PLURALISM, *FATWĀ* AND COURT IN INDONESIA
The Case of Yusman Roy

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Abstract:. The interrelation between Islam, state and pluralism is an unfinished discussion in Indonesia. This paper examines an issue of promoting individual freedom to practice his/her belief, and at the same time not insulting the majority belief in a plural society. It takes the case of Yusman Roy on performing the *ṣalāh* (prayer) in a local language as the subject of analysis in order to identify the fault lines of religion and pluralism, and to consider how best to address them. The paper argues that *fatwā* and court should not be used as mechanisms to deal with the issue of religion and pluralism. It further argues for an "alternative dispute resolution" in dealing with the plurality of interpretation within Islamic tradition and at the same time maintaining the unity and harmony Islamic communities. It maintains that Roy should have the rights to practice what he believes, but at the same time, a negotiation on how he spreads his ideas outside his schools should take place in order to avoid provocative actions that invite violence.

Keywords: Pluralism, *fatwā*, court, alternative dispute resolution.

Introduction

The topic of religion and pluralism in Indonesia is a complex arrangement of legal and public reasoning, moral practice, and political authority. There is understandable anxiety about the role of religion in public life, and Indonesian society attempts to inculcate the values of respect, tolerance, and pluralism. But what are the limits of these ideals, and how do they play out in practice? Is it possible to show respect for individuals while rigorously examining the foundations and implications of their beliefs?

In recent years, Indonesia, as the largest Muslim population in the world, has faced difficulties to maintain the majority belief and at the same time to recognize the plurality of opinions.[1] The issue here is on the unfinished discussion on the interrelation between Islam, state and pluralism. This paper will examine how to promote individual freedom to practice his/her belief and at the same time not insulting the majority belief in a plural society. Is the court the best place to deal with such dispute? Do we have an alternative dispute resolution?

This paper will examine the case of Yusman Roy in order to identify the fault lines of religion and pluralism, and to consider how best to address them. The controversy surrounding Yusman Roy centers on his insistence to perform *ṣalāh* (prayers) in a local language. In addition, he distributed leaflets explaining his beliefs on the use of Indonesian (Bahasa Indonesia) in *ṣalāh* services. His actions angered Islamic communities which led Muslim clerics to issue a *fatwā* prohibiting praying in a local language. Subsequently, Yusman was brought to court and, in 2005, sentenced for two years.

First, I will briefly explain the background of the case, and present a profile of Yusman Roy and his activities and opinions that lead to the reactions from society and state. Second, I will give an overview on the *fiqh* (Islamic jurisprudence) literature on prayers using languages other than Arabic. I will show that this is an old matter of controversy. Finally, having examined the *fatwā* and the court's decision, I will argue that *fatwā* and court should not be used as mechanisms to deal with the issue of religion and pluralism. Such contests over rights can degenerate into zero-sum games, where one party's win is, by definition, the other's loss. Increasing dialogue with and between religions should be promoted. Law (either Islamic law or 'secular' law) may intervene in or guide such dialogue by promoting a civil society that negotiates, rather than litigates. Therefore, I would argue that Yusman Roy case provides a strong argument of the need to have an "alternative dispute resolution" in dealing with the plurality of interpretation within Islamic tradition and at the same time maintaining the unity and harmony of the Muslim *ummah*.

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[1] See Bernhard Platzdasch, "Religious Freedom in Indonesia: The Case of the Ahmadiya" (ISEAS Working Paper: Politics & Security Series No. 2, 2011).

Do You Understand What You Recite?

Yusman Roy, in his 50s, is seen as an unconventional Muslim. Born to a Dutch Catholic mother and an Indonesian Muslim father, Roy chose Catholicism as a teenager but converted to Islam when he was in his early 30s. He says Islam helped save him from a life of a crime and violence.[2]

Roy was formerly a professional boxer. He claims he once held the Indonesian lightweight record for the fastest knockout: 59 seconds. He likes wearing a t-shirt, vest, and jeans instead of the common uniforms. Still, he is the caretaker of a spiritual retreat in Lawang, Malang, East Java, called the *Pondok I'tikaf Jamaah Ngaji Lelaku*. His title sounds impressive: *Kiai Haji* Mohammad Yusman Roy. His students call him *Kiai* Roy. The title "kyai" is usually attributed to a charismatic Javanese Muslim scholar. However, his background and physical appearance are not the issue. The main issue here is that Roy teaches his pupils to perform the *ṣalāh* (the Islamic prayer, such as the five daily obligatory prayers) where he requires the *imām* who leads the group prayer to use both Arabic and Indonesian. *Tempo* Magazine observed that:

> When the time for the noon prayer arrives, Roy invites the students and his family to pray together in the basement of a three-story building. After making the *iqāmah* (call to commence the prayer), Roy takes a place in the row of followers. Bambang Sutedjo, 53, one of the students, acts as the *imām* , reciting verses from the Qur'ān in a loud voice. This is not a common practice in the noon prayer, as the verses are supposed to be read quietly. Those who have never prayed here are in for a shock, because after each Arabic verse is read, the *imām* directly translates the words into Indonesian. However, the followers still use Arabic.[3]

Roy, like most Indonesians, never gained a proficient command of Arabic. But Roy estimates that at least 70% of Indonesia's Muslims do not know Arabic as well. According to him, the disadvantage is

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[2] Richard C. Paddock, "Separation of Mosque, State Wanes in Indonesia," *Los Angeles Times,* 20 March 2006 available at http://articles.latimes.com/2006/mar/20/world/fg-hatred20/2 (accessed on 13 February 2012).

[3] Agung Rulianto, "Salat Bilingual Ajaran Roy," *Tempo*, 9 May 2005 available at http://majalah.tempointeraktif.com/id/arsip/2005/05/09/AG/mbm.20050509.AG112105.id.html (accessed on 19 February 2012).

greatest when it comes to *ṣalāh*. Indonesian Muslims learn the meaning of their prayers in their own language as they memorize the Arabic words. He argues that due to lack of understanding, they do not have high-quality prayers. He explains that: "I couldn't understand Arabic and neither could my friends. The clerics were saying it doesn't matter what you pray as long as it's in Arabic. That's wrong. We have to know what's being said when we talk to God."[4] He could be the Islamic version of Martin Luther (1483 – 1546) who translated Bible into non-Latin language and made it more accessible.

He holds that it is useless for someone to perform the *ṣalāh* if they do not understand what they are reciting. He likes to argue: "Show me a single verse of the Qur'ān which forbids the prayer to be performed in a language other than Arabic." He claims to have about 300 students spread throughout East Java. His practice might have gone unnoticed, but in his zeal to spread his idea, he made a video of himself praying in Indonesian and Arabic and distributed copies at nearby mosques. Roy's students frequently distribute leaflets about his teachings, entitled "Freedom and the Method of Prayer" and "Leading a pure Group Prayer". He even plans to search for new followers in Kalimantan and Sumatra.

Luthfi Bashori, chair of MUI (The Indonesian Council of Ulama)'s *Fatwā* Committee of its Eastern Javanese branch in the city of Malang, revealed that Yusman Roy in his leaflet states that: "Allāh will curse religious leaders who intentionally do not want to translate the Arabic into a local language while leading the prayers."[5] Such a provocative statement from Roy angered the society. Their persistent attitude has caused a number of organizations in East Java to react. About fifteen men claiming to represent the Hizbut Tahrir Indonesia (HTI) organization, the Prosperous Justice Party (PKS), and the Pasuruan Citizens Concerned for Islam Forum went to Roy's boarding school. They asked him to stop performing the prayer in Indonesian. "If this

[4] Duncan Graham, "Yusman Roy: Fighting to Pray in Peace," *The Jakarta Post*, 23 November 2006, available at http://www.thejakartapost.com/news/2006/11/23/yusman-roy-fighting-pray-peace.html (accessed on 15 February 2012).

[5] Luthfi Bashori, "Kronologi Mengapa Yusman Roy Ditahan," available at his website http://www.pejuangislam.com/main.php?prm=karya&var=detail&id=15 (accessed 1 February 2012)

continues, we cannot be held responsible if the community takes some action on their own," said one of the guests in a threatening tone.[6]

The Indonesian Council of Ulama (MUI) of East Java has spoken up. According to the *fatwā*, the use of any language but Arabic is considered unlawful. They quoted the statement of the Prophet Muḥammad, in a Ḥadīth (saying of the Prophet) which was transmitted by the highly-respected Ḥadīth narrators Aḥmad and Bukhārī, which reads "Pray as you have seen me praying." Reciting a translation of the Qur'ān during group prayer is considered to be a new method which falls outside of the bounds of Islamic law. The *fatwā* also referred to a prophetic statement conveyed by the two most highly-regarded Ḥadīth narrators, Bukhārī and Muslim. It reads: "Related by `Ā'ishah, who said that the Messenger of God (Muḥammad) said: He who innovates something in these affair of ours (Islam) which is not a part of it, his innovation is rejected." Hence, MUI concluded that Roy's practice deviated from Islamic law, was misguiding for the Muslim community, and tarnishing the purity of Islam. Producing something new in *`ibādah maḥḍah* (clearly defined acts of worship) is classified as a *bid`ah ḥaqīqīyah* (an evident heinous religious innovation) or a *bid`ah ḍalālah* (a rejected and misguided heinous religious innovation).[7]

The father of nine, Roy says he is being silenced for challenging the Islamic establishment, with his effort to ensure that all Muslims understand the principles of their religion. Roy reacted to the *fatwā* by saying that his actions are based on the Holy Qur'ān, while the *fatwā* has used "man-made sources" other than the Qur'ān. He cited a number of verses from the Qu'ranic chapters 4, 14 and 29 which mention the importance of understanding what is recited in prayer. He takes the view that Ḥadīth and *fiqh* are all man-made, written centuries after the death of Prophet Muḥammad, and therefore should not be used as basis of the *fatwā* against him.[8]

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[6] Rulianto, "Salat Bilingual Ajaran Roy."

[7] Bashori, "Kronologi Mengapa Yusman Roy Ditahan."

[8] Yusman Roy's response can be read here: http://www.indonesiamatters.com/-802/sholat-in-indonesian/. In this website, Roy comments on the discussion. It is hard to verify whether such comment is written by Roy or others.

MUI, however, continued to put pressure on Roy. They called for the *Ngaji Lelaku* congregation to repent, to acknowledge the error of their ways, and return to performing the prayer in accordance with Islamic law, as exemplified by Prophet Muḥammad. The problem is, the prohibitive *fatwā* has no authority to stop Roy, who insists on continuing his teachings. Malang Regent Sujud Pribadi and chief of the Malang Prosecutor's Office Ichdar Supi'i then moved to close down the Muslim boarding school and arrested Roy. Insulting a religion is a crime, and although it is not a legally binding, a *fatwā*, issued by the MUI can carry great weight as evidence before the court of an alleged offense to Islam. The late Abdurrahman Wahid (Gus Dur) is reported to have supported Yusman Roy. Another prominent scholar from Nahdlatul Ulama, Masdar F. Mas'udi disagreed the way the MUI and the Government handled this matter.[9]

Roy eventually faced two charges: the first one was that he had deviated from Islam in his teachings, and the second was that he has incited hatred. At the trial at the Malang District Court (No: 461/Pid.B/2005/PN.Kpjn), however, Roy was acquitted of "despoiling" or insulting Islam. Instead, he was found guilty only of the lesser charge, that is of violating Article 157 of the Criminal Code, for circulating leaflets which sparked hatred between groups in society. The East Java High Court (No: 361/PID/2005/PT.SBY) and the Supreme Court (No: 75/K/Pid/2006) later confirmed this verdict.

The case was brought before the "secular" court since the religious court (Pengadilan Agama) does not have jurisdiction on this issue. The prosecutor in the "secular" court used *fatwā*s as evidence that Islam rejects bilingual prayer and that Roy had insulted Islam. Unlike theological issues, this case actually involves conflicting views among Muslim scholars themselves. While the Prosecutor presented three witnesses from the local MUI to support the claim the claim of blasphemy, Roy's lawyers argue that the case is only about *khilāfiyah* matters. Surprisingly, the Court agreed to Roy's lawyers. Justice Soedarmaji took the view that the issue has been debated since classic time so there is nothing new with Roy's opinion.[10]

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[9] Rulianto, "Salat Bilingual Ajaran Roy."

[10] L.R. Baskoro, "Dua Tahun Untuk Sang Guru," *Tempo,* 5 September 2005 available at http://majalah.tempointeraktif.com/id/arsip/2005/09/05/HK/mbm.20050905.HK116459.id.html (accessed on 15 February 2012).

There Is Nothing New Under The Sun: It's A Classic Debate!

According to a saying of the Prophet Muḥammad, diversity among the Muslim people is a blessing (*ikhtilāf ummatī raḥmah*). Such jurisdictional differences give Muslims a multiplicity of options owing to the disparity of the level of their zeal and determination as well as their differing conditions. Since the beginning of the development of Islamic law, *ikhtilāf* among the jurists not only existed, but was also respected. The majority of Sunni Muslims believe that all four schools (Ḥanafī, Mālikī, Shāfi'ī, Ḥanbalī – the *madhhab*s) have "correct guidance", and that the differences between them are not based in the fundamentals of faith, but in jurisprudence, which are a result of the independent reasoning of the Imāms and the scholars who followed them. Because their individual methodologies of interpretation and extraction from the primary sources were different, they came to different judgments on particular matters. For example, there are subtle differences in the methods of prayer among the four schools, yet the differences are not so great as to require separate prayers by the followers of each school. In fact, a follower of any school can usually pray behind an Imām of another school without any confusion. The differences between the *madhhab*s arose due to a variety of factors such as the divergence in the availability of Ḥadīth to their Imāms, the differences in interpretation, and also the fact that Prophet Muḥammad himself used to do things slightly differently at different times.[11]

In this case, it is reported that Abū Ḥanīfah (d. 150/767), after whom the Ḥanafī school is named, allowed Muslims to pray in a local language. The Hanafi school reflected on whether the Qur'ān constituted text and meaning or meaning alone. Most scholars agree that the Qur'ān constitutes text and meaning. One thing indicating Abū Ḥanīfah's view is the fact that he allowed recitation of the Qur'ān in the prayer in Persian and considered the person to have in that case fulfilled the obligation of recitation, whether or not he was able to recite in Arabic, even though he disliked him doing it if he was capable of reciting in Arabic.

Muḥammad Jawād Mughniyah explains that

[11] On the formation of Islamic legal schools, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), pp. 150-178.

> All the schools, excepting the Ḥanafī, concur that it is compulsory to recite it in Arabic, even if the performer is a non-Arab. If he cannot, it is obligatory for him to learn it. The Ḥanafīs observe: it is valid to recite it in any language even if one is able to recite it in Arabic.[12]

The times during which Abū Ḥanīfah lived, fifty years of which was under the Umayyads, could explain his views above. He encountered Persians when they became Muslims in droves and their tongues made mistakes in Arabic and did not pronounce it well and many did not understand it well. He saw the verses of the Qur'ān being badly mispronounced and so he thought that as an allowance the non-Arabs should be permitted to recite the meanings of verses which were not subject to interpretation in a translated form. Abū Ḥanīfah himself did not leave behind substantial works on religious law, but his legal thought may be reconstructed from the writings of his students. His best-known students were Muḥammad al-Shaybānī (d. 189/749) and Abū Yūsūf (d. 192/798), who have preserved Abū Ḥanīfah's doctrines and opinions in their works.[13]

It is worth noting that Abū Yūsūf and al-Shaybānī (two chief disciples of Abū Ḥanīfah) have different views. They said, "Recitation in other than Arabic is only accepted in the case of inability to recite in Arabic."[14] Abū Ḥanīfah's opinion is clearly against the majority, including his own school.[15] Imām Shāfi'ī said, "It is not allowed [to recite the verses] in other than Arabic even if someone is unable. In such a case a person must call on Allāh with what he knows and glorify Him."[16] However, in Islamic law, a minority opinion is still respected as the truth is not based on the numbers, but based on the quality of arguments.

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[12] Muhammad Jawad Mughniyah, "Prayer According to Five Islamic Schools of Law," available at http://www.al-islam.org/encyclopedia/chapter7/6.html (accessed on 12 February 2012). The fifth school here refers to the Ja'farī school (Shī`ah).

[13] On Hanafi School see Christopher Melchert, *The Formation of the Sunni Schools of Law, Ninth–Tenth Centuries* (Leiden: EJ. Brill, 1997), pp. 48-63

[14] M. Abū Zahrah, *Imām Abū Ḥanīfah: Ḥayātuh, `Aṣruh, Ārā'uh wa Fiqhuh* (Beirut: Dār al-Fikr, 1947), p. 62.

[15] See for example al-Imām al-Nawāwī, *al-Tibyān fī Adab Ḥamalat al-Qur'ān* (Beirut: Dār al-Fikr, 1997), p. 66.

[16] Ibid.

Therefore, by following Abū Ḥanīfah's views, Yusman Roy should not be punished or criminalised, as Abū Ḥanīfah is widely recognised as one of the Imāms in Islamic law. In fact, while the Indonesian scholars generally follow the Shāfi'ī school, many of them are aware that the Ḥanafī school allowed reading Chapter *al-Fātiḥah* in Persian or other languages. So, why they still issue the *fatwā* against Yusman Roy?

MUI found that there is a report in literature that Abū Ḥanīfah retracted such position. They refer to *al-Fiqh al-Islāmī wa Adillatuh* by Wahbah al-Zuhaylī.[17] My readings of the Ḥanafī literature show that Burhān al-Dīn Al-Marghinānī (d. 593/1197) in the standard book of Ḥanafī school, *al-Hidāyah,* and Ibn `Ābidīn (d. 1252/1836) in a main reference of Ḥanafī literature, *Radd al-Mukhtār 'alā al-Dur al-Mukhtār,* both state that "Imām Abū Ḥanīfah returned to the common position (the opinion of his two chief disciples: Abū Yūsūf and Muḥammad al-Shaybānī)."[18] Since it is believed that Abū Ḥanīfah already changed his views, then the practice of performing prayers in non Arabic language is considered as invalid.

My own readings of the Ḥanafī literature find that the claim above needs to be further investigated. Another great scholar in the Ḥanafī school, Sarakhsī (d. 483/1090), who died a hundred year before al-Marghinānī (d. 593/1197), did not mention that Abū Ḥanīfah changed his mind on this matter. Such claim is based on the authority of Abū Bakr al-Rāzī, sometimes on that of Nūḥ bin Maryam, and sometimes on that of 'Alī bin al-Ja'd,[19] but the fact that it is not even mentioned by Sarakhsī in his authoritative book *Al-Mabsūṭ* which, in thirty volumes, expounds the Ḥanafī *fiqh* as related by al-Shaybānī from Abū Ḥanīfah, reveals that the matter is unresolved.[20]

It is also interesting to note that a great scholar from the Shāfi'ī school, al-Nawāwī (d. 676/1277) quoted (and criticised) Abū Ḥanīfah's

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[17] Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh,* vol 1 (Beirut: Dār al-Fikr, 1996), p. 53.

[18] The text says: *"Wa yurwa rujū`uh fī aṣl al-mas'alah ilā qawlihimā".* Burhān al-Dīn al-Marghinānī, *al-Hidāyah,* Vol. 1, p. 462, and Ibn `Abidīn, *Radd al-Mukhtār 'alā ad-Dur al-Mukhtār,* Vol 4, p. 9.

[19] See a *fatwā* issued by Shyaykh `Athiyah Saqr, "Tarjamat al-Qur'ān fī al-Ṣalāh', *Fatāwā al-Azhar*, Vol. 9, p. 39, May 1997.

[20] Shams al-Dīn al-Sarakhsī, *al-Mabsūṭ*, 30 vols (Beirut: Dār al-Ma'rifah, 1986).

views of allowing prayer in a non-Arabic language.[21] The Qur'ān is a revelation very specifically in Arabic, and so it should only be recited in the Arabic language. The Qur'ān is considered as miraculous and inimitable (*i'jāz al-Qur'ān*). Translations into other languages are necessarily the work of humans and so, accordingly, no longer possess the uniquely sacred character of the Arabic original. Put it simply, the translation of the Qur'ān is not considered as the Qur'ān. Since the Qur'ān must be recited in *ṣalāh,* reciting the translation would make it invalid. One might wonder: if it was widely known during al-Marghinānī's time that Abū Ḥanīfah retracted from his opinion, why then al-Nawāwī in his *al-Majmū' Sharḥ Muhadhdhab* did not know about that? Is it possible that al-Nawāwī who lived 147 years after al-Marghinānī referred to the Ḥanafī literature before al-Marghinānī era?

The matter needs to be further investigated as the gap between Abū Ḥanīfah and al-Marghinānī is 443 years. Another concern is that al-Marghinānī did not even explain why, if it was true, Abū Ḥanīfah changed his mind. What makes the issue more interesting is that Abū Bakr bin Mas`ūd 'Alā al-Dīn Kashānī (d.1191), another Ḥanafī jurist, in his *Badā'i` al-Shanā'i`*[22] claimed that Abū Ḥanīfah approved reading something of the Torah, the Gospel or the Psalms in *ṣalāh* provided one was certain such verses were not corrupted (still in original form).[23] If Abū Ḥanīfah approved reading the Gospel during *ṣalāh* why then Abū Ḥanīfah changed his mind that Muslims cannot recite the translation of the Qur'ān? One may note that Kashānī lived in the same period of al-Marghinānī's time.

Abū Ḥanīfah's Persian origin cannot alone be the explanation of his daring opinion. Sarakhsī in *Al-Mabsūṭ* mentions that the argument of Abū Ḥanīfah "original" views could be traced back to the early report that the people of Persia wrote to Salmān al-Fārisī (a companion of the Prophet) to write to them the *Fātiḥah* (opening chapter in the

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[21] al-Imām al-Nawāwī, *al-Majmū' Sharḥ Muhadhdhab* (Vol. 3), pp. 380-81.

[22] Abū Bakr bin Mas`ūd 'Alā' al-Dīn Kashānī, *Badā'i` al-Shanā'i` fī Tartīb al-Sharā'i`,* Vol 1 (Beirut: Dār al-Fikr, 1996), p. 464. It is stated that *"Wa law qara`a shay`a min al-tawrah aw al-injīl aw al-zabūr fī al-ṣalāh in tayaqqana annahu ghayr muḥarraf yajūz 'inda Abī Ḥanīfah li mā qulnā."*

[23] It is widely believed by Muslims that those old holy books are corrupted and no longer valid as they were in the original texts.

Qur'ān) in Persian, which he did; and they used to recite it in prayer until their tongues became used to it. According to this report, Salmān al-Fārisī submitted what he had done to the Prophet, and he did not disapprove of it.[24]

Even if we accept the claim that Abū Ḥanīfah abandoned his original permission to perform *ṣalāh* in non-Arabic language, and that in the end he followed the opinion of his two chief disciples, it is worth noting that Abū Yūsūf and Muḥammad al-Shaybānī actually permit the use of translation for those unable to recite the original Arabic. Yusman Roy and many Indonesians could be considered as one of them.

Hence, the debate whether it is permissible to recite the Qur'ān in languages other than Arabic during prayers is an old one. Despite MUI's *fatwā* against Roy, the court came to the conclusion that Roy's insistence to hold prayers in Indonesian was not blasphemous. The court's position seems to be: we cannot punish someone who follows a minority opinion of *fiqh*. The issue is not a matter of *`aqīdah* or theology. That is the reason why this case is different with other cases such as Abdul Rahman, a senior member of the Lia Eden sect, who was sentenced to three years in prison in 2007 for blasphemy because he claimed to be a reincarnation of Prophet Muḥammad.

Article 29 of the 1945 Constitution explicitly guarantees the freedom of every citizen to observe each of their own religions and to practice in accordance to those religions and beliefs. However, the guarantee provided by the constitution is reined by Law No. 1/PNPS/1965 which decides what religion or belief is acknowledged or not. It is then adopted in KUHP article 156(a) on Blasphemies that give the State the authority to criminalize any religions or beliefs that are declared deviate. The penalty for violating Article 156(a) is a maximum of five years imprisonment.

Several human rights activists, NGOs, and also former President Abdurrahman Wahid have challenged the validity of Law No. 1 of 1965. They took the view that Law No. 1/PNPS/1965 is clearly in contradiction with the 1945 Constitution, as well as with the Covenant on Civil and Political Rights (ICCPR), in which article 18 of ICCPR has been ratified into Law No. 12/2005.

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[24] Saqr, "Tarjamah al-Qur'an fi al-Sholah."

However, in April 2010, the Constitutional Court rejected the legal challenge and, instead, upheld Law No. 1 of 1965. Eight of the judges found that the law is necessary to maintain public order, and is respectful of the principle of religious freedom in Indonesia. Dissenting judge Maria Farida, the first ever female member of the court, reasoned that the law should be revoked because it is at odds with the constitution, since it recognises only six religions, and is used arbitrarily to suppress all other religions. C.J. Mahfud stated that the law itself is not contrary to the basic articles in the Constitution, but he admitted it needs to be made clearer, and states that it is up to the Parliament to amend it.[25]

Unfortunately, while accusations of blasphemy against Yusman Roy could not be justified in court, Yusman Roy was still imprisoned, but not for breaking Article 156(a). He was imprisoned under article 157 of the Penal Code and, it seems, by the result of public pressure. The court was under heavy pressure from some elements of the society and also from Malang Regent (*bupati),* Sujud Pribadi, who issued his decision to close Yusman Roy's pesantren. Later, Roy challenged the Major decision to the Administrative Court (PTUN) but the court confirmed the Major decision.

The Prosecutor states that "Roy distributed his video, and it spread hatred in the community," and this explains why "people hated Roy for spreading his ideas in a public way." In the video, Yusman Roy made a statement that "the Imām who says that dual-language of *ṣalāh* as invalid is really stupid." Although the statement did not refer to any particular person, the prosecutor took the view that such statement has violaed Article 157 of the Criminal Code, for circulating leaflets which sparked hatred between groups in society.

After serving two years in jail, Yusman Roy was freed on 9 November 2006. It is clear that despite the claim of MUI that Yusman Row was insulting Islam, the Court did not believe so. However, MUI refused to revoke its *fatwā* and the Malang regent does not allow the reopening of Roy's boarding school, which gave Indonesian translations to Arabic verses in prayers.

Conclusion

While inter-religious pluralism deals with relationship between one religion to others, intra-religious pluralism refers to views held by

[25] See Constitutional Court Decision No 140/PUU-VII/2009.

specific schools or denominations within a major faith about the validity or truth of other schools or denominations within the same major faith tradition. This paper has demonstrated how Indonesian Muslims have to deal with plurality of opinions within Muslim communities. Managing and maintaining such pluralism are important for Indonesia.

The Yusman Roy case illustrates that law and court are not the best approach to manage such intra-pluralism. *Fatwā* is not legally binding, and therefore should accommodate different and conflicting views among Muslims, instead of being a tool to discriminate others. The "secular" court is also not the right place to determine whether such practice or opinion is insulting Islam. The judges in the "secular" court simply do not have the capacity and expertise in religious matters. In fact, as has been demonstrated above, Yusman Roy case is a matter of interpretation within Islamic legal tradition. At the same time, the jurisdiction of religious court in Indonesia is limited to family law matters and economic sharī'ah. Therefore, I would argue that Yusman Roy case provides a strong argument of the need to have an alternative dispute resolution (ADR) within Islamic community in Indonesia.

With regard to inter-pluralism, Joint Forums for Religious Tolerance (FKUBs) have been established allowing FKUB members to mediate sectarian disputes in ways consistent with Indonesia's national and international commitments to protect the freedom of religion and belief. The Ministry of Religion has made some efforts to establish and train provincial FKUB panels to mediate problems within local communities. In many provinces, the local FKUBs are dominated by the majority religious group of the region, and they oppose or stall issuing licenses to religious minorities.

However,for ADR, all parties should have dialogue by promoting a civil society that negotiates, rather than litigates. In family matters, Indonesia has established Badan Penasihat Perkawinan dan penyelesaian Perceraian (BP4 - Advisory Board for Marriage, Disputes, and Divorce Settlements) for mediation and counselling before people go to the court for divorce. In commercial disputes, particularly with regard to Islamic financial institutions, there is BASYARNAS (Badan Arbitrase Syariah Nasional), the national arbitration council based on sharī`ah that will settle the dispute of Islamic finance transaction as according to the principle of Islam (sharī'ah). This is as an alternative

out of court settlement. In addition, there was an attempt to establish a Truth and Reconciliation Commission (Komisi Kebenaran dan Rekonsiliasi) to deal with past human rights abuses. However, the commission was struck down by the Constitutional Court decision in December 2006. Law No 27 of 2004 was declared invalid.[26]

There is something missing here. In the area of socio-religious conflict within Islamic communities, there is no formal institution of alternative dispute resolution. It is acknowledged that the role of Islamic leaders (both formal and non-formal) is important to educate and guide local Muslim communities. But what if Islamic leaders and Islamic organizations have already been involved in the conflict? Competition amongst Islamic organisations would lead to a contestation of Islamic authority in a plural society like Indonesia. It is worth noting that the approach for mediation and negotiation as an alternative dispute resolution must be developed at a grassroots level. They should occur at civil society level; not at state level. It should help reduce the level of tension and conflict in a community, like in Yusman Roy's case. Most importantly, it should maintain the harmony but at the same time it should protect the plurality of opinions (and practices) within Islamic communities. In Yusman Roy case, he should have the rights to practice what he believes, but at the same time, a negotiation on how he spreads his ideas outside his schools should take place in order to avoid provocative actions that invite violence.[]

Bibliography

Books and Articles

al-Sarakhsī, Shams al-Dīn. *Al-Mabsūṭ*, 30 vols. Beirut: Dār al-Ma`rifah, 1986.

al-Zuhaylī, Wahbah. *al-Fiqh al-Islāmī wa Adillatuh.* vol 1. Beirut: Dār al-Fikr, 1996.

al-Nawāwī, al-Imām. *al-Tibyān fī Adab Ḥamalat al-Qur'ān.* Beirut: Dār al-Fikr, 1997.

al-Nawāwī, al-Imām. *al-Majmū' Sharḥ Muhadhdhab.* vol 3,), pp. 380-81.

[26] See Priyambudi Sulistiyanto, *Reconciliation in Post-Suharto Indonesia* (London and New York: Routledge, 2008).

Bashori, Luthfi. "Kronologi Mengapa Yusman Roy Ditahan." available at his website http://www.pejuangislam.com/main.php?prm=-karya&var=detail&id=15. Accessed 1 February 2012.

Baskoro, L.R. "Dua Tahun Untuk Sang Guru." *Tempo,* 5 September 2005 available at http://majalah.tempointeraktif.com/id/arsip/-2005/09/05/HK/mbm.20050905.HK116459.id.html. Accessed on 15 February 2012.

Constitutional Court Decision No 140/PUU-VII/2009

Graham, Duncan. "Yusman Roy: Fighting to pray in peace." *The Jakarta Post*, 23 November 2006, available at http://www.the-jakartapost.com/news/2006/11/23/yusman-roy-fighting-pray-peace.html. Accessed on 15 February 2012.

Hallaq, Wael B. *The Origins and Evolution of Islamic Law.* Cambridge University Press, 2005.

http://www.indonesiamatters.com/802/sholat-in-indonesian/.

Kashānī, Abū Bakr bin Mas`ūd 'Alā' al-Dīn. *Badā`i' al-Shanā`i' fī Tartīb al-Sharā'i`*. Vol 1. Beirut: Dār al-Fikr, 1996.

Melchert, Christopher. *The Formation of the Sunni Schools of Law, Ninth–Tenth Centuries.* Leiden: EJ. Brill, 1997.

Mughniyah, Muhammad Jawad. "Prayer According to Five Islamic Schools of Law." available at http://www.al-islam.org/ency-clopedia/chapter7/6.html. Accessed on 12 February 2012.

Paddock, Richard C. "Separation of Mosque, State Wanes in Indonesia." *Los Angeles Times,* 20 March 2006 available at http://articles.latimes.com/2006/mar/20/world/fg-hatred20/-2. Accessed on 13 February 2012.

Platzdasch, Bernhard. "Religious Freedom in Indonesia: The Case of the Ahmadiya." ISEAS Working Paper: Politics & Security Series No. 2 (2011).

Rulianto, Agung. "Salat Bilingual Ajaran Roy." *Tempo*, 9 May 2005 available at http://majalah.tempointeraktif.com/id/arsip/2005-/05/09/AG/mbm.20050509.AG112105.id.html. Accessed on 19 February 2012.

Saqr, Shaykh `Āṭiyah. "Tarjamat al-Qur'ān fī al-Ṣalāh." *Fatāwā al-Azhar*, Vol. 9.

Sulistiyanto, Priyambudi. *Reconciliation in Post-Suharto Indonesia*. London and New York: Routledge, 2008.

Zahrah, M. Abū. *Imām Abū Ḥanīfah: Ḥayātuh, `Asruh, Ārā'uh wa Fiqhuh*. Beirut: Dār al-Fikr, 1947.