

# The Methodology of Reforming Islamic Law Fatwa Bahthul Masail Nahdhatu Ulama in Family Planning (KB) in Indonesia by the Maqasid Shari'ah Approach

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## Abstract

This research aims to find out the renewal of NU (nahdatul ulama)'s fatwa of Bahsul Masail about the law of family planning (KB, keluarga Berencana, or family planning) in Indonesia, where it started from a law of haram, makruh, and halal. It specifies conditions through the maqasid shari'ah approach as a renewal of Islamic law. This study utilizes qualitative and descriptive analytical methods using a maqasid approach. In addition, the data that is obtained is analyzed descriptively by using deductive ideation methods. The results of this study are: 1) The reason for changing the legal fatwa on family planning (KB) from haram, makruh, and halal with condition is because of a new 'illat, namely the demands of the times. 2) Bahthul Masail NU agrees to the new fatwa under certain conditions. 3) The renewal of the new Family Planning Fatwa through the maqasid sharia approach can be carried out not only to avoid economic downturns but also to save the nation's children from caretakers, disease, low morality, faith, and crime, as well as other social ailments. Regarding the permissibility of the Bahtsul Masail Family Planning Program, NU has already paid attention to its goals (maqasid) and the conditions of society because family planning is essentially only a means or tool (wasail) to achieve goals (maqasid). Means for good and maslahah are considered permissible and sunnah, while means for evil and harm are considered makruh and unlawful.

## Keywords

Fatwa Bahtsul Masail Nahdlatul Ulama; Family planning (KB); Maqasid Syari'ah

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## 1. INTRODUCTION

LBM-NU (Lembaga Bahtsul Masail Nahdlatul Ulama), was formed and assigned specifically to decide matters of law (Islam) or fiqh in a broad sense, both in the areas of worship, mu'amalat, jinayat, Mawarits, health, and various waqi issues 'iyyah (actual), maudhu'iyyah (thematic), and qanuniyyah (legislation) which the study of the results will be the decision of the Nahdlatul Ulama Executive Board (Ahyani, 2021). It does not only discuss matters of fiqh, its corridors cover all activities of monotheism, tasawuf, socio-culture and others.

The law istibath method of LBM-NU, it is done by istinbath jama'ah (istinbath jama'i). The results



of decisions that have been agreed on the results of Bahtsul Masail can be considered as *al-Qawl al Rajih* (strong opinion) which is the opinion of the majority of NU scholars, although NU as the institution must be respect if there are NU clerics who carry out *istinbath fardi* (individual legal digging). Different from the results of the decisions agreed in the Bahtsul Masail (Ahyani, 2021).

Sometimes the legal decisions issued by LBM-NU are not in line or become stagnant law with current developments, so the fatwa needs to be renewed then the fatwa on Islamic law can be accepted and goes with the times. Like the renewal of Islamic law carried out by LBM-NU regarding the family planning (KB) program. Where LBM-NU carried out the three legal reforms, first in 13 Rabiul Awal 1357 H / 12 June 1938 explaining that the family planning program was illegal and Haram (Asrori, (ed)., 2011). Second, on 21-25 Syawal 1379 H/18-22 April 1960 at the 1st NU Syuriyah General Council Council, they discussed Family Planning/KB, which is legal to delay pregnancy, but deciding not to have children is illegitimate (A. Ma'ruf Asrori, (ed). 2011). Third, at the 28th Mukhtamar at Al-Munawwir Islamic Boarding School, Krapyak 26-28 Rabiul Akhir 1410 H/ 25-28 November 1989 AD, it was decided that it was permissible to use the spiral together with 'azl, or other contraceptives (Asrori, (ed)., 2011).

The important point to emphasize here is the idea of updating the LBM-NU legal fatwa above. The idea of renewal is very important efforts to optimize the function and relevance of LBM-NU in the context of the dynamic and complex needs of socio-cultural life. However, on the other hand, there are three fundamental aspects was not touched by the update idea above (Adib, 2022). The first is the basic character of tradition from a sociological perspective, the second is the thinking framework of the NU kiai behind the use of the *qauli* method, and the third is the problem analysis framework in the formulation of the legal *istinbath* methodology. These three aspects are an important starting point, so LBM-NU reform can be "renewal from within" (*tajdid min ad-dākhil*), namely reform that based on the roots of tradition, not something uprooted from it or even ignoring it (Al-Jābirī, 1990).

The Maqashid approach, legal renewal based on Maqashid al shari'ah is the effort to make maqashid as the reference basis that is considered in the *ijtihad* process, so it is expected to produce *ijtihad* products (laws or fatwa) in contemporary issues (Nuruddin. 1431 H). NU through Bahtsul Masail acts as a *mujtahid* who responds to the community's need for certainty and *syar'i* guidance in modern life, because many issues are not founded literally in law in the texts of the Quran and hadith or other sources of law (Asrori, (ed). 2011).

Therefore, the renewal of NU's bahtsul masail fatwa regarding family planning programs is considered important and should be discussed by the reviewer. In order to achieve the purpose of updating the fatwa, it will find common ground by using the *maqasid shari'ah* method.

## 2. METHODS

Inside finishing this journal, the author uses qualitative study methods where this method can be used as the basis of study material in various aspects of scientific disciplines such as the fields of sharia, socio-culture, economics and others. Qualitative inquiry is the construct knowledge through discovery and understanding of situations, both textually and contextually. In addition, qualitative investigations use the naturalistic approach to look for and seek the understanding of phenomena in the typical contextual setting. According to Denzin and Lincoln, qualitative investigation is the investigations that use natural settings, namely interpreting phenomena that occur and it is carried out by involving various existing methods (Moleong, 2005). Qualitative research aims to examine a phenomenon and social phenomena that arise from the causes of a case that are included in the values and norms of society, even problems can occur in the midst of people's lives such as laws following program. (Rosniza Aznie Che Rose, Mimi Sulo, 2021).

### **3. FINDINGS AND DISCUSSION**

#### **3.1. The background founding of Bahsul Masail in Nahdhatul Ulama organization.**

The background emergence of small LBM was due to the community's need for practical Islamic law or practices of daily life which encouraged NU ulama and intellectuals to find the solutions by conducting LBM. Then, if we trace the results of the legal decisions, it can be seen that LBM was first implemented in 1926, a few months after the founding of NU. (Poetoesan-Poetoesan Congres Nahdloetoel 'Oelama', 1347. H). However, even the Bahsul Masail's activities had existed since the 1st Congress, LBM began becoming an official institution at the 28th Congress in Yogyakarta 1989 the commission I recommended PBNU to form LBM al-Diniyyah (institution for the study of religious issues) as the institution permanent office which specifically deals some issues that are mauquf and some issues of waqi'iyah that must be immediately obtain legal certainty (Asrori, (ed)., 2011). The recommendation of formatting this LBM is strengthened with the same recommendation in halaqoh agenda at Mambaul Ma'arif Islamic boarding school Denanyar on 26-28 Januari in 1990. Hopefully able to appeal all the theologions and intellectual of NU to do istimbat Jama'I (collective exploration and determination of law), so in 1990 formed LBM al-Diniyah based on PBNU Decree Number 30/A.I.05/5/1990 (Zahro, 2004). After formatting this official institution, two years later, in 1992, the LBM legal decision-making system was born (Wafi, 2021).

LBM-NU is the official forum that has the authority to answer all religious issues that faced by Nahdiyyin members. It could say that NU scientific tradition was also influenced by the results of this forum's decisions, because all religious issues included were studied and provided answers and then transmitted to its members. (Imam AZ dan Nasikh, 1990). After institution was inaugurated, the handling of LBM was more systematic by sorting out issues that were waqi'iyah (casuistic-practical), maudu'iyah (thematic-theoretical), and qaununiyyah (legislation), in the form of commissions. For example, the term maudu'iyah commission appeared at the 29th Mukhtar at Cipasung in 1994, the term waqi'iyah commission was used at the NU National Conference at Central Lombok in 1997 and the term qaununiyyah only appeared at Monas at Sukolilo Surabaya in 2006, so till this day in every National Conference event or congress, LBM-NU activities are divided into three: waqi'iyah, maudu'iyah and qaununiyyah commissions. (Asrori, (ed)., 2011).

It is interesting to note that the Maudu'iyah commission's LBM-NU commission is dominated by academic members, so the leap of thought is relatively progressive and tends to be liberal in certain matters. (Wafi, 2021). From this commission many conceptual ideas emerged which were sometimes considered to clash with the nahdiyyah fiqh, so some Kiyai who were originally active participants in the waqi'iyah commission forum were asked by other kyai to color the mawdu' forum as a neutralizer of progressive-liberal thoughts. (Wafi, 2021).

#### **3.2. Maqasid Shari'ah the Bahthul Masail Approach in the Istimbath method of Islamic Law in Indonesia**

Maqasid shari'ah and ushul fiqh are the main objectives that must be realized by solving problems and then applying Islamic law or shari'a to Muslims. (Al-Fasi, 1963). Realizing Sharia in real life (world) is creates benefit or goodness for creatures on earth that have an impact of benefits or goodness in the hereafter.

Mastering maqasid shari'ah and ushul fiqh are really needed in doing istinbat al-ahkām. The mujtahid is demanded to master the set of laws which have been arranged as the istinbat method by the purpose spreading the mistakes in doing istinbat. (Janah dan Ghofur , 2018). The purpose, all ulama ushul fiqh have laid down various rules, both related to language and the purposes behind the imposition of each syar'i law. (Safriadi, 2017). Some ulama such as al-Syātibī (as the adherent of mazhab Maliki), signing mujtahid mastery of Maqashid al-Shari'ah as the first condition among a number of conditions for ijtiḥād. (Al-Syātibī , t.th.) Maqashid shari'ah and ushul fiqh are the main basic points as the istinbat al-Ahkam method of Al-Quran and hadith texts to explore the arguments for all legal issues, such as Worship, Muamalah and others.

In exploring the *istinbat* law, both *ushul fiqh* and *maqasid shari'ah*, mujtahids can apply various methods of *ijtihad*. Basically these methods lead efforts to find a method and it uses as a tool to establish laws whose cases are not explicitly stated in the Qur'an or Sunnah. (Yusri 2019). *Ushul fiqh* and *maqasid shari'ah* can be used as *ijtihad* methods developed by mujtahids to explore existing problems and establish laws as *qanuns* (Islamic law laws) such as *Ushul fiqh* uses the *Ta'lili* method (method of substantive analysis) which includes *Qiyās*, *Istihṣān*, and others. (Nazir Alias et al, 2018). The *maqasid* of sharia is not a benefit that is thought of by human reason alone but it is based on a deep and comprehensive understanding of *maqasid shariah*. (Nazir Alias et al, 2018).

If we look at the legal *istinbat*, the study of fatwa and *ijtihad* of LBM-NU it is closely related to *maqasid shari'ah*, especially to *maqasid shari'ah Khassah*, namely the procedures intended by *syara'* to realize human which has beneficial values or to maintain human *mashlahah*. its activities, in sense that *maqasid Khassah* is the meaning and the benefit that exists in a *Shari'ah* law which has special nature. (Busyro, 2019)

Comes from the *Bahtsul Masail* legal decision-making system which was formulated at the 1992 Bandar Lampung National Conference, actually there has been a dynamic of legal thinking within the NU environment both of the substance of the discussion aspect and the methodological aspect. (Mahfudin, 2021). For NU the formulation of this system is very meaningful not only for the *kiyai* who are directly involved in the *bahtsul masail*, but also for the development mind-set of the NU community in general (Hilmy Pratomo, 2020).

According to Muhammad Adib, the Branch Secretary of NU Malang, seeing *bahtsul masail* means seeing two important things,

There are two things when you read *Bahtsul Masail*. First, it is not enough just rely on the text resulting from the decision, but we also have to read from the side that is hidden behind the text, when we fail to catch the hidden side, we are prone to misreading. Second, it is also necessary to involve an interdisciplinary perspective between one *bahtsul masail* decision text, and through the sequence events of the previous fatwas. This means that fatwas were issued at a certain time are rooted in previous fatwas and cannot be released because of the continuous way of thinking. Why? Because there is a structure of thinking hidden behind the text. (Muhammad Adib, special interview, 9 Februari 2022)

Basically the term of *ijtihad* is not popular among NU, according to NU the activity of *ijtihad* is the authority right of a mujtahid who already has several requirements set by the *ushul* expert scholars (Hilmy Pratomo, 2020). There are many requirements that must be has for someone who is entitled and worthy to become a mujtahid, such as being able to master the *Al-Qur'an* and the sciences related to it, being able to master the *Hadith* and the sciences related to it, mastering the Arabic language and the sciences related to it, mastering the science of *ushul fiqh*, mastering *maqasid al-shari'ah*, and others. (Janah dan Ghofur, 2018).

Therefore, NU, through *Lajnah Bahtsul Masail*, in solving a problem, has never used the term *ijtihad* for this activity, in which *ijtihad* was believed to be the authoritarian right of the previous mujtahid, but instead used the term *Istinbath* (excavation and determination) of *mazhab* law. (Ahamad Zahro, 2004).

### **3.2.1. Religious attitude**

Since the beginning, LBM has pledged to adhere to one of four *mazhabb* of thought this *mazhab* attitude refers to one or more of the four schools of thought (Imam Abu Hanifah, Imam Malik, Imam Syafi'i and Imam Ibn Hanbal. KH. Hasyim Asy'ari said in the book *Risale Fi Ta'kid Al-Khdzi Bi Madzhabi Al-Arba 'a* that practicing one of the four imams is very beneficial, on the other hand, if you don't adhere to one of the four priests, you risk being fatal because the Prophet Muhammad SAW ordered the well-known group of Muslims (*al sawad al-'a'zham*). (Wahid, 2000)

The *mazhab* system for the NU community is necessity as the scientific tradition that always upheld both of the individual level and the organizational level of NU. ( Abdurrahman Wahid, 2000). The scientific tradition adhered by the NU community to follow this pattern of *mazhab* has been openly

stated by NU members themselves since its inception, in the AD/ART NU it is explained that the organizational principle of NU is the Islamic belief ahl al sunnah wa al-jamâ'ah. (<https://mualliminenamtahun.net>)

### **3.2.2. The concept kutub mu'tabarah**

Al Kutub al Mu'tabarah refers to books that are accordance to the Sunnah wal Jama'ah experts. These books were written by the followers of Imam al Asyari and al Maturidy in the field of Tawhid/Aqidah, the writings of Imam Maliki, Imam Hanafi, Imam Syafii and Imam Hambali and all their followers in the field of Fiqh and; the books by Imam Ghozali and Imam al Junaidi and their followers in the field of Sufism. (Zuhron, 2012)

Actually, al-kutub al-mu'tabarah was not carried out for the purpose of closing oneself against modern developments, but as the manifestation of the precautionary efforts of the "elders" or NU scholars after observing the intellectual developments that had taken place. This happened because the younger generation of NU tended to abandon old traditions and try to incorporate "new" traditions that were inconsistent with the NU culture that had been built since its inception. (Hamim, t.th).

### **3.2.3. Taqrir jama'I**

Taqrir Jama'i is when there is a different opinion among ulama regarding the determination of the law of a problem, then LBM-NU takes one of the opinions of the ulama in the classical book. Taqrir Jama'i is a technical term used by Kyai NU to mention the procedure for implementing Qauli. (Ahmad Zahro, 2004). Taqrir Jama'i is interpreted as a joint decree to choose an opinion of Imam Madzhab (which is termed Qaul) and or the opinion of followers of the Imam Madzhab (Ashab), which is termed Wajh. (Agus Mahfudin 2021). In the context of Qauli, taqrir jama'i is absolutely done. In the problem of determining the legal status, there are several qaul or wajh, so it must be chosen as a stronger opinion (Daud, 2022)

A qauli approach is an approach to establish fatwas through the views of the madhhab priests which found in the dominant fiqh books (al-kutub al-mu'tabarah). However, if the qaul is deemed inappropriate due to changes in illat, then a re-examination will be conducted.

### **3.2.4. Ilhaqul-Masail bi nazairiha collectively/jama'i**

Provide that the legal issue is not in qauli and cannot solve the problem, the mechanism carried out by LBM-NU is to apply the ilhaqul-Masail bi nazairiha method collectively/jama'i. (Aminuddin, 2013).

The development of the ilhaq method still considers the mu'tabarah book to be essential in determining wajh of resemblance between the problem being solved and the problem that becomes law/qanun as a result of the book. In LBM-NU, the pillars of ilhaq are mulhaq bih (issues that are punished) in the form of the opinion of the ulama (Ma'mun, 2011) mulhaq ilaih (questions that are followed), wajh al-ilhaq (equality in legal matters), and fiqh law in the form of wajeeb (obligatory), sunnah/mandoob (recommended), makrooh (discourage or abominable), mubah (permitted bur normally indifferent) and haram (forbidden or prohibited) (al-Sharbaini, 1995).

### **3.2.5. Mazhab manhaji method**

On condition that the legal issues cannot be resolved using the qauli method and the ilhaqi method is inapplicable, LBM-NU employs the mazhab manhaji method. (Rahmat, 2002). This method is defined as a method for resolving problems in accordance with Imam mazhab's establish principles of thought and lawmaking (Masyhuri, 2004). One of the problems solved by mazhab manhaji method is life insurance. The previous books did not discuss this issue, so the study of the manhaji school of thought method was used as a study to discuss the issue of life insurance (NU, 2022)

LBM-NU considers the following factors when establishing insurance laws: First, insurance includes a mu'awadah contract, namely, a contract for both parties to take ujah (reward) as a substitute

for the object handed over. The insurer provides compensation in the form of *ujrah* or premium compensation (NU, 2022). Second, insurances contain *gharar* (uncertainty or speculation), and the results of these insurances need to be clarified or hidden. Third, sale and purchase contracts and other *mu'awadhah* contracts that include *gharar*, especially *gharar fahisy*, are invalid because *gharar* trading is against the law according to the hadith of the Prophet Muhammad SAW. The hadith says that *gharar* is forbidden, and it says that this rule applies to all contracts whose *illah* is the same as buying and selling: a *mu'awadhah* contract. Therefore, in insurance, there is no *gharar*, including the *mu'awadhah* contract (Idayanti dan Aryani, 2010).

In the mechanism of taking *istinbat*, LBM-NU tends to be more traditional (*al-muhafizin*). Hence, steps toward modern thinking (*al-islahiyah*) are still very doubtful and cautious because it is still time to move towards modern thinking, and it is not time to leave traditional thinking (Siradj, 1999). The attachment of the traditional fatwa method is considered relevant to the current context with the development of the textual *qauli* method. However, the acceptance of the new method is also crucial.

المُحَافَظَةُ عَلَى الْقَدِيمِ الصَّالِحِ وَالْأَخْذُ بِالْجَدِيدِ الْأَصْلَحِ

*"Maintaining good traditions and taking on new values (innovations) that are even better"*  
(<https://nu.or.id/warta/jaga-tradisi-nu-terima-nilai-baru-yang-baik-ONnuG>).

In the history of the development of LBM-NU, there have been important decisions related to study methods. During the 1992 Alim Ulama National Conference in Lampung, it was decided that *qauli* and *manhaji* would be used to solve difficulties. (Abdul Aziz Masyhuri, 2004). The solution to this problem follows the methods and procedures for establishing the law adopted by the four *mazhab* (Hanafiyah, Malikiyah, Syafi'iyah, and Hanbaliyah). Although the use of the *manhaji* method as a new method established by the MUNAS Lampung in 1992 has not yet been fully developed, the *manhaji* method is still in the formulation stage and *ulama* continue to use the *qauli* method. (Mahfudin, 2021). Therefore, the *manhaji* method is still in the process of being developed for application in the LBM-NU fatwa.

### 3.3. Analysis of Bahstul Masail in the Reconstruction of Family Planning Law in Indonesia from the Maqasid Sharia Perspective

The LBM-NU decision was taken in the framework of studying with one of the four *mazhab* (Hanafi, Maliki, Shafi'i, and Hanbali) which were agreed upon and prioritized *qaul* schooling. As a result, it is used as follows in legal *ittifaq* answers:

- 1) In cases where the answer is found in a similar book and there is only one *qaul* (opinion), that *qaul* is taken.
- 2) In cases where there are two legal opinions, a *jama'i taqir* is carried out in choosing one of them.
- 3) If the answer is not found in the book, the experts recommend *Ilhaq al-Masail bin Nadhariha* in *Jama'ah*.
- 4) If the answer to the problem is in the form of a book and cannot be carried out by *ilhaq*, then the *jama'i istimbat* is carried out with the *mazhab* procedure in a *manhaji* manner by the experts. (Materi Musyawarah Nasional Alim Ulama Nahdlatul Ulama 1992, 2002)

It was around 1980 when discussions about renewal (*tajdid*) began to emerge. It was a lively conversation because the classical *fiqh* books were incapable of resolving contemporary issues, and the idea of making the yellow book more relevant came up. Since this discussion, a *halaqah* (discussion) was held, attended by several *Syuriyah* *ulama* and Islamic boarding school caretakers, to formulate a new *fiqh*. (Miftahul Ulum dan Abd. Wahid HS, 2019). An agreement has been reached about the addition and expansion of the content of the LBM-NU agenda, which covers issues of *halal/haram* law and matters like developing Islamic thought and book study. (<https://www.nu.or.id>).

NU played a big role in *fiqh* renewal not only because of the emergence of young NU figures but also because this progressive development was addressed as a counter to modernist ideas. (Ahyani,

2021). The nahdiyyin's renewal of fiqh is a continuous process of meaning. This is because different parts of people's lives change over time. Fiqh is not a permanent institution that is sacred, but fiqh is a civilization product. (Imam Yahya, 2009).

Bahtsul Masail is a special institution that decides laws in coordination with NU's Syuriah (legislative) institution. This forum makes decisions about Islamic law related to fiqh, monotheism, and even tasawuf (tarekat) issues. (Ahyani, 2021). Typically, the Bahtsul Masail consists of Kiais or ulamas within the NU, both inside and outside the organizational structure, including Islamic Boarding School caretakers and other NU scholars. (Muzawwir. 2021).

In Ahkamul Fuqaha, the Bahtsul Masail collection book of the NU, a number of legal issues requiring renewal are outlined. Some are related to family planning. The fatwa declared at Menes Banten on 13 Rabiul Awal 1357 H (12 June 1938) stated that treatment to prevent pregnancy, for whatever reason, is illegal and haram. (Asrori, (ed)., 2011). Based on the following:

1. Al-Quran: al-An'am: 151.
2. Talkhis al-Murad

أفتى ابن عبد السلام وابن يونس بأنه لا يحل للمرأة أن تسعمل دواء يمنع لحبل ولو برضا الزوج

*Syaikh Ibn Abdussalam and Ibn Yunus said in a fatwa that it is not lawful for women to use contraceptives even with their husbands' consent.*

3. I'anah at-thalibin

ويحرم استعمال ما يقطع الحبل

*Use things that prevent pregnancy is haram. (Zarkasyi t.th).*

The opinion above can be used as a reference regarding family planning. On 21–25 Shawwal 1379 H (18–22 April 1960), the 1st NU Syuriah General Council discussed family planning. (A. Ma'ruf Asrori, (ed). 'Azl (the secretion of sperm outside the uterus) or the use of a contraceptive that prevents sperm from reaching the uterus, such as a condom, is considered makruh. This also applies to restrictions on heredity by taking medication. This law may be deemed haram if it completely kills a pregnancy unless there is an imminent danger. According to professional view, a woman who gives birth to too many children might be harmful to women; therefore, it is permitted for such a woman to avoid pregnancy. (Asrori, (ed)., 2011)

At the 28th Muktamar held at Al-Munawwir Islamic Boarding School in Krapyak, Yogyakarta, 26–28 Rabiul Akhir 1410 H (25–28 November 1989), it was also decided that the spiral could be used in conjunction with 'azl or other contraceptive. (Asrori, (ed), 2011). According to KH. Sahal Mahfudz, there are different perceptions between the government and Islamic scholars regarding Indonesia's Family Planning (KB) program. The differences between the two sides worsened due to a lack of active interaction. (<https://harakah.id/>). In addition, KH. Sahal Mahfudh also questioned the opinions of ulama, who viewed family planning from only one perspective without paying attention to the program's primary objective (maqashid).

عَنْ جَابِرٍ قَالَ كُنَّا نَعَزُّلُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَلَغَ ذَلِكَ نَبِيَّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَلَمْ يَنْهَنَا

*From Jabir, he said that we did 'azl during the time of Rasulullah SAW, and that the Prophet SAW did not forbid it. (H.R. Muslim )*

Imam Nawawi provided a compromise between the two hadiths that appeared to contradict each other in response to their apparent contradiction. According to him, the hadith that prohibits 'azl must be interpreted to suggest that the prohibition is restricted to makruh tanzih, or is permissible, whilst the

hadith that permits 'azl demonstrates that 'azl is not haram. However, this unlawfulness does not eliminate the disrepute of 'azl. (Siti Kholilah 2019).

In the opinion of K.H. Sahal Mahfuh, those who support family planning must consider its goals (maqasid) and the existing conditions of society because family planning is essentially a method or instrument (wasail) to attain that purpose (<https://harakah.id/>) According to 'Izzuddin Ibn 'Abdussalam, lil wasail ahkamul maqashid, means judged based on their purpose. This indicates that helping people and doing good things are considered mubah and sunah, whereas hurting people and doing bad things are considered makruh and haram. (Izzuddin Ibn Abd as-Salam, t.th, dan As-Suyuthi, t.tn). The closer these facilities are to the benefit, the more highly encouraged or even required their use becomes.

The rule formulated by 'Izzuddin in Qawaidul Ahkam was strengthened by his student, Syihabuddin al-Qarafi. He divided law into two categories: wasilah (means) and maqasid (goal). These two things are connected and can't be taken apart, since a path must be taken to accomplish the objective. In order to perform Hajj, for example, travel is required. Travel might be considered as a wasilah to achieve the goal of pilgrimage.

In several of his writings related to the Family Planning (KB) program, KH. Sahal Mahfudh emphasizes the importance of paying attention to and assessing the advantages and disadvantages of any regulation or action. He emphasized this to the ulama and kyai in particular. He quoted Imam al-Ghazali, KH, who stated that one of the fundamental characteristics of ulama is faqih fi mashalihil khalq or a thorough understanding of the benefits of creatures. Ulama are obliged and responsible for providing humans' benefits and helping them avoid harm as much as possible, both in this world and hereafter. (Ali, 2022).

Fundamentally, humans live to seek happiness in the world and the hereafter (sa'adah al-darayni). This happiness is achieved when humans are able to collaborate and communicate with one another in order to perform productive deeds and charitable acts. (Asy-Syathibi, 1997). In the opinion of KH. Sahal, human interaction and cooperation are more beneficial if the quality and quantity are balanced. The deterioration of social order, security, and comfort will occur if the population grows while the number of available facilities and amenities remains small.

The consequences of this imbalance between quality and quantity, or the number of people not commensurate with the facilities, are a worsening economy, unequal social welfare, deteriorating health, and majority of people with low education and poor health. In some areas, the impact of population growth is that natural and economic resources are drained, and as a result, people lose their jobs and give up on life. (Mahfudh, 2004).

Therefore, in order to avoid negative impacts, it is necessary to limit heredity or the birth rate so that the community's needs and the facilities provided are balanced, starting from work, the economy, health, education, and others. (Sābiq, 1968).

Based on these considerations, LBM-NU allows family planning as long as it does not conflict with religious laws, state laws, or Pancasila morals, and so long as its purpose is to further the welfare of the family and the nation. According to the initiators of social fiqh, regulation of birth rates and restrictions on offspring were already known at the time of Rasulullah SAW. The difference is that in the past, it was done without using tools like "'azl," whereas it is now done with birth control tools. This opinion is based on the hadith narrated by Jabir that the companions performed 'azl at the time of the Prophet, he did not forbid it, and not a single verse was revealed to prohibit this practice (HR. Bukhari-Muslim). (Asrori, (ed), 2011).

The LBM-NU legal reform for family planning starts with haram, makruh, and mubah. Changes to the law must adapt to the times. LBM-NU has a dynamic and democratic character with extensive knowledge. (Asrori, (ed), 2011). It is considered dynamic because the legal issues discussed are in accordance with actual legal trends, and the forum does not provide barriers to the social status of LBM-NU members such as Kyai and Santri, both young and old, so they are considered democratic. It is asserted of him that he is knowledgeable because in this forum there are no dominant sects and



everyone agrees on errors (differences). (Miri Penerj, 2015).

### 3.4. Ulama Perspective towards Family Planning (KB) Law in Indonesia

The Indonesian Family Planning Association (PKBI) was established in Jakarta on December 23, 1957, and was followed as a legal entity by the Ministry of Health in 1967, which operated in a silent operation. Family planning efforts kept growing, especially after the head of state's speech on August 16, 1967. This was done to help people who needed voluntary help. When the family planning organizations in Indonesia entered a period of job transition in the old order, the family planning organization program was run by a group of volunteer workers who operated voluntarily and kept silent because the head of state did not justify family planning (BKN, 2023). Then, in the new order, the family planning organization was signed and included in the Indonesian royal program. Additionally, the organizational structure of the family planning program shifted. As part of this effort, the National Family Planning Institute (LKBN) was founded on October 17, 1968. Then in 1970, this institution was renamed BKKBN (The National Population and Family Planning Board), the official agency and position and is wholly accountable for implementing the family planning program in Indonesia. (BKN, 2022)

According to Prof. Dr. Madkour, Abu A'la al-Maududi forbids birth control since birth control entails the murder of progeny, including Surah Al-Isra': 31 (Sunarto, 2020).

The ulama said that the above verse was the main reason why family planners should not be allowed (KB). According to him, Islam is a religion that works according to human nature. In "Islam and Family Planning," Prof. Madkour of the Law Faculty's Islamic Law department wrote that he did not agree with making a family planning program if there was no reason to do so. He adhered to the principle that pressing circumstances might justify illegal actions. (Al-Fauzi, 2017).

In addition to the opinions above, certain ulama use arguments that, in principle, reject family planning, including Surah al-An'am (151) and Surah al-Isra' (31). The purpose of these two verses is not to give someone a chance to live; it is the same as killing, albeit indirectly, and the reason is a fear of poverty. In contrast, Allah has guaranteed the sustenance of His servants as the words of the Prophet SAW.

تزوجوا الودود فاني مكاثركم لأمم

*"Marry women who are compassionate and have many children, as I am proud of how many of you are in relationships with other Muslims."* (Abu Daud, t.th./, 2. Al-Tirmidzi, t.th./1. Ibn Majah, t.th./1).

According to the hadith, as mentioned earlier, the Prophet Muhammad was exceedingly proud when he had many followers. Operating a family planning program entails population reduction. Outwardly, this is the case, but what is truly desired is a large number of devoted followers of his Islamic beliefs and not his opponents. (Hasan, 2017)

Meanwhile, the decision of the Tarjih Muhammadiyah Council to discuss restrictions on heredity (KB) in its decision explains that sterilization (vasectomy/tubectomy) is not justified in Islamic teachings and is, therefore, strictly prohibited. (Wijaya, Abdi (2019). Muhammadiyah says that sterilization goes against the point of marriage, which is to have children. However, in emergencies, restrictions on children may be allowed in order to reach the goals of Islamic law (maqasid sharia). (Wijaya, Abdi (2019).

The Tarjih Muhammadiyah Council, in its decision regarding family planning, provides a general perspective. According to the Tarjih Assembly, several points must be considered, including preventing pregnancy, which is contrary to Islamic teachings if the intention is to be reluctant to have children. Furthermore, damaging or physically changing, such as cutting, binding, and so on, is prohibited. According to Muhammadiyah, it is permitted to space birth if there is an emergency due to health considerations. (Hasan dan Basundoro, 2017). However, it must be done with the consent of the

husband and wife after consulting with doctors and religious experts. The Tarjih Council explained the aforementioned critical situation in two ways. First, according to the doctor, concerns regarding the mother's health throughout pregnancy or childbirth. Second, concerning the safety of religion due to the narrowness of life, particularly the economy, it is believed that Muslims may commit illegal practices or haram things in order to fulfill the needs of their children (Republika, 2014).

The MUI fatwa regarding how a vasectomy affects progeny (tahdid al-nasl) has changed four times (1979, 1983, 2009, and 2012). Its 2012 fatwa indicates that the vasectomy law has changed from being haram to mubah (permitted) with exceptions. Several requirements must be met to eligible for this exception. (Rista Laily Prestyana dan Gandhung Fajar Panjalu, 2017). The law changed because recanalization (reconnection) was successful, as evidenced by a letter from the Ministry of Health with the number TU.05.02/V/1016/2012 and supported by a statement from the Indonesian Association of Urologists Association (IAUI), so in this case, illat illusory law formed the basis for the emergence of new laws. (Prestyana dan Panjalu, 2017).

The three organizations agreed to prohibit this case. However, in its development, the MUI fatwa changed its law since a new illat became the major foundation for consideration with evidence of recanalization (reconnection), which resulted in the emergence of a new law, namely mubah (permitted). As seen from these conditions in order to maintain the existence of religion, soul, and offspring. (Rista Laily Prestyana dan Gandhung Fajar Panjalu, 2017). Although Muhammadiyah still sticks with its decision by forbidding sterilization, it is permissible in an emergency according to the emergency criteria explained in its decision. (Djamil, 1997). If it is related to the elements of maqasid sharia, the emergency criteria can include the five elements: maintaining religion, soul, mind, lineage, and property. In this case, the benefit that is the basis for consideration is in accordance with maqasid sharia.

Fiqh scholars are currently debating the continuation of verse 31 of Surah al-Isra on the permissibility or non-permissibility of engaging in the family planning program. However, K.H. Sahal Mahfudh's objective is to allow family planning. At the beginning of the formation of Islam, he contended that the Prophet Muhammad SAW exhorted us to have more children. (Jannah, 2016). However, the number of Muslims is growing, as is the case currently. Thus, improving the quality of human beings for the family's welfare is not optimal. (Asmani, 2015). Therefore, he has particular reasons for suggesting the following argument:

تناكحوا تناسلوا فأني مباه بكم الأمم يوم القيامة

*"Get married, and then you will have zuriat (offspring), considering that I am proud of the number of people on the doomsday."* (HR. Abd al-Razzaq).

The hadith above is the argument used by K.H. Sahal Mahfudh to socialize the family planning program on a religious foundation in order to underline its significance. (baroroh dan Janah, 2016). In his opinion, if the family focuses solely on the number of earned an sich, as in a family with ten children, without considering the children's quality, family welfare, or the economy, it is irresponsible. (el Baroroh, 2016). Here, the significance of family planning programs is determined by educational, health, economic, and religious factors. (Asmani, 2015).

The following hadiths from Islamic beliefs support family planning programs:

عن جابر قال: كنا نعزل على عهد رسول الله صلى الله عليه وسلم فبلغه ذلك فلم ينهنا

*"Jabir stated, "We used to do 'azl at the time of Rasulullah SAW, then conveyed it to Rasulullah SAW, and he allowed us."* (Ya'qub 2014).

Through the family planning program, it can be attributed to the act of 'azl. Some ulamas believe that the family planning program is intended to regulate offspring (tanzim al-nasl), rather than to prevent women from having children indefinitely (man' nasl). Thus, because there is a distance and a need for the number of children, it is required, as the process of 'azl which the companions have carried out. In accordance with the opinion of K.H. Sahal Mahfudh, the family planning program is an effort to establish a *sakinah mawadah wa rohmah* family that prioritizes happiness and peace in the home, (el Baroroh dan Janah, 2016). Thus arousing the desire to share happiness and affection with all family members.

National Family Planning is being implemented based on Islamic law, with the reasons and objectives of family planning, and it is becoming a government program. K.H. Sahal Mahfudh (Asmani, 2015) refers to Imam Ghazali's opinion:

1. The husband's happiness depends on his wife's beauty and health.
2. Protect the wife's life from the dangers of pregnancy.
3. Avoid economic difficulties or hardships of life (haraj).

K.H. Sahal Mahfudh cited Sayyid Sabiq's position in the book *Fiqh al-Sunnah* to strengthen the necessity of family planning. First, if the family already has many children and the husband cannot have more children. Second, the wife's health factors, such as frequent illness. Third, the wife is frequently pregnant. Fourth, maintain the beauty of the wife (el Baroroh dan Janah, 2016). However, in principle, K.H. Sahal Mahfudh allowed the family planning program due to economic considerations.

#### 4. CONCLUSION

Therefore, in the three renewal legal fatwas issued by LBM-NU, family planning has considered its goals (maqasid) and the existing conditions of society because family planning is essentially only a means or tool (wasail) to achieve that goal (maqasid). Good and beneficial means are regarded as *mubah* and *sunnah*, while evil and harmful are considered *makruh* and *haram*. The closer the facility is to *maslahah*, the more it is recommended and even obligatory. In essence, family planning programs are implemented not only to avoid economic downturns but also to protect the nation's children from ignorance, disease, low morality, faith, and crime, as well as other social ailments, thus giving birth to human happiness in the world and the hereafter (*sa'adah al-daraini*). Happiness is born when humans are able to work together and interact with each other to carry out productive deeds and charities.

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