

Concept of Fiqh Mu'amalat Between Nahdlatul 'Ulama and Persatuan Islam: Comparative Study

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Abstract

This article compares the concept of basic thought of Fiqh Mu'amalat by two contemporary religious organization in Indonesia, Nahdlatul 'Ulama and Persatuan Islam. Both organizations have some disagreement in some issues such as the use of reason in religious interpretations. As a traditionalist movement, the NU holds that the four Madzhab (Sunni school of Islamic law and jurisprudence) provided a reliable and systematic framework therefore no further amendment, and as such Muslims should simply follow and adhere to the ruling of the Madhhab. On the other hand, PERSIS being modernist movement holds that the al-Qur'an and the al-Sunnah are the only fundamental truths for Muslims and that adherence to Madzhab is not necessary. Therefore, those disagreement has caused a keen debate in their concept of Fiqh Mu'amalat. Despite some those debates, both have some similar thought mainly in concept of usury. To get some understanding about both organizations, the overview of their intellectual development will be elaborated.

Keywords: Nahdlatul 'Ulama, Persatuan Islam, Riba (Usury), Insurance.

Intellectual Development of Nahdlatul ‘Ulama and Persatuan Islam

Nahdlatul ‘Ulama is one of influential Muslim organizations existing in Indonesia. Established in 1926, NU is considered as the traditionalist organization which maintains the practice of *madhāhib* within Indonesian community. The NU as the largest socio-religious organization has attracted the attention of several scholars to held researches on its history and development, characteristics, legal methods as well as flexibility in accommodating socio-political transformation. Despite NU accounted as traditionalist in legal methods, it does not neglect development of social life within Muslims society.

Bylaws of Nahdlatul ‘Ulama article 2 1926 stated: “The purpose of this organization is to maintain the teaching one of four *sunni* schools of law; Imām Muḥammad ibn Idrīs al-Shafī‘ī, Imām Mālik ibn Anas, Imām Abū Hanīfah an-Nu‘mān and Imām Aḥmad ibn Hanbal, and to practice whatever benefit to Islam.”¹

The bylaws become the foundation of NU in every movement and reaffirmed in 27th mu‘tamar in Situbondo which define *khiṭṭah* (lines of action) of NU. The *khiṭṭah* means: the foundation of thought, attitude and action of NU’s members which reflected in both personal and organization and preserves the understanding of *ahl al-sunnahwa al-jamā‘ah* which is applied according to the social conditions in Indonesia.

The *khiṭṭah* is governs all of programs and activities of NU throughout Indonesian history. NU refers to the teaching of al-Ash‘arī and al-Mātūrīdī in issuing of *fatāwā* related to theology, including *fatāwā* of Syī‘ah. In the field of *fiqh*, NU confirms to adhere one of the four *madhāhib* in all of. SahalMahfudh states: “By adhering four *madhāhib*, NU drives its flexibility so that it may shift from one *madhhab* to another according to the necessity. From its inception, NU maintains to the rulling of *madhhab* in every doctrines and more importantly in its *fatāwā*. The *fatāwā* issued by NU divided into ‘*ibādah*, *mu‘āmalah*, *munākahat*, and *jināyah/qaḍa*’ always refers to the books of *imammadhhab*.²

¹Aboe bakar, *Sedjarah Hidup K.H.A. Wahid Hasjim dan Karangan Tersiar* (Jakarta: Panitia Buku Peringatan Alm. K.H.A. Wahid Hasjim, 1957), 505.

²Sahal Mahfudh, “Bahtsul Masail dan Istinbath Hukum NU: Sebuah Catatan Pendek” in *Solusi Problematika Aktual Hukum Islam Keputusan Mukhtar, Munas dan Konbes Nahdlatul ‘Ulama 1926-1999* (Surabaya: Lajnah Ta‘lif wan Nasyr NU Jawa Timur: 2005), ix.

Unlike Nahdlatul 'Ulama, Persatuan Islam (PERSIS) is considered as one of the reformist organizations which strive to apply the teaching of Jamal al-Dīn al-Afghāni (1838- 1897) and Muhammad 'Abduh (1849-1905) in Indonesia. The inception of PERSIS, however, provided a new feature of reformist organizations in Indonesia due to its activities. Muhammadiyah and Al-Irsyad which founded before PERSIS stressed merely their activities in education by establishing several *madrrasah* while PERSIS concerned also to challenge traditionalist and nationalist in debates and discussions and hence it called extreme and aggressive.

As listed in its statute (*qānūnasāsī*), the primary objectives of PERSIS are to perform Islamic doctrines embracing all aspects of life and to encourage Muslims toward pure Islamic understandings based on the Qur'ān and the *Sunnah*. For PERSIS, both the Qur'ān and the *Sunnah* are the main sources for Muslims, and as such, *ijmā'* and *qiyās* are not considered as an independent sources of Islam. Therefore, the main movement of PERSIS is to straighten the '*aqidah*' of Muslims in order to be consistent with the Qur'ān and the *Sunnah* and does not receptive the interpretation from anyone.³

According to A. Hassan, the meaning of reform of religion is to purify Islam from any fallacies and supplementary views so as religion remains a new. Another leader of PERSIS in 1960-1983, K.H.E. Abdurrahman, defined the reform within PERSIS is not *tabdīl* (change) the old religious views to the new one, yet it is reform of religion as *tajdīd al-īmān* (reconditioning of belief) by refreshing the spirit of the Qur'ān and the *Sunnah* within Muslims' soul.⁴ Latief Muchtar, the leader of PERSIS 1983-1997, contends: "The methodology of reform in the Islamic thought must be built on the basis of the understanding of the Qur'ān and the *Sunnah* without neglecting the socio-cultural values, and as such will be able to build the ideal civilization based on Islamic values."⁵ Those definitions are in accordance with the aims of PERSIS to purify '*aqidah*' of Muslims so that appropriate with the teachings of *Rasūlullah*.

In the sphere of *fiqh*, however, PERSIS insists Muslims to draw the Islamic law merely from the Qur'ān and the *Sunnah* without

³Mughni, *Hassan Bandung Pemikir Islam Radikal* (Surabaya: Penerbit PT. BinaIlmu, 1980), 57.

⁴Kamiluddin, *Menyorot Ijtihad PERSIS; Fungsi dan Peranan dalam Pembinaan Hukum Islam di Indonesia* (Bandung: Tafakur, 2006), 65.

⁵A. Latif Muchtar, *Gerakan Kembali ke Islam* (Bandung: Penerbit Rosda, 1998), 209.

any direct consideration to the opinion of *madhhab*. Several pioneers of PERSIS assume that traditionalists neglect both the Qur'ān and the *Sunnah*, and as such construe laws incorrectly and has resulted several religious practices containing *bid'ah* and *mulhidah* (deviate). Therefore, PERSIS asserts that without adhering the Qur'ān and the *Sunnah*, Muslims will dive into *bid'ah*, *khurafat*, and *shirk*.⁶

Concept of both Organizations on *Fiqh al-Mu'āmalāt* (Islamic Legal Transaction)

Both organizations of NU and PERSIS display serious preoccupation with a number of contemporary issues on Islamic legal transaction (*fiqhal-mu'āmalāt*). Both have issued and published various legal verdicts in their books, magazines and online websites. Both hold to their legal positions and both show disagreements while also agreeing on many other issues such as insurance and credit cards. The disagreements may come from different methodologies of evidence from the Qur'an and the *Sunnah*. In this section, a number of legal issues that reflect some of their divergences are discussed while elaborating each evidence and methodologies in order to obtain the convergences and divergences.

1. *Ribā* (Usury) and Bank Interests

In its *fatwā* on *ribā* (interest) in 1937, the NU strictly prohibited its forms like mortgage.⁷ However, depositing money in bank is reprehensible (*makrūh*) so long the intention of the depositing client is to only save money.⁸ In its second *fatwā* in 1971, however, NU changed the ruling on the status of depositing funds in bank to the ruling of prohibition (*tahrīm*) in view of the fact that this legal judgment is apparently better and religiously more acceptable.⁹ The third fatwa in 1992 on usury

⁶Jamil, *Nalar Islam Nusantara: Studi Islam ala Muhammadiyah, al-Irsyad, Persis dan NU* (Cirebon: Fahmina Institute, 2008), 236.

⁷In its second conference in Lampung, NU issued fatwa pertaining to mortgage. There are three opinions discussed among participants of *bahths al-masā'il*; prohibited, permissible and uncertainty (*shubhat*). The conference, however, concluded that mortgage is prohibited. See LTNU, *Solusi Problematika*, 30.

⁸*Ibid.*, hlm. 200-201. In this fatwa, LBM quoted two statements from al-Ashbahwa al-Nazāirand Faḥ al-Muīn in which both reveals mortgage. It is seems that the scholars of NU coincided that the status of interest is fully similar with the mortgage.

⁹*Ibid.*, 350.

and interest is similar to preceding *fatāwā*. The NU recommended setting up of an Islamic banking system because its members represent great potential for national development and they need a system that saves funds.¹⁰

As far as PERSIS is concerned, there are two contrasting inferences concerning bank interest; one that is judged to be permissible with some specifications and another that is absolutely prohibited. Hassan concludes that interest is in general permissible unless the following are present coercion, a hundredfold and high priced or harmful.¹¹ For him, the establishment of bank for trade is compulsory on the part of financially capable Muslims because its establishment serves traders, despite the minimum levels of usury involved. The bank eliminates moneylenders who impose expensive usury rates among people and it is also appropriate with legal maxim stating “the lesser of two evils shall be chosen” (*yukhtārahwan al-sharrayn*).¹²

Unlike Hassan, however, *Dewan Hisbah* PERSIS issued a *fatwā* in 1991 in which it decided that the current interest in conventional banks was absolutely prohibited. They based their *fatwā* on a verse in the Qur’ān, *‘Alīmrān*: 130: “O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful”¹³ Zakaria also maintains that the Qur’ān and the *Sunnah* do not determine the level of usury and as such it is strictly prohibited in any level of rates. However, he admits that usury may be permissible in exigent situations.¹⁴

Bank interest charges are clearly prohibited by the authority of the Qur’ān and *ḥadīth*. There are numerous Qur’ānic verses which outrightly prohibit usury including the following

¹⁰Such recommendation provides the global tenets and regulations for Islamic banking. See: *Ibid.*, 474-475.

¹¹A. Hassan elaborates on the nature of prohibited *riba*. *First*, there should be no coercion in the use of such transaction; *second*, it is prohibited to impose the hundredfold usury; and *third*, it is prohibited to employ usury with high price or any damage. See: A. Hassan, *Kumpulan Risalah*, 266.

¹²The complete explanation of A. Hassan about *riba* is collected in one chapter of 47 pages entitled ‘*risalahriba*’. See *Ibid.*, 213-260.

¹³Pusat Pimpinan PERSIS, *Keputusan Sidang Dewan Hisbah ke-5 tentang Pengertian Riba* (Bandung: Pusat Pimpinan Persis, n.d), 2.

¹⁴Aceng Zakaria, *Etika Bisnis dalam Islam* (Garut: Ibn Azka Press, 2012), 250-251.

Qur'ān, *al-Baqarah*: 275-278, Qur'ān, *Alī 'Imrān*: 231, Qur'ān, *al-Nisā'*: 161 and Qur'ān, *al-Rūm*: 39. Therefore, Muslims are not allowed to deposit their money in conventional banks because of the usury involved. Muslims are supposed to deposit their funds in Islamic banks because there are many Islamic regulations that avoid usury in all of the transactions.

2. Cash Endowment (*Awqāf al-Nuqūd*)

In 2002, the *fatwā* issuing body of NU (LBM) addressed the issue of cash endowment. It seems, however, that NU was somewhat uncertain to determine the position of Islam on cash endowment. The *fatwā* says “According to the majority of Muslim scholars (*jumhūr al-'ulamā'*), whether Mālikiyyah, Shafi'īyyah, anabilah or some of anafiyyah that cash endowment is invalid because it is not eligible. For some Hanafiyyah, however, it is permissible.” This view was further reinforced by three statements in *al-Fatāwā al-Hindiyyah*, *Rawḍat al-Ūālibīnwa 'Umdat al-Muḥtāḥ* and *al-Mughnī* which agree that endowment of things that cannot be used except through spending it such as gold, silver, food, drink, dinar and dirham are ruled to be prohibited. This is because endowment is permanent dedication of property which involves the ownership of God.¹⁵

PERSIS does allow for cash endowment by placing its supervision under the control of Islamic financial institutions. Its *fatwā* finds support in three *aḥādīth* pertaining to continual charity (*ṣadaqah jāriyah*) and endowment such as the *ḥadīth* of Ibn 'Umar that when 'Umar acquired a garden soil in Khaybar, Prophet Muhammad (saw) advised him to keep it and give away its fruit to the poor, relatives, slaves, wayfarers (*sabīlillāh*) and guests.¹⁶ Another related argument is that of Maman Abdu in a paper published by *Pusat Zakat Umat* (The Center of Coreligionists Zakat) of PERSIS in which he argues that despite the fact that money is the medium of financial exchange instead of using real object, it is considered as an object based on its very existence. He draws on the statement of Ibn Taymiyyah from Muḥammad Abdillāh al-Anshariy pertaining cash endowment, “Despite the fact that money cannot be used before spending its value, cash endowment is permissible through

¹⁵LTNU, *Solusi Problematika...*, 601-603.

¹⁶Uyun Kamiluddin, *Menyorot Ijtihad PERSIS...*, 219-220.

muḍārabah transaction then the profit can be used as the product of usual endowment.¹⁷

Essentially, the evidence of legality of cash endowment are stronger than the evidence prohibiting it. The general evidence on the permissibility of *waqf* were never itemized with other evidence including Qur'ānic verses or prophetic traditions. Hence, we may include money and other related things such as gold and silver into endowment items similar to land. This is based on a principle stating “the general evidences must be remain in their general and cannot be specifies by consideration” (*al-dalīl al-‘āmyabqā ‘alā ‘umūmihiwa al-muṭlaq ‘alāiṭlāqihī*).

3. MLM (Multi-Level Marketing)

Multi-Level Marketing is a marketing strategy that sell products directly to customers therefore promotion and distribution costs can be eliminated because distributors handle them with *down-line* system. All distributors also make money through direct sales of products to customers and bonus from from company. Such marketing was overspread in Indonesia with many of their members are Muslims so as various scholars issue their verdicts in this area.

The NU throughout its official website discusses this issue within two papers with distinct conclusion. *First* paper written by Cholil Nafis, reveals that MLM is permissible as long as goods offered is lawful and there is no usury, gharar (hazard) and ḍarar (damage).¹⁸ The dissimilar argument written by Khairul Anam in which concludes that the current system of MLM is considered as *mu‘āmalah fāsīdah* based on *al-‘aqdayn fī al-‘aqd* (two in one contracts). Such contract was prohibited by the prophet through ḥādīth narrated by Imam Ahmad ibn anbal from ‘Abdullāh ibn Mas‘ūdra. Anam believes that two from three kinds of current MLM is included in *al-‘aqdayn fī al-‘aqd* because those who transact in MLM actually do two transactions at once; selling and broker. Meanwhile, the *third* kind of MLM is a business game which is similar to gambling

¹⁷Maman Abdu, “Wakaf Uang: Suatu Upaya Kontekstualisasi Fiqih Maliy” <<http://pzu.or.id/>> (Accessed 11 October, 2013).

¹⁸Cholil Nafis, “Batasan Hukum dalam Bisnis MLM” <<http://nu.or.id/>> (Accessed 11 October, 2013).

because whoever may become member with promised bonus when he/she find customer.¹⁹

Zakaria is one who reviews the issue of MLM concludes that the legal status of MLM is depend on type of traded goods and the requirement of transfer ownership. He draws such conclusion after reviewing three distinct opinions of scholars; prohibited, uncertain and permissible. First camp which concludes that MLM is prohibited argued that transaction of MLM is based on *al-bay'ataynifī al-bay'atin* and *al-samsarahfī al-samsaratin* therefore MLM is absolutely prohibited. Those who conclude that MLM is uncertain based on the negative effects within community emerge from MLM, whereas third camp argued that transactions of MLM is based on commercial transactions without any coercion.²⁰

In general, MLM is prohibited because it follows the pyramid scheme in its marketing strategy where each member has to find a new member and so forth. Each member pays a fee to the company with the objective to attain bonus. The more members one could attract, the more bonus they would enjoy. Majority of those who join these companies are motivated by the lucrative bonus offered and hope to get rich fast. They are not concerned about the product at all and as such this type of business is pure gambling.²¹

4. Business Alms (*Zakāt al-Tijārah*)

There is a slight difference between NU and PERSIS on the obligation of business alms among Muslims. In 2002, NU issued a ruling that business alms is compulsory for Muslims when it has lasted up to one year and with the standard of gold. Such inference is supported through the arguments of scholars like Mahfuḍ al-Termasi in his work *al-Mauhibah Dhī al-Faḍl* which establishes that business alms shall be paid each year.²²

NU maintains the obligation of *zakat* is enforced to all business items owned by Muslims because they intend to do business with those items. The intention of business causes the

¹⁹Khoirul Anam, "Transaksi Dua Aqad dalam MLM" <<http://nu.or.id/>> (Accessed 11 October, 2013).

²⁰Zakaria, *Etika Bisnis...*, 183-190.

²¹One may refer to the pyramid scheme of MLM in many website such as <<http://www.wikihow.com/>>, <<http://www.scamwatch.gov.au/>> and many others.

²²LTNU, *Solusi Problematika...*, 597.

obligation of *zakat* because all profits which are obtained by Muslims must be considered as their properties. Likewise, other items like gift (*al-hibah*) and inheritance (*al-warathah*) are not included as business items. This is because those items are gained without effort and as such the calculation of those items is different from business items.²³

PERSIS holds the opinion that business alms is to be paid 2.5% from the cost of sold goods without *niṣāb* (quorum) and *ḥawl* (when it has lasted up to one year). The inference is based on a statement narrated by al-Shāfi'ī in *'Awn al-Ma' būd* which reveals that 'Umar ibn al-Khattāb commanded Hammās to issue *zakāt* from his business without mentioning the *ḥawl* or *niṣāb*. 'Umar said "Estimate its cost and issue charity." It is understood from this statement that business alms were commanded by 'Umar during the Prophet's time. It means that it was the instruction of Prophet Muhammad (saw) to 'Umar ibn al-Khattāb as well.²⁴

The majority of Muslim jurists, however, agree that *zakāt* is payable on the value of all goods which are intended to be sold; the calculated value needs to be the selling price. Such calculations which include the *niṣāb* is subject of agreement among the ṣanafite, Shāfi'īte, ṣanbalite and some Mālikite with slight difference on the calculation of *ḥawl*.²⁵ It is important to remember that *zakāt* for Muslims is due regardless of whether the business is making profit or not.

5. Insurance

Insurance is the promise of compensation for specific potential future losses in exchange for a periodic payment. Insurance is designed to protect the financial well-being of an individual, company or other entity in the case of unexpected loss.²⁶ The question of insurance represents an important element of socialization in current societies, and as such drew attention from Muslim scholars. The NU issued three fatāwā in 1939, 1960 and 1992 respectively. In its first two fatāwā, NU prohibits all type of insurance viewing them as sort of gambling

²³*Ibid.*, 598-599.

²⁴Sholehuddin, *Kumpulan Keputusan Dewan Hisbah...*, 452-454.

²⁵Al-Zuhailī, *al-Fiqh al-Islāmiy*, v. 2, 787-788.

²⁶LTNU, *Solusi Problematika...*, 250.

based on the statement of Bakhīt al-Muṭī‘ī.²⁷ Al-Muṭī‘ī compares insurance with lottery in which the insured has to pay a premium for guarantees even when he never knows whether it will be used or not.²⁸ In its third fatwā, the NU stipulates a set of requirements that have never been considered by any insurance company. As such, NU recommends the establishment of Islamic insurance, free from any type of gambling.²⁹

Through Zakaria’s view, PERSIS contends that the key problem in insurance is the contract between the insurer and insured. The insurer covers for the loss or accident of the insured; in case of not incurring any problem, the insurer shall not pay anything, whereas the insured has paid monthly or annual premiums. Zakaria concludes that there are two forms of permissible insurances cooperative insurance because of its aim of business and the current international insurance based on exigent condition.³⁰

Generally speaking, some scholars prohibit insurance under the conventional system and consider it as exploitative and unjust. They argue that paying money for something without any guarantee of benefit, may cause ambiguity and risk. In this sense, the insured seems to lose while the insurance companies get richer. On the other hand, some scholars allow insurance for those living in non-Islamic countries and forced by insurance laws.³¹ It is better for Muslims, however, to leave conventional insurance and take Islamic insurance which strives to apply Islamic laws. Nevertheless, it is permissible for Muslims who are forced to take insurance in non-Muslim countries because they are mandated to abide by insurance law.

²⁷He was the mufti of Egypt in 1915-1920 with some works on Islamic legal rulings. One of his works is quoted by several NU scholars including Haqīqat al-Islām wa Usūl al-Hukm.

²⁸LTNU, *Solusi Problematika...*, 250; 317-318.

²⁹*Ibid.*, 476-477.

³⁰Zakaria, *Etika Bisnis...*, 243-245.

³¹Huda, *What do Muslims believe about insurance?* In <http://islam.about.com/od/business/f/insurancefaq.htm>. (accessed June 2, 2014).

Concluding Remarks

Obviously, legal methodologies of NU influenced more by its view about madhhab so as it uses *qauli* method by citing the statements of scholars of madhhab. NU only provides simple answer from each questions raised then followed by citation one or two statements from authoritative books without any analysis. It is understood that NU selects existing answers from madhhab instead of analyzing the issues from its roots; the Qur'ān and *sunnah*. In case of some issues that do not exist in authoritative books, NU will answer the issues by *ilhāq al-masā'il bi naḍāiriha* (attachment of issues by its similar issues).

PERSIS has divergent methods with NU that is by drawing the conclusion of laws from the Qur'ān and *sunnah*. In deduction by the Qur'ān, PERSIS precedes the obvious verses (*dāhir al-ayāt*) than interpretation (*ta'wīl*) and accept verses although it is conflict with reason (*'aql*). In deduction by aḥādīth, PERSIS accentuates ḥadīthṣaḥīḥ and ḥasan in deriving laws and will not accept theorem *al-ḥadīth al-ḍa'īfyu 'maluḥfaḍāil al-a'māl*.

Those disagreements in legal methodologies have caused some different concept in Islamic legal transaction. Despite some similarity, both preserve their methodologies and build their concept based on their religious views. Therefore, some disagreement may be understood as their answer of socio-political situation in their era.

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The conference, however, concluded that mortgage is prohibited. See LTNU, *Solusi Problematika*.

The complete explanation of A. Hassan about riba is collected in one chapter of 47 pages entitled 'risalah riba'.

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