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**THE VIEWS OF NAHDLATUL ULAMA SCHOLAR MALANG ABOUT
THE WILL OF HUMAN BODY DONOR FOR EDUCATION PURPOSE IN
MASLAHAH MURSALAH PERSPECTIVE**

Thesis

By:

Rosiana Kholifah

(13210030)



AL AHWAL AL SYAKHSIYYAH DEPARTMENT

SHARIA FACULTY

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MAULANA MALIK IBRAHIM OF MALANG

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2017

STATEMENT OF THE AUTHENTICITY

In the name of Allah SWT,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE VIEWS OF NAHDLATUL ULAMA SCHOLARS MALANG ABOUT
THE WILL OF HUMAN BODY DONOR FOR EDUCATION PURPOSE IN
MASLAHAH MURSALAH PERSPECTIVE**

Is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 13th September 2017

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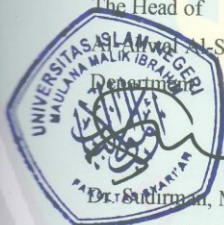
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ABOUT THE WILL OF HUMAN BODY DONOR FOR EDUCATION
PURPOSE IN MASLAHAH MURSALAH PERSPECTIVE**

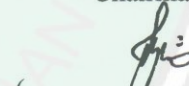
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MOTTO

وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا ۗ

And whoever saves one - it is as if he had saved mankind entirely.¹



¹ QS. Al-Maidah (5): 32

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Malang, the benefit will be gotten all readers and the author herself. Realizing the fact of weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 10th September, 2017

Author,

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TRANSLITERATION GUIDENCE

A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا =	unsigned	ش =	sy	ن =	n
ب =	b	ص =	sh	و =	w
ت =	t	ض =	dl	ه =	h
ث =	ts	ط =	th	ي =	y
ج =	j	ظ =	dh		
ح =	h	ع =	' (comma facing up)		
خ =	kh	غ =	gh		
د =	d	ف =	f		
ذ =	dz	ق =	q		
ر =	r	ك =	k		
ز =	z	ل =	l		
س =	s	م =	m		

The hamzah (ء) which is usually represented by and *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards (“), as oppose to a comma (,,) which replaces the “ ع ”

C. Vocal, long and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال becomes qâla

Elongated (î) vowel = î for example قيل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Specially for the pronouncing of *ya' nisbat* (in association), it cannot be represented by "i", unless it is written as "iy" so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = و for example قول becomes qawlun

Diftong (ay) = ي for example خير becomes khayrun

D. Ta' marbûthah (ة)

Ta' marbûthah is transliterated as “ṭ” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalaṭ li al-mudarrisah*, or if it happens to be in

the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example *في رحمة الله* becomes *fi rahmatillah*.

E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the phrase of lafadh jalalah (speaking of God) which is in the middle of a sentence and supported by and (idhafah), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said....
2. Al-Bukhâriy explains in the prologue of his book....
3. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâh 'azza wa jalla*

ABSTRAK

Kholifah, Rosiana. 13210030. 2017. *Pandangan Tokoh Nahdlatul Ulama Kota Malang Tentang Wasiat Donor Tubuh Untuk Kepentingan Pendidikan Ditinjau Dari Perspektif Masalah Mursalah*. Skripsi Jurusan Al-Ahwal Al-Syakhsiyah, Fakultas Syari'ah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Hj. Tutik Hamidah, M.Ag

Kata Kunci: Wasiat , Donor, Tokoh, Masalah Mursalah.

Manusia adalah makhluk sosial. Makhluk yang tidak mampu hidup tanpa bantuan orang lain. Seperti halnya kegiatan sosial yaitu donor yang ada pada bidang kesehatan. Pada zaman serba canggih ini, masalah donor semakin kompleks dan belum adanya hukum yang mengatur. Seperti masalah wasiat donor tubuh untuk kepentingan pendidikan yang banyak orang belum mengetahui tentang hukum ini.

Berdasarkan masalah tersebut, peneliti mengadakan penelitian ini dengan tujuan untuk mengkaji serta mendeskripsikan tentang wasiat, donor sekaligus sejarah, masalah mursalah, dan juga cara pengambilan ijtihad dalam organisasi Nahdlatul Ulama.

Dalam penelitian ini penulis menggunakan jenis penelitian yang berupa penelitian empiris. Maka pendekatan yang digunakan dalam penelitian ini penulis menggunakan pendekatan kualitatif. Dalam teknik pengumpulan data, peneliti menggunakan metode wawancara yang kemudian hasilnya dianalisis disertai dengan dokumentasi sebagai bukti penelitian yang dilakukan.

Dari hasil penelitian ini menunjukkan mengenai pandangan tokoh Nahdlatul Ulama kota Malang tentang wasiat donor tubuh untuk kepentingan pendidikan ditinjau dari perpektif masalah mursalah mayoritas tidak setuju dengan praktik wasiat donor tubuh ini. Dikarenakan adanya beberapa faktor mengenai kemuliaan mayat muslim, faktor mayat yang diawetkan menyalahi hukum syariat berakibat kepada mayat kelak diakhirat dan dirusaknya tubuh mayat berdampak urutan diperbolehkannya mayat muslim digunakan untuk praktik pendidikan dalam dunia kedokteran yaitu, orang kafir harby, kafir dzimmy, munafik, fasik, dan terakhir muslim. Dan dari pendapat minoritas tokoh Nahdlatul Ulama, memperbolehkan praktik wasiat donor tubuh ini dengan alasan bahwa ilmu kedokteran adalah hal yang tidak bisa dipungkiri perubahannya, Sebagaimana yang terjadi pada praktik wasiat donor tubuh ini maka tidak ada yang lebih baik jika tidak menggunakan tubuh manusia asli untuk pengajaran, namun tetap sesuai prosedur agama dan juga peraturan negara. Jika memungkinkan untuk mengganti tubuh manusia asli untuk praktik pengajaran dalam pendidikan kedokteran, maka sangat setuju jika diganti dengan *cadaver* sintesis atau buatan.

ABSTRACT

Kholifah, Rosiana. 13210030, 2017. *The views of Nahdlatul Ulama Malang About The will of Human Body Donor for Education Purpose In masalah Mursalah Perspective*. Thesis. Al-Ahwal Al -Syakhsyah Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University of Malang. Supervisor: Dr. Hj. Tutik Hamidah, M.Ag

Keywords: Testament , Donor, Scholar, *Maslahah Mursalah*.

Humans are social beings. Beings who can not live without the help of others. As well as social activities ie donors that exist in the field of health. In this very sophisticated era, donor problems are getting more complex and there is no rule of law. Like donor wills for educational purposes that many people do not know about this law.

Based on these problems, the researcher conducted this research with the aim to study and describe the will, donor and history, masalah mursalah, and also how to take ijtihad in organization Nahdlatul Ulama.

In this study, the authors use this type of research in the form of empirical research. the approach used in this study the authors use a qualitative approach. In data collection techniques, the researcher uses an interview method which then analyzed the results along with the documentation as evidence of the research conducted.

From the results of this study shows about the views of Malang city leaders about the donation of the body for education in terms of perspective masalah mursalah majority disagree with the practice of this blood donor agency. Due to several factors concerning the glory of the corpse of Muslims, the extinction factor of the corpse violated sharia law and resulted in the corpse in the afterlife. And the destruction of the corpse body and the existence of a collection of Muslim corpses that are allowed to be used for medical practice in the medical world that is, kafir harby, kafir dzimmy, apostate, and muslim. And from the opinion of a minority of Nahdlatul Ulama figures, permit the practice of this body donor testament on the grounds that medical science is an undeniable thing to change, As happened in the practice of this donor body will not be better if not using the original human body for teaching , but still according to religious procedures as well as state regulations. If possible to replace the original human body for teaching practice in medical education, then strongly agree if replaced with synthetic or artificial cadaver.

ملخص البحث

خليفة، راسيانا ١٣٢١٠٠٣، نظرة قطب نهضة العلماء في مدينة مالانج عن مانحة الأجساد لمقتضيات التعليم بمنظور المصلحة المرسله، بحث جامعي، شعبة الأحوال الشخصية، كلية الشريعة، جامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج. المشرفة: الدكتور الحاجة توتيك حامدة الماجستير.

الكلمات الرئيسية: الوصية، القطب، المانحة، المصلحة المرسله.

الإنسان هو كائنات اجتماعية. الكائنات التي كانت لا تستطيع العيش بدون مساعدة الآخرين. ومن الأنشطة الاجتماعية، هي الجهات المانحة الموجودة في مجال الصحة. وفي هذه الحقبة المعقدة للغاية، تزداد تعقيدات مشاكل المانحين ولم يكن القانون منظماً. مثل شهادة المانح للأجساد لصالح التعليم التي كان كثير من الناس لا يعرفون هذا القانون حتى الآن. ومن تلك المشكلة، أجرى الباحث هذا البحث بهدف الدراسة والوصف عن الوصية وأحكام مانحة الأجساد، حتى التاريخ، ومصالحه مرسله، وطريقة أخذ الاجتهاد في منظمة نهضة العلماء أيضاً.

هذا البحث من أنواع البحث التجريبي (*field research*)، ويستخدم النهج النوعي (*kualitatif*). وطريقة جمع البيانات هي المقابلة التي كانت نتائجها تحللها الباحث مع الدراسة التوثيقية كالدليل عن صلاحية هذا البحث.

والحاصل، أن آراء قطب نهضة العلماء في مدينة مالانج عن وصية مانحة الأجساد بمنظور المصلحة المرسله هي كان أكثرهم لايتفقها. لأن فيها العوامل التي تتعلق بكرام جنة المسلمين، وكانت الجثة المحفوظة تنتهكها الشريعة الإسلامية وتؤدي إلى الجثة في الآخرة. وأما الترتيب في إجازة وتدمير جسم الجثة واستخدام الجثة لمقتضيات التعليم في الطبي فهو الكافر الحربي، والكافر الذمي، والمرتد، والفاسق، والمسلم. ومن وجهة نظر أقلية من أهل النهضة العلماء، تسمح ممارسة هذه الهيئة المانحة شهادة على أساس أن العلوم الطبية شيء لا يمكن إنكاره لتغيير، كما حدث في ممارسة شهادة هذه الهيئة المانحة ثم لا يوجد شيء أفضل إذا لم يكن استخدام الجسم البشري الأصلي للتدريس، ولكن لا يزال وفقاً للإجراءات الدينية وكذلك لوائح الدولة. إذا كان من الممكن أن تحل محل الجسم البشري الأصلي لتعليم الممارسات في التعليم الطبي، ومن المتفق عليه أنه إذا تم استبدال جيفة مع تركيبية أو اصطناعية.

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CHAPTER I

INTRODUCTION

A. Background Of Research

Humans are social beings who can not live alone. Social human beings have an instinct mutual help². Many social activities or charitable activities carried out by some people. Type a lot of charity work, charity activities in the fields of education, social, and health fields. In this era, health problems have undergone significant changes and many donor activities done as a blood donor and the donor organ. Donor organs include, organ donor corneas, organ donor kidney, cardiac, and others.

² <https://jurnal.usu.ac.id/index.php/premise/article/view/9681> accessed on 13 May 2017.

Donor is included in new medical issues that appear recently such as cloning, transplantation, test tube baby and others³. Here, the researcher just focuses on donor. There are many people who did donor even though it is allowed or not. The contributions of Islamic scholars in giving the understanding of donor based on Islamic law are very helpful.

In this case there is no doubt that there are some institutions that try to respond to contemporary problems such as Majelis Ulama Indonesia or Indonesian Islamic organizations such as Muhammadiyah, Nahdlatul Ulama, and Persis. In Muhammadiyah, there tarjih assembly institution in charge of contemporary legal issues, as well as the Nahdlatul Ulama, there are agencies that assess and bahtsul bahtsul making jurisprudence of contemporary laws.

One of the contemporary law which will be discussed in this study is a testament donor body. Islam has made it clear that the will is an obligation on those who fear Him who has excess possessions to leave his property to his relatives in ma'ruf⁴. Regarding the donor's body will in Islam is a contemporary problem that there is no law. With the absence of laws that explain, scholars or people who are competent to try to analyze the case and make a new law. Then the benefit contained in the new law regarding the make testamentary donor's body.

Products produced and also will do will produce a benefit. Expediency is an action performed by someone who distributes the estate he had to relatives

³ Tanggo T, Chuzaimah. *Problematika Hukum Islam Kontemporer Buku Ke-IV*, (Jakarta: PT Pustaka Firdaus, 1995), 83.

⁴ Al-Quran, Al-Baqarah ayat 180.

or people who need a perpetual charity that no break until doomsday. This is in accordance with the hadith of the Prophet which says "three things that will not break up after you die, the pious child who pray, *shodaqoh jariyah* and useful knowledge⁵." As a product of *ijtihad*, it is natural that *fiqh* continues to evolve because of considerations of socio-political and socio-cultural considerations and the mindset that lies behind the results of legal excavations that are highly likely to change⁶.

In this advanced era, the benefit can be obtained in the health field. The usefulness of the health sector is the discovery of new drugs that did not previously exist. One benefit in the field of health and well transplant donor. Transplantation is the removal of tissue from one place to another (such as closing the wounds crusted with skin tissue from other parts of the body); transplant⁷. Donors are blood donors (who gave blood to help others in need): blood⁸. Transplantation is intended to replace a damaged organ or function to the recipient with the donor that is still functioning organ.

In this study, researchers focused only to find out the views of the Nahdlatul Ulama thus only will the donor's body. Nahdlatul Ulama is a place where people are very intellectual and religious role in society. In social life, the organization is very worthy to be a role model to perform a legal sharia action particularly in establishing a new law that was not there regulations

⁵ <http://media-islam.or.id/2012/01/25/3-amal-yang-pahalanya-tidak-terputus/> diakses pada 28 maret 2017.

⁶ Tim Redaksi, *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 57.

⁷ Kamus Besar Bahasa Indonesia.

⁸ Kamus Besar Bahasa Indonesia.

governing the issue, as the example of testamentary donor's body for educational purposes. Thus, it can be concluded that in the organization Nahdlatul Ulama role dignified people as high as clerics, or professors who are knowledgeable about the Islamic religion.

In Indonesia, the law of the body donor will not exist yet, but the government to make regulations governing the donor. This regulation contained in Law number 23 1992 year on health⁹ and implementation stipulated in Government Regulation number 18 1981 year on the post-mortem and post-mortem clinical anatomical and transplantation tools or human tissue¹⁰.

Islamic studies regarding organ donation will have been written in various papers. But the study of the body donor will not be discussed for educational purposes. Need for additional references on Islamic studies and a body donor will also be made in reference rules have fulfilled Personality 'or vice versa. Problems donor for education is still not recognized and this issue is included in *ijtihadiah* problems that do not have clear texts concerning the prohibition or skill.

As the above problems, the researchers are interested in doing research on the views of leaders of Nahdlatul Ulama Scholar Malang on testament donor bodies for educational purposes in *mursalah masalah* perspective.

⁹ Undang-undang Nomor 23 Tahun 1992 Tentang Kesehatan.

¹⁰ Peraturan Pemerintah Nomor 18 Tahun 1981 Tentang Bedah Mayat Klinis Dan Bedah Mayat Natomis Serta Transplantasi Alat Atau Jaringan Tubuh Manusia.

B. Statement Of Problem

1. What are the opinions of *Nahdhatul Ulama* scholar Malang about the will of donor human body in education purpose?
2. What are the opinions of *Nahdhatul Ulama* scholar Malang about the will of donor human body in education purpose in *masalah mursalah* perspective?

C. Objective Research

Based on the research problems, there are objectives that the researcher wants to achieve:

1. To describe the opinions of Nahdhatul Ulama scholar Malang about the will of donor in education purpose.
2. To describe the analysis of Islamic law about the will of donor in education purpose based on *Maslahah Mursalah*'s perspective.

D. Significance Of Research

In line with the objectives above, this study is expected:

1. Teoritically

The result of this research will give a new thought of Islamic studies. Then, it is expected to be a reference for students in the same field (islamic law) which especially based on the Indonesian Islamic scholars about the will of human body's donor for education importance.

2. Practically

a. for society, the result of this research hopefully can give the information about the will of human body's donor for education importance.

b. for the researcher, getting the experience and self knowledge about this research, especially in this topic the wil of human body's donor for education importance.

c. Others, It expected to give a contribution for information and scientific thought for the research and society which have the same interest in islmaic law about *masail fiqhiyah*.

E. Definition Operational

The purpose of the operational definition is to define what will be examined in this study. In the definition of operation, formulated several operating definitions that will be used by researchers so that no misunderstandings occur and readers can understand and follow clearly the purpose of this study. Some understanding of the terms contained in the title of this thesis, among others:

1. Will: legal document states about what happens to somebody's property and money after they die or formally give your property or possessions to somebody after you die.
2. Education purpose: the process of teaching, training untill the subject and reason which done created. This research explained that education purpose here means the fuction of education about body of anatomical in medical faculty can be run efectively and suitable with the time of new issues of medical news, giving the health soul with education of human body donor that used.

3. *Maslahah Mursalah*: Something that looks good by a mind that intend goodness and eliminate damage to human beings, and fit with Islamic law when deciding the law. And regardless or free of explanations indicate unable or unwilling to do.

4. Donor : The removal of an organ from the donor to the recipient. Material life was like tissues, cells, not only the organ.

5. Scholar : Prominent and famous people who in the fields of politics, culture, and others, especially the Malang city and charge or play a role in the field of fatwa *Bahtsul Masail* Commission and who have Authority in giving fatwa in *bahtsul masail* forum.

F. Discussion Structure

This research will be written using a systematic procedure in four chapters. Each chapter has their focused discussion as described as follows:

Chapter I is an introduction. This chapter contains the background of research that provides a foundation to think of matter of research, statement of a problem, an objective of a problem, a significance of research, research method aims the discussion research can be directional and systematic, previous research, and the structure of discussion. It is intended that the reader has a global picture of the research. Furthermore, this chapter explains about originality the research.

Chapter II, the writer will import some theories that expected to give a picture or problem that found in research object that is used in analyzing the process. Then, it states the concept: donor in Indonesia, donor in Nahdlatul

Ulama Scholar's perspective, and analyze of donor in *masalah mursalah* perspective. This chapter aims to be used as basic research analysis.

Chapter III is the research and discussion of the result. This chapter will describe on the perspective that has been obtained from the research literature. The data is obtained from reading and studying literature which is been edited, classified, verified, analyzed and also concluded. This chapter is a part that used as based to give a conclusion in the fourth chapter.

Chapter IV about containing about exposure to research result. Containing about exposure the result and data analysis of the will of the human body for education purpose in *masalah mursalah* perspective.

Chapter V about conclusion chapter. This chapter presented conclusion of the discussion of the research as the answer to the statement of a problem and state some suggestion as a contribution of scientific ideas. This chapter enablea the readersfor understanding this research.



CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

To avoid a repetition of the discussion and research, it is necessary discourse or knowledge of the research - the kind of research that discusses transplant or donor body for educational purposes.

Husnul Khatimah, The Law of The Will Organ Donation of Human Body of Yusuf Al-Qaradawi Opinion, UIN Sultan Syarif Kasim Riau. the focus of this thesis is the notion of the donor by yusuf qardhawi. Yusuf Al-Qaradawi stated that the donation of human organs when he is allowed to live. by

fulfilling certain conditions. while a will donating human organs after death is allowed, due to see the serious benefits arising from the recipient and does not pose a danger to the donor. equality contained in Khatimah Husnul research and this research is the study of the donor's will neighbor.

The difference in the kind of research on Husnul is a research library and a written research is empirical. study object under study is a testament not donor body organs such as research Husnul.

Nurhasim, a review of Islamic law against organ transplantation through probate, UIN sunan Ampel Surabaya. In Nurhasim research discusses about organ donation even specify the uterus organ. Researchers wrote that womb transplants carried out would cause irregularities against the children conceived *nasab*.

This study is the equation with the same focus on the discussion of the donor's will. there are differences in donor will headline the body for the purposes of education, which is where the interests of education refers to the practice of medicine in faculty conducted in universities anywhere.

Ahmad Bashori, ijtima decision analysis study commission se fatwa Indonesian Council of Ulama Indonesia three in 2009 dipandangpanjang of donor corneas will be allowed in the eye bank, UIN walisongo. In this thesis, the focus of discussion on the decision of the panel of ijtima scholars fatwa commission se Indonesian Indonesian cleric 3 2009 in Padangpanjang about the permissibility of donors will corneas eye at the eye bank.

Differences in the discussion of my thesis is not only the organ alone but all the bodies that diwasiatkan for the purposes of education and research and differ on research methods derived from interviews and literature books about body transplants for educational purposes. while research ahmad bashori, using normative research that prefers written sources such as books or fatwa related to donor corneas.

Hasbullah Ma'ruf, transplantation of human organs perspective of Nahdlatul Ulama and Islamic unity, UIN Sunan Kalijaga. in this paper, the researchers explain that the views of the two organizations in expressing his opinion about organ donation. These two institutions in their fatwa is equally forbidden to carry out human organ donation. in beberapa years later their legal flexing that regarding organ transplants are allowed on the condition that no other remedy except to the organ donor, to the benefit, as well as donor and receipient one faith, one religion. similarities with the research I do is the same object in view of undertaking research in Indonesian scholars namely Nahdlatul Ulama.

While the difference is found in the research object is the donor body and organ donors, and research I do is just to analyze the views of scholars that Nahdlatul Ulama Indonesia.

Ni'matul mamlu'ah, Islamic legal review to transplant a womb and status of children born, IAIN Surabaya. in this thesis, the researcher explains trasnplntasi womb that carried the world of medicine. womb transplant law is permissible for her to donate her womb to the womb of a woman who suffered damage, on

condition that her ovaries are still functioning properly. This action allowed for transplanted does not cause mixing nasab womb. There are similarities between the thesis that I did with Ni'matul mamlu'ah is the same theme of transplants. while the difference is, the uterus organ that is described in this paper while my research is the entire human body that has been dead for educational purposes.

No.	Nama	Judul	Similarity	Difference
1.	Husnul Khatimah	The Law of The Will Organ Donation of Human Body of Yusuf Al-Qaradawi Opinion,	Equality contained in Husnul research and this research is the study of the donor's will.	The kind of research on Husnul is a research library and a written research is empirical. study object under study is a testament not donor body organs such as research Husnul.
2.	Nurhasim	Review of Islamic law against organ transplantation through probate,	This study is the equation with the same focus on the discussion of the donor's will.	there are differences in donor will headline the body for the purposes of education.
3.	Ahmad Bashori	Ijtima decision analysis study commission se fatwa Indonesian Council of Ulama Indonesia	Indonesian cleric decision analysis and the same theme is	he difference is the research methods used. Bashori is normative

		three in 2009 dipandangpanjang	testament donor	whereas mine is empirical
4.	Hasbullah Ma'ruf.	Transplantation Of Human Organs Perspective Of Nahdlatul Ulama And Islamic Unity,	similarities with my research object examined is the same that scholars view that is Nahdlatul Ulama Scholar	the difference is in the focus of discussion, namely Hasbullah is an organ while the research I do is all over the human body.
5.	Ni'matul Mamlu'ah.	Islamic legal review to transplant a womb and status of children born.	The same theme is testament donor	The difference is in the focus of discussion, namely Ni'matul mamlu'ah uterus is the organ while the research I do is all over the human body for educational purposes.

B. Theoretical Framework

1. Testament of Body Donor

1.1 Definition Of Testament

Many words of testament mentions in Quran. The testament means put love as well as connect to other thing. In Quran word (testament) said nine more, and forhteen in verb and in noun twice. In *fiqh* testament means

special message, about good news that can be treasured or given or other message that have wirtten down by the actor (after dead of the *mushi*)¹¹.

Meanwhile in Fiqh Sunnah, testament is a word from وصيت الشيء which means, when I bequeath means I'm connecting to them. Thus, the giver (*mushi*) connects on stuffs or thing that they have done after his death. According to sharia perspective, testament is a present (*hibah*) from someone to others, for instances like; obligation, or beneficial things that will be given after his death. In addition, testament also means as transferring of ownership on hibah that occurs after the death of the mushi by giving a charity as the methodology (*tabarru'*)¹².

The meaning of testament in Islamic Law Compilation is a present or a gift of some stuffs from the giver (*mushi*) to anyone or a foundation which will be managed right after his death. Testament in Islamic Law Compilation is elaborated in articles or regulations. It regulate about the type of testament, cancelled testament procedure and the reason behind its cancelation, and discussing about the withdrawal of the testament itself¹³.

Thus, from the explanation above, it can be concluded that a testament and a present (*hibah*) are different. The significance difference happened once when someone who gives the present after the death means testament.

¹¹ Abdul Ghofur Anshori, *Filsafat Hukum Hibah dan wasiat di Indonesia*, (Yogyakarta: UGM Press,2011), 83.

¹² Sayyid Sabiq, *Fiqih Sunnah*, (Jakarta: al-i'thisom, 2008), 645.

¹³ Abdul Ghofur Anshori, *Filsafat Hukum Hibah dan wasiat di Indonesia*, (Yogyakarta: UGM Press,2011), 95.

Meanwhile hibah occurred as a means while they do not wait someone after his death, occur after the things given to *mushi lahu*.

Prerequisite and principle of the will in Scholar opinions there are; the condition include three sides. The giver (*Mushi*), the receiver (*Mushi Lahu*), and the object (*Mushi Bihi*). The principle of the will is *ijab*, the *Ijab* reputed valid if use the word of transfer the ownership after the giver dead and haven't *iwadh*. Example; "*I will give you this thing after I dead*". Or "*I bring to pass this thing to him after I dead.*"

The valid testament can be showed with a statement, written, or the sign. If the testamentary are meant to give to the institution means, we do not need the *qabul*, because that testament will equal with the charity. Whereas, giving the testament to somebody must have the *qabul*, because that somebody will take the thing whose gives from the *mushi*, also the *mushi lahu*, refuse the things so the things (*mushi bihi*) back to his heirs.

Many kind of the act about the testament in Fuqoha opinions, there are; obligatory to people who leave the thing before the death. Intestate law itself there is a wide - range according fuqoha, is good fortune lot or a little. They take on the basis of God's word letter al Baqarah verse 180. Second, parents and relatives who did not have the legal heirs be sunnah when, intestate to your family, relatives, poverty - poor, and people - the righteous among men. And be unlawful if, his will cause harm to the heirs, as the word of God in

the letter al - Baqarah verse 229. Makruh testament if, those who intestate only discount a little treasure. He left the heir to many who need his money. And also Makruh if, treasures his will be used to wickedness and sin.

The definition in Al-Qur'an have mentioned many word and the testament also explained in Al-Qur'an in many Letter:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدُكُمْ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ¹⁴

Meaning: prescribed for you when death approaches (any) one of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable a duty, upon the righteous.

أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةً مِنَ اللَّهِ إِنَّ اللَّهَ
كَانَ عَلِيمًا حَكِيمًا¹⁵.

Meaning: Your parents or your children- you know not which of them are nearest to you in benefit. (these shares are) an obligation (imposed) by Allah. Indeed, Allah is ever Knowing and wise. (an-nisa :11)

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَدَةٌ بَيْنَكُمْ إِذَا حَضَرَ أَحَدُكُمْ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ
ذَوَا عَدْلٍ مِّنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ¹⁶

Meaning: O you who have believed, testimony (should be taken) among you when death approaches one of you at the time of bequest – (that of) two just men from among you or two others.

¹⁴ QS. Al-Baqarah (1):180.

¹⁵ QS. An-Nisa (4):11.

¹⁶ QS.An-Nisa (4): 106.

In the hadith, the testament have explained. The testament here explained that testament is about the right of moeslim to receive after the death of one of family member and the family member also have the treasure to bring. The hadith can read below:

حدثنا عبد الله بن يوسف أخبرنا مالك عن نافع عن عبد الله بن عمر رضي الله عنهما
أن رسول الله صلى الله عليه وسلم قال: (مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ
فِيهِ بَيْتٌ لِيَلْتَيْنِ إِلَاَّ وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ^{١٧})

Meaning: Rasulallah shalallahu 'alaihi wasallam said, "There is no right of a Muslim who has something he wants to make one's will to her pent two nights unless the will was written on the side."

In the hadith above, testament to explain what is required it (beneficiaries) and the rights to him, such as debt or buying and selling, or the trust was deposited, or explaining the rights that are covered by the other (loans granted to others). Testament in these conditions is required to maintain his property and the discharge of their responsibilities, and in order to avoid a dispute between the heirs after the death and in between the owner of such rights.

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْحِمَاصِيُّ ثَنَا بَقِيَّةُ بْنُ الْوَلِيدِ عَنْ يَزِيدَ بْنِ عَوْفٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ
بْنِ عَبْدِ اللَّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ مَاتَ عَلَى وَصِيَّةٍ مَاتَ عَلَى سَبِيلٍ وَسُنَّةٍ
وَمَاتَ عَلَى ثَقَى وَشَهَادَةٍ وَمَاتَ مَغْفُورًا لَهُ^{١٨}

^{١٧} إمام شهاب الدين أبي العباس أحمد بن محمد الشافعي سلطان، إرشاد السّادي ثرح صحيح البخاري بيروت: دار الكتاب العلمية، (١٩٩٦)، ٢٢٢.

الشيخ خليل مأمون شبحا، سنن ابن ماجه بشرح الإمام أبي الحسن الحفي المعروف بالسندي المجلد الثالث، (بيوت-لينن: دار المعرفة، ٢٠٠٦)، ٣٠٩.

Meaning : Said Rasulullah shallallahu 'alaihi wasallam: "Whoever dies in a state that he died intestate on the right path and Sunnah, he died on faith and the shahadah, and he died in a state of forgiveness."

1.2 Constraints Of Testament

As much as any treasure left by the testator. Limits - certain restrictions to be done

because according to the words of the Prophet Muhammad:

حدَّثنا قتيبة بن سعيد حدَّثنا سفيان عن هشام بن عروة عن أبيه عن ابن عباس رضي الله عنهما قال :

لو عضوا الناس إلي الربع لأن رسول الله ص.م قال : الثلث و الثلث كثير . (رواه البخارى و

مسلم)¹⁹ . Meaning: "It is good to humans reducing their wills for a third to a quarter

Rasulullah SAW, said: will the third, the third is a lot." (HR. Buchari and Moeslim)²⁰ .

Hadith below forbid for give the will more about one third. And the treasure of the will obtain only about one third per property (the will).

1.3 Kinds Of Testament

The basic of a will statement is a oral type and written type. So, in the Islamic law just two types and that are oral type and written type.

Requirement of the will :

1. Adult
2. Intellect

¹⁹ .إمام شهاب الدّين أبي العباس أحمد بن محمد الشافعي سلطان, إرشاد السّادي ثرح صحيح البخاريبيروت: دار الكتاب العلميّة, ١٩٩٦), ٢٢٨.

²⁰ Dian khairul Umam, *Fiqh Mawaris (Untuk IAIN, STAIN, PTS)*, (Bandung: Pustaka Setia, 1999), 238.

3. Independent

4. Trusteeship

People who give the will must cover the requirement below. So, the will can accomplish goodly, but the non-moslem (*harby or Dzimmy*) can accomplish during the giver is not slave. If the giver of a will is a slave then before death he independent and intellect so, the will reputed valid because the person is independent (*mukallaf*).

In the book of *sayyid sabiq*, the requirement of the giver (*Mushy*) are; adult, intellect, independent, and no forcing. And the receiver of the will (*Mushy Lahu*) is people who receive and he have good purpose and must sincere about the will which made by the giver of a will (*Mushy*) appropriate with sharia. And, if the non-moslem give the will to moslem slave and apostate so the will is not valid. And the Islamic scholar agree that the receiver of the will (*Mushy Lahu*) when he apostate so the will reputed in violation of the God's law²¹.

2. Donation of Body

2.1 History Of Donor

In the medical area trasnplantation is familiar, and also very famous with the experiment. Transplantation had save many life, in many experiment. Blood transfusion is one of transplantation types and doing often. This transplantation had save many life in the world. There are history of transplantation:

²¹http://etheses.uin-malang.ac.id/1679/5/06210029_Bab_2.pdf accessed on 13 June 2017.

In period of 1902, Being Possible Transplantation Alexis Carrel showing the vascular until organ transplantation enable in the first time. Operating the vascular (merge) is one of technique operation had founded by Doctor Alexis Carrel. New step is opening to enable continuous operate the transplantation with allowing tissue which operated and it is connecting with blood supply. Carrel keeps research about organ transplantation and find the machine that able to keep the organ until life out of body during transplantation going on. The period of 1905 – Transplantation cornea firstly, reported about transplantation the cornea at Olmutz, Moravia on December 1905. On December 7 1905, had accomplished the cornea transplantation for employee who had accident last year. The operating give the transplantation was success. And now, more than 2400 cornea transplantation accomplish per year. Cornea transplantation is an unique because not needing supply the vascular for life and cornea able to donation for 24 hours after death and can accomplish to all people with all kind of ages. Then in 1918 Blood Transfusion, happened in World war I, blood transfusion more sturdy to save many soul and operating can accomplish for the first time²². Many effort in blood transfusion and not going well in many years but they fail because the science behind the blood not understand all. And blood types and develop anti gelation, blood able to keep for transfusion with good result than before. During World War I, the soldier of British

²² Praticia Soetjipto, “*Naskah Akademik*”, (Universitas Indonesia, 2010), 7.

using the technology for making “*Depot Darah*” as keeper and first shape from blood bank. In period 1954 First Successful Kidney Transplantation. Actually first success in kidney transplantation done by Doctor Joseph Murray and Doctor David Hume, Brigham Hospital, Boston, Massachussets. Medical technic continuous and success to save more 400 thousand people in the world. The first practice to Ronald Herrick to His twin name Richard. The operating save his twin and the kidney is doing well. But, Normally the kidney had donated the donor is dead (In Articulo Moortis), or a third of the Donor is life²³.

Then in 1962 First successful kidney transplantation from (cadaver) by Dr. Joseph and Dr.Davidh, in Boston. Also in 1963 First successful lungs transplantation by Dr.James Hardy, University of Mississipi medical centre, jackson, MS²⁴.

In medical area, donor cannot release without anatomy. Anatomy is a science that studies the chronology of anatomical problems ranging from the incident of sacrificial sacrifice in ancient times to the complex analysis of body parts by modern scientists. In its development, people increasingly understand the functions and body structure through anatomy. The method of examination is always evolving, from the examination of the animal's

²³ Jorge Ortiz, Jason Andre, “*Understanding The Complexities of Kidney Transplantation*, (Crotia: InTech, 2011), 16.

²⁴ Praticia Soetjipto, “*Naskah Akademik*”, (Universitas Indonesia, 2010), 7.

body, the surgical corpse, to the complex techniques developed in the last century²⁵.

This period begins at least at the beginning of 1600 BC, when the papyrus of anatomical sciences by the scientists of ancient Egyptian civilization. At that time has been recognized some of the organs and basic knowledge of blood vessels.

Hippocrates was an ancient Greek medical scientist whose work is still recognized today. He was a doctor at the end of the 6th century BC or early 5th century BC. Hippocrates has been able to understand the basic science of skeletal and muscular systems, and the beginning of a deeper understanding of organ work such as the kidneys. However, many other works are based on speculation rather than on scientific research²⁶.

In the 4th century BC, Aristotle embarked on a better study of the system of the body through animal body surgery. He managed to distinguish the veins (veins) with arteries (arteries) and the relationship of more accurate organs.

The use of dead bodies of humans or corpses for anatomical science research began in the 4th century BC, when Herophilos and Erasistratus performed surgical dissidents

²⁵ Bernard J. Moxham, Odile Plaisant, “*the history of the teaching of gross Anatomy-how we got to where we are*”, Eur. J. Anat. 18 (3) (2014), 221.

²⁶ http://www.cengage.com/resource/uploads/download/1305511360_532325.pdf accessed on 14 August 2017.

in Alexandria under the aegis of the Ptolemaic dynasty. Herophilos was the man who first developed anatomy based on the original structure of the human body²⁷.

The scientist who was quite important in the days of ancient anatomy was Galen (2nd century AD). He collected much of his science from previous scientists and understood the function of organs by conducting live surgery on animals. Many collections of anatomical images are based on dog anatomy and are considered "Gray's Anatomy" in the ancient world for 1500 years. Many original works are missing, and most are known only to doctors in the Renaissance. Due to the religious prohibition of human surgery alive, Galen considers the structure of human anatomy similar to dog's anatomy.

Small advances in anatomical science occurred after the fall of the Roman Empire. Arab scientists have made much progress in other sciences, but not with anatomy because of prohibitions and taboos.

After Galen, there was an anatomical development in Bologna in the 14th century to the 16th century. The scientists learn more about things they can find on corpses. Finally, they can better understand the function of organs. Anatomists who played a significant role during this period were Mondino de Liuzzi and Alessandro Achillini²⁸.

In the sixteenth century, Vesalius published his anatomical images from the journey of Leuven to Padua by dissecting victims of hanging executions. He managed to show

²⁷ Bernard J. Moxham, Odile Plaisant, "the history of the teaching of gross Anatomy-how we got to where we are", *Eur. J. Anat.* 18 (3) (2014), 221.

²⁸ Alexandra Mavrodi, George Paraskevas, "Panagiotis Kitsoulis, *Research Article: History of Anatomy and Embryology*", (April 2013), 269.

the big difference between the anatomical picture of the human body with the dog (Galen's picture).

Scientists in the sixteenth and seventeenth centuries managed to understand the circulatory system, the invention of the valve in the vein, the blood flow from the left to the right ventricle of the heart, and the hepatic vein identified differently from other circulatory systems. Similarly, the discovery of the lymphatic system.

Anatomical science prevailed in the 17th and 18th centuries. With the presence of printing companies, the exchange of ideas and opinions can easily be done across Europe. Since anatomy concentrates on research and portrayal, the fame of the anatomist is surely proportional to the quality of his drawing ability, rather than the Latin ability.

Many renowned artists are studying anatomy, perform surgery, and publish the images for money, from Michaelangelo to Rembrandt. For the first time, leading universities open anatomy majors through drawing. However, obstacles sometimes come from the church.

Although this period is a harvest for scientists, it can be dangerous, as Galileo Galilei experienced. Some scientists are afraid to move like Descartes. Although all doctors agree that anatomy will support the development of medical science, only certain anatomists and licensed are allowed to perform surgery. Surgery is usually supported by city councils and always fix fees. Many European cities such as Amsterdam, London, Copenhagen, Padua, and Paris have royal anatomists tied to local

authorities. Although surgery is very difficult, but attending surgery is legal. This made many anatomical students wander around Europe²⁹.

Many European societies, interested in anatomy, are studying in Italy as anatomy education centers. Only in Italy, some important research is done such as surgery on a woman's body.

Realdo Colombo and Gabriele Falloppio were disciples of Vesalius (anatomist of the 16th century). Colombo, who eventually became a professor in Rome, made much progress in bone anatomy³⁰, improved facts about the shape and space of the heart, lung vessels, aorta and valves, new depictions of the brain and its vascular, correction of the inner ear understanding, And about the room on the larynx.

In the nineteenth century, many scientists provided anatomical images more profoundly than the previous century. In addition, also developed a science of microanatomy histology in humans and animals. Anatomical research is growing everywhere with Britain as its center.

Demand for corpses is increasing. For those various ways done, even murder. Seeing these unfavorable developments, the British parliament passed the 1832 Anatomy Law, which provided legal limits for the supply of bodies. This restriction led

²⁹ Bernard J. Moxham, Odile Plaisant, “*The History Of The Teaching Of Gross Anatomy-How We Got To Where We Are*”, Eur. J. Anat. 18 (3) (2014), 229.

³⁰ Bernard J. Moxham, Odile Plaisant, “*The History Of The Teaching Of Gross Anatomy-How We Got To Where We Are*”, Eur. J. Anat. 18 (3) (2014), 229.

to the commencement of the work of an anatomy science textbook that was finally famous, Gray's Anatomy³¹.

Anatomical research on hundreds of years ago helped much the development of understanding in new sciences such as molecular biology. Various developments also occur in sophisticated tools to understand the human body (especially living body), namely through MRI tools and CAT scanning.

The Government of Indonesia issued Government Regulation on Clinical Surgery and Anatomical Surgery and Transplantation of Human Body Tool and / or Network in 1981. This was done to maintain and honor the corpse as a human relic.

The clinical coronary surgery referred to is an autopsy measure conducted to determine the cause of death of the patient or in a criminal case, and acquire the knowledge that is deemed necessary. Anatomical body surgery is a post-mortem in the context of education³².

2.2 Definition Of Donor

Many definition about transplantation, there are:

- 1). In the medicine area, transplantation means transference tissue or organ to another place. This case can happen to one person or more³³.

³¹ ³¹ <http://research.fk.ui.ac.id/sisteminformasi/index.php/departemen/departemen-pre-klinik/departemen-anatomi> accessed on 23 May 2017.

³² <http://research.fk.ui.ac.id/sisteminformasi/index.php/departemen/departemen-pre-klinik/departemen-anatomi> Accessed on 23 May 2017.

³³ Fathurrahman Djamil, *Metod Ijtihad Majlis Tarjih Muhammadiyah* Cet. 1, Jakarta: Logos Publishing House, 1995), 112.

2). Transplantation is transference a tissue or human organ from another place on body self or other body with rules and certain condition³⁴.

3). In the dictionary of DORLAND medicine, had explained that origin from transplantation (trans+ L.plantare plant) means planting of tissue taking from the same body or from the other body. There is transplant means: 1. Transference the tissue from the section to other section. 2. An Organ or a tissue had taken from body to plant in another section on the same body or to other body of other person.

From some explanation mentioned previously above, it is showed that the aim and its means are remaining the same, in which the transference of the organ or an element of a human body in accordance of treatment previously. In the medicine's area, giving the organ its *donor*, and the receiver is recipient, and the organ called graft or transplant, also there is types of transplantation, 1. Donor in healthy condition 2. Donor in coma condition or death expected condition, and 3. Donor in death condition.

In medical rules, there is some rules required which are having the DNA, blood type, having the type of anti-gen which match perfectly between the donor and the recipient, and firming the circulation and metabolism area are still work perfectly and have not malfunction yet. This case will legally has its relation with an act that the organ of somebody or family had donor for other family not become problem. And have the certificate that participate the organ its legal and valid³⁵.

³⁴ Ratma Suprapti Samil, *Etika Kedokteran Indonesia*,(Jakarta: Bina Pustaka Sarwono Prawirohardjo, 2001), 101.

³⁵ Kutbuddin Aibak, *Kajian Fiqh Kontemporer Cet.1*, (Surabaya: ELKAF, 2006), 111.

2.3 Types Of Donor

Many types of the utilization will be divided into some section, those are:

- 1) Transplantation organ from life human.
- 2) Transplantation organ from dead human.
- 3) Transplantation from fetus.

The first type of utilization is the transference of the organ from someone life which covered these cases; transference the organ from one to other section in same body, like skin transplantation, fragile bone transplantation, hard bone transplantation, blood vessel transplantation, blood transfusion, and others. Transference the organ in the different body with the life donor has its aim which can determine the life of somebody and also single organ like heart, liver and two shape like the lungs and the kidney which these organs not determining life of somebody. Many types of organ not all can function in direct way and other in the new ways.

Second type of transplantation is the transference the organ from cadaver. An attention needed to know that the death are covering into two different situation, brain death which not function the aim of brain fully and complete and the medical the brain never back. Attention of two cases below, back to *Majma' al – Fiqh al – Islamy* in third conference. The third type of utilization is the transference of fetus which the utilization have three types of case, the fetus fall prematurely, the fetus fall premature in medical factor or criminal and also the fetus from fertilization out of the womb³⁶.

³⁶ Mahjuddin, *Masail Fiqhiyah Berbagai Kasus yang Dihadapi Hukum Islam Masa Kini*, (Jakarta: kalam mulia, 2012), 62.

2.4 Jurisprudence Of Islamic Scholar

a. Yusuf Qardhawi

In a book written by him is mentioned several sub-chapters about organ transplants. Among these, a Muslim donate their organs while still alive, to donate to non-Muslims, not the permissibility of selling organs, bequeath organs after death, and trustees and heirs of deceased organ donation portion.

In accordance with the theme of this study was bequeath organs after death. In the opinion of Yusuf Qardhawi, taking most organs deceased does not conflict with Personality 'in honor of deceased. Because that meant respect is to maintain and do not damage it. Displacements are not included in the category of damage, because the operations performed when the transplant is commonly performed at the time of surgery - other operations. In this case, there are provisions that must be met is to donate or donate whole body or part of many members of the body thus eliminating laws for the concerned deceased. Like, on the obligation to bathe, to wrap to pray, to bury, and others.

Similarly, the heirs of the deceased who mendedekahkan organ for the benefit of the deceased and also to be rewarded for appropriate levels of benefits that accrue sick people who need it. Then by Yusuf Qardhawi permissible for the heirs deceased to donate most organs needed by the people - people who are sick to treat them³⁷.

³⁷ Yusuf Qardhawi, *Fatwa-Fatwa Kontemporer Jilid 2*, (jakarta: Gema Insani Press, 1995), 762-766.

b. Fatwa Of Majma' Al-Fiqh Al-Islami

In the trial of the Islamic Fiqh Council in muktamar- 4 held in Jeddah on 18-23 Jumada Tsaniyah, 1988 M (6-11 Feb 1988) With reference to the problems that occur in the medical world and is a consequence of the advancement of science and medicine. Various things have seems positive and useful, but also the presence of anxiety in the community on the matter according to law allowed or problems about maintaining human dignity. Taking into account the existing beneficiaries in the maqasid sharia guarantee the realization of every good thing so valuable for individuals and groups calling for the sentence of mutual help and altruism.

The Council decided as follows: Judging from the definition and distribution, then :

1. What is meant by the members of the body is part of any member of the human body, in the form of a network of cells, muscles, blood and others. Both limbs attached and detached.
2. Efforts are removal the benefit that used and much needed vital function of one of the members of his body, a case of vision, and that will be the donor (people) will benefit and living patterns and noble shari'ah.
3. Shape taking advantage of the body.

Allowing for a heart transplant (organ) when it is very urgent and qualified specified in Islamic law on human organ transplants. In his words Taha verse 118-119 "Indeed, you (Adam) will not starve in her and not naked. And you will never thirst nor Mersa overwritten

scorching heat in it. "Verily Allah created the disease and the cure anyway. God wants man to profess it, already and did not find it difficult to move the issue of organs that do not function the way that the relevant transplant healthy and strong again - just like in principle fiqhiyah "Emergency will allow the bastard."

In another fatwa also noted that:

1. Emergency treatment is allowed from something that is forbidden.
2. Grafting of corneas from the dead to the living may be carried out in an emergency nature.
3. People who are forced to eat the carcass should not be led to death
4. People who choked his throat with a food that can cause death and forced drinking wine, then it is allowed on the condition and just little.
5. The doctor or nurse should not be viewed genitalia (female / male) unless he saw was an emergency / forced.

To the problem of heart transplantation, the law does not absolutely permissible, because sometimes successful events in the subject of medicine in small amounts. Therefore, the need for an inquiry before the transplant process begins³⁸.

3. Nahdlatul Ulama Scholar

Nahdlatul Ulama is one of the few mass organizations in Indonesia. Nahdaltul ulama stood by one of the madzab among which there are madzab Syafi'I, madzab Hanafi , madzab Maliki, and madzab Hambali. And Nadlatul Ulama Scholar based on madzab

³⁸ Husein Bahreisj, *Himpunan Fatwa*, (Surabaya: Al – Ikhlas1987), 563-565.

syafi'i, in the method of *ijtihadnya* Nahdlatul Ulama followed him. The methods undertaken among others are, are references in the books and references in the jurisprudence³⁹.

The reference in the book is as defined by the fiqh scholars according to the sequence. The sequence of opinions that is used as a guide from some books *an-Nawawiy* when there is a difference of opinion:

- 1) The opinion of the book *at-Tahqiq: Syarh kitab at-Tanbih*
- 2) The opinion of book *al-Majmu': Syarh kitab al-Muhadzdzab*
- 3) The opinion of book *At-Tanqih: Syarh Kitab al-Wasith*
- 4) The opinion of book *Raudlah ath-Thalibin: Mukhtasar kitab al-Aziz*
- 5) The opinion of book *Fatawinya Imam an-Nawawiy*
- 6) The opinion of book *Syarh Muslim*
- 7) The opinion of book *Tashhih at-Tanbih*
- 8) The opinion of book *Nuktah at-Tanbih*

From the above sequence, if there is a difference from the book of *Tuhfah al_muhtaj*, *Nihayah al-Muhtaj* with other books then the reference made is the opinion that exists in both books. If the difference occurs between the books of *syarah* or *Hashiah* books, while the disputed issues are not contained in the books of *Tuhfah* and *an-Nihayah al-Muhtaj*, then the precedence is as follows:

- 1) Book of shaykh Shaykh Zakariyya al-Anshariy

³⁹ TAPAK TILAS, *Jendela Madzab: Memahami Istilah dan Rumus Madzahib Al-Arba'ah*, (Kediri: Lirboyo Press, 20111, cet. III), 16-17.

- 2) Book of shaykh Imam Khatib asy-Syirbiniy
- 3) Book of Hasyiah Imam az-Ziyadiy
- 4) Book of Hasyiah Syekh Ibn al-Qasim al-‘Abadiy
- 5) Book of Syekh ‘Umairah
- 6) Book of Hasyiah Syekh ‘Ali Syubramilsiy
- 7) Book of Hasyiah Syekh al-Halabiy
- 8) Book of Hasyiah Syekh al-Saubariy
- 9) Book of Hasyiah Syekh al-‘Ananiy

While the books of Shaykh Zakariyya al-Anshariy that can be used as a reference is the book of syarh al-Bahjah then Manhaj ath-Thulab, because these two books do not deviate from the book Tuhfah and Nihayah al-Muhtaj.

While references in the fatwa⁴⁰Is the book of the followers of Ash-Shafi'iy, the fatwa of the Ashhab is also often there are differences of opinion. To use the opinion of the criteria and the order set by the scholars. Here is the order of fatwa level from the opinion of some scholars muta'akhirin asy-Syafi'iyah when there is a difference:

- 1) Opinions agreed by the imam an-Nawawiy dan ar-Rafi'iy
- 2) Opinions agreed by the imam an-Nawawiy When there happened *khilaf* between Imam an-Nawawiy and ar-Rifaiy no one did tarjih
- 3) Opinions are addressed from one ar-Rifa'iy and an-Nawawiy
- 4) Opinion of Imam ar-Rafi'iy and Imam an-Nawawiy did not comment

⁴⁰ TAPAK TILAS, *Jendela Madzab: Memahami Istilah dan Rumus Madzahib Al-Arba'ah*, (Kediri: Lirboyo Press, 20111, cet. III), 17-18.

- 5) The opinion set by the majority of scholars when Imam ar-Rafi'iy and Imam an-Nawawiy did not set it.
- 6) Opinions set by scholars of fiqh experts.
- 7) Opinions set by wara'i scholars.
- 8) The opinions set by Imam Ahmad ibn Muhammad ibn Hajar al-Haitamy according to the Hijaz scholar, or the opinion set by Imam Syamsudin Muhammad ibn Ahmad ibn Hamzah ar-Ramliy according to the Egyptian scholar.
- 9) And so on.

It can be concluded also that the source of madhhab law of Asy-Shafi'iy is to follow al-Kitab and as-Sunnah, following the truth of the proposition, based on the ijma', prioritizing the opinion of the Companions of the Prophet, establishing the source of Qiyas law, taking the law of origin as the legal ground, Istishhab which establishes a second time law based on the existence of the law already existed at the first time because no factor was found to require change, and the last al-istiqlal 'which examines the things partial and uses its conclusion as a tool to punish something Which is general⁴¹.

The attempt to extract laws from references (maraji ') in the form of books of fiqh which are generally systematized in several systematic components: worship, muamalah, munakahat, and jinayat. In this case, the NU scholars and the bahtsul masail

⁴¹ TAPAK TILAS, *Jendela Madzab: Memahami Istilah dan Rumus Madzahib Al-Arba'ah*, (Kediri: Lirboyo Press, 2011, cet. III), 4-5.

forum direct their orientation in the legal decision to the independent and intra-Madya al-mujtahidin law. If by chance found the opinion that already exist nasnya, then the words that are held. If not found it will turn to revenue takhrij results. If there is a difference of opinion then it is taken strongly according to the tarjih expert's battle⁴².

The mask bathsul institution in Nahdlatul Ulama is a forum co-ordinated by the legislature. This forum is in charge of taking a decision on the laws of Islam both with respect to the fiqhiyya period as well as the problems of ketauhidan, even tarekat affairs. This forum is usually followed by syuriah and Nahdlatul Ulama scholars who are siluar organizational structure including the caretaker cottage. The issues discussed are generally the incidents experienced by community members submitted to syuriah by organizations or individuals. After the inventory of the proposed problem, a discussion of the priority of the discussion is then made to the higher level of organization: from branch to branch, from branch to region, from region to large board, from big board to munas which eventually to the conference⁴³.

In terms of historical or orientalist, *bahtsul masail of Nahdlatul Ulama* is a forum that is very dynamic, democratic and insightful. Because of the society problems always follow the development of society, and is said to be democratic because the forum does not distinguish between *kyai* and *santri*, young or old. The strongest

⁴² Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 51-52.

⁴³ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, 52.

opinions will be taken. It is said to be broad-minded because in *bahtsul masail* there is no dominance of *madzab* and always agree on differences⁴⁴.

The notion of *istinbath al-ahkam* among Nahdlatul Ulama is not to take directly from its original source, that is al-quran and sunnah, but in accordance with the basic attitude of meditating by way of dynamically applying the jurisprudence in the context of the problem which is sought by law. With the foundation of *Nahdlatul Ulama* scholars have limitations in digging knowledge if based on al-quran and sunnah directly. With that, the sentence *istinbath* done among scholars of *Nahdlatul Ulama* is *ijtihad* by using *batsul masail* sentence which means to discuss the problems that occur through reference, namely books by experts jurisprudence⁴⁵.

Legal decision-making systems have problem-solving procedures, hierarchies and the nature of mass decisions, as well as the problem analysis framework. In the procedure of answering the problem in the decision *bahtsul masail* environment *Nahdaltul Ulama* is made in the framework of meditating to one of the four *madzab* agreed and prioritized in *qauli berkadzab*. Therefore, the problem solving procedure is arranged in the following order:

1. In the case where the answer is looked by book and there is only one face, the face is expressed as described in their likeness.
2. In the case where the answer is looked by the book and there are more than one face, then *taqrir jama'i* is to choose one face.

⁴⁴ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 52.

⁴⁵ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, 55.

3. In the case of no one face at all that provides a solution, then performed the procedure *ilhaqul-masail bi nazha'iriha jama'i* by the experts.

4. In the case of no one face at all and impossible to do ilhaq, then can be performed procedure *ilhaqul-masail bi nazhar'iriha manhaji* by the experts.

The hierarchy and the nature of mass decisions are as follows:

1. All decisions *bahtsul masail* environment *Nahdlatul Ulama* taken with procedures that have been agreed in this decision, both organized in the organizational structure and outside have equal position and not cancel each other.

2. A result of the decision *bahtsul masail* considered to have higher binding power after endorsed by the board *syriah Nahdlatul Ulama* without having to wait *munas alim ulama* or *muktamar* are:

- a. Ratifies the draft decisions prepared before and or.
- b. Intended for judgments assessed to have wide impact in all fields⁴⁶.

4. Jurisprudence of Islamic Scholar about Surgical Of Corpses

In determining the legal problem, the differences of opinion on the clergy, as follows: 1.Imam Ahmad Bin Hanbal A pregnant and then she dies, her stomach does not need surgery, but is already believed to be true that the fetus was still alive. 2.Imam Shafi If a pregnant, then she died and it turns out her fetus was still alive then be dissected stomach to deliver the fetus. Likewise, the law, if the stomach of the deceased

⁴⁶ Djamaluddin Miri, Imam Ghazali Said, *Ahkamul Fuqaha solusi Hukum islam, keputusan muktamar, munas dan konbes Nahdlatul Ulama*, (Surabaya: Diantama, 2006), 627-628.

no valuables. 3.Imam Malik A man who died and no valuables in the stomach, then the body was to be dissected. Both in the belly of the corpse's own property or the property of others. However, it should not be dissected if only to remove the fetus estimated to remain alive. 4.Imam Hanafi If the estimated fetus in the belly is still alive, then it must be dissected to remove the fetus. The opinion of the scholars mentioned above is only a matter of the fetus and valuables alone. Regarding the post-mortem examination for other purposes such as the purpose of education, research interests is not mentioned at all. This is because the matter at the time of the scholars of the above is not true. Problems encountered is still very simple. In this issue, the need for scientists or mujtahid - new mujtahid to solve the problem - a problem that in accordance with the field and also required in accordance era⁴⁷.

5. Normative Foundation of Utilization Body

1. Act number 23 year 1992 on health

in this law stated that the transplant by definition is a series of medical procedures to remove the organ or tissue derived from someone else's body or the body itself in order to replace the treatment of organ or tissue that is not functioning properly. in article 33 explained that the transplantation of organs or tissue just untyk humanitarian purposes and not for commercial purposes. and in article 34, the transplant is only done by health workers who have the expertise and authority to do so and be done in a certain medium. harvesting of organs or tissue from a

⁴⁷ M. Ali Hasan, *Masail Fiqhiyah Al Haditsah (pada masalah – masalah kontemporer Hukum Islam)*, (Jakarta: PT RajaGrafindo Persada, 1996), 141-143.

donor should be noted that the relevant donor health and the consent of the heirs or his family. equipped for post-mortem in implementing and development can be done to cause disease or cause investigation as well as health education. to article 70 include offenses for those who commercially in Article 81 where the article 69 paragraph (2) and (3) shall be a maximum fine of Rp. 140,000,000.00 (one hundred forty million)⁴⁸.

2. Government Regulations number 18 1981 year on post-mortem clinical and post-mortem anatomy and apparatus transplantation or and tissue of the human body transplantation.

in this regulation, can be divided into two post-mortem. the first, post-mortem clinical seeks to know for sure the disease or disorder is the cause of death and for the assessment of the results of health recovery efforts. while the post-mortem anatomical, is an examination conducted for educational purposes in the field of medical science. anatomical autopsy described in chapter three. and Article 5, for the post-mortem anatomical required corpses obtained from the hospital with the terms and conditions. Article 6 anatomical autopsy can only be done in a medical school anatomy ward. Article 7 of the post-mortem anatomical dilakukan oleh kedokteran medical students and scholars under the leadership and direct responsibility of an expert explained. Article 8 of the corpse treatment before, submarines, and after the post-mortem anatomical

⁴⁸ Undang-undang nomor 23 tahun 1992 tentang kesehatan.

carried out in accordance with their respective religion, belief in God almighty one and regulated by the health minister⁴⁹.

3. Kompilasi Hukum Islam about testament.

KHI explained that the will as much as possible is a third of properties. requirements that must dipenuhiadalah presence of two witnesses and the consent of the heirs. will be done through speech and writing⁵⁰.

6. Maslahah Mursalah

The term of Maslahah Mursalah is forming into two words 1). Maslahah means benefit, 2). Mursalah means quit. The combination of these word is something that considered having a benefit but there are no clear act for realization and also have no proofed dalil which reject or support⁵¹.

Many of the terms put forward by the Ulama concerning Maslahah mursalah. As stated by usul fiqh experts that maslahah mursalah is a benefit that is not made by lawmakers to legitimize it and there is no theorem 'syara' who pay attention or ignore it. Second, according to Dr. Husain Hamid Hassan maslahah mursalah is maslahat yangtermasuk in the type proposed by lawmakers globally without any clear argument. And according to Prof. Dr. Mukhtar Yahya and Prof. Drs. Fathurrahman maslahah

⁴⁹ Peraturan Pemerintah Nomor 18 Tahun 1981 Tentang Bedah Mayat Klinis Dan Bedah Mayat Natomis Serta Transplantasi Alat Atau Jaringan Tubuh Manusia.

⁵⁰ Kompilasi Hukum Islam.

⁵¹ Amir syarifudin, *Ushul fiqh 2*, (Jakarta: Kencana, 2008), 343-344.

mursalah is a maslahat not defined by syara 'a law to make it happen and there is no theorem syara' who pay attention or ignore it⁵².

From the definition of *maslahah* can be concluded that *maslahah* is something that is considered good by common sense because it brings good and avoids evil (damage) for human, and in line with *syara'*. *Maslahah* aims to meet the needs of human beings and therefore contain understanding to follow the passions. And the reference *syara'* is *maqasid sharia* (maintenance of religion, soul, mind, descent, and possessions)⁵³.

And from some of these definitions can be taken elements *maslahah mursalah*:

1. The existence of the benefit contained in an event that will be determined by law through *maslahah mursalah*.
2. Maslahat contained in the event is not contrary to *maqasid shari'ah*.
3. There is no concrete passage in explaining to do or ignore⁵⁴.

6.1 Terms Maslahah Mursalah

In using *maslahah mursalah*, there are several conditions that must be met as follows:

- a. *Maslahah mursalah* should have a tendency towards the aim of the Shari'a although in general and not contrary to the basic syari', the legal arguments.

⁵² Noorwahidah, *Esensi Al-Maslahah Al- Mursalah dalam teori Istinbath Hukum Imam Syafi'I*, (Banjarmasin: Fakultas Syariah IAIN Antasari Banjarmasin, 2014), 3.

⁵³ Amir syarifudin, *Ushul Fiqh 2*, (Jakarta: Kencana, 2008), 369-370.

⁵⁴ Noorwahidah, *Esensi Al-Maslahah Al- Mursalah dalam teori Istinbath Hukum Imam Syafi'I*, (Banjarmasin: Fakultas Syariah IAIN Antasari Banjarmasin, 2014), 3.

- b. The discussion should be rational with an indication if exposed to the intelligent people they will accept.
- c. Its use aims for a very urgent need or to eliminate various forms of religious difficulties.
- d. Maslahah mursalah used to make the law is really maslahah not real allegations.
- e. Maslahah that is used is a general maslahah, not maslahah for the interests of a particular group or individual⁵⁵.

According to Imam al-Ghazali in making operational constraints maslahah mursalah to be accepted as a basis for the establishment of Islamic law:

- a. *Maslahah* must be in line with the purpose of determining Islamic law that is to maintain religion, soul, mind, property and descent or honor.
- b. *Maslahah* should not conflict with the Qur'an and sunnah and *ijma'*.
- c. Maslahah occupies the level of *daruriyyah* (primary) or *hajiyyah* (sekunder) which is level with *daruriyah*.
- d. The Maslahah must be qath'i or zanny that approached qath'i.
- e. In certain cases, required requirements must be *qathiyah*, *daruriyah*, and *kulliyah*⁵⁶.

⁵⁵ Ainul Yaqin, *Urgensi Teori Maqashid Syariah Dalam penetapan Hukum Islam dengan Pendekatan Maslahah Mursalah*, (Probolinggo: IAIN Nurul Jadid, 2015), 35.

⁵⁶ Ainul Yaqin, *Urgensi Teori Maqashid Syariah Dalam penetapan Hukum Islam dengan Pendekatan Maslahah Mursalah*, (Probolinggo: IAIN Nurul Jadid, 2015), 37.

6.2 Miscellaneous Maslahah Mursalah

The division of maslahah mursalah can be distinguished into two kinds the level and aspect of its existence. First, there are three kinds of levels. Maslahat daruriyat is the basis of the upholding of human life both relating to religion and the world. According to Zakariya al-Bisri maslahat daruriyat is a basic human base to ensure the survival of human life. Related to this maslahat is the maintenance of religion, soul, mind, descent, and property. The second is maslahat hajiyat is a problem-persoalan associated with human life to eliminate the difficulties and distress faced. In this maslahat, the level is lower than maslahat daruriyat. The legal provisions that apply to this maslahat are to facilitate the achievement of human interests such as breaking the fast for the traveler, meng qasr prayer when traveling, and others. The last is the maslahat tahsiniyah that is to maintain the goodness and goodness of character and beauty only. If maslahat not done in life will not cause difficulties and shocks and destruction of the order of human life. This maslahat is a complement to the previous maslahat-maslahat and will not cause damage if not done⁵⁷.

The types of maslahah mursalah are: 1. Maslahah mu'tabarah Maslahah accredited sharia and have an eternity in the action of perseverance for its realization. 2. Maslahah al-mulgah, which accredits the maslahah by the brain but is falsely accredited because it is against the sharia rules. 3. Maslahah mursalah, containing the problem without the direct decision of the action and also unmatched in Qur'an and hadith for an analogy. Scholars of Fiqh agree that maslahah mursalah unlawful become the basis of

⁵⁷ Romli, *Muqaranah Madzahib Fil Ushul*, (Jakarta: Gaya Media Pratama, 1999), 159-162.

the act of worship, but that means a legal action and the basis of action that can still be realized in the muamalah that fit with the time. Maslahah Mursalah means opening the gates of judges in court or masters to defend the action as desired with the motive of benefit⁵⁸.

Criteria maslahah mursalah is: Opinion Abdul Wahab Khalaf, about maslahah mursalah:

1. Benefits of accredited maslahat true can provide feedback on the benefits or reject the ugliness, not just assessment. 2. Something that is accredited maslahat as a public urgency, not personal. 3. Accredited maslahah not contrary to the decision of the Qur'an or Hadith or contrary to Ijma.

Ibn al-Qayyim al-jawziyah Ibn al-Qayyim al-jawziyah a Hanbali Islamic figure concluded that Islamic sharia is built for the benefit of humanity and other universal humanitarian goals, namely profit, justice, mercy, and wisdom. Izuddin ibn Abdi al-salam said the achievement of human kindness is the goal of all the burden of law in Islam⁵⁹.

The scholars who agreed on maslahah as a source of Islamic law say that where there is maslahat then there is Shari'a and vice versa. Means there is no contradiction between sharia and maslahat texts. Thus the importance of benefit though not confirmed by the al-Quran and hadith that can be used as a source of law. With the record, the

⁵⁸ Satria effendi, M. Zein, *USUL FIQH*, (Jakarta:Kencana,2005), 148-151.

⁵⁹ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 107.

benefits do not negate the Naas al-Quran and hadith. These benefits should be the basis and substance of all law enforcement activities. The calculation of benefits and congruence must be in the minds of jurists and policymakers when it comes to enforcing the law or enforcing the law⁶⁰.

The scholar of *Usul Fiqh* agree that *maslahah mursalah* is not valid of being the basic of act in worship section, whereas it means as a valid and the basic of act which still can be a realization on *muamalah* section that appropriate with period. *Maslahah Mursalah* means open the gate for the judge in the court or master to maintain the act according to desire with benefit motive⁶¹. The criteria of *maslahah mursalah* are:

Abdul Wahab Khalaf' Opinion, about *maslahah Mursalah*:

1. Accredited benefit duly factual *maslahat* can feedback the benefit or reject the ugliness, not only assessment.
2. Something accredited *maslahat* as public urgency, not personal.
3. Accredited *maslahah* not contradict with decision on Qur'an or Hadith or contradict with *Ijma'*⁶².

Ibnu al-Qayyim al-jauziyah Ibn al-Qayyim al-jawziyah an Islamic figure Hanbali concluded that the Islamic Shari'ah was built for the benefit of humanity and other universal humanitarian goals, namely benefit, justice, mercy, and wisdom. Izuddin ibn

⁶⁰Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, 108.

⁶¹ Satria effendi, M. Zein, *USUL FIQH*, (Jakarta:Kencana,2005), 148-151.

⁶² Satria Effendi, M. Zein, *USUL FIQH*,(Jakarta:Kencana,2005), 152-153.

Abdi al-salam said, the achievement of human good is the goal of all the burden of law in Islam⁶³.

The scholars who agreed on *maslahah* as a source of Islamic law say that where there is *maslahat* then there is *Shari'a* and vice versa. Means there is no contradiction between *sharia* and *maslahat* texts. Thus the importance of *kemaslahtan* although not affirmed by the Koran and *hadith* that can be used as sources of law. With note, the benefit is not negated *nas al-Quran* and *hadith*. This benefit must be the basis and substance of all legal enforcement activities. The calculation of the benefit as well as the congruence must be in the minds of jurists and policymakers when it comes to enforcing the law or enforcing a law⁶⁴.

In reality *fiqh* books by Abu Yasid explained that⁶⁵, in Islam is highly valued human glory. Both life and the dead. Because humans have many advantages that are not owned by other creatures. Humans endowed with reason to think, the perfect body, the ability to regulate the universe, as Allah says:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ

كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا⁶⁶

⁶³ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 107.

⁶⁴ Akhmad Sahal, *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 108.

⁶⁵ Abu Yasid, *Fiqh Relaitas Respon Ma'had Aly Terhadap Wacana Hukum Islam Kontemporer*, (Yogyakarta: Pustaka Pelajar, 2005), 222-235.

⁶⁶ QS. Al-Isra'(17): 70.

Meaning: Verily we have honoured the Children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created with a marked preferment.

Therefore our fellow human beings are forbidden to trample on the dignity of others. One should not destroy the soul, feelings, dignity, and rights of others. Even against corpses in religion is prohibited. And on the contrary, we should glorify it, as the Prophet said:

المُسْلِمُ عَلَى الْمُسْلِمِ حَرَامٌ دَمُهُ وَ مَالُهُ وَ عِرْضُهُ

Meaning: “Every Muslim is forbidden on other Muslim blood, property and honor.”

In the above hadith, one can not sacrifice others for the sake of self. If it is associated with a body donor it is taking a person's body to the object of research of medical students in the teaching of anatomy. So the purpose of teaching is for the benefit of many people who are getting more and more new diseases and not yet found the cure, and also the only way is to dissect the body of the human corpse for the benefit of teaching.

Similarly, the corpse will be autopsy. The corpse had to be dissected and carried out research on the body to find out the cause of death on the corpse. As in the explanation Ahmad al-Syarbashi namely:

The existence of a *dharurat* that requires to investigate the body of a corpse or cut off one of its limbs. Related to this problem, the scholars allow dissect human bodies because of their high *maslahah* and valuable. As to know the cause of death or in medical education know the human body parts real. However, the scholars limit the extent of needs not more.

Utilization of corpses for the benefit of education is allowed because it belongs to the category of pilgrimage. Because in the medical world can be ascertained human health is a sure thing for the continuous. However, not freely perform surgery to the corpse, according to the needs only. This is based on *fiqh* rules:

ما أُحِلَّ لضرورةٍ أو حاجةٍ يقدرُ يقدرُ بقدرِها

Meaning: “Something permitted because of *dharurat* or necessity, then only allowed according to the level of the need.”

So the utilization of a corpse body done for teaching in the medical faculty must be in accordance with the needs only. If the body can no longer function in education then as a living person has an obligation to care until it also buries.

7. Theory of Taking Law of Nahdlatul Ulama

Scholar Nahdlatul Ulama is one of the few mass organizations in Indonesia. Nahdaltul ulama stood in one of the madzab among them the madhhab Syafi'I, Hanafi madzab, Maliki madzab, and Hambali madzab. And Nadlatul Ulama Scholars based on madzab syafi'i, in the method of *ijtihadnya* Nahdlatul Ulama followed him. The methods undertaken include the reference in books and references in jurisprudence.

References in this book are as defined by fiqh scientists in their order. The order of opinion used as the guidance of several books an-Nawawiy when there is a difference of opinion: 1) The opinion of the book at-Tahqiq: Syarh Kitab at-Tanbih 2) The opinion of the book al-Majmu ': Syarh Kitab al-Muhadzdzab 3) Tanimih: Syarh Kitab al-Wasith 4) Opinion of Raudlah ath-Thalibin: Mukhtasar al-Aziz 5) Opinion of Imam an-Nawawiy's book 6) Opinion of Syarh Muslim book 7) Opinion of Tashhih at-Tanbih book 8) Opinion of book Nuktah at –Tanbih.

From the above sequence, if there is any difference from the book of Tuhfah al_muhtaj, Nihayah al-Muhtaj with other books then the reference made is the opinion in both books. If the difference occurs between the books of syarah or hashiah books, while the issue of disputes is not contained in the books of Tuhfah and a-Nihayah al-Muhtaj, then the priorities are as follows: 1) Book of Sheikh Zakariyya al-Anshariy 2) Book of Shaykh Imam Khatib asy-Syirbiniy 3) Book of Hashiah Imam az-Ziyadiy 4) Book of Hashiah Shaykh Ibn al-Qasim al-'Abadiy 5) Book of Shaykh Umairah 6) Book of Hasiyah Shaykh 'Ali Syubramilsiy 7) Book of Hashiah Shaykh al-Halabiy 8) Book of Hashiah Shaykh al-Saubariy 9) Book of Hashiah Shaykh al-'Ananiy While the book of Sheikh Zakariyyah al-Anshariy which can be used as a reference is syarh al-Bahjah then Manhaj ath-Thulab, because these two books do not deviate from the book Tuhfah and Nihayah al-Muhtaj.

While references in the fatwa are the book of the followers of Ash-Shafi'i, fatwa Ashhab also often there are differences of opinion. To use the criteria and sequence opinions set by the scientists. This is the order of fatwa from the opinion of some

scholars muta'akhirin asy-syafi'iyah if there is a difference: 1) Opinion agreed by imam an-Nawawiy and ar-Rafi'iy 2) Opinion agreed by imam an-Nawawiy When happened erroneous between Imam an-Nawawiy and ar-Rifa'iy no one does tarjih 3) Opinions addressed from one ar-Rifa'iy and an-Nawawiy 4) Opinions of Imam ar-Rafi'iy and Imam an-Nawawiy do not comment 5) Opinions set by the majority clerics when Imam ar-Rafi'iy and Imam An-Nawawiy did not arrange it. 6) Opinion proposed by fiqh scholars. 7) Opinions set by wara'i scholars. 8) The opinion was given by Imam Ahmad ibn Muhammad ibn Hajar al-Haitamy according to the Hijaz scholar, or the opinion set by Imam Syamsudin Muhammad ibn Ahmad ibn Hamzah ar-Ramliy according to the Egyptian scholar. 9) And so on⁶⁷.

It can be concluded also that the source of madhhab ash-shafi'iyah law is to follow the Book and Sunnah, following the truth of proposition, based on ijma ', prioritizing the opinion of the Companions of the Prophet, establishing the source of Qiyas law, taking his original law as the legal basis, Istishhab legislation second only to the existence of existing laws at the first time because no factors are known to require change and the latter Al-istiqra 'who examines partial matters and uses his conclusions as a tool to punish something of a general nature.

Attempts to take the law of reference (maraji ') in the form of fiqh books are generally systematized in several systematic components: worship, muamalah, munakahat, and jinayat. In this case, the Nahdlatul Ulama scholars and mas bahtsul

⁶⁷ TAPAK TILAS, *Jendela Madzab: Memahami Istilah dan Rumus Madzahib Al-Arba 'ah* cet. III, (Kediri: Lirboyo Press, 2011), 4-5.

forums orient their orientation in legal decisions to the independent and intra-Madya al-mujtahidin law. If by chance find an opinion that already exists naasnya, then the words are held. If not found it will switch to the revenue takhrij. If there is a difference of opinion then it is taken strongly in accordance with tarjih expert battles⁶⁸.

The bathsul mask institution at Nahdlatul Ulama is a forum coordinated by the legislature. This forum is in charge of making decisions about Islamic law both concerning the fiqhiyya period and the problems of ketauhidan, even tarekat. This forum is usually followed by syuriah and Nahdlatul Ulama scholars who are outside organizational structures including temporary huts. The issues discussed are generally the incidents experienced by community members submitted to syuriah by organizations or individuals. After the inventory of the proposed problem, the discussion of the priority of the discussion is then made to a higher level of organization: from branch to branch, from branch to region, from region to large council, from large council to munas that finally reaches the Conference⁶⁹.

In terms of history and orientalis, bahtsul masail Nahdlatul Ulama is a forum that is very dynamic, democratic and insightful. Because the problem of society always follow the development of society and is said to be democratic because the forum does not distinguish between kyai and santri, young or old. The strongest opinion will be taken.

⁶⁸ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 51-52.

⁶⁹ Akhmad Shal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*, (Bandung: PT. Mizan Pustaka, 2015), 52.

It is said to be broad-minded because in bahtsul masail there is no dominance madzab and always agree on differences⁷⁰.

The idea of istinbath al-ahkam among the NU is not to take it directly from its original source, ie the Qur'an and the Sunnah, but in accordance with the basic attitude of meditating by applying dynamically jurisprudence in the context of the problems sought by law. With the founding of the Nahdlatul Ulama scholars have the limitation in digging knowledge if based on al Quran and sunnah directly. With that, the sentence istinbath done among ulama Nahdlatul Ulama is ijihad by using the phrase batsul masail which means discussing the problems that occur through reference, that is the book by jurisprudence experts. The legal decision-making system has problem-solving procedures, hierarchies, and mass decisions, as well as a problem analysis framework. In the procedure to answer the problem in the decision bahngul masail environment, Nahdaltul Ulama made in order to meditate to one of four madzab agreed and prioritized in qauli berkadzab. Therefore, the troubleshooting procedure is organized in the following order:

1. In cases where the answer is seen by the book and there is only one face, the face is expressed as depicted in their likeness.
2. In the case where the answer is seen by the book and there is more than one face, the taqrir jama'i is choosing one face.

⁷⁰ Akhmad Sahal (ed), *Islam Nusantara Dari Ushul Fiqh Hingga Paham Kebangsaan*,52.

3. In the case of no face at all which gives a solution, then performed the procedure ilhaqul-masail bi nazha'iriha jama'i by experts.

4. In the case of no face at all and impossible to do ilhaq, it can be done ilhaqul-masail bi nazhar'iriha manhaji procedure by experts.

Hierarchy and nature of mass decisions are as follows: 1. All environmental decisions bahsul masail Nahdaltul Ulama taken with procedures that have been agreed in this decision, both organized in the organizational structure as well as outside have the same position and not cancel each other. 2. Due to the decision of the mass bahsul which is considered to have higher bonding strength after being endorsed by Syariah council Nahdlatul ulama without having to wait for munas alim ulama or muktamar is: A. Ratify draft decisions prepared before and or. Aimed at assessments assessed to have broad impact in all areas⁷¹.

⁷¹ Djamaluddin Miri dan Imam Ghazali Said, *Ahkamul Fuqaha solusi Hukum islam, keputusan muktamar, munas dan konbes Nahdlatul Ulama*, (Surabaya: Diantama, 2006), 627-628.





CHAPTER III

RESEARCH METHOD

A. Type Of Research

Research method is very necessary in order to get a valid data. In this part, the researcher uses some techniques and does some steps in collecting the data. The type of this research is empiric. That is mean this reseach directly towards the object being examined in order to obtain data treating to the matters that are discussed. The procedure research that get the descriptive result like some written words or oral from informan⁷². Descriptive reseach is describing characteristic of individu completely, characteristic of indication, characteristic of situation, or group for

⁷² Kasiram, *Metodologi Penelitian Kuantitatif – Kualitatif*, (Malang: UIN Malang Press), 151.

determine distributing an indication, or determine the relation between indication and other indication in societ⁷³. Characteristic of qualitative research is analyze descriptive. The data that get like result of observation, result of interview, result of ducomentation, analyzis of documentation, field note, researcher arranges in location, and not describe in type and quantitative.

Researcher makes data analysis with increase the information, find the relation, comparing, find the pattern from the original data. Result of data analysis is explanation about situation after observation that serve in narative text⁷⁴. Type of this research used by researcher was empiric research on an Islamic institution in Malang, specially in affiliate of Association Nahdlatul Ulama Scholar that can be informant are comissions of fatwa bahtsul Masail.

B. Approach Of Research

In this law research, many approach of research. The researcher gets the information from many ways about issue that searching the answer. There are, statute approach, case approach, comparative approach, historical approach, and conceptual approach⁷⁵. Data exposure generally answer the questions that problem why and how that fenomenm happen. For researcher must understand and capable in this topic, so can give the justification about concept and meanin from the data.

C. Type And Data Source

⁷³ Siti Woerjan Soemadidjojo Mahadewa, *Betal jemur ada makna*, 17.

⁷⁴ <http://belajarpikologi.com/metode-penelitian-kualitatif/> accessed on 5 March 2017.

⁷⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010), 93.

Data Source is important for research. Means, data source in the research is subject and hoe to get the data. In the research are two types of data source, primer and secondary.

1). Data Primary

The location to get the data directly on interview way, observation,documentation from informant in the constitution of Nahdlatul Ulama Scholar Malang specially in comission fatwa bahtsul Masail. For knowing the posture and study literature of law for receive the problem about the will of donor human body fpr education purpose that establish in medical field. The informant in this research is

No.	Nama	Keterangan
1.	K. H Athoillah Wijayanto, S.Ag	Chairman of jurisprudence bathsul masail Nahdlatul Ulama Scholar Malang
2.	Dr. H. Nasrullah, Lc., M.TH.I	Member of the board of Nahdlatul Ulama Scholar Malang
3.	Dr. K.H Chamzawi, M.HI	Rais Syriah of the Administrators of the branch of Nahdlatul Ulama Scholar Malang
4.	KH Marzuki Mustamar,	Musytasar
5.	Moch. Said, M.Pd	Chairman of Batsul Masail institusion

2). Data Secondary

While secondary data is data supporter from books or jurnal that help in research and relate to the topic of this research.

D. Collecting Technique

1. Interview

Interview is an oral activity that is done by the researcher which the researcher meets face to face with the informant. In order to get the data, the researcher did the interview with Ulama of the Nahdlatul Ulama Scholar of PCNU (affiliate of Association Nahdlatul Ulama Scholar) Malang.

2. Documentation

Documentation here means that the researcher's documentation while doing the interview with the informant. The documentation type here is video that was taken directly while doing the interview with the Ulama of of the Nahdlatul Ulama Scholar of PCNU (affiliate of Association Nahdlatul Ulama Scholar) Malang. The documentation has important function for the researcher. If there will be any misunderstanding things while collecting the data, the researcher can check it in the books, Journals that related to the title of this research. Besides, the documentation will help the researcher through this research.

E. Data Analisis Method

The researcher used qualitative data inductively. This data analysis technique brings the researcher to process the data in some phases. Those phases are the examination of the data (editing), in classification (classifying), verification (verify), analysis (analyzing) and the making of the conclusion (concluding).

1) Editing

In order to collect the quality data, the researcher selects the important one. Then, the researcher re-checks it with rereading the reference and other

information that is taken while doing the interview with the Ulama of of the Nahdlatul Ulama Scholar of PCNU (affiliate of Association Nahdlatul Ulama Scholar) Malang and books that correlates with the research problems.

2) Classifying

The data classification is grouping various kinds of answers into the limitless categories⁶.

3) Verifying

Verifying is reviewing in detail about the law reference or data and informations that is taken from the field and books to get valid data. Verification is the next step in re-checking the reference and the data.

4) Analyzing

Analyzing is comparing the data that was taken from Ulama of Affiliate of Association Nahdlatul Ulama Scholar Malang with the correlated theories.

5) Concluding

After the fourth stage of the data processing view of scholars in the study completed last step in processing the data is concluding. What is meant by concluding is a conclusion of the data obtained after analysis to obtain answers to the reader in accordance with that described in the background⁷⁶.

With the data that has been obtained, the next step for researchers is to

⁷⁶ Nana Sudjana, *Proposal Penelitian DiPerguruan Tinggi*, (Bandung: Sinar Baru Algesido,2008), 6.

analyze all the data obtained through interviews and data libraries to make conclusions generate concise and clear picture.





CHAPTER IV

FINDINGS AND DISCUSSION

A. Finding

One of the important field research is the data directly obtained from the field. The explanation below consist of data obtained through interviews and documentations. The data grouping is aimed to give efficient and comprehensive to the reader.

The data consist of research location, interview data of the basic thought of Nahdlatul Ulama scholar about human body donors for education purpose, and the informant data. The explanation of reseach location consist of geographical conditions, and history of Nahdlatul Ulama Scholar Malang.

General description of Malang city. The city of Malang is a city located in the province of East Java, Indonesia. The city is located 90 km south of Surabaya and is the second largest city in East Java after Surabaya, and is one of the largest cities in Indonesia by population. Malang is also the second largest city in the southern part of Java island after Bandung. Malang is located on a high plateau which is quite cool, and the whole area is bordered by Malang Regency. The total area of Malang is 110.06 km². Together with Batu city and Malang regency, Malang city is part of the unity of metropolitan area of Malang. The Malang region with a population of about 4.5 million, is the second largest metropolitan area in East Java after Gerbangkertosusila. Malang Raya area is known as one of the main tourist destinations in Indonesia.

1. Reseach Location

Nahdlatul Ulama Malang is located in the city of Malang which is specifically located in Jalan K.H. Hasyim Ashari No.21, Kauman, Klojen, Malang City, postal code 65119. Secretariat or office of Nahdlatul Ulama branch of Kota Malang has recently formed a new management chaired by Kyai Haji Chamzawi as head of syuriah and Ustad Isroqunnajah as chairman of tanfidziyah. This stewardship period is for five years from 2017 to 2022.

The management structure of Nahdlatul Ulama Board of Malang City term of office 2017-2022:

No.	Nama	Position
1.	Drs. K.H Chamzawi, M.Hi	RAIS
2.	PROF. DR. H. Kasuwi Saiban	Vice of Rais
3.	KH. Abdul Malik Salam Amin	Vice of Rais
4.	KH. Muhammad Nafi'	Vice of Rais
5.	KH. Drs. A. Achwanuri	Vice of Rais
6.	KH. Drs. Saifuddin Zuhri	Vice of Rais
7.	KH. Drs. Moh. Murtadho, M.HI	Vice of Rais
	KH. Drs. M. Damanhuri SC	Vice of Rais
	KH. Drs. M. Nursalim	Vice of Rais
	KH. Hasan Amin	A'wan
	KH. A. Nur Hadi	A'wan
	Habib Asadullah Alaydrus	A'wan
	KH. DR. Badruddin Muhammad, M.HI	KATIB
	KH. DR. A. Zainur Rouf, M.HI	Vice Katib
	KH. Atho'illah Wijayanto, S.Ag	Vice Katib
	KH. Faris Khoirul Anam, M.HI	Vice Katib
	Ust. H. Choirul Arif, S.Ag	Vice Katib
	Dr. Isroqunnajah, M.Ag	CHIEF
	Dr. H. M. Mujab Masyhudi	Vice of Chief

	Prof. Dr. H. M. Mas'ud Said	Vice of Chief
	Drs. Sutiaji	Vice of Chief
	Drs. H. Muh. Sudiyono Al-Anshory	Vice Of Chief
	Dr. H. Akhmad Muzakki, M.A	Vice of Chief
	KH. Dr. A. Muhtadi Ridwan, M.Ag	Vice of Chief
	Dr. H. Mochtar Data, M.Pd	Vice of Chief
	Mahmudi Muhith	Vice of Chief
	H. Asif Budairi, M.H	Secretary
	H. M. Anton	Chanberlain

1.1 Informant Descriptions

No.	Nama	Keterangan
1.	K. H Athoillah Wijayanto, S.Ag	Chairman of jurisprudence <i>bahsul masail</i> Nahdlatul Ulama Malang
2.	Drs. K.H Chamzawi, M.HI	<i>Rais Syuriah</i> The administrators of the branch of nahdlatul ulama malang city
3.	KH. Marzuki Mustamar, M.Ag	<i>Mustasyar</i>
4.	Moch. Said, M.Pd	Chairman of bahtsul masail institution
5.	Dr. H. Nasrullah, Lc., M.Th.I.	Members of the board of Nahdlatul Ulama

1.1 Table OF Nahdlatul Ulama Scholars

No.	Nama	Keterangan
1	Dr. Tias Pramesti Griana, M.Biomed.	Laboratory Responsible
2	Dr. Anik Listiyana, M.Biomed.	Histology Lecturer
3	Dr. Abdul Malik Setiawan, M.Infect.Dis.	Anatomy laboratory lecturer

1.2 Table Of Doctors In health and Medical Education Faculty

2. Nahdlatul Ulama

The history of the founding of the Nahdlatul Ulama is the result of colonialism and the consequence of traditional confinement has aroused the awareness of educated people to fight for the dignity of this nation, through the way of education and organization. The movement that emerged in 1908 was known as "National Awakening". The spirit of awakening continues to spread - after the indigenous people are aware of their suffering and backwardness with other nations. In response, there are various educational and liberation organizations.

Responding to the national awakening, Nahdlatul Wathan (Awakening of the Homeland) was formed in 1916. Then in 1918 the Taswirul Afkar founded or known as "Nahdlatul Fikri" (the awakening of thought), as a vehicle for socio-political education of the santri and religious people. From there then established Nahdlatut Tujjar, (movement of the merchants).

United was used as the basis to improve the people's economy. With the existence of Nahdlatul Tujjar, then Taswirul Afkar, in addition to appearing as a study group also became an educational institution that is growing very rapidly and has branches in several cities.

Starting from the emergence of various embryonic and ad hoc committees and organizations, then it is necessary to form a more systematic and more systematic organization to anticipate the development of the times. So after coordinating with various kyai, because it is not accommodated kyai from traditional circles to follow the World Islamic Conference in Indonesia and the Middle East finally came the agreement of the pesantren scholars to form an organization called Nahdlatul Ulama (Awakening Ulama) on 16 Rajab 1344 H (31 January 1926) in Surabaya City. This organization is headed by K.H. Hasjim Asy'ari as Rais Akbar. There are many factors behind the establishment of NU. Among these factors are the development and renewal of Islamic thought that requires the prohibition of all forms of the abolishment of Sunnis. A thought in order for Muslims to return to the teachings of "pure" Islam, that is by way of Muslims break away from the system of schools. For pesantren kyai, the renewal of true religious thought remains a necessity, but not by abandoning the scholarly tradition of earlier scholars who are still relevant. Therefore, Jam'iyah Nahdlatul Ulama is urgent to be established soon.

Affirming the basic principles of this organization, then K.H. Hasyim Ash'ari formulated Qanun Asasi (basic principles), then also formulated the book of I'tiqad Ahlussunnah Wal Jamaah. Both books are then embodied in the Nahdlatul Ulama

khittah, which serve as the basis and reference of Nahdlatul Ulama citizens in thinking and acting in the social, religious and political fields⁷⁷.

3. The Basic Thought Of Scholar About Testament Of Human Body Donors In Maslahah Mursalah Perspective

The first data presentation provided by Ustad Atho'illah about the donor body test for education as the representative of katib and the explanation as follows:

“saya tidak membolehkan. Jika boleh maka mayatnya harus kafir harbi. Donor sebagian tidak boleh apalagi seluruhnya. Kehormatan mayit layaknya orang hidup. Adanya kewajiban bagi kita memandikan, mengkafani, dan menggubur dan itu hukumnya wajib kifayah. Sebab tubuh seorang muslim tetap mulia sampai kapanpun. *Al yauma nahtimu ala afwahihim watukallimu illa aidhihim*, wasitnya telah melanggar ketentuan syariat. Dan wasiatpun ada syaratnya salah satunya adalah ‘adamul maksiat. Untuk melakukan suatu hal yang maksiat tidak wajib dilakukan atau tidak boleh dijalankan, karena wasiat tersebut melawan fardhu kifayahmaka tidak boleh dijalankan.”

"I do not allow, if it is permissible, then the corpse must be kafir harby Donor partially should not let alone The honor of the dead is like a living person There is an obligation for us to bathe, wrap the corpse, and bury, it is law fardhu kifayah if one is not fulfilled then our sin as a living person, for the body of a Muslim is noble at all times, Al yauma nahtimu ala afwahihim watukalimu ilaa aidhihim. If indeed his direction for teaching practice, and still not allowed. Because it violates the existing Shari'a and wills there are some requirements that must be done such as 'adamul maksiat. The will to perform an immoral thing is not mandatory or should not be executed, because the will is against fardhu kifayah then it should not be executed"⁷⁸.

Exposure data about maslahah mursalah following explanation:

“dalam ijthidat yang dilakukan di nahdlatul ulama tidak memakai maslahah mursalah/. Maslahah mursalah sampai sekarang ini masih diperdebatkan. Jadi walaupun

⁷⁷ https://id.wikipedia.org/wiki/Nahdlatul_%27Ulama#Sejarah, Accessed on 16 July 2017.

⁷⁸ Atho'illah, *Interview*, (Malang, 17 April 2017).

memakai perspektif masalah mursalah NU tidak membolehkan wasiat donor tubuh. Secara kaidah fiqhiyah *al-dlararu yuzalu*.”

"In ijthihad conducted in Nahdlatul Ulama do not use masalahah mursalah. Marsalahah mursalah until now is still disputed. So although using the perspective masalahah murslah Nahdlatul Ulama does not allow the body donor. In fiqhiyah al-dlararu yuzalu rules. "

Further exposure data is given by Kyai Chamzawi about the donor body testament for educational purposes and the following explanation:

“Dalam kaidah fiqhiyah *darul mafasid muqoddamu ala jalbi mashalih*. Buat praktik di fakultas kedokteran itu nggak boleh, dikarenakan adanya madaratnya. orang muslim meninggal itu masih terhormat harus dikuburkan. kecuali buat cadaver dari orang kafir itu boleh saja. walaupun keluarga telah mengikhhlaskan untuk wasiat tersebut, hukumnya tetap tidak boleh. Dalam hadits nabi “tulangpun tidak boleh diremuk-remuk”. Apalagi seluruh tubuh ya tidak boleh dibeddah, apalagi juga diawetkan. Saya tidak setuju dengan cadaver itu kalo emang buat cadaver cari yang dari non-muslim.”

"In the rule of fiqhiyah darul mafasid muqoddamu ala jalbi masholih, for practice in the medical faculty is not allowed, due to the madharat. The dead Muslim is still honorable to be buried. Except for the cadaver of the infidel it is okay. Although the family has sought for the testament, the law still should not be. In the hadith of the prophet the bones should not be crushed. Let alone the whole body yes should not be dissected, let alone also preserved. I do not agree with that cadaver if it makes a cadaver looking non-Muslim⁷⁹. "

His opinion in masalahah mursalah is the following:

“Nahdlatul Ulama memakai kitab-kitab *mu'tabarah*, tidak di pake kaidah fiqhiyah. Tapi ya kadang masalahah mursalah tetap dipakai. Tapi kalau menyangkut masalah ini wasiat donor tubuh adanya mafsadat. Maka tidak memungkinkan untuk memakai masalahah mursalah.”

"Nahdlatul Ulama uses the books of mu'tabarah, not using the rules of fiqhiyah. But sometimes masalahah mursalah still used. But when it comes to this issue (the donor body) as mafsadat, it is not possible to use the masalahah mursalah. "

The third data exposure was given by Kyai Marzuki about the donor body testament for educational purposes and the following explanation:

⁷⁹Chamzawi, *Interview*, (Malang, 9 May 2017).

"The property rights to the goods we have with the right we do to the body are different. The goods that really belong to us want us to do whatever it wants no problem. Like to be slammed, want to be thrown up to us as the owner, but against our bodies do not have any rights. The first rule is to do the interests of the living people first (الميت حرمة من أعظم الحي حرمة). If the living person is more important to his life than the mayit then it is permissible to donate. But obviously, the person who accepts it if the Muslim must be Muslim, if we donor the hand continues who receive the Hindu people are not allowed. the second rule is to honor the dead, if associated with this rule then the vow is vowed to know for the sake of what this body or organ will be. Usually if for medical practice it is Mr.X's unknown corpses. And Muslim body dissected associated with this rule. If can be a non-Muslim corpse, to be dissected but not revealed, can be crowded. Because the value of non-Muslim corpses is lower than the Muslim corpse. Non-Muslim bodies may be disposed of immediately, no problem⁸⁰."

His opinion in masalah mursalah is the following:

"kalo di kaitkan dengan masalah mursalah ya wes gak usah muluk-muluk seperti yang saya jelaskan tadi dengan kaidah."

"If it is linked with masalah mursalah, yes wes not have to grandiose as I explained earlier with the rules."

The fourth data presentation was given by Ustad Said about the donor body testament for educational purposes and the following explanation:

"kita itu kan metode istinbathnya adalah ijthid manhajy, metodologinya ikut madzab syafi'i sudah jelas dikatakan dalam madzahib al arba'ah dikatakan bahwa orang yang sudah meninggal itu dalam keadaan ikhtiar tidak darurat itu tidak bisa dirusak kehormatannayatu dalam bahasannya haqqan lii hurmati mayyit. Harus dijaga kehormatannya. Termasuk dengan pemotongan, kecuali dalam keadaan darurat itu pandangan umum secara madzahib al-arbaah. Lalu pendapat ini seiring perkembangan zaman medis juga sudah berkembang ilmu pengethaun juga sudah berkembang, ada yang mengatakan dalam keadaan darurat termasuk juga untuk kepentingan pendidikan itu boleh yang pertama transplantasi dalam keadaan darurat kalo menurut imam rofi'i dikatakan itu boleh kalo kalo mayit muslim ulama masih agak berat untuk memperbolehkan. Karena dalam beberapa teks atau nash dikatakan bahwa jangankan dicabik-cabik, dimandikan kasar saja tidak boleh apalagi untuk apalagi organnya dipotong, hatinya diambil, maka kemudian hari mutakhirin syafi'iyah sebaiknya diambilkan dari yang tidak muslim. Urutan mayat yang dijadikan anatomi adalah Kafir harby, dzimmi, murtad, fasik, muslim. Darurat yang dimaksud disini adalah dalam konteks syafi'iyah dibedakan dengan hajathajat itu hanya sekedar butuh kalo darurat memang tidak ada lagi kecuali itu. Ini diambil dari versi ulama ushul fiqh dari madzab syafi'iyah. Diibaratkan seperti makan yang aslinya

⁸⁰Marzuki Mustamar, *Interview*, (Malang, 19 May 2017).

dilarang menjadi boleh sebab tidak ada pilihan lain jika memang kita tidak makan akan meninggal.”

"We use the istinbath method of ijihad manhajy, methodology follow madzab syafi'i is clearly said in madzahib al arba'ah that the deceased person in the state of the emergency cannot be destroyed the honor or in the discussion haqqan lii hurmati mayyit. Must be honored. Including with cutting, except in the emergency is the general view of madzahib al-arbaah. Then this opinion as the development of the medical age has also developed science has also been developed, some say in emergencies as well as for the benefit of education it may be the first transplant in emergency if according to imam rofi'i said it is okay, if the Muslim cleric still a bit heavy to allow. Because in some texts or texts it is said that let alone torn, bathed roughly should not let alone cut his organs, his heart is taken, then the day of judgment from syafi'iyah should be taken from non-Muslims. The order of the corpse that is made anatomy is Kafir harby, dhimmi, murtad, fasiq, muslim. Emergency is meant in the context of syafi'iyah distinguished by intent it's just need emergency is not there anymore except it. This is taken from the clerical version of ushul fiqh from madzab syafi'iyah. Rather like a meal that was originally prohibited to be allowed because there is no other choice if indeed we do not eat will die⁸¹. "

Exposure data about masalah mursalah:

“Maslahah mursalah yang dimaksud disini tidak ada kaitannya dengan masalah mursalah yang kamu maksud. Para ulama masih memegang haqqan lii hurmati al-mayyit, untuk beberapa hal kaitannya dengan kebangkitan hari kiamat besok. Seperti urutan yang saya sebut kafir harby, kafir dzimmi, murtad/fasiq, muslim. Dalam islam adanya kepercayaan hari kiamat yang nantinya akan dibangkitkan kembali dan adanya hari pembalasan.”

"Maslahah mursalah that is meant here has nothing to do with masalah mursalah you mean. The scholars still hold haqqan lii hurmati al-mayyit, for some things to do with the resurrection of doomsday tomorrow. Such as the order I call before kafir harby, kafir dzimmy, murtad / fasiq, muslim. In Islam the belief of the Day of Resurrection will be resurrected and the day of revenge."

The most recent exposure by ustad Nasrullah on the donor body will be for the following educational purposes:

“Penjualan mayat atau cadaver ada mekanismenya atau spo ada standart nya ada tidak mudah beli mayat ada caranya, aturan birokrasi aturan itu dibuat demi untuk tidak terjadi hal-hal yang tidak diinginkan dari beberapa pihak pihak keluarga, pihak transaksi dan seterusnya. Maka disini menurut saya, mekanisme itu dibuat demi kemaslahatanjika tidak ada mekanismenya justru membahayakan dan menjadi bias. Yang kedua, harga cadaver sekitar 3 M, sesungguhnya itu adalah dharar mayat itu dimuliakan. La qod harromna banii adam.. bahkan semua bangki najis kecuali mayat tidak hanya disolati,

⁸¹ Said, Interview, (Malang, 19 May 2017).

dikafani, dimandikan, diminyak wangi, dikubur, bukti kemuliaan jasad manusia walaupun sudah meninggal. Tapi kenapa diperjual belikan ini? Ini jelas ini adalah dharar (membahayakan) bahkan mayat itu dicubit lebih sakit daripada saat dia hidup itu ada haditsnya. Tapi ketika dia tidak diperjual belikan untuk kedokteran dan ini satu orang berkorban untuk nyawa orang banyak (ribuan). Satu orang itu kan hanya bisa dieksperiment beberapa kali dalam beberapa jurusan ilmu medis kedokteran Kaidah fiqhiyah mengatakan “yatahammalu al-dharar al-khos al-dharar ‘am” lupa antara itu. Jadi dharar yang khas akan menanggung dharar yang ‘am contohnya misalnya, pengurusan pengurusan ini dharar bagi orang yang digusur tapi kalo tidak digusur malah banjir banyak orang akan kena imbasnya, makanya dharar yang khas ini menanggung dharar yang ‘am. Jadi dia harus digusur demi untuk waduk karena kalo gak digusur tidak hanya lima kk yang akan terkena dampak jeleknya tapi satu kota akan banjir. Maka yang sedikir harus ngalah. Kaidah “idza ta’arodlo mafsadatani ru’iyak akbaru huma dhararan bir tikabi akhofihima” ada dua mafsadat yang bertentangan maka dilihat mana yang lebih besar madharat lalu dipilih yang lebih ringan madharatnya. Mayat diedel-edel ya madharat tapi kalo gak di edel-edel beberapa ribu manusia tidak tertolong nyawanya dan jiwanya.”

"The sale of dead bodies or cadavers is no mechanism, standard operating procedures. It is not easy to buy a corpse, the rules of bureaucracy, rule were made in order not to happen things that are not desired from some side of the family, the transactions and others. He thinks, the mechanism is made for the benefit if no mechanism is harmful and become biased. Then, the cadaver price is about 3 billion, in fact it is the dharar the corpse is glorified. La qod karromna banii adam, even all the carcasses are unclean except corpses. The corpse is not only prayed, wrapped, bathed, perfumed oil, buried, proof of the glory of the human body even though it is dead. But why is this traded? This is obviously this is dharar (harm) even the corpse is pinched more sick than when he lived there is a hadith. But when he was not traded for medicine and this one man sacrificed for the lives of the people (thousands). One person can only be experimented several times in some medical science departments. The jurisprudence of fiqhiyah acknowledges "yatahammalu al-dharar al-khos al-dharar" am "forget it. So a typical dharar will bear the dharar for example, the eviction of this evictions dharar for people who are evicted but if not evicted even the floods of many people will be affected, so this unique dharar bear the dharar that 'am. So he must be evicted for the sake of dam because if not evicted not only five kk will be affected by the bad but one city will flood. So a little bit must be relieved. The rule of "idza ta'arodlo mafsadatani ru'iyak akbaru huma dhararan bir tikabi akhofihima" there are two opposing mafsadat then see which is greater madharat then chosen the lighter madharat. The corpses were deleted ya madharat but if not in surgical operation some thousands of humans are not helped his life and his soul⁸². "

Exposure data about masalah mursalah following explanation:

⁸² Nasrullah, *Interview*, (Malang, 20 Mei 2017).

“Jadi menurut saya masalah mursalah masuk, karena masalah itu adalah demi kebutuhan masyarakat secara umum. Kan adanya syarat masalah nabrak hal-hal yang sifatnya juziyyah. Dengan mekanisme dan syarat yang legal dan resmi.”

"I think masalah enter, because masalah it is for the needs of society in general. Kan there are conditions masalah nabrak things that are juziyyah. With legal and official mechanisms and conditions. "

Much has been written in various papers or fatwas of the bathsul Masail about organ donation. Organ donors in the fatwa bathstul masail explained that it is not permissible to donate organs such as heart, kidneys, corneas, and others to others. Therefore, the body that he possesses is entirely the property of God, therefore the organs to be donated either to others who are still alive or for what purposes is very urgent law still not allowed.

What is meant in this thesis about the donor body for the benefit of education is a whole body donor for teaching practice activities conducted in medical faculty and allows also to do research on new diseases that have no cure to cure him.

Related to the study of the views of the scholars of Indonesia that is devoted *Nahdlatul Ulama* unfortunate city, then in this thesis that will be discussed is the view of *Nahdlatul Ulama* scholar about the donor body test for education in the perspective *masalah mursalah*. *Nahdaltul Ulama* Malang city as interview data as follows about their view of the title of this thesis.

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In the exposure of data from the results of interviews with physician respondents from the faculty of health and medical education State Islamic University Maulana Malik Ibrahim Malang.

Cadaver function for the education system in the faculty of medicine:

Doctor Tias: “untuk belajar, untuk mempelajari sistem pada tubuh manusia. Agar mahasiswa tahu sistem tubuh manusia yang nyata, yang asli tidak gambar ataupun tiruan. Karena satu tubuh manusia satu dengan yang lain tidak sama, dari variasi berbeda-beda misalnya, pembuluh darah yang ditangan bisa saja dari bentuk cabangnya beda arah. Misal dari praktik menyuntik, mereka (mahasiswa harus tahu pembuluh darah letaknya dimana), mengira-ngira dari permukaan⁸³”

“To learn, to study the system on the human body. In order for the student to know the real human body system, the original is not a picture or an imitation. Because one human body with one another tidak sama, from different variations for example, blood vessels in hand may be from the form of branches different direction. For example from the practice of injecting, they (students must know where the blood vessels where), guessing from the surface.”

⁸³ Dokter Tias, *Interview*, (Malang, 8 Juni 2017).

Doctor Anik: sebagai sarana belajar untuk mahasiswa agar lebih mengetahui anatomi manusia, berdasarkan kenyataan atau hampir menyerupai kenyataan. Penampakan luar dan dalam tidak sama, maka harus dibedah supaya mengetahui secara jelas.

“as a learning tool for students to be more aware of human anatomy, based on reality or almost resembling reality. Outward and inward appearance is not the same, it must be dissected in order to know clearly⁸⁴.”

Doctor Malik: “Fungsi cadaver adalah untuk media pembelajaran yang menjelaskan bagaimana anatomi tubuh manusia. Mengharuskannya memakai cadaver (manusia asli) adalah organ pada setiap manusi berbeda meskipun secara garis besar sama tapi adanya perbedaan yang khusus. Seperti besar jantung, posisi usus, dan lain-lain. Memakai cadaver manusia asli akan mendapatkan gambaran yang realistis, karena selama ini belum ada media pembelajaran anatomi yang lebih realistis dari cadaver.”

“cadaver function is for learning media explaining how anatomy of human body. Requiring him to use cadaver (original human) is an organ in every human being is different even though the outline is the same but there are special differences. Like big heart, bowel position, and others. Wearing real human cadavers will get a realistic picture, because so far there has been no more realistic anatomy learning media from cadaver⁸⁵.”

Exposure data on surgical mechanisms in the laboratory:

Doctor Tias:”Ada modul praktikum, Pendahuluan sebelum masuk laboratorium, untuk pembedahan. Kewajiban untuk memiliki cadaver sendiri karena kesulitan pada praktikum nantinya. Harga cadaver itu sendiri sebenarnya cadaver sendiri tidak diperjual belikan. Hanya saja pembayaran tersebut untuk biaya transportasi, biaya pengawetan mayat, penyewaan frezer yang dibutuhkan oleh mayat tersebut. Karena ada undang-undang yang tidak memperbolehkan jual-beli mayat. Seperti cadaver yang masih fresh yang akan dipergunakan untuk kampus yang membutuhkan, maka mayat tersebut harus dibawa dalam keadaan fresh dalam frezer dan jika telah sampai kampus diawetkan. Cadaver sendiri usia untuk bisa digunakan dalam praktikum tergantung pada penggunaan. Jika yang dibutuhkan hanya untuk pembedahan pada permukaan tubuh saja, maka bisa digunakan sampai sepuluh tahun. Dan dikatakan rusak cadaver itu jika diidentifikasi ototnya sudah tidak bisa, sulit ditemukan. Nyari pembuluh darah kepotong ilang itu tidak bisa dipakai. Untuk organ dalam (pencernaan) jika masih bisa diidentifikasi untuk praktikum maka masih bisa diolah dibiarkan saja.”

“There is a practicum module, Introduction before entering the laboratory, for surgery. Obligation to own cadaver because of difficulties on the lab later. Price cadaver itself is actually cadaver own not traded. It's just that payment for transportation costs, the cost of corpse preservation, frezer leasing required by the

⁸⁴ Dokter Anik, *Interview*, (Malang, 8 juni 2017).

⁸⁵Malik, *Interview*, (Malang, 14 Juni 2017).

corpse. Because there are laws that do not allow the sale of corpses. Like a fresh cadaver that will be used for campus in need, then the body must be brought in a fresh state in the freezer and if it has been up to campus preserved. Cadaver's own age to be used in practicum depends on usage. If needed only for surgery on the surface of the body only, it can be used for up to ten years. And it is said damaged cadaver that if identified muscle cannot be, hard to find. The blood vessels of the cuttings cannot be used. For internal organs (digestion) if still can be identified for practicum then can still be processed left alone⁸⁶."

Doctor Anik: "Aturan diseksi adalah pembedahan secara wajar dimana organ yang dibutuhkan yang dibedah, tidak dibedah secara menyeluruh. Pembedahan yang dilakukan di fkip adalah semester 3. Sesuai kebutuhan diseksi dilakukan. Setelah pembedahan ditaruh disumuran yang ada formalinnya"

"The dissection rule is a proper surgery where the required organs are dissected, not dissected thoroughly. Surgery performed at medical faculty is 3 semester according to dissection need done. After the surgery is putumed in existing formalin⁸⁷."

Doctor Malik: "awal sebelum masuk laboratorium, untuk pembedahan. Kewajiban untuk memiliki cadaver sendiri karena kesulitan pada praktikum nantinya. cadaver sendiri tidak diperjual belikan. Hanya saja pembayaran tersebut untuk biaya transportasi, biaya pengawetan mayat, penyewaan freezer yang dibutuhkan oleh mayat tersebut. Karena ada undang-undang yang tidak memperbolehkan jual-beli mayat. Cadaver bisa digunakan dalam praktikum tergantung pada penggunaan. Jika yang dibutuhkan hanya untuk pembedahan pada permukaan tubuh saja, maka bisa digunakan sampai sepuluh tahun. Dan dikatakan rusak cadaver jika diidentifikasi ototnya sudah tidak bisa, dan sulit ditemukan. Untuk organ dalam (pencernaan) jika masih bisa diidentifikasi untuk praktikum maka masih bisa diolah dan dibiarkan saja.

"Introduction before entering the laboratory, for surgery. Obligation to own cadaver because of difficulties on the lab later. cadaver itself is not traded. It's just that payment for transportation costs, the cost of corpse preservation, freezer leasing required by the corpse. Because there are laws that do not allow the sale of corpses. Cadaver can be used in a practicum depending on use. If needed only for surgery on the surface of the body only, it can be used for up to ten years. And said to be damaged cadaver if identified muscle was not able, and hard to find. For internal organs (digestion) if still can be identified for practice then it can still be processed and left alone."

Exposure data about after surgery how burial:

Doctor Tias : "Jika sudah tidak dipakai lagi, cadaver tersebut bisa langsung dikubur atau dibedah dan diambil tulangnya. Karena fungsi cadaver ada dua yaitu, untuk mempelajari jaringan dan untuk mempelajari tulang. Penguburan tergantung dimana."

⁸⁶Tias, *Interview*, (Malang, 8 juni 2017).

⁸⁷Anik, *Interview*, (Malang, 8 juni 2017).

"If it is not used anymore, cadaver can be directly buried or dissected and taken bone. Because cadaver function there are two that is, to study the network and to learn bone. Burials depend on where⁸⁸."

Doctor Anik: "setelah dinyatakan rusak cadaver itu, maka penguburan dilakukan setelah cadaver dijahit kembali seperti awal dan dikuburkan sesuai dengan kultur mayoritas di daerah tersebut."

"after being declared damaged cadaver, then burial done after cadaver sewn back like early and buried in accordance with culture majority of area⁸⁹."

Doctor Malik: "bagi cadaver yang tidak digunakan lagi harus dikuburkan sesuai dengan prosedur yang berlaku. Bagi kita institusi Islam menyepakati bahwa jika tidak ketahui identitasnya kita anggap orang Islam. Kita kuburkan sesuai dengan aturan Islam. Ada dua pilihan untuk penguburannya, yaitu pemakaman umum dan pemakaman khusus. Proses penguburan yang dilakukan di pemakaman umum harus memiliki izin terlebih dahulu kepada kepolisian, dan pemakaman khusus dilakukan di daerah milik kita sendiri untuk lokasinya dirahasiakan. Sebenarnya ada 3 macam pilihan mayat (cadaver): mayat diseksi, mayat plastinasi, cadaver tiruan. Karena cadaver tiruan yang harganya sangat mahal, bentuk yang nantinya dipelajari oleh mahasiswa tidak seefektif dan sereal cadaver asli manusia."

"for unused cadavers must be buried in accordance with applicable procedures. For us Islamic institutions agree that if we do not know the identity we consider the Muslims. We buried according to the rules of Islam. There are two options for burial, the public cemetery and the special cemetery. The funerary process performed in a public cemetery must have prior permission to the police, and a special funeral is done in our own territory for its secret location. Actually there are 3 kinds of choices of corpses (cadaver): dissected corpses, corpse plastinasi, artificial cadavers. Due to the expensive cadavers that are very expensive, the forms that students will learn are not as effective as the original human cadaver cereals⁹⁰."

Exposure data on cadaver interpretation mechanisms:

Doctor Tias: "Dinas kota surabaya membantu penyediaan cadaver dari dinas sosialnya. Misalnya dari UNAIR butuh nanti dibantu. Tapi mungkin sejak tahun 2013 keatas karena perubahan walikota. Tergantung kebijakan walikota. Karena harus ada izin dari RS, kota, kepolisian, dan lain-lain. Cadaver yang ada di Uin sendiri dibantu oleh Univ negeri surakarta yang sudah mempunyai link dinas kota."

"For example from Airlangga State University need to be assisted later. But maybe since 2013 and up due to changes in the mayor. Depending on the mayor's

⁸⁸ Tias, *Interview*, (Malang, 8 Juni 2017).

⁸⁹ Anik, *Interview*, (Malang, 8 juni 2017).

⁹⁰ Malik, *Interview*, (Malang, 14 Juni 2017).

policy. Because there must be permission from the hospital, city, police, and others. Cadaver in The State Islamic University Of Malang itself is assisted by the country the state university of Surakarta who already have a link city service⁹¹.”

Doctor Anik: “seperti gelandangan di dinas sosial memang tidak diketahui identitasnya, keluarganya dan tidak ada yang bisa bertanggung jawab dengan orang yang meninggal itu. Dari fkik UIN sendiri mendapatkan cadaver tersebut dari universitas lain (UNS) yang memiliki rumah sakit.”

“The opinion of doctorr Anik about interpretation of cadaver, she said “like homeless in the social service is unknown identity, his family and no one can take responsibility with the deceased person. From the faculty of medicine and health sciences of Malang State Islamic University itself get the cadaver from other universities State University of Semarang which has a hospital⁹².”

Doctor Malik: “sebelumnya mengadakan perjanjian dengan instansi-instansi terkait. Contohnya di UIN, kita mengadakan perjanjian dengan FK UNS. UNS menghibahkan ke UIN. Mereka mendapat cadaver dari perjanjian dengan bagian forensik di rumah sakit sekitar mereka. Yang dijadikan cadaver adalah mayat-mayat yang tidak memiliki identitas, mayat tersebut harus diumumkan di media masa selama enam bulan dan tidak ada yang mengakui yang mempunyai dua pilihan dikubur atau di hibahkan ke FK.”

“Previously entered into an agreement with the relevant agencies. For example at the State Islamic University of Malang, we entered into an agreement with the Faculty of Medicine, State University of Semarang. Semarang State University grants to the State Islamic University of Malang. They got cadaver from the agreement with the forensic department at the hospital around them. The cadaver is a corpse with no identity, the body must be announced in the media for six months and no one has admitted that the two options are buried or granted to the Faculty of Medicine⁹³.”

Exposure of data on Opinion of physician to testament of body donor for the benefit of education:

Doctor Tias:”Jika ada pengganti tubuh manusia sebagai bahan untuk mempelajari mekanisme tubuh manusia untuk pengobatan, maka tidak akan perlu pembelajaran dengan kadaver atau mayat manusia. Sebagai pengajar, jika ada solusi pengganti tubuh manusia maka saya tidak akan setuju memakai kadaver manusia, tetapi karena belum ada pengganti maka mau tidak mau saya terima pembelajaran menggunakan kadaver manusia, demikian juga dengan orang yang menyumbangkan diri sebagai kadaver. selama tidak ada pengganti tubuh manusia, maka mau tidak mau saya sebagai pengajar akan menerima, tapi jika ada solusi pengganti tubuh manusia maka saya tidak akan mau menerima tubuh yang disumbangkan tadi.

⁹¹ Tias, *Interview*, (Malang, 8 Juni 2017).

⁹² Anik, *Interview*, (Malang, 8 juni 2017).

⁹³ Malik, *Interview*, (Malang, 14 Juni 2017).

Berikut bisa di browsing seorang ilmuwan bernama Mansur ibn Muhammad ibn Ahmad ibn Yusuf ibn Ilyas (akhir abad 14-15) bukunya berjudul : *تشریح بدن انسان* (Tashrih_i badan_i insan) atau dalam bahasa inggris di translate sbg The Anatomy of Human Body. Seorang ilmuwan medis yang hidup di persia dan menulis manuskrip tentang anatomi manusia lengkap pada abad 14-15. Didalam manuskrip kuno tersebut Mansur menggambarkan dengan lengkap jalur pembuluh darah seluruh tubuh, jalur persarafan seluruh tubuh, macam-macam organ didalam tubuh termasuk bagaimana posisi bayi didalam ibu hamil. Tulisannya sangat lengkap dan jika di kroscek dengan ilmu kedokteran modern saat ini maka hanya sedikit ditemukan perbedaan dari manuskripnya dengan buku yang sudah diterbitkan di jaman modern hasil pembelajaran dengan kadaver.”

*“If there is a substitute for the human body as a material to study the mechanisms of the human body for treatment, then there would be no need for learning with cadaver or human corpse. As a teacher, if there is a human body replacement solution then I would not agree to use human cadaver, but because there is no substitute then I would not accept learning using human cadaver, as well as people who donate themselves as a cadaver. as long as there is no substitute for the human body, then I cannot help as a teacher will accept, but if there is a replacement solution of the human body then I will not want to receive the donated body earlier. The following can be browsed by a scientist named Mansur ibn Muhammad ibn Ahmad ibn Yusuf ibn Ilyas (late 14-15th century) book entitled: *انسان بدن تشریح* (Tashrih_i badan_i insan) or in English in translate as The Anatomy of Human Body. A medical scientist who lived in Persia and wrote manuscripts on complete human anatomy in the 14-15th century. In the ancient manuscript Mansur describes the complete path of blood vessels throughout the body, the path of innervation of the entire body, various organs in the body including how the baby position in pregnant women. The writing is very complete and if in kroscek with modern medical science today it is only a little found the difference from the manuscript to the published book in modern times the learning outcome with the cadaver⁹⁴.”*

Doctor Anik:” Menurut saya pribadi, bagi pewasiat yang mewasiatkan tubuhnya untuk praktik pendidikan sebagaimana dilakukan di fakultas kedokteran maka saya setuju. Karena dengan alasan dari kenginannya sendiri, tidak ada paksaan, dan ahli waris pun menerima wasiatnya dan dari situ mendapat pahala juga. Namun, jika ada pengganti cadaver manusia asli yaitu cadaver tiruan maka saya lebih memilih memakai yang tiruan.”

“I personally think, for the heir who put his body for the practice of education as done in the medical faculty then I agree. For reasons of his own confusion, there is no compulsion, and the heirs receive his will and thus receive a reward as well. However, if there is a substitute for the original human cadaver that is a mock cadaver then I prefer to use the mock⁹⁵.”

⁹⁴ Tias, *Interview*, (Malang, 8 Juni 2017).

⁹⁵ Anik, *Interview*, (Malang, 8 Juni 2017).

Doctor Malik: “cadaver bisa didapatkan dari instalansi forensik bisa juga didapatkan dari donasi secara langsung. Selama ini donasi ini didapatkan dari kelompok masyarakat beragama Hindu atau Budha. Karena menurut keyakinan mereka, pendonasian tersebut tidak melanggar keyakinan mereka. Proses untuk mendapatkan adalah dari pengurus fakultas kedokteran mengunjungi Komunitas keagamaan tingkat daerah dari agama Hindu atau Budha. Dari pengurus fakultas kedokteran sendiri menyampaikan kehendaknya bahwa dari FK menerima donasi tubuh untuk cadaver. Dari komunitas mereka ada yang menyumbangkan tubuhnya atau membolehkan tubuhnya untuk dijadikan cadaver dan harus ada persetujuan dari keluarganya. Kalo dikaji dari agama Islam saya kurang tahu, tapi kalo dari keluarga saya mewasiatkan tubuhnya saya tidak akan menyetujui. Namun, jika yang berwasiat dari agama yang lain ataupun dari agama Islam dan menganggap itu boleh kami (fk) siap untuk memanfaatkannya untuk dijadikan cadaver. Tapi kedepan kita berupaya untuk mengurangi cadaver. Yang pertama beralih ke cadaver plastinasi, kemudian jika memungkinkan bisa menggunakan cadaver tiruan meskipun proses pendidikan sedikit berbeda, insyallah masih bisa memenuhi kebutuhan mahasiswa.”

“Cadavers can be obtained from forensic instantiation can also be obtained from donations directly. So far, this donation is obtained from Hindu or Buddhist community groups. Because according to their belief, the donation does not violate their beliefs. The process of getting it is from the medical faculty board visiting the regional religious Community of Hinduism or Buddhism. From the faculty of medicine himself conveyed his will that from the medical faculty receive donations body for cadaver of their community there is rendering body or allow his body to be cadaver and there must be approval from his family. If I studied from the religion of Islam I do not know, but if from my family have bequeath. body I will not approve. However, if one of the other religions or from the religion of Islam and suspect that we may (medical faculty) ready to use it to be cadaver. But in the future we are trying to reduce cadaver. The first switches to cadaver plastinasi, then if possible can use artificial cadaver although the education process is slightly different, and still can fulfill requirement of student⁹⁶.”

B. Data Analysis

In Islam has been explained about the will, where the testament has a harmonious testament, a requirement of a will that cannot be abandoned if it will do so. In the Qur'an has been described in al-Isra' verse 70:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ

⁹⁶ Malik, *Interview*, (Malang, 14 Juni 2017).

مَمَّنْ خَلَقْنَا تَفْضِيلاً.

Islam greatly upholds the glory of man. Both the living or the deceased. Therefore one should not destroy the soul, the feelings of others. Even in the religion of the corpse is also prohibited.

In accordance with the pillars of the testament presented above experts, then Fuqaha set the terms of each pillars of the testament as follows:

Various kinds of God's rights related to the human body are alive. Concerning the right of Allah is explained by the laws of jurisprudence such as:

1. It is agreed by the Shari'a on the haram of suicide and is considered a great sin. In the Quran letter of the An-nisa verse 29 "and do not kill yourselves, verily Allah is the Wonder of you."
2. The fuqoha opinion which forbids one to persecute himself in any way. Therefore, it is forbidden for him to cut one of his limbs or hurt him for no reason. The granting of patent rights set by the owner is certainly not forbidden to him.
3. The opinion of *Fuqaha Malikiyah* and *Shafi'iyah* in *Mukhtar*, of the necessity of punishing the murderer even though his guardian is forgiving, on the grounds that if his guardian forgives the death problems related to human rights. Yet there is still the right of Allah and the rights of the Jama'ah who must be punished, so this will benefit humans.

4. The laws that apply to the prohibition of drinking the *khamr*, the drinker is scourged. On the basis of destructive reason which is God's right too, the drinking of *khamr* is forbidden.

5. The existence of the rights of the people with the human body, which is explained by the sharia texts that show on the unity of the Muslim congregation, brotherhood fellow believers, all of which require the help and cooperation in getting *ghanimah* (loot) and debt repayment⁹⁷.

The rights associated with human remains die. With human death, all rights that are based upon life are broken. If he dies, his right to be honored is still being bathed, denied, greeted, directed towards *Qiblah*, asked for forgiveness, in addition to being safeguarded and buried. These rights, although they are specific to the owner, but there is still God's right to God's right cannot be wiped out despite other factors that abort human rights.

In the case of surgery, Surgical corpses is an effort team of experts to dissect the corpse, because it is based on a particular purpose or interests.

Surgical surgical motivation there are some backgrounds:

a. To Save a Living Fetus in a Corpse's Womb

Islamic teachings give guidance to his people to always berijtihad in a matter that has no texts, based on the Quran:

وجهدوا في الله حق جهاده هو اجتنب كم وما جعل عليكم في الدين من حرج

⁹⁷ M. Nu'aim Yasin, *Fikih Kedokteran*, (Jakarta: Pustaka al-Kautsar, 2001), 153.

Meaning: “*And strive in the way of Allah with the real jihad. He has chosen you, and He has not made trouble for you in religion.*”

To overcome the problem of a human difficulties, must use a mind called *ijtihad* in Islam that is destined for the benefit of the people, with the provision of public benefit takes precedence over the benefit of individuals. Likewise, the benefit of the living person takes precedence over the dead.

b. To Remove a Valuable Object From A Corpse

Some of the most frequent cases in society, which can affect the development of Islamic law. Among other people who swallow the gems of others, resulting in his death. Furthermore the owner of the goods demanded that the gem be returned to him. But there was no other way than to dissect the corpse for the object.

c. For Law Enforcement Purposes

Law enforcement in a country is equally important in Islamic law. Law enforcement is used to organize society fairly. As God says:

إن الله يأمركم أن تؤدوا الأمانات إلى أهلها وإذا حكمتم بين الناس أن تحكموا بالعدل

Meaning: “*Allah hath commanded you to deliver a message to the righteous to receive it, and (enjoin you) when establishing the law among men so that ye may judge equitably.*”

d. For Medical Research Purposes

Islam is very concerned with the development of science in all areas of life. Therefore, scholars in the middle of the century have found a variety of science

through his work in the field of philosophy, biology, physics, medical science, arts, astronomy, mathematics and so forth.

One branch of science that is of relevance to corpse surgery is the science of anatomy, which is in fact the foundations of the Qur'an since 14 centuries ago.

In the letter az zumar verse 6 which reads;

يخلقكم في بطون أمهاتكم خلقا من بعد خلق في ظلمات ثلاث

Meaning: *“He made you in your mother's tummy of events for the sake of events in three darkness.”*

In lafadz "ثلاث ظلمات في" mufassirin in the past with the interpretation of the stomach, uterus, and spinal cord. After changing the times, the development of science progressed. So what is meant in the lafad is chorion, amnion, and uterine wall.

Because Muslims do not develop such conceptions because they consider them sufficient because they are sourced from God, then westerners develop them by taking guidance from the results of their studies through the works of Muslim scholars. The existence of legal provisions on the above surgical studies such as:

With the provision of coronary surgery to save the fetus. In Islam it is permissible to dissect a corpse in whose womb there is a living fetus to save it. So the matter is submitted to the team of specialists to do it, as well as caring for the fetus who had saved it.

Legal provisions about surgical corpses to remove valuable objects from his stomach. If the owner of the goods filed a lawsuit to return the goods, then the corpse must be dissected by a team of expert doctors. Because it is related to the property of others, which can disturb the corpse in the grave.

Legal provisions on coronary surgery for law enforcement. To impose a legal sanction against the defendant, should not be blocked by anyone and for any reason. For example, the perpetrator against the victim is unknown, while there are no signs that can be used as evidence. If through an investigation outside the corpse, it is permissible in Islam to dissect as a vehicle to find the data - data needed to further mentioning.

Legal provisions concerning cadaver surgery for research purposes. Have rule that is kifayah for Muslims to learn the general sciences, including medical science, biology, physics, either through the literature, or with practicum and research of post-mortem as a suggestion.

If post-mortem is needed as a research tool for the development of medical science, it is allowed in Islam that aims for the welfare of mankind and it must be in line with the mission of Islam. As in the rule of *fiqhiyah* which reads:

الضرورات تبيح المحظورات

This means that the emergency rule allows something that is forbidden by law. Just as the permissibility of post-mortem surgery in Islam is based on the

reason that improving the fate of a living person takes precedence over the interests of the dead.

In the book and from interviews that researchers do that almsgiving for humanity, as well as for the education and teaching of others is not allowed if the corpse is from a Muslim, it is recommended from the harbors of *harby*.

In the verdict of the Indonesian Ulama Council, the organs of the organs are allowed on condition. Conditions for permission to donate these organs is not violate the provisions of the Shari'a. like case between donors and recipients of the same religion, not to be traded and so forth.

Whereas in the ruling of the *tarjih Muhammadiyah* assembly, the organ donor's will is permitted on the grounds of the absence of a commercial purpose and with the ultimate treatment goal after not finding a meeting point for other treatments other than the organ donation. However, in the donor there is no compulsion and sincerity of himself to expect *ridho* from Him and as the recipient strives to do well the organ obtained and always serve his creator.

And in the decision *bahtsul masail nahdlatul ulama* declared that the donor organ donation is not allowed. For the reason that the body belongs to man belongs to Allah SWT. It should not be used for anything like organ donation. Although organ donation activities are *maslahat*, but many considerations for doing so. With that the high-ranking *nahdlatul ulama* (Kyai, expert fatwas) is still burdensome to permit donation organ donation.

And it can be concluded that, among the clerical assemblies of Indonesia, *Tarjih Muhammadiyah* assembly permit donation organ donation, while the institution *Bahtsul Masail of Nahdatul Ulama* do not allow to do organ donor donation. If diqiyaskan organ donor wills with donor body then still *Nahdlatul Ulama* with very not allow donation of donor body. The reason, the human body is wholly belongs to God, man has no right to do anything to his body. As the results of interviews that researchers do, the sources said that the body of a Muslim body is still noble, must be respected until buried. Roughly bathed should not be let alone if in medical practice dissected, slashed, left in place that should not be not allowed.

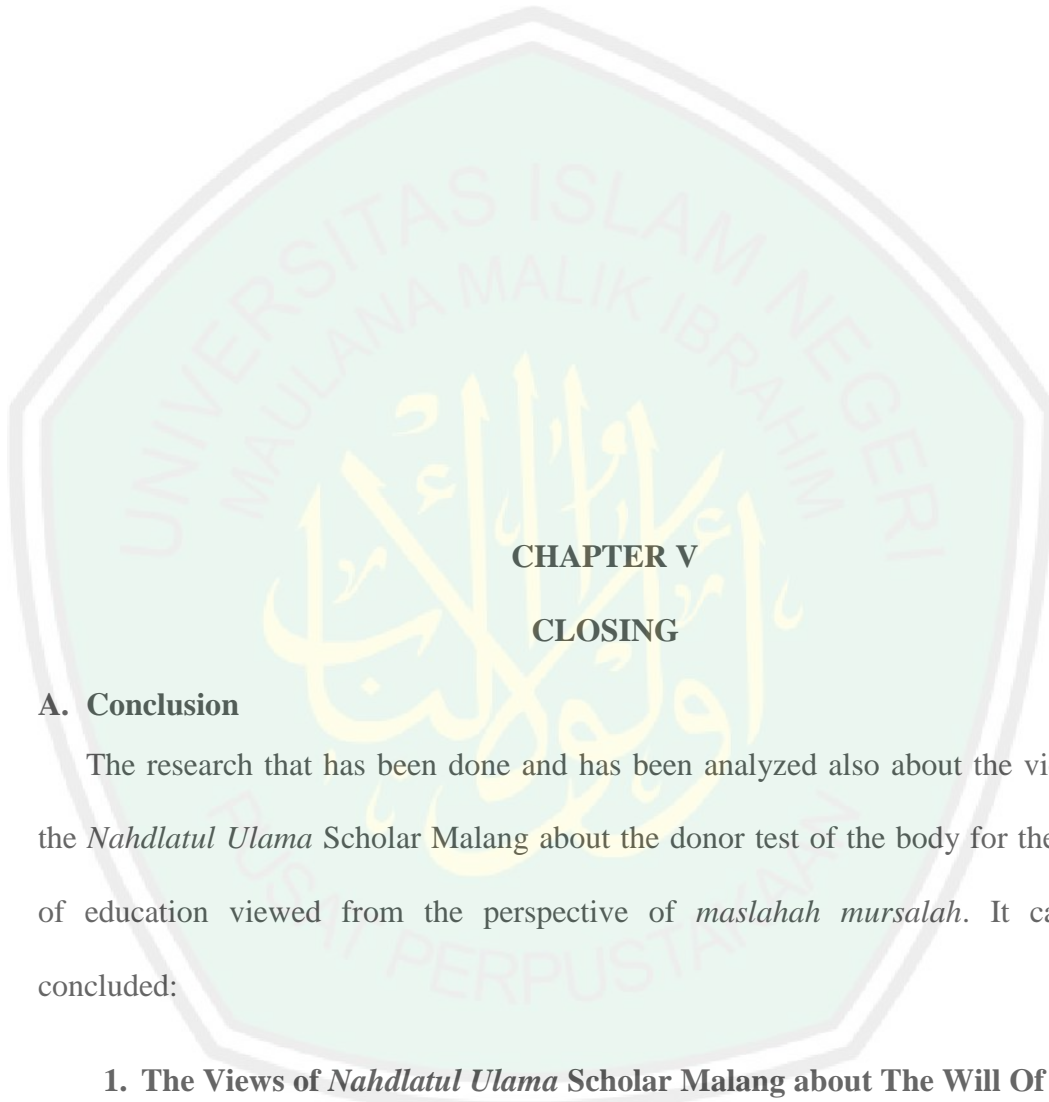
Pillar of the will testament is the main thing to carry out a will, if one of the pillars of the testament is not executed, then the death of the will. Above has been described the pillars of the testament is, the donator, the recipient of the will, *qabul*, and the goods that are inherited. These conditions must be fully implemented. And from the results of interviews that researchers do, donor testament of the body is included immoral. For the reason that the possessions should only be a one-third, but with this will (testament of body donor) on the whole body is mandated and it is already in violation.

So is the presence of cadavers in Indonesia is very less and still rare. Especially now citizens of Indonesia aware of the identity that needs to be taken anywhere. So the cadaver commonly used for medical practice is a very unidentified corpse (Mr.X) that is now found. The majority of Indonesians are

Muslim, it also makes it difficult to find cadavers that will be used for medical practices. Just as the cadaver at the state Islamic university of Maulana Malik Ibrahim Malang is the MoU of the University of Surakarta and it is waiting a long time to get. While the practice of medical faculty needed is two cadaver of different gender. With these difficulties cadaver can be preserved and made for practices in a long time of ten years.

From the results of interviews to the administrators of the *Nahdlatul Ulama* branch of Malang and as a complement to the data of medical doctors faculty and health sciences university Maulana Malik Ibrahim Malang can be concluded that, donor body test according to the speakers are two answers:

1. It is permissible if, do not violate the provisions of the established Sharia, and also it includes *maslahah* with the aim that no bodies other than Muslims are found and the corpse is indispensable for education and science of new health. Sequence of the corpses: *kafir harby*, *kafir dzimmy*, apostate, hypocritical / wicked, Moeslim.
2. Not allowed because the Muslim corpse to dead still noble. So it should not be intended even with good intentions. Because the body of a fully-entitled man is the Creator, Allah Almighty.



CHAPTER V

CLOSING

A. Conclusion

The research that has been done and has been analyzed also about the view of the *Nahdlatul Ulama* Scholar Malang about the donor test of the body for the sake of education viewed from the perspective of *maslahah mursalah*. It can be concluded:

1. The Views of *Nahdlatul Ulama* Scholar Malang about The Will Of Body Donor For Education Purposes

From this research can conclude that the leaders of *Nahdlatul Ulama* Malang city majority do not agree with the practice of donor test this body. Due to several

factors about the glory of the bodies of Muslims should be respected after death. Ranging from how to bathe the bodies that should not be rude, wearing the cloth for the corpse correctly, praying corpse well, and to bury in accordance with the rules of Sharia. If the corpse is preserved then according to the *Nahdlatul Ulama* figures have violated the sharia law and resulted in the corpse in the hereafter. And undermined the bodies are also not allowed as dissecting, cutting and other so are the sequences allowed the Muslim corpses are used for educational practice in the medical world that is, unbelievers harby, dzimmiy infidels, hypocrites, wicked, and the last Muslim.

However, most scholars of *Nahdlatul Ulama* do not mind if the Muslim's body in use in educational practice in medicine. Because there is no media other than the original human body is good, real, and perfect for teaching practice in the world of medical education. And as long as the mechanisms committed by the willful and those who receive the will in accordance with the established rules of sharia are allowed. And have also met some local rules regarding the bodies to be created for educational practice in accordance with the rules of the city and also their caring rights bodies in accordance with the laboratory corpse.

2. View of Nahdlatul Ulama Scholar Malang About the will of Body Donor for Educational purpose in *Maslahah Mursalah* Perspective

According to the researcher who referred to *maslahah mursalah* here is for the benefit of mankind entirely. So from the point of view of the majority of

Nahdlatul Ulama scholars still cannot practice the donor test of the body for the sake of education. If indeed the purpose of the donor's will for the sake of education then remains on the order that has been set namely, *kafir harby*, *karfi dzimmi*, hypocritical, ungodly, and Moeslim. And the will activity is performed in accordance with the procedures established in the local regulations and in accordance with Islamic Sharia. And from the opinion of a minority of *Nahdlatul Ulama* scholar, permit the practice of this body donor testament on the grounds that medical science is an undeniable change, as do new diseases that result in abundant drug production. As is the case with the practice of these bodily donor wills, there is nothing better to not use the original human body for teaching, but must be in accordance with religious procedures as well as state regulations. If possible to replace the original human body for teaching practice in medical education, then strongly agree if replaced with a synthetic or artificial cadaver.

B. Suggestion

Based on research and discussion about the opinion of *Nahdlatul Ulama* Scholar Malang on testament of body donor for education purpose, the writer can conclude as follows:

1. For the next researcher, research about *Nahdlatul Ulama* scholar about donor body will not be here. This research can be continued by using different analysis and will be more productive again research with the same study theme.

2. For the community that will perform this donor testament, the body is required to understand the study of this donor body testament to preserve her life, her family, and for the benefit of many people. Although from another point of view that the practice of this testament is a very noble thing. However, it is good to think carefully and to be discussed with the family and perhaps to seek the opinion of the doctor or person in accordance with this field so that the practice of this will is not much misused.

3. As a doctor as well as an educator at the university and especially medical and health faculty then there is an appropriate solution to replace the original human cadaver for teaching practice.



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