

RATIO LEGIS OF INTERFAITH INHERITANCE REFORMULATION FROM THE PERSPECTIVE OF *FIQH* MINORITY: A STUDY OF THE THOUGHTS OF YUSUF AL-QARDHAWI AND TAHA JABIR AL-ALWANI

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Abstract

This article aims to delve deeply into the ratio legis of reformulating the legal status of interfaith inheritance from the perspective of fiqh minority, as articulated by the thoughts of Yusuf al-Qardhawi and Taha Jabir al-Alwani. The research method employed in this article is a library research approach, utilizing comparison and content analysis to identify similarities, differences, and potential points of convergence in their thinking. The research findings indicate that the legal status of interfaith inheritance, according to the fiqh minority of Qardhawi and Alwani, must be redefined from the classical textual fiqh formulations to a contextual division of interfaith inheritance. The growing Muslim population in various non-Muslim countries necessitates the urgent reformulation of interfaith inheritance distribution to fill the normative vacuum within minority Muslim communities. The ratio legis of reformulating the legal status of interfaith inheritance according to Qardhawi and Alwani is based on considerations of maslahat (public interest) and the values of Maqashid al-Shariah, which serve as guiding principles for redefining the contextual legal status of interfaith inheritance. Failure to understand Islam solely through a textual lens and an inability to address the issues faced by minority Muslims in non-Muslim countries could relegate Islamic law to a relic of civilization.

Keyword: *Fiqh; Inheritance; Interfaith Minority; Ulama.*

A. INTRODUCTION

The issue of Islamic law within minority Muslim communities, on one hand, represents good news for the acceptance of Islam in non-Muslim countries. However, on the other hand, Islamic jurisprudence must respond to the challenges that arise with new and rather complex patterns and variations. The legitimacy of Islamic law, which is considered *shahih likulli zaman wa al-makan* valid for all times and places, continues to be tested for its universality and relevance. If Islamic law is deemed universal, then it must address various dynamic challenges faced by humanity.¹ Islamic law must be capable of being contextualized within contemporary and future

¹ Asghar Ali Engineer., *Islam Dan Teologi Pembebasan*, 5th ed., Jakarta, Pustaka Firdaus, 2009, page. 15.

contexts, as failing to do so would render Islamic law perceived as a relic of civilization.²

One of the Islamic legal issues requiring a contemporary response pertains to the legal status of interfaith inheritance within minority Muslim communities in non-Muslim countries. The increasing number of Muslim immigrants and the rate of conversions to Islam among non-Muslims in non-Muslim countries underscore the need for a current approach to interfaith inheritance cases. Examples include the growing number of Muslim immigrants marrying non-Muslims and non-Muslims converting to Islam within families that remain predominantly non-Muslim.³ On the other hand, this issue has been raised by the Muslim community in the United Kingdom, who are concerned about their status as heirs in cases involving non-Muslim legacies".⁴

At the same level within the Indonesian context, inheritance among individuals of different religions has become an existing reality amidst the Muslim minority in Indonesia. Interfaith marriages are prevalent in Indonesia, with 147 cases in 2020, 169 cases in 2021, 177 cases in 2022, and 89 cases in 2023. Until July 2023, there are a total of 1,655 interfaith marriages.⁵ The conversion rate to Islam, on the other hand, is also a factor contributing to interfaith inheritance. Meanwhile, the Compilation of Islamic Law does not recognize inheritance between individuals of different religions. This aligns with Article 171 point c, stating that "heirs are individuals who, at the time of death, have a blood relationship or marital ties with the deceased, are Muslims, and are not prohibited by law from being heirs."

In regions such as Bali with a Hindu majority, Jayapura, East Nusa Tenggara, and Batak with a Christian majority, which serve as the Muslim minority base in Indonesia, the potential for interfaith inheritance (non-Muslim heirs inheriting from Muslim deceased) is significant. This is evident in the Pahieme community in Central Tapanuli, where the perspective on inheritance serves as a bond for family harmony, creating a dilemma for their status as Muslims within a non-Muslim family.⁶ It raises questions about faith or harmony within the family. Does interfaith inheritance significantly impact faith? The *ratio legis* will be reformulated to address existing legal gaps.

2 Andi Muhammad Galib Moh. Anas Kholish, Gugus Irianto., *Fikih Ekonomi Kontemporer*, I, Malang, Empatdua Media, 2021, page. 5.

3 'Abd Allah bin al-Syaikh al-Mahfuz Bin Bayyah., *Shina'ah Al-Fatwâ Wa Fiqh Al-Aqalliyat*, Beirut, Dar al-Minhaj, 2007, page. 228-464.

4 Yusuf Al-Qardhawi., *Fiqh Minoritas : Fatwa Kontemporer Terhadap Kehidupan Kaum Muslimin Di Tengah Masyarakat Non Muslim*, ed. Gusharya Putra penerjemah, Adillah Obid; editor, Fauzi Fauzan, Jakarta, Zikrul Media Intelektual, 2004, page. 91

5 M.Irwan Zamroni Ali., *Prof Haris Kupas Tuntas Perkawinan Beda Agama, Begini Pemikirannya*, Media Center UINKHAS, 2023, <https://fsyariah.uinkhas.ac.id/berita/detail/prof-haris-kupas-tuntas-perkawinan-beda-agama-begini-pemikirannya#:~:text=, Tahun 2020 ada 147%2C tahun,dan Hukum PTKIN se-Indonesia.>

6 Wildan Hakim Nasution., *Pembagian Harta Warisan Bagi Ahli Waris Berbeda Agama Pada Masyarakat Desa Pahieme 1 Kecamatan Sorkam Barat Kabupaten Tapanuli Tengah*, Institut Agama Islam negeri Padangsidempuan, 2019, page. 36.

In the context of the legal status of interfaith inheritance, the majority of classical jurisprudential perspectives among scholars (Malikiyyah, Shafi'iyah, and Hanabilah) assert that Muslims and non-Muslims are not allowed to inherit from each other.⁷ This stems from a hadith narrated by Bukhari and Muslim, which states, "La yaritsu muslim al-Kafir wa la kafir al-Muslim".⁸ This hadith is interpreted with *qath'i* that Muslim heirs have no rights to the wealth of a non-Muslim deceased, and likewise, non-Muslim heirs have no rights to the wealth of a deceased Muslim.⁹ The change in status of a non-Muslim converting to Islam within a family carries legal consequences that must be reassessed, taking into account various considerations of public interest (*maslahat*) and justice. Hence, Islamic law, which is *shalih likulli zaman wa al-makan wa al-Asykhos*, does not diminish its universality.

In this context, the reformulation of the legal status of interfaith inheritance within minority communities becomes an inevitability in the lives of minority Muslims in non-Muslim countries. Therefore, the interpretation of rigid textual absolutism must be transformed into a progressive form in accordance with the *qowaid al-Fiqhiah*, as per the maxim "Taghayyirul al-Ahkam bi thagayyiri al-azminah wa al-amkinah wa al-Ahwal."¹⁰ This spirit of *fiqh* principles is what serves as the *ratio legis* for Qardhawi and Alwani in formulating law, advocating the perspective of *fiqh* minority as a legal standing.

According to Qardhawi and Alwani, the understanding of *fiqh* as "law in the book" does not hold a legal status that entails absolute correctness.¹¹ Rather, the understanding of *fiqh* as "law in context" is considered to possess legal correctness of an absolute nature within the paradigm of *fiqh* minority. This is because *fiqh*, as a product of classical jurist scholars, cannot be separated from the underlying social, political, and cultural conditions.¹²

Previous research has shown that non-Muslim heirs and Muslim heirs can inherit together due to the precedence of kinship in Islamic inheritance, which is considered more important than religious differences. This was evident in studies conducted by Kartika Herenawati, I Nyoman Sujana, I Made Hendra Kusuma (2020).¹³ However, this study does not comprehensively analyze the *ratio legis* of implementing such decisions,

7 Wahbah Az-Zuhaili., *Fiqh Islam Wa Adillatuhu*, in *Terjemahan Oleh Abdul Hayyie Al-Kattani, Dkk*, Jakarta, Gema Insani Press, 2016, page. 360.

8 Abu Abd al-Lah Muhammad bin Ismâil bin Ibrahim bin Al-Mughirah and bin Bardizbah Al-Ju'fi, *Shahih Al-Bukhari*, Juz XII, Kairo, Dar al-Hadits, 2004, page. 43.

9 Ali al- Şabuni., *Pembagian Waris Menurut Islam*, Jakarta, Gema Insani Press, 2001, page. 41.

10 Jalaluddin As-Suyuthi., *Al-Asybah Wa an-Nadhair*, Beirut, Darul Kutub AlIlmiyyah, 1983, page. 456.

11 Yusuf Al-Qardhawi., *Fiqh Maqashid Syariah: Moderasi Islam Antara Aliran Tekstual Dan Aliran Liberal*, ed. Muslich Taman, I, Jakarta, Pustaka Al-kautsar, 2007

12 Ahmad Qiram As-suvi and Moh Zainullah., *Sociology of Law in The Perspective of Roscoe Pound and Donald Black and Its Relevance in The Indonesian Context*, *PJLS: Peradaban Journal of Law and Society*, Vol. 1, No. 2, 2022, page. 82–95.

13 Kartika Herenawati, I Nyoman Sujana, and I Made Hendra Kusuma., *Kedudukan Harta Warisan Dari Pewaris Non Muslim Dan Penerapan Wasiat Wajibah Bagi Ahliwaris Non Muslim (Analisis Penetapan Pengadilan Agama Badung Nomor: 4 / Pdt . P / 2013 / PA . Bdg Tanggal 7 Maret 2013)*, *DiH: Jurnal Ilmu Hukum*, Vol. 16, No. 24, 2020, page. 25–37.

especially from the perspectives of Qardhawi and Alwani. Simultaneously, in the context of discussing inheritances between different religions, the status of minority inheritance rights is rarely addressed. When discussed, the focus is often on how to resolve inheritances from different religions using the principle of legal pluralism. In this regard, researchers like Rizki Isihlayungdianti and Abdul Halim (2021) in their study "Non-Muslim Inheritance in Interfaith Marriages",¹⁴ and Adit Kurniawan (2022) in his research "Inheritance Rights of Children Born from Interfaith Marriages," tend to consider Islamic law beyond inheritance terminology, such as obligatory wills.¹⁵

At the same level, studies comparing the thoughts of two main figures in the field of minority *fiqh*, especially in the context of inheritance, such as Yusuf al-Qardhawi and Taha Jabir al-Alwani, are also very rare. Most researchers tend to choose only one figure, either Qardhawi or Alwani. For instance, Zainul Mun'im's research on "The Role of Islamic Legal Maxims in Actualizing Islamic Law: A Study of Yusuf al-Qaradawi's Fatwa on *Fiqh Al-Aqalliyat*" focuses solely on Qardhawi,¹⁶ as does Muhammad Bushiri's study on "Interpreting the Quran with the Maqashid al-Quran Approach: Taha Jabir al-Alwani's Perspective", which explores Alwani's views".¹⁷

In this context, this article seeks to present the new ideas of Qardhawi and Alwani regarding the importance of formulating *fiqh* minority as a methodological foundation¹⁸. For Qardhawi and Alwani, this reformulation's *ratio legis* is a response to the increasingly complex challenges faced by Muslim communities in non-Muslim countries. Islamic law must be capable of being actualized and contextualized through transformative and responsive *ijtihad* propositions to address the evolving challenges of the times.¹⁹ Consequently, there should be no normative vacuum in the legal status of interfaith inheritance within minority Muslim communities, which is a reality faced by Muslims in non-Muslim countries today.

B. RESEARCH METHODS

This article will employ a library research method by analyzing relevant literature written by Yusuf al-Qardhawi and Taha Jabir al-Alwani, including books, articles, fatwas, and other writings that discuss interfaith marriage inheritance laws from the perspective of classical to contemporary

14 Rizki Isihlayungdianti and Abdul Halim., Non-Muslim Inheritance in Interfaith Marriages Kewarisan Non-Muslim Dalam Perkawinan Beda Agama, *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, Vol. 9, No. 2, 2021, page. 451–70

15 Adit Kurniawan., Hak Waris Anak Yang Lahir Dari Perkawinan Beda Agama, *Maqasid: Jurnal Studi Hukum Islam*, Vol. 11, No. 1, 2022

16 Zainul Mun'im., Peran Kaidah Fikih Dalam Aktualisasi Hukum Islam: Studi Fatwa Yusuf Al-Qaradawi Tentang *Fiqh Al-Aqalliyat*, *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol. 15, No. 1, 2021, page. 151–72

17 Muhammad Bushiri., Tafsir Al-Qur'an Dengan Pendekatan Maqāshid Al-Qur'Ān Perspektif Thaha Jabir Al-'Alwani, *Tafsere*, Vol. 7, No. 1, 2019, page. 132–49.

18 Ilham Tohari and Moh. Kholish., Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia, *Jurnal Hukum & Pembangunan*, Vol. 50, No. 02, 2020, page. 314–28.

19 Fazlur Rahman., *Islam & Modernity: Transformation of an Intellectual Tradition*, Paperback, Chicago, The University of Chicago Press, 1982, page. 19.

Islam.²⁰ As for the applied method, this article falls under the descriptive-qualitative approach, involving an in-depth analysis of the gathered data.²¹ Subsequently, the data, comprising two formulations of *fiqh* minority by Yusuf al-Qardhawi and Taha Jabir al-Alwani, will be compared to reformulate the legal status of interfaith marriage inheritance within minority communities.

C. RESULTS AND DISCUSSION

1. Intellectual Biography of Qardhawi and Alwani and Their Key Thoughts on Minority Jurisprudence

a. Yusuf al-Qardhawi and His Key Thoughts on Minority Jurisprudence

Yusuf Musthafa al-Qardhawi, a prominent and respected Muslim scholar in the Islamic world, was born on September 9, 1926, in Saft Turab, Egypt²², and passed away in Qatar on September 26, 2022. His father passed away when Qardhawi was only two years old, and he was subsequently raised by his paternal uncle, a religious scholar, which greatly influenced the early intellectual environment of Qardhawi.

Qardhawi began seriously studying the Quran at the age of five and completed it by the age of ten. He continued his formal education under the auspices of the Egyptian Ministry of Education.²³ His intellectual foundation during that time opened up his horizons and led him to pursue further studies at Al-Azhar University in Cairo, where he graduated in 1953. After completing his studies at Al-Azhar, Qardhawi pursued additional education in the Arabic language for two years.

In 1960, he began postgraduate studies at the University of Cairo, focusing on Tafsir Hadith. Later, in 1968, he embarked on his doctoral studies, writing his dissertation on the jurisprudence of zakat (charitable giving), which he completed in 1970. Qardhawi's role as a progressive academic is evidenced by his support for the Muslim Brotherhood movement, which led to his imprisonment by the military. After his release, he relocated to Qatar and established the Faculty of Sharia at the University of Qatar.²⁴

In addition to his early engagement with Quranic studies, Qardhawi also had a keen interest in Islamic law and frequently delivered lectures and sermons on Islamic legal issues that motivated him to deepen his understanding of the fundamentals of Islamic law, such as *fiqh* (jurisprudence) and *usul al-fiqh* (principles of

20 Wahyudin Darmalaksana., *Metode Penelitian Kualitatif Studi Pustaka Dan Studi Lapangan*, Bandung, *Pre-Print Digital Library UIN Sunan Gunung Djati Bandung*, 2020, page. 1–6.

21 Sugiono., *Metode Penelitian, Kuantitatif Kualitatif, Dan R&D*, ed. Sutopo, Bandung ALFABETA, 2019, page. 25.

22 Syaikh Akram Kassab., *Metode Dakwah Yusuf Al-Qardhawi* (Jakarta: Pustaka Al-kautsar, 2010), page. 5.

23 Yusuf Al-Qardhawi., *Pasang Surut Gerakan Islam*, ed. terj: Faruq Uqbah, I, Jakarta, Media Dakwah, 1987, page. 3.

24 Abdul Aziz Dahlan., *Ensklopedia Hukum Islam*, in *Hukum Islam, Jilid 6*, Jakarta, Ichtiar van Hoeve, 1996, page. 184.

jurisprudence) as elucidated by earlier scholars.

Qardhawi's career as both a contemporary scholar with a contextual approach and his various leadership roles, such as heading the Department of Islamic Studies at the Faculty of Sharia, University of Qatar, serving as the Chairman of the Fatwa and Research Council of the Ireland-based Council of *Fiqh*, and leading the International Union of Muslim Scholars, placed him at the forefront of Islamic scholarship. During this time, he was also invited to conduct seminars and deliver lectures at numerous campuses around the world.

Yusuf al-Qardhawi is renowned for his concern for contemporary issues and the relevance of Islam in modern life. He was a progressive scholar who often provided inclusive and open-minded perspectives on social developments and the changing times. In practice, Qardhawi refused to mandate strict adherence to the imams (juridical authorities), as he believed that the imams had never claimed to be *Ishmah* (infallible). He quoted Ali bin Abi Thalib, saying, "Do not recognize the truth because of its people; recognize the truth as the truth itself, so that you will recognize its people".²⁵

One of Yusuf al-Qardhawi's major academic concerns was the condition of Muslim minorities in practicing Islamic law. As someone who lived in the Arab world with a Muslim majority, he felt it was essential to address the issues faced by Muslims in non-Muslim countries. According to him, the challenges of contemporary Islam could not be adequately addressed by relying solely on the classical sources of mujtahid scholars, especially within minority contexts.

He considered this special attention as an expression of concern for Muslims wherever they may be, who were restricted by rigid thinking in their adherence to Sharia. This rigidity seemingly deprived them of the opportunity to practice Sharia. He believed this crisis of thought extended to every aspect of life, as he expressed, "In various parts of the world, they die physically due to hunger and disease, die morally due to ignorance, illiteracy, the spread of drugs, and addiction, become targets of Christianization, apostasy, and deviation. Why do we not pay attention to their issues? Is it not true that whoever does not care about the issues of Muslims is not part of them?".²⁶

Thus, at this juncture, the formulation of minority jurisprudence within Muslim minority communities became a special focus for Qardhawi. Minority jurisprudence encompasses various aspects, such as interfaith marriages, inheritance laws, citizenship, and various other aspects of life that differ from the majority Muslim context. Qardhawi believed it was necessary to address these challenges with a contextual and broad-minded approach, providing

25 Yusuf Al-Qardhawi., *Halal Dan Haram Dalam Islam*, ed. H. Mu'ammal Hamidy, PT. Bina Ilmu, 1993, page. 6.

26 'Abdul Hamid Abu Sulayman., *Krisis Pemikiran Islam*, ed. Alih bahasa Rifyal Ka'bah, Jakarta, Media Da'wah, 1994, page. 392.

solutions that were fair and consistent with Islamic principles, without neglecting the social realities and the needs of minority Muslim communities.

Yusuf al-Qaradawi was a figure of great influence in the Islamic world, and his thoughts on minority jurisprudence made a significant contribution to formulating an inclusive and just view of how Islamic law could be applied within the context of Muslim minorities.

b. Taha Jabir al-Alwani and His Key Thoughts on *Fiqh* Minority

Taha Jabir al-Alwani was a prominent Muslim scholar in the field of Islamic law and theology. He was born on February 28, 1935, in Iraq and grew up in a devout family²⁷. He passed away on March 4, 2016. His formal education began in Iraq and continued through secondary school. However, Alwani later pursued his studies at Al-Azhar University in Cairo, Egypt, one of the world's most prestigious Islamic universities. He subsequently continued his studies at the same university and earned a master's degree in 1968.²⁸

At Al-Azhar, Alwani delved into the fields of Islamic law and Islamic theology, earning his doctoral degree in *Ushul al-Fiqh* (principles of jurisprudence) in 1973. Following the completion of his doctoral education, he served as a Professor of *Fiqh* (jurisprudence) and *Usul al-Fiqh* (principles of jurisprudence) at Imam Muhammad Sa'ud University in Riyadh for a period of ten years from 1975 to 1985.²⁹ Simultaneously, while holding the position of a Professor in Riyadh, he decided to relocate to the United States and founded the Graduate School of Islamic and Social Sciences (GSISS) in Leesburg, Virginia. Alwani served as the President of GSISS and also held the position of Chair of Imam al-Shafi'i in Islamic Legal Theory. He was instrumental in establishing the International Institute of Islamic Thought (IIIT) in the United States and served as the President of IIIT in Herndon while also being a member of its Board of Trustees.³⁰

Furthermore, Alwani was the founder and a member of the World Muslim League in Mecca, as well as a member of the Islamic *Fiqh* Academy of the Organization of Islamic Cooperation (OIC) in Jeddah since 1987. A year later, he assumed the position of the North American *Fiqh* Council.³¹ In his academic career, he taught Islamic legal theory for eleven years at various universities in the

27 M. Ulil Abshor and Husnul Khotimah., *Etika Ilmiah Islam Sebagai Wujud Toleransi (Analisis Pemikiran Taha Jabir Al-Alwani Dalam Kitab Adab Al-Ikhtilafi Fi Al Islami)*, *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman*, Vol. 19, No. 1, 2020, page. 55

28 IIIT Family., *In Celebration of the Life of Shaykh Taha Jabir Al-'Alwani*, *American Journal of Islam and Society*, Vol. 33, No. 2, 2016

29 Taha Jabir Al-Alwani., *The Ethics of Disagreement in Islam*, *The Journal of Islamic Faith and Practice*, Vol. 2, No. 2, 2011, page. 1–6.

30 IIIT., *International Institute of Islamic Thought: Our Team-USA and UK*, <https://iiit.org/en/our-team-usa-uk/>, 2023,

31 Mohammad Husnul Affan., *Adab Dalam Berbeda Pendapat Dalam Islam Menurut Taha Jabir Al-Alwani: Studi Analisis Kitab Min Adab-I*, *Islamika: Jurnal Agama, Pendidikan Dan Sosial Budaya*, Vol. 15, No. 2, 2021, page. 81–90

Muslim world. He had a profound interest in the social implications of Islamic law and was a major contributor to the field of Muslim social scientists. Additionally, Alwani was a regular contributor to the *American Journal of Islamic Social Sciences*.

Among his notable works, Alwani's thoughts on Islamic law can be identified through several of his writings, such as "Islamic Thought: An Approach to Reform," "Issues in Islamic Contemporary Thought," "Towards a *Fiqh* for Minorities," "Source Methodology in Islamic Jurisprudence," and "The Authority of the Qur'an and the Status of the Sunnah." His works are recognized for their focus on the concept of *Maqashid al-Shariah* or the objectives of Islamic law in understanding Islamic jurisprudence. This approach does not entail creating a new Islam but rather constitutes a methodology to guide the understanding of the objectives and ethical values in formulating Islamic law that is relevant to the contemporary context, including minority contexts.³²

Alwani's academic journey, coupled with various empirical realities he encountered in the United States, led to his academic concern about adaptive *fiqh* (Islamic jurisprudence) within minority contexts or Islamic law in the context of Muslim minorities. As a Muslim scholar hailing from the Arab world with a Muslim majority, Alwani realized that there were challenges faced by Muslims in minority positions in non-Muslim countries.

Issues of minority jurisprudence encompass various aspects of life, such as interfaith marriages, inheritance laws, citizenship, and other social issues. Alwani felt the need to interpret Islamic law contextually and broadly, so that it could provide fair solutions consistent with Islamic values. He believed that this was necessary because, in his view, the entire Muslim Ummah, particularly the Arab nations, was grappling with a crisis of thought, making them unable to accommodate the social realities and the needs of minority Muslims.³³

Alwani's concern for the reality of Muslim communities in minority contexts compelled him to continuously contribute to the development of the *Maqashid al-Shariah* approach in Islamic law, or in Alwani's words, "jurisprudence of reality".³⁴ This approach aimed to provide inclusive and relevant solutions for minority Muslims. He also sought to facilitate dialogue and discussions between scholars and Muslim intellectuals to seek common ground in addressing contemporary issues through forums and media initiatives that he initiated.

32 Naelah Istiqomah., *Fiqh Minoritas: Islam Dan Diskursus Kepemimpinan*, Jakarta, UIN Syarif Hidayatullah, 2019, page. 1.

33 Taha Jabir Al-Alwani., *Islahul Fikr Al Islami*, IV, Virginia: Ma'had al-'aly lil al-fikr al-Islamy, 1995, page. 144.

34 Family, *In Celebration of the Life of Shaykh Taha Jabir Al-'Alwani*.

2. Formulation of the Legal Status of Inheritance in Interfaith Marriages from the Perspective of Classical Jurists

The classical Islamic period spanned from 650 CE to 1250 CE, before the subsequent medieval period around 1250-1800 CE, which is known for its rigidity and conservatism.³⁵ This classical era was characterized, on one hand, by the expansion of Islam across the world, from Africa and Persia to India and Andalusia in Spain. On the other hand, this classical period had a significant impact on the advancements within Islam through the remarkable dialectics of Islamic law influenced by varying socio-cultural contexts of Islam.

Several famous classical jurists emerged during this era, including Imam Abu Hanifah (700-767 CE), Imam Malik ibn Anas (711-795 CE), Imam Shafi'i (767-820 CE), and Imam Ahmad bin Hanbal (780-855 CE). Each school of thought (madhhab) founded by these jurists had its own approach and methods of interpreting Islamic law from the primary sources. Among these classical jurists, there were intricate dialectics ranging from particular to fundamental issues.³⁶ such as the formulation of the legal status of interfaith inheritance.

In the context of formulating the legal status of inheritance in interfaith marriages, differences in opinion among these jurists were inevitable. For instance, Imam Abu Hanifah, who was based in Kufah, which was formerly a part of Persia and is now in Iraq, had a socio-cultural background vastly different from the other school founders. The geographical distance between Persia and Mecca/Medina had a profound impact on the frequency of hadith transmissions. Additionally, the complex and distinct issues faced in Kufah, as opposed to Mecca and Medina, influenced the interpretations.³⁷ Therefore, due to the scarcity of hadith they received to explain the Quranic text, they needed to rely heavily on rational methods for contextualization, using Ratio as an instrument. These jurists were part of what Hasbi Ash Shiddieqy referred to as the rationalist school of thought, known as the *ahlu al-Ra'yi*.³⁸

Jawad Mughniyah, in his book "The Five Schools of Islamic Law: Al-Hanafi, Al-Hanbali, Al-Ja'fari, Al-Maliki, Al-Shafi'i," states that the majority of scholars, except for Imam Hanafi, agree that a Muslim heir cannot inherit from a non-Muslim heir, and vice versa.³⁹ This position is based on the hadith: "A Muslim cannot inherit from a non-Muslim, and a non-Muslim cannot inherit from a Muslim," a hadith agreed upon by Imam Shafi'i, Maliki, and Hanbali as the basis for prohibiting inheritance between Muslims and non-Muslims.⁴⁰ However, Imam Hanafi's argued

35 Warkum Sumitro, Moh. Anas Kholish, Labib Muttaqin., *Hukum Islam Dan Hukum Barat*, ed. Dymas Yulia Putri, 1st ed., Malang, Setara Press, 2017, page. 17.

36 Moh Anas Kholis., *Menyemai Pendidikan Fiqih Beyond The Wall*, ed. Siti Rohmah, 1st ed., Malang, Intelegensia Media, 2021, page. 35.

37 Sitta 'Ala Arkham and Laila Afni Rambe., Pendekatan Sejarah Dalam Hukum Wakaf Imam Hanafi, *El-Faqih: Jurnal Pemikiran Dan Hukum Islam*, Vol. 7, No. April 2021, page. 21.

38 Hasbi Ash Shiddieqy., *Pengantar Ilmu Fiqih*, Jakarta, CV. Mulya, 1967, page. 65.

39 Muhammad Jawād Maghniyah., *The Five Schools of Islamic Law: Al-Hanafi, Al-Hanbali, Al-Ja'fari, Al-Maliki, Al-Shafi'i*, Anssariyan, 1995, page. 575.

40 Wahbah Az-Zuhaili., *Fiqh Islam Wa Adillatuhu*, Jilid 10, Damaskus, Dar al-Fikr, 1984, page. 360.

that a Muslim has the right to inherit from a non-Muslim relative, just as the Muhajirin had the right to inherit from the Ansar, even if they followed different faiths.⁴¹

Imam Abu Hanafi, as the primary proponent of the Ahlu al-Ra'yi (rationalist) school, argued that inheritance among individuals of different faiths was permissible. According to him, Muslim heirs and non-Muslim heirs have a blood relationship, entitling them to inheritance rights. In this regard, Imam Abu Hanafi only utilized two of the seven sources of istinbath (deduction) he proposed (the Quran, the Sunnah of the Prophet, Ijma', the opinions of the Companions, Qiyas, Istihsan, Istihbab, and 'urf).⁴²

The two sources of istinbath Imam Abu Hanafi employed in the context of the legal status of inheritance in interfaith marriages were, first, the Quranic verses: Surah Al-Ahzab, verse 6, "And those with relationships are more entitled to inheritance in the Book of Allah," and Surah Al-Anfal, verse 75, "And those who are [rightfully] related are more entitled to [inherit] from one another in the decree of Allah." The second source was the fatwa (legal opinion) of Zaid bin Tsabit, who conveyed, "Zaid bin Tsabit narrated: Abu Bakr, upon referring to the apostates, dispatched me to distribute the wealth of an apostate among his Muslim heirs".⁴³ In these Quranic verses and the companion's fatwa, Imam Abu Hanafi returned the issue of inheritance to its authentic course and invalidated the textual understanding of the text regarding inheritance among individuals of the same faith. Furthermore, he considered the socio-cultural conditions in Persia at that time, which was previously a non-Muslim territory but had become a part of the Islamic realm due to conquests, and this influenced Imam Abu Hanafi's rationale.

Clear differences of opinion cannot be avoided in this context. The majority of scholars, consisting of Imam Shafi'i, Imam Hanbali, and Imam Maliki, along with their followers, maintained differences of opinion despite their evident teacher-student relationships. Additionally, they had varying methods of istinbath due to the influence of their respective geographical and temporal contexts. Imam Shafi'i developed his jurisprudence in Egypt, Imam Maliki in Medina, and Imam Hanbali in Mecca. These scholars, collectively known as the Jumhur 'Ulama (majority scholars), based their prohibition of inheritance between Muslims and non-Muslims on the Quranic verse in Surah An-Nisa, verse 141, "Allah will never allow the disbelievers to have authority over the believers"⁴⁴, In addition, they referenced the hadith transmitted by Ahmad from Abdullah Ibn Umar, "There is no inheritance between

41 Malik bin Ansin bin Malik bin 'Amir Al-Ashaby., *Muwattha Malik Riwayati Muhammad Ibn Al-Husain*, ed. Abdul Wahab Abdul Lathif, II, Beirut: Maktabah 'Ilmiyah, 2010), pages. 225.

42 Ibrahim Abbas Al-Dzarwy., *Nadzariyut Al-Ijtihad Fi Syari'ah Al-Islamiyah*, ed. Terjemahan Agil Husin Al-Munawar (Teori Ijtihad dalam Hukum Islam), I, Semarang, Dina Utama, 1983, page. 19.

43 Ibnu Abidin., *Radd Al-Mukhtar*, 10th ed., Beirut, Dar Al-Kutub Al-Ilmiyah, 2003, page. 508.

44 Departemen Agama RI., *Al-Qur'an Dan Terjemahannya*, Bandung, Bandung, PT. Madina Raihan Makmur, 2014, page. 101.

followers of two different religions" ⁴⁵, Simultaneously, they highlighted the practice of the Prophet Muhammad following the death of Abu Thalib, where the wealth of the apostate was distributed entirely to non-Muslim heirs ('Uqail and Thalib), while Muslim heirs (Ali and Ja'far) received nothing.⁴⁶

At this point, the prohibition of inheriting from non-Muslim heirs according to the Jumhur 'Ulama remains absolute, even if the heirs are Muslims, as they died in a state of disbelief. According to the Jumhur 'Ulama, the wealth of the non-Muslim heir is considered *fa'i* (unclaimed) property and should be given to "Baitul Maal" (the Islamic treasury).⁴⁷ The perspective from classical jurists is an integral part of Islamic legal history and development. However, to address contemporary issues such as the legal status of interfaith inheritance in Muslim minority contexts, a comprehensive and contextual approach is essential. This approach aims to formulate laws that are more inclusive and in line with diverse social and cultural realities. The role of the classical juristic perspective remains a valuable reference but needs to be combined with more contemporary and equitable interpretations.⁴⁸

3. Ratio legis Reformulation of Interfaith Inheritance Legal Status from the Perspective of Minority *Fiqh* by Yusuf al-Qaradawi

The complexity of the issue surrounding the legal status of interfaith inheritance in the contemporary context is progressively escalating due to the global prominence of Islam. Yusuf al-Qaradawi, with his concept of 'aqaliyat *fiqh* (minority jurisprudence), seeks to address the challenges faced by Muslim communities in minority settings. The emergence of 'aqaliyat *fiqh* by Qaradawi represents a form of reformulation of ideas put forth by earlier scholars.

According to Qaradawi, 'aqaliyat *fiqh* within minority contexts is a subset of general *fiqh* (Islamic jurisprudence), but it possesses distinctive characteristics. The scholars of the past who produced renowned works of *fiqh* never envisioned challenges like those faced today, such as cultural blending through immigration and advancements in science, and technology. However, the presence of Islam in the West holds significant importance in the efforts of Islamic propagation as a universal blessing. To deny, belittle, or even disregard its existence constitutes disrespect towards Islamic values.

Similarly, in the context of the legal status of interfaith inheritance, Qaradawi issues a fatwa stating that Muslim heirs are

45 Al Hafidh Ibnu Hajar Al Asqalani., *Bulugul Maram*, ed. Terj. Mahrus Ali, Surabaya, Mutiara Ilmu, 1995, 404.

46 Abu Abdullah Muhammad bin Yazid bin Abdullah bin Majah Al Quzwaini., *Sunan Ibnu Majah: Nomor Hadist 2730*, ed. Muhammad Fuad Abdul Al-Baqi, I, Kairo, Dar Ihya Al-Kutub Al-Ilmiyah, 1993, page. 912.

47 Ahmad Rofiq., *Fiqh Mawaris*, Jakarta, PT. Grafindo Persada, 2002, page. 27.

48 Ilham Tohari and Karunia Hazyimara., Status Hak Waris Perkawinan Beda Agama Di Indonesia Perspektif Yuris Islam Klasik Dan Kontemporer, *Peradaban Journal of Law and Society*, Vol. 2, No. 1, 2023, page. 78–91

entitled to inherit from non-Muslim heirs.⁴⁹ He approaches inheritance with a focus on the realm of *mu'amalah* (interpersonal transactions). He bases his argument on one of the *fiqhi qawaid* (legal maxims) that states: *al-aslu fi al-'adiyat wa al-mu'amalat al'nazar ila al-'ilali wa al-masalih*. Thus, in the context of interfaith inheritance, according to Qaradawi, the 'illat (reason) lies in the purpose of property usage, not in the loyalty of the heart. If it were otherwise, hypocrites (munafiqun) would not be entitled to inherit.⁵⁰

According to Qaradawi, this purpose should be viewed through the lens of intention, as per the *fiqhi* maxim *al-umur bi maqhasidiha*⁵¹. In the context of heirs inheriting from non-Muslim heirs, it should be intended to assist Muslim heirs in supporting their faith, thereby enhancing their monotheism (tauhid) towards Allah SWT. Therefore, categorically rejecting the absolute prohibition of the rights of Muslim heirs over their non-Muslim heirs in minority settings takes precedence, as there are other potential emergencies, such as non-Muslim heirs receiving the inheritance and not utilizing it for the sake of Allah SWT.⁵²

The spirit of inheritance embodies the values of mutual support and benefiting one another⁵³. In the context of inheritance, whether Muslim heirs can inherit from non-Muslim or disbelieving heirs should be based on the status of disbelief. According to Qaradawi, Muslim heirs can only inherit from non-Muslim heirs classified as "dhimmis" (protected non-Muslim citizens) because, in Islam, it is essential to protect dhimmis.⁵⁴ This interpretation allows converts who have the status of heirs to inherit from their non-Muslim heirs, as justified by the fatwa transmitted by the companions Umar, Muadh, and Mu'awiyah, which permits Muslim heirs to inherit from non-Muslim heirs.⁵⁵

At this point, Qaradawi's methodological reformulation comprises several instruments. Among these instruments applied in this context is approaching textual sources without rigid literalism. For instance, the hadith prohibiting interfaith inheritance is interpreted contextually, with a focus on the underlying benefits in a radical manner.

In the context of the legal status of interfaith inheritance in Muslim minority settings, these methodological instruments can be applied. First, starting with the proposition of the validity of interfaith

49 Yusuf Al-Qardhawi., *Al- Fi Fiqh Al-Aulawiyāt: Dirāsah Jadīdah Fi Ḍau'ī Al-Qur'ān Wa Al-Sunnah*, Kairo, Maktabah Wahbah, 1996, page. 91.

50 Amir Sahidin., Telaah Atas *Fiqh* Al-Aqalliyat Syekh Yusuf Al-Qardhawi, *An-Natiq Jurnal Kajian Islam Interdisipliner*, Vol. 2, No. 2, 2022, page. 121

51 Yusuf Al-Qardhawi., *Al- Al-Qawā'id Al-Ḥā Kimah Li Fiqh Al-Mu'āmalah*, Doha, al-Majlis al-Aurubi lil Ifta' wa al-Buhūth, 2009, page. 17.

52 Salih bin Ghanim Sadlan., *Al- Al-Qawaid Al-Fiqhiyyah Al-Kubra Wa Ma Tafarragha 'Anha*, Riyadh, Dār Balnasih, 1997, page. 53.

53 Idah Suaidah et al., Fungsi Dan Tujuan Kewarisan Menurut Al-Qur'an, *Jurnal Diskursus Islam*, Vol. 7, No. 2, 2019, page. 335–54.

54 Yusuf Al-Qardhawi., *Fiqh Minoritas: Fatwa Kontemporer Terhadap Kehidupan Kaum Muslimin Di Tengah Masyarakat Non Muslim*, ed. Gusharya Putra penerjemah, Adillah Obid; editor, Fauzi Fauzan Jakarta, Zikrul Media Intelektual, 2004, page. 126-128.

55 Yusuf Al-Qardhawi., *Fiqh Aqalliyat Fiqh Minoriti*, ed. Ustadz Muhammad Hanif Hassan, Malaysia, Rabitah Al-` Alam Al-Islami, 2001, page. 39.

marriages, referring to Qaradawi's opinion, where such marriages need not be annulled, and the couple may continue marital relations while waiting for the non-Muslim spouse to convert to Islam. During the spouse's lifetime, they are protected in their life and needs, and their status as dhimmis is undisputed, making them eligible for protection again. Thus, at this juncture, the propositions of Ibn Qayyim, Ibn Taymiyyah, and Qaradawi regarding the validity of interfaith marriages in Muslim minority settings become the cause of inheritance. On the other hand, the non-Muslim husband, who is a dhimmi, should also be safeguarded concerning his assets, consistent with Qaradawi's interpretation of Islamic teachings that encourage the protection of dhimmis.

Second, granting rights or legal inheritance status to family members who convert to Islam must be intended for the benefit of the faith. Third, inheritance is within the domain of mu'amalah, so family members who are also converts and heirs should not be judged based on the loyalty of their hearts. Thus, based on Qaradawi's 'aqaliyat *fiqh* methodology in addressing the issue of the legal status of interfaith inheritance in Muslim minority contexts, priority is given to examining the purpose of establishing a particular law, which is *maslahah* (public interest). Therefore, this issue must be reviewed through the lens of *Maqasid al-Shari'ah* (objectives of Islamic law).⁵⁶

4. **Ratio legis Reformulation of Interfaith Inheritance Legal Status from the Perspective of Fiqh Minority by Taha Jabir al-Alwani**

Taha Jabir Al-Alwani spent his time in Virginia, the United States, where he directly observed the conditions of Muslims in minority communities.⁵⁷ His approach to minority *fiqh* strives not only to understand and adapt the principles of pure Islamic law but goes beyond that to comprehensively examine the lived realities of minority Muslim life in non-Muslim countries, particularly concerning monotheism (tauhid) and ethics.⁵⁸

According to Al-Alwani, the revival of minority *fiqh* should return to the authentic essence of *fiqh*, which entails a more comprehensive understanding of Islamic teachings in line with the macro *fiqh* of Imam Abu Hanafi, which places its universal values in the application of Islamic law. In the context of minorities, the universal values of Islamic law are greatly needed alongside the complex issues faced by Muslims in minority settings.⁵⁹ Al-Alwani argues that, at this point, Islamic law should be seen as embodying universal meanings, purposes, and objectives that transcend textual interpretations, often referred to as *maqashid al-Shari'ah*. In other words, the application of Islamic law

56 Sahidin, Telaah Atas *Fiqh Al-Aqalliyat* Syekh Yusuf Al-Qardhawi.

57 Al-Alwani, The Ethics of Disagreement in Islam

58 Akmal Bashori Muhammad Ichrom, Epistemologi Usul Al-*Fiqh* Taha Jabir Al-Alwani: Antara Ortodoksi Dan Modernitas, *Jurnal Al Wasith: Jurnal Studi Hukum Islam*, Vol. 7, No. 1, 2020, page. 1–20.

59 Taha Jabir Al-Alwani, *Towards A Fiqh For Minorities: Some Basic Reflections Taha*, II, London, The International Institute of Islamic Thought, 2003, page. 7.

among minority Muslims cannot materialize without the foundation of the universal values of Islamic law within *maqashid al-Shari'ah*.

Unlike previous *maqashidi* scholars, Al-Alwani explains that the discussion of *maqashid al-Shari'ah* does not stop at the three main concepts of *dharuriyah* (essential), *Hajiyah* (complementary), and *Tahsiniyah* (desirable) alone.⁶⁰ Rather, within Alwani's conception of *maqashid al-Shari'ah*, inspired by the universal values of Islamic law, there are absolute universal values such as *Tauhid* (the oneness of God), *Tazkiyah* (self-purification), and *'Umron* (peace), which serve as the fundamental and macro principles underlying every application of Islamic law. According to him, these principles are integral to every prophet's mission. In the *maqashid al-Shari'ah* framework of Al-Alwani, these principles occupy the top class referred to as *maqashid al-Ulya al-Hakimah*⁶¹. In the second class, there are values like justice, freedom, and equity, and in the subsequent class, they relate to the three main concepts of *Dharuriyah*, *Hajiyah*, and *Tahsiniyah*.

In terms of methodological perspective, the epistemological construction of *maqashid al-Ulya al-Hakimah* by Al-Alwani is built on several foundations as methods and approaches. This includes *nidzam ma'rifi tawhidi* (theological epistemological rules), an approach based on understanding the Quran (*manhajiyah ma'rifiyyah qur'aniyyah*), strategies related to the Quran as a source of theological knowledge, an approach that considers the Sunnah as an explanatory source consistent with the Quran, a method linked to the intellectual heritage within Islam to allow critical analysis in line with Quranic principles, and an approach related to the general heritage of human knowledge.⁶²

Thus, in the realm of Islamic law, these foundations constitute an approach capable of providing authoritative answers for every time and place. Al-Alwani's approach to Islamic law aligns with the perspective of Syahrur, who places the Quran as the highest and non-contradictory authoritative source.⁶³ The return to universal Islamic values by elevating the Quran as the highest source of values offers a solution to all the particular issues of Islamic law.

So far, the concept of *Maqasid al-Shari'ah* (objectives of Islamic law) has been central to Al-Alwani's view. He argues that Islamic law should aim to achieve fundamental objectives such as preserving religion, life, lineage, intellect, and property, relying on the macro principles underlying the application of Islamic law: *tauhid*, *tazkiyah*, and

60 Ahmad Imam Mawardi., *Fiqh Minoritas: Fiqh Al-Aqalliyât Dan Evolusi Maqâshid Al-Syarî'ah Dari Konsep Ke Pendekatan*, ed. Ahmala Arifin, I, Yogyakarta, PT. LKIS Printing Cemerlang, 2010, page. 134.

61 Taha Jabir Al-Alwani., *Issues in Contemporary Islamic Thought* (London: The International Institute of Islamic Thought, 2005), page. 55.

62 Taha Jabir Al-Alwani., *Uşûl Al Fiqh Al Islâmî: Source Methodology in Islamic Jurisprudence: Methodology for Research and Knowledge*, ed. Yusuf Talal DeLorenzo A. S. Al Shaikh-Ali, Herndon, Virginia USA Research: The International Institute of Islamic Thought, 1990, page. 39.

63 Nancy Mustapha El Hallak., *Approaching The Qur'ân Through The Lens Of Mu Ḥammad Sha Ḥrūr: A Critical Analysis*, American University of Beirut, 2022, page. 115.

'*umron*.⁶⁴ Taha Jabir al-Alwani's approach in his book "Toward a *Fiqh* For Minorities: Some Basic Reflections" attempts to strike a balance between maintaining religious texts and contexts by adapting the text to the demands of the environment where minority Muslims reside.⁶⁵ This is an approach that respects diversity and acknowledges the importance of building harmonious relationships, both within the human fraternity (*ukhuwah al-Insaniyah*) and with the surrounding communities (*ukhuwah al-Wathaniyah*).

In the context of the legal status of interfaith inheritance, Al-Alwani undoubtedly takes into consideration the context of minority Muslims, as he pays special attention to the issues of Islamic law in minority settings through his book. In situations where minority Muslims live in non-Muslim countries, inheritance laws must be interpreted while considering the laws of the country of residence and Islamic principles. Textually, the interfaith inheritance provision is mentioned in a hadith of the Prophet Muhammad, which states, "A Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim." Almost all scholars agree that a Muslim cannot inherit from a non-Muslim, and vice versa.⁶⁶ However, the textual interpretation, as per the classical juristic perspective, is highly irrelevant when applied within a minority context.

This is because in minority-majority countries, the growth of converts (*mualaf*) has been significant.⁶⁷ Therefore, differences in religion within one family have become quite common. There are families where the father converts to Islam, but the wife and children remain non-Muslim, and vice versa. Some children convert to Islam while their parents remain non-Muslim. This means that the legal status of interfaith inheritance has become a lived reality in countries with a Muslim majority, such as the United States, Europe, and some Asian countries (Japan, South Korea, China, Thailand, among others). In this context, the classical juristic perspective on the forbidden status of interfaith inheritance must be reformulated based on the context and circumstances of minority Muslim communities in non-Muslim countries. If the classical juristic perspective, based on the textual understanding of the hadith narrated by Abdullah bin Umar, is applied, the universal authority of Islamic law that is applicable in all times and places will diminish.

The spirit of reformulation regarding the legal status of interfaith inheritance in minority Muslim communities, proposed by Al-Alwani, is not a novel concept. Early companions such as Umar bin Khattab also undertook similar reformulations with a similar spirit. As an example of

64 Taha Jabir Al-alwani., *Islamic Thought An Approach to Reform*, London, The International Institute of Islamic Thought, 2006, page. 43.

65 Taha Jabir Al-Alwani., *Reviving the Balance The Authority of the Qur ' an and the Status of the Sunnah* (London: The International Institute of Islamic Thought, 2017, page. 98.

66 Kurniawan., *Hak Waris Anak Yang Lahir Dari Perkawinan Beda Agama*.

67 Pew Research Center., *Europe Population by Religion*, Washington, 2023, <https://www.findeasy.in/europe-population-by-religion/>.

Umar bin Khattab's reformulation, he did not amputate the hand of a person convicted of theft because he was suffering from extreme poverty at that time.⁶⁸ It is *ijtihad* in the form of such reformulation that Al-Alwani uses as a theoretical basis for his perspective on the legal status of interfaith inheritance in minority contexts. Although Al-Alwani's work, "Towards *fiqh* minorities," does not specifically address the legal status of interfaith inheritance in minority Muslim communities, he presents it in the form of case studies that have occurred in non-Muslim countries.

Long before Al-Alwani, Najmudin al-Thufi stated that when text and context are in conflict, the text must yield to the context.⁶⁹ Al-Alwani's perspective is based on the theory of *maqashid al-Shari'ah*, which includes *maslahah* (public interest). Through the *maqashid al-Shari'ah* approach, as his predecessor al-Thufi did, Al-Alwani seeks to find a balance between Islamic principles, justice, the purpose of legislation, and the realities of minority Muslims in the context of the legal status of interfaith inheritance. He advocates for a fair, inclusive, and Islamically aligned interpretation of the law when confronting the challenges of a more modern era.⁷⁰

5. A Comparative Study of the Thoughts of Yusuf al-Qaradawi and Taha Jabir al-Alwani on the Legal Status of Interfaith Inheritance in Minority Muslim Communities

Qaradawi and Alwani are two influential Islamic legal thinkers in the contemporary era.⁷¹ Both of them employ a similar approach and perspective, which is the *Maqashid al-Shariah* approach. Qaradawi and Alwani believe that Islamic law is a universally revealed law, making it adoptable and adaptable to spatial, temporal, and situational conditions. According to them, Islamic law is comprehensive and even cosmopolitan, making its universality highly compatible with addressing the dynamic challenges faced by humanity.⁷² This includes its universality in addressing interfaith inheritance legal status cases occurring in non-Muslim countries.

The spirit and belief of Qaradawi and Alwani in the universality of Islamic law serve as the foundation of their *Maqashid al-Shariah* conception. By placing the Quran as the highest and authoritative source, they intentionally seek to unearth universal values in the application of Islamic law. This methodological foundation is also legitimized by Muhammad Shahrur, who states that the Quran is the

68 Muhammad Aldiansyah Pratama and Ahmad Fajar Shodik., Analisis Konsep Penafsiran Kontekstual Sayyidina Umar Bin Khattab Terhadap Teks Al-Qur'an, in *Proceeding of Annual Conference on Islamic Studies and Humanities*, ed. Muhammad Faiz, Jember, Fakultas Ushuluddin, Adab, dan Humaniora Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2022, page.39–59.

69 Hannani., Analysis of Najmuddin Al Thufi'S Concept of the Supremacy of Maslahah Against the Postulates of Islamic Law, *DIKTUM : Jurnal Syariah Dan Hukum*, Vol. 9, No. 1, 2021, page. 75–85.

70 Al-Alwani., *Issues in Contemporary Islamic Thought*.

71 N. Gafoordeen and M.M.M. Sabir., Thaha Jabir Al-Alwani & Yusuf Al-Qardlawi Founders of Minority *Fiqh* (*Fiqh Al Aqalliyat*), *International Journal of Research and Scientific Innovation*, Vol. X, No. IV, 2023

72 Rahman., *Islam & Modernity: Transformation of an Intellectual Tradition*, page. 19.

primary and foremost source, and all other sources must submit and correspond with the Quran.⁷³

Qaradawi and Alwani's proposals to reformulate the legal status of interfaith inheritance in minority Muslim communities are rooted in a shared academic approach and concern. Both of them employ a contextual approach with the spirit of *Maqashid al-Shariah*. Interestingly, both Qaradawi and Alwani have experienced living in both Muslim-majority and non-Muslim-majority countries. This diverse experience and background have led them to formulate *Qaulu al-Qadim* (the old stance) and *Qaulu al-Jadid* (the new stance). Qaradawi formulated his *Qaulu al-Qadim* while in Qatar, while his *Qaulu al-Jadid* was formulated during his stay in several European countries. Similarly, Alwani's *Qaulu al-Qadim* was shaped during his residence in Egypt, while his *Qaulu al-Jadid* emerged when he lived in Virginia, the United States.

When Qaradawi and Alwani resided in Qatar and Egypt, the epistemological basis they employed was more inclined towards a highly textual *bayani* epistemology. However, when they lived in non-Muslim countries like Europe and the United States, their *Qaul al-Jadid* required them to use a *burhani* epistemology that is rational and contextual.⁷⁴ According to Qaradawi and Alwani, the legal status of interfaith inheritance in minority communities should shift from a textual approach to a contextual one. Their experiences of living in both Muslim-majority and minority environments have made their thoughts highly progressive. Both Qaradawi and Alwani use the concept of minority *fiqh* to evaluate the legal status of interfaith inheritance in minority communities. They question whether the text should conform to reality or whether reality should conform to the text.

Both Qaradawi and Alwani prioritize reality over the text concerning the legal status of interfaith inheritance. While the hadith text "la yaritsu muslim al-Kafir wa la kafir al-Muslim" provides a definite legal ruling, the reality and context beyond the textual prescription present a legal purpose commonly known as *Maqashid al-Shariah*. The interfaith inheritance provision, as mentioned in the saying of Prophet Muhammad, must be viewed in light of its context, taking into consideration its moral ideals. According to Fazlur Rahman's theory of the "double movement", which serves as theoretical legitimacy for Qaradawi and Alwani's thinking, Islamic legal texts must be examined sociohistorically and then contextualized according to their moral ideals based on the circumstances.⁷⁵

In line with Fazlur Rahman's theory of the double movement, Ibn Ashur, in his work *al-Tahrir wa al-Tanwir*, also emphasizes the need for dialogue between text and context anytime and anywhere to ensure the flexibility of the Quran's scope. Thus, contextualizing the law through a

73 Muhammad Shahrur, *The Qur'an, Morality & Critical Reason*, ed. Dale F. Eickelman, Leiden, BRILL, Vol. 53, 2009, page. 71.

74 Moh. Anas Kholish and Nor Salam, *Epistemologi Hukum Islam Transformatif: Sebuah Tawaran Metodologis Dalam Pembacaan Kontemporer*, I, Malang, UIN-Maliki Press, 2015, page. 102.

75 Fazlur Rahman, *Islam, Second Edition*, Chicago, Universitas Chicago Press, 1979, page. 37.

historical textual examination becomes a solution.⁷⁶ With this understanding, the Quranic texts will always remain relevant in addressing contemporary issues of Islamic law at any time and place.⁷⁷ Simultaneously, Fatimah Mernissi affirms that by examining the historical context of a text, one can discover its true meaning and intent. Therefore, contextualizing the text cannot be generalized.⁷⁸

If Umar bin Khattab reformulated the provision regarding the non-obligation of zakat for converts due to different circumstances⁷⁹, then Qaradawi and Alwani, inspired by the same spirit of *Maqashid al-Shariah* reformulation as Umar bin Khattab, assert that a convert residing in a non-Muslim country should not be entitled to inherit. This is because the ruling mentioned in the hadith "la yaritsu muslim kafir wa la al-kafir muslim" would greatly harm the converts. The Quranic terminology related to converts, "wal muallaftu qulubuhum," which means those whose hearts are to be reconciled, suggests that the hearts of converts in minority Muslim communities need to be strengthened. This strengthening includes removing the prohibition on receiving inheritance from their non-Muslim family members. If the textual understanding is enforced upon converts, it would diminish the universality and comprehensiveness of Islamic law.

This progressive legal construct distinguishes Islamic law from other legal systems. While there are Islamic jurists who interpret Islamic law in a textual or literal manner, in the context of the legal status of interfaith inheritance in minority Muslim communities, Qaradawi and Alwani do not force textualism onto the justice-based understanding held by converts in minority communities. From a progressive legal perspective, this approach, as advocated by Satjipto Rahardjo, humanizes the law because ethics and moral ideals, as they are applied in a policy, become considerations in interpreting a legal provision.⁸⁰

Therefore, through the reformulation of the legal status of interfaith inheritance in minority communities by Qardhawi and Alwani, they have addressed the concerns of converts who were at risk of falling into the abyss of doubt as heirs to non-Muslim heirs in minority settings. Islamic law further emphasizes its responsive nature, which is not merely a slogan but a substantive aspect, through the *ratio legis* reformulation of the legal status of interfaith inheritance pioneered by Qardhawi and Alwani. This is the responsive law referred to by Philippe Nonet and

76 Muhammad At-Thohir bin 'Asyur, *Al-Tahrir Wa Al-Tanwir.*, *Al-Tahrir Wa Al-Tanwir*, Tunis, Dar At-Tunisiyah, 1984, page. 13.

77 Ulul Umami and Abdul Ghofur., Human Rights in Maqāṣid Al-Sharī'ah Al-Āmmah: A Perspective of Ibn 'Ashūr, *Al-Ahkam*, Vol. 32, No. 1, 2022, page. 87–108

78 Roibin, Ahmad Qiram As-Suvi, Yahya Abdullah, Zahrah Salsabilah Ashari., Domestifikasi Peran Perempuan Sebagai Representasi Tradisi Patriarki Masa Silam: Sebuah Refleksi Pemikiran Friedrich Engels Dan Fatimah Mernissi, *Marwah: Jurnal Perempuan, Agama Dan Jender*, Vol. 22, No. 1, 2023, page. 53–71.

79 Nashih Muhammad, Eko Sariyekti, and Sumarjoko Sumarjoko., Reaktualisasi Nasakh Dalam Perspektif Sosiologis, *Syariat: Jurnal Studi Al-Qur'an Dan Hukum*, Vol. 8, No. 1, 2022, page. 53–64.

80 Herlindah, Siti Rohmah, Ahmad Qiram As-Suvi., Character-Building For Law Students: Exploring The Satjipto Rahardjo ' S Thoughts, *Waskita: Jurnal Pendidikan Nilai Dan Pengembangan Karakter*, Vol. 6, No. 2, 2022, page. 156–73.

Philip Selznick, which is accommodating and delves into implied meanings, such as universal values within a policy, ensuring that the law is not interpreted in a rigid and inflexible manner.⁸¹

Therefore, in the context of the legal status of interfaith inheritance in minority settings, Qardhawi and Alwani perceive that converts who have the status of heirs should still have the right to inherit from non-Muslim heirs. The minority context serves as a consideration. At the same time, they take into account the objective of the inheritance law, which revolves around the dimension of public interest, making it the primary approach for Qardhawi and Alwani in minority settings.⁸²

The expressions of Qardhawi and Alwani share a similar spirit with the progressive legal thinking of Satjipto Rahardjo. According to him, the law must be capable of providing a sense of justice for humanity. The law should not differentiate between minority and majority communities; it should serve as a shield between them.⁸³

In this context, in Indonesia, the existence of non-Muslim heirs and Muslim heirs is also a reality amidst the majority Muslim population. Despite the legal system in Indonesia not recognizing inheritance across religions in the Compilation of Islamic Law, in Bali with a Hindu majority, NTT and Manado with a Christian majority, and some other Muslim-minority areas in Indonesia, the potential for interfaith inheritance (non-Muslim heirs and Muslim heirs) exists.⁸⁴ The lives of minority Muslims who live tolerantly with the non-Muslim majority should not be disrupted by court decisions and religious edicts declaring interfaith inheritance as forbidden.

Simultaneously, Indonesia, as a multicultural country, encourages practices of interfaith marriage in multicultural areas with various religious variants. The insistence of many Muslim communities on imposing the majority fiqh perspective on minority bases is a form of authoritarianism that goes against the natural order of societal living. As a consequence, religious conflicts often occur due to minorities not respecting the majority, while the majority oppresses the minority, as seen in cases in India⁸⁴, Myanmar⁸⁵, and other non-Muslim countries. Conflicts in the name of religion in minority bases persist due to their conservative and literalist views on religious law.

81 Agam Ibnu Asa, Misnal Munir, and Rr. Siti Murti Ningsih., Nonet and Selznick'S Responsive Law Concept in a Historical Philosophy Perspective, *Crepidol*, Vol. 3, No. 2, 2021, page. 96–109.

82 Adel Ibrahim A. Alturki, Jamal, Ahmad Wasito., Good Muslims and Good Citizens: How *Fiqh Al-Aqalliyat* Solves the Problems of Muslim Minorities in the West, *PJRS: Peradaban Journal Of Religion and Society*, Vol. 2, No. 1, 2023, page. 85–104.

83 Habibi, Muhammad Badri, and Muchammad Zidan Taufiqi., Humanitarian Conflict in Myanmar from the Perspective of International Law and Human Rights, *Peradaban Journal of Law and Society*, Vol. 2, No. 1, 2023, page. 23-35.

84 Kodir, A., As-Suvi, A. Q., & Rianda, F. U., Reaktualisasi Ahimsa dalam Perdamaian Agama di India: Kritik atas Otoritarianisme Agama dalam Pemikiran Gandhi, *Peradaban Journal of Religion and Society*, Vol. 2, No. 2, 2023, page.164-175.

85 Setyabudi, M. N. P., Toleransi itu Mahal, Tidak Setiap Orang Mampu dan Berani Mambayarnya! Berkaca Pada agenda Costly Tolerance, *Peradaban Journal of Religion and Society*, Vol. 2, No. 1, 2023, page. 1-19.

Tolerance becomes a precious commodity in minority bases, often torn away from society due to the injustice in legal perspectives.⁸⁶ Thus, the formulation of Qardhawi and Alwani's *fiqh al-aqaliyah* must continue to be promoted and contextualized to address various issues faced by Muslim minorities in Indonesia and globally. Technically, judges in religious courts and scholars in Indonesia must prioritize the Aqaliyat perspective to meet the needs of Indonesian society regarding interfaith inheritance, particularly in minority areas such as Manado, Papua, Bali, Nusa Tenggara Timur, Toba, Ambon, and others. The progressive *ijtihad* of judges, Kyai, and Ulama in responding to the complexities faced by Muslim minorities in non-Muslim majority bases is a legislative ratio emphasizing the importance of Qardhawi and Alwani's *fiqh al-Aqaliyat* as the methodological foundation for legal determination.

D. CONCLUSION

From the various discussions above, several conclusions can be drawn that the reformulation of the thoughts of Yusuf al-Qardhawi and Taha Jabir al-Alwani regarding the legal status of interfaith inheritance in minority Muslim communities is a methodological necessity to address the normative vacuum that exists in Western countries and non-Muslim nations. The minority jurisprudence of Qardhawi and Alwani represents a methodological perspective that emphasizes the importance of understanding "law in context" rather than "law in the book." The legal certainty of "law in the book" must be able to engage in a dialogue with legal justice embodied in "law in context." The interpretation of "law in the book" by classical jurists regarding the hadith "la yaritsu muslim al-Kafir wa la kafir al-Muslim" (a Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim) is a form of anachronism in *ijtihad* when applied in minority Muslim settings. Therefore, it must be reformulated in the context of "law in context." The ratio legis of the reformulation by Qardhawi and Alwani is based on considerations of *maslahat* (public interest) and *maqashid al-Syariah* (objectives of Islamic law) that are deeply embedded in "law in context." If the classical juristic formulation of inheritance distribution based on the hadith is not reformulated, the spirit of justice and benefit in the inheritance of Muslims and non-Muslims in non-Muslim countries will strip away their fundamental rights as human beings. At this juncture, this article can serve as a reference for judges in Islamic courts when deciding cases of interfaith inheritance, which are prevalent in Indonesia. The ratio legis of the reformulation of the legal status of interfaith inheritance from the perspective of minority *fiqh* by Qardhawi and Alwani can at least be replicated and applied in the rulings of progressive Islamic court judges. Wallahu a'alam bi al-showab.

86 Sukmana, T., Ashari, Z. S., & Darmawan, Y., (2023). Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo, *Peradaban Journal of Law and Society*, Vol. 2, No. 1, 2023, page. 92-106.

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