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THE CAUSES OF DIFFERENCES OPINIONS AMONG JURISTS

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STUDENT DECLARATION

بسم الله الرحمن الرحيم

We hereby acknowledge that in fact all of the work in the preparation of this academic work is the result of our own efforts and works except as expressly stated.

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1.0 ABSTRACT

This article aims to explain the concept of ikhtilaf and the three main factors that cause the occurrence of ikhtilaf among the Companion jurists in ijtiḥad. In presenting some examples of differences among the jurists of the Sahābah ra, the views of the ṭabi'in jurists and the mazḥab imams were also stated at the end of some of the issues discussed. The objective of this article is to prove that the occurrence of ikhtilaf among mujtahidīn jurists in ijtiḥad is caused by factors that are deliberately provided by the syar'a coinciding with the essence of Islamic shari'a which is rabbinical, comprehensive, flexible, realistic, and eternal.

2.0 INTRODUCTION

The laws of syaraq contained in al-Quran and al-Sunnah can be known by mujtahidin jurisprudence in two ways, either directly or by means of ijtiḥad. Ijtiḥad itself can be defined as (Al-Shawḳaniy):

بذل الوسع في نيل حكم شرعي عملي بطريق الاستنباط

Meaning: "Put all your abilities into identifying a practical syariah law by means of "istinbat" (issuing the law by using the ijtiḥad methodology certain)"

In ijtiḥad to identify a certain syariah law, each mujtahid is always bound by the legal arguments connected with a question under study, the general principles, and objectives of Syariah (Musa, 1958). In addition, fuqaha' also needs to use a robust ijtiḥad methodology as detailed in Usul al-Fiqh.

The jurists are allowed to ijtiḥad and differ in opinion when they are faced with a question that is not decided qat'iy (finally) by the shari'ah and when they do not know or are unable to find the detailed texts of the syar'ik regarding a legal problem that wants to ijtiḥad, not when there are absolutely no nas regarding the problem (al-Wazir, 1985).

According to Imam al-Shatibiy (790H), the ikhtilaf of jurists is caused by the existence of conflicting arguments regarding a legal issue. Ijtiḥad because mujtahidin jurists who use different ijtiḥad methodologies have different opinions in analyzing and drawing legal conclusions from the arguments in question.