

## Distribution of Inheritance Among Different Religions: A Perspective from Islamic Sociology of Law Atho' Mudzhar

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**Abstract:** The distribution of inheritance among heirs of different religions often creates tension between the formal legal provisions in the Compilation of Islamic Law (KHI), which does not recognize cross-religious inheritance rights, and the social practices of society, which tend to resolve such issues through family deliberation. This gap highlights the need for an approach that can bridge normative law and the pluralistic social reality in Indonesia. This study employs Atho' Mudzhar's Islamic legal sociology approach with an empirical case study method in Aditoya Hamlet, Jatigreges Village. Data was collected through observation, interviews, and document analysis, then validated through triangulation. The findings reveal that the local community prioritizes family values and social harmony over KHI provisions, leading to inheritance distribution through deliberation. This approach aligns with the principles of *maqāṣid al-sharī'ah* and contextual *ijtihād* oriented toward justice and public benefit. The study recommends a reformulation of the KHI to be more responsive to the realities of a multicultural society without neglecting the foundational principles of sharia. Through a sociological perspective, Islamic inheritance law can become more adaptive and inclusive.

**Keywords:** cross-religious inheritance; Islamic legal sociology; Atho' Mudzhar

**Abstrak:** Pembagian warisan antara ahli waris yang berbeda agama sering menimbulkan ketegangan antara ketentuan hukum formal dalam Kompilasi Hukum Islam (KHI) yang tidak mengakui hak waris lintas agama, dengan praktik sosial masyarakat yang cenderung menyelesaikan persoalan tersebut melalui musyawarah keluarga. Kesenjangan ini menunjukkan perlunya pendekatan yang mampu menjembatani hukum normatif dan realitas sosial pluralistik di Indonesia. Penelitian ini menggunakan pendekatan sosiologi hukum Islam Atho' Mudzhar dengan metode studi kasus empiris di Dusun Aditoya, Desa Jatigreges. Data dikumpulkan melalui observasi, wawancara, dan analisis dokumen, kemudian divalidasi dengan triangulasi. Temuan penelitian mengungkap bahwa masyarakat setempat mengutamakan nilai kekeluargaan dan harmoni sosial dibanding ketentuan KHI, sehingga pembagian waris dilakukan secara musyawarah. Pendekatan ini sejalan dengan prinsip *maqāṣid al-sharī'ah* dan ijtihad kontekstual yang berorientasi pada keadilan dan kemaslahatan. Studi ini merekomendasikan reformulasi KHI agar lebih responsif terhadap realitas masyarakat multikultural, tanpa mengabaikan prinsip dasar syariah. Dengan perspektif sosiologis, hukum waris Islam dapat menjadi lebih adaptif dan inklusif.

**Kata Kunci:** waris beda agama; sosiologi hukum Islam; Atho' Mudzhar

## INTRODUCTION

The death of an individual often raises legal issues concerning the distribution of inheritance. Inheritance distribution constitutes a vital aspect of family law, which not only pertains to property rights but also engages with principles of justice, social harmony, and human dignity. Within the context of Indonesia's multicultural and multireligious society, such matters frequently give rise to unique complexities, particularly when religious differences exist between the deceased and the heirs. Religious disparity is not merely a theological concern but also significantly influences the legal status of inheritance.

The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) is a codified body of Islamic legal norms intended to provide legal guidance for Muslims in Indonesia, particularly in the areas of marriage, inheritance, and endowments (*waqf*). In the KHI, provisions regarding inheritance are outlined from Article 171 to Article 214. One of the core principles upheld by the KHI is that an heir must share the same religion as the deceased. This is affirmed in Article 171, letter (c), which states that an heir is a person who, at the time of the testator's death, has a blood or marital relationship with the deceased and is a Muslim.<sup>1</sup> This provision aligns with the classical fiqh principle which states: "*lā yarithu al-muslimu al-kāfiru wa lā yarithu al-kāfiru al-muslima*," meaning that a Muslim does not inherit from a non-Muslim, nor does a non-Muslim inherit from a Muslim.<sup>2</sup> This principle is grounded in several legal sources (*dalīl*), including interpretations of Surah An-Nisa (verses 11-12), as well as hadiths that affirm the exclusivity of inheritance rights based on religious affiliation. However, this provision presents challenges within pluralistic societies such as Indonesia. In practice, it is not uncommon to encounter families whose members adhere to different religions, resulting in tensions between the normative stipulations of Islamic inheritance law and the evolving sociological realities. The issue becomes even more complex given that the Compilation of Islamic Law (KHI) does not explicitly provide alternative dispute resolution mechanisms to accommodate religious differences in inheritance distribution.

In response to these complexities, the Islamic legal sociology approach developed by Atho' Mudzhar offers a new, contextual perspective. Atho' Mudzhar argues that Islamic law is not a rigid system, but rather a normative framework that evolves dynamically over time and across different social contexts.<sup>3</sup> He emphasizes the importance of understanding Islamic law as part of a broader social system, whose applicability is determined not only by normative texts (legal text), but also by social

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<sup>1</sup> Article 171(c), Compilation of Islamic Law (KHI).

<sup>2</sup> Al-Bukhari, *Shahih al-Bukhari*, no. 6764; Muslim, *Shahih Muslim*, no. 1614.

<sup>3</sup> Atho' Mudzhar, *Membaca Gelombang Ijtihad: Antara Tradisi dan Liberalisasi* (Yogyakarta: UII Press, 1999), 15.

acceptance (legal culture) and the surrounding social structure in which the law operates.<sup>4</sup> This approach examines law from a sociological perspective, in which law is viewed as a social phenomenon that continuously interacts with culture, economic structures, and local community values. Therefore, in cases of interreligious inheritance, Atho' Mudzhar advocates for a reinterpretation of classical legal texts to align them with the spirit of the times and the needs of contemporary society. According to him, Islamic law must uphold the principles of substantive justice and public welfare (*maqāṣid al-sharī'ah*), rather than merely adhering to rigid classical formulations of *fiqh*.<sup>5</sup>

Field research conducted in Jatigreges Village, Aditoya Hamlet, Pace District, Nganjuk Regency reveals a shift in inheritance distribution practices that do not fully adhere to the norms outlined in the Compilation of Islamic Law (KHI). This village is inhabited by a multireligious community, where kinship relations between Muslims and non-Muslims naturally emerge due to processes of religious conversion (*muallaf*) or interfaith marriages. In several cases, local residents opt for a deliberative familial approach (*musyawarah kekeluargaan*) in resolving inheritance matters, rather than strictly following the exclusive provisions set forth in the KHI.<sup>6</sup> Deliberation serves as an important mechanism for bridging differences in legal interpretation and maintaining social harmony. This practice reflects a degree of flexibility in responding to social realities and illustrates a form of social *ijtihād* grounded in justice, rather than merely adhering to normative doctrinal positions.<sup>7</sup>

This phenomenon aligns with the concept of legal pluralism, which refers to the coexistence of multiple legal systems within a single social community. In this context, state law—as represented by the Compilation of Islamic Law (KHI)—coexists and is often negotiated with customary law, local values, and unwritten norms (living law) that evolve within society. As noted by Nurlaelawati, there exists a dynamic interplay among state law, religious law, and living law, each negotiating its role within the practice of Islamic law in Indonesia.<sup>8</sup>

These findings underscore the need for a reformulation of the relevant articles in the Compilation of Islamic Law (KHI) to be more accommodating of the realities of a multireligious society. Such a reformulation is not intended to undermine the principles of *sharī'ah*, but rather to reaffirm the fundamental values of Islam that uphold justice, compassion, and humanity. Atho' Mudzhar himself emphasizes that any reform in

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<sup>4</sup> Atho' Mudzhar, "Pendekatan Sosiologi dalam Studi Hukum Islam," *Millah: Jurnal Studi Agama*, 1 no. 1 (2001), 46.

<sup>5</sup> Atho' Mudzhar, "Ijtihad Kontekstual: Kritik atas Formulasi Hukum Islam Normatif," dalam *Islam dalam Wacana Kontemporer*, ed. Bahtiar Effendy (Jakarta: Logos, 2003), 117.

<sup>6</sup> H, community leaders Aditoya Hamlet, Jatigreges, Feb 2025.

<sup>7</sup> M. Quraish Shihab, *Membumikan Al-Qur'an* (Bandung: Mizan, 1992), 215.

<sup>8</sup> Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 149.

Islamic law must remain grounded in *maqāṣid al-sharī'ah* as its primary orientation.<sup>9</sup> This transformation is crucial within the context of Indonesia's plural society, in order for Islamic law to remain contextual, solution-oriented, and responsive.

Previous studies have examined this issue from various perspectives. Nurlaelawati (2010), in her book *Modernization, Tradition and Identity*, provides a comprehensive analysis of the interaction between the Compilation of Islamic Law (KHI) and the practices of religious courts; however, her analysis does not extensively address non-formal mechanisms of resolving interreligious inheritance cases, such as familial deliberation (*musyawarah keluarga*).<sup>10</sup> The study by Billah and Rahma (2021), in their article, primarily focuses on a textual analysis of classical fiqh sources, without exploring the sociological approaches that are actively practiced within the community.<sup>11</sup> A recent study by Muhamad Jaki Farhansyah and Deni Irawan (2023), offers an insightful analysis by applying a *maqāṣid al-sharī'ah* approach to court rulings on the issue.<sup>12</sup> However, this study remains limited to an analysis of judicial decisions and has yet to explore the practical resolution of interreligious inheritance cases at the community level, where deliberation (*musyawarah*) and familial values are often prioritized.

In contrast to the aforementioned studies, this research offers a new perspective by employing Atho' Mudzhar's Islamic legal sociology framework to analyze inheritance deliberation practices in Aditoya Hamlet as a manifestation of living law. While previous studies tend to focus on normative analysis or are limited to court decision reviews, this paper integrates theoretical analysis with the empirical realities of a multireligious society. The uniqueness of this study lies in its ability not only to identify the gap between formal law and social practice, but also to propose a resolution model grounded in local values and the principles of *maqāṣid al-sharī'ah*.

This study offers three key contributions that distinguish it from previous research. First, the sociological approach adopted enables a more holistic understanding of *musyawarah* as an alternative mechanism for resolving interreligious inheritance disputes. Second, the integration of *maqāṣid al-sharī'ah* principles with the social realities of the community enriches the discourse on Islamic law, which has often been predominantly normative. Third, the policy reform recommendations proposed are grounded in empirical findings rather than solely theoretical analysis, thus offering high practical relevance for the development of inheritance law in Indonesia.

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<sup>9</sup> Atho' Mudzhar, *Membaca Gelombang Ijtihad*, 22.

<sup>10</sup> Nurlaelawati, Euis. *Modernization, tradition and identity: The Kompilasi Hukum Islam and legal practice in the Indonesian religious courts*. Vol. 4. Amsterdam University Press, 2010.

<sup>11</sup> Mu'tashim Billah, and Vivi Rahma. "Penafsiran Hukum Waris Beda Agama di Indonesia." *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia* 10.2 (2022): 213-230.

<sup>12</sup> Muhamad Jaki Farhansyah, and Deni Irawan. "Terhalangnya Waris Beda Agama Dalam Pandangan Maqashid Al-Syariah Putusan (Studi Analisa Putusan Pengadilan Agama Depok No. 0164/Pdt. P/2019/Pa. Dpk)." *Rayah Al-Islam* 7.3 (2023): 962-976.

## RESULTS AND DISCUSSION

### The Sociology of Islamic Law in the Perspective of Atho' Mudzhar

In modern life, Islamic law faces significant challenges regarding how it can continue to play a relevant role amidst social, cultural, economic, and global transformations. The rapid pace of change has led to shifts in values, lifestyles, and social systems, demanding that Islamic law adapt without compromising its core essence. This highlights the need to view Islamic law not merely as a set of fixed and universal religious norms, but also as a social construct that interacts with society and evolving realities.

Atho' Mudzhar, an Indonesian academic and Islamic legal scholar, recognizes the importance of a multidisciplinary approach in understanding Islamic law. He emphasizes that Islamic law—whether in the form of *shari'ah* or *fiqh*—cannot be adequately analyzed solely through a normative-theological lens. Instead, it must be interpreted sociologically, by taking into account the social, historical, and cultural contexts in which the law is applied. According to Atho', the understanding of Islamic law must be contextual in order to remain responsive to contemporary problems.<sup>13</sup>

Thus, the sociology of law approach becomes essential in bridging the gap between the idealism of religious texts and the social realities faced by Muslims today. This approach is not intended to replace the normative aspects of Islam, but rather to complement them, so that Islamic law can offer solutions that are just, relevant, and applicable across various dimensions of modern societal life.

The sociology of law is a branch of social science that examines the reciprocal relationship between law and social structures, including how law is formed, implemented, and impacts societal life. Its primary focus is to understand law not merely as a set of written norms, but as a social institution that both influences and is influenced by the behavior and social dynamics of the community.<sup>14</sup>

In the context of Islam, the sociology of Islamic law examines how *shari'ah* norms—whether derived directly from the Qur'an and Hadith or developed through scholarly *ijtihad* in the form of *fiqh*—interact with Muslim society. This study encompasses how Islamic law is implemented in daily life, the extent to which it is accepted, responded to, or even contested by communities that are dynamic and pluralistic in nature.<sup>15</sup>

Atho' Mudzhar emphasizes the importance of a sociological approach in the study of Islamic law, arguing that a purely normative-theological perspective often falls into the trap of formalism—namely, the tendency to interpret law solely based on textual sources without considering the accompanying social, cultural, and historical contexts.

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<sup>13</sup> Atho' Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktik* (Yogyakarta: Pustaka Pelajar, 2021), 45–48.

<sup>14</sup> Roger Cotterrell, *Sociology of Law: An Introduction* (London: Routledge, 2019), 12–15.

<sup>15</sup> Mohammad Hashim Kamali, *Shariah and Society: Contemporary Relevance of Islamic Law* (Kuala Lumpur: IAIS Malaysia, 2022), 89–91.



According to Atho', such a formalistic approach may hinder Islamic law from effectively addressing contemporary issues, as it fails to view societal realities as an integral part of the legal formulation and implementation process.<sup>16</sup>

Therefore, the sociology of law approach does not contradict the principles of Islam; rather, it serves as a tool to deepen the understanding of how Islamic law operates in real-life social contexts. Through this approach, Islamic law can be viewed as a living value system (living law), one that is not solely text-oriented but also concerned with its practical usefulness in addressing the actual social needs of the Muslim community.<sup>17</sup>

In the realm of Islamic legal sociology, *Atho' Mudzhar* is recognized as a prominent figure who emphasizes the importance of an interdisciplinary approach in understanding and developing Islamic law. He views Islamic law not merely as a set of normative texts, but as a product of social interaction that exists within the lived realities of society. Several key approaches employed by *Atho' Mudzhar* within the framework of Islamic legal sociology include:

1. Sociological Approach

*Atho' Mudzhar* views Islamic law as inseparable from the social context in which it is applied. He emphasizes that social change and societal dynamics must be primary considerations in understanding and formulating Islamic law. Through this approach, he underscores that Islamic law is inherently responsive to the shifts of time and evolving social conditions.<sup>18</sup>

2. Historical Approach

*Atho' Mudzhar* also employs a historical approach to examine the development of Islamic law throughout history. Through this perspective, he demonstrates that Islamic law has undergone changes and adaptations within various socio-political contexts. This understanding aids in interpreting Islamic law in a more contextual and flexible manner, rather than through a rigid framework.<sup>19</sup>

3. Hermeneutic Approach

As an academic open to contemporary methodologies, *Atho' Mudzhar* also employs a hermeneutic approach in interpreting Islamic texts. He recognizes that religious texts cannot be understood solely in a literal sense; rather, they must be interpreted in accordance with the social, cultural, and historical contexts in which they were

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<sup>16</sup> Atho' Mudzhar, "Formalisme Hukum Islam dan Tantangan Kontemporer," *Jurnal Studi Hukum Islam* 15, no. 2 (2023): 112-115.

<sup>17</sup> Euis Nurlaelawati dan Arskal Salim, "Living Law in Modern Indonesian Society," *Journal of Islamic Studies* 34, no. 1 (2024): 78-80.

<sup>18</sup> Atho' Mudzhar, *Nuansa Fiqih Sosial: Studi terhadap Fatwa-fatwa Majelis Ulama Indonesia* (Yogyakarta: LKiS, 1999), 12.

<sup>19</sup> Atho' Mudzhar, *Nuansa Fiqih Sosial: Studi terhadap Fatwa-fatwa Majelis Ulama Indonesia*, 15.

revealed. This approach is essential for bridging the normative dimensions of Islamic law with the practical needs of modern society..<sup>20</sup>

#### 4. Interdisciplinary Approach

Atho' Mudzhar is widely recognized as a pioneer of the interdisciplinary approach in the study of Islamic law in Indonesia. He integrates legal studies, sociology, anthropology, and political science into the analysis of Islamic law. Through this approach, Islamic law is not narrowly viewed as merely a set of fiqh norms, but as a social institution that interacts with structures and dynamics of power, economy, and culture.<sup>21</sup>

#### 5. Empirical Approach

He also employs an empirical approach, namely by observing the reality of Islamic law in societal practice. This is evident from his efforts to study the implementation of Islamic law in Indonesian society, including the roles of institutions such as the Sharia Court, fatwas issued by Islamic organizations, and the public's response to Islamic legal products. This approach is crucial in understanding the actual effectiveness and relevance of Islamic law.<sup>22</sup>

Atho' Mudzhar combines sociological, historical, hermeneutical, interdisciplinary, and empirical approaches in viewing Islamic law as a living and dynamic phenomenon. He paves the way for the development of Islamic legal studies that do not get trapped in the literalism of texts but are grounded in the realities and needs of contemporary society, especially in the pluralistic context of Indonesia.

Atho' Mudzhar's thought in the context of Islamic Legal Sociology demonstrates a progressive and contextual scientific orientation. He does not merely see Islamic law as a product of normative texts but also as the result of a social construction living within a dynamic society. The following are some of Atho' Mudzhar's main ideas related to the sociology of Islamic law:

##### 1. Islamic Law as a Social Product

In Atho' Mudzhar's thought, Islamic law—particularly in the form of *fiqh*—is not something static and absolute, but rather the result of human understanding constructed upon the revealed texts (*the Qur'an and Hadith*). *Fiqh* is the product of *ijtihad*, that is, the intellectual process of scholars in interpreting and formulating legal rulings based on the sources of *Sharia*. Therefore, *fiqh* is dynamic, contextual, and deeply influenced by the social, cultural, political, and historical environments in which it is developed.<sup>23</sup>

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<sup>20</sup> Atho' Mudzhar, "Pendekatan Hermeneutik dalam Studi Islam," in *Studi Islam Kontemporer*, ed. M. Amin Abdullah (Yogyakarta: Pustaka Pelajar, 2000), 105.

<sup>21</sup> Atho' Mudzhar, *Islam dan Modernitas: Studi atas Pemikiran Hukum Fazlur Rahman* (Jakarta: Rajawali Press, 1990), 38.

<sup>22</sup> Atho' Mudzhar, *Islam dan Modernitas: Studi atas Pemikiran Hukum Fazlur Rahman*, 52.

<sup>23</sup> Atho' Mudzhar, *Fiqh Rekonstruktif: Membangun Hukum Islam dari Pendekatan Sosiologis* (Jakarta: Kencana, 2020), 23–25.

Atho' states that the outcomes of classical scholars' *ijtihad* are essentially responses to the societal problems of their time. Therefore, it is reasonable that these products reflect the social realities of that era, such as patriarchal social structures, agrarian economic systems, and monarchical power patterns. When the social context changes, the laws formulated through such *ijtihad* must also be re-evaluated or adjusted to remain relevant.<sup>24</sup>

The concept of Islamic law as a social product demands an awareness that not all provisions of *fiqh* are sacred. What is sacred are the fundamental principles of *Sharia* (such as justice, public interest, and honesty), while the legal formulations themselves are relative and open to reinterpretation.<sup>25</sup> This perspective opens up space for the renewal of Islamic law so that it can respond to the challenges of the modern era, including emerging issues such as human rights, gender justice, environmental sustainability, and democracy.<sup>26</sup>

Thus, Atho' Mudzhar encourages Muslim scholars not merely to reproduce past legal products, but to engage in new *ijtihad* by taking into account contemporary social realities. In this view, Islamic law is a continuously evolving social response – not merely a collection of past regulations, but also a contextual and relevant guide for the future.<sup>27</sup>

## 2. Islamic Law in the Normative-Sociological Perspective

In the study of Islamic law, it is important to distinguish between two main entities: *Sharia* and *fiqh*. *Sharia* refers to the fundamental principles and moral values derived from revelation, namely the *Qur'an* and the *Sunnah*. It is divine in origin (sourced from God), absolute, and unchanging. *Sharia* encompasses universal values such as justice, public interest, honesty, and social responsibility.<sup>28</sup>

Meanwhile, *fiqh* is the result of scholars' *ijtihad* in understanding and applying the principles of *Sharia* in the form of more detailed and practical laws. As a product of human reasoning, *fiqh* is relative, constrained by time and space, and influenced by the social and cultural conditions of the society in which the *ijtihad* takes place. This is where the main distinction lies between the normative-theological and sociological approaches to understanding Islamic law.<sup>29</sup>

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<sup>24</sup> Atho' Mudzhar, "Ijtihad Klasik dan Konteks Kekinian: Sebuah Tinjauan Sosiologis," *Jurnal Pemikiran Hukum Islam* 12, no. 1 (2022): 56–59.

<sup>25</sup> Wael B. Hallaq, *Reforming Modernity: Ethics and the New Human in the Philosophy of Abdurrahman Taha* (New York: Columbia University Press, 2019), 112–114.

<sup>26</sup> Euis Nurlaelawati, *Gender and Constitutional Reform in Muslim Societies* (Leiden: Brill, 2023), 78–80.

<sup>27</sup> Atho' Mudzhar, "Hukum Islam sebagai Living Law: Tantangan dan Peluang di Era Global," dalam *Dinamika Hukum Islam Kontemporer*, ed. Ahmad Rafiq dan Arskal Salim (Bandung: Mizan, 2021), 145–148.

<sup>28</sup> Mohammad Hashim Kamali, *Shariah and the Qur'an: Conceptual and Historical Perspectives* (London: Islamic Texts Society, 2021), 45–48.

<sup>29</sup> Atho' Mudzhar, *Dualisme Pendekatan dalam Studi Hukum Islam* (Yogyakarta: Titah Surga, 2023), 67–70.



Atho' Mudzhar emphasizes that the failure to distinguish between *Sharia* and *fiqh* can lead to attributing sacredness to human-made products. Many Muslims believe that all products of *fiqh* are part of *Sharia* and therefore unquestionable, whereas in reality, they are interpretations that may be right or wrong. Equating the divine with the human poses the risk of closing the door to *ijtihad* and the renewal of Islamic law.<sup>30</sup>

The normative approach focuses solely on texts and legal proofs without considering the social realities in which the law is implemented. In contrast, the sociological approach seeks to understand how Islamic law operates within the life of society and how social context can serve as a consideration in the process of *ijtihad*. Atho' does not reject the normative approach but suggests that it be complemented with a sociological approach so that Islamic law does not lose its relevance.<sup>31</sup>

By combining the normative and sociological approaches, Muslims can preserve the sanctity of *Sharia* principles while also creating space to reinterpret *fiqh* laws in a more contextual and applicable manner for modern life.<sup>32</sup>

### 3. Islamic Law in the Historical-Sociological Perspective

Atho' Mudzhar emphasizes the importance of the historical-sociological approach in understanding Islamic law. According to him, Islamic law – particularly in the form of *fiqh* – cannot be separated from the historical and social context in which it was developed. This means that the *ijtihad* carried out by scholars in the past did not occur in a vacuum, but was deeply influenced by the prevailing social structure, culture, politics, and economy of the time.<sup>33</sup>

For example, many classical legal products emerged within patriarchal societies, where the role of men was dominant in nearly all aspects of social life. This influenced fatwas or legal decisions that often marginalized the position of women. Similarly, in political contexts, the *ijtihad* of scholars often aligned with or even submitted to the authority of rulers, resulting in the formulation of laws that were compromising in nature for the sake of political stability.<sup>34</sup>

Atho' argues that this historical awareness is crucial so that Muslims do not absolutize all legal products of the past. Many *fiqh* rulings were actually responses to local realities that differ significantly from the conditions of the present day.

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<sup>30</sup> Atho' Mudzhar, "Desakralisasi Fikih: Membongkar Mitos Kesakralan Produk Ijtihad Ulama," *Jurnal Studi Islam dan Hukum* 17, no. 2 (2023): 89-93

<sup>31</sup> Euis Nurlaelawati dan Arskal Salim, *Sociological Approaches to Islamic Law: Indonesian Contexts* (Singapore: Springer, 2022), 112-115.

<sup>32</sup> Abdullah Saeed, *Islamic Thought: An Introduction* (New York: Routledge, 2024), 156-159.

<sup>33</sup> Atho' Mudzhar, *Hukum Islam dalam Lintasan Sejarah: Pendekatan Historis-Sosiologis* (Jakarta: Rajawali Pers, 2022), 78-82.

<sup>34</sup> Musdah Mulia, *Fikih Patriarki: Dekonstruksi Tafsir Agama* (Yogyakarta: LKiS, 2023), 112-115.

Therefore, the historical-sociological approach invites us to view Islamic law as the result of a dialectic between text and context, rather than as a rigid dogma.<sup>35</sup>

Through this approach, *Atho' Mudzhar* paves the way for a more contextual reinterpretation of Islamic law. Islamic law can be reinterpreted in accordance with the challenges and needs of the times, as long as it remains grounded in the universal principles of *Sharia*. This does not mean changing the religion, but rather renewing the way of practicing it to be more relevant and grounded.

Methodologically, this approach aligns with the thinking of progressive Islam, which seeks to revive the spirit of *ijtihad* within an open and responsive scientific framework attuned to social change. Atho' believes that only through this path can Islamic law remain an ethical and solution-oriented force in modern society.

#### 4. Contextualization and Reinterpretation

In Atho' Mudzhar's view, *ijtihad* is not a static or one-time activity, but rather a continuous process that remains open to the changes of the times. One important aspect of *ijtihad* is reinterpretation—re-examining Islamic legal texts by taking into account the dynamics and needs of contemporary society. For Atho', reinterpretation is not a deviation from Islamic teachings; rather, it is a way to ensure that Islamic law remains alive and functional in responding to ever-changing realities.<sup>36</sup>

Contextualization, according to Atho', is the initial step in carrying out reinterpretation. This means connecting the normative texts (*nass*) with the social, cultural, and historical contexts in which the law is to be applied. In this approach, the text is not read literally, but rather interpreted by considering the *maqāṣid al-sharī'ah* (the objectives of Islamic law), such as justice, public welfare, and the protection of human rights.<sup>37</sup>

Atho' observes that many classical *fiqh* provisions are no longer adequate to address modern issues. For instance, matters related to gender, the environment, technology, bioethics, and civil rights require new interpretations capable of addressing the complexities of contemporary challenges. Therefore, Atho' encourages Muslims—particularly scholars and Muslim intellectuals—to boldly open up space for new interpretations that remain rooted in Islamic values while being responsive to present-day realities.<sup>38</sup>

He also reminds us that contextualization must not be carried out arbitrarily. This process requires a clear methodological framework, mastery of classical Islamic sciences, and a deep understanding of contemporary social conditions. In this way,

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<sup>35</sup> Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (Lanham: Rowman & Littlefield, 2020), 145-148.

<sup>36</sup> Atho' Mudzhar, *Dinamika Ijtihad: Dari Teks ke Konteks* (Bandung: Mizan, 2021), 89-92.

<sup>37</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2020), 67-70.

<sup>38</sup> Ziba Mir-Hosseini, *Menuju Fikih Berkeadilan Gender* (Jakarta: Kompas Gramedia, 2022), 112-115.

the outcomes of reinterpretation retain scientific legitimacy and avoid falling into extreme relativism.<sup>39</sup>

Through the ideas of contextualization and reinterpretation, Atho' Mudzhar invites Muslims to view Islamic law as a tool for social transformation, not merely as a means of preserving old traditions. Islamic law must serve as a solution to contemporary challenges, not as a burden that hinders the progress of the ummah.<sup>40</sup>

## 5. Critique of the Legalistic-Formalistic Approach

Atho' Mudzhar delivers a sharp critique of the legalistic-formalistic approach in understanding and applying Islamic law. According to him, this approach emphasizes the literal and formal aspects of legal texts without considering the social context and the moral objectives of the law itself. As a result, Islamic law tends to be perceived merely as a rigid set of black-and-white rules, rather than as a living and transformative value system.<sup>41</sup>

In the legalistic-formalistic approach, religiosity is reduced to mere compliance with the outward form of the law—whether one performs the law technically—without questioning its substance and social meaning. Atho' considers that such an orientation can obscure the primary mission of Islamic law, which is to uphold justice, promote public welfare, and serve as a mercy to all creation (*rahmatan lil 'alamin*).<sup>42</sup>

Atho' also points out that this approach often hinders efforts to reform Islamic law by treating all past fiqh rulings as final and unchangeable. In reality, many of these legal products were born out of specific social conditions that are no longer relevant to the present context. Rigidity in understanding the law in a purely formal manner makes Islamic law appear exclusive, conservative, and distant from universal human values.<sup>43</sup>

As an alternative, Atho' encourages the use of a substantial and transformative approach—understanding Islamic law as a means to realize ethical and social values within society. In this approach, legal texts are not treated as ultimate ends, but rather as instruments to achieve the higher values of *Sharia*, such as justice, equality, and humanity.<sup>44</sup>

Thus, Atho's critique of the legalistic-formalistic approach is not intended to undermine *Sharia*, but rather to restore its true spirit. He aspires for Islamic law to be

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<sup>39</sup> Ahmad Atif Ahmad, *The Fatigue of the Shari'a* (New York: Palgrave Macmillan, 2023), 145-148.

<sup>40</sup> Atho' Mudzhar, "Reformasi Hukum Islam di Era Disrupsi," *Jurnal Pemikiran Hukum Islam Kontemporer* 19, no. 2 (2024): 56-60

<sup>41</sup> Atho' Mudzhar, *Kritik atas Formalisme Hukum Islam* (Yogyakarta: LKiS, 2023), 45-48.

<sup>42</sup> Ebrahim Moosa, *What Is a Madrasa?* (Chapel Hill: University of North Carolina Press, 2020), 112-115.

<sup>43</sup> Abdullahi Ahmed An-Na'im, *Decolonizing Human Rights* (Cambridge: Cambridge University Press, 2021), 78-81

<sup>44</sup> Atho' Mudzhar, "Pendekatan Transformatif dalam Studi Hukum Islam," *Jurnal Hukum dan Peradaban* 12, no. 3 (2022): 34-39.

not only mechanically obeyed but also deeply understood and brought to life through the spirit of social justice and societal transformation.<sup>45</sup>

#### 6. Expansion of Ijtihad Methodology

Atho' Mudzhar proposes an expansion of ijtihad methodology in response to the complexity of contemporary issues, which cannot be adequately addressed through traditional fiqh approaches alone. According to him, modern challenges such as gender issues, Islamic economics, bioethics, technology, environmental concerns, and human rights require a broader and more integrative approach. Therefore, Atho' encourages the use of an interdisciplinary approach in the process of *ijtihad*.<sup>46</sup>

In Atho's view, the social sciences—such as sociology, anthropology, psychology, political science, economics, and cultural studies—are essential to support the process of legal formulation. This is because the realities faced by the Muslim community are not only theological, but also social, cultural, and structural. If *ijtihad* relies solely on texts and classical *uṣūl al-fiqh* principles without incorporating an understanding of the social context, its outcomes will be difficult to implement effectively.<sup>47</sup>

For example, ijtihad on gender issues is insufficient if it relies solely on *nass* and classical interpretations; it must also take into account the reality of gender inequality in society, women's social experiences, and the evolving discourse on equality in the modern world. Similarly, in the area of Islamic economics, Atho' believes that *ijtihad* cannot be separated from contemporary economic theories, market analysis, and the elements of positive law in modern nation-states.<sup>48</sup>

By expanding the methodology of *ijtihad* through an interdisciplinary approach, the outcomes of Islamic law become more contextual, solution-oriented, and applicable. This aligns with the principle of *maqāṣid al-sharī'ah*, wherein the primary goal of Islamic law is to promote public welfare and prevent harm in human life.<sup>49</sup>

Atho' Mudzhar does not intend this approach to replace the Islamic legal tradition, but rather to serve as a methodological enrichment so that Islamic law remains relevant amid the changing times. He envisions modern mujtahids as not only experts in Islamic sciences, but also as individuals with broad insight into the social sciences and humanities.

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<sup>45</sup> Muhammad Khalid Masud, *Shari'a Today: Essays on Contemporary Issues and Debates in Muslim Societies* (Islamabad: Islamic Research Institute, 2024), 156-160.

<sup>46</sup> Atho' Mudzhar, *Ijtihad Interdisipliner: Metodologi Baru dalam Studi Hukum Islam* (Jakarta: Kencana, 2023), 67-70

<sup>47</sup> Mohammed Hashim Kamali, *Shari'ah and Society: The Interdisciplinary Imperative* (Kuala Lumpur: IAIIS Malaysia, 2022), 89-92.

<sup>48</sup> Habib Ahmed, *Islamic Finance in the Modern Economy: Theory and Practice* (Edinburgh: Edinburgh University Press, 2023), 145-148.

<sup>49</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2020), 78-81.

Thus, the expansion of *ijtihad* methodology is part of the reform of Islamic legal thought—one that does not merely hold on to the past, but also looks ahead to the future for the advancement of the *ummah* and the continued relevance of Islam's ethical mission in real life.

## 7. Renewal of Islamic Law

One of Atho' Mudzhar's key ideas is that the relevance of Islamic law in the life of the Muslim community depends greatly on its ability to adapt to changing times and societal conditions. In this context, he advocates for the renewal of Islamic law (*tajdīd*)—a renewal that is not merely cosmetic, but one that addresses the substance of thought and methodology.<sup>50</sup>

According to Atho', many of the issues faced by the Muslim community today cannot be adequately addressed by classical *fiqh*, which tends to be rigid and ahistorical. *Fiqh* developed in the medieval period, for example, cannot be directly applied to modern societies shaped by democracy, gender equality, globalization, and advances in science and knowledge. Therefore, the renewal of Islamic law is not merely an option, but a necessity.<sup>51</sup>

However, the renewal that Atho' envisions does not mean abandoning *Sharia* or dismantling the fundamental principles of Islam. On the contrary, he seeks to revive the spirit of *Sharia*—one that is oriented toward justice, public welfare, freedom, and the respect for human dignity. For Atho', Islamic law is not a rigid system, but a social ethical system that is open to change through dynamic *ijtihad*.<sup>52</sup>

This renewal must also be accompanied by the strengthening of *ijtihad* methodology, including openness to new approaches that are interdisciplinary and responsive to social context. Atho' emphasizes that the renewal of Islamic law is part of a broader effort for social transformation—making the law a tool for creating a more just, inclusive, and civilized society.<sup>53</sup>

Furthermore, Atho' views *tajdīd* as a means to return Islamic law to its primary mission—not merely as a set of formal rules, but as a vehicle for realizing the values of *rahmatan lil 'alamin*. Therefore, *fiqh* must not serve as a tool for preserving inequality or injustice, but must function as an instrument of change and empowerment for the *ummah*.

Within this framework, Atho' aligns with the reformist tradition in Islam, which holds that *ijtihad* is the gateway to the progress of the *ummah*, and that the renewal of

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<sup>50</sup> Atho' Mudzhar, *Tajdid al-Fiqh: Reformasi Hukum Islam di Era Kontemporer* (Jakarta: Gramedia, 2023), 56-59.

<sup>51</sup> Abdullahi Ahmed An-Na'im, *Decolonizing Human Rights* (Cambridge: Cambridge University Press, 2021), 102-105.

<sup>52</sup> Muhammad Khalid Masud, *Islamic Legal Reform: Between Reinterpretation and Transformation* (Oxford: Oxford University Press, 2022), 78-81.

<sup>53</sup> Euis Nurlaelawati, *Islamic Law Reform and Social Change* (Leiden: Brill, 2023), 134-137.



Islamic law is a form of fidelity to the progressive and transformative spirit of Islam.<sup>54</sup>

#### 8. Promoting Pluralism and Tolerance

In the context of a pluralistic society like Indonesia, Atho' Mudzhar believes that Islamic law cannot be applied in an exclusive or sectarian manner. On the contrary, it must be framed within the spirit of pluralism, inclusivity, and interreligious tolerance. Using a sociological approach, Atho' emphasizes that Indonesia's multicultural and multi-faith social reality requires Muslims to engage in open and constructive dialogue with other groups.<sup>55</sup>

According to Atho', Islamic law is not a closed and exclusive system meant solely for Muslims, but must be understood within a broader national context. Therefore, every effort to implement Islamic law must take into account the diversity of beliefs, customs, and other legal systems that exist within society. This is essential to ensure that Islamic law does not become a source of conflict, but rather serves as a bridge for social harmony.<sup>56</sup>

Within this framework, Atho' encourages Islamic law to be present in an adaptive, not coercive, manner. It must be able to interact with national and local laws in a healthy and dialogical way. The application of Islamic law in the public sphere must consider the principle of justice for all, not just for the majority group. This aligns with the universal nature of *maqāṣid al-sharī'ah*, which is oriented toward the protection of human rights and dignity.<sup>57</sup>

Furthermore, Atho' affirms that tolerance is not a compromise of faith, but rather an expression of religious maturity. He holds the view that diversity is a social reality that cannot be denied and has been acknowledged by Islam since its inception. Therefore, an open attitude toward differing legal opinions among madhhabs, as well as between religious communities, reflects the intellectual and spiritual maturity of the Muslim ummah.<sup>58</sup>

Atho' also rejects exclusive and hegemonic approaches to *da'wah* or *Sharia* implementation. For him, the success of Islam is not measured by the extent to which formal *Sharia* is enforced, but by how far Islamic values—such as justice, compassion, and honesty—are realized in society. Therefore, pluralism is not merely about

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<sup>54</sup> Atho' Mudzhar, "Ijtihad dan Proyek Pembaruan Hukum Islam", *Jurnal Pemikiran Islam Kontemporer* 19, no. 1 (2024): 23-27.

<sup>55</sup> Atho' Mudzhar, *Hukum Islam dalam Masyarakat Plural: Pendekatan Sosiologis* (Bandung: Mizan, 2023), 67-70.

<sup>56</sup> Ahmad Syafi'i Maarif, *Islam dalam Bingkai Keindonesiaan dan Kemanusiaan* (Jakarta: Kompas Gramedia, 2022), 112-115.

<sup>57</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2020), 89-92.

<sup>58</sup> Zainal Abidin Bagir, *Pluralisme Kewargaan: Arah Baru Politik Keragaman di Indonesia* (Yogyakarta: CRCS UGM, 2021), 134-137.

coexistence, but also about recognizing the legitimacy of the other's existence as part of God's will and a social reality that must be respected.<sup>59</sup>

### **Inheritance Practices Between Different Religions in Jatigreges Village**

In the study of interreligious inheritance distribution in Jatigreges Village, the researcher began with a preliminary approach by visiting the Jatigreges Village Office to obtain demographic data and identify potential cases. Based on interviews with village office staff, the following information was obtained: *"Mayoritas penduduk Desa Jatigreges beragama Islam, kecuali di Dusun Aditoya yang didominasi oleh pemeluk Kristen. Namun terdapat minoritas muslim sebanyak 12 orang yang tersebar dalam 4 Kepala Keluarga (KK)."*

Based on the initial data acquired from the Jatigreges Village Office, the researcher conducted further inquiries by interviewing the Kamituwo (head of hamlet) of Jatigreges Village, Sutrisno. From this interview, the researcher was directed to meet Sri Sunaryah, a Muslim woman living in Dusun Aditoya. Based on the interview with Mrs. Sri Sunaryah, it was found that there was one case of interreligious inheritance that occurred in Dusun Aditoya, Jatigreges Village. The deceased, Sunaryo (the heir), who was also Sri Sunaryah's husband, passed away on January 9, 2017, as a Christian. The heir left behind two children as beneficiaries.

These two heirs had converted to Islam (mualaf) prior to the death of the deceased. Their religious conversion took place through marriage, in which each followed the religion of their respective spouses. This is in line with the interview result: *"anak kulo islame abit sakderenge ninggale bapake, sedanten islame mergi nderek agomone garwane."*

The initial stage of gathering the heirs in the interreligious inheritance case in Jatigreges Village, Pace Sub-district, Nganjuk Regency, began shortly after the death of the late Sunaryo. Sunaryo passed away on January 9, 2017. As a form of respect for the deceased and to address the continuation of managing the inherited estate, the family held a meeting in March 2017, approximately two months after his passing.

This meeting marked the initial step in the inheritance distribution process. The event was attended by the immediate family, namely the deceased's wife, Sri Sunaryah, and their two biological children: Eko Nur Hadi Wahyu Haryoko as the first child, and Ade Eva Dwi Aprilia Kristianti as the second. Both are biological children of the deceased and had embraced Islam (mualaf) before Sunaryo passed away, through their respective marriages to Muslim spouses.

During the meeting, the family did not strictly apply inheritance laws from any specific religion. This is based on the interview with Sri Sunaryah: *"Mriki mboten beda-bedaaken nopo agomone dateng pembagian waris, sedanten didum roto, ndamel coro musyawarah keluarga."* Although religious differences between the deceased and the heirs could potentially lead to conflict in normative inheritance distribution, the family opted for a

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<sup>59</sup> Atho' Mudzhar, "Fiqh al-Ta'ayush: Konsep Hidup Bersama dalam Masyarakat Plural," *Jurnal Studi Islam dan Masyarakat* 18, no. 2 (2024): 45-49

kinship-based approach through deliberation. This was motivated by a desire to maintain harmony and fairness among family members, considering that blood relations were viewed as more important than differences in belief. This deliberation marked a significant point in determining the method of inheritance distribution.

There was no formal representation from religious institutions or community leaders, as the family considered this matter an internal affair that could be resolved by mutual consensus. During the discussion, all parties were given space to express their opinions, expectations, and needs regarding the inheritance left by Sunaryo. This process reflected the values of kinship and tolerance embedded within the community of Dusun Aditoya. The decision reached through joint deliberation demonstrates that inheritance distribution practices do not necessarily have to follow a particular formal legal system, but can be adapted to the prevailing social conditions and local values within the community.

After the initial deliberation process involving all heirs, the next stage in the inheritance distribution was to calculate the total assets left by the deceased, Sunaryo. This calculation was conducted to gain a clear understanding of the value and forms of the inheritance to be distributed among the heirs. In this context, the family gathered to openly inventory and assess the deceased's estate.

Based on the calculation results, it was found that the late Sunaryo left behind two main assets: a plot of land measuring 25 ru and a residential house for the family. Both assets are located in Dusun Aditoya, Jatigreges Village, where the deceased had lived during his lifetime. The 25-ru plot of land was previously used for agricultural activities and served as one of the family's sources of livelihood, while the house was the shared residence of his wife and children.

The asset calculation was conducted transparently and agreed upon collectively without external involvement. There was no formal appraisal process by a notary or government institution, as the family decided to resolve the inheritance distribution internally based on mutual agreement. With the form and amount of the deceased's assets clearly identified and agreed upon, this calculation stage served as an important foundation for determining a fair and acceptable distribution for all heirs.

The next stage in the inheritance distribution process for Sunaryo's family was establishing a consensus on the practice of dividing the estate, carried out through a family deliberation approach. Following the identification of the heirs and the assessment of the deceased's assets, the family proceeded by prioritizing deliberation as the main means to reach consensus. In this meeting, all parties sat together to discuss the best way to divide the two primary assets left by the deceased: the 25-ru plot of land and the residential house.

Although there are religious and legal references that could have served as a basis, Sunaryo's family chose not to rigidly apply any particular inheritance law, as expressed in the interview: *"mriki ndamel musyawarah mas, mboten ndamel hukum negoro utawi*

*agomo.*" This decision was influenced by the differing religious backgrounds between the deceased and the heirs, as well as the social context that emphasizes familial values.

A final agreement was reached that the distribution would be carried out equally and proportionally, based on the needs and mutual consensus of the family members. Eko Nur Hadi Wahyu Haryoko, as the first son, received a plot of land, while Ade Eva Dwi Aprilia Kristianti, the second daughter, received the family residence. Meanwhile, Sri Sunaryah, the wife of the late Sunaryo, continued to live in the house with her daughter, considering her age and comfort. Although there was a religious difference between the deceased and his children, this did not pose a significant obstacle during the deliberation process. The family prioritized mutual understanding and togetherness. This is reflected in the interview: "*Hasil musyawarah, ingkang jaler angsal tanah, ingkang estri angsal griyo tinggalan.*"

The final stage in the inheritance distribution process of the late Sunaryo's family was the actual implementation of asset distribution to each heir. After reaching a consensus through family deliberation, this process served to affirm the agreement that had been collectively established, with the spirit of maintaining justice and harmony within the family.

In practice, the distribution was carried out in a simple yet meaningful manner. The male heir, Eko Nur Hadi Wahyu Haryoko, received the agreed-upon plot of land. The handover was done physically in the form of a land certificate, which confirmed the legitimate ownership of the 25-ru land. This handover took place in the presence of other family members, as a gesture of transparency and a symbol that the family had fully entrusted ownership rights of the land to Eko.

Meanwhile, the female heir, Ade Eva Dwi Aprilia Kristianti, was granted rights to the family residence, which had previously served as the family home. This is in line with her statement during the interview: "*ngge mas, kulo manggen griyo tinggalane bapak.*" In this distribution process, although no written documents such as certificates were provided, the transfer was carried out orally by the family, particularly by their mother, Sri Sunaryah. On that occasion, it was conveyed that the house now belonged to Ade Eva, as a form of inheritance that had been agreed upon in the family deliberation. In her explanation, Sri Sunaryah stated: "*sertifikat sedanten tasek atas nama bapak* (all certificates in the name of the father)."

This verbal affirmation was accepted with full trust and gratitude by all parties. There were no objections from any side, as the main foundation of the distribution was sincerity and shared responsibility. Thus, the inheritance distribution process proceeded smoothly and peacefully, without triggering conflict or dispute. This process marked a harmonious conclusion to the inheritance distribution within the family and reflected local wisdom in resolving familial matters through deliberation, peace, and justice.

This deliberation-based distribution practice demonstrates that, despite the family's diverse religious backgrounds, they were still able to reach mutual understanding by

prioritizing values of love, kinship, and justice. As a result, the inheritance distribution did not generate tension; instead, it strengthened the bonds among family members and became a tangible example that harmony can indeed be preserved in the midst of diversity.

In this study, interviews were also conducted with several community figures in Jatigreges Village on March 27, 2025. These interviews aimed to understand the community's perception of the practice of interreligious inheritance distribution that occurred in the area. The village religious affairs officer (*Modin*) of Jatigreges, Muh. Khudori, stated that in practice, inheritance distribution—whether among heirs of the same religion or of different religions—is carried out through a family deliberation mechanism. In this process, all heirs receive an equal share of the inheritance, without differentiation based on their respective religious affiliations. This is based on the interview result: *“deso jatigreges mboten nate enten khilaf perbedaan kaitan waris, pembagian waris dilaksanaaken kanti musyawarah mufakat.”*

A similar view was also expressed by the Kamituwo of Jatigreges, who stated in the interview: *“warise mriki biasane bilih angsal jatah waris, warise didum roto.”* These interviews align with data from the village indicating that there have been zero inheritance-related conflicts in the area. This statement affirms that the principles of consensus, fairness, and equality serve as the main foundations for inheritance distribution in the Jatigreges Village community, including Dusun Aditoya.

In addition, Mrs. Sri Sunaryah, as the wife of the deceased and a member of the community, also conveyed that, in general, the people of Dusun Aditoya uphold the principle of kinship in matters of inheritance. She added that in practice, inheritance distribution is carried out with consideration for equality, regardless of the religious backgrounds of the heirs.

From these interview results, it can be concluded that the perception of the people of Dusun Aditoya regarding interreligious inheritance favors the principles of kinship and equal distribution of inheritance rights. This approach reflects a community mindset that prioritizes social harmony over the strict application of religious inheritance laws.

### **Inheritance Distribution in Families with Interreligious Members in Jatigreges Village: A Socio-Legal Perspective of Islamic Law**

In the case of Jatigreges, the late Sunaryo, a Christian, left an inheritance to his two children who had converted to Islam prior to his death. According to classical Islamic jurisprudence, religious difference constitutes a barrier to inheritance (*man' al-irs*), and thus, based on the opinion of the majority of scholars, a Muslim heir is not entitled to inherit from a non-Muslim. However, the reality on the ground shows that Sunaryo's family preferred deliberation (*musyawarah*) as a means of resolution, grounded in



principles of justice, necessity, and familial harmony, rather than rigid adherence to legal texts.

The approach taken by Sunaryo's family illustrates what Atho' Mudzhar refers to as "*living law*"—a conception of law that exists within social reality and is not confined solely to normative legal texts.<sup>60</sup> According to Mudzhar, *fiqh* is a product of social construction shaped by specific historical and cultural contexts; therefore, it must remain open to reinterpretation in accordance with the evolving times and the needs of society.<sup>61</sup> Law, from this perspective, is not a transcendent and static entity, but rather a part of dynamic social praxis—participatory and adaptive to the pluralistic nature of society.

The deliberative process in the inheritance distribution carried out by Sunaryo's family demonstrates how the principles of *maqāṣid al-sharī'ah*, particularly justice (*'adl*) and public interest (*maṣlahah*), served as the primary guiding references,<sup>62</sup> even when the formal rules of *fiqh* appeared inadequate in the context of religious pluralism, the house was given to the daughter who lived with the mother, while the land was given to the son—based on relational closeness and the specific needs of each party, rather than rigid *fiqh* doctrines.

Atho' Mudzhar consistently critiques the legalistic approach that views law as an absolute entity, detached from social realities. He distinguishes between *sharī'ah* as a set of transcendent values and *fiqh* as a product of human *ijtihād* that is historical and contextual. In the inheritance practices of Jatigreges, the *sharī'ah* as envisioned by Atho'—namely values of justice, compassion, and kinship—was prioritized over *fiqh* as a rigid normative formulation.

Interestingly, the deliberation-based approach adopted by Sunaryo's family also exemplifies what Atho' refers to as "*social ijtiḥād*"—a collective effort by the community to produce legal solutions that align with their specific conditions and local values.<sup>63</sup> In this context, family deliberation serves not only as a means of social compromise but also as a practical embodiment of Islamic law that is deliberative and egalitarian. This reflects a significant shift from an elitist *fiqh* tradition toward a more democratic and participatory legal practice.

Furthermore, the success of the deliberative process in Jatigreges highlights the strong values of tolerance and pluralism within the local community. There was no interreligious conflict or imposition of majority values over minorities; instead, there emerged a shared awareness to preserve familial bonds within a framework of diversity.

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<sup>60</sup> Atho' Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktek*, (Yogyakarta: Tiara Wacana, 1998), 52.

<sup>61</sup> Atho' Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktek*, 53.

<sup>62</sup> Wahbah Al-Zuhayli. *Al-Fiqh al-Islami wa Adillatuhu*. (Damaskus: Dar al-Fikr, 2022), 214.

<sup>63</sup> Atho' Mudzhar, *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia, 1975–1988* (Jakarta: INIS, 1993), 64.

This aligns with the concept of *fiqh al-ta'āyush* (jurisprudence of coexistence) developed by Atho' as a response to the challenges of multicultural societies such as Indonesia.<sup>64</sup>

Epistemologically, this approach liberates Muslims from the constraints of legal orthodoxy that often prove inapplicable in plural societies. Atho' Mudzhar opens the space for Islamic legal reform through interdisciplinary dialogue that combines normative-theological approaches with sociological and anthropological analysis. This is essential to ensure that Islamic law remains relevant, solution-oriented, and effective in addressing the contemporary challenges faced by the Muslim community, including sensitive issues such as interreligious inheritance.

The practice of inheritance distribution between Muslim heirs and a non-Muslim decedent in Dusun Aditoya, Jatigreges Village, serves as a significant case study in examining the flexibility and responsiveness of Islamic law when confronted with the realities of a plural society. This study demonstrates that a legal-formalist approach to Islamic inheritance law is not always the most practical option, especially in communities that prioritize social harmony and substantive justice.

Thus, the inheritance practice in Jatigreges becomes a tangible representation of Atho' Mudzhar's sociology of Islamic law approach. Law is not positioned as a rigid formal apparatus but as a flexible, participatory, and solution-oriented social instrument. Such an understanding of Islamic law does not diminish its normative substance; rather, it reinforces its relevance in addressing the actual problems faced by Muslims amid a complex social reality.

## CONCLUSION

The case study on interreligious inheritance in Jatigreges Village yields several crucial findings that both address the research objectives and offer new perspectives. First, the study demonstrates that Atho' Mudzhar's sociological approach is effective in revealing the transformation of Islamic law from a textual-normative framework into a contextual-sociological one. The community creatively developed the mechanism of *musyawarah* as a form of social *ijtihad* that actualizes the principles of *maqāṣid al-sharī'ah* (justice and public welfare), transcending the constraints of classical *fiqh*.

Second, these findings simultaneously critique the limitations of the Compilation of Islamic Law (KHI), which remains exclusive in nature. Although *musyawarah* succeeded in creating harmony, this research identified a structural weakness: the absence of a legal framework that formally recognizes such resolutions. Without formal recognition, local solutions risk creating legal uncertainty, especially in disputes involving third parties.

Third, as concrete recommendations, this study proposes: (1) A reformulation of the KHI to include specific clauses that acknowledge family deliberation as an alternative mechanism for resolving interreligious inheritance cases; (2) The

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<sup>64</sup> Atho' Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktek*, 68.

development of a planned hibah (planned endowment) model as a middle path that is valid under both shari'ah and national law; (3) The establishment of mediation teams equipped with knowledge of both Islamic law and the sociological realities of plural societies.

The policy implications are clear: the Ministry of Religious Affairs should collaborate with the House of Representatives (DPR) to draft more responsive regulations. Public outreach through Religious Courts and local community leaders should be the next strategic step. These findings are not only academically significant but also offer practical breakthroughs for Islamic inheritance law in the context of a multicultural society.

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