The Coevolution of Sacred and Secular: Islamic Law and Family Planning in Indonesia

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Abstract: While scholars of the Islamic revival have devoted attention to the increased prominence of Islamic law (shari’a) in the once-secular public sphere, less attention has been paid to a countervailing trend. A diachronic case study of Islamic law in Indonesia regarding birth control shows that reciprocal negotiations between secular authorities and religious leaders have changed the meaning of the shari’a. The resulting policies were neither secular nor sacred; they did, however, change women’s lives. This finding raises questions about the binary distinction between secular and sacred authority and suggests the coevolution of religion and secularism in modern Muslim societies.

Keywords: Islam, politics, secularism, shari’a, women, Indonesia

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I. Introduction

From 1938 to 2005, the three most prominent Islamic institutions in Indonesia—Nahdlatul Ulama (NU), Muhammadiyah, and the Indonesian Council of Ulamas (Majelis Ulama Indonesia, MUI)—radically changed their interpretations of Islamic law in favor of increased access to birth control. For example, in 1938 the country’s largest Islamic institution, NU, issued a religious edict (fatwa) saying that according to Islamic law (shari’a), “it is forbidden (haram) to have any medicine to prevent pregnancy”.¹ Yet seventy years later, NU leaders maintained that intra-uterine devices (IUDs), condoms, injectables, birth control pills, and even some instances of abortion were acceptable according to shari’a when used correctly.²

What drove NU and the other institutions to change their interpretation of Islamic law? What can the evolution of Islamic institutions on the issue of birth control tell us about the changing relationship between religious law, secular authority, and state power in Muslim societies?

This article contends that multiple factors drove their changing interpretations of the shari’a. Within NU, the activity of the women’s organization, Muslimat NU, was crucial to shifts in the interpretation of the shari’a during the early period, while regime pressure and incentives led leaders to partner with the state and support its development programs in the 1970s and 1980s. Muhammadiyah, meanwhile, was also pressured by the state, but appears to have been more influenced by their concern for social welfare and by advances in medical knowledge. MUI, as an organization wholly dependent on the state, was most clearly driven to change by pressure from the state. In sum, the organizations changed their interpretation of the shari’a in response to state authority, contemporary scientific knowledge, and social pressure.

² Author interview with Nasaruddin Umar, July 24, 2009. Umar is a member of the central board of NU, a self-described “Islamic feminist”, and director of Islamic community affairs in the Ministry of Religion.
The changing interpretations of the shari’a has implications that go beyond understanding fatwas. Existing scholarship on the Islamic revival has focused on the growing demand for the incorporation of religious ethics and religious law into the public sphere. Less attention, however, has gone into understanding the content of Islamic law and its evolution over the twentieth century. By excavating the evolution of Islamic law over the twentieth century, I demonstrate that the shari’a is a product of decades of negotiations between Islamic institutions and more secular authorities including constitutions, government ministers, doctors, and social movements. This evolution suggests that secular authority and secular forms of knowledge have influenced but not displaced religious authority and religious forms of knowledge. The opposite is also true. In that respect, both modernization theorists and scholars of the Islamic revival have presented an incomplete picture; the sacred and the secular may be mutually constitutive rather than being in diametrically opposed competition.

This article first outlines the literature on the politics of the Islamic revival to highlight areas of oversight. The next section explains the methods, data sources, and why Indonesia presents a crucial case for mapping the changing interpretations of the shari’a. The three subsequent sections trace the evolution of NU, Muhammadiyah and the MUI fatwas concerning birth control as well as the tangible ways that the institutions contributed to increasing women’s access to birth control. The conclusion points toward future directions for research on the coevolution of the sacred and secular.

II. The Shari’a and the Public Sphere

Early Western scholarship held Islamic law to be a pre-modern, irrational residue of disappearing social and political institutions. An influential Western scholar of Islamic law, Joseph Schact, argued that Islamic jurisprudence was frozen in the Middle Ages and the
consolidated schools of law (mazhab). Secular political rulers developed separate rules for governance while Islamic law was left stagnating. Likewise, a founder of the social sciences, Max Weber, argued that the judicial process in Islamic courts was often arbitrary and irrational in contrast to the Western-style courts based on procedural regularity and rational reasoning. Weber held that the Islamic judicial system’s “kadi-justice” failed to provide the forms of individual security, property rights, and rationality necessary for a modern economy or political system.

Since the 1979 Islamic revolution in Iran, scholars of religion and politics have paid increasingly close attention to the shari’a. Focused on Islamic social movements, Islamist political parties whose platform is dedicated to Islamic law, militant groups that justify violence on the grounds that it will help usher in a new caliphate, and everyday activists trying to comport their behavior with religious ethics, the Islamic revival has brought the shari’a and religious ethics to the forefront of research on religion and politics.

As a result of this focus, scholars have raised strong doubts about Schact and Weber’s depiction of Islamic law. Egypt is home to some of the most creative debates about Islamic law and public life. Article Two of the Egyptian Constitution holds Islamic law to be a chief source of legislation. Yet the Supreme Court has discretion over the interpretation of Article Two and has used that discretion to interpret the shari’a using independent reasoning, argument, and modern forms of exegesis. In parallel, Saba Mahmood draws on ethnographic observation with Muslim women’s movements to suggest that their efforts to instill an Islamic ethical disposition in everyday life including the virtues of patience, modesty and honesty have transformed the public sphere in ways that are not a reversion to premodern values. These transformations may

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3 Schacht 1964.
4 Weber 1978[1925].
not register as changes in formal political institutions, but they challenge the secular division between public and private and between religion and politics by infusing individuals with modern religious values in all aspects of life.\(^6\)

Focusing on Malaysia, Michael Peletz argues that the Islamic courts are a central part of an effort by Malaysian leaders to craft a state and civil society that is modern, plural, responsive to democratic sentiment, and home to a vibrant marketplace.\(^7\) Against Max Weber’s claim that “kadi-courts” are a relic of premodern reasoning, Peletz demonstrates that Islamic courts are urban, part of industrialized society, and highly bureaucratized. Peletz echoes Talal Asad’s contention that contemporary Islamic legal institutions are part of modernity rather than its opposite. Asad argues that modernity is best seen as a project that people in power seek to achieve rather than a linear process or a stable object. The project aims at institutionalizing a number of principles including secularism, democracy, moral autonomy, and market freedom. The notion that these principals constitute “disenchantment,” the unmediated access to reality and disavowal of the sacred, is a central component of the modern project but not an empirical marker of contemporary life in “the West” or the Muslim world.\(^8\)

The most recent work on this “Muslim modernity” suggests that Islamic law is being drawn on to address contemporary issues rather than stemming from devotion to unchanging religious traditions or residues from the past. A recent edited volume by Robert Hefner demonstrates that the demand for the shari’a stems from a desire to address issues like corruption, crime, economic inequality, and poor governance.\(^9\) And Brendon Kendhammer suggests that Islamic reform movements deliberately tailor their appeals for the shari’a

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\(^7\) Peletz 2002.
\(^8\) Asad 2003. For defenses of a modified version of secularization theory see Casanova 1994, Norris and Inglehart 2004.
\(^9\) Hefner 2011.
implementation to local policy concerns, harnessing popular frustration with weak and ineffective government to public hopefulness that sharia can force political and religious leaders to provide the “dividends of democracy.”

Instead of being seen as a reaction against modernity, contemporary scholars now Islamic movements as modern and working to address contemporary issues.

Against that backdrop, this article suggests that the content of contemporary Islamic law is no less a product of modernity than the institutions, political parties and social movements promoting it. Secular knowledge and secular forms of authority have shaped the content of the shari’a so that it is distinctly modern, conducive to the policy interests of the state, and may even be complimentary to the concerns of women’s social movements. A diachronic case study of Islamic law in Indonesia regarding birth control shows that reciprocal negotiations between religious leaders and secular authorities including the constitution, government ministers, medical doctors, and progressive social movements have changed the meaning of the shari’a so that it is infused with as much secular content as sacred. Despite correcting Weber and Schact, the influence of secularism on the shari’a is still underappreciated relative to the focus on the influence of Islam in the public sphere.

This unequal focus is due to at least two factors. First is the difficulty of mapping the trajectory and influence of “the secular”. Secular authority has changed the meaning of the shari’a to contemporary Muslims, a process that must be mapped historically with detailed attention to the varied interpretations of sacred texts by religious actors. Second are scholar’s normative concern with the perceived infiltration of Islamic law into the public sphere and its

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10 Kendhammer, 2013. See also Collins, 2008.
12 Asad 2003, 16. This investigation is slowed by the recent “rediscovery of religion” by political science (Wilcox and Wald 2006, 523). Bellin began a review article by noting, “Religion has long been peripheral to the concerns of most political scientists” (2008:315).
incompatibility with democratic politics. Scholars are still investigating the degree to which commitments to both Islamic law and human rights can coexist in the modern public sphere and are often ambivalent about accommodating Islamist parties in democratic politics.\textsuperscript{13}

In order to understand the role of the Islamic tradition on modern political life, however, scholars must engage both projects: mapping the influence of religious authority on modern secular institutions, and the influence of secular institutions on religious authorities. By doing so, this paper demonstrates that Islamic law and secular authority have coevolved over the course of the twentieth century; one cannot be understood without reference to the actors and institutions that constitute the other.\textsuperscript{14} While secularization theorists content that religious authority is being displaced, and scholars of the Islamic revival demonstrate that religious leaders are increasingly resurgent, I suggest that the sacred and the secular are mutually constitutive and coevolve over time rather than being in diametrically opposed competition.

III. Case Selection and Method

Indonesia has the largest Muslim population in the world and its institutions present crucial cases for understanding the relationship between religion and politics. The three institutions are an ideological cross section of Islamic society: the reformist Muhammadiyah, the traditionalist NU, and the conservative MUI.\textsuperscript{15} By obtaining a representative sample of institutions, I avoid selection bias as well as being able to test whether ideology can explain

\textsuperscript{13} There is a vast literature on the inclusion of Islamist parties and Islamic law in democratic politics. Highlights include Bayat 2007; Hefner 2000; March 2009; an-Na’im 2008; Schwedler 2011; Tessler 2002; Wickham 2004.

\textsuperscript{14} Asad 2003, chapter 6.

\textsuperscript{15} “Reformers” or “modernists” are part of the global movement to revitalize Islamic societies through scientific education and social reform, based on the ideas of Mohammad Abduh and Rasyid Ridha. A “traditionalist” is someone who identifies with practices of Islam laid down in the Syafii school of jurisprudence. A “conservative” is a group that favors strong communal norms, group rights, and orthodox interpretations of religion over individual rights and liberal freedoms but does not adhere to a specific religious doctrine (Ichwan 2013, Menchik 2007).
changes in religious doctrine. In other words, I harness Mill’s method of agreement; the content of their ideology varies but the cases are similar in being subject to repeated instances of state pressure. A further advantage of choosing Muhammadiyah and NU and is that they are substantively important: 75 percent of Indonesia’s 200 million Muslims identify with them, which is why they, “constitute the ‘steel frame’ of Indonesian Muslim civil society.”

Muhammadiyah was formed in 1912 in Yogaykarta, Central Java by self-proclaimed reformists influenced by the Egyptian modernist Muhammed ‘Abduh. Muhammadiyah’s founder’s sought to integrate religious education with western scientific education and methods of social reform. Their educational commitment to the welfare of their members, alongside their ideological commitment to rational exegesis, has continued to motivate Muhammadiyah behavior. Muhammadiyah has a decentralized, rational-bureaucratic structure and approximately 25-30 million members based primarily in urban areas and engaged in both social and formal political activities. Their women’s wings are called Aisyiyah and Nasyiatul Aisyiyah.

NU was formed in 1926 in East Java in order to promote traditionalist Islam in accordance with the authority of classical Islamic scholarship. Now believed to be the largest and one of the most influential Muslim institutions in the world, NU has approximately 35-40 million members. NU is hierarchically structured around charismatic religious scholars (ulama) and its members are rooted in a vast network of Islamic boarding schools (pesantran). NU has two

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16 George and Bennett 2005, Slater and Ziblatt 2013; Gerring 2001, 212-214. As I will show, the institutions also vary along the other key variables of institutional structure and regional origin.
17 42 percent of Indonesians claim themselves a part of the NU community and 12 percent part of the Muhammadiyah community. Another 17 percent felt themselves very close to NU and four percent to Muhammadiyah (Mujani and Liddle 2004, 120).
18 Fealy and Hooker 2007, 40.
19 One NU executive board member claims as many as 50 million members (interview with Umar). In the 2009 list of the world’s 500 most influential Muslims, seven come from NU backgrounds: former chair of NU Dr KH Achmad Hasyim Muzadi, former NU chair Abdurahman Wahid, PBNU Secretary Prof Dr. H Nasaruddin Umar, Muslimat NU chair Siti Musdah Mulia, Muslimat NU board member Lily Zakiyah Munir, Fatayat NU chair Maria Ulfah Anshor, and Prof. Dr Tutu Alawiyah (Esposito and Kalin 2009).
women’s organizations, Fatayat and Muslimat. Muslimat is for women over the age of 40 and is organized at the national, provincial, district and sub district levels of government, with leaders in more than 14,000 villages as of 2004. Fatayat NU is for women between ages 20 and 40 and has nine departments at each level; organization and management, leadership and education, economic and co-operative activities; health and sports, religious propagation and information, advocacy and legal affairs, cultural activities, research and development, and foreign affairs.  

The MUI was created in 1975 when the Indonesian dictator Suharto created a series of hierarchical consultative councils intended to control political Islam. While the MUI historically served as a state tool for manipulating Islamic parties and institutions, they have also opposed the government. Some activists and scholars contend that the MUI was specifically created to promote the social programs of regime. Since the end of the New Order, the MUI have increased their autonomy from the state. Drawing members from a wide array of organizations, the MUI purports to represent the entirety of Indonesia’s 200 million Muslims.

This article uses the method of process tracing based on archival documents and interviews in order to explain the evolution of Islamic institution’s interpretation of shari’a. The causal process is the reciprocal and iterated negotiation between the state, medical authorities, religious leaders and activists. The outcome is MUI, NU and Muhammadiyah’s interpretation of shari’a as it relates to birth control.

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22 Author interview with Hana Satriyo, July 16, 2009. Satriyo is an activist and currently Director of Gender and Women’s Participation at the Asia Foundation. Similarly, Porter notes that from 1975-1998 the MUI was a mechanism for the dissemination of state ideas and a tool for social management (2002, 78-83).
23 Author interview with Maaruf Amin, August 2, 2005. Amin is one of the most-high profile leaders of the MUI and a former chair of their fatwa council.
24 George and Bennett 2005, 206.
The chief source of data for NU, Muhammadiyah and MUI’s interpretations of shari’a are fatwas. A fatwa is an answer to an interrogatory or an issue regarding principles of dogma, and is given by a person or institution trained in Islamic jurisprudence. In crafting a fatwa, religious elites choose from different opinions within a religious tradition and present the matter in a clear way so that the public can act in accordance with the ruling. Fatwas are responsive to political and social pressure, thereby changing faster than the bulwark of Islamic jurisprudence. Fatwas may convey norms, attitudes, and self-regulation. They are a crucial mechanism for the transmission of Islamic rules and values from generation to generation and from scholars to the general public.

Since the debates over the Islamic revival and modernity have been fought on the terrain of women’s bodies, I focused on fatwas related to an issue of concern to proponents of modernity and to Islamic authorities: birth control. Birth control in Indonesia includes the practices of withdrawal, female sterilization, male sterilization or vasectomy, abortion, birth control pills, intra-uterine devices (IUDs), condoms, injections, and traditional medicines. Free access to tools of reproductive health is considered a fundamental human right by Western feminists. This sentiment has been institutionalized in the 1979 United Nation’s Convention on the Elimination of All Forms of Discrimination Against Women, which states that governments are obliged to develop laws that guarantee women’s rights “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and

25 “Fātūwā” is the Arabic plural of “Fātwa.” For the sake of clarity, I eliminate diacritical marks and use the common English terms, e.g. fatwa and fatwas (Federspiel 1995).
26 Hooker 2003.
27 Skovgaard-Petersen, 1997, 37.
28 The impact of a fatwa varies depending on the political and social power of the actor. While fatwas in Indonesia are socially influential and inform state policy, they do not constitute state law.
means to enable them to exercise these rights."\textsuperscript{30} While access to birth control was not always considered a human rights issue, gender activists now routinely use the language of rights to articulate their need for access to reproductive health services.\textsuperscript{31}

Fatwas from 1926-2005 were collected from the published collections from each institution while recent fatwas were collected from pamphlets and newspapers. Out of a total of approximately 1,500 fatwas, 25 related to birth control.\textsuperscript{32} Within these 25, I focused on whether it was acceptable for women to use birth control. Islamic law contains multiple levels of determination: forbidden (\textit{haram}), detested (\textit{makruh}), permissible (\textit{mubah}, neither forbidden nor commended), permitted (\textit{halal}) and recommended (\textit{mandub}). In order to understand the changes in Islamic institution’s interpretation of the shari’a on birth control it is crucial to map out the changing prescriptions for appropriate behavior.

The next three sections map the evolution of the shari’a. The first period from 1938-1968 details Islamic institution’s initial opposition to birth control, followed by groups that pressured Islamic institutions to change: NGOs, women’s organizations, and the state. The second period from 1969-1992 explains how the state and Islamic institutions renegotiated the goals and means of birth control: a reciprocal process that constrained the state but also reshaped the views of religious leaders. The third period from 1992-2005 describes how female Muslim intellectuals and government concerns over HIV/AIDS are now shaping further changes in the shari’a.

\textbf{IV. 1938–1968: Opposition To Birth Control}

\textsuperscript{30} United Nations General Assembly 1979, 16.e.  
\textsuperscript{31} Luker 1985, 966-97.  
\textsuperscript{32} MUI 1997; Muhammadiyah 1995; NU 1999.
The earliest record of policy on birth control practice was a 1938 fatwa by the NU. The questioner asked whether it was permissible to drink medicine to terminate pregnancy if the woman feared that the child was sick with leprosy. The medicine was most likely a traditional concoction with herbs, yeast, or alcohol intended to induce menstruation or miscarriage (jamu peluntur). In response, NU stated that pregnancy was part of the normal course of a women’s life and anything preventing pregnancy must have a certain purpose. An uncertain purpose was not condoned and even with a certain purpose, preventing pregnancy might not be excused. NU gave two citations to fiqh: that it was forbidden for a woman to have pregnancy prevention medicine even with the permission of her husband, and that was forbidden to have any medicine to prevent pregnancy.

NU’s views changed rapidly in response to social pressure and mobilization by Muslimat NU. Ibu Muhammad Baidawei, head of Muslimat NU in Jombong, East Java, began promoting the use of birth control even prior to national approval from the NU executive board. The Muslimat NU health clinic in Jombong was one of the first to provide women with access to contraception. It was, therefore, not a radical shock when in 1960 the central board declared that some forms of birth control were permissible. Use of the withdrawal technique was considered detested rather than forbidden. Consuming medicine was also detested, and would have included herbal medicines and injectables. Preventing pregnancy entirely was still forbidden. Emergency situations changed NU’s determinations based on the principle that the lesser of two evils should

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34 “Every women knows this remedy [for unwanted pregnancy].” Author interview with Lies Marcoes Natsir, July 28, 2009. Natsir is an activist and a Senior Program Officer at the Asia Foundation.
35 Citations to hadiths in Talkhisul Murad Hamisy Bughyah and I’anatuth at-thaliban.
prevail: any form of contraceptive was permitted in situations where pregnancy would threaten the life of the mother.

Further changes began after Suharto seized office in a coup d’état in 1965-1966. The country’s first government-funded family planning program was launched in 1967 as the Jakarta Pilot Project under the direction of General Ali Sadikin. In February 1967, the minister of welfare Kyai Haji Idham Chalid headed a panel discussion to address the feasibility of family planning according to the views of Indonesia’s major religious groups. In addition to being minister of welfare, Chalid was chair of NU from 1956-1984 and his involvement suggests that family planning had support from the highest level of NU despite the fatwa of 1938. Another such leader was Ali Yafie, a representative in the Indonesian parliament from NU and one of the foremost proponents of drawing on Islamic jurisprudence to reconcile divine imperatives and government programs.

NU leaders like Chalid and Yafie were vital to the success of family planning while opposition by religious leaders would have doomed the program. For that reason, Haryono Suyono, the Deputy head of the National Planning Coordinating Board (Badan Kordinasi Keluarga Berencana Nasional, BKKBN) from 1973-1983 and head from 1983-1998, gathered information on Islamic leaders’ reaction to family planning and tweaked the program in order to minimize offending elites. The state then used the schools, mosques, prayer circles, hospitals and social networks of Islamic organizations to implement the program.

38 Hull 2007, 236.
40 Feener 2007,159.
41 Author interview with Terence Hull, November 10, 2009. Hull is the John C. Caldwell Professor of Population, Health and Development at Australian National University and has been involved in and written about the family planning program since the 1970s.
Religious elites exchanged their support for financial gain and heightened authority. The state created incentives for religious leaders to change their rulings; they distributed audio-visual material, typewriters, multiplying machines and learning aids through the networks of religious elites. Elites became famous for promoting the program and received support for awards from the state for their cooperation. In sum, the regime provided both material and political incentives for religious leaders to change their interpretations of the shari’a.

Islamic leaders were not the only religious elites integrated into the program. The regime’s 1968 publication, “Views of Religions on Family Planning” proclaimed Islam, Protestant Christianity, Catholic Christianity, and Balinese Hinduism’s acceptance of family planning. Hull argues that this discussion marked the point when the national consensus around the morality of birth control was turned from negative to positive. Yet, rather than being a tipping point, the discussions of 1967/1968 should be seen as one instance of negotiation. To this day, BKKBN feels the need to promote their program with glossy pamphlets and quotes from religious elites.

In 1968, Muhammadiyah laid out their guidelines for family planning. After hearing testimony from executive board members Dr. H. Koesnadi and H. Djarnawi Hadikusuma, the Islamic law committee issued a fatwa that sought to balance two values. On the one, they noted that Islamic teachings stated that one of the aims of marriage was to gain descendants, “Preventing pregnancy is strongly against Islamic teachings. The same is true for the family

42 Author interview with Firman Lubis, November 13, 2009. Lubis is a professor of Community and Family Health at the University of Indonesia, a medical historian, and director of the health NGO Yayasan Kusama Buana.
43 Hull 2007, 238, 258.
44 One recent pamphlet shows a photo of a Buddhist monk alongside scriptures interpreted to support small families (BKKBN 2007).
45 Dr. Koesnadi was included on the BKKBN executive committee as well as being a member of Muhammadiyah’s executive board from 1962-1990.
planning program, which is implemented by preventing pregnancy.46 Like the NU fatwa of 1938, Muhammadiyah in 1968 interpreted the shari’a as forbidding birth control. Yet Muhammadiyah also backed the state’s development goals by noting that Islam warned Muslims not to leave their children in poverty. “A strong and powerful believer (mu’min) is better and loved by Allah than a weak believer.”47 To resolve this tension, birth control was permitted in emergency conditions (darurat).

The novel aspect of Muhammadiyah’s fatwa was their list of emergency conditions; fear for the safety of mother's soul and health and based on the opinion of a physician, fear of sustaining a religious life due to inability to fulfill the needs of the child, and fear of children's health and education due to inadequate birth spacing. Muhammadiyah effectively permitted the use of any form of birth control that would not prevent pregnancy entirely. Moreover, while recognizing that there are sayings of the prophet (hadith) urging men and women to procreate, Muhammadiyah noted that such hadith were meant as a suggestion to the community and not to individuals, who could consider their own situation act accordingly. By permitting the use of birth control in ‘everyday’ emergencies, Muhammadiyah opened the door for a tidal wave of change.

While NU, Muhammadiyah, and the state’s reshaping of the shari’a was innovative, it was not unique to Indonesia. Similar to emergency conditions (darurat), other concepts like the repeal of previous decisions (nashkh), custom (‘urf) and public interest (maslaha) have historically given the shari’a the flexibility to adapt to different contexts.48 While the scale and scope of change in contemporary Indonesia is distinct from the pre-modern period, Islamic law in other periods and contexts has proven similarly dynamic.

46 Hooker 2003, 167; Muhammadiyah 1995, 305-308.
V. 1969-1991: Islamic Law and Social Reform

In 1969, the religious legislative (Syuriah) council of NU issued a new statement supporting the regime’s program but framed their support explicitly in terms of family welfare (keluarga maslahah). In doing so, they expanded the scope of accepted contraception to include modern contraceptives while rejecting aspects of the state’s approach to women’s health. In the early years of the program, BKKBN set targets to induce women to accept contraception with widespread allegations of coercion. Incentives were given to workers that convinced women to use IUDs and implants without disclosure of the side effects.

The 1969 fatwa contained eight parts: that family planning should be practiced to space rather than prevent pregnancy; that abortion should be prohibited; that family planning must be voluntary; that planning should stress the health and welfare of the family rather than fear of poverty; that permanent damage to reproductive organs should not be allowed; that consent of both husband and wife is necessary; that planning should be practiced in accordance with Islamic law; and that family planning should not aid in immoral acts. The state’s emphasis on population control was less important for NU than their concerns for women’s welfare and family health.

The institutions that had supported family planning even before the fatwa, Muslimat and Fatayat, led the way in implementing the decision. Muslimat NU’s welfare foundation set up a family welfare institution (Lembaga Kemaslahatan Keluarga, LKK) to promote reproductive

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49 Widyantoro 2003, 113; Candland and Nurjanah 1988, 98-99; Fathuddin 1990, 30. The Tanfidziah (executive) board affirmed the fatwa in 1971 (BKKBN 1993, 116). The Islamic law or Syuriah council is the institution’s highest leadership body (Kadir 1999; Nahdlatul Ulama n.d. [2004]).
50 “In the past they [BKKBN] would set a target for adopters of contraception, and then they would bribe their acceptors. For example if someone used condoms, they would get no money. But if they used the injectable or the pill, they would get [a] very small amount of money. And then if the women used the IUD or the Norplant, they would receive even more money. Then finally, if the women agreed to get a vasectomy or the man got the sterilized they would receive even more money” (author interview with Ninuk Widyantoro, August 4, 2009). Widyantoro is the director of an influential women’s health NGO, Yayasan Kesehatan Perempuan.
health. LKK conducted training for health care workers, partnered with international organizations to educate NU members, and ran over two-dozen hospitals and health clinics.\textsuperscript{52} With thousands of schools and leaders in every province, regency, district and neighborhood, NU’s support accelerated the public’s acceptance of family planning.

In the period between 1968 and 1974, the Islamic law council of Muhammadiyah (\textit{Majelis Tarjih}) likewise expanded their support for family planning as long as it did not include vasectomy, female sterilization, or abortion.\textsuperscript{53} In a 1974 pamphlet titled “Statement of the Central Board of Muhammadiyah Concerning Vasectomy, Tubectomy and Menstrual-Regulation,” Muhammadiyah laid out their policies.\textsuperscript{54} The pamphlet encouraged members to be, “more active and intensive in implementing development programs.” Likewise members should be, “disciplined in the implementation of family planning... performed in accordance with the instructions and guidance of the Legal Affairs Committee of Muhammadiyah.” Consistent with the fatwa of 1968, their support was limited to the approved methods of contraception. Despite state pressure, Muhammadiyah hospitals and health clinics did not use undertake vasectomies, female sterilization, implant women with IUDs or perform abortions.

MUI also resisted aspects of the family planning program. And like Muhammadiyah, their doing so transformed state policies. All three institutions opposed the use of sterilization and vocally opposed BKKBN’s efforts in the late 1970s to promote sterilization. In a fatwa in 1979, MUI forbade the practice of vasectomy and female sterilization since there was no

\textsuperscript{52} Candland and Nurjanah 1988, 99; Fathuddin 1993, 116-117.
\textsuperscript{53} Widyantoro 2003, 114.
\textsuperscript{54} Muhammadiyah 1974. This pamphlet was issued in cooperation with the Ministry of Health, testifying to the continued cooperation of Islamic institutions and the state.
evidence that the damage could be repaired.\textsuperscript{55} As a result, despite clear cost and efficiency benefits, BKKBN dropped sterilization from their public program.\textsuperscript{56}

A second point of contention was the IUD. In a 1971 fatwa issued by MUI’s predecessor, 11 of the nation’s leading ulama prohibited the IUD on the grounds that insertion involved the sight of a woman’s genitals by an unrelated man. The fatwa coincided with the expansion of the program beyond Jakarta and was interpreted as a rebuke to the state. Yet, at the same time, other methods promoted by the government—condoms, coitus interruptus, birth control pills and injections—were permitted.\textsuperscript{57} Hull suggests that around this time, MUI even gave their tacit acceptance of menstrual regulation (abortion) in private clinics.\textsuperscript{58}

MUI’s IUD policy underwent a further change in a 1983 fatwa.\textsuperscript{59} Citing the government’s desire to educate the public about family planning and the importance of the Muslim community in national prosperity, MUI granted the morality of using the IUD in one of their longest fatwas on record. IUDs were detested but permissible if done by a female doctor with the permission of both the husband and wife. MUI went on to argue that the government should increase the supervision of birth control facilities: every clinic was to have a worker that understood shari’a and guarded against the misuse of birth control.

In the 1983 fatwa, MUI cited the testimony of almost a dozen government officials, the 1945 constitution, the Pancasila, and 16 Qur’anic verses and six hadiths.\textsuperscript{60} This evidentiary

\textsuperscript{55} MUI 1997, 2/1979. The fatwa includes testimony from Ramatullah Shiddiq, M. Syakir and Syafi’I Al Hadzami but no citations to the Quran or hadith.
\textsuperscript{56} Interview with Lubis.
\textsuperscript{57} Mudzhar 1993, 109-113.
\textsuperscript{58} Hull 2003, 72.
\textsuperscript{59} MUI 1997, 16/1983.
\textsuperscript{60} MUI 1997, 16/1983. Citations to Pengarahan Menko Kesra RI Alamsjah Ratu Perwiranegara, Pengarahan Menteri Negara Kependudukan dan Lingkungan Hidup RI Prof Dr H Emil Salim, Sambutan Menteri Agama RI Munawir Syadsali, Sambutan Ketua Umum MUI Syukri Ghozali, Sambutan Kepala BKKBN Haryono Suyono, Dr Bambang Sumakno, Dr Bachrun Dip, Prasaran Roeslan Abdulgani, Prasaran Dr H Kusnadi, QS 103:1-3, 13:11, 8:53, 7:96,
support was unusual within MUI fatwas that usually relied solely on religious citations, and suggest pressure from the Suharto regime for MUI to shift their policy. Indeed, Hull noted that government pressure led to MUI’s revised interpretation of Islamic law and eventual acceptance of the IUD.\textsuperscript{61}

The use of IUDs remained contested for NU until 1989. In two fatwas, the NU focused on the distinction between birth control that permanently disable reproductive organs and those that do not.\textsuperscript{62} In the latter category, all contraception was permitted with a caveat concerning the IUD. If a male doctor did the insertion, and was not the husband of the woman, than the IUD was forbidden. However, NU also argued that in situations where the IUD was necessary, the woman could have the device implanted when accompanied by her husband, a male relative, or a trusted woman. Given NU’s use of the term ‘necessary’ instead of ‘emergency’, NU’s fatwa suggests that female health concerns and family interests were sufficient justification.

NU’s distinction between birth control that permanently disables reproductive organs and birth control that does temporary damage enabled them to change their stance on sterilization as well as IUDs. In the 1989 fatwa, NU maintained their 1960 policy stating that any form of birth control that caused permanent damage was forbidden.\textsuperscript{63} Yet, if the damage could be restored by modern medical techniques then sterilization would be permitted. Allowing sterilization when it could be reversed using new technology marked yet another shift.

By 1990, all three institutions had made radical changes. NU went from prohibiting almost everything to allowing the birth control pill, IUDs, injectables, and anything else that did
not permanently prevent pregnancy. Both MUI and Muhammadiyah changed from an implicit rejection of family planning to overt and public support for injectables, the birth control pill, and even the IUD. All of their fatwas were marked by increased attention to state policy, national development, and a conspicuous awareness of the family planning program. Rather than simply relying on religious authorities, secular authorities came to play an increasingly prominent role in their interpretations of the shari’a. This evolution of the shari’a evolved over time as an outcome of continued, iterated negotiations with the state.

These changes affected state policy. MUI’s 1983 fatwa rejecting vasectomy and female sterilization, “not only served to shape public attitudes about the family planning services, they [MUI] also established notional boundaries on the policies and practices of the BKKBN preventing official acceptance of sterilization, and moderating program strategies of community mobilization using campaigns of incentives and disincentives.”64 A complete tally of national level activities by Islamic institutions is unavailable, but BKKBN has compiled a list of the accomplishments of Islamic organizations in promoting family planning; table 1 lists the number of Muhammadiyah hospitals and health clinics promoting family planning from 1970-1988.

[Table 1]

Table 2 shows how in one region, religious organizations worked with the Ministry of Religious Affairs and BKKBN to promote family planning.

[Table 2]

64 Hull 2003, 72-73.
Table 3 details one NU clinic’s family planning activity in 1987/1988. This clinic was one of the first to promote family planning in Indonesia. As we will see, this cooperation between Islamic organizations and the state helped the program succeed across Indonesia.

[Table 3]

In addition to expanding Islamic institution’s acceptance of birth control, the period from 1969-1992 witnessed a geographic expansion of family planning. The first phase in 1970 covered only Java and Bali. The second covered Aceh, North Sumatra, West Sumatra, South Sumatra, Lampung, West Kalimantan, South Kalimantan, North Sulawesi, South Sulawesi, and West Nusa Tenggara. The third extended to all the remaining provinces. Hull notes that the expansion was not only geographic. “By the end of the 1970s BKKBN promoted small-family norms through mothers’ groups, small credit schemes, youth groups, religious groups, military units, and a wide variety of government linkages.” This expansion was accompanied by a dramatic increase in funding. Figure 1 illustrates the funding increases from 1969-1989.

[Figure 1]

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This expansion had a significant impact on women’s lives. Figure 2 depicts Total Fertility Rates alongside contraception rates from 1950-2007. Once contraception was made widely available and affordable, fertility rates dropped dramatically. While economic development also contributed to the decline, demographers consider the increase in contraceptive use to be the dominant behavioral mechanism influencing the change in fertility rates.67

[Figure 2]

The period from 1969-1991 witnessed considerable changes in Islamic institutions and women’s lives. Islamic institutions went from tacit or outright opposition to birth control to active support for condoms, injectables, birth control pills, withdrawal, and herbal remedies. Total fertility rates plummeted from 5.4 children per woman in 1970 to 2.8 in 1992, while contraception use skyrocketed from 3 percent to 50 percent of women. And although the major period of change was 1969-1991, the program and the negotiation continues.

VI. 1992-2005: The Negotiation Continues

Islamic institutions have continued to revise their interpretation of the shari’a regarding permissible forms of birth control in negotiation with the state. Nasaruddin Umar of NU notes that IUDs are now widely acceptable, condoms acceptable if used appropriately, and vasectomy and female sterilization are still forbidden. Abortion is more complex: there are multiple schools of thought within NU and most people believe that only if the fetus is sick is it permissible to

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have an abortion. Yet the activist Lies Marcoes Natsir argues that, “Even though it was not possible to issue a fatwa, abortion is still seen as acceptable according to Islamic jurisprudence within the NU.” This shift from an outright ban on abortion to an internal debate marks a further change in NU. Former Fatayat NU chair Maria Ulfah Anshor’s research on the diversity of opinion within the schools of Islamic jurisprudence is thought to have promoted additional changes in the views of senior ulama as well as the MUI. In fact, women’s rights activists no longer focus their efforts on NU, viewing Muhammadiyah as the more intransient institution.

Nor are Muhammadiyah’s view’s stagnating. After opposing all forms of birth control in 1968, Muhammadiyah now actively supports family planning using multiple methods including abortion in limited instances. According to Natsir, compared to NU,

Muhammadiyah is more like Catholics, they are strict and stick to the fatwa that says abortion is unlawful. Aisiyah is still conservative, and that is why at the Asia Foundation we no longer work with the NU. Because the NU is already progressive. They are finished! But Aisiyah is different. This is in part because, also, they have an orphanage. Therefore they are less sympathetic to abortion even in the case of rape because they say the child can be adopted rather than killed. However if there is a medical reason, like incest, then they are more supportive. This is because they are rational, and if there is a strong reason for something, they are likely to approve. And we find that they will approve for other reasons as well, like if the male rapist is a Christian, then they will all approve because the child will take the religion of the father and no longer be a Muslim.

While Aisiyah may not be “progressive” like NU, they are more accommodating than NU on abortion. Muhammadiyah classifies miscarriage into those that are medically provoked and those that are criminally provoked. The former is permitted in cases of emergency before 28 weeks, based the World Health Organization’s contention that the fetus cannot survive outside the

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68 Interview with Umar, July 24, 2009.
69 Interview with Natsir (emphasis mine).
70 Author interview with Maria Ulfah Anshor, July 22, 2009; Rinaldo 2008.
71 Author interview with Satriyo.
72 Author interview with Natsir.
womb before 28 weeks.\textsuperscript{73} This is markedly longer than some leaders of NU, who follow the Hanafi schools’ ruling that the spirit enters the fetus after forty days.\textsuperscript{74}

In delineating these views, Muhammadiyah’s rules for permissibility have certainly expanded. Yet the changes have not been as substantial as NU; activists in Fatayat-NU have began to refer to abortion as an issue of a woman’s autonomy over her body and her reproductive health.\textsuperscript{75} Muhammadiyah activists preferred to couch any justification for birth control in scientific or rational arguments. Both institutions stress the importance of keeping state policies consistent with Islamic jurisprudence. And both have come out in support of contraception based on the notion that the national context is an important factor in determining the permissibility of birth control.\textsuperscript{76}

MUI has changed as well. In November 1995, MUI laid out their prescriptions for coping with the perception of rising HIV/AIDS rates by expanding the allowable use of condoms.\textsuperscript{77} They justified their support for condom use on the grounds that condoms were considered reliable by medical authorities for the prevention of HIV/AIDs.\textsuperscript{78}

\textsuperscript{73} Author interview with Natsir.
\textsuperscript{74} Author interview with Umar.
\textsuperscript{75} Not all Fatayat activists take this stance. One informant argued that women having better access to birth control should not be seen as an indicator of women’s rights. “They [BKKBN] want to control the population, not respect it, and they do not have concern for the quality of a women’s life. So you see KB [family planning] is really a program that is about control over the population only, and not about women’s health or women’s rights. In fact, I think that KB actually violates women’s rights because all the rules were written by men, and they are not respectful of women’s safety, or women’s health, and not concerned with women’s sexuality. For example in Indonesia we still have young girls of 13 or 14 that are forced to marry even though they are not ready for marriage, not physically and not emotionally. But they [BKKBN] do not look at the quality of women’s health, they don’t study these things, and they don’t care. I mean, I have done some work with Fatayat-NU, but that is very small and they don’t even, I think, understand the role of birth control in women’s rights... Today, for example, a woman from Fatayat-NU interviewed me about birth control. And I asked her why it was an important issue, and she said, ‘for population control’. Even a female activist did not see birth control as a question of women’s rights, or women’s health, or women’s choice. So you see this is not the way that KB should be understood” (emphasis speaker) (author interview with Ninuk Widyantoro).
\textsuperscript{76} Hooker 2003, 166-175.
\textsuperscript{78} Roesin and Ichwam 1999: 72-74.
The final shift for MUI came in 2005. In their 2003 fatwa, MUI maintained that abortion was explicitly forbidden except where the life of the mother was at stake. In their 2005 fatwa, the MUI added other emergency conditions: when a pregnant woman suffers serious physical illness, if the fetus has a genetic defect, and if the pregnancy resulted from rape. In these instances the pregnancy could be terminated before 40 days. Once more, MUI expanded the grounds upon which the shari’a permits women access to abortion.

For many years, the Indonesian family planning program was a model for the developing world. Officials traveled from around the globe to attend BKKBN’s International Training Program (ITP), visiting health clinics and meeting with Muslim leaders. For the period from 1987-2008, ITP hosted 4,524 participants from 94 countries. BKKBN is currently working on a manual on family planning for religious leaders from Iran and Bangladesh. The manual covers maternal and child health, HIV/AIDS, the concept of gender in Islam, and builds on more than thirty years of Indonesian Islamic theology promoting women’s access to birth control.

VII. Conclusion

Over the course of thirty years, the popular expression *banyak anak, banyak rezeki*, ‘many children, much good fortune’, transformed into the New Order’s maxim, *dua anak cukup*, ‘two children is enough’. The Indonesian case suggests that key to this change was Islamic institution’s reformulated interpretations of the shari’a. In addition to consulting the sacred texts,

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79 MUI 2005.
80 Warwick 1986; World Bank 1990. For criticisms of this model see fn 50 and fn 75.
81 BKKBN 2009.
83 Niehof and Lubis 2003, 251.
the institutions drew on secular sources; domestic and foreign medical authorities, government ministers from health, demography and the environment, the family planning coordinating board, and experts from the World Health Organization and other international organizations. In other words, the sacred and the secular have combined in unexpected ways. As a result, the institutions’ interpretations of the shari’a today are radically different from when NU issued their fatwa about *jamu peluntur* in 1938.

The coevolution of the shari’a and secular authority has at least two implications for the study of Islam and politics. The first is conceptual. The complex evolution between religious and secular authority in Indonesia is not unique: scholars have mapped secularism’s circuitous trajectory in Egypt and Malaysia. Instead of positing a “clash” between Islam and modernity, or the displacement of religious authority by secular authority, scholars face the challenge of crafting models of the coevolution of the sacred and secular in this “enchanted” modern.

The second implication of this article is theoretical. The shari’a promoted by NU, Muhammadiyah and MUI overlaps with some arguments for women’s access to birth control. Yet, in justifying their evolving interpretations of the Islamic tradition, none of the institutions used the language of women’s rights or women’s equality. Instead, the justifications for adjustments to Islamic jurisprudence were expressed in medical and rational terms or the interests of the religious or national community. This suggests that Islamic institutions are driven by non-liberal conceptions of agency and likely to evolve in ways that are poorly predicted by existing theories of secularization, modernization, and the global expansion of liberal human rights. To understand the future of states where Islamic actors are unapologetically in the public

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84 Asad 2003, Layish 1978.
85 Deeb 2006.
sphere, scholars will need a new vocabulary that maps the concepts, motives, and trajectory of politics in the grey zone between secular-liberalism and theocracy.
REFERENCES


Masud, Muhammad Khalid, Morris Messick Brinkley and David Stephan Powers. 1996. “Muftis, Fatāwā and Islamic Legal Interpretation.” In Muhammad Khalid Masud, Morris


Table 1: Muhammadiyah Promotes Family Planning in Their Hospitals and Clinics

<table>
<thead>
<tr>
<th>Year</th>
<th>Muhammadiyah Hospitals Clinics</th>
<th>Number Of Provinces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>1972</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>1973</td>
<td>22</td>
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<td>1974</td>
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<tr>
<td>1980</td>
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<td>14</td>
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<td>1988</td>
<td>133</td>
<td>18</td>
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<tr>
<td>1992</td>
<td>376</td>
<td>NA</td>
</tr>
<tr>
<td>2000</td>
<td>312</td>
<td>NA</td>
</tr>
<tr>
<td>2005</td>
<td>345</td>
<td>23</td>
</tr>
</tbody>
</table>

Table 2: Mosque, Islamic Study Groups, Qur’an Readings and Weddings Used to Promote Family Planning (FP) in West Nusa Tenggara (1968-1988)

<table>
<thead>
<tr>
<th>Year</th>
<th>Info on FP Distributed in Mosques</th>
<th>Info on FP Incorporated into Islamic Study Groups</th>
<th>Info on FP Incorporated into Public Recitations of the Qur’an</th>
<th>Info on FP Given to Newly Married Couples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968-1972</td>
<td>5,935</td>
<td>720</td>
<td>44</td>
<td>-</td>
</tr>
<tr>
<td>1974-1978</td>
<td>3,306</td>
<td>837</td>
<td>63</td>
<td>83,835</td>
</tr>
<tr>
<td>1979-1983</td>
<td>-</td>
<td>1,013</td>
<td>201</td>
<td>94,576</td>
</tr>
<tr>
<td>1984-1988</td>
<td>8,951</td>
<td>1,006</td>
<td>326</td>
<td>72,168</td>
</tr>
</tbody>
</table>

Source: BKKBN 1993, 156
Table 3: Family Planning Activity by One NU Health Clinic in Jombang 1987/1988

<table>
<thead>
<tr>
<th>Contraceptive</th>
<th>Number Of Users</th>
</tr>
</thead>
<tbody>
<tr>
<td>IUD</td>
<td>328</td>
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<tr>
<td>Condom</td>
<td>177</td>
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<tr>
<td>Vasectomy</td>
<td>96</td>
</tr>
<tr>
<td>Pill</td>
<td>365</td>
</tr>
<tr>
<td>Injection</td>
<td>204</td>
</tr>
</tbody>
</table>

Source: BKKBN 1993, 150
Figure 1: The Dramatic Expansion of Family Planning

Source: World Bank 1990, 138. Figure 1 divides funding into domestic and foreign funding. This is important because while international organizations provided technical expertise at the outset of the program, they did not provide the capital during the period of growth. As a result, the increase in access to contraception cannot be attributed to foreign involvement.
Figure 2: Birth Control Changes Indonesian Women's Lives (1950-2007)