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 usū 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 usū 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 usū 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 usū al-fiqh reason, and to examine it to criticize the slogan “Back to the Qur’an and Sunna” as a phenomenon of religiosity.

Keywords: Usū 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 quotations from the Qur’an and Sunna. The slogan “Back to the Qur’an and Sunna” as a religious phenomenon can not only eliminate the existence of Islamic school jurisprudence (mazhab), but at the same time, it can endanger the activities of reasoning religious texts (ijtihad). Whereas the understanding of religious teachings needs to be updated constantly in order to remain its relevance of the context. 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 ḥusū ʿal-fiqh reason.

The study of Hassan Hanafi’s thought of renewal of the Islamic discursive has been interested by various scholars from various disciplines. In term of the development of Islamic thought, Hj. Aisyah and Nurul Chotimah presented how Hassan Hanafi’s ideas can rebuild the Islamic sciences from its sources generally.

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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 *uşū 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 *uşū al-fiqh*. Yudian Wahyudi stated firmly that *uşū al-fiqh*, with all its concepts of *istinba> tah} ka> m*, is much more complex than what is in other Islamic sciences. According to Yudian Wahyudi’s perspective, *uşū 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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the works of Hassan Hanafi, especially those related to the usūl al-fiqh studies. Because Hassan Hanafi was the first thinker in Islamic modern age to reconstruct the total building of the of usūl al-fiqh reason.\textsuperscript{15}

In the scope of the development of Islamic legal thought, the reconstruction of the usūl 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 projects that we can trace from his work in \textit{Al-Qaul al-Sadi fi-al-Tajdi'd wa al-Taqli'd}.\textsuperscript{16} The effort of the reconstruction of usūl al-fiqh reason, according to Jamilah Bu Khatim, have two typologies: the conceptual frame (al-syakl) and the material discourse (al-mad\textsuperscript{mun}). Based on Jamilah Bu Khatim's literature research, Hassan Hanafi's project of the reconstruction of usūl al-fiqh reason was the part of the first category.\textsuperscript{17}

The study of Hasan Hanafi's thought, especially those related with usūl 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.\textsuperscript{18} In A Luthfi Assyaukanie's research, Hassan Hanafi's thought is included in the reformist category.\textsuperscript{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


\textsuperscript{16} Sya'ban Muhammad Isma'il, \textit{Usuf-al-Fiqh Ta\textperiodcentered ikhuw wa Rijahu}, (Kairo: Dar Salam, 2010), 66.

\textsuperscript{17} Jamilah Bu Khatim, \textit{Al-Tajdi'd fi-Ushuf-al-Fiqh}, (Kairo: Darul Faruq, 2010), 127.


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 ḩusū al-īfīḥ 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 Kamaruddin Wan Ali\textsuperscript{20} and M. Syukri Ismail,\textsuperscript{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.\textsuperscript{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 ḩusū al-īfīḥ 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.\textsuperscript{23} Every discovery and invention


\textsuperscript{23} Michael Walzer, Interpretation and Social Criticism (USA: Harvard University Press, 1993), 22.
(divine law is an obvious example) requires interpretation. In this research, I make decision to put Hassan Hanafi’s thought through his works as primary sources, specifically hisUSHū 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-turasl, which so far have been more concern with theocentric discourses, must be presented to develop the anthropocentric orientations. Hassan Hanafi through al-Turaslwa al-Tajdiḍ noticed that Islamic disciplines runs into difficulties when dealing to humanities issues in the contemporary era. According to Hassan Hanafi, al-turasl must be read by using philosophical methodology. He proposed the phenomenology as a tool to reconstruct al-turasl. This prescription will establish all of Islamic literatures as a phenomenon of religiosity. 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 consciousness will allow us to carry out the renewal of Islamic disciplines (al-tajdiḍ).

Al-Turasl in Hassan Hanafi’s perspective, is the starting point (muqṭaḥ bidāyah) as a cultural and social responsibilities, while al-tajdiḍ is the reinterpretation of it (i’ādah tafṣīr) to implement what era needs. By using phenomenology, Hassan Hanafi expressed that religious

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26 Hassan Hanafi, *Al-TuraslWa Al-Tajdiḍ, Ibid.*, 37
texts (*nusḥ diniyyah*) is historical texts (*nusḥ tariqhiyyah*) which grew up in special social conditions that it will be 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 epistemology 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 *iṣū 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-


\(^{32}\) Hassan Hanafi, *Min al-’Aqidah ila al-Sjurah*, (Kairo: Maktabah Madbuli, t.t.).


\(^{37}\) Hassan Hanafi, *Dirasat Islamiyyah*, (Kairo: Maktabah Angelo, t.t.).
and the reform efforts (al-tajdid). Hassan Hanafi considers that the sacralization (al-taqdisiyah) 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

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.
A simple question but basically principle. Both al-turas and al-tajdid, by Hassan Hanafi, are positioned as a phenomenological entity. From al-turas as a text to al-tajdid as contextualization is a progressive-transformative awareness of past religious experiences toward new religious humanity. Meanwhile, the reconstruction of tradition (tajdid al-turas), for Hassan Hanafi, has the potential to eliminate the role of al-turas as historical consciousness. That is because the practice of the reconstruction of Islamic tradition directly can corrupt al-turas 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-nazar) 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 kalaam and philosophy, for Hassan Hanafi, are two disciplines with a pattern of theoretical thinking. Meanwhile, usū 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.

Based on phenomenology, Hassan Hanafi conceptualized four new awareness of the four disciplines in Islamic sciences: first, the science of kalaam as a theological awareness (from theology to revolution/min al-aqîdah ila as-sîaurah: 5 volumes); second, philosophy as a

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41 Hassan Hanafi, Al-Turas wa al-Tajdid, (Kairo: Maktabah Angelo, 1987), 24.
42 Hassan Hanafi, Al-Turas wa al-Tajdid, (Kairo: Maktabah Angelo, 1987), 137.
critical-creative awareness (from sacredness to creativity/min al-naql ila-al-ibda>: 9 volumes); third, ṭṣū ṭ-fiqh as a juridical awareness (from text to context/min al-nas} ila-al-wa}qi>: 2 volumes); fourth, tasawuf as a theosophical consciousness (from shroud to eternity/min al-fana>: ila-al-ba}qa>: 2 volumes). Thus, al-turas as a living culture has vitality and al-tajdi as an epistemological reconstruction effort has creative power. At this point, Hassan Hanafi through phenomenology saw that al-turas and al-tajdi are the ways of being religious humanity itself.

Al-Turas wa Al-Tajdi 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. 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. Thus, Islamic sciences have a completely humanitarian orientation that seeks to implement humanity (al-insa}niyah), social justice (al-’adl al-ijtima}iy), political freedom (al-h}rriyah al-siya}siyah), norms (al-mabdaiyah) and sustainable development (al-taqaddum al-mustamir).

Phenomenological Hermeneutics: Designing and Rebuilding the ṭṣū ṭ-fiqh Reason

Ṭṣū ṭ-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. For saving ṭṣū ṭ-fiqh from this isolation, Hassan Hanafi proposes the phenomenology as the new perspective to

43 Hassan Hanafi, Dirasa Islamiyah, (Kairo: Maktabah Agelo), 397.
44 Muhsin Al-Miliy, Zahirah Al-Yasa r Al-Islamiy, (Riyadh: Dar Nasyar Dawli, 1993), 64.
45 Muhsin Al-Miliy, Zahirah Al-Yasa r Al-Islamiy, Ibid., 65.
46 Hassan Hanafi, Al-Turas wa al-Tajdi, Ibid., 159.
reconstruct *usū al-fiqh* reason.\(^{47}\) As a critical thinking, the idea of the renewal of the *usū al-fiqh* reason is necessary, because *usū al-fiqh* does not think about itself. In Hassan Hanafi’s perspective, the reconstruction of *usū al-fiqh* can be seen as a humanization process at the same time. So, this academic awareness will establish a new perspective for *al-turas* 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 *usū 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 *usū 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-bayan*) must be rationalized through demonstrative reasoning (*al-burhan*) 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 *usū al-fiqh* as the legal reasoning for Islamic law. *Al-Turas* 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


\(^{48}\) Hassan Hanafi, *Dirasat-Islamiyyah*, (Kairo: Maktabah Angelo, t.t.), 393.


\(^{50}\) Abdul Majid Shagir, *Al-Ma‘rifah wa al-Sultān fi-al-Tajribah al-Islamiyah Qira‘ah Fi‘Nasy‘ati ‘Ilmi al-Uṣūl wa Maqāṣid al-Syari‘ah*, (Kairo: Dar Ruyah, 2010), 154

a new meaning that is more relevant and rational. Phenomenological hermeneutics is positioned as a critique of historical methodology. Therefore, the reconstruction of ḥusū 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 ḥusū 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-nāṣ) as a historical awareness (al-wā’yu al-tārikhī); 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-wā’yu al-nazāri); and third, the context (al-wāqi’) as a praxis awareness (al-wā’yu al-‘amali).

The text (al-nāṣ) 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 ḥusū al-fiqh reason.⁵³ The process of changing terminology from traditional languages to international languages today must be seen as an effort by al-tajdiḍ so that al-turats can be understood and accepted by all of human being. In the new form of ḥusū 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 ijma⁵ was replaced with the communal experience (al-tajriḥab al-musytarakah). For Hassan Hanafi, the term of communal experience does not reduce the weight of the meaning contained by ijma⁵ as a tradition diction in the classical Islamic legal thought.⁵⁴ In fact, this terminology

⁵² Hassan Hanafi, Dirāṣat-Falsafiyyah, (Kairo: Maktabah Angelo, t.t.), 145-146
⁵³ Jamilah Bu Khatim, Ibid., 129.
⁵⁴ Hassan Hanafi, Al-Turās wa al-Tajdiḍ, Ibid., 105.
transformation, in Hassan Hanafi's view, can help *usū al-fiqh* to always be relevant on the one side, and make it easier for researchers to understand *al-turas* 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 *usū 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).* 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-haram*, which in the classical *usū 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-i jābi)* and negative actions *(al-'amal al-salbi).* Likewise with the terminology of *al-ahkām al-khamsah* which in the classical *usū al-fiqh* suggests that five kinds of *syar'i* law can be replaced with the terminology of the level *(al-mustawa)* of Islamic law.

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-Turaṣ wa al-Tajdid*, Ibid., 105.
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 Qaṣṣaṣ al-Ta’wīl:

"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,

58 Imam Al-Ghazali, Qaṣṣaṣ al-Ta’wīl; 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*'i*’ 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 *uṣū al-fiqh* critical thinking. At this point, Hassan Hanafi’s philosophical work can be called the reconstruction of *uṣū 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 *uṣū al-fiqh*, in Hassan Hanafi’s perspective, is framed in three categories of

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\(^{60}\) See: Hassan Hanafi, *Dirasat-Islamiyah*, (Kairo: Maktabah Angelo, t.t.).
consciousness; historical awareness \textit{(al-wa‘yu al-tarikhi)}; eidetic awareness \textit{(al-wa‘yu al-nazari)} and realistic-praxis awareness \textit{(al-wa‘yu al-amali)}.\footnote{Hasan Hanafi, \textit{Min al-Nas} ila\textsuperscript{'} al-Waqi}, \textit{Ibid.}, 37. The three juridical awareness, for Hassan Hanafi through phenomenological reading, are an effort to present the discipline of \textit{usū 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 \textit{usū al-fiqh} science to the anthropocentric paradigm.

\textit{Usū 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. \textit{Usū al-fiqh}, for Hassan Hanafi, cannot only run with what has been conceptualized, but must also balance the movement of modern human thought.\footnote{Hassan Hanafi, \textit{Min al-Nas} ila\textsuperscript{'} al-Waqi}, \textit{Ibid.}, 36. Here, Hassan Hanafi wants to promote the phenomenology as an approach to presenting \textit{usū 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 \textit{usū 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 \textit{al-naql} or \textit{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 \textit{usū al-fiqh}. Therefore, in the book \textit{Min al-Nas} ila\textsuperscript{'} al-Waqi, volume I, Hassan Hanafi name it the Formulation of the Text \textit{(Takwi\textsuperscript{n} al-Nas)}, which is an effort to read, identify, research and map various typologies of text structure reason.\footnote{See: Hassan Hanafi, \textit{Min al-Nas} ila\textsuperscript{'} al-Waqi, volume I, the Formulation of the Text \textit{(Takwi\textsuperscript{n} al-Nas)}.}
While in volume II of the same book, *Min al-Nasījila al-Waqi‘*, Hasan Hanafi finalizes the theory of the reconstruction of *uṣūl al-fiqh* reason. Historical awareness (al-wa'yu al-ta‘rikhi) 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 masādir al-ahkām 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-Kitāb* as an universal humanist experience (al-tajribah al-insāniyyah al-‘ammah);64 (2) *Al-Sunnah* as an experience pilot model (al-tajribah al-namuţajiyyah);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-ahkām was updated by Hassan Hanafi with four models of reason: (1) systemic reason (al-manzūm) namely the discussion of pronunciation;68 (2) conceptual reason (al-mafhūm) namely the discussion of meaning;69 (3) critical reason (al-ma‘quṭ) 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 *uṣūl 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

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 (maqasid al-syari‘) namely the discussion of the purposes of the Islamic law;72 (2) the purpose of mukallaf (maqasid 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 usū 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 usū 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 (zahiriyah al-nas) which departs from what mentioned in the text literally; second, the context of the text (waqi‘iyah 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-taqli‘i); 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 usū 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

72 Hassan Hanafi, Min al-Nasjil al-Waqi‘, Ibid., 483-516.
73 Hassan Hanafi, Min al-Nasjil al-Waqi‘, Ibid., 517-532.
74 Hassan Hanafi, Min al-Nasjil al-Waqi‘, Ibid., 517-532.
75 Hassan Hanafi, Min al-Nasjil al-Waqi‘, Ibid., 561-583.
phenomenological hermeneutics is an epistemological tool so that religious people can arrive at the purpose of the text (maqasid al-nas). Based on the epistemological description of usū 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 usū 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 usū al-fiqh reason through phenomenological hermeneutics from the perspective of Hassan Hanafi can be seen as academic awareness that al-turašt was a legacy of thought can always be contextualized so that it can be relevant to the context of the times. 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.

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

76 Hassan Hanafi, Al-Turas wa al-Tajdid, Ibid., 160.
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 *istih*ān in the hanafite school, *maslahah mursalah* and *ijma’ AHL madinah* in the malikite school, *istis*ḥāb in the shafi’ite school and *qawl saḥābiy* 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 uṣū al-fīqh discipline are the primary sources for the application of syar’i law (masādir 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 (istinbath).79 The Al-Qur’an and Sunna in the concept of al-bayn, especially from the first al-bayn to the fourth al-bayn, 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


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. This idea ignites human critical thinking to seek discursive relations between religious texts and human’s phenomenon like historical, socio-political, and cultural contexts. 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.

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81 Imam Asy-Syafi’i, Al-Risalah, Ibid., 117-119.
82 Imam Asy-Syafi’i, Al-Risalah, Ibid., 474.
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 scholar, 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

87 Sumber: https://www.nu.or.id/post/read/104842/umat-islam-jangan-tertipu-slogan-kembali-pada-qur-an-dan-hadits
is no evidence"", "the Prophet did not give an example", "do you 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 aspects 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-nazarî), work and practice (al-‘amal wa al-mumārasah) and social solidarity aspects (al-takafîl al-ijtima‘î). The Qur’an as an universal humanist experience must be read by using the ‘ulum al-qur‘ān (min al-mahmūl ‘ila al-hāmil) and must be practiced by using the ‘ulum al-tafsîr (min al-tafsîr al-tulî ‘ila al-tafsîr al-maudû‘î), 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

Ulum al-hadis (min naqd al-sanad ila-naqd al-matan)\textsuperscript{92} and must be practiced by using the ‘ilm al-sirah (min al-rasul ila-al-risalah),\textsuperscript{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.\textsuperscript{94} Apart from being an antithesis to al-turas\textsuperscript{2}, 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 usū 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\textsuperscript{2} as the communal experience and the qiya\textsuperscript{2} 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


\textsuperscript{94} Hassan Hanafi, *Al-Turas\textsuperscript{2} 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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Qur’an and Sunna itself. Fighting murtaddin, musyrikin and kuffar is no longer justifiable because it conflicts with the verse la ikrama 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 usū 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 usū 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-Nasṭīla al-Waqi’, Hassan Hanafi tried to eradicate the theocentric sides from Uṣū al-fiqh reason to be more sensitive with social and humanities issues. As a classical Islamic discipline, usū al-fiqh must be able to open itself to epistemology features in modern philosophy. The

97 To explore more descriptions about these objects of Hassan Hanafi’s thought, see: Arafat Muhammad Uthman, “Kitab Al-Tafsīr Al-Mawḍū’ī Li Ad-Duktu>r Ḥāsran Ḥanafī: 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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