

**ESTABLISHMENT OF ISLAMIC LAW BASED ON MUKHTALIF HADITHS:  
A STUDY ON IBN QUTAYBAH'S THOUGHTS****Salman Abdul Muthalib**

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Email: [salman@ar-raniry.ac.id](mailto:salman@ar-raniry.ac.id)**ABSTRACT**

Islamic law should be based on clear and proven evidence, both in the Qur'an and in the authentic hadiths, while the existence of *mukhtalif* hadiths can cause confusion in making decisions and determining the legal certainty that governs the issue. This study will elaborate on the methods used by scholars in determining the law based on conflicting hadiths. The research results indicate that there are three steps that scholars take in producing laws derived from *mukhtalif* hadiths: the methods of *al-Jam'u wa al-Taufiq*, *al-Nash*, and *tarjih*. In the method of *al-Jam' wa al-tawfiq*, there is a linguistic approach, interpretation, and reduction of meaning, as well as the conditions under which a hadith was uttered and the reinterpretation of the wording of the hadith to a different meaning. In the method of *al-nasikh wa al-mansukh*, Ibn Qutaybah did not provide a detailed explanation of when, where, and in what case the hadith was uttered. In the method of *tarjih*, the focus is on the quality of the *sanad*, where the proximity of the relationship between the narrator and the Prophet is the main consideration for strengthening one hadith.

**Keywords:** *Islamic law, Mukhtalif hadiths, Istinbat.***ABSTRAK**

Hukum Islam seharusnya dibentuk berdasarkan dalil-dalil yang jelas dan terbukti keasliannya, baik dalam Al-Quran maupun hadis yang shahih, sementara keberadaan hadis-hadis mukhtalif dapat menimbulkan kebingungan dalam mengambil keputusan dan kepastian hukum yang mengatur masalah tersebut. Kajian ini akan menguraikan metode yang ditempuh para ulama dalam menentukan hukum berdasarkan hadis-hadis yang tampak kontradiktif. Hasil penelitian menunjukkan bahwa terdapat tiga langkah yang dilakukan para ulama dalam menghasilkan hukum yang bersal dari hadis mukhtalif, metode *al-Jam' wa al-Taufiq*, *al-Nash* dan *tarjih*. Dalam metode *al-Jam' wa al-tawfiq*, terdapat pendekatan kebahasaan, penguraian dan pengurangan makna dan juga kondisi ketika sebuah hadith itu diucapkan serta *men-ta'wil*-kan lafal hadith kepada makna lain. Dalam metode *al-Nasikh wa al-Mansukh* tidak tampak uraian rinci yang dipaparkan Ibn Qutaybah, kapan, dimana dan dalam kasus apa hadith itu disabdakan tidak dijelaskan olehnya. Dalam metode *tarjih*, ia fokus pada kualitas sanad, aspek kedekatan hubungan perawi dengan Rasul menjadi pertimbangan utama untuk menguatkan salah satu hadis.

**Kata Kunci:** *Hukum Islam, Hadis Mukhtalif, Istinbat*

## **A. Introduction**

Islamic law should be based on clear and proven evidence,<sup>1</sup> both in the Quran and in authentic hadiths. This is crucial so that Muslims can easily comprehend and put the laws created into practice in their daily lives. The use of unclear or untested evidence can lead to misunderstandings and controversy in the understanding and implementation of Islamic law.<sup>2</sup> However, the discovery of *mukhtalif* hadiths in the works of scholars, which sometimes contradict each other in their interpretations, has confused Muslims in determining the correct views and understanding of the true teachings of Islam.

The existence of *mukhtalif* hadiths regarding a particular issue can practically cause confusion in making decisions and determining the legal certainty that governs the issue.<sup>3</sup> Which one should be followed or practiced - as there are those that command and those that forbid - if the ways to resolve the apparent conflict between the hadiths are not well known. In addition, it is also important to note that these *mukhtalif* hadiths have been utilized by those who seek to undermine the position of hadith as a mandatory source of religious teachings to be held and practiced. They employ various means to achieve their goals, sometimes by sowing doubt about the authenticity of the hadiths by stating that they are *ahad* hadiths, not *mutawatir*. Sometimes through the transmission of hadiths in various ways, as if the hadiths contradict historical facts, common sense, and even other *naql* evidence.<sup>4</sup>

The formation of Islamic law based on various hadiths is an important process in the development of Islamic law. *Mukhtalif* hadiths are hadiths that have variations in content but still have the same meaning. In forming Islamic law, *mukhtalif* hadiths are often used as one of the sources of law because they can provide a broader and deeper perspective on a particular issue. The process of forming Islamic law through *mukhtalif* hadiths is done through the method of comparing hadiths or *tarjih*, where the selection of hadiths considered stronger or more correct is made. Additionally, it is important to understand the historical and social context in which the hadith was delivered and to take the opinions of scholars into account in determining the appropriate law.<sup>5</sup>

Based on the above issue, this writing attempts to describe the nature of the understanding of *mukhtalif* hadiths and their criteria so that they can be comprehensively understood and do not lead to ambiguous understanding. Furthermore, the discussion will be directed towards the method of legal excavation carried out by scholars related to the

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<sup>1</sup> Muhammad Irkham Firdaus, Selvia Namira Ahmad, and Yashinta Aulia Santoso Putro, 'Kajian Filsafat Hukum Islam (Tafsir Dan Ijtihad Sebagai Alat Metodologi Pengalian Hukum Islam)', *Al-Thiqah : Jurnal Ilmu Keislaman*, 5.2 (2022), 42 <<https://doi.org/10.56594/althiqah.v5i2.71>>.

<sup>2</sup> Wahyudin Darmalaksana, Lamlam Pahala, and Endang Soetari, 'Kontroversi Hadis Sebagai Sumber Hukum Islam', *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya*, 2.2 (2017), 245–58 <<https://doi.org/10.15575/jw.v2i2.1770>>.

<sup>3</sup> Adynata Adynata, 'Studi Hadis-Hadis Mukhtalif Tentang Mengumumkan Kematian (Al-Na'Y)', *Jurnal Ushuluddin*, 23.1 (2017), 54 <<https://doi.org/10.24014/jush.v23i1.1083>>.

<sup>4</sup> Muhammad ibn Muhammad Abu Syuhbah, *Difa' 'an al-Sunnah wa Radd Syubah al-Mustasyriqin wa al-Kuttab al-Mu'asirin*, (Kairo: Maktabat al-Sunnah, 1989), hal. 7.

<sup>5</sup> Mustahidin Malula, 'MA' NACUM MAGHZA SEBAGAI METODE DALAM KONTEKSTUALISASI HADIS MUSYKIL (TELAH PEMIKIRAN DAN APLIKASI HERMENEUTIKA Pendahuluan Biografi', *Jurnal Citra Ilmu*, XV. April (2019), 29–38.

sources of *mukhtalif* hadiths, which will be presented in depth so that the steps taken by scholars in concluding a law will be depicted.

## **B. Establishing Islamic Law from Mukhtalif Hadiths**

Establishing Islamic law from *mukhtalif* hadiths has been a continuously debated topic in the field of Islamic scholarship. The establishment of law from *mukhtalif* hadiths must be based on scientific principles and proven critical methods so that the results can be relied upon and meet the scientific criteria in Islam. This section will present several examples of Islamic law that scholars have established based on *mukhtalif* hadiths.

### **1. Kissing one's spouse while fasting**

Kissing one's spouse during the month of Ramadan can be considered a sensitive issue in Muslim culture. In the religious context, fasting during Ramadan is a form of self-control and spiritual reflection, and therefore, adherents are expected to avoid actions that can affect their fasting experience.<sup>6</sup> However, in the context of a husband-wife relationship, kissing can be considered a form of affection and moral support. Therefore, in certain circumstances, kissing can be considered permissible as long as it does not violate the religious principles and ethics outlined by religious teachings.

In a *fi'li* hadith, it is explained that Prophet Muhammad once kissed his wife while she was fasting, indicating that the act does not invalidate the fast.<sup>7</sup> However, in another hadith, the Prophet prohibited someone from doing so, which gives the understanding that it is forbidden.

Based on this case, scholars explain that a person's kiss while fasting will invalidate their fast if it is accompanied by sexual desire and the release of pre-ejaculate fluid (*madhi*). As for the Prophet himself, he was *ma'sum* (infallible), so his kiss to his wife is considered like a father's kiss to his child, or siblings kisses to each other,<sup>8</sup> and does not disrupt the act of fasting.

The statement above describes that, in some cases, the law regarding the behavior of the prophet differs from what applies to his followers,<sup>9</sup> so it is considered a specificity. Ibn Qutaybah, one of the scholars who focuses on studying hadiths that appear contradictory, explains that the two hadiths should be understood with the methods of *'amm* and *khass*, where the first hadith is specific to the Prophet and the second applies generally to his followers.

The actually disputed hadiths are also found in Sahih al-Bukhari, such as:

عن عائشة رضی الله عنها قالت إن كان رسول الله صلى الله عليه وسلم ليقبّل بعض أزواجه وهو صائم، ثم صحّكت (رواه البخاری).<sup>10</sup>

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<sup>6</sup> H. Edi Bahtiar Baqir, 'Peran Ummahātul Mukminīn Dalam Tahammul Al-Hadīs', *Riwayah: Jurnal Studi Hadis*, 3.2 (2018), 197–214.

<sup>7</sup> Abu Muhammad 'Abd Allah ibn Muslim Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Arī* (Beirut: Dar al- Kutub al-'Ilmiyyah, n.d.), 226.

<sup>8</sup> Ibn Qutaybah. 226.

<sup>9</sup> Ibn Qutaybah. 226.

<sup>10</sup> Ahmad ibn 'Ali ibn Hajar Al-'Asqalani, *Fath Al-Bari Syarh Sahih Al-Bukhari, Juz 4*, 2nd ed. (Beirut: Dar al- Kutub al-'Ilmiyyah, 1997). 190.

*The Prophet once kissed his wife while he was fasting, and 'A'ishah laughed.*

According to Ibn Hajar's citation of Imam al-Nawawi on this subject, kissing by a person who is fasting is not against the law as long as it does not affect their desire, but refraining is preferable. As for a person whose desire is aroused while kissing, then the kiss becomes forbidden. There is also an opinion that deems it to be disliked (*makruh*), and the fast remains valid unless ejaculation occurs.<sup>11</sup>

The author claims that the hadith that indicates breaking the fast because of kissing one's wife leaves open the possibility that the person did it out of desire or that the prohibition is only *sadd al-Dhara'i* (blocking the means to sin). However, Ibn Qutaybah did not explain the *asbab al-Wurud* (reasons for the narration) of the hadith that describes a man who kissed his wife above, what the man's condition was when kissing, whether it was just a normal kiss or a kiss that aroused his passion. It is better to understand the hadith by fully considering its *asbab al-Wurud*.

## 2. The Purity of Wudu Water

Wudu water is one of the essential elements in Islamic worship that must be used by Muslims before performing prayer. Wudu water is considered pure and clean because it has the ability to cleanse oneself of impurities and sins. Additionally, wudu water can also help calm the mind and eliminate fatigue, allowing Muslims to focus better on carrying out their worship.<sup>12</sup> Therefore, the use of wudu water is highly important and must be done correctly according to the procedures set forth in the teachings of Islam.

In a hadith of the Prophet, he said:

الماء لا ينجسه شيء.<sup>13</sup>

*Verily, water cannot be made impure by anything.*

On the other hand, there is a hadith of the Prophet that appears outwardly contradictory, namely the hadith:

إذا بلغ الماء قلتين لم يحمل نجسا.<sup>14</sup>

*If the water reaches two qullah, it does not carry impurities.*

The first hadith provides information regarding the purity of water from impurities absolutely without limits, whether the water is abundant or not. Meanwhile, the second hadith explains the amount of water that does not become impure, which is two *kulah*. That means if the water does not reach two *kulah*, it can become impure. Based on an understanding of the hadith texts above, it can be said that an apparent contradiction has occurred between them.

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<sup>11</sup> Al-'Asqalani, 191.

<sup>12</sup> SAiful Amin Busyro, 'KEDUDUKAN BAK PENCUCI KAKI SEBELUM MASUK DAN KELUAR TEMPAT BERWUDHUK DALAM TINJAUAN FIQH IBADAH', 03.01 (2018), 0–12.

<sup>13</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 312.

<sup>14</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*, 312.

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The first hadith indicates that water is understood in a general sense,<sup>15</sup> because when the word "الماء" (water) is mentioned, the majority of the Arabs' understanding at that time was directed towards wells and rivers with a large water supply that could not possibly become impure. Meanwhile, the meaning of the second hadith contains the minimum amount of water that cannot be impure by anything.<sup>16</sup> Therefore, it can be said that the first hadith is understood in a general sense and the second hadith is understood in a specific sense. However, when explaining the generality and specificity of these hadiths, it does not explain in detail the linguistic rules used.

As a comparison in resolving this conflict, al-Shafi'i's explanation of the case can be followed.<sup>17</sup> In his explanation, al-Shafi'i positioned the content of the first hadith as something understood universally (general) because its meaning shows a broad scope without any limitation. The word "al-Ma'" in the first hadith is a singular noun that is defined by the particle "alif-lam al-Jinsiyyah," which covers a wide range without any specific boundary. Therefore, the scope contained in the hadith is that every drop of water, whether much or little, cannot be contaminated by anything. In the second hadith, the word "al-Ma'" has been restricted by the word "qullatayn". The inclusion of this word has provided a minimal standard for water quantity, which is the amount of water that cannot be contaminated. If so, then it is a form of particular (*khass*) expression.<sup>18</sup>

Based on the above explanation, it can be concluded that, in general, any amount of water that is more than two *kulah* is pure and does not become impure, even if something impure falls into it (unless one of its properties changes). However, if the water is less than two *kulah* and something impure falls into it, then the water becomes impure.

### 3. Criminal Penalties for Theft

The punishment for theft in Islam is a penalty given to the perpetrator who takes someone else's property without permission or lawful right. This punishment is regulated in the Quran and Hadith,<sup>19</sup> where the thief can be subject to having their hand cut off. The aim of this punishment is to deter the perpetrator and also to protect the property rights of others. However, before this punishment is applied, there must be sufficient and fair evidence and a competent court to settle the case.

There is a hadith of the Prophet that explains this case, where the Messenger once said:

لعن الله السارق يسرق البيضة فتقطع يده، ويسرق الحبل فتقطع يده<sup>20</sup>

*May Allah curse the thief who steals an egg, so his hand is cut off, and who steals a rope, so his hand is cut off.*

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<sup>15</sup>Makna "umum" di sini mengacu pada istilah yang digunakan Ibn Qutaybah, yaitu الأكلب dan الأكثر.

<sup>16</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*, 313.

<sup>17</sup> Muhammad ibn Idris Al-Syafi'i, *Ikhtilaf Al-Hadith, Tahqiq 'Amir Ahmad Haydar*, 1st ed. (Beirut: Muassasah al-Kutub al-Thaqafiyah, 1985). 104.

<sup>18</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 106-107.

<sup>19</sup> Nailul Rahmi, 'Hukuman Potong Tangan Perspektif Al-Qur'an Dan Hadis', *Jurnal Ulunnuha*, 7.2 (2019), 53–70 <<https://doi.org/10.15548/ju.v7i2.254>>.

<sup>20</sup> Muslim ibn al-Hajjaj ibn Muslim Al-Qusyayri, *Sahih Muslim*, 1st ed. (Riyadh: Dar al-Salam li al-Nasyr wa al-Tawzi', 1998). 155.

While there are also other hadiths found with different contents, namely:

لا قطع إلا في ربع دينار.<sup>21</sup>

*There is no cutting of the hand as punishment except in the case of theft, where the value of the stolen property reaches a quarter of a dinar.*

The first hadith carries the meaning that theft of any amount, whether small or large, is cursed by God, and the word 'curse' also implies that the thief must be punished, regardless of the quantity of the stolen goods. This hadith became the basis for the *Khawarij* group, who believed that every thief should be punished by cutting off their hand, regardless of the quantity of the stolen goods. Meanwhile, the second hadith negates the meaning contained in the first hadith, where the punishment of cutting off the hand only applies if the stolen goods reach the amount of *nisab*, which is a quarter of a *dinar*.

In responding to the differing meanings of these hadiths, Ibn Qutaybah did not deny the contradiction between the two hadiths. He explained that when Allah said in Surah al-Ma'idah verse 38:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

*As for the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent (punishment) from Allah. And Allah is Exalted in Might and Wise.*

Then the Prophet said:

لعن الله السارق يسرق البيضة فتقطع يده، ويسرق الحبل فتقطع يده.

*May Allah curse the thief who steals an egg, so his hand is cut off, and who steals a rope, so his hand is cut off*

Here, it is clear that the aforementioned hadith is consistent with what God revealed at the time through the Qur'an. Then Allah informed Muhammad that the punishment of cutting off the thief's hand is only done if the stolen property is worth a quarter of a *dinar* or more. In this case, the Prophet did not know the law of Allah except after it was revealed to him.<sup>22</sup>

Furthermore, Ibn Qutaybah explained that the lesson that can be drawn from this case of cutting off the hand is that it is Allah's wisdom not to establish a *taklif* directly with His servants. Although He knows what should be decided for His people from the beginning, the law is still revealed little by little, and it is full of wisdom. Sometimes Allah reveals to the Prophet certain provisions at a certain time, and then, for the benefit of the community, Allah replaces the old law with something new.

In the above case, Ibn Qutaybah also raised the incident in the early era of Islam where the people of the *'Uraynah* tribe who apostatized had their hands and feet cut off, eyes gouged out, and were left to die in the hot sun because the punishment of *hudud* had not

<sup>21</sup> *Ibid.*

<sup>22</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 155.

been revealed at that time. Then, after the punishment of *hudud* was revealed by Allah, such punishment was prohibited.<sup>23</sup>

Based on the solution adopted by Ibn Qutaybah above, it can be affirmed that he did not use the methods of *al-Jam'* and *al-Tarjih* to resolve the contradiction that occurred. Nevertheless, Ibn Qutaybah also did not explicitly state that he used the method of *al-Naskh*, where the first hadith was abrogated by the second hadith. This conclusion is understood from the expressions he used:

ثم أعلمه الله تعالى أن التقطع لا يكون إلا في ربع دينار فما فوقه.<sup>24</sup>

*Then Allah informed Muhammad that the punishment of cutting off the hand for theft is only carried out if the stolen item is worth a quarter of a dinar or more.*

Ibn Qutaybah's statement indicates that the first hadith, which implies that the hand of any thief will be cut off regardless of the value of the stolen item, has been abrogated by the hadith that indicates that only someone who steals an item worth a quarter dinar or more will have their hand cut off.

However, other scholars prefer to use the method of *al-jam'* in solving this case. Al-A'masy, for example, by doing *takwil*, sees that the meaning of *البيضة* in the first hadith is the iron helmet worn during the war, and he interprets *الحبل* as the rope of a ship, which costs more than the stolen property threshold. Meanwhile, some scholars understand the mentioned punishment of cutting off the hand in the hadith as a form of criticism or warning (*الشتيم والتخويف*) against theft, even if the stolen item is very small, and it is also to prevent someone from falling into that act. Usually, if someone is used to taking something of no value, they will not feel guilty about taking more. That is why the Prophet prohibited such behavior so that people would not make it a habit and eventually have the courage to steal something above the threshold.<sup>25</sup>

#### **4. Intercourse with a Wife During Menstruation**

Dealing with women during menstruation is a sensitive topic that needs to be handled with utmost care. Therefore, it is important to have a good understanding of religious rules and proper handling to maintain the honor and health of both partners.<sup>26</sup> In addition, attention should also be paid to health and hygiene factors during intimate relationships, as well as avoiding practices that can endanger the partner's health.

This section will discuss the perspective of Islamic law regarding relationships with women during menstruation. In a hadith narrated by Aisha:

عن عائشة رضی الله عنها قالت: كان رسول الله صلى الله عليه وسلم يأمرنا في فوح حيضنا أن نأتزر

ثم يباشرنا، وإياكم يملك إربه كما كان رسول الله صلى الله عليه وسلم يملكه.<sup>27</sup>

<sup>23</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 156.

<sup>24</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 155.

<sup>25</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 156.

<sup>26</sup> Sofiatul Widad, 'Konsepsi Saat Masa Menstruasi Berdasarkan Perspektif Fiqih Dan Medis', *Oksitosin, Kebidanan*, IV.1 (2017), 14–28.

<sup>27</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 321.

*From Aisha, may Allah be pleased with her, she said: "The Messenger of Allah (peace be upon him) used to command us during the period of our menstruation to wear a waist-wrapper and then have intercourse with us. Do not allow your garment to be smeared with impurities, as the Messenger of Allah (peace be upon him) used to do?"*

This hadith shows that the Prophet still slept with his wife during her menstrual period. Another hadith was found from Aisha, but the meaning is different:

عن عائشة رضی الله عنها قالت: كنت إذا حضت، نزلت عن المثل إلى الحصير، فلم تقرب رسول الله صلى الله عليه وسلم، ولم ندن منه حتى نطهر.<sup>28</sup>

*From Aisha, may Allah be pleased with her, she said: "When I had my menstrual period, I used to come down from the bed to the mat, and we did not approach the Messenger of Allah (peace be upon him) nor have sexual intercourse with him until I became pure (i.e., until the end of the menstrual cycle)."*

The first hadith has the meaning that when the wife of the Prophet had her period, he still had intercourse with her normally, meaning he continued to have a relationship with her (other than sexual intercourse). While the second hadith indicates that when she had her period, they did not get close to the Prophet until she became pure again.

According to Ibn Qutaybah, the conflict that arises between these two hadiths cannot be resolved through the methods of *al-jam'* and *al-naskh* because the historical authenticity of both hadiths is unknown. Therefore, he took the last approach to resolving the contradiction between these different hadiths, which is the method of *al-tarjih*.

The first hadith, according to Ibn Qutaybah's evaluation, is of sound quality because there is another hadith that serves as a *tabi'* and supports the meaning of the first, which is:

عن عائشة رضی الله عنها قالت: كان رسول الله صلى الله عليه وسلم يأمر إحدانا، إذا كانت حائضا أن تتزرتهم يضاعفها.<sup>29</sup>

*Narrated Aisha (may Allah be pleased with her): "The Messenger of Allah (peace be upon him) used to instruct one of us, when we were on our period, to wear an izar (waist wrap), and then he would have sexual intercourse with us."*

The hadith text that supports Ibn Qutaybah's opinion is also found in the book *Fath al-Bari*:

عن عائشة قالت: كانت إحدانا إذا كانت حائضا فأراد رسول الله صلى الله عليه وسلم أن يباشرها، أمرها أن تتزرت في فور حَيْضَتِهَا ثم يباشرها. قالت: وأيكم يملك إربه كما كان النبي صلى الله عليه وسلم يملك إربه.<sup>30</sup>

<sup>28</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 321.

<sup>29</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 321.

<sup>30</sup> Al-'Asqalani, *Fath Al-Bari Syarh Sahih Al-Bukhari, Juz 1*. 531-532.



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*Aisha reported: "If one of us (the wives of the Prophet) had her period and the Prophet wanted to have intercourse with her (other than jima'), he would tell her to wear a waist wrapper, and then he would have intercourse with her. Aisha said, 'Would you not be cautious in fulfilling a need just like the Prophet?'*

Regarding the second hadith, Ibn Qutaybah considered that there was an error in its narration because it was not possible for Aishah to say at one time, "The Prophet had intercourse with me during my period," and at another time, "The Prophet did not have intercourse with me or come near me during my period until I became clean." One of these two hadiths must contain falsehood, and this is likely to be the second hadith because the first hadith is supported by many other similar hadiths. Additionally, it is not forbidden to have physical contact with one's wife during her period except for *jima'* (sexual intercourse), which is explicitly prohibited in the Qur'an.

Other academics like Sufyan al-Thawri, Ahmad, and Ishaq also expressed similar opinions. Quoting the explanation of Ibn Hajar al-Asqalani, they argued that what is prohibited in having sexual intercourse with a wife during her menstruation is only restricted to the vagina (*jima'*) only. This opinion is also shared by Muhammad ibn al-Hasan, a Hanafi follower, and is supported by al-Tahawi.<sup>31</sup>

Based on the two examples above, it can be concluded that Ibn Qutaybah tended to pay attention to the quality of the *isnad*, the quality of the narrator in terms of his proximity to the Prophet, and the *sahib al-Qissah* (narrator who was directly involved in the event) as a reference for Ibn Qutaybah in making *tarjih* to strengthen one hadith that appeared to contradict another. He also looked for other credible hadith *isnads* to perform *tarjih* on one of the evidences. In this case, it seems that Ibn Qutaybah only focused on the aspect of *isnad* in assessing the strength of a hadith, while there are still many steps that can be taken when resolving conflicting hadith through *tarjih*.

### C. General Analysis

From several examples of resolving conflicting hadiths above, it can be stated that in understanding *mukhtalif* hadiths, Ibn Qutaybah employed the approaches of *al-Jam' wa al-Taufiq*, *nasikh-mansukh*, and *al-tarjih*.

In the method of *al-Jam' wa al-Taufiq*, Ibn Qutaybah's approach includes: first, using linguistic rules (semantics) to interpret the general and specific conditions in explaining the meaning of the hadith. Second, analyzing *ta'wil* (interpretation) as the foundation for harmonizing conflicting hadiths. Third, understanding the hadith by inserting additional words (*iqtida'*) to resolve apparent contradictions. Fourth, consider the situation and condition at the time the hadith was uttered.

In addition to the method of *al-Jam' wa al-Taufiq*, Ibn Qutaybah also understood *mukhtalif* hadiths through the method of *al-Nasikh wa al-Mansukh*. In this method, the hadith that came earlier is considered *mansukh* (abrogated), and the later one becomes *nasikh* (abrogating). As is known, the issue of *nasikh-mansukh* is closely related to the historical authenticity of a hadith. However, after careful examination, Ibn Qutaybah's detailed

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<sup>31</sup> Ibn Qutaybah, *Ta'wil Mukhtalif Al-Hadith, Tahqiq Isma'il Al-As'Aradi*. 532-533.

explanations of his approach to naskh in resolving *mukhtalif* hadiths are not apparent. When, where, and in what cases the hadith was uttered are not explained by him.

Ibn Qutaybah also used the *tarjih* (preference) method between two hadiths that appeared to contradict one another to understand *mukhtalif* hadiths. Here, he chooses the one that is considered stronger to be used as evidence. This approach focuses more on the quality of the *isnad* (chain of narrators) by considering the closeness of the relationship between the first narrator (the *sahabah*) and the Prophet and the aspect of *sahib al-Qissah* (the narrator who directly witnessed the event). In other words, he gives more weight to the opinion of the *sahabah*, who directly saw and experienced an event, compared to the opinions of others.

#### **D. Conclusions**

From the discussion above, several conclusions can be formulated regarding Ibn Qutaybah's method of establishing Islamic law, which includes the methods of *al-Jam' wa al-Taufiq*, *naskh*, and *al-Tarjih*. In the method of *al-Jam' wa al-Taufiq*, Ibn Qutaybah employs linguistic principles (semantics) in the form of interpreting the meanings of 'amm (general) and *khass* (specific) conditions in explaining the meaning of hadiths. In addition, *ta'wil* (interpretation) is also used as a foundation for harmonizing conflicting hadiths. Furthermore, the situation and conditions at the time the hadith was uttered are taken into consideration when determining a specific law. In the method of *al-Nasikh wa al-Mansukh*, the clear and detailed explanations regarding when, where, and in what cases the hadith was uttered are not apparent, which is closely related to the historical authenticity of a hadith. The third step is *tarjih*, and this approach focuses more on the quality of the *isnad* (chain of narrators) by considering the closeness of the relationship between the first narrator (the *sahabah*) and the Prophet and the aspect of *sahib al-Qissah* (the narrator who directly witnessed the event). In other words, he gives more weight to the opinion of the *sahabah*, who directly saw and experienced an event, compared to the opinions of others.

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