

Article History

Received : 5 Mei 2025
Revised : 10 Juni 2025
Accepted : 22 Juni 2025
Publishe : 22 Juni 2025

THE RULING ON ENGAGING IN SEXUAL INTERCOURSE DURING THE DAYTIME IN RAMADAN DUE TO FORGETFULNESS: KAFFARAT OR QADA

Fadilah Syafitra¹

Sunan Gunung Jati State Islamic University Bandung, Indonesia

Email : fadilahsyafitra@gmail.com

Abstract *This article aims to analyze the differences in the laws of an obtained by a husband and wife who have sex during the day during the fasting month of Ramadan in a state of forgetfulness. The research method used is qualitative research with an exploratory analysis approach , namely analyzing in depth how the laws of an obtained by a husband and wife who have sex during the day in the month of Ramadan but in a state of forgetfulness by comparing the opinions of Imam Malik and Imam Syafi'i . The data sources used are secondary data sources, namely the Book of al- Muwattha' by Imam Malik and the Book of al-Umm by Imam Syafi'i as well as books and articles based on OJS (Open Journal System). Data processing techniques are carried out by processing library materials (library research). The technique of analyzing data analyzed with descriptive analysis using reduction, display, and verification techniques. The findings: First : Imam Malik is of the opinion that his fast has been broken and the punishment received by the husband and wife is to make up for their fast on another day with the argument of the Hadith narrated by Abu Hurairah. Meanwhile, Imam Syafi'i is of the opinion that his fast is still valid and does not receive punishments such as qadha and kafarat by using the Hadith argument narrated by Abu Hurairah, Bukhari and Muslim, and Ahmad. Second , the cause of the difference of opinion is the use and understanding of the argument used and the approach in understanding the condition of forgetting. Third, based on the analysis conducted, Imam Syafi'i's opinion is stronger from the aspect of the argument and interpreting forgetting in the case of jima' carried out by husband and wife in the month of Ramadan.*

Keywords: ; *Kafarat; Fast; Qadha; Ramadan.*

INTRODUCTION

Ramadan is a month that not only presents the obligation of worship but also demands high spiritual awareness and self-control. Muslims are taught not only to restrain hunger and thirst, but also to subdue lust, guard the tongue, sight, and all parts of the body from actions that

can damage the sanctity of fasting (Summa, 2005) . However, in reality, not a few married couples are faced with severe temptations: biological urges that they are unable to contain, until they finally slip into sexual intercourse during the day while fasting (Rohman, 2002) . This act

clearly breaks the fast, but the question is: is it enough for the perpetrator to just make up for the fast? Or must he bear other, more severe consequences?

In the Islamic fiqh tradition, this question is not answered with one voice. The imams of the schools of thought have different views regarding the legal consequences of having sex during the day in Ramadan (Mahmasani, 2010). Imam Malik, the founder of the Maliki school of thought, is of the opinion that a husband and wife who have sex while fasting are only required to make up for their fast on another day. For him, although this act violates the manners and spirit of Ramadan, it does not require expiation as an additional punishment (Anas, 1998).

In contrast, Imam Syafi'i adheres to a lighter and more conditional opinion. According to him, this violation is a serious form of breaking the fast, only in a state of forgetfulness, all the taklifi laws and penalties obtained do not apply because in a state of forgetfulness (Al-Syafi'i, 1987). If it is intentional and full of awareness, then the perpetrator is not only obliged to replace the fast, but also fulfill the kafarat in a tiered form: freeing the slaves, if they are unable then fasting for two months in a row, and if still unable then feeding 60 poor people (Al-Syafi'i, 1987).

These differences of opinion certainly raise deeper questions: why can two great imams with the same breadth of knowledge and sincerity come to different legal conclusions? Is this difference merely due to differences in interpreting the evidence, or due to different methodological approaches in exploring the law (istinbat al-hukm)? In this context, it is interesting to trace how each imam understands the Prophet's hadiths about expiation, how they interpret the element of "forgetting" in breaking the fast or not, and what sharia values they want to uphold—whether atonement,

moral learning, or enforcing the discipline of worship. This discussion is important not only for students and academics, but also for Muslims in general so that they understand that Islamic law is not just a text but also reflects the dynamics of a rich understanding and full of consideration of wisdom.

Discussions on violations committed during the month of Ramadan, including having intercourse during the day, have been carried out by several other academics, namely the writing of Akhmad Hanafi Dain Yunta, Sofyan Nur and Muhammad Nurtaufiq Sudirman entitled *Impression of Forgetting in Taklif and Its Implementation in the Fiqh of Fasting from the Perspective of the Hambali School*. The results of his research state that according to the Hambali School, a person who forgets is not called a mukallaf because at the time of forgetting the mukallaf has temporarily lost his mind until he realizes, then the law of taklifi does not apply there, so there is no punishment for those who forget, including having intercourse during the day for husband and wife (Akhmad Hanafi Dain Yunta; et al., 2024). In his writing entitled *The Communication Pattern of the Prophet Muhammad SAW in Determining the Punishment of Perpetrators of Intercourse During the Day in Ramadan*, Aflah Agan Hasibuan explains that perpetrators who intentionally have intercourse during the day in the month of Ramadan are subject to punishment in the form of an obligation to pay expiation. The communication method used by Rasulullah SAW in delivering this punishment was through a question and answer approach in his preaching (Hasibuan, 2024). In his article entitled *Tarbiyah Bil Qalam: Laws Relating to the Ejection of Mani or Madzi, Either Intentionally or Unintentionally When Fasting According to the Imams of the Four Schools in Islamic Fiqh wa Adillatuhu* (by

Prof. The same also applies to women (Orlando, 2022)

Tjek Tanti's article entitled Problems with Women in Performing the Ramadhan Fast explains that if a woman has had sexual relations with a man who is legally her husband and she forgets to fast, then her fast is still valid and there is no need to make up for it or pay kafarat (Tanti, 2017). In his article entitled *Biological Satisfaction in Husband-and-Wife Relationships from an Islamic Perspective*, Muhammad Arifin Badri explains that if a husband and wife have intimate relations while fasting in the month of Ramadan on purpose, then they are obliged to pay kafarat. However, if the relationship is carried out because they forget that they are fasting, whether they achieve biological satisfaction or not, then their fast is still valid and not invalidated (Badri, 2015). Various previous literature and scientific writings have examined legal issues for husband and wife who have sexual relations during the day during the month of Ramadan. Generally, the discussion focuses on legal provisions and consequences in the form of the obligation to pay kafarat for couples who do this intentionally. However, from these studies, there is still an academic gap that has not been explained in depth, namely regarding how Islamic law views married couples who have intimate relations during the day in the month of Ramadan while forgetting that they are fasting.

The phenomenon of forgetfulness is part of human nature, and in the context of worship, Islam provides space and exceptions for actions carried out in a state of forgetfulness. Therefore, it is necessary to further explore how scholars understand and determine the law on this case. In this case, this article presents novelty by raising the dimensions of the views of scholars of the school of thought, especially Imam Malik and Imam Syafi'i, regarding the legal provisions for husbands and wives who have sexual

intercourse while fasting in a state of forgetfulness.

Sexual intercourse during the day in the month of Ramadan is a very important issue in the discussion of fasting because it has consequences that can affect all worship performed during this holy month. Fasting in Islam is not only about refraining from eating and drinking but also refraining from all actions that can break the fast, including sexual intercourse. In this case, Islamic law pays close attention to the intention and awareness of the perpetrator. If someone accidentally commits sexual intercourse because they forget or are forced to, then Islam provides leniency by not imposing the punishment of expiation but still requires the person to make up for the broken fast. However, if sexual intercourse is done intentionally, then the perpetrator must not only replace the fast, but must also undergo a severe punishment of expiation as a form of atonement for his violation of the fasting worship.

The author views the importance of this discussion not only to complement the existing discourse, but also to provide a complete and proportional understanding for Muslims in facing similar cases in everyday life. This study will be analyzed based on the comparative fiqh approach (*muqaranah al-madzahib*) by comparing the opinions of Imam Malik and Imam Syafi'i.

METHODS / METODE

The research method used is qualitative research with a descriptive analysis approach, namely describing how the punishment is received by husbands and wives who forget but have had sex during the day while fasting. The data source used is a secondary data source, namely the Book of *al-Muwatha'* Imam Malik's writing and the Book of *al-Umm* by Imam Syafi'i as well as books and

articles based on OJS (*Open Journal System*) about the law for married couples who have *intercourse* during the day while fasting . Data processing techniques are carried out by processing library materials (*library research*). The technique of analyzing data analyzed by exploratory descriptive analysis using reduction, display, and verification techniques.

RESULT / TEMUAN DAN PEMBAHASAN

Definition of Jima' and its Consequences During Fasting

Jima' in Islamic law terms refers to sexual intercourse between husband and wife carried out in a legal marriage according to sharia (Munawwir, 2007) . Jima' is considered as one of the biological needs that are permitted in Islam as long as it is carried out in a legal manner and in accordance with the established rules (Dahlan, 2018) . In general, jima' is a form of expression of love and affection in the family which is prescribed as a right and obligation in a marriage relationship (Summa, 2005) .

However, intercourse also has limitations and rules that must be considered in various contexts of worship, one of which is in the month of Ramadan (Rohman, 2002) . In the context of fasting, intercourse has a very important position because it can break the fast if done during the day in the month of Ramadan. This is based on the hadith of the Prophet Muhammad SAW which states that sexual intercourse during the day of Ramadan will break a person's fast. This intercourse that breaks the fast does not only break the fast on that day, but also causes the perpetrator to be forced to fulfill an additional obligation, namely to perform kafarat (atonement) for his actions (Mahmasani, 2010) .

Expiation for those who have sex during the day in the month of Ramadan

is one form of legal consequence in Islam. This expiation aims to atone for violations committed against the holy fasting and maintain the sanctity of worship during Ramadan (Auliya, 2023) . When someone has sex during the day in Ramadan, then in addition to the fast being broken, he must bear the punishment in the form of expiation. The expedition consists of several options, namely: first, freeing a slave. This is a form of punishment that only applies if the perpetrator has financial ability and there is a slave who can be freed. Second, if someone is unable to free the slave, then he is required to fast for two consecutive months. This is a severe punishment because the fast must be carried out continuously without any breaks, and must not be stopped for any reason, including illness or travel. Third, if the first two options cannot be fulfilled, then the person is required to feed 60 poor people, with each person receiving enough food for one day (Farisi, 2023) .

However, it is important to remember that this expiation punishment only applies if intercourse is done with full awareness and intentionally. If intercourse occurs due to forgetfulness or coercion, the punishment is different (Ash-Shiddieqy, 2010) . In this case, according to the view of most scholars, including Imam Malik and Imam Syafi'i, if someone performs intercourse because he forgets that he is fasting or because of forced circumstances, then he is not required to pay expiation. Forgetting is considered an excuse (valid reason) that eliminates the obligation of expiation, as mentioned in the hadith of the Prophet Muhammad SAW: "*Indeed, Allah forgives my people for their mistakes, forgetfulness, and what they do because they are forced.*" Thus, a person who performs intercourse due to forgetfulness is only required to replace the broken fast (qadha), without any obligation to pay expiation (Makmur & Aisyah, 1970) .

Thus, intercourse during the day in the month of Ramadan not only breaks the fast, but also involves the obligation to atone for the mistakes made through expiation. Islam, with clear and comprehensive rules, teaches its followers to maintain the sanctity of fasting worship, both physically and spiritually, and provides solutions for those who do wrong in a way that suits their circumstances (Muthalib et al., 2022).

Argumentation and Proposition of Imam Malik and Imam Syafi'i

Fasting in the month of Ramadan is an obligatory act of worship for every Muslim who is a mukallaf, and has provisions and guidelines that must be adhered to properly. (Abror, 2019). One of the main prohibitions in fasting is having sex during the day, which is generally considered a serious violation and breaks the fast, and can result in severe legal consequences in the form of expiation. However, in the context of implementing Islamic law, it is very important to distinguish between acts that are done intentionally and acts that occur due to forgetfulness (Nurhayati, 2018).

The case of having sex during the day in Ramadan because of forgetting that one is fasting is a problem that has received attention from classical scholars. Scholars from various schools of thought, including Imam Malik and Imam Syafi'i, discussed in detail the legal status of the act and whether the perpetrator is obliged to perform expiation or is sufficient to replace the fast (*qadha*) or must pay expiation and replace the fast outside the month of Ramadan.

Imam Malik rahimahullah in the book *al-Muwattha'* and also explained by the scholars of the Maliki school, is of the view that a person who has intercourse during the day in the month of Ramadan because he forgets that he is fasting, is not subject to expiation. However, his fast is

still invalid because he has done something that according to sharia invalidates the fast. However, because the act was done in a state of forgetfulness, the element of intent as the main requirement for the obligation of expiation is not fulfilled. In cases like this, Imam Malik only requires the perpetrator to make up for the fast on another day as a form of replacement for the worship that has been damaged. Imam Malik stated his opinion in the Book *al-Muwattha'* (Anas, 1998) :

قلت: أرأيت من أكل أو شرب أو جامع امرأته في رمضان ناسياً، أعليه القضاء؟ في قول مالك: قال: نعم، ولا كفارة عليه

Translation:

I said: What do you think about people who eat, drink or have sex with their wives during the day of Ramadan and forget, is it obligatory to make up for their fast (*qadha*)? So Imam Malik answered: yes, but it is not mandatory to pay *kafarat*

This opinion is in line with the general principles of Islamic law which pay close attention to the inner condition and intention of the perpetrator. In the rules of *usul fiqh* it is stated that "intention is the basis of all deeds", and in the context of fasting, intention is a requirement for the imposition of expiation sanctions. Imam Malik also based his opinion on the hadith narrated by Ibn Majah and al-Thabrani, in which the Messenger of Allah SAW said that Allah SWT lifted the burden of sin from His people who made mistakes because they forgot, did not know, or were forced. Thus, forgetting is considered an excuse (*sharia reason*) that eliminates the severe punishment in fasting (Rusyd, 1990).

The evidence used by Imam Malik to strengthen his argument was the hadith from Abu Hurairah ra:

God willing God willing, God willing, God willing, God willing, God willing, God willing, قَالَ يَا رَسُولَ اللَّهِ هَلْ كُنْتُ . قَالَ « مَا لَكَ » . قَالَ وَقَعْتُ عَلَى امْرَأَتِي وَأَنَا صَائِمٌ . فَقَالَ رَسُولُ اللَّهِ

Translation:

"One day we were sitting near the Prophet sallallaahu 'alaihi wa sallam then a man came to face him sallallahu 'alaihi wa sallam. Then the man said, "O Rasûlullâh, woe is me." The Prophet sallallaahu 'alaihi wa sallam said, "What happened to you?" The man then answered, "I had sex with my wife, even though I was fasting." Then Rasûlullâh sallallaahu 'alaihi wa sallam asked, "Do you have a slave who you can free?" The man answered, "No". Then the Prophet sallallaahu 'alaihi wa sallam asked again, "Are you able to fast for two months in a row?" The man answered, "No". Then he sallallaahu 'alaihi wa sallam asked again, "Can you feed 60 poor people?" The man also answered, "No". Abu Hurairah Radhiyallahu anhu said, the Prophet sallallaahu 'alaihi wa sallam then became silent. When we were in this condition, someone gave a gift of a basket of dates to the Prophet sallallaahu 'alaihi wa sallam. Then He sallallaahu 'alaihi wa sallam said, "Where is the person who asked earlier?" The man then answered, "Yes, I am." Then He sallallaahu 'alaihi wa sallam said, "Take it and give charity to it." Then the man said, "Shall I give it to someone who is poorer than me, O Rasûlullâh? By Allah, there is no one poorer in the east end to the west end of the city of Medina than my family." The Prophet sallallaahu 'alaihi wa sallam then laughed until his canine teeth showed. Then He sallallaahu 'alaihi wa sallam said, "Give this food to your family." (HR. Abu Hurairah)

However, in a situation where the couple had intercourse because they forgot that they were fasting, Imam Malik is of the opinion that even though their fast is still invalid, both of them are not required to make expiation. This is because the element of intention is not fulfilled, while the law of expiation only applies to acts that are done with full awareness and will. Instead, they are only required to make up for the fast on another day outside the month of Ramadan.

This is also the view expressed by Imam Syafi'i, as stated in the book *al-Umm* and explained by the scholars of the

Shafi'i school of thought. According to him, someone who performs jima' during the day of Ramadan because he forgot is not burdened with kafarat and qadha, because he did not violate it on purpose. Imam Syafi'i stated that kafarat is only obligatory if the act is done consciously and with the knowledge that it breaks the fast. In Imam Syafi'i's view, when someone is truly unaware that they are fasting because they forgot, then their actions cannot be categorized as a form of disobedience to the Shari'a. Imam Syafi'i explains his opinion in Buku al-Umm (Al-Syafi'i, 1987) :

وإن وطئ امرأته أو ولج عامدا فعليهما القضاء والكفارة واحدة عنه وعنهما، وإن كان ناسيا فلا قضاء عليه للخبر عن رسول الله عليه وسلم في أكل Al Nissi

Translation:

If someone has sexual intercourse with his wife or enters intentionally, then it is obligatory for both of them to make qadha and pay kafarat, if because they forget then there is no obligation to make qadha and pay kafarat based on the words of the Prophet Muhammad SAW. The law is the same as for someone who eats while forgetting.

Imam Syafi'i, one of the four great schools of thought in Islam, gave a thoughtful view of the legal issue for a husband and wife who have sexual intercourse during the day in the month of Ramadan while forgetful. In his framework of thought, the act of forgetfulness is not a violation that can be punished, because it does not fulfill the basic requirements for a person to be burdened with sharia law, namely awareness (*idrak*) and will (*ikhtiyar*).

Imam Syafi'i equates the situation of a husband and wife who forget during intercourse during the day in the month of Ramadan with people who eat and drink because they forget while fasting. In both situations, there is no element of intent, which is the main requirement for imposing sanctions in Islamic law. Therefore, according to him, someone

who forgets cannot be called a *mukallaf* in the context of the act, namely not being subject to the burden of legal responsibility because the condition of forgetting eliminates the burden of taklif.

In Imam Syafi'i's view, jima' due to forgetting is not only not subject to kafarat but also does not break the fast absolutely. This means that if someone eats, drinks or performs sexual intercourse while completely forgetting that he is fasting, then his fast is still valid and does not need to be made up for. This is a form of consistency in the rules of fiqh held by Imam Syafi'i, namely: "*An-nisyanu la yu'akhdz bihi*" - forgetfulness is not punished. This is also reinforced by the hadith of the Prophet SAW:

"Whoever forgets that he is fasting and then eats or drinks, let him complete his fast, for indeed it is Allah who gives him food and drink." (HR. al-Bukhari and Muslim).

By expanding the meaning of this hadith, Imam Syafi'i believes that forgetfulness in all forms of fasting violations—including husband and wife relations—receives the same legal treatment. This reflects a very humane and merciful view in Islamic law, which considers the psychological reality of humans who may slip into a state of complete unconsciousness.

Imam Syafi'i's approach also reflects the principles of *raf' al-haraj* (eliminating difficulties) and *al-'udhr* (reasons accepted by the Shari'a), which are part of his legal istinbat framework. Therefore, in the case of a husband and wife who completely forget that they are fasting and perform jima', Imam Syafi'i emphasized that there is no kafarat, no qadha, and no sin. This shows the breadth and compassion in Islamic law as exemplified by Rasulullah SAW and interpreted by mujtahid imams.

One of the arguments used by Imam Syafi'i to strengthen his argument is the same as the argument used by Imam

Malik previously, namely the hadith narrated by Abu Hurairah:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ : بَيْنَمَا نَحْنُ جُلُوسٌ عِنْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذْ جَاءَهُ رَجُلٌ ، فَقَالَ يَا رَسُولَ اللَّهِ هَلَكْتُ . قَالَ « مَا لَكَ » . قَالَ وَقَعْتُ عَلَى امْرَأَتِي وَأَنَا صَائِمٌ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ « هَلْ تَجِدُ رَقَبَةً تُعْتِقُهَا » . قَالَ لَا . قَالَ « فَهَلْ تَسْتَطِيعُ أَنْ تَصُومَ شَهْرَيْنِ مُتَتَابِعَيْنِ » . قَالَ لَا . فَقَالَ « فَهَلْ تَجِدُ إِطْعَامَ سِتِّينَ مِسْكِينًا » . قَالَ لَا . قَالَ فَمَكَثَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، فَبَيْنَمَا نَحْنُ عَلَى ذَلِكَ أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعْرَقٌ فِيهَا تَمْرٌ – وَالْعَرَقُ الْمِثْلُ – قَالَ « أَيْنَ السَّائِلُ » . فَقَالَ أَنَا . قَالَ « خُذْهَا فَتَصَدَّقْ بِهِ » . فَقَالَ الرَّجُلُ أَعْلَى أَفْقَرُ مِنِّي يَا رَسُولَ اللَّهِ فَوَاللَّهِ مَا بَيْنَ لَابَتَيْهَا – يُرِيدُ الْحَرَتَيْنِ – أَهْلٌ بَيْتٍ أَفْقَرُ مِنْ أَهْلِ بَيْتِي ، فَضَجَكَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَتَّى بَدَتْ أَنْيَابُهُ ثُمَّ قَالَ « أَطْعِمَهُ أَهْلَكَ »

Translation:

"One day we were sitting near the Prophet sallallaahu 'alaihi wa sallam then a man came to face him sallallahu 'alaihi wa sallam. Then the man said, "O Rasûlullâh, woe is me." The Prophet sallallaahu 'alaihi wa sallam said, "What happened to you?" The man then answered, "I had sexual intercourse with my wife, even though I was fasting." Then Rasûlullâh sallallaahu 'alaihi wa sallam asked, "Do you have a slave who you can free?" The man answered, "No". Then the Prophet sallallaahu 'alaihi wa sallam asked again, "Are you able to fast for two months in a row?" The man answered, "No". Then he sallallaahu 'alaihi wa sallam asked again, "Can you feed 60 poor people?" The man also answered, "No". Abu Hurairah Radhiyallahu anhu said, the Prophet sallallaahu 'alaihi wa sallam then became silent. When we were in such a condition, someone gave a gift of a basket of dates to the Prophet sallallaahu 'alaihi wa sallam. Then He sallallaahu 'alaihi wa sallam said, "Where is the person who asked earlier?" The man then answered, "Yes, I am." Then He sallallaahu 'alaihi wa sallam said, "Take it and give charity to it." Then the man said, "Shall I give it to someone who is poorer than me, O Rasûlullâh? By Allah, there is no one poorer in the east end to the west end of the city of Medina than my family." The

Prophet sallallaahu 'alaihi wa sallam then laughed until his canine teeth showed. Then He sallallaahu 'alaihi wa sallam said, "Give this food to your family." (HR. Abu Hurairah)

Based on the hadith that is used as the main reference in this discussion, it can be understood that the obligation to pay expiation is only imposed on people who intentionally have sexual intercourse (jima') during the day in the month of Ramadan. The hadith emphasizes that such actions are a serious violation of the sanctity of fasting worship, so that the perpetrators are subject to severe sanctions in the form of expiation, which consists of three levels: freeing slaves, or if unable, fasting for two consecutive months, and if still unable, feeding 60 poor people.

However, if the act of intercourse is carried out while forgetting that one is fasting, then the legal status changes. In this condition, the element of intent which is the main requirement for imposing punishment is not fulfilled. Therefore, scholars consider that the perpetrator is not burdened with the obligation of expiation, because Islamic law does not impose sanctions for acts committed due to forgetfulness. Thus, forgetfulness becomes a sharia reason (udzur) which removes the burden of law, as explained in several hadiths which affirm that Allah SWT does not punish His people for mistakes that occur due to forgetfulness, ignorance, or coercion.

Then Imam Syafii used a hadith narrated by Imam Bukhari and Muslim:

مَنْ أَكَلَ نَاسِيًا وَهُوَ صَائِمٌ فَلْيُتِمَّ صَوْمَهُ، فَإِنَّمَا أَطْعَمَهُ اللَّهُ وَسَقَاهُ

Translation:

Whoever eats because he forgets while he is fasting, let him complete his fast, for verily Allah has given him food and drink." (HR al-Bukhari Muslim)

Hadith narrated by Abu Daud and Ahmad:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ عَنْ الْغُلَّةِ وَالْجُنُونِ
حَتَّى يُفِيْقَ وَعَنْ الْمَجْنُونِ
God willing Yaballah

Translation: The law does not apply to three people, namely: children until they reach maturity; people who are crazy until they are sane, and people who sleep until they wake up (HR. Abu Daud and Ahmad)

The state of forgetfulness in the view of Islamic law cannot be used as a basis for imposing laws or imposing punishment on the perpetrator of an act. In this case, Imam Syafi'i provides a deep explanation that a person who forgets is not included in the category of *mukallaf*, namely an individual who is burdened with legal responsibility according to Islamic law. According to him, a person who forgets can be equated with a crazy person, because both experience a loss of consciousness (*idrak*) and reason (*'aql*) - two important elements that are conditions for imposing legal burdens in Islam (Zahra, 1958).

During the state of forgetfulness, a person does not have full control over his consciousness, so that actions carried out in that state cannot be considered as intentional violations. Therefore, just as a mad person is not burdened with the law as long as he is not conscious, so too is a person who forgets—he cannot be held legally responsible for his actions until he is fully conscious and returns to a normal state. Only then can he be called a *mukallaf* and all the provisions of the sharia law apply to him.

This view is in line with the principle of *al-'udhr by an-nisyan*, namely that forgetfulness is a reason that can eliminate legal responsibility and is reinforced by the hadith of the Prophet SAW which reads: *"Indeed, Allah has forgiven my people for their mistakes, forgetfulness, and what they did because they were forced."* (HR. Ibn Majah and al-Baihaqi). Thus, Imam Syafi'i laid a strong foundation that forgetfulness not only

eliminates punishment but also shows that the perpetrator in that situation has not yet entered the realm of legal responsibility.

Both Imam Malik and Imam Shafi'i based their opinions on the principle of justice in Islam and attention to the psychological state of the perpetrator. The Shari'a does not burden a person beyond his ability and does not prescribe punishment without clear intent. In this context, expiation which is a form of severe punishment (which consists of freeing a slave, fasting for two consecutive months, or feeding 60 poor people) is only imposed on someone who has truly committed a major offense with full awareness. Therefore, a perpetrator of intercourse who forgets that he is fasting is not treated like a perpetrator who intentionally does it, because the loss of awareness of fasting means the loss of full legal responsibility for his actions.

Causes of the differences of opinion between Imam Malik and Imam Syafi'i

The difference of opinion between Imam Malik and Imam Syafi'i regarding the law of a husband and wife who have sexual intercourse during the day in the month of Ramadan in a state of forgetfulness, stems from their differences in understanding the meaning and legal implications of the condition of "forgetfulness" in the context of fasting. Imam Malik is of the opinion that even though sexual intercourse is carried out in a state of forgetfulness, the act still breaks the fast. In his view, intercourse has serious legal consequences and cannot be equated with eating or drinking because of forgetfulness. Therefore, even though no expiation is imposed because there is no element of intent, the broken fast must still be replaced on another day outside of Ramadan. For Imam Malik, forgetfulness only eliminates the punishment of expiation but does not eliminate the

obligation to make up for it because intercourse is considered a form of breaking the fast that is still valid even if done unintentionally.

Meanwhile, Imam Syafi'i took a different position. He viewed that forgetfulness absolutely nullifies a person's legal responsibility in the context of fasting. In fact, he equated the state of forgetfulness with the condition of losing one's mind, such as being crazy, because in both cases there is a temporary loss of consciousness that removes the status of *mukallaf*. Therefore, if someone—including a married couple—performs intercourse during the day in the month of Ramadan while forgetting that they are fasting, then their fast is not invalidated, they are not sinful, they do not have to make up for it, and they are not subject to expiation. Imam Syafi'i expanded the understanding of the hadith of the Prophet SAW which states that a person who eats or drinks because he forgets must continue his fast because it is a blessing from Allah. In Imam Syafi'i's approach, the meaning of this hadith does not only apply to eating and drinking, but also includes other forms of violations such as intercourse, as long as it is done in a state of complete forgetfulness.

Thus, the core of this difference lies in the way the two imams interpret and classify the condition of forgetfulness in relation to legal responsibility (*taklif*). Imam Malik tends to be careful and limits the excuse of forgetfulness only as an excuse to waive expiation but still requires *qadha*. Meanwhile, Imam Syafi'i considers forgetfulness as a sharia reason that eliminates all forms of legal responsibility for the act. In addition, their differences also show differences in methodology in studying the hadith, in performing *qiyas* on acts that break the fast, and in understanding the basic principles of sharia regarding awareness and will in human actions.

Analysis of the opinions of Imam Malik and Imam Syafii regarding the punishment of husband and wife performing jima' during the day while fasting

Of the two opinions that have been put forward by Imam Malik and Imam Syafi'i regarding the legal status of intercourse performed by a husband and wife during the day in the month of Ramadan in a state of forgetfulness, then if viewed from the aspect of the methodology of thinking, the evidence used, the general principles of Islamic law, and the need to apply the law in the present day, Imam Syafi'i's opinion seems to be superior, more rational, and reflects the main characteristics of Islamic law which is *rahmatan lil 'alamin*.

Imam Syafi'i views that the act of sexual intercourse in a state of complete forgetfulness eliminates the legal responsibility of the perpetrator. This view is built on a very solid foundation of evidence, namely the hadith of the Prophet Muhammad SAW: "Indeed, Allah has forgiven my people for their mistakes, forgetfulness, and what they did out of compulsion." (Narrated by Ibn Majah, al-Thabarani, and al-Baihaqi). This hadith is a very strong basis that Islam tolerates conditions that are beyond human control, including forgetfulness. In Imam Syafi'i's view, forgetfulness causes a person to temporarily leave the status of *mukallaf*, because one of the basic requirements for a person to be burdened by the law is the awareness and will to do the act.

Furthermore, Imam Syafi'i expanded the meaning of the authentic hadith narrated by al-Bukhari and Muslim which states that a person who eats or drinks because he forgets while fasting is still obliged to continue his fast because it is "a gift of sustenance from Allah." According to him, the logic of this hadith does not only apply to eating and drinking but can also be analogized to the act of

intercourse because the essence of all three is the same: both break the fast, and both are done unintentionally. Therefore, there is no fundamental difference that can be used as a reason to differentiate the law between forgetting to eat and forgetting to have sex. In the construction of fiqh thinking based on *qiyas*, Imam Syafi'i's understanding shows strong consistency between the text and the logic of the law.

On the other hand, Imam Malik did show a more careful attitude (*iḥtiyāt*) by arguing that even if *jima'* was done because he forgot, the fast was still invalid even though *kafarat* was not obligatory. According to him, *jima'* is not just a fast breaker, but has a larger physical and psychological dimension, so it still breaks the fast even if it is done without full awareness. However, this approach logically opens the question: if forgetting to eat does not break fast, then why is *jima'* which is also done because you forget to still be considered breaking it? Isn't the basis of the Shari'a in many legal matters the existence of will and consciousness?

In the current context, Imam Syafi'i's opinion also offers high legal flexibility and can be applied effectively in modern society. In today's era, humans live in an environment full of stress, busyness, and physical and mental fatigue, all of which contribute to the potential for real forgetfulness, even in important matters. In this situation, applying a more flexible view and forgiving mistakes due to forgetfulness becomes more relevant and beneficial. Islam does not aim to burden its people, but to guide them with love and wisdom. Imam Syafi'i's opinion is in line with the principles of *raf' al-ḥaraj* (removing difficulties) and *taysir* (ease) in Islamic law, as Allah SWT says: "Allah desires ease for you, and does not desire hardship for you." (QS. Al-Baqarah: 185).

Thus, when viewed as a whole, Imam Syafi'i's opinion is not only strong in terms of evidence and analogy but also shows the relevance of sharia to the dynamics of human life. This opinion reflects the human side of Islamic law, where forgetting is not only recognized as a human weakness, but also as a legitimate reason for the elimination of legal burdens. This is in line with the spirit of sharia which emphasizes compassion, justice, and the welfare of the people. Therefore, in this matter, Imam Syafi'i's view deserves to be considered the strongest opinion to be applied, both in the context of Islamic legal theory and in current socio-religious practices.

CONCLUSION/ KESIMPULAN

In examining the legal issue of a husband and wife having sexual intercourse during the day in the month of Ramadan in a state of forgetfulness, there are differences of opinion between Imam Malik and Imam Syafi'i who have their own basis and analysis. These two scholars hold different principles in interpreting the hadiths related to fasting and forgetfulness.

Imam Malik is of the opinion that even though intercourse done in a state of forgetfulness is not subject to expiration, the fast is still invalid and must be replaced on another day. Imam Malik is based on the principle of caution in applying the law (*iḥtiyāt*) which considers that intercourse is still a major act that invalidates the fast, even if it is done without full awareness. He uses a hadith from Abu Hurairah which states that if someone has intercourse while fasting, then he is obliged to pay expiation if it is done intentionally. However, in cases of forgetfulness, Imam Malik is of the opinion that the fast is still considered invalid and must be replaced, even without the sanction of expiation.

Meanwhile, Imam Syafi'i provides a softer view by viewing forgetfulness as a valid reason to drop all forms of legal responsibility. He considers that someone who has intercourse during the day in the month of Ramadan in a state of forgetfulness does not need to replace his fast, because forgetfulness is a state that frees someone from the status of *mukallaf* (burdened by law). Imam Syafi'i connects the case of forgetting in sexual intercourse with forgetting to eat or drink, based on the hadith of the Prophet Muhammad SAW which states that a person who eats or drinks because he forgets is still obliged to continue his fast because it is a provision from Allah. Based on this argument, Imam Syafi'i analogizes that intercourse that is done by forgetfulness must be treated in the same way.

The difference between these two opinions lies in their understanding of the meaning and impact of forgetfulness. Imam Malik sees forgetfulness as an excuse that nullifies the obligation of expiation, but still considers the act as invalidating the fast that must be made up on another day. Meanwhile, Imam Shafi'i, based on the principle of *raf' al-ḥaraj* (removing hardship) and *taysir* (ease), sees forgetfulness as an excuse that frees a person from all legal responsibilities related to fasting. In Imam Shafi'i's view, forgetfulness not only nullifies expiation, but also frees one from the obligation of qadha.

Analysis of these two opinions shows that Imam Syafi'i's opinion is superior in a practical context and in accordance with the convenience desired in Islamic law. Given the busyness and pressures of modern life that are more complex, people tend to forget more easily, even in big things. Thus, the application of Imam Syafi'i's opinion which considers forgetting as a valid reason to eliminate legal obligations is more suitable and relevant to the

conditions of Muslims in the current era. This opinion is in line with the principles of justice, convenience, and compassion which are the core of Islamic teachings.

REFERENCE / DAFTAR BACAAN

Abror, K. (2019). *Fiqh of Worship*. Phoenix Publisher.

Akhmad Hanafi Dain Yunta; Nur, S., & Muhammad Nurtaufiq Sudirman. (2024). Impression of Forgetting in Taklif and Its Implementation in the Jurisprudence of Fasting from the Perspective of the Hambali School. *AL-QIBLAH: Journal of Islamic and Arabic Studies*, 3 (2), 232-258. <https://doi.org/10.36701/qiblah.v3i2.1399>

Al-Shafi'i, MI bin. (1987). *al-Umm*. Dar al-Fikr.

Anas, M. bin. (1998). *al-Muwatha'*. Dar al-Fikr.

Ash-Shiddieqy, H. (2010). *Philosophy of Islamic Law*. Rizki Putra Library.

Auliya, I. (2023). Analysis of Fasting: Review of the Books Fathul Qarib and Muttafaq Wa Mukhtalaf Fih from the Perspective of the Four Madzhabs. *Fiqhul Hadith: Journal of Hadith and Islamic Law Studies*, 1 (2), 78-91.

Badri, MA (2015). Biological Satisfaction in Husband and Wife Relationships from an Islamic Perspective. *Al-Majaalis: Journal of Islamic Studies*, 3 (1), 155-193.

Dahlan, AA (2018). *Encyclopedia of Islamic Law*. Van Hoeve's New Idea.

Farisi, MA Al. (2023). Fasting in the Review of Fiqh and Sufism. *Journal of Spiritual Science (JIS)*, 9 (2), 258-278.

Hasibuan, AA (2024). The Communication Pattern of the Prophet Muhammad SAW in Determining the Punishment for Perpetrators of Intercourse During the Day in Ramadan. *Al-Balagh: Journal of Islamic Communication*, 8 (1), 58.

<https://doi.org/10.37064/ab.jki.v8i1.21466>

Mahmasani, S. (2010). *Philosophy of Islamic Law*. Al-Ma'arif Library.

Makmur, MA, & Aisyah, S. (1970). Ethics of Jima' According to the Imam of the School. *Shautuna: Scientific Journal of Comparative School and Law Students*. <https://doi.org/10.24252/shautuna.v1i2.13726>

Munawwir, AW (2007). *Indonesian Arabic Dictionary*. Progressive Library.

Muthalib, SA, Furqan, F., & Ridayani, O. (2022). Understanding of the Gampong Lapang Community in West Aceh Regency towards Qada and Fidiah Fasting in the Qur'an. *TAFSE: Journal of Qur'anic Studies*, 7 (2), 244. <https://doi.org/10.22373/tafse.v7i2.13006>

Nurhayati. (2018). UNDERSTANDING THE CONCEPTS OF SHARIA, FIKIH, LAW AND USHUL FIKIH. *J-HES*, 2 (2), 124–134.

Orlando, G. (2022). Tarbiyah Bil Qalam Laws Relating to the Excretion of Mani or Madzi Either Intentionally or Unintentionally When Fasting According to the Imams of the 4 Madzhab in Islamic Fiqh Wa Adillatuhu (Work by Prof. Dr. Wahbah Az-Zuhaili). *Tarbiyatul Bukhary: Journal of Religious and Science Education*, IV (II), 55–64.

Rohman. (2002). *Explanation of God's Laws*. Raja Grafindo Persada.

Rushd, I. (1990). *Translation of Bidayatul Mujtahid Volume 2*. 536.

Summa, MA (2005). *Islamic Family Law in the Islamic World*. Raja Grafindo Persada.

Tanti, T. (2017). Women's Problems in Carrying Out Ramadan Fasting. *AL-MUQARANA: A Journal of Comparative Schools*, 5 (1), 101–117. <http://jurnal.fk.umi.ac.id/index.php/umimedicalljournal/article/view/88>

Zahra, M.A. (1958). *Ushul al-Fiqh*. Dar Al-Arabi.