Istiński’ Law in Şīgat Ṭalāq Four Mazhab Perspectives

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Abstract. The different istinbât aḥkam rules cause differences of opinion among the four mazhabs in determining Islamic law, such as the issue of istiński’ law in the šīgat ṭalāq, the perspective of four mazhab which still requires a more detailed study. Departing from this background, the main issues answered in the dissertation are (1) What are the views of the four mazhab on Islamic law in the šīgat ṭalāq perspectives of the four mazhab? (2) How is the law of the four mazhab’s laws against the law of istiński’ in the šīgat ṭalāq perspectives of the four mazhab? (3) What is the legal status of istiński’ law in the šīgat ṭalāq perspectives of four mazhabs towards Islamic marriage in Indonesia? This dissertation is a library research that basically enters the discipline of usūl fiqh, to analyze data concerning istinbât aḥkam used by four mazhabs using descriptive analytical methods, while to analyze istinbât aḥkam about the opinions of four mazhabs to the istinbât aḥkam in šīgat ṭalāq perspective four mazhab. This used content analysis techniques (content analysis) qualitatively, then the conclusion used deductive and inductive methods. This dissertation concludes, First, If the speech of ṭalāq depends on the will of Allāh then according to Imām Mālik and Imām Ḥanbalī occurs and falls ṭalāq, Imām Abū Ḥanifa and Imām Shāfi‘ī did not fall in their ṭalāq. Secondly, Istinbât aḥkam against the law of istiński in the šīgat ṭalāq Imām Mālik and Imām Ḥanbalī in the history of Ibn Umar, atṣar and ijma’. Imām Abū Ḥanifa and Imām Shāfi‘ī based on the historical hadith of Ibn Abbas. Third, the istiński’Law in the šīgat ṭalāq in Islamic marriages in Indonesia results in the ṭalāq while the istiński’ in no legal implications.

Keywords: law · istiński’ · istinbât aḥkam · four mazhab

1 Introduction

Istiński’ very popular or is very common among the Muslim community, especially in the country. The phrase, which literally means “If Allah Wills,” or in its Arabic form (لا ينوا شاء), actually has a very deep theological meaning; not only in everyday conversation, but the sentence hayibah is also frequently heard in both the mass media and the electronic media. Even so, as usual, this word is often accepted and used without adjusting its meaning and usage as it should be [1].

So popular or already very common among the Muslim community, especially in the homeland. The phrase, which literally means “If Allah Wills”, or in its Arabic form,
actually contains a very deep theological meaning, not only in everyday conversation. The phrase thayibah is also very often heard both in the mass media and electronic media. Even so, as usual, this word is often accepted and used without adjusting its meaning and usage as it should be [2].

A Muslim pronounces this greeting when he promises or plans to do something in the future. Say Istiṣnā’ because he does not know whether what he is about to do will actually happen or not. Because all things that happen or do not happen are by Allah’s will, based on Allah’s destiny. It also contains the isti’ānah prayer (asking for help) or seeking blessings from Allah so that it is easier to do something [3].

Allah rebuked them when they did not say Istiṣnā’ in doing or promising something that would happen. On the other hand, when they say Istiṣnā’, Allah gives them ease and a good end result. And there is also an incident when a Prophet said “ustin” but by Allah’s destiny, something did not happen [4].

First, the scholars say, Allah (SWT) reminded the actions of His Prophet to speak with the disbelievers about spirits, youths (ashabul kahf) and dzul qarnain, “Tomorrow I will give you the answers to your questions.” In that case, he did not state istiṣnā’. So that the revelation stopped coming down to him for fifteen days, which was something that was very difficult for him and shook the disbelievers. So this verse was revealed to him as a way out [5].

Second, Ibn al-T. iyah (d. 541 H.) said, “With regard to this verse, people talk about istin’ in the oath while this verse does not relate to the oath, but relates to, with istiṣnā’ other than the oath.” Allah SWT has said, “أَن يَشَاءَ اللَّهُ إِلاَّ أَنْ يَشَاءَ اللَّهُ (نَقْفُ وَلَوْ أَنْ يَشَاءَ اللَّهُ إِلاَّ أَنْ يَشَاءَ اللَّهُ)” this saying, there is clearly an omission and it is declared good for the sake of abbreviation. The origin is (أَنْ يَشَاءَ اللَّهُ إِلاَّ أَنْ يَشَاءَ اللَّهُ (نَقْفُ وَلَوْ أَنْ يَشَاءَ اللَّهُ). So the meaning is: “If you mention the will of Allah,” it is not a forbidden word [6].

According to al-Qurṭubi (d. 671 H.), what chose Ibn al-Atiyah (d. 541 H.) and what he pleased was the opinion of al-Kisā’i (d. 189 H.) and al-Farra (d. 215 H.) and al-Akhfas (d. 177 H.). While the people of Basrah said: “but by the will of Allah”. If humans say, “I do this insyā Allāh,” then it means by the will of Allah or something that is dependent on the will of Allah.

The issue of marriage, including the law of istiṣnā’ in ṣīgat talaq and ṣīgat zihār, is a classic case that has been discussed by previous scholars. Ṣīgat talaq and ṣīgat zihār in general are something that has been agreed upon by scholars’ besides being explained in the nas al-Qur’ān and Sunnah. However, when Ṣīgat talaq and ṣīgat zihār, they are faced with an unusual event, such as hanging talaq (talaq mua’il laq) and hanging zihār (zihār mua’il laq) on istiṣnā’, for example, “you are to me like my mother’s back insyā Allāh” or “you are talaq insyā Allāh). So the Ṣīgat talaq and ṣīgat zihār become a problem that requires careful study, because in this case there are differences of opinion among the four mażhab of thought [7].

Istiṣnā’ the issue of ṣīgat talaq and ṣīgat zihār is not explained in the al-Qur’ān implicitly, therefore it still invites differences of opinion among scholars, as well as the need to know the law of istiṣnā’ in ṣīgat talaq and ṣīgat zihār in the context of Muslim society in Indonesia. Based on the above background, the writer is interested in examining the views of the four mażhab of thought regarding istiṣnā’ law in ṣīgat talaq.
and ṣīgat źīhār by expressing the opinions of the four mażhab of fiqh and seeking legal istinbaṭ, as well as the legal status of the Muslim community in Indonesia [8].

2 Methodology

This research is qualitative research. Moleong defines qualitative research as research that produces analytical procedures without using statistical analysis procedures or other quantification. Thus, qualitative research is research that does not produce calculations in any form, but is a written word. This research prioritizes searching for data, so a researcher must choose a method according to the characteristics of the object of study and its political conceptualization. By looking at the main problem and the purpose of writing, so that writing in a discussion can be directed and hit the problem [9].

3 Discussion

3.1 Opinion of the Four Mażhab Against Istišnā’ Law in Šīgat Ţalāq

a. Opinion of Imām Abū Ḥanīfah (d. 150 H) Against Istišnā’ Law in Šīgat Ţalāq. This is based on the hadith narration of Imām Baiḥāqī:

"أخبرنا أبو سعدي المغافقي، أنَّ أبو أحمد بن بلال النعيدي، نا إبراهيم بن إسماعيل المغافقي، نا علي بن معيبد بن يحيى، نا علي بن معيبد بن شاذان الكلغني، نا إسحاق بن أبي يحيى، عن النبي ﷺ، عن عبد الزهير بن أبي رواج، عن ابن جرير، عن عطاء، عن ابن عباس رضي الله عليهما أن رسول الله صل الله عليه وسلم قال: "كلما أتت حرة أن شاء الله أبو علي عليه السلام إلى بني الله إن شاء الله فلا شيء عليه""

Meaning: Whoever says to his wife, “You are ťalāq if Allah wills,” or says to his slave, “You are free,” or says “I have to walk to the Baitullah if Allah wills,” then he has nothing to pay for the oath.

According to Imām Abū Ḥanīfah (d. 150 H), depending Ťalāq on the will of Allah, such as if a husband says to his wife, ‘You are ťalāq insyā Allāh (if Allh wills, then ťalāq like this is not valid or does not fall into ťalāq.

Opinion of Imām Mālik (d. 179 H) Against Istimna’ Law in Šīgat Ťalāq. Imām Mālik say: When the ťalāq utterance is dependent on Allah’s will, such as “You are I ťalāq insyā Allāh.” If ťalāq uses speech like this, ťalāq or ťalāq falls, and the exceptions mentioned in speech have no effect. This support is based on the narration of Ibn Abbas:
Meaning: The narration of Ibn Umar says, “We, the companions of the Messenger of Allah, view the application of istisnā’ in all matters apart from the liberation of slaves and talāq.”

Opinion of Imām Syāfi’ī (d. 204 H) Against the Law of Istiṣnā’ in Ṣīgat Ṭalāq. The opinion of Imām Syāfi’ī (d. 204 H) on Ṣīgat Ṭalāq is required by the will of Allah not to fall. This is based on the hadith narrated by Ibūn Umar:

Meaning: has told us Mahmud bin Ghailn said, has told us Abdu al-Šhamad bin Abdul Wāriš said, has told me my father and Ammad bin Salamah from Ayyub from nāfi’ from Ibūn Umar that the Messenger of Allah—peace and prayer of Allah be upon him—said: Whoever swears, then he says, “If Allah wills, then there is no violation of this oath.” (HR. Tirmidhi)” [10].

Imām Syāfi’ī (d. 204 H) say, If the husband says, “You are talāq if Allah wills,” and he means ta’liq, the alq will not take place. If someone swears according to the oath of the Muslims, then he regrets it (revokes it), and according to the Syāfi’īah group, he pays kafarat and does not fall under talāq or others.

Opinion of Imām Ahmad bin Ḥanbal (d. 241 H) Against Istiṣnā’ Law in Ṣīgat Talāq. It is argued that talāq which is required or suspended by Allah’s will will fall into talāq. This is based on Ibn Sās:

Meaning: Ibn Sās said, “If a husband hangs a divorce by Allah’s will, then he says, ‘Your divorce falls if Allah wills, then the divorce falls and there is no use in saying ‘if Allah wills’ (insyā Allāh).’

3.2 Takhrij Ḥadīṣ, Legal Basis of the Four Mażhab Against Istiṣnā’ Law in Ṣīgat Talāq

As stated above, the author performs the steps to determine the istiṣnā’ law in Ṣīgat talāq so that, in the end, he finds answers to the problems related to this research, among the stages, namely:

a. The opinion of Imām Abū Ḥanīfah (d. 150 H): This is based on the adi history of Imām Baiḥāqī: After tracing this adi, it is only found in the book of Sunan al-Baiḥaqī al-Kubrā. It is explained by Abū Aḥmad that this ḥadīth is an evil chain, and all of
them do not exist who are referred to as narrators except Ishāq bin Abī yahya. This hadith, according to al-Jarūt bin Yazīd, is part of the dhaif hadith. Ibn al-Jauzī in the book Jam‘ul Jawāmī‘ ‘al al-Jāmi‘ al-Kabīr li-Sūyūtī (d. 911 H) says that the hadith narrated by Imam Baihaqi above is an invalid hadith. (هذا حديث لا يصح).

b. The opinion of Imām Mālik (d. 179 H): this is based on the adī hadith narrated by Ibn Abbas, and this is the atar of the companions, and it does not include adīs, but no one rejects this opinion, and many other narrations support the atar. In the book Arsīf Multāa Ahl al-ḥadīs, it is explained that Ibn Abbas never narrated the ad and that the sanad of the ad is unknown [11].

c. The opinion of Imām Șafi‘ī (d. 204 H) is based on the adī narration of Ibn Umar. The Nasbu al-Rāyah Juz III explains the status of an ad, and according to Imām al-Tirmidzī, this status of an hadith is ḥasan, and I’tibar adīth, Mahmud bin Ghailan, Al ‘Adawiy Al Marwazi, Abu Ahmad, Tabī‘in middle class, (w. 239 H), live in Kufur Jadiya. (2) Abdush Shamad bin ‘Abdul Warits bin Sa‘id bin Dzakwan, Al ‘Anbariy At Tanawwuriy, Abu Sahal, Abdau, Tabī‘ut Tabī‘i in ordinary people, ( w. 207 H), live in Bashrah. (3) Abdul Warits bin Sa‘id bin Dzakwan, Al ‘Anbariy At Tanuriy, Abu ‘Ubaidah, Tabī‘ut Tabī‘i in middle class, (w. 180 H), hidup di Bashrah, ddied in Bashrah. (4) Hammad bin Salamah bin Dinar, Abu Salamah, Al Khazzaz, Tabī‘ut Tabī‘i in middle class, (w. 167 H), live in Bashrah. (5) Ayyub bin Abi Tamimah Kaysan, As Sikhtiyaniy, Abu Bakar, Tabī‘i in ordinary people, (w. 131 H), live in Bashrah. (6) “Nafi’, maula Ibnu ‘Umar”, Al Madaniy, Abu ‘Abdullah, Tabī‘in ordinary people, (w. 117 H), live in Madinah, died in Madinah. (7) Abdullah bin ‘Umar bin Al Khatthhab bin Nufail, Al ‘Adawiy Al Qurasiy, Abu ‘Abdur Rahman, Shahbat, (w. 73 H), live in Madinah, died in Marur Rawdz. Hadith narrated by the owners of the four books of sunan at-Tirmidzi say that this hadith is ḥasan. The scholars differ in defining hadith ḥasan because they see that it is intermediate between hadith ḥasan and hadith dāif, and also because some scholars define it as one of its parts [12].

d. The opinion of Imām Șahīd bin Ḥanbal (d. 241 H): this is based on the hadith narrated by Ibn Sās after performing takhrij and is not found in any hadith book, because this opinion is the same as the opinion that was referenced by Imām Mālik related to atsar. From a linguistic point of view, atsar means’ remains of something’, or ‘remains of an image of something’, and ‘results of a legacy’. According to Ibn Fāris (d. 395 H.), there are three basic meanings of atsar: “to put something first”, “to mention something”, and “a picture of the rest of something”. In addition, the word atsar can also mean khabar. Terminologically, atsar is also considered synonymous with hadith, sunnah, and khabar. The majority of hadith scholars interpret atsar as ‘something that is leaned on the Prophet, companions, or tabi‘n’. Meanwhile, al-Nawawī (d. 676 H.), stated that atsar in the terminology of the Salaf scholars and the majority of the khalaf scholars is “something narrated from the Prophet (marfū’) and from friends (mawqūf)” [13].
3.3 Analysis of Opinions and Istinbaṭ Ḥaḵm of the Four Maḏḥab of Iṣtiḥnā’ Law in Ṣigat Ṭalāq

From the description above, it is concluded that the findings related to istiṣnā’ law in ṣīgat ṭalāq are based on the opinions of the four maḏḥab of thought, with the classification of similarities and differences, which are described in the table as follows:

a. The difference is that the difference of opinion lies in the arguments that are used as the basis for formulating their respective opinions. The difference of opinion is probably due to the expertise of each in understanding the arguments and the method of istinbat. In another note, Imām Syāfi’ī (d. 204 H) once said, “When it comes to ātṣar, then Imām Mālik is the star” [14].

<table>
<thead>
<tr>
<th>Imām Mālik (w. 179 H)</th>
<th>Imām Abū Ḥanīfah (w. 150 H)</th>
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<thead>
<tr>
<th>Divorced ṭalāq ṭalāq</th>
<th>No, divorced</th>
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<tr>
<td>No exceptions apply</td>
<td>Exceptions apply</td>
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<tr>
<td>ātṣar, ījmā’</td>
<td>ḥadīth</td>
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b. Similarities: As for the similarities, there is no more specific explanation that confirms that the opinion is the same regarding the saying istinā’ in ṭalāq. However, the four maḏḥab of thought have their own basis.

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| Have a basis | Have a basis |

3.4 Iṣtiḥnā’ Law in Ṣīgat Ṭalaq Against Marriage in Indonesia

According to the previous discussion, a husband’s words in ṣīgāt ṭalāq using lafaz istiṣnā’ fall under several conditions. Syaikh Abū Sujak says:

وَيَصَحُّ تَعْلِيْقُهُ بِالصَّفْةَ وَالسُّرْط

“And it is valid to associate ta’liq ṭalāq with the nature and conditions of”

Just as it is valid to use talaq, so also relate it to ta’liq, as from the words of the Prophet s.a.w:

أَلْمُمْنِنَّ عِندَ شُرْوَطِهِمْ

“Believers are standing according to their conditions”.
Although the implementation of marriage law in Indonesia, especially regarding ṭalāq, has obtained a standard formulation from the Compilation of Islamic Law as it is today, it seems that this formulation is not comprehensive, because there are still several problems that have not yet been finalized, including

a. The šīgat ta’liq ṭalāq has not been regulated in the Compilation of Islamic Law in detail and detail, as has been done in Malaysia.

b. The decision of the fuqahā’ occurs ikhtilāf. Some say it falls and does not fall. So it is very urgent for an explanation if it is included in a provision, as in Malaysia.

The two problems related to šīgat ta’liq ṭalāq and itself seem to still need to be studied further. Because if you read various discussions about this in various fiqh books, it seems that they do not always provide clear information to the Indonesian people, so a more binding understanding is needed for peace in the household [15].

4 Conclusion

Becoming a human rabbani and insan kamil is the goal of every Muslim. There are several rabbinic characters that we can emulate in the stories of the prophets. The prophet with the title ulul azmi has advantages compared to other prophets. There are 5 prophets who are included in the ulul azmi glass, namely Noah, Abraham, Moses, Jesus and Muhammad.

Prophet Noah gave an example of a rabbinic character in the form of gratitude. We must give thanks to Allah every day and even every moment. All the goodness and advantages that we receive must be grateful to Allah, worship Him. Prophet ibrahim gave us instructions to be able to increase our faith and monotheism in Allah, namely by thinking and contemplating Allah’s creation in the form of this universe. Prophet Musa taught us about courage in preaching. Prophet Isa taught us to be humble even though we have advantages over others. While the Prophet Muhammad taught about perfect morals, being kind and gentle to humans and God’s creatures.

5 Suggestion

Although the implementation of marriage law in Indonesia, especially regarding ṭalāq, has obtained a standard formulation from the Compilation of Islamic Law as it is today, it seems that this formulation is not comprehensive, because there are still several problems that have not yet been finalized, including

1. Formalized paraphrase The šīgat ta’liq ṭalāq has not been regulated in the Compilation of Islamic Law in detail and detail, as has been done in Malaysia.

2. The decision of the fuqahā’ occurs ikhtilāf; some say it falls and does not fall ṭalāq. So it is very urgent for an explanation if it is included in a provision, as in Malaysia.

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References


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