

Islamic Law Reform Through the Thought of Abdullahi Ahmed Al-Na'im: The Deconstruction and Reconstruction of Islamic Law

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Abstract

Generally, thinkers of Islamic law reform deconstruct the radical and discriminatory notion and practice of Islamic law in Muslim countries, such as Al-Na'im who has done so in his country -Sudan- since (Al-Na'im, 1988) has rebuilt a legal theory-the naskh theory-with a new theory, the reversed naskh theory or a theory of change in the understanding of Islamic law to revive the eliminated verses of the Qur'an caused by traditional script theory. When there is a verse of the Qur'an that contradicts humanity's benefit, it should be ignored, and a more appropriate verse (naskh) is sought. In addition to the theory, (Al-Na'im, 1988) also puts forward the principle of reciprocity-everyone should treat others well, if he wants to be treated well-as a starting point to realize a moderate and non-discriminatory notion of Islamic law. Thus, the term shari'ah which is understood only as a result of human interpretation is seen to be contrary to the theory of Islamic law (tasyri') which views shari'ah as something that can not be intervened by human thought (qath'i) because it is the law God and not the result of human thinking. The omission of qath'i value in shari'ah influences the paradigm shift of shari'ah which was once considered normative, sacred and can not be changed to be very flexible and dynamic in fulfilling the needs and the benefit of humanity. This study concludes that Islamic public law, in the perspective of Al-Na'im, appears unfair, unfriendly and intolerant, which consequently make public Islamic law not functional in modern life. At present the alternative Islamic law which should be understood and practiced is based on the facts of reality supported by two arguments: moral arguments and empirical arguments, both defending humanitarian values so that Islamic public law will always solve humanitarian problems, not otherwise bring up problems caused by extremism. Muslims have rights to define their beliefs in their Islamic identity, including the practice of public Islamic law by not depriving the legitimacy of individual's or group's rights both inside and outside the Muslim community.

Keywords: Extremism; Humanity; Naskh; Public law; Syari'ah.



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1. Introduction

In general, the contemporary reformers of Islamic law, such as Ashmawi-Egyptian law expert, (Rahman, 1982), Muhammad Syahrur and other reformers, argue that there had been misinterpretations in understanding the Qur'anic verses such as Islamic legal understandings from the classical period to the middle period (VII-XVIII century AD). The understanding of Islamic law during these two periods, seen by contemporary reformers, is relevant to the life at that time, but it is irrelevant to the conditions in this modern and milleniuml era universally. Various methodologies in solving public legal problems have been raised by the reformers of contemporary Islamic legal thought, such as Ashmawy (Al-'Ashmâwî, 1996) with the theory of distinction between religion as pure ideas and religion as thoughts, to describe the pure idea; (Rahman, 1982) with the theory of the double movement theory (general princlples from specific ones and from specific principles to general ones), and Syahrur (1990) with his *hudud* theory. Nonetheless, the theories of Islamic law reform, which have been done by contemporary reformers, remain imperfect, pointing out weaknesses; not functional and weak on the application of systematic principles to new situations (Hallaq, 1997). Al-Na'im (1996), whose thought of the reform of Islamic law (*shari'ah*) is the object of discussion in this study, has also given a similar assessment of Islamic public law. According to him, shari'a (Al-Na'im, 1996) was not sufficient and fair, whereas shari'a is considered by Muslims as a part of the faith (Al-Na'im, 1996) Therefore he undertook radical reform of Islamic law in the field of public law covering criminal, constitutional, international law, and human rights law by presenting theoretical and legislative cases. The ideas discussed in this study are the issues of *shari'ah* public law.

According to Al-Na'im (1996), it is a demand for Muslims, especially reformers, to criticize and reform this historical *shari'ah*. Otherwise, the more the practices of *shari'ah*, the more the possibility of the spread of discrimination and abuses, as long as it is the *shari'ah* of past historical products, especially those related to public law. Therefore, it can be said that Al-Na'im (1996) understands *shari'ah* in a broader sense. For him, *shari'ah* is not just Islamic law Al-Na'im (1996) Because this latter term, he argues, is an inadequate translation of the *shari'ah* term. He argues that *shari'ah* should include ethical and social norms, political and constitutional theory and so on, as well as legal rules on civil, criminal and public law. Therefore, according to him, *shari'ah* is the historical formulation of this comprehensive system to distinguish it from the reform of a possible modern law. In this study I propose and analyze the view of (Al-Na'im, 1988) about Islamic law understood by Muslims since the classical period (Al-Na'im, 1988); how uncovered the understanding of Islamic law that has become such a tradition and how (Al-Na'im, 1988) read Islamic law through a rational manner and modern standards. Furthermore, I analyze

how (Al-Na'im, 1988) re-formulates the understanding of Islamic law that is considered traditional in order to be understood rationally with modern standards.

2. Literature Review: The Typology of Renewal in Islamic Law

2.1. The Typology of Transformation

On the typology of renewal, according to Assyaukanie (1998) there are three typologies of thought that characterize contemporary Arab thought. *The first* is the typology of transformation. The transformation of Muslim societies from traditional-patriarchal culture to rational society as well as rejection of religious views and mystical tendencies that are not based on practical reason, are peculiar to this typology. Thinkers of this type also consider the religion and traditions in the past to be irrelevant to the demands of the present age, so they must be abandoned. According to Assyaukanie (1998), thinkers have a tendency to be transformatically oriented towards Marxism. Their affiliation to Assyaukanie (1998) is not on the dimension of political ideology, but rather on intellectual aspect as seen in the views of two Arab Marxist thinkers, Thayyib Tayzini and Abdullah Laroui, on the problems of contemporary Arab world. (Assyaukanie, 1998) is known for his civilization project, reflecting his Marxist views, as well as giving a transformative message from *turats* to the revolution. The revolution is Marx-style revolution. He criticized other Arab thinkers who read *turats* in an unhistorical way. *Turats*, according to Tayzini, as stated by Assyaukanie, must be approached historically and should be seen in the context of the dialectical relationship between socio-economic problems and the political conditions in a society. The latter elements play a major role in shaping human *turats*, which get ontologism justification. Therefore, in order to liberate *turats* from subjective interpretations, it must be placed within the framework of historicism, for in fact, *turats* themselves are history.

Unlike Tayzini who does not distinguish between *turats* and history, Laroui, as cited in Assyaukanie (1998), views *turats* as a form of traditionalism that must be surpassed. The Arab society will not change as long as the ruling class and its intellectuals have not changed their perspective on *turats*. They will not be better if their way of thinking and orientation are about the past (Assyaukanie, 1998). Laroui rejects the approach of both traditionalists (*salafi*) and modernists (secular). According to him, the traditionalist group views *turats* historically (*la tarikhi*). Their mistake is to consider *turats* something sacred, suitable for every age and every condition while it is clear that the present and past conditions are different. Likewise, in Laroui's view, modernists are merely ecclesiastical people who pick out certain elements and elements of Western culture / other cultures. This attitude will not improve the condition of the Arabs. Instead, it will make the nation continue to depend on the West.

Both groups, according to Laroui, do not understand the social conditions of the Arabs, so they live separately from the environment and society. One group in the extreme wants to make the past a model of progress, while the other one wants to make others (the West) a model. According to him, either taking the past or taking other people as a model is not a creative action. According to Assyaukanie (1998) as cited in Assyaukanie (1998), the problems mentioned above can only be overcome through self-enrichment by thinking critically and historically, which can be found in Marxism with its historical dialectical theory. Marxism has neatly linked these issues with economic, social and political issues, which are basically perfectly compatible and in line with the contemporary Arab world. Therefore, studying Marxism for the sake of reaching the level of critical and historical thinking should be a priority. Another thinker of the tendency for transformative thinking, according to Assyaukanie (1998), is Adonis Akra. His important work is *Al-Thabit wa al-Mutahawwil: Bahts fi al-Ittiba'wa al-Ibda'inda al-'Arab* (The Permanent and the changing: The study in imitation and creativity of the Arab Nation), written in three volumes. The book is planned by Adonis as a re-reading of Arab-Islamic history, especially in the search for the meaning of authenticity (*al-aslah*). Adonis' conclusion, as Assyaukanie reveals, is quite radical; in his view the Arabs are unrealistic and will not be better because their thinking is in a logocentric orientation with ideological barriers. This is in accordance with the facts of the life of the Arabs to this day who depend on the Western world. The above descriptions show that the core goal of this transformative reform is none other than social transformation.

2.2. The Typology of Reform

The second is the typology of reform. In contrast to the transformative type, the objective of this second type of renewal is reforming with more vivid new interpretations that are more suited to the demands of the time. This group is more specifically divided into two tendencies. The first is the thinkers who use reconstructive approach, which is seeing the tradition with the perspective of rebuilding. It means that to make the traditions of a society (religion) remain alive and continue to be accepted, it must be rebuilt in a new way with a modern framework and rational conditions. This perspective differs from that of traditionalist group who prioritize "re-statement" (Al-Attas, 1986) or reiteration (Nasr, 1987) on past traditions. In the view of the latter, the whole issue of Muslims had actually been discussed by the scholars in the past. Therefore the task of the Muslims today is simply to restate what their predecessors have done. In the late nineteenth and twentieth century, the group of reconstructive thinking was represented by reformer like Madzkur (1962). In the present era, such tendency is believed by thinkers such as Hassan Hanafi, Muhammad Imarah, Muhammad Ahmad Khalafallah, Hasan Sa'ab and Muhammad Nuwayhi. The second tendency of the typology of reform thought is the use of the deconstructive method which is a new phenomenon for contemporary Arab thinking. Deconstructive thinkers are Arab thinkers influenced by the French (post) structuralist movement and some other postmodernist figures such as Barthes, Foucault, Derrida and Gadamer. The thinkers of this group are Mohammed Arkoun and Mohammed Abid Jabiri. Other thinkers who are in line with Arkoun and Jabiri are M. Bennis, Abdul Kebir Khetib, Salim Yafut, Aziz Azmeh and Hashim Shaleh.

Both tendencies of these reformist typologies have the same goals and ideals, but the method of delivery and treatment of problems are different. Unlike the radical transformative group, reformist thinkers still believe on *turats*. Tradition or *turat*, according to them, remains relevant for the modern era as long as it is read, interpreted and understood to the standards of modernity. More broadly, the typology of reform is a tendency to believe that between *turats* and modernity, both are good. The problem is how to deal with both justly and wisely by harmonizing the two without violating common sense and rational standards, which are at the core of reform. Clearly, reformist renewal wants a quality blend between modernity and *turats*. Nonetheless, in the course of history, the dichotomous tendency to be "left" or "right" in the 'Abduh's school is getting intense. The left group of 'Abduh's successors are getting more secular, and the right group becomes fundamentalist. Both tendencies in the two opposite sides can be seen in the discussion about the status of the caliphate. If a group of Muslims in the past chose the caliphate as an alternative political system, according to Imarah (a secular adherent) as cited by Assyaukanie, it is not a theological option. In other words, the problem is only driven by the urgent needs of the Muslims of that day, whose theological base-the most powerful-is only interpretation. Islam never advocates theocracy. Even if the theocracy is then manifested as a sentence of some people, it is merely a historical incarnation (Imarah, 1980). This does not mean that Imarah argues for a separation in Islam between the heavenly (the hereafter) and the worldly (the mundane). But the problem of the two is very complex, while Islam only provides guidelines and outlines.

With that explanation, Imarah wants to emphasize that the political issue in Islam should be taken seriously. The temporary wishes of a Muslim group to establish an Islamic State stem from the psychological pressure of "the losers". If the psychological pressure disappears, the necessity of establishing such an Islamic State will eventually disappear. The reformist side of this view of Imarah is the desire to reinterpret the questions concerned with the Islamic state system, without having to dispose of the authority of existing traditions. Hanafi, as another reconstructive renewal thinker, according to Assyaukani, divides the three attitudes of a modern Arab-Muslim. The first is the attitude toward the past, namely self-concern of tradition and old heritage; The second is the attitude towards the West; and the third is the attitude to the reality and conditions of contemporary Muslims. Hanafi, according to by Assyaukanie (1998) claims himself as the successor to the idea of reconstruction of Muhammad Iqbal (Pakistani philosopher), the model of 'Abduh's reform and the revolution concept of al Afghani and Shari'ati. For Hanafi, the reconstruction is "rebuilding" (*I'adah buniyat min jadid*) Arab-Islamic heritage by looking at the spirit of modernity and the needs of contemporary Muslims." The theology, considered by Hanafi as the most fundamental science in Islamic tradition, according to Hanafi as explained by Assyaukanie, must be rebuilt in accordance with the perspectives and standards of modernity. Because of it, he proposes the idea of *neo-kalam* (*new kalam science*). What he means by science is not just doctrinal ideology as what al-Ash'ari, Baqillani and al-Ghazali once understood, but it is more of an ideological revolution that can motivate Modern Muslims to act against despotism and authoritarian rulers. In various forms, Hanafi always associates this theology with the theology of the land, the theology of the oppressed, and the theology of liberation like Latin America (Assyaukanie, 1998).

For attitudes toward the West, (Assyaukanie, 1998) wants to create a new approach to Western studies, restoring Western culture to its normal limitations. Since the era of colonialism and subsequently continued by the power and control of news agencies in the international world, Western culture has spread to all corners of non-Western countries. He wants to abolish the myth of universal culture that was founded by the West (Assyaukanie, 1998). In other words, Hanafi invites modern Muslims to view the West with a new perspective. If during this time Muslims have become the object of study through Western-made orientalism discourse, it is now that Muslims have to build knowledge with a new epistemology based on occidentalism discourse.

The second group affiliated with the reformist typology is the intellectuals who tend to use the deconstructive method. Arab deconstructionist thinkers mostly come from the Maghreb region (Morocco, al-Jazair, Tunisia and Libya). It seems that the French element from the colonialism heritage left in these countries caused academicians to absorb more French literature than any other European languages. The intellectual attachment of Arab Maghribi thinkers to French is not only to language but also contemporary French philosophical movements of thought and philosophy, especially the movement of post-structuralism. It is not even an exaggeration to say that almost all Muslim Maghreb thinkers who are concerned about Islam are structuralists. It is because the problem they encounter happens to be the same, that is, the reading of tradition, both in the form of text and reality, and according to them, the most modern and most powerful method for reading traditions is deconstruction.

There are two main figures in this group, (Al-Jabiri, 1990), an Al-Jazair thinker who spent most of his life in France, and Al-Jabiri (1990), a Moroccan thinker who was quite productive in writing down problems related to Arab-Islamic thinking. There is a similarity between Mohammed Al-Jabiri (1990) and Al-Jabiri (1990). Not only because they are from the Arab Maghreb region, but also both Arkoun and Jabiri have the same intellectualism tendencies. Both see the need for critical methods in reading the history of Arab-Islamic thought. With historicism, Arkoun intends to see all socio-cultural phenomena through a historical perspective, that the past must be seen according to its strata of historicity and limited according to the chronological sequences of real facts. This means that historicism serves as a method of reconstructing meaning through the elimination of the relevance of the text to the context. If this method is applied to religious texts, what is needed, according to Arkoun, is new meanings potentially residing in the texts (Arkoun, 1986).

His study's historical method of classical texts is to look for another meaning hidden there. In other words, to lead to the reconstruction of meaning, there must be a deconstruction of text and context. How does Arkoun see tradition or *turats*? In general, (Al-Jabiri, 1990) distinguishes between two forms of tradition. In his works written in French, he simultaneously uses two words tradition and *turats* and divides them into two types. First, tradition or *turats* with a large "T", the trasendent tradition that is always understood and perceived as an ideal tradition, which

comes from God and can not be changed by historical events. This kind of tradition is eternal and absolute (Arkoun). Secondly, tradition or *turats* are written with a small "t". This tradition is shaped by human history and culture, both inherited down through life's history, as well as human interpretation of God's revelation through scriptural texts. Of the two types of this tradition, Arkoun puts aside the first kind, because he thinks that tradition is beyond the knowledge and capacity of human reason. Thus, the second type of *turats* is the target and the object of the study that will be done by him.

Since *turats* are shaped and standardized in history, they must be read through a historical framework. This is understood as historicism. For Al-Jabiri (1990), one of the purposes of reading the text, the sacred text in particular, is to appreciate the text in the midst of constant change. In other words, the religious teachings derived from the sacred text must always be appropriate and not contrary to all situations. This is one of the core message of Islamic teachings (al-Islam yashluh li kulli zaman wa makan).

Therefore, what Arkoun is trying to do, like other reformers, is actually an attempt to harmonize tradition with modernity through the latest methods. In line with Al-Jabiri (1990) considers the importance of historical studies, and further emphasizes the necessity of presenting traditions or *turats* in a packaging more suited to modernity. In an attempt to dismantle the established structure of Arabic (Islamic) epistemology, Al-Jabiri, as cited in Assyaukanie, derives from the methodological question "How to Interact with *turats*?" (Al-Jabiri, 1991).

To answer that question, Jabiri feels the need to redefine the meaning of *turats*. According to him, *turats* are a legacy of the past in the history of one nation in the form of behavior, work ethic, cultural achievement and scientific works. Among the classical relics summarized in this *turats*, according to al-Jabiri, scientific relics are the most important and most influential in determining the culture and civilization of a nation. As long as the scientific heritage becomes the most important element and written in the form of text, the next methodological question asked by Jabiri is "how to read the texts?". According to Jabiri, the problem ultimately hits the question of authority (sultah), i.e.: who has authority in determining the reading; readers or readings, us or *turats*? In this case, as explained by Jabiri, *turats* must be seen as a well-established structure, namely "as a system of fixed relations within the framework of all changes and transformations (Al-Jabiri, 1991). Thus, in the dialectic of readers, readings, and who is the authority holder, there are three models of how the *turats* should be addressed; first reading *turats* with a framework of modernity, second reading *turats* with a framework of *turats*, and third reading modernity with *turats*. Amongst these three options, Jabiri takes the first one, arguing that if this was not his quick pick, the authority would move on to the second and third, and those-especially the third one-were dangerous. In other words, this issue of authority is not limited to reading *turats*, but it can be more dangerous, measuring everything including modernity with the framework of *turats* (Al-Jabiri, 1991). Jabiri, furthermore, considers that the offer of "tradition" with "modernity" is not a matter of choice, that in facing both we must take firm stance. He strongly criticizes the intellectual classification of the dichotomous problem of "tradition and modernity", namely the classification of modernists, traditionalists and selective. According to him, the first tends to deny the *turats* and accept modernity completely, the second is the opposite, and the third agrees with both by behaving more justly to *turats* and modernity (Al-Jabiri, 1987). To Jabiri, tradition and modernity come just as we are, with no power to choose. Both come with the power of their respective discourse as an authoritarian idealist offer. *Turats* come from the past through inheritance that no one can resist the inheritance and the past that grows in him. So is modernity. It comes that we are not able to reject it. We are never given the freedom to choose one or leave one (Al-Jabiri, 1991). So, how do we act? According to Jabiri, as long as we are never asked to vote one of both or reject both, then what we need to do is to be critical of both, to the *turats* and modernity with criticism.

In the midst of this criticism, Jabiri, according to Assyaukanie (1998) applies his method of deconstruction. For him, the first was the deconstruction of *turats*, as long as the *turats* were the longest attached and united in Arab mind. The deconstruction method used by Jabiri-as he admitted-was originally an analysis. It means the first task an Arab intellectual must do is to analyze the established structure of the building by studying the relationship between the elements that create and unite the building. After this structural analysis, only a reshuffle or dismantling of the structure is made. From this, the deconstruction effort is meant to transform that which is fixed to change, absolute to the relative, and ahistorical to the historical (Al-Jabiri, 1991).

Both Arkoun and Jabiri look from the same epistemological framework. Both use deconstruction approaches, and Arab-Islamic reason is the central theme of the approach. Unfortunately as much criticized, Arkoun and Jabiri stop at the reform of the structure of reason, without continuing new construction as a bid for change. Apparently, that is the ultimate goal to be achieved by Arkoun, Jabiri and other thinkers of the deconstructionist tendency. "Do not give a specific structure if you do not want the next generation to overhaul your structure". Thus, it is about the expression of the deconstruction method. However, Arkoun and Jabiri remain like Derrida and his followers in France who managed to get out of the tradition of structuralism but never survived from the deconstruction net they created, and they died there.

2.3. The Idealistic-Totalistic Typology

The *third* is the idealistic-totalistic typology of thought. The idealistic view of Islamic law which is totalistic and highly committed with the religious aspects of Islamic culture is a feature of this type of renewal. Reviving Islam as a religion, culture and civilization and rejecting foreign elements coming from the West because Islam itself has sufficiently embraced the social, political and economic order have become the founding of its thinkers. Furthermore, according to the group of thinkers of this typology, Islam no longer needs Western methods and improved theories from the West. They call on the authenticity of Islam (al-aslah) that is Islam which was practiced by the Prophet and his four caliphs. These thinkers who represent this idealistic-totalistic typology do not believe in

either the transformation or the reformation method because what Islam demands, according to them, is to return to the source of origin (*al-awdah ila al-mamba'*) namely the Qur'an and the hadith. In many ways, their method of approach to *turats* can be equated to the traditionalists. Nevertheless, they do not deny the achievement of modernity because what has been produced by modernity (science and technology) is nothing more than what has ever been achieved by Muslims in the former glory era. The thinkers who have the idealistic-idealistic tendencies are Al-Ghazali, Sayyid Qutb, Anwar Jundi, Muhammad Qutb, Said Hawwa and some Muslim-oriented thinkers of the political Islam movement.

These three typologies have enlivened contemporary Islamic law. Although these types of typology do not entirely have clear-cut limits, in general the substance of any thinker's idea can be explained by one of the typologies. In other words, the above mapping of thoughts is also applicable to mapping in the legal field.

Therefore, Islamic law reformers usually provide arguments against cultures and thinking traditions that are part of the beliefs or community group beliefs. For example, the hand-cutting punishment for thieves was carried out by the Arab community at that time because it was about the victim's self-esteem, not just an economic matter. While now the theft is dominated by economic issues, so there is no need for hand-cut punishment. Thus, the Islamic law is not only seen as a creed or punishment. Before the implementation of these rule, it is necessary to form social atmosphere of the society and their souls who have the determination to apply the rules so that each individual society has moral responsibility.

3. Discussion

In the early modern era, Jamaluddin al-Afghani and Muhammad Abduh emphasized the need to combine modern philosophy with modern science in the renewal of Islamic law to show that Islamic law is compatible with modernity (Rahman, 1982). Albert Hourani, as cited in Al-Na'im (1987) in his book *Toward an Islamic Reformation*, shares his judgment though Abduh seems to have more lasting influence in the effort of Islamic law reform. However, the "pioneers" of Islamic modernism did not succeed in their attempts to give birth concrete results for the purposes of public law. Abduh's ambivalent argument in his work provides a common basis for opposing views so that on the one hand it can be used to justify the free adoption of Western ideas and institutions irrespective of Islamic values, and on the other hand it can also be used to justify the re-enforcement of shari'ah state.

The results of a survey conducted by Ahmed (1987) on the debate over the application of shari'ah in Muslim countries can provide information on Islamic legal reform approaches or methodologies. The supporters of Shari'ah, as identified by Ahmed, are absolutists such as Mawdudi, Asad, Perwez, Hakim and Javid Iqbal Ahmed (1987) The Pakistani Islamic (shari'ah) law reformer (shari'ah), for example, was committed to the Qur'an and Sunnah as an inspiring source of law, but different in holding Islamic fiqh (jurisprudence). Maududi sees that the whole of shari'ah and jurisprudence are applicable directly in life. Asad, Perwez, Hakim, and Javid Iqbal speak of the Qur'an and sunnah as the basis of the law by giving an opportunity for today's people consideration in the interpretation and its application (Ahmed).

In general, there are three approaches (tendencies) in the discourse of Islamic law thought, namely: The tendency to use a formalist approach that devotes its attention to material aspects of the disciplines of fiqh and *ushul al fiqh* which have been standardized. So far the formalist approach is more about fiqh realities that have been out of the historic dimension. This approach is commonly called the textual approach, born in Muslim scripturalists. Arkoun called it a monolithic approach, an approach that confined itself to written texts and paid little attention to the living Islamic tradition. The tendency to use the historical approach that recently developed into historical-sociological. This approach appeared to cover the shortcomings of the first approach. This approach sees fiqh as a fact not as a practice. Historical facts are presented as they are for an explanation of the reality of fiqh. The tendency to use the normative-historical approach. This approach is a combination of the two previous approaches, with an assumption that the first approach does not touch reality, while in the second approach there is a concern of being out of its normative roots. Thus with this approach it is expected that those two concerns will be overcome.

Law, when it is formed and enforced, of course, has a purpose. Similarly, the Shari'ah, the divine law that applies to man, which is the reasoning of the Qur'an and Sunnah, of course, has a general purpose which is to achieve *maslahat* and refuse damage, both in the world and the hereafter (Aziz, 1997). In the fiqh *usul* literature, the purpose of the application of shari'ah is known as *maqasid al-shari'ah*. Therefore, the discussion of *maqasid al-Shari'ah*, can not be separated from the discussion of law reform.

Etymologically (*lughawi*), *maqasid al-Shari'ah* consists of two phrases namely "maqasid" (Al-Syathibi, 1975), and "Shari'ah", which means the purpose or intent of shari'ah Islamic law. In general, the word shari'ah can be synonymous with the word religion, while specifically it refers to the rules created by God to be followed by humans in having relations with God, with human beings both Muslims or non Muslims, nature and life. Although the jurists have a definitive understanding of the *maqasid al-shari'ah*, but on substance there are basic similarities. For example Muhammad Tahir ibn 'Assyria divided the *maqasid al-Shari'ah* into two categories, namely the general (*maqasid al-Tyasri` al-' Ammah*) and the special category (*maqasid al-tasyri` al-khassah*). The general category of *maqasid al-Shari'ah* is understood by the variety and wisdom noticed by the legislator (Shari`) in all or most of the conditions of law enforcement. Things included in this category are to bring benefits, to reject mischievousness, and to uphold the principle of equality of rights between people. Whereas, in particular, it is understood as the manner intended by Shar' in order to realize the general benefits with various efforts of a special person. For example the existence of a guarantee in the contract of pledge, or the existence of options for commodity futures trading and so forth (Ibn `Asyur, 1366). Al-Fasi understands the *maqasid al-Shari'ah* as the ultimate goal to be achieved by shari'at and all the secrets behind every provision in Islamic law (Al-Fasi, n.d.). Satria Effendi M. Zein understands it as the purpose

of Allah and his Messenger in the formulation of Islamic laws, which they can be traced in the verses of the Qur'an and Sunnah of Prophet Muhammad, as a logical reason for the formulation of a law that is oriented to human benefits (Effendi, 2008). While Al-Syatibi as the initiator of the concept of maqasid al-Shari'ah states that "the actual institutionalization of shari` is none other than to realize benefits for servants both in the world and in the Hereafter."

As for the masalah, According to Al-Syatibi, masalah is what returns to the upright of human life and the perfection of its livelihood. There is no truly pure masalah, as well as with mafsadah. Either Maslahah or mafsadah according to size in the world is what is more and stronger. If the more and stronger is maslahah element, then it is called maslahah. On the contrary, if what is more and stronger is the element of mafsadah, then it is called mafsadah (asy-Syathibi: 20). Thus, as stated by M. Khalid Mas'ud, *maqasid al-Shari'ah* for al-Syatibi is efforts to strengthen the maslahah as an important element of the purpose of law (Mas'ud, tt: 225). The doctrine of *maqasid al-Shari'ah* is an attempt to uphold the maslahah as an essential element for the purposes of the law. Maslahah, according to asy-Syatibi, can be seen from two points of view (Mas'ud, t.t.: 228). Qasd al-Shari` (the aim of the Legislator), which consists of four aspects: first the main purpose of shari` in instituting such a law; second, its purpose in instituting law to be understood; third its objectives in demanding *taklif* of institutional law; and the fourth Shari's intent in incorporating the mukallaf under the law. In detail it can be explained that the first aspect relates to the content and the essence of maqasid al-syari'ah. The second aspect can be said to be related to the understanding of the intent and purpose of institutionalization of law in order to realize benefits which can attainable and acquired by human beings. The third aspect relates to the implementation of the provisions of the Shari'a in order to realize benefits. It also deals with the human ability to carry it out. The last aspect relates to the obedience of men as *mukallaf* to the laws of God. Qasd al-Mukallaf indicates that a command which is *taklif* must be understood by all subjects, both in the linguistic and cultural sense. *Taklif* must be in harmony with human abilities (*qudrah*), eliminating difficulties (*masyaqqah*), and others. The purpose of the *mukallaf* is also in order to avoid lust, and to demand dedication to the laws of God (*ta'abbud*).

In such interrelationship, the purpose of the creation of syari`at namely benefits for human beings both in the world and in the Hereafter can be realized well (Effendi, 2008). Although many people disagree about whether maslahah is a legal theory or legal purpose, but ultimately through asy -Asy-Syatibi maslahah is enforced in addition to the theory of law as well as the purpose of law. When talking about the efforts to reform the formulation of Islamic law, then examining the existence of *ushûl al fiqh* is necessary because the tool of science (*ushûl al fiqh*), is possibly unable to explain and resolve the complexity of legal issues that arise and not sufficient to formulate the desired Islamic law products. Therefore, it does not rule out the renewal of the science of *ushûl al fiqh* (Fanani and Hidayat, 2001). Even this aspect is actually the most crucial. Al-Bayayuni and al-Thalabi argue that the renewal of *ushûl al fiqh* is better understood as a simplification in systematic things or writing rather than in the sense of renewal or development of the substance of the discipline. That opinion may be influenced by the practical need in the teaching process of *ushûl al fiqh* which has been faced by both experts.

Unlike the two figures above, contemporary Muslim thinkers argue that the renewal of the science of *ushûl al fiqh* is not solely on the level of systematic things or writing, but also on a substantial level. That is, both from the aspect of the paradigm used and the rules covered in the science of *ushûl al fiqh* today need to be interpreted and developed in such a way according to the needs of the times. Hasan al-Turabi, argues that reform efforts in order to reconstruct the epistemology of Islamic law or *ushûl al fiqh* should be done fundamentally, because the products of *ushûl al fiqh* in the tradition of Islamic legal thought are still abstract and in the form of theoretical discourse which is unable to bear the Islamic law once, even just spawned an unfinished debate. Furthermore, according to him, the condition of science *ushûl al fiqh* traditionally used as a guide in formulating *fiqh*, is no longer relevant in meeting modern needs, because it is arranged in historical conditions and influenced by the nature of legal problems that became the discussion of Islamic law at that time. In fact, Islamic law and its epistemology (*ushûl al-fiqh*) should continue to develop in the face of the challenges of modern life's reality. Furthermore, al-Turabi believes Muslims should re-examine Islamic law with new perceptions, utilize all knowledge as a means of worship to Allah SWT, and create a new format that unifies the textual and rational approach that will always undergo renewal in accordance with the demands of life. With the integration of the sciences we will be able to renew our religious understanding and meet the demands of modern life of all time. Based on this assessment of al-Turabi, it can be said that the construction of science *ushûl al fiqh* traditional has experienced a crisis paradigm. This condition causes *ushûl al fiqh* no longer able to take part in accordance with the proper function. Hence, there is a need to reformulat new paradigm as ideological and operational basis of *ushul fiqh*. The paradigm is not expected to "follow" the past, though it does not mean leaving it altogether, and presumably able to answer all forms of contemporary problems of Muslim life. The paradigm in question is, in the writer's view, the so-called epistemology of *jama'i* or comprehensive epistemology, which is actually a critical reflection of the epistemological study offered by one of the most famous contemporary Muslim thinkers of Morocco, Muhammad Al-Jabiri (1991).

Unlike Turabi, Rahman with his neo-modernism claims that he has formulated a legal theory called the double movement theory, from the particular to the general and vice versa. The first movement of the double movement theory is to understand the situation and the historical problem in which the revelation is derived, and then the *illat* is rationalized. This movement is a genuine effort to understand the micro and macro context at the time the Qur'an was revealed. The results of this understanding will be able to build the original meaning contained by revelation in the midst of the social-moral context of the era of prophethood, as well to obtain picture of the situation of the wider world in general today. The study and understanding of such subjects will result in a discourse on the coherent teachings of the Qur'an covering general and systematic principles and values underlying normative orders, that is an important role of the concept because the revelation of the verse (*asbâb al-nuzûl*) and the concept of *naskh*. The

second movement is to generalize and sistemize the general principles of the first movement to be confronted later with the today's actual reality (Madjid, 1993).

To practice second movement, applying the values that have been found to the present conditions, requires very complex analysis. Fazlur Rahman does not elaborate in detail how an analysis should involve a combination of social and intellectual realms and how to do it Rakhmat (2003). However, what is obvious in Rahman's mind is that he justifies the use of modern social sciences and contemporary humanists as a good means to provide a good understanding of history. In such an understanding, it is not surprising that al-Jabiri holds that the law-by-law fixation is based on historical factors. Al-Jabiri sees that the orders and restrictions contained in the Qur'an and Sunnah are not arbitrary laws that do not rely on any logic, but they are laws containing rationality and wisdom. Since Allah swt does not explicitly give explanation of the aspect of rationality and wisdom concerning the majority of these laws. He, for example, does not explain the causes of adultery, the drink of khamar and so on, the application of shari'ah requires a mujtahid to make the principles he makes as guidance in the operation of this application, the principles which serve to provide the basis of the legal rationality it produces in response to the events and new things that happen. To support his view of the hand-cutting of parts of the historical, but rational, shari'a, al-Jabiri found the following data: First, the law of hand-cutting of thieves had been imposed before Islam on the Arabian Peninsula. Secondly, in badawi (nomadic) people, their inhabitants moved from one place to another with their tents and camels in search of grass for the fodder, it was impossible then to punish a thief with a prison sentence, because the prison did not exist, the walls of buildings also did not exist. Hence, there was no power to keep and feed and drink for the imprisoned and so on. The only way was corporal punishment, which inevitably impacted the destruction of the existence of theft because it gave a sign to a man who once stole to be recognized as a thief so that people were careful of him. There is no doubt that the law of hand-cut is for these two purposes at once, so the hand-cutting of thieves is entirely a rational consideration for the padang saharan society that is accommodated in the historical shari'ah.

The construction of Rahman's thoughts on the hermeneutics of the Qur'an with his dual movement theory was a response to the "particular" model of interpretation and understanding of the Qur'an and the partial understanding and approach to the Qur'an commonly used by mediators in the Middle Ages, even by the traditional interpreters of the contemporary era like now (Rahman, 1982). This approach, according to Rahman, is clearly understated the coherence and unity that is always underlined by the messages of revelation and obstructed the efforts of the formulation of the view of life based on the Quran as a whole by using the Quran's words/terms. The glory of particular approaches in the understanding of revelation was the emergence of a dry legalism, an era in which the function of law can not preserve, protect, and nurture a dynamic and energetic legal culture. According to Rahman, further, without understanding the Qur'anic point of view, modern-day interpreters are unlikely to be able to distinguish the social context, ordinances, norms, and past customs that are grafted and clamped in such a way by the interpreters of their exegetical works against original revelation. According to him, all values - that are truly worthy of morality- also have extra-historical aspects (trancendental being), and the application or execution of those trancendental values at a certain history (classical, middle, modern, postmodern) can not solve the application of the deeper meaning of the meaning. Thus, the need to apply revelation to the context of the prophetic community is absolutely crucial (Rahman, 1982).

In this methodology, Rahman, in the research of Mas'adi (1998) proposed an interpretive methodology consisting of three approaches: First, a simple and honest historical approach must be used to find the meaning of the Qur'anic text. The Qur'an should be examined in chronological order. Initiating tests on the earliest revelations will provide a fairly accurate understanding of the basic spirit of the Islamic movement as distinguished from the later sizes and institutions. Second, a contextual approach to find goals and objectives contained in specific legal expressions. Third, the sociological background approach to corroborate the findings of a contextual approach or to find targets and goals that can not be expressed by a contextual approach. That is to say, the goals of the Qur'an must be understood and defined by considering the environment in which the Prophet fought. This, according to Rahman, will end the subjective interpretation that has been done by Muslims in both medieval and modern centuries. It seems that the objective or object of Rahman's approach is the areas of law that are about social, not theology, worship and moral.

To explain these three approaches further, Rahman, as quoted by Mas'adi, explains that the Qur'an should be studied in its chronological order, beginning with the study of the Qur'an throughout the career and struggle of Prophet Muhammad (sallallahu 'alaihi wa sallam). This effort begins with the examination of earlier passages of revelation which will produce a fairly accurate perception of the basic tenets of Islam, as it is distinguished from the decisions of the later social order. In this way, the assessment will establish in addition to the meaning of the details, as well as the overall meaning of the Qur'an systematically and coherently with regard to the field of social law, not theology, worship or moral teachings.

The reason why Rahman did not develop those ideas for his logical conclusion may be because he holds that "although this method of interpretation of the Qur'an and Sunnah seems most satisfying and perhaps the only possible - honest, correct and practical - then there is no reason to believe that Muslims are ready to accept it ". Because of this judgment of Muslim attitudes, Rahman focuses only on "improving the real situation ... a renewal of a fundamental modern educational system" to discover pure Islamic values and schools, universities as well as other issues.

Meanwhile, Muhammad Syahrur with his renewal ideas attempts to dialogue the Qur'an as a limited text with the unlimited development of human social problems to the conclusive distinction between the Qur'an and the Book. The term "the Book", according to him, is the whole themes contained in the Mushaf of the Qur'an, ranging from Al-

Fatihah to An-Nas and more broadly scope than the Qur'an. The Qur'an refers only to some of the contents of the Book, in the form of *mutasyabihat* verses that contain the nature of objective truths outside the human consciousness. The significance of the distinction that he did was to distinguish methods that must be used in interpreting the Qur'an. If the Qur'an contains verses of *muhkamat* (as *al-risalah* Book), it must be used the method of *ijtihad* according to the context and the development of the times. If the Qur'an contains *mutasyabihat* verses (as *al-nubuwwah* Book), it should be approached by *ta'wil* method and its understanding is usually subject to the development of relative science. In the Book, Syahrur (2007) distinguishes the Book of Al-Risalah which contains the rules of acting for human beings, in the form of pure worship, mu'amalah and morals which are covered in verses of *muhkamat* (verses of law), commonly also called with the *umm al-kitab*. Furthermore, Muhammad's position is regarded as an apostle in this Book. Unlike the Book of *Al-Risalah*, the Book of *Al-Nubuwwah* contains a collection of knowledge about nature, history, stories and trying to explain the nature of objective. It belongs to the category of verses of *mutasyabihat* and the position of Muhammad is as the Prophet (Syahrur, 2007). In general, the Book of Al-Risalah is associated with *tasyri'* (legislation) which contains rules of action for human beings covering three main points: first, *al-Sha'a'ir* such as performing prayer, doing charity/*zakat*, fasting and so forth; second, *al-akhlaq* (moral or ethical); and third, the verses of *tasyri' wa al-ahkam* which contains *hudud* problems (legal limits). The verses in the Book of Al-Risalah function to distinguish between the allowed (*halal*) and the forbidden (*haram*). *Tasyri'* can be changed in accordance with the demands of changing conditions that are still important in the view of *hududullah*. Syahrur later used *hudud* theory approach, so the product of interpretation can be in line with the demands of the contemporary problem without having to subordinate the verse on behalf of the interpreter.

The theory of the Syahrur *hudud* is built with a serious understanding of the two main characters of Islamic teachings, namely the dimension of *istiqamah* (constant motion) and the dimension of *hanifiyyah* (dynamic motion). Those two things are like the binary opposition that gave birth to the dialectic movement (*al-harakah al-jadaliyyah*) in the knowledge and the social sciences. In the context of Islamic law, by dialectical dialogue of the *istiqamah* dimensions with the *hanifiyyah* dimensions, it will have a positive effect on the adaptability of Islamic law to the legal problems faced by mankind, making it responsive and dynamic.

In general, the boundary theory (*al-hudûd*) may be described as follows: there is a provision of God revealed in the Qur'an and the Sunnah which sets the lower boundary and upper boundary for all human deeds. "The lower boundary is the minimum limit required by law in certain cases, while the upper limit is the maximum limit. Legal acts that are less than the lower boundary are invalid (not allowed), and so are those exceeding the maximum limit. When these limits are exceeded then penalties must be imposed according to the proportion of violations incurred. Hence, humans can do dynamic movements within the limits that have been determined. According to Syahrur, here lies the power of Islamic law. By understanding this theory, there will undoubtedly be born millions of legal provisions based on it. Therefore, according to the theory of boundary, treatise of Muhammad (Peace be upon Him) is regarded as *Umm al-Kitab* (the mother of any law Books) because of its inherent nature (Syahrur, 1994). Based on his study of legal verses, (Syahrur, 2007) concluded the existence of six forms of boundary theory. The first is the rule of law that has the lower boundary only (*al-hâdd al-adna*). This occurs in the case of: unmarried women (QS an-Nisa (4): 22-23), kinds of food that are forbidden (QS al-Maidah: 3-4), debt/loan (QS al-Baqarah: 283-284), and about women's clothing (QS an-Nisa ': 31). In terms of women forbidden to marry, for example, the kinds of women mentioned in the verse are the minimum boundary of women who should not be married. *Ijtihad* can only be done to add the kinds of women who should not be married. If, according to medical science, for example, women with close relatives-like aunt's or uncle's daughter-can not be married, then a rule that prohibits the marriage can be made (Syahrur, 2007).

The second is the legal provisions that only have the upper boundary (*al-hâdd al'ala*). This happened to the criminal act of theft (QS al-Maidah: 38), and murder (Surat al-Baqarah: 178). The hand-cutting punishment for thieves, for example, is the most severe punishment, so it can not impose tougher penalties than that, but lower penalties can be given. The obligation of the *Mujtahids* is only defining - according to the objective reality of the society - which kind of theft deserves to be given such severe punishment and which do not and what law is imposed on every theft in general (Syahrur, 2007). The third is the legal provisions that have upper and lower boundary which apply to the law of inheritance (QS an-Nisa ': 11-14) and polygamy (QS Al Nisa: 3). In the matter of the inheritance, according to Syahrur, the upper boundary is for male heirs, and lower boundary is for women. That is, if it is based on male and female part of the principle, namely 2: 1, 66.6% for men is the upper limit while the 33.3% for women is the lower limit. Therefore, if at some points men are only given 60% share and girls are given 40%, this is permissible. The area of *ijtihad* lies in the area between the upper boundary for men and the lower boundary for women, which is adapted to the objective conditions of society to draw closer between the two boundaries. Efforts to bring this closer to the point of equality between men and women, of course, consider the situation and condition of each case or consider the tendency in the community.

The fourth is the legal provisions in which the lower and upper bounds are at one point (straight line, *mustaqim*). This means there is no other legal alternative, which should not be less and should not be more than what has been predetermined. According to Syahrur (2007) this fourth form applies only to the punishment of adultery, which is a hundred times (Q.S. Al Nur: 2). Then, the punishment can only be imposed on condition of the existence of four witnesses or through *li'an*. The fifth is the provisions that have the upper and lower bounds, but the two are not to be touched because touching it means the God's prohibition. This applies to the social relationships between men and women that start from not touching at all between the two (lower boundary) to the relationship which is close to adultery. Thus, if men and women commit acts close to adultery, but they have not committed adultery, it means that both are not falling on the boundaries (*hudud*) of Allah. It is the adultery which is the limit set by Allah which should

not be violated by the men (Syahrur, 2007). The sixth is the legal provisions that have upper and lower boundary, where the upper one is positive (+) and should not be exceeded while the lower one is negative (-) and may be exceeded. This applies to the relationship of the fellow human beings. The upper one of positive value (+) is in the form of usury while *alm* as the lower limit of money is negative (-). This lower boundary may be exceeded by different forms of *sadaqah*, in addition to alms. The middle position between the positive upper boundary and the negative lower boundary is zero (zero), namely in the form of a loan without levying interest (usury).

Through the sixth form of this boundary theory, Syahrur explains his view of usury, which differs from that of most scholars. Etymologically, there is no difference in the meaning of usury with the commonly known, namely "add" and "grow". Having said a number of verses related to usury, he concludes that there are four points to consider in usury, namely: usury is associated with *sadaqah* (Surat al-Baqarah: 276), usury is attributed to alms (Surat ar-Rum: 39), upper boundary is for interest / usury (QS Ali Imran: 130) and zero percent (QS al-Baqarah: 279). In this case, according to him, alms equal *sadaqah* because alms are the lower boundary of *sadaqah* that must be done (*zakat*). Thus, *alm* is part of *sadaqah* (Antonio, 2001).

The poor are among those who receive alms. The poor, according to Syahrur (2007), is a person, in terms of his economic and social conditions, can not pay debt. Therefore, the things given to them are not in the form of debt, but in the form of alms (grant) or the reward is up to Allah (Q.S. al-Baqarah 275-278). That is the first condition of usury. The second state of usury happens to a person who is only able to pay principal debt, but he can not afford to pay interest. To this person, the things are given through an interest-free loan, namely in the form of *al-qard al-hasan* (Q.S. al-Baqarah: 230). The usury in the third state occurs on the businessman (entrepreneur) who does not deserve to receive alms. Loans given to them may be with interest as long as it does not exceed the upper boundary, namely the amount of interest expense equals to the principal loan (Q.S. Ali Imran: 130).

Thus, it is clear that both Syahrur (2007) and Rahman (1982) have both offered a new legal conception and legal method, emphasizing ideas composed of textual and contextual analysis intended to place a humanist law. That is, (Syahrur, 2007), with his boundary theory (*al-had al-adna, al-had al-a'la*), explains that "the *Mujtahids* must determine the punishment equivalent to one's mistakes (Syahrur, 2007). "Therefore, the punishment imposed must not exceed the maximum limit, and on the contrary it is possible to be reduced under the objective conditions prevailing in a particular society. It is the responsibility of the *mujtahid* / judge to determine the extent of the sanctions to be imposed on the perpetrator of the crime. This is a humanistic legal style in the view of (Syahrur, 2007).

In line with (Syahrur, 2007), based on Mas'adi's research, Rahman's concept of the Qur'an essentially revolves around three things: the nature, function and legislation of the Qur'an (Mas'adi, 114). In this case, of these three concepts, the concept of the Qur'anic legislation is of course related to the conception, and the legal approach used by Rahman in attempting to explain the humanist style embedded in Islamic law (*shari'ah*). Rahman, as quoted by Mas'adi, puts it: "Although the Qur'an contains some important statutory declarations, it is essentially a Book which contains moral principles, which calls for the creation of social justice, not for legislation alone (Rahman (1970, p 38). "With a contextual approach, the morals are meant in accordance with the universal concepts applicable to the international life of modern nations, that is, there is no discrimination based on the element of individual subjectivity, such as religion, ethnicity, race or gender, and the attitude of treating others as one treats oneself (Mas'adi, 1998). In a contextual approach, the Qur'anic legislation, in Arabic terminology, the term "tasyri" (law enforcement) is usually used, which is inseparable from the sociological approach. Therefore, the laws discussed by Rahman, according to Mas'adi, socially charged laws, not theological or worship laws. This sociological approach still sees God's eternity substantially, but the letter of law, in Rahman's view, is possible to experience situational change. Hand cutting, for example, has sociologically existed in some Arab tribes before Islam, and then the Qur'an adopted it.

For that matter, the background of life becomes an important thing to be understood. In pre-Islamic tribal societies, material rights are closely related to one's honor; because the term theft is not only seen as an economic crime, but also as a harassment of honor, then the hand-cut penalty becomes an option to keep the honor. While, in advanced urban society there has been a shift in values where theft is more regarded as an economic crime, which has nothing to do with the honor of an individual or a community group. With this argument, there is a gap not to impose the hand-cut penalty for not fulfilling one of the historical reasons, namely the defense of self-respect / tribe. In addition, international law also does not recognize the existence of the hand-cut penalty because it is considered inhuman.

Since Islamic religious doctrines have traditionally claimed full jurisdiction over matters of social morality but without always providing practical answers, modern Muslim thinkers are faced with two broad alternatives: whether they will develop a new life with inherited doctrines and adapt them to the needs of contemporary life; or they look for another inspiration. If the latter one is chosen, consequently, temporally, secularization has been carried out for various reasons. In fact, the *Shari'ah* has been sidelined from private territory in most Muslim countries since the end of World War I. However, as the demanding demands for the implementation of *shari'ah* in public life, especially in countries that previously thought to be secular in total, the realistic choice of secularism will diminish. In many cases, even though the *Shari'ah* is applied as a civil law to Muslims, we will still face the implications of the constitutional rights and human rights of the civil law.

In the contemporary era, (Rahman, 1982) has pointed out that scholars or those educated in *fiqh* (historical *shari'ah* jurisprudence) are unable to contribute to the modernization process because their education and orientation not only constrains with traditional boundaries, but prevents them from paying attention the problem. He concludes that this is why modernism is, as far as it exists, "layman" muslim's work with liberal education. Given the general

conception that Muslim modernist beliefs of "layman" are somewhat suspicious, Fazlur Rahman seems to think that the "layman" modernist can not lay the foundations of a new Islamic theology (Rahman, 1970).

Meanwhile, in the discourse of contemporary Arab thought, together with M. Arkoun and M. Abed al-Jabiri, also known as Hassan Hanafi's thought that is classified in the type of reformist thinking. In general this type of thinking tends to believe that both *turâts* (tradition) and modernity are good. Tradition remains relevant to modernity as long as it is read, interpreted and understood by modernity standards. According to Hassan Hanafi, tradition will have no value when it is regarded as a season for the thought that is always proud. Tradition will have value for every condition of the times when it is placed in the frame of modernity after passing through the process of interpretation and reinterpretation. The formula of the idea is to position the science of *ushul fiqh* as a method (*manhaj*) in formulating an interpretive theory (*nazariyah tafsir*) against contemporary reality which is the ultimate goal of the scenario of *al-turâts wa al-tajdid* (tradition and renewal).

In addition to the above reformist thinking approach, there are also reformers using deductive methods. This deductive method is commonly used in legal reasoning, which stems from the promulgation of the major premise, namely the rule of law, then proposed minor premise, namely the legal facts, and from these two premises a conclusion is drawn. Thus, the use of such syllogism is to prove whether the existing legal facts fulfill the elements of deeds that exist in the rule of law (Marzuki, 2007). With deductive reasoning, Taha makes the assumption that Islamic law is currently built on the basis of the rules of law contained in the verses of the *Medinan* period (verses revealed after the *hijra*), which have discriminatory characteristics and tend to impose restrictions on certain communities such as women and non-Muslims (QS Al-Baqarah: 282 and QS An-Nisa: 34 and QS At-Taubah: 5). The problem is that if the discriminatory Islamic law is applied today, where the issue of equality and human rights becomes the benchmark, it is certain that Islamic law will be rejected.

To answer that assumption, Taha raised the theory of the *naskh* as an answer to the problematic methodology of modern Islamic legal reform, which emphasizes the authenticity of the source of law and continuity with the tradition of Islamic scholarship that ever existed. That means if modern moslems intend to show the Islamic laws as their authentic rule, they inevitably have to reform the formulation of Islamic law that exists today. The way, according to Taha, is by actualizing the verses of the Mecca period (verses revealed before the *hijra*) as their raw material, because the verses contained in that era have the characteristics needed for Muslims at this time, which is very appreciative of differences, equations, egalitarian, and non-discriminatory (QS Al-Baqarah: 256 and QS An-Nisa: 1). The process of reactualization is done through the path of *nasikh wa mansukh*, which in the tradition of classical Islamic scholarship (*ushul al-fiqh*) has been recognized as a medium for divorce the tension between two or more verses that seem to contradict. Thus, men must learn directly from Allah if they the right answers to the problems they encounter. About the behavior of his teacher, An-Na'im writes:

"...he (Taha) maintained that since the Quran is the literal word of God, human beings can receive an anlightened understanding of the word and learn from God, directly throuht His word as revealed to the prophet... by rigorously and intelligently pursuing reflective worship an other practices of the prophet Muhammad...human beings could sharpen their senses and develop their faculties, thereby becoming ready to appreciate and understand what God teaches through the Quran and fearful of God...or tradition of the granted by God knowledge of that which he or she does not know."

Spiritual activity in order to find inspiration that is then called by An-Na'im as a modern approach of mystical approach. This approach is very unusual, so it is not uncommon for anyone to doubt its validity (Al-Na'im, "Translator introduction, In Mahmoud Mohammed Taha, The Second Message of Islam, (Na'im, 1988). In accordance with the spirit of the verses of the period of Medina, the verses of the period of Medina were replaced by verses of the period of Mecca.

At first glance, it seems that Taha's *naskh* theory is the same as the classical *naskh* theory. Although acknowledged by Taha that his theory was departing from the existing *naskh* theory, actually conceptually both are much different. In the classical theory of *naskh*, the text is understood as a deletion indicating the unenforceability of the legal power of a verse because of the coming of a new verse. Moreover, in classical *naskh* theory, *naskh wa mansukh* is casuistic. However, in Taha's views, the meaning changed drastically. For Taha, the text can not be understood as a deletion which means that there is no longer any legal force because it has been replaced by a later descending verse, but more accurately understood as a "delay" in its application. The problem was that why the verses of the Makkah period were not applied in the era of prophethood. According to Taha, it was due to the special conditions of Medina and Arabia at that time close to the time of Jahilliyah. The Prophet deliberately did not apply Makkiiyyah verses that are universal (regardless of gender, ethnicity, nation, and religion), until a period in which the condition of society had enabled Makkiiyyah verses to be applied again. The verses of Madaniyyah count the testimony of two women as a testimony of a man, looking at the part of women in inheritance law as half male, *jizyah* (non-Muslim taxes) and others. In the Makkiiyyah verses no such distinction is found. The prevailing and invalid conditions between these Makkiiyyah and Madaniyyah verses will always spin until the end of time, when society is in a certain condition. Today, the message of Islam (al-Risalah al-Tsaniyyah) which recognize the principles of human rights and human equality before the law without distinction of gender, religion and ethnicity, generally contained in Makiyyah verses, is applied, according to Taha (1987).

Regardless of how the theory of *naskh* was found, there are some interesting things that should be observed. First, from the above description it seems that Taha understands Makkiiyyah verses and verses of Madaniyyah at equal positions, experiencing the evolutionary process of application when encountering different situations. That is to say, both the Makiyyah verses and the Madaniyya verses do not actually annihilate permanently but are temporary, or are only temporary delays. Secondly, such a view makes the concept of Taha's theory of *naskh*

intertwine with classical *naskh* theory which sees several verses in the Qur'an seem contradictory, so it takes one final word, that the later verse replaced the former verse in one same case. The development of Taha's theory of *naskh* in the applicative form has been done by his student, 'Abdullah Ahmed An-Na'im in his book *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Fanani and Hidayat, 2001).

Based on the approaches, the theories and methodologies described earlier are clearly visible methods of *ijtihad* used by the reformers. Apparently, the method of *ijtihad* that should be developed in the XXI century is the method of *ijtihad*, which can give birth to legal views that have the effect of goodness and benefit to human life, which becomes the object of the law itself. This can be achieved by changing the tendency of deductive thinking (*istinbath istidlali*) to inductive thinking (*istinbath istiqr'a'i*). By inductive reasoning, the reality of the society, which will become the object of the views of the law should receive as much attention as to the shari'ah texts themselves. *Istihsan* and *mashlahat* are both *ijtihad* methods that have this potential. *Illat mashlahah* and *illat al-husn* must get attention in formulating the views of Islamic law in this XXI century. If this is done, the views of Islamic law (*fiqh*) and which are born from institutions, are pragmatically accepted and adopted by the wider Islamic community.

The theory of Islamic law used by Al-Na'im is the *nasakh* theory or the theory of "*inverted nasakh*" created by his teacher, Taha, as mentioned above, which is nothing but a reconstruction of an existing theory in *ushul al-fiqh*. With the theory, he tries to adjust the text of the Qur'an and Sunnah with the present conditions. It aims to answer the demands of the application of the text of the Qur'an and Sunnah, which require adequate interpretation in order to capture the spirit (Assyaukanie, 1998).

The concept of *nasakh* has become a discussion among scholars. According to most scholars, *nasakh* is divided into three categories. First, the text is removed but the law remains. Second, the law and the texts are removed. Third, the law is removed, but the text remains (Az-Zuhaili, 1997). In its reconstruction, Al-Na'im raised the third sense, namely: *naskh al-hukm duna al-tilawah*. In the sense of the words of verse 106, Al-Baqarah (2), Al-Na'im follows his teacher, Taha, where the word "*ma nasakh*" is interpreted by having abolished some pre-Islamic texts (pre-Muhammad treatise). While, "*nunsiha*" is defined as delaying its implementation or application. The phrase "*na'ti mitsliha aw bi khoir mimba*" means that Allah will create a verse closer to the understanding of society and more appropriate to their situation rather than to be interpreted with the meaning of the postponed verse. The point of the comparable verse means returning the same verse when time permits to restore to apply it, so the abolition is as it corresponds to the needs of the situation and is postponed until the right time (Al-Na'im, 1996).

The interpretation is almost the same as al-Maraghi's opinion when interpreting verse 106, Al-Baqarah (2). According to Al-Maraghi, law is enacted for the benefit of humanity and human interest, and human interest can be different due to the difference of time, place (environment) and situation. When a law is enacted and at that time it is felt the need for the existence of the law, and then that need no longer exists, it is a wise move to override that law and replace it with another more appropriate law. In the same meaning, Rashid Ridha also believes that the law can be different due to the difference of time, place and situation. If a law is enacted at a time of great need for the law, then that need no longer exists at any other time, it is a wise act to abolish the law and replace it with another law, which is more in line with current situation.

When interpreting *naskah* in the Qur'an, Muhammad Abduh interprets it as a shift from one container to another container. It reminds us that the Qur'an is gradually brought down in a certain social context as the society evolves. By interpreting *naskh* in such a way, it means that the whole Qur'an is essentially operative and not contradictory. According to Quraish Shihab, the scholars agree there is no contradiction in the content of verses of the Qur'an. In dealing with verses that were thought to have a contradictory phenomenon, they compromised it. The compromise was done that there was no verses which was abrogated, deleted or abandoned (Shihab, 2004). Al-Na'im stressed that Islam is not present in a vacuum of religious, social, economic and political aspects. In his own words, it is mentioned that Islam is a continuation and culmination of the Abrahamic tradition. In addition, Islamic law in Shari'ah accepts and modifies many aspects of customs and practices of pre-Islamic Arabia. However, according to him, early Islam really has a mental attitude and psychological orientation to start with white sheets, in the sense that they believe that they have principles and various methods to "carve a social comfort". This mental attitude and psychological orientation is now lost and must be recovered. The possible method for reaching the creative initiative is a way out of Islam from the deadlock of understanding of shari'a law. It is stated by Al-Na'im's teacher, Mahmoud Mohamed Taha, where Taha held a premise that an open test of the content of the Qur'an ' and the Sunnah which gave birth to two levels or stages of Islamic treatise, an early period of Mecca and the next stage of Medina ". From that assumption he argues that in fact the message of Mecca is an eternal and fundamental message of Islam, which emphasizes the inherent dignity of all mankind, regardless of gender, religious belief, race, social status and so on. The message is characterized by equality between men and women and full freedom to choose their religion and faith (Al-Na'im, 1996).

There is, therefore, a title to the verses revealed in the Makkah period with the term 'universal egalitarian democratic verse', while the Medinan passages are called 'democratic sectarian'. Both the substance of Islam's message and its developmental behavior during the Makkah period were based on '*ismah*, the freedom to choose without threats or images of violence and coercion. If the noble message is strongly and unreasonably rejected, and in general, the people were not ready to carry it out, then a more realistic message during Medina was given and executed. In this way, aspects of the message of the Makkah period that were not ready to be applied in practice in the context of the history of the seventeenth century were postponed and replaced with more practical principles during the Medina period. However, the aspects of Makkah's message never disappear as a source of law. It is only suspended or postponed in the right conditions in the future. On the contrary, the great and lasting aspects of Islam that have been lost can not be exchanged let alone eliminated (Al-Na'im, 1996).

In the view of Al-Na'im, as Taha, the actual development of shari'ah moves from text to text, from 7th century texts to today's larger and more complex texts. In such situations a *naskh* occurs. Then the re-enacted verse becomes the *muhkamat* verse (Makkah verses), and verses of *muhkamat* in the seventh-century applied *furu'* verses (derivative verses) and now the *usul* verses (primary verses) are applied.

If more in-depth analysis is conducted, it seems that almost all revelations were revealed in certain social contexts along with the development of Islamic society. Therefore, the Qur'an is also always in line with the environment and changing circumstances. Thus, the interpretation made by M. Abduh that the *naskh* is the introduction from one container to another container is somewhat relevant to what is expressed Al-Na'im. It can be said that *hikamah naskh* not only gives warning to Allah's favors and eliminates narrowing, but also delays (*al-ta'jil*) for the enactment of the current law because the circumstances surrounding it are not yet possible to implement. Strictly speaking, Al-Na'im disagrees if the text is interpreted by the abolition as some scholars think. The argument is based on two things. First, if the deletion is permanent, the texts that have been derived become useless. Second, interpreting the *naskh* permanently means to let Muslims reject part of their best religious teachings. He also clearly distinguishes between the verses of Makkah and the verse of Medina.

The selection between Makkah verse and Medina verse is not unusual to the study of the Qur'an. According to Al-Suyuti (tth: 156), the most essential standardization for Makkiyah text is the text that was revealed after the *hijrah*, even though the place of revelation was not in Medina. There is a fundamental difference between the text after and before the *hijrah* event. The characteristic of the Makkiyah text is warning that has the goal of removing classical beliefs with a new (Islamic) belief. This is highly correlated with Q.S. al-Baqarah 2: 106 which is the basis for the existence of the text in the Qur'an. The Madaniyah text is *al-risalah*, which builds a new society theology (*al-Ummah*).

During the first 13 years of his mission, Muhammad was commanded by the Qur'an to spread Islam in Mecca in a peaceful and closed manner in accordance with the principle of complete freedom to choose. Lots of texts support these principles, including QS. an-Nahl 16: 125, al-Kahf 18:29, al-Hujurat 49:13 and al-Isra '17:70. After the *hijrah*, the message of the Qur'an began to distinguish between men and women, Muslims and non-Muslims, their legal status and rights before the law, for example *surah* an-Nisa, which contains more detailed rules about divorce, inheritance and other discriminatory messages.

Furthermore, according to Al-Na'im, the implications of the shifting of his message and method, some Madinah pretended to convert to Islam without pure and profound conviction. The phenomenon is largely shown by the Qur'an in the *Surah Al-Munafiqun* on revelation in Medina, whereas in Makkiyah texts there are no such phenomena. With the reduced form of violence in Makkah one has full freedom to accept Islam or rejects it. With the gradual loss of liberty levels during the period of Medina, many unbelievers showed outward faith to avoid the negative threats of the Muslims. Seeing the very principal difference, the study of makkiyah text has become significant to be one of the standardization of *naskh*. Thus, the text is a logical process required in the application of appropriate texts by delaying the application of texts until it can be used in the appropriate moments.

The argument that Al-Na'im constructed about the *naskh* (delay or *al-ta'khir*) is based on two things. First, the Qur'an is the last revelation of the prophet Muhammad as well as the last prophet. Consequently, the prophet must preach all that God wants to teach. Second, for the sake of the dignity and freedom bestowed by God and all mankind, God wants men to learn through practical experience. Due to the inexplicable message of Makkah, it was later postponed and replaced with a more practical Medina message. In this way, society will have a stronger and more authentic belief about the possibility of practicing the Makkah message.

With the new *naskh* theory developed by Al-Na'im, he has the potential to determine which verses should be implemented in modern times and which verses should be set aside from a jurisprudential point of view (not religious or ritual). When synchronized with the view of Arkoun, Al-Na'im actually still wants to have an authentic foundation in doing the renewal, namely to make the Qur'an as a corpus of pure and closed texts (*textus receptus*). In attempting to actualize Islamic law, he takes the corpus of interpretation (the result of the first corpus interpreting activity). Al-Na'im does not contradict the verses, but he compromises the verse with the social context.

In this case, it seems that Al-Na'im sees the purpose of law enforcement, the verses of the Qur'an, adapted to the cultural context of society according to the time. The attempt to uphold the *maslahah* as an essential element for the purposes of the law has to consider not only *qasd al-Shari'* (the legislator's purpose) but also *qasd al-mukallaf*. In other words, all subjects, both in the linguistic and cultural sense, must understand a command that is *taklif*. The loading or *taklif* must be in harmony with the human (*qudrat*) ability, eliminating difficulties (*mashaqqah*), and others (al-Shatibi, tth.: vol. II, 20).

It can be concluded that there are similarities and differences between Al-Na'im and the commentary scholars who do not recognize the existence of *naskh* in the Qur'an. The similarity is that no al-Qur'an text is deleted. *Naskh* is interpreted as a shift from legal text to other legal text or explanation of the exhaustion of a command. Al-Na'im and earlier clerics also recognized the evolution of Islamic law legislation in the Qur'an. However, the difference is that the earlier scholars built the theory of evolution historically chronologically, meaning that the perfection of the law is achieved through historical stages so that the last one is considered the ideal condition. As for Al-Na'im, the ideal conditions are Makkiyah texts, but the ideal text could not be applied at first because the condition of the audience (*mukallaf*) was not ready to accept it, so the implementation was postponed and instead Allah introduced the first texts which could be applied in accordance with the conditions of that time, namely the texts of Medina. According to Al-Na'im there are two types of renewal that the majority of nations of the nineteenth century governments have done. First, replace shari'a with secular law in trade, civil, constitutional and criminal matters. Secondly, renewal is

done by continuing to hold the principles and rules of shari'a as applied in family law and inheritance for Muslims (Al-Na'im, 1996)

In the "renewal" of shari'a family law and inheritance, (Al-Na'im, 1996) taking from Anderson, *Law in the Muslim World*, explains that the official authorities in the majority of the Muslim nation have adopted the following techniques: First, *takhsish al-qadha* (the right of the authorities to decide and corroborate judicial decisions), is used as a procedure to limit the application of shari'a to the problems of civil law for Muslims. The same procedure is also used to prevent the trial of the application of shari'a under specific circumstances without altering the substance of the relevant shari'a rules. For example, to prevent children's marriage, Egyptian law in 1931 dismissed matrimonial assistance through courts by blocking courts from allowing a marriage claim if a husband has not reached the age of 18 or a wife has not reached 16 years during the process of that trial.

The second is *takhayyur*; selecting opinions within certain jurisprudence schools and not choosing the dominant opinion within the thought, including permitting the selection of opinions from other *Sunni* schools. This eclectic way is used in Sudan through *fatwa* (judicial directives) which allow the courts to deviate from the rules of the Hanafi School, which is recognized as the official school for matters relating to the civil law of Muslims. *Takhayyur* is also called *talfiq*, and this technique is used to incorporate part of the doctrine of a jurist or other school. In this case, an authority sets up a provision that cannot be approved entirely, by many judges or schools of the past, although each component can claim that they are the most original. A practical example of this can be found in Egyptian law of 1925, which regulated and limited the freedom of husbands to divorce their wives by slowing the divorce process. The wider use of this method was in Chapter 37 of Egyptian Law of Testament Disposition in 1946, which takes the principle derived from *Shi'i* fiqh without explanation as to why it was done.

Third, a form of reinterpretation is used to limit the freedom of men to divorce and do polygamy. For example, the Tunisian Law of Personal Status 1995 states that divorce is not authorized except by a court ruling, and courts are permitted to require husbands to pay some money in compensation if the court feels that the husband is not fair to his wife or sought - find a reason to divorce. In countries such as Syria and Iraq, reinterpretation is used to require court recognition of polygamous marriages to ensure the fulfillment of the demands of Qur'an justice among potential wives. Reinterpretation is excessively used by the Tunisian law of 1956, which prohibits at all polygamy on the basis of unacceptable polygamy and the demand for justice to wives as required by the Qur'an is impossible for anyone but the prophet.

Fourth, *siyaa*h shar'iyah (the wisdom of the ruler to impose useful administrative rules and not contrary to shari'a) is also used to introduce various forms of renewal. For example, to impose a general principle of shari'ah that requires a wife to obey her husband, shari'a allows the husband to force the conduct of *ta'at* (obedience of the wife). At the same time the Shari'ah strictly limits the various circumstances concerning the guardianship of a child, to a wife or husband. Stopping obedience while securing a husband in the guardianship of his son, article 145 of The Syrian Law of Personal Status 1953 states that if a wife is disobedient and her child is over five years old, the court may place them wherever they are deemed more secure, and welfare is provided to them.

Fifth, in India and in other former British colonies, the renewal was done through various court decisions in the manner used in customary law tradition (Fyzee, 1964). Renewal through the court decision is not envisaged as a mechanism for opposing or altering the principles and rules of shari'ah based on clear and definite Qur'an and *sunnah*. The Lahore High Court expresses this restriction clearly: "If there are uncertain rules of decisions in the text of the Qur'an and Tradition (*sunnah*) ... then the court may use individual reasoning and, therefore, it will necessarily be demanded by a fair, equal, and good conscience." The court only states the right to be from the view of existing legal experts, not the right to refuse the application of shari'a rules based on clear and definite texts of the Qur'an and / or *sunnah*. Shari'ah, in the understanding of Al-Na'im, "is not the whole of Islam itself but only an interpretation of the basic texts as understood in a particular historical context." The interpretation and practice of all religions, including Islam, are strongly influenced by sociological, economic conditions and certain people's politics. Of course, there are variations and local peculiarities, as well as the religious legal system, such as shari'a. Therefore, shari'a, which has been drafted by pioneering jurists, can be reconstructed on certain aspects as long as the reconstruction is also based on the same basic Islamic sources and is fully compatible with the moral and religious message. "Therefore Al-Na'im sues the sacralization of the results of the understanding of shari'ah historically, moreover he considered shari'a, was inadequate and unjust, whereas shari'a is considered by Muslims as part of faith (Al-Na'im, 1996). For al-Na'im, shari'a is a matter of the personal relationship of man with his god and becomes as a kind of life ethic. Therefore, the effort to make shari'a formal shows the understanding of shari'a is still narrow. According to him shari'a is broader than just arranging things like that, that is how to uphold social justice and a more peaceful life. Thus the community needs to rethink about shari'a, so that shari'a can be more relevant to answer every contemporary matter of the modern world.

When commenting on Islamic law related to public affairs such as hudud law, qisas and the like, it is said, "the public law embodied in shari'a is wholly justified and consistent with its historical constancy. However, it cannot be an excuse and does not consistently correspond to the contemporary context. Various aspects of public law in shari'a in the political context are no longer accurate. The Islamic public law is not functional through the expression of its thesis: "As long as Muslims remain faithful to the shari'ah framework of history, they will never really achieve the level of imperative reformation that Islamic public law can function now (Al-Na'im, 1996) For him the perfect one is always making changes and developments. Human perfection is like the image of God Almighty Himself when he says: "every day He (showing Himself) is in a new state" (Surat al-Rahman 55:29).

About the concept of *ijtihad*, it is understood by Al-Na'im as a generic term that is the effort to apply the Qur'an and Sunnah factually in order to maintain the authenticity of Islam that involves human interpretation. Modern

shari'a supporters always talk about *ijtihad* in response to all the problems facing the *ijtihad* of modern shari'a applications. Al-Na'im also holds that *ijtihad* as a serious effort to solve public problems requires a seriousness and seriousness. Barriers are indeed possible, but they are not something that was created to deny the possibility of such a strict requirement for the sake of the exercise of *ijtihad*. They should not be controlling, but in order to place the role of *ijtihad* in the proper position so that anyone may be able to solve the contemporary problems of the people. The authority to decide who is eligible to carry out *ijtihad* and how every Muslim exercises it is, according to him, a matter of religious belief and duty (Al-Na'im, 2007).

With regard to Al-Na'im's opinions and arguments about his understanding of shari'a, it seems that he follows postmodernist thought, which rejects all forms of authority and affirms the relativity of shari'a. For shari'a is considered a product of human thought projected from the Qur'an and Sunnah, and therefore it can not be separated from the influence of space, time, historical context, social, and political interpretation. Shari'a is thus not sacred and even permanent that it can be applied to all times and places. Here Al-Na'im seems to assume that everyone has the ability to access, understand, and interact with the Qur'an and Sunnah. The opinion of Al-Na'im is not much different from what is expressed by other secular thinkers such as Ashmawi, Nasr Hamid, Syahrur, and so on. Relativism of understanding and desecration of such shari'a is very dangerous because it will imply on the idea that religion itself is the result of human creation, which means Islam is a product of human mind. This opinion has very serious implications. It not only confirms the religious disregard, but also undermines the position of shari'a law. Al-Na'im does offer the possibility of the application of shari'a through the path of democracy. He said that in order to make Islamic law a rule and public law, he should gain international public recognition. However, Al-Na'im quickly relates it with modern constitutional framework and international human rights principles, and at the same time blurs the difference between the principles of basic Islamic teachings (shari'a) with historical practices and jurisprudence of Islamic law.

Shari'a pioneer jurists argue that *ijtihad* can not be done in matters ordered by the Qur'anic and Sunnah texts which permit coercion and the use of force, by pioneer jurists considered legally binding, as revealed during the time of Medina and strengthened by the practice of the prophet until his death in 632 AD. Therefore, these principles and rules can not be abrogated or changed through *ijtihad*. Al-Na'im sees an important spiritual value in *ijtihad* and that value is not accommodated in the order of requirements to become mujtahid in historical shari'a. The appreciation of spiritual values is inseparable from rationality, but not from rationalism. Likewise the element of religious duty, it shows the existence of the responsibility of fellow Muslims against the enforcement of shari'a, thus, Al-Na'im through rational argument affirms that *ijtihad* means enforcing shari'a, of course including the issue of shari'a public law. With rational and spiritual arguments, his insights and arguments on *ijtihad* can be used as initial capital to receive his thinking about the Islamic Shari'a Public Law.

Epistemologically, the stipulation of Islamic law is done by using the science of tools, namely the proposition of *fiqh*, and in this science the existence of the concept of "*qat'i* and *zanni*" is recognized. This concept is used to express a degree of truth (validity); *qat'i* denotes absolute truth, on the contrary *zanni* denotes relative truth. In terms of scientific authority (the field of jurisprudence), it has been formulated that the knowledge of Islamic law produced through the interference of human reason in the excavation of the Qur'an and Sunnah is called *fiqh*. On the contrary, the knowledge of Islamic law which is not interfered with by reason is not called *fiqh*, but shari'ah (Effendi, 2008).

In principle, in building Islamic law, understanding of the content of *nash* is a necessity which means *ijtihad* will always emerge. What is expected is *ijtihad* which uses dynamic reasoning and inclusive reasoning. With dynamic reasoning, *ijtihad* is used as a means to seek truth based on the liberating *fiqh* (*fiqh tahrir*), not the *fiqh of taqlidin* (Rahman, 1982). Furthermore, the transformation of Muslim attitudes towards its relationship with shari'a, including Al-Na'im, involves the arena of nation action through government policies, legal reforms, and constitution. In addition, there is also a community domain on an individual or communal level that has a goal to combine the values of neutrality of political power against shari'a, constitutionalism and human rights as something that is at least consistent with shari'a. The two dimensions of transformation, whether through the change of official institutions or changes at the level of civil society, are in fact mutually dependent and mutually supportive. Each goal may require different actions and strategies, depending on the social and cultural context of each. However, these two types of transformations are closely related, in which one is cause and effect for the other one.

Apparently in the context of this issue, Al-Na'im posits his thought that Shari'a is not the whole of Islam itself but only an interpretation of the texts that are understood in a particular historical context. Likewise he states that shari'a is inadequate and unjust, which must be reformed. He also state that Islamic shari'a law is fully valid and in accordance with its own historical context, but that does not make it valid and appropriate because of the concrete realities of modern states and the international order with contemporary contexts. The aspects of shari'a public law are, politically, untenable (Al-Na'im, 1996). But when he puts forward his idea of how to construct shari'a public law, Al-Na'im does not propose a new theory, but he notes that he realizes it is unlikely that the majority of Muslims continually receive secularization in their public life because modern secularists, "wherever are people elite, which impose their renewal through the control of power structures. As a result, the Muslim people, who eventually learned the principles of shari'a, saw the law of successors on the surface only. Therefore a better approach, he argues, is to consider the Shari'a public law and the historical experience of Muslims with the standards applicable at (Al-Na'im, 1996) the time of Shari'a applied and seek to develop alternative Islamic principles for public law for modern application (Al-Na'im, 1996). Thus the two types of Islamic legal reforms proposed by Al-Na'im can be equated with the transformative and reformist typology as described in the preceding chapter. About Al-Na'im himself, he can be called reconstructive reformer.

4. Conclusion

Based on the description in the previous chapters, some conclusions can be drawn as follows. First, shari'a public law, in the view of Al-Na'im, is considered inadequate and unjust, which consequently does not work in modern life. The right alternative Islamic law to implement today is Islamic law based on concrete reality, not God, so that it can solve problems and it is addressed to right target. The standard for its validity and accuracy is the defense of human values, supported by two arguments, namely: moral arguments and empirical arguments. These arguments require that "one should treat others as he wants to be treated so by others" (the principle of reciprocity), and follow the practices of the life of the modern nations. Muslims are justified in self-determination with Islamic identity, including the application of Islamic law, provided it does not violate the legitimacy of individual and collective rights of others, within or outside the Islamic community. In order to establish such appropriate alternative shari'a law, a reinterpretation of the texts is required.

Al-Na'im reconstructed the old legal theory, the theory of the *naskh* with a new theory, which is the reverse *naskh* theory to revive the verses erased by traditional *naskh* theory. When there are verses that are contrary to human needs and benefits, they are not practiced, and other relevant *naskh* is searched. In this way, *shari'a* public law becomes functional to meet the needs and developments of the times. The concept of *shari'a*, understood by Al-Na'im, as the result of human interpretation, deprives the nature of *qat'i*, and is considered contradictory to the '*tashri'* theory. Second, there are the strengths and weaknesses of Al-Na'im's thought and renewal. The strength lies in; the idea level or the rational and objective approach based on two arguments, one being moral and empirical. The concept of Al-Na'im reform; if most Islamic reform scholars questioned the text of the Qur'an directly, capturing the substance of the verse, considering human values subordinated to divine considerations, the theology of tolerance he always puts forward, his ideas against gender-based discrimination, equality before the law, does not make secularism as the basis for Islamic law reformation. He prefers to synchronize the teachings in Islam including in the practices of Islamic government when the Prophet Muhammad (Peace be upon Him) was still living with the current conditions of modern life of the community.

The disadvantage lies in the methodological aspect in which the *naskh* theory used is the adoption of his teacher, Mahmud Muhammad Taha, which is nothing more than a reconstruction of the *naskh* theory already existing in *Ushul Fikih*, a misconception of the concept of the *naskh*. The assumption of Al-Na'im, that between verses Madaniyah with Makiyyah verse, the process of *naskh* has occurred, is an argumentation that lacks the validity. It is an absurd idea in which the renewal of Al-Na'im Islamic law still seems imposed, remembering that its methodological framework still uses the old framework (the concept of *naskh*), but the text is forced to be subject to the demands of reality. It has not offered a structured textual-contextual analysis tool that is more likely to bear humanistic laws but generally still demanded by revelation.

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