The Pattern of Nahdlatul Ulama’s Ijtihad

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ABSTRACT

In line with the socio-religious dynamics in society, various problems surrounding fiqh have also developed, most of which have not been absorbed in the legal thinking of the scholars. Concerning issues commonly referred to as masa’il fighiyyah al-hadithah, scholars have institutional mechanisms to solve these problems. Nahdlatul Ulama, the most prominent Islamic religious organization in the country, is also concerned with masa’il fighiyyah al-hadithah through the Bahtsul Masa’il (BM-NU) mechanism. However, the BM-NU legal istinbath framework is unique, because it is different from the legal istinbath framework that previous scholars had—such as the legal istinbath framework used by Abu Hanifah and Muhammad.
Ibn Idris al-Syaf'i, also different from the legal *istinbath* framework with mass organizations. Other Indonesian Islam—such as the legal *istinbath* framework of the Persis Hisbah Council and the legal *istinbath* framework of Majlis Tarjih and the Development of Muhammadiyah Islamic Thought. The uniqueness is mainly because the legal *istinbath* framework adopted by BM-NU tends to present themselves as *muttabi‘ ulama* and does not present themselves as *mujtahid* clerics as is generally understood by *fuqahâ*.

**Keywords:** Bahtsul masâ‘îl, istinbâth, Nahdlatul Ulama, qiyâs, ilhâq, mu’tabarâh.

### INTRODUCTION

*Ijtihad* has been carried out by scholars since the time of the Prophet Muhammad. However, the new *ijtihad* is formulated more clearly and is equipped with a number of important steps that are estimated - based on the literature that can be traced - compiled at the end of the Umayyad era of Damascus and the beginning of the reign of the Bani Abbas. Practically, *ijtihad* has been carried out by the Prophet and his great companions. However, the explanation of the definition of *ijtihad* was only compiled at the time of Abu Hanifah and Shafi‘i. Imam Abu Hanifa explained that *ijtihad* is (بُذل الجهد لِبِلِّ المقصود) (Al-Dzarwi, 1983: 9). The Imam al-Shafi‘i is of the opinion that *ijtihad* is (بُذل الفقه استباط الأحكام العملية لِبِلِّ التفصيلية) (Zahrah, t.th:379).

The definition of *ijtihad* as explained by the Shafi‘iyah can be seen in the definition of Imam Al-Ghazali (t.th: 350; 1984: 24; Zahrah, t.th: 109; Mubarok, 1998: 72). Imam Abu Hanifa (80-150 H) offers the following steps for *ijtihad*: first, he looks for evidence in the Qur’an. Second, if it is not found in the Qur’an, he looks for it in the Sunnah of the Prophet; third, if it is not found in the Qur’an and Sunnah, he seeks the opinion (qawl) of friends; if it is not found in the Qur’an, Sunnah, and *qawl* companions, he will *ijtihad* as other *tabi‘in* also perform *ijtihad* (Mubarok, 2000:74). After that, the steps of *ijtihad* were developed by scholars in a relatively non-uniform manner (al-Zuhaili, 1986). The method of *ijtihad* of *mujtahid* scholars is preserved in various books of *ushul fiqh* which are read by many scholars in various countries, including scholars in Indonesia.

In Indonesia, there are a number of Islamic community organizations (ormas) that have determined the steps in carrying out legal *istinbath*, including Nahdlatul Ulama. Jaih Mubarok and Nurrohman have conducted research on the methods of *ijtihad* carried out by Islamic
organizations in Indonesia (Mubarok, 2002:169). However, this research is only descriptive in nature—haven’t analyzed it more sharply. Therefore, this paper is a continuation of this research which is expected to complement previous research. In addition, the analysis is carried out by means of comparison, namely comparison with the *ijtihad* steps offered by *ushul fiqh* experts in various schools of *fiqh*.

**METHOD**

This study uses a literature review method or literature review. In this study, a literature review was used to survey scientific sources on the *ijtihad* pattern of Nahdlatul Ulama, the oldest Islamic religious organization in Indonesia, to provide an overview of the current development of the Nahdlatul Ulama *ijtihad* pattern.

**RESEARCH RESULTS AND DISCUSSION**

Al-Qur’an and Hadith as Sources of Law

In general, scholars are of the opinion that the highest source (*ashl*) of law is the Qur’an; Sunnah is used as the second source; and *ijtihad* is used as the third source of law (Dawud, t.th.: 303; Mubarok, 2002:7; Khallaf, t.th.: 21). The exception to this general opinion is the opinion of al-Qadhi ’Abd al-Jabbar. He argues that the highest source of law is reason (*al-ra’y*), and the next source of law is the Qur’an, Sunnah, and *ijma* (Al-Hamadani, 1965:88). Jaih Mubarok—trying to harmonize the two opinions by saying that the sources of Islamic law are the Qur’an, Sunnah, and *ijtihad*—without showing a hierarchy; but cumulative; because—explained Jaih Mubarok—the Qur’an and Hadith which are used as the highest sources of law are basically understood by means of *ijtihad*, at least, by means of *ijtihad* bayani (Mubarok, 2002:8).

In contrast to the opinion of scholars in general, Bahtsul Masa’il NU (hereinafter BM-NU) does not make the Al-Qur’an and Sunnah as the highest source of law; because BM-NU is of the opinion that the law of doing legal *istinbath* with the Qur’an directly—without going through the opinions of scholars who are deemed worthy and capable—is haram. In the 11th NU congress in Banjarmasin (9 June 1935) there were questions submitted to NU regarding establishing Islamic law directly referring to the Qur’an and
Sunnah. The congress stipulates that the determination of the law by referring directly to the Qur’an and Sunnah without going through the books of *fiqh*, is not allowed; because the direct legal determination of the Qur’an and Sunnah will make those who do it astray (*dhâl*) and will also mislead others (*mudhil*) (Masyhuri, 1977:137). This decision seems to be the forerunner that triggers the birth of a number of BM-NU decisions that are different from other ulema’s decisions regarding ways of enacting the law.

**Obligation to follow one of the schools of jurisprudence**

Along with the prohibition of deciding an opinion by referring directly to the Qur’an and Hadith, BM-NU stipulates that following one of the schools of *fiqh* is obligatory. In the 1st NU congress in Surabaya (21 October 1926) it was stipulated that Muslims must follow one of the four schools of jurisprudence. The reason is to follow the opinion of Sayyid ‘Ali al-Khawas. Sayyid ‘Ali al-Khawas—in his book *al-Mîzân al-Sya’rani*—argued that Muslims must follow one of the four schools of jurisprudence and the same opinion is also explained in the book Nihâyat al-Sûl (Mashuri, 1977:138).

Implicitly, the decision regarding the obligation to follow the four schools of jurisprudence is a thought-washing process (*taqds al-afkâr*) which does not seem to be in line with the rules adopted by NU, namely maintaining old opinions that are still useful and adopting new, more favorable opinions. useful (Haidar, 1994:318).

Because of the decision regarding the obligation to follow one of the four schools of jurisprudence, BM-NU stipulates a number of technical terms that are part of a series in the legal decision-making process. These terms are: first, *al-kutub al-mu’tabarat*; namely books on Islamic teachings that are in accordance with the aqidah of Ahlusunnah Wal-Jama’ah (formula of the 27th NU Congress). Second, *qawl* school; namely following the “finished” opinions within a certain school of thought. Third, *manhâji* school; i.e. bermadzhab by following the way of thinking and the rules of determining the law drawn up by the imam of the *madhhab*.

Fourth, *qawwol* and face. *Qawwol* is the opinion of the *madhhab* imam; and the face is the opinion of the scholars of *madhhab*; and fifth, *ilhâq al-masâ’il bi nazhâ’irihâ*, which equates the law of a case or problem that has not been answered by the scholars in the book with similar problems that have been answered by the book (equating it with an opinion that has “made up”).
Nature of BM-NU Decisions

In general, decisions or fatwas of Islamic organizations in Indonesia can be divided into two: first, decisions which are explicitly stated to bind all members of the mass organizations concerned so that they are “obligated” to follow the decision. In other words, the decision of the ulama (who is bound by the law or fatwa) regarding the law of something is binding. The decision of the Persis Hisbah Council is binding on the Persis congregation; and second, decisions that are not binding on all members of the mass organizations concerned so that they are not “obligated” to follow the decision. The decision of the Majlis Tarjih and the Development of Muhammadiyah Islamic Thought is not binding on Muhammadiyah members.

All BM-NU decisions taken with agreed procedures, whether carried out within the organizational structure or outside, have an equal position and do not cancel each other out; and a decision made by BM-NU is considered to have a higher binding power after being ratified by the NU Syuriah Executive Board without having to wait for the Ulama National Conference or Congress.

The nature of the BM-NU decisions at the National Conference and Congress levels are: (a) ratifying the draft decisions that have been prepared in advance; and (b) intended for decisions that are considered to have a broad impact in all fields. BM-NU does not provide affirmation—explicitly—in the form of a decision regarding the nature (binding or not of NU members) of its decision. However, the decision regarding the obligations of one of the four schools of fiqh can be used as the basis that the BM-NU decision binds NU citizens.

Qiyas and Ilhaq

One of the “new” treasures in the BM-NU legal decision-making method is ilhâq. Basically, ilhâq is a continuation of the qiyâs method or analogy. Linguistically, qiyâs means (التشبيه النسوية), guessing and equating (Mahmasahshani 1961:165; al-Khinn, 1982:470). The linguistic understanding of qiyâs which is closer to the linguistic understanding of qiyâs is to equate the branch to the main (سماوية الفرع إلى الأصل) (Al-Hakim, 1963:304; Al-Shafî‘i, t.th.:
205). While the definition of *qiyās* in terms is explained by scholars with different editors.

Al-Qadhi Abi Bakr said that what is meant by *qiyās* is (حمل لوم لى لوم إثبات) (Al-Khinn, 1982:470; Al-Juwaini, 1400:745); “bringing something that is known to something else that is also known to establish a law or prohibit both because there is something in common between the two, both law and nature.”

Al-Amidi said that what is meant by *qiyās* is (عبارة الاستواء الفرع والأصل العلة) (Al-Khinn, 1982:470); “equating the branch with the principal on the basis of the ‘illat of the principal law.” Ibn al-Hajib explained that what is meant by *qiyās* is (مساءة لأصل لله) (Al-Khinn, 1982:471); “equalizes branch law to principal because of the similarity of ‘illat law.”

Not all definitions are agreed upon by other scholars. Regarding the first definition put forward by al-Qadhi Abi Bakr, Imam al-Ghazali in al-Mankhûl min Ta’liqât al-Ushl said that this definition includes fasid, because the term al-jâmi‘ used is majhûl (cryptic) (Al-Ghazali, 1980:323).

Almost the same as the definitions above, Ali Hasab Allah explained that what is meant by *qiyās* is (مشاركة عنه منصوص لي الشرعي لله الحكم) (Hasaballah, 1971:124); “equating the law of something (which is not specified in the texts) with something else (whose law has been determined in the texts) on the basis of ‘illat Hukum.”

Although explained by different editors, almost all of the definitions put forward have explained about al-qiyās as an effort to determine laws that are not legally stipulated in the texts by equating them to something else that already has laws in the texts; and they take ‘illat as a standard.

Thus, there are four pillars of *qiyās*: First, the principal (*al-ashl* or *al-maqīs ʻalayh*) is the legal provision of something contained in the text. Second, the branch (*al-far ʻor al-maqīs*) is a particular topic or case for which the legal provisions are not determined in the texts. Third, the law (*al-hukm*), namely the provisions regarding the permissibility and impermissibility of doing or consuming something; and fourth, *al-ʻillat*, namely the “cause” of the law understood by scholars from the texts;
whether ‘illat is contained in the texts explicitly (called ‘illat manhûshat) or is it obtained after doing in-depth research (‘illat munstanbâthat).

An example of qiyâs is regarding the law of consuming shabu-shabu or marijuana. Cannabis or methamphetamine is a branch (al-far’ or al-maqîs); khamr is the principal (ashl or maqîs ‘alayh); the law is haram; and the forbidden illat is al-iskar (intoxicating).

The difference between qiyâs and ilhaq lies in the pillars. Ashl in qiyas is a provision that is in the Qur’an and Sunnah. Therefore, a branch cannot be used as asl in doing qiyâs. However, making a branch as asl is permissible in ilhaq. An example that makes things easier is zakat fitrah. The law of zakat fitrah is obligatory for those who can afford it which is explicitly specified in the Hadith. The object that must be removed is dates or wheat. Why should it be dates or wheat? One answer is that dates and wheat were staple foods at that time. Therefore, the ulama determined that dates and wheat could be replaced with rice (because the staple food of the Indonesian people is rice). Thus, the permissibility of doing zakat fitrah with rice is the result of an analogy. His illat is a staple food.

In a certain period of time, paying zakat with rice is considered less practical. A more practical zakat expenditure is using money. Therefore, the next idea emerged from some scholars, namely zakat does not have to use rice, but can be with money. The amount of money that must be spent is commensurate with the price of rice that must be spent. The replacement of dates and wheat with rice is called qiyâs; and replacing rice with money is called ilhaq.

If ilhâq is not possible because there is no mulhaq bih and wajh al-ilhâq at all in the mu’tabar books, legal istinbath is carried out in a congregational manner by practicing qawâ’id al-ushûliyyat and qawâ’id al-fiqhiyyat by the experts. However, the limits or criteria for measuring experts or not in conducting ijtihad, have never been discussed.

Mu’tabar books

In line with the prohibition of establishing law directly on the main source, the Qur’an and Sunnah, BM-NU stipulates a number of fiqh books that can be used as references in determining the law. Until this article was written, detailed information has not been obtained regarding the books
(and their authors) which are included in the mu’tabar books. However, implicitly, the books that are considered mu’tabar are books that are used as references by the BM-NU in determining the law on a number of topics. K.H. Abdul Aziz Masyhuri (Deputy Rais Syuriah PWNU East Java) wrote that there were 162 fiqh books used as references by BM-NU in establishing laws. Among these are the books of Ersyâd al-’Ibâd by al-Malibari, I’ânat al-Thâlibîn by Abu Bakr Syatha, al-Adzkâr by al-Nawawi, and Bughyat al-Mustarsyidin by Sayyid ‘Abd al-Rahman (Masyhuri, 1982: 405-413).

As one of the impacts of the determination of mu’tabar books by BM-NU, is that the Ministry of Religion (in 1953) has determined 13 books to be used as guidelines in deciding cases in courts within the Religious Courts, namely: (1) al- Bâjâr; (2) Fath al-Mu’în; (3) Syarqawî ‘alâ al-Tahrîr; (4) al-Mahalli; (5) Fath al-Wahhab; (6) Tuḥfat; (7) Tagrîb al-Musytâq; (8) Qawânîn al-Syar’îyyat Uthman Ibn Yahya; (9) Qawânîn al-Syar’îyyat Sadaqat Di’ân; (10) Shamsûrî fî al-Farâ’îdîh; (11) Bugyat al-Murtasyidin; (12) al-Fiqh ‘alâ Madzâhib al-Arba’at; and (13) Mugnî al-Muhtâj (Arifin, 1985:27; Mubarok, 1995:103).


The *fiqh* books are studied in Islamic boarding schools in Indonesia. According to M. Atho Mudzhar, the *fiqh* books can be grouped into four families: First, the *fiqh* books that lead to the book of *al-Muharrar* by Imam al-Rafi’i are: (1) *Minhâj al-Thâlibîn* by Imam Nawawi (w. 576 H); the book of minhâj was then abridged (*ikhtishâr*) by Mahalli (d. 864 H) into Kanz al-Râghibîn; then *Kanz al-Râghibîn* was commented on (*syarh*) by Qalyubi and ‘Umairah became *Sharh Kanz al-Râghibîn*; (2) *Manhâj al-Thullâb* by al-Ansari (d. 926 H); (3) *Fath al-Wahhab* by al-Ansari; (4) *Tuhfat al-Muhtâj* by Ibn Hajar (d. 973 AD); (5) *Mughnî al-Muhtâj* by al-Syarbini (d. 977 H); and (6) *Nihayat al-Muhtâj* by al-Ramli (d. 926 H).

Second, the *fiqh* books that lead to the book of *Taqrîb* by Abu Syuja’ are: (1) *al-Iqnâ’* by al-Syarbini (d. 977 H); (2) *Kifâyat al-Akhyâr* by al-Dimasyqi (d. 829 H); (3) *Fath al-Qarîb* by Ibn Qasima l-Ghuzzi (d. 918 H); (4) *Taqurrîr* by Awwad; (5) *Tuhfat al-Habîb* by Bujairimi (d. 1110 H); and (6) *Hâsiyat al-Bâjûrî* by al-Bajuri (d. 1277 H).

Third, the *fiqh* books that lead to the book *Muqaddimat al-Hadhramiyyat* by Ba Fadhal (10th century H / XV century AD) are: (1) *Minhâj al-Qawwim* by Ibn Hajar al-Haitami (d. 1338 H/1919 M); (2) *Busyrâ al-Karîm* by Sa’id Ibn Ba’syin; and (3) *al-Hawasyi al-Madaniyyat* by Sulaiman al-Kurdi (d. 1194 H/1780 AD).

Fourth, the *fiqh* books that lead to *al-Malibari’s Qurrat al-‘Ayn* (d. 975 H) are: (1) *Al-Malibari’s Fath al-Mu’in*; (2) *Nihayat al-Zayn* by al-Nawawi al-Bantani (19th century AD); (3) *I’ânat al-Thâlibîn* by al-Dimyathi (1130 H); and (4) *Tarsyîh al-Mustafidîn* by ‘Alwi al-Tsaqqaf (1130 H) (Mudzhar, 2000:109).

Problem Analysis Framework
In determining the law of a problem, BM-NU uses the following problem-solving framework: First, it examines the factors that cause the problem from an economic, cultural, political, and social perspective.

Second, an analysis of the impacts (positive and negative) caused by a problem that is being sought for law in terms of economics, culture, and politics. Third, legal analysis (fatwa [including fiqh, pen.] about the problem being resolved). After considering the background and its impact in various fields. In addition to the formal juridical-fiqh decisions, the decisions also take into account the considerations of fiqh and positive law which include: (a) legal status (al-ahkâm al-khamsat); (b) the basis of the teachings of Ahlus Sunnah wal-Jama’ah; and (c) positive law.

Fourth, analysis of actions, roles and supervision of what must be done as a consequence of decisions or fatwas. Then BM-NU determines the party who can carry out monitoring, the method, time, place, and monitoring mechanism, so that decisions can proceed according to plan.

The channels used to carry out monitoring are: (a) political channels (trying on the lines of state authority with the aim of influencing government policies); (b) cultural channels (trying to generate public understanding and awareness through various mass media and forums such as recitations); (c) the economic route (improving people’s welfare); and (d) social pathways (efforts to improve public health, and the environment).

Legal Enforcement Procedure

In general, the problems that BM-NU intends to solve can be divided into four categories: first, problems that have been solved by scholars who have written in mu’tabar books and the opinion is uniform; second, problems that have been resolved by scholars who have written in mu’tabar books, but in these books there are various opinions; third, problems that have not been resolved by scholars so that there is no scholarly opinion in the mu’tabar books at all, but it is possible to do ilhaq; and fourth, problems that have not been resolved by the scholars so that there is no information about their opinions in the mu’tabar books, and there is also no wajh.

The identification and division of these problems gave birth to different steps for determining legal decision-making: first, problems that have been resolved by scholars who have been written in mu’tabar books
and the opinions are uniform, are resolved by quoting opinions and followed as is.

Second, problems that have been resolved by scholars who have written in *mu’tabar* books, and in these books there are various opinions, are resolved by means of *taqrir jama’i* (mutual agreement) to choose one opinion (*qawl*).

Third, problems that have not been resolved by scholars so that there is no opinion of scholars in *mu’tabar* books, and in *mu’tabar* books there is wajh, resolved by *ilhâq*; and fourth, if *ilhâq* cannot be done, then the last step is to do *ijtihad* (istinbâth al-ahkâm) together (jama’i) with a manhâji *madhhab* procedure.

**Opinion Selection Procedure (Taqrîr Jamâ’î)**

As a continuation of the procedure for determining the law, BM-NU distinguishes the opinions of scholars contained in the *mu’tabar* books into six: (1) opinions agreed upon by al-Shaykhânî (al-Nawawi and Rafi’i); (2) the opinion held by al-Nawawi only; (3) the opinion held by al-Rafi’i only; (4) the opinion supported by the majority of scholars; (5) the opinion of the smartest scholars; and (6) the opinion of the most sane scholars.

As mentioned earlier that BM-NU requires its members to follow one of the four schools of jurisprudence; and in practice, BM-NU is more likely to quote the opinions of clerics who adhere to the *madzhab*—not the opinions of the founding clerics of the *madzhab*. If several opinions are found—in *mu’tabar* books—when trying to decide the law of a problem, BM-NU chooses one opinion among the various opinions. The selection of opinions is carried out by prioritizing (1) the opinion agreed upon by al-Shaykhânî (al-Nawawi and Rafi’i); (2) the opinion held by al-Nawawi only; (3) the opinion held by al-Rafi’i only; (4) the opinion supported by the majority of scholars; (5) the opinion of the smartest scholars; and (6) the opinion of the most sane scholars. Thus, the sorting of opinions carried out by BM-NU shows levels or is understood hierarchically.

**CONCLUSION**
BM-NU has its own legal istinbath framework which is different from the legal framework of the previous scholars—such as the legal istinbath framework proposed by Abu Hanifah and Muhammad Ibn Idris al-Syafi’i, also different from the legal istinbath framework with other Indonesian Islamic organizations—such as the legal istinbath framework of the Hisbah Persis Council and the legal istinbath framework of Majlis Tarjih and the Development of Muhammadiyah Islamic Thought. In general, the legal istinbath framework adopted by BM-NU tends to present themselves as muttabi’ ulama and do not present themselves as mujtahid scholars. Therefore, BM-NU assigns a ranking of ulama’s opinions in order to choose one opinion among the existing ulama’s opinions; and ijtihad is only carried out if the problem to be solved is not found by the qawl and his face in the mu’tabar books.

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