

Fatwa Institutions in Handling Religious Blasphemy Crimes in Indonesia and Malaysia

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Abstract

The position of fatwa institutions in cases of blasphemy by cult groups is often seen as representing only the majority Muslims and blaming minority Muslims, as in Indonesia, or seen as a tool to suppress anti-government groups, as in Malaysia. This study aims to explain the position of the Indonesian Ulema Council (MUI) and *Jawatankuasa Fatwa* in handling heresy, including the reasons behind the differences in the positions and roles of the two institutions. Researchers use qualitative methods with a comparative legal approach. This study found that MUI's heretical fatwas had no legal force, the central MUI has the authority to enact heretical fatwas within MUI institutions, but not absolutely to respond to national laws, and not play a role in the criminal justice system. Meanwhile, *Jawatankuasa Fatwa Kebangsaan* (JFK) has the force of law with certain conditions, however, the state *Jawatankuasa Fatwa* has the authority to determine heretical fatwas to respond and strengthen state regulations (blasphemy laws). This research can be used as a reference for law enforcement in handling blasphemy cases by considering the views of MUI and *Jawatankuasa Fatwa*, which are regulated adequately by laws and regulations.

Keywords: blasphemy; heresy; *Jawatankuasa Fatwa*; MUI

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Posisi lembaga fatwa dalam kasus-kasus penistaan agama oleh kelompok aliran sesat sering dianggap hanya mewakili umat Islam mayoritas dan menyalahkan umat Islam minoritas, seperti di Indonesia, maupun dipandang sebagai alat untuk menekan kelompok anti-pemerintah, seperti di Malaysia. Penelitian ini bertujuan untuk menjelaskan posisi Majelis Ulama Indonesia (MUI) dan *Jawatankuasa Fatwa* dalam menangani aliran sesat, termasuk alasan-alasan yang melatarbelakangi perbedaan posisi dan peran kedua lembaga tersebut. Peneliti menggunakan metode kualitatif dengan pendekatan perbandingan hukum. Penelitian ini menemukan bahwa fatwa sesat MUI tidak memiliki kekuatan hukum, MUI pusat memiliki kewenangan untuk menetapkan fatwa sesat di dalam institusi MUI, tetapi tidak mutlak untuk merespon hukum nasional, dan tidak berperan dalam sistem peradilan pidana. Sementara itu, *Jawatankuasa Fatwa Kebangsaan* (JFK) memiliki kekuatan hukum dengan syarat-syarat tertentu, namun, *Jawatankuasa Fatwa* negara bagian memiliki kewenangan menetapkan fatwa sesat untuk merespons dan memperkuat peraturan negara (undang-undang penodaan agama). Penelitian ini dapat digunakan sebagai referensi bagi penegak hukum dalam menangani kasus penodaan agama dengan mempertimbangkan pandangan MUI dan *Jawatankuasa Fatwa* yang diatur secara memadai oleh peraturan perundang-undangan.

Kata Kunci: penodaan agama; ajaran sesat; *Jawatankuasa Fatwa*; MUI

Introduction

The Indonesian Ulema Council (MUI) is a non-governmental organization, but the role of MUI in blasphemy cases, especially heresy, is significant enough to be disputed by several parties. This problem occurs because, legally, the MUI cannot influence the state in determining a heretical group from Islamic teachings. However, as if the state obeys the results of the MUI's view in determining a group classified as heretical because the MUI is the representative of the majority of Islam in Indonesia, in other words, the MUI is considered to occupy the position of "creed police."¹

According to Melissa A. Crouch, the problem occurs because Indonesia does not have specific rules regarding the limits of a person or group having committed the crime of blasphemy by a cult, so the state seems to compromise with the leadership of religion to determine a person or group has committed blasphemy by heresy.² It is contrary to the position and role of the Fatwa Office in Malaysia, where the position is under the government, and there are rules regarding the limits of someone who has committed the crime of blasphemy by heresy.³ Even fatwas issued by *Jawatankuasa Fatwa* are facilitated by law so that they have legal force, and there are penalties for violators if the state has formalized the fatwa.⁴

The position of the fatwa institution is indeed a polemic in the case of blasphemy of Islam by heretics, Whether it's because of the position of the fatwa institution as a non-governmental organization that is considered to represent only the majority Muslim group and blames minority Muslim groups like in Indonesia or even in Malaysia because the fatwa institution is a government institution that is considered a tool to exert anti-government political pressure.⁵

¹ Syafiq Hasyim, 'Fatwa Aliran Sesat dan Politik Hukum Majelis Ulama Indonesia (MUI)', *al-Ahkam* 25, no. 2 (2015): 254, 264, <https://doi.org/10.21580/ahkam.2015.25.2.810>.

² Melissa A. Crouch, 'Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law', *Asian Journal of Comparative Law* 7 (2011): 45, <https://doi.org/10.1017/S2194607800000582>.

³ Ahmad Hidayat Buang, 'Fatwa Ajaran Sesat dari Sudut Undang-Undang dan Cabaran Pembanterasannya di Malaysia', *Journal of Fatwa Management and Research* 2, no. 1 (2018): 37-38, <https://doi.org/10.33102/jfatwa.vol2no1.116>.

⁴ Yuki Shiozaki and Hiroko Kushimoto, 'Reconfigurations of Islamic Authority in Malaysia', *Asian Journal of Social Science* 42, no. 5 (2014): 613-14, <https://doi.org/10.1163/15685314-04205007>.

⁵ Yuki Shiozaki, 'The Historical Origins of Control over Deviant Groups in Malaysia: Official Fatwa and Regulation of Interpretation', *Studia Islamika* 22, no. 2 (2015): 219, <https://doi.org/10.15408/sdi.v22i2.1917>.

The main factor in this conflict is that the criminalization of blasphemy acts, especially heresies, is an issue that is often debated because it is considered to violate human rights and damage harmony. The blasphemy law is regarded as structural violence because: 1) it goes beyond freedom of expression and results in a person being punished; 2) can cause social injustice in society.⁶ Therefore, cult fatwas issued by fatwa institutions are considered to have a substantial impact on a person being punished and the social life of the perpetrator after and before being convicted. However, the criminalization of blasphemy acts with heresy can be justified if viewed based on the element “of public wrong”. Anthony Duff argues that criminalizing an act must consider the “public wrong”.⁷

Criminalization based on “public wrong” is defined as criminalizing an act that affects the wider community, either because the act causes collective public unrest or because the public is collectively harmed due to the act.⁸ In addition, the elements of moral culture proposed by Joshua Kleinfeld can also be used as a basis for criminalizing blasphemy by heresy and justifying the role of fatwa institutions in handling blasphemy cases. According to Joshua Kleinfeld, the principle of criminalization of moral culture teaches that actions that can be criminalized violate and firmly attack the values on which the social community is based in a nation.⁹

Based on the two elements above, it can be understood that the criminalization of blasphemy by a cult can be justified because it violates the “public wrong”; what is meant by public wrong in the act of blasphemy by a cult is the result of this act which causes public unrest and can even trigger other criminal acts. Meanwhile, the relationship between elements of moral culture and the criminalization of blasphemy by heresy is in terms of the basic foundation adopted by the nation. Indonesia is a country that adheres to the values of the Almighty God as affirmed in the Constitution of the Republic of

⁶ Ceki Setya Pratiwi and Sidik Sunaryo, ‘Blasphemy Law as a Structural Violence: A Challenge for Maintaining Sustainable Peace’, *Muslim World Journal of Human Rights* 18, no. 1 (2021): 160–61, <https://doi.org/10.1515/mwjhr-2020-0019>.

⁷ R. A. Duff, ‘Defending the Realm of Criminal Law’, *Criminal Law and Philosophy* 14, no. 3 (2020): 466, <https://doi.org/10.1007/s11572-020-09548-3>.

⁸ Ambrose Y. K. Lee, ‘Public Wrongs and the Criminal Law’, *Criminal Law and Philosophy* 9, no. 1 (2015): 158, <https://doi.org/10.1007/s11572-013-9231-z>.

⁹ Joshua Kleinfeld, ‘Three Principles of Democratic Criminal Justice’, *Northwestern University Law Review* 111, no. 6 (2017): 1478, <https://scholarlycommons.law.northwestern.edu/nulr/vol111/iss6/5/>.

Indonesia, Article 29, Paragraph 1. In this case, Hazairin gave an interpretation of the article, one of which was related to the prohibition of anything contrary to the rules of Islam, Christianity, Hinduism, and Buddhism.¹⁰ Similarly, Malaysia strictly restricts the development of religious doctrine or belief among Muslims as contained in Article 11, Paragraph 4 of the Malaysian Constitution. With this principle, the institution of fatwas can also play a role in handling the “moral culture” that is violated. However, in this case, there are differences regarding the position and role of fatwa institutions in Indonesia and Malaysia in handling blasphemy cases by heresy.

The position of the fatwas on the legal system is influenced by the government's political system, constitution, and culture, which then impacts the role of MUI and *Jawatankuasa Fatwa* in handling blasphemy crimes. In countries where the fatwa institution is in the government structure, the fatwas produced tend to be more binding than fatwa institutions outside the government structure. It can be seen in the heretical fatwas issued by *Jawatankuasa Fatwa* as an official institution of the Malaysian state,¹¹ as well as the MUI, which is an organization.¹²

Researchers have conducted a literature study of research relevant to this study. The first is an article by Melissa A. Crouch. In the results of her research, Melissa mentioned that there are no explicit restrictions on religious freedom in Indonesia, even though blasphemy laws are often raised in court; this is because the court does not articulate clear instructions to determine the limits of when the state can act on a person's religious freedom. It then gives the impression that the state is compromising with religious institutions, including the MUI, which are considered to have the authority to impose a limit on blasphemy based on “public order” and “religious values.”¹³

In addition, researchers have also conducted a literature study on an article by Mujar Ibnu Syarif and Arip Purkon. This study uses Fatwas by *Jawatankuasa Fatwa* as the primary source. The results of this study explain that the category of Islamic heresy in Malaysia is a stream that deviates from what was taught by *Nash*.

¹⁰ Hazairin, *Demokrasi Pancasila* (Jakarta: Bina Aksara, 1985), 28–29.

¹¹ Daud Mahyudin, ‘Pendalilan Berasaskan Ayat al-Ahkam dalam Penghujahan Hukum Islam Semasa: Kajian Perbandingan di antara Fatwa Malaysia dan Brunei Darussalam’, *Thesis* (Universiti Malaya, 2017), 140.

¹² Association and Bylaws of Majelis Ulama Indonesia, Article 1.

¹³ Crouch, ‘Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law’.

Second, the fatwas pattern in Malaysia's heresy is based on theology, sharia, and morals based on the *manhaj* of the *Ahl al-Sunnah wa al-Jamā'ah*. Moreover, the third is that the government applies two policies in handling the spread of heresy, namely forming preventive policies by designing educational curricula and preparing sermons so that Muslims avoid heresy. The second way is a curative step by establishing a center for restoring faith to guide heretics to repentance.¹⁴

Based on the above studies, there are similarities with this study, namely the influence of fatwa institutions on handling cult crimes in both Indonesia and Malaysia. However, there are fundamental differences regarding the approach used. This study focuses on comparative legal research, namely the position and role of fatwa institutions in the criminal justice system towards handling cult crimes in Indonesia and Malaysia. Therefore, this study focuses more on the similarities and differences in the position and role of the fatwa institutions in Malaysia and Indonesia and the reasons behind the similarities and differences in these roles in handling heretical sects' crimes focused on the criminal law sector.

The theory that researchers will use to analyze issues in this study is the Radbruch Doctrine. According to Radbruch, the law has three aspects: 1) Law serves expediency. 2) Serving justice. 3) Increase legal certainty.¹⁵ According to G. Redbruch, legal certainty must be prioritized based on these three aspects. The use of this theory in research is intended to explain that fatwas are often adopted. Fatwa institutions often play a role in handling cult crimes in Indonesia and Malaysia, and the role must still be based on the laws and regulations in force in both countries as a form of legal certainty.

This research is doctrinal research. The approach used in this study is a comparative legal approach by comparing two countries on the issue of the role of Indonesian and Malaysian fatwa institutions in dealing with blasphemy crimes, especially by heresy. This research is a micro comparison research, which discusses a specific topic based on two or more legal systems.¹⁶ Because this research is comparative legal research, the researcher will divide the discussion

¹⁴ Arip Purkon and Mujar Ibnu Syarif, 'Malaysian Government Policy to Eradicate the Islamic Heretical Sects', *Journal of Namibian Studies: History Politics Culture* 34 (2023): 2375-84, <https://doi.org/10.59670/jns.v34i.1511>.

¹⁵ Edwin W. Patterson, *The Legal Philosophies of Lask, Radbruch, and Dabin*, ed. Kurt Willk (Cambridge: Harvard University Press, 1950), 118, <https://doi.org/10.4159/harvard.9780674493025>.

¹⁶ Peter De Cruz, *A Modern Approach to Comparative Law* (Boston: Kluwer, 1993), 37.

into three stages of the debate: description, identification, and explanation, which are requirements in conducting comparative legal research. This study aims to help understand the law or legal system. This study also aims to pay attention to accumulating relative legal knowledge without determining which is correct.¹⁷

The Position of Fatwa Institutions and Their Role in Handling Religious Blasphemy Crimes and Heretical Cases

The Indonesian state is not a country based on Islamic law but a country with a majority Muslim population. However, that does not mean Indonesia prohibits institutions that focus on issuing fatwas to meet the needs of the Muslim community. The first precept of Pancasila, later affirmed by the constitution, stipulates that religion is highly considered in Indonesia, which is guaranteed and used as a juridical basis for the existence of rules governing blasphemy, namely in Law No. 1/PNPS of 1965, which is currently included with slight changes in articles 300-305 of the new Criminal Code. The state's guarantee for religion can also be seen from the support for forming religious organizations outside the government, including the MUI, which, in its founding, received support from the government of President Soeharto.¹⁸

An institution that is often used as a basis both by the government and the public to ask for fatwas, especially is the Indonesian Ulema Council (MUI). However, MUI is not an institution under the government but an organization or association. MUI's membership consists of various Islamic religious groups with different views. Based on the MUI's Articles of Association, the role of the MUI is defined as giving fatwas and advice to both the government and Muslims, whether requested or unsolicited.¹⁹ MUI is also expected to encourage Muslim unity, mediate between the government and society, and represent Muslims in interreligious deliberations.²⁰ In essence, MUI is like other Islamic community organizations, where the fatwas issued are not legally enforceable. Hence, the

¹⁷ Stefan Vogenauer, 'Sources of Law and Legal Method in Comparative Law', in *The Oxford Handbook of Comparative Law*, ed. Mathias Reimann and Reinhard Zimmermann (Oxford University Press, 2019), 875–901, <https://doi.org/10.1093/oxfordhb/9780198810230.013.28>.

¹⁸ Moch. Nur Ichwan, "'Ulamā", State and Politics: Majelis Ulama Indonesia After Suharto', *Islamic Law and Society* 12, no. 1 (2005): 47–48, <https://doi.org/10.1163/1568519053123867>.

¹⁹ Association and Bylaws Articles (AD-ART) of Majelis Ulama Indonesia, Article 4, Paragraph 4.

²⁰ N. Hosen, 'Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975-1998)', *Journal of Islamic Studies* 15, no. 2 (2004): 152, <https://doi.org/10.1093/jis/15.2.147>.

position of the fatwas issued is not binding. Products issued by MUI in the form of fatwas are not legally enforceable. Nevertheless, MUI fatwas can be used as a reference in forming laws and regulations. There are many laws and regulations in Indonesia that adopt elements of MUI fatwas, such as the Pornography Law and Sharia Banking Law.²¹ However, it is no longer a fatwa but a law that adopts societal values as an MUI fatwa. In other words, it is no different from the concept of *gono-gini* formulated in the Marriage Law as a form of absorption of the law that lives in society in the form of customary law, so that both MUI fatwas and customs formulated in laws and regulations can have legal force.

Such a position of the MUI makes fatwas or products of Islamic law issued cannot be forced to be enforced. Although the fatwa is requested by the public or the government when the fatwa is issued, the government and the community asking for the fatwa have no obligation to implement or follow the fatwa. There is no criminal threat if the fatwa is not implemented.²² Although MUI fatwas have no legal force, their existence is still needed by both the community and the government. Society and government need guidance in the form of Islamic views quickly and precisely from fatwa givers on various issues. To obtain a solution, scholars conduct *ijtihad* with the method of Islamic scientific heritage from a long time ago, and the MUI has formulated this in the Guidelines for Fatwa Assessment of the Majelis Ulama Indonesia issued in 2015.

Based on the previous explanation, MUI is not a government institution, and there is no guarantee of implementing its fatwa by laws and regulations. However, the fact is that the MUI has a reasonably dominant role in solving crimes committed by heresy groups covered by blasphemy crimes. The role of MUI can also be carried out after receiving reports from the community and law enforcement. After that, a discussion is carried out in the deliberations; if the results of the reviews find that the sect group under study is indicated to be heretical, the fatwa commission will issue a fatwa. In this case, the findings of the MUI will be submitted to state agencies such as intelligence, the Ministry of Home Affairs, the Ministry of Religious Affairs, the Ministry of Justice, and the

²¹ Atho Mudzhar et al., *Fatwa Majelis Ulama Indonesia (MUI) dalam Perspektif Hukum dan Peraturan Perundang-Undangan*, ed. Nahar Nahravi et al. (Jakarta: Puslitbang Kehidupan Keagamaan Badan Litbang, dan Diklat Kementerian Agama RI, in collaboration with Majelis Ulama Indonesia (MUI), 2012), 9.

²² Imaro Sidqi and Doli Witro, 'Kedudukan Fatwa Majelis Ulama Indonesia (MUI) dalam Perspektif Hukum Islam dan Nasional: Studi Implikasi Fatwa terhadap Masyarakat', *Nizham Journal of Islamic Studies* 8, no. 1 (2020): 23, <https://doi.org/10.32332/nizham.v8i01.2103>.

Attorney General's Office, which, in turn, the Attorney General's Office officially issues a ban. In essence, the state has a unique institution tasked with overseeing the flow of beliefs in society, namely Bakorpakem. But still, if it is related to Islam, Bakorpakem will ask for MUI's views on the sect it supervises.²³

Thus, MUI has a significant role in the process of gathering facts related to religious elements carried out by a sect or group and providing a seal of approval or prohibition of deviant religious tendencies based on Islamic studies if the sect claims to be a branch of Islamic teachings, or worship that is not by Islamic teachings. Misguided fatwas issued by the MUI are sometimes misinterpreted by the public, who attack groups that are considered sinful, as experienced by Ahmadiyah and Shia. It is not the intention to issue a heretical fatwa, but so that people do not join the group. The purpose of issuing MUI fatwas related to heresy is the opposite, namely to prevent mass conflicts and violence.²⁴

In handling heresy cases in Indonesia, the MUI does not only give fatwas and submit the results of its research to the authorities. MUI is often presented in criminal proceedings as expert witnesses. At the same time, its fatwas are used as evidence, letter evidence, and doctrine for judges in deciding blasphemy criminal cases. Often, the labeling of a sect as heretical is based on non-judicial institutions in which the MUI, with its fatwas, is used as the basis for determining blasphemy cases by law enforcement. It can be seen in the case of GAFATAR, Tajul Muluk, and Yusman Roy, who were charged with blasphemy as stipulated in Law No. 1 PNPS of 1965. This article of the law was inserted into Article 156a of the Criminal Code.²⁵

In the trial of blasphemy cases, based on the Indonesian criminal justice system, MUI can be used as an expert witness. The role is because MUI is an organization whose management is filled by Islamic scholars or scholars from various other Islamic community organizations such as Nahdlatul Ulama, Muhammadiyah, and Persatuan Tarbiyah Islamiyah, including independent

²³ Jacqueline Hicks, 'Heresy and Authority: Understanding the Turn against Ahmadiyah in Indonesia', *South East Asia Research* 22, no. 3 (2014): 321–39, <https://doi.org/10.5367/sear.2014.0216>.

²⁴ John Olle, 'The Majelis Ulama Indonesia Versus "Heresy": The Resurgence of Authoritarian Islam', in *State of Authority*, ed. Gerry Van Klinken and Joshua Barker (Ithaca, NY: Cornell University Press, 2019), 101, <https://doi.org/10.7591/9781501719448-005>.

²⁵ Arsil et al., *Interpretations of Article 156a of the Indonesian Criminal Code on Blasphemy and Religious Defamation (A Legal and Human Rights Analysis)*, ed. David Cohen (Jakarta: Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP), 2018), 60.

scholars who are not affiliated with other community organizations. So, MUI has credibility and is considered to represent Islamic groups to determine whether a group or individual has committed blasphemy crimes in the form of heresy, especially those related to Islam. Information by experts is essential, considering that the information is in the form of an assessment of things that have been real and making conclusions related to the things being prosecuted.²⁶ In addition to being able to act as an expert witness, products issued by MUI in the form of fatwas represented by a person or group acting as an expert witness can be used as evidence letters as regulated in Article 187 Point C of the Code of Criminal Procedure, which explains that the letter referred to by Article 184, Paragraph 1 of the Criminal Procedure Code is a certificate by an expert witness containing information based on his expertise on the case in the trial that was formally asked of him.

However, according to the author, sometimes, in the process, there is an error in the use of MUI Fatwas, which is used as evidence Based on Article 39, Paragraph 1, as in the case of Tajul Muluk, which was heard at the Sampang District Court in 2012. Evidence, based on Article 39, Paragraph 1 of the Code of Criminal Procedure, is objects used for preparation and when committing a criminal act, to obstruct the investigation process, made to carry out a criminal act, and other objects that have a direct or indirect connection with the enactment of a criminal act. Andi Hamzah explained that what is meant by evidence Based on Article 39, Paragraph 1 in criminal cases is items related to the offense used when committing the crime, as well as the goods resulting from the crime. MUI fatwas are not items derived from criminal acts, nor are they the result of criminal acts, because basically, MUI fatwas are the result of public or government requests to the MUI and can also be the results of MUI's research to determine whether the actions of suspects or defendants can be said to be religious blasphemy. Therefore, it is inappropriate for MUI fatwas to be used as evidence as in Article 39, Paragraph 1 of the Code of Criminal Procedure.

Even if the MUI is not present at the trial, the MUI fatwa can still be used as a doctrine, where the MUI, in this case, acts as an *amicus curiae* or familiarly called a friend of the court. *Amicus curiae* is a term applied to a person or group without having an interest in a case, but with his knowledge, makes suggestions about a matter, either legal facts or other facts for information for the judge.²⁷

²⁶ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2016), 274.

²⁷ Samuel Krislov, 'The Amicus Curiae Brief: From Friendship to Advocacy', *The Yale Law Journal* 72, no. 4 (1963): 694–721, <https://doi.org/10.2307/794698>.

Amicus curiae is a concept adopted from the common law tradition. This concept has often begun to be applied in the Indonesian criminal justice system. There are no specific rules governing it, but several laws and regulations are considered to be the basis for implementing this concept. The legislation in question is Law No. 48 of 2009 concerning judicial power regulated in Article 5, Paragraph 1. So, in this case, the judge can use the MUI fatwa as material in examination, consideration, and deciding cases. The MUI can act as an *amicus curiae* because, in the concept of *amicus curiae*, there is no intervention in the court. In other words, *amicus curiae* do not act as parties to a matter present in court proceedings. Similarly, when the MUI is not present as an expert in court, fatwas issued by the MUI can be used as doctrine for judges in the trial process of blasphemy crimes.

The role of MUI as an *amicus curiae* is to strengthen or complement legal arguments and other factual arguments that have been presented by the parties or, in some cases, to offer alternative ideas that the litigants do not propose. The second is to inform the court of the implications of the decision or point out unintended consequences for people or groups who are not parties to the litigant. The third is to tell about the importance of cases with those who, in this case, are MUI.²⁸

Like Indonesia, Malaysia has a majority Muslim population in ASEAN. Malaysia is a federal state with a democratic monarchy system established on August 31, 1957, with 13 states. Malaysia's federated system consists of central and state governments whose executive and legislative powers are divided into major and state governments under articles 74 and 80 of the Constitution of Malaysia. Each state in the federation has its head of state.²⁹ On this basis, there is a division of law and judicial systems between federal and state.

Islam has an essential position in Malaysia, where based on the Malaysian constitution in Article 3, Paragraph 1 states that Islam is the religion of the federation, but other religions can still be practiced safely and peacefully in each state.³⁰ Thus, it can be understood that Islam has a significant role in the state

²⁸ Victor E. Flango, Donald C. Bross, and Sarah Corbally, 'Amicus Curiae Briefs: The Court's Perspective', *Justice Sistem Journal* 27, no. 2 (2006): 181, <https://doi.org/10.1080/0098261X.2006.10767799>.

²⁹ K. Ratnam, *Sejarah Malaysia* (Selangor: Logman, 1996), 122.

³⁰ Ahmad Fathoni, 'Sejarah Sosial Hukum Islam di Asia Tenggara: Studi Pemberlakuan dan Pengkodifikasian Hukum Islam di Malaysia', *Asy-Syari'ah* 17, no. 1 (2014): 189, <https://doi.org/10.15575/asv17i1.638>.

system and Malaysian law, in addition to common law and customary law. Article 11 provides freedom of religion, but in that article, there are restrictions as provided in Paragraph 4, which states that the laws of states, territories of the Union, and regulations of the federation can restrict the development of religious doctrine or belief among Muslims. Restrictions on religious freedom are also provided for in Paragraph 5, which contains respect for public order. The effect is that any sacred act contrary to public order under the law cannot be carried out. This article is used as a tool to prevent the practice of heresy from spreading in Malaysia. With Article 11, Paragraph 4, state and federal laws can restrict or control the spread of religious beliefs or doctrines. These restrictions could affect efforts by non-Sunni groups to confront Sunni Muslims in Malaysia.³¹

With this arrangement, perpetrators who spread heretical doctrines or teachings can be punished in Malaysia, and the constitution leaves the arrangement to the states. In this regard, some institutions assist in determining someone to commit the crime of blasphemy by spreading heresy, where the institution is called the *Jawatankuasa Fatwa Kebangsaan*, often abbreviated as (JFK). However, because the jurisdiction of religious affairs is left to each state, the issue of heresy is fully delegated to the fatwa committee of each state. JFK's position is under the auspices of *Majelis Kebangsaan bagi Hal Ehwal Ugama Islam Malaysia* (MAKI), which was formed by the agreement of the kingdoms in 1969 to coordinate activities, work, and administration related to Islam in Malaysia.³² The following year, JFK was established as the body charged with issuing fatwas at the national level on matters referred by the Council of Kings. It is stipulated in Article 14 of the Regulation of the National Council for Malaysian Islamic Affairs, which is done by submitting the fatwas obtained to MAKI, which then MAKI conveys the fatwas to the Council of Kings. In further review, JFK's position under MAKI and MAKI in its management is managed by the Prime Minister, a coordinating body at the federal level formed by the Council of Kings in 1968.

³¹ Fauzan Ali Rasyid, *Kontestasi Agama dan Negara Politik Hukum Penodaan Agama di Asia Tenggara* (Bandung: LP2M UIN Sunan Gunung Djati, 2020), 71–72.

³² Mahyudin, 'Pendalilan Berasaskan Ayat al-Ahkam dalam Penghujahan Hukum Islam Semasa: Kajian Perbandingan di antara Fatwa Malaysia dan Brunei Darussalam', 140.

The role of the *Jawatankuasa Fatwa* on law is assisted by the Sharia Study Panel (*Panel Kajian Syari'ah/PKS*) managed by the Sharia Council, the Board of Planning and Investigation Section, and *Jabatan Kemajuan Islam Malaysia* (JAKIM) to discuss legal issues that arise in society and the state whose discussion includes aspects of *mu'āmala*, medical science, *siyāsa* (statecraft), *jināya* (crime), and kinship. In this case, the PKS's decision is a guide, not a fatwa.³³ Fatwas issued by *Jawatankuasan Fatwa* sometimes cause problems due to using fatwas in court. This condition is because Malaysia is a Muslim country, and it is in line with the provisions in the constitution that recognize Islam as the official religion. The fatwa is nothing more than legal advice and opinions. It is different when fatwas have been confirmed in the states so that they have the force of law.

Although the fatwa is not legally binding, the court still reserves the right to follow or not follow the fatwa. The exact position of fatwas also applies to fatwas issued by fatwa institutions based in the states, and do not have to wait for approval from JFK. Based on the above, it can be understood that the fatwa authority in Malaysia is not legally binding.³⁴ However, it is still considered authoritative because every decision and fatwa issued is the result of the mutual agreement of every mufti in this institution, primarily if the fatwa is issued by the state gazette, which makes the fatwa legally enforceable, about criminal acts that are the theme of this paper, namely heresy, where the *Jawatankuasa Fatwa* has issued 156 fatwas aimed at several categories, namely new teachings, *ṭarīqa*, traditional practices and beliefs.³⁵

The legal consequence of the fatwa is that the practice of fatwa teachings is prohibited from being heretical. Those who violate the fatwa can be punished based on criminal laws in each state, one of which is stipulated in Article 12 of Law 599. This fatwa reinforces the sharia *jināya* law, which regulates the prohibition of creed issues. The consequence of the heretical activities that are considered sinful is the dissolution of organizations, as happened to Darul Arqam and Inkar Sunnah.³⁶ In essence, it is tough to determine the size of a

³³ Mahyudin.

³⁴ Mahyudin.

³⁵ Engku Ahmad Zaki Engku Alwi, *Ajaran Sesat: Mengenali Jalan yang Terpesong* (Selangor: PTS Islamika, 2007), 62.

³⁶ Buang, 'Fatwa Ajaran Sesat dari Sudut Undang-Undang dan Cabaran Pembanterasannya di Malaysia', 36.

person or group that is part of heresy because it involves thinking and requires monitoring. In addition to administrative sanctions, criminal sanctions are also given to this type of crime, which is regulated by various rules of states and federal territories, such as in the Sharia Criminal Offences Act of Federal Territories 1957, Act 599. In the regulation, there are four categories a person can be punished, namely, worship that is contrary to the teachings of Islam can be fined RM 3,000 or imprisonment for two years or both sanctions; teaching religious doctrines or ceremonies that are contrary to Islam or fatwa fined RM 5,000 or imprisonment three years or both, stating that he or someone else is a prophet, Imam Mahdi, guardian, or purporting to know supernatural matters can be fined RM 5000 or imprisonment of 3 years or both.

Although there are criminal penalties at the state and federal level against heresy, it can be said that many cases are eventually acquitted because of the difficulty of proof. One area that often punishes heresy cases is the Penang region. It is a form of proactive effort of the Penang State *Jawatankuasa Fatwa* by establishing an investigation unit on the creed.³⁷

As mentioned earlier, fatwas issued by the fatwa committee can have legal force if confirmed in the government gazette. It is considered more effective in helping judges decide good cases when there are no rules governing a criminal act so that the proclaimed fatwas can be the basis for regulations that, if not obeyed, can be criminalized. Provisions related to the legal force of fatwas that can be binding are regulated in *Jināya* Enactment in Kelantan, Sabah, Terengganu, and other states. When a fatwa issued by the state *Jawatankuasa Fatwa* is confirmed or published in the state gazette, the mufti cannot be presented in a Sharia court to resolve blasphemy crime cases.³⁸

However, when a rule criminalizes an act, the fatwa supports the relevant law. It is also included in the fatwa against cases of heresy, one of which the fatwa has a supporting function for the Sharia Criminal Offence Enactment (Penang State) No. 3 of 1996, which article 4 explains related to every act by teaching or explaining false doctrines that are contrary to sharia law or fatwas in force in the country of Penang can be punished with a fine of not more than RM 5000 or

³⁷ Buang

³⁸ Asmady Idris et al., 'Dasar Kerajaan Negeri Sabah Menangani Perkembangan Ajaran Sesat dalam Islam (Sabah State Policy in Dealing with the Development of Deviant Teachings in Islam)', *UMRAN - International Journal of Islamic and Civilizational Studies* 7, no. 1 (2020): 57, <https://doi.org/10.11113/umran2020.7n1.358>.

imprisonment of not more than three years or caning that does not exceed six lashes or Combination of the three forms of sanctions.

The state government has diversified its surveillance mechanisms to control the development of heresy. It does not rely solely on arrest methods. Other efforts can be made with rehabilitation to restore an understanding of Islam in rehabilitation centers in Selangor, Negeri Sembilan, and Negeri Sabah. Furthermore, each state's religious activities will be supervised by an institution called the *Jabatan Hal Ehwal Agama Islam Negeri* (JHEAIN). Every preacher must obtain permission and power of attorney from the JHEAIN institution to conduct religious programs such as lectures, courses, spiritual counseling, etc. Furthermore, JHEAIN and other state religious institutions strengthened Islamic knowledge by increasing *da'wa* and other spiritual programs to preserve the sanctity of the creed of the Islamic community in Malaysia.³⁹

Based on the explanation above, it can be understood that the role of the *Jawatankuasa Fatwa* in Malaysia in cases of blasphemy by heresy is more focused on the stage of legal determination juxtaposed with the *jināya* rules before the criminal justice process where a heretical fatwa against a group issued by the state *Jawatankuasa Fatwa* is used as a support for the law which contains provisions for cult crimes for each state. Other states cannot generalize misguided fatwas issued by states; in other words, they can have legal force after being confirmed and only apply to the territorial position of the fatwa authority concerned. However, in some cases, there are similarities based on national fatwas followed by the fatwa institutions of each state.

It can be seen in the inequality of groups considered heretical in some states, such as the heresies set explicitly by the Penang *Jawatankuasa Fatwa*, namely the teachings brought by Ismail Harun, Suluk in Penaga and Pondok Upeh, and Taslim in Seronok. However, there are also heretical fatwas that have similarities between several states, such as the teachings brought by Tok Hussin Janggut or Ahmad Laksamana which are also banned in Kedah state, and the teachings of Black Metal, Shi'a sects, Darul Arqam sects, Azhar Wahab sects, and Naqsyabandiyah tariqas which are prohibited and declared heretical by each statewide *Jawatankuasa Fatwa*.⁴⁰

³⁹ Idris et al.

⁴⁰ Jasni Sulong, 'Pemeliharaan Akidah Islam: Analisis daripada Sudut Penguatkuasaan Undang-Undang dan Fatwa di Pulau Pinang', *Jurnal Akidah & Pemikiran Islam* 18 (2016): 24, <https://doi.org/10.22452/afkar.sp2016no1.1>.

Similarities and Differences between MUI and *Jawatankuasa Fatwa*

MUI and *Jawatankuasa Fatwa* have four similarities and five differences that affect handling heretical cases. The similarity between the two institutions is regarding the authority to issue fatwas. MUI and *Jawatankuasa Fatwa* are institutions whose main task is to issue fatwas, one of which is a heresy fatwa. However, there are fundamental differences between the two institutions. *Jawatankuasa Fatwa* is an official state institution established by the state.⁴¹ MUI is based on Article 1, Organizational Regulations of the Majelis Ulama Indonesia concerning the Work Procedures of the Majelis Ulama Indonesia Leadership Council. In this case, MUI is like other community organizations that have an autonomous existence by upholding the spirit of independence in the sense that it is not interfered with by outside parties in publishing views, attitudes, thoughts, and decisions on behalf of the organization.⁴²

The next similarity is about the power of fatwas about heresy in each country. Fatwas on heresy issued by the MUI and *Jawatankuasa Fatwa* are either unenforceable or non-binding. However, both MUI fatwas and *Jawatankuasa Fatwa* fatwas can still be used as references by judges in deciding criminal cases of blasphemy by heresy. There are exceptions to fatwas issued by *Jawatankuasa Fatwa* that can be legally binding if confirmed or promulgated by the state gazette.⁴³

Another similarity is that MUI and *Jawatankuasa Fatwa* have central and regional positions. The authority to issue heretical fatwas is the central MUI. It excludes cults that only exist in certain areas and are unlikely to spread to others. In this case, the heretical fatwa was issued by the Regional MUI.⁴⁴ Unlike the Malaysian Fatwa Institution, although *Jawatankuasa Fatwa* Kebangsaan (JFK) can issue heretical fatwas, as in fatwas that stipulate that Muslims in Malaysia adhere to Sunni sects and prohibit other sects, including Shia, the state

⁴¹ Mahyudin, 'Pendalilan Berasaskan Ayat al-Ahkam dalam Penghujahan Hukum Islam Semasa: Kajian Perbandingan di Antara Fatwa Malaysia dan Brunei Darussalam', 140.

⁴² Majelis Ulama Indonesia, *Pedoman Penyelenggaraan Organisasi Majelis Ulama Indonesia* (Jakarta: Majelis Ulama Indonesia, 2011), 12.

⁴³ Idris et al, 'Dasar Kerajaan Negeri Sabah Menangani Perkembangan Ajaran Sesat dalam Islam (Sabah State Policy in Dealing with the Development of Deviant Teachings in Islam)'.

⁴⁴ Muhammad Asrorun Ni'am Shaleh, Chairman of the Central MUI Fatwa Commission, interview, November 8, 2023.

fatwa committee continues to issue fatwas that are in line with JFK's,⁴⁵ in other words, the state *Jawatankuasa Fatwa* must still establish heretical fatwas despite the fatwas issued by JFK. In addition, there are differences in responding to the rules regarding heresy, where MUI fatwas are issued in response to Law No. 1 PNPS of 1965, in other words, to respond to national scale laws. In comparison, the state *Jawatankuasa Fatwa* issues heretical fatwas to react to sharia criminal enactments in each state.

The last similarity is regarding heretical fatwas issued by either the MUI or *Jawatankuasa Fatwa*. Both have a role in the criminal law system, especially in blasphemy. However, there are differences in terms of function between the two fatwas. Heretical fatwas issued by the MUI can only play a role in the criminal justice system, from the investigation to the adjudication stage. It has a function on evidence and doctrine for law enforcement. Meanwhile, fatwas issued by the *Jawatankuasa Fatwa* in Malaysia can be a supporting basis guaranteed by laws and regulations, provided they have been confirmed first in the state gazette. Therefore, the fatwa can strengthen the law.⁴⁶

To make it easier to identify similarities and differences in the role of fatwa institutions in Indonesia and Malaysia in the criminal act of blasphemy by heresy, the researcher displays it in the form of Table 1 and Table 2.

Table 1
Similarities between MUI and Jawatankuasa Fatwa and Their Effect
in Handling of Blasphemy in Heretical Cases

Fatwa Institute	Similarities
MUI & <i>Jawatankuasa Fatwa</i>	An institution that functions in issuing fatwas (including cult fatwas).
MUI & <i>Jawatankuasa Fatwa</i>	Misguided fatwas issued have no legal force.
MUI & <i>Jawatankuasa Fatwa</i>	Its position is in the center and regions.
MUI & <i>Jawatankuasa Fatwa</i>	Have a role in criminal law, especially in handling blasphemy crimes by heresy.

⁴⁵ Zarina Othman, Nor Azizan Idris, and Abdul Halim Daud, 'Shia Belief and National Security in Malaysia: The Securitisation', *Jurnal Akidah & Pemikiran Islam* 24, no. 2 (2022): 189, <https://doi.org/10.22452/afkar.vol24no2.5>.

⁴⁶ Zaini Nasohah, 'Undang-Undang Penguatkuasaan Fatwa di Malaysia', *Islāmiyyāt: International Journal of Islamic Studies* 27, no. 1 (2005): 29.

Table 2
Differences between MUI and *Jawatankuasa Fatwa* and Their Effect
in Handling of Blasphemy in Heretical Cases

MUI	<i>Jawatankuasa Fatwa</i>
Civic Organization.	State institutions.
The fatwa issued is not legally enforceable.	Fatwas issued have legal force with certain conditions.
The authority to determine heretical fatwas resides in the central MUI (but not absolutely).	The authority to decide heretical fatwas rests with the state <i>Jawatankuasa Fatwa (Jawatankuasa Fatwa Kebangsaan/JFK</i> has the authority, but the state <i>Jawatankuasa Fatwa</i> still issues the same fatwa).
Respond to national legislation.	Respond to territory laws.
Role in the Criminal Justice System (investigation-trial).	It plays a role in strengthening the law and has no role in the criminal justice system.

Reasons for the Similarities and Differences in the Role of Fatwa Institutions

In the previous sub-discussion, the similarities and differences in the role of the MUI and the *Jawatankuasa Fatwa* in handling blasphemy cases by heresy have been described. Based on the explanation above, starting from the constitution, state system, and legal system also affect the role of fatwa institutions in dealing with blasphemy and heretical crimes in Indonesia and Malaysia. Both MUI and *Jawatankuasa Fatwa* are institutions that have a function in issuing fatwas, one of which is a fatwa on Islamic heresy; this is motivated by the state's need for advice or views of scholars who have credibility and capacity in Islamic religious issues. However, the two countries differ in positioning the institution of fatwas in their countries.

Indonesia did not make MUI part of the government institution, but the government gave impetus to its establishment. Establishing MUI outside government institutions is intended so that the fatwa issued does not become a tool to justify all forms of government policy. MUI's position, in this case, is an

organization formed as a forum for scholars from various groups whose purpose is to foster, guide, and protect the Indonesian Muslim community.⁴⁷ Although MUI is not a government institution, as an organization, MUI is often entrusted with issuing heretical fatwas by the state through the procuratorate and police agencies.⁴⁸ However, this does not mean that the determination of heretical fatwas by the MUI Fatwa Commission is based on a unique regulatory mandate; until now, only the DSN-MUI unit has been mandated by law to provide fatwas related to the Islamic economy and finance.⁴⁹

M. Asrorun Ni'am Sholeh said that MUI can also issue misguided fatwas at the initiation of the MUI itself in response to a phenomenon.⁵⁰ Fatwas can also be issued at the request of the public, asking for answers to various issues,⁵¹ including heretical fatwas, such as the Ahmadiyya Qadiyah heretical fatwas motivated by public demand.⁵² The role of the MUI is not government intervention but the function of the MUI itself, which has been mentioned in Articles of Association and Bylaws MUI, Article 4, Paragraph 4, which states that the MUI functions to issue fatwas to the public or the government, whether requested or not.

Meanwhile, the Malaysian state positions the fatwa institution as a government institution. When viewed based on the Malaysian constitution,

⁴⁷ Yudi Harimurti et al., 'The Role of Majelis Ulama Indonesia and Its Fatwas within the Indonesian Governance System', in *Proceedings of the International Conference on Environmental and Technology of Law, Business and Education on Post Covid 19, ICETLAWBE 2020, 26 September 2020, Bandar Lampung, Indonesia* (Bandar Lampung: EAI, 2020), <https://doi.org/10.4108/eai.26-9-2020.2302535>.

⁴⁸ Rohayatie, Chief Prosecutor of Purwakarta State, Interview, December 25, 2023, at 09.21. Rosadi, Chief Investigator of the Sub Directorate of State Security of the Directorate of General Criminal Investigation of Metro Jaya Regional Police, Interview, January 26, 2024.

⁴⁹ Tri Hidayati et al., 'Digitalization of Islamic Finance: Epistemological Study of the National Sharia Board-Indonesian Council of Ulama's Fatwa', *al-Ahkam* 33, no. 2 (2023): 255-78, <https://doi.org/10.21580/ahkam.2023.33.2.17324>.

⁵⁰ M. Asrorun Ni'am Sholeh, Chairman of the Central MUI Fatwa Commission, interview, November 8, 2023.

⁵¹ Maskur Rosyid, 'Reading Fatwas of MUI a Perspective of Maslahah Concept', *Syariah: Jurnal Hukum dan Pemikiran* 19, no. 1 (2019): 91-117, <https://doi.org/10.18592/sjhp.v19i1.2726>; Muhyiddin Muhyiddin, 'Fatwa MUI tentang Vasektomi: Tanggapan Ulama dan Dampaknya terhadap Peningkatan Medis Operasi Pria (MOP)', *al-Ahkam* 24, no. 1 (2014): 69-92, <https://doi.org/10.21580/ahkam.2014.24.1.134>.

⁵² Fariz Alnizar, Fadlil Munawwar Manshur, and Amir Ma'ruf, 'Following the Global Rejection: The Motives of Majelis Ulama Indonesia's Fatwas on Ahmadiyah', *Studia Islamika* 29, no. 3 (2023): 536, <https://doi.org/10.36712/sdi.v29i3.15349>.

which states that the official religion in Malaysia is Islam, such a clause makes Islamic institutions in Malaysia very complex, ranging from JAKIM, MAKI, JFK, PKS, and Sharia Court, which, in this case, have their respective functions and always coordinate in handling heresy. The establishment of Islamic institutions was made under the government as an effort by the government to produce uniformity of Islamic law between each state because, to this day, Malaysia is a federal state that gives authority related to Islamic law to each state.⁵³

The position of the MUI and the *Jawatankuasa Fatwa* affects the strength of heretical fatwas issued. Where MUI fatwas have no legal force, this is because MUI is a community organization, so there are no special laws and regulations that facilitate the implementation of the fatwa except for general provisions as stipulated in Article 5, Paragraph 1 of the Law on Judicial Power, where judges are required to explore, follow, and understand the law and the sense of civility that lives in society. Thus, law enforcement can consider fatwas issued by the MUI in deciding blasphemy cases by heresy. Still, judges are not obligated to follow them because fatwas are separate from the hierarchy of laws and regulations. For Islamic law, including fatwas, to be binding, it must be made constitutionally policy.⁵⁴

It's unlike the case with fatwa authorities in Malaysia, where fatwas for each state and center can have legal force with certain conditions. In addition to the institution of fatwas being part of the government, this is also due to the existence of rules that facilitate the position of fatwas in each State, which states that once announced in the State Gazette, a fatwa is binding for every Muslim in the State as his religious command.⁵⁵ In the case of heresy in Malaysia, fatwas are an essential element, where fatwas can support the prosecution of blasphemy cases by heresy in court. Fatwas become a condition in determining

⁵³ Mahyudin, 'Pendalilan Berasaskan Ayat al-Ahkam dalam Penghujahan Hukum Islam Semasa: Kajian Perbandingan di Antara Fatwa Malaysia dan Brunei Darussalam'.

⁵⁴ Abu Hapsin, 'How to Make Islamic Law as the State Legal Policy of Indonesia: Constitutional and Sociological Arguments', *al-Ahkam* 27, no. 2 (2017): 153, <https://doi.org/10.21580/ahkam.2017.27.2.1918>.

⁵⁵ Farhanin Abdullah Asuhaimi et al., 'The Role and Position of Fatwa in Malaysian Court', *Pertanika Journal of Tropical Agricultural Science* 25, no. S (2017): 231, <http://www.pertanika.upm.edu.my/pjtas/browse/regular-issue?article=JSSH-S0411-2016>; Mohd Kamel Mat Salleh, Adibah Bahori, and Mohamad Azhan Yahya, 'Position of Fatwa in The Constitution: A Legal Analysis', *Pertanika Journal of Social Sciences and Humanities* 29, no. 4 (2021): 2171-88, <https://doi.org/10.47836/pjssh.29.4.04>.

the charges imposed on the accused. In the process, the fatwa will be examined first to determine whether the fatwa prohibits the teachings presented by the defendant and ascertain whether the defendant's actions have any connection with disseminating these teachings.⁵⁶ Thus, heretical fatwas issued by *Jawatankuasa Fatwa* confirmed in the state gazette, can have the force of law.

Another difference is regarding jurisdiction in dealing with heresy between the two institutions, where the *Jawatankuasa Fatwa*, each state has jurisdiction to issue heresy fatwas in the states because the Malaysian constitution in the ninth table of article 2 states that the authority of religious affairs is regulated in each state, so that the authority related to fatwas on blasphemy belongs to the *Jawatankuasa Fatwa* authority of each state, When JFK issued a cult fatwa, the state fatwa committee continued to give the same fatwa, not only following without issuing a cult fatwa.⁵⁷

The jurisdiction of the MUI in issuing heretical fatwas is at the center MUI of this because of the decision of the *Ijtimā'* 'Ulama of the National Fatwa Commission in 2015 concerning the Criteria for Disbelief, which is intended as a form of prudence in determining fatwas related to *'aqīda*.⁵⁸ However, this is not absolute; according to Sholeh, in principle, the central MUI indeed owns the authority of heretical fatwas; this is related to the MUI Fatwa Determination Guidelines. When the central MUI has issued a fatwa, the regional MUI is only entitled to implement the fatwa unless the problems giving the fatwa occur in certain regions, so the regional MUI has the authority to determine the fatwa. However, when the problem is in a particular area and has the potential to extend to other regions, then in that case, the one who has the authority to determine fatwas is the central MUI or at least the MUI in some areas to consult first with the central MUI before deciding fatwas.⁵⁹

In the previous sub-discussion, it was stated that the MUI as a servant of the people in responding to heretical teachings refers to the Al-Qur'an and Hadith. In line with this, the MUI responded and supported the Law No. 1 PNPS of 1965

⁵⁶ Nur Hazirah Zainal Abidin and Zaini Nasohah, *the Complexities of Implementing Gazetted Fatwas in Malaysia's Federal Territories*, *Mazahib*, vol. 22, 2023, 497, <https://doi.org/10.21093/mj.v22i2.5862>.

⁵⁷ Othman, Idris, and Daud, 'Shia Belief and National Security in Malaysia: The Securitisation'.

⁵⁸ Decision of 5th All-Indonesian Ijtima Ulama of MUI Fatwa Commission on Strategic National Issues (*Masail Asasiyah Wathaniyah*), in Tegal, Central Java, 2015.

⁵⁹ Muhammad Asrorun Ni'am Shaleh, Chairman of the Central MUI Fatwa Commission, interview, November 8, 2023.

which was later included in the Criminal Code in Article 156a. This article is not included in the Netherlands *Wetboek van Strafrecht* (WvS). In other words, this article is an additional article of the Criminal Code.⁶⁰ The article in the Criminal Code included a proposal by Oemar Seno Adji. The basis for criminalizing blasphemy and abuse of religion is based on the first precept of Pancasila as the prima power in the state and Article 29 of the 1945 Constitution, which is the basis for religious life. Thus, considering that religion is fundamental in legal life in Indonesia, it is sufficient to be a reason to form religious offenses in Indonesia.⁶¹

MUI's view is also a reference for law enforcement in imposing crimes on perpetrators of blasphemy crimes that violate national laws and regulations. It can be seen as one of them in decision No. 18/Pid.B/2020/PN Brb. In the ruling, it was explained that the judge declared the defendant legally and convincingly guilty of committing the crime of blasphemy as stipulated in Article 156a of the Criminal Code. This indictment, like the first indictment, one of the considerations is the criteria for disbelief as regulated in the *Ijtima'* Decree of the All-Indonesian Ulama Fatwa Commission V of 2015, especially Commission A, National Strategic Issues (*Masā'il Asāsīyah Waṭāniyah*) regarding the Criteria for Disbelief (*Dawābiṭ al-Takfīr*).⁶²

MUI's support for the blasphemy article on religion can also be seen in MUI's fatwa regarding the *Gerakan Fajar Nusantara* (GAFATAR). The fatwa states that the government is obliged to prohibit the spread of the GAFATAR sect and other similar beliefs. The government must take legal action by statutory regulations –Law no. 1 PNPS of 1965 and Criminal Code Article 156a– against the leaders of the GAFATAR group who continue to spread their religion.⁶³

This decision is different from the Fatwa of the Jawatankuasa in Malaysia, which responds to the regulations of each country. It is because, as the constitution in the ninth table article 2 explains in religious affairs, the Malaysian constitution provides rules on religion against each state, including in the aspect

⁶⁰ Andi Hamzah, *Delik-Delik Tertentu (Sepiciale Delicten) di dalam KUHP* (Jakarta: Sinar Grafika, 2016), 249.

⁶¹ Oemar Seno Adji, *Hukum (Acara) Pidana dalam Prospekti* (Jakarta: Erlangga, 1981), 168.

⁶² Barabai District Court, Decision No. 18/Pid.B/2020/PN. Brb., RI against Nasaruddin bin H. Darsani (2020), 9.

⁶³ Fatwa Majelis Ulama Indonesia No. 6 of 2016 about Gerakan Fajar Nusantara (GAFATAR)", 2016.

of criminalizing and punishing mistakes committed by Muslims against the pillars of Islam. In implementing the constitution, Sharia criminal enactments were formed in each state, including illegal regulations on heresy. Thus, the fatwa on heresy in Malaysia is an endorsement of every *jināya* Sharia enactment in each state of Malaysia, with the Sharia Court as the executor of the *jināya* enactment. This constitutional arrangement has implications for the authority of state institutions, *Jawatankuasa Fatwa* of each independent state, in supporting each law in their respective states. This constitutional arrangement has consequences for the authority of state institutions, *Jawatankuasa Fatwa* of each state, in helping each law in their states.

The Constitution and Islamic Law recognize that fatwas can be a source of Islamic law, which is strengthened by the legitimacy of the Fatwa Institution. Therefore, every fatwa and the role of the fatwa institution is constitutional.⁶⁴ Fatwas issued by *Jawatankuasa Fatwa* must be recognized as an authority by every Sharia Court when given; this can be seen in the Deed of Administration of the Islamic Religious Law (Federal Territories) 1993. It is because there are rules that form the basis for its enforcement, as stipulated in Article 34 of the Islamic Religious Administration Law (Federal Territories). Paragraph 1 explains that *Jawatankuasa Fatwa* has the responsibility to issue fatwas either by order of the DYMM (Sultan),⁶⁵ at the initiation of the fatwa committee itself, or the request of the public with a letter sent to the mufti related to matters concerning sharia law. In other words, the fatwa's role is to determine that the perpetrator has committed a criminal act of heresy stipulated in the *jināya* enactment.

This role can be seen in the scheme of handling cult crimes, which began with the issuance of fatwas prohibiting heresy and then in court charged with each state's rules on heresy.⁶⁶ Thus, the position of fatwas supports the enactment of *jināya* enactments in each state. Fatwas that have been issued are essential to assist law enforcement in obtaining strong evidence. It would be difficult to indict suspects with a lack of evidence, including fatwas banning a sect.⁶⁷ The fatwa is

⁶⁴ Mat Salleh, Bahori, and Yahya, 'Position of Fatwa in The Constitution: A Legal Analysis'.

⁶⁵ DYMM = *Duli Yang Maha Mulia* is the title for the Sultan/King of the federal territories in Malaysia.

⁶⁶ Buang, "Fatwa Ajaran Sesat dari Sudut Undang-Undang dan Cabaran Pembanterasannya di Malaysia," 37.

⁶⁷ Alias Azhar, Baderuddin Mohd Shauki Muhammad, and Mohd Shauki, 'Kesalahan Ajaran Sesat dalam Kerang Perundangan dan Fatwa di Negeri Kedah: Satu Tinjauan', in *International Multidisciplinary Academic Conference (TMAC)* (Perak, 2018).

used by judges considering that fatwas have authority issued when they have obtained permission from the Sultan. So, in this case, there is government interference in a fatwa. Unlike the MUI, although fatwas can be used as evidence of letters, the judge is not bound by the evidence; the judge is free to consider whether it is accepted or rejected. So, MUI's fatwa handling heresy is not authoritative and cannot be used as a basis for convicting suspected heresy. However, fatwas are living laws that can be an essential element in revealing facts for law enforcement to find whether suspects have committed blasphemy or not.

Based on the above-interrelated explanations, it impacts the role of fatwa institutions against blasphemy by heresy. The role of MUI is more focused on the criminal justice system both in evidence as an expert or documentary evidence and as a doctrine, not because the specific material or formal rules governing MUI fatwas can have legal force. MUI fatwas can still be adopted, and MUI can still play a role in Criminal justice system cases of blasphemy by heresy by referring to the general rules regulated by the Code of Criminal Procedure Articles 87 Letter c and 184 Paragraph 1. In addition, MUI can also serve as *amicus curiae* in providing doctrine both in the investigation stage and the trial. It is a form of implementation of Law No. 48 of 2009 concerning judicial power regulated in Article 5, Paragraph 1. The role of MUI in cases of blasphemy by heresy is needed because MUI is an institution consisting of various Islamic organizations, jurists, clerics, and the government. Therefore, this council has a strategic role in issuing fatwas if there are problems related to Islam.⁶⁸

It differs from the *Jawatankuasa Fatwa* in each state of Malaysia, which has special regulations regarding fatwas. The role of *Jawatankuasa Fatwa* fatwa was issued as reinforcement of state regulations on the criminal act of blasphemy by heresies, as explained earlier. It affects the role of the *Jawatankuasa Fatwa* in the criminal justice system, where it is stated that in every fatwa enactment in each state, the mufti and members of the States Fatwa Council cannot be summoned to the Civil or Sharia Courts to give opinions or evidence related to Islamic Law.⁶⁹ It is because the function of fatwas in determining a heretical group is strong enough. After all, it can be binding and legally enforceable and strengthen state laws, including articles on blasphemy.

⁶⁸ Evra Willya, Ahmad B. Bintang Maronrong, and Sabil Mokodenseho, 'The Enforcement of MUI Fatwa Number 1 of 2003 Concerning Copyright for Merchants Selling Pirated VCD and DVD in Manado City', *al-Ahkam* 31, no. 2 (2021): 192, <https://doi.org/10.21580/ahkam.2021.31.2.8638>.

⁶⁹ Nasohah, 'Undang-Undang Penguatkuasaan Fatwa di Malaysia', 29.

Conclusion

Indonesia does not determine that the state's official religion is Islam, so it affects the absence of fatwa institutions (Islam) under the government and the lack of special regulations that facilitate fatwas to be enforced. MUI was born as an organization whose management has a special commission in issuing fatwas with members of scholars from various backgrounds, both independent and from other Islamic organizations in Indonesia. Therefore, the fatwa issued does not have legal force to be used to convict perpetrators of cult crimes. The role of MUI is more due to the needs and trust of the state and society because it has credibility capability and is considered to be able to represent other Indonesian scholars in issuing fatwas against heresy. Thus, organs in the criminal justice system often coordinate with the MUI to help law enforcement determine a cult categorized as a blasphemy case. Based on the Criminal Procedure Code and the Law on Judicial Power, law enforcement can present the MUI or simply make fatwas a doctrine in investigations to trial. However, law enforcement officials may not follow the MUI's views on blasphemy cases.

Unlike the case with the institution of fatwas in Malaysia, because the constitution states Islam is the official religion of the state, it affects the complexity of Islamic institutions under the government, including, in this case, JFK. It involves the existence of special rules that facilitate fatwas, which in their content state that the fatwas can be binding if announced in the state gazette. So that it can provide facilities for fatwas to be used as a basis for strengthening rules on heresy and must be obeyed and recognized by every court throughout the state. Even the mufti and members of the fatwa committee also have the right to legal protection. Therefore, the position of the fatwa is already quite strong, which makes it unnecessary for the presence of the mufti and fatwa (*Jawatankuasa Fatwa*) in court either as an expert witness or fatwa as documentary evidence, and this has been regulated in fatwa enactments in every state and federal territory in Malaysia.

Based on the above research, it is necessary to position the role of MUI and the Fatwa Committee as facilitated by laws and regulations. Using fatwas as stipulated in laws and regulations is vital to ensure legal certainty, an essential element for the state, and minimize the assumption that the state only relies on fatwas in imposing sanctions for perpetrators of spreading heresy. The role of fatwa institutions regulated in laws and regulations manifests the aspirational

law of the community absorbed by the state to find facts of violations against the religion adopted by the community so that the role of MUI fatwas and *Jawatankuasa Fatwa* as supporters for law. Researchers in the future can conduct research related to restorative justice in solving blasphemy cases involving fatwa institutions in their resolution; this is important to examine, considering the application of criminal law to blasphemy cases is often considered to violate human rights.[a]

Author Contribution Statement

M. Ridho Ilahi: Conceptualization; Data Curation; Formal Analysis; Investigation; Methodology; Project Administration; Resources; Validation; Visualization; Writing Original Draft; Writing, Review & Editing.

M. Nurul Irfan: Data Curation; Funding Acquisition; Resources; Validation; Writing, Review & Editing.

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