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FIQH REFORM IN THE SULTANATE OF ACEH DARUSSALAM: IS IT MODERNISM OR MODERATISM? A STUDY OF THE *HAREUTA SIHAREUKAT* CUSTOM

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Abstract

The custom of joint property in marriage exemplifies the Fiqh reform during the Sultanate of Aceh Darussalam. Some authors link this custom to the issue of women's equality that strengthened in the 1970s. However, it raises questions about the paradigm that underlies this custom: Did the Acehnese ulema adhere to the same paradigm as modern thinkers? The authors hypothesize that the paradigm underlies this custom is moderate because it moderates between women's property ownership dimension and the dimension of the family's living needs. The primary data for this study are legal materials in the form of law books, regulations, and constitutions of Aceh Darussalam Sultanate. Therefore, the authors conducted normative legal research with a historical approach. The authors used Gadamer's dialogical hermeneutics to moderate the subject and object as a dialogue partner. This study found that Acehnese ulema, who served as chairman of the Supreme Court (Qāḍi Mālik al-'Ādil), was moderate in Aqida, Sharia, and Siyasa, so the moderate paradigm influenced the law system in The Sultanate of Aceh Darussalam. It resulted in the fiqh reform, which means compatibility between the opinions of the ulemas and the needs of the people. It concluded that the fiqh reform carried out by the Acehnese ulema was moderation.

Keywords: *Reform; Fiqh; Moderatism; the Sultanate of Aceh Darussalam.*

A. Introduction

The *adat hareuta sihareukat* (custom of joint property in marriage) has been paid attention to by researchers in the modern era, including Ismail Muhammad Syah (Syah, 1984). Even though *hareuta sihareukat* is a family law issue (*ahkam munakahat*), he considers this to be similar to joint property in commercial law (*ahka*m *muamalah maliyyah*). However, commercial law is unintended to regulate the problems in family law because this is a different field, so this analogy is invalid (*qiyās ma'a al-fāriq*) (Azhar, 2024; Nurdin et al., 2022). It is because the *hareuta sihareuka*t custom is seen only from a *Fiqh* perspective (mono-perspective). Nevertheless, this legal issue is an intersection between *Fiqh* and *Siyasa*, so it must seen from a multi-dimensional perspective. This means the *adat hareuta sihareukat* must be seen from a moderate paradigm.

In Aceh, the *hareuta sihareukat* custom occurred during the reign of Sultan Iskandar Muda (1607-1636 AD) (Said, 1981). Some writers call this custom a breakthrough for Indonesian ulema in the vacuum of Islamic law and then link it to the issue of women's equality that strengthened in the 1970s (Junaidy, 2014; Fakhruddin et al., 2024). Thus, modern researchers see the custom of joint property as modernization if it gives the impression that the ulema in Aceh were ahead of their time because they formulated legal dogmatics that became the trend of modernity two hundred years later.

The two excerpts above show that history is interpreted from the reader's horizon, not through a dialogic process that results in horizon fusion. It raises questions about the paradigm that underlies the implementation of the custom of joint property in marriage. Did the Acehnese ulema adhere to the same paradigm as modern thinkers or a moderate paradigm?

The authors studied primary legal materials such as regulations, law books, and constitutions. Especially the Constitution of the Sultanate of Aceh Darussalam was initiated by 'Alī Mughāyat Syāh (1514-1530 AD), the first Sultan of Aceh Sultanate (Djajadiningrat, 1982). Ibrahim Alfian (Alfian, 2005) wrote about the discovery of an ancient manuscript entitled *Tazkirāt al-Ṭabaqāt al-Qanūn al-Syar'ī Kerajaan Aceh*. He ensured that this manuscript was the first constitution of the Aceh Darussalam Sultanate, which stated.

> We are all one country called Aceh; one country, one nation, one kingdom, one *'alam* (flag), and one teaching, namely Islam, following the Sharia of the Prophet Muhammad PBUH. On the path of *ahl al-sunnah wa aljamā'ah raḍiy Allāh' anh* by taking the law from the Quran and *Hadith* of the Prophet and *qiyās* and *ijmā' alim ulema ahl al-sunnah wa al-jamā'ah raḍiy Allāh' anh* by law and *adat* with *reusam* with *qanun*, namely *syara'* Allah, *syara'* Rasulullah, and *syara'* we take shelter under the banner of Sharia of the Prophet Muhammad PBUH, from this world to the hereafter and in the world for all time.

This constitution shows that *adat (custom)*, *reusam (procedures or habits and rules of life carried out as a hereditary norm for the society become binding all people unofficially to serve as a common guide in regulating social life)*, and *qanun (a statutory regulation or the rule of law that applies in one particular area)* apply in addition to the four sources of Sharia law (Quran, Sunna, *al-ijmā'*, and *al-qiyās*). In Islam, the three types of law (*adat*, *reusam*, and *qanun*) are the applied aspect (*tanfiż*) called Siyasa Sharia, namely the rules that regulate social relations and dedicated as servants (*khādim*) for the Sharia (Al-Najjār, 2001; Rojak & Fawzi, 2024). Islam gives authority to the government as stated in verse 59 of Surah al-Nisa': "*O you who believe, obey Allah and obey the Messenger and those in authority among you*".

According to Ibn' Āsyūr ('Āsyūr, 1985), the command to obey Allah and the Messenger, as well as *ulil amri* (ruler), in this verse shows the existence of two types of law, namely Sharia law and government law. It is why the state's existence is valuable (Kayadibi, 2019).

According to *uṣūliyyūn*, Sharia law is a greeting from Allah (*khiṭāb*), and its essence is the authority to make laws (*insyā' al-ḥukm*). Hence, Sharia law only exists by Allah's authority (Ḥassān, 1972). On the other hand, the law has an applied aspect (*tanfiż*), namely the government's duties of taking from the hands of strong people to hand them over to weak people, who have the right. According to al-Qarāfī, *tanfiż* occurs *insyā' al-ḥukm* through government authority (Al-Qarāfī, 1938). Therefore, this verse is the basis for customary authority, *reusam,* and *qanun* in implementing Sharia law, but it must not conflict with Sharia texts (Aziz et al., 2023).

Even though some Sharia texts have meanings that concretely cover several objects, the scope of meaning (in most Sharia texts) is unclear, so it requires the hard work of *ijtihad* (exertion and effort for discovering the Sharia laws from their legal sources) that relies solely on reason. Therefore, al-Ghazālī said that ninety percent of the *Fiqh* (Islamic Jurisprudence) is reasoning (Al-Ghazālī, 1993; Nurjanah & Nur, 2022). It means that reason dominates the legal process, so the legal practitioner's paradigm has the opportunity to influence a legal system. It is what Gadamer calls a horizon that must considered by a reader so horizon fusion can occur (Gadamer, 1975). Unfortunately, some writers don't realize this, so they learn from history incorrectly. Even though history is not only understood and interpreted, it is also applied (Gadamer, 1975). The authors, therefore, hope that this study can provide Indonesian Muslims and the Muslim community worldwide with a valuable lesson about the application of Sharia law today.

B. Method

To answer the research problems, the authors carry out normative legal research with a historical approach (Marzuki, 2005). Legal history is a field of legal study that studies the development and origins of legal systems in a particular society and its comparison to others (Amiruddin & Asikin, 2003). The historical method adheres to analysis and synthesis as the main methods in interpreting several facts, so they become a comprehensive interpretation (Sudarsono, 2001).

Analysis means explaining, which is terminologically different from synthesis because synthesis means uniting (Abdurrachman, 1999). It uses Gadamer's dialogical hermeneutics because an analysis must built on three pre-structural elements of understanding: tradition (*vorhabe*), perspective (*vorsicht*), and conceptual framework (*vorgrif*) (Bleicher, 1980). Dialogue between the subject and the object takes place through these three elements. It results in a fusion of horizons that originates from the negative path (*via negativa*) through the negation of new experiences (Gadamer, 1975).

Gadamer's dialogic hermeneutics moderated the subject and the object, where experience and tradition become dialogue partners. It differs

from Adorno's concept, which strictly binds them (Giannakakis, 2023). Therefore, the authors interpreted primary legal materials to discover the paradigm behind them related to *vorhabe*, *vorsicht*, and *vorgrif*.

Collecting primary legal materials is a difficult first step in this study because historical documents are not always available in distinct and clear categories. For example, in identifying ancient manuscripts in the category of the constitution and regulation of the Aceh Darussalam Sultanate, the authors must crosscheck the opinions of historians such as Van Langen, Hoesenin Djajadiningrat, Ibrahim Alfian, and Amirul Hadi. Likewise, aspects studied in law books such as *Mir'at al-Ṭullāb*, *Safīnat al-Ḥukkām*, and *Ḥujjah Bāligha*h, the authors verify by referring to relevant research reports, theses and dissertations, both published and unpublished.

Of course, historians and researchers—including the authors—are surrounded by their horizons. Therefore, the authors postpone the conclusions until they succeed in identifying the traditions (*vorhabe*), perspectives (*vorsicht*), and conceptual frameworks (*vorgrif*) that underlie the primary legal sources studied. The authors mark and underline unspoken parallels and agreements among historians and researchers because it leads the author to intersubjective truth.

The hypothesis that moderate tradition gave rise to the primary legal material studied in this study indicated Amirul Hadi's opinion regarding al-Sinkili's moderation towards women's leadership (Hadi, 2010). However, it is incompletely compatible with aspects of the authors' study, so they denied this new experience. This negative path (*via negativa*) leads the authors to reach a new result regarding moderate tradition (*vorhabe*). It inspired the authors to examine the relationship between these primary legal materials (law books, constitutions, and regulations) and the moderate scientific tradition among ulemas of the al-Syāfi'ī school of thought and *ahl al-sunnah wa al-jamā'ah*.

During this study, the authors witnessed that *vorhabe* (tradition) is an existential problem that is not so hard to identify. What is more difficult is uncovering the perspective (*vorsicht*) and conceptual framework (*vorgrif*) within the tradition (*vorhabe*). Perspective is a substantial matter at the level of mathematical reflection (*riyāḍiyāt*), while the conceptual framework is an

essential matter at the level of metaphysical reflection (*ilāhiyyāt*). These two levels of reflection are immaterial and more abstract than existential matters (Poespoprodjo, 2007).

The authors examine the literature of the Syafi'i and Asy'ari schools of thought to clarify their concept of moderation. The authors finds clues regarding *vorhabe*, *vorsicht*, and *vorgrif*. Thus, the hermeneutic concept (of three pre-structural elements of understanding) builds the researcher's awareness of the tradition, perspective, and conceptual framework that gave rise to the moderate opinions, especially from Syafi'i schools of thought. The authors validated this concept by the results of Islamic jurisprudence historians' research, such as Muḥammad Abū Zahrah and Muṣṭafā Sa'īd al-Khinn. Furthermore, the authors discovered the existence of a moderate paradigm in the law books, constitutions, and regulations of the Sultanate of Aceh Darussalam. It shows how hermeneutical theory integrates text and context to understand a historical legal fact.

Data validation is related to the quality of data (Emzir, 2014) and can validated by enriching descriptions (Creswell, 2009). The authors crosschecked library data, published manuscripts, editors' comments, and ancient manuscript researchers' work. The authors find intersubjective truths regarding the influence of the chairman of the Supreme Court (*Qāḍi Mālik al-'Ādil*) on the moderate tradition in the constitution, regulations, and law books in the Sultanate of Aceh Darussalam. Added to this is the fact that al-Sinkilī, who served as chairman of the Supreme Court during the leadership of the four Sultanahs, was a figure who gained in the moderate scientific tradition of the al-Syāfi'ī school of thought and the aqida of *ahl al-sunnah wa al-jamā'ah*. Al-Sinkili's work in *Fiqh*, Aqida, and Sufism is its evidence.

C. Result and Discussion

This study seeks to understand the reform of fiqh in the Sultanate of Aceh Darussalam by tracing the paradigm underlying legal policies during that period. Through a historical approach and dialogical hermeneutics, this research identifies how customary law, fiqh, and *siyasah* interact in shaping a moderate legal system. The following section will elaborate on the analytical findings derived from the study of primary and secondary sources.

1. Result

This study reveals the historical context of legal texts to identify the paradigm behind them. The authors emphasized that it's not a purely historical context but a historical context of science. It must combine the hermeneutics concept with the scientific context, namely four disciplinary matrices of sciences as below (Kuhn, 1996).

1. Symbolic generalization. It is an assumption of legal interpretation because it is a characteristic of all legal dogmatic thinking that shows the content of positive law (Aarnio, 1983). This matrix guides the authors in choosing a subject matter that aligns with legal interpretation.
2. Metaphysical paradigms are the model that provides an analogy or metaphor within acceptable or permissible limits (Kuhn, 1996). This matrix contains assumptions about the doctrine of valid sources of law that form a model of thinking (Aarnio, 1983). In a broader context, a model can simplify problem-solving steps, such as the *common* law steps (Collier, 1993). This second matrix illustrates *vorsicht* and *vorgrif* because it produces a perspective (*vorsicht*), and problem-solving steps reflect a conceptual framework (*vorgrif*).
3. Values. Researchers used it to justify theories and identify crises. Kuhn cited values such as accurate estimates, preferable quantitative estimates, allowable margin of error, and consistency (Kuhn, 1996). In legal dogmatics, there are values such as legality, constitutionality, and justice. Likewise, legal researchers agree on the values that govern dogmatic inquiry that guide the selection of interpretations and justifications in legal findings (Aarnio, 1983). This third matrix guides the authors in identifying the traditions (*vorhabe*).
4. Exemplars. It is concrete problem-solving (Kuhn, 1996). The perspective (*vorsicht*) and conceptual framework (*vorgrif*) play a role in solving concrete problems, so they formulate a scientific tradition (*vorhabe*). Thus, tradition (*vorhabe*) must be found by exploring for exemplars, namely, cases resolved by ulemas.

At this point, it is clear that from the philosophy of science point of view, the word paradigm here refers to the second disciplinary matrix of science, namely metaphysical paradigms. One important thing is that this disciplinary

matrix provides a model, analogy, or metaphor within acceptable limits. It can simplify the substantial matter (perspective/ *vorsicht*) and essential matter (conceptual framework/*vorgrif*) in this study into a metaphor. Furthermore, this model can clarify the tradition (*vorhabe*) underlying the legal texts studied.

a. Definition of *fiqh* reform

The issue of *tajdīd* first appeared in the Hadith narrated by Abū Dāwūd (Dāwūd, n.d.), where the Prophet Muhammad said the word *yujaddid*, which is etymologically equivalent to *ḥadīṡ*, meaning new (Manẓūr, 2003). Referring to *Mu'jam Falsafi*, the word *tajdīd* means modernism, namely things treated in a new way (Al-'Arabiyah, 1983). Thus, *tajdīd* can be equated with renewal, which contains a scientific-positivistic paradigm that views Islamic teachings from a purely anthropocentric perspective.

Some linguists equate the word *tajdīd* with reform, which is equivalent to the word *al-iṣlāḥ*, meaning improvement (Al-Ba'albakī, 1973). This meaning is closer to the meaning of the word *yujaddid* in the following Hadith (Dāwūd, n.d.):

إن يبعث لهذه الأمة على رأس كل مائة سنة من يجدد لها دينها

Indeed, Allah raises among these people every hundred years someone who will reform for them their religion.

The purpose of *tajdīd* in this Hadith is to bring to life what is learned by practicing the Quran and Sunna and the contents of both and protecting it from heresy/ *bid'ah* (Syaraf al-Ḥaqq, 2005). *Tajdīd* is different from *bid'ah* because *tajdīd* means correcting (*taṣḥīḥ*), while *bid'ah* means deviating (*taḥrīf*) (Sa'īd, 2012).

This meaning (*al-iṣlāḥ*/reform) is more appropriate to the Islamic context because the object of reformation is Muslim's understanding, not Islamic teachings (Farrūkh, 1981). According to Muḥammad Salīm al-'Awwā, the reformation of *Fiqh* is valuable to facilitate the application of Islamic law to reality so that there is conformity between the opinions of *Fiqh* experts and the needs of the people (Al-'Awwā, 2006). Up to this point, *Fiqh* reform can be defined as improving the understanding of Sharia so it will be actual in the present day, where conditions are different from the past, so *Fiqh* reform

requires understanding, interpretation, and application, such as Gadamer's concept of dialogical hermeneutics.

b. Definition of modernisation

Some scholars define modernization as a process of cultural differentiation and social autonomy, and others use the term modernity to refer to the society that emerged in Europe in the 17th and 18th centuries, which is different from premodern or traditional societies (Soerjanto & Seran, 2015; Agustina & Ismah, 2024). This society has a worldview formed by the modernism movement inspired by the thoughts of Rene Descartes, then strengthened by the Enlightenment movement (Aufklarung) and the domination of science and capitalism in the 20th century (Sugiharto, 1996).

Modernism adheres to a paradigm based on the theory of Auguste Comte (d. 1274 H/1857 AD), which divides the development of society into three stages (Soerjanto & Seran, 2015), from the lowest to the highest.

1) The theological stage. It marks the way of thinking of society that explains social reality according to theological concepts, so social change is always linked to religious teachings (theology).
2) Metaphysical stage. It is a change from the theological stage, which shows an attempt to explain social reality according to abstract, speculative, and universal philosophical concepts.
3) The positive stage where are humans act positively. It means they have placed their free will far above theological and metaphysical doctrines.

Auguste Comte's theory strengthened anthropocentrism in modern Western philosophy and positivistic orientation in science. As a result, people hate everything identified as traditionality and theocentric because it is considered a setback. Western modernism influenced some Muslim scholars so that renewal took place, but this was different from the reformation brought about by movements that did not accept the influence of Western modernism, as explained in the following points (Azhar, 1996).

1) The premodern revivalism period that emerged in the 18th century was driven by Ibn Abd al-Wahhāb (d. 1206 H/1792 AD) in

purifying the Islamic faith, which was filled with *khurafat*. Hence, the motivation for this movement was internal (Hamzah Ya'qub, 1988), not influenced by Western modernization (Madjid, 1994). This movement did not carry out reforms but adopted some classical thought, especially the thought of Ibn Taymiyyah al-Ḥanbalī.

2) Classical modernism that emerged in the mid-19th century, driven by Muḥammad' Abduh (d. 1323 H/1905 AD), was influenced by Western positivistic thinking due to awareness of the backwardness of Muslims socially, politically, and technologically (Asmuni, 1996). For Fazlur Rahman, classical modernism is not critical of secularism in Western science, worse than medieval Islamic Sufism and medieval Christian theology (Rahman, 1982).
3) Neorevivalism (postmodern revivalism). This movement adopts classical modernist thinking even though it is reactionary to it. Fazlur Rahman calls the Wahhābī movement new fundamentalism because they adhere to premodern revivalism even though they are anti-Western (Rahman, 1982).
4) Neomodernism. Fazlur Rahman initiated this movement, which was critical of the West and the historical heritage of Islam itself (Azhar, 1996).

Renewal in the sense of modernisation applies to the movement initiated by Abduh and Rahman, but the reform carried out by the Wahhābī movement is not modernization. According to Fazlur Rahman, the unanimous acceptance of modern science contradicts Islamic theology because modern science emphasizes the immutability of natural law so that there is no room for the existence of Allah as taught by Islamic theology (Rahman, 1982; Agustina, 2022). Acceptance of modern science places *ijtihad Fiqh* under the methodology of positive science, which uses hypothetical-verification logic. It raises the problem of demarcation among knowledge, which is the philosophy of sciences should not overlap, so it is criticized by postmodern thinkers.

Reform in the sense of modernism emerged in Indonesia through several figures, including Harun Nasution (1919-1998 AD). He stated that

Abduh supported *Muktazilah* teachings, rationality is the main of Quranic themes, and the Prophet Muhammad was a rationalist, so to become modern, Muslims must replace Asy'ari theology with Mu'tazili theology (Richard C. Martin et al., 2003). It shows that the basis of Harun's ideas of *Fiqh* reform is the positive science perspective (*vorsicht*), and it is a conceptual framework (*vorgrif*) that builds tradition (*vorhabe*) for modern readers. If the reader fails to dialogue with the tradition that gave rise to the text, it results in a subjective interpretation.

According to Harun Nasution, modernization started from 1400 H/1800 AD onwards (Nasution, 1994), but this era ended in the 1980s when academic circles used the term postmodern (Lubis, 2014). Postmodernists use hermeneutics to criticize modernists who tend to generalize the truth. Muslim postmodernists used these four approaches: poststructuralism, historicism, critical legal studies, and postcolonialism (Auda, 2007).

Some postmodernists adhered to extreme deconstructionism, relativism, and pluralism. As a result, postmodernists destroyed almost all grand theories established in the modern era (Abdullah, 2004). Jacques Derrida (1930-2004 AD), a French scientist, was the first to introduce deconstruction, called radical hermeneutics because it tends to deconstruct the rules, conventions, and concepts accepted in the modern era (Lubis, 2014). This postmodernist criticism is a reason to be moderate towards tradition (*vorhabe*), so dialogue between subject and object takes place and results in the fusion of paradigms.

c. Definition of moderation

In Indonesian, 'moderate' means avoiding extreme behavior, expressions, or a tendency toward a middle dimension or path (Redaksi, 2008). The word 'moderate' comes from English, which in Arabic is equivalent to *mu'tadil* or *mutawasiṭ* (Al-Ba'albakī, 1973), meaning being between two edges (Manẓūr, 2003).

As used in the Al-Quran in verse 143 of Surah al-Baqarah, the word *wasaṭa* means middle (*al-bayniyyah*) and goodness (*al-khayriyyah*) because of the moderate attitude (Al-Ṭabarī, n.d.). According to Ibn' Āshūr, Muslims are equipped with moderate teachings (*tawāsuṭ*), so as long as they follow Islamic

teachings, Muslims will not fall into extreme attitudes (‘Āsyūr, 1985). The word moderate has an abstract meaning, so it had to be concretized by referring to verse 82 Surah al-Nisa’: “*Then, do they not reflect upon the Quran? If it had been from [any] other than Allah, they would have found within it much contradiction*”.

This verse shows that reflective thinking toward the Quran is inevitable (Al-Qurṭubī, n.d.). Ibn’ Āshūr implemented *tadabbur* (pondering over the meaning of the verses of the Quran and contemplating them) in these two ways: 1) a detailed study (*tafṣīlī*) of the meaning contained in one verse; 2) examine the Quran as a whole so that there are no longer any contradictory (‘Āsyūr, 1985).

Contradictory (*tanāquḍ*) means if one of the two statements is true, the other is false (Al-Mīdānī, 1993). For example, the verse states that knowledge is only with Allah. Does it contradict the command to seek knowledge so that one of these verses is wrong? Reflective thinking (*tadabbur*) shows that the first verse speaks about knowledge in the divine dimension, which is absolute truth. The second verse talks about the human dimension, where the truth of knowledge is only a probability. Although these are different dimensions, they can be moderation by using a dualistic perspective. First, acknowledge the existence of these two types of knowledge (God’s and human pieces of knowledge), then place them in each dimension so that moderation (*tawāsuṭ*) occurs. Kuntowijoyo calls it the theo-anthropocentrism paradigm (Kuntowijoyo, 2006). He stated.

> *Religion never uses God’s revelation as the only source of knowledge and forgets human intelligence or considers the human mind as the only source of knowledge and forgets God. So there are two kinds of sources of knowledge, namely those that come from God and those that come from humans; in other words, theo-anthropocentrism.*

Kuntowojoyo’s concept can be called moderation-dualism, which produces multi-perspective and multi-dimensional thinking patterns. It is not the same as monism because monism is a belief that only recognizes one reality. Adherents of ontological monism recognize only one substance, so they view reality from only one perspective (mono-perspective). Adherents of epistemological monism only see one pattern of truth, even though what is known does not always correspond to the object of known (Kattsoff, 1953).

Moderation-dualism is wisdom (*al-ḥikmah*) that arises from knowledge and deeds based on expertise (Al-Ṣāwī, n.d.). *Ḥukamā'* understands the position of things so that they can place them in harmony, without contradiction. Wisdom also means prioritizing important things over others, so *Ḥukamā'* must fulfill the following pillars ('Āsyūr, 1985).

1) True and solid knowledge that the proof is methods and approaches validity, and its resistance to various tests (falsification).
2) Smart (*al-ḥilm*) combines deep knowledge and compassion so that the *Ḥukamā* can manage negative energy into a positive one. The Prophet Muhammad praised the leader of the al-Asyāj tribe with the words: "In you, there are two things that Allah loves, cleverness (*al-ḥilm*) and prudence (*al-ānah*)".
3) Prudence (*al-ānah*) that means not being hasty in deciding cases. The measure is to fulfill the *"fatabayyanu"* command by conducting surveys, observations, and so on according to the context.

Imam al-Syāfi'ī (d. 204 H/820 AD) was a wise man who succeeded in moderating between the contextual tendencies of *ahl al-ra'y* and the textual tendencies of *ahl al-ḥadīṡ* (Al-Khinn, 2000), so he was called the helper of the Sunna (*nāṣir al-sunnah*) (Al-Mun'im, 2017). For example, al-Syāfi'ī stated that the inheritance law of apostates was determined based on Sunna, while Abu Hanifah prioritized the Quran over the Sunna (Nasrun & Rizki, 2023). In his book, *al-Umm*, al-Syāfi'ī (Al-Syāfi'ī, 2009) confirmed his stance and then asked the following critical question.

فوافقنا بعض الناس على كل كافر إلا المرتد وحده فإنه قال ترثه ورثته من المسلمين فقلنا فيعدو المرتد أن يكون داخلا في معنى الكافرين أو يكون في أحكام المسلمين؟ فإن قلت: هو في بعض حكمه في أحكام المسلمين، قلنا أفيجوز أن يكون كافرا في حكم مؤمنا في غيره؟

> *We agree with some people regarding non-Muslim inheritance laws, except regarding apostates. Because they said that Muslims inherited apostates, so we ask: Is the law of apostates included in non-Muslim inheritance law or Muslim inheritance law? If you answer that some of them apply Islamic law, then we ask: Is it permissible for an apostate to be half non-Muslim and half Muslim?*

It shows that al-Syāfi'ī moderates the Quran and Sunna because he accepts both and places them according to their respective contexts. It means that al-Syāfi'ī assumes that the Quran and Sunna complement each other in determining Islamic legal norms. Referring to the second matrix (metaphysical paradigm), this is an assumption about valid sources of law. The ulemas of the al-Syāfi'ī school of thought place the Quran as the source of Islamic law, while the Sunna only provides information about what Allah commands and prohibits. Al-Ghazālī stated (Al-Ghazālī, 2000):

وإن اعتبر السبب الملزم فهو واحد وهو حكم تعالى، لكن إذا لم نجرد النظر وجمعنا المدارك صارت الأصول التي يجب النظر فيها أربعة كما سبق.

If we look at the reasons that make the law binding (mulzim), there is only one, namely provisions from Allah. But if the binding aspect (mulzim) is unlooked at, and all sources grouped (al-madārik), then the sources (al-uṣūl) studied are four, as mentioned before.

It means that the Quran, Sunna, consensus (*al-ijmā*), and deductive inference (*al-qiyās*) are the places where the law is found (*al-madārik*). But binding laws (*mulzim*) are only enforced by commands and prohibitions from Allah. However, the Prophet Muhammad PBUH was able to establish binding laws (*mulzim*) through his role as government (*al-imam*). According to al-Qarāfī (Al-Qarāfī, 2001), Prophet Muhammad performed three roles: (1) giving fatwas (*al-fatwā*) and delivering treatises (*al-tablīgh*), (2) judging (*al-qaḍā'*), and (3) governing (*al-imāmah*). Thus, moderation between the Quran and Sunna means moderation between *Fiqh* and Siyasa. In the context of *vorsicht*, it produces a multi-perspective worldview or multi-dimensional perspective.

This assumption about valid sources of law produces two ways of problem-solving: (1) in which the Quran and Sunnah explain each other, and (2) the Sunna, in the sense of Siyasa, determines Sharia laws. In the context of *vorgrif*, this problem-solving is a conceptual framework that moderates between *Fiqh* and Siyasa, so its essence is moderatism. The authors concluded that metaphysical paradigms provide a model of al-Syāfi'ī's school of thought, moderatism. According to Kuntowijoyo, the theo-anthropocentrism paradigm has a dualistic model. Then what about in the field of Aqida?

Even though al-Syāfi'ī founded a moderate school of thought in jurisprudence, in the *aqida* field, he followed the Asy'ari school of thought. It explains that Imam al-Syāfi'ī succeeded in moderation because his perspective (*vorsicht*) is multi-dimensional, so Syāfi'iyyah ulemas such as al-Ghazālī applied this thinking pattern as a problem-solving (*vorgrif*) that it's essence is moderatism.

Imam al-Ghazālī and other ulemas (called *madrasa takhrīj al-furū alā al-uṣūl*) were figures who succeeded in moderating the *Uṣūl al-Fiqh*. He moderated between Muktazilah thought, which tended towards Greek philosophy, and Mutakallimin thought, which tended towards tradition (Sunna). Moderat attitude led him to select the subject matter of *Uṣūl al-Fiqh* and placed logic as the introduction to his *Uṣūl al-Fiqh* book, *al-Mustaṣfā*. Al-Ghazālī applies an epistemological pattern called the skepticism method (*syakk manhaji*), which lasts temporarily during the research process (Sabil, 2024). It shows that al-Ghazālī used a multi-perspective and multi-dimensional thinking pattern.

This description shows the conceptual framework (*vorgrif*) that underlies the paradigm of moderate thinkers. It concluded that *ahl al-sunnah wa aljamā'ah* ulemas developed a multi-perspective and multi-dimensional thinking pattern (*vorsicht*). It forms a moderate tradition (*vorhabe*) among Shafi'iyyah ulemas. Moderation between text and context leads moderate thinkers to moderation between *Fiqh* and *Siyasa* and moderates between Sharia law and custom. Therefore, they treated Sharia law and customary law as two complementary sides (Sabil, 2024). The authors believe moderate tradition also applies in the Sultanate of Aceh Darussalam.

2. Discussion

Based on the Definition of *Fiqh* reform, modernization, and moderation, this section discusses *Fiqh reform* in Aceh Darussalam Sultanate in the case of *hareuta sihareukat*. Based on hermeneutics, the first step is finding *vorhabe* (tradition) and then analyzing the *hareuta sihareukat* case.

a. Moderate tradition in The Sultanate of Aceh Darussalam

As stated in its constitution, the Sultanate of Aceh Darussalam follows the path of *ahl al-sunnah wa aljamā'ah*. Apart from that, the *sarakata*

(regulations) compiled during the reign of Sultan Iskandar Muda (1607-1636 AD) stated that the Sultanate of Aceh Darussalam follows the al-Syāfi'ī School of thought (Daud, 2010). It strengthens the presumption that the laws that apply in the Aceh Sultanate refer to the books of its school of thought.[1] During the reign of Sultan Iskandar Muda, Acehnese ulema copied several books of Syafi'i followers, including the book *Syarḥ al-Maḥallī*, copied in 1619 AD (Fathurrahman, 2010). In the following period, *Fiqh* books were written in Jawi (Melayu-Jawi), using Arabic script,[2] including the books *Mir'at al-Ṭullāb*, *Safinat al-Ḥukkām* and *Ḥujjah Bālighah*.

Shaykh' Abd al-Ra'uf al-Sinkilī finished writing *Mir'at al-Ṭullāb* on Saturday, 8 Jumadilakhir 1083 H/1 October 1672 AD (Al-Sinkilī, 1770). According to Amirul Hadi, al-Sinkili is a moderate ulema figure, as seen in his treatment of *the wujudiyyah* movement (Hadi, 2010**).** The authors believes that his moderate attitude influenced his thinking in the legal field, so he moderated *Fiqh* and *Siyasa*. Therefore, he did not discuss worship in the book he dedicated as a guide for judges in Aceh unless criminal and civil law. According to al-Qarāfī (Al-Qarāfī, 1938), there is no need for the judge's intervention in worship matters because they discuss the benefits of the afterlife. Considering that al-Sinkili was the head of the Supreme Court (*Qāḍi Mālik al-'Ādil*), so his moderate attitude influenced the tradition of Sharia law implementation in Aceh.

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[1]In the Dayah Tanoh Abee library collection, several Arabic fiqh manuscripts that copied in Aceh were found, including: *Syarḥ al-Maḥallī*, the work of Jalāl al-Maḥallī (copied in 1619 AD), *Syarqawī*, the work of Imam al-Syarqawī (copied in th. 1718 AD), *Fatḥ al-Qarīb*, the work of Abū Qāsim (copied in 1825 AD), *Fatḥ al-Wahhāb*, the work of Zakariyyā' al-Anṣarī (copied in 1830 AD), *Tuḥfat al-Muḥtāj*, the work of Ibn Ḥajar (copied in 1842 AD), *al-Taḥrīr*, the work of Zakariyyā' al-Anṣarī (copied in 1843 AD), *Al-Zubab*, the work of Imam al-Ramlī (copied in 1851 AD), *Minhāj al-Ṭālibīn*, the work of Imam al-Nawawī (copied in 1861 AD), *Fatḥ al-Jawad*, the work of Imam al-Ramlī (copied in 1867 AD), *Fayḍ al-Mālik*, the work of al-Qalyūbī (copied in 1867 AD), *Nihāyat al-Muḥtāj*, the work of Imam al-Ramlī (copied in 1874 AD).

[2]Jawi language *Fiqh* books written after the reign of Sultan Iskandar Muda include: *Ṣirāṭ al-Mustaqīm*, dan *Bāb al-Nikah*, the work of al-Rānirī written during the time of Iskandar Ṡānī (1636-1641 AD), *Mir'at al-Ṭullāb*, al-Sinkilī's work written during the time of Ṣafiyyat al-Dīn (1641-1675 AD), *Ilmu Fikih* (anonymous) written during the time of Jamāl al-'Ālam (1704-1726 AD), *Safinat al-Ḥukkām* dan *Ḥujjah Bālighah* works by Jalāl al-Dīn al-Tarūsanī written during the time of Johan Syāh (1735-1760 AD).

Generally, the *Jawi Fiqh* book follows the provisions accepted among Syāfi'iyyah ulemas, so customs such as *hareuta sihareukat* (joint property in marriage) are not contained in the book because this is government policy. In Islam, this is called Siyasa Sharia, which is preceded through deliberation and consideration by the ulema, and then *qanun* is implemented to maintain order, benefit, and stability (Khallāf, 1977; Sulfinadia & Roszi, 2024).

According to Mawardī *(Al-Mawardī, n.d.)*, the existence of *imāmah* is to carry out prophetic duties to maintain religion and politics (*Siyasa)*, so the *imam's* obligations are 1) implementing Sharia law and 2) realizing the benefits of the people. The first task is the government's authority as the highest leader (*al-imām al-a'ẓam*), and the second task is to *mujtahids, muftis*, and judges because they are under the *imam's* authority (al-Qarāfī, 1938; Hasan et al., 2023).

The rule of jurisprudence (*qawā'id fiqhiyyah*) states that government actions depend on the benefit (Al-Suyūṭī, 1960), so policies are based on the people's benefit. Its general nature means that political policy also influences the work of *mujtahids, muftis*, and judges but does not eliminate their independence because *al-adillah al-syarī'ah* (Quran, Sunna, *al-ijmā'* and *al-qiyās*) guides *mujtahids and muftis*, and judges guidance is witnesses and evidence (Al-Qarāfī, 1938; Taufiqurohman & Fauziah, 2023).

Following *Shafi'iyyah* moderation, Acehnese ulema recognizes two dimensions of law: 1) the dimension of *Fiqh* in the form of Sharia provisions, and 2) the dimension of Siyasa in the form of Sharia law implementation (Tarantang et al., 2024). They placed these two dimensions into their position, which means moderation-dualism. In the implementation (*tanfīẓ*) of Sharia law, Acehnese ulema occupies the first position in the administration of law and justice (Hadi, 2004), but have no authority in the Siyasa (Al-Qarāfī, 1938).

Even though they are not authorized, ulema is obligated to consider the context of Siyasa because there is potential for deviation from Sharia law. The *adat hareuta sihareukat* shows that the Acehnese ulema approves the custom in the Aceh Sultanate. It means that Acehnese ulemas implemented traditions that moderated *Fiqh* and *Siyasa* so that *Fiqh* reform occurred in the Sultanate of Aceh Darussalam. In comparison, the ulema in Damascus do not recognize joint property in marriage (Al-Sibā'ī, 2010), so this is the unique approach of Acehnese ulemas.

b. Fiqh reform in *Hareuta Sihareukat* custom

The authors did not find any scholarly records about the *adat hareuta sihareukat*, but insider and outsider historians state the existence of this custom. For example, Snouck Hurgronje noted that the *haeruta sihareukat* custom was practiced in Aceh by the coastal and highland people (Hurgronje, 1996). This statement is enough to prove the existence of this custom. Regarding its implementation, it can referred to Kutaraja District Court Decision Number 13/1947, dated 16 December 1947 (Ismuha, 1978).

Although there is no written evidence, historians' comments indicate the moderation between *Fiqh* and *Siyasa*. According to Muhammad Said, Iskandar Muda considered women's shares in property during their life together as husband and wife (Said, 1981). After Iskandar Muda, this policy was continued, as stated in the *sarakata* (regulation) of Sultan Syamsul Alam (1726 AD). The transliterations of this *sarakata* can be seen in the appendix of Van Langen's book (Van Langen, 1997). Amirul Hadi (Hadi, 2004) quoted a section of the *sarakata* that emphasized that hurting women was against customary law in Aceh.

According to Zakaria Ahmad, Iskandar Muda's policy is a form of integration of custom (*adat*) and Sharia law. The adjustment of customary law (*hukum adat*) and Sharia law proves how deeply Islamic teachings have penetrated the lives of the Acehnese people. Even ulema raised the status of women in the legal system, so they were considered progressive (Ahmad, 1972). Muḥammad Abū Zahrah stated that Muslims can implement customs based on different benefits from one region to another as long as they do not deviate from the texts of the Sharia (Zahrah, 1958; Mahmudi et al., 2024; Hasan, 2023). Therefore, the ulema must study this custom deeply before its implementation. So, what is the evidence that Acehnese ulema implemented the traditions that moderate *Fiqh* and Siyasa so that *Fiqh* reform occurred?

As explained previously, there is no written evidence, so it cannot concluded with a posteriori patterns. However, it does not prevent the inference with a priori patterns, especially in historical studies. According to Kuntowijoyo, historical researchers use conceptual generalisations, where the terms used have their denotations and connotations (Kuntowijoyo, 2005), so

this inference can't based on a posteriori patterns (Wardiono, 2019). Next, the authors generalize a premise about the moderatism of the Acehnese ulema.

First, it emphasized that al-Sinkili is a figure who influenced the legal system in the Sultanate of Aceh because he served as *Qāḍi Mālik al-'Ādil* during the reign of four sultanates. Second, al-Sinkili's moderation covers the areas of Aqida, Sharia, and Siyasa. In the Aqida and Sharia fields, al-Singkili's moderation is visible in his book *Tanbīh al-Māsyi*. He moderates Sharia and Sufism so that the Aqida he adheres to is *wasaṭiyyah* (Fathurrahman, 1999). In the Siyasa field, his support for women's leadership shows moderatism treatment (Hadi, 2010).

Based on this fact, the authors generalized a premise that al-Sinkili is moderate in Siyasa. Furthermore, the *hareuta sihareukat* custom indeed includes Siyasa issues involving the role of *Qāḍi Mālik al-'Ādil*. Based on these premises, the authors conclude that al-Sinkili moderates the *hareuta sihareukat* custom. Next, the authors provide a supporting argument that the *hareuta sihareukat* custom is moderated between *Fiqh* and Siyasa because Siyasa is the applied aspect of *Fiqh*.

Referring to al-Qarāfī's opinion regarding the difference between *ḥukm* and *tanfīż*, there is no more *ḥukm* after revelation is complete because Sharia law is *khiṭāb* in the form of revelation. While the application of the Sharia (*tanfīż*) includes aspects not regulated by the text of Sharia, the Prophet Muhammad stated the following (Al-Dāruqutnī, 2004):

أن رسول قال: "إن فرض فرائض فلا تضيعوها، وحدّ حدودا فلا تعتدوها، وحرم أشياء فلا تنتهكوها، وسكت عن أشياء رحمة بكم غير نسيان فلا تسألوا عنها.

> *Indeed, Allah sets various obligations, so do not ignore them. Allah sets boundaries, so do not step over them. Allah has forbidden some things, so do not violate them, and Allah is silent about some things as a mercy for you, not because forget, so do not ask.*

What the Prophet Muhammad called matters that Allah has left silent is the government's authority to determine laws (*insyā' al-ḥukm*), namely *qanun*, but on condition that it does not conflict with the teachings of the Sharia. In addition, the judge applies the *qanun* in court, so in the application (*tanfīż*) of

Sharia law, there are two authorities (*insyā' al-ḥukm*): first, the government authority (*al-imām al-a'ẓam*) in determining the benefit of the people, and second, the authority of the judge (*al-qāḍī*) in deciding cases in the court.

Judges must ensure that the dogmatics of Sharia law do not cover the cases that are tried based on *adat*, *reusam,* or *qanun*. For this reason, the judge must understand the facts surrounding the case at hand based on evidence and witness statements. Judges must also understand the intent (*maqasid*) contained in the provisions of Sharia law (Trishananto et al., 2024). These two things can only be held by jurists who fulfill the three pillars of wisdom: true and solid knowledge (*al-ilm*), smartness (*al-ḥilm*), and prudence (*al-ānah*).

To moderate between *Fiqh* and Siyasah in the context of *adat hareuta sihareukat*, ulema must moderate the following two dimensions so they do not contradict each other: First, the dimension of women's property ownership. Second, the dimension of the family's living needs, and then ensured that the decisions taken do not conflict with Sharia law.

The ulema of various schools of thought distinguishes ownership rights to property and the issue of living needs in the family because they recognize women's ownership rights to property as the same as men's rights. Regarding this first dimension, Imam al-Syāfi'ī stated that it is not permissible for a husband to control his wife's property (Asy-Syāfi'i, 2001). As for the second dimension, Islam places the burden on the husband. It does not mean eliminating the wife's ownership rights to property, nor does it prohibit the wife from working to help her husband meet the family's living needs.

The cost of living is a consequence of the marriage contract as long as the wife fulfils her obligations in household life, so ulemas agree that the husband is obliged to provide support for the wife (Al-Sarakhsī, 2001). According to Ibn Hazm (Ibn Ḥazm, n.d.), taking care of a husband is required by Allah, so Allah requires the wife's living cost to the husband, even though the wife has more property than the husband. Ulema agrees that household rights and obligations are spacial limits, not rights limits. Therefore, Imam Malik (Mālik, 1994) stated that what a husband may prohibit his wife from doing is leaving his home, not prohibiting her from working. Women can do some work at home, such as

trading or sewing, but *Fiqh* ulema agrees that husbands should not force their wives to do this work. So what if she works willingly?

Regarding Satria Efendi, there are two models of family culture in Muslim communities. The first is a model that differentiates between the husband's and wife's assets in the household. Second, the cultural model is not as different as in Indonesia. (Efendi, 2010). In the first model, the husband can prohibit his wife from working because her activity is limited to the rights that arise from the marriage contract (Al-Jurjāwī, 1997). According to Mutakallimin ulemas, if the husband does not provide for the wife's living cost, then it becomes a debt unless the wife willingly frees the husband from this debt (Ibn Qudāmah, 2000). If the wife's willingness can free the husband from obligation for the wife's living cost, then the husband's willingness can free the wife from activity restrictions so she can work.

In societies that do not separate husband and wife's assets, it is normal for wives to work to provide for the family, especially if they have children. According to al-Sarakhsī (Al-Sarakhsī, 2001), the child's living expenses are obligatory on the husband because he is the parent. It also applies to the wife because she is the mother and the child's parent. For Ḥanafiyyah and Syāfi'iyyah ulemas, the child's living expenses paid by the wife become the husband's debt but can be released if the wife frees him. However, according to Ḥanbaliyyah ulemas, it does not become a debt (Ibn Qudāmah, 2000).

The opinions of *Fiqh* experts from various schools of thought show the opportunity to moderate the dimension of women's property ownership and family living needs. In this way, the Acehnese ulema could approve the policies taken by Sultan Iskandar Muda. Therefore, it concludes that Acehnese ulema used moderate tradition from *ahl al-sunnah wa aljamā'ah*. So does it mean *Fiqh* reform?

Referring to Muḥammad Salīm al-'Awwā's opinion (Al-'Awwā, 2006), *Fiqh* reform means the implementation of Sharia law into reality so that there is a compatibility between the *Fiqh* opinions and the needs of the people. Referring to the tradition, perspective, and conceptual framework among Syāfi'iyyah followers, it concluded that *Fiqh* reform in the Sultanate of

Aceh Darussalam occurred in moderate tradition. Thus, its paradigm is moderation with a dualistic model, not modernism. This tradition is a horizon, while the reader gains by a tradition (*vorhabe*) that gives him a horizon, so he must carry out a fusion of horizons.

Acehnese ulema moderated *Fiqh* and *Siyasa*, so their opinions aligned with the people's needs. This is a valuable lesson for ulema and the Aceh Government in implementing Sharia law today. The authors believe it can be adopted by legal systems in other Islamic countries facing similar challenges.

D. Conclusion

The constitution of The Sultanate of Aceh Darussalam states that apart from the Quran, Sunna, *al-ijmā '*, and *al-qiyās*, so *adat (custom), reusam (habits),* and *qanun (regulation)* apply in Aceh's legal system. The three types (*adat*, *reusam*, and *qanun*) are the applied aspect (*tanfīż*) of *fiqh* called Siyasa Sharia, dedicated to servants (*khādim*) for the Sharia. Referred to verse 59 of Surah al-Nisa, Islam gives authority to the government to make laws (*insyā' al-ḥukm*). This verse is the basis for custom authority like *hareuta sihareukat*, but it must not conflict with Sharia texts.

Since the 17th century, Iskandar Muda has implemented the *hareuta sihareukat* custom in Aceh. He considered women's shares in property during their life together as husband and wife. Iskandar Muda formulated this custom under the moderate paradigm moderates *Fiqh* and *Siyasa*. Acehnese ulema, who served as chairman of the Supreme Court (*Qāḍi Mālik al-'Ādil*), was a moderate figure in Aqida, Sharia, and Siyasa fields. Thus, they can approve Iskandar Muda policy in the Siyasa field, so the moderate paradigm influenced the law system in The Sultanate of Aceh Darussalam.

This study found that moderate is a dualistic thinking pattern that produces a multi-dimensional perspective (*vorsicht*). This perspective produced problem-solving, a conceptual framework that moderates between *Fiqh* and Siyasa (*vorgrif*). All of these formed a tradition (*vorhabe*) that Gadamer called a horizon. It must considered by a reader, so horizon fusion occurs through the three pre-structural elements of understanding: tradition (*vorhabe*),

perspective (*vorsicht*), and conceptual framework (*vorgrif*). In this way, readers can learn from history because reading is not only understanding and interpreting but even applicating.

Acehnese ulema accepted moderate tradition from the al-Syāfi'ī school of thought. This tradition resulted in *Fiqh* reform, which means the implementation of Sharia law into reality, so there is a compatibility between the *Fiqh* opinions and the needs of the people. Acehnese ulema can accommodate the *hareuta sihareukat* custom, which is caused by the moderation of the dimension of women's property ownership rights with family support. They ensured that the custom did not conflict with the Sharia.

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