

**NON-MUSLIM LEADERSHIP POLEMIC
IN INDONESIA:
Outcomes of Mukhtamar NU XXX at Lirboyo in 1999
and Bahtsul Masail Kiai Muda Ansor in 2017**

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Abstract

Non-Muslim leadership is still being a political issue and causes polemic in Indonesia. The previous election of Governor of DKI Jakarta was remembering last controversy either probability or prohibition to vote a non-muslim as a chief. The law judgments addressing this issue are NU Congress at Lirboyo in 1999 and Bahtsul Masail Kiai Muda GP Ansor in 2017. According to Congress at Lirboyo, authorizing state affairs to a non-Muslim is not allowed, except in an emergency situation. Meanwhile, Bahtsul Masail of Kiai Muda Ansor in 2017 decided that voting non-Muslim leader in Indonesia is legally and constitutionally legitimate. This paper is trying to examine istinbāt method which is used in those two forums considering their position in the theory of al-Sabit and al-Mutahawwil. By conducting a literature study, the author concludes that the outcomes of Mukhtamar NU at Lirboyo in 1999 using the istinbāt Bayani method, belongs to al-Sabit category. Meanwhile, the outcomes of Bahtsul Masail Kiai Muda GP Ansor in 2017 which is using combination of istinbāt Bayani and istislahi, belongs to an al-Mutahawwil category.

[Persoalan kepemimpinan non-Muslim dalam ranah politik kembali menuai polemik. Pilkada DKI Jakarta membuka kembali perdebatan lama perihal boleh tidaknya memilih non-Muslim sebagai pemimpin. Keputusan hukum

yang membahas persoalan ini adalah Mukhtamar NU di Lirboyo tahun 1999 dan Bahstul Masail Kiai Muda GP Anzor yang diadakan tahun 2017. Mukhtamar Lirboyo melarang menguasai urusan kenegaraan kepada non-Muslim kecuali dalam keadaan darurat, sedang Bahtsul Masail Kiai Muda Anzor menghasilkan keputusan bahwa memilih pemimpin non-Muslim di Indonesia sah secara agama dan konstitusi. Artikel ini mencoba untuk mengkaji metode istinbāt yang digunakan dua forum tersebut, sekaligus dilihat posisi keduanya dalam teori al-Sabit dan al-Mutahawwil Adonis. Dengan melakukan studi kepustakaan, kajian ini menghasilkan kesimpulan bahwa hasil keputusan Mukhtamar NU di Lirboyo menggunakan metode istinbāt bayani, dan masuk dalam kategori al-Sabit. Sedang keputusan Bahtsul Masail Kiai Muda Anzor menggunakan perpaduan istinbāt bayani dan istislahi, dan masuk dalam kategori al-Mutahawwil.]

Keywords: *Istinbāt, NU, GP. Anzor, Mukhtamar, Bahtsul Masail*

Introduction

The previous election of Governor of DKI Jakarta was remembering last controversy about voting a non-Muslim as a leader in Indonesia. Discussing about the election of non-Muslim leader is a case that would have never been done, prominently refers to nation-state context¹, as well as it is implemented in Indonesia.

The polemic of non-Muslim leadership is not a hot issue in Islam. In Indonesia, the controversy related to this case emerged since Indonesia has not been become independent country yet.² Written in

¹ Is a concept in which the inhabitants see themselves as in nation and one identity that have geographical boundaries under administration. The inhabitants see that between a human and others are related. See Daniel S. Papp, *Contemporary International Relations: Framework for Understanding* (London: Macmillan Publishing, 1988), p. 19. In another concept, nation-state means a set of idea about the state that built for all citizens based on agreement that produce opened contractual-transactional relation between parties. Nurcholis Madjid, *Indonesia Kita* (Jakarta: Paramadina, 2004), p. 42.

² In *Mukhtamar Nahdlatul Ulama (NU)* in Banjarmasin, 1936 resulted that Indonesia is *Dārul Islām*. Nevertheless, at that time, the reign is on Dutch, but NU agreed that Indonesia is categorized as *Dārul Islām*. The term *Dārul Islām* in *Mukhtamar Banjarmasin*, according to KH. Ahmad Shiddiq, does not refer to the administration

some *fikih* literature, this authorization is excessively discussed. Most of *fuqaha* agreed that in normal situation, bringing non-Muslim into being a chief is forbidden.³

Thus, this prohibition is not an absolute decision. There are some contexts in *fikih* that can be considered to change this certain prohibition into allowable thing.⁴ Moreover, Nahdlatul Ulama (NU) Congress at Lirboyo⁵ allowed non-Muslim authorization in the emergency situation only.⁶

The dynamics matters happened in non-Muslim authorization indicated that the controversy did not obviously reach the final point. The prohibition stated by *fuqaha* cannot be separated from the situation and condition at that time. The system that government used was *kehilafan* as it has been implemented since Umayyah Diynasty.⁷ It is different from the nation-state concept which is applied today in Indonesia.

A chief, in *Fikih Siyāsah* is purposed as the people who authorizes secular and religious all at once (*siyāsah al-Dunyā wa Ḥirāsah al-Dīn*). Therefore, all about authorization should be taken over by Muslim. It is fine different from the concept of nation-state in Indonesia, where a chief does not have religion responsibility. So, the constitution of Indonesia

system, but refers to the term religious, exactly Islamic itself. Abdul Mun'im DZ, *Piagam Perjuangan Kebangsaan* (Jakarta: Setjen PBNU-NU Online, 2011), p. 52.

³ Ibnu Hajar al-Haitami, Juz. IX, p. 72. Ali As-Shabuni, *Rawā' al-Bayān fi Tafṣīr Ayat al-Aḥkām min Al-Qur'ān*, (Beirut: Dar Al-Fikr, 1980), p. 181.

⁴Ar-Romli, he guided Argon's citizens, Andalusia, to live in their country although they are led by Non-Muslim. Even, Muslims are not forbidden to pray there. Syihabuddin ar-Ramli, *Fatāwā ar-Ramlī* (Maktabah Syamilah), p. 182.

⁵ The results of *Muktamar* Lirboyo regarding some decisions related to non-Muslim reign. Those results will be examined in the next part.

⁶ Is the condition when there is an addiction and threats to five aspects in Islam, such as religion, soul, wealth, generation, and intelligence. Wahbah Zuhaili, *Konsep Darurat dalam Hukum Islam: Studi Banding dengan Hukum Positif*, trans Said Agil Husain al-Munawwar (Jakarta: Gaya Media Pratama, 1997), p. 71.

⁷ Umayyah Dynasty is Muslims' reign after Khulafa' al-Rasyidin. This dynasy existed in 41 H or 661 M. The founder of Umayyah Dynasty is Muawiyah ibn Abi Sufyan ibn Harb. Moh. Nurhakim, *Sejarah dan Peradaban Islam* (Malang: UMM Press, 2003), p. 53. Samsul Munir Amin, *Sejarah Peradaban Islam* (Jakarta: Amzah, 2009), p. 118.

bestows an equal right authority to whoever to be the chief, without considering his ethnic group or religion.⁸

Discussing about NU, it is the biggest Islamic organization in Indonesia. In etymology, NU means revival of *mufiti*. This organization is established in Surabaya, on 31 January 1926/ 16th or Rajab 1344 H.⁹ NU has given lots of contributions on historical journey of Indonesia, either before or after its independence.

The existence of *Bahtsul Masail* institute as subordinate of NU has a significant role in the process of solving problems related to religious issues. In every congress, problems are always solved. One result of *Bahtsul Masail* that is the main focus of this study is the outcome of NU Congress XXX at Lirboyo in 1999, concerning non-Muslim reign.

Muktamar Lirboyo yielded results as follows:

“Muslims are not allowed to be given a dominance to a non-Muslim aside from in a hurry situations which are: (a) in the fields that Muslims cannot take it in hand cause definite capability; (b) in the fields when there is Muslim that has capability, but there is an indication exists that he might betray; (c) since non-Muslim reign brings benefits.”¹⁰

The outcomes of *Muktamar* Lirboyo became the main principal of NU through non-Muslim reign. What decided by *Muktamar* Lirboyo was different from the result of *Bahtsul Masail Kiai Muda Ansor* forum which was held at March 11-12, 2017. As the subordinate of NU, GP Ansor resulted a recent law referring to non-Muslim reign which different from what *Muktamar* Lirboyo’s result.

By considering all sorts of aspects included nowadays circumstances of Indonesia, those forums resulted different final law. In *ikhtiṣār* released

⁸ Those principles are officially written in UUD 1945 article 27 verse (1) and (2); Article 28, Article 28D verse (3), article 28E verse (3).

⁹ H. Soeleiman Fadelī, *Antologi NU: Sejarah Istilah Amaliyah Uswah* (Surabaya: Khalista, 2008), p. 1.

¹⁰ Lajnah Ta’lif wan Nasyr, *Aḥkāmul Fuqahā’; Solusi Problematika Aktual Hukum Islam, Keputusan Muktamar, Munas dan Konbes Nahdlatul Ulama (1926-1999 M)* (Surabaya: Diantama, 2004), p. 581.

by GP Ansor, the following is point (f):

“The change of global politic system encourages the existence of fresh *ijtihad* which is based on late classic views. Ibn Taimiyah tried to leave the reciprocal categorization once by means of *dār murākhabah* concept. Ibn Taimiyah’s views should be considered in order to see the system of modern statehood based on citizenship. This system seems difficult to review if only use the categorizations written in classic books. Consider about this case, also al-Ramli speaking and result of *Muktamar* NU Banjarmasin, the selected non-Muslim chief is constitutionally and religiously legitimate.”¹¹

These contrast results are debatable to be examined, prominently when they are seen by means of the existence of GP Ansor as the subordinate organization of NU, and considering at the *istinbāt* methodology of law used at once. Essentially, the writer saw these dissimilar point of views could contribute the development of *istinbāt* methodology in nowadays contexts.

***Istinbāt* and *al-Ṣābit-al-Mutahawwil* Theories in Islamic Thoughts**

Etymologically, the word *istinbāt* means get something out of its hiding.¹² In Islam, the term *istinbāt* is used to produce an Islamic law based on the main sources.¹³ Therefore, *istinbāt* is a fundamental step in Islamic law discussion. *istinbāt*, its existence influences the principals to bring Islam law into reality which relevant and significant to every historicity.

In Islamic law theory, there are three typologies of *istinbāt* of law methodology, such as *bayānī*, *ta’līlī*, and *istiṣlāḥī*. First, *bayānī* method which is also called *al-Qawā’id al-Lughawīyah al-Uṣūliyah*.¹⁴ This method refers to language rules that used to analyze and understand the written text in

¹¹ The result of *Babtsul Masail* Kiai Muda Ansor March 2017 point (f).

¹² Haidar Bagir and Syafiq Basri, *Ijtihad dalam Sorotan* (Bandung: Mizan, 1996), p. 25.

¹³ Romli SA., *Moqaranah Mazahib fi al-Ushul* (Jakarta: Gaya Media Pratama, 1999), p. 1.

¹⁴ The principles of language have significant influence in the process of deciding Islamic law. Abdul Wahab Abd. Salam Tawilah, *Aṣar al-Lughab fi Iktibāl al-Mujtahidīn* (Cairo: Dar al-Salam, 2000.)

Qur'an and *hadis* Prophet.¹⁵ These norms are used as the primary resource in Islamic law due to Qur'an and *Sunnah* written rightly as language.

Bayānī method includes two definitions, that are *al-Tabāyun* dan *al-Tabayūn*, which are the process of finding clarity (*al-Zubūr*) and giving clarity (*al-Iḥbār*), by means understanding (*al-Fahm*), making others understand (*al-Ifhām*), gaining meaning (*al-Talaqqī*) and transferring meaning (*al-Tablīg*).¹⁶ In this methodology, the object is texts.

The third is about *istiṣlāḥi* method, means that prosperity is the top of priority in how and why sharia is created. According to Izzuddin Ibn Abdissalam, all sharia certainty coming from Allah is containing prosperity, sometimes to avoid disruption or inviting prosperity.¹⁷ Then, in the next development, the method of finding sharia law that oriented on prosperity is also called by *Maqāṣid al-Syarī'ah*.¹⁸

Al-Ṣābit and *al-Mutahawwil* theories are used to analyze the products of Islamic thought. According to Adonis¹⁹, the Islamic view history can

¹⁵ M. Hasbi Umar, *Nalar Fikih Kontemporer* (Jakarta: Gaung Persada Press, 2007), p. 66.

¹⁶ Rahma Amir, "Kerangka Metodologi Penalaran hukum", *Jurnal Al-Abkam*, Vol. 5 No. 2, December, 2015, p. 171.

¹⁷ Izzudin Ibn Abdissalam, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām* (Lebanon: Dar al-Ma'rifah, t.t.), p. 9.

¹⁸ *Maqāṣid al-Syarī'ah* comes from two words, *maqāṣid* and *syarī'ah*. The word *Maqāṣid* merupakan is plural form of *maqṣid* which means come into. Mahir Hamid al-Hauli, *Al-Istiqrā' wa Dauruhu fī Ma'rifati Maqāṣid al-Syarī'ah 'Inda al-Imām al-Syātibī*, Unpublished paper, 13. While, terminology, there are some definitions by experts. Muhammad Tahir Ibn 'Asyur defines *Maqāṣid al-syarī'ah* as a general goal and obvious meaning in some measurements (*taṣyīr*). Ismail Hasani, *Naẓariyyah al-Maqāṣid 'Inda al-Imām Muḥammad Ṭābir Ibn 'Ayyūr* (Virginia: Al-Ma'had al-'Alami li al-Fikr al-Islami, 1995), p. 117-118. While 'Allal al-Fasi defines *Maqāṣid al-syarī'ah* as a goal and Allah's certainty. 'Allal al-Fasi, *Maqāṣid al-Syarī'ah al-Islāmīyah wa Makārimuha* (Maroko: Maktabah al-Wahdah al-'Arabiyah, t.t.), p. 3. In *Maqāṣid al-syarī'ah* there five principles which become fundamental things from what Allah gives to us. Those five aspects also called as *ḍarūrīyah*, that means keeping religion (*ḥifẓu al-Dīn*), keeping soul (*ḥifẓu al-Nafs*), keeping wealth (*ḥifẓu al-Māl*), keeping generation (*ḥifẓu al-Nasl*), and keeping intelligent (*ḥifẓu al-'Aql*). Abu Hamid al-Ghazali, *Al-Mustaṣfā min 'Ilm al-Uṣūl* (Beirut: Dar al-Kutub al-'Ilmiyah, 1983), p. 286.

¹⁹ Adonis is not an authentic name. Hence the name is Ali Ahmad Said, Adonis is given by Anton Sa'adah, the founder of The Syrian Social Nationalist Party (SSNP)

be divided into two. They are *al-Ṣābi*²⁰ (unchanged) and *al-Mutaḥannwil*²¹ (changed). According to Adonis, the *al-Ṣābi* refers to people who imitate (*ittibā'*) the recent others' thinking. In other words, the decision produced from this method is only a copy-paste form,²² while *al-Mutaḥannwil* refers to a thinking based on creativities (*ibdā'*). Human creativity resources become the significant things in using this theory. Hence, this thinking, as known as *al-Mutaḥannwil* is always progressive because of not using textual as the main pillar.

Those classification (*al-Ṣābi*) and (*al-Mutaḥannwil*) are not aimed at Islamic doctrine, but those classification is purposing at the way of thinking of Muslim of the way how to look at two aspects which are past and present events. The way of thinking above is reflected in various products of thinking, culture, and Muslim scientists from all dimensions, such as religion (*fikih*, theology, *tasawuf*, and so on), language and literature.²³

Then, the competition between the unchanged (*al-Ṣābi*) and changed (*al-Mutaḥannwil*) has recorded that (*al-Ṣābi*) is dominate. The way of imitating the thought is by repeating what are existed in medieval era, more precisely, when the condition of Islamic thought was in static period due to *taqlīd*²⁴ as the main choice. But the thing should be understood

in 1940s. Adonis is the name of one of gods in Babilonia legend. Adonis, *Arkeologi Sejarah Pemikiran Arab-Islam*, trans. Khairon Nahdiyyin (Yogyakarta: LKiS, 2012), p. xvi.

²⁰ Adonis defines *al-Ṣābi* as a thought based on the text, and what makes it in order (*sabat*) as the basic of established, both in understanding or evaluating. Adonis, *Arkeologi*..., p. xxvii.

²¹ *al-Mutaḥannwil*, Adonis divides it into two: *first*, as a thought based on the text, but by interpretation which cause text can adapt to realities and changes. *Second*, as the thought that assumes text that does not contain authority, and based on intelligence, not verses (vision form God to man). See Adonis, *Arkeologi*...p. xxviii.

²² *Ibid.*, p. vii.

²³ Khairon Nahdiyyin, *Dalam Pengantar Penerjemah Buku Adonis*..., p. xxii.

²⁴ Etymology, *taqlīd* is taken from *al-Qalādab* which mean following someone. While, terminology, *taqlīd* means following someone's idea but he does not know the background of the idea. Abdul Karim Zaidan, *Al-Wajīz fī Uṣūl al-Fikih* (Oman: Maktabah al-Baṣāir, 1994), p. 410.

as its substantial, Islam is not only about *ittibā'* dimension and *subūt*, but rather other dimension such as *ibdā'* and *tahannul*.

The Results of *Muktamar* NU Lirboyo and Kiai Muda Ansor Addressing Non-Muslim Leadership

NU is the biggest organization in Indonesia. Established at 16 of Rajab in 1344 H, coincided exactly at 31 January 1926 led by K.H. Hasyim Asy'ari as Rais Akbar.²⁵ NU exists to sustainably preserve and develop Islam through Ahlussunnah Waljamaah.²⁶ In the term of faith, NU was following Abu Hasan and Abu Mansur. In *fikih*, it refers to one of the four schools of thought concerning Muslim. While related to tasawuf, NU stayed in Imam Junaidi al-Baghdadi and Abu Hamid's al-Ghazali's thought.²⁷

The controversy of non-Muslim reign focused on *Bahtsul Masail Mukhtamar XXX* NU in Lirboyo, Kediri, was held in *Bahtsul Masail ad-Diniyah al-Waqi'iyah* at 21 to 27 November 1999. This kind of discussion began by the following question: "What is Islamic law of empowering state affairs to non-Muslim?"

Bahtsul Masail forum resulted that Muslims are not permitted to give dominance to a non-Muslim with the following written exceptions: *first*, in the fields that Muslim cannot take it in hand causes definite capability; *second*, in the fields when there is Muslim that has capability, but there is an indication exists that he might betray; *third*, since non-Muslim dominance brings benefits.²⁸

Those results underlined that people classified into non-Muslim is around *ahl-Dzimmah* and it should be an effective control mechanism.

Deciding and finding the results of the discussion above, here are

²⁵ Abdul Muchith Muzadi, *NU dalam Perspektif Sejarah dan Ajaran* (Surabaya: Khalista, 2006), p. 36.

²⁶ Djamaluddin dan Ahmad Chumaidi Umar, *Ke-NU-an Ahlussunnah Waljamaah* (Semarang: LP Ma'arif, 1994), p. 42.

²⁷ Laode Ida, *NU Muda* (Jakarta: Erlangga, 2004), p. 7.

²⁸ Lajnah Ta'lif wa Nasyr, *Abkam al-Fuqaha'* (Surabaya: Diantama, 2004), p. 581.

the main considerations:

1. Q.S. An-Nisa: 141

ولن يجعل الله للكافرين على المؤمنين سبيلاً

“*And Allah will never give the disbelievers over the believers a way (to overcome them)*”.

2. *Tuhfab*, page 72

ولا يستعان عليهم بكافر) ذمي او غيره الا ان اضطررنا لذلك, قول المتن:
ولا يستعان الخ) اي يحرم ذلك اه. عبارة المغنى والنهاية: (تنبيه) ظاهر
كلامهم ان ذلك لا يجوز ولو دعت الضرورة اليه لكنه في التتمة صرح بجواز
الإستعانة به اي الكافر عند الضرورة.

“*Muslims are not allowed to ask helps to either disbelievers or others asides from highly urgent condition. According to their views, asking helps to disbeliever is prohibited although in emergency way. However, in titimmah, it is mentioned exactly the probability of asking helps in emergency.*”

3. *Ary-Syarwāni ‘Ala al-Tuhfab*, page 72-73

نعم ان قتضت المصلحة توليته في شئ لا يقوم به غيره من المسلمين او
ظهر من المسلمين خيانة وامنت في ذمي فلا يبعد جواز توليته لضرورة القيام
بمصلحة ما ولي فيه, ومع ذلك يجب على من ينصبه مراقبته ومنعه من
التعرض لأحد من المسلمين.

“*If an important matter requires a conferral that cannot be solved by Muslims or there is an indication exists that those Muslims might betray and safe in kafir dzimmi, so it is allowed to give the authorization due to emergency. However, for those who confer it, they should do controlling toward kafir and able to take them care of any attacks come from Muslims.*”

4. *Al-Mahalli ‘Ala al-Minhāj*, page 172

ولا يستعان عليهم بكافر) لأنه يحرم تسليطه على المسلمين
قوله ولا يستعان) فيحرم الا لضرورة

“*Muslims are not allowed to ask any helps to kafir since it is forbidden to authorize a kafir through Muslims in exception of emergency.*”

5. *Alḥkām al-Sulṭāniyah*, page 22 and 25

والوزارة على ضربين وزارة تفويض ووزارة تنفيذ. اما وزارة التفويض فهي ان
يستوزر الإسلام من يفوض اليه تدبير الأمور برأيه وامضاءها على اجتهاده.
واما وزارة التنفيذ فحكمها اضعف. وشروطها اقل, لأن النظر فيها مقصور

على رأي الإمام وتديره.

“There are two kinds of ministry such as *tafwīd* (conceptor) and *tanfidz* (executor). It is called by *tafwīd*, if a leader/one in authority determines a minister to do all things that he ought to do in setting all matters which appropriate to his point of views and come to him upon the *ijtihad*. Meanwhile, what the *tanfidz* is, the dominance is weaken than it and the requirements are more little in amount due to the limited of imam’s views and its controller.”

Babtsul Masail held by Kiai Muda Ansor in Jakarta on 11 to 12 March 2017 is not addressing without significant results. This kind of discussion was held to solve Ansor’s worries considering the phenomenon happened at that time. The election of governor of Jakarta which brought religion as a political propaganda divided Muslims into two groups. It is written in the beginning of *Babtsul Masail* result, that:

Islam and state are different topics that seem difficult to find the final discussion result. The experiences concerning Muslim countries nowadays need discussions. Some places such as Iraq, Syria, and Yemen are the closer factual examples. Since we are in Ansor, believe that the relation of Islam and state has already done for Indonesia. In 1984, NU has approved five basic principles of the Republic Indonesia (Pancasila) as the one and only principle. That issue aims at the conclusion which NU accepts nation-state, as the form of state with its all consequences. But unfortunately, what we found in society did not work in line with that suspicion. Since the independence of Indonesia, it had been agreed that this country belonged all Indonesian people and no differentiations based on religion. Therefore, it never happened as far as histories recorded that all the cabinets are Muslims. So do Indonesian people, it would never happen that all of them are Muslims. But in fact, there are still some who do not agree with it. One of obvious indicators is the existence of clamorous religion symbolization which is in serious condition in Jakarta’s governor election. It is possible that this case will affect other regions in Indonesia. If we ignore it, there will be disunity in Indonesia. The development of this country will be run well if only the society reach a harmony by diminishing some points of contradiction, particularly in a sensitive contradiction.²⁹

²⁹ Result of *Babtsul Masail* Kiai Muda Ansor.

Bahtsul Masail forum realized that the taken controversy was one of the sensitive and debatable issues, especially in Jakarta's governor election. But the facts did not already strive to the better way, so it is needed to solve all about non-Muslim reign in all levels, in the context of nation-state like in Indonesia. Based on those description, this controversy discussed in *waqī'iyah* way, then investigated in *maudū'iyah*.

Regarding to the result of Bahtsul Masail Kiai Muda Ansor, there were three decisions of *Muktamar* NU Congress about the reign that had been mentioned, for instance *Muktamar* in Banjarmasin, Surabaya, and Lirboyo³⁰, Kediri. In Banjarmasin congress held in 1936, it was concluded that Indonesia is Islamic country, even if Dutch held the power at that time. What Islamic country mentioned before, means there was no aim that refers to the system of state-politics, but it refers to the term religious, exactly Islamic region.³¹

While in *Muktamar* NU in Surabaya, held in 1954, the result was unpredictable. Soekarno was selected as *waliyul amri al-Daruri bi al-Syaukah*. The main source of this result was the declaration of Imam Ghazali in *Ihya' Ulumiddin*. This judgement was concluded based on prosperity and unity of Indonesia, practically in leadership.³²

Based on those three results of *Muktamar* which discussed above, it can be considered that controversy about non-Muslim reign in nation-state like Indonesia is not a clumsy case. The finding referring to this problem is dynamics depends on context and situation around. This matter orders Kiai Muda Ansor to do re-inspection by considering context and the developing era.

Bahtsul Masail Forum Kiai Muda Ansor also discussed about KH. Sahal Mahfudz talks related to the terminology of classical Islamic Politic that is not suitable to match with the concept of nation-state according

³⁰ It has been examined in previous page.

³¹ *Bughyatul Mustasyidin*.

³² The result of *Muktamar* NU is criticized by Perti and PSII who disagree with *waliyul amri al-Daruri bi al-Syaukah* that pinned to Soekarno.

to him. The dichotomy *dzimmī-harbi* is the one of the terms that would be a matter if it is applied in nation-state like in Indonesia. This kind of paradigm usually puts non-Muslims as the second-grade community and do not belong to an association which equals to Muslim. Whereas, in democracy, all citizens have similar right authority in all aspects without being separated by religion, reins and ethnics.

It is a must that *dzimmī-harbi* should be understood as a selected concept when the citizenship is based on religion and not based on nation-state as implemented in Indonesia. The applying of these two concepts should be done by considering the context and system of citizenship used. Therefore, as the manifestation of Islamic law that aiming at social justice, so doing re-contemplation and renewing some terminologies in *fikih* of classical Islamic politic is a must.³³

About the policy of choosing non-Muslim in the election, Kiai Muda Ansor mentioned the judgement of Ali as-Sabuni and Said Ramadan al-Buti told that it is proscribed thing to choose non-Muslim as leader. This thought became popular for Muslim. Some references in *fikih* of classical Islamic politic told the same thing as before. The opinion of as-Sabuni and al-Buti was in line with the result of *Muktamar NU* in Lirboyo.

In addition, Kiai Muda Ansor was inclining to the opinion that mentions if choosing non-Muslim as a leader is allowed. To strengthen its argument, this forum used the opinion of Syaikh Ali Jum'ah, as the ex-adviser on religious law for a region of Egypt. These are the three reasons of the probability to choose non-Muslim as a chief:

1. The context of nowadays state structures is not similar as the past. In modern, every citizen has similar right authority; in consequence, a non-Muslim is able to have an equal position in

³³ It became Ahmad ar-Raisuni's concern, a Muslim intellect from Maroko that yelled re-contemplation to topics in classic Islamic *fikih* that is already not suitable to this era. Ahmad ar-Raisuni, *Fikih al-Saurah Murajaat fi al-Fikih al-Siyasi al-Islami* (Kairo: Dar al-Kalimah, 2013).

military, police force, chief executive and others government offices.

2. The purpose of this position is in order to make resembling of its duties. Therefore, the most important thing from the election of government part is the capability and integrity a candidate in carry out the duties.

3. The prohibition to select non-Muslim as a leader is especially for *khilāfah al-Uzma* only, which covers all the matters includes state and religion. While an executive now is only concerning about state.³⁴

In summary, Bahtsul Masail Kiai Muda Ansor is resulted these following points:

1. Referring to three results of *Muktamar* NU: Banjarmasin, Surabaya, and Lirboyo, Kediri; the best solution to respond all issues related to nationality.

2. As what expected by KH. Sahal Mahfudz, it needs an effort to obtain the permanent solution to make the complicated things apart cause the difficulties of applying the concept of state structure using classical *fikih* in modern era.

3. Basically, KH. Wachid Hasyim's attitudes as representative of NU and BPUPKI let the action of religion struggle model that oriented to achieve the substantive of Islamic doctrine than the symbols of Islamic itself.

4. It is necessary to change the concept of friend-rival which is based on solely different religion into friend-rival concept based on obvious enmity (*hirābah*). This is in line with *ukhūmah waṭaniyah* concept by NU without ignoring *ukhūmah Islamiyah*.

5. Most of *mufti* are override-count on *Muktamar* NU Lirboyo results- to the election of non-Muslim as a leader or executive. The decision is reached carefully. However, the *ijtihad* done by

³⁴ The results of *Bahtsul Masail* Kiai Muda Ansor.

contemporary ulama, such as Syaikh Ali Jum'ah and Syaikh Abdul Hamid al-'Atrasy, in choosing a non-Muslim leader, should be seen as the effort to solve problems related to the applying of Islamic doctrine in the context of modern state politic system. By considering both capacities, it is not excessive if the opinion of both *ulama* above is categorized as *kbilaf mu'tabar*.

6. The change of global politic system requires the existence of new *ijtihad* with basically based on classical point of view. Ibn Taimiyah views should be considered in order to see the system of modern statehood based on citizenship. This system seems difficult to review with only use the categorizations written in classic books. Considering about this case, also al-Ramli opinion and result of *Muktamar* NU Banjarmasin, the selected non-Muslim leader is constitutionally and religiously legitimate

Those results were officially existed on Sunday, 19 March 2017. At that time, the *mushobih* were KH. Abdul Ghofur Maimoen and KH. Shofiyulloh Mukhlas. The formulators of the results were KH. Muhammad Najib Buchori, KH. Abdul Lathif Malik, KH. Ahmad Nadhif Abdul Mujib, K. Faridu Asrihi, and KH. Abu Bakar Yahya.

Typology of Methodology of *Istinbāt* Method of *Muktamar* NU Lirboyo and *Bahtsul Masail* Kiai Muda Ansor

A lot of problems have been discussed in *Muktamar* NU at Lirboyo in 1999. One important thing is about statehood leadership. The main question emerges in the forum was: "How does Islamic law authorize state affairs of Muslim to non-Muslim?" Literally, it can be understood that the main question was not addressing the highest chief executive but the ministers.

The fact written above can be easily accepted because the president at that time was KH. Abdurrahman Wahid. What means by 'authorizing the state administration' was referring to authorize it to presidential

ministers. Shortly, this forum obsessing in solving the problems related to the Islamic law of how about inaugurate ministers, legislatives, governor, regent and so on, by the president of Indonesia, Gus Dur.

Basically, *Muktamar* forum resulted that Muslim was not allowed to give dominance to non-Muslim, particularly for Indonesian administration, except in an emergency. It sounds interesting to know 'emergency' is the key word from this result. In other words, the forum desired to strengthen that no reasons to give an authorization to non-Muslim when it is in safe way.

Deciding 'emergency' as the background of the result was like a compromise from this forum on how to implement classical *fikih* of Islamic law in Indonesia. Therefore, emergency situation of this case was only an 'escape', so the result was not out of Islamic law rules. The circumstance of Indonesia could not be considered in order to change the concepts in *fikih* of classical politic doctrine that was not already suitable to the era. These concepts would have been applied in different era. If these concepts do not seem to be compatible, the concepts cannot be changed into any, but the decision would be run into the key 'emergency'.

Regarding the results of *Babtsul Masail Mukhtamar* Lirboyo, it can be seen that the method used tends to *istimbāḥ bayāni* method. *Bayāni* method is the way of thinking which uses text as the main focus. It refers to what has been written in the text, both in Qur'an, *Sunnah*, and texts of holy books.

The basis used in this forum is Qur'an 4:141. From a holistic perspective, Allah will never let disbelievers to destroy Muslims. This verse is used to legitimate the suspicion that non-Muslim cannot be given a dominance which they can use to shatter Muslim. At the end of spectrum, yield the dominance to non-Muslim to arrange the system can be used as the way to merge mankind.

Besides, there are some texts on classical *fikih* which are worked as reference. Written in *Tuhfab*, Muslims are not allowed to ask any helps

to non-Muslims aside from emergency. It is also mentioned that another judgement said, asking helps to non-Muslim *dzimmi* is settled forbidden in spite of emergency. Agreed, *al-Mahalli 'ala al-Minhaj* also writes what it is as *Tuhfab's*.

There are three prominent things within classical *fikih* holy book being references. *First*, the issue related to the involvement of non-Muslim in executive structural that does not belong to a clumsy issue. Although it is literally not allowed, but in fact, classic *fikih* unfolds opportunities to non-Muslim to take a part in executive structural in spite of in emergency situation only. The dynamics occur around *fuqaha* indicates this problem is still related to religious consideration scope, not about religion.

Second, 'emergency' as the background of the result is like a compromise from this forum. Since the fact indicates that in reality not all items in government can be guaranteed by Muslim, the consideration of ability and morality becomes the main reason of why non-Muslim is given an opportunity to state the structure, not only just because of ability, but also morality.

Third, the term *dzimmi* is still being a key in those references. It has to be acknowledged that *dzimmi* is the term of classic *fikih*. This term is opposite *harbi*. Literally, dichotomy of *dzimmi-harbi* within classical references has to be viewed exactly as it obtained in the past. This kind of terminology is a classification of inhabitant status based on religion. Muslims as number one of citizen, while non-Muslims belong to *dzimmi* as the next number with their limits.

Despite, using theory of Adonis about Unchanged and Changed, the writer categorizes the results of *Babtsul Masail Mukhtamar* NU in Lirboyo into Unchanged category (*al-Ṣābi*). The result of *Mukhtamar* which prohibits an authorization of countrywide affairs to non-Muslim (in normally) indicates that this decision imitates (*ittiba'*) the previous point of views. Inability to leave the regulations within classical *fikih* doctrine becomes the reason of why this decision is suitable to be categorized to *al-Ṣābit*.

This result has no audacity to leave the term *dzimmi* as a criterion of citizenship status. It can be seen from the result of *Muktamar* which brings along the term *dzimmi*, whereas, as written above, *dzimmi* is a term made in the context of classical state system which differentiates citizenship based on religion. But what happened in Indonesia is already clear that nation is not differentiated by religion, but rather based on citizenship (*al-Muwāṭānah*).

The important result of *Babtsul Masail* Kiai Muda Ansor is the probability to vote a non-Muslim chief in the context of election in Indonesia. Not only 'probable', but this forum states that voting non-Muslim in the election is legal, whether in accordance with religion or constitution.

Considering the type of *istinbāt* used, *Babtsul Masail* Kiai Muda Ansor is using combination between *bayāni* and *istiṣlāḥi*. As a part of NU, the way of discovering a law through text is persistent hold by, and combining them into good deed approach. By using these two merged methods, it is not astonishment that the result of Kiai Muda Ansor Congress was different from the results in *Muktamar* Lirboyo.

To strengthen its argument, this forum did not only use *fikih*, but also cited experts' view such as Ali Jum'ah dan Abdul Hamid 'Atrasy. The fact of state-nation system is different from state concept within classic politic *fikih*, parallel with Ali Jum'ah point of view.

This forum comprehended that the difference context happened should be a primary consideration in making every decision. But if the text of classic *fikih* is applied in the context of modern statehood, a new problem will probably emerge, for instance the status of inhabitant. In classic *fikih* doctrine, citizenship is differentiated based on religion, so the term *dzimmi-barbi* disbelievers appears. If this kind of concept is implemented in the context of state-nation such as in Indonesia, a serious problem may exist. In the context of state-nation, the status of inhabitant is defined by citizenship (*al-Muwāṭānah*), not about their religion. So, all

citizenships have similar authorization whatever their religion.

As the result, what decided by Kiai Muda Ansor in combining between text and context leads the writer to add the typology of *istinbāt* they used into *bayāni* and *istiṣlāḥi*. Kiai Muda Ansor does not leave any texts in implementing *bayani* method. Texts are still used as the basis in making decision. Named as *istiṣlāḥi* caused of what resulted by Kiai Muda Ansor did not utilizing textual texts as the main answer, but the aim (*maqāṣid*) of texts precisely became the main basic. In other words, Kiai Muda Ansor tended to consider substances than what has formally been written. The way of thinking was popular known as *istiṣlāḥi* method.

Meanwhile, considering the Adonis' theory, what resulted by *Bahtsul Masail* Kiai Muda Ansor was counted in *al-Mutaḥawwil* category. The law of the ability to vote non-Muslim chief was religious and constitutionally valid, and it belongs to creation (*ibda'*), and was not an imitation (*ittiba'*). This forum assumed that the justness is not in written in the text only, but it is found within the aims to be achieved.

Daring to produce a new result was a way of thinking that should be appreciated. The consciousness of context in Indonesia is totally different from context of state within classic *fikih* doctrines was the basis of why this forum could produce a progressive result. Texts as references are not longer examined literally, but it's substances and the goals within are considered.

Therefore, the Adonis' theory of Changed is neither longer considered as the justness which assumed as "in proper" nor a hegemony point of view which hold *quo status*. That is why the Unchanged theory is usually reputed as mistaken way of thinking and should be removed and banned. Due to deciding different result from majority, as the result, Kiai Muda Ansor forum causes many controversies.

It seems to be not sufficient if solving problems related to Islamic law by only using *bayani* approach, considering the plurality contexts of Indonesia. Texts must not be the primary pillar in solving any problems

appear. Besides, there is a goal or *maqāṣid* that should be considered. Then, developing *istislahi* method as the primary key in solving problems is a must, regarding the context of Indonesia. It has to avoid the practical Islamic law congress that has no significant roles.

Therefore, Kiai Muda Ansor disposed to consider about substances than formal form can be a penetration in doing inspecting and developing the methodology of gaining Islamic law in Indonesia. However, each decision in Islamic law is aiming at benefits at last. Thus, it is prohibited if there is a formulation of law that causes a damage or anxiety. If it happens, it is wrong to accuse Islam, but it could be because of the way of how the law was produced.

Conclusion

Istinbāt methodology which was used by *Muktamar* NU in Lirboyo regarding non-Muslim reign tends to use *bayani* method, while, considering the theory of Adonis, the result of *Muktamar* NU in Lirboyo belongs to *al-Ṣābit* category. Based on the result of Bahtsul Masail Kiai Muda Ansor, the *istinbāt* method used is combination of *bayāni* and *istiṣlāḥi*. In addition, reviewing the theory of Adonis, this result belongs to *al-Mutah annwil* category. The implementation of *bayāni* and *istiṣlāḥi* in discussion held by Bahtsul Masail Kiai Muda Ansor contributes in development of *istinbāt* method in Indonesia, prominently in deliberation to enact substance (*maqāṣid*) than formal way.

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