

## Implementation of the Legal Istinbath Method of LBM Mudi Mesra Samalanga

Yasir Nasution<sup>1</sup>, Pagar<sup>2</sup>, Abdullah<sup>3</sup>

<sup>1,2,3</sup>Universitas Islam Negeri Sumatera Utara, Indonesia  
atiraceklah@gmail.com

### Abstract

*Istinbath of law which is able to abstract the thoughts of previous scholars and place them according to portions and proposals. On the other hand, various fatwa institutions have also emerged, but the results are very irrelevant and not adaptive to the environment, the ilhaq al-masail bi nadhairiha method was born as one of the methods of legal istinbath carried out by LBM MUDI Mesjid Raya Samalanga. The ilhaq al-masail bi nadhairiha method is not just the result of the thoughts of the LBM board and expert council, but this method is reconstructed from a solid foundation. The basic argumentation of applying istinbath with the ilhaq al-masail bi nadhairiha method is also caused by the opening of the door to interrupt some of the arguments and evidence which are used as a legal basis in the past. The opening of the door can be seen from the existence of several rules which have very universal meanings and are able to adapt according to the development of the times*

### Keywords

implementation; legal istinbath method; Mudi Mesra



## I. Introduction

*Instinbāth* is a rule in fiqh proposal. In language the word *instinbāth* comes from Arabic, namely "استنباط - استنباط - استنباط" which means to issue, give birth, dig and others. The root word is "استنباط" (الماء) means rising water that comes out of the ground. Thus, according to the language the meaning of *instinbāth* is about removing something from its hidden hiding place.

The definition of *ijtihad* according to the theologian of the fiqh proposal is that there is a lot of diversity with the editor who adds it. But in the author's opinion, although with the diversity of the editors but not showing substantial variations, some of these definitions are: "معاني من الصوص من ال معاني اس تخراج" (contained) by shedding thoughts and abilities (potential) instinctively" (Kamal,2019)

According to Atabik Ali and A. Zuhdi Muhdhar in the contemporary Indonesian Arabic dictionary, what is meant by *instinbāth* is the excavation or removal of the law from the source.

As for the ways to obtain these rules can be found in three ways. First, it is directly a formulation of the al-Qur'an or hadith. Like the rule "there is no loss or loss" (*la dharara wa la dhirara*) is the Prophet's words which reads this way. The second is concluded inductively from a number of al-Qur'an texts or hadiths such as the rule of "difficulty brings ease" which is deduced from a number of verses of the al-Qur'an which provide dispensation and convenience in terms of implementing the provisions of sharia law. Inductively deduced from the legal provisions of similar detailed cases. For example, in a sale and purchase agreement, there are provisions in the form of a sale and purchase agreement based on the approval (consent) of the parties.

The presence of LBM MUDI is certainly a solution to the urgency of legal answers to actual problems, this can be seen from the fatwa issued which is very dynamic and preserves

local wisdom. These results are obtained from the appropriate and precise methodology of istinbath law that is able to abstract the thought of the previous ulama and place it according to the portion and proposinal. On the other hand, various fatwa institutions have also appeared, but the results are very irrelevant and not adaptive to the environment, of course, also the law issued in the fatwa through the istinbath process as a methodological framework. Both have istinbath methodology but produce law that is solution in the first party and often contradictory by the second party raises a problem about the substance of the methodology used. This assumption sometimes raises a paradigm about authentic and comprehensive formulation of reasoning as outlined in the istinbath methodology on the first side and the imposition of a rush of ijthihad by mixing rationalism and philosophy to view the benefits in the istinbath methodology on the other hand. Therefore, scientific studies are needed to eliminate the mere justification of istinbath methodology, basic arguments and the application and results of the legal products generated by the methodology it uses.

## **II. Review of Literature**

### **2.1 Method and Distribution of Ijthihad**

According to Muhammad Salam Madzkur divides the ijthihad method into three types, namely bayaniy, qiyasiy, and istislahi, namely:

1. Bayaniy method is a method of istinbath (excavation and stipulation) of law which rests on the principles of lughawiyah (linguistic) meaning of lafaz.
2. The Qiyasiy method is a way of istinbath the law by bringing something that is not yet known to the law through na sudah (Alquran and Sunnah) in order to determine or deny the law because there are characteristics that unite the two. Included in the qiyasiy method is istishan, which is switching from a qiyas result to another stronger qiyas result, or mentachsis of a qiyas result with another stronger qiyas result.
3. The Istislahiy method is a method of legal istinbath regarding a problem that rests on general arguments, because there are no specific arguments regarding the problem based on the principle of benefit which is in accordance with the maqasid asyari'ah (the main objective of Islamic law) which includes three categories of needs, namely daruriyyat (main), hajiyyat (important) and tahsiniyyat (support).

Some that can be categorized under this method are al-masalih al-mursalah (kemashlahatan for which there is no explicit text reference), al-istishab (basically everything is legal), bara'ah azzimmah (basically someone is not burdened by law, popularly known as the principle of presumption of innocence, sadd az'arai '(blocking the path that leads to violations of the law) and urf (good customs and habits).

Apart from the above methods, there are also various kinds of divisions of ijthihad depending on the point of view. When viewed from the perspective of the scope of the field that becomes the object, there are two categories, namely:

1. Ijthihad Kulliy (Whole), namely ijthihad which in a complete unity cannot be separated. This means that a mujtahid must be able to perform ijthihad in every problem. Because the knowledge of ijthihad is related to one another.
2. Ijthihad Juz'iy (partially), namely ijthihad which can be carried out even though a mujtahid only masters a certain legal method, so he may act according to the method he controls, even though he is not skilled in other methods.

Meanwhile, in terms of orientation (attention and tendency), the mujtahid in carrying out ijthihad in order to decide a problem can be grouped into two, namely:

1. Traditional Ijtihad, namely ijthad, which in the exploration and determination of the law is more oriented to expressive expressions in the Koran and Sunnah so that this group is often referred to as ahl al-Hadith or textualists.
2. Rational ijthad is ijthad which in its study and determination of law is more oriented towards the utilization of reason with based on the understanding that syariah law 'can be explored by looking at its substance aspects. This group is usually called ahl ar-Ra'y atrau contextualists.

If in terms of the number of perpetrators, *ijthad* is also divided into two, namely: 1) *Ijthad Fardiy* (Individual) is ijthad which is carried out independently and alone by a mujtahid, both in terms of methods and procedures for determining the law of a problem and in relation to the decision-making process. This *Mujtahid* must have several disciplines that are adequate as a requirement and as a capital for doing ijthad. 2) *Ijthad Jama'iy* (Collective), namely the mobilization of all efforts of the majority of Islamic jurists to find *dzanniy syar'i* laws by performing *istinbath* and the results are agreed upon by all or most of the Islamic jurists after deliberation. In this ijthad can gather various potentials in order to get better results

## 2.2 The *Ilhaq al-Masail bi Nadhairiha* Method

Building a method to unite the perceptions of reasoning from various experts with their respective expertise will be very helpful in producing maximum reasoning results; this reason is the background of the *ilhaq al-masail bi nadhairiha* method which was born as one of the methods of legal *istinbath* carried out by LBM MUDI Mesjid Raya Samalanga. The method of *ilhaq al-masail bi nadhairiha* is not just the result of the thoughts of the board and board of experts of the LBM, but this method is reconstructed from a strong foundation, among them the hadith narrated by Umar bin Khathab RA, namely:

وقد أخرج الدارقطني أن عمر بن الخطاب رضي الله عنه كتب إلى أبي موسى الأشعري أما بعد فاعرف الأشباه والأمثال ثم قس الأمور عندك فاعمد إلى أحبها إلى الله وأشبهها بالحق

Meaning: The narration from al-Daraquthni that Umar bin Khathab RA once wrote a letter to Abi Musa al-Asy'ari RA, "As after that, know what is most like and most equal then compare with your problems, hold on to the most Allah. love and to that which most closely resembles the truth.

This hadith is indicated by Umar ibn Khathab RA's suggestion in ordering Abi Musa al-Asy'ari RA to use qiyas in his *ijthad*, this is based on Abi Musa's capacity as a mujtahid. But on the other hand, Imam al-Sayuti emphasized that this hadith is a guide to using equality formulas in finding contemporary problems, from this hadith he also relies on the virtues and advantages of studying fiqh principles which are of course to find the law of the latest problems, this assumption boils down to the application of the rules. With the *ilhaq* method based on the above hadith.

قال الإمام السيوطي في الأصل هي صريحة في الأمر بتتبع النظائر وحفظها ليقاس عليها  
مالم ينقل

Meaning: Imam al-Sayuti in his original book, Hadith about the contents of Umar ibn Khathab RA's veins to Abi Musa al-Asy'ari RA clearly as an order to follow equal problems to be addressed with unlawful problems from the Al-Qur`an and hadith.

Textually, it is very inappropriate to interpret qiyas in Imam al-Sayuti's statement with the meaning of *qiyas* which is used as one of the methods of *ijtihad* by the *mujtahid*, because it will be very contradictory to the meaning of *nadhair*, it is different if the qiyas referred to in the text above is qiyas which is basically with the meaning of comparison. The hadith and the words of al-Sayuti above are used as the basic foundation by the pesantren's caregivers to compile a procedural *ilhaq* method in solving problems at every *mubahasah* event and become the permanent method of LBM MUDI Mesjid Raya in solving actual problems that cannot be solved by the *qauli* method.

The need for the method of *istinbath* law through *al-qawaid al-fiqhiyah* was also explained by Sheikh Yasin Isa al-Fadani, along with his statement;

قال "من يرد الله خيرا يفقهه في الدين" ومعنى ذلك التفقه بالفروع المحتاج إليها وبالقواعد إذ التفقه بالفروع كلها من لدن بعثة نبينا محمد صلى الله عليه وسلم إلى آخر الزمان عسير جدا حيث إن الوقائع ويتجدد بتجدد الزمان كما لا يخفى

Meaning: The Prophet SAW said whoever Allah SWT wants goodness to him surely Allah will give knowledge to him. The meaning of giving knowledge in the hadith is the knowledge of the *furū'iyah* that is needed by him as well as the knowledge of *al-qawaid al-fiqhiyah*. This is because knowing all of the *furū'iyah* since the Prophet Muhammad (peace be upon him) rose to the end of time is not possible because new problems continue to emerge throughout the ages as clearly occur.

This interpretation given by Sheikh Yasin Isa al-Fadani of the prophet's hadith has an impact on the assumption that the need for *al-qawaid al-fiqhiyah* is a necessity for a *faqih* in answering contemporary problems. The other side of the statement above is an attempt to consider aspects of rationality with the category of whether or not a text is reasonable, as well as an analysis of the sociological aspects of the text in the yellow book. Sociological considerations are intended as a study of the socio-cultural background of why and how a text was born as stated in the book, this problem actually becomes significant when we intend to develop thoughts on the text for different contexts or situations. The same statement about the urgency of *al-qawaid al-fiqhiyah* was also made by al-Qarafi, he said;

ومن ضبط الفقه بقواعده استغنى عن حفظ أكثر الجزئيات لاندراجها في الكليات، واتحد عنده ما تناقض عند غيره وتناسب

Meaning: Whoever masters the science of *fiqh* accompanied by the principles of his *kulliyah* then he does not need to bother memorizing the *juziyyah* laws, because everything has been included in these principles, in his view it will unite and according to something that other people think is different and opposite.

The invitation conveyed by Sheikh Yasin Isa al-Fadani and al-Qarafi seemed to mean a condition, in which the capacity and capability of a person conducting an actual legal study would give birth to the wrong paradigm without mastering the concept of *al-qawaid al-*

*fiqhiyah* as the basic material of the method. *ilhaq* to the maximum. Even though the *ilhaq al-masail bi nadhairiha* method can be done by anyone, of course, it also has specific criteria, including people who have understood *ushul fiqh*, *fiqhiyyah rules* and various other supporting sciences. This provision is due to the nature of the settlement using the *ilhaq al-masail bi nadhairiha* method, including the application of rules in certain cases. Rule is defined by Imam al-Sayuti as follows;

القاعدة : الأمر الكلي الذي ينطبق عليه جزئيات كثير تفهم أحكامها منها

Meaning: A rule is a general provision that corresponds too many specific cases where decisions in this general provision are used to determine the legal status of that specific case.

Some other scholars interpret the rules as follows;

قانون تعرغ به احكام الحوادث التي لانص عليها في كئات أو سنة أو إجماع

Meaning: Provisions that can be used to find out about the law of cases where there are no rules in the Qur'an, hadith or *ijma'*

The application of rules in solving cases in the *ilhaq* method becomes a basic concept, even though it means *ilhaq* with the perception of equating the law of a case that has not been answered by the book with similar case law that has been answered by the book. Thus the realm equates a new case with an old case because both are within the scope of the same principle.

In general, Imam al-Sayuti also invited the jurists to know about the principles of *fiqh* and their details, especially those contained in the book *al-Asybah wa al-Nadhair*. The book of *al-Asybah wa al-Nadhair* has become a compulsory reference book for every student who takes education in the field of Islamic legal thought, he said:

علم أن فن الأشباه والنظائر فن عظيم، به يطلع على حقائق الفقه ومداركه، ومأخذه وأسراره، ويتمهر في فهمه واستحضاره، ويقتدر على الإلحاق والتخريج، ومعرفة أحكام والوقائع التي لا تنقضي على ممر الزمان المسائل التي ليست بمسطورة، والحوادث

Meaning: Know that the science of *asybah wa nadhair* is a great science, where with this knowledge a person will be able to know the substance of *fiqh*, patterns of thought, the basis of legal references and the wisdom of implementing law. With this knowledge also a person will be able to have a formulation of reason and be able to realize it and be able to do *ilhaq* and legal *takhrij*. As well as being able to know the laws of problems that have never been mentioned before, and the actual problems that always arise in every time.

Imam al-Sayuti's statement above is a strong argument about the methods of *ilhaq* and *takhrij* that must be used by a person to be able to solve actual problems that occur at any time, of course that person must be an expert in the field of *al-qawaid al-fiqhiyyah* science so as not to give birth to contradictory views. In addition, this statement by Imam al-Sayuti essentially explains the criteria for a person who has the potential and capacity to do *ilhaq*

and *takhrij*, as well as this statement being a preventive attitude that must be in someone who does not know the knowledge of *al-qawaid al-fiqhiyyah*.

Imam al-Sayuti added that the substance of *fiqh* is recognizing comparisons (new cases-old cases), where these words strengthen the argument for the form of the *ilhaq al-masail bi nadhairiha* method.

قال بعض أصحابنا: الفقه معرفة النظائر

Meaning: Some friends say that *fiqh* essentially knows comparisons.

Studying the rules of *fiqh* will be very helpful in knowing the fundamentals of Islamic law and being able to find out various contemporary problems where these problems did not occur before or there was no legal stipulation from previous scholars. Even someone who has been an expert in the field of *fiqh* rules and knows them comprehensively will be able to lead him to the degree of a *mujtahid fatwa*. From all of Imam al-Sayuti's statements, it can be understood that the *ilhaq* and *takhrij* meant by him were that *al-qawaid al-fiqhiyyah* would have the anticipatory ability to answer new problems after the formulation of these rules.

The method of *ilhaq al-masail bi nadhairiha* invites more to take the line of thought of previous scholars in compiling *fiqhiyyah* rules and bridging the arguments used in legal stipulation on old problems to be used as references for new problems. In other words, through the *ilhaq al-masail bi nadhairiha* method, Islamic legal experts are invited to compile formulations to answer religious issues, not only to solve cases individually and selectively, this is the substantial meaning of the *istinbath* method which for some scholars instills with *fiqh manhaji*. Even considering all the statements above from various scholars, it is not too much to conclude that there is a genealogical relationship between the concept of *qiyas*, the concept of *al-qawaid al-fiqhiyyah* and the concept of *ilhaq*.

The perspective of the *maslahah* becomes one of the parts of the *ilhaq* method, where the study of the *maslahah* in the actual problem becomes the focus and subject of the case. *Maslahah* as a method of analysis of benefit by the *mujtahid* classifies it into two types, namely *al-mashlahah al-mursalah* and *al-dzari'ah*, both *sadd al-dzari'ah* and *fath al-dzari'ah*.

#### a. *Al-Mashlahah al-Mursalah*

*Al-Mashlahah al-mursalah* is a wording consisting of *al-mashlahah* and *al-mursalah*. *al-mashlahah* according to Ibn Manzhur means kindness. Meanwhile *al-mursalah* is the same as the word *al-muthlaqah* which means detached. It means that what is meant by *al-mashlahah al-mursalah* is *maslahat* or benefit that there is no certain argument that justifies or cancels it. This understanding is in line with what was explained by Muhammad Sa'id Ramadhan al-Buthi that;

شاهد لها ي كون أن دون ال شارع مقاصد في داخله من فعة كل هي الامر سلة المصالح حقيقة إن  
الإلغاء أو بالاعتماد

Meaning: The essence of *al-mashlahah al-mursalah* is every benefit that is included in the goal of *syara'* without any argument that justifies or cancels.

It should be underlined that basically there are differences of opinion about the blasphemy of *Mashlahah al-Mursalah* as the proposition and process of determining the law. Imam Shafi'i belongs to a group that rejects the blasphemy of *Mashlahah al-Mursalah* as the absolute proposition or basis for establishing the law, but Imam Shafi'i notes that even if



benefits can be accepted in Islam, of course these benefits should not contradict the Qur'an and hadith, *maqashid al-syari'ah*, and not motivated by lust and lust. Meanwhile, the scholar who uses *Mashlahah al-Mursalah* as the argument for establishing law is Imam Malik. According to him, using *Mashlahah al-Mursalah* as an argument for establishing the law does not go outside the scope of the Al-Qur'an and hadith.

### III. Discussion

#### 3.1 Application of the *Istinbath* Method of Mudi Mesjid Raya Samalanga

Pesantren as *tafaqquh fiddin* institutions have unique and specific features and characteristics from various other educational institutions. Characteristics include the method and curriculum that refers to the classic or more popular cleric book known as the yellow book. The interesting and unique aspect of this yellow book is that in terms of the need for special skills to understand it, this can be seen from many who master Arabic but are overwhelmed by understanding the yellow book, on the other hand there are also not a few scholars who really understand the yellow book but are unable to interact using Arabic. Another distinctive feature of the pesantren is that the caregivers and senior teachers have a continuous genealogy of knowledge even to the authors of certain books. This is a material that is very original and can be accounted for and comes from reliable sources, in this pesantren this aspect is better known as scientific sanad.

The lineage of science or better known as scientific sanad also includes aspects of the method of reasoning that are used from generation to generation, this method is inherited indirectly, meaning that in shaping the method of reasoning and studies to the next generation, it is not in the form of isolated curricula but compounds with other curricula. LBM MUDI Mesjid Raya also has a strong foundation on the application of the *istinbath* method like pesantren in general, the following is the basis for arguing for the application of the *istinbath* method at LBM MUDI Mesjid Raya.

Tgk. H. Muhamam Iqbal said that the *qauli* method shows the willingness of a person to accept the fatwa of the previous ulama contained in the yellow book. Aside from being caused by the pious and the precepts of the previous ulama, this willingness to accept is also based on the originality of the ulama's fatwa and is far from personal or group interests. This point of view does not indicate fanaticism that has no basis, but for some people they prefer the ready-to-serve rather than have to process it first with the *ijtihad* method which is far from true value.

The historical aspect on which the verse was revealed is to respond to the predictions of the polytheists who claim that Allah will not send messengers of a human kind. Even so, in the provisions of the proposed *fiqh* the legal consideration and emphasis in a verse is the generality (universal) of the *lafadz* verse. Therefore, the above verse actually contains an order for people who do not have religious knowledge to ask questions and follow the opinions of pious people among them. Departing from this, the scholars interpreted the necessity to ask questions in the form of *amaliyah* or other matters regarding religion that led to the obligation of *mazhab*.

Quoting the opinion of Thaib ibn Bakar al-Hadhrami, Imam Abdurrahman al-Saqafi tries to classify who is meant by people who do not know in the verse of the letter al-Anbiya, he said that the meaning is:

Meaning: Ordinary people in the *uruf* ulama *ushul* are known as people who do not have the capacity to consume *syara'* law through the argument that they do not even know the method, therefore it is permissible for them to do *taklid* and even obligatory *taklid* based on the word of Allah SWT. "Then ask people. Which is

knowledgeable if you do not know “? Meanwhile, people who are pious, but not yet have the status of a mujtahid, have the same position as ordinary people on the issue of imitation obligations.

This statement is quite firm about the capacity of a person how to be obligated, this arises with the category of laymen who are unable to understand the propositions of shara and pious who do not yet have a position as mujtahid. Regarding taklid or mazhab, Imam Taj al-Din al-Subki in the book *Jam'u al-Jawami'* states:

التزام غير المجتهد مذهبا معينا يعتقده أرجح أو مساويا لغيره

Meaning: To hold fast apart from mujtahid to certain mazhab which he believes is stronger or equal to others.

*Al-'Athar* when commenting on the word "*iltizam*" explained that the meaning of "*iltizam*" is that people who practice in dealing with a religious problem do not take or seek answers except in certain schools of thought. This explanation reinforces the meaning of the school which is an important aspect in interpreting the imitation. Badr al-Din al-Zarkasyi made the statement of Taj al-Subki above as the definition of al-tamadzhub (bermazhab). Shaykh Ramadlan al-Buthi also explained that what is meant by mazhab is;

أن يقلد العامي أو من لم يبلغ رتبة الإجتهد مذهب إمام مجتهد سواء التزم واحد بعينه أو عاش يتحول من واحد على آخر

Meaning: Ordinary people or people who have not reached the rank of being able to perform ijtihaad with the mujtahid Imam's mazhab, either he is tied to one particular mazhab or he lives moving from one school to another.

The need to study is actually a convenience and a blessing, it is clearly seen from the variety of opinions in various schools of thought that are very appropriate to be solutions according to physical conditions and the environment. How hard it is to be religious if all people have to perform ijtihaad and many sectors that are human needs will be neglected if every human being is obliged to perform ijtihaad, because to fulfill the requirements of ijtihaad, of course it will take a long time to study it.

The advisors, administrators, and daily executives at LBM MUDI Mesjid Raya, even the pesantren's caretakers, all of them have mazhab, mazhab not directly claimed to be old-fashioned. Between *mazhab* and *jumud* there is no correlation between one another which is mutually binding, if *jumud* is interpreted as rigorous thinking of change even though it is very necessary, then *mazhab* is interpreted as an attitude of holding one's firmly to certain schools of worship and daily *muamalah*. There were many previous scholars of the caliber of Imam Bukhari and Muslim imams who were known as the most authentic narrators of hadith. This is a sign that ijtihaad is not a necessity but an obligation for someone who already has the criteria and capacity as a mujtahid.

Fatwas, decrees, and guidelines for determining the law in the pesantren environment can certainly refer to the yellow book, the majority in the Syafi'i school of thought and sometimes also refer to other schools of thought. This provision is no different, whether the problems studied are related to the masail *fiqhiyyah*, the problem of Sufism, or the theology of monotheism, but what is most often studied and discussed is the actual problem related to fiqh. Schooling attitudes for pesantren have become a fundamental aspect of various religious



issues, this consequence can be seen from the strong effort to restore the law of fiqh in terms of references to books that are generally systematically arranged. In the event of a mistake or difference of opinion from the reference ulama, the tarjih will be sought according to the applicable provisions. Even if you have to refer to an opinion that is contrary to rajih, you will see another side that needs to be considered.

Opinions from various scholars certainly get a portion in the realm of studies that serve as a reference to the legal status of religious issues, but the large and small portions obtained differ. In this case Imam Ibn Hajar al-Haitami said;

قال الشيخ ابن حجر وغيره من المتأخرين: قد أجمع المحققون على أن الكتب المتقدمة على الشيخين لا يعتد بشيء منها إلا بعد كمال البحث والتحري، حتى يغلب على الظن أنه راجح في مذهب الشافعي

Meaning: Syekh Ibn Hajar and other scholars from among the mutaakhirin said that the muhaqiq scholars agreed that the entire book of al-Nawawi and al-Rafi'i certainly went through a process of deep study and discussion so that it was almost certain that his opinion was the strongest in the realm of the school Shafi'i.

These two Imams are followers of the Syafi'i School who get recommendations from the followers of the latest Imam Syafi'i as people who have authority in selecting the thoughts of Imam Syafi'i and his students. This statement of the attitude of Imam Ibn Hajar cannot be indicated that the opinions of other scholars have no place in the realm of fiqh discourse, even many scholars who unilaterally or agree with and become supporters of the opinions of Imam al-Nawawi and Imam al-Rafi'i.

In terms of differences of opinion between imam al-Nawawi and al-Rafi'i, the scholars said;

ثم قالوا هذا في حكم لم يتعرض له الشيخان أو أحدهما، فإن تعرضا له فالذي أطبق عليه المحققون أن المعتمد ما اتفقا عليه، فإن اختلفا - ولم يوجد لهما مرجح، أو وجد ولكن على السواء- فالمعتمد ما قاله النووي، وإن وجد لأحدهما دون الآخر فالمعتمد ذو الترجيح أه

Meaning: Then adding that the provision applies to issues that are not raised directly by both or one of them. If it is directly stated by the two of them, then what is strong is the opinion agreed upon by both of them, if there is a difference and there is no aspect that strengthens one or there are aspects but has the same degree, in this case the opinion expressed by al-Nawawi. If there is a supporting aspect for one of them, then what are strong is those who have that supporting aspect.

Putting the opinion of Imam al-Nawawi over Imam al-Rafi'i in times of disputes certainly has a strong foundation, among which is that Imam al-Nawawi is an expert on fiqh as well as an expert on hadith, this situation explains that the capacity of Imam al-Nawawi in the hadith is more prominent than Imam al-Rafi'i. Imam al-Nawawi's specialization in the field of hadith can be seen from the point of view that he always connects his *fiqh* with the basics of hadith. Regarding the position of imam al-Nawawi and imam al-Rafi'i, Abiya Muhammad as the LBM manager said that some people do not see this side and dare to comment that currently most people have tended to the al-Nawawi school, not to the al-Syafi

*mazhab*. 'i. Even considering that Imam al-Nawawi belongs to the category of *jumud* who does not dare to do *ijtihad*, the funny thing is that those who comment like this do not realize that their capacity is very far from that of Imam al-Nawawi, let alone Imam al-Syafi'i.

Regarding the order of the books that are used as references in answering the problem, Imam al-Kurdi said;

قال الكردي في "المسلك العدل والفوائد المدنية"، فإن تخالفت كتب النووي، فالغالب أن المعتمد: "التحقيق"، فالمجموع فد"التنقيح"، فد"الروضة" والمنهاج ونحو فتاواه، فد"شرح مسلم" فتصحيح التنبيه

Meaning: al-Kurdi said in the book al-Masalik al-'Adal and al-Fawaid al-Janiyah that fellow books written by Imam al-Nawawi then his strong habits are the al-Tahqiq book then the al-Tankih book then the al-Raudhah book and Kitab al-Minhaj and Fatawanya, then Syarh Muslim, then *Tashih al-Tanbih* and *Nukkat*.

At a glance LBM MUDI Mesjid Raya in deciding and resolving problems (*istinbat* law) seems to ignore the Qur'an and Hadith as the first and foremost source of Islamic law. However, in essence, LBM MUDI prioritizes prudence in deciding legal issues so that there is a need to compromise the various opinions of previous scholars in the mu'tabarah yellow books. More than that, by referring to the yellow book again will avoid the exclusive and fundamentalist interpretation of the understanding of the Al-Qur'an and hadith. Impressed to be very careful in solving religious problems in this form is also inseparable from the view that the chain of conversion of Muslims to Islam cannot be broken from one generation to the next.

#### IV. Conclusion

The obligation to practice for those who do not have the capacity of a *mujtahid* is a fundamental argument for the application of the *qauli* method and the *ilhaq* method. Another paradigm that becomes the basic reference for the application of the *qauli* method is that referring to the yellow book will avoid exclusive and fundamentalist interpretations of the understanding of the Qur'an and hadith. The existence of a typical pesantren by maintaining scientific *sanad* (*silsilah*) makes the yellow book through the contextualization-oriented *qauli* method as a very original reference and very appropriate for interpreting the Al-Quran and hadith. The basic argumentation of applying *istinbath* with the *ilhaq al-masail bi nadhairiha* method is also caused by the opening of the door to interrupt some of the arguments and evidence which are used as a legal basis in the past. The opening of the door is very apparent from the existence of several rules which have a very universal meaning and are able to adapt according to the development of the times, these rules certainly open up opportunities for jurists to resolve religious problems in accordance with the formulation of fiqh which is consumptive. Even the scholars stressed the role of *al-qawa'id al-fiqhiyah* in solving the problem of *furu'iyah* is a necessity.

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