

Abdullah Ahmed An-Naim Islamic Legal Thinking “Deconstruction Syariah”

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ABSTRACT

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This article discusses the Islamic Legal Thought of Abdullah Ahmed An-Naim "Deconstruction of Sharia". The research used by the compiler is library research, which is research whose studies are carried out by tracing and examining literature or written sources related to the subject matter (research focused on library materials). The results showed An-Naim, born in Sudan in 1946 who is more familiarly called An-na'im, Na'im completed his undergraduate education at the University of Khartoum Sudan and received an LL.B degree cum laude. Three years later (1973) An-Na'im received three degrees at once LL.B., LL.M., and M.A. (diploma in criminology) from the University of Cambridge, English. In 1976, he received his Ph.D., in law from the University of Edinburgh, Scotland, with a dissertation on the comparison of criminal pre-trial procedures (English, Scottish, American, and Sudanese law).

As for An-Naim's thinking on the deconstruction of sharia; Sharia as a historical product, Madaniyah Historical Sharia, Makiyyah Modern Sharia, Nasakh as a modern methodology. It seems clear that an-Na'im does not use a secular approach in building Islamic legal methodology, as he is often accused of, but still makes al-Qur'an and as-Sunnah as the primary source in extracting Islamic law. This can be seen from the concept of ijtihad that he built with the naskh method. The difference is that traditional scholars interpret naskh with the elimination of the legal content of the verse of the Qur'an forever, and the verse that was later revealed canceled the verse that was revealed first with the term Madaniyyah verse erasing the Makiyyah verse. In contrast to that, An-Na'im interprets naskh as the postponement of Qur'anic verses that are not relevant to a particular social context, and will be able to return to apply at other times and social contexts when the verse is needed. Thus it is clear that the criteria for nasikh mansukh is which verse is better, not which verse was revealed first.

The thinking of Abdullah Ahmad An Naim offers a bold and controversial view of how Islamic law can adapt to the modern world. Through his approach that prioritizes human rights and the concept of a secular state, An Naim encourages important debates about the application of Islamic law in contemporary society.

1. Introduction

The syariah problems faced by Muslims today are very complex. Not only the problem of fiqh of worship but also muamalah and even social fiqh or contemporary thinking about sharia. Syariah in the Islamic perspective is the laws of Allah contained in

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the Koran and Assunah in this termination of revelation, either in the sense of revelation al matluw (Koran) or revelation in the sense of ghoiru matluw (Al Hadith).

Syariah is understood as an Islamic teaching that is completely uninterrupted by human reasoning. Syariah is the pure revelation of God, hence it is absolute, eternal, cannot and should not be changed.² With this argument, syariah is the source of fiqh, because fiqh is a deep understanding of an nususs al muqoddasah, (sacred text). Jurisprudence when interpreted as understanding, means that it is a process of law formation through human reasoning power, in this sense fiqh is the same as ijtihad.

Although Islamic law connotes a static and unchanging Islamic law, it does not mean that it does not tolerate and accommodate changes and developments. According to Juhaya S Praja, there are two dimensions in understanding Islamic law. First, Islamic law has a divine dimension because it is believed to be a teaching that comes from the Most Perfect and the Most True. In this dimension, Islamic teachings are considered as teachings that are kept sacred. Second, Islamic law has an Insaniyah dimension, in this dimension, Islamic law is a serious human effort to understand teachings that are considered sacred by taking two approaches, namely the kebahsan approach and the maqosid approach. In this dimension, Islamic law is understood as a product of thought carried out by various approaches known as Ijtihad.

Islam as a religion of revelation has given birth to various understandings and interpretations for its adherents. The emergence of these thoughts and interpretations cannot be separated from the tug of war over the transcendental position of the Quranic revelation that is eternal, eternal. On the one hand with the historical side of the revelation of the Koran that touches the culture of a particular locality.⁵ No wonder the relationship between normative revelation with its historical side gave birth to continuous interpretation in the stage of Islamic history. Departing from this, some problems are considered very complicated so that some thinkers of Islamic studies or scholars assess sharia from several aspects because the purpose in applying sharia is for the benefit of the world or in the hereafter as well as to follow the teachings of syariah.

The definition of syariah then gradually experienced a narrowing of meaning so that it was only interpreted as fiqh law, whereas in fact all the problems that fall within the scope of syariah are themes of study that cover various dimensions of life that are broader and more comprehensive. This mindset then gave birth to several contemporary figures, one of them Abdullah Ahmad An-naim who appeared with his conservative thoughts breaking down several problems in syariah, such as problems, syariah with human rights (Human Rights), sharia with constitutional, syariah and civil law, and syariah with modern international law with his famous concept of "Deconstruction of Syariah". This is what escapes the scrutiny of conservative scholars, especially fundamentalist scholars, to study these matters.

2. Literature Review

Approaching Islamic Law and Human Rights, An Naim argues that Islamic law should be reformed to align with universal human rights principles. In his book, "Islam and the secular state: negotiating the future of sariah," he argues that Islamic law must be understood as a system that can adapt to values without sacrificing its essence.

3. Methodology

The type of research used by the authors is library research, namely research in which the study is carried out by searching and rivewing literature or wirteen sources related to the subjeket of discussion (research that focuses on library materials). Which are wirtten arguments and the results of scientificreasoning, literature riviews, as well as the ressults of logical research reasoning regarding a problem or topic being dicussed, library research contains ideas or thoughts that are supported by library data.

4. Results and Discussion

1. Biografi Abdullah Ahmad An Na-im

He was born in Sudan in 1946 who is more familiarly called An-na`im, Na'im completed his undergraduate education at the University of Khartoum Sudan and received an LL.B degree cum laude. Three years later (1973) An-Na'im received three degrees at once LL.B., LL.M., and M.A. (diploma in criminology) from the University of Cambridge, English. In 1976, he received his Ph.D., in law from the University of Edinburgh, Scotland, with a dissertation on the comparison of criminal pretrial procedures (English, Scottish, American, and Sudanese law).

From November 1976 to June 1985, An-Na'im was a lecturer in Law at the University of Khartoum, Sudan. In the same year (1979-1985) An-Na'im became chairman of the public law department at the same alma mater. In August 1985-June 1992 An-Na'im was Olof Palme visiting professor at the Faculty of Law, Uppsala University, Sweden. In July 1992-1993 he was a scholar-in-residence at The Ford Foundation's office for the Middle East and North Africa, in Cairo, Egypt. From July 1993-April 1995 he was Executive Director of the Human Rights Watch in Washington D.C. And from June 1985 to the present he has been Professor of Law at Emory University, Atlanta, GA, USA.

An-Na'im was a student of Mahmood Mohamed Taha who founded the Republican Brotherhood party at the end of World War II as an alternative party in the midst of Sudan's nationalist struggle. An-Na'im translated his teacher's great work *Al-Risalah al-Tsaniyah minal Islam* into English as *The Second Message of Islam*, then printed in 1987 after nineteen years he officially became a member of the Republican Brotherhood which at that time was still studying at the University of Khartoum law faculty. In 1973 he obtained an LL.B and Diploma in Criminology from Cambridge University and three years later (1976) a Ph.D in law from Edinburgh University, then returned to Sudan to become a lawyer and lecturer in law at Khartoum University. By 1979 he was head of the Department of Public Law at the Faculty of Law, University of Khartoum.

Ahmad An-Na'im is a prolific contemporary thinker. Between 1974-1999, An-Na'im has written around forty long articles and seventy short articles, book reviews. The first book is *Sudanese Criminal Law: The general principles of Criminal Responsibility* (Arabic), (Omdurman [Sudan]: Huriya Press, 1985). While the second book is entitled *Toward an Islamic Reformation: Civil Liberties, Human Rights and international Law* (Syracuse, NY: University Press, 1990). In addition, he also edited books. There are four books that he edited himself and two books co-edited with others. He also translated a book by his teacher, Mahmood Muhammad Toha entitled *The Second Message of Islam* (Syracuse, NY: Syracuse University Press., 1987). An-Na'im's entire body of work revolves around issues of human rights, Islam and law.

2. An Na-im's Thought

An-Na'im's view (denying the sacredness of shari'ah) turns out to want to make shari'ah relative. This is certainly dangerous, because by eliminating the sacred value of shari'ah and making it relative will result in reduced Muslim compliance with the implementation of shari'ah, because it is considered a human product and has no definite truth value.

After shari'ah is no longer considered sacred, then the next step, An-Na'im calls for reforming shari'ah. In this framework, according to him, *ijtihad* does not apply to laws that have been touched by the Qur'an definitively. While the laws that need to be reformed are laws that fall into this category such as the laws of *hudud* and *qishas*, the status of women and non-Muslims, inheritance laws and so on.

For an-Na'im, this is the dilemma faced by Islamic law reformers. On the one hand they are told to do *ijtihad*, but on the other hand they are prevented by the classic *ushul fiqh* provision "*la ijtihad fi mawrid al-nass.*" Therefore, what is needed is not reform but deconstruction. An-Na'im seems to want to break down the door of reform by taking a path that uses the hermeneutic method to read the purpose and normative content of the verses of the Qur'an.¹¹

An-Naim argues that sharia reform to respond to the demands of modernity can be done while still being based on the fundamental sources of sharia, namely al-Qur'an and as-Sunnah, accompanied by efforts to reinterpret it in a way that remains in accordance with the totality of its content and mission. In this context, he offers the idea of sharia reform that allows sharia to respond to important issues for the future of humanity, such as democratization, world peace, including respect for human rights.

An-Naim's conceptualization is as follows:

- Sharia as a product of history.
- Madaniyah Historical Sharia
- Modern Sharia Makiyyah
- Nasakh as a modern methodology

a. Sharia as a historical product

According to an-Na'im, shari'ah is not divine, in the sense that all specific principles and detailed rules are directly revealed by God to the Prophet Muhammad. Shari'ah is a product of history, that is, the result of interpretation of the texts of the Qur'an

and as-Sunnah in accordance with the historical context of the seventh to ninth centuries. It was during this period that Islamic jurists interpreted the Qur'an and other sources in order to develop a comprehensive system of sharia as practical guidance for Muslims at that time.

As a product of history, the formulation of sharia can be reformed when it is felt that it is no longer adequate for contemporary life. That is why an-Naim uses the words historical formulation, to legitimize the possibility of reforming the sharia system to keep it modern, as he wants to build it. An-Na'im's views on Sharia, fiqh and Islamic law are still difficult to distinguish from each other, because they seem to be equated with each other, namely the same is the result of historical interpretation of the fundamental sources of Islam, the Qur'an and sunnah. It is also because it refers to terminology that is not commonly used by most scholars. But that is the sharia that an-Na'im is referring to when he builds the framework of the idea of sharia.

b. Madaniyah Historical Sharia

For an-Naim, the current sharia is no longer adequate for contemporary needs, so it must be replaced with a new sharia. This thesis clearly challenges the view of Muslims who believe that sharia is a complete and final legal system. In fact, it is considered that perfection lies in the sharia of the Medina period. It was during this period that the sharia obtained a more detailed form of details, and it was also during this period that the verse al-Maidah was revealed: 3 which mentions the perfection of the Islamic dinul, namely:

Translated: Today I have perfected for you your religion, and I have made sufficient for you My favor, and I have made Islam your religion. So whoever is forced to do so by famine without intentionally committing a sin, surely Allah is Forgiving, Merciful.

According to an-Naim, the detailed and detailed sharia indicates its temporal and contextual nature. These details are evidence of the dialogical relationship between sharia and the concrete reality it faces. The Quran and as-Sunnah as the source of sharia are Islam's response to the concrete realities of the past, so they must also be the source of modern sharia as Islam's response to the concrete realities of the present.

The necessity of making the Qur'an and as-sunnah the source of modern sharia requires creative efforts to choose which verses of the Qur'an and sunnah are relevant to the needs. This is where 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. This is because the Madaniyah sharia formulation still discriminates between men and women, Muslims and non-Muslims. Whereas the world community today tends to embrace and uphold equal rights between them.

The context of Medina that an-Na'im understands is the social reality experienced by the Muhajirin who interact with the Ansar, where among the Ansar there are believers and non-believers. The pattern of interaction recommended by the Qur'an at that time was considered conditional. An-Na'im compares it with contemporary patterns of interaction between religious communities that are increasingly plural.

c. Modern Sharia Makiyyah

After the Madaniyah sharia was deemed by An-Na'im to be inadequate, then an-Naim invited to leave the sharia. Then he offered Makiyyah sharia which he considered relevant to the needs of contemporary society. This sharia is what he later referred to as modern sharia. An-Na'im asserts that the verses of Mecca are verses that emphasize the fundamental values of justice and equality and the inherent dignity of all human beings. As an example he points out that the Qur'an during the Meccan period always addressed all human beings using the words "O son of Adam", or "O human being". In addition, the Makiyyah verses also address all human beings with respect and dignity without distinction of race, color, religion and gender.

Some indicators of Makiyyah verses are:

- Nuances of faith and moral guidance, not yet containing legal guidance and its implications. Unlike the Madaniyah sharia which gives the impression of being discriminatory and intolerant, the Makiyyah sharia is more egalitarian and tolerant.
- Emphasizes the values of justice and unity based on the inherent dignity of all human beings.
- Very concerned about the weak. According to Johan Effendi's study, the suras revealed in Makkah, or in the early days of Muhammad's prophethood (610-615 CE), are scathing condemnations of greed and social indifference.

It is the Makkiyah sharia with such characteristics that An-Naim offers as an alternative to replace the current historical sharia.

d. Nasakh as a modern methodology

An-Na'im agrees with scholars who accept naskh as a theory used to form new laws. The method chosen by an-Naim, as also mentioned earlier, is to use naskh as a method to compromise verses that are considered contradictory to each other. However, what An-Naim did was different from the scholars in determining the naskh process. The scholars perform naskh by deleting or suspending the earlier verse by the later revealed verse (nasikh), and the deleted verse (mansukh) is no longer used.

According to An-Na'im, the process of naskh 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. An-Na'im makes a statement about the condition of the "public of shari'ah at this time" which over time has spread to all corners of the earth, of course, with a socio-cultural background that is rich in differences. Related to that, the formulation of naskh that has been put forward by classical scholars is a concern for an-Na'im. He has a desire to look back at the formulation of naskh critically. The genealogy of an-Na'im's thinking in criticizing the formulation of naskh is, he admits, stimulated by the views of his teacher, Mahmoud Muhammad Taha, who issued the concept of shari'ah evolution.

This description makes it clear that according to an-Na'im, a special interest in the current context is to reconsider the principle of naskh (cancellation or revocation of the validity of the law of certain Qur'anic verses. replaced with other verses. Thus, according to an-Na'im, naskh can mean the abolition or suspension of verses that came later by verses that were revealed earlier, if contemporary conditions require it. Furthermore, the mansukh verse, if needed, can be reactivated on another occasion according to its needs. This is what he means by "intiqaal min nash ila nash" the transition from a text that has functioned in accordance with its purpose to another text that is delayed waiting for the right time.

Thus, the evolution of shari'ah is not unrealistic, nor is it a naive and crude view. It is merely a transition from one text to another. An-Na'im himself realizes that the grouping of Makkiyah and Madaniyah verses overlaps. The grouping based on the place of revelation is not significant. The use of the grouping Makkiyah and Madaniyah is a simple term, to indicate differences in the context and audience of revelation. Therefore, there are some Makkiyah verses which are in substance Madaniyah verses, and vice versa. Thus, verses that are tolerant and democratic are seen as Makkiyah verses, and verses that are not in line with that spirit are grouped as Madaniyah verses.

If the previous scholars used naskh to produce historical shari'ah by using Madaniyah verses as nasikh and Makkiyah verses as mansukh, then an-Na'im continues to use naskh as a methodology to produce modern shari'ah law by reversing the way it works that has been commonly done. Because according to him, Makkiyah verses that are universal and non-discriminatory are more relevant to modern human life.

For an-Na'im, the message of Mecca is a timeless and fundamental message that emphasizes the inherent dignity of all human beings regardless of gender, religion, faith, race and so on. However, between determining the message of Mecca and Medina there is no explanation of the criteria. Because at that time the community was not ready to implement it, the more realistic message during the Medina period was implemented, meaning that the Medina message was a substitute, while the Mecca message was postponed and aspects of the Mecca message would never disappear as a source of law.

The method initiated by an-Na'im and his teacher in turn has an impact on the current shari'ah, especially in several aspects of law such as ijtihad and human rights issues; religious tolerance, Islamic civil and criminal law, and constitutionalism and international relations. The concept of naskh that is the basis of his thinking reveals a unique and even controversial new form in the midst of the concept of naskh of most ushul fiqh scholars.

It is clear that an-Na'im does not use a secular approach in developing Islamic legal methodology, as he is often accused of, but still makes the Qur'an and as-Sunnah as the primary source in extracting Islamic law. This can be seen from the concept of ijtihad that he built with the naskh method. The difference is that traditional scholars interpret naskh with the elimination of the legal content of the verse of the Qur'an forever, and the verse that was later revealed canceled the verse that ran first with the term Madaniyyah verse erasing the Makkiyah verse.

In contrast to that, An-Na'im interprets naskh as the postponement of Qur'anic verses that are irrelevant to a particular social context, and will be applicable again in other times and social contexts when the verse is needed. Thus it is clear that the criterion for nasikh mansukh is which verse is better, not which verse was revealed first.

5. Conclusion

He was born in Sudan in 1946 who is more familiarly called An-na'im, Na'im completed his undergraduate education at the University of Khartoum Sudan and received an LL.B degree cum laude. Three years later (1973) An-Na'im received three degrees at once LL.B., LL.M., and M.A. (diploma in criminology) from the University of Cambridge, English. In 1976, he received his Ph.D., in law from the University of Edinburgh, Scotland, with a dissertation on the comparison of criminal pre-trial procedures (English, Scottish, American, and Sudanese law).

An-Naim's thoughts on the deconstruction of sharia

- a. Sharia as a product of history.
- b. Madaniyah Historical Sharia
- c. Modern Makiyyah Sharia
- d. Nasakh as a modern methodology

It seems clear that an-Na'im does not use a secular approach in building Islamic legal methodology, as he is often accused of, but still makes al-Qur'an and as-Sunnah as the primary source in extracting Islamic law. This can be seen from the concept of ijtihad that he built with the naskh method. The difference is that traditional scholars interpret naskh with the elimination of the legal content of the verse of the Qur'an forever, and the verse that was later revealed canceled the verse that was revealed first with the term Madaniyyah verse erasing the Makiyyah verse. In contrast to that, An-Na'im interprets naskh as the postponement of Qur'anic verses that are not relevant to a particular social context, and will be able to return to apply at other times and social contexts when the verse is needed. Thus it is clear that the criteria for nasikh mansukh is which verse is better, not which verse was revealed first.

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