

# Reform of Hasan Turabi *USHUL AL FIQH*

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**Abstract:** *The article is the research result of the reform of Ushul Al Fiqh proposed by Hasan Turabi. The method applied is descriptive qualitative, exposing the entire ideas of Hasan Turabi pertaining to the reform of Ushul Fiqh and proceeded by the approach of content analysis. The next step is to make comparison with ideas of other Ushul Fiqh scholars. The reform of Ushul Fiqh according to Hasan Turabi is to implement qiyas al-wasi (wide qiyas) and istishab al-wasi (wide qiyas). The method applied by Hasan Turabi has already been used by former Ushul Fiqh scholars. Hasan Turabi only adds the words al-wasi. The essence of qiyas al-wasi and istishab al-wasi by Hasan Turabi is traditional issues already been done for a long time in a certain community or actual issues.*

**Keywords:** tajdid, al-qiyās wāsi,, istishāb al-wāsi,,

## 1. Introduction

Islam is a perfect religion encompassing all aspects of human life. The perfection of Islam can be seen from the goal of the *syaria'at*, that is to get happiness and welfare of mankind in the world or hereafter.

To get the ultimate purpose in life, Allah SWT has provided the Quran, brought by Prophet Muhammad. The teachings of the Koran cover theology, *Shari'ah*, and morals. In *Shari'ah* there is a set of rules governing human way of life and manners of worship rites to the Lord, similar to prayer, *zakat*, *munakahat*, *jinayat* and other issues and the whole sets of rules is called *Fiqh*. *Fiqh* is a study related to *syara*, rules of personality to be practiced derived from the norms of *tafsīliyah*.<sup>1</sup>

Efforts to produce the *fiqh* materials from the norms of *tafsīliyah* are termed *Ushul Fiqh*. *Ushul Fiqh* is a study of norms contributing to the *istinbāt* rules of *syara*, *Furu* 'through detailed norms'.<sup>2</sup>

*Ushul Fiqh* is the main study to be possessed by everyone who wishes to practice *istinbāt* of the Qur'an and hadith of the Prophet. *Ushul Fiqh* is a very important instrument, without which no one could do *istidlāl* properly as we could know the ways to cultivate the norms directly from the text of *Ushul Fiqh*.

*Ushul Fiqh* has been formulated comprehensively into an independent study since the second century H.<sup>3</sup> The goal to be achieved from the science of *Ushul Fiqh* is to implement the norms *syara* with the forms of hymns. If we have already known the method of *Ushul Fiqh* already formulated by the former scholars of *fiqh*, then if a certain lawsuit occurs and needs a solution, while such a case is found in the classical books of *fiqh*, then we have to implement the norms formulated the *fiqh* scholars in the former books of *ushul fiqh* to find the solution, such as the *ar-Risalah* by Imam al-Shafi'i (w.204 H), the book o *al-Mu ' tamad*, by Abū Muhammad al-Husayn ibn 'Ali al-Bisri (w.463 H), of the school of thought of *mutakallimin*, *al-proposal* by Imam Abū al-Hasan Ubaidullah ibn Hasan al-Kharkhī (w.340 H / 952 AD), and the book of *Ushul Fiqih* by Abu Bakr al-Jassās of *Hanafiyyah* school of thought.

The *mujtahid* after Imam Shafi'i in doing *ristidlal* or *istinbāt* to produce an issu of *fiqh*, use the norms already formulated by the former *mujtahid* and by this comes the term *mujtahid mazhab*.

The practice of *ijtihad* which has lasted for more than 1,000 years old, while the norms are stable and unchanged. On the other hand, times have changed and the law events keep emerging and far different from those in time of the formulation of *fiqh* norms. Then a question arises whether those norms are still relevant to the present condition or whether those norms need redrafting.

In this article the writer exposes the ides of Hasan Al-Turabi on the importance of the reform of *Ushul Fiqh*.

## 2. The Meaning of Reform

Etymologically reforms means *Jaddada* and said to be *ajadda ash-syai'* meaning making something new.<sup>4</sup>

The terminology, *tajdid* means reform of religious life, either in the form of thought or movement, as a reaction or response to internal and external challenges regarding beliefs and social affairs of the people.<sup>5</sup> *Tajdid* is also interpreted an effort to change the lives and activities of the Muslims from the present condition to the realization one to uplift the welfare of mankind.

According to Karen Armstrong *tajdid* is a reform movement to restore Islam to its purity by returning to Qur'an and *Sunnah* by refusing legalization and practice emerging later.<sup>6</sup> Reform according to Karen Armstrong is a purification meaning that the conditions of people have deviated from the values outlined in Qur'an and *Sunnah*. Thus purification of Islam is highly needed to clean and sterile all elements that are not derived from Islam.

Regarding the reform of *Ushul Fiqh*, Dr. Sha'ban Muhammad Isma'il says that the meaning of *Ushul Fiqh* reform is the reconstruction of the structure of *Ushul Fiqh* to be new, having the forms compatible with the present age.<sup>7</sup>

Pertaining to *tajdid*, there is a hadith narrated from the life of Abu Dawood, stating that "From Abi Hurairah, he said, "what I've learned from the Messenger of Allah saw," he said:" Verily Allah will raise for this community at every

beginning of a hundred years, a man who would do a reform.”<sup>8</sup>

The figures promoting the reform movement, called mujaddid are: Muhammad Bin Abdul Wahhab, Shah Waliyulloh, Sultan Mahmud II, Muhammad Ali Pasha, At-Tahtawi, Jamaluddin al-Afghani, Muhammad Abduh, Muhammad Rashid Rida, Sayyid Ahmad Khan and Muhammad Iqbal.

Az-Zabīdī explains that *mujaddid* in the first century is 'Umar ibn' Abd al-'Aziz, in the second Imam Shafi'i, in the third Ibn Al-Ash'ari or Suraij, in the fourth Al-Asfāinī, As - Sa'lūkī or Al-Bāqilānī and in the fifth Al-Gazali.<sup>9</sup>

### 3. Biography of Hasan Al-Turabi.

Dr. Hasan Al-Turabi was born in Kassala, Eastern Sudan, in 1932, from a family that had a long tradition in the teachings of Islam and Sufism. He graduated from the Faculty of Law, University of Khartoum in 1955, graduated from S-2 in the field of Law in London. In 1957, he obtained a Ph.D in Constitutional Law from the Sorbonne in Paris in 1964. As long as he lived in France, between 1959 to 1964, he never made a visit to the United States.<sup>10</sup>

Dr. Hasan Al-Turabi became the Dean of the Faculty of law, University of Khartoum, the positions he then left behind when he became a member of parliament and the Secretary General of the Islamic Charter in December 1964. In 1969, after a coup attempted by leftists, for the first time he was in Sudan until 1977, the year when he chose the National Reconciliation Agreement with Numeiri. He became a prosecutor Court from 1979 to 1982, and became head of advisory legal problems and abroad until March 1985. He and the leaders of other Islamic movements then thrown into prison, and was only released when the regime of Numeiri collapsed.<sup>11</sup>

In 1988, the National Islamic Front (NIF) led by Hasan Turabi made a coalition with the government of Sadiq al-Mahdi and brought him to become attorney general, then deputy of prime minister and foreign minister. He was the Secretary General of the Islamic Congress Khartoum consisting of parties, groups, and leaders of Islamic nationalist movements from 55 Islamic countries and the West. Since the election in 1966, he served as chairman of the parliament, the second most powerful position in the country, after the president, General Omar al-Bashir, his junior in the NIF party.<sup>12</sup>

Being busy and active in various organizations, both in the government of Sudan and in groups and other national and international social organizations, Hasan Al-Turabi is also active in writing numerous scientific papers, one of which is an article about " the Islamic State "and a book with entitled *tajdid Usul al-Fiqh al-Islami*.<sup>13</sup>

### 4. The Reform of Hasan Turabi Ushul Fiqh

Methods of *istinbat* law mentioned in the books of *Ushul Fiqh* either classic or modern, circulating among the Muslims in general are almost the same. The method created

by classical scholar such as Imam Ash-Shafi'i is adjusted and affected by the conditions of his day. Similarly, other scholars of the same surrounding or *bī'ah* greatly affect his thought in creating or constructing the structure of *Usul Fiqh*.

Times are changing rapidly and then a question arises whether the old methods are still applicable to respond the changing of the times. Hasan Turabi finds that at this time, it is necessary to reevaluate *Usul Fiqh* in connection with the reality context because the origin of the product is still in the nature of classics, discourse, and theory , unable to deliver *fiqh* and in contrary create unsolvable arguments. As a matter of fact, *Usul Fiqh* should progress to face the challenges of modern reality.<sup>14</sup>

At the present, the development of *Usul Fiqh* methodology in the context of its relevance to the needs of modern Islamic society is urgent. As a dynamic religion, Islam is demanded to solve modern problems more deeply as formerly Islam is focussed on the principles of religion, producing *furū'iyah*.

Modern rational sciences are progressing rapidly and owing to this the Muslims should properly rethink the Islamic *fiqh* with new perceptions, utilizing all the knowledge as a means of worship to Allah, and creating a new format uniting the textual and rational sciences constantly going through reforms to perfection by means of experimentation and observation. By the integration of science, we shall be able to renew our religious understanding to meet the demands of modern life.

### 5. Need for Usul Fiqh Methodology

To solve the growing matters in today's society, Hasan Turabi offers a methodology that can be accepted by everyone, that is integrative methodology.<sup>15</sup> The methodology offers a return to the principle of consultation and consensus to gather various disagreements of ideas and then take a consensus so that there will be one opinion to be referred to. The opinion that has gone through agreement among the Muslim majority and a shared desire, in its application will become mandatory to be attended to though they still stand apart in the relative truth.<sup>16</sup>

Furthermore Hasan Turabi explains that at the present time *Usul Fiqh* methodology that can be used as a foundation for the revival of Islam is urgent. Besides the traditional *Usul Fiqh* that has been used as a reference to *istinbat*, is no longer relevant to modern condition. Then historically, the classic *Usul Fiqh* contains norms affected by the nature of *fiqh* at that time.<sup>17</sup>

*Usul Fiqh* Methodology has various scopes and standards adjusted with the problems to be examined. Parts of *fiqh* are oriented to *Ubudiah* and rituals to God, such as prayer, fasting, and pilgrimage. The laws regarding the issues of worship have been specified in details in various passages or texts so the scope of *ijtihad* becomes limited in all this matter, and the understanding of *fiqh* scholars is merely to collate the texts and connect them with other texts forming a whole picture of worship. Thus, the issues revolve only around the interpretation, such as examining the problem of

am and, *khās ta' ārud, tarjih, mafhūm mukhālafah, mafhūm muwafaqah* and others.

Traditional *fiqh* is focussed on issues like this. The *fiqh* scholars do not solve the innumerable issues of social life as they only place themselves in the assemblies of science already provided. Therefore, they are far from social life. The patterns of their *fatwa* are around *Furu*, and very few scholars write books on theoretical methodology. Therefore, most of the *fiqh* are oriented to issues relating to individuality and worship rituals, such as marriage, divorce, manners, and largely the texts do not create contradiction in opinions.

Life of the Muslims at the present time has gone astray from the goal of Islam, especially in matters of social life. While the *fatwa* issued so far revolves around matters of transaction of buying and selling, while issues of social policy economics, such as organizing people's lives in the areas of production, import, export, and overcoming the high life standard or low burden of life, have not been considered by the authorities, and all these matters have not been asked yet to the *fiqh* scholars to be put in the real field of *fiqh*.

Similarly, political problems together with the rules of practice, such as consultation carried out in the community, crystallization of consensus, forms of government, loyalty and leadership in whole have not been touched well.

Likewise, religious texts in the field of social life are few. Most of the texts are focussed on goal rather on form. For example, on the subject of leadership, we will not find the text about prayer, as well as economic issues. Hasan Turabi argues that *fiqh* considering the purpose of social life and the welfare of beings are not developed in such a way, owing to the conditions and circumstances covering the Islamic life at that time. It is therefore not surprising that the concepts of *Ushul Fiqh* in accordance with this field has been forgotten and no longer growing. When Islamic life starts to complete and economic and social agreement practices are stuck on religion, such a condition requires respective new *fiqh*.

*Tajdid* offered by Hasan Turabi, has the emphasis is on issues closely related to the public interest, in particular the social aspects of society, because such problems require a more comprehensive concept of *ijtihad (wāsi'ah ijtihad)*, so as to meet the needs of modern life.

In the implementation of *tajdid Ushul Fiqh*, he offers some concepts to solve various problems of people's lives today, namely:

#### 1. The use of *al-Qiyās al-Wāsi (comprehensive qiyas)*

According to Hasan Turabi traditional *qiyas*, inherited by former scholars, can no longer meet the needs of modern human life, because its scope is limited and rigid. The same *Qiyas*, in his view, can be used to formulate the laws relating to marital, moral and religious matters. While for the goals that are common and wide, *qiyas al-Fitr* (pure *qiyas*) or wider and more comprehensive *qiyas* are more appropriate and needed, because such a *qiyas* is not bound by requirements, it is pure set by Greek logicians, subsequently adopted by Islamic scholars in formulating Islamic laws.<sup>18</sup>

The concept of *qiyas* meant by Hasan Turabi, which he also terms *al-qiyas al-Wāsi*, the operation of which is by studying a number of passages from the *Qur'an* or the *hadith* of the Prophet, then formulated into some specific purpose or benefit piloted by *syara* in the laws and the specific purposes and welfare of the people are the applied to the new matter and condition formulated in the laws. Such *Qiyas*, according to Hasan Turabi is similar to what done by Caliph Omar ibn Khattab. This *qiyas* is also named *fiqh masālih 'ammah wāsi'ah (fiqh, based on the common interest)*.<sup>19</sup>

The basic concept of *al-qiyas al-Wāsi*, according to Turabi, is taken from *maslahah mursalah*, apart from the text itself. This type of *qiyas* is also called *the al-qiyas al-ijmālī al-AWSA* or *al-maslahah al-mursalah qiyas*. The steps to do this *qiyas* are:

**The first step**, started by collecting a number of *Koranic* verses or *hadith*, then formulated based on goal or a particular matter found in the collection of verses or the *hadiths*.

**The second step** is to use a specific purpose or matter already formulated as a base in determining the law for new cases occurring in the new circumstances as well, without having to look at the shape and condition of these cases in details. Only the meaning and welfare are considered, and after that the law from previous cases was applied to the new case, based on the equation of meaning and the benefit owned by both. Finally, with reference to such procedures, new issues facing modern life can be solved.<sup>20</sup>

Hasan Turabi gives an example of his concept of *qiyas* above by quoting a *hadith* of the Prophet containing the story of a husband having sexual intercourse (*jima*) with his wife during the day of *Ramadan*, and as the result, his fast becomes void and he is sentenced. However, having studied the situation, the Prophet finally release the man and Prophet says:

Abu Hurairah r.a. has said : " a man comes to the Prophet and says: I have been wretched, O Messenger of Allah, and the Prophet says: " What makes you wretched? The man says: "I have done sex with wife during *Ramadan*, the Prophet says: 'Are you able to free a slave? The man says: "I cannot, *Rasulullah*, "then if you cannot, then are you able to fast for two consecutive months? The man says: "I cannot. The Prophet then says: "Are you able to feed 60 poor people? The man says I cannot and he sits down, then the Prophet brings a basket of dates, and then he says: "Please give charity with this," "poorer than we? among the families we are in need." then the Prophet laughs until his teeth are seen and later he says: "Go and feed your family (with the dates)". H.R.Jamaah, *hadith* scholars.<sup>21</sup>

Such a similar case, says Turabi, will not happen again in similar circumstances but a certain meaning can be inferred from such an event. This example is an act resulted in breaking the fast and this act can be used to evaluate other acts can break the fast, such as eating and drinking, and others.



Regarding this method, Turabi further comments that the method of *qiyas* could be broader or narrower, depending on the extent to which the freedom of the requirements specified for implementing the *qiyas* and its effect on the improvement of the establishment of Islamic law. *Maslahah mursalah qiyas* is a higher level *qiyas* that is used to study the basis of the various laws, such as through *qiyas* we can collect a number of laws on specific cases, and then formulate the laws for the benefit of common interest. Through the concept of such welfare, we can find a way to organize life in line with the will of *syara*.

## 2. The use of wide *istishāb* (*al-Istishāb al-Wāsi'*)

Turabi says that the idea of *istishāb*, obviously shows that Islam is not to reconstruct the life of mankind based on the new provisions and but also to destroy completely the provisions that have been implemented previously.

But the coming of Islam is to ensure the continuity of the enactment of practices and traditions that have been established reflecting the nature of justice and truth, and at the same time improving and modifying practices deviating from justice. The Prophet himself does not consider that all norms previously done are to be canceled, , and must be destroyed to build a religion on the completely new principle. However, the principle used is that what is already known by man can be accepted, while religion is revealed to rectify their affairs distorted.<sup>22</sup> Allah swt says:

Meaning: Be thou a forgiving person ask people to do *ma'ruf* and and turn away from ignorant people.<sup>23</sup>

The content of Surat al-Araf: 199 is to do good. The word *Ma'ruf* in this verse can be understood containing two meanings, namely: virtue and mature practice confessed by *syara*, or cancellation or rejection towards wrong and unfair act and in this case termed out of *ma'ruf*. Then Turabi says that this is the base of *istishāb*. From the *istishāb* concept, Hasan Turabi, formulates the concept of skill (*al-Ibāhah*) which is the general provision of *syara'* against acts or actions that are socially useful and not causing harm. In other words, everything is allowed as long as there is no indication of being prohibited.

Hasan Turabi concludes that the principle of *istishāb* together with the concept of comprehensive *qiyas* (*qiyas Wasi'*) can produce comprehensive and dynamic *fiqh* that could answer all the problems.<sup>24</sup>

### Analysis

The reform offered by Hassan Turabi as already explained by the writer contains two items: *al-qiyas al-Wasi'* and *al-istishāb al-Wasi'*. *Al-Qiyas al-Wasi'* (wide *qiyas*) and is inspired by the former *Ushul Fiqh* scholars, using *qiyas* as a way to review the law that is not explained in Al-qur'an or *hadith*.

Hasan Turabi in using wide *qiyas*, seems different from the formulation used by the former scholars of *fiqh*. The goal of *qiyas* meant by Hasan Turabi, is concerned with general matters and for the public interest, and not concerned with the problems of marriage, as well as other ritual worships.

Regarding this matter, Hasan Turabi seems to refer to the former scholars of *Ushul Fiqh*.

Former scholars of *fiqh* before Turabi in evaluating matters of legalization not mentioned in Al-Qur'an or *hadith* use *qiyas*. *Qiyas* that can be used to evaluate the law has certain pillars, namely; originality, branches, '*illat* and law.<sup>25</sup> Originality is a problem that will be made matter of *qiyas* ; for example if making *qiyas* for intoxicating drinks such as whiskey, then the originality is *khamar* and the branch is whiskey and '*illatnya* is the intoxicating element. The law of drinking alcohol is forbidden or *haram*. Prohibition of wine is caused by the element of *Iskar* (alcohol)<sup>26</sup> so drinking whiskey is also *haram*, because it has the same '*illat*, intoxicating; between the matters of making *qiyas* with the originality, there is no similarity and *qiyas* cannot be conducted. This is the model of *qiyas* done by the former scholars since the time of Iman Syafi'i.

In common issues, Hasan Turabi uses the same term, but in the methodology application he is different from *Ushul* scholars. *Qiyas* used by Hasan Turabi actually leads to *maslahah al-mursalah*, as indeed in the procedure of using *qiyas*, Hasan Turabi is different from what is done by the scholars of *Ushul*. In the application procedure, the *Ushul* scholars see similarities between *illat* and *furu'* with *asl*. While Hasan Turabi in using *qiyas*, does not touch matters of *illat* as the focus goes to the welfare of the people.

*Maslahah al-mursalah* meant in Islamic *Shari'ah* is conveyed through revelation: Qur'an and purposeful *hadith* (*Maqasid ash-shari'a*) for the benefit of mankind. *Maqasid* theory actually has been developed by scholars of *fiqh* before HasanTuarabi, namely ash-Syatibi. (730-790 H),<sup>27</sup> even scholars before ash-Syatibi also uses the point of *al-mursalah*, like Imam Malik (93-179 H).<sup>28</sup>

The second reform offered by Al-Turabi is wide *istishāb* (*al-Istishāb al-Wasi'*). The *istishāb* concept has actually been used long before Al-Turabi by classical scholars such as Malik, Hanafi, Shafi'i, and Ahmad ibn Hanbal. Al-Turabi simply adds the words *al-wāsi'* and that the term is not used by *mutaqaddimin* scholars. *Istishāb* according to the definition proposed by *Ushul* scholars is the consideration that the law remains unchanged as the original condition has no norms or there are no norms to make alteration.<sup>29</sup> The base or field of *istishāb* according to Al-Turabi is a tradition or customs prevailing in the society from one to the next generation. As far as these traditions have value of *ma'ruf* or beneficial to mankind and there is no pointof banning then the it is *ibāhah* (allowed). But the field of *istishāb* according to *Ushul* scholars is not limited to *Mu'amalah* and prevailing traditions but is also extended to the laws of worship. If someone is doubtful whether he has already taken *wudhu*, then according to *istishāb* the person should again take the *wudhu*.<sup>30</sup> The concept of *istishāb al-wāsi'* offered by Al-Turabi states that the tradition that is considered *ma'ruf*, could still be practices as long as there is no rule that prohibit the practice of the tradition concerned as this is used by the former *Ushul* scholars in terms of '*uruf saħīth*. (good tradition). '*uruf fasid*, or '*uruf*, that is not suitable with the principle of Islamic law or against with the Islamic values could not be put into consideration.<sup>31</sup>

## 6. Conclusion

The reform of *Ushul Fiqh* offered by Hasan al-Turabi does not change the whole framework of *Ushul Fiqh*, by the former scholars. Hasan Turabi only offers two points.

- 1) The base of the use of *al-qiyās al-wāsi'* (wide and comprehensive *qiyās*) is taken from *maṣāliḥ al-mursalah*. Basically Islamic syari'at is for the welfare of the people and not to make people suffer.
- 2) The use of wide *istishāb* is based on the tradition or *uruf*, that has prevailed in the society. The tradition has existed before the Islamic syari'at. Islam comes not to construct human life based on new certain norms or to destroy all that has existed before. Islam comes to ensure the continuity of the existing practice of tradition that has moral values, justice and truth and at the same time improve and modifies anything that has gone astray.

The reform concept of *Ushul Fiqh* offered by Hasan al-Turabi has already been pioneered by the former *Ushul* scholars. Al-Turabi takes the terms *qiyās* and *istishāb* then changes into *al-wāsi'*, with the base that is not far different with that of the thoughts of the former *Ushul* scholars. According to the writer, the concept of Al-Turabi is not a new thing.

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[14] Al-Turabi, *Demokratis*, h.50

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[17] *Ibid*,h.54. explanation can be seen from Dr Muhammad Syabān Ismail in his book *at-Tajdīd Fī Usūl al-Fiqh*, he quotes from Hasan Turabi,h.42

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