

ARTICLE SYMPOSIUM

EAT, PRAY, REGULATE: THE INDONESIAN ULAMA COUNCIL AND THE MANAGEMENT OF ISLAMIC AFFAIRS

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ABSTRACT

Indonesia's national ulama council, the Majelis Ulama Indonesia, or MUI, has successfully transformed itself during the reform era reversing its earlier relationship with government. It is the MUI that now sets the agenda on appropriate ways to recognize, protect, and promote the majority faith. However it does not operate entirely separate to the state, indeed, there are numerous points of contact and mutual dependence between this group of Islamic scholars and state agencies.

This article offers two case studies on religious freedom demonstrating different aspects of the MUI's self-appointed role of national mufti. The first case study demonstrates how the MUI has taken control of the high ground of religious doctrine. Through its response to blasphemy cases and deviant Muslim activities the MUI defines appropriate, orthodox Muslim conduct. The second case study deals with the revised regime of halal food certification. Here the state has sought to bring the MUI back into its embrace, partly as a result of corruption scandals. In doing so, however, Islam continues to be further entrenched in state law and regulation.

Indonesian Islam was said to be deconfessionalized, reflecting the nature of the former authoritarian and bureaucratic state's engagement with various Islamic institutions. The changing role of the MUI demonstrates that the state and law are becoming increasingly confessionalized. This change has significant implications for Indonesia's democratic constitutional framework, evident in what these cases say about the enjoyment of the fundamental right of citizenship.

KEYWORDS: Islam, Indonesia, citizenship, regulation, freedom of religion

INTRODUCTION

Indonesia offers a striking example of the interplay between approaches to public administration and management of religious affairs, particularly of the majority faith, Islam. The decades of authoritarian rule, prior to democratization in 1998, saw the confinement of religious affairs to predetermined pathways and subject to bureaucratic control through a central ministry. Muslim religious leadership was also largely allied with the regime. It is now nearing two decades since democratic transition, and the picture could not be more contrasting. Islam flourishes as a source of law and policy, and public administration reflects, in key areas, the priorities set by the official national

Muslim leadership group, the Majelis Ulama Indonesia, or MUI, the Indonesian council of ulama, or Islamic religious scholars.

The MUI is now entrenched, through law and practice, as the primary source of guidance to government on matters of Islamic religious interpretation. Indonesian Islam was once seen as deconfessionalized and constrained by the overarching power of government and the bureaucracy. Now, the MUI's policy of establishing itself as unofficial mufti¹ has been willingly accepted by the state authorities: when Islam speaks to government, it is the voice of the MUI that is heard. Moreover, MUI bodies are granted special status through law and regulation to deliver definitive interpretations of Islam in specific areas of administration. The institution has succeeded in being, effectively, annexed to the state administration. The peculiar status held by this nongovernmental organization appears to be widely accepted as being in the public interest. Accordingly, this arrangement raises fundamental questions about the purpose and structure of the state, and the role of religious authority in public administration, as well as the meaning of religious freedom in democratized Indonesia.

This essay focuses on two case studies to demonstrate the contemporary authority of the scholars of Indonesia's council of ulama and to illustrate the experience of religious freedom in this large and continually transforming democracy. The first case is about the role played by the MUI in the nature of Islamic faith itself through its rulings on religious deviancy, and the second focuses on the recently revised system for halal certification. These two regimes embrace the full gamut of Islamic life in Indonesia and permit a detailed examination of the links between the state and the MUI. I discuss how the MUI adopts the stance of guardian of creed (*aqidah*) and seeks to enforce conservative interpretations of doctrine to define the nature of Islam. Halal certification is no less important from a spiritual perspective, but the MUI has been subject to significant attention recently for more mundane reasons. The prevailing system for regulating the halal food industry, in which the MUI played a key role, came into focus following allegations of corruption. This added impetus to the development of a new system of regulation that is still being established.²

RELIGION AND STATE IN INDONESIA

Analysis of the relationship between state, law, and religion in Indonesia commonly involves identifying where Indonesia might be said to rest on a spectrum running from secular to religious. Official formulations, indeed, hold that Indonesia is neither a secular nor religious state. As I show below, it is arguable that this position is not tenable and that law and wider jurisprudence clearly accommodate Islamic religious law. Scholars have also considered the degree to which Islam has been bureaucratized due to the close embrace of religious functions by government administration and institutions. Again, the intimate relationship between law, policy, and administration, and Islamic precepts indicates that the state is highly accommodating to Islamic religious needs. The case studies I offer here show that tensions arise as a result of the continuing accommodation by the state of a particular form of Islamic authority. This tension between state accommodation and the notionally secular constitutional and legal framework results from the failure of the

1 Traditionally a scholar independent of the state and qualified to provide religious rulings. See, for example, M. Barry Hooker, *Indonesian Islam: Social Change through Contemporary Fatawa* (Crow's Nest: Allen & Unwin and University of Hawaii Press, 2003), 1.

2 At the time of this article's publication, the major elements of the halal certification process were in place, but the many implementing regulations were yet to be proclaimed.

nation's political elite to "negotiate and reconcile" the different discourses on the ideological basis of the state.³

The case of Indonesia is thus particularly interesting for the interplay and negotiation between state and religious authority. Like Antoun's examination of the co-optation of religion in Jordan, this study does not seek to emphasize specifically the attributes frequently associated with studies of bureaucratization.⁴ These case studies instead highlight the importance of the central question about the nature and functions of bureaucracy, being: In whose interests does it serve?⁵ In particular the paper offers observations on the latest developments in the Indonesian state's efforts to be seen to recognize Islamic practices as well as to graft them into the existing regulatory and bureaucratic systems. In this we see, as observed by Antoun,⁶ an intertwining of rather than a dichotomy between state and society.

The research for this article was based on documentary analysis, including material obtained during fieldwork conducted for postgraduate study. It builds on previous research in which I detailed the close relationship between state agencies and elements of the MUI, and work examining the way in which the Indonesian legal system serves to both promote religion and protect freedom of religion.⁷ It also forms part of a wider examination of the nature of the relationship between state and Islam within Indonesia's broadly liberal constitutional order.⁸ In this respect, I seek to emphasize the impact of increasing public religiosity for the formal, legal normative order. This contrasts with other recent scholarship that describes the motivation and posture of Islamic religious elites in the public sphere.⁹ This essay focuses on the persistent, dynamic, and ongoing interchange between Islam and the state and the crucial role of the MUI in bridging these domains, a topic of growing scholarly attention.¹⁰

In summary, I seek to elaborate through the case studies, which address core aspects of the Islamic faith (on defining the nature of Indonesian Islam, and the halal food regime), the ways in which the regimes of state regulation and religious regulation are increasingly blended. In particular, this article highlights the important and special status of the MUI and the way its religious rulings have come to implant aspects of Islamic law into the legal system. Regulating Islam is arguably a rational response to the challenge of managing religious affairs in the world's largest Muslim democracy. This new regime affirms a legitimate role for religion in public life but also has the potential to threaten the key attributes of Indonesia's "civil Islam." These attributes are defined by Hefner as including a rejection of the idea of an Islamic state, belief in pluralism, and acceptance that democracy requires a noncoercive civic culture; that is, in short, a culture of democratic

3 Bahtiar Effendy, *Islam and the State in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), 14.

4 Richard T. Antoun, "Fundamentalism, Bureaucratization and the State's Co-optation of Religion: A Jordanian Case Study," *International Journal of Middle East Studies* 38, no. 3 (2006): 369–93.

5 S. N. Eisenstadt, "Bureaucracy and Bureaucratization," *Current Sociology* 7, no. 2 (1958): 99–124.

6 Antoun, "Fundamentalism, Bureaucratization and the State's Co-optation of Religion," 376.

7 Stewart Fenwick, "Yusman Roy and the Language of Devotion: 'Innovation' in Indonesian Islam on Trial," *Studia Islamika* 18, no. 3 (2011): 497–529; Stewart Fenwick, "Faith and Freedom in Indonesian Law: Liberal Pluralism, Religion and the Democratic State," in *Religion, Law and Intolerance in Indonesia*, ed. Tim Lindsey and Helen Pausacker (London: Routledge, 2016), 68–94.

8 Stewart Fenwick, *Blasphemy, Islam and the State: Pluralism and Liberalism in Indonesia* (New York: Routledge, 2017).

9 Jeremy Menchik, *Islam and Democracy in Indonesia: Tolerance without Liberalism* (New York: Cambridge University Press, 2016).

10 See Syafiq Hasyim, "Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and its Role in the Shariatisation of Indonesia" (PhD diss., Free University of Berlin, 2013).

civility.¹¹ With the MUI occupying the commanding heights of Islamic public policy, it would appear that the essential notion of pluralism is at risk as its standard-setting role diminishes the scope for variant practices. This is an issue not, primarily, for non-Muslims, but one for observant Indonesian Muslims whose expectations of the role of law in a democratic state may be unsatisfied.

THE MUI: ORIGINS AND EVOLUTION

The beginnings of the MUI as an organization have been described, in one of its own publications, as “controversial.”¹² This is because despite being a nongovernmental organization, its existence was seen as engineered by government. What appears clear, however, is that the organization has taken steps to emerge from the shadow of earlier association with, or perhaps subordination to, the state administration and position itself as an independent voice. This voice is expressed in part through *fatawa*, and the MUI clearly identifies in its published policy that the capacity to influence law and policy development is a matter of high priority.¹³

The genesis of the MUI appears to have been in discussions in the early 1970s among Muslim scholars on the need for such an organization.¹⁴ However, Soeharto promoted the concept and the minister for internal affairs instructed provincial governors to establish regional council of ulama, which subsequently came together in a conference with representatives of existing Islamic organizations.¹⁵ Thus, in July 1975, the MUI was established by declaration.¹⁶ Hooker describes the government’s motive in encouraging the establishment of the MUI as being to “establish and control the public expression of Islam under state (here Department of Religion) auspices”; in short, it was

11 Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000), 12–20.

12 Majelis Ulama Indonesia, *Himpunan Keputusan Musyawarah Nasional VIII Majelis Ulama Indonesia* [Collected decisions of the Eighth National Conference of the MUI] (Jakarta: Sekretariat Majelis Ulama Indonesia, 2010). All translations from the Indonesian in this article are provided by the author.

13 A *fatwa* (plural *fatawa*) is an opinion on a point of Islamic law by a Muslim religious scholar, issued in response to a request by an individual, traditionally not considered to be binding or of general application.

14 Nadirsyah Hosen, “Behind the Scenes: Fatwas of the *Majelis Ulama Indonesia* (1975–1998),” *Journal of Islamic Studies* 15, no. 2 (2004): 147–79, at 149–50. In contrast, according to Mohammad Atho Mudzhar, a proposal was made by Soeharto in 1970 to form the national body but this went unanswered as ulama did not want “to be used by the government.” Mohammad Atho Mudzhar, “The Council of Indonesian ‘Ulama’ on Muslims’ Attendance at Christmas Celebrations,” in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (Cambridge, MA: Harvard University Press, 1996), 230–41, at 236.

15 See Hosen, “Behind the Scenes,” 150; see also Moch Nur Ichwan, “‘Ulamā’, State and Politics: *Majelis Ulama Indonesia* after Soeharto,” *Islamic Law and Society* 12, no. 1 (2005): 45–72, at 48. For a detailed history of earlier regional and national ulama councils, see Deliar Noer, *Administration of Islam in Indonesia* (Jakarta: Equinox, 2010), 81–90. The earliest regional body identified in this account was established in West Java in 1958 specifically for security reasons, and it was under the auspices of a military commander, although not all pre-MUI ulama councils were government controlled. There are two large or mass Muslim organizations in Indonesia: Nahdlatul Ulama (Awakening of the Ulama), Indonesia’s largest nongovernmental Muslim organization; and Muhammadiyah, the second largest. Numerous other Muslim organizations have played an important role in public life in the past, and these and other contemporary organizations, including those with hardline or Islamist views, are discussed below.

16 The Ministry of Religion supports this account of the formation of the MUI. See *Kementerian Agama* [Ministry of Religion], *Kompilasi Peraturan Perundang-Undangan Kerukunan Hidup Umat Beragama* [Compilation of laws and regulations on harmony in the life of the religious community], 9th ed. (Jakarta: Badan Litbang dan Diklat [Research, Development and Training Institute, Ministry of Religion], 2007), 25–27.

the extreme expression of the New Order's bureaucratization of Islam.¹⁷ The organization has, however, always been an independent, nongovernmental organization and is more specifically a *quango*, or quasi-autonomous nongovernmental organization.¹⁸

It has been said that the MUI's main function is to support or justify government policy and programs, reducing it in the eyes of the Muslim community to a government "mouthpiece."¹⁹ A more nuanced analysis is advanced by Mudzhar, a former director of the Ministry of Religion's research and development organization, who concludes that its religious rulings at times supported and at other times opposed government policy.²⁰ The organization has also consistently seen itself as playing a role in the government's legislative agenda, a critical issue for the discussion below. The MUI's third secretary general, Hasan Basri, who served between 1985 and 1998, claimed that it should function as a "watchdog," ensuring consistency between Islamic teachings and state law.²¹ The stance of the MUI was also informed not only by the broader political context—the New Order itself and its relations with Islam—but also by relations among Islamic organizations. Leaders of existing Muslim organizations feared the MUI's becoming a serious rival. However, it accepted its place of advisor, avoiding conduct of "practical programs" such as running schools or other institutions.²² Traditionally, the MUI comprised representatives from a range of organizations, including the large Nahdlatul Ulama and Muhammadiyah, but this membership widened after democratic reform in 1998.

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- 17 Hooker, *Indonesian Islam*, 60; Nico Kaptein describes it as "an attempt by the government to involve the *'ulamā'* in its developmental policy in an institutionalized way." Nico J. G. Kaptein, "The Voice of the *'Ulamā'*: Fatwas and Religious Authority in Indonesia," in "Autorités religieuses en islam," special issue, *Archives de sciences sociales des religions* 49, no. 125 (2004): 115–130, at 121. Similarly, Abdullah Saeed observes that Soeharto's aim was to keep political Islam at bay and nurture an "apolitical Islam in order to use it as a tool in the economic and social development programme of the New Order." Abdullah Saeed, "Introduction: The Qur'an, Interpretation and the Indonesian Context," in *Approaches to the Qur'an in Contemporary Indonesia*, ed. Abdullah Saeed (London: Oxford University Press, 2005), 1–16, at 8. The MUI has also been grouped together with other examples of "state *mufti*" appointed in the Islamic world during the twentieth century. Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, "Muftis, *Fatawas*, and Islamic Legal Interpretation," in Masud, Messick, and Powers, *Islamic Legal Interpretation*, 3–32, at 27. On the nature of the early Indonesian state as a "bureaucratic state," see Tim Lindsey, "Monopolising Islam? The Indonesian Ulama Council and State Regulation of the 'Islamic Economy'," *Bulletin of Indonesian Economic Studies* 48, no. 2 (2012): 253–74, at 254–56. On the bureaucratization of Islam in Indonesia, see Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* 56, no. 2 (2014): 448–78.
- 18 Lindsey, "Monopolising Islam," 255; see also Ichwan, "*Ulamā'*, State and Politics," 45.
- 19 Hosen, "Behind the Scenes," 154; see also John Olle, "The Campaign against 'Heresy': State and Society in Negotiation in Indonesia" (paper presented at the 16th Biennial Conference of the Asian Studies Association of Australia, Wollongong, Australia, June, 26–29, 2006), <http://pandora.nla.gov.au/pan/124461/20110211-1446/coombs.anu.edu.au/SpecialProj/ASAA/biennial-conference/2006/proceedings.html> (under "Olle"). Another formula is offered by Noorhaidi Hasan, who argues that the establishment of the MUI was the New Order's attempt to "domesticate the social force of *ulama*." Noorhaidi Hasan, "Reformasi, Religious Diversity, and Islamic Radicalism after Soeharto," *Journal of Indonesian Social Sciences and Humanities* 1 (2008): 23–51, 26.
- 20 Mohammad Atho Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia, 1975–1988* [Fatwas of the Indonesian Ulama Council: A study of Islamic legal thought in Indonesia] (Jakarta: Indonesian-Netherlands Cooperation in Islamic Studies, 1993). Hosen also refers to arguments raised by Islamic scholars that the MUI received requests for *fatawa* because it was seen as trusted, and legitimate (and not merely supportive of policy). Hosen, "Behind the Scenes," 155. Hooker, *Indonesian Islam*, 60, quotes Mudzhar's study of *fatawa*, *Fatwa-fatwa Majelis Ulama Indonesia*, 122–23, as finding that only three out of a total of twenty-two *fatawa* demonstrate "any sort of government policy influence."
- 21 Hosen, "Behind the Scenes," 154, quoting Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia*, 120.
- 22 Hosen, "Behind the Scenes," 152; Noer, *Administration of Islam*, 90.

There are two key characteristics to emphasize about the MUI today. First is its representative status. As noted above, it comprises members of other Muslim organizations and so is a peak body. Indeed, the MUI claims to have become the “umbrella organisation for the central levels of more than 63 Islamic organisations, ranging from moderate to extreme.”²³ I discuss the complexion of its makeup later, but its claim to representing the overarching voice of Islam in Indonesia is founded in its supposed breadth. The MUI therefore claims the role of being the external face of Indonesian Islam (such as representing Indonesia in international forums²⁴ and in meeting foreign religious figures domestically), being the bridge between the government and “Muslim society,” and as a consultative forum among Muslim scholars. Second, and more importantly, it describes itself as acting as Indonesia’s national mufti. This appears to reflect an ambition to equate the MUI with similar councils in other parts of Southeast Asia that maintain positions as “supreme advisers on religious affairs to the government.”²⁵ In official publications the term *mufti* is used in parenthesis, accompanied by the statement that the MUI’s role is to deliver fatawa and act as religious adviser to the nation, which might be read as a definition of the term *mufti* in its eyes.²⁶ The MUI’s position is “complicated,” according to Hosen, because of the need to maintain good relations with both Muslim organizations and with government, which extends financial support to it (discussed further below).²⁷ The MUI’s sources of funding include its state-sanctioned activities in the syariah economy and halal certification, supplemented with funds from the state budget, but the MUI does not publish or publicly discuss its accounts.²⁸

The MUI is governed by a board comprising representatives from a range of Islamic organizations in Indonesia.²⁹ The two largest Islamic organizations—Nahdlatul Ulama and Muhammadiyah—have traditionally alternated the role of chair and secretary of this board but more recently the dominant role of these mainstream organizations has been challenged by a non-mainstream faction.³⁰ As noted above, the MUI openly embraces even “extreme” Muslim organizations and Islamists have been eager to access the MUI given its position as a “strategic hub” allowing them to spread their views.³¹ Hasyim explains that in recent years not only has there been an obvious “fundamentalist faction” in the MUI, but successive chairmen have fostered the conservative viewpoint.³² The board oversees the work of twelve commissions that direct a wide range of activities, from economic development, women, youth, and development to fatawa and law and legislation.³³ The MUI also maintains several institutes, including one dealing with food

23 Majelis Ulama Indonesia, *Profile of MUI: Retrospective of the Indonesian Council of Ulama—35 Years of Remarkable Progress* (Jakarta: Majelis Ulama Indonesia, 2010). These groups include the controversial hard-line organizations Hizbut Tharir Indonesia and Front Pembela Islam (Islamic Defender’s Front) based on a deliberate program to bridge radical and moderate Islam. See Lindsey, “Monopolising Islam,” 260; Ichwan, “‘Ulamā’, State and Politics,” 49. It is not a mass organization and therefore lacks a membership base from which it might raise funds. See Lindsey, “Monopolising Islam,” 262.

24 Menchik, *Tolerance without Liberalism*, 81 (noting that Soeharto intended the MUI to represent Indonesia at the Organisation of Islamic States and the World Muslim League).

25 MUI, *Profile of MUI*.

26 MUI, *Himpunan Keputusan Musyawarah Nasional VIII Majelis Ulama Indonesia*; see also MUI, *Profile of MUI*.

27 Hosen, “Behind the Scenes,” 154; Hooker, *Indonesian Islam*, 60.

28 Lindsey, “Monopolising Islam,” 262. There is a brief reference to the receipt of state funds in MUI, *Profile of MUI*.

29 Lindsey, 259.

30 Hasyim, “Council of Indonesian Ulama,” 72.

31 Hasyim, 72.

32 Hasyim, 74.

33 Lindsey, “Monopolising Islam,” 260. At the time of writing the commission structure had not changed.

standards and one governing the various syariah boards that play a role in regulation of syariah finance.³⁴ As I discuss later, this structure facilitates the increasingly prominent role of the MUI as a de facto regulatory arm of government.

The organization maintains representation at all levels of government in Indonesia. Its national bodies are important, but are mirrored in councils at the provincial, district, and even village or subdistrict levels. It asserts that a “consultative” relationship exists between its national and regional levels³⁵ and this structure perhaps unwittingly parallels the notorious *dwifungsi* of the New Order period, in which military representation shadowed government and administrative structures at all levels. While the national MUI is theoretically in control, the lower, regional-level MUI tend to “go their own way” and provide advice in their own areas, a tendency also exhibited by the Jakarta-based branch of the MUI.³⁶ This reflects MUI published policy, which acknowledges that fatawa at central and local levels are of equal status; one cannot override another even if they contradict each other.³⁷

FROM FATAWA TO LAW

There is no attempt made to conceal the public agenda that the MUI has established for itself and the nation. It maintains both a fatwa program, and a program for the development of law and legislation. While the objective of developing Islamic religious rulings includes the provision of guidance and legal guidelines to the Islamic community, the MUI also openly states that it seeks to do everything in its power to ensure (*mengusahakan agar*) “every MUI fatwa whether at the central or local level becomes positive law.”³⁸ Accordingly, the objectives of the law and legislation program include: preparing draft laws and regulations; urging or motivating (*mendorong*) national legal agencies in law enforcement in Indonesia; and preparing legal advocacy teams to represent the MUI in and outside of court.

MUI fatawa do not follow the question-and-answer format traditionally seen in fatawa but rather follow a format that gives them the appearance almost of a government-issued document, such as a regulation.³⁹ There are many bodies in Indonesia that issue fatawa, with four main institutions being responsible for the majority of them, and the MUI being the youngest member of this group.⁴⁰ This raises the question of the status of those issued by this umbrella organization, and the

34 Lindsey, 261–62.

35 MUI, *Himpunan Keputusan Musyawarah Nasional VIII Majelis Ulama Indonesia*.

36 Hooker, *Indonesian Islam*, 230.

37 Tim Lindsey, *Islam, Law and the State in Southeast Asia*, vol. 1, *Indonesia* (London: I. B. Tauris, 2012), 131.

38 MUI, *Himpunan Fatwa Majelis Ulama Indonesia* [Collection of MUI fatawa] (Jakarta: Sekretariat Majelis Ulama Indonesia, 2010), 73–74.

39 Hosen, “Behind the Scenes,” 169; Kaptein, “The Voice of the ‘*Ulamâ*’,” 9. This can be distinguished from Hooker’s category of “bureaucratic” fatawa, which is how he describes Islamic rulings on medical ethics issued by the Ministry of Health over many years. *Indonesian Islam*, 62–63. It has been noted that fatawa “assume a variety of local forms, differing in language and literary style, conventions of inclusion and exclusion, and usage of characteristic rubrics.” Masud, Brinkley, and Powers, “Muftis, *Fatawas*, and Islamic Legal Interpretation,” 24.

40 M. Barry Hooker and Tim Lindsey, “Public Faces of *Syariah* in Contemporary Indonesia: Towards a National *Madhab*?” *Australian Journal of Asian Law* 4, no. 3 (2002): 259–94, at 286; Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia*. The other organizations are Nahdlatul Ulama and Muhammadiyah, both mentioned above, and Persatuan Islam, or Persis, the Islamic Union, a conservative Muslim organization known for opposing secular nationalism during the twentieth century.

position in Indonesia is that MUI rulings have never been considered binding upon members of other Muslim organizations.⁴¹ The institutional form of fatwa is a feature of Islam in Indonesia, and Kaptein identifies it as emerging at the beginning of the twentieth century.⁴² Whether intended or not, the advantage of such a format is that by its appearance and content it blurs the distinction between religious ruling and government regulation. The state has become increasingly receptive to the MUI's role and the recent developments in constitutional interpretation mean that the consequences of this role are more far reaching than ever. They are also consistent with wider jurisprudence arguing that it is appropriate for Islamic law to be a source for state law.⁴³

Evidence shows that the MUI's objective of influencing legislation is effective. In a presentation to a conference celebrating the MUI's thirty-sixth anniversary in 2011, the director general of law and legislation at that time, Dr. Wahiduddin Adams,⁴⁴ discussed the clear impact of both the MUI's fatawa and advice since its establishment in 1974. Eleven national laws passed between 1974 and 1999 reflect in some way Islamic needs (such as the marriage law from 1974 and the establishment of the Religious Courts in 1989), and he identified eighteen laws or regulations that have absorbed Islamic legal principles or protect the interests of the *umat*, the Islamic community, such as narcotics legislation from 1976 and the 2008 pornography law.⁴⁵ Adams observes that the MUI fatawa and advice occupy an increasingly strong position as a resource and reference in developing law and legislation.⁴⁶

Several pieces of legislation indeed make direct reference to a role for the MUI: the Companies Law (Law 40/2007, art. 109) requires corporations carrying out activities on the basis of syariah principles to establish a Syariah Supervision Council that includes an expert nominated by the MUI; under syariah securities legislation (Law 19/2008, art. 25) the relevant minister must request a fatwa or declaration of conformity with syariah from the MUI; and, under the Syariah Banking Law (Law 21/2008, art. 26), business activities and products and services must be consistent with syariah principles as established in MUI fatawa.⁴⁷ Adams also observed that (at the time of the conference) there were eight draft laws before parliament to which the MUI might offer a contribution by way of Islamic legal thought, including the then draft legislation on halal products that I discuss below as part of the second case study.⁴⁸ Adams concluded with the invitation that the MUI

41 Hooker, *Indonesian Islam*, 229–30; Ichwan, “‘Ulamā’, State and Politics,” 49. No fatwa is, strictly speaking, considered binding; the issue here is whether or not the MUI's collection of rulings would have precedence over those rulings made by another organization for consideration by its members.

42 Kaptein, “The Voice of the ‘Ulamā’,” 2–7. He also describes fatawa following a traditional style dating from the nineteenth century and being requested by Muslims from Southeast Asia of scholars in the Middle East, and others issued in the early twentieth century in Indonesia, also following a question-and-answer format.

43 See, for example, Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* [The Indonesian constitution and constitutionalism] (Jakarta: Indonesian Constitutional Court, 2005).

44 In 2014 Adams was appointed a justice of the Mahkamah Konstitusi, the Indonesian Constitutional Court. This section draws on Wahiduddin Adams, “Fatwa MUI dalam Perspektif Hukum dan Perundang-undangan” [MUI fatwa from the perspective of law and legislation], in *Fatwa Majelis Ulama Indonesia (MUI) dalam Perspektif Hukum dan Perundang-Undangan*, ed. Mohammad Atho Mudzhar and Choiril Fuad Yusuf (Jakarta: Puslitbang Kehidupan Keagamaan, Badan Litbang dan Diklat, Kementerian Agama, 2012), 3–16.

45 The issue here is the implementation of Islamic moral norms in legislation. In the case of pornography, the development and passage of law between 2005 and 2008 seeking to prohibit certain forms of social and even artistic practice caused controversy due to claims it was designed to impose Islamic standards. See Lindsey, *Islam, Law and the State*, 445.

46 Adams, “Fatwa MUI dalam Perspektif Hukum dan Perundang-undangan.”

47 Regarding the MUI and Islamic finance, see Lindsey, “Monopolising Islam,” 264–65.

48 The MUI has a virtual monopoly over the process of halal certification; see Lindsey, “Monopolising Islam,” 269.

formulate clear and concrete input that can be adopted directly as raw material (*materi muatan*) in the legislative process.⁴⁹

DEFINING INDONESIAN ISLAM

There are a number of dimensions to the MUI's efforts to take the lead role in defining orthodoxy in Indonesian Islam. In a way, its place as the self-appointed arbiter of doctrine is anticipated, or expected, by the overarching legal framework. Jurisprudence almost requires that there be a determinative, if not binding, voice in respect of important aspects of the faith. The MUI has also consistently focused on heresy. Its public stance, including through fatawa, has seen it adopt a conservative and highly orthodox position in areas of public policy. This existing focus has, in contemporary legal affairs, added weight to prosecutions for blasphemy.

The MUI has set itself the challenge of counterbalancing the rise of pluralism in democratic Indonesia. It clearly sees that freedom of religion under a working democracy leaves the public free to voice thoughts and opinions and to conduct themselves in ways that conflict with *aqidah* (Islamic theology) and *syariah* (Islamic law).⁵⁰ It therefore strives to correct such deviations in order to help those who are misled and to help in reducing "disturbance" among the Islamic community. One response has been the MUI's guidelines to protect against deviancy. The guidelines distinguish between an error (*kesalahan*) and deviancy (*kesesatan*).⁵¹ An error is defined as a "confusion in understanding or practice related to a matter of *syariah* the consequences of which is only sin (*maksiyat*)."⁵² Deviancy is defined as a "confusion in understanding or practice related to a matter of *aqidah* or *syariah* but that is believed to be the truth, the consequence of which is unbelief (*kekufuran*)."⁵² The guidelines provide ten criteria by which to judge whether thoughts, opinions, or acts are deviant, including denying one of the Islamic pillars of faith, following a creed that is not in accordance with *syariah*, and interpreting Islam in a way inconsistent with *syariah*.⁵³

Beyond this public policy statement, the core response of the MUI to managing the correct interpretation of the fundamentals of Islam has been through fatawa. Both prior to and after democratic reform, the MUI has issued more than a dozen fatawa dealing with deviant sects. Its continuing concern about the state of the faith led it to issue an even broader ruling against pluralism, liberalism, and secularism in religion at its July 2005 national conference.⁵⁴ It was issued in response to

49 Adams, "Fatwa MUI dalam Perspektif Hukum dan Perundang-undangan."

50 MUI, *Mengawal aqidah Umat: Fatwa MUI Tentang Aliran-Aliran Sesat di Indonesia* [Guarding the faith of the Islamic community: MUI fatawa on deviant sects in Indonesia] (Jakarta: Sekretariat Majelis Ulama Indonesia, 2007), 1.

51 MUI, *Mengawal aqidah Umat*, 4.

52 The guidelines require that prior to a ruling (*penetapan*) on deviancy being issued, the MUI must research the activities or teachings concerned, and engage with the leadership of the group or sect. See MUI, *Mengawal aqidah Umat*, 4–5. This includes a process of validation or clarification, together with the provision of advice so that those concerned will abandon the incorrect thoughts, opinions, or acts and return to the right path.

53 For a discussion of the Islamic concept of *bida'ah*, innovation in practice, in the context of a prosecution under Indonesia's blasphemy regime, see Fenwick, "Yusman Roy and the Language of Devotion."

54 MUI Fatwa Number 7/MUNAS VII/MUI/11/2005 (July 28, 2005), on pluralism, liberalism, and secularism in religion. Some scholars neglect to include reference to religion, presenting the fatwa as being against "all forms of pluralism, liberalism and secularism." See Moch Nur Ichwan, "Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy," in *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn,"* ed. Martin van Bruinessen (Singapore: Institute of Southeast Asian Studies, 2013), 60–104, at 82.

the concern in the community about the rise of plural, liberal and secular religious thoughts. It is expressed as having been requested by an element of the community as a result of these views causing disturbance (*menimbulkan keresahan*). The fatwa in its operative parts is relatively short, comprising four paragraphs of definitions and four paragraphs described as “legal provisions” (*ketentuan hukum*). The fatwa defines pluralism in religion (*pluralisme agama*) as teaching that all religions are relative and that followers of all religions will live together in heaven. Liberalism in religion (*liberalisme agama*) is defined as using “free forms of reasoning” (*dengan menggunakan akal pikiran yang bebas*) to interpret Islam.⁵⁵ Secularism in religion (*sekularisme agama*) is understood as relegating religion to the private sphere. These three positions, the fatwa holds, conflict with Islamic teaching. More specifically, it declares that the *umat*, the Islamic community, can blend with those of other faiths only in the conduct of their social relations, not in respect of *aqidah* or *ibadat*.

The MUI has come to prominence not only as a result of its efforts to manage key matters of doctrine, as outlined above. It has also played an important role in supporting the implementation of offenses in Indonesian law that are intended to provide protection for religion. They are not based explicitly in Islamic law and they existed in pre-Independence laws, some being a product of the colonial administration. Key provisions appear in the chapter of the Criminal Code addressing public order. Together they aim to protect religion and its public expression and prefigure by many years the contemporary international debate concerning defamation of religion.

A 1965 Presidential Decree, later elevated to the status of law introduced the blasphemy regime.⁵⁶ Together with the Criminal Code, it provides the framework for the management of offenses against religion in Indonesia. The law establishes administrative procedures for the control of certain “deviant” activities for implementation jointly by the minister for religion, attorney general, minister for the interior, and the president.⁵⁷ Deviancy is described as deliberately communicating or encouraging religious interpretations or activities that are outside the central teachings of that religion.⁵⁸ The Criminal Code was amended by the inclusion of art. 156a, providing essentially for an offense of religious vilification by prohibiting abuse of a religion, or “disgracing” a religion (*penodaan agama*). The preexisting art. 156 provides for an offense of expressing hostility, hatred, or contempt toward one or more groups in Indonesian society, with “group” interpreted as

55 MUI Fatwa Number 7/MUNAS VII/MUI/11/2005.

56 Presidential Decree 1/1965 Concerning Prevention of Abuse and/or Disgrace of Religion (*Pencegahan Penyalagunaan dan/atau Penodaan Agama*), later Law 1/PNPS/1965.

57 Badan Koordinasi Pengawasan Kepercayaan Masyarakat (Coordinating Body for the Monitoring of Mystical Beliefs in Society), known as BAKORPAKEM, the national team is complemented by regional teams and is led by the intelligence division of the Attorney General’s Office, pursuant to Decision of the Attorney General 108/JA/5/1984, on the establishment of the coordinating body for the monitoring of mystical beliefs in society. The public prosecutor has a legislative mandate to monitor belief systems and prevent the misuse or insult to religion under art. 30 of Law 16/2004, on the public prosecutor.

58 This provision is arguably the one that comes closest on its face to a notion of blasphemy as it is most clearly applicable in cases of a religious offense. Other provisions in the Criminal Code (discussed in the text accompanying this note) are more easily interpreted as offenses against religion which may, or may not, carry elements of an offense against religion or religious stipulations. For this reason I have described the legal framework as a “de facto blasphemy regime,” as the most frequently used provisions are those in the Criminal Code. For a detailed discussion, see Fenwick, “Yusman Roy and the Language of Devotion.” On the distinction between the forms of offense, see Omar Seno Adji, *Hukum (Acara) Pidana Dalam Prospekti* [Criminal procedure in action] (Jakarta: Penerbit Erlangga, 1984); Muktiono Margiyono and Irianto Rumadi, eds., *No Middle Road: A Public Examination of the Decision of the Constitutional Court Concerning Review of Law No. 1/1965* (Jakarta: Indonesian Legal Resource Center, 2011).

including associations based on religious identification. The subsequent provision, art. 157, extends the offense by prohibiting the distribution or dissemination of such expressions of hostility.

There is no formal, legislated role for the MUI in the blasphemy regime. However there is a demonstrable and well-documented pattern of the MUI's facilitating prosecutions. These cases are typically brought against those promoting variants of Islamic teaching, attracting the opposition of local branches of the MUI and resulting in fatawa rejecting the teaching as deviant.⁵⁹ This pattern reflects elements of what Olle describes as a "campaign against heresy" in which the MUI has played a key role.⁶⁰ Prosecutions have increased in the years following democratic transition.⁶¹ There may have been as few as ten cases in the years 1966 to 1998 (Soeharto's New Order),⁶² increasing nearly fivefold to forty-seven between the years 1998 and 2011.⁶³ Margiyono states that more than 150 individuals were subject to criminal process in the five years from 2003 to 2008 alone.⁶⁴ Frequently it is small, localized groups that are subjected to protest action (and sometimes violence), and their activities are formally denounced in fatawa by the MUI, and key personnel are subsequently arrested and prosecuted.⁶⁵

The blasphemy regime was upheld by the Mahkamah Konstitusi in a decision handed down in 2010.⁶⁶ The judicial review was filed in late 2009 by a coalition of leading nongovernmental human rights and legal aid organizations, several prominent individuals including a former president, the late Abdurahman Wahid, and a group of fifty-four lawyers (the Freedom of Religion Advocacy Team). Speaking against the application to overturn the blasphemy law were many of the twenty-four related parties—primarily religious organizations—among which were eleven Islamic groups, including the MUI and the hard-line Front Pembela Islam and Hizbut Tharir

59 Lindsey, *Islam, Law and the State*, 413–16.

60 Olle, "The Campaign against 'Heresy.'"

61 Melissa Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7, no. 1 (2012): 1–46; Lindsey, *Islam, Law and the State*; Ulil Parulian Sihombing et al., *Injustice in Belief: Monitoring the Results of Cases on Blasphemy of Religion and Religious Hate Speech in Indonesia* (Jakarta: Indonesian Legal Resource Center, 2012).

62 Crouch, "Law and Religion in Indonesia," 12.

63 Crouch, 1, 14.

64 Margiyono and Rumadi, *No Middle Road*, 6.

65 See generally Fenwick, "Yusman Roy and the Language of Devotion"; Lindsey, *Islam, Law and the State*, 418–19; Olle, "The Campaign against 'Heresy.'" A study of thirty-seven cases of prosecutions or other instances of alleged blasphemy bears out this conclusion (in five cases the study does not record criminal action). See Sihombing et al., *Injustice in Belief*, 9–57. At least seventeen of the thirty-seven cases involved Islamic sects. The study identifies MUI involvement in nine instances, of which four include the issue of fatawa. There were ten cases in which other Islamic organizations made objections to conduct or religious practices, or brought the matter to the attention of police, or were otherwise implicated in protest action (including the Ministry of Religion, the Front Pembela Islam, and the Majelis Mujahidin Indonesia (Indonesian Mujahidin Council). Protest action, raids on premises, or other violent mob activity occurred in fifteen of the thirty-seven cases reported and in ten of these there was both a form of protest action and the involvement in some form of an Islamic organization.

66 Constitutional Court Decision 140/PUU-VII/2009. Several case studies were referred to in the application. However, due to the nature of judicial review in Indonesia, constitutional challenges proceed separate to any individual cases as there is no nexus between the general courts, which hold jurisdiction for trials and appeals, and the power of constitutional review. The Court is thus not an appeal court on constitutional issues for matters arising in the general courts. Instead, it hears in principle applications regarding provisions of statutes claimed to be contrary to the constitution. See, for example, Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart, 2012), 87–88. See also Stewart Fenwick, "Administrative Law and Judicial Review in Indonesia: The Search for Accountability," in *Administrative Law and Governance in Asia: Comparative Perspectives*, ed. Tom Ginsburg and Albert H. Y. Chen (London: Routledge, 2009), 329–358.

Indonesia.⁶⁷ The Court, in a hearing that was marked by protests,⁶⁸ reaffirmed the well-known position that Indonesia is neither a secular nor a religious state. However it also found that the principle of *Ketuhanan Yang Maha Esa* is the leading principle underpinning the life of the people. This specific constitutional formula can be translated as “belief in Almighty God” and expresses in the preambular statement known as the *Pancasila*⁶⁹ a national commitment to godliness. This idea was described by the Court as the “yardstick” for the measurement of all law in Indonesia. Despite the protection of religious freedom in the constitution, the Court noted (correctly) that this right may be limited on the basis of “religious values” (art. 28J (2)).⁷⁰

Importantly, for the MUI, the Mahkamah Konstitusi acknowledged that faith was a personal matter but held that beliefs must be consistent with fundamental religious teachings. Accordingly matters of deviancy are questions for religious authorities and therefore “religious parent organizations” (*organisasi keagamaan yang induk*) can become partners with the state in creating a religious society. This critical jurisprudence provides the necessary endorsement for precisely the role the MUI has created for itself in democratic Indonesia. This decision is a major victory for conservative, orthodox voices seeking to ensure Indonesia maintains, as a nation, an appropriate level of respect for religion in public life. The de facto advisory capacity of the MUI in defining the very nature of Islam is secure and—inherently—lawful.

ISLAMIC FOOD REGULATION

The second case study provides a specific example of a regime of Islamic regulation in which the MUI has a dedicated, legislated, function. This case study demonstrates both similarities and differences to the way in which the MUI influences the overall character of Indonesian Islam. We saw above how law and policy provide a space for the MUI to seek to define, at a higher level, what it is to be a Muslim in Indonesia. In the case of halal certification, the MUI has operated for some time with a mandate that has extended to a monopoly from the government to have oversight of religious food standards. As seen above, there are several laws providing a special place for the MUI and its rulings, syariah banking being the prime example. With the new, revised system of Islamic food regulation, the legislature has established a comprehensive set of provisions. These now extend to criminal sanctions, which brings Islamic law very much into the daily lives of all Indonesians, and the entire food industry.

The purity of food under Islamic law in Indonesia was a feature of religious life well before the establishment of the MUI.⁷¹ Various Islamic organizations have issued rulings from time to time concerning food and its preparation. For example, methods of slaughter have been the subject of

67 The hearings of the Court were marked by protest action by Islamic groups who displayed banners outside the Court, attended hearings, interjected during evidence, and at times allegedly intimidated witnesses in and around the court. Margiyono and Rumadi, *No Middle Road*, 28–33; Jeremy Menchik, “Productive Intolerance: Godly Nationalism in Indonesia,” *Comparative Studies in Society and History* 56, no. 3 (2014): 591–621, at 612–13.

68 Margiyono and Rumadi, *No Middle Road*, 28–33; Menchik, 612–13.

69 A set of five principles understood as embodying the state philosophy, also including humanity, state unity, democratic life, and social justice.

70 This article holds that human rights may be restricted by law on grounds that include satisfying “just demands” based on morality, religious values, security, and public order. Freedom of religion is nonetheless enshrined in two articles of the Constitution, 28E and 29. The first was introduced, along with wide ranging human rights amendments, following the fall of President Soeharto, and the second has existed since Independence.

71 Hooker, *Indonesian Islam*, 212–16.

comment from at least the 1930s.⁷² The MUI fatawa on particular kinds of new meat products (rabbit and frog) were seen in the 1980s, well over a decade before the regulation of halal certification.⁷³ Then, in 1989, the MUI established the Lembaga Pengkajian Pangan Obat-obatan dan Kosmetika MUI (Institute for the Study of Food, Medicine, and Cosmetics).⁷⁴ The institute comprises scientists who conduct laboratory assessments, and a syariah body, which issued its first ruling in 1994. From the mid-1990s, however, a system of laws and regulations emerged, and the MUI came to sit at the center of the state's halal regulation scheme.

The debate over halal certification in Indonesia has been marked both by matters of religious normativity and the economic potential of the halal industry. There has also been a fundamental, underlying issue of governance: How could a nongovernmental organization play a role in food regulation with no sound legal basis? The MUI's response has been to argue for recognition of its institute; the Ministry of Religion has long desired to draw the body into the ministry. The end goal for the MUI, Ichwan argues, has been to reduce its dependence on government funding, as halal certification has provided its "chief source of income."⁷⁵ Both the management of fees (payment for the cost of inspection) and the provision of various forms of government support (policy, personnel and budget) were found in government decisions (Decision of the Minister for Religion No. 518 of 2001). Nonetheless ambiguity around the MUI's status and the processes involved in the regime remained. One of the most obvious areas of ambiguity in a practical sense was whether or not halal certification was compulsory. Imported products were required to carry certification—hence the corruption scandal (discussed below) broke around the issue of fees paid by international producers. Locally, there was ambiguity because the legislation, Law No. 7/1996, on food, required certification only when there was a claim that food was halal, but not otherwise. This ambiguity appears to have been the result of debate about the increased cost of production that would arise from a more rigid regime.

The impact on the MUI of changes to the system of halal certification is difficult to determine with any certainty. Data published by the MUI itself shows that over a four year period up to 2014 the number of certificates issued has more than doubled, from 650 in 2011 to 1,313 in 2014. In total over this period, the MUI issued 3,708 certificates. During 2014 alone, the MUI gave approval for a little over 40,000 individual products. The question is, how does this translate into income? Details of the MUI's financial position are elusive as "it does not publish or publicly discuss its accounts."⁷⁶ However it is recognized, as discussed earlier, that the halal certification regime is an important part of the MUI's business model.⁷⁷ Lindsey states that income from both syariah banking and halal certification "is widely believed to be much greater" than funding received directly from the government. In recent years direct state funding has been the equivalent of USD 250,000 per annum.⁷⁸ One report suggests that the MUI routinely charged IDR 5 million

72 Hooker, 217–19.

73 Hooker, 216.

74 Ichwan, "Towards a Puritanical Moderate Islam," 71; Lindsey, *Islam, Law and the State*, 132. This section draws throughout on Ichwan and Lindsey.

75 Ichwan, "Towards a Puritanical Moderate Islam," 72–73.

76 Lindsey, "Monopolising Islam," 262.

77 See also Mirjam Künkler and Alfred Stepan, "Introduction: Indonesian Democratization in Theoretical Perspective," in *Democracy and Islam in Indonesia*, ed. Mirjam Künkler and Alfred Stepan (New York: Columbia University Press, 2013), 3–23, at 21–22.

78 A figure broadly consistent with the figure of EUR 300,000 cited by Hasyim, "Council of Indonesian Ulama," 70.

(approximately USD 450) for issuing a halal certificate.⁷⁹ In which case, the MUI would have obtained the equivalent of nearly USD 600,000 income in 2014 (based on the data above). These sums remain well under the total operating budget of the MUI, which, according to one inside source, is IDR 25 billion (approximately USD 1.8 million).⁸⁰

The mysteries behind the MUI's role in halal certification were exposed when the Indonesian magazine *Tempo* devoted its cover story in the February 24–March 2, 2014, edition to accusations of corruption.⁸¹ A series of revelations ran under the banner “Good God! Halal Labeling,” and the cover featured a Warhol-style can of soup bearing, provocatively, a picture of a pig. This reflects the theme of the editorial that described the MUI's certification program as being conducted in a *haram* (forbidden) fashion. The feature articles paid particular attention to the international dimension of the MUI's certification program. The edition sparked a series of public statements by the MUI and, quite possibly, gave impetus to the long-standing legislative agenda on halal certification. According to *Tempo*, concerns appear to have arisen following publication of claims in an Australian newspaper that gifts had been provided by Australian partners to the MUI during halal certification. The process of certification within Australia was also tainted by claims of payments required to be paid by meat suppliers to approved Australian certification authorities.⁸² Amidhan Shaberah, then the chairman of the MUI, with responsibility for halal certification, denied allegations of bribery. He was, however, less firm in his denial that other payments may have been made in association with visits to Australia: “if there is proof, I'm not part of the state administration, so I'm able to receive payments [*gratifikasi*],” he is reported as saying by *Tempo*.⁸³

The MUI also responded publicly through press statements and clarifications to the issues raised by *Tempo*. Interestingly, one contemporary report from the Ministry of Religion news service bore the headline, “Chair of MUI Advisory Board Seeks Clarification from Amidhan on the Halal Certificate Issue.”⁸⁴ While the report reiterates the denials seen above, it suggests an attempt by the MUI to demonstrate some degree of accountability, suggestive perhaps of an effort to put some space between MUI senior leadership and Amidhan. Tellingly, the report also notes that the story broke around the time the government was advancing the draft law on halal product assurance (RUU Jaminan Produk Halal). The draft law had “languished” in parliament for more than eight years.⁸⁵ Put simply, it was not lost on observers that this was a bad news story for the MUI and likely to reinforce any concerns that already existed about the regime.

The lengthy delay in the passage of the legislation is said to have been due to an impasse between the Ministry of Religion and the MUI.⁸⁶ The ministry sought to bring the process into the state

79 Margareth Aritonang and Ina Parlina, “MUI, Govt Wrangle over *Halal* Certification,” *Jakarta Post*, February 28, 2014, <http://www.thejakartapost.com/news/2014/02/28/mui-govt-wrangle-over-halal-certification.html>.

80 Hasyim, “Council of Indonesian Ulama,” 70.

81 “*Astaga! Label Halal*” [Good God! Halal labeling] *Tempo*, February 24–March 2, 2014.

82 Natasha Erviani, “Religious Levy Costs Queensland Abattoirs Thousands Each Month,” *Courier Mail*, October 20, 2014, <https://www.couriermail.com.au/news/queensland/religious-levy-costs-queensland-abattoirs-thousands-each-month/news-story/c1ebc330573bfc879f79d3bf52411bc>.

83 “Bukan Penyelenggara Negara, Saya Boleh Terima *Gratifikasi*” [Not being a state official, I am permitted to receive gratuities], *Tempo*, February 24–March 2, 2014, <https://majalah.tempo.co/read/144776/bukan-penyelenggara-negara-saya-boleh-terima-gratifikasi> (in Indonesian).

84 Direktorat Jenderal Bimbingan Masyarakat Islam [Directorate General of Islamic Community Guidance], “Ketua Penasehat MUI Minta Klarifikasi Amidhan Soal Isu Sertifikasi Halal” [Chair of MUI advisory board seeks clarification from Amidhan on the halal certificate issue], *Bimasislam*, March 4, 2014, <https://bimasislam.kemendagri.go.id/post/berita/ketua-penasehat-mui-minta-klarifikasi-amidhan-soal-isu-sertifikasi-halal> (in Indonesian).

85 Aritonang and Parlina, “MUI, Govt Wrangle.”

86 Aritonang and Parlina.

administration in pursuit of equity; according to the minister for religious affairs, Suryadharma Ali, it was not fair to other religious organizations for the MUI to be responsible for certification.⁸⁷ Moreover, a member of the key parliamentary commission responsible for religion, social welfare, and women's empowerment, Komisi VIII, stated that the MUI had never been transparent about its earnings from the regime. The law would, in essence, prevent business being subjected to extortion.⁸⁸ Echoing the call to bring the regime into government hands, a representative of Indonesia's competition watchdog, the Komisi Pengawas Persaingan Usaha (Business Competition Supervisory Commission), was reported by *Tempo* as arguing that the MUI was engaged in monopolistic practices. Reports were brought to the agency about the MUI's practice of charging, which also raised potential for allegations of corruption as the income was not reported to the state, as is the revenue generated by the customs agency.

LEGISLATIVE REFORM OF THE HALAL REGIME

In October 2014 former president Yudhoyono endorsed Law No 33/2014, on halal product assurance. The law was passed by parliament on September 25, 2014, and members of the responsible parliamentary committee, the Komisi VIII, expressed their strong support for the legislation. According to the leading Indonesian online legal news service, Hukumonline, the deputy chair of that commission, Ledia Hanifa, a member of the Partai Keadilan Sejahtera (Prosperous Justice Party), a leading Islamist political party, described its adoption as a positive development in the employment of syariah principles in law.⁸⁹ It was also described as providing legal certainty for Indonesian consumers. Ledia also described the law as "expanding" the MUI's responsibilities in the field of halal certification. The MUI, however, was to work in partnership with a new body, the Badan Penyelenggara Jaminan Produk Halal, the halal product assurance agency, with the agency issuing certificates following rulings by the MUI in the form of fatawa: "Endorsement from both bodies became important because some countries only accepted the endorsement of MUI. Meanwhile, several other countries queried the legality of MUI which isn't a state institution."⁹⁰

Concerns were expressed by a representative of the pharmaceutical industry that the law would lengthen the production process and potentially reduce the production of vaccines, with fatal consequences.⁹¹ In response, Ledia argued that the lead times built into the legislation (see further below) meant that appropriate halal production could be researched and implemented.⁹² This issue is not only of interest to industry for commercial reasons, but because the new legal regime introduces criminal penalties, which will be discussed further. Interestingly, at the same time, the law introduces a role for the community to contribute to socialization (awareness raising) and supervision of the new regime.

Key elements in the new law are as follows:

87 Aritonang and Parlina.

88 Aritonang and Parlina.

89 See "UU Jaminan Produk Halal Berikan Kepastian Hukum Bagi Konsumen" [Law on halal product assurance gives legal certainty to consumers], September 25, 2014, <http://www.hukumonline.com/berita/baca/lt54241d9c5a5ed/uu-jaminan-produk-halal-berikan-kepastian-hukum-bagi-konsumen>.

90 Yohannie Linggasari, "Pemerintah Akan Bentuk Badan Jaminan Produk Halal" [Government to form agency for halal product assurance], *CNN Indonesia*, January 21, 2015.

91 Linggasari.

92 Linggasari.

- All products entering into, distributed, or marketed in Indonesia must have a *halal* certificate (art. 4).
- The government, through the minister for religion, is responsible for halal product assurance (art. 5).
- A new agency for managing halal product assurance (Badan Penyelenggara Jaminan Produk Halal) is established (art. 6) to (inter alia)
 - handle policy and procedure;
 - issue and withdraw *halal* certificates and labels;
 - accredit halal examination institutes (Lembaga Pemeriksa Halal);
 - register halal auditors; and
 - coordinate with other organizations.
- The Badan Penyelenggara Jaminan Produk Halal will coordinate with other ministries and other institutions, the Lembaga Pemeriksa Halal, and with the MUI (art. 7).
- More specifically, the coordination with the MUI will take the form of certification of halal auditors, decisions on halal status of products, and accreditation of the Lembaga Pemeriksa Halal (art. 10).
- Decisions on the halal status of products will be issued by the MUI in the form of decisions determining a product halal (Keputusan Penetapan Halal Produk) (art. 10).
- The cost of halal certification is to be borne by producers (except in the case of micro- and small enterprises) pursuant to a future government regulation (art. 44).
- The government is responsible for international cooperation, including with foreign halal-determining bodies, and Indonesian certification will not be required where products are already subject to certification in their home jurisdiction and the certificate is registered by the Badan Penyelenggara Jaminan Produk Halal (arts. 46, 47).

The law also provides a broad presumption of halal status of a wide range of products (arts. 17–20). Products from carcasses, blood, pigs and animals not slaughtered according to Islamic requirements cannot obtain halal certification, and other products may be determined *haram* (*diharamkan*) by the minister on the basis of an MUI fatwa (arts. 18, 20). Government regulations required by the legislation must be developed within two years, and the Badan Penyelenggara Jaminan Produk Halal is to be established within three years of the passage of the law.

A simplified outline of the new certification process (arts. 29–36) is as follows:

1. The producer requests certificate from the Badan Penyelenggara Jaminan Produk Halal.
2. Within five days the Badan Penyelenggara Jaminan Produk Halal appoints the Lembaga Pemeriksa Halal/auditor to conduct assessment.
3. The result of assessment is sent to the MUI for consideration in a halal fatwa hearing (*Sidang Fatwa Halal*), to be conducted within thirty days.
4.
 - a. Negative outcome: the Badan Penyelenggara Jaminan Produk Halal returns the request for a certificate to the producer with an explanation.
 - b. Positive outcome: the Badan Penyelenggara Jaminan Produk Halal provides the halal certificate within seven days and publishes the certificate, which is valid for up to four years (art. 42).

According to art. 27, producers that fail to apply for halal certificates and maintain appropriate procedures in manufacturing can be subject to written warnings, administrative fines and the withdrawal of certificates. In the future, products that are not halal must be labelled accordingly (art. 26) and a failure to comply with this provision can also attract warnings and fines (art. 27). Sanctions will be elaborated in a future ministerial regulation. Failure of producers to “protect” the halal status of products (*menjaga kehalalan*) may also attract criminal sanctions in the form of a custodial sentence of up to five years or a criminal fine of up to IDR 2 billion (approximately USD 150,000). Any person involved in the administration of halal product assurance that fails to maintain the secrecy of information provided by producers during the certification process may be subject to a custodial sentence of up to two years, or a fine of up to IDR 2 billion (arts. 56, 57).

There may be signs in the legislation of the well-known disputes forming the background to the halal certification in Indonesia. It refers, for example, to the administration of halal certification being based on consumer protection, justice, legal certainty, accountability and transparency and professionalism (art. 2). While these objectives may be attributable to concerns around the weaknesses of the current regime, and are dealt with essentially by the establishment of a new government agency with overall responsibility for certification, the law goes much further. The introduction of civil and criminal penalties significantly raises the stakes for the food manufacturing industry. Quite significant penalties will be faced by those commercial operators who fail to maintain adequate quality standards or who seek to undermine the religious requirements underpinning the regime. It was seen above how the blasphemy regime has the potential to import matters of *ibadah* into the state legal process. Similarly, the criminalizing of failures to meet the requirements of halal food production in Indonesia marks a further step in the introduction of Islamic law into national law.

What is the impact on the MUI of the new regime? The law does not expand the MUI’s role, as suggested by the statement of the Partai Keadilan Sejahtera parliamentarian, above. Although the MUI is explicitly acknowledged as a key partner with government, all key regulatory steps are to be the responsibility of the new agency, the Badan Penyelenggara Jaminan Produk Halal. In particular, while matters concerning fees are to be subject of regulation, the MUI may well now be distanced from money-generating activities. If nothing else, the regulations may add a much needed level of transparency. Precisely how far this removes the MUI from income generation remains to be seen. To date, the MUI has been de facto the sole inspecting authority and this may or may not continue to be the case.⁹³

More importantly, the law provides recognition to the MUI’s religious rulings. The MUI will be responsible for fatawa on food sources. In these provisions the law provides formal backing for the MUI in its role as unofficial mufti. These provisions do, however, provide that the minister remains responsible for any resulting determinations. Furthermore, the law formalizes the MUI’s role in determining the status of all products in production or circulation in the marketplace. Interestingly, the legislation does not specify that halal certification follows from the issuance of a fatwa. Rather, it refers to work conducted by the Halal Fatwa Committee of the MUI. The distinction in practice may be of limited importance.

93 Lindsey, *Islam, Law and the State*, 135.

RELIGION AND THE PUBLIC INTEREST

The MUI emerged as a creature of the pre-reform era authoritarian state. Indonesia was, indeed, at that time, considered a bureaucratic state.⁹⁴ The characteristics of the state then were “force, political demobilisation, and a technocratic approach towards the modernisation of society.”⁹⁵ A further key dimension of this era, noted above, was the deconfessionalized version of Islam that was erected by the state. The principal institution here was the Ministry of Religion, which Lindsey describes as being the “formal bureaucratic face of Islam in government.”⁹⁶ Albeit focused more on process and procedure than doctrine, it has been argued that establishing the ministry was also an effort to “appropriate” syariah from the religious scholars, the ulama.⁹⁷ Ichwan proposes that, by force of the various mechanisms by which the state has engaged with faith (and Islam in particular), Indonesia has experienced a process of “deconfessionalization.”⁹⁸ Otto argues, in fact, that the state has successfully incorporated and subjugated Islam, making it a “subsidiary part of national law and governance.”⁹⁹ In this way the authoritarian state, first, and the democratic state, subsequently, have arguably “appropriated” religion for the larger purpose of state building.¹⁰⁰

It has been seen however, that the MUI’s aspiration to influence government legislation has been realised and it has become a de facto arm of the bureaucracy.¹⁰¹ In several instances, most recently with the revised halal certification regime, the legislative schemes provide a specific place for its religious rulings. Thus the MUI has ultimately become literally woven into the fabric of contemporary government administration. The link between religious rulings and state action in cases of enforcement of the Blasphemy Law is more tenuous. Nonetheless, even here there has been a level of recognition afforded to the MUI’s perspective on Islam that elevates it to a special status. There has been, argues Olle, a renegotiation of who is the arbiter in Indonesia of religious “truth” and “who has the political and cultural legitimacy/power to regulate social life,” and the MUI has parlayed its way into this role.¹⁰² The scholars of the MUI have control of doctrine where its influence is brought to bear on areas of public policy, in which religion is seen as playing a vital part.

94 Lindsey, 105.

95 Lindsey, 105.

96 Lindsey, 108–09.

97 See Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaii Press, 2008), 172. There has, however, never been a stark distinction between the ministry and Islamic organizations. Members of the two major Islamic organizations, Nahdlatul Ulama and Muhammadiyah, have enjoyed at different times in modern Indonesia greater or lesser influence in the ministry; see, for example, M. C. Ricklefs, *A History of Modern Indonesia Since c. 1200* (Basingstoke: Palgrave, 2001), 375.

98 Moch Nur Ichwan, “Official Reform of State Islam: State Islam and the Ministry of Religious Affairs in Contemporary Indonesia (1966–2004)” (PhD diss., University of Tillburg, 2006), 15. Ichwan here summarizes the concept as used by C. A. O. Niewenhuijze, “The Indonesian State and ‘Deconfessionalized’ Muslim Concepts,” in *Aspects of Islam in Post-Colonial Indonesia: Five Essays* (The Hague: W. van Hoeve, 1958), 180–243, and argues that the adoption of the notion of *Ketubanan Yang Maba Esa* and the establishment of the Ministry of Religion were “the two major elements in what [Niewenhuijze] refers to as the ‘deconfessionalisation’ of Islam in post-colonial Indonesia.” Ichwan, 15.

99 Jan Michiel Otto, “Sharia and National Law in Indonesia,” in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden: Leiden University Press, 2010), 433–90, at 480.

100 Sezgin and Künkler, “Regulation of ‘Religion’ and the ‘Religious,’” 451, 472. Salim points out that—once legislated—Islamic law ceases to be religious law. Salim, *Challenging the Secular State*, 177. Going further, Hooker would appear to argue that bureaucratizing Islam through codification is a trivialization of Islamic law. Hooker, *Indonesian Islam*, 25.

101 See, for example, Lindsey, “Monopolising Islam,” 262.

102 Olle, “The Campaign against ‘Heresy,’” 6.

The MUI's religious rulings have at times both supported and contradicted government policy, but they have—throughout its life—carried the characteristic stamp of administrative authority in their bureaucratic appearance and formulation. They have, in this way, reached beyond the classical, persuasive, or recommendatory nature of fatwa to fit comfortably into the wider administrative context. What exactly is the basis for the quasi-legislative authority of the MUI rulings? Indonesia's hierarchy of laws and regulations is established in Law No. 12/2011, on Lawmaking. This hierarchy begins with the constitution and places legislation above government regulations and presidential decrees, followed by regulations from lower levels of government: each type of law must not conflict with a higher one in the hierarchy.¹⁰³ Religious rulings do not form part of this hierarchy, and incorporating them into administration appears to violate Indonesia's own scheme of law and regulation.

In short, the public interest in Indonesia is deemed to require respect for faith, in cases where religious interests are engaged, and in a prescribed manner. The identification by the Mahkamah Konstitusi in its ruling on the Blasphemy Law of a special place for faith, as a touchstone for the validity of law through its interpretation of the role of godliness in the constitution, reflects the strength of this line of thinking. The Court identifies a role for nonstate Islam by inviting religious authorities to partner with the government in the area of determining what is and is not appropriate religious conduct or teaching. In the abstract, this approach could be seen as playing appropriate deference to the place of religion in public life, and not encroaching on the sphere of doctrine. However, as discussed above, the implementation of the blasphemy regime in practice has arguably involved the restriction of the right to religious belief and the criminalization of deviant behavior. That is, the state sanctions religious misbehavior. Similarly, the inclusion of a criminal penalty in the revised halal regime directly links the state legal system with Islamic law.

While the expansion of the MUI's role has been, broadly, under the control of the national legislature and a democratically elected administration, it arguably represents a deviation from the constitutional path established in democratic reforms. As Effendy notes, the sense of obligation among Muslim Indonesians to seek recognition for their faith cannot be pursued without properly engaging with the notion of pluralism.¹⁰⁴ Democratic mechanisms are a means of balancing competing social interests, which should include an appreciation of diversity within faiths. The imposition of doctrinal viewpoints, as seen in the MUI's response to so-called deviant sects and the administrative action and jurisprudence around blasphemy, clearly has significant potential to reduce, or indeed erase, the fundamental right to religious freedom. The motivation to revitalize and more fully regulate Islamic food standards appears to have been somewhat different. The public interest is, on one view, advanced by the enhancement of the quality, consistency, and transparency in an otherwise monopolistic set of practices. However, the ongoing accommodation by the state of Islamic rulings, now regularly incorporated into the legal framework, is also a significant compromise in response to the call for expression of Islam in public life.

CONCLUSION

According to Eisensadt, the subjects of bureaucracy and bureaucratization “are related to and closely interwoven with problems of democracy, totalitarianism and mass-society.”¹⁰⁵ With

103 Simon Butt, “Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia,” *Sydney Law Review* 32, no. 2 (2010): 177–97, at 181.

104 Effendy, *Islam and the State in Indonesia*, 224.

105 Eisenstadt, “Bureaucracy and Bureaucratization,” 99.

Indonesia's authoritarian past now nearly two decades behind it, it might be considered surprising that such issues could seem relevant today. However, the fundamental question examined by early scholars of bureaucracy around the control and legitimation of power continue to be important.¹⁰⁶ The embrace of faith, specifically, Islam, by bureaucratic mechanisms helps to ensure that higher-level state goals can be achieved while at the same time allowing the state to exercise a measure of control over the circumstances in which faith is applied to administrative problems. By providing this very recognition the state also simultaneously strengthens the place of religion in society and its institutions as a source of independent authority.

The case studies offered here highlight the ever more important place of Islam in Indonesian law and constitutional thought, as seen in the emphasis on the broad constitutional prescription of godliness and the development of a partnership between the state and Islamic religious authority in the form of the MUI. In the case of blasphemy, this trend shows the MUI playing a practical role in supporting prosecutions, but it also plays a critical role conceptually in shaping the overarching debate about deviancy. The annexation to the state of religious authority to provide guidance on matters of religious values, however, arguably reveals a misapprehension about the nature of power in a constitutional democracy. The MUI, as a nongovernment organization, is not accountable to the public for its rulings nor for its policy positions. The most significant implications of this for the right to religious freedom lie with Indonesian Muslims. The MUI is not the only body capable of delivering fatawa or developing policy positions based on doctrine. Indonesia, rather, has a diverse and richly textured form of Islam, and, moreover, normative Islam itself contains a diversity of outcomes beyond the binary of halal/haram, permitted/forbidden.¹⁰⁷ Entrenching one body as the source of guidance on the majority faith runs the risk of both constraining that faith and narrowing the scope of its interpretation.

The new halal certification regime is the latest example of the incorporation of Islamic religious law into state law. This embrace of religious practices and guidance within a set of procedures could be considered a dilution, or perhaps even the capture, of Islamic law by the state. The new regime also literally amounts to a process of bureaucratization by establishing a dedicated agency and by converting religious rulings into administrative acts and determinations. Equally, the underlying doctrinal material is neither contestable theoretically, nor is it appealable legally. At the same time, it criminalizes breaches of Islamic guidance, making state law an enforcer of religious standards much in the same way as is seen (albeit more indirectly) in the case of blasphemy. The regime also reinforces the place of the MUI as the sole provider of guidance to the state on matters of Islamic doctrine. This transformation comes at a time when the MUI has also sought to eradicate both moderate doctrinal views and deviant variations from the public face of Islam in Indonesia. The MUI demonstrates not only a clear doctrinal agenda but also a motivation to influence state law and policy and to exploit opportunities to assert an authoritative view on doctrine.

106 Eisenstadt, 99.

107 Hooker, *Indonesian Islam*, 243–45.