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FATWAS ON INTER-FAITH MARRIAGE  
IN INDONESIA  
Muhamad Ali

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ISLAM AS AN IDEOLOGY:  
THE POLITICAL THOUGHT OF TJOKROAMINOTO  
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NEW LIGHTS ON THE LIFE AND WORKS  
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# STUDIA ISLAMIKA

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## Fatwas on Inter-faith Marriage in Indonesia<sup>1</sup>

**Abstraksi:** *Artikel ini mengkaji secara analitik-historis fatwa-fatwa tentang perkawinan beda agama yang dikeluarkan Nahdlatul Ulama (NU) dan Majelis Ulama Indonesia (MUI) tingkat pusat dan DKI Jakarta. Fatwa-fatwa perkawinan beda agama ternyata tidak hanya mencerminkan wacana hukum Islam, tapi lebih penting lagi mencerminkan persepsi (sebagian) pemuka Islam (the self) tentang “agama yang lain” (the other) dalam konteks relasi Islam-Kristen di Indonesia.*

*Tesis utama artikel ini adalah bahwa sejak 1960-an hingga tahun 1990-an fatwa-fatwa perkawinan beda agama tidak mengalami perubahan dan fleksibilitas yang signifikan. Seluruh fatwa itu menolak perkawinan beda agama, meskipun dengan alasan-alasan yang berbeda, waktu yang berbeda-beda, dan dikeluarkan individu ulama yang berbeda. Fatwa pertama tentang isu ini adalah fatwa NU yang dikeluarkan pada tahun 1962. Fatwa yang sama dikeluarkan lagi pada 1968 dan kemudian 1989. MUI Jakarta mengeluarkan fatwa beda agama pada 1975, sementara MUI Pusat mengeluarkan fatwa serupa pada 1980. Pada 1986, MUI Jakarta mengeluarkan surat publik yang menegaskan kembali larangan perkawinan beda agama dalam situasi apapun. Fatwa-fatwa yang dikeluarkan MUI terkait erat dengan kontroversi Undang-undang Perkawinan 1974.*

*Mengapa fatwa-fatwa tersebut ternyata tidak fleksibel dan tidak berubah? Salah satu penjelasannya adalah bahwa pertemuan antara satu komunitas (Muslim) dan komunitas lain terjadi pada dua lapisan: lapisan sosio-politik dan interaksi antara gagasan dan praktek keagamaan. Hukum Islam muncul tidak dalam historical vacuum; ia berada dalam konteks sosio-politik.*

*Dalam fatwa-fatwa tersebut, tampak jelas adanya interaksi antara tafsir terhadap ayat-ayat teologis (seperti iman, kufr, syirk, ahl al-Kitâb, dan semacamnya) dan pembacaan sosial-politik terhadap hubungan Islam dan Kristen. Amat menarik melihat bagaimana NU dan MUI menggeneralisasi kufr, syirk, ahl al-Kitâb sebagai semata-mata “non-Muslim”, meskipun al-Quran sendiri menggunakan istilah-istilah itu*

untuk maksud dan konteks yang berbeda-beda. Generalisasi kufr, syirk dan ahl al-Kitâb sebagai non-Muslim, dan lebih khusus lagi dalam konteks ini, sebagai umat Kristen, dapat dijelaskan dengan melihat ketegangan Islam-Kristen di Indonesia sejak masa kolonial. Nuansa kompetisi antarumat terlihat dalam pernyataan-pernyataan yang melatarbelakangi fatwa-fatwa pelarangan perkawinan beda agama.

Pada lapisan kedua, interaksi antara cita-cita dan praktek agama, terlihat betapa para ulama NU dan MUI yang dikaji dalam artikel ini, melihat sebagian umat Islam yang melakukan perkawinan beda agama telah melanggar cita-cita agama dalam hal menjaga akidah Islam dan menjaga identitas dan integritas komunitas Islam. Perkawinan beda agama dianggap tidak hanya masalah interaksi sosial biasa (*muamalat*) tapi juga masalah ritual (*ibadah*) dan keyakinan (*aqidah*). Institusi perkawinan menjadi garis demarkasi yang memisahkan kelompok Muslim dan kelompok non-Muslim.

Kecewaan dan kekhawatiran ulama sebagai 'penjaga gawang' komunitas Muslim menyebabkan munculnya fatwa-fatwa (yang serupa dan dianggap saling melengkapi) dikeluarkan berulang kali. Tidak hanya ayat-ayat yang menunjukkan permusuhan Kristen terhadap Islam, kaidah *ushul fiqh* seperti kaidah manfaat-mudharat digunakan dengan pemahaman bahwa perkawinan beda agama, termasuk antara laki-laki Muslim dan perempuan non-Muslim, lebih banyak resikonya daripadanya keuntungannya. Namun karena karakter fatwa yang singkat dan menghindari ambiguitas, penjelasan tentang keuntungan dan kerugian perkawinan beda agama tidak luas dan mendalam.

Berbeda dengan persepsi umum bahwa fatwa-fatwa selalu menempati posisi sangat penting dan tidak dapat diganggu gugat, artikel ini menunjukkan betapa resistensi dan penolakan terhadap fatwa-fatwa juga dimungkinkan. Dengan berdasarkan prinsip-prinsip Hak Asasi Manusia dan kebebasan beragama, sebagian cendekiawan Muslim, termasuk Munawir Sjadzali pada 1992, melihat bolehnya perkawinan beda agama. Perkawinan beda agama juga didukung oleh beberapa pejabat pemerintah Orde Baru, cendekiawan Muslim dan non-Muslim, serta beberapa individu masyarakat yang telah melangsungkan perkawinan beda agama. Perkembangan terakhir (2002) mencatat adanya upaya perancangan Undang-undang yang memungkinkan mereka yang hendak melakukan perkawinan beda agama untuk dicatat di Kantor Catatan Sipil, jika Kantor Urusan Agama masih tidak dapat menerima perkawinan beda agama dengan basis pemahaman keagamaan eksklusif dan konteks sosio-politik yang penuh ketegangan.

## Fatwas on Inter-faith Marriage in Indonesia<sup>1</sup>

**خلاصة:** تستعرض هذه المقالة بحثاً حول الفتاوى الخاصة بالزواج بين أتباع مختلفي الديانة الصادرة من جمعية نخبة العلماء (NU) ومن مجلس العلماء الإندونيسي (MUI) من مركزه الرئيسي ومن مكتبه بمحافظة جاكرتا العاصمة، وهي فتاوى كان لها أهميتها بالنسبة للحياة الاجتماعية والسياسية إذ لم تعبر فقط عن رأي الإسلام وحكمه وإنما كانت تعكس أساساً العلاقة بين الإسلام والمسيحية وكذلك الديانات الأخرى بإندونيسيا، وبالتالي فإنها تعكس موقف بعض المسلمين من الأديان الأخرى.

وينبغي هذا البحث على أنه منذ فترة الستينات حتى التسعينات لم يتطراً أي تغيير ولا ظهر أي موقف مرن يذكر في الفتاوى الصادرة حول الزواج بين أتباع مختلفي الديانة، وقد كانت الفتاوى في هذا الموضوع كلها تمنع الزواج وإن كانت الأدلة وأوقات صدورها كذلك مختلفة لأنها صدرت من أفراد معينة، وكان أول فتوى صدر حول القضية من جمعية نخبة العلماء عام ١٩٦٢م ثم يليه فتوى آخر عام ١٩٦٨م ثم عام ١٩٨٩م، وأصدر مكتب مجلس العلماء الإندونيسي بمحافظة جاكرتا فتواه عام ١٩٧٥م بينما أصدر مكتبه الرئيسي الفتوى المماثل عام ١٩٨٠م، وفي عام ١٩٨٦م أصدر مكتب مجلس العلماء بمحافظة جاكرتا مرسوماً أكد فيه منع الزواج بين أتباع مختلفي الديانة، وكانت الفتاوى التي أصدرها المجلس تتعلق بالجدل حول قانون الزواج لسنة ١٩٧٤م.

وقد أظهرت هذه الفتاوى كلها التفاعل بين تفسير الآيات القرآنية المتعلقة بالقضايا الكلامية مثل الإيمان والكفر والشرك وأهل الكتاب وبين التفسير الاجتماعي والسياسي للعلاقة بين الإسلام والمسيحية، وفي هذا الصدد يظهر أن جمعية نخبة العلماء ومجلس العلماء الإندونيسي يتفقان على إطلاق الكفر والشرك وأهل الكتاب على غير المسلمين وبالأخص على المسيحيين، وإن كان القرآن نفسه يستخدم هذه المصطلحات للدلالة على معانٍ مختلفة، ويمكن تفسير هذا الإطلاق بالنظر إلى الصراع بين الإسلام

والمسيحية بإندونيسيا الذي يرجع تاريخه إلى عهود الاستعمار، وهو الذي كان يسود التصريحات الخاصة بمنع الزواج بين أتباع مختلفي الديانة.

وكان في رأي جمعية فئضة العلماء ومجلس العلماء الإندونيسي أن من يقوم بالزواج مع غير مسلم قد وقع في انتهاك حرمة الدين وخرج عن مسار الحفاظ على الهوية الإسلامية ويهدد تكامل المجتمع الإسلامي، فالزواج بين أتباع مختلفي الديانة لم يتعلق فقط بالمعاملات وإنما أيضا بالعبادة والعقيدة، فقضية الزواج تمثل خطا فاصلا بين الجماعة الإسلامية وغيرهم.

وفي هذا الاطار يكون لمنع الزواج بين مختلفي الديانة ما يبرره، فخوف العلماء وهم الذين يمثلون حراس العقيدة هو الذي يؤدي إلى صدور فتاوى ماثلة ومتكررة، ولذلك لم يبنوا أحكامهم على الآيات القرآنية التي تدل على عداوة المسيحية للإسلام فحسب وإنما يستندون كذلك إلى قاعدة في أصول الفقه مثل أسس المنفعة والضرر، فهم يرون أنه حتى زواج المسلم من امرأة غير مسلمة ضرره أكثر من نفعه، بيد أن الحرص على أن يكون نص الفتوى قصيرا لم يتعرض للتفصيل حول هذا الضرر بشكل أوسع وأعمق.

ومن خلال دراسة تلك الفتاوى يبرز هذا البحث أن العلاقة بين الإسلام والمسيحية والديانات الأخرى بإندونيسيا مازالت معقدة، ويرجع ذلك بصفة أساسية إلى أن المسلمين مازالوا ينظرون إلى غير المسلم على أنه الأجنبي، بل قد يرتقي إلى أن يمثل تهديدا للإسلام بإندونيسيا، إن حقيقة كون تلك الفتاوى صدرت من جمعية فئضة العلماء ومجلس العلماء الإندونيسي وهما من المؤسسات الإسلامية الكبرى وخاصة فئضة العلماء يدل على أن موقف التعددية والتسامح قضية كبرى لم تزال تحتاج إلى مزيد من الاهتمام.

ويلاحظ أنه في الآونة الأخيرة تعرضت تلك الفتاوى للنقد وإعادة النظر فيها، وهذا يتماشى مع التغيرات الاجتماعية والدينية المتزايدة، بالإضافة إلى أن الفتوى ليس ملزما بل يتوقف ذلك على الشروط الموجودة في وقت معين، وكما تعرض له البحث في أواخر هذه المقالة فقد بدأ تنشأ مواقف تتساءل حول صحة تلك الفتاوى، فبالاستناد إلى قضية حقوق الإنسان وحرية التدين قام بعض المفكرين المسلمين برفض حكم منع الزواج بين أتباع مختلفي الديانة ويدخل في ذلك مناوور شاذلي (Munawir Sjadzali) 1992م، وقد أيدته في رأيه بعض أفراد الحكام في عهد نظام الحكم الجديد، وبعض المفكرين المسلمين وغير المسلمين وبعض أفراد المجتمع الإندونيسي، وفي الحصلة النهائية أنه في عام 2002م لوحظ وجود محاولة لسن قانون يسمح الزواج بين أتباع مختلفي الديانة عن طريق مكتب التسجيل المدني.

This article presents a study on the *fatwas* (legal opinion) concerning inter-faith marriage in Indonesia. The *fatwas* under the discussion are those issued by Nahdlatul Ulama (NU) and Majelis Ulama Indonesia (MUI) in post-Independence Indonesia. Those *fatwas* are of special significance, both in terms of Islamic legal discourses and — perhaps more importantly— Muslims' perceptions and attitudes towards other religious communities in Indonesia. Issued by authoritative bodies of Indonesian Islam, more in particular the NU, the *fatwas* could be said as presenting the voices of Indonesian Muslims in their encounters with the issues of religious tolerance and plurality.

My central thesis is that these *fatwas* lack flexibility and show exclusiveness in term of inter-religious relationship. One of the reasons why this has been the case could be that an encounter between one *community* and another takes place on two levels: a setting of affairs on a socio-political level and an interaction of religious ideals and practices. We will also see how Muslim perceptions of other religions have been shaped by an exclusive religious interpretation and socio-political contexts. More specifically, the *fatwas* which prohibit inter-faith marriage has been used for demarcating religious community's boundaries and identity vis-à-vis other religious communities, in situation of political competition.

### The Significance of the *Fatwas*

*Fatwa* has been defined as a legal opinion (sometimes interpreted as a legal edict), issued by either religious individuals (*muftî*, the *fatwa issuer*) or organizations (such as *dâr al-iftâ*, *Majelis Ulama Indonesia*), primarily aimed to answer questions, to respond to specific events, or merely to give advice. Different from a legal judgment given by a judge (*hâkim*, *qâdî*), *fatwa* is not legally binding. This non-binding status of *fatwa* indicates different layers of significance of *fatwas* amongst Muslim scholars and ordinary people.

To most Muslims, *fatwa* has been regarded as authoritative statements on matters of Islamic law by a scholar of the law qualified to issue. The significance of *fatwa* has been proximate to the position of Islamic law, either in terms of *fiqh* (legal product) or even in terms of *shari'ah* (the very essence of religion, path of God). The role of *fatwa* or *muftî* is important in disseminating Islamic



teachings because *muftî* are also regarded as part of the *ulama*, the religious learned individuals, who are believed to be the successors of the Prophet Muhammad as signaled in his ḥadith (the Prophet's sayings). It is also believed that the task of *mufti* is a very hard and risky, but a noble one. *Fatwas* carry a high degree of authority in Muslim communities, because they require not only some knowledge of the Koran, the ḥadith, Islamic law (*fiqh*), and Arabic language, but also the knowledge of the environment in which a *fatwa* is to be issued. It is carried out based on certain rules and methodologies (*uṣul a-fiqh*), mostly legalistic in character. Thus, it is only the *ulama* with certain qualities who have issued *fatwas*.<sup>2</sup> Whether or not the position of the *muftî* can be compared to priesthood in Christianity, it is often stressed that there is no such priesthood (*ruḥbaniyya*) in Islam.

While the role of *fatwa* is significant for most Muslims any where including in Indonesia, the degree of such significance should be investigated case by case by empirical research. Nico Kaptein for example recently studied *the Mubimmat al-Nafâis: A Bilingual Meccan Fatwa Collection for Indonesian Muslims*, a collection of some 130 *fatwas* published in Mecca in 1892 written in Arabic and its Malay translation), intended for Muslims in 'Indonesia', which cover today's Malay-Indonesian archipelago, Malaysia, and Patani (South-east Thailand). Kaptein made a point that the issues discussed in *the Mubimmat* reflect a tension between the Islamic ideal, as formulated by the authoritative Meccan *muftîs* in their *fatwas*, and all kinds of practices which were carried out in daily life. Whether these ideas which were voiced in these *fatwas* had any influence on the interpretation and concrete observance of Islam in Indonesia should be studied individually.<sup>3</sup>

Historically, *fatwa* has undergone both changes and continuities. In the formative period of Islam (seventh century AD), most Muslim problems were to be solved by the Prophet Muhammad himself; there was little need to ask others' advice, although the Prophet told his companions (*sahabat*) to search their own minds for guidance when no Koranic verse was found to answer their specific problem. Thus, in essence, the Prophet was the only *muftî*. Muhammad's death in 632 marked an important shift in the dynamic of the consultative process.

With the growing number of Islamic converts, new issues arose for which the Koran and the ḥadīth provided little or no instruction. What constituted proper and improper Islamic behavior became the major question. The Koran says that it is incumbent upon Muslims to consult with the most learned individuals when they are unable to solve their own problems. With this instruction, consultation methods and products (i.e. *fatwa*) became developed.

From the seventh century until the fifteenth century AD, Muslims lived in diverse areas with different Islamic dynasties – some were Sunnites, while others were Shiites and adherents of other sects. Different *fatwas* were issued in different areas. Each Muslim community had its own *fatwa* institutions, and influence was confined to that community. As transmission of Islamic knowledge was taking place, Muslim travelers and preachers played the key role in this process of producing *fatwas* throughout the Islamic areas.

In the early modern period (fifteenth-eighteenth century AD), many *muftīs* began to operate privately and independently of the political authorities, while others were officially appointed. For example, in the Ottoman Turkish period (1516-1918), the office of *Shaykh al-Islām* (Grand Teacher) underwent a process of bureaucratization. At that time, there was a strong link between *fatwa* and the state, between knowledge and power. During this period, individual *fatwas* flourished in Southeast Asia. Nurudin al-Raniri (d.1658), Abdurrauf al-Sinkili (d.1693), Abdussamad al-Palimbani and Dawud b. Abdullah al-Fatani are among the leading *ulamas* in this period. They wrote books on Islamic issues and thus issued *fatwas*. For example, Al-Fatani issued a *fatwa* on jihad. According to him, *dār al-Islām* (abode of believers) must be based on the Koran and the ḥadīth, otherwise it is *dār al-kufr* or *dār al-ḥarb* (abode of unbelievers, abode of war).<sup>4</sup>

Islamic law doctrines were largely scattered in a number of legal works, but eventually there arose collections of individual *fatwas* in books. The emergence of the *fatwa* collection as a discrete literary genre points to the increasingly important role played by *muftīs* not only in the judicial process but also in Muslim daily life. In the course of history, *fatwa* has taken not only written but also oral forms. *Fatwas* also assume a variety of local forms, differing in language and

literary style, conventions of inclusion and exclusion, and usage of characteristic rubrics. Oral *fatwas* may have developed in the absence or lack of written materials or became of the prevalence of oral tradition in certain Muslim societies.

Today, "print-capitalism" (Benedict Anderson)<sup>5</sup> and information technologies such as TV, radio, and internet, have enabled the *fatwa* to become a worldwide media phenomenon. We might hear the news on *fatwas* issued in Iran, Nigeria, Pakistan, Indonesia, or Egypt, including *fatwas* by Muslim clerics, which were related to the assassination of Egyptian president Anwar Sadat, the death edict of Salman Rushdi by Khomeini in Iran, and the death edict by certain *ulama* and government in Nigeria against a Christian writer whose comments in the Miss Universe Contest which was regarded by some muftis to have belittled the position of the Prophet Muhammad. Most recently, on December 2002, a young Indonesian Muslim scholar, Ulil Abshar Abdalla, also received a death *fatwa* issued by a group who claimed to represent some organizations and Islamic parties, because, it was accused, he had belittled and despised Islam, the Prophet Muhammad, and the Islamic *Sharî'a*.

These recent *fatwas* have been striking, but *fatwas* do cover a variety of subjects. The issues involved in *fatwas* have been increasingly diverse over time.<sup>6</sup> Yet, *fatwas* are made in response to actual situation and are never purely hypothetical or imaginary. The *muftîs* are supposed to comprehend the question raised, local customs and colloquial language. Since knowledge about a real situation is important, *fatwa* reveals both "practical Islam" and "ideal Islam".

The intended audience of *fatwas* can be either non-specialist or laymen (*'awwâm*) or scholars, but it seems that most of the audience was the former because of their greater need for guidance. The questioners also come from different social status and gender. In individual cases, different *muftîs* may have different audiences.

What happens when more than one *fatwa* are available on one issue? In general, if a layman obtains more than one opinion (*fatwa*) for particular problem, he has at least three options. The first is to choose any one of them and ignore the others, because *muftîs* are equals in their attempt to interpret the law of God. The second is to adhere to the opinion (*fatwa*) of the *mufti* who is the most just, trust-

worthy, and learned in the law. The third is to adopt the least lenient of the opinions on the grounds that it is safer to do so. For instance, if the legality of inter-religious marriage was in question, and there were two opinions, one prohibiting it and another allowing it, then it is safer, according to this position, to adhere to the rule of prohibition.<sup>7</sup> These options appear to have affected the ways most Muslims deal with *fatwas*.

Therefore, *fatwas* reflect Muslims reactions and responses to current issues that are directly or indirectly related to Muslim affairs. To the majority, *fatwa* is a legal opinion, and can be simply regarded as “*shari‘a* (Islamic law) in action”. The influence of the *fatwas* is high for the majority of Muslims. People have selected specific *fatwas* in accordance with their specific needs. Although *fatwa* is an opinion of one or a number of Islamic scholars, its influence has been invariably important in shaping the thought and attitudes of Muslim communities throughout history.

In addition, there is another layer of significance as taken by ‘liberal’ Muslims. Along with reform movement, a small number of Indonesian Muslim scholars, either in the government circles or in socio-religious organizations, tended to question certain *fatwas*, including that of inter-religious marriage, which were regarded to have ignored such principles as pluralism and human rights. This group often went side by side with those non-Muslim scholars, activists, and ordinary peoples who felt uncomfortable with religious strictness. Controversies on inter-religious marriage for example occurred between the ‘traditional’ *ulamas* (represented by those in the Nahdlatul Ulama, Muhammadiyah (this organization is not covered in this article), and Majelis Ulama Indonesia (MUI)) and those liberal Islamic and non-Islamic scholars, with some support from some ordinary peoples.

In order to better understand *fatwa* as a genre, we need pay attention not only to the text (the sources cited, the language and rhetoric, the method of reasoning, legal methodology) but also to the context in which a *fatwa* was issued, the issuing individuals or organizations and the particular intended audience. The following section will deal with some of the textual and contextual aspects of *fatwas* on inter-religious marriage in Indonesia. We will arrive at some understanding that *fatwas* that are related to Islamic belief (commonly termed *aqidah*) have undergone lack of change or inflexibility. All organiza-

tions under study have responded to the challenge of religious diversity and human rights in an exclusive manner, while still recognizing a kind of religious tolerance. Some government officials, notably Munawwir Sjadzali, and some intellectuals and ordinary peoples opposed the *fatwas* on the pretext of promoting human rights and religious pluralism.

### Early Legal Concerns with Inter-religious Marriage

In Indonesia, there happened to be individual *fatwas* issued by non-Indonesian *mufiis* (notably the Arab muftis) who were recognized by Indonesian Muslims studying in Mecca and Medina. Since the eighteenth century AD, *pesantrens* (Islamic boarding Schools) in mostly rural areas of Indonesia have become the centers of Islamic studies. They may have known the status of inter-religious marriage from Islamic legal (*fiqh*) sources.<sup>8</sup> The most popular amongst them were *al-fiqh 'alâ madhâbib al-arba'ah* by al-Jâzirî, and *Fiqh al-Sunnah* by Sayyid Sabiq. There were also more classical *fiqh* texts such as *Minhâj al-Tâlibîn* by al-Nawâwî, *Tuḥfat al-tullâb bi sharḥ tanqîḥ al-lubab* by al-Ansharî, and *Sharqawi 'alâ al-Taḥrîr* by al-Sharqawî, which addressed the inter-religious marriage issue. Most allowed the marriage between a Muslim man and a woman of the *Ahl al-Kitâb* (People of the Book).<sup>9</sup>

In the absence of institutional *fatwas*, Muslims in their respective areas might have referred the problem to the above mentioned individual *fiqh* texts, which, in a sense, constituted a collection of *fatwas*. The *kyai*, *alim*, or *ustaz* (different terms but similar connotation namely the most learned person or religious teacher) around a particular rural community presented himself or herself as a muftî for their respective limited audience. His or her<sup>10</sup> (mostly his) influence was confined to this particular community. Thus, in most cases, *pesantrens* had been at the center for Islamic learning and advice for the surrounding communities. The relationship between *kyai* and his followers was so close that it would not allow difference in opinion. But when a *kyai* lost his charisma his audience would shift to another *kyai*.<sup>11</sup>

In the *Muhimmat al-Nafâis*, the mention of the Dutch or the unbelievers (*kafir*) in a number of cases makes it clear that the issues involved referred to the Netherlands East Indies. Some *fatwas* referred to "infidel Dutch nation" (*Kaum Kafir Olanda*). The infidels

who are in power are repeatedly mentioned. The book reveals the tense relationships between Indonesian *ulama* and the Dutch government.<sup>12</sup> Besides the Dutch unbelievers, indigenous believers were also referred to. Nico Kaptein suggested that there would be certain Batak groups at that time because conversions of Batak villages to Islam occurred at that time in the last quarter of the nineteenth century.<sup>13</sup>

In the Dutch colonial period, inter-religious marriage may have occurred between Christian Dutch and Islamic indigenous people, but there was not a *fatwa* on this issue. The issue of interfaith marriage was partly connected with the problem of mixed marriage (marriage between different ethnic groups or nationalities). The colonial Dutch had the Marriage Decree stipulating a partial rule on this issue. In pursuance to the Order in Council of 1896 concerning mixed marriages, it was the law of the male party that prevailed in such marriages. An exception to this rule was given by clause 75 of the Marriage Decree, which offers the Christian Indonesian women and the non-Christian Indonesian man, who wished to get married, an opportunity to choose the law of the female party as the law which should predominate in their marriage. This clause was inserted to prevent the Christian woman from being ruled by a polygamous law. Yet this clause undermined this provision because no guarantees were given concerning the impediments for non-Christian man.<sup>14</sup> The legal system which was used in the Netherlands Indies, was criticized by later Muslims to have been in favor of Christian missionaries.

### The NU *Fatwa* on Inter-religious Marriage

The earliest *fatwa* in Indonesia concerning inter-religious marriage was issued by a socio-religious organization which claimed more than 35 million members, the *Nahdlatul Ulama* (NU), in 1962. It addressed for the first time the issue of inter-religious marriage at its Summit Conference (*Muktamar*) in 1962, for the second time at a Conference on Recognized Path (*Muktamar Thariqah Muktabarah*) in 1968 and for the third time at the Conference XXVIII in Yogyakarta 26-28 November 1989. In all these years, the same *fatwa* was pronounced, which stated that inter-religious marriage was not allowed. This answer was short and straightforward, and was in response to the question of the legal status (*hukm*) of men and women

from different religions wishing to marry in Indonesia. The question and the short answer were given in Indonesian. Then it went to provide the reasons (*dalîl*) derived from seven *fiqh* texts written in Arabic. This use of Indonesian language in the first part and the Arabic in the part of reasons implies that the intended audience was primarily lay people of the NU members, while the reasons written in its original form of Arabic derived from *fiqh* texts, were intended for specialists or religious scholars who could get access to Arabic.

The first *fiqh* text was entitled '*al-Syarqawî: Matânan wa Sharhan*' (al-Syarqawy: text and interpretation), in volume 2, page 237. The first reason was a Koranic verse: "Don't marry female polytheists, idolatries, or pagans (*mushrik*) unless they became believers (*mukmin*)." The interpretation of what *mushrik* means leads to the prohibition of the *mushrik* females to marry Muslim males. The *fatwa* stipulated that female from the Peoples of the Book (*ahl al-Kitâb*) is allowed to marry Muslim male, because *ahl al-Kitâb* was not part of the *mushrik*. The People of the Book included the Christians and the Jews, because the former had the New Testament (*Injil*) and the latter the Old Testament (*Taurat*). It didn't include *shuhuf* (scriptures) of the prophets before Moses and Jesus such as that of Abraham, Idris, and so forth. Therefore, according to this *fatwa*, Muslims males are only allowed to marry with Christian and Jewish females even in the periods before the change (*tabdîl*). Many Muslim scholars believed that the Old Testament and the New Testament are not original, for both underwent change and corruption over time. It is thus implied that Christians and Jews after the prophet Muhammad are not regarded as the People of the Book. No People of the Book were present after the advent of Muhammad, and it was thus prohibited to marry them. In addition to that, a consensus among the *ulama* (*ijmâ'*), went to stipulate that female Muslim cannot marry a *kâfir*, a term used to mean non-Muslims, either the Peoples of the Book (*ahl al-Kitâb*) or the polytheists (*mushrik*).

The second text was titled '*al-Muhadhdhab*' in volume 2, page 44. The *fatwa* stated that it is prohibited for Muslim males to marry Christian and Jewish females after the change of the scriptures (*tabdîl*). It further stated that Arab Christians such as *Tanukh*, *Banu Taglib*, and *Babra* did not belong to the People of the Book, so that it was

prohibited to get married to them. Other *fiqh* texts were mentioned, but not their contents, namely *al-Umm* by al-Shâfi'î, *Ahkâm al-Fuqahâ*, *al-Fuyûdat al-Rubbâniyyah* at *Ahl al-tarîqah al-Mu'tabarab* of the *Nahdlatul Ulama* (NU) East Java, *al-Majmû' Sharh al-Muhadhdhab*, and *Tanwîr al-Qulûb*. All these books belong to the *school* of thought of Imam al-Shâfi'î to which most Indonesian Muslims adhere till today. So there was no real change from the 1962 fatwa. Why, then, was there a reissuing of the *fatwa*? We assume that the issue of inter-religious marriage had become increasingly so popular by 1989 that the NU saw the need to reissue the *fatwa* with a greater emphasis.

What is the context of the *fatwa* issued in the 1989 Conference? The Conference that produced the *fatwa* involved some 20 muftis or *faqîh* (teacher in Islamic legal issues) from different NU *pesantrens*. The *fatwa* commission was led by the then NU scholar who is now the Minister of Religion of the Republic of Indonesia, namely Dr. Sayyid Agil Hussein al-Munawwar, of Arabic descent, who graduated from Mecca, Saudi Arabia, in Islamic law (*fiqh*).<sup>15</sup> Six of them graduated from universities, whereas others graduated from *pesantrens*. They constituted a team which discussed questions arisen at that time and worked out the answers.

Before the conference was held, there was an increasing number of inter-religious marriage practices amongst Indonesians. This 1989 *fatwa* was issued to readdress and reaffirm the *Nahdlatul Ulama* position on the very issue. According to a census carried out in 1981, during the period from 1975 to 1980, mixed marriage accounted for 28 % (39,838) of the total marriage (141,108) that took place at the national level. Out of this mixed marriage figure (39,838), 64,2 % (25,558) was inter-religious. During this period, inter-religious marriage occurred predominantly in Central Java, East Java, and Bali.<sup>16</sup> For Muslim organizations centered in Java such as NU, this fact was so worrying that legal efforts were taken repeatedly on the grounds that inter-religious marriage was perceived largely favor Christianity because Muslim females became Christians in such inter-religious marriages. In other words, to these Muslim groups, inter-religious marriage was tantamount to subtle conversion to Christianity.

As can be discerned from the *fatwa* statements, short and straightforward answers were given to avoid ambiguity. *Fatwa* was meant to be clear enough to be understood and implemented by the audi-



ence, which was mostly layman. Yet, the repeated issuance of the *fatwa* on the same issue meant that there were still among Indonesian Muslims, notably the NU members, uncertainties on the issue in the period after 1962, which led to the need to issue another *fatwa* in 1968. This reconfirmation makes it clear that questions could emerge several times requiring repeated *fatwas*. This may also suggest that different *muftîs* from different periods issued similar answers (*fatwa*) on the same issue. The *fatwa* underwent little change, which could mean a lack of dynamic re-interpretation of the Holy Scripture and *fiqh* sources. This lack of change could be further understood by considering the belief that inter-religious marriage is regarded to be related to basic beliefs (*aqîdah*) rather than merely social relationships (*mu'âmalat*). Family is not merely a matter of social interaction but also that of religious interaction, for it involves rituals as well.

It should be clearly understood at this point that the NU has used the institution of marriage as a ritual in creating a sense of exclusiveness in the external dimension. Externally the core relationship is one which exists between believers and non-believers, between the self and the others. The definition of who is a believer and who is not, depends in large part on a corpus of shared meaning, for a number of reasons, any distinction becomes a power issue. The way power is organized internally and the process by which it is justified or criticized, will have consequences for the religious group's own attitude towards religious pluralism. In the case of the *fatwas* on inter-religious marriage, a group's identity depends very much on its leaders (including the *ulama* and their institutions) who act as the exclusive face of the group.<sup>17</sup> Rituals such as marriage express and recreate the solidarity, identity, and boundaries of a Muslim community. Marriage is strongly unitive *ad intra* and weakly divisive *ad extra*. The prohibition of inter-religious marriage by the NU has been to maintain the solidarity and identity of Muslim *umma* and it is thus hard to expect changes.

### The MUI *Fatwas* on Inter-religious Marriage

At a more national, governmental level, The Council of Indonesian *Ulamas* (MUI) which was established on July 25, 1975, equally issued a *fatwa* on inter-religious marriage on June 1, 1980 at its Second National Meeting, which was signed by a prominent *Muhammadiyah* religious scholar who became the chief of the Coun-

cil, Hamka<sup>18</sup>, and its secretary, Drs. Kafrawi. The MUI stated that the marriage between female Muslim and male non-Muslim is prohibited. It further stated that a male Muslim is equally prohibited from marrying a female non-Muslim, although there was disagreement on whether a male Muslim can marry a female non-Muslim who belonged to the People of the Book. After considering that the disadvantages of such a marriage outweighed the advantages, the MUI argued in favor of its prohibition.

The above *fatwa* by MUI shows an exclusive religious understanding, based on passages of the Koran and the *ḥadīth*. One of the Koranic verses were interpreted to have instructed male believers not to marry female *mushrik*, unless the latter became believers (*mukmin*), however much they loved each other, because the latter (*mushrik*) would lead the believers into hell. A second justification cites another verse saying that male Muslims may marry women from the People of the Book (*ahl al-kitâb*). The third basis for judgment is that a male non-Muslim has no right to marry a new female Muslim. For these three reasons, *mukmin* in the verse was translated as Muslim, while *mushrik* and *kâfir* as non-Muslims. At this point, MUI interpreted *mushrik* and *kâfir* as peoples of non-Muslims in general. MUI did not take any consideration of other interpretation of the terms. Muhammad Rashid Rida for example interpreted *Mushrik* as Arabian pagans or polytheists living in the Prophet age.<sup>19</sup>

The fourth reason of the prohibition *fatwa* is related to a verse on family (*ahl*). The verse states that believers should be serious in preventing their families from hell. The fifth argumentation used a *ḥadīth* which viewed the institution of marriage as the half part of the religion. Lastly, the argumentation referred to a prophetic *ḥadīth* that says that every child is born in a pure condition (*fiṭrah*) before he or she was influenced by his or her parents to be a Jew, a Christian, or a Zoroastrian. This *ḥadīth* was interpreted that parents should always educate their children to be Muslims for Islam is believed to be the religion of *fiṭrah*.<sup>20</sup>

It is clear now that the MUI regards the inter-religious marriage as a matter of belief. Nonetheless, those passages in the MUI *fatwa* should not only be understood in their religious context but also in their social-cultural-political context. Interestingly, the socio-political context has shaped the theological position already taken.

The argumentation of the *fatwa* that prohibited a male Muslim from marrying a female non-Muslim was not based on the explicit statement of the Koran, which clearly allows a male Muslim to get married a female from the People of the Book. Instead, the *fatwa* was based on the legal reasoning of the concept of *maṣlahat-maṣadat* (pros-and-cons, cost-benefit). The MUI took the hardest position amongst existing legal opinions on inter-religious marriage.

The *fatwa* also contradicts classical *fiqh* texts that had been so far consulted by the MUI in other *fatwas*. For the benefit of public interest (i.e. Muslim community), the MUI prohibits a Muslim man from marrying a woman of the People of the Book although it is explicitly allowed in the Koran and is supported in the classical *fiqh* texts. Why was such inter-religious marriage viewed by the MUI harmful to Muslim community? The socio-political context of the issuance of the *fatwa* contains a possible answer.

The reconfirmation of this particular *fatwa* by The Jakarta Regional Council of the *Ulama* (Jakarta MUI) on August 11, 1975, was in response to articles in the Jakarta daily newspaper, *Sinar Harapan* (generally known as a Christian-backed newspaper), concerning what was called the *Pancasila* marriage, which allows inter-religious marriage under the pretext of *Pancasila* state ideology. The council regarded the idea of *Pancasila* marriage insulting and thus found it necessary to issue a *fatwa* to prevent such a practice. The *fatwa* stated the argument that marriage institution is not merely a matter of reproduction but also a matter of obedience to God. Here again marriage was regarded as a matter of faith, rather than a matter of human love and social interaction. Therefore, the Jakarta MUI argues, Islam forbids a Muslim woman to marry a non-Muslim man.

The Jakarta MUI *fatwa* recognizes that a Muslim man may marry a non-Muslim woman of the People of the Book if he is fully confident that he can lead his offspring to Islam. The *fatwa* stipulates that a non-Muslim man can only marry a Muslim woman if he promises to convert to Islam. In addition, his *wali* (guardian) must provide a written agreement with the man that the marriage would be annulled if the man returns to his old faith. The *fatwa* was signed by the chairman, Abdullah Shafi'i, and the secretary, Ghozali Syahlan, of the Jakarta regional council of *ulama* (MUI Jakarta). At this point, the *fatwa* used only the Koranic verses as its basis of judgment.

Only a week later, on August 19, 1975, did the Jakarta MUI supplement the *fatwa* by presenting the *fiqh* texts of al-Jâzirî, *al-Fiqh 'alâ al-Madhâhib al-Arba'a*, and that of Sayyid Sabiq, *Fiqh Sunna*, and two works of *tafsîr* by Rashid Rida, *al-Manâr*, and Sayyid Qutb, *Fî Zilâl al-Qur'ân*, all of which prohibit a Muslim woman from marrying a non-Muslim man regardless of his being *mushrik* or of the People of the Book.<sup>21</sup> This supplements show a greater strictness in preventing inter-religious marriage from occurring between Muslims and the People of Books (not only the *mushrik*), although the Koran clearly allows Muslims to marriage members of the People of the Book.

Some ten years later, on September 30, 1986, the Jakarta MUI issued the *fatwa* in the form of public letter arguing that Muslims not to engage in inter-religious marriage under any circumstances. This time, it was a response to a letter sent by a Muslim, Mr Nasimul Falah who asked about the legal status of the marriage between two artists, Djamal Mirdad, a Muslim man, and Lydia Kandouw, a Christian woman. It was also a response to a series of articles and reports in the mass media such as *Kompas*, *Pelita*, and *Panji Masyarakat* during the month of July 1986 about the growing number of inter-religious marriages. The statistics released by the Jakarta Civil Registration Office showed that from April 1985 to July 1986 there were 239 cases of inter-religious marriages involving 112 Muslim men and 127 Muslim women.<sup>22</sup>

The letter further said that a Muslim marriage should be registered in the Office for Muslim Affairs (KUA) under Islamic procedures. If one of the marrying parties is a Muslim, the letter asks the Civil Registration Office to advise the couple to have their marriage registered in the Office for Muslim Affairs (KUA). The letter regards this to be in line with the *Pancasila*, the 1945 Constitution, and the 1974 Marriage Law.<sup>23</sup>

The *fatwas* issued by the National and Jakarta MUI were radical in terms of their contradiction with the explicit verses of the Koran. The religious content of the *fatwa* reflects the mainstream kind of Islamic interpretation that the world is divided into two: Muslim world and non-Muslim world, into which various terms in Islamic texts are translated and interpreted in the light of religious competition. One may argue that contextual interpretation have been ignored in the *fatwas* when interpreting such Koranic terms as *mukmin*, *mushrik*, *ahl al-kitâb* to have meant simply Muslims and non-Muslims.

lims. The *fatwas* used the term non-Muslims without further detailed qualification.

However, the *fatwas* were not radical in terms of their attempt to give the highest priority to the integrity of Islamic *umma*. This can be explained by looking at its history and goals. The MUI was founded by the government and its foundation was aimed at achieving the double task of promoting unity and solidarity among the Muslim community and representing Islam towards the government. The MUI was also founded in response to the existence of other religious organizations such as the Conference of Catholic Bishops of Indonesia (MAWI), the Protestant Council of Churches (PGI), Hindu and Buddhist representations, and *Secretariat Aliran Kepercayaan* for indigenous beliefs.

In 1978 the MUI strongly supported the government decision to limit the number of foreign missionaries and to regulate foreign aid given through churches. In 1981 the MUI issued the *fatwa* on the prohibition of participation in Christian celebrations by Muslims. There were some other cases which showed tensions between Muslims and Christians as well as between religious communities and the government. The *fatwas* on inter-religious marriage can be understood as part of the whole tense relationships. Interestingly, all parties seem to have used the *Pancasila* ideology as one of references in their argumentations.<sup>24</sup>

In the 1970s and 1980s, Indonesian leaders were categorized as either pro-Islam or anti-Islam. Ali Murtopo for example was criticized to be anti-Islam by many Muslim leaders and student demonstrators, especially when he supported the idea of a new marriage law which allowed Muslim women to marry non-Muslims and recognized civil marriages.<sup>25</sup> The new bill was among other things, to allow inter-religious marriage, stipulating that difference in religion is not an impediment to marriage. The *Mubammadiyyah*, for example, responded to this plan by sending a letter dated July 28, 1973, to a number of relevant ministers, arguing that the bill contravened Islamic law. According to *Mubammadiyyah*, a female Muslim may not marry a non-Muslim, whether *Mushrik* or the People of the Book. The debate was fierce but eventually ended with a compromise in December 1973, which was issued nationally in early 1974 as the Marriage Law. It stipulates that marriage can only be carried out in accordance with any one of the religions of involving parties.<sup>26</sup>

In 1992, the old controversy on inter-religious marriage flared up again. The number of inter-religious marriages went up, in contrast to what occurred after the previous *fatwas*. More cases were reported and publicly known. There were cases in which one party refused to convert to another party's religion. Some people argued that this case was not yet regulated in the Marriage Law or that there was a legal vacuum. Consequently, these people argued that such marriages were allowed because there was no legal prohibition.

On January 7, 1992, being aware of the increasing number of inter-religious marriages, the then Minister of Religion, Munawir Sjadzali, again raised the issue and argued the need for the new bill which would allow inter-religious marriage. Among his reasons was that religious heterogeneity was inevitable and so inter-religious marriage need not be prohibited. Sjadzali also reasoned that human rights should not be violated by any regulations. Sjadzali admitted that some churches allowed marriage between Christians and non-Christians, while almost all Islamic, Hindu, and Buddhist institutions did not. People were forced to be hypocrites just to legalize marriage. People married abroad and therefore avoided the restriction. What Sjadzali's arguments revealed was that, despite the *fatwas*, in practice they could be ignored or circumvented. It is therefore important to understand the context of each *fatwa* issued.

Munawir Sjadzali's proposal seemed to have received some support from government officials, including the Chairman of the Supreme Court, Ali Said, Minister of Justice, Ismail Saleh, Minister of Home Affairs, Rudini, as well as a number of Christians and some legal experts. The mass media reported the statement by Ismail Saleh that a joint meeting was planned to be held, but we do not know whether the meeting was eventually held. If it was held we do not know the results of the meeting. In the meantime, Sjadzali received severe criticisms by some Muslim scholars, including Supreme Court member, Bismar Siregar, scholar at IAIN (State Institute for Islamic Studies) Sunan Ampel, Surabaya, Sjeichul Hadi Permono, Hasan Basri, chairman of the MUI, Professor of theology, IAIN Syarif Hidayatullah Jakarta, Harun Nasution, and Psychologist Zakiah Daradjat. The main argument was familiar: the problem was not merely legal, but also a matter of faith.<sup>27</sup>

In response to this controversy, in February 1992, the MUI issued a booklet entitled “guidelines of marriage for Muslims”, signed by the chief, Hasan Basri and the secretary, H.S. Prodjokusumo. It cited references to the 1974 Marriage Law and the MUI Fatwa of 1980. The book begins with an introduction which gives the background for that publication of the book. It referred to the mass media reporting of inter-religious marriage cases, especially between Muslims and Christians, which the government refused to register on the grounds that such marriages contravene the 1974 Marriage Law. The book interprets the Law to have clearly prohibited such marriages. There was, it claimed, no legal vacuum on this problem. The MUI found it necessary to further elaborate its opinions concerning the matter, based on previous *fatwas* and the 1974 Marriage Law.

The second chapter of the book explains what the MUI viewed as the basic problems of inter-religious marriage namely religious belief, legality, and politics. It regarded the problem of inter-religious marriage as an obstacle and threat to the existence of the Muslim community as the majority in the *Pancasila* state. Here there was a difference in interpretation between the MUI and Munawir Sjadzali regarding what religious tolerance should mean. According to Munawir Sjadzali, religious tolerance should mean allowing different religious persons to get married as an indication of respect for religious freedom or human rights, whereas the MUI regarded inter-religious marriage as an obstacle to religious tolerance itself because allowing inter-religious marriage would mean disintegrating Islamic community, thereby hampering inter-religious harmony.

The subsequent chapter mentioned what the MUI understood as the Islamic view of the problem by citing the translation of two Koranic verses. It concluded the chapter with two statements which prohibit inter-religious marriage under any circumstance as stated previously in the 1980 *fatwa*. The fourth chapter included the MUI interpretation of the 1974 Marriage Law. Indonesia is neither a secular nor an Islamic state; instead it is a *Pancasila* state which recognizes the belief in One God (*Ketuhanan Yang Maha Esa*). Therefore, all prevailing laws should not contradict this first pillar. The 1974 Marriage Law accords with *Pancasila* and the 1945 Constitution, while previous marriage laws, including that which was cre-

ated by the colonial Dutch, contradict the *Pancasila* and the 1945 Constitution.<sup>28</sup>

The passage admits that the inter-religious marriage issue was not a new one (in 1992). Before the passing of the 1974 Marriage Law there was a bill (*Rancangan Undang-Undang*) in 1973 which stipulated the possibility of inter-religious marriage. The MUI regarded this as reflecting the attitudes of a minority religion (i.e. Christianity) that had a vested interest in secularizing the Indonesian state. The bill was also regarded as violating the sense of justice among Muslim communities. As a result, strong opposition and demonstration took place against the bill, which brought about controversy in the Meeting of House of Representative (DPR) on September 27, 1973. Compromise was eventually worked out with the birth of the 1974 Marriage Law, allowing no inter-religious marriage to be legalized by the state.

Christians regarded this Law as being unjust. On December 12, 1973, the Conference of Catholic Bishops of Indonesia (MAWI) and the Protestant Council of Churches (PGI) sent the then President Soeharto a letter opposing the Law. The government responded by a letter, which seemed ambiguous, but, to a great extent, favored the Muslim side (i.e. the MUI).

The letter contains the following point: If indigenous people who have no religion yet wish to marry, their marriage can proceed through one way or another based on this 1974 Marriage Law. In cases where persons of different religion wish to marry, the Marriage Law does not force one to convert to another religion. Freedom of religion is guaranteed by the 1945 Constitution. Therefore, as long as the marriage is carried out in accordance with one of the ways regulated in the Law, based on agreement of both parties, the marriage shall be regarded legal (*sah*). The letter goes on to say that one's conversion to another religion which was taken after the marriage proceeding which accords his or her old religion does not affect the legality of such marriage. If he or she, after conversion, performs an act relating to marriage, this act shall be judged in accordance with the laws of the newly-adopted religion. The MUI interpreted these statements by concluding that inter-religious marriage is prohibited.

The subsequent section of the booklet shows the MUI position on the problem of inter-religious marriage in the framework of tolerance and national unity. The MUI acknowledges the development of



religious diversity, including the still existing indigenous belief or animism. In this situation, religious tolerance should be respected by allowing other religions to obey their own religious law. The MUI assumed that all religions forbid their adherents from entering into inter-religious marriage, and believed that it is the task of religious leaders to discourage or even prevent such marriage. The passing of the 1974 Marriage Law should be celebrated, instead of being harmed by such an opinion that says there was a legal vacuum to allow inter-religious marriage. The problem also had to do with the relationship between religions and the government. All religious communities, the MUI argued, should make sure that this relationship be harmonious and peaceful, especially in preparation for the General Election in 1992 and the general meeting of The People's Consultative Assembly (MPR) in 1993.

The MUI categorized the inter-religious marriage issue as that of SARA (Tribe, Religion, Race, and Other factions) that should be avoided and thus viewed it as an obstacle to national stability needed to the national development. The MUI argumentations were attempted to be in line with the New Order slogans and policies, although as mentioned above, not all the regime's officials shared the argument against inter-religious marriage. What becomes obvious is that the MUI did not find it adequate to just refer to religious texts; it came to use the contextual reasons to support its strong stand on the issue.

The *fatwas* clearly reflect religious rivalry, especially between Muslims and Christians. In those *fatwas*, the People of the Book refer to the Christians, rather than the Jews, let alone Zoroastrians, for the latter two are not found in Indonesia. Many Muslim leaders were constantly aware of the danger of "the project of Christianization" in Indonesia, which began in the Dutch colonial age.<sup>29</sup> Tensions in the form of polemics as well as physical conflicts between Muslims and Christians were so high that it was not an easy task for both Muslim and Christian leaders to build religious tolerance. For example, in the late 1970s, H.M. Rasyidi, the Muslim scholar at the State Islamic University, Jakarta, a graduate from Sorbonne University, Paris, strongly criticized efforts of Christianization in a majority Muslim country.<sup>30</sup>

Similarly, the late Muhammad Natsir, another leading Muslim scholar, saw increasing Christian missionary activity in Muslim areas as a threat to the building of religious tolerance in the *Pancasila* state.<sup>31</sup> Another noted scholar, Hamka, had similar arguments against what

he called 'Christian mission and *zending*'. Hamka admitted that since the Dutch period, there had been the 'race of influence' between Muslims and Christians. Hamka even said that the prestige, which Christian received from the Dutch government during the colonial age, had now become threatened by the Muslim majority in the periods after independence because all became equal.<sup>32</sup> It is thus easy to understand that, for Rasyidi, M.Natsir, Hamka, and many other Muslim leaders, including those in the MUI circle, the legality of inter-religious marriage would only facilitate what they view as the on-going process of Christianization.

More recently, the Ministry of Religion worked to prepare three bills in parliament (*Rancangan Undang Undang*): on Islamic Marriage, Islamic *Wakaf* and Islamic Inheritance. This proposal was in accordance with UU No. 25/ 2000 on the National Development Program. The then Director for Islamic Court of the Ministry of Religion said that these three bills would be the material laws at the Islamic court and be applied only to Muslims. This proposal was also viewed to be related to the Compilation of Islamic Law in Indonesia (KHI) which had been enacted by the Presidential Instruction number 1/1991. At the discussion on the bills, there was a debate on inter-religious marriage in particular among Muslim scholars and governmental officials.

Despite the *fatwa* issued by the MUI on the prohibition and illegality of inter-religious marriage, there were some officials who opposed that *fatwa*. One of those who disagreed with the *fatwa* of MUI was Ichtijanto, an ex-director for Islamic court, Ministry of Religion, arguing that formalization of Islamic law was a backward step. He went to say that there should be various approaches to Islamic law in Indonesia, including legal, court, social, and moral aspects. The latter three had been already present and had become an Indonesian social reality which must be recognized. The philosophy of life of Indonesian peoples had been the philosophy of religion. Legal consciousness and goals had been based on and aimed at religious observance.<sup>33</sup>

In early October 2002, MUI planned to broaden its influence in Southeast Asian Countries (ASEAN), by initiating a meeting of Southeast Asian *Ulamas*. The MUI found the need to address Muslims-related current issues, including inter-religious marriage, food, finance, terrorism, and theological issues.<sup>34</sup> The MUI also raised the issue in the Organization of Islamic Conference (OIC).

### Some Oppositional Public Responses to the *Fatwas*

Muslim and non-Muslim responses to the *fatwa* on inter-religious marriage vary according to their perspective. Most Muslims seem to have supported the *fatwas* issued by the NU and MUI due to the absence of resistance. Yet, a number of letters and articles in the media opposed the *fatwas* that prohibit inter-religious marriage. For example, Siswo Pramono, a graduate student at the Australian National University, wrote in early January 2002, that interfaith marriage should not be prohibited because a tolerant community should begin in the family level, while the government and the *ulamas* had no right to impose a law which violates individual human rights in such pluralist society as Indonesia.<sup>35</sup>

A number of religious scholars also backed interfaith marriage, including Ulil Abshar Abdalla, a researcher at the *Nahdlatul Ulama* (NU) and a member of the Indonesian Conference on Religion and Peace (ICRP), who opposed the idea of illegality and prohibition of interfaith marriage by the law. "Interfaith marriage is becoming a growing problem as people are more and more mobile. Human relationships are no longer based on religion. So, there should be a solution to this problem." In the context of planned reform in the civil registry system, the function of the civil registry office should be strictly limited to registering marriage and other activities related to citizenship. "There should be a distinction between a marriage blessed by a particular religion and civil registration of a marriage", Ulil reasoned. Ulil suggested that it would be better if the Religious Affairs office (KUA), simply registered Muslim marriages. Muslims who want to marry non-Muslims could then get married in the civil registry office.

Mudji Sutrisno, a Catholic priest, agreed with Ulil. "I think it is good for our civil law. This is a solution to the deadlock in interfaith marriage and it respects religious differences because each person can maintain his or her religion."

Budiman of the Indonesian Buddhist Society (MBI) shared Ulil's view. "It is annoying when the civil registry office insists that you have the same faith as your spouse before it registers your marriage. If couples of different religions want to get married, the civil registry office should register their marriage." Budiman went on to say that under the 1974 Marriage Law, a marriage is legal only when it is conducted according to one's faith or religion. In practice, however, the civil registry office only recognizes marriages between people of the

same faith. The 1974 Marriage Law also refuses to register non-denominational marriages unless the couple chooses to convert to one of the religions recognized by the state: Islam, Protestantism, Catholicism, Buddhism and Hinduism. Such a ruling prompts couples from different religions — especially Muslims wanting to marry non-Muslims — to get married outside the country where interfaith marriages are recognized.

According to Budiman, in December 2001, around 5,000 Indonesian couples were on a waiting list in Singapore to have their marriage registered there. Worse still, according to Budiman, the regulation has promoted couples of different religions to pretend to have converted to his or her spouse's religion just to have their marriage registered. They would continue to practice their own religion once their marriage had been registered.<sup>36</sup>

There have been an increasing number of stories about couples whose marriage was an interfaith one. Kania, 38 years old, a Muslim girl, had to marry her Christian boyfriend in Paris on Christmas Eve, December 2001, after they learned that there was no way to legalize and register their interfaith marriage in Indonesia. They had learned that under the 1974 Marriage Law, a marriage was only legal when it was conducted according to one's faith or religion. Kania's sister, Purnama Anggraeni, married her Christian boyfriend in front of a *kiyai* (Muslim cleric) at the Islamic religious affairs office in South Jakarta. Another story was told by Siska who was a Christian girl wanting to marry her Muslim boyfriend, but had decided that they would adhere to their respective religions. Siska said, "If we get married at the Islamic religious affairs office, I have to state that I convert to Islam. That means pretending, and it's like playing games. I don't want to do that." So they went abroad.<sup>37</sup>

Those who have carried out interfaith marriage and lived their life claimed that they had based their decisions on basic human rights, and that the government regulations and MUI *fatwas* had denied those basic human rights. "It is a pity because religion is one's personal right. Everyone has their freedom, it is their personal relationship with God," Siska said.<sup>38</sup>

Most recently, a consortium—from the government, non-governmental organizations and United Nations Children's Fund (UNICEF)—is working on a new bill to legalize interfaith marriages while maintaining a couple's respective religions. Although the bill is

not expected for another year, the Consortium for Civil Registry has started to disseminate its ideas. According to Budiman, the proposed reform would ease pressure on couples of different faiths if they wanted to register their marriage at the registry office. "They will feel free to come to the civil registry office. They wouldn't have to feel awkward about their religious background," Budiman remarked.<sup>39</sup>

## Conclusions

*Fatwas* have played an important role in shaping the thought, attitudes and customs of Muslim community in Indonesia. *Fatwas* are supposed to be flexible as they constitute legal opinions. Nonetheless, on some issues which are regarded as part of Islamic beliefs and rituals, the flexibility of *fatwas* is hardly found. In the case of inter-religious marriage, the *fatwa* lacks flexibility and changes. There is not a single *fatwa* in Indonesia which allows inter-religious marriage. One of the reasons stated or implied by the issuing organizations such as NU and the MUI is that the issue concerned Islamic basic beliefs and rituals, not merely the Islamic legal matter or social interaction. However, this article has shown that the socio-political contexts in which the *fatwas* were issued have actually shaped such lack of flexibility and change in *fatwas*. The *fatwas* were issued in the context of inter-religious tensions and amidst the dilemma faced by the government in promoting religious tolerance. For Nahdlatul Ulama and MUI, the prohibition of inter-religious marriage has been necessary in order to maintain what they perceived as the identity and integrity of the Muslim *umma*.

However, *fatwas* are by no means binding to everybody. While *fatwas* have affected most Muslim lives, certain Muslim intellectuals and some segments of society have regarded *fatwas* as merely a human, often elitist opinion which does not require absolute adherence. A number of liberal Muslim scholars, albeit minority, saw the acceptability of inter-religious marriage on the pretext of individual human rights and religious freedom. Given the perceived dead-lock in interfaith marriage by way of religious dialogue, some individuals of this group preferred civil solution by preparing a new bill which would allow inter-religious marriage to be registered.

Whether this new bill will be able to answer the problems of inter-religious marriage in Indonesia remains to be seen, but one thing is instructive: by looking at the history of *fatwas* on interfaith marriage, tensions between different religious leaders and communities will remain existent in the future, whereas the government will still face the dilemma of ensuring legal certainty on the one hand and promoting religious tolerance in the pretext of the *Pancasila* on the other.

## Endnotes

1. I would like to express my indebtedness to Prof. Leonard Andaya, a professor in Southeast Asian history, University of Hawaii, U.S.A., for his patient guidance in shaping this research paper.
2. On the high position of *fatwa* in Southeast Asia, see for example, Othman Haji Ishak, *Fatwa dalam Perundangan Islam* (Kuala Lumpur: Penerbit Fajar Bakti Sdn.Bhd., 1981), Othman Haji Ishak, *Hubungan Antara Undang-undang Islam dengan Undang-undang Adat* (Kuala Lumpur: Dewan Bahasa dan Budaya, 1997), Abdul Monir Yaacob and Wan Roslili Abd.Majid (eds.), *Mufti dan Fatwa di Negara-negara ASEAN* (Kuala Terengganu: Perpustakaan Yayasan Islam Terengganu, 1998)
3. Nico Kaptein, *The Muhimmat al-Nafa'is: A Bilingual Meccan Fatwa Collection for Indonesian Muslims from the End of the Nineteenth Century* (Jakarta: INIS, 1997), pp. 1-16. On the study of the relationship between Islamic law and Muslim practices, see for example Luis Q. Lacar, *Muslim-Christian Marriages in the Philippines* (Quezon City: New Day Publishers, 1980) especially pp.76-7.
4. Cited in Azyumardi Azra, *Jaringan Ulama Timur Tengah dan Kepulauan Nusantara Abad XVII dan XVIII* (Bandung: Penerbit Mizan, 1994) pp.166-232, p.288.
5. Benedict R. O'G. Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London: Verso, 1983)
6. For example, the Council of Indonesian Ulama (MUI) have issued *fatwas* on various issues, ranging from the issue of luxurious life (issued on February 1976), drug abuses (February 1976), the film titled 'The Message' (July 1976), the writing of the Koran in non-Arabic language (June 1977), prayers to prevent multidimensional crisis (July 1979), inter-religious marriage (June 1980) Muslims' attendance in Christmas (March 1981), child adoption (March 1984), demography, health, environment, and family planning (March 1984), alcohol (October 1993), and the film titled 'True Lies' (September 1994). Majelis Ulama Indonesia, *Himpunan Keputusan dan Fatwa Majelis Ulama Indonesia* (Jakarta: Sekretariat Majelis Ulama Indonesia, 1995).
7. Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Fiqh* (Cambridge: Cambridge University Press, 1997) p.123-4.
8. On the tradition of pesantren and kiyai see for example Zamakhsyari Dhofier, *The Pesantren Tradition: The Role of the Kiyai in the Maintenance of Traditional Islam in Java* (Arizona: Monograph Series Press, Program for Southeast Asian Studies Arizona State University, 1999) and Martin van Bruinessen, *Kitab kuning, Pesantren dan Tarekat: Tradisi-tradisi Islam di Indonesia* (Bandung: Mizan, 1995)
9. Atho Mudzhar, *Fatwa-fatwa*, p. 86.
10. Further research is needed to investigate female *muftis* in Southeast Asian history.
11. This kind of center-peripheral relationship recalls Wolter's concept of man of prowess. In the case of *fatwa*, mufti became the center and the audience or the followers (mostly laity) became the peripheral. The 'power' derived from knowledge and moral authority, or in other words, charisma. "The leadership of big men, or, to use the term I prefer, 'men of prowess', would depend on their

- being attributed with an abnormal amount of personal and innate 'soul stuff', which explained and distinguished their performance from that of others in their generation and especially among their own kinsmen...a person's spiritual identity and capacity for leadership were established when his fellows could recognize his superior endowment and knew that being close to him was to their advantage..." See O.W. Wolters, *History, Culture, and Region in Southeast Asian Perspectives* revised edition (New York and Singapore: Southeast Asia Program Cornell University and The Institute of Southeast Asian Studies, 1999) pp.18-9.
12. Nico Kaptein, p.10
  13. *Ibid.* p.13.
  14. Johan Philip van Hasselt, "summary", *De botsingsbepalingen van de Huwelijksordonnantie voor Christen-Indonesiërs, Artt. 72 t/m 76 I. St. 1933 nr 74.* (Leiden: De Jong, 1952), p. 186
  15. Prof.Dr.H.Said Agil Husin Al Munawar MA is now a professor of Islamic law at the IAIN Syarif Hidayatullah Jakarta. Agil was also active in Lembaga Pengembangan Tilawatil Quran (LPTQ). He learned the Koran by heart, was born in Palembang, South Sumatera, January 26, 1954. Agil obtained his Ph.D. from the Faculty of Islamic Law, University of *Umm al-Qurrâ*, in Mecca, Saudi Arabia, in 1987. Agil also served as General Secretary, Consultative Body, *Nabhdlatul Ulama*. He was also a member of *Fatwa* Commission, of the MUI, a member of the National *Shari'a* Council, and board member of *Lembaga Pengembangan Tilawatil Quran* (LPTQ) and *Dewan Pertimbangan Badan Amil Zakat Nasional*. He wrote books on Islam, including on Women Leadership in Islam, Arbitrage in Islam, and Social Problems in Indonesian Islam, Other *mufit's* issuing included M.Cholil Bisri, K.A. Masduki, Zainal Abidin, Drs.Nadjid Hasan, and M.Subadar. See Aziz Masyhuri (ed.) *Masalah Keagamaan: Hasil Mukhtamar dan Munas Ulama Nabhdlatul Ulama 1926-1994* (Surabaya:PP RMI and Dinamika Press, 1997), p.333.
  16. "Profil Paroki Gereja Katolik di Seluruh Indonesia 1980: Hasil Sensus Gerejani 1981", Jilid I and II, Seri Laporan Penelitian Keagamaan 75A and 75B, October 1982, in Dr.P.Go O. Carm and Suharto S.H., *Kawin Campur Beda Agama dan Beda Gereja* (Malang: Penerbit Dioma, 1987), p.59.
  17. For more discussion of the three dimensions of religions and their implications for religious pluralism, see André Droogers, "Identity, Religious Pluralism, and Ritual in Brazil", in Jan Platvoet and Karel Van Der Toorn, *Pluralism and Identity: Studies in Ritual Behavior* (Leiden: E.J.Brill, 1995), pp.91-113.
  18. Haji Abdul Malik Karim Amrullah (Hamka) was a man of letters, productive writer, influential religious preacher in Southeast Asia, and the first chief of the MUI. He was born in Maninjau, South Sumatera on 16th February 1908, son of H. Abdul Karim Amrullah, a prominent activist of the Kaum Muda (Young Generation) in Minangkabau. After meeting Egyptian writers such as Taha Husein and Fikri Abadah, he wrote novels, including *Mandi Cabaya di Tanah Suci* (Sun Bath in Holy Land), *Di Lembah Sungai Nil* (In the Valley of the Nile), and *Di Tepi Sungai Dajlah* (At the Edge of Dajlah River), *Di Bawah Lindungan Ka'bah* (In the shadow of the Ca'bah, 1938), *Tenggelamnya Kapal van der Wijck* (Sinking of the Ship van der Wijck, 1939). Hamka was arrested by the state from 27th January 1964 until the fall of the Old Order in 1966.



During his arrest, he wrote his tafsir (Koranic exegesis) called 'Tafsir Al-Azhar' of 30 volumes. In 1975, he became the first leader of *Majelis Ulama Indonesia* and hold the position until 1985. Hamka has produced around 118 books, excluding his articles and lectures. His field includes politics, history, culture, ethics, mysticism, and Islamic sciences.

19. See for example Muhammad Rashid Rida, *Tafsir Al-Manar*, vol.vi (Beirut: Dâr al-Fikr, n.d), p.190.
20. Majelis Ulama Indonesia, *Himpunan Keputusan dan Fatwa Majelis Ulama Indonesia* (Jakarta: Sekretariat Majelis Ulama Indonesia, 1994), pp.91-4.
21. Majelis Ulama DKI, *Fatwa Majelis Ulama DKI Jakarta* (Jakarta: Majelis Ulama DKI Jakarta, n.d.), pp.3-9 in Atho Mudzhar, p. 87.
22. *ibid*, p.88.
23. *ibid*.
24. See Karel A. Steenbrink, "The Pancasila Ideology and an Indonesian Muslim Theology of Religions", in Jacques Waardenburg, *Muslim Perceptions, op.cit.*, pp.280-96.
25. Ali Murtopo was an influential leader of the Golkar, the leading party of the New Order. He was regarded as one of the regime's anti-Islamic figures in the New Order. See M.C. Ricklefs, *A History of Modern Indonesia since c.1300*, second edition (Hampshire and London: The Macmillan Press Ltd, 1993), pp.299-300.
26. Ricklefs, *A History*, p.300.
27. Darul Aqsha, Dick van der Meij, and Johan Hendrik Meuleman, *Islam in Indonesia: A Survey of Events and Developments from 1988 to March 1993* (Jakarta: INIS, 1995) pp. 471-3.
28. By the previous laws, the MUI might refer to *Kitab Undang-undang Hukum Perdata (Burgerlijk Wetboek)*, *Ordinansi Perkawinan Indonesian Kristen (Huwelijksordonantie Christen Indonesiers S. 1933 No.74)*, and *Peraturan Perkawinan Campuran (Regeling op de gemengde huwelijken S. 1898 No.158)*. See Ahmad Ichsan, *Hukum Perkawinan Bagi Yang Beragama Islam: Suatu Tinjauan dan Ulasan Secara Sosiologi Hukum* (Jakarta: PT Pradnya Paramita, 1986), pp.88
29. A number of works have been done on the Dutch policy towards Islam in Indonesia. Some would argue that the Dutch policy was in favor of Christian missionary activities, while suppressing 'political Islam', but encouraging 'cultural Islam'. See for example, Hamid Algadri, *C. Snouck Hurgronje: Politik Belanda terhadap Islam dan Keturunan Arab* (Jakarta: Penerbit Sinar Harapan, 1984), especially pp. 117-50; Karel Steenbrink, *Dutch Colonialism and Indonesian Islam: Contacts and Conflicts 1596-1950*, trans. Jan Steenbrink and Henry Jansen (Amsterdam: Rodovi, 1993).
30. H.M.Rasyidi, *Sekali Lagi Hubungan Islam dan Kristen di Indonesia* (Jakarta: Media Dakwah, 1978) pp.23-5
31. M.Natsir, *Kerukunan Hidup Umat Beragama di Indonesia* (Jakarta: Media Dakwah, 1978), pp.50-69.
32. Hamka, *Cara Zending dan Missi Menyerang Aqidah Kita* (Kualalumpur, Pustaka Melayu Baru, 1979), pp.40-1.
33. *Kompas*, Saturday, September 21, 2002
34. *Kompas*, Monday, October 7, 2002

35. *Kompas*, January 9, 2002
36. Fitri Wulandari, "Religious Scholars back Interfaith Marriage", *The Jakarta Post*, December 15, 2001
37. Heri Diani, "Marrying "Out: A Leap of Faith", *The Jakarta Post*, December 23, 2001; Purnama Anggreini, "Can Love Overcome Religion in Indonesia", *The Jakarta Post*, December 23, 2001
38. Heri Diani, *ibid.*
39. *The Jakarta Post*, December 15, 2001

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Muhamad Ali is a lecturer at the Faculty of Ushuluddin, State University of Islamic Studies (UIN) Syarif Hidayatullah Jakarta. He obtained his master's degree in Islamic History and Politics from Edinburgh University, Scotland in 2001. He is now pursuing his Ph.D in History at the University of Hawaii and a fellow at the East-West Center, U.S.