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AHMAD HASSAN AND ISLAMIC LEGAL REFORM IN INDONESIA (1887-1958)

by
Akh Minhaji

A dissertation submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements
for the degree of Doctor of Philosophy

Institute of Islamic Studies
McGill University
Montreal
May 1997

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Comprehensive knowledge, critical study of legal opinions
with reference to the Qur'an, Sunna, and the *ijtihād* of
the previous jurists and the thorough examination of
the problems and circumstances of the specific
environment, are essential pre-requisites
of any genuine law revision
or reform process

(Alhaji A.M. Nour)

ABSTRACT

Author : Akh Minhaji
Title : Ahmad Hassan and Islamic Legal Reform in Indonesia (1887-1958)
Department : Institute of Islamic Studies, McGill University
Degree : Ph.D.

There is a perception, held not only by scholars in the field but by many Muslims as well, that Islamic law in Indonesia is strongly colored by "non-Islamic" local custom (*adat*). Historically, this notion has given rise to a number of movements which have sought to ensure that religious beliefs and practices be restored and brought into harmony with the primary sources of Islam, the Qur'an and Sunnah. One of these movements was led by Ahmad Hassan (1887-1958), acknowledged by many as a great scholar and a tireless advocate of the need for renewal (*tajdīd*) and reform (*iṣlāḥ*). This study analyses the significance of Hassan's role in the movement for Islamic legal reform and examines in particular his legal theory (*uṣūl al-fiqh*) and its application to problems of substantive law (*fiqh*). In terms of Indonesia (and perhaps other regions as well), this is a new approach; for few works on Islamic law in Indonesia concerned with either the Islamic judicial system or substantive law devote any significant attention to *uṣūl al-fiqh*, which, in fact, provides the foundation for these institutions, not to mention other aspects of Islamic teaching as well.

As a reformer, Hassan was sometimes led to adopt bold, even extreme positions. He attacked his traditionalist opponents for placing too much faith in the

doctrines of particular legal schools when seeking solutions to the problems faced by Muslims. Too often this led them to base their decisions on individual opinion, which placed them at a doble remove from the two primary sources. Instead Hassan advocated constant *ijtihād*, or at least *ittibā'*, in the belief that the door had never been shut on direct analysis of scripture. In adopting this position, Hassan developed a sound, consistent and text-based approach to *uṣūl al-fiqh* that was adopted after his death by his followers and students. Indeed, this approach has even had a substantial effect on his opponents, whose stance has changed subtly to reflect many of Hassan's concerns.

Auteur : Akh Minhaji
Titre : Ahmad Hasan et la réforme légale islamique en Indonésie (1887-1958).
Département : Institut des Etudes Islamiques, Université McGill
Diplôme : Doctorat ès Philosophie

Il existe une affirmation, soutenue non seulement par les spécialistes en la matière mais aussi par de nombreux musulmans que la loi islamique en Indonésie est teintée d'éléments non-islamiques issus des coutumes locales (*adat*). Historiquement, cette notion a provoqué l'émergence de nombreux mouvements dont l'objectif était de s'assurer que les croyances et les pratiques religieuses soient restorées et harmonisées avec les sources premières de l'Islam, le Qur'an et la Sunnah. Un de ces mouvements fut dirigé par Ahmad Hassan (1887-1958), reconnu par plusieurs comme étant un grand intellectuel et un défenseur infatiguable en faveur du renouveau (*tajdīd*) et de la réforme (*islāh*). Cette étude analysera l'importance du rôle d'Hassan au sein du mouvement pour la réforme légale islamique et examinera en particulier sa théorie légale (*usūl al-fiqh*) ainsi que son application dans les problèmes de loi effective (*fiqh*). Pour l'Indonésie ainsi que pour d'autres régions, ceci est une approche nouvelle; seulement quelques traités légaux indonésiens concernant le système juridique islamique portent une attention particulière à l'*usūl al-fiqh* qui, en fait, établit la fondation de ces institutions, non sans oublier les autres aspects de l'enseignement islamique.

En tant que réformateur, Hassan fut parfois enclin à adopter une approche directe, voire même extrémiste. Il dénoncera ses opposants traditionalistes pour avoir

trop insisté sur les doctrines de certaines écoles légales afin de solutionner les problèmes confrontés par les musulmans. Trop souvent cette attitude a porté les traditionalistes à fonder leurs décisions sur l'opinion personelle, ce qui les a éloignés des deux sources primaires. Comme alternative, Hassan a alors proposé l'usage constant de l'*ijtihād*, ou du moins l'*ittibā'*, en affirmant que la porte de l'*ijtihād* n'a jamais été close dans l'analyse directe des écritures. En adoptant cette position, Hassan a développé une approche efficace, constante et textuelle de l'*uṣūl al-fiqh* et qui sera adoptée après sa mort par ses disciples et étudiants. En effet, cette approche aura même un impact déterminant sur ses opposants, dont l'argumentation sera subtilement transformée afin de refléter les préoccupations d'Hassan.

TRANSLITERATION AND QUR'ANIC TRANSLATION

The system of Arabic transliteration used in this dissertation is that of the Institute of Islamic Studies, McGill University. Indonesian terms are written according to the *Ejaan Baru Bahasa Indonesia* (1972), but personal names and the titles of books and articles are rendered according to the original spellings. The Qur'anic translations are based on those of 'Abdullah Yūsuf 'Alī.

ا = a	ز = z	ق = q
ب = b	س = s	ك = k
ت = t	ش = sh	ل = l
ث = th	ص = ṣ	م = m
ج = j	ض = ḍ	ن = n
ح = ḥ	ط = ṭ	و = w
خ = kh	ظ = ẓ	ه = h
د = d	ع = ‘-	ي = y
ذ = dh	غ = gh	
ر = r	ف = f	

- short vowels:

  ـَ = a, fatḥah

  ـِ = i, kasrah

ـُ = u, ḍammah

- long vowels:

ى ا = ā, alif/alif maqṣūrah

ـِي = ī, yā

ـو = ū, waw

- the *tā' marbūṭah* (ة) is translated as "ah" in pause form and "at" in conjunctional form; examples: *bid'ah*, *bidāyat al-mujtahid*. In the case of *tashdīd*, the letter is doubled; example: *'Arabiyyah*. Alif or hamzah is transliterated as an elevated comma in all positions except when it occurs at the beginning of a word; examples: *istiḥsān*, *sayyi'ah*, *iftā'*.

ACKNOWLEDGMENTS

I would like to express my thanks to the Faculty of Islamic Law, State Institute of Islamic Studies Sunan Kalijaga, and to the Ministry of Religious Affairs of Indonesia, for allowing me to take a leave of absence to study at the Institute of Islamic Studies, McGill University. This opportunity has allowed me to broaden my understanding of Islamic studies, especially in the field of Islamic law.

My desire to study at McGill University was enhanced by the presence there of Dr. Wael B. Hallaq who has acted as my academic adviser and supervised both my master's and doctoral theses. He has been largely responsible for opening my eyes to the critical analysis of Islamic law; his critical evaluation, scholarly suggestions, and his kindness and personal interest have been of inestimable value. Without Dr. Hallaq's painstaking reading and incisive criticisms, this work might never have been completed. In short, I cannot find the appropriate words to express my gratitude to him.

Indeed, I am indebted to a great many people for their assistance. Dr. A. Uner Turgay, the Director of the Institute, was of much help during my period of study; Dr. Howard M. Federspiel was always ready to assist me with my work, particularly by reading the first draft of this study and by providing valuable suggestions and additional sources relevant to the topic of my study. Dr. Syafii Maarif, visiting professor at the Institute during the 1993-1994 academic year, gave me moral and intellectual support at a critical point in my studies. I owe a debt of gratitude to Steve

Millier who read and scrupulously edited the first draft of this dissertation and who patiently assisted me in acquiring many of the sources needed to complete it. The participants of the routine seminar of the Muslim Research Institute, organized by Dr. Ahmad Shafaat of Concordia University, contributed significantly to the central arguments developed in this study.

Although I should like to record my gratitude to all who assisted me in this project, space demands, regrettably, that I mention only a few. I am particularly thankful to the staff of the Indonesia-Canada Islamic Higher Education Project both in Indonesia and Canada, and of Bappenas who both provided, among other things, financial support which made my study possible, most especially to Dr. Munawir Sjadzali, dr. Tirmidzi Thahir, Dr. Mohammad Atho Mudzhar, Drs. Murni Djamal, Drs. Zaini Muchtarom, Dr. Charles J. Adams, Dr. Issa Boullata, Dr. Howard M. Federspiel, Dr. Rebecca B. Aiken, Ratna Dewi, Celine Beaudoin, Wendy Allen, Joanna Gacek, Lori Novak, Susy Ricciardelli, and Jim Dury. Thanks go also to the staff of the Islamic Studies Library at McGill, especially Ms. Salwa Ferahian and Wayne St. Thomas, and also to Ben Abel of the Library of Cornell University, for their help in locating important sources for my dissertation research. In Indonesia, I would like to acknowledge my gratitude to Ustadh Mansur Hassan, Ustadh Ghazi Abdulkadir, Ustadh Hud Abdullah Musa of the Pesantren Persis in Bangil, to K.H.A. Latief Muchtar, the present leader of Persis, who all kindly gave information during a series of interviews. Thanks are also due to Drs. H. Afandi Muchtar of the Pesantren Babakan, Ciwaringin, to Drs. H. Fuad Zein of the Fakultas Shari'ah, IAIN Sunan

Kalijaga, to H. Syahwanuddin, to my cousin Riyadi, and most notably to my own brother Drs. Kiyai Moh. Tabrani of the Pesantren Nurud Dhalam, Pamekasan-Madura, all of whom provided material, oral or written information that was crucial to my work. I am very much indebted to my parents and parents-in-law, Kiyai Ahmad Muzakki, Nyai Chuzaimah, Kiyai H.A. Kamil Yasin, and Nyai Hajjah Kamanah, who have been supportive in every thing I have done.

My everlasting gratitude goes to my beloved wife, Dra. Kuny Faizah and to our two daughters, Al-Imroatul Azizah and Nurul Maziyyah, for their encouragement and patience during my study. The dedication of this study to them is but a small token of my appreciation of their devotion, patience, sacrifices, and infinite forbearance.

Montreal, May 1997
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INTRODUCTION

INTRODUCTION

1. Subject Matter and Significance of the Study.

> In the case of [Islam in] Indonesia...there has been a very serious disregard, both by Western students and, even more striking, by Muslims of other areas. The role of Islam in contemporary Indonesia, and of Indonesia in contemporary Islam, has still to be not only assessed but noticed. Even an elementary acquaintance makes it clear that here is Islamically something distinctive and fascinating and potentially very rich.[1]

This remark by Wilfred Cantwell Smith was later echoed by Fazlur Rahman in the following words: "It is notorious that in general accounts of Islam,...Indonesia is severely ignored even though it is the most populous Muslim country, the general impression being that it is some sort of a 'backwater' of Islam."[2] Albert Hourani has pointed to signs that there is an increasing tendency in modern scholarship to concentrate on many hitherto neglected regions and subjects in the Islamic world;[3] yet, Indonesia remains something of an exception. This is even more true in the case of Islamic legal reform. Although much has been written about legal reform in certain Muslim countries, very little attention has been given in this respect to Indonesia. Scholars usually raise the issue of Islamic legal reform in a partial way, as one aspect of a general discussion of the Islamic reform movements in Indonesia. Consequently,

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[1]Wilfred Cantwell Smith, *Islam in Modern History* (New York: New American Library, 1957), 295-6.

[2]Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: The University of Chicago Press, 1984), 125. See also B.J. Boland, *The Struggle of Islam in Modern Indonesia* (The Hague: Martinus Nijhoff, 1982), 2.

[3]Albert Hourani, "How Should We Write the History of the Middle East?" *International Journal of Middle East Studies* 23 (1991), 125-36.

efforts at legal reform remain a side issue for those studying the nature and development of such reform organizations as the Muhammadiyah, al-Irsyad, and Persatuan Islam.[4] Thus, one of the main objectives of this study is to fill this gap, thereby adding to our knowledge of the recent history of Islam in Indonesia and particularly that of Islamic legal reform in the region.

Moreover, it has often been said that Islamic law in Indonesia is strongly colored by "non-Islamic" local custom (*adat*). This being so, it is not surprising that since early times, there have arisen movements which have sought to ensure that religious beliefs and practices be restored and brought into harmony with the original sources of Islam, the Qur'an and Sunnah. One of the most successful of these movements was led for a time by Ahmad Hassan (1887-1958), who won widespread recognition for both his scholarship and reformist ideas.[5] The organization that he led was Persatuan Islam, popularly known as Persis, a reformist organization which was considered the spearhead of the reform movement. Because of his reputation as a religious scholar, he was often invited by the Majlis Fatwa Wattarjih of al-Irsyad and

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[4]See e.g. Alfian, *Muhammadiyah: The Political Behavior of a Muslim Modernist Organization under Dutch Colonialism* (Yogyakarta: Gadjahmada University Press, 1989); Mitsuo Nakamura, *The Crescent Arises over the Banyan Tree: A Study of the Muhammadiyah Movement in a Central Javanese Town* (Yogyakarta: Gadjahmada University Press, 1983); Bisri Affandi, "Shaikh Ahmad al-Surkati: His Role in al-Irshād Movement" (M.A. thesis, McGill University, 1976); Howard M. Federspiel, *Persatuan Islam: Islamic Reform in Twentieth Century Indonesia* (Ithaca: Cornell University Press, 1970); and Deliar Noer, *The Modernist Muslim Movement in Indonesia 1900-1942* (Singapore: Oxford University Press, 1973).

[5]Tamar Djaja, ed., *Riwayat Hidup A. Hassan* (Jakarta: Mutiara, 1980), 6, 33-4, 39.

the Majlis Tarjih of the Muhammadiyah to discuss various issues of Islamic law in order to help frame answers (*fatwās*) to legal problems faced by Muslims.[6] These functions provided Hassan with many opportunities to influence the Muslim reform movement.

It is true that Hassan's ideas have been seen by some as "heretical" on the grounds that they were radically different from teachings familiar to the majority of Muslims. His radical approach to reform and his severe attitude toward others elicited hostile responses from his opponents. Quite a number of books and articles were published criticizing his mission, to many of which he responded sternly. There were frequent public debates between Hassan and his opponents, and these were attended by large numbers of both Muslims and non-Muslims.

Nevertheless, the impact of Hassan's ideas on his fellow Muslims is beyond doubt. His formulation of an Islamic doctrine has systematically been taught to succeeding generations of students in such places as the Pesantren Persis in Indonesia and the schools of the Persatuan Muhammadiyah in Singapore. A prolific writer, Hassan published quite a number of books and articles. This effort of writing and of publishing scholarly works has been carried on by his family and his disciples.

While there are quite a number of works that have been written on Hassan's career, none of them discusses his involvement in the reform movement comprehensively. In fact, there are some differences, not to say contradictions, among

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[6]K.H.A. Latief Muchtar, interviewed by Fuad Zein, tape recording, 18 January 1996, Bandung (West Java).

writers on a number of points, particularly as regards his ideas on nationalism and consensus (*ijmā'*). Thus, the objective of this study is to give a fuller exposition of Hassan's involvement in the reform movement, exploiting new sources and taking an exhaustive look at a problem which continues to have an impact on Indonesian society today. All of this will be analyzed in the light of Islamic legal theory (*uṣūl al-fiqh*), for it was this discipline that influenced and dictated many of the legal and social issues of Hassan's day. In terms of Indonesia (and perhaps other regions as well), this is a new approach, for few works on Islamic law in Indonesia concerned with either the Islamic judicial system or substantive law devote any significant attention to *uṣūl al-fiqh*. This is surprising, since it is *uṣūl al-fiqh* that provides the foundation for these institutions, not to mention other aspects of Islamic teaching as well.

2. The Structure of this Study.

Five principal topics have been isolated for discussion and analysis, for each of which a chapter will be devoted. The first chapter will examine the historical background of Islamic legal reform in the Muslim world, especially in the period following the emergence of nation states, with particular reference to the case of Indonesia. This will allow us to place the reform movement in Indonesia in the context of similar processes taking place in other Muslim countries, and help us to comprehend the religious issues faced by Muslims everywhere prior to and during Hassan's life.

The second chapter deals with Hassan's background, career, and writing activities, in an effort to understand Hassan's significance to the debate on legal issues

among Indonesian Muslims in general and Indonesian scholars in particular. This chapter will demonstrate how Hassan viewed the problems of society and why he felt the need to respond critically to such questions.

Hassan's approach to *uṣūl al-fiqh* will be discussed in chapter three. It is generally acknowledged that the *uṣūl al-fiqh* followed by the traditional scholars prior to and during Hassan's time was that of the Shāfi'ī school, which recognized the Qur'an, Sunnah, consensus, and *qiyās* as the sources of Islamic law. However, spurred by his noted intellectual curiosity, Hassan examined each of the four sources and came to the conclusion that the Qur'an and Sunnah are the only true foundations of Islamic law, while consensus and *qiyās* are no more than methods employed to discover those rules which have not been explicitly stated in either scripture or the traditions of the Prophet. Furthermore, Hassan also accepted other methods of deriving rules such as juristic preference (*istiḥsān*), custom (*'urf*), consideration of public interest (*maṣlaḥah mursalah*), and presumption of continuity (*istiṣḥāb*). The opinions of earlier scholars, recorded in the works on *fiqh*, served to sharpen his analysis of the problems of Islamic law. Moreover, other subjects such as *ijtihād, ittibā'*, and *taqlīd* are also discussed in Hassan's writings on *uṣūl al-fiqh*. This part of our study examines the extent to which Hassan's approach to *uṣūl al-fiqh* differed from that adopted by the traditional scholars of his time.

The fourth chapter is concerned with the implementation of Hassan's *uṣūl al-fiqh*. This explores, for instance, how Hassan dealt with traditional Indonesian culture, various social developments occurring in the first half of this century, the influence

of Western culture, and traditional Muslim thought and practices. In keeping with the subjects discussed in Hassan's works, this part of the study focuses upon his approach to matters affecting both worship (*'ibādāt*) and mundane transactions (*mu'āmalāt*). It is in this section that we attempt to show the extent to which Hassan's views in the field of substantive law differed from those of the traditional scholars.

Finally, both the response to and the impact of Hassan's doctrine are analyzed in chapter five. As has already been pointed out, despite the sometimes harsh criticisms that were directed at Hassan, the impact of his thought on his fellow Muslims remains beyond doubt. This chapter therefore attempts to explain why Hassan was (and still is) considered both a great scholar and, at the same time, an "unbeliever," guilty of spreading confusion and chaos among Muslims.

3. Sources.

The works of Ahmad Hassan constitute the primary sources of this study. These include a variety of writings on several of the Islamic religious sciences, e.g. theology (*tawḥīd*), Islamic law (*fiqh*), Islamic legal theory (*uṣūl al-fiqh*), Qur'anic exegesis (*tafsīr*), Prophetic traditions (*ḥadīth*), history (*tārīkh*), and ethics (*akhlāq*). Legal theory and issues of Islamic law, however, dominate his writings, and reflect the idea that the Qur'an and Sunnah should provide the sole guidance for Muslims.

No less important are the works of his disciples, his students and others who have written about his life and career. At the moment, there are at least twelve works

on Hassan in the Indonesian language.[7] These sources however suffer from certain weaknesses. For example, they discuss Hassan's ideas very briefly and provide little critical analysis of the issues. Most of these works are clearly addressed to general readers, and are particularly aimed at praising Hassan; consequently, there is practically no discussion of the critical response to Hassan's views. The second major weakness of these works is that while legal thought is so central in Hassan's works, they almost ignore this aspect of his writings. Zainul Muttaqin's study however is an exception in this respect, in that it is exclusively concerned with Hassan's *ijtihād*. Nonetheless, in the nature of an undergraduate thesis, Muttaqin's work does not provide any deep theoretical discussion of the subject; nor does it discuss Hassan's *ijtihād* in the context of the contemporary movement of Indonesian Islam. Thus, his *ijtihād* seems to emerge from a vacuum without any link to the social life of

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[7]"A. Hassan, Guru Para Ulama dan Pemimpin Bangsa," *Republika Online* (29 September 1995); Endang Saifuddin Anshari and Syafiq A. Mughni, *A. Hassan: Wajah & Wijhah Seorang Mujtahid* (Bandung: Firma al-Muslimun, 1985); Aboebakar Atjeh, *Salaf: Muhji Atsaris Salaf, Gerakan Salafijah di Indonesia* (Djakarta: Permata, 1979), especially the chapter titled "A. Hassan dan Persis," 137-44; Djaja, *Hassan*; idem, "Riwayat Hidup A. Hassan," *Daulah Islamijah* 8 (August 1957), 6-14, reprinted in *Soal-Jawab Masalah Agama*, vol. 3 (Bandung: C.V. Diponegoro, 1983), 1266-9; "Hassan Bandung," in *Ensiklopedi Islam di Indonesia*, ed. Harun Nasution et al. (Jakarta: Depag, 1987/1988); Nawawi Dusky, "A. Hassan: Kenangan Kita Terakhir dengan Ulama Besar Ini," *Hikmah* 31 (November 1958), 13-5; Hamka, *Pengaruh Muhammad Abduh di Indonesia* (Jakarta: Tintamas, 1961), particularly the chapter titled "Syekh Ahmad Hassan dan Persatuan Islam," 22-8; M. Jasin, "A. Hassan: Dokumentator Surat-Surat Islam dari Endeh," *Gema Islam* 4 (Mei 1965), 12-26; Syafiq A. Mughni, *Hassan Bandung: Pemikir Islam Radikal* (Surabaya: PT. Bina Ilmu, 1980); Zainul Muttaqin, "Pola Ijtihad Hukum Muhammad Hasbi Ash-Shiddieqy dan A. Hassan" (Undergraduate thesis, IAIN Sunan Kalijaga, 1992); Roebaie Widjaja, "Biografi A. Hassan: Pengarang, Kritikus dan Ahli Debat Islam," *Hudjdjatul Islam* 1 (August 1956), 35-41.

Indonesian Muslims.

For English readers, there are at least three works providing some information about Hassan. As may be inferred from the title of his book, *The Modernist Muslim Movement in Indonesia*,[8] Deliar Noer examines the reform movement in Indonesia, and gives due credit to Persis and Hassan as important agents of the movement. Noer's treatment of the subject is however very general and covers almost all institutions or figures who were involved in reformist activities; thus, his remarks on Persis and Hassan are necessarily very limited. It nevertheless remains a good introduction to readers who wish to understand the significance of Hassan in the movement for Islamic reform in Indonesia. A more specific treatment may be found in Howard Federspiel's study of Persis,[9] in which he examines the contribution of Persis to the Islamic reform movement in Indonesia. In the course of his study of this organization, Federspiel provides a great deal more information on Hassan as compared to Noer, simply by reason of the fact that Hassan was the architect of the Islamic orientation of Persis. Readers will acknowledge however that neither Noer's nor Federspiel's work focuses on Hassan as the central topic of their study. It was in fact Agusni Yahya[10] who for the first time placed Hassan at the centre of attention,

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[8]Deliar Noer, *The Modernist Muslim Movement in Indonesia 1900-1942* (Singapore: Oxford University Press, 1973).

[9]Howard M. Federspiel, *Persatuan Islam: Islamic Reform in Twentieth Century Indonesia* (Ithaca: Cornell University Press, 1970).

[10]Agusni Yahya, "The Impact of Colonial Experience on the Religious and Social Thought of Sir Sayyid Ahmad Khan and Ahmad Hassan: A Comparison" (M.A. thesis, McGill University, 1994).

concentrating particularly on the impact of the colonial experience on the religious and social thought of Hassan as compared with that of Sayyid Ahmad Khan of India.

A common feature of these three works is their concentration on the socio-historical framework of Hassan's activities, at the expense of any analysis of the doctrinal foundations of his reform efforts. An examination of Hassan's *uṣūl al-fiqh* and its significance for Indonesian Islam is certainly lacking, to say the least.[11] It is symptomatic of what Karel Steenbrink regards as Western neglect of the role of Islamic law (*sharī'ah*) in Indonesian Islam.[12] This thesis represents an attempt to fill this lacuna.

The third major category of sources used in this study consists of works which supported or rejected proposals for Islamic legal reform in Indonesia, proposals launched primarily by Hassan. In addition, materials that will shed light on the subject matter analyzed in this study, such as Islamic reform in general and legal reform in particular, on *uṣul al-fiqh*, and on law in Indonesia, also serve as a basis for our inquiry.

4. Approach.

Needless to say, there are quite a number of methods which can serve to

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[11]In fact, the 20th century has been marked by a decreasing attention to *uṣūl al-fiqh* all over the Muslim world.

[12]Karel A. Steenbrink, *Mencari Tuhan dengan Kacamata Barat: Kajian Kritis Mengenai Agama di Indonesia* (Yogyakarta: IAIN Sunan Kalijaga Press, 1988), 224, 230.

provide a framework for such a study. For the purpose of this dissertation, however, the method suggested by Ali Shari'ati will be employed.[13] According to Shari'ati:

> There are...two fundamental methods for learning Islam correctly, precisely and in accordance with contemporary methodology. First, the study of the Qur'an, taking it as the compendium of the ideas and the scientific and literary output of the person known as "Islam"; and second, the study of Islamic history, taking it as the sum total of the developments undergone by Islam from the beginning of the Prophet's mission down to the present.[14]

These two fundamental methods are elaborated further into five different areas of understanding: God, the Book, the Prophet, the circumstances of the Prophet, and the representative figures trained according to the religion.[15] Furthermore, Shari'ati compares the method of studying a religion to that of studying an individual, emphasizing that to understand the latter it is important first of all to examine and to analyze "the intellectual, scientific and written books of the individual, his theories, his speeches, his lectures and his books."[16] Our understanding of the ideas and beliefs of a person, says Shari'ati, "is an indispensable preliminary to understanding him." This should be combined with an investigation of that person's biography in order to have a complete understanding of his achievement.[17]

Shari'ati's method has been adopted by other scholars, among them John O.

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[13]Ali Shari'ati, *On the Sociology of Islam*, trans. Hamid Algar (Berkeley: Mizan Press, 1979), particularly chapter two, "Approaches to the Understanding of Islam," 39-69.

[14]Ibid., 62.

[15]Ibid., 64.

[16]Ibid., 62.

[17]Ibid.

Voll, who is engaged in the study of the Islamic movement in the modern world.[18] Through his "three dimensional approach,"[19] Voll augments Shari'ati's methodology, providing us with an additional vantagepoint from which to view our subject. According to this approach, three dimensions should be considered in conducting research on Islamic movements in the modern period. In the first place, one must take into account the important individuals and groups and the local conditions in which they developed.[20] Secondly, the response of the Islamic movements to modern developments should be examined. Finally, one should always take into account the nature of Islam and its response to the challenge of changing conditions throughout history; by doing so, "one stands a better chance of avoiding the pitfalls of using only an analytical model, which imposes alien categories upon the modern Islamic experience."[21]

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[18]Shari'ati's method has been used by Voll in his study on Wahhabism and Mahdism in relation to the movements of *tajdīd* and *iṣlāḥ*; see John O. Voll, "Wahhabism and Mahdism: Alternative Styles of Islamic Renewals," *Arab Studies Quarterly* 4 (1982), 110-25.

[19]John O. Voll, *Islam: Continuity and Change in the Modern World* (Boulder, Colorado: Westview Press, 1982), 2-4.

[20]In 1932, H.A.R. Gibb pointed out that to study Islam in the modern world it is important to distinguish between its manifestation in various parts of the world because of the differences in its characteristic features; see H.A.R. Gibb, ed., *Whither Islam? A Survey of Modern Movements in the Moslem World* (London: Victor Gollancz, 1932), 14.

[21]Karel A. Steenbrink indicates that the third aspect of Voll's approach seems often to be neglected in the study of Indonesian Islam. He points out, for instance, that in his *Religion of Java*, anthropologist Clifford Geertz examined Islam in Java without paying any attention to Islam as an international religion; thus he neglected the relation of Islam in Indonesia to that of other areas. This also happened in the case of Mitsuo Nakamura, a Japanese anthropologist. Only when he had finished writing

The method conceived by Shari'ati, as later elaborated by Voll through his "three dimensional approach," forms the basic framework of this study.

5. The Problem of Terminology.

Quite a number of terms are used in the pertinent Indonesian literature to refer to the movement which has traditionally called for a return to the fundamental teachings of Islam as expressed in the Qur'an and Sunnah. According to Boland,[22] the terms *reformasi* (reformation), *liberalisasi* (liberalization), and *modernisasi* (modernization) are frequently used in modern Indonesia; these three terms "are often used indiscriminately, without a definition of what each of them means," but they can each be used to denote the effort advocating a return to the original teachings of Islamic doctrine, freedom from the rigid teachings of the legal schools, and yet at the same time openness to the socio-economic changes imposed by modern times. Boland also mentions other terms such as *westernisasi* (westernization) and *sekularisasi* (secularization) in the context of the Islamic reform movement in Indonesia. Any leading figure involved in such a movement is usually called a modernist, a *pembaharu* (reformer), or one of the "people of *ijtihād*," the opposite of which are called orthodox, conservative, traditionalist, or the "people of the school."

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his doctoral thesis on the Muhammadiyah, did Nakamura realize that it is impossible to understand the Islamic movement in Indonesia without sufficient knowledge of Islam and Arabic; thus in 1981/1982 he went to Harvard University to study these subjects in more depth; see Karel A. Steenbrink, *Beberapa Aspek tentang Islam di Indonesia Abad ke-19* (Jakarta: Bulan Bintang, 1984), 13.

[22]Boland, *Islam in Modern Indonesia*, 211-24.

In the later twentieth century, the problem of terminology in the context of the movement for Islamic reform has been the focus of serious attention among Muslims. Heated debates on this issue have taken place. Since 1968, for example, some leading Muslim youth activists have introduced terms, mostly derived from Western literature, in an attempt to promote new approaches to Islamic teaching. The most prominent among them has been Nurcholish Madjid[23] who coined the word *sekularisasi*,[24] a term rigorously attacked by others, such as M. Rasjidi.[25] The term *sekularisasi* came to be understood by most Muslims as having a negative connotation, simply because it originated in Western secular society. Most people as a result avoid using this term.

Because of this controversy and others besides, contemporary Muslim writers are careful about importing terms to promote new ideas among Muslims. Harun Nasution, who is considered one of the most important agents in promoting the ideas of the Mu'tazilah, avoids terms which are clearly associated with Western society and uses instead the Indonesian term *pembaharuan*. According to Nasution, it is better to translate the term modernism, modernization, or modern by *pembaharuan*, for, he

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[23]For a concise discussion of the terms used since 1968 particularly by Madjid, see M. Dawam Rahardjo, "Islam dan Modernisasi: Catatan atas Paham Sekularisasi Nurcholish Madjid," in *Islam: Kemodernan dan Keindonesiaan*, ed. Agus Edi Santoso (Bandung: Mizan, 1987), 11-31.

[24]For the works of Madjid on the issue, see his "Modernisasi ialah Rasionalisasi bukan Westernisasi," "Keharusan Pembaharuan Pemikiran Islam dan Masalah Integrasi Umat," and "Sekali Lagi tentang Sekularisasi." For these three articles, see Madjid, *Islam: Kemodernan dan Keindonesiaan*, chapter four, sections one, two, and four, 171-214, 221-33.

[25]See, for example, H.M. Rasjidi, *Koreksi terhadap Drs. Nurcholish Madjid tentang Sekularisasi* (Jakarta: Bulan Bintang, n.d.).

argues, the Western terms have negative connotations because they originate in Western society.[26] At the present time, *pembaharuan* is the term most commonly employed to denote the movement which promotes a new interpretation of Islamic values. Nasution's suggestion that it be used as an equivalent for modernism, modernization, or modern has not been heeded. The term *tajdīd* (renewal) is commonly used in Muhammadiyah circles for *pembaharuan*. Thus, the terms *tajdīd*, *reform* (the most common form is *reformasi*), and most particularly *pembaharuan* are widely used in present-day Indonesia. Anyone involved in the reform movement is called a *pembaharu* (reformist) or sometimes a *mujaddid*. Both of these terms, in fact, are used by contemporary writers in reference to Ahmad Hassan.

One may ask, however, what terms were in use prior to and during the era of Hassan. Reading the sources during the end of the nineteenth and early twentieth centuries, one seldom comes upon the term *pembaharuan*. Instead, the terms *kaum tua* (old group) and *kaum muda* (young group) were often used. These terms were derived from the Malay language, a language in which Bahasa Indonesia is rooted.[27] The epithets *kaum tua* and *kaum muda* became familiar to Indonesians throughout the country, but more particularly in the Minangkabau region (West Sumatra).[28] In Java,

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[26]Harun Nasution, *Pembaharuan dalam Islam: Sejarah Pemikiran dan Gerakan* (Jakarta: Bulan Bintang, 1975), particularly the section titled "Pengertian Pembaharuan," 11-2.

[27]See Affandi, "Ahmad al-Surkati," especially chapter three, section two, "Reformists versus Conservatives and the Role of Surkati," 129-40.

[28]Noer, *Modernist Muslim Movement*, 6. For the differences and the complex relationship between the *kaum muda* and the *kaum tua* in West Sumatra, see generally

the terms *moderen* and its converse *kuna* or *kolot* (conservative or old-fashioned) were more familiar than *kaum tua* and *kaum muda*. Geertz, in his famous work *The Religion of Java*, employs the terms *kuna* and *moderen* in analyzing his subject, defining them as follows:

> *Kuna* means old-fashioned, traditional, the ancient way. *Moderen* means exactly what it sounds like--modern.... For *kuna* people the ways of their fathers are good enough, and the temptations of the present a snare and a delusion; for *moderen* people, mostly but not entirely clustered in the town, there is a need to reform the beliefs of the past to make them consonant with what they take to be the demands of the present. That such reform should paradoxically sometimes take the form of a return to a supposed earlier and purer form of belief considered to be more adequate than the degenerations which followed it is not so surprising in the light of anthropological studies of revivalist religious movements in different parts of the world....[29]

Nevertheless, when Hassan first arrived at Surabaya, the words *kaum tua* and *kaum muda* were the terms most commonly used among the Muslims of the region. One explanation of this is that the works of scholars from West Sumatra, e.g. Abdullah Ahmad, Abdulkarim Amrullah, Zainuddin Labay, circulated among the Muslims of Surabaya.[30] However, as shown by Tamar Djaja, the term *kuna* was also in use among the people of the region;[31] in fact, over time the words *kuna* and *moderen* as

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Taufik Abdullah, *Schools and Politics: The Kaum Muda Movement in West Sumatra (1927-1933)* (Ithaca: Cornell University Press, 1971) and Sanusi Latief, "Gerakan Kaum Tua di Minangkabau" (Ph.D. diss., IAIN Syarif Hidayatullah, 1988).

[29]Clifford Geertz, *The Religion of Java* (Chicago: The University of Chicago Press, 1976), 112. See also G.F. Pijper, *Beberapa Studi Tentang Sejarah Islam di Indonesia 1900-1950*, trans. Tudjimah and Yessi Augusdin (Jakarta: UI-Press, 1984), 106.

[30]Deliar Noer, "A. Hassan," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 104.

[31]Djaja, *Hassan*, 21.

defined by Geertz become increasingly more common among the Javanese, eventually displacing the terms *kaum tua* and *kaum muda*. In the end, the terms *kaum tua* and *kuna* have been replaced by the term *tradisional*, while the terms *kaum muda* and *moderen* have been displaced by the term *pembaharu* (reformer), the movement itself being called *pembaharuan* (reform). It is these new terms that are most often used in Indonesian literature on religious and social reform in the latter part of the twentieth century.

CHAPTER ONE

CHAPTER 1
Islamic Legal Reform: A Historical Background

A. A General Overview.

So much has been written about Islamic legal reform in the modern world by Western scholars that it may seem redundant to say anything more.[1] Nonetheless, we shall endeavour to do so, if only to emphasize a certain perspective on the issues involved. Before embarking on this task, however, it is necessary to begin with a critical survey of the scholarship on the subject.

The development of Islamic law, according to some legal historians, passed through three periods.[2] The first period is usually called the formative era, during which Islamic law was very flexible and adapted itself to the local custom of societies. This period has therefore been seen as the great creative age of Islamic law.[3] The second period dates approximately from the fourth/tenth century, when

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[1]The most extensive study on Islamic reform in the Muslim world remains J.N.D. Anderson's *Islamic Law in the Modern World* (New York: New York State University Press, 1959) and his *Law Reform in the Muslim World* (London: The Athlone Press, 1976). For further references on Islamic law in the modern world, see John Makdisi and Marianne Makdisi, "Islamic Law Bibliography: Revised and Updated List of Secondary Sources," *Law Library Journal* 87 (1995), 136-63.

[2]Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 4-5; Bassam Tibi, *Islam and the Cultural Accommodation of Social Change*, trans. Clare Krojzl (Oxford: Westview Press, 1991), 64-5.

[3]Herbert J. Liebesny, "Religious Law and Westernization in Moslem Near East," *The American Journal of Comparative Law* 2 (1953), 495; R. Stephen Humphreys, *Islamic History: A Framework for Inquiry* (Princeton: Princeton University Press,

Islamic law was supposedly expounded definitively by the orthodox legal schools (i.e. the Mālikī, Ḥanafī, Shāfi'ī, and Ḥanbalī schools), and when Muslims throughout the central Islamic lands elected to follow one of these four schools.[4] It is said that even by the fourth century, Islamic law was considered to have become immutable.[5] Consequently, it became increasingly rigid and static,[6] a phenomenon which

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1991), 211-2.

[4]For example, the Ḥanafī school was followed in Baghdad, Basrah, Kufah, Mosul, Nishapur, Bukhara, Balkh, Samarqand and Farghana. The Mālikī school was adopted in Egypt and North Africa. The Shāfi'ī school was followed by Muslims in Jibāl-Rayy, Qum, Qazvin, Ḥamadan, Isfahan, Shiraz, Marw, Herat, Nasā and Tūs. The Ḥanbalī school flourished in Wāsit, Ukbara, Takrīt and Damascus; see Ira M. Lapidus, "The Evolution of Muslim Urban Society," *Comparative Studies in Society and History* (1973), 42-3. In the modern period, the North Africans are almost completely Mālikī, the Egyptians and Malays almost all Shāfi'ī, the Turks and the Sunnis of the Indo-Pakistani subcontinent mostly Ḥanafī, and the Saudis and many Syrians Ḥanbalī; see Seyyed Hossein Nasr, "Islam," in *Our Religions*, ed. Arvind Sharma (New York: Harper Collins, 1993), 466.

[5]For a discussion of immutability and change in Islamic law, see Wael B. Hallaq, "From *Fatwā*s to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1 (1994), 17-56; idem, "*Uṣūl al-Fiqh*: Beyond Tradition," *Journal of Islamic Studies* 3 (1993), 172-202; Seyyed Hossein Nasr, "Changes in Muslim Personal Law," in *Changes in Muslim Personal Law, A Symposium* (New Delhi: The Caxton Press, 1964), 54-64; J.N.D. Anderson, "Is the Shari'ah Doomed to Immutability?" *The Muslim World* 56 (1966), 10-3; N.J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago: The University of Chicago Press, 1969), 96-116; Baber Johansen, "Legal Literature and the Problem of Change: The Case of the Land Rent," in *Islam and Public Law*, ed. Chibli Mallat (London: Graham & Trotman, 1993), 29-47; Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993), 58-68.

[6]See generally Joseph Schacht, "Classicisme, traditionalisme et ankylose dans la loi religieuse de l'Islam," in *Classicisme et déclin culturel dans l'histoire de l'Islam*, ed. R. Brunschvig et G.E. von Grunebaum (Paris: Editions Besson, 1957), 141-66; idem, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1959), 137; idem, "The Schools of Law and Later Developments of Jurisprudence," in *Law in the Middle East: Origin and Development of Islamic Law*, ed Majid Khadduri and

eventually resulted in the controversial notion of the *insidād bāb al-ijtihād*, or the closing of the gate of creative legal reasoning.[7] This era ended supposedly at the close of the thirteenth/nineteenth century, when the Islamic nation-state began to emerge, along with a growing consciousness of the need for legal reform.[8] This, the third and current stage of development, arose out of an impression on the part of scholars that they were unable to resolve new legal problems with the aid of classical Islamic law.[9] Because of historical conditions, says Bassam Tibi, the classical legal doctrines "are no longer true in modern times and are therefore obviously no longer appropriate to new legal requirements."[10] In the eyes of Mazheruddin Siddiqi, the main problem faced by modern Muslims is that of law-making: "The rigidity of our religious orthodoxy has disabled the Muslims from having a fresh look at the laws

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Herbert J. Liebesny (Washington D.C.: The Middle East Institute, 1955), 76-7; idem, "The Law," in *Unity and Variety in Muslim Civilization*, ed. G.E. von Grunebaum (Chicago: University of Chicago Press, 1955), 77; Majid Khadduri, "From Religious to National Law," in *Mid-East: World Centre, Yesterday, Today, and Tomorrow*, ed. Ruth Ananda Anshem (New York: Harper & Brothers, 1956), 224; idem, "Nature and Sources of Islamic Law," *The George Washington Law Review* 22 (1953), 19; Herbert J. Liebesny, "Judicial System in the Near and Middle East: Evolutionary Development and Islamic Revival," *The Middle East Journal* 37 (1983), 202-3.

[7]There is an extensive debate on the problem of the gate of *ijtihād*. For a good introduction and important references to the issue in Western scholarship, see Shaista P. Ali-Karamali and Fiona Dunne, "The Ijtihad Controversy," *Arab Law Quarterly* 9 (1994), 238-57.

[8]J.N.D. Anderson, "Modern Trends in Islam: Legal Reform and Modernization in the Middle East," *International and Comparative Law Quarterly* 20 (1971), 14.

[9]Tibi, *Islam*, 65. See also Joseph Schacht, "Problems of Modern Islamic Legislation," *Studia Islamica* 12 (1960), 99-129.

[10]Tibi, *Islam*, 65.

framed by our medieval jurists whose opinions are considered infallible."[11] The third stage of development, according to Herbert Liebesny, "has not yet come to an end."[12]

This survey represents the common understanding among earlier Western scholars on the historical development of Islamic law. More recently, however, Wael B. Hallaq has turned the thesis right on its head.[13] In analyzing the problem of the gate of *ijtihād* and related issues, Hallaq has come to the conclusion that, contrary to the earlier thesis, Islamic law was still dynamic even after the establishment of the orthodox legal schools in the fourth/tenth century. He argues that the consistent emergence of jurists who have exercised *ijtihād* (*mujtahid*s), the existence throughout this period of those qualified to issue legal opinions (*muftī*s), and the availability of works on legal opinion (*fatwā*) support this interpretation. As such, Hallaq has been successful in giving a new direction to the question of the gate of *ijtihād*, and that certain problems with the thesis will be pointed out below should by no means detract

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[11]Mazheruddin Siddiqi, *Modern Reformist Thought in the Muslim World* (Islamabad: Islamic Research Institute, 1982), 230.

[12]Herbert J. Liebesny, "Stability and Change in Islamic Law," *The Middle East Journal* 21 (1967), 16.

[13]Wael B. Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16 (1984), 3-41; idem, "On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad," *Studia Islamica* 63 (1986), 129-41; idem, "*Usūl al-Fiqh*: Beyond Tradition," 172-202; idem, "From *Fatwā*s to *Furū'*," 17-56; idem, "Murder in Cordoba: *Ijtihād, Iftā'* and the Evolution of Substantive Law in Medieval Islam," *Acta Orientalia* 55 (1994), 55-83; idem, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice," *Islamic Law and Society* 2 (1995), 109-34. An analysis of Hallaq's works, theses, and some repsonses to them can be found in Akh. Minhaji, "Kontribusi Dr. Wael B. Hallaq terhadap Kajian Hukum Islam," in *Pengalaman Belajar Islam di Kanada*, ed. Yudian W. Asmin (Yogyakarta: Titian Ilahi Press, 1997), 115-42.

from the immense value of his contribution to this intricate issue.

Certainly, Hallaq cannot altogether ignore the fact that although the *mujtahid* has always existed from the earliest period of Islam until the present day, the rigidity of Islamic teachings in general and of Islamic law in particular have preoccupied Muslim thinkers throughout the pre-modern period, and especially during the last two centuries. The works of Amīr Shakīb Arslān,[14] M. Pickthall,[15] Mohammed Al-Nowaihi,[16] Subhī Mahmaṣānī,[17] Asaf A.A Fyzee,[18] Ṭāhā Jābir al-'Alwānī,[19]

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[14]*Limādhā Ta'akhkhara al-Muslimūna wa-Limādhā Taqaddama Ghayruhum?* (Beirut: Dār Maktabat al-Ḥayāh, 1965).

[15]*Cultural Side of Islam* (Lahore: SH. Muhammad Ashraf, 1969).

[16]"Problems of Modernization in Islam," *The Muslim World* 65 (1975), 174-85; "Religion and Modernization: The General Problem and Islamic Responses," in *Modernization: The Humanist Response to Its Promise and Problems*, ed. Richard L. Rubenstein (Washington: Paragon House, 1976), 309-40.

[17]"Muslims: Decadence and Renaissance, Adaptation of Islamic Jurisprudence to Modern Social Needs," *The Muslim World* 44 (1954), 186-201, reprinted in *Islam in Transition: Muslim Perspectives*, ed. John J. Donohue and John L. Esposito (Oxford: Oxford University Press, 1982), 181-7.

[18]*A Modern Approach to Islam* (New York: Asia Publishing House, 1963); *Islamic Culture* (Bombay: Sadhana Press, 1944); "The Reinterpretation of Islam," in *Islam in Transition: Muslim Perspectives*, ed. John J. Donohue and John L. Esposito (Oxford: Oxford University Press, 1982), 188-93; "The Relevance of Muhammadan Law in the Twentieth Century," *The Cambridge Law Journal* (1963), 261-9.

[19]"Taqlid and Ijtihad," *The American Journal of Islamic Social Sciences* 8 (1991), 129-42; "The Crisis in Fiqh and Methodology of Ijtihad," *The American Journal of Islamic Social Sciences* 8 (1991), 317-37; "Taqlid and the Stagnation of the Muslim Mind," *The American Journal of Islamic Social Sciences* 8 (1991), 513-22.

Seyyed Hossein Nasr,[20] Fazlur Rahman,[21] and Mahmoud Muhammad Toha,[22] to mention only some of the modern writers on Islam, are among those who acknowledge this fact and at the same time try to encourage Muslims to free themselves from such backward attitudes towards dogma. In this context, it may be useful to consider the observations of Ann Elizabeth Mayer, who discusses some of the issues we have looked at thus far.

In the early period of Islam, according to Mayer, Muslims adopted a threefold classification of the sources of Islamic law: primary, secondary, and remote:

> In a modern legal setting, one can classify sources as primary sources, which one consults to find the actual texts of laws, and secondary sources, where one finds clarifications of the rules that are set forth in the primary sources. These

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[20]"Islam and the Islamic World Today: An Overview," in *Islam in the Contemporary World*, ed. Cyriac K. Pullapilly (Notre Dame, Indiana: Cross Road Books, 1980), 1-19; *Traditional Islam in the Modern World* (London: KPI, 1987).

[21]See, for example, his *Islamic Methodology in History* (Karachi: Central Institute of Islamic Research, 1965); *Islam and Modernity*; "Islamic Modernism: Its Scope, Method and Alternative," *International Journal of Middle East Studies* 1 (1970), 317-32; "Revival and Reform in Islam," in *The Cambridge History of Islam*, ed. P.M. Holt, Ann K.S. Lambton, and Bernard Lewis, vol. 2B (Cambridge: Cambridge University Press, 1970), 632-56; "A Survey of Modernization of Muslim Family Law," *International Journal of Middle East Studies* 11 (1980), 449-65; "The Status of Women in Islam," in *Separate Worlds: Studies of Purdah in South Asia*, ed. Hanna Papanek and Gail Minault (Delhi: Kay Kay Printers, 1982), 285-311.

[22]*The Second Message of Islam*, trans. Abdullahi Ahmed An-Na'im (Syracuse: Syracuse University Press, 1987). Toha's ideas have been developed later by his disciple An-Na'im and are indeed increasingly receiving attention; see e.g. Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990); idem, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives, A Preliminary Inquiry," *Harvard Human Rights Journal* 3 (1990), 13-52; Tore Lindholm and Kari Vogt, eds., *Islamic Law Reform and Human Rights: Challenges and Rejoinders* (Oslo: Nordic Human Rights Publications, 1993).

> should be distinguished from remote sources of law, such as customary norms and the religio-cultural heritage from which the law ultimately derives. Understanding the historical background and origins of legal rules, as found in the remote sources, enhances the understanding of primary and secondary sources, but one does not refer to the remote sources to find what the legal system actually treats as the definitive statements of legal rules.[23]

Mayer herself acknowledges that "this hierarchical ranking of legal sources may seem oversimplified."[24] She argues however that "it can be used as a starting point for analyzing where one should turn to find the law."[25]

In the pre-modern period, however, the situation changed considerably. Muslims were faced with the so-called backwardness of their beliefs. The *mujtahid*, particularly the absolute *mujtahid* (*mujtahid mutlaq*), was seen as an impossibility in Islam. Consequently, blind-adherence (*taqlīd*) became the order of the day among Muslims. The religious interpretations recorded in the works on *fiqh* were treated as primary sources and were regarded as sufficient to deal with any problem faced by Muslims. Legal decisions were based upon opinions within one or another of the legal schools. Thus, the sources of Islamic law were turned upside down: the secondary or even the remote sources became the primary sources and replaced the position of the Qur'an and Sunnah.[26] The remote sources, the works on *fiqh*, thus came to be regarded as the most authoritative sources of law.

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[23]Ann Elizabeth Mayer, "The Sharī'ah: A Methodology or a Body of Substantive Rules?" in *Islamic Law and Jurisprudence: Studies in Honor of Farhat J. Ziadeh*, ed. Nicholas Heer (Seattle: University of Washington Press, 1990), 184.

[24]Ibid.

[25]Ibid.

[26]Ibid., 185.

In view of these considerations, it may be rightly observed that whereas earlier scholars (such as Schacht) were overly harsh in condemning post-fourth/tenth century Islamic law as totally rigid and static, all the while ignoring the fact that *mujtahid*s still existed at one time/place or another, Hallaq, for his part, goes to the other extreme, relying as he does exclusively on the historical link between one *mujtahid* and another without giving enough attention to the popularity of *taqlīd* among Muslims, at least in the pre-modern period.[27] The truth definitely lies somewhere in between. Thus, even today, at a time when *ijtihād* is being widely promoted, we still readily find people who, while calling themselves '*ulamā*', in fact refuse to perform *ijtihād* and rely instead totally upon medieval works on *fiqh*.[28] It is in this context that we can understand the following remark by Frank Vogel:

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[27]In his later article, Hallaq revises certain points of his account of the existence of *taqlīd* and of *muqallid*; see generally his "Ifta' and Ijtihad in Sunni Legal Theory: A Developmental Account," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (Cambridge: Harvard University Press, 1996), 33-43. In the words of Norman Calder, "The distinction [in Hallaq] between independent *ijtihād* and *ijtihād fī 'l-madhhab* is now clearly articulated and controlled, and the complete or near complete disappearance of the former is acknowledged"; see Norman Calder, "Al-Nawawī's Typology of *Muftī*s and Its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3 (1996), 161. See also Sherman A. Jackson, "*Taqlīd*, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory: *Muṭlaq* and *'Āmm* in the Jurisprudence of Shihāb al-Dīn al-Qarāfī," *Islamic Law and Society* 3 (1996), 170-3. It should be noted, however, that Calder's and Jackson's points are rebutted by Hallaq in his "Introduction: Issues and Problems," *Islamic Law and Society* 3 (1996), 127-36.

[28]Other analyses of Hallaq's thesis can be found in M. Hoebink, *Two Halves of the Same Truth: Schacht, Hallaq, and the Gate of Ijtihad* (Amsterdam: Middle East Research Associates, 1994); Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: E.J. Brill, 1996), 74-9; Minhaji, "Kontribusi Dr. Wael B. Hallaq," 115-42.

> This hypothesis can explain a paradox noted by Hallaq. He observes the oddity that scholars should declare ijtihad nonexistent, while they at the very same time acclaim certain *fuqahā'* of their own age as *mujtahid*s, exercising ijtihad. The explanation for this paradox lies in the link between the "closing of the door" and the day-to-day operation of the legal system: the doctrine was intended to constrain rank-and-file *qādī*s and muftis, not the elite. Elite scholars, who possessed the capabilities and the courage to exercise ijtihad as well as the prestige to make it stick, could breach the barrier.[29]

What we are trying to emphasize here is this: there is a certain belief among Muslims that, at least during the pre-modern period, *taqlīd* had been the prevailing approach to questions of religious practice. This belief has been taken up by the reformist Muslim movement of the modern era. To this internal factor is added an external one: the influence of Western ideas on Muslim society, an issue that will be discussed in the rest of this section.

Certainly, one has to take into account that the third period of Islamic law, the modern era, emerged when the influence of Western civilization on the East began to grow considerably, especially after the French Revolution.[30] Thus, it may be valid to say that to many observers, the history of Islam in general and Islamic law in

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[29]Frank E. Vogel, "The Closing of the Door of Ijtihad and the Application of the Law," *The American Journal of Islamic Social Sciences* 10 (1993), 399.

[30]See James L. Barton, "The Impact and Influence of Western Civilization on the Islamic World," in *The Moslem World of To-day*, ed. John R. Mott (London: Hodder and Stoughton, 1925), 3-18; Seyyed Hossein Nasr, "The Western World and Its Challenges to Islam," in *Islam: Its Meaning and Message*, ed. Khurshid Ahmad (London: Islamic Council of Europe, 1975), 217-41; Anonymous, "Western Influence on Muhammedan Law," *The Moslem World* 3 (1913), 350-66; Howard A. Reed, "Revival of Islam in Secular Turkey," *The Middle East Journal* 8 (1954), 268; Gamal Moursi Badr, "Islamic Law and the Challenge of Modern Times," in *Law, Personalities, and Politics of the Middle East: Essays in Honor of Majid Khadduri*, ed. James Piscatori and George S. Harris (Washington D.C.: The Middle East Institute, 1987), 27-8.

particular in the modern period "is essentially the history of the Western impact on Muslim society, especially since the thirteenth/nineteenth century."[31] Because of the challenge of Western ideas, according to this view, many aspects of Islamic teaching came to be questioned, and one of the most serious questions both then and now is that of the role of Islamic law,[32] a subject which is considered as the core of Islam itself.[33] This situation has led Majid Khadduri to state that "the greatest

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[31]Fazlur Rahman, *Islam* (Chicago: The University of Chicago Press, 1979), 212.

[32]A. Rahman I. Doi, *Shari'ah in the 1500 Century of Hijra: Problems and Prospects* (London: Ta-Ha Publisher, 1981), 8.

[33]The central position of Islamic law among Muslims can be seen, among others, from the following statements: (a). "Islam is a religion of law"; see C. Snouck Hurgronje, *Selected Works of C. Snouck Hurgronje*, ed. G.H. Bousquet and Joseph Schacht (Leiden: E.J. Brill, 1957), 48; Joseph Schacht, "Theology and Law in Islam," in *Theology and Law in Islam*, ed. G.E. von Grunebaum (Wiesbaden: Otto Harrassowitz, 1971), 3-4; Charles J. Adams, "The Islamic Religious Tradition," in *Religion and Man: An Introduction*, ed. W. Richard Comstock (New York: Harper & Row Publisher, 1971), 577. (b). "...law is the distilled essence of the civilization of a people and it reflects that people's soul more clearly than any other organization. But if this is true of peoples and civilizations in general, there can be no doubt that it is particularly true of the world of Islam...."; see J.N.D. Anderson, *The Study of Islamic Law* (Ann Arbor: The University of Michigan Ann Arbor, 1977), 3. (c). "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself"; see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1986), 1; idem, "Islamic Religious Law," in *The Legacy of Islam*, ed. Joseph Schacht and C.E. Bosworth, (Oxford: Clarendon Press, 1974), 392; idem, "Theology and Law in Islam," 3-4; Aharon Layish, "Notes on Joseph Schacht's Contribution to the Study of Islamic Law," *British Society for Middle Eastern Studies, Bulletin* 9 (1982), 133. (d). "It is, indeed, impossible to understand the Muslim mind, Muslim society, Muslim ideals, politics, and reactions, without some knowledge of that law which...still molds and pervades them all"; see J.N.D. Anderson, "The Significance of Islamic Law in the World Today," *The American Journal of Comparative Law* 9 (1960), 187. (e). "Law is at the heart of Islam; this is a proposition which has been generally accepted within the ranks of the Unbelievers as well of course as of Believers, and it forms the basis of much Islamic scholarship"; see M.B. Hooker, "Muhammadan Law and Islamic

challenge...has come from the West, under the impact of which Islamic law is bound to change."[34]

Nonetheless, it should be mentioned at once that Western influence is not the only factor which has inspired the reform movements among Muslims.[35] Obviously, contact with the West is important, "but not the most decisive factor in producing the Islamic response."[36] Long before the emergence of the Western civilization of the modern period, Muslims were accustomed to periodic attempts at *iṣlāḥ* (reform) and *tajdīd* (renewal), and both became key features of Islamic teaching. Therefore, without neglecting the importance of external factors (e.g. Western influence), Islam can be said to possess an internal dynamic which allows it continuously to reform its doctrine

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Law," in *Islam in South-East Asia*, ed. M.B. Hooker (Leiden: E.J. Brill, 1983), 160. (f). "...for many devout Muslims, traditionalist and modernist alike, Islam without the law is unimaginable"; see Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972), 228. (g). "...it was the way of life, the *sharī'ah*, which for Muslims constituted the core of Islam"; see George F. Hourani, "The Basis of Authority of Consensus in Sunnite Islam," *Studia Islamica* 21 (1964), 25. (h). "It is impossible to understand Islam without understanding Islamic law"; see Schacht, *Introduction*, 1. (i). "[Islamic law] will always remain one of the most important, if not the most important, subject of study for the student of Islam"; see Joseph Schacht, "Schools of Law and Later Developments," 84. (j). "There is no subject more important for the student of Islām than what is usually called Islamic 'law'"; see Charles J. Adams, ed., *A Reader's Guide to the Great Religions* (New York: The Free Press, 1965), 316.

[34]Khadduri, "Religious to National Law," 220; idem, "Secularization and Islamic Law," in *The Principles of Law Making*, ed. Nazar Ali Shah (Lahore: Meezan Printing Press, 1961), 37.

[35]Rahman, "Revival and Reform in Islam," 641; John L. Esposito, *The Islamic Threat: Myth or Reality?* (Oxford: Oxford University Press, 1992), 49.

[36]Khurshid Ahmad, "The Nature of the Islamic Resurgence," in *Voices of Resurgent Islam*, ed. John L. Esposito (Oxford: Oxford University Press, 1983), 228.

in response to innovations (*bida'*) which are perceived as deviations from the fundamental Islamic values.[37] This phenomenon has been legitimized by, among others, the Sunnah, which states that in each century God will send a *mujaddid* (renewer) to purify and reform Islamic doctrine.[38]

Thus, reform is an important component of Islam. Moshe Sharon points out for instance that the coming of Islam itself may be regarded as the first major reform to effect serious change among the Arabs, while the emergence of the Abbasids may have constituted a second reform movement, one which revolutionized Islam through the involvement of non-Arabs and in which Muslims successfully contributed to the development of human civilization.[39] If we agree on this point, it is not an exaggeration to say that the modern era, which has to some extent been inspired by Western values, may be thought of as the third major period of reform among

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[37]For a discussion of the nature of *islāḥ* and *tajdīd* in Islam, see John O. Voll, "Renewal and Reform in Islamic History: *Tajdid* and *Islah*," in *Voices of Resurgent Islam*, ed. John L. Esposito (Oxford: Oxford University Press, 1983), 32-47; A. Merad, "Islāh," in *The Encyclopaedia of Islam*, new edition, ed. E. van Donzel et al. (Leiden: E.J. Brill, 1978); Khurshid Ahmad, "Nature of the Islamic Resurgence," 220-9.

[38]The Sunnah goes as follows: *inna Allāh yab'athu li-hādhihi al-ummah 'alā ra'si kulli mi'ati sanah man yujaddidu lahā dīnahā* (Allah shall send to this nation at the beginning of every period of one hundred years a man who shall renew their religion for them); see Abū Dāwūd, *Sunan Abī Dāwūd*, vol. 4 (Beirut: Al-Maktabah al-'Asriyyah, n.d.), 109. An analysis of this tradition can be read in Yohanan Friedmann, *Prophecy Continuous: Aspects of Ahmadī Religious Thought and Its Medieval Background* (Berkeley: University of California Press, 1989), 94-101; Ella Landau-Tasseron, "The 'Cyclical Reform': A Study of the *Mujaddid* Tradition," *Studia Islamica* 70 (1989), 79-117.

[39]Moshe Sharon, *Black Banners from the East* (Leiden: E.J. Brill, 1983), 16, 19.

Muslims.

Realizing that Islam has this internal dynamic for reform, it is hard to understand why certain Western scholars tend to emphasize the impact of Western ideas only; indeed, the modification of Islamic law in the modern era has always been seen in the light of Western influence. While no one should discount the impact of Western ideas on Muslims, it should nonetheless be kept in mind that the purpose of the reform of Islamic law is not to adapt it blindly to Western models, but rather to bring Muslims into line with the original teachings of Islam.[40] For this very reason, the slogan "back to the Qur'an and Sunnah" is common among Muslim reformists[41] and represents the most important characteristic of Islamic reform, which is so central to Muslims throughout the world, including those in Indonesia.[42] Consequently, the results of the modern reformist movement can either be in line with or in contradiction to Western ideas. Indeed, the movement sometimes even encourages the

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[40]The utter rejection by Muslims of the Indonesian government-proposed law on marriage in 1974 is an example of this. This proposal, in the eyes of devout Muslims, was much influenced by secular ideas which were seen as being in conflict with the fundamental teachings of Islam. For a discussion of the marriage law of 1974, see June S. Katz and Ronald S. Katz, "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal System," *The American Journal of Comparative Law* 23 (1975), 653-79; idem, "Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited," *The American Journal of Comparative Law* 26 (1978), 309-21.

[41]Siddiqi, *Modern Reformist Thought*, 1-40. See also Daniel W. Brown, *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1996), 31.

[42]Taufik Abdullah, *Islam dan Masyarakat: Pantulan Sejarah Indonesia* (Jakarta: LP3ES, 1987), 88. See also Munawar Chalil, *Kembali Kepada Al-Qur'an dan As-Sunnah* (Djakarta: Bulan Bintang, 1956).

emergence of anti-Western attitudes;[43] the holy wars waged against the colonial authorities in Africa, India, and Southeast Asia were among the clearest examples in this respect.[44] Seyyed Hossein Nasr has reminded Muslims of the danger of assimilating Western ideas, saying: "For anyone who understood the essence of modernism based on and originating in the secularizing and humanistic tendencies of the European Renaissance, it was easy to detect the confrontation between traditional and modern elements in the Islamic world."[45] Nasr emphasizes this view elsewhere, arguing that "Muslims cannot hope to follow the same path as the West without reaching the same *impasse* or an even worse one.... They must cease to live in the state of a psychological and cultural sense of inferiority."[46] Abul A'la Maududi, too, admonished Muslims about the risk of adopting Western values, arguing: "the moral

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[43]C.C. Berg, "Indonesia," in *Whither Islam? A Survey of Modern Movements in the Moslem World*, ed. H.A.R. Gibb (London: Victor Gollancz, 1932), 261-2; Harry J. Benda, *The Crescent and the Rising Sun* (New York: Institute of Pacific Relations, n.d.), 46; Nasr, "Western World and Its Challenges to Islam," 217-41; idem, "Islam and the Islamic World Today," 6-17; Abdullah, *Islam dan Masyarakat*, 224.

[44]Examples of these in the Indonesian context include, among others, the holy war against the Dutch led by Kiyai Semantri or Kiyai Lancheng of Sampang-Madura and the severe hatred shown by al-Islaah, an Islamic reform organization of Bangkalan-Madura, towards the colonial regime; see Kuntowijoyo, "Social Change in an Agrarian Society: Madura, 1850-1940" (Ph.D. diss., Columbia University, 1980), 323, 514-6. For a Tunisian example, see Arnold H. Green, *The Tunisian Ulama 1873-1915: Social Structure and Response to Ideological Currents* (Leiden: E.J. Brill, 1978), 103-61.

[45]Nasr, *Traditional Islam*, 12.

[46]Seyyed Hossein Nasr, *Islam and Plight of Modern Man* (London: Longman, 1975), 148. On another occasion, Nasr ventures the opinion that "one of the worst tragedies today is that there has appeared recently in the Muslim world a new type of person who tries consciously to imitate the obvious maladies of the West"; see Nasr, "Western World and Its Challenges to Islam," 233.

concepts which the Western world adopted a century and a half ago have already resulted in the disruption of family life, and produced licentiousness and sexual anarchy to an extent hitherto unknown in history."[47]

B. The Indonesian Case.

In the preceding section, we discussed in general terms the historical background of the movement for Islamic legal reform. One may conclude from that discussion that two factors emerge as being the most important in driving the movement: an external one, i.e. the impact of Western ideas, and an internal one, i.e. the spread of *taqlīd* among Muslims. These two elements, as we shall see later, can also be found in Indonesia; for one thing, the development of Islamic law in Indonesia cannot, by any means, be separated from what is happening in other Muslim countries. Thus, in Indonesia "we are observing essentially the same aspects, the same struggle, the same future possibilities as in the rest of the Muhammadan world, in spite of the difference of local circumstances and historical development."[48] Before considering the Indonesian case, however, some observations will be made with respect to the general trend of Islamic reform in Indonesia as a backdrop to the more specific movement of Islamic legal reform in the country.

Colonization has been seen as one of the main avenues of the penetration of

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[47]Abul A'la Maududi, *Purdah and the Status of Women in Islam*, trans., ed. Al-Ash'ari (Pakistan: Islamic Publication Limited, 1972), iii.

[48]Berg, "Indonesia," 310.

Western ideas into Muslim countries, and Indonesia was by no means an exception, particularly during the nineteenth century when, it has been said, "Indonesia experienced the effects of Western influence on a rapidly increasing scale."[49] Although the primary interests of Westerners (particularly the Dutch) in colonizing the Indonesian archipelago were economic in nature, it has been pointed out that "a paragraph on religion is often contained in treaties" made between the colonial power and the local peoples.[50] Through Portuguese, British, and especially Dutch intervention, Western ideas easily penetrated into Indonesia, making known the latest developments in Western countries, or even in Muslim countries which had been influenced by Western ideas. These Western ideas, in the long run, profoundly influenced many young Indonesians, among them most notably Sukarno, the leading figure of the Nationalist group, who in his early life, attacked Islam as a backward religion. What is more, severe criticisms were directed at Muslim society by some members of the Nationalist and Communist parties, who argued that Islam is incompatible with the modern world, particularly with regard to the position of women. This situation was exacerbated in many instances by Dutch colonial policy which as a rule always suppressed the identity of the local population.

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[49]Benda, *Rising Sun*, 32. For some examples of such influences, see generally B.J.O. Schrieke, ed., *The Effect of Western Influence on Native Civilizations in the Malay Archipelago* (Batavia: G. Kolf & Co, 1929).

[50]Karel Steenbrink, *Dutch Colonialism and Indonesian Islam: Contacts and Conflicts 1596-1950*, trans. Jan Steenbrink and Henry Jansen (Amsterdam: Rodopi, 1993), 66-7; Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (Chicago: The University of Chicago Press, 1968), 63-5.

The effects of the penetration of Western colonial ideas naturally met with a negative response from committed Muslims, and it prompted a serious effort on the part of Muslim reformists to counter this process.[51] For it had long been generally believed that the basic purpose of Western colonialism was to eliminate the role of Islam[52] and to promote that of Christianity through missionary activities.[53] "Destructive forces," says Berg, "are no doubt at work against Islam all over the world...."[54] To achieve their goal, the Dutch colonial authorities did not hesitate, for example, to support members of the local elite, such as the *priyayi*, *kaum adat*, and *uleebalang* who preserved unorthodox or even un-Islamic practices, as a bulwark against devout Muslims.[55] Ahmad Hassan, the subject of this study, is considered to

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[51]Sartono Kartodirdjo, *Modern Indonesia: Tradition & Transformation, A Socio-Historical Perspective* (Yogyakarta: Gadjahmada Press, 1984), 270; idem, *Protest Movements in Rural Java: A Study of Agrarian Unrest in the Nineteenth and Early Twentieth Centuries* (Jakarta: Oxford, 1973), 7.

[52]Ruth McVey, "Faith as the Outsider: Islam in Indonesian Politics," in *Islam in the Political Process*, ed. James P. Piscatori (Cambridge: Cambridge University Press, 1983), 203, 206-7; M. Natsir, *Capita Selecta*, vol. 1 (Bandung: N.V. Penerbit W. Van Hoeve, 1954), 158, 161; Berg, "Indonesia," 295; Abdullah, *Islam dan Masyarakat*, 216-7. Among the examples of the hostility of the colonial government towards Islam in Indonesia was the destruction of the Islamic kingdoms (*kesultanan Islam*), known as centres for Islamic teaching, in Palembang (1820), Banjarmasin (1860), and Aceh (after 1873) and the subjugation of the indigenous religious scholars by force of arms; see Steenbrink, *Islam di Indonesia Abad ke-19*, 5; G.W.J. Drewes, "Indonesia: Mysticism and Activism," in *Unity and Variety in Muslim Civilization*, ed. Gustave E. von Grunebaum (London: The University of Chicago Press, 1955), 305.

[53]Berg, "Indonesia," 261; Noer, *Modernist Muslim Movement*, 22-3, 29; Sartono Kartodirdjo, *The Peasant's Revolt of Banten in 1888: Its Conditions, Course and Sequel* (The Hague: Martinus Nijhoff, 1966), 157; Rahman, *Islam*, 212.

[54]Berg, "Indonesia," 306.

[55]Benda, *Rising Sun*, 29, 195; Lev, *Islamic Courts*, 10.

have been the most active among Muslim reformists in fighting against such trends.

No less important for the development of Islamic reform in Indonesia is the internal factor spoken of earlier. Azyumardi Azra reminds us that the reform movement in Indonesia was first motivated by the debate amongst the Muslims themselves. Western ideas, says Azra, did have a serious impact upon the local population, but this factor contributed to the acceleration of the reform movement only, rather than served as its first cause.[56] In order to understand the internal factors that motivated the reform movement, one must first realize the uniqueness of Indonesian Islam, a religious and cultural phenomenon whose origins extend far into the past, as far back as the arrival of the first Muslim merchants in the archipelago.

Certainly, there is much controversy concerning the origins of Indonesian Islam, and a number of theories have been advanced in an attempt to resolve it. In the end, however, one may agree with Azra that these theories are not final in themselves; the subject is still open to discussion and new methods of investigation can lead to additional theories being advanced.[57] In fact, Ahmad Hassan's ancestors, as we shall see in the next chapter, may serve partly to explain the roots of Indonesian Islam: following the Southeast Asian trade route, Islam originally came from Arab countries (first Yemen, then later on Egypt), then from India, and finally from Malay-speaking

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[56]Azyumardi Azra, "The Transmission of Islamic Reformism to Indonesia: Networks of Middle Eastern and Malay-Indonesia 'Ulama' in the Seventeenth and Eighteenth Centuries" (Ph.D. diss., Columbia University, 1992), 488.

[57]Azyumardi Azra, *Perspektif Islam di Asia Tenggara* (Jakarta: Yayasan Obor Indonesia, 1989), xiii.

countries such as Singapore. In fact, Singapore, the birth-place of Ahmad Hassan, has long been "an important centre on the Indonesia-Arabia route."[58]

In any case, it is generally admitted that by the time Islam was brought to Indonesia, it had been colored by the notion of legal school (*madhhab*), characteristic of an era when Islamic civilization is commonly considered to have been in decline. It was the Gujeratis, Malabarese, Kalings, Bengalis, Arabs, Persians and Turks who were most responsible for the spread of Islam to Indonesia, even though their role was for the most part limited merely to introducing the new religion. The actual conversion of the local populace to Islam was "due to the untiring efforts of Indian, particularly Bengali, Sufi (mystic) preachers who accompanied the merchants on their visits to the local rulers."[59] This being the case, it is understandable that the early Islamic leaders and preachers should have been mostly *sūfīs*,[60] and early Indonesian

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[58]Jacob Vredenbregt, "The Haddj: Some of Its Features and Functions in Indonesia." *Bijdragen Tot de Taal* 118 (1962), 126.

[59]Mohammad Atho Mudzhar, *Fatwās of the Council of Indonesian 'Ulama: A Study of Islamic Legal Thought in Indonesia, 1975-1988* (Jakarta: INIS, 1993), 15. See also Clifford Geertz, "The Javanese Kijaji: The Changing Role of a Cultural Broker," *Comparative Studies in Society and History* 2 (1959-60), 239; idem, "Modernization in a Muslim Society: The Indonesian Case," in *Religion and Progress in Modern Asia*, ed. Robert N. Bellah (New York: The Free Press, 1965), 97; Drewes, "Indonesia," 287; Armando Cortesao, *The Suma Oriental of Tome Pires*, vol. 1 (London: Hakluyt Society, 1944), 135-228; Christine E. Dobbin, *Islamic Revivalism in a Changing Peasant Economy: Central Sumatra, 1784-1847* (London: Curzon Press, 1983), 119. For the syncretic nature of the Bengali *sūfī*, see Asim Roy, *The Islamic Syncretic Tradition in Bengal* (Princeton: Princeton University Press, 1983), 141-206.

[60]C.C. Berg, "The Islamization of Java," *Studia Islamica* 4 (1955), 111-42; A. Mukti Ali, "Islam and Modernism in Indonesia," *The Voice of Islam* 8 (1959), 84; Federspiel, *Persatuan Islam*, 2; Drewes, "Indonesia," 297; Clara Kibby Nicholson, "The Introduction of Islam into Sumatra and Java: A Study in Cultural Change"

Islam highly infused with *ṣūfī* doctrine,[61] which is generally understood to be tolerant of traditional usages and habits whether these be compatible with orthodox Islam or not.[62] In fact, the mystical nature of early Indonesian Islam constituted the most important factor in the rapid conversion of the local people.[63] Its mystical character made Islam easier for the local people "to understand it, appreciate it, and use it."[64] Nor is it surprising that the local populace who converted to Islam in these circumstances still preserved the old traditions common to the followers of the earlier

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(Ph.D. diss., Syracuse University, 1965), 89.

[61]A.H. Johns, "The Role of Sufism in the Spread of Islam to Malaya and Indonesia," *Journal of the Pakistan Historical Society* 9 (1961), 146-7; idem, "Aspects of Sufi Thought in India and Indonesia in the First Half of the Seventeenth Century," *Journal of the Malayan Branch of the Royal Asiatic Society* 28 (1955), 70-7; idem, "Islam in Southeast Asia: Reflections and New Directions," *Indonesia* 19 (1975), 35-55; idem, "Sufism as a Category of Indonesian Literature and History," *Journal of Southeast Asian History* 2 (1961), 10-23; McVey, "Islam in Indonesian Politics," 210; Dobbin, *Islamic Revivalism*, 121; Steenbrink, *Islam di Indonesia Abad ke-19*, 173; Azra, *Islam di Asia Tenggara*, xv.

[62]H.A.R. Gibb, *Modern Trends in Islam* (New York: Octagon Books, 1972), 25. See also Ali, "Islam and Modernism," 82-92. It is a common perception among Muslims, even in Indonesia, that *ṣūfī*s are tolerant of the local traditions which are non-orthodox. In fact, this is not always the case. The Ḥanbalī school which is usually regarded as the champion of orthodox Islam, has a positive relationship with the *ṣūfī*s. Ibn Taymiyyah, one of the leading scholars of the Ḥanbalīs, even became a member of the *Ṣūfī Qādiriyyah*; see Wael B. Hallaq, trans. *Ibn Taymiyya Against the Greek Logicians* (Oxford: Clarendon Press, 1993), xii; George Makdisi, "Ibn Taymiya: A Sufi of the Qadariya Order," *The American Journal of Arabic Studies* (1973), 118-29; idem, "The Hanbali School and Sufism," *Humaniora Islamica* 11 (1974), 61-72; reprinted in *Boletin de la Asociacion española de orientalistas* 19 (1979), 115-26.

[63]Mudzhar, *Fatwās*, 15; Benda, *Rising Sun*, 12; Ali, "Islam and Modernism," 83; Federspiel, *Persatuan Islam*, 1-2; Noer, *Modernist Muslim Movement*, 12; Dobbin, *Islamic Revivalism*, 118-20.

[64]Kenneth Perry Landon, *Southeast Asia, Crossroad of Religions* (Chicago: The University of Chicago Press, 1947), 138-9.

beliefs and religions, simply giving these traditions new meaning and significance[65]--new wine in a very old bottle. Some examples may make this process clearer. The word *santri* (student), for instance, is supposedly derived from the Indian word *shastri* (*chastri*) which in Sanskrit means "one who is knowledgable in the Hindu holy book."[66] The *pesantren* (religious educational centre) in Java is also seen as a continuation of pre-Islamic tradition, especially that of Hindu-Buddhist tradition.[67] The same appears to be the case with the origin of the *madrasah* (religious school): "There appears to be a direct line of descent, traceable from the monastic schools (*mandala*) of the Hindu-Buddhist period which, as their *guru*s were converted to

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[65]Azra, *Islam di Asia Tenggara*, xvii-xviii; Taufik Abdullah, "Islam, History and Social Change in Minangkabau," in *Change and Continuity in Minangkabau: Local, Regional, and Historical Perspectives on West Sumatra*, ed. Lynn L. Thomas and Franz von Benda-Beckman (Ohio: Ohio University Press, 1988), 147-8; William R. Roff, "South-East Asian Islam in the Nineteenth Century," in *The Cambridge History of Islam*, ed. P.M. Holt, Ann K.S. Lambton, and Bernard Lewis, vol. 2A (Cambridge: Cambridge University Press, 1970), 155-6; Federspiel, *Persatuan Islam*, 2; Gavin W. Jones, *Marriage and Divorce in Islamic South-East Asia* (Kuala Lumpur: Oxford University, 1994), 3, 41-2; Drewes, "Indonesia," 286, 308; Dobbin, *Islamic Revivalism*, 119; Kartodirdjo, *Protest Movements*, 69-70.

[66]Zamachsyari Dhofier, *Tradisi Pesantren* (Jakarta: LP3ES, 1982), 18; Aminuddin Rasyad and Baihaqi, eds., *Sejarah Pendidikan Islam di Indonesia* (Jakarta: Departemen Agama, 1986), 53; Geertz, "Indonesian Case," 98; Berg, "Indonesia," 257.

[67]Geertz, "Javanese Kijaji," 231; Ra. Kern, "The Origins of the Malay Surau," *Journal of the Malayan Branch of the Royal Asiatic Society* 29 (1956), 179-81; Dobbin, *Islamic Revivalism*, 120-1. Although it is claimed that the term *dayah* had its origin in the Arabic *zāwiyah*, it features also some aspects of pre-Islamic Hindu tradition; see M. Hasbi Amiruddin, "The Response of the '*Ulamā*' *Dayah* to the Modernization of Islamic Law in Aceh" (M.A. thesis, McGill University, 1994), 41, 44.

Islam, altered the content but not the style of their teaching."[68] This represents the common understanding among writers of the origin of both the *pesantren* and *madrasah* in Indonesia. But, it is in many ways unsatisfactory, and, in order to have a more balanced view of the issues, a few remarks are in order.

Most writers on the history of the *pesantren* and *madrasah* in Indonesia have emphasized the pre-Islamic, local origin of such institutions, while at the same time ignoring the influence of Islamic institutions from the early history of Islam on their development. The word *madrasah*, however, clearly indicates such an influence. Moreover, some of the Muslims who brought Islam to Indonesia would have been familiar with the Islamic institutions in their own country, just as at the same time those Indonesian Muslims who studied in the Middle East must have been to some degree impressed by the long-established institutions of Islam found there. Anyone familiar with the origin and development of the mosque and *madrasah* will see that there are some similarities between those in Indonesia and in other parts of the Muslim world.[69] Of course these similarities do not necessarily indicate a link

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[68]Kenneth Orr, M.M. Billah, and Budi Lazarusli, "Education for this Life or for the Life to Come: Observations on the Javanese Village Madrasah," *Indonesia* 23 (1977), 130.

[69]See George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981); A.L. Tibawi, *Arabic and Islamic Themes* (London: Luzac & Company, 1976), especially part two, chapter five, "Origin and Character of *al-Madrasa*," 212-27; Jonathan Porter Berkey, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education* (Princeton: Princeton University Press, 1992); J. Pedersen et al., "Masdjid," in *The Encyclopaedia of Islam*, new edition, ed. C.E. Bosworth et al. (Leiden: E.J. Brill, 1991); Muhammad al-Faruque, "The Development of the Institution of *Madrasah* and the Niẓāmiyah of Baghdad," *Islamic Studies* 26 (1987), 253-63; Munir D. Ahmed,

between the two; however, the contacts between Indonesian Muslims and those in other countries must have allowed for the sharing of knowledge, both intellectual and practical. It is worthy of note that, while accentuating the monastic origin of the *pesantren*, Geertz also reveals the contrast between the two, saying: "But the immediate impression is misleading. A pesantren is only superficially like a monastery, for the santris are not monks; they have made no vows."[70] Our point is this: while trying to prove the local pre-Islamic influence on the Islamic institutions in Indonesia, one must not ignore altogether the links between such institutions and those in other Muslim countries; nor should one underestimate the influence of the Islamic heritage in general. For doing so would involve a methodological fallacy. Leonard Binder is quite correct in saying that "social scientists...have tended to disregard the unifying aspects of classical Islam and have concentrated upon the particular variety of Islam practised in a particular place or that practised by a particular group of people."[71]

Furthermore, contacts between Indonesian Muslims and reformists from other Muslim countries brought about considerable change. Arab traders, students who studied in Mecca, Cairo, and other centres of learning in the Middle East, and Indonesian Muslims who performed the pilgrimage were key to this exchange of

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"Muslim Education Prior to the Establishment of Madrasah," *Islamic Studies* 26 (1987), 321-49 .

[70]Geertz, "Javanese Kijaji," 234.

[71]Leonard Binder, "Islamic Tradition and Politics: The Kijaji and the Alim," *Comparative Studies in Society and History* 2 (1960), 250.

information.[72] The growing importance of the pilgrimage in particular provided an opportunity for Indonesian Muslims to have direct and effective communication with Muslims at the religious centre of the Islamic world: Mecca. By the nineteenth century, these Indonesian Muslims became one of, if not the largest groups at Mecca and reportedly maintained continuous contact with their counterparts at home.[73]

It is clear then that "Arabia began to take the place which India had taken hitherto, which meant a better chance for orthodoxy."[74] It should be borne in mind that the early works on Islamic reform in Indonesia tend to emphasize the view that the nineteenth or even twentieth century marked the starting point of Islamic reform in Indonesia. In the last few years, however, this common belief has been much challenged; it is increasingly being recognized that there is at work a continuous process among Muslims, either individually or in groups, to live up to the standards of pure Islamic teaching.[75] Perhaps puzzled by this problem, Azra has examined the transmission of Islamic reformism to Indonesia, and argues that as early as the second half of the seventeenth century the *tajdīd* movement had started and had led to the

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[72]Oemar Amin Husein, "Sedjarah Perkembangan Politik Modern di Indonesia," *Hikmah* 20/21 (No. Lebaran 1374/1954), 24-6; Steenbrink, *Islam di Indonesia Abad ke-19*, 6; Ali, "Islam and Modernism," 86-7; Noer, *Modernist Muslim Movement*, 24-8, 56-7; Geertz, "Javanese Kijaji," 231; Burhanuddin Daya, *Gerakan Pembaharuan Pemikiran Islam: Kasus Sumatra Thawalib* (Yogyakarta: PT. Tiara Wacana Yogya, 1990), 6; Federspiel, *Persatuan Islam*, 4.

[73]C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century*, trans. J.H. Monahan (Leiden: E.J. Brill, 1931), 257, 291.

[74]Berg, "Indonesia," 259; Ali, "Islam and Modernism," 87; Boland, *Islam in Modern Indonesia*, 212.

[75]Drewes, "Indonesia," 286.

spread of orthodox Islam among Indonesian Muslims,[76] an effort which was continued later by the reformists of the eighteenth century.[77] In the early nineteenth century, Minangkabau (West Sumatra) is usually seen as having been the region of Indonesia where reformist ideas emerged.[78] It was certainly during this period that contacts between Indonesia and Arab countries began to increase, particularly after the opening of the Suez Canal in 1869.[79] This *tajdīd* movement was continued by the reformists of the early twentieth century,[80] and according to Ricklefs, this century

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[76]See generally Azra, "Islamic Reformism." Earlier, we saw that Mudzhar indicates that the orthodox movement in Indonesia had been established as early as the 17th century (Mudzhar, *Fatwās*, 18-9), while Drewes is of the opinion that since the first half of 17th century, there had been contact between Indonesian Muslims and those in Mecca which affected the orthodox nature of Indonesian Islam; see Drewes, "Indonesia," 291.

[77]Nūr al-Dīn al-Rānīrī, 'Abd al-Ra'ūf al-Sinkilī, and Muḥammad Yūsuf al-Maqassārī are seen as having been among the most important agents of the early Islamic reform, while among the most important reformists of the 18th century there were Shihāb al-Dīn b. 'Abd Allāh Muḥammad, Kemas Fakhr al-Dīn, 'Abd al-Ṣamad al-Palimbānī, Kemas Muḥammad b. Aḥmad, and Muḥammad Muḥyī al-Dīn b. Shihāb al-Dīn; see Azra, "Islamic Reformism," 346-582.

[78]Haji Muhammad Arif known as Sumanik, Haji Abdurrahman (known also as Haji Piobang), Miskin Pandai Sikek, and some time later Syekh Ahmad Khatib are considered to have contributed the most to these efforts. For more detailed information on Minangkabau during that era, see Hamka, *Ayahku: Riwayat Hidup Dr. H. Abdul Karim Amrullah dan Perjuangan Kaum Agama di Sumatera* (Jakarta: Umminda, 1992); Noer, *Modernist Muslim Movement*, 31-56; Daya, *Gerakan Pembaharuan*, particularly chapter two, "Gerakan Pembaharuan Pemikiran Islam di Sumatra Barat," 45-79; Dobbin, *Islamic Revivalism*, 117-54.

[79]Benda, *Rising Sun*, 45.

[80]The movement was continued by such figures as Muhammad Tahir Djalaluddin al-Azhari, Abdulkarim Amrullah, Muhammad Djamil Djambek, Abdullah Ahmad, Ahmad al-Surkati, Ahmad Dahlan, and Ahmad Hassan; see Boland, *Islam in Modern Indonesia*, 212.

also saw Java and Sumatra take the lead in this gradual religious transformation.[81]

Given their direct contacts with the Muslim reformers of the Ḥijāz and elsewhere, it should come as no surprise that the Dutch colonial authorities should have regarded the pilgrims to Mecca as dangerous elements in the population, especially in view of the fact that the Dutch gave official support to the more traditional and conservative Muslims of Indonesia.[82] For such reasons, it is easy to understand why, from 1859 onwards, the Dutch authorities introduced measures to limit the pilgrimage.[83] Hurgronje, however, expressed a different view, arguing that the pilgrims were not necessarily fanatics and rebels.[84] Beginning about 1902 he proposed to the colonial government that it remove the "irritating restrictions upon the

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[81]M.C. Ricklefs, *A History of Modern Indonesia: c. 1300 to the Present* (London: Macmillan Press, 1981), 155; Drewes, "Indonesia," 301.

[82]Thomas Stamford Raffles, one of the highest ranking British administrators in the East Indies, also acknowledged this danger; see his *The History of Java*, vol. 2 (London: Murray, 1830), 3; Steenbrink, *Dutch Colonialism*, 74; Vredenbregt, "The Haddj," 97. The danger of the pilgrims was also admitted by C. Poensen, who writes: "Arabia not only constitutes the uniting centre for devoted pilgrims, but politicians and leaders of various Muslim peoples meet there and also discuss their political interests and plans; there consultations and counsel take place, and the returning pilgrims are supplied with tracts for religious stimulation and conversion which should be considered of suspicious character for the social security and order of the various Muslim peoples under Christian domination"; quoted in Noer, *Modernist Muslim Movement*, 25. Sartono Kartodirdjo also portrayed the danger of the pilgrims to the colonial authorities particularly in relation to the revolt of Banten in 1888; see his *Revolt of Banten*, 148-54.

[83]Vredenbregt, "The Haddj," 100; Ricklefs, *Modern Indonesia*, 160; Benda, *Rising Sun*, 73. For the policies adopted by the Dutch, see Vredenbregt, "The Haddj," 98-100; Noer, *Modernist Muslim Movement*, 25-6.

[84]Hurgronje, *Mekka*, 249; Vredenbregt, "The Haddj," 102-4; Kartodirdjo, *Revolt of Banten*, 149, 156; Roff, "South-East Asian Islam," 181; Benda, *Rising Sun*, 22.

pilgrimage together with increased but intelligent vigilance over and prohibitions against any form of political activity directly connected with it;"[85] as of that year the restrictive policy towards the pilgrims was abolished.[86] Hurgronje was right at least in the case of the pilgrims from Madura, one of the most strongly Islamic regions of Indonesia.[87] Perhaps, based on their experience in other parts of the country, the Dutch colonial authorities always kept a watchful eye on the pilgrims from that region. However, "reports about Madurese *haji*s were optimistic in that the *haji*s were said to be peaceful and with little influence on the people."[88] This was indeed the case, for the pilgrims of Madura "were regarded more in terms of their individual and particular occupations rather than as religious leaders."[89] The much-awaited revolt against the Dutch was however led not by a pilgrim but rather by a simple religious leader, Kiyai Semantri, who had never performed pilgrimage.[90] The same can be said of pilgrims today. In the opinion of the present writer, it was not the practice of pilgrimage itself that inspired those who had performed it to adopt reformist ideas,

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[85]Roff, "South-East Asian Islam," 181; Ricklefs, *Modern Indonesia*, 160; Benda, *Rising Sun*, 24.

[86]Vredenbregt, "The Haddj," 100.

[87]For a discussion of Islam in Madura, see generally Iik Arifin Mansurnoor, *Islam in an Indonesian World: Ulama of Madura* (Yogyakarta: Gadjahmada University Press, 1990); Kuntowijoyo, "Madura." For some traditional practices which are considered *bid'ah* and *khurāfah* by the reformists, see Kuntowijoyo, "Madura," 311, 317.

[88]Kuntowijoyo, "Madura," 312.

[89]Ibid.

[90]Ibid., 316.

attack the traditional *bid'ah* or rise in rebellion against the colonial government. Geertz rightly observes that quite a number of the pilgrims were no more than tourists in the Hijāz and returned to Indonesia "with no more scholarly knowledge than they had when they left."[91] In fact, Hurgronje's moderate policy towards pilgrims was consistent with the rest of his policy on Islam: "a neutral policy toward Islam as a religion, but to maintain a policy of vigilance and vigorous suppression of Islamic political fanaticism."[92]

Many pilgrims (and particularly those who studied in Arab countries) who had been influenced by ideas of reform came back to the archipelago only to find the society in a state of what they regarded as complete degradation, and given over to practices which were incompatible with Islamic teaching. Local religious leaders, such as *'ulamā', labai, khatīb,* and *datuk ibadat*, were joining, along with their family and their students, *sūfī* orders such as the Tarekat Satariyah or Tarekat Naksabandiyah.

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[91]Geertz, "Javanese Kijaji," 233.

[92]Amry Vandenbosch, review of *The Crescent and the Rising Sun*, by Harry J. Benda, *Comparative Studies in Society and History* 2 (1960), 257; McVey, "Islam in Indonesian Politics," 200. Based on Hurgronje's advice, the Dutch colonial policy towards Indonesian Muslims could be summarized as follows: (a) in matters relating to pure religious worship, the government with all sincerity must give the fullest freedom; (b) in social questions [e.g. the law of *mu'āmalah*], the government must respect the existing national institutions [including those of *adat*] while leaving open to them the opportunity of a "desirable" evolution in "our" direction and must make every effort to promote this evolution; (c) in matters relating to politics, the government must suppress all kinds of Pan-Islamistic ideas, which aim at inviting foreign powers to influence the relations between the Dutch government and its eastern subjects; see Ali, "Islam and Modernism," 87; Natsir, *Capita Selecta*, vol. 1, 155.

The followers of one tarekat would look down on those belonging to others, a situation which often gave rise to serious social conflict.[93] Such situations gave added impetus to the spread of reform ideas in Indonesia. More important still was the fact that, although the Dutch conscientiously censored the influence of modern Arab thought, Arabic works continued to penetrate into Indonesia through, for instance, the small fishing harbours of Tuban in East Java (the big harbours in Jakarta, Semarang, and Surabaya all having been closed to Arabic printed materials). These works, which consisted for the most part of periodicals, included such titles as *al-'Urwah al-Wuthqā, al-Mu'ayyad, al-Siyāsah, al-Liwā', al-'Adl*, and *al-Manār*, all from Egypt, and *Thamarāt al-Funūn* and *al-Qistās al-Mustaqīm*, both from Beirut.[94] Some Indonesian scholars occasionally sent letters to religious leaders in the Middle East, as in the case of Muhammad Basjuni 'Umran, the student of Rashīd Ridā and the religious judge of the Islamic Kingdom of Sanbas (Borneo, now Kalimantan),[95] who sent a letter to *al-Manār* in Egypt asking the following question: Why are the Muslims nowadays in a state of backwardness, while the Europeans, Americans, and Japanese, who are unbelievers, enjoy better living conditions than Muslims? The answers to such questions were written in a series of articles in *al-Manār* which were later collected in a book entitled *Limādhā Ta'akhkhara al-Muslimūna wa-Limādhā Taqaddama Ghayruhum?* As can be seen from the contents of the first part of the

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[93]Daya, *Gerakan Pembaharuan*, 8.

[94]Ali, "Islam and Modernism," 88.

[95]For 'Umran's biography, see Pijper, *Sejarah Islam di Indonesia*, 142-9.

book, the answers to the questions were addressed not only to the people of the Malay-speaking countries, but also to Muslims in other parts of the world.[96]

In the nineteenth and early twentieth centuries, the ideas of Arab reformists such as Jamāl al-Dīn al-Afghānī, Muḥammad 'Abduh, and Rashīd Riḍā, as well as the puritan ideas of Muḥammad ibn 'Abd al-Wahhāb, colored the pronouncements of the Indonesian Muslim reformers.[97] According to Mukti Ali, the programme of the reformist movement was similar to that of 'Abduh as summarized by Gibb,[98] but with the addition of one point: liberation from Western colonization. In fact, the objective of the Islamic reformers in Indonesia was to fight against four opponents simultaneously:

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[96]Another example is also found in a letter sent by Umar b. Salim b. Attas to Rashīd Ridā asking about the Islamic basis of the marriage between a non-Sayyid and a Sharīfah, a controversial topic among Malay Muslims; see e.g. Affandi, "Ahmad al-Surkati," 57-8, 115; Noer, *Modernist Muslim Movement*, 61-2. By the same token, the Court of Banten (West Java) "repeatedly sent missions to Mecca in quest of information on religious matters or to ask for commentaries on difficult books, such as the *Insān al-Kāmil*...written by 'Abd al-Karīm al Jīlī"; see Drewes, "Indonesia," 291.

[97]Ali, "Islam and Modernism," 86-8; Harry J. Benda, "South-East Asian Islam in the Twentieth Century," in *The Cambridge History of Islam*, ed. P.M. Holt, Ann K.S. Lambton, and Bernard Lewis, vol. 2A (Cambridge: Cambridge University Press, 1970), 182; Daya, *Gerakan Pembaharuan*, 3-6; Saifuddin Zuhri, *Sejarah Kebangkitan Islam dan Perkembangannya di Indonesia* (Bandung: Maarif, 1981), 586-7; Hamka, *Pengaruh Muhammad Abduh di Indonesia* (Djakarta: Tintamas, 1961); Geertz, "Indonesian Case," 98; Husein Haikal, "Pembaharuan Islam Syaikh Ahmad Surkati dan Gerakan Al-Irsyad," *Ulumul Qur'an* 2 (1993), 93.

[98]Boland, *Islam in Modern Indonesia*, 215. These programs are: "1. the purification of Islam from corrupting influences and practices; 2. the reformation of Muslim education, 3. the re-formulation of Islamic doctrine in the light of modern thought; and 4. the defense of Islam against European influences and Christian attack"; see Gibb, *Modern Trends*, 33.

> In the first place, it attacked the formalism of Islamic orthodoxy embodied in the *santri* civilization of rural Indonesia, as well as the animistic and Hindu-Buddhist 'impurities' of village Islam.... The second area of attack lay in pre-Islamic Indonesian institutions, embodied in the *adat* and the *priyayi* civilization.... Third, Indonesian reformists sought to stem the tide of Westernization by identifying Islam with Indonesian-centred separateness, opposed to the passive surrender to Western-Christian no less than secular-values and norms.... Finally, Indonesian reformism was, by its very nature, bound to come into conflict with the colonial *status quo* itself.[99]

It should be kept in mind however that the reformist ideas which influenced Indonesian Muslims during this period were coming not only from Arab countries but also from other parts of the Muslim world. It should also be stated that on occasion some Arabs introduced practices into Indonesia that troubled the reformers. This may be seen in the letter sent by Sukarno to Hassan, where it is pointed out that some people of Hadramawt origin in Endeh (Flores), together with the local population, preserved and practised certain unorthodox and even un-Islamic traditions.[100]

In fact, the ideas of Indian reformers such as Amir Ali and Muhammad Iqbal, and certain Indian Islamic centres such as Lahore, Qadian, and the Islamic College at Aligarh, also exercised a significant influence on their counterparts in Indonesia.[101] Moreover, Turkey also contributed to the development of Islam in

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[99]Benda, *Rising Sun*, 48-9.

[100]Sukarno, *Dibawah Bendera Revolusi*, vol. 1 (Jakarta: Panitiya Penerbit Dibawah Bendera Revolusi, 1964), 333, 337. See also the issue of *kafā'ah* discussed in chapter four below.

[101]Benda, "South-East Asian Islam," 183; idem, *Rising Sun*, 45; Drewes, "Indonesia," 307; Ahmad bin Mohd. Ibrahim, "The Administration of Muslim Law in South-East Asia," *Islamic Culture* 47 (1973), 55; Berg, "Indonesia," 287-8; A. Mukti Ali, "The Muhammadiyah Movement: A Bibliographical Introduction" (M.A. thesis, McGill University, 1957), 16.

Indonesia. Towards the end of 1897, for instance, the periodical *al-Ma'lūmāt* published in Constantinople began to penetrate the Indonesian archipelago.[102] In addition, some works by authors of Indonesian origin were published in Istanbul,[103] and several Indonesian youth were sent to Turkey to pursue advanced study.[104] Such developments prompted the Dutch colonial authorities to look with suspicion on "the activities of the Turkish consul in Jakarta in recruiting and sending several Indonesian youths to Turkey for study purposes."[105] Hurgronje even advised the Dutch to stop the common prayer for the Turkish Sultan included in the religious sermon (*khutbah*) during Friday prayer (*salāt al-jum'ah*), arguing that it had a political implication.[106]

Indeed, the tendency to see the Arab countries as the source of the reform movement is not restricted to Indonesia but it is also prevalent in other Muslim countries. As far as India is concerned, for instance, M.A. Bari points out that quite a number of writers are convinced that the reform movement in India in the nineteenth century was influenced by the Wahhabi movement in Saudi Arabia led by Muhammad ibn 'Abd al-Wahhāb (1703-92). According to Bari, this is not historically true; for one thing, the Wahhabi movement appeared after the emergence of the reform movement led by Ahmad Sirhindi (1563/4-1624), who lived during the reign

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[102]Anthony Reid, "Nineteenth Century Pan-Islam in Indonesia and Malaysia," *The Journal of Asian Studies* 26 (1967), 281.

[103]Drewes, "Indonesia," 284.

[104]Noer, *Modernist Muslim Movement*, 59.

[105]Ibid., 28.

[106]Vredenbregt, "The Haddj," 102.

of the Mughal Sultan Awrangzeb.[107] It is also true that the reform movement led by Ahmad Khan (1817-1898) appeared earlier than that led by Jamāl al-Dīn al-Afghānī (1839-97) and his disciple Muhammad 'Abduh (1849-1905). This is not all. The position of the Ottoman Empire (now Turkey) played an important role in terms of Islamic reform in the modern period. W. Cantwell Smith writes that "[any] Muslim, or any outside observer, who would come to grips with the question of Islam in the modern period, must take very seriously the Islam of the twentieth-century Turks."[108] As a matter of fact, the Ottoman Empire is usually seen as having been the first Muslim polity that tried to reform its society through, for the most part, adopting Western ideas, including Western codes of law.[109] For one thing, the Ottoman Empire "was geographically closer to the centres of change than any other non-Western society and was the first to feel their influence."[110] Furthermore, one

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[107]M.A. Bari, "A Nineteenth-Century Muslim Reform Movement in India," in *Arabic and Islamic Studies in Honor of Hamilton A.R. Gibb*, ed. George Makdisi (Cambridge: Harvard University Press, 1965), 84-102.

[108]Smith, *Islam in Modern History*, 165.

[109]Anderson, "The Significance of Islamic Law," 188; idem, "The Shari'a Today," *Journal of Comparative Legislation and International Law* 31 (1949), 19; idem, "The Adaptation of Muslim Law in Sub-Saharan Africa," in *African Law: Adaptation and Development*, ed. Hilda Kuper and Leo Kuper (Los Angeles: University of California Press, 1965), 151; idem, "Recent Development in Sharī'a Law," *The Muslim World* 41 (1951), 34; Herbert J. Liebesny, "Impact of Western Law in the Countries of the Near East," *The George Washington Law Review* 22 (1953), 141; idem, "Religious Law and Westernization," 496; idem, "Stability and Change," 20-1; David Bonderman, "Modernization and Changing Perception of Islamic Law," *Harvard Law Review* 81 (1968), 1177.

[110]Niyazi Berkes, *The Development of Secularism in Turkey* (Montreal: McGill University Press, 1964), 508.

should not forget the fact that the Ottoman Empire was the last for some centuries to have controlled or exercised an influence over virtually all the Muslim countries, including those in the Middle East. In the case of Indonesia, there is still much research to be done in order to determine the extent of the influence of non-Arab reformers on Indonesian Islam. We leave this problem to those historians who are concerned with the transmission of Islamic reformism to Indonesia.

These efforts at reform were furthered on a systematic basis at the local level by such Islamic organizations as Perserikatan Ulama (1911), the Muhammadiyah (1912), Al-Irsyad (1914), Sumatra Thawalib (1918), and Persis (1923).[111] Of course, all supporters of reform were severely castigated by the traditionalists (known as *kaum tua*), who labelled the former (known as *kaum muda*) as unbelievers (*kāfirūn*). For example, Ahmad Dahlan, the founder of the Muhammadiyah, was seen as a Wahhabi "who had deviated from the path of the *ahl al-sunnah wa al-jamā'ah*, rejected the accepted schools of law (*madhhab*s), ruined the religion, was a *Mu'tazilī*, a *Khārijī*...nay a *kāfir*, whose tongue, when he died, would come out two meters from his mouth."[112]

Finally, the external and internal factors underlying the reform movement among Indonesian Muslims were apparent in, among other conflicts, the so-called

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[111]Mudzhar, *Fatwās*, 22.

[112]Ali, "Muhammadijah Movement," 32.

Padri war (*Perang Paderi*), a subject which has been much discussed by scholars.[113] In this war, those who had come back from pilgrimage and their followers fought against the local population that wanted to preserve the old traditions (*adat*), some of which were incompatible with Islamic values. The local people were supported by the Dutch,[114] who in fact promoted the *adat* while at the same time trying to eliminate the implementation of Islamic values.[115] This conflict contributed significantly to what was often referred to later as a struggle between the *kaum muda* who attempted to introduce reformist ideas and the *kaum tua* who wished to preserve the existing traditions.[116]

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[113]On the Padri movement, see Muhammad Radjab, *Perang Paderi di Sumatera Barat (1803-1838)* (Djakarta: P.N. Balai Pustaka, 1964); Latief, "Kaum Tua di Minangkabau," 54-64; Daya, *Gerakan Pembaharuan*, 8-10, 49-58; Dobbin, *Islamic Revivalism*, 128-54, 161-86; idem, "Islamic Revivalism in Minangkabau at the Turn of the Nineteenth Century," *Modern Asian Studies* 8 (1974), 319-45; idem, "Economic Change in Minangkabau as a Factor in the Rise of the Paderi Movement," *Indonesia* 23 (1977), 1-38.

[114]See Radjab, *Perang Paderi*, 51-76; Hamka, *Ayahku*, 17-21; Steenbrink, *Dutch Colonialism*, 74; Benda, "South-East Asian Islam," 185; Siradjuddin Abbas, *Sejarah dan Keagungan Madzhab Syafi'i* (Jakarta: Pustaka Tarbiyah, 1994), 281-5.

[115]Munawir Sjadzali, "Landasan Pemikiran Politik Hukum Islam dalam Rangka Menentukan Peradilan Agama di Indonesia," in *Hukum Islam di Indonesia: Pemikiran dan Praktek*, ed. Tjun Surjaman (Bandung: PT. Remaja Rosdakarya, 1991), 45-6; Benda, "South-East Asian Islam," 185. C. Snouck Hurgronje played a very important part in the attempt to eliminate the role of Islam by, among other strategies, insisting on a clear cut separation between *adat* law and Islamic law; see Roff, "South-East Asian Islam," 181; Azra, *Islam di Asia Tenggara*, ix; Nicholson, "Introduction," 73.

[116]Mahmud Yunus, *Sejarah Pendidikan Islam di Indonesia* (Jakarta: Mutiara Sumber Widya, 1992), 91. On the *Kaum Muda* and *Kaum Tua*, see generally Abdullah, *Schools and Politics*; Latief, "Kaum Tua di Minangkabau;" B.J.O. Schrieke, *Pergolakan Agama di Sumatera Barat* (Jakarta: Bhatara, 1973), 57-9.

We have thus far discussed the general trend of Islamic reform, and it is against this overall background that we must try to understand the issue of Islamic legal reform in Indonesia. In spite of the importance of this subject, in comparison with other fields such as theology, mysticism, and political Islam, it has received very limited attention, if any, either from Indonesian scholars or from Western ones.[117] It is true that brief accounts of the history of Islamic law in Indonesia have been written;[118] nevertheless, none has concerned itself exclusively with the historical background of Islamic legal reform.

We begin first of all with a familiar external factor in Islamic legal reform: Western influence. As has already been mentioned, the presence of the colonial regime had a serious impact on the movement for Islamic reform in Indonesia; this impact extended to the application of Islamic law. Needless to say, there were important developments with regard to the colonial interaction with local and Islamic law,[119] chief among these being the Dutch colonial policy itself. Realizing the important position of Islamic law among Muslims, the Dutch colonial administration paid special attention to the issue of Islamic law and developed certain theories

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[117]Even Schacht, Coulson, and Anderson do not pay enough attention to Islamic law in Indonesia.

[118]See, for instance, M.B. Hooker, *Islamic Law in South-East Asia* (Singapore: Oxford University Press, 1984), 248-78; Mudzhar, *Fatwās*, 28-43; and Ahmad bin Mohd. Ibrahim, "The Administration of Muslim Law in Indonesia," *Islamic Culture* 43 (1969), 109-24.

[119]See Howard M. Federspiel, "The Importance of Islamic Law in Twentieth-Century Indonesia" (unpublished article, 1995, which also provides important references regarding the issue).

concerning its application. The *Receptio in Complexu* theory of L.W.C. van den Berg (1845-1927) and the *Receptie* theory of Christian Snouck Hurgronje (1857-1936) are the best known of these from that period.

Van den Berg was the first Dutch scholar to be appointed as special advisor to the Dutch colonial government in the field of Eastern languages and Islamic law, and was in charge of answering the questions of colonial officials concerning the daily problems faced by Indonesian Muslims.[120] Based on his experience as a member of the national court of Semarang (Central Java), Van den Berg was of the opinion that it was important to unify the rules of Islamic law; he therefore proposed that the *Minhāj al-Ṭālibīn* of Nawawī (and his own translation of this text into French) be "the guide to the law used in the religious court."[121] Another important contribution to colonial administration in the field of Islamic law was his well known theory *Receptio in Complexu*, enacted in the Law no. 152 of 1882,[122] according to which:

> the law of the natives (and foreign orientals) is conditioned by their religion until the contrary is proved, because by accepting a religion they also 'virtually' accept its religious law. If the contrary or 'exception' is proved for one or more subjects (whole institutions or merely subordinate points), such exceptions should be regarded as 'deviation' from a religious law which has

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[120]For the life, career, and works of Van den Berg, see Karel A. Steenbrink, "Foreword" to *Hadramaut dan Koloni Arab di Nusantara*, by L.W.C. van den Berg, trans. Rahayu Hidayat (Jakarta: INIS, 1989), xi-xxv.

[121]Ibid., xiv-xv.

[122]Arso Sosroatmodjo and A. Wasit Aulawi, *Hukum Perkawinan di Indonesia* (Jakarta: Bulan Bintang, 1981), 13. See also Ichtijanto, "Pengembangan Teori Berlakunya Hukum Islam di Indonesia," in *Hukum Islam di Indonesia: Perkembangan dan Pembentukan*, ed. Tjun Surjaman (Bandung: PT Remaja Rosdakarya, 1991), 120.

been accepted in *complexu*.[123]

Accordingly, Islamic law was to be considered the living law for Indonesian Muslims.[124] This theory was based on Van den Berg's belief that "Islam has been almost fully, if not entirely, accepted."[125] In fact, long before the coming of Western colonists, Islamic law under the local Islamic kingdoms had, to a certain extent, influenced the local people; it dictated, for instance, the penalties for killing free-men and slaves, the amputation of hands for theft, punishment for unlawful sexual intercourse, and the use of terms common in works on *fiqh* such as *walī* (guardian), *nikāḥ* (marriage), *ṭalāq* (divorce), *ījāb* and *qabūl* (mutual acceptance).[126] This being so, it is not surprising that "in Indonesia," according to Van Niel, "religion cannot be divorced from the other aspects of life, and similarly Islamic policy could not be separated from general policies towards the indigenous people."[127] Surely, Islam "is an important element in the Indonesian culture,"[128] and it was always a living force

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[123]C. Van Vollenhoven, *Van Vollenhoven on Indonesian Adat Law*, trans. J.F. Holleman, Rachael Kalis, and Kenneth Maddock (The Hague: Martinus Nijhoff, 1981), 20.

[124]Sajuti Thalib, "Receptio in Complexu, Theorie Receptie dan Receptio a Contrario," in *Pembaharuan Hukum Islam di Indonesia*, ed. Sajuti Thalib (Jakarta: Penerbit Universitas Indonesia, 1981), 45.

[125]Van Vollenhoven, *Indonesian Adat Law*, 20.

[126]Mudzhar, *Fatwās*, 28-31.

[127]Robert Van Niel, "Christian Snouck Hurgronje: In Memory of the Centennial of His Birth," *Journal of Asian Studies* 16 (1956-1957), 592.

[128]Hooker, *Islamic Law in South-East Asia*, 248.

politically, socially, and culturally.[129]

It is true that Van den Berg was not the first to acknowledge Islamic law as the living law for Indonesian Muslims. Before the coming of Van den Berg, the Dutch colonial government had recognized it in practice, and officially as well in the *Regalement op het beleid der Regeering van Nederlandsch Indie* (R.R), Stbl. no. 129 of 1854 and no. 2 of 1855, particularly articles 75, 78, and 109.[130] It was also the case during the era of Daendels and Raffles.[131] Nonetheless, it was Van den Berg who for the first time gave substance to the theory.[132] It was based on Van den Berg's theory that religious institutions which had existed before the era of colonization, such as the Islamic court,[133] were allowed to continue their activities.[134] Efforts were even continuously made to put the provisions of Islamic law into practice, such as the rules concerning inheritance (*farā'id*), marriage (*nikāh*), and divorce (*talāq*).[135]

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[129]Boland, *Islam in Modern Indonesia*, 216; Abdullah, *Islam dan Masyarakat*, 108.

[130]Thalib, "Receptio in Complexu," 44.

[131]Sosroatmodjo and Aulawi, *Hukum Perkawinan*, 11-2.

[132]Ichtijanto, "Hukum Islam di Indonesia," 117.

[133]Ibid., 120.

[134]The Islamic courts which existed during the colonial era provided the foundations for the Islamic courts after independence; for the history of the Islamic court, see Lev, *Islamic Courts*, 8-101; Ibrahim, "Muslim Law in Indonesia," 109-13; Hooker, *Islamic Law in South-East Asia*, 249-55, 258-67; Steenbrink, *Islam di Indonesia Abad ke-19*, 213-33.

[135]Ichtijanto, "Hukum Islam di Indonesia," 121.

The *Receptio in Complexu* theory was later replaced by the *Receptie* theory developed by Hurgronje, who for more than seventeen years (1889-1906) continued in the position previously held by Van den Berg.[136] In contrast to Van den Berg, Hurgronje was of the opinion that Islamic law could only be effective and binding upon Indonesian Muslims if it were consistent with or derived from the customary law, the *adat*. The living law for Indonesian people was, therefore, seen as being rooted not in religious law but rather in customary law.[137] In the case of Minangkabau, Hurgronje acknowledged the fact that Islam had been dominant in that region for a long period, but insisted that the domestic institutions of that area "are in many respects in conflict with the religious law."[138] This phenomenon he also found to be the case in other regions of Indonesia; and Aceh, the region where Islam

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[136]Pijper, *Sejarah Islam di Indonesia*, 8; Berg, "Islamization of Java," 111; Benda, *Rising Sun*, 20; P.Sj. Van Koningsveld, *Snouck Hurgronje dan Islam* (Jakarta: PT Girimukti Pusaka, 1989), 251. In fact, Hurgronje is more famous than Van den Berg. He is considered among those who established Islam as a special discipline in Western scholarship and as one of the founders of the study of Islamic law in Europe who stressed the importance of the historical method; see Steenbrink, "Foreword," xxv; Gerhard Endress, *An Introduction to Islam*, trans. Carole Hillenbrand (Edinburgh: Edinburgh University Press, 1988), 16-7; Joseph Schacht, "The Present State of the Studies in Islamic Law," in *Atti Del Terzo Congresso di Studi e Islamici* (Napoli: Instituto Universitario Orientale, 1967), 621; J. Brugman, "Snouck Hurgronje's Study of Islamic Law," in *Leiden Oriental Connections 1850-1940*, ed. Willem Otterspeer (Leiden: E.J. Brill, 1989), 87, 93.

[137]Hooker, *Islamic Law in South-East Asia*, 269; idem, "Muhammadan Law and Islamic Law," 176; Daniel S. Lev, "Judicial Institutions and Legal Culture in Indonesia," in *Culture and Politics in Indonesia*, ed. Claire Holt (Ithaca: Cornell University Press, n.d.), 254.

[138]C. Snouck Hurgronje, *The Achehnese*, trans. A.W.S. O'Sullivan (Leiden: E.J. Brill, 1906), 316.

is most deeply rooted, was in his view no exception in this respect.[139] It is clear then that Hurgronje had turned Van den Berg's theory upside down. C. Van Vollenhoven, who in the course of his research found that there were nineteen systems of *adat* in Indonesia,[140] supported Hurgronje's ideas, arguing:

> An obstacle to the study of Indonesian customary law...is the utterly wrong supposition that law follows religion, that pagans have pagan law, Hindus have Hindu law, Mohammedans Moslem law, and Christian natives Christian law, so far as that may exist. This supposition, positively contradicted by the fact, has had and is still having a fatal influence. The influence of religious law is limited; and most students make the mistake of stressing the religious element of the customary law too much, and of uniting religious and customary law.[141]

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[139]Ibid., 317; H. Westra, "Custom and Muslim Law in the Netherlands East Indies," *Transactions of the Grotius Society* 25 (1939), 166.

[140]Van Vollenhoven, *Indonesian Adat Law*, 44; B. Ter Haar, *Adat Law in Indonesia*, trans. Adamson Hoebel and A. Arthur Schiller (New York: Institute of Pacific Relations, 1948), 7-10; J. Leyser, "Legal Developments in Indonesia," *The American Journal of Comparative Law* 3 (1954), 410; A. Arthur Schiller, "Conflict of Laws in Indonesia," *Journal of Asian Studies* 2 (1943), 44; J.C.T. Simongkir and Warjono Sastropranoto, *Peladjaran Hukum Islam* (Jakarta: Gunung Agung, 1958), 70. The nineteen *adat*s include: 1. Aceh excluding the Gayo and Alas lands; 2. Gayo, Alas, and Batak lands; 3. The Minangkabau territory; 4. South Sumatra; 5. The Malay territory, that is, the east coast of Sumatra excluding the Batak area, together with the Riau-Lingga archipelago, of which the Malayan peninsula could be regarded as the British portion; 6. Bangka and Blitung; 7. Borneo excluding Serawak North Borneo; 8. The Minahasa; 9. The territory of Gorontalo; 10. South Celebes, together with the Buginese coast of the island; 11. The Toraja territory; 12. The Ternate archipelago; 13. Ambon and Moluccas (Seram, Buru, etc.); 14. Dutch New Guinea; 15. Dutch Timur with its archipelago; 16. Bali and Lombok; 17. Central and East Java, with Madura; 18. The Central Javanese Principalities; 19. West Java (Pasundan).

[141]Amry Vandenbosch, *The Dutch East Indies: Its Government, Problems, and Policies* (Berkeley: University of California Press, 1944), 178. Van Vollenhoven's criticism of Van den Berg's theory can also be found in his *Indonesian Adat Law*, 19-23. Westra has also a similar opinion, saying: "For a long time the importance of religious law in general and Muslim law in particular as compared with native customary law has been overestimated"; see Westra, "Custom and Muslim Law," 151.

The transition from a policy based on the *Receptio in Complexu* theory to one based on the *Receptie* theory took quite a long time, for the Dutch colonial government had enacted quite a number of laws during the period of this transition.[142] At the end of this long process, there was finally enacted *Stbl.* no. 221 of 1929, article 134 (2) of *Wet op de Staats Inrichting van Nederlands Indie* (IS), which was to serve as the formal source for the *Receptie* theory.[143] Supporters of the *adat* law were also prevalent among the indigenous lawyers, most notably R. Supomo (d. 1958). As Daniel S. Lev has put it: "many Javanese lawyers...fully supported the adat-law views of their teachers, van Vollenhoven and Ter Haar, and were sympathetic to the protection of customary institutions."[144]

In general, it is true that most, if not all, Indonesian Muslims supported the general policy of Van den Berg and at the same time opposed Hurgronje's. Hamid al-Gadri, for example, praised the policy of Van den Berg and accused Hurgronje of attempting to limit the development of Islam in Indonesia.[145] A number of other Indonesian scholars have responded to Hurgronje's theory, the most famous among

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[142]Thalib, "Receptio in Complexu," 47-51.

[143]Ibid., 50-1. See also Abdul Mutholib, *Kedudukan Hukum Islam Dewasa Ini di Indonesia* (Surabaya: PT Bina Ilmu, 1984), 29.

[144]Daniel S. Lev, "Judicial Unification in Post-Colonial Indonesia," *Indonesia* 16 (1973), 5; idem, *Islamic Courts*, 20. See also McVey, "Islam in Indonesian Politics," 207.

[145]According to al-Gadri, in order to support his policy, Hurgronje advised the colonial government to send a number of Indonesian students to study in Leiden in order to prevent them from becoming "Muslim fanatics"; see Hamid al-Gadri, *Politik Belanda terhadap Islam dan Keturunan Arab di Indonesia* (Jakarta: CV Haji Masagung, 1988), 105.

them being Hazairin and Sayuti Thalib.

Hazairin (1906-1975) was known as the first scholar to systematically challenge Hurgronje's ideas by putting forward his *Receptie Exit* theory.[146] According to Hazairin, who called Hurgronje's theory the "theory of the devil"[147] and regarded it as having been designed to hinder "the progress of Islam in Indonesia,"[148] the Indonesian people were well-advised to "exit" from Hurgronje's theory, for it was contrary to the Constitution of 1945 (Undang-Undang Dasar 1945) and the five principles forming the basis of the Indonesian State (Pancasila), in which it is clearly stated that Indonesian law should be based on religious belief.[149] Simply stated, Islamic law should be binding upon Indonesian Muslims. Moreover. Hurgronje's theory, according to Hazairin, was at variance with the principles laid down in the Qur'an and the Sunnah.[150]

Hazairin's theory was later developed by his disciple, Sajuti Thalib, who put forward a theory which he called *Receptio a Contrario*. In it he stated his opinion that after independence, colonial laws should no longer be binding upon the Indonesian people. In accordance with the Pancasila and the Constitution of 1945, religious law

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[146]Ichtijanto, "Hukum Islam di Indonesia," 101.

[147]Hazairin, *Hukum Kekeluargaan Nasional* (Djakarta: Tintamas, 1962), 4-6. See also Lev, *Islamic Courts*, 197; Deliar Noer, *Administration of Islam in Indonesia* (Ithaca: Cornell University Press, 1978), 47; Thalib, "Receptio in Complexu," 52.

[148]Boland, *Islam in Modern Indonesia*, 169.

[149]Ichtijanto, "Hukum Islam di Indonesia," 100, 128-31.

[150]Hazairin, *Hukum Kekeluargaan*, 129.

was to be the law for the indigenous peoples. Consequently, customary law should be binding upon Indonesian Muslims only if it were not contrary to the provisions of Islamic law.[151] This thesis was supported by the results of research conducted in Jakarta, Aceh, and Minangkabau where the people believed that Islamic law was their living law, and that the customary law should only be applied insofar as it was compatible with the provisions of Islamic law.[152] As indicated in the name of the theory itself, Thalib turned Hurgronje's theory on its head.

It should be noted, however, that Thalib's thesis has not yet been accepted by all Indonesian jurists and that the struggle between those who support Islamic law and those who promote non-Islamic law (i.e. national law as it is usually called today) continues to the present-day.

Having considered the theories of Van den Berg, Hurgronje, and Hazairin (developed later by Thalib), one may conclude that there is no fundamental difference between the theories of Van den Berg and those of Hazairin, in the sense that Islamic law was (and still is) important for Indonesians, though one may say that Van den Berg was referring to a situation that really existed while Hazairin was talking about what should be the case for the Indonesian Muslims. One may question, however, the extent of the difference between the theory of Hurgronje and that of Hazairin. It is very likely that there is a clear difference between the two on a theoretical level, but this is less true on a practical one. In other words, it is effectively acknowledged by

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[151]Ichtijanto, "Hukum Islam di Indonesia," 132.

[152]Ibid., 132-5.

Hurgronje and Hazairin that *adat* plays a decisive role in the daily life of Indonesian Muslims. This is supported by the fact that there are certain provisions of Islamic law which cannot be applied due to the fact that they seem to be contrary to the *adat* of the Indonesian Muslims themselves.

Hazairin himself, for example, pointed out that most, if not all, of the provisions of Islamic law that were currently in force in Indonesia were based on the classical jurists' views, which were themselves influenced by Arab culture.[153] The Indonesian Muslims, therefore, were justified in interpreting Islamic law according to the particularities of their own culture (*adat*). In line with this reasoning, Hazairin proposed an Indonesian *madhhab*, a concept which has been advocated since the 1950s.[154]

One thing however should be pointed out in this regard. The problem of the

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[153]Hazairin, *Hukum Islam dan Masyarakat* (Jakarta: Bulan Bintang, n.d.), 8.

[154]Ibid.; Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an dan Hadith* (Jakarta: Tintamas, 1974), 1; Hooker, *Islamic Law in South-East Asia*, 270; Lev, *Islamic Courts*, 219, 238-9. Hazairin provides a few examples of values which Muslims need to rethink, one of these being that requiring a guardian (*walī*) for the marriage contract. This rule, says Hazairin, is rooted in the Arab tradition of paternal relation (*'aṣabah*) which assumes that the status of a man is more important than that of a woman. This rule was appropriate to the Arab peoples whose family structure was *patrilineal* which is very different from that of Indonesian culture where the family structure can generally be divided into *patrilineal, matrilineal,* and *parental*; see Hazairin, *Hukum Islam*, 7-8; Abu Bakar Al Yasa, "Ahliwaris Sepertalian, Kajian Perbandingan terhadap Penalaran Hazairin dan Penalaran Fiqih Mazhab" (Ph.D. diss., IAIN Sunan Kalijaga, 1989), 7, 32-3. Efforts were also made to reformulate the rules of inheritance by considering the local culture of Indonesian society; see Hazairin, *Kewarisan Bilateral*, 19-58; idem, *Hukum Kekeluargaan National*, 1-15. Ideas similar to those of Hazairin can also be found in the writings of Munawir Sjadzali; see e.g. Sjadzali, "Pemikiran Politik Hukum Islam," 45-6.

relation between *adat* and Islam or between *adat* law and Islamic law emerges among those who believe that Islamic law is different and must be separated from *adat* law, an idea which springs mostly from the views of Western scholars who are accustomed to applying the conflict approach which is advocated, for instance, in Marxist historical theory;[155] consequently, they often contrast *adat* with Islam. In the case of Indonesia, the tendency to contrast *adat* and Islamic teaching or *adat* law and Islamic law was evident, for instance, during the period when Hurgronje was serving as the colonial advisor.[156] He in fact introduced the doctrine that religion must be

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[155]For a short but important account of Karl Marx's theory, see Patrick Gardiner, ed., *Theories of History* (New York: The Free Press, 1959), 124-38.

[156]According to Noer, a similar attitude can also be found in "the tendency of many Western writers to contrast *santri* and *abangan* as if abangan Javanese were not Muslims"; Noer, *Administration of Islam*, 44 note 4, 45 note 7. Deliar Noer is of course referring to Clifford Geertz who continues the conflict approach of Western scholars (e.g. Hurgronje). In 1956, Geertz published his article entitled "Religious Belief and Economic Behavior in a Central Javanese Town: Some Preliminary Considerations," *Economic Development and Cultural Change* 4 (1956), 134-58; he refers therein to the "agama jawa" (the javanese religion), a term introduced at first by C.C. Berg in 1932; see Berg "Indonesia," 255. Like Berg, Geertz used the term "agama jawa" to represent the beliefs adopted by some Javanese who were called *abangan* in contrast to the other two variants of the Javanese groups: *santri* and *prijaji*. In doing so, Geertz nevertheless indicates that the term "agama jawa" was not an appropriate name for the *abangan*. He says, for instance, "the *abangan*, whose main adherence is to what is often miscalled 'the Javanese religion' (agama djawa)"; see p. 138. Later, however, Geertz not only insisted that the term "agama jawa" was a proper name for the Javanese *abangan*, but also included under this heading the other two groups (*santri* and *prijaji*), as clearly shown in his more developed work entitled *The Religion of Java*. Thus, the term "agama jawa" covers all the religious beliefs of the Javanese people, a view which can only be accepted with difficulty by the Javanese and particularly the Javanese Muslims. In addition, the conflict approach can also be found in the efforts of certain scholars to contrast Islam and the Indonesian government, Islam and the Indonesian military (ABRI), while in fact most of the government officials and the members of ABRI were (and are) Muslims. Turkey (including the Ottoman Empire) is another case in point. Some Western

separated from politics,[157] and then advised the governor of West Sumatra not to codify the *adat* law,[158] arguing that it was very important to maintain the conflict between *adat* law and Islamic law. By codifying *adat* law, he argued, it would lose its force to compete with the dynamic of Islamic law. This, according to Hurgronje, would counteract the policy of the colonial government which was to promote *adat* law at the expense of Islamic law. In support of this policy, he advised colonial officers to spread the ideas and works of Ahmad Khatib, the reformist who severely attacked the *adat* in his writing. By doing so, *adat* law would be shown to be different

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scholars are accustomed to seeing a contrast between *qānūn* and Islamic law, emphasizing that the *qānūn* deviated from the provisions of Islamic law and was seen as "un-Islamic"; while in fact certain '*ulamā*' of the Ottoman empire, as shown by Uriel Heyd, considered *qānūn* as part of Islamic law; thus, there is no need to look for a contrast between the two. For a discussion of Islamic law under the Ottoman Empire, see Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V.L. Menage (Oxford: Clarendon Press, 1973); idem, *Kānūn and Sharī'a in Old Ottoman Criminal Justice* (Jerusalem: The Israel Academy of Science and Humanities, 1967); Ebul Ula Mardin, "Development of the Sharī'a under the Ottoman Empire," in *Law in the Middle East: Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington D.C.: The Middle East Institute, 1955), 279-91; Richard C. Repp, "Qānūn and Sharī'a in Ottoman Context," in *Islamic Law: Social and Historical Context*, ed. Aziz al-Azmeh (London: Routledge, 1988), 124-45; Haim Gerber, "*Shari'a, Kanun* and Custom in the Ottoman Law: The Court Records of 17th-Century Bursa," *International Journal of Turkish Studies* 2 (1981-1982), 131-47; idem, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (New York: State University of New York Press, 1994); Akh. Minhaji, "Islamic Law under the Ottoman Empire," in *The Dynamic of Islamic Civilization* (Yogyakarta: Forum Komunikasi Alumni Program Pembibitan Dosen IAIN se-Indonesia, 1997; forthcoming).

[157]Steenbrink, *Islam di Indonesia Abad ke-19*, 7; Benda, *Rising Sun*, 23.

[158]Abdullah, *Islam dan Masyarakat*, 220.

from Islamic law, making it clear that they had to be kept separate from one another.[159] For this very reason, it is not surprising that Hurgronje, in his *The Achehnese*, devotes several pages to discussing the contrasts between the provisions of *adat* law and Islamic law.[160] There he enshrined the view that *adat* law was man-made law as opposed to the Islamic law revealed by God.[161]

This issue had a linguistic angle as well. According to Jan Prins, the Qur'anic term *hukm* (Ind. *hukum*) was used by Indonesians to signify "law." Prins stresses that "there never was in any Indonesian language a word that had exactly the same meaning as the English word 'law', the Dutch and German 'recht', the Latin 'jus'."[162] It was in fact Dutch scholars who in about 1900 invented and introduced the term "adatrecht" (adat law). As a result of European and particularly Dutch influence, Indonesians began to make a sharp distinction between law (Shari'ah according to Muslims) and *adat* law.[163]

This idea of a contrast between *adat* law and Islamic law was given greater

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[159]Ibid., 220-1.

[160]See particularly chapter three of volume one and chapter four of volume two. A similar effort to establish a contrast between *adat* law and Islamic law can be found in Westra, "Custom and Muslim Law," 158-9.

[161]F. Gobee and C. Adriaanse, *Nasehat-Nasehat C. Snouck Hurgronje Semasa Kepegawaiannya kepada Pemerintah Hindia Belanda*, trans. Sukarsi, vol. 5 (Jakarta: INIS, 1991), 744.

[162]Jan Prins, "Adat Law and Muslim Religious Law in Modern Indonesia," *Die Welt des Islams* 1 (1951), 283.

[163]Ibid. See also Busthanul Arifin, "Perbenturan Hukum Sipil dan Hukum Islam di Bidang Hukum Keluarga," *Media Dakwah* 257 (November 1995), 33-5.

currency by the French scholar G.H. Bousquet, who theorized that the provisions of Islamic law in Indonesia had been very much influenced by *adat*. According to Bousquet, this phenomenon is a distinctive feature of Islamic law in Indonesia (as also in some parts of North Africa) and is not to be found in other Muslim countries.[164] Perhaps influenced by Bousquet's ideas, Hooker is of the opinion that "Islamic legal history in Southeast Asia is a history of the tension between an absolute scheme of (revealed) obligations and its adaptation to local cultural realities."[165] However, Bousquet's thesis, which has also been adopted by some Western writers such as Coulson,[166] Anderson,[167] Mayer,[168] Milliot & Blanc,[169] Jan Prins,[170] and Riaz

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[164]In terms of the application of Islamic law, Bousquet divides the Muslim countries into four categories: the conservative regions; areas where reforms have been adopted; the countries where Islamic law has been abolished; and countries where custom remains strong, a category which includes Indonesia; see G.H. Bousquet, *Du droit musulman et de son application effective dans le monde* (Alger: Imprimerie Nord-Africaine, 1949). On the same issue, see also Prins, "Adat Law and Muslim Religious Law," 289.

[165]Hooker, *Islamic law in South-East Asia*, 36.

[166]Coulson, *History*, 136, 154.

[167]Anderson, *Law Reform*, 11.

[168]Ann Elizabeth Mayer, "Modern Legal Reform," in *The Oxford Encyclopedia of the Modern Islamic World*, ed. John L. Esposito (Oxford: Oxford University Press, 1995).

[169]Louis Milliot et Francois-Paul Blanc, *Introduction a l'étude du droit musulman* (Paris: Sirey, 1987), 139.

[170]Jan Prins, "'Āda (Indonesia)," in *The Encyclopaedia of Islam*, new edition, ed. H.A.R. Gibb, J.H. Kramers, E. Levi-Provencal, and Joseph Schacht (Leiden: E.J. Brill, 1960); idem, "Adat Law and Muslim Religious Law," 283-300.

Hassan,[171] needs to be modified, if not rejected; for one thing, historical evidence indicates that since the early history of Islamic law, local custom has played an important role in the development of law not only in Indonesia but also in other Muslim countries. As Chehata observes: "Il y a certainement dans le droit musulman un fonds arabe préislamite. Mais il y a eu aussi un fonds talmudique, un fonds mésopotamien, sasanide et même romain."[172] The second Caliph, 'Umar ibn al-Khattāb, is also reported to have "ordered his lieutenants to conserve almost the entire legal system of the conquered countries with regard at least to land revenue, in Iraq for instance."[173] In his letter to Abū Mūsā al-Ash'arī (a *Qāḍī* of Baṣrah), he also indicated the importance of using the prevailing tradition (*al-sunnah al-muttaba'ah*) in dealing with local legal problems.[174] Indeed, *'urf* and *'ādah* (Ind. *adat*) "are very

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[171]Riaz Hassan, review of *Islamic Law in South-East Asia*, by M.B. Hooker, *Journal Institute of Muslim Minority Affairs* 12 (January 1991), 260.

[172]Chafik Chehata, *Études de droit musulman* (Paris: Presses universitaires de France, 1971), 35.

[173]Muhammad Hamidullah, "Sources of Islamic Law-A New Approach," *The Islamic Quarterly* 1 (1954), 207.

[174]Khadduri, "Nature and Sources," 11. For the Arabic works which contain 'Umar's letter, see Muhammad Yusuf Guraya, "Judicial Principles as Enunciated by Caliph 'Umar I," *Islamic Studies* 11 (June 1972), 167, 183 note 9, an analysis of which can be found in D.S. Margoliouth, "Omar's Instruction to the Kadi," *Journal of the Royal Asiatic Society* (1910), 307-26; Muhammad Hamidullah, "Administration of Justice under the Early Caliphate (Instructions of Caliph 'Umar to Abū Mūsā al-Ash'arī, 17H)," *Journal of the Pakistan Historical Society* 19 (1971), 1-50; R.B. Serjeant, "The Caliph Umar's Letters to Abu Musa al-Ash'ari and Muawiyah," *Journal of Semitic Studies* 29 (1984), 65-79.

ancient and important sources of Islamic law."[175] It is not surprising therefore that *adat*, which is sometimes also referred to as *'urf*, is considered by many to be an important source of Islamic law.[176] Of course, certain conditions (*sharā'iṭ*) should be met in order to make a certain *adat* a source of Islamic law, the most important of which is that this *adat* not be in contradiction with the established legal sources (*al-adillah al-uṣūliyyah al-mu'tabarah*).[177] There is a possibility therefore that certain *adat*s are compatible with Islamic teaching and that they may be considered as one of the sources of application of Islamic doctrine. It is also a fact however that some Muslims have adopted certain *adat*s even though they are incompatible with

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[175]Muhammad Y. Faruqi, "Consideration of *'Urf* in the Judgement of the *Khulafā' al-Rāshidūn* and the Early *Fuqahā'*," *The American Journal of Islamic Social Sciences* 9 (1992), 482. In the words of Schacht: "...custom and customary law have coexisted with the ideal theory of Islamic law...in the whole of the Islamic world"; see his *Introduction*, 62.

[176]For a discussion of *'urf* as a source of Islamic law, see for instance, Ahmad Fahmī Abū Sinnah, *al-'Urf wa al-'Ādah fī Ra'y al-Fuqahā'* (Cairo: Al-Azhar, 1947); Farhat J. Ziadeh, "*'Urf* and Law in Islam," in *The World of Islam: Studies in Honour of Philip K. Hitti*, ed. James Kritzeck and R. Bayly Winder (London: Macmillan & Co, 1959), 60-7; Ahmad Azhar Basyir, *Hukum Adat Bagi Umat Islam* (Yogyakarta: Nur Cahaya, 1983); Faruqi, "Consideration," 482-96; Mohamed el-Awa, "The Place of Custom (*'Urf*) in Islamic Legal Theory," *Islamic Quarterly* 17 (1973), 177-82; David C. Buxbaum, *Family Law and Customary Law in Asia: A Contemporary Legal Perspective*, (The Hague: Martinus Nijhoff, 1968) section B, "The Role of Custom in Islamic Law," 265-7; M. Habibur Rahman, "The Role of Pre-Islamic Customs in the Islamic Law of Succession," *Islamic and Comparative Law Quarterly* 8 (1988), 48-64; Akh. Minhaji, "The Problem of Foreign Influences on Early Islamic Law," *Al-Jami'ah* 49 (1992), 4-12.

[177]For such conditions (*sharā'iṭ*), see Abū Sinnah, *al-'Urf wa al-'Ādah*, 56-68; Ṣubḥī Maḥmaṣānī, *Falsafat al-Tashrī' fī al-Islām* (Beirut: Dār al-'Ilm lil-Malāyīn, 1961), 241-3; Abdel Azim Elsiddiq, "An Examination of the Problems of Islamization of Laws: Issues in Contemporary Islamic Legal Theory" (Ph.D. diss., Temple University, 1993), 100.

Islamic values. These deviations "were not limited to Indonesia nor was there any reason to give Indonesia a distinct status within the Islamic world."[178] In the words of Lev, "Islamic law was never taken over fully anywhere in Indonesia, as indeed it was never applied fully anywhere in the Islamic world."[179] Azra reminds us:

> ...there is a tendency among scholars to exclude the Malay-Indonesian world from any discussion of Islam. It is assumed that the region has no single stable core of Islamic tradition. Islam in the archipelago has long been regarded as not "real Islam." It is considered distinct from Islam in the centres in the Middle East. We will not, of course, ignore local influences on Islam in the archipelago, but one should not assume that Malay-Indonesian Islamic tradition has little to do with Islam in the Middle East.[180]

In the case of Minangkabau (West Sumatra), which is often cited as an example of a region where *adat* was very strong, Taufik Abdullah rejects any suggestion that there exists a contrast between *adat* and Islam or between *adat* law and Islamic law; for one thing, both occupy an important place in the lives of the local people, as symbolized in the proverbs *adat bersendi syara', syara' bersendi kitabullah* (*adat* based on *sharī'ah*, and *sharī'ah* based on the Qur'an), and *agama mangato, adat memakai* (religion designs, *adat* applies).[181] Examining the views of Western scholars on the conflict between *adat* and Islam or between *adat* law and Islamic law, Abdullah concludes:

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[178]Steenbrink, *Dutch Colonialism*, 90. See also Ricklefs, *Modern Indonesia*, 160; Benda, *Rising Sun*, 22.

[179]Lev, *Islamic Courts*, 5.

[180]Azra, "Islamic Reformism," 3.

[181]For further information on Abdullah's views, see his "Adat and Islam: An Examination of Conflict in Minangkabau," *Indonesia* 2 (October 1966), 1-24. See also Hamka, *Ayahku*, 5-10.

> The application of the formalistic approach of Snouck Hurgronje, making a clear separation between religious doctrine, which regulates man's relationship with the transcendental being, and adat, which is supposed to govern his social relationships, gives a misleading picture of Minangkabau society. This kind of conflict...should not be seen as the tension between two separate entities, but as one within the whole system itself.[182]

Similar sayings to the effect that *adat* and Islamic law are inseparable can be found among the Achehnese. As one Achehnese proverb goes: *hukōm hukōmōllah adat adatōllah* (the law is Allah's law and *adat* is Allah's *adat*).[183]

There is still another point that should be made here. Fazlur Rahman may be correct in saying that some Western writers tend to identify *sharī'ah* with the Muslim past rather than with the truth of Islam itself.[184] Consider, for example, the cases of polygamy and divorce.[185] According to the Qur'an (as it is elaborated in so many

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[182]Abdullah, "Adat and Islam," 23. Natsir is of the opinion that the *adat* of Minangkabau was not rigid and static; thus, it could change under the influence of time or religious teaching; see Natsir, *Capita Selecta*, vol. 1, especially section titled "Pertjaturan Adat dan Agama," 139-52.

[183]Two other versions are: *Hukōm ngon adat han jeuet chre, lagee dat ngon sipheuet* (law and *adat* are inseparable, it is like a substance and its attributes), *hukōm ngon adat lagee mata itam ngon mata puteh* (law and *adat* are like the black and the white of the eyes); see Hurgronje, *Achehnese*, 72.

[184]Rahman, "Islamic Modernism," 331.

[185]For a discussion of polygamy and divorce, see Kawthar Kāmil 'Alī, *Niẓām Ta'addud al-Zawjāt fī al-Islām* (Cairo: Dār al-I'tiṣām, 1985); Jameelah Jones and Abu Ameenah Bilaal Philips, *Plural Marriage in Islam* (Saudi Arabia: International Islamic Publishing House, 1987); Mahmoud Hoballah, "Marriage, Divorce, and Inheritance in Islamic Law," *The George Washington Law Review* 22 (1953), 24-31; Bello Daura, "The Limit of Polygamy in Islam," *Journal of Islamic and Comparative Law* 3 (1969), 21-6; Khurshid Ahmad, ed., *Studies in the Family Law of Islam* (Karachi: Chiragh-E-Rah Publications, 1961), 20-6, 31-2, 214-28; Haji Ahmad H. Sheriff, *Why Polygamy is Allowed in Islam?* (Teheran: A Group of Muslim Brothers, 1974); Rahman, "Survey of Modernization," 451-65.

works on *fiqh*) a husband can marry another woman without the first wife's consent and can divorce his wife whenever he likes. Certain Western scholars[186] have tried to contrast these rules with the facts, which they have called *adat*: according to the latter, the wife's consent is needed for a polygamous marriage and a husband cannot automatically repudiate his wife without any decision from the religious court. They forget however that these rules can be validated by such principles of Islamic teaching as, for example, the concept of juristic preference (*istiḥsān*) or consideration of public interest (*maṣlaḥah al-mursalah*). Moreover, there are a number of maxims among the principles of *fiqh* (*al-qawā'id al-fiqhiyyah*) which can be used to explain the problem, one of which is known as *al-'ādah muḥakkimah* (*adat* can become a law).[187] Thus, Western scholars are often guilty of enshrining certain provisions of Islamic law, and of denying in the process its ability to adapt or grow. As Nyazee puts it: "Western scholars attempt to confine the *sharī'ah* to what is stated in the books of early Muslim

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[186]See, for example, Prins, "Adat Law and Muslim Religious Law," 291. See also Westra, "Custom and Muslim Law," 160-1.

[187]See, Jalāl al-Dīn al-Suyūṭī, *al-Ashbāh wa al-Naẓā'ir fī Qawā'id wa Furū' Fiqh al-Shāfi'iyyah* (Cairo: 'Īsā al-Bābī al-Ḥalabī, n.d.), 99. Other maxims are as follows: *al-ma'lūm bi al-'urf ka al-mashrūṭ bi al-naṣṣ*; *al-ma'rūf 'urfan ka al-mashrūṭ shartan*, or *al-ma'rūf 'urfan ka al-mashrū' shar'an* (what is proper according to common usage is like what is legal according to the *sharī'ah*); *al-thābit bi al-'urf ka al-thābit bi al-shart* or *al-thābit bi al-'urf ka al-thābit bi al-naṣṣ* (a rule based on an *'urf* is like a rule based on a text); see Muḥammad ibn Aḥmad al-Sarakhsī, *al-Mabsūṭ*, vol. 15 (Cairo: Maṭba'at al-Sa'ādah, 1324-1331/1906-1912), 171; Abū Sinnah, *al-'Urf wa al-'Ādah*, 169; *al-'ādah iḥdā al-ḥujaj al-shar'iyyah fīmā lā naṣṣa fīhi* (*'urf* is one of the *sharī'ah* proofs in matters on which there is no written authority); see Muḥammad Amīn ibn 'Umar ibn 'Ābidīn, *Ḥāshiyat Radd al-Muḥtār*, vol. 5 (Beirut: Dār al-Fikr, 1979), 152; *al-'ādah ka al-naṣṣ* (*adat* is like an authoritative text); see Heyd, *Studies*, 182.

jurists...."[188]

Overall, it is safe to say that *adat* has played a decisive role in the formulation of Islamic law, both in Indonesia and elsewhere. As mentioned above, this notion is supported by the fact that Islamic law is, to some extent, rooted in the tradition of the society of Arabia in the era of Muhammad. This does not mean, however, that any Muslim society "must" formulate Islamic law in the way that the Arab Muslims practised it. Given their different traditions in terms of politics, economics, and social structure, non-Arab Muslims have formulated the subject matter of Islamic law somewhat differently, while still basing themselves on Islamic principles. Indeed, Hallaq has successfully demonstrated that Islamic law "grew up" and acquired different forms in different regions, even in the central lands of the Islamic empire(s).[189] He further notes that "it was not only the case that the four legal schools succeeded in creating four versions of the law dominating different regions or parts thereof, but also that each school was subject to differing regional developments."[190] Indeed, Islamic civilization, like other civilizations, came into direct and indirect contact with its surrounding environment. Islamic law, therefore, being so important an aspect of Islamic civilization, could not have avoided contact with the laws and traditions of other civilizations. Thus, it is only natural that foreign

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[188]Imran Ahsan Khan Nyazee, *Theories of Islamic Law-The Methodology of Ijtihād* (Islamabad: Islamic Research Institute and International Institute of Islamic Thought, 1994), 12.

[189]See, for instance, Hallaq, "The Dialectic of Doctrine and Practice," 126-32.

[190]Ibid., 126.

influences should have found their way into what is essentially an original system of law, just as, of course, Islamic law has also influenced other systems.[191] This only goes to prove the fact that, in more developed civilizations, "a legal system which is actually in use, and really represents the habits and sentiments of the people, has never been the product of a single mind or even of a single age."[192]

So far we have discussed the external factor (Western influence) in the movement of Islamic legal reform in Indonesia, and we have seen also that Western ideas have inspired Indonesian Muslims (e.g., Hazairin) to re-formulate the provisions of Islamic law. Undoubtedly, the colonial policy to eliminate the role of Islam in general and Islamic law in particular encouraged the development of strong Muslim movements which urged a more authentic approach to Islamic teachings and greater efficiency in organization in order, among other purposes, to fight against Western

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[191]Schacht, "Islamic Religious Law," 401-2; Henry Cattan, "The Law of Waqf," in *Law in the Middle East: Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington D.C.: The Middle East Institute, 1955), 215; Marcel A. Boisard, "On the Probable Influence of Islam on Western Public and International Law," *International Journal of Middle East Studies* 11 (1980), 429-50; Imran Ahsan Niazi, "The Karaites: Influence of Islamic Law on Jewish Law," *Islamic Studies* 32 (1993), 137-47; P. Nicholas Kowrides, "The Influence of Islamic Law on Contemporary Middle Eastern Legal System: The Formation and Binding Force of Contracts," *Columbia Journal of Transnational Law* 9 (1970), 384-435; Monica M. Gaudiosi, "The Influence of the Islamic Law of *Waqf* on the Development of the Trust in England: The Case of Merton College," *University of Pennsylvania Law Review* 136 (1988), 1231-56; Gideon Libson, "Islamic Influence on Medieval Jewish Law? Sefer Ha'arevuth ('Book of Surety') of Rav Shamuel Ben Hofni Gaon and Its Relationship to Islamic Law," *Studia Islamica* 73 (1991), 5-23.

[192]Anonymous. "Western Influences," 351.

domination.[193]

Now, I turn to a discussion of the internal factor: the crisis among Muslims themselves. As has already been pointed out, Islam was introduced to Indonesia by, among others, Indian mystics. The latter, besides being tolerant of traditional usages and practices, also brought with them the beliefs and attitudes of an Islamic civilization which was already in decline. This is reflected also in the field of Islamic law, the most important part of Islamic doctrine. Therefore, it should surprise no one that the Islamic law brought to Indonesia in the era of *taqlīd*[194] should have been colored by the idea of loyalty to a given legal school, particularly that of the Shāfi'īs.[195] The character of the Shāfi'ī school is even considered to have been an important element in the development of Islam from the time of its arrival in Indonesia.[196] It is also to some extent seen as having played a significant role in

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[193]McVey, "Islam in Indonesian Politics," 219; Geertz, "Religious Belief and Economic Behavior," 144-5.

[194]Abdul Rahman Haji Abdullah, *Pemikiran Umat Islam di Nusantara: Sejarah dan Perkembangannya Hingga Abad ke-19* (Kuala Lumpur: Dewan Bahasa, 1990), 42, 129-31; Steenbrink, *Islam di Indonesia Abad ke-19*, 4-5.

[195]Ibrahim, "Muslim Law in Indonesia," 113; idem, "The Administration of Muslim Law in South-East Asia," *Islamic Culture* 46 (1972), 245; Amir Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam* (Padang: Angkasa Raya, 1990), 129; Ricklefs, *Modern Indonesia*, 160; Noer, *Administration of Islam*, 45; C.A.O. van Nieuwenhuijz, "Indonesia," in *The Legacy of Islam*, ed. Joseph Schacht and C.E. Bosworth (Oxford: Clarendon Press, 1974), 148; Mudzhar, *Fatwās*, 17; Nicholson, "Introduction," 85; R.O. Winstedt, "A History of Malaya," *Journal of the Malayan Branch of the Royal Asiatic Society* 13 (1935), 29.

[196]For example, Keyzer was of the opinion that the country of origin of Indonesian Islam was Egypt, for the Shāfi'ī school was adopted by Muslims in Egypt just as it was in the case of Indonesian Muslims. By the same token, Nieman and Hollander believed that it was the people from Ḥadramawt (also followers of the Shāfi'ī school)

integrating Indonesian Muslims.[197] The Shāfi'ī character of Indonesian Islam was also reinforced by the fact that most of the early works on *fiqh* used in the religious schools, *dayah*s, *surau*s, *pesantren*s, and the religious courts all derived from the Shāfi'ī school.[198] Some translations of works of Shāfi'ī *fiqh* even circulate among the local people.[199] Most of these works on *fiqh* are commentaries (*shurūḥ*, sing. *sharḥ*) and commentaries upon commentaries (*ḥawāshin*, sing. *ḥāshiyah*). This category of literature, because of its seemingly derivative nature, is seen by many as an indication of intellectual backwardness (*jumūd*) on the part of Muslims,[200] a view

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who for the first time brought Islam into Indonesia. G.W.J. Drewes rejected the theory of Fatimi who pointed out that Islam came from Bengal, arguing that the Bengali Muslims belonged to the Ḥanafī school, while Indonesian Muslims are the followers of the Shāfi'ī school; see Azra, *Islam di Asia Tenggara*, xi-xviii.

[197]Hamka, *Islam di Sumatra* (Medan: Badan Pembangunan Semangat Islam, 1950), 16-7; Drewers, "Indonesia," 287.

[198]For these works, see Martin Van Bruinessen, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu," *Bijdragen Tot De Taal* 146 (1990), 245-8; Syarifuddin, *Hukum Islam*, 129-30; Abdullah, *Pemikiran Umat Islam*, 127, 139-40; Bustanul Arifin, "Kompilasi: Fiqh dalam Bahasa Undang-Undang," *Pesantren* 2 (1985), 27; Mudzhar, *Fatwās*, 17-8, 37-8. It should be noted that since 1991, the Ministry of Religious Affairs has codified the provisions of Islamic law based on the teachings not only of the Shāfi'ī school, but of the other "orthodox" schools as well, particularly in the fields of marriage, divorce, inheritance, and *waqf*; see Departemen Agama RI, *Kompilasi Hukum Islam di Indonesia* (Bandung: Humaniora Utama Press, 1991/1992), a book used by Islamic judges throughout the country in dealing with cases brought by Muslims.

[199]M.B. Hooker, ed., *Islam in South-East Asia* (E.J. Brill, 1983), 9.

[200]Nurcholish Madjid gives a clear example of such a phenomenon in his "Tradisi *Syarah* dan *Hasyiyah* dalam Fiqh dan Masalah Stagnasi Pemikiran Hukum Islam," in *Kontekstualisasi Doktrin Islam dalam Sejarah*, ed. Budy Munawar-Rachman (Jakarta: Paramadina, 1994), 311-8. See also A. Naufal Ramzy, "Mengenang Stagnasi Pemikiran Fiqh," *Pesan* 4 (1991), 49.

which has, however, been much challenged recently by Hallaq.[201]

In any case, Islamic law in Indonesia has generally been described as heavily dependant on *taqlīd*, for strict adherence to a certain school is considered by the reformists as an important characteristic of *taqlīd*.[202] It would appear from these considerations that *ijtihād* was not, as the reformists always claimed, practised among Indonesian Muslims, and that in that country at least the gate of *ijtihād* was tightly shut. Sayid Usman, although one of those who criticized the unorthodox practices of the *sūfīs* and although counted among the reformers of the early nineteenth century, is reported to have said that "because of their qualified knowledge and their moral attitude, the early generation of Islam had the right to perform *ijtihād*. In the dark age of our era, no more people are qualified to perform *ijtihād* and the gate of *ijtihād* has been closed."[203]

In the field of *usūl al-fiqh*, Indonesian Muslims, like Muslims in other parts of the Muslim world who follow the Shāfi'ī school, employed the Qur'an, Sunnah, consensus (*ijmā'*), and analogy (*qiyās*) as the sources of Islamic law, a theory which has traditionally been seen as an orthodox doctrine. Beyond these, there were still

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[201]Hallaq is of the opinion that the activities of *sharh*, *mukhtaṣar*, and *hāshiyah*, rather than being uninspired and derivative, constitute serious intellectual exercises that not only comment on the texts but also serve as a locus for a dialogue between their authors and the problems faced by Muslims of that era. For a detailed account of this process, see generally Hallaq, "*Uṣūl al-Fiqh*: Beyond Tradition"; idem, "Ifta' and Ijtihad."

[202]Muḥammad Muṣṭafā Shalabī, *al-Madkhal fī al-Ta'rīf bi al-Fiqh al-Islāmī wa-Qawā'id al-Milkiyyah wa al-'Uqūd Fīhi* (Cairo: Dār al-Ta'līf, 1960), 74.

[203]Steenbrink, *Islam di Indonesia Abad ke-19*, 185.

other sources used by jurists to help them discover the rules of Islamic law. In short, as did other followers of the Shāfi'ī school, Indonesian Muslims adopted the three sources of Islamic law described earlier in this chapter: primary, secondary, and remote.

In the pre-modern period, however, the situation changed considerably. As we have noted to be case in other parts of the Muslim world,[204] the secondary or even remote sources became the primary sources and vice-versa. Accordingly, the religious interpretations recorded in the works on *fiqh*, particularly those of the Shāfi'ī school, were taken as the last word in the religious problems faced by Muslims; what is more, the viewpoints of the religious leaders (e.g. *kiyais*) were increasingly seen as authoritative, although they were sometimes contrary to the teachings of the Qur'an and Sunnah. Consequently, Muslims came to engage in certain practices which in the eyes of the reformers could be defined as innovation (*bid'ah*) and superstition (*khurāfah*). Not only did the traditional scholars approve of such practices; in fact, quite a number of them were involved in them as well.[205] Kiyai Nurhakim of Banyumas (Central Java) is a clear example in point.[206]

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[204]See p. 23 above.

[205]For some practices condemned by the reformists, see Hamka, *Ayahku*, 70; Benda, *Rising Sun*, 238; L.W.C. Van den Berg, *Hadthramaut and the Arab Colonies in the Indian Archipelago*, trans. Major C.W.H. Sealy (Bombay: The Government Central Press, 1887), 37; Daya, *Gerakan Pembaharuan*, 7; Ali, "Islam and Modernism," 85; Federspiel, *Persatuan Islam*, 6; Kuntowijoyo, "Madura," 316-7; Noer, *Modernist Muslim Movement*, 16-7.

[206]For more information of Kiyai Nurhakim, see Steenbrink, *Islam di Indonesia Abad ke-19*, 186-96.

In line with the efforts of Islamic reform explained earlier, a greater effort was afterwards made towards an application of Islamic law which was more strictly based on the religious texts (*nuṣūṣ*), with the result that strict adherence to the Shāfi'ī school[207] or even to Sunnī schools in general was re-evaluated. The eclectic method (*talfīq*), which in earlier times was very much condemned by scholars, became the preferred method of dealing with daily problems.[208] Thus, works on *fiqh* and *uṣūl al-fiqh* which are not necessarily those of the Shāfi'ī or even of a Sunnī school, now constitute a significant part of the curricula in today's course of religious education.[209] For example, the works of Ibn Taymiyyah and of his disciple Ibn

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[207]Ibrahim, "Muslim Law in Indonesia," 124; idem, "Muslim Law in South-East Asia," 55.

[208]Hooker, *Islamic Law in South-East Asia*, 270. In the modern world, besides *talfīq*, there are other means used to reform the provisions of Islamic law, the most famous among them being the procedural expedient, the expedient of re-interpretation, the expedient of administrative regulation, and the expedient of reform by juridical decision; see Anderson, *Law Reform*, 43-7, 58-80; idem, "Shari'a Today," 21-4; idem, "The Significance of Islamic Law," 192-4; idem, "The Role of Personal Status in Social Development in Islamic Countries," *Comparative Studies in Society and History* 13 (1971), 20-1; idem, "The Eclipse of the Patriarchal Family in Contemporary Islamic Law," in *Family Law in Asia and Africa*, ed. J.N.D. Anderson (London: George Allen and Unwin, 1969), 224-5.

[209]Karel A. Steenbrink, *Pesantren, Madrasah, Sekolah: Pendidikan Islam dalam Kurun Moderen* (Jakarta: LP3ES, 1986), 172. The works include, among others, *al-Maḥallā* of Ibn Ḥazm, the multi-volume *Fiqh al-Sunnah* of al-Sayyid Sābiq (a work which has been translated into Indonesian), *al-Fiqh al-Muqārin* of Ḥasan Aḥmad al-Khaṭīb, *Fiqh al-Shī'ah* of Muḥammad al-Khalkhālī, *al-Fiqh 'alā Madhāhib al-Khamsah* of Muḥammad Jawād Mughniyyah, *Kitāb al-Kharāj* of Abū Yūsuf, *Fiqh al-Mu'āmalāt 'alā Madhhab Imām Mālik* of Ḥasan Kāmil al-Maṭāwī, *al-Islām: 'Aqīdah wa Sharī'ah* and *Muqāranāt al-Madhāhib fī al-Fiqh* (with Muḥammad 'Alī Sāyis) and *al-Fatāwā* of the reformist Maḥmūd Shaltūt, *al-I'tiṣām* and *al-Muwāfaqāt fī Uṣūl al-Aḥkām* of Shāṭibī, *Kitāb al-Fiqh 'alā Madhāhib al-Arba'ah* of Jazīrī, and *Bidāyat al-Mujtahid* of Ibn Rushd. According to Van Bruinessen, the *Bidayah* was for

Qayyim al-Jawziyyah, which were at an early time condemned as controversial, now receive a great deal of attention from Indonesian Muslims. These trends are very likely similar to those in any other Muslim countries. As Nour puts it:

> This [the non-commitment to one particular school] can be very clearly illustrated by the syllabuses and the comparative mode of teaching adopted by the faculties and schools of *shari'a* and law almost all over the Muslim world. It can also be traced in the modern works on Islamic law where a comparative approach is generally observed.[210]

But there still remains a problem: What kind of Islamic law should be implemented? According to Boland, there are at least five solutions to this problem, as proposed by Indonesian Muslims:

> a. Those who exclusively want to stick to the Shāfi'ī school of law, probably a diminishing number of older *ulamas*, who, however, are still powerful, particularly in the religious courts; b. A group of scholars who are also prepared to make use of the three other schools (Ḥanafī, Mālikī, Ḥanbalī) when their regulations are to be preferred to those of the Shāfi'ī school; c. Those, who moreover, want to use certain opinions held by earlier (now extinct) schools of law, e.g. concerning a literal or symbolical interpretation of some verses of the Qur'ān; d. Those who adhere to the "new *idjtihād*,"...; e. Even more extreme is the group of those who want to go back to the Qur'ān as the only source of religious law, and leave the decision to the individual in all cases which are not provided for in the Qur'ān.[211]

The above remarks by Boland reflect also the notion that there was a conflict between those who wanted to base their ideas completely on the earlier jurists (i.e. those of the

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the first time used by the *kaum muda* of Minangkabau. In the 1920s, says Van Bruinessen, the *kaum muda* wrote a great deal on *uṣūl al-fiqh* referring to Suyūṭī's *al-Ashbāh wa al-Naẓā'ir*, Shāfi'ī's *Risālah*, and more specifically Ibn Rushd's *Bidāyah*; see Van Bruinessen, "Kitab Kuning," 250.

[210]Alhaji A.M. Nour, "The Schools of Law: Their Emergence and Validity Today," *Journal of Islamic and Comparative Law* 7 (1977), 66-7.

[211]Boland, *Islam in Modern Indonesia*, 165.

Shāfi'ī school) and those who preferred to liberate themselves from strict adherence to a certain legal school; while the former were referred to as traditionalists, the latter were known as reformists. In the words of Mukti Ali, Indonesian Muslims were generally divided into two groups: the "people of *madhhab*" and the "people of *ijtihād*."[212] In the process of exercising *ijtihād*, traditionalists look for the answer to a problem directly in works on *fiqh*, comparing and analysing the different ideas found therein. The reformers for their part adopt a different method, looking directly at the Qur'an or Sunnah in order to find an answer to the problem under review.[213] This difference in methods has often brought the two sides into a polemic and even open conflict.

Nevertheless, efforts at reform continue apace. This can be witnessed in the use of works on *uṣūl al-fiqh*. According to Van Bruinessen, the subject of *uṣūl al-fiqh* is quite new among Indonesians and has for the first time received serious attention from the reformists (*kaum muda*), who have used *uṣūl al-fiqh* to combat the traditional

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[212]A. Mukti Ali, *Alam Pikiran Islam Modern di Indonesia* (Yogyakarta: Yayasan Nida, 1969), 31-2.

[213]Mukti Ali is of the opinion that this contrast was much clearer in the early stages of the reform movement, but now is no longer important. What is more, a synthesis of the two groups has already been achieved; thus, both try to base their ideas of Islamic law on the Qur'an and Sunnah; see Ali, *Islam Modern di Indonesia*, 31-2; Boland, *Islam in Modern Indonesia*, 214-5. Van Bruinessen has come to agree with Mukti Ali's idea, saying that at the present time "the dividing line between 'modernist' and 'traditionalist' no longer is so sharp and clear, and many of the old antagonisms have worn off"; see Van Bruinessen, "Kitab Kuning," 227-8. In the words of Rahman, "the original gap between the traditionalists...and the reformists...has been almost closed, and I myself have heard certain prominent members of the former discussing not just the theoretical possibility, but actual ijtihād solutions to certain social problems"; see Rahman, *Islam and Modernity*, 128.

bid'ah and *khurāfah* and to promote the belief that the gate of *ijtihād* is not necessarily closed. In the *pesantrens*, it was K.H. Mahfudz of Termas (d. 1919) who is regarded as having been the first to become an expert in the subject; the special subject of *uṣūl al-fiqh* was later included in the curricula of the *pesantrens*.[214] Interestingly enough, while the school of Shāfi'ī was the school of the early Indonesian Muslims, it is the case that one will find neither *al-Risālah* nor *al-Umm* (both works by Shāfi'ī himself) in the list of the *fiqh* and *uṣūl al-fiqh* books used in the *pesantrens*; the works of the later Shāfi'ī scholars are indeed more heavily depended on.[215]

In order to support the study of *uṣūl al-fiqh*, other subjects have received increased attention, among them Qur'anic exegesis (*tafsīr*) and the science of Sunnah (*muṣṭalaḥ al-ḥadīth*). As is the case with *uṣūl al-fiqh*, the study of the latter two subjects is of quite recent date; in fact, they have only begun to receive attention since the emergence of the reform movement, particularly in the twentieth century.[216] Perhaps this is one result of the reformist's slogan: back to the Qur'an and Sunnah. This does not mean however that the study of both Qur'anic exegesis and the science of Sunnah was neglected completely by the traditionalists; for one thing, the works

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[214]For the works of *uṣūl al-fiqh*, see Van Bruinessen, "Kitab Kuning," 250-1.

[215]According to Ahmad Hassan, the *kiyais* never read the works of Shāfi'ī himself; see his *Ijma', Qiyas, Madzhab, Taqlid* (Bangil: Lajnah Penerbitan Pesantren Persis, 1984), 69, 128.

[216]Van Bruinessen, "Kitab Kuning," 253, 255. See also Steenbrink, *Pesantren, Madrasah, Sekolah*, 166.

on these subjects, such as *Jalālayn* and *Arba'īn*, have long been included in the curriculum of the *pesantrens*.[217] Moreover, works on *fiqh* include a great many Qur'anic and Sunnaic texts in the course of their discussion of legal topics; thus, it would have been impossible for the religious teachers to explain the contents of the works on *fiqh* without some knowledge of Qur'anic exegesis and the science of Sunnah. The reform movement has been influential in other ways too. Later on, for instance, reformist Qur'anic exegesis in particular was very much read by Muslims.[218] In terms of Sunnah, there is a growing consciousness among Muslims to use tradition more selectively. The controversy over the origin of Sunnah, an issue which has sparked one of the most heated debates among Western scholars,[219] is receiving even more serious attention on the part of Muslims in Indonesia.[220]

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[217]For other works on *tafsīr* and *ḥadīth* used in the early history of the *pesantren*, see Van Bruinessen, "Kitab Kuning," 253-6.

[218]This includes *Tafsīr al-Manār* by Muhammad 'Abduh and Rashīd Ridā, *Tafsīr al-Marāghī* by Mustafā al-Marāghī, *Fī Zilāl al-Qur'ān* by Sayyid Qutb, *Tafsīr al-Qur'ān al-Karīm* by Maḥmūd Shaltūt, and *al-Tafsīr al-Bayānī lil-Qur'ān al-Karīm* by Bint al-Shāti'.

[219]On the controversy over the origins of the Sunnah, see Brown, *Rethinking Tradition*, chapter five titled "The Authenticity of Ḥadīth," 81-107; Akh. Minhaji, "Joseph Schacht's Contribution to the Study of Islamic Law" (M.A. thesis, McGill University, 1992), 38-55, 73-104; idem, "Hukum Islam di Mata Sarjana Barat," in *Islam Berbagai Aspek: Didedikasikan untuk 70 Tahun Prof. Dr. H. Munawir Sjadzali, M.A.*, ed. Sudarnoto Abdul Hakim (Yogyakarta: LPMI, 1995), 63-79; idem, "Some Scholars' Responses to Joseph Schacht's Thesis Regarding the Authenticity of Prophetic Tradition," *UNISIA* (April 1992), 13-21.

[220]It is important to note that in December 1993, a meeting was held in the Pesantren al-Hikmah of Brebes (Central Java). This meeting finally recommended, among other things, that Muslims not use works which contain fabricated *ḥadīth*, a conclusion which received a very negative response from those on the traditional side; see "Hadis Palsu dalam Kitab Kuning," *Tempo* (15 January 1994), 34.

In concluding our investigation of the historical background of Islamic legal reform, there are at least two important points that need to be underlined here. In the first place, the policy of the Dutch colonial regime towards Islamic law provided a significant, albeit unintentional stimulus to the movement for Islamic legal reform. Secondly, the unorthodox or even un-Islamic character that was perceived as dominating early Islam in Indonesia provided an important incentive to the emergence of the reformists. Conflict between the latter and the targets of their reformist zeal, i.e. the traditionalists, was therefore unavoidable. It was in this atmosphere that Ahmad Hassan, whose ideas for the main focus of the present study, was born and grew to adulthood. In what follows we will see why Hassan came to be regarded as the most ardent of the Indonesian reformists.

CHAPTER TWO

CHAPTER 2
AHMAD HASSAN: A BIOGRAPHICAL SKETCH

Since it is not my intention to write a complete account of Hassan's life, career, and works, I will limit myself to providing a sketch of certain significant events therein, concentrating especially on those factors that are necessary for our understanding of his background as a religious scholar (*'ālim*)--particularly those relating to his career in Islamic legal reform.

A. Background and Personality.

Hassan was born in 1887 at Tamil in Singapore and came from a moderately religious and educated family.[1] His mother was Hajjah Muznah, who was born in Surabaya (East Java) to a family that came from Palekat (Madras, India), one of very modest means by the standards of Surabaya, but "... devout and attached to religious learning."[2] His father, Ahmad, was born in Singapore and married Muznah after meeting her while on a trading mission in Surabaya.[3] Both lived in Singapore until

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[1]Noer, "Hassan," 99.

[2]Noer, *Modernist Muslim Movement*, 86.

[3]Ahmad first married a woman from Nagore who gave birth to five children: Khadijah, Ghani Nachiar, Hastan, M. Naina and Yahya. In 1909 Ahmad took a second wife, an Indian woman, Qadribi who gave birth to a daughter, Zainab. Muznah was his third wife who bore him the following children: Maryam, Maimunah, Zuleikha, and their only son, Hassan; see Noer, "Hassan," 120-1.

the end of their lives.[4]

On one occasion Hassan gave an account of the origins of his ancestors to his student, Tamar Djaja. In it, Hassan's paternal ancestors are described as having migrated from Egypt to India, about 500 to 600 years before the birth of Hassan's father, Ahmad, and settling in Madras for trading purposes. Here, they built a village called Qahirah, later called Qahiri Patnam or Kail-Patnam. This family, according to Hassan's account, was responsible for spreading Islam from Madras to its hinterland.[5]

According to yet another narrative, Hassan's Egyptian ancestor was reportedly the descendant of a Yemenite vizier, whose name was Dawlah, later transformed into Dawalah. The name Dawalah was also used by Hassan's father during his lifetime.[6]

Hassan also tells of how his father juggled many important careers. He was well known as a writer in the Tamil language, was the editor of a Tamil religious and literary journal *Nurul Islam* (The Light of Islam) and also translated Arabic and

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[4]Djaja, "Riwayat Hidup," 1266. Based on his father's name, one might assume that Ahmad Hassan's full name should rightly be Hassan bin Ahmad or Hassan Ahmad; but this is not the case, for, according to Hassan's letter to Pijper, his name followed the pattern common to Indian people who put their father's names in front of their own; see Pijper, *Sejarah Islam di Indonesia*, 126. Without citing any reference, Dadan Wildan writes that the name Ahmad Hassan followed the pattern of people in Singapore; see Dadan Wildan, *Sejarah Perjuangan Persis 1923-1983* (Bandung: Gema Syahida, 1995), 37 note 19. Hassan himself wrote his name Ahmad Hassan in Latin script, whereas in Arabic characters he wrote Hassan bin Ahmad; see e.g. A. Hassan, *al-Furqān fī Tafsīr al-Qur'ān* (Surabaja: Salim Nabhan, 1956) in which he wrote his name in both Latin and Arabic differently. See also "Hassan Bandung," in *Ensiklopedi Islam di Indonesia.*

[5]Djaja, *Hassan*, 16; Anshari and Mughni, *Wajah & Wijhah*, 17. According to Noer, the name of the place was Kahlil Patnam; see Noer, "Hassan," 99.

[6]Noer, "Hassan," 100.

Persian works into Tamil. All these works dealt with Islamic teachings. Ahmad also held frequent debates with others on religion and language and devoted a section in his journal to questions and answers on religious issues.[7] Because of his extensive religious knowledge, Ahmad was given the title *Pandit*.[8] As we shall see later, Ahmad's background and that of his family had a significant influence on his only son, Hassan, who was expected to become a religious leader in his own turn.[9]

Hassan began his education in his home village of Kapur in Singapore. He received a classical religious education from his father, who placed emphasis on language; Hassan was eventually to learn Tamil, Malay, English, and Arabic. At about 6 years of age, he went to a Malay school in the Arab street, in which he stayed until grade 4 only, while at the same time attending an English school known as the Victoria Bridge School in Geylang, also until grade 4.[10] There is every indication therefore that Hassan never finished his elementary schooling, let alone the higher levels of education such as junior or senior high school or even university.

Nonetheless, Hassan's background in Islamic religious teaching is beyond doubt. It was common for children in his village to take religious instruction from an early age. Like many other children, he at first learned how to read the Qur'an from

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[7]Mughni, *Hassan Bandung*, 11.

[8]Noer, "Hassan," 99.

[9]Djaja, *Hassan*, 17; idem, "Riwayat Hidup," 1267.

[10]Widjaja, "Hassan: Pengarang," 35; Ajip Rosidi, *M. Natsir: Sebuah Biografi* (Jakarta: Girimukti Pusaka, 1990), 37; "Hassan Bandung," in *Ensiklopedi Islam di Indonesia*; Djaja, "Riwayat Hidup," 1266.

the famous teachers of his era, i.e. Ahmad at Bukit Tiung and Muhammad Thaib at Minto Road. In addition to the study of the Qur'an, he also learned about such other subjects as purification (*tahārah*), prayer (*salāh*), fasting (*sawm*), alms-tax (*zakāh*), and pilgrimage (*hajj*).[11]

Hassan continued his studies until 1910, when he was about 23 years of age. During the later stages of his education, he studied Arabic grammar (*nahw* and *sarf*) from Muhammad Thaib. Thaib considered him to be a very serious and hardworking student.[12] After finishing his studies with Thaib, he continued to receive instruction in Arabic with another teacher, Said Abdullah al-Musawi. At the same time he received instruction in religious subjects from a teacher well-known in Malaka and Singapore, Abdul Latif, and also from Shaykh Hassan, a scholar of Indian origin. It is worth noting that he did not study the religious sciences for a long period of time from any of his teachers; his knowledge of Arabic enabled him in fact to pursue these subjects on his own.[13] Said Abdullah rightly advised Hassan to develop a good background in the tools of study (in this case Arabic) in order to develop further his religious knowledge. Thus, although he never officially attained the highest levels of religious education, his formidable knowledge in the field was recognized by his

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[11]Mughni, *Hassan Bandung*, 12.

[12]Noer, "Hassan," 101.

[13]"Hassan Bandung," in *Ensiklopedi Islam di Indonesia*.

contemporaries.[14]

It was in Singapore that Hassan first came into contact with the reformist ideas which were later to contribute greatly to his radical program. For example, he knew four Indian religious leaders in his city, including his own father, who had adopted the reformist ideas advocated by the Wahhabis.[15] It was also in Singapore that Hassan came into contact with the reformist publications *al-Manār* (The Lighthouse) of Cairo, *al-Imam* (The Religious Leader) of Singapore, and *al-Munir* (The Illuminative) of Padang,[16] later published in Padangpanjang. By about 1914/1915, Hassan had already come across a book on *kafā'ah*[17] written by Ahmad al-Surkati, the founder of the reformist organization al-Irsyad,[18] and one of those who contributed to Hassan's personality and his radical reformist thought as well.[19]

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[14]Mughni, *Hassan Bandung*, 12. One may agree with Dr. Howard Federspiel that Hassan's lack of formal religious training may have influenced his intolerant attitude toward other scholars and their views.

[15]Noer points out that the other three Indians were Thabib Raja Alseroang, Abdul Rahim, and Jailani; see Noer, "Hassan," 110, while according to Mughni, they were: Thalib Rajab Ali, Abdurrahman, and Jaelani; see Mughni, *Hassan Bandung*, 19.

[16]*Al-Munir* was the first journal of the *kaum muda*, the reformists of Padang (West Sumatra).

[17]For more details on *kafā'ah*, see chapter four below.

[18]The complete Arabic name of the organization was Jam'iyyat al-Iṣlāḥ wa al-Irshād al-'Arabiyyah which later became Jam'iyyat al-Iṣlāḥ wa al-Irshād al-Islāmiyyah.

[19]Cis Attamimi, "Hassan Bandung," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 124. On Surkati and his role in al-Irsyad, see Affandi, "Ahmad al-Surkati"; Haikal, "Ahmad Surkati"; Pijper, *Sejarah Islam di Indonesia*, 114-26.

At some point in 1920/1921, Hassan decided to move to Surabaya in connection with the batik business owned by his uncle, Abdul Latif. Here, he witnessed the conflict between the *kaum tua* and the *kaum muda*. The *kaum tua* were led by, among others, Abdul Wahab Hasbullah who later participated in the establishment of the traditionalist organization Nahdlatul Ulama. The *kaum muda* were for their part under the leadership of two reformists: Mas Mansur, who established the reformist school Madrasah Hizbul Wathan, and Faqih Hasyim, who used the forum provided by al-Irsyad to spread his ideas for renewal.[20] These representatives of the *kaum muda* were reported to have been influenced by the reform ideas of Abdullah Ahmad, Abdul Karim Amrullah, Zainuddin Labay (all of whom come from Sumatra), and Ahmad al-Surkati (of Java).[21] In fact, when he was about to move to Surabaya, Hassan was warned by his uncle, Abdul Latif, not to join the activities of Faqih Hasyim who, in the eyes of Latif, was a follower of the heretical Wahhabi group.[22]

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[20]Noer, *Modernist Muslim Movement*, 226-7; Mughni, *Hassan Bandung*, 7-8.

[21]Mughni, *Hassan Bandung*, 16.

[22]Ibid., 15; Anshari and Mughni, *Wajah & Wijhah*, 18-9. In the era of Hassan, the term Wahhabi was mostly used to insult others or to accuse them of apostasy; see A. Hassan, "Kembali Lagi," *Pembela Islam* 1 (March 1952), 6-7; Aboebakar Atjeh, *Salaf: Muhji Atsaris Salaf, Gerakan Salafijah di Indonesia* (Djakarta: Permata, 1979), 65; A., "I'tiqad Al-Ba 'Alawi tentang Wahhabi," *Pembela Islam* 47 (June 1932), 7-11; J.M.B., "Mentjari Kebenaran," *Pembela Islam* 61 (May 1933), 20; Hamka, *Ayahku*, 105. For a similar case in India, see Usha Sanyal, "Are Wahhabis Kafirs? Ahmad Riza Khan Barelwi and His *Sword of the Haramayn*," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (Cambridge: Harvard University Press, 1996), 204-13. It has also been reported that when he met Abdul Wahab Hasbullah, Hassan was asked the religious argument for *talaffuẓ bi al-niyyah* (i.e. reciting *uṣallī* at the beginning of the prayer), a subject of heated debate between the *kaum muda* and the *kaum tua* in Surabaya.

Together with his relatives, Hassan planned to establish a textile plant in Surabaya. For this reason, he first went to Kediri (East Java) and then in 1924 to Bandung (West Java) to study weaving techniques at the government textile institute in order to equip himself with the skills needed. In Bandung, he lived with Muhammad Yunus, one of the founders of Persis. Because of his religious background, he was often asked to preach among the members of Persis. This audience was becoming increasingly receptive to his ideas. For this reason, he was encouraged by the members of Persis to stay in Bandung; in fact, the religious activities of Persis attracted Hassan and made him reluctant to return to Surabaya. He then proposed to his relatives that they set up the weaving mill in Bandung rather than in Surabaya, an arrangement to which they agreed. This effort unfortunately failed and he thereafter devoted himself exclusively to religious activities[23] and, as we shall see in the next section, became the most important religious leader in the history of Persis.

In February 1940, Hassan decided to move to Bangil (East Java). Bandung,

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Based on what he had learned in Singapore, his immediate reaction was to point out that the *talaffuẓ bi al-niyyah* was recommended (*sunnah*). Concerned however that he should be able to support this view with a text, he searched through the Qur'an and Sunnah, but was unable to find anything that justified his position. His thinking underwent a sudden change of direction. Hassan, who had previously supported the *kaum tua* on the issue of *talaffuẓ bi al-niyyah*, became convinced that the practice was *bid'ah*, for it had no basis whatsoever in either the Qur'an or Sunnah. His adoption of the interpretation favoured by the *kaum muda* brought him many friends from among the *kaum muda*, most especially Faqih Hasyim; see Anshari and Mughni, *Wajah & Wijhah*, 19; Mughni, *Hassan Bandung*, 17; Djaja, *Hassan*, 21-2.

[23]Djaja, "Riwayat Hidup," 1268; Mughni, *Hassan Bandung*, 16.

according to him, was not conducive to the life of students (*santris*), for it was too expensive to stay in such a big city; moreover, there were many distractions and places of entertainment common to a big city which drew them away from their studies.[24]

In order to have a clearer picture of Hassan, the reformist and legal scholar, it is important to understand his attitude and personality. Influenced by his father's example, Hassan was always concerned with providing for the financial needs of his family. He took various jobs such as textile worker, perfume seller, jewel trader, agent for the distribution of ice, vulcaniser, and clerk in the Jeddah Pilgrims Office. Like his father, he always encouraged his children, his disciples, and his friends to support their families through their own efforts.[25] This attitude was seen as a serious criticism to the most traditional religious leaders who, as is also common in other Muslim countries, had considerable control over the local economy through the gifts of the faithful such as charitable deeds (*ṣadaqah*, *zakāt al-māl*, and *zakāt al-fiṭr*) and investment in land and commerce; as a result they led a more comfortable life compared to others. It is not surprising therefore that these charities, which were originally aimed at overcoming the poverty of society (*ummah*) as a whole, were not achieving their intended goals; the wealth accumulated instead within the small circle

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[24]Ahmad, "Mengenal A. Hassan," 134.

[25]Noer, *Modernist Muslim Movement*, 14; Djaja, "Riwayat Hidup," 1267-8.

of the religious leaders.[26]

Hassan also offended the religious establishment in another way. In contrast to the vast majority of traditional scholars who, particularly in Java, were (and still are) called *Kiyai*,[27] Hassan preferred the title *Tuan* (Mr.); at the same time, he also addressed others by the same title, *Tuan*.[28] The title *Tuan* was intentionally chosen by him to symbolize the equal status of scholars and the people; i.e. he saw himself as occupying the same position as everyone else and in no way distinct from others. Besides, contrary to the practice of most of the religious leaders of his era, who commonly had more than one wife at a time, Hassan married only once in his lifetime.[29] Indeed, although he repeatedly defended the Islamic doctrine of polygamy

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[26]Djaja, *Hassan*, 17, 36, 151; McVey, "Islam in Indonesian Politics," 209; Geertz, "Javanese Kijaji," 234; Nourouzzaman Shiddiqi, "The Role of the '*Ulamā*' during the Japanese Occupation of Indonesia (1942-45)" (M.A. thesis, McGill University, 1975), 14. For more information on the tendency of the '*ulamā*' to monopolize the economy, see Nikki R. Keddie, ed., *Scholars, Saints, and Sufis: Muslim Religious Institutions in the Middle East since 1500* (Berkeley: University of California Press, 1972), 149-209; Green, *Tunisian Ulama*, 10-3, 41-68, 76-100; and Moshe Ma'oz, "The 'Ulamā' and the Process of Modernization in Syria During the Mid-Nineteenth Century," *Asian and African Studies* 7 (1971), 77-88.

[27]On the origin and function of the *kiyai*, see Dhofier, *Tradisi Pesantren*, 55-60, 135-47, 171-7; Mastuhu, *Dinamika Sistem Pendidikan Pesantren: Suatu Kajian Tentang Unsur dan Nilai Sistem Pendidikan Pesantren* (Jakarta: INIS, 1994), 126-35; Steenbrink, *Pesantren. Madrasah, Sekolah*, particularly chapter two, "Profil Guru Agama Modern," 103-64; Geertz, "Javanese Kijaji," 232-49.

[28]Djaja, *Hassan*, 54, 98.

[29]In 1911, he married a Tamil woman, Maryam, who gave birth to his seven children: Abdulkadir, Jamilah, Abdul Hakim, Zuleikha, Ahmad, M. Said and Mansur; see Mughni, *Hassan Bandung*, 22; Djaja, *Hassan*, 150-1. Djaja may be correct in saying that the Indonesian religious scholars in the era of Hassan used to have four wives; some even having more than four. In practice, however, they divorced one of them and married a new one, divorced another of them and married again, and so on.

against the Nationalists, Hassan did not himself indulge in the practice. He criticized by his own example those religious leaders who married more than one wife only for the purpose of releasing their animal desires, without concern for the restrictions that were imposed concerning the permissibility of polygamy. The phenomenon of polygamy was common among Muslims not only in Indonesia but also in other countries.[30]

According to Mohammad Natsir, one of Hassan's best students, Hassan always encouraged people to live according to Islamic teachings, and to live in a simple and humble way. In terms of his personal finances, he was neither rich nor poor, but led a simple life all the same.[31] He once made the now famous statement: "There is no better life than in following religious doctrine; be good to everybody; be ready to help others; love each other; avoid hatred and hard feelings; we do not need to make our opponents our enemies; we must acknowledge the truth even from our enemies. The Qur'an and *hadīth* are the only guidance for our life."[32] Hassan was reported to have

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Thus, they may have formally had four wives, but in practice they had quite a number of wives in the course of a lifetime; see Djaja, *Hassan*, 150-1.

[30]Helmut Gätje, "Modern Qur'ānic Exegesis," in *The Qur'ān and Its Exegesis*, trans., ed. Alford T. Welch (London: Routledge & Kegal Paul, 1976), 252.

[31]Mohammad Natsir, "Sambutan," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 9.

[32]Djaja, *Hassan*, 13; idem, "Riwayat Hidup," 1269; Fuad Muhd. Fachruddin, "A. Hassan Dipandang dari Jauh," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 158. In his *An-Nubuwwah: Bukti-Bukti Kebenaran Nabi Muhammad S.A.W.* (Jakarta: PT. Bina Ilmu, 1977) and *Benarkah Muhammad Itu Rasul?* (Bangil: Persatoean Islam, n.d.), Hassan elaborates at length upon the personality and character of the Prophet Muhammad; these may even have had an influence on Hassan's daily life.

been influenced by the famous advice of Imām Mālik: *la yaṣluhu ākhiru hādhihi al-ummah illā bimā ṣaluha bihi awwaluhā.*[33]

Hassan's personality also comes across in his publications. As Federspiel has pointed out, his writing "is sharp, clear, argumentative to the point of being querulous, and direct to the point of being uncompromising. He regarded these features as virtues, seeing himself as applying Islamic teaching to the problems faced by Muslims of his day."[34] Moreover, his writing is also straightforward: "the sureness of his writing is striking, as is the militant tone he used against the arguments of his opponents when he castigated them for not believing as he did."[35] Thus, he had a strong personality and an uncompromising integrity which sometimes led him to take extreme positions. In order to defend his beliefs, Hassan engaged in polemics or in open debates with his opponents.[36] Indeed, his ideas and his popularity in promoting his teachings appealed not only to Muslims but also won the respect of non-Muslims such as Christians and Communists. His mastery of logic (*mantiq*) was admitted by many who witnessed his ability to defeat easily his "adversaries" during the

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[33]"The end of this nation will not be reformed except by what reformed its beginning"; see Attamimi, "Hassan Bandung," 124.

[34]Howard M. Federspiel, "Islam and Nationalism," *Indonesia* 24 (1977), 41. An offer to engage in open debate was addressed by Hassan to any individual or group who challenged his ideas. For more details, see chapter five below.

[35]Federspiel, "Islam and Nationalism," 41.

[36]Natsir, "Sambutan," 9. See also "Perdebatan 'Pembela Islam' dan 'Ahmadijah Qadian'," *Pembela Islam* 57 (January 1933), 40-1; 62 (June 1933), 18; Widjaja, "Hassan: Pengarang," 37.

debates.[37] It is generally admitted that his aptitude in writing, polemics and debate was so remarkable that he was able, for instance, to make Sukarno, who earlier in his career had attacked Islam as being incompatible with the nature of the modern state, become increasingly interested in studying Islam.[38] It has been reported also that he always carried with him a book containing an alphabetical listing of the controversial issues among Muslims and answers to them as found in the works of earlier scholars and especially in the Qur'an and Sunnah.[39] He was regarded therefore as an unparalleled dialectician and polemicist.[40]

His style of writing and the polemics he addressed to his opponents seem sometimes to be harsh in tone and unusual for religious circles. For instance, during the polemics between him and those who opposed the use by women of the veil, Hassan argued:

> This problem is very important. So, I hope to be able to meet the Aliran Baroe, its Syaihul Islam, its Mufti, and its fanatic followers including Mr. Husain Bakri of Pekalongan to discuss the point.... This invitation can be seen as an offer to claw, to debate, or even to fight between us.... If the Aliran Baroe feel that their view is true according to Islamic teaching, they should not

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[37]Djaja, *Hassan*, 9, 13; Widjaja, "Hassan: Pengarang," 38.

[38]"Hassan, Guru Para Ulama dan Pemimpin Bangsa," *Republika Online*. For the dialogue between Hassan and Sukarno, see, for instance, Sukarno, *Di Bawah Bendera Revolusi*, vol. 1, particularly section titled "Surat-Surat Islam dari Endeh," 325-44. See also Muhammad Ridwan Lubis, *Pemikiran Sukarno tentang Islam* (Jakarta: CV. Haji Masagung, 1992), 213-5, 221, 254.

[39]Anshari and Mughni, *Wajah & Wijhah*, 31; Djaja, *Hassan*, 15; idem, "Riwayat Hidup," 1267; "Hassan Bandung," in *Ensiklopedi Islam di Indonesia*.

[40]Djaja, *Hassan*, 13, 27-8.

hesitate to meet us in a special forum under the supervision of a jury.[41]

Thus, Hassan was not tolerant of those whom he considered to be violating Islamic teachings and was said to be courageous, bold and daring, expressing his views without fear or favour. Indeed, he is still remembered as having been one of the outstanding debaters of his time: skilful, intelligent, articulate, and able to develop arguments that destroyed or invalidated many innovations (*bida'*). Under his leadership, Persis was known as an organization which espoused radical reform ideas and which was always ready to challenge those who were seen to have violated or attacked Islamic teachings, whether Muslims or non-Muslims.[42] Perhaps because of his radical approach to reform and his harsh judgement of others, he has sometimes been compared with the great thirteenth century reformer Ibn Taymiyyah.[43] Like Ibn

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[41]A. Hassan, *Risalah Kudung* (Bandung: Persatuan Islam, 1956), 70.

[42]Noer, "Hassan," 109. The following Arabic proverb seems to have inspired Hassan's worldly outlook: *qul al-haqq walaw kāna murran* (tell the truth, though it may be bitter). The following example will give an idea of the radical approach of Persis under the leadership of Hassan. From the time he was in Bandung, Hassan made it a practice to perform Friday prayer (*salāt al-jum'ah*) which was attended by Persis members only. The content of the sermon (*khutbah*) of the Friday prayer usually consisted of encouraging the audience to return to the teachings of the Qur'an and Sunnah and at the same time attacked the common practices of innovation (*bid'ah*), superstition (*khurāfah*), and the tendency to follow one or another particular legal school. Contrary to the common practice of that era, the sermon was delivered in the Indonesian language rather than in Arabic. The fact that the sermon was directed at non-Persis Muslims was an issue that attracted those who stood outside the movement as well as others from among the local authorities. The government official of the district (*pihak kabupaten*) even asked Persis to put an end to this policy during the sermon, but the request was rejected by the organization; see Noer, "Hassan," 118.

[43]Z.A. Ahmad, "Sumbangan yang tak Ternilai dari Tuan Hassan," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 131. Some important remarks on Ibn Taymiyyah's personality and his attitude towards others may be found

Taymiyyah,[44] he rejected any compromise with those who violated Islamic teachings, emphasized the important position of the early generation (*salaf*) compared to the later generations (including the schools' eponyms), and accentuated the absolute supremacy of the Qur'an and Sunnah as the only sources of religious inquiry.[45] His radical approach towards reform is still kept alive by his disciples even today.[46]

Although he was regarded as having a very stern personality and as being sharp-tongued in both print and open debate, Hassan was quite simple, humble, and sincere in his daily life; his criticisms were in fact never on a personal level.[47] Tamar Djaja describes him as "fierce in writing but refined in friendship."[48] His relationship with Sukarno is a clear example in point. Although he bitterly criticized Sukarno for promoting nationalism (which, in Hassan's view, was identical to *'aṣabiyyah*), Hassan always sent books and food to Sukarno when the latter was incarcerated in the jail at

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in Donald P. Little, "Did Ibn Taymiya Have a Screw Loose?" *Studia Islamica* 41 (1975), 93-111; idem, "The Historical and Historiographic Significance of the Detention of Ibn Taymiya," *International Journal of Middle East Studies* 4 (1973), 311-27.

[44]See, for example, Muhammad Umar Memon, *Ibn Taymiya's Struggle against Popular Religion* (The Hague: Mouton, 1976).

[45]Anshari and Mughni, *Wajah & Wijhah*, 62-5; Abdulkadir Hassan, *U-shul Fiqih* (Surabaja: Al-Muslimun, 1956), 120-1.

[46]The journals *Al-Muslimun* of Pesantren Persis (Bangil) and *Media Dakwah* of the Dewan Da'wah Islam (Jakarta) are among the more important periodicals that currently reflect Hassan's approach.

[47]Anshari and Mughni, *Wajah & Wijhah*, 29-30. Based on his personal experience, Federspiel says that this warm friendship has become one of the important characteristics of Persis' leaders in both Bandung and Bangil.

[48]Djaja, *Hassan*, 14.

Sukamiskin (Bandung) and even when he was exiled to Endeh (Flores) by the colonial authorities.[49] This being the case, it is natural then that most, if not all, of Hassan's friends and disciples each saw himself as being his best friend or as having the closest relationship with him. Consider, for example, the following statement of one of his students: "It may be true that I am the last to have met him [Hassan], but I am certainly his close friend and included among those who really understand his life and personality."[50] Moreover, he was not always close-minded but could, on occasion, change his viewpoint once he saw a new approach to a problem.[51]

According to Sati Alimin,[52] it may be true that there have been other scholars as knowledgeable as or even more so than Hassan, but his courage and toughness in conveying his ideas to those whom he considered to be violating Islamic values were qualities not shared by other scholars; this made Hassan different from other religious scholars, even from other reformists.[53] It is also of great importance to point out that Hassan successfully taught his own seven children;[54] indeed, his sons and daughters

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[49]For a short but good account of Hassan's relationship with Sukarno, see "Hassan, Guru Para Ulama dan Pemimpin Bangsa," *Republika Online*.

[50]Djaja, *Hassan*, 5. This was also the case with Z.A. Ahmad who claimed to be the very close friend of Hassan; see Ahmad, "Mengenal A. Hassan," 130.

[51]A. Hassan, "Riba Bank," *Pembela Islam* 51 (15 September 1932), 74; Rosidi, *Natsir*, 29-30; Dusky, "Hassan: Kenangan," 14; Attamimi, "Hassan Bandung," 126.

[52]H.D.P. Sati Alimin, "Guru Kita A. Hassan," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 138.

[53]Dusky, "Hassan: Kenangan," 14-5.

[54]Anshari and Mughni, *Wajah & Wijhah*, 41.

never took religious instruction from anyone except him. His son Abdulkadir, for example, was taught in this fashion, and has since become known as his father's disciple, continuing Hassan's mission through his leadership of the Pesantren Persis of Bangil. This type of education is considered by many as remarkable; seldom does one find a family where, as in Hassan's, all of the children have received an education without outside help.[55]

Two years before his death, in 1956, Hassan went to Mecca to perform the pilgrimage in the company of some of his close students and friends, all of whom were members of Persis.[56] Unfortunately, he fell ill during the pilgrimage and could not even manage to perform the *jamrat al-'aqabah* (the practice of throwing small stones). He was still sick when he arrived back in Bangil, and some time later one of his feet became infected and had to be amputated. On Monday, 10th November 1958, Hassan died at the age of 71 years and was buried at Bangil.[57]

B. Career.

Hassan's background and personality provided a solid foundation for his career as a reformist and enabled him to acquire later on a prestigious position in religious circles. In Singapore, he at first taught at the religious school for people of Indian origin in the Arab Street and also at religious schools in Baghdad Street and Geylang.

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[55]Widjaja, "Hassan: Pengarang," 39.

[56]They were: Isa Anshari, Abdurrahman, Emzita and his wife, Tamar Djaja, Tamim and his two wives; see Djaja, *Hassan*, 32.

[57]Mughni, *Hassan Bandung*, 22; Djaja, *Hassan*, 32-3.

Later, he took the place of Fadhlullah Suhaimi as the principal teacher at the religious school by the name of Assegaf in Sultan Street.[58] He also taught Malay and English at schools in Pontian Kecil, Sanglang, Benut, and Johore. During the years 1912-1913, he worked on the staff of the Singapore daily newspaper *Utusan Melayu* (The Malay Messenger), published by Inche Hamid and Sa'adullah Khan. He later became a regular contributor to this newspaper, writing articles concerned for the most part with ethical problems but presented mostly in verse. During this period of his career he also wrote a four volume work entitled *Tertawa* (Laughter), a book of humor.[59]

In Singapore, Hassan was always ready to serve as a preacher (*dā'in, muballigh*) when asked to do so. He even had a reputation as a radical preacher, and in one of his sermons he went so far as to accuse Muslim society of being backward. This criticism was considered to have been political in inspiration, and as a result he was banned from preaching for a certain period.[60]

When he became involved with Persis in Bandung, he quickly came to be regarded as a distinguished teacher and was even considered Persis' most articulate and eloquent spokesman.[61] What is more, he was also known as the chief person responsible for the orientation of Islamic teaching in Persis; in fact, his views are

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[58]Noer, "Hassan," 103.

[59]Widjaja, "Hassan: Pengarang," 36; Noer, *Modernist Muslim Movement*, 86; Mughni, *Hassan Bandung*, 14; Djaja, *Hassan*, 102; idem, "Riwayat Hidup," 1267; Ridwan Saidi, *Islam dan Nasionalisme Indonesia* (Jakarta: Lembaga Studi Informasi Pembangunan, 1995), 55.

[60]Mughni, *Hassan Bandung*, 14.

[61]Federspiel, *Persatuan Islam*, 13; Pijper, *Sejarah Islam di Indonesia*, 126-9.

regarded as having given "real format and individuality to the organization and clearly placed it in the modernist camp."[62] His influence on Persis as a whole and on its individual members was so strong that people often identified the organization with him.[63] Under his leadership, Persis was even seen "as more extreme than the others in its position, making itself the spearhead of the reformist movement."[64]

Hassan's contribution to the development of Persis was not limited to his fiery oratory. He also established a religious school to teach Islamic values to the younger generation. In 1925, he gave a course for the party intellectuals of Persis in which he discussed the religious problems of the day. At the same time, he organized a course for members of Persis (which was later offered to the public) designed to provide instruction in Islamic teachings concerning both *'ibādāt* and *mu'āmalāt*. Moreover, in 1936, under the umbrella of Persis, he founded the pesantren at Bandung, the chief aim of which was to provide its students with religious knowledge sufficient to allow them to preach Islam as well as defend it from its enemies.[65] He also established Pesantren Kecil (literally: small *pesantren*), designed to instruct young children in

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[62]Federspiel, *Persatuan Islam*, 13, 28.

[63]Anshari and Mughni, *Wajah & Wijhah*, 19; "Persatuan Islam," in *Ensiklopedi Islam*, ed. Kafrawi Ridwan et al. (Jakarta: PT Ichtiar Baru van Hoeve, 1993); Wildan, *Perjuangan Persis*, 36.

[64]Mudzhar, *Fatwās*, 22.

[65]Hassan laid down a number of requirements that had to be met by those who would study at either of these *pesantrens*: the prospective students had to be 18 years of age or over, able to read both the Arabic and Roman alphabets, and have at least an elementary level grounding in mathematics.

Islamic values.[66] No less important was his practice of writing religious books and articles, and issuing *fatwās* answering questions from Muslims across the country. Bandung, which had previously had the reputation among tourists as the *Paris van Java*, came to be known, through Hassan's efforts, as the centre of militant Islam.[67]

As has briefly been pointed out,[68] Hassan was frequently invited by the Majlis Fatwa Wattarjih of al-Irsyad and the Majlis Tarjih of the Muhammadiyah, both reform organizations, to discuss issues of Islamic law due to the fact that he was knowledgable in Islamic teachings.[69] The main purpose of these bodies in particular was to issue *fatwās* relating to the daily problems faced by Muslims. This also reflects the fact that the religious doctrines of al-Irsyad and the Muhammadiyah were similar to that of Persis in the sense that they promoted a reorientation of religious teachings. Nonetheless, one important characteristic of Persis was not shared by the other Islamic reform organizations. As Federspiel states:

> The major religious-oriented organizations existing in the pre-war period were not fitted for the role the Persatuan Islam chose for itself. Al-Irsyad, which had a similar purpose, limited its endeavors to the Arab population of the Indies and was plagued for years by internal dissension in the Arab community over the question of Arab prerogative in the Muslim community in Indonesia. The Muhammadiyah espoused modernist Muslim principles but, during the first twenty years, concentrated on educational and social welfare activities, and it was not until 1935 that attention was given to improving the religious belief and behavior of its members. The Sarekat Islam was almost always more concerned with political activities and gave only secondary attention to the

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[66]Mughni, *Hassan Bandung*, 69.

[67]Djaja, *Hassan*, 27.

[68]See pp. 2-3 above.

[69]Djaja, *Hassan*, 127; Latief Muchtar, interviewed by Fuad Zein.

purely religious aspects of the Islamic movement.[70]

When he moved to Bangil, Hassan continued the career that he had carved out for himself in Bandung; this included writing, giving *fatwās*, participating in debates and engaging in polemics on religious issues, and establishing one Pesantren Persis for men and another for women. As in Bandung, the students of the pesantren came from every corner of the country; some were even sent afterwards to al-Azhar in Egypt in order to complete their studies.[71] It is well-known that the success of Hassan's efforts in these two cities earned for him the titles "Hassan Bandung" and "Hassan Bangil."[72]

Finally, Hassan's deep knowledge of Islamic teachings can also be witnessed in his career as minister of religious affairs for the Negara Pasundan during the era of the Federal States of Indonesia (RIS).[73] Unfortunately, we have no detailed information on this aspect of his life. Indeed, because of his remarkable career, and because of his background and personality as discussed above, Hassan won

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[70]Federspiel, *Persatuan Islam*, 15. See also Djaja, *Hassan*, 176.

[71]Djaja, "Riwayat Hidup," 1269. On 15 October 1956, for instance, 21 students (*santris*) left for Egypt to continue their studies; see Mughni, *Hassan Bandung*, 18. For further information on the early development of Pesantren Persis, see Persis, *Pesantren Bagian Putera dan Puteri* (Bangil: Persatuan Islam, 1960).

[72]Fuad Muhd Fachruddin identified Hassan with the great inaugurator of Islamic reform, Jamāl al-Dīn al-Afghānī. Just as Iran and Afghanistan claim the honour of being the birth place of Afghānī, the people of Bandung and Bangil both claim to be the centre of Hassan's mission; thus Hassan is named both "Hassan Bandung" and "Hassan Bangil"; see Fachruddin, "Hassan Dipandang dari Jauh," 154.

[73]Ridwan Saidi, *Kepemimpinan Islam Indonesia: Kini dan Esok* (Jakarta: Penerbit Antar Kota, 1986), 42.

considerable repute as a scholar in Muslim circles, particularly in Java. It is generally acknowledged that the three most important reformers in Java over the last hundred years or so were Ahmad Dahlan (1868-1923) of the Muhammadiyah, Ahmad al-Surkati (1872-1943) of al-Irsyad, and Ahmad Hassan (1887-1958) of Persis.[74] Tamar Djaja for his part insists that Hassan was the most knowledgable religious leader not only in Java but throughout Indonesia and even claims to have asked some leading scholars to give their opinions on Hassan: they were unanimous in agreeing that Hassan's contribution to Islamic scholarship was significant and of a very high quality.[75]

C. Scholarly Works.

It should be stated at the outset that Hassan seldom mentions his references in his works. It is true that on some occasions he mentions the names of earlier scholars, but he does so without citing the works from which he derived his ideas. The references that he makes are mostly to the Qur'an and Sunnah; the ideas of earlier scholars are cited only to support his understanding of these sources. One may argue, however, that this style was intentionally adopted in order to emphasize the important position

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[74]Natsir, "Sambutan," 10; Hamka, *Pengaruh Muhammad Abduh*, 15-7, 22; Anshari and Mughni, *Wajah & Wijhah*, 9-10.

[75]Djaja, *Hassan*, 14, 36; Anshari and Mughni, *Wajah & Wijhah*, 31; Mughni, *Hassan Bandung*, 42. For some other comments on Hassan's significance, see Purnomo, "Studi tentang Pesantren Persatuan Islam Bangil sebagai Suatu Sistem Pendidikan" (Undergraduate thesis, IAIN Sunan Ampel, 1977), 61-3; Mughni, *Hassan Bandung*, 42, 52; Natsir, "Sambutan," 9-10; Ali Mohammad Siradj, "A. Hassan," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 62-4.

of, and the need to return to, the Qur'an and Sunnah as the only sources of Islamic teaching. This was the essence of what he taught throughout his life and was in line with his consistent anti-*madhhab* position. In spite of the scarcity of references, however, it is clear that there were many works that influenced Hassan's ideas, most of them either in Arabic or English.[76]

There is another aspect of his work that must be mentioned. Hassan relied to a great extent on the "question and answer" method (as is the common practice in *iftā'* and *istiftā'*) in writing his works.[77] Hassan (and Persis) "developed this form of writing more fully than other groups did."[78] He was also interested in the comparative approach of Ibn Rushd in his *Bidāyat al-Mujtahid*[79] and was influenced

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[76]M. Natsir, "Membina Kader Bertanggung Jawab," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 56. For a list of some of the Arabic and English works used by Hassan, see Hassan, *An-Nubuwwah*, 10, 47; idem, *Membudakkan Pengertian Islam* (Bangil: Toko Timoer, 1946), 131; idem, *Soal-Jawab*, vol. 2, 449; Noer, "Hassan," 113; Mughni, *Hassan Bandung*, 21.

[77]Howard M. Federspiel, "The Political and Social Language of Indonesian Muslims: The Case of *Al-Muslimun*," *Indonesia* 38 (1984), 59; idem, *The Usage of Traditions of the Prophet in Contemporary Indonesia* (Arizona: Arizona State University, 1993), 81. The Muhammadiyah has adopted this popular style of dialogue under the name *tanya-jawab*; see e.g. Majlis Tarjih, *Tanya Jawab Agama* (Yoyakarta: Penerbit Suara Muhammadiyah, 1991). It is also the case with the Council of Indonesian Ulama through its department known as Majlis Fatwa; see e.g. Majlis Ulama Indonesia, *Bunga Rampai I* (Jakarta: Sipress, 1992).

[78]Federspiel, *Persatuan Islam*, 22; idem, "The Case of *Al-Muslimun*," 59.

[79]For a discussion of *Bidāyat al-Mujtahid* particularly in relation to the discussion of Ibn Rushd as a jurist, see A.M. Turkī, "La place d'Averroès juriste dans l'histoire du mālikisme et de l'Espagne musulmane," in *Multiple Averroès: Actes du colloque international organisé à l'occasion du 850e anniversaire de la naissance d'Averroès, Paris 20-23 septembre 1976*, ed. J. Jolivet (Paris: Les Belles Lettres, 1978), 33-43; reprinted in A.M. Turkī, *Théologiens et juristes de l'Espagne musulmane: aspects polemiques* (Paris: G.-P. Maisonneuve et Larose, 1982), 282-93; Dominique Urvoy,

by the latter's approach in his discussion of religious issues.[80] Moreover, in contrast to earlier writings on Islam which had mostly been composed in *Arab Melayu* (Malay language in Arabic script) and which contained many Arabic terms and expressions, he consistently used the Malay language (*bahasa Melayu*) commonly used in Malaysia and some parts of Sumatra but written in the Roman alphabet. These works were very beneficial to those who knew only how to read Latin characters.[81] Beginning in 1929, he even introduced a system of transliteration from Arabic to Malay, a system which has, according to Roebaie Widjaja, been followed later by other writers.[82] Once again, in an effort to reach a greater audience, he responded to requests that he write in Sundanese, a language commonly used in Bandung (the centre of Persis), by asking two of his colleagues, Ajengan Anwar Sanusi and Muh. Djoenaidi, to translate his works into that language.[83]

Hassan's unwavering reliance on the Qur'an and Sunnah can also be seen in

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Ibn Rusd (Averroes) (London: Routledge, 1991), 64-8; Yasin Dutton, "The Introduction to Ibn Rushd's *Bidāyat al-Mujtahid*," *Islamic Law and Society* 1 (1994), 188-205; and Imran Ahsan Khan Nyazee and Muhammad Abdul Rauf, "Introduction" to *Ibn Rushd: The Distinguished Jurist's Primer* (United Kingdom: Garnet, 1994), xxvii-xlii.

[80]He came upon the *Bidāyah* of Ibn Rushd for the first time in Surabaya in the house of Bibi Wante, and the following day he bought the book and began to study it avidly; see Noer, "Hassan," 113; Mughni, *Hassan Bandung*, 20-1.

[81]Rosidi, *Natsir*, 31.

[82]Widjaja, "Hassan: Pengarang," 40. See also Howard M. Federspiel, *Popular Indonesian Literature of the Qur'an* (Ithaca: Cornel Modern Indonesia Project, 1994), 14.

[83]Rosidi, *Natsir*, 31-2.

the events surrounding two important articles written by him which are no longer available to us. The first was written in 1909, and it criticized the religious judge of Singapore (*Tuan Kadhi*) for reportedly questioning suspects in the same locale without separating men from women. This article received a favourable response from his fellow Muslims because no one had ever had the courage to criticize such an important officer as the *Tuan Kadhi*.[84] The second essay was written in 1918 and entitled "*Apa Hukum Mentjium Tangan Said?*" (What is the Rule on Kissing Sayyid's Hands?). In it he questioned the widespread practice of *taqbīl* (kissing the hand of a Sayyid). Because of this article, a group of Sayyids reported him to the local authorities; he was then summoned to court to defend his ideas. Here, he argued that there was no single Qur'anic or Sunnaic text which supported such a practice. He was acquitted of the charge.[85]

By 1917 Hassan, together with Hasyim Junus, had formed the intention of writing a book discussing certain issues from the sole perspective of the Qur'an and Sunnah. The implementation of this project however was postponed due to the fact that his ideas would offend those in his community who followed the Shāfi'ī school. He felt that he needed more time to study the issues before attacking the beliefs and

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[84]Djaja, "Riwayat Hidup," 1267; idem, *Hassan*, 18; Mughni, *Hassan Bandung*, 14.

[85]Mughni, *Hassan Bandung*, 21; Djaja, *Hassan*, 19, 11-2. An analysis of *taqbīl* in the context of Islamic law can be read in Brinkley Messick, "Kissing Hands and Knees: Hegemony and Hierarchy in Shari'a Discourse," *Law and Society Review* 22 (1988), 637-59.

practices cherished by his fellow Muslims.[86]

As mentioned earlier, Hassan saw himself as a defender of Islam; whenever his faith was attacked, he was ready to respond decisively. During the 1920's and 1930's, for instance, the Nationalist group often held public meetings in which its leading figure, Sukarno, frequently castigated Islam for being both unjust and a hindrance to the careers of women. Echoing these sentiments, the Isteri Sedar, the women's organization within the Nationalist group, held a meeting in Bandung led by Suwarni Pringgodigdo denouncing the doctrine of polygamy in Islam. Some members of Persis, including Mohammad Natsir, attended the meeting and tried to respond to these accusations; however, they were not given an opportunity to explain the Islamic teachings on any given subject. At the same time, in September 1928, the Christian missionary A.C. Christoffel gave a lecture on "Muhammad as a Prophet" in which he discredited the Prophet Muhammad. In their role as defenders of Islam, the members of Persis under the leadership of Hassan held a meeting and immediately decided to reply to the accusations of the Nationalist group and Christoffel. These were only some of the reasons why in March 1929 the Komite Pembela Islam (Committee of Islamic Defender)[87] was established, to which Hassan was appointed as an adviser. In October 1929, the Komite published its first periodical *Pembela Islam* (Defender of Islam), whose mandate was to disseminate Islamic values, and more importantly

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[86]Noer, "Hassan," 112; Mughni, *Hassan Bandung*, 21.

[87]For a detailed account of the objectives of the organization, see A. Hassan, "Asas dan Tujuan Comite Pembela Islam," *Pembela Islam* 1 (October 1929), 1-3; Rosidi, *Natsir*, 19-23, 47-8; Mughni, *Hassan Bandung*, 75-8.

to respond to any attack upon Islam and also to challenge such practices as Hassan considered contradictory to the Qur'an and Sunnah.[88] Seventy-one issues of this journal were published in all.[89] The name of the journal itself, according to Mohammad Roem, reflects the spirit of the times, when it was felt that Islam needed to be defended against the attacks of Westerners and of those Indonesians who had been influenced by Western ideas.[90] In November 1931, Hassan, under the umbrella of Persis, also began publishing a monthly journal entitled *Al-Fatwa* (Legal Opinion) written in the Malay language using Arabic characters. This journal was primarily aimed at promoting Islamic values especially among those who were not able to read Latin characters. The journal ceased with its twentieth number in 1933. It seems that financial reasons forced Hassan to discontinue the publication of both *Pembela Islam* and *Al-Fatwa*.[91] However, according to some writers, the journals ceased due to pressure from colonial officials, who accused the journals of being anti-Christian.[92] On 27 December 1935, Hassan launched a new journal entitled *Al-Lisaan* (The Tongue), which aimed at continuing the mission of both *Pembela Islam* and *Al-Fatwa*,

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[88]Atjeh, *Salaf*, 141; Saidi, *Kepemimpinan Islam*, 37-8; Mughni, *Hassan Bandung*, 75-6; Djaja, *Hassan*, 14; Noer, "Hassan," 114; H. Abubakar Atjeh, *Sedjarah Hidup K.H.A. Wahid Hasjim dan Karangan Tersiar* (Djakarta: n.p, 1957), 221.

[89]Publication of the *Pembela Islam* (also named *Himāyat al-Islām*) was reinstated by the Persis of Bangil in March 1956, but it was published until number 9 only; see Saidi, *Islam dan Nasionalisme*, 73.

[90]Mughni, *Hassan Bandung*, 83. See also Saidi, *Islam dan Nasionalisme*, 25-6.

[91]Rosidi, *Natsir*, 20; Noer, "Hassan," 114-5.

[92]Atjeh, *Wahid Hasjim*, 221; Saidi, *Kepemimpinan Islam*, 41; Federspiel, *Persatuan Islam*, 20.

though its approach was not as agitative as that of *Pembela Islam* and *Al-Fatwa*. Because of his eagerness to spread his ideas and to defend Islam from its enemies, Hassan continued this publication in spite of financial problems. The journal was published until number 65, ceasing just as the Japanese occupation got underway.[93] There were also other journals which promoted the radical ideas of Hassan (and Persis), including: *Al-Taqwa*, *Majalah Aliran Islam*, *Lasykar Islam*, *Daulah Islamiyah*, *Suara Ahlu Sunnah Wal Jamaah*, *Al-Hikam*, *Al-Muslimun*, and *Risalah*. These last two journals continue to be published even today; the former published by Persis out of Bangil, and the latter by Persis out of Bandung. Through these journals, Hassan's name became well-known throughout the country and even in neighbouring lands such as Malaysia, Thailand, and Singapore.[94] It has also been reported that some copies of *Pembela Islam* and *Al-Muslimun* were sent to Indonesians in Asia, Africa, America, and Australia.[95] It is true that Persis, to which Hassan belonged, did not have at the time a large number of followers, especially when compared to the Muhammadiyah and the Nahdlatul Ulama (NU); but the works of its leading figures, and particularly those of Hassan, were read by many outside Persis' membership. Those who belonged to other organizations were eager to read the publications of Hassan, either in order

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[93]Noer, "Hassan," 114-6.

[94]Widjaja, "Hassan: Pengarang," 39.

[95]F., "Sepatah Kata," *Pembela Islam* 1 (March 1952), 1; "Kiriman," *Pembela Islam* 15 (December 1930), 10-1; Federspiel, "The Case of *Al-Muslimun*," 59.

to adopt his new ideas or to counter them.[96]

It should be mentioned that, at first, other Indonesian journals were reluctant to publish Hassan's essays on the grounds that his ideas were too radical. He "was very hard in his judgments, and his writing style upset his opponents."[97] In the later period however there were certain journals (e.g. *Pandji Islam* of Padang) that accepted Hassan's contributions. Indeed, under the initials M.S., Hassan hit at his adversaries in short and pointed articles, many of which were collected into a two volume publication entitled *Kitab Pepatah*.[98]

As Federspiel has rightly observed, Hassan's religious doctrine emphasized the view that "man's relationship with God depended vitally on the correct interpretation of religious law."[99] Accordingly, man's relationship with God (*'ibādah*) and with other creatures (*mu'āmalah*) "emphasized the legal obligations of Islam."[100] The main duty of Muslims, according to Hassan, is to follow the commands of God dictated in the Qur'an and Sunnah as the only sources of Islamic teaching. This being so, it is not surprising that rigorous interpretation of religious law becomes the basis

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[96]Mohammad Roem, "Perpisahan Siswa Kelas VI Pesantren Persatuan Islam," *Al-Muslimun* 67 (October 1975), 18; Mughni, *Hassan Bandung*, 83-4; Saidi, *Kepemimpinan Islam*, 35; Atjeh, *Salaf*, 144; Wildan, *Perjuangan Persis*, 37 note 17.

[97]Noer, *Modernist Muslim Movement*, 94.

[98]Federspiel, *Persatuan Islam*, 25; A. Hassan, *Islam dan Kebangsaan* (Bangil: Persatoean Islam, 1941), vii; Rosidi, *Natsir*, 23; Widjaja, "Hassan: Pengarang," 37.

[99]Federspiel, *Persatuan Islam*, 14. See also M. Isa Anshary, Jusuf Wibisono, and Sjarif Usman, eds., *Bahaja Merah di Indonesia* (Bandung: Front Anti Komunis, 1955), especially section "Fatwa 'Ulama Persatuan Islam," 66-70.

[100]Federspiel, *Persatuan Islam*, 40; Widjaja, "Hassan: Pengarang," 36.

for describing what is properly Islamic and what is not, and that Islamic law, in Hassan's view, constitutes the essence of a religious doctrine which covers not only what is considered law according to the Western concept but also all aspects of human life.[101] Hassan elaborates his understanding of Islam in his works such as *Apa Dia Islam?* and *Ringkasan Islam*. Thus, Hassan was chiefly concerned to promote the application of Islamic law according to the Qur'an and Sunnah.[102]

In line with the above doctrine, *uṣūl al-fiqh* takes on a role of central importance in Hassan's works where he aims at elaborating legal theory as the key to correctly understanding Islamic teaching.[103] Based on his doctrine that Islamic law is the essence of this teaching, it is easy to understand that *uṣūl al-fiqh*, in his view, should constitute the basic theory not only for law in the narrow sense but also for all aspects of Islamic teaching. It is in this context that we comprehend Hallaq's notion that *uṣūl al-fiqh* is a science "which encompassed a system of thought

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[101]For the difference between law in Islam and law in Western society, see J.N.D. Anderson, "Conceptions of Law: Islamic and Western," in his *Islamic Law in the Modern World*, 1-16, reprinted in *Comparative Law of Israel and the Middle East: A Reader*, ed. Nicholas N. Kittrie (Washington: Lerner Law Book Co., 1971), 1-16; idem, *Law Reform*, 38; Wael B. Hallaq, "The Logic of Legal Reasoning in Religious and Non-Religious Cultures: The Case of Islamic Law and Common Law," *The Cleveland State Law Review* 34 (1985-1986), 79-96, reprinted in *Comparative Legal Cultures*, ed. Csaba Varga (Hampshire: Dartmouth Publishing Co., 1992), 401-18; Coulson, *History*, 1-2, 20; S.V. Fitzgerald, "The Alleged Debt of Islamic to Roman Law," *The Law Quarterly Review* (January 1951), 82; Adams, "Islamic Religious Tradition," 578; idem, *Reader's Guide*, 317; Stephen C. Hicks, "The Fuqaha and Islamic Law," *The American Journal of Comparative Law* 30 (1982), 3.

[102]"Hassan Bandung," in *Ensiklopedi Islam di Indonesia*.

[103]Hassan's doctrine on *uṣūl al-fiqh* can be found in his *al-Boerhān* (Bandung: Persatuan Islam, 1933), *Soal-Jawab*, vol. 1, 9-29 and *Ijma', Qiyas, Madzhab, Taqlid*.

expanding over several fields."[104] Nabil Shehaby has likewise stated that *usūl al-fiqh* is a subject that concerns itself "not only with the law proper but also with questions of linguistics, logic, methodology, epistemology, and theology."[105] Thus, Hassan wrote works not only in the field of law proper but also on other aspects of Islam such as language, theology, politics, history, morals, poetry, Qur'anic exegesis, and Prophetic Sunnah; his purpose in writing on all these fields was to emphasize that the main duty of Muslims is to practice the law of Allah. Seen from this perspective, one may conclude that, like the medieval jurists, Hassan believed that Islamic law is the most important and most noble science in Islam.[106] In fact, Islamic law in Indonesia is "still considered as the Islamic science par excellence," and consequently "forms the real essence of religious education."[107] This is so because, says Ali Yafi (one of the present-day Indonesian jurists), Islamic law is the most concrete manifestation of Islam in the daily life of Muslims.[108] Therefore, it is understandable that the study of Islamic law (*fiqh*) dominates religious education throughout Indonesia and that the works on Islamic law used in *pesantren*s and other religious institutions are

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[104]Hallaq, "Origins of the Controversy," 140.

[105]Nabil Shehaby, "'*Illa* and *Qiyās* in Early Islamic Legal Theory," *Journal of the American Oriental Society* 102 (1982), 27.

[106]George Makdisi, "The Juridical Theology of Shāfi'ī: Origins and Significance of *Usūl al-Fiqh*," *Studia Islamica* 59 (1984), 35-9.

[107]Van Bruinessen, "Kitab Kuning," 244. A similar idea can also be found in H.A.R. Gibb, *Mohammedanism* (Oxford: Oxford University Press, 1962), 9; Anderson, "Modern Trends in Islam," 1.

[108]Ali Yafi, "Merantai yang Hilang," *Pesantren* 2 (1985), 36.

far more numerous compared to those devoted to other Islamic subjects.[109]

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[109]As Van Bruinessen shows us, 20% of the works used in the *pesantren* may be characterized as *fiqh* works, while other subjects are only between 5% to 17%; see Van Bruinessen, "Kitab Kuning," 229; Mastuhu, *Sistem Pendidikan Pesantren*, 171. It should be noted however that there seems to be a tendency among some Indonesian Muslims to overlook the important position of Islamic law. They even suggest that the normative approach of *fiqh* and *uṣūl al-fiqh* used so far has contributed to the backwardness of Muslims. For a brief account on the marginal position of Islamic law, see Thoha Anwar, "ICMI dan Para Fuqaha," *Berita Buana* (7 January 1991), 45-6; Abrar Muhammad, ed., *ICMI dan Harapan Umat* (Jakarta: Yayasan Pendidikan Islam Ruhama, 1991), particularly part three, chapter three, "Cendekiawan Muslim Hendaknya Menggali Hukum Islam," 231-3. See also the statement given by Ahmad Syafii Maarif in "Muhammadiyah Perlu Sentuh Budaya," *Media Indonesia* (6 April 1995), 18. However, despite repeatedly undermining the position of *fiqh* and *uṣūl al-fiqh*, they promote the need for the reorientation of Islamic doctrine, advocating a return to the Qur'an and Sunnah, the significance of *ijtihād*, and the right to question the opinions of the legal schools; but they have not yet elaborated further what they mean by such statements; such common slogans may be found in Ahmad Syafii Maarif, "Muhammadiyah: Gerakan Non-Madzhab," *Suara Muhammadiyah* 9 (1995), 12. Those who have some knowledge of *fiqh* and *uṣūl al-fiqh* will not fail to point out that such statements are entirely in keeping with the same themes. Thus, while undermining the study of *fiqh* and *uṣūl al-fiqh*, they promote at the same time the topics which form the foundations of the same subjects. The result is then confusion; and without giving a new and clear formulation, they undermine or even destroy the classical and medieval heritages of Islamic teaching; as a consequence, the younger generation is less enthusiastic about using the works of classical and medieval works of *fiqh* and *uṣūl al-fiqh*. The richness of the principles of *fiqh* (*al-qawā'id al-fiqhiyyah*) and the principles of *uṣūl al-fiqh* (*al-qawā'id al-uṣūliyyah*), which are very useful in analysing social movements, for instance, are very much neglected by most present writers on Islam-even by those who are considered experts on Islam. In this context, Hallaq's remark is very relevant: "The *ijtihād* of modern reformers...remains without methodological and philosophical foundations. Like the reformers' other means of changing the law, their interpretation is still based on expediency, without due consideration of the intellectual integrity and systematic consistency of the law. They have set aside the traditional legal methodology, but they have not, at the same time, attempted to fashion a new methodology that can sustain the present and future need for legal change"; see Wael B. Hallaq, "Ijtihād," in *The Oxford Encyclopedia of the Modern Islamic World*, ed. John L. Esposito (Oxford: Oxford University Press, 1995). Schacht has also suggested that "La jurisprudence et la législation musulmane moderne, si elles veulent être solides et permanentes, ont besoin d'une base théorique plus réelle et plus logique"; see Schacht, "Classicisme, traditionalisme et ankylose," 153.

In his works on *uṣūl al-fiqh*, Hassan elaborates on how to understand the Qur'an and Sunnah and how to employ them as the only sources of Islamic teaching. To support his legal theory, he waged a fierce and ceaseless war against the general tendency of the Muslims of his era to insist on the significant position of both the school of law (*madhhab*) and servile imitation (*taqlīd*). To promote his views, he wrote quite extensively on the subject, the most important of his works in this area being: *Risalah Al-Madz-hab*; *Ijma', Qijas, Madzhab, Taqlid*; *Halalkah Bermadz-hab?*; *Djawaban Kepada Alwi bin Thahir Alhaddad*; *Mendjawab Buku Bantahan Tuan Hadji Husain Al-Habsji*; and *Verslag Debat Taqlid (Dengan Tambahan)*.

To support his contention that the Qur'an and Sunnah are the only sources of Islamic teaching, Hassan wrote, among other works, *al-Boerhān*, in which he discusses some issues of Islamic law based solely on the Qur'an and Sunnah. His *al-Djawāhir* comments on a selection of Qur'anic and Sunnaic texts, each of which is translated into Malay (Indonesian), Javanese, Sundanese, and Dutch. In publishing this work, Hassan was a pioneer. The Dutch translation was particularly addressed to those young Indonesians who were more familiar with that language and who had received higher education compared to the average young Indonesians. This group, because of its intellectual superiority and greater exposure to European culture, was regarded as the one from which Indonesia's future leaders would emerge. For this very reason, according to Hassan, it was of prime importance to expose them to religious teaching in order to prevent them from going astray.[110]

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[110]Rosidi, *Natsir*, 33-6.

Hassan's most important work on the Qur'an is perhaps his *al-Furqān fī Tafsīr al-Qur'ān*, the first Qur'anic exegesis in the Indonesian language, written over a period of 25 years (1928-1953).[111] Pijper considers *al-Furqān* to be the *magnum opus* of Hassan.[112] The name *al-Furqān* was chosen because it emphasized that the Qur'an helped Muslims to differentiate between permissible (*halāl*) and forbidden (*harām*) in daily life. It was seen as a potentially significant aid to Indonesian Muslims who had been greatly influenced by unorthodox or even un-Islamic practices.[113] *At-Tauhied*, *al-Iman*, and *Adakah Tuhan?* were other works written by Hassan in order to give a clear explanation of, among other things, the position of God as the only Creator (*khāliq*) of all creatures (*makhlūq*). In his *Bibel Lawan Bibel*, he deals with the following questions: whether or not Jesus was God; whether or not he was crucified; and the position of Jesus and his religion according to Islamic understanding. His explanation of these issues was aimed at assuring Muslims that the only law which must be followed by human beings is the law of God as revealed to His Messenger Muhammad; accordingly, the law of God should take precedence over other laws.

By the same token, Hassan paid close attention to the Sunnah, the second source of Islamic teaching after the Qur'an. He translated the *Bulūgh al-Marām min*

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[111]Hassan, *al-Furqān*, xi; Djaja, *Hassan*, 24. For other Qur'anic exegesis by Indonesian Muslims, see Federspiel, *Popular Indonesian Literature of the Qur'an*, particularly chapter three, "Making the Qur'an Comprehensible in Indonesian," 43-73.

[112]Pijper, *Sejarah Islam di Indonesia*, 138.

[113]Rosidi, *Natsir*, 32.

Adillat al-Ahkām of al-Ḥāfiẓ Ahmad ibn 'Alī ibn Hajar al-'Asqalānī entitling it *Tarjamah Bulughul-Maram.*[114] In his works *al-Muchtār*, *Benarkah Muhammad Itu Rasul?* and *An-Nubuwwah*, he tries to prove that Muhammad was the true and the last messenger of God and that the provisions of Islamic law contained in the Sunnah are in line with those in the Qur'an, and must be followed by Muslims. In his *Risalah Ahmadijah* and *Risalah Mirza-ijah*, he attempts to disprove the Ahmadiyah (Qadiyani) teachings on prophethood.

In an attempt further to promote his idea that Islamic law is the essence of Islamic teaching, Hassan also wrote *Islam dan Kebangsaan*; *Membudakkan Pengertian Islam*; *Kedaulatan*; *Mereboet Kekoeasaan*; and *Pemerintahan Tjara Islam*. He argues in these works that both an Islamic state and an Islamic government are necessary conditions for the application of Islamic law. The four titles contain the texts of some of his polemics with members of both the Nationalist and Communist parties who rejected religion, and especially Islam, as the basis of the new Indonesian state. Rosidi may be correct when he indicates that the dialogue between Hassan, who promoted Islam as the foundation of state, and Sukarno, as the representative of the so-called Nationalist group, has seriously affected political development in Indonesia even to this day.[115] The dichotomy of these two groups is indicated clearly in Hassan's work

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[114]For other works of Prophetic Sunnah by Indonesian Muslims, see Federspiel, *Traditions of the Prophet in Contemporary Indonesia*, 149-53.

[115]Rosidi, *Natsir*, 24.

Islam dan Kebangsaan (Islam and Nationalism).[116]

Hassan elaborates on his legal theory in his works on substantive law (*furū'*), which cover many aspects of the daily problems faced by Muslims; problems relating, for instance, to prayer, fasting, alms-tax, pilgrimage, food and drink, marriage and divorce, the position of women, bank-interest (*ribā*), and lottery (*maysir*). Most of his *fatwā*s relating to such problems were collected later in his fifteen volume *Sual-Djawab* (Questions and Answers), later republished in more systematic fashion by his disciples entitled *Soal-Jawab Masalah Agama* (Questions and Answers on Issues of Islamic Teaching), a four volume work which is still in print today and generally considered to be Hassan's most popular work. It is read by Muslims not only in Indonesia but also in other Malay countries such as Malaysia, Brunei Darussalam, Singapore, and Thailand.[117] The Persatuan Muhammadiyah of Singapore for instance recommends to all its members the works of Hassan, particularly his *Soal-Jawab Masalah Agama*, as a guide for daily life. Nonetheless, at the same time this work (like many other of his works) was seen by some as "heretical" on the grounds that its contents were radically different from teachings common to the majority of Muslims; thus, it became the favorite target of Hassan's opponents, the traditional scholars, who criticized it severely. In a meeting held by the Moesyawaratoet-Thalibin, for instance, Salim bin Djindan warned his audience, saying:

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[116]An English version of *Islam dan Kebangsaan* can be found in Federspiel, "Islam and Nationalism."

[117]The latest edition that has been published, the 13th, appeared in 1994.

> Fellow Muslims, beware of the works of the 'Pembela Islam' such as *Al-Fatwaa*,...which are false, and quote *āyah*s out of context. Friends, do not read, accept or buy those books for they lead astray and induce one to become a *Wahhābī* and *kaum muda*. Whether *Wahhābī* or *kaum muda* we may not approach them or eat with them for they are more wicked than the Chinese and the Dutch.[118]

Finally, it has been reported that according to the poll held by the Association of Islamic Writers (Himpunan Pengarang Islam) in 1957, Hassan was included among the 10 most prolific writers on Islam;[119] in fact, his works, particularly his *Soal-Jawab* are among the hottest items on the publishing market even today.

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[118]*Pembela Islam* 57 (January 1933), 27, cited in Federspiel, *Persatuan Islam*, 47 note 4. See also J.M.B., "Mentjari Kebenaran," 20. A similar attitude was also shown by Mahmoed Pauzie towards Persis and *Pembela Islam*; see "Tjelaan," *Pembela Islam* 38 (November 1931), 26; *Pembela Islam* 58 (February 1933), 19-21.

[119]The others were Muhammad Hasbi Ash-Shiddieqy, Munawar Chalil, Isa Anshary, Hamka, M. Natsir, Tamar Djaja, Z.A. Ahmad, H. Firdaus A.N., and Arifin Abbas; see Djaja, *Hassan*, 169.

CHAPTER THREE

CHAPTER 3
UṢŪL AL-FIQH (ISLAMIC LEGAL THEORY)

In the preceding chapter, we provided a general survey of Hassan's understanding of Islam, focusing on his view that *fiqh* (Islamic law) represents the essence of Islamic teaching, and that *uṣūl al-fiqh*, the principles used to discover legal rules, is considered no less than the queen of all the Islamic sciences.[1] The present chapter will explore Hassan's *uṣūl al-fiqh* as a preliminary to understanding his views on the role of law in Muslim society.

A. *Uṣūl al-Fiqh*.

While there is some controversy over the early history of *uṣūl al-fiqh*, nevertheless there is no disagreement among scholars that the subject has received serious attention since the earliest period of Islam.[2] It is also true however that for

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[1]For a similar idea, see Nyazee, *Theories of Islamic Law*, 1. See also Murad Wilfred Hofmann, review of *Theories of Islamic Law-The Methodology of Ijtihād*, by Imran Ahsan Khan Nyazee, *Muslim World Book Review* 16 (1996), 10. In the words of Ṭāhā Jābir al-'Alwānī, "*uṣūl al-fiqh* is rightly considered to be the most important method of research ever devised by Muslim Thought. Indeed, as the solid foundation upon which all the Islamic disciplines are based, *uṣūl al-fiqh* not only benefited Islamic civilization but contributed to the intellectual enrichment of world civilization as a whole"; see his *Uṣūl al-Fiqh al-Islāmī*, trans. Yusuf Talal DeLorenzo and A.S. al-Shaikh-Ali (Virginia: The International Institute of Islamic Thought, 1990), xi.

[2]It is true that Shāfi'ī has often been considered the founder of *uṣūl al-fiqh*; see Philip K. Hitti, *Makers of Arab History* (London: Macmillan, 1968), chapter "Al-Shafi'i: Founder of the Science of Islamic Law," 167-83; Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-'Arabī, 1958), 13; Badrān Abū al-'Aynayn Badrān, *Uṣūl al-Fiqh al-Islāmī* (Alexandria: Mu'assasat Shabāb al-Jāmi'ah, 1402/1982), 14;

some time afterwards *uṣūl al-fiqh* was neglected as a field of study. As Yusuf Talal

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idem, *Tārīkh al-Fiqh al-Islāmī wa Naẓariyyat al-Milkiyyah wa al-'Uqūd* (Beirut: Dār al-Nahḍah al-'Arabiyyah, n.d.), 87; Ignaz Goldziher, *The Ẓāhiris: Their Doctrine and Their History*, trans. Wolfgang Behn (Leiden: E.J. Brill, 1971), 21; Schacht, *Introduction*, 48; Coulson, *History*, 60-1; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), 5; Sherman A. Jackson, "From Prophetic Actions to Constitutional Theory: A Novel Chapter in Medieval Muslim Jurisprudence," *International Journal of Middle East Studies* 25 (1993), 71; idem, "Shihāb al-Dīn al-Qarāfī," 165 note 1. However, some scholars have also indicated that *uṣūl al-fiqh* had, to a certain extent, developed before Shāfi'ī's era and that Shāfi'ī was only one among those who contributed to the development of the subject; see, for example, Muṣṭafā Ibrāhīm al-Zalamī, *Dalālat al-Nuṣūṣ wa-Ṭuruq Istinbāṭ al-Aḥkām fī Ḍaw' Uṣūl al-Fiqh al-Islāmī* (Baghdad: Maṭba'at As'ad, 1972/1973), 4; Aron Zysow, "The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory" (Ph.D. diss., Harvard University, 1984), 3; Anwar A. Qadri, *Islamic Jurisprudence in the Modern World* (Lahore: SH. Muhammad Ashraf, 1973), 131-2; Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), 18; Muhammad al-Faruque, review of *The Search for God's Law*, by Bernard G. Weiss, *Muslim World Book Review* 14 (1994), 9; Muhammed Selim el-Awa, "Approaches to *Sharī'a*: Response to Coulson's *A History of Islamic Law*," *Journal of Islamic Studies* 2 (1991), 154; Hamidullah, "Sources of Islamic Law," 205-6; Farhat J. Ziadeh, "Uṣūl al-Fiqh," in *The Oxford Encyclopedia of the Modern Islamic World*, ed. John L. Esposito (Oxford: Oxford University Press, 1995); Marie Bernand, "Ḥanafī *Uṣūl al-Fiqh* through a Manuscript of al-Jaṣṣās," *Journal of the American Oriental Society* 105 (1985), 624-5; Makdisi, "Juridical Theology of Shāfi'ī," 6-7. But it was Wael B. Hallaq who for the first time critically examined Shāfi'ī's role in the development of *uṣūl al-fiqh*. Scrutinizing the historical development of the subject, Hallaq points out, among other things, that "the *Risāla* has little to offer in the way of systematic methodology." The *Risālah*, he goes on to say, received serious attention only since the 10th century, a century after its appearance. Accordingly, the claim that Shāfi'ī was the founder of *uṣūl al-fiqh* is not attested by the historical facts; see Wael B. Hallaq, "A Tenth-Eleventh Century Treatise on Juridical Dialectic," *The Muslim World* 77 (1987), 197 note 5; idem, "Was al-Shafi'i the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25 (1993), 587-605; idem, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997; forthcoming), 39-46. I am very thankful to the author for making the manuscript of this last work available to me. It should be mentioned here that Nyazee echoes some of Hallaq's views on the question of Shāfi'ī; see Nyazee, *Theories of Islamic Law*, 18, 150-9.

DeLorenzo puts it:

> the simple truth is that *uṣūl al-fiqh* has been neglected by Muslims.[3] As an essential tool in the process of ijtihad, it was only natural that if ijtihad were neglected then *uṣūl al-fiqh* would suffer much the same fate. And so it did. As a discipline, it was relegated to the worlds of the *kutub ṣafrā* (the yellowed tomes), where it remained unchanged and unchallenged...for centuries.[4]

The same may also be said of Western study of the subject. According to Marie Bernand, "despite the great interest shown in *uṣūl al-fiqh* by Orientalists throughout the world, no general and systematic work dealing with this most important Islamic science has been done."[5] Hallaq supports this view, indicating that "...we have not yet scratched the surface of this important subject."[6]

In recent years, however, *uṣūl al-fiqh* has begun to receive more serious attention from Western scholars. Mohammad Hashim Kamali's *Principles of Islamic*

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[3]DeLorenzo may be referring at least to the pre-modern period as defined by Mayer already discussed in chapter one.

[4]Yusuf Talal DeLorenzo, review of *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī*, by Bernard G. Weiss, *The American Journal of Islamic Social Sciences* 11 (1994), 580.

[5]Bernand, "Ḥanafī *Uṣūl al-Fiqh*," 623; Shehaby, "'*Illa* and *Qiyās*," 27.

[6]Wael B. Hallaq, "Considerations on the Function and Character of Sunnī Legal Theory," *Journal of the American Oriental Society* 104 (1984), 679. By the same token, DeLorenzo writes: "While translations of classical works in the field are non-existent, with the shining exception of professor Khadduri's excellent rendition of al-Imam al-Shāfi'ī's *Risālah*, there is as yet no general and systematic study of the discipline in English. Even survey literature on the subject is scarce"; see Yusuf Talal DeLorenzo, "Foreword" to *Uṣūl al-Fiqh al-Islāmī*, by al-'Alwānī, ix. In the words of Zafar Ishaq Ansari: "Compared to these [studies on substantive law], the works dealing with *uṣūl al-fiqh* (Islamic jurisprudence) are scarce. Even more scarce are such studies in Western languages"; see Zafar Ishaq Ansari, "Foreword" to *Theories of Islamic Law-The Methodology of Ijtihād*, by Imran Ahsan Khan Nyazee (Islamabad: Islamic Research Institute and the International Institute of Islamic Thought, 1994), v.

Jurisprudence[7] was perhaps the first modern introduction to the subject to expound "Islamic jurisprudence in accordance with the methodology and vocabulary of Muslim jurists."[8] It is also considered to be a work which "offers the only detailed presentation available in English of the...*uṣūl al-fiqh*."[9] Quite important also is Weiss' *The Search for God's Law*, a work which "is unparalled in its phenomenal success in running the gamut of theoretical issues dealt with not only by Amidi, but also by the majority of Sunni legal theoreticians."[10] In addition, more detailed discussion of some of the finer points of *uṣūl al-fiqh* may be found in the many writings of Wael B. Hallaq. It is also very likely that Hallaq's forthcoming *History of Islamic Legal*

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[7]It was first published in 1989.

[8]Majid Khadduri, review of *Principles of Islamic Jurisprudence*, by Mohammad Hashim Kamali, *Journal of Islamic Studies* 4 (1993), 84. In the following year, Yusuf Talal DeLorenzo and A.S. al-Shaikh-Ali translated the work of Ṭāhā Jābir al-'Alwānī into English, *Uṣūl al-Fiqh al-Islāmī*; this work is, however, quite brief compared to that of Kamali and concentrates more on the historical development of the subject rather than on its content.

[9]For English readers, Kamali's work is quite significant; but for those who are familiar with the Arabic works on the subject, it offers hardly any new information, so that one may agree with Hallaq that "aside from the fact that the work is written in English...there is little to distinguish it from the innumerable Arabic works on Islamic jurisprudence produced by scholars writing in the Middle East" and it lacks "historicist consciousness on both the diachronic and synchronic levels"; see Wael B. Hallaq, review of *Principles of Islamic Jurisprudence*, by Mohammad Hashim Kamali, *Islamic Law and Society* 2 (1995), 209.

[10]Wael B. Hallaq, review of *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī*, by Bernard G. Weiss, *International Journal of Middle East Studies* 26 (1994), 152.

Theories will open entirely new perspectives on a hitherto neglected subject.[11]

We have likewise seen in an earlier chapter that in the hands of the reformists, the study of *uṣūl al-fiqh* in Indonesia began once again to be regarded as important, with Hassan playing a major role in its revival. Reading the works of Hassan on *uṣūl al-fiqh*, one cannot fail to conclude that his understanding of the principle points of the subject is generally similar to that of earlier scholars. Thus, to introduce Hassan's *uṣūl al-fiqh*, it would be useful to recall some of the basic features of the discipline.

Uṣūl al-fiqh is an Arabic phrase which consists of the two words *uṣūl* and *fiqh*. Lexically, the word *uṣūl* is the plural form of *aṣl* which means root, origin, source, cause, foundation, fundament, basis, principle, fundamental, rudiment, basic rule, or axiom,[12] and thus "a certain thing upon which anything else is built."[13] There was of course a historical development of the meaning of *uṣūl*,[14] resulting in three different sciences being associated with the term: *uṣūl al-dīn* (*kalām*), *uṣūl al-ḥadīth*

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[11]It should be mentioned here that Hallaq's earlier book, *Ibn Taymiyya Against the Greek Logicians*, is also of significance, particularly in relation to our understanding of analogy and the syllogism, subjects relevant to the science of discovering the rules of Islamic law.

[12]Hans Wehr, *A Dictionary of Modern Written Arabic* (New York: Spoken Language Services, 1976), 19. See also Nyazee, *Theories of Islamic Law*, 26-7.

[13]Muḥammad ibn 'Alī al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min 'Ilm al-Uṣūl* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī wa-Awlāduhu, 1937), 3; Samīr 'Āliyah, *'Ilm al-Qānūn wa al-Fiqh al-Islāmī* (Beirut: al-Mu'assasah al-Jāmi'iyyah, 1991), 15; 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdāwī* (Beirut: Dār al-Kitāb al-'Arabī, 1991), 63; 'Alī ibn Muḥammad al-Jurjānī, *al-Ta'rīfāt* (Beirut: 'Ālam al-Kutub, 1987), 49-50; 'Alwānī, *Uṣūl al-Fiqh*, 4.

[14]Hallaq, "Master Architect of Islamic Jurisprudence?" 588-90; Makdisi, "Juridical Theology of Shāfi'ī," 7-9.

(*muṣṭalaḥ al-ḥadīth*), and *uṣūl al-fiqh*. Later, however, *uṣūl al-fiqh* came to be referred to simply as *uṣūl*, to the extent that the latter term was regarded as designating *uṣūl al-fiqh*.[15] *Fiqh*, on the other hand, literally means understanding, comprehension, intelligence, or knowledge,[16] and is perhaps best defined as "a statement concerning the understanding of the speaker of the meaning of his speech" (*'ibārah 'an fahmi gharaḍi al-mutakkallim min kalāmihī*),[17] a meaning which is commonly used in the Qur'an.[18]

Thus, the phrase *uṣūl al-fiqh* literally means "roots of understanding;" it may also be translated as "roots of law," "roots of jurisprudence," "sources of law," "theoretical bases of Islamic law," or "principles of jurisprudence."[19] In current English literature on the subject, the phrase "Islamic legal theory" is often used to denote *uṣūl al-fiqh*.

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[15]Joseph Schacht, "Uṣūl," in *Shorter Encyclopaedia of Islam*, ed. H.A.R. Gibb and J.H. Kramers (Leiden: E.J. Brill, 1961). It has also been said that "*uṣūl al-dīn* et *uṣūl al-fiqh* ne sont que deux volets d'une seule et même science"; see Marie Bernand, "Les *uṣūl al-fiqh* de l'époque classique: *status quaestionis*," *Arabica* 39 (1992), 277.

[16]Wehr, *Dictionary*, 723; Muḥammad 'Abd Allāh Abū al-Najā, *'Ilm Uṣūl al-Fiqh* (Cairo: Al-Maṭba'ah al-Munīriyyah, 1955), 8; Shawkānī, *Irshād al-Fuḥūl*, 3. In the early history of Islam, the words *fiqh* and *fahm* were synonymous, since both were used in the literal sense to mean "understanding"; see Nyazee, *Theories of Islamic Law*, 20.

[17]Jurjānī, *Ta'rīfāt*, 216; Badrān, *Tārīkh al-Fiqh al-Islāmī*, 10.

[18]See, for example, the Qur'an 4:78; 6:65; 7:179, 11:91, 20:27-8; and 48:15.

[19]See Weiss, *God's Law*, 15; idem, "Uṣūl al-Fiqh," in *The Encyclopedia of Religion*, ed. Mircea Eliade (London: Macmillan Publishing Company, 1987); Ziadeh, "Uṣūl al-Fiqh," in *Oxford Encyclopedia of the Modern Islamic World*; Coulson, *History*, 76; Schacht, *Introduction*, 303.

In its technical legal connotation, *fiqh* is defined as "a science of positive law based on detailed proofs,"[20] while *uṣūl al-fiqh*, according to Bājī: "is the knowledge of the judgement about duties and prohibited things; the general and particular; the inconspicuous, the conspicuous and other types of speech; abrogation; consensus; qiyas, its method and types; and the objections against all these (matters), as well as the arguments adduced in response to these objections...."[21] But the most comprehensive definition of *uṣūl al-fiqh* is perhaps the following list of five different, but connected, meanings given by Nabil Shehaby:

> 1. ...the authoritative legal sources from which judicial judgments are obtained (al-Qur'an and *aḥādīth*); 2. ...the basic tools for obtaining the judicial judgments in cases not treated in the sources referred to in (1), these tools are *ijmā'* and *qiyās*; 3. ...a case for which a judicial judgment has been found in any of the sources mentioned in (1), or by using such acceptable means as explained in (2).... Such cases and their judicial judgments are called *uṣūl*...because they can be taken as bases for establishing an analogy between them and the so-called derivative cases (*furū'*); 4. ...a postulated

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[20]'Alī ibn Abī 'Alī al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 1 (Cairo: Dār al-Ḥadīth, n.d.), 7; Aḥmad ibn Idrīs al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī al-Uṣūl* (Beirut: Dār al-Fikr, 1973), 17.

[21]Abū al-Walīd ibn Khalaf al-Bājī, *al-Ḥudūd fī al-Uṣūl*, ed. N. Ḥammād (Beirut, 1973), 37, cited in Wael B. Hallaq, "The Development of Logical Structure in Sunni Legal Theory," *Der Islam* 64 (1987), 42. According to Abū al-Yusr al-Bazdāwī, *fiqh* "is the name given to a specific religious science, which is the science of all that determines the *sharī'ah*'s legal rules; it is found in the Qur'ān, *sunna*, and *ijmā'*," while *uṣūl al-fiqh* "is the science of those three roots"; see Bernand, "Ḥanafī *Uṣūl al-Fiqh*," 625. Āmidī defines *uṣūl al-fiqh* as "the indicators upon which the understanding of the Sharī'a is based, the ways in which those indicators function as indicators of the divine categorizations, and the considerations which pertain to the role of the scholar who employs those indicators in the actual formulation of the divine categorizations, all of which matters are treated in a general way, not in relation to specific instances"; see Āmidī, *Iḥkām*, vol. 1, 8; Weiss, *God's Law*, 26. Similarly, see Abū Ḥāmid al-Ghazālī, *al-Mustasfā min 'Ilm al-Uṣūl*, vol. 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1983), 5.

> methodological principle or an opinion given by an authority; 5. ...an area of knowledge that can roughly be translated as legal theory.[22]

In short, *usūl al-fiqh* is defined as "the body of principles and the investigative methodology through which practical rules are derived from their particular sources,"[23] or "the science of the proofs which lead to the establishment of legal standards in general."[24] It is also stated that "c'est dans les *usūl al-fiqh* que le *fiqh* trouve son fondement et ses principes de développement."[25] Thus, the difference between the terms *fiqh* and *usūl al-fiqh* is fairly obvious particularly in Arabic works; but they become quite blurred in definitions given in other languages.[26]

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[22]Shehaby, "*'Illa* and *Qiyās*," 27-8.

[23]Ziadeh, "Usūl al-Fiqh," in *Encyclopedia of the Modern Islamic World*. See also Hallaq, "Ifta' and Ijtihad," 33; Zalamī, *Usūl al-Fiqh al-Islāmī*, 3; Nādiyah Sharīf al-'Umarī, *al-Ijtihād fī al-Islām: Usūluhu, Ahkāmuhu, Āfāquhu* (Beirut: Mu'assasat al-Risālah, 1981), 14; Kamali, *Islamic Jurisprudence*, 1.

[24]Schacht, "Usūl," in *Shorter Encyclopaedia of Islam*. Such a definition of *usūl al-fiqh* closely corresponds to the following definition of jurisprudence as it is understood in Western society: "the philosophy of law, or the science which treats of the principles of positive law and legal relations...that science which has for its function to ascertain the principles on which legal rules are based, but also to settle the manner in which new or doubtful cases should be brought under the appropriate rules"; see Henry Campbell Black, *Black's Law Dictionary* (St. Paul: West Publishing Co., 1990), 854. Kamali reminds us however that *usūl al-fiqh* "exhibits greater stability and continuity of values, thought and institutions when compared to Western jurisprudence"; see Kamali, *Islamic Jurisprudence*, xv.

[25]Bernand, "Les *usūl al-fiqh*," 279.

[26]In English, a variety of terms have been used to render *fiqh* and *usūl al-fiqh*, among them: Islamic practical jurisprudence and Islamic theoretical jurisprudence, Islamic law and Islamic jurisprudence, Islamic jurisprudence and Islamic legal theory, Islamic law and Islamic legal theory, the science of Islamic law and Islamic jurisprudence. Throughout this thesis, the term Islamic law is reserved for *fiqh* and Islamic legal theory for *usūl al-fiqh*.

These methods and principles of deriving the positive rules from the particular sources gave rise to the so-called *'ilm uṣūl al-fiqh*, as opposed to *'ilm al-fiqh*, the science of positive law as such.[27] Together, "these two sciences constitute the two main branches of what may be called...Islamic jurisprudence."[28] Although both are theoretically different, nevertheless in practice they are inseparable; that is to say, anyone who has a knowledge of *uṣūl al-fiqh* is expected to apply it to the problems faced by Muslims, just as those who are concerned with positive law (*fiqh*) will not be able to deal with daily problems without some knowledge of *uṣūl al-fiqh*. It is in this context that the term *fiqh* can be understood as combining the senses of both *fiqh* (in its limited meaning) and *uṣūl al-fiqh*. Accordingly, the term *fuqahā'* (sing. *faqīh*) is applied to those who have knowledge of both *fiqh* and *uṣūl al-fiqh* and who employ this knowledge in interpreting Islamic law and answering the daily problems faced by Muslims.[29]

Certainly, Hassan shared this fundamental understanding of *uṣūl al-fiqh*. As he writes in his work *al-Boerhān*, "*uṣūl* originally means principles (*pokok-pokok*), while *fiqh* literally means knowledge (*kepintaran*) which is generally also understood as the rules of Islam which are concerned with the external aspect of Muslim

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[27]Weiss, "Uṣūl al-Fiqh," in *Encyclopedia of Religion*; idem, *God's Law*, 27.

[28]Weiss, "Uṣūl al-Fiqh," in *Encyclopedia of Religion*.

[29]Obviously, this wide meaning of *fiqh* is then rendered as Islamic law (English), droit musulman (French), Islamietisch recht (Dutch), Islamische Recht (German), Islam hukuku (Turkish), and hukum Islam (Malay and Indonesian). This hopefully gives some clarification for those who are confused by the terms used in non-Arabic works, as is the case with Kamali; see Kamali, *Islamic Jurisprudence*, xix.

activities."[30] Therefore, the technical meaning of *uṣūl al-fiqh*, according to Hassan, is "the principles used to understand Islam from which people are able to derive the religious rules based on religious proofs."[31] Through the science of *uṣūl al-fiqh*, Hassan goes on to say, people are able to determine the rules applying in various situations, and thus put everything in society in its proper place.[32]

In short, *fiqh* is positive law (*furū'*), as opposed to the roots or principles of law (*uṣūl al-fiqh*). The relationship between the two is similar to that between language and grammar or philosophy and logic.

The main objective of *uṣūl al-fiqh* in Islamic studies is defined by Hallaq thus: "Discovering the law of God through a highly systematic and logically sophisticated methodology was...considered by Muslims the primary, if not the only, function of legal theory. Theorists have repeatedly declared that in effect this function is the *raison d'être* of *uṣūl al-fiqh*."[33] What is more, *uṣūl al-fiqh* "provides a set of criteria for the correct evaluation and understanding of almost any branch of Islamic learning."[34] In fact, this science is an important tool for a *mujtahid*, a *muftī*, and

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[30]Hassan, *al-Boerhān*, i-ii;

[31]Ibid., ii.

[32]A. Hassan, "Ushul Fiqih," in *Soal-Jawab*, vol. 1, 20.

[33]Hallaq, "Character of Sunnī Legal Theory," 681. See also idem, "Gate of Ijtihad," 5; idem, "*Uṣūl al-Fiqh*: Beyond Tradition," 183; Calder, "Nawawī's Typology of *Muftī*s," 158 note 37; Kamali, *Islamic Jurisprudence*, 3.

[34]Ahmad Ibrahim, "Foreword" to *Principles of Islamic Jurisprudence*, by Mohammad Hashim Kamali (Cambridge: The Islamic Texts Society, 1991), vii. According to Shehaby, "the usefulness of *uṣūl al-fiqh* lies primarily in its being an indispensable source for understanding the views of a large and important segment of

anyone else who wishes to derive rules from the sources (*istinbāṭ al-ḥukm*).[35]

There are also similarities between the objectives of *uṣūl al-fiqh* and those of jurisprudence as it is practiced in the West. This can be most clearly seen in the attention devoted to the sources of the law, a subject of great importance in Western jurisprudence,[36] and in Islam, of such significance that it is regularly identified with *uṣūl al-fiqh* itself.[37] These sources of Islamic law are variably known as *uṣūl al-aḥkām* (roots of commands), *adillat al-aḥkām al-shar'iyyah* (proofs of commands), *maṣādir al-aḥkām* (sources of commands), *al-maṣādir al-shar'iyyah* (sources of the sharī'ah), *maṣādir al-tashrī' al-Islāmī* (sources of Islamic law), or *maṣādir al-tashrī' lil-aḥkām* (sources of the formulation of Islamic law).

As will be shown later, Hassan adopted the classical doctrine of the sources of Islamic law as these were formulated by Shāfi'ī in his *Risālah*; i.e. the Qur'an,

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Muslim thinkers who used the subject as a vehicle for their opinions on the various topics mentioned above [all aspects of human being]"; see Shehaby, *'Illa* and *Qiyās*," 27.

[35]Muḥammad Khuḍarī Bik, *Uṣūl al-Fiqh* (Cairo: Al-Maktabah al-Tijāriyyah al-Kubrā, 1938), 17; Muḥammad Bāqir al-Ṣadr, *Durūs fī 'Ilm al-Uṣūl*, vol. 2 (Beirut: Dār al-Kitāb al-Lubnānī, 1980), 11-2.

[36]Ziadeh, "Uṣūl al-Fiqh," in *Encyclopedia of the Modern Islamic World*; Zysow, "Islamic Legal Theory," 1. See also John Austin, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence* (New York: The Noonday Press, 1958) and Sir Carleton Kemp Allen, *Law in the Making* (Oxford: The Clarendon Press, 1964).

[37]Muḥammad Yūsuf Mūsā, *al-Fiqh al-Islāmī* (Cairo: Dār al-Kutub al-Ḥadīthah, 1954), 175; Weiss, *God's Law*, 26.

Sunnah, consensus (*ijmā'*), and analogy (*qiyās*).[38] However, like other Muslim reformists, Hassan repeatedly emphasized the view that the original sources of Islamic law are the Qur'an and Sunnah. For those cases which were not explicitly treated in the Qur'an and Sunnah, he adopted consensus (*ijmā'*) and analogy (*qiyās*); these Hassan regarded not as independent but rather as based on the previous two sources, the Qur'an and Sunnah.[39] This emphasis on the Qur'an and Sunnah is similar to that adopted by the Ẓāhirī school as advocated, for example, by its most prominent figure Ibn Ḥazm (994-1064 AD),[40] or that of the Ḥanbalī school reflected in the ideas of its outstanding exponent Ibn Taymiyyah (661/1263-728/1328).[41] In order to obtain a clearer picture of Hassan's ideas on the sources of Islamic law, we shall now discuss each of them in turn.

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[38]See generally Muḥammad ibn Idrīs al-Shāfi'ī, *al-Risālah* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1358/1940).

[39]Hassan, *al-Boerhān*, ii.

[40]Ibn Ḥazm points out: "It should be kept in mind that there is no true way for the believers except following the Qur'anic and Sunnaic texts; anything which is not based on the religious texts is not the way of believers but rather that of the unbelievers. Allah says: The answer of the believers, when summoned to Allah and His Messenger, in order that he may judge between them is no other than this: they say, we hear and we obey"; see 'Alī ibn Aḥmad ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, vol. 4 (Cairo: Maṭba'at al-Sa'ādah, 1925), 132.

[41]For a discussion of the legal theories of the Ḥanbalī school and of Ibn Taymiyyah, see Susan A. Spectorsky, "Aḥmad Ibn Ḥanbal's *Fiqh*," *Journal of the American Oriental Society* 102 (1982), 461-5; Victor E. Makari, *Ibn Taymiyyah's Ethics: The Social Factor* (California: Scholars Press, 1983), particularly chapter six, "Ibn Taymiyyah's Jurisprudence," 85-112.

B. *Maṣādir al-Tashrīʿ al-Islāmī* (The Sources of Islamic Law).

1. Primary Sources.

a. The Qur'an.

Obviously, Hassan accentuated the Oneness (*wahdah*) of God, presenting, for instance, in one of his works a lengthy refutation of the Christian doctrine that Jesus is the son of God.[42] He also believed that God communicated with His people through, among other media, the holy book, i.e. the Qur'an. According to him, the Qur'an, which is sometimes also called *al-kitāb*, literally means "reading" and it is technically understood to be "a name of the holy book for Muslims revealed by Allah to his Messenger Muhammad."[43] This holy book constitutes a written revelation, which together with unwritten revelation (e.g. the universe around us), was sent by God as a guidance to human beings.[44]

Although it was revealed to the Prophet Muhammad, the Qur'an was written down by his secretaries, the most famous among them having been Zayd ibn Thābit. It has likewise been preserved continuously, transmitted from one generation to another until the present day through universally accepted testimony (*mutawātir*); God

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[42]For his treatment of this subject, see A. Hassan, *At-Tauhied* (Bangil: Persatoean Islam, 1937); idem, *Bibel Lawan Bibel* (Bangil: Lajnah Penerbitan Pesantren Persis, 1983); idem, *Ketoehanan Jesoes Menoeroet Bibel* (Bandoeng: Persatoean Islam, 1940); idem, *An-Nubuwwah*, 169-70. A brief analysis of Hassan's doctrine of God can be found in Federspiel, *Persatuan Islam*, 29-33.

[43]A. Hassan, *Ringkasan Islam* (Malaysia: Balai Persuratan 'Miezaan,' 1971), 9; idem, *al-Muchtār: Tāriech Islām* (Bangil: Persatoean Islam, 1952), 42.

[44]Hassan, *al-Furqān*, xiii.

himself has even promised to preserve the text in its original state, as mentioned in the Qur'an 15:9. The Qur'an, therefore, in all its 114 chapters (*sūrah*s) and 6666 verses (*āyah*s), is physically intact and has come down to us in its entirety.[45] Hassan goes on to reject any assertion that the Qur'an represents the words of Muhammad,[46] arguing that, among other reasons, Muhammad lacked the ability to read and write (*ummī*). Quoting the ideas of certain Western scholars, such as Comte Henry de Castries, L.A. Sedillot, and Theodor Nöldeke, he acknowledges the fact that there is a controversy over the meaning of *ummī* in the Qur'an 9:158, but maintains all the same that the true meaning of the term is "the one who cannot read or write."[47] Along with this, Hassan insists on the view that no one could possibly respond to the challenges expressed in its text[48] to all mankind to produce even a single chapter similar to one in the Qur'an (*fa'tū bi-sūrah min mithlihi*).[49] This proves the

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[45]Hassan, *al-Boerhān*, iii-v.

[46]Hassan, *An-Nubuwwah*, 159-60.

[47]Hassan, *al-Furqān*, 325 note 1060a; idem, *An-Nubuwwah*, 45-8; Anshari and Mughni, *Wajah & Wijhah*, 52. For an analysis of the meaning of *ummī*, see Isaiah Goldfeld, "The Illiterate Prophet (*Nabī Ummī*): An Inquiry into the Development of a Dogma in Islamic Tradition," *Der Islam* 57 (1980), 58-67; Yusuf H.R. Seferta, "The Prophethood of Muḥammad in the Writings of Muḥammad 'Abdu and Rashīd Riḍā," *Hamdard Islamicus* 8 (1985), 17-9; Norman Calder, "The *Ummī* in Early Islamic Juristic Literature," *Der Islam* 67 (1990), 111-23; Muhammad Khalid Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq al-Shāṭibi's Life and Thought* (Islamabad: Islamic Research Institute, 1977), 242-3; Khalil 'Athamina, "Al-Nabiyy al-Umiyy: An Inquiry into the Meaning of a Qur'anic Verse," *Der Islam* 69 (1992), 61-80.

[48]See the Qur'an 2:23, 10:38, and 11:13.

[49]A. Hassan, *Is Muhammad a True Prophet?* trans. K.A. Abdul Wahid (Bangil: Persatuan Islam, 1951), 52; idem, *An-Nubuwwah*, 165-6; Federspiel, *Persatuan Islam*, 38.

uniqueness of the Qur'an compared to other books. In order to prove the authenticity and the holiness of the Qur'an, he refers to its extraordinary features, among these being the beauty of its style, its ability to forecast the future (e.g. the victory of Muhammad over Mecca), and its conformity with reason and contemporary science.[50]

However, although he emphasizes the completeness of the Qur'an and the fact that it was also read out to and checked by Muhammad in the presence of Jibrīl, Hassan acknowledges the fact that human beings were involved in the historical development of the text in at least two cases: first, in the arrangement of the chapters (*sūrah*s); and second, in the preparation of other collections (*mushaf*s), e.g. those of 'Abd Allāh ibn Mas'ūd, Sālim, and Ubayy, besides that of 'Uthmān which has come down to us.[51] Certainly, the arrangement of the Qur'an, its completeness, and its linguistic problems have been the focus of debate among many writers.[52]

Realizing the important position of the Qur'an, Hassan wrote a translation with textual commentary which he entitled *al-Furqān fī Tafsīr al-Qur'ān*. However, in his

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[50]Hassan, *Is Muhammad a True Prophet?* 43-5; Federspiel, *Persatuan Islam*, 38-9.

[51]Hassan, *al-Furqān*, xiv.

[52]See, for instance, W. Montgomery Watt, "The Dating of the Qur'ān: A Review of Richard Bell's Theories," *Journal of the Royal Asiatic Society* (1957), 46-56; John Burton, "Linguistic Errors in the Qur'ān," *Journal of Semitic Studies* 33 (1988), 181-96; W. St. Clair Tisdall, "Shi'ah Addition to the Koran," *The Muslim World* 3 (1913), 227-41; Joseph Eliash, "The Šī'ite Qur'ān: A Consideration of Goldziher's Interpretation," *Arabica* 16 (1969), 15-24; B. Todd Lawson, "Note for the Study of a 'Shī'ī Qur'ān'," *Journal of Semitic Studies* 36 (1991), 279-95; Hossein Modarressi, "Early Debates on the Integrity of the Qur'ān: A Brief Survey," *Studia Islamica* 77 (1993), 5-39.

introduction to this work, he reminds his readers of the difficulties involved in producing an exact translation of the Qur'an and admits that his *tafsīr* might not be able to express the exact meaning of even a single verse of the Qur'an,[53] a problem acknowledged also by others.[54] The problem that Hassan states here is what is known in Western scholarship as a problem of hermeneutic.[55]

Furthermore, basing himself on the Qur'an 3:103 and 6:155, Hassan believes that the Qur'an is the basic foundation and the primary source of Islamic law, and that all other sources are secondary to and explanatory of the Qur'an; it covers all aspects of human life, both matters of worship (*'ibādāt*) and worldly affairs (*mu'āmalāt*), ensuring the happiness, prosperity, peace, and justice of human beings on earth (*fī al-dunyā*) in their preparation for life in the hereafter (*fī al-ākhirah*).[56] This

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[53]Hassan, *al-Furqān*, xii. For the problem of translation of the Qur'an, see A.L. Tibawi, *Arabic and Islamic Themes* (London: Luzac & Company, 1976), especially part one, chapter three, "Is the Qur'ān Translatable?" 72-85; Said Ramadan, *Islamic Law: Its Scope and Equity* (n.p., 1970), especially section "Difficulties of Language," 27-30; Shahir El-Hasan and Mustafa Al-Said, "Lexical Issues in Translating the Qur'an into English: Obstacles and Suggested Solutions," *International Journal of Islamic and Arabic Studies* 6 (1989), 45-57.

[54]See e.g. Muhammad Ali, *The Holy Qur'ān* (Lahore: Ahmadiyya Anjuman-i-Ishaat-i-Islam, 1920), xciv-xcv; 'Abdullah Yūsuf 'Alī, *The Meaning of the Holy Qur'ān* (Brentwood, Maryland: Amana Corporation, 1993), xiii, and Mohammad Marmaduke Pickthall, *The Meaning of the Glorious Koran* (New York: Mentor, n.d.), viii.

[55]See, for instance, Gregory Leyh, ed., *Legal Hermeneutics: History, Theory, and Practice* (Berkeley: University of California Press, 1992).

[56]Hassan, *al-Boerhān*, iii, v; idem, *al-Muchtār*, 42; Abdulkadir Hassan, *U-Shul Fiqih*, 8.

interpretation of the Qur'an's role is common among Muslim scholars.[57] We have also seen earlier that in Hassan's view, man's relationship with God depended vitally on the correct understanding of the legal precepts dictated in the Qur'an--and for that matter in the Sunnah. Accordingly, the Qur'an constitutes an aggregate body of legal commands on the basis of which cases of positive law are decided. This view, as indicated by Hallaq, is common among legal scholars.[58]

In fact, Hassan forcefully argued that the backwardness of the Muslims of his day was due primarily to their neglect of the Qur'an as the essential source of Islamic teaching. It is true even today that many Indonesian Muslims read the Qur'an without making any effort to understand its meaning; their sole reason for doing so is to fulfil certain ritual practices (*'ibādāt*) or to receive a reward from God. It was time, according to Hassan, to wage war against those who confined themselves to the opinions of religious leaders (e.g. *kiyais*) when the latter did not necessarily follow Qur'anic doctrine, and to encourage them to read and understand the Qur'an as a

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[57]See e.g. Shāṭibī's ideas on the Qur'an, an analysis of which can be read in Wael B. Hallaq, "The Primacy of the Qur'ān in Shāṭibi's Legal Theory," in *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald P. Little (Leiden: E.J. Brill, 1991), 69-90. For Sayyid Quṭb's ideas on the Qur'an, see Muḥammad Quṭb, "Introduction" to *In the Shade of the Qur'ān*, by Sayyid Quṭb (London: MWH London Publisher, 1979), xi-xvii; Aref Ali Nayed, "The Radical Qur'ānic Hermeneutics of Sayyid Qutb," *Islamic Studies* 31 (1992), 355-63; Ronald Nettler, "A Modern Islamic Confession of Faith and Conception of Religion: Sayyid Quṭb's Introduction to the *Tafsīr, Fī Ẓilāl al-Qur'ān*," *British Journal of Middle Eastern Studies* 21 (1994), 102-14. For Maḥmūd Shaltūt's ideas on the Qur'an, see his *al-Islām: 'Aqīdah wa Sharī'ah* (Cairo: Dār al-Qalam, n.d.), 499-500; an analysis of which can be read in Kate Zebiri, *Mahmūd Shaltūt and Islamic Modernism* (Oxford: Clarendon Press, 1993), 128-80.

[58]Hallaq, "Primacy of the Qur'ān," 71-2.

guidance for their daily life.

b. *Ḥadīth* or *Sunnah*.

According to Hassan, *hadīth* literally means "speech, talk, conversation, [something] new, and narrative,"[59] while *sunnah* literally means "journey, action, habitual practice, and the like."[60] Technically, however, they mean "the utterance (*qawl*), deed (*fi'l*), and fixation or tacit approval (*taqrīr*) of the Prophet Muhammad."[61] Thus, Hassan follows the traditional view that *sunnah* is identical to *hadīth* and may be divided into the following categories: the Prophet's sayings (*al-sunnah al-qawliyyah*), his acts (*al-sunnah al-fi'liyyah*), and his tacit approval of his Companions' sayings and acts (*al-sunnah al-taqrīriyyah*).

Hassan states his belief that the Sunnah was being collected as early as the period of the Umayyad Caliph 'Umar b. 'Abd al-'Azīz (99-101/717-9), who first sent

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[59]Hassan, *Ringkasan Islam*, 14; idem, *Tarjamah Bulughul-Maram*, vol. 1 (Bandung: C.V. Diponegoro, 1986), 10; Mughni, *Hassan Bandung*, 24.

[60]Hassan, *al-Boerhān*, v; idem, *An-Nubuwwah*, 39.

[61]Hassan, *al-Boerhān*, vi; idem, *Ringkasan Islam*, 14; idem, *An-Nubuwwah*, 39-40; Mughni, *Hassan Bandung*, 24-5. See also Jurjānī, *Ta'rifāt*, 161; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 197; Abū al-Najā, *Uṣūl al-Fiqh*, 67. The term *sunnah* is also used in the sense of "recommended" when it describes one of the five rulings (*al-aḥkām al-khamsah, al-aḥkām al-taklīfiyyah*) applied in Islamic law, i.e.: obligatory (*wājib*), recommended (*sunnah*), repugnant (*makrūh*), permissible (*mubāh*), and forbidden (*ḥarām*), an analysis of which can be read in Kemal Faruki, "*Al-Aḥkām al-Khamsah*: The Five Values," *Islamic Studies* 5 (1966), 43-98; idem, "Legal Implications for Today of *al-Aḥkām al-Khamsa* (The Five Values)," in *Ethics in Islam*, ed. G. Hovannisian (California: The University of California Press, 1985), 65-72. For the examples of the three kinds of Sunnah referred to above, see Maḥmaṣānī, *Falsafat al-Tashrī'*, 151; Abū al-Najā, *Uṣūl al-Fiqh*, 67-8.

a letter to the governor of Medina Abū Bakr Muhammad b. 'Umar b. Ḥazm, instructing him to begin the project. The effort continued until the emergence of canonical collections, the most famous among them being the *Muwaṭṭa'* of Mālik (d. 178), the *Ṣaḥīḥs* of Bukhārī (d. 251) and Muslim (d. 261), the *Musnad* of Aḥmad (d. 241), and the *Muṣannaf*s of Ibn Mājah (d. 273), Abū Dāwūd (d. 275), Tirmidhī (d. 279) and Nasā'ī (d. 303).[62] Hassan also classifies the Sunnah according to its reliability, following a scheme which for the most part resembles what had been devised by earlier scholars. It may be described, according to Hassan, as a multiple transmission of reports (*mutawātir*), a solitary report (*āḥād*, which includes the qualifications well-known/*mashhūr*, strong/*'azīz*, and strange or unfamiliar/*gharīb*), sound (*ṣaḥīḥ*), fair or good (*ḥasan*), or weak (*ḍa'īf*).[63]

Hassan shared the belief of earlier scholars that the Sunnah is the primary source of Islamic law after the Qur'an.[64] Accordingly, the Sunnah should not contradict the Qur'an,[65] a doctrine which is clearly established by the Qur'an 4:65,

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[62]Hassan, *al-Boerhān*, vi. See also Maḥmaṣānī, *Falsafat al-Tashrī'*, 151-2; Badrān, *Uṣūl al-Fiqh Islamī*, 198-9.

[63]For a detailed explanation of each Sunnah, see A. Hassan, "Pemakaian Hadiets Dla'if," in *Soal-Jawab*, vol. 1, 343-4; idem, *Bulughul-Maram*, vol. 1, 9-35; idem, *al-Boerhān*, vii-xiv; idem, *Ringkasan Islam*, 15.

[64]See e.g. Maḥmaṣānī, *Falsafat al-Tashrī'*, 138; Badrān, *Uṣūl al-Fiqh al-Islāmī*, 193-4.

[65]A. Hassan, *Kitab Ribaa* (Bandoeng: Persatoean Islam, 1932), 42; idem, *al-Furqān*, xx; idem, "Tudung Kepala Wanita, Pergaulannya dan Lain-Lainnya," in *Soal-Jawab*, vol. 2, 642; idem, "Hadijah Amal," *Pembela Islam* 69 (1 March 1935), 33.

80, 8:1, 20, 46, and 59:7.[66] Among the many important functions of the Sunnah, according to Hassan, is that of explaining in more detail what has been laid down in the Qur'an. In support of his idea, he quotes the Qur'an 16:44 and 59:7, and two Sunnaic texts.[67] This view of the relation between the Qur'an and Sunnah is very similar to that of Shāṭibī,[68] and at the same time contradicts the position of Shāfi'ī who maintained, for example, that the Qur'an had to be interpreted in the light of the Sunnah and not vice versa.[69] In Shāfi'ī's view, the Qur'an should be considered "as subordinate to the *Sunna*."[70] Thus, "in the event of an apparent conflict between the *ahkām* of the Qur'ān and those of the *sunna* the two must be harmonized and...in the last analysis a *sunna* formally and clearly ascertained must be held to have properly

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[66]For more Qur'anic verses, see Abū al-Najā, *Uṣūl al-Fiqh*, 70-2.

[67]The Sunnaic texts go as follows: *ṣallū kamā ra'aytumūnī uṣallī* (perform the prayer the way you see me performing it) and *khudhū 'annī manāsikakum* (follow me concerning the rituals of the pilgrimage).

[68]See Abū Isḥāq Ibrāhīm al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, vol. 4 (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.), 5-43, an analysis of which can be read in Hallaq, "Primacy of the Qur'ān," 77-84; idem, *History of Islamic Legal Theories*, 291-7.

[69]Kemal A. Faruki, "Al-Shāfi'ī's Agreements/Disagreements with the Mālikī and the Ḥanafī Schools," *Islamic Studies* 10 (1971), 132. See also Schacht, *Introduction*, 47, 53; idem, *Origins*, 15; idem, "Law and Justice," in *The Cambridge History of Islam*, ed. P.M. Holt, Ann K.S. Lambton, and Bernard Lewis, vol. 2 (Cambridge: Cambridge University Press, 1970), 559; idem, "Pre-Islamic Background and Early Development of Jurisprudence," in *Law in the Middle East: Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington D.C.: The Middle East Institute, 1955), 55; David F. Forte, "Islamic Law: The Impact of Joseph Schacht," *Loyola of Los Angeles International and Comparative Law Annual* 1 (1978), 13.

[70]Makdisi, "Juridical Theology of Shāfi'ī," 12.

understood the Qur'ānic *hukm* or *sharī'a* value."[71] It should be borne in mind also, according to Hassan, that Sunnaic texts may be used as the basis for the rules of Islamic law so far as they meet the following three requirements: they must be sound (*ṣaḥīḥ*), they must not be abrogated by other Sunnaic texts, and they must not contradict stronger Sunnaic texts or the Qur'an.[72] Nevertheless, in practice he emphasizes the Sunnaic text (*matn*) rather than the quality of its transmitters (*asānīd*). He argues that a Sunnah whose *matn* is in agreement with the Qur'an may still be used as the basis for a legal ruling even though its transmitters may be weak (*da'īf*).[73] He also admits the fact that fabricated Sunnahs were spread by irresponsible persons for various reasons, such as economic and social interests, political influence, or sectarian hostility.[74]

To reinforce the position of the Sunnah as the second primary source of Islamic law, Hassan stresses that Muhammad was "truly a Messenger commissioned by Allah to guide human beings in matters temporal and spiritual,"[75] arguing that the Qur'an 33:40 shows clearly that Muhammad was the seal of the Prophets (*khātama*

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[71]Faruki, "Shāfi'ī's Agreements/Disagreements," 132.

[72]Hassan, *al-Boerhān*, xiv. For a similar idea, see Badrān, *Uṣūl al-Fiqh al-Islāmī*, 195.

[73]A. Hassan, *al-Djawāhir (Permata2) Ajat2 dan Hadits2* (Bangil: Persatuan Islam, 1957); i; idem, "Tahliel," in *Soal-Jawab*, vol. 2, 509; idem, "Tahliel dan Chandoeri," *Pembela Islam* 59 (March 1933), 39.

[74]Hassan, *Ringkasan Islam*, 18-9.

[75]Hassan, *Is Muhammad a True Prophet?* 3. See also Federspiel, *Persatuan Islam*, 33.

al-nabiyyīn).[76] Moreover, in his *An-Nubuwwah* and *Benarkah Muhammad Itu Rasul?* he offers several proofs of the prophethood of Muhammad. At the same time, he rejects the doctrine of the Ahmadiyah Qadian which held that Mirza Ghulam Ahmad was a prophet sent down by God to continue Muhammad's mission,[77] a belief which was and still is popular among certain Indonesian Muslims.

Last, but by no means least, it would seem appropriate at this juncture to consider the fact that while there is no disagreement among the jurists or Muslims in general over the place of the Qur'an and Sunnah as the primary sources of Islamic law, even among those who were accused of ignoring them, in practice however there is much controversy over the issue. For example, in certain cases each group charges the other with neglecting these sources, and both use arguments based, interestingly enough, on the same sources, the Qur'an and Sunnah. As will be seen in chapters four and five, this was also the case in the polemics between Hassan and his opponents.

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[76]For Hassan's ideas on the prophethood of Muhammad, see his *An-Nubuwwah*, especially chapter "Muhammadur-Rasulullah," 40-216. See also Federspiel, *Persatuan Islam*, 33-7; Anshari and Mughni, *Wajah & Wijhah*, 51-6. One may argue, however, that the Arabic *khātam* itself has a variety of meanings literally and historically and that it does not necessarily mean the seal of the Prophets. For a discussion on the finality of the Prophet Muhammad, see Gedeliahu G. Stroumsa, "'Seal of the Prophet': The Nature of a Manichaean Metaphor," *Jerusalem Studies in Arabic and Islam* 7-8 (1986), 61-74; Yohanan Friedmann, "Finality of Prophethood in Sunnī Islām," *Jerusalem Studies in Arabic and Islam* 7-8 (1986), 177-215, developed later in his *Prophecy Continuous*, 49-82.

[77]See generally A. Hassan, *Risalah Ahmadijah*, 2 vols. (Bangil: Al-Muslimun, 1975). See also Federspiel, *Persatuan Islam*, 99-104. For Mirza Ghulam Ahmad's teachings see e.g. his *Teachings of Islam*, trans. Maulana Muhammad Ali (Lahore: Ahmadiyyah Anjuman Isha'at Islam, 1910). For an analysis of Ghulam Ahmad's religious thought, see generally Friedmann, *Prophecy Continuous*.

2. Secondary Sources.

a. *Ijmā'* (Consensus).

Historically speaking, the issue of consensus first arose after the death of the Prophet and upon the completion of revelation, when new problems of every sort emerged. Consensus was thereafter regarded as a means of keeping Muslim society continuously guided by the divine teaching. Some even say that the emergence of consensus among the Sunnīs was stimulated at first by the challenges of the Shī'īs, who maintained at that time, and still do, that the Imām, like the Prophet, provided infallible religious judgements. However, this view of the origins of consensus, according to Hourani, is questionable; for one thing, the issue of consensus had appeared long before the political dispute between Sunnīs and Shī'īs.[78]

According to Hassan, *ajma'a, yujmi'u, ijmā'an* literally means "to determine" or "to make an agreement" as seen in the Qur'an 10:71, in a Sunnah recorded by Abū Dāwūd,[79] and in the following statement: "the people reach an agreement on such-and-such" (*ajma'a al-qawmu 'alā kadhā*).[80] In the context of legal theory, says Hassan, consensus is commonly understood as "an agreement or a consensus of the Muslim community represented by *mujtahid*s, those who are qualified to perform

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[78]Hourani, "Authority of Consensus," 18.

[79]The Sunnaic text goes as follows: *lā ṣiyām liman lam yujmi' al-ṣiyām min al-layl* (fasting is not valid unless it is intended from the night before).

[80]A. Hassan, "Dari Hal Idjma'," *Pembela Islam* 56 (December 1932), 29; idem, "Dari Hal Ijma'," in *Soal-Jawab*, vol. 4, 1612; idem, *Ijma'*, 3. Hassan's ideas on this point are exactly similar to those of Abū al-Najā, Āmidī, and Shawkānī; see Abū al-Najā, *Uṣūl al-Fiqh*, 76; Āmidī, *Iḥkām*, vol. 1, 195; Shawkānī, *Irshād al-Fuḥūl*, 70.

ijtihād, on the problems not covered by the Qur'an and Sunnah."[81] Hassan then cites the technical meaning of consensus according to some earlier scholars such as Āmidī, Ghazālī, Khuḍārī, Naẓẓām, and Shawkānī. However, these definitions, according to Hassan, suffer from at least four problems.[82] In the first place, there is no clear explanation of what constitutes the *ummah* of Muhammad: Is it the Muslims of the past, of the present time, of the future, or all of these? If the *ummah* means all Muslims, it is practically impossible; at the very least it must be admitted that earlier generations would not necessarily know of the problems faced by later ones. Moreover, the term *ummah* also includes those who have knowledge and those who do not. Should consensus comprise both of these two groups? Secondly, who makes up the *mujtahid*s? How does one determine that someone is a scholar or a *mujtahid*? Thirdly, there is a difficulty in defining the term "religious problem": does it refer to both matters of worship (*'ibādāt*) and worldly affairs (*mu'āmalāt*)? Certainly, no one, not even a *mujtahid*, has the right to determine rules in matters of worship, for all of the latter were instituted by Allah and His Prophet Muhammad; thus, there is no need for consensus. Accordingly, Hassan refuses to accept the notion that the obligations of fasting and performing five daily prayers, for instance, were based on a consensus;

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[81]Hassan, *Ringkasan Islam*, 29; Mughni, *Hassan Bandung*, 25-6.

[82]Hassan, "Dari Hal Idjma'," *Pembela Islam* 56, 30-3; idem, *Ijma'*, 4-7; idem, "Dari Hal Ijma'," in *Soal-Jawab*, vol. 4, 1611-2. To take one example, Āmidī defines *ijmā'* as follows: "the agreement of the *ahl al-ḥall wa al-'aqd* of Muhammad's community in a particular generation upon a rule of law pertaining to a particular case"; see Āmidī, *Iḥkām*, vol. 1, 281-2; Yūsuf Mūsā, *al-Fiqh al-Islāmī*, 182; Weiss, *God's Law*, 185.

rather, he looks to the Qur'an and Sunnah for their foundation.[83] In the case of *mu'āmalāt*, it is impossible for all people, of all generations, to reach a consensus and continue to agree on it throughout all time. One thing, after all, is certain: rules may have to be altered because of changes in time and place.[84] Fourthly, some say that it is in the hands of the effective rulers of the community (*ahl al-ḥall wa al-'aqd*) to produce a consensus. But people have different ideas concerning who should be considered *ahl al-ḥall wa al-'aqd*.[85]

It is also true, says Hassan, that we do not have evidence of a consensus being supported by the *ummah* of any generation. This being the case, Hassan concludes that consensus cannot be a source of Islamic doctrine, quoting in support of this conclusion Ahmad ibn Hanbal's statement: "anyone who claims the existence of consensus is a liar (*man idda'ā wujūda al-ijmā' fahuwa kādhib*).[86] Accordingly,

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[83]Hassan, *Ijma'*, 7, 9.

[84]As in the case of some *al-qawā'id al-fiqhiyyah* such as *al-ḥukm yadūru ma'a 'illatihi wujūdan wa 'adaman* (the existence of law depends upon whether or not there is a *ratio legis*/*'illah*).

[85]For a survey of some of the theories pertaining to the *ahl al-ḥall wa al-'aqd* held by some medieval jurists such as Bāqillānī, Fadl Allāh, Māwardī, Ghazālī, Ibn Jamā'ah, and Juwaynī, see Ann K.S. Lambton, *State and Government in Medieval Islam, An Introduction to the Study of Islamic Political Theory: the Jurists* (Oxford: Oxford University Press, 1991). According to Yūsuf Mūsā, instead of *ahl al-ḥall wa al-'aqd*, the term *jumlat al-mujtahidīn* is more accurate, for a consensus must be arrived at by *mujtahid*s while the members of today's *ahl al-ḥall wa al-'aqd* are not all *mujtahid*s; see Yūsuf Mūsā, *al-Fiqh al-Islāmī*, 182.

[86]A. Hassan, "Dari Hal Idjma'," *Pembela Islam* 57 (January 1933), 32; 58 (February 1933), 36; idem, "Melafazhkan Niat," in *Soal-Jawab*, vol. 1, 94; idem, "Imkanul 'Ilmi tentang Ijma'," in *Soal Jawab*, vol. 4, 1618; idem, *Ijma'*, 9, 17; idem, *al-Boerhān*, xxiii; idem, *Djawaban Kepada Alwi bin Thahir Alhaddad* (Bangil:

Hassan flatly rejects the idea that consensus occupies a position similar to that of the Qur'an and Sunnah as a source of Islamic law and, like Ibn Taymiyyah,[87] opposes those who believe that consensus can supersede or abrogate textual proofs, and even the Qur'an itself.[88] Those who believe that consensus can abrogate such texts argue that consensus has long been considered among the religious proofs (*hujjah min hujaj al-shar'*), giving as an example the consensus reached in the era of the Caliph Abū Bakr that the *mu'allafah qulūbuhum* (those whose hearts had only recently been reconciled to the Truth/Islam) should not receive any share of the religious charity (*sadaqah*), which was certainly against the clear text of the Qur'an 9:60.[89]

Hassan, for his part, offers objections to all of the arguments made in support of consensus as a source of Islamic law. In Hassan's view, those who advocate consensus are incorrect in basing their ideas on either the Qur'an or Sunnah. For example, they rely on the Qur'an 42:10 and 4:59 as the textual indicants (*dalā'il*) of

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Persatuan Islam, n.d.), 9. See also 'Abd al-Salām ibn 'Abd Allāh ibn Taymiyyah, *al-Musawwadah fī Usūl al-Fiqh* (Cairo: Al-Mu'assasah al-Su'ūdiyyah, 1983), 283; Muhammad ibn Abī Bakr ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, vol. 1 (Cairo: Matba'at al-Sa'ādah, 1955), 30; Yūsuf Mūsā, *al-Fiqh Islāmī*, 183; 'Abd al-Wahhāb Khallāf, *'Ilm Usūl al-Fiqh* (Cairo: Matba'at al-Nasr, 1954), 51; Muhammad Amin, *Ijtihad Ibn Taymiyyah dalam Bidang Fikih Islam* (Jakarta: INIS, 1991), 69.

[87]Makari, *Ibn Taymiyyah's Ethics*, 99-100.

[88]For the idea that consensus can supersede the Qur'an and Sunnah, see Kemal A. Faruki, *Ijma and the Gate of Ijtihad* (Karachi: Gateway Publications, 1954), 9-10; idem, "Shāfi'ī's Agreement/Disagreement," 135; Wael B. Hallaq, "Consensus," in *The Oxford Encyclopedia of Modern Islamic World*, ed. John L. Esposito (Oxford: Oxford University Press, 1995); idem, *History of Islamic Legal Theories*, 110.

[89]'Alī 'Abd al-Rāziq, *al-Ijmā' fī al-Sharī'ah al-Islāmiyyah* (Cairo: Dār al-Fikr al-'Arabī, 1947), 97-8.

consensus.[90] According to these two verses, if people have different opinions on a certain case, they have to refer it to Allah (the Qur'an) and to the Prophet (Sunnah). The supporters of consensus applied the principle of divergent implication (*mafhūm al-mukhālafah*) to these verses and came to the conclusion that in matters upon which people agree (consensus) there is no need to refer to the Qur'an or Sunnah,[91] and that consensus thus becomes a legitimate source of Islamic law. This is certainly wrong, says Hassan, and is furthermore an example of incorrect use of *mafhūm al-mukhālafah*. To make this point clearer, Hassan gives the following illustration: It is said, "According to Islamic law, drinking spring water (*air perigi*) is permissible." If we apply *mafhūm al-mukhālafah* to this statement, the result would be: "drinking water other than spring water is forbidden;" thus, drinking the water of rivers and lakes, for instance, would not be allowed. This however is certainly not true, for it is contrary to the accepted teaching that drinking such water is permissible.[92]

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[90]Hassan, "Dari Hal Idjma'," *Pembela Islam* 57, 33; idem, "Dalil-Dalil Idjma'," in *Soal-Jawab*, vol. 4, 1619-20; idem, *Ijma'*, 10-1.

[91]For more examples of the Qur'anic and Sunnaic texts used to support the doctrine of consensus, which interpretations Hassan refused to accept, see Hassan, "Dari Hal Idjma'," *Pembela Islam* 57, 34-6; 58 (February 1933), 33-6; idem, "Dalil-Dalil Idjma'," in *Soal-Jawab*, vol. 4, 1621-6; idem, *Ijma'*, 11-6; idem, *al-Boerhān*, xvii-xx. For an extensive discussion of the evidentiary status of consensus (*hujjiyat al-ijmā'*), see Hourani, "Authority of Consensus," 11-60; Norman Calder, "Ikhtilāf and Ijmā' in Shāfi'ī's Risālah," *Studia Islamica* 58 (1983), 55-81; Zysow, "Islamic Legal Theory," 202-10; Wael B. Hallaq, "On the Authoritativeness of Sunnī Consensus," *International Journal of Middle East Studies* 18 (1986), 427-54; idem, *History of Islamic Legal Theories*, 107-16; and Kamali, *Islamic Jurisprudence*, 175-82.

[92]Hassan, *Ijma'*, 10. See also idem, "Dari Hal Idjma'," *Pembela Islam* 57, 31-6.

Furthermore, like Ibn Ḥazm[93], Hassan criticizes those who believe that the Sunnah which reads "my people will never agree on an error" represents a textual indicant (*dalīl*) for consensus.[94] He argues that while the Sunnah is correct in saying that the *ummah* as a whole will never accept an error (*khaṭa'*) or go astray (*ḍalālah*), this still does not mean that it supports the doctrine of consensus.[95] The true meaning of the Sunnah, says Hassan, can be seen in another tradition which goes: "there will always be a group of Muslims who promote the truth (*ḥaqq*); and those who are against them will not be able to defeat them." He also points to the fact that the Sunnah mentioned earlier ("my people...") uses the word *ummatī* (my people); thus it cannot be used to justify the doctrine of consensus, for it is impossible for all Muslims of every generation to sit together except on the Day of Judgment,[96] a view held also by the Mu'tazilite Ibrāhīm al-Naẓẓām, the Murji'ites, and some Mutakallimūn.[97]

What we have discussed so far is Hassan's principle doctrine of consensus in

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[93]Ibn Ḥazm, *Iḥkām*, vol. 4, 131; Hourani, "Authority of Consensus," 30.

[94]Hassan, *Ijma'*, 14. Similarly, see Muhammad Asad, *The Principles of State and Government in Islam* (Berkeley: University of California, 1961), 38. For the Sunnah, see Muḥammad ibn Yazīd ibn Mājah, *Sunan Ibn Mājah*, vol. 2 (Cairo: 'Īsā al-Bābī al-Ḥalabī, 1952), 1303. According to Asad, the conclusion that whatever the community agrees upon must be the right course is "analogous to the ancient Roman saying *vox populi, vox Dei* (the voice of the people is the voice of God)"; see Asad, *State and Government*, 38.

[95]Hassan, *Ijma'*, 14.

[96]Hassan, *al-Boerhān*, xix.

[97]Ibn Taymiyyah, *Musawwadah*, 282; Khallāf, *'Ilm Uṣūl*, 50; Khadduri, "Nature and Sources," 16; Hallaq, "Authoritativeness of Sunni Consensus," 442.

his *uṣūl al-fiqh*. In fact, his discussion of consensus is completely dominated by his effort to reject it as a source of Islamic law. Nonetheless, as we shall see, there is an exception to this general pronouncement. Quoting the statements of Rāzī and Baydāwī, Hassan recognizes a specific consensus, that is, the consensus of the Companions of the Prophet (*ijma' sahabat Nabī*), the only consensus which may be considered a source of Islamic law,[98] and this is so for various reasons. First, it was quite possible for the Companions to have met to discuss a certain problem which is not stated in the Qur'an.[99] Secondly, the validity of their consensus is based on the Sunnah which goes: "you have to follow my traditions and those of my successors after me." Finally, the Companions would not have agreed on anything without any support from the Prophet; hence, the individual instances of such a consensus do not stand by themselves as a source of Islamic law but rather on the basis of various Sunnahs that have not come down to us. What we call consensus is therefore the Sunnah.[100] This consensus is concerned with matters of worship and not with worldly affairs.[101] It may also be said that this doctrine of consensus is, to some

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[98]Hassan, *al-Boerhān*, xxiii; idem, "Melafadzkan Niat," 93.

[99]Hassan, *Ijma'*, 17-8; idem, *Ringkasan Islam*, 29.

[100]Hassan, "Dari Hal Ijma'," *Pembela Islam* 58, 37; idem, *Mendjawab Buku Bantahan Tuan Hadji Husain al-Habsji* (Bangil: Persatuan Islam, 1957), 10-1; idem, *Ringkasan Islam*, 29; idem, *al-Boerhān*, xx, xxii; Mughni, *Hassan Bandung*, 26.

[101]Hassan, *Ijma'*, 18.

extent, similar to that of the Wahhābīs, Ḥanbalīs, and Ẓāhirīs.[102]

In one of his articles, Norman Calder poses the following question: "Does the existence of an *ijmā'* amongst the people...imply the existence of prophetic Tradition which has somehow got lost?" Calder tries very hard to relate the problem of the 'lost' tradition in Islamic jurisprudence, particularly in Shāfi'ī's doctrine, to that of *minhag* in Judaic law.[103] This is a theory that has often been advanced by Western writers in order to prove that Islam is obligated to earlier religions (e.g. Judaism).[104] To borrow Hallaq's words, Islam "was [and still is] predominantly perceived...in terms of influences, debts, borrowings--terms that persistently negate the quality of

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[102]Muhammad Y. Faruqi, "The Development of *Ijmā'*: The Practices of the *Khulafā' al-Rāshidūn* and the Views of the Classical *Fuqahā'*," *The American Journal of Islamic Social Sciences* 9 (1992), 181, 183; Zysow, "Islamic Legal Theory," 240, 250; Ibn Taymiyyah, *Musawwadah*, 282; Kamali, *Islamic Jurisprudence*, 183; Amin, *Ijtihad Ibn Taymiyyah*, 69; Bernard G. Weiss, "Ijmā'," in *The Encyclopedia of Religion*, ed. Mircea Eliade (London: Macmillan Publishing Company, 1987); D.B. MacDonald, "Idjmā'," in *Shorter Encyclopaedia of Islam*, ed. H.A.R. Gibb and J.H. Kramers (Leiden: E.J. Brill, 1961).

[103]Calder, "Ikhtilāf and Ijmā'," 74-6.

[104]Muhammad al-Faruque has included Calder among those Western writers (e.g. Goldziher, Schacht, Wansbrough, and Crone) who are inclined to believe that there is no originality in Islam in general and Islamic law in particular. "Borrowing" is always emphasized as a common feature of Islam; see Muhammad al-Faruque, review of *Studies in Early Muslim Jurisprudence*, by Norman Calder, *Muslim World Book Review* 15 (1994), 11-5. To the present writer, there are some others who follow such an approach, among them Judith Romney, G.H.A Juynboll, Rafael Talmon, and R. Marston Speight; see Minhaji, "Schacht's Contribution," 73-104; Theodore P. John, "Roman Law and Mohammedan Jurisprudence," *Michigan Law Review* 6 (1907-1908), 44-52, 197-214, 371-96.

originality."[105]

It is odd that in his works on consensus, Hassan never gives a single example of the sort of consensus that he regards as the only one of its kind to form a valid source of Islamic law (i.e. the Companions' consensus). Thus, Hassan's discussion of the subject appears to be theoretical only; in fact, he never explains how to use it when dealing with the problems faced by Muslims.

It is important to note also that Hassan acknowledges the so-called consensus of "those charged with authority" (*ulū al-amr*), arguing that such a consensus is sanctioned by the Qur'an 4:59.[106] This consensus is, however, mentioned in passing only in the section on analogy (*qiyās*) and not in that dealing with consensus. Elsewhere, he mentions also the possibility of a consensus of jurists of a certain period and place. If this consensus is reached and adopted by an Islamic government as the constitution of the state, Muslims are obligated to follow it as a consequence of their "oath of allegiance" (*bay'ah*)[107] to the government. But this consensus should not contradict the Qur'anic or the Sunnaic text.[108] Hassan does not however discuss these topics in those of his works in which he treats consensus at length;

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[105]Hallaq, "*Uṣūl al-Fiqh*: Beyond Tradition," 172. Similarly, see John O. Voll, "The Sudanese Mahdī: Frontier Fundamentalist," *International Journal of Middle East Studies* 10 (1979), 151.

[106]Hassan, *Ijma'*, 21, 31-2.

[107]*Bay'ah* is an unwritten contract or a pact which involves "a recognition of, and an oath of allegiance to, a caliph, a ruler, a king, or an emir"; see Emile A. Nakhleh, "Bay'ah," in *The Oxford Encyclopedia of the Modern Islamic World*, ed. John L. Esposito (Oxford: Oxford University Press, 1995).

[108]Hassan, *Ringkasan Islam*, 29-30; Mughni, *Hassan Bandung*, 26.

rather, he brings them up, strangely enough, in his other works which have nothing to do with consensus. For example, he deals with these subjects in his *Pemerintahan Tjara Islam*, which is concerned with Islamic government, and in his *Islam dan Kebangsaan*, which deals with the issue of Islam and nationalism.[109] Thus, one may conclude that his adoption of this type of consensus stands in clear contradiction with his general doctrine of consensus mentioned earlier, in which he rejected it in all of its forms, with the single exception of the Companions' consensus.

Hassan's inconsistency on this issue may have been due to his realization that the Companions' consensus, which depends for its validity on the theory of a lost Sunnah, does not change the very real fact that certain Muslim societies (e.g. Indonesian Muslims) need a consensus to solve certain problems of their own; apparently it was for this reason that Hassan adopted the consensus of the *ulū al-amr*, a consensus "that derives its authority from some form of consultative and parliamentary process." This type of consensus is revocable (i.e. it can be altered by another consensus), an idea which is certainly in accordance with the modern doctrine of consensus[110] advocated, for instance, by Kemal A. Faruki, Muhammad 'Abduh, Muhammad Iqbal, and Rashīd Riḍā,[111] as well as by the Indonesian reformers

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[109]See especially chapter "Bagaimana Menghukum dengan Qur'an dan Hadis," 34-6.

[110]For a brief account of *ijmā'* in the modern period, see Hallaq, "Consensus," in *Encyclopedia of the Modern Islamic World.*

[111]See Avriel Butovsky, *The Languages of History: Selected Writings on the Middle East* (Cambridge: Harvard University Press, 1995), 106-7, 126-33; Yusuf H.R. Seferta, "Rahīd Riḍā's Quest for an Islamic Government," *Hamdard Islamicus* 8

Hazairin, Ibrahim Hosen, and Muhammad Hasbi Ash-Shiddieqy.[112] According to this modern concept, consensus is accepted within its given time-space context, and together with the doctrines of the effective rulers of the community (*ahl al-hall wa al-'aqd*) and the process of consultation (*shūrā*), consensus is understood to be similar to the European form of consultative government and parliamentary process.[113] Hassan maintains also that the system of Islamic government falls under the category of worldly affairs (*mu'āmalāt*); thus it is permitted for Muslims (i.e. Indonesians) to

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(1985), 37-48; Kamali, *Islamic Jurisprudence*, 190-4; Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad 'Abduh and Rashīd Ridā* (Berkeley: University of California Press, 1966), 143-5, 203-4; Hourani, "Authority of Consensus," 39-44; Hamid Enayet, *Modern Islamic Political Thought* (London: The Macmillan Press, 1982), 69-83; Jackson, "Prophetic Actions to Constitutional Theory," 85; Schacht, "Classicisme, traditionalisme et ankylose," 154-5; Faruki, *Ijma and the Gate of Ijtihad*, 31-8; idem, *Islamic Constitution* (Karachi: Gateway Publications, 1952), 55-82; idem, *Islamic Jurisprudence* (Karachi: Pakistan Publishing House, 1962), 152-65; Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: SH. Muhammad Ashraf, 1982), 173-6.

[112]See Hazairin, *Indonesia Satu Masdjid* (Djakarta: Bulan Bintang, 1952), 4-14; idem, *Hukum Kewarisan Bilateral*, 66-8; idem, *Tinjauan Mengenai U.U. Perkawinan Nomor: 1-1974* (Jakarta: Tintamas, 1986), 1-36; Ibrahim Hosen, "Pemerintah Sebagai Madzhab," *Pesantren* 2 (1985), 43-6; Panitia Penyusun Biografi, *Prof. K.H. Ibrahim Hosen dan Pembaharuan Hukum Islam* (Jakarta: C.V. Putra Harahap, 1990), 101-226; Muhammad Hasbi Ash-Shiddieqy, *Asas-Asas Hukum Tatanegara* (Djakarta: Matahari, 1969), 29-58.

[113]Abū al-Najā's definition of consensus reflects the idea of modern consensus: "an agreement of the *mujtahid*s on a certain case within its given time-space context after the death of the Prophet"; see his *'Usūl al-Fiqh*, 76. In the context of modern consensus, Hallaq writes: "Law governing these matters [worldly affairs] must be legislated by the qualified legal scholars who are the effective rulers of the community (*ahl al-hall wa-al-'aqd*) and act on its behalf and in its best interest. Their legislation is the result of a process of consultation (*shūrā*), and as such it represents the will and consensus of the community"; see Hallaq, "Consensus," in *Oxford Encyclopedia of the Modern Islamic World.*

produce a consensus adopting any system of government (Western or non-Western) so long as it can produce a society that applies in full the provisions of Islamic law.[114]

While it might be safe to say that, in the context of *usūl al-fiqh* in general, consensus has traditionally been considered one of the legitimate sources of Islamic law (*aslun min usūl al-shar'*), nonetheless there is wide room for discussion on the meaning of consensus, its origins, its relation to the term *sunnah*, its subjects, its functions, and its evidentiary status (*hujjiyat al-ijmā'*), topics which have been discussed by many early writers.[115] Hassan was to some extent involved in the discussion of these topics; nonetheless, an effort must still be made by his disciples to re-evaluate his concept of *ijmā'*. For there are significant differences, not to say contradictions, between his ideas as expressed in his different works. This is particularly true of his attitude towards the consensus of the *ulū al-amr* and how it relates to his principal doctrine of consensus.

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[114]A. Hassan, *Pemerintahan Tjara Islam* (Malang and Bangil: Toko Timoer, 1946), 147; idem, *Islam dan Kebangsaan*, 35-6.

[115]These issues are discussed in M.M. Bravmann, *The Spiritual Background of Early Islam: Studies in Ancient Arab Concepts* (Leiden: E.J. Brill, 1972), particularly chapter three (a), "Ijmā'," 194-8; Hallaq, "Authoritativeness of Sunni Consensus," 427-54; Hourani, "Authority of Consensus," 13-60; Calder, "Ikhtilāf and Ijmā'," 55-81; Zohorul Bari, "The Concepts of Sunna and Jamā'a in the Early Schools of Islamic Law," *Islamic and Comparative Law Quarterly* 4 (1984), 150-63; Bernard G. Weiss, "al-Āmidī on the Basis of Authority of Consensus," in *Essays on Islamic Civilization: Presented to Niyazi Berkes*, ed. Donald P. Little (Leiden: E.J. Brill, 1976), 342-56; idem, *God's Law*, particularly chapter five, "Ijmā'," 181-258.

b. *Qiyās* (Analogy).

Qiyās fulfils an important role in *uṣūl al-fiqh*, providing as it does the means to resolve a wide variety of problems not covered by the divine texts. This concept of *qiyās* took a very long time to acquire its final form. It first appeared in the second century but it was not until the third century that the notion was fully developed.[116] In fact, the origins of *qiyās* are somewhat controversial, with some scholars having even suggested that the concept is a product of foreign influence, particularly that of Graeco-Roman and Jewish law. The idea of a foreign origin for *qiyās* was a common view among some earlier Western scholars,[117] but this has been challenged in recent years especially by Alhaji Nour, who argues that the term was used as early as the days of Ibn Mas'ūd (d. 32 A.H.), and was even commonly used by the Arabs long before Islam.[118] Ending his analysis, Nour concludes:

> For all these reasons, one finds the 'evidence', brought forward by Professor Schacht, too weak to prove any Jewish debt against Islamic Jurisprudence and that the statements of A.J. Arberry that "the admission of Qias (analogy) as a

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[116]Fadel I. Abdallah, "Notes on Ibn Hazm's Rejection of Analogy (Qiyās) in Matters of Religious Law," *The American Journal of Islamic Social Sciences* 2 (1985), 208-9; Alhaji A.M. Nour, "Qias as a Source of Islamic Law," *Journal of Islamic and Comparative Law* 5 (1974), 22.

[117]See e.g. Ignaz Goldziher, "The Principles of Law in Islam," in *Historian's History of the World*, ed. H.S. Williams, vol. 8 (New York: Tiffany & Co, 1908), 297; Schacht, *Origins*, 99-100; A.J. Arberry, *Revelation and Reason in Islam* (London: George Allen & Unwin, 1971), 17.

[118]Nour, "Qias," 43-4. According to Kamali, "although *qiyās* as a technical formula was elaborated in the second century AH..., evidence suggests that the companions of the Prophet approved of it in principle"; see Mohammad Hashim Kamali, "Qiyās," in *The Encyclopedia of Religion*, ed. Mercia Eliade (London: Macmillan Publishing Company, 1987); idem, *Islamic Jurisprudence*, 218-9.

> legitimate instrument of jurisprudence couldn't have happened without some awareness of methods of Aristotelian logic" and "the derivation of *Qias* as a legal term from Hebrew *hiqqish* has been generally accepted" are both unfounded conclusions.[119]

This of course does not mean that the doctrine of *qiyās* has nothing to do with other concepts outside Islam (and the Arab heritage). But to emphasize foreign influence while at the same time neglecting the internal origins of such a concept is a grave methodological error. Rahman fairly observes: "the term [*qiyās*], as consciously formulated, most probably shows foreign influence, but the doctrine itself shows unmistakably a consistent internal development."[120] This internal development of juridical dialectic among Muslim jurists has been discussed at length by Hallaq.[121]

As an important source of Islamic law, *qiyās* has received considerable attention from jurists, who regard it as extremely useful in dealing with the problems increasingly being faced by Muslims. Hassan is himself an example of this trend, for he vigorously defends *qiyās* as one of the legitimate sources of Islamic law (*aṣlun min uṣūl al-shar'*), something he was quite unwilling to do in the case of consensus. Rejecting *qiyās*, says Hassan, is contrary to the principles of Islamic teaching; he argues that its use is supported by the Qur'an and Sunnah. This comes as a somewhat surprising statement from one whose position on the Qur'an, the Sunnah, and

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[119]Nour, "Qias," 49-50.

[120]Rahman, *Islam*, 71.

[121]See Hallaq, "Juridical Dialectic," 197-206; idem, "Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence," *Arabica* 37 (1990), 315-58; idem, "Development of Logical Structure," 42-67.

consensus reflects the doctrine held by the Ẓāhirī school[122] on those topics. It is nonetheless true however that his stance on *qiyās* would never have found favour with Ibn Ḥazm.[123]

Hassan supports his claim that *qiyās* is a legitimate source of law with a systematic exposition of proofs. He begins by singling out sixteen Qur'anic verses and one Sunnaic text used by the opponents of *qiyās*, which he then analyzes in such a way as to render invalid their understanding of the textual indicants (*dalā'il*). At the same time he provides his own understanding of the texts, which he claims to have arrived at through valid means. It should be noted, however, that Hassan does not identify any individual or group who was considered an opponent of *qiyās*. Nor does he mention the sources from which he derived the arguments presented by its so-called opponents. In fact, as followers of the Shāfi'ī school, the traditional scholars of Indonesia had no problem with *qiyās* as one of the sources of Islamic law.

In the next step, Hassan offers the textual indicants (*dalā'il*) advanced by

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[122]For a brief but important account of the Ẓahirī school, see Adam Muhammad Ajiri, "Ibn Ḥazm and Why He is Regarded as the Second Teacher of the Ẓāhirite Madhhab," *The Islamic Quarterly* 37 (1994), 113-23.

[123]For some background on the life and thought of Ibn Ḥazm, see Muhammad Khalid Masud, "A History of Islamic Law in Spain: An Overview," *Islamic Studies* 30 (1991), 20; Ajiri, "Ibn Ḥazm," 117-23. For his ideas on *qiyās* in particular, see generally 'Alī ibn Aḥmad ibn Ḥazm, *Mulakhkhaṣ Ibṭāl al-Qiyās wa al-Ra'y wa al-Istiḥsān wa al-Taqlīd wa al-Ta'līl*, ed. Sa'īd al-Afghānī (Beirut: Maktabat Dār al-Fikr, 1969). For a summary and an analysis of Ibn Ḥazm's ideas on *qiyās*, see Abdallah, "Ibn Ḥazm's Rejection of Analogy (Qiyās)," 207-25; Kamali, *Islamic Jurisprudence*, 219-20. See also Maḥmaṣānī, *Falsafat al-Tashrī'*, 165; idem, *The Philosophy of Jurisprudence in Islam*, trans. Farhat J. Ziadeh, (Leiden: E.J. Brill, 1961), 80; Shehaby, "*'Illa* and *Qiyās*," 32-3; Qadri, *Islamic Jurisprudence*, 212.

certain advocates of *qiyās* with whom he naturally agrees. He then goes on to quote thirteen statements by various Companions and their Followers (*tābi'ūn*) denouncing the use of *qiyās* as a source of Islamic law, to which Hassan carefully responds by arguing that such statements were not necessarily aimed at refusing *qiyās* as a source of Islamic law. Put in slightly different terms: Hassan was accusing the opponents of *qiyās* of having misunderstood the true meaning of the statements of the Companions and their Followers. He further backs up his claim by pointing to certain practices of the Companions which, in Hassan's view, support the adoption of *qiyās*. Finally, he proceeds to a discussion of the meaning of *qiyās*, its types, its application, and various examples of its being put into practice. Due to the exhaustive nature of his discussion of the subject, only some points of his argument will be outlined in the following, which will focus on the main points of Hassan's doctrine of *qiyās*.

In the Qur'an 4:59, Allah says: "O you who believe: obey Allah and obey the Messenger and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger if you do believe in Allah and the Last Day. That is best and most suitable for final determination." This verse appeals to both the opponents and the advocates of *qiyās*. According to those who reject *qiyās*, this verse clearly suggests that if there is any difference among Muslims they should turn to Allah (the Qur'an) and His messenger (the Sunnah) and not to *qiyās*, which is based on mere human criteria. In line with those who champion *qiyās*, Hassan disagrees with the interpretation advanced by its opponents and provides various reasons to support his position. In the first place, he discusses at some length

Rāzī's statements on the point, concluding that the sense of the verse is as follows: the command "obey Allah" refers to following the precepts of the Qur'an; "obey the Messenger" means complying with the Sunnah; "obey those charged with authority" means observing the rules established through the consensus of the *ulū al-amr*; lastly, "if you differ in anything among yourselves, refer it to Allah and His Messenger..." should be understood to mean the application of *qiyās* to the Qur'an and Sunnah.[124] Secondly, Hassan elaborates on the meaning of "refer to Allah and His Messenger" ("*faruddūhu...*") and of "if you differ" ("*fa'in tanāza'tum...*"). According to him, referring to Allah and His Messenger means two things: first, looking for rules applicable to certain cases as stated in the Qur'an or the Sunnah; and second, looking for such rules even when these are not to be found explicitly stated in the Qur'an and Sunnah, but can be discovered through patient examination of these same texts. This second meaning refers clearly to *qiyās*, intended by the "*faruddūhu...*" of the Qur'anic verse mentioned above.[125]

Moreover, the meaning of "*fa'in tanāza'tum...*" refers either to differences over the meaning of certain passages in the Qur'an and Sunnah or differences concerning something not clearly treated therein. According to Hassan,[126] it is impossible to refer to the first meaning; for one thing, if we have differences with regard to understanding certain texts in the Qur'an or Sunnah, it is impossible to solve such

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[124]Hassan, *Ijma'*, 31-2. See also Khallāf, *'Ilm Uṣūl*, 58.

[125]Hassan, *Ijma'*, 26; idem, *al-Djawāhir*, 8-9.

[126]Hassan, *Ijma'*, 32-3.

problems by referring to these two sources. How can disputes over the meaning of the Qur'an or Sunnah be decided by referring to the Qur'an or Sunnah? Thus, Hassan emphasizes the view that the real meaning of "*fa'in tanāza'tum...*" therefore refers to the second purpose: the differences concerning something not treated in the texts. To deal with this, people are asked to solve the problems which are not cited in the texts on the basis of those specified in the texts; and this is exactly the process of *qiyās*. For this very reason, Hassan argues, the use of *qiyās* is obviously sanctioned by the Qur'an.[127]

In the second stage, Hassan analyses certain Sunnaic texts in relation to the problem of *qiyās*. He quotes, for example, the following Sunnah: "I left two things among you. You shall not go astray so long as you hold on to them: the Qur'an and my Sunnah."[128] This Sunnah is usually given in conjunction with the Qur'an 16:89 and 6:38. It is clear, say the opponents of *qiyās*, that the Prophet did not mention anything whatsoever about *qiyās*. Hassan very consistently argues that the use of *qiyās* means following the Qur'an, for its use is authorized by the Qur'an; thus, practising *qiyās* does not contradict the Sunnah mentioned above that urges Muslims to follow

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[127]Ibid., 34.

[128]For this Sunnah, see "Pimpinlah Kami Dijalan jang Loeroes," *Pembela Islam* 60 (April 1933), 5; A., "I'tiqad Al-Ba 'Alawī tentang Ketinggian Dirinja dan Bahaja-Bahaja I'tiqad Itoe," *Pembela Islam* 54 (21 November 1932), 30; Yūsuf ibn 'Abd Allāh ibn 'Abd al-Barr, *Ṣaḥīḥ Jāmi' Bayān al-'Ilm wa-Faḍlihi*, ed. Abū al-Ashbāl al-Zuhayrī (Cairo: Maktabat Ibn Taymiyyah, 1996), 389; Yūsuf Mūsā, *al-Fiqh al-Islāmī*, 182.

the Qur'an.[129] Hassan applies the same argument to the Qur'an 16:89 and 6:38 above.[130] This thesis, argues Hassan, is supported by other Sunnahs most notably that in which Mu'ādh b. Jabal, sent by the Prophet to Yemen, says that for any case not explicitly covered in the Qur'an and Sunnah, he will arrive at a solution by exercising his own discretion (*ra'y*).[131] The use of *ra'y* here can be understood as referring to either the exercise of pure reason or the application of human criteria based on the texts; and it is this second meaning, which is the essence of *qiyās*, that is intended in the case of Mu'ādh. By quoting this Sunnah, Hassan hopes to show that the use of *qiyās* is authorized not only by the Qur'an but also by the Sunnah.[132]

Hassan then goes on to support his ideas by enumerating various statements and practices of the Companions. For example, he quotes a statement by Ibn Mas'ūd often employed by the opponents of *qiyās* to attack the practice: "If you use *qiyās* in religious matters, it will lead you to make some things which are forbidden permissible and vice-versa."[133] This statement, says Hassan, does not indicate a

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[129]Hassan, *Ijma'*, 25, 30.

[130]Ibid., 29.

[131]Abū Dāwūd, *Sunan Abī Dāwūd*, vol. 3, 303. See also Muḥammad ibn Idrīs al-Shāfi'ī, *al-Umm*, vol. 6 (Cairo: al-Hay'ah al-Miṣriyyah al-'Āmmah lil-Kitāb, 1987), 203; Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn*, vol. 1, 202; Hamidullah, "Instructions of Caliph 'Umar to Abū Mūsā," 15; Milliot, *Droit Musulman*, 116; Khallāf, *'Ilm Uṣūl*, 56; Qadri, *Islamic Jurisprudence*, 213; Sherman A. Jackson, "In Defence of Two-Tiered Orthodoxy: A Study of Shihāb al-Dīn al-Qarāfī's *Kitāb al-Iḥkām fī Tamyīz al-Fatāwā 'an al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām*" (Ph.D. diss., University of Pennsylvania, 1991), 120-1.

[132]Hassan, *Ijma'*, 36-8.

[133]Ibid., 43.

rejection of the use of *qiyās* but rather condemns those attempts at *qiyās* which lead to results contrary to the established rules of the Qur'an and Sunnah.[134] Defending his thesis, Hassan points to the case of Abū Bakr (632-34), who was chosen as the first successor to the Prophet. Perhaps the most important of the reasons for his appointment, according to Hassan, was the fact that Abū Bakr had been asked by the Prophet to replace him as the leader (*imām*) of the prayers during his period of illness. This conclusion could only have been reached as a result of *qiyās*.[135] The argument is not new in itself and was advanced in the past by some earlier advocates of *qiyās*.[136] Hassan however does not appear to have been aware of Ibn Ḥazm's opinion on this issue, for the latter categorically rejected this analogy as having been a factor in Abū Bakr's appointment, arguing, among other reasons, that not everyone who is capable of leading the community in prayer will necessarily have the qualifications to be a caliph.[137] As Abdallah puts it:

> To Ibn Ḥazm this [the analogy] is false and untrue; he proceeds to refute at length their claims, discussing the conditions that qualify an individual to lead the prayers, on the one hand, and the conditions that are required to qualify a person to be religious and political leader of the Islamic community on the other hand. Ibn Ḥazm delves deeply into legal questions concerning this matter, concluding that the conditions required in leading the prayers are different from those required for succession. For Ibn Hazm, Abu Bakr was chosen to succeed the Prophet because he met the many qualifications required and not merely because the Prophet happened to choose him for leading the

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[134]Ibid., 46.

[135]Ibid., 39.

[136]See, for example, Abdallah, "Ibn Ḥazm's Rejection of Analogy," 218.

[137]Ibn Ḥazm, *Mulakhkhas*, 35.

prayers during his sickness.[138]

Hassan further attempts to prove his case by introducing the letter of the Caliph 'Umar ibn al-Khattāb (634-44) to Abū Mūsā al-Ash'arī; 'Umar wrote therein: "Know the semblances and the similitudes and collate matters to their likes (in giving judgments)."[139] Hassan, however, conveniently ignores the issue of this Sunnah's authenticity. Again, it is Ibn Ḥazm who raises this point, indicating that some of the transmitters (*asānīd*) are either unknown or their authority unrecognized.[140] Hassan appears to be guilty in this case of citing only that evidence which supported his theory while ignoring those which contradicted his thesis. In any case, Hassan finally observes that the use of *qiyās* "is supported by the Qur'an, the Sunnah, the tradition of the Companions, and our awareness of the need for *qiyās*."[141]

Hassan next proceeds to a discussion of the meaning of *qiyās*, its kinds, its application, and examples of the latter. According to Hassan, *qiyās* literally means "measuring, measurement, comparison, and decision," and he defines it as "discovering the rule (*ḥukm*) of a certain thing not treated in the Qur'an or Sunnah

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[138]Abdallah, "Ibn Ḥazm's Rejection of Analogy," 218. For the detailed reasons given by Ibn Ḥazm and also others, see Nour, "Qias," 31-4; Abdallah, "Ibn Ḥazm's Rejection of Analogy," 207-25.

[139]The statement was narrated by Bayhaqī and Dāraqutnī; see Hassan, *Ijma'*, 40; Ibn Ḥazm, *Ihkām*, vol. 7, 146-7; Hamidullah, "Instructions of Caliph 'Umar to Abū Mūsā," 8, 14; Abū Zahrah, *Usūl al-Fiqh*, 177.

[140]Abdallah, "Ibn Ḥazm's Rejection of Analogy," 217.

[141]Hassan, *Ijma'*, 41. For some arguments in favour of the acceptance of *qiyās* given by others, see Nour, "Qias," 34-9.

based on that explicitly mentioned in the text (*nass*) because of their similarities,"[142] a definition commonly adopted in legal treatises.[143] Thus, *qiyās* in Hassan's view is concerned with problems or occurrences the legal value of which is not directly referred to in the Qur'an and Sunnah. He goes on to say that there are two types of *qiyās*. The first he calls "*qiyās* of the rule mentioned in the text" (*qiyas pada asal hukum*), one example of which is the rule concerning a man/woman who accuses another man/woman of committing adultery (*zinā*) without bringing forth witnesses. According to the Qur'an 24:4, anyone who accuses a woman of committing adultery without 4 witnesses is subject to eighty stripes (*thamānīna jaldah*). The question then is whether someone who accuses a man (not a woman) of committing such a sin would be subject to this punishment, since the accused is a man and not a woman, as stated in the text. In this case, says Hassan, the rule applied in cases involving unjust accusation of a woman (e.g. a punishment of eighty stripes) should be applied to those who accuse a man of a similar action and yet are unable to produce the required witnesses.[144] The link between the two cases is therefore the rule (*hukm*) of the action. This example demonstrates how the rule found in the text can be systematically applied to other comparable situations.

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[142]Hassan, *Ringkasan Islam*, 31.

[143]See, for example, Jurjānī, *Ta'rīfāt*, 230-1; Shawkānī, *Irshād al-Fuhūl*, 198; Qarāfī, *Tanqīh al-Fusūl*, 383; Khallāf, *'Ilm Usūl*, 55; Yūsuf Mūsā, *al-Fiqh al-Islāmī*, 184; Kerr, *Islamic Reform*, 66; Nour, "Qias," 23; Weiss, *God's Law*, 555; Kamali, *Islamic Jurisprudence*, 197; Qadri, *Islamic Jurisprudence*, 208-9, 211; Faruki, *Islamic Jurisprudence*, 147; Rahman, *Islam*, 71.

[144]Hassan, *Ijma'*, 33.

The second type of *qiyās* is what Hassan calls "*qiyās* based on the subject matter" (*qiyas pada benda yang ditetapkan oleh hukum*). Alms-tax (*zakāh*) is one of the examples given by Hassan to illustrate this type. According to the Qur'an 9:60, it is obligatory for every Muslim to donate charity each year. Tradition has it that in the era of the Prophet, donating wheat became the common means of paying the alms-tax. This is of course impossible for the vast majority of Muslims today, particularly for those living in areas where wheat is not cultivated. For this reason, according to Hassan, we have to understand the main function of wheat in the era of the Prophet, i.e. that of a dietary staple. This being so, Muslims could replace wheat with another foodstuff serving as a staple in Indonesian society, such as rice, corn, or the like. Equating rice and corn with wheat is, Hassan concludes, a *qiyās* based on subject matter.[145] Indeed, both types of *qiyās* cited by Hassan may be included in what Abū Husayn al-Baṣrī and Ibn Taymiyyah call *qiyās al-ṭard*.[146]

Hassan reminds us however that *qiyās* is used only in the field of worldly affairs (*mu'āmalāt*) and not in matters of worship (*'ibādāt*), arguing that all activities in the field of *'ibādāt* have been clearly defined in both the Qur'an and the Sunnah. Any practices not so identified are considered innovations (*bida'*), and are, according

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[145]Hassan, *Ringkasan Islam*, 31. For more examples of *qiyās*, see Hassan, *Ijma'*, 33-4, 46-8; Nour, "Qias," 23; Kamali, *Islamic Jurisprudence*, 199-200.

[146]Hallaq, "Juridical Dialectic," 200; Aḥmad ibn 'Abd al-Ḥalīm ibn Taymiyyah and Muḥammad ibn Abī Bakr ibn Qayyim al-Jawziyyah, *al-Qiyās fī al-Shar' al-Islāmī* (Cairo: Al-Maṭba'ah al-Salafiyyah, 1375/1955), 6; Amin, *Ijtihad Ibn Taymiyyah*, 84.

to the Sunnah, to be severely condemned.[147] To support this interpretation, Hassan quotes Shāfi'ī's saying: "there is no analogy in the field of worship" (*lā qiyāsa fī al-'ibādah*).[148] He goes on to say that the original rule (*aṣl*) used in the *qiyās* must be derived from either the Qur'an or the Sunnah;[149] *qiyās* should also be used in the case of dire necessity (*darūrah*) only, as in the case of dry ablution (*tayammum*, i.e. rubbing the hands and face with clean earth or sand)[150] in the event that someone cannot use water to perform ablution (*wudū'*) (*al-qiyās bi-manzilat al-tayammum*),[151] a position similar to that of Ibn Hanbal.[152] It is for this very reason that *qiyās* is not

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[147]Hassan, *Ijma'*, 49-50; idem, *Risalah Al-Madz-hab* (Bangil: Persatuan Islam, 1956), 2. For the Sunnah of *bid'ah*, see p. 185 below. Hassan gives the following examples of *qiyās* in the field of *'ibādāt* as practised by Indonesian Muslims: the practice of *usallī* in the beginning of a prayer based on the *talbiyah* of the pilgrimage; the *talqīn* based on the permissibility of giving advice to people who are still alive; the permissibility of *qadā'* and *fidyah* for those who miss a prayer based on the rules of fasting; see Hassan, *Ijma'*, 113-4.

[148]Hassan, "Melafazhkan Niat," 93.

[149]Hassan, *Risalah Al-Madz-hab*, 2.

[150]The term *tayammum* is derived from *amma*, meaning "he repaired to a thing." *Tayammum* therefore means, originally, simply "betaking oneself to a thing," and since the word is used here in connection with betaking oneself to pure earth or sand, *tayammum* has come technically to mean this particular practice; see Maulana Muhammed Ali, *The Religion of Islam* (Lahore: The Ahmadiyya Anjuman Isha'at Islam, 1990), 296. This *tayammum* is based on the Qur'an 5:6 and, among other texts, the following Sunnah: "It would have been sufficient for you to do like this. The Prophet then stroked lightly the earth with his hands and then blew off the dust and passed his hands over his face and hands"; see al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, trans. Muhammad Muhsin Khan, vol. 1 (Beirut: Dār al-Fikr, n.d.), 202.

[151]Hassan, *Ijma'*, 49.

[152]Muhammad Abū Zahrah, *Ibn Taymiyyah, Hayātuhu wa-'Aṣruhu--Ārā'uhu wa-Fiqhuhu* (Cairo: Dār al-Fikr al-'Arabī, 1958), 353; Makari, *Ibn Taymiyyah's Ethics*, 94. It has been reported that Ibn Hanbal has said: "I asked al-Shāfi'ī concerning *qiyās*

included among the primary sources of Islamic law.[153]

Hassan then describes essential constituents (*arkān*) and conditions (*sharā'iṭ*) for the soundness of the application of *qiyās*.[154] There are four constituents necessary to establish *qiyās*: the original case (*aṣl*) embedded in the primary sources, the novel case (*far'*) that requires a legal solution, the *ratio legis* (*'illah*) which links the *aṣl* and the *far'*, and the legal norm or the rule (*ḥukm*) which is attached to the original case and which is transferred from that case to the novel one. These should be accompanied by certain conditions, the most important among them being the following. First, the rule extended to the novel case (*far'*) should be established in the Qur'an or Sunnah but not in another *qiyās*. Secondly, the rule of the original case (*aṣl*) must not have been abrogated. Thirdly, the original case should be something which can be analyzed by reason (*'aql*); thus, matters of worship such as prayer, pilgrimage, and the like are outside the province of *qiyās* because they deal with matters that are beyond reason. Fourthly, the *ratio legis* found in the original case should be located in the novel case too. Fifthly, the novel case must have no rule before the process of *qiyās*. Finally, the rule given to the novel case as a result of the process of *qiyās* must not be contrary to the established rules of the Qur'an and

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to which he replied that *qiyās* is used in the case of necessity (*ḍarūrah*)"; see Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn*, vol. 1, 32.

[153]Hassan, *Ringkasan Islam*, 23.

[154]Certainly, there is no agreement among Muslim jurists on the number of conditions (*sharā'iṭ*) of *qiyās*, some of which have been given by Nour in his "Qias," 29; Kamali, *Islamic Jurisprudence*, 202-6.

Sunnah.[155]

With this account of *qiyās*, Hassan concludes his discussion of the sources of Islamic law. We have seen that, according to Hassan, the primary sources of Islamic law are the Qur'an and the Sunnah (with the Companions' consensus included therein), while consensus (that of the *ulū al-amr*) and *qiyās* are, in Hassan's doctrine, no more than methods employed to discover the rules of the cases where the divine texts are silent. These four sources constitute the cornerstone of his legal theory.

However, in analyzing the works of Hassan that discuss the sources of Islamic law, one soon realizes that consensus and *qiyās* are not the only sources after the Qur'an and Sunnah. In his collection of *fatwā*s, there is a clear indication that he also adopted other sources such as juristic preference (*istiḥsān*), consideration of public interest (*maṣlahah mursalah*), presumption of continuity (*istiṣḥāb*), and custom (*'urf*). Thus, Hassan recognized other sources for extracting rules, even though he passes over these in silence in the chapter where he elaborates upon the sources of Islamic law. Although these sources were obviously used by him in dealing with the daily problems of his fellow Muslims, Hassan does not clearly define them nor does he refer to them very often in his works. For this reason, we will postpone a discussion of these sources to the following chapter, wherein we will discuss the application of Hassan's *uṣūl al-fiqh*.

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[155]Hassan, *al-Boerhān*, xiv-v.

C. *Taqlīd, Ijtihād*, and Related Issues.

Hassan's approach to *uṣūl al-fiqh* comprised two major areas: the sources of Islamic law and the methods and problems of their application. In his discussion of the latter he addresses such issues as blind-adherence (*taqlīd*), judicial discretion (*ijtihād*), and related issues such as legal school (*madhhab*), innovation (*bid'ah*), following a certain rule (*ittibā'*), asking and giving legal advice (*istiftā'* and *iftā'*), eclectic method (*talfīq*), and the people of the Sunnah and the community (*ahl al-sunnah wa al-jamā'ah*). As we shall see, Hassan's style of discussion of this second major area is very different from the way in which he treats the subject of the sources of Islamic law. Here, Hassan's ideas are very much directed towards condemnation of his fellow Muslims, particularly religious leaders such as the *kiyai*s, who were in the eyes of Hassan trapped in attitudes of servile imitation (*taqlīd*), innovation (*bid'ah*), and superstition (*khurāfah*). As indicated in the preceding chapter,[156] most Indonesian Muslims prior to and during Hassan's life were reported to have been very much involved in practices which reflected such tendencies, in particular that form of *taqlīd* which consisted of blind-adherence to the established legal schools (*madhāhib*). This being the case, it is not surprising that *taqlīd*, *madhhab*, and *bid'ah* are the subjects of the most lengthy discussion in this second area of Hassan's treatment of *uṣūl al-fiqh*, while *ijtihād*, *ittibā'*, *istiftā'*, *iftā'*, *talfīq*, and *ahl al-sunnah wa al-jamā'ah* are given very limited attention only. In his discussion, Hassan begins with the definition the subject matter of each.

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[156]See chapter one, 35-7, 73.

1. ***Taqlīd*** **(Servile Imitation).**

According to Hassan, *taqlīd* literally means "copying, imitating, and the like." Technically speaking, "*taqlīd* is imitating, copying, or accepting certain rules without arguments of the Qur'an and Sunnah."[157] After offering these definitions, Hassan goes on to single out the arguments one by one as put forward by the "imitators" (*muqallid*s, i.e. those who advocate *taqlīd*) in support of their position; he then proceeds to discuss them, revealing their invalidity and mentioning legal indicants that would support or confirm his claims on the one hand and render invalid his

[157]Hassan, *Ringkasan Islam*, 42; idem, *Halalkah Bermadz-hab?* (Bangil: Persatoean Islam, 1956), 3; idem, *Menjawab Buku Bantahan*, 13; idem, "Taqlid Kepada 'Ulama'," in *Soal-Jawab*, vol. 1, 390; idem, *Ijma'*, 79. *Taqlīd* is generally defined as "accepting an opinion concerning a legal rule without knowledge of its bases"; see Jurjānī, *Ta'rīfāt*, 93; Muḥammad 'Alī al-Fārūqī al-Tahānawī, *Kashshāf Istilāhāt al-Funūn*, vol. 2 (Cairo: Maktabat al-Nahdah al-Misriyyah, 1963), 1178; Rudolph Peters, "*Idjtihād* and *Taqlīd* in 18th and 19th Century Islam," *Die Welt de Islams* 20 (1980), 135; A. Kevin Reinhart, "Transcendence and Social Practice: *Muftī*s and *Qādī*s as Religious Interpreters," *Annales Islamologiques* 27 (1993), 20. According to Shawkānī, *taqlīd* is "accepting the opinion of others without any proof"; see al-Shawkānī, *al-Qawl al-Mufīd fī Adillat al-Ijtihād wa al-Taqlīd* (Cairo: Idārat al-Tibā'ah al-Munīriyyah, n.d.), 16; idem, *Irshād al-Fuhūl*, 265; while according to Ibn Qayyim al-Jawziyyah, *taqlīd* is "referring to an opinion upon which there is no proof"; see Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn*, vol. 2, 187. According to Āmidī, *taqlīd* is "adherence to the dictum of someone else without an authoritative basis"; see Āmidī, *Ihkām*, vol. 4, 297; Maḥmaṣānī, *Falsafat al-Tashrī'*, 182; Weiss, *God's Law*, 717; Reinhart, "Transcendence and Social Practice," 20. Lane defines it as "a man's following another in that which he says or does, firmly believing him to be right therein without regard or consideration of the proof or evidence," while according to Al-Ghazālī, *taqlīd* is "blind adherence to, or following of, ancestral tradition and pronouncements by teachers, without independent checking, meditation and reflection"; see Hava Lazarus-Yafeh, "Some Notes on the Term 'Taqlīd' in the Writings of al-Ghazzālī," *Israel Oriental Studies* 1 (1971), 249-50. See also Ghazālī, *Mustasfā*, vol. 2, 387; Lutz Wiederhold, "Legal Doctrines in Conflict: The Relevance of *Madhhab* Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlīd* and *Ijtihād*," *Islamic Law and Society* 3 (1996), 243.

opponents' claims on the other. Hassan enumerates twenty-one arguments used by the proponents of *taqlīd*, to which Hassan replies in critical terms. Some of these arguments are as follows:

In the Qur'an 16:43 Allah says: "ask of those who possess the Message." This verse is used by the *muqallid*s to legitimize *taqlīd*, arguing that this verse appeals to Muslims to ask those who are more knowledgable about something which they themselves do not understand. This argument, in Hassan's view, is misleading for at least a couple of reasons.[158] First, the *muqallid*s are confusing the meanings of the term "*fas'alū*" (ask) mentioned in the Qur'anic verse and that of "*taqlīd*" (servile imitation); asking a question does not necessarily imply servile imitation. Asking is one thing and servile imitation is another. Secondly, Hassan reminds his readers to read the verse completely: "And before thee also the messengers We sent were but men, to whom we granted inspiration: if ye realize this not, ask of those who possess the Message." This verse, says Hassan, is concerned with the question of the gender of the Prophets before Muhammad, i.e. Were all the Prophets men? In order to obtain the right information about various issues, people were invited to ask "those who possess the Message" (*ahl al-dhikr*); and thus the verse is concerned with the *ahl al-dhikr* of the Jews and Christians, not the leaders of Muslims. One may say however that the *ahl al-dhikr* includes also the leaders of Muslims. Even so, we should realize that the question in the verse deals with the information of historical fact (*riwāyah*)

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[158]Shawkānī refuses to accept the idea that this verse supports the exercise of *taqlīd*; see Shawkānī, *Irshād al-Fuhūl*, 268.

and not the opinions of the *ahl al-dhikr* (*dirāyah*).[159] To make things clearer, Hassan divides *taqlīd* into two: the *taqlīd* of *riwāyah* and that of *dirāyah*. *Taqlīd* of *riwāyah* means receiving information or messages from others without it having been transformed by the opinions of others. In this kind of *taqlīd* one or more persons simply inform others what they have seen or witnessed. This type, according to Hassan, is permissible and has been practised since the early history of Islam. One example of it is the acceptance of certain information concerning the personal credibility of the transmitter of a Sunnah, a situation where there is no opportunity to verify its truthfulness. The second type of *taqlīd*, the *taqlīd* of *dirāyah*, is forbidden; this type of course refers to following the opinions of certain people without reference to either the Qur'an or Sunnah.[160] To borrow Shawkānī's words: "accepting the opinions of others but not narrative accounts" (*al-taqlīd innamā huwa al-'amal bi al-ra'y lā bi al-riwāyah*).[161]

Another reason cited by the proponents of *taqlīd* in support of their position is the following Sunnah: "Follow my sunnah and those of the rightly-guided Caliphs (al-Khulafā' al-Rāshidūn) after me."[162] Following the rightly-guided Caliphs is, according to the *muqallid*s, nothing other than *taqlīd*. Addressing those who accepted this interpretation, Hassan points out that the *kiyai*s of his era were not following the

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[159]Hassan, *Ijma'*, 81; idem, "Taqlied Kepada 'Ulama'," 390.

[160]Hassan, *Ijma'*, 97-8.

[161]Shawkānī, *Irshād al-Fuhūl*, 268.

[162]This Sunnah was narrated by Abū Dāwūd; see Hassan, *Ijma'*, 111.

Companions as indicated in the Sunnah but rather were following the opinions of their teachers and their leaders. Moreover, the Companions themselves did not practice *taqlīd*, but rather consulted with each other, basing their arguments on the Qur'an and Sunnah and not their own opinions.

The next stage of Hassan's approach to the subject is his discussion of the arguments put forward in condemnation of *taqlīd*, which are derived from four sources: the Qur'an, the Sunnah, the tradition of the Companions, and the statements of the founding Imāms particularly those of Mālik, Abū Ḥanīfah, Shāfi'ī, and Aḥmad. All in all, he locates seventy-three arguments in favour of his position.[163] At the same time, Hassan uses all these arguments to attack those Indonesian Muslims who challenged his ideas on *taqlīd*.

Hassan begins by quoting Qur'an 3:103 which, according to him, is alone sufficient proof that Muslims must follow the Qur'an and Sunnah, in order to create a strong society, and not practice *taqlīd* which tends to separate Muslims from one another and which in the long run can lead to a weakening of the society. In the Qur'an 3:103 Allah says: "And hold fast, all together, by the Rope which Allah (stretches out for you), and be not divided among yourselves." Hassan then goes on to cite Qur'an 5:44-5, 47, in which there is a threat made against those Muslims who do not follow the rules of Allah. These three Qur'anic verses were of very great significance to Hassan's religious doctrine, especially in his polemics against the *muqallid*s and the Nationalist and Communist groups. Basing himself on these three

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[163]Ibid., 98-126.

verses, Hassan argues that Allah considers one who does not follow His rules (e.g. the *muqallid*s) as a great sinner (*fāsiq*), transgressor (*ẓālim*), and unbeliever (*kāfir*). Hassan then argues: "It is certainly strange that most of the *kiyai*s deem those who pursue the Qur'an and Sunnah as *fāsiq*, *ẓālim*, and *kāfir* and at the same time promote the practice of *taqlīd*. Praise the Lord! We have returned to the era of pre-Islamic times (*jāhiliyyah*)."[164]

Notwithstanding the above, Hassan believes that the clearest condemnation of *taqlīd* comes in the following Qur'anic verse: "And pursue not that of which thou hast no knowledge; for every act of hearing, or of seeing, or of (feeling in) the heart will be enquired into (on the Day of Reckoning)."[165] Commenting on this verse, Hassan reminds his fellow Muslims not to follow those opinions of the *kiyai*s that do not find any support in the Qur'an or Sunnah. He then says: "But the *kiyai*s always encourage their fellow Muslims to take their opinions blindly (*wajib turut dengan pejam mata*)."[166] According to Hassan, every Muslim should be allowed to think freely and not be constrained by others.[167]

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[164]Ibid., 99-100.

[165]The Qur'an 17:36. See Hassan, "Taqlied Kepada 'Ulama'," 390; idem, *Ijma'*, 104; idem, *Ringkasan Islam*, 43-4; A. Kadir Hassan, "Ajat Taqlied," in *Soal-Jawab*, vol. 3, 1246-7; Mughni, *Hassan Bandung*, 29.

[166]Hassan, *Ijma'*, 104; idem, "Perkataan 'Ulama'," in *Soal-Jawab*, vol. 2, 794-5; idem, *Risālatul Hadj: Kitab Pimpinan jang Lengkap Bersama Dalil-Dalilnja untuk Mengerdjakan Ibadah Hadji dan Umrah* (Djakarta: Tintamas, 1955), 5; idem, "Taqlied," *Pembela Islam* 49 (July 1932), 38; A. Kadir Hassan, "Ajat Taqlied," in *Soal-Jawab*, vol. 4, 1693-4.

[167]A. Hassan, "Ayat Taqlied," in *Soal-Jawab*, vol. 3, 1247 and vol. 4, 1694.

Hassan next proceeds to list the arguments found in the Sunnah, quoting for instance the following Sunnaic text: "I left two things among you. You shall not go astray as long as you hold on to them: the Qur'an and my Sunnah."[168] This Sunnah, in Hassan's view, urges Muslims to refer strictly to the two primary sources of Islam and not to the ideas of the *kiyai*s. This is supported also by the Sunnah: "Keep away from assumption or mere speculation (*zann*), because it will lead you to become the greatest of liars."[169] Basing himself upon this Sunnah, Hassan accuses the majority of Indonesian Muslims of blindly adhering to the pronouncements of their *kiyai*s on the assumption that the latter derived their ideas from the Qur'an and Sunnah. The *kiyai*s themselves make the assumption that their teachers based their own ideas on the Qur'an and Sunnah. Not only is this mistaken, says Hassan, but the sheer fact that they make such an assumption (*zann*) is clearly condemned in the Sunnah.[170]

Next Hassan considers some of the statements of the Companions, among them Ibn Mas'ūd's statement: "Keep away from *taqlīd* of someone on matters of religion." If *taqlīd* were permissible, says Hassan, Ibn Mas'ūd would have not forbidden it.[171]

Hassan next proceeds to consider some of the condemnations of *taqlīd* expressed by the founders of legal schools such as Mālik, Abū Ḥanīfah, Shāfi'ī,

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[168]For the reference of this Sunnah, see p. 158 note 128 above.

[169]This Sunnah was narrated by Bukhārī, Muslim, and others; see Hassan, *Ijma'*, 112.

[170]Hassan, *Ijma'*, 112.

[171]Ibid., 117; idem, *Halalkah Bermadz-hab?* 5-6; idem, "Taqlied Kepada 'Ulama'," 390-1.

Ahmad, and also those made by other scholars such as Abū 'Abd Allāh b. Khuwayz Mandād, Abū 'Amr, 'Abd Allāh b. al-Mu'tamir, Abū Dāwūd, Abū Yūsuf, and Ibn al-Jawzī.[172] Hassan ends this section by quoting eight of Shāfi'ī's statements (eight being the greatest number of statements cited from any one of the scholars surveyed by Hassan), with the probable intention of demonstrating that even Shāfi'ī, the founder of the school adopted by the majority of Indonesian Muslims, condemns the exercise of *taqlīd*. It is hard to understand, according to Hassan, why most Indonesian Muslims should claim to be followers of the Shāfi'ī school while at the same time ignoring the fact that Shāfi'ī himself was against the practice.[173] In fact, one of the great Shāfi'ī jurists, Ghazālī, whose thought is very influential among Indonesians, also castigated *taqlīd*.[174]

Hassan's final remarks on the subject of *taqlīd* take the form of a dialogue

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[172]Hassan, *Ijma'*, 118-26. See also Muhammad Bedja Dermalaksana, "Sedikit tentang Madzhab Empat," *Almanak Muhammadijah* (1960-1961), 255-6. For the statements of Abū Ḥanīfah, Abū Yūsuf, Mālik, Shāfi'ī, and Aḥmad b. Ḥanbal, see Shawkānī, *al-Qawl al-Mufīd*, 15, 21-2, 25; idem, *Irshād al-Fuḥūl*, 267; Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn*, vol. 2, 181-2; Wahbah al-Zuḥaylī, *Uṣūl al-Fiqh al-Islāmī*, vol. 2 (Damascus: Dār al-Fikr, 1986), 1130.

[173]Hassan, "Taqlied Kepada 'Ulama'," 391. See also Ghazālī, *Mustaṣfā*, vol. 2, 390; Calder, "Nawawī's Typology of *Muftī*s," 145.

[174]It has been said that "Al-Ghazzālī generally opposes the 'Taqlīd' and even stresses the fact that belief based on "Taqlīd" can become a veil between man and religious truth, and make it most difficult for him to accept even visions of truth, if they contradict what he has been taught in his youth. In the same way the "Shaiṭān-al-Taqlīd", the Satan of authoritative belief, provides one of the veils or screens that make it impossible for man to understand the Qur'ān in a personal, sincere way and makes him follow the trodden ways of ancestral exegesis which often have no real meaning for himself"; Lazarus-Yafeh, "Writings of al-Ghazzālī," 250. See also Ghazālī, *Mustaṣfā*, vol. 2, 387-92; Calder, "Nawawī's Typology of *Muftī*s," 161-2.

between a so-called *muttabi'* (one who practices *ittibā'*) and a *muqallid* (one who exercises *taqlīd*).[175] In this dialogue Hassan attempts to show how misguided the majority of Muslims were who adopted *taqlīd* and encourages all to practice instead *ittibā'*, if not *ijtihād*. What is more, referring to the Qur'an 4:59 and 9:31, Hassan claims that these verses are rightfully addressed to the *kiyai*s and the *kaum tua* who give *fatwā*s (e.g. declaring this to be permissible and that forbidden) without any support from the Qur'an and Sunnah,[176] thus making their religious leaders, such as the *kiyai*s, into gods alongside Allah; therefore, Hassan accuses them of polytheism (*shirk*).[177] Indeed, Hassan states, the Indonesian *muqallid*s were all committing a grave sin, for they were transgressing Allah's rules which condemn *taqlīd*.[178]

There is no doubt that Hassan's utterly severe attitude towards *taqlīd* had an important influence on the doctrinal character of Persis. In the words of Noer, "On this question [*taqlīd*],...Persis was radical. It would not rely on the books written by man. Those who rely on the books of *ulama* have in fact left God aside. Those who violate the regulations of God, commit a sin. Therefore, those who blindly follow the *ulama* [*taqlīd*], commit a sin."[179]

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[175]Hassan, *Ijma'*, 127-31.

[176]Ibid., 63, 104; idem, *al-Boerhān*, xlii.

[177]Hassan, *At-Tauhied*, 46-7.

[178]Hassan, "Debat Taqlid," 6; idem, "Taqlied," in *Soal-Jawab*, vol. 4, 1743.

[179]Noer, *Modernist Muslim Movement*, 98-9.

2. *Madhhab* (School of Law).

First, Hassan defines the *madhhab*; it is literally understood as *perjalanan* (journey) or *tempat berjalan* (a place where people walk) and technically defined as "a collection of *fatwās* or opinions of a great scholar which are concerned with both *'ibādāt* and *mu'āmalāt*."[180] According to Hassan, the development of schools of thought or opinion is a natural phenomenon among people. Describing briefly the historical background of the emergence of the Islamic legal schools, Hassan observes that it was natural for some people in the early history of Islam to choose to follow, for instance, the opinions of 'Abd Allāh b. Mas'ūd (the school of Madinah), while others adopted the ideas of Ibn 'Abbās (the school of Kufah).[181] Thus, the emergence of the school can be dated to the first century of Islam, the era of the Companions.[182] It should be kept in mind, however, that this only represents one of

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[180]Hassan, *Risalah Al-Madz-hab*, 3; idem, *Ijma'*, 53. For a fuller definition of the school adopted by Indonesians, see Dermalaksana, "Madzhab Empat," 234-6.

[181]Hassan, *Ringkasan Islam*, 34-5; idem, *Menjawab Buku Bantahan*, 34 note 114. An account of the historical background of the emergence of the schools can be found in Muhammad Abū Zahrah, *Tārīkh al-Madhāhib al-Islāmiyyah fī al-Siyāsah wa al-'Aqā'id wa Tārīkh al-Madhāhib al-Fiqhiyyah* (Cairo: Dār al-Fikr al-'Arabī, 1963), especially chapter two, "Fī Tārīkh al-Madhāhib al-Fiqhiyyah," 233ff.; 'Alī al-Khafīf, *Muḥādarāt fī Asbāb Ikhtilāf al-Fuqahā'* (Cairo: Matba'at al-Risālah, 1956), 259-84; Jalaluddin Rakhmat, "Tinjauan Kritis atas Sejarah Fiqh: Dari Fiqh al-Khulafa' al-Rasyidin hingga Madzhab Liberalisme," in *Kontekstualisasi Doktrin Islam*, ed. Budy Munawar-Rachman (Jakarta: Paramadina, 1994), 251-76; Aboebakar Atjeh, *Melacak Jejak Ahlus Salaf* (Solo: Ramadhani, 1993), 91-9; Dermalaksana, "Madzhab Empat," 236-40; 'Alwānī, *Uṣūl al-Fiqh*, 25-31; Nour, "Schools of Law," 55-61; George Makdisi, "The Significance of the Sunni Schools of Law in Islamic Religious History," *International Journal of Middle East Studies* 10 (1979), 3-5.

[182]Thus, in Hassan's view, the four best-known scholars (Mālik, Abū Ḥanīfah, Shāfi'ī, and Aḥmad ibn Ḥanbal) were not the first to establish the concept of school

Hassan's earlier opinions regarding the schools.

Later, in a more lengthy treatment of schools (i.e. his *Risalah Al-Madz-hab*), Hassan equates fanatical adherence to a school (*ta'assub al-madhhab*) with *taqlīd*,[183] an outlook adopted generally by Indonesian reformists.[184] Thus, it is not surprising that the dialogue between the *muttabi'* and *muqallid* found in the chapter on *taqlīd*, in which he castigates the *muqallids*, is repeated in the chapter on school (*madhhab*) with only slight modifications.[185] This dialogue re-emphasizes the falsity of both *taqlīd* and the adoption of a school.[186] Seen from this perspective, it would appear that "the historical beginnings of the 'Taklīd' coincide with the formation of the

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in Islam; see Hassan, *Ringkasan Islam*, 35-6; idem, "Madz-hab," *Pembela Islam* 54 (21 November 1932), 21. Even more, these four Imāms were not the only respected figures during the period. There were quite a number of Imāms who were also equally important, among them being Ibn Subrumah (d. 144), Sufyān al-Thawrī (d. 161), Hammād Zayd (d. 179), al-Awzā'ī (d. 157), Ibn 'Uyaynah (d. 198), Dāwūd ibn 'Alī (202-70), Zayd ibn 'Alī (80-122), Ja'far al-Ṣādiq (80-148), and Ṭabarī (224-310); see Hassan, *Ringkasan Islam*, 37. See also Rakhmat, "Madzhab Liberalisme," 270-2; Nour, "Schools of Law," 63-4; W. Montgomery Watt, "The Closing of the Gate of *Iǧtihād*," in *Orientalia Hispanica*, vol. 1, ed. J.M. Barral (Leiden: E.J. Brill, 1974), 678.

[183]Hassan, *Risalah al-Madz-hab*, 12, 41; idem, *Halalkah Bermadz-hab?* 3; idem, *Ijma'*, 60, 62-3, 67-8, 75-6; Mughni, *Hassan Bandung*, 29.

[184]See generally Hassan, *Risalah Al-Madz-hab*; idem, *Menjawab Buku Bantahan*; Dermalaksana, "Madzhab Empat," 234-56.

[185]While in his chapter on *taqlīd* Hassan uses the terms *muttabi'* vis-à-vis the *muqallid*, in his chapter on *madhhab* he puts A (a reformer) in opposition to B (a follower of a legal school); see Hassan, *Risalah Al-Madz-hab*, 30-7; idem, *Ijma'*, 67-73.

[186]Widjaja, "Hassan: Pengarang," 36.

juristic 'Madhāhib'."[187] Furthermore, Hassan is also of the opinion that all scholars are in a similar position in that their opinions are not infallible; thus, he rejects the notion that the ideas of the leading scholars of the schools were always true and in accordance with the Qur'an and Sunnah, a view which, says Hassan, was common among the *kiyais*.[188]

While at first glance it may seem strange that Hassan should regard the school as a natural phenomenon on the one hand and then equate it with *taqlīd*, which is forbidden, on the other, there seems no compelling reason, however, to accuse him of inconsistency or lack of integrity. On the contrary, it is perfectly reasonable that he should have acknowledged a natural human tendency while at the same time condemning its blind application in the case of legal schools. Indeed, the attitude of the majority of Indonesian Muslims towards the Shāfi'ī school was often equated with that of Abū al-Ḥasan 'Ubayd Allāh al-Karkhī towards the Ḥanafī school, in which the latter was reported to have said that "any Qur'anic verse which is contrary to the view of our school is abrogated (*mansūkh*), and any *ḥadīth* different from the practice common to our school is also abrogated."[189] This belief is still quite common among Indonesians even today and is often pointed out by contemporary writers who fight

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[187]Lazarus-Yafeh, "Writings of al-Ghazzālī," 249.

[188]Widjaja, "Hassan: Pengarang," 36.

[189]Dermalaksana, "Madzhab Empat," 238. For Karakhī's statement, see also Muḥammad Khudarī Bik, *Tārīkh al-Tashrī' al-Islāmī* (Beirut: Dār al-Qalam, 1983), 240-1.

against blind-adherence to school.[190] Realizing this, one should not be surprised at Hassan's attitude towards the issue, for the local situation must have contributed greatly to the formation of his outlook.[191]

Hassan's refusal to commit to any particular legal school had a great impact upon his fellow Muslims, and continues to have an effect until this day. This stance was representative of an important movement "taking place almost everywhere in the Muslim world, not only an exercise of jurists but...as a common trend in general."[192] Hassan believed that Muslims "who base their judgments solely on *fiqh* books [opinions of scholars] and not on the commands of God and the Prophet [the Qur'an and Sunnah], are transgressors (*fāsiq*s) and even polytheists (*ahl al-shirk*)."[193] In fact, Hassan's radical attitude towards the school is similar to that of Shawkānī who states, *inter alia*, that those who believe that only the four founders of the schools were able to understand the Qur'an and Sunnah correctly

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[190]See generally Budy Munawar-Rachman, ed., *Kontekstualisasi Doktrin Islam dalam Sejarah* (Jakarta: Yayasan Wakaf Paramadina, 1994).

[191]Referring to what was happening in East Java, Dermalaksana pointed out that fanatic loyalty towards legal schools created uncertainty and endless conflict among Indonesian Muslims, which in the long run would hamper their efforts at establishing a strong Muslim society; see Dermalaksana, "Madzhab Empat," 234. On the conflict arising out of school fanaticism, see Wiederhold, "Legal Doctrines in Conflict," 250-9; Reinhart, "Transcendence and Social Practice," 23; Richard W. Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge: Harvard University Press, 1972), particularly chapter three, "Ḥanafī and Shāfi'ī," 28-46.

[192]Nour, "Schools of Law," 66. See also Zebiri, *Shaltūt*, particularly chapter five, "*Fiqh* in the Twentieth Century: A Comparative Approach," 82-106; Badr, "Islamic Law," 28-9.

[193]Hassan, *At-Tauhied*, 46; Noer, *Modernist Muslim Movement*, 99 note 188.

> tell lies about Allah and accuse Him of being incapable of creating people that understand what is His law for them and how they must worship Him. They make it appear as if what He has enacted for them through His book and His Messenger, is not an absolute but a temporary law, restricted to the period before the rise of the *madhhab*s. After their appearance, there was no longer any Book and *Sunnah*..., but there emerged persons that enacted a new law and invented another religion for this community and replaced the Book and the *Sunnah*, that were there before them, by their personal opinions and sentiments.[194]

Finally, Hassan suggests: "In fact, what we have to realize is this: we have to accept any accurate information [based on the Qur'an or Sunnah] even though it may be said by foolish people (*orang yang bodoh*), and we have to reject any wrong information [based merely on reason] even though it may come from the most knowledgable people (*se'alim-'alim manusia*),"[195] an idea similar to that of Ibn Hanbal.[196]

3. *Bid'ah* (Innovation).

It has been reported that during the first two centuries of Islam, *bid'ah*, *hadath*, *muhdath*, or *ikhtirā'* were generally seen as the opposite of *sunnah*; accordingly,

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[194]Shawkānī, *al-Qawl al-Mufīd*, 26-7; with slightly modifications, the English translation is taken from Peters, "*Idjtihād* and *Taqlīd*," 138. For Shawkānī's ideas, see also Hallaq, "Gate of Ijtihad,"32-3; Watt, "The Door of *Iǧtihād*," 676; Brown, *Rethinking Tradition*, 25-7.

[195]A. Hassan, "Bid'ah," in *Soal-Jawab*, vol. 2, 746; idem, "Masalah Membagi Bid'ah Kepada Lima Bagian," *Pembela Islam* 23 (April 1931), 42.

[196]Amin, *Ijtihad Ibn Taymiyyah*, 67.

bid'ah must carry a negative connotation.[197] This being so, it is reasonable that the discussion of *bid'ah* should frequently be connected with that of *sunnah*. After the second century, however, jurists elaborated the doctrine of *bid'ah*, with some even dividing it into, for instance, good or praiseworthy innovation (*bid'ah ḥasanah* or *maḥmūdah*) and bad or objectionable innovation (*bid'ah sayyi'ah* or *madhmūmah*). Shāfi'ī is reported to have said: "there are two types of *bid'ah*: good and bad. Anything in accordance with the Sunnah is good, while anything contrary to it is bad."[198]

Reading Hassan's statements on *bid'ah*, one cannot fail to conclude that he based his ideas to a great extent on the work of Abū Isḥāq Ibrāhīm al-Shāṭibī (d.

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[197]See Muhammad Khalid Masud, "The Definition of *Bid'a* in the South Asian *Fatāwā* Literature," *Annales Islamogiques* 27 (1993), 55; Mohammed Talbi, "Les *Bida'*," *Studia Islamica* 12 (1960), 75; Duncan B. Macdonald, *Development of Muslim Theology, Jurisprudence and Constitutional Theory* (New Delhi: Amarco Book Agency, 1973), 74, 297, 299, 307; Ignaz Goldziher, *Muslim Studies*, trans., ed. C.P. Barber and S.M. Stern, vol. 2 (New York: Atherton, 1967-1971), chapter one, "Ḥadīth and Sunnah," 17-37; Subhi Labib, "The Problem of the *Bid'a* in the Light of an Arabic Manuscript of the 14th Century," *Journal of the Economic and Social History of the Orient* 7 (1964), 191; Bernard Lewis, "Some Observations on the Significance of Heresy in the History of Islam," *Studia Islamica* 1 (1953), 43; Maribel Fierro, "The Treatises Against Innovations (*Kutub al-Bida'*)," *Der Islam* 69 (1992), 204-5. Umar's statement, *ni'mat al-bid'ah hādhihī* (this *bid'ah* is favourable), is seen as an exception in this respect; see Vardit Rispler, "Toward a New Understanding of the Term *Bid'a*," *Der Islam* 68 (1991), 320, 323. Some of the earliest works on *bid'ah* seem to be *al-Bida' wa al-Nahy 'Anhā* by Muḥammad ibn Waddāḥ al-Qurṭubī (d. 286/899), *Kitāb al-Radd 'alā Ahl al-Bida'* by Muḥammad ibn Saḥnūn (d. 256/870), and *al-Radd 'alā Ahl al-Bida'* by Abū Zakariyyā ibn Yaḥyā ibn 'Awn (d. 298/910), all of them belonging to the Mālikī school. For more information on the development of the works on *bid'ah*, see Rispler, "The Term *bid'a*," 321-3.

[198]'Izzat 'Alī 'Aṭiyyah, *al-Bid'ah: Taḥdīduhā wa-Mawqif al-Islām Minhā* (Beirut: Dār al-Kitāb al-'Arabī, 1980), 160. See also Tahānawī, *Iṣṭilāḥāt al-Funūn*, vol. 1, 133; Talbi, "Les *Bida'*," 62; Fierro, "Against Innovations," 205-6.

790/1388), a Māliki jurist, particularly his work *al-I'tiṣām*.[199] This book, which is directed at the mystics of his time,[200] deals with, among other subjects, the classification of *bid'ah* and its examples, the many aspects of performing a *bid'ah*, and the status of those who practice *bid'ah*.[201] He begins by quoting Shāṭibī's statement on the literal meaning of *bid'ah*: "a thing for which there is no precedent" (*al-ikhtirā' 'alā ghayr mithāl sābiq*),[202] a definition based in particular on the Qur'an 2:117 and 46:9.[203] This literal meaning indicates, says Hassan, that any innovation should be referred to as *bid'ah*. He then goes on to quote Shāṭibī's fuller definition of *bid'ah* as "a way of innovation in religion that resembles the way of *sharī'ah* and which is meant to be followed in an attempt to show the utmost

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[199]2 volumes (Cairo: Al-Maktabah al-Tijāriyyah, n.d.).

[200]Hallaq, *History of Islamic Legal Theories*, 246.

[201]An analysis of Shāṭibī's ideas on *bid'ah* can be found in Masud, *Islamic Legal Philosophy*, 300-7; Talbi, "Les *Bida'*," 66-9; Muhammad Hasbi Ash-Shiddieqy, *Kriteria antara Sunnah dan Bid'ah* (Jakarta: Bulan Bintang, 1967).

[202]Hassan, "Bid'ah," 737; idem, "Masalah Membagi Bid'ah," 33. See also Shāṭibī, *I'tiṣām*, vol. 1, 36. Hassan provides also the literal meaning of *bid'ah* derived from *al-Tarīqah al-Muhammadiyyah*: "an innovation in the fields of *'ādah* [*mu'āmalah*] and *'ibādah*"; see A. Hassan, *Kitab Choeth-bah Djoem'ah dan Choeth-bah Hariraja* (Bangil: Persatoean Islam, 1949), 20. Elsewhere, Hassan gives the literal meaning of *bid'ah* as "something extraordinary, something incomparable, and a new model"; see Hassan, *Ringkasan Islam*, 45. 'Aṭiyyah gives an additional sense to the literal meaning of *bid'ah*: "*...sawā'un kāna maḥmūdan aw madhmūman*" (...either good or bad); see 'Aṭiyyah, *Bid'ah*, 157.

[203]Shāṭibī, *I'tiṣām*, vol. 1, 36; 'Aṭiyyah, *Bid'ah*, 157-8; Abū Bakr al-Ṭurtūshī, *Kitāb al-Ḥawādith wa al-Bida'* (Beirut: Dār al-Gharb al-Islāmī, 1990), 31; Tahānawī, *Iṣṭilāḥāt al-Funūn*, vol. 1, 133.

obedience to Allah."[204] Based on this definition, Hassan forms the opinion that the *bid'ah* which is forbidden is that which is introduced in the field of *'ibādāt*, whereas in the field of *mu'āmalāt*, any *bid'ah* is permissible. The Prophet even invited Muslims to practice the latter type of *bid'ah* as much or as frequently as possible.[205] Furthermore, the golden age of Islam was made possible because of the enthusiasm of the early Muslims to practice *bid'ah* in the field of social welfare, science, and technology.[206]

The following maxim is very central to Hassan's concept of *bid'ah*: "in the field of worship, an act is prohibited unless there is a legal indicant (*dalīl*) which allows it; while in the field of worldly affairs, an act is permissible unless there is a legal indicant which forbids it" (*al-aslu fī al-'ibādah al-tahrīm hattā yadull al-dalīl*

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[204]Hassan, "Bid'ah," 737; idem, "Masalah Membagi Bid'ah," 33-4. See also Shāṭibī, *I'tiṣām*, vol. 1, 37; 'Aṭiyyah, *Bid'ah*, 164; Masud, *Islamic Legal Philosophy*, 300-1; idem, "Definition of *Bid'a*," 61. In the words of al-Ṭurṭūshī, *bid'ah* is anything that lacks support in either the Qur'an, Sunnah, consensus, or others (*tilka al-latī laysa lahā aṣl fī kitāb Allāh wa lā fī sunnati nabiyyih wa lā ijmā' wa lā ghayrah*); see his *Bida'*, 31.

[205]On the permissibility of the *bid'ah dunyawiyyah*, Hassan based his ideas on the following two Sunnaic texts: "you know better your own worldly affairs" (*antum a'lam bi-umūr dunyākum*) and "any one who introduces a good thing will receive a reward from God and also the reward of those who follow him" (*man sanna sunnah hasanah falahu ajruhā wa ajru man 'amila bihā*); see Hassan, "Bid'ah," 741-2, 744. See also Hassan, *Choeth-bah Djoem'ah*, 21-2; idem, "Masalah Talqin," in *Soal-Jawab*, vol. 4, 1439-40; idem, *Ringkasan Islam*, 45-6; Ibn Mājah, *Sunan Ibn Mājah*, vol. 1, 74.

[206]Hassan, *Choeth-bah Djoem'ah*, 25-6.

'alā tahlīlihi, wa al-aslu fī al-mu'āmalah al-tahlīl hattā yadull al-dalīl 'alā tahrīmihi).[207] Hassan therefore sees two types of *bid'ah*: *bid'ah 'ubūdiyyah* which is forbidden, and *bid'ah dunyawiyyah* which is permissible, even recommended.[208] In addition, he rejects the division of *bid'ah* into five categories in the field of *'ibādāt*: obligatory (*wājib*), recommended (*mandūb*), permissible (*mubāh*), repugnant (*makrūh*), and prohibited (*harām*); accordingly, a given *bid'ah 'ubūdiyyah* could be deemed good (*bid'ah hasanah*),[209] a view commonly adopted by Indonesian Muslims in the era of Hassan and one which originated in the Shāfi'ī school. Some examples of this kind of *bid'ah* are prompting of the dead (*talqīn*), reciting the intention (*uṣallī*) at the beginning of a prayer, reciting certain readings (*dhikr*) on the first, second, and third nights in the house of a deceased person, asking help from the deceased, and the use of an intermediary to attain an objective (*tawassul*).[210] In the eyes of the traditional *kiyai*s, these practices all should be considered *bid'ah hasanah*, while according to

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[207]Hassan, *Ringkasan Islam*, 46; idem, "Riba Bank," *Pembela Islam* 51 (15 September 1932), 72.

[208]Hassan, *Choeth-bah Djoem'ah*, 21; idem, "Melafazhkan Niat," 92, 95; idem, *Pengajaran Shalat* (Bandung: C.V. Diponegoro, 1995), 305.

[209]A. Hassan, "Sembah Tuhan," in *Soal-Jawab*, vol. 3, 1207; idem, "Masalah Membagi Bid'ah," 38-9. Among the first jurists to classify *bid'ah* into five categories were the Shāfi'ī jurist 'Izz al-Dīn ibn 'Abd al-Salām (d. 1262), followed later by the Mālikī Qarāfī (d. 1285) and Ibn Ḥajar al-Haytamī; see Shāṭibī, *I'tiṣām*, vol. 1, 188; Talbi, "Les *Bida'*," 64. For some other classifications of *bid'ah*, see Shiddieqy, *Sunnah dan Bid'ah*, 56-71; Rispler, "The Term *bid'a*," 323-8.

[210]Mughni, *Hassan Bandung*, 32. More examples of those activities which are seen as *bid'ah*, see Labib, "Problem of the *Bid'a*," 192-5; Shiddieqy, *Sunnah dan Bid'ah*, 21-2, 24-5, 77-8; Fierro, "Against Innovations," 211-38.

Hassan, they should be regarded as *bid'ah 'ubūdiyyah*--unwarranted innovation in Islam--or even polytheism (*shirk*).[211] In his eyes these practices are condemned by the following Sunnah: "the worst of all things are novelties (*muḥdathāt*), every novelty is innovation (*bid'ah*), every innovation is error (*ḍalālah*) and every error leads to Hell-fire."[212] In the field of *mu'āmalāt*, it is essential to remember that there are matters that have been determined by the *sharī'ah* and those that are not treated in the text (*nass*); the former must be followed while the latter affords the opportunity to innovate in any way that is permissible. For example, in the case of the wedding ceremony (*walīmah*), people are asked to follow the rule that there must be two just witnesses; but at the same time they may adopt any traditional ceremony (i.e. rituals of eating or drinking) so far as these are not contradictory to the principles of the *sharī'ah*. Hassan maintains also that it is forbidden to attend a meeting (e.g. a *walīmah*) where a *bid'ah* is practised, unless one attends only in order to remind the audience of the danger of such a *bid'ah*.[213]

Indeed, Hassan was not the only religious leader who bitterly attacked the

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[211]Hassan, *At-Tauhied*, 46-54, 58-9.

[212]Hassan, "Masalah Talqin," 1440. See also Ibn Mājah, *Sunan Ibn Mājah*, vol. 1, 18; Ṭurtūshī, *Bida'*, 102; Shawkānī, *al-Qawl al-Mufīd*, 33, 35; Talbi, "Les *Bida'*," 49; M.B. Ahmad, "Theory and Practice of Law in Islam," *Journal of the Pakistan Historical Society* 8 (1960), 191; Lewis, "Some Observations," 52; Fierro, "Against Innovations," 205. Another Sunnah which condemns *bid'ah* reads as follows: "whoever performs a religious deed which is essentially not part of our Sunna is refused"; see Hassan, "Masalah Membagi Bid'ah," 40; Talbi, "Les *Bida'*," 48-9.

[213]A. Hassan, "Datang di Undangan yang Dikerjakan Padanya Bid'ah," in *Soal-Jawab*, vol. 3, 1263-4, reprinted in *Soal-Jawab*, vol. 4, 1714; Mughni, *Hassan Bandung*, 31.

practice of *bid'ah 'ubūdiyyah*. Those who belonged to the Muhammadiyah, the Gerakan Sumatra Thawalib, and al-Irsyad, for example, were widely known to have been involved in the efforts aimed at ending the practice.[214] Similarly, certain scholars such as Ibn Taymiyyah,[215] al-Turkumānī, Ibn al-Ḥājj, and Abū Bakr al-Ṭurtūsī,[216] shared a similar attitude to that of Hassan,

In pursuit of this goal, Hassan, in one of his Friday sermons, reminds his fellow Muslims of the danger of the spread of *bid'ah 'ubūdiyyah*, which leads to the backwardness of Muslims.[217] To overcome this problem, suggests Hassan, we have to realize two things. In the first place, Muslims should be aware of the Islamic teaching that forbids *bid'ah 'ubūdiyyah*, a teaching which is not understood properly, not only by the common people but also, more importantly, by their religious leaders such as *kiyai*s or the *kaum tua*. The situation becomes worse because the religious leaders have promoted *taqlīd* and blind loyalty to the school. Secondly, those who practice *bid'ah* (*mubtadi'ūn*, sometimes called also *ahl al-bida'* or *ahl al-ahwā'*), are intent on introducing *bid'ah 'ubūdiyyah* which is illicit, while unfortunately ignoring the opportunity to perform *bid'ah dunyawiyyah* which is permissible.[218] The

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[214]See Atjeh, *Salaf*, 87-200; Shiddieqy, *Sunnah dan Bid'ah*, 20-8, 46-111.

[215]See generally Memon, *Ibn Taimiya's Struggle*.

[216]See Labib, "Problem of the *Bid'a*," 191-6.

[217]Hassan, *Choeth-bah Djoem'ah*, 19-27; "Selama Oemat Islam Indonesia Masih...," *Pembela Islam* 64 (9 August 1933), 19; "Pertjajalah," *Pembela Islam* 64 (9 August 1933), 39; "Pengisi Soedoet," *Pembela Islam* 65 (9 December 1933), 30.

[218]Hassan, *Choeth-bah Djoem'ah*, 26-7. See also Shiddieqy, *Sunnah dan Bid'ah*, 9-10.

implication is very serious. *Bid'ah 'ubūdiyyah* was becoming chronic among Muslims, spoiling the purity of Islamic doctrine in general and *'ibādāt* in particular. We have to remember, says Hassan, that the decline of Judaism and Christianity was due to the actions of their religious leaders who changed, added, and reduced their religious rules determined by God; consequently, there were serious problems in their holy book, i.e. internal contradictions, etc.[219] On the other hand, the reluctance to practice *bid'ah dunyawiyyah* has also had serious effects. It has meant that Muslims are unable to compete with others; hence they find themselves in a state of backwardness and are out of step with this modern era.[220] Hassan then suggests:

> Indeed, Allah commands Muslims to actively practice *bid'ah* in the field of *mu'āmalah*, and the Prophet encourages us to become a developed, secure, and prosperous society in order to be a model for others. For this reason, we have to compete in inventing any new innovation such as certain ways of life, new rules, and new materials useful for human life.[221]

4. *Ijtihād, Ittibā', Istiftā', Iftā', Talfīq,* and *Ahl al-Sunnah wa al-Jamā'ah.*

Hassan introduces the topics of judicial discretion (*ijtihād*), of following a certain rule (*ittibā'*), of asking and giving legal advice (*istiftā'* and *iftā'*), and of the people of the Sunnah and the community (*ahl al-sunnah wa al-jamā'ah*), with the intention of lending support to his condemnation of the tendency of Indonesian Muslims to rely

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[219]Hassan, *Choeth-bah Djoem'ah*, 22.

[220]Ibid., 19.

[221]Ibid., 25. See also Hassan, *Ringkasan Islam*, 46.

on *taqlīd*, follow the teachings of a school, and engage in the practices of *bid'ah 'ubūdiyyah*. His treatment of these issues is however no more extensive than that devoted to the subjects of *taqlīd*, *madhhab*, and *bid'ah*.

First, we begin with Hassan's ideas on *ijtihād*. In fact, Hassan never wrote extensively on the subject, and his views on it are only supplementary to those he expressed on *taqlīd*, *madhhab*, and *bid'ah*.

In general, *ijtihād*[222] is defined as "exerting one's effort in order to derive from the bases of the law (*adillah*) an opinion concerning a legal rule."[223] In the words of Hassan, *ijtihād* is "a concerted effort to discover a religious rule" or "a concerted effort in understanding the difficult Qur'anic and Sunnaic texts."[224] *Ijtihād* is therefore concerned only with the rules (*ahkām*) affecting Muslim life that are difficult to interpret, and is not concerned with such ordinary issues as the obligations of prayer, fasting, and pilgrimage, the rules on which are known to most

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[222]*Ijtihād* comes from *jahd* or *juhd* (exertion, endeavor, attempt, effort); thus, it literally means exerting an effort to investigate something; see e.g. Ḥasan Aḥmad Mara'ī, "al-Ijtihād fī al-Sharī'ah al-Islāmiyyah," in *al-Ijtihād fī al-Sharī'ah al-Islāmiyyah wa-Buḥūth Ukhrā* (Riyāḍ: Al-Mamlakah al-'Arabiyyah al-Su'ūdiyyah, 1984), 11; *Al-Azhar: The First Conference of the Academy of Islamic Research* (Cairo: Al-Azhar, 1964), 39.

[223]Jurjānī, *Ta'rīfāt*, 31; Tahānawī, *Iṣṭilāḥāt al-Funūn*, vol. 1, 198-9; Khudarī Bik, *Uṣūl al-Fiqh*, 367; Hallaq, "Gate of Ijtihad," 3; Peters, "*Idjtihād* and *Taqlīd*," 135. For further information on *ijtihād* and some related issues, see *Al-Azhar: The First Conference*, 37-55.

[224]Hassan, *Risalah Al-Madz-hab*, 11; idem, *Halalkah Bermadz-hab?* 2; idem, *al-Boerhān*, xxxvi; idem, *Ijma'*, 59.

Muslims.[225] Hassan also lists certain conditions (*sharā'iṭ*) which should be met by the *mujtahid*s, i.e. those who practice *ijtihād*,[226] among them: a sufficient knowledge of Arabic in order to understand the Qur'an and Sunnah; an understanding of the sources of Islamic law such as the Qur'an, Sunnah, consensus, and *qiyās*; an ability to apprehend the aspects of proof (*dalīl*), whether these be ambiguous (*mujmāl*), clarified (*mufassar*), perspicuous (*muḥkām*), general (*'āmm*), specific (*khāṣṣ*), implied (*mafhūm*); a knowledge of the science of Sunnah and its classification into continuous (*mutawātir*), solitary (*āḥād*), sound (*sahīh*), good (*hasan*), and weak (*da'īf*), etc.; an understanding of the science of scriptural abrogation (*nāsikh* and *mansūkh*); and a knowledge of a comprehensive concept of *sharī'ah* categorization (*al-ḥukm al-shar'ī*).

In his study of Hassan's *ijtihād*, Zainul Muttaqin concludes, *inter alia*, that, like Shāfi'ī,[227] Hassan sees *ijtihād* and *qiyās* as two terms with one meaning (*humā ismāni li-ma'nā wāḥid*).[228] This view however is misleading. Hassan conceives

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[225]Hassan, *al-Boerhān*, xxxvi.

[226]Ibid., xxxvi-xxxvii; idem, *Ijma'*, 59; idem, *Risalah Al-Madz-hab*, 13-4. On the conditions (*sharā'iṭ*) of a *mujtahid*, see Muḥammad ibn 'Umar Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh*, vol. 2 (Riyād: Lajnat al-Buḥūth wa al-Ta'līf wa al-Tarjamah wa al-Nashr, 1981), 30-8; Abū al-Walīd al-Bājī, *Iḥkām al-Fuṣūl fī Aḥkām al-Uṣūl*, ed. 'Abd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1986), 722; Shāfi'ī, *al-Umm*, vol. 7, 274; Hallaq, *History of Islamic Legal Theories*, 173-4, 298-9; idem, "Ifta' and Ijtihad," 33-5; Weiss, *God's Law*, 687-90; Jackson, "Defence of Two-Tiered Orthodoxy," 118-20; Muḥammad Daūd Rahbar, "Shāh Walī Ullāh and Ijtihād," *The Muslim World* 45 (1955), 348.

[227]Shāfi'ī, *Risālah*, 477. See also Schacht, "Classicisme, traditionalisme et ankylose," 146; Kerr, *Islamic Reform*, 76.

[228]Muttaqin, "Pola Ijtihad Hukum," 136-7.

ijtihād as being wider than *qiyās*; he writes: "If a qāḍī is unable to solve certain problems through *qiyās*..., he should exercise another *ijtihād* by considering the *maslahah* [advantage] and *mafsadah* [harmfulness] of the problems."[229]

Furthermore, the cornerstone of Hassan's ideas concerning *ijtihād* is his confidence that the gate of *ijtihād* was never closed. Indeed, he emphasizes the equal ability of all believers to exercise *ijtihād* as long as they possess sufficient knowledge to consult the sources of Islamic law.[230] The only hierarchy he admits is a quality that one can acquire by one's own effort, through which one attains the rank of a *mujtahid*.[231] This notion was obviously against the current of Indonesian Muslim scholarship, especially in the eyes of those *kiyai*s who believed that no one could consider himself qualified to be a *mujtahid* in this day and age and that people in general had no other option but *taqlīd* and hence complete reliance on the schools.[232] Hassan's ideas therefore are similar to those of jurists "who revolted against the mode of imitation throughout the history of Islam"[233] and promoted the validity of *ijtihād*. In fact, validation of *ijtihād* as a tool for reform was an important feature of Muslim intellectual life in the modern period. Peters writes:

> Reformers claimed the right to interpret the Koran and the *Sunnah* independently from the prevailing opinions of the lawyers of the four

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[229]Hassan, *Islam dan Kebangsaan*, 35.

[230]Hassan, *Risalah Al-Madz-hab*, 13; idem, *Ringkasan Islam*, 43.

[231]Hassan, *Ijma'*, 71-2, 130.

[232]Mughni, *Hassan Bandung*, 30.

[233]Nour, "Schools of Law," 69.

> *madhhab*s. Their claims were opposed by the followers of these *madhhab*s, who held that since long nobody was qualified any more to interpret the sources on his own, and that all Moslems were nowadays bound to abide by the decisions of the scholars of *madhhab*s.[234]

Also, according to Hassan, *ijtihād* can result in only one judgement, the correct one, for a given case. This represents his answer to the question: Is each of the *mujtahid*s or schools correct, or is only one of them correct?[235] This question divided the jurists into two camps: the first, comprising such scholars as 'Abd al-Ḥasan al-Ash'arī, Abū Yūsuf, Ibn Sharīkh, Muḥammad ibn al-Ḥasan, and al-Qāḍī Abū Bakr, was of the opinion that it is possible to have more than one correct opinion in a given case; the other camp, represented by, for instance, Baydāwī and Dihlawī, believed that there is only one ruling which is correct in any given problem,[236] an idea clearly adopted by Hassan. However, it should be borne in mind that Hassan's view contrasts with the position of most Indonesian Muslims who adopted exclusively the Shāfi'ī school while ignoring others. This is to say that according to Hassan any one of the founders of a school, including Shāfi'ī himself, was capable of error as well as of being correct; accordingly, there is no legitimate reason to follow exclusively the Shāfi'ī school or even any of the other Sunnī schools, especially since there is only one truth in any given case and this truth could have been determined

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[234]Peters, "*Idjtihād* and *Taqlīd*," 131.

[235]"Oeroesan Taqlied Lagi," *Al-Lisaan* 9 (25 August 1936), 32; Hassan, *Halalkah Bermadz-hab?* 10-1; idem, *Ijma'*, 57.

[236]On the matter, see Rahbar, "Walī Ullāh and Ijtihād," 350-1. See also Hallaq, *History of Islamic Legal Theories*, 177-9; Reinhart, "Transcendence and Social Practice," 19-20; Zysow, "Islamic Legal Theory," 242, 245-6.

by anyone of the founders of the schools.[237]

Nonetheless, Hassan realizes the fact that a majority of Muslims are laymen who do not meet the conditions (*sharā'iṭ*) to exercise *ijtihād*, and that *mujtahid*s always form a minority within society, i.e. an elite, knowledgable in religious matters, usually consisting of the religious leaders of that society. But this situation, in Hassan's view, is not a legitimate reason for people to exercise *taqlīd*; for it has, as we have indicated earlier, normatively been forbidden. Some solution is obviously needed, and Hassan introduces the doctrine of *ittibā'*, a doctrine known since the early history of Islam.[238]

Ittibā' literally means "following" (e.g. of certain rule), and it technically means "the acceptance of certain rules from another person based on the Qur'an, Sunnah, consensus, or *qiyās*."[239] Hassan emphasizes the view that the *muttabi'*, the one who exercises *ittibā'*, should ask for the rules lying behind a religious teaching and not depend solely on the declaration of a scholar. Moreover, the *muttabi'* does not necessarily need to have knowledge of Arabic, for he is asked to understand the

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[237]Hassan, *Risalah Al-Madz-hab*, 9-10; idem, *Mendjawab Buku Bantahan*, 18.

[238]The term *ittibā'* was used, for instance, by Ahmad b. Hanbal, Ibn 'Abd al-Barr, and Ibn Daqīq al-'Īd (d. 1302-3); see Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn*, vol. 2, 171, 178; Peters, "*Idjtihād* and *Taqlīd*," 140.

[239]A. Hassan, *Verslag Debat Taqlid (Dengan Tambahan)* (Bangil: Persatoean Islam, 1936), 40; idem, *Halalkah Bermadz-hab*, 2; idem, *Ijma'*, 59, 79; idem, *Menjawab Buku Bantahan*, 30; idem, *Risalah Al-Madz-hab*, 12; idem, *Ringkasan Islam*, 42. According to Ibn Qayyim al-Jawziyyah, *ittibā'* means "an opinion supported by a proof" (*mā thabata 'alayhi ḥujjah*); see his *I'lām al-Muwaqqi'īn*, vol. 2, 187.

religious reasons for his daily religious practices only and not to discover certain rules as the *mujtahid* usually does.[240] In fact, Hassan finds it difficult to understand why so many Muslims who have an advanced knowledge of Arabic exercise *taqlīd* and not *ijtihād* or at least *ittibā'*. "To understand the Qur'an and Sunnah is even easier than the books of jurists which are full of the opinions of other people (e.g. *qīla wa-qāla*)."[241] In his final remarks, Hassan suggests that there are only two ways to pursue a correct understanding of religious teachings: *ijtihād* and *ittibā'*; beyond these there is only *taqlīd*, which is absolutely illicit.[242] In fact, there will be some instances wherein a *muttabi'* will be confronted with different ideas from different jurists, all of which are purportedly based on the Qur'an and Sunnah. In such cases, it is hoped that he will exercise even simple *ijtihād* (*berijtihad sekadarnya*) to chose between them.[243] Hassan's attitude seems to be similar to that of Muḥammad b. 'Alī al-Shawkānī (1760-1832), who claimed that "anybody with a minimal knowledge of jurisprudence can be a *mujtahid* and considers *taqlīd* absolutely forbidden."[244]

In order to further stress the importance of *ijtihād* and *ittibā'* and the dangers of *taqlīd*, Hassan turns his attention to the procedures involved in requesting a legal opinion (*istiftā'*) and its deliverance (*iftā'*). In this discussion, Hassan insists that any

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[240]Hassan, "Taqlid Kepada 'Ulama'," 389; idem, *Ijma'*, 59.

[241]Hassan, *Ijma'*, 71, 130.

[242]Hassan, "Taqlid Kepada 'Ulama'," 389; idem, *Ringkasan Islam*, 43.

[243]Hassan, *Ringkasan Islam*, 43.

[244]Peters, "*Idjtihād* and *Taqlīd*," 143. For a discussion of this problem, see Hallaq, *History of Islamic Legal Theories*, 182-3.

legal advice (*fatwā*) must be based on the Qur'an or Sunnah. The petitioner (*mustaftī*) should demand of the jurisconsult (*muftī*) that he base his answer on the Qur'an and Sunnah and not on his own opinions or on those of the founders of the schools. By the same token, the *muftīs* are themselves obliged to give their *fatwās* solely based on the Qur'an and Sunnah and not on their own ideas or on those of others. Clearly, this section is meant to reinforce Hassan's argument against following a school and exercising *taqlīd*.[245]

The eclectic method (*talfīq*),[246] which was commonly condemned by the *kiyais*,[247] was highly recommended by Hassan. This *talfīq* is legally defined as "combining certain rules from two or more schools dealing with certain problems."[248] Hassan understood *talfīq* differently from the majority of Indonesian Muslims who saw it as meaning choosing and combining the most convenient rules

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[245]Hassan, *Ijma'*, 79; idem, *al-Boerhān*, xli-xlii; idem, "Samboengan," *Pembela Islam* 8 (January 1957), 41.

[246]*Talfīq* comes from *lafaqa* which means to stitch together a tear in a sheet making of it one whole.

[247]See Abbas, *Madzhab Shafi'i*, 96-9. Similarly, see William R. Roff, "An Argument about How to Argue," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (Cambridge: Harvard University Press, 1996), 227-8.

[248]Muḥammad Dasūqī, *al-Ijtihād wa al-Taqlīd fī al-Sharī'ah al-Islāmiyyah* (Qatar: Dār al-Thaqāfah, 1987), 230; Zuḥaylī, *Uṣūl al-Fiqh al-Islāmī*, vol. 2, 1142; Ibrahim Hosen, "Taqlid dan Ijtihad: Beberapa Pengertian Dasar," in *Kontekstualisasi Doktrin Islam*, ed. Budy Munawar-Rachman (Jakarta: Paramadina, 1994), 334; idem, "Memecahkan Permasalahan Hukum Baru," in *Ijtihad dalam Sorotan*, ed. Jalaluddin Rakhmat (Jakarta: Mizan, 1988), 36. See also J.N.D. Anderson and Noel J. Coulson, "Modernization: Islamic Law," in *Northern Africa: Islam and Modernization*, ed. M. Brett (London: Frank Cass, 1973), 75; Anderson, *Law Reform*, 51.

amongst the various schools, avoiding difficulties and seeking the easiest way in following the rules of God. Hassan points out that the followers of the Shāfi'ī school are of the opinion that all schools are in the same position: each of them is open to being both right and wrong. If so, why is it forbidden to choose or combine certain rules from the different schools so far as they are based on the Qur'an and Sunnah? This logical problem, says Hassan, proves that the majority of Indonesian Muslims have misunderstood the doctrine of *talfīq*.[249] It is true that as in other parts of the Muslim world,[250] *talfīq* has become increasingly important for contemporary Indonesian Muslims and has been used by the government (e.g. through the Department of Religious Affairs and the MUI) to solve the problems facing Muslims.[251] Thus, it is no longer unusual for most modern Indonesian writers, particularly those who are considered members of the reformist group, to use the works of non-Shāfi'ī or even non-Sunnī schools (e.g. Shī'ī), not to mention those of non-Muslims, in order, *inter alia*, to broaden their understanding of Islam in general and Islamic law in particular.[252]

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[249]Hassan, *Risalah Al-Madz-hab*, 12-3; idem, *Ijma'*, 60. See also Dermalaksana, "Madzhab Empat," 243.

[250]See Badr, "Islamic Law," 28-9; *Al-Azhar: The First Conference*, 57-76; Kamali, *Islamic Jurisprudence*, xiv-xv.

[251]For example, it is used by Ibrahim Hosen, the chief of the Majlis Fatwa of MUI who advocates the use of *talfīq*; see his "Taqlid dan Ijtihad," especially section "Masalah Talfiq," 334-6. For extensive examples of the *fatwā*s issued by the MUI, which employ *talfīq*, see generally Mudzhar, *Fatwās*.

[252]The prestigious journal *Ulumul Qur'an* is clearly representative of such a tendency.

In addition, Hassan pays attention to the notion of "people of the Sunnah and the community" (*ahl al-sunnah wa al-jamā'ah*), an expression which was used more as a weapon against rivals than as anything else, and which was adopted by certain groups in the political agitation prior to the first Indonesian general election of 1955.[253] Hassan, in fact, claimed to have placed Persis in the front line in promoting a truer understanding of *ahl al-sunnah wa al-jamā'ah*. In his writings he condemns the majority of Indonesian Muslims as not being members of the so-called *ahl al-sunnah wa al-jamā'ah*. The followers of this religious belief system, admits Hassan, are those who imitate the Prophet and his Companions who, *inter alia*, denounce *taqlīd*. For this very reason, anyone who claims to follow one of the schools, as in the case of the majority of Indonesian Muslims, has no right to claim that he is a member of the *ahl al-sunnah wa al-jamā'ah*.[254] This criticism was addressed to his opponents who themselves claimed to belong to the *ahl al-sunnah wa al-jamā'ah* and who in turn expelled Hassan from their number. This resulted in each party claiming to belong to the *ahl al-sunnah wa al-jamā'ah*, and in mutual accusations of heresy. But one thing should be borne in mind: while Hassan accused his opponents of being of the *ahl al-bid'ah* and consequently cut off from the *ahl al-sunnah wa al-jamā'ah*, his opponents merely excluded Hassan from the *ahl al-sunnah wa al-jamā'ah* without denouncing him as a member of the *ahl al-bid'ah*. Indeed, the notion of *ahl al-sunnah*

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[253]E. Abdurrahman, "Ahli Sunnah Wal Djama'ah," *Hudjdjatul Islam* 1 (August 1956), 12.

[254]Hassan, *Ijma'*, 61. See also "Islam, Agama, Politik, Sosial," *Pembela Islam* 57 (January 1932), 3.

wa al-jamā'ah is not an exclusively Indonesian phenomenon; it is a subject much discussed by scholars, especially with reference to the meaning of the terms *sunnah* and *jamā'ah*, and the relation between the two in the context of legal doctrine.[255]

In observing Hassan's approach to *uṣūl al-fiqh*, some clear tendencies emerge. For instance, in his inference (*istinbāṭ*) Hassan uses generally the so-called etymological approach (*ṭarīqah lafẓiyyah*) and the epistemological approach (*ṭarīqah ma'nawiyyah*). While the former is concerned with discovering rules based on a knowledge of the grammar, syntax, and other features of the Arabic language, the latter involves determining these same rules by going beyond the limits of Arabic linguistic knowledge. This feature will be presented in greater detail in the next chapter which discusses the application of Hassan's *uṣūl al-fiqh*. Moreover, in his analysis of the sources of Islamic law, he emphasizes the view that the Qur'an and the authenticated Sunnah ought to be the sole guiding criteria for arriving at judicial decisions. Indeed, Persis, under the leadership of Hassan, "more than any other modernist Muslim group in Indonesia, drew heavily on the Qur'an and *hadīth* in order to provide evidence for the correctness of its position on religious, social, economic and political issues."[256] The call for a return to the Qur'an and Sunnah and the use and reliance on analysis of textual material were therefore the most distinctive features

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[255]For further discussion of *sunnah* and *jamā'ah*, see Bari, "Sunna and Jamā'a," 150-63; Muhammad Yusuf Guraya, "The Concept of Sunnah: A Historical Study," *Islamic Studies* 11 (March 1972), 13-44; Rahman, *Islamic Methodology*, 1-47; Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 58-96.

[256]Federspiel, *Persatuan Islam*, 38.

of Hassan's approach, one which is sometimes seen as characteristic of fundamentalist groups.[257] It does indeed correspond to the principles of the Ẓāhirī school and to those of such modern movements as al-Ikhwān al-Muslimūn and the Jamaat-i Islami; accordingly, Hassan has sometimes been considered fundamentalist in the sense that he radically promotes the Islamic state as a means of realizing the strict application of the provisions of Islamic law coined in the Qur'an and Sunnah.[258]

Finally, seen from a general perspective, Hassan's *uṣūl al-fiqh* may be said to be very simple. He tends to avoid the more complex aspects of the subject. For example, Hassan pays no attention to the intricate problems of the *ratio legis* (*'illah*), the bed-rock of *qiyās* upon which a legal ruling is based and a subject that always receives a lengthy discussion in the legal treatises.[259] It is interesting to note that Hassan criticized his contemporaries for making the subject of *uṣūl al-fiqh* (e.g. the process of *ijtihād*) a very complex study, and hence a subject which is not open to everybody. According to Hassan, rather than asking people to study the Qur'an and Sunnah directly, the religious leaders made their pupils study the complex and wide differences of opinion found in the works of medieval jurists. Most came away from this exercise with the impression that the Qur'an and Sunnah could only be

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[257]Voll, "Sudanese Mahdi," 150-1; Peters, "*Idjtihād* and *Taqlīd*," 131-2.

[258]Federspiel, *Persatuan Islam*, iv; idem, "Islam and Nationalism," 39-40, 43; Boland, *Islam in Modern Indonesia*, 214.

[259]See generally Hallaq, "Character of Sunnī Legal Theory;" idem, "Logical Structure in Sunni Legal Theory;" idem, "Logic, Formal Arguments; idem, "Juridical Dialectic;" Kamali, *Islamic Jurisprudence*, 206-14; Shehaby, "*'Illa* and *Qiyās*."

understood with the help of these early scholars. Hassan would have Muslims believe that any one who can understand the works of the medieval jurists is more than able to understand the rules found in the Qur'an and Sunnah; the latter are in fact even easier for those who can keep away from the blind *taqlīd* of the *kiyais*.[260] This being the case, it is understandable that many Indonesian Muslims consider Hassan as having presented a new approach towards *usūl al-fiqh*, particularly compared to that employed by the traditionalists. In general, his aim was to understand the contexts of the sources and to draw conclusions that he saw as the expression of the *lex divina*.

[260]Hassan, *Ijma'*, 34, 71-2, 130.

CHAPTER FOUR

CHAPTER 4
CONTROVERSIAL ISSUES IN ISLAMIC LAW

What we have thus far said makes it clear that Hassan's *uṣūl al-fiqh* was not merely theoretical but also practical, influenced by the conditions in which the Indonesian Muslims of his era lived.[1] This is reflected most clearly in his *fatwā*s, i.e. legal opinions given in answer to questions posed by Muslims on points of law. For this reason, we find it necessary to examine, in greater detail than was possible in the preceding chapters, his *fatwā*s on issues of Islamic law, the study of which will provide us not only with an insight into his approach to the law but also with a sense of the totality of his career as a reformer.

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[1]Theory and practice, doctrine and practice, or idealism and realism in Islamic law have become important topics for the students of Islamic law. Some argue that there is a significant gap between theory and practice, while others stand against this notion. On this problem, see Schacht, *Introduction*, 76-85; Coulson, *Conflicts and Tensions*, chapters four and five "Idealism and Realism" and "Law and Morality," 58-76; idem, "Doctrine and Practice in Islamic Law: One Aspect of the Problem," *Bulletin of the School of Oriental and African Studies* 18 (1956), 211-76; Kerr, *Islamic Reform*, 55-102; Ahmad, "Theory and Practice of Law," 8 (1960), 184-205, 271-86; 9 (1961), 8-22; Abraham L. Udovitch, "Theory and Practice of Islamic Law: Some Evidence from the Geniza," *Studia Islamica* 32 (1970), 289-303; Muhammad Muslehuddin, *Philosophy of Islamic Law and the Orientalists: A Comparative Study of Islamic Legal System* (Lahore: Islamic Publications, 1977), chapter nineteen (d) "Idealism and Realism," 209-27 and chapter twenty (a) "Idealism and Traditional Jurisprudence," 241-50; Bernard G. Weiss, "The Primacy of Revelation in Classical Islamic Legal Theory as Expounded by Sayf al-Dīn al-Āmidī," *Studia Islamica* 59 (1984), 79-109; Aziz al-Azmeh, "Islamic Legal Theory and the Appropriation of Reality," in *Islamic Law: Social and Historical Contexts*, ed. Aziz al-Azmeh (London: Routledge, 1988), 250-65; Abdulaziz A. Sachedina, "The Ideal and Real in Islamic Law," in *Perspectives on Islamic Law, Justice and Society*, ed. R.S. Khare (Charlottesville: University of Virginia, 1987), 36-46; Hallaq, "The Dialectic of Doctrine and Practice," 109-34; idem, "Ifta' and Ijtihad," 42-3; Nyazee, *Theories of Islamic Law*, 12-7.

It should be mentioned at the outset that quite a number of works have appeared that deal with both traditional and reformist ideas regarding various issues of Islamic law and which make comparisons to some extent between the two.[2] However, these works merely touch the surface of the problems without analyzing them in the context of *uṣūl al-fiqh*; in fact, they often disregard the theoretical foundations of the rules that apply in such cases. Thus, part of the task of this chapter will be to examine the application of Hassan's *uṣūl al-fiqh* to the issues of Islamic law. At the same time, it will consider to what extent Hassan's doctrine is different from the common and traditional views on questions of Islamic law.

Another area that deserves investigation is Hassan's classification of the subject matter of Islamic law. In the first place, Hassan declares that the main duty of human beings is to worship Allah (*'ibādah*) by following His command (*al-amr*) and avoiding what He has forbidden (*al-nahy*). Thus, any activity performed by a human being must ultimately be intended for the worship of Allah or *'ibādah*. This is considered to be the general meaning of *'ibādah*.[3] Going into more detail, he

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[2]See e.g. Noer, *Modernist Muslim Movement*, 216-47; A. Farichin Chumaidy, "The Jam'iyyah Nahdlatul 'Ulamā': Its Rise and Early Development (1926-45)" (M.A. thesis, McGill University, 1976), 119-28; Latief, "Kaum Tua di Minangkabau," 534-605; Yahya, "Ahmad Khan and Ahmad Hassan," 57-63; Geertz, *Religion of Java*, 133-42, 366-8; Ali, "Islam and Modernism," *Voice of Islam* 8 (1959), 85; 9 (1960), 125-7, 132; Cees van Dijk, "The Re-Actualization of Islam in Indonesia," *Rima* 25 (1991), 75-82; and Affandi, "Ahmad al-Surkati," 86-90, 99-102.

[3]Hassan, "Sembah Tuhan," 1206. See also Mughni, *Hassan Bandung*, 30; Doi, *Sharī'ah*, 116.

divides the teaching of Allah into two categories: *'ibādah* (pl. *'ibādāt*)[4] and *'ādah* (pl. *'ādāt, 'awā'id*) or *mu'āmalah* (pl. *mu'āmalāt*).[5] The former is defined as things or actions concerned with aspects of the hereafter or of worship, the latter as those involving worldly affairs. He explains further that the teachings defined as *'ibādāt* belong to the field of *ghayr ma'qūl al-ma'nā*, things which cannot necessarily be understood through mere human reason and are practised for the sake of Allah alone, as opposed to those of *mu'āmalāt* which are *ma'qūl al-ma'nā* (reasonable).[6] Once a teaching has been defined as either *'ibādāt* or *mu'āmalāt*, a further important distinction--one central to Hassan's own approach to legal interpretation--comes into play: "in the field of worship, an act is prohibited unless there is a legal indicant (*dalīl*) which allows it; while in the field of worldly affairs, an act is permissible unless there is a legal indicant which forbids it" (*al-aslu fī al-'ibādah al-tahrīm hattā yadull al-dalīl 'alā tahlīlihi, wa al-aslu fī al-mu'āmalah al-tahlīl hattā yadull al-dalīl*

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[4]The term *'ibādah* and its variations are found in many verses of the Qur'an; for instance, 10:29, 18:110, 19:65, 7:206, and 40:60. According to Jurjānī, *'ibādah* is "any act of a legally capable person which is against his own personal inclination (*hawā*) in order to worship his God"; see Jurjānī, *Ta'rīfāt*, 190.

[5]The term *mu'āmalah* is completely absent from the Qur'an. *Mu'āmalah* is sometimes considered as only one area of worldly affairs; for instance, it refers only to transactions such as buying and selling; see Schacht, *Introduction*, 79, 145; W. Heffening, "'Ibādāt," in *Shorter Encyclopaedia of Islam*, ed. H.A.R. Gibb and J.H. Kramers (Leiden: E.J. Brill, 1961). Other areas of worldly affairs are named, among them, *munākahāt* (marriages), *jināyāt* (criminal aspects), and *murāfa'āt* (court and justice).

[6]Hassan, *Ringkasan Islam*, 26-7. See also idem, *Pemerintahan Tjara Islam*, 145-6; idem, *Risālatul Hadj*, 6; idem, "Melafazhkan Niat," 91-2; idem, "Sembah Tuhan," 1206; idem, *al-Furqān*, xxiv; Mughni, *Hassan Bandung*, 30-1; Muttaqin, "Pola Ijtihad Hukum," 137-8.

'alā taḥrīmihi).[7]

In general terms, it may seem easy to understand the distinction between matters of *'ibādāt* and those of *mu'āmalāt*. In practice, however, it is difficult to draw a line between the two. A well known example of this is *jihād* (holy war).[8] Rahman finds the same difficulty surrounding alms-tax (*zakāh*),[9] which leads him to the conclusion: "Indeed, the very division of *'ibādāt* and *mu'āmalāt* seems quite dubious."[10] This is also true for Hassan, who cites, as a further example of this problem, the language of the religious sermon (*khuṭbah*) in the Friday prayer (*ṣalāt al-jum'ah*) and the religious feasts prayer (*ṣalāt al-'īd*).[11] In this case, he took a rational approach, promoting the use of the vernacular (e.g. Indonesian, Javanese, or Madurese) for the sermon, arguing that the purpose of the sermon was to offer advice to the audience; accordingly, he considered the sermon as *mu'āmalah* rather than *'ibādah* and declared that, as on other occasions when advice is given, the sermon

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[7]Hassan, "Sembah Tuhan," 1207; idem, *al-Furqān*, xxiv. See also Muhammad Hasbi Ash-Shiddieqy, *Pengantar Ilmu Fiqh* (Jakarta: Bulan Bintang, 1967), 22-3.

[8]Henri Laoust, *Essai sur les doctrines sociales et politiques de Taḳī-d-Dīn Aḥmad b. Taimīya* (Cairo: Institut français d'archéologie orientale, 1939), 248; Kerr, *Islamic Reform*, 89.

[9]Fazlur Rahman, "Towards Reformulating the Methodology of Islamic Law: Sheikh Yamani on 'Public Interest' in Islamic Law," *New York University Journal of International Law and Politics* 12 (1979), 220.

[10]Ibid., 221.

[11]The problem is also reflected in Hassan's placing the *qurbān* (religious sacrifice at the time of the feast of immolation, *'īd al-aḍḥā*) in the field of *'ibādāt* and alms-tax (*zakāh*) in the field of *mu'āmalāt*; see e.g. Hassan, *Pemerintahan Tjara Islam*, 145.

should be delivered in the language understood by the audience.[12] This was contrary to the beliefs of a majority of the people of his era who considered the sermon to be an inseparable part of the prayer, which is unquestionably *'ibādah*, and that it should be read in Arabic. They argued, for instance, that delivering the sermon in Arabic is one of the conditions without which the prayer is rendered null and void (*bātil*).[13] It is true that there were (and still are) specially-compiled anthologies of sermons used by those who deliver the sermon (*khatībs*) arranged according to the Arabic calendar, a practice found also in some other Muslim countries as indicated by A.J. Wensinck.[14] In fact, the use of local language became increasingly acceptable even among traditionalists, who in the earlier stages of reform utterly rejected such a practice.[15]

Indeed, the problem of differentiating matters of *'ibādāt* from those of

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[12]A. Hassan, "Sahkah Khuthbah Jum'at dengan Bahasa Indonesia," in *Soal-Jawab*, vol. 1, 203-5; idem, "Bahasa dalam Khuthbah," in *Soal-Jawab*, vol. 2, 463-5; idem, "Berkhuthbah dengan Bahasa Lain dari Arab," in *Soal-Jawab*, vol. 4, 1421-3; idem, "Bahasa Choeth-bah," *Pembela Islam* 22 (March 1931), 33-4; idem, "Chuthbah Bahasa Melaju," in *Sual-Djawab*, vol. 4, 3-5.

[13]Siradjuddin Abbas, *Kumpulan Soal Jawab Keagamaan* (Jakarta: Pustaka Tarbiyah, 1987), particularly section titled "Khutbah Juma'at dengan Bahasa Arab," 265-8.

[14]A.J. Wensinck, "Khutba," *The Encyclopaedia of Islam*, new edition, ed. C.E. Bosworth et al. (Leiden: E.J. Brill, 1986).

[15]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 126-7; Latief, "Kaum Tua di Minangkabau," 277-8. In some areas (e.g. Kaliwaru-Tengaran of Central Java and Batang Kabung, West Sumatera), the local *'ulamā'* combine the two practices. For example, the *khatīb* goes to the pulpit (*minbar*); at first, he delivers advice in the local language (e.g. Javanese)--this is not considered part of the sermon; then he starts reciting the sermon in Arabic, the contents of which are similar from one time to another.

mu'āmalāt is clearly reflected in Hassan's *fatwās*, as will be seen below.

Hassan's *fatwās* on issues of Islamic law cover almost all aspects of the problems encountered by Muslims in daily life, i.e. in the ritual, political, social, and economic spheres.[16] In fact, Hassan's treatment of each of these issues could furnish sufficient material for separate studies. All that will be attempted here is to give an idea of Hassan's approach to the application of *uṣūl al-fiqh* to daily problems. Given this fact, only a few examples are offered in the following discussion, examples which will bring out the general characteristics of his distinctive thought on these issues. Certain criteria are followed in selecting which of Hassan's *fatwās* to study, among the most important being these: that the subjects should have been controversial issues in the era of Hassan, still in dispute at the present time, and potentially so in the future.

A. Issues of *'Ibādāt*.

1. *Talaffuẓ bi al-Niyyah* (Pronouncing the Intention).

We have already mentioned briefly that when he moved to Surabaya, Hassan was asked by Abdul Wahab Hasbullah to give a legal opinion on the rule pertaining to *talaffuẓ bi al-niyyah*, to which he answered that it was recommended. Nonetheless, he failed to provide references from either the Qur'an or Sunnah to support his opinion.[17] This problem was later brought to him by other Muslims; for example, he

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[16]See particularly his *Soal-Jawab Masalah Agama*, a collection of his *fatwās*.

[17]See chapter two, 88 note 22.

was asked the following question: "What is the rule on the *talaffuẓ bi al-niyyah* [in the prayer]?"[18] After investigating thoroughly all the arguments on the matter, he finally concluded that, as we shall see later, the *talaffuẓ bi al-niyyah* was an innovation (*bid'ah*).

Talaffuẓ bi al-niyyah is a practice in which people pronounce their intention verbally at the beginning of certain *'ibādāt* practices such as prayer (*ṣalāh*), fasting (*ṣawm*), alms-tax (*zakāh*), etc. Here, we are referring especially to the intention (*niyyah*) stated before prayer, due to the fact that this was the most common issue of debate among Indonesians. The practice was apparently first challenged in about 1911 when Abdul Karim Amrullah, a reformist of Sumatra, questioned it in an article written for the reformist journal *al-Munir*.[19] In practice, those who are about to perform the prayer, e.g. the early morning prayer (*ṣalāt al-ṣubḥ*), start by reciting the following: *uṣallī farḍa al-ṣubḥ rak'atayn mustaqbila al-qiblah adā'an lillāhi ta'ālā* (I am praying *ṣubḥ* two *rak'āh*s facing towards the *qiblah* for the sake of Allah).[20]

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[18]Hassan, "Melafazhkan Niat," 91.

[19]Hamka, *Ayahku*, 100-2; Federspiel, *Persatuan Islam*, 62. For further polemics on *uṣallī* between Amrullah (*kaum muda*) and his opponents (*kaum tua*), see Latief, "Kaum Tua di Minangkabau," 535-80.

[20]*Rak'ah* is literally the act of bowing down before Allah, while *qiblah* is the direction to which Muslims turn in praying; the worshippers turn their face towards the *Ka'bah* at Mecca. For the intentions of the early afternoon prayer (*ẓuhr*), the late afternoon prayer (*'aṣr*), the sunset prayer (*maghrib*), and the night prayer (*'ishā'*), see Abbas, "Masalah Niat dan Ushalli," in *40 Masalah Agama*, vol. 4 (Jakarta: Pustaka Tarbiyah, 1982), 225-7.

This is recited before the *takbīrat al-ihrām* at the beginning of the prayer.[21] In Indonesia, this practice is popularly known as reciting *uṣallī*,[22] a usage observed by Indonesian Muslims since the coming of Islam to Indonesia. It is a practice declared to be recommended,[23] based primarily on the views of the jurists of the Shāfi'ī school such as Ibn Hajar al-Haytamī, Khatīb al-Shirbīnī, Nawawī, Ramlī, Zakariyyā al-Anṣārī, and Zayn al-Dīn al-Malibarī,[24] all of whose works are read widely in Indonesia.

When however the practice of reciting the *uṣallī* came to be regarded by reformers as unforgivable innovation (*bid'ah*), Muslims were thrown into confusion. Among those condemned by the traditionalists was Hassan; they labelled him as anti-*uṣallī*, and accused him of propagating a "strange" *fatwā*.[25] Indeed, the problem of *talaffuẓ bi al-niyyah* divided Muslim society into two camps: those who chose to recite *uṣallī* and those who refused to do it; the former were for the most members of the *kaum tua* or the traditionalist group, while the latter belonged to the *kaum muda* or the reformist group, of whom Hassan was the chief representative.

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[21]*Takbīrat al-ihrām* is the utterance of the words *Allāhu akbar* at the beginning of the prayer. With this utterance, attention to anything but prayer is prohibited.

[22]The word *uṣallī* is originally the first person, present continuous form of the Arabic verb *ṣallā*, meaning to pray. It is generally understood in Indonesian to be a noun referring to the practice described above.

[23]Abbas, "Masalah Niat," 218.

[24]Ibid., 218, 229-32; Latief, "Kaum Tua di Minangkabau," 535-80; Drewers, "Indonesia," 294; Federspiel, *Persatuan Islam*, 63 note 58.

[25]Abbas, "Masalah Niat," 218-9, 243.

Oddly enough, both the traditionalists and Hassan agreed that intention was an inseparable part of the prayer, an idea based on the Sunnah: "The reward for deeds depends upon the intentions and every person will get the reward according to what he has intended."[26] Thus, the intention is obligatory (*wājib*), and without it a prayer will be null and void (*bāṭil*), a doctrine adopted by all schools of law.[27] In the Shāfi'ī school, followed by the majority of Indonesian Muslims, intention is defined as "an aim declared when starting to do a certain thing" (*qaṣdu al-shay'i muqtarinan bi-fi'lihi*);[28] consequently, in the case of prayer, the intention must be expressed (in the heart) while reciting *Allāhu akbar* at the beginning of the prayer. But it is difficult, say the traditionalists, to concentrate on reciting the intention in the heart while pronouncing *Allāhu akbar*; therefore, reciting *usallī* verbally will help in achieving this concentration.

Hassan, on the other hand, expresses the opinion that intention is simply "a purpose to do a certain thing without any need to recite it verbally," and that there is no single religious text commanding the recitation of *usallī* as ordinarily practiced and

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[26]Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 8, 444-5; Shāṭibī, *Muwāfaqāt*, vol. 2, 246; Abū Bakr Muḥammad Shaṭā Bakrī, *Ḥāshiyat I'ānat al-Ṭālibīn*, vol. 1 (Beirut: Dār al-Fikr, 1993), 149; al-Sayyid Sābiq, *Fiqh al-Sunnah*, vol. 1 (Beirut: Dār al-Kitāb al-'Arabī, 1987), 119; Suyūṭī, *al-Ashbāh wa al-Naẓā'ir*, 9, 15.

[27]'Abd al-Raḥmān al-Jazīrī, *Kitāb al-Fiqh 'alā Madhāhib al-Arba'ah*, vol. 1 (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1986), 210; Muḥammad ibn Aḥmad ibn Rushd, *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid*, vol. 1 (Cairo: Al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), 104.

[28]Abbas, "Masalah Niat," 219. See also Bakrī, *I'ānat al-Ṭālibīn*, vol. 1, 149.

propagated by the traditional scholars.[29] In fact, the Prophet said: "if you want to perform prayer, make the ablution (*wuḍū'*), face the *qiblah*, and say *takbīr*."[30] In support of Hassan's position, Haji Abbas quotes Majduddin who states that "when Rasulullah performed prayer, he said *Allāhu akbar* and there is no report that he read the intention [*uṣallī*]."[31] Surely, Hassan's idea is similar to that adopted by theorists of the Mālikī, Hanafī, and Hanbalī schools who believe that the intention can take place before reciting *Allāh akbar* at the beginning of the prayer.[32]

Moreover, Hassan challenges the traditional practice of *uṣallī*, questioning the textual bases of this tradition. Understanding Hassan's approach to *usul al-fiqh*, one could easily predict Hassan's view on the issue; indeed Hassan does see the *uṣallī* as *bid'ah*, claiming that it was an invention of the later jurists lacking the support of either the Qur'an or Sunnah.[33]

Certainly, the traditionalists made every effort to counter this challenge. Nonetheless, most, if not all of them, failed to present a single Qur'anic or Sunnaic

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[29]Hassan, *Pengajaran Shalat*, 210-1, 248; idem, "Muqaranah Niat," in *Soal-Jawab*, vol. 2, 428; idem, "Masalah Membagi Bid'ah," 34; idem, *al-Boerhān*, 71.

[30]The Sunnah is narrated by Muslim. A similar Sunnah is as follows: "if you perform prayer, say *takbīr*; see Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 1, 100. For some other similar Sunnahs, see Sābiq, *Fiqh al-Sunnah*, vol. 1, 120.

[31]Haji Abbas, "Hukum Talaffuzh Niat," in *Soal-Jawab*, vol. 4, 1366.

[32]Ibrāhīm al-Jamal, *Fiqh al-Muslim 'alā Madhāhib al-Arba'ah*, vol. 1 (Beirut: Dār al-Jīl, 1992), 216.

[33]Hassan, "Melafazhkan Niat," 95; idem, "Muqaranah Niat," 425; idem, "Mengucapkan Nawaitu sebelum Takbiratul Ihram," in *Soal-Jawab*, vol. 4, 1369; idem, *al-Boerhān*, 73; Haji Abbas, "Hukum Talaffuzh Niat," 1364.

text in support of the practice of *uṣallī*. It is true that Thaib bin H. Umar Jenieb and Haji Usman provided statements which they claimed to be the Prophet's saying. This Sunnah, however, was rejected by Mohammad Ma'sum, Hassan's colleague, who said that the claims of Jenieb and Usman could not be proved; thus, they were both lying about the Prophet, an attitude which was punishable by Hell-fire.[34] In general, the traditionalists based their ideas on the writings of earlier jurists, particularly those belonging to the Shāfi'ī school. There were at least two key reasons advanced by the traditionalists in support of their views. First, the *uṣallī*, they claimed, was based on *qiyās*: the *talaffuẓ bi al-niyyah* of the prayer was analogized to the *talaffuẓ bi al-niyyah* of the pilgrimage as performed by the Prophet, an idea based on earlier jurists such as Ibn Ḥajar and Qasṭallānī.[35] Of course, this argument was rejected by Hassan who believed, according to his understanding of *uṣūl al-fiqh*, that there can be no valid analogy in the field of worship. There is no evidence, says Hassan, that the Companions of the Prophet used *qiyās* in the field of *'ibādāt*, nor did any of the four eponyms of the schools. Shāfi'ī is even reported to have said: "there can be no valid

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[34]Moh. Ma'sum, "Lafazh Ushalli," in *Soal-Jawab*, vol. 2, 423-5.

[35]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 124; Abbas, "Masalah Niat dan Ushalli," 237-8. The *talaffuẓ bi al-niyyah* of the pilgrimage is based on two Sunnaic texts narrated by Bukhārī and Muslim. Nevertheless, referring to certain works, Abbas bin Thoha observes that the *talaffuẓ bi al-niyyah* has no precedent in either Qur'an or Sunnah, and that there is no information that the Prophet ever recited *nawaytu al-ḥajj* or *nawaytu al-'umrah* at the time of pilgrimage or *'umrah* (literally: a visit to the *Ka'bah* at Mecca); see Abbas ibn Thoha, "Talaffoezh Niat," *Pembela Islam* 60 (April 1933), 35-8.

analogy in the field of worship" (*lā qiyāsa fī al-'ibādah*).[36] More important still is the fact that the command respecting pilgrimage was revealed later than the injunction of prayer; thus, such a *qiyās* is invalid due to the reason that it is not correct to make a rule which is established later the foundation (*aṣl*) for a ruling that was established earlier.[37] Hassan goes on to say: "If we want to use *qiyās* in *'ibādāt*, why do we not use *adhān* [the call to prayer] and *iqāmah* [the announcement that the congregational prayer is about to begin] in the prayers for the deceased, the two feast prayers, and *tarāwīh*?"[38]

The second argument is no less interesting. The traditionalists are of the opinion that the place of intention is in the heart (*qalb*); in the case of prayer, however, the intention is said (in the heart) while reciting *Allāhu akbar* at the beginning of the prayer.[39] As indicated earlier, to concentrate on reciting this intention in the heart is, according to them, somehow difficult if not impossible. Thus, the movement of the mouth in verbally pronouncing the *uṣallī* before the *takbīrat al-iḥrām* helps the heart in its recitation of the intention. Again, this argument is based also on the ideas of the earlier jurists particularly those belonging to the Shāfi'ī

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[36]Hassan, "Melafazhkan Niat," 93-4; idem, "Muqaranah Niat," 427; idem, "Mengucapkan Nawaitu," 1369; Moh. Ma'sum, "Lafazh Ushalli," 423; Haji Abbas, "Hukum Talaffuzh Niat," 1364.

[37]Hassan, *Pengajaran Shalat*, 213.

[38]Ibid., 213-4; idem, "Melafazhkan Niat," 94.

[39]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 124; Abbas, "Masalah Niat dan Ushalli," 222-3, 228.

school.[40]

In his response to this argument, Hassan wonders how the movement of the mouth (in reciting the *uṣallī*) can help the heart to concentrate more fully. If we were allowed to use mere reason to validate the rules of *'ibādāt*, we might say that the truth is the opposite: "it is the heart that moves the mouth and not the mouth that moves the heart."[41] But this way of thinking is quite unacceptable, especially in the field of *'ibādāt*, for it would allow people to change the rules of God and His Prophet by adding to or subtracting from them. For example, says Hassan, one may say that it would be better to exchange the words recited at the time of *tashahhud* (the last part of every prayer) with verses from the Qur'an, for no one would reject the idea that reading the Qur'an is preferable to reading any other text.[42] Here, once again, Hassan emphasizes the maxim: *al-aslu fī al-'ibādah al-tahrīm hattā yadull al-dalīl 'alā tahlīlihi*, for the *'ibādāt* belong to *ghayr ma'qūl al-ma'nā*, teachings which cannot necessarily be understood through mere human reason.[43] In fact, Hassan's views on *talaffuz bi al-niyyah* remind us of what Ibn Qayyim al-Jawziyyah has said:

> The intention is the aim and purpose of something. It is a condition of the heart, and it does not come from the tongue. For that reason, the Prophet and his companions never spoke their intentions. What has been introduced into this matter during the actions of purity and the prayer comes from Satan and

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[40]Chumaidy, "Jam'iyyah Nahdlatul Ulamā'," 124; Abbas, "Masalah Niat dan Ushalli," 229, 131-2, 240.

[41]Hassan, "Melafazhkan Niat," 94; Federspiel, *Persatuan Islam*, 63.

[42]Hassan, *Pengajaran Shalat*, 214-5; idem, "Melafazhkan Niat," 95; idem, "Masalah Membagi Bid'ah," 41.

[43]Hassan, "Melafazhkan Niat," 91-2.

> is a trap for those who are unsure about how to perform it. You will find them repeating it over and over, but that is not part of the prayer at all.[44]

Ultimately, this issue is an accurate reflection of Hassan's approach to *uṣūl al-fiqh*, i.e. he challenges those who support the practice of *uṣallī* to present references from either the Qur'an or Sunnah, calling especially upon the traditional scholars to base their arguments on religious texts instead of the views of other scholars as was commonly their practice. In concluding his remarks, Hassan maintains: "there is no single *'ibādah* that can be called recommended or obligatory without a command from God or the Prophet."[45] He says elsewhere, "we hope that our society, particularly our *'ulamā'*, return to the Qur'an and Sunnah in all aspects of *'ibādāt*."[46]

2. *Tarāwīḥ* (Prayers during Ramaḍān).

Tarāwīḥ is commonly understood as the prayer performed on the nights during *Ramaḍān*. *Tarāwīḥ* is the plural of *tarwīḥah*, derived from *rāḥah* and meaning "the act of taking rest." The name *tarāwīḥ* is given to this prayer "because the worshippers take a brief rest after every two *rak'ah*s."[47]

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[44]Muḥammad ibn Abī Bakr ibn Qayyim al-Jawziyyah, *Ighāthat al-Lahfān min Maṣāyid al-Shaytān*, ed. al-Sayyid al-Jamīlī (Beirut: Dār Ibn Zaydūn, 1985), 144. See also Sābiq, *Fiqh al-Sunnah*, vol. 1, 119, the translation of which is taken from Muhammad Sa'eed Dabas and Jamal al-Din M. Zarabozo, *Fiqh us-Sunnah*, vol. 1 (Indianapolis: American Trust Publications, 1989), 119.

[45]Hassan, *Pengajaran Shalat*, 212.

[46]Hassan, "Muqaranah Niat," 431.

[47]Ali, *Religion of Islam*, 337. According to Sābiq, the worshipper takes a brief rest after every four *rak'āh*s; see his *Fiqh al-Sunnah*, vol. 1, 182 note 1.

As followers of the Shāfi'ī school, the early Indonesian Muslims used to practice the *tarāwīh* performing twenty *rak'āh*s and *witr* for three *rak'āh*s, in all twenty-three *rak'āh*s.[48] This practice was later questioned by the reformists with Hassan being the most outspoken among them. The pivotal problem in *tarāwīh* is this: Are the twenty-three *rak'āh*s based on the recognized sources, i.e. the Qur'an and Sunnah? Obviously, there is nothing in the Qur'an which can serve to answer this question. The controversy has therefore to be resolved on the basis of the Sunnah as elaborated through the opinions of earlier jurists.

Both the traditional scholars and the reformists (e.g. Hassan) agreed that Islam encourages Muslims to be particularly attentive in performing the recommended prayer (*salāt al-nawāfil*), e.g. the recommended night prayer (*salāt al-layl*) during the month of *Ramadān*.[49] Controversy arises however when it comes to the *tarāwīh* which is also regarded as a recommended prayer. Following the usage prevalent within the Shāfi'ī school, the early Indonesian Muslims performed the *tarāwīh* with twenty-three *rak'āh*s, a tradition believed to have started in the time of the second caliph, 'Umar ibn al-Khaṭṭāb. It is argued that the number of twenty-three *rak'āh*s was then adopted and approved by the other companions of the Prophet such as 'Abbās,

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[48]The word *rak'ah* (pl. *raka'āt*) is derived from *raka'a* meaning *he bowed down*, and literally the *rak'ah* is the act of bowing down before God. *Witr* literally means "odd number;" that is a prayer which consists of an odd number of *rak'ah*s, performed after the night prayer (*salāt al-layl*).

[49]A. Hassan, "Shalat Tarawih," in *Soal-Jawab*, vol. 2, 450; Siradjuddin Abbas, "Masalah Tarawih," in *40 Masalah Agama*, vol. 1 (Jakarta: Pustaka Tarbiyah, 1982), 310; 'Alī Ma'ṣūm, *Ḥujjat Ahl al-Sunnah wa al-Jamā'ah* (Pekalongan: n.p., n.d.), 32.

'Alī, Ibn 'Abbās, Mu'ādh, Ṭalḥah, Ubayy, 'Uthmān, and Zubayr; that it was continued after the reign of 'Umar, i.e. during the era of 'Uthmān and 'Alī; and that it became a consensus of the Companions.[50] This tradition, according to 'Alī Ma'ṣūm (a leading traditionalist), belongs to "people of the Sunnah and the community" (*ahl al-sunnah wa al-jamā'ah*) and has been approved by the scholars of the four schools.[51]

Hassan expresses disagreement with the traditionalists in his works, saying that the practice of twenty-three *rak'āh*s was *bid'ah 'ubūdiyyah*, for it had no precedent during the life of the Prophet and even contradicted the well known Sunnah reported by Muhammad's wife 'Ā'ishah. According to 'Ā'ishah, "Rasulullah did not pray more than eleven *rak'āh*s during Ramaḍān or in any other month. He used to pray four *rak'āh*s--behold their beauty and length--and then he would pray four--behold their beauty and length--and then he would pray three *rak'āh*s (*witr*)...."[52] This is supported also by another Sunnah: "Jabir said that the Prophet prayed together with his Companions eight *rak'āh*s and then practised the *witr*."[53] Therefore, the *tarāwīḥ* should consist of eight *rak'āh*s and *witr* for three, altogether a total of eleven *rak'āh*s. Elsewhere, Hassan acknowledges the fact that the Prophet never verbally determined

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[50]Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 28-30, 38; Abbas, "Masalah Tarawih," 314; Jazīrī, *Kitāb al-Fiqh*, vol. 1, 341.

[51]Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 24, 33-4. According to Jazīrī, the additional *rak'āh*s are permissible, for the *tarāwīḥ* belongs to the *nawāfil*, a prayer that Muslims are recommended to perform as much as possible; see Jazīrī, *Kitāb al-Fiqh*, vol. 1, 341.

[52]Hassan, "Shalat Tarawih," 450; idem, "Raka'at Tarawih," in *Soal-Jawab*, vol. 3, 879-80.

[53]Hassan, "Shalat Tarawih," 450.

the number of *rak'āhs*; 'Ā'ishah is even reported to have said that the Prophet performed the *tarāwīḥ* (and *witr*) with thirteen *rak'āhs*.[54] For this very reason, says Hassan, some Companions and their Successors performed in their *tarāwīḥ* more than eleven *rak'āhs*, as in the case of 'Aṭā', Ibn 'Abbās, Mālik, 'Umar, and 'Umar ibn 'Abd al-'Azīz.[55] Hassan emphasizes, however, that "it is better for us to follow the most well-known number of *rak'āhs* performed by the Prophet, i.e. eleven *rak'āhs* including the *witr*."[56]

Thus, the controversy lies primarily in this question: Should the *tarāwīḥ* (and *witr*) be comprised of twenty-three or of eleven *rak'āhs*? This problem was discussed by the early jurists[57] and is still raised, particularly prior to and during the month of *Ramaḍān*.[58] It has also led to a number of other controversial issues being raised.

In the first place, there is a dispute over the meaning of the *tarāwīḥ* itself. The traditionalists argue that *tarāwīḥ* is a recommended prayer practised during the month of *Ramaḍān* only and is different from another recommended night prayer (*ṣalāt al-layl*) both during and outside *Ramaḍān*. Accordingly, during *Ramaḍān*, one may practice both *ṣalāt al-layl* and *tarāwīḥ*, meaning that one will surely perform on the

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[54]The Sunnah goes as follows: "the Prophet used to offer thirteen *rak'āhs* of the night prayer and that included the *witr*...."; see e.g. Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 2, 132; Hassan, *Pengajaran Shalat*, 283.

[55]Hassan, *Pengajaran Shalat*, 303-4.

[56]Ibid., 305.

[57]See Ibn Rushd, *Bidāyat al-Mujtahid*, 178.

[58]For an example of this controversy, see e.g. Komari Muzni, "Sesuai Sunnah Rasul Solat Tarawih 20 Rakaat," *Aula* (March 1991), 39-42.

nights of *Ramaḍān* more than eleven *rak'āhs*.[59] For his part, Hassan is of the opinion that there is no difference between *ṣalāt al-layl* and *tarāwīḥ*; the prayer is called *ṣalāt al-layl* on common days, but it is referred to as *tarāwīḥ* during *Ramaḍān*. This prayer, as indicated by the Sunnah reported by 'Ā'ishah, consists of eleven *rak'āhs*, a doctrine which becomes a distinctive feature of the reformist groups.[60]

Another issue involves the Sunnah reported by 'Ā'ishah mentioned above, the one which provides the foundation for Hassan's opinion on the *rak'āhs* of *tarāwīḥ*. Based on this Sunnah, Hassan maintains that the Prophet was reported to have performed the night prayer with no more than eleven *rak'āhs*, a practice which, as we have noted, is called *tarāwīḥ* during *Ramaḍān*. Out of a concern to preserve the common usage of Muslim society, however, the popular religious scholars rejected this idea. Siradjuddin Abbas, one of the leading traditionalists, argues in his writings that the Sunnah narrated by 'Ā'ishah does not provide textual support for the practice of *tarāwīḥ*, but refers rather to another of the recommended prayers, this for at least three reasons. First, the Sunnah refers to prayer carried out both during and outside of *Ramaḍān*; thus, it has nothing to do with *tarāwīḥ* because *tarāwīḥ* is a prayer practised during *Ramaḍān* only. In fact, this objection reflects the different views on the meaning of the term *tarāwīḥ* explained earlier. Secondly, there is no doubt that the Prophet performed the night prayer (*ṣalāt al-layl*) with more than eleven *rak'āhs*.

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[59]Abbas, "Masalah Tarawih," 318-20.

[60]Hassan, *Pengajaran Shalat*, 63; idem, "Shalat Tarawih," 450. For a similar idea, see Ali, *Religion of Islam*, 336.

Every night he fulfilled the prayers of *maghrib*, *'ishā'*, and *rawātib* (recommended prayers before or after the five obligatory prayers), all of them including no less than thirteen *raka'āt*; this alone is enough to prove that the Prophet performed night prayer with more than eleven *rak'āhs*. It should be borne in mind, however, that this second argument is clearly misleading, for all people agree that the night prayer (*ṣalāt al-layl*) is one of the recommended prayers and not an obligatory one. Therefore, to include the prayers of *maghrib* and *'ishā'* with the night prayer is obviously unfounded. The third reason given by Abbas is that Bukhārī places the Sunnah narrated by 'Ā'ishah in the chapter on "The Prayer of the Prophet at Night in Ramadān and other Months." This, says Abbas, indicates that the Sunnah refers to another of the recommended prayers and not the *tarāwīḥ*.[61] However, when one consults the *Ṣaḥīḥ* of Bukhārī, one finds the Sunnah not only in the above-mentioned chapter but also in the chapter on "Prayer of *Tarāwīḥ*."[62] Abbas' failure to mention that the Sunnah is placed in both chapters raises questions of an entirely different nature.

'Alī Ma'ṣūm, another leading traditionalist, offers a different view from that of Abbas. He believes that the Sunnah of 'Ā'ishah refers to the *witr* and not to the *tarāwīḥ*, and this for three reasons. First, the prayer mentioned in the Sunnah is said to be performed after sleeping; thus it cannot be *tarāwīḥ* because *tarāwīḥ* is carried out after the night prayer (*'ishā'*) and before sleeping. Secondly, there is no *tarāwīḥ*

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[61]Abbas, "Masalah Tarawih," 318-9.

[62]Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 2, 137; vol. 3, 128-9.

outside *Ramaḍān*. Thirdly, Bukhārī places the Sunnah in the chapter on *witr*.[63] In fact, the first and the third reasons advanced by Ma'ṣūm are obviously questionable, to say the least, for there is no argument whatsoever that the *tarāwīḥ* should be performed after the *'ishā'* prayer and before sleeping. As we shall see later, this practice was an innovation introduced by 'Umar.[64] True, even today there are many Indonesian Muslims who perform the *tarāwīḥ* after having slept for a period of time. Furthermore, according to the majority of jurists (*jumhūr al-fuqahā'*), even 'Umar himself declared that practising *tarāwīḥ* (or other recommended night prayers) in the latter part of the night is better than doing so earlier in the evening.[65] Concerning the third reason, Ma'ṣūm's argument is manifestly incorrect; in fact, as indicated earlier, Bukhārī places the Sunnah in the chapters on "Prayer of *Tarāwīḥ*" and "The Prayer of the Prophet at Night in Ramaḍān and other Months" and not in the chapter on *witr* as Ma'ṣūm claims.[66]

A third problem relating to the *tarāwīḥ* concerns the practice of 'Umar, i.e. the twenty-three *rak'āh*s. Within the Shāfi'ī school, this tradition is frequently pointed to in justification of the practice of performing so many *rak'āh*s during the *tarāwīḥ*. It has been said, for instance, that the practice of 'Umar is also recorded in the

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[63]Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 35-7.

[64]Ali, *Religion of Islam*, 337.

[65]Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 1, 178; Sābiq, *Fiqh al-Sunnah*, vol. 1, 183; Ali, *Religion of Islam*, 337. For the report of 'Abd al-Raḥmān ibn 'Abd al-Qārī, see p. 222 note 72 below.

[66]For the chapter on *witr*, see Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 2, 57-62.

Muwaṭṭa' of Mālik[67] and in the works of Abū Bakr Shaṭā Bakrī, Bayhaqī, Ibn al-'Irāqī, Jalal al-Dīn al-Maḥallī, Nawawī, Qasṭallānī, and Ramlī.[68] Accordingly, the traditionalists are of the opinion that the tradition of 'Umar represents a consensus of the Companions, arguing that the practice was obviously not rejected by 'Umar's peers.

Hassan, for his part, avoids discussing specifically the twenty-three *rak'āh*s of 'Umar, possibly because he found it difficult to respond to the arguments advanced by those who wished to legitimize a practice already prevalent among Muslims. There were, at least, two reasons for this. First, if the tradition of 'Umar had become a consensus of the Companions, it would have been impossible for Hassan to refuse it as a foundation for *tarāwīḥ*. After all, in his *uṣūl al-fiqh*, discussed in the preceding chapter, Hassan acknowledges the consensus of the Companions (based on the "lost" Sunnah) as an important source in establishing the rules of Islamic law. Granted, Hassan might have argued that if the practice of 'Umar became a consensus of the Companions, why did it start in the era of 'Umar and not earlier, i.e. in that of Abū Bakr? Perhaps anticipating such an objection, Ma'ṣūm maintains that according to Shaykhān, the Prophet was reported to have performed eight *rak'āh*s in the mosque and then to have continued the prayer at his house until he had reached the number

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[67]It reads: "In the era of 'Umar, people practiced the prayer [*tarāwīḥ*] twenty-three *rak'āh*s"; see Abbas, "Masalah Tarawih," 314; Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 38; Mālik ibn Anas, *al-Muwaṭṭa'*, trans. Mohammed Rahimuddin (New Delhi: Kitab Bhavan, 1989), 53.

[68]For their sayings, see Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 29; 37-8; Abbas, "Masalah Tarawih," 314-7.

twenty,[69] a tradition not cited by Abbas or Hassan.

The second argument deals with the status of *bid'ah*: if 'Umar's practice was correct and it had no precedent during the life of the Prophet, it could be regarded as falling under the heading of *bid'ah 'ubūdiyyah* which Hassan sternly condemned. But, would it have been possible for Hassan to say that 'Umar should be considered among the *ahl al-bid'ah* and that he was liable to suffer the punishments of Hell? All of these critical questions were faced not only by Hassan but also by other reformists of his and even our own day.[70] But, based on his general approach towards *uṣūl al-fiqh*, Hassan might have argued that the Sunnah of 'Ā'ishah, which is sound (*ṣaḥīḥ*), must remain the basis of the issue, and that other reports contradictory to it, especially those at a lower level (i.e. the consensus of Companions or the views of jurists), must necessarily be rejected. Why he did not take up this line of argument remains a mystery.

As far as the traditionalists were concerned, most of them agreed that 'Umar's practice was *bid'ah*; but they insisted that it should be seen as a good innovation (*bid'ah ḥasanah*); consequently, it became a recommended practice. Moreover, one may say that the traditionalists were consistent in their approach towards *uṣūl al-fiqh*; this is to say that the true meaning of a text at a certain level of the sources of Islamic

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[69]Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 25, 28. For the tradition narrated by Shaykhān, see Jazīrī, *Kitāb al-Fiqh*, vol. 1, 341.

[70]Most reformists pass over 'Umar's innovation in silence; see e.g. a pamphlet entitled "Tuntunan Shalat Tarawih" issued by the Muhammadiyah of Condongcatur, Yogyakarta.

law should be understood according to the interpretation of a lower level of these sources. In this case, the Sunnah of 'Ā'ishah should be interpreted according to the consensus of the Companions that originated in the era of 'Umar. This is one of the distinctive features of the Shāfi'ī school indicated in the previous chapter (i.e. that the Qur'an should be interpreted according to the Sunnah),[71] a doctrine obviously contrary to that adopted by Hassan.

There were still other debatable matters relating to the usual practice of *tarāwīḥ* in which Hassan became deeply involved. For instance, it is well-known that during the eras of the Prophet and Abū Bakr, and early in 'Umar's rule as well, the *tarāwīḥ* was principally an individual prayer, and it was only since the era of 'Umar that this prayer became a congregational one. In connection with this, 'Umar himself was reported to have said: *ni'mat al-bid'ah hādhihī* (what an excellent *bid'ah* is this),[72] a phrase repeatedly quoted by the traditionalists. In fact, most Indonesian

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[71]See chapter three, 138-9.

[72]Ali, *Religion of Islam*, 337. See also Abbas, "Masalah Tarawih," 313; Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 1, 178; Fierro, "Against Innovations," 205. It is said that 'Abd al-Raḥmān ibn al-Qārī reported: "I went out in the company of 'Umar bin al-Khaṭṭāb one night in Ramaḍān to the mosque and found the people praying in different groups, for example, a man praying alone or a man praying with a little group behind him. So 'Umar said, 'in my opinion I would better collect these (people) under the leadership of one Qārī (Reciter) (i.e. let them pray in congregation!).' So, he made up his mind to gather them behind Ubay bin Ka'b. Then on another night I went again in his company and the people were praying behind their reciter. On that, 'Umar remarked, 'What an excellent Bid'ah (i.e. innovation in religion) this is; but the prayer which they do not perform, but sleep at its time, is better than the one they are offering.' He meant the prayer in the last part of the night. (In those days) people used to pray in the early part of the night"; see Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 3, 127; Hassan, *Pengajaran Shalat*, 305-6; Sābiq, *Fiqh al-Sunnah*, vol. 1, 183; Mālik, *Muwaṭṭa'*, 52-3; Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 26-7.

Muslims treat *tarāwīḥ* as a congregational prayer even in the present day, including many who fall into the reformist camp.

Hassan, unsurprisingly, avoids classifying the practice of 'Umar as *bid'ah*.[73] It is true, he argues, that the *tarāwīḥ* is principally an individual prayer, but this does mean that it should not be performed congregationally. Based on the Sunnahs of 'Ā'ishah[74] and of Qārī,[75] Hassan points out that the Prophet himself performed the *tarāwīḥ* congregationally on at least three occasions. It is also true that in the early part of 'Umar's rule, some people performed it congregationally; the fact is that in his day there were some in the mosque of Madinah who performed it individually while others chose to perform it congregationally in different places within the same mosque. What 'Umar did was to collect all those people in the mosque under the leadership of one *imām*. For this very reason, says Hassan, the congregational form can be said to have been started by the Prophet, and we have therefore to look for a

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[73]Hassan, *Pengajaran Shalat*, 305-7.

[74]According to 'Ā'ishah: "Allah's Apostle went out in the middle of the night and prayed in the mosque and some men prayed behind him. In the morning, the people spoke about it and then a large number of them gathered and prayed behind him (on the second night). On the next morning the people again talked about it and on the third night the mosque was filled with a large number of people. Allah's Apostle came out and the people prayed behind him. On the fourth night the mosque was overwhelmed with people and could not accommodate them, but the Prophet came out (only) for the morning prayer. When the morning prayer was finished he recited *tashahhud* and (addressing the people) said, ''*Amma ba'du*, your presence was not hidden from me but I was afraid that the night prayer should be enjoined on you and you might not be able to carry it on.' So, Allah's Apostle died and the situation remained like that (i.e. people prayed individually)"; see Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 3, 127-8.

[75]See p. 222 note 72.

more correct interpretation of 'Umar's saying: *ni'mat al-bid'ah hādhihī*. According to Hassan, there are at least two possible meanings for the word *bid'ah* in 'Umar's statement. Firstly, it is very likely that the *tarāwīḥ* is *bid'ah* in the sense that it was invented by the Prophet himself and not by others (i.e. 'Umar); thus, it should not be defined as *bid'ah* in the traditional sense, because we are commanded to follow any rule given by the Prophet. Secondly, "the congregational form of *tarāwīḥ* is *bid'ah* in terms of language only but not according to the rule defined in *uṣūl al-fiqh*;" for one thing, the congregational form had already started in the era of the Prophet himself. Apparently, Hassan makes every effort to be consistent in his legal theory and its application, particularly in his doctrine of *bid'ah*. However, his efforts in this instance seem to be more a case of word-play, and difficult to understand besides.

Another controversial issue is that of supplication (*qunūt*), a type of prayer (*du'ā'*) read during the *witr* prayer.[76] Most Indonesian Muslims read the *qunūt* during the last *rak'ah* of the *witr* prayer. This tradition was later challenged by Hassan, who claimed that it had no foundation in Islamic teaching; thus, it qualifies as *bid'ah 'ubūdiyyah*. The only *qunūt* which is recommended by the Prophet, according to Hassan, is that of *qunūt nāzilah*, a prayer recited when Muslims have suffered a large-scale tragedy, e.g. disease, defeat in war, etc. Beyond this, the

[76]*Qunūt* means "obedience to God, humility before God, devoutness, piety" or "reciting a certain prayer after reading *sami'a Allāhu liman ḥamidah* in the last *rak'āh* of the prayer"; see Hassan, *Pengajaran Shalat*, 76. It is also defined as "being obedient" or "the act of standing," referring "to special supplications made in certain prayers during the standing posture"; see Sābiq, *Fiqh us-Sunnah*, vol. 2, 15 note 9.

supplication in the *witr* prayer (also in the morning/*subh* prayer),[77] commonly practised by most Indonesians, is *bid'ah*, and should be avoided.[78] This idea, needless to say, is in direct contrast with that held by the traditionalists.[79]

Last, but by no means least, there is a tendency among some Indonesian Muslims to choose the shorter version of the *tarāwīh*, performing eleven *rak'āh*s instead of the twenty-three, a choice popular even among the traditionalists themselves. The *tarāwīh* in the mosque of the IAIN Sunan Kalijaga, one of the largest mosques in Yogyakarta, is a clear example of this. In this mosque, a compromise has been reached between the two practices: in the first step of the *tarāwīh*, the eleven *rak'āh*s advocated by the reformists are performed by all those present; then the reformists leave the mosque while the traditionalists continue the *tarāwīh* until they reach twenty-three *rak'āh*s. Having said this, it must be admitted that most of the traditionalists do not stay for the second step of the *tarāwīh* but leave the mosque together with the reformists; in fact, the second step of the *tarāwīh* is conducted by

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[77]Again, *qunūt* in both the prayers of *subh* and *witr* was the subject of heated debates among earlier *fuqahā'*; see Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 1, 113, 173; Jazīrī, *Kitāb al-Fiqh*, vol. 1, 173, 175-6.

[78]Hassan's ideas on *qunūt* can be read in his *Pengajaran Shalat*, 76-7, 330-40; idem, "Tempat Berqunut," in *Soal-Jawab*, vol. 3, 880-2; idem, "Hukum Do'a Qunut," in *Soal-Jawab*, vol. 4, 1387-8. See also Moh. Ma'sum, "Shalat Shubuh tanpa Qunut," in *Soal-Jawab*, vol. 1, 129-36; idem, "Qunut dalam Tarawih," *Soal-Jawab*, vol. 2, 445; S.H. Munawar, "Qunut dengan Tak Mengangkat Tangan," in *Soal-Jawab*, vol. 2, 443-4; Mahmud Aziz, "Waktu Membaca Qunut," in *Soal-Jawab*, vol. 1, 137-8; EAN, "Kedudukan Hadits Qunut," *Risālah* 45-7/Th VI (n.d.), 24-5.

[79]See, for instance, Siradjuddin Abbas, "Masalah Qunut Subuh," in *40 Masalah Agama*, vol. 1, 165-89.

only about two lines (*saffs*) or even less, whereas in the first step there are about thirty-five lines of worshippers. Therefore, in practice, the traditionalists tend to follow the reformists, although on a theoretical level they would argue vigorously in defense of their position on the issue.

3. *Tahlīl* (Recitation and Feast).

Since the early history of Islam, one important issue faced by Muslims has been the effort to accommodate the existing local custom as a part of their religious beliefs. This situation has generally resulted in tension between those who would interpret the religious texts literally and the followers of the customs of a certain society. In Indonesia, this is usually understood as the conflict between the provisions of Islamic law and those of *adat* law.[80] *Tahlīl* is a clear example in point.

There is no entirely satisfactory definition of the literal meaning of the term *tahlīl*, but its signification can be understood from the fact that it is derived from Arabic *hallala, yuhallilu, tahlīlan* which means "utterance of the formula *lā ilāha illā Allāh* (there is no God but Allah)."[81] Based on this literal meaning, *tahlīl* may then be understood to mean "an activity in which the phrase *lā ilāha illā Allāh* is recited," a custom usually observed on the occasion of someone's death. In practice, when a person dies, people gather in the house of the deceased from the 1st to the 7th day after the death, usually after the sunset prayer (*maghrib*) and until the night prayer

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[80]For the relation of Islamic law and *adat* law, see chapter one, 53ff. above.

[81]Wehr, *Modern Written Arabic*, s.v. "halla," 1030.

(*'ishā'*). Then they are invited to come again on the 40th, 100th, and 1000th day after the death of that person. In these gatherings, they usually recite the Qur'an and other formulas such as *subḥāna Allāh*, *alḥamdu lillāh*; but the most important observance is the recitation of *lā ilāha illā Allāh*. Indeed, Indonesian Muslims, particularly those of the traditionalist persuasion, believe that *tahlīl* is of critical importance in obtaining God's forgiveness of the deceased for the wrongs he committed during his life. They also believe that *tahlīl* is a recommended *'ibādah*, and a means of drawing closer to God (*taqarruban ilā Allāh*).[82]

Moreover, there is apparently no disagreement among Indonesians concerning the origins of *tahlīl*. Muslims in fact believe that *tahlīl* originated in pre-Islamic tradition, particularly in Hindu and Buddhist practice.[83] As explained in the preceding chapter,[84] such traditions were continued by those who had converted to Islam. They were simply modified in terms of their contents so as to accord with Islamic teachings.[85] It is true that the phenomenon of *tahlīl* is not exclusive to

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[82]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 122.

[83]It is interesting that according to Jalaluddin Rakhmat, *tahlīl* in Indonesia might have been influenced also by Shī'ī tradition; see Jalaluddin Rakhmat, "Dikotomi Sunni-Syi'ah tidak Relevan Lagi," *Ulumul Qur'an* 4 (1995), 93. Fierro indicates also that funeral ceremonies (*al-ma'ātim*) which consist "in assembling the mourning after the burial, and also on the second, third and seventh day afterwards, as well as one month and a year later" are common practices among certain Muslim societies; see Fierro, "Against Innovations," 233.

[84]See chapter one, 35-7, 73.

[85]In the case of *tahlīl*, the old custom of gambling, for instance, was replaced by the reciting of *lā ilāha illā Allāh* and the like. In certain areas (e.g. among the Bugis of South Sulawesi), the *tahlīl* is performed at the same time and place as gambling (*dominōs*); those who indulge in gambling are however more numerous than those

Muslims but is also practised by members of other Indonesian religious communities, and is known by a variety of names such as *slametan* and *kenduri*.[86] This phenomenon can easily be found today anywhere in the country.

The central question then is: Is this *tahlīl* legally permissible? It should come as no surprise that the reformers vigorously attacked this practice, or that Hassan was among those who rejected any compromise on this issue, condemning it as un-Islamic. Consistent with his general doctrine of *uṣūl al-fiqh*, Hassan repeats once again the maxim: *al-aṣlu fī al-'ibādah al-taḥrīm ḥattā yadull al-dalīl 'alā taḥlīlihi*. Based on this, he forcefully argues that *tahlīl* should be considered as *bid'ah 'ubūdiyyah*, arguing that there is nothing in either the Qur'an or Sunnah legitimizing such a tradition.[87]

There is still another reason why Hassan attacks *tahlīl*, and this is because of its association with the feasting that accompanies funeral ceremonies. The situation is made more difficult due to the fact that the family of the deceased must have enough food and drink to serve the people who come to recite *tahlīl*, a service which is considered as a charity (*ṣadaqah*) by the advocates of the practice;[88] in fact, some

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who recite *tahlīl*; see e.g. Mochid Zein, "Tahlil di Tanah Bugis," *Aula* (October 1991), 74.

[86]For some discussion of the traditional activities of Indonesian Muslims and their links to pre-Islamic traditions, see chapter one, 35-7, 73. See also Robert W. Hefner, *Hindu Javanese: Tengger Tradition and Islam* (Princeton: Princeton University Press, 1985).

[87]Hassan, *Pengajaran Shalat*, 367; idem, "Masalah Membagi Bid'ah," 34.

[88]A. Hassan, "Perihal Makan-Makan di Rumah Orang Mati," in *Soal-Jawab*, vol. 3, 969.

bereaved families have to sell their property or even borrow money from their neighbours to finance this feast, which in reality poses a burden for them and indeed often impoverishes them.[89] This, according to Hassan, obviously contradicts the clear Sunnah in which the Prophet asked his Companions to supply the family of the deceased with food during their grief and not vice-versa.[90] Moreover, *tahlīl* may also be regarded as a form of mourning (*niyāḥah*), which is condemned by Islam.[91]

Nonetheless, although *tahlīl* is severely attacked by Hassan, it is still prevalent among a majority of Indonesian Muslims, and this for various reasons. In the first place, the traditional scholars provide the reasons justifying *tahlīl*. For example, they keep to the literal meaning of the custom: reciting the *lā ilāha illā Allāh*. This form of remembrance (*dhikr*), they argue, is generally permissible; the Qur'an and Sunnah even recommend that Muslims do so as much as possible.[92] Even Hassan cannot argue with efforts at encouraging the practice of *dhikr*; but it should be borne in mind, Hassan reminds us, that this does not mean that it is permitted to recite the *dhikr* in any place or at any time, or that it should be recited on certain days (e.g. the 3rd or

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[89]A. Hassan, "Tahliel dan Makan-Makan di Rumah Orang Kematian," in *Soal-Jawab*, vol. 1, 216; idem, "Makan-Makan di Rumah Orang Kematian dan Batas Terlarangnja," in *Sual-Djawab*, vol. 8, 64; *Soal-Jawab*, vol. 2, 510.

[90]This Sunnah was narrated by Tirmidhī and Ibn Mājah; see Hassan, "Tahliel dan Makan-Makan," 216-7.

[91]Hassan, "Tahliel dan Makan-Makan," 217; idem, "Tahliel," in *Soal-Jawab*, vol. 2, 508-9; idem, "Perihal Makan-Makan," 965-75; idem, "Dari Hal Makan-Makan di Rumah Orang Mati," in *Sual-Djawab*, vol. 12, 31; H.M.A. "Soeal-Djawab," *Pembela Islam* 19 (February 1931), 38-9.

[92]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 30.

the 7th day after someone dies) or in certain quantities (i.e. 100, 1000, or more). Hassan goes on to say that everyone would agree, even those who support *tahlīl*, that it is unacceptable to recite *dhikr* when one is coming out of the toilet.[93] Also, the *dhikr* is a part of *'ibādah*, an area in which people have no right to introduce innovations, such as formulas, frequencies, or schedules.[94] *Tahlīl*, says Hassan, was clearly introduced on the basis of an earlier non-Islamic tradition. It stipulates which verses of the Qur'an and how many *subhāna Allāh*, *alhamdu lillāh*, and *lā ilāha illā Allāh* should be recited; it also determines that these should be practised at certain times, e.g. on the 40th or 100th day after the death of a person. All of these traditions, according to Hassan, are definitely without any precedent during the life of the Prophet and his Companions and should therefore be classed as *bid'ah 'ubūdiyyah*.[95]

Those who support the practice of *tahlīl* believe that it is an important factor in securing for the deceased a place beside God in paradise. Furthermore, people who recite *dhikr* and the like will receive a reward from God which they can in turn offer to the deceased person. This doctrine, according to them, is based on a Sunnah in which the Prophet is said to have allowed his Companions to give their rewards to

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[93]Hassan, "Makan-Makan di Rumah Orang Kematian," 510.

[94]Hassan, "Tahliel dan Makan-Makan," 216; idem, "Tahliel," 506, 508; idem, *At-Tauhied*, 47, 71; idem, *Risālatul Hadj*, 58.

[95]Hassan says also that the prayer (*du'ā'*) is good, but it is unacceptable to perform it at any time or in any place other than those that have been determined by the Prophet. The *tahlīl* in particular belongs to the field of *'ibādāt*; see Hassan, "Tahliel dan Makan-Makan," 216; idem, *Pengajaran Shalat*, 367; idem, *At-Tauhied*, 53.

others in cases such as the pilgrimage and fasting.[96] Hassan does not disagree with the issue of whether people can pray, on behalf of the deceased, that he be forgiven for any wrongdoing in this world and that he might receive a place in paradise; nevertheless, Hassan does reject the idea that people can give or send their reward for remembrance (*dhikr*) to a deceased person. He points out that the Prophet clearly said that one who has died will only be rewarded by God for three things: religious charity (*ṣadaqah jāriyah*), knowledge which is beneficial (*'ilm yuntafa' bih*), and having a pious son (*walad ṣālih*). Anything beyond these, e.g. the rewards sent by those who recite *tahlīl*, is of no use to a deceased person.[97] Moreover, basing himself on his *uṣūl al-fiqh*, Hassan rejects the idea of applying *qiyās* in trying to equate the reward for *tahlīl* with that for pilgrimage or fasting. As has already been explained in the section on *qiyās*, Hassan rejects its use in the field of *'ibādāt*. More important still is the fact that those Sunnahs which allow one to present one's reward to a deceased person are unacceptable due to the fact that they contradict stronger textual indicants (*dalā'il*), namely the Qur'an 36:54 and 53:39.[98]

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[96]See Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 123; Siradjuddin Abbas, "Hadiah Pahala," in *40 Masalah Agama*, vol. 1, 194-6, 198; Syukron Makmun, "Doa Bacaan Alqur'an, Shadaqah dan Tahlil untuk Orang Mati," *Aula* (July 1991), 48-9; Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 3, 46-7.

[97]A. Hassan, "Hadiah Surah Al-Fatihah," in *Soal-Jawab*, vol. 4, 1437; idem, "Tahliel and Chandoeri," 39. The Sunnah was narrated by Bukhārī and Muslim; see Ibn 'Abd al-Barr, *Bayān al-'Ilm*, 17.

[98]Hassan, "Tahliel," 509; idem, *al-Djawāhir*, 13; idem, "Hadiah Bacaan Dzikir dan Lainnya kepada si Mati," in *Soal-Jawab*, vol. 4, 1436; idem, "Hadiah Surah al-Fatihah," 1437-8; idem, *Wanita Islam: Jilbab, di Podium, Jabatan Tangan* (Bangil: Percetakan Persatuan, 1989), 122, 144; idem, "Hadijah Amal," 28, 33; Mahmud Aziz,

No less important a reason for the continued practice of *tahlīl* is that it has a social significance; it is natural to want to show sympathy to one's neighbours when they have suffered a loss. In fact, *tahlīl* may be considered as having some aspects of *mu'āmalāt*, i.e. fostering good relations within a community. In this regard, *tahlīl* is a clear example of the difficulty in drawing a line between *'ibādāt* and *mu'āmalāt*. It seems reasonable therefore that some people, who on doctrinal grounds believe that *tahlīl* is against the provisions of Islamic law, nevertheless also attend the *tahlīl*, though some of them do not eat the food served by the family of the deceased (*ṣāhib al-bayt*) out of respect for the Sunnah mentioned earlier which forbids eating and drinking in the house of the deceased. Others, in order to avoid a tradition which is seen as *bid'ah*, take part in another ceremony which is literally not seen as *'ibādah*. For example, they gather in the house of the deceased and one or two of them (sometimes more) give speeches, a practice which frequently takes more than one hour.

Hassan, however, also condemns this ceremony arguing that these people run away from one *bid'ah* (reciting *tahlīl*) only to engage in another (giving speeches).[99] The question is this: Is there any possibility of acknowledging that *tahlīl* comprises some aspects that can be considered *'ibādāt* and others that belong to *mu'āmalāt*? If so, how can one differentiate between the two? If we compare this case with that of

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"Tahliel dan Baca Qur'an Buat Orang Mati," in *Soal-Jawab*, vol. 1, 218.

[99]A. Hassan, "Dari Bid'ah Lama ke Bid'ah Baroe," *Pembela Islam* 64 (9 August 1933), 26.

the religious sermon (*khutbah*) mentioned earlier, it is very striking that in the latter case, Hassan was able to see it as *mu'āmalah* even though it takes place in the middle of prayer which is considered as *'ibādah*. Another practice which may help to shed light on this issue is that of the so-called *halāl bi-halāl*, on which Hassan also expresses an opinion. *Halāl bi-halāl* is a meeting held after the month of *Ramadān*, during which people shake one another's hand asking forgiveness for their wrongdoings during the year leading up to *Ramadān*. This practice certainly has no precedent in the era of the Prophet or his Companions, and seems to be distinctively Indonesian. Hassan acknowledges the fact that *halāl bi-halāl* has a positive aspect for Muslims, but he reminds them that it should not be considered *'ibādah* for it could lead people to *bid'ah*. It is significant however that he did not absolutely reject the practice, even though it is closely connected with fasting (*sawm*) which is seen as *'ibādah*.[100] This *halāl bi-halāl* is practised by most if not all Indonesian Muslims, including many reformists.

The point to be emphasized here is this: in the case of religious sermons and *halāl bi-halāl*, Hassan is able to differentiate between those aspects that belong to *'ibādāt* and those classifiable as *mu'āmalāt*; but he does not do the same in the case of *tahlīl*.

Reviewing all the reasons advanced by both the traditionalists and the reformists (the latter represented by Hassan), one finds that each group consistently

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[100]A. Hassan, "Halal bi Halal," *Al-Lisaan* 2 (22 January 1936), 1; idem, "Halal bi Halal," in *Soal-Jawab*, vol. 4, 1692-3; idem, "Selamat Hari Raja," *Pembela Islam* 41 (1932), 38; idem, "PERSIS dan Persis," *Pembela Islam* 68 (1 February 1935), 10.

defends its ideas using arguments which support them while ignoring to a great extent the arguments of their opponents. The traditionalists, for example, consistently argue that the essence of *tahlīl* is reciting *lā ilāha illā Allāh*, a remembrance (*dhikr*) which is recommended in Islam. They also believe that the food and drink served during the *tahlīl* is a charity which is also a recommended activity.[101] To support these ideas, they quote quite a number of Qur'anic and Sunnaic texts and also the statements of scholars such as Abū Ja'far al-Ṭabarī, Ghazālī, and Nawawī.[102] Finally, they never mention the supposed origins of *tahlīl* in non-Islamic tradition, a subject which is always pointed out by Hassan.

On the other hand, Hassan consistently defends his belief that such a tradition is against the obvious provisions of the Qur'an and Sunnah; accordingly, any proof which is offered in support of the *tahlīl* must be rejected due to the fact that the practice is automatically invalidated by the primary sources of Islam. Along with this, he criticizes the economic implications of such a tradition which, it is true, causes financial hardship for some families, an implication which is never mentioned by the traditionalists.

4. *Talqīn* (Prompting of the Dead).

The Arabic word *talqīn* literally means *tafhīm*, that is "to teach others and to make

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[101]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 123 note 166.

[102]See generally Siradjuddin Abbas, "Masalah Dzikir dan Do'a," and "Hadiah Pahala," in *40 Masalah Agama*, vol. 1, 26-47, 192-222; Ma'ṣūm, *Ahl al-Sunnah wa al-Jamā'ah*, 8-16, 92-106.

them understand."[103] In its technical legal connotation, however, *talqīn* is defined as "teaching someone who is about to die to recite *lā ilāha illā Allāh*," or "teaching someone who has just died and been buried to prepare answers to the questions posed by the two angels Munkar and Nakīr."[104] It is the second meaning that concerns us here, for it has long formed an integral part of the burial tradition among Indonesian Muslims and remains the focus of debate among them even in the present-day.[105] The objective of *talqīn* is therefore to help the deceased by prompting him with the correct answers to each question asked by the angels; indeed, correct responses are important, for failure will result in the deceased's being condemned to Hell-fire. The *talqīn* is usually recited in Arabic,[106] but in certain regions, such as in Mojokuto

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[103]Muhammad ibn Mukarram ibn Manzūr, *Lisān al-'Arab al-Muhīt*, vol. 3 (Beirut: Dār Lisān al-'Arab, 1970), 388; Muhammad Idrīs 'Abd al-Ra'ūf al-Marbawī, *Qāmūs Idrīs al-Marbawī* (Surabaya: Sharikat Bungkul Indah, n.d.), 225.

[104]Siradjuddin Abbas, "Masalah Talqin," in *40 Masalah Agama*, vol. 4, 67. See also A. Hassan, "Talqienkan Orang yang Sudah Mati," in *Soal-Jawab*, vol. 1, 212.

[105]Hassan agrees with the other '*ulamā*' that the first type of *talqīn* is recommended by Islamic teaching and that this is the true meaning of *talqīn*; see Hassan, *Pengajaran Shalat*, 350-2.

[106]For the Arabic text of *talqīn* usually used among the followers of the Shāfi'ī school, see Bakrī, *I'ānat al-Tālibīn*, vol. 2, 159-60; Abbas, "Masalah Talqin," 74-5. The text of *talqīn* reads as follows: "Oh you are already living in the world of the grave. Do not forget the confession of faith, i.e. there is no god but Allah, and that Muhammad is the messenger of Allah. You will shortly be visited by two messengers of God, the two angels Munkar and Nakīr. However, you must not be afraid, and not be frightened; they are the creatures of God as you are. If they ask you: O human being! who is your God, what is your religion, who is your Prophet, what is your religious lodestar, what is the direction to which you turn to pray, what has been commanded to you and who are your brothers? you must answer: The Lord Allah is my God. If they ask you again, you must answer: The Lord Allah is my God, and if they ask you again, you must answer clearly without being afraid: The Lord Allah is my God, Islam is my religion, Muhammad is my Prophet; the Qur'an is my lodestar,

(Central Java), it is read in Arabic first and then in Javanese.[107] Geertz rightly observes that "some old-fashioned *modins* [religious leaders] refuse to translate it [*talqīn*]...regarding this as against the strict tenets of Islam."[108] This was particularly true prior to and during the era of Hassan.

Talqīn, being popular among the followers of the Shāfi'ī school, has become an integral part of the Indonesian burial ceremony and can be easily found nowadays in any corner of the country. At the same time, however, it has become one of the chief targets of the reformists, who question its religious foundation. Hassan forcefully argues that "*Talqin*...does not exist in the Qur'an, is not confirmed by Sunnah, was never performed by the Companions, and was not mentioned as a valid ceremony by any of the founders of the four schools of law."[109]

Definitely, both the opponents and proponents of *talqīn* agree that there is no one verse in the Qur'an that relates directly to the practice; the only argument upon

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the *Ka'bah* is the direction of my prayer, the five daily prayers are what I have been commanded; all Muslims, men and women are my brothers. Oh Fulan! (the name of the deceased) you now already know that death does in fact exist, that life in the grave does in fact exist, that the questions of the angels do in fact exist, that the balancing of good and evil deeds does in fact exist, that heaven and hell indeed do in fact exist, and that the Lord Allah will wake each individual in the grave on judgement day is a fact as well"; see Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 119-20.

[107]For a translation of the Javanese *talqīn* into English, see Geertz, *Religion of Java*, 71. See also Federspiel, *Persatuan Islam*, 59 note 48.

[108]Geertz, *Religion of Java*, 71.

[109]Hassan, "Talqienkan Orang," 212; idem, "Siapa Men-dla'ifkan Hadiets Talqin?" in *Soal-Jawab*, vol. 3, 977; idem, *Pengajaran Shalat*, 367; the English version of which is taken from Federspiel, *Persatuan Islam*, 60.

which *talqīn* is based is the so-called Sunnah narrated by Abū Umāmah, a tradition whose authority is at best questionable.

In line with the opinions of some earlier scholars such as Ḥāfiẓ ibn Ḥajar, Ḥāfiẓ 'Irāqī, Ibn Qayyim, Ibn al-Ṣalāḥ, Nawawī, Ṣan'ānī, and Zayn al-Dīn al-'Irāqī, Hassan believes that the Sunnah reported by Abū Umāmah is weak (*ḍa'īf*), while other scholars even see it as a fabricated tradition (*ḥadīth mawḍū'*);[110] accordingly, it cannot be used to establish the rule of *talqīn*. This fact is enough for Hassan to classify *talqīn* as *bid'ah 'ubūdiyyah* due to the fact that it has no sound religious foundation.[111] He quotes 'Izz al-Dīn ibn 'Abd al-Salām's saying: "the *talqīn* is an innovation, there is no sound tradition on the issue" (*al-talqīn bid'ah lā yaṣiḥḥu fīhi shay'un*).[112]

In a *fatwā* addressed to his fellow Muslims in Palembang (South Sumatra),[113] Hassan elaborates further upon his rejection of *talqīn*. First, he quotes two Qur'anic verses which, according to him, indicate that the deceased cannot receive any teaching

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[110]Hassan, "Talqienkan Orang," 212; idem, "Talqien," in *Soal-Jawab*, vol. 2, 477, 480; idem, "Men-dla'iefkan Hadiets Talqin?" 976.

[111]Hassan, "Masalah Talqin," 1440-1.

[112]Hassan, "Talqienkan Orang," 212.

[113]The *fatwā* was issued after he had received several letters from his fellow Muslims in Palembang reporting the case that on 23 December 1929 the Religious Council of the region had decided that the *talqīn* was recommended; see A. Hassan, "Mengajar Orang Mati," in *Soal-Jawab*, vol. 1, 210.

from those who are still alive.[114] Secondly, he points out that according to Shaybānī, the Sunnah approving of the *talqīn* was narrated by Abū Umāmah at the time of dying (*naz'*); therefore, this Sunnah cannot be accepted on the grounds that anything spoken by someone who is about to die, e.g. instructions on the disposal of one's testament (*waṣiyyah*) is unacceptable.[115] Besides, the jurists unanimously agree that according to the Qur'an 4:18, even repentance (*tawbah*) at such a time is unacceptable.[116] If such a repentance is not acceptable, it would be even less so in the case of someone who is already in the grave.[117] Hassan goes on to say that it is a foolish attitude to maintain that the dead can be taught. In his own words:

> let them [those who practiced *talqīn*] teach those who have died, or let the corpse teach the corpse. Let them open schools to teach corpses.... [For us], let's teach those who are still alive. Let's work hard to spread the truth.... Do not worry, when they die, their descendants will hopefully turn to the true religion following the teachings of Allah and His Prophet.[118]

No less ironic according to Hassan is the fact that the *talqīn* is given in Arabic,

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[114]The Qur'anic verses go as follows: "Truly thou canst not cause the dead to listen" (27:80) and "...but thou canst not make those to hear who are (buried) in graves" (35:22). According to Tohir bin Ibrahim and Bisri Mustafa, Hassan misunderstood the meaning of these two Qur'anic verses. For their arguments, see Tohir bin Ibrahim, "Oeroesan Koeboer Lagi," *Pembela Islam* 22 (March 1931), 29-32; Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 121.

[115]Hassan, "Men-dla'iefkan Hadiets Talqin?" 976-7.

[116]The Qur'anic verse goes as follows: "Of no effect is the repentance of those who continue to do evil, until Death faces one of them, and he says, 'now have I repented indeed;' nor of those who die rejecting Faith; for them have we prepared a punishment most grievous."

[117]Hassan, "Talqienkan Orang," 213.

[118]Hassan, "Mengajar Orang Mati," 211. See also Sj., "Boeat Orang Matikah atau Orang Hidoep," *Pembela Islam* 52 (15 September 1932), 8-9.

even when those who die do not understand this language; it is irrational for those who perform the *talqīn* to assume that corpses, who during their lifetime never learned Arabic, can automatically understand the language once dead.[119] Hassan himself concedes the fact that it is difficult to resolve the problem of what language is used in the grave (or afterlife). But since there is no clear indication from religious teaching, he argues, we should assume that people will be questioned in the language they understood while they were still alive, and not necessarily Arabic.[120]

In another *fatwā*, Hassan summarizes his argument regarding *talqīn* thus:

> 1. The Qur'an clarifies that people who are dead cannot be taught anything; 2. The *imāms* of the *ahl al-hadīth* state that there is not a single firm narrative of the Prophet confirming *talqīn*; 3. Imām Aḥmad [Ibn Ḥanbal] said that he never saw a person perform *talqīn*, except the people of Syria when Abū al-Mughīrah died, upon which occasion a person came forward and performed *talqīn*; 4. There is no single *ḥadīth* that indicates that the Prophet ever performed *talqīn*, or that his Companions, or that the *mujtahidūn* did so; 5. Teaching the dead is not only refuted in religion, but according to reason it can be seen to be the act of madmen; 6. It is according to the Qur'an that when a person is close to death his repentance is not accepted. If this is true, then how can the teachings of the living to the dead already in the grave have validity?[121]

There are however certain problems with regard to Hassan's rejection of *talqīn*, the most important of which is concerned with the status of the Sunnah of Abū Umāmah mentioned earlier. Abbas, for instance, rejects Hassan's claim that certain scholars considered the Sunnah as fabricated and that it cannot be used as religious

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[119]Hassan, "Talqienkan Orang," 213.

[120]Hassan, "Masalah Talqin," 1441.

[121]Hassan, "Mengajar Orang Mati," 210-1; with slightly modifications, the English translation is taken from Federspiel, *Persatuan Islam*, 61.

proof. The truth is, says Abbas, that the Sunnah is weak (*ḍa'īf*), and cannot, according to *uṣūl al-fiqh*, be automatically rejected as a religious foundation simply on that basis. If a weak tradition (*ḥadīth ḍa'īf*) is supported by other traditions at least with the same status (i.e. weak/*ḍa'īf*), or even stronger, such a Sunnah becomes, at least, *ḥasan li-ghayrihi* (becomes fair/*ḥasan* because of the support of other traditions), and this is the case in the Sunnah of Abū Umāmah.[122] Abbas then provides some Sunnahs (a few of which are sound/*ṣaḥīḥ*) which were quoted by earlier Shāfi'ī jurists but which were, unfortunately, overlooked by Hassan.[123] In fact, Hassan's position on *talqīn* points to a major difficulty in his interpretation of *uṣūl al-fiqh*. For instance, in his polemics with those who refused to accept that the wearing of a *jilbāb* is obligatory,[124] Hassan echoes Abbas' argument that the weak Sunnah can be used as a religious argument as long as it is upheld by other Sunnahs.[125] He says: "According to the maxim of *uṣūl*, ...a weak Sunnah cannot be used as an argument, but if this Sunnah is supported by other weak Sunnahs (*ḥadīth ḍa'īf*), they can all together be employed as an argument to establish a certain rule...."[126] In view of this, one is forced to conclude that Hassan's rejection of *talqīn* is justifiable only if the Sunnah of Abū Umāmah is, as he himself asserts, weak and without any support

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[122]Abbas, "Masalah Talqin," 90-2.

[123]For the Sunnahs, see Abbas, "Masalah Talqin," 95-109.

[124]See section on *jilbāb* below.

[125]Hassan, *Wanita Islam*, 29-30, 70.

[126]Ibid., 70.

from other Sunnahs. The fact that his opponents were able to cite other Sunnahs in support of the Sunnah of Abū Umāmah casts considerable doubt on Hassan's argument. As for Hassan's other objection to *talqīn* on Sunnah-critical grounds, namely, that the Sunnah of Abū Umāmah is a fabricated (*mawḍū'*), this is mentioned in passing only. More important still is the fact that in the case of *talqīn* Hassan seems to confuse the terms weak tradition (*ḥadīth ḍa'īf*) and fabricated tradition (*ḥadīth mawḍū'*), a mistake which his opponents are quick to point out.[127] In fact, a comprehensive study of the writings of Hassan on this issue makes it clear that he considers the Sunnah of Abū Umāmah to be weak (*ḍa'īf*) and not fabricated (*mawḍū'*). Certainly, this problem of the Sunnah of Abū Umāmah is a clear example of the application of the so-called inductive corroboration in *uṣūl al-fiqh*, a subject which has been subjected to careful analysis by Hallaq.[128]

Syukron Makmun,[129] one of the leading traditionalists, tries in one of his articles to legitimize *talqīn*, arguing that regardless of the status of the Sunnah, one should acknowledge the fact that according to *uṣūl al-fiqh*, *maṣlaḥah* can provide a sufficient foundation to establish a rule of Islamic law with certainty. Accordingly, anything that has no precedent in the Qur'an or Sunnah should be measured according

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[127]Abbas, "Masalah Talqin," 111-2.

[128]Wael B. Hallaq, "On Inductive Corroboration, Probability, and Certainty in Sunnī Legal Thought," in *Islamic Law and Jurisprudence: Studies in Honor of Farhat J. Ziadeh*, ed. Nicholas Heer (Seattle: University of Washington Press, 1990), 19-29; idem, "Authoritativeness of Sunnī Consensus," 441-50.

[129]See, Makmun, "Alqur'an, Shadaqah dan Tahlil," 52-5.

to advantage (*maslahah*) and evil (*mafsadah*) or harm (*madārrah*). If a certain case offers advantages for a human being, it is recommended; if not, it is forbidden. In the case of *talqīn*, it is clear that the custom can provide advantages, at least for those who attend the *talqīn*, by reminding them that some day they too will die. In the long run, this will encourage them to improve their own attitudes and behavior in this world. Thus, even if *talqīn* has no precedent in the Qur'an or Sunnah, it still has advantages and is still recommended.

It should be pointed out here that Makmun's idea reflects the traditionalist approach towards *usūl al-fiqh*, that is to say that he approved of *bid'ah* in both *'ibādāt* and *mu'āmalāt*, a decision which obviously contradicts the reformist approach, particularly that of Hassan. As already pointed out in the previous chapter, Hassan rejects any *bid'ah* in the field of *'ibādāt*. This being the case, Hassan would have immediately rejected Makmun's argument on the grounds that *talqīn* is without any religious foundation and in fact should be classified as unforgivable *bid'ah 'ubūdiyyah*.

B. Issues of *Mu'āmalāt*.

1. *Kafā'ah* (Equality).

The doctrine of *kafā'ah* emerged in the early history of Islam, and was elaborated upon extensively in works on *fiqh*.[130] It is derived from the Arabic *kafā'ah* (pl.

[130]The doctrine of *kafā'ah*, according to Farhat J. Ziadeh, originated in Kufah, where the Ḥanafī school arose, and was influenced primarily by social stratification in the Sassanian Empire; see Farhat J. Ziadeh, "Equality (*Kafā'ah*) in the Muslim Law

kafā'āt), which literally means *musāwāh* (equality) or *mumāthalah* (resemblance)[131] and is defined as "the situation in which the husband is equal to the wife in nobility (*hasab*), piety (*dīn*), lineage (*nasab*), family (*bayt*), etc."[132] As will become clearer, Hassan's views on this subject show him to have been a staunch defender of the equality of people. The only difference that he recognized among people was that of individual piety (*taqwā*).

This problem was (and still is) among the most controversial issues faced by Indonesian Muslims, and one which seems to have had its origins in the arrival of

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of Marriage," *The American Journal of Comparative Law* 6 (1957), 506-7. This idea, however, is disputed by, among others, M.M. Bravmann, who argues that the doctrine of *kafā'ah* can also be found among Arab Muslims since the early history of Islam; it was even known among the pre-Islamic Arabs; see Bravmann, *Spiritual Background of Early Islam*, especially chapter twelve, "Equality of Birth of Husband and Wife (*Kafā'ah*), an Early Arab Principle," 301-10. See also Bernard Lewis, *Race and Slavery in the Middle East: An Historical Enquiry* (Oxford: Oxford University Press, 1990), chapter twelve, "Equality and Marriage," 85-91; Y. Linant De Bellefonds, "Kafā'a," in *The Encyclopaedia of Islam*, new edition, ed. E. van Donzel et al. (Leiden: E.J. Brill, 1978); Ḥammūdah 'Abd al-'Atī, *The Family Structure in Islam* (Indianapolis: American Trust Publications, 1977), 86-8. In fact, jurists do not agree on the problem of *kafā'ah*; for example, Mālik is of the opinion that a non-Arab (*mawālī*) can marry an Arab, an idea rejected by Sufyān al-Thawrī and Ahmad; while according to Abū Ḥanīfah, the Quraysh should marry only Quraysh, and Arabs marry only Arabs; see Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 2, 14. For more information on the opinions of Mālik and Abū Ḥanīfah, see Jazīrī, *Kitāb al-Fiqh*, vol. 4, 54-60. But it should be kept in mind, according to Abū Ḥanīfah, that a non-Arab who is knowledgeable can marry an Arab who is ignorant (*al-'ajamī al-'ālim kuf'un lil-'arabī al-jāhil*), for the consideration of knowledge is more important than that of descent; see Jazīrī, *Kitāb al-Fiqh*, vol. 4, 54-5.

[131]Sābiq, *Fiqh al-Sunnah*, vol. 2, 133.

[132]Ibn Manẓūr, *Lisān al-'Arab al-Muḥīt*, vol. 3, 269. See also Ziadeh, "Equality (*Kafā'ah*)," 509.

Arab immigrants to Indonesia.[133] Naturally, the Arabs formed their own group, distinct from others.[134] This was particularly true in the case of those who claimed to be the descendants of the Prophet Muhammad through the line of 'Alī and Fāṭimah, the most well-known among them being those who belonged to the Bā 'Alawī family group, which came mostly from Ḥadramawt (Yemen). In Indonesia, they formed an Arab organization known as Djami'atul Chair. The men were known by the titles Ḥabīb, Ḥaddād, Ḥajjām, Najjār, Saqqāf, and Sayyid, while the women were called Ḥabībah, Sharīfah, or Wan Ipah.[135] They argued as well that, inasmuch as they were the descendants of 'Alī and Fāṭimah, they were protected from evil (*shaytān*) by the prayers of the Prophet and were themselves the door of mercy (*raḥmah*);[136] if they

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[133]For a general account of the Arabs and their relation to other races, see C. Snouck Hurgronje, "Islam and the Race Problem," in *The Moslem World of To-day*, ed. John R. Mott (London: Hodder and Stoughton, 1925), 79-90; H.A.R. Gibb, *Studies on the Civilization of Islam* (Princeton: Princeton University Press, 1982), especially chapter four, "The Social Significance of the Shuubiya," 62-73.

[134]Justus M. van der Kroef, "The Arabs in Indonesia," *The Middle East Journal* 7 (1953), 308-9. Although it seems to be natural to form a certain group based on, for instance, racial similarity, it can create problems in relations with others. In an extreme view, Hurgronje writes: "Among the innumerable obstacles to a peaceful settlement none seems to be considered so insurmountable as the race conflict. Even those who think it possible to arrive at a mutual understanding concerning questions raised by difference of religion, language, civilization, or nationality, describe the race problem as a chronic illness without remedy"; see Hurgronje, "Islam and the Race Problem," 79.

[135]A., "I'tiqad Al-Ba 'Alawi tentang Nikah," *Pembela Islam* 45 (April 1932), 27; "Apa Imam Sjafi'i Tidak Adil," *Pembela Islam* 48 (June 1932), 27; Van der Kroef, "Arabs in Indonesia," 305-6.

[136]A., "I'tiqad Al-Ba 'Alawi tentang Nikah," 28; idem, "I'tiqad, Cultuur dan Politiek Al-Ba 'Alawi," *Pembela Islam* 34 (September 1931), 8; Affandi, "Ahmad al-Surkati," 113.

were to commit a sin, they would be forgiven by Allah because of their being descendants of the Prophet.[137]

But it should be kept in mind that some Sayyids disagreed with the attitude taken by the Bā 'Alawī; Sayyid Hasan b. Djadid al-Habsji even condemned them as the agents of evil (*shaytān*) for creating conflicts and ruptures within society and for neglecting the Qur'an and Sunnah.[138] However, Sayyid Hasan and those who shared his ideas proved to be the exceptions among the Arabs of the time.[139]

In the era of Hassan, the problem of the Sayyids and related issues became a real issue in the country.[140] There is one contemporary account that reads:

> Consider how in villages the children of the Ba 'Alawi [Sayyid] already look down upon the villagers. Hear how in playing together with village children, they as 'grandsons of the Prophet' boast of their holiness and how they claim to be able to curse others.... Look how the 'Sajid' children...squeeze the poor villagers who do not dare to deny the request of 'uan Sajid' or 'uan Seripah' for fear of being cursed and who believe that they will be blessed in return for their act of giving something to people considered to be saints.... Look how the villagers have not the courage to reject the request of 'Mr. Sajid' who approaches them for their daughter's hand. They do not dare to mention the amount of the dowry and leave this to the discretion of 'Mr. Sajid.'[141]

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[137]A., "I'tiqad Al-Ba 'Alawi tentang Ketinggian Dirinja dan Bahaja-Bahaja I'tiqad Itoe," *Pembela Islam* 57 (January 1933), 23.

[138]"Tipoean Baa Haddad dan Baa 'Aidroes," *Pembela Islam* 55 (December 1932), 16.

[139]See "Perkawinan Sjarifah dengan Indonesier," *Pembela Islam* 48 (June 1932), 17-8; Affandi, "Ahmad al-Surkati," 114; Haikal, "Ahmad Surkati," 95.

[140]A. Hassan, "Kawin Sjarifah," *Pembela Islam* 49 (July 1932), 38; A.M., "Saijid dengan Persatoean," *Pembela Islam* 51 (15 September 1932), 22; Affandi, "Ahmad al-Surkati," 56-8, 113-29.

[141]Noer, *Modernist Muslim Movement*, 68.

Some also said that the attitude of the Bā 'Alawī had caused other groups (i.e. Indonesian Muslims) to lag behind, believing that it was inappropriate for them to compete with the Bā 'Alawī in social and economic life.[142]

Moreover, the status of the Bā 'Alawī became an even greater issue within the *Volksraad* (the advisory and representative body of colonial Indonesia). One representative, a native Indonesian by the name of Wiwoho, complained that such favouritism made Indonesian Muslims into second class citizens. According to Wiwoho, "in fact, the term Sayyid is more or less similar to that of Tuan (English: Mr.) [used by Indonesians]."[143] Another member of the *Volksraad*, Abdullah Badjerei, supported Wiwoho's contention that the title Sayyid should not be restricted only to those who claimed to be the descendants of the Prophet;[144] calling someone Sayyid was no more than a mark of respect.[145] Worrying that the title Sayyid would be adopted by the common people, Muhammad al-Attas of the Bā 'Alawī consequently urged the *Volskraad* "to recommend enactment of a law limiting the use

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[142]A., "I'tiqad Al-Ba 'Alawi tentang Ketinggian Dirinja dan Bahaja-Bahaja I'tiqad Itoe," *Pembela Islam* 57, 21.

[143]"Titel Saijid di Volksraad," *Pembela Islam* 50 (August 1932), 7-9; "Al-Irsjad in Actie," *Pembela Islam* 45 (April 1932), 13. In the *Volksraad*, Muhammad al-Attas Bā 'Alawī defended the Bā 'Alawī's doctrine; see A., "I'tiqad Ba 'Alawi tentang Ketinggian Dirinja dan Bahaja I'tiqad Itoe," *Pembela Islam* 58 (February 1933), 12.

[144]Haikal, "Ahmad Surkati," 96.

[145]The understanding that the title Sayyid is similar to that of *Tuan* was adopted by most, if not all, members of Persis; see e.g. Federspiel, *Persatuan Islam*, 66.

of the title...to those who already claimed the title."[146]

This issue brings us to the doctrine of *kafā'ah*. The Bā 'Alawī believed that they were better than others and that consequently they (particularly the women) could not marry anybody outside of their own community. For this reason, they opposed any non-Sayyid's marrying a Sharīfah.[147] According to them, "A marriage between a Sharīfah and a non-Sayyid is forbidden."[148] It is against this background that we can understand Hurgronje's statement that "...the marriage of an Arabic woman with a non-Arab, of a woman of Koraish with a non-Koraishite, of a female descendant of Mohammed with a man of another family, was deemed to be a *mésalliance*, to be permitted only for exceptional reasons."[149]

Obviously, the Bā 'Alawī's doctrine of *kafā'ah* met with a negative response from many, including some who were themselves of Arab descent. The Arab organization known as al-Irsyad, under the leadership of Surkati, rigorously attacked this position, saying that forbidding marriage between a non-Sayyid and a Sharīfah

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[146]A. Hassan, "Saijid Al-Attas di Bawah Boemboeng Volksraad," *Pembela Islam* 51 (15 September 1932), 18-9; Federspiel, *Persatuan Islam*, 66; Rep., "Pemerintah dan Titel Saijid," *Pembela Islam* 59 (March 1933), 27; C.A. Schnitzler, "Titel Sajid," *Pembela Islam* 66 (1 December 1934), 5-6.

[147]"Perkawinan Sjarifah dengan Indonesier," 17-8; A., "I'tiqad Al-Ba 'Alawi tentang Nikah," 30.

[148]"Teka-Teki," *Pembela Islam* 48 (June 1932), 22; A., "I'tiqad Al-Ba 'Alawi tentang Nikah," 30. Sayyid Iraqi and Sayyid Abdoel Wahid al-Djailani were also among those who castigated the attitude of Bā 'Alawī; see A. Hassan, "Sajjid al-Iraqi dan Sajjid al-Djailani," *Pembela Islam* 58 (9 February 1933), 38-9.

[149]Hurgronje, "Islam and the Problem of Race," 88.

is not based on the teaching of the Qur'an or of the Sunnah.[150] This conflict among Arabs, especially between the Bā 'Alawī and al-Irsyad, was widespread in Indonesia in the 1930s.[151] Muhammad al-Attas, a member of the Bā 'Alawī family,[152] was reported to have said: "the Arabs of al-Irsyad cannot marry the women of the descendants of Sayyid [Bā 'Alawī] because our religion forbids such an event."[153] It was also believed by the Bā 'Alawī that "for a Sharīfah to marry someone not having such exalted antecedents would cast an unfavorable reflection on the status of the Bā 'Alawī, on the *Quraysh*, on Fātimah..., and even on the Prophet himself."[154] Hassan, who acknowledged Surkati as one of his teachers, supported the latter by providing certain *fatwās* in answer to questions addressed to him by his fellow Muslims. This being so, it is understandable that Persis, under the leadership of

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[150]It should be noted, however, that although theoretically the Arabs of al-Irsyad disagreed with the attitude of the Bā 'Alawī, in practice, there are strong indications that they too only married people within their own group; see e.g. A. Hassan, "Kaoem Arab Berkelahi," *Pembela Islam* 32 (August 1931), 18.

[151]Hassan, "Kaoem Arab Berkelahi," 17-8; "O, Itoe Tjoema Keldai Kita," *Pembela Islam* 50 (August 1932), 20-1. For more detail on the conflict between Bā 'Alawī and al-Irsyad, see Affandi, "Ahmad al-Surkati," 113-29; Noer, *Modernist Muslim Movement*, 58-69; Haikal, "Ahmad Surkati," 94-5.

[152]Muhammad al-Attas was one of the leaders of the Partai Arab Indonesia (Indonesian Arab Party) founded at Semarang (Central Java) on 5 October 1934 by A.R. Baswedan. This organization was seen as the political representative of those Arabs living in Indonesia who wished to become part of Indonesian society and it took part in the nationalist struggle; see Federspiel, "Islam and Nationalism," 65 note 40; Van der Kroef, "Arabs in Indonesia," 308.

[153]"Tjoema Keldai," 20.

[154]Federspiel, *Persatuan Islam*, 67.

Hassan, was "a favorite target of Bā 'Alawī polemic and retort."[155]

Unsurprisingly, Hassan, in line with his approach to *uṣūl al-fiqh*, turned to the Qur'an and Sunnah in order to discover a solution to this dilemma. He found in these sources the proof that Islam promotes equality among believers. These religious texts, in Hassan's view, should take precedence over other reasons, especially those of mere human inclination (*hawā*). He then states: "a Muslim man can marry a Muslim woman without any condition of having to consider their ancestors."[156]

Hassan provided more details in at least two *fatwās*: one is concerned with the issue of marriage between a non-Sayyid and a Sharīfah; the other deals with so-called inter-religious marriages, i.e. marriages between a Muslim man and a non-Muslim woman or between a Muslim woman and a non-Muslim man. Concerning the former, Hassan quotes Qur'an 49:10 and 13, verses which refer to the equality that exists among believers or even among people, the only recognizable criterion of ultimate distinction among them being their piety or God-mindedness (*taqwā*). He also cites the Sunnah which reads: "The Arab does not excel over the non-Arab, unless he is the

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[155]Ibid., 64.

[156]A. Hassan, "Madz-hab Sjafi'ie," *Pembela Islam* 50 (August 1932), 21; idem, "Kawin Sjarifah," 38-9; idem, "Kawin Sjarifah," in *Soal-Jawab*, vol. 2, 581; idem, "Sjarifah Ba-'Alawijah," *Pembela Islam* 49 (July 1932), 11. See also Moh. Ma'sum, "Halal Berkahwin dengan Sjarifah," in *Sual-Djawab*, vol. 6, 52-65. For a similar idea, see Masud, "Definition of *Bid'a*," 65; John Henry Wigmore, "The Mohammedan Legal System," in *A Panorama of the World's Legal System*, vol. 2 (Saint Paul: West Publishing Company, 1928), 639; Rene A. Wormser, "The Legal System of Islam," *American Bar Association Journal* 64 (1978), 1361.

more pious of the two (*taqwā*)."[157] Therefore, he saw no reason whatsoever to support the idea that a Sharīfah cannot marry a non-Sayyid. He says also, "if a person prides himself on being an Arab, let him know that Jews [who violated the law of God] come from the same stock."[158] Indeed, says Hassan, there is no need for us to be proud of being the descendants of this or that lineage; people will respect us not because of our origins but rather because of our attitude towards others and our real contribution towards human prosperity.[159] Finally, he accuses the Bā 'Alawī of showing contempt for the law of God by making a lawful ruling (*halāl*), i.e. regarding marriage between a Sharīfah and a non-Sayyid, an unlawful one (*harām*), an attitude clearly against the will of Allah.[160]

As far as inter-religious marriages were concerned, Hassan was of the opinion that, according to the Qur'an 5:5, a Muslim man is permitted to marry a non-Muslim woman, especially one who belongs to the people of the book (*ahl al-kitāb*) such as

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[157]A. Hassan, "Membanggakan Keturunan, Kesukuan," in *Soal-Jawab*, vol. 1, 383; idem, "Saijid, Raden, 'Arab," in *Sual-Djawab*, vol. 3, 4-5. The Prophet was also reported to have said: "The Arab has no precedence over the non-Arab, nor the non-Arab over the Arab, nor the white man over the black one, nor the black man over the white one except by excelling in righteousness"; see e.g. Ali, *Religion of Islam*, 471. Lewis, however, indicates that any Sunnah which bears a prejudicial attitude towards others is questionable. According to him, "the story [black people] is probably not authentic, since it deals with a prejudice which does not seem to have existed in the Prophet's lifetime"; see Lewis, *Race and Slavery*, 87.

[158]Hassan, "Membanggakan Keturunan," 384; Federspiel, *Persatuan Islam*, 65.

[159]Hassan, "Membanggakan Keturunan," 384.

[160]Hassan, "Kawin Sjarifah," 581.

a Christian or a Jew,[161] a view adopted by most earlier jurists.[162] Hassan cites in this instance the example of Hudhayfah ibn al-Yamanī, a Companion of the Prophet, who married a Jewish woman, an act which met with no complaint from the other Companions.[163] Some have argued however that this rule is no longer applicable due to the fact that the Christians and Jews nowadays are different from those of the era of the Prophet. But Hassan rejects this idea, claiming that there is no reason to differentiate between them; the Christians and Jews in the era of the Prophet continuously violated the divine teachings by drinking alcohol, eating pork, and the like, just as they continue to do in the present day.[164]

It is important to note at this juncture that the title Sayyid and its relation to the problem of *kafā'ah* is no longer an issue for Indonesian Muslims. It is true that some if not most Arabs still maintain their group solidarity and marry within their own community. Indeed, the al-Irsyad, whose members are mostly Arabs, still exists

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[161]A. Hassan, "Kawin dengan Lain Bangsa," in *Soal-Jawab*, vol. 1, 263; idem, "Kawin dengan Perempuan Lain Agama," in *Soal-Jawab*, vol. 1, 264. See also Abdullah Ahmad, "Sual-Djawab no. 21," *Pembela Islam* 1 (March 1952), 22.

[162]Sābiq, *Fiqh al-Sunnah*, vol. 2, 94-5, 99.

[163]Hassan, "Kawin dengan Lain Bangsa," 263; idem, "Kawin dengan Perempuan Lain Agama," 264. See also Ahmad, "Soeal-Djawab," 22. It was also reported that the Prophet himself married Māriyah al-Qibtiyyah and Shāfiyyah, both Christian women; see Muniron, "Mengkaji Ulang Hukum Menikahi Wanita Ahli Kitab," *Panji Masyarakat* 840 (1-14 October 1995), 36. It was said also that 'Uthmān married Nā'ilah, a Christian woman. This inter-religious marriage was approved also by Ṭalha, Ibn 'Abbās, Jābir, Sa'īd b. al-Musayyab, Sa'īd b. Jubayr, Ḥasan, Mujāhid, Ṭāwūs, Ikrimah, Sha'bī, and Dohḥāk; see Sābiq, *Fiqh al-Sunnah*, vol. 2, 95; Doi, *Sharī'ah*, 135.

[164]A. Hassan, "Kawin dengan Perempuan Kitabi," in *Soal-Jawab*, vol. 4, 1508-9.

today.[165] However, this notion of group solidarity and of choosing a spouse from his or her own group has come to be seen as natural in the sense that it is also the case with other groups, i.e. Javanese, Madurese, Chinese, and Balinese. According to one theory, "people tend to marry people who are in various social ways like themselves...."[166] Looking at the family of Hassan, it is not strange at all that his father married a woman whose family came from the same place of origin, Madras in India. This too was the case with Hassan himself, who married a woman of Tamil origin from Singapore. Notwithstanding these facts, Islam emphasizes the view that religion is the most important criterion in *kafā'ah*, and that other considerations are of secondary importance.[167] This idea was adopted by Hassan and expressed in his criticism of the Bā 'Alawī.

On the other hand, inter-religious marriages remain an issue among present-day Indonesians; there is even increasing debate on the subject.[168] In fact, on 1 June 1980, the MUI introduced a *fatwā* which forbade not only marriage between a Muslim

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[165]According to Haikal, the Arab character of al-Irsyad makes it difficult for the organization to grow compared to those whose members are native Indonesians; see Haikal, "Ahmad Surkati," 95. It even has a hard time in finding a figure who is willing to lead it, as was the case at its 35th national conference on 10-3 December 1990; see "Kembalinya Mutiara yang Hilang: Al-Irsyad Tidak Ekslusif, Tapi Sulit Mencari Ketua Baru," *Media Dakwah* 199 (January 1991), 10-1.

[166]'Abd al-'Aṭī, *Family Structure*, 85.

[167]Ibid., 88-9.

[168]See Ismuha, "Segi Hukum Perkawinan Campuran," *Amanah* 20 (10-23 April 1987), 74-5, 80; "Kawin Campur: Ada Harga Mati," *Tempo* (25 January 1992), 90; "Forum Ukhuwah tentang Perkawinan Antaragama," *Media Dakwah* 214 (April 1992), 14-5.

woman and a non-Muslim man but also between a Muslim man and a non-Muslim woman,[169] the latter provision was particularly unusual in that it contradicted the Qur'anic verse cited earlier.[170] This *fatwā* was later adopted by the Indonesian government and made law.[171] It is very striking that Latief Muchtar, the present leader of Persis, was among those who signed the letter sent by the Forum Ukhuwah Islamiyah (the Indonesian Islamic Brotherhood) to the Dewan Perwakilan Rakyat (The

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[169]An analysis of this issue can be found in Mudzhar, *Fatwās*, 85-90.

[170]It is very likely that the *fatwā* of the MUI is based primarily on the fact that in reality there are quite a number of Muslim men who marry non-Muslim women, only later to convert to their wife's religion, most often in such cases to Christianity. According to Mudzhar, this *fatwā* was based on consideration of public interest (*maṣlahah mursalah*), expressed by the MUI thus: "...for the sake of the Muslim community's growth, the doorway to inter-religious marriages had better be shut altogether"; see Mudzhar, *Fatwās*, 89. For other reasons that are seen as prohibiting inter-religious marriages, see Masduqi Mahfudz, "Nikah Berlainan Agama," *Aula* (July 1994), 49-52; Muniron, "Menikahi Wanita Ahli Kitab," 35-7. But one may argue that the ruling issued by MUI was based rather on the principle known as "blocking the means" (*sadd al-dharī'ah*), that is: "blocking the means to an expected end which is likely to materialize if the means towards it is not obstructed"; see Kamali, *Islamic Jurisprudence*, 310. Thus, MUI attempted to block the means that might lead to evil, i.e. the conversion of Muslims to Christianity. This policy is justified by the following maxim: *dar'u al-mafāsid muqaddamun 'alā jalbi al-maṣālih* (avoiding the harm should be taken into consideration first before estimating the advantage). For this maxim, see Asjmuni A. Rahman, *Qa'idah-Qa'idah Fiqih (Qawaidul Fiqhiyah)* (Jakarta: Bulan Bintang, 1976), 27, 29, 75-6.

[171]In chapter 40 section (a) of the *Kompilasi Hukum Islam di Indonesia*, a formal guide for Islamic judges to be used in Islamic courts throughout the country, it is stated: "a marriage between a man and a woman cannot be carried out if the woman is a non-Muslim"; see Departemen Agama, *Kompilasi Hukum Islam di Indonesia*, 28. This renders it impossible for a Muslim man to marry a non-Muslim woman, a doctrine contrary to the stated rule of the Qur'an. In fact, in 1962 the NU also decided that a marriage between a Muslim and a non-Muslim was forbidden; a similar rule was also adopted by Thariqah Mu'tabarah through its Congress in 1968; see Mahfudz, "Nikah Berlainan Agama," 50.

Peoples' Consultative Assembly) pointing out the danger of inter-religious marriages and affirming the notion that Islam does not in principle permit such unions, referring particularly to the Qur'an 2:221.[172]

2. Islam and Nationalism.

Hassan lived during the last years of Dutch colonial administration and during the early period of Indonesian independence. This era was one in which the effort to achieve independence and the promotion of nationalism as an ideology were very important topics among Muslims not only in Indonesia but also in other parts of the Muslim world.[173] It was also the period in which the Ottoman Empire, the last

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[172]"Forum Ukhuwah tentang Perkawinan Antaragama," 14-5. The Qur'an 2:221 states as follows: "Do not marry unbelieving women until they believe: a slave woman who believes is better than an unbelieving woman even though she allure you. Do not marry (your girls) to unbelievers until they believe: a male slave who believes is better than an unbeliever even though he allure you...." In fact, the more restrictive attitude towards inter-religious marriages is also adopted by Muslims outside Indonesia, as is reflected, for instance, in the ideas of Mawdudi, Sayyid Qutb, and Yūsuf al-Qardāwī; see Muniron, "Menikahi Wanita Ahli Kitab," 36-7; Yūsuf al-Qardāwī, *al-Ḥalāl wa al-Ḥarām* (Beirut: Dār al-Qur'ān al-Karīm, 1978), 175-8.

[173]See generally Rupert Emerson, *From Empire to Nation: The Rise to Self-Assertion of Asian and African People* (Boston: Beacon Press, 1963); Hans Kohn, *Nationalism: Its Meaning and History* (Toronto: D. Van Nostrand Company, 1965); Rashid Khalidi et al., *The Origins of Arab Nationalism* (New York: Columbia University, 1991); Bassam Tibi, *Arab Nationalism: A Critical Enquiry* (London: The Macmillan Press, 1990); Aziz al-Azmeh, "Nationalism and the Arabs," *Arab Studies Quarterly* 17 (1995), 1-17. For the Indonesian case, see Zainu'ddin Ailsa, *A Short History of Indonesia* (New York: Praeger, 1970), particularly section "Rise of the Nationalist Movement," 169-204; Berg, "Indonesia," especially section "Origin and Growth of Nationalism," 272-88.

Islamic Empire, was abolished, and when efforts to revive it ended in failure;[174] thus, the concept of nationalism received a great deal of attention from Muslims.[175]

In the case of Indonesia, some nationalist leaders, e.g. the first Indonesian president, Sukarno, promoted a secular ideology, wherein nationalism was seen as the only means of solving the country's problems. At the same time, however, he attacked Islam, as understood and practised by most Indonesians, for being old fashioned and incompatible with the needs of a modern state.[176] Sutomo, another proponent of nationalism, went even further, saying that Islam was alien to Indonesians; accordingly, serving the nationalist interest was better than serving that of Islam.[177]

In his role as a defender of Islam, Hassan responded sternly to the propagation of nationalism, admonishing his fellow Muslims on the dangers of nationalist ideology and promoting the importance of Islam as the basis of the new Indonesian state.

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[174]A caliphal congress was held in Egypt in 1926 to reinstitute the institution of caliphate, but it ended in failure because the participants disagreed over who would be chosen as the Caliph: some wanted Abdul Majid (Turkey), some Sharif Husein, still others King Fuad of Egypt; see Munawir Sjadzali, *Islam and Governmental System* (Jakarta: INIS, 1991), 94. According to Yusuf H.R. Seferta, the congress was held in 1925; see Seferta, "Rashīd Riḍā," 36, 43.

[175]Elie Salem, "Nationalism and Islam," *The Muslim World* 52 (1962), 277; George N. Sfeir, "Islam as the State Religion: A Secularist Point of View in Syria," *The Muslim World* 45 (1955), 244.

[176]Sukarno, *Dibawah Bendera Revolusi*, vol. 1, 327-8, 332-6, 340-1, 343; Federspiel, *Persatuan Islam*, 93. See also Lubis, *Pemikiran Sukarno*, 45.

[177]A. Hassan, "Kebentjian Kaoem Soeara Oemoem," *Al-Lisaan* 24 (April 1938), 27; Federspiel, "Islam and Nationalism," 46; idem, *Persatuan Islam*, 91; Ali, "Islam and Modernism," 129; "Dr. Soetomo," *Pembela Islam* 16 (December 1930), 8; "Seroean dari Comite Pembela Islam Makassar," *Pembela Islam* 49 (July 1932), 29; Am.Am., "Kijahi jang Djadi Perkakas," *Pembela Islam* 54 (21 November 1932), 33; Saidi, *Islam dan Nasionalisme*, 25, 68-9.

Establishing an Islamic state, Hassan maintained, is an obligation for every Muslim and a pre-condition for the application of God's law. He states in one of his articles:

> Islam orders us to unite according to Islam and on the basis of Islam. Islam obliges us to seek freedom, not on account of happiness or misery, but in order to realize fully the commandments of Islam in every respect.... Islam does not recognize as its members those who leave the Islamic community. Islam does not recognize as its members those who use nationalism as their principle.... Islam commands its community...to strive for freedom and realize everything connected with it, solely for the cause of and in the name of Islam.[178]

Moreover, Hassan reminds his fellow Muslims of the fact that the nationalist groups promoted the neutrality of religion, a concept which has two meanings. First, it gives freedom to everyone to practice his or her own religion and to respect others; this he saw as quite positive. Second, it is indifferent towards religion, it is chauvinist, and more importantly it tries to make man-made law the law of the state, replacing the law of God. It was the second meaning, says Hassan, that was stressed within the nationalist movements in Indonesia, thus making them the enemies of Islam.[179] Hassan goes on to say that the nationalists were very much influenced by Western ways of thinking, particularly in their effort to separate religion from state.[180] This

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[178]A. Hassan, "Kebangsaan," in *Sual-Djawab*, vol. 2, 24; Noer, *Modernist Muslim Movement*, 260.

[179]Hassan, *Islam dan Kebangsaan*, v; Saidi, *Islam dan Nasionalisme*, 51, 69; Mughni, *Hassan Bandung*, 33; T.M. Oesman, "Terpedo Atjeh (Islam)," *Pembela Islam* 20 (February 1931), 12-6; "Sikap Kita...?" *Pembela Islam* 16 (December 1930), 8-9; M.T., "Keadilan 'Nasional'," *Pembela Islam* 19 (February 1931), 28; Sj., "Pengakoean jang Teroes Terang," *Pembela Islam* 23 (April 1931), 27-8.

[180]For a discussion of the separation of religion and state in Islam, see Erwin I.J. Rosenthal, "Some Reflections on the Separation of Religion and Politics in Modern Islam," *Islamic Studies* 3 (1964), 249-84; Ira M. Lapidus, "The Separation of State and Religion in the Development of Early Islamic Society," *International Journal of*

blind-adherence to Western ideas was due primarily to their lack of understanding of the nature of Islam. In contrast with other religions, he argues, Islam consists of teachings that deal not only with *'ibādāt* but also with *mu'āmalāt*. The latter consists of, among other things, the rules concerning the state as elaborated extensively by the jurists and practiced by Muslims for many centuries.[181] It should be kept in mind, says Hassan, that "...the nationalist movements strive to cast out the laws of Allah and His Messenger and replace them with man-made laws, as they have made clear both in theory and practice."[182] Thus, in Hassan's opinion, the mission of the nationalist groups in promoting the neutrality of religion was a profound threat to the application of Islamic law and in the long run menaced the existence of Islam itself. In fact, the nationalist groups, says Hassan, followed their own inclinations (*ahwā'*) rather than Islamic teachings.[183] These nationalist groups were usually referred to as religiously neutral nationalists.[184]

Middle East Studies 6 (1975), 363-85.

[181]Hassan, *Pemerintahan Tjara Islam*, 141-2; idem, *Membudakkan Pengertian Islam*, 99-102. The 1956 manifesto of Persis states: "the efforts of the Persatuan Islam were 'not limited to creed [*'aqīdah*] and worship [*'ibādah*],' but also 'to struggle in the political realm for achieving victory for Islamic ideology'"; see Federspiel, *Persatuan Islam*, 155.

[182]Hassan, *Islam dan Kebangsaan*, 24; Federspiel, "Islam and Nationalism," 64; idem, *Persatuan Islam*, 88.

[183]Hassan's *Membudakkan Pengertian Islam* was a rigorous response to Sukarno's article "Memudakan Pengertian Islam," published in *Pandji Islam* 12-16 of 1940, reprinted in his *Dibawah Bendera Revolusi*, vol. 1, 369-402. See also Saidi, *Islam dan Nasionalisme*, 25.

[184]Noer, *Modernist Muslim Movement*, 247.

Moreover, in his *Membudakkan Pengertian Islam*, Hassan expresses the opinion that Sukarno, the leading figure of the nationalist groups, was responsible for making Islam into "a slave" (*budak*); this is to say that in Sukarno's view, Islamic teachings should be interpreted according to human reason and not vice-versa. Hassan defines the essence of Sukarno's idea as: "putting away the Qur'an if it does not meet our desire."[185]

Predictably enough, Hassan's critique of the nationalist movement is heavily based on textual evidence found in the Qur'an and Sunnah. He in fact begins his *Islam dan Kebangsaan* with the three Qur'anic verses (5:44-45, 47) that are central to his concept of reform. According to these verses, God threatens those who do not adopt Islamic law as a guide for their life. Federspiel rightly observes that "Hassan's key assumption in *Islam dan Kebangsaan* was that the *sharī'ah* had to be made operative in the Indies [Indonesia]" and that he "admonished all Muslims to reform and follow 'real' Muslim leaders who would apply Islamic law throughout the country and its society."[186] These three Qur'anic verses are followed by others, no less than 26 in number, and all of them selected in order to condemn those who preferred nationalism instead of Islam as the foundation of the new Indonesian state. In addition, he cites several Sunnahs which are critical of those who promote the "spirit

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[185]Hassan, *Membudakkan Pengertian Islam*, 68. See also Badri Yatim, *Soekarno, Islam dan Nasionalisme: Rekonstruksi Pemikiran Islam-Nasionalis* (Jakarta: PT Inti Sarana Aksara, 1985), 193.

[186]Federspiel, "Islam and Nationalism," 43. See also Anshary, Wibisono, and Usman, *Bahaja Merah*, 66-70.

of kinship" (*'asabiyyah*), which he equates with nationalism.[187] Referring to the Prophetic Sunnahs narrated by Abū Dāwūd and Muslim respectively, he maintains that to "set up a nationalist organization, to invite and persuade people to join or to assist a nationalist party, is forbidden in Islam."[188] Likewise, commenting on the Sunnahs narrated by Muslim and Nasā'ī, Hassan states that anybody who quits an Islamic party and then subsequently dies, dies as an unbeliever. Similarly, anybody who goes to war under the flag of those who have gone astray by promoting nationalism, and are killed in that war, die as unbelievers.[189] He also accuses the nationalists of committing polytheism (*shirk*) because their "prayer" for the national flag and anthem and national heroes was similar to ones recited during the pre-Islamic era (*jāhiliyyah*).[190]

Hassan's *Islam dan Kebangsaan* is full of quotations from the Qur'an and Sunnah--in fact, nowhere does he make reference to medieval works of *fiqh*. This is also the case with his works *Membudakkan Pengertian Islam* and *Pemerintahan Tjara Islam*, and is entirely consistent with his approach to *uṣūl al-fiqh* in which he

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[187]For some ideas on the relationship between the terms *'asabiyyah* and nationalism, see Gibb, *Civilization of Islam*, chapter "The Social Significance of the Shuubiya," 62-73.

[188]Hassan, "Kebangsaan," 22-4; Noer, *Modernist Muslim Movement*, 259. The first Sunnah reads as follows: "whoever is killed beneath the banners of error calling for nationalism or assisting such a nationalism, his corpse is the corpse of a heathen," while the second one reads: "whoever calls for nationalism is not one of us; whoever fights for the (cause of) nationalism is not one of us; and whoever dies for the (cause of) nationalism is not one of us"; see Hassan, *Islam dan Kebangsaan*, 20; Federspiel, "Islam and Nationalism," 62.

[189]Hassan, *al-Djawāhir*, 25.

[190]Hassan, *Islam dan Kebangsaan*, 56-9; Federspiel, *Persatuan Islam*, 95, 60-2.

encourages Muslims to return to the Qur'an and Sunnah as the primary sources of Islam. Through his *Islam dan Kebangsaan* and his *Pemerintahan Tjara Islam*, he outlined his doctrine of how the state should operate according to the *sharī'ah*.

Reading the works of Hassan, especially his *Islam dan Kebangsaan*, one is inclined to agree with Federspiel's conclusion that Hassan was a radical and a fundamentalist, one who promoted an Islamic state as the chief means of applying Islamic law; in this sense his views were perhaps similar to those of the al-Ikhwān al-Muslimūn of Egypt and the Jamaat-i Islami of Pakistan.[191] In addition, says Federspiel, Hassan promoted also Pan-Islamism,[192] a movement widespread in the Muslim world due to the efforts of Jamāl al-Dīn al-Afghānī. For example, Hassan supported the idea that Masjumi, the political party favouring Islam as the foundation of the state, should be open to any Muslims, not only in Indonesia but also in other parts of the Muslim world.[193] He emphasizes this view elsewhere, saying that according to the Qur'an 49:10, all Muslims are brothers.[194] Nonetheless, as we shall see later, Hassan did not entirely reject the idea of nationalism. This will be apparent

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[191]Federspiel, "Islam and Nationalism," 39-40, 42. See also Mughni, *Hassan Bandung*, 38. Hassan's view is similar to that of Muṣṭafā al-Sibbā'ī in the sense that Islam should become the foundation of the state; see Muṣṭafā al-Sibbā'ī, "The Establishment of Islam as the State Religion of Syria," trans. R. Bayly Winder, *The Muslim World* 44 (1954), 215-26, a counter article to which may be read in Sfeir, "Islam as the State Religion," 242-9.

[192]Federspiel, "Islam and Nationalism," 46.

[193]A. Hassan, *A.B.C. Politik* (Bangil: Persatuan Islam Bahagian Pustaka, 1947), 85, cited in Mughni, *Hassan Bandung*, 37.

[194]Hassan, *Islam dan Kebangsaan*, vi; Noer, *Modernist Muslim Movement*, 259.

when we compare Hassan's ideas on the Islamic state with his views on consensus discussed in the preceding chapter.

While Hassan was convinced that an Islamic state was the only means to realize the provisions of Islamic law,[195] he was nevertheless faced by the fact that Muslims had somehow become divided by national boundaries.[196] Moreover, Muslims everywhere were struggling to free themselves from Western colonialism and imperialism. Indonesians had, for their part, rebelled against Western occupation, particularly that of the Dutch; in fact, the latter were Hassan's chief preoccupation in his effort at countering the negative impact of Western ideas. In his *Mereboet Kekoeasaan*,[197] Hassan recognizes the usefulness of nationalist movements in the struggle against Western domination; but such movements, in Hassan's view, must be followed by an effort to establish an Islamic state or a country which allowed for the application of divine law.[198] It has been reported that in his dialogue with Mukhtar Luthfi, the leader of Permi (a political party based on Islam and nationalism),[199]

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[195]See generally Hassan, *Pemerintahan Tjara Islam*; idem, *Membudakkan Pengertian Islam*, 71-3; Mughni, *Hassan Bandung*, 36.

[196]Ibn Taymiyyah, realizing this fact, did not insist on there being only one caliph ruling Muslims throughout the world. He was reported to have said that "...more than one *Imām* might rule simultaneously"; see Lambton, *State and Government*, 148; Qamaruddin Khan, *The Political Thought of Ibn Taymiyah* (Delhi: Adam Publishers & Distributors, 1988), 184.

[197](Malang: Toko Timoer, 1946), particularly sections one to three, 2-12.

[198]A. Hassan, "Pentjela Kebangsaan," *Pembela Islam* 19 (February 1931), 2-3.

[199]Permi was Persatuan Muslim Indonesia (Islamic Muslim Union), later renamed Partai Muslim Indonesia (Islamic Indonesian Party); see Atjeh, *Salaf*, 141.

Hassan was able to understand Luthfi's argument that the nationalist movement was only an intermediary stage in preparation for the final goal, i.e. the establishment of an Islamic state.[200] Thus, Hassan had no objections whatsoever to those who joined nationalist parties so long as they made Islam their basic ideology, as happened to be the case with the PII (Indonesian Islamic Party) and the PSII (Indonesian Islamic Union Party).[201] Elsewhere Hassan emphasizes this point, saying that "...a person who loves his people or his nation is not to be regarded as one devoted to special interests ['*aṣabiyyah*], which is forbidden, and is not to be seen as being involved in matters of nationalism which are not blessed by Allah. But what is forbidden is for a person to assist his people in transgression [*ẓālim*]."[202] Certainly, according to Hassan, "there was no religious prohibition against loving one's country, and he generally recognized that the national state was the practical political organization for the current age."[203] Besides, in one of his polemical works directed at Sukarno, Hassan states his opinion that "asking people to love their country is not considered as promoting '*aṣabiyyah*, because the essence of '*aṣabiyyah* is establishing a country based on rules other than the divine law."[204]

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[200]Mukhtar Luthfi, "A. Hassan dan Permi," in *Riwayat Hidup A. Hassan*, ed. Tamar Djaja (Jakarta: Mutiara, 1980), 57-61; Saidi, *Islam dan Nasionalisme*, 24.

[201]Hassan, *Islam dan Kebangsaan*, 25; idem, *Membudakkan Pengertian Islam*, 75; Federspiel, "Islam and Nationalism," 65.

[202]Hassan, *Islam dan Kebangsaan*, 24; idem, *Membudakkan Pengertian Islam*, 71; Federspiel, "Islam and Nationalism," 65.

[203]Federspiel, *Persatuan Islam*, 90.

[204]Hassan, *Membudakkan Pengertian Islam*, 74.

Hassan's own political career reflected this pragmatic approach towards nationalism. Shortly after independence, Hassan accepted a post as minister of religious affairs in the Pasundan State (Negara Pasundan), one of the components of the recently formed Federal States of Indonesia (Republik Indonesia Serikat). He saw this as an opportunity to promote the formation of an Islamic state, or at least one in which Islamic law could freely be practiced.[205] He was also sent by Natsir to Kartosuwirjo in order to advise him not to proclaim his own Islamic State (*Dār al-Islām*), an action which, in the eyes of Hassan, would have endangered the chances of establishing an Indonesian Islamic state.[206] Moreover, even his acceptance of an Indonesian constitution based on the Pancasila, which as a member of Masjumi he was obliged to support, can be seen as utilitarian, in that at least it did not shut the door on the possibility of forming a state based on Islamic principles.[207] It is against this background that we can understand Hassan's ideas on Islamic government elaborated in his *Pemerintahan Tjara Islam*, a work which expands upon, among other subjects, the possible form of an Indonesian government based on Islamic teachings. He explains therein how consensus (*ijmā'*) would function as an important instrument of government, allowing Indonesia to adopt certain Western institutions insofar as

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[205]Hassan, *Islam dan Kebangsaan*, 26; Saidi, *Kepemimpinan Islam*, 42; idem, *Islam dan Nasionalisme*, 57; Mughni, *Hassan Bandung*, 37.

[206]Latief Muchtar, interviewed by Fuad Zein. The case mentioned above may be an indication of the close relationship between Hassan (and Persis) and Kartosuwirjo and his supporters.

[207]Hassan, *Islam dan Kebangsaan*, 26; Mughni, *Hassan Bandung*, 37.

these were in accordance with Islamic values.

Federspiel, writing in 1977, observed: "Today, many of these values [those in *Islam dan Kebangsaan*] remain important to some Indonesian Muslims, even when a nationalist philosophy has gained the acceptance of most Indonesians."[208] Certainly, this situation remains in force today or is even stronger, and will remain so in the future. To the knowledge of the present writer, Hassan's *Islam dan Kebangsaan* was the first major work to address the problematic represented by the terms Islam and nationalism (*Islam, kebangsaan*); this polemic continues even today. In the 1990s, particularly since the emergence of ICMI (Ikatan Cendekiawan Muslim Indonesia, Association of Indonesian Muslim Intellectuals),[209] the controversy over Islam and nationalism has once again become a focus for heated debate among Indonesians and a favourite topic of the media.[210] ICMI has been accused of promoting primordialism and sectarianism while at the same time neglecting the importance of national unity among Indonesians. Thus, ICMI's foundation was followed by the emergence of a number of other organizations, such as PCPP

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[208]Federspiel, "Islam and Nationalism," 40.

[209]An analysis of the emergence of ICMI may be found in Robert W. Hefner, "Islam, State, and Civil Society: ICMI and the Struggle for the Indonesian Middle Class," *Indonesia* 56 (1993), 1-35, developed later in his *ICMI dan Perjuangan Menuju Kelas Menengah Indonesia* (Yogyakarta: Tiara Wacana Yogya, 1995).

[210]See, for example, *Suara Muhammadiyah* no. 19 Th. 80 (1-15 October 1995); Baharuddin Lopa, "Membangkitkan Semangat Nasionalisme," *Kompas* (25 January 1996), 4-5; "PCPP, Keranjang Baru Cendekiawan," *Aula* (September 1995), 55-62; A.M. Fatwa, "Opini: Fenomena Politik Aliran," *Republika Online* (15 February 1996); "YKPK: Sarasehan Tanpa Isu Baru," *Gatra Online* (20 January 1996). See generally also Saidi, *Islam dan Nasionalisme*.

(Persatuan Cendekiawan Pembangunan Pancasila, Intellectual Association for the Development of Pancasila), YKPK (Yayasan Kerukunan Persaudaraan Kebangsaan, Association of Nationalist Groups), and PNI (Persatuan Nasional Indonesia, Indonesian Nationalist Association). All of these may be seen as nationalist groups designed to counter the powerful ICMI, which is seen as representative of the Islamic community.[211]

3. *Jilbāb* (Veil).

The Arabic word *jilbāb* (pl. *jalābīb*), a term found in the Qur'an 33:59,[212] literally means "garment, dress, gown, woman's dress;"[213] Yusuf Ali defines it as "an outer garment: a long gown covering the whole body, or a cloak covering the neck and bosom."[214]

In the era of Hassan, the word popularly used in Indonesia to designate such a garment was *tudung kepala* (literally: cover for the head), whereas in the present

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[211]"Organisasi Kebangsaan Mengcounter ICMI," *Media Dakwah* 257 (November 1995), 16.

[212]*jalābīhinna* (their outer garments)

[213]Wehr, *Modern Written Arabic*, 129.

[214]Alī, *Holy Qur'ān*, 1977 note 3765. According to A.M.R. Muhajir, *jilbāb* "was a long piece of cloth which the women of Arabia put on over their clothes when going out"; see his *Islam in Practical Life* (Lahore: SH. Muhammad Ashraf, 1968), 133.

day, the word *jilbāb* is commonly employed.[215] Hassan, for his part, saw *jilbāb* as referring to the dress for a woman covering the body which, together with the *khimār*, or headcover,[216] forms the garment covering a woman's whole body except for her face and her two hands. In present-day Indonesia (as well as in almost all parts of the Muslim world), the word *jilbāb* (sometimes *hijāb*) is used to indicate such a dress, generally seen as the costume worn by a religious and pious woman.[217]

Hassan considers the problem of *jilbāb* as stemming from the negative effects of the penetration of Western ideas into Indonesia. He repeatedly mentions, for example, the word *Eropa* (symbolizing Western society) in relation to the problems affecting the social role of women. According to Hassan, women in Western society have gone too far; they have exceeded the limits of their nature as women.[218] In order to understand the context more fully, it may be useful to recall some important developments in other parts of the Muslim world.

Historically speaking, Hassan was living in the era of Western domination of

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[215]Perhaps, due to the fact that the word *jilbāb* has become more popular today, the word *tudung kepala* used in Hassan's writings has been changed into *jilbāb* by their editors in modern reprints; see e.g. Hassan, *Wanita Islam*.

[216]*Khimār* (pl. *khumur*) literally means "veil covering head and face of a woman"; see Wehr, *Modern Written Arabic*, s.v. "khamara," 261. This is based, among others, on the Qur'an 24:31: "*...wal yadribna bi-khumurihinna 'alā juyūbihinna...*" (and they should draw their veils over their bosoms).

[217]For the relationship between the terms *jilbāb* and *hijāb*, see Cl. Huart, "Hidjāb," in *The Encyclopaedia of Islam*, old edition, ed. M.Th. Houtsma et al. (Leiden: E.J. Brill, 1927).

[218]Hassan, "Tudung Kepala Wanita," 639-41; idem, "Kejadian yang Hebat Sebab Tudung," in *Soal-Jawab*, vol. 3, 1092; idem, *Wanita Islam*, 5.

the East, i.e. the Muslim countries. One of the most important ideas being propagated by Western liberal thinkers was the liberation of women, and *jilbāb* was consequently seen as an important symbol of the oppression of women in the Islamic lands. This attitude had a serious impact upon Muslim society and some changes to the laws affecting women came about in response to the penetration of such an idea.[219] Not only this; certain native leaders were deeply influenced by Western ideas and in turn advocated the liberation of women sometimes even more vocally than the Westerners themselves. Qāsim Amīn of Egypt may be seen as the prime example of this tendency. In his *Taḥrīr al-Mar'ah* (The Liberation of Woman), published in 1899, Amīn recommends basic changes to the lifestyle of women in Islamic society. One such recommendation was the need for re-evaluating the rule pertaining to *jilbāb*, a suggestion that was flatly rejected by leading religious figures, led by Ṭal'at Pāshā Ḥarb.[220] Because of his book, Amīn "was criticized, ostracized, and considered

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[219]An analysis of some of the changes in both rules and roles affecting women in the Muslim world may be found in Lois Beck and Nikki Keddie, eds., *Women in the Muslim World* (Cambridge: Harvard University Press, 1978); Charles H. Kennedy, "Islamic Legal Reform and the Status of Women in Pakistan," *Journal of Islamic Studies* 2 (1991), 45-55; and John R. Mott, ed., *The Moslem World of To-day* (London: Hodder and Stoughton, 1925), particularly chapters fourteen, fifteen, and sixteen, 211-59.

[220]For an analysis of Qāsim Amīn's ideas, see Juan Ricardo Cole, "Feminism, Class, and Islam in Turn-of-the Century Egypt," *International Journal of Middle East Studies* 13 (1981), 387-407; Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), chapter "The Discourse of the Veil," 144-68; Huart, "Ḥidjāb," in *Encyclopaedia of Islam.*

almost a madman."[221] His critics continue to attack him even today. Leila Ahmed, for instance, concludes: "unfortunately, his [Amīn] assault on the veil represented not the result of reasoned reflection and analysis but rather the internalization and replication of the colonialist perception."[222] Indeed, this background will help us to understand the issue of *jilbāb* in the Indonesian context in the era of Hassan.

As has already been briefly pointed out above, Hassan's attitude towards *jilbāb* was influenced to some extent by his views on the negative effect of Western ideas. He even labels the problem of women's dress as one of the significant "diseases" disseminated by Western thought.[223] According to Hassan, those Indonesian Muslims who were influenced by Western ideas, particularly in the case of *jilbāb*, belonged to the *Aliran Baroe* (literally: new group).[224] The *Aliran Baroe*, states

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[221]Caroline M. Buchanan, "Movements in the Life of Women in the Islamic World--The Near and Middle East," in *The Moslem World of To-day*, ed. John R. Mott (London: Hodder and Stoughton, 1925), 216.

[222]Ahmed, *Women and Gender*, 160.

[223]Those which were seen as Western "diseases" were: manners of dress, of relationships, and of marriage; see A. Hassan, "Penjakit Kebaratan," *Pembela Islam* 55 (December 1932), 8-10.

[224]For the ideas of the *Aliran Baroe*, see *Aliran Baroe*, numbers 17-8, 21, 23-4, 29, and 35, most of which are quoted in Hassan's *Wanita Islam*. Federspiel misunderstands the nature of *Aliran Baroe*, saying that "*Aliran Baroe* is apparently a reference to the Indonesian literary movement of the 1930s epitomized by the journal *Poedjangga Baroe*"; see his "Islam and Nationalism," 83 note 64. In fact, the *Aliran Baroe* had nothing to do with the literary movement but was rather a journal edited by Hoesin Bafagih, a prominent figure of the PAI (Indonesian Arab Party) founded by A.R. Baswedan; see e.g. Al-Gadri, *Politik Belanda*, 5, 120-2; "Introduction" to *Wanita Islam*, by Hassan, 7. Thus, it is understandable that in his responses to the *Aliran Baroe*, Hassan repeatedly mentions the members of the PAI; see Hassan, *Wanita Islam*, 7, 14, 24, 42, 45; idem, *Islam dan Kebangsaan*, 62; idem, *Membudakkan Pengertian Islam*, 106.

Hassan, manipulated Islamic teachings in order, ultimately, to liberate women from *jilbāb*. Certainly, without mentioning definite peoples or groups, the *Aliran Baroe* frequently made reference to the Muslims of Egypt,[225] where a feminist emancipation movement had emerged in 1925 under its first president Hudā Hanum Sha'rāwī.[226]

As will be elaborated later, the *Aliran Baroe* pointed out that the use of *jilbāb* is not obligatory but rather recommended; accordingly, those who do not wear *jilbāb* are not violating Islamic teachings and should not be made the object of condemnation. Hassan, however, was of the contrary opinion, insisting that according to the Qur'an and Sunnah, the rule on *jilbāb* is not just recommended but obligatory. In fact, this position was consistent with Hassan's other ideas on women's issues, in which he adopted a very uncompromising stance. Consider, for example, his view that the primary role of a woman is to work in the house, and that only on limited occasions can she leave it for some other purpose, e.g. to attend a meeting.[227] He believed also that segregation of men and women is obligatory according to Islamic teaching,[228] an idea which he maintained from the time he was in Singapore until

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[225]Hassan, *Wanita Islam*, 18.

[226]Huart, "Hidjāb," in *Encyclopaedia of Islam*. According to Buchanan, the feminist movement was born in 1896; see his "Movements in the Life of Women," 216.

[227]Hassan, "Tudung Kepala Wanita," 639, 642. Hassan's ideas on some of the differences between men and women may be found in his "Perempuan Islam di Pedium," in *Wanita Islam*, 169-92.

[228]Hassan, "Tudung Kepala Wanita," 642.

the end of his life. In this case, Hassan may be seen as extremely traditional in his outlook; indeed, it might be because of this teaching that some have seen Hassan as fundamentalist.

Again, the problem of *jilbāb* reflects the orientation of Hassan's *usūl al-fiqh* in placing the Qur'an and Sunnah at the forefront of the sources of law in Islam. In developing his ideas on the *jilbāb*, Hassan begins by quoting extensively the statements made by the *Aliran Baroe*, together with his responses to them. Finally, he formulates his argument systematically, based on the Qur'an and the Sunnah.

According to the *Aliran Baroe*, the ruling on *jilbāb* is based on Qur'an 24:31; but to understand this verse, one should read it in the context of the verses coming before and after it, i.e. 24:29 and 32.[229] Based on these verses, argued the *Aliran*

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[229]To assist the reader, we quote in full the relevant Qur'anic verses: 24:27: "O ye who believe! enter not houses other than your own, until ye have asked permission and saluted those in them: that is best for you, in order that ye may heed (what is seemly)." 24:28: "If ye find no one in the house, enter not until permission is given to you: if ye are asked to go back, go back: that makes for greater authority for yourselves: and Allah knows well all that ye do." 24:29: "It is no fault on your part to enter houses not used for living in, which serve some (other) use for you, and Allah has knowledge of what ye reveal and what ye conceal." 24:30: "Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well acquainted with all that they do." 24:31: "And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands' father, their sons, their husbands' sons, their brothers or their brothers' sons, or their sister's sons, or their women, or their slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! Turn ye all together towards Allah, that ye may attain Bliss." 24:32: "And marry those among you who are single, or the virtuous ones among your slaves, male or female: if they are in poverty, Allah will give them means

Baroe, the verse concerning *jilbāb* follows upon the verse dealing with the rules on entering another person's house (e.g. as a guest). According to all jurists, said the *Aliran Baroe*, the rule about asking permission to enter another's house as elaborated in this verse is recommended only, and not obligatory. This verse is then followed by the verse on *jilbāb*, which is in its turn followed by another verse which stresses the importance of helping men and women, freeborn as well as slaves, to get married. The rules respecting this help, said the *Aliran Baroe*, are also recommended. Thus, the *Aliran Baroe* concluded: if the rules applying to matters both before that of the *jilbāb* and also after it are recommended, it is clear that the rule falling between them (i.e. the rule of *jilbāb*) is also recommended. This idea is supported by the fact that all the rules mentioned in these verses are connected to one another by the conjunction *wa* (and); and all rules which are joined by the conjunction *wa* must have the same force. Consequently, because the rules in the verses both before and after the one dealing with *jilbāb* are recommended, so the rule of *jilbāb*, united as it is by the conjunction *wa*, must be recommended.[230]

Hassan naturally rejects this line of reasoning, accusing the *Aliran Baroe* of manipulating the verses in order to satisfy their desire (*hawā*).[231] According to Hassan, there are at least two reasons to reject their interpretation. In the first place, it should be noted that verses 27 to 29 of *al-Nūr* (chapter 24 of the Qur'an) are

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out of His grace: for Allah encompasseth all, and He knoweth all things."

[230]Hassan, *Wanita Islam*, 18.

[231]Ibid., 18-24.

concerned with the rules on how to be a guest; e.g. asking permission to enter a house. These verses are addressed to believers in general. Verse 30, however, does not start with the conjunction *wa*; thus, it has no connection (at least literally) with the previous verses. This fact, curiously enough, is never referred to by the *Aliran Baroe*, perhaps because of the obligatory nature of the rule stated in this verse. Then comes verse 31 (on *jilbāb*) which starts with the conjunction *wa*. In contrast to the previous verses (27-9), these verses (30-1) are addressed to the Prophet and thus are completely disconnected from the foregoing ones. It is followed then by verse 32 which starts with the conjunction *wa* which is addressed to believers in general but not to the Prophet. On the basis of this, we can conclude, insists Hassan, that the inference (*istinbāṭ*) of the *Aliran Baroe* must be rejected, or at least its argument that all verses related to the verse on *jilbāb* are connected one to the other by the conjunction *wa*. Moreover, there is no doubt that verses 30 and 31 are addressed to the Prophet and not to the believers as in the case of verses 27-9 and 32. But, there is still another reason which is no less important than these, says Hassan: it is not necessarily true to say that any subject connected by the conjunction *wa* must have the same rule. Only those people who do not understand Arabic and lack knowledge of how to exercise inference (*istinbāṭ*) would claim that any issues linked by the conjunction *wa* must have similar rules. To give just one example, says Hassan, there is the Qur'an 6:141: "Eat of their fruit in their season, and [*wa*, Yusuf Ali translates it into "but"] render the dues that are proper on the day that harvest is gathered." According to Hassan, although the two subjects (to eat and to give charity) are

connected by the conjunction *wa*, they are different: the first rule is permissible (*mubāh*) while the second one is obligatory (*wājib*). It should be kept in mind also, maintains Hassan, that the rule of *jilbāb* is expressed in the form of the imperative (*amr*), a form which normally implies that a rule is obligatory, except when there is an indication (*qarīnah*)[232] to change this original meaning; this is a doctrine based on the following maxim: *al-aṣlu fī al-amr lil-wujūb* (the imperative originally indicates obligation).[233]

The second argument put forth by the *Aliran Baroe* was that it is necessary to understand the background of the verse on *jilbāb*, particularly the implications of the Qur'an 33:59. According to the *Aliran Baroe*, the rule of *jilbāb* was put in place in order to differentiate good women from bad ones. Wearing *jilbāb* allowed good women to avoid harassment from irresponsible men, particularly at nighttime.[234] Thus, the essence of the command to wear *jilbāb* was to differentiate one woman from another, a practice which could be different from one time to another and from one place to another. They pointed out that a change of time and place can bring about a change of rule as in the case of Shāfi'ī, who is reported to have had an old

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[232]Ibid., 73. On *amr* and *qarīnah* in the context of *uṣūl al-fiqh*, see Hallaq, *History of Islamic Legal Theories*, 69-81; idem, "Notes on the Term *Qarīna* in Islamic Legal Discourse," *Journal of the American Oriental Society* 108 (1989), 475-80.

[233]Hassan, *Risālatul Hadj*, 59.

[234]Hassan, "Tudung Kepala Wanita," 640; idem, *Wanita Islam*, 38-40, 43. For a similar view, see Ahmed, *Women and Gender*, 5, 15, 55-6.

opinion (*qawl al-qadīm*) and a new one (*qawl al-jadīd*) on a number of issues.[235]

This second argument was dismissed by Hassan, who claims that it represents nothing more than an attempt to justify the abandonment of the religious teachings on *jilbāb*. According to Hassan, the argument is a dangerous one, for if we are allowed to use mere reason, we might say, for instance, that the aim of prayers is to make people refrain from shameful and unjust deeds (*inna al-salāta tanhā 'an al-fahshā' wa al-munkar*).[236] Based on the inference (*istinbāt*) of the *Aliran Baroe*, observes Hassan, it could be maintained then that those who have always done good deeds need not perform prayers any longer, an idea which is certainly alien to those who have any knowledge of Islamic law.[237] This could also be analogized to other commands of God (e.g. fasting). Hassan then writes: "Indeed, each obligation can be reversed according to human desires (*hawā*); each act that is prohibited can be made permissible (*jā'iz, halāl*).... According to the Shaykh al-Islām of *Aliran Baroe*, people do not even need religion, because the essence of religion is to make people good. For those who are already good, religion is no longer needed."[238] Hassan also disagreed with the *Aliran Baroe* that a rule can be changed because of a change of time or place. In his own words: "Muslims should know that the rules of permissible,

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[235]Hassan, *Wanita Islam*, 17. It may be useful to cite here the following maxim: *al-hukm yataghayyar bitaghayyur al-azminah wa al-amkinah* (the rule can change because of changes of times and places); for this maxim and its explanation, see Mahmasānī, *Falsafat al-Tashrī'*, 198-202; 'Umarī, *al-Ijtihād fī al-Islām*, 246-52.

[236]See the Qur'an 29:45.

[237]Hassan, *Wanita Islam*, 40, 44-5, 79.

[238]Ibid., 45.

forbidden, recommended, and reprehensible cannot be altered because of a change in the will of the people or a change of time...."[239]

Thirdly, the *Aliran Baroe* rejected the following saying of the Prophet: "'O Asmā'! when the woman attains her majority, it is not proper that any part of her body should be seen except this and this,' pointing to his face and his hands."[240] According to the *Aliran Baroe*, this Prophetic tradition was used by those who supported the obligatory force of the rule on *jilbāb*; nonetheless, it is weak (*da'īf*) and therefore not a valid support. Moreover, they pointed out, this Sunnah contains the word *lam yasluh*, and no text that contains the words *lam yasluh* or *lā yasluhu* can make an action forbidden. In his response to this reasoning, Hassan concedes that the Sunnah is weak; but the *Aliran Baroe* should understand, says Hassan, that the jurists do not use it as the fundamental reason for establishing the obligatory nature of *jilbāb*, but rather as an aid in understanding other, stronger texts pertaining to the issue, particularly ones concerning the proper extent of a woman's dress. It was also difficult for him to understand how the *Aliran Baroe* could have conceived that the words *lā yasluhu* cannot give the sense of forbidden. To mention but one example, we find in the following Sunnah the words: *lā yasluhu li-basharin an-yasjuda li-basharin* (it is forbidden for people to worship other people). This Sunnah, which contains the phrase

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[239]Ibid., 17.

[240]This Sunnah was narrated by Abū Dāwūd; see Hassan, "Tudung Kepala," 620; Ali, *Religion of Islam*, 486.

lā yaṣluhu, clearly indicates that such activity is forbidden.[241]

Having disposed of the arguments of the *Aliran Baroe*, Hassan approaches the issue of the *jilbāb* systematically, and at the same time responds to those who addressed to him questions (*mustaftīs*) relating to women's affairs in general and the *jilbāb* in particular.[242] In his *fatwā*, he begins by posing the following question: "What is the rule on women's dress according to Islamic law?" In answer, Hassan points out that in general there are at least four regulations concerning the matter. The first applies to how a woman should be covered in front of the following people: her husband, her father, her father-in-law, her stepsons, her brothers and her sons. According to Hassan, in front of these people, a woman can uncover her head, face, feet, and hands (she can even uncover her arms), a rule based on the Qur'an 24:31 and a Sunnah narrated by Abū Dāwūd.[243]

The second regulation applies to women at prayer, during which exercise a woman must cover her entire body except for her face and hands. This dictum is founded upon four Sunnahs, two of them narrated by Abū Dāwūd, one by Ahmad, and

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[241]Hassan, *Wanita Islam*, 29-31, 64-5, 69-70, 74-5.

[242]*Jilbāb* is in fact discussed by Hassan in line with other matters affecting women, among them being: the parts which it is necessary for both men and women to cover (*'awrah*), the propriety of men and women looking at each other, the door for women in a mosque, the place of women in the mosque, the feast prayer (*salāt al-'īd*) and other prayers, addressing greetings (*al-salāmu 'alaikum*) to women, shaking hands with women, women in war, women becoming political leaders, and a woman pretending to be a man; see Hassan, "Tudung Kepala Wanita," 616-45.

[243]Hassan, "Tudung Kepala Wanita," 618, 635; idem, *Wanita Islam*, 75-6.

the rest by Ṭabarānī.[244]

The third regulation deals with situations in which a man comes to see a woman in her home. In such a case, a woman can reveal her face, her hands and whatever is on her hands such as rings and the like. This regulation is based on the Qur'an 24:31, a Sunnah narrated by Abū Dāwūd, and Ibn 'Abbās's interpretation of the Qur'an 24:31. In addition, according to a Sunnah narrated by Bukhārī and Muslim, in such a situation a woman has also to be accompanied by at least one of those who is forbidden to marry her (*maḥram*).[245]

The last rule is concerned with occasions when women venture outside the home, at which time they must cover the parts which it is necessary to cover (*'awrah*): i.e. the entire body except for the face and hands. Nor may they show any ornaments except those commonly seen by others (e.g. rings), an opinion adopted by the majority of jurists (*jumhūr al-fuqahā'*).[246] For old women who no longer have any intention of marrying, they can reveal their head and neck. All of these provisions are regulated by the Qur'an 24:31, 60 and 33:59.[247]

In his final remarks on this subject, Hassan reminds his fellow Muslims of the fact that there is no single well-known jurist, including the schools' eponyms, who is

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[244]Hassan, "Tudung Kepala Wanita," 619, 635.

[245]Ibid., 620, 635.

[246]Abū Ḥanīfah, however, maintains that feet are not included as one of the *'awrah*, while Abū Bakr ibn 'Abd al-Raḥmān and Aḥmad are of the opinion that the whole body of a woman is *'awrah*; see Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 1, 99.

[247]Hassan, "Tudung Kepala Wanita," 621, 635-6; idem, *Wanita Islam*, 62-6.

of the opinion that the *jilbāb* is not obligatory.[248] Furthermore, it would make no sense for Muslims not to feel guilty about ignoring the rules on *jilbāb* and yet be angry about the omission of the *tahlīl* for a deceased person, especially when they know that the former is based on clear texts, whereas the latter has no precedent during the time of the Prophet and his Companions.[249]

Hassan's doctrine on *jilbāb*, solidly based on the Qur'an and Sunnah, became the formal regulation of Persis and is still in effect. It is currently applied in the *pesantren* for women in Bangil.[250] It is interesting to note that, originally, quite a number of people were opposed to Hassan's ideas on *jilbāb*. In the 1940s, the houses of some members of Persis who wore *jilbāb* were stoned by those who disliked the rule, a very serious development indeed. As a result, the local leader (Bupati) invited Persis, led by Hassan, to discuss the issue. At this meeting, the Bupati finally promised to protect the members of Persis who wore *jilbāb* from irresponsible people.[251]

In fact, the idea that *jilbāb* is not obligatory resurfaces again and again. In the 1980s and 1990s, this argument was once again advanced by Munawir Sjadzali and

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[248]A. Hassan, "Tudung Kepala," in *Soal-Jawab*, vol. 3, 1089-90; idem, *Wanita Islam*, 14-5, 24, 46.

[249]Hassan, "Tudung Kepala," 1091.

[250]Hassan, *Wanita Islam*, 5.

[251]Hassan, "Kejadian jang Hebat Sebab Tudung," 1091-2; idem, *Wanita Islam*, 3-4.

Nurcholish Madjid,[252] both among the leading reformists of this era. This interpretation is certainly popular amongst those who do not support the use of *jilbāb*; nonetheless, it is unlikely to have any major effect on the growing number of women who continue to wear it in present-day Indonesia.[253]

C. Inconsistencies.

So far we have discussed the application of Hassan's *usūl al-fiqh* to various problems faced by the Muslims of his era, problems which touch upon matters of both *'ibādāt*

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[252]See Munawir Sjadzali, *Islam: Realitas Baru dan Orientasi Masa Depan Bangsa* (Jakarta: UI Press, 1993), 67; "Tidak Usah Munafik," *Matra* 12 (1992), 12-5.

[253]Apparently, the Iranian revolution of 1979 influenced Indonesian Muslims in a number of ways; this can be seen, for instance, in the fact that, since the early 1980s there has been an increase in the number of women who have chosen to wear the *jilbāb*; see M. Fauzi, "Dampak Psikologis Lahirnya SK Jilbab di Sekolah," *Aula* (April 1991), 83. This phenomenon has been regarded by some as a very dangerous one, both politically and socially, and particularly by those who do not want to see Islam playing a significant role in the daily life of Indonesian society. Indeed, some students and government employees who wore the *jilbāb* were threatened with expulsion from school or the loss of their jobs, while some have even been prosecuted by the law. Instances of this happening were recorded widely by the country's media, whose interest has also been engaged by the latest publication of Hassan's *Wanita Islam* by its editor; see Hassan, *Wanita Islam*, 6-7, 83-97. See also Fauzi, "Lahirnya SK Jilbab," 84; "Jilbab Kembali Dibelenggu," *Media Dakwah* 249 (March 1995), 41-52; "Alhamdulillah Jilbab Bebas," *Media Dakwah* 199 (January 1991), 42-5; "Desah Panjang Para Ulama," *Media Dakwah* 199 (January 1991), 46-7; "Akhirnya Kerudung Dibolehkan di Akper," *Tempo* 49 (1 February 1992), 7. In recent years, however, this situation has changed considerably; more women are increasingly wearing the *jilbāb* freely, without any serious intimidation from others. On 16 February 1991, Law no. 100/C/Kep/D/1991 was signed by Hasan Walinono of the Ministry of Education, allowing students to wear the *jilbāb* in the schools; see Damanhuri, "Sujud Syukur Jilbab," *Media Dakwah* 202 (April 1991), 56-7; "NU Menyambut Jilbab," *Aula* (March 1991), 29-30. As a result, *jilbāb* is nowadays a common sight not only in religious institutions such as the *pesantren*s and IAINs but also in other places such as factories, private and government offices, and "secular" universities.

and *mu'āmalāt*. In general, we have witnessed a remarkable consistency on his part in applying the principles adopted in his *uṣūl al-fiqh* to these problems. These principles consist primarily of an insistence on the importance of *ijtihād* and the promotion of the doctrine "back to the Qur'an and Sunnah." Indeed, these principles became the distinctive features of Hassan's reformist doctrine.

Nonetheless, Hassan did occasionally make exceptions to his general principles. As will be shown below, in certain aspects of his *fatwās*, particularly in the field of *mu'āmalāt*, he does not follow the stated rule in the texts but adopts instead a rational approach which allows him to alter the given rule on the matter. In addition, we will see how, in spite of the fact that he adopted the four sources of Islamic law (the Qur'an, Sunnah, consensus, and *qiyās*), he also accepted other methods in his *ijtihād*. These he passes over in silence in those works where he elaborates upon the sources of Islamic law; nor does he refer to them in his *fatwās* either.

One such exception can be seen in his treatment of beards (Arabic: *lihyah*, Indonesian: *janggut*).[254] There are two Sunnahs which deal with the matter, one narrated by Aḥmad and Muslim and the other by Bukhārī and Muslim.[255] According to these Sunnahs, Muslims should shave their mustache but not their beard in order to distinguish themselves from non-Muslims, particularly the polytheists and the

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[254]See A. Hassan, "Memelihara Janggut," in *Soal-Jawab*, vol. 3, 1255-6; 4: 1704-5.

[255]The first Sunnah goes as follows: "Shave your mustache but not your beard;" and the second one reads: "Be different from the unbelievers, maintain your beard, and shave your mustache"; see Hassan, "Memelihara Janggut," 1256.

majūs, or adherents of Mazdaism. Since the essence of this rule (i.e. keeping one's beard), says Hassan, is to differentiate Muslims from non-Muslims,[256] then, "if we can make ourselves different from others [non-Muslims], in a certain way [according to our own tradition], there is no need to avoid shaving our beards."[257] Here, there is a clear indication that Hassan took local tradition (*'urf*) into consideration in arriving at a decision on this matter. He goes on to say that in India, non-Muslims also do not shave their beards; accordingly, the beard cannot function as a sign distinguishing Muslims from non-Muslims. In ending his remarks, Hassan writes: "In my opinion, we are allowed to arrange our hair, beard, mustache, clothes, etc., so long as we can easily be identified as Muslims."[258]

Thus it is clear that in the case of the beard, Hassan does not follow the stated rules contained in those Sunnahs mentioned above, but instead relies upon his reason in trying to understand the background of a rule made during the time of the Prophet. This in the end allowed him to modify the stated rule to accord with local tradition. The contrast here between his views on beards and those on the *jilbāb*, as explained earlier, is striking. In the case of the *jilbāb*, he refuses to accept the argument that it was instituted in order to differentiate good women from bad ones, arguing that the rule of the *jilbāb* is clearly stated by the texts, which cannot be changed by human reason. Certainly, this gives rise to the following question: In what aspects of

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[256]Hassan, "Memelihara Janggut," 1256.

[257]Ibid.

[258]Ibid.

mu'āmalāt did Hassan feel himself justified to disregard the stated rule of the text in a given matter? This is a question that we do not have any clear answer for. Nor has the issue of wearing a beard died out; in fact, in present-day Indonesia, there is an increasing number of Muslims who are choosing to keep their beards, a tendency which is matched by the increase in the number of women who wear *jilbāb*.

A second example of Hassan's apparently deliberate inconsistency involves the issue of interest (*ribā*).[259] As is generally known, the rule on interest is based primarily on the Qur'an, particularly the Qur'an 2:275: "Those who devour usury will not stand except as stands one whom the evil one by his touch hath driven to madness. That is because they say: 'trade is like usury.' But Allah hath permitted trade and forbidden usury."[260] This verse makes it clear that interest is forbidden. The problem faced by Muslims of today is principally that of bank-interest, a common transaction of the modern world, and a problem over which Muslims have split generally into two opposing camps.[261] Hassan, for his part, was of the opinion that the bank-interest we have today is permissible and ought not to be included in the interest forbidden by the Qur'an, for it has none of the negative effects that prompted the Prophet to ban interest in his day;[262] it can even be advantageous to the

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[259]See A. Hassan, "Bunga Bank," in *Soal-Jawab*, vol. 2, 678; idem, "Riba Bank," in *Soal-Jawab*, vol. 3, 1191; idem, "Riba Bank," 33-74; idem, *Kitab Ribaa*.

[260]For other Qur'anic and Sunnaic texts condemning interest, see Doi, *Sharī'ah*, 376-8; Siradjuddin Abbas, "Masalah Riba," in *40 Masalah Agama*, vol. 2, 124-9.

[261]van Dijk, "Re-Actualization of Islam in Indonesia," 80-1.

[262]Hassan, "Riba Bank," 71-4.

economic life of Muslims, as many other Muslim writers point out.[263] In fact, Hassan bases his attitude towards the regulations affecting bank-interest on rational opinion instead of on the clear texts of scripture, in contrast to certain other Muslim theorists.[264] Hassan even sees bank-interest as a basic right of those who deposit their money in the bank; accordingly, those who refuse to accept the interest to which they are entitled are wrong for abandoning their rights; the interest can at least be donated to Islamic schools, which are very important to future generations of Muslims.[265] Hassan even states: "those who do not want to use their interest, take it and send it to us [Persis]."[266] It is interesting to note that in the 1980s, the NU, who earlier strictly forbade bank-interest, established their own bank called Bank Perkreditan Rakyat (BPR).[267] The Muhammadiyah, for its part, has long regarded

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[263]See Fazlur Rahman, "Ribā and Interest," *Islamic Studies* 3 (March 1964), 1-42; idem, "Some Islamic Issues in the Ayyūb Khān Era," in *Essays on Islamic Civilization: Presented to Niyazi Berkes*, ed. Donald P. Little (Leiden: E.J. Brill, 1976), 291-5. See also Badr, "Islamic Law," 36-7; Hallaq, *History of Islamic Legal Theories*, 356-8.

[264]In his *Debat Pembantah Kitab Riba jang Dikarang oleh A. Hassan* (Medan: n.p., 1938), Soelaiman Thaib expressed the view that Hassan's ideas concerning interest are misleading, to which Hassan replied in his *Risalah Pendjawab Debatan terhadap Kitab Ribaa* (Bandoeng: Persatoean Islam, 1938). For others who condemn the bank-interest, see Syarifuddin, *Hukum Islam*, 133-4; Siradjuddin Abbas, "Masalah Riba," in *40 Masalah Agaama*, vol. 2, 137-9; Doi, *Sharī'ah*, 381.

[265]Hassan, "Riba Bank," 1191.

[266]Hassan, "Bunga Bank," 678; idem, "Riba Bank," *Pembela Islam* 53 (26 October 1932), 42; idem, "Rente Post Spaarbank," *Pembela Islam* 63 (9 July 1933), 35.

[267]"Antara Tuntutan dan Kepastian Hukum," *Pesan* 6 (1991), 2-5. For the reasons underlying the establishment of the BPR, see A. Muchith Muzadi, "Melihat Bank dengan Teropong Berlensa Rangkap Akhlaq dan Fiqh," *Aula* (February 1991), 61-5; idem, "Berusaha Memahami Kehadiran Bank-BPR," *Aula* (March 1991), 57-65;

the issue of bank-interest as uncertain (*shubhah*);[268] however, its present leader, M. Amin Rais, personally tends to allow bank-interest. Rais is reported to have said: "while other people have utilized and even established banks, the members of the Muhammadiyah are still occupied with uncertainty over the ruling, i.e. whether it is permissible or forbidden, on bank-interest."[269] In fact, the idea that bank-interest is permissible is contrary to the belief held by an increasing number of Indonesian Muslims today who are willing to follow the rule stated in the texts. This outlook has resulted, for instance, in the establishment of Bank Mu'amalah,[270] an interest-free

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"Selebaran Anti Bank yang Mengarah Sara," *Aula* (December 1990), 30-2; "Hukum Bank," *Aula* (December 1990), 80-6. These articles were responses to Misbach Mustafa who, in his *BPR NU dalam Sorotan al-Qur'an* (Tuban: n.p., 1990), condemns the effort of the NU to establish a bank.

[268]The rule on *shubhah* was decided by the Majlis Tarjih Muhammadiyah at its Mu'tamar held in Sidoarjo (East Java) in 1968; see A. Maulana Yusuf, "Kajian Ulang tentang Hukum Bank," *Suara Muhammadiyah* 17 (1995), 36-7.

[269]"Tiga Puluh Tahun Berada di Pinggir," *Suara Muhammadiyah* 14 (1995), 47.

[270]According to AM Saifuddin, although the MUI tends to accommodate the view that bank-interest is permissible, it has made every effort to establish an interest-free bank; see "Antara Tuntutan dan Kepastian Hukum," 4. On 3 November 1991, the MUI held a large meeting in Bogor (West Java), the most important result of which was the establishment of an Islamic bank to be known as Bank Mu'amalah, an interest-free bank, supported by the Indonesian President, Haji Muhammad Suharto; see van Dijk, "Re-Actualization of Islam in Indonesia," 81; "Selamat Datang Bank (Shari'ah) Islam," *Media Dakwah* 201 (March 1991), 11-3. This set a precedent for the NU, who some years earlier had established BPR, a bank which operated on an interest basis. At its national meeting in Bandarlampung (Sumatra), on 20-22 January 1992, the NU decided to establish an interest-free bank; see "Setuju Bank Tanpa Bunga, Asuransi Bersifat Tabungan," *Aula* (February 1992), 38-43; "Bank NU Segera Berdiri," *Aula* (February 1992), 42-53.

bank which represents a trend not unique to Indonesia.[271]

The final example that we shall cite in which Hassan does not follow a clear text involves the issue of lotteries (*maysir*s).[272] The traditional rule forbidding such practices is the Qur'an 5:90: "O ye who believe! intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination-of Satan's handiwork; eschew such (abomination), that ye may prosper."[273] Based on this verse, Hassan acknowledges that lotteries are forbidden; for this reason, anything relating to lotteries is also forbidden.[274] According to Hassan, this is an ideal rule, and it must be applied in Muslim countries such as Saudi Arabia. The case of Indonesia, however, he saw as being different, inasmuch as it is a country in which Islamic law is not formally adopted, even though Muslims form the majority in the country. Consequently, given that Indonesia is governed on the basis of secular law, lotteries are not illegal. This situation, according to Hassan, compels Muslims to rethink their position with respect to this issue.

First of all, according to Hassan, one must consider who operates the lotteries.

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[271]See Muhammad Nejatullah Siddiqi, *Banking Without Interest* (Lahore: Islamic Publication, 1973); idem, *Issues in Islamic Banking* (London: The Islamic Foundation, 1983).

[272]See A. Hassan, "Lotery," in *Soal-Jawab*, vol. 1, 365-70; idem, "Judi," in *Soal-Jawab*, vol. 2, 747-52; idem, "Loteriy," in *Soal-Jawab*, vol. 3, 1199-1202, reprinted in *Soal-Jawab*, vol. 4, 1638-41. See also H.M. Mansur, "Hal Lotre," in *Soal-Jawab*, vol. 4, 1632-3.

[273]Other textual bases can be found in Hassan, "Judi," 750-2; idem, "Loteriy," 1199.

[274]Hassan, "Lotery," 367-8; idem, "Judi," 749; idem, "Loteriy," 1200-1.

The Muslims of Hassan's day, as well as of our own, were permitted, even encouraged, to operate lotteries. If Muslims were to refuse to participate at this level, and yet continue to be the biggest buyers of lottery tickets, then they would be endangering their future.[275] Secondly, one must look at the distribution of the profits reaped by the institutions operating the lotteries, whether these be government or private institutions. In fact, the institutions responsible for the lotteries were always ready to give aid to any group seeking financial help for a public need, e.g. schools and hospitals.[276] If Muslims did not ask for this financial aid because of the fact that the money originally came from a process which is forbidden, the money would certainly go to non-Muslims (mostly Christians), especially to develop their hospitals and schools.[277] According to Hassan, while it is true that the money coming from a lottery is not good money, nevertheless the situation would be worse if Muslims avoided using the money. In such a situation, one is obliged to avoid that which poses the most risk to society.[278] Here Hassan appears to invoke the principle "the more harm is eliminated by the less harm" (*al-ḍarar al-ashadd yuzāl bi al-ḍarar al-akhaff*).[279] Hassan repeatedly employs the word *maṣlaḥah* in formulating his *fatwā* on this matter.

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[275]Hassan, "Loteriy," 1201.

[276]Hassan, "Lotery," 367.

[277]Ibid., 368; idem, "Loteriy," 1201.

[278]Hassan. "Lotery," 369; idem, "Loteriy," 1201-2.

[279]For the maxim, see Rahman, *Qa'idah-Qa'idah Fiqih*, 82.

Certainly, Hassan was not alone in giving at least grudging approval to the lottery. The 1933 Muhammadiyah congress, for instance, arrived at conclusions similar to those of Hassan.[280] In the 1980s, the idea was once again advocated, albeit for different reasons, by Ibrahim Hosen, the chief of the Majlis Fatwa of the MUI.[281] Nonetheless, this outlook contrasts with the belief of an increasing number of Muslims that any kind of lottery is forbidden. Indeed, during the 1990s, the government came under considerable pressure from Muslims to abolish lotteries such as PORKAS and SDSB, with the result that lotteries have recently been abandoned altogether.

On the basis of these three examples, one may conclude that Hassan favoured a contextual approach to interpreting the law. In doing so he can hardly be seen as having adopted a fundamentalist's point of view, i.e. one which usually emphasizes a textual approach. Moreover, his ideas on these topics are quite different from the common tendency of many present-day Indonesians who tend to follow the literal meaning of texts (again a textual approach). But, it should be borne in mind that these

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[280]Mansur, "Hal Lotre," 1633; HD. Haryo Sasongko, "Porkas dan Buah Simalakama," *Amanah* 4 (19 August-1 September 1995), 43, 84.

[281]Among the most controversial lotteries during the 1980s and 1990s were PORKAS and SDSB; see "Tersandung Musibah Bernomor 901," "Kemelut Dari Gedung Tua," "Perjalanan Dana Haram," "Jangan Main Advokat-Advokatan," "Saya Punya Hak Beladiri," "Memprotes Sang Pemecah Belah," "Menimbang Dana Haram," *Tempo* (14 March 1991), 22-8, 31-2; "Sudah Saatnya SDSB Ditutup," *Aula* (November 1991), 32-7; "Dari Munas Hingga SDSB," *Aula* (November 1991), 34-48; "Heboh SDSB Semoga Sudah Usai," *Aula* (December 1991), 10-3. For the ideas of Ibrahim Hosen, see Ibrahim Hosen, *Apakah Judi Itu?* (Jakarta: Lembaga Kajian Ilmiah Institut Ilmu Al-Qur'an, 1987)); Panitia Penyusun Biografi, *Ibrahim Hosen dan Pembaharuan Hukum Islam*, 195-99.

ideas form exceptions to his general approach to Islamic law in which he emphasized the importance of "back to the Qur'an and Sunnah" and the need for textual support for every point of Islamic law.

Indeed, it is interesting to see that Hassan did employ custom (*'urf*)[282] and considerations of public interest (*maslahah mursalah*)[283] as methods in arriving at decisions in his *fatwās*. The use of sources outside of those best known (the Qur'an, Sunnah, consensus, and *qiyās*) is evident also in his other *fatwās*. For instance, Zainul Muttaqin rightly observes that in certain cases of alms-tax (*zakāh*), Hassan used juristic preference (*istihsān*);[284] he once issued a *fatwā* permitting a change in the rate of alms-tax from 2.5% of accumulated wealth to 3% if such a policy might be

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[282]For a discussion of *'urf*, see chapter one, 61-72.

[283]On *maslahah*, see Hallaq, *History of Islamic Legal Theories*, 165-7; Elsiddiq, "Problems of Islamization of Laws," 106-48; Ihsan A. Bagby, "The Issue of *Maslahah* in Classical Islamic Legal Theory," *International Journal of Islamic and Arabic Studies* 2 (1985), 1-11; Majid Khadduri, "The *Maslaha* (Public Interest) and *'Illa* (Cause) in Islamic Law," *New York University Journal of International Law and Politics* 12 (1979), 213-7; Ahmed Zaki Yamani, "The Eternal *Shari'a*," *New York University Journal of International Law and Politics* 12 (1979), 205-12; Emile Tyan, "Méthodologie et sources du droit en Islam," *Studia Islamica* 10 (1969), 96-101; Rahman, "Methodology of Islamic Law," 219-24; and Kamali, *Islamic Jurisprudence*, 267-82.

[284]On *istihsān*, see John Makdisi, "Legal Logic and Equity in Islamic Law," *The American Journal of Comparative Law* 33 (1985), 63-92; Kamali, *Islamic Jurisprudence*, 245-66; Husain Kassim, "Sarakhsī's Doctrine of Juristic Preference (*Istihsān*) as a Methodological Approach Toward Worldly Affairs (*Ahkām al-Dunyā*)," *The American Journal of Islamic Social Sciences* 5 (1988), 181-205; Hallaq, *History of Islamic Legal Theories*, 159-65; Tyan, "Méthodologie et sources," 84-101; Hadi Permono, "Maslahah Ditinjau dari Pandangan Islam," *Aula* (December 1994), 71-80.

considered good for society.[285] The use of custom (*'urf*) can also be seen in his *fatwā* concerning the recitation of the two "testimonies" of the Islamic faith (*shahādatayn*) by those wishing to convert to Islam. In this case, says Hassan, it is permissible for someone to use his own vernacular in reciting the *shahādatayn*; his conversion to Islam is no less valid for this.[286]

Presumption of continuity (*istiṣhāb*)[287] is another method used by Hassan in his *fatwās*. In the case of Friday prayer (*ṣalāt al-jum'ah*), he observes that those who miss the prayer must perform the early afternoon prayer (*ṣalāt al-ẓuhr*), basing himself on the reason that the standard prayer in the early afternoon, including Fridays, is *ṣalāt al-ẓuhr*.[288] There is no an agreement, however, on this matter. Muhammad Hasbi Ash-Shiddieqy, another reformist, disagrees with Hassan, saying that the standard prayer in the early afternoon of Fridays is Friday prayer (*ṣalāt al-jum'ah*); accordingly, there is no *ṣalāt al-ẓuhr* on Fridays. Furthermore, as is the case with any other prayer, says Shiddieqy, Muslims can even perform Friday prayer in any location

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[285]Muttaqin, "Pola Ijithad Hukum," 149; for Hassan's ideas, see his *Pemerintahan Tjara Islam*, 148.

[286]A. Hassan, "Mengucapkan Syahadat dengan Bahasa Sendiri," in *Soal-Jawab*, vol. 4, 1591. See also, Muttaqin, "Pola Ijtihad Hukum," 150.

[287]For a discussions of *istiṣhāb*, see Hallaq, *History of Islamic Legal Theories*, 167-9; Kamali, *Islamic Jurisprudence*, 297-309.

[288]A. Hassan, *Risalah Djum'at* (Bangil: Persatuan Islam, n.d.), 105; idem, *Wadjibkah Perempuan Ber-Djum'ah?* (Bangil: Persatuan Islam, 1959), particularly section five, "Wadjibkah Zhuhur Atas Orang jang Tidak Wadjib Djum'ah?" 24-5; Muttaqin, "Pola Ijtihad Hukum," 149; Rosidi, *Natsir*, 29-30.

and not necessarily in the mosque.[289]

[289]Muhammad Hasbi Ash-Shiddieqy, "Mengapa Saya Menyalahi Jumhur dan Mewajibkan Jum'at Juga Atas Orang yang Tidak ke Masjid?" *Al-Jami'ah* 7 (1974), 10-38.

CHAPTER FIVE

CHAPTER 5
RESPONSE AND IMPACT

A. Responses to Ahmad Hassan's Reform Doctrine.

We have examined thus far Hassan's *usūl al-fiqh* and its application to the issues of substantive law faced by Indonesian Muslims, an exercise which has allowed us to understand the distinctive features of his religious doctrine. It should come as no surprise, however, that his stance on many issues has occasionally elicited hostile reactions.[1] These reactions came not only from the traditionalist group, who

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[1]There were many individuals and groups opposed to Hassan's reform program; some even went so far as to accuse *Pembela Islam*, a major organ for the dissemination of Hassan's doctrine, of being at the heart of the rupture, of fomenting trouble, of destroying the foundations of the legal school (*madhhab*), and more importantly of going astray; see A. Hassan, "Mentaliteit Pengarang 'Adil'," *Pembela Islam* 56 (30 December 1932), 36; Wali Djoko, "Sajang, Sajang, Atas Saudara jang Tertjinta Mahmoed Pauzi," *Pembela Islam* 58 (February 1933), 19; Soeki, "Pemetjah," *Pembela Islam* 34 (September 1931), 24-5; "Sepatah Kata," *Pembela Islam* 16 (December 1930), 2; TMT., "Pembela Djadi Pembelah," *Pembela Islam* 17 (January 1931), 13; "Pembela Islam dan Moehammadiah," *Pembela Islam* 18 (January 1931), 8. One of the members of Permi has also accused Persis under Hassan of being paid by the government to create friction among Muslims; see "Goblok," *Pembela Islam* 62 (June 1933), 23. On one occasion, M. Oezir of Toebohan (B. Radja) was banned from performing duties as a *khaṭīb* on the ground that he used Hassan's *Risalah Djum'at* in his *khuṭbah*; see M. Oezir, "Soerat Kiriman," *Pembela Islam* 24 (April 1931), 27. Furthermore, Alwi bin Thahir Alhaddad accused Hassan of being a *dajjāl* (anti-Messiah), a follower of Mirza Ghulam Ahmad, and a *kaum muda* who was systematically trying to destroy Islam; see *Warta Djabatan Agama Johore*, no. 101, cited in Hassan, *Djawaban Kepada Alwi Bin Thahir Alhaddad*. Responding to these various responses, Persis, under the leadership of Hassan, wrote an open letter inviting all its opponents to have an open debate (*munāẓarah*); see A. Hassan, "Djawaban Kami kepada jang Membantah Kami," a supplement to the *Pembela Islam* 56 (30 December 1932).

represented his major target, but also from others such as his fellow reformists and even some Christians and members of the Communist Party (PKI). This section is devoted to a discussion of these criticisms, and where appropriate, Hassan's defense of his position.

1. Responses from the Traditionalists.

As already pointed out, Hassan was generally considered the foremost proponent of reform amongst Indonesian Muslims. This being the case, criticisms directed at Hassan might be seen as a response to the reformist cause as a whole. One of the most vocal groups opposing his ideas was that of the traditionalists, who insisted on preserving the traditional tenets and usages. Perhaps the most notable responses from the traditionalists came from the members of Persatuan Tarbiyah Islamiyah (Union of Islamic Education) popularly known as Perti and from those of the Nahdlatul Ulama (Renaissance of Religious Scholars) known as the NU; these were traditionalist organizations established primarily to counter the reform movement. Another critical response was delivered by the Arab traditionalist Husain al-Habsji.

a. Persatuan Tarbiyah Islamiyah (Perti).

Perti was established on 20 May 1930 in Candung Bukittinggi (West Sumatra), seven years after the foundation of Persis. According to its constitution, Perti follows the teachings of "the people of the Sunnah and the community" (*ahl al-sunnah wa al-*

jamā'ah) and the doctrine of the Shāfi'ī school.[2] The members of Perti rigorously attacked Hassan's ideas which they saw as encouraging teachings alien to the doctrines of the *ahl al-sunnah wa al-jamā'ah* and the Shāfi'ī school. The chief spokesman for the organization was its leader during the period 1936-1965,[3] Siradjuddin Abbas (1905-1980). In order to buttress the traditional doctrines of Islam, Abbas wrote no less than 13 books, and a great many articles,[4] the most important of which was his four volume *40 Masalah Agama* (40 Problems Concerning Religious Issues).[5] The work, which deals with Shāfi'ī legal issues, was written with the express purpose of refuting the reformists. Like Hassan's *Soal-Jawab Masalah Agama*, Abbas's book was popular with Muslims not only in Indonesia but also in other Malay countries such as Malaysia, Singapore, Thailand, and Brunei Darussalam.[6] In fact, Abbas' *40 Masalah Agama* is often regarded as the standard interpretation of the

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[2]Latief, "Kaum Tua di Minangkabau," 256, 267; Yunus, *Pendidikan Islam di Indonesia*, 98-9; Abbas, *Soal Jawab Keagamaan*, 4; "Persatuan Tarbiyah Islamiyah," in *Ensiklopedi Islam di Indonesia*, ed. Harun Nasution et al. (Jakarta: Departemen Agama, 1987-1988); "Persatuan Tarbiyah Islamiyah," in *Ensiklopedi Islam*, ed. Kafrawi Ridwan et al. (Jakarta: PT Ichtiar Baru van Hoeve, 1993). For the historical background of Perti and its early development, see Latief, "Kaum Tua di Minangkabau," 248-367.

[3]For Abbas' biography, see Abbas, *Soal Jawab Keagamaan*, 3-6.

[4]For Abbas' works, see Abbas, *Soal Jawab Keagamaan*, 6; Lubis, *Pemikiran Sukarno*, 280.

[5]The first volume of the book was published for the first time in 1970 by PT Karya Nusantara of Bandung and republished quite a number of times; the present writer uses the eighth edition published in 1982. It is thereafter likely still being republished because of its popularity among Muslims in the Malay countries.

[6]Abbas, *40 Masalah Agama*, vol. 1, 13-4.

traditionalist position, just as Hassan's *Soal-Jawab Masalah Agama* is seen as best expressing the reformist point of view.

Abbas's book, while clearly a critique of reformist ideas, does not target Hassan's ideas in particular. Nonetheless, as will be seen below, Abbas does quote certain statements from Hassan's *Soal-Jawab Masalah Agama* without acknowledgment. Moreover, Abbas was perhaps aware of the need to counteract the influence of Hassan's work on Malay readers who were increasingly attracted to it as a guide for daily life.

In his response to the problem of *talqīn*, for example, Abbas begins by saying:

> There is a certain person who does not like the *talqīn*. In attacking the *talqīn*, he has not only written books but has also given speeches. In both his books and speeches, he has sometimes attacked the *talqīn* calmly but on other occasions he has sneered [at *talqīn*]. Without mentioning his book and his name, I will quote some of his criticisms [of *talqīn*] and my reply to them. The aim of this response is to make him aware of his fault or at least ensure that in future he will not be so aggressive in attacking *talqīn* and those who perform it.[7]

These remarks are obviously directed at Hassan. As added proof of this, in the pages that follow this passage Abbas quotes one of Hassan's statements. Consider, for example, the following account:

> Be aware! Abū Umāmah spoke [about *talqīn*] during the time of *naz'* [on the death bed]. *Naz'* means that a person is at the point of his last breath. If the *hadīth* is *saḥīḥ fī al-riwāyah*--in fact it is not--then Abū Umāmah's statement cannot be accepted, for it was given at the time of *naz'*; this situation is similar to that of repentance and other acts which are not accepted [during the time of *naz'*].[8]

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[7]Abbas, "Masalah Talqin," in *40 Masalah Agama*, vol. 4, 109.

[8]Ibid., 112.

This passage is an exact quotation, without acknowledgement, derived from Hassan's *Soal-Jawab Masalah Agama*, in which he gives his *fatwā* on *talqīn*.[9] Hassan appears also to be the target in this critique of the reformist position on *uṣallī*. Abbas writes: "I read also the book that you [the one who is asking for legal advice from Abbas] mentioned.... In this book, he used the term *tidak sah* [not correct] for the *ḥadīth*s which are *tidak ṣaḥīh* [unsound-*ḥadīth/da'īf*]. He does not know that there is a big difference between *tidak sah* and *tidak ṣaḥīh*."[10] In his *fatwā* on *talqīn*, Abbas goes on to point out that:

> The *ḥadīth* of Abū Umāmah is *tidak ṣaḥīh* and not *tidak sah*. *Tidak sah* means invalid (*bātil*) and that it cannot be accepted as a religious reason, while *tidak ṣaḥīh* can be accepted and used as a legal reason because it could be a *ḥadīth ḥasan* as explained in the *muṣṭalaḥ al-ḥadīth* [the science of Sunnah]. The use of the term *tidak sah* for the *ḥadīth da'īf* [of *ḥadīth* Abū Umāmah] was intentionally used [by Hassan] to lead people to the wrong direction.[11]

These criticisms were definitely directed at Hassan, for it is a fact that Hassan, in quite a number of places, uses the term *tidak sah* to describe Sunnahs which are weak (*da'īf*); Hassan also states in one of his works that the Sunnah of Abū Umāmah is *tidak sah*.[12]

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[9]Hassan, "Men-dla'ifkan Hadiets Talqin?" 977.

[10]Abbas, "Masalah Niyat dan Ushalli," 243.

[11]Abbas, "Masalah Talqin," 112. For another example, see Abbas, "Masalah Niyat dan Ushalli," 243 paragraph 9, and compare it to Hassan, "Melafazhkan Niat," in *Soal-Jawab*, vol. 1, 94 paragraphs 10 and 11.

[12]See Hassan, "Melafazhkan Niat," 94; idem, "Tudung Kepala Wanita," 619; idem, *al-Djawāhir*, i; idem, *Pengajaran Shalat*, 76, 337; idem, *Wanita Islam*, 70, 112; idem, "Men-dla'iefkan Hadiets Talqin?" 976; Anshari and Mughni, *Wajah & Wijhah*, 64; Ibrahim, "Oeroesan Koeboer Lagi," 29 note 1, 32 note 1.

These are only two examples out of many in which Abbas avoids any explicit mention of Hassan's name while at the same time attacking his principles. Another striking instance is to be found in the former's condemnation of the ideas of Sukarno. Abbas writes: "when he was sent to Endeh in Flores, Sukarno sent many letters to *his friend* [italics mine] discussing the need for religious reform. These letters were then included in *Di Bawah Bendera Revolusi.*"[13] Of course, anyone familiar with Sukarno's works will acknowledge that the words "*his friend*" refer to Hassan, for the well-known letters found in the *Di Bawah Bendera Revolusi* are those that Sukarno sent to Hassan.

It may be appropriate to examine in more detail Abbas' response to Hassan's position on *uṣallī*, already referred to in the preceding chapter. Hassan for his part castigated the traditional scholars who believed that the practice of *uṣallī* is based on, among other foundations, a *qiyās* having as its basis (*aṣl*) the intention of the Prophet to perform pilgrimage. Besides his refusal to accept *qiyās* in matters of worship (*'ibādāt*), Hassan also claims in one of his articles that the Sunnah in which the Prophet verbally expressed his intention to perform the pilgrimage is not sound (*tidak sah*).[14] As the defender of common usage among Muslims, Abbas responds to this criticism by asking the following questions: "Is there any one who says that it is not allowed to make a *qiyās* between [intention in] the prayer and [that in] pilgrimage?

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[13]Siradjuddin Abbas, "Masalah Modernisasi Agama," in *40 Masalah Agama*, vol. 2, 241.

[14]Hassan, "Melafazhkan Niat," 94.

Does Allah or His Prophet say anything about it [viz. the prohibition of such a *qiyās*]?" Concerning the status of the Sunnah, Abbas is of the opinion that it is found in the *Ṣaḥīḥ* of Bukhārī. According to him, any Sunnah found in the *Ṣaḥīḥ* of Bukhārī is in fact sound (*ṣaḥīḥ*). Failure to acknowledge this would mean refusing the consensus of all Muslims throughout the world. In conclusion, Abbas writes: "a statement that indicates the existence of a weak tradition in the *Ṣaḥīḥ* of Bukhārī comes only from the Orientalists who are unbelievers."[15] The implication here is that Hassan is an Orientalist, and, consequently, an enemy of Islam. The term orientalist is commonly used in Muslim religious polemic to refer to anyone, even a fellow Muslim, who is seen as discrediting Islam.[16]

Indeed, there were many issues on which Abbas disagreed with Hassan--issues discussed both above and in the preceding chapter. One should remember, however, that these differences depend for the most part on their approach towards *uṣūl al-fiqh*, and particularly on their views on the sources of Islamic law (*maṣādir al-aḥkām*). As stressed in the previous chapter, Hassan promoted the importance of "back to the Qur'an and Sunnah;" accordingly, anything contrary to these two primary sources had to be rejected. What is more, Hassan insisted that sources with higher authority should

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[15]Abbas, "Masalah Niyat dan Ushalli," 244; idem, "Masalah Modernisasi Agama," 312.

[16]It is true that the term "orientalist" has all too frequently been employed to denigrate those who promote ideas which are not in accordance with common belief and practice, most notably those held by students who have graduated from Western universities. This tendency is still prevalent among some Indonesian Muslims of the present-day and has, I think, to some extent become a significant barrier to the progress of Muslims themselves.

take precedence over lower ones. Thus, the Qur'an supersedes the Sunnah, the Sunnah consensus, and consensus *qiyās*. This is exactly the reverse of Abbas' approach to the sources of Islamic law. He agrees with Hassan that there are four sources of Islamic law; nevertheless, he indicates clearly that the higher sources should be interpreted according to the lower ones, a doctrine that originated in Shāfi'ī's *uṣūl al-fiqh*. That is to say, the Qur'an should be interpreted according to the Sunnah; Sunnah according to the consensus, and consensus according to *qiyās*. If for instance there is a consensus of Shāfi'ī scholars on a given issue which seems to contradict the literal meaning of either the Qur'an or Sunnah, Abbas would insist on following the consensus; for one thing, this consensus must be understood as a true interpretation of the religious teachings found in the Qur'an or Sunnah. This can be seen in the case of *usallī* and *tarāwīh* explained in the preceding chapter. It is against this background that we can understand Hallaq's statement:

> The epistemological value attached to consensus renders this instrument so powerful in the realm of doctrine and practice in the community that it can override established practice as well as clear statements of the Qur'an. For instance, if the community, represented by its *mujtahid*s, reaches a consensus that runs counter to a Qur'anic text, the text is considered to have been superseded by this consensus.[17]

Abbas' reliance on the legal theories of the Shāfi'ī school is also evident in his anti-reformist article "Masalah Modernisasi Agama" (The Issue of Religious Modernization/Reformation).[18] He explains therein two points: the importance of

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[17]Hallaq, "Consensus," in *Encyclopedia of the Modern Islamic World.*

[18]See *40 Masalah Agama*, vol. 2, 201-320.

preserving the teachings of the Shāfi'ī school, and the danger posed by the reform movement to the unity of the Indonesian Muslims as a whole.

Regarding the first point, Abbas explains that, since the coming of Islam to Indonesia, the teachings of the Shāfi'ī school have predominated. All the sources used in religious education and the religious courts were inspired by the theories of Shāfi'ī. This has contributed to harmony among Muslims in the Malay-speaking countries.[19] It is therefore unfortunate, he claims, that beginning with the early years of the twentieth century, this harmony began to be disturbed by the "strange ideas" of the so-called reformists, modernists, and the like.[20] According to Abbas, these groups claimed that their central mission was to provoke war against imitation (*taqlīd*), innovation (*bid'ah*), and superstition (*khurāfah*) while at the same time promoting the importance of *ijtihād* and the policy of "back to the Qur'an and Sunnah," as if Indonesian Muslims were neglecting these two sources. According to Abbas, no one would deny the importance of the Qur'an and Sunnah; nevertheless, if one were to analyse the track record of the reformists, it might be qualified by the phrase "a good statement used for deceptive intention" (*kalimatu ḥaqqin urīda bihā al-bāṭil*). The call of the reformists, Abbas goes on to say, is similar to the slogan "the decision is God's alone" (*lā ḥukma illā lillāh*) flung by the Khawārij at their enemies during the battle

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[19]See generally Abbas, *Madzhab Syafi'i*, especially chapter five, "Perkembangan Madzhab Syafi'i ke Indonesia," 239-97. See also Abbas, "Masalah Modernisasi Agama," 206-7, 209; idem, "Foreword" to the first edition of his *40 Masalah Agama*, vol. 1, 8-9.

[20]Abbas, "Foreword," 9.

of Ṣiffīn in 37/657, accusing the negotiators appointed by 'Alī and Mu'āwiyah of neglecting the Qur'an and Sunnah.[21] In fact, it is the Orientalists who have spread the lie that present-day Muslims do not follow the teachings of the principal sources of their faith but rather the opinions of their religious leaders.[22] Moreover, the anti-*madhhab* position of the reformists combined with the latter's openness to the ideas of the Shī'ī, Mu'tazilī, and Wahhabī schools had contributed to the divisiveness afflicting the Indonesian Muslim community. The creation of bodies designed to restore unity, such as Masjumi, Liga Muslimin Indonesia, and Kongres Muslimin Indonesia, had all ended in failure, and Abbas lays the blame for this on the doorstep of the reformists.[23] Finally he suggests that efforts must be made to cure this turbulent situation, the most effective solution being to bring Muslims back to the teachings of the Shāfi'ī school.[24] This was not only because the Shāfi'ī school has been the school of the majority of Indonesian Muslims since the beginning but, more importantly, because it is also the most popular in the Muslim world. It should be kept in mind, says Abbas, that the Shāfi'ī school is nobler (*lebih agung*) than the

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[21]Abbas, "Masalah Modernisasi Agama," 273-4. For the two phrases, see also Muḥammad b. 'Abd al-Karīm al-Shahrastānī, *Kitāb al-Milal wa al-Niḥal*, ed. Muḥammad b. Fatḥ Allāh Badrān (Cairo: Maṭba'at al-Azhar, 1947), 201. For an analysis of the phrase *lā ḥukma illā lillāh*, see G.H. Hawting, "The Significance of the Slogan *Lā Ḥukm Illā Lillāh* and the References to the *Ḥudūd* in the Traditions about the Fitna and the Murder of 'Uthmān," *Bulletin of the School of Oriental and African Studies* 41 (1978), 453-63.

[22]Abbas, *Soal Jawab Keagamaan*, 149.

[23]Abbas, "Masalah Modernisasi Agama," 205-7; idem, "Foreword," 9.

[24]Abbas, *Madzhab Syafi'i*, 299-300; idem, "Masalah Modernisasi Agama," 275, 317.

Hanbalī school of the reformists. That is to say that if Indonesian Muslims were to switch over to the Hanbalī school as advocated by the reformists, it would be a sign that Muslims were on the decline (*menjalani garis menurun*); for, unlike the Shāfi'ī school, the Hanbalī school employs "disconnected" Sunnah (*hadīth mursal*) as a foundation for establishing religious rules.[25]

Moreover, to convince his fellow Muslims of the danger of reformist ideas, Abbas traces their origins in the central Islamic lands. Abbas attributes their beginnings to Ibn Taymiyyah, whose ideas were then spread by later figures such as Ibn Qayyim al-Jawziyyah, Muhammad ibn 'Abd al-Wahhāb, Muhammad 'Abduh, and Rashīd Ridā. The journal published by the latter two, *al-Manār*, was largely responsible for their propagation.[26] Abbas next presents a negative picture of the proponents of reform, especially Ibn Taymiyyah. He says that Harran, the birthplace of the latter, was a predominantly Christian village and home to people who made it a practice to manipulate reason.[27] Along with this, he repeats Ibn Batūtah's report that Ibn Taymiyyah was mentally unstable (*illā anna fī 'aqlihi shay'an*),[28] leading

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[25]Abbas, "Masalah Modernisasi Agama," 270-2.

[26]Abbas, "Foreword," 9; idem, "Masalah Modernisasi Agama," 208-11. Elsewhere, Abbas points out that the proponents of the reform movement include: Ibn Taymiyyah, Muhammad ibn 'Abd al-Wahhāb, Jamāl al-Dīn al-Afghānī, Ahmad Khan, Muhammad 'Abduh, Mirza Ghulam Ahmad, Mustafa Kemal Ataturk; see Abbas, "Masalah Modernisasi Agama," 213.

[27]Siradjuddin Abbas, *I'tiqad Ahlussunnah Wal-jama'ah* (Jakarta: Pustaka Tarbiyah, 1983), 261.

[28]In fact, Ibn Batūtah himself acknowledges the fact that Ibn Taymiyyah was a famous jurist (*faqīh*) in Damascus respected by his society. For the passage, see Ibn Batūtah, *Rihlat Ibn Batūtah* (Beirut: Dār Bayrūt, 1980), 95. An analysis of the issue

him to issue many strange *fatwās* contrary to common belief and practice.[29] One should not therefore wonder that the Indonesian reformers, who were influenced by Ibn Taymiyyah, produced so many *fatwās* contradictory to the common beliefs and practices of Indonesian Muslims. Abbas goes on to say that Ibn Taymiyyah was also strongly opposed to the *sūfī* tradition popularly practiced by most Mulims of his era, assaulting it as forbidden (*harām*) and a form of polytheism (*shirk*).[30] He also makes the point that Ibn Taymiyyah was reputedly a follower of the Ḥanbalī school; therefore, Ibn Taymiyyah was not a *mujtahid* but rather a *muqallid* following the teachings of Ahmad ibn Ḥanbal. Thus, it is odd that Ibn Taymiyyah warned Muslims against practising *taqlīd* and yet encouraged people to follow blindly his ideas.[31] Abbas' point is an interesting one, for it undermines the claim of the reformists that they exercised *ijtihād* and eschewed *taqlīd*, when in fact their spiritual leader, Ibn

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can be read in Little, "Did Ibn Taymiya Have a Screw Loose?" 93-111. It should be noted however that the Indonesian reformists generally praise Ibn Taymiyyah as a great scholar; see e.g. "Sjurga Dunia," *Pandji Masjarakat* 17 (15 February 1960), 1.

[29]Abbas, *I'tiqad Ahlussunnah*, 264, 266, 307-8; idem, "Masalah Modernisasi Agama," 214-9, 292-3. Abbas traces also what he calls the strange ideas of the other proponents of the reform movement in his "Masalah Modernisasi Agama," 220-46, 294-316 and his *I'tiqad Ahlussunnah*, 309-32, 341-53.

[30]Abbas, *I'tiqad Ahlussunnah*, 303-4. In fact, according to Makdisi, Ibn Taymiyyah did not condemn all the *sūfīs*; he assaulted those who, in his eyes, violated the Qur'an and Sunnah; he was even reported to have been himself a member of the *Qādiriyyah* order; see chapter one, 36 note 62.

[31]Abbas, *I'tiqad Ahlussunnah*, 263.

Taymiyyah, was clearly a *muqallid*.[32] Moreover, in spite of their claim to be anti-*madhhab*, the reformists were guilty of merely promoting a change from one school (Shāfi'ī) to another (Hanbalī). A lot of energy was being expended by the reformists in this contradictory effort, which in the end only led to more confusion for Muslims.[33]

According to Abbas, the danger of the reformist movement can be seen even more clearly when we look at the other source of the reformists' inspiration: the Orientalists. These Orientalists were Western scholars, for the most part Christians, who worked with colonialist and imperialist administrators to defeat and oppress Muslims in every part of the world. Abbas cites the names of Snouck Hurgronje, Van der Plas, Van der Meulen, A. Gobee, De Pyper, L. Stoddard, and Philip K. Hitti, among others.[34]

It was earlier mentioned that Abbas, in his attacks on the reform movement, avoided citing the names of individual scholars whom he regarded as chiefly to blame, Hassan being a prime example. The one person that he does however mention in this regard is Sukarno. Through Sukarno, Abbas criticized the reformist ideas on *taqlīd*,

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[32]Abbas, "Masalah Modernisasi Agama," 264-9. In the eyes of Abbas, *taqlīd* is not necessarily unlawful, but ranks after *ijtihād*. Contrary to Hassan, he hardly mentions the term *ittibā'*. This may point to a difference in understanding the meanings of these terms, i.e. *taqlīd* and *ijtihād*; see e.g. Abbas, "Masalah Modernisasi Agama," 252-64; idem, *Madzhab Syafi'i*, 55-7.

[33]Abbas, "Masalah Modernisasi Agama," 270-1, 273; idem, *Madzhab Syafi'i*, 113-5.

[34]Abbas, *Soal Jawab Keagamaan*, 99-104; idem, "Masalah Modernisasi Agama," 211-2, 283-6; idem, *Madzhab Syafi'i*, 114.

tahlīl, Sunnah, etc. As has already been shown above, these criticisms were not, in fact, necessarily a true reflection of Sukarno's doctrine; some clearly referred to Hassan's ideas but were connected instead to the name of Sukarno. The point to be emphasized here is this: it was misleading on Abbas's part to attack the reformists, particularly Hassan, of being negatively influenced by the Orientalists or Western ideas. Indeed, Hassan himself was known to have challenged those who blindly followed Western ideas, most notably Sukarno.[35]

b. Nahdlatul Ulama (NU).

In his study of the NU, Farichin Chumaidy concludes:

> The significance of the emergence of the Nahdlatul 'Ulamā' for the Indonesian Muslim community can be viewed perhaps best from the angle of the orthodox [traditionalist] Muslim group. It united them and made them a social force which was regarded as a counterbalance to the existence of the Islamic reformist organizations in Indonesia.[36]

According to Chumaidy, one of the most important reformist organization of the era was Persis. He goes on to say that the one whose ideas gave real shape to the movement and "clearly placed it in the reformist group was Ahmad Hassan."[37] Thus, in his discussion of the controversial issues of Islamic law, Chumaidy chooses Hassan's ideas as representative of the reformist groups opposed by the traditionalist

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[35]See chapter four in the section on "Islam and Nationalism."

[36]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 159. Similarly, see Slamet Effendy Yusuf, Mohammad Ichwan Syam, and Masdar Farid Mas'udi, *Dinamika Kaum Santri* (Jakarta: CV Rajawali, 1983), x, 13-4.

[37]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 27.

NU.[38] This is a true reflection of the dialogue that went on between Hassan and his traditionalist opponents, and makes it even more important to understand the position adopted by the NU.

The NU was established on 31 January 1926 in Surabaya, three years after the foundation of Persis, at the initiative of Abdul Wahab Hasbullah, a famous *kiyai* of that era who was known for his loyalty to the traditionalists (*kaum tua*).[39] It is no exaggeration to state that this organization is regarded as the most important representative of the traditionalist group; for one thing, the NU has always been the largest Muslim organization, compared not only to the other traditionalist groups but even to the reformist ones.

According to the second article of its constitution, one of the objectives of the NU is "to hold firmly to [the teachings of] one of the four *imām madhāhib*: Imām Muḥammad ibn Idrīs al-Shāfi'ī, Imām Mālik ibn Anas, Imām Abū Ḥanīfah ibn Nu'man, or Imām Aḥmad ibn Ḥanbal, and to carry out any program that promotes the advantages of Islam."[40] According to Ahmad Siddiq, the legal school, is similar to

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[38]See, for instance, in the case of *ijtihād*, *talqīn*, *uṣallī*, and *khutbah*.

[39]Zuhri, *Kebangkitan Islam*, 609; Yusuf, Syam, and Mas'udi, *Kaum Santri*, 21; Kacung Marijan, *Quo Vadis NU Setelah Kembali ke Khittah 1926* (Jakarta: Penerbit Erlangga, 1992), 17; Atjeh, *Wahid Hasjim*, 469, 476.

[40]Atjeh, *Wahid Hasjim*, 505, 509; Yunus, *Pendidikan Islam*, 240, 243; Zuhri, *Kebangkitan Islam*, 610. The school-based character of the NU was introduced also in the "Interpretation of the Principles of the Party" adopted by the NU at its National Congress of September 1954 and printed in *Risalah Politik*, 3-4 (Djakarta: Pengurus Besar Nahdlatul Ulama, 1955), an extract of which can be found in Herbert Feith and Larice Castles, eds., *Indonesian Political Thinking 1945-1965* (Ithaca: Cornell University Press, 1970), particularly section "Nahdlatul Ulama: God's Law and Its

what may be termed a "school of thought" (*disiplin berpikir*) which naturally exists in any branch of science.[41] Obviously, the NU "was established in reaction to the emergence of a movement whose aim was to abolish the legal school in Indonesia...."[42] In fact, the problem of legal schools was even cited by the NU as among the reasons for their leaving the political party Masjumi in 1952.[43]

Thus, the NU came to be known as the *ahl al-madhāhib al-arba'ah*,[44] meaning that it saw the teaching of all four schools as equally valid and showed no inclination to favour any particular one of them. This is on the theoretical level. In

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Interpretation (1954)," 204-11. This was emphasized later in the national meeting of NU scholars in Bandarlampung on 23 January 1992; see Pengurus Besar Nahdlatul Ulama, *Keputusan Munas Alim Ulama & Konbes Nahdlatul Ulama di Bandarlampung* (Semarang: Sumber Barokah, 1992), 3-9; "Sistem Pengambilan Keputusan Hukum," *Aula* (February 1992), 32-8; Aziz Masyhuri, "Sistem Pengambilan Keputusan Hukum dalam Bahtsul Masail di Lingkungan NU," *Aula* (October 1994), 40-5, 55. See also Said Agil Husin Al-Munawar, "Mazhab dalam Pandangan NU, Fiqh dan Teologi," *Aula* (September 1992), 51, 56-7; "Menghalalkan Ijtihad di Bandarlampung," *Tempo* (1 February 1992), 31.

[41]Ahmad Siddiq, "Pokok-Pokok Pikiran Nahdlatul Ulama tentang 'Tajdid'," *Asy Syir'ah* 1 (1988), 45.

[42]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 41. See also Yusuf, Syam, and Mas'udi, *Kaum Santri*, 27.

[43]Mughni, *Hassan Bandung*, 96. The argument in support of reliance on schools given by the NU was rejected by Hassan on the grounds that it was based on artificial reasons. According to Hassan, the different views on school were familiar to all members of the Masjumi since its establishment. Thus, it is hard to believe that the school issue was the most important factor behind the NU's quitting from Masjumi; therefore, there must be another more significant reason; see Hassan, *Risalah Al-Madz-hab*, 17-8, 20. See also Federspiel, *Persatuan Islam*, 162.

[44]For the meaning of *madhhab* according to the NU doctrine, see Masyhuri, "Pengambilan Keputusan Hukum," 42-4.

practice, however, the NU was (and still is) devoted to the Shāfi'ī school[45] and refused to adopt the eclectic method (*talfīq*).[46] For this reason, NU doctrines can hardly be differentiated from those of Perti, for both are known to be champions of traditional beliefs and practices according to the Shāfi'ī school, beliefs which are characteristic of Indonesian Islam. Therefore, it is not strange at all that in the educational centres affiliated to the NU, the works of medieval Shāfi'ī scholars form the basis of the curriculum. The only difference between Perti and the NU is that the latter is open to the other three schools in cases that are not to be found in Shāfi'ī sources, resorting in such cases to what is called *intiqāl madhhab* (borrowing opinions from other schools).[47] This can be seen, for instance, in the cases of determining the first day of *Ramadān*, the invalidity of ablution (*wudū'*), and the alms-tax (*zakāh*) value of plants.[48] In fact, the legal school approach (*manhaj al-madhhab*) can be

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[45]Marijan, *Quo Vadis NU*, 21; Imran Hamzah, "Katanya Mazhab Empat, Tapi...," *Aula* (February 1994), 34.

[46]"Pinjam Mazhab (Lain), Apa Salahnya?" *Tempo* (14 March 1992), 69; Mughni, *Hassan Bandung*, 96.

[47]See "Pinjam Mazhab (Lain), Apa Salahnya?" 69; Malik Madaniy, "Cara Pengambilan Keputusan Hukum Islam dalam Bachtsul Masail Nahdlatul Ulama (Sebuah Alternatif Pengembangan)," *Aula* (December 1991), 59.

[48]"Pinjam Mazhab (Lain), Apa Salahnya?" 59. Geographically, Indonesia is a vast country. If the Indonesian Muslims were to follow strictly the Shāfi'ī school, the first day of *Ramadān* would be different from one area to another; for according to the Shāfi'ī school, only those who live in the same locality can start *Ramadān* on the same day. Thus in practice, says Ali Yafi, Indonesian Muslims follow rather the Mālikī school which allows Muslims in one country to start *Ramadān* on the same day, although they may live in different regions. Similarly, ablution (*wudū'*), according to the Shāf'ī school, is rendered invalid by touching between a man and a woman. This is difficult to avoid at, for instance, the time of *tawāf* during the pilgrimage. In such a case, according to Sahal Mahfudz, Indonesian Muslims can

seen as making the NU very flexible in that it is able to provide a number of alternatives in dealing with social issues; at the same time, however, it is considered, particularly by their opponents, as an ambivalent and opportunistic stance.[49]

The criticisms of Hassan and other reformists forced NU into defending their position on the legal school (*madhhab*). According to the NU, the notion of school is not an arbitrary but rather a highly articulated approach to problem-solving. Certainly, the NU is no different from Hassan in respecting the Qur'an, Sunnah, consensus, and *qiyās*. But the NU differs fundamentally from him in the application and the operation of these sources, particularly insofar as they relate to the notions of *ijtihād* and *taqlīd*. Responding to Hassan's criticisms and yet at the same time preserving the traditional approach towards *uṣūl al-fiqh*, the scholars of the NU acknowledge that the Qur'an and Sunnah are the primary sources of Islamic law, and that they should be exploited in the process of *ijtihād* in order to find the answer to a given issue; but they also insist on the fact that it is not easy to determine the rules

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follow the doctrine of the Ḥanafī school which holds that touching between a man and a woman does not make ablution invalid. Finally, according to the Shāfi'ī school, *zakāh* on plants should be paid in the form of the same plants and cannot be replaced by money. Given the situation of traditional farming in Indonesia, this can create difficulties for the farmers themselves who, in most cases, do not sow their own crops but rather have this done by others from whom they receive a cash payment after the crops are harvested and sold. The doctrine of the Ḥanafī school can free farmers from this difficulty, in that it allows for the *zakāh* to be paid in the form of money.

[49]Arief Muhaimin, "Buat Para Pembaca dan Ust. Sapto Waluyo," *Al-Muslimun* 300 (1995), 4.

derived from either the Qur'an or Sunnah.[50] Unlike Hassan, the NU believes that it is only the schools' eponyms who can be considered true *mujtahid*s, or absolute *mujtahid*s (*mujtahid mustaqil* or *mujtahid mutlāq*), i.e. those who exercise *ijtihād* by deducing rules directly from the Qur'an and Sunnah, while all others must be deemed *muqallid*s, or those who exercise *taqlīd*.[51] This being the case, *taqlīd*, according to the doctrines of the NU, was a natural phenomenon in the period subsequent to the founders of the schools. Far from being forbidden, *taqlīd* is even recommended, particularly for people of our era who live so long after the time of the Prophet. Chumaidy rightly observes:

> ...it should be noted that the notion of *taqlīd* according to the Nahdlatul 'Ulamā' is not as its opponents have charged, i.e. blind and unquestioning obedience to the interpretation and teaching of religious law expounded by the four *Imām*s. The Nahdlatul 'Ulamā' views that *taqlīd* has a broader meaning. Except those who have the necessary requirements for exercising *ijtihād* (the four *Imām*s) all others are included under the category of *muqallid*, which consists of several stages. The highest is that of the *muntasib*s, those who actually exercise *ijtihād*, but who still follow the method used by their *imām*s (one of the four *Imām*s). Among the *'ulamā'* who were called *muntasib* were the students of the four *Imām*s, such as Ibn Qāsim, Muhammad ibn Ahmad al-Hasan, Abū Yūsuf, al-Mazāni, etc. The lower stages of *muqallid* are *ashāb al-wujūh, ahl al-tarjīh, huffāz*, and some other categories which end in the lowest stage, that of the uneducated laymen who follow the teaching of their *Imām*s

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[50]See generally Machfudz Shiddiq, *Disekitar Soal Idjtihad dan Taqlid* (Surabaja: Nahdlatul-'Oelama', 1940).

[51]Ibid., 54-5; Feith and Castles, *Indonesian Political Thinking*, 210; Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 115; Yusuf, Syam, and Mas'udi, *Kaum Santri*, 6; Abdul Karim Husain, *NU Menyongsong Tahun 2000* (Kendal: CV. MA. Noer Chamid, 1989), 10; Afifuddin Muhajir, "Implementasi Sistem Pengambilan Keputusan Hukum dalam Bahtsul Masail NU," *Aula* (November 1994), 83. For an analysis of the problem of the existence of the *mujtahid*, see generally Hallaq, "Controversy about the Existence of Mujtahids."

without knowing their religious arguments at all.[52]

In fact, it is commonly believed by the members of the NU that the gate of *ijtihād* had been closed since the establishment of the schools; since then the scholars have had to confine themselves to the inference (*istinbāṭ*) formulated by the schools' eponyms.[53] A few have even gone so far as to state that "embracing Islam without employing one of the four schools is invalid (*bātil*)."[54] According to the NU doctrine, it is enough for Indonesian scholars to follow the rules determined by the medieval scholars, for in referring to the latter, they act as agents when issuing *fatwās* for the masses. Accordingly, the members of the NU depend completely upon the scholars,[55] and these scholars in turn rely on the medieval works on *fiqh* believing

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[52]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 115. See also Shiddiq, *Idjtihad dan Taqlid*, 56-8; Reinhart, "Transcendence and Social Practice," 20-1; Makdisi, "*Freedoom in Islamic Jurisprudence*: Ijtihad, Taqlid *and Academic Freedom*," in *The Concept of Freedom in the Middle Ages: Islam, Byzantium and the West* (Paris: Les Belles Lettres, 1985), 82. On the justification for *taqlīd*, see generally Mohammad Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*," *Islamic Law and Society* 3 (1996), 193-233; Hallaq, *History of Islamic Legal Theories*, 179-81; Jackson, "Defence of Two-Tiered Orthodoxy," 138.

[53]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 116. The idea that the gate of *ijtihād* has been closed was common not only among the members of NU but also among those who were considered *kaum tua*; see e.g. Naoeli, "Bantahan," *Pembela Islam* 17 (January 1931), 36.

[54]Marijan, *Quo Vadis NU*, 30. See also Feith and Castles, *Indonesian Political Thinking*, 210.

[55]The central position of scholars among the members of NU is indicated by the name of the organization itself: Nahdlatul Ulama and not Nahdlatul Ummah or Nahdlatul Muslim; see Yusuf, Syam, and Mas'udi, *Kaum Santri*, 22; Marijan, *Quo Vadis NU*, 30.

that they transmit the unquestionable inference (*istinbāṭ*) of the Shāfi'ī school.[56] Consider, for example, the following *fatwā* issued at one of the Mu'tamar Nahdlatul Ulama:

> Question (*istiftā'*): What is the rule of the prayer, the reward for which is given to the deceased (*ṣalāt al-hadiyyah*), held by the family of the deceased on the first day after the death, to which they invite their family and neighbours [to perform it] and after which, food is served?
>
> Answer (*fatwā*): If the prayer is intended as purely recommended prayer (*sunnah mutlaqah*) and its reward is then sent to the deceased, such a prayer is permissible (*falā ba'sa bihā*) and according to one opinion, it is beneficial for the deceased. [But], if the prayer is intended as a prayer of reward (*ṣalāt al-hadiyyah*), it is invalid and forbidden. This *fatwā* is based on the second volume of *Tuhfat al-Muḥtāj*, chapter *ṣalāt al-ishrāq*.[57]

This *fatwā* was issued at the national meeting of the NU in Cirebon (West Java) on 27 August 1931, and relies on an inference (*istinbāṭ*) still maintained until the present day. Compare it to the following *fatwā* issued on 19 September 1995:

> The foundation of the stock exchange (*bursa efek*) as the institution to manage the capital market (*pasar modal*) is substantially permissible (*mubāḥ lidhātih*). This is based, among other references, on *Nihāyat al-Muḥtāj*, vol. 4, 84-5, 87, *Hāshiyat Radd al-Muḥtār*, vol. 5, 642, *Mudawwanah Kubrā*, vol. 4, *Takmilah*, the commentary on *Fatḥ al-Qadīr*, vol. 7, 52.[58]

Not surprisingly, Hassan condemned such an approach as unforgivable *taqlīd*, and held it up as evidence of the traditionalists' over-reliance on it to the complete

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[56]Al-Munawar, "Mazhab," 57-8.

[57]Pengurus Besar Nahdlatul Ulama, *Aḥkām al-Fuqahā'*, vol. 1 (Semarang: Toha Putra, 1960), 69-70.

[58]"Dihukumi Setelah Lama Tak Jelas," *Aula* (October 1995), 88.

exclusion of *ijtihād*.[59] In the eyes of Hassan, it was wrong for the traditionalists to place the views of scholars on the same level as, and sometimes even higher than, the Qur'an and the Sunnah.[60] In his response to this, Al-Munawar states that this accusation is based on a lack of understanding of the doctrine as it was adopted by the NU.[61] The NU members also embrace the doctrine that "...there is nothing in any *madzhab* which is in contradiction with the Koran and Sunnah. Because these two form the basis of Islamic jurisprudence, it is not possible that the results can conflict with the Koran and the tradition."[62] On this basis, the NU scholar Saifuddin Zuhri somewhat cynically remarks that it would be quite surprising to find, in this twentieth century, someone who could legitimately claim to have fulfilled the requirements of a *mujtahid*. It would be as if Imām Shāfi'ī had been reborn in our day.[63] It is interesting to note in this connection that the NU almost never refers to the statement by Shāfi'ī himself in which, according to Hassan and the reformists in general, he

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[59]See A.R. Baswedan, "Perkembangan Fikiran Dikalangan Umat Islam," *Hikmah* 4 (23 January 1954), 4.

[60]A. Hassan, *Kesopanan Tinggi Secara Islam* (Bandung: C.V. Diponegoro, 1993), 28.

[61]Al-Munawar, "Mazhab," 55.

[62]Feith and Castles, *Indonesian Political Thinking*, 210.

[63]Zuhri, *Kebangkitan Islam*, 615. In the context of Shawkānī's era, Hallaq writes: "This is why...mujtahids might appear to have vanished; it is not because they have really vanished that their voices are not heard, but because their existence will be significantly endangered should they insist on claiming the right of ijtihad for themselves"; see Hallaq, "Gate of Ijtihad," 32.

condemns *taqlīd*.[64] This view of Shāfi'ī is usually quoted in the discussion known as "the attitude of the four *imām*s in condemning *taqlīd*" (*aqwāl al-a'immah al-arba'ah fī dhamm al-taqlīd*) which takes place in certain religious schools which promote the reform movement.[65] But this is not all. The members of the NU never mention the statement of Muhammad Hasjim Asj'ari, the very founder of the NU, in which he warns his fellow Muslims against fanatic loyalty towards a particular school, saying finally, "if Shāfi'ī, Abū Ḥanīfah, Mālik, Aḥmad, Ibn Ḥajar, and Ramlī were still alive, they would strongly reject your attitude and they would not be responsible for what you have done."[66]

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[64]Shāfi'ī was reported to have said: *mathalu al-ladhī yaṭlubu al-'ilma bilā ḥujjah kamathali ḥātibi laylin yaḥmilu ḥuzmah ḥaṭab wa-fīhi af'ā taldaghuhu wa-huwa lā yadrī* (the one who seeks knowledge without an authority is like a wood-cutter in the night, carrying a bundle of wood with a snake therein that keeps biting him while he is unaware of it); see Hassan, *Ijma'*, 124. He was also reported to have said: *mā qultu wa-kāna al-nabī qad qāla bi-khilāfi qawlī, famā ṣaḥḥa 'an al-nabī awlā wa-lā tuqallidūnī. Wa'idhā ṣaḥḥa khabarun yukhālifu madhhabī fa-ittabi'ūhu wa-i'lamū annahu madhhabī* (If you come across a statement by me which runs counter to a statement by the Prophet, then follow the Prophet's statement and do not imitate me. Similarly, if an authentic Sunnah conflicts with my school, then follow the former and know that it is my school); see Abdulwahhab, "Djawaban jang Tak Poetoes Asa," *Pembela Islam* 49 (July 1932), 8; M. Natsir, *Islam dan Akal Merdeka* (Jakarta: Media Da'wah, 1988), 31; Zuḥaylī, *Uṣūl al-Fiqh*, vol. 2, 1130; Maḥmaṣānī, *Falsafat al-Tashrī'*, 187; Shawkānī, *al-Qawl al-Mufīd*, 22-3.

[65]See, for instance, the course outlines for *fiqh* and *uṣūl al-fiqh* as taught in the "reformist" school Pendidikan Hakim Islam Negeri (PHIN) of Yogyakarta.

[66]*Law anna al-shāfi'ī wa-abā ḥanīfah wa-mālik wa-aḥmad wa-ibn ḥajar wa-al-ramlī aḥyā' lashaddadū al-nakīr 'alaikum wa-tabarra'ū minkum fīmā taf'alūn*; see Sjaich Hasjim Asj'ari, *Al-Mawā'iẓ* (n.p.: Nahdlatul Oelama, 1935), originally delivered in the 9th National Congress of NU in Banjarmasin. See also Hassan, *Risalah Al-Madz-hab*, 39-40; Hamka, "Al-Mawaa'izh Sjaich Hasjim Asj'ari," *Pandji Masjarakat* 5 (15 August 1959), 5-6.

It is acknowledged, however, that the notion of the school has, to some degree, made the NU rigid and unable to deal with problems not covered by the medieval works on *fiqh*; in such cases, the NU usually adopts what in *fiqh* is known as *tawaqquf*, i.e. suspension of the issuance of a *fatwā*; consequently, there are many contemporary issues (*al-masā'il al-waqī'ah*) on which the NU has no policy.[67]

Judging by what has been discussed so far, one may conclude that there are certain positions adopted by the NU that are similar to those favoured by Perti. First, like Perti, the NU acknowledges only two means of determining certain rules of Islamic law: *ijtihād* and *taqlīd*. They hardly ever mention the practice of *ittibā'*, advocated by Hassan. While it is true that in his article on *madhhab*, Al-Munawar, a member of the NU, refers to *ittibā'*; nevertheless by his own admission this term is identical to *taqlīd*.[68] Machfudz Shiddiq even considers *ittibā'* the lowest type of *taqlīd*,[69] a view generally adopted by the members of the NU but one which differs fundamentally from that of Hassan.[70]

Secondly, like Perti, the NU espouses the belief that the higher level sources,

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[67]Chumaidy, "Jam'iyyah Nahdlatul 'Ulamā'," 159. See also Madaniy, "Pengambilan Keputusan Hukum Islam," 54; "Dihukumi Setelah Lama Tak Jelas," 86; "Pintu Ijtihad Sudah Ketemu Kuncinya," *Aula* (February 1992), 29; "Pinjam Mazhab (Lain), Apa Salahnya?" 69; Husain, *Menyongsong Tahun 2000*, 8; "Menghalalkan Ijtihad di Bandarlampung," 30.

[68]Al-Munawar, "Mazhab," 53-4.

[69]Shiddiq, *Idjtihad dan Taqlid*, 59.

[70]Hassan defines *ittibā'* as *qabūlu qawlin bihujjatin* (receiving a view with its argument), and *taqlīd* as *qabūlu qawlin bilā hujjatin* (receiving an idea without any argument).

or the ideas of earlier scholars, should be understood in the light of the lower level sources, or explanations of the same matters by later scholars. Without going into detail, it is sufficient to say that in the case of *uṣallī* explained earlier, for instance, the proponents of the traditional practice (i.e. the NU) used *qiyās* to legitimize it. This idea is based on the opinions of later scholars of the Shāfi'ī school but it contradicts, at least literally, what Shāfi'ī himself has said: "there is no analogy in the field of worship" (*lā qiyāsa fī al-'ibādah*).[71] This led Hassan to state that the members of the NU were not the followers of Shāfi'ī because they disregarded the latter's own, perfectly clear, statement regarding *qiyās*.[72] Of course, it is odd that the traditionalists have never attempted to explain this contradiction. Nobody has claimed that later Shāfi'ī scholars wilfully neglected the teachings of their school's founder on such issues; it was simply believed that the contradictions between these different generations of scholars could only be apparent ones, and not in fact essential--an answer that did not satisfy the reformists. Also significant is the fact that the works relied upon by the NU scholars are mostly, if not all, by later scholars of the Shāfi'ī school and not by Shāfi'ī himself.[73]

Thirdly, NU and Perti leaders are inclined to be both fatalist and pessimistic. That is to say, both see historical events as being predetermined and controlled from "above" and likewise believe that the high stature of the earliest generations of Islam

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[71]See chapter four on the section of *talaffuẓ bi al-niyyah*.

[72]Hassan, *Ijma'*, 72, 130.

[73]Madaniy, "Pengambilan Keputusan Hukum Islam," 54.

(*salaf ṣālih*) cannot be attained by later ones, a belief seen as validated by the Sunnah: "the best century is my century and then the one which follows and then the one which follows and then the one which follows."[74]

Given the fact that the NU's approach towards and conception of *uṣūl al-fiqh* was fundamentally different from that of Hassan, conflict between the two was unavoidable. A few members of the NU were even said to have labelled the scholars of Persis, and more particularly Hassan, as absolutely unqualified scholars (*'ulamā'/mujtahid bāṭil muṭlaq*).[75] The controversy came to a head in a debate (*munāẓarah*) on the problem of *taqlīd* held in the Madrasah al-Irsyad, in Gebang-Surabaya, attended by Hassan as the representative of Persis and Awad Bansir and Aboel-Chair of the NU in Cileduk.[76] Bansir opened the debate by asking Hassan to cite any Qur'anic verse which forbids *taqlīd*, to which Hassan replied by citing the Qur'an 3:103: "And hold fast, all together, by the Rope which Allah (stretches out for you), and be not divided among yourselves." This verse, said Hassan, obligates Muslims to rely for their ideas upon the Qur'an only and that, consequently, *taqlīd* is forbidden. Commenting on this verse in turn, Bansir was of the opinion that Allah asks Muslims in this verse to hold to the teachings of the Qur'an, but that there is

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[74]Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 5, 2; Ahmad, "Theory and Practice," 185; Schacht, "Classicisme, traditionalisme et ankylose," 148; Friedmann, *Prophecy Continuous*, 94-5.

[75]S.S. "Soeal-Djawab," *Pembela Islam* 2 (April 1956), 16.

[76]For the debate, see "Verslag Debat Taqlied," *Al-Lisaan* 1 (27 (December 1935), 28-9.

nothing therein which expressly forbids *taqlīd*. Faced with this reply, Hassan pointed out that it is of course difficult to find in the Qur'an any statement that accords exactly with established practices. For example, there is no verse in the Qur'an which says that Muslims are obligated to pray five times a day. Bansir, however, replied to Hassan: "...give me the verse which clearly forbids *taqlīd*; if you fail to do so, I cannot accept [your attack on *taqlīd*]." Hassan then turned the question back on Bansir asking him to provide any verse which literally obligates Muslims to perform *taqlīd*, to which Bansir replied: "I am not a scholar. I don't know the answer. But, Aboel-Chair has the answer." Chair then proceeded to address the following questions to Hassan: How do you translate the Qur'an 3:103? How did you learn Arabic? Did not all this come through the process of *taqlīd*? By the end of the debate, neither side had given any ground on the issue.

What is important to note regarding this event is that there is clearly a problem with terminology (i.e. *taqlīd* and *ijtihād*), which contributed greatly to the misunderstanding between Hassan and his NU opponents. For example, learning Arabic from a teacher is considered *taqlīd* by Chair, an idea rejected by Hassan on the grounds that it has nothing to do with the term.[77] Besides, the term *muntasib* (affiliated) used by the NU to refer to the *'ulamā' muqallidūn* (i.e. scholars who were affiliated with the founders of the schools) is similar to the term *mujtahid madhhab*

[77]Like Chair, Ghaffar Ismail was of the opinion that learning German is also considered a process of *taqlīd*, a view rejected of course by Hassan who accuses him of being ignorant of the meaning of the term; see Hassan, "Samboengan," 41-2.

used by others[78] or *mujtahid muntasib* employed by Majd al-Dīn Ibn Taymiyyah, Ibn al-Ṣalāḥ, and Nawawī. It is perhaps true to say that the terminological confusion afflicting Indonesian and other Muslim scholars explains the existence of the same syndrome in the writings of Western scholars, as noted by Hallaq.[79]

There was also a debate between Abdul Wahab Hasbullah (NU) and Hassan (Persis) held at the Clubhuis Nahdlatul Ulama of Kopoweg (Bandung) on 18 November 1935. On this occasion, Hasbullah explained the NU doctrines relating to the obligation of *taqlīd* imposed upon Muslims after the establishment of the four schools, as explained earlier. Hasbullah also emphasized the view that the doctrine of *ittibā'* introduced by Hassan was not known in Islamic teaching.[80] Hassan, for his part, explained to the audience the doctrine of Persis concerning the prohibition of *taqlīd*.[81]

At the same time, there were polemics between Hassan (published in *Al-Lisaan*) and Machfudz Shiddiq, another NU leader (published in *Berita Nahdlatoel 'Oelama'*) mostly concerned with *ijtihād*, *taqlīd*, *madhhab*, and their relation to the

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[78]See, for instance, Mahmaṣānī, *Falsafat al-Tashrī'*, 184-5.

[79]Hallaq, "Introduction: Issues and Problems," 135-6. See also idem, "Gate of Ijtihad," 25; Calder, "Nawawī's Typology of *Muftīs*," 159 note 42, 160 note 46.

[80]Of course, Hasbullah's understanding is incorrect, for earlier jurists such as Suyūṭī, Ibn 'Abd al-Barr, and Ibn Daqīq al-'Īd have dealt with the doctrine of *ittibā'*; see Dasūqī, *al-Ijtihād wa al-Taqlīd*, 203; Zuḥaylī, *Uṣūl al-Fiqh*, vol. 2, 1121; Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn*, vol. 2, 171, 178; Peters, "*Idjtihād* and *Taqlīd*," 140.

[81]Mughni, *Hassan Bandung*, 39-42. Hassan's response was elaborated later in his *Ijma', Qiyas, Madzhab, Taqlid*.

controversial issues of Islamic law (e.g. *talqīn*).[82] During this exchange of polemics, Shiddiq reminded Hassan of the fact that the NU has a large number of scholars who, through their knowledge and their inference (*istinbāṭ*), are able to help Muslims live according to the teachings of the Qur'an and Sunnah. In his response, Hassan writes: "we believe that the NU has many scholars; but this quantity is nothing if their quality is similar to that of Toean Shiddiq who attacks [our mission] without any argument."[83]

No less interesting is the letter sent by Wahid Hasjim, one of the NU leaders, to Hassan. While he was minister of religious affairs, Hasjim received a letter from Hassan calling attention to the spread of a dangerous new form of *bid'ah* among Indonesian Muslims, i.e. worshipping the statues and pictures of their leaders. Replying to this letter, Hasjim writes: "I am disappointed too [with this situation]. [But you have to remember that]...at the time when the NU and Persis openly disputed the ruling on pictures (*taṣwīr*), you were the one who issued a *fatwā* stating that the taking and making of photos are permissible.[84] Now, consequently, we witness the effect of your inference (*istinbāṭ*)."[85]

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[82]A. Hassan, "Berita Nahdlatoel-'Oelama' tentang Taqlied," *Al-Lisaan* 4 (7 March 1936), 28-30; idem, *Ijma'*, vii; Djaja, *Hassan*, 28; Mughni, *Hassan Bandung*, 41-4; Sj., "Boeat Orang Matikah atau Orang Hidup?" 8. Shiddiq's ideas of *ijtihād* and *taqlīd* was elaborated later in his *Idjtihad dan Taqlid*.

[83]Hassan, "Berita Nahdlatoel-'Oelama'," 29-30.

[84]For Hassan's *fatwā* on *taṣwīr* (e.g. picture), see A. Hassan, "Gambar," *Pembela Islam* 4 (January 1930), 49-51; idem, "Dari Hal Gambar," in *Soal-Jawab*, vol. 1, 347-63.

[85]Atjeh, *Wahid Hasjim*, 216.

Predictably enough, the fundamental difference between the NU and Hassan in the field of *uṣūl al-fiqh* has eventually led to conflicting views in the field of substantive law (*al-masā'il al-fiqhiyyah*); accordingly, some members of the NU, as representatives of the traditional outlook, disputed with Hassan over a number of issues in the field of Islamic law, some of which have been discussed in the preceding chapter. Nonetheless, the NU warned Hassan and the reformists in general of the danger of conducting endless debates over *khilāfiyyah* issues, i.e. points of law which are open to different interpretations. In such cases, according to the NU, respect has to be shown to those who have different views. More importantly, an effort had to be made to avoid conflict among Muslims over such issues (e.g. *uṣallī* and *talqīn*) at a time when it was imperative to concentrate on unifying Muslims against Western colonialism.[86] In their response, Hassan and his colleagues pointed out that a difference of opinion over such issues should not contribute to disunity among Muslims in the face of the infidel.[87]

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[86]Yusuf, Syam, and Mas'udi, *Kaum Santri*, 9, 13-4. Similar warnings were also addressed by PSII to Hassan and his colleagues, to which Hassan responded by saying that some members of PSII were not performing prayer, and that they were also divided amongst themselves in spite of the fact that they were avoiding any discussion of what they called "simple matters" (*furū'*); see A. Hassan, "PSII dengan Salat," *Pembela Islam* 49 (July 1932), 20; idem, "Mas-alah Foeroe'," *Pembela Islam* 2 (April 1956), 18; idem, "Lagi-Lagi Masalah Foeroe'," *Pembela Islam* 44 (March 1932), 78; idem, "Openbare Debat PSII dengan Kaoem-Kaoem Foeroe'," *Pembela Islam* 44 (March 1932), 43-4.

[87]A. Hassan, "Toean Salim Djadi Djoeroe Foeroe'," *Al-Lisaan* 24 (April 1938), 21; Mughni, *Hassan Bandung*, 97-8; "Isa Anshary: Pertentangan Ideologie Tak Perlu Timbulkan Perpetjahan Nasional," *Suara Merdeka* (28 December 1954), 3.

c. Husain al-Habsji.

In 1956, Hassan published a book entitled *Risalah Al-Madz-hab* and *Halalkah Bermadz-hab?* in which he castigated the followers of the legal schools, equating them with those who practise *taqlīd*--a practice which is, in his view, forbidden. Later in the same year, Husain al-Habsji wrote *Risalah Lahirnja Madz-hab jang Mengharamkan Madz-hab2*, only to follow it, in the next year (1957), with *Risalah Haramkah Orang Bermadzhab?* Both works were aimed primarily at countering Hassan's *Risalah Al-Madz-hab* and *Halalkah Bermadz-hab?* In reply to Habsji's attack, Hassan wrote *Mendjawab Buku Bantahan Tuan Hadji Husain al-Habsji*, published earlier the same year in a series of articles for *Pembela Islam*.

The polemics between Habsji and Hassan were concerned with the problem of the legal school (*madhhab*), and more particularly the following question: Is adopting a school considered forbidden or permissible? A traditionalist, Habsji maintained the legitimacy of following a school, particularly that of Shāfi'ī adopted by the majority of Indonesian Muslims. In defending this position, he was clearly responding to Hassan's attacks on the institution; in taking up the challenge, he was just as determined not to give any ground as was his opponent.

Habsji opens his argument by reminding Hassan of how critical it was at that time for Muslims to promote Islam as the basis of the Indonesian state and that the polemics on legal schools would weaken Muslim unity.[88] According to Hassan, it is

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[88]Husain Al-Habsji, *Risalah Lahirnja Madz-hab jang Mengharamkan Madz-hab2* (Surabaja: P.P. Alaydrus, 1956), 4-5.

difficult to understand why Habsji took the trouble to respond to his ideas on the issue if he considered it to be so simple. The fact that he spent so much time in addressing the controversy indicated the importance of the problem.[89]

Both writers traded the accusation that the other had insufficient knowledge of Islamic teachings. Habsji claimed that Hassan had not enough knowledge of Arabic to support his ambition to be a scholar. This could be seen in Hassan's translation of the title of his journal *Pembela Islam* (the Defender of Islam) into Arabic as *Himāyat al-Islām*. According to Habsji, the words *Pembela Islam* must rightly be translated as *Hāmī al-Islām* instead of *Himāyat al-Islām*.[90] The problem with Hassan's Arabic was also reflected in his understanding of the literal meaning of *madhhab* (school). Hassan, says Habsji, translates the term *madhhab* literally into "*tempat berjalan*" ("a place where people walk"). This is certainly not correct, for the Arabic word for "a place where people walk" is *mamshā*, originating in the verb *mashā-yamshī*. The word *madhhab*, he goes on to say, comes rather from *dhahaba ilā* which means "to go along with an opinion on a certain matter."[91] Responding to this, Hassan states that the word *madhhab* is the noun of place (*ism makān*) of the verb *dhahaba* and therefore means "a place where people walk." Hassan acknowledges the correctness of *mamshā* as suggested by Habsji, but he reminds Habsji that *mamshā* is not the only

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[89]Hassan, *Mendjawab Buku Bantahan*, 5.

[90]Husain Al-Habsji, *Risalah Haramkah Orang Bermadzhab?* (Surabaja: Toko Kitab Assegaf, 1957), 5.

[91]Habsji, *Lahirnja Madz-hab*, 11-2.

word which can mean "a place where people walk;" the following words have, to some extent, a similar meaning: *masīr, mamarr, madhhab, majāz, ma'bar, mamdā, majrā, masrā*, etc. Hassan finally recommends to Habsji that he read the works on *fiqh al-lughah* as well as those on *uṣūl al-fiqh* in order to be better able to discuss the issue.[92]

According to Habsji, however, Hassan's problem with Arabic led to an inability on his part to understand religious texts. In the case of the Qur'an 24:30 and 31, for instance, Hassan is unaware of the importance of the preposition "*min*" (*...min abṣārihim...*), which in this passage literally denotes "some"; hence the Qur'anic verses indicate that only some of the *nazar*s (i.e. looks exchanged between a man and a woman) are prohibited and not, as Hassan claimed, all *nazar*s. Therefore, Habsji suggests that scholars re-evaluate Hassan's *al-Furqān fī Tafsīr al-Qur'ān*, out of concern that Hassan's weakness in Arabic might lead some Muslims astray.[93]

Habsji then goes on to discuss issues more directly related to the issue of the legal school. Like other traditionalists, he believes that following a particular school is firmly based on the Qur'an and Sunnah and that the works of the scholars of these schools conform in every way to the two primary sources of Islam. He challenges Hassan to prove his claim that some of their opinions are not based on or are even contrary to the Qur'an or Sunnah, a challenge which is, unfortunately, not answered

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[92]Hassan, *Mendjawab Buku Bantahan*, 12, 21.

[93]Habsji, *Haramkah Orang Bermadzhab?* 11-2.

by Hassan.[94] Moreover, Habsji declares that it is possible to have more than one correct view on any given problem. This had happened many times since the era of the Companions (*ṣaḥābah*); a clear example of this is the difference of opinions over the meaning of the term *qurū'* in the Qur'an 2:228, with 'Abdullah ibn 'Umar, 'Abdullah ibn 'Amr, and 'Abdullah ibn Mas'ūd holding one view (later adopted by Abū Ḥanīfah), and 'Ā'ishah, Ibn 'Abbās, 'Uthmān, and Zayd b. Thābit holding another (later accepted by Mālik and Shāfi'ī). A similar case can also be found regarding the issue of the "waiting period" (*'iddah*)[95] for a woman whose husband has died while she is pregnant, over which the Companions of the Prophet generally split into two groups.[96]

In fact, the opinions of the schools, maintains Habsji, are of great help in enabling future generations to discover the rules of Islamic law. Thus, it is not strange, for example, that so great a scholar as Ibn Ḥazm should have chosen to follow the principal ideas of the Ẓāhirī school.[97] Even Hassan himself follows the

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[94]Habsji, *Lahirnja Madz-hab*, 25, 30; idem, *Haramkah Orang Bermadzhab?* 13.

[95]*'Iddah* is a legally prescribed period of waiting during which a woman may not remarry after being widowed or divorced.

[96]Habsji, *Lahirnja Madz-hab*, 14-6, 19. On the meaning of *qur'un* (pl. *qurū'*), the first group understood it as *ḥayḍ* (menstruation), while the second group translated it as *ṭuhr* (cleanness). As regards the second case, 'Alī was of the opinion that the *'iddah* for the woman is the longest period of the two offered by the Qur'an 2:234 and 65:4, while according to 'Umar, the Qur'an 65:4 is a *takhṣīṣ* (specifying the general sense) of the Qur'an 2:234 and that the *'iddah* of the woman must be finished immediately after giving birth; see Khafīf, *Ikhtilāf al-Fuqahā'*, 110; Shāfi'ī, *Risālah*, 562-4; Muhammad Hasbi Ash-Shiddieqy, *Sebab-Sebab Perbedaan Faham Para Ulama dalam Hukum-Hukum Sjara'* (Jogjakarta: IAIN Sunan Kalijaga, 1969), 3, 5.

[97]Habsji, *Lahirnja Madz-hab*, 32.

opinions of the earlier scholars of a certain school, even though in his *fatwās* he pretends as if the *fatwās* are the results of his own *ijtihād*. His *fatwā* that eating dogs is permissible is a clear example of his indebtedness to the ideas of Mālik. Thus, while condemning those who followed a school, Hassan himself assimilated the teachings of earlier scholars of schools, and then encouraged people to follow his own ideas, effectively establishing a new school of his own--an anti-*madhhab* with a great many fanatical adherents.[98]

According to Habsji, Hassan was also guilty of quoting the opinions of earlier scholars even though these opinions were supported neither by the Qur'an nor by the Sunnah, a practice of which Hassan was himself very critical. For instance, in an effort to differentiate *taqlīd* from *ittibā'*, Hassan quotes the definitions of both *taqlīd* and *ittibā'* given by Abū 'Abdillāh ibn Khuwayz Mandād in which Mandād himself makes no reference to either the Qur'an or Sunnah;[99] more interesting still is the fact that Mandād was, in fact, a follower of the Māliki school; thus Hassan, while rejecting the school, nevertheless himself relied upon the views of one of its founders.[100] Along with this, Hassan quotes Mandād's statement: *fa-kullu man ittaba'ta qawlahu fa-anta muqalliduhu* (if you follow the opinion of someone, it means you are the *muqallid* of him). This statement, says Habsji, features the word *ittaba'ta*, a word

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[98]Ibid., 30-1.

[99]For Hassan's quotation, see Hassan, *Ijma'*, 120. See also Ibn 'Abd al-Barr, *Bayān al-'Ilm*, 394.

[100]Habsji, *Haramkah Orang Bermadzhab?* 15.

derived from the same root as *ittibā'*, and serves to prove his case that *taqlīd* is identical with *ittibā'*.[101] However, Habsji does not explain another of Mandād's statements cited by Hassan along with the other, i.e.: *wa al-taqlīd fī dīn Allāh ghairu sahīh* (and *taqlīd* in Islam is forbidden). Would Habsji say that *taqlid* and *ittibā'* are prohibited in Islam? This is also a clear example of how certain writers omit statements because they do not help their own argument.

Indeed, there are a number of issues advanced by Habsji that do not receive any answer from Hassan, and vice-versa. It is true that Hassan repeatedly asked Habsji to engage in an open debate (*munāẓarah*) in order to resolve their differences of opinion, and that Habsji was reported to have agreed to such a debate. The debate never took place, however, and this for different reasons according to the two sides involved. Djaja, one of Hassan's students, claims that Habsji denied that he had ever agreed to an open debate with Hassan,[102] while according to Hassan, Habsji always looked for an excuse to avoid participating in the debate.[103] On the other hand, Habsji claims that he was ready to have the debate, but that Natsir (another of Hassan's students and also the leader of Masjumi in that era) suggested to him that the debate not be held in order to avoid conflict among Muslims and eventual disunity.[104]

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[101]Ibid., 14.

[102]Djaja, *Hassan*, 29.

[103]Hassan, *Menjawab Buku Bantahan*, 4-5, 27. See also A. Hassan, "Masih Mahu Tjari-Tjari Djuri," a pamphlet issued on 10 December 1956.

[104]Habsji, *Haramkah Orang Bermadzhab?* 4.

2. Response from a Reformist: Muhammad Hasbi Ash-Shiddieqy.

We have already mentioned that Hassan had a very strong personality and uncompromising integrity which led him to take extreme positions. His approach to reform was considered very harsh in tone and unusual for religious circles. This style became the distinctive attitude of Hassan, distinguishing him not only from the traditionalists but also from his fellow reformists. Accordingly, many Muslims were hesitant to engage in direct polemics with him or afraid of mentioning his name directly; some journals were also reluctant to publish his articles because of their too radical ideas. This attitude of Hassan is very apparent in the following section which discusses his polemic with Muhammad Hasbi Ash-Shiddieqy, a professor in the Faculty of Islamic Law at the State Institute of Islamic Studies, Yogyakarta, on the problem of *musāfahah*, i.e. the shaking of hands, between men and women.

It should be underlined here that both Hassan and Shiddieqy were well-known as proponents of the reform movement which had declared war upon traditional imitation (*taqlīd*), innovation (*bid'ah*), legal school (*madhhab*), and superstition (*khurāfah*) and which stressed the importance of the need to return to the Qur'an and Sunnah. The difference between the two scholars, as reflected in the debate over *musāfahah*, lies in the application of their *uṣūl al-fiqh* to the matter at hand. This consisted in first of all looking at the Qur'an and Sunnah, then considering certain of the opinions of earlier scholars to sharpen their understanding of the subject.

As early as 1932, Hassan wrote an article focusing on a number of women's

issues, among them *musāfahah*,[105] a subject to which he later returned in his *Perempoean Islam di Dewan dan Podioem* published in 1941.[106] Hassan explained therein that according to Islamic law, the *musāfahah* is forbidden. In 1956, the Majlis Tarjih of the Muhammadiyah held a meeting to discuss the same issue and came to a conclusion similar to that reached by Hassan. Soon afterwards, however, in a series of articles, Shiddieqy criticized those who had issued the *fatwā* that *musāfahah* is forbidden arguing primarily that it was based on a wrong inference (*istinbāt*).[107] It is true that in his articles, Shiddieqy does not once mention Hassan's name; nevertheless, Hassan believed that Shiddieqy's articles were a direct response to his own writings on the issue published earlier. In reply, he accused Shiddieqy of having serious misconceptions about the meanings of many Qur'anic and Sunnaic texts and the ideas of earlier scholars. Given this fact, Hassan sent a letter to 'Alī Ma'sūm of the Pesantren Al-Munawwir Yogyakarta asking for his help in organizing an open debate (*munāẓarah*) in which Hassan hoped to be able to discuss the issue face to face with Shiddieqy. Some time later, Hassan received a reply from Ma'sūm indicating that Shiddieqy was not ready to hold an open debate but that he had no objections to

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[105]See A. Hassan, "Dari Hal Koedoeng Perempoean, Pergaoelannja, dan Lain-lainnja," *Pembela Islam* 43 (February 1932), particularly section six, "Perihal Berdjabat Tangan dengan Perempoean," 27-9.

[106](Bangil: Persatoean Islam, 1941), 12-3.

[107]For the ideas of Shiddieqy on the issue, see Muhammad Hasbi Ash-Shiddieqy, "Qiyas Tardjih jang Tidak Radjih," *Soeara Oemmat* (22 June 1956); idem, "Istilah Hukum jang Tidak Tepat," *Soeara Oemmat* (13 July 1956); idem, "Istinbath Hukum jang Tidak Tepat," *Soeara Oemmat* (20 July 1956), most of which are quoted in Hassan, *Wanita Islam*, 126-65.

carrying out their polemics in print.[108] Unfortunately, *Soeara Oemmat*, the journal which published Shiddieqy's articles, did not want to continue the polemic on the issue, and other Islamic periodicals were unwilling to publish articles on issues that they considered to be "simple matters" (*al-masā'il al-furū'iyyah*). This, according to Hassan, was why he chose to write *Berdjabatan Tangan dengan Perempoean & Perempoean Islam di Podioem* (Shaking Hands with Muslim Women, and Muslim Women in Assemblies).[109]

One important characteristic of Hassan's writing in his *Berdjabatan Tangan dengan Perempoean* is its sharp, tough, and uncompromising nature. The words "lie" (*bohong*), "slander" (*fitnah*), "drunk" (*mabuk*), and "dishonest" (*tidak jujur*) are among the terms used in connection with and addressed to Shiddieqy. Hassan even accuses Shiddieqy of not hesitating to change the rules of Allah and His messenger for the sake of his own argument. By contrast, Shiddieqy, in his articles, makes no personal attack on Hassan, let alone even mentioning him by name. Nonetheless, it should be kept in mind that there was a tendency among later Indonesian scholars to avoid direct conflict with Hassan by avoiding explicit mention of his name, as was the case with Abbas, mentioned earlier. Hassan, however, firmly believed that Shiddieqy's articles were addressed to him and therefore he did not hesitate to quote some of Shiddieqy's statements, following these with his own criticisms. To cite but one

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[108]Hassan, *Wanita Islam*, 105-6.

[109]Bangil: Persatoean Islam, 1956. This work is later included in Hassan, *Wanita Islam*, 99-166.

example: "Tuan Hasbi [Shiddieqy] should be careful and not be careless in attributing certain statements to us [Hassan] as if we really said the words; to put it in extreme terms, such an attitude in fact amounts to slander (*fitnah*) which is inappropriate for those who are called scholars'"[110]

Basing himself on Qur'an 24:31 and various Sunnahs,[111] all dealing with the relations between men and women, Hassan, for his part, comes to the conclusion that *musāfahah* is forbidden, an idea fundamentally different from that of Shiddieqy.[112] According to Shiddieqy, there is no single text which clearly states that *musāfahah* is forbidden. What we find in the Qur'an and Sunnah is that it is forbidden for a man and a woman to look at each other (*nazar*). Through *qiyās*, this ruling of impermissibility is extended, by certain scholars, to the case of *musāfahah*. Referring to Ahmad ibn Hanbal, Shiddieqy reminds his fellow Muslims not to apply *qiyās* automatically to any matter which is not clearly ruled upon in the texts. *Qiyās*, he

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[110]Hassan, *Wanita Islam*, 131-2, 134.

[111]For the texts used by Hassan, see Hassan, *Wanita Islam*, 107-24.

[112]The difference of opinion between Hassan and Shiddieqy can also be seen in the following two cases. First, they were at odds over the question of whether a man is allowed to wear gold on his person or his clothing. Based on the same texts (the Qur'an and Sunnah), they came to different conclusions: while Shiddieqy saw the matter as permissible (*mubāh*), Hassan considered it reprehensible (*makrūh*); see Muhammad Hasbi Ash-Shiddieqy, *Al-Ahkam: Hukum-Hukum Fiqh Islam*, vol. 2 (Medan: Islamyah, 1952), particularly on the problem number 211: 365-8; A. Hassan, "Laki-Laki Pakai Emas," in *Soal-Jawab*, vol. 4, 1609-11; idem, "Laki-Laki Pakai Emas," *Pembela Islam* 56 (30 December 1932), 39-41; H.M.A., "Soeal-Djawab," *Pembela Islam* 16 (December 1930), 24-7. Second, they did not agree on the issue of Friday prayer (*salāt al-jum'ah*), the details of which have already been mentioned above in chapter four.

goes on to say, should be applied only in the case of necessity (*darūrah*) as in the case of eating a carcass when there is no food. Moreover, says Shiddieqy, certain scholars (e.g. Ibn Muẓaffar, al-Ābī, and Yaḥyā) even observe that the legal indicants (*dalā'il*) which forbid *naẓar* are addressed to those who look at others with desire (*shahwah*); thus, *naẓar* without *shahwah* is not forbidden.

Hassan is determined to counter every one of Shiddieqy's arguments, the most important of which is that involving *qiyās*. At first, Hassan agrees with Shiddieqy that there is no single text which literally forbids *muṣāfaḥah*. Nonetheless, its prohibition is based on the legal indicants (*dalā'īl*) which prohibit *naẓar*, and is arrived at as a result of inference (*istinbāṭ*) through the so-called method *mafhūm al-muwāfaqah* (harmonious meaning), particularly in the form of *fahwā al-khiṭāb* (superior meaning). *Fahwā al-khiṭāb* is generally understood to be an implicit meaning on which the text may be silent, but it is nevertheless superior to pronounced meaning (*dalālah al-manṭūq*),[113] a method which is sometimes also called *mafhūm awlawī* or *min bāb al-awlā*. That is to say, the implicit meaning of the texts applied to the case of *muṣāfaḥah* is superior to the pronounced meaning of the texts applied to the case of *naẓar*. For this very reason, if the ruling of forbidden is applied to the case of *naẓar*, it will be equally true and even more appropriate in the case of *muṣāfaḥah*; after all, the physical contact between a man and a woman in the case of *muṣāfaḥah* is certainly closer than that of mere *naẓar*. In Hassan's eyes, it should have been

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[113]Muḥammad Ḥasan Hītū, *al-Wajīz fī Uṣūl al-Tashrī' al-Islāmī* (Beirut: Mu'assasat al-Risālah, 1983), 124; Ṣubḥī Ṣāliḥ, *Mabāḥith fī 'Ulūm al-Qur'ān* (Beirut: Dār al-'Ilm lil-Malāyīn, 1983), 301.

apparent to Shiddieqy that he was using *fahwā al-khiṭāb* (a process of inference) rather than *qiyās* in determining the rule pertaining to *muṣāfahah*. This argument, he goes on to say, is enough to refute the whole line of Shiddieqy's reasoning; for the other reasons given by Shiddieqy, such as the ideas of Ibn Muzaffar, al-Ābī, and Yaḥyā, are contrary to the rule determined by the Qur'an through *fahwā al-khiṭāb*.

Based on the above explanation, one may conclude that the difference between Hassan's and Shiddieqy's ideas on *muṣāfahah* is a fundamental one. It is for this very reason, perhaps, that at the end of his *Berjabatan Tangan dengan Perempuan*, Hassan once again invites Shiddieqy to engage in an open debate. In his own words:

> If this reply is answered by Shiddieqy and followed then by my response, the issue will [take a very long time and will] not be finished. Therefore, I suggest either a closed or an open meeting, [I think] two days are enough to answer all questions, even the most difficult ones, on the issue of shaking hands. I believe that if we really want to explore the truth, there is nothing to prevent this meeting.[114]

Hassan was to live another two years after this exchange, but in that time he received no response from Shiddieqy. Nor did Shiddieqy ever again raise the issue in spite of the fact that he lived until 1975.

3. Responses from Other Groups.

Responses toward Hassan's mission came also from other groups, but these were, for the most part, not concerned with *uṣūl al-fiqh* in its strictest sense, i.e. the sources of Islamic law and their application to the issues of Islamic law (*masā'il al-fiqhiyyah*).

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[114]Hassan, *Wanita Islam*, 165-6.

These responses were expressed in the form of open debates attended by both Muslims and non-Muslims.

The first reaction came from the Ahmadiyah Qadian. It is true that Hassan repeatedly attacked the doctrine of Ahmadiyah Qadian through his journal articles and books,[115] an attitude which angered the members of the organization and which led to their sending an open letter to the journal *Sinar Islam* proposing to Persis that they have an open debate (*munāẓarah*).[116] This conflict reached its climax in a three-day open debate between the Ahmadiyah Qadian and Persis in Batavia Centrum (Jakarta) on 28-30 September 1933.[117] The Ahmadiyah Qadian was represented by Rahmat Ali and Aboe Bakar Ajoeb, and Persis by Hassan. The topics to be dealt with were

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[115]Pijper, *Sejarah Islam di Indonesia*, 137. Hassan produced a serial publication on Ahmadiyah entitled *Risalah Ahmadijah* which later became *Risalah Mirza-ijah* (Bandoeng: Persatoean Islam, 1933); see Pijper, *Sejarah Islam di Indonesia*, 138. For the articles addressed to the Ahmadijah Qadian, see A. Hassan, "Ahmadijah, Keterangan tentang Nabi Isa Tidak Berbapa," *Pembela Islam* 28 (June 1931), 37-9; idem, "Nabi Isa Berbapa?" *Pembela Islam* 36 (October 1931), 23-8; idem, "Nabi Isa Berbapa?" in *Sual-Djawab*, vol. 9, 80-2; idem, "Nabi jang Masih Hidup," in *Sual-Djawab*, vol. 12, 80-3; idem, "Mirza Ghoelam Ahmad Baa 'Alawi," *Pembela Islam* 56 (30 December 1932), 37; idem, *An-Nubuwwah*, particularly the section "Nabi-Nabi dalam Islam," 11-6; "Perhatikanlah!" *Pembela Islam* 36 (October 1931), 22; "Soerat Terboeka," *Pembela Islam* 64 (1 December 1934), 6-8; "Pertjakapan," *Pembela Islam* 69 (1 March 1935), 17; "Moebahalah dan Perdebatan," *Al-Lisaan* 10 (25 September 1936), 28-32; "Perdebatan," *Al-Lisaan* 10 (25 September 1936), 32.

[116]"Perdebatan 'Pembela Islam' dan 'Ahmadijah Qadian'," 40-1; "Oeroesan Ahmadijah," *Pembela Islam* 56 (30 December 1932), 44; A. Hassan, "Introduction" to the *Official Verslag Debate Pembela Islam dengan Ahmadijah Qadian* (Bandoeng: Persatoean Islam, 1933), 4.

[117]The proceedings and results of the debate can be read in Hassan, *Officieel Verslag Debat*. A summary of the contents of the debate can also be found in Federspiel, *Persatuan Islam*, 99-104.

mainly two: the death of Jesus and the prophethood of Mirza Ghulam Ahmad. The Ahmadiyah Qadian maintained their position that Jesus died and, as indicated in the Sunnah, that he would be followed by someone else who had the same characteristics as *al-masīḥ* (the Messiah) and who would become Imām Mahdi. This *al-masīḥ* was actually Mirza Ghulam Ahmad, a Prophet appointed not to bring a new *sharī'ah* but rather to continue the divine law brought by the Prophet Muhammad. By contrast, Hassan was of the opinion that Jesus had not died a natural death but had been taken by God and that he would return on the Day of Judgment. Thus he argued that "there has not been a single prophet [after Muhammad] either with or without a *sharī'ah*."[118] Perhaps because of the competence of the Committee and the moderator who managed the meeting, the debate ran smoothly and without any significant interference. Both sides did their best to defend their beliefs and at the same time to counter their opponent's arguments. Until the end, both sides still stood up for their own beliefs, respectively. Nonetheless, Abdurrazak, a member of the Ahmadiyah Qadian who witnessed the event, was reported to have abandoned his belief in the doctrine of the Ahmadiyah Qadian and, to use Djaja's words, "returned to the pure Islam."[119]

Another response came from certain members of the Indonesian Communist Party (PKI) who, in the era of Hassan, freely promoted atheism, a view which stood fundamentally in opposition to Hassan's beliefs. The members of the PKI rejected all

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[118]Hassan, *An-Nubuwwah*, 11; Federspiel, *Persatuan Islam*, 101.

[119]Djaja, *Hassan*, 28.

belief in the existence of God. Because Hassan tirelessly promoted the opposite view, conflict between him and the members of the PKI was unavoidable. In August 1955 and again on 2 September 1955, an open debate between Muhammad Akhsan, a member of the PKI from Malang (East Java), and Hassan was held in the offices of al-Irsyad (Surabaya).[120] The debate revolved around two problems: the existence of God and His justice. During this debate, Akhsan is reported to have been unable to counter Hassan's arguments; as a result, Akhsan eventually converted back to Islam. Apparently, this debate angered a great many members of the PKI. Thus, Suradal Mahatmanto from Yogyakarta declared his intention to continue the debate on the existence of God.[121] He observed that Hassan's arguments, presented during the debate in Surabaya, were not sufficient proof that God exists. Another open debate was then held between Mahatmanto and Hassan in Jakarta, an event attended by a huge number of people. This debate, however, ended in failure. The reason for this, says Djaja, was that Mahatmanto was very emotional and could not provide any clear argument in defence of his belief or counter Hassan's challenges. Hassan was reported to have been very dissatisfied with the debate because he felt that he had prepared well to face the challenge offered by an atheist whose beliefs were in his eyes very dangerous for Indonesian Muslims.

Hassan also participated in another debate, this time with the Dutch Christian

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[120]Ibid., 72-83. The proceedings of the debate and its results are well recorded and further developed in A. Hassan, *Adakah Tuhan? Pertukaran Pikiran tentang Ada Tidaknya Tuhan* (Bandung: C.V. Diponegoro, 1994).

[121]Djaja, *Hassan*, 83-5.

intellectuals Dierhuis, Elsink, and Shoemaker, concentrating on the issue of Islam and Christianity. It is reported that Hassan was eventually successful in converting Shoemaker to Islam and that the latter became a close friend of Hassan.[122]

Other open debates were also planned, but these were apparently called off. The first was a debate in which Hassan was supposed to challenge the Majlis Shura of Masjumi over its *fatwā* that it is permissible for a woman to go out (*musāfir*) without having in her company a *mahram* (those who are prohibited from marrying her) or her husband.[123] The second debate represented Hassan's challenge to the policy of the Ministry of Religious Affairs on *mīqāt*, i.e. the place from which the Indonesian pilgrims enter into a state of *ihrām*.[124] Supported by the views of traditional scholars, the Ministry of Religious Affairs instituted a policy that the *mīqāt* for the Indonesian pilgrims could be Bir 'Alī or Jiddah. In response, Hassan issued a *fatwā* stating that the *mīqāt* for Indonesian pilgrims who go by ship must be Yalamlam; while for those who go by airplane, their *mīqāt* must be Qarna al-Manāzil (between Jiddah and Riyāḍ) and that the pilgrimage of any Indonesian whose *mīqāt*

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[122]Ibid., 28.

[123]For Hassan's ideas on a woman as a *musāfir*, see Hassan, *Wanita Islam*, 138; idem, "Hukum Perempuan Islam Bepergian (*Safar*) Tidak dengan Mahramnja," *Al-Muslimun* 3 (July 1956), 5-9.

[124]*Mīqāt* is derived from the word *waqt* (time), literally meaning "an appointed time" or "a place in which certain action is appointed to be performed"; this is also called a *muhill*, from *ahalla* (he raised his voice), which signifies "the place of raising voices with *talbiyah* (*labbayk Allāhumma labbayk*; here am I, O Allāh! here am I in Thy presence). *Ihrām* is entering upon a state in which a particular dress is put on and certain acts, ordinarily lawful, are forbidden; this signifies the beginning of pilgrimage or *'umrah*; see Ali, *Religion of Islam*, 392-3.

was other than Yalamlam and Qarna al-Manāzil would be invalid (*bātil*).[125] Replying to this *fatwā*, the Ministry of Religious Affairs produced a brochure explaining that *mīqāt* is considered *khilāfiyyah*, i.e. an issue on which scholars are permitted to differ from one another; accordingly, people are free to choose one of the available options. This explanation was bitterly opposed by Hassan who said that in matters of religion, more particularly *'ibādāt*, Muslims must follow the rules laid down by Allah and His messenger and not the opinions of scholars. Thus, any idea contrary to the Sunnah of *mīqāt* narrated by Bukhārī and Muslim must be rejected.[126] Apparently, Hassan's *fatwā* shocked his fellow scholars as well as the Ministry of Religious Affairs; to cope with this, the Persatuan Haji Indonesia (Association of Indonesian Pilgrims) called for an open debate between Hassan and those who supported the existing rule on *mīqāt*. This debate, however, was called off for the reason that, according to Djaja, it was too difficult to change a *mīqāt* which had been formally adopted by the Indonesian government and observed for a very long time by all Indonesian Muslims.[127] This policy is in fact still in effect.[128]

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[125]Hassan, *Risālatul Hadj*, 19, 48; "Masalah Ihram: Pendapat Ustaz A. Hassan," *Hikmah* (27 October 1956), 4; Djaja, *Hassan*, 28-9; Ali, *Religion of Islam*, 394.

[126]"Masalah Ihram," 4.

[127]Djaja, *Hassan*, 29. On Hassan's idea of pilgrimage, see his *Risālatul Hadj*.

[128]See "Ihram Dikenakan Sejak Embarkasi," *Republika Online* (15 April 1996). In fact, Hassan's ideas on *mīqāt* are similar to those of, not to say adopted by, the traditionalist *kiyais*, i.e. Basori Alwi; see, Basori Alwi, "Dimana Miqat Haji Indonesia," *Aula* (March 1991), 66-71.

B. Impact of Ahmad Hassan's Reform Doctrine.

In the preceding section, we have analyzed some responses, often severely critical, directed at Hassan. Nevertheless, many scholars have thought highly of his religious doctrine and have taken it as a basis for their religious teaching. The impact of his ideas on his fellow Muslims is beyond doubt, not only in Indonesia but also in other Malay countries such as Malaysia, Brunei Darussalam, Thailand, and Singapore.[129] His works are among the most important sources read in religious institutions

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[129]Certainly, Hassan's works, particularly his *Soal-Jawab Masalah Agama*, are widely read by Muslims in Malay countries. Moreover, Abdurrahman, the jurisconsult of Perlis (Malaysia), is reported to have said that he supports and promotes Hassan's religious doctrine among his fellow Malaysian Muslims; see Djaja, *Hassan*, 172. The journal *Al-Ekhwan* of Penang (Malaysia) has also frequently quoted some of Hassan's ideas written in *Pembela Islam*; see e.g. "Petikan dari Madjalah Al-Ekhwan Penang," *Pembela Islam* (January 1930), 16-7. It is also reported that Hassan's *al-Furqān fī Tafsīr al-Qur'ān* has become the standard work in the religious schools of South Thailand (Pattani); see Ustadh Mansur, interviewed by Tabrani and Riyadi. Hassan's influence is even more apparent in Singapore, his birthplace. His religious teachings remain one of the most important sources for the Muslims of that nation. This can be seen in the character of the Islamic organization known as Persatuan Muhammadiyah, whose name is a combination of those of two Indonesian reformist organizations: Persatuan Islam and Muhammadiyah. According to Djamal Tukimin, the establishment of this organization was influenced by the Muhammadiyah in terms of its social activities and by Persatuan Islam in terms of its religious doctrine, and hence primarily on the teachings of Hassan. On 28-30 January 1979, the Persatuan Muhammadiyah organized a seminar on "Falsafah dan Perjuangan Ahmad Hassan" (Intellectualism and Activism of Ahmad Hassan), attended by, among others, scholars from Singapore, Indonesia, Malaysia, and Thailand. This seminar concluded, *inter alia*, that Hassan was an outstanding scholar who introduced *tajdīd* to Muslims in Malay countries. In addition to this, Hassan's religious doctrine and his effort to promote it should be taken as a model to promote further the belief that the Qur'an and Sunnah constitute the only guidance for Muslims. Finally, the seminar recommended the need to collect Hassan's works, to search for and write to Hassan's disciples and to determine their writings and role within Muslim community, all of which should be published and distributed throughout the Muslim Southeast Asia; see Djaja, *Hassan*, 38-9, 171, 174; Anshari and Mughni, *Wajah & Wijhah*, v-vi, 41-2.

nowadays. The present section will examine the extent of the impact of Hassan's religious doctrine on his fellow Muslims.

1. Impact on His Students and Disciples.

a. Mohammad Natsir.

Perhaps among the most significant impact of Hassan's reform mission can be seen in the career of Mohammad Natsir (1908-1993), a statesman, a writer, and a pre-eminent preacher who was well-known at both the national and international levels.[130] He himself acknowledges that the one teacher whose religious doctrine most influenced his ideas was Ahmad Hassan.[131] It was when he began to attend high school in Bandung (the center of Persis' influence) that he had the opportunity to study under Hassan. During this time, Natsir, together with his friends, such as

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[130]For Natsir's life, career, and works, see Ilzamuddin Ma'mur, "Abul A'la Mawdudi's and Mohammad Natsir's Views on Statehood: A Comparative Study" (M.A. thesis, McGill University, 1995), 29-46; Ajip Rosidi, "Foreword" to *M. Natsir: Kebudayaan Islam dalam Perspektif Sejarah*, by Endang Saifuddin Anshari (Jakarta: PT Girimukti Pusaka, 1988), xii-xxxiii; Moch. Lukman Fatahullah Rais, Mohammad Syah Agusdin, and Nasmay Lofita Anas, *Mohammad Natsir Pemandu Ummat* (Jakarta: Bulan Bintang, 1989), 133-4.

[131]George McT. Kahin, "In Memoriam: Mohammad Natsir (1907-1993)," *Indonesia* 56 (October 1993), 160; "Doctor Honoris Causa untuk Pak Natsir," *Media Dakwah* 205 (July 1991), 10. Another religious leader from which Natsir learned was Ahmad Surkati; see Lukman Hakiem, ed., *Pemimpin Pulang: Rekaman Peristiwa Wafatnya M. Natsir* (Jakarta: Yayasan Piranti Ilmu, 1993), especially section "Pemikiran Tiga Tokoh Islam Pengaruhi Mohammad Natsir," 72; Saidi, *Islam dan Nasionalisme*, 36-8. But Natsir acknowledges that he had a very limited opportunity to see Surkati; see A.W. Pratiknya, ed., *Pesan Perjuangan Seorang Bapak* (Jakarta: Dewan Dakwah Islamiyah Indonesia, 1989), 31-2. It should be noted also that Natsir's involvement in the intellectual and political activities at both the national and international levels gave him the opportunity to excel at his career.

Fakhruddin al-Kahiri, Abdurrahman, Qamaruddin, and Isa Anshary, visited Hassan's house every evening to learn many aspects of Islam from him. On each occasion, one of them raised a question which then became the topic of discussion during the meeting. In addition, Natsir says: "Tuan Hassan always encourages me to read the works of Muḥammad 'Abduh and Rashīd Riḍā."[132]

According to Natsir, there were at least two reasons why he and his friends admired Hassan. First, Hassan was very knowledgeable about a variety of Islamic teachings, as reflected in his ability to deal with the many issues faced by the Muslims of his day. Secondly, Hassan's approach in introducing Islamic values to his students was very attractive to young Muslims, in that it was quite different from that of his fellow scholars. For example, Hassan was always ready to discuss any problem with his students and respected any new idea expressed by them. If the students had certain religious questions, he did not give the answers directly; instead he asked the students to solve the problems by searching for the answers in the available reference sources, written mostly in Arabic and English.[133] All of this was quite different from the common approach of his peers, who always determined the answers to certain problems and set the books that the students should read. It may be interesting to mention here one example of Natsir's experiences. In 1928, the *Algemene Indische Dagblad*, a newspaper widely circulated in Bandung, published an article by a Christian missionary, A.C. Christoffel, in which he, according to Natsir, insulted the

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[132]Pratiknya, *Perjuangan Seorang Bapak*, 32.

[133]Natsir, "Membina Kader," 56.

Prophet Muhammad. Natsir, a devout Muslim, felt outraged, and brought the problem to Hassan. After discussing some significant points in the article, Hassan then showed Natsir some references and asked him to take on the responsibility of drafting a reply to Christoffel's article. The result was an article entitled "Qur'ān en Evangelie" (a comparison between the Qur'an and the teachings of Jesus) published in the same newspaper. According to Natsir, Hassan was very pleased with Natsir's reply to Christoffel. In the next issue of the newspaper, the latter wrote a response to Natsir's article which, according to Natsir, showed more clearly the fundamental misconceptions of its author regarding the doctrine of Muhammad's prophethood. Realizing the dangers inherent in these ideas, Natsir wrote a second, even longer article entitled "Muhammad als Profeet" addressed to Christoffel; nevertheless, the newspaper refused to publish it arguing that the polemics had been exhausted. This event then became one of the most important reasons for Persis' launch of the publication *Pembela Islam*, the first issue of which contained Natsir's article.[134] Natsir's articles were later brought together and published as a book entitled *Muhammad als Profeet* (Muhammad as Prophet).[135]

Certainly, for Natsir, who was appointed the leader of Persis in 1939,[136] Islam was all and everything, a belief which, says Natsir, is expressed in the following

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[134]Rosidi, *Natsir*, 43-8; idem, "Foreword," xii-xiii. Natsir's article can be found in Anshari, *M. Natsir: Kebudayaan Islam*, 3-32.

[135]Natsir, "Membina Kader," 55.

[136]"Suri Teladan dari: Almarhum K.H.M. Isa Anshary sebagai Anggota Persatuan Islam," *Risālah* 79-80 (TH. VIII), 252.

Sunnah: "Islam is high and there is nothing higher than it" (*al-Islām ya'lū walā yu'lā 'alayhi*).[137] He frequently quotes Gibb's statement that "Islam is much more than a system of theology; it is a complete civilization."[138] It is true that Natsir's works are not concerned with *uṣūl al-fiqh* in the strict sense. But, as we shall see later, Natsir's religious ideas reflect the influence of Hassan's doctrine of *uṣūl al-fiqh*. The first example of this is his insistence on the slogan "back to the Qur'an and Sunnah." In his works, Natsir always quotes either the Qur'an or Sunnah as the foundation of his ideas, while the opinions of scholars (sometimes even Westerns scholars) are quoted only to support or elaborate his understanding of the teachings of the Qur'an and Sunnah.[139]

Another example of Hassan's influence on Natsir can be seen in the latter's definition of the term "reform" (*reformasi, pembaharuan*). According to him, the essence of reform is "re-introducing what has been presented in the early history of Islam but has been very much neglected later [by Muslims]. [The purpose of reform] is to free Islam from disgrace."[140] Natsir states his firm belief that there are "even

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[137]Natsir, *Capita Selecta*, vol. 1, 193.

[138]Anshari, *M. Natsir: Kebudayaan Islam*, 280; Rosidi, "Foreword," xx, xxii; Gibb, *Whither Islam?* 12.

[139]For example, see generally Mohammad Natsir, *Marilah Salat* (Djakarta: Bulan Bintang, 1956), the second chapter of which, says Natsir, is based on Hassan's *Pengajaran Shalat*; idem, *Islam dan Akal Merdeka*, idem, *Capita Selecta*, vol. 2 (Djakarta: Pustaka Pendis, 1957), chapter "Pidato dan Chotbah," 53-154; Anshari, *M. Natsir: Kebudayaan Islam*, chapter "World of Islam Festival dalam Perspektif Sejarah," 275-315.

[140]Pratiknya, *Perjuangan Seorang Bapak*, 25-6.

amongst Muslims many misconceptions of the true aims and purposes of the Islamic teachings"[141] and, consequently, he condemns *taqlīd*, *bid'ah*, and *khurāfah* and encourages the younger generation to make every effort to regain the glory of Islam,[142] an effort which became the mission launched by his teacher, Hassan. In the words of Rosidi, "...Natsir is on the same side with Hassan; through Persis, they uncompromisingly waged war against *khurāfah* and *bid'ah*."[143] Natsir also quotes the statements of the schools' eponyms which condemn *taqlīd*.[144]

Thirdly, Natsir's understanding of the term *bid'ah* recalls that of Hassan. Like his teacher, he adopted the following maxim: *al-aṣlu fī al-'ibādah al-taḥrīm ḥattā yadull al-dalīl 'alā taḥlīlihi, wa al-aṣlu fī al-mu'āmalah al-taḥlīl ḥatta yadull al-dalīl 'alā taḥrīmihi*.[145] Based on this maxim, Natsir is of the opinion that any new idea is welcome in Islam, most particularly in the field of *mu'āmalāt*, so far as it is not in contradiction with the principles laid down in the Qur'an and Sunnah. His ability to elaborate the teachings of Islam in the light of present-day conditions has led W.

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[141]M. Natsir, *Some Observations Concerning the Role of Islam in National and International Affairs* (Ithaca: Cornell University Press, 1954), 2.

[142]Natsir, *Capita Selecta*, vol. 1, chapter "Djedjak Islam dalam Kebudayaan,"28-9; Anshari, *M. Natsir: Kebudayaan Islam*, 284; Pratiknya, *Perjuangan Seorang Bapak*, 23.

[143]Rosidi, "Foreword," xxvii.

[144]Anshari, *M. Natsir: Kebudayaan Islam*, 253-4.

[145]"In the field of worship, an act is prohibited unless there is a legal indicant which allows it; while in the field of worldly affairs, an act is permissible unless there is a legal indicant which forbids it"; see Natsir, *Islam dan Akal Merdeka*, 27; Pratiknya, *Perjuangan Seorang Bapak*, 23.

Montgomery Watt to comment that Natsir "is one of the great reformists who are able to creatively adjust Islam to the modern life."[146] Like Hassan, Natsir maintains that one of the most important reasons for the backwardness of Muslims (especially in Indonesia) is the fact that while they are very eager to introduce *bid'ah* in matters of worship (*'ibādāt*), they at the same time refuse to do so in worldly affairs (*mu'āmalāt*). The problems of *usallī* and the language of the religious sermon (*khutbah*) are, according to Natsir, clear examples in point.[147]

Politics is another area in which the influence of Hassan's doctrine on Natsir's ideas may be detected. For a period of about six years, he led Masjumi, an influential Islamic political party during the early period of independence. When prime minister, Natsir was very much involved in political life; he frequently represented Indonesia at international meetings (e.g. Rābitat al-'Ālam al-Islāmī).[148] Indeed, his involvement in politics has led most, if not all, his biographers to devote most of their attention to this aspect of his career.[149] And while he acknowledged that his political acumen

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[146]Watt's comment was made after listening to Natsir's speech entitled "The Message of Islam to the Modern World," delivered at the conference on the *Sīrah Nabī* in Pakistan in 1976; see Pratiknya, *Perjuangan Seorang Bapak*, 21-2.

[147]Natsir, *Islam dan Akal Merdeka*, 29-30.

[148]Natsir was the vice president of the Mu'tamar al-'Ālam al-Islāmī, and member of the World Muslim League of Makkah, al-Majlis al-A'lā al-'Ālamī lil-Masājid of Makkah, The International Islamic Charitable Foundation, The Oxford Centre for Islamic Studies, and The Majlis Ulama of International University; see Rais, Agusdin, and Anas, *Natsir Pemandu Ummat*, 134.

[149]See Yusril Ihza Mahendra, "Asas Politik Natsir, Moral Landasannya," *Panji Masyarakat* 824 (11-20 April 1995), 14-5; idem, "Combining Activism and Intellectualism," *Studia Islamika* 2 (1995), 111-47; Anwar Harjono and Lukman Hakiem, "Mohammad Natsir: Pemikiran dan Sumbangannya untuk Indonesia," *Media*

was formed under the guidance of Agus Salim,[150] the intellectual background of his political ideas and activities nevertheless represents a continuation of Hassan's ideas, particularly in the belief that there is no separation between religion and state.[151] The state, according to Natsir, is only a means of applying the teachings of God.[152] In this, he definitely continues Hassan's response to the secular nationalists' political propaganda as expressed in particular by Sukarno. Like Hassan,[153] Natsir rejected Sukarno's support of Mustafa Kemal's ideas on separating religion from state, arguing primarily that Islam, based on the Qur'an and Sunnah, provides at least the basic values underlying every aspect of human life, including those which are concerned with the state and related issues. In addition, Natsir reminds his readers that the Pancasila, the five principles of the Indonesian state, is an open ideology, and one that can be determined by those who take the trouble to interpret it. In the eyes of Natsir, the Pancasila should be interpreted according to Islamic values due to the fact that

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Dakwah 249 (March 1995), 33-41; Kahin, "Mohammad Natsir," 159-65.

[150]Pratiknya, *Perjuangan Seorang Bapak*, 30.

[151]Perhaps the most important contributions by Natsir on the unity of religion and state can be read in his *Persatuan Agama dengan Negara* (Padang: Jajasan Pendidikan Islam, 1968) and his *Islam sebagai Dasar Negara* (Bandung: Masjumi, 1957), originally delivered in the constituent assembly on 12 November 1957. See also Rosidi, *Natsir*, 253-312.

[152]Noer, *Modernist Muslim Movement*, 288-9; Ma'mur, "Natsir's Views," 87.

[153]For Hassan's ideas, see Hassan, *Membudakkan Pengertian Islam*, 122-31; idem, *Pemerintahan Tjara Islam*, 141-2.

Islam is the religion of the majority of Indonesian citizens,[154] an idea clearly expressed by Hassan earlier.[155] In this respect, Natsir regards Indonesia as similar to Pakistan in the sense that Islam plays a major role in the life of Muslims in both countries.[156] In addition, he also attacked Sukarno who quoted Zia Gokalp's saying, "we come from the East, we walk towards the West." Natsir's reply was "whether in the West or in the East, we walk towards God's pleasure."[157]

b. Muhammad Isa Anshary.

Born in Maninjau (Sumatra), Muhammad Isa Anshary (1916-1969) was among the earliest students of Hassan.[158] In 1932 at the age of 16, he moved to Bandung to continue his studies. There, together with Natsir and others, he had the opportunity to study the teachings of Islam under Hassan, an experience which greatly influenced his future life.[159] He subsequently rose to a distinguished position within the Indonesian Muslim community. As Federspiel indicates, "Isa Anshary provided

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[154]Natsir, *Capita Selecta*, vol. 2, particularly section "Apakah Pantjasila Bertentangan dengan Adjaran al-Qur'an?" 144-50; idem, *Islam sebagai Dasar Negara*, 11.

[155]See Hassan, *Islam dan Kebangsaan*, 40-1.

[156]See generally Natsir, *Some Observations*, a book which was originally an address made to the Pakistan Institute of World Affairs in 1952.

[157]Noer, *Modernist Muslim Movement*, 290; Ma'mur, "Natsir's Views," 89.

[158]For a brief biography of Anshary, see "Suri Teladan," 252-5.

[159]Mughni, *Hassan Bandung*, 67; Federspiel, *Persatuan Islam*, 125.

leadership and a point of view, just as Ahmad Hassan had done in the pre-war years."[160] This can also be witnessed from the variety of careers that he pursued in his lifetime. He was appointed leader of Persis, of the prestigious Islamic party Masjumi, and of the Front Anti-Komunis (Anti-Communist Movement).[161] While leader of Persis, he became famous for drafting the *Qanun Asasi Persatuan Islam*, a constitution considered to be the philosophical foundation of the movement.[162] In addition to his leadership role, Anshary spent much of his time writing about political affairs. His books and articles were mostly concerned with advancing the struggle against the proponents of secular nationalism and communism and against the idea of separation between religion and state. At the same time, he promoted Islam as the only possible alternative to guarantee the prosperity of the Indonesian population.[163]

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[160]Federspiel, *Persatuan Islam*, 124-5.

[161]"Isa Anshary: Pertentangan Ideologie," 3.

[162]The *Qanun Asasi Persatuan Islam* was accepted at the fifth Mu'tamar of Persis in 1954 and was revised later at the sixth Mu'tamar in 1957 and then again at the eighth Mu'tamar in 1967; for the latest *Qanun Asasi Persatuan Islam*, see Mughni, *Hassan Bandung*, 133-57. For a similar view, see also M. Isa Anshary, "Kejakinan dan Perdjuangan 'Persatuan Islam'," *Hudjdjatul Islam* 1 (August 1956), 4-11.

[163]See M. Isa Anshary, *Falsafah Perdjuangan Islam* (Medan: Saiful, 1951); idem (together with Jusuf Wibisono and Sjarif Usman), *Bahaja Merah*; idem, "Garis Perdjuangan Kita," *Aliran Islam* 4 (February 1949), 4-8; idem, "Menuju Bangsa Merdeka, Negara Berdaulat," *Aliran Islam* 9-10 (July-August 1949), 8-12; idem, "Masjumi dan D.I.," *Suara Partai Masjumi* 6 (June 1951), 8-9; idem, "Garis Pokok Perdjuangan Masjumi," *Suara Partai Masjumi* 3 (March 1953), 18-22; idem, "Mu'tamar Masjumi Bandung," *Daulah Islamijah* 1 (January 1957), 6-18; idem, "Konsepsi Bung Karno Mengantjam Kehidupan Agama," *Daulah Islamijah* 3 (March 1957), 4-11; idem, "Persoalan Pimpinan, Menilai Perdjuangan dengan Bashirah dan Aqidah," *Daulah Islamijah* 4 (April 1957), 4-10; idem, "K.E. Voroshilov di Indonesia: Menerima dan Menjadi Tamu Agung 'Indonesia' Pegang Rekor," *Daulah Islamijah* 5-6 (May-June 1957), 4-9; idem, "Musjawarah Nasional," *Daulah Islamijah* 9

A prolific writer, he was also entrusted with the position of editor-in-chief of the journals *Hudjdjatul Islam* and *Aliran Islam*, both well-known organs of Islamic reformism and key tools in furthering Hassan's reform doctrine.

Moreover, Anshary paid close attention to the interpretation and elaboration of Islamic teachings, which formed the philosophical and intellectual background of his political activities. A study of his thought in this area will certainly give the impression that Anshary adopted Hassan's principal religious ideas. He believed that Muslims have been too much influenced by Western ways of thinking, to the extent that they live in an era of "modern *jāhiliyyah*," i.e. a way of life which features material progress but lacks spiritual values. What man needs, Anshary says in one of his works, "is an absolute guide, and such a guide is provided by Islam, with its unchanging beliefs in God, its *sharī'ah* and its *ummah*."[164] He also reminded his fellow Muslims of the importance of the Qur'an and Sunnah as the primary sources of Islamic law and, at the same time, warned them of the danger of the current phenomenon where Muslims place the opinions of scholars on par with, and even higher than the Qur'an and Sunnah. Like Hassan, he also insisted on the importance of a true understanding of *bid'ah*.[165] In the context of the present discussion, it may be interesting to throw some light on his ideas regarding blind-adherence (*taqlīd*) and

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(September 1957), 3-10; idem, "Menjambut Ulang Tahun Masjumi," *Daulah Islamijah* 11 (November 1957), 3-6; idem, "5 Tahun Revolusi," *Aliran Islam* 16 (September 1959), 4-8.

[164]Federspiel, *Persatuan Islam*, 125.

[165]Anshary, *Falsafah Perdjuangan Islam*, 76-84.

affiliation with the legal schools (*madhhabs*).

Anshary tried to make his fellow Muslims realize that they had long ago entered a dark age for their culture and civilization and that it was now time for them to wake up. It was their task to liberate themselves from their un-Islamic beliefs and activities and return to the original message of Islam. According to Anshary, Muslims should always remember what Imām Mālik said: *lā yaṣluhu ākhiru hādhihi al-ummah illā bimā ṣaluha bihi awwaluhā.*[166] For this purpose, he wrote, among other subjects, the "Periode Perjalanan Hukum Islam" (Historical Development of Islamic Law).[167] According to Anshary, Islamic law passed through six periods: the period of the Prophet, the rightly-guided Caliphs (*al-Khulafā' al-Rāshidūn*), the Followers (*tābi'ūn*), the *mujtahids*, the students of the founders of schools, and the *muqallids*. It was with the beginning of the sixth period, says Anshary, that the gate of *ijtihād* was believed to have closed. This happened because Muslims were of the opinion that once the schools had been established, every aspect of Islamic law had finally been discussed, and that henceforward Muslims were confined to the interpretation and elaboration of the opinions of the founders of those schools. The school thus became the chief agent in the spread of *taqlīd*, as Hassan pointed out and as reformists of that era echoed. We are now witnessing, says Anshary, *kiyais* across the country teaching their students to follow the opinions of scholars instead of the Qur'an and Sunnah; moreover,

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[166]"The end of this nation will not be reformed except by what reformed its beginning"; see ibid., 76, 209.

[167]Anshary, *Falsafah Perdjuangan Islam*, 66-76.

Indonesian Muslims who claim to be followers of the Shāfi'ī school are, in fact, following the opinions of Shāfi'ī scholars who lived much later than Shāfi'ī himself. An obvious example of this is their attitude to *taqlīd* and *talqīn*, both of which were condemned by Shāfi'ī but wholeheartedly accepted by those claiming to belong to his school in the present day.[168] Quoting such Western theorists as Hans Kohn and L. Stoddard, Anshary expresses the belief that the renaissance of Islam has come to pass, that this is shown in the many progressive Muslims and reformist Muslim organizations that have emerged, and that the contributions of Ahmad Hassan and Persis are among the most significant in this regard.

c. Usman El-Muhammady.

Another of Hassan's students who furthered his teacher's mission was Usman El-Muhammady (b. 1903), an Achehnese who was active as a preacher in the 1920s and 1930s.[169] Like Natsir and Anshary, El-Muhammady was impressed by Hassan, not only because of his knowledge of Islam, but more importantly because of the way in which he applied his understanding of Islamic teachings to real life.

For several months, El-Muhammady stayed in Hassan's house in Lengkong Besar 90 (Bandung), during which time he claimed to have had considerable

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[168]Ibid., 71.

[169]This remark on El-Muhammady is based on his writing "Jasa Persatuan Islam," *Al-Muslimun* 70 (January 1976), 12-4, 19.

opportunity to learn from Hassan how to live according to Islam. [170] What is more, Hassan encouraged him to learn in order to develop and widen his religious outlook; this led him to study foreign languages (Arabic, English, German, French, and Japanese), philosophy, and the natural and social sciences. Most importantly, during his stay in Bandung El-Muhammady learned how to interpret Islam solely on the basis of the Qur'an and Sunnah, to reject the questionable ideas of the legal schools as well as those of the Mu'tazilah, the Ash'ariyah, the Maturidiyah, etc. This training was responsible, he claims, for his ability to access directly the original teachings of Islam, the Qur'an and Sunnah, in contrast to most contemporary religious leaders who base their ideas completely on the viewpoints of the founders of schools.

In 1927, El-Muhammady returned to his home in Aceh, where he spent the rest of his life promoting what he had learned during his stay in Bandung. To achieve his goals, he established schools equipped with modern laboratories to pursue research in the social and natural sciences. Along with this, he published journals such as *Suara Atjeh* (1927-1934), *Al-Muslimin* (1932-1934), and *Industrie* (1937), the latter first published in Aceh and then in Medan. All these journals, according to El-

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[170]According to El-Muhammady, Hassan taught him about good nutrition and about Indonesian, Arabian and Indian foods, all of which impressed him deeply. Hassan's teachings, which are concerned with the daily life of Muslims, such as the ways of eating, cleaning the body, dressing, speaking, respecting parents, teachers, and others, can be read in Hassan, *Kesopanan Tinggi Secara Islam*; idem, *Hai Tjoetjoe-koe! (Nasihat seorang toea jang telah hidoep lama, banjak melihat, banjak mendengar dan banjak mengalami hal-hal doenia kepada tjoetjoenja jang laki-laki dan jang perempoean dan kepada kanak-kanak jang se'oemoer dengan mereka)* (Surabaja: Salim Nabhan, 1948); the latter, according to Pijper, is similar to Erasmus' *De Civilitate Morum Puerilium*; but there is no evidence, says Pijper, that Hassan ever read this work; see Pijper, *Sejarah Islam di Indonesia*, 139-41.

Muhammady, were aimed at spreading Hassan's doctrine, particularly as it was expressed in *Pembela Islam*. From the beginning, El-Muhammady realized that his efforts would meet with severe condemnation from local religious leaders, as had happened in the case of *Pembela Islam* published by Hassan. Indeed, stern reactions came from people across the city; but El-Muhammady anticipated all these persistently and patiently.

El-Muhammady, however, seems to have differed in many ways from Natsir and Anshary. In his effort to understand Islamic teachings, El-Muhammady avoided using the Arabic works of earlier scholars in order to sharpen his understanding. Instead he principally used the "secular" sciences, such as history, philosophy, psychology, and the natural sciences (i.e. physics and chemistry) to explain, for instance, the concepts of faith (*īmān*), *islām*, prayer, alms-tax, and pilgrimage. To put it in terms commonly used in present-day Indonesia, El-Muhammady was more of a Muslim intellectual rather than an *'ālim* or a *kiyai*. His approach was of particular interest to those who had a good background in the "secular" sciences; it is not surprising therefore that he was appointed as the instructor in Islamic subjects in the Sekolah Staf Umum Angkatan Darat (a military school).[171] We can therefore understand Abdul Madjid's remarks in his foreword to El-Muhammady's *Islamologie*: "Usman el-Muhammady was not an expert on Islam or a philosopher but rather a

[171]His lectures at the school were later published in a work entitled *Islamologie* (Djakarta: Pustaka Agus Salim, 1951). See also his *Pembangunan Djiwa, Negara dan Kebudajaan Islam*, 2 vols. (Djakarta: Pustaka Agus Salim, 1951).

musallin [a man of prayer] and a man of science who really loved Islam."[172]

d. Abdulkadir Hassan.

Abdulkadir (as he was usually referred to) (d. 1984) was perhaps the best example of the impact of Hassan's doctrine. After all, as already noted in the second chapter, he was Hassan's eldest son and had studied Islam under his father's tutelage. Immediately after his father's death, Abdulkadir stepped into his shoes at the Pesantren Persis in Bangil. Unlike Natsir and Anshary, Abdulkadir was not very much involved in politics but rather took over the directorship of Pesantren Persis and spent much of his time issuing *fatwā*s through, among other media, *Al-Muslimun*, a journal published by Pesantren Persis of Bangil until the present-day.[173] Like his father, Abdulkadir also successfully taught his own children; in fact his children never took religious instruction from any one except him. His son Ghazi Abdulkadir was taught in this fashion, and has since become known as his father's disciple in the Pesantren Persis of today. As such, Abdulkadir has been successful in continuing his father's mission; hence the criticisms expressed in what follows is in no way meant to detract from his valuable contribution to the effort of solving the problems faced by Indonesian Muslims.

Abdulkadir was not as prolific an author as was his father for he left two

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[172]Abdul Madjid, "Foreword" to *Pembangunan Djiwa, Negara dan Kebudayaan Islam*, by Usman El-Muhammady, vol. 1, 24.

[173]For an analysis of *Al-Muslimun* and its contents, see generally Federspiel, "The Case of *Al-Muslimun*."

works only: *U-shūl Fiqih*[174] and a ten volume *Kata Berjawab* (literally: an answered word).[175] Both are mostly collections of his writings issued in *Al-Muslimun*. Through these two works, one can see how close his religious ideas were to those of his father. The first work deals with the topics of *uṣūl al-fiqh*, namely the sources of Islamic law and how to derive rules from these sources; the discussion therefore deals with, among other subjects, the Qur'an, Sunnah, consensus, *qiyās*, *ijtihād*, *ittibā'*, *taqlīd*, and *madhhab*. Reading this work, one finds little that has not been said already by Hassan. In fact, this work reiterates Hassan's doctrine of the importance of accepting the Qur'an and Sunnah as the sole guidance for believers, the promotion of *ijtihād* or at least *ittibā'*. and condemnation of the adoption of a school which he too sees as tantamount to practising *taqlīd*. Again, like Hassan, Abdulkadir believes that the opinions of the schools' eponyms are not necessarily correct, and that many of their ideas even contradict the original teachings of Islam. For example, Shāfi'ī, Mālik, and Ahmad are of the opinion that the *salāt al-qasr* (shortened prayers)[176]

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[174]Surabaja: Al-Muslimun, 1956. This book was a collection of his writings published in *Al-Muslimun* from number 1 to 28.

[175]All are published by Fa. Al-Muslimun, Bangil; the tenth volume was published in 1990. A number of his *fatwās* were issued during Hassan's lifetime and appear, for instance, in *Sual-Djawab*, vol. 13 (Bangil: Persatuan Islam, 1956), 77-92; vol. 14 (Bangil: Persatuan Islam, 1958), 1-23, 31-4, 40-100; and vol. 15 (Bangil: Persatuan Islam, 1958), 1-7, 9-40.

[176]*Ṣalāt al-qaṣr* is a prayer performed during a period of travel or insecurity, during which Muslims are allowed to shorten their prayers based on the Qur'an 4:101: "When ye travel through the earth, there is no blame on you if ye shorten your prayers, for fear the Unbelievers may attack you: for the Unbelievers are unto you open enemies."

is allowed for those who are in the midst of a journey (*safar*) lasting at least one day and one night, while according to Abū Ḥanīfah, the journey should be of at least three days' duration. Nevertheless, since the Prophet never set any limit on the length of a journey justifying such a prayer, the views of Shāfi'ī, Mālik, Aḥmad, and Abū Ḥanīfah cannot be said to reflect the sources of Islamic teaching. Abdulkadir then asks: Did the founders of the schools think that they knew better than the Prophet, so that they determined the limit of the journey?[177] Another example of inconsistency on the part of the schools' eponyms concerns dry ablution (*tayammum*). Abū Ḥanīfah and Shāfi'ī issued *fatwā*s to the effect that in the case of *tayammum*, Muslims are asked to wipe their face and their two hands until their elbows. This rule, maintains Abdulkadir, is certainly not in conformity with that determined by the Prophet who said that the "*tayammum* is only for the face and the two hands (*kaffayn*);" clearly no mention was made respecting the elbows. This is but one more example of how the ideas of the schools' eponyms are in contradiction with the original teachings of Islam.[178]

Notwithstanding these points, it must be said that Abdulkadir's *uṣūl al-fiqh* is less elaborate than that of Hassan. His discussion of *ijtihād, ittibā', taqlīd*, and *madhhab* is no more than six pages in length and consists of a mere summary of Hassan's lengthy discussion of these topics. Also, one will not find any further elaboration of Hassan's doctrine on consensus (*ijmā'*). As already discussed in the

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[177]Abdulkadir Hassan, *Kata Berjawab*, vol. 1-5 (Bangil: Al-Muslimun, 1991), 575.

[178]Ibid.

third chapter, Hassan, on the one hand, acknowledges the consensus of the Companions as the only consensus which constitutes a source of Islamic law; on the other hand, he recognizes the validity of consensus at any given time as the basis for deciding, for instance, on the best form of government for Indonesia. The answer to this problem cannot be found in Abdulkadir's treatment of consensus; he does not even mention the second type of consensus (consensus of the *ulū al-amr*) offered by Hassan.[179] A similar situation exists regarding the role of the weak Sunnah (*hadīth da'īf*). Like Hassan, he is of the opinion that a weak Sunnah can be used only so far as it is supported by others of an equal or greater strength; but, his treatment of the subject, like that of Hassan, fails to resolve, for instance, the issue of *talqīn*, which the traditionalists were able to justify by citing proofs in support of the weak Sunnah of Abū Umāmah.[180] Along with this, Abdulkadir preserves his father's use of the term *tidak sah* (not sound) in his discussion of Sunnah, a term which, as we have seen, was very much criticized by the traditionalists.

Our assessment of Abdulkadir's *U-shūl Fiqih* is supported by the contents of his other work, the *Kata Berjawab*, a work which in principle continues Hassan's *Soal Jawab Masalah Agama* and consists of Abdulkadir's *fatwās* in answer to the questions addressed to him by his fellow Muslims. As in his *U-shūl Fiqih*, Abdulkadir proposes nothing new in his *fatwās*; the problems submitted by his fellow Muslims are almost identical to those in Hassan's *Soal Jawab Masalah Agama*, and the answers for the

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[179]Abdulkadir Hassan, *U-shūl Fiqih*, 17-8.

[180]See chapter four on *talqīn*.

most part reiterate what Hassan said earlier. For example, Abdulkadir's *fatwās* dealing with the issues of inter-religious marriage, the religious sermon, Friday prayer, reciting the intention known as *usallī*, recommended prayers during *Ramaḍān* (*tarāwīḥ*), shaking hands between a man and a woman (*muṣāfaḥah*), kissing the hands of a respected person (*taqbīl*), the appointed time and place for pilgrimage (*mīqāt*), the veil (*jilbāb*), and recitation and feast (*tahlīl*), are copied almost verbatim from the *fatwās* of Hassan.[181] Indeed, Abdulkadir's treatment of the issues does not go beyond Hassan's position, and is in most respects much less elaborate than that of the latter. The only differences between Abdulkadir's approach and that of his father lie in the former's treatment of subjects that did not exist in Hassan's time, e.g. *fatwās* which deal with the *zakāh* of fishponds (*tambak ikan*), the use of the money destined for *zakāh* to defray the costs of pilgrimage, and the rules on abortion.[182] Moreover, Abdulkadir's works may suggest also that the problems faced by Muslims in the era of Hassan remained controversial during Abdulkadir's life and, in fact, do so until the present day.

Thus, one could accuse Abdulkadir of following Hassan's "*madhhab*" and therefore of performing *taqlīd*, an attitude which had been categorically rejected by Hassan. Nevertheless, it should be borne in mind that Hassan always encouraged his students to search for the truth in any given matter, a practice which sometimes

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[181]Abdulkadir Hassan, *Kata Berjawab*, vol. 1-5, 86-7, 111, 184, 192, 397, 474, 561, 587, 604, 778; vol. 8, 143-4; vol. 9, 97-104; vol. 10, 193-4, 246-50.

[182]Ibid., vol. 1-5, 341, 353; vol. 8, 267-72.

resulted in their adopting views different from his own. During his life, Hassan always encouraged his students to debate with one another, or even with Hassan himself. According to Mansur Hassan, this approach is still observed in the Pesantren Persis in Bangil, under the leadership of Abdulkadir and continued during the era of Ghazi Abdulkadir.[183] Thus, it is possible, at least theoretically, that Abdulkadir may have differed from his father on certain issues, although these departures have not yet appeared in print.

Finally, needless to say that Abdulkadir, more than anyone else, has also played a major role in passing on his father's legacy through the teaching at Pesantren Persis. In fact, Persis operates two well-known *pesantren*s which continue Hassan's mission: Pesantren Persis in Bangil, now under the leadership of Ghazi Abdulkadir,[184] and Pesantren Persis in Bandung under Latief Muchtar, to which students come from across the country and even from abroad (e.g. Malaysia). In addition to these, both of which were originally established by Hassan, there are no less than one hundred other *pesantren*s and other religious institutions of Persis spreading Hassan's religious teachings, located in Garut, Tasik Malaya, Surabaya, Jember, Camplong-Madura, Sumatra, Kalimantan, and elsewhere.[185]

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[183]Ustadh Mansur Hassan and Ustadh Hud Abdullah Musa, interviewed by Moh. Tabrani and Riyadi, tape recording, 11-12 April 1996, Bangil (East Java).

[184]While Ustadh Ghazi is responsible for the Pesantren Putri (*pesantren* for girls), Ustadh Abdullah Musa is responsible for the Pesantren Putra (*pesantren* for boys).

[185]"Tjabang Persatoean Islam," *Al-Lisaan* 9 (25 August 1936), 36-8; Pijper, *Sejarah Islam di Indonesia*, 129; Ustadh Mansur, interviewed by Tabrani and Riyadi; Latief Muchtar, interviewed by Zein.

2. Impact on the Traditionalist Groups.

Given the amount of effort that Hassan expended in trying to convince the traditionalist camp of the soundness of his views, it would be surprising if it turned out that he did not have at least some success in this regard. True, the traditionalist groups defended their doctrines with great consistency. At every opportunity, they tried to rebut Hassan's message. Indeed, this remains the situation in the present-day. Nevertheless, one can detect a greater willingness on the part of the traditionalists to re-evaluate existing doctrine in an attempt to deal with the problems confronting Muslims in the modern world. Did this come about as a result of the efforts by Hassan and his fellow reformists? Isa Anshary, one of Hassan's students, may be correct when he observes that the doctrine which establishes the Qur'an and Sunnah as the only sources for the basic values of human life, a doctrine initiated by Persis under Hassan, has gradually been accepted by Muslim traditionalists, even though they pass over it in silence when discussing religious issues.[186] Here, a few examples are in order.

In the first place, some movement can be detected in their use of the term *ijtihād*. It has already been pointed out that the traditionalists (i.e. Perti and NU) adopted the idea that the followers of the schools' eponyms should all be considered *muqallid*s. At present, however, the term *ijtihād* is increasingly being applied to efforts at answering requests for guidance in certain matters. In this respect, the

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[186]M. Isa Anshary, *Manifesto Perdjuangan Persatuan Islam* (Bandung: n.p., n.d.), 6; "Suri Teladan," 253.

national conference (*musyawarah nasional*) of the scholars of the NU held in Bandarlampung in 1992 was a momentous one. This conference evaluated, among other important issues, the rigid attitude of the NU in dealing with the new developments faced by Muslims and in trying to find the answers to these problems. In the end, *ijtihād* was judged an important tool in making the NU more dynamic and in helping it to be able to cope with new circumstances. Since the conference, *ijtihād* has become more popular among NU members.[187] The importance of *ijtihād* is also reflected in the works of Ahmad Siddiq,[188] Ali Yafie,[189] and Sahal Mahfudz,[190] all of whom are leading scholars in the NU.

Moreover, 'Alī Ma'sūm of the Pesantren al-Munawwir of Krapyak, Yogyakarta, was said to have shown an interest in reading several works that are normally avoided by his fellow *kiyai*s in the NU (e.g. the works of Ibn Taymiyyah and his disciple Ibn Qayyim al-Jawziyyah). He was also in favor of efforts at *tajdīd*

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[187]Commenting on the conference, *Aula*, the journal of the NU, makes the following remark: "Pintu Ijtihad Sudah Ketemu Kuncinya" (the key to open the door of *ijtihād* has been found); see *Aula* (February 1992), 29-33; while *Tempo* remarks: "Menghalalkan Ijtihad di Bandarlampung" (in Bandarlampung, NU recognizes *ijtihād*); see *Tempo* (1 February 1992), 30-1. It should be noted also that in March 1992, the leading scholars of the NU held a meeting in Pati (Central Java), discussing the possibility of practicing the *intiqāl madhhab*, i.e. the use of non-Shāfi'ī school sources; see "Pinjam Mazhab (Lain), Apa Salahnya?" 69.

[188]See Siddiq, "Nahdlatul Ulama tentang 'Tajdid'," 43-5.

[189]See Ali Yafie, *Menggagas Fiqih Sosial: Dari Soal Lingkungan Hidup, Asuransi Hingga Ukhuwah* (Bandung: Penerbitan Mizan, 1994); idem, "Merantai yang Hilang," 32-6.

[190]Sahal Mahfudz, "Ijtihad sebagai Kebutuhan," *Pesantren* 2 (1985), 38-42; "K.H. Muhammad Ahmad Sahal Mahfudz: Ihwal Dakwah Kita yang Masih 'Ngawur'," *Media Dakwah* 205 (July 1991), 60-3.

and encouraged people to practice *ijtihād* in order to answer new demands. He constantly reminded his students of the need to see the works of the medieval scholars as being in part influenced by their own historical context; thus, in his view, people in the later period, including those in Indonesia, do not always need to refer strictly to the views of these scholars, since the scholars of their own day are no different in being influenced by their own historical setting.[191]

Abdurrahman Wahid, the present leader of the NU, has gone even further.[192] He is reported to have recognized Khomeini of Iran as a great Muslim leader of this era, an attitude which was widely condemned by other members of the NU on the grounds that Wahid's idea implied recognition of the truth of Shī'ī doctrine, which was, according to his opponents, contrary to the constitution of the NU.[193]

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[191]Masdar Farid Mas'udi, "Dia ['Alī Ma'ṣūm] Menganjurkan Ijtihad," *Pesan* 2 (1990), 37. Similarly, see Ansari, "Foreword," vii.

[192]See Abdurrahman Wahid, "Pengaruh Perubahan Sosial Pada Perkembangan Hukum Islam: Suatu Pandangan Historis," *Aula* (March 1995), 34-45; idem, "Pengembangan Fiqh yang Kontekstual," *Pesantren* 2 (1985), 3-8; idem, "Menjadikan Hukum Islam sebagai Penunjang Pembangunan," in *Agama dan Tantangan Zaman: Pilihan Artikel Prisma 1975-1984* (Jakarta: LP3ES, 1985), 63-79; idem, "Tradisi Keilmuan dalam Islam," *Aula* (September 1992), 78-85; idem, "Foreword" to *Agama Keadilan: Risalah Zakat (Pajak) dalam Islam* by Masdar Farid Mas'udi (Jakarta: Pustaka Firdaus, 1991), ix-xxi.

[193]"Gus Dur Menyikapi Syiah: Membunuh Kecoak dengan Bombardir," *Aula* (September 1993), 16-20; "Kontra Syi'ah Kontra Sunni," *Aula* 1 (January 1996), 33-46. The issue of Shī'ī doctrine has again become an important issue among the members of the NU under the leadership of Wahid. Said Aqil Siraj, for example, was attacked for being an apostate (*murtadd*) because of his, according to his opponents, sympathy towards Shī'ī doctrine. This case was even used to shake the position of Wahid as the leader of the NU, for Siraj is a close colleague of Wahid; see "NU: Kini Masalah dari Pendukung," and "Wawancara: Hasyim Asy'arie," *Gatra Online* (17 February 1996).

Moreover, in his works on Islamic law, Wahid does not hesitate to use the works of Western scholars (such as Goldziher, Schacht, and Coulson), a practice which is, of course, in contradiction to the common practice of most scholars who confine themselves to the works of Muslims and more specifically to those within the Shāfi'ī school.

Quite radical also is the approach introduced by Masdar Farid Mas'udi in dealing with the problems of Islamic law. This can be seen, for instance, in his effort at solving the problem of the alms-tax (*zakāh*).[194] It is true that even today, Muslims in Indonesia must pay *zakāh* to their religious leaders or religious institutions; at the same time, they have to pay the tax imposed by the state. Muslims commonly believe that while *zakāh* is an obligation according to a clear religious text, the national tax is required of Muslims on the basis of state legislation, and that, although the latter is justified through the consideration of public interest (*maslahah mursalah*), the two are completely different from one another.[195] Contrary to this belief, Mas'udi

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[194]Masdar Farid Mas'udi, *Agama Keadilan: Risalah Zakat (Pajak) dalam Islam* (Jakarta: Pustaka Firdaus, 1991); idem, "Kembalikan Konsep Zakat-Pajak pada Tempatnya," *Aula* (June 1992), 72-82; idem, "Zakat? Ya Pajak Itu," *Republika Online* (16 February 1996); idem, "Zakat dan Keadilan Sosial," *Amanah* 3 (February 1996), 38-40.

[195]The problems of *zakāh* and tax have become important issues in the 1990s mainly on account of the effort of the government to increase the national income; at least two national seminars have been held and the results, in fact, emphasized the common belief that *zakāh* and tax are different from one another; see B. Wiwoho, Usman Yatim, and Enny A. Hendargo, eds., *Zakat dan Pajak* (Jakarta: PT. Bina Rena Pariwara, 1991). Another seminar was also held by the NU, and it reached two general, although different, conclusions: some viewed *zakāh* as different from tax, while others considered *zakāh* as tax and vice-versa; see "Mencari Kepastian Hukum Pajak," *Aula* (June 1992), 67-71.

proposes that the national tax be regarded by Muslims as equivalent to *zakāh*, thus combining the two into a single obligation. He argues that *zakāh* is really the spiritual aspect of God's command to give charity, and that while tax is the institutionalization of the latter, they are both essentially performed in obedience to the one command. In elaborating his thesis, Mas'udi criticizes those scholars, including the well-known contemporary jurist Yusūf al-Qardawī, who support the conventional approach towards *zakāh*. By the same token, his thesis has met with a largely negative response from the traditionalist groups.[196] One of the leading scholars of the NU has even accused him of being a paid government official whose aim is to increase tax-income (*pesan sponsor*).[197] However, these responses are limited mainly to certain details of the proposal and are all easily answered by Mas'udi.[198]

What is most interesting here is Mas'udi's approach to *zakāh* which is clearly antithetical to the doctrines of the NU to which he belongs. He tends to dismiss his critics as "conventional." Certainly, the common practice of *zakāh* is based on the teachings of the *kiyai*s across the country. These *kiyai*s have in turn based their ideas on the views recorded in the works on *fiqh*, influenced as these are by the ideas of

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[196]Cholil Bisri, "Zakatkah Pajak Itu?" *Aula* (June 1992), 82-6; Farid Wazdi, "Opini: Zakat? Ya Tetap Zakat!" *Republika Online* (29 February 1996); Muhammad Syafii Antonio, "Zakat dan Pajak Itu Beda Konsep," *Republika Online* (12 April 1996).

[197]Bisri, "Zakatkah Pajak Itu?" 82.

[198]For Mas'udi's replies, see his "Zakat dan Pajak: Jawaban Masdar F. Mas'udi kepada Kiai Cholil Bisri Rembang," *Aula* (August 1992), 69-75 and his "Pajak Diniati Zakat," *Republika Online* (15 March 1996).

earlier scholars. As has already been pointed out earlier, this use of inference (*istinbāṭ*) is the corner-stone of the traditionalist group, including the NU, and at the same time fundamentally different from that employed by Hassan. Mas'udi, for his part, goes beyond NU doctrine and draws attention to the need to re-evaluate common beliefs and practices, proposing at the same time to uncover what really happened in the early history of Islam. In so doing, he criticizes the common paradigm of most religious leaders which he sees as responsible for the failure of Muslims to use *zakāh* to solve the economic problems of Muslim society. According to Mas'udi, scholars believe that it was only the legal schools' eponyms who had the right to perform *ijtihād*. By the third century of the Muslim era, all essential problems were supposed to have been completely settled, leaving it to the later jurists only to interpret, elaborate, and apply the doctrines laid down by the schools' eponyms. Any effort to go beyond this is immediately suspected of creating discord among Muslims. This paradigm, says Mas'udi, no longer serves Muslims' needs in the present era and can no longer be maintained.[199] In his approach then, Mas'udi avoids making the ideas of the jurists the basis for his thesis but instead uses their views to sharpen his understanding of the Qur'an and Sunnah, especially as they relate to the historical development of *zakāh* and other forms of taxation. Indeed, Mas'udi's remarks clearly go far beyond the boundaries set down in the constitution of the NU and that his ideas are in line with those of Hassan and his disciples. Commenting on Mas'udi's thesis, Wahid correctly observes that if Mas'udi's approach towards *zakāh* is accepted, there

[199]Mas'udi, *Agama Keadilan*, 1-2; idem, "Zakat dan Keadilan Sosial," 40.

will be many traditional beliefs and practices that will have to be re-evaluated.[200] This is the sort of objection that has traditionally been directed at the reformists, and principally at Hassan.

The same reaction can also be detected in another traditionalist group, namely Perti. It is true that at an earlier period, any *fatwā* issued by the scholars of Perti was supposed to be based almost exclusively on the ideas of the earlier scholars of the Shāfi'ī school recorded in the works on *fiqh*. Nowadays, however, perhaps because of reformist criticism (particularly addressed by Hassan) that they were neglecting the Qur'an and Sunnah, Perti jurists have made a point of showing that the ideas of the scholars of the Shāfi'ī school were unquestionably based on the Qur'an and Sunnah. In so doing, they buttress their *fatwā*s with certain Qur'anic verses and Sunnahs, alongside the ideas of the scholars of the Shāfi'ī school. This is reflected, for instance, in Siradjuddin Abbas' *40 Masalah Agama*, a book which is representative of the traditionalists' ideas and widely read today by Muslims in the Malay-speaking countries.[201]

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[200]Wahid, "Foreword," xvii.

[201]See also Abbas, *Madzhab Syafi'i*.

CONCLUSION

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In any analysis of a socio-religious movement, one can identify at least two important phenomena: religion as an active agent in furthering social change on the one hand, and social transformation as a major catalyst in religious change on the other.[1] These two features can be differentiated but they cannot be separated, as they are but two sides of the same coin. These two phenomena can be detected in the thought of the Indonesian scholar Ahmad Hassan and in his efforts to introduce Islamic legal reform in his country during the first half of this century. On the one hand, Hassan's reform movement inspired his fellow Muslims to build "a new order" of society based on the equality of all believers. This is reflected in his doctrine that Allah and His messenger are the only unquestionable sources of truth; all other sources are fallible. Accordingly, *ijtihād* is open to any one and is not confined to a certain elite, whether they are the schools' eponyms or others. The only qualification that he recognizes is that of ability which one can acquire by one's own effort and through which one can attain the rank of a *mujtahid*. On the other hand, Hassan's religious doctrine is influenced by his perception of the social change that his community had undergone, a perception which became increasingly pessimistic. In Hassan's view, the problems affecting Indonesian Muslim society were only exacerbated by a common misunderstanding of the doctrine of *bid'ah* which, in the long run, rendered Muslims

[1]Kartodirdjo, *Modern Indonesia*, 263.

less competitive with other societies and resulted in their being colonized both politically and economically.

Efforts were nevertheless being made to free Muslims from their backward condition. The debate surrounding this process forced Hassan to analyze in greater depth the problems facing Muslims and to try to arrive at a solution. Hassan finally came to the conclusion that the roots of this situation lay in the mis-application of *uṣūl al-fiqh*, the one science fundamental to a comprehension of God's message. According to Hassan, *uṣūl al-fiqh* as practised by Indonesian Muslims suffered from serious deviations, i.e. it led Muslims to base their everyday conduct not on the two primary sources of Islam, but rather on the opinions of their religious leaders (*kiyais*), whose own understanding of the issues of Islamic law ultimately depended on the ideas of legal scholars who had lived many centuries ago. In a number of instances, this belief gave birth to practices contrary to fundamental Islamic values. Moreover, belief in the infallibility of the scholars of the Shāfi'ī school rendered the traditional *kiyais* incapable of dealing with the new developments affecting Muslims due to the fact that such developments had never been discussed by earlier scholars of the Shāfi'ī school. Instead they resorted to *tawaqquf* (i.e. suspension of the issuing of a *fatwā*), a practice foreign to Hassan, who never refused to prepare a *fatwā* when one was demanded of him. Thus, Hassan's *uṣūl al-fiqh* was not only theoretical, but also practical and reflected the influence of the dialogue that he carried out with his contemporaries. It also shows how he attempted to accommodate the modern lifestyles of Indonesian Muslims, as shown by, among others, his *fatwās* on nationalism, bank-

interest (*ribā*), and the lottery (*maysir*).

But there was another fundamental difference between Hassan's doctrine and that of his opponents, one that neither he nor his opponents ever fully acknowledged. This had to do with the application of the sources of Islamic law. True, both agreed that there are four sources of Islamic law: the Qur'an, Sunnah, consensus, and *qiyās*. But while Hassan believed that the higher level sources supersede the lower ones, his opponents were of the opinion that, following Shāfi'ī's doctrine, the lower level sources override the higher ones. The present study reveals that Shāfi'ī's doctrine played a very important role in the polemics between Hassan and his opponents, even though none of the latter ever mentioned Shāfi'ī's doctrine on the relationship between the different sources. Curiously enough, as this study shows, the traditionalists themselves hardly ever cited Shāfi'ī's ideas, and in fact even maintained certain ideas that contradicted those of the founder of the school, e.g. their doctrine regarding *taqlīd* and the role of *qiyās* in matters of worship (*'ibādāt*). The polemics between Hassan and his opponents discussed in the fourth and fifth chapters are clear examples of this.

The dialogue between Hassan and the scholars of his day illustrates perfectly the truth of what Ernest Gellner calls "a pendulum swing theory of Islam."[2] It is beyond doubt that prior to Hassan's lifetime, there was a common belief, shared by the majority of Indonesian Muslims and taught by their religious leaders in religious

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[2]E. Gellner, "A Pendulum Swing Theory of Islam," *Annales de sociologie* (1968), 5-14, reprinted in *Sociology of Religion: Selected Readings*, ed. Roland Robertson (Victoria, Australia: Penguin Books, 1969), 127-38.

institutions such as the *pesantren*, that Muslims should follow the Shāfi'ī school. Hassan's message was in effect a response to this common belief which he saw as already suffering from a set of debased religious values. True, Hassan's effort in the long run has created, to use Habsji's term, a "new school" followed with great devotion by his students and disciples. This irony has not been lost on Hassan's traditionalist opponents, who accuse Hassan's so-called "school" of fomenting discord among Muslims, and even of leading them astray. Perti, the NU, and Husain al-Habsji were particularly vocal on this issue.

The debate between the proponents of reform and traditional religious practice is still ongoing. It should be kept in mind, however, that the differences between these two groups are becoming increasingly blurred; indeed whereas differences between them may be detected at the institutional level, this is much more difficult in the personal sphere. Accordingly, there are quite a number of Muslims who belong to traditionalist groups (e.g. the NU) but who in fact often promote new ideas, in some cases more actively even than their counterparts in the various reformist groups (e.g. Persis). In the case of Hassan's reform mission, it is clear that his students and disciples have been unable to go beyond their teacher's accomplishments. Persis, which in the era of Hassan was at the forefront of promoting religious reform, now has hardly anything to offer to Indonesian Muslims, particularly at the intellectual level. On the other hand, certain members of the NU, for instance, often go beyond the limits of the organization's constitution in promoting new solutions to current problems. However, one might say that the reformist teachings spread by Hassan have

ultimately proven successful in that they have been taken over not only by his students and disciples but more importantly by the traditionalists who had once been his primary adversaries. Thus, even though traditionalists consistently defend their practice of following a school when confronting the problems faced by Muslims, in reality they often go beyond this limit and employ the opinions of the scholars of the schools only as a means of sharpening their understanding of the primary religious texts, the Qur'an or Sunnah. This approach was the cornerstone of Hassan's *uṣūl al-fiqh*. In this respect, Hassan's contribution represented something of a revolution among Indonesians.

This study has also suggested that the polemics between Hassan and his opponents, whether in print or in the form of debate (*munāẓarah*), suffered from a case of what Hallaq calls *terminological confusion syndrome*. This, unfortunately, often resulted in hopeless confusion; their different understandings of the meanings of *ijtihād*, *ittibā'*, and *taqlīd*, and their respective attitudes towards legal school reveals this tendency. This was also reflected in their different opinions of what the most important and fundamental issues were for Muslims. For example, most of Hassan's opponents tended to blame Hassan for concentrating on trivial matters (referred to as *furū'*) at the expense of the more fundamental aspects of Muslim life, e.g., the struggle against Western imperialism and native secularism. By the same token, without trying to clarify the terms used by his opponents, Hassan insisted that he had dealt with fundamental issues; nevertheless, Hassan was referring to the fact that Muslims had long neglected the fundamental sources of Islam, the Qur'an and

Sunnah, and that to solve their problem, they had to return to the original teachings of the faith. In support of this argument, Hassan pointed out that in his works he had concerned himself not merely with questions of *'ibādāt* but also with those of *mu'āmalāt*, this out of a concern to counter the secular ideas of the nationalist movement. In fact, the problem of terminology did not end there. Hassan also attempted to distinguish sharply between the terms *'ibādah* and *mu'āmalah* and between certain aspects which belong to both of them. But he was unsuccessful in this effort, for there are certain activities which are difficult to assign to one field rather than the other, the case of *ḥalāl bi-ḥalāl* being the most clear example in point.

The problem is not an easy one; indeed, its roots lie deep in Islamic history, derived as it is from attempts at the humanization of divine law (and vice versa), as well as from an effort at reconciling reason and revelation. To use Kerr's words, the problem is this: "where does revelation end and where does reason begin, and what, if anything, lies in between?"[3] This is a question which is faced not only by Muslims but also by religious people in general.[4] This brings us to another important point: an analysis of the philosophical framework underlying the issues is an essential prerequisite for any genuine polemics. In our case, an understanding of *uṣūl al-fiqh* is central to any discussion of substantive law, for *uṣūl al-fiqh* represents the basis upon which the rules of Islamic law are built, rationalized and justified. Thus, any

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[3]Kerr, *Islamic Reform*, 75.

[4]See, for instance, Haim H. Cohn, "Secularization of Divine Law," *Scripta Hierosolymitana* 16 (1966), 55-103.

effort to solve the fundamental problems of Islamic law without addressing the issues of *uṣūl al-fiqh* would be certain to end in failure. This is reflected very clearly in the polemics between Hassan and his opponents and also in the responses addressed to Mas'udi's proposals regarding *zakāh* and the national tax. The present study has hopefully shown that *uṣūl al-fiqh* remains an essential element in the reformist efforts at reformulating Islamic law in Indonesia.

GLOSSARY

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Arabic:

āḥād: solitary *ḥadīth* or *sunnah*, report by a single person or by odd individuals.

ahl al-ḥall wa al-'aqd: the legitimate holders of authority, who decide matters on behalf of Muslims and act in their best interest.

ahl al-kitāb: people of the book, i.e. Jews and Christians, to whom were added later Sabeans and Zoroastrians.

ahl al-sunnah wa al-jamā'ah: the people of the Sunnah and the community, i.e. the Sunnīs.

'ālim (pl. *'ulamā'*): a scholar, a man learned especially in religious knowledge.

'aṣabiyyah: 'spirit of kinship,' it is the fundamental bond of human society whether based on blood ties or some other social grouping which, in the belief of Ibn Khaldūn, impels groups to establish their hegemony.

aṣl (pl. *uṣūl*): root, origin, source.

bāṭil: void, invalid, legally unacceptable.

bay'ah: an unwritten contract or a pact which involves recognition of, and an oath of allegiance to, a caliph, a ruler, a king, or an amir.

bid'ah (pl. *bida'*): innovation, a belief or practice for which there is no precedent in the time of the Prophet. Innovations may be good and praiseworthy (*bid'ah ḥasanah* or *maḥmūdah*) or bad and blameworthy (*bid'ah sayyi'ah* or *madhmūmah*). *Bid'ah* is sometimes called also *ikhtirā'* or *muḥdath*. Those who are involved in *bid'ah* are named *mubtadi'ūn*, *ahl al-bida'*, or *ahl al-ahwā'*.

ḍa'īf: 'weak,' referring to a certain Sunnah which, in general, cannot be used as a religious foundation.

dā'in: a 'caller,' a religious preacher, or a propagandist.

dalīl (pl. *dalā'il*): proof, evidence, textual indicant, legal indicant.

ḍarūrah: dire necessity, dire need.

faḥwā al-khiṭāb: superior meaning, an implicit meaning on which the text may be silent but which is nevertheless superior to the pronounced meaning.

far' (pl. *furū'*): a branch or a sub-division, and (in the context of *qiyās*) a new case.

fāsiq: a reprobate, a great sinner.

fatwā: considered opinion of a legal expert. The request for a formal legal opinion is *istiftā'* and the act of giving a *fatwā* is *futyā* or *iftā'*. The person who gives a *fatwā* is a *muftī* and the person who asks for a *fatwā* is a *mustaftī*.

faqīh (pl. *fuqahā'*): a jurist, one who is learned in *fiqh*. In the Indonesian context, the plural form, *fuqahā'*, is more commonly used, and often may refer to a single jurist only.

fiqh: comprehension of the divine teaching; a science of positive law based on detailed proofs; substantive law.

ghairu ma'qūl al-ma'nā: beyond reason, supra-rational, the opposite of which is *ma'qūl al-ma'nā*.

ḥadīth: a tradition of what the Prophet said, did, or approved; it is also often named Sunnah.

ḥajj: the once-in-a lifetime obligation of pilgrimage to the holy Ka'bah at Mecca. The one who performs *ḥajj* is called a *ḥājj*.

ḥalāl: something permissible and thus one of the five values in Islam; the other four being *ḥarām* (forbidden), *sunnah* or *mandūb* (recommended), *mubāḥ* (permissible), and *makrūh* (repugnant).

ḥasan: good, referring to a certain Sunnah which can, in general, be used as a religious foundation.

ḥāshiyah (pl. *ḥawāshin*): commentary upon a commentary, usually referring to Arabic works.

ḥijāb: veil worn by a Muslim woman; see also *jilbāb*.

ḥukm (pl. *aḥkām*): law, value, a judgement of a judge, a decree, regulation, order, or ruling of *sharī'ah*.

'ibādah (pl. *'ibādāt*): duty or worship towards Allah, or the relations between human beings and Allah.

iftā': see *fatwā*.

iḥrām: entering upon a state in which a particular dress is put on and certain acts, originally lawful, are forbidden; this signifies the beginning of pilgrimage or *'umrah*.

ijmā': agreement or consensus of the Muslim community represented by *mujtahid*s on problems not covered by the Qur'an and Sunnah.

ijtihād: exerting one's effort in order to derive from the bases of the law an opinion concerning a legal rule.

ikhtirā': see *bid'ah*.

'illah: effective cause, or *ratio legis*, of a particular ruling.

iṣlāḥ: reform within the Islamic tradition or having a sense of reshaping for the sake of improving effectiveness. Together with the term *tajdīd*, *iṣlāḥ* has always involved a call for a return to the basic fundamentals of Islam as presented in the Qur'an and Sunnah.

isnād (pl. *asānīd*): chain of authorities (an essential part in the transmission of a tradition).

istiftā': see *fatwā*.

istiḥsān: to deem something good; juristic preference.

istinbāṭ al-ḥukm: inference, e.g. deducing a somewhat hidden meaning (a rule) from a given text.

istiṣḥāb: presumption of continuity, or presuming continuation of the *status quo ante*.

ittibā': the acceptance of certain rules from others based on the religious sources, the Qur'an and Sunnah. The one who performs *ittibā'* is a *muttabi'* (pl. *muttabi'ūn*).

jāhiliyyah: period of ignorance.

jilbāb (pl. *jalābīb*): an outer garment: a long gown covering the whole body, or a cloak covering the neck and bosom worn by a Muslim woman.

jumhūr al-fuqahā': dominant majority of those who are learned in *fiqh*.

kafā'ah (pl. *kafā'āt*): the situation in which the husband is equal to the wife in nobility, piety, lineage, family, etc.

khilāfiyyah (pl. *khilāfiyyāt*): an issue on which scholars are permitted to have different interpretations.

khurāfah: superstitious practice generally seen as *bid'ah*.

khutbah: the sermon delivered at the Friday and other festival prayers. The one who delivers the sermon is a *khaṭīb*.

madhhab (pl. *madhāhib*): school of thought in Islamic law, the most popular among them being the Māliki, Ḥanafī, Shāfi'ī, and Ḥanbalī schools.

madrasah: a religious school.

mafhūm muwāfaqah: an implicit meaning on which the text may be silent but is nevertheless in harmony with its pronounced meaning.

mafsadah (pl. *mafāsid*): cause of corruption or evil.

manhaj al-madhhab: approach based on the ideas of an established school.

manṭiq: logic, faculty of speech, manner of speaking.

ma'qūl al-ma'nā: see *ghairu ma'qūl al-ma'nā*.

maṣādir al-tashrī' al-islāmī: the sources of Islamic law.

maṣlaḥah mursalah: consideration of public interest.

ma'ṣūm: infallible.

matn: the text of the Sunnah.

mīqāt: an appointed time; the place of pronouncing the intention for *hajj*.

mu'āmalah (pl. *mu'āmalāt*): duty towards men, i.e. all matters which concern the ordering of society and for which special laws have been laid down in Islamic law.

mubtadi': see *bid'ah*.

muftī: see *fatwā*.

muḥdath: see *bid'ah*.

mujaddid: the one who leads the movement of *tajdīd*.

mujtahid (pl. *mujtahidūn*): the one who performs *ijtihād*.

mujtahid muṭlaq: absolute *mujtahid*.

mujtahid muntasib: *mujtahid* among the students of the *mujtahid muṭlaq*.

mukhtaṣar: abridgement or summary of a certain book, especially in Arabic works.

munāẓarah: open debate.

musāfir: a traveller, to whom certain exceptions have been made in the *'ibādāt*.

muṣāfaḥah: shaking hands between a man and a woman.

muṣḥaf (pl. *maṣāḥif*): copy of the Qur'an.

mustaftī: see *fatwā*.

muṣṭalāḥ al-ḥadīth: the science of Sunnah.

mutawātir: universally accepted testimony or supported by multiple *isnād*s, referring to certain Sunnahs which can be used as a religious foundation.

naẓar: seeing each other (with desire); looks exchanged between a man and a woman.

niyyah: an intention cited before performing certain activities, e.g. prayer, fasting, and alms-tax; pronouncing a *niyyah* is called *talaffuẓ bi al-niyyah*.
al-qawā'id al-fiqhiyyah: maxims in Islamic law.
qiyās: analogy.
qunūt: special supplications made in certain prayers during the standing posture.
rak'ah (pl. *raka'āt*): an act of bowing down before Allah performed at the time of prayer.
ribā: usury or interest.
rukn: constituents without which a certain *'ibādah* is invalid.
ṣaḥābah: companions of the Prophet.
ṣaḥīḥ: valid, authentic.
ṣalāt al-nawāfil: recommended prayer.
ṣalāt al-rawātib: recommended prayer performed before or after the five daily prayers.
ṣalāt al-witr: prayer the *rak'ah* of which is odd (one, three, etc.) performed after the *ṣalāt al-layl*, *tahajjud*, or *tarāwīḥ*.
sharḥ (pl. *shurūḥ*): commentary upon certain books, especially in Arabic works.
sharī'ah: the divine teaching of Islam.
shart (pl. *shurūt*, *sharā'iṭ*): condition.
shī'ī: those who proclaim that the leadership in Islam was vested in Muhammad's cousin and son-in-law, 'Alī ibn Abī Tālib, and his descendants; their counterparts are known as *sunnī*.
shirk: polytheism.
shubhah (pl. *shubuhāt*): obscurity.
sūfī: Islamic mystic.
sunnah: precedent, normative legal custom; one of the five values in Islam, a tradition of the Prophet.
al-sunnah al-muttaba'ah: the prevailing tradition of a certain Islamic region.
sunnah taqrīriyyah: sayings or activities of the Companions approved by the Prophet.
sunnī: see *shī'ī*.
tahlīl: utterance of the formula *lā ilāha illā Allāh*, an activity in which the phrase *lā ilāha illā Allāh* is recited especially immediately after the death of a person.
tajdīd: renewal, see also *iṣlāḥ*.
talaffuẓ bi al-niyyah: see *niyyah*.
ṭalāq: divorce.
talqīn: pronouncement of certain prayers for the dead during a funeral.
taqbīl: kissing the hands of a respected person, e.g. *sayyid* or *kiyai*.
taqlīd: copying, imitating, or accepting certain rules without arguments of the Qur'an and Sunnah. The one who exercises *taqlīd* is *muqallid* (pl. *muqallidūn*).
taqrīr: fixation or tacit approval of the Prophet.
tarāwīḥ: the night prayer during the month of *Ramaḍān*.
tayammum: dry ablution, a substitute for *wuḍū'*; rubbing the hands and face with clean earth or sand.
ulū al-amr: those who are in authority and in charge of community affairs.
ummī: people who cannot read nor write.

'urf: tradition, custom; it is sometimes called *ādah*.
uṣallī: a verbal form of intention recited in the beginning of the prayer.
uṣūl al-fiqh: Islamic legal theory; literally: roots of understanding; technically: the body of principles and the investigative methodology through which practical legal rules are derived from their particular sources.
wājib: legally compulsory, legally obligatory, often synonymous with *farḍ*.
witr: see *ṣalāt al-witr*.
wuḍū': a ritual ablution as a pre-condition before performing certain acts of *'ibādah*, e.g. prayer.
zakāh: religious charity, e.g. alms-tax, alms given at the end of *Ramaḍān*.
ẓālim: transgressor of the divine teaching.
ẓann: speculation, uncertainty.

Indonesian:

adat: an Arabic-derived term referring to a region's manners, tastes, customs, and beliefs.
Aliran Baroe: a journal edited by Hoesin Bafagih, a prominent figure of the PAI; it was also a group of Muslims who were accused by Ahmad Hassan of having neglected the rule of *jilbāb*.
BPR: Badan Perkreditan Rakyat, foundation of public credit.
datuk ibadat: a local religious leader or a scholar particularly in Sumatra.
dayah: a small mosque or *muṣallā* in Aceh.
halāl bi-ḥalāl: a meeting held after the month of *Ramaḍān*, during which people shake each other hands asking forgiveness for their wrong-doings in the year before.
IAIN: Institut Agama Islam Negeri, State Institute of Islamic Studies.
ICMI: Ikatan Cendekiawan Muslim Indonesia, Association of Indonesian Muslim Intellectuals.
intiqāl madhhab: using the idea of another school.
al-Irsyad: a reform organization, established by the prominent reformist Ahmad al-Surkati.
kaum adat: the defenders of the traditions, some of which are, in the eyes of reformers, in contradiction with religious teaching, often synonymous with *kaum tua* or *kaum tradisional*.
kaum muda: those who belong to the reformist group; the opponents of the *kaum tua* or *kaum adat*.
kaum tua: the defenders of custom against the *kaum muda*, see also *kaum adat*.
kenduri: the world's most common religious ritual, the communal feast; it symbolizes the mystic and social unity of those participating in it; it is sometimes also called *slametan* and, to some extent, similar to *tahlīl*.
kitab kuning: literally means "yellow book", it usually refers to the Arabic medieval and classical works used in the *pesantren* in contrast to the works written in

Latin characters.

kiyai: a teacher in a *pesantren* or any Islamic scholar in general, particularly in Madura and Java. In other areas, the terms *buya* and *labai* are more common.

Muhammadiyah: a reformist organization established by Ahmad Dahlan in 1912.

MUI: Majelis Ulama Indonesia, the Council of Indonesian Ulama established in 1975.

NU: Nahdlatul Ulama, the Renaissance of '*Ulamā*', a well-known traditionalist organization, established in 1926.

PAI: Partai Arab Indonesia, Indonesian Arab Party.

PCPP: Persatuan Cendekiawan Pembangunan Pancasila, the Intellectual Association for the Development of Pancasila.

Persatuan Muhammadiyah: a religious organization in Singapore which promotes Hassan's religious doctrine.

Persis: Persatuan Islam, a radical reformist organization established in 1923, the religious doctrine of which was mostly outlined by Ahmad Hassan.

Perti: Persatuan Tarbiyah Islamiyah, the Union of Islamic Education. Like the NU, Perti is seen as the defender of the traditional beliefs and practices.

pesantren: traditional Islamic educational institution.

PII: Partai Islam Indonesia, Indonesian Islamic Party.

PKI: Partai Komunis Indonesia, Indonesian Communist Party.

PNI: Persatuan Nasional Indonesia, Indonesian Nationalist Association.

PORKAS: Pekan Olahraga dan Kesejahteraan Sosial, Association of Sport and Social Welfare.

priyayi: white collar elite, it refers to the hereditary aristocracy which the Dutch pried loose from the kings of the vanquished native states and turned into an appointed, salaried civil service.

PSII: Partai Sarekat Islam Indonesia, Indonesian Islamic Union Party.

receptie: theory promoted by C. Snouck Hurgronje, according to which the law of the native Indonesians was customary law.

receptie exit: theory established by Hazairin opposing the *receptie* theory of Hurgronje and claiming that the laws of the natives were based on religious values.

receptio a contrario: theory put forward by Sajuti Thalib which developed further Hazairin's theory and at the same time turned Hurgronje's theory upside down.

receptio in complexu: theory advanced by Van den Berg proposing the idea that the law of the Indonesian native people was based on religious teachings.

santri: devout Muslim or the student of *pesantren*.

SDSB: Sumbangan Dana Sosial Berhadiah, Social Contribution with Reward.

slametan: see *kenduri* and *tahlīl*.

suraw: see *dayah*.

tarekat: mystic.

YKPK: Yayasan Kerukunan Persaudaraan Kebangsaan, Association of Nationalist Groups.

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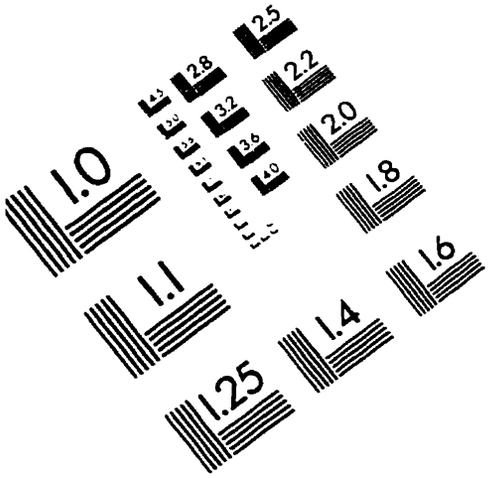
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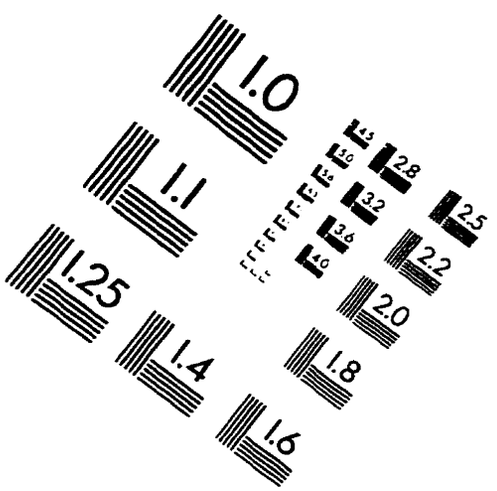
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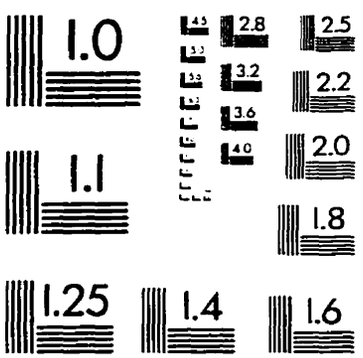
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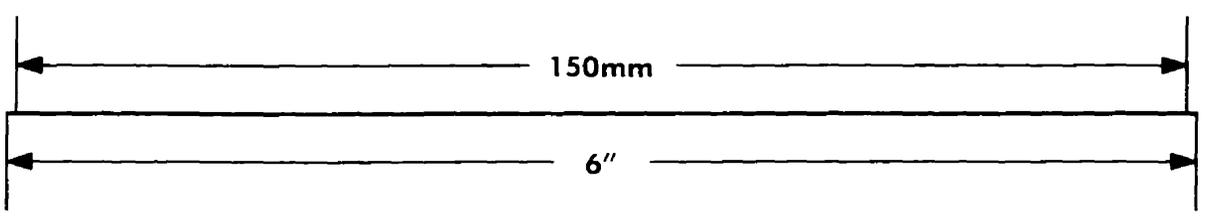
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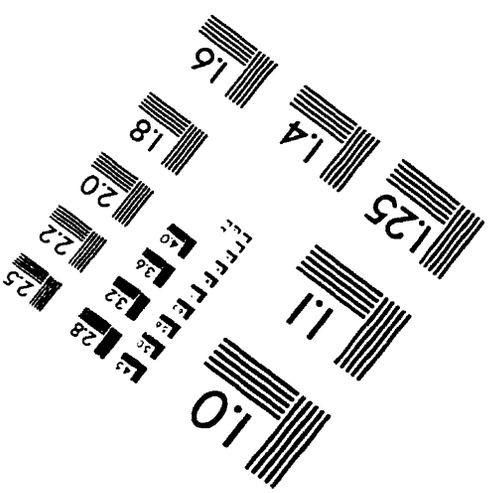
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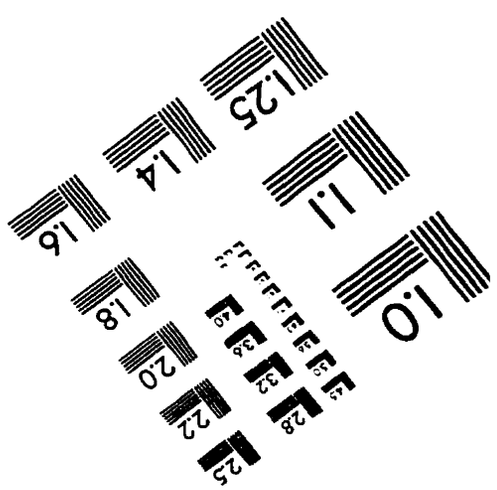












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