

Inter Subjectivity of Fatwa Results of The Decision of Bahtsul Masail NU On The Status of Non-Muslim Citizenship

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Abstract

The fatwa in response to questions about Islamic law at Nahdlatul Ulama was discussed at the NU Bahtsul Masail Institute. The methodology used in exploring the law was initially still using the classical fiqh paradigm. However, recently many decisions made by the institution imply a new paradigm that leads to a progressive Islamic approach. The paradigm underlying the decision is not only based on subjectivity ('ulum ad-dien) but also involves a dimension of objectivity (social sciences and humanities). This is reflected in the decision of the Bahtsul Masail ad-Diniyyah al-Maudlu'iyah PBNU LBMNU forum at the Banjar West Java National Conference on 27 February-1 March 2019 regarding point A: State, Citizenship and State Law. Non-Muslim *ẓimmi* in the context of the nation state according to NU is referred to as *muwaththin*, namely citizens of equal status. The intersubjectivity of the fatwa in the decision is a transformation of the methodology of the new legal approach at Nahdlatul Ulama in responding to current contextual problems.

I. Introduction

The classification of non-Muslims *ẓimmi* in the study of classical fiqh is a religious teaching which is still a dogma so far. When the context of the state has changed, is the classification of non-Muslims *ẓimmi* in classical fiqh still relevant? This question turned out to have been discussed in the Bahtsul Masail ad-Diniyyah al-Maudlu'iyah LBMNU PBNU forum at the Banjar West Java National Conference on 27th February until 1st March 2019 regarding point A: State, Citizenship and State Law.

This forum became a public concern at the time, considering that the NU organization throughout its history was known in its fatwas, using the

classical *siyasa fiqh* paradigm with the categorization of infidels into *harbi*, *zimmy*, *musta'man*, *mu'āhad* which is still its teaching. The decision of the Bahtsul Masail forum regarding the status of non-Muslims in Indonesia which is not categorized as infidel is interesting to study.

The paradigm underlying the decision is not only based on subjectivity (*'ulum ad-dien*) but also involves an objectivity dimension (social sciences and humanities). This assumption needs to be proven by an in-depth study of the fatwa. There are two questions that become the formulation of the problem: (1) through which approach was the decision of Bahtsul Masail NU produced? (2) how is the relevance of the *zimmy* concept in the context of the nation state according to NU?

The paradigm needed as an analysis tool in this study is an integration-interconnection approach, the relationship between religion and science that is dialogical and integrative (Semipermeable, Intersubjective Testability and Creative Imagination).¹ Intersubjective, a theoretical framework initiated by Amin Abdullah, will be used by the author to identify whether in the *zimmy's* fatwa decision there is a pattern of dialogue between subjectivity and objectivity or not?

Previous studies on methodology and paradigms in Islamic studies include Abdullah (2020); Rochmat (2014).² Other books and research related to citizenship in Islam include Huwaidy (1968); Harmakaputra (2015). Specifically, studies on paradigms and references in Bahtsul Masail NU include Kholilah (2019); Riza (2011); Rochmat (2014).

A review of Iis Kholilah's research concludes that there are three methods of legal *istinbat* used in the *Bahtsul Masail* NU forum related to decisions with nationalist nuances, namely *Qauli*, *Ilhaqi*, and *Manhaji*. Besides that, there is a paradigm used, namely the *Bayani* and *Burhani* paradigms which are based on text, rational reasoning and empirical experience. In other decisions there is a Sunni political influence on some of NU's nationalist attitudes, and there is a tendency for decisions to be progressive.³ Intersubjectivity as a paradigm has not been touched in the discussion.

Zimmy's article and the Concept of Citizenship in Classical and Modern Perspectives by Abdul Azis in its conclusion refer to the concept of the Medina charter which is more relevant to be used as a reference for modern citizenship than the views of classical *fiqh* scholars regarding *zimmy*

¹Amin Abdullah, "Praxis Paradigma Integrasi-Interkoneksi dan Transformasi Islamic Studies di UIN Sunan Kalijaga," *Pasca Sarjana UIN*, 2014, hlm.6.

²Saefur Rochmat, "The Fiqh Paradigm for the Pancasila State: Abdurrahman Wahid's Thoughts on Islam and the Republic of Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 52, no. 2 (26 Desember 2014): 309, <https://doi.org/10.14421/ajis.2014.522.309-329>.

³Iis Kholilah, "Metodologi dan Paradigma Keilmuan Nasionalisme Nahdlatul Ulama" (Semarang, UIN Walisongo Semarang, 2019).

which is deemed no longer compatible with the values outlined in the Al-Quran and examples given by the Prophet SAW. Although it has provided a lot of information related to citizenship in classical (pre-modern) and modern perspectives, it has not yet reached the level of dissecting the paradigm used.

The journal *Islamism And Post-Islamism "Non-Muslim" in Socio-Political Discourses of Pakistan, the United States, and Indonesia*, by Hans Abdiel Harmakaputra has identified three types. The first type, positioning non-Muslims as opponents. The second type understands non-Muslims as second-class citizens under the category of "protected minorities"⁴ such as Christians and Ahmadiyah in Maududi's thinking. Lastly, non-Muslims are perceived as equal citizens with equal rights under the law as demonstrated by the American Muslim engagement program and the Indonesian constitution which allows non-Muslims to take part in social and political life without discrimination based on religion.⁵ In his conclusion, Harmakaputra wants to show that Islamism always tends to marginalize non-Muslims, while post-Islamism takes a different direction. Related to what paradigms are used to perceive non-Muslims as equal citizens has not been shown in his research.

⁶This research is expected to reveal a variety of qualitative information with a thorough and meaningful description-analysis that also does not reject quantitative information in the form of numbers or amounts. In each object will be seen the tendency, mindset, disorder, and display of behavior integration as in the genetic case study.⁷ The object of field research in the sense that the data sources are obtained from real events in the field or in the community, namely the study of Bahtsul Masail ad-Diniyyah al-Maudhu'iyah LBMNU PBNU at the Banjar National Conference, West Java on 27th February until 1st March 2019 regarding material point A: State, Citizenship and State Law.

Research methods need to be used, Arnold M. Rose emphasizes, "Facts don't just lie around waiting to be picked up. Facts must be opened from the skin of reality, must be observed in a specific frame of reference⁸, must be measured accurately, must be observed where a fact can be related to other relevant facts".

⁴ Husna Nashihin, M Daud Yahya, and Noor Aziz, "Morality and Expression of Religious Moderation in "Pecinan", no. Dalimunthe 2016 (2020): 24158–68.

⁵Hans Abdiel Harmakaputra, "Islamism and Post-Islamism: 'Non-Muslim' in Socio-Political Discourse of Pakistan, the United States, and Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 53, no. 1 (July 2, 2015): 179, <https://doi.org/10.14421/ajis.2015.531.179-204>.

⁶Sugiyono, *Metode Penelitian Pendidikan: Pendalaman Kualitatif, Dan R & D, CV. Alfabeta* (Alfabeta, 2013).

⁷M P Mukhtazar, *Prosedur Penelitian Pendidikan* (Absolute Media, 2020).

⁸Sukardi, *Metodologi Penelitian Pendidikan: Kompetensi Dan Praktiknya (Edisi Revisi)* (Bumi Aksara, 2021).

The object of this research is the decision of Bahtsul Masail ad-Diniyyah al-Maudlu'iyah LBMNU PBNU at the Banjar National Conference, West Java on 27th February until 1st March 2019 regarding point A: State, Citizenship and State Law.

The approach used in this research is a comparative approach⁹, which is a way or method to understand and know something (science) by using an effort to compare two or more objects of study¹⁰. This comparative approach can also be used in various sciences. In this case to find and analyze a scientific field. Both in the form of similarities and differences or the advantages and disadvantages of each object of study.

2. Research Method

The research method is a form of applying scientific methods in the context of developing scientific treasures in the field of knowledge and seeking the truth which is carried out in a systematically planned manner and follows scientific concepts. As for the method to prove the accuracy of the research, the research method used in this writing is as follows:

This research is a type of qualitative research, which is research that prioritizes the problem of process and meaning or perception. In each object will be seen the tendency, mindset, irregularity, as well as the display of integrated behavior as in the genetic case study. The object of field research in the sense that the source of the data is obtained from real events in the field or in the community, namely regarding the decision of Bahtsul Masail ad-Diniyyah al-Maudlu'iyah LBMNU PBNU at the Banjar National Conference in West Java on February 27-March 1 2019 on material point A: State, Citizenship and State Law.

The qualitative data analysis process according to Seiddel includes:

- a. a. the note-taking process that produces field notes, whereby they are coded so that the source of the data remains traceable.
- b. b. Collecting, sorting, classifying, synthesizing, summarizing and indexing.
- c. Thinking, by making the data categories have meaning, looking for and finding patterns and relationships.
- d. Make general findings.¹¹

⁹J Nasrudin, *Metodologi Penelitian Pendidikan: Buku Ajar Praktis Cara Membuat Penelitian* (Pantera Publishing, 2019).

¹⁰Santosa, *Buku Ajar Metodologi Penelitian* (PT Penerbit IPB Press, 2019).

¹¹ Sandu Siyoto, *Dasar Metodologi Penelitian* (Yogyakarta: Literasi media Publishing, 2015), 121,

Methods in a study really need to be used, Arnold M. Rose stated:

“Facts are not lying around waiting to be picked up. Facts must be opened from the skin of reality, must be observed in a specific frame of reference, must be measured precisely, must be observed where a fact can be related to other relevant facts.”¹²

The scientific method that the writer uses is to follow the flow of convergence which combines deductive and inductive mindsets. Namely finding the truth through the effort to think which is followed up with efforts to find evidence in real life. With this scientific method the truth can be obtained through research activities carried out in a planned, systematic and controlled manner based on empirical data.

The object of research is the Bahtsul Masail ad-Diniyyah al-Maudhuiyyah LBMNU PBNU Decree at the West Java Banjar Conference on February 27-March 1 2019 concerning the material point A: State, Citizenship and State Law. And data collection techniques are carried out by:

- a) Observation method, namely how to make direct observations of research objects to obtain the required data.
- b) Interview, which is an oral question and answer process, is carried out by 2 (two) or more people facing each other physically, so that facial expressions and body movements can be identified which can be checked with verbal questions. The parties who were used as interview respondents in this study were the PBNU leadership, the management of the PBNU Bahtsul Masail Nahdlatul Ulama Institute which included the Formulator, Musahhih and the Chairman of the Bahtsul Masail Commission Maudlu'iyah Commission and scholars observing Islam and Human Rights (HAM).
- c) Documentation, namely collecting data from documents related to the object of study, such as scientific books, archives, monograph data, and other documents.

3. Results and Discussion

a. Citizenship Concept

Citizens in this discussion can be seen from two contexts, classic and modern. In a modern context, the word citizen in English is defined as

¹² Syahril Dedi, “Perluasan Teori Maqashid Al-Syari’ah: Kaji Ulang Wacana Hifdz Al-‘Ummah A. Djuzuli,” *Al Istinbath: Jurnal Hukum Islam STAIN Curup-Bengkulu* 1 (2016): 58.

'citizen'. John C. Cogan as quoted by Winarno defines the term 'citizen' with *a constituent member of society*.¹³ **According to Kansil, people who are in the territory of a country can be divided into two:**¹⁴

- 1) Residents are those who have met certain conditions stipulated by the regulations of the country concerned are allowed to have a principal residence (domicile) within the territory of that State. This population is further divided into 2, namely: citizens or residents who can be fully regulated by the government of the country and recognize its own government, and residents who are not citizens or foreigners, namely residents who are not citizens.
- 2) Non-residents are those who are in the territory of a country temporarily and who do not intend to reside in the territory of that country.

The provisions on who are citizens are formulated by law that adheres to two principles, namely the principle of place of birth (*ius soli*) and the principle of descent (*ius sanguinis*).¹⁵ Citizenship in Indonesia is regulated in Article 26 of the 1945 Constitution. Further implementation is regulated in Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia. In the 1945 Constitution, Indonesian citizens are people of the original Indonesian nation and people of other nations who are ratified by law as citizens with the conditions stipulated by law.¹⁶

Citizens in the classical context, in the early period of Islam were known as the *ummah* and in the later period a *dār al-Islam* society bound by religious equality as well as an agreement with an Islamic state.¹⁷ In the Qur'an there are four terms that imply the meaning of citizens, namely *ahl al Qurā* which means population and the word *Qaum* which means people in al-A'raf/7:96-99, *ummah* means people in Ali Imran/3:110, and *al nas* means human in the letter of Al Hujurat/49:13.¹⁸ Both the understanding of *ahlu*, *ummah* and practical people are still limited to the understanding of residents of a certain place or nation, such as *ahlu al-qaryah* (village residents), *qaum 'Ad* (nation 'Ad) and *qaum Thamud* (nation Thamud).

Citizenship as a political concept according to Bernard Lewis is unknown in Islam and there are no equivalent words in Arabic, Persian or Turkish. Lewis's view was criticized by Al-Affandi, "*This is an erroneous*

¹³Asrori Muhtarom, "Pendidikan Keagamaan Dalam Perspektif Al Quran," *MIQOT* 43 (1 Juni 2019): 5.

¹⁴M. Arifin Hakim, *Ilmu Sosial Dasar, Teori dan Konsep Ilmu Sosial* (t.t.: Pustaka Satya, 2001), 70.

¹⁵Hakim, 70.

¹⁶Hakim, 71.

¹⁷Abdul Aziz, *Jimmy dan Konsep Kewarganegaraan Perspektif Klasik dan Modern*, Jurnal Studi Islam, Vol. 11, No. 2 Desember, hlm. 39.

¹⁸Asrori Mukhtarom dkk., *Pendidikan Keagamaan*, hlm. 6.

assertion notwithstanding the fact that many Arab researchers have concurred". According to him, the word Muslim itself is equivalent to the word 'citizen'.¹⁹

Historically, Muslims at the time of the Abbasids could live and find work in the lands of other Islamic caliphate powers anywhere. Examples of prominent figures such as al-Shafi'i, Ibn Khaldun, al-Ghazali, Ibn Battuta and many others who lived in various places and worked in various administrative rulers throughout the land of Islam. No Muslim is a foreigner in any Muslim land.²⁰

The difference between the classical and modern concepts of citizenship cannot be separated from the differences in the state system adopted. During the period of conquest and expansion, the rulers were the groups or nations that won the war. At that time, Islam was the ruler, with a religious state system (theocracy), so there were only two concepts of citizenship; Muslim and *Ẓimmi*. The principle of citizenship in an Islamic state is the similarity of faith or the ability to accept Islamic laws.²¹ All who are Muslim or who want to accept Islamic laws are citizens, regardless of skin color, race, nation, language, religion or the origin of their parents. Vice versa, for citizens in a non-Muslim country (*dar al-harb*), the concept of citizens is those who do not embrace Islam and who do not recognize Islamic laws. Changes in the status of citizens can occur due to changes in existing principles. Citizens who apostatize or no longer recognize Islamic law or stay long in the territory of an infidel, then their status changes to become a citizen of an infidel. Likewise, a citizen of a non-Muslim country who converts to Islam and wants to live in an Islamic country either by migration (*hijrah*) or the entire territory has become an Islamic territory and recognizes Islamic laws, then he changes the status of being an Islamic citizen.²²

In the modern era, especially after the declaration of Human Rights, the state system in the world has changed significantly. Conquest or expansion became a very reprehensible thing in the world. This affects the pattern of citizenship of a person in the country. Citizenship is no longer based on ethnicity, race and religion. A person will legally become a citizen if he is legally declared a country as a citizen.²³ Regarding the relationship between Islam and modernity, many Muslim scholars have carried out updates and reforms (*tajdid* and *islah*), including Tariq Ramadhan who for

¹⁹Mohammad Hashim Kamali, "Citizenship: An Islamic Perspective," *Journal of Islamic Law and Culture* 11, no. 2 (May 2009): 126, <https://doi.org/10.1080/15288170903273060>.

²⁰Kamali, 125.

²¹Abdul Qadir Awdah, *al-Tasyrī' al-Jināi fī al-Islām*, vol. 1 (Beirut: Dār al-Katib al 'Arabi, t.t.), 307.

²²Awdah, 1:308.

²³Abdul Aziz, *Ẓimmi*, hlm. 42

the last twenty years has developed citizenship ethics for Muslims in general and Muslims.

b. The concept of *Zimmy* in Islamic law

As mentioned earlier, that citizens in Islam are classified into two; muslim and zimmy. In the Qur'an the word *zimmy* is only mentioned twice in two verses, namely in the letter at-Taubah verses 8-10:

كَيْفَ وَإِنْ يَظْهَرُوا عَلَيْكُمْ لَا يَرْقُبُوا فِيكُمْ إِلَّا وَلَا ذِمَّةً ۚ يُرْضُونَكُمْ بِأَفْوَاهِهِمْ وَتَأْبَىٰ قُلُوبُهُمْ وَأَكْثَرُهُمْ فَاسِقُونَ

"How can (there is a Covenant from Allah and His Messenger with the polytheists), even though if they gain victory over you, they do not maintain kinship with you and do not (also heed) the agreement. They please your heart with their mouth, while their heart reject it. and most of them are people who are ungodly (do not keep the agreement) ". (At-Taubah: 8)

لَا يَرْقُبُونَ فِي مُؤْمِنٍ إِلَّا وَلَا ذِمَّةً ۚ وَأُولَٰئِكَ هُمُ الْمُعْتَدُونَ

"They do not maintain (relations) relatives to the moslem and do not (also heed) the agreement. and they are the transgressors." (At-Taubah: 10).

The word *zimmah* which means agreement is meant by the Hudaibiyah agreement.²⁴ The nature of the agreement is temporal, not permanent as the zimmy infidel in Islamic countries is defined by the fukaha. The definition of zimmy as a permanent agreement for a non-Muslim in an Islamic state was only prescribed after the conquest of Makkah (*fath al Makkah*). This is confirmed by the verse about the *jizyah* (tribute) which was revealed in the 9th year AH, which is after the fathul of Makkah. So in the interpretation literature, the verse *zimmah* and *jizyah* are separated in different contexts. The verse of *zimmah* was revealed in the context of temporal agreements, while *jizyah* was revealed in the context of a permanent agreement of a non-Muslim in an Islamic state.

The hadiths that mention the word *zimmy* are nothing more than an adjective, not a definition as intended by fukaha.²⁵ This is based on the history that long before Islam came, the word *zimmah* was used by Arabs to mean giving protection to guests who come to one people as neighbors. The Arabs call it a neighborly contract (*'aqd al jiwār*) or an agreement (*ad-zimmah*). The guests who have entered the environment of a tribe will receive protection as the tribe protects its own citizens.

In this sense, the term zimmy is a historical product that is not universal and permanent. When in certain contexts it creates confusion and

²⁴Fahmi Huwaidy, *al Muwatthinūn Lā Dzimmiyyūn* (Kairo: Dar as-Syuruq, 1968), 110.

²⁵Huwaidy, 110.

problems, it can be reconstructed in terms that are more equitable to the rights of non-Muslims in an Islamic state.²⁶ The classification of citizens with the status of *zimmi* is a product of the tradition of *ijtihad ulama'* which is influenced by the context of circumstances and times. Not as a relevant Shari'a throughout the ages.

The main source of reference to the concept of *zimmi* is the issue of *jizyah*, which in the Qur'an is only mentioned once in Surah at-Taubah: 29. In the *munasabah*, the context of the verse is related to the people of the book. That when the Roman empire threatened the Islamic sovereignty of Medina, the Messenger of Allah. showed his strength in the Tabuk war. In the end, when the Romans were defeated in many battles, they proposed a peace treaty with the *jizyah*. This event was then standardized in general as a legal obligation for the people of the book to pay *jizyah*. The first tribe of the people of the book to pay *jizyah* in the Arabian Peninsula before the death of the Prophet SAW. are the Najran Christians.

Historically, *jizyah* was not only practiced during the Islamic period. Long time before Islam came, *jizyah* had been practiced by the Persians. The word *jizyah* is an absorption from Persian into Arabic (*mu'arrab*), namely *kazit*, which means tax for war financing. Rasyid Ridha suspects that the person who first practiced *jizyah* was the Persian king named *Anu Syarwan*. Anu Syarwan imposed a war financing tax payer on his people except for the leaders and officials of institutions, the army, the royal secretary, and palace aides. The meaning of *jizyah* by Rasyid Ridha is defined as the obligation to carry out the defense and security of the soul and property of each individual. People who are able to take part in defense and security are no longer required to pay anything, such as soldiers, while people who are unable to participate in war because of work or other reasons are required to pay a sum of money instead.²⁷

1) The Principle of Justice

Ghannushi sees the essence of justice in Islam as a solid basis for developing laws and regulations regarding non-Muslim citizenship.²⁸ Allah sent the apostles with their holy books is for the reason of justice. The Prophet was sent to teach the people that they must be fair, says Allah:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ

²⁶Huwaidy, 125.

²⁷Huwaidy, 130.

²⁸ Abdullah Saeed, "Rethinking Citizenship Rights of Non-Muslims in an Islamic State: Rashid Al-Ghannūshi's Contribution to the Evolving Debate," *Islam and Christian-Muslim Relations* 10, no. 3 (October 1999): 321, <https://doi.org/10.1080/09596419908721189>.

Indeed, We have sent Our messengers with clear evidences and We have sent down with them the book and the balance (justice) so that humans can do justice (Al-Hadiid: 25)

Ghannushi emphasized that one of the main goals of Islam from the very beginning was to establish a just order.²⁹

In Islam, justice is enshrined in divine revelations and in the traditions of the Prophet conveyed to his people. Revelation, is transmitted in the word of Allah in the Qur'an, and that Divine wisdom is uttered in the words of the Prophet as Sunnah. Al Quran and Sunnah are textual sources available as raw material for Islamic law and justice.³⁰

Fair is all things that are shown by Islam, namely the Qur'an and al-Sunnah, both in muamalah (laws) relating to sanctions or other laws. In general, what is prohibited by the Qur'an and al-Sunnah is a return to the realization of justice and the prohibition to act unjustly, for example eating false wealth.³¹ Imam al-Qurthubi interprets justice with everything that is required, both in the form of Islamic faith and Islamic law.³²

Justice in Islam depends on justice that has been determined by Allah Himself. Because it is impossible for humans to know justice correctly and precisely. Here, faith precedes understanding, because it has been determined that everything that is determined by Allah SWT must be fair.³³ The concept of justice in civil law is completely dependent on human reasoning. Therefore, it is included in the field of legal philosophy. And because of that, the notion of justice is always from one society to another, depending on the development of legal philosophy that is regulated by that society³⁴

The word *ādil* is used in four ways, namely balance, equality and non-discrimination, granting rights to entitled parties, and delegation of form based on level and feasibility. Divine justice means that every being takes on the form and perfection of his form according to what is worthy and possible for him.³⁵

2) Methodology and Paradigm of Bahtsul Masail NU

Historically, the *Bahtsul Masail* forum existed before NU was founded. At that time, there was a tradition of discussion among pesantren involving

²⁹Saeed, 312.

³⁰Rashid Ghannushi, *Huqūq al Muwātanah: Huqūq Ghayr al Muslim fī al Mujtama' al Islāmi* (Herndon, Virginia, USA: The International Institute of Islamic Thought, 1993), 35–38.

³¹Ibnu Taimiyah, *al-Siyasah al-Syar'iyyah* (Beirut: Dar al-Ma'arif li al-Thibaah wa al-Nasyr, t.t.), 156.

³²Qurthubi, *Al-Jami' Li Ahkam al-Qur'an*, vol. X, n.d., 165.

³³Busthanul Arifin, *Pelebagaan Hukum Islam Di Indonesia: Akar Sejarah, Hambatan Dan Implementasinya* (Jakarta: Gema Insani Press, 1999), 46.

³⁴Arifin, 46.

³⁵Murtadha Muthahhari, *Keadilan Tuhan: Asas Pandangan Dunia Islam* (Jakarta: Mizan Pustaka, 2009), 65.

kiai and santri³⁶, the results of which were published in the LINO bulletin (Lailatul Ijtima' Nahdlatul Oelama). In LINO, in addition to containing the results of Bahtsul Masail, it is also a place for long-distance interactive discussions between scholars. A kiai writes then another kiai responds, and so on.³⁷

Bahtsul masail is a forum where fatwas are formulated. Bahtsul masail comes from two Arabic words, *bahth* and *al-masā'il*. *Bahth* is a noun meaning examination, analysis, and discussion.³⁸ At first, the *Bahtsul Masail* NU Forum seemed to only be oriented to the *qaul* (verbal statement) of the ulama, not the *manhaj* (methodology) and centric Syafi'iyah. However, by KH. Sahal Mahfudz (Rois 'Am PBNU at that time) denied this impression:

*"This criticism is not entirely true. For example, in the past, the Bahtsul Masail forum forbade Muslims to wear suits and ties because they were considered tasyabbuh (resembling) with infidels. But KH. Wahab Hasbullah himself after independence always wore a sarong and tie. There is no evidence for this (qaul)".*³⁹

The Bahtsul Masail NU Forum has adapted to accommodate contemporary methodologies stated by Ahmad Kemal Riza:⁴⁰

When the fiqh establishment underwent changes in order to accommodate modernism, fatwa had to follow accordingly. Similarly, bahtsul masail also shows such adaptability. Moreover, bahtsul masail in the Indonesian context also brings about some unusual features to the fatwa institution. Therefore, contrary to commonly held views that NU consistently maintains the tradition of classical Islamic law, some features of contemporary bahtsul masail show otherwise. In examining on the nature of bahtsul masail forums, this paper begins by explaining fatwa institution and fiqh development. Response of such classic Islamic institution to modernism is highlighted. Later on, the development of bahtsul masail is discussed and the chapter concludes by describing the bahtsul masail debates of the East Javanese ulama.

(Ketika pendirian fiqh mengalami perubahan untuk mengakomodasi modernisme, fatwa harus mengikutinya. Demikian pula, bahtsul masail

³⁶ Husna Nashihin, *Pendidikan Karakter Berbasis Budaya Pesantren* (Formaci, 2017), 34, <https://books.google.co.id/books?id=X27IDwAAQBAJ>.

³⁷ Tim Penyusun, ed. *Ahkamul Fuqaha Solusi Problematika Aktual Hukum Islam Keputusan Mukhtar, Munas dan Konbes Nahdlatul Ulama (1926-1999 M.)*. (Surabaya: Lajnah Ta'lif Wan Nasyr (LTM) NU Jawa Timur dan Penerbit Diantama Surabaya, 2005), x.

³⁸ Achmad Kemal Riza, "CONTEMPORARY FATAWA OF NAHDLATUL ULAMA: Between Observing the Madhhab and Adapting the Context," *JOURNAL OF INDONESIAN ISLAM* 5, no. 1 (June 1, 2011): 44, <https://doi.org/10.15642/JIIS.2011.5.1.35-65>.

³⁹ Tim Penyusun, *Ahkamul Fuqaha Solusi Problematika Aktual Hukum Islam Keputusan Mukhtar, Munas Dan Konbes Nahdlatul Ulama (1926-1999 M.)*, xi.

⁴⁰ Riza, "CONTEMPORARY FATAWA OF NAHDLATUL ULAMA," 36.

juga menunjukkan kemampuan beradaptasi tersebut. Selain itu, bahtsul masail dalam konteks Indonesia juga membawa beberapa ciri yang tidak biasa pada lembaga fatwatersebut. Oleh karena itu, bertentangan dengan pandangan umum bahwa NU secara konsisten mempertahankan tradisi hukum Islam klasik, beberapa ciri bahtsul masail kontemporer menunjukkan sebaliknya.)

The opportunity for reforming the Bahtsul Masail NU system even though it has not been successful was found in the 1992 NU Congressional Decision process regarding the decision-making method at Bahtsul Masail entitled 'The Bahtsul Masail Legal Decision Formulation System in the Nahdlatul Ulama Environment. There are three interests behind the preparation of the document: first, views agreed upon and supported by conservative groups such as the section on accredited texts (al-kutub al-mu'tabarah) and procedures for answering problems; second, it still contains justifications for the ongoing practice of collective practice of *ilhāq* (analogy). An in-depth examination of various NU fatwas reveals that the analogy has been practiced for a long time, thirdly, it consists of elements agreed upon by the two groups of scholars. Included in this section is a section of technical terms used in the document. From this ruling there were other developments, but not widely accepted, in the practice of this doctrine. KH M. A. Sahal Mahfudh, for example, combines the *talfiq* and *manhaji* schools at once. That is by using several aspects of the legal theory of non-Syafi'i scholars -especially the principle of *maslahah* (benefits or usefulness) of al-Shathibi from the Maliki school - while maintaining commitment to the Shafi'i school. This refusal shows that all forms of references must be textual (yellow book references) in issuing fatwas among NU scholars.⁴¹

Practically there are three methods of legal *istinbat* used in the *Bahtsul Masail* NU forum, namely *Qauli*, *Ilhaqi*, and *Manhaji*. Besides that, there is a paradigm used, namely the *Bayani* and *Burhani* paradigms which are based on text, rational reasoning and empirical experience.⁴² It was only at the 33rd Congress in Jombang that NU made a new decision on Bahtsul Masail ad-Diniyyah al Maudlu'iyah (thematic). The decision is contained in the Decision of the 33rd Nahdlatul Ulama Congress Number: 006/MNU-33/VII/2015 concerning Bahtsul Masail Ad-Diniyyah Al-Maudlu'iyah Nahdlatul Ulama.⁴³

⁴¹Riza, 56–57.

⁴²Kholilah, "Metodologi dan Paradigma Keilmuan Nasionalisme Nahdlatul Ulama," 211.

⁴³*Hasil-Hasil Muktamar ke-33 tahun 2015 di Jombang*, Cetakan II (Jakarta: Lembaga Ta'lif wa an-Nasyr PBNU, 2016), 150.

Bahtsul Masail ad-Diniyyah al-Maudlu'iyah LBMNU PBNU at the Banjar National Conference West Java on 27th February-1st March 2019 regarding point A: State, Citizenship and State Law which has resulted in the decision not to call non-Muslims as infidels but as citizens (*muwatthinūn*). The legal istinbat methodology that is based on it is not limited to classical fiqh texts (*'ulūm ad-din*) but also with approaches from other sciences. This is in line with classical scholars who often involve other disciplines outside of fiqh to determine the legal status of certain problems. For example, the science of astronomy (reckoning) and *ikhthilaf al-mathla'* in terms of determining the beginning of Ramadan and Shawwal, *ma'rifat al-qiblah* and *ma'rifat al-waqt* related to prayer times and the discovery of drugs in contraception (*man' al hamli, ibtha ' al-hamli*) in the matter of marriage.⁴⁴

The estuary of fiqh is the creation of social justice in society. So Ali bin Abi Talib ever said: "The world, power, state, can stand upright with justice even though *ma'a al-kufri* and the country will be destroyed even though *ma'a al-muslimin*." Ibn Taymiyya also said: "Allah will establish a just state even if it is an infidel (state) and Allah will destroy an unjust state even if it is a Muslim (state)." In this framework of thinking, if there is a fiqh product that does not lead to the creation of justice in society, it must be abandoned. For example, "political fiqh" (*fiqh siyasah*) whose dictums are often inconsistent with the idea of democracy which requires justice and equality of human rights before the law. The classical *fiqh siyasah* formula places non-Muslim groups as "second class" not as equal entities with Muslims. These views must begin to change. Because this view collides with the idea of modern democracy as well as against the idea of a nation state such as Indonesia. Professionalism, ability and capability should be the main choice, not Muslim or not, not male or female.⁴⁵

The intersubjective approach was seen in the formulation of the decisions made by *Bahtsul Masail Maudhu'iyah Munas* and the NU Consul, 27th February – 1st March 2019 in Banjar, West Java. Where the categorization of infidel in classical fiqh as subjectivity has been successfully dialogued with social sciences related to humanity, equality, and justice. In the study of NU's bahtsul masail, the idioms of *zimmi* infidel, *harbi* infidel, *musta'man* infidel, and *mu'ahad* infidel are classical fiqh lexicon that are biased by the Islamic State. They are infidels who have made peace treaties with Muslims. If they are citizens of *dār al-Islam*, their

⁴⁴Tim Penyusun, *Ahkamul Fuqaha Solusi Problematika Aktual Hukum Islam Keputusan Mukhtamar, Munas Dan Konbes Nahdlatul Ulama (1926-1999 M.)*, xv.

⁴⁵Tim Penyusun, xvii.

status is second-class citizens who pay jizyah. Jizyah is a symbol of submission which must be expressed in the manner of submission that reflects subordination. Al-Ghazali describes the surrender of the jizyah which must show *ihanah* (despicable and submissive) or subordinate:

الإهانة وهي أن يطأطيء الذمي رأسه عند التسليم، فيأخذ المستوفي بلحيته ويضرب في لهازمه وهو واجب

Subordinate is the will of *zimmi* to bow his head when handing over the jizyah. The receiving officer grabbed his beard and hit his jawbone. And this is mandatory.⁴⁶

This concept is considered inappropriate and relevant. When plenary, this concept changed to *muwathinīn* that is citizen.⁴⁷

Muwathinīn is derived from the word *wathan* which means nation because the Unitary State of the Republic of Indonesia is a form of *mu'āhadah wathaniyah* (national consensus). All parties without discrimination are citizens of equal status. Normatively, there is no majority and minority. All apply the principle of equality and similarity before the law. The reference for this argument is the Medina Charter which states that all citizens who are diverse from various religions, as one people, are citizens of equal status.⁴⁸

Infidel idiom still exist in the private realm of theology of each religion, but not in the context of socio-religious relationships. This is in line with Qaradhawi's view, which agrees that the term infidel is replaced by non-Muslim and *zimmiyun* is replaced by *muwathinūn*, namely equal citizens.⁴⁹ The Bahtsul Masail NU Forum in having a dialogue between subjectivity and objectivity related to *zimmi* in the context of the nation-state through an intersubjective approach has found its format.

4. Conclusion

The dialectic between subjectivity and objectivity can be carried out through an intersubjective approach, namely a dialogue between the two objective and subjective worlds, both in the world of science, religion, and culture. Religion in this case has the dimensions of universality and particularity. The *zimmi* classification in Islamic law is part of a particular dimension where the nation-state is currently present as well as another particularity that can dialogue with each other.

⁴⁶Abu Hamid Muhammad Ibn Muhammad al-Ghazali, *Al-Wajīz fī fiqh al-Imām al-Syāfi'ī*, vol. 2 (Beirut: Syirkah Dār al-Arqam bin Abī al-Arqam, 1997), 200.

⁴⁷M. Kholid Syeirazi, *WASATHIYAH ISLAM Anatomi, Narasi, dan Konsepsi Gerakan Islam* (Bekasi: alif.id, 2021), 361.

⁴⁸Syeirazi, 362.

⁴⁹Syeirazi, 364.

The decision of the Bahtsul Masail Maudhu'iyah National Conference Forum and the NU Konbes, 27th February – 1st March 2019 in Banjar, West Java was made through an intersubjective approach. The categorization of infidels in classical fiqh as subjectivity has been successfully dialogued with social sciences related to humanity, equality, and justice. The categorization of infidels into *zimmi*, *kāfir harbi*, *kāfir musta'man*, and *kāfir mu'āhad* is a classical fiqh lexicon that is biased by the Islamic State. This concept, according to the Bahtsul Masail NU forum, does not fit and is relevant to the context of the nation state. *Zimmi* in the context of the nation state according to NU is called the term *muwaththin*, namely citizens of equal status.

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