

Imam Ash-Shafi'i's Opinion on Hajj without a *Mahram* and Its Relevance to the Present Day

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Abstract

This study aims to examine more deeply the opinion of Imam ash-Shafi'i regarding the pilgrimage for women without a *mahram*, and then see its relevance in today's times. Imam ash-Shafi'i has opinion that a *mahram* or husband is not obligatory for a woman in carrying out the pilgrimage, but on condition that the woman is protected from harming her body and soul and her honor. The majority of *fiqh* scholars are of the opinion that women must be accompanied by their *mahram* to perform the pilgrimage. According to the provisions of the Shari'ah, a woman may not travel alone but must be accompanied by her husband or *mahram*. Even the al-Hanafiyah school of thought argues that a *mahram* for women is a mandatory requirement for Hajj. This study is in the form of a character study categorized as library research. It used secondary data, either in the form of primary materials, tertiary secondary. Data analysis used heuristic, critics (internal and external), interpretation, and historiography. The results of this study suggest that Imam asy-Syafi'i's opinion which emphasizes law based on its 'illat, namely the factor of women's safety is very relevant to current conditions.

Keywords: Hajj; mahram; ash-Shafi'i; women

Introduction

Islamic Shari'ah prohibits a woman from traveling alone; she must be accompanied by her husband or mahram, as stated in the hadith:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تُسَافِرُ الْمَرْأَةُ ثَلَاثَةَ أَيَّامٍ إِلَّا مَعَ ذِي مَحْرَمٍ
(رواه: البخاري)^١

Ibn Umar r.a. reported that the Prophet said: It is not permissible for a woman to travel for three days unless she is with her mahram. (HR: al-Bukhari)

This hadith covers all kinds of traveling, whether obligatory or permissible, such as long journeys of more than three days or in unsafe and lonely situations. This ruling is not meant to be prejudiced against women and their morals, as some people think. Rather, it is intended to protect her good name and honor and to protect her from crime, because women are very vulnerable both physically and in terms of their honor. For this reason, Allah SWT and His messenger warned women from all things that would damage them.

Regarding the issue of Hajj, the Prophet said:

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا تُسَافِرُ الْمَرْأَةُ 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 اخْرُجْ مَعَهَا (رواه: البخاري) ٢

From Ibn Abbas r.a, he said: The Prophet Muhammad (PBUH) was preaching, so he said: It is not permissible for a woman to travel unless she has a mahram with her, so a man said: O Messenger of Allah, I have taken a pledge to go to war, and my wife wishes to perform Hajj, so the Messenger of Allah said: Go for Hajj with your wife. (HR: al-Bukhari)

Based on this Hadith, a mahram/husband is one of the obligatory conditions of Hajj that women must fulfill.³ Because of this obligation of mahram, the Prophet ordered husbands to leave *jihad*, and escort their wives for Hajj.⁴ This is in line with the view of *al-Hanfiyah*. This means that it is not permissible for a woman to worship alone without a mahram or husband accompanying her.⁵

¹Abi 'Abd Allah Muhammad bin Ismail al-Bukhari, *Shabih al-Bukhari*, (Bairut: Dar as-Sa'ab, (t.th.), No. Hadits 1024.

²Al-Bukhari, *Shabih...*, No. Hadits 1729.

³Said Sabiq, *Fiqh as-Sunnah*, (Bairut: Dar al-Kutub, 1992), Juz I, h. 530-534.

⁴Muhammad 'Ali ash-Shabuni, *Rawah al-Bayan Tafsir Ayat al-Abkam min al-Qur'an*, (t,tp: Dar al-Kutub al-Ilmiah, t.th), Juz I, h. 325.

⁵Ash-Shabuni, *Rawah...*h. 325

In other words, even if she is able to perform Hajj, her Hajj is not valid and she has to repeat it because she has not fulfilled the obligatory conditions of Hajj. Imam ash-Shafi'i argues elsewhere that a *mahram* or husband is not obligatory for a woman to perform Hajj, provided that she is protected from harm to her body, soul and honor. He stated that women may travel with other women or with a group of Muslim men in which there are women.⁶

It is clear from the text that Imam ash-Shafi'i's statement above, violates the provisions of the hadith of the Prophet Muhammad SAW which prohibits women from traveling without a mahram. Meanwhile, Imam ash-Shafi'i once said:

إذا وجدتم في كتابي خلاف سنة رسول الله صلى الله عليه وسلم فقولوا بسنة رسول الله صلى الله عليه وسلم ودعوا ما قلت^٧

If you find in my book something that violates the Sunnah of the Messenger of Allah (SAW), then you should speak according to the Sunnah of the Messenger of Allah (SAW) and leave my fatwa.

Hajj is a long journey to the holy land of *Makkah al-Mukarramah*, and of course it is not enough for just one or two days. That's why in the hadith above *Rasullah* SAW ordered a man who had signed up for jihad to abort his intention and must accompany his wife to go on Hajj. Isn't Hajj a matter of worship in which the people must follow and accept as the rule states:

الأصل في العبادات التوقيف والألتباع^٨...

The Asbal of worship is silence (acceptance) and following...

In addition, it is agreed among the scholars that all the laws enacted by Allah SWT and His Messenger upon His servants, in the form of commands or prohibitions contain *mashlahab*. There is no *syara'* law that is devoid of *mashlahab*. Some of the benefits can be felt at that time and some are felt afterward, such as the command to pray is beneficial for spiritual tranquility and physical hygiene. The prohibition of alcohol prevents a person from damaging the body, soul (mental), and mind. Therefore, Allah SWT commands in His word:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

...what the Messenger gives you, accept; and what he forbids you, forsake; and fear Allah. Verily, Allah is very severe in punishment. (QS:59:7)

⁶Muhammad bin Idris asy-Syafi'i, *al-Umm*, (Bairut: Dar al-Kutub al-Ilmiyah, t.th), Juz II, h. 164.

⁷Ibn Qayyim al-Jawziah, *A'lam al-Muwaqin an rab al-'Alamin*, (Bairut: Dar al-Kitab al Ilmiyah, 1996), Juz II, h. 361.

⁸Abd al-Hamid Hakim, *al-Bayan*, (Jakarta : Bulan Bintang, 1976), Juz 3, Cet ke- 1, h.178.

Looking at this opinion of Imam ash-Shafi'i, the author is interested in tracing it more deeply, so that his way of thinking is known. Then it is connected with the contemporary context to examine its relevance in today's era and if it is possible to be applied in today's era, so that there is no need to wait for the Hajj until the money is enough for two husbands and wives, but it can be carried out by one person first, both husband and wife.

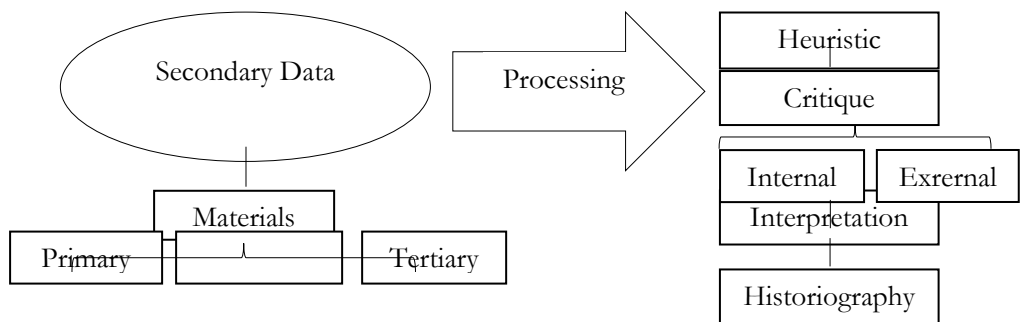
Based on the search, there are several journals that have studied the implementation of traveling for women, including: *Mughniatul Ilma* entitled *Reconstruction of The Concept of Mahram in Women's Safar Based on Ibn Qayyim al-Jauziyyah's Legal Change Theory*. This paper concludes that the legal text that prohibits women from traveling without a mahram needs interpretation through contextualization and reconstruction. The hadith about the prohibition of traveling for women without a mahram has a very different context from the current 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*), conditions (*ahwal*), intention/motivation (*niyāt*), and tradition (*'awāid*). Based on these aspects, it can be understood that the urgency of mahrams in women's travel is intended as a guarantee of safety from the dangers that are very likely to be experienced by women at that time. In contrast to the current context, this has experienced rapid development in the fields of technology, information, transportation, which provides more access, comfort, and security. Efforts to protect women have been legitimized through existing legal norms.⁹ Firqah Annajiyah Mansyuroh's article titled *Analysis of Legal Change for Women Traveling without Mahram: A Case Study of the Kingdom of Saudi Arabia Royal Decree No.M/134 of 2019*, concluded that the Saudi Arabian government lifted the ban on women traveling without a mahram. This was driven by the influence of economic and social changes. This is because the Saudis want their Vision 2030 to be achieved.¹⁰ None of these studies specifically examines Imam ash-Shafi'i's opinion on the implementation of Hajj for women without a *mahram* and studies the relevance of this opinion in the present day, so this research is considered new.

This study is a character study categorized as library research. The data used is secondary data, which is ready-made data in the form of primary materials such as the book *al-Umm* by Imam ash-Shafi'i, secondary materials in the form of fiqh books that intersect with the topic of discussion, and tertiary

⁹ Mughniatul Ilma, "Reconstruction of The Concept of Mahram in Women's Safar Based on Ibnu Qayyim al-Jauziyyah's Legal Change Theory," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 147–61, <https://doi.org/10.31958/juris.v20i2.4303>.

¹⁰ Firqah Annajiyah Mansyuroh, "Analysis of Legal Change for Women Traveling Without Mahram: A Case Study of the Kingdom of Saudi Arabia Royal Decree No. M/134 of 2019," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 2 (December 10, 2019): 201–20, <https://doi.org/10.19105/al-lhkam.v14i2.2785>.

materials such as dictionaries and encyclopedias. Data collection is carried out by reading and understanding fiqh books on Hajj mahran and related books and journals, then the data is processed through several stages, namely: a) The heuristic stage, which is the technique of searching for data, classifying data. b) The criticism stage, which is the process of criticizing existing data, including external criticism and internal criticism, so as to obtain the correct conception of the character's thoughts, then proceed with the grouping of the conception of thought, so that it is clearly illustrated. c) The interpretation stage, which is the stage of interpreting the conception of the character's thoughts. d) The historiography stage, which is an effort to write and combine into journal form. More details are illustrated in the following figure:



Overview of Imam Ash-Shafi'i

Imam ash-Shafi'i was born in the month of Rajab in the year 150 AH (767 AD) in Ghuzah in the region of Asqalan near the coast of the White sea (Dead sea) in the center of Palestine (Sham).¹¹ Imam ash-Shafi'i's birth was on the eve of the death of Imam Abu Hanifah bin 'Tsabit, hence, the popular expression "One star sinks and another rises".¹²

The lineage of his descendants from his father is: Idris bin Abbas bin Uthman bin Shafi'i bin Saib bin 'Ubaid bin Abu Yazid bin Hashim bin Abd al-Manaf.¹³ Thus it is clear that Imam ash-Shafi'i was a descendant of Quraysh; Abd al-Manaf (the Prophet's third grandfather). The Hashim mentioned in the genealogy is not Hashim the Prophet's grandfather, because the Prophet's grandfather was Hashim bin Abd al-Manaf. From his mother's side were: Fatimah bint Abd al-Azdiyah.¹⁴ Thus, it is wrong to say that his mother was a Qurayshite who was closely related to the lineage of the Prophet Muhammad.

¹¹Moenawar Chalil, *Biografi Empat Serangkai Imam Mazhab*, (Jakarta : PT. Bulan Bintang, 1992), Cet Ke-8, h. 149.

¹²Yusuf asy-Syekh Muhammad al-Baq'a'i, *Koleksi Syair Imam Syafi'i*, Penerjemah, Abdul Ra'uf Jabir, judul asli, "*Dirvan asy-Syafi'i*", (Jakarta : Pustaka Amani, 1995), Cet Ke-1, h. 10.

¹³Muhammad Abu Zahrah, *asy-Syafi'i Hayatuh wa 'Asbruh wa Arwuh wa Fiqhuh*, (Arabi : Dar al-Fikr, 1978), h. 14.

¹⁴Abu Zahrah, h. 16.

Saib (IVth grandfather) of Imam ash-Shafi'i was from the Quraysh, when he was a polytheist and was taken captive by the Muslim army during the battle of Badr al-Kubra. At that time he repented and then gave a ransom to the Prophet so that he was freed, then converted to Islam and was among the companions who faithfully followed the teachings of Islam.¹⁵

Imam ash-Shafi'i's scientific journey began at the age of two. He was taken by his mother to Makkah. At the age of 7, he was able to memorize the Qur'an. He studied the Qur'an with Ismail ibn Qastantin, the reciter of Makkah. Imam ash-Shafi'i even memorized the Qur'an in the month of Ramadan 60 times.¹⁶ Imam ash-Shafi'i left Makkah for Banu Huzail to learn the Arabic language and its literature and poetry from Imru' al-Qais, Zuhaer, and Jarir. He stayed there for 10 years.¹⁷ Imam ash-Shafi'i learned fiqh from Muslim bin Khalid al-Zanji (mufti of Makkah). He studied hadith with Sufyan bin 'Umayyah in Makkah. Then he went to Medina and became a student of Imam Malik and studied al-Muwaththa' which he had memorized at the age of 13.¹⁸ He also studied fiqh *abl al-hadith* with Imam Malik, which is a school of fiqh that is very attached to the text of the Qur'an and hadith and the practice of the companions in determining the law.¹⁹ Imam ash-Shafi'i went to Iraq to study *rihlah fi thalab al-fiqh* that used more reason in their ijtihad.²⁰ He studied fiqh *abl ar-ra'yu* with Muhammad ibn al-Hasan (a student of Imam Abu Hanifah).²¹ so that Imam ash-Shafi'i accumulated knowledge of *fiqh ashab al-hadith* and *fiqh ashab ar-ra'yu*.

Among the famous teachers of Imam ash-Shafi'i while in Makkah are: Muslim bin Khalid al-Zanji, Sufyan bin 'Uyainah, Said bin Salim al-Qudah, Daud bin Abd al-Rahman al-'Ithar, Abd al-Hamid bin Abd al-'Aziz bin Abi Daud. In Medina such as, Malik bin Anas, Ibrahim bin Sa'id al-Anshari, Abd al-'Aziz bin Muhammad al-Darawardi, Ibrahim bin Yahya al-Usami, Muhammad bin Sa'id bin Abi Fudaik, Abdullah bin Nafi' al-Shaigh. As for Yemen, they were: Mathraf bin Mazin, Hisham bin Yusuf Qadhi Shuna'ak, Umar bin Abi Musallah Shahib al-Auza'i, Yahya bin Hasan Shahib al-Laits bin Sa'id. And in Iraq were: Muhammad bin al-Hasan, Waki' bin al-Jarah al-Kaufi, Abu Usamah Humad bin Usamah al-Kaufi, Ismail bin 'Athiah al-Bashri, and Abd al-Wahhab bin Abd al-

¹⁵Jamal ad-Din Abd ar-Rahim al-Asnawi, *Thabaqat asy-Syafi'iyah*, Di-tahqiq oleh Abdullah al-Juburi, (Baghdad : Mathba'ah al-Irsyad, 1390 H), Juz 1, h. 11.

¹⁶Huzaemah Tahido Yanggo, *Pengantar Perbandingan Mazhab*, (Jakarta: PT. Logos Wacana Ilmu, 1999), Cet Ke-2, h. 121.

¹⁷Tahido Yanggo, *Pengantar...*h. 121.

¹⁸Tahido Yanggo, *Pengantar...*h. 122.

¹⁹Tahido Yanggo, *Pengantar...*h. 33.

²⁰Tahido Yanggo, *Pengantar...*h. 76.

²¹Tahido Yanggo, *Pengantar...*h. 123.

Majid al-Bashari.²² All of Imam ash-Shafi'i's teachers were prominent scholars of the time.

Imam ash-Shafi'i also had students scattered in various cities including, in Makkah namely: Abu Bakr al-Hamidi, Ibrahim bin Muhammad bin al-'Abbas, Abu Bakr Muhammad bin Idris, Musa bin Abi al-Jarud. In Baghdad (Iraq) were: Al-Hasan ash-Shubahi az-Za'farani, al-Husain bin 'Ali al-Karabisi, Abu Tsur al-Kalabi, Ahmad bin Muhammad al-Ash'ari al-Bashri. And in Egypt such as, Harmalah bin Yahya, Yusuf bin al-Buwaithi, Isma'il bin Yahya al-Muzani, Muhammad bin Abdullah bin al-Hakim, ar-Rabi' bin Sulaiman al-Jaizi.²³

His recorded books are: *ar-Risalah* This book is devoted to the science of *ushul al-fiqh*. Abd ar-Rahman bin Mahdi, a prominent hadith expert Imam of his time, asked him to write a book on *ushul al-fiqh*,²⁴ so that the methodology of Imam ash-Shafi'i's legal *istinbath* is clearly seen:

ليس لأحد أبدا أن يقول في شيء حل ولا حرم إلا من حبه العلم وجهة العلم والخبر في الكتاب أو السنة أو الإجماع أو القياس^{٢٥}

It is not permissible for a person to say that this is lawful or that this is unlawful unless he has knowledge of it. This knowledge is found in the Qur'an, the Sunnah, consensus and qiyas.

This expression of Imam Ash-Shafi'i illustrates the hierarchy in the epistemological study of *ushul fiqh*, which was then followed and developed by the next generation.²⁶

Kitab al-Umm on the science of *fiqh*. Al-Qadhi Imam Abu Muhammad bin Husein bin Muhammad al-Maruzi (Imam ash-Shafi'i's student) said that Imam ash-Shafi'i had compiled 113 books, in the fields of *tafsir*, *fiqh*, *hadith*, *manners* and so on.²⁷ The books written by Imam ash-Shafi'i are divided by historians into two parts, one written by Imam ash-Shafi'i himself, and the other written by his students, by dictation, or books attributed to him.

Imam ash-Shafi'i suffered from hemorrhoids and died after Isha prayer on the last Friday night of Rajab, (29 Rajab) 204. H (820. AD) at the age of 54

²² Ahmad asy-Syarbasi, *al-Aimah al-Arba'ah*, (Bairut : Dar al-Jil, [t.th]), h. 127.

²³ Ahmad asy-Syarbasi, *al-Aimah...* h. 129.

²⁴ Moenawar Chalil, *Biografi...* h. 241.

²⁵ Muhammad bin Idris asy-Syafi'i, *ar-Risalah*, naskah di-tahqiq oleh Ahmad Muhammad Syakir, (Bairut: Maktabah al-Islamiyah, [t. th]), Cet ke-1, h. 39

²⁶ Syarial Dedi, *Ushul Fiqih Menurut Paradigma Filsafat Ilmu* (Kajian Ontologi, Epistemologi, dan Aksiologi): Al-Istinbath: Jurnal Hukum Islam, Vol.5, No.2, 2020 DOI: 10.29240/jhi.v5i2.1829, h. 299-301

²⁷ Siradjuddin Abbas, *Sejarah dan Keagungan Mazhab Syafi'i*, (Jakarta : Pustaka Tarbiyah, 1972), Cet ke-2, h. 140.

years and was released by his student, Rabi' al-Jizi.²⁸ His remains were buried in the Banu Zahrah village in Qarafah Shughra at the foot of the mountain "*al-Muqaththam*" in Egypt..²⁹

Hajj for Women without a *Mahram*

The word '*mahram*' is an isim makan (indicating place) from the word ha-ra-mim, meaning a woman/relative who is forbidden to marry. From this word is born the term '*ihram*', meaning the person wearing ihram (hajj/umrah) clothes.³⁰ According to Ibn Faris, all the roots derived from ha-ra, and mim mean 'prohibition' and 'affirmation'. Mecca and Medina are called haramain because of the glory of the two cities and the prohibition of doing some things that are allowed outside these two cities. An ihram person is a person who is performing a series of Hajj or Umrah pilgrimages characterized by wearing certain clothes at the designated miqat-miqat. This is because there is a prohibition on doing things that are permitted outside of ihram such as hunting and having sex with one's wife. A person who refrains from begging even if he is very poor is called a mahrum. Similarly, a person who cannot be married is called a mahram.³¹ Fiqh scholars refer to mahrams as all people who are forbidden to marry, whether by descent, breastfeeding or marriage in accordance with Islamic law.³² This statement refers to Surah an-Nisa' verses 22-24. The Shaafa'is add that touching does not invalidate wudoo'.

The Big Indonesian Dictionary (KBBI) defines the word 'mahram' with two meanings; 1) a person (woman, man) who is a close relative by descent, breastfeeding, or marriage so that it is not permissible to marry between them. 2) A male person who is considered to be able to protect a woman who is going to perform Hajj (husband, son, etc.).³³ Thus mahram is related to the issue of marriage and the performance of Hajj or Umrah for women, indirectly involving all forms of traveling by women. This is what feminists criticize.

The treatment of women, which often leads to injustice, both in the household and in society, inspires many people to speak up for women's rights. Among the Islamic sciences that greatly influence the perception of the position of women in Islam is Fiqh Science, both concerning *mu'amalah* (social interaction) and worship (spiritual interaction) issues. One example in the issue of worship is the implementation of the Hajj by women.

²⁸Siradjuddin Abbas, *Sejarah...* h. 140.

²⁹Moernawar Chalil, *Biografi...*h. 226.

³⁰ Ahmad Warson Munawwir, *al-Munawwir Kamus Arab-Indonesia*, (Surabaya: Pustaka Progressif, 1997), Cet ke-4, h. 257.

³¹M. Quraish Shihab, *Ensiklopedia al-Qur'an: Kajian Kosakata*, (Jakarta: Lentera Hati, 2007), h. 557.

³²M. Ali Yusuf as-Subki, *Fiqh Keluarga*, (Jakarta: Amzah, 2010), h. 121.

³³<https://kbbi.web.id/mahram> diakses tanggal 9 Agustus 2023.

The majority of fiqh scholars are of the opinion that women must be accompanied by a mahram for the Hajj pilgrimage. They believe that according to Islamic law, a woman cannot travel alone, but must be accompanied by her husband or *mahram*. In fact, the Hanafi school is of the opinion that a *mahram* for women is an obligatory condition of Hajj. Imam ash-Shafi'i, on the other hand, is of the opinion that a mahram or husband is not obligatory for a woman to perform Hajj. He explicitly stated that women may travel with other women or with a group of Muslim men who have women.

A Study of Imam ash-Shafi'i's Opinion

In the book *al-Umm*, Imam ash-Shafi'i said:

وأذا كان فيما يروي عن النبي صل الله عليه و سلم ما يدل على أن السبيل : الزاد والراحلة وكانت المرأة تجدهما وكانت مع ثقة من النساء في طريق مأهولة أمانة فهي ممن عليه الحج عندي والله أعلم وأن لم يكن معها ذو محرم...³⁴

If there is something in the hadeeth narrated from the Prophet (peace and blessings of Allaah be upon him) that indicates a journey, that is, a journey with provisions and a long journey, and the woman finds herself in both of these situations, and there are trustworthy men with her on a journey that is ma'ulah (capable of being done) and safe, then - according to Imam ash-Shafi'i - the journey is Hajj, and Allaah knows best, even if there are no mahrams with her.

From Imam ash-Shafi'i's statement above, it can be understood that to perform the Hajj pilgrimage, it is necessary to have the physical ability which is expressed by the expression of provisions; in the form of material ability and inner ability which is expressed by a long journey because in simple logic, traveling long distances requires mental readiness and determination to face various obstacles, especially women who have to leave their hometowns, husbands, children, siblings and all their relatives. By nature, women are happy and calm at home. Hence, the Hajj pilgrimage requires both physical and mental readiness. Therefore, according to Imam ash-Shafi'i, the Prophet did not exclude in the hadiths that make Hajj obligatory unless the form of the journey must carry provisions and the distance is very far.³⁵

Then, Imam ash-Shafi'i's statement shows that he would allow a woman to perform Hajj without her mahram. However, the concession that Imam ash-Shafi'i made must fulfill several conditions; first, that the woman is with a group of trustworthy women.³⁶ This means that the woman is not traveling alone, but she is in the company of trustworthy women. To support this opinion, Imam ash-Shafi'i cites a hadith from 'Aisha r.a in the case of a woman traveling for Hajj, even without a mahram. It reads:

³⁴Asy-Syafi'i, *al-Umm*, h. 164.

³⁵Asy-Syafi'i, *al-Umm*, h. 164.

³⁶Asy-Syafi'i, *al-Umm*, h. 164.

أن ابن عمر سافر بمولاة له ليس هو لها بمحرم ولا معها محرم (رواه:أبو داود)³⁷

Ibn 'Umar traveled with a woman who was not his mahram, nor was she accompanied by his mahram. (HR:Abu Daud)

Secondly, it is permissible for a woman to join a group of men in which there are women. This requirement is understood from Imam ash-Shafi'i's statement:

...وأن لم تكن مع حرة مسلمة ثقة من النساء فصاعدا لم تخرج مع رجال لا امرأة معهم ولا محرم لها منهم...³⁸

...if there is not with her a believing free woman who is trustworthy, or a number of women, and the women do not go out with the men, who are not in the company of women, nor is there a mahram following them....

With this statement, Imam ash-Shafi'i allowed women to go out for Hajj with a group of men who have women with them. If this is not the case, then Imam ash-Shafi'i forbids women to join the group. However, if she wants to go, she must be accompanied by her mahram. This opinion of Imam ash-Shafi'i is supported by a hadith from Ibn Juraij who said:

عن ابن جريج قال: سئل عطاء عن امرأة ليس معها ذو محرم ولا زوج معها ولكن معها ولاند وموليات يلين أنزالها وحفظها ورفعها؟ قال: نعم فلتجرح (رواه:مسلم)³⁹

'Atha' was asked about a woman who is neither with her mahram, nor with her husband, but has children with her, and some women who gladly serve, care for and respect her? Atha' replied: Yes, so let him go on jihad. (HR:Muslim)

From this statement, the *third condition* is implied, namely, safety. The phrase: women who gladly serve, nurture and respect her, indicates that she will have peace and comfort on the pilgrimage.

Imam ash-Shafi'i then analogized the case of a woman going for Hajj without a mahram to the case of a woman asserting her rights, because she was charged by someone with a charge in a country where there was no qadi, so she moved to another country, hoping that the charge would be dropped.⁴⁰ With this analogy, Imam ash-Shafi'i justified women traveling to uphold their rights because there was no qadi in their country to protect their rights. This means that it is permissible for a woman to travel in order to uphold her rights, and Hajj is one of them. Hajj is obligatory for Muslims who are able to do it, both men and women, as the verse reads:

³⁷Asy-Syafi'i, *al-Umm*, h. 164.

³⁸Asy-Syafi'i, *al-Umm*, h. 164.

³⁹Asy-Syafi'i, *al-Umm*, h. 165.

⁴⁰Asy-Syafi'i, *al-Umm*, h. 165.

وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ

And complete the Hajj and 'Umrah for the sake of Allah. ... (QS:2:196)

For clarity, Imam ash-Shafi'i continued his analogy; or the woman leaves by right even if she has to travel for days without a mahram, if there is a woman with another woman, and indeed Allah SWT has said in the case of al-mu'tadat (women in abstinence).⁴¹ The details read:

لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُبَيَّنَةٍ

...do not expel them from their homes and do not let them go out unless they are committing an obvious abomination.... (QS:65:1)

Basically, Allah SWT forbids women who are in iddah to leave the house. However, it is permissible for her to leave the house if she does so in the right way. According to Imam ash-Shafi'i, Allah, the Almighty, does not prohibit a woman from going out of the house by means of the customary right. However, if this is not the case, then the act of going out is considered a fahisyah (abominable act), so the woman is considered to have transgressed because she went out without the proper right.⁴² More explicitly Imam ash-Shafi'i, said that none of the scholars differed in opinion about a woman who is in abstinence outside her home to enforce haddah on her and all the rights that are common to her. To support his argument, Imam ash-Shafi'i cites the case of Fatimah bint Qais who met the Prophet when her husband divorced her.⁴³

Furthermore, Imam ash-Shafi'i said that the book, sunnah and scholarly consensus all indicate that it is prohibited for a woman to travel or leave her house during 'iddah, but only for what is not customary for her, and she cannot be prohibited from doing so for a valid reason, and something that she cannot leave.⁴⁴ Hence it is customary for a woman to perform Hajj, and if she is physically and financially able to do so, and there are other women in her party who are trustworthy, then in this case it is permissible for her to perform Hajj without her mahram.

In addition, Imam ash-Shafi'i added that if a woman reaches puberty and is physically and materially able to perform Hajj, but her guardian wishes to prevent her, or her husband wishes to prevent her. In this case, Imam ash-Shafi'i agrees with Atha' that the woman is in the same situation as al-hasar (the captive), so she has to slaughter a sacrifice, and complete her Hajj, and then she is halal - free from the bonds of ihram -. ⁴⁵

⁴¹ Asy-Syafi'i, *al-Umm*, h. 165.

⁴² Asy-Syafi'i, *al-Umm*, h. 164.

⁴³ Asy-Syafi'i, *al-Umm*, h. 164.

⁴⁴ Asy-Syafi'i, *al-Umm*, h. 164.

⁴⁵ Asy-Syafi'i, *al-Umm*, h. 165.

However, Imam ash-Shafi'i wanted the husband not to forbid her, rather it is incumbent on the husband not to forbid his wife from performing the obligatory Hajj, and if it is a recommended Hajj it is permissible for the husband to forbid her if he wishes.⁴⁶

It can be seen from the description of Imam ash-Shafi'i's opinion, which gives leeway for women to perform Hajj without being accompanied by a mahram or her husband, by presenting some of the arguments above, because Imam ash-Shafi'i, views mahrams as not an obligatory condition of Hajj. Women are allowed to go on Hajj with a group of women, provided that they are safe during the journey. Imam ash-Shafi'i explicitly said:

أن حج الفرض فيه المحرم بشرط أمن المرأة علي نفسها بأن يكون معها عدة من النسوة⁴⁷

The obligatory Hajj is not obligatory with a mahram, provided that the woman is safe with a group of other women.

It seems that Imam ash-Shafi'i is focusing more on the 'illat' of the ruling, which is the security factor. If this factor is guaranteed, then it is permissible for a woman to perform Hajj without her mahram, such as in the company of another woman who is honest and of good character, or with a group of women who are known to be of good religious character, or perhaps through a Hajj organization that has been assigned to her.

This application of the law is based on the rule:

الحكم يدور مع العلة وجودا و عدما⁴⁸

The ruling circulates with its 'illat, whether or not it is present.

This means that the application of a law looks at the 'illat (motivating factor for the existence of the law) of the law; if the 'illat exists then the law exists, but if the 'illat no longer exists, then the law also does not exist. Thus, the order for women to perform the Hajj disappears because the factor that led to the issuance of the law, namely insecurity, is no longer present.

As for the woman without a husband, she may go to Hajj with an honest woman or with a large group of men and women, and the woman who is still in the waiting period for divorce must wait for her 'iddah to end, and if she goes to Hajj, her Hajj is valid but she is sinning.

Observing Imam ash-Shafi'i's way of thinking in the case of mahram Hajj, his foresight is seen to break the flow of the ahl al-ra'y and ahl al-hadith

⁴⁶Asy-Syafi'i, *al-Umm*, h. 164.

⁴⁷Ash-Shabuni, *Rawah....*, h. 325. Said Sabiq, *Fiqh as-Sunnah*, (Bairut: Dar al-Kutub, 1992), Juz I, h. 530-534.

⁴⁸Muchlis Usman, *Kaidab-kaidab Ushuliyah dan Fiqhiyah; Pedoman Dasar dalam Istimbath Hukum Islam*, (Jakarta:PT. Raja Grafindo Persada, 1999), Cet ke-3, h. 192.

schools. Imam ash-Shafi'i tried to combine the ahl al-hadith school with the ahl al-hadith school to build his own stream. Not too rigid on the demands of the nash and nor excessively rely on ra'yu. However, trying to link the call of the nash and social reality by maximizing the critical reasoning of his ijtihad. So it can be said that the feud between manhaj ahl al-ra'y and manhaj ahl al-hadith ended when Imam ash-Shafi'i combined the two ijtihad methodologies.⁴⁹ Imam ash-Shafi'i's fatwa also does not undermine his commitment to the sunnah, because this fatwa on mahrams is also supported by several sunnahs of the Prophet Muhammad. So the title *nashr as-sunnah* is still worthy and appropriate for him.⁵⁰ An analogy (قياس) that Imam ash-Shafi'i did in this case can be justified based on the principle:

متى ورد النص بشيء لمعنى معقول وجب تعديته إلى ما وجد فيه المعنى⁵¹

When a text comes in a matter of worship for a purpose that can be reasoned out, it is permissible to analogize it to another text that serves the same purpose.

The scholars did say that لا قياس في العبادات (there is no qiyas in worship). According to Ibn 'Uthaymeen, this rule applies to the determination of acts of worship that are mustaqilah (the prerogative of Allah SWT). As for the issue of conditions, making qiyas between two acts of worship that have similar purposes, and so on are not touched by this statement, and can be made qiyas.⁵² The issue of mahrams for women going for Hajj is categorized as an act of worship, but the meaning behind it is to protect the woman's safety. Therefore, there is no prohibition on the use of qiyas.

Relevance of Imam ash-Shafi'i's Opinion to the Present Context

Seeing what Imam ash-Shafi'i had said, it turned out to be followed by many scholars after him, both from the Shafi'iyah school itself and other scholars. For example, Wahbah az-Zuhaili, mahram can be replaced with a group of women or men and this can be justified, such as the existence of hajj travel in Indonesia or KBIH, but it still seems to maintain the norms of Islamic morals that have been established by religion. In fact, he said that if a person is in the waiting period for divorce, his Hajj is valid but he is sinning.⁵³

⁴⁹ Ainol Yaqin, "Evolusi Ijtihad Imam Syafi'i: Dari Qawl Qadim Ke Qawl Jadid," *Al-Ahkam* 26, no. 2 (December 2, 2016): 143, <https://doi.org/10.21580/ahkam.2016.26.2.899>.

⁵⁰ Ainol Yaqin, *Evolusi...*

⁵¹ Rami bin Muhammad Jibrin Salhab Abu Hasan al-Maqdisy, *al-Qiyas fi al-Ibadah wa Tatbiquyah fi al-Mazhab asy-Syafi'i Dirasah Ta'sbilyah Tatbiquyah*, (Bairut: Dar Ibn Hazm, 2010), h. 62.

⁵² Rami bin Muhammad, *al-Qiyas*, h. 60.

⁵³ Wahbah az-Zuhaili, *al-Fiqh al-Islami wa 'Adillatuhu*, (Damsyik: Dar al-Fikr, 1993), Cet ke-3, Juz III, h. 29.

Abd al-Walid al-Yaji of the Maalikis stated that a mahram is not required for a woman who is no longer sexually active. This limits the generalization to the meaning, as Ibn Daqiqil'id said, which is to look at the dominant factor.⁵⁴ In addition, some of the Maalikis were of the view that the mahram can be replaced by a woman who is trustworthy in character and religion.

In another place, Ibn Muflih mentioned in al-Furu' that he said: "It is permissible for a woman to perform Hajj if it is safe for her to do so without a mahram." He said: "This applies to all kinds of travel for the purpose of performing acts of worship." Al-Karabisi also narrated this view. Some of his students said that this applies to tathawwu' Hajj and to all kinds of non-obligatory travel, such as pilgrimage and trade.⁵⁵ Ibn Sirrin was of the view that it is also permissible for a woman's mahram to be a Muslim man while al-Auza'i must be with a just man.⁵⁶

From the various opinions expressed by scholars on the issue of mahrams for women going on Hajj, it can be concluded that it is permissible for a woman to perform Hajj without her mahram, on the grounds that Islamic rulings look at the intent and purpose. The purpose of the command to bring a mahram is to protect the safety of women. However, if the aim and purpose of the ruling is not achieved, then that way - allowing a woman to perform Hajj without a mahram - is forbidden. This is what is called the *saddadz dzari'ah* method.

As Yusuf al-Qardhawi stated, something that is forbidden for its own sake is not permissible except in cases of necessity, whereas something that is forbidden for the sake of preventing a cause (*saddadz dzari'ah*) is permissible because of necessity. In this case, there is no doubt that traveling by a woman without a mahram is something that is haraam because it prevents it from being haraam because of its nature,⁵⁷ as the rule states:

ما حرم سد للذريعة أبيع للمصلحة الراجحة⁵⁸

Something that is prohibited because of sadd az-zari'ah is allowed on the grounds of rajihah kemashlabatan (urgently needed).

Said Sabiq relates in his Fiqh as-Sunnah that 'Umar ibn al-Khattab allowed the wives of the Prophet to perform their last Hajj, so he sent 'Uthman

⁵⁴Ibn Hajar Ahmad Ibn Ali, Muhammad Fu'ad Abdul Baqi (ed), *Fath al-Bari bi Syarh Shahih al-Bukhari*, (Riyad:t.tp, t.th.), Juz IV, h. 447.

⁵⁵ Yusuf al-Qardhawiy, *Fatwa-fatwa Kontenporer* (terj.As'ad Yasin; Judul asli. *Fatawa Mu'shirah*. (Jakarta:Gema Insani Press, 2005), Jilid 1, Cet ke-8, h. 449.

⁵⁶Yusuf al-Qardhawiy, *al-Madkhal lidirasah as-Sunnah an-Nabawiyah*, (Kairo: Maktabah Wahabiah, t.th), h. 123.

⁵⁷Al-Qardhawiy, *al-Madkhal...* h. 451.

⁵⁸ A. Djazulil, *Kaidah-kaidah Fikih; Kaidah-kaidah Hukum Islam dalam Menyelesaikan Masalah-masalah yang Praktis*, (Bandung: Kencana Prenada Media Group, 2011), Cet ke-4, h. 225.

ibn 'Affan and Abd ar-Rahman ibn 'Auf to accompany them.⁵⁹ So, what 'Umar, 'Uthman, 'Abd ar-Raman and the Prophet's wives did was without any of the companions denying it. Thus it is regarded as *ijma'*.

From the above description, if it is related to the current situation, it can be said that what Imam ash-Shafi'i has said is very suitable and relevant to the current situation. This means that it is permissible for a woman to perform Hajj without her mahram, provided that her safety is maintained.

It should be noted that traveling today is not the same as traveling in the past, which was full of dangers because you had to pass through the desert, be stopped by robbers, and so on. In fact, traveling is now done using means of transportation that can accommodate many people, such as ships, airplanes and buses. Therefore, it would be better for the government, which is in charge of Hajj, to understand and apply what Imam ash-Shafi'i has said about the permissibility of a woman going for Hajj without a mahram in this atmosphere of peace and security, although it is better for her to be accompanied by a mahram.

The prohibition of traveling for women without a mahram contained in the hadith text requires an holistic and comprehensive approach. Understanding the context and history is a necessity to represent humanist and transformative Islamic law. The existence of a mahram in the hadith text is not the purpose of the hadith but is intended as a guarantee of security for the woman herself. Social change and Islamic law must go hand in hand. Legal fatwas always demand changes in line with the turn of time, place, conditions, intentions, and traditions. Stagnating the law by ignoring these aspects will only eliminate the principle of Islamic universality. This is what is called living Islamic law, which is Islamic law that always lives according to the style of the movement of social reality,⁶⁰ as understood from the following expression of Ibn al-Qayyim:

تغير الفتوى واختالفها حسب بتغير الأزمنة والامكنة والاحوال والنيات والعوَاد⁶¹

The fatwa changes with the times, places, situations, intentions and customs.

Firqah Annajiyah said that the emergence of Saudi Decree No. M/134 of 2019 concerning the freedom of women to travel without a mahram was greatly influenced by social changes and economic demands.⁶²

⁵⁹Said Sabiq, *Fiqh...* h. 535.

⁶⁰Mughniatul Ilma, *Reconstruction...* h. 160.

⁶¹Ibn Qayyim al-Jawziah, *A'lam al-Muwaqqin an rab al-'Alamin*, (Bairut: Dar al-Kitab al P'lmiah, 1996), Juz III, h. 31.

⁶²Firqah Annajiyah Mansyuroh, *Analisis...*h. 217

In addition, the above argument is strengthened by the Prophet's hadith from Adi bin Hatim when he told him about the future of Islam and its development:

عَدِيُّ بْنُ حَاتِمٍ وَقَفَ عَلَى رَسُولِ اللَّهِ -صلى الله عليه وسلم- فَقَالَ لَهُ رَسُولُ اللَّهِ - صلى الله عليه وسلم- يُوشِكُ أَنْ تَخْرُجَ الْمَرْأَةُ مِنَ الْحَبْرَةِ بِغَيْرِ جَوَارٍ أَحَدٍ حَتَّى تَحُجَّ الْبَيْتَ... (رواه: الدار قطني)⁶³

Hadi bin Hatim stopped/ stood in front of the Messenger of Allah, so the Messenger of Allah said to him: The time has almost come when a woman from the city of Hirah (Iraq) will go to visit the House of Allah unaccompanied... (HR: ad-Dar Qutny)

The news does not merely indicate that this will happen; rather, it indicates that it is permissible for women to go on Hajj without a mahram/husband if it is safe. This is because he said this hadith in order to praise the development of Islam and its security. This means that Imam ash-Shafi'i's fatwa is in line with the Sunnah, as is his commitment ... ودعوا ما قلت... (discard my opinion if it contradicts the sunnah). The issue of mahrams for women in Hajj does not fall under the prohibition of qiyas in worship, because it is meant to protect the safety of women. **Allahu A'lam**

Conclusion

This study concludes that Imam ash-Shafi'i, who gives leeway for women to perform Hajj without being accompanied by a mahram or her husband, because the mahram is not an obligatory condition of Hajj. Women are allowed to go on Hajj with a group of women provided that they are safe during the journey, which is the 'illat' of the law. The application of this ruling is based on the rule: الحكم يدور مع العلة وجودا و عدما: (The law circulates with its 'illat, whether it exists or not). Imam ash-Shafi'i's fatwa that emphasizes the 'illat' of the ruling is very suitable and relevant to the current situation and is also supported by the text. It is permissible for a woman to perform Hajj without her mahram, such as with another woman who is honest and of good character, or with a group of women who are known to be religiously upright, or perhaps through a Hajj organization that has been assigned to her. Moreover, traveling today is not the same as traveling in the past, which was fraught with dangers, such as passing through deserts, being stopped by robbers, and so on. In fact, traveling now involves using means of transportation that can accommodate many people, such as ships, airplanes and buses.

⁶³ 'Ali bin 'Umar Ad-Daraquthny,, *Sunan ad-Daraquthny*, (Bairut: Dar al-Kutub al-Ilmiyah, 1996), No. Hadits. 2465.

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