



NAHDLATUL ULAMA'S IJTIHAD METHOD IN FATWA: ANALYSIS OF THE CONTENT OF LEGAL DECISIONS AND THEIR VALIDITY IN INDONESIA

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Abstract: This research aimed to investigate the method of inference in Nahdatul Ulama Scholars to issue fatwas regarding some issues in Indonesia. This research applied the qualitative method to collect data for looking into the topic and using a content analysis approach to analyze the legal decision of Nahdatul Ulama scholars and its validity as a product of fatwa. The results show that the inference done by Nahdatul Ulama scholars did not correspond to the belief done by the Muslim scholars in the past era due to their shortcomings in fulfilling the requirement of *Mujtahid Muthlaq*. This research also reveals that their method can be categorized as *ijtihad jama'i*, and the validity of the fatwas was significant enough for the Indonesian Muslim society to perform their daily ibadah or muamalah activities. This research contributes to the existing body of literature by providing insights into the specific inference method employed in Indonesia. It focuses on the influence of fatwas issued by scholars affiliated with Nahdatul Ulama, highlighting their significant following among ordinary individuals associated with this organization.

Keywords: religious issues; legal decision; Muslim scholars

Abstrak: Penelitian ini bertujuan untuk mengetahui metode penyimpulan ulama Nahdatul Ulama' dalam mengeluarkan fatwa mengenai beberapa permasalahan keagamaan di masyarakat Indonesia. Penelitian ini menggunakan metode kualitatif untuk mengumpulkan data dalam melihat topik dan menggunakan pendekatan analisis isi untuk menganalisis keputusan hukum ulama Nahdatul Ulama dan validitasnya sebagai produk

fatwa. Hasil penelitian menunjukkan bahwa metode ijtihad yang dilakukan oleh ulama Nahdatul Ulama tidak sama seperti apa yang dilakukan oleh para ulama Muslim di era sebelumnya, karena kekurangan mereka dalam memenuhi persyaratan sebagai Mujtahid Muthlaq. Penelitian ini juga memperjelas bahwa metode yang digunakan dapat dikategorikan sebagai metode ijtihad jama'i, dan validitas fatwa-fatwanya cukup signifikan bagi masyarakat Muslim Indonesia dalam menjalankan aktivitas ibadah atau muamalah sehari-hari. Penelitian ini berkontribusi dalam memperkaya literatur yang ada dengan memberikan wawasan tentang metode yang lebih spesifik dalam berfatwa di kalangan ulama NU di Indonesia. Fatwa para ulama NU ini sangat dipercaya dan diikuti oleh masyarakat awam, terutama sekali mereka yang menjadi pengikut organisasi ini secara tradisional maupun struktural.

Kata Kunci: masalah agama; keputusan hukum; cendekiawan Muslim



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INTRODUCTION

There are some Muslim community organizations in Indonesia; one of them is Nahdatul Ulama (NU), which is known as the most influential Muslim community group these days. Some argue that the majority of his supporters are from rural or coastal areas, have poor levels of education, and live in poverty. Regardless of the stigma associated with this organization, it can not be denied that it is a reality due to the presence of charismatic persons and brilliant minds in pesantren education. They are known as Kyai, and the people they educate are called Santri.¹ Community leaders have studied in Pesantren², the bulk of which were founded and developed by Kyai connected to this community organization of Nahdatul Ulama, alongside the journey of Indonesia's historical growth.³ Followers of this communal organization, referred to in the following as Nahdiyyiin, see the figure of a kyai as highly sacred and central, especially when faced with theological challenges that require legal judgments (*fatwas*) to settle. Because these kyai are the problem solvers

¹ Muhaemin Latif and Erwin Hafid, "Multicultural Attitudes in an Islamic Boarding School of South Sulawesi-Indonesia," *Cogent Education* 8, no. 1 (2021), <https://doi.org/10.1080/2331186X.2021.1968736>.

² Wildana Wargadinata, Iffat Maimunah, and Rohmani Nur Indah, "Eco-Religious Approach to Deforestation by Indonesian Istighosah Community," *Journal for the Study of Religions and Ideologies* 19, no. 56 (2020): 166-78.

³ Johanna Pink, "The Kyai's Voice and the Arabic Qur'an," *Wacana: Jurnal Ilmu Pengetahuan Budaya* 21 No.3, no. 3 (2020): 329-59, <https://doi.org/10.17510/wacana.v21i3.948.330>.

for the Nahdiyyin people, they are naturally submissive to the commands that are given to them by their superiors⁴

Kyai, together with the support of younger NU intellectuals, took the initiative to form a type of discussion group, which ultimately led to the development of a working group within the NU organization that deals mainly with the topic of legal fatwas (*al-Ahkâm al-mustanbathah*). *Lajnah Bahsul Masail Nahdatul Ulama* (LBM NU) is the name given to this particular organization.⁵ They did this to decide on religious legislation about a theological challenge posed by the Nahdiyyin and others from outside their group.⁶ Kyai was undoubtedly able to independently issue legal rulings (fatwas) in years past when the difficulties facing the ummah were less complex.

Regarding the current topic, previous works explain the existence of the NU community organization in Indonesia. This organization, particularly its scholars, plays an essential role in developing morals and religious life in Indonesia; one of its figures, the late President Abdurahman Wahid, ruled the Republic of Indonesia from 1999 to 2001. This demonstrates that figures from NU have influenced political life and government practices in Indonesia until now. Wahyudi Akmaliyah emphasized in his journal titled *Reclaiming Moderate Islam in Nahdlatul Ulama: Challenging the Dominant Religious Authority in Digital Platform* that in carrying out political activities and leadership at the grassroots level, tolerance, democracy, and the promotion of pluralism, moderation, and justice are always considered as the most critical priorities to do.⁷

Three approaches, known as *qauli*, *ilhaqi*, and *manhaji*, are described by M. Asrorun Niam Sholeh et al. in their work, *A Critical Analysis of Islamic Law and Fatwa of MUI (Majlis Ulama Indonesia) & NU (Nahdlatul Ulama') on A Gold-Backed Cryptocurrency (OneGram)*. By analyzing the issues they face and then searching for solutions in the *fiqh* texts of the four schools of thought, NU scholars adopt the *Qauli* method. If a question in Islamic law (*mu'tabarrah*) cannot be answered by consulting

⁴ Deliar Noer, *The Modernist Muslim Movement in Indonesia: 1900-1942* (Singapore: Oxford University Press, 1973).

⁵ Moh Mundzir, "Metode Penetapan Fatwa Majelis Ulama Indonesia (Analisis Penggunaan Qawaid Fiqhiyyah Sebagai Dalil Mandiri Dalam Fatwa)," *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 1 (2021): 1-18, <https://doi.org/10.51675/jaksya.v2i1.161>.

⁶ Achmad Kemal Riza, "Contemporary Fatwa of Nahdlatul Ulama Between Observing the Madhhab and Adopting the Context," *Journal of Indonesian Islam* 05, no. 1 (2011): 35-65.

⁷ Wahyudi Akmaliyah, "Reclaiming Moderate Islam in Nahdlatul Ulama: Challenging the Dominant Religious Authority in Digital Platform," *Journal of Indonesian Islam* 16, no. 1 (2022): 223-48, <https://doi.org/10.15642/JIIS.2022.16.1.223-248>.

authoritative classical texts, the *ilhaqi* approach is employed. This technique equates (*qiyas*) any novel case analogous to one existing in the classics. Meanwhile, the Imam of Mazhab compiled a set of guidelines for constructing law known as the Manhaji method to help resolve religious disputes.⁸ The prior research proved beneficial in elucidating the subject matter discussed in the present paper under investigation.

Regarding the practice of *istinbath al-ahkam* conducted by scholars affiliated with Nahdlatul Ulama (NU), Ahmad Baso elucidated that it constitutes an integral component of the field of *ushul al-fiqh*, encompassing a set of principles and methodologies employed to generate legal rulings (*furu' fiqhiyyah*). This practice is further fortified by applying *qawa'id fiqhiyyah*, a guiding principle in issuing religious legal verdicts (*fatwas*). Furthermore, in his book entitled *NU Studies: Pergolakan Pemikiran Antara Fundamentalisme Islam dan Fundamentalisme Neo-Liberal*, Ahmad Baso provided a comprehensive elucidation about the methodology employed by NU scholars in conducting *istinbath ahkam*, which pertains to the issue of the ummah in the present era. Furthermore, the individual elaborated on the longstanding legacy of scholars affiliated with NU (Nahdlatul Ulama) in delving into various facets of manhaji within jurisprudence. These scholars have significantly contributed to identifying legal remedies for national and societal issues in Indonesia.⁹

However, as the situations became more complex and convoluted, they started working together¹⁰ to make legal rulings (*fatwas*).¹¹ This is because the objective of *ijtihad* itself is an attempt to determine the law of a problem by employing the *ushul al-fiqh* mechanism and then the conclusion of the law based on that determination (*legal fatwa*). It is also what the scholars at NU do to this day; in terms of judgment,

⁸ M. Asrorun Niam Sholeh, Muhammad Fauzinudin Faiz, and Moh Muhlis Anwar, "A Critical Analysis of Islamic Law and Fatwa of MUI (Majlis Ulama Indonesia) & NU (Nahdlatul Ulama) on A Gold-Backed Cryptocurrency (OneGram)," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 506-30, <https://doi.org/10.19105/al-Ihkam.v17i2.6511>.

⁹ Ahmad Baso, *NU Studies: Pergolakan Pemikiran Antara Fundamentalisme Islam dan Fundamentalisme Neo Liberal* (Jakarta: Penerbit Erlangga, 2006), 39.

¹⁰ Historically, *fatwas* have been collectively issued by NU scholars in response to religious problem since the founding of the NU community organization on January 31, 1926. The *Bahsul Masail* Commission was established on October 21, 1926, as a forum for NU scholars to collaborate in studying a particular religious problem to issue *fatwas* on the issues discussed after the NU organization had been founded for several months. See Imam Yahya, "Akar Sejarah Bahtsul Masa'il: Penjelajahan Singkat," in *Kritik Nalar Fiqih NU: Transformasi Paradigma Bahtsul Masa'il*, ed. M. Imdadun Rahmat, 1st ed. (Jakarta: Lakpesdam, 2002), 15.

¹¹ L. A. Olorogun and Akhtarzait Abdul Aziz, "Critical Evaluation of the Contemporary Scholars' Fatwas on Substitution of Gold Dinar for Banknotes," *International Journal of Islamic Thought* 20 (2021): 109-19, <https://doi.org/10.24035/ijit.20.2021.215>.

they do the same thing as the scholars who came before them, even though there are some differences.¹²

This study aimed to analyze the distinctiveness of the methodology employed by scholars from NU (Nahdlatul Ulama) in issuing fatwas on specific contemporary matters. Additionally, it sought to evaluate the exemplification of these fatwas and their validity from the perspective of *ushuliyyun* (Islamic legal theorists) in previous times, and it also described that the scholars affiliated with Nahdatul Ulama demonstrate a high level of engagement in deliberating upon the challenges faced by the Muslim community in Indonesia. They actively issue fatwas, providing religious rulings and guidance to foster a sense of unity and coherence in worship practices among Muslims.

TRADITION IN NAHDIYYIN REGARDING THE SEEKING OF FATWAS FROM SCHOLARS

Regarding their level of comprehension of the subject of fiqh, Muslims can be broken down into two distinct divisions. First, those who have the scientific competence of fiqh science (*qudrah fiqhiyyah*) to do ijtihad in concluding a law on a religious difficulty (*al-masa'il al-fiqhiyyah*), which is based on syar'iy pretexts (the Quran and the Hadith). In this context, they are also referred to as al-Mujtahid al-Mutlaq. Second, ordinary people (*awwam*) who do not have the scientific competence of fiqh science (*qudrah fiqhiyyah*) to do ijtihad to a fiqh problem in the community. In most cases, they look for answers (solutions) to problems by passing responsibility for finding them on to the first group, known as the *mujtahids*.¹³

It is a custom that has developed in Islamic civilizations all over the world, but particularly in Indonesia, for people who are confronted with religious concerns to refer them to specialists who are Muslims.¹⁴ This is because it is a norm that has emerged in Islamic civilizations worldwide.¹⁵

In Indonesia, this custom is highly pervasive in many households. The *mujtahids* will initially search for the concepts of the syar'iy. Then, they will use the

¹² Hanifah Kusumastuti et al., "Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU," *Proceedings of the International Conference on Islamic and Muhammadiyah Studies (ICIMS 2022)* 676, no. Icims (2022), 76, <https://doi.org/10.2991/assehr.k.220708.010>.

¹³ Faishal Agil Al Munawar and Mirwan, "Ijtihad Jama'i (Ijtihad Kolektif) Perspektif Ulama Kontemporer," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 4, no. 2 (2020): 127-37, <https://doi.org/10.35316/istidlal.v4i2.268>.

¹⁴ Rifyal Ka'bah, *Formulasi Hukum Di Kalangan NU. Kritik Nalar Fiqih NU: Transformasi Pradigma Bahtsul Masail.*, ed. M. Imdadun Rahmat (Jakarta: Lakpesdam, 2002).

¹⁵ Kusumastuti et al., "Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU."

tried-and-true procedure of *istinbâth al-Ahkâm* to decide on the legitimacy of the issues.¹⁶ Even if the mujtahids have to consider the consequences of their *ijtihad* or *fatwa*, it is not a burden that requires individuals to carry out the results.¹⁷ Without a doubt, this organization is genuinely concerned with the religious lives of its members, notably in the implementation of religious activities and concerns about *muamalah*, which are an integral part of their daily lives.

Furthermore, this institution has a long history of systematized and well-organized scientific ideas.¹⁸ However, their approach to concluding a law based on current religious beliefs differs from past authorities.¹⁹ They have attempted to carry out Allah's and the Prophet's (peace be upon him) directives by holding public debates and deliberations to solve the people's problems.²⁰ Furthermore, it motivated the Prophet's associates and others who lived centuries afterward to conduct *ijtihad* when confronted with religious dilemmas.²¹

CONCEPT OF ISTINBATH AL-AHKAM

Accordingly, to understand the notion of *istinbath al-ahkam*, we need to start by consulting the *Turats* book that defines the concept, and then we need to round out our understanding of the concept by reading scientific publications published later. In this context, we will have a comprehensive understanding of the concept.

Linguists like Ibn Manzhur understand the term *istinbâth* to mean making all possible attempts to communicate something. If someone were to say, "A jurist performs a legal *istinbath* on a religious topic," what exactly would it entail? That indicates that he has exerted the utmost effort by the capacity of the information he

¹⁶ Khairuddin Hasballah et al., "Identifying 'Illat through Munasabah in Islamic Law: A Perspective of Imam Al-Ghazali," *Samarah* 5, no. 2 (2021): 598–618, <https://doi.org/10.22373/sjhk.v5i2.10914>.

¹⁷ Badran Abu al-'Ainain Badran, *Ushul Al-Fiqh Al-Islamiy* (Iskandaria: Muassasah Syabab al-Jami'ah, n.d.).

¹⁸ Kusumastuti et al., "Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU."

¹⁹ Alamsyah Alamsyah, "Religion and Water Preservation: Tradition Studies Nahdhatul Ulama (NU) in Earth Alms in Daren Village Nalumsari Jepara," *E3S Web of Conferences* 202 (2020), <https://doi.org/10.1051/e3sconf/202020207001>.

²⁰ Ramazan S. Abdulmazhidov and Khizri G. Alibekov, "The Dispute of Dagestan Theologians Over the Rules of Performing the Tarawih Prayer in the Late 19 – Early 20th Centuries," *History, Archeology and Ethnography of the Caucasus* 17, no. 3 (2021): 568–80, <https://doi.org/10.32653/CH173568-580>.

²¹ Hilman Latief and Haedar Nashir, "Local Dynamics and Global Engagements of the Islamic Modernist Movement in Contemporary Indonesia: The Case of Muhammadiyah (2000–2020)," *Journal of Current Southeast Asian Affairs* 39, no. 2 (2020): 290–309, <https://doi.org/10.1177/1868103420910514>.

possesses to issue the legislation of a religious problem based on the pretexts of syar'i.²²

Abdul Karim Zaidan added that a mujtahid who seeks to issue a law on a religious issue must, at the very least, understand well the science of Ushul al-Fiqh, Arabic methods, maqasid shari'ah, the method of strengthening between the two conflicting syar'iy propositions, nasikh, and mansukh. This is required for the mujtahid to be qualified to issue.²³ However, the prerequisites above are not the only ones that must be met to carry out istinbâth concerning a religious concern legally. We must emphasize that istinbâth al-Ahkâm is, in and of itself, an ijihad practice.²⁴

Muslim scholars indicate that the istinbâth conducted by mujtahid mutlaq differs much from the istinbâth performed by mujtahid ghairu mutlaq. In other words, we can categorize them as mujtahid mazhab in which the *istinbath al-ahkam* does not directly return to the al-Qur'an and al-Hadith but instead investigates the concept of thought and findings of the ijihad of the particular fuqaha's school, in the form of fatwas.²⁵ Based on the research, they only reached legal judgments on a religious issue.²⁶ It is just that the Qur'an and Sunnah, as a guide for the life of Muslims, must be explored deeper so that the magnificence and majesty of Islam are not obscured by the shallowness of thought (*jumud*) and creative poverty (stagnation) of Muslims in comprehending its living rules.²⁷

According to Ahwan Fanani et al., in Indonesia, the term *istinbath al-ahkam* is used synonymously with any recognized legal procedure in Islamic jurisprudence to indicate the process for conducting legal deduction (*istinbath*). This mechanism stands for the theoretical basis of legal inference and theological comprehension. It reflects the fundamental concepts of Islamic jurisprudence (*ushul fiqh*) that are

²² Jamal ad-Din Muhammad ibn Mukrim ibn Ali Ibnu Manzhur, *Lisan Al-'Arab*, 4th ed. (Beirut: Daar ash-Shadir, 1955).

²³ Abdul Karim Zaidan, *Al-Wajiz Fi Ushul Fiqh* (al-Qahirah: Daar at-Tauzi' wan Nasyr al-Islamiyyah, 1993); Mudasra Sabreen, "Guardianship of Property in Islamic Law," *Hamdard Islamicus* 44, no. 1 (2021): 121-44; Busyro Busyro, "Utilizing the Assets Acquired from Illegal Conducts A Study of Fiqh Maqâshid of Yûsuf Al-Qaradlâwî," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 13, no. 2 (2018): 231, <https://doi.org/10.19105/al-ihkam.v13i2.1670>.

²⁴ Asifa Quraishi and Mohammad Hashim Kamali, "Principles of Islamic Jurisprudence," *Journal of Law and Religion* 15, no. 1/2 (2000): 385, <https://doi.org/10.2307/1051529>.

²⁵ Asrizal Saain et al., "Islamic Law in Indonesia: Bahtsul Masâil Ijtihad and the Production of Knowledge," *Proceedings of the International Conference on Environmental and Energy Policy (ICEEP 2021)* 583, no. Iceep (2021): 26-30, <https://doi.org/10.2991/assehr.k.211014.007>.

²⁶ Salih Yucel and Ismail Albayrak, "Are Online Fatwas Credible? A Critical Analysis of Fifty Fatwas on Organ Donation and Transplantation," *Religions* 12, no. 10 (2021), <https://doi.org/10.3390/rel12100902>.

²⁷ Serdar Kurnaz, "Who Is the Lawgiver? The Hermeneutical Grounds of the Methods of Interpreting Qur'an and Sunna (Istinbat Al-Ahkam)," *Oxford Journal of Law and Religion* 6, no. 2 (2017): 347-71, <https://doi.org/10.1093/ojlr/rwx007>.

typically discussed in discussions about law, sources of law, deduction methods, and authority to execute the deduction process.²⁸

Thus, the fuqaha' and previous *ushuliyyun*, including the NU scholars, exerted their scientific abilities to make the frame of mind (method) and methods accessible to understand so that scholars after them could perform *ijtihād* in drawing legal conclusions on a religious problem until modern times. As a result, they have earned the title of mujtahid by completing the ijtihad process to pass a law.²⁹

However, due to their inadequate scientific skill and comprehension of the syar'iy ideas, their approaches are not the same as the ones used by the earlier fuqaha and ushuliyyun. Suppose the mujtahids are absolute and carry out the ijtihad procedure to arrive at a legal verdict on a particular religious matter by directly referring to the Qur'an and al-Hadith. In that case, the NU scholars cannot directly refer to the Qur'an and the Hadith in their arguments. They look for legal parallels in a scenario and try to connect them with solutions that have been analyzed or legal conclusions that earlier experts have established.³⁰ For instance, in Indonesia, even if the *istinbāth* approach utilized by NU scholars does not necessarily mean that the legally obtained findings are in doubt or cannot be used as a handle, it is justified if the Indonesian people are the pullers of legal judgments on existing issues.³¹

There's no doubt that citing the fatwas of earlier scholars is appropriate.³² Ibn Qayyim al-Jauziy allowed that not only imitate (*taqlīd al-a'mā*) must be reviewed again to determine whether the fatwa is really following reality or whether it still causes problems and confusion.³³ Exactly, this was about *istinbath al-ahkam*, which was based on an earlier fatwa issued by the fuqaha. Even though NU scholars do not directly refer to the Qur'an and al-Hadith and instead refer to the fatwa (conclusion of law) published by the fuqaha' contained in the books of fiqh, they

²⁸ Ahwan Fanani et al., "Muhammadiyah's Manhaj Tarjih: An Evolution of a Modernist Approach to Islamic Jurisprudence in Indonesia," *HTS Teologiese Studies / Theological Studies* 77, no. 4 (2021): 1-7, <https://doi.org/10.4102/HTS.V77I4.6942>.

²⁹ Kusumastuti et al., "Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU."

³⁰ Saiin et al., "Islamic Law in Indonesia: Bahtsul Masāil Ijtihad and the Production of Knowledge."

³¹ Alamsyah, "Religion and Water Preservation: Tradition Studies Nahdhatul Ulama (NU) in Earth Alms in Daren Village Nalumsari Jepara."

³² Ildus Rafikov and Elmira Akhmetova, "Methodology of Integrated Knowledge in Islamic Economics and Finance: Collective Ijtihād," *ISRA International Journal of Islamic Finance* 12, no. 1 (2020): 115-29, <https://doi.org/10.1108/IJIF-02-2019-0034>.

³³ Syamsuddin Abu Abdillah Muhammad bin Abi Bakar bin Qayyim Al-Jauziyah, *I'lāmūl Muwaqqi'în 'an Rabbil 'Ālamîn* (Beirut: Dārul Kutub al-'Ilmiyyah, 1991), 165.

have made tremendous and essential efforts in maintaining and maintaining the religious life of Muslims in Indonesia.³⁴

Legal opinions are considerations of Islamic law issued by the mujtahid, individually or collectively, in response to questions posed or societal problems. Even though it is often considered not to have binding legal force. However, rulings have had a significant role in providing religious legal considerations to the Muslim community from the past until now. In addition, it also has a substantial role in the renewal of Islamic legal thought as a step in the development of jurisprudence in Indonesia.³⁵

DETERMINATION OF SHAFI'I SCHOLARS AS REFERENCE IN *ISTINBATH AL-AHKAM*

The book AD/ART³⁶ NU stated that for NU scholars to draw legal findings on a religious topic, they must base their conclusions on the Qur'anic texts, al-Hadith, ijma companions of the Prophet, and qiyas. This is because the Qur'anic texts are considered the most reliable source of Islamic law.³⁷ In other words, while issuing religious fatwas, the four types of propositions serve as a primary point of reference. When discussing and evaluating spiritual matters, they do not directly refer to the four types of requests they are addressing. They only refer to particular fiqh books that include fatwas relevant to the issue they are addressing.³⁸ However, they may do so out of a sense of duty and submission to the organization's leadership. Every Muslim must adhere to one of four fiqh schools, as proclaimed by the LBM NU at the first NU Congress held in Surabaya, Indonesia, on October 21, 1926 AD.³⁹ Some facts indicate that the propagators of Islam in Indonesia adhere to the Syafei school. Thus, unlike other fiqh schools, it is unsurprising that this school is widespread and highly developed.⁴⁰

³⁴ Baso, *NU Studies: Pergolakan Pemikiran Antara Fundamentalisme Islam Dan Fundamentalisme Neo Liberal*. 48-49.

³⁵ Abdul Syatar Syatar and Firdayanti Firdayanti, "The Authority of the Indonesian Ulama Council in Certifying Halal Products From a Siyasa Syar'iyah Perspective," *International Journal of Contemporary Islamic Law and Society* 4, no. 1 (2022): 1-16, <https://doi.org/10.24239/ijcils.vol4.iss1.30>.

³⁶ AD/ART is Articles of Association and Bylaws

³⁷ Khotib Sholeh, *Menyoal Efektifitas Bahtsul Masail*, 1st ed. (Jakarta: LAKPESDAM, 2002), 233.

³⁸ Ahmed Fekry Ibrahim, "Rethinking the Taqlid Hegemony: An Institutional, Longue-Durée Approach," *Journal of the American Oriental Society* 136, no. 4 (2016): 801-16.

³⁹ Pengurus Besar NU, *Kumpulan Masalah-Masalah Diniyyah Dalam Mukhtamar NU*, 1st ed. (Semarang: CV. Toha Putra, 1960), 6-7.

⁴⁰ Marzuki Wahid, *Cara Membaca Tradisi Bahtsul Masa'il NU: Tatapan Reflektif*, ed. M. Imdadun Rahmat (Jakarta: Lakpesdam, 2002).

As a result, they create a genealogy (sequence) of fiqh scholars based on the Shafei school, whose opinions and words become the primary reference in *istinbâth*, as follows: 1) Opinions shared by Imams Nawawi and Rafi'i. 2) If the opinions of the two are contradictory, Imam Nawawi's opinions take precedence. 3) If Imam Nawawi does not express an opinion, Imam Rafi'i's opinion is followed. 4) If the two do not argue, most Shafei'i Scholars will take their position. 5) The most potent cleric's opinion in concluding fatwa. 6) Accepting the majority of Shafi'i scholars' viewpoints.⁴¹

Husein Muhammad commented on the NU scholars' position, which placed Imam Nawawi at the top of the list of other Imams, as follows: 1) Imam Nawawi is regarded as a worthy person for upholding the purity of Imam Shafei's opinions. 2) He is regarded as a faqih who is an expert in the field of hadith, as evidenced by his books referring to the prophet's (peace be upon him) hadiths, such as *Kitab al-Minhaj fi Syrah Shahih Muslim*, *Kitab al-Adzkar*, *Kitab al-Arba'in an-Nawawiyyah*, etc. 3) In his daily life, he is regarded as the most pious priest of the Shafii school.⁴²

UTILIZATION OF *ISTINBÂTH AL-AHKÂM* BY NU SCHOLARS

As previously established, the approach of *istinbâth al-ahkam* used by NU academics in rendering legal rulings (fatwas) on specific religious topics is to resort to the opinions or fatwas of past scholars, particularly those affiliated with the Shafe'i school. This tradition began with the formation of the NU organization and continued until the 25th of January, 1992, when the NU congress was held in Lampung. The NU meeting resolved that the procedures (methods) for reviewing and discussing a religious issue to produce a legal conclusion would be revised (fatwas). To get legal judgments (fatwas) agreed upon by scholars who are members of the fatwa council, they have created three primary procedures that must be followed (LBM NU). The three approaches are: 1). To establish the law collectively; 2). To correlate the discussed concerns with the viewpoints of the most renowned academics (particularly those of the Shafi'iy school); and 3). To infer the law on religious issues together.⁴³ These methods can be described as follows:

⁴¹ Abdul Aziz Masyhuri, *Masalah Keagamaan: Hasil Muktamar dan Munas Ulama NU* (Surabaya: Dinamika Press, 1997), 3.

⁴² Muhammad, Husein, *Tradisi Istinbath Hukum NU: Sebuah Kritik*, 1st ed. (Jakarta: Lakpesdam, 2002), 28-29.

⁴³ Masyhuri, *Masalah Keagamaan : Hasil Muktamar Dan Munas Ulama NU*, 365.

1). To establish the law collectively

Using this method, NU scholars will refer directly to the opinions and words of shafi'i scholars found in the fiqh literature about some religious issues. When the idea of the Shafe'i scholar is deemed to satisfy the agreement, a legal ruling will be rendered. Then, it was established as a mutually agreed upon law by NU scholars. For example, a question was asked to the NU scholars about the law regarding cooperative borrowing and lending of money. NU scholars responded to this question by releasing a legal ruling outlined during the NU congress in Malang City on the 1st of July 1939.

The legal order states: "In the instance of borrowing money, if the borrower is forced to pay back more than the amount borrowed (interest) when entering into a contract (transaction), then the law is haram. It is permissible if no additional money is required (interest). However, when the borrower gives extra money (more than the amount borrowed) voluntarily, there are two opinions: the first opinion prohibits it, while the second position permits it." The opinions of the scholars of Shafei that are found in the books *Fath al-Mu'în*, *Bughyah al-Mustarsyidîn*, and *al-Asybah wa an-Nazhâ'ir* are the arguments that NU scholars employ when making legal judgments about the subject.⁴⁴ It looks clear when the scholars of NU give the view on the Government's Control and Distribution of Land. They postulate their beliefs with Qa'idah Fiqhiyyah: "The leader's action towards the people must be based on consideration of the benefit of the people."⁴⁵

Therefore, to address the growing and varied land requirements, the government can implement laws that apportion land usage based on the community's evolving needs or distribute state-owned lands to the public in a manner that adheres to principles of fairness and equity. The allocation of land by the state in Islamic jurisprudence is referred to as *iqtha'*. This practice involves the state's policy of granting a portion of Allah's property to individuals who are deemed deserving. Typically, this allocation takes the form of land, known as *iqtha' al-ardl*. They postulate this view by referring to the following book of *Umdatul Qaari*: "*Iqtha'* is the giving of something from Allah's property by the imam (state) to the person deemed worthy of receiving it and is generally applied in the context of land distribution, i.e., removing a portion of the land he controls and (giving it) to the

⁴⁴ Masyhuri, *Masalah Keagamaan: Hasil Muktamar Dan Munas Ulama NU*, 177.

⁴⁵ "*Tasharruful imam 'alar ra'iyah manuthun bil masalahah.*" See Jalaluddin Abdurrahman bin Abi Bakar Abu al-Fadhl As-Suyuthi, *Al-Asybah Wan Nazha'ir Fi Qawa'id Wa Furu' Fiqh Al-Syafi'iyyah*, 1st ed. (Beirut: Daar al-Kutub al-Ilmiyyah, 1991), https://ia801308.us.archive.org/17/items/FP42189/01_42189.pdf.

party he deems worthy, by granting ownership rights to him to manage, or it could also be by granting land management rights within a certain period.”⁴⁶.

Conclusions and Recommendations: 1). One of the maqashid of sharia is *hifdz an-nafs* and *hifzh al-mal*. In this regard, the people should live properly and with economic balance; 2). The state creates financial compensation through preventive and curative approaches to minimize economic inequality; 3). Economic and social inequality can be reduced by: a. Withdraw land distributed by the government excessively; b. Withdraw land that is not used or utilized but not as it should be; c. Limiting the Right to Use for entrepreneurs both the amount of land and the time of management with the principle of justice; d. Distribute land controlled by the state for *fuqara'* and *masakin*, either *tamlik* or *ghairu tamlik*, with the principle of justice.⁴⁷

2). To match the religious issues discussed with the opinions of the most famous scholars (especially from among the Shafi'iy school) due to the illat equation (reason).

By this method, it looks like NU scholars want to apply the *qiyas* method in carrying out legal *istinbâth* on a religious problem. In *qiyas* practice, the *ushuliyyun* refers directly to the Qur'an and al-Hadith. In this method, NU scholars refer to the opinions and words of scholars found in *fiqh* books.

When the issue of a woman becoming the village chief appeared, NU scholars responded by issuing a legal decision stipulated in the NU congress in Salatiga on 25th October 1961. The sound of the legal conclusion (as well as the answer to the above question): "A woman cannot be the head of the village, except in an emergency (no man is worthy to be the village chief at that time). This opinion is likened to the prohibition of a woman from being a judge, according to the Shafii's, Maliki's, and Hanbali's schools. Unless the Hanafi school allows unconditionally."⁴⁸

In deciding the law against the problems asked of them, NU scholars use the proposition as the basis. These propositions are the words and opinions of scholars found in the books of *fiqh* that they consider reliable (*mu'tabar*), such as *The book of Bidayah al-Mujtahid*, *al-Mizan as-Sha'rani*, *Fath al-Mu'in*, *Bughyat al-Mustarshidin*,

⁴⁶ Badrud Din Abi Muhammad Mahmud bin Ahmad Al-'Ainani, *'Umdah Al-Qari Syarh Shahih Al-Bukhari*, ed. Abdullah Mahmud Muhammad Umar (Beirut: Daar al-Kutub al-Ilmiyyah, 2001), vol. 15, 119, https://ia600703.us.archive.org/20/items/waq68701/15_68708-01.pdf.

⁴⁷ Mujib Qulyubi et al., *Hasil-Hasil Munas Alim Ulama Konbes NU 2017*, 1st ed. (Jakarta: Lembaga Ta'lif wan Nasyr, 2017), 50-53.

⁴⁸ Abdul Aziz Masyhuri, *Masalah Keagamaan: Hasil Muktamar Dan Munas Ulama NU* (Surabaya: Dinamika Press, 1997), 242.

Tuhfat al-Muhtaj, Mugni al-Muhtaj, Nihayat al-Muhtaj, etc.⁴⁹ They are the authoritative jurisprudence books of mainly the Shafi'ite School of Law. They are frequently referred to in *bahtsul masail* forums and used as the basis for issuing a fatwa.

Concerning the utilization of scholarly works within the *Shafi'i* school, which serve as authoritative sources in the process of *istinbath al-ahkam*, Ahmad Baso has observed that NU scholars, as represented by Kyai Sahal, have expressed a preference for prioritizing the concept of *maslahah* in the determination of legal rulings, particularly in matters about social and political contexts. Then, during the NU Conference held in Cipasung in 1994, the perspectives of Kyai Sahal were identified as the primary factor influencing the decision-making process of the *Bahtsul Masail Diniyah* Commission. As an illustration of its practical implementation, scholars affiliated with NU have issued religious rulings, known as *fatwas*, aimed at safeguarding the rights of individuals of lesser stature in their efforts to protect their legally contentious agricultural land holdings while considering the broader interests of the community.⁵⁰

3). To infer the law on religious issues together

This method is, in substance, the same as the previous two methods. In this method, the NU scholars have begun to show their courage in using the techniques and systematics set by the earlier *ushuliyun* when they conclude a law on religious issues.⁵¹ In the third method, it looks like NU scholars have undergone positive changes, where they began to try to apply *manhaj* (plans and systematics) made by the *ushuliyun* in doing *istinbâth al-Ahkâm*.⁵² Here, it can be seen that the NU scholars have performed *ijtihad jama'iy* in performing *istinbâth al-Ahkâm*.

Quthub Mushtofa Sano says that *ijtihad jama'iy* reflects the *ijtihad* performed by several people gathered in one place. They consist of people of multiple disciplines because the problems of religious life are increasing and diverse as time progresses.⁵³ However, once they still do *ijtihad* by the *manhaj* that has been set by the *ushuliyun* before. They are indeed doing *istinbâth al-Ahkâm* by way of *ijtihad*

⁴⁹ Asep Opik Akbar, "Konstruksi Epistemologis Penalaran Hukum Imam Syafi'i," *AHKAM : Jurnal Ilmu Syariah* 14, no. 2 (2014): 185–92, <https://doi.org/10.15408/ajis.v14i2.1277>.

⁵⁰ Baso, *NU Studies: Pergolakan Pemikiran Antara Fundamentalisme Islam Dan Fundamentalisme Neo Liberal*.

⁵¹ Imam Yahya, "Akar Sejarah Bahtsul Masa'il: Penjelajahan Singkat," in *Kritik Nalar Fiqih NU: Transformasi Paradigma Bahtsul Masa'il*, ed. M. Imdadun Rahmat, 1st ed. (Jakarta: Lakpesdam, 2002), 56.

⁵² Masyhuri, *Masalah Keagamaan : Hasil Mukhtamar Dan Munas Ulama NU*, 367.

⁵³ Quthub Mushtofa Sano, *Al-Istitsmar: Ahkamuhu Wa Dhawabituhu Fil Fiqh Al-Islami*, 1st ed. (Urdun: Daar an-Nafa'is, 2000), 154.

jama'iy concerns NU scholars in Indonesia and Muslim scholars.⁵⁴ Scholars in other countries, including Middle Eastern countries, have also practiced it.⁵⁵

The evidence corroborating the data is a decision issued by the Al-Azhar University Research Institute, which explains the importance of implementing *ijtihad jama'iy*. The decision reads:

The Qur'an and al-Hadith are the pretexts of the syar'i, and deciding a law on religious matters based on these syar'i propositions is mandatory, especially for those who have fulfilled the conditions of *ijtihad*. As for referring to the fiqh fatwas of the previous scholars, and in the interests of the ummah is very justified. Suppose there is no fatwa of the scholars regarding the religious problems faced. In that case, it is recommended to do *ijtihad jama'iy* by paying attention to the opinions of the previous scholars who have something to do with the problems discussed.⁵⁶

Apart from the supporting data on the justification of the above *ijtihad jama'iy*, the scholars have practiced it, especially when answering the religious problems they asked. About this third method, NU scholars have responded to a question about the wisdom of the Indonesian government in managing money belonging to Muslims for the common good: what is the view of Islam? NU scholars answered the question by issuing a legal decision that they took in the conference they held in the city of Kediri on 21-26th November 1999, as follows: NU scholars decided that the government may issue wisdom in any form as long as it is for the benefit of the people. Therefore, the government could act on some crucial policies regarding the interest of society due to the official position held by the government as a mandate from God. The government is responsible for spreading justice and the benefit of the people, ensuring security, and regulating all the affairs of the people without exception by not discriminating between tribes, races, and even their religions. The Qur'anic proposition they use is surah an-Nisa: 59, and the fiqh method that says: "*The government's policy towards the people must follow the common benefit.*"⁵⁷

The three methods above are details and systemic explanations of the methods they have used for many years. In the first and second methods, the

⁵⁴ Kusumastuti et al., "Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU."

⁵⁵ Rafikov and Akhmetova, "Methodology of Integrated Knowledge in Islamic Economics and Finance: Collective Ijtihad."

⁵⁶ Ibrahim Hosen, *Memecahkan Permasalahan Hukum Baru*, ed. Haidar Bagir and Syafiq Basri, 1st ed. (Bandung: al-Mizan, 1988), 41-42.

⁵⁷ Sekjend PBNU, *Masail Al-Diniyah Al-Waqi'iyah NU: Hasil Muktamar Ke-30 NU* (Lirboyo, 1999), 70-71.

substance or subject matter of thought in the *istinbath* method of NU scholars does not change. They still refer directly to the opinions or words (*fatwas*) of the Shafei' scholars, then match and finally establish mutually agreed legal conclusions. However, Rifyal Ka'bah sees that the examples of religious law conclusions reached by NU scholars using the third method can signify the progress made by NU scholars, where they do not directly refer to the fatwas of scholars in the books of fiqh. Still, they refer to *nushush syar'iiyyah* (al-Qur'an and al-Hadith) and some instruments in *istinbâth al-ahkâm*.⁵⁸

Following the demise of the Prophet (Peace be upon Him),⁵⁹ the companions made substantial contributions to the development of Islamic jurisprudence, mainly through their involvement in Islamic legal schools, known as *madhhab fihiy*. Notably, the leadership of Abu Hanifah had a pivotal role in shaping this grand design. This pertains mainly to the methodology employed in legal reasoning, often known as the systematization of the *ijtihâd* method of the companions by *madhhab* scholars. The peculiarities of their approach in elucidating the profound significance of the Quranic passages have been notable.⁶⁰

In modern times, there is a growing recognition of the significant impact of the companions' methodology on the development of Islamic jurisprudence, making it a noteworthy contribution to its future trajectory. Islamic legal reformers frequently rely on the companions' methods as a fundamental framework for thinking. The variations observed in the *ijtihâd* companions' practices indicate that Islamic law did not possess an inherently inflexible and unchanging nature from its inception. The companions of Islam demonstrated, in an implicit manner, the flexibility and multifaceted nature of Islamic law.⁶¹

Demonstrating the impact of the companions' legal reasoning approach on Islamic legal schools or *madhhab* is a complex task, primarily due to various considerations, including 1). The study of determining whether the present era may be characterized as the era of *taqlîd*, the period of stagnation in Islamic law, or the era of revival is a complex one, posing challenges in terms of justification. Suppose

⁵⁸ Ka'bah, *Formulasi Hukum Di Kalangan NU. Kritik Nalar Fiqih NU: Transformasi Pradigma Bahtsul Masail*, 45.

⁵⁹ Abdulrahman M.A. Albelahi et al., "The Theory of Interpretation in Solving Contemporary Legal Issues: With A Focus on the Instrument of Ijtihad," *MATEC Web of Conferences* 150 (2018): 1-8, <https://doi.org/10.1051/mateconf/201815005056>.

⁶⁰ Kerime Cesur Turhan, "The Status of Ijtihad in the Early Period of Wahhabi Thought and the Meaning of Commitment to a Madhhab on Fiqh," *Cumhuriyet İlahiyat Dergisi* 21, no. 2 (2017): 1323-54, <https://doi.org/10.18505/cuid.307556>.

⁶¹ Khairuddin Hasballah et al., "Identifying 'Illat through Munasabah in Islamic Law: A Perspective of Imam Al-Ghazali," *Samarah* 5, no. 2 (2021): 598-618, <https://doi.org/10.22373/sjhk.v5i2.10914>.

the current period can be characterized as the era of *taqlîd*. In that case, it can be argued that it deviates from the approach of the companions who exemplified the adaptability of Islamic law in addressing diverse legal matters not explicitly addressed in the Qur'an. This suggests that the essence of *taqlîd* opposes the sense of *ijtihad*; 2). Even if the present time is sometimes characterized as a period of resurgence in Islamic legal thought, it remains challenging to disregard the traditions of the *madhhabs* completely. There is a consensus among current jurists that the approach employed by the companions, as delineated and adapted by the *madhâhib al-arba'ah*, holds irrefutable significance; 3). It is worth noting that no Islamic legal authorities may operate independently from the methodologies mentioned earlier.⁶²

Accordingly, *ijtihad* facilitated the school's ability to accommodate legal modifications, serving as the mechanism for advancing both the positive law and the theoretical framework that supports the legal structure.⁶³ Most extant Islamic legal works refer to the practice of *ijtihad* by early Islamic jurists, including the renowned *madhâhib al-arba'ah*. The development of the *madhâhib al-arba'ah* spanned around two and a half centuries, commencing in the second century and concluding in the mid-fourth century of the Hijra calendar. Subsequently, Islamic legal traditions transitioned into a phase known as *taqlid*, characterized by the stagnation of Islamic law. It is frequently observed that the *fiqh* regulations currently adhered to by Muslims worldwide are predominantly derived from the teachings of the four prominent *madhhabs*: Abu Hanifah, Maliki, Shafi'i, and Hanbali.⁶⁴ Nevertheless, scholars affiliated with the Nahdlatul Ulama (NU) in Indonesia also employ the approach of *madhâhib al-arba'ah*, especially *Shafi'i madhhab*, wherein they consult the fatwas issued by renowned scholars as documented in *fiqh* literature.

CONCLUSION

NU scholars are essential to the organization's social, religious, and political activities. The NU scholars are responsible for ensuring the following of Shafi'i *madhhab* (Islamic school of law) by NU members and others on their fatwas in the

⁶² Achmad Kholiq and Achyar Zein, "Fiqh Model of the Companions (Shahabah) of the Prophet and Its Influence on Abu Hanifah's Rational Fiqh and Malik's Traditional Fiqh," *Ahkam* 21, no. 1 (2021): 141-62.

⁶³ Muhammad Farooq, "Neo-Ijtihad: A Hierarchical Process Adopted by Pakistani Judiciary in the Context of Muslim Family Laws," *SSRN Electronic Journal*, October (2021), <https://doi.org/10.2139/ssrn.3954032>.

⁶⁴ Muhammad Rasyid Muhammad Nuri Al-Dersyawi, "Al-Iltizam Bil Madhahib Al-Arba'ah Binal Indhibath Wal Jumud: Tahlil Wa Muqaranah," *Marifetname*, 2022, 407-32, <https://doi.org/10.47425/marifetname.vi.1139588>.

sphere of Islamic jurisprudence (fiqh). The absolute Ijtihad from primary sources is still impossible for NU academics to perform because of the constraints of supporting and supplementary information that a *mujtahid muthlaq* must learn. Nonetheless, Mujtahid favors *ijtihad mazhab* over nahdliyin to issue fatwas since it is more practical. Furthermore, practically all NU scholars have understood Islamic jurisprudence works using standard terminology. Essentially, a fatwa does not bind the *mustafti*; unusually, a *mustafti* would dispute the NU scholars' fatwas suggestion.

Regarding textual authority, the consensus of al-Nawawi (d. 676H/1277CE) and al-Rafi'i (623H/1226CE) is the highest authority. If there is no consensus, al-opinions Nawawi's are favored; if that fails, al-are Rafi'i's selected. Suppose these sources fail to explain. In that case, the opinions of the majority of ulama' are sought, followed by the idea of the cleverest scholar, and finally by the most pious scholar. All of the references in the technique are to jurisprudence (*Furû' al-fiqh*), and none are to legal theory (*Usul al-fiqh*).

Nevertheless, NU scholars have done and worked for the welfare of Muslims, particularly Nahdiyyin people and those who rely on their hope for religious understanding. They have provided remedies to spiritual difficulties that Indonesian Muslims require. Therefore, they implicitly invite people to be obedient in religious activities.

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