

NEGOTIATIONS FUTURE OF INCLUSIVE ISLAMIC LAW: A Study of Abdullah Ahmed An-Naim's Sharia Deconstruction Thought

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ABSTRACT

Discourse on Islamic law is very important to be studied in more depth. This is because the study never ceases to be debated. In addition, Islamic law must continue to evolve and adjust to the times. The purpose of this paper is to understand 3 things: First, at a glance, an-Naim's thoughts related to Islamic law (Sharia). Second, the methodology used in reformulating Sharia. The third is the idea of the future of inclusive Islamic law that spans the space and dynamics of the social development of society. The data were collected using a literature research model, a text-text approach in the form of books and articles. Then it was analyzed using data examination, classification, analysis, and verification. The results found in the form of: 1) Sharia in an-Naim's view is not only fixated on the text of the Qur'an and Sunnah, but more than that it needs to be reinterpreted by looking at the context and reality that occurs today. 2) The methodology used by an-Naim is naskh-mansukh, by removing verses but not permanently (delaying the application of irrelevant verses). 3) The idea of an inclusive future for Islamic law is to provide space for every human being, the concept of equality in the realm of religion, ethnicity, race, and so on. This includes the renewal of criminal law, human rights, and international relations. The result that can be concluded is that Islamic law is acceptable to every community to be a role model that reflects progress and harmony with human life that has an impact on the benefit both in the Islamic world and internationally

Keywords: Islamic Law, Inclusive, Deconstruction, an-Naim

A. INTRODUCTION

The study of Islamic law has always given birth to various controversies from classical to contemporary times. Islamic law is sometimes always associated with the Qur'an and Hadith as a source of reference. As a fiqh concept that needs to be contextualized with the times, Islamic law is also one of the important things to continue to be studied so that the problems and misunderstandings that exist in the field of society obtain inclusive legal rights.¹ Departing from the historical-textualist understanding of legal interpretation, it is necessary to re-understand Islamic law and its interpretation in facing the modern challenges of dynamic Muslims due to civilization. Of the many features of Islamic thought related to its renewal, it certainly has implications for Islamic law methodologically and discourse and needs more careful tracking.²

Abdullah Ahmed an-Naim through his work *"Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law"* became an interesting discussion on the deconstruction of sharia as a solution to the problems of Islamic law. For him, the laws derived from the text have further space of interpretation, because the orthodox understanding of the texts is limited and needs further exploration.³ Meanwhile, Mahmud Thaha with his work entitled *"Ar-Risalah al-Tsaniyah min al-Islam: The Second Message of Islam"*,⁴ offers a new perspective on

¹ Ecep Ishak Fariduddin, "Kontekstualisasi Hukum Islam Dalam Realitas Sosial-Budaya Perspektif Wael B. Hallaq," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (2022): 17–38.

² Martua Nasution, "Arah Baru Metode Pembaharuan Hukum Islam," *El-Ahli: Jurnal Hukum Keluarga Islam* 2, no. 2 (2021): 19–39.

³ Dwi Sagita Akbar and Afifi Fauzi Abbas, "Pemikiran Abdullah An-Na'im Tentang Teori Evolusi Syariah (Nasakh) Dan Relevansinya Dengan Metode Istinbath Hukum Islam," *Al-Hurriyah: Jurnal Hukum Islam* 05, no. 0 (2020): 1–21.

⁴ Mahmud Muhammad Thaha, *The Second Message of Islam* (Syracuse: University Press, 1987).

the Quran and its role in shaping Islamic law in the form of historical Islam⁵ and essential Islam.⁶⁷ In a paper entitled *ar-Risalah al-Tsaniyah min al-Islam*, he not only discussed Sharia law but also touched on monotheism and social life in society at that time. The two works above create a new discourse to respond to Islamic law to remain inclusive within the community. In addition, it also makes important contributions to Islamic discourse and interpretation, so it needs to be explored further.

Ahmed an-Naim is one of the liberal Muslim thinkers who adheres to his teacher Mahmud Muhammad Thoha. Thoha is described as a *history of ideas* by Naim. However, not all of his thoughts were adopted by Naim, only a few of which functioned as a form of Sharia deconstruction. In reality, Islamic law aims to benefit mankind.⁸ Sharia is designed in such a way as to enable people to obtain *worldly happiness -throw*. An-Naim offers a paradigm of Sharia deconstruction as an answer to the problems of modernity issues. With the aim of Islamic law-inclusive becomes a *problem-solving* of various problems that occur today.

Ahmed An-Naim's deconstruction of Sharia is a relevant and important topic to review. An-Naim, a prominent Muslim scholar, has proposed an innovative approach to interpreting and implementing Islamic law, especially in the context of countries with pluralistic societies. The importance of reviewing An-Naim's Sharia deconstruction thinking lies in

⁵Historical Islam is Islam that developed in the past and is tied to its historical context

⁶Essential Islam is universal and eternal Islam

⁷ Nur Istiqlalayah and Abdul Kadir Riyadi, "Menyoal Universalitas Al-Qur'an: Kajian Atas Pemikiran Mahmoud Thaha Dalam 'The Second Message,'" *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 11, no. 2 (2022): 203–13, <https://doi.org/10.19109/intelektualita.v11i2.14034>.

⁸ M. Sulthon, "Studi Pemikiran Abdullah Ahmed An-Naim Tentang Hukum Pidana Islam Dan Ham," *Al-Jinayah: Jurnal Hukum Pidana Islam* 10, no. 1 (2021): 6.

its implications for the renewal of Islamic thought. Taking into account diverse social, political, and cultural realities, An-Naim argues that Sharia must be understood in the context of pluralism and modern democracy. This provides a strong foundation for aligning Sharia with the principles of justice, equality, and human rights.⁹

In addition, An-Naim's thinking has also had a significant impact in promoting interfaith dialogue and interfaith harmony. By emphasizing the principles of universality and tolerance in Islamic teachings, An-Naim opens up space for a more inclusive understanding and mutual respect between Muslims and non-Muslims. Not only that, An-Naim's Sharia deconstruction thinking also challenges the dominant conservative paradigm in Islamic thought. By proposing a more progressive and contextual approach, An-Naim makes a meaningful contribution to formulating a relevant and adaptive legal framework for contemporary society. It is important to critically review An-Naim's Sharia deconstruction approach. While this approach has many values and benefits, it can also generate controversy and opposition, especially in terms of the interpretation of religious texts and traditional Islamic legal authority.

Departing from the background above, this paper seeks to find a meeting point between An-Naim and Thaha regarding the view of Sharia deconstruction to lead to a humanist Sharia. The deconstruction of Sharia is a solution to regulating Islamic law in the contemporary era. The religious thought of Mahmud Muhammad Thoha departs from the thesis of distinguishing religion from Sharia.¹⁰ Sharia according to him is the only

⁹ Gazali and Ferry Payuhi, "An-Naim Dalam Merekonstruksi Kewarisan Non Muslim An-Naim in Reconstructing Non-Muslim," *Iqra: Jurnal Ilmu Kependidikan Dan Keislaman* 18, no. 2 (2023): 108–15, <https://doi.org/10.56338/iqra.v18i2.3643>.

¹⁰ Gazali and Payuhi.

way to enter religion and is the lowest way or the minimum limit of religion. This view was absorbed by his student Abdullahi Ahmed An-Na'im. In line with Mahmud, An-Na'im stated that sharia is not Islam itself but is only an interpretation of the text (*nash*) understood through a certain historical context. Thus, the reassessment of An-Naim's Sharia deconstruction thought is an important step in understanding the dynamics and challenges in the context of Islamic thought renewal. It also opens up space for wider dialog and discussion on how Islam can adapt and evolve in the face of the changing realities of the modern world.

B. RESEARCH METHODS

This research focuses on the study of Abdullah Ahmed an-Naim's thoughts related to the concept initiated, namely the deconstruction of sharia. The method used is a literature study through a literature approach, namely reading and analyzing texts in the form of books and articles. The primary source is a book by an-Naim entitled "Deconstruction of Sharia" as a reference to explore specific data. While secondary sources are in the form of articles relevant to an-Naim's Sharia Deconstruction thinking.¹¹ The data analysis of this research uses data examination through serumun articles with the theme of the study, then classify it by focusing on an-Naim's thoughts on sharia deconstruction, and analyzed, then verified.¹² The data processing method is carried out by analyzing Abdullah Ahmed an-Naim's thoughts as an alternative solution to the development of Islamic law today. Furthermore, this research wants to reveal an-Naim's idea as an answer and

¹¹ Emzir, *Metodologi Penelitian Kualitatif: Analisis Data* (Jakarta: Rajawali Press, 2012).

¹² Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum* (Jakarta: Kencana, 2021).

solution to the problem of textualist Islamic law. So that Islamic law provides an inclusive space for the entire community without distinguishing one another.

C. RESULT AND DISCUSSION

1. Personal Glimpse of Abdullah Ahmed an-Naim

Abdullah Ahmed an-Naim is a professor at Emory University School of Law, United States. He was born in Sudan in 1946 and earned a bachelor's degree from Khartoum University, Sudan. Then, He continued his studies in Edinburgh, Scotland, and holds a PhD in Islamic law. Naim is known as an academic who has experts in the field of Islamic law and *human rights*.¹³ He is also known as an Islamic reformer who fought for the separation between religion and the state by referring to his teacher, Muhammad Thaha. His educational footprint led to extraordinary ideals of devotion. From November 1976 to June 1985, he was busy teaching Law at his former alma mater, Khartoum University, Sudan. In the same year, he also served as head of the public law study program. Furthermore, from 1985 to 1992, an-Na'im was a guest professor of Olof Palme at the Faculty of Law, Uppsala University, Sweden. In July 1993, he was appointed Executive Director of Human Rights Supervision in Washington D.C. Also, since June 1985, he has been a professor of law at Emory University, Atalanta, GA., United States.¹⁴

Abdullah Ahmed An-Naim has written many books and articles on Islamic law and human rights. Here are some of Naim's popular works. Among them: *Toward an Islamic Reformation: Civil Liberties, Human*

¹³ Muhammad Anas Ma'arif, "Book Review: Dekonstruksi Syariah Menurut Abdullah Ahmad An-Na'im" 1, no. 1 (2020): 1–12.

¹⁴ Ma'arif.

Rights, and International Law, Islam, and the Secular State: Negotiating the Future of Shari'a, Human Rights in Cross-Cultural Perspectives: A Quest for Consensus, What Is an American Muslim?: Embracing Faith and Citizenship, Muslims and Global Justice, Religion and Human Rights: Advocacy for Change, and many others.¹⁵ Round his work always discusses important issues such as Islamic human rights reform, negotiations between religion and state, and global justice.¹⁶

Ahmed An-Naim is known as a bold and innovative thinker in facing contemporary challenges related to the implementation of Sharia. His personality as a Sharia deconstructor is reflected in the critical and contextual approach he takes to Islamic law.¹⁷ An-Naim shows assertiveness and courage in confronting traditional norms that have long been considered sacrosanct, as well as in challenging rigid and dogmatic religious authorities. An-Naim's courage as a Sharia deconstructor is seen in his commitment to expressing different and controversial perspectives. He does not hesitate to voice controversial views even if it means facing criticism or even threats to himself. This shows that his persona as a Sharia deconstructor is based not only on intellectual acumen but also on moral courage and personal integrity.

In addition, An-Naim also shows sensitivity to the complexity of the social and political context in applying Islamic law. He does not see Sharia

¹⁵ Yurike Siti Mariyam et al., "Deconstruction of Shariah Abdullah Ahmed An-Na'im; An Alternative Thinking of Sharia-Based Legal Reform," *Hukum Islam* 23, no. 1 (2023): 124–37.

¹⁶ Muhammad Nadiddin Al Hanif, "Islamic Studies Dalam Konteks Global Dan Perkembangannya Di Indonesia," *TRILOGI: Jurnal Ilmu Teknologi, Kesehatan, Dan Humaniora* 2, no. 1 (2021): 71–80, <https://doi.org/10.33650/trilogi.v2i1.2863>.

¹⁷ Zulkifli Abdurrahman Usman, "Changes and Development of the Meaning of Secularism in Islamic Thought," *Al-Risalah* 13, no. 1 (2022): 16–33, <https://doi.org/10.34005/alrisalah.v13i1.1651>.

as a static or monolithic entity, but as a framework that must constantly evolve and adapt to the realities of the modern world. This reflects his personality of being open to different perspectives and experiences, as well as his ability to empathize with the diverse conditions of society. An-Naim's personality as a Sharia deconstructor is also reflected in his commitment to the values of universality and justice. While he recognizes the importance of Islamic teachings in the lives of individuals and communities, he also emphasizes the need to prioritize broader humanitarian principles, including human rights and gender equality. This shows that An-Naim's personality is not only limited to religious identity but also goes beyond those boundaries to seek a more inclusive and universal justice.

2. Abdullah Ahmed An-Naim's Thoughts on Sharia

Ahmed an-Naim has his view or paradigm in terms of Islamic law. He is of the view that the Qur'an is not a collection of laws or law books. The Qur'an is interpreted as something that has an appeal to mankind as a medium to obey the laws of God which were first revealed. It is a mistake if there is an understanding in ignoring the influence of the Qur'an in the creation of the Islamic legal system. Ahmed an-Naim said that the substance of Islamic law is in line with the needs of contemporary society and international legal standards because an-Naim rests his thinking on the principle of reciprocity. In principle, it states that it must treat others as expected by self-enforcement. This basic principle is considered to be a major religious tradition in the world, including Islam. On the other hand, this principle becomes a moral and logical force that can be accepted and appreciated by all humans.

Through an-Naim's thinking, it can be understood that it is important to pay attention to human reality in depth from various perspectives. An-

Naim proposes a concept that emphasizes the importance of considering the *mashlahah* space, namely the benefit or general good, in formulating law or sharia. This suggests that Islamic law should not be seen in a narrow or limited way, but should take into account the interests and needs of all people. By paying attention to the *mashlahah* space, the law can be a tool to achieve common welfare and overcome various challenges and problems faced by society.¹⁸ This approach allows for flexibility and adaptability in the application of Islamic law so that it can adjust to changing times and changing social contexts. Thus, An-Naim's thinking teaches that true justice in law or sharia can only be realized if it takes into account the needs and benefits of all individuals in society.

The Qur'an was originally revealed in response to the situation of society at that time and developed more widely. The laws contained in the Qur'an still require interpretation and have the potential to develop.¹⁹ At the time of the Prophet SAW, in understanding such verses and problems, the explanation was given directly by him with his sunnah and the Companions saw the answer given by the Prophet. In the next period, when he died and the Islamic community experienced rapid development, as well as the wider Islamic territory, the explanation was carried out by the companions through experiences and visions during their life with the Prophet. This responsibility continues and passes to the leaders or scholars of '*mujtahid*' from the next generation. For an-Na'im, the formulation of sharia must be based on a basic view of the Qur'an, understanding it with an inclusive

¹⁸ Muhamad Rouf Didi Sutriadi, "Konsep 1:1 Abdullahi Ahmed An-Naim Dalam Pembagian Harta Waris Laki-Laki Dan Perempuan Ditinjau Dari Perspektif Masalah Mursalah Wahbah Zuhaili," *Amal Insani* 3, no. 2 (2023): 108–22.

¹⁹ Moh Khasan, "From Textuality To Universality The Evolution of Hirābah Crimes in Islamic Jurisprudence," *Al-Jami'ah* 59, no. 1 (2021): 1–32, <https://doi.org/10.14421/ajis.2021.591.1-32>.

pattern of meaning. So the Qur'an is not only a black-and-white book of the law, carrying out moral standards that need to be formulated in the frame of interpretation and weighing the role of the development of times and modernity.²⁰

The term "Sharia Deconstruction" was introduced by Abdullahi Ahmad an-Na'im in reforming Islamic law. This term can be understood as a new way of being very intolerant of the freezing and standardization of texts.²¹ This is often categorized as a subversive action because there is an unpacking that penetrates the text to display the arbitrary and ambiguous character of the text itself.²² This is usually built to create sustainability, even though sustainability (status quo) is part of the community. For an-Naim, Muslims as a whole have the right to apply Islamic law, with a record of not violating the rights of other people and groups either within or outside the Islamic community. That is, the prohibition focuses on claims and using individual and collective rights for personal interests.²³ The reason is, that if historical shari 'a is applied in the current era, it will cause serious problems and have an impact on constitutionalism, criminal law, international relations, and human rights.

As a further understanding, those who often feel the effects of historical-textualist Islamic law are non-Muslim communities and women. Non-Muslims will feel that they are a second-class society with the title of

²⁰ Abdul Malik, "Islam, Al-Qur'an, Dan Pembentukan Syari'at," *Al-Wajid: Jurnal Ilmu Al-Qur'an Dan Tafsir* 1, no. 1 (2020): 1–16.

²¹ Mariyam et al., "Deconstruction of Shariah Abdullah Ahmed An-Na'im; An Alternative Thinking of Sharia-Based Legal Reform."

²² YUSDANI YUSDANI, "Islamic Law and Contemporary Challenges from Fresh Ijtihad Point of View," *Jurnal Hukum Islam* 20, no. 1 (2022), <https://doi.org/10.28918/jhi.v20i1.5991>.

²³ Aji Mukti, Amira Fauzia Luberti, and Yumeiza Nurwinda Astuti, "Analysis Of Abdullah Ahmed An-Na'im's Opinion In Renewing Sharia Public Law," *Milrev* 1, no. 1 (2022): 115–33.

dhimmi, while women, will lose space in obtaining education and access to public space.²⁴ The historical experience of Sudan at that time in the clutches of colonialism experienced colonization by the Turkish-Egyptian nation in 1821.²⁵ Referring to the problems that occurred, Abdullah an-Naim proposed a new concept in the realm of public law in Islamic countries by *re-building* a version of Islamic public law that is by the aforementioned standards that are relevant to modern civilization.

3. Abdullah Ahmed An-Naim Islamic Legal (Sharia) Methodology Glasses

Changes in sharia, which in terms of an-Naim is called sharia deconstruction, are experiencing a level of popularity in parts of the world. In addition, it is also a response as well as a solution to the process of changing perceptions, attitudes, behaviors, and policies of Muslims with Islamic foundations. An-Naim argues, that if sharia is not built on a religiously acceptable and purely modernist reform.²⁶ So Muslims today or adults will use other alternatives in the form of implementing Sharia with all its weaknesses or passing through secular public law.²⁷ In line with an-Naim survey of the challenges of modernity present in the Islamic world when it gained political independence from the clutches of imperialism in the 20th century. One of the important issues for him was how to position

²⁴ Muhammad Harfin Zuhdi, "Moderate Islam: The Response of Islamic Law Toward Contemporary Issues in Indonesia," 2022, 991–1008, <https://doi.org/10.17605/OSF.IO/DGWTK>.

²⁵ Ahmad Taufiq, "Pemikiran Abdullah Ahmed An-Naim Tentang Dekonstruksi Syariah Sebagai Sebuah Solusi," *International Journal Ihya' 'Ulum Al-Din* 20, no. 2 (2018): 145–66, <https://doi.org/10.21580/ihya.20.2.4044>.

²⁶ Umar Faruq Thohir et al., "Reinterpretasi Status Minoritas Dzimmi Di Tengah Mayoritas Muslim," *Jurnal Hukum Islam* 6, no. 2 (2020): 2548–5903.

²⁷ Abdullah Ahmed An-Na'im, *Dekonstruksi Syariah* (Yogyakarta: LKiS, 2006).

Sharia to be able to accommodate all citizens without having ethnic sects, religions, and other things.

To formulate sharia to be relevant and support modern principles and human rights (ham) that have become international agreements, a theoretical basis is needed so that the Islamic legislation that is built can be logical and consistent.²⁸ An-Naim in his ideas was influenced by his teacher Mahmud Thaha regarding the revolutionary methodology of reform. The methodology is described as an evolution of Islamic legislation which essentially calls for new interpretive principles that allow the application of Qur'anic and Sunnahic verses. None other than this approach, if applied, will be able to break the deadlock between the goals of reform, the limitations of the concept, and the techniques of Sharia historically. Therefore, the method is expected to produce sharia that is contextual to the current era. The Islamic frame of reference is the result of the so-called “human agent” and is built based on human experience and reflection-introspective as well as its systematic development towards an established methodology.²⁹

²⁸ M. Hasan Ubaidillah, “Dekonstruksi Syariah Dalam Pembaharuan Hukum Islam: Kajian Terhadap Pemikiran Abdullah Ahmed Al-Naim,” *Ab-Bayan: Jurnal Ilmu Al-Qur'an Dan Hadist* 2, no. 1 (2019): 97–109.

²⁹ Abdullah Ahmed An-Na'im, *Islam Dan Negara Sekuler Menegosiasikan Masa Depan Syariah* (Jakarta: Mizan, 2007).

Table 1. Methods of Sharia Evolution Ahmed an-Naim's is derived from his teacher Mahmud Thaha.

Sharia Evolution Method (<i>Nasakh</i>)			
<i>Makkiyyah</i>			<i>Madaniyyah</i>
Universal / Fair			Particulars / Discrimination
How to Understand			
Text	Justice	reasonable	
<i>'Amm and Khash</i> (<i>'amm is qath 'i, and</i> <i>khash is</i> discriminatory)	Human Rights (human rights) justice-oriented	Connecting <i>Nash</i> to social reality	

The methodology used by an-Naim in the process of deconstructing Sharia is through a socio-historical approach.³⁰ One of them is through the principle of *nasakh*, the cancellation of certain Qur'anic and Sunnahic texts to determine the legality of the Qur'anic and Sunnahic texts in determining the theoretical validity and continuity of practice and evolutionary approaches.³¹ Then combine the *naskh* theory with general principles related to concrete analysis of the implications of Islamic public law.³² The emphasis in its use is focused on the balance of rights of Muslims and non-Muslims, men and women who are included at the price of humanity.

³⁰ Zakiyal Fikri Mochammad, "Kajian Kritis Tentang Nasikh Mansukh Dalam Al-Qur'an," *At-Taisir: Journal of Indonesian Tafsir Studies* 01, no. 1 (2020): 30–34.

³¹ Taufiq, "Pemikiran Abdullah Ahmed An-Naim Tentang Dekonstruksi Syariah Sebagai Sebuah Solusi."

³² Zayadi Zayadi, Abd. Muid N, and Kholilurrohman Kholilurrohman, "Penerapan Teori Nasikh Dan Mansukh Mahmoud Muhammed Taha Pada Ayat-Ayat Kebebasan Beragama," *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 06 (2023): 2317–31, <https://doi.org/10.59141/comserva.v3i06.1013>.

Because many of these aspects are buried in the formulation of sharia theorists who are traditionalists.³³

An-Naim explained that the Qur'an is divided into two types of messages that are qualitatively different, there are *makkiyyah* and *madaniyyah* verses. The substance of the Makkah message emphasizes the value of justice as well as fundamental equality and dignity in all humankind. Meanwhile, the message conveyed by the verse from Medina contains the value of distinguishing between Muslims and non-Muslims, as well as men and women whose status is before the law. Departing through such an understanding, the text that descends in Medina is widely found with the editorial "*O believers*", while the verse that descends in Makkah more generally says "*O fellow human beings*".³⁴ An-Naim does not agree if *naskh* is interpreted with the intention of expiation by the deposition of the *jumhur ulama'*. For him, the deletion of some of these verses is not final and conclusive, but there is an enactment of postponement by looking at the situation if it is suitable and by the social context that occurs.³⁵ The following table explains the comparison of traditionalist and an-Naim thinking related to *naskh* can be seen below.

³³ Muhammad Anshori, "Wawasan Baru Kajian Nasikh-Mansukh: Analisis Pemikiran Maḥmūd Ṭāhā Dan Abdullahi Ahmed An-Naim," *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 4, no. 2 (2019): 246–67, <https://doi.org/10.32505/tibyan.v4i2.899>.

³⁴ Mahmoud Muhammad Thaha, *Syariah Demokratik*, ed. Nur Rachman, Cetakan 1 (Surabaya: Elsad, 1996).

³⁵ Abdullah Ahmed An-Na'im, *Toward an Islamic Reformation, Civil Liberties, Human Rights and International Law* (New York: Syracuse University Press, 1990).

Table 2. Comparison of Traditional *Nasakh* and an-Naim Concepts.

Comparison of Traditional *Naskh* Concept and *Naskh* an-Na 'im Concept

Criteria	<i>Nasakh</i> Ulama Traditional Concept	<i>Nasakh</i> an-Naim Concept
Sentence that deletes (<i>nasikh</i>)	Madaniyyahverses (verses that come down after the Hijra)	Makkiyyahverses (universal verses)
Deleted verse (<i>mansukh</i>)	Makkiyyahverses	MadaniyyahVerses
<i>Qath 'iyal-Dilalah</i>	Detailed and clear verses	Universal verses
<i>Dzanny al-Dilalah</i>	Universal verses	Detailed and clear verses

4. Initiating The Future of Islamic Law-Inclusive: Sharia Deconstruction

The deconstruction of Sharia in an-Naim's view leads to a renewal of Sharia public law. Islamic law was transformed through democratic channels so that it gained international public recognition.³⁶ The discussion of the positivization of Sharia is expected to always be closely related to the frame of modern constitutionalism and international human rights principles. Thus the emphasis of an-Naim in public law was initiated by the background of his scientific interests. In principle, an-Naim does not assess the politicization (involvement of the ruler) in applying Islamic law as long as it does not contradict the principles of sharia. Because what an-Naim

³⁶ Solehuddin Harahap, "Demokrasi Ditinjau Perspektif Siyasa Syariah," *Jurnal Hukum Islam* 2, no. 3 (2020): 65–80.

wants is for Islamic law to remain within the corridor in the maintenance of the common good.³⁷ Not only does it stick with the laws of Western influences, but it still provides opportunities for society as a whole to use Islamic law.³⁸ Envisioning the future of inclusive Islamic law is an exciting and important challenge in the context of a changing world. One interesting approach to achieve this goal is through the deconstruction of Sharia, as proposed by Ahmed An-Naim.

The problem of Islamic law is often stuck in texts and fixated only on the historical side.³⁹ Meanwhile, the dynamics of life continue to run and change due to the social context that affects it. An-Naim offers as well as solutions for implementing Islamic law that is *rahmatan lil alamin* cum inclusive and can be reached by all groups. Several points need to be understood in the context of an-Naim's ideas in his Sharia deconstruction thinking. The following author will detail the analysis of Sharia public law reform through three aspects covering the field of Islamic criminal law, Sharia reconciliation with international law, and Sharia reconciliation with human rights law. Sharia deconstruction proposes a critical and contextual approach to understanding and applying Islamic law.⁴⁰ It involves a deep understanding of the essential values in Islam while recognizing a legal

³⁷ Junaidi Abdillah, "Pembaruan Hukum Publik Syariah: Perspektif Abdullah Ahmed Al-Na'im," *Al-'Adalah* Vol. XII, no. No. 2 (2014): 301–20.

³⁸ Jihad Khufaya, Muhammad Kholil, and Nurrohman Syarif, "Fenomena Hukum Islam Di Masa Modern; Upaya Harmonisasi Antara Eksistensi Dan Relevansi," *Mutawasith: Jurnal Hukum Islam* 4, no. 2 (2021): 128–47, <https://doi.org/10.47971/mjhi.v4i2.366>.

³⁹ Theguh Saumantri and Hajam Hajam, "Urgensi Metodologi Studi Islam Interdisipliner Untuk Moderasi Islam," *An-Nawa : Jurnal Studi Islam* 5, no. 1 (2023): 1–18, <https://doi.org/10.37758/annawa.v4i1.579>.

⁴⁰ Muhammad Al Fikri and Ahmad Mustaniruddin, "Studi Kritis Terhadap Pemikiran Muhammad Mahmud Taha" 20, no. 2 (2021): 431–55.

framework that may require adjustment to diverse social and political realities.

First, in the field of criminal law reform efforts, an-Naim emphasizes the importance of the preparation of state criminal law based on the consensus of all levels of society as an integral part.⁴¹ That is, in a country, there should not be a legal imposition of the majority on the minority.⁴² Questioning the system applied to criminal law such as *qishahsh*, *hudud*, and *ta 'zir* that the state does not know to distinguish the fields of law, ethics, and religion in the corridor of sharia, the state only focuses on the existing fiqh books.⁴³ This is what for an-Naim is a fundamental problem in the context of Sharia criminal law. With that, an-Naim offers an approach that is quite inclusive and touches the realm and social side of society as a whole such as through sociological, psychological, penological, and other disciplines that are able and relevant to answer the challenges of contemporary times. So Islamic law grows without the coercion of the majority which is exclusively typified based on the decision of Muslims only.⁴⁴

Second, historical sharia in terms of international relations is seen to be strongly influenced by pre-Islamic Arab society. Both in cultural aspects, violence, inter-tribal wars, revenge between communities, territorial disputes, and so on. This is because each group maintains its exclusivity and

⁴¹ Didi Hilman, "Tindak Pidana Agama Menurut Perspektif Hukum Islam, Hukum Positif Dan Hak Asasi Manusia," *Mizan: Journal of Islamic Law* 4, no. 1 (2020): 31, <https://doi.org/10.32507/mizan.v4i1.593>.

⁴² Samud Samud and Samud Samud, "Penegakan Hukum Pidana Perspektif Nilai Kemanusiaan Yang Adil Dan Beradab," *Inklusif (Jurnal Pengkajian Penelitian Ekonomi Dan Hukum Islam)* 6, no. 1 (2021): 50, <https://doi.org/10.24235/inklusif.v6i1.8439>.

⁴³ An-Na'im, *Toward an Islamic Reformation, Civil Liberties, Human Rights and International Law*.

⁴⁴ An-Na'im, *Dekonstruksi Syariah*.

does not want to recognize the similarity and reciprocity of the law.⁴⁵ An-Naim stated that the term synonymous with international relations in Islam concerns the concepts of *jihad* and *qital*. Both terms are often used as justifications for violence and war. Whereas if traced through its chronological aspects, there is a reality that surrounds it. Departing from the above argument, an-Naim tried to reconcile Sharia with international law by emphasizing to Muslims the recognition of the UN charter as international law followed by a historical re-reading of Sharia. Thus, the right method according to an-Naim to achieve the level of international law needed today is to replace the more detailed basis of Islamic law sourced from the Qur'an and Sunnah that commands peace in the realm of international relations. With this theory, it is believed that it can support the direction of reconciliation without defeating and setting aside, both Islamic law and international law. This is called Islamic settlement.

Third, efforts to reconcile sharia with human rights law, in which an-Naim criticizes historical sharia that is exclusive and contrary to human rights.⁴⁶ In this regard, he highlights the themes that historical sharia legitimizes,⁴⁷ including slavery as well as discrimination against gender and religion. The reality that is based on an-Naim is contrary to the UN Charter which encourages freedom and also campaigns for tolerance for world peace and full equality among human beings.⁴⁸ Because, from the perspective of an-Naim, if dug deeper, it has the potential to become a legal

⁴⁵ An-Na'im.

⁴⁶ Rumi Suwardiyati et al., "Sharia and Human Rights Compatibility in Determining The Age of Marriage in Indonesia," *Nurani* 21, No. 2 (2021): 263–74.

⁴⁷ Supriyadi Supriyadi, "Kajian Rekognisi Hak Masyarakat Adat Perspektif Propetik," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 2 (2021), <https://doi.org/10.58258/jisip.v5i2.1956>.

⁴⁸ See the Universal Declaration of Human Rights in articles 1 and 2 on freedom and tolerance, "Collection of International Human Rights Tools, (Yogyakarta: Insist, 2001).

basis in the perspective of human rights.⁴⁹ Because human rights in its implementation need to be based on and imbued with the deepest values of someone who will implement them.⁵⁰ The deepest value of the human psyche is religion because religion is one of the basic concepts in human life. Thus, a Muslim must build an open attitude capable of acknowledging differences.⁵¹ Furthermore, al-Na'im emphasized that religion with its sharia must provide equal opportunities for all people to express their thoughts and religion by the principles of the Qur'anic message, namely not only respecting religious people but also non-religious people (atheists).

All forms of an-Naim's thinking about Islamic law always lead to an inclusive and open mind overall differences. Every human being has space and opportunity in the form of rights, authority, and freedom of life. Starting from the exclusivity of his thinking, an-Naim sought to dismantle Islamic law and relegate it to the context of the reality of today's society. The unique text format in the *divine* concept is constant in regulating the nature of Islam and divinity, while the Islamic format which is *mutaghayyirah* is focused on fiqh which continues to evolve and change according to its time. Covers problems in the realm of boundaries between men and women, Muslims and non-Muslims, majority-minorities, to multicultural socio-cultural realities. The effort to deconstruct sharia aims to declare the universality of

⁴⁹ Muhamad Ichrom, "Hak Sipil Agama Dalam Piagam Madinah," *Mumtaz: Jurnal Studi Al-Quran Dan Keislaman* 4, no. 2 (2020): 233–56, <https://www.jurnalptiq.com/index.php/mumtaz/article/view/138>.

⁵⁰ Mohamad Abdun Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law," *Mazahib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 155–86, <https://doi.org/10.21093/mj.v21i2.5436>.

⁵¹ Fariz Ulul Abshar et al., "Islam and Human Rights: Friend or Foe?," *Addin* 15, no. 2 (2021): 229, <https://doi.org/10.21043/addin.v15i2.14868>.

the Qur 'which can enter into various forms (*Qur'an shalih li kulli makan wa zaman*).

In other words, all citizens are free to pay attention to all the differences that exist. Not only that, for an-Na'im, the relationship between religion and state is two entities that are interrelated and have synergies between the two. Islam is a universal religion and contains rules, ethics, or morals that can be applied in state life. In one of his works, an-Na'im offers the idea of sharia through the path of democracy, everyone must be considered high school (*equality before the law*), without any differences in ethnicity, race, religion, gender, and skin color.⁵² Furthermore, to bring Islamic law into the realm of public law, it is also necessary to agree through international law.⁵³ So in his deconstruction ideas related to sharia, he also included arrangements regarding international law.

An-Naim did not use a secular approach in formulating its Islamic legal methodology. Like its stance to make the Quran and Sunnah the primary source in reformulating Sharia. The difference that can be analyzed is that, traditional scholars in using the concept of *naskh* with the elimination of the legal content stated in the Qur'anic verse completely and forever. In contrast to the concept of *naskh* carried by an-Naim which interprets *naskh* as the delay of the Qur'anic verse which is irrelevant to certain social contexts, and will be able to return to apply in other social contexts when indeed the verse is needed. So it is very clear that *the naskh-mansukh* criterion is which verse is better, not which verse comes down first.

⁵² Rupi'i Amri, "Reformasi Hukum Pidana Islam Kontemporer (Studi Atas Pemikiran Abdullah Ahmed an-Naim)," *Hukum Islam* 17, no. 1 (2019): 1–19.

⁵³ Azyumardi Azra, *Pergolakan Politik Islam Dari Fundamentalisme, Modernisme, Hingga Postmodernisme* (Jakarta: Paramadina, 1990).

D. CONCLUSION

Based on the discussion of an-Naim's thoughts on Sharia deconstruction above, it can be concluded through several points: 1. Sharia deconstruction is an effort in the context of renewing Islamic law to be more inclusive and open to social differences, by dismantling the text or text of the Qur'an and Sunnah to be interpreted and adjusted to the current reality. Abdullah Ahmed an-Naim is a pioneer of Islamic law who is known for his strong stance in studying Islamic law through aspects of Sharia application. 2. The methods used in deconstructing sharia are reverse naskh, differentiation of Madaniyah and Makkiyah verse texts, and equality-based interpretation. The aspects initiated include the application of criminal law, the concept of international relations from a legal perspective, and efforts to reconcile sharia with human rights law. 3. The concept of sharia negotiation discussed by an-Naim should be a form of academic contribution without seeing the pros and cons of his ideas. As a consideration for the future of Islamic law, an-Naim negotiates his thoughts as a consideration in the application of Islamic law that is more inclusive and touches the timeline.

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