

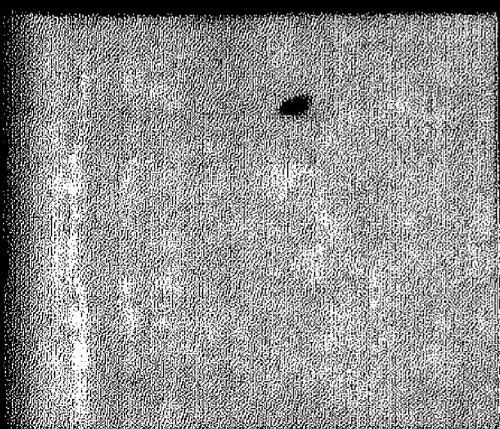
AL-BAY'INAH ALA AL-MUDAE' WA  
AL-YAMIN ALA MAN ANKARA AS  
THE UNDERLYING PRINCIPLE IN  
THE ISLAMIC LAW OF EVIDENCE

THE UNIVERSITY OF AL-QADISIYAH

AL-QADISIYAH

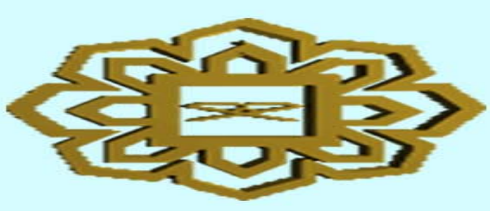
1988

AL-QADISIYAH



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الجامعة الإسلامية العالمية ماليزيا  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA  
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**AL-BAYYINAH ALA AL-MUDDAIE WA AL-YAMIN  
ALA MAN ANKARA; AS THE UNDERLYING  
PRINCIPLE IN THE ISLAMIC LAW OF  
EVIDENCE**

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

○ \* اللَّهُ نُورُ السَّمَوَاتِ وَالْأَرْضِ مِثْلُ نُورِهِ كَمِثْقَاتٍ  
فِيهَا مِصْبَاحٌ الْمِصْبَاحُ فِي زُجَاجَةٍ الزُّجَاجَةُ كَأَنَّهَا كَوْكَبٌ دُرِّيٌّ  
يُوقَدُ مِنْ شَجَرَةٍ مُبَارَكَةٍ زَيْتُونَةٍ لَا شَرْقِيَّةٍ وَلَا غَرْبِيَّةٍ يَكَادُ زَيْتُهَا  
يَضِيءُ وَلَوْ لَمْ تَمْسَسْهُ نَارٌ نُورٌ عَلَى نُورٍ يَهْدِي اللَّهُ لِنُورِهِ مَن يَشَاءُ  
وَيَضْرِبُ اللَّهُ الْأَمْثَالَ لِلنَّاسِ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ \* ○

صدق الله العظيم

عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ  
وآلِهِ وَسَلَّمَ قَالَ لَوْ بَعِثْتُ النَّاسَ بِدَعْوَاهُمْ لَأَدَّعَى رِجَالُ أَمْوَالِ  
قَوْمٍ وَدِمَاهُمْ لَكِنِ الْبَيِّنَةُ عَلَى الْمُدَّعِيِ وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ  
حَدِيثٌ حَسَنٌ ۝ رَوَاهُ الْبَيْهَقِيُّ وَغَيْرُهُ هَكَذَا وَبَعْضُهُ فِي الصَّحِيحَيْنِ

## **ACKNOWLEDGEMENT.**

The writer wishes to express his gratitude and profuse thanks to his choiced supervisor and lecturer, al-Syeikh Prof. Dato Dr. Mahmud Saedon Awang Othman, Deputy Dean of the Kulliyah of Laws, for his unrelentless effort and demand for high standart and criticality towards the accomplishment of this dissertation.

The writer hereby also express his especial thanks to brother Shazli Ezzat bin Ghazali and brother Johari bin Musa for their invaluable contribution in typing and designing this dissertation.

Finally to my wife, Hatijah Abu Bakar and children (Mahmor and Adil) for their patience and sacrifices.

## TABLE OF CONTENTS

### CHAPTER ONE

Introduction	1
--------------	---

### CHAPTER TWO

The various narrations and the various wordings of the Hadith	6
------------------------------------------------------------------	---

Commentry to the quality and the strength of the Hadith	15
------------------------------------------------------------	----

### CHAPTER THREE

An Explanatory about the term 'Fasl al-Khitab'	18
------------------------------------------------	----

Fasl al-Khitab in the view of al-Mufasssirun	21
----------------------------------------------	----

### CHAPTER FOUR

Importance of Bayyinah	28
------------------------	----

The necessity of Bayyinah purports to retrain a false, weak or unsubstantiated claim	28
-----------------------------------------------------------------------------------------	----

Proof forming the basis to just decision	31
------------------------------------------	----

Avoidance of Perjury	34
----------------------	----

Burden of Proof	37
-----------------	----

Judgment in cases where the litigant parties fail to adduce evidence	43
-------------------------------------------------------------------------	----

## CHAPTER FIVE

Dissecting the wording of the hadith	45
Al-Da' wa	45
Da' wa al-Tuhmah and Ghayr al-Tuhmah	48
Al-Muddaie and al-Muddaa Alaih	50

## CHAPTER SIX

Al-Bayyinah	53
The Majority View	53
Ibn Hazm's View	57
Ibn Qayyim's View	59
Evidence and Bayyinah in Malaysia	62
Section 3 of the Evidence Act 1950	64
Bayyinah in Evidence Enactment of the Syariah Court 1991 (Kelantan)	67
Illegally Obtained Evidence	70
The admissibility of illegally obtained evidence in man-made law	71
Illegally obtained evidence in Islamic Law	74

## CHAPTER SEVEN

Al-Yamin	79
Condition of a valid oath	83
Types of oath	87
Dependant's refusal to take oath and its retortion	93



Oath tendered by the judge	98
Conclusion	101

## CHAPTER ONE

### INTRODUCTION

Justice is the main norm of the Islamic Legal system and it is also objective of the Islamic law of evidence. The importance of establishing justice in settling disputes was repeated on several occasion in the Qur'an. In Surah Sad verses 17. to 26 Allah S.W.T. has mentioned the story of Nabi Daud alaihissalam and how justice should be institutionalised and that punishment be based on rights and not by emotions. Though this verse is revealed to Daud alaihissalam but the maxims' al 'ibrah lil umum al lafz la bikhusus assabab ' which is the criteria set by the verses of the Qur'an is general in its meaning and not specific to certain occasion. Therefore in the case of Daud alaihissalam, Allah S.W.T. said :

'O Daud, We have created you to be the vicegerant on the earth, so judge between people in truth ( and justice ) and do not follow the lusts ( of your heart) for they will mislead you from the path of Allah.

Surah Sad : 26

Dr. Samir 'Alaih<sup>1</sup> quoted the tafsir of this verse by mentioning that Nabi Daud alaihissalam was the first judge ever existed in settling disputes. Two angels were send to Daud alaihissalam disputing over their sheeps. The first angels told Daud that the other angel, who is his brother had with him ninety nine sheeps and that he had only one. He told Daud that his brother had succeeded in overcoming him by his richnsess and ability to negotive and convinced him (the first angel) that the single sheep he had was lost to his brother. Daud than ,made his judgement that the defendant to this case has no right to seize the only sheep owned by plaintiff. The defendant than complained to Daud that his judgement was unfair. This is because Daud had only heard the case from the plaintiff side but not from him, the defendant.

This occasion was the contents of verse 26 from Surah Sad imposing the importance of justice even if the judge is a Prophet and that justice could not be establish without enough evidence.

Other verses of the Qur'an that are related towards the importance of establishing justice in dispute settlements are ;

*"Allah commands you to render back your to those to whom they are due and when you judge between people*

---

<sup>1</sup> Aliah, Samir Dr. Al Qadha' wa al Urf Fi al Islam, Dirasah Muqarah, Al Muassasah Al Jami'iyah liddirasat wa an nusyur wa attauzie. Beirut. First Edition 1987. pg. 13-14.

*that you judge with justice. How truly excellent is the teaching he gives."*

**Surah An. Nisa : 58**

*"If they come to you, either judge between them or decline to interfere. If you decline, they cannot heard you in the least . If you judge, judge in equity between them, for Allah loves those who judge in equity."*

**Surah Al Maidah : 42**

*"And those who launch a charge against chaste women and do not produce four witnesses, flog them with eighty stripes and reject their evidence ever after, for such men are wicked transgressors".*

**Surah An Nur : 4**

*"We sent aforetime Our messengers with clear signs and sent down with them the Book and the Balance, that men may stand forth in justice".*

**Surah Al Hadid: 25**

*"Say: "For me, I work on a clear sign from my Lord but you reject Him... The commands rests with none but Allah. He declares the truth, and he is the best of judges".*

**Surah Al An'am: 57.**

*"O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or*

*poor. For Allah can be best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well acquainted with all that you do".*

### **Surah An Nisa : 135**

As justice must be upheld in setting disputes among the peoples. It is important to have a guideline on how to establish the justice.

In this regard the Prophet S.A.W. said:

*If people's claim were accepted on their face value some people would claim other people's blood and properties, but evidence in on the person who allages and the oath is on whom who denies.*

In Nail al- Muram it is stated:

The hadith is considered as a supreme principle amongst the principle of syariah and as a main basis in adjudication of men's disputes.<sup>2</sup>

Al -Nawawi in his "Sahih Muslim bi Syarh al-Nawawi " also stated to such an inference.<sup>3</sup>

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<sup>2</sup> Hasan Sulaiman & Alawi al- Maliki, Nail al-Muram Syarh Umdat al- Ahkam, Vol 1, p 7.

<sup>3</sup> Al-Nawawi, Sahih Muslim bi Syarh al-Nawawi, Vol.12,3.

Knowing that the hadith is of a great importance in the Islamic Law of Evidence, the writer in this course work, would like to furnish and discussion about the implementation of the hadith in the Law of Evidence.

## CHAPTER TWO

### THE VARIOUS NARRATIONS AND THE VARIOUS WORDINGS OF THE HADITH

The hadith Al Bayyinah Ala al Muddaie Wa Al Yamin Ala Man Ankara is considered as a supreme principle in the Islamic Law of Evidence. As it contains the main idea of the science of proof, the hadith also come in various narrations and wording.

In Sahih al-Bukhari <sup>4</sup>, Sahih Muslim <sup>5</sup>, Sunan Ibn Majah <sup>6</sup>, Sunan Aldarqutni <sup>7</sup>, and Sahih Ibn Hiban <sup>8</sup>, the Hadith which was narrated from Ibn. Juraij from Ibn. Abi Mulaikah is read as follow;

لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى نَاسٌ دِمَاءَ رِجَالٍ  
وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ

*If people's claim were accepted based on their face value, some people would claim other men's blood and properties, but he oath is whom who denies.*

---

<sup>4</sup> Sahih Al-Bukhari - Kitab al-Rahn and Kitab al-Shahadat. vol 3, 177/207 (1891).

<sup>5</sup> Sahih Muslim- Kitab al-Aqdhiyah see al-Nawawi, Syarh Sahih Muslim, vol. 12, 2 (1984)

<sup>6</sup> Sunan Ibn Majah - Kitab al-Ahkam. vol. 2, 778 (1952).

<sup>7</sup> Sunan Aldarqutni - Khabar Wahid Yujab al-Amal, Hadith no. 9. vol. 4, 157 (1964m/1386N).

<sup>8</sup> Sahih Ibn Hiban - Kitab al- Dakwa. see also, al-ihsan Fi Taqrib Sahih Ibn Hiban, vol. 11, 477, hadith no. 5083.

However the wording of the hadith as found in Al-Sunan al-Kubra was somewhat different which read;

لو يعطى الناس بدعواهم لادعى ناس دماء  
قوم واموالهم ولكن اليمين على المدعى عليه

*If people's claim is accepted based on their face value, some people would claim other people's blood and properties, but the oath is on whom who denies .  
(Muddaa Alaih )<sup>9</sup>*

Ibn Hiban also narrated the same hadith with some different in wording from Muhammad bin Munzar bin Said from Yusuf bin Said from bin Muhammad from Ibn Juraij from Ibn Abbas. The Hadith is read as follow;

لو يعطى الناس بدعواهم لادعى رجال اموال رجال  
ودماءهم ولكن اليمين على المدعى عليه

*If people's claim were accepted base on their face value, some men would claim other men's properties and blood, but the oath is on the defendant (Muddaa Alaih).<sup>10</sup>*

Al-Tirmizi <sup>11</sup> however narrated another hadith from the chain of transmitters (Isnad) of Nafi' bin Umar al-Jumahi

<sup>9</sup> Abu Bakr Ahmad bin al-Husin bin Ali al-Baihaqi, al-Sunan al-Kubra, vol. 10, 252.

<sup>10</sup> Ala' eddin Ali bin Balban, al-Ihsan fi Taqrib Sahih Ibn. Hiban, vol,10, 476 (1991).

<sup>11</sup> Sahih al-Tirmizi - Abwab al-Ahkam . Vol. 2 , 399 (1937)



from Abdullah bin Abi Mulaikah from Ibn Abbas. Al-Imam Muslim <sup>12</sup> in his " Sahih " also narrated the same narration with al-Tirmizi which read;

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى  
أَنَّ الْيَمِينَ عَلَى الْمُدْعَى عَلَيْهِ

*verily the Prophet S.A.W. adjudicates that the oath is on the defendant*

Al-Tirmizi then said that the hadith is categorised as " Hasan Sahih " <sup>13</sup>. In other narration, Ibn Abbas Reported that the Prophet S.A.W. said;

لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى رِجَالٌ أَمْوَالَ قَوْمٍ  
وَدِمَاءَهُمْ وَلَكِنَّ الْبَيِّنَةَ عَلَى الْمُدْعَى وَالْيَمِينَ عَلَى  
مَنْ أَنْكَرَ

*If people's claim were accepted based on their face value men would claim other people's properties and blood. But evidence ( al-Bayyinah ) is on whom who allages and the oath is on whom who denies <sup>14</sup>*

<sup>12</sup> Sahih Muslim- Kitab al-Aqdhiyah, loc. cit .

<sup>10</sup> Sahih Tirmizi, loc. cit.

<sup>14</sup> Supra note 6. see also Ibn Rajab Al-Hanbali, Jami' al-Ulum Wa al-Hikam, vol.2, 146 (1989)

Another narration of the hadith was narrated by Muhammad bin Umar bin Lubabah from Uthman bin Ayyub al-Andalusi from Ghazi bin Qais from Ibn. Abi Mulaikah from Ibn Abbas that the Prophet S.A.W. said;

لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى رِجَالٌ أَمْوَالَ قَوْمٍ  
وَدِمَاءَهُمْ وَلَكِنَّ الْبَيِّنَةَ عَلَى مَنْ ادَّعَى وَالْيَمِينَ عَلَى  
مَنْ انْكَرَ

*If people's claim were claim were accepted based on their face value, verily men would claim other men's properties and blood, but evidence ( al-bayyinah ) in on the person who allages and the oath is on whom who denies 15.*

In another hadith , it was reported that the Prophet S.A.W. to have been said;

الْبَيِّنَةُ عَلَى الْمُدَّعَى وَالْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ

*Evidence is on the muddaie and the oath is on the muddaa alaih 16.*

The above hadith was narrated by Al-Tirmizi from Muhammad bin Ubaidullah from Amru bin Syuib from his father from his grandfather.<sup>17</sup>

<sup>15</sup> Ibn Rajab al-Hanbali al- Baghdadi, op.cit at vol.2, 146-147.

<sup>16</sup> Ali bin Umar al- Darqutni , Sunan al-Darqutni, vol,4, 157 and 219 (1966)

<sup>17</sup> Sahih al-Tirmizi - Kitab al-Ahkam . loc.cit.

The hadith was also narrated by Aldarqutni from the 'Isnad' ( chain of transmitters ) of Abu Hamad Muhammad bin Harun from Ahmad bin Manie' from Muhammad bin Al-Hassan bin Abi Yazid Al-Hamdani, from al-Hajjaj from Amru bin Syuaib from his father from his grandfather.<sup>18</sup>

Al-Darqutni also narrated the same hadith by another narration from Abdullah bin Ahmad bin Rabiah from Ishak bin Khalid from Abdul Aziz bin Abd. Rahman from Abu Hanifah from Hammad from Ibrahim from Syuraih from Umar who narrated that the Prophet S.A.W. said; ( the hadith as stated above )<sup>19</sup>

However in the first narration, there was Muhammad bin al-Hassan bin Abi Yazid al-Hamdani al-Kufi.

Ibn. Muin Said ;

*He (Muhammad bin al-Hassan) was not classified as 'thiqat' (trustworthy).<sup>20</sup>*

According to Abu Dawood ;

*This hadis is under the category of "Hadith Dhaif" <sup>21</sup>.*

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<sup>18</sup> Ali bin Umar al-Darqutni, loc. cit.

<sup>19</sup> ibid.

<sup>20</sup> Abi al-Tayyib Muhammad, al-Takliq al-Mughaini Ala al-Darqutni, vol. 4, 157 (1966).

<sup>21</sup> ibid.

In the second narration of the hadith there was Abd al-Aziz bin Abd al Rahman al Jazari in its chain of transmitters :

al-Nasaie said :

*He (abd al-Aziz) is not classified as thiqaat (trustworthy)<sup>22</sup>.*

Ibn. Hiban in this regard stated ;

*The hadith cannot be considered as to amount to a syarie proof (Hujjah)<sup>23</sup>*

Imam Ahmad bin Hanbal hawever classified the hadith as "Mudtarib" i.e. A hadith whose content are inconsistent with a number of other reports none of which can prefered over the other.<sup>24</sup>

Al -Tirmizi in his commentary to the hadith stated ;

*There are conflict in the chain of transmitters, of the hadith because there was Muhammad bin Ubaidullah al-Arzizi whoaffected to the hadith to be 'dhaif' because*

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<sup>22</sup> Id , at 219.

<sup>23</sup> ibid.

<sup>24</sup> Muhammad Hashim Kamali, Principles of Islamic Jurisprudence, 103 (1989).

his memory was doubtful. Ibn. Mubarak and others classified this hadith as dhaif<sup>25</sup>.

Another hadith that can be found in Sunan al-Darqutni was narrated by Yazid bin Iyadh from Abd. al-Malik bin Ubaid from Khurainaq bin al Hussain from Imran bin al Hussain who said ;

امر رسول الله صلى الله عليه وسلم بشاهدين  
على المدعى واليمين على المدعى عليه

*Rasullulah commented that two witnesses is on the claimant and the oath is on the defendant.*<sup>26</sup>

Another narration by al-Darquthi was from Marwan bin Muawiyyah from Hajjaj al-Sawwaf from Humaid bin Hilal from Zaid bin Thabit who said ;

فرض رسول الله صلى الله عليه وسلم ان من  
طلب عند اخيه طلبه بغير الشهود فالمطلوب  
اولى باليمين

*Rasulullah had given the verdict that whoever claims against his brother without bringing witnesses, verily the defendant has more right to take the oath.*<sup>27</sup>

Ibn Rajab al-Hanbali al-Baghdadi said ;

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<sup>25</sup> Sahih al-Tirmizi - Kitab al-Ahkam , 100.cit .

<sup>26</sup> Sunan al-Darqutni, op. cit. at 219.

<sup>27</sup> ibid.

*This hadith was reported by Abu Ubaid and al-Baihaqi and its chain of transmitters is 'thiqat' (trustworthy) but I do not think that Humaid bin Hilal met Zaid bin Thabit.*<sup>28</sup>

Al-Darqutni also mentioned another hadith which was narrated from Sinan bin al-Harith bin Masrf from Talhah bin Masrf from Mujahid from Ibn. UmAr, that Ibn. Umar said ; the prophet S.A.W. said ;

الْمُدَّعَىٰ عَلَيْهِ أَوْلَىٰ بِالْيَمِينِ إِلَّا أَنْ تَقُومَ الْبَيِّنَاتُ

*The defendent has more right to take the oath in case where evidence is not being adduced.*<sup>29</sup>

This hadith was also narrated by Ibn. Hiban in his 'Sahih' from the narration of Mujahid from Ibn Umar.<sup>30</sup>

Ibn Rajab in his commentary to the hadith stated;

*In the narration of Mujahid from Ibn Umar that the Prophet S.A.W. said "al-Muddaa Alaih Aula bi al - Yamin Illa An Taquma al -Bayyinah" in his sermon on the day of 'al-Fath'. This hadith was also narrated by al-Tabrani but in his chain of transmitters, there was Abdullah bin Amru bin al-Aas who arised a conflict in the narration.*<sup>31</sup>

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<sup>28</sup> Ibn Rajab al-Hanbali, op. cit at 146 - 147.

<sup>29</sup> Sunan al-Darqutni, loc. cit.

<sup>30</sup> Abu al-Tayyib, op.cit. at vol.4,219.

<sup>31</sup> Ibn Rajab, op.cit. at vol.2,147.

In another hadith the Prophet S.A.W. said;

البينة على من ادعى واليمين على من انكر  
إلا في القسامه

*Al-Bayyinah (evidence) is on whom who claims and the oath is on whom who denies except in case of al-Qasamah.*<sup>32</sup>

This hadith was narrated by Khalid from Ibn Juraij from Ataa from Abi Hurairah as in Sunan al-Darqutni. However al-Baihaqi narrated the hadith from Muslim bin Khalid al-Zanji from Amru bin Syuib from his father from his grandfather.<sup>33</sup>

Al-Hafiz also narrated the same hadith from Ibn Jarir from Amru bin al-Syuib<sup>34</sup> but the hadith is under the category of "hadith mursal".<sup>35</sup>

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<sup>32</sup> Sunan Al-Darqutni, op.cit. at 218.

<sup>33</sup> Abu al-Tayyib, op.cit. at 218.

<sup>34</sup> Ibn Rajab, loc.cit.

<sup>35</sup> Hadith Mursal is defined as a hadith which a Successor (Tabie') has directly attributed to the Prophet without mentioning the last link, namely the Companion who might have narrated it from Prophet. This is the majority definition. See, Mohammad Hashim Kamali, op.cit. at 100.

## COMMENTARY TO THE QUALITY AND THE STRENGTH OF THE HADITH.

Al-Asili in his commentary to the hadith was of the opinion that the *matn* (subject matter) of the hadith *Al-Bayyinah Ala al-Muddaie Wa al-Yamin Ala Man Ankara* is considered as *Idraj* <sup>36</sup> in the hadith from Ibn Abbas words as reported by Iyadh.<sup>37</sup>

However the statement of al-Asili was argued by Ibn Hajar al-Makki in his argument which stated to the effect;

*The opinion of al - Asili that the hadith cannot be considered as 'Marfuk' <sup>38</sup> is rejected by the explicit acceptance of al - Bukhari and Muslim to the hadith as Marfuk from the chain of transmitters of Ibn Juraij. Abu Dawood , al - Tirmizi and the others also accepted the hadith as 'Hadith Marfuk'. Al-Nawawi in this regard said; "If the hadith is valid to be Marfuk by the testimony of al - Bukhari , Muslim and the others, therefore the opinion that the hadith is 'Mauquf' (discontinued hadith) cannot arise a conflict to the hadith and by the same time the*

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<sup>36</sup> Idraj is defined as what is added to the words of the Prophet S.A.W. with some of the word of the transmitters, as though the Companion or one after who added his own word in continuance to the words of the Prophet without clarifying the person who actually mentioned the words. Hence it developed into a confusion to a person having no knowledge about the actual position of the hadith. Consequently , it leads to the belief that the whole text is from the Prophet S.A.W. See, Ibn Salah, *Mukaddimah Ibn Salah* . 208.

<sup>37</sup> Ismail bin Muhammad a-Ajluni, *op.cit.* at vol.1, 343.

<sup>38</sup> Marfuk means what is reported on a certain matter by the companion from the words of Rasulullah S.A.W. or his action. See, Ibn Salah, *op.cit.* at 122.