

## ***A Critical Study of Abdullahi Ahmed An-Na'im's Thought on Islamic Law Reform***

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### **Abstract**

*This study aims to critically analyze Ahmed An-Na'im's thoughts in the renewal of Islamic law, which offers a new perspective on sharia as a dynamic interpretation of sacred texts. The urgency of this study lies in the need to understand the contextual approach to sharia in facing the challenges of modernity, especially in relation to Human Rights (HAM) and constitutionalism. This study uses a qualitative method with a literature study approach, which focuses on An-Na'im's main works and relevant secondary literature. Data analysis was carried out through the content analysis method to identify patterns, themes, and implications of An-Na'im's ideas. The results of the study show that An-Na'im defines sharia as an interpretation of texts that are equivalent to Islamic jurisprudence and law, not something sacred and static. His thoughts underline the relevance of sharia to the development of the times through the distinction between universal Makkiyah sharia and contextual Madaniyyah sharia. This idea is influenced by the nasakh theory of his teacher, Mahmoud Muhammad Thaha. However, An-Na'im's approach has been criticized for being too focused on modern standards such as human rights, giving the impression that Islam needs to adapt to Western values. This study contributes to the discourse on Islamic legal reform by showing how An-Na'im's approach opens up new interpretative space that remains relevant without ignoring the essence of justice in Islamic teachings.*

**Keywords:** *Abdullahi Ahmed An-Na'im, sharia, Islamic legal reform, contextualization, modernity.*

### **Abstrak**

Kajian ini bertujuan untuk menganalisis secara kritis pemikiran Ahmed An-Na'im dalam pembaruan hukum Islam, yang menawarkan perspektif baru terhadap syariah sebagai interpretasi dinamis terhadap teks suci. Urgensi penelitian ini terletak pada perlunya memahami pendekatan kontekstual terhadap syariah dalam menghadapi tantangan modernitas, terutama dalam kaitannya dengan Hak Asasi Manusia (HAM) dan konstiusionalisme. Penelitian ini menggunakan metode kualitatif dengan pendekatan studi kepustakaan, yang berfokus pada karya-karya utama An-Na'im serta literatur sekunder yang relevan. Analisis data dilakukan melalui metode analisis isi untuk mengidentifikasi pola, tema, dan implikasi dari gagasan An-Na'im. Hasil penelitian menunjukkan bahwa An-Na'im mendefinisikan syariah sebagai interpretasi terhadap teks yang setara dengan fiqh dan hukum Islam, bukan sesuatu yang sakral dan statis. Pemikirannya menggarisbawahi relevansi syariah dengan perkembangan zaman melalui pembedaan syariah Makkiyah yang bersifat universal dan syariah Madaniyyah yang kontekstual. Gagasan ini dipengaruhi oleh teori nasakh gurunya, Mahmoud Muhammad Thaha. Meski demikian, pendekatan An-Na'im mendapat kritik karena dianggap terlalu menitikberatkan pada standar modern seperti HAM, sehingga terkesan Islam perlu menyesuaikan diri dengan nilai-nilai Barat. Penelitian ini berkontribusi pada diskursus pembaruan hukum Islam dengan menunjukkan bagaimana pendekatan An-Na'im membuka ruang interpretasi baru yang tetap relevan tanpa mengabaikan esensi keadilan dalam ajaran Islam.

**Keyword:** *Abdullahi Ahmed An-Na'im, syariah, pembaruan hukum Islam, kontekstualisasi, modernitas.*



## INTRODUCTION

The encounter between the Islamic world and Western civilisation has been ongoing since the classical era, especially through interactions with the Greek and Roman civilisations. However, the dynamics of these encounters changed drastically in the 19th century AD, when the Islamic world was in a weaker position compared to the West, which experienced rapid advances in science, economics and technology (Mamedov, 2023). The West's superiority allowed them to exert political and economic influence in Muslim territories through colonialism. As a result, the social, political and legal structures in Islamic societies underwent significant transformations, including in the field of Islamic law, which experienced marginalisation due to the application of colonial legal systems that refer to Western legal models (Dursun, 2023).

The impact of colonialism on legal systems in the Muslim world was profound. Islamic countries under colonial rule experienced westernisation of the legal system, which shifted the dominance of Islamic law in the fabric of society. In Indonesia, for example, the current legal system is still heavily influenced by Dutch colonial legal products, such as the *Wetboek van Strafrecht* (WvS) which became the Criminal Code (KUHP) and the *Burgerlijk Wetboek* (BW) which became the Civil Code (KUHPer). Civil and criminal procedural laws are still based on the *Herziene Inlandsch Reglement* (HIR) and *Rechtsreglement voor de Buitengewesten* (RBg). Similar conditions also occurred in many other Muslim countries that gained independence in the mid-20th century after World War II (Wahyudi, 2024).

After gaining independence, Muslim countries were faced with a major problem regarding the legal system that would be enforced. The main challenge that arose was how to place Islamic law in a modern legal system based on democratic values and human rights. The diversity of ethnicity, religion and culture in Muslim countries demands a legal formulation that can accommodate various interests without ignoring Islamic identity (Khoyyinah & Shalihah, 2024). In various Islamic countries, debates have arisen between groups that want to maintain the secular legal system of colonial heritage, groups that want the strict application of Islamic law, and groups that propose the reconstruction of Islamic law to be more compatible with modern legal principles (Husain et al., 2024).

Sudan is one example of a country that has experienced intense struggles in determining the direction of its legal system. The divergence of views between secular groups that retain the legacy of British and Egyptian colonial law, conservative groups that want the textual application of Islamic law, and progressive groups that seek to harmonise Islamic law with modern human rights standards, created political tensions that led to national instability. This legal struggle became one of the factors that fuelled separatism in South Sudan, where the majority of the population is ethnically and religiously different from North Sudan. In this context, Abdullahi Ahmed An-Na'im's thoughts on Islamic law reform emerged as a response to the complexity of law in modern Muslim countries (Laqzmitha & Yumitro, 2023).

An-Na'im, a Sudanese legal scholar, developed the idea of sharia deconstruction inspired by the thinking of his teacher, Mahmoud Muhammad Thaha. This concept emphasises the need to reinterpret Islamic law to make it more adaptive to the times and more in line with universal principles, including human rights and democracy. Therefore, he considers it necessary to replace the *madaniyah* verses with *makkiyah* verses, which according to him are more valuable (Mukti et al., 2022). An-Na'im views the *madaniyah* verses as contrary to international law because they teach violence and discrimination before the law. Meanwhile, international law,

according to him, teaches togetherness, equality, and prohibits violence (An-Na'im, 2003). According to An-Na'im, this is because the current sharia is still based on classical fiqh which is not fully relevant to the needs of modern society. Therefore, he proposes a more contextual approach by placing maqashid sharia as the main principle in the development of Islamic law (Taufiq, 2018).

In the context of Sudan and the Islamic world in general, An-Na'im's ideas invite much debate. Some Muslim scholars and thinkers see his ideas as an attempt to secularise Islamic law that could threaten the authority of sharia. Meanwhile, progressives see An-Na'im's thoughts as a solution that can answer the challenges of Islamic law in the modern era. His thinking has also become a topic of discussion in Islamic law studies in various parts of the world, especially in the effort to find a balance between Islamic law and universal values recognised in the international legal system.

In the academic context, research on An-Na'im's thought has been widely conducted. Previous research that discusses Ahmed An-Naim's thought has been done by many previous researchers. Criticism of Abdullahi Ahmed An-Na'im's thoughts on the concept of inheritance for non-Muslims was conducted by Nuril Habibi (Habibi, 2016). Research related to the construction of Ahmad An-Na'im's thought was conducted by (Sapiudin, 2016), (Hidayat, 2022), (Anshori, 2019). Research related to Neo-Secularism in the Thought of Abdullahi Ahmed an-Naim: A Study of the Relationship between Islam and the State was conducted by Usman & Hasbi (Abdurrahman Usman & Hasbi, 2022). Abdullah Ahmed An-Naim's Thought on Deconstruction of Shari'ah as a Solution was researched by Taufiq (Taufiq, 2018). Mukti conducted a study related to An-Na'im's thinking in sharia business law (Mukti et al., 2022).

However, there are still gaps in the study that need to be explored more deeply. Some previous studies focus more on the historical aspects and background of An-Na'im's thought, while critical analyses of his methodology and impact on contemporary Islamic legal discourse are still relatively limited. This study will attempt to fill the gap by exploring An-Na'im's argumentation in interpreting Islamic law and the extent to which his approach can be applied in the context of today's Muslim society. Thus, this study is expected to contribute to a further understanding of the dynamics of modern Islamic thought and the challenges faced in the process of reforming Islamic law.

This article aims to critically examine An-Na'im's thoughts on Islamic law reform, especially in the context of his idea of sharia deconstruction. This research will discuss An-Na'im's background, the arguments he builds in the reconstruction of Islamic law, as well as responses and criticisms to his ideas. Using a critical analysis approach, this research is expected to provide a deeper understanding of the relevance of An-Na'im's thought in the context of contemporary Islamic law and the challenges it faces in implementation in various Muslim countries.

As an academic study, this research has an urgency in understanding the dynamics of Islamic legal thought in the modern era. With the increasingly strong demands of globalisation and democratisation in Muslim countries, the debate on Islamic law reform will continue. Therefore, a critical study of the thoughts of a figure like An-Na'im is important to explore the extent to which his ideas can be applied in the reality of contemporary Islamic law and how the Muslim community responds to the reform ideas he offers.

## **METHOD**

This research uses a qualitative method with a library research approach. This approach

was chosen because the nature of the research focuses on analysing Ahmed An-Na'im's thoughts in the context of Islamic law reform. The data used in this research comes from primary literature in the form of An-Na'im's works, such as *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* and scientific articles written by An-Na'im. In addition, this research also utilises secondary literature in the form of books, journal articles, and other relevant research results, both supporting and criticising An-Na'im's ideas. The data collection process is conducted through an in-depth document search to understand An-Na'im's epistemological framework, theoretical foundation, and the relevance of An-Na'im's thoughts in the effort to renew Islamic law in the modern era.

The data that has been collected is analysed using a content analysis approach. This technique allows the researcher to identify patterns, themes, and arguments in An-Na'im's thought, including the criticisms and responses to the ideas. This research also uses a historical approach to trace the influence of Mahmoud Muhammad Thaha's thoughts on An-Na'im, as well as a comparative approach to compare An-Na'im's concept of Islamic legal reform with the views of other figures in similar studies. Through in-depth analysis, this research is expected to provide a comprehensive understanding of the contribution and implications of Ahmed An-Na'im's thinking on the development of contemporary Islamic legal discourse.

## RESULTS AND DISCUSSION

### 1. An-Na'im's Biography

Abdullahi Ahmed An-Na'im was born in Sudan on 6 April 1946 and spent his childhood with religious education at a local madrasa, including memorising parts of the Quran. An-Na'im is actually from Sudan, a country located on the African continent that gained independence in 1956 from Britain (Dahlan, 2009), (Salikin, 2004). An-Na'im was born a period before Sudan's independence, on 6 April 1946. Although factually he was born on 6 April 1946 as he himself admits, the date on his curriculum vitae is 19 November 1946 (Zulkifli, 2020).

He received his primary education in Atbara and completed secondary school in Omdurman. An-Na'im then earned a law degree (LL.B.) from the University of Khartoum cum laude, then continued his studies at the University of Cambridge, obtaining LL.B., LL.M., and M.A. degrees in criminology. His doctoral education was completed at the University of Edinburgh with research on comparative criminal law systems in several countries (Mukti et al., 2022). After returning to Sudan, he worked as a prosecutor, lawyer, and lecturer at the University of Khartoum until he left the country in 1985 after the execution of his teacher, Mahmoud Mohamed Taha. Since then, he has worked in various international academic institutions, including becoming a professor of law at Emory University in Atlanta, USA, and actively teaching Islamic law in various countries (An-Na'im, 1988).

As a progressive thinker, An-Na'im is widely recognised for his academic works on the relationship between Islamic law, human rights and the modern state. He has published dozens of scholarly articles in national and international journals and several influential books, including *Sudanese Criminal Law* (1985), *Toward an Islamic Reformation* (1990), and *Islam and the Secular State* (2008). Many of his works address the themes of Islamic law reform, secularism, and the application of human rights in the context of the Muslim world. Besides writing books, he is also active in editing and translation, including translating his teacher's work, *The Second Message of Islam*. An-Na'im's ideas focus on the need for a reinterpretation of sharia to be compatible with human rights principles as well as contemporary challenges facing Muslim countries (Taufiq, 2018).

In addition to his academic activities, An-Na'im was also involved in various social and

political movements. He was a member of The Republican Brotherhood, a political party founded by Mahmoud Mohamed Taha with the vision of building a more inclusive modern Islam. After Taha's execution, the group ceased political activities and turned to social and advocacy activities (Sulfan & Akbar, 2024). An-Na'im's thinking cannot be separated from his strong background in law and human rights and his life experience as an intellectual moving from country to country. He continues to contribute to the academic debate and global discourse on Islamic law reform, with an approach that emphasises the importance of compatibility between Islamic law and universal values in the context of modern society.

## **2. Background of An-Na'im's Thought**

The background of An-Na'im's thought cannot be separated from the history and socio-political reality in which he was born. An-Na'im was concerned about the existing socio-political conditions. In this case, the protracted conflict in Sudan (Siddiq, 2009). An-Na'im's writings are meant to respond and offer solutions to the crisis. Since Sudan's independence (1956), it has been ruled by a secular nationalist regime that has caused some problems for Islam and Muslim institutions in the political arena. Some of the competing political groups were the Ikhwan Al-Muslimin, the Republican Broterhood founded by Thaha (Guru An-na'im) and the Khatimiyah under the influence of the Mirgani family and the Mahdi circle (Shiddiq Mahdi) (Ma'arif, 2020).

Since then there has been tension in the application of its legal system. The tension and tug of war was between those who wanted to apply Islamic law in its entirety and those who were more moderate in their application of the substance of the law. This struggle became more evident when the president Ja'far Numeyri in 1983 September announced the 'Islamic Revolution' which affected the life of Sudanese society as a whole both politically and legally. Since then, Sudan has become the largest country in Africa that has put Islamic law as the regulator of its constitution. Islamic law became the formal law in a country where 85% of the population is Muslim.

Numeyri's Islamisation programme had a tremendous impact on Sudan and was more divisive than united. There was tremendous tension between the Muslim and non-Muslim populations. There was a civil war between the Muslim-majority northern Sudanese and the non-Muslim-majority (Christian) southern Sudanese (Cahyanti, 2017).

Mahmud Muhammad Thaha (An-na'im's teacher) created an alternative to the major nationalist political parties, as they were dominated by conservative leaders. Thaha began to emphasise the need for the transformation of Islam and liberation from the domination of sectarian forces so that in the next decade the development of this thought and understanding of Islam presented by An-Na'im with the term modern and evolutionary interpretation of the Quran.

Since the beginning of Thaha's politics received a ban from the Numeiry regime, until finally for one and a half years Thaha was imprisoned with 30 of his followers without justice and clear information. And they were released in 1984, but Thaha and other political dreamers were arrested again on charges of sedition and other offences then Thaha was sentenced to death in 1985 (An-Na'im, 1988).

It was this background that led An-na'im to initiate the freedom of human rights and the deconstruction of sharia in accordance with the problems he experienced. Because of the pressure of the conservative-fundamentalistic-authoritarianistic Numeyri regime that An-naim

felt violated rights and suppression of civil rights or more broadly human rights.

### **3. An-Na'im Thought Map**

Looking at all of his written works, in my opinion, An-Na'im's thoughts (the primary ideas) can be mapped into four issues:

#### **a. Politics**

An-Na'im's political thinking can be said to be attached to his legal thinking, because the concepts and theories developed by An-Na'im are based on the study of legal politics of how a country, in this case Sudan, can implement a law that is in harmony with and upholds the values of modernity that are developing now. Legal politics during the early days of independence which tended to be secular and colonial legacy, followed by legal politics that applied conservative Islamic law actually made Sudan worse off in conflict and division. In addition, it was also used as a tool by the ruler to strengthen his authoritarian power, and used to destroy his political opponents.

#### **b. Law**

As a legal scholar from S1 to S3 level, An-Na'im's main concern is the field of law. His thoughts and works are almost all outpourings of legal thoughts that he captured and digested from his learning experience in his own country to studying in the West and being active in various international forums.

#### **c. Islam**

An-Na'im's reality as a Muslim who was born in a religious environment eventually became the basis for his thoughts on Islamic law reform. An-Na'im tries to harmonise the values and rules in Islam to be in line with the context of contemporary times that highly uphold human rights, equality, justice and others.

#### **d. Human Rights**

The focus of human rights studies is based on An-Na'im's experience of persecution and intimidation of human rights carried out by the ruling regime. An-Na'im considers that the authorities use the issue and Islamic law as a weapon to destroy their political opponents. An example is the label of apostasy against his teacher MM Thaha who was eventually sentenced to death by the Numery regime.

An-Na'im thoroughly explores these discourses, both at the conceptual range and casuistic reflections in his works, both in the form of books, scientific articles published in scientific journals, and when speaking in various countries.

### **4. Characteristics of An-Na'im's Thought**

In accordance with the historical and social background that shaped his life, the character of Abdullah Ahmed An-Na'im's thought tends to be realist, which is based on real facts and conditions that are taking place in Sudan. Sudan is a country with a multicultural background, where its people consist of various ethnicities and religions. However, the application of conservative Islamic law by the government of North Sudan has caused social tensions that have led to rebellion from South Sudan. This conflict was not only caused by differences in religious views, but also by differences in racial and cultural identity between South Sudan,

which is predominantly African and Christian, and North Sudan, which is predominantly Arab and Muslim. In this context, An-Na'im criticises the coercive application of Islamic law without considering social diversity and the rights of minority groups. He argues that the application of sharia in the government system should not override the principles of universal justice and equal rights for all citizens, regardless of their religion and ethnicity.

Besides being realist in nature, An-Na'im's thinking also has a *tajdidiah* or renewal character in Islamic legal studies. He offers ideas that seek to deconstruct the concepts of Islamic law that have been considered 'established' for centuries and are deeply embedded in the consciousness of Muslims, especially Sudanese society. An-Na'im saw that the Islamic legal system implemented in Sudan was too rigid and did not provide room for social development, resulting in injustice for certain groups. Therefore, he proposed an approach that tried to combine Islamic values with principles developed in the West, especially in issues of human rights, democracy, and individual freedom. Although this approach has drawn controversy, especially among conservative scholars, An-Na'im's thinking is part of an effort to update the discourse on Islamic law to make it more relevant to the modern socio-political context, without losing its essence of justice.

## **5. An-Na'im's Methodology of Thought**

The methodology used by Abdullah Ahmed An-Na'im in his study is the method of deconstruction or reform, not reconstruction or an eclectic approach. The deconstruction he applies is a way of thinking that rejects the absolute freezing and standardisation of texts. This approach does not simply dismantle the classical understanding of the text, but also offers a new perspective that is more dynamic and contextual. In this case, An-Na'im considers that religious texts, including sharia, cannot be understood rigidly and apart from the social reality that surrounds them.

An-Na'im's thinking seeks to liberate religious interpretation from the limitations of literal texts, so that Islamic values can continue to evolve and be relevant in the context of modern society. He emphasises that texts cannot stand alone without considering the changing social, political and cultural dynamics. Therefore, his deconstructive approach aims to dismantle old understandings that are no longer considered in accordance with the principles of justice and humanity. In his perspective, understanding Islam must take into account the interaction between text and social reality, rather than simply relying on textual interpretations that have been standardised by religious authorities in the past (Lukis Alam and M. Rizkoni Salis, 2015).

The approach used is the evolution of Islamic legislation (modern mystical approach), which is essentially an invitation to build new principles of interpretation that allow the application of verses of the Qur'an and Sunnah according to the needs of a place and its situation. In more technical language, the evolution of Islamic legislation is a way of making the transition from one Qur'anic text to another, from a text that is suitable and applicable in the 7th century to a text that is suitable for the 20th century. The breakdown of the evolution of Islamic legislation is the theory of *nasakh*.

## **6. Approach**

Abdullah Ahmed An-Na'im in his book *Islam and Secular* uses two main approaches in negotiating the future of sharia, namely historical and sociological approaches. His historical approach focuses on the origins, growth and development of religious concepts in society. In

this book, he presents the history of early caliphate governments, both in Islamic and non-Islamic countries, which often used power to implement unjust systems of governance. He highlights how leaders in these governments forced people to submit to religious teachings that were decided unilaterally, without considering individual freedom of belief.

An-Na'im's sociological approach emphasises the importance of social interaction in understanding religion. He divides this approach into four main aspects: evolutionism, interactionism, functionalism and conflict, each of which explains the social dynamics in the development of religion. According to him, a Muslim should have the freedom to choose his faith without coercion from the state. Therefore, he argues that only a secular state can guarantee plural life and harmony between religious communities. To better understand the process of Islamic renewal, An-Na'im proposes a socio-historical approach that highlights the interrelationship of modern Islamic thought with the socio-historical context of Islamic development over time. With this approach, he records the historical journey of the formation of sharia and its relevance in guaranteeing human rights, international law in Islam, and Islamic criminal law (Lukis Alam and M. Rizkoni Salis, 2015).

## **7. An-Na'im's Thought**

### **a. Definition of Sharia**

The term sharia used by An-Na'im is different from the term used by scholars. In general, scholars define sharia as the laws and rules set by God for His servants to follow in their relationship with God and their relationship with fellow human beings (Syarifuddin, 2011). This means that the definition of sharia here is synonymous with religion. Meanwhile, according to An-Na'im, he states that sharia is the result of an understanding of Islam that is influenced by certain historical conditions. For him, sharia is 'the product of a process of interpretation of analogical derivation from the text of the Qur'an and Sunna and other traditions (An-Na'im, 1990). The definition put forward by An-Na'im is actually identical to the term fiqh or Islamic law known in the tradition of fiqh and ushul fiqh.

### **b. Sharia as a Product of History (Historical Shari'ah)**

In relation to the term sharia, according to An-Na'im, the majority of Muslims have understood sharia as the final formulation of God's law, therefore the conditions and conditions of sharia become absolute, anti-change and rigid. In fact, according to An-Na'im, sharia is not Islam itself but only an interpretation of the text (nash) that is understood through a certain historical context, so that it is relative and can change according to the changing times and the reality of civilisation that develops in a time and place. Shari'ah is not divine, in the sense that all its specific principles and detailed rules were directly revealed by God to the Prophet Muhammad. Shari'ah is a product of history, namely the result of the interpretation of the texts of the Qur'an and as-Sunnah in accordance with the historical context of the 7th to 9th centuries AD. It was during this period that Islamic jurists interpreted the Qur'an and other sources in order to develop a comprehensive sharia system as practical guidance for Muslims at that time.

As a product of history, according to An-Na'im, the formulation of sharia can be reformed when it is no longer relevant to contemporary life. For An-Na'im, sharia must be in line with the realities of today's world that highly upholds human rights, gender equality, freedom, equality and others, especially regarding the application of sharia in public law. The historical editorial is used as legitimacy for the possibility of reforming the sharia



system so that it is always modern and relevant (An-Na'im, 1997).

### **c. *Madaniyah Historical Sharia***

According to the majority of scholars, Madaniyah verses are parts of the Qur'an that were revealed after the hijrah to Medina. The verses that were revealed in Medina are seen as verses that perfect the verses that were revealed before the hijrah or while still in Mecca. During this period, sharia obtained a more detailed form of details, and during this period also revealed the verse al-Maidah verse 3 which mentions the perfection of dinul Islam. According to An-Na'im, the Madaniyah verse is the furu' part of the Qur'an which contains teachings that are less tolerant, less considerate of justice, gender bias and less respectful and tolerant of religious pluralism.

For An-Na'im, the Quran and as-Sunnah as the source of sharia is Islam's response to the concrete reality of the past, therefore it must also be a source of modern sharia as Islam's response to the concrete reality of the present (An-Na'im, 1997). The necessity to make the Qur'an and as-sunnah as the source of modern sharia requires creative efforts to choose which verses of the Qur'an and sunnah are relevant to the needs. An-Na'im sees the Madaniyah sharia sourced from the verses of the Medina period as irrelevant and inadequate to answer the challenges of contemporary society (An-Na'im, 1997).

### **d. *Modern Sharia Makiyyah***

For the majority of scholars, Makiyyah verses are parts of the Qur'an that were revealed before the Prophet's hijrah to Medina. In the Makiyyah verses, the core teachings revealed are mostly related to creed, morals, history and the day to come. In An-Na'im's view, the Makiyyah verses are verses that emphasise the fundamental values of justice and equality and the inherent dignity of all human beings. For example, in calling 'O son of Adam', or 'O man'. The Makiyyah verses also address all human beings with respect and dignity regardless of race, colour, religion and gender. The concept of Makiyyah sharia is considered the most relevant to the needs of contemporary society, referred to as modern sharia (An-Na'im, 1997).

### **e. *Nasakh as a Modern Methodology***

Nasakh in the view of Manna 'al-Qaththan, a scholar of the Qur'an defines as replacing sharia law (al-hukm al-syar'i) with a proposition of sharia law (bi khitab al-syar'i) (Al-Qaththan, n.d.). Meanwhile, according to Abdul Hamid Hakim, a scholar of ushul fiqh nusantara defines nasakah as eliminating the law of shara' on the basis of shara' arguments that come later (Hakim, 2010). So basically nasakh is the concept of changing the law that both come from the nash (text), by looking at the time when the text was born.

The majority of ushul fiqh scholars divide the study of nasakh into three categories: (a) the text is deleted but the law remains; (b) both the text and the law are deleted; and (c) the law is deleted but the text remains (As-Suyuthi, 1967). In relation to his theory, An-Na'im highlights the third definition, namely naskh al-hukm duna tilawah. When interpreting verse 106 of Surat al-Baqarah [2] which reads *ma nansakh min ayatina...*, An-Na'im follows in the footsteps of his teacher Thaha, that some pre-Islamic texts (treatises before Muhammad) have been abolished. Meanwhile, the words *nunsiha* are interpreted as delaying the implementation or application of the verse. Furthermore, the expression *na'ti mitsliha aw bi khayr minha* is interpreted to mean that Allah will bring a verse that is closer to the people's understanding and more appropriate to their situation rather than being interpreted to mean a postponed verse. The main meaning of 'comparable verse' is

to restore the same verse when time permits its application. In this way, the abrogation seems to be in accordance with the needs of the situation, and is postponed until the appropriate time when the respective rulings can be applied, whether *nasikh* or *Mansukh* (An-Na'im, 1997).

In principle, An-Na'im agrees with scholars who accept *naskh* as a theory used to form new laws. However, what An-Na'im does is different from the scholars in determining the process of *nasakh*. According to An-Na'im, the process of *nasakh* is tentative in accordance with the demands of the situation and conditions, namely which verse is needed at a certain time, then that verse is applied. As for verses that are not needed, because they are not relevant to contemporary developments, they are positioned as *mansukh* verses and may be replaced by other verses.

According to an-Na'im, *naskh* can also mean the abolition or suspension of a verse that came later by a verse that was revealed earlier, if contemporary conditions require it. Verses that are tolerant and democratic are seen as *Makkiyah* (universal) verses, and verses that are not in line with that spirit are categorised as *Madaniyah* (partial) verses.

## **8. Implications of An-Na'im's Concept of Sharia Deconstruction in Public Law**

Abdullah Ahmed An-Na'im's method has had a significant impact on the modern concept of shariah, particularly in several aspects of law such as *ijtihad*, human rights, religious tolerance, Islamic civil and criminal law, as well as constitutionalism and international relations. These ideas emphasise the need to reform Islamic law to make it more inclusive and in line with the principles of universal justice. An-Na'im argues that Islamic law applied in the context of a modern state must take into account the plurality of society, both in terms of religion and legal views. Therefore, he criticises various legal policies that he believes are discriminatory and do not reflect the principles of justice for all citizens, especially for minority groups who are often marginalised in shari'ah-based legal systems.

In Islamic criminal law, for example, An-Na'im criticises the application of hand-cutting punishment for thieves which is considered a form of discrimination legalised by the state. According to him, the application of Islamic criminal law like this should not only consider the approval of the majority of Muslims, but should also have the support of all citizens, including non-Muslims and secular Muslims. This is because criminal law is public and affects the entire society, so its application should not be based on the beliefs of one religious group only. If this kind of law is applied in a modern state system that consists of various religious and cultural backgrounds, there will be injustice for groups that are not in line with the Islamic norms that are used as the basis of state law.

Furthermore, An-Na'im argues that the application of shari'ah in the government system is a form of imposition on human rights. He asserts that sharia itself is not a law that comes directly from God, but is the result of human interpretation of Islamic teachings. Thus, when shariah is adopted as a state law, the process of formulation and implementation cannot be separated from the possibility of human errors and mistakes. Therefore, he emphasises that Islamic law applied in the modern state system should still be able to be criticised, challenged or questioned without being considered a form of defiance against God's will. This view leads to the idea that Islamic law should continue to evolve and be adapted to more universal principles of justice, especially in diverse societies.

An-Na'im's criticism of the Islamic legal system can also be seen in the aspect of civil law,

particularly in the Islamic inheritance system which he considers does not provide fair treatment for non-Muslims. In the traditional Islamic inheritance system, non-Muslims often do not have inheritance rights from Muslim families who die. For An-Na'im, this policy shows that Islamic law still overrides the rights of non-Muslim citizens. He believes that the concept of citizenship in modern legal systems should be based on the principle of equal rights regardless of religious differences. Therefore, he encourages Islamic law to be more inclusive and not create inequality of rights for minority groups in various aspects of the law, including in inheritance, marriage, and other civil rights. Through his critiques, An-Na'im tries to show that Islamic law must be more flexible and adaptable to modern social realities so that it does not contradict the principles of democracy and human rights (An-Na'im, 1997).

## 9. Criticism of An-Na'im's Thought

As a thought born from human thought, of course nothing is truly perfect and must contain aspects that need to be criticised. In this case, Abdullah Ahmed An-Na'im's thought cannot be separated from various criticisms that can be submitted from various perspectives. Criticism of his thought can be grouped into the following aspects:

### a. Nasakh Theory that deviates from the concept of Jumhur Ulama

One of the main criticisms of An-Na'im's thought is his theory of nasakh (abrogation), which is also influenced by his teacher, Mahmoud Mohamed Taha. This theory is considered to deviate from the concept of nasakh that has been agreed upon by the majority of scholars, both among Qur'anic scholars and ushul fiqh experts. In classical Islamic tradition, nasakh is understood as the abolition or replacement of laws in revelation that occurred during the period of the Qur'an's revelation. However, An-Na'im offers a more radical understanding, which seeks to reinterpret Islamic law with a more contextual and progressive perspective. This approach has been criticised for not being in line with established ushul fiqh rules and risks distorting the understanding of the authority of Islam's sacred texts.

### b. Weak Epistemological Basis

Another fundamental criticism is the weak epistemological basis in An-Na'im's thinking. He tends to base his ideas on logical and rational thinking, but does not provide a strong basis from the shar'i texts that have been the main reference for scholars in formulating Islamic law. This causes his thinking to lack support from authoritative sources in Islam, although on the other hand, An-Na'im's thinking still provides an alternative way out (makharij) for the tension between the application of sharia and modern law. In other words, although he tries to find a solution to the incompatibility between sharia and the contemporary legal system, his epistemological foundation still needs to be strengthened in order to be more widely accepted in Islamic legal discourse.

### c. The Dominance of Western Legal Tradition in Assessing Sharia

One of the sharpest criticisms of An-Na'im's thinking is his tendency to assess historical sharia using the Western legal framework as the main standard. In his view, it is as if the Islamic legal system must conform to the modern Western legal tradition that currently dominates the world. This approach has been criticised for not considering the fundamental differences between Islamic law and Western law, both in terms of philosophical, epistemological and applicative aspects. Islamic law comes from revelation and has a concept of justice based on maqasid sharia, while Western law emphasises secularism and

human rationality. By making the Western legal tradition the benchmark, An-Na'im is considered to have ignored the unique characteristics inherent in Islamic law, which actually has its own mechanism in adapting to the times without having to follow the Western legal paradigm.

d. Contrary to Established Islamic Legal Concepts and Methodologies

An-Na'im's thinking is also considered to contradict the concepts and methodologies of Islamic law that have been established and recognised by scholars throughout history. One example is how he crashes the principle of qath'i (definite law) and dhanni (law that is still open to interpretation) in the study of Islamic law. This concept is very important in determining which laws are fixed and cannot be changed, and which laws can still be reinterpreted according to the social context. Scholars agree that Islamic law has clear rules that cannot be changed carelessly, except in matters that are ijtihadiyah. However, An-Na'im's approach tries to tamper with these rules, raising concerns that his methodology could lead to the obscuring of basic principles in Islamic law.

With these criticisms, An-Na'im's thought can be said to be quite progressive but it also contains various fundamental weaknesses that need to be studied further. Although he offers solutions to the challenges of modernising Islamic law, his approach is still debated among Islamic scholars, especially regarding the suitability of his epistemology and methodology in studying sharia in the context of the modern world.

## 10. Contributions to An-Na'im's Thought

As an Islamic legal thinker who has travelled to various parts of the world, of course An-Na'im's thoughts have influenced and contributed to the development of Islamic law and the application of Islamic law in Islamic countries and Muslim countries. This means that An-Na'im's thought contributes to the development of Islamic legal thought. Abdullahi Ahmed An-Na'im justifies the state of shari'at, because shari'at is actually a belief in Islam. The Qur'an and Hadith are the legal foundations of Islamic law.

Substantively, the values of Islamic sharia are universal values, so they can be compatible with any tradition, including the legal traditions that are developing in the international world today. This is the point that An-Na'im is trying to explore in Islam, which has been obscured by the entrenched traditions inherited from the Islamic period of decline and colonisation of Muslim nations. An-Na'im's thinking is all about returning to the legitimate sources of Islam, by mainstreaming the universal messages of Mecca and putting aside the messages of Medina that are perceived to be in conflict with the modern values prevailing in the world today.

However, An-Na'im's endeavour is an attempt to bring an order based on Islamic norms and values into contemporary life. Of course, this effort is based on An-Na'im's love for Islam and his predominantly Muslim country. A noteworthy effort in the discourse of contemporary Islamic law reform.

## CONCLUSIONS AND SUGGESTIONS

From the description of An-Na'im's thought above, it can be concluded that his thought provides a new view of the concept of sharia as an interpretation of the sacred text. For An-Na'im, sharia should not be understood as something sacred and static, but is equivalent to fiqh and Islamic law which are dynamic and contextual. His emphasis on textual interpretation

indicates that Islamic law must be relevant to the times, although this approach poses great challenges, especially in maintaining the authenticity of Islamic law amidst changing social dynamics.

Furthermore, An-Na'im's thinking cannot be separated from the influence of his teacher, Mahmoud Muhammad Thaha, who is known for his controversial ideas on *nasakh* and abrogation in the Qur'an. An-Na'im's thinking can be seen as a development of the theory formulated by Thaha, especially in relation to the importance of distinguishing Makkiyah and Madaniyyah sharia in the context of epistemology. An-Na'im places Makkiyah sharia as the universal foundation of Islam that can be applied in the modern era, while Madaniyyah sharia is seen as more limited and contextualised according to the needs of the Prophet's time. This approach shows an effort to reconcile Islamic teachings with the demands of modernity.

However, one criticism that arises from this idea is An-Na'im's tendency to judge sharia based on modern standards such as human rights and constitutionalism. This gives the impression that Islam needs to conform to Western values, not the other way round. This approach has drawn controversy because it is considered to have the potential to erode the distinctive Islamic identity. The results of this study provide recommendations that An-Na'im's thinking still makes a significant contribution in opening a space for discussion on how sharia can be applied in a relevant manner without losing its basic essence as a guide to a just life.

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