

Nothing to Fear: Misreading the Ulama's Fatwa and its Legal Effect on Indonesian Society

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Abstract

The relation between the state and ulama in Indonesia is intriguing, especially with regards to issuing fatwa and the people's response and perception towards the consequences it may have on their civil and/or religious obligations. This paper aims to examine the phenomenon of fatwa by ulama on several matters, the development of fatwa by the Indonesian Ulama Council (MUI), and the result of the fatwa issuance in causing the societal confusion and controversy through time. It is argued that the fatwas issued by the MUI operate more as an official religious discourse rather than legally binding or affecting individual's civil obligation. It is summed up that the fatwas are to a great extent simply a religious decree which can be accepted or rethought, and has no consequences on legal civil rights and obligation. The worry and controversy of the Indonesian Muslims are driven by the fact that it is an officially established religious institution and the ulama body which are highly regarded by many Muslims. In addition, there is neither strong connection nor absence of influence between the state and the ulama. The situation is not fixed and may change depending on the dynamics that take place in the level of state, social-culture, and religion.

Keywords : Indonesia Ulama Council (MUI), Fatwa.

A. Introduction

Although the ulama organisation is recognised officially in Indonesia, the relationship between state and ulama in Indonesia still cannot be easily understood only through a single point of view. The well-known group of ulama and the most 'powerful' organisation is the MUI or Indonesian Ulama Council (*Majelis Ulama Indonesia*). It was established in 1975 by the Indonesian government with three main goals; to support the religious life, as it is one of the principles in national Pancasila ideology, to participate in the development process, and to maintain harmony between different religious believers (Bruinessen 1996). The council also serves officially as a consultant for government on issues related to the Muslim community in the country. Yet, at times the government also tries to use the MUI to legitimise its policy through religious discourse. Similarly, the other way around, the MUI in many instances seems to ask for government's legal approval, for example, to ban certain sects after the fatwa stating their deviance is issued (Ibid.). In a way it proves that the state and religious authority in Indonesia is not two faces of the same coin. Thus, the relation between the state and ulama in Indonesia remains intriguing where

the religious authority can be involved in civil matters and vice versa. This paper seeks to examine this phenomenon and its development through time. The argument will emphasise that the fatwa issued by the MUI operate more as an official religious discourse rather than legally binding or affecting individual's civil obligation. Having said that, although the fatwa is not strictly obligatory, why there have been controversies and discontent in the society? There are at least four rationales that can be identified in this tension; intellectual, religious, economic, and personal.

B. Indonesian Ulama Council (MUI) and the Government

Prior to further discussing MUI fatwa and its response, it is useful to review the relation between state and Islam in Indonesian case. Since the independence Pancasila has been formulated by the founding fathers as the ideology of the state. According to Bruinessen (1996) strictly speaking 'Pancasila is not secular ideology'. One of the reasons is that the first principle of the five pillars is belief in One God. The other principles also contain values that are reflected in Islam and other religions. 'The state, then, claims to be based on religious and moral values that are not alien to Islam but not specifically Islamic either.' Not long after the independence, some Islamist movements, particularly Darul Islam, tried to assert their aspiration on the realisation of the shari'a based state for Indonesia where ulama would become the leaders in many aspects of governance. The effort of reviving the Jakarta Charter where the shari'a is part of the constitution was also pronounced rigorously. Later the Republic model of Indonesian state was maintained and though there is no clear cut between political and religious affairs, the (secular) state was observably dominant towards any Islamist voices. The Muslim parties were then given much less room in 1973 because they were merged into only one. The party in 1984 was even more repressed by the state, and forced to have, instead of Islam, Pancasila as the basis of their ideology (Ibid.).

Far before any Islamist parties emerged and sounded their voice, the Ministry of Religion was founded in 1946 and it until now still supervises many religious affairs such as Islamic education, marriages, divorces and inheritance courts. The state had taken step preventively to regulate matters between the community and governance. It is the fact that the majority of Indonesian population are Muslims and seeing this significance the president established the ulama council. The establishment of such institution seemed to be a bridge of communication between the state and society particularly concerning Islam and its society in Indonesia (Ibid.). After the fall of Suharto in 1998 the freedom of expression

was celebrated and the MUI continue to play its role and, according to many observers, it has more power and freedom since the master has no longer controlling its tasks. The Indonesian Ulama Council or MUI consist of different Islamic scholars coming from different socio-religious organisations such as from Muhammadiyah and NU (*Nahdatul Ulama*). One of the MUI activities is to provide a religious decree or fatwa on issues that have no definite explanation either from the Islamic sources or from state law. The fatwa issued by the ulama is not only limited in 'pure' religious matters such as ritual and worship. It also covers social, economic, and politic subjects. Fatwa is independent from government regulation and does not need state approval (Hosen 2003 p169). The ulama are considered religiously more knowledgeable and they can be a source of clarification on matters concerned by the society. Their opinion is therefore respected but that does not mean that every Muslim has to obey the edict. The ulama council also cannot order people by force or punish them if they do not follow what is stated in the decree (Ibid.).

C. The MUI Fatwas and the People's Responses

Each time the MUI issued fatwa there has almost frequently been disgruntlement and criticism from different group of people. The discontent against the ulama's opinion is often expressed through a variety of discourse and media. Some are in the form of written article in mass printed media or online on the website and blogs. The writers range from academia, students, businessmen, and individuals in general. The fatwa banning Ahmadi sect, for example, received many criticisms mainly from academic scholars in the country as well as from overseas. They usually argue that the banning of heterodox understanding of Islam is not in line with the spirit of democracy and freedom of thought. Moreover, the fatwa was believed to have led the tension to violent action by a group of mass who justified their attack based on the legitimised religious opinion (Galingging 2005). The incident happened however does not mean that MUI has been powerful enough to legitimate action to attack the Ahmadi followers but it is the angry mobs who were inspired by the fatwa and use it as a religious justification. The government, on the other side, cannot just simply arrest the Ahmadi followers since the civil law concerning the recognised religions and religious freedom is debatable among officials as well as scholars and lawyers. Galingging (2005) argues that 'The weakness of the 1945 constitution and the Human Rights Law, the existence of Article 156 (a) of the KUHP, the limited mandate of the Human Rights Court have created legal uncertainties which can cause life-threatening atmosphere.' He further asserts that there is no legal binding that authorise anyone to

condemn any sects in any religion. This is where interpretation of a religion considered a disgrace and what they do has been wrongfully criminalised (Ibid.).

Similarly, the fatwa banning the idea of 'pluralism, secularism and religious liberalism' where believing and practicing them is denounced haram has also brought widespread criticism as well as support. The case though is quite different, at least there is no violent action received by those exercising them. One of the reasons is that they are still considered running in the corridor of Islam and using Islamic sources such as Qur'an and Sunna but with different or modern interpretation. The other possible reason is that the methods of understanding used by the group, such as JIL (*Jaringan Islam Liberal*) or Network of Liberal Islam, require intellectual faculty and certain level of education while most Muslims in Indonesia have no access to these kinds of ideas. So the 'threat' is not really felt by the mainstream who seem to prefer simpler doctrine and reasoning in understanding Islam. The idea of pluralism for example has been widely understood in quite narrow sense and it has been used to reinforce the idea that this Liberal Islam is potential to threaten the 'pure' and 'right' Islam. It is particularly often referred to as equalising all religions exist in Indonesia without having special sentiment or belief that Islam is the most right religion. According to Platzdasch (2009) the main critique against pluralism in the fatwa 'Muslim community is forbidden to follow the beliefs of pluralism, secularism and religious liberalism' lies on the rejection of equality of faiths implied in pluralism. If it seen more thoroughly, there is also a part of pluralism that is actually endorsed by both the state and Muslim community, 'live side by side with adherents of other faiths' which can be called 'religious plurality'. Thus in that sense 'the Muslim community [has to] behave inclusively, in the sense of maintaining social relations with adherents of other religions as long as no mutual harm is caused' (Ibid.).

The other fatwas that have attracted massive attention is regarding the general election especially in 1999. It is haram to abstain and therefore voting is religiously obligatory. Additional recommendation was also inserted in the fatwa, that is, Muslims were encouraged to vote for Muslim parties. Since election is individually performed it is up to the participants whether they want to vote or abstain. It is political and at the same time personal choice whether to follow or not to follow the ulama fatwa depends on their understanding and belief in the role of ulama in their religious life. Some criticism against this fatwa said that it is against democracy to force people to vote and the significant number of neutral voice in the election is not necessarily coming from those who did not vote, there possibly have been technical problem as well. The other provoking fatwa is the

banning of smoking. If the majority of Indonesian population stop smoking then the cigarette company will lose many of its profits. The tax income for the state will then decrease significantly. It will also abandon the workers both in the tobacco farmland and in the cigarette factory. The fatwa has triggered the discontent among businessmen and smokers, though until now there is no serious legal prohibition enforced by the state or charge of criminal offence for those who still smoke. Interviews done by Reuters (2009) show how people expressed their various concerns. Some base their reason on economic, personal and some even positively respond because of religious reason. "I am angry about the fatwa, because both my father and grandfather are smokers and the new fatwa now makes them sinners," said Abdul Hardiyanto, 38, a Muslim stock broker.' Another individual was questioning, "Is MUI playing God here?" More rigorously a Muslim who works in a fish shop said, "I am going to keep smoking, because religion must stay away from this matter."

Although the fatwas are not legally binding, the religious pressure they cause is noticeably affecting the feeling of Muslims since the label haram is commonly and widely believed referring to committing big sins. Nevertheless, there is nothing completely new in all of the current fatwas. They can be dated back to the past in 1950s and 1980s. Some of the early fatwas issued were the declaration that Ahmadiya was heretic and the obligation of voting Muslim leaders in parliament in order to achieve the implementation of the shari'a or Islamic law (Platzdasch 2009). The legally ineffective decree can be indicated by the changeable term 'fatwa', religiously giving pressure, into 'appeal' or seruan, a more neutral calling or advice not to abstain in election in 1999. The suggestion is also slightly softened, from advising Muslims to vote candidates who would implement Islamic law and teachings to vote the 'qualified Muslim candidates' or those who would 'guard Islamic interests' (Ibid.). The tone of 'fatwa' or 'appeal' from 1950s election until nowadays remains basically the same, i.e. an (religious) advice for Muslim to vote 'Islam-friendly parties' (Ibid.).

Likewise, other current issues such as the practice of family planning using vasectomies are actually an updated version of the 1979 fatwa. The banning smoking fatwa that is specifically applied for children and pregnant women and prohibition of smoking in public place is basically 'common sense rather than a clear Quranic command' (Ibid.). The smoking ban has also been regulated in state law or by the local authority though not seriously implemented. It 'in essence is not much different from regulations and common perceptions in many Western countries today' (Ibid.). Regarding the marriage, the state law

has also regulated the minimum age of marriage, 19 for men and 16 for women. Thus the MUI fatwa only reiterate the already stipulated law and regulation (Ibid.). The most current formulation of fatwa is the obligation of wearing helmet for bikers especially in the capital city Jakarta. This is performed because the civil regulation deems unsuccessful in persuading people to obey the rule (Rachman 2010). The number of accidents causing bikers death is increasing and every effort to solve the problem is welcome. The Road Safety Association requested the MUI to issue a fatwa making helmets obligatory or wajib for motorcyclists (Ibid.). It is assumed that bikers will obey the law since there is a religious responsibility to always wear helmet and ignoring this rule will be considered a sin. The initiative is warmly welcome by the secretary general of MUI, Ichwan Sam, saying that it was worth following-up. The case, however, was viewed differently by the Ministry of Transportation. He asserted, 'Please don't mix a thing like this with religion' (Ibid.). The current phenomenon in fatwa may imply several indications. The increasing freedom of expression after the fall of Suharto New-Order in 1998, not only provide more room for the MUI but their counterpart as well. The more open and widespread criticism towards the fatwas voiced by a variety of members of Indonesian society has coloured the multi-faceted social process that involve interaction not only between state and religion but also between religious authority and community and even the cross over between all of these entities.

The role of ulama in general and effect of fatwa in particular, for the last fifty years may slightly change in the sense that religious authority nowadays 'is no longer the sole domain of the ulama, who as religious specialists par excellence had monopolised religious interpretation' (Kaptein 2004). The more accessible mass education and information has resulted in the way individuals and groups exchange and influence each other about certain subjects. It can be seen in the public talk and a number of written materials that some educated but non-specialists participate in religious debates (Ibid.). The vigorous view that Islamisation in many aspects is taking place is not quite defensible when it is assessed through a broader perspective such as the relations and interactions that is going on between the groups. Indonesia remains feature 'intellectual and organisational pluralism' throughout centuries and even since pre-modern times 'neither the courts nor the ulama monopolised authority over the moral and intellectual life of the Muslim community in the Malay-Indonesian world.' Also, the ideals of religious pluralism and tolerance are deeply grounded in the archipelago's cultural values' since long time ago (Eliraz 2007).

D. Conclusion

In conclusion, some fatwas, especially in the case of condemnation or rejection on certain religious sects, the Indonesian Ulama Council authority is shaking the society because it is officially an established religious institution sponsored by the state. The implementation and legal action to a great extent do not show manifest amalgamation of civil law with religious authority as to implement criminal offence charge. The banning of the belief of pluralism as mainly associated with the Islam Liberal movement is not legally affecting individuals as well. It is a discourse that is overrated as having civil power to undertake legal action or coerce people to obey or to be charged with committing criminal offence. In the case of banning smoking it is more a common sense and the stipulation that it is haram does not provide legal effect towards individuals. It is rather a discourse that may be considered and accepted by the Muslim community. The constitution and principle of the state also play a role in the overall situation. There is neither strong connection nor absence of influence between the state and the ulama. The situation is not fixed and may change depending on the dynamics that take place in the level of state, social-culture, and religion.

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