

Negotiating Legal Pluralism in Court: Fatwa and the Crime of Blasphemy in Indonesia

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Abstract

This chapter examines the role of *fatwa* issued against so-called ‘deviant’ religious believers convicted on charges of blasphemy. This is an issue of growing concern in Indonesia, where an increasing number of individuals have been convicted for the offence of blasphemy since 1998. It identifies that *fatwa*, despite its lack of legal status, may play an influential part in the legal process. A *fatwa* may be used as a justification or basis for allegations of blasphemy to be lodged with the police. Once a blasphemy case reaches the District Court, a *fatwa* may also be used as evidence in court to support the prosecutor’s argument that a person is guilty of ‘insulting a religion’. This raises the issue of how the legal system reconciles state criminal law with Islamic *fatwa*. I examine how Islamic opinions are given weight in court, despite the fact that a *fatwa* is not recognised as an official or legally binding source of law by the state in Indonesia. Drawing on illustrations from several cases of blasphemy, I argue that a practise of “religious deference” has emerged, where the District Courts defer to the opinion of Islamic religious leaders and *fatwa* on issues of religious sensitivity. This principle of religious deference is one means by which the secular state courts negotiate and reconcile the demands of legal pluralism.

Introduction

Legal pluralism continues to present both promise and challenge in Southeast Asia. The significant work of M.B. Hooker has, among many other things, made a foundational contribution to our understanding of legal pluralism in Southeast Asia,¹ and in particular to our knowledge of the development of *fatwa*, the opinion of Islamic legal scholars, in contexts such as Indonesia.² In post-authoritarian Indonesia, *fatwa* remain an unofficial source of law in the eyes of the state. This chapter examines the role and authority of *fatwa* issued against so-called ‘deviant’ religious believers convicted on charges of blasphemy under article 156a of the Criminal Code.³ This is an issue of growing concern in Indonesia since the introduction of democracy and the process of decentralisation in 1998, where an increasing number of individuals have been convicted for the offence of blasphemy against Islam.

The process of democratic law reform in Indonesia has focused attention on the development and reform of state law. This chapter seeks to promote a broader perspective that includes other legal orders by addressing the relationship between *fatwa* and state law and its institutions. In exploring this question, this chapter assumes that the state and religious authorities are not mutually exclusive centres of power. Religious authority cannot simply be understood as an alternative to the authority of the state. Instead, religious authority forms one of a number of normative orders that coexist as part of a broader legal sphere. In this wider context, the chapter contributes to our understanding of how non-state sources invoke the authority of the state, as well as how non-state sources of law are legitimised by law enforcement agencies and the judiciary, influencing the interpretation and enforcement of state laws in court.

Fatwa issued by local religious leaders on issues of deviancy acknowledge and call on the legal authority of the state to implement its decision. In criminal cases of blasphemy, a local *fatwa* that has declared a group to be ‘deviant’ may be used as the primary evidence in

the legal process. In criminal trials and court proceedings in Indonesia, only the fatwa of the Indonesian Ulama Council (Majelis Ulama Indonesia, MUI) are referred. This raises questions about whether MUI represents the ‘Muslim community’, as it claims, or whether its fatwa embody a state version of Islam.

In terms of criminal proceedings, this chapter demonstrates that a fatwa may be used as the basis or justification for allegations of blasphemy to be lodged with and investigated by the police. A fatwa may also be used by the public prosecutor to support their case that the accused should be found guilty of ‘insulting a religion’ in the District Court (*Pengadilan Negeri*). Islamic religious leaders may also appear as experts at the court trial to testify against the accused and refer to fatwa as part of his evidence given in court. This is all despite the fact that a fatwa is not recognised as an official or legally binding source of law by the District Courts in Indonesia. This raises the issue of how the District Courts, as independent judicial institutions sanctioned by the state, reconcile and integrate state criminal law with Islamic fatwa in post-Suharto Indonesia.

Drawing on illustrations from several cases of blasphemy, this chapter argues that a practise of “religious deference”⁴ has emerged in Indonesia. The police, the public prosecutor and the courts may defer to the opinion of Islamic religious leaders, namely a fatwa of the state-sanctioned Indonesia Ulama Council, on issues of religious sensitivity and in situations where the application of the law requires religious interpretation. This principle of religious deference is one means by which law enforcement agencies and the general courts negotiate and reconcile the demands of legal pluralism in Indonesia.

Legal Pluralism, State and Religion

The field of legal pluralism can be seen as one that raises many questions about the nature of law and legal systems. Legal pluralism cautions us from excluding acknowledgment of a source as law simply because it is not the law of the state. To set out to study law we need to include a wide range of legal sources, taking the spotlight off state law as the primary source of law. That is, we cannot assume that state law is dominant or central, nor that other legal orders are necessarily on an equal level with state law. Embracing a concept of law that is not monolithic but rather plural opens up the possibility of considering legal interactions in all its complexity. These dynamics raise questions about how legal pluralism is defined, what it looks like in particular contexts, how contests between legal orders are played out and who benefits from legal pluralism.⁵

Many definitions and a large body of literature has evolved on the elusive term “legal pluralism”. In essence, legal pluralism has been defined as “the presence in a social field of more than one legal order”.⁶ Similarly, Moore emphasises that legal pluralism recognises law regardless of its origins, that is, the “whole aggregate of governmental and non-governmental norms of social control without any distinctions drawn as to their source”.⁷ These multiple legal norms present a challenge to the legitimacy of the modern and globalised state.

In his seminal work on legal pluralism in Southeast Asia, Hooker⁸ identifies three assumptions challenged by legal pluralism. First, it questions the superiority of state law to override or abolish traditional legal systems. Second, it exposes the claims to superiority made by state law if there are inconsistencies between state law and traditional legal systems, and how state law defines the basis on which traditional legal systems are permitted to exist. Third, the use of state categories and labels to identify and analyse traditional legal systems. Hooker explores these concepts of legal pluralism through numerous case studies of several countries from Asia to Africa.⁹ As part of this project, Hooker analysed the experience of

legal pluralism in Indonesia, particularly the Dutch colonial legal system as a complex plural legal order where the choice of law to be applied in a circumstance depended on which category of citizen the case concerned.

In addition to this understanding of legal pluralism, a wide range of other meanings have since been attributed to legal pluralism. As Moore has identified, these definitions may include issues of internal pluralism within the administration of the state, the fact that state law may exist alongside regional or international legal orders, and the way that the state may depend on non-state actors to enable the implementation of the law.¹⁰ There are therefore multiple dimensions to legal pluralism in modern contexts.

Regardless of how it is defined, legal pluralism calls us to reconsider the connection between law and power. Benda-Beckmann demonstrates that law “defines and validates positions and relations of power of persons or organisations over other persons, organisations and resources”.¹¹ The law therefore supports or contradicts the extent of the authority of those who exercise power. At the same time, these legal constructions of power are not necessarily an accurate reflection or representation of actual power relations.¹² Legal pluralism therefore disrupts and upsets traditional concepts of the relation between law and power, as power must be seen as “relational, relative and embedded in social relationships”.¹³

This chapter seeks to approach legal pluralism as both a social reality and a core challenge that requires attention. It acknowledges the complex questions raised by legal pluralism, such as what is the nature of law, which law applies in a specific situation and who has the power to determine this. While scholarship on legal pluralism emerged from the study of post-colonial societies that had inherited foreign legal systems from their colonial masters, this chapter considers legal pluralism in the context of post-authoritarian Indonesia, as a society that has undergone significant democratic reform. In the transition to democracy, the fixation on state law as part of the rule of law reform development agenda raises new questions about the forms of legal pluralism and their accommodation and interaction today.

I seek to examine the relationship between religious authority and the authority of the state, while recognising that they are not mutually exclusive. I question whether non-state religious fatwa can be said to constitute and inform state law in Indonesia. Given the position of the Indonesian Ulama Council as a quasi-government body recognised and consulted by the Ministry of Religion, this chapter focuses on how a fatwa shapes, and is shaped by, state authorities and law. In particular, it looks at how the state appropriates religious authority to serve its own ends.

In criminal cases against ‘deviants’ or against those accused of violence against deviants, there remains an ongoing issue of where ultimate authority lies. From one perspective, final authority may be identified with state law, while from another view, ultimate authority may be seen to rest with religious leaders. I examine when religious law or state law is invoked and why, such as whether religion is employed to extend state control, or how the Blasphemy Law is attributed meaning by non-state law.

This chapter focuses on the interaction between the legal norms of the state and religious authorities. Benda-Beckmann has identified that “religion is often depicted in opposition to the state, as a means for critiquing state power or abuse, or as an alternative moral order that may be called on to undermine state authority”.¹⁴ Rather than characterising the sources of state law and religious authority as in opposition, this chapter examines how these legal orders co-exist in Indonesia and the extent to which they rely upon, and defer to, the other.

Fatwa and the Kaleidoscope of Indonesian Legal Pluralism

The dynamics of legal pluralism in Indonesia are complex and *fatawa* are just one aspect of the plural legal order. The court system in Indonesia is not based on Islamic *syariah*, with the exception of the Religious Courts (*Pengadilan Agama*). Given that its limited jurisdiction does not include criminal law,¹⁵ and the fact that the Religious Courts are explicitly recognised by the state, I will not discuss cases in these courts in this chapter. Rather, this section highlights the unique position and dynamic authority of the *fatwa* of the Indonesian Ulama Council, as a religious body sanctioned by the state. It outlines the nature of its *fatwa* as a source of religious authority, with specific reference to *fatwa* that declare certain groups and its teachings as ‘deviant’.

The procedure for issuing a *fatwa* in Indonesia and the sources on which it is based has been the topic of extended discussion in the work of Hooker.¹⁶ He has examined the creation and production of *fatwa*, and the extent to which *fatwa* are regulated by the Indonesian state. Hooker defines *fatwa* as “formal legal advice given by qualified legal scholars”.¹⁷ It is non-binding, usually issued in response to a particular question, practise or belief, and the decision is made in light of past interpretations.¹⁸

There are two primary reasons that *fatwa* are not binding in Indonesia, as Hooker has emphasised.¹⁹ The first relates to the classical understanding of *fatawa*, which has never attributed to *fatwa* the status of law. The second is the historical reality that *fatawa* have never been recognised as a source of official law by the Indonesian state. Nevertheless, any analysis of *fatawa* and sources of legal power in Indonesia must go beyond the fact that *fatawa* are not recognised as an official source of state law to examine the ways these religious pronouncements interact with, and are affirmed by, the state.

There are four main bodies that are sources of *fatwa* in Indonesia: Muhammadiyah, Persatuan Islam, Nadhatul Ulama and the Indonesian Ulama Council. This chapter focuses on the *fatwa* of the Indonesian Ulama Council because its *fatawa* have been mentioned in the District Courts in criminal cases concerning so-called “deviancy”.

MUI occupies a unique position in relation to the state. The Indonesian Ulama Council was created as a national, quasi-government institution linked to the Ministry of Religion. On 26 July 1976, it was officially established by *ulama* representing the then 26 provinces.²⁰ Chaired by Haji Abdul Malik Karim Amrullah (known as ‘Buya Hamka’), a prominent Islamic religious leader, writer, politician and activist within Muhammadiyah, the Indonesian Ulama Council gradually established branches at the regional level across Indonesia.

This institution was originally part of Soeharto’s plan to control the *ulama* and the public expression of Islam in Indonesia.²¹ The Indonesian Ulama Council was formed relatively late in comparison to the other national religious councils²² because Islamic religious leaders feared that it might be manipulated by the government to further subordinate Islam.²³ In part this is what occurred, as the New Order government used the Indonesian Ulama Council as a means to disseminate its policies to the Muslim community, primarily through *fatwa*.²⁴

The interaction between the *fatwa* of the Indonesian Ulama Council and state policy works both ways. A study by Mudzhar²⁵ found that most *fatwa* issued from 1975 to 1988 were supportive of government policy. For example, the issue of family planning arose in the 1970s, when the government’s approach to family planning failed because it had not convinced religious leaders of its policy and many *ulama* still taught that it was *haram* to use the pill or other family planning methods.²⁶ In contrast, when the Indonesian Ulama Council issued a *fatwa* in the 1980s, it lent greater credibility and acceptance to the government’s family planning program.²⁷ In this way, *fatwa* were a convenient means for the government to legitimate its policies in religious terms in the eyes of the Muslim community.

An alternative view is that the fatwa of the Indonesian Ulama Council informed and determined government policy. Fatwa can be seen as influential in the drafting and passage of legislation based on the aspirations of the Muslim community and Islamic law.²⁸ Adams cites over ten laws that were influenced by the role of MUI in issuing fatwa, by advice it provided to the government, by the submission of recommendations to the legislature and by its participation as a member of legal drafting teams.²⁹ Adams also demonstrates how the Indonesian Ulama Council was instrumental in opposing policies that were perceived to contravened Islamic law. For example, the Indonesian Ulama Council successfully lobbied the Director General of Education and Culture to overturn the ban on wearing the *jilbab* or *kerudung* (headscarf) in schools in Indonesia.³⁰ Although it may be a state-sanctioned religious body, the Indonesian Ulama Council has therefore made some progress in overturning policies that were opposed to Islamic law.

Since 1998 and the downfall of the authoritarian regime, all religious groups, including the Indonesian Ulama Council, have experienced greater freedom of expression and association as a result of the transition to democracy. Fundamental questions about the nature of the Indonesian Ulama Council and its relations with the state therefore need to be reconsidered. For example, the impartiality and independence of the Indonesian Ulama Council is questionable given that there is little distance between it and the state. It is given a seat at the table of consultations on issues relevant to the Muslim community, and now plays a 'key regulatory function' in regards to halal certification, Islamic banking and the haj (pilgrimage to Mecca).³¹ This raises issues such as whether MUI represents the Muslim community or state interests, and who initiates the request for a fatwa.

The process and guidelines for issuing a fatwa are set out in a decision of the Indonesian Ulama Council issued in 1997.³² According to this guideline, the Indonesian Ulama Council represents a 'consensus' among Islamic scholars and is the central umbrella organisation for all Indonesian Muslims that is best placed to respond to religious and social issues confronting the community (art 6). It then outlines the procedure for issuing a fatwa, and in particular stresses that these guidelines are to ensure that any differences between the national and regional branches can be resolved. It defines fatwa as "a response or explanation from the ulama concerning a religious issue, which is made public". It requires a fatwa to be based on the Qur'an and Sunnah (art 2(1)) and for a comprehensive study to be conducted before a fatwa is issued (art 4). The Indonesian Ulama Council can receive a request for a fatwa from an individual, a community organisation, or the government or it can decide to issue an 'own motion' fatwa. While the national Indonesian Ulama Council has general authority to issue a fatwa, the regional branches are required to consult with the national branch first (art 7). Any difference in opinion between the national and regional branches requires a meeting to be held in order to resolve the matter (art 8(2)). In practise, however, regional branches often go in their own direction,³³ even though this guideline requires it to be under the supervision of the national branch. This is a cause of concern in blasphemy cases, because it is often the regional branches that issue a fatwa against 'deviants'.

The Indonesian Ulama Council at both the national and local level has often issued *fatawa* against minority groups in an attempt to suppress deviant teachings that present a challenge to orthodox Islamic doctrine and to its authority as religious leaders. These fatwa have been referred to in court cases concerning blasphemy. I focus on cases post-1998 because there is no evidence that fatwa were issued in any of the ten blasphemy cases prior to 1998.

The Relation between Criminal Prosecutions for Blasphemy and Fatawa

No comprehensive statistics available on convictions for blasphemy in Indonesia, although there have been over 50 court cases, or at least 130 individuals convicted, under article 156a of the Criminal Code between 1998 and 2012.³⁴ Of these, in at least ten cases (which involved the conviction of 14 people) a fatwa was issued against a group that was considered to be deviant, either by the national or regional branches of the Indonesian Ulama Council, and the fatwa was then referred to by the prosecution in court. In most of the other 40 court cases, although no fatwa was issued prior to these court cases, religious leaders, particularly from the Indonesian Ulama Council, often played a key role in the cases, by reporting the accused to the police, and by giving evidence as witnesses or experts at the trial.

There are several ways in which court trials for blasphemy have relied on fatwa to convict the accused. The police have relied on a fatwa to accept a complaint and conduct investigations. The public prosecutor has relied on a fatwa as a form of evidence against allegedly 'deviant' individuals. Religious leaders have been called as experts or witnesses in court trials and referred to fatwa as the basis for their claims. Judges have also had to consider the weight and merits of fatwa as evidence in court, although the court decisions provide little insight into the reasoning of the judiciary in these cases.

It is necessary to examine how the District Courts reconcile the intersection between a fatwa and state law. Even if a group is not official banned under the Blasphemy Law, if it is declared in a fatwa that certain teachings are *sesat*, then the court can convict an individual for blasphemy on this basis. In examining the attitude of religious deference the courts demonstrate to religious authorities, the question then becomes which religious authorities and sources are deferred to? The existence of the Indonesian Ulama Council has avoided any dilemma in this regard, as it is the primary Islamic religious organisation recognised by the Ministry of Religion.

The function of fatwa in court trials will be illustrated by reference to three cases of individuals convicted for blaspheming Islam. The first is the trials of Lia Eden and two members of her community, primarily because Lia Eden issued her own controversial fatwa containing teachings that were considered to be 'deviant' and then sent a copy to the Indonesian Ulama Council. The second is the trials of members of Al-Qiyadah Al-Islamiyah, which involved a number of local Indonesian Ulama Council branches issuing fatwa, and then pursuing prosecutions, against the leaders of this group. The third case is the trial of Oben Sarbeni, in which conflicting fatwa were issued by two regional branches of the Indonesian Ulama Council on the grounds of 'deviancy'.

I analyse each of these cases in turn, looking in particular at the content of fatwa and whether it recognises the authority of the state; the role of members of the Indonesian Ulama Council; how the prosecution or expert witnesses rely on the fatwa as evidence; whether the fatwa was issued at the regional or national level; and how the fatwa was dealt with by the judiciary. The consideration given to fatwa appears to be at the discretion of the public prosecutor or the judge, although an attitude of "religious deference" has emerged where the public prosecutor and the courts rely on fatwa to validate criminal convictions for blasphemy.

Alternative Sources of Fatwa: The Lia Eden Case

The two separate trials of Lia Eden, and that of two of her members, can be seen as the catalyst for the increasing number of convictions for blasphemy. Lia Eden was the first high profile case of blasphemy in the final years of the unravelling of the New Order and the early years of the transition to democracy. The Eden community began in 1995 under the leadership of Lia Eden (formerly known as Lia Aminuddin) who claimed to have had an encounter with the Archangel Gabriel. In 2005, the movement had about 50 members. As early as 1997, a fatwa was issued by the national Indonesian Ulama Council against Lia Eden

and her teachings.³⁵ The content suggests that although instructions were directed to Lia Eden and to the Muslim community, the fatwa did not go as far as to call on the state to ban the organisation.

The fatwa is only one of a handful of fatwa issued by the national Indonesian Ulama Council against a specific group at that time.³⁶ The fatwa noted that Lia Eden was called before the Fatwa Committee several times in November 1997 to explain her actions and teachings, and it described how she received a vision that she was the Archangel Gabriel. The fatwa explained that the Archangel Gabriel appeared to the Prophet Muhammad to announce that he was the final prophet, and therefore angels no longer reveal themselves to humans. The fatwa quoted several verses from the Qur'an that affirm the belief in the existence of angels as supernatural beings and that highlight their characteristics,³⁷ as further noted in the hadith (HR Muslim). It emphasised that angels are directed by Allah, that angels only appear to the prophets, and that the Prophet Muhammad was the final Prophet.³⁸ It went on to note that it is the task of the *ulama* to explain the Qur'an (16:43) and that therefore someone who claims to be an angel cannot undertake this role. It concluded that any person who claims to be the Archangel Gabriel is deviant. It specifically instructed Lia Eden and her followers to 'return' to the teachings of Islam, and it warns the Muslim community against following her teachings. It does not, however, go as far as to call on the authority of the state to ban the group, as we will see that some fatwa have done in later cases.

Several years passed after the fatwa was issued, although there were ongoing disagreements between the Indonesian Ulama Council and Lia Eden, particularly in early 2000s. Then in 2005, Lia Eden issued her own fatwa, which included the claim that she was the Archangel Gabrielle and that one of her followers Muhammad Abdul Rahman was the reincarnation of the Prophet Muhammad. She sent a copy to the Indonesian Ulama Council and the Ministry of Religion.³⁹ She also published a brochure titled 'The Fatwa of Gabriel v the Fatwa of MUI', setting herself up in direct contrast to the authority of the Indonesian Ulama Council.

At the trial, numerous references were made to the fatwa issued in 1997, including by witnesses and experts such as Muhammad Isa Anshary, a member of the Indonesian Ulama Council. One expert witness was M Amin Djamaludin, the president of LPPi, an Islamist organisation that conducts research on deviant teachings in order to determine whether it is opposed to the teachings of Islam. From his research, Djamaluddin concluded that Lia Eden's teachings contradicted the teachings of Islam because she taught that pork is not *haram* (forbidden); that Abdul Rahman is the reincarnation of the Prophet Muhammad; that she is the angel Gabrielle; that prayers can be conducted in two languages; and that that her pamphlets contradict some verses of the Qur'an. An expert from the Ministry of Religion also gave evidence that Lia Eden's teachings were contrary to Islam.

The public prosecutor submitted a copy of the MUI fatwa 1997 as evidence against Lia Eden in court.⁴⁰ Lia Eden's fatwa and brochures were considered by the court to be a direct insult to the Indonesian Ulama Council.⁴¹ The court described the Indonesian Ulama Council as a "representative of all the various Islamic organisations in Indonesia that has the responsibility to guard inter-religious harmony and resolve any differences of opinion between religions, particular Islam". Lia Eden was found guilty of blasphemy and sentenced to two years jail. In the same trial, Muhammad Abdul Rachman was also convicted under article 156a for claiming to be the Prophet Muhammad.⁴²

In 2009, in the second case, Lia Eden was convicted for revelations she claimed to receive that were then sent in the form of a letter to all major government departments and Islamic organisations in Indonesia, including the President. In these letters, she contended that Islam as a religion should be dissolved, that all religions should unite and that they should all pray in one direction.⁴³ One of her followers, Wahyu Andito Putro Wibisono, was

also convicted under article 156a of the Criminal Code because of his role in distributing the letters (District Court 2009). Again, a central part of the public prosecutor's evidence was the fatwa issued by the Indonesian Ulama Council in 1997.⁴⁴

This case is particularly interesting because Lia Eden issued her own fatwa and teachings, directly challenging the authority of the national Indonesian Ulama Council. In both cases, the MUI fatwa 1997 was referred to extensively by the public prosecutor, witnesses, and also featured in the court decisions.

Proliferation of Local Fatwa: The Al-Qiyadah Al-Islamiyah Case

While the case of Lia Eden involved a fatwa issued by the national Indonesia Ulama Council, there have been many cases of its regional branches issuing a fatwa to declare a group deviant, either on their own initiative or in addition to fatwa issued at the national level. There has also been an increasing tendency for fatwa to not only include instructions to the deviant group to repent and to the Muslim community to avoid its teachings, but also to call on the state to ban the group. One example is the case of Al-Qiyadah Al-Islamiyah, which is an Indonesian-based religious organisation that claims to be based on the teachings of Islam.

Al-Qiyadah Al-Islamiyah was officially formed in 2001 and claimed to have 45,000 followers across Indonesia. The national MUI fatwa against the group and its teachings was preceded by fatwa issued by regional branches of the Indonesian Ulama Council in several areas. The first was in West Sumatera on 24 September, and the second in Yogyakarta on 28 September.⁴⁵ Not long after, in October 2007, the national MUI then issued a fatwa declaring the group "deviant" because it used another creed, believed in a prophet after Muhammad, and did not pray, fast or pay *zakat*.⁴⁶ It legitimised its position with reference to several verses from the Qur'an that emphasised the final prophethood of Muhammad and the five pillars of Islam.⁴⁷ It urged the group to "repent" and "return to Islam", and it called on the government to ban the group. This to some extent suggested that the national MUI recognised the authority and primacy of state law.

The fatwa of Yogyakarta went further than the national fatwa and claimed that the group recognised the book "*Ruhul Qudus yang turun kepada Al-Masih Al-Maw'ud*" as its holy book, and that the group taught that Muhammad is the same as Jesus and that only "stupid people" pray facing Mecca. It called on the government to close its places of worship, ban the book, and convict followers under the *Blasphemy Law*.

Several leaders of the group across Indonesia were taken to court on charges of blaspheming Islam under article 156a of the Criminal Code, including six members in Makassar, South Sulawesi; two members in Padang, West Sumatra; and its national leader, Ahmad Mushaddeq, in Jakarta.⁴⁸ The convictions in these cases rested in part on the fatwa and the bans mentioned above, which were submitted to the court as evidence of the "deviancy" of this group. For example, the leader, Ahmad Mushaddeq, was charged in court with blasphemy.⁴⁹ The main offence identified was that, in July 2006, after spending 40 days and nights in a mountain in Bogor, Mushaddeq claimed he had received a revelation from God and proclaimed himself "the Promised Saviour". As the prophet of the Al-Qiyadah Al-Islamiyah group, he was accused of spreading the teachings mentioned above. The court at first instance referred to similar sources as set out in the fatwa as reasons why the accused was found guilty of blasphemy. On appeal, the defendant challenged this reliance on fatwa, and argued that the difference between the teachings of MUI and Al-Qiyadah Al-Islamiyah was one of interpretation, not blasphemy. The court on appeal instead relied on the evidence given by three Islamic religious leaders (31) that Muhammad is the final prophet according to Al-Azhab 40 and the hadith of Buhari, and that there are no other prophets after Muhammad, according to the hadith of Attarmizi. The court then went through all the pillars of Islam to

demonstrate how the teachings of Mushaddeq differ from the pillars according to the Qur'an and the hadith, as set out by experts and witnesses at the trial. While the fatwa of MUI was only mentioned by witnesses, but not by the court in its decision, the evidence led by many of the experts in support of the prosecution had clearly built upon the basis established by the national MUI fatwa.

The court was not required to address the differences between national and local fatwa in the case of Ahmad Mushaddeq because he was prosecuted in Jakarta, and neither of the regional fatwa were from Jakarta. In the next case, the Oben Sarbeni case, the court did have to deal with conflicting fatwa at the regional level.

Conflicting Fatwa: The Oben Sarbeni Case

The case of Oben Sarbeni must be situated within a history of blasphemy cases that have originated from Tasikmalaya, in the province of West Java. In 1996, Saleh, a young Muslim student from Situbondo (East Java), was convicted for declaring that Muhammad was not the final prophet and therefore for promoting beliefs that 'deviated' from Islam.⁵⁰ In 1997, Buki Sahidin, an Islamic religious leader, was accused of supporting a Jewish agenda because a star found on the ceiling of his mosque was similar to the Star of David, a symbol of Jewish identity. Buki had also pronounced himself the *Imam Mahdi* (Messiah) and it was suspected that he had links with an international network of Jews. He was jailed for five years for blasphemy against Islam under article 156a of the Criminal Code.⁵¹

Then, in 2006, Abraham Bentar Rohadi, a convert from Islam to Christianity, was convicted for insulting Islam.⁵² Further, in 2008, Ishak Suhendra, the Muslim leader of a Martial Arts Institute (Perguruan Pencak Silat) Pancadaya Tasikmalaya, was convicted for insulting Islam through the teachings in his book 'The Reality of Religion'. According to MUI, his teachings were false because, for example, he promoted a wrong interpretation of the word '*basmalah*' (bismillah); he claimed that all religions are true, that there are only three rather than five pillars of Islam, and he proscribes 50 *rakaat*⁵³ in one day, rather than the orthodox position of 17. The local MUI issued a *fatwa* against his teachings, and he was later sentenced to four years jail under article 156a of the Criminal Code.⁵⁴

The case of Oben Sarbeni is yet another case situated in Tasikmalaya, a town known as the city of a thousand *pesantren* (Islamic boarding schools). This case involved conflicting fatwa issued against the accused at the local level. Oben Sarbeni was a 42-year-old *Mubalig* who was the leader of Pondok Pesantren Anwarul Huda from January 2009 to July 2010.⁵⁵ He was taken to court on charges of blaspheming Islam for promoting several teachings that were considered to be 'deviant'. This included instructing his students (*santri*) that his teacher, Ahmad Sulaeman, was the saviour of the Muslim community and that the students must confess that Ahmad is the *Imam Mahdi*, Messiah. As part of this teaching, he invited students to enter a special room to look at a photo of Ahmad Sulaeman, and claimed that the spirit of the Prophet Muhammad had entered the physical body of Ahmad Sulaeman. He was accused of teaching that when students pray they should first address Ahmad, and then the Prophet Muhammad. Although Oben initially spoke about 'Ahmad Sulaeman' in the third person, the prosecution argued that Oben later referred to himself as the saviour. He was also accused of changing the words of the creed and the *Asmaul Husna* (99 names of Allah), among other teachings that were considered to be 'deviant' and insulting to Islam.

One of the key issues in the court case was the conflicting fatwa issued by two local Indonesian Ulama Council branches. In September 2009, the Indonesian Ulama Council of Garut issued a fatwa against KH Ahmad Sulaeman, the teacher of Oben Sarbeni, although it concluded that there was not enough evidence that his teachings deviated from the teachings of Islam.⁵⁶ Less than a year later, in June 2010, the Indonesian Ulama Council of

Tasikmalaya issued a fatwa against Oben Sarbeni, a former follower of KH Ahmad Sulaeman.⁵⁷ The fatwa made three key statements. It found that the teachings developed by Oben Sarbeni were ‘deviant’ (*dhallun*) and ‘deviate’ (*mudhillun*), because it departed from the principles of the true teachings of Islam. It ordered and invited Oben Sarbeni and his followers to immediately return to the teachings of Islam yang haq (*al-ruju ‘ila al-haqq*), according to the Qur’an and the *hadith*. Finally, it called on the government to ban the spread of these teachings and prevent its activities.

In February 2011, the case was heard at first instance in the District Court of Tasikmalaya. The fatwa of MUI Tasikmalaya was a central piece of evidence in this case, and the head of the Fatwa Commission of MUI Tasikmalaya, KH. Udin Sa’dudin Bin KH. Soleh Yusuf, gave evidence as a witness on behalf of the prosecution. The prosecutor demanded the maximum sentence of five years, and the judge found Oben guilty and handed down the full penalty of five years. In March 2011, the accused then took their case on appeal to the Appellate Court of Bandung. The accused based their case on a number of procedural irregularities during the trial and the failure by the prosecution to comply with the Code of Criminal Procedure. Ironically, further breaches occurred when, on 15 March 2011, the court reduced the sentence to four years, although no reasons for its finding that the accused had committed blasphemy were provided in the judgment.

The accused took his case on appeal to the Supreme Court based on claims that further breaches of procedure and legal errors had occurred in the Appellate Court of Bandung. The accused’s lawyers, from Indonesian Legal Aid Institute, tore the prosecution’s case apart systematically and in great detail, similar to the style of the late Yap Thiam Hien, a human rights lawyer.⁵⁸

The lawyers for the accused set out a long list of reasons why the trial was illegal, why the evidence of many of the witnesses was inadmissible, and how the Code of Criminal Procedure had been breached in other ways. For example, the decision of the Appellate High Court of Bandung was issued in a sitting without the attendance of the Public Prosecutor and the Defendant, who had not been informed of the hearing (contrary to art 195 of the Code of Criminal Procedure). In addition, the parties only received the decision of the Appellate Court on 26 April 2011, more than a month after the decision was allegedly handed down. This was in breach of art 243(1) of the Code of Criminal Procedure, which requires the court to send the decision to the parties within 7 days (in this case, by 24 March 2011).

The lawyers for the accused also argued that the judges had ‘panicked’ due to the pressure and threats from radical Islamic groups that the accused be convicted. They claimed that the judges had “closed his/her eyes to the legal facts” of the case.⁵⁹ They highlighted the atmosphere of “terror” and “intimidation” at the court trial, with court proceedings being interrupted by shouts from radical Islamic groups present. In this way, the lawyers painted a picture of a trial conducted incompetently and without independence.

A large part of the accused’s case on appeal focused on the role and authority of the fatwa of the Indonesian Ulama Council. The lawyers for the prosecution highlighted the discrepancy between the fatwa issued by the Garut branch and that issued by the Tasikmalaya branch. They argued that the Tasikmalaya fatwa was used as the main basis for the prosecution to file a case against the accused. They argued that this was illegal because the fatwa was not issued in accordance with MUI’s own procedure on the guidelines concerning the issuing of fatwa.⁶⁰ That is, MUI had failed to gather information and verify the complaints against Oben.

The lawyers for the accused argued that the criminal investigation conducted by the police was also illegal because it was solely based on the fatwa of MUI and no prior warning had been given to the accused.⁶¹ This argument was based on their novel interpretation of the Blasphemy Law, in which they tried to argue that the Blasphemy Law required a person to be

given a warning by the government first before they could be charged with the criminal offence of blasphemy. They referred to a 2007 media report of Hukumonline that quoted the former Attorney General of Indonesia, Hendarman Supanji, who stated that article 156a of the Criminal Code can only be relied on after the Coordinating Board (Pakem)⁶² has conducted an investigation into whether the group is 'deviant' or not. Only if they decide the teachings are deviant, Supanji noted, might a person then be convicted under article 156a.

Therefore, because the accused had not been given a warning by the government, they argued that the police had no basis to conduct an investigation for blasphemy. They also argued that the fatwa of the Indonesian Ulama Council should not be used by the public prosecutor as the basis for the indictment of the accused.⁶³ The lawyers for the accused further argued that legal certainty would be undermined if the courts allowed MUI to effectively coordinate prosecutions for blasphemy, which they claimed had occurred in this case.⁶⁴ This, of course, is not the interpretation that the courts have adopted in the past. If the court had adopted this interpretation, most individuals accused of blasphemy would never have been prosecuted given that Bakor Pakem is rarely active in investigating these cases prior to the case going to court.

In addition to questioning the validity of law enforcement agencies who had based their actions and cases on fatwa, the lawyers for the accused also questioned the authority of the local MUI branches to issue fatwa.⁶⁵ They pointed out that, according to the MUI fatwa 1997 on the guidelines concerning fatwa mentioned above, the city or regency level branches do not have authority to issue their own fatwa without the approval of the national MUI. Given that the Tasikmalaya branch is at the city level, they therefore argued that the fatwa had not been issued according to MUI's own guidelines. They emphasised the primacy of following the procedure under the Blasphemy Law, which prioritised the role of Bakor Pakem and fails to mention MUI. This case is interesting because it appears to be the first case in which the fatwa guidelines issued by the national MUI in 1997 were used to demonstrate that a regional fatwa was invalid without the authority of the national MUI.

Criminal Justice and Deference to Religious Authority

The introduction of democracy in Indonesia displaced the former centre of power, the authoritarian state. This has allowed for sources of authority outside the state legal structure to vie for state recognition and sanction. This chapter has reflected on the development of legal pluralism in post-authoritarian in Indonesia through a case study of the application and interpretation of the offence of blasphemy contained in the Criminal Code. Religious fatwa of the Indonesian Ulama Council are one manifestation of legal pluralism. Although fatawa are not 'law' as recognised by the Indonesian state, fatawa are clearly given legitimacy by both religious leaders and the state. In turn, fatawa on issues such as deviancy seek state approval and reinforcement by calling on the state legal order to ban so-called deviant groups.

The processing of criminal trials for blasphemy suggests that there is a pattern of deference shown by the public prosecutor and the courts to religious authority in the form of written fatawa. This limited form of religious deference arises from the unique position of the Indonesian Ulama Council, as a state-sanctioned, quasi-government body. It is partly out of necessity because the offence of blasphemy requires the court to decide if a group is 'deviant'. A fatwa in this regard gives meaning to the application of the Blasphemy Law. The reference to a fatwa is also partly pragmatic because, by relying on a fatwa, the blame for any potential disagreement with the law or its application lies 'outside' the state and on the shoulders of religious leaders. This may be convenient for the state in an era of globalisation, where it is under pressure due to its international obligations on religious freedom.

The acknowledgment of fatawa suggests that legitimacy not only resides in the state or the courts, as an institutionalised form of power, but also in religious authorities. Therefore, it is only if we consider fatawa as a source of law in Indonesia that we can go deeper in our understanding of the dynamics of state responses to deviancy and judicial interpretations of the offence of blasphemy. In considering how the state relates to fatawa, I have argued that there is an attitude of religious deference between religious authorities and state officials such as public prosecutors and the judiciary. The District Courts legitimate and justify decisions in cases of blasphemy by either silence in the face of fatwa produced as evidence and therefore implicit acceptance, or by explicit mention in the reasons for its decisions. In Indonesia, the fatawa of MUI in practise operate as one of a number of legal orders that has influence over, and is shaped by, state law. This process of integrating fatawa into the interpretation of state criminal law is crucial to understand the reasoning of the court in convictions for blasphemy. The attitude of religious deference between the courts and religious authorities is illustrative of the dynamics of legal pluralism, which forces us to look beyond state law in order to understand criminal trials in contemporary Indonesia.

Notes

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¹ MB Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws* (Oxford: Clarendon Press, 1975).

² MB Hooker, *Indonesian Islam: Social Change through Contemporary Fatwa* (Hawaii: University of Hawaii Press, 2003).

³ This provision was inserted by Presidential Instruction No 1/PNPS/1965 on the Prevention of Mistreatment of Religion and/or Blasphemy, which was upgraded to the status of a law in 1969. It is commonly referred to as the Blasphemy Law and that is how I will refer to it in this chapter.

⁴ I use the term 'religious deference' in a different though perhaps analogous way to the concept of 'judicial deference', which is a term used to explain the approach taken by courts in the United States in cases for review of administrative action. According to the principle of judicial deference, the courts acknowledge that they do not have the expertise to decide such a matter but rather defer to the technical knowledge of the administrative body. This approach, however, limits the scope of matters of fact that can be reviewed by the courts. Further, according to the Chevron doctrine, the courts defer to the opinion of administrative agencies if the interpretation of statutes is unclear, which has severely limited the scope of judicial review. In this chapter, I use the term 'religious deference' to refer to the attitude and approach of both law enforcement agencies and the courts to the fatwa of religious leaders on matters of religious sensitivity.

⁵ F von Benda-Beckmann, "Who's Afraid of Legal Pluralism?", *Journal of Legal Pluralism and Unofficial Law* 47 (2002): 37-82.

⁶ J Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24 (1986) 1.

⁷ S F Moore, "Certainties Undone: Fifty Turbulent Years of Legal Anthropology 1949-1999", 7(1) (March 2001) *The Journal of the Royal Anthropological Institute*, p. 106.

⁸ Hooker, *Legal Pluralism*, p. 4.

⁹ Ibid.

¹⁰ Moore, "Certainties Undone", p. 107.

¹¹ F von Benda-Beckmann, K von Benda-Beckmann and A Griffiths, *The Power of Law in a Transnational World: Anthropological Enquiries* (Oxford: Berghahn Books, 2009), p. 1.

¹² Ibid, p. 5.

¹³ Ibid, p. 4.

¹⁴ Ibid, p. 17.

¹⁵ The jurisdiction of the Religious Courts is restricted to matters of marriage and divorce, wills, inheritance, *wakaf* (charitable trusts) and, more recently, *syariah* economics. Law 3/2006 amending Law 7/1989 on the Religious Judiciary, art 49. 'Syariah economics' is defined in the Elucidation to include: syariah banking,

insurance, obligations, security, costs, institutional pension funds, business, Islamic pawning and micro-finance institutions (art 49). This has been further explained in the Compilation of Laws on Syariah Economics, available at website for the Directorate General of the Religious Courts, <www.badilag.net>.

¹⁶ Hooker, *Indonesian Islam*.

¹⁷ MB Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS, 2008), p. 26.

¹⁸ H Federspiel, *A Dictionary of Indonesian Islam* (USA: Centre for International Studies, Ohio University, 1995), p. 59.

¹⁹ Hooker, *Indonesian Syariah*, p. 26.

²⁰ Fatwa of the Indonesian Ulama Council of the Regency of Garut No 111/MUI-GRt/ IX/1430-2009 dated 12 September 2009.

²¹ Hooker, *Legal Pluralism*, p. 60.

²² There is also a national council for Protestants, Catholics, Hindus, Buddhists and Confucians.

²³ Mohamad Atho Mudzhar, "The Council of Indonesian Ulama on Muslims' Attendance at Christmas Celebrations" in *Islamic Legal Interpretations: Mufti's and their Fatwa*, edited by Muhammad Khalid Masud, Brinkley Messick and David S Powers (Cambridge: Harvard University Press, 1996), p. 236.

²⁴ Mohamad Atho Mudzhar, "The Ulama, the Government and Society in Modern Indonesia: the Indonesian Council of Ulama Revisited", in *Islam in an Era of Globalisation: Muslim Attitudes Towards Modernity and Identity*. Edited by Johan Meuleman (New York: RoutledgeCurzon, 2002), p. 317.

²⁵ Mudzhar, "The Council of Indonesian Ulama on Muslims' Attendance at Christmas Celebrations", p. 236.

²⁶ Tarmizi Taher, *Aspiring for the Middle Path: Religious Harmony in Indonesia* (Jakarta: PPIM/Censis, 1997), pp. 27-8; 57.

²⁷ For an analysis of the *fatwa* see Hooker, *Indonesian Islam*, pp. 166-175. For a copy of the *fatwa* see Ministry of Religion, *Himpunan Fatwa Majelis Ulama Indonesia* (Jakarta, 2003) pp. 188-194.

²⁸ H W Adams, *Pola Penyerapan Fatwa Majelis Ulama Indonesia Dalam Peraturan Perundang-undangan 1975-1997* (Jakarta: Ministry of Religion, 2004) pp. 1-2.

²⁹ MUI was involved in the drafting of Law 1/1974 on Marriage; the Education Law; Law 7/1989 on the Religious Courts; Law 7/1992 on Syariah Banking (revised by Law 9/1998); Law 7/1996 on *Halal* Labelling and Handling; Law 17/1999 on the Organisation of the Hajj; Law 38/1999 on Zakat Administration; Regulation of the Minister of Religion 4/1968 on the Creation of Badan Amil Zakat; Government Regulation 28/1977 on Property as a Charitable Trust (*wakaf*); Presidential Instruction 1/1992 on the Compilation of Islamic Laws; Law 44/1999 on the Special Province of Aceh; Law 9/1976 on Narcotics; Law 4/1979 on Child Safety; and Law 23/1990 on Health: see generally Adams, 2004.

³⁰ Decision of the Director General of Primary and Secondary Education No 052/C/Kep/D.82 dated 17 March 1982 on School Uniforms: Adams, *Pola Penyerapan Fatwa Majelis Ulama Indonesia*, pp. 162-166.

³¹ T Lindsey, "Monopolising Islam? The Indonesian Ulama Council and State Regulation of the Islamic Economy", *Bulletin of Indonesian Economic Studies* 48(2) (2012) 253, p. 272.

³² Decision of the MUI Leadership Council No. U-596/MUI/X/1997 on Guidance on Determining MUI Fatwa, dated 2 October 1997.

³³ Hooker, *Indonesian Islam*, p. 230.

³⁴ A list of these cases is on file with the author. These cases are discussed further in M Crouch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (Routledge, 2013).

³⁵ Ministry of Religion, *Himpunan Fatwa Majelis Ulama Indonesia*, pp. 114-127.

³⁶ Other examples include a fatwa against the following groups: Ahmadiyah (1980), Shiites (1984), Darul Arqam (1994), and a general fatwa against groups that believe in a prophet after the Prophet Muhammad (1983): see Ministry of Religion, *Himpunan Fatwa Majelis Ulama Indonesia*, pp. 95-109.

³⁷ See Qur'an 2:177; 4:136; 72:26-27; and 21:20; 16:50; 21:26-28 respectively.

³⁸ Q 33:40; 5:3.

³⁹ District Court Central Jakarta, Decision No 677/PID.b2006/PN.JKT.PST concerning the accused Lia Eden, dated 29 June 2006.

⁴⁰ *Ibid*, p. 43.

⁴¹ *Ibid*, p. 64.

⁴² District Court Central Jakarta, Decision No 1110/PID.B/2006/PN.JKT.PST concerning the accused Muhammad Abdul Rachman, dated 6 December 2006.

⁴³ District Court Central Jakarta, Decision No PDM-577/JKT.PST/03/2009 concerning the accused Lia Eden and Wahyu Andito Putrowibison, dated 30 March 2009.

⁴⁴ *Ibid*.

⁴⁵ Fatwa of the MUI of Yogyakarta No B-149/MUI-DIY/FATWA/IX/2007 on Al Qiyadah Al Islamiyah dated 28 September 2007; Fatwa of the MUI of West Sumatra No 1/Kpt.F/MUI/SB/IX/2007 on Al Qiyadah Al Islamiyah dated 24 September 2007.

⁴⁶ Fatwa of the National Indonesian Ulama Council No 4/2007 on Al Qiyadah Al Islamiyah dated 3 October 2007.

⁴⁷ This included Qur'an 33:40; 6:153; 2:217; 2:115; 3:32.

⁴⁸ District Court South Jakarta, Decision No 227/Pid/B/2008/PN.JKT.SEL concerning the accused Ahmad Musaddeq, dated 23 April 2008; High District Court Central Jakarta, Decision No 135/PiD/2008/PT.DKT concerning the case of Ahmad Musaddeq, dated 29 May 2008.

⁴⁹ Ibid.

⁵⁰ Rumadi, *Delik Penodaan Agama Dan Kehidupan Beragama Dalam RUU KUHP*, (Jakarta: The Wahid Institute, 2007), pp. 25-37.

⁵¹ James T Siegel, "Kiblat and the Mediatc Jew", *Indonesia* 69 (April 2000), pp. 37-38.

⁵² District Court Tasikmalaya, Decision No 117/PID.B/2006/PN.TSM concerning the accused Abraham Bentar (Tasikmalaya Apostasy Case), dated 17 May 2006.

⁵³ *Rakaat* is the movements and words followed by Muslims in daily prayers.

⁵⁴ Tasikmalaya District Court, Decision No 281/Pid.B/2008/PN.TSM concerning the accused H Ishak Suhendra, dated 28 October 2008.

⁵⁵ Supreme Court, Decision No 1151 K/Pid/2011 in the case of Oben Sarbeni Bin H. Hodin, dated 7 September 2011.

⁵⁶ Fatwa of the Indonesian Ulama Council of the Regency of Garut No 111/MUI-GRT/ IX/1430-2009 dated 12 September 2009.

⁵⁷ Decision of the MUI Fatwa Commission of the City of Tasikmalaya No 181/A.01/MUI-Kota Tsm/VII/2010 concerning the teachings developed by Oben Sarbeni, dated 25 June 2010.

⁵⁸ See generally Dan S Lev, *No Concessions: The Life of Yap Thiam Hien, Indonesian Human Rights Lawyer*. (Seattle: University of Washington Press, 2000).

⁵⁹ Supreme Court, Decision No 1151 K/Pid/2011 in the case of Oben Sarbeni Bin H. Hodin, dated 7 September 2011.

⁶⁰ Ibid, p. 10.

⁶¹ Ibid, p. 24.

⁶² The Coordinating Board was a body established by law in 1984 that was given wide powers to investigate religions or beliefs that were considered to be 'deviant'. Its members consist of representatives from several government offices, chaired by a representative of the Attorney General's office.

⁶³ Supreme Court Decision 2011, p. 10.

⁶⁴ Ibid, p. 29.

⁶⁵ Ibid, p. 30.