

## **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 *maḥram* (unmarriageable kin) issued by the Council for Scientific Research and Legal Opinions (CRLO), Saudi Arabia. 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 *maḥram* 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 of 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), Arab Saudi. 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, has become a contentious issue in recent decades. Numerous scholars have criticized Islamic law for its use in justifying authoritarian policies and practices in countries with Muslim-majority populations.<sup>1</sup> Notable figures such as Fatima Mernissi,<sup>2</sup> Leila Ahmed,<sup>3</sup> Muhammad Sa'id al-Asymawi,<sup>4</sup> and Jamal Albanna<sup>5</sup> have scrutinized the role of women in traditional Islamic law within various Middle Eastern Muslim nations, advocating for more inclusive and progressive interpretations. Abdullah Ahmed an-Na'im underscores

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

<sup>2</sup> 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.

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

<sup>4</sup> 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.

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

the necessity of adapting Islamic law to contemporary social and political contexts.<sup>6</sup> Khaled M. Abou El Fadl, a renowned Islamic legal scholar and critic of authoritative interpretations of Islamic law, has raised similar concerns. He asserts that traditional Islamic legal systems have been employed to legitimize authoritarian policies and practices in Muslim-majority countries. El Fadl criticizes the arbitrary and oppressive application of Islamic law and calls for a reinterpretation of Sharia that aligns with contemporary human rights standards.<sup>7</sup>

As an authoritative and progressive scholar in Islamic law, many fatwas issued by the Council for Scientific Research and Legal Opinions (CRLO, *Al-Lajnah al-Dā'imah li al-Buhūs al-'Ilmiyyah wa al-Iftā'*), Saudi Arabia, have not escaped El Fadl's critique. One particularly noteworthy fatwa is the one prohibiting women from travelling without a *maḥram* (unmarriageable kin), which has been issued by several members of the CRLO. According to El Fadl, some of these fatwas are inappropriate and discriminatory toward women.<sup>8</sup> What sets El Fadl's thinking apart is its divergence from the views of most schools of *fiqh* (Islamic jurisprudence). Moreover, as an American Muslim, many of his works reflect his experiences in both Western and Muslim societies, enabling him to bring a comparative perspective to his analyses of Islamic law and its relationship to contemporary political and social issues. Consequently, the examination of CRLO fatwas using El Fadl's hermeneutic approach becomes a pressing topic for discussion in this article.

El Fadl's progressive scholarship, rooted in postmodern epistemology, has drawn the attention of various scholars. Sofia Tsourlaki explores Khaled Abou El Fadl and Amina Wadud's use of social media to promote progressive Islam.<sup>9</sup> Shayk Muhammad Afifi al-Akiti and H.A. Hellyer respond to El Fadl's article on war and

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<sup>6</sup> 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.

<sup>7</sup> El Fadl, *Speaking in God's Name*, 1–14.

<sup>8</sup> El Fadl, *Speaking in God's Name*, 372–388.

<sup>9</sup> 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.

terror following the events of 11 September 2001.<sup>10</sup> In contrast to previous scholars, Angus M. Slater concentrates on analysing El Fadl's unique reform methodologies within Islamic communities in the face of authoritarian fundamentalism and liberal relativism.<sup>11</sup> Slater also examines the influence of the Gadamerian notion of *horizontverschmelzung* in El Fadl's work<sup>12</sup> and the implications of the queer approach, which encompasses sexual minorities who do not conform to heterosexual, heteronormative, or gender-binary norms, on aspects of Islamic tradition.<sup>13</sup> Additionally, Muzayyin and Hakim explore El Fadl's Islamic legal hermeneutics concerning the study of religious fatwas.<sup>14</sup> Furthermore, several other scholars delve into El Fadl's views on Islam and democracy,<sup>15</sup> gender,<sup>16</sup> human rights,<sup>17</sup> and his articulation of Islamic theology of human rights from the perspective of *maqāsīd al-syarī'ah* (the objectives of Islamic law).<sup>18</sup>

In contrast to prior scholars, this article focuses on El Fadl's perspectives on authority in Islamic law and his critique of the CRLO Fatwa prohibiting women from travelling without a *maḥram*. To this end, this article employs library research with a qualitative methodology. The primary sources utilized by the authors include three CRLO fatwas related to the prohibition of women travelling without a *maḥram*,

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<sup>10</sup> 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.

<sup>11</sup> 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.

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

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

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

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

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

retrieved from the website: <https://binbaz.org.sa/fatwas/>. Additionally, the authors draw upon several of El Fadl's works, particularly his book titled "*Speaking in God's Name: Islamic Law, Authority and Women*," for the analysis of the fatwas. Following data collection, the authors conduct a qualitative analysis.

## **B. Khaled M. Abou El Fadl: A Brief Biography**

Khaled M. Abou El Fadl is a Professor of Islamic Law at the University of California, Los Angeles (UCLA) School of Law.<sup>19</sup> He was born in Kuwait in 1963 and spent his formative years in Kuwait and Egypt. His father, Medhat Abou El Fadl, was an expert in Islamic law who instilled in him a commitment to fight against various forms of oppression. His mother, Afaf El Nimr, would awaken him every morning by reciting verses from the Quran.<sup>20</sup> El Fadl's upbringing was marked by uncertain social conditions due to political turmoil, wars, terrorism, and threats that shaped his early life. Initially, he joined the Wahabi group, believing it could address the problems he witnessed. He embraced their rigid theological and moral teachings and pursued legal studies, eventually becoming certified as a Sheikh. Interestingly, his fundamentalist views evolved toward democracy during his high school years, leading to police scrutiny for his pro-democracy writings.

El Fadl's transition from a conservative to a progressive thinker can be attributed to various factors.<sup>21</sup> First, his Western education in the United States and the United Kingdom exposed him to diverse perspectives and challenged his traditional Islamic beliefs. Second, he developed critical thinking skills, allowing him to question long-standing interpretations of Islam and revisit its primary sources. Third, he became increasingly concerned about social issues within Muslim societies, including social inequality, corruption, and gender discrimination, realizing that traditional Islamic perspectives might exacerbate these problems. Fourth, he recognized the need for reform in the practice and interpretation of Islam,

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

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

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

advocating for a more open and advanced approach to address contemporary challenges.

El Fadl pursued his Bachelor of Laws at Yale Law School and became an expert practitioner in immigration and investigative law under the United States government, extending his expertise to the Middle East. He remains a lecturer at UCLA School of Law, teaching courses on Human Rights, Immigration Law, and International Law. He also champions values such as pluralism, equality, democracy, gender harmony, and social justice.<sup>22</sup>

Several influential figures significantly shaped El Fadl's progressive thinking. Fazlur Rahman, an Islamic scholar who emphasized historical and social context in understanding Islamic teachings and advocated for a re-reading of primary Islamic sources, inspired him. Muhammad Abduh, an Egyptian Islamic reformist thinker who stressed the importance of contextual interpretation and a return to the *ijtihad* method, also influenced his views. Additionally, Nasr Hamid Abu Zayd, an Egyptian Islamic scholar who promoted flexible interpretation in understanding Islam and acknowledged that Islamic understanding can evolve, had an impact on El Fadl's thought.<sup>23</sup>

El Fadl has authored several significant works on progressive Islam. His book "Speaking in God's Name: Islamic Law, Authority and Women" addresses contentious issues in Islamic law, offering a more open and progressive approach to topics such as the death penalty, marriage, and the treatment of women.<sup>24</sup> "The Search for Beauty in Islam: A Conference of the Books" explores the concept of beauty in Islam and underscores the importance of a humanist perspective in understanding Islamic teachings.<sup>25</sup> In "Rebellion and Violence in Islamic Law," El Fadl discusses the concepts of rebellion and violence in Islamic law, highlighting the significance of historical and social context in interpreting Islamic teachings, and

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<sup>22</sup> Slater, "Queer(ing) Notions of Islamic Authority," 3-33.

<sup>23</sup> Muhammad Fauzinuddin Faiz, 'Teori Hermeneutika Al-Qur'an Nasr 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.

<sup>24</sup> El Fadl, *Speaking in God's Name*, 35-70

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

argues that Islam fundamentally promotes peace and justice, with rebellion and violence needing proper contextual interpretation.<sup>26</sup>

### **C. Authority and Authoritarianism in Islamic Law**

In the realm of terminology, authority denotes legitimate power associated with institutions within society. It represents the capability to guide and ensure that tasks are executed correctly. However, the effectiveness of authority relies on individuals willingly accepting and following that guidance. Authority involves imposing the will of others upon human choices, necessitating subordination. Furthermore, it can be defined as the delegation of rights to govern or lead, encompassing the power to act, decide, command, and adjudicate. It entails the right to formulate policies and the responsibility to oversee control in the lives of individuals within the boundaries of authority bestowed by God. God, being the ultimate authority, possesses absolute sovereignty and creator rights. God's rule and authority are characterized by perfect goodness and benevolence, always aiming for the well-being and blessing of all human beings.<sup>27</sup> In the context of Islamic law, authority pertains to the sources of law and the individuals or entities entrusted with implementing Islamic law. The primary sources of Islamic law are the Quran, the Sunnah (the traditions and practices of the Prophet Muhammad), and the opinions of scholars recognized for their expertise.

Conversely, authoritarianism in Islamic law carries a distinct connotation. It refers to the excessive or unjust exercise of power and authority in the application of Islamic law. This occurs when those in positions of power or scholars interpret Islamic law in a manner that serves their interests, without consideration for the principles of justice, equity, and humanity. Instances of authoritarianism in Islamic law include the suppression and violation of human rights, the criminalization of political activity or government criticism, and the discriminatory treatment of minority groups and women.<sup>28</sup>

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<sup>26</sup> 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.

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

<sup>28</sup> El Fadl, *Speaking in God's Name*, 77-87.

It is crucial to emphasize that authoritarianism does not stem from the teachings of Islam itself but arises from the misinterpretation or misuse of Islamic law to legitimize political or personal interests. Islam, as a religion that advocates justice and humanity, mandates that the exercise of power and authority must adhere to these principles and provide protection and equality for all citizens. Therefore, it is incumbent upon scholars and those in positions of power to ensure that their authority is wielded justly and prudently, with due regard for the principles of justice and humanity. Achieving this also necessitates active civic participation in monitoring and advocating for rights to establish a just and dignified society.<sup>29</sup>

In addition to the significant issues mentioned above, a minor yet critical problem that triggers anxiety for El Fadl is the misuse of authority, which he terms authoritarianism. Authoritarianism involves authorizing actions in the name of God by groups or individuals who assert that their perspective is the only correct one. It seeks to monopolize and control the process of extracting meaning from texts through subjective and selective readings. This approach leads to the appropriation of God's will by those who claim to be His agents, diminishing the textual purpose and autonomy of the text itself. This trend can result in misinterpretation and disregard for alternative interpretations.<sup>30</sup> El Fadl contends that when a reader engages with a text and derives laws from it, there is a risk of the reader merging with the text or becoming an exclusive embodiment of the text. Ultimately, the reader and the text become inseparable. This process implies that the text becomes subservient to the reader, effectively making the reader the embodiment of the text.<sup>31</sup>

When a reader selects a particular interpretation of the text and assumes there are no other valid interpretations, the text becomes subordinate to the reader's agenda. This approach bypasses and misuses the text, rendering the reader disconnected, ungrounded, and authoritarian.<sup>32</sup> In such a scenario, the scriptural

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<sup>29</sup> El Fadl, *Speaking in God's Name*, 87-90.

<sup>30</sup> Brown and Fadl, 'The Great Theft', 201.

<sup>31</sup> 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.

<sup>32</sup> El Fadl, *Speaking in God's Name*, 95-103.



text loses its openness when declared to possess a fixed and unchanging meaning, causing the process of interpretation to become closed. Consequently, the text is perceived as irrelevant, and readers have no incentive to engage with it further. Instead, they defer to the final determination of meaning and adhere to it, leading to the text's dependence on the interpreting party.<sup>33</sup>

El Fadl seeks to construct a conceptual framework, termed the "authoritative idea," that challenges the practice of authoritarianism within the study of Islamic law. He addresses how far a person can represent God's will without claiming to be God or aspiring to be perceived as divine. This concept is elaborated in his books titled "The Authoritative and Authoritarian in Islamic Discourse: A Case Study" and "Speaking in God's Name: Islamic Law, Authority and Women." These works present a hermeneutical approach to Islamic law. The theory of authority constitutes a hermeneutical methodology that strives to move beyond the confines of the text and fosters a habit of seeking the meaning of the text within an objective and open reading framework.

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

In Khaled M. Abou El Fadl's analysis, authoritarianism in Islamic thought arises from a methodological error concerning the interplay between the text, author, and reader. Any attempt by readers to rigidly constrain the text can jeopardize the integrity of both the author and the text itself.<sup>34</sup> The crux of the problem within authoritative interpretation, as El Fadl identifies, predominantly lies at the reader's level, impacting authoritarianism. To address this issue, El Fadl introduces a hermeneutic methodology that serves as a conceptual framework for developing ideas of authority and authoritarianism in Islamic law.

El Fadl underscores three primary aspects that must be scrutinized to unlock the discourse on authority and authoritarianism in Islam.<sup>35</sup> Firstly, he focuses on the nature of the text. The text serves as the conduit for various hermeneutical ideas, and all hermeneutical methods are intricately linked to the nature of the text. El Fadl

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<sup>33</sup> El Fadl, *Speaking in God's Name*, 7.

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

<sup>35</sup> Slater, 'Khaled Abou El Fadl's Methodology of Reform', 171.

elucidates that the text is employed to analyse the textual sources of God's will, namely, the Quran and hadith. He categorizes text-related theories into two broad types: the textual approach, which introduces knowledge principles for interpreting textual concepts in Islamic studies, and the specific thesis, which examines the understanding of texts in Islam that are not complete but remain related to the first by applying the peculiarities of each text, such as the Quran.

According to El Fadl, there are four facets of initiating the text. Firstly, the meaning of the text is paramount. El Fadl posits that the text comprises a set of forms used as signs, deliberately selected and designed by the author to communicate with the reader.<sup>36</sup> Second, text and language interact closely, with text closely aligning with the author's intention while language remains fluid and subject to change. Language encompasses letters, words, phrases, and sentences interwoven with symbols, evoking specific descriptions and feelings in the reader that can evolve with the times. When an author utilizes language with all its arrangements and nuances, it can deviate from the intended purpose of the text.<sup>37</sup> Third, the purpose of the text is crucial, as the author's expression of meaning confers autonomy to the text itself. This understanding crystallizes into the purpose of the text, allowing for the freedom to select the author's and reader's purposes. This choice is manifested through the symbols employed and the function of language. Fourth, the authorship of the text is multifaceted, as texts do not emanate solely from authors whose names appear on the cover. Instead, numerous intellectuals influenced by societal normative values contribute to the text. El Fadl dubs the author of the text the "author of history," while those who direct and mould the reader are referred to as "factors of production." Additionally, text editors, revisers, and re-authors are designated as "revisionists," and the recipients and creators of meaning from the text's symbols are known as "interpreters." El Fadl underscores the distinction between text and *naş* (textual sources), emphasizing that the Quran and hadith constitute two inseparable and quantifiable entities whose meanings are determined by their creators. The reader must engage in the quest for purpose and

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<sup>36</sup> El Fadl, *Speaking in God's Name*, 102–3.

<sup>37</sup> El Fadl, *Speaking in God's Name*, 91.

identify the author, recognizing the author of the text as absolute and complete.<sup>38</sup> Fifth, the characteristics of the text vary, with open texts having the potential to generate ideas and inspire interpretation, while closed texts restrict interpretive activities. The former characteristic applies to the Quran and hadith,<sup>39</sup> with the textual skills previously described serving as fundamental principles for understanding Quranic texts. The Quran, as the primary text in Islam, is timeless and serves as the foundational book guiding Muslims as a civilization following the holy text.<sup>40</sup>

Secondly, the concept of determined meaning assumes importance. Determined meaning represents the effort to unveil the meaning within a text, which is crucial within the Islamic concept of authority. Discerning the meaning of the text's commands aids in identifying who holds the authority to interpret the text's meaning. It is essential to acknowledge that God's commands, when expressed in text form, are interlinked with the linguistic context. God employs the text to articulate His will, but the text cannot convey meaning by itself. Instead, the text presents demand that require reading and comprehension by people. As the text is read, numerous interpretations may emerge, and all readers possess the capacity to determine meaning. The accuracy of the reader's determination of meaning is assessed by the degree to which the reader grasps the unified intent of both the author and the text itself. It must be understood that the power to make determinations has been entrusted to individuals who serve as God's representatives. God communicates His commands in two ways: through texts and people. Texts serve to shape attitudes and behaviours, while people play a pivotal role in shaping the meaning extracted from texts.<sup>41</sup>

The multifaceted process of textual interpretation culminates in determining meaning, necessitating a balance of power among the text, the author, and the reader's intent. This process requires an interactive, dynamic, and dialectical engagement among these elements. According to El Fadl, the negotiation between

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<sup>38</sup> El Fadl, *Melawan Tentara Tuhan*, 103–5.

<sup>39</sup> El Fadl, *Melawan Tentara Tuhan*, 210.

<sup>40</sup> El Fadl, *Speaking in God's Name*, 100.

<sup>41</sup> Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 155–56.

the reader and the text is vital, as the nature and authenticity of the text remain unknown until its meaning is configured. Therefore, the reader must maintain a certain distance from the text and acknowledge that while the text continues to evolve through interpretation in light of changing times, the meaning of the text itself remains fixed and immutable. This process is termed implementation and contextualization. The relationship between the text, the author, and the reader is of paramount importance, as it demands precise, autonomous interpretation that seamlessly integrates with the text. As such, Islamic civilization is inherently a civilization of texts. However, when the text assumes a central role, it automatically becomes the primary reference point for Muslims. This phenomenon is what El Fadl refers to as human agency. Nevertheless, these agents must remain focused on their task. In other words, what is conveyed must truly reflect the voice of God, and the Prophet's authenticity must be upheld. This interpretation leads to the question of what meanings these human agents should consider.<sup>42</sup>

Hence, determining the meaning of the text (reading the text) constitutes a diverse and multi-layered process, yielding multiple meanings that naturally emerge. Each reader possesses the freedom to interpret these meanings according to the text. El Fadl anticipates an active engagement among the author, text, and reader. It necessitates the integration of all actors, with each party's role emphasized and the interpretive process kept open. Thus, determining meaning must involve a complex, interactive, dynamic, and continuous dialectical process between the author, the text, and the reader. These three elements must coexist, with none overpowering the others.<sup>43</sup>

Within this framework, El Fadl's hermeneutic work strives to respect the autonomy of the text and forestall the reader's co-optation and authoritarianism towards the text.<sup>44</sup> This approach ensures that the text remains open to diverse

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<sup>42</sup> Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 156.

<sup>43</sup> Nur Zaini, *Hermeneutika Khaled M. Abou El-Fadl*, in *Studi Islam Perspektif Insider/Outsider*, 3-16.

<sup>44</sup> 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.

interpretations, as both the Quran and hadith are works that continually lend themselves to various layers of interpretation.<sup>45</sup> El Fadl asserts that when a reader engages with the text and derives laws from it, there is a concern that the reader will merge with the text, and the reader's fate becomes inexorably intertwined with the text. Ultimately, the text and the reader's construction become indistinguishable. This process reveals that the text becomes subservient to the reader, and the reader becomes the text. When the reader selects a particular way to read the text, assuming there is nothing else to read, the reader's approach influences the text. Whether the reader reads attentively or abuses the text, the result is an ineffectual, disconnected, ungrounded, and authoritarian reader.<sup>46</sup> The scriptural text remains open when a fixed and unchanging meaning is attributed to it, thus concluding the interpretive process. Consequently, the text is perceived as irrelevant, and the reader has no incentive to refer to or engage with it further, reverting instead to the final, predetermined meaning.

Third, the issue of representation emerges as distinct from the previous two and plays a pivotal role in determining validity and meaning. It revolves around questions of which institutional processes and forms can ascertain the authenticity of purpose and its realization. The dilemma revolves around whether this task is left to the creative faculties of each religious believer or whether a particular institution should be established to represent Muslims.<sup>47</sup> In Islam, sovereignty is exclusively vested in God, acknowledging the concept of human agency as God's representative. However, delegating God's authority and power to humans opens the door to authoritarianism. Therefore, El Fadl sets forth fundamental requirements for those designated as "God's special representatives."<sup>48</sup> Firstly, there must be a unification of heart, mind, and action, denoted as "integrity." Secondly, clarity is paramount. Thirdly, there should be excellence in comprehending God's will. Fourthly, reason should be employed in interpreting and comprehending God's commands.<sup>49</sup>

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<sup>45</sup> Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 159.

<sup>46</sup> El Fadl, *Melawan Tentara Tuhan*, 95–103.

<sup>47</sup> Aibak, *Membaca Otoritas dalam Hukum Islam Bersama Khaled M. Abou El Fadl*, 161.

<sup>48</sup> Syaddad, 'Negotiative Hermeneutics of Khaled Abou El Fadl', 140.

<sup>49</sup> Al-Akiti and Hellyer, 'Response to Khaled Abou El Fadl', 5-11.

### **E. The Authoritarian CRLO Fatwa on the Prohibition of Women Traveling Without a *Maḥram***

Khaled M. Abou El Fadl critiques various religious institutions, and one of the institutions that he criticizes is the CRLO. This institution often issues fatwas (Islamic legal opinions) that highlight gender inequalities, raising concerns among Muslim minority clerics worldwide, particularly in the West. One of the fatwas that El Fadl considers authoritarian is the fatwa that prohibits women from travelling without a *maḥram* (a male relative or guardian).<sup>50</sup>

In this context, several cases are presented where individuals seek guidance on women travelling without *maḥram*: a woman travelling for personal reasons or Hajj, a woman travelling to visit her injured husband, and a man wanting his wife and children to travel to him in Saudi Arabia. The CRLO, in response to these scenarios, unequivocally prohibits women from travelling alone without a *maḥram*, regardless of whether the distance exceeds fifty miles or whether they are travelling alone or with friends.<sup>51</sup> This prohibition is grounded in a hadith that states: “*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.*” The CRLO contends that this prohibition is absolute because modern modes of transportation such as planes, cars, and trains can encounter accidents or problems that may leave women vulnerable. Additionally, it is argued that women travelling long distances without a *maḥram* may lead to fitnah (temptation).<sup>52</sup>

This fatwa is underpinned by the belief that women are considered weaker beings who cannot prevent accidents or mechanical failures during travel. It portrays women as emotional beings with limited intellectual capacity, implying that they may harm themselves and others. The CRLO employs the concept of *sādd al-zarī'ah* (eliminating pretexts) in its approach, asserting that anything that may cause harm is haram (forbidden). It justifies preventing potentially harmful situations before they occur. The *sādd al-zarī'ah* contrasts with the concept of

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<sup>50</sup> Khaled Abou El Fadl, ‘Law of Duress in Islamic Law and Common Law: A Comparative Study’, *Islamic Studies* 30, no. 3 (1991): 305–50.

<sup>51</sup> Raisul, ‘Pemikiran Hukum Islam Khaled Abou El Fadl’, 154.

<sup>52</sup> Raisul, ‘Pemikiran Hukum Islam Khaled Abou El Fadl’, 154.

*maṣlahah al-mursalah* (public interest) in Islamic legal tradition, where anything necessary for the greater good is considered permissible. The CRLQ's stance is that anything suspected of causing harm should be avoided, and it presents this injunction as an unquestionable commandment of Islamic law, without providing comprehensive arguments.<sup>53</sup>

In contrast to this fatwa, some classical jurists like Sa'id ibn Jubayr, Malik ibn Anas, al-Auza'i, and al-Shāfi'i argue that the prohibition on women travelling alone is not primarily about the *maḥram* but rather about security.<sup>54</sup> They contend that the original reason for requiring a *maḥram* was to ensure a woman's safety and dignity while travelling, particularly in ancient times when transportation involved camels, horses, and donkeys. In such conditions, women may have felt unsafe when travelling alone or with unrelated men. However, with modern modes of transportation capable of carrying hundreds of passengers, the need for a *maḥram* to guarantee safety has diminished, and solo travel is not prohibited.<sup>55</sup>

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.<sup>56</sup> 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*.

El Fadl argues that this fatwa lacks a solid legal basis in Islam and violates women's rights. He contends that no Quranic verse or hadith explicitly prohibits women from travelling without a *maḥram*. Furthermore, he points to historical

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<sup>53</sup> Khaled Abou El Fadl, 'Islam and The Challenge of Democratic Commitment', *Oriente Moderno* 87, no. 2 (2007): 247-300.

<sup>54</sup> 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.

<sup>55</sup> Raisul, 'Pemikiran Hukum Islam Khaled Abou El Fadl', 155.

<sup>56</sup> Duderija, 'Contemporary Muslim Male Reformist Thought and Gender Equality Affirmative Interpretations of Islam', 1-55.

examples from Islamic history where women, including the Prophet Muhammad's wives and female companions, travelled long distances without a *maḥram*. In her view, the prohibition of women travelling without a *maḥram* is a product of patriarchal thinking that portrays women as weak and incapable of protecting themselves. El Fadl asserts that such a perspective contradicts Islamic teachings that emphasize gender equality and the protection of women's rights.<sup>57</sup>

El Fadl's approach is progressive compared to the CRLO's fatwa, which relies heavily on textual and conservative interpretations.<sup>58</sup> He promotes community values and social responsibility over strict individualism and freedom, distinguishing her stance from liberal and secular views. While liberal and secular views often prioritize individual freedom and question religious authority, El Fadl still regards religious authority as the primary source of understanding Islamic law. Her views on gender equality align with feminist ideals to some extent but emphasize a balanced approach to the rights and responsibilities of men and women in society, reflecting her unique perspective within the context of Islamic law and ethics.

## **F. Conclusion**

Khaled M. Abou El Fadl is a renowned Islamic scholar known for his critical perspectives on interpretations of Islamic law. One of his notable criticisms focuses on the authoritarian fatwa issued by the CRLO, which prohibits women from travelling without a *maḥram* (male guardian). El Fadl argues that this fatwa lacks a solid legal basis in Islamic teachings and reflects patriarchal thinking that contradicts Islamic principles of gender equality and women's rights. He also highlights the adverse consequences of such a ban, including restrictions on women's access to education, social and economic opportunities, healthcare services, and their freedom to engage in various activities. El Fadl's work emphasizes the need for a more inclusive and progressive interpretation of Islamic law that aligns with contemporary human rights standards.

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<sup>57</sup> 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.

<sup>58</sup> Mernissi, *The Veil and the Male Elite*, 77-91.



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