

The Pattern of Nahdlatul Ulama's *Ijtihad*

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ABSTRAK

Sejalan dengan dinamika sosial-keagamaan pada masyarakat, berkembang pula pelbagai masalah di seputar fikih, yang sebagian besar belum terserap dalam pemikiran hukum para *ulama*. Terhadap masalah-masalah yang biasa disebut dengan *masa'il fiqhiyyah al-haditsah*, para *ulama* sejatinya telah memiliki mekanisme institusional yang digunakan untuk memecahkan problematika tersebut. Nahdlatul *Ulama* yang merupakan organisasi keagamaan Islam terbesar di Tanah Air juga *concern* terhadap *masa'il fiqhiyyah al-haditsah* melalui mekanisme Bahtsul Masa'il (BM-NU). Namun kerangka *istinbath* hukum BM-NU ini memiliki keunikan, karena berbeda dengan kerangka *istinbath* hukum yang dimiliki oleh *ulama* sebelumnya—seperti kerangka *istinbath* hukum yang digunakan oleh Abu Hanifah dan Muhammad Ibn Idris al-Syafi'i, juga berbeda dengan kerangka *istinbath* hukum dengan ormas Islam Indonesia lainnya—seperti kerangka *istinbath* hukum Dewan Hisbah Persis dan kerangka *istinbath* hukum Majelis Tarjih dan Pengembangan Pemikiran Islam Muhammadiyah. Keunikan itu terutama karena kerangka *istinbath* hukum yang dianut oleh BM-NU cenderung menampilkan diri sebagai *ulama muttabi'* dan tidak menampilkan diri sebagai *ulama mujtahid* sebagaimana secara umum dipahami oleh *fuqahâ*.

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 fiqhiyyah 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 fiqhiyyah 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-Syafi'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 Majelis 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'il, istinbâth, Nahdlatul Ulama, qiyâs, llhâq, 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 (بذل الجهد لنيل المقصود). (Al-Dzarwi, 1983: 9). The Imam al-Shafi'i is of the opinion that *ijtihad* is (بذل الفقيه استنباط الأحكام العملية لتها 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; Mubarak, 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* (Mubarak, 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 Ualama. Jaih Mubarak 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 (*dhâil*) 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 (المحافظة لى القاسم الصالح الأخذ الجديد لح) (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, *qawlî* school; namely following the “finished” opinions within a certain school of thought. Third, *manhâjî* 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, *qawl* and face. *Qawl* is the opinion of the *madhhab* imam; and the face is the opinion of the scholars of *madhhab*; and fifth, *illhâq al-mas'âl 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 Majelis 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 (التقدير التسوية), 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 (تسوية الفرع الى الأصل) (Al-Hakim, 1963:304; Al-Shafî'i, t.th.:

205). While the definition of *qiyâs* in terms is explained by scholars with different editors.

Al-Qadhi Abi Bakr said that what is meant by *qiyâs* is (حمل لوم لى لوم اثبات) (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 *qiyâs* is (عبارة الاءستواء 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 *qiyâs* is (مساواة لأصل لة) (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-jâmî’* used is *majhûl* (cryptic) (Al- Ghazali, 1980:323).

Almost the same as the definitions above, Ali Hasab Allah explained that what is meant by *qiyâs* is (مشاركة عنه لمنصوص لى الشرعي لة 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-qiyâs* 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 *qiyâs*: First, the principal (*al-ashl* or *al-maqîs ‘alayh*) is the legal provision of something contained in the text. Second, the branch (*al-far* ‘or *al-maqîs*) 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-‘illat*, namely the “cause” of the law understood by scholars from the texts;

whether *'illat* is contained in the texts explicitly (called *'illat manshûshat*) 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 *ashl* 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 PWNNU 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'ânât al-Thâlibîn by Abu Bakr Syatha, al-Adzkâr by al-Nawawi, and Bughyat al-Mustarsyidîn 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) *Tuhfat*; (7) *Tagrîb al-Musytâq*; (8) *Qawânîn al-Syar'iyyat Uthman Ibn Yahya*; (9) *Qawânîn al-Syar'iyyat Sadaqat Di'ân*; (10) *Shamsûrî fî al-Farâ'idh*; (11) *Bugyat al-Murtasyidn*; (12) *al-Fiqh 'alâ Madzâhib al-Arba'at*; and (13) *Mugnî al-Muhtâj* (Arifin, 1985:27; Mubarak, 1995:103).

Kitab al-Bâjûrî (Hâsiyat al-Bâjûrî) by Ibrahim Ibn Muhammad al-Bajuri (d. 918 H./1512 AD) (2 vols) is a commentary on the book *Fath al-Qarîb* by Abu Abdullah Muhammad Ibn Qasim al-Gazzi (w. 918 H./1512 AD); and the book *Fath al-Qarîb* is a commentary on the book *Mukhtashar* by Ahmad Ibn al-Hasan Ibn Ahmad al-Isfahani (Qadhi Abu Shodya) (d. 600 H./1203 AD) (Steenbrink, 1984:155). So, the book of *al-Bâjûrî* is a commentary on the book of *Fath al-Qarîb*; and the book *Fath al-Qarîb* is a commentary on the book *Mukhtashar*.

Zayn al-Din al-Haytami's book *Fath al-Mu'în* (d. 973 H./1465 H.) is a commentary on Ibn Hajar al-Haytami's *Qurrat al-'Ayn bi Muhimmat al-Dn*. The book *Fath al-Mu'în* bi Syarh *Qurrat al-'Ayn* by Zayn al-Din Ibn 'Abd al-'Aziz al-Malibari is commented on again by Muhammad Syatha al-Dimyathi. Muhammad Syatha al-Dimyathi's commentary on the book *Fath al-Mu'în* is entitled *I'ânât al-Thâlibîn*. Shidqi Jamil al-'Athar commented on the book *I'ânât al-Thâlibîn* by Muhammad Syatha al-Dimyathi with the title *Hâsyat I'ânât al-Thâlibîn*. Thus, the first book is the *Qurrat al-'Ayn bi Muhimmat al-Dîn by Ibn Hajar al-Haytami*; the commentary on the *Qurrat al-'Ayn* is *Fath al-Mu'în*; the commentary on the book of *Fath al-Mu'în* is *I'ânât al-Thâlibîn*; and the commentary on the book *I'ânât al-Thâlibîn* is *Hâsyat I'ânât al-Thâlibîn*.

The book of *Fath al-Wahâb* by Abu Yahya Zakaria Ibn Muhammad al-Ansari (d. 926 H./1520 AD) is a commentary on the book *Minhaj al-Thâlibîn* by Abu Zakaria Yahya Ibn Sharaf al-Nawawi (d. 676 H./1277 M.); and the book *Minhaj al-Thâlibîn* is also a commentary on the book *al-Muharrar* by Abu al-Qasim Abd al-Karim Ibn Muhammad al-Rafi'i (d. 623 H./1226 AD). Likewise the book of al-Mahalli by Jalal al-Din Muhammad Ibn Ahmad al-Mahalli (d. 864 H./1460 H.) and the book of *Tuhfat al-Muhtâj* by Ibn Hajar al-Haytami (d. 973 H./1465 AD).) is a commentary on the book *Minhâj al-Thâlibîn* by Abu Zakaria Yahya Ibn Syaraf al-Nawawi (Steenbrink, 1984:155).

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) *Taqrîr* 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'în*; (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-*fiqhi* 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 *manhâjî 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 Majelis 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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