

**WIFE'S EXPIATION FOR HAVING INTERCOURSE IN RAMADAN
ACCORDING TO THE OPINION OF IMAM NAWĀWĪ AND IBN
QUDĀMAH**



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ABSTRACT

The distinct opinions among scholars about women's position, rights and obligations in the social life as well as in the worship problems are still found in the community. Additionally, some people still consider that women are the second-class people. This assumption has resulted in the reduction or even loss of some women's rights and obligation, especially in the worship that is caused by different interpretation and views of scholars regarding the text and context that develop. In the problem of wife's expiation who performs the copulation in the day of *Ramaḍan*, Imam Nawāwī and Ibn Qudamah had the different opinions in the obligation of wife to expiate the copulation, even they used the same proposition.

This is the library research uses descriptive-analytical-comparative. The approach used in this research is the normative-socio historical approach that discusses the text and context behind the text. The data of the research include primary sources from the classical books of Imam Nawawi and Ibn Qudamah along with secondary sources as the books and classical books that have the relevant discussion to this research.

The Muslims who performs an intimate intercourse in the day of *Ramaḍan* are burdened by an expiation that is mentioned by *ḥadiṣ*, is to choose among: to free the slave, to fast two months successively or to feed sixty of poor people. Either Imam Nawawi or Ibn Qudamah used the same Hadis as their basis of the law, but they resulted a different opinion. Imam Nawawi stated that wife is not burdened by an expiation if she performs the copulation, either by her willingness or she is being under compulsion. As for Ibn Qudamah stated that wife is burdened by an expiation if she performs it by her willingness and the legal burden will be lost if she is being under compulsion.

Key words: *kaffārah*, *jima'*, *Ramaḍan*, Imam Nawawi, Ibn Qudamah.



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Menyatakan dengan sesungguhnya bahwa skripsi yang berjudul: "Wife's Expiation for Having Intercourse in Ramadan According to The Opinion of Imam Nawāwī and Ibn Qudāmah" adalah benar hasil karya saya sendiri dan bukan plagiasi dari hasil karya orang lain, kecuali yang secara tertulis diacu dalam penelitian ini dan disebutkan dalam acuan daftar pustaka.

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TRANSLITERATION GUIDELINES OF ARAB-LATIN

The transliteration of Arab-Latin that used in this thesis is guided by the decree of the Minister of Religion and Minister of Education and culture of the Republic of Indonesia Number: 158/1987 and 0543b/u/1987 dated: 22 of January 1988.

A. Single Consonant

<i>Arabic Letters</i>	<i>Name</i>	<i>Latin Letters</i>	<i>Description</i>
ا	Alif	Not denoted	
ب	Ba'	B	Be
ت	Ta'	T	Te
ث	ṡa'	Ṣ	S (with a point above)
ج	Jīm	J	Je
ح	Ḥā'	Ḥ	Ha (with a point below)
خ	Kha'	Kh	K and H
د	Dāl	D	De
ذ	Ẓāl	Ẓ	Z (with a point above)
ر	Ra'	R	Er
ز	Za'	Z	Zet
س	Sīn	S	Es
ش	Syīn	Sy	Es and Ye
ص	Ṣād	Ṣ	Es (with a point below)
ض	Ḍad	Ḍ	De (with a point below)

ط	Ṭā'	Ṭ	Te (with a point below)
ظ	Zā'	Z	Zet (with a point below)
ع	‘Aīn	‘	Inverted comma
غ	Gain	G	Ge
ف	Fa'	F	Ef
ق	Qāf	Q	Qi
ك	Kāf	K	Ka
ل	Lām	L	‘El
م	Mīm	M	‘Em
ن	Nūn	N	‘En
و	Wāwu	W	W
ه	Ha'	H	Ha
ء	Hamzah	‘	Apostrophe
ي	Ya'	Y	Ye

B. Double consonants Because of *Syiddah* is Written Double

مُتَعَدِّدَةٌ	Written	<i>Muta'addidah</i>
عِدَّة	Written	<i>'iddah</i>

C. *Ta' Marbuṭah* in The End of Word

1. If *Ta' Marbuṭah* is being read as a consonant then it is written by the letter *h*, but the Arabic words that have been uptake to the Indonesian language such as Salat, Zakat and ecetera.

حِكْمَة	Written	<i>Hikmah</i>
جِزْيَة	Written	<i>Jizyah</i>

2. If *Ta' Marbuṭah* is folowed by *alif-lam* connection “*al*” and both words are separated, then it is written by the letter *h*

كَرَامَة الْأَوْلِيَاءِ	Written	<i>Karāmah al-auliya'</i>
-------------------------	---------	---------------------------

3. If *Ta' Marbuṭah* is being read as vowel by *harakat fathāḥ, kasrah* or *ḍammah*, then it is written by the letter *t*.

زَكَاةُ الْفِطْرِ	Written	<i>Zakāt al-fiṭr</i>
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D. The Short Vowel

ـَ	<i>fathah</i>	Written	A
ـِ	<i>Kasrah</i>	Written	I
ـُ	<i>ḍammah</i>	Written	U

E. The Long Vowel

<i>fathah+alif</i> جَاهِلِيَّة	Written	<i>Ā</i> <i>Jāhiliyyah</i>
<i>fathah+ya' mati</i> تَنْسَى	Written	<i>Ā</i> <i>Tansā</i>
<i>Kasrah+ya' Mati</i> كَرِيم	Written	<i>Ī</i> <i>Karīm</i>
<i>ḍammah+wayu mati</i> فُرُوض	Written	<i>Ū</i> <i>furūd</i>

F. Double Vowel

<i>fathah+ya' mati</i>	Written	<i>Ai</i> <i>bainakum</i>
------------------------	---------	------------------------------

بَيْنَكُمْ		
<i>fathah+wawu mati</i> قَوْل	Written	<i>Au</i> <i>Qaul</i>

G. The Successive Vowel In A Word

The writing of successive vowel in a word is separated by apostrophe (‘)

أَنْتُمْ	Written	<i>a’antum</i>
لَنْ شَكَرْتُمْ	Written	<i>La’in syakartum</i>

H. The Word With The AlīF-LāM Connection

1. If *Alīf+Lām* connetion is followed by the letters of *qamariyyah*, then it is written by *al*.

الْقُرْآن	Written	<i>Al-Qur’ān</i>
الْقِيَّاس	Written	<i>Al-Qiyās</i>

2. If *Alīf+Lām* connection is followed by the letters of *Syamsiyyah*, then it is written by the letter of *Syamsiyyah* that follows it, as well as eliminating the *l* (el) letter.

السَّمَاء	Written	<i>as-Samā</i>
الشَّمْس	Written	<i>as-Syams</i>

I. Capital Letters

The writing of capital letters appropriates with EYD.

J. The Writing of the Words in The Sentence

The words in the sentence are written as the pronunciation.

ذَوِ الْفُرُوض	Written	<i>Žawī al-furūd</i>
أَهْلِ السُّنَّة	Written	<i>ahl as-Sunnah</i>

MOTTO

ومن لم يذق مرّ التّعلّم ساعة
تجرّع ذلّ الجهل طول حياته



DEDICATION

*I dedicate this essay to my both
parents, especially as a 55th
birthday gift for my mother "18
of February 1961- 18 of
February 2016".*

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله, والشكر لله, الصلاة والسلام على أشرف الأنبياء والمرسلين محمد صلى

الله عليه وسلم واصحابيه ومن تبعه باحسان الى يوم الدين, اما بعدز

As-salām ‘alaikum wa rahmatullah wa barakātuh

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Wa as-salām 'alaikum wa rahmatullāh wa barakātuh

Yogyakarta, 2 Rabi'ul Awwal H
14 December 2015 M

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CHAPTER ONE

INTRODUCTION

A. Background of Problems

Islamic law in the Muslim traditions has begun with the divine revelation of the al-Qur'an and Muhammad's decision,¹ in Islamic tradition, that is called al-Ḥadīṣ or Prophetic traditions. Al-Qur'an and al-Ḥadīṣ have become the foundation and the source for Islamic law. They have solved every problem since the Prophetic period. Some problems were solved directly by divine revelation while they were happening, and other problems were explained by Prophet Muhammad's agreement.

In general, the Qur'an plays as the guidance of the people or *hudan linnās*.² The legal verses of the Qur'an do not always explain the command specifically, but, it mentions only some obligations by the general form. Then the general commands of the legal verses of the Qur'an are explained by the Prophetic traditions that play as the second primary source in Islam.³ The

¹ Muhammad Khalid Mas'ud, *Shatibi's Philosophy of Islamic Law: A Revised and Enlarged Version of Islamic Legal Philosophy*, (Islamabad: Islamic Research Institute, 1995), hlm. 10.

² Ali Sodikin, *Fiqh Ushul Fiqh: Sejarah, Metodologi dan Implementasinya di Indonesia*, cet. Ke 1, (Yogyakarta: Beranda, 2012), hlm. 67.

³ At least, as-Sunnah has three functions for al-Qur'an, first function is as *ta'kid* for the proposition in the verses of al-Qur'an. Second function is as explanation of some commands which are general. And the last function is as *musyārī*' source of law which did not found in the verses of al-Qur'an. Rachmat Syafe'i, *Ilmu Ushul Fiqih: Untuk UIN, STAIN, PTAIS*, (Bandung: Pustaka Setia, 2007), hlm. 65-67.

interpretation of these sources for Islamic law is using different methods, which later cause the diversity in Islamic law determination.

On its progress, the scholar-jurists have different opinions in determining the product of Islamic jurisprudence. According to the law of causality, all actions are caused by the entities. As well as dissent, the different products of Islamic jurisprudence among scholars have been caused by the factors, they are, al-Qur'an and al-Ḥadīṣ linguistic, the validity of Prophetic traditions, the principles of Islamic jurisprudence, and the principle of *fiqh*.⁴ Another literature mentions that the differences of Islamic jurisprudence product have been caused by eight factors, namely the different perusal of al-Qur'an, difference of knowledge among scholars in the Prophetic traditions, misdoubt in the Prophetic traditions, polysemy factor, lacking the proposition of the problem, and employing the different method of the principles of Islamic jurisprudence.⁵

Basically, according to the author's opinion, the different product of Islamic jurisprudence has been caused by the ability of scholars in understanding propositions in al-Qur'an and al-Ḥadīṣ, the methods used to interpret the proposition, and differences in the environmental factors or social constructs. The factors which are mentioned, later, cause different opinions in Islamic jurisprudence problems.

⁴ Dedi Supriadi, *Ushul Fiqh Perbandingan*, (Bandung: CV Pustaka Setia, 2013), hlm. 27.

⁵ Fuad Zein dkk. *Studi Perbandingan Madzhab*, (Yogyakarta: Pokja Akademik UIN Sunan Kalijaga, 2006), hlm. 13.

One Islamic law issue that has been discussed by Muslim scholars in classical books till the present period is about *Ramaḍan*. In the classical books, the scholars of the classic period describe every problem related to *Ramaḍan* and its content, from the beginning of *Ramaḍan* till the punishment for the Muslim who do not obey the religious order such as conducting fast. In the present time, Muslim scholars, especially Indonesian scholars prefer to discuss the beginning of *Ramaḍan*, as known by the people that the Ministry of Religious affairs always holds an establishment of the beginning of *Ramaḍan* than another issues.

The one important discussion about *Ramaḍan* that is rarely discussed is about wife's expiation for having intimate intercourse during the day in *Ramaḍan*. Intimate intercourse is an act which involves two persons, namely a husband and a wife. Then, the problem about the punishment of the expiation arises, why Muslim-scholars agree for men's liability of expiation, meanwhile, some of them do not agree with women's liability.

In the fasting month,⁶ Muslims themselves must abstain from anything that will invalidate their fast. As-Sayyid Sābiq divided the things that would

⁶ Fasting according to the Arabic language is *ṣaum*, it's literally defined refrain from something. Fasting according to Islamic Shari'a is to abstain completely from anything which break the fasting such as eating, drinking or intimate intercourse with the intending of muslim before the dawn till the sunset. Wahbah az-Zuhaili, *Al-Fiqh al-Islāmi Wa Adillatuhu*, (Damaskus: Dār al-Fikr, 2007) cet. 10, jilid 3, hlm. 1616.

break the fast into two parts: 1. Breaking the fast and requiring *qaḍa*; 2. Breaking the fast and requiring *qaḍa*, and *kaffārah* “expiation”⁷

The annulment of the fast by eating and drinking, thus, it is necessary the replacement of the fast in another time but the days of *Ramaḍan*. The Muslim who breaks his fast with an intimate intercourse without an invalid excuse, he has the liability of *qaḍa*, as who breaks his fast because of the sickness and the travelling. The punishment for the annulling of the fast with an intimate intercourse not only the liability of *qaḍa*, but the scholars have agreed for the expiation, and the Muslim whose fast is broken by the intimate intercourse must continue his fast for the rest of the day.⁸

Basically, an intimate intercourse is allowed whenever married people want to perform it. But, specifically in the day of *Ramaḍan*, the Muslim must obey the religion command such as undertaking the fast. Sexual intercourse is one of the things that would break the fast. Muslims who intend to fast and then breaking his fast with an intimate intercourse, thus, his fast will be broken. Intercourse prohibition during the day in *Ramaḍan* is based on divine revelation in Qur'an:

أَحَلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثَ إِلَى نِسَائِكُمْ....⁹

⁷ As-sayyid Sabiq, *Fiqh as-Sunnah*, (Cairo: Dār al-Fath li al-I'lam Al-Arobi, 2000), jilid 1, hlm. 325.

⁸ Yahya Ibn Syarif an-Nawāwī, *Al-majmu' Syarah Al-Muhazzab*, (Kairo: Al-Muniriyyah), jilid 6, hlm. 330.

⁹ Al-Baqarah (2): 187

Explicitly, the verse provides freedom to married people to perform an intimate intercourse in the night of *Ramaḍan*. It means that an intimate intercourse in the day of *Ramaḍan* is not allowed and forbidden by utilising the reciprocal understanding.¹⁰ The Muslim who breaks his fast without an excuse of *syar'i*, he has to expiate it with some penalties based upon to the Prophetic tradition regarding the expiation for having an intimate intercourse in the day of *Ramaḍan*:

حدثنا يحيى بن يحيى وأبو بكر بن أبي شيبة، وزهير بن حرب وابن نمير، كلهم عن ابن عيينه، قال يحيى: أخبرنا سفيان بن عيينة، عن الزهري، عن حميد بن عبد الرحمن، عن أبي هريرة رضي الله عنه قال: جاء رجل إلى النبي صلى الله عليه وسلم، فقال: هلكت يا رسول الله! قال: (وما أهلكك؟) قال وقعت على امرأتي في رمضان، قال: (هل تجد ما تعتق رقبة؟) قال: لا، قال: (فهل تستطيع أن تصوم شهرين متتابعين؟) قال: لا، قال: (فهل تجد ما تطعم ستين مسكيناً؟) قال: لا، قال: ثم جلس، فأوتي النبي صلى الله عليه وسلم بعرق فيه تمر، فقال: (تصدق بهذا) قال: أفقر منّا؟ فما بين لابتيها أهل بيت أحوج إليه منّا، فضحك النبي صلى الله عليه وسلم حتى بدت أنيابه، ثم قال: (أذهب فأطعمه أهلك)¹¹

According to the al-Ḥadīṣ, there are three opinions among scholars regarding the expiation: first, the expiation is only husband's liability, because, it is the special obligation for men on the intercourse act as same as men's

¹⁰ To take the law from the *nash* by understanding its opposite. Read, Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, alih bahasa: Faiz el Muttaqin, cet. 1, (Jakarta: Pustaka Amani, 2003), hlm. 219.

¹¹ Abu Husain Muslim Ibn al Hajaj al-Qushairi al-Naysaburi, *Sahih Muslim*, (Beirut: Dar al-Kitāb al-ʿArabi, 2004), hlm. 215.

obligation on the dowry; second, each husband and his wife have the liability of the expiation, because it is the punishment of an act such as intimate intercourse, as same as the punishment of adultery; third, both a husband and a wife have one liability of expiation, it is because the narrative says that an Arabian asked to the Prophet of Muhammad about an act involving two people, so he was obliged to set a slave free. It is an indication that a slave is for both subjects.¹²

This study aims to reveal the diversity between Imam Nawāwī and Ibn Qudāmah. Both scholars used the same proposition based on Prophetic tradition. However, either Imam Nawāwī or Ibn Qudāmah concluded different opinions regarding wife's liability. The author views the factor of the different opinion is the employment of different method and their environment. Imam Nawāwī said, based on Imam Syāfi'i book *al-Umm*, that the expiation is only husband's liability.¹³ Many opinions of Imam Nawāwī were affected by the ideas of Imam Syāfi'i, because he was one famous scholars from Syāfi'i school. Imam Syāfi'i in his book *al-Umm* said based on the narrative of Ahmad, we did not find wife's expiation in the Prophetic traditions.¹⁴

As for Ibn Qudāmah, he was one famous scholars of Hanbali school. He wrote many works about Islamic studies. There are many famous works in

¹² Yahya Ibn Syarif an-Nawāwī, *Al-majmu' Syarah Al-Muhazzab*, (Kairo: Al-Muniriyyah), jilid 6, hlm. 330.

¹³ *Ibid.*, hlm. 331.

¹⁴ Muhammad Ibn Idris asy-Syāfi'i, *Al-Umm*, (Beirut: Dār al-Kutub Al-'Ilmiyah, 1971), jilid 2. hlm. 175.

Islamic jurisprudence, such as *al-Kāfī*, *al-Muqni'* and *al-Mugnī*. These books are popular references of Islamic jurisprudence in Ḥanbali school. Ibn Qudāmah discussed Islamic jurisprudence by the various perspectives of scholars. Specifically, on expiation of intimate intercourse in the day of *Ramaḍan* discussion, he found that either husband or wife had the same punishment in expiation. He did not say it explicitly, but, in the following discussion which he described about forced wife's expiation, he explained that the wife had no liability of the expiation if they were being forced to perform it.¹⁵ By the reciprocal understanding, it can be concluded that the wife has her expiation if she is not being under compulsion.

The wife's position is equal to the husband in intimate intercourse, then, she has the obligation of expiation as same as husband's due, because the intimate intercourse is the one thing would break the fast.¹⁶ The exception for the wife is, if she is being forced to perform an intimate, then the obligation is lost, according to Ibn Qudāmah's opinion.

B. Formulation of Problem

Based on the background of the matter above, the author developed some problem formulations as follows:

1. What are Imam Nawāwī and Imam Ibn Qudāmah's opinions about wife's expiation for having an intimate intercourse during the day in *Ramaḍan* ?

¹⁵ Ahmad Ibn Muhammad Ibn Qudāmah, *al-Mugnī*, jilid 4, cet. 2, (Kairo, Hajar, 1992), hlm. 376.

¹⁶ Muhammad Ibn Qudāmah al-maqdisi, *Al-Muqni'*, cet. Ke2, (Riyāḍ: Dār 'Alimu Al-Kutub, 2005), jilid: 7, hlm. 448.

2. What are the similarities and the differences between the opinions of Imam Nawawi and Ibn Qudamah related to opinions about wife's expiation for having an intimate intercourse during the day in *Ramaḍan*?

C. Purpose and Benefit of Research

The main purpose of this study is to answer the questions mentioned in the problem formulation. The purposes of the research are as follows:

1. To describe the opinions and thoughts of Imam Nawāwī and Ibn Qudāmah about wife's expiation for having intimate intercourse in the day of *Ramaḍan*.
2. To describe the similarities and differences between the opinion of Imam Nawawi and Ibn Qudamah related to opinions about wife's expiation for having an intimate intercourse during the day in *Ramaḍan*.

As for the benefits of this research are:

1. The results of this research are expected to give thoughtful contribution in order to enrich the treasury of Islamic jurisprudence, especially those that has the relation to the comparative of Islamic thought.
2. The results are hoped to enrich author's knowledge especially, and it becomes a solution for Muslims about wife's expiation.

D. Prior Research

Throughout the search of literature, there are many discussions of the expiation of intimate intercourse in the day of *Ramaḍan*. The theme of expiation has been widely discussed by the scholars of the classical period in

their books of the Islamic jurisprudence. Some of the research and books that are relevant to this present study are as follows:

A book entitled *Fiqih Puasa: Memahami Puasa Ramadhan, Zakat Fitrah, dari Raya dan Halal bi Halal* written by Gus Arifin explains fast and its contents, including the expiation for Muslims whose fast is null by the intimate intercourse. This book compares the opinions of the four Imam mazhab such as Ḥanafī, Syāfi'i, Maliki, and Ḥanbali.¹⁷

The undergraduate thesis that has written by Moh. Ali Shodiqin, entitled *Kifarat Jima' Siang Hari Bulan Ramadhan 'Studi Komparasi Antara Imam Malik dan Imam Asy-Syāfi'i'*. The conclusion of his research is that the offender may choose the punishment for having intimate intercourse by three ways of expiation according to the Prophetic tradition; to free a slave, to fast for two months continually, or to give a food to sixty of the poor man and each of them has one *mud*. According to Imam Malik opinion, the expiation can be selected from among three ways. He argued that the mean of (أَوْ) in the proposition is (علي التخيير) to choose among three, not in sequence. As for Imam asy-Syāfi'i, he argued that the expiation must be in sequence, the offender could not choose the punishment. He has made a decision to provide the deterrent effect for the offender.¹⁸

¹⁷ Arifin, *Fiqih Puasa: Memahami Puasa Ramadhan, Zakat Fitrah, Hari Raya, dan Halal Bihalal*, (Jakarta: Gramedia, 2013).

¹⁸ Moh. Ali Shodiqin, *Kifarat Jima' Siang Hari Bulan Ramadhan 'Studi Komparasi Antara Imam Malik Dan Imam Asy-Syafi'i'* skripsi, (Yogyakarta: UIN Sunan Kalijaga, 2009)

The second undergraduate thesis that described *Kifarat Jima' Siang Hari Pada Bulan Ramadhan 'Studi Komparasi Menurut Pendapat Imam Malik Dengan Imam asy-Syafi'i'* was written by Fatchurrohman. The conclusion of his research is that Imam asy-Syāfi'i opinion is the closest opinion to the purpose of the law. He argued that the Prophetic tradition position is equal to the al-Qur'an, and it does not explain about the choice of the punishment for the offender, it is the *qat'i* proposition.¹⁹

As far as the author's search, there are many books, and thesis that discuss about expiation for having an intimate intercourse in the day of *Ramadhan*. But, there are no books or science papers that specifically discuss wife's expiation for having intercourse in the day of *Ramadhan*: according to the opinion of Imam Nawāwī and Ibn Qudāmah. Therefore, the author convinces that this research is a new thing and no discussion about it before.

E. Theoretical Framework

Kaffārah etymologically is from the Arabic language, which means to cover, to erase, and to clean.²⁰ *Kaffārah* is an expiation or atonement for the Muslims non-discharge of certain obligations,²¹ which purposes is to cover or erase the sin of the Muslim's violation. Expiation in Islamic law, according to

¹⁹ Fatchurrohman, *Kifarat Jima' Siang Hari Pada Bulan Ramadhan 'Studi Komparasi Menurut Pendapat Imam Malik Dengan Imam Asy-Syafi'i'*, skripsi (Yogyakarta: IAIN Sunan Kalijaga, 2001)

²⁰ Arifin, *Fiqih Puasa: Memahami Puasa Ramadhan, Zakat Fitrah, Hari Raya, dan Halal Bihalal*, (Jakarta: Gramedia, 2013), hlm. 116.

²¹ Abdur Rahim, *The Principles of Islamic Jurisprudence*, edisi revisi ke 2, (New Delhi: Kitab Bhavan, 1994), hlm. 384.

Wahbah az-Zuhailī, it is limited to violations of Islamic law regarding four kinds of actions.²² The Muslim who violates one of the four kinds of these actions will be burdened by one of three punishments of expiation. As for the kinds of actions that will be burdened by the punishment of expiation are as follows:

1. Having intimate intercourse in the day of *Ramaḍan*
2. Disobeying an oath
3. Killing the people intentionally
4. *Zihār*

As for the kinds of expiation punishment according to the Prophetic tradition are to set a slave free, fast for two months continually, and to give a food to sixty of the poor man and each of them have one *mud*. The forms of punishment that are mentioned in Prophetic tradition described a self-purification of a Muslim to his God.

Expiation in the *Ramaḍan* is burdened to the Muslim who do not obey certain obligations as the religious order. Hanafiyah scholars said the things of actions that would be burdened by the *qada* and expiation is breaking the fast intentionally such as eating and drinking during the fasting time, and having intimate intercourse.²³ As for Syāfi'iyah scholars stated that the thing will

²² Wahbah az-Zuhaili, *Al-Fiqh al-Islāmī Wa Adillatuhu*, cet. Ke 3, (Damaskus: Dār al-Fikr, 2007) , jilid 3, hlm. 1616.

²³ Abdurrahman Al-Jaziri, *Kitab al-Fiqh 'ala al-Mazhab al-Arba'ah*, cet. Ke 3 (Kairo: Maktabah at-Tijāri, 1990) hlm. 560.

break the fast is an intimate intercourse only.²⁴ Then Ḥanbaliah scholars said as same Syāfi'iyah scholars. Afterward, Malikiyah scholars said the things that would break and null the fast, would be burdened by the *qada* and expiation, and they established some special requirement on it.²⁵

Jumhūr 'Ulama agreed that the Muslim whose fast is invalid by an intimate intercourse, thus he/she has to replace his fast in another time but the day of *Ramaḍan*. Although, Imam asy-Syāfi'i and al-Auzā'i have said there is no obligation of *qada* for who has been obliged with the expiation²⁶. Beside *qada*', he is burdened by an expiation. Basically, the prohibition of the intimate intercourse during the day in *Ramaḍan* is based on the divine revelation at verse 187 of *al-Baqarah*. Indeed, it does not explicitly explain about the prohibition, but, if this verse is understood by the reciprocal understanding, will find that the intimate intercourse in the day is forbidden. This verse explicitly says that the intimate intercourse is allowed in the night of *Ramaḍan*.

To facilitate the analysis of the opinion of Imam Nawāwī and Ibn Qudāmah, the author will use the principle of Islamic jurisprudence as a theoretical framework. The principle of Islamic jurisprudence in Arabic language known as *uṣul fiqh*.

²⁴ *Ibid*, hlm. 561.

²⁵ *Ibid*., hlm. 562.

²⁶ Abdul Karim Zaidan, *Al-Mufaṣṣal fī Ahkam al-Mar'ah wa Bayt al-Muslim fī asy-Syāri'ah al-Islāmiyyah*, jilid 2, cet. Ke 3, (Beirut: Mu'assasah ar-Risalah, 2000), hlm. 55.

Uṣul fiqh is knowledge about the principles that is employed as equipment to elaborate the laws of Islam from the sources such as al-Qur'an and al-Ḥadīṣ.²⁷ Every problem which appears in the life of human being then identified and sought the law from the sources to be used as the basis of law. From the perspective of *ḥujjiyah* of the proposition, then will be judged the grade of the truth of proposition. The function of *uṣul fiqh* is to elaborate the thought and methods of both scholars opinion.

Al-Qur'an and al-Ḥadīṣ uses the Arabic language, then the law of its content can be understood by understanding the structure of the words. These principles and limits are developed from the structure of the Arabic language and the establishment of philologist of Arabic language.²⁸ At least, there are two linguistic principles that could be used to analyze the mean of the proposition, they are *ṭurūq lafẓiyah* or textual approach, and *ṭurūq ma'nāwiyah*.

The text approach is to analyze the text of proposition by the accurate and detail.²⁹ The method of textual approach in another literature is called by *manṭūq*, it is the technical form of determining the Islamic law by understanding the instructions of the proposition words.³⁰ There are four form of proposition word that can be used as the basis of Islamic jurisprudence

²⁷ Muhammad Abu Zahrah, *Uṣul Fiqh*, alih bahasa: Saefullah Ma'shum dkk. cet. ke 13, (Jakarta: Pustaka Firdaus, 2010), hlm. 3.

²⁸ Abdul Wahhab Khallaf, *Ilmu Ushul Fikih*, alih bahasa: Faiz el Muttaqin, cet. 1, (Jakarta: Pustaka Amani, 2003), hlm 199.

²⁹ Hasbiyallah, *Fiqh dan Ushul Fiqh: Metode Istinbath dan istidlal*, (Bandung: Remaja Rosdakarya, 2013), hlm. 46.

³⁰ Hafidz Abdurrahman, *Ushul Fiqih: Membangun Paradigma Berpikir Tasyri'i*, (Bogor: Al-Azhar Press, 2012), hlm. 290.

determination. The first form is *ẓāhir*, it is the explicit form of the proposition word but it has probably the other mean that purposed. The second form is *naṣ*, the scholars of Syāfi'i school viewed that *naṣ* is the word of proposition which does not contain *iḥtimāl*. Technically, there are some similarity between *ẓāhir* and *naṣ* which has the mean of the explicit purpose from the proposition. The third form is *mufassar*, it is the other name of the explained proposition by the other one. The last form is *muḥkam*, it is the distinct interpretation and does not approve the *ta'wīl*.³¹

Beside the mentioned or *manṭuq* proposition, there is other way to view the proposition from the side of unmentioned form, by understanding the reason of the proposition, it is called by *dalalah mafhūm*. 'Ulama *uṣūl* have categorized *mafhūm* into two form, *mafhūm muwāfaqah* and *mafhūm mukhālafah*. The first form means that unmentioned law has the similarity and relevance purpose to the mentioned proposition, it can be called as *fahw al-khiṭāb* and *laḥn al-khiṭāb*. As for *mafhūm mukhālafah* is to take the conclusion of law by the opposite of the proposition. Sometime, *naṣ* did not mention the command explicitly, because the order and prohibition that mentioned by *naṣ* is the opposite.³² If the *naṣ* states the permissibility of an act, then it can be concluded that the prohibition on the opposite.

³¹ Hasbiyallah, *Fiqh dan Ushul Fiqh: Metode Istinbath dan istidlal*, hlm. 46-50.

³² Hafidz Abdurrahman, *Ushul Fiqih: Membangun Paradigma Berpikir Tasyri'i*, hlm. 303-306.

To determine the law of some cases, scholars have to find the proposition that explains the problem. There are problems of Islamic jurisprudence that has been explained by the proposition, but there are many problems are not declared by proposition. Here the scholar has to find the relation between problems which did not told by the proposition and the other problem mentioned in the proposition. This method called by *qiyās* or analogical reasoning, this concept of *ijtihād* systematized by Imam Syāfi'i. *Qiyās* actually used to balance the use of mind and proposition in determining of Islamic law.³³

The implementation of *qiyās* in determining Islamic law should fulfill some pillars of *qiyās* such as *al-aṣl*, it is the problem of Islamic law which has mentioned in the proposition such al-Qur'an and al-Ḥadīṣ, second pillar is *al-furu'*, it is the problem that looked for its basis of law, third is *ḥukm al-aṣl*, it is problem's law mentioned in the proposition, and fourth is *'illah*, it is the characteristic of *al-aṣl*, by the requirements that it is real character and can be reached by the sense, it must be concrete and appropriate to the purpose of that law.³⁴

Scholars have divided *qiyas* into three categories due to the comparative of *al-far'u* and *al-aṣl* strength of law. Those are *qiyas aulawi* which the law of *al-far'u* is higher than *al-aṣl*, then *qiyas al-musāwi*, either the

³³ Ali Sodikin, *Fiqh Ushul Fiqh: Sejarah, Metodologi dan Implementasinya di Indonesia*, hlm. 87.

³⁴ *Ibid.*, hlm. 88.

law of *al-far'u* or *al-aşl* has the same strength law, and the last is *qiyas adna* which the law of *al-far'u* is weaker than law of *al-aşl*.³⁵ This way of analogical reasoning is one example of *ṭurūq ma'nāwiyah*.

F. Research methods

The methods used in this study are as follows:

1. Type of Research

This research used library research, which focused on analysing the contents of the literature that is related to this study. This is the descriptive-analytical-comparative research, which describes the thought and opinion of Imam Nawāwī and Ibn Qudāmah. After describing their thoughts and opinions, then it analyzed and compared by using their methods.

2. Technique of data collecting

The library research is used to analyze some books that are relevant to the discussion. The author uses the source of data as bellow:

a. Primary source

The primary source contains the things that related to this study, as for the data that used as a primary source are the classical books that discuss about wife's expiation, especially Imam Nawāwī's book *as-Syarah al-Muḥaẓẓab*, *Rauḍatu at-ṭalibin*, *al-Minhāj* and Ibn Qudāmah's book as *al-Mugnī*, *al-Kāfī* and *al-Muqni'*.

³⁵ *Ibid.*, hlm. 89-90.

b. Secondary source

Secondary sources were taken from some of the papers as thesis, journals, and books that discuss expiation for having an intimate intercourse in the day of *Ramaḍan*.

3. Approach

This research uses the normative socio-historical approach. The normative approach is used to discuss the theme using the principle of Islamic jurisprudence, to know the basic method of the thought. The socio-historical approach is used to discuss the background of both scholars, and to analyze their history of life that affected their mind in Islamic jurisprudence.

4. Data Analysis

This research is using the deductive, inductive, and comparative to analyze the data. Deductive analysis is used to look for the proposition which is related to the rules from al-Qur'an and al-Ḥadīṣ, then implementing it into the life. The inductive analysis is used to look for the proposition of the life problem regarding wife's expiation by the methods of Imam Nawāwī and Ibn Qudāmah. Then, it will be analyzed by the comparative method to get the similarities and differences between two opinions.

G. Organization of Thesis

To facilitate this research discussion, the author divides it into five chapters namely:

The first chapter contains the introduction that introduces the research that will be discussed. In the background section, the author explains about the need of this research. The problem formulation is to limit the discussion to be specific. Then purpose research will make the explanation about the purpose and benefit of this research. Afterward, the literature review section explains the differences between this research and other studies that have been written. The theoretical framework contains explanation about the concept of expiation in Islamic jurisprudence. It also explains the author's approach. In the research method section, it explains methods of the research used by the author in writing the report. So, the last content is the systematic discussion to organize the research systematically, from the introduction to the conclusion.

The second chapter discusses expiation in Islamic jurisprudence. Generally, this chapter is divided into two parts: the first part explains some kinds of action that would break the fast and punishment with an expiation that is based on scholars' opinion. The second part explains the object of the expiation, which consists of the opinions of scholars about men and women obligation in the expiation.

The third chapter contains the biography of Imam Nawāwī and Ibn Qudāmah related to their social life, works, and their background of education. Then, it explains their methods in Islamic jurisprudence, and their view about wife's expiation.

The fourth chapter discussion is specialized to analyze both of scholar's opinion from the perspective of the proposition and their methods. Then it compares their opinion to get the similarities and differences between both opinions.

The fifth chapter is the closing of the discussion which contains the conclusion, suggestions, bibliography and appendices.



CHAPTER FIVE

CLOSING

A. Conclusion

Based on the discussion about “wife’s expiation for having an intimate intercourse in Ramaḍan according to the opinion of Imam Nawāwī and Ibn Qudāmah”, it can be concluded as follows:

1. Imam Nawāwī that wife is not burdened by the expiation, even she performs it by her willingness. He argued that the proposition was not mention and explain it explicitly. Ibn Qudāmah stated that wife has the obligation of expiation even the proposition did not mention it explicitly, it is because there is no different between man and woman in the obligation of fast. Either man or woman who breaks the fast by intimate intercourse, it means they break the honor of Ramadan. Wife’s obligation will be lost if she is being under compulsion in performing it.
2. Either Imam Nawāwī or Ibn Qudāmah is the scholar that categorized as *mujtahid tarjih* who lied his opinion on the opinion and method that used by the founding of the school. They used the same proposition of al-Ḥaḍīṣ about an Arabian who came to prophet Muhammad to ask about the punishment of the break the Ramaḍan fast by an intimate intercourse. Even, they both used the same proposition, but, by utilising a different method of Islamic jurisprudence, thus they made different opinions about wife’s

obligation of an expiation. Imam Nawāwī stated that an expiation is special obligation for the man, and the woman had no obligation on it. He argued that the text or *manṭūq* of Ḥadīṣ did not mention about the obligation of wife. Then it can be seen that Imam Nawāwī concluded the law of an expiation is based on the *ẓāhir* or text of Ḥadīṣ. Whereas Ibn Qudāmah stated that even the text of Ḥadīṣ did not explain the wife's obligation, but he argued that the copulation is one of things that would break the fast. Therefore, there is no difference between husband and wife. Invalidating the fast by an intimate intercourse also breaks the honor of Ramaḍān month, then the wife is burdened by an expiation if she performs the copulation by her willingness. Then, the legal burden of her would be lost if she is being forced by her husband to perform it. He used the method of *fahwā wa isyārah* which seeks the existence of the same meaning between *maskūt* and *manṭūq* of the proposition.

B. Suggestions

1. The writer hopes the leaders of religion such as scholars, Kyai, *Ustāẓ*, and *muballig* to be more careful in interpreting the Islamic law from the sources. It is purposed to avoid the partial and ahistorical interpretation that causes the violences legalisation on behalf of Islam.
2. Intrerpretation of verses and Ḥadīṣ of laws should not be separated from the context that caused the revelation of either verse of Ḥadīṣ. It is important to discuss the context when the law was revealed and the present context to

find the main purpose of law to be relevant to be implemented at any times and any places.



BIBLIOGRAPHY

A. Al-Qur'an

Departemen Agama, *Al-Qur'an dan Terjemahnya*, Semarang: CV. Al Waah, 2008.

Zuhaily, Wahbah az-, *At-Tafsīr al-Munīr: fī al-'Aqīdah wa al-Syarī'ah wa al-Manhaj*, Beirut: Dar al-Fikr, 1991.

B. Al-Hadis

‘Asqalaniy, Ibn Hajar al-, *Fath al-Bāriy Syarah Ṣahih al-Bukhārī*, Beirut: Dār al-Kutub al-Islāmiyah, 2002.

Nawāwī, Yahya Ibn Syaraf ad-Dimasqi an-, *Ṣahīh Muslim bi Syarh an-Nawāwī*, jilid 1, cet. Ke 4, Beirut: Dār al-Kutub al-‘Ilmiyah, 2010.

Naysaburi, Abū Husain Muslim bin al Hajāj al-Qushairi an-, *Ṣahīh Muslim*, Beirut: Dar al-Kitab al-Arabi, 2004.

Qazwiny, Abu Abdullah Muhammad Ibn Yazid al-, *Sunan Ibn Mājah*, jilid 1, Semarang: Toha Putra.

Zarhūni, Muhammad al-Fadhil al-Fātimiy asy-Syubaihi az-, *al-Fajru asy-Syāthi'u 'ala as-Ṣahīh al-Jamī'*, jilid 5, Riyād: Maktabah ar-Rusyd, 2009.

C. Fiqh/ Hukum

‘Abdullah Ibn Ahmad Ibn Qudāmah and Abū ‘Umar Muhammad Ibn Ahmad Ibn Qudāmah, *Al-Mugni wa asy-Syarah al-Kabīr*, jilid 1, Beirut: Dār al-Fikr, t. Th..

Arifin, *Fiqh Puasa: Memahami Puasa Ramadhan, Zakat Fitrah, Hari Raya, dan Halal Bihalal*, Jakarta: Gramedia, 2013

Abdurrahman, Hafidz, *Ushul Fiqih: Membangun Paradigma Berpikir Tasyri'i*, Bogor: Al-Azhar Press, 2012.

Bagdādiy, Abd al-Wahhāb al-, *Al-Ma'ūnah 'ala Mazhab 'Alim al-Madīnah al-Imām Malik Ibn Anas*, jilid 1, tkp: Dar al-Fikr, t.t.

- Farra, Muhammad Ibn, *Al-Tahzīb fī Fiqh al-Imām asy-Syāfi'i*, jilid 3, Beirut: Dār al-Kutub al-‘Ilmiyah, 1997.
- Fatchrrohman, *Kifarat Jima’ Siang Hari Pada Bulan Ramadhan ‘Studi Komparasi Menurut Pendapat Imam Malik Dengan Imam Asy-Syāfi’i’*, skripsi, Yogyakarta: IAIN Sunan Kalijaga, 2001.
- Hasbiyallah, *Fiqh dan Ushul Fiqh: Metode Istinbath dan istidlal*, (Bandung: Remaja Rosdakarya, 2013.
- Hanbali, Ibn Muflih al-, *Al-Mubdi’ Syarhu al-Muqni’*, jilid 3, cet. Ke 1, Beirut: Dār al-Kutub al-‘Ilmiyah, 1997.
- Ibrāhim, Bahā’ al-Din ‘Abd ar-Rahmān Ibn al-Maqdisi, *Al-‘Uddah fī Syarh al-‘Umdah*, jilid 1, Beirut: Muassasah al-Risālah, 2006.
- Imraniy, Abū al-Husain Yahya Ibn Abī al-Khair Salim al-, *Al-Bayān fī Mazhab al-Imām al-Syāfi’i: Syarh Kitab al-Muhazzab Kāmilan wa al-Fiqh al-Muqāran*, jilid 3, Beirut: Dār al-Minhaj, 2007.
- Juzairiy, Abdurrahman al-, *Kitab al-Fiqh ‘ala al-Mazhab al-‘Arba’ah*, jilid 1, cet. Ke 1, Beirut, Dār al-Fikr, 1996.
- Juzairiy, Abdurrahman al-, *Kitab al-Fiqh ‘ala al-Mazhab al-‘Arba’ah*, cet. Ke 3 Kairo: Maktabah al-Tijāri, 1990.
- Jauziy, Ali Ibn Muhammad al-Baghdādiy al-, *Kitāb Ahkām al-Nisā’*, Beirut: Dār al-Fikr, 1989.
- Kasāni, Abu Bakr Ibn Mas’ud al-Ḥanāfi al-, *Kitab Badāi’ al-Ṣanāi’ fī Tarīb al-Syarāi’*, jilid 2, Beirut: Dār al-Fikr, 1996.
- Khin, Musthafa al-, *Al-Fiqh al-Manhāji ‘ala Mazhab al-Imām al-Syāfi’i*, jilid 1, cet ke. 10, Damsiq: Dār al-Qalam, 2009.
- Khohst, Mohamed Osman El-, *Fiqh Wanita: Dari Klasik sampai Modern*, alih bahasa: Abu Ilhamdillaha, Solo: Tinta Medina, 2013.
- Khallaf, Abdul Wahhab, *Ilmu Ushūl Fikih*, alih bahasa: Faiz el Muttaqin, cet. 1, Jakarta: Pustaka Amani, 2003.

- Malikiy, Abī Muhammad ‘Abdulwahab Ibn ‘Ali Ibn Nasr al-Baghdādiy al-, *Al-Isyrāf ‘ala Nukat Masāil al-Khilāf*, jilid 2, Riyād: Dār Ibn al-Qayyim, 2008.
- Mas’ud, Muhammad Khalid, *Shatibi’s Philosophy of Islamic Law: A Revised and Enlarged Version of Islamic Legal Philosophy*, Islamabad: Islamic Research Institute, 1995.
- Nawāwī, Yahya Ibn Syaraf ad-Dimasqi an-, *Raudhatu at-Ṭālibin*, jilid 2, cet. Ke 3, Beirut: Dār al-Kutub al-‘Ilmiyah, t.t.
- , Yahya Ibn Syaraf ad-Dimasqi an-, *Raudah at-Ṭalibin wa ‘Umdah al-Muftin*, jilid 1, t.tp: Dar al-Fikr, t.t.
- , Yahya bin Syarif An-, *Al-majmu’ Syarah Al-Muhazzab*, jilid 6. Kairo: Al-muniriyyah, t.t.
- Qazwiny, Abū Abdullah Muhammad Ibn Yazid al-, *Sunan Ibn Mājah*, jilid 1, Semarang: Toha Putra.
- Qoiruwaniy, Ibn Abi Zaid al-, *Al-Fawākih al-Dawāniy ‘ala Risālat Ibn Abi Zaid al-Qoiruwaniy*, Beirut: Dār al-Kutub al-Ilmiyah, 1997.
- Qudāmah, Ahmad Ibn Muhammad al-Maqdisi, *Raudat an-Nāzir wa Junnat al-Manāzir*, ttp.: tnp, t.t.
- , Ahmad Ibn Muhammad al-Maqdisi, *Al-Kāfi fī Fiqh al-Imām al-Mujabbal Ahmad Ibn Ḥanbal*, jilid 1, cet. Ke 5, Beirut: al-Maktab al-Islāmi, 1988.
- , Ahmad bin Muhammad bin, *Al-Mugni*, jilid 4, cet. 2, Kairo: Hajar, 1992.
- , Ahmad bin Muhammad al-Maqdisi, *Al-Muqni’*, jilid: 7, cet. Ke2, Riyad: Dār ‘Alimu al-Kutub, 2005.
- Qurtubi, Ibn ‘Abdi al-Barr an-Namriy al-, *Al-Istidzkār*, jilid 3, cet. Ke 2, Beirut: Dār al-Kutub al-‘Ilmiyah, 2006.
- Rahim, Abdur, *The Principles of Islamic Jurisprudence*, edisi revisi ke 2, New Delhi: Kitab Bhavan, 1994.

- Rajab, Abu al-Fajr Abdurrahman Ibn, *Zail Ṭabaqat al-Ḥanābilah*, jilid 2, Mesir: as-Sunnah al-Muhammadiyah, t. Th.
- Rusyd, Muhammad bin Ahmad bin, *Bidāyah Al-Mujtahid Wa Nihāyah Al-Muqtaṣid*, Cairo: Maktabah asy-Syurūq ad-Dauliyah, 2004.
- Sabiq, As-sayyid, *Fiqh as-Sunnah*, jilid 1, Cairo: Dār al-Fath lili'lām al-‘Arabi, 2000.
- Sarkhasi, Abu Bakr Muhammad Ibn Abi Sahl as-, *Kitab al-Mabsūt*, jilid 3, cet. Ke 1, Beirut: Dār al-Fikr, 2000.
- Sodiqin, Ali, *Fiqh Ushul Fiqh: Sejarah, Metodologi dan Implementasinya di Indonesia*, cet. Ke 1, Yogyakarta: Beranda, 2012.
- Shodiqin, Moh. Ali, *Kifarat Jima’ Siang Hari Bulan Ramadhan ‘‘Studi Komparasi Antara Imam Malik Dan Imam Asy-Syafi’i’’* skripsi, Yogyakarta: UIN Sunan Kalijaga, 2009.
- Supriadi, Dedi, *Ushul Fiqh Perbandingan*, Bandung: CV Pustaka Setia, 2013.
- Syairazi, ‘Ali Ibn Yusuf al-Fairuzabadi asy-, *Al-Muhazzab fi Fiqh al-Imām asy-Syāfi’i*, jilid 1, cet. Ke2, Beirut: Dār al-Kutub al-‘Ilmiah, 2008.
- Syāfi’ī, Muhammad Ibn Idris asy-, *Ar-Risālah*, Beirut: Dār al-Kitāb al-‘Arabi, 2006.
- , Muhammad bin Idris asy- *Al-Umm*, jilid 2, Beirut: Dār al-Kutub al-‘Ilmiah, 1971.
- Syafe’i, Rachmat, *Ilmu Ushul Fiqih: Untuk UIN, STAIN, PTAIS*, Bandung: Pustaka Setia, 2007.
- Zahrah, Muhammad Abu, *Ushul Fiqih*, alih bahasa: Saefullah Ma’shum dkk. cet. Ke 13, Jakarta: Pustaka Firdaus, 2010.
- Zaidan, Abdul Karim, *Al-Mufasssal fi Ahkām al-Mar’ah wa Bayt al-Muslim fi al-Syarī’ah al-Islāmiyyah*, jilid 2, cet. Ke 3, Beirut: Muassasah al-Risālah, 2000.
- Zein, Fuad dkk. *Studi Perbandingan Madzhab*, Yogyakarta: Pokja Akademik UIN Sunan Kalijaga, 2006.

Zuhaili, Wahbah az-, *Al-Fiqh al-Islāmī wa Adillatuhu*, jilid 3, cet. 10, Damaskus: Darul Fikr, 2007.

D. Other literature

Baqiy, M. Fuad Abdul, *Al-Mu'jam al-Mufahroys li Alfaẓ al-Qur'an al-Karīm: bi Hashiyah al-Mushaf al-Sharifah*, Kairo: Dar al-Hadis, 2001.

Boullata, Issa J., *Dekonstruksi Tradisi: Gelegar Pemikiran Arab Islam*, penerjemah Imam Khoiri, cet. Ke 2, Yogyakarta: LkiS, 2012

Brill, E.J., *First Encyclopedia of Islam 1913-1936*, jilid 6, reprint edition, Leiden: E.J. Brill, 1993.

Ilyas, Hamim dkk, *Perempuan Tertindas? Kajian Hadis-Hadis "Misoginis"*, Yogyakarta, PSW IAIN Sunan Kalijaga, 2003.

Khalil, Rasyad Hasan, *Tarikh Tasyri': Sejarah Legislasi Hukum Islam*, alih bahasa Nadirsyah Hawari, cet. ke-1, Jakarta: Amzah, 2009.

Khoiriyah, *Reorientasi Wawasan Sejarah Islam: Dari Arab Sebelum Islam Hingga Dinasti Islam*, Yogyakarta: Penerbit Teras, 2012.

Manẓur, Ibn, *Lisān al-arab*, Libanon: Dār al-Kutub al-‘Ilmiyah, 2009.

Mas'udi, Masdar F., *Perempuan di Antara Lembaran Kitab Kuning*, dalam buku *Membincang Feminisme: Diskursus Gender Perspektif Islam*, cet. Ke 2, Surabaya: Risalah Gusti, 2000.

Nasution, Harun dkk., *Ensiklopedi Islam Indonesia*, Jakarta: Djambatan, 1992.

APPENDICES

No.	Hlm.	Fn.	Terjemahan
BAB I			
1	6	14	Dihalalkan bagimu pada malam hari puasa bercampur dengan istrimu
2	7	16	Yahya Ibn Yahya dan Abu Bakr Ibn Abi Syaibah dan Zuhair Ibn Harb dan Ibn Namir berkata kepada kami, mereka semua mendengarkan dari Ibn ‘Uyainah, Yahya berkata Sufyan Ibn ‘Uyainah mengabarkan kepada kami, dari as-Zuhriy, dari Hamid Ibn ‘Abd ar-Rahman, dari Abu Hurairah Radiya Allahu ‘anhu berkata: seorang laki laki datang kepada Nabi Muhammad lalu dia berkata “celaka aku, wahai Rasulullah”, Rasulullah bertanya “apakah yang membuatmu celaka?” dia menjawab “aku menyetubuhi istriku pada siang Ramadan”. Rasulullah bersabda “mampukah engkau memerdekakan seorang budak?” dia menjawab “tidak”, Rasulullah bertanya “mampukah engkau berpuasa selama dua bulan berturut turut?” dia menjawab “tidak”, Rasulullah bertanya lagi “mampukah engkau memberi makan 60 orang miskin?” dia menjawab “tidak” Abu Hurairah berkata “orang itu lalu duduk, kemudian Nabi dibawakan satu keranjang kurma, lalu Nabi bersabda “sedekahkanlah ini” orang itu berkata “apakah bersedekah kepada orang yang lebih miskin dari kami? Disekitar sini tidak ada yang lebih membutuhkan kurma ini daripada kami” maka Nabi tertawa sampai tampak gigi serinya, kemudian bersabda “pergilah, lalu berikan kurma ini untuk makanan keluargamu”
BAB II			
3	22	2	Dihalalkan bagimu pada malam hari puasa bercampur dengan istrimu, mereka adalah pakaian bagimu dan kamu adalah pakaian bagi mereka
4	23	9	Barang siapa melepas (hak qisas) nya maka itu menjadi penebus dosa baginya.

5	23	10	Itulah kaffarah sumpah sumpahmu apabila kamu bersumpah.
6	24	11	Atau kaffarah (membayar tebusan dengan) memberi makan kepada orang orang miskin.
7	24	12	Maka kaffarahnya adalah memberi makan sepuluh orang miskin
8	24	13	Agar Allah menghapus bagi mereka kesalahan kesalahan mereka dan memperbaiki keadaan mereka.
9	28	30	Dan tidak ada dosa bagimu jika kamu khilaf tentang itu, tetapi yang dosa adalah apa yang disengaja oleh hatimu.
10	29	31	Muhammad Ibn Mustafa al-himsiy mengatakan kepada kami, al-Walid Ibn Muslim mengatakan kepada kami, al-Auza'iy mengatakan kepada kami dari 'Ata, dari Ibn 'Abbas, dari Nabi Muhammada sallallahu alaihi wasallam bersabda “sesungguhnya Allah mengampuni ummatku dalam tiga hal: kesalahan/ khilaf, kelupaan, dan yang dalam keadaan terpaksa”
11	29	32	Yahya Ibn Yahya dan Abu Bakr Ibn Abi Syaibah dan Zuhair Ibn Harb dan Ibn Namir berkata kepada kami, mereka semua mendengarkan dari Ibn 'Uyainah, Yahya berkata Sufyan Ibn 'Uyainah mengabarkan kepada kami, dari as-Zuhriy, dari Hamid Ibn 'Abd ar-Rahman, dari Abu Hurairah Radiya Allahu 'anhu berkata: seorang laki laki datang kepada Nabi Muhammad lalu dia berkata “celaka aku, wahai Rasulullah”, Rasulullah bertanya “apakah yang membuatmu celaka?” dia menjawab “aku menyetubuhi istriku pada siang Ramadan”. Rasulullah bersabda “mampukah engkau memerdekakan seorang budak?” dia menjawab “tidak”, Rasulullah bertanya “mampukah engkau berpuasa selama dua bulan berturut turut?” dia menjawab “tidak”, Rasulullah bertanya lagi “mampukah engkau memberi makan 60 orang miskin?” dia menjawab “tidak” Abu Hurairah berkata “orang itu lalu duduk, kemudian Nabi dibawakan satu keranjang kurma, lalu Nabi bersabda “sedekahkanlah ini” orang itu berkata “apakah bersedekah kepada orang yang lebih miskin dari kami? Disekitar sini tidak ada yang lebih membutuhkan kurma ini daripada kami” maka Nabi tertawa sampai tampak gigi serinya, kemudian bersabda “pergilah, lalu berikan kurma ini untuk makanan keluargamu”
12	33	41	Barangsiapa membatalkan puasa Ramadhan secara sengaja maka baginya adalah seperti kaffarah zihar

BAB IV

13	62	6	<p>Yahya Ibn Yahya dan Abu Bakr Ibn Abi Syaibah dan Zuhair Ibn Harb dan Ibn Namir berkata kepada kami, mereka semua mendengarkan dari Ibn 'Uyainah, Yahya berkata Sufyan Ibn 'Uyainah mengabarkan kepada kami, dari as-Zuhriy, dari Hamid Ibn 'Abd ar-Rahman, dari Abu Hurairah Radiya Allahu 'anhu berkata: seorang laki laki datang kepada Nabi Muhammad lalu dia berkata "celaka aku, wahai Rasulullah", Rasulullah bertanya "apakah yang membuatmu celaka?" dia menjawab "aku menyetubuhi istriku pada siang Ramadan". Rasulullah bersabda "mampukah engkau memerdekakan seorang budak?" dia menjawab "tidak", Rasulullah bertanya "mampukah engkau berpuasa selama dua bulan berturut turut?" dia menjawab "tidak", Rasulullah bertanya lagi "mampukah engkau memberi makan 60 orang miskin?" dia menjawab "tidak" Abu Hurairah berkata "orang itu lalu duduk, kemudian Nabi dibawakan satu keranjang kurma, lalu Nabi bersabda "sedekahkanlah ini" orang itu berkata "apakah bersedekah kepada orang yang lebih miskin dari kami? Disekitar sini tidak ada yang lebih membutuhkan kurma ini daripada kami" maka Nabi tertawa sampai tampak gigi serinya, kemudian bersabda "pergilah, lalu berikan kurma ini untuk makanan keluargamu"</p>
14	66	16	<p>Muhammad Ibn Mustafa al-himsiy mengatakan kepada kami, al-Walid Ibn Muslim mengatakan kepada kami, al-Auza'iy mengatakan kepada kami dari 'Ata, dari Ibn 'Abbas, dari Nabi Muhammada sallallahu alaihi wasallam bersabda "sesungguhnya Allah mengampuni umatku dalam tiga hal: kesalahan/ khilaf, kelupaan, dan yang dalam keadaan terpaksa"</p>
15	67	18	<p>Dan barangsiapa melakukan amal saleh baik dari laki laki maupun perempuan dan dia adalah seorang yang beriman, maka mereka akan masuk kedalam surga dan mereka tidak dizalimi sedikitpun.</p>
16	70	20	<p>Yahya Ibn Yahya dan Abu Bakr Ibn Abi Syaibah dan Zuhair Ibn Harb dan Ibn Namir berkata kepada kami, mereka semua mendengarkan dari Ibn 'Uyainah, Yahya berkata Sufyan Ibn 'Uyainah mengabarkan kepada kami, dari as-Zuhriy, dari Hamid Ibn 'Abd ar-Rahman, dari Abu Hurairah Radiya Allahu 'anhu berkata: seorang laki laki datang kepada Nabi Muhammad lalu dia berkata "celaka aku, wahai Rasulullah", Rasulullah</p>

			bertanya “apakah yang membuatmu celaka?” dia menjawab “aku menyetubuhi istriku pada siang Ramadan”. Rasulullah bersabda “mampukah engkau memerdekakan seorang budak?” dia menjawab “tidak”, Rasulullah bertanya “mampukah engkau berpuasa selama dua bulan berturut turut?” dia menjawab “tidak”, Rasulullah bertanya lagi “mampukah engkau memberi makan 60 orang miskin?” dia menjawab “tidak” Abu Hurairah berkata “orang itu lalu duduk, kemudian Nabi dibawakan satu keranjang kurma, lalu Nabi bersabda “sedekahkanlah ini” orang itu berkata “apakah bersedekah kepada orang yang lebih miskin dari kami? Disekitar sini tidak ada yang lebih membutuhkan kurma ini daripada kami” maka Nabi tertawa sampai tampak gigi serinya, kemudian bersabda “pergilah, lalu berikan kurma ini untuk makanan keluargamu”
17	74	27	Dan barangsiapa melakukan amal saleh baik dari laki laki maupun perempuan dan dia adalah seorang yang beriman, maka mereka akan masuk kedalam surga dan mereka tidak dizalimi sedikitpun.
18	74	28	Barangsiapa melakukan kejahatan, maka dia tidak dibalas kecuali sama (dengan hal perbuatannya).
19	77	31	Dan pergaulilah mereka dengan <i>ma'ruf</i> (baik baik).

BIOGRAPHY OF SCHOLARS

1. Abu Hanifah Nu'man Ibn Sabit

Abū Ḥanīfah was born in the city of Kufa in Iraq during the reign of the Umayyah caliph Abd al-Malik ibn Marwan. His father, Thabit bin Zuta, a trader, was 40 years old at the time of Abū Ḥanīfah's birth. In 767, Abū Ḥanīfah died in prison. The cause of his death is not clear, as some say that Abū Ḥanīfah issued a legal opinion for bearing arms against Al-Mansur, and the latter had him poisoned. The sources from which Abu Hanifa derived Islamic law, in order of importance and preference, are: the al-Qur'an, the authentic narrations of the Muslim prophet Muhammad (known as al-Hadis), consensus of the Muslim community (*Ijma*), analogical reasoning (*qiyas*), juristic discretion (*istihsan*) and the customs of the local population enacting said law (*urf*).

2. Malik Ibn Anas Ibn Malik

His full name was Abu Abdullah Mālik ibn Anas ibn Mālik Ibn Abī 'Āmir Ibn 'Amr Ibnul-Hārith Ibn Ghaimān Ibn Khuthail Ibn 'Amr Ibnul-Haarith. Malik was born the son of Anas ibn Malik (not the Sahabi) and Aaliyah bin Shurayk al-Azdiyya in Madina circa 711. Imam Malik died at the age of 85 in Madina in 795 and is buried in the famous Jannat ul-Baqi cemetery across from the Masjid al Nabawi. His famous work that has been taken as the reference of Maliki school is *al-Muwatta*.

3. Muhammad Ibn Idris asy-Syafi'i

Al-Shāfi'ī was born in Gaza by the town of Asqalan on 767. Al-Shāfi'ī died at the age of 54 on the 30th of Rajab in 204 H (20 January 820 M) in al-Fustat, Egypt, and was buried in the vault of the Banū 'Abd al-Hakam, near Mount al-Muqattam. His famous works are ar-Risalah and al-Umm. The sources from which Imam asy-Syafi'i derived Islamic law, in order of importance and preference, are: al-Qur'an and as-Sunnah, al-Ijma' al-Qiyas.

4. Imam Ahmad Ibn Hanbal

Aḥmad bin Muḥammad bin Ḥanbal Abū 'Abd Allāh al-Shaybānī, His father was an officer in the Abbasid army in Khurasan and later settled with his family in Baghdad, where Ahmad was born in 780. Ahmad Ibn Hanbal died in 855 H in Baghdad, Iraq. He was mastering the al-Hadis that was reason for some of peoples has called him as the scholar of al-Hadis, not the Islamic jurist.

CURRICULUM VITAE

A. Identity

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 1. Anggota Pasukan Khusus Pramuka 15089/17
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