

UNDEMOCRATIC RESPONSE TOWARDS DEVIANT JUDGMENT AND FATWA: SUNNI-SHIITE CONFLICT IN SAMPANG, MADURA, EAST JAVA.

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Abstrak

Kajian ini mendiskusikan mengenai bagaimana grup-grup sipil menghakimi kelompok lain sebagai aliran “sesat” dan bagaimana negara meresponnya dalam kasus konflik Sunni-Syiah di Sampang, Madura. Istilah “sesat” telah menjadi perhatian penting dalam melihat bagaimana beberapa komunitas memandang perbedaan yang lain. Artikel ini memperlihatkan bahwa negara telah merespon secara tidak demokratis kepada beberapa penilaian kelompok terhadap Syiah sebagai salah satu warga negara yang dilindungi oleh negara. Selain itu, rekomendasi MUI yang juga tidak demokratis terhadap negara untuk menghentikan komunitas Syiah mempraktikkan ritual mereka juga menjadi perhatian, karena hal tersebut melanggar kebebasan beragama dan demokrasi. Penelitian ini mengambil beberapa literatur, seperti fatwa MUI, dokumentasi kasus Tajul Muluk dalam Catatan Keberagamaan oleh Center for Religious and Cross-cultural Studies, dan narasi eskalasi konflik oleh ilmuwan sebelumnya sebagai data. Sebagai studi yang melihat dinamika konflik, makalah ini membantu ilmuwan, aktivis, dan pemerintah secara kritis memahami hubungan antara negara dan kelompok masyarakat sebelum dan selama eskalasi konflik. Selain itu, studi ini bisa menjadi analisis kritis terhadap implementasi demokrasi di Indonesia.

Kata kunci: Konflik Sunni-Syiah, sekte menyimpang di Indonesia, fatwa, demokrasi.

Abstract

The study discusses how civic groups have judged other as deviant in the case of Sunni-Shiite conflict in Sampang, Madura, and how the state has responded to it. The term “deviant” has been an important subject to study in Indonesia because it helps us to understand how certain communities other the others who are different in terms of religious understandings. This article argues that the state has undemocratically responded towards several groups’ judgment on Shiite in Sampang of being deviant; while Shiite community in Sampang are Indonesian citizen who are subject to the state protection. This situation is further exacerbated by the MUI recommendation to the state to stop Shiite community from practicing their rituals, as it clearly violates religious freedom and democracy. This study uses secondary data in the forms of the MUI fatwa, Tajul Muluk case documentation in Catatan Keberagamaan by Center for Religious and

Cross-cultural Studies, and the conflict escalation narration by previous scholars. As a study focused on the dynamic of the conflict, this paper helps scholars, activists, and government critically comprehend the relation between the state and civic groups before and during conflict escalation. Further, it becomes critical analysis towards the implementation of democracy in Indonesia.

Keywords: Sunni-Shiite conflict, deviant sects in Indonesia, fatwa, Democracy

A. Introduction

After the fall down of New Order Regime, some inter/intra-religious conflicts, intolerant movements and its emergence and beginning for occupying public sphere become a common phenomenon of our plurality condition in Indonesia. The post-democratization also brought social changes in Indonesian religious life. This circumstance also raises some questions whether Indonesia is democratic country or not? Where is *Pancasila*? Does everyone have not comprehended about *Bhineka Tunggal ika* as a motto of national plurality?" Furthermore, I also emphasize another question; "where is the State, what has state been doing so far?"

Since the founders of this state decided to take *Pancasila* as state's ideology, it explains that all citizens have to realise that they live in diversity and plurality. Living in diversity and plurality means to accept differences among people. Having differences is not a problem, but problematizing differences are a problem. Besides, it also shows the inclusivity of the founders, including those from Muslims side. Taking *Pancasila* as an ideology is one of real act to unite Indonesia which has many different ethnics, languages, religions, and many other things under one ideology.

Considering the question about what state has been doing this far in terms of protecting religious freedom, the rights of minority, providing security for all of citizens, implementing UUD 1945, *Pancasila*, and democracy, I take the case of Sunni-Shiite conflict in Sampang and focus on the issue of state neutrality on treating its citizens. Exploring more about the state's role, as which I emphasize, in relation to conflicts among religious adherents, I rise a question related to state's role and neutrality on implementing democracy and law that I am exploring. How does state respond to civic group's judgment of "deviant" in public sphere?

Shiite community has faced persecutions in Indonesia and Sampang case is one that went to the court where Tajul Muluk, Shiite leader, was suspected as religious blasphemy doer. In Yogyakarta, Al Makin found that the persecution of shiite community in Yogyakarta is part of homogenizing Islam movement in national context.¹ This means there is a demand on the orthodoxy of Islam. Regarding the blasphemy law that is often used in the court process, there are several activists and scholars who have discussed and proposed it for judicial

¹ Al Makin, "Homogenizing Indonesian Islam: Persecution of the Shia Group in Yogyakarta," *Studia Islamika* Vol 24, no. No 1 (2017): 1–32.

review, even though rejected by the Constitutional Court. The rejection then led Religious leaders to be able to capitalize their power, legitimacy, and authorities, as Melissa Crouch contended.² She argued that the rejection by the court is to keep blasphemy policy which then led religious leaders to be unchallenged. Another important research questioning the root of religious minorities' discrimination by Frinke et al argued, that minorities represent the unwanted competition against majority religion, supported by the state, which then led to discrimination. They are, moreover, viewed as those threatening the larger culture and the state.³

In this case, I consider some theories developed by scholars, such as Alfred Stepan, and John Rawls. Stepan's theorization of democracy and toleration helps me see how state responds to some religious group judgement of "deviant" towards other. It also explains how state should treat its citizens, with their differences, in the nature of democracy, in favour of harmony between its citizens, including those from different religious traditions. Furthermore, the term "Public Reason" is also helpful in looking at how state and its civic organization make and should make their reasons reasonable in public.

B. The State and Civic Groups

Before going deeper to discuss about how state respond to certain religious groups' judgement of deviant towards other groups, it is important at first for us to define what it means by both state and civic groups here. Since the case I am taking is Shiite of Sampang case, and based on data I got from several sources, the state here is those institution legalized and recognized as part of state that are supposed to play role in managing harmony and political stability based on constitution and law. For example, The court is a state since it represents the state in processing Tajul Muluk, the leader of Shiite in Sampang, judgement based on legitimated law. The last is local government as those responsible in resolving conflict escalation as well as written in UU no.7 about resolving social conflict. Besides, the government, in this context, also those who have to protect minority and religious freedom.

Furthermore, what I mean by civic groups in this paper is those non-state community who are institutionalized under leadership or guidance of religious leader, such as NU, Basrri and any other groups that judge Shiite community in Sampang as deviant and recommend the state to also involve in stopping them from practicing their teachings and religious activities for the sake of religious harmony. They are also those who feel religiously offended then conclude that those deviant sects break their teachings, hence should be abolished. Moreover, MUI (Majelis Ulama Indonesia/Indonesian Ulama Council) is as civic groups

² Melissa Crouch, "Constitutionalism, Islam and the Practice of Religious Deference: The Case of the Indonesian Constitutional Court," March 7, 2016, <https://papers.ssrn.com/abstract=2744394>.

³ Roger Finke, Robert R. Martin, and Jonathan Fox, "Explaining Discrimination against Religious Minorities," *Politics and Religion*, June 2017, /core/journals/politics-and-religion/article/explaining-discrimination-against-religious-minorities/0289FF18ADB221946DD6756560A3F592.

representing the voice of Muslims. Besides, members of MUI also played roles in serving *ummah*, in terms of producing fatwa which some believe and implement it in daily lives. However, seeing the fact that Muslims are also divided into several groups with each different teachings, it becomes problematic when the question “which voice of Muslims group should MUI represent?” is raised. Not only does it become theoretically problematic, but also pragmatically, because members of MUI sometimes measure whether or not certain group is deviant by investigating them on their own without having dialogue with those of group’s members considered as deviant. This is also what I will be discussing in the next chapter.

C. The Religious Group Judgement on Shiite

Shiite community has already emerged in Sampang since 1980s and began to openly practice in 2004. However, the attack of some people who opposed to this community began to emerge in 2006. Following this situation, in 2009, MUI Sampang, Danramil, and Kapolsek stated that Shiite was not deviant, because they did not find any deviant in the sense that they are different from the basic of Islamic mainstream teachings. Even though this community felt secure by this statement, in contrast, non-Shiite community became stricter in opposing them.⁴

There were three ultimatum offered to Shiite community by people who opposed to them when the tension increased in April 2011. They asked them to stop practicing their religious activities and go back to the right Islamic teaching, which means the Islamic mainstream teachings of Sunni, to leave Sampang without compensation of land or any asset they had, if those two options are not implemented, then they should die. Responding to this situation, local leader, MUI, and Muspida (*Musyawahah Pimpinan Daerah/Local Leaders Forum*) tried to resolve this problem but failed.⁵

Bassra (*Badan Silaturrahmi Ulama Pesantren Madura/Pesantren religious leaders Forum*) and NU (*Nahdlatul Ulama*) worked together with MUI in discussing about how to solve the conflict beginning to escalate. Of Some religious leaders who involved in this are; Abuya Ali Karrar Sinhaji, Mudassir, Hamid, Fauzan Zain, and Syafiuddin. However, they never directly involved, in this period, in the field since they knew the informations about Shiite’s teachings, considered as different, from their students. They started to have some discussion with some elites in government, and then also invited Tajul Muluk to encourage him to stop spreading and practicing his religion for its deviancy.⁶

⁴ Zainal Abidin Bagir et all, *Laporan Tahunan Kehidupan Beragama di Indonesia 2012* (Yogyakarta: Center for Religious and Cross-Cultural Studies, Universitas Gadjah Mada, 2013), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwi5qP7m57rUAhUBO48KHfQSBfkQFggUAE&url=http%3A%2F%2Fsinergibangsa.org%2Fwp-content%2Fuploads%2F2015%2F01%2FLaporan-Tahunan-Kehidupan-Beragama.pdf&usq=AFQjCNF7dOn-MI6TWD4VqIU18H1IICUjkw&sig2=E4hRDq3Ghu6hxjtSCjtvEQ>.

⁵ Laporan Tahunan... p.29-30.

⁶ Interview with Lutfillah 24 February 2013. See more Muhammad Afdillah and Ph D. Zainal Abidin Bagir, “DARI MASJID KE PANGGUNG POLITIK; Studi Kasus Peran Pemuka Agama Dan Politisi Dalam Konflik Kekerasan Agama Antara Komunitas Sunni Dan Syiah Di

Furthermore, after several dialogs between those of religious leaders with the involvement from some government's institution, they did not find the solution, because Tajul Muluk still insisted to practice his religion. Hence, the demonstration by some people opposing him emerged. In response to that, they held dialog again. For this time, the judgement of deviant towards Tajul Muluk's teachings happened. They then appealed the recommendation to local government to stop Shiite's activities and to relocate them to outside Madura in order to create harmony and avoid communal conflict again.

In response to the tension between Sunni and Shiite, MUI as civic group and that representing Muslims voice decided to involve in it, in favour of religious harmony among people in Sampang. They started to find out whether or not Shiite teachings are deviant through investigating several books and activities consisting Shiite teachings and doctrines.

Right after violence conducted by Sunni Muslims towards Shiite in 29 December 2011, MUI Sampang produced *fatwa* that Tajul's teachings is deviant and considered as blasphemy towards Islam in 1 January 2012 as written in 035/mui/spg/i/2012. Furthermore, PCNU Sampang also produced statement letter supporting *fatwa* of MUI Sampang. Following *fatwa* and several supports of recognizing Shiite as deviant, in 3 January 2012, Bassra (*Badan Silaturrahmi Ulama Pesantren Madura*/Pesantren religious leaders Forum) asked East Java MUI and MUI Centre to produce the same *fatwa* as well, and then to prohibit Shiite community to exist and to spread their teachings in Madura. Not only MUI in Sampang but also those from several districts in East Java such as Bangkalan, Gresik, Surabaya, and those representing Sunni, such as Jam'iyah Ahlussunnah wal Jama'ah Bangil Pasuruan, and GUIB (*Gerakan Umat Islam Bersatu*/Muslims United Movement)

Being asked to produce *fatwa* about Shiite, MUI East Java consequently also did it in 14 January 2012 after investigating several teachings and books of Shiite, deciding that Shiite *Imamiyah Itsna Asyaariyah* and other sects of Shiite which have the same teaching are deviant and may deviate others. As a result, MUI East Java recommended to all Muslims to anticipate and to be aware from being influenced by this kind of teachings. They also recommended to the government to not support and to stop them spreading teachings. Because spreading Shiite teachings among Indonesians as ahlu al-sunnah wa al-jama'ah followers, will cause political instability that will threaten the unity of Republic of Indonesia.⁷ After producing such *fatwa*, MUI East Java also support religious leaders BMN in attempt to ask MUI Centre to produce the same *fatwa* by

Sampang Jawa Timur" (Universitas Gadjah Mada, 2013), 90, http://etd.repository.ugm.ac.id/index.php?mod=penelitian_detail&sub=PenelitianDetail&act=view&typ=html&buku_id=63764.

⁷ "Keputusan Fatwa Majelis Ulama Indonesia" (Majelis Ulama Indonesia Prov. Jawa Timur, No. Kep- /SKF-MUI/JTM/I 2012).

facilitating their trip. This was one of real support provided by MUI East Java for religious leaders.⁸

D. State's Response

1. Local Government (Pemda)

Following anti Shiite movement in Sampang that has spread and has escalated, religious leaders who opposed to Shiite invited local government to discuss about how to solve the problem of Shiite considered as deviant, thus should be corrected or even be abolished and government should play roles in it. Since religious leaders (*Kyai*) in Madura also have certain political power to mobilize people, even though local government was only guest invitation in several discussions, they eventually did not have choices but to follow kyai's instruction in order to avoid losing vote and support from society.⁹

Besides following some forums of Sunni religious leaders, at the end of seeking ways to resolve this conflict, the government finally decided to resolve it by relocating Shiite community to Sidoarjo using three trucks and two police buses with three patrol cars to provide security.¹⁰

Another role of local government that should be considered is Noer Tjahja, district head of Sampang, who involved in escalating the conflict. He ruled the district from 2008-2012 and ran for re-election in 2012. The challenge of 2012 election is the fact that he lost in village of Karang Anyam in previous election, where many Shiite community lived before the incident. So he had to win this area too. Since this re-election was more challenging and more difficult, he had no choice but to increase popularity through supporting anti Shiite activities that was considered as people's interest, because they wanted their village to be neutral from deviant sects.¹¹

Furthermore, his explicit statement about Shiite was delivered through his speech during political campaign. He stated that Tajul, the leader of Shiite community, was deviant because of not obligating Jumat prayer and allowing *mut'ah*¹² marriage and then might lead others to be deviant too. Hence, he asked people to be careful with this community and asked police to drive them away if they still practice their deviant teachings.¹³

⁸ Afdillah and Zainal Abidin Bagir, "DARI MASJID KE PANGGUNG POLITIK; Studi Kasus Peran Pemuka Agama Dan Politisi Dalam Konflik Kekerasan Agama Antara Komunitas Sunni Dan Syiah Di Sampang Jawa Timur."

⁹ Afdillah dan Zainal Abidin Bagir, et all, *Dari Masjid...* p.104–5.

¹⁰ AH. Semendawai, et all., "Laporan Tim Temuan dan Rekomendasi (TTR) Tentang Penyerangan terhadap Penganut Syiah di Sampang, Madura." See more <http://www.komnasperempuan.or.id/wp-content/uploads/2013/09/LAPORAN-PUBLIK-TIM-TEMUAN-DAN-REKOMENDASI-TTR-SYIAH-SAMPANG.pdf>.

¹¹ Iqbal Ahnaf, "Local Elections and Intolerance: A Lesson from Sampang," *CRCS, ICRS Universitas Gadjah Mada*, May 2014, Volume 3 edition.

¹² *Mut'ah* marriage: is a kind of contracted marriage that requires both specific limited period and sum of money under the agreement, usually practiced by Shia Islam. However, it is rejected by Sunni Islam. See more Thomas Patrick Hughes, *A Dictionary of Islam*, (New Delhi: Asian Educational Services, 2001), p. 424.

¹³ Tjahya's speech, 12 February 2012. See more Afdillah, *Dari Masjid ke Panggung Politik: Studi Kasus Pemuka Agama dan Politisi dalam Konflik Kekerasan Agama antara*

2. Court

In this case, Tajul Muluk was accused as a religious blasphemy doer and recognised as deviant for insulting Qur'an that he said it is not original. For, he rejected this accusation that Qur'an he always use is as same as Qur'an used by other generally. Besides, he was also suspected that his speech was insulting the prophet *sahabah*, such as Abu Bakr, Umar bin al-Khattab, and Utsman bin Affan. However, this kind of suspicion is never proved in the court.¹⁴

Thus, in 12 July 2012 he was sentenced by the State Court Sampang with two years in prison. This was lighter than was what imposed by Jaksa. However, he appealed the case to the State Court Surabaya, yet he received more severe penalty, four years in prison, then was it before. He appealed cassation again in Supreme Court, for the sentence remained and the earlier decision was strengthened.¹⁵

On the other side, the State Court Surabaya also sentenced six suspects of attackers towards Shiite community in 26 August 2012. They are; Mukhsin with ten months jailed, Mat Safi with one year and six months jailed, Saniawan with eight months jailed, Hadiri with for years jailed and the last, Rois Hukama as a main suspected, but was not sentenced and was free in 16 April 2013.¹⁶

E. Challenging Democracy

Looking at how state and civic groups encounter with the existence of Shiite Community, there are at least two state's institution involving in resolving this problem. First is the local government who are of course supposed to take responsibility in resolving the conflict as mentioned in UU No.7 about resolving social dispute. In addition, resolving conflict includes responding religious groups' judgment towards Shiite. Hence, the way of government respond to this religious groups' judgment will cause whether it will escalate or be peacefully resolved. The second is the court, where Tajul Muluk case took place. This court represents state's institution where citizens are equal before the law.

Before looking at how MUI, as civic group which receive money from government, respond to it, I want to quote what Stepan suggested about democracy:

Komunitas Sunni dan Syiah di Sampang Jawa Timur, Central for Religious and Cross-cultural Studies, (Yogyakarta: Gadjah Mada University 2013), p. 106.

¹⁴Zinal Abidin Bagir, et all., *Laporan Tahunan Kehidupan Beragama di Indonesia 2012*, (Yogyakarta: CRCS, 2013), p. 63.

¹⁵Bagir, *Laporan Tahunan Kehidupan Beragama di Indonesia 2012*, 64.

¹⁶AH. Semendawai, et all., "Laporan Tim Temuan dan Rekomendasi (TTR) Tentang Penyerangan terhadap Penganut Syiah di Sampang, Madura." See more <http://www.komnasperempuan.or.id/wp-content/uploads/2013/09/LAPORAN-PUBLIK-TIM-TEMUAN-DAN-REKOMENDASI-TTR-SYIAH-SAMPANG.pdf>

“Democracy must also have a constitution that itself is democratic in that it respects fundamental liberties and offers considerable protection for minority rights.”¹⁷

Since the founders of Indonesia took *Pancasila* as ideology, democracy was also chosen and was believed as an adequate system to implement in favour of protecting human right of each citizen. Even though Indonesia was under authoritarian government for many decades, its citizens have been trying to implement the real democracy for better Indonesia. It includes the protection of minority and religious freedom as mentioned by Stepan as well as written in UUD 1945, article 28 about human right.

However, if we see MUI in Indonesia, it is a manifestation of special privilege for Muslims to serve and to accommodate the interest of Sunni Muslims majority in Indonesia. That is why the teaching and certain way of producing *fatwa* is the way of Sunni. If we see historically, it was founded by Suharto regime to control *ulama* for the sake of his own regime. Since it is getting more independent now days, the state or government have more distance to it, thus they cannot control as much as did Suharto regime.

As one of civic groups that should balance the state’s power in democratic way, it becomes problematic when MUI produce *fatwa* that accommodate some Muslims interest on the one hand, but on the other, influence certain people in justifying their acts to violate other rights. Or in certain condition, people use MUI to support their acts of violating other right, which is incompatible with democracy system, referring to Stepan. How can civic group as civil society that should support democracy violate minority rights? It also shows that this civil society violate UUD 1945 article 28 about human right.

Looking at *fatwa*, stating that Shiite’s teachings in Sampang is deviant, produced by MUI in Madura and East Java, as bodies of the state; it did not respect fundamental liberties and did not offer considerable protection for minority rights. Besides, they also recommended the government to stop Shiite spreading their teachings in Indonesia, considered as that having *ahlu al-sunnah wa al-jama’ah* followers. Because it will cause political instability that will threaten the unity of Republic of Indonesia. In contrast, MUI *fatwa* actually that which cause political instability threatening the implementation of UUD 1945, human right and religious freedom, because it support and strengthen violation of Shiite community’s right.

I also see the problematic interpretation of religious blasphemy law that which considered as deviant and usually is used by MUI to judge certain group. In this context, it means if Shiite teachings are different from and incompatible with the basic teaching of mainstream teaching, they will be considered as deviant, and they are. So difference from the basic teaching is deviant. In fact, before this violence emerged, MUI in Madura stated that Shiite was not deviant. This interpretation of constitution does not respect the fundamental liberties and does not offer protection for minorities’ right of religious freedom.

¹⁷ Alfred C. Stepan, “Religion, Democracy, and the ‘Twin Tolerations,’” *Journal of Democracy* 11, no. 4 (October 1, 2000): 37–57, doi:10.1353/jod.2000.0088.

Furthermore, Stepan also suggested that to apply democracy is to apply the “twin toleration” between elected government and religious institution. The lesson he took from Western European democracy was no more hostile separation between state and church implemented in there. He stated to apply democracy does not necessarily mean that we have to apply secularism or to build a strict wall between state and church. One thing we have to implement is the “twin toleration.” It means that both elected government and religious institution should be free from each other. On the one side, Government should respect the right of citizens to privately practice religion, on the other, religious institution also are not supposed to have privileged prerogatives to mandate public policy to democratically elected government.¹⁸

Let us now turn to the case of local government, such as Noer Tjahya as district leader and *Pemda/Pemkab* policy as a whole. First, having considered Tjahya’s attempt to increase his popularity to win the re-election through providing support to anti Shiite movement, it indicates that as government he was unable to implement the “twin toleration” and democracy in terms of respecting citizens to privately worship and protecting minority. It also can be seen from his speech saying that Shiite community is deviant; hence they have to stop practicing their teachings and asked the police to drive them away if still practicing it. In favour of his popularity, he took the side of majority to show that he had the same interest as did they have. This unneutrality of government is incompatible with democracy system that should be implemented in multicultural country.

Second, it is getting worse when the local government decided to relocate Shiite community to Siduarjo in order to create harmony and to avoid violence. This kind of solution explains that to achieve harmony and to avoid social conflict among religious adherents, we have to abolish differences by abolishing some groups which are different from mainstream and making them as same as mainstream is. This relocation is explicit evidence that the government representing the state did not protect minority for the sake of protecting religious freedom.

The next is court. Based on the data I got, the people in Sampang claimed Tajul Muluk and his followers is deviant, but the verdict of the court was that he was guilty because of his statement of “Qur’an is not original.” This indicates that the court was unable to prove that he and his followers are deviant. Different claim about Shiite deviancy from some expert witnesses also led the court cannot claim whether or not Tajul and his followers are deviant. This also means that they are not deviant and should be allowed to practice their teachings in Sampang. But the fact that government relocate them is incompatible with the result of the court and UUD 1945 about religious freedom.

Furthermore, his penalty was increased to be four years after proposing cassation to the higher court, because he was claimed guilty for being the cause of conflict escalation, as mentioned above. This shows that the court victimised the victim. How can Tajul Muluk as a victim of those who burn his and his follower’s house, those who violate his religious freedom be guilty for causing this conflict

¹⁸ Ibid.

escalation? How can practicing certain belief that does not violate democracy and other's right be the cause of conflict escalation? In fact, there were provocation, hate speech done by other including Rois Hukama and Nur Tjhaya. But in contrast, Rois Hukama was free from any penalty.

There was *eksaminasi*¹⁹ in 10th September 2012 stating that there has been formal law abusing in the process of Tajul Muluk judgment. One of them was that the court only had witnesses who had tension with him in this conflict to be the basic of court's decision. This means the court pick not neutrally witness that led court's decision became weak.²⁰ Since Tajul Muluk was claimed guilty based on this weak decision, it indicates the court as state's institution that should implement law and justice among all citizens is weak and undemocratic. The argument is because the implication is violation of citizen's right to have appropriate life in a country. No one should simplify this case, because living in prison based on the victimization of victim done by the court as state's institution is not simple.

F. Public Reason

Regarding the term of "public reason," I would like to include what John Rawl said:

"The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood."²¹

In addition, he perceived that since we live in countries which have plurality of conflicting reasonable doctrines, which are different from each other, we find difficulties in obtaining agreement on comprehensive doctrine. Hence, there should be reasonable universal reason that can be accepted by all of citizens. In this case, he purposed the idea of politically reasonable addressed to citizens as citizens. Furthermore, Rawl also suggested what it means by such reason is public: fundamental political justice questioning constitutional essential and matter of basic justice, and its nature and content are public. About political right and liberties may be written in constitution and interpreted in Supreme Court or similar institution.²² So according to this theory, in relation to Indonesia, there should be one reasonable idea which is universal and can be accepted by all of citizens contextually, in order to build democratic country where each citizen may respect rights of others'. Having this in mind, there actually has been this kind of

¹⁹ *Eksaminasi* is Indonesian law term (derived from English; examination). It is a process of examining, by some scholars or practitioners, court's product whether or not there are some procedural mistakes or abusing of justice principle in court's decisions. However, it does not constitutionally bind, but can be the basic for higher court like cassation.

²⁰ Zinal Abidin Bagir, et al., *Laporan Tahunan Kehidupan Beragama di Indonesia 2012*, (Yogyakarta: CRCS, 2013), p. 25.

²¹ John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64, no. 3 (Summer 1997): 765–807.

²² See Rawls, "The Idea of Public Reason Revisited."

idea founded by Indonesian's founding fathers, which is *Pancasila*. UUD 1945 is also, in my view, considered as the idea of public reason constitutionally written in which people from different ethnics, religions, beliefs, and any other things are protected by the state.

Public reason should also have, at least, three political forums where each citizen should seek reasonable ideas when involving in this forum.²³ The First, the discourse of judges in their discussion court. In my opinion, the process of Tajul Muluk's judgement by the court is included in this discourse. In this case, the court actually has tried to make the decision reasonable by claiming that he was guilty for stating "Qur'an is not original." It might be reasonable if one claims it as insulting. In contrast, it would be unreasonable if the court claimed him guilty for his deviancy based on MUI *fatwa*. This *fatwa* does not represent the voice of Muslims as a whole or even more all citizens. However, some scholars and activists still perceived that this court's decision is weak. One of the reasons is the fact that Tajul's penalty was increased became four years jailed based on claim that he has become the cause of dispute escalation. If it is so, then this victimisation of the victim is publicly unreasonable in terms of protecting the victim's right as equal citizen as others.

Second, the discourse of government officials. Government officials, in Sampang context, could mean local government/*pemda/pemkab*. Seeing that this government also played a role in escalating the dispute and did not protect Shiite minority in Sampang, by supporting anti Shiite movement through speech (Tjahya's speech), relocating them to Siduarjo, and asking them to stop practicing religious activities, I failed to see that the local government's policies and activities towards this minority was reasonable in public. It might be reasonable for only their side.

The last is the discourse of candidate for public office.²⁴ The way Tjhaya increased his popularity for the new re-election in Sampang through supporting anti Shiite community, considered as public interest, was unreasonable publicly. How can a leader of district, as body of the state, side and support certain community and violate the other rather than protecting all of his people?

Furthermore, the idea of public reason should not belong to only certain background culture with its own non-public reason.²⁵ Having considered this in mind, thus the idea of public reason can be from either secular or religious, but each who brings it should make it reasonable in public and may be based on public interest. Each should make others sure that this idea is what they need for the sake of public interest, specifically for the sake of a country.

Thus, let us see whether MUI as civic group and its *fatwa* are public reason or not. Since MUI actually represents the voice of Muslims majority who are Sunni, it can be seen from how they judged Shiite as deviant through the standardisation of Sunni; I would say it is problematic if we want to relate to the

²³ John Rawls, *The Law of Peoples: With, The Idea of Public Reason Revisited* (Harvard University Press, 2001).

²⁴ John rawl, "The Idea of public Reason Revisited," *The University of Chicago Law Review*, vol. 64, No. 3 (1997), p. 765-807.

²⁵ Rawls, "The Idea of Public Reason Revisited."

idea of public reason suggested by John Rawls. Because of MUI itself is civil society, and it is included in the discourse of government officials as one of public political forum. Hence, Rawls perceived;

“The idea of public reason does not apply to background culture with its many forms of Non-public reason or to media of any kind.”²⁶

As civil society in the public political forum that deal with Muslims matter in daily life, funded by the government, and should support democracy, how can MUI judge Shiite in Sampang as deviant through Sunni’s background culture? And consequently, it strengthens the anti-Shiite movement in Sampang and in many other places in Indonesia. It also became one of justification for those who conducted violence towards Shiite community. So I would argue that MUI’s interpretation of blasphemy is not a public reason. It only belongs to certain background culture that should not be taken as account in justifying violent act towards other groups.

However, there were attempts to make it reasonable in public if we see MUI recommendation in its *fatwa* of Shiite. They recommended the government to stop Shiite community to stop all of activities and close their offices in order to create political stability and to keep the unity of Republic of Indonesia.²⁷ They framed it as well to make it as public interest; in contrast, their way of judging Shiite is deviant is not reasonable in public political forum.

G. Contestation between National and Islamic identity

Indonesia has been experiencing Islamization to this day and it is the process that never ends. This process also means a struggle for hegemony and in some ways for power. However, we have to note that Islamic party never gained a full control of the state meaning that political Islam has never won. However, the grass-root level Islamization has never stopped through culture, law, and politics, such as *hijab* as both fashion and life style and the codification of Islamic law into positive law as represented in Religious Court, MUI, and Syariah District Regulation. The codification happens through negotiations between political elites. This Islamization then contributes to the contestation between national and Islamic identity in some ways, although many religious leaders and Islamic communities have agreed on being Muslims and nationalists at the same time. It becomes a contest when certain religious community feel threatened by other community, such as Shiite in Sampang, and then invited religious authorities such as MUI and religious leaders to judge Shiite and brought the case to the court, and asked the state to stop them for practicing some rituals and spreading their teachings. As a result, The Government relocated them to Sidoarjo, the other city

²⁶ Rawls, “The Idea of Public Reason Revisited.”

²⁷Keputusan Fatwa Majelis Ulama Indonesia (MUI) PROP. JAWA TIMUR No. Kep-01/SKF-MUI/JTMI/2012.

that far from their hometown. What happened was that Religious communities judged other as deviant and then invited and pressured the state to be on their side.

If we discuss what the national identity is then we should take *Pancasila*, Bhineka Tunggal Ika, and Constitution into account, where Shiite community is basically supposed to be protected by the state. The case of Sampang shows how Muslims majorities think of Islamic orthodoxy where the state has to involve in constructing and running it. It was a struggle of the orthodox Islamic identity in public sphere, instead of Democratic Islamic country. When the body of the state such as Court, Police, and District leader are pressured and forced to response to this, what kind of identity did they represent? Focusing the Court and District leader, Nur Tjahya, they indicated the un-neutrality, which means aligning themselves to Sunni-majorities.

Looking at another case, Identity contestation is part of nation-building, such as that happening in Malaysia where communities try to define what being Malays mean. However, Malaysia case is somewhat different in the sense that it defined in its post-colonial constitution that being Malays means having three pillars, such as Muslim religion, Malay language, and aristocratic Government of sultanate. These pillars should be embodied in every Malaysia citizens. What interesting is that there is a contestation within Islamic identity itself among radical and moderate *dakwahist*. Both groups have attempted to define what being Muslims mean, what kind of Islam is authentic, and what being Malaysians mean with their Islam as religion.²⁸ This case indicates that identity contestation is something unavoidable, yet the most important thing is that whether or not the contestation is in democratic ways. Indeed, this religion-state contestation has a significant effect in the condition of religious liberty in Indonesia. This designation has had various discriminatory effects on its adherents, which waters down significantly the guarantee of religious freedom in Indonesia.²⁹

H. Conclusion

Looking at the alignments of some state's institution, such as local government, and court in responding people's claim about deviancy of certain community, which later led to violence, it can be considered as undemocratic and publicly unreasonable. As I have mentioned above about protecting minority rights in democratic country, I failed to see that state's institution succeed in protecting minority right and tolerate their religious freedom as citizens. Thus, what actually happened was undemocratic and publicly unreasonable way of the state in responding to the claim of deviancy from certain group.

If we see MUI as civic group and civil society that should support democracy, it becomes problematic when producing such *fatwa* that supports and strengthens others' right violation. It might be an institution representing Sunni majority of Muslims' voice, but cannot recommend the state to stop other from

²⁸ see more Robert W. Hefner and Patricia Horvatich, eds., "Identity Construction, Nation Formation, and Islamic Revivalism in Malaysia," in *Islam in an Era of Nation-States: Politics and Religious Renewal in Muslim Southeast Asia* (University of Hawaii Press, 1997), 207–30.

²⁹ Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," *Asian Journal of Comparative Law* 3 (2008): 1–27, doi:10.1017/S219460780000144.

practicing what they believe, which is in public political forum. Hence, the existence of MUI as an institution representing Sunni Muslims that wish Shiite community stop their rituals is undemocratic and publicly unreasonable.

Further, Noer Tjahya's alignments with Sunni majority in Sampang in claiming deviancy of Shiite community, thus they should stop their activities or go out of Madura, shows his powerlessness in implementing twin toleration in the country struggling for democracy. Besides, relocating Shiite community from their homeland to Sidoarjo, is a complex undemocratic way of local government in equally treating all citizens, even there is such claim of deviancy towards certain community.

The last is the role of the court. As one of political forum that should publicly reasonable in favour of democracy, the victimization of Tajul Muluk whose right is violated is one indicating unreasonable way of the court in protecting minority rights, thus, it also violates the written constitution UUD 1945 as a part of public reasoning and is undemocratic

Answering how state respond to religious groups' judgment of "deviant" at the end of this paper, I would say generally that state has implied favouritism towards certain community by being an ally of that community and then violate other's right which is actually written in a constitution as a part of public reason. Besides, the state also gave a special privilege for Sunni Muslims to judge other through MUI. This is what I consider as undemocratic and unreasonable favouritism towards Sunni-Muslims

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