Syatha. *I'annah Al-Thalibin*. Semarang: Hikmah Keluarga, n.d.
- al-Hajjaj, Muslim bin. *Sahih Muslim*, 1472.
- al-Tirmidzi, Yahya bin 'Isa. *Sunan Al-Tirmidzi*. Beirut: Dar al-Kutub al-'Ilmiyah, n.d.

Anas, Malik bin. *Muwaththa' Malik*, n.d.

Daud, Fathonah K. "Urgensi Khitbah Pada Era Kontemporer: Kajian Tafsir Fiqh Dalam Surat Al-Baqarah [2]: 235." *Al Fikrah* 3, no. 2020 (n.d.): 56–79.  
<https://www.jurnal.alhamidiyah.ac.id/index.php/al-fikrah/article/view/64>.

Deski, Ahmad. "Asbab Al Ikhtilaf." *AL-FURQAN* 5 (2020): 5.  
<https://ejournal.staidapayakumbuh.ac.id/index.php/alfurqan/article/view/6/3>.

Man, Saadan. "The Development Of Ikhtilaf And Its Impact On Muslim Community In Contemporary Malaysia." *Jurnal Syariah, Jil 16*, n.d., 497–521.

Muhadjir, Noeng. *Metode Penelitian Kualitatif*. Yogyakarta: Rakesarasin, 1996.

Munandar, Arif. "Zihar Dalam Tafsir Fi Zhilal Al-Qur'an Dan Tafsir Al-Mishbah." *Tafse: Journal of Qur'anic Studies* 3 (2018): 17–29.

Pagani, Samule. "The Meaning of The Ikhtilāf Al-Madhāhib In 'Abd Al-Wahhāb Al-Sha'rānī's Al-Mīzān Al-Kubrā," n.d.

Rosmita. "The Position of the Guardian in Marriage Perspective of the Hanafi and the Al-Shafi'i Madhhab." *Mazahibuna: Jurnal Perbandingan Mazhab* 4 (2022): 152–72.  
[file:///C:/Users/User/Downloads/30969-Article Text-99418-1-10-20221202.pdf](file:///C:/Users/User/Downloads/30969-Article%20Text-99418-1-10-20221202.pdf).

Sarwat, Ahmad. *Ahmad Sarwat, Ensiklopedia Fikih Indonesia Pernikahan*. Jakarta: Gramedia, 2019.

Soedjono. *Bentuk Penelitian : Suatu Pemikiran Dan Penerapan*. Jakarta: Rineka Cipta, 1999.

Yusuf, Abu Ubaidah. "Fiqh Ikhtilaf." *Pagani, Samule*, n.d.