

# Reconstruction of The Concept of *Mahram* in Women's *Safar* Based on Ibnu Qayyim al-Jauziyyah's Legal Change Theory

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| Received: 14-07-2021 | Revised: 25-09-2021,<br>08-11-2021 | Accepted: 10-11-2021 |
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**Abstract:** *This paper aims to analyze the legal thought about the prohibition of women traveling without mahram and attempt to reinterpret the Prophet's hadith regarding the prohibition through contextualization and reconstruction. The theory of legal change by Ibn Qayyim al-Jauziyyah was chosen in this paper to explain the characteristics of the Islamic law that can change and accept change. The universal message contained in the hadith cannot be ignored by simply sticking to the text. The hadith regarding the prohibition of traveling for women without a mahram has a very different context from the present context. This can be proven by the aspects that become factors of legal change according to Ibn Qayyim al-Jauziyyah including time (azminah), place (amkinah), condition (ahwal), intention/ motivation (niyat), and tradition ('awaid). Based on these aspects, it can be understood that the urgency of the mahram in women's journey is intended as a guarantee of security from the dangers that were very likely to be experienced women at that time. In contrast to the present context, which has experienced rapid development in the fields of technology, information, transportation, which provide more access, comfort, and security. Efforts to protect women have been legitimized through existing legal norms.*

**Abstrak:** Tulisan ini bertujuan untuk menganalisis pemikiran hukum tentang larangan perempuan bepergian tanpa mahram dan mencoba menafsirkan kembali hadits Nabi tentang larangan tersebut melalui kontekstualisasi dan rekonstruksi. Teori perubahan hukum oleh Ibn Qayyim al-Jauziyyah dipilih dalam tulisan ini untuk menjelaskan karakteristik hukum Islam yang dapat berubah dan menerima perubahan. Pesan universal yang terkandung dalam hadis tidak bisa diabaikan begitu saja dengan berpegang teguh pada teksnya. Hadits tentang larangan bepergian bagi wanita tanpa mahram memiliki konteks yang sangat berbeda dengan konteks kekinian. Hal ini dapat dibuktikan dengan aspek-aspek yang menjadi faktor perubahan hukum menurut Ibnu Qayyim al-Jauziyyah antara lain waktu (*azminah*), tempat (*amkinah*), kondisi (*ahwal*), niat/motivasi (*niyat*), dan tradisi (*'awaid*). Berdasarkan aspek-aspek tersebut, dapat dipahami bahwa urgensi mahram dalam perjalanan perempuan dimaksudkan sebagai jaminan keamanan dari mara bahaya yang sangat mungkin dialami perempuan saat itu. Berbeda dengan konteks kekinian yang mengalami perkembangan pesat di bidang teknologi, informasi, transportasi yang memberikan akses, kenyamanan, dan keamanan yang lebih. Upaya perlindungan perempuan telah dilegitimasi melalui norma hukum yang ada.

**Keywords:** *Mahram, Safar, Women, Legal Change, Ibn Qayyim al-Jauziyyah.*

## INTRODUCTION

Women have a dark history long before Islam came. Women were seen as weak and worthless. The Romans,

Jews, and Arab Jahiliyyah positioned women as the second sex after men. (Siba'i, 1998: 15) Women were seen as objects that could be inherited until they were traded. Even history records the

Arab Jahiliyyah tradition that burying baby girls alive because having a baby girl was considered despicable at that time. A daughter's life belongs entirely to her father. Her father could sell her and treat her freely. She also has no right to inheritance at all if she had a brother. In addition, she did not have the right to choose a husband. The husband and wife relationship was seen as a woman's full ownership right, so she must submit completely to her husband and did not have any rights from her husband. Husbands had the right to polygamy without limits. Even when the husband dies, the wife would be bequeathed to her children. (Siba'i, 1998: 17-18) Such an irony of the forms of discrimination that befell women before Islam.

Islam came to bring fresh air for women. Discrimination against women began to fade with the presence of Islamic teachings that brought justice and equality for men and women. Women are given their rights and their dignity is protected and respected. However, the spirit of Islam to elevate the status of women certainly cannot be done as easily as turning the palm. *Nash* both the Qur'an and the hadith came gradually and gradually adjusted to the social constructs that occurred at that time. So it can be understood that Islamic law is present to bring benefits while still paying attention to the social conditions of the community which aims to make Islam easily accepted and digested well by everyone.

On the other hand, the patriarchal-misogynistic culture that is already rooted in society takes advantage of the presence of religious texts as a basis for legitimacy that still corners women. Some of them only hold on to the texts of the Qur'an and hadith without understanding the causes of these texts. One of them

is regarding the law prohibiting women's travel without a *maḥram* which is based on the hadiths of the Prophet which until now still leaves contradiction opinions among classical and contemporary fuqaha.

The current social context is inappropriate with the prohibition on women traveling without a *maḥram*. The complexity of life and the flow of modernity inevitably lead to high mobility that must be carried out by humans, including women. On the other hand, the role of women in the public sphere is a right that has been declared together. There should be no form of restraint and domestication aimed at women from engaging in activities outside the domestic area.

Ibn Qayyim al-Jauziyyah expressly states that absolute legal changes occur with changes in time (*azminah*), place (*amkinah*), condition (*ahwāl*), intention/motivation (*niyāt*), and tradition (*'awā'id*). According to him, the aspects that affect the legal changes are mentioned in detail. This proves that Islamic law is dynamic and cannot be enforced for changing social conditions. The principle of universality and flexibility of Islamic law can adapt to the social transformations that occur. (Tahir, 2010: 64) The law prohibiting women's traveling (*safar*) without a *maḥram* has an essential universality value. The essence behind the word *maḥram* is the security guarantee that can be given to women by their presence. So when a woman goes alone with guaranteed security and protection, the existence of *maḥram* becomes meaningless because its essence has been replaced.

Many previous studies have discussed the law of *maḥram* in women's travel. Hasanah et al (2018)'s research

entitled "Hadits Perempuan Melakukan Perjalanan Tanpa *Maḥram* Perspektif Hermeneutika Paul Ricoeur" reveals that the urgency of the existence of *maḥram* is a form of concrete prevention of violence that may befall her. The prevention is not only carried out by close families, but also by the state with its instruments. This is based on Paul Ricoeur's hermeneutical approach which combines the textual and contextual meaning of hadith. Furthermore, Fawaid's research (2016) entitled "Reinterpretasi Hadis Tentang *Maḥram* (Pendekatan Hermeneutika)" concluded that the prohibition on women's travel without a *maḥram* is temporal by looking at security conditions. Another study was also conducted by Maimun (2010) with the title "Pendamping *Travelling*: Kajian Antropologi Sosial tentang *Maḥram*". The results of his research revealed that the position of the *maḥram* can be interpreted as a travel companion who does not always come from the *maḥram* or travel agents and organizations that take care of it that can ensure safety and comfort. There is also research by Thobroni (2010) entitled "Rethinking Posisi *Maḥram* Pria Dalam Fiqih *Safar* Perempuan" which explains that the fatwa regarding the prohibition of female worker from working abroad is no longer relevant. Security guarantees have been regulated by the state.

From the studies mentioned above, the author feels it is important to write this paper because Ibn Qayyim's theory of legal change is very appropriate to be used to explore this problem. The factors in the change in the law prohibiting women's travel must be explained in detail to provide a clear descriptions and convince the reader that Islam through the

hadith of the Prophet wants global benefit (*maṣlaḥah 'āmmah*).

## RESEARCH METHODS

This research is library research conducted by tracing references, literature, and reading sources related to the focus of this research. The approach used in this research is a philosophical approach by understanding the text of the Prophet's hadith about the prohibition of women's travel without *maḥram* and then relevance to social reality as a factor of legal change as stated by Ibn Qayyim al-Jauziyyah.

## RESULTS AND DISCUSSION

### *Maḥram* Definitive Study in Fiqh

*Maḥram* (مَحْرَم) is linguistically rooted in the word *ḥaram* which is the antonym of *ḥalal*, which is something that is prohibited and must be abandoned. *Fuqaha* define *maḥram* in the following terms:

مَنْ لَا يَجُوزُ لَهُ مُنَاكَحُهَا عَلَى التَّأْيِيدِ بِقَرَابَةٍ أَوْ رَضَاعٍ  
أَوْ صِهْرِيَّةٍ

The women are forbidden to be married permanently, either because of kinship (*qarabah*), breastfeeding (*radhā'ah*), or *mushāharah* (marriage). (Tihami & Sahrani, 2010: 98)

The people who are included in the *maḥram* has been mentioned in Q.S. an-Nisā': 23. The verse explains who the women that become *maḥram* for a man. Of course, *maḥram* for women is the opposite. To facilitate understanding in this paper, the author chooses to mention *maḥram* for women as follows:

1. *Maḥram* because of kinship / *nasab*

- a. Fathers, which are included here are biological fathers, grandfathers from both father and mother lines, and above.
  - b. Sons. Included here are sons, grandsons (both from sons and daughters), and down.
  - c. Full brother, paternal half-brother, and maternal half-brother.
  - d. The son of a full brother, the son of a paternal half-brother, and the son of a maternal half-brother.
  - e. The son of a full sister, the son of a paternal half-sister, and the son of a maternal half-sister.
  - f. Father's brother, whether biological, same-father, or same-mother. Likewise, the brothers of the grandfather and grandmother from the father's path, whether biological, same-father, or same-mother.
  - g. Mother's brother, whether biological, same-father, or same-mother. Likewise, the brothers of the grandfather and grandmother from the mother's path, whether biological, same-father, or same-mother.
2. *Maḥram due to marriage (muṣāharah)*
    - a. Mother's husband (stepfather) and grandmother's husband and so on, provided that the stepfather has intercourse with his mother.
    - b. The husband of the daughter (son-in-law), the husband of the granddaughter of the son or daughter and continues down. This *maḥram* status lasts forever even though there has been a divorce.
    - c. Husband's father (father-in-law), husband's grandfather from the husband's mother or husband's father and continues upwards. This *maḥram* status lasts forever even though there has been a divorce.
    - d. The husband's son (with another wife), the grandson of the husband's daughter and continues down. This *maḥram* status lasts forever even though the husband has divorced his other wives.
  3. *Maḥram due to breastfeeding (raḍā'ah)*
    - a. Husband of milk mother (milk-father)
    - b. Father of milk-mother
    - c. Father of milk-father
    - d. Brother of milk-mother
    - e. Brother of milk-father
    - f. Son of milk-mother and milk-father, son of milk-mother, son of milk-father (with another wife).
    - g. Milk-brother, either from the path of the milk-mother and the milk-father or from one of the parties. (Rohman, 2018: 257-259)

### **Nash Existence Against the Prohibition of Women's *Safar* Without *Maḥram***

In the discourse on *maḥram*, matters relating to the classification of *maḥram* and its implications regarding the prohibition of marrying a *maḥram* have become the consensus of the fuqaha without any contradictory opinions. However, another problem arises when faced with the text of the hadith of the Prophet SAW which states the prohibition of traveling for women who are not accompanied by their *maḥram*. The prohibition is often understood textually. It is worried that textual understanding of hadith can become a gap for domestication and restraint against women. These hadiths include:

1. Hadits narrated by al-Bukhari from 'Abdullah Ibn 'Umar:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا تُسَافِرُ الْمَرْأَةُ ثَلَاثَةَ أَيَّامٍ إِلَّا مَعَ ذِي مَحْرَمٍ

*Indeed, the Prophet SAW said: A woman should not travel for three days except with her mahram.*

2. Hadits narrated by al-Bukhari from Ibnu 'Abbas:

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا تُسَافِرُ الْمَرْأَةُ ثَلَاثَةَ أَيَّامٍ إِلَّا مَعَ ذِي مَحْرَمٍ، وَلَا يَدْخُلُ عَلَيْهَا رَجُلٌ إِلَّا وَمَعَهَا مَحْرَمٌ. فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ إِنِّي أُرِيدُ أَنْ أَخْرُجَ فِي جَيْشٍ كَذَا وَكَذَا، وَأَمْرَاتِي تُرِيدُ الْحَجَّ، فَقَالَ: أَخْرُجْ مَعَهَا.

*The Prophet SAW said: A woman should not travel for three days except with her mahram, and do not invite male guests unless accompanied by her mahram. Then a man said: O Messenger of Allah, I want to join a certain army, and my wife wants to perform the pilgrimage. So the Prophet said: Go with him.*

3. Hadits narrated by Muslim from Abu Sa'id al-Khudry:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا تُسَافِرُ الْمَرْأَةُ ثَلَاثَةَ أَيَّامٍ إِلَّا مَعَ ذِي مَحْرَمٍ

*The Prophet SAW said: A woman should not travel for three days except with mahram.*

4. Hadits narrated by Muslim from Abu Hurairah:

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ، تُسَافِرُ مَسِيرَةَ يَوْمٍ وَلَيْلَةٍ إِلَّا مَعَ ذِي مَحْرَمٍ عَلَيْهَا

*Rasulullah SAW said: It is not lawful for a woman who believes in Allah and the Last Day to travel a distance of a day and a night unless she is accompanied by a mahram.*

5. Hadits narrated by Muslim from 'Abd al-Malik Ibn 'Umar:

عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: سَمِعْتُ قِرْعَةَ، قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ قَالَ: سَمِعْتُ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَرْبَعًا فَأَعْجَبَنِي وَأَنْفَقَنِي، نَهَى أَنْ تُسَافِرَ الْمَرْأَةُ مَسِيرَةَ يَوْمَيْنِ، إِلَّا وَمَعَهَا زَوْجُهَا، أَوْ ذُو مَحْرَمٍ وَأَقْتَصَّ بَاقِيَ الْحَدِيثِ

*...I heard from Rasulullah SAW four things, then I was impressed. He forbade a woman to travel for two days unless accompanied by her husband, or her mahram. And he also tells the continuation of the hadith. (Fawaid, 2016: 180-186)*

## The Fuqaha's Opinions

The fuqaha differ in understanding the texts of the hadith of the Prophet SAW regarding the prohibition of traveling (*safar*) for women without *mahram*. In this case, the opinions of the fuqaha can be classified into two groups, namely: 1. groups of fuqaha who require the existence of *mahram* in women's journeys/trips; 2. A group of fuqaha who do not require the existence of *mahram* *safar*/women's trips.

First, the group of *fuqaha* who require the existence of *mahram* in women's journeys/trips, which include Hanafiyyah and Hanabilah madhab. According to the Hanafi madhab, it is obligatory for women who want to travel to be accompanied by a *mahram*. The *mahram* in question is the one who has matured, is intelligent (*murāhiq*), is not *fasiq* and trusted, or is with her husband. This provision also applies to women

traveling to perform the pilgrimage. According to this madhab, women who perform *Hajj* without *maḥram* are forbidden (*haram*). (Al-Syaukani, 2005: 16) So it can be understood that according to this view, the absolute condition for allowing women to travel is the presence of a *maḥram* or husband. A similar opinion is also held by Sufyan al-Tsauri, Ibrahim an-Nakha'i, and Ishaq ibn Rahawaih.

The Hanabilah madhab also insists that women should not travel without a *maḥram*. During the pilgrimage, the obligation for women is lost because they are not accompanied by their *maḥram*. Even in this madhab, the existence of *maḥram* is a condition of being able (*istithā'ah*). (Sa'i, 2003: 25-26) So even though a woman has physical and financial abilities, the obligation of *Hajj* will still be invalid if she does not have a *maḥram* as a companion for *Hajj*. This opinion was also followed by Muhammad ibn Salih al-Utsaimin or commonly known as Ibn Utsaimin. He held on to the hadith narrated by al-Bukhari about the prohibition of traveling for women without *maḥram*. He emphasized that a woman's journey must be accompanied by her *maḥram* absolutely, even if a woman's journey without a *maḥram* has guaranteed safety, such as using airplanes or trains. Ibn Utsaimin was also asked about the law of traveling with a woman accompanied by a driver, he argued that it should not be because the driver in question is not a *maḥram* for the woman. According to Ibn Utsaimin, the Prophet's hadith regarding the prohibition of traveling for women without a *maḥram* has a meaning that shows the generality of requiring a physical *maḥram*.

Ash-Shan'ani in the Book of *Subul as-Salām* also states that the hadith regarding the prohibition of a woman traveling

without a *maḥram* applies to all trips for any purpose. According to him, the prohibition is due to the possibility of slandering a woman's body and this prohibition only applies to girls, not elderly women. (Shan'ani, t.t.: 294) However, this opinion has been rejected by an-Nawawi. He argues that elderly women still have an attraction that can also cause lust. So according to an-Nawawi, it is not appropriate if that slander is the reason for the prohibition of traveling without the *maḥram*. (Ulya, 2013: 250)

Second, the group of fuqaha who do not require the existence of *maḥram* in women's journeys/trips. Included in this group are the *madhab* of Shafi'i. The well-known opinion of this *madhab* states that the existence of a *maḥram* is not a condition for a woman to be allowed to travel, but what is a condition is that there is a guarantee of security for her. This security guarantee does not only come from *maḥram* but can also be accompanied by a trusted group of women (*ṣiqqah*). (Sa'i, 2003: 21) However, if there is no *maḥram* or other woman who cannot accompany her, while the journey can be ascertained to be safe, then traveling without a *maḥram* is permissible for her. The necessity of having *maḥram* in this opinion is understood as a form of protection for women from threats and dangers that may occur. So, if the safety for women in traveling has been guaranteed, then *maḥram* in the physical sense becomes no longer needed. This opinion was also followed by al-Nawawi, Ibn Sirin, al-Auza'i, Said ibn Jubayr, al-Mawardi, and Atha' ibn Abi Rabah. (Suryadinata, 2010: 36)

Another *madhab* that also included in this group is the *madhab* of Maliki. Imam Malik has an opinion that seems looser

than the Hanafi and Hanbali, but not as loose as the opinion of the Shafi'i. This madhab allows women to travel without a *mahram*, but it is still required to have a companion on the journey (*rufqah ma'mūnah*), either a woman, a group of all women, or consisting of some women and some men. (Hajar, 2012: 146) However, one of the ulama of Maliki madhab named Imam al-Baji argued that a woman may travel alone without a *mahram* and without being accompanied by anyone if the road she takes during her *safar* is a busy public road and is guaranteed to be safe.

Other ulama such as Abu Bakr al-Qaffal (Imam al-Qaffal), Abu al-Mahasin al-Rayyani also argued that women may travel alone for any reason. Meanwhile, Imam al-Karabisi argues that women can perform *Hajj* and *Umrah* without *mahram* if conditions are safe. (Al-Atsqalaniy, 1397 H: 75)

Some ulama assume that the prohibition of traveling for women without a *mahram* is no longer appropriate in the current context. One of these opinions was assumed by Muhammad Jawad Mughniyah. According to him, the requirement for the existence of a *mahram* for women's travel is not relevant to the increasingly rapid progress of science and technology which makes transportation needs easier to obtain. (Mughniyah, 2010: 210) Contemporary Ulama Yusuf al-Qardhawi also has a similar view in this regard. According to him, the prohibition in the hadith of the Prophet is a form of concern for the safety of women who travel alone without *mahram* where in the past traveling was often done on horseback and through deserts which could endanger the safety of women. While the current conditions are very different, many means of transportation

such as trains, planes, public transportation, and others will be very easy to find. Therefore, according to him, the journey of women without a *mahram* at this time cannot be considered as something that violates the hadith of the Prophet. (Al-Qardhawi, 1992: 129)

From the differences of opinion of the fuqaha above regarding the necessity of having *mahram* in women's journeys, it can be understood that among them some hold firmly to the text of the Prophet's hadith while still physically involving *mahram* in women's journeys. So that it is not only limited to security guarantees, but the necessity of having this *mahram* is an absolute law, as well as a form of *ta'abbudi* to the text of the Prophet's hadith. On the other hand, some *fuqaha* have tried to contextualize the Prophet's hadith regarding the prohibition of women traveling without a *mahram* to be more in line with the times by looking for the hidden '*illat* which is the essence of the necessity of having a *mahram* itself. The existence of a physical *mahram* in the text of the Prophet's hadith is intended to ensure the safety and security of women. So that *mahram* can be interpreted more broadly as a form of protection and security guarantee for women which if both have been fulfilled, then the physical existence of *mahram* is no longer stated as an absolute requirement for women who want to travel.

### A Brief Biography of Ibnu Qayyim Al-Jauziyyah

Ibn Qayyim's full name is Abu Abdillah Shams al-Din Muhammad ibn Abi Bakr ibn Ayyub ibn Sa'ad ibn Hariz Ibn Makkiy Zaid al-Zur'iy al-Dimasyqy. His *kunyah* name is Abu Abdillah, while his *laqab* name is Shams al-Din. (Al-Jauziyah, 2004: 5) He is better known as

Ibn Qayyim al-Jauziyyah. Al-Jauziyyah was a school name. His father, Muhammad ibn Abi Bakr ibn Ayyub al-Zur'iyy was a caretaker and supervisor (*qayyim*) at Madrasah al-Jauziyyah which was formerly located near the wheat market in the city of Damascus and is now called the al-Bazuriyyah area. (Muhammad, 1424 H: 81) Ibn Qayyim was born on 7 Safar in the year 691 H to coincide on January 29, 1292, in the city of Damascus. He died on Thursday, 13 Rajab 751 H on September 26, 1350 H at the age of 60 years and was buried side by side with his parents' graves in the Babu al-Shaghir cemetery. (Al-Sanhuti, 2001: 25)

Ibn Qayyim also has political and socio-religious background around him. He lived in the 8th century Hijriyyah when the Islamic world was experiencing political disintegration due to the loss of power in Baghdad by the Mongols in 1258 M. (Muslim, 2020: 286) The existence of political conflicts and prolonged wars also had implications for social degradation for the religious life of Muslims at that time. Stupidity in thinking and blind *taqlid* began to become entrenched among the people. Excessive fanaticism began to appear in the socio-religious conditions of the people. They consider that the door of *ijtihad* has been tightly closed, so there is no room to accept new legal formulations through critical reasoning with any model. (Nasution, 1985: 83) In addition, the Sufi order movement at that time began to expand due to government support in providing places for them to spread their teachings. They also create worship rituals in the form of dances and songs which they consider as a form of *dzikr* and *taqarrub* to Allah. Departing from this reality, Ibn Qayyim expresses many criticisms in his book *Madārij as-Sālikīn* about the concept of *tasawwuf* and

heretical practices that attack the surrounding community.

The intellectuality of Ibn Qayyim al-Jauziyyah has been seen since childhood when he started his studies at the Madrasah al-Jauziyyah with his father. In addition, he also studied many fields of knowledge from leading ulamas. At the age of seven, he had memorized hadith and studied *fiqh*, *ushul fiqh*, *tafsir*, *kalam*, *aqidah*, philosophy, *nahwu*, and other Arabic knowledge in some assemblies with the *masyayikh*. Therefore, he deserves to be recognized as one of the intelligent ulamas and great thinkers who are very famous throughout the history of Islamic civilization. (Basri, 2015: 195)

Many eminent ulama in several scientific fields became Ibn Qayyim's teachers. The majority were *madhab* of Hanbali and some were *madhab* of Shafi'i. One of the most influential teachers and coloring the pattern of his thinking was Syaikhul Islam Ibn Taimiyyah. However, he also often disagrees with his teacher because of the argument that he thinks was more appropriate. He was known as Ibn Taimiyyah's favorite disciple and he was even called the chief disciple of Ibn Taimiyyah. He studied a lot from Ibn Taimiyyah to fight together in the fight against heresy at that time. Ibn Qayyim also played a major role in popularizing the thoughts of Ibn Taimiyyah. One of them was by compiling a treatise on the works of his teacher with the title *Risālah fī Asmā' al-Muallafāt Ibn Taimiyyah*. (Al-Sanhuti, 2001: 27)

Ibn Qayyim had a very bright mind and a high scientific spirit. After the departure of his father, he continued his father's leadership relay at Madrasah al-Jauziyyah for a long time. He was also busy teaching in many schools (madrasah) in the city of Damascus which at that time



was also a center for studies and scientific forums for scholars. Many other great scholars who have been born through the upbringing of Ibn Qayyim such as Ibn Kathir, Ibn Rajab, and others.

Ibn Qayyim was one of the most productive ulama. His life which was always busy with scientific activities can produce many monumental works. He had authored about forty-one books in some scientific fields. Among his works in the field of tauhid are the Book of *Syif al-Alil fi Masail al-Qadhā' wa al-Qadr, ar-Rūh*, and others. While in the field of fiqh, he authored several books, one of which was *I'lām al-Muwaqqi'īn, Bayān al-Dalīl 'ala Istiqnā' al-Musābaqat 'an at-Tahlīl*. In addition, he also has worked in the fields of tashawwuf and history, including the Books of *'Iddat ash-Shābirīn, Madārij as-Sālikīn, al-Fawā'id, Akhbār an-Nisā', Zād al-Ma'ād*, and others. (Wijaya, 2017: 389)

### **Ibnu Qayyim Al-Jauziyyah's Legal Change Paradigm**

One of the leading Muslim scholars in the discussion of the progressivity of fiqh is Ibn Qayyim al-Jauziyyah. Thoughts about this were stated in his work entitled *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*. This book contained many reviews of ijtiḥad and its methods and was equipped with a case-by-case explanation of the results of ijtiḥad. Ibn Qayyim also wrote in the last chapter of this book about the fatwa/results of the Prophet Muhammad's ijtiḥad regarding several legal issues in the field of *ibadah, muamalah, munakahat, jinayah, aqidah* and others.

In the book *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, Ibn Qayyim specifically explained his opinion on the paradigm of legal change. The opinion that he put forward about this legal change was not

something new among the *fuqaha*. However, he needs to reaffirm this as a form of reflection and expression of his concern about the condition of the surrounding community who are experiencing stagnation in thinking by assuming that the door to ijtiḥad has been closed. According to him, the law necessitates a change. Law must continue to evolve according to changing times and places. The law is a tool for enforcing the Shari'a. Shari'a is oriented towards justice and the *maslahah* of the people. (Al-Jauziyyah, 2000: 459) When the law as the enforcer of the Shari'a is not relevant to the condition of the people, it will lead to *mafsadat* and *misguidance* which are contrary to the objectives of the Shari'a. Therefore, Ibn Qayyim loudly spread the idea of change by developing ideas on legal reform for the sake of creating justice, giving the *maslahah* for the people, and upholding the Shari'a.

In carrying out legal *istinbath*, Ibn Qayyim referred to the Qur'an, Hadith, *Ijmā'*, *Qiyās*, *Fatwa Shaḥabat*, *Istiṣḥāb*, *Maṣlahah Mursalah*, *Syāzz al-Zarī'ah*, and *'urf*. (Nasution, 2002: 404) If we examined carefully, these sources of law reflect the paradigm of Ibn Qayyim's thought that is not indifferent to the development and legal needs of society. It is proven by the existence of *Maṣlahah Mursalah*, *Syāzz Al-Zarī'ah*, and *'Urf* which were the basis for building his fiqh thought. The concept of legal change according to Ibn Qayyim was written in the Book of *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn* with the following text:

تَغْيِيرُ الْفُتُوى وَاحْتِلَافُهَا بِحَسَبِ تَغْيِيرِ الْأَزْمَنَةِ

وَالْأَمْكَنَةِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَائِدِ

*Changes in fatwas and their differences are based on changes in time, place, condition, intentions (motivations), and traditions.*

This concept is also commonly included with the following editorials:

تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَزْمَنَةِ وَالْأَمْكَنَةِ وَالْأَحْوَالِ وَالنِّيَّاتِ  
والعوائد

*Changes in law depend on changes in time, place, condition, intentions (motivations), and traditions.*

Legal changes according to Ibn Qayyim are influenced by factors of time, place, situation, intentions (motivation), and customs (tradition). These factors are the determinants of *maslahah* that form the basis for fiqh renewal. These factors are part of the social context of the people that cannot be separated. By understanding the social context, it is hoped that the law can be reinterpreted for the *maslahah* of the people which is the essence and purpose of Islamic law. The paradigm built by Ibn Qayyim shows that fiqh must be adaptive, flexible, and responsive to the problems faced by the people.

Factors of time (*al-azminah*), place (*al-amkinah*), condition (*al-ahwāl*), intention or motivation (*an-niyāt*), and traditions/customs (*al-'awā'id*) are the basic things behind the existence of new legal thought that cannot be separated from the *maslahah* that is the goal of shari'a. These factors are proven to affect the legal istinbath products formulated by the Prophet SAW and Shahabat. In the Book of *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, Ibn Qayyim gives several examples of legal cases that have changed due to the influence of the factors mentioned above. One of them is regarding the law of cutting hands for thieves. The legal provisions for cutting off hands have been mentioned in the Qur'an as a form of punishment for a thief. However, the Prophet SAW once forbade this law to be imposed on one of his Muslim soldiers who stole the enemy's

shield, while their position was still in enemy territory. Some narrations state that the reason for this prohibition was that the *hadd* punishment could not be carried out in the enemy territory. Meanwhile, another narration states that it is not permissible to carry out *hadd* punishment on a Muslim in conditions of war because this can trigger his desire to apostatize (leave from Islam). According to Ibn Qayyim, the change in the law is a form of greater *maslahah*. Ending the *had* in a critical condition because a noble goal is a *maslahah*. The suspension of this *had* is purely done for *maslahah* of the perpetrator. (Al-Jauziyyah, 2000: 463) The example of the legal case shows that time and condition greatly influence the changes in the applicable law. The law of cutting hands should be implemented at the same time, but due to time and situation, the law can be suspended.

Ibn Qayyim also gave examples of cases of law enforcement that show the influence of the place factor. The law of paying *zakat fitrah* was originally set by the Prophet in the form of one *sha'* of dates, wheat, raisins, or *aqith*. This decree was based on the type of staple food when the Prophet lived in Medina. The problem that then arises is that the Muslim population other than in Medina does not find the type of *zakat fitrah* that has been set by the Prophet. Therefore, the majority of fuqaha stipulate that the payment of *zakat fitrah* is adjusted to the type of staple food in the *muzakki* area (people who pay *zakat*). The essence of giving *zakat fitrah* is to lighten the burden of the poor on Eid and provide them with sufficient food for a longer time. That is why the more important *zakat fitrah* is in the form of grains because of their durable nature. Although fuqaha allow food that does not last long, such as bread. (Al-Jauziyyah,

2000: 471) This shows that the difference in place affects the validity of a law.

Furthermore, one example of the influence of the intention factor on legal changes is regarding the law of a person who is in *iḥram* and deliberately intends to hunt animals and eat them. So the law becomes forbidden (*haram*) even though the animal being hunted is included as an animal whose flesh is lawful to eat. The prohibition is influenced by the intention to intentionally hunt which is a prohibition for people who carry out *iḥram*. (Al-Jauziyyah, 2000: 479)

The influence of customs/traditions on legal changes is also explained by Ibn Qayyim. Customs/traditions in Islamic law are often referred to as '*Urf*'. If someone swears not to ride a *dābbah*, and the *dābbah* according to tradition in his area is a donkey, then it is forbidden for him to ride a donkey. It is different if he is outside the area where according to the tradition of the area *dābbah* means horse, then it is forbidden for him to ride a horse. This shows that the customs/traditions of each region affect the differences in the applicable laws. (Al-Jauziyyah, 2000: 492)

### **Actualization of the Law of *Safar* Without *Maḥram* for Women in The Framework of Ibn Al-Qayyim Al-Jauziyyah's Legal Change Theory**

The theory of legal change put forward by Ibn Qayyim al-Jauziyyah is very appropriate if it is used as a tool to reconstruct the concept of *maḥram* in women's journeys to create a more humanist and female-friendly understanding. Efforts to reconstruct thoughts about this concept need to be done because there are many ideas, especially the classical fiqh view which still suggests discrimination and domestication of women. These views are

constructs created from past lives that are not relevant to the current social context.

In line with the paradigm built by Ibn Qayyim al-Jauziyyah, Islamic law is a *living law*. Living law refers to laws that live according to the dynamics of society. As a living law, Islamic law always develops in harmony with the legal needs of society. Stupidity in Islamic legal thought shows stagnation which is contrary to its essence as living law. These various aspects that affect the legal needs of the community are then described in detail by Ibn Qayyim in his theory of legal change.

Legal reforms must always refer to universal messages implied in Shari'a texts that want the *maslahah* of the ummah at all times following Islamic principles that are *shālih likulli zamān wa makān*. Therefore, the mujtahids, muftis, fuqaha, or ulama as parties with the capacity in the formulation of legal thought must involve a comprehensive understanding of the social development of society as consideration for creating laws that are just and beneficial. As stated by Ibn Qayyim in *I'lām al-Murwaqqi'īn 'an Rabb al-'Ālamīn* that the foundation and principles of the Shari'a are *maslahah* in the present and future life. The interpretation of the Shari'a which causes difficulties and burdens for the people is not the will of the Shari'a, but the human error of understanding itself. (Al-Jauziyyah, 2000: 459)

Thoughts on the reconstruction of the law of the necessity of having a *maḥram* that accompanies women's journeys have recently been presented by many contemporary scholars. This is motivated by the social reality around us today which is far different from the context of the birth of the Prophet's hadith regarding the prohibition of women

traveling without *maḥram*. The social contexts referred to in this case, according to the author, are following the factors that influence legal changes as stated by Ibn Qayyim al-Jauziyyah in his book. Aspects of time (*al-azminah*), place (*al-amkinah*), condition (*al-ahwāl*), motivation/intention (*al-niyāt*), and tradition (*al-'awā'id*) are part of the social context of the society that cannot be ignored in legal reformulation. The law must follow changes in various social aspects of society. Likewise, the community must be able to sort out which lawsuits their social needs.

Aspects that influence legal changes according to Ibn Qayyim al-Jauziyyah's opinion above necessitate reconstruction of legal thought about women's travel following the realities of today's life. The existence of a law that prohibits women's travel without a *maḥram* is not in accordance with the current changing context that opens up the public role for women. The prohibition of women traveling without *maḥram* must be understood as a socio-cultural product of Arab society at the time of the Prophet's life. The Prophet based his hadiths on the realities faced by women at that time. The journey carried out by women at that time was very risky if done alone. This is due to the unfavorable security conditions. The geographical condition of Saudi Arabia at that time was described as expanses of desert and valleys that were quiet from the crowds, the lack of shelter and houses for residents. The natural conditions that are difficult to take are also not supported by adequate means of transportation. The only means of transportation at that time were camels, horses, or donkeys. In addition, the existence of robbery and sexual harassment also threatened women at that

time due to the deeply rooted patriarchal-misogynistic culture. These facts will be very heavy and dangerous if women have to travel alone without *maḥram*. Even Yusuf al-Qardlawi added that even if the woman did not face great danger in her journey, she would bear a bad image for her honor. (Al-Qardhawi, 1992: 129) Thus, it can be understood that the Prophet forbade a woman to travel without a *maḥram* through his hadith not without reasons behind it. These reasons were based on the social context that existed at that time (*asbāb wurūd al-hadīth*) intending to provide security and protection for women against harm.

The universal message contained in the hadiths regarding the prohibition of women's travel without a *maḥram* must be able to be elaborated with more contextual legal thinking. It can be understood that the essence of the prohibition of women traveling without *maḥram* is an effort to provide security and protection guarantees for women. The social context in which the hadith was born is very dangerous for women's journey if done alone. It is different with today's social context, whether it is seen from the setting of the place, time, condition, motivation (intentions), or even traditions/cultures that are very much different.

Aspects that should be considered for changes in legal thinking regarding women's travel are the rapid development of infrastructure in the form of facilities and infrastructure that can ensure the safety of women from harm. The facilities and infrastructure in question include the convenience of information technology and telecommunications that provide convenience in accessing information from anywhere and about anything, the freedom to communicate with anyone easily without being limited by space and

time through the availability of communication tools such as gadgets, laptops, and other electronic devices, as well as the availability of informative public service spaces. In addition, the existence of transportation facilities also greatly supports the safety and comfort of women's travel. All means of private and public transportation allow women to travel without a *mahram* because of the guaranteed safety factor. Even with increasingly sophisticated means of transportation, long distances can be traversed in a shorter time. This is also supported by safe and barrier-free transportation routes and a densely populated surrounding environment that makes it possible to make contact with anyone if at any time they encounter danger.

One aspect that is also important in ensuring women's security is the existence of legal instruments including legal norms/rules, officers, and law enforcement agencies that regulate social institutions in people's lives. All actions and behavior of the community have legal consequences which are regulated in the laws and regulations in which they are located. These laws are binding on the community as legal subjects. Someone's actions that violate the law will be subject to sanctions so that this law can also carry out the function of social control. Its main purpose is to protect the community, including women. All forms of crime against women can be controlled by law. In addition, the law also provides legality to the role and participation of women in the public sphere.

The explanation above shows that the factors of time (*amkinah*), place (*azminah*), and existing social conditions (*ahwāl*) greatly influence and demand legal changes. The ban on women

traveling without a *mahram* that was once echoed in the context of protecting women requires reinterpretation by looking at the current reality. Even today's security and protection for women can be more assured with increasingly established social changes. In addition, the traditional or cultural factors (*'awā'id*) that exist in today's social context indicate that a woman traveling without a *mahram* is a common thing to happen, both with the intention and purpose for worship, work, study, public relation, and so many other.

It can be understood that the ban on women traveling without *mahram* in the current social reality is no longer relevant. The majority of the six factors of legal change described by Ibn Qayyim al-Jauziyyah show that changing the law regarding the prohibition is a must, not just a necessity. The law should not be enforced if it does not view social reality as a counterbalance. The prohibition of women traveling without a *mahram* will only have an impact on the restraint and domestication of women which will lead to discrimination

The principle of adaptability in Islamic law as contained in Ibn Qayyim's theory of legal change requires a more substantive and objective meaning of *nash* by prioritizing universal benefit (*maṣlaḥah al-'āmmah*) in every social context faced by society. The law forbidding women to travel without *mahram* contains a spirit of protection and security for women without looking down on them. It would not be an exaggeration if the word '*mahram*' in the prohibition hadiths was interpreted as a guarantee of security. The Prophet himself as a source of hadith always voiced equality between men and women. It's just that the universal spirits contained in the hadiths are often not well understood by textualists. Therefore, these

universal spirits must always be manifested in Islamic law by harmonizing Islamic law with social realities to image Islam as *shālih likulli zamān wa makān*.

## CONCLUSION

There is a sacred reason behind the prohibition of women traveling without *maḥram* which is contained in the hadith of the Prophet. The reason cannot be reached by just looking at the text. A holistic and comprehensive understanding of the context and history is a must to represent humanist and transformative Islamic law. The necessity of the existence of *maḥram* in the text of the hadith is not the goal of the birth of the hadith but is intended as a guarantee of security for the woman herself. Social change and Islamic law must be able to go hand in hand. Likewise, the law on women's travel always opens up opportunities for the reconstruction of the social changes that occur. As the theory of change in Islamic law stated by Ibn Qayyim al-Jauziyyah, that law is always changing with changes in time, place, conditions, intentions, and traditions. Legal stagnation by ignoring these aspects will only eliminate the principle of the universality of Islam. This is what is called living Islamic law, namely Islamic law that always lives according to the movement style of social reality.

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