STUDIA ISLAMIKA

INDONESIAN JOURNAL FOR ISLAMIC STUDIES

Volume 2, Number 4, 1995

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ISSN 0215-0492

STUDIA ISLAMIKA

Indonesian Journal for Islamic Studies

Volume 2, Number 3, 1995

STUDIA ISLAMIKA (ISSN 0215-0492) is a journal published quarterly by the *Institut Agama Islam Negeri* (IAIN, The State Institute for Islamic Studies) Syarif Hidayatullah, Jakarta. (STT DEPPEN No. 129/SK/DITJEN/PPG/STT/1976) and sponsored by the Department of Religious Affairs of the Republic of Indonesia. It specializes in Indonesian Islamic studies, and is intended to communicate original researches and current issues on the subject. This journal warmly welcomes contributions from scholars of related disciplines.

Nico Kaptein

Meccan *Fatwâs* from the End of the Nineteenth Century on Indonesian Affairs[1].

Abstraksi: *Berabad-abad lamanya umat Islam Indonesia menoleh ke Arab untuk mendapatkan fatwa-fatwa yang mereka perlukan tentang pelbagai masalah keagamaan yang muncul di tanah air. Di antara kitab-kitab yang berisi fatwa-fatwa tersebut adalah* Muhimmât al-nafâ'is fî bayân as'ilât al-hadîth. *Ini merupakan kumpulan fatwa yang dikeluarkan mufti-mufti Mekah ternama di penghujung abad kesembilan belas atas dasar permintaan dari kaum Muslim di Nusantara. Kitab ini unik, dan tulisan ini akan menelaah keunikan tersebut. Untuk menangkap kandungan kitab tersebut, tulisan ini juga sangat mempertimbangkan latarbelakangnya.*

Di antara fatwa-fatwa itu banyak yang terkait dengan latar belakang historis, yakni ketika umat Islam Nusantara berada dalam penjajahan Belanda. Umat dihadapkan pada persoalan siapa yang sah menjadi wali nikah mengingat banyak pemimpin yang diangkat pemerintah kolonial; di pihak lain ada 'ulamâ' yang tidak diakui pemerintah. Menurut fatwa dalam kitab ini, 'ulamâ' yang tidak diakui tersebut tidak sah bertindak sebagai wali nikah, demikian juga yang diangkat pemerintah kalau memang umat tidak mengajukannya. Namun dalam situasi di mana tidak ada kadi, seorang Muslim awam yang diangkat pemerintah kolonial yang kafir, yang tidak faham hukum Islam sekalipun, bisa berperan sebagai wali nikah, bahkan sekalipun ia seorang fasiq. Ini untuk mencegah terjadinya fitnah dan untuk menjaga ketertiban umum. Juga difatwakan, seorang qadi yang diangkat pemerintah punya wewenang untuk menjadi wali bagi mereka yang tak punya wali. Sementara 'ulamâ' tidak pu-

nya wewenang untuk ini. Ia hanya berwenang dalam situasi di mana tidak ada penguasa dalam masyarakat. Inipun dengan syarat, bahwa 'ulamâ' tersebut dipandang adil.

Dalam kitab ini juga terkandung fatwa berkaitan dengan sikap yang harus diambil kaum Muslim Nusantara atas pemerintah kolonial Belanda yang kafir. Dalam fatwa itu pemerintah kolonial sendiri tidak ditentang, dan secara implisit pemerintah kolonial yang kafir diakui. Fatwa ini cukup berbeda dengan pandangan-pandangan yang beredar di Aceh, di mana para 'ulamâ' lokal menyerukan untuk berjihad menentang penjajah kafir. Fatwa dari Mufti Arab ini diperkirakan ikut meredakan keadaan di Aceh.

Fatwa-fatwa dalam kitab ini juga menarik secara etnografis. Di dalamnya terkandung fatwa tentang tali ari (plasenta). Dikatakan bahwa plasenta merupakan bagian dari tubuh, dan karena itu, seperti juga bagian-bagian lain dari tubuh, ia harus dikuburkan setelah dipotong dari bayi. Ada juga penjelasan, bahwa tali ari tersebut merupakan sumber penyakit, dan karena itu harus dipotong dan dikuburkan.

Sejumlah fatwa juga ada yang berkaitan dengan etiket. Di antaranya mengenai sikap hormat pada guru atau kyai. Difatwakan bahwa setiap murid harus berdiri kalau seorang guru atau kiyai datang, sekalipun sang murid sedang membaca ayat suci al-Qur'ân.Fatwa ini sebenarnya berbeda dengan adat yang ada di masyarakat Nusantara, misalnya dari Jawa atau Sunda. Dalam adat dua mayarakat ini seorang murid harus tetap diam di tempat secara tertib kalau seorang guru atau kyai datang. Fatwa ini menunjukkan adanya ketegangan antara Islam budaya Arab dan Islam budaya Jawa atau Sunda. Ini juga menunjukkan sikap yang harus diambil apakah menerima ide reformisme Islam atau menolaknya. Fatwa-fatwa yang menunjukkan perbedaan antara kultur Arab dan budaya lokal Nusantara banyak terkandung dalam kitab ini.

Banyak fatwa yang dikemukakan para mufti dari Arab yang terkumpul dalam kitab ini, yang merupakan pandangan ideal tentang Islam, tidak selalu selaras dengan praktek keseharian kaum Muslim di tanah air pada waktu itu. Karena itu muncul persoalan apakah fatwa-fatwa ini berpengaruh terhadap hidup keseharian umat Islam pada waktu itu? Pertanyaan penting ini membutuhkan riset lebih mendalam dan lebih jauh. Namun demikian, setidaknya dapat dikemukakan, bahwa fatwa-fatwa tersebut telah ikut menumbuhkan kesadaran di kalangan umat Islam Nusantara bahwa mereka merupakan bagian dari umat Islam dunia yang lebih luas.

نيكو كبتين

الفتاوى الصادرة من مكة عن جملة مسائل إندونيسية فى آخر القرن التاسع عشر

نبذة مختصرة: قرون طويلة يتطلع مسلمو إندونيسيا إلى شبه الجزيرة العربية للحصول إلى فتاوى هم فى حاجة ملحة إليها فيما يتعلق بالمسائل الدينية الظاهرة فى وطنهم. فمن بين الكتب الحاوية على هذه الفتاوى هو كتاب *مهمة النفائس فى بيان أسئلة الحديث*. هذا الكتاب عبارة عن مجموعة فتاوى أصدرها مفتيو مكة الأكثر شهرة فى أواخر القرن التاسع عشر عن الموضوعات المطلوبة من مسلمى أرخبيل إندونيسيا. هذا الكتاب وحيد من نوعه، والكتابة قدتناولت تلك الندرة الوحيدة، ونشير على محتواه وتقييم الخلفيات الظاهرة فيه.

من بين تلك الفتاوى ماله صلة وثيقة بالخلفية التاريخية، فىالوقت الذى كانت الأمة الإسلامية الإندونيسية ما زالت تحت الاستعمار الهولندى وهى الأمة التى تواجه موضوع من الذى يجب أن يتولى عقد نكاح المرأة بناء على أن كثيراما من الزعماء الشعبيين ولتهم الحكومة الهولندية ولاة الأمور الإسلامية فىالبلاد، ومن ناحية أخرى لم تعترف بالعلماء. بناء على فتوى هذا الكتاب، إن هؤلاء العلماء الذين لا تعترف بهم لم يصح أن يتولوا ولاية النكاح، وهكذا بخصوص من تعينه الحكومة لهذا الغرض إذا كانت الأمة الإسلامية لا ترشحه. ففى حالة ما إذا لم يكن هناك مأذون شرعى، فإن المسلم الذى تعينه الحكومة الكافرة من العوام وإن كان فاسقا يمكن أن يتولى ولاية النكاح تلافيا من الوقوع فى فتنة ولحفظ السلام والأمن العام.

ومن هذه الفتاوى، ان القاضى الذى عينته الحكومة له السلطة للولاية للمرأة التى لا ولى لها، بينما العلماء لا سلطة لهم فى هذا الأمر، فإن لهم سلطة إذا لم تكن هنالك سلطة حاكمة فى البلاد، وهذا بشرط أن يكونوا عدولا.

فى هـذا الكتـاب توجـد فتـوى فيمـا يتعلـق بالخطـة التـى يجـب أن يتخذهـا المسلمون فى أرخبيل إندونيسيا نحو الاستعمار الهولندى الكافر. ففى هذه الفتوى ألا تقاوم الحكومة الاحتلالية المحتلة، وضمنيا الاعـتراف بالحكومـة الكـافرة. هـذه الفتوى تختلـف كليـا مـع النظريـة السـائدة فـى منطقـة Aceh (آتشيه، بشـمال سومطرة) التى أعلن فيها العلماء المحليون الجهـاد ضـد المسـتعمر الكـافر. وفتـوى المفتى العربى هذا يعتبر مسكنة/أفيونا للحالة فى آتشيه.

إن لفتاوى هذا الكتاب جاذبية مـن ناحيـة الأعـراق الجنسـية، وفـى داخلهـا تتضمن فتوى عن المشيمة (غشاء الجنين)، إذ المشيمة جزء من الجسـم التـى يجـب أن تدفن بعد قطعها من الجنين. وقد قيل ان هذه المشيمة مصدر للأمراض، ولهـذا يجب قطعها ودفنها.

وبعض تلك الفتاوى ما يتصل بـ etiket (التصرفـات الأدبيـة)، منهـا احـترام المدرسين والمشايخ. تقول تلك الفتوى بأن كل تلميذ يجب أن يقف عند حضـور أى مدرس أو شيخ ولو كان التلميذ فى أثناء تلاوة القرآن، هـذه الفتـوى تختلـف عن التقليد الموجود فى الأرخبيل مثل فى جاوة أو فى صوندا. ففـى تقليـد هذيـن المجتمعين فإن التلميذ يجب أن يكون ثابتا فى مكانه منتظمـا إذا حضـر المـدرس أو الشيخ. وهذه الفتوى تدل على أن هنالكم مشادة بين نظـام الإسـلام فـى الثقافـة العربية والثقافة الجاوية والصونداوية. وهـذا يشـير كذلـك إلى الخطـة التـى يجـب اتخاذها من حيث هل تقبل التقدم الإسلامى أو رفضه. إن الفتاوى التى تشـير إلى خلاف الحضارة العربية وثقافة الأرخبيل المحلية موجود بكثرة فى هذا الكتاب.

كثير من الفتاوى التى تقدم بهـا هـؤلاء المفتيـون مـن الجزيـرة العربيـة الذيـن تجمعوا رأيا فى هذا الكتاب تصوروا النظرية المثالية عـن الإسـلام لا تتلائـم دائمـا مع التطبيقات اليومية للأمة الإسلامية فى إندونيسـيا وبـالأخص فـى هـذه الآونـة ولذلك ظهرت مسألة هل هذه الفتاوى ذات أثر فى حياة يومية الأمـة الإسـلامية المعاصرة؟ هذا السؤال الهام يحتاج إلى بحث أكثر عمقـا وأوسـع بعـدا مهمـا كـان الأمر فإن أقل ما نستطيع تقديمه هو أن تلك الفتاوى المذكورة قـد غرسـت وعيـا فى وسط الأمة الإسلامية فى الأرخبيل لأنها تعتبر جزءا من الأمـة الإسـلامية فـى الدنيا الأكثر اتساعا.

I.

For many centuries Indonesian Muslims turned to the *'ulamâ'* in the Haramayn for guidance in religious matters. The oldest known evidence for this are two works on mysticism which the seventeenth century Medinan scholar Ibrâhîm al-Kurânî, one of the teachers of 'Abd al-Ra'ûf al-Sinkilî, wrote at the request of Muslims from the Malay-Indonesian Archipelago, the 'Jâwi people' as he calls them. Two other examples, one from the seventeenth and one from the eighteenth century, are also known (Azra 1992:259-261, 288). Although we may expect that there must have been many more such requests for religious guidance from the Malay-Indonesian Archipelago, addressed to authoritative Meccan *'ulamâ'*, extant examples of such texts are rare.

In the present article I wish to draw attention to a collection of requests for religious advice which is entitled *Muhimmât al-nafâ'is fî bayân as'ilat al-hadîth*, 'The precious gems dealing with the explanation of questions about current topics'. This work is a collection of *fatwâs* given by the most prestigious Meccan *muftîs* in the final quarter of the nineteenth century at the request of Muslims from the Malay-Indonesian Archipelago. Apart from this work, I know of only one other Meccan *fatwâ* collection of a similar size which was intended for Muslims from South-East Asia, namely the *Fatâwâ al-Fatânîyyah* by Ahmad ibn Muhammad ibn Zain al-Fatânî (1856-1906), who issued these *fatwâs* in Mecca towards the end of his life (Matheson and Hooker 1988:28-30). As was to be expected, in view of the Patani background of their author, these *fatwâs* in this work tend to deal with cases relevant to the situation in mainland South-East Asia (al-Fatânî 1377 [1957])[2]. The *Muhimmât al-nafâ'is*, then, seems to be unique, and I want to discuss a number of issues which are dealt with in this book. However, before I do this I will give some essential background information on this collection of *fatwâs* and on the Indonesian presence in Mecca at the end of the nineteenth century.

II.

The *Muhimmât al-nafâ'is* was published in a lithograph edition in Mecca in 1310/1892. It contains some 130 *fatwâs* referring to all kinds of subjects. The majority of the *fatwâs* are signed by the *muftî* who issued them. In many cases this is Ahmad ibn Zainî Dahlân, who was the *muftî* of the Shâfi'îtes from 1871 until shortly before his death in

Medina in 1886. He received questions from Shâfi'îte Muslims from all over the world (Snouck Hurgronje [1887] 1923:67-68). A number of other *muftîs* apart from Ahmad Dahlân are also featured in the collection. The second name which springs to mind is Muhammad Hasab Allâh (1233/1817-1335/1917), another Shâfi'îte scholar from Mecca, who was a rival of Ahmad Dahlân. Among their differences of opinion were their views on the smoking of tobacco: Hasab Allâh considered it *haram* (forbidden), while Dahlân was a dedicated smoker (cf. MN:51; 72-73). Hasab Allâh had been sent to prison for some time through the machinations of Dahlân (Snouck Hurgronje [1887] 1923:72-74; 'Abd al-Jabbâr, 1385/1965:259-263). A third person who figures in the *Muhimmât al-nafâ'is* is 'Abd al-Rahmân ibn 'Abd Allâh al-Sirâj al-Hanafî (d. 1314/1896), who was the *muftî* of the Hanafite *madhhab*, the school of Law adhered to by the Ottoman government. He was also engaged in teaching ('Abd al-Jabbâr, 1385/1965:196). Another *muftî* whose *responsa* are noted in the collection is Muhammad Sa'îd Babâsîl (d. 1330/1912), who was the assistant to Ahmad Dahlân in the issuing of *fatwâs* (*amîn al-fatwâ*) towards the end of the latter's life (GAL, SII 811; 'Abd al-Jabbâr, 1385/1965:277-278; Snouck Hurgronje 1941:68). The last *muftî* whose name is mentioned is 'Abd al-Qâdir ibn 'Abd al-Rahmân Fatânî, who belonged to the group of scholars in Mecca with a Patani background. He was a pupil of Dâwûd ibn 'Abd Allâh al-Fatânî (Saghir Abdullah 1990:3, 17, 47). A number of his *responsa* in Malay are included in the *Muhimmât al-nafâ'is*. Finally, it should be mentioned that in some cases the name of the *muftî* is not specified.

In most cases, these *fatwâs* are presented in the following way: they begin with a question in Arabic, whereupon this question is rendered into Malay (in Arabic script). Next, the answer is given in Arabic, followed by a translation into Malay. The Arabic part has been fully vocalized, which shows that this text was meant for persons who were not yet fluent in this language. This plus the presence of the Malay translations underlines that these *fatwâs* were intended for the members of the so-called Jâwah colony in Mecca. In the text (MN:104) it is said that the translation of the book was finished on 25 Safar, 1305 (12 November 1887) in the Qushâshiyyah quarter in Mecca. In addition to this date, the name of the person who made the translation is also mentioned: 'Abd al-Salâm al-Âshî. His *nisbah al-Âshî* (= Arabic: the Acehnese) shows that he originated from Aceh

in North Sumatera. Although I have not been able to establish the identity of this person with any certainty, he should perhaps be equated with a certain Abdoes-Salam who, according to a letter from C. Snouck Hurgronje dated 22 November, 1890, was due to leave Mecca for Aceh to raise money there for the founding of *waqfs* in the Holy City (Gobée and Adriaanse 1957-1965: 1599-1600). If this identification is correct, this 'Abd al-Salâm must have been a learned Muslim of Acehnese descent living in Mecca, who was working for the benefit of his compatriots in the Jâwah colony and at the same time maintained close relations with his country of origin.

Fortunately, we are well informed about the Jâwah colony because the great Dutch Islamicist C. Snouck Hurgronje (1857-1936), who knew Mecca from personal observation, gave a famous description of it in the latter part of the nineteenth century (Snouck Hurgronje [1889] 1970:215-292). The Jâwah colony consisted of people who had originally come from the *bilâd al-Jâwâh* (= the Malay-Indonesian Archipelago) to the Holy City for devotional purposes or for religious study, and had then settled there permanently, spending the rest or a large part of their lives there. As long as their command of Arabic was still inadequate, all Jâwis in Mecca used the Malay language, even if this was not their mother tongue (Snouck Hurgronje [1889] 1970:215, 229, 264). I have no clear idea of the number of persons of Jâwi descent in the period in which the *Muhimmât al-nafâ'is* was published; some twenty-five years later their number was thought to be around 5600, excluding all children under the age of 10-12 years, and including people who had been born in Mecca of Jâwi fathers (Anonymous 1915:538). The total population of Mecca in this period was estimated at 125,000 (E.I^2., vi, 159). In addition to the Jâwis who dwelt permanently in Mecca, each year thousands of Indonesian pilgrims came to the Holy Land to perform the *hajj* (for exact numbers, see Vredenbregt 1962:148-149). The core of the Jâwah colony was formed by teachers and students who had great influence on Islamic matters in their countries of origin (Snouck Hurgronje [1889] 1970:254), and for this reason Snouck Hurgronje characterized the Jâwah colony as 'the heart of the religious life of the East-Indian Archipelago' (Snouck Hurgronje [1889] 1970:291). Therefore it is important to have some knowledge of the topics which were being discussed in this colony, and the *Muhimmât al-nafâ'is* constitutes an excellent source for this purpose.

III.

In order to illustrate the rich contents of the *Muhimmât al-nafâ'is*, in this section I will examine a few issues which are touched upon in the collection.

a) Problems caused by the Dutch presence in the Netherlands East Indies.

The *Muhimmât al-nafâ'is* includes a number of *fatwâs* which can be related to specific historical circumstances. The following is an example of this (MN:52-54).

A certain community (Arabic *baldah*; Malay *negeri*) is composed of villages (Arabic and Malay *qaryah*) which are all administered by Muslim heads who have been appointed as such by the infidel ruler (Arabic and Malay *hâkim kâfir*). These village heads have a leader (Arabic *kabîr*; Malay *besar*) to whom they (Malay *hulubalang yang kecil-kecil*) are responsible in the execution of their duties. This leader (Malay *hulubalang besar*) has also been appointed by the infidel ruler with the approval of the people of the village. In each village there are also *'ulamâ'* who have not been appointed by the infidels to administer the law, but who nevertheless claim that they should function as the legal representatives of bride (*walî al-nikâh*) at marriages.

The Malay rendering is longer than the Arabic original and adds the question of who should conclude a marriage when the occasion arises: the said *'ulamâ'*, the 'Great Ulebalang' or the 'Little Ulebalangs' for each individual village or the infidel ruler?

In his answer to this question Muhammad Hasab Allâh says that the said *'ulamâ'* cannot function as a *walî al-nikâh*, when nobody has given them any authority to do so. According to the Chapter on the Supreme Leader in the *Kitâb al-mughnî* (by al-Shirbînî, d. 977/1569, Juynboll 1930:374), likewise the decisions of those who have been appointed by an infidel ruler are not to be executed. The *Fath al-mu'în* (written by Zain al-Dîn al-Malaibârî in 982/1574, Juynboll 1930:375), however, explains that in a situation in which the *qâdîs* are dismissed and the sultan, even he is an infidel, appoints a Muslim who is not qualified for the administration of Law, this appointment, as well as the legal judgements of the person appointed, are valid, even if this Muslim is a sinner (*fâsiq*). He is the one who should be requested to give legal opinions (*fatwâs*) in the territory of Islam which has been overpowered by the infidels, in order to avoid chaos (Ara-

bic and Malay *fitnah*), and to promote the well-being of the people. If the Muslim dignitaries of the community accept and confirm the authority of this local ruler appointed by the infidels, then he is in charge. This is very important to save the community from chaos (*fitnah*).

The same question is also answered by Ahmad Dahlân, who is of the opinion that a person who has been appointed as *qâdî* by a ruler - Muslim or not - , is indeed *qâdî* and is able to conclude marriages for women who do not have a *walî* of their own. The *'ulamâs* do not have this power.

In the same *fatwâ* Ahmad Dahlân gives a second answer relevant to the question. If a woman, he says, for various reasons does not have a *walî* to give away her in marriage, the Muslim 'sultan' should function as *walî* because, according to the consensus, it is not possible for an infidel to perform this function. The term sultan is specified in this case by mentioning a number of categories to which it can be applied. One of these is the so-called *qâdî al-darûrah*, an 'emergency' *qâdî* (cf. Juynboll, 1930:315). The *'ulamâs*, however, are not able to give away a bride in marriage. However, if there is no ruler, an *'ulamâ'* with the degree of absolute *ijtihâd* or a just (*'adl*) *'ulamâ'* may function as such.

In both form and content this *fatwâ* is very reminiscent of another *fatwâ* issued by Muhammad Hasab Allâh addressing the problem of the way the Acehnese should behave towards the Dutch during the Aceh war (Van Koningsveld 1990:92-94; 98). Bearing this in mind, it appears that the situation described in the present *fatwâ* reflects the political organization of Greater Aceh around the year 1880: the infidel ruler is, of course, the Dutch colonial government which waged war in this part of the Archipelago from 1873 onwards. The village heads mentioned in the *Muhimmât al-nafâ'is* have to be equated with the heads of the so-called 'mukims', a unit composed of several kampongs which originally included at least forty male adults (the minimum required to perform a valid Friday prayer). These heads who were called *'imeum'* in Acehnese were subordinate to the *uléëbalangs*, the rulers of a larger territory, who are called *hulubalang besar* in the *fatwâ* under discussion here. Some of these *uléëbalangs* collaborated with the Dutch government. The final group mentioned are the *'ulamâ'*, the religious scholars, who did not associate themselves with the Dutch, forming the fiercest opposition throughout the Aceh war (Snouck Hurgronje 1893-1894:I,84 ff.).

Apart from the technical juridical aspects, the most interesting point of this *fatwâ* is that the Dutch rule as such is not challenged, and that the infidel ruler is implicitly recognized. This opinion is quite different from the ideas which were circulating in Aceh at the time, where a number of local authoritative *'ulamâ'* were constantly calling for a *jihâd* against the infidel government (Gobée and Adriaanse 1957-1965:98-103). In view of the great influence exerted by the Meccan *muftîs* on the Indonesian Muslims, this particular Meccan *fatwâ* discussed here will most probably have helped to calm down the situation in Aceh.

b) Ethnographical data.

Apart from *fatwâs* relating to historical situations, the *Muhimmât al-nafâ'is* also includes texts which are interesting from an ethnographical point of view. One example may suffice this illustrate this. The *fatwâ* begins as follows:

> Question. What is your opinion - may your superiority ever endure - about a custom which is current in various regions, namely that when a baby has been born the navel cord is cut and the placenta (Arabic and Malay *mashîmah*), which the people call the afterbirth (Arabic and Malay *khalâs*), is put in a bag (Arabic and Malay *kharîtah*); then salt, lemon and red pepper are thrown upon it, and it is hung from the ceiling of the kitchen. Whenever a particular disease afflicts that baby, the midwife (Arabic *qâbilah*; Malay *bidan*) goes to this bag in order to sprinkle it (sc. the bag) with betel (Arabic *tanbul*; Malay *sirih*) or some similar substance. Then, through God's power that baby is cured. Is this allowed from the Sharî'ah point of view or what is your legal opinion on this? (MN:18-19).

In the answer Ahmad Dahlân states that according to Jamâl al-Ramlî (d. 1006/1596, Juynboll 1930:31, 374) the placenta is part of the human body and therefore, like all other parts of the body, should be buried (MN:19).

As is often the case, the most interesting part of this *fatwâ* is the question. From the scholarly literature it is known that both in Aceh and Java the placenta was regarded as the younger brother of the newborn baby, and that certain rituals were carried out with it. In Java, the 'younger brother', *ari-ari*, was not disposed of but wrapped up in banana leaves or cotton cloth, along with certain things, for example salt or a needle. One of the explanations given for the inclusion of the needle was that this would serve as a weapon to prevent

the younger brother from harming his older brother or sister (Snouck Hurgronje [1891-1892] 1924:128, 130-132). The placenta was also preserved in the Sunda lands, in West Java. Should the newborn baby fall ill, a ritual meal was organised for the placenta. A few days later the placenta was thrown into the river, or sometimes it was buried (Moestapa [1913] 1946:36). In Aceh, the placenta was wrapped up in some rags with some salt and ashes from the kitchen and kept behind the kitchen oven. In general, however, the Acehnese customs with regard to the placenta were not as elaborate as those in Java: for instance, there is no trace of the belief that the placenta could harm its older brother or sister in the first days after the birth (Snouck Hurgronje 1893-1894:I,412; 421).

In the relevant *fatwâ* the placenta is presented as the source of the illness of the baby and, therefore, the question reflects certain Javanese practices with regard to the placenta. This *fatwâ* provides us with some additional information about these customs: the reference to lemon and red pepper, as far as I know, is not mentioned in the scientific literature. Perhaps, the addition of these substances may have had a certain symbolic meaning. Apart from this, it is interesting to see that it was apparently believed that the sprinkling of the placenta with betel by the midwife (a symbolic punishment?) would effect the recovery of the sick baby.

c) Etiquette.

The *Muhimmât al-nafâ'is* contains a number of *fatwâs*, which do not at first glance reveal why they have been included in this collection for Indonesian Muslims. Nevertheless, on closer examination the connection with Indonesian matters clearly emerges. The following is one example of this type:

> What is your opinion - may your superiority ever endure - about a student (*murîd*) who is reciting the Qur'ân. Then, his teacher (*shaykh*) enters, whereupon this student stands up to respect and to honour him, and stops his recital. Is this allowed or not? ...

The answer given by Ahmad Dahlân is that standing up (Arabic *qiyâm*; Malay *berdiri*) for the *shaykh* is allowed 'even if he (sc. the student) stops reciting' (MN:72).

This *fatwâ* was undoubtedly requested by people from the Netherlands East Indies because according to the Javanese and Sundanese

adat (custom) the way to show respect for a person was not to rise for him, as was the Arab/Islamic custom, but on the contrary to remain seated in front of the person to whom respect should be shown (Moestapa [1913] 1946:14-15). In real terms, this meant that in showing his respect to his teachers a student of Javanese or Sundanese origin, when studying in Mecca, had to act in an entirely different way from that which he was used to at home. In this *fatwâ* the custom of standing up is advocated in unequivocal terms and, in addition, the approval of this custom is reinforced by stating that it is even allowed, when this implies that the reciting of the Holy Book will be interrupted.

This *fatwâ* is interesting because at the beginning of the twentieth century a hotly debated issue was connected with the question of standing up. This concerned whether or not one was permitted to stand up to express one's respect for the Prophet Muhammad during a ritual recital of his pious biography (a so-called *mawlîd text*), at the point at which Muhammad's birth was recited. At the beginning of the twentieth century, the underlying reasons for this debate were to do with the acceptance or denial of reformist ideas (see Kaptein 1993a), while the immediate cause of this *fatwâ* was the tension between an Arab/Islamic cultural phenomenon on the one hand, and a traditional Javanese and Sundanese custom on the other. Although as reformist ideas spread throughout the entire Muslim world from the beginning of the twentieth century, the issue of standing up also became of interest to Muslims in other regions of the Muslim world, like India (Baljon 1995:167-168) and Morocco (Kaptein 1993b:88), the circumstance that rising as an expression of respect ran counter to traditional Javanese and Sundanese etiquette, will have increased the attention paid to it by scholars from these regions.

d) Local Muslim customs.

A number of *fatwâs* give an insight into the tension that existed between customs which were observed in Indonesian Islam, and more general Islamic opinions. An example of this is the following *fatwâ*.

> Question. What is your opinion - may your superiority ever endure - about the custom of the people of the Malay-Indonesian Archipelago (*ahl al-Jâwâ*) of beating a drum (Arabic *tabl*; Malay *tabl*) with a length of 15 ell (Arabic *dhirâ'*; Malay *hasta*) or more, on Friday in order to summon the people to the Friday mosque. And if they do not do this, they do not hear the voice of

> the announcer of the time of prayer (Arabic *mu'adhdhin*; Malay *mu'adhdhin bang*). Is this allowed or not? Let us benefit from your answer.
> [The answer] O God, [give us] guidance to [do] what is right. The drum mentioned and the beating on it are incompatible with proper conduct (Arabic *al-awlâ*; Malay *sunnah*), because the call to prayer (Arabic *adhân*; Malay *bang*) is prescribed by the Law, in order to make this known to the majority of the Muslims. If the areas are [too] great, at their outermost limits more announcers of the prayer should be placed at the two borders, for the beating of the drum mentioned, which takes place unlawfully and resembles the [way of the] unbelievers is forbidden (Arabic *muharram*; Malay *haram*). But God knows best. Sayyid Ahmad Dahlân (MN:71).

This beating on the drum to announce the time of prayer, the time of fasting and other special occasions was common practice in the Netherlands East Indies and mainland South-East Asia, and various historical sources show that this custom did indeed give rise to debates about its permissibility (Blasdell 1940:43-44). In the Netherlands East Indies, the well-known Muslim scholar from Batavia, Sayyid 'Uthman (d. 1914), also dealt with this issue. He argued that the use of the drum (Malay *bedug*) was permissible to announce the time of prayer to people at a considerable distance, on condition that the use of the drum was restricted to a minimum, and its beating did not degenerate into a mere game (Pijper 1977:39-40). Thus, in this case Sayyid 'Uthman's opinion differs from that of Ahmad Dahlân, leaving room for local custom.

A second example of a local Islamic custom I would like to bring up here is circumcision. This topic is touched upon in ten out of the total of 130 *fatwâs* in the *Muhimmât al-nafâ'is*. At first sight this may seem strange because this operation is regarded as one of the most prominent identity- markers of a Muslim, and therefore one would not expect this to constitute an issue in a collection of *fatwâs* which is addressed to a Muslim audience. However, one brief *fatwâ* reveals exactly where the controversy lay. In this text, which is given only in Malay, the name of the *muftî* is absent. The fact that this *fatwâ* is given only in Malay perhaps indicates that it was not given by one of the Arab *muftîs* of Mecca, but by 'Abd al-Qâdir ibn 'Abd al-Rahmân Fatânî. In translation this text runs as follows:

> Question. Is it sufficient if a person has been circumcised (*berkhatan*) by the cleaving of the skin of his penis (*dibelah kulit dhakarnya*), so that it is exposed to its glans (*hashafa*)? Is it right for this person to act as a legal guardian (*walî*) at the marriage of his child and could he act as a witness (*shaksi*[3]) at a wedding or not?

> The answer thereof. The cleaving is not sufficient. Bajîramî (d. 1007/1783, GAL, GII:324) and others say that it is compulsory to remove the foreskin which covers the glans of a male (*wajib dikerut akan kulit yang menutupi hashafa pada laki-laki*). Whosoever does not do so, commits a sin (*berdosa*) and may even be considered a sinner (*fâsiq*), who is not allowed to act as a legal guardian at a marriage (*walî nikah*), or bear witness. And God knows best (MN:90).

This *fatwâ* shows that there were Indonesian Muslims who had been circumcised by merely incising the foreskin. This cleaving was an indigenous Indonesian circumcision technique which originated in pre-Islamic times, and which had been included in Indonesian Islam. However, the Meccan *muftî* who issued this *fatwâ* regarded this cleaving as invalid from the point of view of Muslim Law, and proscribed full circumcision in which the entire foreskin had to be cut off.

This *fatwâ* is interesting because it seems certain that similar *fatwâ*s made a deep impression and persuaded Indonesians in Mecca to act according to the advice given. From Snouck Hurgronje's book on Mecca in the latter part of the nineteenth century it is clear that there were Indonesians who had themselves circumcised for a second time to satisfy the opinion of the Meccan religious establishment, as expressed in this *fatwâ* (Snouck Hurgronje (1889) 1970:228); the former *hoofdpanghoeloe* of Bandung, Haji Hasan Moestapa (d. 1930) also reported that many Javanese men in Mecca in 1880 were circumcised for the second time (Moestapa 1946:53). As in the case of the previous one, we can regard this *fatwâ* as an example of the tension between an indigenous custom (sc. the cleaving of the foreskin) and the more general Islamic point of view, as advocated by the *muftîs* (sc. the entire cutting off of the foreskin). In present-day Indonesia, the cleaving of the foreskin is no longer performed, so in this case the general Islamic custom has triumphed over the local custom. Although other factors will have also played a role in the disappearance of this indigenous circumcision technique, the religious incentive to do away with the cleaving of the foreskin should certainly not be underestimated (Kaptein, forthcoming).

e) Adat law.

Many *fatwâs* in the *Muhimmât al-nafâ'is* discuss topics which are related to what later became known as 'adatrecht' (customary law): quite a few *fatwâs* deal with indigenous family law, while others touch

upon indigenous systems of inheritance. For this article I have selected another topic, to wit the issue of pledging (Arabic *rahn*; Malay *menggadai*). The first *fatwâ* I will examine reads in translation as follows:

> Question. What is your opinion - may your superiority ever endure - of a person who pledges (Arabic *rahanah*) land, for instance. The pledge-taker (Arabic *murtahin*) benefits from it without any stipulation being made in the contract apart from mutual consent between the two of them. [He benefits from it] thereafter for one day, two days or more[4]. Is that legally valid or not? And if this user (*muntafi'*) [in his turn] become the pledge-giver (*râhin*), while the seeds are supplied by [another] pledge-taker with mutual consent and if after the harvest both of them receive half, as is the custom (*'âda*) of the land of Minangkabau, is this legally valid or not? Let us know your answer.
> [The answer] O, God, [give us] guidance to [do] what is right. The first manner is allowed (*jâ'iz*), while the second is not (*ghayra jâ'iz*). Sayyid Ahmad Dahlân (MN:46).

Before giving comments on this *fatwâ* I will translate another which deals with the same topic. It runs as follows:

> Question. What is your opinion - may your superiority ever endure - about a person who pledges (Arabic *rahana*) land or plants, while the profits (*al-manfa'ah*) are to accrue to the pledge-taker (*murtahin*). This is the custom (*'âdah*) of our land. Is what was just mentioned forbidden (*harâm*) or reprehensible (*makrûh*)? Let us know your answer.
> [The answer] O, God, [give us] guidance to [do] what is right. If the pledge-taker reaps the profits of the land and the plants, this is forbidden or reprehensible, if a condition has been made for the pledge-giver, through which he (sc. the pledge-taker) aims to get financial gain from this. And God knows best. Sayyid Ahmad Dahlân (MN:55).

It is interesting to note that in the first *fatwâ* translated 'Minangkabau', West Sumatra, is explicitly mentioned. Professional literature on this topic has clearly described that pledging was a widespread custom in this part of the Archipelago, because people were averse to selling land which pertained to the traditional property of the family (*harta pusaka*). In times of hardship, however, or when a person had more land than he could work, the adat allowed this land to be pledged. As a result of this transaction the pledge-giver received money from the person who took the pledge, but the ownership of the land was not transferred. In Minangkabau it was normal practice

for the fruits of the land to go to the pledge-taker, while the practice of 'subpledging', by which the pledge-taker himself became the pledge-giver, is also recorded (Willinck 1909:722-746; subpledging, 737).

The first *fatwâ* translated here shows that Ahmad Dahlân considered the usufruct of land by the pledge-taker permissible. This is an interesting opinion because, according to a number of Shafi'ite authorities the right to take the pledge did not automatically convey the usufruct of it (Juynboll 1893:66, 67, 74). In this respect Ahmad Dahlân's opinion is quite surprising. The second problem raised in this *fatwâ*, the issue of 'subpledging', is rejected categorically by Ahmad Dahlân. The interesting aspect of this part of the *fatwâ* seems to me to lie in the question: it shows the existence of a form of agricultural co-operation in Minangkabau, fully independent of the owner of the land, by which the pledge-taker becomes pledge-giver and 'subpledges' the use of the land against half of its profits.

The second *fatwâ* does not mention Minangkabau, but only refers to 'our land'. It is possible that Minangkabau is again referred to here, although the practice of pledging was also known in Java (Enthoven 1912:133-135). In this *fatwâ* Ahmad Dahlân considers pledging forbidden or reprehensible, if the pledge-taker sets out deliberately to make financial profits. The reason for this is undoubtedly that such a form of pledging close approaches the practice of accruing *ribâ*, interest.

Both *fatwâs* on pledging in the Netherlands East Indies show that at the beginning of the final quarter of the nineteenth century certain aspects of this indigenous custom were disapproved of, or at least criticized, by the most authoritative Shafi'ite *muftî* of his time, and that from an Islamic point of view these indigenous forms of pledging were under pressure.

Viewed from an analytical angle this example on pledging shows that the *Muhimmât al-nafâ'is* includes interesting sources of information for the study of adat law. In the first place these *fatwâs* are of interest because they are *indigenous* sources, which were recorded without any interference from Dutch colonial officers, which was the case with most sources for adat law. Furthermore, the relevant *fatwâs* have the advantage that they can be easily understood in comparison with other indigenous written sources for our knowledge of adat Law, which are often difficult to interpret. Another advantage of these texts over other indigenous sources is that they can be roughly

dated. For this reason, I think it might be interesting for a student of adat Law to study all other relevant passages from the *Muhimmât al-nafâ'is* in the light of all later materials which were collected in this field.

IV.

By presenting a number of concrete cases, in the foregoing section I have demonstrated that the *Muhimmât al-nafâ'is* is an important source for historical, ethnographical, juridical and other forms of research. The significance of the work is beyond any shadow of doubt: it presents a picture of all kinds of issues which were of topical interest to Muslims in the Jâwah colony, and in the Netherlands East Indies in the latter part of the nineteenth century.

An enormous variety of issues is discussed in the *Muhimmât al-nafâ'is*, and there are many examples of tension between the Islamic ideal, as formulated by the authoritative Meccan *muftîs* in their *fatwâs* on the one hand, and all kinds of practices which were carried out in daily life on the other. One question of the utmost importance is whether or not these Islamic ideals played a role in the shaping and reshaping of Indonesian customs in everyday life, and if this question is answered affirmatively, how this came about. To put it another way: had the ideas which were voiced in these *fatwâs* any influence on the interpretation and concrete observance of Islam in Indonesia? To answer this question, I think that each single case should be studied individually, and that this research should be extended to the present. However, broadly speaking I think the least we can say is that, through the medium of these kind of texts the Indonesian Muslim community became more and more aware that it formed part of the world-wide Muslim *ummah*[5].

Endnotes

1. This article is an extended version of a paper which I presented at the *Joseph Schacht Conference on Theory and Practice of Islamic Law*, which was held at the Universities of Leiden and of Amsterdam from 8 - 11 October, 1994. I thank Dr. Azyumardi Azra for stimulating me to prepare this paper for publication.
2. I thank Dr. M. van Bruinessen for making his photocopy of this book available to me. Unfortunately, I have not yet seen the PhD thesis on this text, which Perayot Rahimmula submitted at the University of Kent in 1990.
3. The marriage contract should be concluded in the presence of at least two witnesses (Juynboll 1930:191).
4. Probably by 'day' is meant '(day of) harvest'.
5. At present, I am preparing an edition of the *Muhimmât al-nafâ'is*.

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