

10-Article Text-49-2-10- 20210830 (1).pdf

by Nasruddin Yusuf

Submission date: 14-Jun-2023 10:32AM (UTC+0700)

Submission ID: 2115677725

File name: 10-Article Text-49-2-10-20210830 (1).pdf (770.12K)

Word count: 5606

Character count: 26992

Considering the Power of Ahl Madinah Malik Bin Anas Ijma as an Islamic Legal Source

Nasruddin Yusuf¹, Faradila Hasan²

^{1,2} State Islamic Institute of Manado (IAIN) Manado, Indonesia

Article Info

Article history:

Received Jan 1, 2020
Revised Mar 7, 2020
Accepted 1 Jun, 2020

Keywords:

Islamic Law
Islamic Legal
Ijma
Qur'an and Hadis

ABSTRACT

Ijmak Ahl Madinah became the method used in performing legal istinbath which was held by Imam Malik and was challenged by other scholars. Most of the other scholars consider this kind of ijmak, not ijmak but only an agreement for a region in the form of individual ijthad which does not bind all the Muslims. Imam Malik considers the consent of ahl al-Madinah as an Ijma which has a specific value from the city of Medina itself. Imam Malik holds the ijma model as his source of law because it is considered to have continuity of authority with the main source, the qath'iy Qur'an wh the valid hadiths. This is different from the ijma that comes from the results of ijthad, so it can be categorized as 'urf which applies in the area of Medina and this cannot be said to be ijma.

⁴

This is an open access article under the CC BY license.



Corresponding Author:

Nasruddin Yusuf,
State Islamic Institute of Manado (IAIN) Manado, Indonesia,
Jl. Dr. S.H. Sarundajang, Kawasan Ringroad I, Malendeng Manado Kode Pos 95128, Sulawesi utara,
Indonesia
Email: nasruddin.yusuf@⁵iain-manado.ac.id

1. INTRODUCTION

All Muslims believe that the Qur'an and hadith are the main sources of taking Islamic law. It is through the instructions taken from the two Islamic societies to practice all the legal instructions contained. Al-Qur'an as the first main source is Allah's revelation that was sent down to the Prophet Muhammad (d. 632 M./11 H.) gradually over twenty-two years starting in Makkah and ending in Medina. Whereas the hadith is the second main source of words, deeds, and *taqrîr* (Al-Sanânî, 1966, pp. 276–278; Sâlih, 1979). The Prophet has the function of explaining (*bayân*) for the Qur'an which is still general and limited (Al-Sibâiy, 1966, pp. 53–54; Al-Syâtibi, n.d., pp. 53–58; Fazlurrahman, 1979, pp. 3–7; Mahmudunnasir, n.d., pp. 108–115).

In addition to the two main sources, to obtain legal provisions that are not mentioned by the two due to limited information from the Qur'an and hadith, according to scholars, legal taking can also be obtained by other methods of taking law, such as *qiyâs*, *istihsân*, *istislâh*, *syar'u man qablanâ*, and so on. The whole method can be determined as a source of law without contradicting the main source, the Qur'an and the hadith. The entire source of law-making, both the main source and the other methods of making law in Ushul Fiqh is called *al-adillah al-syar'iyyah* (propositions of *syarak*) (Tiwâna, n.d., pp. 320–321).

To explore Islamic law, it cannot be denied that the laws derived from the Al-Qur'an and hadiths are not disputed among the scholars for using them as a source of Islamic law. This is different from the legal arguments that come from the *ijtihad* theories of the scholars, as mentioned earlier. Some ulama defend the results of *ijtihad* through this argument that they must be accepted as a source of law, while other ulama refuse to be used as a source of law. The difference in the validity of *ijtihad* theories will certainly have implications for differences in the results of *ijtihad*.

Among the legal arguments that have received resistance or rejection from other scholars is the validity of the argument of the *ijmak* ahl al-Madinah or commonly referred to as the agreement of the scholars. As well known, this theory was brought and developed by Imam Malik, the founder of the Malikiyyah school of thought. In Malik's view, if there had been an agreement among the Medina scholars at that time regarding a law, then that agreement would be used by the Madina ulama. Even the agreement of the madinah ulama (*ijma* 'ahl al-Madinah) could invalidate the *ahad* hadith.

In one case, for example, Imam Malik had rejected a hadith about *khiyar* majelis.

عن عبدالله ابن عمر أن رسول الله صلى الله عليه وسلم قال المتبايعان كل واحد منهما بالخيار على صاحبه ما لم يتفرقا إلا بيع الخيار
 "From Abdullah ibn 'Umar that Rasulullah saw said the buyer and seller, each of them may *khiyâr* over the others if they have not been separated, except for the sale and purchase of *khiyâr*" (al-Zarqani, 1990, pp. 320–321).

Imam Malik did not practice this hadith about *khiyâr* majelis because the hadith contradicts the consent of ahl al-Madinah. Therefore Imam Malik mentioned the continuation of the hadith:

لَقَا مَالِكٌ لَيْسَ وَلِهَذَا عَدْنَا حَدَّ وَقَسْمَعَرٍ لَا وَمَرَلٍ أَمْعُو بِهِ فِيهِ

And for us there are no known boundaries about this and also not practiced.

In the common practice of the people of Madina, buying and selling are considered a legal act, which is to separate the words, not the separation of the body, as is practiced by many followers of the school of al-Syafi'iy.

Therefore, if there is an *ijâb* and *qabûl* contract between the buyer and seller in the form of words, then there has been a legal sale and purchase. Because it is not allowed for the buyer to return the goods that have been purchased. The following is a well-known attitude among Malikiyyah about the sale and purchase of *khiyar*;

لَقَا بَعْضُ لِمَالِكِيهِ أَفْعَهُ رِمَالِكُ بِأَجْمَعِ هَلْ أَلْمَدِيَّةُ أَعْلَى لِكُنْتُمْ لِعَمَلِ أَبِيهِ لَكِنَّهُ وَذَعْنَدِي قُوَ أَمِنْ خَيْرِ أَحْدَالِوَا

Said some of Malikiyyah followers who are Malik's opinion to hold on to the *ijmak* ahl al-Madinah and leave provision (*khiyâr majlis*). And it is for him more powerful as evidence than *ahad* hadith. (al-Zarqani, 1990).

The *ushul* scholars have discussed a lot about the legal propositions of the madinah ahl *ijmak*, some reject it as legal arguments because the arguments used as their backing are unclear, namely they do not rely on passages of the Koran and hadiths and do not also rely on the categories that enter sense. The argument of *ijmak* ahl al-Madinah is nothing more than determining the law on a subjective basis for the Malikiyyah group. However, some others did not openly object, but refused by only mentioning the basis of the Madinah ahl *ijmak* is still vague. Is he one of the arguments for the agreement of the companions which comes from the passages mentioned by the Prophet, or is it the customs that have been going on for a long time in the city of Medina. This paper will limit to the main problem what is the position or position of *ijmak* in the *tariqah* *istinbath* al-ahkam *al-Syar'iyyah* (method of extracting Islamic law), whether it can be categorized as part of general *ijmak* that has been agreed by many scholars or is included in theory *istinbath* al-ahkam which many scholars dispute.



2. RESULTS AND DISCUSSION

2.1. The Meaning of Ahl Madinah Ijma and Legal Basis

Imam Malik Ibn Anas was the founder of the Malikiyyah school of development during the two major leadership periods, namely the Umayyad and Abbasid periods. Imam Malik was born during the time of Walid ibn Abdul Malik, who was one of the Umayyad caliphs who had succeeded in creating peace and prosperity, and order. During this period around 711 AD, a military expedition from North Africa to the southwest and the European continent was recorded and succeeded in conquering European armies while controlling areas there, such as Cordova, Seville, Elvira, and Toledo. In the argument against the sources of Islamic law, there is almost no fundamental difference with the sources of law held by other scholars, except that the most basic is the courage to make the ahl Madinah ijma as a source of law that can defeat the hadith ahad (hadith that is based on individual people) (Yatim, 1998, p. 43).

The word "ijma" according to language means agreement or equality of opinion about a problem, so that if the expression *ajma 'al-qaum' alâ kadzâ* is found, it means that the group has agreed on a problem. Meanwhile, the meaning of *ijmak* according to the meaning put forward by ushul scholars, for example, is (1) Abu Ishaq al-Syirazyi *اتفاق علماء العصر* Agreement of all scholars at one time on the law of an incident) (Al-Syirazyi, 1985, p. 87). (2) Al-Amidi *حكم على العصور من العصور الإسلامية الأمة من المجتهدين اتفاق وسلم* (Agreement of the *mujtahid* at one time on a sharia law after the death of the Prophet Muhammad) (Al-Amidiy, 1928). The two definitions above correspond to the meaning of consent written in the later ushul books which were influenced by the meanings of *ijmak* that were written earlier. Abd al-Wahab Khallaf defined consent as:

الإجماع في اصطلاح الأصوليين هو اتفاق جميع المجتهدين من المسلمين في عهد من العصور بعد وفاة الرسول على حكم شرعي في واقعة

"*Ijma* according to the terms of the proposed scholars is the agreement of all *mujtahid* ulama from the Muslims at a time after the death of the Prophet against a law in an incident."

The definition of *ijma*, such as the definition above, is the definition put forward by many scholars. It's just that the limitation of *ijmak* still leaves some basic issues that make scholars differ, especially about the possibility of *ijmak*. If what is meant by *ijmak* is the agreement of the *mujtahid* at all times against the laws of *syarak*, then that *ijmak* is almost impossible to happen. Because it is impossible to bring together all the *mujtahid* in one place and time due to the geographical differences in the places where the *mujtahid* lived.

The *ijmak ahl al-Madinah* is one of the methods of legal *istinbath* in the form of an agreement that takes place in a certain area, in this case the city of Medina. Therefore, *ijmak ahl al-Madinah* is a method of legal *istinbath* which was held by Imam Malik and received rebuttal from other scholars. Because of this, *ijmak* like this is considered to still have territorial boundaries, while the real term *ijmak* has no territorial boundaries, because it covers the entire agreement of Muslims in the world. Imam Syafi'iy, among others, is included in the ulama who do not acknowledge the existence of regional *ijmak*. For him, the recognized *ijmak* is the consent of a friend, besides that what may be included in the definition of consent is only the agreement of the *mujtahids* on the *syarak* laws that have been established based on the arguments of a *qat'iy nas*, such as an agreement on obligatory prayer, facing the Qibla, the place of the Ka'bah. The obligation to fast, pay zakat, pilgrimage and so on. This kind of thing might be applied to the meaning of consent as mentioned.

This last opinion² is the hold of al-Shâfi'iy as stated in the book al-Risâlah:

لست أقول ولا أحد من أهل العلم هذا مجتمع عليه إلا لما تلقى عالما أبدا إلا قاله لك وحكاه عن قبلة ، كالظاهر أربع ، وكترهيم الخمر وما أشبه ذلك

"I and no one from among the scholars (experts of science) have ever said," this is a matter that has been agreed upon", except regarding issues that no expert has ever questioned you again and narrated from those who preceded him, such as the four *zuhur*. *rakat*, that *khamr* is haram and so on."

Therefore al-Syâfi'iy stated that *ijma* is an agreement where there is no one who has an opinion other than what has been agreed:

وقلت له ومن أهل العلم الذين إذا أجمعوا قامت بإجماعهم حجة قال هم من نصيبهم أهل بلد من البلدان فيها رضوا قوله و قبلوا حكمه

The agreement of the scholars (*ahl al-'ilm*) regarding a sharia law and its decisions are accepted by the inhabitants of a country (Al-Syâfi'i, n.d., p. 419, 1966, p. 293; Nahrawi & Al-Salam, 1994, p. 379).

From the above statement, it is also known that al-Syâfi'iy is one of the scholars who strongly rejects *ijma* that is regional, such as *ahl al-Madīnah ijma* or *ahl al-kūfah ijmak*. Regional consent according to al-Shafi'iy cannot be called *ijma* because it is not comprehensive and is limited to certain countries, whereas to receive that *ijma*, the acceptance of the ulema's fatwa must cover the whole country with the ulema's blessing (*radhu*) and not because of compulsion (Abu Zahrah, 1957, p. 158).

Al-Syâfi'iy berkeyakinan bahwa tidak ada satupun ulama yang hidup di suatu negara yang memiliki sifat-sifat di atas, yaitu fatwanya diterima dengan senang hati oleh seluruh ulama negerinya. Barangkali ada seseorang yang diakui sebagai ahli fikih oleh sebagian penduduk, akan tetapi oleh sebagian penduduk lain menganggapnya sebagai orang bodoh yang tidak memiliki otoritas memberikan fatwa, sehingga fatwa-fatwanya tidak dapat diterima. Dari sini diketahui bahwa jika dalam satu negara saja tidak ada atau sulit seorang ulama yang fatwanya bisa diterima secara bulat oleh seluruh penduduk, apalagi mencari ulama yang fatwanya diterima oleh seluruh penduduk antar negara (Nahrawi & Al-Salam, 1994, pp. 380-381)

The same information about the statement of al-Syâfi'iy that consent can't occur at another time and the invalidity of the ijmak which is regional can also be found from the writings of Joseph Schacht which said:

"The consensus of the scholars, which expressed the living traditions of each ancient school, also became irrelevant for Shafi'i, he even denied the existence of any such consensus because always find scholars who held divergent opinions, and he fell back on the consensus of all Muslims on essentials (Schacht, 1993, p. 47)."

Therefore, one of the categories of consent that has received recognition from al-Shafi'iy, as written by Abu Zahrah (1957, p. 158) is the consent of a friend, because it is possible that the consent they are doing shows that the problem that is applied is there is hadith information that was heard from the Prophet. It could be that the problem with the consent is a sunnah, but they don't want to see it as al-sunnah but only as their ijthad. However, if the problem is accompanied by the sunnah, then what becomes evident is the sunnah, not their consent (Al-Syâfi'i, n.d., p. 204).

This is of course contrary to the principle held by Imam Malik, for him even though the ahl al-Madinah ijma occurs in the regional sphere, it has binding power for all Muslims. And the power of the madinah ahl ijmak exceeds the strength possessed by the hadith ahad and qiyas. Therefore, if there is a conflict between the two arguments (al-ta'arudh bain al-dalilain) between the argument of ahl al-Madinah ijma and the hadith ahad or qiyas, then the ijmak ahl al-Madinah must be accepted and the two arguments are abandoned (Ash-Shiddieqy, 1997, p. 213).

The theory of ijmak ahl al-Madinah itself is known through a letter sent by Imam Malik to al-Laits ibn Sa'ad which contains:

واعلم رحمك الله أنه بلغني أنك تفتي الناس بأشياء مختلفة , مخالفة لما عليه الناس عندنا ببلدنا الذي نحن فيه

You know, my brother, that the news has reached me that you have made a fatwa which is distributed to others with a fatwa that is different from what has been stipulated on us and is spread in our country where we are also in that place (Khin, 1981, p. 457)."

From there it appears clearly that Imam Malik did use the ijmak ahl al-Madinah, and the power he had was like that in general. Therefore, al-Laits in Egypt had to follow the instructions that had an consent in the Medina area. Therefore, as described by al-Ghazaliy, if the Imam says in his fatwa:

هذا هو الأمر المجتمع عليه عندنا

"This is a business that has agreed (against him) by our side"

So the meaning of the phrase Imam Malik means is the consent of the scholars of Medina (Khin, 1981, p. 221). This opinion of Imam Malik was later followed by the ulama afterward, including al-Qarafi who said that what Ijmak said was the consent of all the scholars, while what was stipulated by the scholars of Medina was included in the evidence.

الأدلة هي الكتاب و السنة و إجماع الأمة و إجماع أهل المدينة و القياس و قول الصحابي و المصلحة المرسله و الإستصحابات

"The proof of syarak is the Qur'an, sunnah, consensus of the entire ummah, the consent of the scholars of Medina and qiyas, the opinion of the friends, mashlahat al-mursalah and al-istishhab" Medina. In this latter case, the action means that it is still valid and continues to be practiced by the people of Medina.

The theory that is widely held by Imam Malik is not new, but a theory that is widely held by his teacher, Rabi'ah, who once said:

واحد عن واحد من خير ألف عن ألف

"A thousand people who take from a thousand people is better than one who is just take from someone anyway."

The basis used by Imam Malik in using this theory is the following verses:

"Those who were formerly were the first (to convert to Islam) from the muhajirin and the ansar and those who followed them well, Allah was pleased with them and they were pleased with Allah and Allah provided them with heaven that flowed stream in it forever. They are eternal in it. That's a big win.

"And those who stay away from taghut (that is) do not worship it back to Allah, for them is good news; therefore convey the news to my servants, who listen to words and then follow what is best among them. They are directed and thoughtful people.

The two verses above are the basis for the existence of the ahl al-Madinah ijma, the guidance of Imam Malik. In the first verse the phrase "Those who were earlier (converted to Islam) from the muhajirin and the ansar groups" is the basis for the existence of ahl al-Madinah ijma, while in the second verse the phrase "Who hears the words then follows what is best among them" is the second verse which forms the basis for the existence of the consent of ahl al-Madinah (Khin, 1981, p. 458).

2.2. The Form and Basic Argument of Ahl al-Madinah Imam Malik Ijma

The use of ahl al-Madinah ijma as the basis for the theory of legal istinbath by Imam Malik is not without the basis of rational arguments. There are several arguments used by Imam Malik in making the ahl al-Madinah ijma as the basis of his theory.

- a. The establishment of the Medina region as the basis for ijma is because the city of Medina is the place of the Prophet's hijrah (*Dar al-Hijrah*), and the place of revelation (*muhbith al-wahy*) and the center of Islam (*mustaqir al-Islam*), the gathering place of the companions (*majma' al-shahabah*). With such a strategic status, the legal provisions will always live and be practiced by the people of Medina and not be mixed with other provisions, because it is impossible to be different from the provisions stipulated by the Prophet.
- b. The people of Medina were those who had witnessed firsthand the descent of revelation (*syahidu al-tanzil*), and heard takwil from nas (*sami'u al-ta'wil*). With such conditions, it is certain that the inhabitants of Medina were the first to witness the revelations and other provisions published by the Messenger of Allah, therefore there is no doubt that what they were doing was close to the actions that the Prophet also performed.
- c. Because they were residents of Medina, including those who witnessed all the actions of the Prophet (*araf al-nas bi ahwal al-Rasul*);
- d. There is an agreed stipulation that the history brought by the people of Medina takes precedence over history other than those who come from the regions. If so, then of course the consent of the residents of Medina would certainly take precedence and have a higher weight of evidence than the consent made by other residents (Al-Amidiy, 1928, p. 125).

The three provisions mentioned above are the basis used by Imam Malik in basing his theory. And that basis is mentioned in the letter he wrote to al-laits:

فإنما الناس تبع لأهل المدينة . إليها كانت الهجرة وبها تنزل القرآن وأحل الحلال و حرم الحرام كان رسول الله بين أظهرهم يحضرون الوحي والتنزيل و يأمرهم فيطيعونه ويسن لهم فيتبعونه حتى توفاه الله واختار له ما عنده صلوات الله عليه ورحمة وبركاته

"I know that people follow all the provisions of the inhabitants of Medina, because the city of Medina is a place of hijrah, and that place is also where the Qur'an descends, and they justify what is lawful and what is haram while the Messenger of Allah is at their side, listening to revelations and told them to follow him and they obeyed him and told them to follow the sunnah and they too followed him until the Prophet died from their side".

According to Qadhi Iyadh, the state of the consent of ahl al-Madinah can be divided into two types: First, Ijma is defined based on the actions done by the Prophet, and this is divided into four forms: (1) commands that come from the Prophet, such as, call to prayer, iqamah, and not reciting basmalah; (2) the actions that the Prophet always performed, such as the characteristics of prayer, the number of rakats; (3) agreements of the Prophet; and (4) actions which the Prophet did not do, such as not taking zakat on vegetables. Second, Ijma ahl al-Madinah which comes from ijthihad. For the first category of consent, such consent must be accepted and the arguments that are contrary to it are abandoned, hadith ahad, or qiyas ('Iyad, n.d., p. 102; Ash-Shiddieqy, 1997, p. 213).

On the other hand, Ibn Qayyim divides the consent of ahl al-Madinah into three parts, as the following description:

أولها نقل شرع مبتدأ عن النبي صلى الله عليه وسلم و الثاني نقل العمل المتصل و الثالث نقل الأمان و الأعيان و مقادير الأشياء

Ijma ahl al-Madinah can be divided into three parts, the first is everything that was quoted from the beginning of the Prophet, the second which chronicles an act that is continuously carried out, and the third which chronicles the names of places, objects, and measurements (Al-Jauziyyah, 1973).

From the descriptions above, it can be concluded that in the ijma ahl al-Madinah there are actions that definitely originate from the Messenger of Allah, who have a clear basis and have long since developed

in Medina. But in part, these deeds and knowledge have long developed and existed in Medina but did not have clear support from the Prophet or were indeed based on the *ijtihād* of the Medina scholars and later tradition among the people of Medina. For the first form, it can be limited to the *ijmak* which has a nasal base, while the second form of the *ijmak* does not have a nasal backing. From these two forms will be analyzed about the consent that occurred among the people of Medina.

2.2. Analysis Toward Ahl al-Madina Ijma Status

Al-Syâfi'iy does not recognize the existence of *ijmak* in the form of regionalism. Regional *ijma*, including ahl Madînah *ijma* cannot be said with *ijma*, because it has the same form as other legal arguments, not as a source. After all, the basis is *ijtihād* (Al-Râziq, n.d., p. 69; Khin, 1981, p. 469). In regional *ijma* the consideration is *maslahah* contained in a *ijtihād* result. Therefore in some literature, ahl Madînah *ijma* is called 'urf ahl al-Madînah or' amal ahl al-Madînah.

Most of the scholars refuse consent such as consent *ahl al-Madînah* to be used as evidence. *Ijma* like this is nothing more than the agreement of a small part of the Muslim community, whereas in the word *Ijma*, the real agreement is the whole Muslim community. Imam Malik held a lot to the consent of ahl al-Madînah, because of that he said that in the consent of ahl al-Madînah there was evidence.

As for the basis for receiving the *ahl al-Madînah ijma* according to Imam Mâlik, as already mentioned, are: (1) Medina was the place of the Prophet's hijrah, the place where the companions lived, therefore they could not be wrong in doing *ijtihād*; (2) The people of Medina were people who witnessed the revelation directly and heard its interpretation. The people of Medina knew the Prophet better than anyone else, and (3) The narrators of hadith from Medina were more widely followed than other narrators (Al-Amidiy, 1928, p. 350).

Al-Syâfi'iy still adheres to the authentic hadith even though the hadith is *ahad* and violates the provisions of the *ahl al-Madînah ijmak* (Al-'Ashimiyy, 1977, pp. 303–310). Congratulations behind the priest. According to al-Syâfi'iy a congregation must read the *fâtiḥah* for himself, either in *jahriyyah* or *sirriyyah* prayers. Al-Syâfi'iy argued with:

عن عبادة بن صامت رضي الله عنه قال : صلى رسول الله صلى الله عليه وسلم الصبح فثقلت عليه القراءة فلما انصرف قال: إني أراكم تقرؤون وراء امامكم؟ قال: قلنا: يا رسول الله، أي والله: قال: لا تفتلوا إلا بأب القرآن فإنه لإصلا لمن لم يقرأ فيها

"From 'Ubâdah ibn Sâmit ra. said: Rasulullah prayed at dawn, and read in a heavy tone, then when he finished praying, Rasulullah asked his companions: I saw you reading something behind your Imam, so we answered: We read the verse of the Qur'an, O Rasulullah. Rasulullah said: do not you do that (read the verses of the Al-Qur'an) except umm al-Qur'an (al-fâtiḥah) because it is not valid to pray without reading it." HR. Abû Dâwûd, Tirmîdîziy, Ahmad, and Ibn Hibban (Al-San'ani, n.d., pp. 170–171).

The opinion of al-Syâfi'iy above with the arguments of the hadith that he brought was not by his teacher, Imam Mâlik, who held a lot of *ijmak* ahl al-Madînah. For Imam Malik, a congregation is only required to read *fâtiḥah* only in *sirriyyah* prayers, while in *jahriyyah* prayer a congregation is not required to read *fâtiḥah*. Imam Mâlik said that in the book al-Muwatta':

الأمر عندنا أن يقرأ الرجل وراء الإمام فيما لا يجهر فيه الإمام بالقراءة ويترك القراءة فيما يجهر فيه الإمام بالقراءة

"The stipulation that we have is that a congregation who is behind the priest should only read *fâtiḥah* when the priest does not read it clearly (*jahr*), and that provision is abandoned when the priest reads it clearly" (al-Zarqani, 1990, p. 86).

Likewise in the case of *khiyâr majelis*, as explained earlier by al-Syâfi'iy to the hadith of the Prophet, namely in buying and selling transactions there is *khiyâr* between the buyer and the seller until they are both separate. However, Imam Mâlik did not recognize the hadith which mentioned the *khiyâr* of the assembly because it was considered contrary to the practice and agreement of the people of Madînah (*ijmak ahl al-Madînah*). The following is quoted from Imam Malik's statement which mentions the hadith *khiyâr majelis*.

عن عبدالله ابن عمر أن رسول الله صلى الله عليه وسلم قال للمتبايعان كل واحد منهما بالخيار على صاحبه مالم يتفرقا إلا بيع الخيار قال مالك وليس لهذا عندنا حد معروف ولا أمر معمول به فيه

"From Abdullah ibn 'Umar that Rasulullah saw said the buyer and seller, each of them may *khiyâr* over the others if they have not been separated, except for the sale and purchase of *khiyâr*. And for us there are no known boundaries about this and it is also not practiced (al-Zarqani, 1990)"

This hadith about *khiyâr* assemblies was not practiced by Imam Malik because the hadith is against the consent of ahl al-Madînah. In the actions of the people of Medina, buying and selling were separated by words, not from the body. Therefore, if there is an agreement of consent and *qab penjual* between the buyer and seller in words, then there has been a sale and purchase. The following are the attitudes that are well known among the Malikiyyah:

قال بعض المالكية رفعه مالك بأجمع أهل المدينة على ترك العمل به وذلك عنده أقوى من خبر الواحد

"Said some of Mâlikiyah's followers, which is Mâlik's opinion, to hold on to the ijmak ahl al-Madînah and leave that provision (*khiyâr majlis*). And that for him is stronger as evidence than the hadith ahâd (al-Zarqani, 1990)"

Not all of Mâlik's opinion which relies on the ijmak ahl al-Madînah is rejected by al-Syâfi'iy, sometimes his opinion agrees with Mâlik's opinion. However, the same opinion as to his teacher, Imam Mâlik, does not mean that al-Syâfi'iy based his argument on the consent of the ahl al-Madînah. The similarity of their opinion for al-Syâfi'iy is because based on the hadith as the basis of his argument is the same as the opinion of Imam Mâlik, while his teacher did not fully adhere to the hadith, he held more and based his argument on the existence of *ahl al-Madînah ijma*.²

وحدثني عن مالك أنه سأل ابن شهاب عن المرأة الحامل تري الدم؟ قال تقف عن الصلاة قال يحيى قال مالك: وذلك الأمر عندنا

"From Mâlik that he asked Ibn Syihab about a pregnant woman who bled, then Ibn Syihab replied: it is forbidden for him to pray, said Yahyâ said Mâlik: and that is the ruling that is in us (al-Zarqani, 1990, p. 60)"

From the various descriptions above, it can be seen that the basis of the ahl al-Madinah ijma held by Imam Malik is based on a *qath'iy* or valid hadith and some are based on the results of ijthad which do not have the support of the Prophet's hadith. For the first form, such an ijma is an ijma that must be obeyed and has the same position as other qath'iy sources. This is different from the ijma that comes from the results of ijthad, so it can be categorized as 'urf which applies in the area of Medina and this cannot be said to be ijma.

3. CONCLUSION

Ahl Madinah Ijma is a method of legal istinbath that was held by Imam Malik and was challenged by other scholars. Most of the other scholars consider this kind of ijma not ijma but only an agreement for a region in the form of individual ijthad which does not bind all the Muslims. He considered the consent of ahl al-Madinah as consent by Malik because of the special value of the city of Medina itself.

As for the basis for receiving the ijmak ahl al-Madînah according to Imam Mâlik, as already mentioned, are: (1) Medina was the place of the Prophet's hijrah, the place where the companions lived, therefore they could not be wrong in doing ijthad; (2) The people of Medina were people who witnessed the revelation directly and heard its interpretation. The people of Medina knew the Prophet better than anyone else, and (3) Hadith narrators from Medina were more widely followed than other narrators.

But, if you look at the ahl Medina ijma more deeply, the basis of the ahl al-Madinah ijma held by Imam Malik is based on a qath'iy verse or valid hadith and some are based on the results of ijthad that do not have the support of the hadith. For the first form, such an ijma is an ijma that must be obeyed and has the same position as other qath'iy sources. This is different from the ijmak that comes from the results of ijthad, so it can be categorized as 'urf which applies in the area of Medina and this cannot be said to be ijma.

REFERENCES

- 'Iyad, Q. (n.d.). *Tartib al-Madarik wa Taqarib al-Masalik*. Dar al-Maktabah al-Hayat.
- Abu Zahrah, M. (1957). *Usul Al-Fiqh*. Dar al-Fikr al-'Arabi.
- Al-'Ashimiy, M. ibn al-Q. (1977). *Majmu' al-Fatawa al-Syaikh al-Islâm Ibn al-Taimiyyah*. Mamlakah Saudi Arabia.
- Al-Amidiy, M. (1928). *al-Ihkam fi Ushul al-Ahkam*. Dar al-Fikr.
- Al-Jauziyyah, M. ibn A. B. I. al-Q. (1973). *A'lam al-Muwaqqi'in 'an Rabb al-'Alamin*. Dâr al-Jail.
- Al-Râziq, A. 'Abd. (n.d.). *al-Ijma' fi al-Syar'ah al-Islâmiyyah*. Dâr al-Fikr al-'Arabi.
- Al-San'ani, I. al-K. (n.d.). *Subul al-Salam*. Dahlan.
- Al-Sanâni, M. ibn I. (1966). *Taudîh al-Afkâr li Ma'âni Tanqîh al-Anzâr*. Maktabah Khânijiy.
- Al-Sibâiy, M. (1966). *al-Sunnah wa Makânatuhâ fi al-Tasyrî' al-Islâmiy*. Dâr al-Qaumiyyah.
- Al-Syâfi'i, M. bin I. (n.d.). *al-Risalah li al-Imâm al-Muthallibi Muhammad bin Idris al-Syâfi'i*. Dar al-Fikr.
- Al-Syâfi'i, M. bin I. (1966). *Kitab al-Umm*. Bulaq.
- Al-Syâtibi, A. I. I. ibn M. (n.d.). *al-Muwafaqat fi Usûl al-Syar'ah*. -Maktabah al-Tujariyyah al-Kubra.
- Al-Syiraziyy, A. I. (1985). *al-Luma'*. Dar al-Fikr.
- al-Zarqani, I. S. M. (1990). *Sharh al-Zarqani'ala Muwatta'al-Imam Malik*. Dar al-Fikr.

-
- Ash-Shiddieqy, H. (1997). *Pokok-Pokok Pegangan Imam Mazhab*. Pustaka Rizki Putra.
- Fazlurrahman. (1979). *Islam*. University of Chicago Press.
- Khin, M. S. (1981). *Atsar al-Ikhtilaf fi Qawa'id al-Ushuliyyah fi Ikhtilaf al-Fuqaha'*. Muassasah al-Risalah.
- Mahmudunnasir, S. (n.d.). *Islamic Concept and History*. Nusrat Ali Nasri for Kitab Bhavan.
- Nahrawi, A., & Al-Salam, 'Abd. (1994). *al-Imam al-Syafi'i fi Madzhabaih fi al-Qa-dim wa al-Jadid*. Dar al-Kutub.
- Sâlih, M. A. (1979). *Lamhat fi Usûl al-hadîts*. al-Maktab al-Islâmiy.
- Schacht, J. (1993). *An introduction to Islamic law*. Clarendon Press.
- Tiwâna, M. M. (n.d.). *al-Ijtihâd*. Dâr al-Kutub al-Hadîtsah.
- Yatim, B. (1998). *Sejarah Peradaban Islam*. Raja Grafindo Persada.

ORIGINALITY REPORT

3%

SIMILARITY INDEX

%

INTERNET SOURCES

3%

PUBLICATIONS

%

STUDENT PAPERS

PRIMARY SOURCES

1

Catalán Salgado Enrique. "La identidad nacional mexicana en el siglo XXI : los impactos de la globalización cultural y sus nuevos desafíos", TESIUNAM, 2008

Publication

1%

2

محمد محمود إبراهيم العابد. "مفهوم الإجماع عند الإمام مالك وموقف العلماء منه", مجلة الدراسات العربية, 2020

Publication

<1%

3

Zarul Arifin, Hatoli Hatoli. "Implementation of the Application of Multi Akad Murabahah and Rahn in the Mulia Metal Products in the Sharia Pawnshops City of Singkawang Islamic Law Perspective", Jurnal Ilmiah Al-Syir'ah, 2021

Publication

<1%

4

Cornelis Blauwendraat, Mary B. Makarios, Hampton L. Leonard, Sara Bandres-Ciga et al. "A population scale analysis of rare SNCA variation in the UK Biobank", Neurobiology of Disease, 2020

Publication

<1%

5

Ega Indiana, Irzal Anderson, Dona Sariani.
"STRATEGI KOMUNIKASI POLITIK TIM
PEMENANGAN FACHRORI-SYAFRIL PADA
PILKADA 2020 DI PROVINSI JAMBI", Academy
of Education Journal, 2022

Publication

<1 %

6

أحمد بن حمود المخلفى. "التفرق المسقط لخيار المجلس
وتطبيقاته المعاصرة فى عقد البيع", حولية كلية الدراسات
الإسلامية والعربية للبنات بالإسكندرية, 2013

Publication

<1 %

7

إبراهيم محمد أحمد حسين. "عناية الإمام الآمدى بتحرير
الأقوال الأصولية للأئمة الأربعة رضى الله عنهم", حولية كلية
الدراسات الإسلامية والعربية بنين بأسوان, 2019

Publication

<1 %

8

ناديا محمد صابر عبد اللطيف. "المرحلة المدنية من الهجرة
إلى غزوة بدر الكبرى نشر الدعوة وتأسيس الدولة دراسة
موضوعية مع تخريج الأحاديث", حولية كلية الدراسات
الإسلامية والعربية للبنات بالإسكندرية, 2017

Publication

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On