

# The Law of Selling Food at Daytime During Ramadhan

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**THE LAW OF SELLING FOOD AT DAYTIME DURING RAMADHAN  
(AN ANALYSIS OF ISLAMIC LAW USING USULIYAH APPROACH)**

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**ABSTRACT**

Ramadhan is one of the blessed and priority month so that it becomes the ideal for Muslims to worship, besides fasting also perform various forms of sunnah worship both in spiritual and in social dimensions, various dimensions. It is allowed to sell food to the people who are not yet obliged to fast, are unable to fast or given leniency for not fasting, such as children, women who are menstruating and people who are sick. And also if the food will be consumed when not fasting, such as for breaking the fast or for having sahur or selling food and drinks during the daytime of Ramadhan may be the only effort to get some money to support his family. It is forbidden to sell food to the person who is required to fast when he knows or think (dzon) that the food will be consumed during the day because this is considered to help disobedience. If he does not know whether the food will be consumed during the day or not, then the law is makruh and better not to sell food to that person. That is why some ulemas issued a fatwa to cover the places of selling food and drink during the fasting month.

**Keywords:** Al Quran; selling food; Islamic law; Ramadhan

**INTRODUCTION**

Based on Islamic normative doctrine, the month of Ramadhan is one of the blessed and priority month so that it becomes the ideal for Muslims to worship, besides fasting also perform various forms of sunnah worship both in spiritual and in social dimensions, various dimensions. The blessings and virtues of the month are marked by the opening of the heaven gates and the closing of the hell gates, as mentioned in the hadith of Imam Muslim from Abu Hurairah No. 1079 which reads:

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إِجَاءَ رَمَضَانَ فَتُخْتَفَتُ أَبْوَابُ الْجَنَّةِ وَتُغْلَقُ أَبْوَابُ النَّارِ وَصُفِّدَتِ الشَّيَاطِينُ

Meaning: "When the month of Ramadhan comes, the doors of heaven will be opened wide and the gates of hell will be closed and the demons will be shackled".

The hadith is an injection of religious spirit so that Moslems everywhere look disheartened in the nuances of religiosity and very strong sociological ties. But on the other hands there are some who only are not fasting but also with the various acts that prevent the coming of the blessing. One example is that they not only do not fast but openly publicly eat and drink without feeling any regrets or sinful feelings at all. And so do the non-Moslems because they are inspired by those who do not fast.

In fact, some Moslems partly have been disturbed by the actions of other Moslems who disturb the tranquility in performing fasting. One example of the act of disturbing some Moslems in carrying out fasting is that some of other Moslems sell food as well as open places to eat in the form of restaurants, cafes, rice stalls, cigarettes and so on that operate during the month of Ramadhan, where the purpose is to provide food and drink to anyone who wants to eat especially during the day of Ramadhan.

It is undeniable that selling and opening food places during Ramadhan at daytime will benefit multiplied by other months, many factors that cause it to happen, among others, the increasingly consumptive power of the people during the month of Ramadhan due to the restraining fasting a person from eating and

drinking, so that when approaching the breaking of fast of many Muslims who buy food and drink. Therefore, many traders are coming up in Ramadhan to gain more profit from other months.

There are several types of sellers, who sell food in Ramadhan, including:

1. Type of seller who sells food from evening special for breaking and eating.
2. Type of seller who sell food from the daytime (selling as usual outside Ramadhan) where to eat in the lid with a curtain.

Speaking the reasons, there are several reasons for the sellers who sell their food in the middle of the month especially Ramadhan that sells food in the daytime start:

1. Because it has become a habit of selling food in the day of Ramadhan
2. Because the food stalls have been closed with a curtain so it is not visible from the outside for the people who fast.
3. Due to the urgent economic factors to keep selling food during the month of Ramadhan.

For some reason the sellers who sell their food during the day during the month of Ramadhan often assume that selling food in Ramadhan has become a habit and they have honored the fasting person by closing the meal with the curtain, while it is clear how the law of selling food during the day in Ramadhan.

On this matter, Shaykh Abdul Muhsin al-A'bbad in Sharah Sunan Abu Dawud issued a fatwa on the law of trading and selling food on the day of Ramadhan: <sup>1</sup>

لا يجوز للمسلم أن يبيع الطعام في نهار رمضان لا للمسلمين ولا للكفار.

"It is not permissible for a Muslim to sell food during the day of Ramadhan either to Muslims or to infidels".

It is clear that there is an ouster for the sellers who sell food during the day of Ramadhan both to Muslims and to non-believers. So anyhow whether by closing his place of eating with a legal status curtain from selling food in the daytime in the month of ramadhan still should not be.

The problem in this study is how law status for the sellers who are forced to sell their food because of the difficulties of economic factors, because the effort to continue his life depends on the results of selling the food, both in terms of paying rent for the place to eat, tuition fees etc that all depend on the results of selling food every day to get money. If he does not sell it, they will not be able to meet the needs of his life because of the difficult economic circumstances.

In this case does the disengagement still apply to the sellers who sell food during daytime in the month of Ramadhan which is forced to sell because of economic factors? Is there no *ruksha* or easiness for the sellers who sell food that forced due to economic difficulties?

Based on the reality that has been described above, the author is interested to examine this issue <sup>1</sup> in a scientific paper that explores the issue of *Food Trade Law Day In the Month of Ramadhan. The Law of Selling Food at Daytime during Ramadhan*.

## METHODOLOGY

<sup>9</sup>  
<sup>1</sup> Abdul Muhsin al-Abbad, Syarah Sunan Abi Dawud (Riyadh : King Abdul Aziz, t.t.), Vol. 19, p. 24.

The research methodology conducted by the author in this study is as follows:

a. Types of research

In this study the author uses the sociological juridical approach, namely an approach which is intended to explain the problems studied with the research results obtained in relation to the rule of law and view life and reality which is developing in the society. In this case, how the law selling food during daytime in the month of Ramadhan. The research method used in this study is a qualitative research method that approaches the procedure of the invention that is conducted not using statistical procedures or quantification.<sup>2</sup>

b. Research Approach

The approach that the author uses in discussing this research is the empirical or sociological approach. The approach emphasizes on the practice and behavior of Moslems related to Islamic law which in this case is how the law selling food in the daytime in the month of Ramadhan.

c. Data Source

The data sources that the author uses in this study include the data from the field either through observation or interview or from the Acts as well as the related literatures.

d. Method of Collecting Data

As the author pointed out that this research is a social research, then the method of collecting data by the author is through field observation and reviewing the data sources that the author has mentioned above.

e. Research Location

The location of this research conducted is in Medan City. In conducting this research, the author conducted the data collection by means of observation<sup>18</sup> and direct interviews to the food sellers in 7 districts in Medan City. The results of the interviews can be seen in the following table:

**Table 1** .Food Sellers in Medan City

| No | Sub District  | Name of Food Stall | Name of the Owner | Description                      | Reason  |
|----|---------------|--------------------|-------------------|----------------------------------|---|
| 1  | Medan Tembung | Warung Makan Fauzi | Fauzi             | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 2  | Medan Tembung | Bagindo            | Zulkifli          | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 3  | Medan Tembung | Bunda              | H. Salman Lbs     | Closed on the month of Ramadhan  | 11 Months Alah gives me sustenance, so it is appropriate that I close   |

<sup>2</sup> Salim dan Sahrum, Metodologi Penelitian Kualitatif, (Bandung :Cita Pustaka, 2010), p. 41 .

|    |               |                |              |                                  |   |
|----|---------------|----------------|--------------|----------------------------------|---|
|    |               |                |              |                                  | a month in the fasting month to be able to worship better   |
| 4  | Medan Tembung | Putri Balqis   | Hasan Mansur | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur, opens at 4.am   |
| 5  | Medan Tembung | Cahaya Minang  | Nurlis       | Closed on the month of Ramadhan  | I am afraid of to be sinful if I sell the food to the people who do not fast  |
| 6  | Medan Tembung | Merapi Jaya    | Herman       |                                  |   |
| 7  | Medan Tembung | Madinah        | Iskandar     |                                  |   |
| 8  | Medan Tembung | Mekar          | Syarifuddin  |                                  |   |
| 9  | Medan Tembung | Aulia          | Hartono      |                                  |   |
| 10 | Medan Tembung | Hirma          | Julianto     |                                  |   |
| 11 | Medan Denai   | Ampera Jaya    | Slamet       | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 12 | Medan Denai   | Elok Manja     | Khairuddin   | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur  |
| 13 | Medan Denai   | Gumarang Indah | Junaidi      | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 14 | Medan Denai   | Uni Marni      | Mami         | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 15 | Medan Denai   | Panyalai Resto | Rachmad      |                                  |   |
| 16 | Medan Denai   | Elok Manja     | Hermanto     |                                  |   |
| 17 | Medan Denai   | Gumarang Indah | Zufri        |                                  |   |
| 18 | Medan Denai   | Koki Padang    | Rusdi        |                                  |   |
| 19 | Medan Denai   | Putra Padang   | Putra        |                                  |   |
| 20 | Medan Denai   | Sinar Minang   | Efrizal      |                                  |   |
| 21 | Medan Denai   | Pantai Sunur   | Amrizal      |                                  |   |
| 22 | Medan Area    | Anugerah       | Buyung       | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 23 | Medan Area    | Uni Er         | Uni Er       | Selling in the month of          | Because of the economic difficulty that   |

|    |            |                        |          |                                  |   |
|----|------------|------------------------|----------|----------------------------------|---|
|    |            |                        |          | Ramadhan                         | forced to keep selling in the fasting month. If not selling there will be no other income   |
| 24 | Medan Area | Widuri                 | Fajar    | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income           |
| 25 | Medan Area | Uni Asnah              | Asnah    | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income           |
| 26 | Medan Area | Pondok Salero          | H. Juned |                                  | Knowing the prohibition of selling food in the fasting month, it is no difference<br>I subhat if I still sell the food in the fasting month |
| 27 | Medan Area | Fitri Minang           | Fitri    |                                  |   |
| 28 | Medan Area | Sinar Andalas          | Roy      |                                  |   |
| 29 | Medan Area | Samo Salero            | Rustam   |                                  |   |
| 30 | Medan Area | Bendang                | Khaidir  |                                  |   |
| 31 | Medan Area | Dua Saudara            | Irfan    |                                  |   |
| 32 | Medan Area | Tiga Saudara           | Fendi    |                                  |   |
| 31 | Medan Area | Ridho I                | Ridho    |                                  |   |
| 34 | Medan Area | Serumpun               | Buk Ida  |                                  |   |
| 35 | Medan Kota | Ampera                 | Muliono  | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income           |
| 36 | Medan Kota | Warung Makan Mbak Lina | Lina     | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income           |
| 37 | Medan Kota | Warung Buk Khadijah    | Khadijah | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income           |

|    |              |                     |              |                                  |   |
|----|--------------|---------------------|--------------|----------------------------------|---|
| 38 | Medan Kota   | Talago Jaya         | Arifuddin    | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 39 | Medan Kota   | Lado Mudo           | Syahria      | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 40 | Medan Kota   | Permata             | Ahmad Husin  | Selling in the month of Ramadhan |   |
| 41 | Medan Kota   | Berkah Makuniang    | Safrizal     |                                  |   |
| 42 | Medan Kota   | Ana Chintiya        | Ana Chintiya |                                  |   |
| 43 | Medan Kota   | Talago Singgalang   | Haris        |                                  |   |
| 44 | Medan Kota   | Padi Boneh          | Ahmad Faisal |                                  |   |
| 45 | Medan Amplas | Warung Putri        | Putri        | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 46 | Medan Amplas | Warung Wak Ijah     | Wak Ijah     | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 47 | Medan Amplas | Warung Dua Saudara  | Henri        | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 48 | Medan Amplas | Warung Tajuk Kapies | Burhan       | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 49 | Medan Amplas | Uni Nen             | Uni Nen      | Selling in the month of Ramadhan |   |
| 50 | Medan Amplas | Agung               | Agung        | Selling in the month of Ramadhan |   |
| 51 | Medan Amplas | Minang Basamo       | Sofyan       | Selling in the month of          | At the time of fasting, the food is covered with  |

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|    |              |                 |              |                                  |   |
|----|--------------|-----------------|--------------|----------------------------------|---|
|    |              |                 |              | Ramadhan                         | a curtain to be unseen for the fasting Moslems  |
| 52 | Medan Amplas | Padang Bolak    | Marajoki Srg |                                  |   |
| 53 | Medan Amplas | Minang Saiyo    | Rizal Koto   |                                  |   |
| 54 | Medan Amplas | Minang Kenangan | Yusnaidi     |                                  |   |
| 55 | Medan Amplas | Pondok Salero   | Hendrizarl   |                                  |   |
| 56 | Medan Maimun | Warung Tanjung  | Hamidi       | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 57 | Medan Maimun | Tiara Jaya      | Tiara        | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 58 | Medan Maimun | Famili Baru     | Sugianto     | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 59 | Medan Maimun | Kak Yus         | Kak Yus      | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 60 | Medan Maimun | Buk Srik        | Buk Srik     | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 61 | Medan Maimun | Gumarang        | Syukur       | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 62 | Medan Maimun | Medan Jaya      | Agus         | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur  |
| 63 | Medan Maimun | Semangat Minang | Ahmadi       | Selling in the month of Ramadhan |   |
| 64 | Medan Maimun | Minang Surya    | Zulham       | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen   |



|    |              |                           |               |                                  | for the fasting Moslems   |
|----|--------------|---------------------------|---------------|----------------------------------|---|
| 65 | Medan Maimun | Pondok Gurih              | Irwansyah     |                                  |   |
| 66 | Medan Maimun | Anugrah                   | Sofyan        |                                  |   |
| 67 | Medan Maimun | Minang Murni              | Junaidi       |                                  |   |
| 68 | Medan Maimun | Sambal Balado             | Heru          |                                  |   |
| 69 | Medan Maimun | Garuda Jaya               | Rustam Efendi |                                  |   |
| 70 | Medan Maimun | Minang Surya              | Firdaus       |                                  |   |
| 71 | Medan Maimun | Nita                      | Nita          |                                  |   |
| 72 | Medan Timur  | Warung Makan Nur Khadijah | Nur Khadijah  | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 73 | Medan Timur  | Warung Nasi Puja          | Rudi          | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 74 | Medan Timur  | Restu Bunda               | Razali        | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur  |
| 75 | Medan Timur  | Rahmah Jaya               | Abdul Azis    | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur  |
| 76 | Medan Timur  | Embun Pagi                | Hadi Prayitno | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 77 | Medan Timur  | Minang Setia              | Rusli         | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 78 | Medan Timur  | Syukurillah               | Zulfikar      | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 79 | Medan Timur  | Salero Basamo             | Hamdani       | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 80 | Medan Timur  | Bg Regar                  | M. Yunus Srg  | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in   |

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|    |                  |                   |               |                                  |   |
|----|------------------|-------------------|---------------|----------------------------------|---|
|    |                  |                   |               |                                  | the fasting month. If not selling there will be no other income   |
| 81 | Medan Timur      | Anugrah           | Aris Nasution | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur  |
| 82 | Medan Timur      | Minang Maimbau    | Ambo          | Closed on the month of Ramadhan  | Knowing the prohibition of selling food in the fasting month  |
| 83 | Medan Perjuangan | Ajo Sayang        | Ajo           | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 84 | Medan Perjuangan | Sinar Minang      | Adi           | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur  |
| 85 | Medan Perjuangan | New Bundo Kandung | Rahmat        | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 86 | Medan Perjuangan | Ridho Ilahi       | Ridho         | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 87 | Medan Perjuangan | Warung Maninjau   | Bg Man        | Closed on the month of Ramadhan  | Knowing the prohibition of selling food in the fasting month  |
| 88 | Medan Perjuangan | Cici Minang       | Herman        | Selling in the month of Ramadhan | At the time of fasting, the food is covered with a curtain to be unseen for the fasting Moslems                                   |
| 89 | Medan Perjuangan | Berkah            | Hanafi        | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 90 | Medan Perjuangan | Warung Bg Juan    | Juan          | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no other income |
| 91 | Medan Perjuangan | Indra Seno        | Indra Seno    | Selling in the month of Ramadhan | Because of the economic difficulty that forced to keep selling in the fasting month. If not selling there will be no              |

|    |                  |               |        |                                  |  |
|----|------------------|---------------|--------|----------------------------------|--|
|    |                  |               |        |                                  | other income   |
| 92 | Medan Perjuangan | Mato Air Jaya | Ridwan | Selling in the month of Ramadhan | Selling special foods for breaking the fast and having sahur |

From the table above, it can be known that most of the food sellers in Medan City sell the food during the daytime of Ramadhan. From the author's interview with the food sellers, there are several reasons that the traders sell their food during the day time of the fasting month, namely: The food sellers are forced to sell their food during the day during the fasting month because of the difficulty of their family's economy that forced to keep selling food in the fasting month, because if they do not sell then they will not get income and daily livelihood just selling food no other. The sellers keep their selling food during the daytime of the fasting month but the food is closed with a curtain, it will not disturb the fasting person. The sellers keep selling the food in the fasting month but especially just to break the fast and eat it, starting to open their food stalls at 4 pm.

A small part of the food sellers in Medan City closed for a month during the fasting month for the reason that for 11 months Allah gives them sustenance, so it should be appropriate to close a month in the month of fasting to be able to worship better.

The reason that the sellers keep selling food during the daytime of fasting month is because of economic factors which are the focus point of this research. The food sellers are forced to sell their food during the daytime of the fasting month because of the difficulty of their family's economy that forced them to keep selling food in the fasting month, because if they do not sell then they will not get income and their daily livelihood is just selling food. In this study, it will be seen whether the legal status of the ban on selling food in the fasting month according to the *ulemas* applies also to the sellers who keep selling food in the fasting month because of economic factors.

## DISCUSSION

### *Selling on the Daytime of Ramadhan*

Related to buying and selling food conducted by the sellers on the day time of Ramadhan, in general if the pillars and conditions are met it may be to sell the food, but because the sale is conducted in the month of Ramadhan then at noon when the Moslems are doing their fasting and the conditions is being limp so that if there is someone who sells, provides food and facilities for anyone who wants to break his fast. Surely this is very disturbing for the worship of Moslems in running the fasting of Ramadhan. In addition, every person both Islam and non-Moslems are required to honor the Moslems who are performing fasting, so as not to eat and drink in front of them.

Related to this problem, one of the *ulemas* of the <sup>3</sup> Syafi'i sect, Asy-Shaykh Abu Bakr Ad-Dimyathi Asy-Syafi'i rahimahullah said:

من على والخشب، محرم لغناء يتخذها من على والأمة طفتها فوق يكلفها الدابة كبيع وذلك  
وكذا، رمضان نهار في مكلفا كافرا مكلف مسلم وكباطعام، فهو آلة يتخذها طعاما ببيع ه أنه ظن أو علم  
نهارا يأكله

"That is the case (for example, selling goods that can deliver to the sinners) such as selling animals to be burdened over their abilities, female slaves who will be employed for illicit songs, timber for neglected

entertainment tools, mukallaf Muslims feeding infidels mukallaf during the day of Ramadhan, so selling food to people he knows or thinks he will eat it during the day of Ramadhan" <sup>3</sup>

Shaykh Abdul Muhsin al-A'bbad in Syarah Sunan Abu Dawud issued a fatwa on trading laws and selling food during the day of Ramadhan. Against this issue, Shaykh Abdul Muhsin al-A'bbad in Syarah Sunan Abu Dawud issued a fatwa on trading laws and selling food at the daytime of Ramadhan: <sup>4</sup>

لا يجوز للمسلم أن يبيع الطعام في نهار رمضان لا للمسلمين ولا للكفار

"It is not permissible for a Muslim to sell food on the day of Ramadhan both to Muslims and to the infidels"

In accordance with its legal product type, the fatwa is submitted by a lawyer based on a question submitted by a person. The fatwa of Shaykh Abdul Muhsin al-A'bbad above was initiated from a person's question: <sup>5</sup>

حكم فتح المطعم في نهار رمضان للمسلم والكافر السوي: <sup>8</sup> هناك مسلم صاحب مطعم في فرنسا هل يجوز له أن يبيع فيه في نهار رمضان سواءً للمسلم أو للكافر؟ الجواب: لا يجوز للمسلم أن يبيع الطعام في نهار رمضان لا للمسلمين ولا للكفار

"The law opens a dining place during Ramadhan's day for Muslims and infidels. Question: In France there are Muslims who have a place to eat, is it possible for him to sell food on the day of Ramadhan to the Muslims or to the infidels? Answer: It is not permissible for a Muslim to sell food during the day of Ramadhan both to Muslims and to the infidels"

Besides the fatwa of Sheikh Abdul Muhsin al-A'bbad above, the grand masters of Saudi Arabia also issued a fatwa on selling food during the daytime of Ramadhan in *Fatawi Syabakah Islamiyah*. Fatwa 2097: <sup>6</sup>

لا يجوز بيع الطعام مأكولاً كان أو مشروباً في نهار رمضان لمن يجب عليه الصيام من المسلمين إذا كان سيستعمله في الوقت المحرم فيه عليه لأن ذلك تعاون معه على الإثمقال الله تعالى: ولا تعاونوا على الإثم والعدوان. أما إذا علم من حال المشتري أنه يريد لمن به عذر شرعي مانع له من الصيام كالشيخ الفاني والمريض والحائض والصبوي، فلا حرج إن شاء الله في ذلك ، فإذا التبس الأمر أو كان الغالب على الظن استعمالهما لا يجوز له ، فلا شك أن حسم الأمر أولى ، وقد أفتى جماعة من أهل العلم بوجوب إغلاق المطاعم في نهار رمضان

"Must not sell food or drink during the day of Ramadhan for Muslims who are obliged to fast if they know or suspect (dzon) that the food will be consumed during the day because it is considered to help disobedience. Allah Almighty says: do not you please help in the matter of sin and enmity. If it is known that the buyer is a person who is prevented from fasting (having an aging not to fast) such as elderly parents, sick people, menstruating women and children then it is allowed to sell food to those who have aging. If a case is mixed with another or the case is dominantly zhan then decide the mingled case with one more major decision. Thus the scholars agree on the obligation to close the place to eat during the day of Ramadhan" .

The fatwa of *Syabakah Islamiyah* above does not prohibit the sellers to sell food on the daytime of Ramadhan absolutely. The fatwa of *Syabalah Islamiyah* above distinguish and specify to whom the sale and purchase on the daytime of Ramadhan allowed and prohibited are:

It is permissible to sell food to people who are not yet obliged to fast, are unable to fast or are given leniency for not fasting, such as small children, women who are menstruating and people who are sick. So it is also allowed if the food will be consumed when not fasting, meal of fasting or to have sahur.

<sup>3</sup> *anatut Thaalin*, 3/30

<sup>4</sup> Abdul Muhsin al-Abbad, *Syarah Sunan Abi Dawud* (Riyadh : King Abdul Aziz, t.t.), Vol.19, p. 24.

<sup>5</sup> *Ibid*

<sup>6</sup> Abdullah al-Faqih, *Fatawi al-Syabakah al-Islamiyah* (Riyadh : King Abdul Aziz, t.t.), jil 2, h. 640.

It is forbidden to sell food to the person who is required to fast when he knows or think (*dzon*) that the food will be consumed during the day because this is considered to help bad deeds.<sup>7</sup>

If he does not know whether the food will be consumed during the daytime or not, then the law is *makruh* and better not to sell food to that person. That is why some *ulemas* issued a fatwa to cover food and drink selling places during the fasting month.

The ban on selling food during Ramadhan day based on the above fatwa, applies to Moslems only. Some consider that the ban does not apply to *kafeers* who are not required to fast during Ramadhan. Therefore they consider the permissibility of selliogn food to the Gentiles during the day of Ramadhan because the fasting of Ramadhan is only obliged to Muslims alone not to the Gentiles. This is a strong reason for traders who sell food and drink to the *kafeers*.

But this reason is not in accordance with the study of jurisprudence in the form of *ijtihad* from the Islamic law experts. They assume that the non-fasting non-believers can not be used as an excuse to trade on them during the day of Ramadhan. Among the law experts who argue are:

<sup>3</sup> Asy-Syaikh Muhammad bin Asy-Syihab Ar-Romli Asy-Syafi'i Rahimahullah:

يَحْرُمُ عَلَى الْمُسْلِمِ أَنْ يَسْقِيَ الذَّمِّيَّ فِي بَعْوِضٍ أَوْ غَيْرِهِ لِأَنَّ فِي ذَلِكَ إِعَانَةً مَغْصِيَةً عَلَى

"*Haram* upon a *Muslim* gives a drink to a *Gentile* who lives in a *Muslim* country during the day of *Ramadhan*, whether by way of sale or by other means, because it means helping in immorality".

Imam Syarwani;

<sup>2</sup> ومثل ذلك إطعام مسلم مكلف كافرا مكلفا في نهار رمضان وكذا بيعه طعاما ما علم أو ظن أنه يأكله نهار

"*It is an unlawful act that is a Muslim who mukallaf feed the infidel convert during the day of Ramadhan as well as sell food to him if he knows or thinks (dz) that the food will be consumed during the day.*"<sup>8</sup>

Abu Bakar Syata' al-Dimyati:

<sup>2</sup> وكإطعام مسلم مكلف كافرا مكلفا في نهار رمضان، وكذا بيعه طعاما علم أو ظن أنه يأكله نهار

"*Haram is also a Muslim who mukallaf feed the infidel convert during the day of Ramadhan as well as sell food to him if he knows or think (dzon) that the food will be consumed during the day*"<sup>9</sup>

Imam Syihabuddin al-ramli

<sup>2</sup> ويؤيد ذلك ما صرحوا به من حرمة بيع الطعام للكافر في نهار رمضان مع أنا لا نتعرض لهذا وجدناه يأكل أو يشرب

"*The scholars made clear again about the prohibition of selling food to the infidels during the day of Ramadhan because we do not know if we find it in the state of consuming food or drink*"<sup>10</sup>

Sulaiman bin Mansur al-A'jili al-Azhari:

<sup>11</sup> يَحْرُمُ عَلَى الْمُسْلِمِ أَنْ يَسْقِيَ الذَّمِّيَّ فِي رَمَضَانَ بَعْوِضٍ أَوْ غَيْرِهِ لِأَنَّ فِي ذَلِكَ إِعَانَةً عَلَى مَغْصِيَةٍ

<sup>3</sup> <sup>7</sup> Haasyiatul Jamal 'ala Syarhi Manhajit Thullab: 17, 26

<sup>8</sup> Imam Syarwani, Hawasyi Syarwani A'la Tuhfati al-Muhtaj (Beirut : Dar al-Fikr, t.t.), Vol. 4, p. 317.

<sup>9</sup> Abu Bakar Syata' al-Dimyati, I'annah Thalibin (Beirut : Dar al-Fikr, 1992), Vol. 3, p. 30.

<sup>10</sup> Imam Syihabuddin al-Ramli, Nihayatul Muhtaj (Beirut : Dar Kutub Ilmiah, t.t.), Vol 5, p. 543.

"It is forbidden for a Muslim to give a zimmi infidel drink in the month of Ramadhan in return or otherwise because it is a helpful help in bad deeds"<sup>11</sup>

Fatawa Al-Lajnah Ad-Daimah

العظيمة، الشرعية المحاذير من فيه فيه؛ لما خدمتهم ولا رمضان نهار في المطعم فتح يجوز لا، وفروعها الشريعة بأصول مخاطبون الكفار أن المظهر الشرع من، الله حرم ما على لهم إعانة من شرطه تحقيق مع ذلك فعل عليهم الواجب وأن الإسلام أركان من رمضان صيام أن ريب ولا الإسلام في الدخول وهو

"It is not possible to open a diner during the day of Ramadhan for the kafeers and help them to eat, because it is forbidden in the Shari'ah, to help them to do what is forbidden by Allah, because it is understood that the kafeers are commanded to practice the tree of shari'ah and its branches, and there is no doubt that Ramadhan fasting includes the pillars of Islam, so it is mandatory for them to fast by fulfilling the requirements of fasting, ie converting to Islam"

Ash-Shaykh Al-Faqih Ibn 'Utsaimin rahimahullah :<sup>12</sup>

منكم رأى ومن، رمضان أيام في مفتوحة غير للمسلمين وطبعاً للكفار ولو المطاعم فتح يجوز لا عليه وجب رمضان في فتحه مطعم صاحب الجهات يبلغ أن كافر لأي يمكن ولا، لمنعه المسنولة ذلك من يمنع أن يجب، المسلمين بلاد في رمضان نهار في شرباً أو أكلاً يظهر أن

"It is not possible to open a food stall even for kafeers and of course for Muslims too cannot be opened during the day of Ramadhan. Anyone who sees the owner of the stall that opens it during the day of Ramadhan is obligatory for those who see it to report to the authorities (the government) to ban it, and it is not permissible for anyone to reveal the eating and drinking activities during the day of Ramadhan in the countries Muslim state, obliged to prevent it"<sup>13</sup>

Based on the *ijtihad* of the *ulemas* above, selling to *kafeer* who are not obliged to fast in Ramadhan do not influence his abilities, because the law is still illegal. One of the reasons why the *ulemas* above are trading to them is helping act in bad deeds.

The bad deeds will be seen when a Moslem who works as a seller opens his dining place devoted to the *kafeers* who do not fast. Other Moslems who are fasting and who do not fast will see those who are eating during Ramadhan at the daytime at the open public dining place. Finally, other Moslems who do not fast will be affected by them then come to the place of the meal and have lunch with them. Of course, this situation will be seen by fasting people. They will surely feel very disturbed and annoyed by the *kafeers* and Moslems who do not fast and eat in public places.

The ban on selling food during the daytime of Ramadhan, as described above, is based on a fatwa issued by the *syuyukh* of Saudi Arabia. In accordance with his legal products, the fatwa is:<sup>14</sup>

إجابة السائل عن الحكم الشرعي

"The answer to one's question about sharia law".

<sup>11</sup> 3 Iaiman bin Mansur al-A'jili al-Azhari, Hasyiyah al-Jamal (Beirut : Dar al-Fikr, tt.), Vol. 5, p. 226.

<sup>12</sup> Fatawa Al-Lajnah Ad-Daimah, 9/37 no. 17717

<sup>13</sup> Al-Liqo' Asy-Syahri, no. 8

<sup>14</sup> Muhammad Mustafa Zuhaili, al-Wajiz Fii Ushul Fiqh al-Islami (Damaskus : Dar al-Khair, 2006), Vol 2, p. 377

This means that the form of a fatwa can be an answer which is begun by a general question of a legal event, then he asks the question to a more pious person and who better understand about *sharia*. But the fatwa is not always the answer of a *mufti* to someone who asks him, fatwa can be a parrot or legal explanation of an event experienced by Moslems. This is expressed by Muhammad ibn Husein ibn Hasan al-Jizani:<sup>15</sup>

بيان الحكم الشرعي

"Explanation of sharia law"

Fatwa products in the form of answers to a person's question or explanation of *Shari'a* are found in both the fatwa of selling food ban on the daytime of Ramadhan above. First is the fatwa of Shaykh Abdul Muhsin al-A'bbad in explaining the book of Sunan Abi Dawud which begins from the question of a person about whether or not for Moslems who have a place for eating to open it on the daytime of Ramadhan. Fatwa Shaykh Abdul Muhsin al-A'bbad firmly declared to prohibit the selling during the daytime of Ramadhan.

Both fatwas in the form of *bayan* or explanations on one *sharia*. The fatwa in this form comes from the Grand Masters of Saudi Arabia who also issued a fatwa on selling food during the daytime of Ramadhan in Fatawi Syabakah Islamiyah no. Fatwa 2097. The fatwa does not forbid the absolute trade on the daytime of Ramadhan but some buyings and sellings are allowed and there is a forbidden sale on the daytime of Ramadhan.

The problem is, can a fatwa ban about selling food during the daytime of Ramadhan applied in Indonesia? Considering in Indonesia there are also many Islamic jurists who master the science of *Shari'a* in the form of *Fikih* and *Usul Fikih* then Tafseer Science and Science of Hadith. If in Indonesia there are many Muslim jurists, should Indonesian Moslems ask for a fatwa to the *Ulema* who come from outside Indonesia?

To this Imam al-Ghazali argues:<sup>16</sup>

إذا لم يكن في البلدة إلا مفت واحد وجب على العامي مراجعته وإن كانوا جماعة فله أن يسأل من شاء ولا يلزمه مراجعة الأعم كما فعل في زمان الصحابة

"If in a country there is nothing but a mufti it is obligatory for the ordinary person to ask for his opinion, but if there is more than a mufti in a country he is not obliged to ask the opinion of the mufti which is more ' Friend"

The statement of Imam al-Ghazali which states إذا لم يكن في البلدة إلا مفت واحد وجب على العامي مراجعته the process of issuing fatwas cannot be derogated from the territorial boundaries between mustafti and mufti in one region or in one particular country, which affirms even though only a mufti which is in the area or country then mustafti obliged to ask a fatwa to the mufti. The requirement to request a fatwa on the local mufti in the country is mentioned by Imam al-Ghazali in the form of a very strong sentence using the terms of letters which is followed by the letters of *nafi (lam)* and the answer by using *fi'il madhi* with the word *wajaba* preceded by the letters of *istisna*, which denotes an exception that cannot be denied or avoided its existence, in this case, it refers to the *mufti* which is the only one present in the region or country, and does not even distinguish or question the religious and scientific qualities the *mufti*.

<sup>15</sup>Muhammad bin Husein bin Hasan al-Jizani, Ma'alim Usul Fiqh al-Islami (Mekah : Dar Ibnu Jauzi, 2006), Vol. 1, p. 504.

<sup>16</sup>Abu Hamid al-Ghazali, al-Mustaṣfā fi l'Imi al-Uṣūl, (Beirut: Dār al-Kutub al-Ilmiyah, 1993), p. 373.

Not far different from the opinion of Imam al-Ghazali above, Wahbah Zuhaili also states that a *mustafti* should ask a fatwa on *mufti* that is in the region or in his country, as his expression:<sup>17</sup>

إذا لم يوجد في بلد إلا مفت واحد فعلى العامي سؤاله والرجوع إلى

"If it is not in a country except a mufti then for the layman must ask him and ask for his fatwa"

Thus, Moslems in Indonesia if they want to ask a fatwa about selling food during the daytime of Ramadhan does not need to ask a *mufti* originating outside of Indonesia whether Egypt, Saudi Arabia, Syria and so on enough to ask Islamic jurists who are local citizens and understand the condition his own country. If a fatwa is issued from a mufti that does not originate from his own country, the authority and power of a fatwa will not arise, considering the existence of a demand for a mufti to determine the socio cultural condition of the local community. As Ibnul Qayyim al-Jauziyah asserted:<sup>18</sup>

على المفتي أن يرجع إلى العرف في مسائل

"A mufti should have the socio-cultural knowledge of the local community, and at the same time pay attention to various issues".

Besides Imam Muhyiddin Nawawi, Abu Ishaq al-Syatibi also reveals that the fatwa may have been issued verbally, and not necessarily by writing, as his expression:<sup>19</sup>

15  
وذلك أن الفتوى من المفتي تحصل من جهة القول والفعل والإقرار

"That the fatwa of a mufti may be in oral form, deed and or confession"

Some Muslims assume that the ban on selling food on the daytime of Ramadhan only applies to Moslems. In the study of *Fikih* and *Usul Fikih*, this ban is not only applicable to Moslems but also applies to *kafeers* but are still required to implement the *Shari'a*. This is revealed by Imam Nawawi in the hearts of 'Syarah al-Muhazzab:

فإن المذهب الصحيح أن الكفار مخاطبون بفروع الشرع

"The correct statement is that the kafeers get the burden (prosecuted) to run Islamic law"

The same thing is also revealed by Imam al-Ghazali in his work of *Fikih al-Mankhul*:

الكفار مخاطبون بفروع الشريعة

"The kafeers are required to carry the law".

What *kafeers* means here is required to execute the *Shari'a* as revealed by Sheikh Harari al-Shafi'i:<sup>20</sup>

الكفار مخاطبون بالإيمان والعقوبات والمعاملات إجماعاً، أما العبادات فهم مخاطبون بها في حق المواخذة في الآخرة اتفاقاً

"Kafeers are required in the case of faith, uqubat (sanctions), muamalat according to ijma'. As for the demands of worship based on the agreement of their clerics are demanded by obtaining the right of torture in the hereafter".

<sup>17</sup> Zuhaili, Uşûl Fiqh al-Islami, Vol. II, p. 1162.

<sup>18</sup> Ibnul Qayyim al-Jauziyah, I'lâm al-Muwaqqi'in 'an Rabb al-'Âlamîn(Beirut: Dâr al-Kutub al Ilmiyah, 1996), Vol. IV, p. 175. 184 and 201.

<sup>19</sup> Abu Ishaq Syatibi, al-muwâfaqât, (Beirut: Dâr al-Ma'rifah, t.t.), Vol. IV, p. 597.

<sup>20</sup> Muhammad al-Amin al-Harari al-Syafi'i, Hadaiqur Rauhi War Raihan (Beirut : Dar Thauq Najah, 2001), Vol. 30, p. 412.



As it is known that in Moslem majority countries, every month of Ramadhan is a special atmosphere, which is almost no food or drink during the day, as they are generally fasting. Those who do not fast, because they are stumbled, do not dare to eat/drink in public, in addition to shame, as well as to respect those who are fasting. Even in many countries there is a call from some people, so that everyone respects the holy month of Ramadhan and those who are fasting.

It should be understood that the need to respect the fasting person is actually more social moral, not formal (law). In moral (attitude) and social (society) we must respect those who are fasting, among others are by not eating or drinking in front of them or not showing that we do not fast for being allowed, or even because of other religions.

But as formal (law) as long as there is no legal provision that regulates it, the person who does not respect the person who is fasting as far as the above, cannot be prosecuted legally, in accordance with the rules of fikih:

التَّحْرِيمُ عَلَى الدَّلِيلِ يُدْبَا حَتَّى حَاةِ الْإِثْمَانِ فِي الْأَصْلِ

"Basically everything is law permissible if there is no prohibition against it")

Until now there is no explicit proposition that prohibits people selling food/drinks during the daytime of Ramadhan. There are three factors that need to be considered to allow people to sell food and drink during the daytime of Ramadhan:

Some *ulemas* differ on the law of selling food to non-Moslems. The reason is whether they include people who are burdened (being *taklif*) of *shariah* or not. Of course it is awkward when non-Moslems are also required to honor the fasting Muslims. Is not the commandment of fasting obligations only applied to the Moslems as Allah says in Q.S Al Baqarah Verse 183 which means "O you who believe, is obliged for you to fast as the people before you carry it out.

Shaykh Salim bin Abdullah, the author of *Kashifah as-Saja*, explains that there are six people who are allowed not to fast. They are the sellers, the sick, the elderly, the hungry and the thirsty who can endanger their lives, pregnant women, and nursing mothers. What if this selling is devoted to them?

The food and beverage seller during the daytime of Ramadhan could be his only attempt to get some money to support his family or maybe he is just a worker scavenging the fortune of his boss's restaurant. Therefore, one of these *fikih* rules may be appropriate to consider in relation to the law of selling food and drink during the daytime of Ramadhan:

لا ينكر المختلفي و انما ينكر المجمع عليه

14

*la yunkaru al-mukhtalaf fihi wa innama yunkaru al-mujma' alaih*

*Something law still disputed scholars do not need to be dealt with.*

## CONCLUSION

Based on the author discussed in this paper, it can be known that there are some points about the law of selling food on the daytime of Ramadhan:

It is allowed to sell food to the people who are not yet obliged to fast, are unable to fast or given leniency for not fasting, such as children, women who are menstruating and people who are sick. And also if the food will be consumed when not fasting, such as for breaking the fast or for having sahur or selling food and drinks during the daytime of Ramadhan may be the only effort to get some money to support his family. It is forbidden to sell food to the person who is required to fast when he knows or think (*dzon*) that the food will be consumed during the day because this is considered to help disobedience. If he does not

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know whether the food will be consumed during the day or not, then the law is *makruh* and better not to sell food to that person. That is why some *ulemas* issued a fatwa to cover the places of selling food and drink during the fasting month. Trading or opening a place for eating with a special reason for the *kafeers* only, cannot be used as a *hujjah* to allow the traders or businessmen to sell during the daytime of Ramadhan because the *kafeers* are still required to run the *Shari'a*.

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