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The Ruling on Having Intercourse with a Wife who has Completed Her Menses but has not done the Obligatory *Ghusl* according to Imam Abu Hanifah

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Abstract. The purpose of this study aims to analyze the opinion of imam Abu Hanifah regarding the opinion of having sex with a wife who has finished her period but has not taken the obligatory bath, the type of research used is library research, with qualitative analysis methods. using data in the form of verses of the Qur'an and hadith in various books of interpretation that contain related information. In this case, the author selects the data to be included in the writing according to the existing rules so that it can be easily understood regarding the sequence of the data to be analyzed using interpretation, through the data by using the rules of figh. while in analyzing the data collected through deductive and inductive methods. to implement the problem of menstruation when taking the opinion of imam Abu Hanifah based on the Qur'an and hadith. The conclusion of this research is the opinion of Imam Abu Hanifah that if the husband wants to have intercourse with his wife who has finished menstruating but has not taken a bath, it is permissible to have sexual intercourse even though he has not had time to take a janābah bath. The most important thing is that the blood has really stopped and does not come out again according to the conditions that have been determined. This research is expected to contribute to increasing understanding of the importance of understanding the relationship between wife and husband in the household. The findings of this study can be a reference for related parties, including family members, communities and educational institutions in realizing a good family.

Keywords: Abu Hanifah; Bathing; Menstruation; Obligatory.



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1. Introduction

The problem of menstruation for women in Islam is defined as menstruation. In Shara', menstruation is blood that comes out of the uterus of a woman in good health and not due to childbirth or illness at a certain time. Women from adolescence to adulthood will normally experience menstrual periods or commonly called menstruation in the course of their lives, namely with the discharge of blood that occurs periodically through the vagina originating from the walls of the female uterus. The discharge of blood is because the egg is not fertilized, resulting in the decay of the inner layer of the uterus which contains many blood vessels. The real puberty for women begins when the first menstrual blood comes out. The first menstruation is usually experienced by women at the age of nine years or later if menstruation before the age of nine years is called damaged blood. Menstruation is a woman's nature which indicates that the woman is healthy and her reproductive system is running well.

Based on the above statement, this title is very interesting to be studied more deeply by the author regarding the legal issues of having intercourse with a wife who has finished menstruating but has not taken the obligatory bath according to imam Abu Hanifah. If this problem is related to a husband who has sex with his wife who is pure from menstruation but has not taken a bath, at first glance there is nothing irregular about what the husband and wife are doing, because it is a natural thing for a husband and wife to have intercourse, but they are not allowed to exceed the signs that have been outlined by Islamic law. The *Madzhab* of Imam Abu Hanifah, whose opinion differs from the other *Madzhabs* on this issue, is one of them.

Imam Abu Hanifah said the minimum limit of the problem is 10 days. If it has been more than 10 days then the blood is *istihadah* and the woman must do *ghusl* and pray. Imam Ibn Taymiyyah (may Allah have mercy on him) said in Majmu' Fatawa: "There is no definite limit to the minimum or maximum period of menstruation." This is the strongest and most sensible view, and it is agreed upon by most of the scholars, including Shaykh Ibn Taymiyyah (may Allah have mercy on him), who agree with this view in saying that there is no minimum or maximum period.

Shaykh ibnu 'Uthaymeen (may Allah have mercy on him) added that if there is a limit to the number of days a period lasts, there is a shar'i text from the Qur'an and Sunnah that explains this. Shaykh al-Islam ibn Taymiyyah (may Allah have mercy on him) said: In principle, any blood that comes out of the uterus is menses. That is unless there is evidence to suggest that it is *istihadah*. If a



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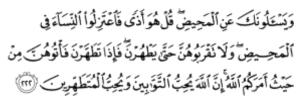
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woman who is menstruating stops, even if it is for one day, then she must do *ghusl* and pray, and if it is Ramadan, then she must fast, because a woman may have her period for two or three days, up to seven or even fifteen days, and she may still bleed for some time.¹

If she does not have a regular menstrual schedule then she can experience it from the color of the blood. If the blood is black in color and emits fishy ashes then it is considered to be menstrual blood if it is anything other than that then she has to pray and fast and the husband can have intercourse with his wife.

Basically, having sex with your wife is a natural thing to do. The problem of menstruation for women in Islam is said to be menstruation. in Shara' menstruation is blood that comes out of the womb of a woman at a certain time in a healthy state not caused by illness or childbirth.²

In Islam, the discussion of menstruation does not prohibit a husband from having sexual intercourse with his wife unless she is menstruating, (Abdullah, February 2005)In the Qur'an, it is discussed as explained that it is forbidden for husbands to have intercourse with their wives during menstruation, Allah SWT. says in *al-Baqarah*: 222 which reads:



Meaning: They asked you (Prophet Muhammad) about menstruation. Say, "It is an impurity." So, keep away from your wives during their menses and do not approach them until they are pure. When they are completely chaste (after the obligatory bath), mix with them according to what Allah has commanded you. Verily, Allah loves those who repent and loves those who purify themselves.³

This verse describes menstruation and the attitude towards menstruating women. Menstrual blood is weak, and an unfertilized egg leaves a woman's womb every month for at least one day and night, usually six or seven days, and up to fifteen days. The ancients had different attitudes towards menstruating women. The attitude of the Jews was very strict, not wanting to associate with a menstruating wife, not wanting to eat and drink together, not wanting to share a house with a wife, and not wanting to be with a wife. They do not want to touch

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¹Himatu Mardiah Rosada. (2015). *Ibadah Penuh Berkah Ketika Haid Dan Nifas.* Jakarta: Lembar Langit Indonesia.

²Zuhaili, W. A. (2008). *Al Fiqh Al Islami Wa Adillatuhu*. Beirut: Dar Al Fikr.

³ Kemenag Agama Ri. (2015). *Al-Qur'an Dan Terjemahnya*. Depok: Al-Huda.



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a menstruating woman because her skin is considered unclean. The attitude of Christians is different, they interact normally with a menstruating woman and there is no difference between a menstruating and non-menstruating person. They are free to have sex with her and do whatever they want. The same attitude was shared by Arabs and Jews in the barbaric times. Islam prohibits a husband from having sex with his menstruating wife.

Health experts have explained the dangers of having sex with a menstruating woman. The verse ends with the explanation that Allah loves those who repent of their mistakes and those who always keep clean. Menstruation occurs in adult women when unfertilized ovaries are expelled from the body. Since fertilization has not occurred, the wall of the uterus that is supposed to receive fertilization shrinks. With this contraction, the unfertilized ovary is expelled along with the discharge of blood from the damaged hair vessels. After the egg and blood are expelled, the body repeats the ovarian maturation process. All these processes repeat over a period of time.

As explained in the verse *Al-Baqarah* 222 in the verse shows that Allah SWT has given instructions regarding the menstrual period that ends after purity, namely when after drying and stopping the blood. Does not depend on a certain number of days. So that is the basis of menstruation itself. If there is blood whose nature is menstrual blood, then the nature of water does not apply to it.

As in the quote of the verse Al-Baqarah verse 222, the words of Allah SWT, "do not approach them until they are pure." This is an interpretation of the verse, "Therefore you should abstain from women during menstruation, (Ministry of Religious Affairs 2015: 25) meaning that Allah SWT forbids mixing with a woman while she is experiencing menstruation, and it is permissible to do so if her menstruation has stopped.⁴

The issue of menstruation, despite its importance in Shari'ah, health, morality and society, is still categorized as a very complicated matter. In order to find out information about menstruation, diligence is needed as well as a deep understanding by examining the explanations given by experts who specifically study the issue.

From this problem, to get something good in a life, of course, a good process is needed too. Likewise with sexual intercourse, to obtain good offspring (pious) of course the sexual intercourse must be done with the right ethics. In addition, the most important thing before having sexual intercourse is that before having intercourse, the married couple should first purify themselves physically and

⁴ Ad-Damasyqi, Muhammad Bin Abdurrahman. (2009). Fiqh Empat Madzhab. Bandung: Hasyimi.



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non-physically. Physically pure means that it is done in a clean and healthy state, not menstruating, while non-physically first cleansing his heart and preferably before doing so should do ablution and two raka'at of sunnah prayer first.

There are several previous studies obtained that have to do with the theme that discusses this menstrual matter. then research is taken that specifically discusses this period, among others: The journal by Muhammad Nailurroman Hendri Sayuti and Arifuddin with the title "the law of having sex with his wife after menstruation before bathing (a comparative study between imam Malik and imam ibn hamz) This study concludes that judging from the opinion of imam Malik the law of having sex with his wife after menstruation before bathing is haram for the husband, while according to imam Ibn Hazm it is halal for the husband to have sex with his wife so that the wife does one of the four ways of purifying, namely bathing, tayammum, ablution and cleaning the genitals with water. ⁵

Then the work of Amin Karman in 2018 with the title "the law of having intercourse with a wife who has finished menstruating according to the Shafi'i madzhab and the Hanafi madzhab. It can be concluded that the law of having intercourse with a wife who has finished menstruating according to the Shafi'i madzhab is not allowed until they are pure, namely purifying with water or tayammum if there is an obstacle that cannot use water and there is no water. While the law of having intercourse with a wife who has finished menstruating according to the Anafi madzhab until the menstrual blood stops with a maximum period of 10 days or more. It is permissible to have sexual intercourse even if you have not taken a bath. The most important thing is that the blood has completely stopped. ⁶

From the review that the author did from the scientific works above, it can be said that this research the author found that no one has specifically discussed the law of having intercourse with a wife who has finished menstruating but has not taken an obligatory bath according to imam Abu Hanifah, this can be an opportunity to further familiarize the opinion of imam Abu Hanifah and his writings on this menstrual problem, so that this research is expected to add to the scientific treasure and help perfect the existing Islamic law in Indonesia.

⁵ Nailurrahman, M., Hendri Sayuti, H. S., & Arifuddin, A. (2023). Hukum Menggauli Istri Setelah Haid Sebelum Mandi (Studi Komparatif Antara Imam Malik Dan Imam Ibn Hazm). *Journal of Sharia and Law*, 2(3), 757–779.

⁶ Karman, A. (2018). *Hukum Menjima*" *Istri Yang Selesai Haidh Menurut Madzhab Syafi*"*I Dan Madzhab Hanafi*. Diploma Thesis, UIN Raden Fatah Palembang.



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2. Research Methods

This type of research is library research, namely where researchers collect all data and literature in the form of verses of the Qur'an and hadith in various books of interpretation and books that are in line with the discussion with qualitative analysis methods. Library research is theoretical research, reference materials and other scientific literature. Related to the culture and values of norms that have been established social situations that are being studied. In conducting research, the author collects descriptive methods, namely methods of solving the problems investigated by making systematic, factual and accurate analysis. This method is used by the author to be able to find out the views of the *Hanafi madzhab* regarding the law of having intercourse with a wife who has finished menstruating but has not taken an obligatory bath using the rules of *ushul fiqh*. So that the opinion of Imam Abu Hanifah on matters relating to the law of having intercourse with a wife after completing her period but not yet taking an obligatory bath is found.

3. Results and Discussion

3.1 Definition of Menstruation

Haidh or mens (Indonesian spelling) is blood that comes out of a woman's uterus at certain times that is not caused by disease or childbirth, where what comes out is *sunatullah* that has been determined by Allah SWT to women, blood that comes out in a certain period of time, the blood is blackish red thick, hot and also has a distinctive odor or unpleasant odor.

Menstruation is something normal that happens to all women, and every woman has different habits. When menstruation occurs there are those who feel pain in the hip, and there are also those who do not feel pain at all. When menstruating there are only 3 days, there are also more even up to 10 days. There are those who when coming out begins with brownish yellow lender, and there are also those who immediately come out in the form of thick red blood. In these conditions that must be known by a woman, because knowing the period and characteristics of menstrual blood is the root where a woman can distinguish other blood that comes out.

Women who are menstruating are not allowed to perform prayers touching the *Mushaf*, tawaf, fasting and cannot have sex with their husbands in the pubic

⁷ Sugiyono. (2012). Metode Penelitian Kuantitatif, Kualitatif, dan R&D. Bandung: Alfabeta.

⁸ Sumardi Suryabrata. (1992). *Metodologi Penelitian.* Jakarta: Rajawali.



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area. But it is allowed to read the Qur'an without touching the *Mushaf* directly (allowed by using a barrier and using electronic devices and media such as cellphones, ipads, computers and so on), *dhikr*, and it is also allowed to serve or make out with the husband except in the pubic area. ⁹

3.2 Periods of Menstruating Women

The age at which a woman begins to menstruate is when she reaches the age of 9 years and 16 days. If the period of chastity is less than that, the maximum period of chastity (15 days) and the minimum period of menstruation (one day and one night) are ruled. So if she bleeds less than this age, the blood that comes out is not commonly called menstrual blood, but is called *istihadah* blood. However, in general, the first time a woman bleeds is when she is 12-14 years old.

If the blood that comes out partly at the age of menstruation and partly before the age of menstruation, then the blood that is considered menstrual is only the blood that comes out at the age of menstruation. For example, if a woman who is nine years old and less than twenty days old bleeds for ten days, then the blood that is less than the first four days is called *istihadah*. The blood that is less than the last 6 days is called menstrual blood. This is because the six days' worth of blood is less. It comes out when the woman has reached the age of 9 years and 16 days or less, which is the minimum age for a woman to menstruate.

The minimum and maximum limits of menstrual bleeding cannot be determined with certainty, because the evidence used to determine the minimum and maximum limits of menstrual bleeding is partly $mauq\bar{u}f$ and cannot be used as evidence, and partly $marf\bar{u}'$, but it is not saheeh. Therefore, they cannot be used as a guide in determining the minimum and maximum limits of menstrual bleeding. Rather, the reference should be made to repeated customs, which are applicable to women who have regular menstrual rhythms, and to those whose periods are irregular, who can rely on the evidence of the blood that comes out. 10

The permissibility of adhering to custom as a proof of the minimum and maximum limits of menstruation recognized by shara" is based on several hadiths, for example the hadith of Aisha ra. That the Prophet said:

⁹ Rosana, H. M. (2015). *Ibadah Penuh Berkah Ketika Haid Dan Nifas.* Jakarta: Lembar Langit Indonesia.

¹⁰ Ustman, Al-Khasyt. Muhammad Ustman. (2004). Fiqh Wanita 4 Mazhab. Jakarta: Kunci Iman.



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From Aisha ra. That the Prophet SAW said if menstruation comes then leave the prayer, and if it goes, then wash and pray. (H.R Bukhari)

The minimum period of menstruation is one day and one night, which is 24 hours according to the custom of menstruation. The longest period is 15 days and nights. If it is longer than that, it can be declared as *istihadah* blood. The shortest period of one day and night is 24 hours and the longest period is 15 days, meaning that if it does not reach 15 days but fulfills the conditions and the time of blood gathering is 24 hours, it is considered menstrual blood, but if it does not reach the conditions and passes the syarah, it can be called *istihadah* blood.

3.3 Risks of Intercourse When the Wife is on Her Period

On the health side, having sex during menstruation is not recommended for several reasons:

- During menstruation, the endometrial layer (the inner lining of the uterine wall) is shed, which contains various proteins and amino acids. However, if fertilization does not occur, the endometrium can be a very good medium for the growth of various types of diseases. So it is certain that the germs that enter the endometrium enter through the vaginal door.
- 2. If a woman suffers from one of the many STDs (sexually transmitted diseases) such as herpes and gonorrhea, then menstrual blood is an excellent medium for transferring the viruses and bacteria that cause these diseases to her partner.
- 3. During menstruation, the vagina is in a very sensitive state. If penetration is forced, the woman will usually feel pain and sting due to laceration, and it will take a long time to heal.
- 4. Health experts say that when penetration occurs, there is a concern that air will enter the uterus, causing health problems, and can even cause death.

Having intercourse during menstruation can cause infection. Therefore, it is better for husband and wife, when the wife is menstruating, to be more patient to enjoy healthier sex according to Shariah. ¹¹

3.4 Profile of Imam Abu Hanifah

The founder and *mujtahid* of the Hanafi scholars was named Nu'man Bin Tsabit Bil Zuta bin Mahan At-Taimin. But known as Abu Hanifah then after becoming a

¹¹ Junaedi, D. (2016). *Penyimpangan Seksual Yang Dilarang Al-Qur'an*. Jakarta: PT. Elex Media Komputindo.



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famous mujtahid and his thoughts are followed by most Muslims around the world. He has the honorary title of Iman then the title is used as the beginning of his nickname as Imam Abu Hanifah The way of thinking of Imam Bonifah by his followers is called the Hanafi school.¹²

Imam Abu Hanifah was born in kufa, a city in Iraq located 10 km from the northeast of najav and 170 KM in the South West in 80 H or 699M. he lived in two great dynasties of Islam namely the dynasty of Bani Umayyah and Bani Abbasiyah his city of birth also became the beginning of the birth of the hanafi school.¹³

Imam Abu Hanifah spent his childhood and grew up in kufa since he was a child he has studied and memorized the Qur'an he was also a diligent child when memorizing the Qur'an. He always repeated his recitation without the slightest fatigue so that the holy verses were well preserved in his memory as well as making it easier to explore the meaning contained in the verses of the Koran. Besides memorizing and having a deep understanding of the Qur'an Imam Abu Hanifa is also a jurist his life is occupied with looking for Atsar or Hadith and doing Rihlah has extraordinary accuracy.¹⁴

Abu Hanifah is one of the figures who made a valuable contribution to the development of Islamic law. His legal thinking emphasizes aspects of rationality that are influenced by the geographical and demographic environment of Iraq. Many of his thoughts are progressive and different from other scholars, both in methodological aspects and the results of *ijtihad*. Al-*Fiqh* al-Akbar (the great *fiqh*) is the only monographic work of Imam Abu Hanifah that is very instrumental in developing the *fiqh madzab* he built. Because reviewing Abu Hanifah's *fiqh* paradigm cannot be separated from the discourse contained in it. Unlike *fiqh* works in general that contain comprehensive legal dictums, al-*fiqh* al-Akbar actually describes a lot about the science of monotheism.¹⁵

Many narrations mention, before switching to pursue this field of *fiqh* science, Abu Hanifah dabbled a lot with the field of *kalam* science. Even mentioned Maududi, he is very well known to master this field of science so that most of his time he used to argue with several sects / sects that exist in Bashrah such as,

¹²Depag RI. (1981). *Pengantar Ilmu Fiqh.* Jakarta: Proyek Pembinaan Perguruan Tinggi Pembinaan Agama (IAIN)Di Pusat Direktorat Perguruan Tinggi Agama Islam.

¹³ Zamhari, Arif. (2021), Konsep Imam Menurut Imam Abu Hanifah. Banjar Sari: IKAPI.

¹⁴ Ustad Rizam Aizid. (2016). *Kitab Terlengkap Biografi Empat Imam Mazhab.* Yoyakarta: Serambi Semesta Distribusi.

¹⁵ Saleh, Rukaiyah. 1991) *Perkembangan Kalam Di Kalangan Fuqaaha' Imam Abu Hanifah Dan Imam Ahmad Bin Hanbal.* Pekabaru Riau: Husada Grafika Press, Cet Ke1



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Khawarij, Ibadiyah, Sufriyah and Hashwiyah. For this purpose, he even traveled to Bashrah nearly 20 times. Usually he stayed up to six months or more. For Abu Hanifah, the idea of *kalam* is very important to realize the principle of faith contained in the Qur'an. While the law is nothing but a link to the science of *kalam* which is directly in contact with the actions of *mukallaf*. Human actions are considered to have a *kasbi* nature so that they have room to adjust to the Qur'an and Hadith. The perspective of the Qur'an and the actions of mukallaf is what then colors every phrase in the work of al-*Figh* al-Akbar.

3.5 Analysis of Imam Abu Hanifah's Opinion Regarding the Ruling on Copulating with a Wife After Her Period But Has Not Taken an Obligatory Bath

The Hanafis differed in their opinion on the issue of having intercourse with wives who have ceased menstruating. Imam Abu Hanifah was of the opinion that it is permissible for husbands to have intercourse with their wives after their menstrual blood has stopped. Imam Abu Hanifah was of the opinion that what is meant by *Surah al-Baqarah* verse 222: "Do not have intercourse with them until they are pure" means that their menstrual blood has stopped. Imam Abu Hanifah was of the opinion:

"Abu Hanifah permits intercourse with his wife when her menses has ended, even if she has not taken the obligatory ghusl. However, if the menstrual blood stops after the period of menstruation (10 days), then it is permissible at that time. If the bleeding stops after less than ten days, then she is not permissible until the time for the complete prayer has passed or she takes the obligatory ghusl."

Imam Abu Hanifah interpreted the words "Yathurna" and "Tatahharna" in the above verse as "cessation of menstrual blood". Thus, the prohibition of having intercourse with one's wife is only until the time when the menstrual blood stops. After the blood stops, it is permissible to have intercourse with her.

However, Abu Hanifah stipulated that when the duration of menstruation has reached 10 days or more. If it has not reached 10 days or more than 10 days but the blood has stopped or is no longer coming out, then it is permissible to have sexual intercourse even if she has not done the obligatory *ghusl*. The important thing is that the blood has completely stopped coming out.

Imam Abu Hanifah also explained, "If the blood has stopped during the period before reaching the customary duration or more than the period of menstruation, it is permissible to have intercourse with her, but if it is less than the period of menstruation, it is not permissible until she has done *ghusl* or



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tayammum unless the time for prayer has passed, because the obligatory time for *ghusl* is not prevented from intercourse because of *janābah*.¹⁶

There are several stipulations for menstruating women regarding whether or not it is permissible to have intercourse with their wives after the menstrual blood stops. As explained by the Hanafi *Madzhab*, namely Ibn Abidin in his book Hāshiyah, namely:¹⁷

- 1. The blood stops at the end of the maximum duration of menstruation, or more: In the Hanafi *Madzhab*, the maximum duration of menstruation is 10 days. When the bleeding completely stops on the 10th day or later, it is permissible to have sexual intercourse even if she has not taken a *ghusl*. The most important thing is that the blood has stopped and is no longer coming out. However, it is recommended that the woman postpone sexual intercourse until she has performed *ghusl*.
- 2. The blood stops before reaching the maximum duration of menstruation (before the 10th day): If her bleeding has stopped and she has not menstruated again but has not reached the 10th day from the first day of menstruation, she should not have intercourse before doing *ghusl*.
- 3. The blood stops after reaching the customary duration: This applies to *mu'taādah* women, i.e. women who have a regular menstrual cycle where she can predict the duration of her period by looking at her habit. For example, a woman who always has a fixed duration of menstruation every month (6 days, or 7 days, or 8 days,). For a *mu'taādah* woman who is accustomed to menstruating for 6 days, for example, if her menstrual blood has stopped on the 6th day or more, then she may have intercourse after taking a *janābah* bath. But if she has not, she may not have intercourse before doing *ghusl*.
- 4. The blood stops before reaching the usual duration: Only applicable to *mu'taādah* women A *mu'taādah* woman who is accustomed to taking the 7th day of menstruation, for example, if she has blood on the 4th or 5th day or the 6th day, she is not allowed to have intercourse with her husband, even if she takes a ritual bath.

This means that a *mu'taādah* woman may only have intercourse if: At the end of her period, her bleeding stops and she takes her first *ghusl*. If the menstruation has stopped, within the range of the longest menstrual period you can have sexual intercourse before *ghusl*. But not if it stops Starting from the longest menstrual period, you cannot have sex before *ghusl* or when the prayer ends.

¹⁶ Wahbah, Syekh Azzuhayli, (1985 M/1405 H). *Al-Fiqhul Islami Wa Adillatuh*, Beirut, Darul Fikr, Cetakan 2, Jus 3.

¹⁷ Hāshiyah Ibn Ābidīn, Volume 1.



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Ozai and Daoud are of the opinion: If the woman cleans her private parts, then he may have sexual intercourse with her. If the menses have stopped but there is no water for purification, In this case, the Hanafi school of thought holds that sexual intercourse is not permissible until she performs *tayammum* and prayer.¹⁸

4. Conclusion

Based on the discussion above, it can be concluded that Imam Abu Hanifah is of the opinion that the law of having intercourse with a wife after menstruation but has not taken the obligatory bath is permissible provided that the menstrual blood stops with the maximum duration of menstruation, which is 10 days. When the menstrual blood has completely stopped on the 10th day or more, a couple can have intercourse even though they have not had a *janabah* bath. The most important thing is that the menstrual blood has stopped coming out.

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