



Historical Sharia vs Modern Sharia: Measuring the Islamic Public Law Paradigm

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Abstract

This article aims to analyze the modern sharia paradigm offered by Abdullahi Ahmed An-Na'im as an effort to reconstruct Islamic public law to be compatible with the modern constitutional state. This research is normative legal research with a philosophical approach that relies on the study of literature on the main works of An-Na'im and relevant literature. The data is analyzed qualitatively through content analysis and philosophical interpretation to uncover the conceptual constructions of historical and modern sharia. The results of the study show that An-Na'im deconstructed historical sharia by shifting the normative orientation from the specific legal formulation to the universal values of the Qur'an through the reinterpretation of the relationship between Makkiyah and Madaniyah verses. Sharia is no longer positioned as a positive state law, but rather as a source of public ethics that operates through public reason within the framework of constitutional democracy. The reconstruction gave birth to a paradigm of universal citizenship that rejected the differentiation of legal status based on religion, gender, and social identity, and placed justice, freedom, equality, and human dignity as the foundation of Islamic public law. Although there is still debate about the methodological legitimacy of the reinterpretation of the naskh concept, the An-Na'im paradigm offers a framework of renewal that expands the possibilities of dialogue between sharia and modern public law without relinquishing the normative dimension of Islam.

Keywords: Deconstructing Sharia, Islamic Public Law; Abdullahi Ahmed An-Na'im

Abstrak

Artikel ini bertujuan untuk menganalisis paradigma syariah modern yang ditawarkan oleh Abdullahi Ahmed An-Na'im sebagai upaya merekonstruksi hukum publik Islam agar selaras dengan negara konstitusional modern. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan filosofis yang mengandalkan studi pustaka terhadap karya-karya utama An-Na'im serta literatur relevan lainnya. Data dianalisis secara kualitatif melalui analisis isi dan interpretasi filosofis untuk mengungkap konstruksi konseptual syariah historis dan syariah modern. Hasil penelitian menunjukkan bahwa An-Na'im melakukan dekonstruksi terhadap syariah historis dengan menggeser orientasi normatif dari rumusan hukum yang spesifik menuju nilai-nilai universal Al-Qur'an melalui reinterpretasi hubungan antara ayat-ayat Makkiyah dan Madaniyah. Syariah tidak lagi diposisikan sebagai hukum positif negara, melainkan sebagai sumber etika publik yang beroperasi melalui nalar publik dalam kerangka demokrasi konstitusional. Rekonstruksi tersebut melahirkan paradigma kewarganegaraan universal yang menolak pembedaan status hukum berdasarkan agama, gender, dan identitas sosial, serta menempatkan keadilan, kebebasan, kesetaraan, dan martabat manusia sebagai landasan hukum publik Islam. Meskipun masih terdapat perdebatan mengenai legitimasi metodologis atas reinterpretasi konsep *naskh*, paradigma An-Na'im menawarkan kerangka pembaruan yang memperluas peluang dialog antara syariah dan hukum publik modern tanpa menanggalkan dimensi normatif Islam.

Kata Kunci: Dekonstruksi Syariah; Hukum Publik Islam; Abdullahi Ahmed An-Na'im

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Introductiona

The birth of *the modern* nation-state and the concept of *citizenship* in it presents one of the most fundamental debates in contemporary Islamic public law discourse.¹ The principle of modern citizenship is built on the normative assumption that all citizens have an equal position before the law and the state without distinction of religion, gender, race, or social status.² Within this framework, the state is positioned as a political institution that gives equal rights and obligations to all citizens as equal legal subjects. The concept is a historical product of political modernity born from the transformation of *post-Enlightenment* thought and is not found explicitly in the political configuration of pre-nation-state societies.³

The problem arises when the principle of modern citizenship is faced with historical sharia that develops in the tradition of classical Islamic civilization. As stated by Wael B. Hallaq, sharia is not only understood as a set of legal norms, but also as an epistemological, moral, social, and political system formed through the long historical experience of Muslims.⁴ In its historical construction, sharia develops in the context of a society that recognizes the differentiation of legal status based on religious identity, gender, and social status.⁵ Therefore, the relationship between Muslims and non-Muslims, men and women, as well as free people and slaves is not always placed within the framework of formal equality as understood in modern concepts of citizenship.

This is where the tension arises. On the one hand, sharia (of course what is meant in *isni* is historical sharia, including *fiqh*) represents a normative heritage that is formed in certain socio-political contexts and has a different public legal structure from modern nation-states.⁶ On the other hand, sharia seeks to reinterpret Islamic normative traditions in order to interact constructively with modern principles such as democracy, human rights, constitutionalism, and equal citizenship. Thus, the debate on public law in the context of the nation-state is actually not only concerned with technical constitutional

¹ Samy Ayoub, "Peace as a Legal Presumption in Islamic Law: Territoriality, Nationality, and the Promise of International Law," *Islamic Law and Society* 33, no. 1–2 (2025): 100–144, <https://doi.org/10.1163/15685195-bja10074>.

² M. C. Loureiro, "Critical Citizenship Theory Law, Race and Rights Through the Portuguese Empire," preprint, SSRN, 2026, <https://doi.org/10.2139/ssrn.7210838>.

³ Ali Fuat Gokce dkk., "Historical Development of the Concept of the Modern(Ity)," preprint, SSRN, 2025, <https://doi.org/10.2139/ssrn.5686502>.

⁴ Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (Columbia University Press, 2013), hlm. ix.

⁵ Karmawan Karmawan dan Teguh Prawiro Teguh Prawiro, "Dowry from the Perspective of Islamic Law and Local Culturehas Been Critical of Society Practices," *Social Science Academic* 4, no. 1 (2026): 795–810, <https://doi.org/10.37680/ssa.10104>.

⁶ Hafizul Husni dkk., "SOCIAL AND POLITICAL DIMENSIONS IN ISLAMIC STUDIES: AN ANALYSIS OF THE CONTEMPORARY RELEVANCE OF SHARIA VALUES," *Jurnal Al-Ijtima'iyyah* 11, no. 2 (2025): 241–56, <https://doi.org/10.22373/al-ijtima'iyyah.v11i2.32515>.

issues, but also touches on the more fundamental issue of the transformation of the paradigm of Islamic public law in the modern era.

In this context, there are various intellectual responses regarding the relationship between sharia and the nation-state. A growing spectrum of thought moves from positions that reject the compatibility of the two to approaches that seek to establish a normative synthesis between Islamic traditions and modern public law within the nation-state. One of the important representations of the first position can be found in the thought of Taqiyuddin an-Nabhani. Through the idea of the caliphate that he developed, an-Nabhani placed sharia as the sole and main source in the formation of public policies and laws, the management of power, and the administration of the state. Sharia is understood as a normative system that is comprehensive (*syāmil*) and perfect (*kāmil*), so it does not require the legitimacy of the modern political paradigm.⁷ Consequently, the principle of nation-state citizenship that demands absolute equality between citizens is seen as contrary to the historical sharia normative structure that recognizes the differentiation of certain legal statuses. In this perspective, the relationship between sharia and *nation-state* is antagonistic and does not allow for conceptual integration.

A different view is put forward by Wael B. Hallaq. While equally rejecting the possibility of full integration between sharia and the modern nation-state, Hallaq bases his argument on epistemological and ontological critiques of modernity.⁸ According to him, *the nation-state* is a product of modern Western civilization that is rooted in the Enlightenment tradition, which is a paradigm that places humans as the center of political and legal legitimacy. This paradigm establishes a firm separation between the normative realm that represents moral values and the empirical realm that is related to socio-political practice. On the other hand, sharia does not recognize this dichotomy because the ethical, legal, and social dimensions are integrated in a normative unit oriented to God's will. Therefore, for Hallaq, the main problem is not solely the incompatibility of some sharia law rules with the concept of modern citizenship, but the existence of a very basic paradigm of civilization between historical sharia and modern nation-state.⁹

Different from these two positions, Abdullahi Ahmed An-Na'im offers a more dialogical approach. An-Na'im does not see sharia and the nation-state as two entities that must affirm each other, but as two realities that can be brought together through a process of normative reinterpretation. Within its frame of thought, sharia principles can still contribute in the modern public sphere, but not through the imposition of religious authority by the state. On the contrary, sharia values must be translated into the language

⁷ Taqiyuddin An-Nabhani, *Nizām al-Islām* (Hizbuttahrir, 2001), hlm. 82.

⁸ Danyal Ahmad dkk., "Does The Legacy of Colonialism Define Islamism? Analyzing Hallaq's Critique of Islamic Political Modernity," *Afkaruna: Indonesian Interdisciplinary Journal of Islamic Studies* 21, no. 2 (2025): 181–98, <https://doi.org/10.18196/afkaruna.v21i2.29424>.

⁹ Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*, hlm. 12-13.

of *public reason* so that they can be accepted by all plural citizens. With this approach, the concept of modern public law based on equality, human rights, and constitutionalism is not seen as a threat to Islam, but rather as a new space for the articulation of sharia values in the context of the modern state.¹⁰

The debate between an-Nabhani, Hallaq, and An-Na'im shows that there are three major paradigms in understanding the relationship between sharia and the nation-state: the integrative-theocratic paradigm, the critical-civilizational paradigm, and the dialogical-constitutional paradigm. All three reflect the struggle between historical sharia born in the context of classical civilization and "modern sharia" that seeks to find its relevance in contemporary political reality. Therefore, the study of the concept of citizenship is an important analytical instrument to measure the direction of the transformation of Islamic public law in the modern era.

Based on this background, this paper seeks to critically examine the dialectic between sharia and public law (as a logical consequence of citizenship) in the framework of the modern nation-state through the thought of Abdullahi Ahmed An-Na'im. The main focus of this study is to examine how An-Na'im constructs theoretical arguments regarding the possibility of reconciliation between sharia and modern citizenship, and the extent to which his ideas can be understood as representations of the modern sharia paradigm in contemporary Islamic public law debates.

Method

This research is *normative legal research* that uses a *philosophical approach* to examine the construction of Islamic public law as Abdullahi Ahmed An-Na'im's offer in deconstructing the concept of sharia.¹¹ A philosophical approach is used to examine the ontological, epistemological, and axiological foundations of An-Na'im's thought, so that it can be understood the conceptual building that underlies his ideas about the relationship between sharia, the state, and public space.

The source of research data consists of primary legal materials and secondary legal materials.¹² Primary legal materials include Abdullahi Ahmed An-Na'im's major works, including *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, *Islam and the Secular State: Negotiating the Future of Shari'a*, and *Islam and Human Rights: Selected Essays of Abdullahi Ahmed An-Na'im*. The secondary legal materials are in the form

¹⁰ Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press, 2009), hlm. 84-111.

¹¹ Putri Wulandari, "Normative Legal Research Methodology from the Experts' Perspective: A Comparative Analysis of Concepts and Approaches," *Archipel: Journal of Indonesian Interdisciplinary Studies* 1, no. 6 (2026): 12–25, <https://doi.org/10.65739/archipel.v1i6.34>.

¹² Satish Prakash Chand, "Methods of Data Collection in Qualitative Research: Interviews, Focus Groups, Observations, and Document Analysis," *Advances in Educational Research and Evaluation* 6, no. 1 (2025): 303–17, <https://doi.org/10.25082/AERE.2025.01.001>.

of books, scientific articles, research results, and other literature that discusses Islamic legal theory, sharia reform, human rights, and contemporary Islamic thought that are relevant to the focus of the research. Data collection is carried out through *library research* with documentation techniques. The stages of data collection include inventory, classification, verification, and systematization of various sources that are related to the research object. All legal materials are then selected based on the relevance of the substance and the level of academic authority.

Data analysis is carried out qualitatively using content *analysis techniques* combined with philosophical interpretation.¹³ The analysis begins by identifying the main concepts in An-Na'im's thought regarding historical sharia, modern sharia, secular state, and Islamic public law. Furthermore, the interpretation of the relationship between concepts is carried out through philosophical reasoning to find the coherence of arguments, normative basis, and theoretical implications of these ideas on the reconstruction of Islamic public law. The results of the analysis are then presented in a descriptive-analytical manner in order to produce a comprehensive understanding of the construction of Islamic public law in the perspective of Abdullahi Ahmed An-Na'im.

Results and Discussion

Sharia Responds to Modern Public Law

The emergence of modern *nation-states* has presented significant conceptual challenges for sharia. The modern state is built on the principles of constitutionalism, people's sovereignty, equality of citizenship, and state neutrality towards various particular identities, including religion.¹⁴ Within this framework, public law derives legitimacy from citizens' political agreements that are realized through the constitution and democratic mechanisms. In contrast, sharia has historically been understood as a system of law and ethics that originated from transcendent authority and developed in a different socio-political structure than modern nation-states. This paradigm difference has given birth to a debate on how sharia can respond to the development of modern public law without losing its normative authenticity or ignoring contemporary political reality.

In the contemporary Islamic public law discourse, the issue is no longer simply understood as a conflict between religion and the state, but as an effort to find a form of relationship that allows sharia values to continue to contribute to the pluralistic modern

¹³ Frank Serafini dan Stephanie F. Reid, "Multimodal Content Analysis: Expanding Analytical Approaches to Content Analysis," *Visual Communication* 22, no. 4 (2023): 623–49, <https://doi.org/10.1177/1470357219864133>.

¹⁴ Arief Budiman, *Teori Negara: Negara, Kekuasaan, dan Ideologi* (PT. Gramedia, 2002), hlm. 27.

public space.¹⁵ Therefore, the fundamental question that arises is not whether sharia should be implemented or abandoned, but rather how sharia can interact with modern institutions such as the constitution, democracy, human rights, and equal citizenship.

The debate on the relationship between sharia and the modern state has given birth to several key paradigms. *The first paradigm* is the full integration between religion and the state that wants sharia to be the main source of positive law and public policy. This paradigm departs from the assumption that sharia has a comprehensive (*syāmil*) and perfect (*kāmil*) character, so the state must function as an instrument of implementing God's law.¹⁶ However, this approach faces serious problems when faced with the character of the modern state that rests on the principle of universal citizenship and political pluralism. As stated by Wael B. Hallaq, the concept of "Islamic state" in the sense of a modern state contains internal contradictions because historical sharia and *nation-states* are born from different civilization paradigms. Hallaq concluded that there are at least three major points that distinguish the state from sharia, namely sovereignty, paradigm, and morality. In the modern state the supreme sovereignty is in the state, while the sovereignty in the sharia is in Allah. The modern-state paradigm distinguishes what should be from what it really is; Sharia does not distinguish between the two. The modern state separates values and facts, whereas sharia always emphasizes the connection of the two.¹⁷

The second paradigm places religion and the state in a completely separate relationship through a secularistic approach. In this model, religion is positioned as the private affairs of individuals, while the state operates independently of religious considerations. Although this approach is considered to guarantee state neutrality, it also faces criticism for ignoring the fact that religion is an integral part of society's social and moral identity.¹⁸ In the context of Muslim society, sharia not only serves as a theological doctrine, but also as a source of values that shape the ethical orientation and social behavior of the ummah.

Between the two poles, Abdullahi Ahmed An-Na'im offers a more dialogical and adaptive approach in responding to modern public law. An-Na'im departs from the conceptual distinction between the state and politics. According to him, the state as a formal institution must be neutral towards various religious beliefs in order to ensure the freedom and equality of all citizens. However, state neutrality does not mean removing religion from

¹⁵ Taslim Jusmin dkk., "TRANSFORMATION OF CONTEMPORARY ISLAMIC LEGAL THINKING IN RESPONDING TO THE CHALLENGES OF TRADITION, MODERNITY, AND GLOBALIZATION," *ANAYASA : Journal of Legal Studies* 3, no. 2 (2026): 21–30, <https://doi.org/10.61397/ays.v3i2.477>.

¹⁶ An-Nabhani, *Nizām al-Islām*, hlm. 82.

¹⁷ Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*, Paperback edition (Columbia University Press, 2014), 19–36.

¹⁸ Abdullahi Ahmed An-Na'im, *Islam dan Negara Sekuler: Menegosiasikan Masa Depan Syariah* (Mizan, 2007), hlm. 62–63.

the public sphere. On the contrary, religion still has the legitimacy to participate in the political process as a source of moral inspiration for citizens.¹⁹

For An-Na'im, the characteristics of the modern nation-state that rely on constitutionalism, sovereignty, and centralization of power make it impossible for sharia to be enforced directly as state law. The modern state has a single authority in the formation of positive law, while sharia has historically developed through a process of plural interpretation and is not centralized on one particular authority. In the classical Islamic tradition, the diversity of sects and the differences of opinion among scholars show that sharia works through the dynamics of *ijtihad*, not through a monopoly of political power. Therefore, when the state claims to implement sharia, what actually happens is the transformation of certain interpretations into state law through political mechanisms, not the application of sharia in an authentic normative sense.²⁰

This argument is strengthened by An-Na'im's historical reading of the practice of Islamic rule. According to him, various policies taken by the caliphs since the early days of Islam represent more political and administrative actions of the state than religious actions in a normative sense. Policies related to security, taxation, territorial expansion, and government administration are essentially political decisions taken to maintain the stability and sustainability of the country.²¹ Thus, the history of Islam itself shows that there is a distinction between religious authority and political authority, although the two often influence each other.

However, the separation between the state and sharia does not mean eliminating the role of sharia in public life. This is precisely where An-Na'im's main contribution lies in formulating the sharia response to modern public law. He emphasized that sharia values can participate in the formation of public policy through the *mechanism of public reason*. This concept requires that every argument put forward in the public sphere be translated into a language that is rational, inclusive, and acceptable to all citizens, without relying on the exclusive authority of a particular religion.

Through this approach, sharia is no longer positioned as a source of law imposed by the state, but as a source of public ethics that provides moral inspiration for the democratic process and the formation of law. The values of justice (*al-'adl*), welfare (*al-maslahah*), equality (*al-musawah*), and respect for human dignity (*karamah al-insan*) can be the substantive foundation in the formulation of modern public law, as long as they are put forward through arguments that can be understood and accepted by all citizens.

In this context, An-Na'im's thinking represents an effort to transition from the historical sharia paradigm to modern sharia. If historical sharia developed within the

¹⁹ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, hlm. 36.

²⁰ An-Na'im, *Islam dan Negara Sekuler: Menegosiasikan Masa Depan Syariah*, hlm. 24.

²¹ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, hlm. 30.

framework of a pre-nation-state society with a differentiating citizenship structure, then modern sharia seeks to reconstruct Islamic normative values to be compatible with the principles of the modern constitutional state. Thus, the sharia response to modern public law is not realized through the symbolic formalization of Islamic law, but through the reinterpretation of the ethical substance of sharia that is able to contribute to the development of a democratic, inclusive, and just public order.

An-Na'im's approach shows that the main challenge of Islamic public law today does not lie in how to Islamize the modern state, but how to transform sharia values to remain relevant in a modern political structure based on equality of citizenship and pluralism. In this way, sharia is not understood as the antithesis of modernity, but as a moral source that continues to develop and is able to engage constructively with the dynamics of contemporary public law.

In this framework, the sharia in question is not sharia in a formalistic and symbolic sense that emphasizes the literal application of certain legal norms, but sharia in its substantive and universal dimensions. This substantive dimension is embodied in the concept of *maqāṣid al-syarī'ah* which represents the fundamental objectives of Islamic law. Maqāṣid is the normative core of sharia which contains universal values such as justice, equality, freedom, brotherhood, respect for human dignity, and protection of basic rights. Therefore, maqāṣid can be understood as the deepest essence of sharia that allows Islam to dialogue with modern socio-political reality.²²

Conceptually, the relationship between sharia, maqāṣid, and *maslaḥah* is hierarchical and interrelated. Sharia contains a set of norms and legal provisions, while maqāṣid is the goal that these norms want to realize. On a more fundamental level, maqāṣid boils down to the realization of *maslaḥah* as a human benefit. Thus, *maslaḥah* can be understood as the universal and functional language of sharia that allows Islamic values to be applied in various spaces and times, including in the context of public policy, constitutionalism, and modern citizenship.

The advantage of maqāṣid as a paradigm of public law lies in its ability to simultaneously bridge text, ratio, and reality. Maqāṣidis not trapped in a textualist approach that understands the nash literally without considering the purpose behind it, but also does not fall into extreme rationalism that detaches the law from the foundation of revelation. On the contrary, maqāṣid seeks to dialogue the three elements through the search for purpose, wisdom, and moral orientation contained in the text to be implemented in the ever-changing social context. With such an approach, maqāṣid becomes a methodological instrument that allows sharia to remain relevant in the face of the complexities of modern public law.

²² Jasser Auda, *Maqāṣid al-Sharī'ah: Dalīl al-Mubtadi'in* (al-Ma'had al-'Alami li al-Fikr al-Islamy, 2011), hlm. 14.

However, An-Na'im considers that the formulation of the classical *maqāṣid* still faces a number of limitations, especially when the concept of *maṣlaḥah* is interpreted solely as a *utility*. In the classical tradition of *ushul fiqh*, benefits are often understood as everything that brings benefits and rejects harm. This understanding was born in the context of pre-nation-state societies whose political structure was still based on religious communities. As a result, benefits are often interpreted as benefits for the Muslim community as the dominant group, or as the greatest benefit for the most numerous groups. This paradigm has similarities to utilitarianism in modern political philosophy which makes happiness or *the greatest happiness for the greatest number* as a moral standard in policy-making. In its historical context, this approach is understandable and even progressive in its time because it seeks to maintain the stability and sustainability of the community. However, according to An-Na'im, this paradigm is no longer adequate to answer the demands of the modern nation-state built on the principle of equality of citizenship.²³

In the modern country, all individuals are positioned as citizens who have the same rights and obligations before the law without distinction between religion, ethnicity, race, or other identities. Therefore, if the benefit of the majority is used as the only measure in public policy, there is a risk that minority groups will be marginalized and lose the protection of their rights. In such a situation, the concept of *maṣlaḥah* can actually turn into an instrument of legitimacy for the dominance of the majority group over the weaker group.

In addition, the utilitarianistic paradigm tends to assume that collective well-being automatically represents individual well-being. In fact, in practice, the interests of the community are not always identical to the interests of each individual in it. In order to achieve certain collective goals, individual rights are often sacrificed. A similar criticism was put forward by John Rawls through the theory of *justice as fairness*, which rejects the sacrifice of individual rights in the name of the welfare of the majority. For Rawls, justice must guarantee equal protection of the basic rights of every individual as a prerequisite for the creation of a just society.²⁴

Departing from this criticism, An-Na'im proposed the reconstruction of *maqāṣid* through the human rights paradigm. According to him, human rights are the most possible normative framework to translate the universal values of sharia into the context of modern nation-states. By making human rights a paradigm of *maqāṣid*, sharia is no longer understood in the framework of the benefits of certain groups, but as an instrument of protection of the dignity and rights of every human being equally.

This approach allows *maqāṣid* to serve as an ethical foundation for inclusive public policy. Values such as justice, freedom, equality, and respect for human dignity are no

²³ Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Yrcause Univ. Press, 1996), hlm. 164.

²⁴ John Rawls, *A Theory of Justice* (Harvard University Press, 1971), hlm. 28.

longer understood as the exclusive rights of the Muslim community, but as universal rights inherent in all citizens. Thus, *maqāṣid* not only functions as a theory of the purpose of Islamic law, but also as a paradigm of citizenship that is able to guarantee equality and non-discrimination in the life of the state.

However, An-Na'im argues that the historical sharia that developed in the classical Islamic tradition still retains a number of provisions that are difficult to reconcile with modern human rights principles, especially with regard to the status of women, non-Muslims, and other vulnerable groups. According to him, this problem arises because of the dominance of the reading of Madaniyah verses which are contextual in the construction of classical Islamic public law. Following the ideas of Mahmoud Muhammad Taha, An-Na'im proposed a reversal of the *naskh* paradigm by placing the Makkiyah verses containing universal values as the main normative foundation for modern public life.²⁵

In this perspective, the Makkiyah verses are seen as more representative of the universal spirit of Islam because they emphasize the principles of freedom, equality, justice, and human moral responsibility. On the contrary, a number of Madaniyah verses are understood as a contextual response to the socio-political conditions of seventh-century Arab society that do not have to be applied literally in the context of the modern state. Through this approach, sharia can be reconstructed into a public ethics system that is compatible with democracy, constitutionalism, human rights, and modern citizenship.

Thus, the sharia response to modern public law in An-Na'im thought is not realized through the project of sharia formalization by the state, but rather through the transformation of *maqāṣid* into an ethical framework oriented towards human rights. In this model, sharia remains present in the public sphere as a living source of morality, but its contribution is made through *public reason* and democratic mechanisms that guarantee the equality of all citizens. The approach represents a shift from a community-based historical sharia to a modern one oriented towards universal citizenship and the protection of human rights.

From Madaniyah to Makkiyah: from Particular to Universal

One of the important discourses in the study of the Qur'an that has direct implications for the reform of Islamic public law is the classification of Makkiyah and Madaniyah verses. Traditionally, the discussion of Makkiyah and Madaniyah has been placed in the study of *'Ulūm al-Qur'ān* as an instrument to understand the historical context of the descent of revelation. Classical and contemporary scholars basically agree on the importance of this categorization, although there are differences of opinion on the criteria used to distinguish the two. These differences are born from the variation in the methodological approach used,

²⁵ Mahmoud Mohamed Taha, *The Second Message of Islam*, 1st ed, with Abdullahi An Na'im (Syracuse University Press, 1996), 59–67.

both those that focus on the chronological aspects of revelation, the location of the descent of the verses, and the main goal of the message conveyed.²⁶

In the classical tradition, the categorization of Makkiyah and Madaniyah is generally based on three main approaches. *First*, the chronological approach defines the Makkiyah verse as a revelation that descended before the migration of the Prophet Muhammad to Medina, while the Madaniyah verse is a revelation that descended after the hijrah. *Second*, a geographical approach that links Makkiyah with verses revealed in Makkah and its surroundings, as well as Madaniyah with verses revealed in Medina and its surroundings. *Third*, a sociological approach that looks at the main target of the verse, where the Makkiyah verse is generally addressed to the people of Makkah, while the Madaniyah verse is addressed to the community of Medina.²⁷ This classification is then reinforced by various thematic characteristics that distinguish the two periods.

In general, the verses of Makkiyah are characterized by an emphasis on the issues of faith, monotheism, faith in the last days, human moral freedom, and universal human values. On the other hand, the verses of Madaniyah talk more about legal aspects, socio-political arrangements, inter-community relations, wars, family systems, muamalah, and various rules needed to build the growing Islamic society in Medina. Thus, in the classical perspective, the difference between Makkiyah and Madaniyah is basically understood as the difference in the phase of the development of Islamic da'wah: the phase of the formation of moral and spiritual foundations in Makkah, as well as the phase of institutionalization of socio-political life in Medina.²⁸

However, the classic reading is not without criticism. The question that then arises is whether the categorization of Makkiyah and Madaniyah is a normative construction that is final and binding, or is it simply the result of the ijtihad of scholars in reading the history of revelation. There is not a single verse of the Qur'an or hadith that explicitly obliges Muslims to classify verses based on the categories of Makkiyah and Madaniyah. The categorization is basically a methodological instrument developed by scholars to help understand the context of the revelation and the purpose that a verse is intended to achieve. Therefore, the classification of Makkiyah and Madaniyah is actually ijtihadi, so it remains open to reinterpretation and methodological development according to the needs of the times.

From this perspective, a number of modern Muslim thinkers seek to offer a new reading of the concepts of Makkiyah and Madaniyah. Fazlur Rahman, for example, emphasized the importance of a historical approach in understanding the universality of

ابراهيم، محمد أبو الفضل، (المكتبة، dan الزركشي، محمد بن بهادر بن عبد الله الزركشي، 95-187)، 2014، العصرية.

ابراهيم، محمد أبو الفضل، (المكتبة، dan 94-188، الزركشي، محمد بن بهادر بن عبد الله الزركشي.

أحمد with محمد عبد العظيم الزرقاني، مناهل العرفان في علوم القرآن طبق ماقرره مجلس الأزهري الأعلى في دراسة تخصص الكليات الأزهرية 97-187، (2003)، شمس الدين (دار الكتب العلمية).

the Qur'an's message through the theory of *double movement*.²⁹ Meanwhile, Nasr Hamid Abu Zayd proposes a contextual reading that is not trapped in the category of space and time, but rather focuses on the relationship between the text and the social reality that gave birth to it.³⁰ It was in this current of thought that Abdullahi Ahmed An-Na'im's ideas gained their significance.

Different from the classical scholars' approach that makes time and place as the main parameters, An-Na'im views Makkiyah and Madaniyah as two models of the message of the Qur'an that are substantively different. According to him, the difference between the two does not lie solely in the chronology of revelation, but in the normative quality and moral orientation contained in each group of verses. In this perspective, the Makkiyah verses contain universal principles that speak to all mankind without discrimination, while the Madaniyah verses contain more specific rules that were born in response to the socio-political needs of seventh-century Arab society.³¹

For An-Na'im, the main message of the Makkiyah verses is the affirmation of fundamental human equality, religious freedom, justice, human dignity, and universal moral responsibility. These values are transhistorical because they are not bound by space, time, or the identity of a particular community. On the other hand, some verses of Madaniyah contain provisions that distinguish legal status based on gender, religion, and certain social positions. In the context of the people of Medina who are building a new political community, these provisions can be understood as a pragmatic and contextual solution to the social realities faced at that time.

On that basis, An-Na'im proposes a radical reinterpretation of the relationship between the verses of Makkiyah and Madaniyah. If the *classical naskh* theory places the Madaniyah verse as the final provision that removes or limits the validity of some of the Makkiyah verses, then An-Na'im, following his teacher, Mahmoud Muhammad Taha, actually reverses this logic. According to him, the Makkiyah verses that contain universal values must be used as the main normative foundation for modern society, while the Madaniyah verses are understood as contextual formulations that are relevant to a particular historical situation.

Within this framework, the shift from Madaniyah to Makkiyah is not a chronological shift, but a paradigm shift: from the particular to the universal, from the contextual to the transhistorical, and from social regulation based on differentiation to ethical principles based on human equality. This idea is also the basis for An-Na'im's argument in reconstructing the relationship between sharia and modern public law. According to him,

²⁹ Fazlur Raḥmān, *Islam and Modernity: Transformation of an Intellectual Tradition*, Publications of the Center for Middle Eastern Studies, v. 15 (University of Chicago Press, 2017).

³⁰ Naṣr Ḥāmid Abū Zayd, *Maḥmūd al-naṣṣ: dirāsah fī uṣūl al-Qurʾān* (al-Markaz al-thaqāfī al-aḥīdī, 1987).

³¹ Abdullahi Ahmed An Na'im, *Toward an Islamic reformation: Civil liberties, human rights, and international law* (Syracuse University Press, 1996).

if Islamic public law still relies on a literal reading of the verses of Madaniyah, it will be difficult for sharia to dialogue with modern principles such as human rights, democracy, constitutionalism, and equal citizenship.

On the other hand, if what is used as a basis is the universal message of the Makkiyah verses, then sharia has a greater opportunity to transform into a public ethics system that is inclusive and compatible with the demands of modern society. The values of justice, freedom, equality, and respect for human dignity contained in the Makkiyah verses can be the normative basis for the development of Islamic public law that is responsive to the plurality of contemporary society. Thus, the sharia reform project offered by An-Na'im is actually an effort to restore Islamic law to the universal spirit of the Qur'an, which according to him is more clearly reflected in the messages of Makkiyah.³²

An-Na'im's ideas marked an important shift in the study of contemporary Islamic law. He no longer views Makkiyah and Madaniyah as mere historical categories in *'Ulūm al-Qur'ān*, but as hermeneutical instruments for distinguishing between universal messages and contextual messages in the Qur'an. Through this approach, the reading of sharia is no longer oriented towards the reproduction of past historical norms, but on the actualization of Islamic universal values that are able to answer the challenges of modern public law. Therefore, the concept of "from Madaniyah to Makkiyah" in An-Na'im thought can be understood as a project of sharia transformation from a particularistic paradigm to a universalistic paradigm, from a community-oriented law to a law that is oriented towards humanity as a whole.

Deconstruction of Sharia: from Historical Sharia to Modern Sharia

The idea of deconstruction of sharia offered by Abdullahi Ahmed An-Na'im departs from the realization that there is a fundamental tension between a number of historical sharia formulations and the principles of modern public law. These tensions especially arise when sharia born in the context of a pre-nation-state society is faced with the concept of modern citizenship that demands full equality of all citizens regardless of religion, gender, ethnicity, or social status. In An-Na'im's perspective, the main problem lies not in Islam as a normative teaching, but in the historical construction of sharia that is formed in a particular socio-political context and then considered as the final representation of the will of Islam.

On that basis, An-Na'im proposed a sharia deconstruction project through the reconstruction of the normative foundations of Islamic law. If the classical fiqh tradition relies more on the legal formulation that developed in the Madaniyah period, then An-Na'im actually made the universal messages of Makkiyah verses the basis for the formation

³² Taha, *The Second Message of Islam*.

of modern Islamic public law. Through this approach, sharia is not understood as a static collection of legal rules, but as an ethical system that continues to evolve in accordance with changing social conditions and humanitarian demands.³³

In the context of citizenship, this deconstruction is very important because the concept of modern citizenship demands equal recognition of all members of the political community. Meanwhile, historical sharia still retains a number of legal status differentiations based on religious identity and gender. These differences can be seen, for example, in the issue of criminal law, the tax system, military obligations, testimony in court, family law, and various other aspects that in modern terminology are categorized as public jurisdictions.³⁴ In the modern citizenship system, such differentiation is seen as problematic because it is contrary to the principle of equality of citizens before the law.

According to An-Na'im, the discriminatory construction of citizenship cannot be separated from the maqāṣid paradigm which is still utilitarianistic. This paradigm tends to place the interests of the majority group as the main orientation of public policy. As a result, the rights of minority groups are often in a subordinate position. Therefore, An-Na'im seeks to reformulate the concept of maqāṣid by shifting it from a paradigm of collective benefit to a paradigm of human rights that is more compatible with the principles of the modern constitutional state.

Reconstruction of Citizenship in a Modern State

In An-Na'im's thought, citizenship is understood as a person's membership in a political community organized in the form of a state. Membership is not based on religion, ethnicity, race, or other primordial identities, but on attachment to a common political community. Thus, citizenship is a political category, not a theological category.

This view is also a criticism of the tendency to equate citizenship with a certain religious or national identity. According to An-Na'im, the modern state is built on a territorial basis and political contract, not on the basis of religion.³⁵ Therefore, the rights and obligations of citizens must apply universally to all members of the political community without discrimination. Even in a global context, citizenship rights are not only the responsibility of the state, but also derive legitimacy from international norms on human rights.

³³ Na'im, *Toward an Islamic reformation*, 171–76.

³⁴ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, hlm. 126.

³⁵ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, hlm. 126.

Departing from this framework, An-Na'im offers a citizenship model that seeks to transcend the three major paradigms in modern citizenship theory, namely republican, liberal, and multicultural citizenship. He criticized the republican model for emphasizing the integrity of the state so that it has the potential to create a hierarchy of citizenship.³⁶ He also criticized the liberal model that tends to push religion into the private sphere and eliminate its contribution in the public sphere.³⁷ Meanwhile, the multicultural model is considered to have the potential to strengthen the exclusivism of group identity.³⁸ Alternatively, An-Na'im offers a concept of citizenship based on constitutionalism, human rights, and *public reason*, so that religious identity can still be present in the public space without sacrificing the principle of equality.³⁹

For An-Na'im, constitutionalism is the main principle in the formation of modern citizenship. The Constitution not only serves as the legal basis of the state, but also as an instrument to ensure equality and justice for all citizens. In this sense, a constitutional state is a state that is governed by law (*government of law*), not by the will of a particular individual or group (*government of men*). Interestingly, An-Na'im does not view the constitution solely as a formal legal document, but as a normative instrument that has an ethical purpose. The main purpose of the constitution is to create justice and *equality* for all citizens. This view shows the intersection between modern constitutionalism and the substantive values of sharia, especially the principles of *al-'adl* (justice) and *al-musāwah* (equality).⁴⁰

In practice, this goal can only be realized if the legal system guarantees equal rights and obligations for all citizens, opens equal access to public office, rejects discrimination based on religion and social identity, and establishes a public accountability mechanism that allows for citizen control over the state. Thus, constitutionalism is not only a matter of legality, but also a moral and political issue that aims to protect human dignity.⁴¹ Through this perspective, An-Na'im criticized the historical sharia model of government which, according to him, tends to concentrate power on certain political authorities and has not

³⁶ Freddy K. Kalidjernih, *Puspa Ragam Konsep dan Isu Kewarganegaraan* (Widya Aksara Press, 2009), hlm. 22.

³⁷ Ignasius Jaques Juru, *Dislokasi Wacana Kewargaan: Melampaui Liberalisme Menuju Wacana Agnostik* (RCPG Universitas Gajah Mada, 2013) hlm, 33.

³⁸ Will Kymlicka, *Kewargaan Multikultura* (LP3ES, 2011), hlm. 51.

³⁹ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, hlm. 84.

⁴⁰ An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* hlm, 70.

⁴¹ Moh Dahlan, *Abdullah Ahmed an-Na'im: Epistemologi Hukum Islam* (Pustaka Pelajar, 2009), hlm. 201.

provided an adequate mechanism for citizen participation. As a result, the goals of justice and equality are often not optimally realized.

Human Rights as a Modern Sharia Paradigm

In addition to constitutionalism, human rights are the second foundation in the modern sharia reconstruction offered by An-Na'im. Human rights are seen as inherent rights that are inherent in every individual from birth and should not be diminished by any state or social group. Within this framework, human rights serve as a moral substance, while the constitution serves as a legal instrument that guarantees its protection. Therefore, all laws and regulations must be formulated with reference to human rights principles. The relationship between the two is complementary: human rights need legal legitimacy to be effective, while law requires a moral orientation so as not to lose its direction of justice.

An-Na'im emphasized that the principles of human rights actually have strong roots in the universal values of Islam, especially those contained in the Makkiyah verses.⁴² However, he also acknowledged that historical sharia still holds a number of serious problems related to the issue of slavery, gender relations, and interreligious relations. In some respects, historical sharia still distinguishes the legal status between Muslims and non-Muslims, men and women, and other social groups. Therefore, according to An-Na'im, sharia needs to be reconstructed by making the Makkiyah verses the main normative foundation. These verses further emphasize the principles of freedom, equality, justice, and human dignity which are in harmony with the development of modern human rights. In this context, human rights are not positioned as opponents of sharia, but rather as contemporary expressions of the universal goals of sharia itself.

The most important implication of the sharia reconstruction offered by An-Na'im is the transformation of the concept of citizenship from the paradigm of *ahl al-dhimmah* to the paradigm of universal citizenship. In the classical fiqh tradition, non-Muslims living under Islamic rule are categorized as *zimmi*, which is a group that receives state protection with a certain legal status. Although this concept was relatively progressive in its time, it still contained a differentiation of status between Muslims and non-Muslims.⁴³

For An-Na'im, the concept is no longer relevant in the context of the modern state. All individuals who are bound to the same political community should be seen as citizens (*al-*

⁴² An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, hlm. 171-2.

⁴³ Fahmi Huwaidi, *Muwāṭinūn Lā Dhimmīyyūn* (Dār al-Shurūq, 1999), hlm. 117.

muwāṭinūn) who have equal rights and obligations. Religious identity should not be the basis of discrimination in access to the law, public office, state protection, or political participation. The consequence of this principle is the elimination of all forms of citizenship hierarchy that originate from religion, gender, or other primordial identities. All citizens should have an equal standing before the law, obtain equal opportunities in political life, and receive equal protection from the state.⁴⁴

The principle of equality is also the basis for the protection of the fundamental objectives of sharia (*al-kulliyāt al-khams*), namely the protection of religion (*ḥifẓ al-dīn*), the soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), the family (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*).⁴⁵ In the modern country, the protection of these five basic objectives can only be realized if all citizens obtain equal legal recognition.

The sharia deconstruction project offered by An-Na'im is actually an effort to transform sharia from a legal system oriented to a religious community oriented to a public ethics system that is oriented towards universal humanity. This is what is called the shift from historical sharia to modern sharia: a process of reinterpretation that seeks to preserve the fundamental values of Islam while adapting them to the principles of constitutionalism, human rights, and modern citizenship. In this perspective, the modernization of sharia does not mean abandoning Islamic traditions, but rather actualizing its universal dimensions in order to remain relevant in contemporary political and legal life.

Conclusion

The debate on the relationship between sharia and the modern nation-state essentially reflects the tension between historical sharia born in the context of pre-modern society and the demands of modern public law based on equality of citizenship, constitutionalism, democracy, and human rights. In this context, Abdullahi Ahmed An-Na'im's thought offers a transformational paradigm that seeks to reconstruct sharia through the reinterpretation of its normative foundations, from a particularistic orientation to a universalistic orientation.

An-Na'im rejects the formalization of sharia as state law and shifts its role to a source of public ethics that operates through a mechanism of public reason. Through a rereading of the relationship between Makkiyah and Madaniyah verses, he places universal values such as justice, freedom, equality, and human dignity as the main basis for the development of Islamic public law. The reconstruction encourages a shift from the *ahl al-dhimma*

⁴⁴ An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*, hlm. 126.

⁴⁵ Jamaluddin Athiyah, *Nahw Ta'fīl Maqāṣid al-Syarī'ah* (Dār al-Fikr, 2003), hlm. 28.

paradigm to universal citizenship, where all citizens have equal rights and obligations without discrimination of religion, gender, or other social identities.

Thus, the project of deconstruction of sharia offered by An-Na'im is not intended to abandon the Islamic tradition, but rather to actualize its universal dimension to be compatible with the reality of the modern state. However, critically it can be noted that this paradigm still leaves a methodological debate regarding the legitimacy of the reversal of the naskh concept and the placement of the Makkiyah verse as the main normative foundation. Despite the controversy, An-Na'im's thought made an important contribution to the development of contemporary Islamic public law by presenting a more inclusive, democratic, and socially oriented model of relations between sharia, the state, and citizenship.

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