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Introduction

Richard Tanter of the Nautilus Institute at RMIT writes that the decision by a gathering of Islamic teachers in the Central Java town of Jepara in September to declare the Indonesian government's plans to build a nuclear power station on the Muria peninsula *haram* or forbidden was a remarkable event. "For the first time anywhere in the world" Tanter writes, "the authority of mainstream Islam spoke authoritatively on the question of nuclear power. The Nahdlatul Ulama initiative was a milestone in the creative use of classical Islamic jurisprudence or *fiqh* to address issues of pressing social concern to the *umma* in a responsible and constructive manner as part of the process of cultural renewal of Islam in Indonesia." He concludes that "there appears to be no precedent anywhere else in the Islamic world for this innovation, but we can be sure there will be successors."

Essay: Nuclear fatwa: Islamic jurisprudence and the Muria nuclear power station proposal

On September 1st, 2007, thousands of people gathered outside a building in the Indonesian town of Jepara on the north coast of Central Java. Several thousand of those waiting outside the Jepara headquarters of Nahdlatul Ulama had walked 40 kilometers with flaring torches through the previous night in a Long March from their village of Balong to Jepara, the local administrative centre. The villagers of Balong, and many others, including townspeople, politicians, NGO activists, and students from both prestigious universities and from *pesantren* (traditional rural Islamic schools) had gathered to make clear their interest in the two-day convocation inside the building.

Inside more than a hundred regional Islamic religious leaders were taking part in a *bahtsul masa'il*,

a traditional style of meeting characteristic of Nahdlatul Ulama, to listen to government ministers, senior officials, scientists, lawyers, sociologists, and activists speak for and against the Indonesian government's plan to build a nuclear power station nearby at Balong on the Muria peninsula.[1] After this debate between proponents and opponents, the gathered *ulamas* would then retire to consider the issue from the perspective of Islamic religious jurisprudence, and reach a verdict.

At a press conference early on the afternoon of the following day, September 2nd, the spokesperson for the *bahtsul masa'il* organisers announced that the meeting of Religious Experts Concerning the Muria Nuclear Power Plant had made the strongest possible finding against the government plan, determining that the Muria proposal was *haram* - forbidden.[2]

Within a day, the news had spread literally around the world: mass media, as well as the specialist nuclear industry media, in Indonesia, the United States, and Australia reported that Islamic leaders in Indonesia had issued a *fatwa* condemning a nuclear power plant. The shock was understandable, because the issuing of the *fatwa* was significant on three quite distinct planes.

Firstly, the decision marked the public coalescing of a potent network of opposition to the Indonesian government's plans that brought together the dominant religious community of the country with other local civil society, business and political groupings, and bolstered them with networks of influence linking village activists to the salons of Jakarta politics. Secondly, for the first time anywhere in the world, a mass organisation from within the mainstream of Islam spoke authoritatively on the question of nuclear power. And thirdly, the Nahdlatul Ulama initiative was a milestone in the creative use of classical Islamic jurisprudence or *fiqh* to address issues of pressing social concern to the *umma* in a responsible and constructive manner as part of the process of cultural renewal of Islam in Indonesia.

The Muria nuclear power plant proposal

For more than three decades successive Indonesian governments have announced an intention to build one or more nuclear power stations on the Muria peninsula on the north coast of Java.[3] The peninsula, which juts out into the Java Sea in a line north of Jogjakarta, is dominated by the 1602 metre high volcano, Gunung Muria. The rich alluvial plains that fan out from the mountain are home to the centres of Indonesia's tobacco industry at Kudus and its furniture industry at Jepara. Not surprisingly, the tobacco industry, led by the giant PT Djarum, is deeply concerned about the threat to its image from the development of the nuclear power station.

Government planning for a nuclear power station on the Muria Peninsula has been a protracted, stop-start affair drawn out over three decades, with three serious attempts to get the project up. The first, in the 1980s, was defeated by a combination of Ministry of Finance opposition and military antagonism to its principal backer, the then Minister of Technology and Research B.J.Habibie, together with opposition from the World Bank. The second attempt in the mid-1990s foundered in the fiscal and political collapse of the New Order state that flowed from the 1997 Asian currency

crisis. In 2004-5 the National Nuclear Energy Agency (Batan) once more began publicly to press the case for nuclear energy, and nuclear energy was authorised as part of the nation's planned energy mix for the following decade. In January 2006 a presidential decision by President Susilo Bambang Yudhuyono determined that "new" energy sources including nuclear power would make up five per cent of the nation's electricity supply by 2025. In July the head of Batan announced that the Muria peninsula remained the agency's choice as a site for the first of four 1,000 MW reactors, and that a government plantation in the village of Balong would be the specific site.

A number of site studies were carried out over the years by Batan, the International Atomic Energy Agency (IAEA), and their contractors, to increasing local alarm and antagonism. Within the village of Balong, a community association opposing the nuclear power station proposal grew to a substantial size, and was well-connected to both regional- and national-level environmental non-government organizations and political groupings. Batan's minimalist approach to local community consultation reached its nadir with the building of a seismic and wind survey station in Balong a little over a kilometer from the planned power station site. The research station was constructed in 2005 on several hectares of cleared ground, and consisted of a brick instrumentation building the size of a small house, a huge mast perhaps one hundred meters high for wind measurements, and a number of small structures housing seismic instruments. Although the purposes of the station's work were in fact benign within the context of the planned power station, little explanation was offered to locals, and visits discouraged. Community hostility and suspicion towards the small research station as the palpable local symbol of the giant planned power station crystallised in mid-2007 when the daughter of former president Abdurrachman Wahid, Yenni Wahid, visited the site. The night before the visit the research station was closed, its premises stripped of instrumentation, and even the official sign announcing its title and auspices painted over.^[4] Community opposition welled up in a series of demonstrations and marches culminating in the Long March to Jepara on the night of August 30-September 1.

Nadhlatul Ulama

The Muria peninsula, like most of Central and East Java, is densely populated, with major roads linking its towns to the surrounding region lined with houses and shops and small factories in a seemingly continuous urban strip. The peaks of Gunung Muria rise up out of the alluvial plain of the peninsula, looking like the island the peninsula once was less than two hundred and fifty years ago. Jepara is a town of about 100,000 people - small by Javanese standards - and a rich one. It is the administrative and political centre of the *kabupaten* of Jepara, the administrative unit below province-level, with a local administration headed by a *bupati* appointed by the central government, and a locally elected legislative assembly. The region's wealth is built on the furniture trade, originally fed by the now decimated teak and mahogany forests that grew abundantly in the volcanic soil. Closer to Muria itself, the centre of Indonesia's kretek tobacco industry is centred on the nearby town of Kudus.^[5]

Indonesian Islam is distinctive in a number of respects, but most importantly in its degree of pluralism and accommodation to local, pre-Islamic, custom. Four categories, made up of two polarities, have usually been used to understand contemporary Indonesian Islam: *abangan*, *santri*, traditionalist and modernist. Hooker and Fealy concisely summarise the current scholarly consensus of this core understanding of Islam in Indonesia:

Santri and *abangan* are terms used to denote relative piety...*Santri* Muslims are those who seek to adhere strictly to the ritual and legal requirements of Islam. They are likely to pray five times a day, fast during the holy month of Ramadan, pay the wealth tax (*zakat*), and, if able, undertake the pilgrimage to Mecca. For these Muslims, Islam is a central if not defining part of their lives. *Abangan* Muslims are nominal or less orthopractic Muslims. This category ranges widely, from those who seldom if ever attend to Islamic devotions to those who lead rich but highly syncretic religious lives in which Islam is blended with other religious or spiritual observances.[6]

The terms 'traditionalist' and 'modernist' apply only to *santri* Muslims. They denote primarily a doctrinal divide, but one that is often overlaid with socio-economic, political and cultural content. Traditionalists have two defining characteristics: they seek to preserve the authority of medieval Islamic scholarship, and they tend to be more tolerant of local customs. In practice this entails, first a strict adherence to one of the four classical Sunni law schools, ... and second, a willingness to combine local mystical and spiritual practices with the more orthodox elements of Islam. ...The orientation to classical jurisprudence and legal schools reflects a view that the scholars of that period possessed an erudition unrivalled in subsequent centuries and that their teachings offer the most authoritative interpretation of how Islam should be practised.[7]

Nahdlatul Ulama is the largest and most important 'traditionalist' Islamic organisation in Indonesia, with some 35-40 million claimed members, and NU is overwhelmingly dominant in this part of Java. Jepara and the surrounding region is famously Islamic, home to the claimed graves of some of the "saints" (*walis*) who brought Islam to Java five hundred years ago through the port towns of northern Java, and who have their own following as intermediaries between God and humans in a region where Islam is both strong and tolerant of local pre-Islamic customs.

Despite important shifts in doctrine and social outlook that have undermined the apparent certainties of the "traditionalist" label, NU is an overwhelmingly rural and Javanese organisation. Describing NU in terms highly salient to the Jepara region, one close observer of NU remarked that the organisation, eight decades after its founding, is

still best seen as an alliance of scholars, their pupils and extended families with a backbone of prominent *ulama* known as *kiai*. Some of these *kiais* run *pesantrens*, oversee Sufi brotherhoods (*tarekat*), and even patronise the activities of a range of non-government organisations.[8]

From 1952 to 1984 NU actively participated in party politics. In 1984, its then chairman Abdurrachman Wahid, led a movement to take NU out of party politics and to re-constitute it as a

social organisation. Wahid's move was partly an attempt to disentangle and distance the organisation's corrupt party wing from the snares and temptations of court politics in the New Order dictatorship, and partly a step in a process of cultural regeneration of both NU and Indonesian Islam as whole. This process of regeneration, the development of what came to be known as "cultural Islam", went well beyond NU, and was in turn part of the process of breaking down the simple "traditionalist-modernist" divide:

The movement was 'cultural' in that it eschewed formal political activity and sought to advance the interests of Muslims through intellectual, educational, social and artistic means. Rather than imposing 'Islamic values' via the State, exponents of cultural Islam wanted to make people better Muslims by appealing to their minds and sensibilities...For many in this cultural movement, this involved rethinking 'Islamic knowledge' and developing innovative ways of applying the faith to make it more relevant to contemporary life. Young intellectuals produced new Islamic-based theories on such wide-ranging issues as gender equality, environmental protection, human rights, religious tolerance and democratisation.[9]

All of these characteristics of Nahdlatul Ulama today - the organisation through *ulamas* and *pesantren*, the adherence to classical jurisprudence, the embrace of NGO organisational activity, the rethinking of Islamic knowledge, and the attempt to tackle current pressing social and cultural issues - all facilitated the capacity of the Jepara branch and the Central Java division of the organisation to bring the tool of Islamic jurisprudence to bear the question of the Muria peninsula nuclear power station proposal in an unprecedented and highly creative way.

Fatwas and Islamic jurisprudence

The judgement by the religious scholars present at the NU Jepara *bahtsul masa'il* that the Muria nuclear power station proposal is *haram* or prohibited was a *fatwa*. A *fatwa* is an opinion, given as a formal answer to a question on a point of law or dogma by a person or body with the authority to do so. It is an exercise in religious jurisprudence (*fiqh*) in which

the challenge for the fatwa-giver is to maintain the centrality of divine Revelation but at the same time determine individual duty in a practical way.[10]

Historically *fatwas* were usually issued by learned and respected individual scholars. Increasingly they are a collective affair in Indonesia, reflecting the ongoing indigenous developmental path of Indonesian Islam and the institutionalisation of Islam both in its own right and from its interaction

with the nation-state.[11] In Indonesia today, *fatwas* are mainly issued by four national-level religious bodies, including Nahdlatul Ulama, its modernist counterpart Muhammadiyah, the somewhat sectarian Persatuan Islam (Persis), and the government-established and -funded Majelis Ulama Indonesia (MUI, Council of Indonesian Religious Teachers).[12] NU has issued more than 400 *fatwas* or “decisions” (*keputusan*) since its founding in 1926, and continues to do so with some frequency. The decisions cover a wide range of subjects, many of which are social issues of importance and complexity. In 1994, for example, NU issued nine *fatwas*,

of which three are on organ transplants and contraception, one on the Haj (which discusses Indonesian pilgrims in Saudi Arabia), one on government and minimum wage, one on employment of women outside the home, one on contracts, one on public land, and one on pollution as a crime.[13]

The rules for formulating *fatwas* have themselves been the subject of debate for centuries, and not least within NU throughout its history. These rules address the questions of which texts are permissible to use, and how they are to be used (including the relation between revelation and reason, and the appropriate forms of reason); what procedures are to be used in answering problems; matters of competence and review by different levels of the organisational hierarchy; the framework for analysing issues; and the correct procedures for choosing pinions and making authoritative determinations.[14] Hooker’s summary of the current stipulated NU analytical framework for discussion of social issues describes the expectations that the *ulamas* gathered in Jepara brought to their discussion of the Muria nuclear power station plan:

- Analysis of the problem (the cause of the problem is considered from a number of factors): economic, cultural, political and other social factors.
- Analysis of the effect (positive and negative) which have arisen from this case and the law should be considered from a number of different aspects: socio-economic, sociocultural, sociopolitical, and so on.
- Legal analysis (the legal opinion regarding a certain case after the background and effects in all areas are balanced). Besides the formal legal decision, the decision should consider the positive opinion of Islam and law...
- Analysis of action, role and warnings (what must be done as a consequence of the legal opinion. Who must do it, when, where, etc. and what mechanism must be put in place to ensure all goes according to plan): the political path (influencing government policy), the cultural path (increasing awareness among people via the mass media), the economic path (improving social welfare), other social paths (improving the health of the populace, environment, etc.)[15]

The Jepara fatwa process

Batan’s announcement in July 2006 that Balong was the specific site chosen for the first of four nuclear power stations on the Muria peninsula triggered much greater levels of local concern, and

an approach by villagers to NU. In fact, local and regional NU bodies had themselves been concerned about the nuclear power plant proposal for more than two decades. As far back as the mid-1980s the head of the Central Java division of NU, KH Mochamad Amin Sholeh, and father of the present head of the Jepara branch of NU, KH Nuruddin Amin, had made a statement opposing the first Habibie version of the proposal.^[16] A number of the NGOs active on the question of both environment generally and nuclear power in particular, both regionally and nationally, are NU-affiliated.^[17]

In July the Nahdlatul Ulama Jepara branch and Central Java division announced the holding of a public discussion and debate on the Muria power plant issue to be held in Jepara at the beginning of September. The trigger for the proposal was the evident rising concern amongst members of the Islamic community of the region. The basic purpose of the meeting and the NU's sense of its own role were clearly spelled out:

This intensive dialogue and debate based on religious law is important to disentangle a number of issues that have concerned people for a long time, and to clarify information in support of beneficial aspects the nuclear power plant (*kemashlahatan*) and information on negative aspects of the nuclear power plant (*kemadlaratan*). In this respect, the role of Nahdlatul Ulama (NU, the Awakening of the Religious Scholars) is a strategic one, as a mediator and facilitator of a balanced dialogue between groups for and against the proposal. For this reason, NU hopes to be able to make efforts towards strengthening community capacity so that the community is capable of taking a comprehensive and fair-minded approach to the nuclear power plant proposal.

The planning document stressed the aims of generating a balanced discussion, one that contributed to a partnership between civil society and government, and that developed the capacity of community organisations for public service. The planners specified outputs including

- “a complete and comprehensive explanation” from the government of its plans;
- “a full and transparent explanation by nuclear experts, social-cultural observers, and religious figures of the positive and negative aspects” of the proposal;
- “an accurate, genuine and fair understanding of the plan for the development of the Muria nuclear power plant among stakeholders”; and
- “guidance and recommendations emanating from the Bahtsul Masa'il forum, as a guide for the people in making their judgement about the positive and negative aspects of the Muria nuclear power plant plan.”

The dialogue and the debate was to be divided into two sessions.

In the first session, representatives of the government (as the initiator of the Muria

nuclear power plant plan), nuclear specialists, social-cultural observers, and religious leaders will be present. This first session will aim at a sharing of information by the resource persons, both those from the government side as well as various nuclear specialists, social-cultural observers, and religious figures, to ensure that public dialogue with general public.

The focus in the second session will then be on debate concerning the balance of positives and negatives of the Muria nuclear power plant plan from the point of view of religious jurisprudence. This second session will feature specialists in religious law from various parts of Central Java. It is hoped that the recommendations emerging from this discussion forum will be able to be used by all parties having sincere and genuine concerns and views about the Muria nuclear power plant plan.

Three types of participants were expected, all of them on an ambitious scale:

1. 150 prominent members of the wider community, religious figures, young people, students and women will participate in the Seminar about the Muria nuclear power plant plan.
2. 100 Kiai and Ulama from Central Java will participate in the Debate on the application of the religious law to the Muria nuclear power plant plan.
3. About 10,000 people from around Jepara and Kudus will participate in the Public Dialogue and Public Investigation/ Recitation as part of the 81st Anniversary of NU.

All of these preparations over several months were to set the occasion for the assembled kiais to answer three questions for the guidance of the community:

1. From the perspective of religious law, do the positive aspects of the nuclear power plant project outweigh the negative aspects?
2. If the positive aspects predominate, how should the project proceed? If the negative aspects predominate, who is responsible for stopping it, and how is this to be done?
3. Who is responsible for the well-being of the community for the overall impact of the Muria nuclear power plant?

The Bahtsul Masa'il

The organisers' ambitious hopes for a large presence at the discussion and debate were fulfilled, jump-started by the arrival early on the morning of the first day by some five thousand villagers who had marched from Balong, the planned site of the power plant. The villagers had set out from Balong

the previous afternoon, carefully marshalled to restrict onlookers joining the march lest agent provocateurs disrupt its peaceful intent. As the villagers walked the route from Balong to Basri and on to Jepara onlookers gave the marchers food and water, sometimes helping out with children. After midnight the march halted for the night in the grounds of a large mosque just outside Jepara. In the cool of the early morning the march moved into Jepara to take up its station in front of the NU Jepara branch building.[18]

After prayers and greetings, the meeting opened with a keynote presentation by the Minister for Research and Technology, Dr Kusmayanto Kadiman[19], who had been allocated two hours in the programme to open the government case. Through the afternoon Kadiman was followed by senior officials from the National Nuclear Energy Agency, the Nuclear Regulatory Agency, the Department of Research and Technology and the Department of Energy and Mineral Resources, and five other specialists speaking from the perspective of nuclear physics, biology, law, religion and culture, and social issues. In these two sessions the assembled kiais listened to the expert speakers and asked questions, but did not themselves take part in the discussion.[20]

In the evening the group of about one hundred ulamas began the *fiqh* debate proper (*mubahatsah*). They were accompanied by four advisors, two supporters of the government plan, and two opponents, who were present to speak only in answer to questions from the ulamas. The meeting was led by KH Drs. Nadjib Hasan from the NU Central Java Regional Board, one of the eleven organisers of the event. The session began with an expression of opinions after listening to the expert debate, before settling down to the main business of the night: an examination of relevant statements in the Koran and the Sunna (the sayings of the prophet recorded in the *hadith*), and principles and precedents in the accredited texts in jurisprudence in cases where the Koran and *hadith* were less than evidently applicable.[21]

Apart from the unlikely suggestion that support for the Muria nuclear power plant proposal was obligatory, it was open to the *mubahatsah* to make one of four recommendations:

- that the proposal is *haram* or prohibited;
- that the proposal is *makruh* or “permissible but repugnant”[22];
- that the proposal is *murbah* or acceptable or neutral; or
- that the proposal is *mandub* or recommended.

If the decision of the *bahtsul masa’il* was to have any significance for the wider Indonesian Islamic community, much would depend on the precise domain of the recommendation: for example, whether it applied to the issue of nuclear power as a whole, or this proposal in particular. In the world of serious and learnedly opinionated world of Islamic jurisprudence, more would hang on the rationales and references adduced in support of the decision.

The fatwa decision

The decision announced the following day began by clarifying the issue of domain[23]:

This plan is viewed from the interests of the people of Jepara, as an issue of *waqi'iyah* or an issue specific to the context of Jepara and its environs.

It then established two key points of reference – a legal philosophy of religious utilitarianism, and a hierarchy or priority of needs, beginning with a principle

to maintain the positive aspects and obviate the negative. From this principle, the policy that involves the needs of the lives of the community, including basic needs, secondary needs, and tertiary (or extravagant) needs, must accommodate three main concerns, namely (1) the order of life; (2) the fulfilment of needs, and (3) accordance with Islamic law (*syariah*). The positive and negative aspects are not just a matter of presumption (*mauhumah*), but in this context have a clear legal reference (*muhaqqaqah*).

The *mubahatsah* announced its determination in two parts, each supported by Arabic language references to the Koran and *hadith*. Firstly the meeting determined that

the development of the Muria nuclear power plant is forbidden in Islamic law, because while the Muria nuclear power plant project has within it both positive and negative aspects, the disadvantages predominate. Accordingly then the principle of preventing the negative aspects must take precedence, in accordance with the rule "*dar'u al-mafasid muqaddam 'ala jalb al-mashalih*".

The decision then cited both positive and negative aspects of the proposal which it had balanced to make its judgement. The question of long-term safe disposal and storage of radioactive waste was the first of four negative concerns cited, followed by concern with the potential local and regional environmental consequences of the plant's operation (for example the impact on heated cooling water on local fishing grounds). A third concern was the lack of financial clarity about the project, and in particular future potential costs, especially

if the development is based on a Build, Operate, and Transfer (BOT) model, because that would mean Indonesia will be left with an old and run-down nuclear power station, and must then pay for the cost of decommissioning.

The final negative aspect cited in the decision derived from nationalist concerns about foreign dependence:

Design of the nuclear power station, its technology, its operation and maintenance, all will be in the hands of foreigners, leaving Indonesia dependent. The raw material of nuclear energy, uranium, requires enrichment, and in any case, Indonesia possesses only a small uranium mine with low grade ore. If like Iran, Indonesia attempts to enrich uranium (without nuclear weapons proliferation), as a developing country, it will be obstructed by the west, and will always be dependent on foreign uranium producers.

Three claimed positive aspects of the proposal were cited: the contribution of a nuclear power station to the nation's energy crisis, its contribution to limiting global warming, and its predicted contribution to lowering electricity cost. Each was followed by a summary refutation. The brief comments on cost and climate change were unremarkable, but the refutation of the claimed solution to Indonesia's national energy crisis went beyond arguments about supply and demand similar to those often made in other cases around the world:

The argument that there is an "energy crisis" is a matter of estimation and prediction (*mauhumah* and *dhanni*). The needs that are to be met may be categorised as tertiary or extravagant needs (*tahsiniyyah*) and not secondary (*hajiyyah*) nor primary (*dharuriyyah*) needs.

The framers of the *fatwa* rooted the argument about energy in a classic tradition of Islamic jurisprudence that distinguishes a hierarchy of needs in arguments about public interest. Standard arguments about electricity policy in terms of whether or not shortfalls of supply against predictions of increased demand are correct, or whether conservation measures are adequate are here recast in a culturally and religiously resonant discourse about the validity of needs.

In the second part of their decision in answer to the question of "who is responsible for the well-being of the community regarding the Muria nuclear power plant", the decision stated that

Both the government and the people, in proportion to their capacities, have an obligation to stop [the development of the nuclear power station].

There were *kiais* who spoke strongly in favour of the Muria proposal, but not many. Some in the meeting wanted to take the middle ground of a *makruh* judgement, but the final result was clear-cut: as the chair of the Jepara Branch Board of Nahdlatul Ulama, KH Nuruddin Amin, later clarified:

Islamic law is basically neutral towards nuclear energy, neither recommending nor forbidding. The use of nuclear energy in Indonesia will be investigated more deeply by the Central Board of Nahdlatul Ulama. "What was clearly judged to be forbidden [haram] is the Muria nuclear power plant to be developed in Jepara." ... The question of other applications of nuclear energy was not part of the discussion by the religious leaders in Jepara. Nuruddin acknowledged that other nuclear power plants may be judged to be neutral. Moreover, nuclear power may bring benefits for health or agriculture or genetic engineering. "Therefore, we will not react negatively in such a case."[\[24\]](#)

Amin went on to clarify some aspects of the legal reasoning in *fiqh* considered by the *mubahatsah*:

Apart from other things, the decision is based on the norm of requiring that forbidding damage or negative consequences be placed ahead of obtaining benefits or positive consequences (*dar'ul mafasid muqoddamun 'ala jalbil mashalih*). "Often there are cases where the positive and negative aspects mixed together. The Koran gives the examples of alcohol and gambling, where it is acknowledged there may be positive aspects, but, in the words of the Koran, the sin is greater than its benefits (*itsmuhuma akbaru min naf'ihima*). Accordingly they are judged to be forbidden!"

Responses to the decision

The head of Nahdlatul Ulama, the General Chairman of the Central Board of Nahdlatul Ulama (PBNU) KH Hasyim Muzadi, reacted strongly against the decision of the *mubahatsah* organised by the Jepara branch of NU. Hasyim first said that the Muria nuclear project had "caught a cold", and that the government would have to reconsider its plan.[\[25\]](#) He then announced that the Central Board would not become involved in the matter, and that in any case, the government's plans were not final, and that the plant would not be built.[\[26\]](#) The organisers of the *mubahatsah* had anticipated opposition from within the organisation's Central Board and had formulated their decision with that possibility in mind. Nuruddin Amin explained that

This judgment is the result of a public discussion by ulamas organized in accord with the provision that a reasoned decision by *ulamas* is not able to be annulled by another decision (*al-ijtihad laa yunqodlu bi al-ijtihad*). Consequently, since this decision is tied to its context in Jepara, it cannot be annulled by either the Regional Board of Nahdlatul Ulama or the Central Board of Nahdlatul Ulama.[27]

Hasyim made his second statement at his office confronted by several hundred NU villagers from Balong and their supporters wanting to explain their position to the General Chairman. The villagers had come to Jakarta to seek support for their position within NU and from the National Commission on Human Rights (Komnas HAM). They made a decision to not visit the national parliament lest it be represented as a demonstration. They went to Hasyim after staying overnight in the house of former president, and former chairman of NU, Abdurrachman Wahid. Hasyim warned the villagers “not be provoked”, saying “there are many [other] interests involved in this matter”. The villagers should beware, he said, of being taken in by non-government organisations that did not represent wide sections of the community, and implied that possibly the group facing him was one such. One of the Balong spokespeople presenting their case to Hasyim was Setiawan Sumedi, chair of Persatuan Masyarakat Balong (PMB, Balong Community Association), a teacher in the village. He reported the group’s anger at the Chairman’s charge, and their sense of his condescension towards them, as well his ignorance of both their case and their relationship to NU. According to Sumedi, Hasyim changed his mind after talking to the group, and they showed him their NU membership cards.[28]

Mainstream foreign media reported widely on the issue.[29] Within Indonesia every major newspaper and media outlet in the country reported the *fatwa haram*. Batan’s head stressed that final decisions had not yet been made[30], and promised to further its efforts at consultation with the local and regional community into a better awareness of its true intent.

In time, though, the response was less benign. Within the village of Balong, a campaign to oust opponents of the nuclear power station plan from key positions in the village’s administration began shortly after the NU decision. Representatives of KRATON (Koalisi Rakyat Tolak PLTN, Community Ant-Nuclear Coalition) claimed that “money politics” had entered the village, with a pro-nuclear candidate subsequently unexpectedly elected as village head.[31] Despite widespread suggestions, including from the Vice-President, that the Muria proposal will be shelved due to the Jepara controversy, especially in the run-up to the 2009 elections, the head of Batan has called for the government to be resolute and try to stick to its announced plans to call for tenders for the reactor construction in 2008, with construction itself to begin in 2010 and be completed within six years.

The meaning and potential of the nuclear fatwa

The Jepara *bahtsul masa’il* provides strong support for those, both within Indonesian Islam and

amongst those observing it closely, who maintain that ostensibly “traditionalist” socio-religious organisations like Nahdlatul Ulama have a capacity to undertake cultural and political innovation.

The *fatwa* form, including the Indonesian, show us a truly remarkable creative engagement between the texts and contemporary social reality. The *fatawa*-givers provide us with authoritative statements which link classical doctrine to the day-to-day life of the individual Muslim.[\[32\]](#)

To be sure, NU like the *fatwas* handed down by its different parts, is an uneven affair, with varying levels of organisational and investigatory capacity and engagement with urgent social issues, differing social attitudes, and, in the eyes of some, variable degrees of separation from vested interests. One influence clearly evident in the Jepara nuclear power decision was the longterm influence of the process of organisational regeneration that began during the chairmanship of Abdurrachman Wahid in the 1980s. Some of the animus behind General Chairman Hasyim Muzadi’s comments about “non-government organisations” reflects a difference of both generation and perception about the role of NU: is it purely a religious organisation, or one with a more pronounced social role? The organisational expansion of NU-related NGOs in a wide-range of social and cultural fields initiated on Wahid’s watch was reflected in the strength of community-based opposition in the Muria case. Equally, the stress on cultural Islam is reflected in the pluralism of the regional and national coalitions within which local Central Java NU leaders have placed the organisation.

Islamic jurisprudence itself has been one area in which the cultural Islam paradigm has been formulated and applied. In many respects the Muria *fatwa haram* is an excellent example of the doctrine of “social *fiqh*” promulgated by the president of NU and head of its *shariah* board, M.A.Sahal Mahfudh.

Social *fiqh* is derived from a view that the solution for complex social problems is the main purpose of Islamic *shari’ah*. The solution to these social problems is for Muslim people to fulfill their responsibilities, with their obligation as Muslims to realize the happiness and advantages for the public interest (*al-masâlih al-‘âmmah*). In this case, advantages for the public mean the primary need of a certain group of people in a certain area for the sake of supporting the exterior prosperity of that area. The needs may include *darûriyah* (necessary) dimensions or basic needs, which may then become the principle tool to achieve religious salvation, a peaceful mind, and the happiness of ones soul, fete, descendants and wealth.[\[33\]](#)

The stress in the Jepara decision on clarifying the hierarchy of needs and social responsibility in relation to them reflect this view of social *fiqh*:

[T]he social *fiqh* paradigm, is based on the notion that *fiqh* must be read in the context of the fulfillment of three human needs. These include primary needs (*darûriyah*), secondary needs (*hâjjiyah*) and supplementary needs (*tahsîniyah*). Social *fiqh* is not only a tool to see events in a clear cut black and white perspective as the *fiqh* perspective is obliged to do, but it also becomes a paradigm of social meaning.[\[34\]](#)

In this case, *fiqh* has a dual function, firstly as a tool to measure social reality with *shari'ah* ideals, concluding with the decision of *halal* or *haram* laws, permitted or prohibited; and secondly at the same time it becomes a tool for social engineering. Within the science of law, there is always a dual function; the function of law as social control and as social engineering.[\[35\]](#)

To be sure, as one Muhammadiyah advisor said to me when we discussed the Muria *fatwa haram*, such authoritative determinations can be a two-edged sword, as obvious examples from both Indonesia and a number of sources in the Middle East in recent years make evident. On the other hand, as a tool of communitarian cultural formation in societies where terms like “traditional” and “modern” are both necessary and often absurdly an anachronistic, the creative application of Islamic jurisprudence holds considerable potential beyond its immediate applications.[\[36\]](#)

Abdurrachman Wahid, in his time as head of Nahdlatul Ulama, sketched the commonly held view of traditionalists that

they are a wholly passive community unable to cope with the dynamic challenges of modernisation, the sort of community that scholars regard as belonging to a dying tradition.[\[37\]](#)

There appears to be no precedent anywhere else in the Islamic world for this innovatory application of Islamic jurisprudence to the question of nuclear power, but we can be sure there will be successors. The question then will be whether the tradition of Islamic jurisprudence, in Indonesia and elsewhere, can begin to address in concrete and particular cases the successor question to that of nuclear power: nuclear weapons.[\[38\]](#)

About the author

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Other policy forums by Richard Tanter:

- [The Re-emergence of an Australian nuclear weapons option?](#) 29 October 2007, Austral Policy Forum 07-20A
- [The Abuses of Realism and Australian Security Interests: the 2007 Defence Update](#), Richard Tanter, Austral Policy Forum 07-14A, 12 July 2007.
- [The new security architecture: Binding Japan and Australia, containing China](#), Richard Tanter, Austral Policy Forum 07-07A, 15 March 2007
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Endnotes

[1] Documents relating to the planning of the *bahtsul masa'il* and its decision are available at [Muria nuclear power plant fatwa documents](#), Reframing Australia-Indonesia security project, Nautilus Institute, November 2007. English translations by Richard Tanter.

[2] [Muria nuclear plant 'haram'](#), *NU Online*, September 3, 2007.

[3] For a brief account of the current debate on the Muria peninsula nuclear power plant proposal see Tom Hyland, [Nuclear reactor plan on shaky ground](#), *The Age*, 14 October 2007, and Rizal Sukma, [Indonesia's energy plan: Is nuclear power really the only option?](#) *Straits Times*, 20 July 2007.

[4] Interviews with Sumedi Setiawan and Lilo Sunaryo, Balong, Jepara, 15 September 2007, and site visit, 15 September 2007.

[5] See Jim Schiller, *Developing Jepara: State and Society in New Order Indonesia*, Monash Asia

Institute, 1996, and Schiller, [Inside Jepara](#), *Inside Indonesia*, 63, July 2000.

[6] Greg Fealy, Virginia Hooker and Sally White, "Indonesia", in Greg Fealy and Virginia Hooker, *Voices of Indonesian Islam: A Contemporary Source Book*, Institute of Southeast Asian Studies, 2006, pp. 39-40.

[7] Fealy, Hooker and White, *op.cit.*, p. 40.

[8] Michael Laffan, The Fatwa debated? Shura in one Indonesian context, *Islamic Law and Society*, Vol. 12 No. 1 (2005) p. 96.

[9] Fealy, Hooker and White, *op. cit.*, p. 48.

[10] M.B.Hooker, *Indonesian Islam: Social Change through Contemporary Fatawa*, Asian Studies Association of Australia, in association with Allen and Unwin and University of Hawai'i Press, 2003, p. viii.

[11] Nico J.G. Kaptein, "Introduction to *Fatwas* in Indonesia, Theme issue, *Islamic Law and Society* 12, 1 (2005), p. 6.

[12] M.B.Hooker, *op.cit.*, pp. 48 ff. However some other groups and even individual teachers will issue *fatwas* on occasion.

[13] Hooker, p. 249. On *fatwas* and related "discursive products" issued by the Majelis Ulama Indonesia see Moch. Nur Ichwan, "'Ulamas', State and Politics: Majelis Ulama Indonesia after Suharto", *Islamic Law and Society*, 12, 1 (2005),

[14] These matters are dealt with in detail by M.B.Hooker, *op.cit.*, pp. 55-60.

[15] Hooker, *op.cit.*, p. 59.

[16] Interview with Nuruddin Amin, Bangsri, 16 September 2007.

[17] For example, [Lembaga Kajian dan Pengembangan Sumber Daya Manusia](http://www.lakpesdam.or.id/) <<http://www.lakpesdam.or.id/>> and [Lembaga Pengembangan Masyarakat Perhimpunan Pengembangan Pesantren dan Masyarakat \(P3M\)](#).

[18] Interviews with Sumedi Setiawan, Nuruddin Amin, and Lilo Sunaryo, Balong, Bangsri and Jepara, 15-17 September 2007.

[19] Kusmayanto Kadiman, [Sambutan Menteri Negara Riset dan Teknologi pada Dialog dan Mubahatsah 'Alim Ulama NU "PLTN Muria Dalam Perspektif Fiqh](#), 1 September 2007.

[20] Minister Kadiman was expected to speak to the assembled crowd outside the NU building, but did not do so. It was reported that he was concerned he would be “forced” to agree to demands from the Balong villagers to abandon Batan’s plans for the Balong site.

[21] For the list of *fiqh* texts approved for NU deliberations see M.B.Hooker, *op.cit.*, p. 57.

[22] M.B.Hooker, *op.cit.*, p. 243. The conventional translation in a number of dictionaries is “the avoidance of which yields merit but the performance of which is not sinful”.

[23] *PLTN Muria Dalam Perspektif Fiqh, Panitia Dialog Dan Mubahatsah 'Alim Ulama: PLTN Muria Dalam Perspektif Fiqh* [[The decision of religious scholars: the Muria nuclear power plant - forbidden](#)].

[24] *Klarifikasi Keharaman PLTN Muria: Substansi "Nuklir"-Nya Mubah, "PLTN Muria"-Nya Haram, [Clarification of the judgment that the Muria Nuclear Power Plant is prohibited: Nuclear energy as such is neutral, but the Muria nuclear power plant is forbidden]*, KH Nuruddin Amin, n.d.

[25] [PBNU: PLTN Muria 'Masuk Angin'](#), *NU Online*, 5 September 2007.

[26] [Hasyim calls on residents not to be provoked](#), *NU Online*, September 8, 2007.

[27] *Klarifikasi Keharaman PLTN Muria, [Clarification] op.cit.*

[28] Interview with Setiawan Sumedi, Balong, 16 September 2007.

[29] For example, see the Reuters wire service story: [Indonesian clerics say nuclear plant forbidden](#), *Reuters*, 3 September 2007. [30] [Menteri Ristek: Fatwa Haram PLTN Muria Bagian Pembelajaran Publik](#), *Tempo Interaktif*, 3 September 2007.

[31] [Calon Petinggi Balong Teken Kontrak Anti-PLTN](#), *Suara Merdeka*, 26 October 2007.

[32] M.B.Hooker, *op.cit.*, p.ix.

[33] M.A Sahal Mahfudh, [Social Fiqh: An Attempt to Expand Qawli and Manhaji Paradigm](#), *ICIP Journal*, Vol I, No.1 Jan - Apr 2004, p. 4.

[34] M.A Sahal Mahfudh, *op.cit.* p. 5.

[35] M.A Sahal Mahfudh, *op.cit.* p. 9.

[36] The social *fiqh* position and the cultural islam stream it represents is by no means a dominant

one in Indonesia. See Piers Gillespie's analysis of the precisely contrary use of fatwa against pluralist approaches: Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism and Secularism, *Journal of Islamic Studies*, 2007 Vol. 18, No. 2, pp. 202-240.

[37] Abdurrachman Wahid, Foreword, Greg Barton and Greg Fealy (eds.), *Nahdlatul Ulama Traditional Islam and Modernity in Indonesia*, Monash Asia Institute, 1996, p. xiii.

[38] According to a 2005 Iranian government statement to the IAEA, "the Leader of the Islamic Republic of Iran, Ayatollah Ali Khamenei, has issued the fatwa that the production, stockpiling, and use of nuclear weapons are forbidden under Islam and that the Islamic Republic of Iran shall never acquire these weapons." However no official text has ever been issued to confirm this statement. See Iran's Missing Anti-Nuclear Fatwa, *Secrecy News*, Federation of American Scientists, Volume 2005, Issue No. 79, August 11, 2005. In 1983 the American Catholic bishops considered the legitimacy of nuclear weapons from a comparable religious and political framework, but stopped well short of declaring them *haram*. See Richard Tanter, "Breaking the nuclear faith: an introduction to the US Catholic Bishops' statement on war and peace", *Alternatives: A Journal of World Policy*, IX, 3: 461-473 (1983).

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