

Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU

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ABSTRACT

Ijtihad began to become a necessity to find certainty of Islamic law in the rapid pace of change and development of the times. Muhammadiyah and Nahdlatul Ulama (NU) realized the importance of ijtihad in answering modern problems by being realized in the form of fatwa institutions. Muhammadiyah has a Tarjih Assembly, while NU founded Bahtsul Masail. These institutions have their own methods of performing crucially and influencing the legal decisions they determine. This is the reason for the need for research on the ijtihad method used by Muhammadiyah and NU. This study uses a descriptive and comparative methodology that describes the ijtihad method conducted by the Muhammadiyah Tarjih Assembly and Bahtsul Masail NU and then compares it. This research proves Muhammadiyah and NU have their own standards in doing ijtihad. Muhammadiyah and NU both conduct ijtihad collectively (jama'i). However, each has different methods and standards. Muhammadiyah uses the bayani methods, ta'lili, and istislahi. NU uses the qauli (opinion) approach of the previous scholars, although it does not close the opportunity to conduct ijtihad with the manhaji method. The use of Muhammadiyah and NU ijtihad methods is proven when each issues a product of Islamic law in the form of fatwas. This research is useful to help Muslims in understanding the fatwas decided by Muhammadiyah and NU.

Keywords: *Ijtihad, Muhammadiyah, Nahdlatul Ulama.*

1. INTRODUCTION

The Qur'an and Hadith for Muslims are the two highest sources in Islamic wisdom. These sources are confirmed as a basic framework, inspiration, and direction for efforts to solve various problems faced by Muslims. In the modern era marked by the emergence of the industrial revolution, the increase in technological advances, and material relations internationally will give rise to a growing behavior as well. The dynamics of Islamic law are at the same time required to undergo updates, in line with the times. The demand is in the form of the development of Islamic legal thought that remains based on the nash text because Islam cannot be separated from these sources.

The modern period marked by social change raises some serious issues related to Islamic law. Reformers are not always able to answer these problems satisfactorily. Islamic law needs to continue to be explored and developed to answer new problems, of course with the syar'i corridor. That is very important because Muslims need to get certainty in the form of legal provisions for problems that are considered new. The Qur'an and

Hadith do not mean that they cannot mirror and reflect on the development of the times, but in principle the effort to extract the law on a problem must be aligned with the development of the times. The way to answer the challenge is to use the ijtihad method.

Ijtihad is one way to dig the law on issues not described in the Qur'an. This method is useful in giving proper directions to explore Islamic law rather than arbitrary guessing. All Muslims are not necessarily able to preach properly. The person who is doing ijtihad must meet the conditions so that the results of his ijtihad can be accounted for. Mujtahid (people who are doing ijtihad) need to meet the qualifications to avoid deviations that may be committed by certain groups or individuals because they deviate from the truth of the Qur'an and Hadith [1].

Ijtihad as a way to establish the law, almost accepted by all scholars. The use of ijtihad was used while the Prophet Muhammad was still alive. Ijtihad has also been used in the era of khulafaurrasyidin companions. Over time and into the modern era, most Islamic jurists established laws with ijtihad in addition to nash and ijma'.

The development of the *ijtihad* method as the establishment of Islamic law in Indonesia has developed. *Ijtihad* in the country is usually done together through community organization. The determination of the fatwa was among others carried out by Indonesian Ulema Council (MUI), Muhammadiyah with The Tarjih and Tajdid Assembly, Nahdlatul Ulama (NU) with Bahtsul Masail, or Islamic Association with Hisbah Council. Various kinds of Islamic organizations in establishing Islamic law give rise to opinions that do not have to be the same with each other. The difference actually reflects the development of Islamic legal thinking as long as the methods carried out do not violate the rules. *Ijtihad* produced a verdict that was able to answer challenges in any contemporary problem or any case that was not previously explained in detail in the Qur'an or Hadith.

Muhammadiyah and NU have their own beliefs and methods in digging for an Islamic law through *ijtihad*. The legal products or fatwas issued by the two largest Islamic organizations in the country do not have to be the same considering they have their own path in the process of extracting the law. The Islamic community in general or Muslims in Indonesia need to understand these methods so that they can understand the results of fatwas produced by NU and Muhammadiyah. Based on the background of the problem, research is needed on "The Concept of *Ijtihad* Bayani, Ta'lili, Istislahi on Muhammadiyah and Qauli Approach to Nahdlatul Ulama".

2. THEORETICAL FOUNDATION

2.1. *Ijtihad as The Establishment of Islamic Law*

Ijtihad in terms according to the view of jurists means the earnest efforts of fuqaha or mujtahid in digging up their knowledge in order to find the law of syara in some issues. *Ijtihad* serves to issue Islamic law rulings. With that understanding and function, it can be concluded that *ijtihad* is limited to the problem of jurisprudent and does not concern the realm of creed and morals [2].

The scholars of ushul fikih agree that the scope of *ijtihad* is limited to problems that do not exist in nash or the Qur'an texts and hadiths that fall under the criteria zhanni al-dalalat (vague proposition). The existing cases of nash qath'i cannot be taken for granted by them to do *ijtihad*. Jurists from the times do not enter the realm that has been set up with certainty in the Qur'an and Hadith.

Ushul fikih which is a mujtahid guideline, was only not used until finally Imam Shafi'i utilized in the determination of Islamic law (1338 H). From then onwards, ushul fikih became the condition of legal experts in the theory of legal excavation. Imam Shafi'i begins by identifying the main source of the Qur'an, then checking the hadith based on its level of validity, where

hadith is the second source of the law. He interpreted the text and performed qiyas. Imam Shafi'i realized that every problem was found to be related to the existing text. This made him not accept some of the methods used by fuqaha before, one of which was Istihsan. As a result of his thoughts, Imam Shafi'i deserves the nickname as a true writer in Islamic jurisprudence.

A person who is unable to preach should not be forced to preach because it can invite madharat (evil). A person who wants to preach needs to achieve certain conditions in order to reach the mujtahid level. Imam as-Syatibi explained that to arrive at the mujtahid degree must be able to have two traits. These traits are able to understand the intentions of sharia (maqashid asy-sharia) and can be able to obey the law based on his own understanding of maqashid asy-sharia. The thought of maqashid asy-shari'ah according to Ibn Taymiyya that sharia aims to bring benefits (mashlahah) and eliminate destruction (mafsadat) [4].

Maqashid asy-sharia consists of five basic principles, namely protecting belief (din), protecting oneself, protecting the mind, fencing matter, and protecting offspring. Maqashid asy-sharia is the spirit of Islamic law discussed in ushul fikih and jurisprudence [5]. This principle becomes the essence of the purpose and policy in the establishment of Islamic law which covers three areas, namely worship, muamalah, and jinayah (Islamic criminal law). Maqasyid al-sharia is even an important part of the philosophy of Islamic law.

Some scholars take the view that it is difficult to find mujtahid who perform absolute *ijtihad* in the current era. Conversely, doing *ijtihad* in group is easier to find and done by involving various experts related to the issues discussed. By involving experts from various disciplines, not just scholars or religious leaders, the conclusions and verdicts are believed to be close to the truth to achieve the benefits as expected. The purpose of *ijtihad* is to seek truth and goodness for Muslims.

Yusuf al-Qardhawi argues *ijtihad* jama'i as a form of exchanging the opinions of scholars and experts of various disciplines over general issues and has a widespread impact on Muslims. Doing *ijtihad* in group can be done by way of deliberation. *Ijtihad* jama'i is certainly different from *ijma'*. Collective *Ijtihad* takes the form of mutual agreement from most scholars, while *ijma'* is the opinion or agreement of all scholars [7].

2.2. *Bayani, Ta'lili, dan Istislahi*

There are at least three *ijtihad* in the perspective of ushul fikih namely bayani (language approach), ta'lili or qiyasi (reason), and termi (philosophical). These three perspectives are common patterns used to change the framework of jurisprudent from time to time. These patterns then produce thousands of books of fiqh with

various kinds or versions. The three kinds of patterns are in the opinion of al-Syatibi in the book *Al-Muwafaqot*.

The meaning of *ijtihad bayani* is *ijtihad* which is used to explain the law of *syara* in the Qur'an or Hadith which is still vague (*zanni*), both from the factor of its determination and its designation. This method is identical to the discovery of the law with the study of language aka semantics. That's because the emphasis of this *ijtihad* on extracting textual meaning, among others, includes when pronunciation is interpreted metaphorically, how to choose one of the ambiguous pronunciations (*mustarak*), determine the general (*amm*) and special verses (*khass*), determine whether the command (*amar*) means obligatory or just *sunnah*, can determine whether the prohibition sentence (*nahi*) should be decided *haram* or *makruh*, and others.

Ijtihad ta'lili is commonly called *ijtihad qiyasi*. *Ijtihad* is an attempt to dig or find the law for cases that are not contained in the Qur'an or Hadith by applying the *qiyas* pattern. To find the law in the problem at hand, there needs to be an equality of cause or *illat* with the problem that already has legal provisions in *nash*.

The *istislahi* method is used if the *bayani* method and *qiyasi* method cannot be taken to answer new problems. Muhammad Salam Madkur explained that *ijtihad istislahi* is an attempt to achieve the law of *syara* with a *kulliyah* approach (general rules). The condition of the problem that is reviewed and sought the legal provisions are not yet in the Qur'an, *sunah*, or *no ijma'* (clerical agreement). Besides not being able to be excavated by the *bayani* and *ta'lili* methods, the use of *ijtihad istislahi* basically refers to the pattern of *maslahah mursalah*, which means attracting benefit and rejecting the existence [8].

2.3. *Qauli and Manhaji*

There are two approaches, namely *madzhab qauli* and *Manhaji* to establish and conclude the products of Islamic law. Technical in these two approaches have characteristics and have their own characteristics. The *qauli* approach is to find and understand the finished and concluded text of the previous scholars. This *madzhab qauli* tends to be easier because it takes the opinions of scholars who have been explained and attributed to the text of the Qur'an and Hadith. *Mahzab qauli* took the verdict that *mujtahid* had made as a guideline for his followers [9].

Madzab manhaji is a way to conclude and decide Islamic law by following the method of one of the *madhhabs*. To be punished in this way means following the way the imam of *mahzab* thinks and coded in establishing the law. *Manhaji* as a reflection to refer back to the Qur'an, Hadith, and so on directly with the rules of *ushul fikih*.

In practice, doing *madzhab* in *manhaji* way on collective *ijtihad* provides an opportunity for each *mujtahid* to think together in accordance with each other's wisdom. It should be underlined, the issues discussed are still *zhanni*. Then, the *mujtahids* can conclude or make decisions together by acclamation or by taking the most votes after deliberation [10].

3. METHODOLOGY

This research method is qualitative with a descriptive and comparative approach that exposes the method of establishing Islamic law to *Tarjih Muhammadiyah Council* and *Bahtsul Masail NU*, then comparing it [11]. Data research based on books, research results, journals, and especially the decisions of *Tarjih Muhammadiyah Council* and *Bahtsul Masail*. Then, the author compared the *ijtihad* method taken by The Assembly of *Tarjih Muhammadiyah* and *Bahtsul Masail NU* [12].

Inductive methods are used in this study by observing the results of the decisions of the *Tarjih Muhammadiyah Assembly* contained in the *Tarjih Verdict Association (HPT)* and the legal rulings of *Bahtsul Masa'il NU* contained in the book of *Ahkamul Fuqaha*. From the *fatwas* are then drawn conclusions based on the methods of *ijtihad* used by each organization in establishing the law.

4. RESULTS OF RESEARCH AND DISCUSSION

Muhammadiyah and *NU* through each *fatwa* institutions use the way *ijtihad jama'i* (collective). In *Lajnah Tarjih Article 4 Paragraph 1* explained the participants of *tarjih* deliberation are scholars (men and women) who are members of the association (*Muhammadiyah*). *Ulema* is a person who has the capability of knowledge in the field of religion and is able to perform *ijtihad* or *tarjih* [13].

Muhammadiyah argues that the highest sources in Islamic law are the Qur'an and Hadith. In the Articles of Association of *Muhammadiyah Article 4 Paragraph (1)* it is explained that *Muhammadiyah* refers to two sources in the determination of the law, namely the Qur'an and Hadith. This Articles of Association is also strengthened in the *Jakarta Tarjih Verdict in 2000 Chapter II Number 1* which reads "The source of Islamic teachings is the Qur'an and Hadith as *Sunah Maqbullah*". This ruling also strengthens several similar rulings regarding the source of the law that *Muhammadiyah* has ever made [14]. *Muhammadiyah* accepted *ijtihad* and developed it as a method of delving into Islamic law, especially on contemporary issues and not explicitly explained in the two legal sources of the Qur'an and Hadith.

Muhammadiyah is not *taqlid* to a particular *mahzab*. They have the principle to refer to the Qur'an and Hadith

directly when worshipping the law. Muhammadiyah through the Tarjih Institute uses the pattern of *ijtihad bayani*, *ta'lili* (*qiyasi*), and *istislahi* in deciding a case or digging into Islamic law. The organization uses the *bayani* pattern as a form of study of texts in the Qur'an and Hadith, as well as a form of critical thinking towards *nash*. While the pattern of *ta'lili* or *qiyasi* is done by looking for similarities, especially in contemporary problems. Alternatively, Muhammadiyah uses *istislahi* as a form of legal discovery of empirical reality based on the principle of *maslahah* if there is no similarity of *illat* or not possible to use *qiyas*.

The Muhammadiyah Tarjih Assembly used these patterns, one of them when deciding fatwa No. 6/SM/MMT/III/2010 on Smoking Law. The ruling said smoking is illegal. PP Muhammadiyah uses the principle of language (*bayani*) about smoking laws based on QS. Al-A'raf verse 157 that smoking is a category of doing "*khaba'is*" (despicable), then QS. Al-Baqarah verses 195 and QS. An-Nisa' verse 29 which explains the act of smoking contains an element of falling into perdition. Smoking is considered a "wasteful" act where waste is prohibited in QS. Al-Isra' verses 26 -27. The *ta'lili* pattern is used by equating smoking as an act of flopping in perdition. Self-harm is forbidden in the Qur'an precisely in QS. Al-Baqarah verse 195. Thus, the law of smoking if analogous to these verses are prohibited acts.

Fatwa with the use of *bayani*, *ta'lili*, and *istislahi* methods on HPT is contained in Decree No. 08 of 2006 on Bank Interest. In the fatwa it was decided that interest is usury because it is in addition to the principal of capital lent and the addition is binding and promised, while the voluntary and without any promised does not include usury. Interest as a form of additional capital on the principal lent is the result of Muhammadiyah *ijtihad* pattern *ta'lili* / *qiyasi* by taking usury as in QS. Al-Baqarah verses 278 - 279. In the verse it is explained "And if you repent (of the taking of *riba*) then for you the principal of your wealth..." Muhammadiyah declares bank interest in addition to the capital lent and it is not the change of usury according to the *nash*. The decision of the Majelis Tarjih interest that is being *qiyas* as usury is illegal.

In the decision of the Tarjih Assembly in Sidoarjo in 1968 it was stated *illat* interest with usury is the occurrence of exploitation by the strong to the weak. Therefore, at the verdict in Sidoarjo interest on state banks is still allowed because the state is considered as the manager of the community economy and the profits of state banks will eventually return to the benefit of the people not enjoyed by individuals. However, bank interest on private banks is prohibited because it is considered a strong party to the weak side. The verdict was revised in a 2006 fatwa that stated all bank interest, both in state-owned banks and private banks, was usury to be equally illegal. The Tarjih Assembly argued

ownership of state banks had undergone a shift in which shareholders of state banks came from private. Thus, the *illat* about bank interest and usury on state banks also changed.

NU does not dig the law directly from the main legal sources, namely the Qur'an and the Sunna. Bahtsul Masail prefers to use the opinion of imam mahzab. NU argues that the excavation of the law is carried out by dynamically demonstrating the *nash* that *fuqaha* has concluded to the issues sought by law.

Absolute *Ijtihad* or legal excavation from primary sources directly is still difficult to do by NU scholars because of the limitations of supporting and complementary knowledge that must be mastered by a *mujtahid*. *Mujtahid* from among *nahdliyin* chose to do *ijtihad mazhab* because it is more practical. Moreover, almost all NU scholars have understood like the books of jurisprudent in accordance with its standard terminology [16].

Bahtsul Masail uses the *qauli* method by establishing the law by referring to the *mu'tabara* poles of the mahzab priests. This is evidenced by the decisions of Bahtsul Masail which majority include the opinion of a mahzab priest. Bahtsul Masail only four times included the Qur'an's propositions directly in their decisions during 1926 – 1999.

Bahtsul Masail's method of *ijtihad* is evident in most of their rulings in "*Ahkamul Fuqaha*" which quotes the opinions of priests or scholars from *kitab-kitab fiqh* [18]. The book includes the creation of scholars with mahzab *shafi'iyah*, including the popular book *al-um* or *al-Majmu'* by Imam Shafi'i to small-scale books such as *Safinat al-Shalah* by Imam Nawawi Banten. For example, in the case of "working on rice fields with the condition of cleaning rice and drying it" set at the 4th *Nahdlatul Ulama Muktamar* in Semarang in September 1929. In his ruling, Bahtsul Masail explained that one should not clean his land to someone with the condition that farmers must cultivate their rice fields while cleaning rice and drying their crops. The reason for the decree is because the work of cleaning rice and drying rice is not included in the work of working rice fields, meaning that it is an additional job that is different from the work that should be done by rice field cultivators. NU determines this by basing on the book of *Shafi'iyah* mahzab namely *Fath al-Qarib* by Ibn Qosim Al Ghazi. In the book it is stated "The owner (rice field) must not set conditions against his messenger about something that has nothing to do with the actual tasks". From this example it can be known that Bahtsul Masail did *ijtihad* by *qauli* or took the opinion of scholars quoted from the book of imam mahzab [19].

The dominance of *shafi'i* mahzab among NU cannot be thought of in decision-making by Bahtsul Masail. It is necessary to be underlined, the scholars Bahtsul Masail did not necessarily reject the opinion of three other

mahzab imams. NU has a reason to lean towards the mahzab Sayifi'i because this organization initially had no reference other than Imam Shafi'i, such as the book of al-Muwadanah belonging to Imam Malik.

NU also cites books from other mahzab namely Maliki, Hanafi, and Hanbali. In the ruling on the "Polluting the Environment" law set out at the 29th NU Conference in Cipasung Tasikmalaya, West Java on December 4, 1994. In the ruling it is explained that the law pollutes the environment, the consequences / impacts of industrial development, both air, water, and land if it causes dharar (loss) then the law is haram and includes criminal acts (jinayat). If there has been environmental pollution, the perpetrator must replace the damage caused and the perpetrator must get a punishment that gives a deterrent effect [20].

In deciding that, NU quoted the editor of the shafiiyah-patterned book "Al-Tafsir Al-Kabir" by Muhammad al-Razi where in the tafsir it refers to QS. Al-A'raf verse 56 which means do not make any damage on the face of the earth, after (Allah) has repaired it. However, NU also cites the opinions of scholars from other mahzab books in the conclusion of the law "Polluting the Environment" such as the mahzab Maliki "Al Jami' li Ahkam Qur'an" by Muhammad bin Abi Bakar and the hanafiyah-patterned book "Al Kharraj" by Abu Yusuf. In Al Jami' li Ahkam the Qur'an is explained also quoting QS. Al-A'raf verse 56 by emphasizing the explanation do not pollute certain water and do not cut fruiting trees, while "Al Kharraj" explained that polluting the environment is not halal for Muslims intentionally (entering the land) belonging to other Muslims or even belonging to infidels dhimmi with the intention of drowning their rice fields aimed at causing damage. to him. In the book "Al Kharraj" also rests the case of environmental pollution with a hadith that means to be cursed by a person who endangers a Muslim or others.

At the NU Conference in Krappyak, Yogyakarta which was confirmed at Munas Alim Ulama in Lampung in 1992, it was realized that ijthid manhaji (methodology) was also an important consideration. Munas recommended to NU kyai who have sufficient intellectual ability in digging into Islamic law to do ijthid manhaji by digging directly nash texts, including using qiyas method. Qiyas or ilhaq is used by NU as a method of jihad on a jamai (collective) basis. This method is taken if in the book of imam mahzab there is no legal decision that they are looking for. Methodology used with the development of masalik al-illat, which integrates legal illat and legal wisdom so that the resulting fiqh is in accordance with the public interest or the benefit of the people (maslahat al ammah).

5. CONCLUSIONS

The Muhammadiyah Tarjih Assembly and Bahtsul Masail NU both use ijthid jama'i in deciding matters. Both involve many people who have expertise in various fields of science. The Muhammadiyah Tarjih Assembly and Bahtsul Masail NU do not use ijthid fardi or ijthid individually on behalf of their respective fatwa institutions. Muhammadiyah uses the concept of referring to the Qur'an and Hadith directly when exploring legal issues using the pattern of bayani, ta'lili, and istislahi. Bahtsul Masail tends to take the opinions of previous scholars in doing ijthid, especially the opinion of Imam Shafi'I who uses a qauli approach. Bahstul Masail then uses the approach of manhaji (using imam mahzab methodologically) in doing ijthid, if the issues discussed have not existed yet in the qaul / opinion of imam mahzab.

SUGGESTION

The Tarjih Assembly and Bahstul Masail NU should disseminate the results of ijthid and the process they do as widely as possible until it is known to the lower layers of society. The Assembly of Tarjih and Bahtsul Masail must be strictly selective in determining which members will carry out the legal ijthid in order to truly meet the mujtahid criteria.

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