

Paradigm modernism Islam in reinterpretation of Islamic law in the millennial era

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44 Abstract

Islamic law is one of the legal systems prevailing in the Islamic world. The paradigm of Islamic modernism has the principle that Islamic law must reach the needs of modern society with all its dynamics. Required reinterpretation for Islamic law can shalih li kuli zaman wa makan. The purpose of this study is to describe the paradigm of Islamic modernism, to describe Islamic law in the flow of social change, and to discuss the modernist Islamic paradigm in the reintepration of Islamic law in the millennial era. This research uses normative approach, secondary data, and replication method in analyzing data. The results of this study indicate that Islamic modernism is a tendency of Islamic thought to bridge the doctrine of Islam with a growing human civilization. With the paradigm of Islamic modernism the gap of Islamic idealism and modern civilization can be overcome. The paradigm of Islamic modernism can reinterpret the teachings of Islam to answer the attributes of modern society such as democracy, human rights, politics, economics, the development of science and technology. Islamic law does not escape from the exploitation of social change. With a view of the door of ijthad is always open, Islamic law can reach the impact of social change. Reintepration of Islamic law continues to be needed to provide certainty of Islamic law in entering the millennial era. Various new transaction-based online is growing very rapidly the necessary legal certainty in the perspective of Islamic law.

Keywords: paradigm, Islamic modernism, reinterpretation, millennial

Introduction

The law moves from the realm of freedom to public order despite its coercive nature. The purpose of law is generally to bring justice, benefit and certainty. The law should not be limited to the shadow of the false in the rules of legislation. In addition, the law should also serve as a medium for preventing conflict, rather than being the cause of conflict because legal objectives are not achieved. Likewise, Islamic law whose purpose is also to meet justice, expediency and certainty¹. Moreover, Islamic law is aimed at keeping the five facets of life, ie keeping the religion (*hifdz ad-din*), keeping the mind (*hifdz al-'aql*), keeping the soul (*hifdz an-nafs*), keeping the offspring (*hifdz an-nasb*) and keep the treasure (*hifdz al-maal*). These five joints are termed *maqashid al-syar'iyah*².

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¹Achmad Irwan Hamzani, *Kontribusi Hukum Islam dalam Sistem Hukum Indonesia*, Bogor: RWTC, 2017.

²Abi Ishaq Ibrahim bin Musa al-Syathibi, *al-Muwaa'faqaat fii Ushual al-Ahkaam*, Jilid II, Beirut: al-Maktabah al-'Aşriyah, 2011.

Islamic law is one of the prevailing legal systems in the world today whose substance encompasses all aspects of human life³. The reach of Islamic law not only regulates human relations with fellow human beings and objects which in the context of Western law are classified into private and public law. Islamic law at the same time regulate human relations with God that is not owned by Western law. A fairly popular classification is *hablu mi Allah* and *hablu mi alnas*, transcendent relations and profane relations.

In order to always survive and reach the legal needs of modern society, Islamic law could continue to be developed although its development pattern is not free as Western law. As a law derived from revelation, Islamic law has its own standards in its development. Human reason different from one person to another, from one place to another, making the development of Islamic law must follow certain rules and standards so that the foundation is not damaged⁴.

Islamic law has evolved over the centuries into a legal system, and is in sync with a complex reality. Just as Western law has a source (*al-mashadir*), Islamic law also has a derivative product of the principle (*al-ushuul*) which determines the nature of evangelism (*al-adillah*), seeks the use of the 'law of maxim' (*al-qawa'id*) and utilizing some of the underlying aspects of 'goals' (*al-maqashid*) to support its legal theory structure⁵. Along with the development of Islam to various corners of the world and the growing human civilization that is also followed by Muslims, Islamic law must continue to hold and provide legal certainty.

Human civilization is increasingly leading to its peak in the present era which is often called the milenial era in which society is entering a global culture with advances in information technology. The mileneal era is the culmination of globalization and digital telecommunication technology. Increasingly sophisticated digital telecommunications, bringing the impact of social changes that have a tremendous impact and change the pattern of thinking and religious views including the environment of Muslims⁶. Many new economic, social, and cultural systems, one of which is characterized by new transactions as a rush of advances in information technology.

New issues arise that require a solution of Islamic law. Legal position is needed to ensure legal certainty for Muslims⁷. With the widespread sphere of social change affecting all aspects of life, the need for *ijtihad* is necessary to find the epistemological foundation⁸. The tool of *ijtihad* plays an important role as an innovation in the development of Islamic law so that the adagium of Islamic law that always *shalih li coolies eat time* can be tested by giving perspective.

Departing from the thinking on the discourse to the paradigm of Islamic modernism in the reinterpretation of Islamic law in the millenial era relevant to do. Islamic law has a broad principle that if interpreted properly can accommodate the needs of society

³M. Sirajuddin, "Wacana Penerapan Hukum Islam dalam Tinjauan Politik Hukum Nasional", *Jurnal Sosio-Relegia*, Volume 32 Nomor 3, (Mei 2009).

⁴Muhammad Muslehuddin, *Philosophy of Islamic Law and The Orientalist; A Comparative Study of Islamic Legal System*, Pakistan: Islamic Publication Ltd., 2000.

⁵Syafaul Mudawan, "Syari'ah-Fiqh-Hukum Islam; Studi Tentang Konstruksi Pemikiran Kontemporer", *Jurnal Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, Volume 46, Nomor II, (Juli-Desember 2012), p. 421.

⁶M. Amin Abdullah, *Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam dalam Merespon Globalisasi*, *Jurnal Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, Volume 46, Nomor II, (Juli-Desember 2012).

⁷Abd. Shomad, *Hukum Islam; Penormaann Prinsip Syariah dalam Hukum Indonesia*, Jakarta: Kencana, 2017.

⁸Saifudin Zuhri, "Masalah Sebagai Sumber Hukum dan Implikasinya Terhadap Liberalisasi dalam Pembaharuan Hukum Islam di Indonesia", *Jurnal Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, Vol. 43, Nomor II, (Januari-Juni 2009).

with its civilization⁹. Review of actual problems in the perspective of Islamic law is essential to provide legal certainty. The increasingly heavily complex legal fact demands more sophisticated discourses and no longer deals with the problems of *khilafiyah alubudiyah*.

The issues raised in this study are: What is the paradigm of Islamic modernism? What is the law in the flow of social change? What is the paradigm of Islamic modernism in reinterpreting Islamic law to respond to social change in the millennial era? This study includes the type of normative legal research because the studied is the written legal theoretical aspects. The approach is also normative by using legal theory. The data used are secondary data in the form of written documents obtained through library search. The method of analysis used induction-interpretation-conceptualization by using interactive model, namely data reduction, data presentation and conclusion.

The Paradigm of Islamic Modernism

Modernism as a reform movement began in Europe offering a new outlook on cultural phenomena. The emergence of modernism has historically been the conquest of medieval old values by new values. Rational power is used to solve all humanity problems and test other truths such as revelation and traditional myth. Introduced a new worldview or so-called modern paradigm. The birth of modernism coincided with the advancement of science and technology that enabled the industrial revolution and knowledge revolution. Modernism became a paradigm as an antithesis of a mystical and feudal paradigm of traditionalism. The paradigm of modernism offers a rational and factual view. Man in the paradigm of modernism has authority in determining history, open the subordinate of the forces of nature and supernatural forces. The paradigm of modernism becomes a progressive symbol of man towards the condition of society's enlightenment¹⁰.

The paradigm of modernism positions human reason and rationality as a source of knowledge to human freedom so as not to be shackled by traditional dogmas that cause humans to always be objects. The giving of reason portions makes man a subject rather than an object with a reasoning mission as the main source of science that produces universal truths¹¹. The project of modernism in Europe succeeded in overthrowing religious dogmatism so that it implicated the separation of the church as the holder of the religious authority of the state as the holder of political authority. Modernism in the field of law through rebellion against the norms of natural and theological law in Europe results in the codification of modern legal norms characterized by secular and positivistic¹².

Modernism also has an effect on the Islamic world although its movement is different from what happened in Europe. The emergence of Islamic modernism as an attempt to bridge the gap between the ideals of Islam and the reality of society¹³ (between doctrine with civilization). Islamic modernism emerged to reconcile Islam with modern attributes such as democracy, human rights, nationalism, rationality, science, equality and progress. The emergence of the paradigm of Islamic modernism was also a response to

⁹ Muhammad Muslehuddin, *op.cit.*, hlm. 87.

¹⁰ M. Nur Prabowo S., "Respon Agama Terhadap Kultur Modernisme: Perspektif Perennialisme, *Jurnal Rasail*, Volume 1, Nomor 1, (Januari-Juni 2014).

¹¹ Suryani, "Neo Modernisme Islam Indonesia: Wacana Keislaman dan Kebangsaan Nurcholish Madjid", *Jurnal Wacana Politik: Jurnal Ilmiah Departemen Ilmu Politik*, Volume 1, Nomor 1, (Maret 2016).

¹² M. Nur Prabowo S., *op.cit.*, p. 98.

¹³ A. Sunarto AS, "Paradigma Nahdatul 'Ulama Terhadap Modernisme", dalam *Jurnal Sosiologi Islam*, Volume 3, Nomor 2, (Oktober 2013) p. 53.

European colonialism towards the Islamic world in the 19th century battles¹⁴. Islam often faces challenges especially in social change. There are various movements to change the course of Islam that was originally run in a contextual textual context¹⁵.

The paradigm of Islamic modernism is a refreshing understanding of religion and social reform that has helped democratize Islam and become the main actor that shapes the economy, political and intellectual life in the Islamic world¹⁶. The Islamic modernism movement against taklid in the past by re-enacting *ijtihad*. According to the paradigm of modernism, *ijtihad* is a rational interpretation of the Qur'an to meet the needs of modern society. The paradigm of Islamic modernism aims to bring Islam to a progressive religion. As is the case in the West with an emphasis on human rationality and freedom, Islamic modernism harmonizes Islamic beliefs with modern values through *ijtihad*¹⁷.

The movement of Islamic modernism emerged in order to adjust the understanding of Islam with the new development of science and technology. The emergence of this movement is a response to various backwardness experienced by Muslims in various fields such as economics, politics, education, culture, law and so forth¹⁸. Backwardness is not in line with the spirit of Islamic teachings that always push toward progress, upholding science that leads to humanity's misery. The reality of Muslims is lagging behind, backward and declining. This situation raises anxiety that led to the movement of modernization in various areas of human life. Islamic doctrine is highly relevant to all fields of private and public life. In accordance with his soul, Islamic doctrine always receives development, because the Qur'an is a universal and up-to-date revelation of God to meet the demands of the times. The views and traditional practices must be reformed based on original sources are authoritative, namely the Qur'an and Sunnah in the context of the contemporary situation and needs.

The tradition of the past by the paradigm of Islamic modernism is considered to be irrelevant to the demands of the times that it must be abandoned. People must think critically in new social problems. The old-fashioned (tinkering of thought) and *taqlid* attitude of the past must be rejected. As long as the way of thinking and orientation is always in the past, as the traditionalist paradigm, Muslims will not advance.

The traditional paradigm holds on to the minds of Islamic scholars in the past and seeks to cling to established traditions. The teachings of Islam stay followed through the existing schools of thought. The scholars are now deemed incapable of doing *ijtihad* again because they do not have the same level of capacity as Hanafi, Maliki, Shafii and Hambali. The door of *ijtihad* has also been closed. The whole issue of human life associated with religious law has been completely written by the earlier scholars. Even if there are new problems that arise now and need to solve enough to see the book written by the scholar (yellow book) and then diqiaskan use *'illat* which also has formulated them. Tradition with all its aspects, is not only judged as something to be followed and displayed again in

¹⁴Tauseef Ahmad Parray, "Islamic Modernist and Reformist Thought: A Study of the Contribution of Sir Sayyid and Muhammad Iqbal", *World Journal of Islamic History and Civilization*, Volume 1, Number 2, (December 2011).

¹⁵Muh. Dahlan, "K.H. Ahmad Dahlan sebagai Tokoh Pembaharu", *Jurnal Adabiyah*, Volume XIV, Nomor 2, (November 2014).

¹⁶Robert R. Bianchi, "Islamic Globalization and Its Role in China's Future", *Journal of Middle Eastern and Islamic Studies (in Asia)*, Volun 43, Number 3, (December 2015).

¹⁷Kamarudin Saleh, "Transformasi Pemikiran Pembaharuan dan Modernisme di Malaysia; Satu Penelitian Awal", *Jur 4 International Journal of Islamic Thought*, Volume 2, (Desember 2012).

¹⁸Rusli Malli, "Konsep Pemikiran Pendidikan Islam Kontemporer di Indonesia", *Jurnal Tarbawi*, Volume 2, Nomor 2, (2014), p. 164

modern life, but has been regarded as something perfect, fixed and can not be criticized (sacred) like the Qur'an. The thought of the scholar who lived medieval life, is considered to have solved the problems of the Muslims until the end of time¹⁹. People who deepen and master the tradition to get a blessing, regarded as a figure who must be a role model and able to solve all the problems of the world and the hereafter.

The impact of the traditionalist paradigm in time gave birth to attitudes: (1) Exclusivism. Due to the characterization, even the individual sacralization, the traditionalistic attitude leads to the formation of attitudes of eksklusifisme which only appreciate and acknowledge the truth of its own paradigm and deny the existence of others. (2) Subjectivism. As a result of continued exclusiveness, this paradigm has lost an objective attitude in judging a problem. Right and wrong are no longer based on the problem, but rather on the origin, and from / by which group or by whom. (3) Determinism. As a further result of the above two consequences, where society has been subordinated and confined in one color, become accustomed to accept the role model's "fatwa" and regard it as a necessity without any desire to change, let alone refuse.

The modernist paradigm considers the approach taken by traditionalist paradigms to be unrealistic, ahistorical and will not succeed in building Islamic civilization. Islamic tradition needs to be analyzed through historical study. Including the Sunnah of the Prophet which can not be proved authenticity, also must be rejected²⁰. Muslims must have new interpretive constructs with modern frameworks and rational prerequisites in order to survive and be accepted in modern life. In addition, Muslims must also be freed from the mystical worldview, the attitude of the elderly (tinkering thinking) and *taqlid* blind because it will not be able to convince Muslims can compete in the modern age.

Islamic Law in the Flow of Social Change

Discourses on laws and community structures are essential to explain why the law develops. The structure of society can be an obstacle in terms of facilitating the means of social institutions that allow the law to have its form. Law is seen as an institution that is not autonomous. Eugen Ehrlich states that "... both now and at any time, the center of activity and the development of the law is not in legislation, not in law, nor in court judgment but in society itself"²¹. Society as the center of legal development is the forerunner to the birth of a legislation. Any social change that occurs in society is an instrument that can affect the center of activity and legal development.

The historical development of legal theory is also influenced by the theory of social change, as contained in the school of historical school, sociological jurisprudence and the flow of realism. The historical school considers law as the development of the nation's soul (*volkgeist*). This school recognizes the importance of legitimizing the unwritten law or the living law. Roscoe Pound, the historical schoolmaker, legitimizes the legal interdependence of non-legal elements. State interests, social interests and personal interests may cause the law not to be dogmatic. The flow of realism is also influenced by various models of social change. Benjamin Natan Cardozo, one of the realism figures mentioned that "judgments born by judges are not merely interpretations of laws, but are like mixed recipes." The judge's verdict is an ingredient derived from legal and non-legal elements such as politics, history, economics, ideology, social pressure, and culture. This expression is in line with Ronald Dworkin's criticism of three prominent legal positivists; Kelsen, Austin and Hart.

¹⁹A. Sunarti, *loc.cit.*

²⁰Abdullah Arwi, *al-'Arab wa al-Fikr al-Tarikhi*, Beirut: Markaz Tsaqafi al-Arabi, 1973.

²¹Peter Curzon, *Jurispudence Lecture Notes*, Britania: Cavendish-Routledge Publishing, 1998, p. 169.

Dworkin criticized that legal positivism is not yet perfect to accommodate the interests and rights of every person by law alone²².

The theory of social change is not a theoretical one. As is usually the theory, it is born of a historical process bound in time and space. Social theory is always experiencing dynamism in line with the progress and development of human civilization. The birth of social theories itself is the result of research done in the Western world²³. Max Weber shares the model of social change in three stages: the type of traditional society, the type of charismatic society, and the rational type of society. Further development of the theory of social change is not much different from the classification put forward by Max Weber which is labeled social solidarity. Emil Durkheim then divides the two patterns of social change in mechanical solidarity and organic solidarity. The theory of social change was also developed by Talcott Parson. Parson view that society is still considered traditional by Max Weber or still within the limits of mechanical solidarity is formed as a united community, has not occurred sub-division in the community. The next era gave birth to Marxism to the Frankfurt school renewing critical views of Karl Marx²⁴.

There is a pameo yam societias ibi ius whose meaning is where the law is society, there is law, so it reflects the relationship of social change and change of law. Society exists and creates law, society changes, law changes. Legal change through two forms; society changes first, new laws come to legalize the change (passive change), or law as a tool to change for the better (law as a tool of social engineering).

There are two opposing views about the functionalization of the law. First, the view that law should follow social change. This view was put forward by Carl Von Savigny; that the law was found not created. Second, the view that the law as a means of community renewal as proposed by Roscoe Pond. There is no need to argue how the law adapts to the changing societies and how the law becomes a driver toward the change of society. For, wherever in the course of law change, the law has a role in the change. The law serves as the protection of human interests. Legal changes that occur are logical consequences of dynamic law.

Islamic law also experienced an imbalance from the flow of social change in every phase. Muslim jurists use several models of social change for the development of law within the praxis area. There is a slogan that Islamic law should be oriented towards the benefit. Abi Ishaq al-Syatibi formulates the theory of *maqashid al-syari'ah*²⁵. Law became a determinant with social, political, economic, ideological, and moral elements. Islamic law will continue to develop from time to time as problems arise in society. The concept of the rule of law that currently dominates also does not appear suddenly, but through the process of history. Islamic law is closely related to social change, even as a reaction to social change.

In terminologically, Islamic law is a law formulated by one's or group's thinking about rules that are reduced according to the Qur'an and hadith about the behavior of *mukallaf* which is recognized and believed to be binding for all Muslims²⁶. Joseph Schacht mentions that Islamic law is a collection of religious rules, the totality of Allah's

²² *Ibid.*, p. 230

²³ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Press, 2008, p. 212.

²⁴ *Ibid.*, p. 214.

²⁵ Abi Ishaq Ibrahim bin Musa al-Syathibi, *loc.cit.*

²⁶ Ahmar Rofiq, *Pembahasan Hukum Islam di Indonesia*, Yogyakarta: Gama Media, 2001.

commandments, which governs the behavior of Muslim life in all its aspects²⁷. In summary, Islamic law is a law that comes from the teachings of Islam where the deeds are patterned²⁸.

Normatively, Islamic law is derived to provide solutions to the problems of human civilization. Historical sketches of inheritance law can be used as argumentative data. Before Islam was demoted, the Arab community was familiar with an inheritance system based on the blood relation, covenant and adoption or adoption. In the early days of Islam until the hijrah, the three basic inheritance were still in effect with some revisions, coupled with the hijra and brotherly ties between the Muhajirins and the Ansar. Original blood constriction is limited that inheritance is only given to male and adult family members. Islamic law renews by giving equal rights to all heirs, men and women, adults and children, even including infants still in the womb²⁹.

² The problem of Islamic law authoritarian arises after the Prophet Muhammad Saw. died. ¹² tially all the problems that emerged directly resolved by the Prophet Muhammad Saw. with the decline of verses of the Qur'an and with the authority of hadith. After the Prophet Muhammad Saw. died, many legal events arose in connection with the widespread power of Islam in contact with the prevailing legal system as well as local culture. As a result of this problem comes the need to solve it, and it takes innovation and legal solutions through interpretation, hereinafter called *ijtihad*.

The Paradigm of Islamic Modernism in Re-interpretation of Islamic Law in the Millennial Era

The terminology used for the interpretation of Islamic law is *ijtihad*. Interpretation of Islamic law is a genuine effort to explore and understand Islamic law in its various aspects in order to be able to answer the various problems that occur in society either related to man with man, with objects, also with God. *Ijtihad* literally means trying. While technically it means trying to find the law from the source. *Ijtihad* or is the opposite of *taqlid*, ie follow the opinions of others without carefully examining the sources of its taking³⁰. Muhammad Iqbal mentioned that *ijtihad* is the principle of movement of the progress of Islam³¹. In other words, *ijtihad* is the key to the dynamics of Islamic teachings, including the field of law and a concern especially for *mujtahid*³².

Historically the emergence of *ijtihad* in Islam because of the existence of the contact between the teachings of Islam with the development of community life. *Ijtihad* is the beginning of the epistemology of Islamic law as it concerns the role of revelation and reason. Although the question of the role of revelation and the original reason is the subject of theology, but in its development enters and influences the views of fiqh experts. Theology is a matter of basic (*ushuul*) while fiqh is a matter of branch (*furū*). The science of theology became the foundation of *fiqh*. The *fuqaha* views of the law will be influenced by the theological style it embraces, both traditional theology initiated by Ash'ariyah, rational by Mu'tazilah or moderate by Maturidiyah.

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²⁷ Joseph Schacht, *An Introduction to Islamic Law*, London: Oxford University Press, 1971, p. 1.

²⁸ Muhammad Muslehuddin, *op.cit.*, hlm. 17. Kamaruzzaman Bustaman Ahmad, "The Application of Islamic Law in Indonesia; The Case Study of Aceh, *Journal of Indonesian Islam*, Volume 1, Number 1, (June 2007).

²⁹ Ahmar Rofiq, *op.cit.*, p. 34.

³⁰ Muhammad Muslehuddin, *op.cit.*, p. 125.

³¹ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, India: Kitab Bhavan, 1981.

³² Tauseef Ahmad Parray, *loc.cit.*

With *ijtihad* changes and renewal of Islamic law in the present and in the future must also touch the theological aspects underlying the thoughts of the *fiqh* experts. Another aspect of *fiqh* epistemology which has been developed by *fuqaha* to develop Islamic law. *Fiqh* should be placed as a result of science as well as science. As a science, *fiqh* has scientific characteristics. Consequently, *fiqh* must also accept its logical consequences as a science³³.

The development of Islamic law in addition to being based on strong epistemology also needs to formulate and reconstruct its theoretical basis. The basis of the theory of Islamic law is that the essential requirement of *mujtahid* in doing *ijtihad* must know the purpose of law. This requirement was first put forward by Abd al-Malik al-Juwaini, followed by Abu Hamid al-Ghazali, forwarded by Izzudin Abd al-Salam. This systematic and detailed base of the theory was developed by Abi Ishaq al-Syatibi and liberalized by Najmudin al-Tufi.

The main study in the theory of *maqashid al-syari'ah* is about the reference of Islamic law which is manifested in the form of the benefit of mankind both in the world and in the hereafter. The orientation of *mashlahat* which is the basic of the theory of Islamic law that has been pioneered by al-Syatibi disappeared and revived by the experts of modern Islamic law, and more relevant if it is associated with the needs of Islamic law legislation in the current era of globalization.

The basic of the theory and practice of Islamic law is the benefit of the people who rely on *maqashid al-syari'ah*. The formulation and reconstruction of legislation, theoretical bids and any method of *ijtihad* in settling Islamic legal matters shall refer to the realization of the benefit. Islamic law has a strategic position because of its character that emphasizes religious morality in the form of accountability before God³⁴. The study of Islamic law can not be separated from the study of Islam. Islamic law as a legal system that comes from the Islamic religion is one legal system that exists in addition to other legal systems. Islamic law is progressive in character, so it must be a legal model for all and others³⁵.

The wider scope of social change that affects all aspects of life. The pattern of utilitarian life becomes popular, so the movements of Islamic modernism must seek to find a foundation or foundation that can help them adapt to changing conditions. The contemporary development of Islamic law in the economic field is also quite developed, including banking, insurance, arbitration, mortgage, finance, and capital markets³⁶. These economic products also need to be reinterpreted in the conception of Islamic law. For example insurance is still debatable to date. Insurance is a complicated and crucial problem faced by Muslim scholars and scholars both classical and contemporary. Long before, insurance has not been known and has not been discussed by the early madzhab priests.

The current development has been known as *Takaful* or *Takaful* insurance. *Takaful* is operationalized on the basis of Sharia rules with the aim of mutual protection and assistance among a number of people. *Takaful*'s capital is an investment in the form of assets and / or *tabaru* that provides a pattern of return to deal with certain risks through a contract (engagement) in accordance with sharia. The presence of *takaful* is a reconstruction and reinterpretation of the face of an onventional insurance that contains

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³³ Abd al-Wahab Khalaf, *Ilm Ushul al-Fiqh*, Kairo: Maktabah al-Da'wah al-Islamiyah Syabab al-Azhar, t.th.

³⁴ M. Sirajuddin, *op.cit.*, p. 808.

³⁵ Nehaluddin Ahmad, "A Critical Appraisal of Triple Divorce in Islamic Law", *International Journal of Law, Policy and the Family*, Volume 23, Number 1, (2009).

³⁶ Abd. Shomad, *op.cit.*, p. 5.

gharar, riba, maisir and so forth³⁷. Polemic against the practice of Takaful is still happening. *Shari'ah* insurance is still considered to contain *gharar*. The policyholder does not pay the premium as a "bet" of future payment expectations, but prefers to buy a specific and easy service and avoids the risk in exchange for his premium payment³⁸.

Syari'ah bonds (*sukuk*) also have no standardization (45) the structure of Islamic instruments products of each country and the standard Accounting and Auditing Organization of Islamic Financial Institution (AAOIFI) has not been used as a reference by all countries whose population is predominantly Muslim. Required re-interpretation of the shariah bonds that apply so far, because in practice very impact on the reluctance of one country to invest in other countries. Level of understanding of society is still oriented to the profit (return) offered only. People are still trapped to compare the benefits offered by conventional bonds³⁹.

Once the development of buying and selling using electronic media or often called e-commerce, or new online transaction (no need direct relations) need to get a review in the perspective of Islamic law. The concept of buying and selling in Islamic law must be present to answer various problems arising from the consequences of the transaction. E-commerce in Islamic law is actually included in the concept of al-salam. One of the topics in e-commerce is the warranty given to purchased items. Warranty of sale and purchase is a facility of seller which is very useful for all parties, both for the giver of the warranty (seller) own and for the recipient (buyer) and benefited (29) to society in general.

Warranty is not in principle known at the time of the Prophet Muhammad Saw., but according to the rules of *fiqh* it reads; *al-aslu fi al-muamalat al-ibahah*, that the law of origin in *muamalah* is permissible unless otherwise specified in the Qur'an and hadith, so it is not forbidden. This type of transaction can be categorized as part of *bai 'bisy syarathi*. Warranty has become a common accepted in the middle of society and not contrary to *shari'ah*. As the rule reads *al-adatu mukhakamah*; customs can be a legal consideration, warranty is not prohibited. Also known as *khiyar* right, that is rights that be broken down to a buyer if in process of buying and selling transaction to things that are not desirable. This warranty may be included in the *khiyar* section, let alone in the field of *khiyar* against *khiyar* disgrace (defect), namely the right to forward or cancel a transaction because there is a defect in the goods traded⁴⁰.

The problem of usury (*riba*) and bank interest so far has never been resolved. Debate about usury (*riba*) and bank interest is still struggling about the prohibition of implementing it has not reached the essence of the problem (41) the economic system may be based on interest-free banks. The prohibition of usury of al-Qur'an is closely related to the enforcement of the welfare of the people. This prohibition for Islamic jurists of the middle ages stipulates that all kinds of interest are usury and the law is forbidden. Until now the majority of Muslims have argued that, although in the modern world, the role of conventional banks is difficult to avoid⁴¹.

³⁷Havis Aravik, "Asuransi dalam Perspektif Islam", *Jurnal Nurani*, Volume 16, Nomor 2, (Desember 2016), p. 47.

³⁸Haider Ala Hamoudi, "The Muezzin's Call and the Dow Jones Bell: On the Necessity of Realism in the Study of Islam (31) aw", *Journal The American Journal Of Comparative Law*, Volume 56, Number 2, (2008), p. 459.

³⁹Dede Abdul Fatah, "Perkembangan Obligasi Syariah (Sukuk) di Indonesia: Analisis Peluang dan Tantangan", *Jurnal Adalah*, Volume X, Nomor I, (2011), p. 42.

⁴⁰Mohammad Mufi (16) *shul Fiqh Ekonomi dan Keuangan Kontemporer*, Jakarta: Kencana, 2016, p. 162.

⁴¹Daud Damsyik, "Reinterpretasi Sumber Hukum Islam; Kajian Pemikiran Fazlur Rahman", *Jurnal Al-Adalah*, Volume IX, Nomor 2, (Juli 2013), p. 237.

Usury (*riba*) is something that happens mainly in debt and exchange money with money. Islamic banking system that uses a *murabaha* system that is similar to conventional bank practices is not usury (*riba*). For an increase in buying and selling with a delayed payment on the *murabaha* system is caused by them itself, so there are two prices, namely the cash price and higher credit price. The cash price reflects the cost plus the profit margin (mark-up), while the credit price reflects the cost plus the profit limit (mark-up) plus an appreciation of the credit period (time)⁴².

The paradigm of modern Islamic modernism in giving the perspective of Islamic law especially in the present era called the millennial era. Many things have changed to the digitalization base. The Internet has shifted platforms indefinitely. Islamic law in the paradigm of modernism with the principle of *ijtihad* door is always open, it will be easy to complete a new internet-based transaction. The paradigm of Islamic modernism can provide legal certainty to new issues that will continue to emerge along with the development of information technology.

29 Conclusion

Based on the above discussion can be concluded that modernism as a renewal movement that offers a new perspective on cultural phenomena that are rational and factual. Modernism also influences the Islamic world. Islamic modernism emerged to reconcile Islam with modern values such as democracy, human rights, nationalism, rationality, science, equality and progress. Islamic modernism movement against imitation in the past by moving back *ijtihad*. The emergence of Islamic modernism movement is also a response to various backwardness experienced by Muslims in the field of economy, politics, education, culture, law and so forth. In accordance with his soul, Islamic doctrine always receives development, because the Qur'an is a universal and up-to-date revelation of God to meet the demands of the times. Traditional views and practices must be reformed on the basis of authoritative original sources of the Qur'an and al-Sunnah in the context of contemporary situations and needs. Islamic law is subject to the flow of social change in each of its phases. Islamic jurists also use some models of social change for legal development in practical areas. There is a slogan that Islamic law should be oriented towards the benefit. Islamic law will continue to develop from time to time as problems arise in society. Islamic law needs to be continuously developed in the millennial era in order to meet the needs of the law according to the perspective of Islamic law. The scope of social change is increasingly widespread, affecting all aspects of life. Through the movement of Islamic modernism, must try to find a foothold that is able to adjust to changing conditions. The paradigm of Islamic modernism will be strategic in meeting the needs of Islamic law in the millennial era. The Internet has shifted platforms without boundaries with digitizing-based. The approach of modernism with "*ijtihad* always open" will be able to capture and acquire various problems that arise. The contemporary development of Islamic law in the field of economics is quite developed, including banking, insurance, arbitration, mortgage, finance, and online transactions. Islamic law in the paradigm of modernism with the principle of *ijtihad* door is always open, it will be easy to complete a new digital-based transcendent in the millennial era.

⁴²Abdullah Saeed, *Islamic Banking and Interest; A Study of the Prohibiting of Riba and its Contemporary Interpretation*, Leiden: E.J. Brill, 1996, p. 77-80.

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