METHODOLOGY OF DECIDING FATWA IN ISLAM: A CASE STUDY OF LEGAL DECISION MAKING IN NU ORGANIZATION

Abd Moqsith
UIN Syarif Hidayatullah Jakarta
abd.moqsith@uinjkt.ac.id

Abstract

There are problems of islamic jurisprudence existing in society, but Qur'an and hadith as the references of shari'a are keep stagnant. Text of Qur'an and hadith are stagnant-without development, while the problems of jurisprudence are still growing. In fact, it is impossible to leave the problems without a solution. In that context, like other Islamic organizations, Nahdhatul Ulama (NU) actively issues religious fatwas. In order to keep the religious fatwa still based on the islamic law, NU has established a procedure of bahtsul masail, which is a scientific forum to respond the problems of jurisprudence, both individual and public jurisprudence related to public affairs. In delivering fatwa or answering the problems of jurisprudence, NU likely only picks up old Jurisprudence reference which are relevant to the problems. However, NU is allowed to perform ilhaqul masa'il binadhairiha, even istinbath in jama'i if the problems of Jurisprudence which can not be solved with the old Jurisprudence reference.

Keywords: fatwa, mufti, mustafti, taqrir, ilhaq, istinbath

A. INTRODUCTION

One thousand four hundred years ago Islam came, delivered by Prophet Muhammad SAW. He came to solve the problems of society as his occupation as a prophet and also a head of government, from personal problems to community problems. For example, he solved the conflict between Aus and Khazraj tribes which had lasted for hundred years. He did not learn about conflict resolution academically. However, the achievements of the Prophet SAW in resolving social and economy disputes were quite amazing.

As the head of Medina, the Prophet SAW also entered the markets to ensure there were no monopolies and cartels existed. Therefore, sometimes he acted as a judge[1] (*qadhi*)[1] in solving problems. He also liked to act as a *mufti* when there were people and communities asking the law of a case. It was because of the fact that Qur'an was not only for solving his personal problems but also other's problems, in both *masa'il shahshiyah* and *masa'il ijtima'iyah* period, even Qur'an was delivered directly to the Prophet.

Prophet SAW is the reference of muslims. If there was a problem, the companions could asked him to find the solution. In the era of prophethood, ijtihad activity was not much needed, because the Prophet answered every question 2. However, after the Prophet passed away, the situation changed. The problems continued to grow because the Prophet SAW, as the one who gave the solution, was not with them anymore. At that time, the companions began to interpret the answers of the case faced by muslims.

In the era of companions, there were some powerful mujtahids such as Abu Bakr al-Siddiq, Umar ibn Khattab, Uthman ibn Affan, Ali ibn Abi Talib, Mu'ad ibn Jabal, Ubai ibn Ka'ab, Zaid ibn Thabit, Ibn Abbas, Ibn Mas' ud, Ibn Umar, and others. They became the references of muslims at that time. As Ibn Khaldun said, not all of the companions of the Prophet achieved the level of Mujtahid. The companions have

---

[1] Once upon a time, a Muslim of Anshar from Bani Zhafar named Thu'mah ibn Ubairiq stole his neighbors' armor named Qatadah ibn al-Nu'man. However, to deceive and avoid charges, Thu'mah entrusted his stolen armor at the home of Zayd ibn Samin, the Jew. Qatadah complained to the Prophet. Then the Prophet SAW called the parties who has the problem. The Prophet SAW would dropped a guilty verdict on Zaid because the evidence in the form of armor is in Zaid's house. Then came the verse of the Qur'an Surah al-Nisa 'verse 105-108 which revealed the lies of Thu'mah. Zaid dibebaskan dari hukuman, and Thu'mah was found guilty. With the verdict, he fled to Mecca and Khaibar. Thu'mah died in a state of apostasy. Nawawi al-Bantani, *Marah Labidz,* Indonesia: Dar Ihya' al-Kutub al-`Arabiyah, Without Year, p. 172; Read also Al-Qurthubi, *al-Jami' li Ahkam al-Qur'an,* (Kairo: Dar al-Hadits, 2002), part III, chapter V, p. 327; Ibn Katsir, *Tafsir al-Qur'an al-Azhim,* (Beirut: Dar al-Fikr, 1999), chapter I, h. 624-625; Fakhr al-Din al-Razi, *Mafatih al-Ghaib,* (Beirut: Dar al-Fikr, 1995), chapter VI, part 11, p. 33.

[2] The ulama disputed whether when the Prophet was still alive there are friends who appear as mufti or not. Ibn Umar was asked about it and he replied, "Abu Bakr and Umar were mufti at the time of the Prophet. Besides, I do not know about those two people ". About that, al-Qasim ibn Muhammad also said, "Abu Bakr, Umar, Uthman, and Ali were mufti in the time of Prophet SAW". Prophet SAW once asked `Amr ibn` Ash to punish a word. `Amr ibn` Ash asked, "do I have to be of solicitude while you are still alive?". Prophet SAW replied, "yes. If you are righteous, then it can be two rewards and if it is wrong, then it can be a reward ". Humaidan ibn Abdullah, "Fuqaha' al-Shahabah al-Muktsirun min al-Fatwa wa Manahijuhum al-Ijtihadiyyah, dalam *Majallah Jami'ah Umm al-Qura,* Mekah: 1411 H, Tahun III, Volume 5, p. 5-7.

different competencies. For example, related to Islamic Jurisprudence, Umar ibn Khattab often recommended muslims to ask Mu'adz ibn Jabal.[3]

When the era of companions ended, there were tabi'in and tabi 'tabi'in era. The problems faced in this era were very serious. Not all things are clearly defined-sharih in Qur'an and hadith. Islamic scholars were divided into ahl al-hadith represented by Imam Malik and ahl al-ra'yi represented by Imam Abu Hanifah[4]. Imam Syafii, who came later tried to combine the two tendencies so that ra'yu-sense remained cooperated with the hadith in solving the case of jurisprudence and hadith could still be explained rationally. Even, in some literature of jurisprudence, it was mentioned that the texts of Qur'an and Hadith can be specified by human's mind, called as takhshish bi al-'aql.

If we see it closely, both ahlu al-hadith and ahl al-ra'y, want to answer muslims' problems based on al-Qur'an and al-Sunnah. Their difference are only in measuring portions when the nash is interpreted by human mind or nash dealing with reality (al-waqi'). In that context, the differences of interpretation are inevitable, which means that even there is same source, the different opinions among scholars are undeniable. The different views are at least because of two things. First, the difference in understanding the postulate, which means that different scholars can bear different legal products, although they use similar postulate. The different interpretations occurs because in Qur'an there are many interpretations of word-lafzh such as lafzh musytarak, lafazh mujmal, lafazh 'am, lafazh muthlaq, and others. Second, the difference in using the postulate. When a scholar uses qiyas, and the other uses the istihsan, those two scholars may have different legal products of similar problem.

Because of that, the disagreements of islamic jurisprudence and fatwas among scholars in many cases are inevitable. Moreover, the recent scholars' fatwa can be different from the previous ones in responding to the same jurisprudence. This article will reveal the methodology of NU scholars in responding the current jurisprudence issues and how the methodology and academic procedures are used by Nahdhatul Ulama in making legal decisions in Islam.

B. DISCUSSION

1. Fatwa-Mufti-Mustafti

Not all of people has the ability to interpret. Most muslims do not understand the detail argument of Islamic law. Therefore, for common people, following one of schools is the most reasonable choice. In addition, according to Imam Ghazali, it is an obligation for people to ask fatwas and follow ulama[5] It is not because of the non-religious business[6], but also the fact that we can not put too heavy academic burden to the common people in order to interpret[7]. Allah SWT orders common people to ask

---

[3] Humaidan ibn Abdullah, "Fuqaha' al-Shahabah al-Muktsirun min al-Fatwa wa Manahijuhum al-Ijtihadiyyah, dalam *Majallah Jami'ah Umm al-Qura,* p. 9.

[4] Abdullah Bin Bayah, *Shina'ah al-Fatwa wa Fiqh al-Aqalliyat,* (Beirut: Dar al-Fikr, 1999), p. 19.

[5] Imam Ghazali, *al-Mustashfa min `Ilm al-Ushul,* (Beirut: Dar al-Arqam ibn Abi al-Arqam, t.t), part II, p. 625.

[6] Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami,* (Beirut: Dar al-Fikr, 2000), part II, p. 1128.

[7] Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami,* (Beirut: Dar al-Fikr, 2000), part II, p. 1128.

ulamas who understand the syara ' postulate. Allah (swt) says in Qur'an (al-Nahl: 43), "fas'alu ahla al-dzikr in kuntum la ta'lamun" (ask the experts if you do not know).

An expert who is asked argument in law issues is called a mufti. A legal opinion issued by an expert called fatwa. A case that requires fatwa called by mustafta bih, while the person who asks the experts is called mustafti. If the person follows the expert's opinion, then it is called a muqallid or muttabi**8**.

The question is, who are the experts whose opinion become references of muslims? In Prophet SAW era, the expert was himself. Qur'an sura al-Nisa' verse 127," wa yastaftunaka fi al-nisa " (they asked you a fatwa about women) describes the position of the Prophet as a mufti or expert. However, the fatwa given by Prophet SAW is based on Qur'an. It affirms, "qul Allah yuftikum fihinna" (say [Muhammad], "Allah gave you fatwas about them [women]) .This is the distinguish between fatwa given by the Prophet and fatwa issued by ulama as the heirs of the Prophet SAW. If the Prophet's fatwa is the revelation of Allah, then the fatwa of the scholars is their interpretation of the revelation of Allah.

After the Prophet SAW passed away, as said before, the experts or mufti were his companions. Related to the authority of the companions, the Prophet SAW asserted; "Iqtadu min ladzaini min ba'di Abi Bakar wa Umar" (follow two people after me, Abu Bakr and Umar). The Prophet also said, "ashhabi ka al-nujum bi ayyihim iqtadaitum ihtadaitum" (my companions are like stars, follow whichever you will get directions from him). Perhaps for that reason, Maliki school made Madinah's behavior ('amal ahl al-madinah) as a legal reference. However, most of ulamas do not see all the companions of the Prophet SAW were qualified as mufti. Ibn al-Qayyim al-Jawziyah estimated that the companions who were qualified as mufti were not more than 130 people. Regarding the numbers, only seven companions issued the most fatwas: Umar ibn Khattab, Ali ibn Abi Talib, Abdullah ibn Mas'ud, A'ishah, Zaid ibn Thabit, Abdullah ibn Abbas and Abdullah ibn Umar**9**.

After the companions era, there were the experts who are mujtahid or interpreter who spend all their time to study religious cases. They were Imam Abu Hanifah, Imam Malik, Imam Syafii, Imam Ahmad ibn Hanbal until the following ulamas called by mujtahid takhrij or mujtahid muqayyad such as Abi Ishaq al-Syairazi and mujtahid tarjih like Imam Nawawi and Imam Rafii. Imam Syafii is known as mujtahid muthlaq mustaqil because he did not only issue argument of Jurisprudence but also provided ushul fiqh as a methodology of Jurisprudence making**10**.

---

8 In the books of ushul fiqh is usually distinguished between muqallid and muttabi '. Muqallid is a person who follows the jurisprudence of a Mujtahid without understanding his juristic argument, while muttabi 'is the one who follows the jurisprudence of a mujtahid equipped with deep knowledge about the jurisprudence of the mujtahid. Read Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami,* Chapter II, p. 1121.

9 Ibn al-Qayyim al-Jauziyah, *A'lam al-Muwaqqi`in,* (Beirut: Dar al-Fikr, 1999), Chapter 1, p. 12. Compared with Jamaluddin al-Qasimi, *al-Fatwa fi al-Islam,* (Beirut: Dar al-Kutub al-`Ilmiyah, 1986), p. 35.

10 Many scholars argue that ushul jurisprudence syafi'iyyah more objective than ushul fikih hanafiyah because ushul fiqh of syafi`i made earlier than jurisprudence. While ushul fikih of hanafiyah is more theorizing than fiqh hanafi. In other words, jurisprudence of the hanafi school is the maker of hanafiyah ushsul.

The question is, what if there is person who have ability to perform ijtihad but he does not have the opportunity to do it? Is he allowed to perform taqlid? Some ulamas such as Muhammad Hasan al-Syaibani as the follower of Hanafi school allows mujtahid to ask another mujtahid who has already performed the ijtihad related to the case. He said, la yayuzu li al-'alim taqlidu man huwa a`lamu minhu wa la yajuzu lahu taqlidu mitslihi11. In other words, a person becomes a muqallid or muttabi ' while he is also a mujtahid. This case due to the fact that it is impossible for a mujtahid to solve various cases. Even, in pilgrimages, Imam Syafii follows 'Atha'. He said, "qultuhu taqlidan li` Atha "(I declare so taqlid to Imam Atha'). 12

In conveying a legal opinion or a fatwa, a mujtahid or mufti does not only study a case from the coherence aspect of its postulate, but also the aspect of its correspondence with the reality. It means that a fatwa is not only seen from the strength of the postulate, but also must be empirically tested that the opinion brings benefits to as many people.

In other words, ulama who delivers fatwa must have two intellectual competences, which are the ability to perform takhrij al-manath (producing law) and tahqiq al-manath (ensuring the benefit of law application) 13. Beside having the ability to interpret the law of Al-Qur'an and Al-Sunnah, a mufti should be able to see which opinion is likely reflect the greatest benefit for people.

Most ulamas do not distinguish between mufti, mujtahid, and faqih14. Al-Syathibi said that al-mufti huwa al-qa'im fi al-ummah maqam al-nabi (mufti is the person who occupied the position of the Prophet in society). According to Ibn Hamdan, "al-mufti huwa al-mukhbiru bi hukm Allah li ma`rifathi bidalilihi" (mufti is a person who delivers God's law because he has knowledge related to postulate of God's law). But Ibn Hamdan's definition was criticized by Muhammad Sulaiman Abdullah al-Ashbar. According to him, telling about God's law without being asked, it is an irshad (guidance), not fatwa. While informing God's law on a case that does not occur in society, it is ta'lim (teaching). Therefore, Muhammad Sulayman defines ifta 'as:

$$الإفتاء هو إخبار بحكم الله تعالى عن دليل شرعى لمن سأل عنه فى أمر نازل$$

"Ifta' is delivering the God's law related to the syara' postulate to the one who asks about the law of a thing that is happening".15

---

[11] Al-Khathib al-Bagdhadi, *Kitab al-Faqih wa al-Mutafaqqih,* (Riyadh: Dar Ibn al-Jauzi, 1996), Part II, p. 136.

[12] Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami,* part II, p. 1082.

[13] Besides these requirements, scholars also disputed whether a mufti should be a man and adult or not? Can a disabled person become a mufti? Imam Ibn al-Shalah did not require them all. It means women, slave, and disable person can be a mufti. According to Ibn al-Shalah, it does not matter that the blind or deaf person becomes mufti because the blind person can deliver speech and the deaf can use the sign language. Ibn al-Shalah, *Adab al-Mufti wa al-Mustafti,* (Kairo: Maktabah al-`Ulum wa al-Hikam & `Alam al-Kutub, 1986), p. 106-107.

[14] Jamaluddin al-Qasimi, *al-Fatwa fi al-Islam,* p. 54.

[15] Muhammad Sulaiman Abdullah al-Asyqar, *al-Futya wa Manahij al-Ifta': Bahts Ushuli,* (Kuwait, Maktabah al-Manar al-Islamiyah, 1976), p. 9.

There are many kinds of definitions of mufti, based on ulamas' arguments. Some of them propose tight rules that not all ulamas fulfill the requirements, but some of them propose loose rules that many ulamas can be categorized as mufti. Ibn Abidin in Radd al-Mukhtar said:

قال فى رد المختار } :المفتى عند الأصوليين هو المجتهد أما من يحفظ أقوال المجتهد فليس بمفت وفتواه ليس بفتوى بل هو ناقل{

"Ibn Abidin in Radd al-Mukhtar said: in the view of the ushul fiqh scholars, mufti is a mujtahid. While people who memorized the opinion of jurisprudence mujtahid cannot be called as mufti. His opinion is not called fatwa. He is only someone who cite it ".[16]

Ibn al-Himam said, "anaa al-mufti huwa al-mujtahid wa huwa al-faqih" (a mufti is a mujtahid and a mujtahid is a faqih, the expert of islamic jurisprudent) [17]. Therefore, all the requirements of mujtahid become the requirements of the mufti. There is a hierarchy of mujtahids, so there is degree of mufti. There are mufti muthlaq mustaqil, mufti tarjih, and mufti muntasib. As the level of mujtahid, some scholars also allow mufti only in certain cases (yatajazza'u). For example, if there is someone who learn inheritance deeply, he is permissible to deliver fatwa related to inheritance. He is not allowed to speak in other fields such as Jurisprudence of tithe, jurayat jurisprudence, and others.

Because there are strict requirements of a mufti, nowadays many scholars aligned to form a fatwa department called dar al-ifta'. This happens because the problem of Jurisprudence become more complex, and it is not easy to find a scholar who can be categorized as mufti. For example, a scholar is an expert in jurisprudence, but he does not have much knowledge in ushul fikih, and vice versa. Therefore, it is better to deliver fatwa in a community rather than individually. As a matter of caution, the presence of a fatwa department that gather scholars who are experts in various fields of science needs to be appreciated.

There is Fatwa Commission in Indonesian Ulema Council (MUI), Tarjih Assembly in Muhammadiyah, and Bahtsul Masa'il Department in NU. The use of "fatwa" in MUI and "tarjih" in Muhammadiyah shows the high intellectual-academic belief of the Islamic organizations. Unlike those two organizations, Nahdhatul Ulama uses the term bahtsul masa'il that reflects the simplicity of the islamc figures or kyai in the department. The NU kyai felt lower than Imam Nawawi and Imam Rafii in tarjih, and they do not feel in the same level with Ibn Hajar al-Haitami and Imam al-Ghazali in issuing fatwa.

Apart from that fact, the three Islamic organizations have issued religious fatwas. Perhaps there have been hundreds or even thousands of fatwas issued by them18. The

---

[16] Ibn Abidin, *Radd al-Mukhtar,* (Beirut: Dar al-Fikr, 2000), part IV, p. 306. Comparing with Abdullah Ibn Bayeh, *Shina'ah al-Fatwa,* p. 117.

[17] Ibn al-Shalah, *Adab al-Mufti wa al-Mustafti,* p. 70; Muhammad Yusri Ibrahim, *al-Fatwa: Ahammiyatuha Dhawabithuha Atsaruha,* (Kairo: al-Daurah al-Tsalitsah, 2007), p. 27.

[18] Rumadi Ahmad made a comparison between the fatwa of the three Islamic organizations, especially fatwas related to interreligious relations in Indonesia. Read Rumadi Ahmad, *Fatwa Hubungan Antaragama di Indonesia,* (Jakarta: Gramedia, 2016).

Methodology of Deciding Fatwa In Islam.... 49-66 (Abd Moqsith)

question is, how if a mustafti asks about a problem to some muftis then he finds various fatwas, which one should he follow. In this case, Ibn al-Shalah said, there are five alternative choices[19]. First, mustafti takes the strongest argument and prohibition, not the lightest and allowance. Because of the fact that there is caution and every truth always contains a hard burden. Second, mustafti takes the lightest opinion because the Prophet comes to lighten, not to harden. This second opinion is based on the hadith "bu`itstu bi al-hanifiyah al-samhah al-sahlah".

Third, mustafti takes the opinion of other mufti who considered as the most pious and wara'. According to Syafii school, if there is a conflict between Imam Nawawi and Imam Rafii, the scholars will take Imam Nawawi's argument. This is because Imam Nawawi is considered having deep knowledge in islamic Jurisprudence and hadith. Imam Nawawi called as faqih al-muhadditsin and muhaddits al-fuqaha'. Some scholars also consider that Imam Nawawi is more wara' than Imam Rafi'i.

Fourth, mustafti seeks an alternative mufti beside the two muftis who have different opinions. Then, the mustafti can take the opinion approved by the third mufti. It happens because mustafti does not have the ability to perform tarjih and taqrir toward muftis' opinion both from the strong aspect of each postulate and the benefit of the fatwa.

Therefore, in Indonesian context, if mustafti does not feel satisfied with the decisions of Tarjih Assembly of Muhammadiyah, he can ask the same thing to the Indonesian Ulema Council. However, if the council and the Tarjih Assembly have different religious views, he can seek the opinion of Bahtsul Masail Department (LBM) NU. According to the fourth opinion, then any opinion supported by LBM NU, becomes the opinion chosen by the mustafti, and vice versa.

Fifth, facing the diversity of views of the muftis, mustafti does not need to be confused. He is free to choose which opinion is more reassuring for himself. This view expressed by Abi Ishaq al-Syairazi. In the context of modern society, this fifth opinion is considerable[20]. Let muslim choose the opinion or fatwa individually that suits him / her.

The explanation reveals that fatwa of a scholar does not bind on all muslims. The fatwa only binds the muslims who ask the mufti. Even, when there are various fatwas related to one problem, mustafti can independently determine and choose the opinion that he wants. This is the difference between Qur'an and religious fatwas. If the Qur'anic law binds all muslims, religious fatwa does not do it. It means that if Qur'an is mulzim syar'i, religious fatwa of scholar does not bind directly to all muslims.

2. Fatwa Changes

Can fatwa on an issue change? The answer is: it can, beccause of two reasons. First, because the mufti finds a new postulate that causes changes on the fatwa. It is possible academically when in the past time a mufti said halal, and in the present time he says haram. That is why, Imam Nawawi's opinion in al-Majmu' may be different with his

---

[19] Ibn al-Shalah, *Adab al-Mufti wa al-Mustafti,* p. 164-165.

[20] The problem comes when sometimes a mustafti ask a problem not to a mufti, but to a muballigh who does not have quaification as a mufti. He did not meet the requirements as a mufti, but he is trusted by the community as a scholar. The result is the muballigh issued a wrong "fatwa".

opinion in al-Taqiq and al-Raudhah[21]. For example, in the case of an masbuq during a prayer, who does not know the position of his imam's rakaat, can he replace the imam whose prayer is void? The Imam Nawawi's explanation in the book al-Tahaqiq states it is allowed (wa istikhlaf al-masbuqi ja'iz wa in lam ya`rif nazhm shalat al-imam). However, in al-Raudhah, he argued that the postulate which states unallowance is stronger than the opposite (anna arjaha al-qaulaini dalilan `adam al-jawaz). [22]

Based on this fact, there is a possibility of a fatwa change among NU ulama because of the new postulates especially those related to the masjlahat mursalah, istihsan, 'urf, and sadd al-dzari'ah. With the postulates, the fatwa moves dynamically. It is possible that something which contained maslahat, it contains mafsadat, so that the law can be changed in order to follow the change of maslahat.

Second, the change occurs because of circumstances, conditions, and traditions changes. In other words, islamic jurisprudence which is built on `urf can change if the`urf of has changed. According to KH MA Sahal Mahfudh - the sacralization of islamic jurisprudence is not a wise act since the change may occur due to circumstances change. Furthermore, Kiai Sahal Mahfudh affirmed that the sacralization of jurisprudence is a denial of history that recognizes the influence of culture in building the Iraq and Madinah jurisprudence[23]. Related to the fact, it is important to pay attention to Imam al-Qarafi's statement that can be the a guidance for mufti:

واسأله بلدك عرف على لاتجره يستفتيك إقليمك أهل غير من رجل جاءك إذا بل .عمرك طول الكتب فى المسطور على والجمود .الواضح الحق هو فهذا كتبك فى والمقرر بلدك عرف دون من به وأفته عليه وأجره بلده عرف عن الماضين أبدا المنقولات

"Do not you stare at what is written in the books throughout your life. If there is a man from outside asking for a fatwa, then do not apply a law according to the traditions in your area. Ask him about the traditions in his area, then give a fatwa based on the tradition in his region, not yours and not based on the decisions listed in your books. This is the real truth. Staring only on the text is a real mistake forever. It shows the ignorance to grasp the intentions of the early salaf scholars ".[24]

---

[21] For example, may the ma'mum masbuk replace a void imam position when he does not know the position of the rakaat? Imam Nawawi in al-Tahqiq stated that it is allowed. While in the book of al-Raudah, he stated thatit is prohibited. Another example of how the law of istitabah on a person who does not perform prayer (tariku al-shalah) before hadd been implemented? Imam Nawawi said in al-Raudhah and al-Majmu', that istitabah is an obligation. However, his opinion in al-Tahqiq stated that it is not an obligation. Read Afifuddin Muhajir & Imam Nahe'i, "Fungsionalisasi Ushul Fikih dalam Bahtsul Masa'il NU", in M. Imdadun Rakhmat (editor), *Krtik Nalar Fiqih NU,* (Jakarta: PP Lakpesdam NU, 2002), p. 253

[22] Zakaria al-Anshari, *Fathu al-Wahhab,* (Beirut: Dar al-Kutub, t.t), part I, p. 79.

[23] M.A Sahal Mahfudh, "Fiqh Sosial: Upaya Pengembangan Madzhab Qauli dan Manhaji", dalam *Pidato Penerimaan Gelar Doktor Honoris Causa dalam Bidang Sosial,* (Jakarta: UIN Syarif Hidayatullah Jakarta, 2003), p. 22.

[24] Syihab al-Din Ahmad Ibn Idris al-Qarafi, *al-Furuq,* (Beirut: Dar al-Gharb al-Islami, 1994), Part II, p. 176-177. Similar content, read Al-Qarafi, *al-Ihkam fi Tamyiz al-Fatawa `an al-Ahkam wa Tasharrufat al-Qadhi wa al-Imam,* (Beirut: Dar Ibn Hazm, 2010), p. 151. The text is as follows:

Methodology of Deciding Fatwa In Islam…. 49-66 (Abd Moqsith)

A similar statement explained by Ibn Abidin:

<div dir="rtl">
فهذا كله وأمثاله دلائل واضحة على أن المفتى ليس له الجمود على المنقول فى كتب ظاهر الرواية من غير مراعاة الزمان واهله وإلا يضيع حقوقا كثيرة ويكون ضرره أعظم من نفعه
</div>

"These and all of their examples are strong evidence that a mufti should not be old-thought by taking the text of a book whose clear source, but ignoring the living human at a time. If that happens, many basic rights which are neglected and the danger are greater than the benefits ".[25]

Thus, fatwa of a scholar related to a case of fiqh in one area may be different from his fatwa in that similar case in a different area because of the circumstances and traditions differences. The fatwa differences can be derived from Abdul Wahab Khallaf's statement about 'urf , as stated follows:

<div dir="rtl">
ولهذا قال العلماء :العادة شريعة محكمة .والعرف فى الشرع له اعتبار .والإمام مالك بنى كثيرا من أحكامه على عمل أهل المدينة .وابو حنيفة وأصحابه اختلفوا فى أحكام بناء على اختلاف أعرافهم . والشافعى لما هبط إلى مصر غير بعض الأحكام التى كان قد ذهب إليها وهو فى بغداد لتغير العرف . ولهذا له مذهبان قديم وجديد .وفى فقه الحنفية أحكام كثيرة مبنية على العرف .ومن العبارات المشهورة المعروف عرفا كالمشروط شرطا .والثابت بالعرف كالثابت بالنص
</div>

"Therefore, the scholars said: al-`adat syari`ah muhakkamah (custom is the shari'a made into a law). And custom (`urf) in syara` must be considered. Imam Malik created many laws based on the behavior of Medina people. Imam Abu Hanifa and his supporters differed in legal matters resulting from differences in their customs. After staying in Egypt, Imam Syafii changed some of his legal opinions which had been set out when he had been in Baghdad. This is because of the different traditions (the two countries). Therefore, he has two legal views, the old one (qaul qadim) and the new one (qaul jadid). And in Hanafi jurisprudence, there are many laws which are based on custom. .... Hence, there are popular phrases, "al-ma`rufu` urfan ka al-masyruthi syarthan" (based on the custom, the good one is equal to the conditions to be fulfilled); "Al tsabit bi al-nash ka al-tsabiti bi al-nash" (what the tradition stipulates is equal to what is set by nash (Qur'an or Hadith). [26]

Because of that argument, NU scholars do not refuse changing. They can change religious views because of circumstances, conditions, traditions , and religious argument change. For example, if the former NU kiai had forbidden muslims wearing ties because it is identical (tasyabbuh) with the colonizers, now the fatwa is valid because of the circumstances change. Abdullah ibn Bayeh stated:

<div dir="rtl">
ولكل زمان نوازله وفتاويه تنوعت بتنوع الحوادث والوقائع المجتهدين واختلاف أهل الصنائع
</div>

<div dir="rtl">
ينبغى للمفتي إذا وردعليه مستفت لايعلم أنه من أهل البلد الذى منه المفتي وموضع الفتيا أن لا يفتيه بما عادته يفتى به حتى يسأله عن بلده وهل حدث له عرف فى ذلك البلد فى هذا اللفظ أم لا؟ وإن كان اللفظ عرفيا فهل عرف ذلك البلد موافق لهذا البلد فى عرفه أم لا؟
</div>

[25] Ibnu Abidin, *Majmu'ah Rasa'il Ibn `Abidin,* (Beirut: Dar al-Fikr, t.t), Part II, p. 131. Comparing with KH Afifuddin Muhajir, *Fiqh Tata Negara,* (Yogyakarta: IRCiSOD, 2017), p. 182.

[26] Abdul Wahab Khallaf, `*Ilm Ushul al-Fiqh,* (Mesir: Maktabah al-Da`wah al-Islamiyah, 1968), p. 90.

"Every era has its own problems and fatwa. The fatwa varies following the diversity of events and occasions. Fatwa varies as long as the diversity of the result of ulama's ijtihad results. Fatwa also varies according to the different views of the fatwa creators ".[27]

Fatwa changes must be based on the maturation of a mufti. Therefore, Ibn al-Sam'ani made simple requirements of being mufti. According to him, mufti must not only be able to perform ijtihad and fairness. Mufti must also be able to refrain himself of putting out fatwas by ease anything thats is not easy (*al-kaff 'an al-tarkhish wa al-tasahul*).[28] According to Ibn al-Shalah, a mufti should not issue a fatwa that ease uneasy things (*la yajuzu li al-mufti an yatasahala fi al-fatwa*). [29] Prohibition to ease the law does not mean too be rigid in constructing law. Kiai Afifuddin Muhajir said that rigidity does not provide benefits, even it is harmful, although it is is proposed for good thing. [30]

3. New Problems and Old Problems

It is undeniable that the previous scholars have overcome the problems of fiqh that arose at that time. They have compiled hundreds or thousands books to settle cases of islamic Jurisprudence that arose at that time. The question is, How is the recent scholars? Actually, there are two problems of jurisprudence faced by muslims today. First, the problems of jurisprudence that have existed since previous times whose law has also been decided by the previous scholars. Facing the such jurisprudence problems, the recent scholars are able to perform re-ijtihad or revisit the views of the previous ones. (I'adah al-nazhar). The re-interpretation can produce the different jurisprudence products because of the circumstances change.

However, in this case, NU scholars do not perform ijtihad or istinbath. For example, if there is only an answer to the questions of jurisprudence, the scholars prefer to pick up the previous opinion of it. Moreover, if the previoous opinion was expressed by scholars who have high authority and thier names listed in the books of mukabarah. For example, if there is a woman who get raj'i divorced by her husband, how to calculate the woman's iddah period, before the period is over,? As Ibn al-Mudzir narrated, the scholars have discussed that the woman's iddah is die iddah (walau mata'an muthallaqah raj`iyyah intaqalat ila` iddah wafat). [31] Based on the rule, NU scholars decide it.

However, if there are many answers to a Jurisprudence issue, NU scholars chose a Jurisprudence opinion from the previous various opinions. According to Nahdhatul Ulama, choosing one opinion should be based on the opnion which has the strongest postulate and the most benefit. In ushul fiqh it is called as tarjih and taqrir.

In tarjih, the one that is criticized is nushush, in taqrir, theone that is criticized is aqwal al-ulama. In tarjih, if there is a conflict of postulates (ta'arudh baina al-adillah) that

---

[27] Abdullah ibn Bayeh, *Shina'ah al-Fatwa wa Fiqh al-Aqalliyat,* p. 9.

[28] Abdullah ibn Bayeh, *Shina'ah al-Fatwa wa Fiqh al-Aqalliyat,* p. 117.

[29] Ibn al-Shalah, *Adab al-Mufti wa al-Mustafti,* p. 111.

[30] KH Afifuddin Muhajir, *Fiqh Tata Negara: Upaya Mendialogkan Sistem Ketatanegaraan Islam,* p. 180

[31] Muhammad al-Syarbini al-Khathib, *al-Iqna`,* (Surabaya: Nurul Huda, t.t), Part II, p. 174.

can not be compromised (al-jam'u wa al-taufiq), [32] such as [1] between the muwatir hadith and ahad hadith, the scholars prefer the mutawatir; [2] between hadiths listed in Bukhari-Muslim and hadith in other books, such as Sunan Abi Dawud, Turmudzi, Nasa'i, ushul fiqh scholars prefer the ones in Bukhari-Muslim; [3] between hadith narrated by jurists and narrated by others, the scholars prefer the hadith narrated by jurists;[4] Between the hadith qawl al-nabi and fi'il al-nabi, the priority is qawl al-nabi SAW. If the difference between obligatory, sunnah, and mubah did not appear in Nabi's attitude, his words of could indicate the difference between obligatory, sunnnah and mubah. The Prophet SAW words could explain lafazh mujmal, muthlaq, and yang 'am, which did not appear in the Prophet SAW's attitude. By the time the Prophet performed Wukuf in a place, he said, "I stand here, and all the land in Arafat is the place of wukuf". When the Prophet slaughtered animals in Mina, the Prophet explained, "I slaughter animals here, and all parts of Mina are slaughterhouses".[33]

Taqrir is criticizing aqwal al-'ulama based on the proposed postulate, the benefit of the opinion when it is applied, and the scholar who stated it. For example; [1]. The jurisprudence opinion which is based on manthuq postulate is prefereable than the mafhum ones; [2]. The jurisprudence opinion that categorized as dar'ul mafasid is more preferable than jalbul manafi', because in dar'ul mafasid contains mashlahat as well; [3]. When there is a conflict between Syafii followers, the priority is Imam Nawawi and Imam Rafii's arguments. However, if Imam Nawawi and Imam Rafii have different arguments, Imam Nawawi's opinion is taken first. It is not only because Imam Nawawi came later than Imam Rafii, but also the position of Imam Nawawi as muhaddits al-fuqaha and faqih al-muhadditsin.

KH Husein Muhammad strongly criticized the tendency of sacralizing Imam Nawawi and Imam Rafii. According to him, it shows the weakness of democratization thought in NU organization and becomes an attempt to ignore prospective geniuses from Khurasan such as Imam al-Haramain Abu al-Ma'ali al-Juwaini, Imam Ghazali, Izzuddin ibn Abdi al-Salam, Ibn Daqiq al-`Id. Husein Muhammad argued that this attitude which prioritizes Imam Nawawi rather than other Shafi'iyyah scholars represents the triumph of one of the hadithist groups over the others. [34]

However, the fact shows that Kiai Husein Muhammad's criticism is not entirely correct. The reason is, in taqrir mechanism in NU organization, every juristic opinion that is taken is not only based on who stated it and how strong it is, but also the jurisprudence opinion must be considered for its benefit to society. If maslahat is the one becoming the legal reference, it can be said that an opinion was considered as maslahat in the past and it is not maslahat anymore for the present time. Therefore, we

---

[32] In Shafi'i's fiqh ushul, it is stated that when ta'arudh occurs, there is baina al-adillah. The first thing to do is compromising the two propositions. Because a rule stated, "al-'amal bi aldalilaini al-muta'aridhaini hall min ilgha'i ahadihima" (implementing two opposing arguments is more important than omitting one of them). If a compromise can not be occured, then the two arguments must be raised. If tarjih is not possible, nasikh mansukh can be done with the requirements of the text set by the scholars.

[33] The diversity of scholars' argument when *ta'arudh* happens between what Prophet said and what Prophet did. Read Muhammad Sulaiman al-Asyqar, *Af'al al-Rasul SAW wa Dalalatuha 'ala al-Ahkam al-Syar'iyyah,* (Beirut: Mu'assasah al-Risalah, 2003), Part I, p. 99-114.

[34] KH Husein Muhammad, "Tradisi Istinbath Hukum NU: Sebuah Kritik", in M. Imdadun Rahmat (ed.), *Kritik Nalar Fiqih NU: Tranformasi Paradigma Bahtsul Masa'il,* (Jakarta: Lakpesdam NU, 2002), p. 28-29.

can accept Imam Nawawi's opinion from takhrij al-manath view. At the same time - according to KH Afifuddin Muhajir - we do not apply his opinion from tahqiq al-manath view because it does not seem to give empirical benefit. [35] This fact occurs because we follow a rule that the law can change because of circumstances, conditions, and traditions change.

It is important to know that in postulates or jurisprudence conflic resolving, tarjih and taqrir are the second solution if al-jam'u wa al-taufiq as the first solution could not work. However, in postulates conflict, if tarjih al-adillah could not be done, Syafii school performs nasakh (law cancellation). Meanwhile, in conflict of jurisprudence, sholars still recommend the second solution, which is al jam'u and al-taqrir . There is no third resolving, which is nasakh of the jurisprudence cancellation.

The next significant question is how if there is one opinion of a scholar which has strong postulate but weak maslahat; or strong jurisprudence opinion but weak in postulates? In order to answer this questio, the scholars agree that the nash postulate is more prioritized than mashalahah mursalah. However, in certain cases, mashlahah mursalah can be the priority than nash postulate if leaving the mashlahat will cause chaos (fawdha) in society.

An interesting example of the problem is stated by KH Afifuddin Muhajir. It is prohibited to take taxes by referring the hadith which states, "la yahillu mal imri'in illa` an thibi nafsin minhu" (it is prohibited to take other people's property except with the agreement of the owner). However, if there is no tax paying, especially from the rich people, and it causes calamity; the country will be destroyed which caused the destruction of society. KH Afifuddin Muhajir stated, in that context, tax paying is allowed referred to mashlahah mursalah postulates. [36]

Second, the problem of jurisprudence faced by muslims is really a new problem, and there was no precedent in the past. In order to overcome this problem, scholars can use two ways methodologically. One, namely takhrij al-furu' 'ala al-furu', which is problem analogy (furu') that does not have law related with other problems (furu') which has had its law. The equation is important because there is similarity of substance between the second problem and the first one.

Methodologically, this pattern is called as ilhaq al-masa'il bi nazha'iriha. The problem that does not have any law is called mulhaq and the problem which has law is called mulhaq bih. The connectors between these two problems is called wajhul ilhaq. Wajhul ilhaq can be in a form of jurisprudence that has been tied to many furu', and a furu' whose law is already been taqrir through jama'i by the scholars. This ilhaq procedure is considered as a cautious academic solution enabling NU scholars to take qiyas procedure carefully which is the authority of mujtahids.

Two, takhrij al-furu 'ala al-ushul, means borrowing ushul fiqh of the previous scholars to perform ijtihad, as Imam Nawawi and Imam Rafii did. The present scholars argued that this way is possible because mustaqil mujtahid muthlaq as Imam Syafii is

---

[35] It is stated by KH Afifuddin Muhajir in a discussion of "Prosedur Taqrir Jama'i dan Ilhaqul Masa'il Binazhairiha di Lingkungan NU" on Oktober 30, 2107 in PBNU Office Jakarta.

[36] The example is explained by KH Afifuddin in a discussion of Prosedur Taqrir Jamai dan Ilhaqul Masa'il Binazhairiha, on Oktober 30, 2017, in PBNU Office Jakarta.

difficult to find. Until now, there is no new ushul fiqh rule to replace the old one. The present scholars systematize the old Jurisprudence, such as Wahbah al-Zuhaili, Ahmad al-Raysuni, Jasir Audah, 'Allah al-Fasi, and others.

In NU organization, the process of takhrij al-furu 'ala al-ushul is simplified into the procedure of istinbath jama'i which includes istinbath bayani, istinbath qiyasi, and istinbath maqashidi. [37] NU likes to use "istinbath" rather than "ijtihad". By the use of istinbath, NU wants to avoid ijtihad because NU scholars think that they do not fulfill the qualification as a mujtahid, either collectively or individually. In fact, in all ushul fiqh literature, there is no adequate explanation that distinguishes between the process of ijtihad and istinbath. The process of ijtihad is similar with istinbath.

Istinbath bayani means studying nushush using qawaid lughawiyah-ushuliyah to do al-tahlil al-lughawi (word analysis), al-tahlil al-ma'nawi (meaning analysis), al-tahlil al-dalali (dalalah- analysis), correlates the nash with the cause of descent, correlates the nash with others so takhshish al-'am, taqyid al-muthlaq, tabyin al-mujmal appear, correlate nushush al-syari'ah with maqashid al-syari'ah. Nushush al-syari'ah (shari'ah text) and maqashid al-syari'ah (the purpose of shari'ah) are two inseparable things. Maqashid al-syari'ah was born and referred to nushush al-syari'ah, while nushush al-syari'ah is interpreted by considering maqashid al-syari'ah which covers the fulfillment of human's benefit in the world and afterlife. [38]

This formulation appears to be more advanced than the scholars' tendency who like to generalize and universalize the teachings texts by ignoring the context or sabab al-nuzul. By referring to the rule of al-'ibrah bi `umum al-lafazh la bi khusush al-sabab (the important thing is the generalization of words rather than the specifityof cause), some textual scholars disregard the context of this nash. Moreover, the decision to perform istinbath bayani in NU above does not look at the text only based on itself, but it must be linked to the context and general goals of the Islamic Shari'ah.

Therefore, it is understandable if scholars allow the attaching qimah (price) on grains, goats, and camels, even though the Prophet's hadith does not mention the price or qimah of the goods textually. For the scholars, the purpose of the hadith is facilitating muzakki (who pay zakat) and mustahiq (who receive zakat) at once. Therefore, there is no reason to prohibit it, if paying zakat in the form of qimah is extremely easy. [39]

Not only that, NU also allow the possibility of performing istinbanth qiyasi. Istinbath qiyasi in NU's perspective is making problem analogy that does not have legal standing with something that has legal standing in Al-Qur'an and al-Sunnah because there are equality in illat (cause of a law). Illat of laws are listed in the nash, called illat manshushah. There is also a illat of law which is the result of scholars' thought, called illat mustanbathah. By using this qiyas, hopefully all jurisprudence issues can have legal status. Qur'an and imited Hadith have been able to respond to infinite legal occasions since the time of the Prophet until the end of time.

---

[37] Pengurus Besar Nahdhatul Ulama, *Hasil-Hasil Muktamar ke 33 Nahdhatul Ulama,* (Jakarta: PBNU, 2016), p. 153-172.

[38] Pengurus Besar Nahdhatul Ulama, *Hasil-Hasil Muktamar ke 33 Nahdhatul Ulama,* p. 154-155.

[39] Pengurus Besar Nahdhatul Ulama, *Hasil-Hasil Muktamar ke 33 Nahdhatul Ulama,* p. 155-156.

Many cases can be solved through qiyas mechanisms, especially those who do not have direct legal provision in Qur'an and hadith. For example, what is the legal status of money politics? This is a new case that is not available in nushush. By using qiyas, the scholars agreed to forbid it. The prohibition of this money politics is equal with the prohibition of giving something to the officials, as in the hadith of the Prophet SAW, "hadaya al-ummal haram kulluha" (all gifts or presents to officials are forbidden). The illat of law which connect both cases is khauf al-mail (unfair). It can affect the gift recipient to treat the giver specially, follow the giver's wishes, make the policy unfair, and so on. [40]

However, some NU kiai which have lower level in society still doubt performing qiyas. They think that qiyas is activity for mujtahids, and NU kiai think that none of the them are qualified as mujtahids. However, in the NU 33rd congress in Jombang, there was an agreement, like or not, that NU decided qiyas as one of the academic mechanisms to interpret laws in al-Qur'an and al-Sunnah.

Istinbath istishlahi, which is also called as istinbath maqashidi, is istinbath which is referred to the aims of syari'at, that is the achievement of the benefit of the world and hereafter, the benefit of 'ammah and khashshah. One for sure, maqashid al-syariah can not be separated from nushush al-shariah, even maqashid al-syari'ah can not be realized without nushush al-syari'ah, [41] because maqashid without nushsuh is like the soul without the body. On the other hand, nushush without maqashid is similar with the body without the soul.

Maqashid al-Shari'ah, as defined by Imam al-Ghazali, consists of five basic teachings, namely protecting religion (hifzh al-din), protecting the soul (hifzh al-nafs), protecting the mind (hifzh al-'aql), protecting generation (hifzh al-nasl), and protecting property (hifzh al-`mal). Imam Ghazali said:

دينهم عليهم يحفظ أن وهو خمسة الخلق من الشرع ومقصود .الشرع مقصود على المحافظة بالمصلحة نعنى لكنا الأصول هذه مايفوت وكل مصلحة فهو الخمسة الأصول هذه حفظ مايتضمن فكل. ومالهم ونسلهم وعقلهم ونفسهم مصلحة ودفعها مفسدة فهو

"However, we propose maslahat to keep the aims of syara '. While there are five aims of shara' to the creature, namely protecting religion, protecting the soul, protecting the mind, protecting the generation, and protecting the property. Everything that contains those five points is maslahat. While everything that deny those five principals is mafsadat and if reject it, it is maslahat ".[42]

Istinbath maqashidi is needed to deal with cases which do not have legal status stated by the Qur'anic and al-Sunnah texts. In this context, the implementation of istinbath maqashidi works on the level of mashlahah mursalah, istihsan, and `urf. As

[40] Pengurus Besar Nahdhatul Ulama, *Hasil-Hasil Muktamar ke 33 Nahdhatul Ulama,* p. 164.

[41] Nowadays, there are some books discussing *maqashid al-syari'ah* especially written by contemporer scholars, such as Abdul Majid al-Najjar, Ahmad al-Raysuni, and Jasir Audah. Read Abdul Majid al-Najjar, *Maqashid al-Syari'ah Bi Ab'ad Jadidah,* (Beirut: Dar al-`Arab al-Islami, 2008); Ahmad al-Raysuni, *Madkhal Ila Maqashid al-Syari`ah,* (Ribath: Dar al-Salam, 2010); Jasir Audah, *Fiqh al-Maqashid: Inathah al-Ahkam al-Syar'iyyah bi Maqashidiha,* (USA: al-Ma'had al-`Alami li al-Fikr al-Islami, 2006); Jasir Audah, *Naqd Nazhariyyah al-Naskh: Bahts fi Fiqh Maqashid al-Syari'ah,* (Beirut: al-Sabakah al-`Arabiyah, 2013).

[42] Imam al-Ghazali, *al-Mustashfa min `Ilm al-Ushul,* Part I, p. 636.

long as no definite rule, the laws which based on uruf, maslahah mursalah, and istihsan change following the situation, condition, and tradition change(taghayyur al-ahkam bi taghayyur al-amkinah wa al-ahwal, wa al- ' awa'id).

As we can see, istinbath jama'i has not widely used by NU in solving problems of islamic jurisprudence since it was formulated in the NU Ulema National Discussion in Bandar Lampung on January 21-25, 1992 until now. There are two possibilities related to this case. First, most problems that would be solved by NU do not require istinbath jama'i, if we see it from jurisprudence view. Due to the fact that the problems of jurisprudence in the Indonesia can be resolved by referring to the explanation of Islamic classical jurisprudence books. As Kiai Sahal Mahfudh said, in solving the problems of Jurisprudence, NU kiai prefers to use a school through qauli rather than manhaji. [43]

Second, the actual problems of jurisprudence solved by NU kiai require istinbath. However, because of the intellectual reluctance, they do not use it. The optimal academic efforts by NU kiai in solving the jurisprudence problems seems to be stalled on the ilhaqul masa'il binazhairiha method. It means that, even the istinbath has been allowed (infitah bab al-istinbath), NU organization prefer to avoid doing it. For most NU scholars, istinbath is an activity of mujtahid, and they see themselves do not fulfill the requirements of being mujtahid. Because of this situation, there are many problems of jurisprudence in NU environment are unsolved. Instead of using istinbath, kiai choose to perform tawaqquf towards the problem than solve them from Islamic jurisprudence view.

C. CONCLUSIONS

Based on the explanation, it is clearly mentionaed that being a mufti is not an easy work. There are a number of academic requirements that have to be fulfilled by a mufti. Because of the difficulties in fulfilling the requirements, the scholars gathered to build a fatwa department. In Indonesia, Nahdhatul Ulama is a organization of islamic scholars which productively express religious views, especially the ones related to the current Jurisprudence problems. In order to avoid the rising of a fatwa that violates the principles of Islamic jurisprudence, Nahdhatul Ulama made the procedure of organizing bahtsul masa'il.

Some of the opinions or fatwas issued by NU are adaptation of the religious views of previous scholars. The adaptation (naql al-`bibarah) is usually taken when the jurisprudence problems can be solved by looking at the views of the previous scholars. However, if the issue can not be solved by adapting the old jurisprudence because of the status as a new problem, the scholars use ilhaqul masa'il binazhairiha mechanism. Even, if it is required, NU scholars can perform istinbath jama'i. Although the procedure of istinbath jama`i has been made, many NU kiai do not apply it in solving the jurisprudence problems.

---

[43] KH MA Sahal Mahfudh, "Bahtsul Masa'il dan Istinbath Hukum NU: Sebuah Catatan Pendek", dalam M. Imdadun Rakhmat, *Kritik Nalar Fiqih NU: Tranformasi Paradigma Bahtsul Masa'il,* p. Xiv.

ISJOUST

Volume 1, Nomor 1, 2017

REFERENCES

Abdullah, Humaidan ibn, "Fuqaha' al-Shahabah al-Muktsirun min al-Fatwa wa Manahijuhum al-Ijtihadiyyah, in *Majallah Jami'ah Umm al-Qura,* Mekah: 1411 H, Tahun III, Volume 5

Abidin, Ibn, *Radd al-Mukhtar,* (Beirut: Dar al-Fikr, 2000)

-------------, *Majmu'ah Rasa'il Ibn `Abidin,* (Beirut: Dar al-Fikr, t.t)

Ahmad, Rumadi, *Fatwa Hubungan Antaragama di Indonesia,* (Jakarta: Gramedia, 2016).

Al-Anshari, Zakaria, *Fathu al-Wahhab,* (Beirut: Dar al-Kutub, without year)

Al-Asyqar, Muhammad Sulaiman Abdullah, *al-Futya wa Manahij al-Ifta': Bahts Ushuli,* (Kuwait, Maktabah al-Manar al-Islamiyah, 1976)

Al-Asyqar, Muhammad Sulaiman, *Af'al al-Rasul SAW wa Dalalatuha 'ala al-Ahkam al-Syar'iyyah,* (Beirut: Mu'assasah al-Risalah, 2003)

Al-Bagdhadi, Al-Khathib, *Kitab al-Faqih wa al-Mutafaqqih,* (Riyadh: Dar Ibn al-Jauzi, 1996)

Al-Bantani, Nawawi, *Marah Labidz,* Indonesia: Dar Ihya' al-Kutub al-`Arabiyah, Without Year

Al-Jauziyah, Ibn al-Qayyim, *A'lam al-Muwaqqi`in,* (Beirut: Dar al-Fikr, 1999)

Al-Khathib, Muhammad al-Syarbini, *al-Iqna`,* (Surabaya: Nurul Huda, t.t)

Al-Najjar, Abdul Majid, *Maqashid al-Syari'ah Bi Ab'ad Jadidah,* (Beirut: Dar al-`Arab al-Islami, 2008)

Al-Qarafi, Syihab al-Din Ahmad Ibn Idris, *al-Furuq,* (Beirut: Dar al-Gharb al-Islami, 1994)

--, *al-Ihkam fi Tamyiz al-Fatawa `an al-Ahkam wa Tasharrufat al-Qadhi wa al-Imam,* (Beirut: Dar Ibn Hazm, 2010)

Al-Qasimi, Jamaluddin, *al-Fatwa fi al-Islam,* (Beirut: Dar al-Kutub al-`Ilmiyah, 1986)

Al-Qurthubi, *al-Jami' li Ahkam al-Qur'an,* (Kairo: Dar al-Hadits, 2002)

Al-Raysuni, Ahmad, *Madkhal Ila Maqashid al-Syari`ah,* (Ribath: Dar al-Salam, 2010)

Al-Razi, Fakhr al-Din, *Mafatih al-Ghaib,* (Beirut: Dar al-Fikr, 1995)

Al-Shalah, Ibn, *Adab al-Mufti wa al-Mustafti,* (Kairo: Maktabah al-`Ulum wa al-Hikam & `Alam al-Kutub, 1986)

Al-Zuhaili, Wahbah, *Ushul al-Fiqh al-Islami,* (Beirut: Dar al-Fikr, 2000)

Audah, Jasir, *Fiqh al-Maqashid: Inathah al-Ahkam al-Syar'iyyah bi Maqashidiha,* (USA: al-Ma'had al-`Alami li al-Fikr al-Islami, 2006)

----------------, *Naqd Nazhariyyah al-Naskh: Bahts fi Fiqh Maqashid al-Syari'ah,* (Beirut: al-Sabakah al-`Arabiyah, 2013)

Bayah, Abdullah Bin, *Shina'ah al-Fatwa wa Fiqh al-Aqalliyat,* (Beirut: Dar al-Fikr, 1999)

Ghazali, Imam, *al-Mustashfa min `Ilm al-Ushul,* (Beirut: Dar al-Arqam ibn Abi al-Arqam, without year)

Ibrahim, Muhammad Yusri, *al-Fatwa: Ahammiyatuha Dhawabithuha Atsaruha,* (Kairo: al-Daurah al-Tsalitsah, 2007)

Katsir, Ibn, *Tafsir al-Qur'an al-Azhim,* (Beirut: Dar al-Fikr, 1999)

Khallaf, Abdul Wahab, *`Ilm Ushul al-Fiqh,* (Mesir: Maktabah al-Da`wah al-Islamiyah, 1968)

Mahfudh, M.A Sahal, "Fiqh Sosial: Upaya Pengembangan Madzhab Qauli dan Manhaji", dalam *Pidato Penerimaan Gelar Doktor Honoris Causa dalam Bidang Sosial,* (Jakarta: UIN Syarif Hidayatullah Jakarta, 2003)

Muhajir, Afifuddin & Imam Nahe'i, "Fungsionalisasi Ushul Fikih dalam Bahtsul Masa'il NU", in M. Imdadun Rakhmat (editor), *Krtik Nalar Fiqih NU,* (Jakarta: PP Lakpesdam NU, 2002)

Muhajir, KH Afifuddin, *Fiqh Tata Negara,* (Yogyakarta: IRCiSOD, 2017)

Muhammad, KH Husein, "Tradisi Istinbath Hukum NU: Sebuah Kritik", in M. Imdadun Rahmat (ed.), *Kritik Nalar Fiqih NU: Tranformasi Paradigma Bahtsul Masa'il,* (Jakarta: Lakpesdam NU, 2002)

Pengurus Besar Nahdhatul Ulama, *Hasil-Hasil Muktamar ke 33 Nahdhatul Ulama,* (Jakarta: PBNU, 2016)