



From Text to Context: The Role of *Kyai* in Shaping Modern Islamic Inheritance Law

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Abstract: This study aims to analyse the reasons for applying modern Islamic inheritance law based on the *ijtihad* of *Kyai* and examine the construction of modern Islamic inheritance law developed in Kajen District. This study is an empirical legal study using a sociological approach to law. Data was obtained through in-depth interviews with *Kyai*, participatory observation, documentary studies, and Focus Group Discussions (FGD). This study shows that the development of modern Islamic inheritance law in the Muslim community of Kajen District is influenced by changes in mindset, attitudes, and social culture. *Kyai* has developed a legal construction of inheritance that combines local cultural values with contemporary Islamic principles through philosophical, juridical, and socio-cultural arguments. The three main provisions resulting from this *ijtihad* include: first, the expansion of the concept of substitute heirs, not limited to grandchildren but also including siblings and parents, even when the testator is still alive; second, equality in the distribution of inheritance between men and women; and third, the recognition of the right to maintenance and mandatory bequests for children born out of wedlock through the mechanism of substitute heirs. This research contributes academically by demonstrating that local traditions play a strategic role in shaping the pattern of Islamic inheritance law, *ijtihad*, thereby enriching the contemporary sociology of Islamic law.

Keywords: Islamic Inheritance Law, *Ijtihad*, Contemporary, *Kyai*

Abstrak: Penelitian ini bertujuan untuk menganalisis alasan penerapan hukum waris Islam modern berdasarkan ijtihad para *Kyai*, serta mengkaji konstruksi hukum waris Islam modern yang berkembang di Kecamatan KAJEN. Studi ini merupakan penelitian hukum empiris dengan pendekatan metode sosiologi hukum. Data diperoleh melalui wawancara mendalam dengan *Kyai-kyai*, observasi partisipatif, studi dokumentasi, serta Focus Group Discussion (FGD). Penelitian ini menunjukkan bahwa perkembangan hukum waris Islam modern di masyarakat Muslim KAJEN dipengaruhi oleh perubahan pola pikir, sikap, dan budaya sosial. Para *Kyai* mengembangkan konstruksi hukum waris yang memadukan nilai budaya lokal dengan prinsip-prinsip Islam kontemporer melalui argumentasi filosofis, yuridis, dan sosial-budaya. Tiga ketentuan pokok hasil ijtihad tersebut meliputi: pertama, perluasan konsep ahli waris pengganti, tidak terbatas pada cucu tetapi juga meliputi saudara kandung dan orang tua, bahkan saat pewaris masih hidup; kedua, kesetaraan pembagian waris antara laki-laki dan perempuan; dan ketiga, pengakuan hak nafkah dan wasiat wajib bagi anak yang lahir dari perkawinan di luar nikah melalui mekanisme ahli waris pengganti. Penelitian ini berkontribusi secara akademis dengan menunjukkan bahwa tradisi lokal memainkan peran strategis dalam membentuk pola ijtihad hukum waris Islam, sehingga memperkaya khazanah sosiologi hukum Islam kontemporer.

Kata Kunci: Hukum Waris Islam, Ijtihad, Kontemporer, *Kyai*

Introduction

The application of Islamic inheritance law in various regions has its characteristics because the interpretation of local scholars and culture influences it.¹ The opinion of the majority of scholars is the primary reference in the distribution of inheritance, such as the provision that the mother's share is one-third of the remaining assets if the heirs consist of a father, mother, and spouse.² Differences of opinion also arise in cases involving husband, mother, mother's sister, and biological brother, as regulated in QS. an-Nisa'/4: 12 and QS. an-Nisa'/4: 176.³ In certain situations, the interpretations of scholars are not always uniform. For example, according to Umar bin Khattab, who Imam Malik and Imam Syafi'i followed, the inheritance is divided evenly between parents and children by one-third. In contrast, Abu Hanifah and Ahmad bin Hanbal still adhere to the literal provisions of the Qur'an and Hadith.⁴ This difference has developed since the time of the Prophet's companions to the generation of *tabi'in*.

In Indonesia, Islamic inheritance law is regulated in the Compilation of Islamic Law, following Presidential Instruction No. 1 of 1991. Inheritance law is contained in the second book of the Compilation of Islamic Law, which the Presidential Instruction regulates.⁵ In addition to the Compilation of Islamic Law, Islamic inheritance law is also constructed by scholars to resolve inheritance outside the court,⁶

¹ Al-Imām Taqīyuddīn Abī Bakrī Ibn Muhammad Al-Husainī, *Kifāyah Al-Akhyār Fī Hal Ghāyah Al-Ikhtisār*, Vol. 1 (Beirut-Lebanon: Dār al-Kutub al-Ilmiyah, 2001).

² Arip Purkon, "Rethinking of Contemporary Islamic Law Methodology: Critical Study of Muhammad Shahrūr's Thinking on Islamic Law Sources," *HTS Teologiese Studies/Theological Studies* 78, no. 4 (2022): 1–7, <https://doi.org/10.4102/hts.v78i4.7152>.

³ Sayyid Sabiq, *Fiqih Sunnah* 14 (Bandung: Al-Ma'arif, 2007), 272–74.

⁴ Ibn Qudamah, *Al-Mughni*, Vol. VI (Kairo: Maktabah Al-Qahira, 1970), 279–80.

⁵ Muhammad Amrullah Drs Nasrul et al., "An Overview of the Inheritance Legal System in Malaysia and Indonesia: Issues Faced by Both Countries," *Journal of Shariah Law Research* 6, no. 2 (2021): 181–200.

⁶ Justin Jones, "Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice between South Asia and Contemporary Britain," *Journal of Muslim Minority Affairs* 40, no. 1 (2020): 48–66, <https://doi.org/10.1080/13602004.2020.1741170>; Faisal Husen Ismail et al., "Customary and Islamic Practices in Inheritance Distribution: Insights from The Gampong Customary Court in Pidie," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 SE-Articles (December 30, 2024): 1–16, <https://doi.org/10.30631/alrisalah.v24i2.1544>.

one of which is the construction of local *Kyai* who legitimize Islamic inheritance law in the local community.⁷ In this context, the resulting construction usually differs from classical scholars. It is relevant to contemporary scholars, even contradicting them, because the *ijtihad* of the *Kyai* not only refers to the normative level, but also pays attention to the surrounding socio-cultural context,⁸ as is the case in Kajen District, Pekalongan Regency. Kajen District holds a significant position as a center of Islamic religious and cultural development, as well as the development of Islamic religion and culture. The people in this area have a strong tradition of respecting ulama or *Kyai* as religious leaders and guardians of tradition. *Kyai*, as the central pillar in understanding and spreading the teachings of Islam, has a central role in shaping legal and moral views in society. As such, there are unique interpretations and approaches to Islamic inheritance law in the region, which may differ from the views of classical and contemporary scholars. In this case, legal decisions and inheritance settlements are not only based on normative aspects of religion, but also consider social factors, culture, and strong traditions in the local community. Therefore, the conditions in Kajen District are interesting for further research to discover the interpretations of Islamic inheritance law developed in the area and analyze its reasons.

Several fields of studies have explored various aspect of the construction of Islamic inheritance law in the modern era, such as are the results of Muhammad Hasan's research, modern Islamic inheritance law *ijtihad* of judges who pay attention to the socio-cultural conditions of the local community,⁹ Then his research Mursyid Djawas et al. discussed the comparison between *fiqh* and the Compilation of Islamic Law in the construction of Islamic inheritance law, as well as the socio-cultural influence on the two legal systems.¹⁰ Anugrah Reskiani et al. examine the construction of *istinbath* in the jurisprudence of inheritance law of the Indonesian Supreme Court, which resulted in the emergence of conservative groups criticizing inheritance *fiqh* because of its findings contradicting classical Islamic law.¹¹ Muhammad Barrunnawa et al. explain the renewal of Islamic inheritance law that has occurred since the era of the companions.¹² Furthermore, the last is Jalaluddin's work, which concludes that patrilineal construction is caused by the formation of '*urf*' in Arab society and an incomplete understanding of the texts. Therefore, patrilineal construction is not the result of patrilineal thinking itself.¹³ Specifically, previous research has not sufficiently analyzed the epistemological process behind the *Kyai*'s legal reasoning, their engagement with local traditions,¹⁴ and how these factors shape the practical application of Islamic inheritance in

⁷ Ahmad Faisal et al., "Strengthening Religious Moderatism through the Traditional Authority of Kiai in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2150450>; Muhammad Taufiq et al., "Tengka, Identity Politics, and the Fiqh of Civilization: The Authority of Madura's Kiai in the Post-Truth Era," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 1 SE-Articles (July 26, 2024): 139–65, <https://doi.org/10.18326/ijtihad.v24i1.139-165>.

⁸ Faisal et al., "Strengthening Religious Moderatism through the Traditional Authority of Kiai in Indonesia."

⁹ Muhammad Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah* 7, no. 2 (2023): 650–68, <https://doi.org/10.22373/sjkh.v7i2.8852>.

¹⁰ Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 207–19, <https://doi.org/10.31958/juris.v21i2.7495>.

¹¹ Anugrah Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *Jurnal Ilmiah Syariah* 21, no. 1 (2022): 1–35, <https://doi.org/10.31958/juris.v21i1.5564>.

¹² Muhammad Barrunnawa, Berlian Fajrul Falakh, and Firdha Setyawan Maslakul Huda, "Hukum Waris Dalam Islam: Dari Era Klasik Hingga Kontemporer," *Jurnal Ilmiah Mahasiswa Raushan Fikr* 10, no. 2 (2021): 149–63, <https://doi.org/10.24090/jimrf.v10i2.4844>.

¹³ Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law."

¹⁴ Liza Diniarizky Putri et al., "Developing Ecological Piety in Pesantren: The *Kyai*'s Cognition and the Practice of Living Fiqh Al-Bī'ah in Banten," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (January 2024): 235–59, <https://doi.org/10.18326/ijtihad.v23i2.235-259>.

local communities. Thus, this study aims to fill that gap by investigating the formation of the *Kyai's* thought process, linking scientific constructs, socio-cultural contexts, and community practices, to propose a culturally and historically relevant construction of Islamic inheritance law.

Based on the previous context, this article aims to analyze the factors influencing modern Islamic inheritance law construction and examine how the *ijtihad* of *Kyai* in Kajen District reflects this construction. This study is an empirical legal study using a sociological approach to law. The primary data was obtained through in-depth interviews with *Kyai*, participatory observation, documentary studies, and Focus Group Discussions (FGD). Meanwhile, the secondary data source is considered relevant to the topic under discussion and functions to support the primary data source. The data set encompasses a variety of literature sources, including scientific articles, books, and other relevant materials.¹⁵ The data was analyzed using a qualitative descriptive analysis method, by identifying the mindset, social interactions, and cultural values that influence the *ijtihad* of the *Kyai* in inheritance cases, then interpreting them within the framework of legal sociology. The data collection technique used was purposive sampling with the snowball principle. The theories used are legal culture theory and symbolic interactionism theory. Symbolic interactionism can help analyze how social meaning is formed and interpreted by the *Kyai* and society in the context of inheritance distribution, not only based on normative legal texts, but also social experiences and interactions., while legal culture theory explains how local culture greatly influences the implementation of Islamic inheritance law as constructed by the *Kyai* in Kajen District.

The Causes of Modern Islamic Inheritance Law Development in Muslim Communities in Kajen District

Islamic inheritance law is an essential part of Muslim society. In the modern era, along with the development of society and social dynamics, there has been a shift in how people understand, interpret, and implement Islamic inheritance law.¹⁶ Humans behave based on their interpretations of specific meanings in situations or objects.¹⁷ This illustrates that the actions taken by individuals in determining the distribution of inheritance property are triggered by the interpretations they have about particular meanings in the situation. These interpretations then motivate them to act according to personal experience. In Mead's theoretical framework, symbolic interactionism reflects that human behavior is based on the understanding of their internal meanings, which are influenced by various factors,¹⁸ such as:

¹⁵ Doli Witro, "State Islamic University Students' Perceptions of Israel-Affiliated Products: A Study After the Fatwa of Indonesia Ulema Council No. 83 of 2023 Concerning the Law on Support for the Palestinian Struggle," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 145–60, <https://doi.org/10.24090/mnh.v18i1.10554>; Shinta Azzahra Sudrajat, Arzam Arzam, and Doli Witro, "Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism," *Khazanah Hukum* 4, no. 1 (2022): 1–9, <https://doi.org/10.15575/kh.v4i1.17027>; Sofian Al-Hakim, Doli Witro, and Muhamad Izazi Nurjaman, "Law of Usury (RIBA) According to Masyarakat Tanpa Riba (MTR): Perceptions, Attitudes, and Movements," *Asy-Syari'ah* 26, no. 1 (2024): 41–62, <https://doi.org/10.15575/as.v26i1.29639>.

¹⁶ Hasse Jubba et al., "Compromise of Islam and Customary Practices in the Religious Practices of the Muslim Community in Papua: A Study of Maqāṣid Syari'ah," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 SE-Articles (December 28, 2024): 305–30, <https://doi.org/10.18326/ijtihad.v24i2.305-330>; Anas Maulana et al., "Inheritance Rights of Nasabiyah Children Born Out of Wedlock According to Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 444–61, <https://doi.org/10.22373/ujhk.v7i2.25072>.

¹⁷ Gulyamov Said Saidakhrarovich, Akramov Akmaljon Anvarjon Ugli, and Eshbayev Gayrat Bolibek Ugli, "Digitization in Inheritance Law," *World Bulletin of Management and Law* 10 (2022): 18–30.

¹⁸ Senanu K. Kutor, Alexandru Raileanu, and Dragos Simandan, "Thinking Geographically about How People Become Wiser: An Analysis of the Spatial Dislocations and Intercultural Encounters of International Migrants," *Social Sciences and Humanities Open* 6, no. 1 (2022): 100288, <https://doi.org/10.1016/j.ssaho.2022.100288>.

1. Mind

The mind is influenced by people's knowledge of Islamic inheritance law.¹⁹ Legal knowledge is a person's knowledge of specific regulations stipulated in written and unwritten law.²⁰ The mindset of the Muslim community in Kajen District, Pekalongan Regency, related to modern Islamic inheritance law, illustrates the evolution in understanding and approach to Islamic inheritance law. The mindset is influenced by knowledge and experience related to inheritance law.²¹ Several aspects that affect the mindset of the community that have led to the development of modern Islamic inheritance law in Kajen District, Pekalongan Regency, include those listed in Table 1:

Table 1.
Influence the Mindset of the Community

No.	Mindset	Information
1.	Education	Increased access to education and information has positively impacted people's mindset regarding inheritance law. ²² Greater education opens up opportunities to understand Islamic law more deeply, and people are more likely to accept new interpretations that align with the values of the times.
2.	Justice	Society's mindset is increasingly accepting of the idea of justice and equality. Equal rights in receiving a share of inheritance become more critical for the benefit and can prevent injustice and disputes in the family.
3.	Social	The tendency to seek justice and efficiency in the inheritance distribution can influence the inheritance law approach. ²³ Communities in Kajen District adopt Islamic values that are adaptive to the context of the times. They recognize the need to interpret Islamic law according to the needs and challenges faced by modern society. This leads to accepting inheritance law principles that are more relevant to current social conditions.
4.	Influence of Clerics and Religious Leaders	The role of ulama and local religious leaders is vital in shaping the community's mindset regarding inheritance law. If ulama and religious leaders embrace the idea of a more modern and inclusive Islamic inheritance law, then the community will tend to follow that direction.

Overall, the mindset of Muslim communities in Kajen District, Pekalongan Regency, regarding modern Islamic inheritance law reflects the adaptation and evolution of their understanding of religious values in the context of the times. Education, information, openness to new interpretations,

¹⁹ Zainal Arifin H. Munir, "Justice and Peace: The Reconstruction Of Inheritance Law Based On Tradition In Lombok," *Russian Law Journal* 11, no. 2 (2023): 25–32, <https://doi.org/10.52783/rlj.v11i2.507>.

²⁰ Zainuddin Ali, *Sosiologi Hukum* (Jakarta: Sinar Grafika, 2002), 100.

²¹ Siah Khosyi'ah and Ayi Yunus Rusyana, "Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2126615>.

²² Ahmad Redi and Hartini Antasari, "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective," *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)* 655, no. Ticash 2021 (2022): 850–56, <https://doi.org/10.2991/assehr.k.220404.135>.

²³ Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence."

and the influence of social and cultural factors have helped shape views that are more inclusive and responsive to changes in modern society.

2. Self

Mead argues that the individual is an actor who is aware of and reflects on the surrounding world. Individuals form a concept of themselves called the self through objects they recognize.²⁴ This self-concept is an ongoing process, where individuals recognize information, evaluate it, give it meaning, and then decide to act based on that interpretation.²⁵ Interviews with informants were conducted to determine the reasons for using modern Islamic inheritance law, as shown in Table 2:

Table 2.
Categorization of Inheritance Distribution Cases

No.	Case Name	Distribution Method	Basis of Distribution	Main Inheritor	Form of Inheritance	Special Notes
1.	Mrs. Yati and her siblings	Equal distribution	Consensus (Musyawarah) and Kyai's opinion	All children (including Mrs. Yati)	Land plots	Fair distribution without gender discrimination.
2.	Mr. Khairul Anam	Equal distribution	Consensus, local Kajen customs	All children, particularly the youngest daughter, receive the house	House and other assets	The house was awarded to the youngest daughter due to local custom and caregiving considerations.
3.	Azizah	Equal with special considerations	The deceased's will & Kyai's opinion	All children, the house was given to Azizah (the youngest daughter)	4 land plots + 1 house	Distribution based on fairness, not solely economic value.
4.	Mrs. Sugiyati	Not by Islamic inheritance law	Substitute inheritance (informal)	Grandchild (child of Sugiyati)	Property transferred from mother to grandchild	Sugiyati's right was bypassed, and the inheritance was passed directly to the grandchild.
5.	Mr. Adi Aryo Kiswanto	Inheritance to substitute the heir	Replacement position as an adopted child	Mr. Adi (adopted child)	1 unit of house	Replacing the position of deceased adoptive parents.

Analysis of categorization of inheritance distribution cases:

- The case experienced by Mrs. Yati and her three siblings was one where they had inheritance rights from their mother. In the process, all heirs consulted the local Kyai regarding the

²⁴ Mina Jahangiri, Fazel Asadi Amjad, and Alireza Omidbakhsh, "Analyzing Edward Albee's A Delicate Balance Based on Symbolic Interactionism Focusing on the Viewpoints of George Herbert Mead," *Sociological Review* 29, no. 1 (2016): 295–321, <https://doi.org/10.22059/jsr.2022.88963>.

²⁵ M. Margaret Paloma, *Sosiologi Kontemporer* (Jakarta: Raja Grafindo Persada, 2003), 258.

distribution of the inheritance. In this case, the *Kyai* considered women's rights because normatively, inheritance law is social, while the condition of women in the Kajen area is already equal in many ways to men, therefore the *ijtihad* of the Kajen *Kyai* is of the view that men and women should be given the same portion for reasons of equal social justice. All parties have reached an agreement to implement an equal inheritance distribution method. Thus, each member of the heirs will receive the same share, namely, a plot of land for each male heir and Mrs. Yati herself.

- b. The case experienced by Mr. Khairul Anam, where his father left an inheritance and had seven children as heirs. In this situation, none of the heirs felt advantaged or disadvantaged because they agreed to implement an equal division of inheritance according to the customs and traditions prevailing in Kajen District. In this case, the *Kyai* Kajen considered the parties' agreement an equal division between men and women. This agreement was based on the culture and customs that gradually forming in the area. The *Kyai* allowed the division because it was considered not normatively contradictory and oriented towards the public interest. Some factors encouraged the heirs to hold discussions and agree to carry out an equal division. However, in this context, the youngest daughter received the inherited house from the heir. In the process of dividing this inheritance, all assets left by the heir were not divided, but were arranged in the same amount. Miss. A's case, where her father had mandated the distribution of the inheritance equally before he died. All the heirs gathered and had a meeting to establish the division of the inheritance to be used based on the *Kyai*'s opinion. Eventually, they agreed to apply the equal division approach, given the will of the deceased, and to ensure the principle of fairness, which is vital in avoiding conflict within the family. The deceased left four plots of land and one housing unit to be divided among five children: four sons and one daughter. Each son will receive one plot of land, while the daughter will receive one housing unit. The granting of inheritance in the form of a house to the daughter is based on local customs in Kajongan Village, Kajen District. Although the value of the house bequeathed to Miss. A has a greater proportional value compared to the property received by other male heirs, and this decision has been taken through previous deliberations. This consideration also included Miss. A's status as the youngest daughter who cared for the deceased before his death was unmarried. All heirs agreed to distribute the inheritance equally.
- c. The case experienced by Azizah is where her father willed an equal division of the inheritance before he died. All heirs gathered and held a meeting to determine the division of the inheritance to be used based on the opinion of the *Kyai*. Finally, they agreed to apply an equal distribution approach, considering the will of the deceased, and to ensure the principle of justice, which is essential to avoid conflict in the family. The deceased left four plots of land and one house to be divided among five children, including four boys and one girl. Each boy will receive one plot of land, while the girl will receive one house. The provision of inheritance in the form of a house to the girl is based on local customs in Kajongan Village, Kajen District. Although the value of the house inherited by Azizah has a greater proportion value than the assets received by the other male heirs, this decision was taken through prior deliberation. This consideration also includes Azizah's status as the

youngest daughter, who took care of the deceased before she died and was not yet married. All heirs agreed to distribute the inheritance equally. In this case, women have a greater inheritance value than men, namely by getting a house. This reason is based on the fact that women are considered to occupy the house with their mothers. Therefore, the *Kyai* consider justice and welfare the only things that allow this division.

- d. In the family of Mr. Musa, where in the distribution, one of the inheritances that should have been given to his second child, Mrs. Sugiyati, but instead the property was transferred directly when Mrs. Sugiyati was still alive. This means that Mrs. Sugiyati's rights as the legitimate heir were taken by her child or grandchild concerning the testator. There is no explanation for this kind of distribution in Islamic law, but the distribution can be said to be a distribution of substitute heirs because the child replaces the position of his parents. The direct distribution was replaced by his grandchildren, even though the principal heir (mother) was still alive. The consideration of the *Kyai* was because the surrounding community considered grandchildren to have longer lives and could lead their families to a better life. The *Kyai* thought that the mechanism of substitute heirs created by Hazairin was socially oriented, so they created a new idea by following the social flow in their area, even though this deviated from existing provisions. Therefore, the *ijtihad* formed in this case prioritized the customs and culture that had been formed for a long time by the community.
- e. In the case of the inheritance distribution carried out by Mr. Sikris, it was given in its entirety to Mr. Adi Aryo Kiswanto. Mr. Adi is the adopted son of Mr. Rohadi and Mrs. Sumitri. The chart explains that the inheritance distribution carried out was that Mr. Adi replaced Mr. Rohadi (who had died before the testator) as his successor heir. The total assets distributed were one house unit, which was given to Mr. Adi and had been certified in his name. In this case, the adopted son replaced his father, who had died before the testator. Normatively, adopted children do not have the right to inherit because there is no element of lineage from the testator. However, because the *Kyai* felt pity and empathy for the adopted child who had no one and nothing, the inheritance was given to the adopted child through the mechanism of a successor heir (considered the testator's grandson).

From these cases, it can be concluded that, in general, the reasons underlying the division of inheritance include considerations of justice, local customs that have developed, socio-economic conditions, and the influence of wills or the replacement of heirs. The heirs conducted deliberation and consensus to decide on the procedure that best suited the context and values prevailing in their community.

3. Society

Society is a group of individuals who live together, interact, and communicate with each other. From these interactions arise patterns of thought, concepts, and attitudes that shape society's culture and become habits passed down from generation to generation. According to Mead, society can be interpreted as a collective response in a community or as a result of the habit of living together in a community.

Regarding the distribution of Islamic inheritance, the role of the *Kyai* is significant in developing laws in the community. In general, the Muslim community in Kajen District, Pekalongan Regency, determines the division of inheritance based on the opinion of the *Kyai*. The construction produced by local *Kyai* to legalize Islamic inheritance law in the local community has unique characteristics. In this situation, the construction they built shows differences from the views of classical scholars and is also relevant to the views of contemporary scholars. Sometimes their views contradict each other, because the *Kyai's ijtihad* is not only based on normative aspects alone, but also considers the surrounding social and cultural context.²⁶ The differences can be seen in Table 3 below:

Table 3.
The Difference between *Kyai's Ijtihad* and Classical *Fiqh*

No.	<i>Kyai's Ijtihad</i>	Classical <i>Fiqh</i>
1.	Substitute heirs with a free system. ²⁷	In classical <i>fiqh</i> , there is no such thing as a <i>Mawali</i> (substitute heir) ²⁸ , so the existence of a substitute heir is not law. However, the system created by classical scholars provided welfare to grandchildren through compulsory testament. ²⁹
2.	Equal distribution ³⁰	According to the Sunni <i>fiqh</i> view, the division of inheritance between men and women is two to one (2:1), meaning that men have more inheritance than women. ³¹
3.	Children out of wedlock can receive support and a will or inheritance using a replacement heir mechanism. ³²	Children born out of wedlock are only related to their biological mother, so maintenance, wills, and inheritances are only obtained from the mother. At the same time, the father is not obliged to provide for them. ³³

The table above shows a difference between the *ijtihad* built by the *Kyai* of Kajen District and the provisions in classical *fiqh*. The difference arises because symbolic interactionism reflects that human behavior is based on interpreting their internal meanings, which are influenced by various factors, as explained earlier. If we look at the context, the construction of the *Kyai* on inheritance law through many considerations, especially *maqashid sharia*³⁴, with the following explanation: first, the

²⁶ Imam Syafi'i and Tutik Hamidah, "Maslahah Controvers As Sources, Methods and Objectives (Comparative Analysis Study of the Four Madhab)," *Al-Adalah : Jurnal Syariah Dan Hukum Islam* 7, no. 1 (2022): 19–38, <https://doi.org/10.31538/adlh.v7i1.1642>.

²⁷ Results of interviews, observations, and Focus Group Discussions (FGD) in Kajen District, Pekalongan Regency.

²⁸ Sayuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Sinar Grafika, 2022).

²⁹ Compulsory testament is wasiat wajibah. See Rahmad Setyawan et al., "Contemporary Ijtihad Deconstruction in the Supreme Court: Wasiat Wajibah as an Alternative for Non-Muslim Heirs in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 25–40, <https://doi.org/10.30984/jis.v22i1.2968>.

³⁰ Results of interviews, observations, and Focus Group Discussions (FGD) in Kajen District, Pekalongan Regency.

³¹ Zakiul Fuady Muhammad Daud and Raihanah Bt Azahari, "Menyoal Rekonstruksi Maqashid Dalam Pembaharuan Hukum Kewarisan Islam," *Jurnal Ilmiah Islam Futura* 18, no. 1 (October 2019): 1–33, <https://doi.org/10.22373/jiif.v18i1.2843>.

³² Results of interviews, observations, and Focus Group Discussions (FGD) in Kajen District, Pekalongan Regency.

³³ Munawir Syadzali, *Polemik Reaktualisasi Ajaran Islam* (Jakarta: Pustaka Panjimas, 1989), 2.

³⁴ Asa'ari Asa'ari et al., "Urgensi Pemahaman Terhadap Maqashid Al-Syari'ah Dan Perubahan Sosial Dalam Istibath Al-Ahkam," *De Jure: Jurnal Hukum Dan Syari'ah* 13, no. 2 (2021): 222–39, <https://doi.org/10.18860/j-fsh.v13i2.13818>; Asa'ari Asa'ari et al., "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāsid Al-Syari'Ah," *Samarah* 7, no. 2 (2023): 920–36, <https://doi.org/10.22373/sjkh.v7i2.14944>; Doli Witro, "Maqashid Syari'ah as a Filter of Hoax Through Al-Quran Perspective," *Jurnal Ilmiah Al-Syir'ah* 18, no. 2 (2020): 187–200, <https://doi.org/10.30984/jis.v18i2.1133>.

consideration is for maintaining religion (*hifdz al-din*). The construction is built based on normative considerations of inheritance law and the mindset of previous scholars, in collaboration with the social conditions of society.³⁵ Second, the construction is under the maintenance of the soul (*hifdz al-nafs*), where the orientation of the Kajen scholars is to maintain social welfare, as the results of observations, interviews, and FGDs, so that the construction formed is based on local culture and customs. Third, the construction of inheritance law follows the maintenance of reason (*hifdz al-aql*), where the construction that the *Kyai* Kajen considers has gone through long and strict discussions with other *Kyai*. Therefore, the results of the *formed ijtihad* do not have personal interests, but are the results of joint discussions. Fourth, the construction of inheritance law formed by the *Kyai* is oriented towards maintaining descendants (*hifdz al-nazl*) because the replacement heir system is highly prioritized with a new mechanism (without following the footsteps of KHI), this has explained how focused the community and the *Kyai* are on grandchildren to continue family life and regeneration. Fifth, the formed construction aims to maintain property (*hifdz al-mal*)³⁶. This means that the inheritance is to be distributed fairly according to the beliefs of the community and the *Kyai*.

Construction of Modern Islamic Inheritance Law Based on *Kyai's Ijtihad* in Kajen District

Kajen District, rich in cultural values and Islamic traditions, became an important foundation for the *Kyais* to apply Islamic inheritance law. The primary sources of law, such as the Qur'an, Hadith, *ijma'* (consensus of scholars), and *qiyas* (analogy)³⁷, become references in their *ijtihad*. However, in dealing with modern issues such as women's inheritance and digital property rights, the *Kyais* combine classical sources with contemporary views.³⁸ In interpreting Islamic inheritance law, the *Kyais* usually utilize interpretative creativity to address contemporary challenges.³⁹ Given the ongoing social changes, a concrete example can be seen in how they address women's rights in inheritance distribution. Their ability to formulate new views on aspects of inheritance law that have not been covered in the tradition of classical texts, such as digital property, shows their adaptation to modern realities. Therefore, the *Kyais* construct an Islamic inheritance law that modifies normative Islamic law with the socio-cultural conditions of the local community, with the following arguments:

³⁵ Helmina Helmina et al., "Compromising and Repositioning the Meaning of Corruptors as Thieves in Applying the Provisions of Shara' into the Modern Era Context," *Al-Adalah* 21, no. 1 (2024): 25–52, <https://doi.org/10.24042/adalah.v21i1.21251>; Muhamad Izazi Nurjaman and Doli Witro, "The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia," *El-Mashlahah* 11, no. 2 (2021): 164–86, <https://doi.org/10.23971/elma.v11i2.3181>.

³⁶ Imaro Sidqi and Mhd. Rasidin, "Sexual Recession in Urban Muslim Societies: A Review of Maqashid Sharia and Its Implications," *Akademika : Jurnal Pemikiran Islam* 28, no. 2 (November 2023): 231–46, <https://doi.org/10.32332/akademika.v28i2.7616>.

³⁷ Mhd. Rasidin, Natardi Natardi, and Doli Witro, "The Impact of Unequal Marriage on Household Harmony (Case Study in Sungai Penuh City, Jambi)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 313–36, <https://doi.org/10.22373/sjhk.v4i2.8083>; Mhd Rasidin et al., "The Mapping Verses and Application of the Linguistic Approach and Uşul Fiqh Toward the Law of Adultery," *El-Mashlahah* 14, no. 1 (2024): 21–42, <https://doi.org/10.23971/el-mashlahah.v14i1.7354>.Jambi

³⁸ Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law"; Zainul Mun'im et al., "'Ulamā', Authority, and Political Relations: How the PCNU Jember Fatwā Influenced Public Policy on Gold Mining in Silo?," *Journal of Islamic Law* 6, no. 1 SE-Articles (February 10, 2025), <https://doi.org/10.24260/jil.v6i1.3605>.

³⁹ Zaimuariffudin Shukri Nordin et al., "Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu," *Journal of Islamic Law* 6, no. 1 SE-Articles (February 28, 2025), <https://doi.org/10.24260/jil.v6i1.3410>.

1. Philosophical Argumentation

Islamic inheritance law contains the values of justice and expediency, as Hazairin said, and the application of inheritance law can change depending on the context and justice felt by the community.⁴⁰ The values of justice and expediency become very important in the development of modern Islamic inheritance law in the current era which requires reconstruction so that its application can be accepted by many parties,⁴¹ as happened in the community of Kajen Pekalongan Regency, where the application of Islamic inheritance law in the area is much different from classical Islamic law. With the construction formed by the *Kyai* or ulama in the region, the inheritance law becomes more flexible and elastic.

Philosophically, legal principles are the basis for running the legal system. According to Scholten, principles have an ethical dimension when applying law in society.⁴² Legal principles must contain ethical aspects to ensure that the legal system operates fairly, with dignity, and follows the moral values recognized by society.⁴³

The general objective of the *Kyai* in Kajen is to distribute inheritance through traditions in each region and maintain justice in the distribution of inheritance. Justice for the Muslim community of Kajen prioritizes the principle of social welfare. For example, equal distribution, where each family member, both men and women, has the same right to receive a fair share of the inheritance. Equality between men and women in the distribution of inheritance reflects the social values experienced by society, which are often more open to change and global influences. In a more urbanized and modern environment, women also have wider access to education and employment, allowing them to play an active role in economic and social life. Then the successor heirs and adopted children prioritize their welfare. Therefore, justice formed from the community and formed by the *Kyai* is the result of a joint social compromise. According to Ratno Lukito, the interaction between Islamic and customary law is dialogical and harmonious. This is because customary law is an open tradition, allowing for exchange between the two laws. According to him, this relationship is inevitable, considering the ability of customs to adapt to other legal traditions.⁴⁴ The harmonious interaction between Islamic law and custom allows for forming a fair and equal inheritance distribution pattern among Muslim communities, as in Kajen. In this case, religious values that emphasize gender equality are reflected in the tradition of equal inheritance distribution and the old community traditions that are still formed today.

The construction of modern Islamic inheritance law based on the *ijtihad* of *Kyai* in Kajen District, Pekalongan Regency, is based on the principle of justice under the justice put forward by Thomas Aquinas that justice is an important principle to maintain harmony and social balance, so that functions in society can run well.⁴⁵ The construction of the *Kyai* regarding the distribution of

⁴⁰ Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence."

⁴¹ Reskiani et al.

⁴² Ismail Ismail, "The Philosophical Values of Islamic Inheritance Law," *INNOVATIO: Journal for Religious Innovation Studies* 20, no. 2 (2020): 125–36, <https://doi.org/10.30631/innovatio.v20i2.112>; Maimanah Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 241–57, <https://doi.org/10.18592/sjhp.v24i1.12916>.

⁴³ I. V. Irkhin, "Discussion on the Nature of the Principles of Law (Legal Principles) in the Context of Convergence of Legal Systems," *Lex Russica* 4, no. 4 (April 2020): 117–29, <https://doi.org/10.17803/1729-5920.2020.161.4.117-129>.

⁴⁴ Ratno Lukito, *Pergumulan Antara Hukum Islam Dan Adat Di Indonesia* (Jakarta: INIS, 1998), 1–2.

⁴⁵ Dino Bigongiari, *The Political Ideas of St. Thomas Aquinas* (New York: Hafner Publishing Company, Inc, 1953).

inheritance in the Kajen area tries to discuss it with the law formed by the community through its customs and culture. The *Kyai* and the community who feel their *ijtihad*s consider this construction a fair decision.

2. Juridical Argumentation

The degree of kinship is a provision that has become one of the determining factors for people entitled to inheritance⁴⁶. As is often discussed in inheritance studies, the degree of kinship is seen as not providing justice, which is the purpose of the revelation of Islamic law. Therefore, modern scholars formulate/ create electrical *ijtihad* in the form of *taqin* (legislation) in coloring justice to the heirs, one of which is the grandchildren, whose parents (children concerning the testator) have died before the testator. In the view of the *maqashid al-sharia*, the provisions that have been explained previously are valid, even if they are deepened; these provisions become a necessity to implement Islamic law to be realized fairly, which is one form of benefit that is the goal of sharia. In several Qur'an verses and traditions discussing justice, it can be emphasized that implementing and upholding justice is one of the objectives of the Islamic sharia. To overcome the injustice caused by the principle of degrees of kinship, Kajen District has been constructed based on Islamic inheritance law based on the *ijtihad* of the local *Kyai*, which upholds the rights of equality, grandchildren, and the agreement of the parties, thus ensuring more justice for them. The construction in question is as follows:

First, replacement heirs replace their parents who have died before the testator. However, the replacement heirs here are not limited to grandchildren, but can be siblings and father/ mother, and the replacement can be done when the parents are still alive. In other words, the replacement of places carried out by the Kajen community can be done freely as long as there is a family agreement in the family of the late Mr. M, where in the distribution that one of the inheritance assets that should have been given to his second child, namely Mrs. Sg, but instead the assets were transferred directly when Mrs. Sg was still alive. This means that Mrs. Sg's rights as a legitimate heir are taken away by the child (grandchild of the testator). There is no explanation for this kind of division in Islamic law, but the division can be said to be the division of substitute heirs because the child replaces the position of his parents. Then, in the case of the division of inheritance made by the late Mr. Sk, it was given to Mr. AAK. Mr. Adi is the adopted son of the couple Mr. R and Mrs. Sm. The chart explains that the division of inheritance is Mr. A replacing Mr. R (who died before the testator) as his successor heir. The entire property distributed is 1 unit of house given to Mr. A, and has been certified in his name. Based on the facts in the field, according to the legal reasoning of K.H. ZA, it is explained that:

"Successor heirs are not only limited to grandchildren, but can also include siblings, fathers, or mothers, and this replacement process can be carried out while their parents are still alive. In other words, in the community of Kecamatan Kajen, the transfer of heir positions can occur flexibly according to the agreement within the family."

Based on this fact, the *Kyai* as a religious leader provides an argument if it brings benefits to the parties and mutually agrees, then such a division is not at issue, because the presence of a replacement heir mechanism is oriented to provide justice for grandchildren who have no rights

⁴⁶ Zainuddin Ali, *Hukum Perdata Islam Di Indonesia* (Jakarta: Sinar Grafika, 2007), 118.

when left dead by their parents, it is the same as the cases above which aim to offer benefits to those who receive. In addition, the culture of the Kajen community also prioritizes grandchildren over children because they believe grandchildren will provide a better family future than children. Therefore, in the opinion of the *Kyai* in Kajen District, it is clear that the *Kyai* in Kajen District have formulated a careful view of the concept of successor heirs in the context of culture and Islamic law. They recognize the need for a mechanism that permits the substitution of heir positions to achieve balance and justice in the distribution of inheritance, especially when children or grandchildren have no rights to the estate due to certain situations. This view is supported by the notion that inheritance distribution decisions taken jointly and with the common good in mind should not be a source of problems.⁴⁷ The Kajen community seeks to consider the circumstances and objectives of each family within the context of local culture and norms, and to ensure that the succession heir mechanism can benefit all parties involved.

Second, the *Kyai*'s subsequent legal reasoning is to equalize all male and female parts with the same quantity; even in certain situations, the division can be different by looking at the context of local social and cultural conditions. *Kyai S* argued that:

“Islamic inheritance law is flexible and elastic, because normatively it is not obligatory to be implemented, because the socio-cultural context in ancient times tended to be patriarchal, while in the Indonesian context the tendency is bilateral (said Prof. Hazairin), so ideally the distribution of inheritance must be following the context, in my opinion Indonesia is very fitting to equalize men and women with the same portion because it is more fair. Women may even get more portions because of the cultural demands of their region.”

By quoting Fazlur Rahman's opinion that a verse must be seen in its moral ideals, the 2:1 formula and hierarchy of relatives in the Qur'an is an attempt to multiply and expand the inheritance rights of women, which in pre-Islamic Arabic law did not exist. Therefore, it is necessary to determine the categories of relatives with the right to inherit. The Qur'an envisions that the share of inheritance is by an equal formula, or one to one.⁴⁸ Likewise, according to Sahrur, the issue of inheritance is a universal law. *Kyai R* states that:

“The values in Islamic inheritance law are oriented towards justice and equality. Justice depends on the context, while equality considers all roles of both men and women.”

Justice in an equal way must be realized. However, it can only be realized at the collective level. Sahrur questions, where is God's justice and equality between men and women in the division of inheritance with the formula 2:1. According to Sahrur, the 2:1 formula is the minimum and maximum limit of inheritance shares which in percentage form, the male party's share is comparable to 66.6%. In comparison, the female party's share is comparable to 33.3%. The principle that applies is *al-qarib*, or the tendency to approach each other to the limit of a balanced comparison between men and women, namely 1:1, or each gets a percentage share of 50%.⁴⁹ While the difference in quantity is an argument that is collaborated with local social and cultural conditions, such as the distribution of inheritance given all the property to the first daughter because in certain situations in certain

⁴⁷ Munir, “Justice and Peace: The Reconstruction Of Inheritance Law Based On Tradition In Lombok.”

⁴⁸ Muhammad Miftah Irfan and Fatimah Shalehah, “Application of Fazlur Rahman'S Double Movement Theory About Milk Al Yāmin,” *At-Tajdid : Jurnal Pendidikan Dan Pemikiran Islam* 6, no. 1 (2022): 71–84, <https://doi.org/10.24127/att.v6i1.2143>.

⁴⁹ Muhamad Rizky Rizaldy and Habib Ahmed, “Islamic Legal Methodologies and Shariah Screening Standars: Application in The Indonesian Stock Market,” *Language Learning Journal* 131, no. 2 (2015): 469–86, <https://doi.org/10.1002/tie.22042>.

areas the first daughter is considered to be the protector and successor for her family in the future, or vice versa. This means that the argument from the *Kyai* of Kajen District highlights a view that harmonizes the principle of equality between men and women in the distribution of inheritance with local social and cultural conditions. This view reflects an attempt to interpret Islamic teachings in a broader context and follow the values considered important in the Kajen community.

Third, children born out of wedlock can receive maintenance and compulsory wills from their fathers or are entitled to inheritance through substitute heirs. K.H. SU stated that:

“Children have the right to be protected by their registered parents. These considerations refer to opinions in contemporary *fiqh*, and the Compilation of Islamic Law parents must still provide protection, not because they are registered or not, but because it is an Islamic obligation. In addition, the provisions of the Compilation of Islamic Law on compulsory wills do not prohibit the granting of such wills to unregistered minors.”

Based on the explanation above, the construction of the *Kyai* is in line with the ethos of the Compilation of Islamic Law and the argument that living law affects the social structure of society, including inheritance issues. Thus, the construction and paradigm of *Kyai* in deciding inheritance cases in Kajen District are influenced by the local wisdom of Indonesian society in general and Kajen society in particular.

3. Socio-Cultural Argumentation

As explained by Lawrence M. Friedman's theory, the “legal system”. In this theory, three elements of the system are interconnected with one another, namely: substance, structure, and legal culture.⁵⁰ Legal culture is the most important control to make the structure and substance run effectively, because after all, the law will run based on the existing social reality, but when the social reality is ruled out, the law will not run well in people's lives.⁵¹

The above explanation aligns with the facts found by researchers in the distribution of inheritance to substitute heirs found in the Muslim community in Kajen District. Their living habits, especially in dividing inheritance property, are still thick with legal cultural values in their lives, considering that grandchildren will live longer than children, with the belief that grandchildren can be the next generation who can lead the family correctly and adequately. According to the beliefs of Muslim communities in Kajen District, this proves that there is something/ diversity that has existed for a long time in their lives, where the priority of grandchildren takes precedence over children (as the heir closest to the heir). Even grandchildren can get more rights than other grandchildren or get all their property when they are more in need, because the values in their environment also prioritize the common interest very high, so that the attitude to help each other among grandchildren who are more in need than other grandchildren will be prioritized. All of that aims for the grandchildren to have capital, which can certainly maximize the grandchildren's goals as family leaders. This will be very different from the inheritance distribution system contained in the rules of Islamic law and even in other laws. In addition, the basic principle of prioritizing grandchildren over children is a

⁵⁰ Irkhin, “Discussion on the Nature of the Principles of Law (Legal Principles) in the Context of Convergence of Legal Systems.”

⁵¹ Budi Ispriyarso, Athasius P. Bayuseno, and Harlida Abdul Wahab, “Legal Reformation of Tax Court in Indonesia: Reforming Legal Culture, Institutional and Legislative Aspects,” *International Journal of Criminology and Sociology* 10, no. May (2021): 722–28, <https://doi.org/10.6000/1929-4409.2021.10.86>.

significant influence in the replacement of places carried out by the community, where they in the matter of replacing the heirs do not require the heir to die before the heir. However, the replacement of the place can be done when the primary heir/parent of the grandchild is still alive. All of this is due to the influence of the legal culture that has been applied for a long time by the Muslim community in Kajen District.

Based on this explanation, the construction of modern Islamic inheritance law based on the *Kyai's ijtihad* in Kajen District, Pekalongan Regency, develops a construction of Islamic inheritance law that combines cultural values and Islamic traditions with contemporary views. The *Kyai* uses philosophical, juridical, and socio-cultural arguments in their *ijtihad*. Philosophical argumentation is based on strong legal and ethical principles to ensure justice and integrity in applying inheritance law. Juridical arguments include the equal treatment of men and women in the distribution of inheritance and arrangements regarding substitute heirs based on family agreements. Socio-cultural arguments highlight the local legal culture and bilateral system that influence the community's mindset in the division of inheritance. These reflect the *Kyais'* adaptation to traditional values and modern developments, making Islamic inheritance law in Kajen District more flexible and relevant to the local socio-cultural context.

Conclusion

The development of modern Islamic inheritance law in the Muslim community of Kajen District, Pekalongan Regency, has complex underpinnings. This shift occurred due to factors such as greater education, prioritised justice, adaptive social values, and the influence of ulama and religious leaders. Society underwent an evolution in the interpretation of Islamic inheritance law, adapting religious values to address modern social and cultural challenges.

The interpretations of *Kyai* play an important role in shaping the construction of inheritance law that combines Islamic values with the local social and cultural context. *Kyai* interpreted inheritance law from a more inclusive perspective, prioritised justice, and responded to the needs of modern society with interpretative creativity. This construction reflects an effort to achieve a balance between religious values and the demands of the times. In the context of gender justice and equality, *Kyai* in Kajen District have formulated views that align with the principles of equality, shifting the traditional formula of 2:1 inheritance distribution to be more equal or even different according to the context. This reflects Islamic law's adaptation to more inclusive social and cultural demands. In addition, the practice of substitute heirs is one of the unique characteristics of Islamic inheritance law in Kajen District. It allows for replacing their positions to achieve justice in situations where children or grandchildren have no rights to inheritance. This view reflects an attempt to optimise the benefits of Islamic law within the context of local culture and norms. Overall, the development of modern Islamic inheritance law in the Muslim community of Kajen District, Pekalongan Regency, results from an interaction between social, cultural, religious, and educational factors. Ulama and *Kyai* shape legal constructions that are more inclusive, fair, and responsive to changing times. Thus, the community experiences an adaptation of the understanding of Islamic inheritance law that is more relevant to their social and cultural context.

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References

- Al-Hakim, Sofian, Doli Witro, and Muhamad Izazi Nurjaman. "Law of Usury (RIBA) According to Masyarakat Tanpa Riba (MTR): Perceptions, Attitudes, and Movements." *Asy-Syari'ah* 26, no. 1 (2024): 41–62. <https://doi.org/10.15575/as.v26i1.29639>.
- Al-Husainī, Al-Imām Taqīyuddīn Abī Bakrī Ibn Muhammad. *Kifāyah Al-Akhyār Fī Hal Ghāyah Al-Ikhtisār*, Vol. 1. Beirut-Lebanon: Dār al-Kutub al-Ilmiyah, 2001.
- Ali, Zainuddin. *Hukum Perdata Islam Di Indonesia*. Jakarta: Sinar Grafika, 2007.
- . *Sosiologi Hukum*. Jakarta: Sinar Grafika, 2002.
- Asa'ari, Asa'ari, Jafar Ahmad, Zufriani Zufriani, Doli Witro, and Muhamad Taufik Kustiawan. "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāsid Al-Syari'ah." *Samarah* 7, no. 2 (2023): 920–36. <https://doi.org/10.22373/sjhc.v7i2.14944>.
- Asa'ari, Asa'ari, Zufriani Zufriani, Arzam Arzam, and Doli Witro. "Urgensi Pemahaman Terhadap Maqashid Al-Syari'ah Dan Perubahan Sosial Dalam Istimbath Al-Ahkam." *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 2 (2021): 222–39. <https://doi.org/10.18860/j-fsh.v13i2.13818>.
- Barrunnawa, Muhammad, Berlian Fajrul Falakh, and Firdha Setyawan Maslakul Huda. "Hukum Waris Dalam Islam: Dari Era Klasik Hingga Kontemporer." *Jurnal Ilmiah Mahasiswa Raushan Fikr* 10, no. 2 (2021): 149–63. <https://doi.org/10.24090/jimrf.v10i2.4844>.
- Bigongiari, Dino. *The Political Ideas of St. Thomas Aquinas*. New York: Hafner Publishing Company, Inc, 1953.
- Djawas, Mursyid, Khairuddin Hasballah, Soraya Devi, Muntasir A. Kadir, and Yusfriadi Abda. "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law." *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022): 207–19. <https://doi.org/10.31958/juris.v21i2.7495>.
- Faisal, Ahmad, Mustaqim Pabbajah, Irwan Abdullah, Nova Effenty Muhammad, and Muh Rusli. "Strengthening Religious Moderatism through the Traditional Authority of Kiai in Indonesia." *Cogent Social Sciences* 8, no. 1 (2022). <https://doi.org/10.1080/23311886.2022.2150450>.
- Hasan, Muhammad. "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan." *Samarah* 7, no. 2 (2023): 650–68. <https://doi.org/10.22373/sjhc.v7i2.8852>.
- Hasse Jubba, Sudirman Sudirman, Suparto Iribaram, Wan Khairul Aiman bin Wan Mokhtar, and Rusdi Rasyid. "Compromise of Islam and Customary Practices in the Religious Practices of the Muslim Community in Papua: A Study of Maqāsid Syari'ah." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 SE-Articles (December 28, 2024): 305–30. <https://doi.org/10.18326/ijtihad.v24i2.305-330>.

- Helmina, Helmina, Hermanto Harun, Doli Witro, Muh Zaitun Ardi, and Darti Busni. "Compromising and Repositioning the Meaning of Corruptors as Thieves in Applying the Provisions of Shara' into the Modern Era Context." *Al-'Adalah* 21, no. 1 (2024): 25–52. <https://doi.org/10.24042/adalah.v21i1.21251>.
- Irfan, Muhammad Miftah, and Fatimah Shalehah. "Application of Fazlur Rahman's Double Movement Theory About Milk Al Yāmin." *At-Tajdid : Jurnal Pendidikan Dan Pemikiran Islam* 6, no. 1 (2022): 71–84. <https://doi.org/10.24127/att.v6i1.2143>.
- Irkhin, I. V. "Discussion on the Nature of the Principles of Law (Legal Principles) in the Context of Convergence of Legal Systems." *Lex Russica* 4, no. 4 (April 2020): 117–29. <https://doi.org/10.17803/1729-5920.2020.161.4.117-129>.
- Ismail, Faisal Husen, Zaitun Muzana, Zahri Hamat, and Jasni Sulong. "Customary and Islamic Practices in Inheritance Distribution: Insights from The Gampong Customary Court in Pidie." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 SE-Articles (December 30, 2024): 1–16. <https://doi.org/10.30631/alrisalah.v24i2.1544>.
- Ismail, Ismail. "The Philosophical Values of Islamic Inheritance Law." *INNOVATIO: Journal for Religious Innovation Studies* 20, no. 2 (2020): 125–36. <https://doi.org/10.30631/innovatio.v20i2.112>.
- Ispriyarso, Budi, Athasius P. Bayuseno, and Harlida Abdul Wahab. "Legal Reformation of Tax Court in Indonesia: Reforming Legal Culture, Institutional and Legislative Aspects." *International Journal of Criminology and Sociology* 10, no. May (2021): 722–28. <https://doi.org/10.6000/1929-4409.2021.10.86>.
- Jahangiri, Mina, Fazel Asadi Amjad, and Alireza Omidbakhsh. "Analyzing Edward Albee's A Delicate Balance Based on Symbolic Interactionism Focusing on the Viewpoints of George Herbert Mead." *Sociological Review* 29, no. 1 (2016): 295–321. <https://doi.org/10.22059/jsr.2022.88963>.
- Jones, Justin. "Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice between South Asia and Contemporary Britain." *Journal of Muslim Minority Affairs* 40, no. 1 (2020): 48–66. <https://doi.org/10.1080/13602004.2020.1741170>.
- Khosyi'ah, Siah, and Ayi Yunus Rusyana. "Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia." *Cogent Social Sciences* 8, no. 1 (2022). <https://doi.org/10.1080/23311886.2022.2126615>.
- Kutor, Senanu K., Alexandru Raileanu, and Dragos Simandan. "Thinking Geographically about How People Become Wiser: An Analysis of the Spatial Dislocations and Intercultural Encounters of International Migrants." *Social Sciences and Humanities Open* 6, no. 1 (2022): 100288. <https://doi.org/10.1016/j.ssaho.2022.100288>.
- Lukito, Ratno. *Pergumulan Antara Hukum Islam Dan Adat Di Indonesia*. Jakarta: INIS, 1998.
- Maimanah, Maimanah, M Fahmi Al-Amruzy, Arni Arni, and Siti Faridah. "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia." *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 241–57. <https://doi.org/10.18592/sjhp.v24i1.12916>.
- Maulana, Anas, Zainuri Akbar, Ramadhani Alfin Habibie, Muhammad Norhadi, and Kamal Hasuna. "Inheritance Rights of Nasabiyyah Children Born Out of Wedlock According to Islamic Family Law." *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 444–61. <https://doi.org/10.22373/ujhk.v7i2.25072>.

- Muhammad Daud, Zakiul Fuady, and Raihanah Bt Azahari. "Menyoal Rekontruksi Maqashid Dalam Pembaharuan Hukum Kewarisan Islam." *Jurnal Ilmiah Islam Futura* 18, no. 1 (October 2019): 1–33. <https://doi.org/10.22373/jiif.v18i1.2843>.
- Mun'im, Zainul, Wahfiuddin Rahmad Harahap, Rona Putra, Budhi Santoso, and Muhammad Viegri. "‘Ulamā’, Authority, and Political Relations: How the PCNU Jember Fatwā Influenced Public Policy on Gold Mining in Silo?" *Journal of Islamic Law* 6, no. 1 SE-Articles (February 10, 2025). <https://doi.org/10.24260/jil.v6i1.3605>.
- Munir, Zainal Arifin H. "Justice and Peace: The Reconstruction Of Inheritance Law Based On Tradition In Lombok." *Russian Law Journal* 11, no. 2 (2023): 25–32. <https://doi.org/10.52783/rlj.v11i2.507>.
- Nasrul, Muhammad Amrullah Drs, Zati Ilham Abdul Manaf, Syafwendi Syafril, and Moh Fathurrohman. "An Overview of the Inheritance Legal System in Malaysia and Indonesia: Issues Faced by Both Countries." *Journal of Shariah Law Research* 6, no. 2 (2021): 181–200.
- Nordin, Zaimuariffudin Shukri, Ismail Ruslan, Yusriadi Yusriadi, Nur Hamzah, and Didi Darmadi. "Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu." *Journal of Islamic Law* 6, no. 1 SE-Articles (February 28, 2025). <https://doi.org/10.24260/jil.v6i1.3410>.
- Nurjaman, Muhamad Izazi, and Doli Witro. "The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia." *El-Mashlahah* 11, no. 2 (2021): 164–86. <https://doi.org/10.23971/elma.v11i2.3181>.
- Paloma, M. Margaret. *Sosiologi Kontemporer*. Jakarta: Raja Grafindo Persada, 2003.
- Purkon, Arip. "Rethinking of Contemporary Islamic Law Methodology: Critical Study of Muhammad Shahrūr’s Thinking on Islamic Law Sources." *HTS Teologiese Studies/Theological Studies* 78, no. 4 (2022): 1–7. <https://doi.org/10.4102/hts.v78i4.7152>.
- Putri, Liza Diniarizky, Catur Nugroho, Abdul Malik, and M Nastain. "Developing Ecological Piety in Pesantren: The Kyai’s Cognition and the Practice of Living Fiqh Al-Bī’ah in Banten." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (January 2024): 235–59. <https://doi.org/10.18326/ijtihad.v23i2.235-259>.
- Qudamah, Ibn. *Al-Mughni*, Vol. VI. Kairo: Maktabah Al-Qahira, 1970.
- Rasidin, Mhd., Natardi Natardi, and Doli Witro. "The Impact of Unequal Marriage on Household Harmony (Case Study in Sungai Penuh City, Jambi)." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 313–36. <https://doi.org/10.22373/sjkh.v4i2.8083>.
- Rasidin, Mhd, Doli Witro, Rahmi Diana, Moh Nailul Muna, Imaro Sidqi, and Hening Sukma Daini. "The Mapping Verses and Application of the Linguistic Approach and Uṣūl Fiqh Toward the Law of Adultery." *El-Mashlahah* 14, no. 1 (2024): 21–42. <https://doi.org/10.23971/el-mashlahah.v14i1.7354>.
- Redi, Ahmad, and Hartini Antasari. "Comparative Analysis on the Regulation of Substitute Heir’s Position in the Civil and Islamic Inheritance Law Perspective." *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)* 655, no. Ticash 2021 (2022): 850–56. <https://doi.org/10.2991/assehr.k.220404.135>.

- Reskiani, Anugrah, Dian Furqani Tenrilawa, Aminuddin Aminuddin, and Rahman Subha. "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence." *Jurnal Ilmiah Syariah* 21, no. 1 (2022): 1–35. <https://doi.org/10.31958/juris.v21i1.5564>.
- Rizaldy, Muhamad Rizky, and Habib Ahmed. "Islamic Legal Methodologies and Shariah Screening Standards: Application in The Indonesian Stock Market." *Language Learning Journal* 131, no. 2 (2015): 469–86. <https://doi.org/10.1002/tie.22042>.
- Sabiq, Sayyid. *Fiqh Sunnah* 14. Bandung: Al-Ma'arif, 2007.
- Saidakhrarovich, Gulyamov Said, Akramov Akmaljon Anvarjon Ugli, and Eshbayev Gayrat Bolibek Ugli. "Digilization in Inheritance Law." *World Bulletin of Management and Law* 10 (2022): 18–30.
- Setyawan, Rahmad, Doli Witro, Darti Busni, Muhamad Taufik Kustiawan, and Fatimatuz Zahro Mulia Syahbani. "Contemporary Ijtihad Deconstruction in the Supreme Court: Wasiat Wajibah as an Alternative for Non-Muslim Heirs in Indonesia." *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 25–40. <https://doi.org/10.30984/jis.v22i1.2968>.
- Sidqi, Imaro, and Mhd. Rasidin. "Sexual Recession in Urban Muslim Societies: A Review of Maqashid Sharia and Its Implications." *Akademika : Jurnal Pemikiran Islam* 28, no. 2 (November 2023): 231–46. <https://doi.org/10.32332/akademika.v28i2.7616>.
- Sudrajat, Shinta Azzahra, Arzam Arzam, and Doli Witro. "Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism." *Khazanah Hukum* 4, no. 1 (2022): 1–9. <https://doi.org/10.15575/kh.v4i1.17027>.
- Syadzali, Munawir. *Polemik Reaktualisasi Ajaran Islam*. Jakarta: Pustaka Panjimas, 1989.
- Syafi'i, Imam, and Tutik Hamidah. "Maslahah Controvers As Sources, Methods and Objectives (Comparative Analysis Study of the Four Madhab)." *Al-'Adalah : Jurnal Syariah Dan Hukum Islam* 7, no. 1 (2022): 19–38. <https://doi.org/10.31538/adlh.v7i1.1642>.
- Taufiq, Muhammad, Jihan Amalia Syahidah, Muhammad Fauzinudin Faiz, and Erie Hariyanto. "Tengka, Identity Politics, and the Fiqh of Civilization: The Authority of Madura's Kiai in the Post-Truth Era." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 1 SE-Articles (July 26, 2024): 139–65. <https://doi.org/10.18326/ijtihad.v24i1.139-165>.
- Thalib, Sayuti. *Hukum Kewarisan Islam Di Indonesia*. Sinar Grafika, 2022.
- Witro, Doli. "Maqashid Syari'ah as a Filter of Hoax Through Al-Quran Perspective." *Jurnal Ilmiah Al-Syir'ah* 18, no. 2 (2020): 187–200. <https://doi.org/10.30984/jis.v18i2.1133>.
- . "State Islamic University Students' Perceptions of Israel-Affiliated Products: A Study After the Fatwa of Indonesia Ulema Council No. 83 of 2023 Concerning the Law on Support for the Palestinian Struggle." *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 145–60. <https://doi.org/10.24090/mnh.v18i1.10554>.

