Hassan Hanafi and Islamic Legal Theory:
From Phenomenology to Critique of the Slogan "Going Back to the Qur'an and Sunna"

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Abstract

Islamic legal theory (popularly known as *uṣū al-fiqh* in Islamic term) runs into difficulties when dealing with social and humanities issues. Religious texts, according to Hassan Hanafi's perspective, should not only be positioned as a source of law, but also at the same time must be seen as a phenomenological experiences of religiosity. The dialectic of religious text and today's empirical context needs to be reformulated. By using phenomenological as a methodological tool, Hassan Hanafi makes an effort of reepistemification of *uṣū al-fiqh* reason into three typologies of consciousness; historical, eidetic, and praxis. These three aspects constitute the discursive relationship to present an anthropocentric dimension in *uṣū al-fiqh* reason. This article uses qualitative research methods with interpretation criticism approach. This article aims to analyze the new formula offered by Hassan Hanafi's *uṣū al-fiqh* reason, and to examine it to criticize the slogan "Back to the Qur'an and Sunna" as a phenomenon of religiosity.

Keywords: Uṣū al-fiqh, Hassan Hanafi, Phenomenology, Back to the Qur'an and Sunna

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Introduction

The religious movement based on the slogan "Back to the Qur'an and Sunna" seeks to justify that words and deeds must be directed literally by quatations from the Qur'an and Sunna.[1] The slogan "Back to the Qur'an and Sunna" as a religious phenomenon can not only eliminate the existence of Islamic school jurisprudence *(mazhab)*,[2] but at the same time, it can endanger the activities of reasoning religious texts *(ijtihad)*.[3] Whereas the understanding of religious teachings needs to be updated constantly in order to remain its relevance of the context.[4] Due to the existence of this slogan which is also related to Islamic legal thought, this article seeks to examine and criticize it from the perspective of Hassan Hanafi's thought through his *uṣū al-fiqh* reason.

The study of Hassan Hanafi's thought of renewal of the Islamic discursives has been interested by various schoolars from various disciplines. In term of the development of Islamic thought, Hj. Aisyah[5] and Nurul Chotimah[6] presented how Hassan Hanafi's ideas can rebuild the Islamic sciences from its sources generally.

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[1] Mohamed Badar, Masaki Nagata, and Tiphanie Tueni, "The Radical Application of the Islamist Concept of *Takfir*," *Arab Law Quarterly* 31, no. 2 (2017): 1, https://doi.org/10.1163/15730255-31020044.

[2] Abdal Hakim Murad, *Understanding the Four Madhhabs: The Facts about Ijtihad and Taqlid* (Islamic Publications International, 1998), 14.

[3] Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law*, (UK: Cambridge University Press, 2001), 4.

[4] Abdulkader Tayob, "Decolonizing the Study of Religions: Muslim Intellectuals and the Enlightenment Project of Religious Studies," *Journal for the Study of Religion* 31, no. 2 (2018): 7–35, https://doi.org/10.17159/2413-3027/2018/v31n2a1.

[5] Hj. Aisyah, "Hassan Hanafi dan Gagasan Pembaruannya." *Jurnal Sulesana*, Volume 6, No. 2, Tahun (2011): 58-68.

[6] Nurul Chotimah, "Studi Tentang Pemikiran Hassan Hanafi." *Jurnal Al-Hikmah*, Volume 1, No. 2, Tahun (2015).

From the theological side, Syarifuddin[7], Hendri Nadiran[8] and Syafieh[9] described Hassan Hanafi's concern to make the liberation of theology. From the process of interpretation discourse, Muhammad Syaifuddien Zuhry[10] examined the thematic interpretation method according Hassan Hanafi's thought, while Ahmad Solahuddin[11] analyzed the epistemology of Hassan Hanafi's hermeneutics.

Hassan Hanafi's thought of *uṣū al-fiqh* as an Islamic legal theory have also received serious attention among schoolars of Islamic legal thought. M. Anis Mashduqi,[12] Moh Sholehuddin[13] and Muhammad Said[14] have attempted to analyze the methodology and the reconstruction of the Hassan Hanafi's contribution to the study of usul *uṣū al-fiqh*. Yudian Wahyudi stated firmly that *uṣū al-fiqh*, with all its concepts of *istinbaṭ ahkam*, is much more complex than what is in other Islamic sciences. According to Yudian Wahyudi's perspective, *uṣū al-fiqh* is one of the most ideal forms of Islamic discipline to interpret the religious texts. This is why it is necessary to present

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[7] Syarifuddin, "Konsep Teologi Hassan Hanafi." *Jurnal Substantia*, Volume 14, No. 2, Tahun (2012): 200-209.

[8] Hendri Nadiran, "Pemikiran Kalam Hassan Hanafi: Rekonstruksi Epistemologi Keilmuan Kalam dan Tantangan Modernitas." *Jurnal Intizar*, Volume 21, No. 2, Tahun (2015): 247-259.

[9] Syafieh, Katimin, Sukiman. The Relevance of Hassan Hanafi's Anthropocentric Theology Ideas towards the Re-Actualization of Islamic Thought in Indonesia. *Jurnal Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, Volume 3, No 1, February (2020).

[10] Muhammad Syaifuddien Zuhry, "Tawaran Metode Penafsiran Tematik Hassan Hanafi." *Jurnal at-Taqaddum*, Volume 6, No. 2, Tahun (2014): 386-410.

[11] Ahmad Solahuddin, "Epistemologi Hermeneutika Hassan Hanafi." *Jurnal Living Islam,* Volume 1, No. 1, Tahun (2018): 151-175

[12] M. Anis Mashduqi, "Kontribusi Hasan Hanafi dalam Kajian Ushul Fiqh." *Jurnal Al-Mazahib,* Volume 1, No. 1, Tahun (2012): 1-18.

[13] Moh Sholehuddin, "Metode Ushul Fiqh Hasan Hanafi." *Jurnal De Jure*, Volume 3, No. 2, Tahun (2011): 165-177.

[14] Muhammad Said, "Rekontekstualisasi Pemikiran Islam dalam Manhaj Ushul Fiqh Hassan Hanafi." *Jurnal Muha*rrik, Volume 2, No. 1, Tahun (2019): 1-14.

the works of Hassan Hanafi, especially those related to the *uṣū al-fiqh* studies. Because Hassan Hanafi was the first thinker in Islamic modern age to reconstruct the total building of the of *uṣū al-fiqh* reason.[15]

In the scope of the development of Islamic legal thought, the reconstruction of the *uṣū al-fiqh* reason has crucial attention from Moslem schoolars. This academic project has been rolled out to the public sphere more than three centuries ago. Sya'ban Muhammad Isma'il stated that the idea of the reconstruction of usul fiqh reason was one of Rifa'at al-Thahthawiy's projecs that we can trace from his work in *Al-Qaul al-Sadid fi al-Tajdid wa al-Taqlid*.[16] The effort of the reconstruction of *uṣū al-fiqh* reason, according to Jamilah Bu Khatim, have two typologies: the conceptual frame *(al-syakl)* and the material discourse *(al-madmun)*. Based on Jamilah Bu Khatim's literature research, Hassan Hanafi's project of the reconstruction of *uṣū al-fiqh* reason was the part of the first category.[17]

The study of Hasan Hanafi's thought, especially those related with *uṣū al-fiqh* reason, has so far only described the dialectic between the text and the context. In fact, the dialectic of the text and the context in Hassan Hanafi's perspective is a way about how to present a transformative process toward epistemology reconstruction.[18] In A Luthfi Assyaukanie's research, Hassan Hanafi's thought is included in the reformist category.[19] Therefore, there is always the diction like "from *(min)*" and "to/towards *(ila)*" in Hassan Hanafi's project to reform the Islamic thought from its primary sources. From the various studies that have been carried out above, there

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[15] YudianWahyudi, *Ushul Fikih versus Hermeneutika*, (Yogyakarta: Nawasea Press, 2007), 119.

[16] Sya'ban Muhammad Isma'il, *Usul al-Fiqh Tarikhuhu wa Rijaluhu*, (Kairo: Dar Salam, 2010), 66.

[17] Jamilah Bu Khatim, *Al-Tajdid fi>Usul al-Fiqh*, (Kairo: Darul Faruq, 2010), 127.

[18] Nurchais Sofyan, "Revolusi Pemikiran Arab Kontemporer di Timur Tengah", Jurnal Adabiya, Volume 10, No. 20, Tahun (2009): 88.

[19] A Luthfi Assyaukanie, "Tipologi dan Wacana Pemikiran Arab Kontemporer", Jurnal Paramida 1, no. 1 (1998): 74.

is a basic thing that has not been seriously discussed, namely the orientation of the transformation process itself. Apart from that issue, the majority of previous researchers have not examined the new *uṣū al-fiqh* reason of Hassan Hanafi as a way of reading to analyze a religiosity phenomenon.

In today's religious context, the rise of exclamation of the slogan "Back to the Qur'an and Sunna" as a religious phenomenon needs to be observed seriously. As the case, the study of the slogan "Back to the Qur'an and Sunna" has been discussed generally by WZ Kamarudin Wan Ali[20] and M. Syukri Ismail,[21] but neither Ali nor Ismail are not mention Hassan Hanafi's thoughts in their research. Yudian Wahyudi discussed the study of the slogan "Back to the Qur'an and Sunna" comparatively by presenting the perspectives of Hassan Hanafi from Egypt, Muhammad Abid Al-Jabiri from Morocco and Nurcholish Madjid from Indonesia.[22] This article is not to challenge the results of the researches above. This article only intends to discuss the slogan "Back to the Qur'an and Sunna" especially based on Hassan Hanafi's perspective through his *uṣū al-fiqh* reason.

This article uses Michael Walzer's interpretation criticism approach. To Walzer, any given interpretation will be contentious, of course, but there is little disagreement about what it is that we are interpreting or about the need for the interpretive effort.[23] Every discovery and invention

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[20] WZ Kamaruddin Wan Ali and Fifi Hasmawati, "Slogan 'Peganglah Atau Kembalilah Kepada Al-Qur'an Dan Al-Sunnah [Q&S]' Isu Dan Tantangan Kepada Dakwah Islam: Analisis Dari Persepektif Pemikiran Islam," *Wardah* 20, no. 2 (2019): 32–53, https://doi.org/10.19109/wardah.v20i2.4547.

[21] M Syukri Ismail, "Al-Ruju' Ila Al-Qur'an Wa Al-Sunnah (Perspektif Muhammadiyah)," *Nur El-Islam* 1, no. 2 (2014): 109–23.

[22] Yudian Wahyudi, *The Slogan "Back to the Qur'an and the Sunna": A Comparative Study of the Responses of Hasan Hanafi, Muhammad 'Abid Al-Jabiri and Nurcholish Madjid*, *Library* (Canada: The Institute of Islamic Studies McGill University, 2002).

[23] Michael Walzer, *Interpretation and Social Criticism* (USA: Harvard University Press, 1993), 22.

(divine law is an abvious example) requires interpretation.[24] In this research, I make decision to put Hassan Hanafi's thought through his wokrs as primary sources, specifically his *uṣū al-fiqh* reason, as an interpretation criticism to interpret and criticize the slogan "Back to the Qur'an and Sunna". This qualitative research also uses the variety of references that used to support it.

Hassan Hanafi's Phenomenology: Tracing the Roots of Reason

The classical Islamic thought, here in after referred to as an *al-turas,* which so far have been more concern with theocentric discourses, must be presented to develop the anthropocentric orientations.[25] Hassan Hanafi through *al-Turas wa al-Tajdid* noticed that Islamic disciplines runs into difilcuties when dealing to humanities issues in the contemporary era.[26] According to Hassan Hanafi, *al-turas* must be read by using philosophical methodology. He proposed the phenomenology as a tool to reconstruct *al-turas.* This prescripiton will establish all of Islamic literatures as a phenomenon of religiosity.[27] Because every era of human civilization has a different character, even though within the same religious horizon, the dialectic between religious texts and contextual realities must be renewed. For Hassan Hanafi, those consciousnes will allow us to carry out the renewal of Islamic disciplines *(al-tajdid).[28]*

Al-Turas, in Hassan Hanafi's perspective, is the starting point *(nuqtah bidayah)* as a cultural and social responsibilities, while *al-tajdid* is the reinterpretation of it *(i'adah tafsir)* to implement what era needs.[29] By using phenomenology, Hassan Hanafi expressed that religious

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[24] Michael Walzer, *Interpretation and Social Criticism., Ibid.,* 26.

[25] Hassan Hanafi, *Al-Turas Wa Al-Tajdid,* (Beirut: Muassasah Jami'ah Li Nasyr wa Tauzi', 1992), 14.

[26] Hassan Hanafi, *Al-Turas Wa Al-Tajdid, Ibid.,* 37

[27] Hassan Hanafi, *Fi Al-Fikr Al-Gharb Al-Muasir,* (Beirut: Muassasah Jami'ah Li Dirasat wa Nasyr wa Tauzi', 1990), 11.

[28] Hanafi, *Al-Turas Wa Al-Tajdid, Ibid.,* 31.

[29] Hanafi, *Al-Turas Wa Al-Tajdid, Ibid.,* 13.

texts *(nuṣūṣ dīniyah)* is historical texts *(nuṣūṣ tarikhiyah)* which grew up in special social conditions that it will been evolving over the times, renewing what society needs and adapting the diversity of human capabilities.[30] It is because the divine revelation, for Hassan Hanafi, as soon as it is revealed becomes a scope of human being and as soon as he reads and understands it, it turns into a human science.[31]

The reconstruction of epystemology as an academic awareness in Islamic studies is a dialogical effort between theocentric aspect from religious texts and anthropocentric side from contextual realities. Islam as a religion is currently represented by divine revelation that are always open so they can be read by humans with various scientific disciplines. According to Hassan Hanafi, the science of *kalam* with its theological concepts,[32] the science of *tafsir* with its method of interpretation,[33] the science of *hadith* with its criticisms of *matan* and *sanad*,[34] the science of *tasawuf* with its transcendent and immanent combinations,[35] and the science of *uṣūl al-fiqh* with its *ijtihad* reasoning.[36] Thus, the process of reconstructing of the religious thought, according Hassan Hanafi's perspective, cannot escape from the reality that surrounds it.[37]

The effort of the reconstruction of epistemological Islamic sciences, for Hassan Hanafi, ideally use two paradigms at once; the traditions of religious thought *(al-*

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[30] Hassan Hanafi, *Min Al-Naql Ila Al-'Aql*, Vol. I, (Kairo: Al-Haiah Al-Mishriyah Al-'amah, 2014), 61.

[31] Hassan Hanafi, *Min Al-'Aqidah Ila Al-Shurah*, Vol. 1, (Beirut: Dar Al-Tanwir, 1988), 262.

[32] Hassan Hanafi, *Min al-'Aqidah ila al-Shurah*, (Kairo: Maktabah Madbuli, t.t.).

[33] Hassan Hanafi, *Ulum al-Qur'an min al-Mahmul ila al-Hamil*, (Kairo: Al-Haiah Al-Amah, 2014).

[34] Hassan Hanafi, *Ulum al-Hadis min Naqdi al-Matan ila Naqdi al-Sanad*, (Kairo: Al-Haiah Al-Amah, 2004).

[35] Hassan Hanafi, *Min al-Fana' ila al-Baqa'*, (Kairo: Maktabah Usrah, 2014).

[36] Hassan Hanafi, *Min al-Nas ila al-Waqi'*, (Kairo: Markaz Al-Kitab Li Al-Nasyr, 2004).

[37] Hassan Hanafi, *Dirasat Islamiyyah*, (Kairo: Maktabah Angelo, t.t.).

turas) and the reform efforts *(al-tajdid)*. Hassan Hanafi considers that the sacralization *(al-taqdisiyyah)* against the results of classical thought will exploit *al-turas* itself. Because so far al-turas is only seen as a historical documentation and is positioned as a final entity. *Al-turas* in Hassan Hanafi's phenomenology is functioned as a world of ideas that need to be reassembled in order to become *al-turas* that can live sustainably *(living al-turas)*. For Hassan Hanafi, *al-turas* is a pre-scientific experience of a thought.[38]

Unlike *al-turas* which has "traditionalized", *al-tajdid* as a reconstruction effort is a reflection of thought so that religious discourses do not marginalize the aspects of humanity that surround it. For Hassan Hanafi, *al-tajdid* can be done in two ways at once: *first*, internal reconstruction *(al-tajdid min al-dakhil)*. Namely tracing the lattice of progression in the body of classical *al-turas* by giving it a new conceptual framework that has function as a new epistemological formula; *second*, external reconstruction *(al-tajdid min al-kharij)*.[39] Namely conducting research efforts on Western schools of thought, and then tracing their objective criteria to be adapted to the repertoire of classical Islamic thought.

The dynamic reality of humanity requires the renewal of the conceptual framework of the Islamic sciences which has been justified absolutely final. Thus, the work of *al-tajdid* is to reconstruct and transform the consciousness of living *al-turas* based on social change with the aim that the way of Islam in the contemporary world is not only critical but also inclusive at the same time. Responding to this phenomenon, Hassan Hanafi ignited his critical reasoning through basic fundamental question: "Why Islamic heritage tradition and reconstruction *(al-turas*

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[38] Hassan Hanafi, *Al-Turas wa al-Tajdid*, (Kairo: Maktabah Angelo, 1987), 13.

[39] Hassan Hanafi, *Al-Turas wa al-Tajdid*, (Kairo: Maktabah Angelo, 1987), 27.

*wa al-tajdi*d*)* not indirectly reconstruction of Islamic heritage traditions *(tajdi*d* at-tura*s*)*."[40]

A simple question but basically principle. Both *al-tura*s* and *al-tajdi*d*, by Hassan Hanafi, are positioned as a phenomenological entity. From *al-tura*s* as a text to *al-tajdi*d* as contextualization is a progressive-transformative awareness of past religious experiences toward new religious humanity. Meanwhile, the reconstruction of tradition *(tajdi*d* al-tura*ts*)*, for Hassan Hanafi, has the potential to eliminate the role of *al-tura*s* as historical consciousness.[41] That is because the practice of the reconstruction of Islamic tradition direclty can corrupt *al-tura*s* from its phenomenological entity.

As an effort to reconstruct the classical Islamic sciences as a transformative process towards critical and humanist science, Hasan Hanafi designed the epistemology of Islamic sciences into two typologies: theoretical thinking *(al-fikr al-naz*a*ri)* and methodological thinking *(al-fikr al-manhaji)*. Based on these typologies, there are four disciplines that are the core objects in the study of the Hasan Hanafi mega project. Science of *kala*m* and philosophy, for Hassan Hanafi, are two disciplines with a pattern of theoretical thinking. Meanwhile, *u*ṣ*u al-fiqh* and *tasawuf*, in Hassan Hanafi's perspective, are two disciplines that have a methodological thinking structure. Those four sciences, for Hassan Hanafi, are major knowledge in the repertoire of Islamic sciences.[42]

Based on phenomenology, Hassan Hanafi conceptualized four new awareness of the four disciplines in Islamic sciences: *first*, the science of *kala*m* as a theological awareness (from theology to revolution/ *min al-'aqi*d*ah ila>as*-*s*a*urah*: 5 volumes); *second*, philosophy as a

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[40] In Arabic: *Limadza Al-Tura*s* wa Al-Tajdi*d*, wa Laisa Tajdi*d* Al-Tura*s*?*. See: Hassan Hanafi, *Al-Tura*s* wa al-Tajdi*d*, (Kairo: Maktabah Angelo, 1987), 16.

[41] Hassan Hanafi, *Al-Tura*s* wa al-Tajdi*d*, (Kairo: Maktabah Angelo, 1987), 24.

[42] Hassan Hanafi, *Al-Tura*s* wa al-Tajdi*d*, (Kairo: Maktabah Angelo, 1987), 137.

critical-creative awareness (from sacredness to creativity/*min al-naql ila al-ibda*: 9 volumes); *third*, *uṣū al-fiqh* as a juridical awareness (from text to context/*min al-nas ila al-waqi':* 2 volumes); *fourth*, *tasawuf* as a theosophical consciousness (from shroud to eternity/*min al-fana ila al-baqa*: 2 volumes). Thus, *al-turas* as a living culture has vitality and *al-tajdid* as an epistemological reconstruction effort has creative power. At this point, Hassan Hanafi through phenomenology saw that *al-turas* and *al-tajdid* are the ways of being religious humanity itself.

Al-Turas wa Al-Tajdid as Hassan Hanafi's project, by using phenomenology with an Islamo-Leftism perspective, seeks to transform Islamic sciences from that initially revolved around divine revelation at the first time to be more focused on humanities aspects that seeks to actualize common interest and public welfare.[43] It can be realized if we dare to state that revelation as God's will can only be understood by human language, and the renewal is not in the name of God but in the name of humanity.[44] Thus, Islamic sciences have a completely humanitarian orientation that seeks to implement humanity *(al-insaniyah)*, social justice *(al-'adl al-ijtima 'iy)*, political freedom *(al-hurriyah al-siyasiyah)*, norms *(al-mabdaiyah)* and sustainable development *(al-taqaddum al-mustamir).*[45]

Phenomenological Hermeneutics: Designing and Rebuilding the *Uṣū al-fiqh* Reason

Uṣū al-fiqh as a part of the Islamic disciplines which related to Islamic legal thought, according to Hassan Hanafi, dissociated from logic and philosophy by *al-turas*.[46] For saving *uṣū al-fiqh* from this isolation, Hassan Hanafi proposes the phenomenology as the new perspective to

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[43] Hassan Hanafi, *Dirasa Islamiyah*, (Kairo: Maktabah Agelo), 397.

[44] Muhsin Al-Miliy, *Zahirah Al-Yasa Al-Islamiy*, (Riyadh: Dar Nasyar Dawli, 1993), 64.

[45] Muhsin Al-Miliy, *Zahirah Al-Yasa Al-Islamiy, Ibid.*, 65.

[46] Hassan Hanafi, *Al-Turas wa al-Tajdid, Ibid.,* 159.

reconstruct *uṣū al-fiqh* reason.[47] As a critical thinking, the idea of the renewal of the *uṣū al-fiqh* reason is necessary, because *uṣū al-fiqh* does not think about itself. In Hassan Hanafi's perspective, the reconstruction of *uṣū al-fiqh* can be seen as a humanization process at the same time. So, this academic awareness will establish a new perspective for *al-turaṡ* itself.[48]

As a linguistic text, the Qur'an is the primary source and the central of knowledge in the history of Islamic civilization. However, that does not mean that the text is the only factor that builds Islamic civilization.[49] With phenomenology, civilization can be seen as the result of a dialogical fusion between humans and texts on the one side, and contextual reality on the other side.[50] "The revelation is final and *uṣū al-fiqh* is the ideal way of reasoning to understand it" is the phenomenological statement of Hassan Hanafi as an opening for the reconstruction of *uṣū al-fiqh* reason.[51] The statement sparked awareness that the text as a religious history needs to be contextualized for the re-benefit of humanity. The text as a sign of God with descriptive reasoning *(al-bayaṅ)* must be rationalized through demonstrative reasoning *(al-burhaṅ)* as a transformative process *(min-ila)* to find the essence of the text.

The observations on problems of religious thought and socio-political studies that are always developing dynamically provide theoretical implications in the disciplines of religious sciences, including *uṣū al-fiqh* as the legal reasoning for Islamic law. *Al-Turaṡ* as the text of the past experiences and we are as the readers today must be able to transform the results of the old interpretation with

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[47] Hassan Hanafi, *Min Al-Nasṣ Ila Al-Waqi'*, Vol. 1, (Kairo: Markaz Al-Kitab Li Nasyr, 2004), 18.

[48] Hassan Hanafi, *Dirasat Islamiyyah*, (Kairo: Maktabah Angelo, t.t.), 393.

[49] Hassan Hanafi, *Al-Turaṡ Wa Al-Tajdid*, *Ibid.*, 154.

[50] Abdul Majid Shagir, *Al-Ma'rifah wa al-Sultaḥ fi al-Tajribah al-Islamiyah Qira'ah fi Nasy'ati 'Ilmi al-Usuḷ wa Maqaṣd al-Syari'ah*, (Kairo: Dar Ru'yah, 2010), 154

[51] In Arabic: *Faqad inqatha'a al-wahyu wa 'ilm al-ushul huwa manthiq al-wayu*". See: Hassan Hanafi, *Min al- Nasṣ Ila al-Waqi'*, Vol. 2, *Ibid.*, 35.

a new meaning that is more relevant and rational. Phenomenological hermeneutics is positioned as a critique of historical methodology. Therefore, the reconstruction of *uṣū al-fiqh* reason through phenomenological hermeneutics must be seen as a transformative process from the practice of religious rituals into a set of human social values.[52]

The reconstruction of *uṣū al-fiqh* reason in Hassan Hanafi's perspective is based on phenomenological hermeneutics pattern. Hassan Hanafi's phenomenological hermeneutics rests on three clusters: *first*, the text *(al-nas)* as a historical awareness *(al-wa'yu al-tarikhi)*; *second*, the reason *(al-'aql)* as a primary tool for analyzing those texts. The reason here, for Hassan Hanafi, is understood as an awareness of theoretical thinking *(al-wa'yu al-nazari)*; and *third*, the context *(al-waqi')* as a praxis awareness *(al-wa'yu al-'amali)*.

The text *(al-nas)* in Hassan Hanafi's phenomenological hermeneutics is about the adjustment of religious languages to linguistic dictions that are commonly used today. The adaptation of traditional religious language into international languages, for Hassan Hanafi, is a form of the reconstruction of *uṣū al-fiqh* reason.[53] The process of changing terminology from traditional languages to international languages today must be seen as an effort by *al-tajdid* so that *al-turas* can be understood and accepted by all of human being. In the new form of *uṣū al-fiqh* reason, Hassan Hanafi's phenomenological hermeneutics mapped three linguistic transformations:

First, the transformation of traditional diction toward a new terminology. For example, the term of *ijma'* was replaced with the communal experience *(al-tajribah al-musytarakah)*. For Hassan Hanafi, the term of communal experience does not reduce the weight of the meaning contained by *ijma'* as a tradition diction in the classical Islamic legal thought.[54] In fact, this terminology

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[52] Hassan Hanafi, *Dirasat Falsafiyyah*, (Kairo: Maktabah Angelo, t.t.), 145-146

[53] Jamilah Bu Khatim, *Ibid.*, 129.

[54] Hassan Hanafi, *Al-Turas wa al-Tajdid*, *Ibid.*, 105.

transformation, in Hassan Hanafi's view, can help *uṣū al-fiqh* to always be relevant on the one side, and make it easier for researchers to understand *al-turas̱* on the other side.

Second, the utilization of using new term based on the essential meaning. For example, the term of *al-amr* and *al-nahy* in *uṣū al-fiqh* classical period which have the essential meaning of commands and prohibitions can be replaced with direct instruction sentences: do it *(if'al)* and leave it *(utruk)*/don't do it *(la>taf'al).*[55] For Hassan Hanafi, the 'do it' or 'leave it' diction, apart from accommodating the meanings of *al-amr* and *al-nahy*, can directly provide an understanding to the reader or researcher that the two dictions are discussing about the commands and the prohibitions.

Third, the transference of new term based on the sign meaning. For example, the word of *al-wajib* and *al-ḥaram*, which in the classical *uṣū al-fiqh* reason imply the meaning of what must be done and what must be avoided, can be replaced with positive actions *(al-'amal al-ijabi)* and negative actions *(al-'amal al-salbi)*. Likewise with the terminology of *al-ahkâm al-khamsah* which in the classical *uṣū al-fiqh* suggests that five kinds of *syar'i* law can be replaced with the terminology of the level *(al-mustawa)* of Islamic law.[56]

The logic *(al-'aql)* as a critical thinking, in the perspective of Hassan Hanafi's phenomenological hermeneutics, is a primary tool that can be used to find the meaning of religious texts. *Al-'Aql* as a critical thinking here is more appropriate if it is understood as a frame of mind and not just a reason. Therefore, Hassan Hanafi stated:

> *"Logic is the basic reason of the text,*
> *things that are irrational, so that means it*
> *is not in accordance for understanding the*
> *text, and things that are rational are in*

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[55] Hassan Hanafi, *Al-Turas̱ wa al-Tajdid*, Ibid., 105.
[56] Hassan Hanafi, *Al-Turas̱ wa al-Tajdid*, Ibid., 108.

fact in accordance for understanding the text."[57]

Hasan Hanafi's statement about *al-'aql* as a critical thinking above has become the target of critique from whom criticizes him. He was accused of being misguided and misleading because he positioned *al-'aql* far above divine revelation. However, basically, this critique cannot be justified. Because what is meant by *al-'aql* by Hasan Hanafi is a comprehensive frame of mind and not merely common sense. Because the same thing is also stated explicitly by Imam Al-Ghazali in *Qanun al-Ta'wil*:

> *"And whoever denies logic, clearly he has denied the shari'a. Because with logic the truth of the syara' can be known. How can logic be denied by syara', while the truth syara' is not determined except by logic itself."*[58]

Besides the text *(al-nas)* and the logic *(al-'aql)* above, the context *(al-waqi')* also gets the same attention by Hassan Hanafi. For him, the context can be positioned as an area of understanding that requires two points of view; *first,* the historical context which is the cause of a law being revealed; *second,* the empirical context which is new causes which of course require different legal decisions. So, the context plays an important role, both in terms of the historical and the empirical studies of Islamic legal thought.

The truth in juridical reasoning does not only contain theological aspects, but also about ethical values, even to practical procedures. The relationship between various objects of the Islamic studies can be portrayed as a way of human dialogue towards sacred religious texts and dynamic realities. Because the existence of divine revelation from the beginning was intended entirely for humans. Regardless of the pros and cons in the theological study of whether the revelation text is *qadim* or *makhluq,*

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[57] In Arabic: *Inna al-'aql huwa asas an-naql, wa anna kulla ma>'arada al-'aql fainnahu yu'arid an-naql, wa kullu ma>wafaqa al-'aql fainnahu yuwafiq an-naql.*

[58] Imam Al-Ghazali, *Qanun al-Ta'wil,* dalam *Majmu>ah Rasa>il Imam Al-Ghazali,>* (Beirut: Dar El-Kitab, t.t.),127

what is clear in its series of declines, God as the subject who produce the revelation, chose Muhammad as the first recipient. Through Muhammad as God's choice, humans will be able to understand and interpret religious teachings explicitly and implicitly at the same time. The revealed text which basically only God, Gabriel and Muhammad knew in its original form, has now become an open text that can be read *(al-nas}al-maqru'}* by all of human being.[59]

Human understanding to interpret the meanings of this readable text must be closely guarded. The approaches for understanding the texts in the past era *(al-nas}al-sabiq)* often turn their backs on today's context *(al-wa}qi' al-hadir)* which actually requires a new appropriately meaning. Ideally, the interpretation of religious texts needs to consider contextual issues within the scope of the social sciences and humanities. In this way, the sides of the plurality of texts can be dynamically identified into the public sphere. At this point, the reconstruction of religious thought has a paradigmatic foothold.

Departing from the awareness of phenomenological hermeneutics as a meta episteme, Hasan Hanafi has tried to inject a new epistemological formula in reading and presenting the renewal of *us}ū al-fiqh* critical thinking. At this point, Hassan Hanafi's philosophical work can be called the reconstruction of *us}ū al-fiqh* reason.

Human efforts to interpret the meanings of the religious text, according to Hassan Hanafi, must be closely monitored. For him, all the juridical problems faced by humans today are a mirror of impartiality that reflects how unbalanced the attention of classical Islamic law experts on humanitarian issues today.[60] The reading of texts that turn their backs on today's context is the starting point for formulating the humanist Islamic laws.

The phenomenological approach as awareness of critical thinking in the discipline of *us}ū al-fiqh*, in Hassan Hanafi's perspective, is framed in three categories of

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[59] Nasr Hamid Abu Zaid, *Mafhum al-Nas},* (Beirut: Markaz Saqafi 'Arabi, 2008), 40-41.

[60] See: Hassan Hanafi, *Dirasat Islamiyah*, (Kairo: Maktabah Angelo, t.t.).

consciousness; historical awareness *(al-wa'yu al-tarikhi)*, eidetic awareness *(al-wa'yu al-nazari)* and realistic-praxis awareness *(al-wa'yu al-'amali)*.[61] The three juridical awareness, for Hassan Hanafi through phenomenological reading, are an effort to present the discipline of *uṣū al-fiqh* which is not only critical, but also humanist at the same time. In simple terms, through these three consciousness, Hassan Hanafi wants to shift the theocentric paradigm in classical *uṣū al-fiqh* science to the anthropocentric paradigm.

Uṣū al-fiqh as a juridical consciousness that accommodates the three categories of consciousness above is a portrait of the contextualization of religious teachings in the contemporary era. *Uṣū al-fiqh*, for Hassan Hanafi, cannot only run with what has been conceptualized, but must also balance the movement of modern human thought.[62] Here, Hassan Hanafi wants to promote the phenomenology as an approach to presenting *uṣū al-fiqh* as a discipline that opens itself to terms in the social sciences and humanities.

Before discussing about how phenomenology describes the new face of *uṣū al-fiqh* reason, Hassan Hanafi performs a definitive identification and interpretation of what is meant by the text so far in the treasures of classical Islamic thought. For Hasan Hanafi, the meaning of the text to this day is still ambiguous, is it *al-naql* or *al-nas*? Because Muslims almost never fail to understand this seemingly trivial and very simple term. The identification of terms becomes a necessity that must be done before we make efforts to reconstruct a scientific discipline, in this case the discipline of *uṣū al-fiqh*. Therefore, in the book *Min al-Nas ila> al-Waqi'* volume I, Hassan Hanafi name it the Formulation of the Text *(Takwin al-Nas)*, which is an effort to read, identify, research and map various typologies of text structure reason.[63]

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[61] Hasan Hanafi, *Min al- Nas ila al-Waqi'*, *Ibid.*, 37.
[62] Hassan Hanafi, *Min al-Nas ila al-Waqi'*, *Ibid.*, 36.
[63] See: Hassan Hanafi, *Min al- Nas ila al-Waqi'*, volume I, the Formulation of the Text *(Takwin al-Nas)*.

While in volume II of the same book, *Min al-Nas ila al-Waqi'*, Hasan Hanafi finalizes the theory of the reconstruction of *usū al-fiqh* reason. Historical awareness *(al-wa'yu al-tarikhi)* is a form of hermeneutical interpretation as a substitute terminology for the concept of legal sources and legal arguments which are narrated in *al-turas* with *masadir al-ahkam* and *al-adillah al-muttafaq 'alaiha*. Historical consciousness which is read with hermeneutics is as form of a humanist terminology. The new terminology offered by Hassan Hanafi emphasizes the anthropocentric aspect of experience. These include: (1) *Al-Kitab* as an universal humanist experience *(al-tajribah al-insaniyyah al-'ammah);*[64] (2) *Al-Sunnah* as an experience pilot model *(al-tajribah al-namuzajiyyah);*[65] (3) *Al-Ijma* as a communal experience *(al-tajribah al-jama'iyyah);*[66] and (4) *Al-Qiyas* as an individual experience *(at-tajribah al-fardiyyah).*[67]

Based on eidetic awareness, the process of critical thinking and extracting the law which is narrated in *al-turas* with *istinbat al-ahkam* was updated by Hassan Hanafi with four models of reason: (1) systemic reason *(al-manzum)* namely the discussion of pronunciation;[68] (2) conceptual reason *(al-mafhum)* namely the discussion of meaning;[69] (3) critical reason *(al-ma'qul)* namely the discussion of the rationality of the text;[70] (4) perspective reason *(al-manzur),* namely the discussion of *ijtihad*, *taqlid* and the *fatwa* process.[71]

To complete the reconstruction effort of the *usū al-fiqh* reason, Hassan Hanafi makes the study of legal orientations and legal categories as the discussion in praxis awareness *(al-wa'yu al-'amali)*. After the dialectic of the text and the context has done through its historical and

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[64] Hassan Hanafi, *Min al- Nass ila al-Waqi'*, *Ibid.*, 99-138.
[65] Hassan Hanafi, *Min al- Nass ila al-Waqi'*, *Ibid.*,139-190.
[66] Hassan Hanafi, *Min al- Nass ila al-Waqi'*, *Ibid.*, 191-214.
[67] Hassan Hanafi, *Min al- Nass ila al-Waqi'*, *Ibid.*, 215-246.
[68] Hassan Hanafi, *Min al- Nass ila al-Waqi'*, *Ibid.*, 247-358.
[69] Hassan Hanafi, *Min al- Nass ila al-Waqi'*, *Ibid.*, 359-374.
[70] Hassan Hanafi, *Min al-Nass ila al-Waqi'*, *Ibid.*, 375-442.
[71] Hassan Hanafi, *Min al-Nass ila al-Waqi'*, *Ibid.*, 443-482.

eidetic analysis process, praxis awareness is the area of contextualization. At this point, praxis awareness is functioned by Hassan Hanafi as the justifiable behavior with four models: (1) the purpose of shari'a *(maqaṣid al-syari')* namely the discussion of the purposes of the Islamic law;[72] (2) the purpose of *mukallaf (maqaṣid al-mukallaf),* namely the study of the intentions of the perpetrators of the Islamic law;[73] (3) categorization of conditional law *(ahkam al-wad'i),* namely the discussion of legal causality;[74] (4) categorization of instructional law *(ahkam at-taklifi)* namely the study of legal level status.[75]

The reconstruction of *uṣū al-fiqh* reason as a phenomenological process from transforming the text material towards the contextualization of matter is a new formula in the study of *uṣū al-fiqh* scope. This is presented by Hassan Hanafi deliberately to solve the paradoxical dimension between the text and the context, so they can be parsed and rationalized. The understanding form the dialectic of the text and the context initiated by Hassan Hanafi can be concluded as a study of two sides at once; *first,* the appearance of the text *(zahiriyyah al-nas)* which departs from what mentioned in the text literally; *second,* the context of the text *(waqi'iyyah al-nas)* which are based on reality that surrounds those text. Each of two models of reasoning above have different patterns in practical reading. The appearance of the text could be read by using the classical method *(al-manhaj al-taqlidi);* while the contextualization of the text could be read by using the philosophical method *(al-manhaj al-falsafi).* This distinction is not to subjugate each other, but to synergize them with their ontological bases.

From the effort of the reconstruction of *uṣū al-fiqh* reason that carried out by Hassan Hanafi, we can find out which are static and sacred entities and which are dynamic and plural realities. At this point, Hassan Hanafi's

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[72] Hassan Hanafi, *Min al-Nass ila al-Waqi'*, *Ibid.,*483-516.
[73] Hassan Hanafi, *Min al-Nass ila al-Waqi'*, *Ibid.,* 517-532.
[74] Hassan Hanafi, *Min al-Nass ila al-Waqi'*, *Ibid.,* 517-532.
[75] Hassan Hanafi, *Min al-Nass ila al-Waqi'*, *Ibid.,* 561-583.

phenomenological hermeneutics is an epistemological tool so that religious people can arrive at the purpose of the text *(maqaṣid al-nas)*. Based on the epistemological description of *uṣū al-fiqh* reason above, Hassan Hanafi emphasized that to gain an understanding of the core values of sacred and static texts and to dialogue it with plural and dynamic contextual realities. As a religious phenomenon, Islamic law can be discussed with social science and humanities. For Hassan Hanafi, the dialectical relation of the text and the context is dialogical-inclusive. Both shari'a and philosophy have to integrated as a way of seeing for formulating a humanist religious understanding. Based on phenomenological hermeneutics, the integration between the text and the context is a way of interpreting that has a clear philosophical footing. At this point, the reconstruction of *uṣū al-fiqh* reason can be interpreted as an epistemology domestication process between the principles of shari'a and the consciousness of philosophical thinking.

Uṣū al-fiqh as a Phenomenological Critique of the Slogan Back to the Qur'an and Sunna

The effort to reconstruct the *uṣū al-fiqh* reason through phenomenological hermeneutics from the perspective of Hassan Hanafi can be seen as academic awareness that *al-turas* as a legacy of thought can always be contextualized so that it can be relevant to the context of the times.[76] Based on the analytical description above, we can state that the dialectic of the text and the context has an anthropocentric intention. Thus, the sacredness of religious texts can be understood wisely in a pluralistic manner in the context of humanity.[77]

The idea of the slogan "Back to the Qur'an and Sunna" was born from a literally understanding of what is written in verse 59 in Surah An-Nisa'. The group who has been carrying this slogan considers that by returning to the Qur'an and Sunna, at the same time, they have carried out the God's instruction in verse 110 in Surah Ali 'Imran. In

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[76] Hassan Hanafi, *Al-Turas wa al-Tajdid*, Ibid., 160..

[77] Hassan Hanafi, *Min Al-Nass Ila Al-Waqi'*, Vol. 1, Ibid., 20..

classical Islamic legal thought, The Imams of the Madhhab, like Imam Abu Hanifa, Imam Malik bin Annas, Imam Ash-Shafi'i and Imam Ahmad bin Hanbal, all of them have various methodological tools that are not only the Qur'an and Sunna. Beside the Qur'an and Sunna, there are Ijma' and Qiyas, as the other sources and legal arguments in the comparative study of Islamic law at the same time. Apart from that, the inclusion of the concept of *istihsan* in the hanafite school, *maslahah mursalah* and *ijma' ahl madinah* in the malikite school, *istishab* in the shafi'ite school and *qawl sahabiy* in hanbalite, all of these things are confirming that the Qur'an and Sunna cannot be read immediately, directly or literally.[78]

The Qur'an and Sunna in the literature of *usul al-fiqh* discipline are the primary sources for the application of syar'i law *(masadir al-ahkam al-syar'iyyah)*. Imam Ash-Shafi'i in Ar-Risalah started the juridical debate by presenting the concept of five categorical descriptions *(al-bayan al-khamsah)* as an initial epistemological construction of how humans can understand religious texts. The description of the five categorical in Imam Ash-Shafi'i's perspective is based on academic awareness that science must accommodate two sides at once; the inclusion of authoritative sources *(ittiba')* and the development of critical thinking *(istinbat)*.[79] The Al-Qur'an and Sunna in the concept of *al-bayan*, especially from the first *al-bayan* to the fourth *al-bayan*, are described with dialogical relations; intra textuality and intertextuality. The intra textuality relation that exemplified by Imam Ash-Shafi'i is about how the Qur'an and Sunna explain themselves. Imam Ash-Shafi'i succeeded in proving how the verses of the Qur'an explain each other's verses *(bayan al-qur'an bi al-qur'an)*.[80] As well with Sunna *(bayan al-sunnah bi*

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[78] See: Qahthan Abdurrahman Ad-Dury, *Manahij Al-Fuqaha' fi Istinbath Al-Ahkam wa Asbab Ikhtilafihim*, (Beirut: Darul Kutub, 2017).

[79] Muhammad Abdus Salam Awam, *Al-Fikr al-Manhaji al-'Ilmi 'inda al-Usuliyyin*, (Beirut: IIIT, 2014), 160-161.

[80] Imam Asy-Syafi'i, *Al-Risalah*, (Kairo: Maktabah Dar Turats, 2005), 115-116.

al-sunnah).[81] While the intertextuality relation according to Imam Ash-Shafi'i is about how the Qur'an explained by Sunna. At this point, Sunnah serves as the initial interpreter for global Qur'anic texts.

As the fifth *al-bayan*, the concept of *al-ijtihad* in Imam Ash-Shafi'i's perspective is about the effort to understand what is not clearly dialogued by the Qur'an and Sunna. This academic awareness is built on the understanding that no single phenomenon, which is faced by Muslims, can escape from the law.[82] This idea ignites human critical thinking to seek discursive relations between religious texts and human's phenomenon like historical, socio-political, and cultural contexts.[83] The limitations of human knowledge on the discursive relationship between these two things require us to observe and analyze the opinions of ulama thought. This point is deliberately obscured by the slogan back to the Qur'an and Sunna.

By maximizing the high religious spirit, those who believe in the truth of that slogan, is spreading massively that what is written in the Qur'an and Sunna absolutely must be practiced and actualized directly and literally. At first glance, the slogan appears to be true on the surface. However, there are many religious discourses that are marginalized by that slogan. The dialogical tradition by the Imams of the madhhab becomes unlovable. The flexibility of *fiqh* becomes stagnant. As a result, the phenomenon of *takfir* is a serious problem in our social life.

Yudian Wahyudi's research on the slogan of back to the Qur'an and Sunna, from the history of its birth and its development in the modern world, describes that the slogan is suspected as a form of theo-political legitimacy.[84]

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[81] Imam Asy-Syafi'i, *Al-Risalah, Ibid.*, 117-119.

[82] Imam Asy-Syafi'i, *Al-Risalah, Ibid.*, 474.

[83] Badruzzaman. "Rekonstruksi Epistemologi Ilmu Ushul Fikih Berbasis Ilmu Sejarah." *Jurnal Al-Adyan*, Volume 13, Nomor 2 (2018): 197.

[84] Yudian Wahyudi, *The Slogan "Back to the Qur'an and the Sunna": A Comparative Study of the Responses of Hasan Hanafi, Muhammad Abid al-Jabiri and Nurcholish Madjid,* (Canada: McGill University, 2002), 15-16.

In its working pattern, other than as being a critique of religious practices that are considered heretical, the slogan back to the Qur'an and Sunna has a political orientation by making the Qur'an and Sunna as its existential legitimacy. According to Abdul Madjid's study, the slogan back to the Qur'an and Sunna, in its enforcement practice, is a form of political exploitation of the religious texts.[85]

The slogan back to the Qur'an and Sunna is always inviting human being to directly read and practice whatever is written literally. The slogan plays an important role in the process of captivating the audiences in the context of Islamic preaching.[86] In Muslim world context, this slogan has been massively conveyed by several preachers recently. In Indonesian context, Ahmad Ishomuddin as one of the Nahdlatul Ulama's schoolar, showed a critical attitude towards the slogan of back to the Qur'an and Sunna. He reminded Muslims not to follow and not be fooled by the slogan "Back to the Qur'an and Sunna" which is now often heralded by some groups to spread their understanding.[87] While Muhammadiyah's perspective on that slogan, according to M. Syukri Ismail's research, has two grops, Puritan Islam and Progressif Islam. The Puritan Islam is sticking to establish and read the Qur'an and th Sunna as the sources of Islamic teachings literally, while Progressive Islam is emphasizing reading the Qur'an and Sunna based on modernist interpretations and contextual interpretations.[88]

The invitation like "back to the Qur'an and Sunna", "where is the evidence from the Qur'an and Sunna?", "there

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[85] Abd al-Majid Saghir, *Al-Fikr al-Usuli wa Isykaliyat al-Sultah al-'Ilmiyah fi al-Islam* (Beirut: Dar Muntakhab 'Arabi, 1994), 172.

[86] WZ Kamaruddin Wan Ali, Slogan "Peganglah atau Kembalilah kepada Al-Qur'an dan Al-Sunnah" Isu dan Tantantangan Kepada Dakwah Islam: Anlisis dari Perspektif Pemikiran Islam, *Jurnal Wardah*, Volume 20, Nomor 2, (2019): 32.

[87] Sumber: https://www.nu.or.id/post/read/104842/umat-islam-jangan-tertipu-slogan-kembali-pada-quran-dan-hadits

[88] M. Syukri Ismail, "Ar-Ruju' Ila Al-Qur'an wa Al-Sunnah (Perspektif Muhammadiyah) "*Jurnal Nur El-Islam*", Volume 1, Nomor 2, (2014): 109.

is no evidence", "the Prophet did not give an example", "do yo want to follow the Prophet or follow Imam Ash-Shafi'i", " do you want to follow God's law or follow the opinion of the Kiai", are presenting with a rebuking intonation and various justifying tones. This slogan is presenting massively by some preachers in the public sphere that followed by provocative questions which tend to doubt Muslims about the cultural practices and the rationalizing's effort of the religious teachings. The challenges are arising in this problem is what if the socio-political religious phenomena faced by Muslims today are not clearly stated in the Qur'an and Sunna. At this point, the slogan back to the Qur'an and Sunna has potentially eliminating the concept of *mazhab*, so the truth will be claimed by only and belong to one party.

The religious movement that spread the slogan "Back to the Qur'an and Sunna" can hinder the process of transforming the anthropocentric aspecs of religious texts, because it does not have a strong methodological tool. For Hassan Hanafi, the Qur'an and Sunna must be understood by mapping out with three strategic steps: theoretical knowledge *(al-'ilm al-nazari)*; work and practice *(al-'amal wa al-mumarasah)* and social solidarity aspects *(al-takaful al-ijtima'i)*.[89] The Qur'an as an universal humanist experience must be read by using the *'ulum al-qur'an (min al-mahmul ila al-hamil)*[90] and must be practiced by using the *'ulum al-tafsir (min al-tafsir al-tjli ila al-tafsir al-maudu'i)*;[91] so that the product of its interpretation can be contextualized for the benefit of mankind universally as well. Sunna as an experience pilot model also must be read with those three's; by using the

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[89] See Hassan Hanafi, *Mafahim Al-'Ilm Wa Al-'Amal Wa Al-Takaful Al-Ijtima'i Fi Al-Fikr Al-'Arabi Al-Mu'asir* (New York: UNDP, 1998).

[90] See Hassan Hanafi, *Min Al-Naql Ila Al-'Aql: 'Ulum al-Qur'an (Min Al-Mahmul Ila Al-Hamil)* (Kairo: Al-Haiah Al-Mishriyah Al-'Ammah, 2013.

[91] See Hassan Hanafi, *Min Al-Naql Ila Al-'Aql: 'Ulum al-tafsir (min al-tafsir al-tjli ila al-tafsir al-maudu'i)*; (Kairo: Al-Haiah Al-Mishriyah Al-'Ammah, 2013.

ulum al-ḥadis (min naqd al-sanad ila naqd al-matan)[92] and must be practiced by using the '*ilm al-sirah (min al-rasul ila al-risalah)*,[93] so that the practice of Sunna in the modern era is more focused on its idealistic values not confined to what the Prophet did in the past.

In Hassan Hanafi's perspective, the slogan "Back to the Qur'an and Sunna" as a model of thinking has the potential orientation to legitimize destructive practices against any interpretive behavior that tries to maintain the status quo.[94] Apart from being an antithesis to *al-turas*, the slogan of back to the Qur'an and Sunna is deliberately ignoring *al-tajdid* as the process of recontextualization of the religious teachings in the modern world. If the slogan back to the Qur'an and Sunna read by using Hassan Hanafi's phenomenological hermeneutics, it can be concluded that the slogan has many paradigmatic defects. Based on the Hassan Hanafi's *uṣū al-fiqh* reason above, the slogan back to the Qur'an and Sunna can be criticized through:

First, the historical consciousness. The slogan back to the Qur'an and Sunna is only heeding the Qur'an as an experimental universal and Sunnah as an experimental pilot model. This slogan does not accommodate the *ijma'* as the communal experience and the *qiyas* as an individual experience. The absence of the last two experiences shows that the slogan back to the Qur'an and Sunna breaks the historical chain as a phenomenological consciousness in Islamic legal thought.

Second, the eidetic consciousness. The slogan back to the Qur'an and Sunna does not have a solid theoretical construction. The eidetic consciousness built on four models of critical thinking that is illegible in the slogan back to the Qur'an and Sunna. The absence of systemic and conceptual thinking about dialectics of words and

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[92] See Hassan Hanafi, *Min Al-Naql Ila Al-'Aql: 'Ulum Al-Ḥadis (Min Naqd Al-Sanad Ila Naqd al-Matan),* (Kairo: Al-Haiah Al-Mishriyah Al-'Amah, 2013).

[93] See Hassan Hanafi, *Min Al-Naql Ila Al-'Aql: '*ilm al-sirah (min al-rasul ila al-risalah),* (Kairo: Al-Haiah Al-Mishriyah Al-'Amah, 2013).

[94] Hassan Hanafi, *Al-Turas wa al-Tajdid, Ibid.*,185.

meanings between religious texts, and the absence of logical contextualization efforts indicates that the slogan back to the Qur'an and Sunna hinders the critical reason as the essential point for *ijtihad* and does not provide a new interpretation space.

Third, the praxis consciousness. The slogan back to the Qur'an and Sunna did not discuss more models of the purpose and the categorization of Islamic legal levels. This slogan has difficulty in deciphering legal formulations regarding which are sacred and static *(al-sawabit)* and which are plural and dynamic *(al-mutaghayyirat)*. On the other side, this slogan obscures the phenomenological fact that although the divine revelation was final *(al-mutanahi)*, the reality that surrounds the human life never recognizes the final word *(al-la>mutanahi)*. This condition shows that the slogan back to the Qur'an and Sunna does not have an anthropocentric orientation.

According to Hassan Hanafi's perspective, Islamic law as human experience is based on the traditions which were prevailing in its time.[95] Like example, the implementation of *Qisas*, the distribution of *Ghanimah*, Slavery phenomenon, *Jihad* and fighting *murtaddin*, *musyrikin* and *kuffar* are no longer relevant to the context of today's era.[96] With the presence of the concept of the nation-state, the application of *Qisas* can be replaced with positive legal agreement. The distribution of *Ghanimah* when winning the battle to the soldiers at the past, can no longer be realized, because today everything regulated by the state agreement. The abolition of the practice of slavery in the modern era will automatically abolish the redemption of slaves in Islamic law. *Jihad* as a combatic action that carried out by ISIS, which sadistically cut off hands and feet and beheaded, is a regrettable religious phenomenon. Worse, to ISIS, everything that they did is a form of obedience to the

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[95] Arafat Muhammad Uthman, "*Kitab Al-Tafsir Al-Maudu>i>Li Ad-Duktur Hassan Hanafi: Dirasah Naqdiyyah*", Al-Majalah Al-'Ilmiyyah Li Kulliyat Al-Qur'an Al-Karim Li Al-Qira'at wa 'Ulumiha, Vol. 6 (2020): 1160.

[96] Arafat Muhammad Uthman, "*Kitab Al-Tafsir Al-Maudu>i>Li Ad-Duktur Hassan Hanafi: Dirasah Naqdiyyah*", *Ibid.*,: 1162-1164.

Qur'an and Sunna itself. Fighting *murtaddin*, *musyrikin* and *kuffar* is no longer justifiable because it conflicts with the verse *la ikraha fi ad-din* and violates the rules of human rights. So, if the prophetic era has ended, then the phenomenon of killing and fighting also ends with it. At this point, to Hassan Hanafi, every tradition will always have experience changes and the implementation of Islamic law is tied to the context of its era within it.[97]

Thus, all socio-religious phenomenon has to be addressed critically. This awareness needs to be built in our experiences of Islamic legal thought. So the discipline of *usu al-fiqh* can synergize with the social sciences of the humanities as a joint effort in promoting a sense of humanity. At this point, religious law is not solely applied because of what is written in the Qur'an and Sunna, but these two must be dialogued with contextual reality based on mutual deliberation. This does not mean that shari'a is bowing to the power of context, but precisely because it has core purposes that are always open. The inclusive nature of the core intentions of the shari'a necessitates the presence of new ways of ruling, although previously unknown to *al-turas* in the classical Islamic legal thought. The idea of the renewal of *usu al-fiqh* discipline, according to Hassan Hanafi's perspective, provides the new insight that the judging by the slogan "Back to the Qur'an and Sunna" as the text have lost normativity and its contextual argumentative reasons at the same time.

Conclusion

Through *Min al-Nass ila al-Waqi'*, Hassan Hanafi tried to eradicate the theocentric sides from *Usu al-fiqh* reason to be more sensitive with social and humanities issues. As a classical Islamic discipline, *usu al-fiqh* must be able to open itself to epistemology features in modern philosophy. The

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[97] To explore more descriptions about these objects of Hassan Hanafi's thought, see: Arafat Muhammad Uthman, "*Kitab Al-Tafsir Al-Maudu'i Li Ad-Duktur Hassan Hanafi: Dirasah Naqdiyyah*", Al-Majalah Al-'Ilmiyyah Li Kulliyat Al-Qur'an Al-Karim Li Al-Qira'at wa 'Ulumiha, Vol. 6 (2020): 1159-1168.

shifting paradigm of academic realities must be seen as phenomenological facts. With this consciousness, the effort to redesign *uṣū al-fiqh* is necessary. Based on the basic of this thesis, Hassan Hanafi performs the new model of the renewal of *uṣū al-fiqh* reason runs into three typologies, historical consciousness, eidetic consciousness and praxis consciousness.

Based on the phenomenological perspective, the presence of the slogan "Back to the Qur'an and Sunna" to Hassan Hanafi, does not only marginalize the historical, eidetic and practical consciousness, but at the same time, it can threaten the contextualization process of religious texts to respond the rhythm of human phenomena which are always dynamic and multi-interpretation. In Islamo-Leftism's term, the slogan "Back to the Qur'an and Sunna" cannot accommodate the five principles of life; humanity, social justice, political freedom, enforcement of social norms and sustainable development.

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