

## Between Adherence to *Madhhab* and Adaptation to Context: *Fatwās* on Female Leadership in Nahdlatul Ulama-Affiliated Islamic Higher Education Institutions

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### Abstract

The issue of women in leadership has been a longstanding topic of debate among classical Islamic jurists, eliciting diverse responses from mainstream Islamic organizations in Indonesia. This article presents a comparative analysis of *fatwās* (Islamic legal opinions) issued by the Forum of Bahtsul Masail (FBM) at two Nahdlatul Ulama (NU)-affiliated Islamic higher education institutions: Ma'had Aly Hasyim Asy'ari Tebuireng, which prohibits female leadership, and Ma'had Aly Salafiyah Syafi'iyah Situbondo, which permits it. Through a combination of literature-based and empirical approaches, the article highlights a significant contrast in the *istinbāt al-ahkām* (derivation of legal rulings) employed by these two FBMs. FBM Ma'had Aly Hasyim Asy'ari Tebuireng adopts the *qawli* (literal) method, adhering to the majority views of classical Islamic jurists. In contrast, FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo employs a *manhājī* (methodological) approach, incorporating minority opinions and reinterpreting texts within the context of modern societal changes. These contrasting *fatwās* reflect a broader tension between *taqlīd* (adherence to precedent) and adaptation to evolving social contexts. Furthermore, this article argues that the educational backgrounds of the FBM actors, as well as the curricula taught in their respective *pesantren* (Islamic boarding schools), contribute to the differences in *fatwās*. These differences reflect the internal dynamics within the *fatwā* production process in NU.

[Isu kepemimpinan perempuan telah lama menjadi topik perdebatan di kalangan ahli hukum Islam klasik yang telah memicu beragam respons di kalangan organisasi masyarakat Islam arus utama di Indonesia. Artikel ini menganalisis secara komparatif fatwa dari Forum Bahtsul Masail (FBM) di dua ma'had aly yang berafiliasi dengan Nahdlatul Ulama (NU): Ma'had Aly Hasyim Asy'ari Tebuireng, yang melarang perempuan menjadi pemimpin, dan Ma'had Aly Salafiyah Syafi'iyah Situbondo, yang memperbolehkannya. Artikel ini, dengan menggabungkan pendekatan kepustakaan dan empiris, menemukan bahwa kedua FBM menggunakan metode penggalian hukum (*istinbāt al-ahkām*) yang berbeda. FBM Ma'had Aly Hasyim Asy'ari Tebuireng menerapkan metode *qawli*, merujuk pada pendapat mayoritas ulama fikih, sementara FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo menggunakan metode *manhājī*, mengadopsi pendapat ulama minoritas dan melakukan interpretasi (ulang) terhadap teks. Perbedaan fatwa tersebut dipengaruhi

*oleh pendekatan yang berbeda antara taklid dalam bermazhab dan adaptasi terhadap perubahan sosial. Lebih jauh, artikel ini berargumentasi bahwa latar belakang pendidikan para aktor FBM, serta kurikulum yang diajarkan di masing-masing pesantren, berkontribusi pada perbedaan fatwa yang dihasilkan. Perbedaan-perbedaan ini mencerminkan dinamika internal dalam proses produksi fatwa di kalangan NU.]*

**Keywords:** *Fatwā*, Female Leadership, *Istinbāt al-Aḥkām*, *Ma'bad Aly*, Nahdlatul Ulama.

## Introduction

In addition to the issue of non-Muslim leadership, female leadership remains a controversial topic in *fiqh* (Islamic jurisprudence), eliciting diverse responses from various *fatwā* (Islamic legal opinion) institutions across the Muslim world.<sup>1</sup> In Saudi Arabia, the Dār al-Iftā' issued a *fatwā* prohibiting women from assuming leadership roles, while in Turkey, the Diyanet permits women to hold such positions.<sup>2</sup> In Indonesia, several mainstream Islamic *fatwā* bodies have produced conflicting rulings regarding women in leadership roles.<sup>3</sup> However, they unanimously prohibit women from serving as prayer leaders.<sup>4</sup> Concerning the leadership of non-Muslims, the Majelis Ulama Indonesia (MUI, Council of Indonesian Ulama) has issued conservative *fatwās* that are seen as limiting democratic processes.<sup>5</sup> Not only does the MUI prohibit non-Muslims from holding leadership roles, but it also forbids Muslims from wearing non-Muslim religious symbols.<sup>6</sup> Although these *fatwās* have sparked public controversy, they have also fostered constructive discussions among various religious groups in Indonesia.<sup>7</sup>

The debate over women's leadership extends beyond Indonesia's mainstream *fatwā* bodies into their internal deliberations. This is evident in the contrasting *fatwās* issued by the forum of *bahtsul masail* (religious deliberations), known as Forum Bahtsul Masail (FBM), at

<sup>1</sup> See: Sareh Larijani, "Muṭahhari's Approach to the Right of Women to Issue Fatwas," *Contemporary Islam* 18, no. 1 (1 April 2024): 115–31; Mun'im Sirry, "Fatwas and Their Controversy: The Case of the Council of Indonesian Ulama (MUI)," *Journal of Southeast Asian Studies* 44, no. 1 (February 2013): 100–117; Sümeýra Yakar dan Emine Enise Yakar, "The Approach of the Fiqh Council of North America towards Identity Problems of Contemporary Muslim Minorities," *Method & Theory in the Study of Religion* 34, no. 1–2 (Desember 17, 2021): 44–63.

<sup>2</sup> Emine Enise Yakar, "Women's Political Leadership: One Question and Two Divergent Fatwās," *Journal of Law and Religion* 37, no. 2 (May 2022): 332–62.

<sup>3</sup> Mhd Syahnan and Ja'far Ja'far, "Examining Religious Moderation of the al-Jam'iyatul Washliyah Fatwa Council," *Journal of Indonesian Islam* 15, no. 1 (June 1, 2021): 21–46.

<sup>4</sup> See: Nurun Najwah et al., "The Rejection of Women Imams in Indonesia: Between Religious and Socio-Cultural Texts," *Journal of International Women's Studies* 24, no. 5 (August 24, 2022): 1–16; Busyro Busyro et al., "Female Imam and Khatib: The Shifting in Worship Traditions from Progressive to Conservative in Sungai Landia, West Sumatra, Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 13, 2023): 39–51.

<sup>5</sup> See: Syafig Hasyim, "Fatwas and Democracy: Majelis Ulama Indonesia (MUI, Indonesian Ulema Council) and Rising Conservatism in Indonesian Islam," *TRaNS: Trans-Regional and -National Studies of Southeast Asia* 8, no. 1 (May 2020): 21–35; Moh Wahib, "Implementation of the Minority Fiqh Concept for the Papuan Muslim Community/Implementasi Konsep Fikih Minoritas bagi Komunitas Muslim Papua," *De Jure: Jurnal Hukum dan Syariah* 13, no. 1 (July 28, 2021): 97–112.

<sup>6</sup> Makyun Subuki, Hilmi Akmal, and Syihaabul Huda, "Identity and Piety: Critical Discourse Analysis on Indonesian Ulema Council's Fatwa about the Law Using Non-Moslim Religious Attributes," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (December 31, 2023): 423–48.

<sup>7</sup> Sirry, "Fatwas and Their Controversy," 100–17.

two Islamic higher education institutions (*ma'had aly*) affiliated with Nahdlatul Ulama (NU).<sup>8</sup> The FBM Ma'had Aly Hasyim Asy'ari Tebuireng adopts a conservative stance, prohibiting women from leadership roles. In contrast, the FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo takes a more contextual approach, explicitly permitting women to hold leadership positions.<sup>9</sup> Although both institutions are recognized for their strong Islamic heritage (*turāth*), they display divergent religious attitudes on the same legal issue, utilizing distinct approaches to *istinbāt al-ahkām* (derivation of legal rulings). Despite their shared affiliation with NU, the different religious perspectives on women's leadership form the central focus of this article's analysis.

As the largest Islamic organization in Indonesia,<sup>10</sup> NU has issued numerous *fatwās* and religious recommendations addressing socio-religious issues, including the child-free movement,<sup>11</sup> disability rights,<sup>12</sup> religious practices during the COVID-19 pandemic,<sup>13</sup> ecological crises,<sup>14</sup> and economic challenges.<sup>15</sup> Ahmad Zahro<sup>16</sup> and M. Afif Yuniarto<sup>17</sup> have examined several Islamic legal methods used by NU in formulating *fatwās*, such as *qawli* (literal), *ilhāqī* (analogical), and *manhājī* (methodological). Jamaludin has identified a significant shift toward the *manhājī* method since the NU National Congress of Ulama in Bandar Lampung in 1992.<sup>18</sup> In addition to the Lajnah Bahtsul Masail (LBM, Special Council of Bahtsul Masail), several scholars have analyzed the use of *istinbāt al-ahkām* in various *pesantrens* (Islamic boarding schools) affiliated with NU in *fatwā* production.<sup>19</sup> Achmad Kemal Riza

<sup>8</sup> Ahmad Munjin Nasih, "Lembaga Fatwa Keagamaan di Indonesia (Telaah atas Lembaga Majelis Tarjih dan Lajnah Bahtsul Masail)," *De Jure: Jurnal Hukum dan Syar'iah* 5, no. 1 (June 30, 2013): 67–78.

<sup>9</sup> Kholilur Rohman and Doni Eka Saputra, eds., *Fikih Progresif: Bunga Rampai Pemikiran Santri Ma'had Aly dalam Buletin Tamvirul Afkar* (Situbondo: Ibrahimy Press, 2014), 921.

<sup>10</sup> Martin van Bruinessen, *Contemporary Developments in Indonesian Islam: Explaining the 'Conservative Turn'* (ISEAS Publishing, 2013), 21.

<sup>11</sup> Imam Syafi'i et al., "Childfree in Islamic Law Perspective of Nahdlatul Ulama," *Al-Ahkam* 33, no. 1 (April 30, 2023): 1–22.

<sup>12</sup> Arif Maftuhin, "Mosques for All: Nahdlatul Ulama and the Promotion of the Rights of People with Disabilities," *Journal of Indonesian Islam* 15, no. 2 (December 1, 2021): 247–70.

<sup>13</sup> See: Mashuri Mashuri, Iffatin Nur, and Muhammad Ngizzul Muttaqin, "Maqāshid Sharī'ah Flexibility to Overcome COVID-19 in Indonesia: From Government Policies to Fatwā of Council of Indonesian Ulama (MUI), Nahdlatul Ulama (NU), and Muhammadiyah," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 2 (December 31, 2021): 240–63; Musda Asmara, "Komparasi Fatwa Ulama Indonesia dalam Menyikapi Pandemi Coronavirus Disease 2019 (COVID-19)," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 1 (May 30, 2022): 29–44.

<sup>14</sup> Moh. Mufid, "Green Fatwas in Bahtsul Masail: Nahdlatul Ulama's Response to the Discourse on the Environmental Crisis in Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (December 29, 2020): 173–200.

<sup>15</sup> Zainal Abidin et al., "Al-Wasathiyah fi al-Iqtishād al-Islāmī: Ârâ'u 'Ulamâ Jam'iyati "Nahdlatul Ulama" bi Jawa al-Syarqiyah Haula "al-Taraddud" bi Sya'ini Fatâwa al-Fawâid al-Mashrifiyah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 30, 2023): 246–83.

<sup>16</sup> Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masa'il, 1926-1999*, 1 (Yogyakarta: LKiS, 2004), 168.

<sup>17</sup> M. Afif Yuniarto, "Metode Mazhab Manhājī Nahdlatul Ulama: Studi Pandangan Aktivistis Bahtsul Masail Jawa Timur Tentang Metode Istinbāt al-Ahkām Hasil Muktamar Ke-33" (Masters, Surabaya, UIN Sunan Ampel, 2017).

<sup>18</sup> Jamaludin Jamaludin, "Perkembangan Ijtihad Nahdlatul Ulama dalam Bahtsul Masail dan Relevansinya dengan Perkembangan Zaman (Kajian terhadap Keputusan Lajnah Bahtsul Masail)" (Masters, Semarang, Unissula, 2015).

<sup>19</sup> See: Ainol Yaqin, Moch Cholid Wardi, and Achmad Mulyadi, "Actualization of Moderation in Reasoning at Ma'had Aly Salafiyah Syafi'iyah Sukorejo Situbondo and Its Influence on Istinbāth of Islamic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 434–57; Mohamad Sobirin and

found that a dynamic exists within NU, where senior scholars prefer the *qawli* method, while younger scholars tend to avoid it and instead use *ijtihad* (legal interpretation based on primary sources) to meet modern demands.<sup>20</sup> Michael Laffan suggests that this dynamic arises from differences in religious understanding, socio-political contexts, interpretations of legal sources, and educational backgrounds.<sup>21</sup> This article adds complexity to the findings of Riza and Laffan by providing evidence of the differing *fatwās* on female leadership issued by FBM Ma'had Aly Hasyim Asy'ari Tebuireng and FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo. It argues that these differences are not only rooted in variations in *istinbat al-ahkām* methods but also in the educational backgrounds of those involved in the *babtsul masail* process and the curricula taught at these institutions.

This article combines literature-based and empirical research through a comparative approach. The literature review involves analyzing *fatwās* from the *babtsul masail* forums on the issue of women's leadership, as formulated by FBM Ma'had Aly Hasyim Asy'ari Tebuireng and FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo. These *fatwās* were drawn from the documentation of the *maha santris* (undergraduate students of *pesantren*) of Ma'had Aly Hasyim Asy'ari Tebuireng, published in 2019 under the title *Kumpulan Babtsul Masail: Menyingkap Problematika Masyarakat*, and from the documentation of the *maha santris* of Ma'had Aly Salafiyah Syafi'iyah Situbondo, published in 2014 under the title *Fikih Progresif: Bunga Rampai Pemikiran Santri Ma'had Aly dalam Buletin Tanwirul Afkar*. The empirical study involved interviews with the actors participating in these two *babtsul masail* forums. The collected data were then analyzed comparatively, using Wael B. Hallaq's theory of authority.<sup>22</sup>

### **Babtsul Masail in Nahdlatul Ulama and Ma'had Aly**

NU is an Islamic social organization founded on the principle of *wasatiyyah* (moderation), accommodating positive local customs (*ma'ruf*), and demonstrating tolerance toward the diversity of Indonesian society. Historically, NU emerged as one of Indonesia's leading socio-religious organizations, representing the *pesantren* community in the fight against colonialism. NU was established on January 31, 1926, in Surabaya by KH. M. Hasyim Asy'ari and a group of *kiais* (traditional Islamic scholars), founders of prominent *pesantrens*.<sup>23</sup> NU is recognized for uniting traditionalist Islamic groups, upholding the *Ahl al-Sunnah wa al-Jamā'ah* sect (the largest branch of Sunnī Islam), following the Shāfi'ī *madhhab* (school of Islamic law) in *fiqh*,<sup>24</sup>

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Karimatul Khasanah, "The Pesantren Scholars' Fatwa on Global Warming and Climate Change: An Integrative Analysis of Islamic Law, Theology, and Environmental Sciences on the Practice of Multidisciplinary Ijtihad," *Cogent Arts & Humanities* 10, no. 1 (December 31, 2023): 2193023.

<sup>20</sup> Achmad Kemal Riza, "Contemporary Fatawa of Nahdlatul Ulama: Between Observing the Madhhab and Adapting the Context," *Journal of Indonesian Islam* 5, no. 1 (June 1, 2011): 35–65.

<sup>21</sup> Michael Laffan, "The Fatwā Debated? Shūrā in One Indonesian Context," *Islamic Law and Society* 12, no. 1 (2005): 93–122.

<sup>22</sup> Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge Univ. Press, 2005).

<sup>23</sup> Abdul Hakim Mahfudz et al., *Hadratusyaikh KH. M. Hasyim Asy'ari Pemersatu Umat Islam Indonesia*, 3 (Jombang: Pustaka Tebuireng, 2024), 101–2.

<sup>24</sup> Yasrul Huda, Jajat Burhanuddin, and Mahmood Kooria, "Strengthening the Shafi'ī Madhhab: Malay Kitab Jawi of Fiqh in the 19th Century," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 15, 2023): 259–73.



and preserving the *sanad* tradition (chain of knowledge transmission), which is central to the *pesantren* education system.<sup>25</sup>

The organizational structure of NU comprises three main tiers. First is the *Syuriyah* (Supreme Council), which serves as the deliberative body responsible for the highest decisions within the organization. The *Syuriyah* consists entirely of Islamic scholars (*'ulamā'*) and functions as NU's controller, supervisor, and policymaker. Second is the *Tanfidziyah* (Administrative Council), the daily executive body that implements the policies the *Syuriyah* determines. Its members manage NU's daily activities based on the *Syuriyah's* decisions. Lastly, the *Mustasyar* (Advisory Council) functions as the advisory body to NU leadership. These three levels exist throughout all tiers of NU, from the national level (PBNU), provincial (PWNU), district (PCNU), and subdistrict (Ranting) to village level (MWC).<sup>26</sup>

Of these four structural components, the *Syuriyah* holds the highest authority within NU, having the power to issue *fatwās*. Besides overseeing and controlling the organization, the *Syuriyah* plays a central role in managing socio-religious activities and addressing legal issues within the Muslim community by issuing *fatwās*.<sup>27</sup> These *fatwās* are binding for all NU members, including those in the *Tanfidziyah*.<sup>28</sup> The *fatwā* issuance process is carried out through *bahtsul masail*. Based on the recommendations of the 1989 NU National Congress and the 1990 NU Leadership Council's decision, a special committee was established to conduct *bahtsul masail*, now known as the Lembaga Bahtsul Masail (LBM, Special Council of Bahtsul Masail).<sup>29</sup> At least six key components are involved in the *bahtsul masail* process: validator (*muṣahhib*), formulator, moderator, secretary, participants, and expert resource persons.<sup>30</sup> Through the LBM, NU has established a structured mechanism for discussing and issuing *fatwās* that align with the evolving socio-religious context. Creating this specialized *fatwā*-producing body demonstrates NU's commitment to ensuring that the *fatwās* they issue remain relevant and accessible to NU members and the wider community.<sup>31</sup>

In general, LBM NU employs three main methods of *istinbāḥ al-ahkām* in producing *fatwās*: *qawli*, *ilhāqī*, and *manbājī*.<sup>32</sup> The *qawli* method addresses issues by tracing various opinions (*qawl*) of the Islamic jurists of *madhhab* or *'ulamā'* who follow these jurists (*wajib* or *aṣḥāb al-imām*) found in reliable sources (*al-ḥadīth al-mu'tabarah*). The *ilhāqī* method applies analogies, linking new cases that lack explicit rulings to older cases with established rulings, also found in *al-ḥadīth al-mu'tabarah*. The *manbājī* method derives legal rulings by using the methodologies employed by Islamic jurists. Ahmad Zahro noted that the *manbājī* method is

<sup>25</sup> Faried F. Saenong, "Chapter 6 Nahdlatul Ulama (NU): A Grassroots Movement Advocating Moderate Islam," in *Handbook of Islamic Sects and Movements*, ed. Muhammad Afzal Upal and Carole M. Cusack (BRILL, 2021), 132–33.

<sup>26</sup> Saenong, 138. See also: Robin Bush, *Nahdlatul Ulama and the Struggle for Power within Islam and Politics in Indonesia*, 1st ed. (Singapore: Institute of Southeast Asian Studies, 2009), 14–5.

<sup>27</sup> Riza, "Contemporary Fatawa of Nahdlatul Ulama," 35–36.

<sup>28</sup> Faisal Ismail, "The Nahdlatul Ulama: Its Early History and Contribution to the Establishment of Indonesian State," *Journal of Indonesian Islam* 5, no. 2 (December 1, 2011): 247–82.

<sup>29</sup> Luthfi Hadi Aminuddin, *Dari Qawli hingga Manbaji: Dinamika Metode Penetapan Fatwa Hukum Islam di Nahdlatul Ulama* (Surabaya: PW LTN NU Jawa Timur, 2022), 92.

<sup>30</sup> Idris Mahmudi, "Metodologi Pembaharuan Hukum Islam dalam Perspektif Pemikiran Hazairin," *Al-Fikra: Jurnal Ilmiah Keislaman* 5, no. 2 (July 28, 2017): 175.

<sup>31</sup> Aminuddin, *Dari Qawli hingga Manbaji*, 99.

<sup>32</sup> Zahro, *Tradisi Intelektual NU*, 168.

the least utilized in NU's *fatwās*. Of the 428 *fatwās* issued from 1926 to 1999, 362 (84.6%) were based on the *qawli* method, 33 (7.7%) on the *ilhāqī* method, 8 (1.9%) on the *manhājī* method, and 25 (5.8%) used unclear methods. Abd. Basid argues that *fatwās* derived through the *qawli* method are generally regarded as the best way to understand the Islamic primary sources (Qur'an and hadith) relevant to legal rulings.<sup>33</sup>

Over time, however, the increasingly complex socio-religious issues society faces have rendered the *qawli* method insufficient.<sup>34</sup> This has prompted NU *kiai*s to address emerging problems using the *manhājī* method, as formalized by the NU National Congress of Ulama in Bandar Lampung in 1992.<sup>35</sup> Following the *manhājī* method means adhering to Islamic jurists' reasoning and legal principles.<sup>36</sup> The methodologies employed in this approach include *bayānī* (textual), *qiyāsī* (analogical reasoning), and *istiṣlāḥī* or *maqāṣidī* (public interest or purposive approach).<sup>37</sup> Based on these considerations, Jamaludin contends that LBM NU has gradually shifted from the *qawli* method to the *manhājī* method in responding to various religious issues in Muslim communities.<sup>38</sup>

Historically, NU has been closely linked with the *pesantren* system,<sup>39</sup> which has preserved the tradition of *bahtsul masail*. For centuries, *pesantrens* have formed *ḥalaqah* (discussion circles) to address legal issues based on *al-ḥadīth al-mu'tabarah*.<sup>40</sup> Among the various educational levels in *pesantren* is the *ma'had aly*, the highest form of education in the *pesantren* system, equivalent to higher education institutions. *Ma'had Aly* continues the tradition of *bahtsul masail*, now formally known as the FBM. Through *ijtihād* and specific *istinbāt al-ahkām*, FBM analyzes new issues comprehensively using a variety of Islamic legal methodologies.<sup>41</sup> This *bahtsul masail* tradition aligns with the founding goal of *ma'had aly*: to produce Islamic jurists who are scientifically rigorous, open-minded, responsible, and contribute to the nation while promoting the understanding that Islam is a religion for all.<sup>42</sup> For Ma'had Aly Hasyim Asy'ari Tebuireng, *bahtsul masail* trains *maha santris* to be sensitive and attentive to new societal issues.<sup>43</sup> For Ma'had Aly Salafiyah Syafi'iyah Situbondo, *bahtsul masail* is an opportunity to address contemporary Islamic legal issues comprehensively and

<sup>33</sup> Abd. Basid, "Bahts Al Masa'il dan Wacana Pemikiran Fiqh: Sebuah Studi Perkembangan Pemikiran Hukum Islam Nahdlatul Ulama' Tahun 1985-1995" (Surabaya, IAIN Sunan Ampel, 1999), 130.

<sup>34</sup> Imam Yahya, *Dinamika Ijtihad NU*, 1 (Semarang: Walisongo Press, 2009), 114.

<sup>35</sup> Yahya, *Dinamika Ijtihad NU*, 114.

<sup>36</sup> Nahdlatul Ulama, ed., *Solusi Problematika Aktual Hukum Islam: Keputusan Mukhtamar, Munas, dan Kongres Nahdlatul Ulama, 1926-2010 M* (Surabaya: Khalista, 2007), 151.

<sup>37</sup> Yuniarto, "Metode Mazhab Manhaji Nahdlatul Ulama," 77.

<sup>38</sup> Jamaludin, "Perkembangan Ijtihad Nahdlatul Ulama dalam Bahtsul Masail dan Relevansinya dengan Perkembangan Zaman," 96–9.

<sup>39</sup> Yanwar Pribadi, "Religious Networks in Madura: Pesantren, Nahdlatul Ulama, and Kiai as the Core of Santri Culture," *Al-Jami'ab: Journal of Islamic Studies* 51, no. 1 (June 15, 2013): 1–32.

<sup>40</sup> Ahmad Munjin Nasih, "Bahtsul Masail dan Problematikanya di Kalangan Masyarakat Muslim Tradisional," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 12, no. 1 (2009): 106–29.

<sup>41</sup> Yūsuf al-Qarḍāwī, *Dirāsāt fī Fiqh al-Maqāṣid al-Sharī'ah Bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah* (Cairo: Dār al-Shurūq, n.d.), 53.

<sup>42</sup> "Decree of the Minister of Religious Affairs of the Republic of Indonesia No. 284 of 2001 on the Ma'had Aly," Articles 5 and 6.

<sup>43</sup> Pengurus FBM Putra Ma'had Aly Hasyim Asy'ari, *Kumpulan Bahtsul Masail*, 4.

scholastically. In addressing such issues, FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo combines Islamic jurists' opinions (*aqwāl al-fuqahā*) with their developed *istinbāt al-ahkām*.<sup>44</sup>

The *bahtsul masail* activities in *ma'had aly* involve more than merely referencing the Islamic jurists' opinions; they also require verification through a set of Islamic legal methodologies, such as *qawā'id uṣūliyyah* (Islamic jurisprudence fundamentals), *qawā'id fiqhīyyah* (Islamic legal maxims), and *qawā'id maqāṣidīyah* (objectives of Islamic law). Additionally, the primary basis for their deliberation must focus on the *maṣlahah* (public interest) and *mafsadah* (harm) that may arise from the legal decision made.<sup>45</sup> In practice, *bahtsul masail* actors often combine both *qawli* and *manhājī* methods.<sup>46</sup> When a particular case has no precedent in classical texts, they resort to the *manhājī* method. The application of the *manhājī* method in *bahtsul masail* aims to produce *fiqh* that leads to justice and public welfare for Muslims, especially when specific provisions in classical *fiqh* books no longer apply. In this context, *bahtsul masail* actors are expected to master the *qawā'id uṣūliyyah*, *qawā'id fiqhīyyah*, *qawā'id maqāṣidīyah*, and various methodologies in *uṣūl fiqh*, such as *maṣlahah* (public interest), *istihsān* (juristic preference), and *'urf* (custom), along with other Islamic legal methodologies that support the application of the *manhājī* method.<sup>47</sup>

### **Fatwās Regarding Female Leadership: Methods and Islamic Legal Reasoning**

The question of whether women can serve as leaders, either as judges (*qāḍī*) or heads of state, is a longstanding issue in Islamic law that the four prominent Sunnī Islamic jurists have debated. The Ḥanafī *madhhab* tends to be more flexible, permitting women to serve as judges, particularly in cases involving family law or matters between women, but not in cases of *hudūd* (prescribed punishments) and *qiṣāṣ* (retribution).<sup>48</sup> The Mālikī and Shāfi'ī *madhbabs* are generally more conservative, usually opposing female leadership as head of state but allowing limited judicial roles based on necessity and competence.<sup>49</sup> The Ḥanbalī *madhhab* holds the strictest view, completely forbidding women from holding leadership positions.<sup>50</sup> However, in the modern era, some contemporary scholars have reinterpreted these traditional views, leading to more progressive and moderate positions that support female leadership based on social necessity, competence, and the promotion of gender equality.<sup>51</sup>

<sup>44</sup> Ma'had Aly Situbondo, "Profil Majalah Tanwirul Afkar," *Ma'had Aly Situbondo* (blog), December 17, 2023, <https://maalysitubondo.ac.id/profil-majalah-tanwirul-afkar/>.

<sup>45</sup> Ainol Yaqin, Moch. Cholid Wardi, and Achmad Mulyadi, "Actualization of Moderation in Reasoning at Ma'had Aly Salafiyah Syafi'iyah Sukorejo Situbondo and Its Influence on Istinbāth of Islamic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 434–57.

<sup>46</sup> Abdul Wafi, *Reformasi Bermaḥab Dalam NU: Studi Pergeseran Metode Bahtsul Masail dari Qawli ke Manhaji* (Pamekasan: Duta Media Publishing, 2022), 408.

<sup>47</sup> 'Abdullāh bin Bayyah, *Alāqab Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh* (Jeddah: Maktabah Makkiyah, n.d.), 23.

<sup>48</sup> Muhammad bin Ibrahim al-Musa, Abdullah bin Muhammad al-Mutlak, and Abdullah bin Muhammad al-Thayyar, *Al-Fiqh al-Muyassar*, vol. 8 (Riyadh: Mamlakah al-Arabiyyah al-Suudiyah, 2012), 67.

<sup>49</sup> See: Al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb bin 'Alī bin Naṣr al-Baghdādī al-Mālikī, *Al-Isyrāf 'alā Naqṭi Masā'il al-Khilāf*, vol. 2 (Dār Ibn Ḥazm, 1999), 956; Al-Māwardī, *Al-Ahkām al-Sulṭāniyyah* (Kairo: Dār al-Hadīth, 2006), 57.

<sup>50</sup> Abi Muḥammad 'Abdillāh bin Aḥmad bin Muḥammad bin Qudāmah al-Ḥanbalī, *Al-Mughnī*, vol. 14 (Riyāḍ: Dār 'Ālam al-Kutub, 1997), 12–3.

<sup>51</sup> See: Muhammad Rikza Muqtada et al., "Fiqh Contestation on Women's Public Leadership in Indonesia and Malaysia: Reproducing Qur'anic and Hadith Interpretations," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (June 30, 2024): 221–48; Mohd Anuar Ramli et al., "Muslim-Malay Women in Political Leadership:

In addition to the perspectives of the four prominent Sunnī Islamic jurists, the FBM Ma’had Aly Hasyim Asy’ari Tebuireng and FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo have issued differing *fatwās* on the issue of women’s leadership. Through their respective *bahtsul masail* forums, Ma’had Aly Hasyim Asy’ari Tebuireng issued a *fatwā* prohibiting women from leadership roles. In contrast, Ma’had Aly Salafiyah Syafi’iyah Situbondo issued a *fatwā* permitting it. These differences stem from the two institutions’ choices of Islamic jurists’ opinions and their respective methods of *istinbāt al-ahkām*. FBM Ma’had Aly Tebuireng applies the *qawli* method, adhering to the majority view of classical Islamic jurists. At the same time, FBM Ma’had Aly Situbondo employs the *manhajī* method, allowing for the contextual reinterpretation of the hadith. The differences in method and Islamic legal reasoning used by these two institutions are summarized in Table 1.

**Table 1**  
**Methods and Islamic Legal Reasoning in *Fatwās* on Female Leadership**

No.	Forum of <i>Bahtsul Masail</i>	<i>Fatwā</i>	Method	Islamic Legal Reasoning
1.	Ma’had Aly Hasyim Asy’ari Tebuireng	Women cannot be leaders	<i>Qawli</i>	Follows the majority view of classical Islamic jurists
2.	Ma’had Aly Salafiyah Syafi’iyah Situbondo	Women can be leaders	<i>Manhajī</i>	Follows the minority view of classical Islamic jurists and reinterprets the hadith in the modern context

#### *FBM Ma’had Aly Hasyim Asy’ari Tebuireng: The Qawli Method*

FBM Ma’had Aly Hasyim Asy’ari Tebuireng issued a *fatwā* prohibiting women from holding leadership positions, relying on the opinions of classical Islamic jurists as found in authoritative religious texts (commonly referred to in Indonesia as *kitab kuning*). Using the *qawli* method, the actors in the *bahtsul masail* forum referred to the majority opinion of classical Islamic jurists, who stipulate that leaders must be male (*dhukurab*). They based their *fatwā* on *kitab kuning*, such as *Tuhfat al-Aḥwadhī Sharḥ Sunan al-Tirmidhī* by Abū al-‘Ulā Muḥammad ‘Abd al-Raḥmān al-Mubārakfūrī and *al-Fiqh al-Islamī wa Adillatuh* by Wahbah al-Zuḥailī. These two works form the basis for FBM Ma’had Aly Hasyim Asy’ari Tebuireng’s *fatwā*, prohibiting women from holding leadership roles locally and nationally.<sup>52</sup>

Although Islamic jurists have differing opinions on the permissibility of women becoming leaders, FBM Ma’had Aly Hasyim Asy’ari Tebuireng followed the majority view, prohibiting women from assuming leadership roles. This prohibition is based on a hadith narrated by al-Bukhārī:<sup>53</sup>

Navigating Challenges and Shaping the Future,” *Mazāhib* 23, no. 1 (June 29, 2024): 305–50; Pitrotussaadah Pitrotussaadah, Eva Fadhilah, and Faisal Zulfikar, “Islamic Law and Gender: A Misconception of Roles and Responsibilities in Parenting,” *De Jure: Jurnal Hukum dan Syar’iah* 15, no. 2 (December 31, 2023): 331–42.

<sup>52</sup> Pengurus FBM Putra Ma’had Aly Hasyim Asy’ari, *Kumpulan Bahtsul Masail*, 235.

<sup>53</sup> Abū ‘Abdillāh Muḥammad ibn Ismā’īl ibn Ibrāhīm al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 5 (Bayrūt: Dār al-Fikr, 1994), 160.



*It was narrated from Abu Bakrah that Allah protected me with something I heard from the Messenger of Allah (peace be upon him) during the Battle of Jamal when I was about to join the horsemen and fight alongside them. Abu Bakrah said, "News came that the people of Persia had appointed the emperor's daughter as their queen. When the Messenger of Allah heard of this, he said, 'A nation that entrusts its affairs to a woman will never prosper.'"*

This hadith is understood as a response to the appointment of a woman as the ruler of Persia, with the Prophet commenting that any nation that entrusts its affairs to a woman will not succeed. In *Tuhfat al-Aḥwadhī Sharḥ Sunan al-Tirmidhī*, al-Khaṭṭābī, as cited by al-Mubārakfūrī, interpreted this hadith as a prohibition against women serving as judges or leaders. Additionally, al-Khaṭṭābī drew an analogy between the prohibition of women serving as leaders and their inability to act as legal guardians (*wali*) in marriage, as a woman cannot serve as her guardian nor marry others.<sup>54</sup> Based on this hadith and the analogy with legal guardianship, the majority of classical Islamic jurists ruled against women's leadership.

From this hadith, Islamic jurists derived seven essential qualifications for leadership: intelligence, maturity, freedom, justice, Islam, being male, and the ability to exercise *ijtihad*. While the first three qualifications are agreed upon, scholars differ regarding the remaining four, including the male leader requirement. Most Islamic jurists, except those of the Ḥanafī *madhhab*, argue that a judge or leader must be male. They contend that leadership requires intellectual perfection and the ability to manage societal affairs, which they claim women lack. Moreover, leaders must interact with various individuals, such as witnesses and litigants, in interactions that women are discouraged from engaging in to avoid temptation. Al-Zuhailī argues that these factors justify why women cannot be appointed judges or high-level leaders. Additionally, al-Zuhailī emphasized that there are no historical examples of female leaders during the time of the Prophet, his companions, or subsequent generations.<sup>55</sup>

Thus, the hadith narrated by al-Bukhārī serves as the primary legal basis for prohibiting female leadership. It establishes one of the conditions for leadership as being male. Women are deemed unfit for leadership due to their perceived lack of intelligence and their restricted freedom to interact with others, unlike men. In addition to this hadith, many Islamic jurists analogize the prohibition of women becoming leaders with the prohibition of women acting as guardians in marriage. FBM Ma'had Aly Hasyim Asy'ari Tebuireng affirmed this Islamic legal reasoning by relying on the *kitab kuning* of al-Mubārakfūrī and al-Zuhailī.<sup>56</sup> As a result, FBM Ma'had Aly Hasyim Asy'ari Tebuireng issued a *fatwā* prohibiting female leadership based on the *qawli* method.

FBM Ma'had Aly Hasyim Asy'ari Tebuireng formulated this prohibition following a *bahtsul masail* forum held at Pesantren Tebuireng on December 26, 2019. *Maha santri* and *santri* (high school Islamic student) from Pesantren Tebuireng and *santri* from other local

<sup>54</sup> See: Abū al-'Ulā Muḥammad 'Abd al-Raḥmān bin 'Abd al-Raḥīm al-Mubārakfūrī, *Tuhfat al-Aḥwadhī Sharḥ Sunan al-Tirmidhī*, vol. 6 (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1353 H), 447; Toha Andiko, Zurifah Nurdin, and Ahmed Abdul Malik, "Reactualization of Wali Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi'i's Concept Regarding Wali's Ijbar Right," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 2 (December 31, 2023): 274–91; Anggi Prasetyo and Ilyya Muhsin, "The Practice of Şiḥah Marriage among the Rifa'iyah Congregation in Sociological and Islamic Marriage Law Perspectives," *Al-'Adalah* 20, no. 2 (March 7, 2024): 235–56.

<sup>55</sup> Wahbah al-Zuhailī, *Al-Fiqh al-Islamī wa Adillatub*, vol. 8 (Damaskus: Dār Al-Fikr, 1985), 86.

<sup>56</sup> Pengurus FBM Putra Ma'had Aly Hasyim Asy'ari, *Kumpulan Bahtsul Masail*, 418.

*pesantrens* attended the forum. They included representatives from Ma'had Aly Hasyim Asy'ari Tebuireng, Ma'had Aly Tarbiyatun Nasyiin Pacul Gowang, Fordisaf (Forum Diskusi Santri Salaf) of Pesantren Tebuireng, MAKK (Madrasah Aliyah Khusus Keagamaan) of Pesantren Tebuireng, Madrasah Muallimin Hasyim Asy'ari of Pesantren Tebuireng, SMA Abdul Wahid Hasyim of Pesantren Tebuireng, Pesantren Aqobah, Pesantren Darul Falah, Pesantren Tarbiyatun Nasyiin Pacul Gowang, Pesantren Mambaul Hikam, and Pesantren Madrasatul Qur'an Tebuireng. The *bahtsul masail* forum's formulator was Said Ridwan, a senior *kiai* at Pesantren Tebuireng in Jombang, and the discussion was supervised by KH. Mahfudz Ali Amari, a mentor for weekly *fiqh* studies. The *muṣabbiḥ* responsible for the final decisions was KH. Mukhlis Dimiyati, senior *kiai* at Pesantren Darul Falah in Jombang.<sup>57</sup>

### *FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo: The Manhāji Method*

FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo issued a *fatwā* permitting women to serve as leaders. While most classical Islamic jurists prohibit women's leadership, the actors in this forum chose to follow the minority view, which allows women to hold leadership roles. They referred to the opinion of Abū Ḥanīfah, who permits women to serve as judges, and Jarīr al-Ṭabarī, who permits women to assume leadership positions in all areas.<sup>58</sup> However, al-Māwardī viewed al-Ṭabarī's opinion as flawed, as it went against the consensus (*ijmā'*) of the classical Islamic jurists.<sup>59</sup> Although they acknowledged the hadith narrated by al-Bukhārī, often cited by those who oppose female leadership, FBM Ma'had Aly Situbondo followed the minority view and reinterpreted the hadith in a modern context.

Employing the *manhāji* method, FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo presented three key legal arguments for permitting female leadership.<sup>60</sup> First, they argued that the *matān* (wording) of the hadith narrated by al-Bukhārī does not meet the strict criteria required for it to serve as a basis for legal prohibition. Using the method of *istiqrā' nuṣūṣ* (comprehensive analysis of Islamic primary sources), FBM Situbondo examined the hadith in detail. Theoretically, the hadith can be understood as a prohibition (*nahy*) only if it meets at least four conditions: it must explicitly state that the act is forbidden, the text must use specific prohibitive language, it must be accompanied by a punishment (*uqūbah*), or it must use another grammatical structure indicating a clear obligation. FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo contends that the wording of the hadith, which uses the phrase *lan yuflīḥa* (will not succeed), does not meet these conditions.

Second, FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo argued that the censure in the hadith cannot be understood literally but must be considered in its historical context (*asbāb al-nurūd*). The hadith refers specifically to the Persian Empire, which was Zoroastrian and had appointed Buwārān bint Sarāwaih as queen. During her reign, Persia experienced a

<sup>57</sup> Ahmad Wasil Syahrir, Interview with Head of the Bahtsul Masail Forum at Ma'had Aly Hasyim Asy'ari, 7 February 2021.

<sup>58</sup> Al-Zuhāilī, *Al-Fiqh al-Islamī wa Adillatuh*, vol. 8, 5937.

<sup>59</sup> See: Al-Māwardī, *Al-Aḥkām al-Sulṭāniyyah*, 110; Muhammad Fajar Pramono and Amir Sahidin, "Maqāṣid al-Sharī'ah Values in al-Māwardī's Concept of the Caliphate," *Al-Aḥkam* 31, no. 2 (October 31, 2021): 203–22.

<sup>60</sup> Kholilur Rohman and Doni Eka Saputra, eds., *Fikih Progresif*, 921–4.

significant decline and eventual collapse. Therefore, the Prophet's comment<sup>61</sup> that “*a nation will never succeed that makes a woman their ruler*” was, in their view, applicable only to this particular case and cannot be generalized. This interpretation aligns with the Islamic legal maxim, *al-‘ibrab bi khabūṣ al-sabab lā bi ‘umūm al-laḥẓ* (the particularity of the cause is more important than the generality of the text).<sup>62</sup>

Third, FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo asserted that the legal arguments used by most classical Islamic jurists to prohibit female leadership must be understood contextually. In the time of the Prophet, women did not enjoy the same social or political rights as men, which influenced the perception of their leadership capacity.<sup>63</sup> This social inequality explains why women were seen as unfit for leadership at the time, a view that may no longer apply in the present day. In modern Indonesia, men and women have equal access to education, politics, and other fields.<sup>64</sup> Thus, the rationale used by classical Islamic jurists is no longer valid. For FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo, leadership is based not on gender but on qualities such as honesty, justice, courage, and responsibility. Therefore, FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo permits women to assume leadership positions at both local and national levels using the *manhāji* method. This *fatwā* was issued following a *bahtsul masail* discussion published in the *Bulletin Tannvirul Afkar*, Edition 4, on August 22, 1997.<sup>65</sup>

### Debating the Legality of Women in Leadership: *Taqīd* versus Contextual Adaptation

The issue of female leadership in Islamic law continues to spark significant debate, particularly regarding the differences in legal interpretation between *taqīd* (adherence to legal precedents) and adaptation to contemporary social contexts. This debate is reflected in the differing *fatwās* issued by two *ma’had aly*s affiliated with NU: FBM Ma’had Aly Hasyim Asy’ari Tebuireng and FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo. These two institutions take different methodological positions in interpreting the permissibility of female leadership. FBM Ma’had Aly Hasyim Asy’ari Tebuireng employs the *qawli* method, which relies on the majority views of classical Islamic jurists without contextualizing these opinions to accommodate modern changes. On the other hand, FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo adopts the more dynamic *manhāji* method, allowing for reinterpreting the Qur’an and hadith in light of contemporary social contexts.

The *qawli* method used by FBM Ma’had Aly Hasyim Asy’ari Tebuireng demonstrates strong adherence to the majority opinion of classical Islamic jurists, which holds that maleness is a necessary qualification for leadership. This position strictly follows the decision

<sup>61</sup> Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 5, 160.

<sup>62</sup> Jalāl al-Dīn al-Suyūṭī, *Jam’ al-Jawāmi’*, vol. 1 (Kairo: Al-Azhar al-Sharīf, 2005), 150.

<sup>63</sup> Linda Firdawaty et al., “Husein Muhammad’s Thoughts on Gender Equality in Islamic Inheritance Law,” *Al-‘Adalah* 19, no. 2 (April 16, 2023): 223–44.

<sup>64</sup> See: Angraini binti Ramli and Radwan Jamal Elatrash, “Woman Participation in Politics: Toward an Ideal Model in the Perspective of Siyasa al-Shar’iyya,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, no. 1 (June 30, 2021): 1–11; Wiwit Pratiwi et al., “Evaluation of the Fulfillment of Political Rights for Persons with Disabilities to Welcome the 2024 General Election,” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 1 (June 27, 2023): 19–32.

<sup>65</sup> Kholilur Rohman and Doni Eka Saputra, eds., *Fikih Progressif*, 923.

made at the NU National Congress of Ulama in Bandar Lampung in 1992.<sup>66</sup> The stance is primarily based on a hadith narrated by al-Bukhārī, in which the Prophet Muhammad stated that a nation would not prosper if led by a woman.<sup>67</sup> Furthermore, an analogy with the rules of marriage guardianship, which prohibit women from serving as legal guardians, reinforces the view that women lack the intelligence and capacity required for leadership, qualities men deem to possess.<sup>68</sup> This approach reflects a cautious stance (*iḥtiyāt*) in legal interpretation, emphasizing commitment to classical legal traditions and authority without considering the evolving social dynamics.

Conversely, FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo takes a more progressive approach using the *manhājī* method, allowing for reinterpreting the Qur'an and hadith within a modern context. They argue that, given its historical context, the hadith used by the majority of classical Islamic jurists to prohibit female leadership does not carry an absolute prohibition. The hadith was a response to the specific situation of Buwārān bint Sarāwaih, the ruler of Persia, whose reign led to the decline of her nation. Understanding the *asbāb al-murūd* of this hadith, they conclude that the prohibition cannot be applied universally. Furthermore, during the time of the Prophet, women did not have equal access to education, politics, and other spheres,<sup>69</sup> making the prohibition situational and not relevant in today's context, where women have access to the same opportunities as men.<sup>70</sup>

This difference in methodology highlights the tension between adherence to a specific *madhhab* and the need for contextual adaptation by Muslim communities when addressing contemporary issues. *Taqīd*, as practiced by FBM Ma'had Aly Hasyim Asy'ari Tebuireng, emphasizes loyalty to the majority opinions of classical Islamic jurists as a way of maintaining the purity of Islamic law without interference from social changes that could be perceived as undermining its originality. In this context, the *fatwās* produced tend to be conservative, apologetic, and textual,<sup>71</sup> ensuring that the views of classical Islamic jurists remain the guiding principles in addressing socio-religious issues. In contrast, the *manhājī* method used by FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo offers greater flexibility in confronting the challenges of modernity. They aim to align the interpretation of the Qur'an and hadith with social change, particularly concerning gender equality,<sup>72</sup> without compromising the integrity

<sup>66</sup> Yahya, *Dinamika Ijtihad NU*, 114.

<sup>67</sup> Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, vol. 5, 160.

<sup>68</sup> Abū al-'Ulā Muḥammad 'Abd al-Raḥmān bin 'Abd al-Raḥīm al-Mubārakfūrī, *Tuḥfat al-Aḥwadhī Sharḥ Sunan al-Tirmidhī*, vol. 6 (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1353 H), 447.

<sup>69</sup> C. Jones-Pauly, "Gender Relations," in *The Ashgate Research Companion to Islamic Law*, ed. Rudolph Peters and P. J. Bearman (Burlington, VT: Ashgate, 2014), 137–49.

<sup>70</sup> Fathonah K. Daud and Aden Rosadi, "Dinamika Hukum Keluarga Islam dan Isu Gender di Iran: Antara Pemikiran Elit Sekuler dan Ulama Islam," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 4, no. 2 (November 30, 2021): 205–2020.

<sup>71</sup> See: Meirison Meirison, Desmadi Saharuddin, and Husnul Fatarib, "The Dynamics of Islamic Jurisprudence in the Eyes of Contemporary Muslims," *El-Mashlahab* 12, no. 1 (June 30, 2022): 70–83; Muhammad Iqbal Juliansyahzen et al., "Between Sharia, Gender, and Science in the Construction of 'Iddah: The Response of Banyumas' Ulamas," *El-Mashlahab* 14, no. 1 (June 30, 2024): 189–210.

<sup>72</sup> See: Mohamed Sulthan Ismiya Begum et al., "Gender Equity in Muslim Family Law: Modern and Contemporary 'Ulamā's View," *Al-Abkam* 34, no. 2 (October 31, 2024): 221–56; Achmad Mudhofar 'Afif, Maskur Rosyid, and Lutfi Lutfi, "Gender Equality in Islamic Sharia (The Study of Bisri Mustofa's Thought in al-Ibrīz li Ma'rifah Tafsīr al-Qur'ān al-'Azīz)," *Syariah: Jurnal Hukum dan Pemikiran* 22, no. 1 (June 9, 2022):



of Islamic law itself. In this approach, leadership is no longer based on gender but on competence and personal integrity. This approach aligns with the dominant trend within NU, as noted by M. Ali Haedar, where *ijtihad* and legal flexibility are increasingly prioritized over strict adherence to a particular *madhhab*.<sup>73</sup>

Moreover, the difference in the *fatwā* method between these two *ma'had alys* can also be understood in light of the background of the participants in the *bahtsul masail* forums and the curricula they follow. The participants in the *bahtsul masail* forum at Ma'had Aly Hasyim Asy'ari Tebuireng are mostly *maha santri* and *santri*. Their curriculum primarily focuses on hadith studies rather than the tools of *ijtihad*, such as *uṣūl al-fiqh* (Islamic legal theory) and *maqāṣid al-sharī'ah* (objectives of Islamic law). This emphasis leads to their tendency to employ the *qawli* method in their *ijtihad*.<sup>74</sup> On the other hand, the participants in the FBM Ma'had Aly Salafiyah Syafi'iyah Situbondo forum are primarily *maha santris* trained to become Islamic jurists capable of adapting to modern times. A partial interpretation of the Qur'an and hadith often leads to rigid and radical legal rulings, hence the need for a more comprehensive reading that involves various relevant disciplines, as emphasized in the *manhajī* method.<sup>75</sup>

Despite the relatively young age and academic experience of the *bahtsul masail* participants at both *ma'had aly*, their differing methods of *istinbāt al-aḥkām* reflect a diversity of approaches to Islamic legal reasoning among younger scholars. This finding contradicts the argument made by Riza, who suggested that younger scholars tend to abandon the *qawli* method in favor of *ijtihad* in responding to modern challenges.<sup>76</sup> This article demonstrates that the methodology difference is not limited to the divide between senior and junior scholars but also among young scholars affiliated with different *pesantrens*. This supports Laffan's finding that these dynamics are shaped by differences in religious understanding, socio-political contexts, interpretations of legal sources, and educational backgrounds.<sup>77</sup> Despite these differences in *fatwās*, the variation in the methods and Islamic legal reasoning used by the two *ma'had alys* highlights the diverse perspectives within NU regarding socio-religious issues, with each drawing on the rich tradition of Islamic heritage.<sup>78</sup>

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69–88; Nastangin Nastangin and Muhammad Chairul Huda, "The Role of Career Women in Creating a Sakinah Family: From Mubadalah (Mutuality) Perspective," *Al-'Adalah* 19, no. 1 (June 20, 2022): 123–40.

<sup>73</sup> See: M. Ali Haidar, *Nabdatul Ulama dan Islam di Indonesia: Pendekatan Fikih dalam Politik* (Jakarta: Gramedia Pustaka Utama, 1994), 72; Muflikhatul Khoiroh and Abd Syukur Syukur, "The Flexibility of Islamic Law in the Ganjur Tradition in Lamongan, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, no. 2 (December 25, 2023): 139–59.

<sup>74</sup> Ahmad Wasil Syahrir, Interview with Head of the Bahtsul Masail Forum at Ma'had Aly Hasyim Asy'ari, February 7, 2021.

<sup>75</sup> Muyiddin Khotib, Interview with the Masyayikh of the Bahtsul Masail Forum at Ma'had Aly Salafiyah Syafi'iyah Situbondo, June 23, 2021.

<sup>76</sup> Riza, "Contemporary Fatawa of Nahdlatul Ulama," 35–65.

<sup>77</sup> Laffan, "The Fatwā Debated?" 93–122. See also: Muhammad Lutfi Hakim et al., "Between Exclusivity and Inclusivity of Institutions: Examining the Role of the Indonesian Ulema Council and Its Political Fatwa in Handling the Spread of Covid-19," *Khazanah Hukum* 5, no. 3 (December 31, 2023): 230–44.

<sup>78</sup> Fathorrahman et al., "Dynamics of Thought in the Fiqh of Civilization Halaqah at Pesantren Affiliated with Nahdlatul Ulama (NU) in Yogyakarta," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 1 (July 23, 2024): 71–95.

## Conclusion

The differing *fatwās* on female leadership issued by FBM Ma’had Aly Hasyim Asy’ari Tebuireng and FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo reflect contrasting methodological approaches within NU. FBM Ma’had Aly Hasyim Asy’ari Tebuireng’s adherence to the *qawli* method, rooted in classical jurisprudence and its commitment to legal precedent, produces conservative *fatwās* that align with the majority opinions of classical Islamic jurists. In contrast, FBM Ma’had Aly Salafiyah Syafi’iyah Situbondo’s use of the *manhaji* method, which embraces the reinterpretation of textual sources in light of contemporary social contexts, results in more progressive rulings that allow for female leadership. These findings highlight the internal diversity within NU’s legal reasoning, demonstrating how varying approaches to *istinbāt al-ahkām* contribute to different religious stances on the same issue.

This study reinforces the importance of considering both *taqlid* and *ijtihad* in the broader framework of Islamic legal interpretation, particularly in relation to evolving social norms such as gender equality. The divergence in *fatwā* methodologies illustrates how Islamic legal institutions negotiate the tension between preserving traditional authority and adapting to modernity. However, the research is limited by its focus on only two *ma’had aly*s affiliated with NU, which may not fully represent the diversity of thought across the broader Islamic community in Indonesia. Future research could benefit from expanding the scope to include more institutions and conducting longitudinal studies on how NU’s *fatwās* evolve in response to further societal changes.

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