

## **DECONSTRUCTION OF SHARIAH ABDULLAHI AHMED AN-NA'IM; AN ALTERNATIVE THINKING OF SHARIA-BASED LEGAL REFORM**

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### **Abstract**

*Abdullahi Ahmed an-Na'im's Sharia Deconstruction is an alternative thought in sharia-based law reform. This thinking tries to reflect back on the dominant authority and interpretation in the Islamic legal tradition, by proposing an approach that is based on universal values such as fairness, fairness, and protection of human rights. An-Na'im argues that Islamic law must be seen as a social construction formed through a historical process and a particular context, and must be reconstructed in accordance with the demands of modern times. An-Na'im's sharia deconstruction approach also emphasizes the importance of freedom of religion and equality in society. He proposed peace between religion and the state, in which the state must treat neutrally and treat all citizens without taking sides or discriminating against certain religions. This thinking aims to create a legal system that is more inclusive and democratic, which involves the active participation of the community in determining appropriate laws and policies. Even though an-Na'im's deconstruction of sharia provides an alternative perspective in sharia-based legal reform, this view is still the subject of presumption among Islamic scholars and scholars. There are various viewpoints in interpreting and applying Islamic law, and the an-Na'im approach is only one of many existing approaches.*

**Keywords:** *Deconstruction, Abdullah Ahmed An Na'im, Alternative Thinking*

### **Abstrak**

Dekonstruksi Syariah karya Abdullahi Ahmed an-Na'im merupakan pemikiran alternatif dalam reformasi hukum berbasis syariah. Pemikiran ini mencoba merefleksikan kembali dominasi otoritas dan interpretasi dalam tradisi hukum Islam, dengan mengajukan pendekatan yang didasarkan pada nilai-nilai universal seperti fairness, fairness, dan perlindungan hak asasi manusia. An-Na'im berpendapat bahwa hukum Islam harus dilihat sebagai konstruksi sosial yang terbentuk melalui proses sejarah dan konteks tertentu, serta harus direkonstruksi sesuai dengan tuntutan zaman modern. Pendekatan dekonstruksi syariah An-Na'im juga menekankan pentingnya kebebasan beragama dan kesetaraan dalam masyarakat. Dia mengusulkan perdamaian antara agama dan negara, di mana negara harus memperlakukan secara netral dan memperlakukan semua warga negara tanpa memihak atau mendiskriminasi agama tertentu. Pemikiran ini bertujuan untuk menciptakan sistem hukum yang lebih inklusif dan demokratis, yang melibatkan partisipasi aktif masyarakat dalam menentukan hukum dan kebijakan yang tepat. Meskipun dekonstruksi syariah an-Na'im memberikan perspektif alternatif dalam pembaharuan hukum berbasis syariah, pandangan ini masih menjadi bahan anggapan di kalangan ulama dan cendekiawan Islam. Ada berbagai sudut pandang dalam menafsirkan dan menerapkan hukum Islam, dan pendekatan an-Na'im hanyalah salah satu dari sekian banyak pendekatan yang ada.

**Kata kunci:** *Dekonstruksi, Abdullah Ahmed An Na'im, Pemikiran Alternatif*

## INTRODUCTION

Islam is a religion of *rahmatan lil'alamin*.<sup>12</sup> Islam is actually a religion that teaches peace, tolerance, openness, togetherness, egalitarianism, hard work, enthusiasm, unyielding, democratic, honest, fair, balanced between world affairs and the hereafter, wealth, motivates its people to become rich people, has sensitivity to problems -Social problems, prioritizing prevention rather than healing in the health sector by paying attention to the aspects of cleanliness of the body, clothing, food, shelter, environment, caring for exploration of natural resources, space science, and other.<sup>3</sup>

Islam is referred to as a revealed religion that has given birth to various understandings and interpretations for its adherents. The emergence of these thoughts and interpretations cannot be separated from the tug-of-war of opinions about the transcendental position of the Qur'anic revelation which is eternal, everlasting. On the one hand, the historical revelation of the Koran touches on certain localities.<sup>4</sup>

It is not surprising that the relationship between normative revelation and its historical side has resulted in continuous interpretations on the stage of Islamic history (M. Amin Abdullah 1996) Sharia is understood as Islamic teachings which are not at all interfered with by human reason. Sharia is a pure revelation from Allah, therefore it is absolute, eternal, cannot and may not be changed. With this argument, sharia is a source of fiqh, because fiqh is a deep understanding of *An Nususs Al Muqoddasah* (the holy texts). Jurisprudence, when interpreted as understanding, means that it is the process of forming law through human reasoning, in this sense fiqh is the same as ijtihad.<sup>56</sup>

Even though Islamic law has the connotation of static and unchanging Islamic law, it does not mean that it does not tolerate and accommodate change and development. According to Juhaya S Praja, there are two dimensions in understanding Islamic law.

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<sup>1</sup> Abdul Wahab Syakhrani and Muhammad Rivaldi Yulistira, "Dasar Keislaman Sebagai Agama Rahmatan Lilalamin," *MUSHAF JOURNAL: Jurnal Ilmu Al Quran Dan Hadis* 2, no. 3 (2022): 263–69, <https://doi.org/10.54443/mushaf.v2i3.43>.

<sup>2</sup> Maufur, "ISLAM SEBAGAI RAHMATAN LIL-'ALAMIN," *Jurnal Kawistara* 2, no. 1 (April 1, 2012), <https://doi.org/https://doi.org/10.22146/kawistara.3955>.

<sup>3</sup> Maulana Rohimat Asep, *Metodologi Studi Islam: Memahami Islam Rahmatan Lil'alamin*, (Yogyakarta: Gerbang Media Aksara, 2018), hal. 12

<sup>4</sup> Nuryu Wahidah dan Ezzah Nuranisah, Diskriminasi Perempuan Bercadar Dalam Perspektif Hegemoni, *Al-Mada: Jurnal Agama, Sosial, dan Budaya* Vol. 3 tahun 2020 hal. 39-49

<sup>5</sup> Husnul Khotimah, *Penerapan Syariah Islam: Bercermin Pada Aplikasi Syariah Zaman Nabi*, (Yogyakarta: Pustaka Pelajar, 2007), hal. 1

<sup>6</sup> Lina Kushidayati, Agus Fakhriana, and Iman Fadhilah, "Pengembangan Ilmu Fikih Dalam Perspektif Filsafat Ilmu," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 5, no. 2 (2014): 380–401, <https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/706>.

**First**, Islamic law has a divine dimension because it is believed to be a teaching originating from the Most Perfect and Most True. In this dimension, Islamic teachings are considered as teachings that are kept sacred.

**Second**, Islamic law has an insaniyah dimension, in this dimension, Islamic law is a serious human effort to understand teachings that are considered sacred by carrying out two approaches, namely the linguistic approach and the maqosid approach. In this dimension, Islamic law is understood as a product of thought carried out by various approaches known as *Ijtihad*.<sup>78</sup>

## **METHOD**

The writing of this research uses a normative method through literature review (library research), which is a research process carried out by collecting, studying, and analyzing various relevant sources such as books, scientific journals, articles, theses, dissertations, and other related publications. the topic or problem being researched. The purpose of a literature review is to understand and compile pre-existing information on the topic being researched.

In a literature review, researchers will look for references related to the research topic to be studied. Then these references will be studied in detail to gain an in-depth understanding of the topic. In addition, researchers will also analyze and evaluate the contents of these references, as well as compile a synthesis or summary of the findings found and also based on several previous studies. The approach in this study is a conceptual approach and then analyzed qualitatively.

## **LITERATURE REVIEW**

*First*, Ahmad Taufiq's research entitled "Abdullahi Ahmad 'An-Naim's Thoughts About Sharia Deconstruction as a Solution". In this research, the author tries to re-describe the thoughts of Abdullah Ahmad 'An-Naim which is then offered as an alternative solution in responding to the discourse of modernity that is developing in Muslim countries. This alternative departs from a major theory called the theory of legal evolution and the theory of nasikh-mansukh. The hope is that with the existence of the Sharia Deconstruction theory that is found with the two theories mentioned above, it can bring sharia values, both in social institutions and especially legal

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<sup>7</sup> Asrul Hamid and Dedisyah Putra, "The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 25, 2021): 1021–43, <https://doi.org/10.22373/SJHK.V5I2.7575>.

<sup>8</sup> Praja S, *Dinamika Pemikiran Hukum Islam, dalam Jalan Sejarah dan Perkembangan Hukum Islam*, (Bandung: Remaja Rosda Karya, 200), hal. 4

institutions in responding to modernity issues that continue to develop in the midst of the dynamics of Muslim society.<sup>9</sup>

*Second*, research by Fahmi Assultoni entitled "Critical Studies on Modern Islamic Constitutionalism from the Perspective of Abdullahi Ahmed 'An-Naim".<sup>10</sup> In this research, the author formulates Abdullahi Ahmed 'An-Naim's thoughts which are comprehensive and touch on social order, politics, criminal law, human rights, including in the context of Islamic constitutionalism. Then, the focus is on the study of modern Islamic constitutionalism as one of the criticisms which is considered that these issues experience a lot of distortion or contradict the studies that are developing in general.

## **RESULTS AND DISCUSSION**

### **A. Short Biography of Abdullahi Ahmed An-Na'im**

An-Na'im, whose full name is Abdullah Ahmed An-Na'im is a student and at the same time the most serious critic of the Sudanese regime, An-Na'im was born in Sudan on November 19, 1946. Basic education up to undergraduate education was taken in his own country, Sudan while studying masters and doctoral programs abroad.<sup>11</sup>

Student (S1) An-Na'im was conducted at the Faculty of Law, University of Khartoum, Sudan. From an early age, An-Na'im was interested in law, including Islamic law, which he studied carefully at all levels of education, including his bachelor's degree. In 1970, An-Na'im successfully graduated from the Faculty with an LL.B. An-Na'im continued his studies in 1971 in the postgraduate program (S2) at the University of Cambridge in England, specializing in civil rights and their relation to developing country constitutions and international law (The Law Relating to Civil Liberties, Constitutional). From that college, An-Na'im earned his LL.M. 1973 with the scientific work "Judicial Review of Administrative Action", civil liberties law, developing country constitutions and international private law.

An-Na'im also took a master's program in criminology at the same college, namely at the University of Cambridge, England, by writing a scientific paper entitled Criminal Process, Penology, Sociology of Crime and Research Methodology. As for the

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<sup>9</sup> Ahmad Taufik, *Pemikiran Abdullahi Ahmad An Na'im Tentang Dekonstruksi Syariah Sebagai Solusi*, *International Journal Ihya Ulum Al-Din*, Tahun 2018 hal. 2

<sup>10</sup> Fahmi Assultoni, *Studi Kritis Tentang Konstitusionalisme Islam Modern Perspektif Abdullahi Ahmed An Na'im*, *Journal Of Social Community*, Tahun 2017, hal. 2

<sup>11</sup> Husniatus Salamah Zaniati, *Reformasi Syariah Dan Hak Hak Asasi Manusia (Kajian Atas Pemikiran Abdullahi Ahmed An-Naim)*, Tahun 1999 hal. 67

Doctoral program (Ph.D) (S3), AnNa'im took at the University of Edinburgh, Scotland in the field of law in 1976, with a dissertation on a comparison of criminal pretrial procedures between English, Scottish, United States and Sudanese law (Comparative pretrial -Trial Criminal Procedure: English, Scottish, U.S and Sudanese Law).<sup>12</sup>

After completing his doctoral program, An-Na'im returned to Sudan as a lawyer and lecturer in law at Khartoum University. In 1979, An-Na'im was President of the Department of Public Law at the Law School of Khartoum University. In addition to teaching law, An-Na'im is a keynote speaker for Thaha's ideas, writes for local publications, and speaks at various forums that generate interest in the idea. This role was important because Thaha himself had been banned from participating in public activities since the early 1970s.

Apart from having developed a scholarly career, An-Na'im is also active in socio-political and religious issues that are currently happening in his country Sudan, with his teachers and groups. An-Na'im carried out an opposition movement 18Adang Jumhur Salikin, Syari'ah Reform and Human Rights in Islam Critical Reading of An-Na'im's Thoughts, pp. 19-20. 14 against the government which at that time was under the leadership of General Moh}ammad Ja'far Numeiri (1969-1985). This movement reached its peak when the Numeiri regime carried out Islamization, by imposing Islamic law (Islamic law). As a state law of the results of its own interpretation in 1983 which shook the national unity between North Muslims and non-South Muslims and implemented repressive policies throughout the country.<sup>13</sup>

## **B. Civil Liberties Discourse**

The state seeks to maintain law, order and security with the authority and power to impose criminal penalties affecting individual life, liberty and property. The imposition of criminal law not only causes loss of life, liberty and property of individuals but also social defects, psychological pain and suffering.<sup>14</sup>

Therefore, it is not surprising that the criminal law administration selects for special restrictions and scrutinizes whether they are in accordance with the spirit of the

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<sup>12</sup> Adang Jumhur Salikin, *Reformasi Syariah Dan Ham Dalam Islam: Bacaan Kritis Terhadap Pemikiran An-Na'im*, (Yogyakarta: Gama Media, 2004), hal 19

<sup>13</sup> Husniatus Salamah Zaniati, *Reformasi Syariah Dan Hak Hak Asasi Manusia (Kajian Atas Pemikiran Abdullahi Ahmed An-Naim*, Tahun 1999 hal. 68

<sup>14</sup> Abdullahi Ahmed An-Na'im, *Dekonstruksi Syariah: Wacana Kebebasan Sipil, Hak Asasi Manusia, Dan Hubungan Internasional Dalam Islam*, (Yogyakarta: Lembaga kajian islam dan social, 2012), hal. 175

national constitution and international instruments. It is significant in my view that most modern Muslim countries have taken this particular approach to penal law in their national constitutions. Sharia does not regulate permanent residency for non-Muslims in Islamic countries unless there is a temporary (safe) residence permit which is limited in terms of the length and conditions of their stay; or if they are guaranteed Dzimma status. Non-Muslims do not have civil and political rights even though they were born and raised in the territory of an Islamic state. Consequently, non-Muslim citizens do not have the right to participate in community life, even though their lives and property are safe. They have no communal autonomy in their private affairs unless they have dzimma status.

### **C. Human rights**

Article 1.3 of the UN charter requires cooperation for all members of the United Nations to promote and fight for human rights and freedoms for all human beings, regardless of race, gender, language or religion. However, this charter does not define human rights and fundamental freedoms.

The main difficulty in creating universal norms that protect cultural boundaries, especially religions, is that each tradition has its own internal frame of reference, because each tradition draws the legitimacy of its teachings and norms from its own source. When a cultural tradition, especially religion, is associated with other traditions, the event tends to have a negative relationship, even vice versa. To affirm the loyalty and obedience of its members, a cultural or religious tradition normatively asserts superiority over other traditions. However, there is a general normative principle shared by all major cultural traditions that is capable of upholding universal standards of human rights. This principle states that a person must treat others the way he expects to be treated by others.

It is not easy to form relationships with other people, especially if there are differences in gender or religious beliefs. The goal of reciprocity is that the person must achieve the closest approximation by placing himself in the other person's shoes. This requires that a person must be equal to other people in all respects, including gender and other people's religious beliefs or beliefs.

According to the Islamic view, shari'ah are the laws of Allah which are found in the Qur'an and as-Sunnah, both in the sense of al-wahy al-matlū, which means al-Qur'ān, as well as al-wahy ghair almatlū, which means as-Sunnah. Shari'ah can be defined as Islamic teachings that are not influenced by human reason. Because Shari'ah is a pure revelation from Allah, it is absolute, eternal and unchangeable. Thus, fiqh comes from

shari'ah because fiqh is a deep understanding of al-Nuṣūṣ al-Muqaddasah, or the holy texts<sup>15</sup> (Ahmad Taufik 2018)

Slavery is one of the most serious obstacles to the two basic human demands, the will to live and the will to be free. Although it has been practiced by every great human civilization throughout history, in the sense of institutionalized and legal ownership of human beings as movable property, slavery was eventually universally condemned and repealed, both by international and domestic law. Further efforts are needed to remove all forms of exploitation and depravity that demean humanity. Indeed, in this context, we formulate a concern for slavery as a legitimate institution.

It is clear that Sharia does not stipulate slavery because slavery was the norm around the world at that time. Sharia recognizes slavery as an institution, but insists on limiting the sources that spread slavery, fighting for its status and promoting its liberation through various means, both religious and humanitarian. However, slavery was legal under Sharia law until recently. It is now impossible to reach agreement on the official institutionalization of slavery in Muslim countries. However, if conditions that allowed slavery were permitted today and a person could become a slave under those conditions, then Sharia must protect the rights of masters and slaves in the same way as it did in the 14th century.

In the Koran there are no verses that speak directly about enslaving someone, but several verses have such implications, for example when the Koran says about the right of Muslims to live with their slaves, which clearly presupposes a precedent. slave. slaves. The same can be found in the Sunnah. The only way a free-born person could be dragged into slavery was through defeat in battle, which was permitted by Sharia.

According to the pioneering jurists, enslaving the conquered infidels was one option for Muslims under Sharia law. Thus, the Shafi'i school allows the choice of four options as prisoners of war; immediately executed, enslaved, or released with or without ransom, and then further humiliated by the Hananfi school through execution or slavery.

When slavery was eventually outlawed by modern Muslim countries, in various cases from the 1960s onward, that result was achieved through secular law and not Sharia law. With the formal prohibition of slavery throughout Muslim countries, there are several

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<sup>15</sup> Ahmad Taufik, *Pemikiran Abdullahi Ahmad An-NA'im tentang Dekonstruksi Syariah sebagai Solusi*, *International Journal Ihya Ulum Al-Din*, Tahun 2018 Vol. 2 hal. 43

reasons that it is less of an issue. I agree and believe that slavery remains a fundamental human rights issue for Muslims until it is completely abolished in Islamic law.

Ahmed An Naim argues that because sharia is relative and does not entirely come from God, it is very possible for there to be reforms in sharia, even if it has to be done if it is to remain relevant to the needs of modern society. Because if that doesn't happen, Muslims have only two choices: continue to implement Sharia, even if it's not enough, or leave it and switch to other laws than Sharia.<sup>16</sup>

In Sudan, for example, images of slavery under Sharia law and Islamic literature continued to support negative stereotypes of Sudanese society from the southwestern states as a source of slavery until the late 19th century. In addition, recent news reports indicate that members of Muslim tribes in southwest Sudan consider it legal to capture non-Muslims from South Sudan and treat them as slaves in disguise.

According to Sharia, non-Muslims can reside in Muslim countries either with *dzimmah* status for non-Muslim nationals or secure status (promise or guarantee of safety) for non-Muslim foreigners. In matters of civil and family law, non-Muslims in the Islamic State must set aside their civil and municipal regulations. For Muslims, Sharia must be applied.

Some discrimination in family law and Sharia civil law includes the following matters; a) A Muslim man may marry a Christian or a Jew, but a Christian or a Jew may not marry a Muslim. Neither Muslim men nor women are allowed to marry an infidel, that is, someone who does not believe in a revealed book. b) Religious differences are a barrier to all inheritance, so a Muslim will not be able to inherit from or inherit to non-Muslims. Some discrimination based on gender in family and civil law includes the following; a) muslim men can marry up to four women at the same time, but Muslim women can only marry one man at the same time; b) A Muslim man can divorce his wife, or one of his wives simply leaving without a *talaq* contract, without being obliged to provide reasons or justifications for his actions against any person or authority. On the other hand, a Muslim woman can divorce only with the husband's consent or with a court decision that allows it on special grounds, such as the husband's inability and his reluctance to take care of his wife; c) In inheritance, a Muslim woman receives less of a share than a Muslim man when both are at the same level in relation to the person who died

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<sup>16</sup> M. Sulthon, Studi Pemikiran Abdullahi Ahmed An-Naim Tentang Hukum Pidana Islam Dan HAM, *Al-Jinayah: Jurnal Hukum Islam*, tahun 2021 Vol. 7 hal. 110



We are not here to highlight the historical basis of various cases of discrimination based on religion or sex. Where appropriate, in their view, communities may acknowledge the historical appropriateness of the justifications that might be offered for certain discriminatory issues. This could be strengthened, for example, by seventh-century Arab economic and political conditions which did not permit some or all of the above discriminatory practice rules. However, I believe that despite different historical justifications, the issue of discrimination against non-Muslim women in Sharia is no longer justified.

Looking at the discussion above, it can be concluded that the continuation of accepting slavery as a legal institution, even if only in theory of Sharia completely violates the most basic and most universal human rights. Discrimination on the basis of religion and gender under Sharia also violates the enforcement of human rights. Discrimination on the basis of religion has been built up by many as a major cause of international conflict and war as states agree that persecuted non-Muslim minorities may be encouraged to act in support of victims of religious discrimination, thereby creating a situation of international conflict and possibly war.

#### **D. International Relationship in Islam**

It is important to distinguish the basic character and purpose of international law as well as the recent manifestations of this system. The weaknesses and defects of modern international law do not in themselves negate its basic character and purpose. The objective and fundamental task of modern international law is to regulate the relations between all members of the international community of states according to the principles of equality and justice in order to create peaceful coexistence and enhance the security and prosperity of nations. and their respective citizens. The state is a subject of international law because the state is the main entity that has international rights and obligations and can carry out international plans. Modern international law usually follows in the footsteps of European state practices, as developed in European nation states that emerged since the XVII century. The practice, of course, is influenced both by factors of benefit and self-interest, the notion of reciprocity, as well as the ancient notion of agreement or agreements.

Drastic changes in international relations, particularly since the end of World War II, led to the extreme changes in international relations, especially after World War II, meant that those previously colonized and disenfranchised gained independence, allowing these new states to participate in the revision and development of international law. In other

words, if traditional international law is not truly international, it is becoming increasingly international and increasingly reflecting the opinions and interests of all the nations of the world.

One possible approach to studying international law is to focus on the actual realities of power relations and state practices. These factors and their cultural and ideological underpinnings are important for understanding the internal and external forces and processes of international relations, including their formulation and implementation.

It is clear that international law today is more international than ever before, and the practice of states which are the main force in establishing the principles of international law is increasingly motivated by higher and better goals. The United Nations Charter is perhaps the best source for what studies have called the sources and principles of international relations. The United Nations charter is a legally binding agreement for almost all countries in the world, including all modern Islamic countries. Article I of the charter states the goals of the United Nations as follows; a) to maintain international peace and security; b) to strengthen friendly relations among countries based on respect for the principle of equal rights; c) to achieve international cooperation in solving international problems such as economic, social, cultural and humanitarian. Two main issues can be noted at this stage; a) It is clear that the main concern of the charter is the maintenance of international peace and security. All member countries are bound to adhere to its goals and principles and guarantee that non-member countries will fulfill them; b) Failure to fulfill a legal obligation need not reduce the binding power of that obligation.

In other words, the problems that arise in the implementation of international law necessary for peaceful coexistence are a reason for more persistent and more consistent efforts to apply these principles, not just a reason to abandon them.

International law in its modern sense and meaning is the result of recent developments, especially since the beginning of this century. But since today's Muslims want to apply Sharia in a national and international context, it is very important to recognize and understand the principles of Sharia that have been central to Islamic practice for centuries.

Islam was born in a very harsh environment and received a very hostile response, various threats and attacks from 7th century Arab tribes, which left the early Muslims struggling to survive. Shortly before his death, the Prophet finally ruled over all of Arabia. The current norms of ethnic relations rely heavily on the use or threat of force to defend

many rights, even the right to life. The use of the threat of force was also common among various political units or systems in the region, including the two giant Northeastern and Northwestern Arab empires, the Sassanids and the Byzantines. When the first Islamic state was established in Arabia in the 7th century, violence became the basic method of regulating international relations. It is therefore inevitable that Islam will condone the use of force in relations between Muslims and non-Muslims. However, in doing so, Sharia introduced new norms to govern the various reasons for waging wars as well as in practice.

This historical context continued for the next thousand years during the emergence of Sharia law and beyond. The texts of the Qur'an and As-Sunnah, as well as reports on rules and regulations written by the pioneering jurists of the 7th and 8th centuries, must be seen as a result of the widespread use of force in international relations at that time. Since an Islamic state is defined by complying with Sharia, the exercise of Islamic rule must target non-Muslims who refuse to comply with Sharia and prohibit non-Muslims who wish to adhere to Sharia.

I believe that today's Muslims can easily understand that the quality of faith in Islam that is achieved through peaceful voluntary movements is much higher than that achieved through threats or violence. Moreover, the quality of Muslim communities built together with true legitimacy and justice is far better than those built against dissidents and separatists. For example, the inconsistent disregard for international law by major powers such as the United States has negative consequences for the credibility of the rule of law in international relations. As the world watched as the United States invaded the small island of Grenada, it is perhaps reasonable to conclude that international law is primarily a tool of the strong against the weak, and not a credible force for upholding the rule of law in the world's international relations.<sup>17</sup>

The same conclusion can be drawn from the United States' refusal to comply with the International Court of Justice's decision in the case of Nicaragua against the United States. However, I find it totally irresponsible to claim that these negative developments encourage us to abandon our efforts to support the rule of law in international relations. On the contrary, I believe that these developments should strengthen our resolve to uphold the law against anyone who violates or threatens to violate international relations. On the other

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<sup>17</sup> Abdullahi Ahmed An-Na'im, *Dekonstruksi Syariah: wacana kebebasan sipil, HAM, dan hubungan internasional dalam islam*, (Yogyakarta: Lembaga Kajian Islam, 2012), hal. 227

hand, defense means submission to total chaos, if not the annihilation of humanity through nuclear war.

#### **E. Deconstruction of Sharia Abdullah Ahmed 'An-Naim as an Alternative to Sharia-Based Law Reform**

Regarding the transformation of Islamic criminal law, al-Na'im offers the possibility of applying sharia through democratic channels. Firmly, he said that in order to make sharia-based law a public law, legislation or regulation, it must have received international public recognition. In terms of positivizing Islamic law, he quickly linked it within the framework of modern constitutionalism and international human rights principles.

In the concept offered by 'An-Naim, it puts forward the concept of sharia-based legal reform, whatever its form. In the context of Indonesia or other countries that are dominated by Muslims, it is the policy of the authorities to apply administrative rules that are useful and not against sharia. For example, 'An-Naim gives an overview of what is happening in Syria, regarding the court's permissibility to secure children in the care of their biological mothers who are seen as disobedient to their husbands. Although, at first glance it contradicts the text of the Qur'an which limits these various conditions. This also happened in Indonesia, after the New Order or what is called the momentum of the political configuration of Islamic law in Indonesia, gave rise to many sharia-based legal products, one of which is the Compilation of Islamic Law (KHI). One of the laws or rules that uphold sharia values. With the principle of usefulness and does not conflict with sharia values.

Things like this are the orientation of the idea of 'An-Naim. Regulations that are fundamentally in direct contact with society and answer the challenges and needs of society, especially in countries occupied by Muslim-majority people. Apart from the Compilation of Islamic Law (KHI), there are many other regulations or laws that practice the style of the thought of 'An-naim (red: Deconstruction of Sharia) which is used as a basis by the authorities in Indonesia in drafting a rule, including the Sharia Banking Law, the Marriage Law, etc.

Furthermore, 'An-Naim offers sociological, psychological, penalological approaches, and other disciplines that are deemed relevant in applying sharia-based law. In his ideas, he emphasized to Muslims to provide a firm and precise definition so as to avoid the misuse of the application of Islamic criminal law. The method used to control abuse is with the rule of law mechanism. Namely the process of making sharia-based law through

collective awareness, law that grows from the whole, without any coercion of an exclusive majority based on religion and the arguments of Muslims only.

Likewise, reconciliation of sharia-based law with international law. Historically, sharia-based law in international relations was heavily influenced by pre-Islamic Middle Eastern culture. These two terms became an obstacle and this was acknowledged by 'An-Naim. Thus, with the concept offered by 'An-Naim with the concept of sharia deconstruction, as an alternative in responding to the challenges of sharia-based legal reform.

## **CONCLUSION**

The conclusion from Abdullahi Ahmed an-Na'im's sharia deconstruction as an alternative thought for sharia-based law reform is the sharia deconstruction approach proposed by Abdullahi Ahmed an-Na'im is an attempt to re-reflect Islamic law by violating the dominant authority and interpretation in the Islamic legal tradition. He pushed to understand that Islamic law is a social construction that is formed through a historical process and a certain context. An-Na'im proposes that Islamic law must be seen as a framework of values and principles that lays down justice, equality, and the protection of human rights. He argues that the interpretation of Islamic law must be based on these universal principles, and that concepts in Islamic law must be re-read and reconstructed in accordance with the context and demands of modern times. An-Na'im's sharia deconstruction thinking also emphasizes the importance of freedom of religion and justice in society. He proposed peace between religion and the state, in which the state must be neutral in treating all citizens without taking sides or discriminating against certain religions.

One of the main objectives of deconstructing sharia an-Na'im is to create a more inclusive and democratic legal system. He views that sharia-based law reform must involve the active participation of the community in determining laws and policies that are in accordance with universal values. Even though an-Na'im's sharia deconstruction proposes alternative thoughts in sharia-based law reform, this view is still the subject of presumption among Islamic scholars and scholars. There are many different viewpoints in interpreting and applying Islamic law, and the an-Na'im approach is just one of many. This conclusion sums up the core of Abdullahi Ahmed an-Na'im's sharia deconstruction thinking, which encourages renewing sharia-based law by making universal values the main footing.

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