



## **Exploring Legal *Istinbāṭ* in the Construction of Disability Fiqh : Insights from Nahdlatul ‘Ulama Advisory Board (LBMNU)**

**Mohamad Asep**

Universitas Muhammadiyah Malang

Email : [Mohamadasep04@gmail.com](mailto:Mohamadasep04@gmail.com)

### **Abstract**

*The aim of this article is to analyze and uncover the legal *istinbāṭ* methodology used by the Nahdlatul ‘Ulama Advisory Board (LBMNU) in constructing the book of disability jurisprudence. To the best of the author's knowledge, there has been no prior article discussing this matter. This discourse is highly significant for discussion, as the book serves as a reference for Muslim individuals with disabilities in the field of jurisprudence, encompassing matters of worship, transactions, and law. The methodology employed in this research is library research, utilizing a content analysis approach. The research findings indicate that LBMNU constructs disability jurisprudence using three methodologies: *Qouliyy*, *Ilḥaqiyy*, and *Manhajiy*, with some fatwas found to employ a collaborative (mixed) method. The *Qouliyy* method remains the most frequently utilized, followed by the *Manhajiy*, collaborative, and *Ilḥaqiyy* methods. These three methodologies stem from the decisions of the National Assembly of Islamic Scholars and the National Conference of NU in Bandarlampung regarding the legal decision-making system in the Nahdlatul Ulama Advisory Board. Thus, in formulating the book of disability jurisprudence, LBMNU continues to utilize these three methods, while still considering the welfare of individuals with disabilities.*

**Keywords:** *Disability Fiqh, Nahdlatul ‘Ulama, Qouliyy, Ilḥaqiyy, Manhajiy.*

### **Abstrak**

Artikel ini bertujuan untuk menganalisis dan mengungkap metodologi *istinbāṭ* hukum yang digunakan oleh Lembaga Bahtsul Masail Nahdlatul ‘Ulama (LBMNU) dalam mengonstruksi buku fikih disabilitas. Sejauh penelusuran penulis belum ada artikel yang membahas hal tersebut. Diskursus ini amat penting untuk diskusikan, karena buku tersebut merupakan salah satu buku rujukan bagi penyandang disabilitas Muslim dalam wilayah fikih, baik ranah ibadah, muamalah maupun hukum. Metode yang digunakan dalam penelitian ini adalah studi kepustakaan (*library research*), dengan pendekatan analisis konten (*conten analysis*). Hasil penelitian menunjukkan bahwa LBMNU dalam mengonstruksi fikih disabilitas menggunakan tiga metodologi yaitu *qouliyy*, *Ilḥaqiyy*, *Manhajiy*, dan ada sebagian fatwa ditemukan menggunakan metode kolaboratif (campuran). Metode *qouliyy* masih menjadi metode terbanyak digunakan, lalu disusul dengan metode *manhajiy*, kolaboratif dan *ilḥaqiyy*. Tiga metode tersebut berasal dari keputusan Munas Alim Ulama dan Konbes NU di Bandarlampung tentang sistem pengambilan keputusan hukum dalam Bahtsul Masail di lingkungan Nahdlatul Ulama. Sehingga dalam perumusan buku fikih disabilitas,

ketiga metode tersebut masih tetap digunakan LBMNU, meskipun demikian, tetap memperhatikan kemaslahatan penyandang disabilitas.

**Kata Kunci:** Fikih Disabilitas, Nahdlatul 'Ulama, *Qouliyy, Ilhaqiy, Manhajiy.*

## INTRODUCTION

According to 2020 Susenas data released by BPS in the same year, it is estimated that the population of people with disabilities in Indonesia reached around 22.97 million people (Kementerian Sosial Republik Indonesia, 2021). Based on the research conducted by Firda Silvia Pramashela and Hadiyanto Abdul Rachim, data taken from ten cities representing the regions of West Java, East Java and Central Java, it was concluded that of the ten cities, only two of them had reached the optimal level in providing accessibility public services for people with disabilities; Tegal and Banda Aceh. However, in eight other cities such as Garut, Pekanbaru, Padang, DKI Jakarta, Malang, Bandung, Yogyakarta and Surakarta, there are still shortcomings in efforts to increase the accessibility of public services for these groups (Silvia Pramashela & Abdul Rachim, 2021).

Muslims with disabilities face more serious and fundamental problems. For them, this serious problem is a matter of worship. Many people with disabilities find it difficult to just pray due to the lack of "fiqh studies" that specifically discuss the issue of worship for Muslims with disabilities. In addition, fiqh also discusses other dimensions of life broadly, such as social, political and economic issues. In fact, fiqh still does not include discussions about Muslims with disabilities.

NU, as the largest Islamic organization in Indonesia, responded to the need for fiqh discussion related to disability quickly and effectively by carrying out *ijtihad*. In 2018, NU published the book "Fikih Penguatan Penyandang Disabilitas NU (Strengthening Fiqh for NU People with Disabilities)". This book aims to eliminate discrimination against people with disabilities, for example, the lack of accessibility facilities in Indonesian mosques, such as the lack of sign language translations for the deaf during Friday sermons. The result is a fiqh construction that is humanistic and inclusive for people with disabilities, covering religious, social and economic aspects. Therefore, according to the author, this book is very important to research.

Studies on fiqh disability have been carried out by several researchers. However, there has been no specific study discussing the methodology used in disability jurisprudence books. For example, an article written by Hiam Al-Aoufi, Nawaf Al-Zyoud & Norbayah Shahminan entitled "Islam and the cultural conceptualisation of disability". The article analyzes Islamic philosophy related to disability

using an analytical approach that examines texts from the Qur'an and Sunnah. The aim is to differentiate between cultural practices and actual Islamic views towards individuals with disabilities. The main argument in this article is that Islam presents a holistic conception of disability, which includes individuals with disabilities in the term 'disadvantaged people'. Through analysis of Qur'anic texts and prophetic traditions, the article emphasizes the importance of aligning cultural practices with true Islamic values to ensure fair treatment and support for individuals with disabilities in Muslim societies (Al-Aoufi et al., 2012).

Another example, an article written by Izaida Ibrahim and Muhammad Fahmi Ismail entitled "Muslims with Disabilities: Psychosocial Reforms from an Islamic Perspective" explores society's perceptions and attitudes towards Muslims with disabilities, and provides strategies for psychosocial reform advocating the integration of Islamic principles with psychosocial reform, such as emphasizing the importance of promoting inclusivity and support for individuals with disabilities in Muslim communities (Ibrahim & Ismail, 2018).

The difference between the articles above and the research conducted by the author is that the author focuses on research and exploration of legal inference methods carried out by LMBNU in the book "Strengthening Fiqh for People with Disabilities". Meanwhile, the two articles above focus more on analyzing the meaning in Islamic legal sources related to disability discourse.

## **RESEARCH METHOD**

This article is a literature review that uses a content analysis approach and belongs to a qualitative research (Zuchdi Darmiyati & Afifah Wiwiek, 2019). The primary data from the research is the book of "Strengthening Fiqh for People with Disabilities" published by the Advisory Board of PBNU in 2018. The secondary data is the book of "NU Intellectual Traditions" written by Ahmad Zahroh, published in 2004, and "Religious Problems" written by Aziz Masyhuri published in 2004. Therefore, researchers initially analyzed the fatwas contained in the primary data, continued by collecting data from various sources such as books, journals, theses and so on, then described and analyzed the methods used in each fatwas.

## **DISCUSSION**

### **Nahdlatul Ulama Advisory Board (Lembaga Bahtsul Masail Nahdlatul Ulama / LBMNU)**

Before discussing further regarding the methods and legal considerations used in the construction of fiqh to strengthen people with

disabilities, in-depth knowledge and understanding are needed regarding the Nahdlatul 'Ulama and the institution that has a very significant role in formulating this construction, namely the Nahdlatul 'Ulama Advisory Board (LBMNU).

NU, or Nahdlatul Ulama, the largest Islamic organization in Indonesia was founded in 1926. NU's main commitment is to promote moderate Islam and protect the interests of traditionalist Muslims. The foundation of this organization was motivated by a response to the developing foreign political situation and also as a response to the Wahhabi movement which was considered a radical movement. NU is also known for the concept of Islam Nusantara, which aims to withstand the impact of globalization and introduce a moderate understanding of Islam in Indonesia (Fuad, 2020).

NU is committed to maintaining, developing and practicing Islamic teachings in accordance with the majority of the Ahlussunnah wal Jama'ah. One of the characteristics of NU is its adherence to one of the four *mazhab* (main schools of thought) in Islam. Apart from being the protector and defender of Muslims, NU is also active in mediating and accelerating the reconciliation process among Muslims in the archipelago. With the support of leading ulama, NU has become a forum for maintaining and promoting Islamic teachings in accordance with the traditions of ahlussunnah wal jama'ah (Fuad, 2020).

Islamic boarding schools are one of NU's valuable assets in terms of Islamic education and teaching. As a well-known Islamic educational institution, NU Islamic boarding schools provide a good learning environment for students to deeply understand and practice Islamic teachings. NU also participates in the development of civilization by developing Islamic teachings to create prosperity and progress for society. This organization upholds civilized human values and strives to improve human dignity in accordance with Islamic teachings (Fuad, 2020). One manifestation of this is the compilation of a fiqh book for people with disabilities, through one of the institutions that focuses on formulating fatwas; LBMNU.

Lajnah (Institute) Bahtsul Masail is an official forum established by NU and has the authority to answer all religious problems faced by Nahdiyyin community. Therefore, the scientific tradition that develops within NU is influenced by the decisions of this institution, because all problems that come in are studied and given answers and then transmitted to its community (Zahroh, 2004). According to the NU Articles of Association/Bylaws (AD/ART) article 17 paragraph 6 point L explains that the Nahdlatul 'Ulama Advisory Board (LBMNU) is tasked with discussing *mauḍū'iyah* (thematic) and *waqī'iyah* (actual) issues which

will become decision of the Nahdlatul Ulama Executive Board. (Pengurus Besar Nahdlatul 'Ulama, 2015)

According to Ahmad Zahro, there are still very few documents that provide information on the birth and development regarding the background, methods, objects and historical actors of the Advisory Board. However, according to him, if we look at the background and the NU Articles of Association, the establishment of the Advisory Board was due to the community's need for practical Islamic law ('*amali*) and required a solution by means of *Bahtsul Masail* (studying religious problems). The Advisory Board was first implemented in 1926, several months after the founding of NU (Zahroh, 2004).

Regarding the history of Advisory Board (*Bahtsul Masail*), Sahal Mahfudh explained:

*"Historically, the Bahtsul Masail forum existed before NU was founded. At that time there was already a tradition of discussion among Islamic boarding schools involving kiai and santri, the results of which were published in the LINO (Lailatul Ijtima' Nahdatul Oelama) bulletin. LINO, apart from containing the results of bahtsul masail, is also a place for long-distance interactive discussions between ulama. A kiai writes and then another kiai responds, and so on"* (Mahfudh, 2004)

*Lajnah Bahtsul Masail Diniyyah* officially appeared at the XXVIII Muktamar in Yogyakarta in 1989. This institution was a recommendation from commission I (*Bahtsul Masail*) which was also supported by the Denananyar *halaqah* (symposium) which was held on 26-28 January 1990, with the hope of gathering NU ulama and intellectuals to carry out *ijtihad jama'i* (collective *ijtihad*). According to these two encouragements, finally in 1990 *Lajnah Bahtsul Masail Diniyyah* was officially established based on PBNU decision Number 30/A.I.05/5/1990 (Zahroh, 2004)

However, it should be noted that in fact in the NU organizational structure, the one in charge of implementing *Bahtsul Masail* is the *Syuriah* Institution (one part of the NU organizational structure at all levels, which has the highest authority) and structurally too, LBMNU is under the supervision of *Syuriah* NU which is the highest structure in NU and oversees NU's *tanfidziyah* (daily implementation institution) and other institutions (Abshor, 2016).

Then the structural management of the *Lajnah Bahtsul Masail* is simply handled by the chairman (*Ra'is*), secretary (*katib*), members (*a'da'* or *a'wan*) and the drafting team consisting of the chairman, secretary and several members. Meanwhile, *Bahtsul Masail* participants are NU ulama and intellectuals, both inside and outside the organizational structure, including Islamic boarding school caregivers (Zahroh, 2004).

### **Construction of Strengthening Fiqh for People with Disabilities**

The book of "Strengthening Fiqh for People with Disabilities" was created in response to conditions where the rights of people with disabilities are often ignored and they face various challenges in practicing religious teachings. The aim is to convey better knowledge about the rights of people with disabilities in the context of fiqh, as well as to promote public awareness so as not to discriminate against them (Lembaga Bahtsul Masail Nahdlatul 'Ulama et al., 2018).

In this book, various issues related to disability are presented, including the definition of disability and the challenges faced by people with disabilities. Islamic views on disability, including rights and obligations as well as the principle of convenience in Islam, are also discussed in depth. Apart from that, there are also discussions on fiqh issues related to worship, economics, social, legal, policy, marriage and family for people with disabilities (Lembaga Bahtsul Masail Nahdlatul 'Ulama et al., 2018).

The process of compiling this book involved various parties, such as kyai/ulama, government, organizations for people with disabilities, academics, and others. Informal discussions and meetings, such as symposium, Focus Group Discussion, and *Bahtsul Masail*, were held to discuss various aspects of strengthening and fulfilling the rights of persons with disabilities based on Islamic sources, such as the Holy Quran, Hadith, and *aqwalul ulama* (ulama's speech) (Lembaga Bahtsul Masail Nahdlatul 'Ulama et al., 2018).

Historically, this book is the result of collaboration between the Bahtsul Masail Institute (LBM) of PBNU team, the Islamic Boarding School and Community Development Association (P3M), and the Center for Disability Studies and Services (PSLD) of Brawijaya University Malang, with support from YAKKUM and The Asia Foundation. Through informal discussions and chats, the writing team succeeded in completing the book (Lembaga Bahtsul Masail Nahdlatul 'Ulama et al., 2018)

The main objective of the book "Strengthening Fiqh for People with Disabilities" is to increase public understanding of the rights of persons with disabilities from the perspective of Islamic fiqh, as well as to encourage the strengthening and fulfillment of their rights as part of society (Lembaga Bahtsul Masail Nahdlatul 'Ulama et al., 2018).

### **LBM-NU Legal Istinbat Methodology: *Qauli, Ilhaqi, and Manhaji***

Lajnah Bahtsul Masail as the institution that has the highest authority to issue fatwas in the NU organization, uses a *madzhabiy* approach in its various fatwas (Zahroh, 2004: 168). At the Nahdlatul Ulama Alim Ulama National Conference which was held in Bandar Lampung on 21-25 January 1992, procedures for resolving fiqh problems

were explicitly and clearly defined. The procedure outlines the steps to be followed in resolving problems that arise.

The first procedure is when the answer can be found in the *Ibarah Kitab* (quotation from the book) and there is only one *qoul/wajh* (opinion) mentioned in the quotation. In this situation, the answer is taken from the opinion stated in the quote. Furthermore, if the answer still requires a choice between several *qoul/wajh* contained in the *Ibarah Kitab*, a *taqrir jama'iy* process is carried out. This is a joint decision making to choose one *qoul/wajh* that is considered most appropriate to the situation. If none of the *qoul/wajh* provides an adequate solution, then the *ilhaqul masa'il binadhairiha* procedure is carried out in congregation by the experts. This step shows cooperation and consensus from experts in finding solutions to the problems faced. Finally, in the cases of no *qoul/wajh* at all and it is not possible to carry out *ilhaq, istinbat jama'i* can be carried out using the *manhaji madhhab* procedure by experts. This reflects the collaborative efforts of experts in determining decisions based on the principles existing in their respective *mazhab* (schools of thought) (Masyhuri, 2004).

According to Muhammad Ulil Abshor (Abshor, 2016), Initially, LBMNU always used the *Qouliyy* method in carrying out *ijtihad*. However, due to the results of the conference held in Bandar Lampung in 1994, LBMNU issued a new and alternative method so as not to be trapped in legal stagnation, namely performing *ijtihad* in a *manhajj* manner.

Then, based on research conducted by Ahmad Zahro, on various documentaries related to fiqh legal decisions from 1926 to 1999, Lajnah Bahtsul Masail applied three types of legal *istinbath* methods which were applied hierarchically (Zahroh, 2004: 117-118), those are:

1) *Qouliyy* Method

This method is the *istinbath* method used by the Bahtsul Masail Institute, which refers directly to *ibarah kitab* from *al-kutub al-mu'tabarah*. The books referred to are limited only to the books of fiqh of the four *mazhab* leaders (Hanafi, Maliki, Syafi'i, Hambali) or books compiled by his followers. In simple terms, this method follows opinions that are already "finished" within the scope of a particular *mazhab*. So, what needs to be done is to quote the editorial / the text that is appropriate to the problem being discussed (Zahroh, 2004).

Then regarding the implementation of referrals to *ibarah kitab* that have more than one *qoul/wajh* (opinion), this is done by taking the opinion that is more beneficial and/or stronger. Furthermore, as far as possible, by implementing the provisions of the 1st NU congress, differences of opinion are resolved by selecting the opinion agreed by al-Syaikh (al-Nawawi and Rafi'i), if there is nothing agreed upon by both of them, choose the opinion taken by al-Nawawi only, then the opinion supported

by the majority of ulama, the opinion of respected ulama and finally the opinion of the most knowledgeable ulama' (Masyhuri, 2004).

According to Aziz Masyhuri, prioritizing to refer to the opinion of Imam Nawawi rather than Imam Rafi'i as Ibn Hajar was given more priority than Imam Ramli. The reason is based on considerations of his scientific work which is more *ahsan* (more advanced) and his wisdom. Meanwhile, the meaning of being supported by the majority of ulama is that this opinion is widely referred to and quoted by ulama in their works. The determination of the smartest scholar is if his opinions are often referred to by other scholars in their works. Meanwhile, the most knowledgeable ulamas are those whose biographies historically do not commit acts that are *syubhat* (unclear whether halal or haram) let alone those that are prohibited by religion, and also viewed from the aspect of *karamah* (sacredness) (Zahroh, 2004).

According to Husein Muhammad, this method is used because of a believed perspective that formulated legal fatwas by ulama always have relevance to the context of today's life and must be used axiomatically (Yahya, 2002). Apart from that, the Islamic boarding school bases within NU cannot be denied that the literature taught is heavily influenced by books belonging to the *mazhab* of Shafi'i. In addition, there is a provision that requires referring to Imam Nawawi and Imam Rafi'i. So, it is not surprising that the resulting decisions tend to or have the impression of being Shafi'i-centered (Mutakin, 2018).

Then, Husein Muhammad criticized that the selection regarding the *kutub al-mu'tabarah* and *ghairu al-mu'tabar* was very unclear, so that the emerging impression that what was called the NU version of *al-kutub al-mu'tabarah* were books which has been commonly recited in Islamic boarding schools for generations (Yahya, 2002). Nurotun Mumlahanan further emphasized that the *al-kutub al-mu'tabaroh* in question is actually dominated by books belonging to the *mazhab* of Shafi'i while books other than those of the *mazhab* of Shafi'i are rarely used (Mumtahanah, 2016). Then, according to Marzuki Wahid, he argued that this was because the Islamic boarding school's academic tradition was strong with the teaching of literature by the *mazhab* of Shafi'i which then dominated the worldview of NU scholars and intellectuals (Yahya et al., 2002:73-75).

Imam Yahya explained that this method was used because it was difficult to reach the degree of *mujtahid*, which resulted in NU's attitude of choosing to become a *mujtahid* of *mazhab*. Because for them, the formulation of a fatwa which refers directly to the Quran and Sunnah can only be conducted by an absolute *mujtahid* who has mastered various Islamic sciences and meets the requirements to become an absolute *mujtahid* (Yahya, 2002).



According to Sahal Mahfudh, regarding the *qouliyy* method which appears textualist, in fact the NU scholars (kiai) in giving fatwa often use the rules of fiqh or *ushul fiqh*, but the problem is that they refuse will it if based on no text. So theoretically, it looks textualist but quoting and taking The text has gone through a long and complicated *manhaj* (methodological) reasoning process. (Mahfudh, 2004)

## 2) *Ilhaqiy* Method

This method is the second method after *qouliyy*, which is used if no textual answer is found from the *mu'tabar* books, this method is known as the rule of *ilhāq al-masā'il bi nazā'irihā*, which is making a legal analogy on an unanswered case/problem or no available legal provisions in the *mu'tabarah* books, with similar problems/cases that already have legal provisions or equate opinions that are already "finished". At first glance, this method is the same as *qiyas*, but the difference lies in that the analogy is not based on the law resulting from *ijtihad* based on the Qur'an and Sunnah but on opinions that have been made in *mu'tabarah* books (Zahroh, 2004).

The *ilhaq* procedure was explicitly stated at the Alim Ulama Nahdhatul Ulama National Conference in Bandar Lampung on 21-25 January 1992, "In the event that a problem has not been resolved in the book, then the problem/case is resolved using the *ilhaqul masa'ili nadha'iriha* procedure (analogizing the problems from the theory) in a jama'i manner. "*Ilhaq* is carried out by paying attention to *mulhaq bihi* (theory adopted), *mulhaq ilaih* (things being analogized) and *wajuh-ilahq* (analogy) by expert *mulhiqs* (Masyhuri, 2004).

For example, the decision of the NU Congress in Situbondo regarding blank checks.

S: Is it legal to pay using a blank check?

J: Payment using a blank check is invalid, because it includes *tsamanan majhul* (prices that are unclear/unknown)

Information from the book:

*Mughnil Muhtaj, Chapter II page 78:*

"*Wa liya'lama thamanahu aw mā qōma bihi falaw jahilahu aḥadu huma baṭala 'ala al-ṣahih*" (Masyhuri, 2004)

The example above does not explain explicitly whether or not it is legal to use a blank check. There is only a brief explanation regarding the invalidity of buying and selling if one party does not know the price. In this case, LBMNU analogizes a blank check to an unknown or unclear price. So in this case LBMNU uses the method of *Ilahqiy*.

According to Husein Muhammad, the existence of the *ilhaqiy* method is a step not to get trapped in the stagnation of fiqh (Yahya, 2002). It can be easily understood that not all *qoul ulama* in *al-kutub al-mu'tabarah*

answered the questions posed to LBMNU, so another method was needed, namely *ilhaqiy*.

Then, in line with Imam Yahya's statement - as explained in the *qouliyy* method - and also based on Mahfudh Shidiq's opinion as quoted by Sukron Ma'mun, he explained that the *ilahqiy* method also has the same reasons as the *qouliyy* method, namely the distrust of NU scholars to carry out *qiyas*, due to the various requirements imposed considered difficult to achieve by NU scholars (Ma'mun, 2011).

### 3) *Manhaji* Method

Based on the decision of the Alim Ulama Nahdhatul Ulama National Conference in Bandar Lampung explained "*What is meant by practicing a mazhab in a manhaji manner is a mazhab that follows the way of thinking and rules of legal determination that have been prepared by the Imam of the mazhab.*" (Masyhuri, 2004). The meaning of "way of thinking" is *ushul fiqh*, and "rules" are *fikhiyah* rules. The general meaning is to carry out *legal istinbath* using a methodology that has been formulated and compiled by the *Imam Mazhab*, for example in the book *al-Risalah* by Syafi'i which formulates an *istinbath* methodology used by NU ulama. So it is not based on the results of his *ijtihad* or law product (Yahya, 2002).

However, regarding this method, it is also necessary to pay attention to the decisions of the 31st and 33rd congresses. In the 31st congress, practicing the *mazhab* according to *manhaji* was defined as taking legal opinions that follow the way of thinking and rules of legal determination of the *Imam Mazhab*, with the application of *qawaidh ushuliyah*. In the 33rd congress, the application of *qawaidh ushuliyah* in the *mazhab* practice in *manhaji* manner was determined using the *bayani*, *qiyasi* and *maqashidi/istishlahi* methods (Riyanto, 2017).

The *bayani* method refers to taking laws from the Quran and Sunnah, while *qiyasi* uses a *qiyas* (analogy) approach, and *istishlahi* considers *maqasid al-shari'ah*. LBMNU carries out *legal istinbath* in a *manhaji* manner by applying the *qawaidh ushuliyah* (Riyanto, 2017)

However, the concept of practicing the *mazhab* in a *manhaji* manner is still a subject of debate. Some groups, such as confrontational-conservatives, reject this method because they do not reflect the principles of *mazhab* assertiveness. Meanwhile, accommodative-conservative and accommodative-progressive view this method as a form of practicing the *mazhab* in a *manhaji* manner in Nahdhatul Ulama, regardless of the mujtahid qualifications of each person, but the most important thing is that this method is carried out collectively (Riyanto, 2017)

Then, an example of the application of this method is the decision of the 1st Nu Congress regarding almsgiving to corpses.

S: Will we get the reward of *sadaqah* to the corpse?

J: Yes, you will!

Description: in the book of al-Bukhari chapter "Jenazah (Corpse)" and in the book al-Muhadzab chapter "testament"

*Ruwiya ibn 'Abbās anna rajulan qāla lil-rosulullah ṣallallah 'alaihi wa sallam inna ummī qod tuwufiyat a yanfa'uhā an atasadaqa 'anha? faqāla na'am qāla fainna lī mukhrifan fashad laka annī qad tasaddaqtu bihā 'anha.* (Masyhuri, 2004)

This decision is one of the decisions that uses the *manhaji* method because it directly refers to the hadith which is a source of law and postulates used after the Quran by Imams of the fourth *mazhab*, and this decision uses the *bayani* method.

The rational reason for the existence of the *manhaji* method is because there are many problems today that cannot be solved using only the *qouliyy* and *ilhaqiyy* methods. This is similar to the *ilhaqiyy* method which is an alternative if no *qoul* can be found that answers the problem directly. So, when *ilhaqiyy* cannot be done, a new effort is needed to avoid a legal vacuum or stagnation in responding to the increasingly complex public problems, namely the *manhaji* method.

According to Ahmad Zahroh on his research, the *qouliyy* method is the most widely used method and becomes a priority in efforts to resolve public problems. This is because of the 428 jurisprudential legal decisions between 1926-1999, 362 issues (84.6%) were decided using the *qouliyy* method, because this method is a priority. There were 33 problems (7.7%) that were decided using the *ilhaqiyy* method, and 8 problems (1.9%) were decided using the *manhaji* method (Zahroh, 2004).

Meanwhile, Mahsun further researched the period 1926-2010, out of 501 problems, 374 problems were decided using the *qouliyy* method, 28 problems were decided using the *ilhaqiyy* method, 59 problems were decided using the *manhaji* method, and 40 problems were decided using the unclear method (Mahsun, 2015).

From the two data above, it can be concluded that the *qouliyy* method is the most widely used by LBMNU in carrying out *legal istinbath* in the period 1926-2010. This makes NU, often called a traditionalist organization for always referring to the books that is *muktabarkah* in practicing *istinbath*, as well as the academic traditions of Islamic boarding school learning. And these three methods seem to still be used in constructing books on disability fiqh and determining other legal fatwas.

In simple terms, LBMNU in enacting a law is always done collectively. According to Nadirsyah Hosen, (Hosen, 2004) collective *ijtihad* has the potential to increase the relevance and applicability of Islamic law in the modern context and collaboration between Muslim scholars is crucial in providing holistic solutions to the various complex problems faced by the Muslim community today. However, sometimes collective *ijtihad*, as hoped by Nadiryah Hosen, is sometimes trapped in

legal stagnation. For example, in the case of marriages carried out online, which were declared invalid by the LBMNU because they did not meet the requirements for the marriage contract procession (Farid Wajidi et al., n.d.).

**Istinbat Hukum in the Construction of Fiqh for Disability: Domination of the Qouliy Method**

In the book of "Strengthening Fiqh for People with Disabilities," there are four main issues discussed, those are: Worship, Economics and Social Affairs, Law and Policy, and Marriage and Family. The methodology used by LBMNU of the 80 problems discussed in the construction of fiqh for disability, there are 25 problems using the *manhaji* method, 30 problems using the *qouliy* method, 10 problems using the *ilhaqiy* method, 14 fatwas using the collaborative method, and 1 problem using an unclear and cannot be included in the 4 methods above. This happens because there is no *ibarah kitab* that is quoted, it is not be *qiyas/ilhaq* and also does not use the *manhaj* method, and only prioritizes the benefit then gives advice.

In general, of the four issues discussed in the book, the *qouliy* method is the most used method, followed by *manhaji*, collaborative and *ilhaqiy*. The *qouliy* method is almost the dominant method in every issue, except for legal and policy issues which are dominated by the *manhaji* method. Then there are two legal issues for which there is no *ilhaqiy* method at all, namely economic and social issues and marriage and family. For more details, see the following table: :

No	Issues	Method				
		Qouliy	Ilhaqiy	Manhaji	Colaborative	Unclear
1	Worship	11	7	4	5	0
2	Economics and Social Affairs	6	0	3	5	0
3	Law and Policy	4	3	10	3	1
4	Marriage and Family	9	0	8	2	0
TOTAL		30	10	25	15	1

Regarding the above, it is explained as follows:

The *manhaji* method is the last method to use in case of inability to use *qouliy* and *ilhaqiy*. This method does not just base the foundation of *legal istinbath* on the Qur'an, sunnah, *qawaid fikihiyah*, or *ushuliyah*. In this

case, the author agrees with Ahmad Zahro that highlighting the role of reason in legal istinbath is part of this method (Zahroh, 2004).

As an example of implementing this method, namely regarding, "Equality of Rights for Disabled and Non-Disabled", LBMNU believes:

"In general, disabilities have the same rights as non-disabled people. However, to fulfill these equal rights, people with disabilities must receive more services. This service is carried out in terms of handling and infrastructure that must be provided. Furthermore, it is also necessary to understand that at certain levels there are exceptions to the sharia. This exception takes into account the interests of disabled and non-disabled people. In Al-Asybah wa al-Nadhair it is explained:

*Taşaruf al-imām 'ala al-ra'iyah manūṭ bi al-maşlāhah hadhihi al-qa'idah naşā 'alaihā al-imām al-Shafi'ī wa qāla manzilah al-imām min al-ra'iyyah munazzalah al-walīyy min al-yatīm*

"A leader's policy towards his people is based on benefits. This rule was stated directly by Imam Syafii who also said, "The position of a leader towards his people is like the position of a guardian towards orphans" (Husna, 2018: 158-160).

In his answer he did not discuss the concept of equality in Islam and instead quoted fiqhiyah principles regarding the leader's policy towards his people based on benefit. So according to the author, it does not answer the question and is not included in the *qouliyy* because *ibarah kitab* does not answer the question. legal istinbath on this issue is more about the use of reason or ratio, and includes the *manhaji* method.

Furthermore, the *qouliyy* method is a typical method commonly used by LBMNU which directly refers to "finished" *qoul*, or according to Moh. Mufid ,(Mufid, 2020) method of making legal decisions (fatwa) is based on information from legal experts in classical books.

For example, regarding "Transferring Mazhab Fiqh for People with Disabilities" LBMNU believes that basically the law of *talfiq* is haram or prohibited, especially since the intention is to seek light opinions based on lust, but it is permissible if in emergency situations, necessities, incapacity, or the right reason, for example that is something that can be done to worship with all its limitations.

This conclusion is based on the ulama's *qoul* which is quoted directly from the book of *Tanwir Qulub* and the book of *al-Fikih al-Islami Wa Adillatuhu*. The two opinions quoted discuss the permissibility of *talfiq*. So, this method is fulfilled by simply quoting opinions that discuss the same subject matter. However, in the construction of disability fiqh, several legal istinbath were found which were substantially *qouliyy* but did

not include *ibarah kitab* and references, for example, regarding "cleansing the blind" according to LBMNU:

"If a blind person wants to use water and someone tells him that the water is unclean, then he must accept the notification on the condition that he explains why it is unclean and does not make *ijtihad* himself. This is the opinion of the majority of Ulama. If there are two vessels (water containers), one of which is unclean and the other is pure, then the blind person is confused about which one is unclean when he is going to pray. If so, then he is allowed to make *ijtihad* and purify himself based on his strong suspicion (*ghalabat al-zan*) by maximizing the other senses that are still functioning. This is the clear opinion of the three opinions of the Ulama. This opinion is the opinion of the *mazhab* of Hanafiyah and Syâfi'iyah" (Husna, 2018: 76)

The explanation above contains the editorial of "this is the solid opinion of three ulamas' opinions". In fact, the editorial refers to the opinion of the ulama, but in this case it does not include any *ibarah kitab* or references and only quotes one verse, so this problem is included in this method.

The *Ilhaqiy* method is the second method that is used if you cannot find a *qoul* that explains the problem to be *istinbât*, by analogizing a problem with a problem that already has a *qoul* or law based on the *ijtihad* of ulama in the *kutub al-mu'tabarah*. On the problem of disability fiqh, explicitly in the explanation included in this method the key editorial "equated" or "analogized", however there are also those which do not use this editorial, but the author includes it in this method, for example, regarding "Friday Prayer for the Deaf", in the legal istinbath answer the two key editorials were not found, the editorials are as follows:

"Members of the congregation who do not hear the imam's sermon during Friday prayers may say whatever they want. Either because his position is far from the imam, there is no loudspeaker, or because he is deaf. However, it is recommended for him to keep himself busy with dhikr or reciting the Quran or religious books. Note that he should not read it too loudly, so that it disturbs other people. This is the opinion of the *mazhab* of Hanbali and some of the Shafi'iyah. Al-Mardawi said: "It is permissible for someone who is far from the imam and does not listen to sermons, so that he can occupy himself by reciting the Quran or doing dhikr slowly. And this action is better (than remaining silent)." And another statement from al-Buhuti who said: "If he is far from the imam, so that he does not hear the imam's sermon, he is not

prohibited from speaking. Because he is not a *mustami'* (listener). However, it is recommended to keep himself busy with *dhikr*, reciting the Quran or *shalawat* to the Prophet *sallallaahu 'alaihi wa sallam* slowly. And that's better than being silent. And it is recommended that he not chat".

The problem above is included in this method because the *ibarah kitab* does not explain explicitly about deaf people who join Friday prayers and cannot hear the sermon, but explains about people whose position is far from the imam and cannot hear the sermon. Therefore, according to the author the equation is cannot hear.

Then, the collaborative method or mixed method, of which LBMNU in carrying out legal *istinbath* of disability *fiqh*, uses at least 2 methods; *manhaji qouliyy*, *manhaji ilhaqiy* or *qouliyy ilhaqiy*. The *manhaji qouliyy* method is based on direct reference to the Qur'an, hadith, *qawaidh fikihiyah*, and *ushuliyah*, which is then strengthened by the *ibarah kitab* or vice versa, legal *istinbath* has even been found which is based on *qoul* but includes it in this method.

For example, regarding "Sign Language", is explicitly answered based on the legal *istinbath* refers to two *qoul*; al-Ghazali's and Muhammad Khatib asy-Syirbini's. Al-Ghazali explained the urgency of a language, which was then linked to sign language, which then had implications for how to explain Islamic teachings to those with hearing and speech disabilities. There lies the urgency that it is morally ethical to learn Sign Language is *fardu kifayah* as is the law of *da'wa*.

Based on these answers, the author sees that the role of reason in answering this problem is very prominent, so that according to the author, it is not only included in the *qouliyy* method but also *manhaji*.

Apart from the methods mentioned above, there are several issues which according to the author fall into the category of "unclear" methods used. For example, regarding, "Making ATM and Driving Licence", LBMNU in making ATM has an opinion:

"Several cases were found where blind people were unable to make ATM because they were considered inconsistent in signing. So companies are required to make accessibility for people with disabilities who want to become their customers" (Husna, 2018: 178).

LBMNU in implementing the *istinbath* regarding ATM did not base it on legal sources or *qawaid fikihiyah* or *uṣūliyah* but suggested making it accessible for people with disabilities who want to become its customers. Meanwhile, regarding making a driving licence, LBMNU has an opinion:

"Meanwhile, people with hearing and speech disabilities encounter obstacles when getting a driving license, even though they feel capable of operating a vehicle. So, by looking at the

benefits and eliminating the harm, they are allowed to drive provided they modify the vehicle to replace the function of danger signals”.

According to the author, there is something unique of which it is based on benefits and eliminates harm. Theoretically, "eliminating harm should take priority over taking benefits". What takes priority is "eliminating harm" in implementing a benefit, and at first glance, the problem will be considered using *manhaji* due to considerations of benefit. However, LBMNU does not explain and consider further regarding the harm that might happen. So, this matter is not based on these rules but only provides suggestions to require the replacement of the danger signal function for people with disabilities.

The *qouliy* method in disability fiqh is the most widely used method. This provides an understanding that disability fiqh cannot be separated from the worldview of its formulators; LBMNU who must continue to implement decisions regarding the Bahsul Masail decision-making system within NU.

Even so, the LBMNU method has started to become more open, flexible and progressive, because the *manhaji* method has occupied a significant position (second most), coupled with the collaborative method. Moreover, the LBMNU in one of its legal istinbaths regarding disability fiqh also quoted the opinion of Ibnu Hazm from his book; *al-muhalla*, even though it only refers to the book once and is only used as an addition and reinforcement to the ulama's *qoul* mentioned previously (Husna, 2018: 150-153).

According to Imam Yahya, within NU circles, there has emerged an awareness of the plurality of *mazhab*, both in theory and practice in religious understanding. The introduction and teaching of books that are not the work of the *mazhab* of Shafi'i has become normal and even a necessity (Yahya et al., 2002: 59).

The existence of a collaborative method - as explained previously - is proof that LBMNU has opened itself up and is trying to be more progressive and dynamic in its practice, so that the way to answer problems in disability fiqh is somewhat different from the various decisions of the Congress or National Conference of Alim Ulama which are generally the majority immediately give answers accompanied by the *ibarah kitab*, without lengthy explanations or descriptions. Whereas in disability fiqh, some of the legal istinbath go directly to the answer and quote the *ibarah kitab* and the mostly (the majority) of the others are accompanied by explanations and descriptions.

The methods presented by LBMNU are still able to answer various contemporary public problems, especially regarding the problems of people with disabilities. Even though it is still considered traditionalist



and gullibe, because the *qouliy* method is still a priority in various issues that are decided either through the symposium or the National Conference of Alim Ulama, including in the construction of jurisprudence, disability is still the most widely used method.

## CONCLUSION

In the structure of the NU disability fiqh book, there are jurisprudence cases discussed by LBMNU, these cases are divided into four aspects; worship, economics and social, law and policy and marriage and family. Based on the author's findings, of the 80 problems in the construction of disability fiqh, there are 25 problems using the *manhaji* method, 30 problems using the *qouliy* method, 10 problems using the *ilhaqiy* method, 15 problems using the collaborative method, and 1 fatwa cannot be included in the 4 methods above.

In general, of the four issues discussed in the book, the *Qouliy* method is the most commonly used, followed by the *Manhaji*, Collaborative, and *Ilhaqiy* methods. The *qouliy* method tends to dominate in almost every issue, except for legal and policy issues where the *manhaji* method is mostly used. Two legal issues; economic and social and marriage and family, do not use the *ilhaqiy* method at all.

## BIBLIOGRAPHY

### Books

- Lembaga Bahtsul Masail Nahdlatul 'Ulama, Perhimpunan Pengembangan Pesantren Masyarakat (P3M) dan, (PSLD), & Pusat Studi dan Pelayanan Disabilitas. (2018). *Fikih Penguatan Penyandang Disabilitas* (S. Husna, Ed.; Cetakan I). Lembaga Bahtsul Masail PBNU.
- Mahfudh, S. (2004). *Nuansa Fikih Sosial*. LkiS.
- Mahsun. (2015). *Mazhab NU Mazhab Praktis: Bermazhab Secara Manhaji dan Implementasinya dalam Bahsul Masail Nahdlatul Ulama*. Nadi Pustaka
- Masyhuri, A. (2004). *Masalah Keagamaan*. QultumMedia
- Zuchdi Darmiyati, & Afifah Wiwiek. (2019). *Analisis Konten, Etnografi, & Grounded Theory, dan Hermeneutika dalam Penelitian* (R. Damayanti, Ed.; 1st ed.). Bumi Aksara.

### Journals

- Abshor, M. U. (2016). Dinamika Ijtihad Nahdlatul Ulama (Analisis Pergeseran Paradigma dalam Lembaga Bahtsul Masail NU). *Millati, Journal of Islamic Studies and Humanities*, 1(2), 75–90. <https://doi.org/10.18326/millati.v1i1.227-242>
- Al-Aoufi, H., Al-Zyoud, N., & Shahminan, N. (2012). Islam and the cultural conceptualisation of disability. In *International Journal of Adolescence*

- and Youth* (Vol. 17, Issue 4, pp. 205–219).  
<https://doi.org/10.1080/02673843.2011.649565>
- Farid Wajidi, M., Mustafid, F., Sunan, U., & Yogyakarta, K. (n.d.). *MARRIAGE PRACTICES IN THE DIGITAL AGE: A Comparative Analysis of Muhammadiyah and Nahdlatul Ulama's Fatwas on Online Marriage*. <https://journal.iainkudus.ac.id/index.php/Yudisia/index>
- Fuad, A. J. (2020). Akar Sejarah Moderasi Islam Pada Nahdlatul Ulama. *Tribakti: Jurnal Pemikiran Keislaman*, 31(1), 153–168. <https://doi.org/10.33367/tribakti.v31i1.991>
- Hosen, N. (2004). NAHDLATUL ULAMA AND COLLECTIVE IJTIHAD. In *New Zealand Journal of Asian Studies* (Vol. 6).
- Ibrahim, I., & Ismail, M. F. (2018). Muslims with Disabilities: Psychosocial Reforms from an Islamic Perspective. *Journal of Disability and Religion*, 22(1), 1–14. <https://doi.org/10.1080/23312521.2017.1351327>
- Ma'mun, S. (2011). ILHAQ DALAM BAHTSUL MASA'IL NU; ANTARA IJTIHAD DAN IKHTIYAT. *ALQALAM*, 28(1), 63–86. <https://doi.org/10.32678/alqalam.v28i1.512>
- Mufid, M. (2020). Green Fatwas in Bahtsul Masā'il: Nahdlatul Ulama's Response to the Discourse of Environmental Crisis in Indonesia. *Jurnal Hukum Dan Pranata Sosial*, 15(2), 173–200. <https://doi.org/10.19105/al-lhkam.v15i2.3656>
- Mumtahanah, N. (2016). BAHTSUL MASAIL NU (Sebuah Kritik Metodologi). *AKADEMIKA*, 10(2), 151–159.
- Mutakin, A. (2018). KITAB KUNING DAN TRADISI INTELEKTUAL NAHDLATUL ULAMA (NU) DALAM PENENTUAN HUKUM (Menelisik Tradisi Riset Kitab Kuning). *Syariah: Jurnal Hukum Dan Pemikiran*, 18(2), 192. <https://doi.org/10.18592/sy.v18i2.2270>
- Silvia Pramashela, F., & Abdul Rachim, H. (2021). AKSESIBILITAS PELAYANAN PUBLIK BAGI PENYANDANG DISABILITAS DI INDONESIA. In *Focus: Jurnal Pekerjaan Sosial e* (Vol. 4, Issue 2).

### Others

- Kementrian Sosial Republik Indonesia. (2021). *Pedoman Operasional Asistensi Rehabilitasi Sosial Penyandang Disabilitas*. <https://kemensos.go.id/uploads/topics/16384433731911.pdf>
- Pengurus Besar Nahdlatul 'Ulama. (2015). *Anggaran Dasar dan Anggaran Rumah Tangga NU*. Lembaga Ta'lif Wan Nasyr PBNU.
- Riyanto, A. (2017). *Metode Mazhab Manhaji Nahdhatul Ulama (Studi Pandangan Aktiois Bahtsul Masail Jawa Timur tentang Metode Istibath Ahkam Hasil Mukhtamar ke-33)*. UIN Sunan Ampel Surabaya.
- Yahya, I. (2002). *Kritik Nalar Fikih NU* (I. Rahmat, Ed.). LAKPESDAM.
- Zahroh, A. (2004). *Tradisi Intelektual NU*. LkiS.