

## **REACTUALIZATION OF ISLAMIC LAW FROM THE PERSPECTIVE OF MUNAWIR SJADZALI**

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### **ABSTRACT**

The reactualization of Islamic law has been a topic of interest for scholars and scholars across the world. This research aims to analyze the implications of Munawir Sjadzali's perspectives on Islamic law in contemporary Indonesian society. The research employed a library research approach, focusing on qualitative descriptive analysis. The analysis was conducted through a process of thematic analysis, identifying and interpreting patterns related to the adaptation and reinterpretation of Islamic teachings. Deductive and inductive reasoning were applied to draw conclusions from the literature, facilitating a deeper understanding of the implications. The study provides a nuanced view of how Islamic law can be relevant and applicable to modern societal challenges, potentially influencing both academic thought and practical applications within Islamic jurisprudence. It may offer guidance for policymakers and legal practitioners in integrating traditional Islamic principles with contemporary legal frameworks.

**Keywords:** Munawir Sjadzali, reactualization of Islamic law, women's heirs

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### **INTRODUCTION**

Nowadays, there are various kinds of thoughts and differences of opinion among contemporary Islamic scholars and thinkers in understanding a science, especially in the field of inheritance. Hence, a thought about gender equality has arisen that wants to equalize the inheritance distribution system between men and women, because the 2:1 distribution of inheritance is considered to have no sense of justice (Aziz, 2023; Begum et al., 2024; Irianto, 2024; Khalaf, 1996).

In the past three decades, many terms have emerged in Indonesia that are used by Muslim thinkers and Islamic socio-religious observers to underline the need to research and re-examine the basic principles, values and norms of Islam that are to be revived in the era of modernity. These terms include reinterpretation (reinterpretation), reactualization (lifting and reviving), reorientation (rethinking), revitalization (revival), contextualization (considering the context of social and cultural life), grounding Islam, and other terms that still have relatively the same meaning content as transformative Islam, intellectual Islam, and substantial Islam (Abdullah, 1995). In the term mentioned above, the one that received the most response was the Rectulisation which was launched by one of the figures and former government officials of the Republic of Indonesia who served for 2 terms as Minister of Religion at that time, namely Munawir Sadjzali. At the end of 1985, Munawir Sjadzali raised the issue of the reactulism of Islamic teachings related to the rejection of Islamic law which is quite fundamental to sharia law. It was at that time that he began to enter the dilemmatic problem between the comprehensive shari'ah and the reality of cultural life in Indonesia. According to him, the Al Quran adheres to nasakh (cancellation), part 2:1 on inheritance can be disasakh or the law can be canceled, this is based on local Arabic culture and customs. In

the past, before Islam, women did not get an inheritance at all. After Islam came, women were given a share of the inheritance even if it was only half (Sjadzali, 1995).

Munawir Sjadzali was born in Klaten, Central Java, November 7, 1925 to Abu Aswad Hasan Sjadzali bin Tohari (after marriage was given the old name Mughaffir) and Tas'iyah binti Badruddin. Munawir's father was a Kyai in his village who formally served as the Head of Madrasah Bi'tsah al-Muslimin (Ibtidaiyah level) in Karang Anom Klaten. Sjadzali's name is behind his father's name because he is indeed a follower of the Syadzaliyah Order. The reason is that behind his son's name is also added Sjadzali. Munawir obtained religious education first from his own parents, and second from formal education at Madrasah Ibtidaiyah in Karang Anom, Tsanawiyah at Madrasah Al-Islam Solo, then Pondok Pesantren Manba'ul 'Ulum Solo. After graduating from Manba'ul 'Ulum in 1943, Munawir had been a teacher at Ungaran Islamic Elementary School, Central Java for one year, then participated in the struggle to defend independence in the Central Java area until 1949. As mentioned above, in 1950 Munawir began his career at the Ministry of Foreign Affairs of Jakarta (Sjadzali, 1995).

Munawir had attended the Diplomatic and Consular Course Batch II (1951) for 10 months, and political science education for one year at the University College of South West of England, Exeter (1953). While serving in America, Munawir took the time to attend a postgraduate lecture at Georgetown University in the field of International Relations and received a Master's degree in 1959. Munawir was abroad in various diplomatic positions, starting from Secretary III of the Embassy of the Republic of Indonesia in Washington D.C. (1956-1959), Secretary I of the Indonesian Embassy in Colombo Sri Lanka (1963-1966), then Chargé d'Affaires of the Indonesian Embassy in the same Republic of Indonesia (1966-1968), Minister Counselor of the Indonesian Embassy in London (1970-1975) until he became the Indonesian Ambassador to the Indonesian Embassy in Kuwait, concurrently the Indonesian Ambassador non-resident to the United Arab Emirates (UAE), Qatar and Bahrain (1976-1980). In total, out of 33 years of career in the Ministry of Foreign Affairs, Munawir spent 17 years abroad, while domestically Munawir held various positions in the Ministry of Foreign Affairs ranging from the Arab/Middle East section staff (1950) to the Director General of Politics (1980-1983) then served as Minister of Religious Affairs for 2 terms during the Soeharto presidency from 1983 to 1993. Munawir Sadjzali has also since 1988 taught Islamic and Constitutional courses at the Postgraduate School of IAIN Syarif Hidayatullah Jakarta. In 1994 IAIN Syarif Hidayatullah awarded Munawir Doctor Honoris Causa. In addition, he was also a Guest Lecturer at the Institute of Islamic Studies McGill University, Canada (March-May 1994), and Leiden University, Netherlands (April 1995).

The research by Sutoyib et al. (2024) addresses the reinterpretation and contextualization of Islamic teachings in Indonesia through the lens of Munawir Sjadzali's reformist thought. However, a potential research gap may exist in several areas. First, while the study might explore theoretical aspects of Sjadzali's thought, it may not fully examine how these ideas are implemented in everyday legal and social practices among Indonesian Muslims.

Additionally, there may be insufficient analysis of the socio-cultural influences that shape the reception and application of Sjadzali's ideas within different communities in

Indonesia. Moreover, the study might lack a comparative framework that situates Sjadzali's contributions alongside other reformist thinkers in the Islamic world, potentially overlooking broader trends in Islamic reform.

This research could contribute uniquely by providing a more detailed examination of how Munawir Sjadzali's teachings are applied in various socio-cultural contexts across Indonesia, thereby bridging the gap between theory and practice. An interdisciplinary approach could be employed, integrating insights from sociology, law, and religious studies to offer a holistic view of the implications of Sjadzali's thought in contemporary Indonesian society. Furthermore, the research may address contemporary issues such as gender rights, economic practices (like banking), and the role of women in leadership, which may not have been adequately explored in previous studies. Lastly, it could assess how Sjadzali's thoughts respond to modern challenges faced by Indonesian Muslims, such as globalization, pluralism, and technological change, thus adding relevance to the discourse on Islamic reform.

The research aims to analyze the reactualization of Islamic law from the perspective of Munawir Sjadzali. The research contributes to the understanding of the reactualization of Islamic law by examining it through the lens of Munawir Sjadzali's perspectives. This analysis can enhance scholarly discourse on the adaptation and reinterpretation of Islamic legal principles in contemporary contexts. By focusing on Sjadzali's insights, the study provides a nuanced view of how Islamic law can be relevant and applicable to modern societal challenges, potentially influencing both academic thought and practical applications within Islamic jurisprudence. Furthermore, it may offer guidance for policymakers and legal practitioners in integrating traditional Islamic principles with contemporary legal frameworks.

## **RESEARCH METHOD**

This research employed a library research approach, focusing on qualitative descriptive analysis. The primary data sources included literature such as books, academic papers, articles, and journals relevant to the reactualization of Islamic law and the thought of Munawir Sjadzali. Data collection involved a systematic review of existing literature, gathering information from various published materials, and identifying key themes and arguments presented by Munawir Sjadzali in his works. The analysis was conducted through a process of thematic analysis, identifying and interpreting patterns related to the reactualization of Islamic teachings. Deductive and inductive reasoning were applied to draw conclusions from the literature, facilitating a deeper understanding of the implications of Sjadzali's perspectives on contemporary Islamic law.

## **RESULT AND DISCUSSION**

### **Reactualization in His Journey**

The idea of Munawir's reactualization, according to Bustanil Arifin, former Deputy Chief Justice of the Supreme Court for the affairs of the Religious Court, was first put forward by Munawir on April 15, 1985. At that time, Munawir gave a speech at the meeting of the Islamic Law Compilation Committee located at the Supreme Court building. Present on the occasion were all members of the committee, the supreme court justices, the Chief

Justice of the Supreme Court Ali Said, and K.H. Ibrahim Hosen from the Indonesian Ulema Council. Meanwhile, Bustanil Arifin himself was present as the Leader of the Islamic Law Compilation Project (Arifin, 1997).

In this case, Munawir sees that the distribution of inheritance, the Qur'an surah an-Nisa' verse 11, clearly states that men's rights are twice as great as women's rights. However, this provision has been abandoned by many Indonesian Islamic communities, both directly and indirectly. Munawir stated that he knew after he became the minister of religion. As Minister of Religious Affairs, Munawir received many reports from judges at Religious Courts in various regions, including areas with strong Islam, such as South Sulawesi and South Kalimantan, about the many deviations from the provisions of the Qur'an. Judges often witnessed that, after the inheritance case was decided according to Islamic law, the heirs did not want to carry it out, but they went to the District Court to ask for the application of another system of distribution, which was clearly not in accordance with Islamic law (Daya, 1990).

It should be noted that those who are reluctant to carry out the inheritance fatwa at the Religious Court and then go to the District Court are not only ordinary people, but also many figures of Islamic organizations who are quite proficient in Islamic sciences. Meanwhile, it has also cultured indirect deviations from the provisions of the Qur'an. Many heads of families take pre-emptive wisdom. During their lifetime they have distributed most of their wealth to children, each of whom receives an equally large share regardless of gender, as grants. Thus, when they die, the wealth that must be divided is little, even almost exhausted, disappointed? But such is the social reality that we must honestly admit exists. Meanwhile, it would be wrong to accuse the perpetrators of the deviance, including a number of scholars, of lacking their commitment to Islam, without studying the background and the factors that encouraged them to dare to commit such deviance (Daya, 1990).

Munawir did not state that Islamic inheritance law as determined by the Qur'an is unfair, but instead he highlighted the attitude of people who no longer seem to believe in the legal justice of Islamic inheritance law. Many responses have emerged from Munawir's thoughts, from Indonesian Islamic scholars and intellectuals, especially regarding the fate of religion when dealing with (customs) of nations/states that are never the same and uniform, or more specifically, regarding the relationship between Islamic law and social changes that are always different from one place to another, especially Indonesia. In this regard, there are two major theories in Islamic legal thought, which have paradigms and perspectives that are not only different, but also contradictory.

In fact, there are 2 major theories in the concept of thinking, namely the Theory of Eternity or commonly called the Normativity of Islamic Law and the Theory of Adaptability of Islamic Law, the first theory assumes and believes that Islamic law, as a revelation set by God, it cannot be changed or changed, and as a consequence it also does not adapt to the development of the times, the second theory actually assumes that Islamic law, as a law created by God for the benefit of mankind, it can not only adapt to the development of the times and places, but can also be changed or changed for the benefit of mankind (Ansori, 2017).

In this case, Munawir Sdjazali's thoughts about the division of inheritance for men who get more than women are no longer relevant today because of the difference in the circumstances of the times, and the circumstances in which women have experienced a change in role, many of the circumstances of women as the bearers responsible for earning a living and supporting the family so that the division should be the same. Munawir put forward his idea about the renewal of the inheritance law also because he has personal experience. Where at that time Munawir Sjadzali had three sons and three daughters. The three sons completed their education at one of the foreign universities, while two of the three daughters of their own volition did not continue to college, but only chose and studied at a vocational school that did not cost much.

The question that Munawir Sjadzali thinks about is whether his son, who has spent a lot of money, still receives twice as much as what his daughter will receive when he dies. This problem was then discussed by Munawir to one of the scholars and the scholar could not provide a solution. He only told what he himself and other scholars had done when he was alive dividing his wealth equally among his sons and daughters before he died as a grant. Hearing this answer, Munawir Sjadzali questioned whether in terms of Islamic beliefs the wisdom was not more wrong. Because according to him, if the scholar suggests like that, it is the same as the scholar does not believe in the faraid law, because if he does, he does not take that path, this is done by many Islamic societies today. According to Munawir, the way of religion of such a person is not right, on the one hand, he wants to continue to practice Islamic inheritance law, but on the other hand he is looking for a way that gives more value to justice. This is what prompted Munawir to reactualize the inheritance law (Mursyid, 1995).

On that basis, Munawir Sjadzali also related it to the gradual determination of the khamr law. Therefore, it can be understood that the soul of the inheritance verse is basically trying to improve the rights and status of the woman must continue to be done (Mudzhar, 1995).

Munawir Sjadzali stated that he never felt that he had become the initiator by introducing a new mindset regarding the reform of Islamic Law. According to him, this is because around the 12th century Abu Yusuf, a great scholar and Supreme Court Justice and favorite student of Imam Abu Hanifah stated that even if the nash is, if in the past the basis of his foundation began from customs and customs, and the custom has changed, then the law or instructions contained in the nash have also been lost. Then about seven centuries ago At-Thufy, a great scholar from the Hanbali madzab, said that if there is a conflict between the interests of the community and the nash and ijma, then it is obligatory to prioritize or put the interests of the people over the nash or ijma'. In addition, Muhammad Abduh, a temporary reformer who lived in the second half of the 19th Century and died in 1905, stated that in the event of a clash between thoughts based on nash and thought based on reason, then the one that is in accordance with reason should be taken (Mursyid, 1995).

Munawir Sjadzali reminded about the danger of people making references to the Qur'an solely textually by not paying attention to the conditions, situations and backgrounds of the passage derivation. According to Munawir, at the end of the nineteenth century, Shaykh Muhammad Abduh stated that we should be careful in reading books by mufasir before us, because the books they wrote at an intellectual level were different from today's. Thus

Muhammad Abduh warned that in order to be able to interpret the Qur'an and Hadith, one is encouraged to master adequate linguistics, a complete knowledge of the history of the Prophet, including the cultural situation of the time, *asbab an-nuzul* (the cause of the revelation of the verse), and the history of mankind (Sjadzali, 1996).

Then, two early 20th Century interpreters, Muasthafa Al-Maraghi and Muhammad Rashid Ridha, agreed that the law was promulgated solely for the benefit of man, while the interests of man could differ due to the difference in time and place. Therefore, if a law is promulgated at a time when the need for the law is urgent, but later the need no longer exists, then it is wiser for the law to be withdrawn and replaced with another law that is in accordance with the last situation, seen from the point of view of the interests of the community (Saimima, 1988).

Ijtihad Humanity in Munawir's thinking expands the cases that need to be contextualized, not only about the inheritance of girls, zakat for converts, bank interest, but also about women's leadership (Q.S. al-Nisa, 4:34), women's testimony (Q.S. al-Baqarah, 2:282), the right of Muslim women to marry non-Muslim men, the position of non-Muslim citizens, and slavery cases (Sjadzali, 1997).

As the target of the idea put forward by Munawir is about the need to consider the context of the socio-cultural life of the community in understanding and making legal conclusions from the verses of the Qur'an in the field of society, even though for that it does not seem to practice the meaning born from the text. Just as Umar has done for the case of spoils of war and converts, in Indonesia, we must dare to do the same. Without contextualization, the teachings of Islam will become outdated, or lose their relevance to the present, or the teachings will not be implemented.

Munawir's opinion did not get a response from the scholars, even some scholars answered it through his writings Jalaluddin Rakhmat outlined five views on Umar's ijtihad, namely (1) Umar's ijtihad did not leave the text, let alone replace or delete its provisions; (2) Ijtihad Umar did leave *dzahir nas*. Because he adheres to the spirit of *nas*, or *maqasid al-ahkam alshar'iyah*; (3) Umar's Ijtihad is related to *qat'iyah* matters that are not the field of ijtihad; but this is allowed specifically for Umar; (4) Ijtihad Umar has abandoned the sharia text, but as is the case with every mujtahid, his ijtihad still receives a reward; (5) Umar's ijtihad did violate many *qat'i* texts, but Umar did it because of the lack of information he received on the matter in question (Saimima, 1988).

Syafruddin Prawiranegara explained about the meaning of justice in inheritance, and also about the status of inheritance law which is in the category of voluntary law (law that applies if the interested party does not use other available alternatives, not compulsory law (law that applies absolutely). The heirs can negotiate first before distributing the inheritance if there is indeed a case that needs attention as stated by Sjadzali (Sjadzali, 1997).

In the forums he attended, because of his position as the Minister of Religion and usually invited to give speeches, the audience did not have the opportunity to respond, or even if on the occasion, psychologically it was not good to respond directly in front of the person concerned. Indonesian culture does not consider it commendable to have different opinions, let alone argue with guests who are considered to have a more honorable position

such as a minister. Usually after the Minister leaves, the listeners will respond spontaneously in small forums (Rakhmat, 2002).

After that, Munawir conveyed his ideas intensively on various occasions, including the Islamic Law Seminar organized by the State Islamic Institute Imam Bonjol Padang, the Bahsul Masail Syuriah Nahdhatul Ulama Forum of East Java at Tambak Beras, Jombang, the Islamic Law Compilation Seminar organized by the Central Executive of Muhammadiyah in Yogyakarta, the Training of the Anshor Youth Leadership at the Provincial Level of Indonesia in Malang, Muhammadiyah Tarjih Cadre Training in Yogyakarta, Lecture in front of Indonesian Students in Cairo, Islamic Law Codification Forum organized by the South East Asian Shariah Association in Colombo, Sri Lanka, Dinner hosted by the Minister of Teaching of Malaysia, Anwar Ibrahim in Kuala Lumpur; was also delivered at the inaugural Recitation of the Paramadina Waqf Foundation, November 28, 1986 in Jakarta (Saimima, 1988).

Roughly in his book in different time spans, the first was in 1988 (Reactualization of Islamic Teachings), the second in 1995 (The Idea of Reactualization of Islamic Teachings), and the third in 1997 (Ijtihad of Humanity). In the first article, Munawir revealed that he was worried about the dual attitude of Indonesian Muslims in religion. On the one hand, they still maintain their beliefs about something, but on the other hand, they do not practice it. He gave two examples, namely about bank interest and the distribution of Munawir's inheritance, which also caused many people, not only laymen, but also from his scholars, who rejected the 2:1 formula pre-emptively by dividing the inheritance with a mandatory will or giving it before the person concerned died.

In the will or grant, the girl is given the same share as the boy. In this case, Munawir also has his own personal experience, how a kyai advised him to make a mandatory will when he consulted about the distribution of inheritance for his children later. When he was alive, boys were already spending much more than girls, is it fair that girls will inherit less than their brothers? Based on the above background, Munawir then proposed the idea of modifying the provision, which he then termed reactualization. But the question is, is it possible to reactualize? Isn't the provision of the law based on the passage that the scholars consider to be qath'i? According to Munawir in the social aspect, even a qat'i passage can be modified for the reason that in its history there are also several verses that are mansukh by other verses. Regarding this naskh, Munawir quotes Mustafa al-Maraghy as follows

Indeed, these laws are promulgated for the benefit of man, and the interests of man may differ because of differences in time and place. If a law is promulgated at a time when the need for the law is felt, and the need no longer exists, then the wise course of action is to abolish the law and replace it with another law that is more in accordance with the last time (Saimima, 1988).

Review of the rule of law in the community aspect can be carried out by using intellectual reasoning, with the interests of the community as the main basis for consideration or benchmark. As a reference to his opinion, Munawir quoted the opinion of Ibn Qayyim al-Jauziyah who said that changes and differences in fatwa or legal opinions can occur due to differences in time, place (environment), situation, purpose and customs; and the opinion of

Abu Yusuf who held that even if the basis of the *nash* is custom, and the custom has changed later, then the law contained in the *nash* will also be lost (Saimima, 1988).

Supporting his idea, Munawir pointed out the historical fact that Umar had done it in the case of the spoils of war that had been regulated by Surah al-Anfal: 41. Umar did not want to distribute the spoils of war in the Sham area to the soldiers, but only collected taxes from the owners, and the taxes were used to finance the armed forces that had to remain in their posts in the northern areas. The second writing is almost entirely the same as the first writing, except that there is an additional example of the case of Umar's *ijtihad* which is considered different from the *nas qat'i*, which is about zakat for converts as regulated by Surah al-Taubah: 60. Umar stopped giving zakat to *mu'allaf* on the grounds that the situation had changed from the time of the Prophet and Abu Bakr, so that the giving of zakat to them was no longer considered necessary. In this second article, Munawir also touched on his astonishment to find the fact that it was the modernists who gave a strong reaction to his idea, even though the traditional group could accept it well.

In his last article, *Ijtihad Humanitarian*, Munawir expanded on cases that need to be contextualized, not only about girls' inheritance, zakat for converts, bank interest, but also about women's leadership (Q.S. al-Nisa 4:34), women's testimony (Q.S. al-Baqarah, 2:282), the right of Muslim women to marry non-Muslim men, the position of non-Muslim citizens, and slavery cases (Sjadzali, 1997).

The essence of the idea put forward by Munawir is about the need to consider the context of the socio-cultural life of the community in understanding and making legal conclusions from the verses of the Qur'an in the field of society, even though for that reason it does not seem to practice the meaning born from the text. Just as Umar has done for the case of spoils of war and converts, in Indonesia, Munawir exclaimed, we must dare to do the same. Without such contextualization, the teachings of the Qur'an will become obsolete, or lose their relevance to the present, or they will become dead and impractical.

## **CONCLUSION**

Munawir Sjadzali's discussions on issues such as inheritance for women's children, bank interest, women's leadership, and zakat for converts highlight the need for a nuanced appreciation of these topics in Islamic studies, particularly within the Indonesian context. His perspectives can enhance the relevance of Islamic articulation among Indonesian Muslims, making them more attuned to local cultural and legal challenges. Future research should investigate the implications of these themes in contemporary Indonesian society, exploring how they resonate with current cultural and legal issues and assessing community responses. Additionally, comparative studies with other Muslim-majority countries could deepen the understanding of how local contexts influence the interpretation of Islamic law. Employing interdisciplinary approaches that incorporate sociology, law, and religious studies may further enrich these findings, addressing societal problems and fostering meaningful dialogue within Islamic studies.



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