menggunakan semua elemen sumber hukum yang ada, baik itu Al-Qur’an, Hadits, Fiqih, maupun undang-undang.

ABSTRACT

M. Irham Hanani, 11210069, 2015, Contradiction Legality Pronunciation Divorce According to Fiqih Four Madzhab and Compilation of Islamic Law (KHI) (study of argument religious court judge unfortunate district Malang). Thesis, Al-Ahwal Al-Syakhsiyyah Department, the Faculty of Syariah, the State Islamic University Maulana Malik Ibrahim of Malang. Supervisor: Dr. Hj. Tutik Hamidah, M.Ag.

Key words: Contradiction, Legality, Divorce/Talak

In the concept of Fiqih law husband has power to drop divorceto his wife whenever and wherever without having permission from his wife, while in Islamic Law Compilation (KHI) and Act No. 1 in 1974 stated that husband or wife are have right to submit claim to the Religion Court. So far before giving a verdict, judge never asked to the husband did he ever pronouncing divorce earlier to his wife? or how many times had spoken divorce to his wife?. But regulations stated in the case of divorcethat granted was falling divorce one raj’i. Meanwhile, if previously husband had spoken divorce, then the case submitted to the Court for the purpose of legality and granted; then, in the concept of Fiqih, the divorce has fallen divorcetwo or even three divorcethat means not talak raj’i. Besides, the consequences and effects between divorce raj’i and ba’in are very clearly different.

This Study was conducted by referring two problems: 1. how the judges of religious court arguments toward the legality of pronunciation talak contradiction according to fiqih four madzhab and Islamic Law Compilation (KHI)? 2. how is the argument of judge at Malang religious court In giving judgment divorce casethat more leaning to Islamic Law Compilation (KHI) then Fiqih of Four Madzhab? This research is a empirical research or field research. The approach that used in this research is a qualitative approach with data collection method are using interview.

This research result showing that judge has a different views about divorce concept that exist in KHI and fikih, namely: 1) The differences between KHI and Fiqih is a khilafiyah, because both of them are there in the different periode and condition. 2) Between KHI and Fiqih are not different, because the purpose of them is to realize Maqashid Al-Syari’ah. About the calculation and pronunciation of divorce, namely: 1) There is a possibility of divorce that pronounce outside of the court is legal. 2) There is nothing another decisions for divorce except divorce raj’i, then in the giving a judgment and using legal certainty, namely: 1) In giving a judgment, haven’t to use the rules or laws that exist but depending on the condition of the case that is handled. 2) In giving a judgment, must refer to guidelines which have no namely the act, KHI and Legislations are ruling. 3) In giving a judgment, must use all elements of sources of law there, the Quran, Hadith, Fiqih, and Civil Law.