

Acehnese Dayah Ulama's Perceptions of the Expansion of Fiqh on Mawani' al-'Irth in the Compilation of Islamic Law (KHI): Resistance or Adaptation?

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Abstract

Article 173 of the *Kompilasi Hukum Islam* (KHI) expands the concept of *mawani' 'irthi* (inheritance barriers) beyond its articulation in classical *fiqh*, which has faced resistance from Nusantara scholars. However, *dayah* scholars in Aceh have responded with a more adaptive yet cautious approach (*ihtiyat*). This article examines their perceptions of the expansion of *fiqh* in Article 173 of the KHI and proposes standards for *fiqh* development based on their perspectives. This qualitative study employs field and library research, utilizing primary data collected through interviews with *dayah* scholars and secondary data sourced from KHI and classical *fiqh* texts. The findings reveal diverse responses, ranging from conservative rejection to progressive acceptance through analogical reasoning (*tamthil al-fiqh*). Based on these perspectives, five standards for *fiqh* expansion are formulated: (1) consistency with *nash* (Islamic texts), (2) validity of *ijtihad*, (3) alignment with *maqashid syariah*, (4) legitimacy of *ulil amri* (government authority), and (5) continuity with the adopted *madhhab*. These standards offer a framework for harmonizing *fiqh* with the demands of modern legal systems.

Keywords: *Dayah Scholars; Fiqh Expansion; KHI; Inheritance Barriers.*

Abstract

Pasal 173 KHI memperluas konsep *mawani' 'irthi* (penghalang warisan) yang berbeda dari fikih klasik, menghadapi resistensi ulama Nusantara. Namun, ulama dayah di Aceh meresponsnya dengan sikap lebih adaptif dan kehati-hatian (*ihtiyat*). Artikel ini menganalisis persepsi ulama dayah terhadap perluasan fikih dalam Pasal 173 KHI serta merumuskan standar perluasan fikih berdasarkan pemikiran mereka. Penelitian kualitatif ini menggunakan *field research* dan *library research*, dengan data primer dari wawancara ulama dayah serta data sekunder dari KHI dan kitab fikih mazhab. Hasil penelitian menunjukkan respons yang beragam, dari penolakan konservatif hingga dukungan progresif dengan pendekatan analogi (*tamthil al-fiqh*). Dari sini dirumuskan lima standar perluasan fikih: (1) konsistensi dengan *nash syariah*, (2) validitas *ijtihad*, (3) keselarasan dengan *maqashid*



syariah, (4) legitimasi ulil amri, dan (5) kesinambungan dengan mazhab yang dianut. Standar ini menjadi panduan dalam menyeimbangkan fikih dengan kebutuhan hukum modern.

Kata Kunci: *Ulama Dayah; Perluasan Fikih; KHI; Penghalang Warisan.*

INTRODUCTION

This article examines the response of the Dayah community in Aceh to the expansion of the *fiqh* norms on barriers to inheritance (*Mawāni' al-irth*) within the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI). *Mawāni' al-Irth*, or barriers to inheritance, refer to factors that nullify a person's right to inherit, even if they otherwise meet the necessary conditions (Yunus, 1990). In classical *fiqh*, the primary barriers to inheritance are slavery, homicide, and religious difference (Al-Shabuni, 2005; Sabiq, 2008). However, scholars have differed in their opinions regarding other potential barriers, such as differences in nationality, non-Muslim status, *li'an* (mutual cursing in divorce cases), adultery, and apostasy (Az-Zuhaili, 2011).

In Indonesia, the Compilation of Islamic Law (KHI) expands the concept of barriers of inheritance beyond those recognized in classical *fiqh*. Article 173 of the KHI stipulates that a person is disqualified from becoming an heir if, based on a final and binding court decision, they are proven to have committed murder, attempted murder, serious assault, or slander against the deceased that results in a criminal sentence of five years or more (Negara Kesatuan Republik Indonesia, 1991). This expansion differs from classical *fiqh*, which recognizes only three main barriers to inheritance: slavery, homicide, and religious difference. Rahmiadi (2023) notes that these changes arose from the socio-historical context of Indonesian society and the evolution of its legal system. The integration of Islamic law into the national legal framework has led to the modification of several traditional *fiqh* norms, including those related to inheritance (Hidayah & Zafi, 2020). These developments reflect the adaptation of Islamic law to Indonesia's social (AM, 2016), political, and cultural dynamics (Mulia, 2018), making it more responsive to the needs of modern society (Walangadi et al., 2021).

The issue of the expansion of *fiqh* norms within the KHI warrants further examination from the perspective of Muslim intellectuals, particularly the Dayah scholar. Dayah scholar play a significant role in preserving the authority of classical *fiqh* through their teaching of traditional *fiqh* texts and their close engagement with the community (Nurlaila & Zuliha, 2019). However, they tend to be cautious about the codification of *fiqh* norms into statutory law, especially when it involves the expansion of these norms. Research by Nasir (2017) in Aceh Tamiang and Armiadi et al., (2020), reveals differences of opinion among Dayah scholar regarding the *fiqh* norms contained in the KHI. This phenomenon reflects the dynamic nature of intellectual discourse among them and highlights the ongoing tension between traditional Islamic law and the codified version of Islamic law found in the KHI.

This study is relevant for understanding the development of Islamic law in Indonesia, particularly in Aceh, which holds a special status in the implementation of Sharia (Manan, 2014). The responses of Dayah scholar to the expansion of *fiqh* norms in the KHI not only reflect the tension between tradition and modernity but also offer insights into how Islamic law adapts to social, political, and cultural changes (Armiadi et al., 2020). In the context of contemporary developments, understanding the attitudes of the Dayah scholar may serve as a foundation for formulating Islamic legal policies that are more inclusive and applicable to society.

Building on the background outlined above, this study complements previous research by formulating a standard for the expansion of *fiqh* in Indonesia based on the perspectives of Dayah scholar. This article aims to: (1) analyze the perceptions of Dayah scholar regarding the expansion of *fiqh* as reflected in Article 173 of the KHI; and (2) formulate a standard for *fiqh* expansion within the reasoning framework of Acehnese Dayah scholars' thoughts. This study extends earlier research that discussed the expansion of *fiqh* norms in the context of Islamic legal reform but did not specifically examine the perceptions of Dayah scholar in Aceh. Previous studies by Mukhlis (2019), Setiawan (2014), and Syarifuddin (1993), highlighted changes in Islamic law influenced by political and social dynamics since Indonesia's independence, while Mu'in et al. (2022) examined the adaptation of family law following the enactment of the Marriage Law of 1974. At the global level, Sugitanata (2021), Hidayatul et. al. (2017), and Fitria (2015) demonstrated that Islamic legal reform has occurred across various social and political contexts in Brunei, Tunisia, and Turkey. In terms of methodology, Samud (2018) and Darliana et al. (2022) emphasized the importance of *maqasid syari'ah* and *istihsan* in responding to social changes, while Rahim and Fadil (2020) discussed the use of *qawa'id fiqhiyyah* and the reformulation of *'illat* in the modernization of Islamic law. However, studies specifically addressing the response of Dayah scholar in Aceh to the codification of *fiqh* norms within the KHI remain limited. The study by Armiadi et al. (2020) identified differing views among Dayah scholar regarding the expansion of *fiqh* in the KHI but did not specifically analyze how their legal reasoning frameworks shape these attitudes. Therefore, this article contributes by examining in greater depth how Acehnese Dayah scholar understand, accept, or reject the expansion of *fiqh* norms in Article 173 of the KHI, and by formulating a standard for *fiqh* expansion grounded in their scholarly tradition.

A qualitative approach was chosen to explore in depth the meanings and dynamics of inheritance *fiqh* in the thought of Acehnese Dayah scholar (Nugrahani et al., 2014). A qualitative approach was chosen to explore in depth the meanings and dynamics of inheritance *fiqh* in the thought of Acehnese Dayah scholar (Moleong, 2007), while the empirical legal approach was used to understand the implementation of *fiqh* norms within the legal system and the social and cultural interactions that influence them (Marzuki, 2018). The research was conducted in Pidie District, Banda Aceh, and Aceh Jaya, representing the social, cultural, and religious diversity of Aceh (Armia, 2022). Data were collected through

in-depth interviews with Dayah scholar and document studies of various regulations and *fiqh* literature. Analysis was carried out inductively by integrating field findings with theoretical perspectives to obtain a comprehensive understanding of the dynamics of *fiqh* formulation in Indonesian inheritance law. (Diantha, 2017)

DISCUSSION

The Concept of Mawani' al-'irthi in Fiqh Madhhab

Barriers to inheritance in Islam, known as *al-Mawani' al-'irthi*, refer to factors that nullify an individual's right to inherit despite fulfilling the general conditions for inheritance. Terminologically, *mani'* means something that causes the loss of inheritance rights (Mesir, 2004). Zakiyah Daradjat emphasizes that a person who is otherwise eligible may be disqualified by specific conditions that legally remove their entitlement (Daradjat, 1995). Sayyid Sabiq identifies four main barriers to inheritance: slavery, homicide, religious difference, and difference of nationality (Sabiq, 2008). Meanwhile, Ali al-Shabuni, in *al-Mawarith fi al-Syari'at al-Islamiyyah*, highlights three principal barriers: slavery, homicide, and religious difference (Al-Shabuni, 2005). While consensus exists among the major Islamic legal schools regarding the three principal barriers, scholars differ in their views regarding additional factors.

Table. 1. Mapping of Fiqh Madhhab on Barriers to Inheritance

Type of Barrier	Perspectives of Fiqh Madhhab			
	Hanafi	Maliki	Syafi'i	Hambali
1. Slavery	√	√	√	√
2. Homicide	√	√	√	√
3. Religious difference	√	√	√	√
4. Difference of nationality	√	-	-	-
5. Unknown date of death	√	-	-	-
6. Unknown oheir	√	-	-	-
7. Prophethood	√	-	-	-
8. <i>Li'an</i>	-	√	-	-
9. <i>Zina</i> (adultery)	-	√	-	-
10. Doubt concerning the death of <i>muwarith</i>	-	√	-	-
11. Fetus in the womb	-	√	-	-
12. Doubt regarding the survival of newborn	-	√	-	-
13. Doubt concerning the death of either <i>muwarith</i> or the heir	-	√	-	-
14. Doubt regarding gender	-	√	-	-
15. <i>Murtad</i> (apostasy)	-	-	√	-
16. Difference in status among non-Muslims (e.g., <i>kafir harbi</i> or <i>kafir dhimmi</i>)	-	-	√	-
17. <i>Ad-daur al-hukmi</i> (judicial circularity)	-	-	√	-

The three principal barriers to inheritance mentioned above are broadly agreed upon by scholarly consensus (*ijma'*). However, other categories of barriers remain

subjects of scholarly debate. The following section elaborates on the legal arguments concerning each type of barrier to inheritance in *fiqh*:

1. Slavery

Slavery nullifies the right to inherit because a slave is considered legally incapacitated, with all of their property belonging to their master (Al-Shabuni, 2005). This is based on the principle that inheritance should not be transferred to an external party, specifically the master. (Mesir, 2004). An individual cannot inherit or bequeath property as long as they remain enslaved. Before emancipation, all of the slave's rights and property are subsumed under the ownership of their master (Rahman, 1990). This principle is further clarified in the Qur'an, particularly in Surah al-Nahl (16:75), where Allah states:

"Allah sets forth a parable: a slave who lacks all means, compared to a 'free' man to whom We granted a good provision, of which he donates 'freely, ' openly and secretly. Are they equal? Praise be to Allah. In fact, most of them do not know."

A slave is barred from both inheriting and being inherited from because a slave is considered legally incapacitated and remains under the dominion of their master (Hasanayn Muhammad Makluf, 1396). According to the Shafi'i madhhab, a slave, including a *mukattab* (a slave who is in the process of a contract for future freedom), remains ineligible to inherit or be inherited from (Ibnu Rusyd, 2000). In contrast, the Hanafiyyah and Malikiyyah hold that a *mukattab* may inherit, provided that sufficient wealth remains after death to settle the outstanding installments of their emancipation. Additionally, the Shafi'iyah and Hanabilah make an exception for a *muba'adh* (a partially emancipated slave), who is permitted to inherit due to partial legal freedom (Al-Zuhaili, 1998).

2. Homicide

All madhhabs agree that homicide bars an individual from inheriting, based on the hadith of the Prophet Muhammad hadith: *"The killer does not inherit"* (Ibn Majah, 2009). However, differences arise concerning the types of homicide that constitute a barrier to inheritance. The Hanafiyyah maintain that only intentional homicide subject to *qishash* (retaliation) prevents inheritance. In contrast, the Malikiyyah categorize homicide into three types (intentional, quasi-intentional, and accidental) with varying inheritance consequences (Jarajab et al., 2018). The Shafi'iyah adopt a stricter view, holding that any form of homicide, without exception, disqualifies inheritance rights. The Hanabilah provide a more detailed classification, identifying six categories of homicide that bar inheritance, including indirect killing and killings committed by those lacking full legal capacity, such as minors or individuals with mental disabilities (Abdullah bin Abdul Muhsin al-Turki, 1997).

3. Religious Difference

Religious difference constitutes a barrier to inheritance, based on the hadith of the Prophet Muhammad stating that a Muslim cannot inherit from a non-Muslim, nor can a non-Muslim inherit from a Muslim (Al-Bukhari, 1992). The Hanafi madhhab holds a slightly more nuanced view, permitting a Muslim to inherit from a non-Muslim, except in the case involving a *kafir harbi* (one who is actively hostile toward Islam). Meanwhile, the Shafi'i and Hanbali madhhabs prohibit inheritance across different religions without exception, even among non-Muslims of differing faiths (An-Nawawi, 2013).

The Expansion of Inhibitors to Inheritance in Article 173 of the Compilation of Islamic Law

This section outlines the inheritance barriers stipulated in the Compilation of Islamic Law (KHI), followed by an exploration of their alignment with the principles of Islamic jurisprudence (*fiqh*). Article 173, paragraphs (A) and (B) of the KHI explicitly state that: “An individual shall be barred from becoming an heir if, by a final and binding court decision, he or she has been convicted of: (1) Committing, attempting to commit, or causing grievous bodily harm to the decedent; or (2) Falsely accusing the decedent of committing a crime punishable by a prison sentence of five years or more.” (Negara Kesatuan Republik Indonesia, 1991). Although the KHI is based on the principles of *fara'id* (Islamic inheritance law), it does not fully conform to classical *fiqh* (Khisni & Ulinnuha, 2016).

1. Attempted Murder

A fundamental divergence exists between classical Islamic law and Article 173 of the Compilation of Islamic Law (KHI) regarding attempted murder as an inhibitor to inheritance rights. In classical Islamic jurisprudence, an attempted murder is not regarded as a completed act of killing; therefore, the perpetrator retains the right to inherit (Rahmiadi, 2023). However, the KHI appears to consider the socio-legal realities of Indonesia by designating attempted murder as a barrier to inheritance rights. As a state not fully based on Islamic law, Indonesia's legal system is also shaped by positive law and customary law. In this context, Article 173 of the KHI can be viewed as an application of the concept of *ta'zir*, wherein the *ulil amri* (ruler or authority) or the judge has the discretion to impose sanctions according to societal needs (Khisni & Ulinnuha, 2016). Consequently, this policy has been codified into statutory law as part of Indonesia's evolving legal jurisprudence. Thus, despite deviating from classical *fiqh*, this provision reflects an effort to adapt Islamic legal norms to the prevailing social and legal dynamics in Indonesia.

2. Serious Assault

Serious assault refers to an intentional act of violence that results in permanent injury or death (Nabilah et al., 2021). In the context of inheritance, an individual who commits a serious assault against the decedent forfeits their right to

inherit. If the assault leads to the decedent's death or causes injuries culminating in death, the perpetrator is deemed unworthy of receiving any share of the estate (Jalil & Inmai, 2020). Accordingly, the Compilation of Islamic Law (KHI) stipulates that serious assault against a testator constitutes a barrier to inheritance, as such an act violates principles of justice and is considered a grave sin (Ramdani & Karim, 2020).

3. Defamation

Defamation (*fitnah*) originates from the Arabic term *fitnah*, meaning an utterance that tarnishes a person's reputation or damages their honor (Sugono & dkk, 2009). According to the *Encyclopedia of Islamic Law*, Dahlan explains that linguistically, *fitnah* refers to a "test" that may manifest as tribulations, divine punishment, or life circumstances such as hardship, prosperity, joy, and adversity, all of which test a person's patience and gratitude (Dahlan, 2001). Although not explicitly mentioned as a barrier to inheritance in classical Islamic inheritance law, KHI recognizes defamation as a ground for disqualification from inheritance (Elsany & Misbahuzzulam, 2023). In a modern context, defamation can act as a concealed offense aimed at harming another person with minimal risk to the perpetrator. Thus, the KHI equates defamation with murder in terms of its destructive impact on the decedent's rights.

Acehnese Dayah Scholar's Perceptions of the Expansion of Fiqh Norms in the Compilation of Islamic Law (KHI)

1. Description of Dayah Scholars Responses

This study explores the perceptions of Acehnese Dayah scholars (*ulama*) regarding the concept of inheritance barriers as formulated in the Compilation of Islamic Law (KHI). Data collection was conducted in stages by visiting selected research sites. The first phase of the study was carried out in Pidie District in eastern Aceh, followed by Aceh Besar District in central Aceh, and finally Aceh Jaya District in western Aceh. During the fieldwork, data were gathered through interviews with various key informants at each location, as detailed below.

Table. 2. Key Informants of the Study

No.	Nama	Position
1.	Tgk Basri (Abi Paloh)	Leader of Dayah Durratul Mutaalimin
2.	Tgk Hanifuddin	Leader of Dayah Asasul Iman
3.	Tgk Munawar	Member of the MPU Aceh Besar, Council of Teachers at Dayah Mahyal Ulum Sibreh
4.	Tgk Sudirman	Leader of Dayah Al-Ikhlas Lamsayun Aceh Besar Member of the MPU Aceh Besar
5.	Teungku Khairi Fadli S, M.Ag.	Council of Teachers at Dayah Baitusshabri, Aceh Besar
6.	Tgk Nasai Abdullah	Secretariat Officer of MPU Aceh Jaya
7.	Tgk Iswandi	Young Islamic Scholar in Calang, Aceh Jaya
8.	Tgk Mustafa Sarong	Leader of Dayah Darul Abrar Sayeung, Aceh Jaya

	(Walidi Sayeung)	Chairman of the MPU Aceh Jaya (2023–2028)
9.	Tgk Al-Hafidz	Leader of Dayah Babul 'Ulum Diniyah Islamiyah Asy-Syafi'i, Aceh Jaya

Teungku Basri, a young scholar from Pidie and the leader of Dayah Durratul Mutaalimin, explained that in classical *fiqh*, it is clearly established that a murderer is disqualified from inheritance. He emphasized that the government holds the authority to broaden the interpretation of “murder” as a cause of disinheritance. According to Teungku Basri, the ruling authority holds the right to regulate matters for the benefit of the community. He illustrated this by referring to the government’s role in determining *hisab*, which the public is obliged to follow. Therefore, in the context of inheritance, if the government expands legal provisions, such regulations must be adhered to by society and are legally binding (Basri, personal communication, May 24, 2024)

Meanwhile, Teungku Hanifuddin from Dayah Asasul Iman in Blang Asan, Pidie, emphasized the importance of obedience to both divine law and human law. He referred to a hadith stating that the judge’s decision resolves disputes (*hukmul hakim yarfaul khilaf*), which underscores the necessity of adhering to government rulings to unite the community. Teungku Hanifuddin stressed that obedience to the government is obligatory as long as the regulations do not contradict Islamic law. He also highlighted the importance of understanding legal maxims concerning general and specific rules, as well as narrow and broad applications (Hanifuddin, personal communication, May 24, 2024)

On the other hand, Teungku Sudirman from Dayah Al Ikhlas Lamsayun in Aceh Besar offered his perspective on the relationship between government regulations and Islamic law. He asserted that the highest law to be followed is Islamic law, with the Qur'an as its primary source. According to Teungku Sudirman, if a government regulation contradicts Islamic law, it indicates a deviation from Islamic principles. Nevertheless, he acknowledged the distinction between the requirements of Islamic law and the administrative needs of a modern state. For instance, while Islamic law does not mandate administrative record-keeping, such documentation is crucial for ensuring efficient governance in a modern nation-state (Sudirman, personal communication, May 25, 2024).

Teungku Munawar, a member of the Aceh Besar MPU, expressed his views on the concept of inheritance barriers in *fiqh*. According to him, classical *fiqh* identifies the barriers to inheritance are limited to three factors: murder, slave status, and religious differences. However, He stated that if legal rules outside of classical *fiqh* introduce additional causes for inheritance barriers, it is necessary to analyze whether the additional cause shares the same legal reasoning (*'illat*) as the three

established causes. If the new *'illat* aligns with one of the traditional causes, then applying *qiyas* (analogical reasoning) could be considered to extend the application to new cases. He emphasized that *qiyas* is a legitimate method of legal reasoning in Islamic law. For example, slander resulting in the death of an heir could be considered a valid reason for disqualifying inheritance through *qiyas* with murder (Munawar, personal communication, May 25, 2024).

Teungku Khairi Fadli S, from the Dayah Baitusshabri Council of Teachers, expressed several views on the relationship between government regulations and Islamic law. First, he voiced concerns that general, non-detailed government regulations could lead to different interpretations among the public, potentially causing division. Second, regarding government regulations that align with Islamic law, he acknowledged that Islamic law generally encompasses various aspects of life, including civil law, criminal law, and social norms. However, he emphasized that laws can change based on place and time. Highlighting the government's essential role in accommodating these changes. Concerning government regulations that contradict Islamic law, He affirmed that Islam teaches obedience to the country's laws and regulations in which they live, as long as these regulations do not conflict with the fundamental Islamic principles. This view aligns with the hadith, "*La tha'ata limakhluq*" (there is no obedience to a creature in disobedience to the Creator). Lastly, regarding the expansion of government regulations beyond classical *fiqh*, he noted that such approaches are generally positive but must be assessed for contextual relevance. He added that fatwas or rulings in classical *fiqh* may change depending on circumstances, place, and time (Khairi, personal communication, June 23, 2024).

Teungku Iswandi Rusyah shared his views on the barriers to inheritance in Islamic law by quoting the hadith of Prophet Muhammad SAW: "*The one who kills does not inherit anything*". For him, this hadith clearly indicates that in Islam, a murderer is disqualified from inheriting from the victim. Furthermore, He emphasized the importance of obedience to Allah, the Prophet, and the legitimate leader, explaining that as long as the laws issued by the leader do not deviate from Islamic law, Muslims are obliged to obey them. In the context of Articles 173 paragraphs (A) and (B) of the Compilation of Islamic Law, Teungku Iswandi Rusyah suggested that the law-makers might have been influenced by the Maliki madhhab thought, which adopts broader and more comprehensive views on inheritance (Iswandi, personal communication, June 5, 2024).

Teungku Al-Hafidz expressed his views on the barriers to inheritance as outlined in the Compilation of Islamic Law (KHI). According to him, the Shafi'i *fiqh* does not explicitly support such expansions. Therefore, it is necessary to refer to the opinions of the madhhab imams regarding this matter. He asserted that if there is no clear evidence from the Shafi'i madhhab, the regulation cannot be

automatically accepted. Based on textual evidence, he argues that the regulation should not be followed unless it is intended as a government initiative to resolve disputes within society. Even so, it must remain within the framework of the four madhhabs. He cautioned that shifting arbitrarily between madhhabs could compromise an individual's integrity. Teungku Al-Hafidz emphasized that if the regulation of the KHI aligns with foundational principles of the *fiqh* of the madhhab, it may be developed, otherwise, if there are differences and contradictions it should be avoided and discarded. This perspective underscores the importance of aligning the applied law with the foundational principles of the madhhab followed by the community (Al-Hafidz, personal communication, June 22, 2024).

2. Identification of Thought Patterns Based on the Perceptions of Dayah Scholar

This section presents the classification of thought patterns among Dayah scholar (scholar) regarding the expansion of *fiqh* norms within the Compilation of Islamic Law (KHI), particularly concerning impediments to inheritance. It captures the diversity of perspectives expressed, offering a comprehensive understanding of the dynamic attitudes of Dayah scholars toward the development of Islamic legal norms in the KHI. Each distinct thought pattern is further elaborated below.

a. Legislative Thought Pattern

The legislative approach in Islamic law emphasizes the government's authority to interpret and expand legal provisions to maintain social order and justice, provided that such expansions do not contradict Islamic principles (Habibi, 2021). This approach is characterized by several key features including (1) Government Authority: the government holds the right to interpret and regulate Islamic law; (2) Legal Compliance: society is obligated to obey regulations issued by the government (*ulil amri*); (3) Adaptability: Islamic law must respond to evolving social conditions; and (4) Social Justice: the law primary aim is to uphold justice and public order (Sulbi, 2021). This perspective supports the broader interpretation of "murder" as an impediment to inheritance, extending beyond direct physical acts but including conspiracy or incitement that leads to death (Rahmiadi, 2023) Such flexibility enables the law to address contemporary realities, such as cases where individuals conspire to kill an heir to obtain inheritance rights, wherein the perpetrators would still be deemed disqualified from inheritance (Ahlul Badri, 2022). Scholars who align with this view argue that the government must have the authority to interpret Islamic law in line with societal developments, provided it remains within the Sharia framework. Obedience to government regulations is also considered a religious obligation essential for maintaining social stability, as long as such regulations do not contradict Islamic teachings (Abbas et al., 2021).

b. Compromising Thought Patterns

The compromising approach in modern Islamic law seeks to bridge obedience to government with adherence to sharia, particularly in the context of expanding Islamic legal norms within the Compilation of Islamic Law (KHI) (Nabila & Endy Muhammad Fadlullah, 2022). It accommodates the government's role in interpreting Islamic law, provided that such interpretations do not contradict Sharia principles. The main features of the compromising approach include: (1) Obedience to Government: respecting state authority as long as it does not violate Islamic law; (2) Alignment with Islamic Teachings: government policies must align with Islamic principles; (3) Inclusiveness: accommodating legal changes to meet modern societal needs without compromising religious principles; and (4) Flexibility: allowing reinterpretation of Islamic law in response to contemporary developments (Fikri, 2019).

This thought views the government as a unifying force and legal authority responsible for maintaining social order. It accepts the broadening of the definition of "murder" as a barrier to inheritance, provided it remains consistent with Sharia (Bay, 2011). The compromising approach also supports regulations that may not be explicitly found in traditional *fiqh* but are deemed necessary for societal stability. Scholars who adopt this view believe that obeying the government is part of obedience to Allah and His Messenger, thereby fostering a legal system that is both inclusive and adaptable to social changes (Gunawan et al., 2024). Through this pragmatic method, the compromising approach blends traditional values with contemporary realities to meet the needs of modern communities.

c. Conservative Thought Patterns

Conservative thought in Islamic law emphasizes adherence to traditional teachings while allowing room for adaptation to contemporary changes (Wahid, 2014). This approach seeks to preserve Islamic values while adjusting legal applications to evolving social conditions (Muthohar et al, 2023). The main characteristics of this thought are: (1) Adherence to Islamic Law: emphasizing the importance of established Islamic legal teachings; (2) Contextual Adaptation: utilizing the method of *ilhaq* (legal assimilation) to align legal rulings with contemporary developments; (3) Consistency with Tradition: ensuring that legal rulings remain in harmony with Islamic values; and (4) Sustainability of Law: maintaining the relevance of Islamic law in a modern context.

While emphasizing adherence to established Islamic legal principles, this approach also acknowledges the need for adaptation in their application. In the case of the inheritance barrier, for instance, conservative thought firmly upholds the principle that murder disqualifies a person from receiving an inheritance

but tends to be less flexible when considering other acts such as conspiracy or incitement (Lubis, 2014). Proponents of this view argue that obedience to Islamic law is a religious duty that must not be neglected. Nevertheless, they recognize that the law must evolve to meet the changing needs of the Muslim community, provided that such developments remain within the framework of established Islamic teachings (Heriyudanta, 2016). This approach ensures that Islamic law maintains its legitimacy and continued acceptance among Muslim communities.

d. Analytical Thought Pattern

The analytical approach in Islamic law emphasizes the use of rational methods, such as *qiyas* (analogy), to expand and interpret the law beyond traditional *fiqh* boundaries. This approach prioritizes logical and systematic reasoning to ensure that Islamic law remains relevant in modern contexts (Arfan, 1970). The key characteristics of this approach include: (1) Analogical Application: applying *qiyas*, *ilhaq*, and other methods to align the rulings of new cases with established ones; (2) Rationality: emphasizing the role of intellect and logical reasoning in interpreting religious texts; (3) Legal Flexibility: ensuring that Islamic law can adapt to social developments; and (4) Contextualization: understanding the historical and social context in the application of legal rulings (AM, 2016).

This approach allows for the adjustment of legal rulings to situations not explicitly addressed in classical texts. For example, in the case of inheritance barriers, analytical scholars may expand the definition of "murder" to include acts such as slander that result in the death of the heir, as the essence lies in preventing someone from profiting from harmful actions (Eltsany & Misbahuzzulam, 2023). In addition to *qiyas*, other methods such as *istihsan* (juridical preference) and *maslahah mursalah* (public interest) are also employed to ensure that the law continues to serve the welfare of the community. This school of thought emphasizes that the primary aims of Islamic law are justice, public welfare, and humanity, making flexibility in its application a necessity (Aminullah, 2021).

e. Conservative-Modernist Thought Pattern

The conservative-modernist approach in Islamic law emphasizes the alignment of government regulations with the fundamental principles of Islam while accommodating the dynamics of modernization. This approach preserves traditional values without compromising their relevance in contemporary contexts. The main features of this approach include: 1) Alignment with Islamic Principles: ensuring that every regulation remains rooted in Islamic teachings; 2) Modern Adaptation: promoting the adjustment of Islamic law to social,

economic, and technological developments; 3) Critique of Ambiguity: avoiding unclear regulations that could confuse; and 4) Inclusiveness: balancing traditional Islamic values with the needs of modern society (Khasanah & Paryanto, 2023).

Conservative modernists maintain that Islamic law should be the primary guide while remaining responsive to modern challenges. In regulating inheritance barriers, the conservative modernist scholar acknowledges the fundamental principle that murder disqualifies an heir but also supports extending this principle to include acts such as incitement leading to death. This approach ensures that the law remains relevant to the social and moral developments of modern society. Supporters of this view demand unambiguous regulations to avoid social instability (Ka'bah, 2018). By critically assessing rules that do not align with Islamic values and promoting specific and beneficial policies, the conservative-modernist scholar seeks to keep Islamic law relevant as the main guidance for Muslims in facing modern challenges. (Syarifuddin, 1993).

f. Selective Thought Pattern

The selective approach in Islamic law emphasizes the importance of filtering government regulations to ensure their alignment with a specific *fiqh* madhhab, particularly the Shafi'i madhhab. This approach exercises caution in accepting legal changes and focuses on maintaining harmony with traditional madhhab interpretations (Azahari, 2007). The main characteristics of this thought include: 1) Loyalty to the Shafi'i madhhab: adapting regulations to fit the views of the Shafi'i madhhab; 2) Strict Selection: accepting only regulations that do not contradict traditional *fiqh*; 3) Prudence: avoiding rules that could create legal confusion; 4) Madhhab Context: ensuring that the application of regulations remains consistent with madhhab interpretations (Santoso, 2021).

Supporters of this approach emphasize that any new regulation must be carefully examined to ensure it does not deviate from the principles of the Shafi'i madhhab. In the context of inheritance barriers, they only accept regulations that align with madhhab views, such as recognizing murder as a barrier to inheritance, with any extension of meaning still grounded in valid *qiyas*. Moreover, this approach highlights the importance of consulting scholars and jurists before adopting new regulations to ensure they remain relevant, legitimate, and fair for society. By ensuring that regulations are aligned with local religious traditions, the selective thought scholar seeks to maintain social harmony and uphold the integrity of Islamic law in the face of modern changes (Nasir, 2017).

g. Traditionalist Thought Pattern

The traditionalist approach scholar in Islamic law emphasizes the importance of maintaining the continuity of established Islamic legal traditions

and aligning any changes with the principles of traditional *fiqh*. This approach exercises caution in accepting new regulations to ensure they do not conflict with specific legal madhhab, particularly the Shafi'i madhhab (Mustafa, 2011). The key characteristics of this approach include: 1) Alignment with Traditional *Fiqh*: legal changes must conform to widely accepted *fiqh* principles; 2) Rejection of Conflicting Regulations: dismissing regulations that are inconsistent with specific madhhab views, such as those of the Shafi'i school; 3) Priority to Legal Tradition: preserving the authenticity and purity of *fiqh* teachings; 4) Consultation with Scholars: relying on scholars' fatwas to ensure the compatibility of legal reforms (Arsadani, 2018).

This approach holds that Islamic law has undergone historical refinement, and thus any legal changes must be approached with caution to avoid undermining the existing legal structure. In the context of inheritance barriers, traditionalist thought accepts legal changes only if they remain aligned with established *fiqh* madhhab. For instance, the principle that murder serves as a barrier to inheritance is widely accepted in *fiqh*, but any extension of its meaning must be based on valid *qiyas* and must not conflict with the views of the Shafi'i or other madhhabs. Supporters of this approach also stress the importance of considering local contexts and religious traditions in the application of Islamic law to prevent confusion or injustice. Accordingly, traditionalist thought seeks to preserve social harmony and uphold justice within the Islamic legal system.

Standardization of the Expansion of Fiqh Norms According to Dayah Scholars in Aceh

Dayah scholars in Aceh emphasize that any expansion of *fiqh* norms within the Compilation of Islamic Law (KHI) must adhere to strict standards to ensure alignment with the principles of Islamic law. Based on a reflection of their views, five main standards have been identified for the expansion of *fiqh* norms within the KHI, particularly in the context of inheritance:

1. Consistency with Sharia Texts (*nash syariah*)

Dayah scholars assert that any change or expansion of inheritance norms within the KHI must remain aligned with the Qur'an and Hadith as the primary sources of Islamic law (Abubakar, 2016). For instance, in cases involving the disqualification of heirs due to murder, debates arise over whether all forms of involvement in the death of a decedent should disqualify inheritance rights or only direct acts of murder. Any expansion of the norm in such cases is acceptable only if it is based on authentic evidence and does not contradict the fundamental principles of Islamic law (Sudirman, personal communication, 2024).

2. Validity of *ijtihad*

The expansion of norms within the KHI must be based on legitimate and recognized methods of *ijtihad*. Dayah scholars emphasize that legal interpretation must not be conducted arbitrarily, but rather through strict methodological approaches such as *qiyas* (analogical reasoning), *istihsan* (juridical preference), or *istishab* (presumption of continuity). For instance, in the case of inheritance rights for children born out of wedlock, some scholars argue that such children are not entitled to inherit from their biological fathers (Munawar, personal communication, 2024). However, by considering aspects of justice and responsibility, *ijtihad* can be developed to grant certain rights, while still adhering to the boundaries set by Sharia (Adlina et al., 2021).

3. Compliance with Government Decisions

Although Islamic law is sourced from divine revelation, dayah scholars also recognize the government's role in regulating laws applicable to Muslim communities. Therefore, any expansion of norms within the KHI must adhere to government decisions, provided they do not contradict Sharia (Abbbas et al., 2021). For instance, in the case of inheritance rights for non-Muslim heirs, the KHI follows the classical *fiqh* position, which does not grant inheritance rights to non-Muslims. However, within the context of a modern, pluralistic state, the government may regulate mechanisms such as *hibah* (gifts) or *wasiat wajibah* (mandatory bequests) as solutions to prevent injustice without violating Sharia principles (Iswandi, personal communication, 2024).

4. Alignment with *maqashid syariah*

The expansion of norms within the KHI must be oriented toward public welfare (*maslahah*) without neglecting the fundamental principles of sharia. Dayah scholars emphasize that Islamic law aims to preserve religion, life, intellect, lineage, and property. In the context of inheritance, for instance, there is ongoing discourse regarding the expansion of inheritance rights to grandchildren whose parents have predeceased the testator. Although under classical *fiqh* grandchildren are not listed among heirs if the testator's biological children are still alive, such expansion may be considered by taking into account social justice and family welfare (Sabil, 2022, 2023).

5. Continuity with the Adopted Madhhab

Dayah scholars in Aceh generally adhere to the Shafi'i madhhab. Thus, any expansion of norms within the KHI should remain grounded in the methodology of this madhhab. Although there is room to consider opinions from other madhhab, legal expansions must not disregard the principal references that have long been upheld by the community (Interview with Al-Hafidz, 2024). For example, regarding the *wasiat wajibah* (mandatory bequest) for adopted children, the Shafi'i madhhab traditionally does not grant inheritance rights to adopted children but permits gifts

(*hibah*) or bequests (*wasiyyah*). Therefore, if the KHI norms are expanded to provide economic rights to adopted children, the approach must still conform to principles consistent with the Shafi'i madhhab (H, 2011; Mumtahanah, 2016).

The standardization of *fiqh* norm expansion implemented by *dayah* scholars in Aceh can serve as a strategic solution in the legislative process of incorporating Islamic law into the national legal system. In a country with a plural legal system like Indonesia, the existence of clear standards in the formulation of *fiqh* norms provides a more systematic framework and stronger legitimacy for the adoption of Islamic law in national legislation. One of the positive impacts of this standardization is the assurance that Islamic legal norms incorporated into national regulations remain firmly grounded in the principles of sharia. By establishing standards such as consistency with *nash syariah* and validity of *ijtihad*, the expansion of norms within the Compilation of Islamic Law (KHI) or other regulations can be safeguarded from subjective bias or overly liberal interpretations. (Witro, 2020).

Furthermore, this standardization also facilitates the integration of Islamic law into the national legal system while maintaining harmony between religious norms and state policies. One of the key challenges in the legislation of Islamic law is ensuring that the established norms do not conflict with Indonesia's national legal system and Constitution. By adhering to standards such as compliance with governmental decisions, the expansion of *fiqh* norms within the Compilation of Islamic Law (KHI) and other regulations can be aligned with state policies without diminishing their Islamic legitimacy. For instance, in the case of inheritance distribution involving non-Muslim heirs, the classical *fiqh* approach, which excludes non-Muslims from inheritance rights, is preserved, yet alternative solutions such as *wasiat wajibah* can be accommodated as a legal mechanism that remains consistent with sharia principles and fulfills aspects of social justice (Afriyanto & Said, 2015). In addition, this standardization strengthens the legitimacy of Islamic law within national legislation by emphasizing *maqashid syariah* (*maslahat 'ammah*, public welfare) as a principal guideline for the development of *fiqh* norms. In a modern legal system, Islamic law must not only conform to sharia texts but also provide tangible benefits to society. By establishing *maqashid syariah* as a standard in the expansion of *fiqh* norms, Islamic law can become more responsive to the needs of contemporary society (Amin & Muhdi, 2021).

The standardization of *fiqh* also ensures the continuity between national regulations and the Islamic legal traditions adhered to by the majority of Muslims in Indonesia. By emphasizing continuity with the Shafi'i madhhab, for instance, *fiqh*-based regulations are more readily accepted by a society where the majority follows this madhhab. This minimizes the potential for social resistance to the incorporation of Islamic law into the national legal system (Umam, 2017). Finally, this standardization

also strengthens the position of Islamic law within the national legal framework by providing a clear methodology for the development of *fiqh* norms. One of the challenges in legislating Islamic law is the wide divergence of opinions among scholars and academics. With clear standards for the validity of *ijtihad*, the process of legislating Islamic law can proceed more systematically and measurably. These standards ensure that any expansion of *fiqh* norms in national regulations is based on recognized methods of *ijtihad*, such as *qiyas*, *istihsan*, or *istishab*, thus ensuring that the resulting legal products possess strong legitimacy both from the perspective of sharia and positive law.

CONCLUSION

The findings of this study reveal that the responses of *dayah* scholars to the expansion of *fiqh* norms in Article 173 of the Compilation of Islamic Law (KHI) are diverse, reflecting a spectrum of views ranging from full resistance to progressive adaptation. The conservative group rejects any changes, arguing that *fiqh* norms must strictly adhere to classical doctrines without modification. Meanwhile, the moderate group tends to accept changes through the approach of *tamthil al-fiqh* (legal analogy), allowing for the reinterpretation of Islamic law within new contexts while maintaining its traditional foundations. On the other hand, the progressive group supports the expansion of norms as a necessary response to evolving social dynamics, emphasizing that Islamic law possesses the inherent capacity to adapt without losing its essential character.

From these diverse perspectives, five principal standards were formulated to guide the expansion of *fiqh* norms, aiming to balance the principles of sharia with contemporary legal needs. *First*, any expansion must remain consistent with the *nash* of sharia to avoid contradicting the fundamental principles of Islam. *Second*, the validity of *ijtihad* is an essential requirement in formulating new legal norms, ensuring that any change is grounded in recognized scholarly methodologies. *Third*, alignment with the *maqashid syariah* must be prioritized to guarantee that expanded norms remain directed toward the ultimate objectives of Islamic law, particularly the welfare of the community. *Fourth*, the legitimacy of the *ulil amri* (government authority) becomes an important factor in ensuring that legal developments receive support from recognized authorities. *Fifth*, continuity with the traditionally adhered *madhhab* serves as a foundation, ensuring that the expansion of *fiqh* norms remains rooted in the established Islamic legal tradition and maintains historical integrity.

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