

PRIEST'S *IJTIHÂD* METHOD IN SOLVING LEGAL PROBLEMS IN INDONESIA

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Abstract: The modernization of Science and Technology with various innovations is a real challenge to Islamic law. This study aims to analyze the methodology of *ijtihâd* and the resolution of legal issues in Indonesia. The method used is a qualitative method with a case study approach of the *ijtihâd* methodology conducted by the Fatwa Commission of Majelis Ulama Indonesia, the Persis Hisbah Council and the Bahsul Masail Nahdhatul Ulama Institute, which explains *ijtihâd* as a methodology in solving legal problems in Indonesia. The research data collection method uses the documentation method and various articles and books. Then analyzed using the content analysis method, which is analyzing library data that is scientific analysis of a premium message. The result of this research is that in conducting Priest's *Ijtiḥād* Method in solving legal problems in Indonesia, one should adhere to three principles of thinking, namely *ḥadhârah nash* (*bayânî* text), *ḥadhârah al-'ilm* (*burhânî* ratio) and *ḥadhârah al-falsafah*. We cannot separate these three principles from each other.

Keywords: methodology of *ijtihâd*; legal problems; Indonesia; Islamic studies

Abstrak: Modernisasi IPTEK dengan berbagai inovasi merupakan tantangan nyata bagi hukum Islam. Tujuan dari penelitian ini adalah untuk menganalisis metodologi *ijtiḥād* Ulama dalam menyelesaikan masalah hukum di Indonesia. Metode yang digunakan adalah metode kualitatif dengan pendekatan studi kasus metodologi *ijtiḥād* yang dilakukan oleh Komisi Fatwa Majelis Ulama Indonesia, Dewan Hisbah Persis dan Lembaga Bahsul Masail Nahdhatul Ulama yang menjelaskan *ijtiḥād* sebagai metodologi dalam menyelesaikan permasalahan hukum di Indonesia. Metode pengumpulan data secara dokumentasi dari berbagai artikel dan buku. Kemudian dianalisis menggunakan metode analisis isi (*content analysis*), yaitu menganalisis data perpustakaan secara ilmiah dari sebuah pesan premium. Temuan penelitian ini adalah dalam melakukan *ijtiḥād* dalam menyelesaikan isu hukum di Indonesia hendaknya berpegang teguh tiga prinsip berpikir yaitu *ḥadhârah nash* (teks *bayânî*), *ḥadhârah al-'ilm* (rasio *burhânî*) dan *ḥadhârah al-falsafah*. Ketia prinsip ini tidak boleh terpisahkan satu sama lain.

Kata kunci: metodologi *ijtiḥād* Ulama; masalah hukum; Indonesia; studi Islam

Introduction

The modernization of Science and Technology with various innovations is a real challenge to Islamic law.¹ Its development continues to move forward, developing something that happens in human civilization with its rich creativity and progressiveness,

such as, cloning, organ transplantation, and others. These phenomena must be responded to flexibly and dynamically by Islamic law through Quran,² Hadith,³ and Islamic scholar's. Unfortunately, this view can not be fully felt by Muslims today.

¹ Islamic law is sharia applicable provisions (*'amaliyah*) regarding human behavior concerning Allah, fellow humans, and the natural surroundings. See Afifuddin Muhajir, *Membangun Nalar Islam Moderat Kajian Metodologis*, (Situbondo, Tanwirul Afkar, 2018), p. 29. In this case, al-Ghazâlî (505H) also said that there are four sources of Islamic law, namely the Quran, Hadîth, Ijmâ, and the argument of reason. 'Abû Ḥâmid Muḥammad bin Muḥammad al-Ghazâlî, *al-Mustasyfâ min 'Ilmi al-Ushûl*, (Beirut: Mu'assasah ar-Risâlah, 1997), p. 80

² The Quran is the word of Allah revealed to the Prophet Muhammad with the intercession of Gabriel, which is written in the *mushafs*, the narration of which is *mutawâtir*, worth worship for those who read it. The beginning of the Quran begins from *al-Fâtihah* until the *al-Nâsy*. Muḥammad 'Alî al-Syabnî, *al-Tibyân fi 'ulum al-Quran*, (Beirut: Dâr al-Kutub al-Islâmiyyah, 2003), p. 8

³ Hadîth is everything narrated from the Prophet Muhammad, whether it is in the form of words, deeds, and rulings that deserve to be used as evidence for Islamic law. Aḥmad 'Umar Hâsyim, *Al-Sunnah al-Nabâ wiiyyah wa 'Ulmuhâ*, (Kairo: Maktabah Gharib, t.t), p. 17

They view that Islamic law, which is the primary reference, appears to be limping, stagnant, even black and white, which only discusses *halâl* and *harâm* without providing concrete solutions. The dedication of the ‘ulamâ needs *ijtihâd* activities. In addition, it is also an effort to show that Islamic law is very flexible and not burdensome (*‘Adamal-kharâj*).

As expressed by ‘Abû Hâsan Muḥammad Ibn Yâsuf al-‘Amîn (381 H), this is the following: “Indeed, the religious texts, although many, are actually limited. In the sense of not being able to receive additional, while the events faced by humans are endless. To deal with these incidents, it is required to determine the law by means of *ijtihâd*, which means that it is necessary to return to *ra’yu* and *Qiyâs*. Thus, *ijtihâd* is something that cannot be avoided from what development requires. And no matter how forbidden *ijtihâd* is for the *mufti*, one must return to one of the two methods.”⁴

Islamic law can be written down according to the times through the words above. Islamic law is very likely to change due to changes in times, conditions, places, and even customs regarding the suitability of the provisions of the Sharia, even though the texts are limited. However, in its performance, the excavation of Islamic law requires methodological renewal of the equipment. If no text has responded to it in a problem, it is not only fixed on the texts that already exist.

This methodological study emerged at the time of the *madhhab* priests, to be precise, the time of al-Syâfi‘î (204 H) with *al-Risâlah*. The beginning of writing the methodology of Islamic law began.⁵ In particular, this methodological study focuses more on efforts to place basic rules that can be a tool in understanding the texts both from Quran and Hadith. Gradually the ideas of the priests of the *madhhab* were discoursed by the scholars after their period became a separate field of knowledge, namely *Ushûl al-fiqh*.⁶

The actualization of *Ushûl al-fiqh* as an approach methodology for *istinbâth al-ahkâm* makes Islamic law more dynamic in responding to contemporary issues. KH. Sahal Mahfudh (2014)⁷ with his social *fiqh* ideas,⁸ Nahdlatul Ulama with its *manhâjî* method, and Majelis Ulama Indonesia fatwa commission.⁹ Muhammad Arkoun, who was quoted by Amir Mu’allim, that the continuity of *ijtihâd* was still open. Never fixed and closed to one interpretation of meaning.¹⁰

Therefore, it is always available, which means that it must always carry out *ijtihâd* as long as needed. Thus, this paper aims to describe *ijtihâd* and the dynamics of its implementation on contemporary issues. Then in the last part, the

globally and the procedure of its use in applying the law. ‘Alî Jum’ah, *Sejarah Usul Fiqh: History Ilmu Usul Fiqh dari Masa Nabi hingga Sekarang*. Translated by Adi Maftuhin, (Depok: Keira, 2017), p. 38

⁷ Dr. (HC). KH. Mohammad Ahmad Sahal Mahfudh (December 17, 1937 – January 24, 2014) was Majelis Ulama Indonesia chairman from 2000 to 2014. Previously, he served two terms as *Ra’îs ‘Âm Syuriah*, Nahdlatul Ulama Executive Board from 1999 to 2014. KH Sahal, for ten years, led Majelis Ulama Indonesia of Central Java, then was asked to become the General Chair of Majelis Ulama Indonesia Leadership Council from June 2000 to 2010. Apart from that, KH Sahal has been the Maslakul Huda Islamic Boarding School, leader since 1963. This Islamic boarding school in Kajen, Margoyoso (Pati, Central Java), was founded by his father, KH Mahfudh Salam, in 1910. In addition, KH Sahal has been the rector of the Nahdlatul Ulama Islamic Institute, Jepara, Central Java, since 1989, led INISNU to become UNISNU Jepara in 2013. He is also one of the most prolific Indonesian scholars in the world of literacy. He wrote such as the book *Tariqah al-wushûl ‘alâ Ghâyah al-Wushûl*, ‘*Anwar al-Bashâ’ir ‘alâ Ta’liqah al-Asybah wa al-Nadhâir li al-Imâm al-Suyûthî*, and etc.

⁸ *Social Fiqh* is a development from *fiqh qawli* to *manhâjî*. In the sense of contextualizing *fiqh* texts in response to social problems and expanding the application of *fiqh* and *ushûl al-fiqh* rules intended to find ‘*illat* (reason for the occurrence of law) and implied wisdom. In addition, KH Sahal’s social *fiqh* has five characters; *The first* is the contextual interpretation of *fiqh* texts. *Second* is the development of the workings of *qawli* towards *manhâjî* (methodological way of thinking). *The third* is formulating the concept of *ushûl* (principal) and *furû’* (branch). *Fourth*, *fiqh* is presented as social ethics. And *fifth*, the introduction of philosophical, methodological ways of thinking about socio-cultural issues. Muhammad Faesyal Muzammil, *Menyegarkan Fiqh Sosial Kiai Sahal, dalam Metodologi Fiqh Sosial: Dari Qauli Menuju Manhaji*, p. 211-213

⁹ The Fatwa Commission is an institution under the auspices of Majelis Ulama Indonesia, which determines fatwas, especially regarding religious issues. *Pedoman Penyelenggaraan Organisasi Majelis Ulama Indonesia*, (Jakarta: Majelis Ulama Indonesia, 2018), p. 269

¹⁰ Amir Mu’allim and YUSDANI, *Ijtihâd Suatu Kontroversi antara Teori dan Fungsi*, (Yogyakarta: Titian Ilahi Press, 1997), p. 101

⁴ Hasbi al-Syiddiqiey, *Falsafah Hukum Islam*, (Jakarta: PT Bulan Bintang, 1993), p. 46

⁵ Muḥammad ‘Abû Zahrah, *Ushûl al-Fiqh*, (Damaskus, Dâr-al- Fikral-‘Arabî, 1958), p. 13

⁶ *Ushûl al-fiqh* is the knowledge of the arguments of *fiqh*

author tries to review the *ijtihâd* method carried out by the Fatwa Commission of the Indonesian Ulema Council, the Persis Hisbah Council, and the Bahtsul Masa'il Nahdlatul Ulama Institute.¹¹

Method

This research is a qualitative method with a case study approach of the *ijtihâd* methodology conducted by the Fatwa Commission of Majelis Ulama Indonesia, the Persis Hisbah Council and the Bahsul Masail Nahdhatul Ulama Institute, which explains *Ijtihâd* as a methodology in solving legal problems in Indonesia. The research data collection method uses the documentation method and various articles and books. Then analyzed using the content analysis method, which is analyzing library data that is scientific analysis of a premium message.

Description of *Ijtihâd*

According to scholars, in the classical literature, we will find various definitions of *ijtihâd*. Imâm Zakariyâ al-Anshârî : exerting one's ability or bearing hardship. The terminology is to mobilize the ability of a jurist to produce allegation of Islamic law.¹² 'Abd al-Wahab Khalâf said that *ijtihâd*, according to the scholars of *Ushûl al-Fiqh* is an activity of exerting efforts to achieve the stage of determination of sharia law from the detailed propositions of sharia propositions.¹³

'Abû Zahrah stated: In terminology, the scholars of *Usyûl* - the jurist did his best to derive

universal rulings from their detailed evidence. Some scholars define *ijtihâd* in fundamentalist terminology as exhausting effort and exerting the utmost effort, either in deriving legal rulings or applying them.¹⁴

In the manner of the decision of the wicked, the precepts of the ancients are the law of the law and in the conclusion of the people. *ijtihâd* in terminology is an effort of *fiqh* scholars in optimally mobilizing to dig the direction taken from the detailed arguments. And sometimes, the *ijtihâd* is to apply the law and explore the law (*tathbîq al-ahkâm*).

The description of the purpose above syows that the essence of *ijtihâd* includes the following: (1) *Ijtihâd* is to mobilize the ability of reason in earnest in doing the digging of the law; (2) *Ijtihâd* is performed by people who know about religion, often called a *fâqih*; (3) The product produced by *ijtihâd* is a strong allegation about Islamic law; and (4) *Ijtihâd* is taken based on the methods of *istinbâth* following the applicable provisions. Then from these four facts can understand that any person cannot do *ijtihâd*. A person who performs *ijtihâd* must have sufficient competence and follow the applicable provisions, as explained in the section on the requirements of *mujtahid*.

The Analysis of Problem-solving Based on the *Ijtihâd* Method of Certain Madzhab Imams

According to Muḥammad 'Abû Zahrâ, the conditions of a *mujtahid*, among others: (1) Mastering the Arabic language and the supporting sciences related to it, is very much needed. One is not able to make legal inferences from these two sources of law without mastering the intricacies of the use of the Arabic language, (2) knowing the sciences of the Quran and *nâsikh wa mansûkh*.¹⁵ Al-Syâfi'î (204 H) said that this is an absolute requirement of a *mujtahid* who masters the Arabic

¹¹ *Baht al-Masâ'il* is a discussion forum for the scholar's in answering questions, whether religious, social, or cultural, that develop in a society with reference sources from the Quran, *Hadîth*, and *qawl ulamâ'* (opinions of scholars) in the *turâ ts* book. Usually, we can meet this forum in Islamic boarding schools or at official meetings such as the General Conference, the Grand Conference, the Alim-Ulama National Deliberation. Ahmad Zahro, *Lajnah Bahtsul Masail 1926-1999: Tradisi Intelektual NU*, (Yogyakarta: LKiS, 2004), p. 5

¹² 'Abî Yahyâ Zakariyâ al-Anshârî, *Lubb al-Ushûl Syarḥ Ghâyah al-Wushûl*, (Surabaya: Al-Hidayah, t.th), p. 147; Ahmad Maulidizen, "The Concept of Qath'l Dalalah: Definition, laws and Perceived Conflict", *Khatulistiwa: Journal of Islamic Studies*, vol. 10, no 1 (2020), p. 120

¹³ 'Abd al-Wahab Khalâf, *Ilmu Usyul al-Fiqh*, (Surabaya: Al-Haramain, 2004), p. 217; Ahmad Maulidizen and Ashilah Raihanah, "The Technique of Determining *Ijtihâd* and Its Application in life: Analysis of *Istihsan*, *Maslahah*, 'Urf and *Syar'u Man Qablana*", *Al-Ahkam: Jurnal Ilmu Syariah*, vol 4, no.1 (2019).

¹⁴ Muḥammad 'Abû Zahrah, *Ushul al-Fiqh*, (Damaskus, Dâral-Fikr al-'Arabî, 1958), p. 379

¹⁵ This requirement is important because a *mujtahid* in establishing the law so that there is no misunderstanding by using verses that have actually been repealed, is no longer enforced. According to Ibn Hazm, *Nasâkh* is to explain that the period of validity of the law contained in the first *nash* has expired.

language. In addition, one must be able to know *asbab al-nuzûl* (the reasons for the descent of the verses of the Quran);¹⁶ (3) The sciences of hadith such as *ilm dirâyah wa riwâyah al-hadîth* (the science of the intricacies and narration of *hadîth*), *al-nâsikh wa mansû kh*, *asbâb al-wurûd* (reasons for the emergence of *hadîth*), *jarh wa ta'dîl*,¹⁷ etc (4) Knowing about issues that have *ijmâ law*¹⁸ and matters that are the difference between the scholar's; (5) Knowing about *qiyâs*; the conditions of *qiyâs*,¹⁹ the wisdom contained in the '*illat*, how to find the '*illat* of a verse or *hadîth*, and knowing the contents of the knowledge of a verse or *hadîth*; (6) Know the purposes of the law prescribed. This knowledge is essential because in setting a rule, one must consider the element of *mashâlih lil'ibâd* (welfare of the servants). Have a good and wise understanding. And the last is to have justice, piety in intention, behavior, and always be careful (put forward the attitude of *warâ'* and *ikhtiyâth*)

Furthermore, a *mujtahid* in this contemporary era must understand the science of politics and the science of sociology of law because paying attention to the development of law is inseparable from the dynamics of the life of a society that is diverse in problems or interests. In addition to the conditions of the above *mujtahid*. We also

¹⁶ Even al-Ghazâlî gave the requirement for a *mujtahid* to know at least 500 verses related to the law, even if he does not know the entire contents of the Quran. 'Abû Hâmid Muḥammad bin Muḥammad al-Ghazâlî, *al-Mustasyfâ min 'Ilmi al-Ushûl...*, p. 383

¹⁷ *Jarh wa Ta'dîl* is a science that focuses more on examining the life history of the narrators of *hadîth*, which includes their intellectual competence and moral attitude will have an impact on the justice and *dhâ bith* of a *hadîth* narrator.

¹⁸ *Ijmâ'* is an Arabic term referring to the consensus or agreement of the Islamic community on a point of Islamic law. Sunni Muslims regard *ijmâ'* as one of the secondary sources of Sharia law, after the Quran, and *hadîth*. Muḥammad 'Abû Zahrah, *Ushul al-Fiqh...*, p. 197

¹⁹ *Qiyâs* equates something that does not have a legal text with something that has a legal text because of the similarity of '*illat*. For example, liquor (*khamr*) is a matter for which there is a legal text reference, which is haram. Meanwhile, the issue of consuming drugs is another problem that does not have an explicit legal text reference. About having strong faith and continuous drugs in the same '*illat*, namely *al-iskâr* (intoxicating), consuming drugs is equated with drinking liquor in the law, which is *harâm*. Muḥammad 'Abû Zahrah, *Ushul al-Fiqh...*, p. 218

need to know the various levels of *mujtahid*:²⁰ First, *Mujtahid mutlâq mustaqil* is the highest level and independent. They exert their efforts on their own both in the method of *istinbâth* and in *furû'* without *taqlîd* on other *mujtahids*, who then produce *fiqh wa 'ulûmuhu* as a result of *ijtihâd*. The examples; 'Abû Hanîfah (150 H), Mâlik (174 H), al-Syâfi'î (204 H), Ahmad Ibn Hanbâl (855 H), Zaid bin 'Alî (122 AH), al-'Auzâ'î (157 AH).

Second. *Mujtahid mutlâq muntasib* is a *mujtahid* who can formulate a law by keeping track of the *mujtahid Mutlaq mustaqil* in terms of methodology, *ijtihâd*, and fatwa. They are accessible in *ijtihâd* without being bound by their teacher.²¹ The examples: al-Muzânî (264 H), al-Buwaytî (231 H) from the Syâfi'î school, 'Abdurrahman bin Qâshim (240 H) from Mâlikî school, 'Abû Yûsuf (182 H) from the Hanâfi school, and while the Hanbali school is al-Khalal.

Third. *Mujtahid Madzhab* is a form of the *mujtahid* who imitates a particular *mujahid imam*, but he knows the rules and policies used by his imam. The scholars who belong to this level are 'Abû Hasân al-karkhî (340 H), al-Hasân bin Ziyâd (204 H) from the Hanâfi school, then from the Syâfi'î school is, Ibn'Abî Hâmid al-Asfiraynî (406 H), and from the Mâlikî school is Muḥammad bin 'Abdullah al-Abhâ rî (375 H).

Fourth. *Mujtahid Murajjih* is in the view of al-Subukî in *Jam'u al-Jawâ mi'* that this *mujtahid* is also called *mujtahid fatwa*. *Mujtahid* is in *istinbâth* by following the *nash* of his imam, as well as the arguments of his imâm's rules, which are then *tarjîh* on the *nash* of his imâm

Identification of the *Ijtihâd* of Majelis Ulama Indonesian and Nahdlatul Ulama

Majelis Ulama Indonesia has an essential role in determining fatwas in Indonesia. Through its fatwa

²⁰ Muḥammad 'Abû Zahrah, *Ushul al-Fiqh*, p. 390-394; Ahmad Maulidizen, "The Urgency of Islamic Law Sources Knowledge Masadir al-Ahkam al-Mukhtalaf fiha: Istisab, Sadd al-Dzariah and Qaul al-Sahabi", *Jurnal Hukum Islam*, vol 18, no 2 (2018), p. 49-68

²¹ This is as conveyed by Ibn Qayyim al-Jawziyah in the book '*alam al-Muwaqî'î* n vol. 4, p. 212. Even al-Nawâwî said that this *mujtahid muntasib* is not a *muqallid* to the *Imâm* and his *madhhab*. Muḥammad Hisyâ m al-Ayyûbî, *al-Ijtihâ d wa Muqtadhayât al-Ashr*, (Amman: Dâral-Fikri, 1986), p. 178

commission, the main task is to study, discuss, and formulate religious fatwa issues. Majelis Ulama Indonesia was established in 1975 along with the establishment of Majelis Ulama Indonesia.²² For over 40 years, starting from 1975 to 2015 has issued a fatwa of 87 cases in the field of sharia economics and 4661 cases in the area of Halal Products, and 160 cases in the religious. Based on the MUI Fatwa collection book since 1975.²³

Furthermore, the *istinbâth* process carries out in several forums, including the fatwa commission forum, DSN-MUI, Ijtima' Ulama, the Indonesian Fatwa Commission, and MUNAS. Through these forums, fatwas are determined by following the procedures for the fatwa determination methods. The guidelines for determining the fatwa are: (1) Before the fatwa is stipulated, a comprehensive study is first carried out to obtain a complete view of the object of the problem (*tashawwur al-masalah*), the formulation of the problem, including the socio-religious impact arising from the critical point of various legal aspects related to the problem; (2) The comprehensive study in paragraph; includes a survey of the views of past mujtahid jurists, opinions of *madhhab* priests and scholars who are conclusive, studies of related fatwas, and jurists' opinions on issues; (3) The comprehensive analysis may be through the assignment of making papers to commission members or experts who have competence in the field related to the issue; (4) Then, a fatwa's determination on a problem with clear laws and arguments (*ma'lûm min al-Dîn bi al-Dharûrah*) is carried out by conveying the direction as it is; (5) Determination of a fatwa on the issue of differences of opinion (*masâ'il khilâfiyyah*) among schools, then: (a) The determination of the fatwa according to the results of efforts to reach common ground between the views expressed through the *al-jam'u wa al-tawfiq* method, and (b) Suppose a meeting point is not reached between these opinions. In that case, the determination of the fatwa is based on the results of the *tarjih*²⁴ through

the *muqâranah* (comparison) method using the rules of *fiqh muqâran*; (6) Determination of fatwas on issues for which there is no legal opinion among the *madhhab* or *mu'tabar* scholars is based on collective *ijtihâd*²⁵ through the *Bayânî*²⁶ and *ta'lîlî* methods (*Qiyâsî*, *Istihâsânî*,²⁷ *ilhâqî*,²⁸ and *Sa'adz zarî 'ah*²⁹) and the process of determining the law (*manhâj*) which the scholars of the *madhhab* guide.

In the matter that is being discussed in the meeting, and there are differences among the members of the commission, and no common ground is reached, then the determination of the fatwa is conveyed regarding the existence of the difference of opinion accompanied by an explanation of each argument, accompanied by a proof in terms of its practice, it is better to

found in a book like the books of *Madzâhib al-Arba'ah*, and in this case, there are also more diverse opinions (more than one opinion), then *Tarjih* procedure is carried out, namely choosing/determining one stronger argument and provide problems according to the issues discussed. Jamal Ma'mur Asmuni, *Madzhab Manhaji: Masa Depan Madzhab NU*, (Yogyakarta: Aswaja Presindo, 2019), p. 55

²⁵ Collective *ijtihâd* involves several scholars of specific disciplines who are different from each other to establish *ijtihâd* in one or several matters. According to KHSahal, this collective *ijtihâd* is done in various ways, such as deliberation or discussion with experts following the competence of the field. Tutik Nur Jannah & Umdah el Bararah, *Fiqh Sosial: Fiqh Masa Depan Indonesia*, (Pati: Pusat FISL, 2016), p. 88

²⁶ Bayânî method is a method of determining the law by referring to the Quran and Hadîth. In its application, this method is done by studying more deeply the *asbâb al-nuzûl* or *asbâb al-wurûd*, studying the text of the verse or hadith in terms of language, often known as *qawâ'id al-ushûliyyah al-lughâwiyyah*, relating the nash with the approach *maqâshid al-sharî'ah* and so on. Afifuddin Muhajir, *Membangun Nalar Islam Moderat Kajian Metodologis...*, p. 62-64

²⁷ According to KH Afifuddin Muhajir, *Istihâsânî* method is a method of *ijtihâd* that refers to the concept of *maqâshid al-sharî'ah*, which aims to know the wisdom behind the texts both in the Quran and Hadîth. Afifuddin Muhajir, *Membangun Nalar Islam Moderat Kajian Metodologis...*, p. 87

²⁸ *Ilhâqî* is the application of the law of *ijtihâdiyyah* which is documented to new issues due to the absence of nash and obtained a strong indication of similarity between the two. Pedomam Penyelenggaraan Organisasi Majelis Ulama Indonesia..., p. 270

²⁹ *Sadd al-Dzarî'ah* is a method of *ijtihâd* by closing the path/intermediary that is considered to bring harm or *mafsadah* (damage). Al-Syâtibî, *al-Muwafaqât fî Ushul al-Syarî'ah*, (Beirut: Dâr Rasyad al-Hadîtsah, t.th), juz 3, p. 257. One example of the determination of the MUI fatwa by using *Sadd al-Dzarî'ah* is interfaith marriages, joint Christmas celebrations, and others. Ma'ruf Amin, et.al, *Himpunan Fatwa MUI Sejak Tahun 1975*, (Jakarta: Emir, 2015), p. 501 & 331

²² Asrarun Niam Sholeh, *Metodologi Penetapan Fatwa Majelis Ulama Indonesia*, (Jakarta: Emir, 2016), p. 85

²³ Asrarun Niam Sholeh, *Metodologi Penetapan Fatwa...*, p. 115

²⁴ *Tarjih* method is used if the answer to a case is not

take the most careful (*ihtiyâth*) and as far as possible out of differences of opinion (*al-khurûj min al-khilâf*).

Furthermore, in formulating the law, the MUI Fatwa Commission has a solid *ijtihadî* argument by exposing the views of the Quran, *Hadîth*, mentioning the rules of *Fiqhiyyah*, which are then followed by the opinions of scholars from the *mu'tabar* book. One example is the fatwa prohibiting *khifâdh* against women issued this fatwa on May 7, 2008, stating that there was a prohibition on the practice of *khifadz* against women published by the Ministry of Health of the Republic of Indonesia.

In response to this, MUI issued a fatwa with careful consideration that MUI disagreed with the circular issued by the Ministry of Health. Therefore, the MUI stipulates a fatwa that *khifadz* for both men and women is part of the nature of symbols of Islam. Even something that is *makrûmah* and its implementation is one form of worship that is recommended. The basis for this fatwa's determination is Allah's word in the letter *al-Nahl* 16:123³⁰, *al-Nisâ* 4:125³¹, *Ali Imrân* 3:31³², 32³³, and 95³⁴. In addition to the arguments of the Quran, this fatwa is also based on the traditions of the Prophet Muhammad, and *fiqh* rules and *turâts* books from *al-salâf al-shâ lih* scholars, including *Nayl al-Authâr*³⁵,

*l'â nah al-Thâ libîn*³⁶, and *Awn al-Ma'bûd*³⁷.

Bahtsul Masail Nahdlatul Ulama institution. This institution is a deliberation forum that has the authority to answer all problems that develop in society, both *waqî 'iyyah* (actual), *mawdhû 'iyyah* (conceptual), and *qanûniyyah* (laws) issues whose participants consist of Islamic boarding school leaders and Muslim academics. The implementation of this Bahtsul Masail was held in the forum of the Grand Conference, the National Deliberation of Islamic Scholars and Congress.

The mechanism in taking the law refers to the opinions of the four *Imâ ms Madzhab* in the *mu'tabarah*³⁸ books other than the Quran and *Hadîth*. Although in practice, it is still more dominant in referring to the *fiqh* books of the *al-Syâfi'î* school.³⁹ In addition, Bahtsul Masail NU applies three different methods of conducting legal *istinbâth*, which is involved stages: *qawlî*, *ilhâqî*, and *manhâjî*.

The procedural provisions of this legal *istinbath* method are stated in the formulation of the decision of the General Conference of Islamic Scholars in Bandar Lampung in 1992. The formulation are: first, to answer a problem for which the answer is enough to use the reference texts of the book, and in the book, there is only one opinion of the priest of the

³⁰ Then We revealed to you, [O Muhammad], to follow the religion of Abraham, inclining toward truth; and he was not of those who associate with Allah [al-Nahl] [16]:123]

³¹ And who is better in religion than one who submits himself to Allah while being a doer of good and follows the religion of Abraham, inclining toward truth? And Allah took Abraham as an intimate friend [al-Nisâ] [4]: 125]

³² Say, [O Muhammad], "If you should love Allah, then follow me, [so] Allah will love you and forgive you your sins. And Allah is Forgiving and Merciful." [Ali Imrân [3]:31]

³³ Say, "Obey Allah and the Messenger." But if they turn away - then indeed, Allah does not like the disbelievers [Ali Imrân [3]:32]

³⁴ Say, "Allah has told the truth. So follow the religion of Abraham, inclining toward truth; and he was not of the polytheists." [Ali Imrân [3]:95]

³⁵ "From 'Abdullah Ibn 'Umar that the Prophet Muhammad. Said; O women of Anshâr, color your nails (with girlfriends and the like) and *khifâ dz* and do not be excessive" [Al-Syawka nî, Nayl al-Authâr]. "From Umm 'Athiyah, it is narrated that in Madinah there was a female circumcision, then the Prophet said to her (woman):" Do not be excessive because that is the happiest for women and most preferred for men (husbands) [Narrated by Abû Dâwud]. "There is a difference in the obligatory circumcision. *Imâm Yahyâ*, *Imâm Shâfi'î* and the majority of scholars said that circumcision is obligatory for

both men and women. Likewise, according to *Mâlik* and *Hanî fah* and *Murtadha*. And *al-Nawâwî* said that the law is *sunnah* for both men and women. Furthermore, according to *Imam Nasir* and *Imam Yahya*, it is obligatory for men and not for women." [Nayl Authâr. Jild1, p. 138]

³⁶ Female circumcision should cut the part that must be circumcised. Preferably in female circumcision, only scrape a little from around the vagina. Based on the hadith narrated by 'Abû Dâ wud and other Imams: the Messenger of Allah: said to the circumcision (woman); circumcision with a little and don't overdo it because circumcision is happier for women and more liked by husbands [l'ânah al-Thâ libîn, Jil 4, p 198].

³⁷ Based on the *dhahir hadîth*, 'Abû Hanî ah and *Mâlik* said that the ruling on circumcision is absolute *Sunnah*. Meanwhile, *Ahmâ d* thinks that circumcision is obligatory for men and *Sunnah* for women. Further *Syâfi'î* : oblige on both (*Awn al-Ma'bûd*. Jil 14, p. 125)

³⁸ *Kitâb Mu'tabarah* are books on the teachings of Islam following the teachings of 'aqî dah *Ahl al-sunnah wa al-jamâ 'ah* as formulated by the 27th NU conference. Mahsun, *Madzhab NU Madzhab Kritis: Bermadzhab secara Manhajiy dan Implementasinya dalam Bahtsul Masail Nahdlatul Ulama*, (Depok: Nadi Pustaka, 2015), p. 71

³⁹ Ahmad Zahra, *Lajnah Bahtsul Masail 1926-1999: Tradisi Intelektual NU*, (Yogyakarta: LKis, 2004), p. 93

madhhab/opinion of the *madhhab* scholars, then the opinion in the reference of the book is used as the answer. Then, in answering the problem, it is still possible to use book reference texts, but it turns out that there is more than one opinion from the *imâm* or *madhhab* scholars. *Taqrîr jamâ'î* is carried out (a collective effort to choose one of several opinions). whose function is to choose one opinion of the *imâm* of the *madhhab*/ulama of the *madhhab*.

Second, the procedure for implementing the *qawli* method is the selection of opinions when there are several opinions of priests of *madhhab* scholars in a problem. Then it is done by choosing one opinion with the following provisions: (a). take a more beneficial or stronger opinion; (b) the opinion agreed upon by al-Nawâwî and al-Rafî'î ; (c). the opinion held by al-Nawâwî only; (d) the opinion held by al-Rafî'î only; (e). opinion supported by the majority of scholars; (f). the opinion of the smartest scholars, g). the opinion of *warâ'* scholars.

Furthermore, *ilhâqî* procedure, in this case, when a problem/case has not been solved in the book, then the problem/case is resolved by the *ilhâq al-masâ'il binadzâ'irihâ* procedure, equating the law of an issue that has no legal provisions with a similar case that has been there are legal provisions in the book of *fiqh*, in a *jamâ'î* (collective) manner. *ilhâq* is carried out by paying attention to *mulhâq bih*, cases for which there are legal provisions in *fiqh* books, *mulhâq 'alayh*, issues for which the law is to be sought/equalized by statute, by expert *mulhiq* (law-digging scholars).

Lastly, suppose it is impossible to do *ilhâq* because there is no *mulhaq bih* and *wajh al-ilhâq* (the side of the equation) in the book. In that case, *istinbâth* is done in a congregational manner, namely by practicing *qawâ'id ushûliyyah*⁴⁰ and *qawâ'id fihiyyah*⁴¹ by the experts.

⁴⁰ *Qawâ'id Ushûliyyah* is a general description that includes the method of determining the law from the aspect of the meaning of the text, *lughâwî* (language), and *tarkîb* (sentence structure) as well as its *uslûb* (language style).

⁴¹ *Qawâ'id fihiyyah* is a universal formulation of jurisprudence law in which there are several *furû'* (branches) or *mustasnayât* (exceptions). For example, the rule of "*al-Yaqîn lâ Yuzâlu bi al-Syâk*". Abdul Hak, et.al, *Formulasi Nalar Fiqh: Telaah Kaidah Fiqh Konseptual*, (Surabaya: Khalista, 2005), p.10-11.

More specifically, examples of the *qawli*, *ilhâqî*, and *manhâjî* methods are: First, the *qawli* method is used by NU scholars in *Bahstul masail* by studying the problem to be learned, then contextualizing it into the *fiqh* books of the four schools of thought. With direct reference to the editor of the text. The example of the application of *qawli* method, one of which was applied in the decision of the 32nd *bahstul masail* congress in Makassar regarding the statement of *sighât ta'liq talâq* with a question; (a) whether *sighât ta'liq talâq* which was not read but with a signed statement automatically occurred according to with its contents, and be penalized if it violates the *ta'liq*? The answer: there is no *ta'liq talâq*, and no sanctions are imposed. b). What is the ruling on a bandoning reading or signing a *sighât ta'liq*, an *ulul amr* commandment? The answer: may leave the task or go to *sighât ta'liq*.⁴²

While the example of the *ilhâqî* method is about the validity of buying and selling firecrackers to celebrate holidays, brides, and others, the answer is that the sale and purchase are legal because there is a good intention, namely the existence / growing feelings of pleasure with the sound of the firecrackers.⁴³

⁴² The direct reference refers to the editor of the text in the book *Hasyiyah Qalyubi wa 'Amirah*. juz 3, p. 328 and *Bughyah al-Murtasydî* n p.90.

(وَلَوْ كَتَبَ تَاطِقُ طَلَّاقًا) كَانَ كَتَبَ زَوْجَتِي طَالِقًا. (وَلَمْ يَنْوِ فَلَوْ) وَتَكُونُ كِتَابَتُهُ لِتَجْرِئَةِ الْقَلَمِ أَوْ الْيَدِ أَوْ غَيْرِ ذَلِكَ. وَفِي وَجْهِ أَنَّ الْكِتَابَةَ صَرِيحَةٌ كَالْعِبَارَةِ يَقَعُ بِهَا الطَّلَاقُ. (وَأِنْ نَوَاهُ فَلَا ظَهَرَ وَفَوْعَهُ) لِأَنَّ الْكِتَابَةَ طَرِيقٌ فِي إِفْهَامِ الْمُرَادِ كَالْعِبَارَةِ. وَقَدْ افْتَرَقَتْ بِالنِّتَةِ وَالثَّانِي لَا يَقَعُ لِأَنَّهَا فِعْلٌ وَالْفِعْلُ لَا يَصْلُحُ كِتَابَةً عَنِ الطَّلَاقِ. لَوْ أَخْرَجَهَا مِنْ بَيْنَتِهِ وَنَوَى الطَّلَاقَ. وَقَطَعَ قَاطِعُونَ بِالْأَوَّلِ وَأَخْرَجُوا بِالثَّانِي.

(مَسْأَلَةٌ: ك) : يَجِبُ امْتِثَالُ أَمْرِ الْإِمَامِ فِي كُلِّ مَا لَهُ فِيهِ وَلَايَةٌ كَدَفْعِ زَكَاةِ الْمَالِ الظَّاهِرِ. فَإِنْ لَمْ تَكُنْ لَهُ فِيهِ وَلَايَةٌ وَهُوَ مِنَ الْحَقُوقِ الْوَاجِبَةِ أَوْ الْمُنْدُوبَةِ جَازَ الدَّفْعُ إِلَيْهِ وَالِاسْتِفْلَالُ بِصَرْفِهِ فِي مَصَارِفِهِ. وَإِنْ كَانَ الْمَأْمُورُ بِهِ مَبَاحًا أَوْ مَكْرُوهًا أَوْ حَرَامًا لَمْ يَجِبْ امْتِثَالُ أَمْرِهِ فِيهِ كَمَا قَالَ (م) وَتَرَدَّدَ فِيهِ فِي الثَّحَقَةِ. ثُمَّ مَالَ إِلَى الْوُجُوبِ فِي كُلِّ مَا أَمَرَ بِهِ الْإِمَامُ وَلَوْ مُحَرَّمًا لَكِنْ ظَاهِرًا فَقَطْ. وَمَا عَدَاهُ إِنْ كَانَ فِيهِ مَضْلَحَةٌ عَامَّةٌ وَجَبَ ظَاهِرًا وَبَاطِنًا وَلَا فُظَاهِرًا فَقَطْ أَيْضًا. وَالْمَبْرُورَةُ فِي الْمُنْدُوبِ وَالْمَبَاحِ بِعَقِيدَةِ الْمَأْمُورِ. وَمَعْنَى قَوْلِهِمْ ظَاهِرًا أَنَّهُ لَا يَأْتُمُّ بِعَدَمِ الْإِمْتِنَالِ. وَمَعْنَى بَاطِنًا أَنَّهُ يَأْتُمُّ أَهـ

⁴³ The explanation of the answer refers to the book of *I'ânah al-Thâlibîn*. Juz 3, p. 121-122 and *al-Bajûrî* p. 652-654.

قَوْلُهُ وَأَمَّا صَرْفُهُ أَيُّ الْمَالِ وَهُوَ مُقَابِلُ إِتْقَانِهِ فِي مُحَرِّمٍ (قَوْلُهُ وَوُجُوهُ الْحَبْرِ) وَالْمَطَاعُ وَالْمَلَابِسُ وَالْهَدَايَا (قَوْلُهُ الَّتِي لَا تَلِيْقُ بِهِ) صِفَةٌ لِلثَّلَاثَةِ قَبْلَهُ (قَوْلُهُ فَلَيْسَ بِتَبْذِيرٍ)

Judging from the aspect of argumentation referring to reference books, no one explicitly mentions the law of buying and selling and using firecrackers. Firecrackers themselves in Arabic are called الطرطقة and الفرقيلة. What is in the editorial reference of the book is the problem of whether it is permissible to invest wealth for good and pleasure. In addition, it is legal to sell something that can be seen or presented proper and holy.⁴⁴

Finally, an example of the *manhâjî* method is the Regional Head General Election issue from an Islamic perspective.⁴⁵ Nahdlatul Ulama views that the practice of direct democracy through the Regional Head General Election so far has not proven the positive impact expected by many parties. The Regional Head General Election brought several *madhârat* or *mafsadah*, including poor political education such as rampant money politics and prohibitive political costs for the state and prospective leaders. The potential to increase the number of corrupt practices. Nahdlatul Ulama recommended that the post-conflict local election be reviewed based on these considerations. It could even be that the election through the representative council deserves to be re-enacted. This idea follows the rules of *fiqhiyyah*:

دَرْءُ الْمَقَاسِدِ أَوْلَى مِنْ جَلْبِ الْمَصَالِحِ

“Pushing damage is more important than pulling safety”.

إِذَا تَعَارَصَ مَفْسَدَتَانِ رُوعِيْ أَعْظَمُهُمَا ضَرَرًا بِأَرْبَابِ أَخْفَهُمَا

“If there are two contradictory damages, then the greater *madhârat* (danger) must be taken care of by carrying out the lighter of the two.”

In addition to the two institutions above, there is also a Persis organization with an Islamic

law study institution, namely the Hisbah council. The author will briefly review the results of the Hisbah board's *ijtihad* regarding the issue of zakat on the results of professional services. In the decision of the 5th session in October 1991 in Bandung, the Hisbah Council decided that: “That zakat is a *mahdhah* worship. Assets and income issued by *zakat* are gold and silver, money as savings whose *nishâb* is the same as gold, *zirâ'ah* (agricultural products), *Ma'adin* (mining goods), *rikâz* (findings in the form of treasure), livestock, and *tijarah* (trading assets). While assets that are not classified as above, one of which is the result of professional services, are not subject to the obligation to issue *zakat*. However, it is subject to an *infâq* obligation, the size depends on the needs for the property.”⁴⁶

The Council of Hisbah considers that the decision to consider *zakat* for services and wages of the profession is not stated in *nash* and cannot be analyzed by the theory of *qiyâs*. They see that in addition to *zakat* not entering the realm of *qiyas* study, it will also be challenging to conduct a survey of *ta'lil* on this issue. Further, they say as below: “If the *zakat* from the profession's efforts is compared (analogized) to the *zakat* on agriculture, then it will also apply to the calculation of fertilization and watering. Meanwhile, the profession's business results cannot do the analysis. And if compared to wealth, then the measure associated with the haul period also applies, even though the results of the profession cannot be classified in the classification. Similarly, if compared to gold and silver, which is part of gold storage and gold jewelry. While the results of the profession's efforts are not of the same kind as the classification.”⁴⁷

Thus, if we look at the decision of the Hisbah board regarding *ijtihad* as a result of professional efforts, they are more concerned with maintaining a traditionalist attitude in this matter by relying on the texts of the Quran and Hadith, which do not explicitly explain it. Still, they accommodate it with the obligation of *infaq*, not *zakat*. In addition, they also do not agree if it is *qiyâs* with the results

أَيُّ عَلَى الْأَصَحِّ لِأَنَّ لَهُ فِي ذَلِكَ غَرْصًا صَحِيحًا وَهُوَ الثَّوَابُ أَوْ التَّلَذُّدُ. وَمَنْ ثَمَّ قَالُوا لَا سَرَفَ فِي الْخَيْرِ كَمَا لَا خَيْرَ فِي الْإِسْرَافِ.

(تَبَعُ سَعْيِ مُشَاهَدَةٍ) أَيِ حَاضِرَةٍ (فَيَجَائِزُ) إِذَا وَجَدْتَ الشَّرْطَ مِنْ كَوْنِ الْمَبْنِيِّ طَاهِرًا مُنْتَقِمًا بِهِ مُقَدَّرًا عَلَى تَسْلِيمِهِ لِلْعَاقِدِ عَلَيْهِ وَلَا يَمْنَعُ.

⁴⁴ Ahmad Zahra, *Lajnah Bahtsul Masail 1926-1999: Tradisi Intelektual NU*, p. 122-124

⁴⁵ LTN PBNU, *Hasil Keputusan Munas Alim Ulama dan Konbes NU*, (Jakarta: LTN PBNU, 2012), p. 6

⁴⁶ Appendix Decision of the 5th session of Dewan Hisbah Persis in Bandung, October 1991

⁴⁷ Appendix Decision of the 5th session..., October 1991.

of agricultural zakat, wealth, and gold and silver, which they judge will be difficult to determine the 'illat and the law of origin, likewise with the *ta'lîl* approach.

In addition to these three institutions, there are also several that have *ijtihâd* institutions to respond to problems that arise from both their followers and the general public, such as Muhammadiyah with its Tarjih Council, then Nahdlatul Wathan, Matala al-Anwar, Al-Irsyad, and al-Washaliyah. Thus, the various approaches to the legal *Istinbath* method will produce different legal products, some of which allow, oblige, and even forbid. Precisely with differences in *ijtihâd*, these scholars will bring mercy. It is up to us to respond to this diversity.

Conclusion

The concept of "*al-muhâfadzah 'alâ qodimi al-shâlih wa al-akhdzubi al-jadîd al-ashlah*", still consistently adheres to previous traditions that are still relevant and takes new things that are more progressive. This is where the role of Muslim academics in the era of globalization with very rapid technological advances must be able to contribute ideas and morals for a more innovative and progressive civilization, especially in the development of Islamic legal thought in answering the problems of contemporary society.

Therefore, in carrying out fresh *ijtihâd* on Islamic law, it is necessary to hold three basic principles of cultural patterns of religious thinking, namely *hadhârah nash* (*bayânî* text), *hadhârah al-'ilm* (*ratio-burhânî*), and *hadhârah al-falsafah* should not be separate these three components from each other.

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