



Istisnā' Law in Ṣīgat Ṭalāq Four Mazhab Perspectives

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Abstract. The different istinbāt aḥkam rules cause differences of opinion among the four mazhabs in determining Islamic law, such as the issue of istisnā' law in the ṣīgat 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 ṣīgat ṭalāq perspectives of the four mazhab ?. (2) How is the law of the four mazhab's laws against the law of istisnā' in the ṣīgat ṭalāq perspectives of the four mazhab ?. (3) What is the legal status of istisnā law in the ṣīgat ṭalāq perspectives of four mazhabs towards Islamic marriage in Indonesia? This dissertation is a library research that basically enters the discipline of uṣūl fiqh, to analyze data concerning istinbāt aḥkam used by four mazhabs using descriptive analytical methods, while to analyze istinbāt aḥkam about the opinions of four mazhabs to the istinbāt aḥkam in ṣīgat 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, Istinbāt aḥkam against the law of istisnā in the ṣīgat 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 istisnā' Law in the ṣīgat ṭalāq in Islamic marriages in Indonesia results in the ṭalāq while the istisnā' in no legal implications.

Keywords: law · istisnā' · istinbāt aḥkam · four mazhab

1 Introduction

Istisnā' 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 (إِن شَاءَ اللهُ), 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].

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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'anah* 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 "*istin'*" 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, Ibnu al-Ṭīyah (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, *أَنْ يَشَاءَ اللَّهُ إِلَّا* "Unless Allah wills." this saying, there is clearly an omission and it is declared good for the sake of abbreviation. The origin is *(تَقُولُ إِنْ شَاءَ أَوْ إِلَّا أَنْ إِلَّا أَنْ تَقُولُ إِلَّا أَنْ يَشَاءَ اللَّهُ)* unless you say, "Unless Allah wills, *insyā Allāh*". 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-Aṭīyyah (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-Akhfasy (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 ṭalāq* and *ṣīgat ḡihār*, is a classic case that has been discussed by previous scholars. *Ṣīgat ṭalāq* and *ṣīgat ḡihār* in general are something that has been agreed upon by scholars' besides being explained in the *naṣ al-Qur'ān* and *Sunnah*. However, when *Ṣīgat ṭalāq* and *ṣīgat ḡihār*, they are faced with an unusual event, such as hanging *ṭalāq* (*ṭalāq mua'llaq*) and hanging *ḡihār* (*ḡihār mua'llaq*) on *istiṣnā'*, for example, "you are to me like my mother's back *insyā Allāh*" or "you are *ṭalāq insyā Allāh*". So the *Ṣīgat ṭalāq* and *ṣīgat ḡihār* become a problem that requires careful study, because in this case there are differences of opinion among the four *maḏhab* of thought [7].

Istiṣnā' the issue of *ṣīgat ṭalāq* and *ṣīgat ḡihār* 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 ṭalāq* and *ṣīgat ḡihār* in the context of Muslim society in Indonesia. Based on the above background, the writer is interested in examining the views of the four *maḏhab* of thought regarding *istiṣnā'* law in *ṣīgat ṭalāq*

and ṣīgat ṣihār by expressing the opinions of the four mazhab of fiqh and seeking legal istinbat, 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 Mazhab Against Istiṣnā' Law in Ṣīgat Ṭalāq

- Opinion of Imām Abū Ḥanīfah (d. 150 H) Against Istiṣnā' Law in Ṣīgat Ṭalāq. This is based on the hadith narration of Imām Baiḥaqī:

أَخْبَرَنَا أَبُو سَعْدِ الْمَالِينِيُّ، أَنَا أَبُو أَحْمَدَ بْنُ قَالِ الْبَيْهَقِيِّ
عَدِيٍّ، نَا إِبْرَاهِيمَ بْنَ إِسْمَاعِيلَ الْعَافِقِيِّ، نَا عَلِيَّ بْنَ مَعْبُدِ بْنِ
نُوحٍ، نَا عَلِيَّ بْنَ مَعْبُدِ بْنِ شَدَّادِ الْكُعْبِيِّ، نَا إِسْحَاقَ بْنَ أَبِي
بَحْيَى، عَنِ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَادٍ، عَنِ ابْنِ جُرَيْجٍ، عَنِ
عَطَاءٍ، عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ
مَنْ قَالَ لِامْرَأَتِهِ أَنْتَ طَالِقٌ إِنْ شَاءَ اللَّهُ أَوْ " :عَلَيْهِ وَسَلَّمَ قَالَ
عُلَامِهِ أَنْتَ حُرٌّ إِنْ شَاءَ اللَّهُ أَوْ عَلَيْهِ الْمَشِيُّ إِلَى بَيْتِ اللَّهِ إِنْ شَاءَ
اللَّهُ فَلَا شَيْءَ عَلَيْهِ

Meaning: Whoever says to his wife, “You are ṭalāq 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 Ṭalāq on the will of Allah, such as if a husband says to his wife, “You are ṭalāq insyā Allāh (if Allh wills, then ṭalāq like this is not valid or does not fall into ṭalāq.

Opinion of Imām Mālik (d. 179 H) Against Istiṣnā' Law in Ṣīgat Ṭalāq. Imām Mālik say: When the ṭalāq utterance is dependent on Allah’s will, such as “You are I ṭalāq insyā Allāh.” If ṭalāq uses speech like this, ṭalāq or ṭalāq falls, and the exceptions mentioned in speech have no effect. This support is based on the narration of Ibn Abbas:

كُنَّا أَصْحَابَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَرَى الْإِسْتِثْنَاءَ جَائِزًا فِي كُلِّ شَيْءٍ إِلَّا فِي الطَّلَاقِ
وَالْعَتَاقِ.

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 *ṭalāq*.”

Opinion of Imām Syāfi‘ī (d. 204 H) Against the Law of *Istisnā*’ 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 Ibn Umar:

حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ حَدَّثَنَا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ
حَدَّثَنِي أَبِي وَحَمَّادُ بْنُ سَلَمَةَ عَنْ أَبِي يُوَيْبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ
أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ حَلَفَ عَلَى يَمِينٍ
فَقَالَ إِنْ شَاءَ اللَّهُ فَلَا جُنْتَ عَلَيْهِ

Meaning: has told us Mahmud bin Ghailn said, has told us Abdu al- Ṣhamad bin Abdul Wārīs said, has told me my father and Ammad bin Salamah from Ayyub from nāfi‘ from Ibn 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 *ṭalāq* 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‘īyah group, he pays *kafarat* and does not fall under *ṭalāq* or others.

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

قال ابن ساس إن علق الطلاق بمشيئة الله سبحانه فقال
أنت طالق إن شاء الله وقع الطلاق ولم تنفعه المشيئة

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 Mazḥab Against *Istisnā*’ Law in *Ṣīgat Ṭalāq*

As stated above, the author performs the steps to determine the *istisnā*’ law in *ṣīgat ṭalāq* 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-Baiḥāqī 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 yaḥya. This hadith, according to al-Jarūt bin Yazīd, is part of the dhaif hadith. Ibn al-Jauzī in the book *Jam 'ul Jawāmi ' au al-Jāmi ' al-Kabīr li-Suyūṭī* (d. 911 H) says that the hadith narrated by Imam Baihaqī above is an invalid hadith. (هذا حديث لا يصح).
- b. The opinion of Imām Mālik (d. 179 H): this is based on the adi narrated by Ibn Abbas, and this is the atar of the companions, and it does not include adis, but no one rejects this opinion, and many other narrations support the atar. In the book *Arsīf Multāā Ahl al-ḥadīṣ*, 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 Syāfi'ī (d. 204 H) is based on the adi 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 ḥadīth, Mahmud bin Ghailan, Al 'Adawiy Al Marwaziyy, Abu Ahmad, Tabi'in middle class, (w. 239 H), live in Baghdad, died in Kufur Jadiya. (2) Abdush Shamad bin 'Abdul Warits bin Sa'id bin Dzakwan, Al 'Anbariy At Tanawwuriyy, Abu Sahal, Abdaus, Tabi'ut Tabi'in ordinary people, (w. 207 H), live in Bashrah. (3) Abdul Warits bin Sa'id bin Dzakwan, Al 'Anbariy At Tanuriyy, Abu 'Ubaidah, Tabi'ut Tabi'in middle class, (w. 180 H), hidup di Bashrah, ddied in Bashrah. (4) Hammad bin Salamah bin Dinar, Abu Salamah, Al Khazzaz, Tabi'ut Tabi'in middle class, (w. 167 H), live in Bashrah. (5) Ayyub bin Abi Tamimah Kaysan, As Sikhtiyaniyy, Abu Bakar, Tabi'in ordinary people, (w. 131 H), live in Bashrah. (6) "Nafi", maula Ibnu 'Umar", Al Madaniyy, Abu 'Abdullah, Tabi'in ordinary people, (w. 117 H), live in Madinah, died in Madinah. (7) Abdullah bin 'Umar bin Al Khatthab bin Nufail, Al 'Adawiy Al Qurasyiy, Abu 'Abdur Rahman, Shahabat, (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 Aḥmad 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-Nawāwī (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 *Istinbat* Aḥkam of the Four Mazḥab of *Istisnā'* Law in *Ṣīgat Ṭalāq*

From the description above, it is concluded that the findings related to *istisnā'* law in *ṣīgat ṭalāq* are based on the opinions of the four mazḥab 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 *atsar*, then Imām Mālik is the star" [14].

Imām Mālik (w. 179 H) Imām Aḥmad bin Ḥanbal (w. 241 H)	Imām Abū Ḥanīfah (w. 150 H) Imām Syāfi'ī (w. 204 H)
Divorced <i>ṭalāq ṭalāq</i>	No. divorced
No exceptions apply	Exceptions apply
<i>atsar, ijma'</i>	<i>ḥadīth</i>

- b. Similarities: As for the similarities, there is no more specific explanation that confirms that the opinion is the same regarding the saying *istisnā'* in *ṭalāq*. However, the four mazḥab of thought have their own basis.

Imām Mālik (w. 179 H) Imām Aḥmad bin Ḥanbal (w. 241 H)	Imām Abū Ḥanīfah (w. 150 H) Imām Syāfi'ī (w. 204 H)
Have a basis	Have a basis

3.4 *Istisnā'* Law in *Ṣīgat Ṭalāq* Against Marriage in Indonesia

According to the previous discussion, a husband's words in *ṣīgat ṭalāq* using lafaz *istisnā'* fall under several conditions. Syaikh Abū Sujak says:

وَيَصِحُّ تَعْلِيْقُهُ بِالصَّفَةِ وَالسَّرَطِ

"And it is valid to associate ta'liq *talāq* 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:

الْمُؤْمِنُونَ عِنْدَ شُرُوطِهِمْ

"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 ṣīgat 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 ṣīgat ta'liq ṭalāq and it self 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 ṣīgat 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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