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Renewal of Islamic Law Munawir Sjadzali's Perspective and Its Implementation in Analyzing Bank Interest Law

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Abstract

Islamic law reform has always been an interesting topic to discuss. No exception is the reform of Islamic law carried out by Munawir Sjadzali. His idea of reform was expressed in the idea of re-actualizing Islamic law, which was the result of his anxiety about the ambivalent attitude of Indonesian Muslims regarding religious beliefs and practices which, according to him, were incompatible. Ijtihad for the re-actualization of Islamic law is generally based on ushul fiqh theories such as naskh, 'urf, and maṣlaḥat. This study analyzes the ijtihad paradigm of re-actualization of Islamic law as a representation of the reform of Islamic law in Indonesia and then analyzes an issue regarding bank interest. The research method used is qualitative with the type of library research. The collected data was analyzed normatively using a historical and ushul fiqh approach. This research shows that the naskh argument put forward by Munawir to build the concept of ijtihad is not strong. Likewise with the theory of benefits that he uses. As for bank interest, the opinion can be accepted that the application of the riba verse to bank interest is seen as inappropriate. There is a different character between the interest system applied in banking and the character of debt which attracts benefits (qarḍ jarra manfa'atan).

1. Introduction

Renewing Islamic law is a necessity. Because the renewal of Islamic law is a logical consequence of the necessity of ijtihad, which is one of the activities that is always needed to respond to the dynamics of society's life which continues to develop. Historically, the dynamics of social development have caused jurists to differ in formulating the construction of ijtihad in Islamic law [1]. The development of social life has given birth to the dynamic role of reason and revelation in the study of Islamic law which can be traced through the history of its legalization. Among the friends after the death of the Prophet, new ijtihads such as those carried out by Umar in several of his policies regarding ghanīmah, mustaḥiq zakat, punishment for theft, and so on, have occurred. Even more so among madzhab imams.

Imam Malik (93-179 H), who lived in Medina, was known as a textualist in formulating his ijtihad paradigm, so he was called an ahl al-ḥadīš. Meanwhile, Imam Hanafi (80-150 H) who lived in Iraq was known to be more rationalist in formulating his ijtihad paradigm and was called an ahl al-ra'yi. From these two ijtihad paradigms, Imam Syafi'i (150-204 H) who studied with Imam Malik in Medina and Muhammad ibn Hasan al-Syaibani (189 H) and other fiqh experts in Iraq, attempted and then succeeded in combining These two ijtihad paradigms have thus become an independent ijtihad building construct and are considered moderate because they take a middle path by combining text and context, dalīl naqli and dalīl 'aqli [2].

During its development, reform figures emerged from generation to generation who continued to strive to formulate a pattern of ijtihad which was expected to always be relevant to answer the problems that occurred in their time. As in recent centuries there were Muhammad Abduh (1849-1905), Rasyid Ridha (1865-1935), Fazlur Rahman (1919-1988), Wahbah Al-Zuhaily (1932-2015), and Yusuf Al- Qardhawi (b. 1926). In the archipelago itself, many figures emerged such as Muhammad Hasbi Ash-Shiddieqy (1904-1975) with his ideas on Indonesian fiqh, Hazairin (1906-1975) with his ideas on the Indonesian National School, Ibrahim Hosen (1917-2001) with his ideas on fiqh nas qaṭ'i, Sahal Mahfudz (1937-2014) and Ali Yafi'e (b. 1926) with their ideas on social jurisprudence, etc.

Among the line of thinkers and figures who reformed Islamic law, there was a quite well-known figure, namely Munawir Sjadzali (1925-2004), who offered ideas about the re-actualization of Islamic teachings. This brilliant and bold idea from Munawir Sjadzali offers a solution to the current thinking of Muslims which is considered stagnant. Munawir Sjadzali is a Minister of Religion. During his tenure as Minister of Religion, he took quite a few policies related to religious life, including three prominent agendas, first, voicing Pancasila as the principle of social organization and a basic pillar in the life of the nation and state. Second, improving educational institutions. Third, consolidate the existence of the Religious Courts and the Compilation of Islamic Law

There are also quite a lot of thoughts from Munawir Sjadzali, which are the implementation of his ideas about the re-actualization of Islamic law, including issues regarding the position of women in the household, inheritance and government, then the law of cutting off hands for thieves, slavery, bank interest, and others. Munawir Sjadzali's thoughts will be the topic of study in this article, especially regarding legal reform and its actualization on the issue of bank interest. This article attempts to examine in more depth the characteristics of the thinking and methodology he developed. The aim is to find a model for reforming Islamic law that is in contact with Indonesia's diverse culture and civilization. From this background, this research tries to answer Munawir Sjadzali's ideas about the re-actualization of Islamic teachings as a manifestation of efforts to reform Islamic law in Indonesia? How is the implementation of the idea of reactualizing Islamic law on bank interest issues?

2. RESEARCH METHODS

The method used in this research is qualitative with a type of literature. Data regarding related themes in the form of Munawir Sjadzali's biography and thoughts were collected through library materials such as books, journals and other research results. The data collected was analyzed normatively using a historical approach and ushul fiqh.

3. RESULTS AND DISCUSSION

3.1 A Glimpse of Munawir Sjadzali's Biography

Munawir Sjadzali was born in Karanganom Village, Klaten, Central Java, on November 7, 1925. Munawir was the first of eight children. His father was named Abu Aswad Hasan Sjadzali, son of Tohari, and his mother was named Tas'iyah, daughter of Badaruddin. Of the eight siblings who lived until Munawir reached seventy years old, only three remained, Munawir himself, Hamnah Qasim (fifth child), and Hifni (sixth child), Hasyim (third child) died in the 1948 war for independence, while four others died before reaching the age of five, one of whom died due to malnutrition [3].

Munawir's economic condition comes from an underprivileged family. However, his father, Abu Aswad Hasan Sjadzali, had deep religious knowledge. In the past, he sought knowledge in various areas, including the Jamsaren Islamic Boarding School in Solo, the Tebuireng Islamic Boarding School in Jombang, and the Termas Islamic Boarding School in Pacitan. This background has shaped Abu Aswad Hasan Sjadzali as a family head figure who is able to guide his family with religious values. Because of this, in the Karanganom community he is also known as a kiai. Uniquely, his father was the Muhammadiyah Branch Leader in his village but was active in the activities of the Sjadziliyyah congregation. So that his father combined traditional thoughts as a Sufi and modern thoughts like the Muhammadiyah movement. This uniqueness then also flowed to Munawir Sjadzali. As a traditionalist he always maintains eastern ethics, and as a modernist he always responds to every positive change, including renewal of Islamic law [9].

With limited economic conditions, his love for science encouraged Munawir Sjadzali to choose to study at a Madrasah. On the one hand, education at Madrasah Ibtidaiyah is relatively cheap, on the other hand, the Madrasah prioritizes Islamic sciences. After graduating from Madrasah Ibtidaiyah in his village, Munawir continued his education at Mambaul Ulum, Solo, and successfully graduated in 1943. Then Munawir began working as a teacher at the Muhammadiyah school in Salatiga. Not long after that he moved to become a teacher in Gunungpati, Semarang. It was from Gunungpati that Munawir began to enter and become involved in Islamic

activities on a national scale. He has an activist spirit and has been involved in several organizations, including as Chairman of the Gunungpati Youth Force, Chairman of the Hezbollah-Sabilillah Battle Leadership Headquarters (MPHS) and General Chairman of the Indonesian Islamic Youth Movement (GPII) Semarang. His presence in Gunungpati has also provided a blessing for Munawir. Here, for the first time, he met Soekarno, who at that time was the General Chair of the Putera (People's Power Center) during his official visit to Gunungpati.

Apart from being active in organizations, Munawir took the time to write his first book entitled "Is it possible for Indonesia to be based on Islam". A book that expresses his ideas about the relationship between the Islamic religion and the state in the Indonesian context. This book was read by Bung Hatta, the number two person in Indonesia at that time. So when one day Munawir met Bung Hatta, he was interested and finally Munawir was trusted to work in the Department of Foreign Affairs and was placed in the Arab Section where his job was to read daily newspapers and Arabic magazines from a number of Embassies of the Republic of Indonesia in Arab countries. In 1951 the Ministry of Foreign Affairs held Diplomatic and Consular Class II courses. Munawir was interested and registered but was rejected because his diploma from Mambaul Ulum was only equivalent to SLTP. However, because the Ministry of Foreign Affairs at that time already knew about Munawi's performance and were used to reading his reports, they made recommendations to the committee so that Munawir could get an exemption and the opportunity to take the course. Even Munawir was able to complete this course well. After the course was completed, Munawir was promoted by the Employee Affairs Office.

In August 1953, Munawir wanted to study political science at the University College of the South West of England, Exerter. In England, Munawir not only studied but also worked as a diplomat in Washington until 1954. While working, Munawir also took the opportunity to study political science at George Town University and wrote a thesis entitled "Indonesian Moslem Political Parties and Their Political Concepts". Munawir worked at the Department of Foreign Affairs for approximately 32 years, and his last position was Director General of Politics. Then on March 19 1983, Munawir was trusted by Suharto as Minister of Religion in the IV Development Cabinet (1983-1988) and continued his second period in the V Development Cabinet (1988-1993).

After retiring from his position as Minister, Munawir remained active as a member of the DPA, Chair of KOMNAS HAM, teaching staff at the Postgraduate Program at UIN Syarif Hidayatullah Jakarta, as well as a flying lecturer at several other universities. Then Munawir died on 23 July 2004 in Jakarta at the age of 79 years [9].

Munawir Sjadzali is a very productive figure. Even though he is very busy, this does not stop him from continuing to increase the number of works he creates, both in the form of books, papers and speeches, including:

1. Mungkinkah Indonesia Bersendikan Islam, written in 1950.
2. Indonesia's Moeslim Parties and Their Political Concept, written in 1959.
3. Problems Indonesian Experience, a paper written in 1987.
4. Islam dan Tata Negara: Ajaran, Sejarah, dan Pemikiran, written in 1990.
5. Islam Realitas dan Orientasi Masa Depan Bangsa, written in 1993.
6. Bunga Rampai Wawasan Islam Dewasa Ini, written in 1994.
7. Reaktualisasi Ajaran Islam, written in 1988.
8. Gagasan Reaktualisasi Ajaran Islam, written in 1995.
9. Ijtihad Kemanusiaan, written in 1997.

3.2 Islamic Law Reform

Renewing Islamic law means changing the old law to the new law to realize human benefit in line with social, cultural and value changes that exist in society. Renewal can also be interpreted as thoughts, movements and efforts to change old beliefs, customs, institutions, and so on, to adapt to the new atmosphere that has emerged due to advances in science and technology. Therefore, the discussion of Islamic law reform focuses more on Islamic law products and analytical methods in their formulation. In Indonesia, the reform of Islamic law began to attract the attention of scholars in the 1940s, starting with Ash-Shiddieqy and Hazairin. The discourse on Islamic law reform continued to develop until the ratification of Law No. 1 of 1974 concerning Marriage is a breath of fresh air for Islamic law researchers, although in substance, these laws are diverse because they regulate all Indonesian citizens with various religious backgrounds [4].

The idea of reforming Islamic law is increasingly being widely discussed in various institutions such as universities, Islamic boarding schools, social organizations such as Muhammadiyah and Nahdhatul Ulama. This discourse finally concluded that in principle Islamic legal reform could be accepted as long as it did not conflict with the will of revelation. Therefore, renewal of Islamic law continues to be carried out until it produces a compilation of Indonesian Islamic law (KHI). KHI was then formally ratified through Presidential Instruction Number 1 of 1991 [5]. This moment became a historical reflection on the development of Islamic legal thought in Indonesia. One of the thinkers who has played a big role in the discourse on Islamic legal reform is Munawir Sjadzali with his ideas about the re-actualization of Islamic law.

3.3 The Idea of Reactualizing Islamic Law

According to Bustanil Arifin, former Junior Chairman of the Supreme Court for Religious Court environmental affairs, the idea of re-actualizing Islamic law was first put forward by Munawir on April 15 1985 when giving a speech at a meeting of the Islamic Law Compilation Committee at the Supreme Court building. Then Munawir conveyed his ideas intensively on various occasions, including: 1) Islamic Law Seminar organized by IAIN Imam Bonjol Padang; 2) Bahtsul Masa'il Syuriah Nahdhatul Ulama East Java Forum in Tambak Beras, Jombang; 3) Islamic Law Compilation Seminar organized by the Muhammadiyah Central Leadership in Yogyakarta; 4) Training for Tarjih Muhammadiyah Cadres in Yogyakarta [6].

This idea of re-actualization initially received little response from Islamic law scholars. According to him, there started to be a strong response when he conveyed this idea at the Paramadina recitation event. Then the whole idea was published in Panjimas magazine No. 543, dated 21 June 1987 with the title "Reactualization of Islamic Teachings". This article received written responses from ulama and intellectuals, of which 13 responses were then recorded and published by Pustaka Panjimas (1988) with the title Polemic on the Reactualization of Islamic Teachings [6].

The idea of reactualization was born from Munawir Sjadzali's thoughts because of his anxiety about seeing the ambivalent attitude of Indonesian Muslims towards religion. This ambivalent attitude means that on the one hand Indonesian Muslims maintain beliefs about certain teachings, but on the other hand do not practice them. The most obvious example is the issue of inheritance and bank interest. Indonesian Muslims believe that a boy's inheritance is twice that of a girl because the verse is quite clear in the QS. Al-Nisā: 11. However, many Muslim communities do not practice this by dividing inheritance according to custom because it is considered fairer. Likewise, with bank interest issues. Many Muslim communities believe that bank interest is usury, whereas usury is haram as clearly stated in the QS. Al-Baqarah: 275. However, many of those who believe that bank interest is usurious borrow money from banks for emergency reasons. It was from this background that Munawir developed his ijtihad reasoning regarding the re-actualization of Islamic teachings.

According to Ibrahim Hosen, the ijtihad re-actualization of Munawir Sjadzali's Islamic teachings is basically rooted in the construction of ijtihad of Islamic law which was put forward by Al-Ṭūfi as an expert on fiqh and maqaṣid sharī'ah and Abu Yusuf as a fiqh expert who has expertise in the field of 'urf (custom) [10]. Of the two ijtihad paradigms, the ijtihad of Islamic law carried out by Munawir Sjadzali basically only attempts to explore the substantive objectives of Islamic legal teachings. He is trying to change the understanding and interpretation of the Al-Qur'an and Al-Sunnah because of the cultural demands ('urf) of society that want it.

In his efforts to carry out re-actualization, Munawir relies on ushul fiqh arguments which guarantee a process of reinterpretation. Munawir agrees with Islamic legal experts who divide Islamic law into two categories, namely law relating to pure worship and law relating to social issues (mu'āmalah) [11]. Laws relating to pure worship have almost no room for reason to intervene. Meanwhile, the law relating to mu'amalah is very open to reason to explore how to implement it, with the interests of society and the principles of justice as the main basis for consideration. For Munawir, the interests of society and the implementation of the principles of justice can change due to differences in era, environment, customs and culture [12].

According to him, Indonesian Muslims in the context of this mu'amalah need to consider the socio-cultural living conditions of the community in understanding and making legal conclusions from the verses of the Qur'an, even though doing so may seem like they are not implementing the original meaning of the text. So that in the social aspect, even a qaṭ'i text can be modified for the reason that in its history there are also verses that are modified by other verses. Munawir understands that naskh is the verses that came later which contain modifications or cancellations of the laws or instructions contained in the verses that the Prophet received at an earlier time [7]. From this it can be seen that Munawir's understanding of naskh theory is the same as the understanding of ushul fiqh scholars in general. However, what is different is that the text according to Munawir did not only occur during the time of the Prophet but could also occur afterwards if the circumstances and conditions behind the revelation of the verse changed.

To strengthen his opinion, Munawir quoted the opinion of Mustafa al-Maraghi who said that in fact the laws were prescribed for human interests, while human interests may differ due to differences in place and time. If a law is promulgated at a time when there is a need for that law, and then the need no longer exists, then the wise attitude is to abolish the law and replace it with another law that is more appropriate to the current time [8]. Munawir also quoted the opinion of Ibn Qayyim al-Jauziyah who said that changes and differences in fatwas or legal opinions can occur due to differences in time, place, situation, goals and customs surrounding them [6].

Then Munawir also quoted the opinion of Abu Yusuf, who was of the opinion that even if a text is based on custom, and the custom then changes, then the law contained in that text also changes. This is proven by the historical fact that Umar once reinterpreted a verse that was seen as qaṭ'i, namely in the case of war booty which was regulated in the QS. al-Anfal: 41. Umar did not distribute the spoils of war in the Syam region to the soldiers, but only collected land tax (dharibah) from the owners, and the tax was then used to finance the armed forces serving there. Umar has also carried out ijtihad which is different from the qaṭ'i text regarding the issue of zakat

for converts as per QS. al-Taubah: 60. Umar did not give his share of zakat to converts on the grounds that the situation at that time had changed from the time of the Prophet and Abu Bakr, namely that the Muslim community at that time was stronger and more widespread than before, so giving zakat to them is considered no longer necessary [3].

Regarding the concept of maslahah, he said that 1) mashlahah is a stand-alone syar'i proposition whose ḥujjah does not depend on the existence of a passage. It only depends on reason alone. For him to declare that something is beneficial is sufficient on the basis of human customs and experience without the need for guidance from the text; 2) however, mashlahat is a syar'i proposition that stands alone in the context of muamalah; and 3) mashlahah is the strongest Islamic proposition, so that mashlahat not only becomes ḥujjah when there is no nas and ijmā', but can also take precedence over nas and ijmā' when there is a conflict between the two. This is because of the rule "Where there is benefit, there is God's law" [7].

Munawir Sjadzali's thoughts on the re-actualization of Islamic law as explained above are actually built on the basis of several ushul fiqh theories, among which the main ones are the theory of naskh and maslahat. As has been stated, Munawir understands the text as the understanding of ulama in general, namely that there are verses that came later which contain modifications or cancellations of laws or instructions contained in verses that were received by the Prophet at an earlier time. However, what is different is that the text according to Munawir did not only occur during the time of the Prophet but could also occur afterward if the situation and conditions behind the revelation of the verse changed.

According to the author, this opinion can be criticized from various sides. Among other things, naskh, which means cancellation or replacement of old laws with new laws, could only occur while the Prophet was still alive. Because Islamic law is law based on revelation in the form of the Koran and Al-Hadith. Meanwhile, after the Prophet died, revelations no longer came down. So the person who has the authority to annul a law to be invalid, or to replace it with a new law is the revelation itself. This means that the old law that is replaced and the new law that replaces it both come from revelation. If not, there will be new laws that do not come from revelation. Related to this, Allah says in QS. Al-Baqarah: 106 which means "Verses that We erase or remove from memory, We will definitely replace them with ones that are better than them or equivalent to them. Don't you know that Allah is Almighty over all things?"

Ushul fiqh experts stated that there was no cancellation or elimination of the Sharia law contained in the Al-Quran and Al-Sunnah after the death of Rasulullah [13]. Because revelation no longer comes down. Because if the text is allowed after the death of the Prophet, it indicates that there is no determination and certainty in the laws set by the Prophet, because everything has the potential to change. So the changes in law in the period after the Prophet died cannot be categorized as naskh, but rather are due to other influencing factors, such as the existence of 'illat at a previous time which then disappeared or changed at a later time so that the status also changed. the law of the matter. Or it could be due to the existence of a certain barrier (māni') that existed later so that the legal status beforehand was different from after the existence of the māni'. In this way, the arguments put forward by Munawir are more appropriate in the context of *al-ḥukmu yadūru ma'a 'illitiki wujūdan wa 'adaman*: the existence and absence of law rotates together with the existence and absence of reasons behind it. So it is not in the context of the text itself. An example is the case explained by Munawir himself, which was related to Umar's ijtihad regarding the portion of zakat for converts that was not distributed at that time. This is because Umar understood that giving converts a portion of the zakat during the time of the Prophet and Abu Bakr was for a legal reason ('illat) namely to attract people to Islam. However, after there were many and widespread followers of Islam during Umar's time, he felt that this reason no longer existed.

Then it is related to benefits. In fact, Munawir follows the theory of benefits put forward by Al-Ṭūfi which says that benefits can be found by reason and can take priority over scriptures. Benefits are something subjective. It could be a benefit for person A but not for person B. So this benefit needs to be a standard, namely the realization of maqāṣid al-syarī'ah, namely the protection of the right to belief (ḥifẓ al-dīn), the right to life (ḥifẓ al-nafs), the right to honor or have offspring (ḥifẓ al-nasl), the right to have an opinion (ḥifẓ al-'aql), and the right to own property (ḥifẓ al-māl). Apart from that, the standard of benefit must not conflict with the law or provisions stated in the sarih text. If reason is allowed to run wild and determine the benefit which then takes precedence over the sarih text, it will have implications for legal uncertainty and Islamic law can be considered inconsistent. Therefore, the main balance is the will of the Shari'a which is stated in the sarih text in the Al-Quran and Al-Hadith. It's just that of course this is a different context in relation to the differences of opinion that occur among the jurists when determining the law in matters of ijtihādiyah for which there is no sarih text.

3.4 Implementation of Reactualization of Islamic Law on Bank Interest

Munawir observed that according to him, many Indonesian Muslims consider bank interest to be usury, therefore it is haram. Ironically, many of them not only live off deposit interest, but many also use bank services in their daily lives, even establishing banks with an interest system, all for emergency reasons. However, according to the instructions in QS. al-Baqarah: 173 that the relief provided in an emergency is conditional on

the fact that it does not contain any intentional elements and does not exceed the level of meeting essential needs. This is a fundamental problem for Munawir so that according to him this kind of attitude is ḥīlah or creating fabrications in religious law [3].

For Munawir, conventional banking with an interest system is not usury. The interest system that is implemented is one way for banks to manage the circulation of public capital. By saving a certain amount of money in the bank within a certain period of time, the money becomes capital for the bank to lend to customers who need it. Customers who save will certainly lose their right to use the purchasing power of their money within a certain time. So that there is fair compensation. On the other hand, customers who borrow funds from the bank will have the right to utilize the purchasing power of the funds they borrow, or for business capital that will generate profits. So he should give compensation to the bank for the money he borrowed.

The argument put forward by Munawir quoted the opinion of Sayyid Sabiq regarding the reasons why riba is prohibited. These reasons are: a) usury can cause hostility and eliminate the spirit of mutual help in society; b) usury gave birth to a class in society who lived in luxury without working; c) usury is the cause of colonialism; and d) that Islam urges its followers to give loans to those in need in order to obtain rewards, not to look for extras [8].

The reasons above may be relevant to the practice of lending and borrowing money carried out by loan sharks which often leads to hostility and injustice. Poor people who are forced to become customers are often very disadvantaged because their debts are never settled, but the interest continues to increase. Not infrequently, when it is due and the borrower cannot pay, the moneylender will abuse him, or take the items in his house and confiscate them by force without reducing the amount of the principal debt in the slightest. The practice of usury is then strictly prohibited by Islam. However, does this also happen when customers borrow money from the bank? It turns out that quite a few people who come to the bank feel helped and assisted.

In QS. Al-Baqarah: 279 is stated which means, "and if you repent (from taking usury), then to you the principal of your wealth; you do not persecute and are not (also) wronged." In this verse, the key words are not to harm other people and not to be harmed, or in short, no party will be harmed. Based on this principle, it is unfair if savers who are the original owners of capital lose the right to use the purchasing power of their money for a certain period of time do not receive compensation from the bank. Meanwhile, borrowers who use the money for business capital and make a profit from that money are not required to share the profits with the original owner of the capital (the saver). So according to Munawir, banks are essentially respected institutions and the interest system is a way for banks to manage the circulation of public capital [8].

Regarding Munawir's opinion, in general the author agrees that bank interest cannot automatically be said to be usury. Of course, the author agrees that usury is haram because it is based on the sarih text. However, to translate this usury verse into bank interest, of course, careful study and analysis is needed so that the law "does not go wrong". Riba, in simple terms, is an addition that arises without any compensation (muqābil 'iwadh) either in buying and selling or in debts and receivables. Transactions that occur in banks if they are related to these two areas of usury are included in the realm of accounts payable and receivable. However, is it true that transactions at conventional banks include accounts payable and receivable contracts? If we understand the definition of giving a debt in fiqh literature, it is called qarḍ or dain, which means giving an asset to another person which will be replaced with an asset of equal value with the aim of helping him [14].

Qarḍ is solely prescribed to help people in need. Therefore, there are differences among scholars regarding whether giving a debt is more important than giving alms or vice versa? Therefore, because this qarḍ is prescribed to merely help, it is not permissible for people to give debts and then ask for compensation or take certain benefits in a determined manner. In this case the Prophet said "*kullu qarḍin jarra manfa'atan fahuwa al-ribā*: every debt that attracts benefits becomes usury". If we look closely at the practice of usury during the period of ignorance, it was very tyrannical to the weak, where the debt of the weak was really for consumer needs. So the poor person was supposed to be helped by the rich with alms, but instead he was given a debt, instead of only returning the amount of property he had borrowed, he instead withdrew it in addition, many times over, this is what is strongly criticized in the Al-Quran (Surah Al- Baqarah: 278-279) because there is a real element of injustice in making a qarḍ contract that has a social nuance into a commercial nuance.

It's different with banks. In fact, when a bank gives a certain amount of money to a customer, it is not a debt. Because from the start, banks were not social institutions to provide free assistance to people in need. Banks from the start were founded for profit, commercial purposes. So, a number of funds provided by banks to customers are actually a form of investment by turning money into a commodity. Therefore, can the additional (interest) applied by the bank be categorized as *jarra manfa'atan* (drawing benefits from the debt contract)? This is a basic question that needs to be answered carefully. If in principle it cannot be included in the qarḍ contract it means that the benefits arising are not usury. Because in fact, in the past, people owed money because they were poor, but in the current context it can be said that poor people will not be able to get debt from banks, because they do not have certain certificates that can be used as collateral.

Apart from that, the element of *lā taẓlimūna walā tuẓlamūn*: not causing harm and not being harmed as mentioned above (Al-Quran surah Al-Baqarah: 279), does not appear to be found in transaction practices at

banks. Considering that both of them carry out transactions willingly, it is not uncommon for customers to feel very helped by getting funds for certain needs, both consumptive and productive. There are cases of people getting into bank debt more because they miscalculated or didn't even calculate their real ability in advance each month to make deposits. Like someone whose monthly income is 5 million but takes a fairly large loan with a monthly obligation of 3 million, for example. So of course, every month there will be a deficit and eventually you will be in a bind.

Then from the other side, it is stated that Allah forbids usury because of the multiple additions which are often practiced by moneylenders so that it has the potential to lead to injustice. QS. Ali 'Imran: 130 is mentioned which means "O you who believe, do not consume usury in doubles and fear Allah so that you will be successful!". This verse briefly provides an explanation of the prohibition on consuming usury in multiple ways. Of course, this doesn't mean that a little usury is okay. Because the word double here is mentioned in the general context that usury is usually double. So, in this way, the character of usury is multiplied. However, this element is also not found in banking. Because the banking sector from the start has determined a margin of a certain percentage and usually it is quite low, 0.6%, 0.9%, etc., which is actually not an addition to the existence of accounts payable and receivable practices, but rather an assumption of profit from the practice of accounts receivable. investment given, or also as compensation for purchasing power that he renounced and handed over to someone else. Moreover, if you want to calculate the inflation value of the current currency, it is quite large. 1 million in money in 2022 is like being able to buy 1 quintal of rice, but in 2023 you could only get 0,8 quintal with the same value of money. So the multiple character of usury almost does not exist in transaction practices in banking with an interest system.

Actually, what is more of a problem is turning money into a commodity. Because over time, when money becomes a commodity, it has the potential for greater inflation and ultimately a monetary crisis. In the author's opinion, this factor is more of the reason why the interest system can have an adverse impact. However, in relation to usury, according to the author, usury law is not appropriate if applied in the bank interest system.

4. Conclusion

The idea of reactualizing Islamic law is one of the models of efforts to reform Islamic law in Indonesia which was formulated by Munawir Sjadzali. His ijtihad is based on several ushul fiqh theories, the most important of which are: naskh and maṡlaḥat. Methodologically, it can be said that this idea is not completely new. It's just that his courage in presenting the concept of 'urf as the main foundation for ijtihad, produces legal products that tend to break mainstream understanding.

His opinion regarding bank interest can actually be accepted, namely that it is not appropriate to apply the riba verse to the issue of bank interest. Because the character of banking transactions that use an interest system is different from the character of debts and receivables (qarḍ) which if you withdraw benefits becomes usury. Apart from that, banking transactions that do not contain elements of mutual harm and additional elements that are multiple in bank interest further strengthen the differences in character between bank interest and jahiliyah usury which is forbidden. So, the problem is precisely from the perspective of making currency a commodity, because it can have an impact on uncontrolled inflation and can trigger a monetary crisis. For Islamic economics researchers, the context of making currency a commodity is what can be studied in more depth from a legal perspective and its impact on inflation and the monetary crisis.

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References

[1] Harmonis, H. (2016). Sistem Penyiaran Syariah (Studi Eksploratif Konseptual). In *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* (Vol. 16, No. 01, pp. 113-130)., doi: 10.30631/alrisalah.v16i01.339.

[2] Yaqin, A. (2016). Evolusi ijtihad imam Syafi'i: dari qawl qadīm ke qawl jadīd. *Al-Ahkam*, *26*(2), 143-178.

[3] Pirol, A. (2008). Reaktualisasi Ajaran Islam (Studi atas Gagasan dan Pemikiran Munawir Sjadzali).

[4] D. Darmawan. (2018). Tahqiq al-Manath dalam Pembaruan Hukum Kewarisan Islam di Indonesia. Al-Daulah: Jurnal Hukum dan Perundangan Islam, vol. 8, no. 1, Art. no. 1, Agu 2018, doi: 10.15642/ad.2018.8.1.165-193.

[5] Zulhamdi, Z. (2019). Pembaharuan Hukum Islam Di Indonesia Dan Tokoh-Tokohnya. *Islam Futura*, *19*(2), 239-258, doi: 10.22373/jiif.v19i2.4414.

[6] Ilyas, Y. (2006). Reaktualisasi ajaran Islam: studi atas pemikiran hukum Munawir Sjadzali. *Al-Jami'ah: Journal of Islamic Studies*, *44*(1), 223-240. doi: 10.14421/ajis.2006.441.223-240.

[7] Saputera, A. R. A., & Yasin, H. (2020). Gagasan Nasikhul Mansukh Dalam Lingkaran Pemikiran Munawir Sjadzali Tentang Reaktualisasi Ajaran Hukum Islam. *AHSANA MEDIA: Jurnal Pemikiran, Pendidikan dan Penelitian Ke-Islaman*, *6*(2), 1-10, doi: 10.31102/ahsana..6.2.2020.1-10.

[8] M. Usman. (2021). Historisitas Kontekstualisasi Hukum Islam (Relevansi Ijtihad Umar Ibn al-Khattab Hingga Munawir Sjadzali). Sukoharjo: CV. Diomedia.

[9] M. Sjadzali. (1995). Kontekstualisasi Ajaran Islam, Jakarta: IPHI dan Yayasan Wakaf Paramida.

[10] H. Ibrahim. (1995). Beberapa Catatan Tentang Reaktualisasi Hukum Islam" dalam Muh. Wahyuni Nafis, Kontekstualisasi Ajaran Islam. Jakarta: Paramadina dan IPHI.

[11] M. Sjadzali. (1988). Reaktualisasi Ajaran Islam dalam Polemik Reaktualisai Ajaran Islam. Jakarta: Pustaka Panjimas.

[12] M. Sjadzali. (1996). Ijtihad dan Kemaslahatan Umat" dalam Haidar Baqir dan Syafiq Basri. Ijtihad dalam Sorotan, Bandung: Mizan.

[13] A. Al-Sarkhasi. (1993). Ushul Al-Sarkhasi. Haidar Abad: Ihya' al-Ma'arif al-Utsmaniyyah.

[14] W. Al-Zuhaili. (1985). Al-Fiqh al-Islami wa Adillatuhu. Damaskus: Dar al-Fikr.