

Challenging the Status Quo: Khaled M. Abou El Fadl's Perspectives on Islamic Legal Authority and the Restrictive Fatwa on Women's Solo Travel

Menantang Status Quo: Otoritas Hukum Islam dan Fatwa Larangan Wanita Pergi Sendiri Perspektif Khaled M. Abou El Fadl

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Abstract: This article discusses Khaled M. Abou El Fadl's (El Fadl) views on Islamic legal authority and his critique of the fatwa prohibiting women from travelling alone without a *mahram* (unmarriageable kin) issued by the Council for Scientific Research and Legal Opinions (CRLO). This research employs a literature review method by analysing several fatwas issued by the CRLO and several of El Fadl's works as primary sources. The research findings indicate that El Fadl strives to formulate an authoritative and progressive Islamic law. El Fadl criticises the CRLO's authoritarian fatwa regarding the prohibition of women travelling alone without a *mahram* using a hermeneutic framework. El Fadl emphasises that the reader must understand the message of the religious text by connecting the text at the time of its revelation with the current text, considering the text's competence, meaning determination, and representation. According to El Fadl, the hadith text used as a basis by the CRLO is no longer relevant in the current context because the sense of security can be overcome on which the fatwa is based. The author argues that El Fadl's views belong to progressive Muslim thinking. This article is expected to contribute to the discourse on openness and inclusivity in Islam.

Keywords: Fatwa, Islamic Legal Authority, Progressive Muslim, Khaled M. Abou El Fadl, Women's Solo Travel.

Abstrak: Artikel ini membahas pemikiran Khaled M. Abou El Fadl (El Fadl) mengenai otoritas hukum Islam dan kritiknya terhadap fatwa tentang larangan wanita bepergian sendirian tanpa mahram yang dikeluarkan oleh Council for Scientific Research and Legal Opinions (CRLO). Penelitian ini menggunakan metode kepustakaan dengan menganalisis sejumlah fatwa yang dikeluarkan oleh CRLO dan sejumlah karya El Fadl sebagai sumber primer. Hasil penelitian menunjukkan bahwa El Fadl berupaya merumuskan hukum Islam yang otoritatif dan progresif. El Fadl mengkritik fatwa otoriter CRLO tentang larangan wanita bepergian sendirian tanpa mahram dengan menggunakan kerangka kerja hermeneutik. El Fadl menegaskan bahwa pembaca harus dapat memahami pesan dari teks keagamaan dengan menghubungkan teks pada saat diturunkan dengan teks pada saat ini, memperhatikan kompetensi teks, penetapan makna, dan keterwakilan. Menurut El Fadl, teks hadis yang dijadikan landasan oleh CRLO tidak lagi relevan pada konteks saat ini, karena rasa aman yang menjadi dasar fatwa tersebut dapat diatasi. Penelitian ini memberikan kesimpulan argumentasi bahwa pandangan El Fadl termasuk dalam pemikiran muslim progresif. Artikel ini diharapkan dapat memberikan kontribusi pada diskursus tentang keterbukaan dan inklusivitas Islam di dunia modern.

Kata Kunci: Fatwa, Otoritas Hukum Islam, Muslim Progresif, Khaled M. Abou El Fadl, Wanita Pergi Sendiri.

A. Introduction

Islamic law, also known as Sharia, is considered to have become a controversial issue in recent decades. Several scholars have criticised Islamic law as being used to justify authoritarian policies and practices in Muslim-majority countries.¹ Fatima Mernissi,² Leila Ahmed,³ Muhammad Sa'id al-Asymawi,⁴ and Jamal Albanna⁵ criticise the role of women in traditional Islamic law in several Middle Eastern Muslim countries and suggest more inclusive and progressive interpretations. Abdullah Ahmed an-Na'im emphasises the importance of adapting

¹ Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2005), 10–11.

² Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (Reading, Mass: Addison-Wesley Pub. Co, 1991), 1–11.

³ Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), 1–7.

⁴ Muhammad Fauzinuddin Faiz, "Pembacaan Baru Konsep Talak: Studi Pemikiran Muhammad Sa'id Al-'Asymāwī," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 10, no. 2 (12 November 2015): 273–90.

⁵ Muhammad Fauzinuddin Faiz, "Pemikiran Jamal Al-Banna tentang Relasi Suami Isteri dalam Kitab Al-Mar'ah al-Muslimah baina Tahrir Al-Qur'an wa Taqyid al-Fuqahā," *Al-Mazaahib: Jurnal Perbandingan Hukum* 3, no. 1 (1 June 2015): 55–70.

Islamic law to the current social and political context.⁶ Khaled M. Abou El Fadl (El Fadl), a renowned Islamic legal scholar and critic of authoritative interpretations of Islamic law, also raised a similar critique. He says traditional Islamic legal systems have been used to justify authoritarian policies and practices in Muslim-majority countries. He criticises how Islamic law is often applied arbitrarily and oppressively and calls for a reinterpretation of Sharia compatible with contemporary human rights standards.⁷

As an authoritative and progressive scholar in Islamic law, many fatwas issued by Council for Scientific Research and Legal Opinions (CRLO, *al-Lajnah al-Dā'imah li al-Buhūs al-'Ilmiyyah wa al-Iftā'*) have not escaped El Fadl's criticism. One of the most exciting fatwas is the fatwa on the prohibition of women travelling without a *maḥram* (unmarriageable kin) issued by many CRLO fatwa members. According to El Fadl, some fatwas are inappropriate and discriminate against women.⁸ El Fadl's thinking is unique because it contradicts some of the opinions of most schools of *fiqh* (Islamic jurisprudence). In addition, El Fadl is an American Muslim, and many of his works reflect his experiences of living in both the Western and Muslim worlds. This allows him to bring a comparative perspective to his analyses of Islamic law and its relationship to contemporary political and social issues. Therefore, the study of the CRLO fatwa, which the authors analyse with El Fadl's hermeneutic approach, becomes urgent to be discussed in this article.

As a progressive scholar working with postmodern epistemology, El Fadl's thought has been studied by several scholars. Sofia Tsourlaki explores Khaled Abou El Fadl and Amina Wadud's use of social media to spread progressive Islam.⁹ Shayk Muhammad Afifi Al-Akiti and H.A. Hellyer respond to El Fadl's article on war and terror after the terrorist attacks of 11 September 2001.¹⁰ In contrast to previous

⁶ 'Abdallāh Aḥmad an-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, 1st ed. (Cambridge, Mass.: Harvard Univ. Press, 2009), 1-10.

⁷ El Fadl, *Speaking in God's Name*, 1-14.

⁸ El Fadl, 372-388.

⁹ Sofia Tsourlaki, "Khaled Abou El Fadl and Amina Wadud's (Re)Politicisation of the Mosque and Employment of Social Media as a Means of Shaping Religious Identity Based on Values of Progressive Islam," *Contemporary Islam* 14, no. 3 (1 November 2020): 309-29.

¹⁰ Shayk Muhammad Afifi al-Akiti dan H.A. Hellyer, "Response to Khaled Abou El Fadl," in *"War on Terror": The Oxford Amnesty Lectures*, ed. oleh Chris Miller, 1 ed. (Manchester University Press, 2016), 304.

scholars, Angus M. Slater focuses on analysing El Fadl's individually shaped reform methodologies within Islamic communities against their sublimation by authoritarian fundamentalism and liberal relativism,¹¹ the influence of the Gadamerian notion of *horizontverschmelzung* in El Fadl's work,¹² and the shape of the queer approach, "an umbrella for sexual minorities who are not heterosexual, heteronormative, or gender binary" on aspects of Islamic tradition and examines El Fadl's Approach to Shari'ah.¹³ Muzayyin and Muhammad Lutfi Hakim explore El Fadl's Islamic legal hermeneutics towards studying religious fatwas.¹⁴ In addition, several other scholars focus on El Fadl's thoughts on Islam and democracy,¹⁵ gender,¹⁶ human rights,¹⁷ and El Fadl's use of articulating an Islamic theology of human rights from *maqāsid al-syarī'ah* (the objectives of Islamic law) perspective.¹⁸

Unlike previous scholars, this article focuses on El Fadl's thoughts on authority in Islamic law and his criticism of the CRLO Fatwa on the prohibition of women travelling without a *maḥram*. To that end, this article is library research with a qualitative method. The primary sources used by the authors are three CRLO fatwas relating to the prohibition of women travelling without a *maḥram*. The three fatwas were taken from the website: <https://binbaz.org.sa/fatwas/>. In addition, the authors also use several of El Fadl's works which the authors use to analyse the

¹¹ Angus M. Slater, "Khaled Abou El Fadl's Methodology of Reform: Law, Tradition, and Resisting the State," *Journal of Law, Religion and State* 4, no. 3 (10 September 2016): 293–321.

¹² Angus M. Slater, "Relationality and the Gadamerian 'Horizontverschmelzung': Khaled Abou El Fadl," *ReOrient* 6, no. 1 (1 October 2020): 47–64.

¹³ Angus M. Slater, "Queer(ing) Notions of Islamic Authority: A Methodological Disposition in the Work of Khaled Abou El Fadl," *Theology & Sexuality* 22, no. 1–2 (16 May 2016): 25–41.

¹⁴ See: Muzayyin Muzayyin, "Hermeneutika Hukum Islam Khaleed Abou El Fadl: Sebuah Tawaran dalam Membendung Otoritarianisme Fatwa MUI," *Potret Pemikiran* 20, no. 1 (1 July 2018): 61–86; Muhammad Lutfi Hakim, "Hermeneutik-Negosiasi dalam Studi Fatwa-Fatwa Keagamaan: Analisis Kritik terhadap Pemikiran Khaled M. Abou El Fadl," *Istinbath* 19, no. 1 (16 July 2020): 27–52; Irza Anwar Syaddad, "Negotiative Hermeneutics of Khaled Abou El Fadl: Truth Postponement and Negotiating the Meaning of Text in Speaking in God's Name," *Jurnal Ushuluddin* 28, no. 2 (31 Desember 2020): 140–54.

¹⁵ Volker Kaul, "Islam and Democracy," dalam *Identity and the Difficulty of Emancipation*, oleh Volker Kaul, vol. 13, Philosophy and Politics - Critical Explorations (Cham: Springer International Publishing, 2020), 111–19.

¹⁶ Adis Duderija, "Contemporary Muslim Male Reformist Thought and Gender Equality Affirmative Interpretations of Islam," *Feminist Theology* 28, no. 2 (15 January 2020): 161–81

¹⁷ David L. Johnston, "Islam and Human Rights: A Growing Rapprochement?" *American Journal of Economics and Sociology* 74, no. 1 (2015): 113–48.

¹⁸ David Johnston, "Maqāsid Al-Sharī'a: Epistemology and Hermeneutics of Muslim Theologies of Human Rights," *Die Welt Des Islams* 47, no. 2 (1 January 2007): 149–87.

fatwas, especially his work entitled, *Speaking in God's Name: Islamic Law, Authority and Women*. After the data is collected, the authors then analyse it qualitatively.

B. Khaled M. Abou El Fadl: A Short Biography

Khaled M. Abou El Fadl is a Professor of Islamic Law at the University of California, Los Angeles (UCLA) School of Law.¹⁹ El Fadl was born in Kuwait in 1963. His childhood growth and development until adolescence were spent in Kuwait and Egypt. His father was Medhat Abou El Fadl, an expert in Islamic law. Medhat was El Fadl's first teacher and taught him to fight against various forms of oppression. His mother's name is Afaf El Nimr. Afaf is a mother who always wakes up El Fadl every morning by chanting verses from the Qur'an.²⁰

El Fadl grew up with uncertain social conditions due to political problems, wars, terror and threats that enveloped his days from childhood to adulthood. Against these uncertain conditions, El Fadl eventually joined the Wahabi group, which he thought could solve these problems. He was diligent and obedient to Wahabi's rigid theological and moral teachings. He studied law until he obtained a certificate and eligibility as a Sheikh. Interestingly, his fundamentalist thinking switched to democratic when he was studying in high school. The Egyptian police once targeted him for his pro-democracy writings.

El Fadl's struggle from conservative to progressive thinking is motivated by various aspects.²¹ Firstly, Western education. El Fadl received a Western education in the United States and the United Kingdom, which gave him access to different perspectives and thoughts. This made him begin to doubt some of the traditional views of Islam that he had previously learnt—second, critical thinking. El Fadl began to develop the ability to think critically and analytically and dig deeper into his understanding of Islam. He revisited the primary sources of Islamic law and began to question long-held interpretations—third, social issues. El Fadl started to be concerned with various social problems; Muslim societies face, such as social

¹⁹ Nur Zaini, *Hermeneutika Khaled M. Abou El Fadl, Artikel dalam Buku Studi Islam Perspektif Insider/Outsider*, (Yogyakarta: IRcISod, 2013), 175.

²⁰ Kutbuddin Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, (Yogyakarta: Pustaka Pelajar, 2017), 99.

²¹ L. Carl Brown dan Khaled M. Abou El Fadl, "The Great Theft: Wrestling Islam from the Extremists," *Foreign Affairs* 85, no. 2 (2006): 201.

inequality, corruption, gender discrimination, etc. He realised that traditional Islamic views on some of these issues might exacerbate the situation. Fourth, the need for reform. El Fadl observed that many things in the practice and interpretation of Islam needed reform. He began to think that Muslim societies must be open to change and progress in understanding their religion. With these factors in mind, Fadl changed his views and became a proponent of progressive Islam. He proposed that Islam should be understood in a contemporary context and that a more open and advanced interpretation would help Muslim societies deal with their various challenges.

El Fadl studied for his Bachelor of Laws at the Yale Law School of the University of Pennsylvania. He is expert as a practitioner in the immigration and investigative law under the United States government, and also, he comes to the Middle East as a same position on it. He also works as a lecturer at UCLA School of Law until now. Some courses he teaches are Human Rights, Immigration Law and International Law. In addition, El Fadl endeavours to champion the values of pluralism, equality, democracy, gender harmony and social justice.²²

At least three actual figures have significantly influenced El Fadl's mindset in his progressive thinking. Fazlur Rahman. El Fadl was inspired by the thoughts of Fazlur Rahman, an Islamic scholar who proposed a new approach to understanding Islam. Rahman emphasised the importance of historical and social context in understanding Islamic teachings, and he also advocated a re-reading of the primary sources of Islamic law. Muhammad Abduh. Muhammad Abduh, an Egyptian Islamic reformist thinker, also inspired El Fadl. Abduh emphasised the importance of contextual interpretation in understanding Islam and advocated a return to the *ijtihad* method of interpreting Islamic teachings. Nasr Hamid Abu Zayd. El Fadl is also influenced by the thought of Nasr Hamid Abu Zayd, an Egyptian Islamic scholar who emphasises the importance of flexible interpretation in understanding Islam.

²² Slater, "Queer(ing) Notions of Islamic Authority:" 3-33.

Abu Zayd suggests that Islamic scholars look at Islamic teachings from a more open perspective and know that understanding Islam can change over time.²³

There are several important works by El Fadl on progressive Islam. The first, *Speaking in God's Name: Islamic Law, Authority and Women*, addresses controversial issues in Islamic law, such as the death penalty, marriage, and the treatment of women. Fadl proposes a new approach to understanding Islamic law, which is more open and progressive.²⁴ The second work, *The Search for Beauty in Islam: A Conference of the Books*, discusses the concept of beauty in Islam and emphasises the importance of understanding Islam from a more humanist perspective. El Fadl argues that the idea of beauty can help us know Islamic teachings better.²⁵ Third, the work, *Rebellion and Violence in Islamic Law* discusses the concepts of rebellion and violence in Islamic law and emphasises the importance of historical and social context in understanding Islamic teachings. El Fadl shows that Islam teaches peace and justice. Instead, El Fadl considers that rebellion and violence should be interpreted in the proper context.²⁶

C. Authority and Authoritarianism in Islamic Law

In terminology, authority means legitimate power related to institutions in society. Authority is the ability to direct so that work can be carried out correctly. Authority can only work well if someone is willing to accept the direction. Authority means the imposition of the will of others on human choice and requires subordination. Authority can also be defined as delegating rights to govern or lead. That is, the power to act, decide, order, and judge; the right to determine policy and the responsibility to assess control in the lives of children within the limits of God-given authority. God has absolute authority and sovereign creator rights. God's rule and authority are never arbitrary, as it is based on His perfect goodness and

²³ Muhammad Fauzinuddin Faiz, 'Teori Hermeneutika Al-Qur'an Naşr Hamid Abu Zayd dan Aplikasinya terhadap Wacana Gender dalam Studi Hukum Islam Kontemporer', *Al-Ahwal: Jurnal Kajian Hukum Keluarga dan Kajian Keislaman* 7, no. 1 (1 April 2015): 23–32.

²⁴ El Fadl, *Speaking in God's Name*, 35-70

²⁵ An-Chi Hoh Dianu, ed. Khaled M. Abou El Fadl, *The Library Quarterly: Information, Community, Policy* 73, no. 2 (2003): 211–13.

²⁶ Joseph E. Lowry, "Rebellion and Violence in Islamic Law. By Khaled Abou El Fadl. 2001. Reprint. Cambridge: Cambridge University Press, 2002.," *Journal of Near Eastern Studies* 65, no. 3 (July 2006): 211–12.

benevolence; and for the good and blessing of all human beings.²⁷ The authority in Islamic law refers to the sources of law and the authorities who rule under Islamic law. The primary sources of Islamic law are the Quran and Sunnah and the opinions of scholars recognised for their expertise.

In contrast, authoritarianism in Islamic law has a different connotation. Authoritarianism in Islamic law refers to the excessive or unjust use of power and authority in applying Islamic law. This can occur when power holders or scholars interpret Islamic law to manipulate it to suit their interests without regard to the principles of justice, equity and humanity. Some examples of authoritarianism in Islamic law include the suppression and violation of human rights, criminalisation of political activity or criticism of the government, and discriminatory treatment of minority groups and women.²⁸

However, it is essential to note that authoritarianism does not arise from the teachings of Islam itself but from the misinterpretation or use of Islamic law to justify political or personal interests. As a religion that teaches justice and humanity, Islamic teachings demand that the use of power and authority be mindful of these principles and provide protection and equality for all citizens. Therefore, it is essential for scholars and power holders in applying Islamic law to ensure that their power and authority are used fairly and judiciously, with due regard to the principles of justice and humanity. It also requires the active participation of the people in monitoring and fighting for their rights to create a society of justice and dignity.²⁹

In addition to the significant problems above, a minor but fundamental problem that triggers El Fadl's anxiety is the misuse of authority, which he calls authoritarianism. Authoritarianism is the authorisation of actions using the power of God by groups or individuals who claim their perspective is the most correct. Authoritarianism seeks to take over and subjugate the workings of finding meaning from texts to subjective and selective readings. This leads to God's agents'

²⁷ Kutbuddin Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl* (Yogyakarta: Pustaka Pelajar, 2017), 33–34.

²⁸ El Fadl, *Speaking in God's Name*. 77-87.

²⁹ El Fadl. 87-90.

appropriation of God's will, who in turn view the textual purpose and autonomy of the text as non-primary. It has the potential to lead to misinterpretation and violates other requirements.³⁰ El Fadl states that when the reader struggles with the text and derives laws from it, the concern is that the reader becomes one with the text, or the reader's determination becomes an exclusive embodiment of the text. Ultimately, the text and the reader's construct will become one. This process suggests that the text is subject to the reader, and the reader becomes the text effectively.³¹

If the reader chooses a particular reading of the text and assumes that there are no other readings, then the text is influenced by the reader's task. When the reader bypasses and abuses the text, the reader becomes ineffective, out of touch, ungrounded and authoritarian.³² The scriptural text becomes unopen when claimed to have a fixed and unchanging meaning, so the process of interpretation becomes closed as well. As a result, the text is considered irrelevant. It means readers have no reason to refer back to and struggle with the text. The reader returns to the final determination of meaning and follows it. The non-open text is a form of intellectual flirting. This paradigm is declared one-sided and irrefutable. It means the original text loses its independence and depends on the other party.³³

El Fadl tries to formulate a conceptual building, namely an authoritative idea that rejects the practice of authoritarianism intertwined with the study of Islamic law. Tawarab El Fadl addresses how far a person can represent God without being God or wanting to be considered God. This idea is outlined in his books entitled "The Authoritative and Authoritarian in Islamic Discourse: A Case Study" and "Speaking in God's Name: Islamic Law, Authority and Women". These two books present a hermeneutical approach to Islamic law. Authority theory is a hermeneutical way of working that seeks to get out of the confines of the text and build a habit of searching for the meaning of the text within an objective and open reading framework.

D. Khaled M. Abou El Fadl's Hermeneutics: Text, Author and Reader

³⁰ Brown and Fadl, 'The Great Theft', 201.

³¹ Khaled Abou El Fadl, *Melawan Tentara Tuhan: Yang Berwenang dan yang Sewenang-Wenang dalam Islam*, trans. Kurniawan Abdullah (Jakarta: PT. Serambi Ilmu Semesta, 2003), 95-103.

³² El Fadl, 95-103.

³³ El Fadl, *Speaking in God's Name*, 7.

In Abou El Fadl's analysis, authoritarianism in Islamic thought results from a methodological error relating to the relationship between text, author and reader. Readers who close the text in any way can damage the integrity of the author and the text itself.³⁴ The problem that appears prominent and decisive in the dimension of authoritative interpretation lies at the reader's level, which impacts authoritarianism. To address this, El Fadl introduces a hermeneutic methodology that provides a conceptual framework for developing notions of authority and authoritarianism in Islamic law.

El Fadl emphasises three main things that must be criticised to unlock authority and authoritarian discourse in Islam.³⁵ Firstly, the ability of the text. The text is the mouth of various hermeneutical ideas, so all hermeneutical methods are directly proportional to the nature of the text. The construction of the idea of the text characterises modern hermeneutics. El Fadl explains that text is used to analyse the textual sources of God's will: the Qur'an and hadith. El Fadl divides text-related theories into two. The textual approach introduces principles of knowledge used to read textual concepts in Islamic studies in general. The specific thesis examines the understanding of texts in Islam that are not complete but still related to the first one by applying the particularities of each text, such as the Qur'an.

According to El Fadl, there are four explanations for initiating the text. Firstly, the meaning of the text. According to him, the text is a set of forms used as signs, chosen, planned and functioning from the author's paradigm to understand the reader.³⁶ Second, text and language. Text is a prediction that is very close to the author's intention, while language is not fixed and can change. Language consists of letters, words, phrases and sentences interwoven with symbols. These symbols evoke specific descriptions and feelings in the reader that can change with the times. When an author uses language with all its arrangements and procedures, he essentially rejects the intended purpose of the text. The author, for example, wants the word A, but the reader interprets it as AA, AB or even Z³⁷ Third, the purpose of

³⁴ Raisul Raisul, "Pemikiran Hukum Islam Khaled Abou El Fadl," *Mazahib* 14, no. 2 (2015): 150.

³⁵ Slater, 'Khaled Abou El Fadl's Methodology of Reform', 171.

³⁶ El Fadl, *Speaking in God's Name*, 102-3.

³⁷ El Fadl, 91.

the text. When the author expresses the meaning of the text, the text has a certain autonomy. This understanding becomes the purpose of the text. The purpose of the text is the freedom to choose the purpose of the author and the reader. This choice is realised in the symbols used and the function of language.³⁸

Fourth, the authorship of the text. The authors of the texts vary. The text does not come from an author whose name is only on the cover. Instead, the reader is written by many intellectuals who are influenced by the normative values of society. The author of the text is called the author of history. The director and printer of the reader are referred to as factors of production. Text editors, editors and re-authors are called revisionists. Recipients and creators of the meaning of the symbols that make up the text are called interpreters. According to El Fadl, text and *naş* (textual sources) are two different things. The Qur'an and hadith are two inseparable and measurable things whose meanings are determined by their creators. The reader must search for the purpose and find the author. The author of the text is absolute and total.³⁹ Fifth, the characteristics of the text. Open textbooks have the potential to generate ideas and motivate interpretation are constructive. Closed readers that strictly limit interpretive activity. The first character belongs to the Qur'an and hadith.⁴⁰ The text skills described earlier are the basic principles for understanding Quranic texts. The Qur'an is the primary text of Islam and is timeless. The Qur'an is the single book from which Allah directs Muslims as a people whose civilisation is following the holy book.⁴¹

Secondly, the determined meaning. Defined meaning is the endeavour to discover the meaning of a text. Therefore, it is essential to express meaning in the context of the Islamic concept of authority. Determining the meaning of the commands in the text helps determine who has the authority to determine the meaning of the text. It should be noted that God's commands, when written in the form of texts, are related to the linguistic environment. God uses the text to express His will, but it cannot speak for itself. The text makes demands that people read and

³⁸ El Fadl, 8.

³⁹ El Fadl, *Melawan Tentara Tuhan*, 103-5.

⁴⁰ El Fadl, 210.

⁴¹ El Fadl, *Speaking in God's Name*, 100.

understand it. As the text is read, several variations towards multiple meanings can occur. All readers can do the determination of meaning. The accuracy of the reader's definition of meaning is measured by the extent to which the reader appreciates the unity of intent of the author and the text itself. It must be understood that the power to make decisions has been given to people who are God's representatives. God communicates His commands in two ways, through texts and people. Texts are used to develop attitudes and behaviours, and people play an essential role in shaping the meaning of texts.⁴²

The multifaceted process of textual interpretation results in the determination of meaning. It, therefore, requires a balance of power between the text, the author and the reader's intent. It requires an interactive, dynamic and dialectical process between text, author and reader. According to El Fadl, the bargaining between the reader and the text is very important because the nature and authenticity of the text cannot be known until its meaning is configured. Therefore, the reader must distance himself from the text by stating that although the text continues to grow to be interpreted in light of the times, the meaning of the text is fixed and cannot be recreated. It is called implementation and contextualisation. The relationship between the text, the author and the reader is urgent because it requires precise, autonomous interpretation and integration with the text. Thus, Islamic civilisation is essentially a civilisation of texts. But when the text becomes central, it automatically becomes the primary reference for Muslims. It is what El Fadl calls human agents. However, these agents must focus on the task at hand. In other words, what is transmitted is truly the voice of God, and the Prophet is valid (authenticity). This interpretation raises the question of what meanings these human agents should consider.⁴³

Therefore, determining the meaning of the text (reading the text) is a very diverse and multi-layered process, so several different meanings automatically emerge, and each reader is free to interpret each meaning according to the text. El

⁴² Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 155–56.

⁴³ Aibak, 156.

Fadl expects an active role between the author, text, and reader. The integration of all actors must be respected, the role of each party must be emphasised, and the process of interpretation must be open. Therefore, defining meaning must involve a complex, interactive, dynamic and continuous dialectical process between the author, the text and the reader. These three things must go hand in hand, and no one should dominate.⁴⁴

El Fadl's hermeneutic work⁴⁵ in this framework aims to respect the autonomy of the text by avoiding co-optation and authoritarianism from the reader towards the text so that the text can be interpreted in a down-to-earth manner because the Qur'an and hadith are works that allow their existence always to be open to various steps of interpretation.⁴⁶ El Fadl explains that when the reader engages with the text and takes the law from the text, there is a concern that the reader will merge with the text or the fate of the reader will become the sole embodiment of the text. Eventually, the text and the reader's construction become one. This process reveals that the text is subordinated to the reader, and the reader becomes the text. When the reader chooses a particular way to read the text, assuming there is nothing else to read, the reader's way of reading affects the text. When the reader reads carefully and abuses the text, he faces an ineffective, out-of-touch, ungrounded, authoritarian reader.⁴⁷ The text of Scripture remains open when a fixed and unchanging meaning is attributed to this text, which also completes the process of interpretation. As a result, the text becomes irrelevant, and the reader has no reason to refer to and engage with the text. The reader returns to and follows the final meaning of the meaning.

Third, representation. This problem of representation presents itself as a different problem from the real one and is responsible for determining and deciding the two issues above, namely determining validity and meaning. Which institutional

⁴⁴ Nur Zaini, *Hermeneutika Khaled M. Abou El-Fadl*, in *Studi Islam Perspektif Insider/Outsider*, 3-16.

⁴⁵ Hermeneutics is a method of interpretation that rests on three things: First, in what context the verse was written, if it is connected to the Qur'an, and then in what context the verse was revealed. Second, what is the grammatical component of the text? Third, how the whole text or its worldview. See: Abdul Mustaqim, *Paradigma Tafsir Feminis: Membaca Al-Qur'an dengan Optik Perempuan* (Yogyakarta: Logung Pustaka, 2008), 40.

⁴⁶ Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 159.

⁴⁷ El Fadl, *Melawan Tentara Tuhan*, 95-103.

processes and forms can determine the authenticity of purpose and its realisation? Later, the question was left to the creativity of each religious believer or whether a particular institution should be established to represent slims.⁴⁸ In Islam, sovereignty belongs only to God and recognises the concept of human agency as God's representative. However, delegating God's authority and power to humans opens the door to authority pianism. Therefore, Fadl sets out some basic requirements for those called "God's special representative".⁴⁹ Firstly, the unification of heart, mind and action (int gritty). The Second is clarity. Third, perfection in analysing God s will. Fourth, the use of reason in interpreting and analysing God's commands.⁵⁰

E. Authoritarian CRLO Fatwa on the prohibition of Women Travelling Without *Maḥram*

One of the institutions that El Fadl criticises as authoritarian religious institutions is the CRLO. This institution often issues fatwas that highlight gender inequalities that raise concerns among Muslim minority clerics worldwide, especially in the West. One fatwas she considers authoritarian is the fatwa on the prohibition of women travelling alone without a *maḥram*.⁵¹

Someone asked for a fatwa on a woman travelling without her *maḥram*, whether the trip was for personal use or Hajj. In another case, a woman asked if her husband had been injured in an accident, and she had invited him to visit him. While travelling to the location, is it permissible for her to travel alone without a *maḥram*? Another interesting case is a man working in Saudi Arabia who wanted to see his wife and young child. Since he could not come to Egypt, he bought a non-stop direct flight from Egypt to Saudi Arabia for his wife and children. Is it permissible for his wife and children to travel without a *maḥram*?⁵²

In light of the above, the CRLO prohibits women from travelling unaccompanied by their *maḥram*, regardless of whether they claim to be spanning

⁴⁸ Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 161.

⁴⁹ Syaddad, 'Negotiative Hermeneutics of Khaled Abou El Fadl', 140.

⁵⁰ Al-Akiti and Hellyer, 'Response to Khaled Abou El Fadl'.5-11.

⁵¹ Khaled Abou El Fadl, 'Law of Duress in Islamic Law and Common Law: A Comparative Study', *Islamic Studies* 30, no. 3 (1991): 305–50.

⁵² Raisul, 'Pemikiran Hukum Islam Khaled Abou El Fadl', 154.

more than fifty miles without a *maḥram*, whether alone or with friends, or distracted. It is based on a hadith: “*It is not permissible for a woman who believes in Allah and His Messenger to make a one-day journey (according to other traditions, a three-day journey) without a maḥram.*” Ibn Fauzan thinks that the prohibition is absolute because when travelling by plane, car or train, there can be accidents or problems that leave women unprotected. On the other hand, a woman travelling long distances without a *maḥram* may cause fitnah (temptation).⁵³

This fatwa is based on the assumption that women are weak beings who cannot prevent planes, cars and trains from breaking down on their journey or having accidents that endanger women’s safety. Women are emotional beings with limited intellectual capacity that allows them to harm themselves and others. With the *sādd al-zarī’ah* (eliminating pretexts) approach, *haram* (forbidden) is anything that can cause harm. It means that people have the right to prevent harmful things before they happen to them. *Sādd al-zarī’ah* is the opposite of the concept of *maṣlahah al-mursalah* (public interest) in the Islamic legal tradition. Thus, whatever is necessary to achieve good is good. These two concepts must go hand in hand; if researchers falsify them, injustice and arbitrariness will arise. The CLRO believes that anything suspected of causing harm should be avoided. An essential point in this fatwa is that the CRLRO endorses its injunction as a commandment of Islamic law without countering it with comprehensive arguments.⁵⁴

In contrast to the fatwa above, some classical jurists such as Sa’id ibn Jubayr, Malik ibn Anas, al-Auza’i, and al-Shāfi’ī argue that the issue of prohibiting women from travelling alone is not the *maḥram* but rather security.⁵⁵ According to them, the reason for the *maḥram*’s validity is a woman’s lack of safety and dignity when travelling alone or with a strange man. It was the case in ancient times, using transport such as camels, horses and donkeys. At that time, buildings were abandoned and crowded in the desert. But transport options evolved. Planes, trains and other vehicles can carry hundreds of passengers, so women no longer have to

⁵³ Raisul, 154.

⁵⁴ Khaled Abou El Fadl, ‘Islam and The Challenge of Democratic Commitment’, *Oriente Moderno* 87, no. 2 (2007): 247–300.

⁵⁵ Htun and Weldon, ‘State Power, Religion, and Women’s Rights: A Comparative Analysis of Family Law’, *Indiana Journal of Global Legal Studies* 18, no. 1 (2011): 145.

worry about travelling alone or with friends, so safaris are not prohibited in any place.⁵⁶

In this case, the reader must look at the competence of the text, the meaning assigned and the representativeness. The text has many interpretations, and the designated purpose relates to representation. The person who understands the hadith must be fair, honest, competent and self-controlled so that the law issued indeed gives a sense of justice to women.⁵⁷ Meaning and significance (*magzha*) must be well understood. The purpose relates to the understanding of the text, while the *magzha* refers to the level of importance of the text or what the point is. Thus, it can be understood that the hadith prohibiting women from travelling long distances without a *maḥram* is a safety factor. If a woman can protect herself (*ḥifẓ al-nafs*), she can travel long distances without a *maḥram*.

According to El Fadl, this fatwa has no legal basis in Islam and violates women's rights. She argues that no verse or hadith prohibits women from travelling without a *maḥram*. In addition, she pointed out many examples in Islamic history where women travelled long distances without a *maḥram*, including the Prophet Muhammad's wives and female companions. According to her, the prohibition of women travelling without a *maḥram* is a product of patriarchal thinking that considers women weak and incapable of protecting themselves. She argues that such a review contradicts Islamic teachings that emphasise gender equality and the protection of women's rights.⁵⁸ El Fadl also highlighted the adverse impact of the ban on women's rights. She said the ban could limit women's access to education, employment, and health services unavailable in their home areas. In addition, the ban can restrict women's freedom to carry out social and economic activities. El Fadl's reasoning is progressive compared to the fatwa issued by the CRLQ, which is very textual and conservative.⁵⁹

El Fadl's progressive thinking is different from liberal and secular views.

⁵⁶ Raisul, 'Pemikiran Hukum Islam Khaled Abou El Fadl', 155.

⁵⁷ Duderija, 'Contemporary Muslim Male Reformist Thought and Gender Equality Affirmative Interpretations of Islam', 1-55

⁵⁸ Tsourlaki, 'Khaled Abou El Fadl and Amina Wadud's (Re)Politicisation of the Mosque and Employment of Social Media as a Means of Shaping Religious Identity Based on Values of Progressive Islam', 50-71

⁵⁹ Mernissi, *The Veil and the Male Elite*, 77-91.

Liberal and secular views prioritise individualism and freedom, while El Fadl emphasises community values and social responsibility. In addition, liberal and secular views tend to question religious authority and prioritise reason as the primary source of knowledge. At the same time, El Fadl still considers religious authority as the primary source in understanding Islamic law. El Fadl's views on gender equality in Islam are often compared with feminist views. Although El Fadl supports gender equality in Islam, his views are still different from feminist views, which tend to prioritise the elimination of gender roles and emphasis on individual freedom. El Fadl emphasises the importance of balancing the rights and responsibilities of men and women in society, and this is El Fadl's genuine view.

F. Conclusion

Khaled M. Abou El Fadl is known for his critical views on authoritarian and unjust interpretations of Islamic law. She has highlighted many controversial issues in Islamic law, including the authoritarian fatwa issued by the CRLQ on the prohibition of women travelling without a *maḥram*. According to El Fadl, this fatwa has no solid legal basis in Islamic teachings and violates women's rights. He argues that no verse or hadith explicitly prohibits women from travelling without a *maḥram*. According to him, the prohibition of women travelling without a *maḥram* is a product of patriarchal thinking that considers women weak and incapable of protecting themselves. He argues that such thinking contradicts Islamic teachings that emphasise gender equality and the protection of women's rights. In addition, El Fadl highlighted the adverse impact of the ban on women's rights, including restrictions on women's access to education and social, economic, and healthcare services.

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