

# The Rechtsvinding Epistemology of Nahdlatul ‘Ulama (NU)

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## Abstract

The dynamics of the spirit of *ijtihad* religious organizations in Indonesia continues to run. Nahdlat al-’Ulama or NU as a religious organization initiated by KH. Hashim Ash’ari, KH. Hasbullah and KH Wahab. Bisri Samsuri on January 31, 1926 in East Java also has a style and epistemology *ijtihad* unique to observe. This paper reveals the epistemological model of *ijtihad* or *istinbat al-Ahkam* NU. epistemology *istinbat al-Ahkam* NU using methods *ilhaq al-masa’il bi nazairiha*. *Ilhaq al-masa’il bi nazairiha* is to equate the law of a case that does not exist, the books of *fiqh* as a reference, by the law of a similar issue that has been answered by the text in these books to be based on the elements/pillars *ilhaq* inside it. *Ilhaq* epistemology is a modification of the theory of *qiyas* and pillars inside. Only difference, *ilhaq* has elements/pillars, namely *mulhiq*, *mulhaq* ‘*alaih*, *mulhiq* law and’ *illat al-hukm*. If *qiyas* was based on the Qur’an and Sunnah, while *ilhaq* resting on the books of *fiqh* existing mains.

**Keywords:** epistemology, *ijtihad*, NU

## 1. Introduction

NU or Nahdlatul ‘Ulama sensitive highlighting real issues in society. NU as a religious organization in Indonesia is engaged in various fields of economy, law, education, preaching *Islamiyya* and others. In solving the existing problem, NU has a style, a model of its own epistemology and thinking roots in the mechanism for the determination of law or *istinbat al-Ahkam*. NU religious leaders (or so-called *Kyai* NU), based the character of its legal reasoning on the domination of the *madh-hab*, that *madh-hab Shafi’iyyah*. Since its inception, NU also opens an opportunity for NU to break *Kyai madh-hab* view other *madh-hab* addition to the typical *fad* NU, plot and character NU *Shafi’i* legal thinking that, of course, affect the process of establishing Islamic law among NU next. based the character of its legal reasoning on the domination of the *madh-hab*, that *madh-hab Shafi’iyyah*. Since its inception, NU also opens an opportunity for NU to break *Kiyai madh-hab* view other *madh-hab* addition to the typical *fad* NU, plot and character NU *Shafi’i* legal thinking that, of course, affect the process of establishing Islamic law among NU next., based the character of its legal reasoning on the domination of the *madh-hab*, that *madh-hab Shafi’iyyah*. Since its inception, NU also opens an opportunity for NU to break *Kyai madh-hab* view other *madh-hab* addition to the typical *fad* NU, plot and character NU *Shafi’i* legal thinking that, of course, affect the process of establishing Islamic law among NU next.

Among actualizing determination procedures NU law, namely the existence of a container that facilitates the scholars’ / *Kyai* NU in the shed all the ideas and the ideas of the problem to be solved. The container or forum that is *Lajnah Bahtsul Masa’il* (hereinafter referred LBM).

Since 1926, LBM has a central role in the mechanism for setting NU law against *Waqi’ah* problems that occur in the community. There has been countless number of fatwas that have sought legal through this forum.

Even more interesting to study, that is how the mechanism of law-making in the forum LBM. At the forum LBM can be seen how *istinbat* legal procedure of ‘*Ulama/Kyai* NU. At the forum, there was a deep assessment of the actual problems that need to find the law, which is of course being bombarded by fighting ideas from all participants.

As to examine various problems that exist, until the formation of a legal product, NU owns and uses methods *istinbat al-Ahkam*. Like what method is used, of course, heavily influenced by the originator and cultural frameworks community cultural/traditional.

What kind of legal thinking patterns NU, thereby affecting the process of law-making in it, as well as how the method of determination of the law through the LBM? That is the motive author to raise this issue, with the theme of Procedure *istinbat al-Ahkam* NU.

## 2. A Brief History of Birth NU

NU is an abbreviation of Nahdah al-’Ulama ‘. Nahdah al-’Ulama ‘comes from the Arabic vocabulary Nahdah which means rose, while al-’Ulama is a form *jama* ‘of the word’ *Alim*, the person who deeply religious knowledge. So, harfiyah NU is the resurrection of the scholars’.<sup>1</sup>

In the process, SI experience the history and journey winding and long. NU was founded by KH. Hashim Ash’ari,<sup>2</sup> KH. Abdul Wahab Hasbullah and KH. Bisri. Regarding the background of the establishment of

<sup>1</sup> Ja’far Shodiq, *The meeting between the Order and the NU, the Order association studies and Nahdlatul ‘Ulama’ in the Context of Political Communications 1955-2005*, (Yogyakarta: Pustaka Pelajar, 2008), p. 54.

<sup>2</sup> Dedy Djamaluddin Malik, at., al, *New Age Islam Indonesia: Political Thought and Action Abdurrahman Wahid, M. Amin*

NU, there are some opinion leaders among others as by Ja'far Shodiq,<sup>1</sup> that in the beginning, NU is a continuation of the Hijaz committee concerned to protect the traditional religious practices. Meanwhile, according to Falah Mohammed Fajrul,<sup>2</sup> one of the young leaders of NU, summarize three important reasons for the establishment of NU: first, to the nation's cultural action, which is using a strategy of acculturation with the local culture, in introducing Islam in society. Second, activities that reflect the dynamics of thinking youth. Third, international efforts to defend religious concerns, namely the emergence of *wahabiyah*<sup>3</sup> attempting to remove all superstition, heresy in the holy city of Makkah. For the latter reason, this idea came from thinking Sheikh Muhammad ibn 'Abd al-Wahab.<sup>4</sup> Several controversial ideas contained in the flow *wahabiyah*,<sup>5</sup> among others:

a. Whereas, pilgrimage to the tomb of the Prophet is an unlawful act and sin. He further argues that whoever pilgrimage to the tomb of the Prophet, they should not be clicking *Qasar* prayers on the go since the purpose of the journey is to sin. He rested his opinion on the hadith of the Prophet:

It means: "Do not bother to make the trip, except the three mosques: this mosque, the Grand Mosque and Masjid al-Aqsa." (HR. Bukhari Muslim from Abu Hurairah).

He understands this hadith that the Prophet forbade bothered to travel to places other than the three mosques, including the pilgrimage to the tomb he saw. While *madh-hab-madh-hab* others believe that the hadith subjects related to the pilgrimage to mosques, while visit the tomb of the Apostle classified *mandub* actions based on the hadith:

It means: "For I forbid you pilgrimages. So now do the pilgrimage." (HR. Muslim, Ibn Majah, Malik, Ahmad and Turmudzi of Buraidah).

b. It is not enough to establish Islamic worship as stipulated in the Quran and *al-Sunnah*, in the view of Ibn Taymiyah, in any tradition should not be out of the scope of Islam as its perceptions. Therefore he forbids smoking, coffee, and music/*qasida*, make the domes of the mosque, photography and so forth living creatures.

c. He expanded the notion of heresy from activities that are considered worship *mandub* by some *Ahlu al-Sunnah*, such as reading *tawasul*, reading the Koran with *qira'ah* jurists', reads the *salawat Dalail al-khairat* that considered too praising the Prophet, reviewing "nature of the twenty" as Ash'ari doctrine, practice the congregation, to commemorate the birth and others up to the things that do not involve worship, such as installing a fabric cover *Raudah*, making the dome of the mosque, and others -other.

d. The most led to clashes is the movement which, as taught Ibn Taymiyah - contrary to mainstream thinking that era tended to be dominated by methods of philosophical thinking (*Mantiqis*), such as the school of thought *Ash'ariyyah* / *Maturidiyyah* and *Mu'tazilah*, and Sufism considered too exalt feelings and fantasies in religion.

e. Wahabi also attacked the culture of *taqlid to madh-hab* (including in *furu'*) as well as the ideas of Ibn Taymiyya.

f. It consists of propaganda of violence and weapons are deemed mandatory in order to uphold the *Sunnah* and destroy heresy. This is evident from the monumental movement, destroying the graves of the Companions of the Prophet as well as the historical sites of the Prophet with the pretext of preventing the worship of these places.

Rampant movement of purification and renewal of Islam like this, not only initiated wahabi 'Abd al-Wahab (1703-1792), but continued by the emergence of the idea of Pan-Islamism by Jamaluddin al-Afghani (1838-1897). Islamic reform movement is growing and speeding, when followed by the disciples Jamaluddin al-Afghani, like Muhammad 'Abduh (1849-1905) and Muhammad Rashid Rida (1865-1935). This renewal of the wind, finally helped inspire some elite Indonesian Muslims to reform Islam in the country.<sup>6</sup> This is the most

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*Rais, Nurchalish Madjid, and Jalaluddin Rachmat*, (Bandung: Zaman Wacana Mulia, 1998), p. 81.

<sup>1</sup> *Ibid.*, p. 67.

<sup>2</sup> Imam Yahya, *Bahtsul-Masail NU: Media Thought Islamic law*. In <http://buntetpesantren.org>. (May 28, 2009).

<sup>3</sup> Wahabi is an organization engaged in purely religious and not a political organization. This movement is grappling with the issue of internal religious Muslims; especially Muslims understand monotheism that has influenced the teachings of the congregation, so that the congregation appreciate the role of the priest as the guardian and glorify their tombs. Besides the congregation, other religious traditions are also considered deviant from Islam Shari 'at. This movement is very radical-puritan and uncompromising against the teachings of non-Islamic, and superstition associated with the teaching. See: M. Ali Haidar, NU and Islam in Indonesia; Jurisprudence approach in Politics, (Jakarta: PT. Gramedia Pustaka Utama, 1994), p. 118.

<sup>4</sup> Muhammad bin 'Abd al-Wahab is the founder of the Wahhabi stream. He was born in the village near the town Uyaynah Riyad (1703-1792 AD). He received religious education from his father, the sheikh 'Abd al-Wahhab and gain knowledge of some shaikh and' great scholar, such as sheikh Muhammad Hayat al-Sindi, author Hashiyah Sahih Bukhari, and learn to shaikh Muhammad Sulayman al-Kurdi teacher shaikh Muhammad Arshad al-Banjari, Martapura, South Kalimantan. In addition to learning to them, Muhammad bin 'Abd al-Wahab also studied the works of Ibn Taymiyah and books *Madh-hab Ibn Hanbal*.

<sup>5</sup> Imam Muhammad Abu Zahrah, *Political flow and creed in Islam*, (Jakarta: Logos, 1996), p. 250.

<sup>6</sup> Abd. Salam, *History and Social Dynamics Fiqh jurisprudence Reformer and Traditionalists in Indonesia*, in the Journal of Islamica, Volume 4, No. 1, (Surabaya: Graduate IAIN Sunan Ampel Surabaya, 2009), p. 50.

important factor, which underlie the birth of traditionalist Islamic movements in Indonesia, including the birth of NU. In addition to these reasons, the history of the birth of NU also motivated by a desire to save the Mecca and Medina of mastery Wahabi extremes, until finally NU sent the Committee Hijaz to Mecca to protest the Wahhabi movement who wanted to eliminate the tomb of the Prophet Muhammad, which is considered by the Wahhabis as a jealous.<sup>1</sup>

As the initiator, NU was actually standing on large services KH. Hasbullah Wahab, who is a cousin and student confidence KH. Hashim Ash'ari. However, without the permission of the teacher NU may not be able to stand, because in Islamic tradition, students or students strictly adhered to a teacher or religious scholars. Had KH. Hashim Ash'ari KH forbids. Wahab Hasbullah to establish NU, NU certainly will not stand become large mass organizations until now. History records that the process of the establishment of NU's really not a lot rest on the formal devices, but rather rely on the confirmation to Allah. On that basis, precisely on January 31, 1926, NU officially became an organization or *Jam'iyah* well as the movement Da'wah al-Islamiyya and *ijtima'iyah*. On the date of enactment of that as the anniversary of the founding of NU.<sup>2</sup>

### 3. The style of Islamic Legal Thought NU

In general, the roots of thought and movement traditionalism in Indonesia menganutaliran Shafi'iyah.<sup>3</sup> Likewise with NU, although in some cases NU based his thinking on priests other madh-hab.

Thought *Shafi'iyah madh-hab*, can be seen from the historical background, like, first: the strong influence of customs/culture and traditions of the community in the past. If you go back to a long history in Indonesia especially the entry of Islam into Indonesia through the land of Java, is the integration of Islam and local culture assimilated within the framework of Sufi Islam. Second, judging from the figure of the initiators/brain founder of NU who incidentally lives and educational background of the propaganda traditionalists like *rihlat 'Ilmiyyah* boarding.<sup>4</sup> While boarding schools themselves always in the rural geographical basis tend to have low tradition. While politically, as according to Ja'far Shodiq,<sup>5</sup> in addition to the above two factors, the strong challenge against Wahhabism in Mecca, also triggers the strengthening of ideologies defended the traditions and culture of the local community such as Java and Madura.

If you see a short explanation above, it can be concluded that the pattern of Islamic legal thought within NU is *madh-hab Shafi'i*. This can be evidenced how *rihlat 'Ilmiyyah* conducted NU founder and thinking that accommodates traditional conditions of civilized society at that time. *Shafi'iyah* pattern can also be seen where the teachers founders of NU learning. Based on this addition, the influence of *madh-hab Shafi'i* in various solutions and "*ijtihad*" were carried out, which continue to be the methodology of NU in the field of Islamic law, so in solving the problems that exist in the community, particularly members of NU next.

### 4. Procedures *istinbath* Islamic law NU

Before explaining how the mechanisms and procedures NU *istinbat* Islamic law, the author will share *istinbat* procedure in two aspects. These aspects are the technical aspects of the procedure NU *istinbat* Islamic law and aspects of Islamic law determination procedures NU.

#### 4.1 Aspects of the technical procedures of Islamic law determination NU

In this aspect, the technical procedure *istinbath* Islamic law NU has multiple devices and formal structures that are accommodating. The authors conclude, these devices, among others, are the scholars' / *Kyai* NU, study forum, reference/book of reference and the object being studied.

##### a. "Ulama/Kiyai NU

'Ulama 'in question is the NU "Ulama/Kyai NU included in the organizational structure and outside the organizational structure. 'Ulama 'are included in the organizational structure of such scholars' / *Kyai* who sits on the board *Shuriyah* (legislative), while the outside of the structure, such as caregivers boarding school, academics and others. Any age terms of variety, both young and old.<sup>6</sup>

##### b. Forum study

In terms of operations, NU has a study forum / discussion. This forum would become a place of expression and speech event thought for all scholars'/*Kyai* and authorities within NU to represent all of the problems to be solved. The container that is *Lajnah Bahithu al-Masa'il* (LBM/BM).

<sup>1</sup> M. Ali Haidar, *NU and Islam in Indonesia; Jurisprudence approach in Politics*, (Jakarta: PT. Gramedia Pustaka Utama, 1994), p. 55.

<sup>2</sup> Nurul Hanani, *Ijtihad and Taqlid Perspective KH. Hasyim Ashari*, (Kediri: STAIN Kediri Press, 2009), p. 55.

<sup>3</sup> Rozikin Daman, *Targetting NU*, (Yogyakarta: Gama Media, 2001), p. 28.

<sup>4</sup> Imam Yahya, *Bahtsul Masail NU: Media Thought Islamic law*. In: <http://buntetpesantren.org>. (28 Mei 2009).

<sup>5</sup> Ja'far Shodiq, *The meeting between the Order and the NU, the Order association studies and Nahdlatul 'Ulama in the Context of Political Communications 1955-2005*, (Yogyakarta: Pustaka Pelajar, 2008), p. 67.

<sup>6</sup> LTN NU, *Solutions Actual Problems of Islamic Law*, (Surabaya: LTN NU Jawa Timur dan Diantama, 2005), p. x.

Historically, there have been LBM forum before NU stands. At that time there was discussion among Islamic boarding school tradition, which involves Kiyai and students. The results of these discussions were later published in the bulletin named LINO (*Lailat al-astrol conjunction 'Nahdah al-'Ulama*). In LINO, besides loading results BM, but also make the event interactive distance discussion between the scholars' at that time. The procedure, a write later responded *Kyai* another, and so on.<sup>1</sup>

While LBM today, has experienced progressive dynamics. He is one of the religious discussion forums within NU to respond and provide solutions to the problems that arise in the lives of actual people. Through this forum, the scholars' NU always on the agenda the discussion of the problems of the actual growing community, such as social, political, cultural, economic, health, safety by trying optimally to break the deadlock Islamic law, as a result of social development community continuously without limits, while there is no textual basis in the Quran and al-Hadith or groundless, but the disclosure is not clearly and in detail. Therefore, LBM is in constant motion as a vehicle for the creation of the shedding of ideas between the *Kyai* in solving real problems occur religious community, especially those related to Islamic law (fiqh).

The activities originally from individual answers, communicated with other experts to take a collective decision (*Taqrir jama'i*) identified by communities as having the strength of the scientific angle and eventually become the norm that binds societies culturally.

Learn step-by-step process of law-making in the forum LBM,<sup>2</sup> are as follows:

- 1) Determination of the law by LBM is a response to questions from various areas, from all levels of the organization that has implemented real individual or community.
- 2) LBM prior to submission to the national level, the issue has been addressed in accordance LBM ranks, but did not get a satisfactory solution.
- 3) To identify a problem to put the answer in pre-trial LBM.
- 4) Finding the answer in the books of classical, modern or magazines written by the scholars'/*Kyai* recognized credible science.
- 5) After hearing the arguments of the participants with a foundation LBM editor of the book so the handle, the head made conclusions and offered to the LBM for legal provisions collectively set (*Taqrir jama'i*).
- 6) Set of legal provisions such as that which the NU, popularly called the *Ahkam al-fuqaha'*.

Meanwhile, the task, the vision and mission of LBM,<sup>3</sup> is the first, to continue the tradition of LBM since NU stands, namely to answer the questions raised by the branch, even the Executive Board of the Regional Board to set legal certainty through *taqriri*. The answer in this section is known as *al-waqi'iyah masa'il* solution, characterized by a pattern of short-answer, emphatically, accompanied by textual argument of yellow books recognized by the four priests *Madh-hab* (Pole *al-Mu'tabaroh*). Second, to respond to the actual problems facing the nation and the Muslims as a whole. The second pattern is in any topics or themes covered in depth, through draft papers inserted first. From there then a discussion going on in-depth and fruitful. These results will be finalized and announced.

#### c. Reference book

Reference or reference book used in solving problems in diverse forums LBM NU. However, the diversity of the book references, seemed dominated by books work '*Ulama 'Shafi'iyah* and *madh-hab Shafi'i*'. Ranging from the most light and small like *Safinah* One of Imam al-Nawawi al-Bantenian to the most large *al-Umm and al-Majmoo'*.<sup>4</sup>

More details, the following list of references at the same hierarchy use the book referenced scholars' NU in LBM forum:

- 1) *Al-Umm*, the work of al-Shafi'i
- 2) *Mukhtasar*, the work of al-Muzani
- 3) *Al-Muhadhdhab*, the work of al-Shirazi
- 4) *Al-Tanbih li al-Shirazi*
- 5) *Al-Matlab fi Dirasah al-Madh-hab*, the work of al-Juwaini
- 6) *Al-Basit*, *al-Wasit* dan *al-Wajiz*, the work of al-Ghazali
- 7) *Al-Muharrar* dan *Fath al-'Aziz*, the work of al-Rafi'i
- 8) *Al-Majmu' Sharah al-Muhadh-dhab*, the work of al-Nawawi
- 9) *Al-Raudah* dan *Minhaj al-Talibin*, the work of al-Nawawi
- 10) *Tuhfah al-Muhtaj Sharah al-Minhaj*, the work of Ahmad bin Muhammad bin 'Ali
- 11) *Al-Mughni al-Muhtaj ila Ma'rifati Alfaz al-Minhaj*, the work of al-Khatib al-Sharbini
- 12) *Nihayah al-Muhtaj Sharah al-Minhaj*, the work of al-Ramli

<sup>1</sup> Ibid., p. x.

<sup>2</sup> Ibid., p. xxxiii.

<sup>3</sup> Ibid., p. xxi.

<sup>4</sup> Ibid., p. xiii.

- 13) *I'annah al-Talibin*, the work of al-Dimyati
- 14) *Fath al-Muin*, the work of Zainudin al-Malibari
- 15) *Bujairimi al-Fath al-Wahhab* the work of Bujairimi

There are also books of works of modern thinkers used as a methodology for NU 'Ulama,<sup>1</sup> such as:

- 1) *Al-Risalah*, the work of Al-Shafi'i
- 2) *Al-Burhan*, the work of Al-Juwaini
- 3) *Al-Mustasfa'*, the work of Al-Ghazali
- 4) *Al-Muwafaqat*, the work of al-Shatibi

In practice, the use of the methodological books, the forum developed LBM "Ulama/ Kyai NU, does not expressly include the renewal *Manhaji* in BM. From the lack of use of the methodological book, there appears to be an attempt on madh-hab desecration Shafi'i who has been the hand book *Kyai NU*.<sup>2</sup>

d. Objects that were examined

Objects studied in LBM forum assortment, ranging from Islamic laws relating to *masa'il al-fiqhiyyah* and problems monotheism and Sufism. The issues are discussed; it is generally an event (*Waqi'ah*) experienced by people who submitted to *Shuriyah* by the organization/individual.<sup>3</sup> In general, the problem is the object *Bahtsu al-Masail* them, is a matter of worship, health, technology, safety, behavior and morality, and others.

From the above, the authors conclude, that the object of the considered problem in the forum LBM is a matter of what is sought legal nature *Ahkam al-shar'iyah*. If the issues discussed related issues of Sufism, of course, problems in the fields of Sufism in terms of *Ahkam al-shar'iyah*, and so on (the legal dimension).

#### 4.2 Aspects of Islamic law determination procedures NU

Since its inception, NU has made madh-hab Shafi'i as one of the dominant fad. Although, the effect of the *Shafi'i madh-hab* looks very strong among NU, does not mean in the course of legal *istinbat Shar'iyah*, NU refused moreover antipathy with 'Ulama 'or other madh-hab. Since the first of Kyai/scholars' NU also does not require Shafi'i, but also refers to other madh-hab.

However, before discussing more deeply how Islamic NU determination procedures law first described what sense of the term "Istinbat" in the context of the NU's.

Understanding *istinbat al-Ahkam* among NU not takes directly from the original source, namely the al-Quran and al-Hadith, but shortly *tatbiq* (enforce) dynamically passages jurists' sought in the context of legal issues. *Istinbat* in the sense of digging directly from al-Quran and al-Hadith which tend towards *ijtihad* is considered *Kyai NU* extremely difficult, even impossible, because of the limitations that realized by them. Overcoming these rights, then *istinbat* in the sense just shortly *tatbiq* that, in addition to practical, *istinbat* the model can be done by all clerics who have understood like NU-like *fiqh* accordance with standard terminology. Hence, the phrase *istinbat* among NU - especially in the work of *Bahts al-Masa'il u Shuriyah* - not popular because it is near the famous phrase once with terminology *ijtihad*. As for *Shuriyah*, *ijtihad* is something that is difficult because of the lack of knowledge. Instead used the phrase *Bahts al-Masa'il* sentence which means discussing issues *Waqi'ah* by reference, namely Pole *al-fuqaha*.<sup>4</sup>

The existence of *Bahts al-Masa'il* forum can be termed as an evolution in its development to perform to the level *Istinbat jama'i*. Since before the founding of NU in the ear in 1926, only in 1992 at the National Congress in Lampung has been decided, that *Bahts al-Masa'il* NU should make the determination of the legal framework in *Manhaji* madh-hab. This discourse has emerged as the first, the struggle of the NU with a new discourse that demands a renewal of all aspects of human life, especially with regard to Islamic law. Second, the emergence of young intellectuals NU trying to establish a new paradigm that is generally aimed menkaji classical *fiqh* texts to include socio-historical. In practice, not only examine the text but also analyze the methodology used by the scholars' previous. Post National Congress in Lampung, the establishment of Islamic law has begun dominated by the spirit within the framework of *madhhab*, which will follow the opinion or frameworks adopted Mujtahid Imam of the passage of the Qur'an and al-al-Hadith. It can be interpreted that the scholars' NU already shifting groove *istinbat* methodology that leads to a culture of *ijtihad*, although not to the degree of *ijtihad mutlaq*. On this basis too, consistently attitude *madh-hab* as it was followed by formulating the methodology of the determination of *Bahts al-Masa'il* law within the framework of *madh-hab*, both *qawli* and *manhaji*.

*Madh-hab* is *qawli* means to follow the laws that have been taken by the Imam *madh-hab* or 'asab its shaped *qawl* and *wajh*. *Qawl* means the opinion or opinions of Imam *madh-hab* as *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali* contained in the book cited essay and the students, and *wajh* means the opinion of the scholars *madh-*

<sup>1</sup> Imam Yahya, *Bahtsul-Masail NU: Media Islamic Legal Thought*. In <http://buntetpesantren.org>. (May 28, 2009).

<sup>2</sup> Imam Yahya, In <http://buntetpesantren.org>. (28 Mei 2009).

<sup>3</sup> LTN NU, *Solutions Actual Problems of Islamic Law*, (Surabaya: LTN NU Jawa Timur dan Diantama, 2005), p. x.

<sup>4</sup> *Ibid.*, p. xiii.

*hab* on an issue contained in the book of their essays. While *madh-hab* is *manhaji* meaning in law establishes a problem following the rules and methods established by the Imam *madh-hab* or take their minds.<sup>1</sup>

The methodological procedure adopted in the determination of the law NU, which has been produced through the National Congress in 1992 within the framework of *madh-hab* is *qawli*,<sup>2</sup> namely:

- a. When the answer could be satisfied by like a book and there is only one *qawl/wajh*, it was agreed *qawl/wajh* as explained in like that.
- b. In cases where the answer can be satisfied by like a book and there are more than one *qawl/wajh*, *jama'i Taqrir* then used to select one *qawl/wajh*.
- c. In case of no *qawl/wajh* that can provide a solution at all, then do the *procedure ilhaq al-masa'il bi nazairiha in jama'i* by experts.
- d. While in case of no *qawl/wajh* at all and there is no possibility of *ilhaq*, it can be done *istinbat jama'i* with the procedure *madh-hab is manhaji* by experts.

Meanwhile, if there is a case that requires *Taqrir jama'i*, the General Assembly also gives rules of procedure to be done,<sup>3</sup> namely:

- a. Taking the opinion that more *maslahah* or more powerful
- b. As far as possible to implement the provisions of NU to 1, that disagreements be resolved by selecting:
  - 1) Opinions were agreed upon by al-Shaikhani (al-Nawawi and al-Rafi'i)
  - 2) Opinions were agreed upon by al-Nawawi
  - 3) Opinions were agreed upon by al-Rafi'i
  - 4) The opinion supported by the majority of scholars'
  - 5) Opinions "Ulama smartest
  - 6) Opinions "Ulama most wira'i.

In the determination of the law, NU also put on the basis of considerations which is commonly used by the 'Ulama 'of *maqasid al-shari'ah*.<sup>4</sup> NU never formulated this in the context *maslahah al-'amma*,<sup>5</sup> as follows:

- a. *Maslahah al-'amma* is something that contains the benefits seen from the interests of man and of no value *madarat* contained therein, either covering *jalb al-masalih* or *daf 'al-mafasid*.
- b. *Maslahah al-'amma* must be aligned with the goal of maintaining the *shari'ah* is five basic human rights and guarantees (*al-usul al-khamsah*).
- c. *Maslahah al-'amma* to be really in the public interest, not for special interests. As for something that brings benefits and negate, which benefit or for the benefit of certain parties and not included *maslahah al-'amma*.
- d. *Maslahah al-'amma* not sacrifice other public interest equal, let alone greater.
- e. *Maslahah al-'amma* must be *al-haqiqiyah* (real) and not *wahmiyyah* (hypothesis). Therefore, to determine *maslahah al-'amma* be done through careful study or assessment, consultation and set out together.
- f. *Maslahah al-'amma* must not conflict with the Qur'an, al-Hadith, *Ijma'*, and *Qiyas*. Therefore, any measures taken under the pretext of public interest, but contrary to these premises, it must be rejected.

Methodological formulations of the above, it can be concluded that the determination of the law in the NU, as quoted Nurul Hanani,<sup>6</sup> do not dig the law directly from the source, but only issued a law by imposing dynamically passages which have been elaborated jurist to the legal issues to be searched. In the mindset of NU, the term *istinbat al-Ahkam* defined as an effort to draft a law *shara 'with al-qawa'id al-fiqhiyah* and *al-qawa'id al-usuliyah*, either *ijmaliyyah* is fair, is fair *tafsiliyyah*, nor is fair *al-Ahkam*.<sup>7</sup>

While the term *Ilhaq* among NU, in use almost the same as *Qiyas*.<sup>8</sup> NU clerics interpret *Ilhaq* by equating the law of a case that does not exist in the book (*qutub al-mu'tabarah*)<sup>9</sup> with the law of a similar issue that has been answered by the text book, while *Qiyas* equate activity law is a problem that there is no law, with the legal issues that have been known in the al-Quran and *al-Sunnah*. Both model such procedures, a commonality that is equally to be supported by the four support software. If in *Qiyas* there *asl, furu'*, law *asl* and *'illat al-hukm*,<sup>10</sup> while in *Ilhaq* there should also supporting software that is *mulhaq, mulhaq 'alaih, mulhiq* law and *'illat al-hukm* same.<sup>11</sup>

<sup>1</sup> Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, (Beirut: Dar al-Fikr, 1981), p. 63.

<sup>2</sup> PBNU, *Decision of the General Assembly Alim 'Ulama' of 1992, No. 01 / National Conference / 1992*, (Jakarta: Lajnah Ta'lif wa al-Nasr PBNU, 1992), p. 5-6.

<sup>3</sup> *Ibid.*, p. 7-8.

<sup>4</sup> Ahmad al-Mursi Husain Jauhar, *Maqasid al-Shari'ah fi al-Islam*, Terj. Khikmawati, (Jakarta: AMZAH, 2009), p. xv.

<sup>5</sup> PBNU, *The results of the 29th Congress of Nahdlat al-'ulama*, (Jakarta: Lajnah Ta'lif wa al-Nasr, 1996), 35-36.

<sup>6</sup> Nurul Hanani, *Ijtihad and Taqlid Perspective KH. Hasyim Ashari*, (Kediri: STAIN Kediri Press, 2009), 77.

<sup>7</sup> *Ibid.*, p. 77.

<sup>8</sup> Moh. Riva'i, *Ushul Fiqih*, (Bandung: PT. Al-Ma'arif, 1995), p. 116.

<sup>9</sup> Kitab-kitab (khususnya fikih) yang menjadi rujukan Imam madh-hab dan 'Ulama' madh-hab.

<sup>10</sup> 'Abd al-Wahhab Khalaf, *'Ilm Usul al-Fiqh*, (Beirut: Dar al-Fikr, 1978), p. 52.

<sup>11</sup> Nurul Hanani, *Ijtihad and Taqlid Perspective KH. Hasyim Ashari*, (Kediri: STAIN Kediri Press, 2009), p. 78.

Although the same model, different from the fixed *Ilhaq Qiyas*. *Ilhaq* more emphasis on the issue of partial (*juz'iyah*), while *Qiyas*, more emphasis on macro issues (*kulliyah*). In other words, objects that form the backrest of law in *Ilhaq* is a reference book, while *Qiyas* referring to the al-Quran and al-Sunnah.<sup>1</sup>

In general, the examples of problems and legal products LBM through various methods such as the above, it can be seen in a book entitled: Solution of Actual Problems of Islamic law, which is published in collaboration LTN Diantama NU East Java and Surabaya in 2005.

The following are examples of cases raised in the forum LBM, which deals with the issue of how legal bury the corpse in a coffin. This issue contained in the above book, issue number 59, page 60, Decision NU 4th in Semarang on 14 Rabi 'al-Thani 1348 H./19 September 1929 M. procedure solving this case, starting with a question:

Problem: What is your opinion about the grave that Congress removes the water, and always flooded before finished planting corpse? Does planting bodies in the grave included insult to the corpse? If so, whether the body was interred in a coffin required preventing the ingress of water? Or is not allowed to plant a corpse in the grave?

Answer: It is true, that the plant corpses in the graves that removing water, it included an insult to the corpse, and planted a corpse in the casket is permissible, according to the description in the book *Tuhfah*, being in the book *I'alah* explained if circumstances so, then plant corpses chest was obligatory.

The description in the Book *Tuhfah* chapter "Corpse Plant" as follows:

Meaning : "According to the agreement 'Ulama, on-the-*makruh* to bury the corpse in a coffin, because including the heresy, unless there *udhur*, such as moist soil or loose, watery or the beast will dig it, despite being solid, which it will not be protected except by being put in a coffin, or the bodies of women who did not have *muhrim*. In this case, it is not on-the-*makruh* use coffins for the benefit, even if it anticipates the beast, the law becomes mandatory."

While the information taken from the book of *I'alah* chapters II, namely:

Meaning: "on-the-*makruh* coffin unless such use is a moist soil watering, then it is obligatory."

Product laws, once the relevant course if it is associated with the natural conditions of each region in this archipelago. Call it in most of the islands of Sumatra and Borneo, the structure of the soil in the form of a swamp. According to the authors, the reason for the permissibility of using a crate, based not only for their beasts and human prestige, but rather, the use case would facilitate the process of drowning corpse into the grave. Meanwhile, to the process of drowning corpse is usually to be trampled first by tomb builders, as well as entering the soil into it. From this fact, one can imagine, what would happen, if in such conditions, the body was not given a casing such as boxes, in order to make it easier to enter into the grave and maintain the condition of the bodies being walked directly by tomb builders.

In addition to the above examples, of course there are many other examples that cannot be included in this paper. However, it can be underlined, that of the existing examples, forums and devices in LBM always use a hierarchy and methodological framework as described above.

As for the term "*Ijtihad*" according NU applies only to *ijtihad mutlaq mustaqil*, so *mujtahid* at a level that can be called as *Mujtahid*. While the level below, belongs to the category of imitation. Thus it is clear that the principle of legal thought, NU does not claim to belong to acknowledge him as a *mujtahid* but *muqallid* group. Actualization of the principle of imitation in NU thinking can be inferred from the following expression:

"... Although already proficient, already memorized dozens Hadith and know exactly the weakness and the strength of the arguments he used, does not mean that has been separated from the level of imitation. Because the requirements needed for people who do not want to accept the title of imitation is not simple. Therefore NU keeps educating people not to behave like people who are already capable of *ijtihad* itself."<sup>2</sup>

From this thinking, the attitude of NU, *bertaklid Imam manhaji madh-hab* is not a bad thing, because it is "the same as" *mujtahid* ranked *muntasib bi al-madhhab*. Claims the term "equal" *mujtahid* ranked *muntasib bi al-madhhab* this, according to the author, as well as to analyze the expression above, it does not mean able to achieve that rank, but only aligned with the rating.

## 5. Conclusion

NU stands in East Java, on January 31, 1926. The organization was founded by KH. Hashim Ash'ari, KH. Hasbullah and KH Wahab. Samsuri Bisri.

<sup>1</sup> Compare method *ilhaq* with *qiyas* method in *fiqh* proposal. In *qiyas*, *Maqis'* alaihnya are passages. While *ilhaq*, which became *mulhaq* 'alaihnya are texts/editor/opinions of Imam *madh-hab* cited' Ulama '-' Ulama 'of jurisprudence in *fiqh*. See: Wahbah al-Zuhaili, *Usul al-Fiqh al-Islami*, the Section I, (Beirut: Dar al-Fikr, 1986), 603. Compare with 'Abd al-Hakim' Abd al-Rahman al-As As'ad 'adi, *Mabahith al-fi al-Qiyas'illah* 'Inda Usuliyyin, (Beirut: Dar al-Basa'ir al-Islamiyya, 1986), 25. Compare with M. Yusuf Musa, *Al-Madkhal li Dirasat al-Fiqh al-Islami*, (Beirut: Dar al-Fikr, nd), p. 193.

<sup>2</sup> Ahmad Siddiq, *Khittah Nahdliyyah*, (Jakarta: PBNU, t.t.), p. 40.

The style of Islamic legal thought NU, which adheres to the *madh-hab Shafi'i*. This pattern became NU in determining the character and lays down the law to the problem is sought legal.

The epistemology *istinbath al-Ahkam*, NU has two aspects. These aspects are:

1. Aspects of structural technical procedures include: the *Kyai''Ulama* NU, *Bahth al-Masa'il* forum, references, and the object being studied.
2. While the epistemological aspect *istinbath al-Ahkam*, NU using *ilhaq al-masa'il bi nazairiha*. *Ilhaq al-masa'il bi nazairiha* is to equate the law of a case that does not exist in the books of *fiqh* as a reference, by the law of a similar issue that has been answered by the text in these books to be based on the elements/pillars in it, The elements/pillars, namely *mulhiq*, *mulhaq 'alaih*, *mulhiq law* and *' illat al-hukm* same. Technically NU has *qawli* methodological framework are as follows:
  - a) When the answer can be satisfied by like a book and there is only one *qawl/wajh*, it was agreed *qawl/wajh* as explained in like that.
  - b) In cases where the answer can be satisfied by like a book and there is more than one *qawl/wajh*, *jama'i* proof then used to choose one *qawl/wajh*.
  - c) In the case of no *qawl/wajh* that can provide a solution at all, then do the procedure *ilhaq al-masa'il bi nazairiha in jama'i* by experts.
  - d) While in no case *qawl/wajh* at all and there is no possibility of *Ilhaq*, it can be done *istinbath jama'i* with the procedure *madh-hab is manhaji* by experts.
3. Meanwhile, if there is a case that requires *Taqrir jama'i*, rules of procedure, which must be done, namely:
  - a) Taking the opinion that more *maslahah* or more powerful
  - b) As far as possible to implement the provisions of NU to 1, that disagreements be resolved by selecting:
    - 1) Opinions were agreed upon by al-Shaikhani (al-Nawawi and al-Rafi'i)
    - 2) Opinions were agreed upon by al-Nawawi
    - 3) Opinions were agreed upon by al-Rafi'i
    - 4) The opinion supported by the majority of scholars'
    - 5) Opinions ''*Ulama* smartest
    - 6) Opinions ''*Ulama* most *wira'i*.

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