

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

ABSTRACT

M.IrhamHanani, 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-SyakhsiyyahDepartement, the Faculty of Syariah, the State Islamic University Maulana Malik Ibrahim of Malang. Supervisor: Dr.Hj. TutikHamidah,M.Ag .

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In the concept of Fiqh law husband has power to drop divorce to 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 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 divorce that 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 divorce two or even three divorce which means *nottalak 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 pronouncement *talak* contradiction according to *fiqh* four madzhab and Islamic Law Compilation (KHI)? 2. how is the argument of judge at Malang religious court in giving judgment divorce case that more leaning to Islamic Law Compilation (KHI) than *Fiqh* of Four Madzhab?. This research is an empirical research or field research. The approach that used in this research is a qualitative approach with data collection methods are using interview.

This research result showing that judge has a different views about divorce concept that exist in KHI and *fiqh*, namely: 1) The differences between KHI and *Fiqh* is a *khilafiyah*, because both of them are there in the different periods and conditions. 2) Between KHI and *Fiqh* are not different, because the purpose of them is to realize *Maqashid Al-Syari'ah*. About the calculation and pronouncement of divorce, namely: 1) There is a possibility of divorce that pronounced 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, *Fiqh*, and Civil Law.