



KAFFĀRAH RULES ON HAVING INTERCOURSE DURING RAMAḌĀN: Gender Analysis of Imam Nawāwī and Ibn Qudāmah's Opinions

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Abstract: *This article tries to analyze the doctrine of kaffārah as the repentance for those who break the fast doing an intercourse in the day of RamaḌān based on the opinions of Imam Nawāwī and Ibn Qudamah viewed from the perspective of gender. This is a library research that used descriptive-comparative methods along with normative and gender equity approach that discusses the text and modern context. The data was derived from the fikih's books. This article shows that Muslims who commit a sexual intercourse in the day of RamaḌān are burdened by an expiation that is mentioned in ḥadīṣ. Imam Nawawi stated that wife is not burdened by an expiation if she commits the intercourse, either by her willingness or under the compulsion. While Ibn Qudāmah stated that wife is burdened by an expiation if she commits it by her willingness and the legal burden will be lost if she is being under compulsion. From the perspective of gender, there is no difference between both man and woman's kaffārah obligation. Both will get the consequence from all they have done, because both are the subjects of law. They should discuss each other on what choices to expiate their sins.*

Keywords: *kaffārah, jima', Imam an-Nawāwī, Ibn Qudāmah, gender.*

Introduction

The fasting ritual in *Ramaḍān* is an Islamic worship that does not only have a formal dimension. From the perspective of *maqāṣid asy-syari'ah*, *Ramaḍān* fasting contains values that contribute in enhancement of Muslim's faith as an implementation of *ḥifẓ ad-dīn* orientation, Muslim's character education as an implementation of *ḥifẓ an-nafs*, and growing Muslim's social awareness as an implementation of *ḥifẓ al-māl* orientation.¹ Moreover, fasting is also a recommended method to prevent some medical diseases such as atherosclerosis, heart disease and stroke that caused by hypercholesterolemia.² Hence, in addition to the factor of obligatory worship that mentioned in *naṣ* and is included in the pillars of Islamic faith, fasting is highly recommended to maintain the health of Muslim.

According to the Islamic jurisprudence discourse, there are several reasons that allow Muslim to break their fasting (*rukḥṣah*), yet they still have to replace their fasting obligatory in another day, or doing *fiḍyah* payment as substitution. There are people who are allowed to choose either continuing their fasting or breaking it and replace it by *qada* and/or *fiḍyah*, those people are 1) People suffering from serious disease; 2) A traveler; 3) Elderly people; 4) Pregnant or breastfeeding women and; 5) Menstruating or *nifas* women.³ In addition to those easiness mentioned, there is also punishment for muslims who deliberate breaks the *Ramaḍān* fasting, that is called as *kaffārah* or expiation.

One of the actions that would be punished by an expiation is breaking the fast of *Ramaḍān* by doing a sexual intercourse in the day of that month. Basically, sexual intercourse

¹ Athoillah Islamy, "Dimensi Maqasid Shariah Dalam Ritualitas Ibadah Puasa Ramadhan," *ISLAMITSCH FAMILIERECHT JOURNAL*, vol. 2, no. 01 (2021): pp. 16–35.

² Nurul Marfu'ah and Dianti Desita Sari, "Perbandingan Pengaruh Puasa Daud Dan Puasa Senin-Kamis Terhadap Kadar Kolesterol Pada Mencit," *JOB: Journal of Biology Education*, vol. 1, no. 2 (2018): pp. 192–207.

³ Mahmud Muhsinin, "Puasa Tekstual Dan Kontekstual Dalam Islam," *Al-Hikmah*, vol. 4, no. 1 (2019).

is allowed at all night during Ramadan, based on the revelation/verse of al-Baqarah (2): 187. The punishment of the expiation is given to the Muslim who breaks the worship of fasting because it is disgracing the honor of *Ramaḍān*.⁴ However, the punishment of expiation is not occurred to those who break the fasting outside *Ramaḍān*, like fasting of *sunnah*, *nazar*, *qada*, and *kaffārah*. This is because, *naṣ* of proposition does not mention about it, and is only specialized for *Ramaḍān*; and it could not be equated to another fasting outside that month.⁵

From the perspective of *maqāṣid asy-syarī'ah*, the consequence of *kaffārah* for sexual intercourse is for religion purposes (*ḥifẓ ad-dīn*). *Kaffārah* is also burdened to all Muslim who intentionally breaks their fasting. *Kaffārah* as an atonement is given to whoever breaks the honor of *Ramaḍān* and everything that break a Muslim's fast including: eating, drinking, and/or breaking the fast intentionally, those are would be burdened by *kaffārah*. It is because, breaking the fast intentionally is a disrespectful thing to do in *Ramaḍān*. The point in the verse of al-Baqarah (2): 187 that says "then complete fasting until the night," indicates that eating, drinking and having sexual intercourse are equally able to break the fast; so that Muslim have to replace it in another day.⁶

The Quran does not mention the subject of *kaffārah* directly, but the prophetic traditions do, and therefore, they are controlling authority on the juridical position on *kaffārah* (compensation) for breaking the fasting through legal sexual intercourse. The Quran essentially lays out the Sharia of fasting in the verses 2:183–2:187. It forbids sexual intercourse during fast and allows those who are travelling or being sick to break the fasting. The compensation for missing the fast is to replace the number of missing fasts with the number of broken fasts precisely

⁴ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islamiy Wa Adillatuhu*, vol. 2 (Damskus: Dar al-Fikr al-Muasir, 1985), p. 682.

⁵ Imam an-Nawāwī, *Rauḍatu At-Tālibīn*, 3rd ed. (Beirut: Dār al-Kutub al-‘Ilmiyah, n.d.), p. 239.

⁶ Mukhamad Agus Zuhurul Fuqohak, "Pengaruh Maqāṣid Syari'ah Di Dalam Tafsir Dan Ḥadīṣ," *Hermeneutik: Jurnal Ilmu Al Qur'an dan Tafsir*, vol. 14, no. 1, 2020: pp. 93-112.

and for those who are unable to fast is to feed poor people (2:184). The Quran does not explicitly discuss the consequence of breaking the fast through intercourse and hence, Muslims need to look at the second source of Islamic law that is the prophetic traditions.⁷

The explanation of *kaffārah* is, indeed, only found in the Prophetic tradition which narrates: there was a complaint of a man who broke the fast because of sexual intercourse with his wife during the day on the *Ramaḍān*. In this *ḥadīṣ*, the Prophet gave three offers as an atonement to the man, those are: 1). Freeing a slave, 2). Feeding sixty poor people, 3). Giving alms to the poor even if only with dates.⁸

This is a library research article which focused on analyzing the contents of the literature that is related to this study. This article is the descriptive-comparative research, which is describing, comparing and analyzing the thoughts and opinions of Imam Nawāwī and Ibn Qudāmah. This article employs normative and gender equity approach.

Islamic Scholar Jurists' Opinions about Wife's Expiation for Sexual Intercourse in *Ramaḍān*

In the topic of expiation of *Ramaḍān*, Islamic scholar jurists have different opinions about the things that may be punished with an expiation. Hanafiya scholars opined that there are two things that will be punished with the expiation: *first*, eating or drinking intentionally and all things that are related to it, with the lack of *syar'i* excuse; *second*, doing sexual intercourse intentionally, along with intention of fasting. The expiation is obliged, due to the meet of human genital. As for, having an intercourse with an animal, or human corpse, it would not be punished with the expiation, yet, they are obliged to replace the

⁷ M A Muqtedar Khan, "The Loss of Ihsan," in *Islam and Good Governance* (Springer, 2019), pp. 9–42.

⁸ Lukman Hakim and Ahmad Danu Syaputra, "Al-Qur'an Dan Pengentasan Kemiskinan," *Jurnal Ilmiah Ekonomi Islam*, vol. 6, no. 3 (2020): 629–44.

fasting along with orgasm.⁹ Furthermore, they argued that if women embrace each other, and get orgasm, their obligation is only *qada*, without an expiation. So, from the opinion of Hanafiya scholars, it can be concluded that there are two things that will invalidate the fast and will be obliged with an expiation. Those are everything that related to the lust of stomach and the lust of genital, with the requirement of an intention of fast before the dawn, lack of a *syar'i* excuse, self-willingness without the compulsion from external side, and carrying it out intentionally.

Hanafiya scholars' opinions are based on the words of 'Ali Ibn Abi Talib who said that, actually, an expiation was burdened to Muslim who breaks the *Ramaḍān* fast by eating, drinking and doing sexual intercourse. It is because invalidating the fast is breaking the honor of proposition which means it is the *naṣ* or verse of al-Qur'an that provides a permission to a Muslim to have an eating, drinking, and having an intercourse during the night of *Ramaḍān*. So, breaking the honour of *nas* is completely a violation.¹⁰

Syafi'iyah scholars stated that the thing that will be punished with an expiation is limited to one thing that is an intercourse only. They stated some requirements of it: *first*, the intention for the fast, if a Muslim does not intended to fast, it would be invalid, because the fast of *Ramaḍān* or the fast of *nazar* is invalid without the intention before the dawn;¹¹ *second*, carrying it out intentionally, because an intercourse will not break the fasting if it is done unintentionally, as well as when Muslims are eating and drinking inadvertently ; *third*, recognizing the prohibition of the intercourse; *fourth*, it must be done voluntarily and is not under compulsion; *fifth*, an intercourse should be done by the entry of men's genital; *sixth*, it must be in *farj*, in front of it or behind it, even with the lack of orgasm.

⁹ Abdurrahman Al-Juzairi, *Kitab Al-Fiqh 'ala Al-Mazhab Al-'Arba'ah*, vol. 1, 1st ed. (Beirut: Dar al-Fikr, 1996), p. 529.

¹⁰ Abu Bakr Muhammad Ibn Abi Sahl As-Sarkhasi, *Kitab Al-Mabsut*, vol. 3, 1st ed. (Beirut: Dar al-Fikr, 2000), p. 68.

¹¹ Ibn 'Abdi al-Barr an-Namriy Al-Qurtubi, *Al-Istizkar*, 1st ed. (Beirut: Dar al-Kutub al-'Ilmiyah, 2006).

If a man performing intercourse with his wife but reach outside the genital area, touching his wife with the lust, kissing her, doing those things without orgasm is not breaking the fast. It is because, the obligation of the expiation is burdened for the entry of genital;¹² *seventh*, he must be the subject of the sex, not an object, because the expiation is for the subject only.¹³ The expiation is burdened to the Muslims who break their fast by an intercourse, the exception is for a traveler and the illness. So, neither traveler nor illness doesn't have the obligation of expiation if they break their fast with an intercourse, because breaking the fast is permitted for them.¹⁴

Malikiya scholar stated that everything that breaks the fast must be obliged with *qada* and *kaffārah*,¹⁵ because invalidating the fast is related to two things, *al- qada wa al- kaffārah*. There is no expiation for invalidating it with an excuse. The expiation is obliged to everything that breaks the fast, because it is breaking the honor of *Ramaḍān*.¹⁶ Ibn Abi Zaid al-Qoiruwaniy stated requirements of expiation, it consists of five conditions, they are; doing it intentionally, self-willingness, breaking *Ramaḍān* honor, knowing the prohibition of it, yet, it is specialized for *Ramaḍān* fast only.¹⁷

Hanabila scholar said, that there are two things that will break the fast along with consequence of *qada* and *kaffārah*: *first*, performing an intercourse; *second*, lesbianism. Then, if there are two women cuddle each other and each of them gets orgasm, then it is obliged to expiate with *kaffārah*.¹⁸ Afterward, a Muslim who breaks his/her fast with an intercourse or lesbianism, their fast

¹² Muhammad Ibn Farra, *At-Tahzib Fi Fiqh Al-Imam Asy-Syafi'i*, vol. 3 (Beirut: Dar al-Kutub al-Ilmiyah, 1997), p 169.

¹³ Al-Juzairy, *Kitab Al-Fiqh 'ala Al-Mazhab Al-'Arba'ah*, p. 530.

¹⁴ Muhammad Ibn Farra, *At-Tahzib Fi Fiqh Al-Imam Asy-Syafi'i*, p. 170.

¹⁵ Al-Juzairy, *Kitab Al-Fiqh 'ala Al-Mazhab Al-'Arba'ah*. p. 530.

¹⁶ Abi Muhammad 'Abdulwahab Ibn 'Ali Ibn Nasr al-Baghdadiy Al-Malikiy, *Al-Isyraf 'ala Nukat Masail Al-Khilaf*, vol. 2 (Riyadh: Dar Ibn al-Qayyim, 2008). pp. 236-48.

¹⁷ Ibn Abi Zaid Al-Qoiruwaniy, *Al-Fawakih Al-Dawaniy 'ala Risalat Ibn Abi Zaid Al-Qoiruwaniy* (Beirut: Dar al-Kutub al-Ilmiyah, 1997), p. 482.

¹⁸ Al-Juzairy, *Kitab Al-Fiqh 'ala Al-Mazhab Al-'Arba'ah*. p. 562.

should be ruined, yet the exception is for who breaks it because of compulsion and forgetfulness.¹⁹

The Muslim who commits sexual intercourse in the day of *Ramaḍān* in consideration of forgetfulness and supposing sunset time or lacking the dawn, then the fast is valid. So, that the obligation of replacing the fast in another and/or *kaffārah* expiation is unnecessary. This is the opinion of Ishaq, Daud, Ibn Hazm, 'Atha, 'Urwah and Hasan al-Bashriy.²⁰ Their opinion is based on the verse of Al-Ahzab (33): 5.: ليس عليكم جناح فيما أخطأتم به ولكن ما تعمدت قلوبكم إن الله وضع عن امتي الخطأ والنسيان وما استكرهوا عليه: Ḥadīṣ.²¹

Based on the recent discussion, it can be concluded that Muslim scholars agreed in *kaffārah* expiation for a Muslim who breaks the fast doing sexual intercourse intentionally. In addition, Syafi'iyah and Hanabila scholars disagree in the expiation for breaking fast by eating and drinking. Besides, they agreed that there would be no *kaffārah* expiation for invalidating the fast along with the *syar'i*, reasons, including: forgetfulness, under compulsion, travelling, and the illness. Expiation in Islamic Jurisprudence tradition derived from the Sunnaic indicant (*dalīl*) that obliging expiation for breaking the *Ramaḍān* fast by doing sexual intercourse, those expiations can be in form of freeing a slave, having two months' consecutive fasting, feeding sixty of the poor, as mentioned by Abū Hurayra. In brief, a man came to the Prophet and confessed that he had sex with his wife during the fast; the Prophet inquires as to whether he can.²²

Upon *ḥadīṣ* informs the Muslims that the expiation for breaking *Ramaḍān* fast consists of three punishments, those are: setting a slave free, undertaking the fast for two months

¹⁹ Ibn Muflih Al-Hanbaliy, *Al-Mubdi' Syarhu Al-Muqni'*, vol. 3 (Beirut: Dar al-Kutub al-Ilmiyah, 1997), p. 31.

²⁰ Sayyid Sabiq, *Fiqh As-Sunnah*, vol. 1, (Kairo: Dar al-Fath Li al-I'lam al-'Arabi, 2000), p. 326.

²¹ Abu Abdullah Muhammad Ibn Yazid Al-Qazwiny, *Sunan Ibn Majah*, vol. 1 (Semarang: Toha Putra, n.d.), p. 659.

²² Abu Husain Muslim bin al-Hajaj al-Qushairi An-Naysaburi, *Sahih Muslim* (Beirut: Dar al-Kutub al-'Arabi, 2004), p. 215.

successively, and feeding sixty poor people and each of them has one mud. *jumhur* 'ulama but Malikiyah scholars agreed that the punishment of an expiation should be in sequence, if the offender is not capable to set a slave free, so he has to fast for two months continually, if he is not capable of it, thus, he has to feed sixty of poor.²³

In carrying those choices of atonement, scholars have different interpretation when understanding the text of *ḥadīṣ*, whether he must to carry the choices mentioned in sequence or the sinner is free to choose one of them. As-Sarkhasi explained, that *kaffārah* expiation ruling must be in sequence, according to Hanafiya scholars. The reason is, that mentioned *ḥadīṣ* explained the sequencing of an expiation. The Arabi who came to Muhammad was not capable to set a slave free; so then, Muhammad gave the second choice, it was fasting for two months successively; until the third choice he was not capable to perform it too. Based on that understanding, the Hanafiya scholars concluded that the obligation of an expiation could be removed because of its difficulty, it is because the Arab was not capable performing all kind of punishments of expiation.²⁴

As for Imam Malik explained that the punishment of an expiation is selectable, he opined that Muhammad gave the choices among three punishments, such as freeing a slave, fasting for two months, or feeding sixty poor people.²⁵ Imam Malik preferred choosing feeding sixty of the poor, equalizing to the command of feeding for the pregnant, the breastfeed, and the old (*fidyah*). They are ordered to feed the poor as a substitution of fast, and are not ordered whether to set a slave free or to fast for two months.²⁶ As for the quantity of food which is given to the poor according to *ḥadīṣ* is about fifteen till twenty *ṣa'*. Equally, according to Malikiya scholar opinion, an expiation punishment

²³ Wahbah az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, vol. 3, 10nd ed. (Beirut: Dar al-Fikr al-Muassir, 2007), p. 1740.

²⁴ As-Sarkhasi, *Al-Mabsuth* (Beirut: Dar al-Fikr, n.d.), pp. 66-67.

²⁵ Al-Qurtubi, *Al-Istizkar*. p. 310.

²⁶ *Ibid.*, pp. 311-12.

is to choose among three choices, depend on offender's capability.

The women have the same obligation as men in the invalidity of the *Ramaḍān* fast caused by copulation, they also have to replace the fast *qada*.²⁷ In the same manner as described above, *jumhur 'ulama* agreed that the fast which is invalidated by sexual intercourse would be burdened by *kaffārah* expiation. Sexual intercourse is an act that involves two subjects of law, such as husband and wife; so logically, both husband and wife would be burdened by *kaffārah* expiation to remove their sins of breaking the respectability of *Ramaḍān*. Women have the obligation of an expiation if they are doing it voluntarily.²⁸ The opinion of Hanafia School indicated that women are not obliged by an expiation if there is no consent in sexual activity, in other word, when wife is being forced by doing what husband wants.

Besides, they explained that the proposition was aimed to the Arab men instead; yet it contained '*illah* or reason which could be concluded that al-Ḥadīṣ was aimed to both men and women. Breaking the fast of *Ramaḍān* by doing sexual intercourse intentionally is a complete invalidation, thus, women are also included to the context and are burdened with an expiation by the proposition of *naṣ*.²⁹ This opinion is strengthened by another *Ḥadīṣ* من أفطر في رمضان متعمدا فعليه ما على المظاهر, the word of من is the form of word that has the general meaning, it meant men and women.³⁰ So, both men and women have equal burden in the expiation according to the general form of the word من.

Malikiya scholars have the same opinion as Hanfiya scholar, everything that would break the fast such as eating, drinking and having copulation will be punished by *qada* and

²⁷ Abdul Karim Zaidan, *Al-Mufasssal Fi Ahkam Al-Mar'ah Wa Bayt Al-Muslim Fi Asy-Syari'at Al-Islamiyah* (Beirut: Muassasah ar-Risalah, 2000), p. 55.

²⁸ Abu Bakr Ibn Mas'ud al-Kasani al- Hanafi, *Kitab Badai' as-Sanai' Fi Tartib Asy-Syarai'*, vol. 2, (Beirut: Dar al-Fikr, 1996), p. 127.

²⁹ *Ibid.*, p. 147.

³⁰ As-Sarkhasi, *Al-Mabsuth*. p. 67.

kaffārah expiation.³¹ They seen equality between men and women in the obligation of expiation. There is no responsibility of the husband to bear his wife expiation and woman have to expiate her copulation punishment by herself. This opinion opposites some of Syafi'iyah scholar who said that wife's expiation obligatory is carried out by husbands.³²

Based on Abi al-Husain Yahya choice, among three opinions, the truest opinion is, an expiation is obliged to men only. He argued that Muhammad gave the punishment to an Arabi such as men only.³³ In the same manner as described above, the majority of Syafi'iyah scholar are in agreement that an expiation is the liability of men only. As for, some of them have the opinions that women also have the obligation of expiation, but it is husbands' responsibility to represent their wives.

There are some circumstances where woman should expiate the invalid fast by her-self: *first*, if she puts her husband's genital to her genital while he is sleeping, thus, she has to expiate it by herself: *second*, if the husband is insane, then he has neither responsibility to expiate his act nor her wife's obligation, it is because his obligation on religion is removed. So, in this condition, she has to expiate it by herself too; *third*, when the man copulates the woman who is not his wife, so, this woman has her own liability on expiation. There is no responsibility for a man to burden her expiation, because the responsibility of expiation must be by the ownership of men on women.³⁴

Ibn Muflih al-Hanbali explained that woman has the obligation of an expiation if she breaks her fast by an intercourse, but her obligation is lost if there are some *syar'i* excuses such as the compulsion and forgetfulness. He explained that carelessness

³¹ Muhammad al-Fadil al-Fatimiy asy-Syubaihi Az-Zarhuni, *Al-Fajru Asy-Syati'u 'Ala as-Sahih Al-Jami'*, vol. 5 (Riyad: Maktabah ar-Rusyid, 2009).

³² Abd al-Wahhab Al-Bagdadiy, *Al-Ma'unah 'ala Mazhab 'Alim Al-Madinah Al-Imam Malik Ibn Anas*, vol. 1 (Dar al-Fikr, n.d.), p. 480.

³³ Abi al-Husain Yahya Ibn Abi al-Khair Salim Al-Imraniy, *Al-Bayan Fi Mazhab Al-Imam Asy-Syafi'i: Syarh Kitab Al-Muhazzab Kamilan Wa Al-Fiqh Al-Muqaran*, vol. 3 (Beirut: Dar al-Minhaj, 2007), p. 521.

³⁴ Muhammad Ibn Farra, *At-Tahzib Fi Fiqh Al-Imam Asy-Syafi'i*. p. 169.

is as same as intentionally in the invalidity of the fast, so, those whose fast is invalid by the carelessness, he/she has to expiate. This opinion is based on *ḥadīṣ* and Muhammad had detailed his question to an Arabian between “did he copulate his wife by the willingness or careless”.³⁵ From the discussion above, it can be concluded that woman has the liability of an expiation according to Hanafiyah, Malikiyah and Hanabilah scholars. Meanwhile, according to Syafi’iyah scholars, some of them stated that a woman does not have obligation to expiate, but some of them said that woman does, with the obligation of her husband to expiate it.

Comparative Analysis of Imam an-Nawawi Ibn Qudamah from The Perspective of Gender

Imam Nawawi considered that wife is not obliged by an expiation as the consequence of sexual intercourse. If her fast is invalid because of menstruation, or committing sexual intercourse, she does not have any burden of *kaffārah* expiation. However, if she commits sexual intercourse by her consent, there are two opinions among the Syafi’i scholars; *first*, she get the obligation *kaffārah* expiation in the same manner as husband’s, because it is the consequence; *second*, it is the opinion that chosen by Imam Nawawi, that wife is not obliged by expiation, because it is only husband’s obligation. Furthermore, he explained for the first opinion where each husband and wife has the same obligation of expiation. That if husband’s obligation of expiation is lost because of other reasons such the illness or travelling, the wife is still obliged by expiation. As for the second opinion, he has explained that wife has no completely obligation of expiation, even husband’s obligation is lost because of other reasons. This is because the obligation of expiation has been specialized for husband only.³⁶

Imam Nawawi said based on the book of *al-Umm* and *qaul qadim*, that an expiation is specialized for husband only. According to this opinion, another question arises, does

³⁵ Al-Hanbaliy, *Al-Mubdi’ Syarhu Al-Muqni’*. pp. 30-31.

³⁶ Abu Zakaria An-Nawawi, *Raudah At-Talibin Wa ‘Umdah Al-Muftin*, vol. 2 (Beirut: Dar al-Fikr, 1995), p. 259.

husband's expiation specialized for him only or he must expiate an intercourse for him and his wife?, there are two opinions as the answers for this question: *first*, expiation is for husband only; and *second*, he must expiate it for him and her wife. From those two opinions, Imam Nawawi chose as the truest answer *arjah* that the obligatory is one expiation just for husband only, there is no wife's obligatory burdened for expiation.³⁷ From the recent discussion, it can be concluded that Imam Nawawi used the text of *ḥadīṣ* as the basis of his determination of the law in the *kaffārah* expiation. His opinion derived from the opinion Imam asy-Syafi'i, in addition to the opinions among Syafi'iyah scholars he has chosen that wife is not burdened by the expiation as the truest opinion. He argued that prophet Muhammad did not explain and mention explicitly the obligation for the wife in his prophetic tradition. This opinion strengthened by the fiqh books that wrote, where he determined the Islamic law based on some powerful proposition that used by Imam Syafi'i.

Ibn Qudamah explained that there is no difference among Hanbali scholar, that wife's fasting is invalid by doing sexual intercourse, because it is one of the things that will break the fasting. Thus, wife's fasting is invalid as well as the husband. Next question is, does wife has the obligation of expiation? He answered by comparing the opinions of scholars from different schools: *first*, wife is obliged by an expiation because she breaks the honor of Ramadan month doing sexual intercourse and is obliged by an expiation in the same manner as husband's obligation. This is the opinion that agreed by some scholars such as Abu Bakr, Imam Malik, Abu Hanifah, Abu Saur and Ibn Munzir.³⁸ Moreover, he explained that, even the wife has the obligation of *kaffara* expiation, it could be lost if she is being under compulsion, this opinion was agreed by the scholars and strengthened by the speech of Imam Ahmad when someone asked him, does wife obliged by *qada'* if she is being forced? He

³⁷ Abu Zakaria An-Nawawi, *Al-Majmu' Syarh Al-Muhazzab*, vol. 6 (Beirut: Dar al-Fikr, n.d.), p. 331.

³⁸ Ahmad bin Muhammad bin Qudamah, *Al-Mugni*, vol. 4, 2nd ed. (Kairo: Hajar, 1992), p. 375.

answered “yes”, so, does she obliged by an expiation? Then he answered “no”.³⁹

The discussion gives the conclusion that Ibn Qudamah has used *hadīṣ* about the expiation as the basis of his determination of the law. In the interpretation of the text, he makes the similarity between man and woman in invalidating the fasting because of the copulation, then he concluded that woman has the obligation of the expiation based on the similarity of the obligation that would be given to either man or woman who breaks the honor of Ramadan by the copulation. Ibn Qudamah in his book of *Raudat an-Nazir wa Junnat al-Manazir* divided the sources in determining Islamic law into two categories, first is the sources that are agreed by scholars and second is the sources that are disagreed by scholars.⁴⁰

Kaffārah is one of Islamic mechanisms designed to give punishment to people who commit certain mistakes, the goal is to remove Muslim's sins. Etymologically, *kaffārah* means closing, by carrying out *kaffārah*, the wrong actions that have been done will be covered. *kaffārah* is also intended as a means of self-purification and repentance for sinners.⁴¹ *Kaffārah* also has an economic dimension that could make as state income. In the Prophet era, the income of the state was not only limited to *kharaj*, *zakat*, *khumus*, and *jizyah*; at that time, *kaffārah* and inheritance properties that had no heirs were also made as source of economic strength for the people.⁴² Thus, basically, the implementation of *kaffārah* to some forms of sin does not only have a divine dimension, but also a human dimension. Three choices, such as freeing slaves, fasting for two consecutive months, and feeding 60 poor people, each of them plays a role in the dimensions of

³⁹ *Ibid.*, p. 376.

⁴⁰ Ahmad Ibn Muhammad ibn Qudamah, *Raudat An-Nazir Wa Junnat Al-Manazir*, p. 35.

⁴¹ H Hamdani, “Konsep Falsafah Penghukuman Dalam Islam,” *REUSAM-Jurnal Ilmu Hukum*, vol. 8, no. 1 (2020): pp. 29–41.

⁴² Ibnudin Fauzan, “The the Thingking of Islamic Economy in Muhammad Prophet Era (Pemikiran Ekonomi Islam Pada Masa Nabi Muhammad),” *Risalah, Jurnal Pendidikan Dan Studi Islam*, vol. 5, no. 1, March (2019): pp. 51–61.

divinity and humanity. In modern times, where the practice of slavery has been abolished, there are only 2 options for penance. Of course someone has the right to choose from the two forms which have more benefit elements.

Gender is something that is attached, codified and institutionalized by social culture to both men and women. Gender is closely related to functions, roles, rights and obligations. For example, women are bland, emotional, motherly and beautiful. These traits can be exchanged from one human to another, so that gender is an inherent trait of men and women which is the result of social construction. As a result of this social construction, both men and women can become victims of the system that has been preserved. There are five forms of gender inequality that can be found as a result of the manifestation of a gender-biased social construct system, those things include: *first*, the burden, women bear more of the domestic workload; *second*, subordination, women are considered as the second class in the field (education, economics and politics); *third*, Marginalization, efforts to impoverish women due to the exclusion of women in decision-making in important affairs; *fourth*, Stereotypes, negative labels against women; *fifth*, Violence/violation, in the form of physical and psychological violence is the result of the assumption that men are the leaders of the household.⁴³

Inequities against women resulting from social constructs can usually be found in some poor countries. If a family does not have a good economic capacity, the thing that is usually sacrificed is the rights of the daughters in the family. For them, women's main tasks after marriage are only limited to taking care of their husbands, children and household; while the education of men are prioritized because they are considered to be the breadwinners of the family in the future. It is undeniable that social constructs play a role in the process of legal formation and *ijtihad*. In the case of *kaffārah*, some scholars stated that women do not have the right to atone for their own mistakes. Although there are those who

⁴³ Agus Hermanto, "Teori Gender Dalam Mewujudkan Kesetaraan: Menggagas Fikih Baru," *Ahkam: Jurnal Hukum Islam*, vol. 5, no. 2 (2017): pp. 209–32.

argue that women also have an obligation to atone for sins, but the implementation of *kaffārah* is considered as husband's duty. This assumption arises due to the assumption that women are only property whose duties are limited to complying with the wishes of their husbands.

The case of *kaffārah* expiation which exclude wife from its obligatory, apparently, is the result of bias view on sexual relationship as well as in its function and role that formed in the society. Thus, it is not surprising if there were the legal assumption which said, that woman does not have obligation to expiate the sexual intercourse. In Syafi'i school, for example, there are three opinions about *kaffārah* expiation among Syafi'i scholar: *first*, *kaffārah* expiation is men's liability and there are no obligation for women, because husband have the special right for doing copulation, as well as the right of the dowry; *second*, either men or women have their liability of an expiation, because it is the punishment which is related to copulation, so it equalizes both men and women like the punishment of adultery; *third*, man is obliged to himself and his wife by an expiation, based on the text of *ḥadīṣ* that mentioned about Arab who asked Muhammad about the punishment for an act involving himself and his wife, thus, Muhammad ordered him to free a slave, then it can be concluded that freeing a slave is for both offenders.⁴⁴ Musthafa al-Khin explain that an expiation is burdened for a husband only who performs the copulation and it is not obliged to a wife, or woman who is being copulated, because the criminal of who force to the copulation is bigger, so then he is the one who should be obliged by an expiation.⁴⁵

First opinion which said that woman has no right in *kaffārah* expiation is totally the result of bias view on function and role of spouses. This view indirectly confirm that wives are merely the object in the sexual activities. They don't have any right to refuse husbands' invitation, whereas actually, wives have

⁴⁴ 'Ali Ibn Yusuf al-Fairuzabadi as-Syairazi, *Al-Muhazzab Fi Fiqh Al-Imam Asy-Syafi'i*, Vol. 1, 2nd ed. (Beirut: Dar al-Kutub al-Ilmiyah, 2008), p. 337.

⁴⁵ Musthafa Al-Khin, *Al-Fiqh Al-Manhaji 'Ala Mazhab Al-Imam Al-Syafi'i*, vol. 1 (Damaskus: Dar al-Qalam, 2009), p. 353.

also rights to commit sexual activities by her consent. The reason that put forward by Imam Nawawi that “what if the husband get the easiness *rukhsah* for not committing the *Ramadan* fast because of travelling or other *syar' i* reasons” was an old paradigm of patriarchal societies. The wives, basically, have totally right to refuse sexual invitation if they are on *Ramadan* fast obligatory. In the some circumstances that wife is forced by her husband, thus, she has only *qada* obligation, so that *kaffārah* expiation is unnecessary because she is being under compulsion and it could be classified as marital rape.

Next question is, who will get the liability of *kaffārah* expiation? There are many situations to get the right answer of this question. In brief, authors agreed to the explanation of ibn Qudamah, who explained that there is no difference between wife and husband in *kaffārah* expiation as the consequence of sexual intercourse in the day of *Ramadan*, both are burdened to expiate their wrongness. Based on the text of *ḥadīṣ*, there are only two remaining choices of expiation, to fast 2 months in a row or to feed 60 poor people. Thus, if each of them chooses the option of fast, then, both are burdened by that choice. Furthermore, if they want to choose the option of feeding 60 poor, then it is not a problem. Yet, who will be in charged?

If this discussion is referred to those concept of *nafkah* liability that explained in both fikih's book and KHI. The answer is very clear that husband is obliged to pay the redemption of wife's *kaffārah* expiation. It is because the income of family only relies on the husband's salary. However, from the perspective of gender which provides the equal rights for each, thus either husband or wife could be obliged by *kaffārah* expiation. Lastly but not least, in the end, the family model always depends on each family choice. If they are comfortable with the pattern of family that have been established, sharing the function and role where husband have the obligatory in public sector while wife is taking care of household matters; then they get happiness and feel the ideal system for them. Thus, husband have to expiate *kaffārah* for himself and her wife. It might be that gender equality and justice has been realized, because another concept of substantive justice

doesn't have to be the same. Share any role as long as we respect each other and have compassion, that's true equality.⁴⁶

However, in this case of *kaffārah*, it appears that the judgment is advanced by the jurists explicitly excludes the prophetic practice and selects only that part of the tradition, which they assume that it is the law. Every jurist claims that the *kaffārah* for breaking the fast through intercourse with one's spouse is the freeing of a slave, or fasting for 60 days (there is variance here, some insist it must be continuous, while others allow discontinuity on grounds of disability) or feeding 60 poor people. Yet, the rest of the tradition, especially the part where the Prophet smiles at the man who claimed that he could neither free a slave, fast for 60 days nor feed poor people, and instead gives him a basket of dates to go home and share with his own family, was ignored.⁴⁷ Islam is the only Religion in which the reward is based upon the purity of our intentions and not upon the amount of hard work. One of the most common problems of our society is the negative interaction of the opposite sex. The present era is an era of distraction. After years of modernization and urbanization we still stand at the point where Arabs stood before the arrival of our beloved Prophet, the point where there wasn't any concept of respect of female, but, now, we still stand at the same place.⁴⁸

Conclusion

The results of the discussion of this article show that there are different opinions between Imam Nawawi and Ibn Qudamah in terms of the consequences of intercourse between husband and wife during the day of *Ramadan*.

Imam Nawawi proposed the opinion that the *kaffārah* of breaking the fast is only burdened to husband, while the wife does not have the burden of *kaffārah* at all. Yet, for Ibn Qudamah, he

⁴⁶ Samsul Zakaria, "Nafkah Dan Ketimpangan Gender (Analisis Nafkah Dalam Kompilasi Hukum Islam)," *IJTIHAD*, vol. 36, no. 2 (2020).

⁴⁷ Khan, "The Loss of Ihsan."

⁴⁸ Habiba Elahi, "ARE GENDER RELATIONS IN THE ERA SATISFACTORY IN THE LIGHT OF ISLAM?," *INTERNATIONAL JOURNAL OF ISLAMIC STUDIES & CULTURE* 4, no. 1 (2020): 1–4.

did not distinguish between husband and wife in the burden of *kaffārah*, the main reason is because both husband and wife, their fast would be ruined by consensual of sexual intercourse. However, this obligation will be removed if the wife does it with the lack of the consent and/or under the threat of the husband.

Kaffārah studies from a gender perspective will lead to various laws decision that are adapted to the circumstances of each family. Basically, both men and women have the same rights in matters of worship and expiation. So, if a husband and wife commit sexual intercourse during the day of *Ramadan*, they will be subjected to the obligation to *kaffārah*. If the wife does it by force and threats, it can be classified into the category of marital rape which is prohibited by religion. Women are not only legal objects, they are also legal subjects who will get all the consequences. When performing *kaffārah*, if they choose to fast, thus, husband and wife must fast each 2 months in a row. If they choose to pay feeding for 60 poor people, they have to discuss, who will pay the payments. Substantive justice does not look at who will pay the payment, as long as it maintains the integrity and harmony of the household, then there is no problem.

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