

## Boundary of Istimta' For Husband Against Menstruating Wife (Comparative Study of Imam Malik and Imam as Syafi'i)

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Received: 15/03/2023

Revised: 23/05/2023

Accepted: 18/06/2023

### Abstract

This research examines the "Istimta' Limits' For Husbands Toward Wife Who Has Menstruation. In more detail, it discusses ISTIMTA'. is a law that is prescribed for a couple so that there is no more opportunity for the husband to commit adultery even though the wife is menstruating, therefore there is a limit of istimta' for the husband towards the wife who is menstruating so that it is more build good family relationships. Opportunities for adultery for husbands are very few because the majority of scholars allow istimta' but differ in opinion as to what istimta' (having fun) with a menstruating wife can be chosen by the husband taking into account the procedures and procedures in accordance with Islamic law. There are several laws that the scholars are not united and have different opinions, in particular regarding the concept of istimta limits. This research is about to examine the opinion of two madhhab priests, namely Imam as Syafi'i and Imam Al Maliki. The problem being investigated is how the views of imam as Syafi'i and imam maliki on the concept of istimta' law on menstruating women. This study aims to analyze the views of two priests of the madhhab, namely Imam As Syafi'i and Imam Al Maliki regarding the limit of istimta' for husbands towards wives who are menstruating. This research is research that uses a normative approach with a qualitative descriptive method, ie describes the views of two madhhab priests, namely imam as Syafi'i and imam Al Maliki. Research results obtained from the discussion of this study, namely that if a wife is menstruating there is a limit for the husband to be istimta' with said wife, so when a husband ignores the istimta' limits for a husband towards a wife who is menstruating which is permissible then the law is haram. So it is important to explain in this related thesis.

### Keywords

Limits, Istimta', Menstruation

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## 1. INTRODUCTION

Humans are the most perfect creation of Allah SWT. Allah SWT created humans in pairs as the word of Allah SWT in the Qur'an surah Al-hujarat verse 13. Which reads

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا<sup>١</sup> إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ<sup>٢</sup> إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ



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Published by Institut Agama Islam Sunan Giri (INSURI) Ponorogo; Indonesia

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*Meaning: " O people! Indeed, We have created you from a male and a female, then We made you nations and tribes so that you may know one another. Indeed, the most noble among you in the sight of Allah is the most pious, Allah is All-Knowing, All-Conscientious."*

As in (Q.S Al-hujarat verse: 13) it is about the creation of men and women, where in this case women have privileges that are not available to men. The privilege is that women experience the menstrual cycle or often referred to as menstruation. The occurrence of menstruation is a normal process for women who are balig/adult.

Menstruation is blood that comes out of a woman's uterus at any time that is not caused by an illness or the presence of a birth process, where the discharge of blood is a sunnatullah that has been established by Allah SWT for women. Blood that comes out within a certain period of time, the blood is thick blackish red, and is hot, and has a distinctive odor or an unpleasant odor.

Menstruation occurs when a woman's egg cells do not experience fertilization resulting in a thickening of the uterine wall which over time this thickening will decay resulting in blood coming out of the female genitals or vagina. Great is Allah SWT who creates in the human body a blood fluid that can be used as a special consumption for the fetus in the mother's stomach without the need to bother to chew and digest it. This food is sent throughout the body through absorption mechanisms that allow the blood to penetrate the veins in the fetus's body. It is from this process of menstrual blood that the fetus is consumed in the mother's stomach.

Then it can be seen that the blood that comes out of a woman's genitals consists of three types, the first is menstrual blood, istihadhah blood and puerperal blood. Which menstrual blood is blood that comes out when a woman is in good health. Thus, every woman normally feels the occurrence of this menstrual or menstrual cycle. The menstrual cycle in women usually ranges from 3-7 days where on the first-third day of menstruation/menstrual blood will come out more, at that time women usually experience pain or cramps in the abdomen and back.

Every month women experience menstrual periods at a certain time, the minimum menstrual period is one day and one night and the maximum is fifteen days, but generally it is six or seven days. This menstrual period generally occurs for women who start from the age of 9 years until they experience menopause. This special situation that occurs in every woman is a nature or gift that God gives to test whether they remain obedient to Him. Rasulullah SAW also said in the book of Bukhari and Muslim which was narrated by Aisyah r.a.

During the period of menstruation there are several things that a woman must take care of both regarding herself and with other people, what is meant here is her husband. Prohibitions relating to himself include praying, fasting, entering the mosque, reading and touching the Qur'an and tawaf. While the prohibition related to other people referred to by her husband is intercourse. These things are forbidden because during menstruation a woman is in a state of having a large hadas (junub). So you have to wait for the cessation of (sacred) blood to be allowed to do it again. In Islam intimate relations (intercourse) between husband and wife are permissible/legal. But when the wife experiences menstruation/menstruation there are limits that must be maintained when having intercourse which is called Istimta'. The Qur'an describes the nature of menstruation in suroh al Baqarah as in the words of Allah SWT:

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ ۖ قُلْ هُوَ أَدْنَىٰ فَاَعْتَرِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرَبُوهُنَّ حَتَّىٰ يَطْهُرْنَ ۖ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ ۚ إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ

*Meaning: And they ask you (Muhammad) about menstruation. Say "menstruation is something dirt" therefore you should keep away from women during menstruation, and do not approach them until they are pure. When they are pure, then mix them in the place that Allah has commanded you. Indeed, Allah loves those who repent and loves those who purify themselves. In line with the Word of Allah SWT in surah Al-Baqarah verse 222, medical experts also prohibit husband and wife relations when the wife is menstruating,*

*the verse emphasizes that menstruation is dirt, therefore we are told to distance ourselves from the wife during menstruation. From here, the scholars agree that it is forbidden to have sexual intercourse with a wife. it's just that the scholars have different opinions if a husband has sex with his menstruating wife by having fun or is called istimta' Or in another language, the scholars have different opinions about the wife's body parts that must be avoided when the wife is menstruating because this verse generally instructs staying away from his wife during menstruation, and not mentioning in detail which members should be avoided even though there are limits on which parts of his body are not allowed to be happy or called istimta'.*

The expected objective of this research is to find out the opinions of Imam Al Maliki and Imam As Syafi'i regarding "Istimta Limits' for Husbands Against Menstruating Wives". And can find out the differences in the opinion of Imam Al Maliki and Imam As Syafi'i. This research is expected to add insight to the development of science, especially those related to Islamic family law.

## 2. METHODS

This research method is descriptive, namely research that aims to describe and analyze the subjects studied. With this type of library research (library research). Namely a research whose data source was obtained from the translation of comparative fiqh books of schools, books, Islamic literature, journals, and writings that are relevant to the issue of istimta' limits for husbands towards menstruating wives according to madzhab priests namely Imam Al Maliki and Imam As Shafi'i.

The source of the data obtained is the data obtained/collected by the researcher directly from the source. In this study the primary data used was the translation of the book Al UM by Imam as Syafi'i and the book Al Mabshut by Imam Malik, Translation of Bidayatul Mujtahid, Islamic Fiqh Wa Adillatuhu, Al Mughni. obtained from Primary data and Secondary data that has been read, reviewed, compared and then drawn conclusions.

## 3. FINDINGS AND DISCUSSION

The opinions of the two Imams of the madhhab, namely Imam Al Maliki and Imam AS Syafi'i regarding the limit of istimta' for a husband towards a wife who is menstruating, the two priests have different opinions regarding the parts of the wife's body that are permissible to have istimta' (having fun) with his wife.

### **View of Imam Al-Maliki and Imam As-Syafii About The Limits of Istime' for Husbands Toward Wife Who are Haid**

#### **A. The limit of istimta' for a husband towards a wife who is menstruating according to Imam Al-Malik and Imam As-Shafii**

It is undeniable that sexual intercourse is the "most enjoyable" activity for many people. In addition to increasing household harmony, sexual relations also improve the health of the body, especially the heart. However, this activity sometimes stops because the wife is menstruating.

Menstruation (menstruation) is blood that comes out of a woman's genitals in a healthy way, not because of childbirth. The color is reddish black, and stings (feels hot). Whereas in the medical world, menstruation is the process of bleeding from the uterus which occurs due to the decay of the inner lining of the uterus which contains many blood vessels and unfertilized eggs. This process is often accompanied by abdominal pain, the result of contractions of the abdominal muscles when bleeding from the uterus.

Scholars differ on the part of the wife's body that must be avoided during menstruation.

##### 1. Opinions of Ibn Abbas and Abidah Al-Salamani.

Imam Ibn Abbas and Abidah Al-Salamani said, a husband must stay away from all members of his wife's body during menstruation. This means that he must not touch his wife in any way. They are guided by the generality of the verse above. This verse generally instructs

to stay away from the wife during menstruation, and does not specify in detail which parts of the body should be avoided.

2. Majority of Ulama (Imam Malik, Imam Auza'i and Imam Abu Hanifah)

The majority of scholars, including Imam Malik, Imam Auza'i and Imam Abu Hanifah emphasized that the part of a wife's body that must be avoided is the limb between the knee and the navel. Thus, the husband may have intercourse with his wife on other than the said body part.

They hold on to the hadith narrated by Malik from nafi

وحدثني عن مالك عن نافع أن عبدا لله بن عبدالله بن عمر أرسل إلى عائشة يسألها هل يبأ شر الرجل امرأته وهي حائض فقالت لتشد إزارها على أسفلها ثم يبأ شرها إنشاء

*"Meaning: he told me, from Malik bin Nafi' that Ubaidillah bin Abdullah bin Umar, sent someone to Aisha to ask, is it permissible for a man to have intercourse with his wife during menstruation? Asiyah said: the wife should wear a sarong on the lower part of her body, then the husband may sprinkle as he pleases*

According to the opinion of Imam Malik with the history of Maimunah, Maimunah said that the Prophet sallallaahu 'alaihi wasallam was happy with his wife except between the navel and the knees while she was menstruating." (Saheeh Muslim, Number 294).

3. Imam Thauri, Muhammad bin Al-Hasan, and Imam As Syafi'i

According to Imam Thauri, Muhammad bin Al-Hasan, and Imam As-Shafi'i, the part of a wife's body that must be avoided is the place where menstrual blood comes out, namely the farji. That is, the husband may have sexual intercourse with his wife in addition to his private parts. They hold on to the hadith narrated by Masruq:

وما روى عن مسروق قال : سألت عائشة ما يحل للرجل من امرأته إذا كانت حائضا ؟ قالت : كل شيء إلا الجماع

It was narrated from Masruq said: I asked 'Aisha what is lawful (having fun) from a woman who is menstruating and she replied:

"Do everything except jima' (intimate relationship).

In line with the opinion of the scholars of this school, medical science has also succeeded in revealing that sexual intercourse with a menstruating woman will cause inflammation of the vagina for that woman. Because the lining of the uterus is open and injured, it is even possible that the inflammation will produce phlegm on the lining of the periton (Hafli, 2021).

Of the three opinions above, it seems that the opinion of the second group is a strong opinion, namely the opinion which states that the part of the wife's body that must be avoided during menstruation is the limb between the knee and the navel. That is, the husband may have fun with his wife on any limb other than between the knee and the navel. This opinion is in line with the precautionary principle in Islamic law, as stated by Sheikh Ali Assabuni: لأن من حام حول الحمى يوشك أن يقع فيه: "Actually, it is permissible to have intercourse with the limbs between the navel and the knees can lead to something that is prohibited. Because whoever is around the limits of what is forbidden is afraid that they will fall into it. So to be careful, we keep it away from the restricted area."

From the explanation above that what is prohibited by Allah SWT is to keep his people away from evil. For that as a people should be more obedient to His commands and prohibitions. As a human being should be more able to control the passions in living life.

#### 4. CONCLUSION

That it has become a quadratic for every woman who is born to experience menstruation (menstruation) when she has reached puberty/adulthood. Menstruation is blood that comes out of a woman's uterus at any time that is not caused by an illness or the presence of a birth process, where the discharge of blood is a sunnatullah that has been established by Allah SWT for women. Blood that comes out within a certain period of time. the minimum menstrual period is one day and one night and the maximum is fifteen days, but generally it is six or seven days. For married women when they are menstruating, there are boundaries that must be maintained when they want to have fun with their husbands.

The scholars agree that it is forbidden to have sexual intercourse with a wife. it's just that the scholars have different opinions if a husband has intercourse with his wife who is menstruating by having fun or is called *istimta'*. That is the opinion of Imam Malik that it is permissible to have intercourse with his wife except in the part of the body between the knees and the navel. And according to Imam As-Syafi'i, the part of the wife's body that must be avoided is the place where menstrual blood comes out, namely the *farji*. Meanwhile, according to Imam Abu Hanifah, it is not permissible for him to have intercourse with his wife in any part of the body when she is menstruating.

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