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The Qur'an and Hadith as a Rule of Law Change: Fatwa Studies of Islamic Organizations in West Java

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Abstract: This study examines how Islamic organizations in West Java use the Qur'an and Hadith as foundations for legal rulings (fatwas) in response to contemporary challenges. Focusing on Muhammadiyah, Nahdlatul Ulama (NU), and Persatuan Islam (Persis), this study highlights how ijtihad (Islamic legal reasoning) adapts to social and technological changes. Comparative analysis reveals distinct methodological approaches: Muhammadiyah employs rational textual methods (bayani, qiyasi, istishlahi), NU combines traditionalism with contextual flexibility, and Persis strictly follows scriptural sources. These differences produce varying fatwas; for example, Muhammadiyah declares smoking *haram* (forbidden) due to health risks, whereas NU and Persis consider it *makruh* (discouraged) due to weaker scriptural evidence. These variations stem from differing interpretations of the texts, social considerations, and methodological priorities. These findings demonstrate Islamic law's ability to address contemporary issues while maintaining its core principles. The study suggests that fatwa differences reflect each organization's intellectual tradition and social context rather than fundamental disagreements about Islamic law. Future research could explore (1) regional variations in fatwa formulation across Indonesia, (2) interdisciplinary studies combining Islamic jurisprudence with the social sciences, and (3) the impact of digital technology on ijtihad processes. Such studies will deepen our understanding of how Islamic legal traditions interact with modernity in diverse Muslim communities.

Keywords: *Qur'an, Hadith, legal change, fatwa, ijtihad, Islamic organizations*

Introduction

Following Apostle's death, diversity in understanding the Qur'an became evident among his companions, with everyone expressing a unique perspective. This phenomenon can be attributed to the varying intellectual capacities and accuracy in recognizing the sentences contained in the Qur'an, whether explicitly or implicitly, among individual companions. This can be seen from the fact that Umar Ibn Al-Khaththab interpreted the verse: اَوْ يَأْخُذَهُمْ عَلٰى تَخَوُّفٍۗ

Then he asked about the meaning of *al-Takhawuf* (al-Nahl: 47) in that verse. Therefore, a man from the Hudzaili tribe said that he thought it could be interpreted *as al-Tanaqush*, which means to gradually reduce, as found in an ancient Arabic poem. This also happened to another companion, namely Addi Ibn Hatim (Husain al-Dzahabi, 2012 and al-Syaukani. T.th).

In previous studies, the differences among Sahabah in interpreting verses are more apparent. For instance, the verse pertaining to the iddah period for a woman divorced by her husband, inclusive of the term "quru'in," offers a notable illustration of this variation in interpretation.

وَا لْمُطَلَّقٰتُ يَتَرَ بَّصْنَ بِاَ نْفُسِهِنَّ ثَلٰثَةَ قُرُوْۤءٍ

"*And the divorced wives (must) restrain themselves (waiting) three times quru'*. (QS. Al-Baqarah 2: 228)

Abu Bakr, 'Umar and 'Ali were of the view that quru'in means *athhar*, purity from menstruation, so that a woman's 'iddah period is purified from three menstrual cycles, which in fact is more than three months.

According to 'Aa'ishah, Ibn 'Umar, and others, the term "*quru'in*" is synonymous with "tuhr," which refers to menstruation. This implies that the "*iddah*" for a divorced woman ends once she has experienced three menstrual cycles. It is noteworthy that the 'iddah period for a woman divorced by her husband can be less than three months. This assertion is supported by Khaeruman's (2004) study.

The Hadith of the Prophet, in the form of speech (*qauli*), action (*fi'li*), and attitude and impression (taqrir) towards something, serves as an example of an Islamic treatise. Consequently, the hadith of the Prophet constitutes the second source of Islamic teachings after the Qur'an. Muslims are obliged to obey and follow this guidance (QS. Al-Hasyr, 59: 7 and al-Nisa, 4: 13, 59 and 80). This entails not only adhering to the explicit tenets of Islam as outlined in the Qur'an, but also following the guidance set forth in the prophetic hadith. From an Islamic theological perspective, Prophet Muhammad (SAW) plays a central role. This necessity stems not only from his role as the bearer of the divine treatise, but also from his status as the sole figure entrusted by God to elucidate, illustrate, or provide examples of these teachings.

This phenomenon can be attributed to numerous challenges and adversities encountered throughout its historical trajectory. Primarily, the Hadith was documented more than a century after the Qur'an, suggesting a delay in its collection and preservation. This temporal discrepancy necessitated the diligent efforts of experts to collect and select the hadith, thereby distinguishing those that are authentic from those that are not. To differentiate between the two, scholars have devised various methods of researching hadith, creating terms, and criticizing them. This criticism was developed with the following primary objectives: first, to ascertain the authenticity of a given narrative and second, to determine its validity, thereby establishing its credibility.

The existence of such a culture of criticism demonstrates profound historical awareness among Muslims. This awareness, in turn, serves as a safeguard against doctrinal deviations (bid'ah) from authentic teachings of Islam. This will ensure the perpetual preservation of the integrity of Islam, particularly as it was taught by the Prophet Muhammad SAW, ensuring its enduring relevance and validity until the end.

Litarture Review

Several prior studies have examined the role of Islamic organizations in the development of Islamic law in Indonesia. Nevertheless, little attention has been devoted to the specific way these organizations interpret the Qur'an and Hadith as evolving legal sources in their issuance of fatwas in response to contemporary social transformation. Fitriyani (2010) explored Muhammadiyah and Nahdlatul Ulama's (NU) role in shaping public perceptions of Islamic law through fatwas. Zuhroni (2011) conducted a comparative study on legal reasoning among major Islamic institutions, including NU's Bahtsul Masail, Muhammadiya's Majelis Tarjih, and Persis's Dewan Hisbah. This study emphasizes the differences between textual and contextual approaches.

Jamaluddin et al. (2022) further noted the contribution of Islamic organizations in legal, educational, and political fields, particularly through their structured fatwa bodies.

Concurrently, Khaeruman (2022) argued that these organizations do not merely shape religious narratives; rather, they actively respond to technological advancements by adapting their fatwas to the digital landscape. This assertion is corroborated by Hayati (2018), who underscored how Muhammadiyah and Nahdlatul Ulama (NU) incorporated contemporary contexts and maqāṣid al-sharīʿah into their fatwas, thereby enabling legal elasticity.

From a sociological perspective, Manggalatung (2007) noted that the implementation of Islamic law in several West Java regencies reflects the local religious authority embedded within these organizations. Nafi (2018) examined public perceptions of Islamic organizations and revealed that responses ranging from fanaticism to apathy shaped the reach and reception of fatwas. Rasjidi (1998) underscores that legal pluralism, and social needs necessitate dynamic interpretations of Islamic texts.

Bisri (2004) expanded the methodological discourse by analysing Islamic law as a socio-legal system shaped by cultural institutions. Manan (2006) emphasized that legal reform and renewal in Islamic jurisprudence in Indonesia is a continuous process in response to modern challenges.

This study builds on these findings by offering a focused comparative analysis of how three prominent Islamic organizations in West Java—Muhammadiyah, Nahdlatul Ulama, and Persis—derive legal decisions (fatwas) from the Qur'an and the Hadith, reflecting their respective methodologies. The study's findings contribute to understanding how Islamic organizations maintain textual loyalty while engaging with modern sociological dynamics in their legal reasoning.

Methods

This study employs a descriptive qualitative approach with a case study method to examine in depth how Islamic mass organizations in West Java, especially Nahdlatul Ulama (NU), Muhammadiyah, and Persatuan Islam (Persis), determine fatwas based on the Qur'an and Hadith as the primary sources of law. This methodological decision was made to facilitate an in-depth analysis of religious social reality in context and to provide a comprehensive description of the intricate interpretative process involved in legal decision-making. The research location is centered in the West Java region because of the high degree of religious dynamism in this area and its status as a significant base for the three mass organizations in producing religious fatwas.

The data used in this study encompassed both the primary and secondary sources. Primary data were obtained through in-depth interviews with scholars or administrators of fatwa institutions from each organization, while secondary data were collected from official fatwa documents, legal istinbath guidebooks, the results of muktamar or religious forums, and scientific literature, such as relevant journals and classical books. Three primary data collection methods were employed: semi-structured interviews to explore the speakers' understanding of the use of the Qur'an and Hadith in determining fatwas, documentation studies of fatwa texts and organizational legal guidelines, and limited participatory observation in religious forums such as bahtsul masail and tarjih deliberations.

The analysis employed in this study followed the interactive model proposed by Miles and Huberman, which encompasses three primary stages: data reduction, data presentation, and drawing and verifying conclusions. The initial stage of data reduction entailed filtering the pertinent information. The subsequent stage of data presentation involved organizing the information in the form of narratives and thematic matrices. The final stage of conclusion drawing was conducted inductively through interpretation of the patterns of meaning that

emerged from the field data. To maintain the validity of the data, source triangulation techniques were used by comparing the results of interviews, documentation, and observations, as well as member check techniques by asking for re-clarification from the interviewees to ensure that the researcher's interpretation was in accordance with their intentions. This methodological approach is expected to provide a comprehensive and valid depiction of the dynamics of fatwas and the utilization of sacred texts in the context of legal changes in an ever-evolving society.

Result and discussion

Demand for Change in Legal Fatwa

Social change in modern society necessitates legal reform, because it is a perennial phenomenon that has occurred throughout the age. Legal changes are inherent in Islamic teachings and are considered fixed and static (qāṭʿī). However, Islamic teachings did not undergo significant alterations throughout the age; only a small portion of these teachings pertained to the issue of worship (ta'abudi). Conversely, most Islamic teachings, excluding the domain of worship, exhibit a degree of malleability (zanni) and are susceptible to modification in accordance with the evolving demands and dynamics of contemporary societies.

Consequently, the necessity for legal changes and law reform in Islamic society arises from the changing norms and shifting values that occur during ever-changing community life. This assertion is further substantiated by past scholars, who have asserted that Islamic law provides a sufficient foundation for the potentiality of legal changes, both in terms of time and space. The subsequent phrase suggests that

تغيّر الفتوى بتغيّر الأزمنة و الأمكنة و الأحوال والعوائد و النيّات

> "*Fatwas (rulings) are subject to change due to changes in times, places, circumstances, customs and intentions (motivations).*" (Ibn Qayyim al-Jauziyah, 1977).

In another shorter rule, with the following expression:

لا ينكر تغيّر الأحكام بتغيّر الأزمان

> "*It is undeniable that laws change due to changes in circumstances (times).*" (Muhammad et al., 1989).

As propounded by certain scholars, this doctrine functions as a catalyst for presenting Islamic law as a dynamic, creative, and responsive body of law to social change. Consequently, Islamic law is expected to have the capacity to address all contemporary issues.

While most fiqh scholars subscribe to this principle of legal change, divergent views emerge on issues explicitly addressed by legal provisions in the Qur'an and Sunnah. Regarding matters of worship (ta'abudi), a consensus is reached among all fiqh scholars, who agree that legal provisions are permanent and unalterable. Conversely, in the context of muamalah or social issues, the fundamental principle entails a meticulous examination and discernment of the legal motivation (illat) and overarching purpose (maqāshid al-sharīʿah) of Islamic law. This domain encompasses the realm of Islamic legal reform, wherein ijtihadiyya concerns are based on the interests, customs, and contemporary realities.

Experts have widely voiced the necessity for changes in the fatwa of legal provisions due to changes in legal illat. The Prophet's words also imply that every century, a *mujtahid* will emerge who is tasked with modernizing religious understanding to be in accordance with the demands of life experienced by the people in their day. The Prophet's words in question are as follows:

انَ للّٰه يَبعث لهذه الأمة على رأس كلّ مائة سنة مَنْ يجدّد لها دينها.

Abu Hurairah reported that the Messenger of Allah (SAW) said: "Allāh will send for this Ummah, in every century, someone who will renew the religion." HR Abū Dawud. (Abī Tahyyib Muhammad Shams al-Haqq al-Azhīm al-'Abadi, 1979).

This history serves as a foundational reference for scholars seeking to modernize religious teachings, encompassing social domains that are deemed no longer pertinent to contemporary circumstances. This paradigm shift has given rise to a new understanding of the rules of fatwa, as evidenced by the explicit changes that can be found in Ibn Qayyim al-Jauziyyah's I'lam al-Muwaqi'īn 'an Rab al- ' Alamin (691-751 H), which asserts that fatwas can undergo modifications in response to shifts in circumstances.

تغيّر الفتوى بحسب تغيّر الأزمنة و الأمكنة و الأحوال و النيّات والعوائد

Fatwas changed because of changes in time, place, circumstances, intentions, and customs.

Ibn Qayyim's perspective was subsequently elaborated upon by Sheikh Yusuf al-Qaradhawi in his book: al-Madkhal li al-Dirāsah al-Sharî 'ah al-Islāmiyyah (2001), asserting that fatwas are subject to change insofar as they pertain to the domain of Ijtihadiyah. Al-Qaradhāwi subsequently enumerated three rationales for this phenomenon. First, theological reasons are provided, and second, the nature or character of Islamic Shari' a is cited as an example of its elasticity and dynamism. Third, historical reasons were provided, drawing upon the experience of the prophet's companions, especially the fatwas issued by Umar bin Khaththâb.

Ulama of Islamic organizations in West Java

The scholarly community in Indonesia is distinct from its counterparts in other regions, particularly in the Middle East. In contrast to their Middle Eastern counterparts, who tended to adopt an independent stance and engage in their own ijtihad on various legal fatwas that came before them, Indonesian scholars demonstrated a different academic approach. Conversely, Indonesian scholars are organized into communities affiliated with local religious organizations. For instance, the Muhamadiyah Organization, Nahdlatul Ulama (NU) Organization, Islamic Unity Organization (Persis), and the MUI itself.

The Islamic organizations established in West Java Province are, in fact, regional extensions of organizations. The exception is the Persis organization, which was originally established in West Java and whose central leadership remains in the city of Bandung.

1**. Muhammadiyah West Java**

a. Muhammadiyah's principles of istinbat

Like other Islamic organizations in Indonesia, Muhammadiyah uses the Qur'an and the Prophet's Hadith as foundational sources for Islamic law in issuing fatwas. According to scholars within the Muhammadiyah intellectual tradition, Islamic legal sources can be categorized into two broad categories: dogmatic sources, also known as naqliyyah, and logical sources, referred to as aqliyyah. Mulyono Jamal and Muhammad Abdul Aziz (2015) expound upon this distinction, asserting that the dogmatic nature of these sources is evidenced by their immediate acceptance without rigorous examination or questioning. It is characterized as pure (mahdlah) because of its direct origin from the Allah SWT in the form of the Al-Quran. The subsequent translation and explanation of its purpose and method of implementation were attributed to the Prophet Muhammad SAW through Sunnah.

By contrast, logical reasoning is intended to capture the message of revelation (ghairu mahdlah). Given variations in capacity, background, experience, and other factors, the resulting legal products will differ. For instance, while Abu Hanifa permits Istihsan, Imam Shafi'i prohibits it. Conversely, while Abu Dawud Al-Dzahiri prohibited qiya, some scholars have permitted it. This second group encompasses a multitude of principles, including *ijma, qiyas, istishab, al-akhdzu bi aqalli ma qila, urf , istihsan, masalih mursalah, qaul sahabi, shar'u man qablana, and sad al-dzariah*. Notwithstanding their differences, all these principles are subject to the overarching authority of revelation, signifying the primacy of dogmatic truth. While the Qur'an comprises only 114 surahs and 6,666 verses, its content, both explicit (*manthuq*) and implicit (*mafhum*), encompasses the scope of time and place (*shalih likulli zaman wa makan*). If the Qur'an were to offer only the meaning of its explicit content, it would constitute a voluminous body of work. According to Ibn Rushd, the question arises of how a finite entity can accommodate an infinite entity. At this juncture, Islam demonstrates its comprehensive nature as a religious tradition *(Syamil kamil*).

This implied meaning is what Allah SWT offers through His many commands: reading, contemplating, analyzing, conveying, and concluding (*qaraa*) all signs (verses) of his greatness and power. Those who have made ijtihad and are correct receive two rewards. Conversely, those who undertook ijtihad but err in their assessments received a single reward. Consequently, this process gave rise to a range of in-bath methods associated with *aqliyyah* sources.

b. Ijtihad Method of Majlis

Mulyono Jamal and Muhammad Abdul Aziz (2015) further revealed that there are three standard procedures in ijtihad according to Tarjih, namely, first, bayani. This method can be defined as an attempt to interpret a dzanni verse using other versions. In the realm of tafsir science, this method is designated tafsir bi al-ma'tsur, signifying the interpretation of one verse through another. Second, the Qiyasi method was employed. This approach aims to establish an analogy between a problem devoid of legal precedent and one that is already governed by a specific legal code, drawing parallels between illah in both the scenarios. Third, the concept of istishlahi has emerged. This method is based on the concept of maslahah as a fundamental principle guiding Islamic law. It is applied to cases where there is an absence of text, whether qath'i or zhanni, which addresses the matter, yet there is a spirit of human benefit. The latter method was eventually developed by Tarjih into five considerations: istihsan, saddu al-dzari'ah, istishlah, al-*urf* , and ijthad kauniyyah.

This method was further developed at the insistence of certain figures within the Muhammadiyah movement, with the objective of enhancing Tarjih's focus on the scientific movement.

The methods are Bayani (text), Burhani (reason and benefit), and Irfani (intuitive). A comparative analysis revealed that the two methods were not significantly different. The final two methods of the initial category were consolidated into a single entity known as burhani while concurrently introducing a novel method termed irfani. The Irfani method is based on the intuitive capacity of everyone to ascertain truth. Given that everyone has different spiritual experiences, this truth is intersubjective, meaning that it differs among individuals. Despite these variations, truth was acknowledged by all individuals.

c. The following example illustrates a fatwa that condemns smoking

The Tarjih Assembly PP issued a fatwa declaring smoking *haram*. This fatwa has been documented in Muhammadiyah No. 6/SM/MTT/III/2010.

The basis of the fatwa is several arguments from the Qur'an, the words of the Prophet, the rules of fiqhiyah, and the logic of the Tarjih Assembly's thinking, which are considered relevant to the prohibition of cigarette consumption by Muslims. The fatwa is expressed as

1. It is imperative to prioritize the maintenance and enhancement of optimal public health and foster an environment conducive to the realization of a healthy lifestyle. This is not only a fundamental right for all individuals, but also a core objective of Sharia (maqasid asysyari 'ah).
2. Smoking is *haram* because
    a. According to Islamic law, smoking is classified as an illicit act of khabais, as outlined in Qur'an 7:157.
    b. Smoking has been deemed an act of *khabais*, which is explicitly described in Q.S, 7:157. This act of smoking has been interpreted as bearing a resemblance to self-destructive behavior and even to the gradual act of suicide. Consequently, it stands in direct opposition to the explicit prohibitions outlined in the Qur'an Q.S, 2:195 and Q.S, 4:29.
    c. Smoking is detrimental to the well-being of both smokers and those exposed to cigarette smoke. Due to the addictive and harmful nature of cigarettes, a consensus has been reached among medical experts and academics. Consequently, smoking is in direct opposition to the principle of sharia, as outlined in the Hadith of the Prophet Muhammad (SAW), which states that one must refrain from causing harm to oneself or others.
    d. Cigarettes are recognized as addictive substances that contain toxic elements that are harmful, although not immediately, but rather after a certain period. Therefore, smoking can be categorized as an act that weakens, which contradicts the hadith of the Prophet PBUH that prohibits intoxicants.
    e. Evidence indicates that smoking is detrimental to health, both for individuals who smoke and those who are exposed to cigarette smoke. Consequently, the expenditure on cigarettes can be regarded as a form of waste (extravagance), as outlined in Qur'anic verses 7:26-27.
    f. Moreover, smoking contravenes the fundamental tenets of the objectives of Sharia (*maqasid ash-shari'ah*) in the following ways: First, it undermines the protection of religion (*hifz ad-din*); second, it jeopardizes the preservation of the soul (hifz an-nafs); third, it endangers the safeguarding of reason (*hifz al-'aql*); fourth, it compromises the protection of the family (*hifz an-nasl*); and finally, it undermines the protection of property (*hifz al-amal*).
3. Those who do not smoke or do not smoke are obliged to prevent themselves and their families from trying to smoke in accordance with Q.S, 66:6 which says, "*O you who believe, avoid yourself and your families from hellfire*."
4. Those who have already become smokers are obliged to make efforts and try according to their abilities to quit smoking by remembering Q.S, S29:69, "*And those who are earnest in our way we will indeed show them our ways, and indeed Allah is truly with those who do good"*, and Q.S, 2:286, "*Allah will not burden anyone except according to his ability; he will get the results of what he has worked for and bear the consequences of what he has done*;" For this reason, health centres within Muhammadiyah must strive to provide therapy to help people who are trying to quit smoking.

5. This fatwa was implemented keeping in mind the principles of *at-tadrij* (gradual), *at-taisir* (ease), and *adam al-haj* (not making things difficult).
6. With the issuance of this fatwa, the fatwas on smoking that had previously been issued by the Tarjih and Tajdid Council of the Muhammadiyah Central Leadership was declared invalid.

Fatwa Evidence

1) Islam (sharia) permits all that is good and forbids *khaba'is* (forbids all that is bad), as stated in the Qur'an: "*And has made lawful for them all that is good and forbidden for them all that is bad*" [Q.S, 2: 57].
2) The Islamic religion (sharia) forbids throwing oneself into destruction and committing suicide, as stated in the Qur'an:" And *thou shalt not cast thyself into destruction and do good, for verily Allah loves those who do good*" [Q.S, 2:175] Meaning: "*And kill not yourselves; surely Allah is Most Merciful to you*" [Q.S 1:175].
3) The prohibition of wasteful behavior in the Qur'an, meaning: "*And give to the near relatives their due, to the poor and the traveler, and do not spend extravagantly; Verily, the spendthrifts are the brothers of the shaitan, and the shaitan is very disobedient to his Lord*". [Q.S,17: 26-27]
4) prohibition of causing harm or danger to oneself and others in the narrations of Ibn Majah, Ahmad, and Malik:

   لاَ ضَرَ وَلاَ ضِرَار

   Meaning: *There is no harm to oneself and to others* [HR Ibn Majah, Ahmad, and Malik].
5) The prohibition on intoxicating and debilitating acts is mentioned in the hadith:

   عن ام سامه ان رسول الله صلى الله عليه وسلم نهى عن كل مسكر ومستر. رواه احمد وابو داود

2. Nahdhatul Ulama (NU) West Java

a. Method of Istinbath al-Ahkam Bahtsul Masail NU

On the 33rd Muktamar in 2015 in Jombang, the Bahtsul Masail institution established the method of *istinbat al-ahkam* by practising qawa'id ushuliyyah in the books of ushul fiqh. Istinbat al-ahkam method in jama'i is based on the *bayani* method, *qiyasi* method, and *istishlahi* or *maqashidi* method.

In The Results of the Nahdlatul Ulama Congress (Rumaddi et al., 2016), as revealed by Agus Mahfudin (2021), the technical use of the three methods is as follows:

1) Bayani Method

The Bayani method involves deriving laws from the Qur'an and Hadith. Another term for this method is *the manhaj istinbath al-ahkam minal-nushuush.* The *nash* in question can be in the form of *juzes RRB-(-tafshili nash, kulli-ijmali nash,* or *nash* in the form of general rules. In the context of *the istinbath* law from the *nash* using the *Bayani* method, Nahdlatul Ulama established five procedural steps.

First, the study of *sabab al-nuzul* or *wurud*, whether in a macro- or micro-context, is essential. The term "micro *asbab al-nuzul*" refers to a specific cause (*asbab al-nuzul al-khoshshoh*) that precipitated the revelation of a verse or hadith. Conversely, macro *asbab al-nuzul* refers to the general cause, which is the socio-political context of the verse: This encompasses the socio-political, socio-cultural, and socio-economic contexts of the processes of *tanzil al-Qur 'an* and *wurud al-hadith*.

Second, the text of verses and hadiths is examined from the perspective of language rules (*al-qawa 'id al-ushuliyyah al-lughawiyah*). The study of texts from the perspective of these language rules includes three simultaneous studies: word analysis, meaning analysis, and *Dalalah* analysis.

Third, the text under scrutiny is to be linked with other related texts, and the *nash* being studied must relate to other NASH. This is because of the inherent interconnectedness of the *nushush al-syari 'ah* (al-Qur'an and Hadith), which constitutes a unified whole that cannot be disaggregated from one another. One verse is related to another verse, one hadith is related to another hadith, one verse is related to the hadith, and one hadith is related to the verse. The interplay between these sources can serve as a form of reinforcement or bayan al-mujmal, which refers to the explanation of an outlined *Nash. taqyid al-muthlaq* (limiting muthlaq memorization), *takhshish al-amm* (limiting the generality of *lafazh` amm*), or taudlih al-musykil (explaining musykil or ambiguous memorization).

Fourth, the Nash that is being studied is linked with *the maqashid al-syari'ah* (*rabth al-nushush bi al-maqashid*). The general purpose of Sharia, also known as the kulliyah al-maqashid, is a fundamental aspect of Islamic jurisprudence. *Maqashid al-syari`ah* (the general purpose of sharia) has an interrelated relationship with *nushush al-syari'ah* (the totality of sharia). The fundamental principles of *Maqashid al-Syari`ah*, often referred to as "the ends of Islamic law", emerged from and are inextricably linked to the concept of nushush al-Syari'ah. In the process of interpreting *nushush al-syari ` ah*, it is imperative that nushush *al-Syari'ah* consider *maqashid al-syari'ah*. The interconnection between the specific and the universal is a fundamental tenet of Islamic jurisprudence. In practice, Islamic *Shari'ah* is designed to benefit human beings, both internally and externally. The formulation of legal doctrine is in accordance with human benefit, which is the purpose of *Shari'ah*. This is contingent on the assumption that *maslahats do* not contradict the *nash*.

Fifth, the principle of *ta'wil* should be invoked when necessary. In principle, every multi-meaning memorization must be taken to its basic meaning, which is clear, essential, and rajih. Nevertheless, a thorough examination of the *nash* can result in the act of *ta'wil*, which entails a shift in the fundamental meaning of memorisation from its clear, essential, and rajih nature to a more concealed or *majazi* interpretation. It is imperative to comprehend that ta`wil should not be interpreted as an endeavor to subject the text to the caprices of personal desires or to modify *Shari'ah* to suit specific circumstances. It is imperative to comprehend that ta`wil can only be executed in the presence of compelling evidence that serves as a catalyst for its implementation. The performance of *ta'wil* is contingent on the evidence that serves as a catalyst for its execution.

2) Qiyasi Method

The NU Bahstul Masail Council established *the qiyas* as a jurisprudential method. Where *qiyas* itself is defined by equating a case that has no reference to the *nash* with another case that has a reference to the *nash* in terms of its legal provisions, when both have the same '*illat*. The *qiyasi* method is considered valid as a legal *istinbat* because it has a working mechanism. In this case, Nahdlatul Ulama compiled the pillars and conditions so that *qiyas* can be recognized as valid, although the pillars and conditions formulated by Nahdlatul Ulama are not different from those formulated by scholars in various books of *usul fiqh*.

The *Qiyas* method consists of four pillars. The first is *al-ashl,* which is a legal provision based on *nash*. *Al-Ashl* is called *al-maqis` alaih* (which is qiyas-i) or *al-musyabbah bih* (which is similar) such as *khamr* in the example above. *Al-far` u,* which is a case that has no legal

provision based on the *nash*. *Al-Far'u* is called *al-maqis* (which is quoted) or *al-musyabbah* (which is similar), such as the problem of liquor (beer in example above). *Hukm al-ashl,* which is the law contained in the *ashl* which is determined based on the *nash*, for example the law of the prohibition of *khamr* in the example above. *al-` illah* is a trait that becomes a point of similarity *(al-jami`)* between *al-ashl* and *al far` u,* such as the nature of intoxicating (*al-iskar*) in the example above. This pillar is the most fundamental element of *the qiyas*. With this *illat,* the laws contained in *Nash* can be used in new cases that arise later.

Each pillar of *the qiya* has its own conditions. The conditions were as follows: *First*, *al-ashl* must have legal provisions based on *text. Second*, *all-far` u* must not have legal provisions based on *text*. *Third*, *hukm al-ashl* must meet the following conditions: (a) It must be in the form of an *amali shar'i* law stipulated based on the *text*. (b) In the form of a law that is *ma`qul al-ma` na* or *ta` aqquli*. (c) It is a rule that does not apply only to *ash*. Therefore, it is not permissible to create qiyas between the people of Muhammad and the Prophet Muhammad regarding the permissibility of marrying more than four women.

In the study of NU Batsul Masail scholars, *qiyas* is one of the most fertile methods of determining a law to resolve issues whose legal provisions are not explicitly stated in the Qur'an and Hadith but have *al-ashl* (parent) in the *text* and/or *ijma* 'ulama. *Qiyas* is considered methodologically correct if it meets the pillars and conditions mentioned above. *Qiyas* that does not fulfil these pillars and conditions is a mistake. This mechanism distinguishes *qiyas* from other secondary arguments.

3) Istishlahi Method

The term "*ijtihad*" is employed herein to denote the use of the istishlahi method, regarded as a form of ijtihad that pertains to *maqashid al-syari'ah*, understood as the overarching objectives of Islamic law. Consequently, it can also be designated as maqashidi Ijtihad. According to Islamic law scholars, the fundamental purpose of Islamic legal doctrine is to ensure the optimal benefit (*mashlahah*) of all humans. This objective encompasses both the physical and mental aspects of human existence, extending within the temporal realm and the hereafter. This conclusion is derived from their research (*istiqra'*) on the Qur'an and Hadith, laws, *illat-illat*, and *wisdom*. Consequently, *maqashid al-syari'ah* is inseparable from nushush al-syariah, and the realization of *maqashid al-syari'ah*is contingent upon nushush al-syariah. Conversely, nushush al-syariah must attend to *maqashid al-syari'ah*in its interpretation and elucidation, ensuring that the legal provisions derived from it are not merely textual but also contextual.

> *The significance of maqashid al-syari'ahextends beyond the realm of interpreting the nash, encompassing the exploration of shari'a laws that do not have direct reference to the nash. Secondary arguments, such as istihsan, mashlahah mursalah, and ' urf , are fundamentally rooted in the principles of maqashid al-syari'ah.*

a) Istihsan

Istihsan, in its simplest form, can be defined as the policy of the *mujtahid* who deviates from the explicit provisions of qiyas or from the provisions of general law. Istihsan is the policy of the *mujtahid* who adheres to *qiyas khafi* by leaving *qiyas jali*; alternatively, it may involve the adoption of the law of exceptions, given the existence of evidence that necessitates its utilisation.

When confronted with two qiyas, one *jali* and the other *khafi*, a *mujtahid* is obligated to adhere to the *rajih* argument, specifically the Jali qiyas. However, under certain

considerations, the *mujtahid* may deviate from the qiyas *jali*, which is *rajih*, and instead opt for *khafi qiyas*, which is *marjuh*. This methodology is formally designated as the istihsan. Similarly, when a *mujtahid* confronts two legal provisions, one a kulli law and the other a juz *'i-istitsna'i* law, in such a scenario, the *mujtahid* would select the *juz'i-istitsna'i law*, disregarding the kulli law, contingent upon considerations of necessity (*dlarurah or hajah*). This process is referred to as *Istihsan*. For instance, within the framework of general law, the object of the transaction must be something that already exists. However, certain transactions are exempted from this ruling based on the needs of the community, such *as ijarah*, *salam*, *istishna'* (like the salam contract), and others.

b) Al-Mashlahah al-Mursalah

The term "*mashlahah*" is understood to signify all that is beneficial and advantageous. The terms "*maslahah*" and "benefit" are synonymous. *Mashlahah* is further defined as an action that engenders benefits to the people. For instance, the pursuit of knowledge is considered *mashlahah* because it has the potential to yield favourable outcomes. Similarly, commercial activities such as trading are regarded as *mashlahah* because of their capacity to generate benefits. In the terminology of *ushul fiqh, mashlahah* is defined as any element that ensures the realisation and preservation of the objective of shari ` (*maqashid al-syari'ah*). This encompasses safeguarding religion, preserving the soul, protecting lineage, and maintaining property.

The scholars of Islam have traditionally categorized *mashlahah* into three distinct categories: *mashlahah mu' tabarah, mashlahah mu' ahkam*, and *mashlahah mu' al-akhbar*. This category comprises *mashlahah* acknowledged by scholars through the exegesis of the Qur'an and Hadith. One example is the prohibition of all intoxicating beverages. Second, *mashlahah* mulgha is defined as *mashlahah* that is refuted by the shar 'i through the text of the Qur'an or Hadith. An illustration of this is the equitable distribution of inheritance among sons and daughters, which is regarded as *mashlahah* (public interest). Third, *mashlahah mursalah*, which is a *mashlahah* that has no reference to nash. This category includes *mashlahah* that has been recognised (*I'tibar*) or denied (*ilgha'*), such as the celebration of the *maulid* of the Prophet Muhammad SAW. This study explores the process of compiling the Qur'an into a unified mushaf, the establishment of a system for registering marriages, and other related practices.

c) ` Urf `

Urf is a well-known term frequently employed by the community, manifesting in both action and words. *Urf* and *adah* (custom) are two words with discrete meanings, yet their mashadaq are congruent. This indicates that these two words have divergent etymologies. Conversely, the term "*urf*" is synonymous with "*adah*," and vice versa. Consequently, the terms "*urf*" and "*adah*" can be considered synonymous, with the Indonesian term "tradisi" serving as a common translation for both terms.

Scholars have divided *urf* into two parts based on its area of applicability. The first is "*urf amm*," which is "*urf* that applies to the whole or majority of mankind at a certain time." The second category is referred to as *'urf khashsh*, signifying '*urf* that pertains to specific individuals, communities, or regions at a given moment in time. In terms of its compatibility with the text and the principles of sharia, ` *urf* is divided into two types: First, "*shahih urf*", which is *urf* that does not contradict the nash al-Qur 'an or Hadith. It is also characterised by its ability to neither legalise nor prohibit anything deemed *haram* or halal. Second, the concept of *'urf* fasid is examined. The term "*urf*" is defined as any local tradition or practice that deviates from the established legal principles found in the Qur'an and Hadith. It

encompasses behaviours that are considered *haram* (forbidden) according to Islamic law, as well as halal (permissible). The term "*urf*" can also describe any local custom or practice that contradicts or deviates from the established legal principles found in the Qur'an and Hadith.

b. Example of a Fatwa on the Law of

A review of the extant literature reveals an absence of fatwas on the law of smoking issued directly by NU scholars in the Mahstul Masail Assembly. These documents are not found in online sources or official publications. However, it should be noted that individual scholars from this organisation have issued numerous fatwas, signifying that their fatwas are representative of NU scholars. For instance, an article authored by KH Arwani Faishal (2009), the Deputy Chairman of the PBNU Bahtsul Masa'il Institute, articulates the perspectives of NU scholars concerning the legal implications of smoking.

Kyai Arwani Faisal initiated his perspective by referencing the prevailing texts found within the Qur'an and Prophetic Hadith, which are then linked with *maqashid al-syari'ah*, a concept found within these texts. The *'illat-'illat* of the law, both expressed and implied, is then drawn to the 'illat in cigarettes'. Is there a connection? This study further delves into the nature of this relationship, questioning whether it is close, tenuous, or distant. The determination of its legal status is derived from this foundation. To substantiate his thoughts, Kyai Arwani references numerous scholarly perspectives articulated within classical and contemporary fiqh literature, thereby establishing a foundation for his own positions.

The texts that prohibit doing anything that causes damage, harm, or mischief are found in the Qur'an and Sunnah:

وَلاَ تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ.

And do not bring yourselves down to destruction, and do good, for surely Allah loves those who do good. (Al-Baqarah: 195)

عَنْ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لاَ ضَرَ وَلاَ ضِرَارَ. رواه ابن ماجه,

Ibn 'Abbas (may Allah be pleased with him) reported that the Messenger of Allah (SAW) said: Do no harm (to yourself) and do no harm (to others). (HR. Ibn Majah, No.2331)

According to Kyai Arwani (2009), scholars concur that any activity that causes harm is considered *haram*, as evidenced by the texts mentioned above. However, the question remains whether smoking is harmful and whether there are any potential benefits. In this case, divergent perceptions emerge when examining the substance of cigarettes from the perspectives of benefits and harms. This divergence in perspective marks a novel chapter in the emergence of diverse opinions concerning the legal implications of smoking, accompanied by a range of arguments. Assuming a consensus is reached on the minimal harm or non-harmfulness of smoking, the law of *mubah* or *makruh* would be upheld as follows: Conversely, if smoking is determined to have a significant negative impact, it would be classified as *haram*.

These opinions and arguments can be classified into three types of rulings.

1) The law on smoking is *mubah* or permissible because smoking is seen as not causing harm. It can be stated explicitly that cigarettes are not toxic.
2) The rule on smoking is *makruh* because smoking brings relatively little harm, which is not significant enough to be used as the basis for *the haram* law.
3) The ruling on smoking is *harmful* because it is regarded as causing many harms. Based on information regarding the results of medical research, cigarettes can cause a variety of internal diseases, such as cancer, lung, and heart, after a long period of habit. The three opinions above can be applied in general in the sense that permissible, *makruh*, and *haram* are for anyone.

However, it is conceivable that the three categories of law may be applicable on a personal basis, with the understanding that everyone will be subject to a distinct set of laws based on a specific cause, whether related to the individual's condition or the quantity consumed. The three levels of smoking laws, both general and personal, are comprehensively delineated in the extensive exposition of Abdur Rahman ibn Muhammad ibn Husain ibn Umar Ba'alawiy in Bughyatul Mustarsyidin, which is a piece of text as follows:

لم يرد في التنباك حديث عنه ولا أثر عن أحد من السلف، ..... والذي يظهر أنه إن عرض له ما يحرمه بالنسبة لمن يضره في عقله أو بدنه فحرام، كما يحرم العسل على المحرور والطين لمن يضره، وقد يعرض له ما يبيحه بل يصيره مسنوناً، كما إذا استعمل للتداوي بقول ثقة أو تجربة نفسه بأنه دواء للعلة التي شرب لها، كالتداوي بالنجاسة غير صرف الخمر، وحيث خلا عن تلك العوارض فهو مكروه، إذ اللاف القوي في الحرمة يفيد

There is no hadith about tobacco and no atsar (saying and actions) from any of the Prophet's companions. ... If there are elements that cause harm to a person in his/her mind or body, then it is haram, just as honey is haraam for a person with a fever, and mud is haraam if it causes harm to a person. However, sometimes there are elements that are permissible that become Sunnah, such as when something that is permissible is intended for treatment, based on reliable information, or one's own experience that can be a cure for a sickness, such as treatment with an impure object other than alcohol. If it is free from both haram and permissible elements, then it is makruh, because if there are elements that contradict the haram elements, then it can be understood that the makruh ruling is indeed makruh.

Kyai Arwani (2009) then quotes Mahmud Saltut's views on tobacco in al-Fatawa:

إن التبغ ..... فحكم بعضهم بحله نظرا إلى أنه ليس مسكرا ولا من شأنه أن يسكر ونظرا إلى أنه ليس ضارا لكل من يتناوله, والأصل في مثله أن يكون حلالا ولكن تطرأ فيه الحرمة بالنسبة فقط لمن يضره ويتأثر به. .... وحكم بعض أخر بحرمته أوكراهته نظرا إلى ما عرف عنه من أنه يحدث ضعفا فى صحة شاربه يفقده شهوة الطعام ويعرض أجهزته الحيوية أو أكثرها للخل والإضطراب .

Regarding tobacco, some scholars ruled it halal because they saw that tobacco is not intoxicating; in essence, it is not an intoxicating object, and it also does not harm everyone who consumes it. ... Tobacco is halal but may be harmful to people who are exposed to harm and negative impacts. Other scholars punish haram or makruh because they see that tobacco can reduce health and appetite and cause important organs to become infected and less stable.

This is also what Wahbah Az-Zuhailiy has explained in Al-Fiqh al-Islamiy wa Adillatuh (Volume 6: 166-167):

القهوة والدخان: سئل صاحب العباب الشافعي عن القهوة، فأجاب: للوسائل حكم المقاصد فإن قصدت للإعانة على قربة كانت قربة أو مباح فمباحة أو مكروه فمكروهة أو حرام فمحرمة وأيده بعض الحنابلة على هذا التفضيل. وقال الشيخ مرعي بن يوسف الحنابلي صاحب غاية المنتهى: ويتجه حل شرب الدخان والقهوة والأولى لكل ذي مروءة

Regarding coffee and cigarettes, the compiler of al-'Ubab from the Ash-Shafi'i madhhab was asked about coffee, and he replied (it is a means) of ruling, and every means was in accordance with its purpose. If it is intended for worship, it becomes worship; if it is permissible, it becomes permissible; if it is makruh, it becomes makruh; or if it is haram, it becomes haram. This is corroborated by some scholars from the Hanbaliy madhhab regarding this ruling. Shaykh Mar'i ibn Yusuf of the Hanbali school, the author of Ghayah al-Muntaha, said: The answer indicates that cigarettes and coffee are permissible, but it is better for the polite person to abstain from them.

According to Kyai Arwani (2009), smoking can be legally categorised as

Initially, early scholars predominantly viewed smoking as permissible or *makruh*. Scholars demonstrated a greater inclination to rely on evidence that smoking did not cause harm, or if it did, the harm was relatively minor. In light of contemporary evidence, the potential harm associated with smoking may be analogous to that posed by durians, a fruit with a notably high cholesterol content. It is conceivable that a person who has smoked for a decade may not be afflicted with smoking-related disease. Conversely, durian consumption for a period of merely three months is likely to result in the onset of a serious illness.

Second, in contrast to the views of most previous scholars, the views of some current scholars, who tend to forbid smoking, are more dependent on information (not evidence) regarding the results of medical research that is very detailed in finding the slightest harm, which then seems to be greater. If the rigor of this type of medical research is not sufficiently scrutinized, the perceived harm caused by smoking may be exaggerated. Moreover, the actual negligible and ostensibly more substantial welfare is employed as the foundation for establishing *haram* law. Conversely, comparatively modest welfare should be utilized as a foundation for instituting *makruh* law. This approach is particularly pertinent in the context of deliberations and adjudications regarding smoking status. A considerable amount of food and drink is also declared halal, yet it is determined to be unsterile for consumption according to medical standards. It is imperative to determine whether every unsterile food or drink is inherently *harmful.* Alternatively, meticulous examinations should be conducted to ascertain the extent of harm, leading to the determination of *mubah*, *makruh*, or *haram* status.

Third, the ruling on smoking may be relative and balanced with its causes, given that the law pivots on the underlying *'illah*. Consequently, smoking can be interpreted as *haram* for individuals who may be exposed to harm. Conversely, smoking is permissible or *makruh* for individuals who are not exposed to harm or are exposed to minimal harm.

Conversely, if smoking is deemed to cause minimal harm and is thus classified as *makruh*, it can be argued that the potential benefits outweigh the harm, thereby permitting its use in moderation. The nature of this benefit can be conceptualised as a revitalisation of cognitive and behavioural faculties, a phenomenon commonly experienced by smokers. This phenomenon occurs when the substance is not consumed in excess, as excessive consumption can result in significant harm. Any substance that is ingested in excess and causes significant harm is impermissible. This distinction is crucial, as it differentiates between substances that are clearly intoxicating and those that, despite potentially offering benefits, are prohibited because of their deleterious effects.

Consequently, NU scholars' perspectives on the legal framework of smoking are more likely to align with the categories of law *mubah* or *makruh* rather than *haram.* The rationale behind this perspective is that the specific reasons underlying the law are perceived to be highly relative and individualised. The consensus among researchers and health professionals is that smoking is detrimental to health, both for active smokers and passive smokers. Numerous studies have shown that many smokers have been smoking for decades and, in some cases, since childhood. However, the prevalence of significant health complaints among smokers is low, with only mild cough reported. This cough is not considered severe and does not require medical attention.

Similarly, there is a paucity of medical reports indicating that individuals exhibit symptoms of disease after inhaling cigarette smoke from smokers.

3. Persatuan Islam (Persis) West Java

a. Sources of Islamic Shari'ah

The Qur'an and al-Sunnah are widely regarded as the primary sources of Islamic teaching. In the absence of a legal issue in these texts, scholars (*mujtahids*) are permitted to engage in ijtihad. The populace is bound to adhere to the outcomes of ijtihad, provided they comprehend the underlying rationales.

A. Hassan (1984), a pioneering figure in the field of Persis, elucidates the classification of *mujtahid*, specifically the *mutlaq mujtahid*, who engages in ijtihad guided by the tenets of the Qur'an and al-Sunnah. The former category, known as the mutlaq *mujtahid*, encompasses scholars who engage in independent legal reasoning guided by Qur'an and Sunnah principles. In contrast, the latter category, termed *muqayyad mujtahid*, comprises scholars who exercise their legal reasoning within the confines of a specific madhab, or school of Islamic law.

Consequently, the primary sources of Islamic law are the Qur'an and al-Sunnah. In the absence of a *nash-nash*, that is, clear and explicit textual evidence found in these two primary sources, Ijtihad emerges as an alternative source. According to scholars of Islamic Unity, ijtihad does not function as an independent source. Rather, it is comprised of several sources or methods, including: *Ijmâ', Qiyâs, Istihsan and Mashâlih, Nasîkh-mansûkh, Tarjih, Ittibâ',* and *Talfîq*, among others. The acceptance of these methodologies necessitates the concomitant acceptance of *ijtihâd* as a source of Islamic *sharî'at law*.

1) *Ijmâ'*

In the view of A. Hasan (1984) *Ijmâ'* which is recognized is only *ijmâ' of the* Prophet's companions, namely "*a religious work or i'tikad that is done or said by some well-known people among the companions of the Prophet without showing his testimony, and not refuted by other companions, thus not contradicting the Qur'an and authentic Hadith*".

Ijmâ' is accepted as a source of Islamic *Sharî'at* because A. Hassan believes that the companions would not dare to agree to determine a law if there was no basis that came from the Prophet, even though it was not known or did not reach us. Thus, it means that in essence the *ijmâ' of* the companions does not stand alone, so it does not need to be used as the main source of Islamic law such as the Qur'an and al-Sunnah.

2) *Qiyâs.*

Qiyâs, according to the language, means "weighing, measuring, comparing, determining, and so on". In terms of religious scholars, *qiyâs* means "giving one law that has been determined by religion to something else whose law has not been determined by religion, because the two are similar". Furthermore, A. Hassan (1972) gives an example of *qiyâs* zakat between wheat and rice, because there is similarity as a staple food.

In worldly social matters (worldly) or worship related to social, A. Hassan justifies *qiyâs* used as a way of determining the law because of 1) Allah's command, 2) in accordance with al-Sunnah, 3) in accordance with *atsâr shahabat*, and 4) it makes sense. Therefore, qiyas is one of the main paradigms of Islamic law, even though it does not stand alone. (A. Hassan, 1984: 41).

As for the issue of worship (*mahdhâh*), A. Hassan (1972: 24) completely rejects the use of *qiyâs*, because it means adding new things to worship. Any worship other than that prescribed by Allah and His Messenger is *bid'ah* (innovation). It seems that A. Hassan's opinion is the same as that of Rasyîd Rîdha who said: "*...in fact I forbid* qiyas *in mahdhâh worship*", (A. Latief

Mukhtar: 1992: 151). Similarly, Imâm al-Shafî'i states that analogising something in worship is unacceptable, "*La Qiyâsa fî al-'ibâdah*."

3) *Istihsân* and *Mashâl*.

KHE. Abdurrahman expounded on the concept of Istihsân, elucidating its connotation as the pursuit of carnal desires and capricious inclinations, which are governed by the principle of *haram*. Consequently, al-Shafî'i's assertion, "*Manistahsâna faqad syarâ'a*," and al-Ruyani's subsequent elaboration, "*Wa man syarâ'a faqad kaffara*," find substantiation in this context. The *Istihsan* that Abu Hanifah is referring to is not so, but is explained with the following example:

"According to the prevailing principle, a transaction is considered invalid if the goods are not available at the time of agreement. However, a specific text from the Hadith allows for al-Salamu, which is the practice of purchasing an overflow, where the monetary compensation is provided in advance and the goods are not yet available."

KH. E. Abdurrahman posited that such a transaction is not inherently problematic, as it is analogous to a scenario in which an individual pays for a table of specific shape and quality or for attire of a certain size and brand. Both are methods of acquiring goods that have not yet been produced. A similar principle applies to the purchase of soto rice that has already been consumed prior to the completion of payment or to its estimation, which is possible. While this initially deviates from the prevailing norm, it is deemed valid under the specific text that sanctions it. This methodology is formally recognised as the *Istihsan* method by KH. E. Abdurrahman.

According to *al-Mashâlîh Mursalah* is another name for this concept. Abdurrahman represents a departure from a specific norm, yet it is consistent with the fundamental tenets of the legal system. Furthermore, he provided the following example.

"Separating a child from their parents constitutes a wrongful act, as does keeping a wife away from her husband and relatives. However, if the wife has a contagious disease that is harmful to others and benefits the sufferer by enabling them to receive proper treatment, then it is not wrong to keep her away from others. At some point, it may become obligatory in view of the danger." (A. Latief Muchtar, 1992: 151).

A. Hassan (1984: 35) asserts that in instances where a judge is unable to exercise qiyas due to a lack of familiarity with the subject matter, he may resort to ijtihad to address the matter by considering *mashlahah* and *mafsadat*. This observation signifies that Hassan utilizes the assessment of *mashlahah* and *mafsadat in mu'amalah* in the absence of nash al-Qur 'an or *al-Sunnah*.

b. Istinbath al-Ahkam Method of Persis Ulama

This was also observed in the PP broadcast. Persis (1412 H./1992 M.) and scholars who were members of the Council Hisbab PP. Persis carries out its ijtihad mechanism to determine a law (istinbath al-hukm) based on al-Qur'an al-Karîm and al-Hadîth *shahîh*, with the following formulation:

1) Preferring the *zhahîr of the* Qur'anic verse over *ta'wîl* and choosing *tafwîl* methods in matters of *i'tiqâdiyah*.
2) Accepting and believing in the content of the Qur'an even if it seems to contradict *'aqli* and *'ady*, such as the issue of *Isra* and *Mi'raj*.

3) Preferring the *haqîqi* meaning over the *majâzi* meaning unless there is a reason (*qarînah*), such as the sentence: "*Aw lamastumun nisa*" with the meaning of intercourse.
4) If a verse of the Qur'an contradicts al-Hadith, the verse of the Qur'an takes precedence, even if the Hadith is narrated by *Muttafaq 'Alaih*, such as in the case of rewarding others.
5) Accepting the existence of *nasîkh* in the Qur'an and not accepting the existence of *mansûkh* verses (*naskh al-kulli*).
6) Accepting the tafsîr of the companions in understanding the verses of the Qur'an (not only the interpretation of *ahl al-bait*) and taking the interpretation of the more expert companions if there are differences in interpretation among them.
7) Favoring *tafsîr bi al-Ma'tsûr* over *bi al-Ra'yi*.
8) Accepting the Hadiths as a *paraphrase of* the Qur'an, except for verses that have been expressed with the *shighat hasr*, such as verses about forbidden food.

In istidlâl with al-Hadîth:

a) Using *Sahîh* and *Hasan* Hadîths to make legal decisions.
b) Accepting the Rule: *Al-hadîsu al-dha'îfatu yaqwa ba'duha If* the *dha'*îfan *Hadîth* is in terms of the narrator's memorization (*dhabth*) and does not contradict the Qur'an or other *shahîh* Hadîths. However, if the *kedha'*îfan is in terms of being accused of lying (*fisq al-rawi*), then the rule is not used.
c) Not accepting the rule: *Al-hadîthu al-dha'îfu ya'malu fî fadhail al-'amali*. This is because *fadhail al-'amal* in Sahîh Hadîths is quite a lot.
d) Accepting *Sahîh Had*îth as an independent *tasyrî'*, even if it is not a *bayan of* the Qur'an.
e) Accepting *Sunday* Hadîths as the basis of law if the quality of the Hadîth *is sahîh*.
f) *Mursal Shahâbi* and *Mauqûf bi Hukm al-Marfû' Hadîths* are used as proof if the sanad of the Hadîth *is saheeh* and does not contradict other *authentic* Hadîths.
g) *Mursal Tabî'iHadiths* are used to prove that the *Hadith* is accompanied by *a qarīnah* that shows the continuity of the sanad (*ittishal*) of the *Hadith*.
h) Accepting the rule: *Al-jarh muqaddamun 'ala al-ta'dîl* under the following conditions:
   1) If the *jarh* explains the jarh (*mubayan al-sabab*), then *jarh* takes precedence over *ta'wil*
   2) If the *jarh* does not explain the reason for the jarh, then *ta'dîl* takes precedence over *jarh*.
   3) If the narrator does not explain the reason for his *jarh*, but no one else states that he is *tsiqat*, then his *jarh* is acceptable.
i) Accepting the rules about the sahabah: *Al-shahâbatu kuluhum 'udul*.
j) The narration of a person who likes to do *tadlîs* is accepted if it explains that what he narrated is clearly *shighat tahamul*, indicating *ittishal*, such as using the word *hadzatsani*.

As for dealing with problems that are not found a strict *nash*-nya (*sharîh*) in the Qur'an and *al-Hadîth*, taken by means of *ijtihâd jama'i*, with the following formulations:

a) Not accepting *ijmâ'* absolutely in matters of worship, except the *ijmâ'* of companions.
b) Not accepting *qiyâs* in matters of *mahdhâh* worship, whereas in matters of *ghair mahdhâh* worship, *qiyâs* are accepted if they meet the requirements of *qiyâs*.
c) In solving *ta'arud, al-'adilah* is sought by means of
   1) *Tharîqat al-jam'i*, if it is possible to *jam'u*.
   2) *Tharîqat al-tarjîh*, from its various angles and segments, for example:
      a) Giving precedence to *al-Mutsbit* over *al-Nafi*.
      b) Preferring Hadîths narrated *by Sahîhain* over those not narrated *by Sahîhain*.

c) In certain issues, Hadîths narrated by Muslims take precedence over those narrated by Bukhâri, as in the case of the Prophet's marriage to Maemunah.
d) Abandoning something that one fears may fall under the ruling of *bid'ah is* preferable to practising something that is doubtful of Sunnah.

3) *Tharîqat al-naskh* if it is known which is earlier and which is later.

d) In discussing ijtihad issues, the Hisbah Council uses the rules of *Ushul Fiqh* as do *Fuqaha*. Such as the practice of interpreting the language of *Hadîth*, not changing the meaning of the original sentence to another meaning unless there is a *qarînah* that allows changing the meaning, as the rule of *usûl al-fiqh* states: اَلنَّبَادُرُ عَلاَمَةُ الْحَقِيْقَةِ *"A sentence that is quickly understood is a sign of true meaning"*. If you find the phrase "*jalasa*", it means to sit. Wherever the sentence exists, it still means sitting; do not change the meaning unless there is a *qarînah* that requires changing it to another meaning. Similarly, interpreting the *Hadîths* of the Prophet and others.

e) The Hisbah Council does not bind itself to a madhhab, but the opinions of the madhhab imams are considered in making legal provisions, if they are in accordance with the spirit of the Qur'an and al-Sunnah.

In these formulations, important notes are also explained, among others, that it is realised that even though the scholars of the Islamic Union have agreed on the method, the results of *ijtihâd are* not necessarily the same, because it still depends on accuracy, expertise, foresight, and accuracy in deciding and reviewing it from various segments. For this reason, in deliberation, an open spirit is needed, daring to correct other people's opinions and willingness to accept them if the results of *ijtihâd* are wrong.

c. Example of a Fatwa on the Law of Cigarettes

The issue of smoking being *haram* has long spread among Muslims, especially in the city of Bandung, where the PP headquarters of PP. Persis is in this city. Through the mechanism of ijtihad jama'i, scholars of the PP. The Persis held a session with the Hisbah Council to specifically address the law on smoking. The special session was held in the courtroom of the Persis pesantren, No. 1, Jl. Pajagalan No. Fourteen Bandung, which is adjacent to the PP office, was selected. Persis, before the PP. office was moved to Viaduct Street. 1-2, Bandung.

The session, which was held on Sunday, 12th of Shawwal 1407 H/10 May 1987 at Pajagalan 14 Bandung, started at 09.45 to 16.00 and was attended by 13 scholars and experts in fields related to smoking, namely, KH.E. Abdullah; KH.E. Sar'an; K.H.O. Syamsuddin; K.H.O. Abdulqadir Shadiq; al-Ust.H.M. Syarief Sukandi; al-Ust.H.M. Akhyar Syuhada; al-Ust. Ghazali; al-Ust.Usman Shalehuddin; al-Ust.Suraedi; al-Ust. Aceng Zakaria; al-Ust. Ikin Shadikin; and 2 lecturers of faculty. Medicine Unpad, Dr. H. Ading Suwardi (Anatomy expert), and Dr. H. Tuti S (pharmacology expert).

After the team of experts delivered an explanation about the issue of tobacco and all its related consequences, followed by several views from the speaker, as well as the views of other experts, it was concluded that:

1. Arguments that support the *harmful* status of smoking do not hold water.
2. Cigarettes were not mentioned in the Quran.
3. None of the cigarette elements included intoxicating *khamr*.
4. However, there is no clear and strong text or evidence for this.

Based On the Above Conclusions, The Members of The Hisbah Council Agreed (*Ittifaq*), That Smoking Is: The Ruling Is "*Makruh*."

d. The arguments that prohibited smoking

The arguments that prohibited smoking were refuted in the hearing as follows:

1. Smoking is considered damaging based on the following verse:

...“لا تُفْسِدُوا فِي الأَرْضِ... - البقرة: ١١

“*You shall not cause corruption on the earth...*”. Al-Baqarah: 11.

The verse has nothing to do with the issue of smoking because fasad means:

الفَسَادُ خُرُوجُ الشَّيْئِ عَنْ حَدِّ الإِعْتِدَالِ وَالصَّلاَحُ ضِدُّهُ. وَالفَسَادُ فِي الأَرْضِ هَيْجُ الحُرُوبِ وَالفِتَنِ الَّذِي تُؤَدِّي إِلَى اخْتِلاَلِ أَمْرِ المَعَاشِ وَالمَعَادِ وَالسَّفْهِ : خِفَّةِ العَقْلِ وَفَسَادِ

Fasad is the departure of something from its upright boundary, and Salah is the opposite of I'tidal. To commit mischief on Earth is to wage war and spread slander, which causes confusion in the affairs of this world and the Hereafter, and to be shortsighted, which is a lack of reason and impaired vision.

الفَسَادُ المَنْهِيُّ عَنْهُ هُنَا الأَسْبَابُ المُؤْدِيَةُ إِلَى الفَسَادِ مِنْ إِفْشَاءِ إِسْرَارِ المُؤْمِنِيْنَ إِلَى الكُفَّارِ وَإِغْرَائِهِمْ بِالمُؤْمِنِيْنَ وَتَنْفِيْرِهِمْ مِنَ اتِّبَاعِ مُحَمَّدٍ ص وَالأَخْذَ بِمَا جَاءَ بِهِ مِنَ الإِصْلاَحِ إِلَى نَحْوِ أُولَئِكَ مِنْ فُنُونِ الشَّرِّ - ٨٣ : وَصُنُوفِ الفِتَنِ - المراغي,

Al-Fasad, what is forbidden here, is the causes that cause corruption, namely spreading the secrets of the believers to the disbelievers, and they confuse the mu'minin, and keep the mu'minin from following the Prophet Muhammad (peace be upon him) and they consider to the good that the Prophet Muhammad brought various evils and slanders' (Al-Maraghi, Tafsir al-Qur'an, Juz I: 83).

2. Smoking is considered a suicide based on the word Allah:

...“وَلاَ تَقْتُلُوا أَنْفُسَكُمْ... - النساء: ٢٩

“*And you shall not kill yourselves...*”. An-Nisa: 29.

This reasoning is incorrect because the verse means the following.

أَيْ لاَ يَقْتُلُ بَعْضُكُمْ بَعْضًا وَعَبَّرَ بِذَالِكَ لِلْمُبَالَغَةِ فِي الزَجْرِ وَلِلإِشْعَارِ بِتَعَاوُنِ الأُمَّةِ وَتَكَافُلِهَا وَوَحْدَتِهَا وَقَدْ جَاءَ فِي الحَدِيْثِ “المُؤْمِنُ كَالنَّفْسِ الوَاحِدَةِ”

This means that some of you do not kill others, and Allah makes an of that to show the seriousness of the prohibition and to foster mutual help among people and mutual support and unity. Indeed, it has been stated in a hadith: “believers are like one soul”.

3. Smoking was considered a transgression. Allah says:

...“وَلا تَعْتَدُوا إِنَّ اللهَ لا يُحِبُّ الْمُعْتَدِينَ... - البقرة: ١٩٠

“*And do not exceed the limits. Verily, Allah dislikes those who transgress*.” Al-Baqarah: 190

Even this verse is not appropriate as evidence for the prohibition of smoking, because what is meant by *al-I'tida* (exceeding the limit) is

مُجَاوَزَةُ الحَدِّ, وَالحَدُّ الَذِي يَنْهَى اللهُ عَنْ مُجَاوَزِهِ إِمَّا شَرْعِيٌّ كَتَجَاوُزِ الحَلاَلِ مِنَ الطَّعَامِ وَالشَّرَابِ وَمَا يَتَعَلَّقُ بِهَا إِلَى الحَرَامِ, وَإِمَّا فِطْرِيٌّ - ٥٣ : طَبِعِيٌّ هُوَ تَجَاوُزُ الشَّبَعِ إِلَى البَطَّةِ الضَارَّةِ - المراغي

Transgressing prohibited limits is sometimes a matter of shariah, such as transgressing the lawful aspects of food and drinks and the things associated with them to the unlawful. Occasionally, it is an ordinary occurrence, such as overstepping the limit of satiety to harmful overindulgence. Al-Maraghi 8: 53

4. Smoking is considered an *israf* (extravagance) based on the word Allah:

وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ - الأنعام : ١٤١ “...

And do not overdo it. Verily, Allah dislikes those who exaggerate.” Al-An'am: 141.

In Tafsir al-Qurthubi, this is explained as follows.

وَالمَعْنَى المَقْصُودُ مِنَ الآيَةِ: لاَ تَأْخُذُوا الشَّيْئَ بِغَيْرِ حَقِهِ ثُمَّ تَضَعُوهُ : غَيْرِ حَقِهِ - القرطبي

"*Do not take what is not rightfully yours and then use it where it is not rightfully yours*." Al-Qurthubi VII: 7l.

مُدا فِي مَعْصِيَّةِ اللهِ كَانَ مُسْرِفًا - - ١١٠ : القرطبي ٧مُجَاهِدٌ: ... وَلَوْ أَنْفَقَ دِرْهَمًا

And said Mujahid... If (Abu Qubais) spends dirham or mud in disobedience to Allah, then he is an israf (wasteful). Al-Qurthubi VII: 110.

Thus, smoking is not considered an israf (extravagance).

5. Smoking is habitable. Allah's Word:

وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ - الأعراف : ١٥٧ "...

Allah has made it lawful to them all that is good and forbidden to them all that is evil. (al-A'raf: 157).

The verse has nothing to do with the smoking prohibition. The meaning of the verse is as follows.

وَيُحَرِّمُ عَلَيْهِمْ مَا تَسْتَقْذِرُهُ النُّفُوسُ كَالمَيْتَةِ وَالدَّمِ المَسْفُوحِ وَمَا يُؤْخَذُ مِنَ : الأَمْوَالِ بِغَيْرِ حَقٍّ كَالرِّبَا وَالرِّشْوَةِ وَالغَصَبِ وَالخِيَانَةِ - المراغي ٩ -

Allah has forbidden that which is disgusting to passions, such as carrion, flowing blood, and wealth taken without right, such as usury, bribery, ghasab and treachery. Al-Maraghi 9: 83

This is what *khabaits* mean.

6. Smoking is seen as leading to corruption, saying Allah.

وَلاَ تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ... - البقرة:

"*... And do not plunge yourselves into corruption*." Al-Baqarah: 195

The verse means that it is difficult to establish Islam to gain victory from your wealth and all the means at your disposal. If you do not do so, you are plunging yourself into defeat. Therefore, the verse has nothing to do with the *harm* caused by smoking.

7. Those who smoke are seen as following the devil for the following reason:

وَلا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ - البقرة :

"*And do not follow the steps of the devil*." Al-Baqarah: 168

The verse implies the following:

وَلاَ تُحَرِّمُوا مَا لَمْ يُحَرِّمْهُ اللهُ عَلَيْكُمْ فَإِنَّ ذَالِكَ إِغْوَاءٌ مِنْهُ وَاللهُ المُبْدِعُ قَدْ أَبَاحَهَا لَكُمْ فَلَيْسَ لِغَيْرِهِ أَنْ يُحَرِّمَ أَوْ يُحَلِّلَ وَلاَ أَنْ يَتَعَّدَ لَكُمْ بِهِ - - ٥٣ : المراغي

Do not forbid that Allah has not been forbidden. Then, which is perversion. However, Allah, who created it, made it permissible. Therefore, it is not permissible for anyone else to forbid, and he will not be subject to you. Al-Maraghi, Tafsir al-Qur'an, volume 8: 53.

There is nothing in this verse to forbid smoking. We should not forbid something if Allah has not forbidden it.

1. There is no single Shah or *Sharih* evidence that prohibits smoking. Therefore, smoking was not considered harmful.
2. Smoking is *makruh* because it smells bad; therefore, it is not a praiseworthy action.

In the broadcast of a session, decision (PP). Persis (1987) was signed by the KHA. Latief Mukhtar, MA, as chairman, and I. Sodikin, as secretary of the session, stated that Fiqh Persis, especially the Hisbah Council, is very open to new evidence or facts, both in the form of arguments, approaches to arguments, and changes in the *illat*.

PP. Exactly related to the issue of smoking, appealing to authoritative institutions such as LP POM and the Ministry of Health, for example, needs to state that cigarettes certainly contain substances that can be religiously forbidden for consumption so that they can be used on a legal basis. It can also be an authoritative and proven scientific journal. The mechanism was submitted to the Hisbah Council, accompanied by papers and supporters.

After selection, if it meets the elements of eligibility, it will be heard again; therefore, it does not rule out the possibility of a new trial decision, different from the previous one, regarding the smoking law.

However, this fatwa was issued by the PP. Scholars of this organization have not issued a fatwa on smoking since 1987, meaning that this fatwa is still valid by 2025, and the law of smoking is only limited to *makruh*, not *haram*.

Conclusion

Changes in fatwas, or official pronouncements of Islamic law, are a natural and inherent aspect of Islamic teaching. This is because many Islamic teachings are considered elastic (*zanni*), which enables them to adapt to the temporal and contextual nuances of society. By contrast, a relatively limited segment of these teachings is considered fixed (*qath'i*), particularly regarding the realm of pure worship. Consequently, ijtihad emerged as a pivotal instrument employed by scholars to address the evolving dynamics of society and the shifting needs of ummah over time.

However, it is important to note that ijtihad does not invariably yield the same conclusions. Discrepancies in opinions among scholars frequently arise from variations in the methodology, context, and arguments employed. The principle of *al-ijtihadu la yunqadu bil-ijtihad* underscores recognition of the plurality of views in Islam. Muslims are therefore obliged to compare the results of existing *ijtihad* and select a view that is most rational and relevant to their circumstances.

An illustration of this phenomenon can be observed in the divergent fatwas (religious decrees) issued by Islamic organizations in Indonesia regarding the legality of smoking. Muhammadiyah declared it *haram,* while NU and Persis were more inclined to declare it *makruh*. The scholars of NU contended that the legal basis for prohibiting smoking was insufficient to reach the level of *haram.* In contrast, Persis's scholars criticized the use of arguments derived from the concepts of *fasad* and *khabaits* in the Qur'an as the foundation for prohibition, asserting that these verses were not applicable in the context under discussion. From a health perspective, Persis aligns with the perspective of expert opinion that there is an absence of conclusive evidence regarding the dangers of smoking in all individuals. Consequently, smoking is regarded as *makruh* rather than *haram* by Persis, primarily due to its unpleasant olfactory characteristics and its failure to align with exemplary conduct.

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