

Talāq In A State of Anger (Comparative Study of Yusuf Qardhawi And Wahbah Az-Zuhaili)

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Abstract

This research is motivated by the high divorce rate in Indonesia from 2020-2023 which is largely caused by disputes and quarrels. The disputes and quarrels occur because of the angry condition of each individual, therefore, this problem is certainly very important to study. This research will focus on how ṭalaq is in a state of anger according to Yusuf Qardhawi and Wahbah Az-Zuhaili. In this matter, the two scholars have different opinions regarding the law of ṭalaq in a state of anger. These differences are certainly based on legal foundations, the method of legal istinbat and other reasons. These differences in opinion are also the background for this research. This study aims to find out the validity of ṭalaq pronounced in a state of anger and how the method of determination the law of ṭalaq pronounced in a state of anger according to Yusuf Qardhawi and Wahbah Az-Zuhaili. This research method uses library research by collecting data that refers to the books of Yusuf Qardhawi and Wahbah Az-Zuhaili. The approach used is descriptive-analytical-comparative. This method is used to describe the views of the two scholars, analyze the basis of their legal deduction, and compare the results. The results show that ṭalaq in a state of anger according to Yusuf Qardhawi is divided into three levels. First, ordinary anger falls into ṭalaq with a note that it has gone through a settlement stage in household problems. Second, moderate anger does not fall into ṭalaq. Third, peak anger does not fall into ṭalaq. The method of determining the law used by Yusuf Qardhawi is to use Intiqā'i Ijtihad. Meanwhile, according to Wahbah Az-Zuhaili, ṭalaq in a state of anger does not fall unless the anger reaches a peak level. The method of determining the law used by Wahbah az-Zuhaili is as-Sunnah.

Keywords: : ṭalaq, Anger, Yusuf Qardhawi, Wahbah az-Zuhaili.

Abstrak

Penelitian ini dilatarbelakangi oleh tingginya angka perceraian di Indonesia pada tahun 2020-2023 yang sebagian besar disebabkan oleh perselisihan dan pertengkaran. Adapun perselisihan dan pertengkaran terjadi karena adanya kondisi marah dari masing-masing individu, oleh karena itu, masalah ini tentu sangat penting untuk dikaji. Penelitian ini akan memfokuskan bagaimana hukum ṭalaq dalam keadaan marah

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menurut Yusuf Qardhawi dan Wahbah Az-Zuhaili, dalam permasalahan ini, kedua ulama tersebut mempunyai perbedaan pendapat mengenai hukum *ṭalāq* dalam keadaan marah, perbedaan tersebut tentunya didasarkan pada landasan hukum, metode istinbat hukum serta alasan-alasan lainnya, adanya perbedaan pandangan itulah yang juga melatarbelakangi penelitian ini. Penelitian ini bertujuan untuk mengetahui hukum *ṭalāq* dalam keadaan marah dan bagaimana metode penetapan hukum *ṭalāq* dalam keadaan marah menurut Yusuf Qardhawi dan Wahbah Az-Zuhaili. Metode penelitian ini menggunakan penelitian pustaka dengan pengambilan data yang merujuk kepada kitab-kitab dari Yusuf Qardhawi dan Wahbah Az-Zuhaili. Pendekatan yang digunakan adalah deskriptif-analisis-komparatif. Metode ini digunakan untuk mendeskripsikan pandangan kedua ulama, menganalisis dasar istinbat hukum mereka, serta membandingkan hasilnya. Adapun hasil penelitian menunjukkan bahwa *ṭalāq* dalam keadaan marah menurut Yusuf Qardhawi terbagi menjadi tiga tingkatan. Pertama, marah biasa jatuh *ṭalāq* dengan catatan telah melalui tahap penyelesaian dalam masalah rumah tangga. Kedua, marah sedang tidak jatuh *ṭalāq*. Ketiga, marah memuncak tidak jatuh *ṭalāq*. Metode penetapan hukum yang digunakan Yusuf Qardhawi adalah dengan menggunakan *Ijtihad Intiqā'i*. Sedangkan menurut Wahbah Az-Zuhaili, *ṭalāq* dalam keadaan marah tidak jatuh kecuali marah tersebut sampai pada tingkat memuncak. Adapun metode penetapan hukum yang digunakan Wahbah az-Zuhaili adalah *as-Sunnah*.

Kata Kunci *Talāq, Marah, Yusuf Qardhami, Wahbah az-Zuhaili.*

INTRODUCTION

The family is the fundamental unit of society and the state, established through marriage between a man and a woman in accordance with religious principles. Marriage is considered a sacred bond in religion, as it provides a lawful means for fulfilling human desires within the framework of worship. According to Wahbah Az-Zuhaili, the term 'marriage' (*nikāh*) linguistically means union, intimacy, or a contractual agreement. In Islamic law (*shari'ah*), it refers to the marriage contract, which is a legally binding agreement. *Nikah* is defined as a contract prescribed by *shari'ah* that grants a husband the right to enjoy intimacy with his wife and, likewise, permits a wife to enjoy intimacy with her husband in a lawful manner.¹

Marriage is something that is highly recommended, because besides being a sunnah practice of the Prophets, one of the signs of Allah's power, it is also a very great blessing.² The purpose of marriage in Islam is to ensure the continuation of lineage through offspring. Additionally, marriage serves as a means of safeguarding individuals from engaging in unlawful acts prohibited by religion, such as adultery and extramarital relationships. Through the bond of marriage, a person gains many benefits, both individually and socially by complementing each other and keeping each other in a bond. A happy couple brings peace of mind and soul, peace in body and heart, as well as a

¹ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985).

29.

² Fazari Zul Hasmi Kanggas dan Hifdhotul Munawaroh, "Nikah Tahlil Dan Hubungannya Dengan Rekayasa Dalam Syari'at Islam," *Syariyah: Journal of Indonesian Comparative of Syari'ah Law* 6, no. 1 (2023): 35.

stable and vibrant life, this will lead to happiness and tranquility for men and women, as the words of Allah SWT in QS ar-rum verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَذَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ.

“And among the signs of His power is that He created for you wives of your own kind, so that you may be inclined and feel peace with him, and make him among you a sense of love and affection. Indeed, in such things there are indeed signs for the thinking race.”

In family life, even though it is in one house, it is possible that in marriage there are no problems such as differences of opinion, misunderstandings and quarrels which often affect household harmony, even to the point of divorce.³ In Arabic, divorce is referred to as *ṭalāq*. Linguistically, the term *ṭalāq* means the dissolution of the marital bond between a husband and wife, signifying their separation. The root word of *ṭalāq* is *al-ithlaq*, meaning to let go or leave. In Islamic law, *ṭalāq* means releasing or ending the marriage bond.⁴ *Ṭalāq* is the property of husbands over their wives.⁵

Essentially, *ṭalāq* is considered undesirable and should be avoided whenever possible. Although it is legally permissible (*halāl*), it remains one of the most detested acts in the sight of Allah (SWT).⁶ *Talāq* serves as a last resort for husbands in resolving marital conflicts when all other efforts to restore harmony in the household have failed.⁷ Divorce is permitted if it is considered better than staying together. This shows that Islam provides flexibility in handling discordant relationships, with the aim of achieving well-being for both parties.⁸

The divorce data in Indonesia for the last years can be seen in the data below:

³ Abdul Wahid, “Talak Dalam Keadaan Emosi (Studi Komparatif Ibnu Qayyim AlJauziyyah Dan Imam Nawawi)” (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2020). 2.

⁴ Sayyid Sabiq, *Fiqh as-Sunnah* (Mesir-kairo: Darr al-Hadits, 2004). 626.

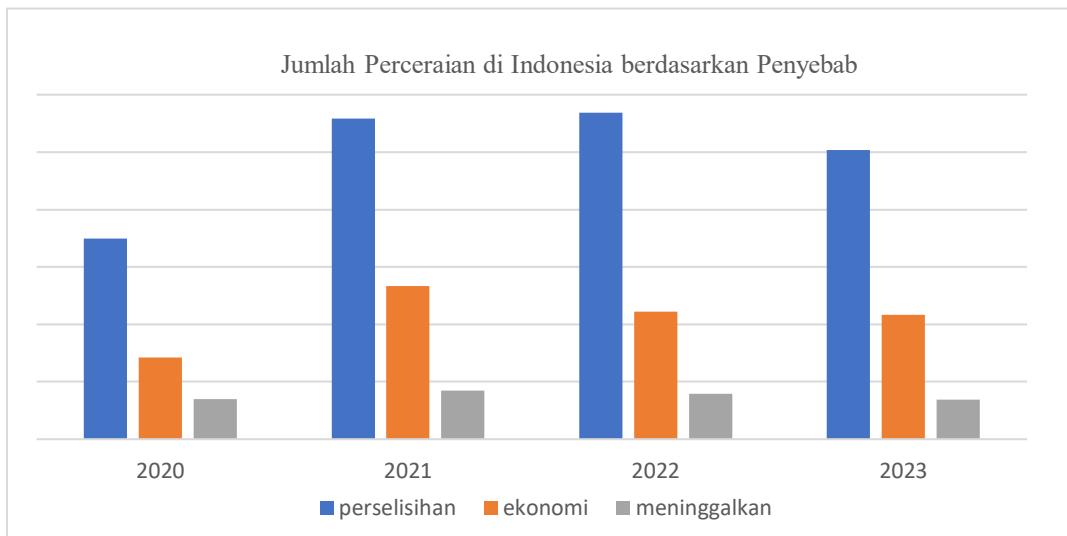
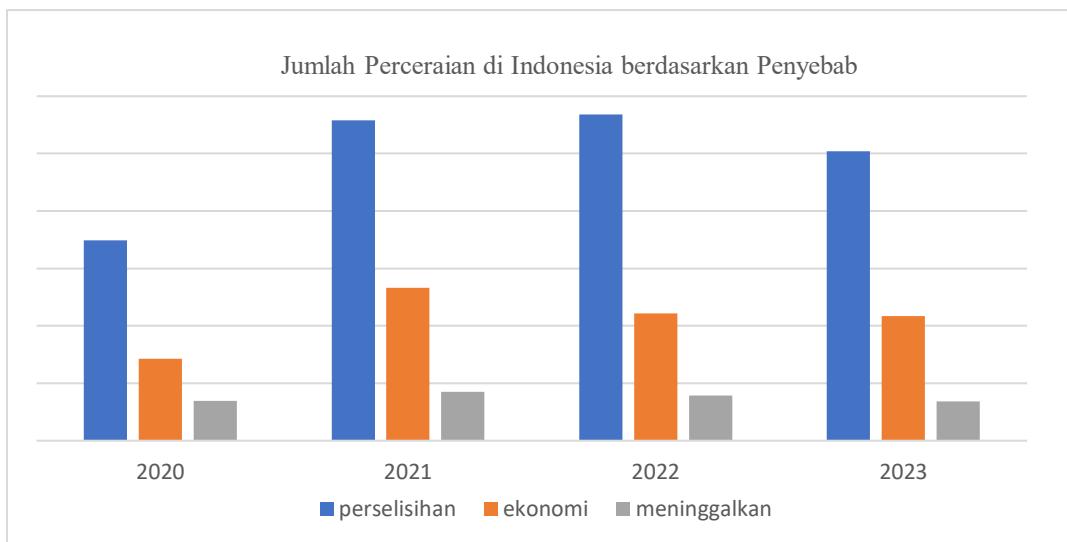
⁵ Imam An-Nawawi, *Al Majmu' Syarah Al Muhadzab* (Pustaka Azzam, n.d.). 394.

⁶ Rusli Halil Nasution, “Talak Menurut Hukum Islam,” *Jurnal Ilmiah Al-Hadi* 3, no. 2 (2018): 707–16.

⁷ Yusuf Al-Qardhawi, *Al-Halal wa Al-Haram fi al Islam* (Bairut: al- Maktabah al Islami, 1980). 199.

⁸ Annie Myranika, “Divorce Perspectives: A Juridical and Economic Analysis of Divorce Claims by the Wife and Its Implications for Family Dynamics,” *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 18, no. 1 (2024): 60.

Figure 1.
Divorce Data in 2020-2023



According to data from the Director General of the Supreme Court's Religious Justice Agency collected by the Central Statistics Agency, In 2020, there were 291,677 divorce cases. The main cause of divorce is ongoing disputes and quarrels, with 176,683

cases. The second biggest cause is economic problems, which amounted to 71,194 cases. In addition, there were 34,671 divorce cases due to one spouse leaving the other.

In 2021, the number of divorces increased by 54% compared to 2020, from 291,677 cases to 447,743 cases. The leading cause of divorce in 2021 was disputes, with a total of 279,205 cases. Economic problems are the reason behind 113,343 divorce cases. In addition, as many as 42,387 because one of the couples left the other. In 2022, there were 516,344 divorces in Indonesia. The main factors causing national divorce throughout the year were disputes and quarrels, with a total of 284,169 cases. The economic factor is second with 110,939 cases. Then, 39,359 cases because one of the parties left the partner. In 2023, there were 408,347 divorces cases. This figure has decreased by 10.20% compared to 2022 which recorded 516,344 divorces. Disputes and quarrels are the leading cause of divorce in Indonesia, with a total of 251,828 cases, or around 61.67% of all divorces. Economic problems are also a significant cause, with 108,488 cases. In addition, there were 34,322 cases of divorce caused by one spouse leaving the other.

The data above shows that the divorce rate in Indonesia from 2020-2023 is primarily driven by disputes or quarrels, which are often rooted in emotional outbursts.⁹ In connection with that, this problem is certainly very important to study the situation of a husband who divorces his wife in a state of anger.

This issue requires legal examination regarding the validity of *talāq* pronounced in a state of anger. In general, scholars hold two differing opinions on this matter: some argue that *talāq* remains valid even if declared in anger. In contrast, others contend that it does not take effect under such conditions. Of the differences of opinion of the scholars, of course, it is based on the legal basis, the method of legal *istikbat* and other reasons. Therefore, this study will focus on how *talāq* is in a state of anger according to Yusuf Qardhawi and Wahbah Az-Zuhaili.

The selection of Yusuf al-Qaradawi and Wahbah al-Zuhaili as the subjects of this study is based on academic considerations, as both are authoritative contemporary scholars in the fields of fiqh and usul al-fiqh, and both discuss the issue of *talāq* (divorce) pronounced in a state of anger. Nevertheless, they differ in their views and methods of *ijtibād*. By comparing their perspectives, this research aims to provide a more comprehensive and balanced understanding of the legal ruling on *talāq* in a state of anger, while also enriching the body of modern Islamic legal thought.

This study has similarities and differences with previous researchers. The similarity is that previous researchers also touched on the issue of divorce in a state of anger, while the difference with the author is in the perspective of viewing divorce in a state of anger, namely according to Yusuf Qardhawi and Wahbah Az-zuhaili.

This research includes a type of literature research, literature research is a series of activities related to the method of collecting library data, reading and recording and

⁹ Badan Pusat Statistik Indonesia, "Jumlah Perceraian Menurut Provinsi dan faktor," n.d., <https://www.bps.go.id/id%0A%0A>.

processing research materials.¹⁰ The data used comes from primary and secondary sources. Primary data sources are data that is directly obtained from the first data source or original sources that contain research data information.¹¹ The primary data sources in this study are books or books written by Yusuf Qardhawi and Wahbah Az-Zuhaili. While the secondary legal material is material that provides an explanation of primary legal material, primary data sources can be books, articles, journals, and other people's writings that are related to the researcher's discussion.¹² The data that has been collected is then analyzed using the descriptive-analysis-comparative method. The descriptive analysis comparative is the process of comparing two or more elements, objects or concepts on a particular issue to understand the differences, similarities and reasons behind the differences. The first step that will be taken is to describe both views related to the problem of *ṭalāq* in an angry state. Then these opinions are analyzed, and the opinions between the two are compared both in terms of the legal methods used and the legal products issued.

This research is expected to be a reference material for students for the purposes of scientific discussion, as well as additional literature for future researchers, and it is hoped that the Muslim community will understand the law of *ṭalāq* well in order to be more careful in saying the word *ṭalāq*, in order to avoid negative impacts on the family. This study aims to find out the validity of *ṭalāq* pronounced in a state of anger and how the method of determination the law of *ṭalāq* pronounced in a state of anger according to Yusuf Qardhawi and Wahbah Az-Zuhaili.

RESULTS AND DISCUSSION

1. Definition of *Talāq*

The meaning of *ṭalāq* linguistically in the Mahmud Yunus dictionary explains that *ṭalāq* is the masdar of *ṭalaqa-yathluqu- ṭalaqan*, which means divorce.¹³ The root word of *ṭalāq* is *al-ithlaq* which means liberation or release.¹⁴ In the great dictionary of Indonesian (KBBI) it is explained that the meaning of *ṭalāq* is divorce between husband and wife or the release of the marriage bond.¹⁵

In connection with the definition of *ṭalāq* above, there are several definitions of *ṭalāq* according to scholars, among which are as follows:

¹⁰ Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2014). 3.

¹¹ Rahmadi, *Pengantar Metodologi Penelitian* (Banjarmasin: Antasari Press, 2011). 71.

¹² Muri Yusuf, *Metode kuantitatif, kualitatif dan Penelitian Gabungan* (Jakarta: Prenada Media Group, 2015). 8.

¹³ Mahmud Yunus, *Kamus Arab-Indonesia* (booksbylanguage, 2020). 241.

¹⁴ Ahmad Warson Munawwir, *Al-munawwir Kamus Arab-Indonesia Terlengkap* (Surabaya: Pustaka Progressif, 1997). 862

¹⁵ Indonesia, "Talak," Badan Pengembangan dan Pembinaan Bahasa, 2016.

- 1.1. According to the Hanafi madzhab, *talāq* linguistically is the release of bonds.¹⁶ While *talāq* in terms is the release of the marriage bond with a special word.¹⁷
- 1.2. According to the Maliki madzhab, *talāq* in language is to break and leave. Meanwhile, according to the term, it is a legal property that causes the loss of the *halal* relationship between husband and wife.¹⁸
- 1.3. According to Imam Shaf'i'i, *talāq* is an act of termination of marriage that is carried out on the initiative of the husband, where the husband conveys *talāq* to his wife using clear expressions or with other statements that have a meaning similar to the intention to divorce.¹⁹
- 1.4. According to madzhab Hambali, *talāq* linguistically is the absolute release of bonds. Meanwhile, in terminology, *talāq* is the release of the marriage bond with a special lafadz.²⁰
- 1.5. Wahbah Az-Zuhaili in the book *Al-Fiqh Islami Wa Adillatuhu* defines *talāq* in language, namely, the release of bonds or liberation. Meanwhile, in terms it is the release of the marriage bond or the release of marriage by using *talāq* and similar expressions. Or lift the marriage bond directly or suspended with a specific speech.²¹
- 1.6. According to Ahmad Zainuddin al-Malibari in the book *Fathul Mu'in*, *talāq* is defined in language as "letting go of the rope", while in terms it is releasing the bond of the marriage contract with the word as it will be stated.²²
- 1.7. Abdurrahman al-Jaziri in the book *Al-Fiqh 'ala al Madzabib al Arba'ah* defines *talāq* by releasing the bond between husband and wife or reducing separation by using special pronunciation.²³

¹⁶ Muhammad Amin bin Umar al-Syahir bi ibn Abidin, *Hayyiyatu Ibn Abidin* (Demaskus-Suriah: Maktabah Dar al-Tsaqafah wa al-Turats littahqiq, 2000). 86.

¹⁷ Ibid., 88.

¹⁸ Abi Abdullah Muhammad bin Muhammad bin Abdul Rahman Al-Maghribi, *Muwabab al-Jalil li Siyara Makhtashar Khalil* (Beirut-Laban: Darr-Kitab al-Ilmiyyah, 1995). 268.

¹⁹ Muhammad bin Idris Asy-Syafi'i, *Al-Umm* (Darr al-Wafa, 2001). 303.

²⁰ Kamaluddin Muhammad bin Abdul Wahid As-Siwasi, *Syarh Fath al-Qadir* (Beirut Lebanon: Darr al-Kutub al-Ilmiyah, 2003). 443.

²¹ Wahbah Al-Zuhaili, *al-Fiqh Islami wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985). 356.

²² Ahmad Zainuddin bin Abdil Aziz Al-Malibari Al-Fannani, *Fathul Mu'in* (Beirut Lebanon: Darr Ibnu Hazm, 2003). 505.

²³ Abdurrahman Al-Jaziri, *Al-Fiqh 'ala al Madzabib al Arba'ah* (Beirut Lebanon: Darr Al-Kotob Al-ilmiyah, 2003). 248.

1.8. According to Syamsuddin Muhammad al-Khatib al-syarbini, *ṭalāq* in language is to let go of the bond and leave. Meanwhile, in terms it is to release the marriage bond with the word *ṭalāq* and the like.²⁴

Based on some of the definitions above, it can be concluded that *ṭalāq* is the elimination of the marriage bond with the word *ṭalāq* and the like by a husband, so that the wife is no longer considered halal for her husband after losing the marriage bond. Divorce is considered valid if it is carried out by a person who has sufficient ability and knowledge (understanding), has reached adulthood (*baligh*), and makes his own decision without coercion (his own choice).²⁵

Ṭalāq is a way to solve problems that can no longer be overcome after all efforts are made.²⁶ *Ṭalāq* is actually a sharia that is an exception in an emergency after a husband goes through several stages, namely behaving well and steadfastly in the face of his wife's ill-treatment, after which giving advice, leaving his wife's bed, hitting her with a light blow, and sending two mediators.²⁷

2. Ijtihad Method

Method is a systematic way or rule used to carry out a goal so that it is achieved as expected. While *ijtihad* in terms of language is to exert all sincerity and ability in a problem. While in terms of terminology it can be interpreted as an effort to establish the laws of sharia from their evidence in detail.

The method in Yusuf Qardhawi's *ijtihad* has three types, namely: *Ijtihad intiqā'i*, *ijtihad insyā'i*, and a combination of the two which is called *ijtihad* integration.

2.1. Ijtihad *al-Intiqā'i*

Ijtihad al-Intiqā'i or also known as *tarjīh*, is the process of selecting one opinion that is considered the strongest of the many views contained in the treasures of Islamic fiqh, either in combining fatwa or judges' decision-making. *Tarjīh* is carried out by selecting and analyzing existing arguments. The goal is to determine which opinion is most in line with the reality and context of the problem at hand. In this process, a faqih will examine whether the arguments in an opinion come directly from the *nash* (the qur'an and hadith) or through the interpretation of the *nash*, then compare each argument to choose the opinion that is considered the strongest and relevant to the current situation.

²⁴ Syamsuddin Muhammad al-Khatib Al-Syarbini, *Mughni al Mukhtaj* (Beirut Lebanon: Darr el-Marefah, 1997). 368.

²⁵ Ria Rahmawati dan Ihsan Nur Hakim, "The Analysis of Judge's Decision on Mafqud's Husband in Case of Claim for Divorce in Ponorogo Religion Court and the Law Impact of the Mafqud Husband (Analysis of Decision Number. 959/pdt. G/2018/PA. PO)," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 13, no. 2 (2019): 221.

²⁶ Yusuf Al-Qardhawi, *al-Halal wa Al-Haram fi al Islam* (Bairut: al-Maktabah al Islami, 1980). 199.

²⁷ Wahbah Al-Zuhaili, *al-Fiqh Islami wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985). 359.

This approach not only considers the postulate aspect alone, but also pays attention to the main goal, which is to protect religion, soul, intellect, heredity, and property (*Maqashid Syari'ah*), while still considering the public interest (*maslahah*) and trying to avoid all forms of damage or negative impacts (*mafsadah*).

According to Yusuf Qardhawi, there are several factors that can affect the results of *ijtihad tarjih*. At least, the three main factors mentioned are changes in social and political aspects, advances in the field of modern science and technology, and pressures arising from the dynamics of the times.²⁸

2.2. *Ijtihad Insya'i*

Ijtihad Insya'i is an effort to formulate a law on a new issue that has not been discussed by scholars before, because the problem has not arisen in their time. In addition, this *ijtihad* can also be applied to problems that have existed before, but a contemporary *mujtahid* has a new view that is different from the existing opinion.

This approach also occurred when there was a difference of opinion among previous scholars, which was limited to only two views. In this situation, *mujtahid* today can present a third view that is more relevant to the conditions and needs of the times. Thus, *ijtihad Insya'i* is a means to answer the challenges of Islamic law that continue to develop in accordance with the changing times.²⁹

2.3. *Ijtihad Integration (Between Ijtihad intiqā'i and Insya'i)*

One of the contemporary forms of *ijtihad* is a combination of *Intiqā'i* and *Insya'i* *ijtihad*. This approach is carried out by selecting the opinions of previous scholars who are considered the most relevant and strong, then integrating new *ijtihad* elements into those opinions to make them more appropriate.³⁰

As for the Wahbah az-Zuhaili *Ijtihad* Wahbah az-Zuhaili method, the first step that must be taken is to refer to the verses of the Qur'an as the main source in Islamic law. If there is a clear verse that provides instructions related to the problem being studied, then the verse should be used as the main basis in determining the law.³¹

However, if the problem being studied is not found to be explained in the Qur'an, then the next step is to refer to *as-Sunnah*, which is everything that comes from the Prophet Muhammad Saw which includes speech (*quliyah*), deeds (*fi'liyah*), and decrees (*taqririyah*).³²

In this regard, Wahbah az-Zuhaili, if he does not find an explanation through the two main sources that he refers to, then he will study the opinions of the scholars by

²⁸ Yusuf Qardhawi, *Al-Ijtihad fi Al-Syari'ah Al-Islamiyyah Ma'a Nazharat Analiz fi Al-Ijtihad Al-Muaashir* (Kuwait: Darr al-Qalam, 1996). 115.

²⁹ Yusuf Qardhawi, *Al-Ijtihad fi Al-Syari'ah Al-Islamiyyah Ma'a Nazharat Analiz fi Al-Ijtihad Al-Muaashir* (Kuwait: Darr al-Qalam, 1996). 126.

³⁰ Ibid, 129.

³¹ Wahbah Al-Zuhaili, *Al-Fiqh Islami Wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985).

120.

³² Wahbah Al-Zuhaili, *Al-Wajiz-Fi Ushul Al-Fiqh* (Suriah-Demaskus: Darr al-Fikri, 1999). 35.

paying attention to the hadith that are used as evidence by these scholars, either in terms of sahih or do'if. To ensure the quality of the hadith, he performs *takhrif* and *tahqiq* in order to know which hadith is *shabih* and which is *dhaif* so that he can choose the opinion of scholars who rely on sahih evidence. However, if the postulates have the same level of validity, then he will choose the opinion that is considered to be more *maslahat* (benefit). And when Wahbah Az-Zuhaili does not do any of the opinions of the scholars, he tends to prioritize the opinions of the majority of scholars. According to him, the support of the majority of ulama' an opinion can be used as a strong one for the *tarjih*.³³

If the three sources above do not provide adequate answers regarding a problem, then *qiyas* is the next method in establishing a law. *Qiyas* is an analogy that connects a new problem with a legal problem that has been determined beforehand, because there is an equality of legal *illat*.

This is how *ijtihad* according to Wahbah Az-Zuhaili, sometimes it is done by referring to the meaning of the *nash*, or analogizing a problem by using *nash-nash*, namely *qiyas*, or considering the reality of a problem that is being faced by using general rules excavated from *nash*, including *maslahah mursalah*, *urf*, *istihsan*, *sadd adz-dzari'ah* and others.³⁴

3. Yusuf Qardhawi dan Wahbah az-Zuhaili Opinion on the Law of *Talāq* in a State of Anger

3.1. Yusuf Qardhawi Opinion

According to Yusuf Qardhawi, a person's state of anger can influence their awareness and self-control. In some circumstances, anger can cause a person to lose their rational capacity, making them unable to control his actions and words, including statements related to *talāq*. However, in other situations, an individual may still comprehend their words and recognise the implications of their statements. Based on this perspective, Yusuf Qardhawi asserts that the validity of *talāq* depends on the degree of anger experienced. In the book of *Fatāwā Mu'āṣirah*, Yusuf Qardhawi divides the state of anger into three levels, namely:³⁵

First Ordinary anger, which is anger that is realized from the beginning, where a person is still able to think without losing his or her mind. In this condition, a person knows what is being said, realizes its meaning, and understands the meaning of the words. This type of anger does not raise doubts about the fall of *talāq*, especially if it is done after thinking about it many times.

Second, Peak Anger. At this level, anger reaches an extreme point, depriving a person of the ability to understand and control his will. In this condition, the individual is unaware of their speech or the meaning of their words. Consequently, no scholarly disagreement exists regarding the invalidity of *talāq* pronounced under such conditions. If anger has caused a loss of consciousness to the extent that a person no longer

³³ Wahbah Al-Zuhaili, *Al-Fiqh Islami wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985). 10.

³⁴ Ibid, 120.

³⁵ Yusuf Al-Qardhawi, *Fatāwā Mu'āṣirah* (Maktabah Wahbah, 2021). 838.

understands their words, then the pronouncement is deemed invalid. This is because the statements of a *mukallaf* (legally accountable person) are only considered valid if the speaker is fully aware of their meaning.

Third, Moderate anger, which is a state that is between ordinary anger and peak anger. According to Yusuf Qardhawi, the condition of anger is in dispute among scholars, regarding whether the *ṭalāq* pronounced in such a state is valid or not. For Yusuf Qardhawi, the moderate anger does not cause the fall of *ṭalāq*, meaning that the *ṭalāq* is invalid.

Among the three levels of anger, only one condition is recognized as valid for the pronunciation of *ṭalāq* namely, ordinary anger, where the husband remains aware of his words and genuinely intends to divorce his wife. However, it should be noted that Yusuf Qardhawi's views on this matter are not only limited to angry situations involving *ṭalāq*, but it is necessary to look at several things, namely it has gone through a stage in the settlement of households such as giving good advice, sleeping in separate beds, hitting, and being a peacemaker.

Thus, *ṭalāq* that is considered valid is *ṭalāq* that is pronounced with full awareness, based on intentions that have been carefully thought out, and have gone through a process. This *ṭalāq* was decided as the last solution agreed upon by all parties, because the household was considered untenable.³⁶

3.2. Wahbah az-Zuhaili Opinion

In Islamic law, *ṭalāq* is a serious decision that must be taken with full awareness. However, emotions such as anger (*ghadhab*) often influence a person in dropping *ṭalāq*. Scholars, including Wahbah az-Zuhaili, pay special attention to the influence of anger, especially regarding whether *ṭalāq* remains valid if it is pronounced in a state of heightened anger. His opinion underscores the importance of distinguishing the level of anger to assess the validity of *ṭalāq*. There are two important situations that need to be distinguished, namely:

First, ordinary anger, which is a type of anger that does not take away a person's sense or consciousness. In this condition, a person is still aware of what is being said and done, even though he is in a state of anger. In this case, the *ṭalāq* that is imposed is still considered valid. This situation is a common case, where a person vents his anger through deliberate and understandable *ṭalāq* words.

Second, extreme anger, which is a state in which a person loses control of his thoughts and actions, so that he is unaware of what is being said or done. In this condition, a person loses control over his thoughts and actions. *ṭalāq* pronounced in this situation is considered invalid. However, situations like this are relatively rare.³⁷

³⁶ Yusuf Al-Qardhawi, *Malamib Al-Mujtama' Al-Muslim* (Kairo: Maktabah Wahbah, 2012). 342.

³⁷ Wahbah Al-Zuhaili, *Al-Fiqh Islami Wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985). 365.

4. The method of determination the law of *ṭalāq* pronounced in a state of anger according to Yusuf Qardhawi and Wahbah az-Zuhaili

4.1. Yusuf Qardhawi

Yusuf Qardhawi explained in his book, that there are differences of opinion among scholars regarding whether *ṭalāq* that is pronounced in a state of anger is considered valid or not. Some scholars are of the opinion that *ṭalāq* is valid, while others are of the opposite opinion. In this case, Yusuf Qardhawi argues that *ṭalāq* in a state of anger is not considered valid, unless the anger is in a state of ordinary anger and has fulfilled the conditions of *ṭalāq*.

In this issue, Yusuf Qardhawi refers to the opinions of scholars related to *ṭalāq* in a state of anger, among these scholars are Ibn Qayyim al-Jauzy and Ibn Abidin.

According to Ibn Qayyim, *ṭalāq* is divided into three parts, namely ordinary, peaking, and medium *ṭalāq* as previously explained.³⁸ Yusuf Qardhawi views the opinion of the scholar as tending to make the benchmark in determining the validity of *ṭalāq* is the existence of intentionality, purpose, and understanding. If a person does not have the intention and purpose to impose *ṭalāq* and does not understand what he is saying, then he is considered to be in a state of anger, which means that his *ṭalāq* does not fall.

Meanwhile according to Ibnu Abidin, in his book, he cites the view of Ibn al-Qayyim, who also classifies anger into three levels. Ibn al-Qayyim explains that the validity of a person's speech is not solely based on their understanding of the words spoken. Instead, if a person exhibits behaviour or speech patterns that deviate from their habits, their statements hold no legal weight even if they appear to understand what they are saying. This condition can be used as a legal guideline, as comprehension and intent must stem from sound reasoning and clear thought.

From the views of some of these scholars, Yusuf Qardhawi argues that, in this matter, Ibn Abidin's opinion is a more relevant benchmark or a more accurate opinion. Therefore, anger that is considered legitimate is anger that does not remove a person's balance in speaking and acting, so that his words and actions go out of his normal hadits.³⁹

4.2. Wahbah Az-Zuhaili

In establishing the law related to *ṭalāq* in a state of anger, Wahbah az-Zuhaili refers to several hadits, including:

وَعَنْ عَائِشَةَ قَالَتْ : سَمِعْتُ رَسُولَ اللَّهِ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: "لَا طَلاقَ، وَلَا عَنَاقَ فِي إِعْلَاقٍ" (رَوَاهُ أَحْمَدُ، وَأَبُو دَاوُدَ، وَابْنُ مَاجَهِ).

"From Aisyah she said, "I heard Rasulullah SAW say, There is no *ṭalāq* and there is no liberation in a closed state (of reason)." (HR. Ahmad, Abu Daud dan Ibnu Majah).

³⁸ Ibnu Qayyim Al-Jauziyyah, *Zadul Ma'ad fi hadi khair al-ibad* (Bairut: Darr alkitab al-arabi, n.d.).

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³⁹ Yusuf Al-Qardhawi, *Fatawa Mu'asirah* (Maktabah Wahbah, 2021). 845.

The above hadiths was narrated by Ahmad, Abu Daud, and Ibn Majah, from Aisha. According to Wahbah Az-Zuhaili, *Al-Ighlaq* refers to any situation that hinders a person's understanding, intention, and consciousness, whether it is caused by a state of madness, heightened anger, deep sadness, or other similar.⁴⁰ The next postulate of the hadiths is related to one's intellect and maturity or puberty, namely:

كُلُّ طَلَاقٍ جَائِزٌ إِلَّا طَلَاقُ الْأَصَيِّيِّ وَالْمَجْنُونِ.

"Every *ṭalāq* is not allowed, except for the *ṭalāq* of small children and crazy people."

وَعَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: (رُفِعَ الْقَلْمَنْ عَنْ ثَلَاثَةِ: عَنِ النَّائِمِ حَتَّىٰ يَسْتَيْقِظَ, وَعَنِ الصَّغِيرِ حَتَّىٰ يَكْبُرَ, وَعَنِ الْمَجْنُونِ حَتَّىٰ يَفْقِي)

"From Aisha r.a from the Prophet PBUH said: "The charity sheet does not record the deeds of the following three groups; people sleep until they wake up, children to adults and crazy people to reason or conscious"."⁴¹

Talāq is an act that requires full awareness and perfect intellect, so it cannot be done by a child or a crazy person. In addition, *ṭalāq* is also considered a potentially harmful act, so it does not give authority to young children, even though they already have an understanding of *ṭalāq*. However, the Hanbali madzhab recognizes the validity of *ṭalāq* pronounced by children who already understand.⁴²

From the above hadiths, Wahbah Az-Zuhaili concludes that a person's *ṭalāq* in a state of anger still falls unless the anger is at the peak level, that is, a person is no longer aware of what is said or deed at the time of anger.

5. Analysis of Yusuf Qardhawi and Wahbah az-Zuhaili opinion on *ṭalāq* in a state of anger.

Based on what has been stated by the two scholars, between Yusuf Qardhawi and Wahbah Az-Zuhaili, after the author analyzes the opinions of the two scholars and the legal determination of the two scholars regarding *ṭalāq* in an angry state, then in this case the author will analyze the opinions of the two scholars above to find the similarities and differences between Yusuf Qardhawi and Wahbah Az-Zuhaili as well as the *ijtihad* method used regarding *ṭalāq* in an angry state.

⁴⁰ Wahbah Al-Zuhaili, *Al-Fiqh Islami Wa Adillatuhu* (Suriah-Demaskus: Darr al-Fikri, 1985). 364.

⁴¹ Narrated by Ahmad and al-Arba'ah except Tirmidzi, assessed shahih by Hakim and narrated by Ibn Hibban.

⁴² Wahbah Al-Zuhaili, *Al-Fiqh Islami Wa Adillatuhu* (Suriah-Demaskus: Darul Fikri, 1985). 365.

Yusuf Qardhawi argues that *ṭalāq* is in a state of anger at a moderate level and culminates in not falling *ṭalāq*. This view is in line with the opinion of the Hanafi madzhab. However, Yusuf Qardhawi provides additional conditions for the validity of *ṭalāq* in an ordinary state of anger, these conditions include the intention or intention of *ṭalāq*, in an emergency condition, and also through the stage of resolving household problems, then *ṭalāq* falls. In the addition of these conditions, it can be seen that there is no requirement in the view of previous scholars such as Yusuf Qardhawi. In this regard, the additional conditions related to the fall of *ṭalāq* in a state of ordinary anger reflect the characteristics that distinguish it from the views of previous scholars.

Based on the analysis of Yusuf Qardhawi's opinion in the previous discussion, the basic principle used by Yusuf Qardhawi is actually not to change, update, or rebuild the law of *ṭalāq* in a state of anger. In this issue of *ṭalāq*, Yusuf Qardhawi is seen to carry out the process of choosing, *tarjih*, and strengthening the opinion of Ibnu Abidin, in this case it is clear that the link in the discovery of the law related to *ṭalāq* in an angry state used by Yusuf Qardhawi through *ijtihad Intiqā'i*. On the other hand, Yusuf Qardhawi also added a number of conditions that previously did not exist in the views of previous scholars.

Meanwhile, according to Wahbah az-Zuhaili, *ṭalāq* in an angry state does not fall unless the anger reaches the peak level, because in this state a person is not aware of what is done or said. In this opinion he referred to several hadiths related to *ṭalāq*, then from these hadiths he was able to conclude the law in this matter. Thus, it appears that the hadits referred to by Wahbah Az-Zuhaili is sufficient to provide an answer regarding this problem. That is, in this case, the *ijtihad* method used by the Wahbah Az-Zuhaili is *As-Sunnah*.

From the explanation above, it appears that there are similarities and differences between the two, among which can be seen from the following table:

Table 1
Differences, similarities of Yusuf Qardhawi and Wahbah Zuhaili

NO	YUSUF QARDHAWI	WAHBAH AZ-ZUHAILI
1	<p><i>Ṭalāq</i> is divided into three:</p> <p>1. Ordinary anger (Not lost in mind, the intention of <i>ṭalāq</i>).</p> <p>2. Moderate anger (No loss of mind, no intention of <i>ṭalāq</i>).</p> <p>3. Peak anger (Loss of consciousness or reason).</p>	<p><i>Ṭalāq</i> is divided into two:</p> <p>1. Ordinary anger (not letting go of consciousness or reason), and</p> <p>2. Peak anger (Loss of consciousness).</p>

2	<p>1. Ordinary anger : Falling conditionally (there is an intention of <i>talāq</i>, emergency, and has gone through the process of settling the household)</p> <p>2. Moderate anger: Doesn't fall</p> <p>3. Peak angry: Doesn't fall</p>	<p>1. Ordinary anger: Fall</p> <p>2. Peak Anger : Doesn't fall</p>
3	<i>Ijtihad Intiqā'i</i>	<i>As-Sunnah</i>

From the table above, there are several similarities and differences between Yusuf Qardhawi and Wahbah Az-Zuhaili. The similarity lies in the non-fall of *talāq* in a state of heightened anger, while the difference is in the validity of *talāq* in a state of ordinary anger and the *ijtihad* method used from both.

Based on what has been stated by the two scholars above, between Yusuf Qardhawi and Wahbah Az-Zuhaili, the author has the view that Wahbah Az-Zuhaili's opinion is the most diligent opinion, without reducing my respect for Yusuf Qardhawi. The reasons behind this view are as follows:

First, Wahbah Az-Zuhaili's opinion is more in line with the views of *ijma'* scholars. *Ijma'* has a strong position because it is the agreement of the previous scholars in understanding and establishing a law. so that the author has the view that Wahbah Az-Zuhaili's opinion is stronger (*rajih*) than Yusuf Qardhawi.

Second, according to the author, in Yusuf Qardhawi's view there is a weakness that may have the potential to have a negative impact, namely his opinion that *talāq* is not considered to fall if it has not met certain conditions, this is feared to cause laxity or lack of caution in the pronunciation of the word *talāq*.

CLOSSING

Based on the problems that have been described in the previous chapters, the following conclusions can be drawn:

According to Yusuf Qardhawi, *talāq* in a state of anger is divided into three levels. First, a person who is in a state of ordinary anger is considered to have fallen into *talāq* with several conditions, namely having the intention of *talāq*, having passed the stage of solving household problems, and being in an emergency condition. Second, a person who is in a state of moderate anger is not considered to have fallen into *talāq*. Third, a person who is in a state of peak anger that is so intense that he loses consciousness is not considered to have fallen into *talāq*. The method of determination the law used is *Intiqā'i Ijtihad*, which is to choose one of the opinions of previous scholars that is considered the strongest (*rajih*).

Meanwhile according to Wahbah Az-Zuhaili, *talāq* in a state of anger does not fall unless the anger reaches a peak level of anger. In this condition, a person loses awareness of his words and actions so that he does not realize what is happening at the

time of anger. The method of determination the law used is *as-Sunnah*, namely by referring to several hadits related to the issue of *talāq*.

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