

## THE MAPPING OF RENEWAL OF 'USUL FIQH ' THOUGHTS IN INDONESIA

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***Abstract,** The substance of this paper is the mapping of thoughts of the renewal of 'Usul Fiqh' that has popular or being occurred in Indonesia, by expressing the proposed idea of the method of legal istinbat based on detailed arguments and not in favor of the dominance of a particular madzhab. The urgency in the academic context becomes an interesting study to be criticized and developed by activists who are concerned on Islamic law in Indonesia. In the context of law need, the mapping became the initial data to encourage the building of renewal ideas. There are two renewed mindsets: Firstly, institutional reform (NU-Muhamamadiyah, MUI, and others). Secondly, reforms are partial among Indonesian Muslim scholars. The thoughts of the proposed Jurisprudence were categorized into three forms: Contextualization of the school, reconstruction of interpretation and vernacularisation of 'Ushul Fiqh' in Indonesia based on local Indonesian culture.*

**Key Words:** Mapping, Renewal thought, 'Usul Fiqh'

### INTRODUCTION

The improvement and development of 'Usul Fiqh' in Indonesia gave the big contribution to the dynamics of Islamic law. The improvements gave the coloring ways and not bring to the domination of current *Mazdhab*. However, it was focused to the ideas and do not intend to shift the minds of the jurisprudence that have been entrenched for a long time. In intended meaning, the renewal does not mean to seek the point of weakness, but gives form to the various mind mapping that actually distorts the development of Islamic law.

The study of mind mapping of renewal of the 'Usul Fiqh' in Indonesia, it can be said relatively small. So far, the study has been conducted in a general way, looking at aspects of Islamic law. This has implications for the unexplored significance of data on mind mapping of *Fiqh* suggestions with models and patterns used. At the same time not encourage the will to make further updates because it is considered final. This paper tries to map out the development of the thought of the 'Usul Fiqh'. This study was not a new thing because around the 70's - 90's topic of reform of Islamic law quite stretched by the Muslim intellectuals at that time.

Different from the 90s to the time this study faded, the direction of thought was no longer the methodology and the idea of renewal. This paper also looks at aspects of the urgency of the various sides to be studied, discussed and even motivates the thoughts of new jurisprudence that can be developed.

Based on the above description, then the research problem is formulated as follows: (1). what is the mapping of thoughts of renewal of the '*Usul Fiqh*' in Indonesia (2). What is the development and form of thoughts of renewal of Jurisprudence in Indonesia (3). What is the urgency of mapping the thoughts of renewal of Jurisprudence in Indonesia?

The purpose of this study is to describe the development and form of thoughts - thoughts renewal *Fiqh* in Indonesia. Explain the purpose of mapping the thoughts of renewal of the '*Usul Fikh*' in Indonesia. Describe the urgency of mapping the thoughts of renewal of Jurisprudence in Indonesia.

The significance of this research was to explain how the actual mapping of thoughts of renewal of Jurisprudence in Indonesia is proposed. The benefits of this research are: (1) in scientific context, this research can enrich the knowledge about the development of thoughts of renewal of the Jurisprudence in Indonesia. (2). in the institutional context this research can be used as material in enriching the treasury of Islamic legal scholarship in Indonesia. (3) In the context of legal sociology, research can be used as information for Islamic law activists and concerned communities in this field.

## METHODOLOGY

This was library research.<sup>1</sup> it was done by collecting the sources of library among books, ensiklopedia, journal, magazine, and others. This research used the qualitative research method that more stressed to the aspect of process than results. The qualitative research has the natural field as a direct source of data naturally. The approach of this research was philosophical and historical methodology. The philosophical approach was used in the range of determining the means of mapping of thought of '*Usul Fiqh*' renewal in Indonesia both formal juridical or normatively. In other hand, the historical approach was used in discover the historical data of '*Usul*

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<sup>1</sup>Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta : Sinar Grafika, 1996) P. 7 -

*Fiqh'* " thoughts which is raising in Indonesia in terms of the form of thought and scholars who produced those thoughts.

This research was also used descriptive research. it was used to draw about something. In this research, the researcher has gotten the shadow realized by the first data about the problem that would be studied.<sup>2</sup> more over, the descriptive aspect elaborate all data historic literature, Then frame of teoritics literature data wich the philosophy and historic approach.

The collecting data related to library was done by collecting the primer and secondary data. The source of primer data refered to all historic scientific work, while the secondary data was supporting works from other relational works both directly or inderectly with the research topic.

There are three phases of collecting data of this research, 1) orientation where the researcher need to collect the data commonly and widely About the things that stand out, interesting, important and useful to be studied more deeply. 2) the researcher explored by collecting data which was done by focusing the research to know the data sources or competence informan who has known about something researched. 3) The researcher observed focused on explorative research interms of maping the renewal of ''*Usul Fiqh'* " in Indonesia. more over, the researcher also cllcting the data elated to the documen of library interms of book, focusly on the thought of renewal of '*Usul fiqh'* in Indonesia.

The analysis of the data was done based on interactive analysis as developed by Miles and habermas. in this model, the analysis of data consist of 4 components that interact each other, they are; Collecting data, Reduction of the data, presentation of the data, getting the conclusion and verification. The four components was as a siklus runned continuously among collecting data, reduction of the data, presentation of the data, getting conclusion and also verification of the data.

The steps of data analysis, model of interactive analysis in this reseearch can be seen as follows:

- a. The collecting data was done by reviewing the documens. The field data was noted in the descriptive field note.

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<sup>2</sup>*Ibid.*, P. 7 - 9

- b. Data reduction. Means as the proses of selecting, concentrating the intention on simplification, abstracting and transforming raw data that rised from direct note. Reduction of the data takes place contonously during the research. the reduction of the data was a form of analysis whis was needed and organized the data based on the problem of reserach.
- c. Presentation of th data. This was formed in the narative texts of field notes. The narrative texts from the field notes are often confusing for the researcher. The presentation of the data was as the step to understand what has been happening and what shoul be done next.

## LITERATURE REVIEW

One of the properties that the law always moves without exception is Islamic law. This movement invokes the law will always change both the product of the law itself and the methodology that gave birth to the law. The movement and change of law in the anthropological review of the law, is said to have many faces and is in a vast expanse of community activity and entering into different parts of life. It also affirmed the followers of the Roscoe Pound law (1870 - 1864) the role of social factors in legal journeys, or the followers of the legal incentives school who used the rational choice model to obtain the expected legal effect and then used the reality of society as a means of measuring eligibility A law to apply, reformulation and legal reform is a fairness and even a historical necessity. This is due to the existence of social phenomena is not static and that remains only the change itself. This is where the reform of a civilization begins including legal reform.<sup>3</sup>

In the context of Islamic law, the methodology of birth law is called the proposal of *Fiqh*, it is the knowledge of the rules and and the discussion which leads to the acquisition of 'practical' laws from detailed sources. The existence of Jurisprudence is important, because in the fikh's suggestion as written by Abdul Muqhit citing Nyazee's opinion, it is the queen of Islamic science of its existence as a requirement of capability of expertise and perfection in the field of science other than Islamic law such as ' *Ulum Al-Hadits* and ' *Ulum Al-Tafsir*.<sup>4</sup> The same opinion is also quoted from Abu Ishaqasy-Syatibi (w.790 H) giving the same judgment that the

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<sup>3</sup>Dedi Supriadi, *Sejarah Hukum Islam* (Jakarta : CV PustakaSetia, 2007) P. 338

<sup>4</sup>Abdul Muqhits, *Kritik Nalar Fiqh Pesantren* (Jakarta : Kencana, 2008) P. 13 -14

'Usul Fiqh' is worth *qat'ib* because of its excavated inductively collaborative rules (*Al-Istiqrai Al-Ma'nawi*) and universality of Syariah (*Kuliyat Syariat*) which is also worth *qat'i*.<sup>5</sup> On that basis the proposal of *Fiqh* becomes an important discipline that must be mastered by *mujtahid*, mufti and activist of Islamic law, because the proposition of *Fiqh* becomes methodology of process from *istinbat* of law.

The importance of the proposition of *Fiqh* has a methodology, in its development requires an update. This is as a necessity. Because the substance of renewal is innovation, restoration, modernization, the creation of a new one, citing the opinion of Syafii Maarif renewal (*Tajdid*) in Islam is an effort and an Islamic intellectual effort to refresh and renew the understanding and appreciation of Muslims against their religion dealing with the changes and development of society. The existence of this update is part of the area of *ijtihad* very strategic in easing the teachings of Islam in the context of space and time.<sup>6</sup> It is true that HasanTurabi's criticisms suggest that the traditional reconciling 'Usul Fiqh' should be done in a basic way, since the traditional Jurisprudence product has not been able to produce the Islamic law itself, even the more prominent debates and *khilafiyah*. In the case of Islamic law and its methodology (*Usul Fiqh*) should continue to develop and face the changing realities of modern life, because modern Muslims are in dire need in order to meet their need for useful applicative system in the formation of a society in contact with the needs of modern law. If the traditional *Usul Fiqh* serves as a methodology of contemporary law, it is certainly no longer able to accommodate modern needs. It was organized in a historical context and influenced by the nature of the problematic Islamic law into the discussion of Islamic law at that time.<sup>7</sup>

The substance of the renewal is not changing the proposition of *Fiqh* that has been deemed to be established so far. The reason for the renewal was important, as Ahmad Imam Mawari wrote: (1). the political aspect that often becomes the obstacle to the manifestation of new ideas of legal reform seems to have softened and made the door of change. The crisis of political elites, with Daniel S. Lev, is often a real opportunity for reform or law reform. (2). The strengthening of the middle class (middle class) consisting of intellectuals, students and professionals. (3). the

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<sup>5</sup>*Ibid.*

<sup>6</sup>Fathurrahman Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah* (Jakarta : Logos, 1995) p.xi

<sup>7</sup> *Ibid.*,P. 106

existence of a whole spirit to move towards the creation of civil society (civil society) which also means the empowerment of civil society, then the change becomes automatic toward the sides of civil society becomes a necessity (4). Emergence and development of the theory - the theory of law that support the legal changes to social interests in Indonesia, such as the theory of sociology jurisprudence in general and theoretical journal of *urf* and *maslahah* in Islamic law.<sup>8</sup>

According to Abdullah An-Naim, the legal reform techniques are: (1) *Takhsis al-qadha* (the right of the ruler to decide and strengthen the judgment). (2) *Takhayyur*, selects various opinions within certain jurisprudence schools and does not choose the dominant opinion in mainstream schools, such as allowing the selection of opinions from other Sunni schools such as Sudan, Libya, Morocco, Saudi Arabia, Iran, Iraq and other Islamic countries. (3). the forms of reinterpretation (4). *Syari'ahSyarah* (the policy of the authorities to apply useful administrative rules and not contrary to *Syari'ah* was also used to introduce various forms of reform. (5). Updates are carried out through various court decisions as used in customary law tradition.<sup>9</sup>

## FINDINGS

### 1. The Development and Form of the Renewal of Thought of *UsulFiqh*in

#### Indonesia

The process of improvement and development of '*Usul Fiqih*' has been through the long chronicle history in the journey of Islam. '*Usulfikh*' manifested from the part of Law '*Istinbat* until became a science that has given the great contribution to the development of Islamic law.

The establishment and development of '*Usul Fiqh*' in Indonesia was originally marked by the entry of Islam into Indonesia. The development of the '*Usul Fiqh*' is inseparable from the role of the dominant of Syafiil in Indonesia.<sup>10</sup> The

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<sup>8</sup>Dedi Supriadi, *Sejarah Hukum Islam*, P. 339 - 340

<sup>9</sup>*Ibid.*,P. 337

<sup>10</sup>Islam entered in an organized manner to Indonesia post-10th century, not long after the establishment of madhhab fiqh in the Middle East. So when entering the territory of the archipelago has brought shades of fiqh mazhabi, not Islam pure and fundamental forms. The ideology of this fiqh mazhabi can be proven in several historical documents, such as the story of the first generation of the Pasai kingdom kings (13th century AD) has been practiced the Shafii school. Likewise, the first organized Islam entered the island of Java around the 14th century AD was brought by Islamic missionaries, such as Maulana Malik Ibrahim (w.822 / 1419 H) who

tendency of *Fiqh Mazhabi* is increasingly crystallized after the establishment of a network of scholars of the archipelago with the Middle East that began the 17th century in the form of intellectual and spiritual transmission, The transmission of intellectual transformation of Islamic sciences and product books from the Middle East. While the spiritual transmission in the form of transferring ascetic teachings and sophistic Middle East and surrounding areas to the archipelago.<sup>11</sup> Otherwise it does not mean that the jurisprudence of schools outside al-Syafii does not develop in Indonesia, but they grow and develop in a limited scope.

The formation of the "Usul Fiqh" in Indonesia is also inseparable from the role of the *Muballiqh* background of the Syafii in developing Islamic teachings in Indonesia. These *Muballiqh* pioneered the establishment of Islamic boarding school in Java as the center of Islamic teaching and development at that time. This struggle was continued by his students and mubaliqh abroad afterwards, such as RadenRahmat or popularly known SunanAmpelDenta who came from Campa (part of Cambodia) to Java in 1443/1440 M *Muballiqh* belonging to the Islamic minority group in Java in the XIV-XVI century is then known by the guardian of nine "WaliSongo".<sup>12</sup>

The existence of *Salafi Pesantren* is the right media in the review of the Jurisprudence. This is also reinforced by the research of Abdul Muqhits. *Salafi Pesantren* in Java such as *Ploso Pesantren*, the books of jurisprudence that are taught is a proof of the dominance of the Syafii school, in addition to the daily practice of *ubudiyah* which always refers to the *Syafis* school, the *Fiqh* books become references in the *Bahsul al-Masa'il* forum All *Syafiiyah* and commitment to the school of Syafii in certain moments as well as verbalization against the belief of *Ahlu Sunnah Wal-Jamaah* as a belief.<sup>13</sup> Zamakhsyari Dhofier said that in the pesantren tradition closely related to the lodge as a place to live, Mosque as a place of worship, Students as

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embraced the Shafi'i mazhab. The missionary delegation on the island of Java century 14-15 AD, then known as the title "WaliSongo". Abdul Muqhits, *Kritik Nalar Fiqh Pesantren* (Jakarta :Kencana, 2008) P. 245.

<sup>11</sup>*Ibid.*, P. 245

<sup>12</sup>The presence of guardian songo who gradually came to accompany the final process of the collapse of Hindu Majapahit kingdom in 1478 and other Hindu-Buddhist kingdom, such as Pajang ends in 1568. Keruduan Hindu Buddhist kingdom was then greeted the establishment of Islamic empires, such as the Islamic sultanate in Demak Bintara as the first Islamic empire in Java in 1481 supported by wali. *Ibid.*, P. 141-142. Lihat pula, Ridin Sofwan, et.al, *Islamisasi di Jawa*, Cet. 1 (Yogyakarta: Pustaka Pelajar, 2000) P. 23.

<sup>13</sup>Abdul Muqhits, *Kritik Nalar Fiqh Pesantren*, P. 244

students get education and teaching, the classical books, as literature of science and *Kyai* as teachers who transfer science.<sup>14</sup> Between *Kyai* and the yellow books as the literature of science (including the study “*Usul Fiqh*””) are two inseparable things in the development of “*Usul Fiqh*” in Indonesia

After the “*Usul Fiqh*” grew and flourished in Indonesia, came the thought of reform. According to Anderson, the characteristic level of renewal of Islamic law that developed into three groups of legal systems, namely: First, the system that still recognizes *Syari'ah* as a fundamental law and apply it intact. Second, the system abandoned *Syari'ah* and replaced it with secular law. *Third*, the system which is compromised both of two systems.<sup>15</sup> The same analysis was also proposed by DediSupriadi that the process of transformation of Islamic law in the perspective of reform of Islamic law is patterned in three categories: (1). Adaptation to the legal system other than the Islamic system. (2). Secular, separation between Islamic legal system and other legal system. (3). Combination or combination of both.

From a long journey, the ‘*Usul Fiqh*’ continues to grow and then enter the stage of desire to make an update. Although as HasballahThaib is quoted by Abdul Manan, it is said that the reform of Islamic law in Indonesia seems to be slow in its development compared to Islamic countries in the Middle East and North Africa. This delay is caused by several factors: (1). Still strong is the notion that *taqlid* is still strong enough for contemporary issues, besides many scholars feel safer to follow the opinion of earlier scholars than to follow the opinions of the people who are feared wrong (2). Islamic law in Indonesia in the present socio-political context has always invited a polemic at the midpoint between the religious paradigm and the state paradigm. If considered a state paradigm, then Islamic law should be ready to face a plural society (3). Perception of some people who identified *Fiqh* as a result of intellectual work of religion that the truth is still relative, and the *Syari'ah* which is the product of God and was absolute.<sup>16</sup> Even though it was delay, the update process has been running. This is generally seen in the reforms at the institutional level and among the Indonesian Muslim scholars.

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<sup>14</sup>Zamakhsyari Dhofier, *Tradisi Pesantren (Studi Tentang Pandangan Hidup Kiyai)*. Cet. 6 (Jakarta : LP3ES, 1994) P. 44

<sup>15</sup>J.N.D. Anderson, *Islamic Law in Modern World* (New York : Greenwood Press Publishers, 1959) p. 83 - 84

<sup>16</sup>Abdul Manan, *Aspek – aspek Pengubah Hukum* (Jakarta : Kencana, 2005) p. 215 - 216



## 2. The mapping of renewal in the level of Institution

After the study of Jurisprudence became an important study in the life of *Pesantren* and lasted long enough, the development of Jurisprudence subsequently crystallized in the environment of religious and civic organizations, such as Nahdatul Ulama (NU), Muhammadiyah, MUI, and others. These institutions are considered appropriate in this study, in addition to these three institutions as a representative institution and always struggling with the dynamics of the study of Islamic law in Indonesia

Nahdatul Ulama (NU) is a house of the collection of scholars, the NU founding purposed to uphold one of the four schools of jurisprudence (Hanafi, Shafi'i, Maliki and Hambali). Furthermore, the more viscous NU journey as an institution of *ijtihad*, developed through the institutions "*Bahsul al-Matsail*" and boarding schools. Through these two institutions and all the process of establishing Islamic law study using the methodology of 'Usul Fiqh' through *istinbath* of law, namely; *Al- Qur'an*, *Hadits*, *Ijma* and *Qiyas*. Although one purpose of the NU is collecting the opinions of scholars (Hanafi, Maliki, Shafi'i and Hambali), however, in using the real *Fiqh* and *qawaid Fiqh*, the tendency is more to Syafi'i section, it can be seen from the yellow books used in NU *Pesantren* like Ploso and Lirboyo. Although there is also other NU *Pesantren* like Sitobundo Boarding School (especially at Ma'had Aly) started using the books of 'Usul Fiqh' non *Syafi'iyah*.<sup>17</sup>

*Bahsu Al-Masail* is a forum on Islamic religious matters, especially concerning the law in various life issues conducted by a group of NU scholars. The method used is a question and answer method that takes place in an official session of the organization such as, Congress, National Conference or National Congress. How to give an answer prioritizes to follow certain opinions rather than using opinions and own analysis. *Taqlid* intended here is to follow the opinion of Islamic jurists (*fuqaha*) and not to the layman.<sup>18</sup> There are several reasons why NU does not issue its own opinion but always follow: *First*, there is self-awareness from the participants of the conference or the official session of the organization that they do not have the capacity to the level of *Mujtahid* let alone the absolute *Mujtahid*, so they

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<sup>17</sup> Abdul Mughits, *Kritik Nalar Fiqh Pesantren*, p. 269

<sup>18</sup> *Ibid.*, p. 149-150

prefer to follow the opinions of the previous' *Ulama*. Secondly, the NU kyai are orthodoxies with classical studies, so it has not been able to appreciate the study into an original critical study in the development of answering the challenges of the times. Third, methodologically the opinion of NU clerics see the problem from the bottom up, starting from the opinion of new scholars *nash* (Qur'an - Hadits), whereas hierarchically, theoretical postulates of Islamic law starts from the Qur'an and Sunnah, then after that the new *ijtihad*.<sup>19</sup>

*Bahsul Masail* process always relies on certain schools of the four schools of *Ahlu Sunnah Wal-Jamaah*. Usually the decision of *Bahsul Masail* prioritizes the *qaulimadhab*, it is seen from the procedure of answering the problems compiled in the mechanism: (1). In the case when the answer can be satisfied by the book and there is only one *statement*, then the statement of the opinion is expressed as explained in the aforementioned. (2). in the case when the answer can be satisfied by the book and there is more than one *statement*, then *taqrirjama'i* is choosed to one qaul. (3). In case there is no *statement*, at all that gives the solution, so it will be performed the procedure of *ilhaqulmasail binadhairiha* by the experts. (4). in the case of no *statement*, at all and impossible to do *ilhaq*, it can be done by *istinbatjama'i* with *madzhabmanhaji* procedures by the experts.<sup>20</sup>

However, in its development, NU also made an idea of the renewal of the 'Usul Fiqh' especially from the thoughts that emerged from the NU elite. More intriguing at the 33rd NU Pre-NU discussion in Makassar, South Sulawesi, NU raised the idea of "Islam Nusantara" emphasizing the empirical and distinctive context as a result of integration, contextualization, and indigenization, translation of universal Islam with social, cultural and literary realities in Indonesia. The idea of Islamic Nusantara is interesting because it tries to accommodate Indonesian culture, so in the context of law it really reflects thoughts to Indonesian. According to the author's analysis this notion is categorized as the form of the NU renewal minds which will automatically touch upon the renewal of its 'Usul Fiqh' as a methodology.

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<sup>19</sup>*Ibid.*, P. 153. Lihat, M. Ali Haidar, *Nahdatul Ulama dan Islam* (Jakarta : PT Gramedia Pustaka Utama, 1994) P. 74.

<sup>20</sup>*Ibid.*, P. 148-149

On the other hand, Muhammadiyah has developed a 'Usul Fiqh' in Indonesia through the *Majelis Tarjih* and *Lajnah Tarjih*. *Lajnah Tarjih* of Muhammadiyah is the strongest opinion committee, Organized through the mechanism of consultation session.<sup>21</sup>The function of *Lajnah Tarjih* is to study the opinions of the various *fuqaha* in the contentious issue, then take the strongest opinion according to the way of thinking and present conditions. In addition *Lajnah Tarjih* also decided contemporary issues not covered by classical *fuqaha*, such as banking, modern finance, insurance, health and others. It was then decided to become a new law. On the other hand, *Majelis Tarjih*, in charge of *Lajnah Tarjih*, also arranged guidebooks related to certain fields at the request of the Muhammadiyah Congress or one of the *Majlis*. The objective is to explain the problems compiled, and also to decide the issues based on Islamic law.<sup>22</sup>

The spirit of the development of Jurisprudence in Muhammadiyah is also evident from the idea of renewal in the *Majlis Tarjih*. The update here is defined as the *tajdid* movement as defined in the following statement "Tajdid in terms of language is defined as an update. While the term is defined: Purification and improvement, development, modernization and the meaningful with it. In the sense of purification, *tajdid* is intended as the maintenance of Islamic teachings that are based on and derived from the *Qur'an* and *Sunnah ash-Shohih*". In the sense of increasing development, modernization and the meaningful with it, *Tajdid* is intended as an interpretation of the practice and embodiment of Islamic teachings by sticking to the *Qur'an* and *Sunnah ash-Shohihah*. To carry out *tajdid* in both terms, it requires the actualization of intelligent and fitrient minds and clean minds, which are imbued with Islamic teachings. According to the Muhammadiyah Union, *tajdid* is one of the characteristics of Islamic teachings"<sup>23</sup>

From this formula, Fathurrahman Djamil said that Muhammadiyah in the methodology of *istinbath* on law always uses the *Qur'an*, Hadits and also *ijtihad*. In the case of *ijtihad*, it will be done toward something or legal cases that are not

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<sup>21</sup>Lajnah Tarjih was the idea of KH.Mas Mansur at the Muhammadiyah Congress XVI in Pekalongan in 1927. This trove proposed that in the Muhammadiyah Union, there are three *Majlis*, namely *Majlis Tasyri* ', *Majlis Tanfidz* and *Majlis Taftisy*. But only *Majlis Tarjih* that was accepted. *Ibid.*, P. 95-99

<sup>22</sup> *Ibid.*, P. 98

<sup>23</sup>Fathurrahman Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah* (Jakarta : Logos, 1995) P. 57-58

explicitly contained in the Qur'an and *Hadits* and the internal cases contained in both sources. Ijtihad in the second form is done by reinterpreting the Qur'an and *Hadits* in accordance with the conditions of today's society. Muhammadiyah recognizes the role of reason in understanding the texts, if the understanding of reason is different from the text of *Al-Qur'an* and *Hadits*, the objective of text must take precedence over reason.<sup>24</sup>

The explanation above shows that the methodology built by Majelis Tarjih Muhammadiyah has its own style when compared with NU. Majelis Tarjih emphasizes the legal restoration through the Qur'an and *Hadits*, not supported by other references such as the books of commentary and the books of the *Hadits*. In some decisions also use *qiyas*, *sadd adz-dzara'i*, and others. Thus the methodology used is not only limited in the context of mere jurisprudence, but also uses modern formulation methods such as induction, deduction, comparison and others. All this is a form of the renewal thoughts of Muhammadiyah on the 'Usul Fiqh' dimension.

In addition, The Indonesian 'Ulama Council (MUI)<sup>25</sup> is an institution that has contributed greatly to the development and renewal of 'Usul Fiqh' in Indonesia was functioned as: (1). The forum of deliberation of scholars, Muslim intellectuals in protecting the society and developing an Islamic life; (2). The gathering of scholars, Muslim scholars to develop and practice the teachings of Islam and mobilize Islamic brotherhood; (3). Containers representing Muslims in relationships and inter-religious consultations; (4). The giver of fatwa to Muslims and government, whether requested or unsolicited..<sup>26</sup>

MUI through the fatwa commission, not only the institute developed the 'Usul Fiqh', but also the institution gave the idea of renewal of the Jurisprudence itself. All matters relating to the fatwa are set out in the MUI Fatwa Guidelines and

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<sup>24</sup>*Ibid.*, P. 58-59

<sup>25</sup> The MUI was formed on June 26, 1975 (17 Rajab 1395 H) through the Ulama Congress in Jakarta, attended by the Regional Ulama Council, the head of the national Islamic Society, the spiritual builder of the four generations (Army, Air Force, Navy and Police of the Republic of Indonesia) As well as several prominent Islamic figures present as individuals. As the elected General Chairman of MUI is Buya Hamka, the charismatic scholar of Muhammadiyah, as the elected General Secretary is Drs. P. Kafrawi Ridwan, MA from the period 1975-1980. Abdul Azis Thaba, *Islam and the State in New Order Politics* (Jakarta: Gema Insani Pres, 1996) P. 220-221. See also, Deliar Noer, *Islamic Administration in Indonesia* (Jakarta: Rajawali, 1984) P. 125. See also, Results Rakernas Year 2011, *Organizational Guidelines Organization of Indonesian Ulama Council*, P. 43 - 47

<sup>26</sup>*Ibid.*, P. 19

Procedures, where in the general basis and natures of the fatwa are described: The fatwa's determination is based on the Qur'an, sunnah (*Hadits*), ijma 'and qiyas as well as the arguable proofs. (Article 1, Chapter II). Fatwa determination activities are conducted collectively by an institution called the Fatwa Commission. (Article 2, Chapter II). The establishment of fatwa is responsive, proactive and anticipatory (Article 3, Chapter II).<sup>27</sup>

Then in the method of determining the fatwa is explained: (1). Prior to the fatwa, the opinions of priests and *mu'tabar* scholars should be examined on the matter to be filed, carefully following the arguments (Article 1 Chapter III). (2). The obvious problem of the law should be delivered as it is. (3). In the case of *khilafiyah* among the schools of thought, then: First, the determination of the fatwa is based on the result of the discovery of the intersection between the opinions of the scholars of the school by the method of *al-jam'uwa al-taufiq*. Secondly, if the effort of the discovery of the intersection is not successful, the determination of the fatwa is based on the result of *tarjih* through the *muqarranah* method with the 'Usul Fiqh' rule of *muqarran*. (Article 3, Chapter III). In matters whose opinions are not found in law among schools, the determination of a fatwa is based on the result of *ijtihadjama'i* (collective through the method of serving, *ta'lili (qiyasi, istihsani, ilhaqi) istislahi and sadd al-zariah* (Chapter 4 Chapter III). The fatwa should always pay attention to the common good (*mashalih 'ammah*) and *maqashid al-syariah* (Chapter 5 Chapter III).<sup>28</sup>

From the formation of about the fatwa above, the MUI has indeed given space from the idea of renewal. This means that it is not only strong with the dominance of certain schools of thought, in the case that is not found in the opinion of the law among the schools, but the determination of the fatwa is based on the result of *ijtihad jama'i*(collective through *bayani method, ta'lili (qiyasi, istihsani, ilhaqi) istislahi and sadd al -zariah* and pay attention to the common good (*mashalih 'ammah*) and *maqashid al-syariah*.

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<sup>27</sup>Results RakernasTahun 2011, Guidelines Organizers Organization of Indonesian Ulema Council, P. 278

<sup>28</sup>*Ibid*,P. 279

## DISCUSSION

The mapping of the Jurisprudence Update in Indonesia has a strategic urgency if it is done. Although not a new study, but every year needs to be mapped, Mapping becomes a necessity, to see the development of the proposition of *Fiqh*, the thoughts that arise, the figures that initiate and others. This will have implications for the strengthening of Islamic law itself. The proposition of *Fiqh* is a methodology, between the proposition of *Fiqh* and the jurisprudence of two integrative matters. Jurisprudence is a product of methodology. The development of jurisprudence is determined by the richness of the '*Usul Fiqh*'. Indonesian Islamic law cannot rely solely on the methodology of classical Jurisprudence, Arab oriented, and colored by conditions that do not reflect the true Islamic law of Indonesia. But culture and time also determine the change of law and make the crystallization of the law in the culture, time and place of the law. It may be said that culture, time and place are very dominant in coloring and forming laws. This is where the required Islamic law is a reflection of Indonesian as an inherent law for the people of Indonesia

As is known Islamic law has two functions: First, as social control and social engineering to the condition of society. Secondly, Islamic law gives birth to new values and social change processes. In this case Islamic law is more of a historical product that to some extent justifies the demands of social, cultural and political change. Therefore Islamic law is required to accommodate the problems of the society without losing its basic principles. Otherwise, it is probable that Islamic law will experience sterility of function,<sup>29</sup> due to Islamic law is no longer able to actualize itself in answering legal needs in society, when people need.

The formulation of Islamic law in the books of classical Jurisprudence, in some aspects has lost its transformational capacity. If the formulation of Islamic law out of date is still enforced its application, it is feared to create legal conflicts within the Islamic community itself. The conflict will ultimately create a prolonged *khilafiyah*, so abandoned by society and society will adopt other laws outside of Islamic law. At least to say the tendency of secularist Muslims to adopt western law to become law applied to Muslims as an indication of the above thesis. This is the

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<sup>29</sup>Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia Dengan Relevansinya Bagi Pembangunan Hukum Nasional*, P. 22-23

madness of some scholars, so the reformer realizes the importance of reform especially concerning the proposition of *Fiqh* as the methodology of Islamic law.<sup>30</sup>

Renewal is seen as the need not to alienate the methodology that has been established by *mujtahid* scholars, but in line with its aim is to purify, enhance, develop, modernize and be meaningful with it against the methodology of Islamic law. At least this thought harmonizes with the opinion of Harun Nasution,<sup>31</sup> Renewal is an adaptation of Islamic religious ideologies as a result of the advance of modern science and technology. Azyumardi Azra said that renewal as a view that influences the social situation and environment, that Islam as a reality and a particular social environment is not always compatible with ideal Islam, in accordance with the perspective, approach, socio-cultural and religious background of the individual and group of reformers concerned.<sup>32</sup>

According to Abdullah Ahmed an-Naim, quoted Imam Syaukani. The importance of updating the legal methodology includes several things, among others; First, Islamic law is not Islam itself, but merely meruakan results of interpretation of experts to the text (Qur'an and *Hadits*). Second, Islamic law is the product of human understanding of the sources of Islam in the context of history from the seventh to the ninth centuries. During this period Islamic jurists have interpreted the Qur'an and other sources in the context of developing a comprehensive and coherent *Syari'ah* system as a guide for Muslims at that time.<sup>33</sup> If this analysis is drawn to today's conclusion, it could be that some of the laws that are historical products of the past are no longer relevant to the present condition. Moreover, the law was adopted with different social and cultural conditions.

Therefore, mapping becomes important as a legal necessity that will have implications for the dynamics of Islamic law itself, the needs of society and the needs of institutions or institutions concerned with Islamic legal studies. With the mapping there is a picture of the stages of the development of Islamic law in Indonesia and a

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<sup>30</sup>*Ibid.*, P. 23-24

<sup>31</sup>Harun Nasution, *Pembaruan Dalam Islam : Sejarah Pemikiran dan Gerakan* (Jakarta : Bulan Bintang, 1986) P. 11-12

<sup>32</sup>Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia Dengan Relevansinya Bagi Pembangunan Hukum Nasional* (Jakarta : Raja Grafindo Persada, 2006) P. 20-21

<sup>33</sup>*Ibid.*, P. 26

picture of the desire to update the methodology of Islamic law according to the needs of society

## CONCLUSSION

The mind mapping of the renewal of *'Usul Fiqh'* was a process of strengthening the development of Islamic law in Indonesia, the mapping becomes important data for reform or adoption of new jurisprudence ideas, as a form of purifying Islamic law in accordance with the Indonesian context which, as long as it does not conflict with texts. This becomes a necessity and sooner or later the demands for an update are sure to arise. Along with the models and approaches of mind are offered also in various forms. Because this becomes a legal requirement in Indonesia

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