



## THE RECONSTRUCTION OF PESANTREN NATIONALITY *FIQH*: AN INSIGHT FROM THE RESULTS OF *BAḤṬH AL-MASĀIL* FORUM MUSYAWARAH PONDOK PESANTREN (FMPP)

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**Abstract:** This paper analyses one of the decisions reached by the *baḥṬh al-masāil* Islamic Boarding School Deliberation Forum (FMPP) in Java and Madura in 2016 at the Babakan Islamic Boarding School in Ciwaringin, Cirebon. In its decision, *baḥṬh al-masāil* FMPP stated that Pancasila as the State's foundation is consistent with the values enshrined in the Medina Charter. The issues that will be addressed in this study are: first, how does *baḥṬh al-masāil* FMPP use the argumentation structure to reach this decision? Second, consider the relevance of the *baḥṬh al-masāil* decision and the ideas of civilizational fiqh produced by the PBNU. To address these two issues, the authors performed a study of the literature based on the primary data from the official document of the *baḥṬh al-masāil* FMPP decision and some results from the PBNU's *halaqah fiqh* of civilization. The *usul fiqh* and *qawa'id fiqhiya* approaches were used in this study, specifically the theory of *maslahah* and *mafsadah* in Islamic law. The data in the decision document was then analyzed using content analysis techniques. Based on the data and analysis, it was determined that, first, the *BaḥṬh al-masāil* FMPP decision on the Pancasila issue was formulated based on a solid argumentation with *maslaha* as its primary paradigm, and the decision's results also demonstrated that Islamic boarding schools have a distinct national fiqh construction. Second, the relevance of the national fiqh construction arising from the *baḥṬh al-masāil* FMPP on Pancasila with the NU civilizational fiqh idea sits in its function as the primary foundation of civilizational fiqh ideas.

**Keywords:** *BaḥṬh al-masāil*; FMPP, Pancasila; Medina Charter; Fiqh of Nationality; Fiqh of Civilization

**Abstrak:** Tulisan ini membahas salah satu hasil keputusan *baḥth al-masā'il* Forum Musyawarah Pondok Pesantren (FMPP) se-Jawa Madura yang berlangsung di Pesantren Babakan, Ciwaringin, Cirebon, tahun 2016. Dalam keputusannya, *baḥth al-masā'il* FMPP menyatakan bahwa Pancasila sebagai dasar Negara sudah sangat sesuai dengan nilai-nilai yang ada dalam Piagam Madinah. Fokus masalah yang akan dijawab dalam tulisan ini adalah, *pertama*, bagaimana bangunan argumentasi yang digunakan *baḥth al-masā'il* FMPP hingga melahirkan keputusan tersebut. *Kedua*, melihat relevansi hasil keputusan *baḥth al-masā'il* tersebut dengan gagasan fikih peradaban yang dihasilkan PBNNU. Untuk menjawab dua masalah ini, penulis melakukan studi kepustakaan dengan data utama dokumen resmi keputusan *baḥth al-masā'il* FMPP dan beberapa hasil halaqah fikih peradaban yang dilaksanakan oleh PBNNU. Pendekatan yang digunakan dalam kajian ini adalah pendekatan Ushul Fiqh dan *Qawā'id Fiqhīyah*, khususnya teori *maṣlahah* dan *mafsadah* dalam hukum Islam. Data yang terdapat dalam dokumen keputusan tersebut kemudian penulis analisis menggunakan tehnik analisis isi. Dari data-data dan analisis yang dilakukan kemudian dihasilkan kesimpulan bahwa: *Pertama*, keputusan *baḥth al-masā'il* FMPP tentang masalah Pancasila dirumuskan di atas bangunan argumentasi yang kuat dengan *maṣlahah* sebagai paradigma utamanya, dan hasil keputusan tersebut juga menunjukkan bahwa pesantren mempunyai konstruksi fikih kebangsaan yang khas. *Kedua*, relevansi konstruksi fikih kebangsaan yang dihasilkan dari *baḥth al-masā'il* FMPP tentang Pancasila dengan gagasan fikih peradaban NU terletak pada fungsinya, yaitu dapat dijadikan sebagai fondasi dasar dari ide fikih peradaban.

**Kata Kunci:** *Baḥth al-Masā'il*; FMPP; Pancasila; Piagam Madinah; Fikih Kebangsaan; Fikih Peradaban



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## INTRODUCTION

Pesantren is a traditional Islamic educational institution in Java, similar to *madrrasah* in the Middle East and South Asia.<sup>1</sup> This institution is a place for studying religious studies to produce pious Muslims.<sup>2</sup> As the oldest educational institution, Islamic boarding schools have made significant contributions in many areas, including the state.<sup>3</sup> Islamic boarding schools are also significantly involved and contribute to the

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- <sup>1</sup> Mark Woodward dan Bianca J. Smith, "De-Colonizing Islam and Muslim Feminism," in *Gender and Power in Indonesian Islam Leaders, Feminists, Sufis and Pesantren Selves*, ed. Mark Woodward dan Bianca J. Smith (New York: Routledge, 2014), 4.
  - <sup>2</sup> Samsul Ma'arif, Ahmadi, Dzikrulloh, and Nailly El Muna "Pesantren Entrepreneurship: Harmonization of The Theories Kasab Asy'ariyah and Locus of Control on Strengthening Santripreneur," *Qudus International Journal of Islamic Studies* 11, no. 1 (2023).
  - <sup>3</sup> Wawan Wahyudin, "Kontribusi Pesantren Terhadap NKRI," *Saintifika Islamica: Jurnal Kajian Keislaman* 3, No. 01 (2016), 40.

community's socioeconomic empowerment.<sup>4</sup> Pesantren has three essential functions in Muslim society: centers for conveying religious knowledge, custodians of traditions, and centers for the cadre of religious experts (*'ulama*).<sup>5</sup>

The prominent role played by pesantren, particularly in transforming Islamic knowledge, makes this institution a center for learning Islamic studies. From the most basic to the most advanced degree of religious knowledge is taught. Fiqh is a religious subject that is extensively studied at Islamic boarding schools.<sup>6</sup> The presence of fiqh science in Islamic boarding schools cannot be divorced from the community's need for an institution devoted to teaching religious sciences, including fiqh, a significant reference in legal affairs.<sup>7</sup> In the pesantren itself, the Syafi'iyah school of thought is the dominant school of thought.<sup>8</sup>

Fiqh is one of the essential study disciplines in the Islamic setting. The yellow book contains classical fiqh books studied concurrently and utilized as the primary reference in answering queries. The yellow book is the focal point of study and teaching in Islamic boarding schools, particularly in traditional Islamic boarding schools.<sup>9</sup> It is called the yellow book because these books are generally printed on yellow paper or at least slightly brown.<sup>10</sup> According to Martin van Bruinessen, the reason why there is such a strong relationship between pesantren and Kitab kuning is that the primary purpose behind the emergence of pesantren is to transmit traditional Islamic teachings contained in various classic books which in Indonesia are known as *Kitab kuning* (Yellow Book).<sup>11</sup>

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<sup>4</sup> Muhamad Nafik Hadi Ryandono, "Peran Pondok Pesantren Dalam Pemberdayaan Sosial Ekonomi Di Jawa Timur Pada Abad Ke-20," *Mozaik Humaniora* 18, No. 02 (2018), 203.

<sup>5</sup> Yanwar Pribadi, "Religious Networks in Madura Pesantren, Nahdlatul Ulama and Kiai as The Core of Santri Culture," *Al-Jami'ah* 51, No. 01 (2013), 4.

<sup>6</sup> Literally, the term *fiqh* means understand. While terminologically, *fiqh* is a science about a practical Islamic law taken from detail theorem. See Abdurrohman Kasdi, "Reconstruction of Fiqh Nusantara: Developing the Ijtihad Methodology in Formulating Fiqh from Indonesian Perspective," *Quodus International Journal of Islamic Studies* 7, no. 2 (2019): 239-66, <https://doi.org/10.21043/qijis.v7i2.4797>.

<sup>7</sup> Wawan Juandi and Abu Yasid, "Al-Tafkīr Al-Fiqhī Bayna Al-Tarīqah Al-Taqlīdīyah Wa Al-Manhajīyah Fi Al-Ma'āhid Al-Islāmīyah Al-Miṣāliyah Fi Indonesia," *Journal of Indonesian Islam* 10, No. 01 (2016), 144.

<sup>8</sup> Sukron Ma'mun dan Ilyya Muhsin, "Istinbat Method of Tablighi Students in Pesantren Temboro: Textual and Contextual Matter," *Justicia Islamica* 17, no. 02 (2020).

<sup>9</sup> Yusuf Rahman, "Feminist Kyai, K.H. Husein Muhammad The Feminist Interpretation on Gendered Verses and The Qur'an-Based Activism," *Al-Jami'ah: Journal of Islamic Studies* 55, no. 2 (2017).

<sup>10</sup> Umma Farida and Abdurrohman Kasdi, "Women's Rules in Ihya' Ulum Al-Din and Method of Teaching It at Pesantrens in Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 1 (2021).

<sup>11</sup> Martin van Bruinessen, *Kitab Kuning, Pesantren Dan Tarekat* (Yogyakarta: Gading Publishing, 2015), 85.

Baḥth al-masāil is a critical tradition preserved by pesantren. *baḥth al-masāil* is a forum for studying Islamic matters, including *fiqh*.<sup>12</sup> The Java and Madura Islamic Boarding School Deliberation Forum (FMPP) is one of Islamic boarding schools' long-running *baḥth al-masāil* meetings. This forum has generated several formulations of Islamic law judgments on various topics, including worship, muamalah, politics, technology, and global challenges like ISIS and corruption.

The results of *baḥth al-masāil* FMPP that are interesting to study are the results of the 30th *baḥth al-masāil* decision in Babakan Islamic Boarding school, Ciwaringin, Cirebon, 21-22 October 2016. One of the issues raised in this forum was the issue of Pancasila and the Medina Charter.<sup>13</sup> In its formulation, *baḥth al-masāil* FMPP states that Pancasila is the basis of the State is on the values contained in the Medina Charter.

Many scholars have studied the themes of *baḥth al-masāil*, national *fiqh*, and civilizational *fiqh*. There is a study that looks at the role of the *ijtihad* of Lamongan coastal scholars who are affiliated with NU and Muhammadiyah in preventing environmental damage due to destructive fishing behavior.<sup>14</sup> Regarding national *fiqh*, some studies look at the actualization of this concept in building religious moderation in Indonesia.<sup>15</sup> Studies that raise the issue of civilizational *fiqh* can be seen in the article by Reza Fauzi Nazar and Mohammad Fahmi Abdul Hamid, who trace the genealogy of the epistemology behind the concept.<sup>16</sup>

This paper will discuss *baḥth al-masāil*, national jurisprudence, and civilizational jurisprudence from different perspectives. This study discusses specifically the results of the 30th *baḥth al-masāil* FMPP decision, particularly on the issues of Pancasila and the Medina Charter. There are two problems to be answered in this paper. First, how does the *baḥth al-masāil* FMPP forum use the argumentation structure to decide that Pancasila follows the Medina Charter's primary values?

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<sup>12</sup> Moh. Shofiyul Huda MF, "Resistensi Terhadap Fikih Patriarki (Studi Baht Al-Masail Forum Musyawarah Pondok Pesantren Putri Se-Jawa Timur)" (UIN Sunan Ampel Surabaya, 2020).

<sup>13</sup> This problem was discussed in Commission A, point 3 with the problem title "Madina Charter as State Constitution for Plural Community." This problem was proposed by PP. HM Ceria Lirboyo.

<sup>14</sup> Thohir Luth, Siti Rohmah, Nur Chanifah, Moh. Anas Kholish, and Ranitya Ganindha, "Coastal Ulama Ijtihad and Destructive Fishing Prevention in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 335-56, <https://doi.org/10.15408/ajis.v22i2.28077>.

<sup>15</sup> Arbanur Rasyid, Muhammad Basyrul Muvid, Maulana Arafat Lubis, dan Puji Kurniawan, "The Actualization of the Concept of National Fiqh in Building Religious Moderation in Indonesia," *Millah* 21, no. 2 (2022).

<sup>16</sup> Reza Fauzi Nazar dan Mohammad Fahmi Abdul Hamid, "Tracking the Genealogical Reasoning Reconstruction of Nahdlatul Ulama (NU) Fiqh: From 'Social Fiqh' to 'Civilization' Fiqh," *Tashwirul Afkar* 41, no. 2 (2022).

Second, what is the relevance of the results of the decision to the ideas of NU's civilizational fiqh? According to the author, these two issues are important to discuss because the results of the *baḥth al-masā'il* FMPP decision become legitimate and function as the fiqhiyah basis for choosing Pancasila as the basis of the State. In addition, through the results of the *baḥth al-masā'il* decision, the author wants to show that pesantren has a distinctive political fiqh construction (*siyāsah*), which is different from the political fiqh construction known in classical political fiqh books. Even so, the pesantren-style national jurisprudence resulting from the decision of *baḥth al-masā'il* can be used as a foundation for the ideas of NU civilizational fiqh.

In this study, the author applies Islamic law's *maṣlahah*<sup>17</sup> and *mafsadah*<sup>18</sup> theories to analyze the contents of the judgment, particularly the references included in the *baḥth al-masā'il* ruling. Furthermore, to read the *istinbāt* method utilized, the author adopts the *istinbāt* theory known in the *Baḥth al-masā'il* tradition.

#### THE *ISTINBAT* METHOD IN THE *BAḤTH AL-MASĀIL* FMPP TRADITION

Before explaining the distinct method used in the *baḥth al-masā'il* FMPP, this discussion will review a little the history of the birth of the *Baḥth al-masā'il* tradition in that organization. The Java-Madura Islamic Boarding School Deliberation Forum (FMPP) was born on the initiative of two large Islamic boarding schools in Kediri, Lirboyo Islamic Boarding School<sup>19</sup> and Al-Falah Islamic Boarding School,<sup>20</sup> Ploso.<sup>21</sup> The objectives of establishing this forum are: (1) fostering friendly relations between Islamic boarding school students; (2) the realization of an attitude of mutual help in developing and improving the quality and quantity of Islamic boarding school students; (3) the application of the Islamic creed in the style of expert sunnah

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<sup>17</sup> Is a very popular term in Islamic Law Study. Literally *maslaha* comes from the word root *saluha* which means good. While terminologically, *maslaha* is the trait like a deed which can take to benefit or goodness. See Muhammad Tahir ibn 'Asyur, *Maqasid al-Shariah al-Islamiyah* (Oman: Dār al-Nafāis, 2001), 278.

<sup>18</sup> *Mafsadah* is the contrary of *maṣlahah*. If *maṣlahah* is the trait which can take to benefit and goodness, then *mafsadah* is the trait which can take to ugliness and damage. Therefore, refusing the damage *dar'u al-Mafāsīd* is a must and included into the category of commendable deed (*maḥmūdun ḥasan*). See 'Izzuddin ibn 'Abdissalām, *Qawā'id Al-Aḥkām Fi Maṣāliḥ Al-Anām* (Beirut: Dār al-Ma'rifah, tt.), 4.

<sup>19</sup> See Agus Muhammad Dahlan Ridlwan, *Pesantren Lirboyo Sejarah, Peristiwa, Fenomena Dan Legenda* (Kediri: BPK P2L, 2010), 4-5; Ali Anwar, *Pembaruan Pendidikan di Pesantren Lirboyo Kediri* (Yogyakarta: Pustaka Pelajar bekerja sama dengan IAIT Press, 2011), 64.

<sup>20</sup> See Imam Mu'alimin, KH. Djazuli Utsman Sang Blawong Pewaris Keturunan (Kediri: PP. Al-Falah Ploso, 2011), 78.

<sup>21</sup> Ibrohim A. Hafidz, *Interview*, 11 June 2021.

waljama'ah; and (4) developing the talents and potential of Islamic boarding school students.<sup>22</sup>

The origins of FMPP cannot be separated from the long-standing tradition of Baḥth al-masā'il in the pesantren culture. FMPP's origins may be traced back to two prominent Islamic boarding schools, Lirboyo and Al-Falah Islamic Boarding School, Ploso, which have deep roots in the Baḥth al-masā'il tradition. The Lirboyo Islamic Boarding School has a Bahtsul Masail Institute (LBMP2L),<sup>23</sup> a *baḥth al-masā'il* forum. While at the Al-Falah Ploso Islamic boarding school, there is a Maktabah Islamic Boarding School with a type of activity called the General Assembly Deliberation (MMU).<sup>24</sup>

FMPP is built based on the Ahlussunnah wal Jama'ah Islamic faith by referring to (1) in the field of faith following Abū Mūsā al-Asy'arī and Abū Manṣūr al-Māturīdī; (2) the field of fiqh follows one of the four schools of thought; (3) the field of Sufism follows Al-Junaid, Al-Ghazali, and those who agree; and (4) in the life of the nation and state based on Pancasila: Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity, Democracy Led by Wisdom of Wisdom in Deliberation/Representation, and Social Justice for All Indonesian People.<sup>25</sup>

The method of formulating law or *ṭarīqah istinbāt*<sup>26</sup> *al-aḥkām* known in the *Baḥth al-masā'il* tradition can be grouped into four: *qaulī*, *taqrīr jamā'ī*, *ilhāqī*, and *manhajī*.<sup>27</sup> The *qaulī* method constructs law through opinion (*qaul*) expressed in numerous fiqh books.<sup>28</sup> The *qaulī* technique is to use the yellow book's editorial (*ta'bīr*) as an argument to address the concerns discussed. If the editorial in the yellow book that is the reference has only one *qaul* (face), the *qaulī* technique is chosen as the method of taking the law.<sup>29</sup> Meanwhile, if the yellow book's redaction has more than one *qaul*/face, the mechanism used is *taqrīr jamā'ī*.<sup>30</sup> *Taqrīr jama'ī* is a collaborative effort to select one *qaul*/face from numerous *qaul*/faces in the yellow book redaction.<sup>31</sup>

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<sup>22</sup> AD/ART FMPP Article 4, Purpose.

<sup>23</sup> See Khamim, *Mengkaji Hadis Di Pesantren Salaf* (Kediri: STAIN Kediri Press, 2015), 83-85.

<sup>24</sup> See Abdul Mughits, *Kritik Nalar Fiqh Pesantren*, 235-236.

<sup>25</sup> AD/ART FMPP Article 2, Aqidah and Principle.

<sup>26</sup> Literally the term *istinbat* means issuing. Terminologically, *istinbat* is issuing the meaning (law) from *naṣ* (the theorem). See Fahd ibn Mubarak ibn 'Abdillah Al-Wahbi, *Manhaj Al-Istinbat Min Al-Qur'an Al-Karim* (Jedah: Markaz al-Dirasat wa al-Ma'lumat al-Qur'aniyah, 2007), 30-35.

<sup>27</sup> Abdul Mughits, *Kritik Nalar Fiqh Pesantren* (Jakarta: Kencana, 2008), 192.

<sup>28</sup> Sukron Ma'mun, "Ilhaq Dalam Bahtsul Masa'il NU; Antara Ijtihad Dan Ikhtiyat," *Al-Qalam* 28, no. 1 (2011): 70.

<sup>29</sup> See KHA. Aziz Masyhuri, *Masalah Keagamaan NU* (Surabaya: PP RMI dan Dinamika Press, 1997), 364.

<sup>30</sup> Abdul Mughits, *Kritik Nalar Fiqh Pesantren*, 193.

<sup>31</sup> Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masa'il 1926-1999*, 118.

From this understanding, it can be understood that the *taqrīr jamā'ī* method is part of the *qaulī* method.

Meanwhile, the *ilhāqī* method is a way of establishing law by analogy to a problem that has no provisions in the book with similar problems in the book (*ilhāq al-Masā'il binazāiriha*).<sup>32</sup> The *ilhāqī* method is carried out by paying attention to the following essential elements: *mulḥaq bih* (editor in the book that discusses certain cases), *mulḥaq 'alaih* (new problems that have no answers in the book editorial), *wajh al-Ilhāq* (an element that brings together *mulḥaq bih* and *mulḥaq 'alaih*), and *mulḥiq* (expert equates).<sup>33</sup> Operationally, the *ilhāqī* method is the same as the al-Qiyās method<sup>34</sup> known in the *ushul fiqh* tradition. However, theoretically, the two are different. The *ilhāqī* method makes the redaction of the yellow book *al-Aṣl*, while in al-Qiyās, *al-Aṣl* comes from the texts.

When the *qaulī* and *ilhāqī* procedures cannot be utilized to determine the law, the *manhajī* method is applied. The *manhajī* approach is carried out operationally by employing the thinking method and the principles of law formation defined by the madhhab's imam.<sup>35</sup> This problem-analysis approach employs theories from the sciences of *usul fiqh* and *qawā'id fiqhīyah*.<sup>36</sup>

## PANCASILA AND THE MADINAH CHARTER IN THE BAḤṬH AL-MASĀIL FMPP DECISION

The issues of Pancasila and the Medina Charter issues were discussed at the *baḥṭh al-masā'il* ke-30 FMPP, held on 21-22 October 2016 at Babakan, Ciwaringin, and Cirebon Islamic Boarding Schools. The question about Pancasila and the Medina Charter was raised by the Hidayatul Mubtadiin Ceria Islamic Boarding School, Lirboyo, Kediri, with the title of the issue "The Medina Charter as the State Constitution for a Plural Society." The point raised in this subject is whether Pancasila, as the foundation of the state, is consistent with the Medina Charter. According to the findings of *Baḥṭh al-masā'ilini*, Pancasila, as the foundation of the

<sup>32</sup> Muhib Rosyidi, "Membumikan Teks Agama Ala Nahdlatul Ulama," *Journal of Qur'ān and Ḥadīth Studies* 2, no. 1 (2013): 26.

<sup>33</sup> KH. Husein Muhammad, "Tradisi Istinbath Hukum NU: Sebuah Kritik," dalam *Kritik Nalar Fiqih NU Transformasi Paradigma Bahtsul Masa'il*, ed. M. Imdadun Rahmat (Jakarta: Lakpesdam, 2002), 33.

<sup>34</sup> Literally the word, *qiyās* means gussing and equating. Terminologically, *qiyās* is equating the status of the new legal cases (*al-Furū'*) and the legal status existed in nas (theorem) (*al-Aṣl*) because there is legal 'illah similarity. See Jalāluddīn Al-Khabbāzī, *Al-Mughnī Fī Uṣūl Al-Fiqh* (Makkah: Markaz al-Baḥṭh al-'Ilmi wa Iḥyā' al-Turās | al-Islāmī, 1403 H), 285.

<sup>35</sup> Amir Syarifuddin, *Ushul Fiqh* (Jakarta: Logos, 1999), 364.

<sup>36</sup> Mahsun, *Mazhab NU Mazhab Kritis Bermazhab Secara Manhajiy Dan Implementasinya Dalam Bahsul Masail Nahdlatul Ulama* (Depok: Nadi Pustaka, 2015), 65.

Unitary State of the Republic of Indonesia (NKRI), is consistent with the values enshrined in the Medina Charter, namely the spirit to form a unitary state that is safe, peaceful and respectful among ethnic groups and religions.<sup>37</sup>

The Baḥth al-masāil decision document uses nine references to formulate legal answers. The nine references are: (1) Muḥammad al-Insān al-Kāmil by al-Sayyid Muḥammad ibn 'Alawī ibn 'Abbās al-Mālīki al-Makkī al-Ḥasanī; (2) Fatawā al-Subkī by Abī al-Ḥasan Taqiyuddīn 'Alī ibn 'Abdīl Kafī al-Subkī; (3) al-Tafsīr al-Munīr by Wahbah Zuḥailī; (4) Ḥabīb Zaid Abdurraḥmān ibn Yaḥyā al-Yamanī paper presented at the International Conference of Ulama Tariqah in Pekalongan; (5) al-Ṭuruq al-Ḥukmīyah fi al-Siyāsah al-Syar'iyah by Ibn Qayyim al-Jauzīyah; (6) al-Waḥdah al-Islāmīyah by Abdul Mālīk Abdurraḥmān al-Sa'dī al-'Irāqī; (7) al-'Alāqah bayna al-Dīn wa al-Waṭan by Shaykh Muḥammad 'Adnān al-Afiyūnī; (8) Tanbīh al-Marāji' 'alā Ta'sīli Fiqhi al-Wāqī' by Abdullah bin Bayyah; (9) al-Asybāh wa al-Nazāir by Imām al-Sayūṭi.

The first reference used as a basis for answering that Pancasila is by the values in the Medina Charter is the book Muḥammad al-Insān al-Kāmil by Muḥammad ibn 'Alawī ibn 'Abbās al-Mālīki al-Makkī al-Ḥasanī. The following are two editorials from Muhammad al-Insān al-Kāmil's book, which were mentioned in the formation of the Baḥth al-masāil FMPP decision:

ومن اهم تلك الخيرات حفظ المستضعفين في مكة من المسلمين وحقق دمائهم لاختلاطهم بالكفار. ومن فوائده  
أيضا إسلام كثير من كفار قريش باختلاطهم بالمسلمين...  
ومن سياسته صلى الله عليه وسلم الرشيدة في حياته الأولى في المدينة أنه لما رأى عدم تجانس أفراد المجتمع  
لاختلاف عقائدهم شرع في وضع نظام يضمن حقوق الجميع...

The first editorial is on the Hudaibiyah Agreement (*sulh al-hudaibiyah*)<sup>38</sup> and how the contents of this agreement impacted many Muslims. The editorial in the book Muhammad al-Insān al-Kāmil aims to demonstrate that, even though it caused more harm to the Muslim community, the Prophet Muhammad still agreed to the contents of the agreement because there was a good that he wanted to achieve, namely protecting the fate of the Muslim minority who lived in Mecca alongside the

<sup>37</sup> The Decision Result of Bahtsul Masail FMPP Within Java - Madura XXX, 7-8.

<sup>38</sup> Hudaibiyah Agreement was one of important histories in Islam. This event became the diplomacy symbol which was exemplified by the prophet. Hudaibiyah Agreement occurred in month Dzulqā'dah year-6th of Hijrah. See Salīm 'Abdullah Ḥijāzī, *Manhaj Al-I'lām Al-Islāmī Fi Sulḥ Al-Hudaibiyah* (Jedah: Dar al-Manaroh, 1986) 21.



Quraysh infidels. Furthermore, one benefit of coexisting Muslims and Quraysh unbelievers is that many Quraysh infidels opt to accept Islam.

The second editor spoke about when the Prophet in Medina saw the reality of a heterogeneous society, different ethnicities, and religions. The order chosen and used by the Prophet was an order that protected all groups. However, as a leader, the Prophet did not choose an order that benefited only one group. Pancasila with *Bhineka Tunggal Ika* (unity in diversity) has the same substance as the Prophet's political stance above. Therefore, by using the *ilhāq al-Masail bi nazāirihā* method, *baḥth al-masāil* FMPP wants to say that the values contained in Pancasila are in line with the values built by the Prophet Muhammad when building a state order in Medina.

The second book used as a reference in the *Baḥth al-masāil* FMPP decision is *Fatāwā al-Subkī* by Abī al-Ḥasan Taqiyuddīn 'Alī ibn 'Abdīl Kafī al-Subkī.<sup>39</sup>The editorial (ta'bīr) used in the formulation of the *Baḥth al-masāil* FMPP decision is contained in Juz 4 page 229:

وعدم اختلاطهم بالمسلمين يبعدهم عن معرفة محاسن الإسلام ألاترى من الهجرة الى زمن الحديبية لم يدخل في الإسلام الاقليل, ومن الحديبية الى الفتح دخل فيه نحو عشرة آلاف لاختلاطهم بهم للهدنة التي حصلت بينهم فهذا هو السبب في مشروعية عقد الذمة—الى ان قال— وقد تقدمت الإشارة الى حكمة عقد الذمة وما فيه من المصلحة ورجاء كثرة المسلمين ...

The editorial of the book *Fatāwā al-Subkī* does not talk about the Medina Charter or in the context of the Prophet's political stance. This editorial discusses the concept of *ahlu al-Dzimmah*<sup>40</sup> in Islam. According to the editorial of this book, one of the wisdom underlying the enactment of the rule of *dzimmah* in Islam is an advantage. If the *dzimmah* is abolished, Muslims and non-Muslims will be unable to coexist. Indeed, if Muslims and non-Muslims do not coexist, non-Muslims will not see the goodness of Islam. Al-Subkī emphasized that just a few converts to Islam during the Hudaibiyah incident. In comparison to the time of Mecca's conquest, when Muslims and non-Muslims lived side by side, the number of converts to Islam reached 10,000.

<sup>39</sup> Is a big figure of mazhab Syafi'i. He was born in Subki, Egypt, in 683H. He was the father of the famous fiqh expert of mazhab Syafi'i. Tājuddīn al-Subkī. See Abī al-Ḥasan Taqiyuddīn 'Alī ibn 'Abdīl Kafī Al-Subkī, *Fatāwā Al-Subkī* (Beirut: Dār al-Ma'rīfah, tt.), 3.

<sup>40</sup> See Khamami Zada dan Arif Arafah, *Diskursus Politik Islam* (Jakarta: LSIP, 2004), 10.

The third book used by Baḥth al-masāil FMPP in the decision document is al-Tafsīr al-Munīr by Wahbah Zuhaili.<sup>41</sup> The editorial (*ta'bīr*) quoted from al-Tafsīr al-Munīr is an interpretation of sura al-Anfāl verses 61 to 66. In his commentary, Wahbah Zuhaili describes the dynamics among scholars regarding this verse, whether it has been sanctioned<sup>42</sup> or not.<sup>43</sup> The formulation of baḥth al-masāil FMPP underlines the editorial section of the book al-Tafsīr al-Munīr and makes it the basis for the decision. The editorial of the book al-Tafsīr al-Munīr is as follows:

وقال جماعة: ليست بمنسوخة، لكنها تضمنت الأمر بالصلح إذا كان فيه المصلحة، فإذا رأى الإمام مصالحتهم، فلا يجوز أن يهادنهم سنة كاملة، وإن كانت القوة للمشركين، جاز مهادنتهم للمسلمين عشر سنين—الى أن قال—والخلاصة كما ذكر ابن العربي: إذا كان للمسلمين قوة وعزة ومنعة فلا صلح، وإن كان لهم مصلحة في الصلح، لنفع يجتلبونه، أو ضرر يدفعونه فلا بأس بالصلح.

The editor selected in the Baḥth al-masāil FMPP decisions did not mention the Medina Charter. The editorial addressed peace with other religious communities. Making peace with them (*al-Sulh*) is allowed as long as there is gain. In truth, if peace is not maintained, it produces danger; nonetheless, peace may be maintained.

The fourth reference cited in the *baḥth al-masāil* FMPP decision is the paper Ḥabīb Zaid Abdirrahmān ibn Yaḥyā al-Yamanī presented at the International Conference in Pekalongan. The editorial (*ta'bīr*) quoted in the formulation of the decision of Baḥth al-masāil talks about the Medina Charter which the Prophet formulated. The editorial is as follows:

وأبرم صحيفة المدينة توثيقاً بين المسلمين وغير المسلمين دفاعاً عن الوطن وحماية له من أي عدو يناوئه أو أي خطر يتهدهده. وأعطي بهذا نموذجاً من أرقى المناذج في الحفاظ على سلامة الوطن وأمنه واستقراره ليقترني به العالم كله بعد ذلك

<sup>41</sup> Wahbah Zuhaili is one of contemporary scholar who has influence in Islamic world. He was born in Dir'Atiyah Village, Qalmun, Damascus, Syria on March 16th, 1932 M/1351 H. See Muhammad Khoiruddin, *Kumpulan Biografi Ulama Kontemporer* (Bandung: Pustaka Ilmu, 2003), 102.

<sup>42</sup> Literally, *nasakh* means eliminating (*al-Izālah*) and cancelling something and replacing it with something else. While terminologically, eliminating certain law with the determination of *syara'* law which came later. See Nādiyah Syarif Al-'Umarī, *An-Nasakh fi Dirāsāt Al-Usuliyīn Dirāsah Muqaranah* (Beirut: Muassasah Risālah, 1985), 19-28.

<sup>43</sup> Wahbah Zuhaili in his interpretation elaborated the Islamic scholar opinion about surah al-Anfal verse 61. Qatadah and 'Ikrimah stated that the verse has been *nasakh* by surah al-Taubah verse 5 and verse 36. While according to Ibnu Abbas, what erased surah al-Anfal verse 61 is surah Muhammad verse 35. There is a group of Islamic scholar who chose that verse 61 surah al-Anfal is not *nasakh*, and this is chosen by Bahth al-Masail FMPP. See Wahbah Zuhaili, *Al-Tafsīr Al-Munīr Fi Al-Syari'ah Wa Al-'Aqīdah Wa Al-Manhaj*, Vol. 5 (Damascus: Dār al-Fikr, 2003), 405.

In the editorial of the paper cited in the *baḥth al-masāil* FMPP decision, Ḥabīb Zaid al-Yamanī stated that the Medina Charter document formulated by the Prophet was a bond between Muslims and non-Muslims to protect each other and defend the State from enemy attacks. According to him, the Medina Charter is the best model to be used as a prototype in the state.

The fifth book cited in the *baḥth al-masāil* FMPP decisions is Ibn Qayyim al-Jauzīyah's *al-Turuq al-Hukmīyah fi al-Siyāsah al-Syar'īyah*.<sup>44</sup> This editorial (*ta'bīr*) is based on Ibn Qayyim al-Jauzīyah's book and includes Ibn Qayyim's comment on Ibn 'Aqīl's opinion on political substance (*al-Siyāsah*) in Islam. According to Ibn 'Aqīl, the fundamental purpose of politics in Islam is to promote profit and keep people away from harm. The political system utilized is not the primary concern; even if the Prophet has never exemplified it and there are provisions in the text, this system is permissible as long as it aims to bring advantage and prevent damage. The following is the editorial:

فقال ابن عقيل: السياسة ما كان فعلا يكون معه الناس اقرب الى الصلاح وأبعد عن الفساد وإن لم يضعه  
الرسول ولا نزل به وحي...

The sixth reference cited in the *baḥth al-masāil* FMPP decision is Abdul Malik Abdurrahman al-Sa'dī, entitled *al-Waḥdah al-Islamiyah*. The editorial (*ta'bīr*) quoted from al-Sa'dī contains a call for Muslim and non-Muslim groups to live peacefully without hostility and war. He gave an example of the Prophet's attitude towards the Jews who chose not to be hostile and to fight until they (Jews) broke their promise. The following is the editorial of al-Sa'dī's writings:

ولأجل أن يعيش الناس في سلم وعدم إقتتال فيما بينهم وبين المشركين لهم في الوطن وادع النبي اليهود وهم ألد الأعداء للمسلمين ولم يتخذ معهم أي إجراءات عدائية إلا بعد أن نقضوا العقد.

The seventh reference cited in the *Baḥth al-masāil* FMPP decision is the writing of Shaykh Muḥammad 'Adnān al-Afiyūnī entitled *al-'Alāqah bayna al-Dīn wa al-Waṭan*. This paper contains a review of the relationship between religion and the state. According to the editorial (*ta'bīr*) based on al-Afiyūnī's writings, the relationship between religion and the state is inseparable, and the two complement

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<sup>44</sup> Complete name Imam Abi 'Abdillah Ibn Muhammad Ibn Abi Bakr Ibn Ayyub Ibn Qayyim al-Jauziyah. One of figures in mazhab Hanbali who was born in date 7th of Safar year 691 H in Damascus. See Bakar Ibn Abdillah Abū Zaid, *Ibnu Qayyim Al-Jauziyah Ḥayātuhū Āsāruhū Mawāriduhū* (Riyadh: Dār al-'Āshimah, 1423 H), 21.

each other. The Prophet established the fundamental premise of the relationship between religion and the state when he established the State of Medina based on the Medina Charter. The Prophet established the relationship between the State and society based on citizenship (*al-Muwātanah*), not religious status, race, or ethnicity. The following is a quote from al-Afiyūnī's writings:

...وفي الحقيقة فإن روح علاقة الدين مع الدولة بدأت مع اللحظات الأولى لنشؤ دولة الإسلام في المدينة المنورة من خلال وثيقة المنورة (دستور المدينة) التي وضع رسول الله صلى الله عليه وسلم والتي تعتبر أول دستور مدني في التاريخ حيث نظمت علاقة الدولة بالمجتمع والناس على إختلاف أطبافهم ومعتقداتهم (مؤمنين مشركين وأهل كتاب), وهو مايسمى مبدأ المواطنة فكانت هذه الوثيقة إعلاناً للأسس ومبادئ حكم الدولة...

The eighth reference cited in the *baḥth al-masāil* FMPP decision is Abdullah bin Bayyah's work, *Tanbīh al-Marāji' 'ala Ta'shīli Fiqhi al-Wāqī'*. In his work, Abdullah bin Bayyah states that the existence of the State in Islam is only one of many media to achieve justice. Models and state systems can be different. As long as the main goal is to realize the benefit and welfare of the community and is close to the spirit of sharia, then any form is legal. The following is a quote from the writings of Abdullah bin Bayyah:

خلاصة القول: إن الدولة في الإسلام هي آلة من آليات العدل وإقامة الدين— إلى أن قال— قد تكون بعض الطرق مفضلة بقدر ما تحقق من المصلحة والسلام الإجتماعي والإقتراب من روح الشرع ونصوصه.

The editorial of Abdullah bin Bayyah's writing above strengthens the following argument regarding the choice to make Pancasila the basis of the State. As written in the editorial, the State is one of the instruments to achieve justice. The country format and system that is applied can vary in form.<sup>45</sup> The realization of the benefit and welfare of the community, as well as being true to the spirit of sharia, is a primary consideration in establishing a system and type of state. Pancasila is designed to be beneficial. And the values included therein are not opposed to the spirit of religion; as previously said, Pancasila is very much in harmony with religious beliefs.

<sup>45</sup> For Bin Bayyah, the state format indeed can be different, but in his point of view, an ideal state is not a theocracy let alone a secular state. See Abdullah bin Bayyah, *Tanbīh Al-Marāji' "Alā Ta'shīl Fiqhi Al-Wāqī'* (Beirut: Markaz Namā' li al-Buḥūs wa al-Dirāsāt, 2014), 101.

The final reference cited in the *baḥth al-masāil* FMPP ruling is Jalaluddīn al-Sayūṭī's work *al-Asybah wa al-Nazāir*. The following two fiqh principles were referenced in the decision's formulation:

إذا تعارض مفسدتان روعى أعظمهما ضررا بارتكاب أخفهما  
درء المفساد أولى من جلب المصالح

Applying the *manhajī* method includes using the two fiqh principles mentioned above to legitimize the answer that Pancasila conforms with the values in the Medina Charter. Two fiqh principles were picked to argue that there are two contradicting faults in choosing Pancasila as the foundation of the State (*al-Mafsadah*). Accepting Pancasila implies rejecting religion as the foundation of the state. If religion is made the foundation of the state, another problem will arise, namely the nation's disintegration. Based on the formulation of the first rule, if there is a contradiction between two damages, then the chosen one is the one with the least risk. *Baḥth al-masāil* FMPP considers that accepting Pancasila as the basis is the option with the least risk and damage.

Meanwhile, for the second principle, making religion the foundation of the State has benefits on one hand while causing harm on the other, namely the prospect of national fragmentation. According to the second rule's formulation, rejecting damage must take precedence over providing benefits. Hence embracing Pancasila as the State's foundation is part of rejecting damage.

The authors discovered the following interesting things based on the formulation of the decision and the references utilized in the *Baḥth al-masāil* FMPP above. First, in answering the status of Pancasila's standing, *baḥth al-masāil* FMPP employs a combination of two methods: *ilhāqī* and *manhajī*. Second, the references used are not confined to one fiqh discipline but include other sources, including articles. Third, the references cited are not solely from Syafi'iyah but also from other Islamic thinkers. Fourth, in seeking answers to the status of Pancasila, *baḥth al-masāil* FMPP has begun to draw on the ideas of contemporary ulamas.

## **THE RECONSTRUCTION OF NATIONALITY *FIQH* AND THE IDEAS OF CIVILIZATIONAL *FIQH***

The formulation of *baḥth al-masāil* FMPP's response, which believes that Pancasila is very much in keeping with the ideals in the Medina Charter, demonstrates that

Islamic boarding schools have a particular national<sup>46</sup> *fiqh* structure. The pesantren's recognition of Pancasila's status as the basis of the State reflects the qualities of this institution's stance towards national concerns, which is constrained by a moderate principle: it is in the middle of the liberal and radical poles.

The construction of the arguments in the *baḥth al-masāil* FMPP decision document demonstrates that when reacting to national concerns such as Pancasila, Islamic boarding schools are more concerned with substantive features than formal aspects. Pancasila, not mentioned in the yellow book, is acknowledged using arguments from these volumes. This leads the author to believe that pesantren has a distinct national *fiqh* construction.

Based on the previous research and analysis of the formulation of the *baḥth al-masāil* FMPP decision, the authors believe that the decision has a significant influence, particularly in developing national Islamic jurisprudence in the style of Islamic boarding schools. At the very least, the results of the *baḥth al-masāil* FMPP decision provide an essential foundation that the construction of pesantren-style national *fiqh* is built on the following principles:

First, pesantren-style nationalist jurisprudence prioritizes substantive above formal aspects. An in-depth examination of the different references used as the foundation for drafting the *Baḥth al-Masā'il* decision reveals that the essential factor, in this case, is its substance. At least, according to *Fatāwā al-Subkī* and Abdullah bin Bayyah's editorials. Formally, Pancasila is not known or stated in religious books, yet its values are consistent with religious values (Islam).

Second, the pesantren-style nationalist jurisprudence makes benefit from its core goal. The outcome of the *baḥ'th al-masāil* FMPP ruling above is more beneficial if read and understood fully. Accepting Pancasila as the basis of the state, even though it is not based on a religious "tradition," can only be done if it is beneficial. In this situation, pesantren are more concerned with external advantage than inward gain (Muslims). Accepting injury must take precedence above bringing advantage for the pesantren.

Third, national jurisprudence in the style of Islamic Boarding Schools is built on the principles of tolerance and peace. In seeing the status of Pancasila as the basis of the State, Islamic boarding schools make the principles of tolerance and peace their basis. For the pesantren, different groups, both from the aspects of religion,

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<sup>46</sup> What is meant by nationality *fiqh* in this paper is the nationality problems such as the state foundation, Pancasila, NKRI, and UUD 1945 that were studied in the *fiqh* perspective.

culture, ethnicity, and language, are not considered opponents that must be eliminated. Those who are different are considered partners fighting for the nation's and the State's progress. They took this principle from the political attitude of the Prophet Muhammad in interacting with other (religious) groups.

One of the actual concerns with nationality is the PBNU's concept of civilizational *fiqh*. This initiative was launched to commemorate the centenary of the birth of Nahdlatul Ulama (NU). The PBNU has convened meetings (*halaqah*) in numerous locations to realize this grand plan, with the climax being the First International Conference on Civilization Jurisprudence on February 6, 2023, in Surabaya, East Java.

Civilizational *fiqh* can be interpreted as understanding social or civilizational realities in dialogue with religious texts. The main objective is to solve problems that arise due to these dynamics.<sup>47</sup> The issues discussed in *fiqh* civilization meetings (*halaqah*) are not new. The issues discussed are old but studied with a new "face."<sup>48</sup>

There are four main issues discussed in the civilizational *fiqh* *halaqah*. These four issues are all themes commonly studied in political *fiqh* (*siyasah*) and are closely related to national issues. The four issues are (1) the rejection of the concept of the caliphate as a state system; (2) the re-positioning of the relationship between religious law (*sharia*) and positive law; (3) the position of the nation-state; and (4) about war and peace.<sup>49</sup>

The culmination of the civilizational *fiqh* *halaqah* was the first International Conference on Civilization Jurisprudence held in Surabaya on February 6, 2023. No less than 15 scholars, both from within and outside the country, presented their thoughts on issues that have become the primary concern of the ideas of civilizational *fiqh* that have been offered so far. The congress resulted in two crucial recommendations: rejecting the caliphate system and legitimizing the UN charter, with its advantages and disadvantages, as the most solid foundation for building a new *fiqh* to create a peaceful and harmonious human civilization.<sup>50</sup>

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<sup>47</sup> Ahmad Tholabi Kharlie, "Memahami Fikih Peradaban," <https://www.detik.com/> accessed on May 29th, 2023.

<sup>48</sup> Afifuddin Muhajir, [https://www.youtube.com/watch?v=Ki5o\\_cuWvyc&t=41s](https://www.youtube.com/watch?v=Ki5o_cuWvyc&t=41s), accessed on May 29th, 2023.

<sup>49</sup> "Muktamar Fiqih Peradaban Akan Bahas 4 Isu Yang Jadi Konsensus Ulama Sedunia," <https://jabar.nu.or.id/> accessed on May 30th, 2023.

<sup>50</sup> "Rekomendasi Muktamar Internasional Fiqih Peradaban Menolak Khilafah Mendukung PBB," <https://www.nu.or.id/internasional/> accessed on May 30th, 2023.

The International Conference on Civilization Jurisprudence's recommendations are incredibly pertinent to the state of Pancasila outcomes from the *bah'th al-masāil* FMPP, as previously explained. The development of national fiqh brought forth by *bah'th al-masail* FMPP can serve as a base for advancing the idea of civilizational fiqh. Regarding the denial of the caliphate system, for instance, the idea that the caliphate existed as a state system is instantly eliminated by acknowledging Pancasila as a *fiqhiyyah* legal state system. Furthermore, the *bah'th al-masāil* FMPP decision's outcomes were supported by solid *fiqhiyyah* reasoning.

In terms of the position of the nation-state, although it does not explicitly acknowledge, the results of the *bah'th al-masāil* FMPP decision implicitly recognize the validity of the nation-state concept as one of the legitimate forms of statehood from a religious perspective. By recognizing the legitimacy of Pancasila as the basis of the state, it automatically recognizes the choice of the nation-state format chosen by Indonesia. Undoubtedly, this is by the judgment of the International Conference on Civilization Jurisprudence, which expressly acknowledges the existence of the United Nations and its peace charter as a new fiqh foundation for fostering peace and harmony in the global civilizational order. The *bah'th al-masā'il* FMPP decision's outcomes were local in scope (Indonesia), whereas the International Conference on Civilization Jurisprudence's outcomes were universal.

The status of citizens is one of the implications of *fiqhiyyah* resulting from the acknowledgment of the concept of nation-state as a state format. Class citizens are classified depending on religious status in the eyes of traditional *siyasa fiqh*. Muslims are treated as first-class citizens with special privileges. Non-Muslims, on the other hand, are treated as second-class citizens with limited rights. As long as they obey and pay the *jizya*, their safety, and rights are protected. Meanwhile, with the acknowledgment of the nation-state notion as a state format, a citizen's status is no longer considered a religious status but rather a citizen's status (*al-muwāṭānah*). A person who legally has the status of a citizen of a country has the same rights and obligations as other citizens, regardless of his religious status.

Thus, based on the three criteria outlined above, the pesantren-style construction of national fiqh is exceptionally pertinent to NU's concept of civilizational fiqh. The development of national *fiqh* based on strong *fiqhiyyah* arguments has the potential to provide the theological foundation for creating civilizational *fiqh* ideas in the future. Thus, the ideas from the conception of civilizational *fiqh* to promote peace and benefit for all humans can become a reality. By prioritizing substantive rather than formal features, the primary emphasis is a



benefit, and by prioritizing peace and tolerance, diverse groups of people around the world will be able to live side by side, amicably, peacefully, and collaboratively to build a better human civilization.

## CONCLUSION

Islamic boarding schools are the earliest Islamic educational institutions, and they have made significant contributions to the life of the nation and state. Acceptance of Pancasila as the basis of the State is one of the contributions of pesantren to the life of the country and state. Not only do pesantren recognize Pancasila as the basis of the state, but they also give a fiqhiyah basis for this acceptance through *baḥth al-masāil* FMPP. Pancasila is acknowledged and considered following the values included in the Medina Charter, which is based on solid reasoning, including references from the science of religion (Islam) with *maslahah* as its primary paradigm. The decision of the *baḥth al-masāil* FMPP, which stated that Pancasila was consistent with the values enshrined in the Medina Charter, significantly impacted the development of Islamic boarding school-style nationalist jurisprudence. The building of national fiqh in the pesantren style is based on three principles: (1) prioritizing substantive aspects over formal ones; (2) making benefit the center of its aim; and (3) putting tolerance and peace the foundation of thinking. The development of national fiqh arising from *Baḥth al-masāil* FMPP on Pancasila is particularly pertinent to NU's concept of civilizational fiqh. The three essential principles emerging from forming national fiqh in the pesantren style can serve as the fiqhiyyah foundation for developing civilizational fiqh ideas. The three essential concepts outlined above must be considered in any national question requiring a fiqhiyyah basis.

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