

R. Michael Feener and Mark E. Cammack, eds. *Islamic Law in Contemporary Indonesia: Ideas and Institutions*. Cambridge: Harvard University Press, 2007. 325 pp.

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Thriving Islamic activism—as well as enduring Muslim aspirations and assertions to expand and enforce *shari'a* (Islamic law)—across the Muslim world in recent decades has fascinated scholars and students of religion, society, and politics.¹ Now, a number of scholars and students across disciplinary boundaries (not only classic religious studies, but also anthropology, history, law, political science, and sociology) focus their analytical attention on various patterns of religious thoughts, legal practices, and enforcement in order to gain a better empirical and theoretical knowledge pertinent to this trend. What do “Islamic law” and other associated institutions (e.g., Islamic courts and judges) look like in Indonesia? How do they differ from those found elsewhere in the Muslim world, such as Egypt, Malaysia, and Pakistan? Who makes and enforces the laws? How—and to what extent—do other non-theological factors, such as locally specific cultural, social, and political conditions, shape its development? Are the same set of laws, rules, principles, and procedures adopted and enforced similarly across the archipelago? How do Islamic laws and courts work in practice in a largely secular, multi-religious state, such as Indonesia? How much power do those Islamic institutions exert on the daily life of Muslim men and women?

Despite the mounting interest in the topic, many questions still remain largely unanswered, leaving considerable empirical and theoretical lacuna in the literature. These questions are especially intriguing because Indonesia is not only the largest Muslim-majority nation, but also socially and culturally diverse—and deeply divided religiously. Moreover, the Indonesian state—and its legal institutions in particular—has been essentially secular since independence, with the regime (both autocratic and democratic) largely dominated by secular political elites up to the present day.

This edited volume is a welcome contribution by leading experts and observers of Indonesia to help answer those questions. Twelve chapters authored by sixteen scholars draw upon an impressive array of both Indonesian and Arabic primary sources and data, as well as on firsthand empirical research conducted in the archipelago, to cast light on the formation of Islamic law and courts and religious authority not merely as a body of scriptural and doctrinal knowledge, but, more importantly, as it affected modern institutions. As outlined at the outset by the volume's editors, Michael Feener and Mark Cammack, these scholars explore the major developments of various facets of Islamic law in contemporary Indonesia:

Legal thought and theory—
chapter 1, by Feener, and
chapter 2, by Nelly van Doorn-Harder;

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¹ Robert W. Hefner, ed., *Shari'a Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011).

- Fatwas* (Islamic legal opinions) and *fatwa*-issuing bodies—
 chapter 3, by Kees van Dijk, and
 chapter 4, by Michael Laffan;
- How courts and other institutions draft and implement laws—
 chapter 5, by Rifyal Ka'bah;
- Substantive laws on divorce and marriage—
 chapter 6, by Cammack, Helen Donovan, and Tim Heaton, and
 chapter 7, by Siti Musdah Mulia and Cammack;
- Administration and operation of Islamic judiciary and courts—
 chapter 8, by Cammack, and
 chapter 9, by John Bowen;
- Introduction and implementation of more comprehensive *shari'a* in Aceh—
 chapter 10, by Moch. Nur Ichwan, and
 chapter 11, by Tim Lindsey, M. B. Hooker, Ross Clarke, and Jeremy Kingsley;
 and
- Islamic higher education—
 chapter 12, by Azyumardi Azra.

All in all, the studies reviewed here identify and elucidate three distinctive and significant developments of Indonesian Islam, and Islamic law and legal institutions in particular. First, there has been a growing tendency to institutionalize, bureaucratize, and centralize the interpretation, adaptation, and enforcement of Islamic law as well as the administration of Islamic institutions during the last few decades, including Islamic law and courts (chapters 5, 6, 8, and 9) and Islamic universities and faculties (chapter 12). The process has occurred in various ways—and to various degrees—according to sectors and localities, as demonstrated by detailed empirical narratives presented in respective chapters. In general, however, the process seems to have been largely attributed to political factors—especially the preference and interests of the authoritarian New Order regime. And, as mentioned in chapters 1, 8, 9, and 12, the regime's new policies, together with massive resources provided by the state, have had an enduring impact on the expansion of a codified and standardized system of Islamic laws, and a centralized bureaucratic apparatus tasked with administering religious courts and judges. Moreover, Islamic universities and higher educational institutions, which were authorized to teach standardized and modernized curricula to current and future interpreters and practitioners of *shari'a* in those state-sponsored legal and administrative bureaucracies, were concurrently built throughout the vast archipelago. The impact of those institutional changes from the 1980s onwards was also felt in the process of achieving a more comprehensive *shari'a* system in the special autonomous province of Aceh, Nanggroe Aceh Darrussalam, after democratization and decentralization, as discussed in chapters 10 and 11.

In short, Indonesian Islam—and *shari'a* in particular—has achieved greater standardization and formalization, as well as power and authority, than ever before, primarily thanks to state involvement and investment. It is not surprising, then, that various Islamic organizations and movements seek to gain access to state patronage and political power—whether that ruling power be authoritarian or democratic. As the

observations of *fatwas* and *fatwa*-issuing bodies such as MUI (Majelis Ulama Indonesia, Indonesian Ulama Council), NU (Nahdlatul Ulama, Indonesian Islam organization), and Muhammadiyah (chapters 3 and 5) attest, they do so in order to influence the expanding institutions of Islamic law-making and law-enforcement against a backdrop of the inherently decentralized institutional foundation of Islam and the traditionally competitive market of Indonesian Islam.

Second, the findings and narratives presented in most chapters (especially chapters 1, 2, 3, 4, 7, and 9) point to highly diverse and decentralized features of Islamic thinking, law-making and -enforcement, and, most important of all, religious authority in itself, despite the standardizing centripetal tendencies mentioned above. The authors demonstrate that local conditions—not only socio-cultural and historical, but also political—have influenced the way in which the authority and power of Islamic institutions and elites (*ulama*) are formed, and classic Islamic texts and precepts are interpreted, codified, and disseminated to produce what may be called Indonesian Islamic traditions.

For example, in chapter 1, Feener discusses the rich scholarship and innovative thinkers and institutions of reformist Islamic learning that emerged and thrived in urban as well as traditional *pesantren* (Islamic boarding schools) communities against a backdrop of the authoritarian rule of Suharto. Among the most prominent examples are Nurcholish Madjid, Sahal Mahfudh, and Masdar Mas'udi. Chapters 2, 6, 7, 8, and 9 look more specifically into legal thinking and reasoning, law-making, and law enforcement in the areas of gender and matrimonial matters. These chapters' studies and findings demonstrate that Indonesian Islamic thinkers and elites have adopted innovative methods and culturally sensitive approaches to protect women's rights and to treat both men and women fairly and impartially within the framework of Islamic tradition, and contribute to a mostly progressive interpretation and adaptation of Islamic law in the areas of marriage and divorce.

Issuing and enforcing *fatwas* offers another illuminating example of Indonesian elites' innovative approach according to local political conditions, as demonstrated in chapters 3, 4, and 5. Suharto created and used MUI, which was authorized to issue "official" *fatwas* as a tool to legitimize his developmentalist and modernization objectives. MUI allowed alternative and potentially competing *fatwas* to be issued by other organizations, such as NU and Muhammadiyah. As Kab'ah suggests (chapter 5), in theory and in practice, any Muslims are permitted to issue a *fatwa* according to Islamic tradition, and issuing of *fatwas* became rampant, especially after democratization. It is important to note, however, as van Dijk emphasizes (chapter 3), this is not a universal practice across Muslim nations. In Malaysia, for example, issuing *fatwas* is a monopoly of the state, especially state-employed *muftis* (Islamic jurists). However, as shown in these three chapters, *fatwas* are not legally binding on Indonesian Muslims, and only informally applicable, and thus should be considered as "norms" rather than laws. As a result, each organization and movement, state-sponsored or private, tends to codify and institutionalize its own *fatwas* in an effort to reinvigorate and expand their religious authority in their respective constituencies. According to Laffan, the Sufi orders, JATM (Jam'iyah Ahlith Thoriqoh al-Mu'tabaroh, Association of People of the Reputable Path), are not an exception in this regard, and spearheaded the compilation of *fatwas* issued by *ulama* associated with the orders so as

to assert their public presence and contribution to the building of Indonesian Islam and nation.

In the case of Aceh, the government introduced a whole new set of Islamic authoritative bodies and institutions, such as the Deliberative Assembly of Ulama (Majelis Permusyawaratan Ulama, MPU), the Shari'a Office (Dinas Syariat Islam), and the Shari'a police (Wilayatul Hisbah), to implement comprehensive *shari'a*. As shown in chapters 10 and 11, the ways in which those religious institutions were developed—and the extent to which *shari'a* were enforced—were largely the result of political competitions and deals among central government officials, local political elites, and religious elites in Aceh. The end result of local ambitions, adjustments, and methodological innovations in the process of codifying and institutionalizing of Islamic rules and norms, both in state and society, was the development of distinctive Islamic traditions of Indonesia's own, as suggested most assertively in Feener and Cammack's introduction and Azra's chapter 12.

Finally, all the chapters seem to agree that the effects of those institutional and intellectual developments of Islamic legal apparatus and scholarship are, overall, positive, with minor adverse consequences and weaknesses. Feener (chapter 1), for example, concludes that "the models of Muslim legal thought developed by Indonesian thinkers over the past century comprise a rich and varied heritage upon which future work may be built" (25). Van Doorn-Harder's study of the intellectual and grassroots works of NU *kiais* (*ulama*) and activists in the area of gender and women's rights (chapter 2), echoes Feener's conclusion. She argues that "not only do they aspire to strengthen the role and position of women within Islam, they also are engaged in strengthening Islam against those who wish to reduce it to a narrow selection of misogynist hadith" (42).

Likewise, in the areas of Islamic law, the judiciary, and the courts, chapters 7, 8, and 9 suggest that the legal and administrative apparatus that the government created and standardized since the late 1980s, such as the Religious Judicature Act of 1989 and the Compilation of Islamic Law (1991), alongside the concurrent expansion of Islamic higher educational institutions and Islamic law faculties (e.g., IAIN [Institut Agama Islam Negara, State Institute for Islamic Studies], UIN [Universitas Islam Negeri, State Islamic University]) nationwide during the same period, have led to a dramatic transformation of a religious court system, from one that was largely informal and of inferior quality to one that is reasonably well-organized and competent. The religious courts and judges are now better qualified and more confident with managing and settling matrimonial and inheritance disputes in ways that give Muslim men and women justice, not only according to Islamic principles and traditions, but also local cultural and social norms and practices. According to a 2002 survey of public perceptions of judicial institutions cited by Cammack, the religious courts were regarded as generally trustworthy and capable, leading to the conclusion that "while not without weaknesses, Indonesia's Islamic courts are a relative success story within Indonesia's otherwise dysfunctional legal system" (169). The new religious court administration is said to be especially significant in protecting Muslim women's rights, though such a transformation has not fully met the higher expectations set by some women's movements and activists, a central point underscored by Cammack and Mulia's essay on conflicts concerning marriage law (chapter 7).

The major empirical findings and arguments advanced by this volume raise some important questions that are not adequately addressed or answered in the studies reviewed here and may merit further research. Despite some superficial emphasis given to political factors, especially the enduring impact of authoritarian rule under Suharto on the formation of Islamic law and legal apparatus, very little is mentioned about the impact of a democratic regime that was almost ten years in the making at the time of publication (2007). Readers do not learn whether the democratic regime that came to power in 1999 and the number of legal and institutional reforms that accompanied it had any noteworthy impact on the transformation and formation of Islamic law and associated institutions, besides regional autonomy and the *shari'a* regime in Aceh. If the institutional development—especially the strengthening of Islamic courts and laws—discussed above was only possible because of “the backing of an *authoritarian* government” (187; emphasis my own) that commanded massive political, administrative, and coercive powers to build and centralize state institutions, we may wonder what resulted from the absence of an authoritarian government. The question is theoretically and empirically fascinating because Indonesian democracy has come with an ambitious decentralization of fiscal and administrative powers (transferred from Jakarta to district levels) and a traditionally unregulated competitive religious market.

A number of other studies have examined the so-called *shari'a*-influenced bylaws that have been introduced in a number of districts as political products of decentralization and competitive local elections in the context of Islamic activism and politicized religion. However, whether such “Islamization” enterprises initiated by democratically elected local governments have strengthened or weakened the authority and power of state-sponsored religious courts, offices, and legal apparatuses remains unknown. If the chapters on Aceh reviewed above give us some insight, it may be surmised that new local aspirations and ambitions to introduce *shari'a*-influenced bylaws only gave rise to competitions and conflict among religious elites and movements, as well as central and local governments, over the already small turfs of influence and authority allocated to Islamic courts and agencies. It should be remembered that the jurisdiction of existing Islamic legal institutions is constrained exclusively to matters of marriage, divorce, and inheritance. Moreover, numerous Islamic movements and organizations, as suggested earlier, fiercely attempt to defend and expand their control over interpretation and adaptation of Islamic laws and practices. We also should not forget about the influence of representatives of the powerful secular regime and bureaucracy, such as the Supreme Court, who are ready to limit and control the expansion of Islamic institutions and elites in the state. Given those institutional and political constraints established over the decades, it is not surprising that we don't hear much about enforcement or institutionalization of *shari'a* by-laws after they are introduced.

Another and final question pertinent to democratization is an observation that Indonesian Islam is now taking a “conservative turn” under democratic rule, and that ultra-conservative and radical Islamic groups and movements exert greater political influence over policy-making and “enforcement” of Islamic rules and norms, relative

to their power when these chapters were written.² This trend raises a question about the real-world impact of the progressive Islamic thinkers and movements, as well as standardized enforcement of Islamic laws mentioned above in the context of Indonesia's democratic regime. If these legal and educational institutions were already established in the Muslim community as interpreters and transmitters of culturally contextualized moderate and progressive Islamic thoughts and traditions, why are they now on the defensive? Worse still, some of the NU *kiais* cherished as exemplars of moderate and progressive Islamic thinking in the volume, most notably the late Sahal Mahfudh, now sit in the highest echelon of MUI leadership to issue controversial *fatwas* against religious pluralism, minorities, freedom, secularism, and liberalism, which makes the moderate and liberal segment of the Indonesian community extremely nervous.

Obviously, MUI has achieved freedom from autocratic political control and begun taking on a life of its own after the demise of Suharto, but to the detriment of moderate and progressive Islamic movements and institutions. Even if *fatwas* are not legally binding and Muslims are free to take or ignore them, the growing influence and authority of MUI, its radical and ultra-conservative Islamic interests, and its close relations with political elites in some localities may continue to challenge the mostly moderate and culturally sensitive Islamic traditions that have been established over the decades. The trend is even more alarming because it is, after all, the political motivations of religious elites that have shaped their relations with state and political powers in their quest for more Islamic rule and society, thereby giving rise to highly politicized religion. Whether an Indonesian democracy—and the legal institutions, principles, and traditions discussed in the volume—is ready to deal with those ultra-conservative religious authorities so as to protect not only Indonesian Islamic traditions, but also the basic civil rights of its citizens, including Muslim men, women, and non-Muslims alike, remains to be seen.

² For example, see: Martin van Bruinessen, ed., *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn"* (Singapore: ISEAS Publishing, 2013); Andrée Feillard and Rémy Madinier, *The End of Innocence? Indonesian Islam and the Temptations of Radicalism*, trans. Wong Wee (Singapore: NUS Press, 2011); Kikue Hamayotsu, "Conservative Turn? Religion, State, and Conflict in Indonesia," *Pacific Affairs* 87, no. 4 (2014): 815–25; Robert W. Hefner, "Muslim Democrats and Islamist Violence in Post-Soeharto Indonesia," in *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, ed. R. W. Hefner (Princeton: Princeton University Press, 2004), 273–301; and Robert W. Hefner, "Human Rights and Democracy in Islam: The Indonesian Case in Global Perspective," in *Religion and the Global Politics of Human Rights*, ed. Thomas Banchoff and Robert Wuthnow (Oxford: Oxford University Press, 2011), 39–69.