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R. Michael Feener

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MUSLIM LEGAL THOUGHT IN MODERN INDONESIA

Indonesia has been home to some of the most vibrant and complex developments in modern Islamic thought anywhere in the world. Nevertheless little is known or understood about these developments outside Southeast Asia. By considering the work of the leading Indonesian thinkers of the twentieth century, R. Michael Feener, an intellectual authority in the area, offers a cogent critique of this diverse and extensive literature and sheds light on the contemporary debates and the dynamics of Islamic reform. The book highlights the openness to, and creative manipulation of, diverse strands of international thought that have come to define Islamic intellectualism in modern Indonesia. This is an accessible and interpretive overview of the religious and social thought of the world's largest Muslim majority nation. As such it will be read by scholars of Islamic law and society, Southeast Asian Studies and comparative law and jurisprudence.

R. MICHAEL FEENER is Associate Professor of History at the National University of Singapore. His recent publications include, as editor, *Islam in World Cultures: Comparative Perspectives* (2003) and *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (forthcoming).

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For Nana, and Little Nana, with much love and many thanks

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As there were many Reformers, so likewise many Reformations; every
Country proceeding in a peculiar Method, according as their national
interest together with their constitution and clime inclined them, some
angrily and with extremitie, others calmely, and with mediocrity, not
rending, but easily dividing the community, and leaving an honest
possibility of a reconciliation . . .

Sir Thomas Browne, *Religio Medici*

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Acknowledgments

For all the solitude of early morning and late night scribbling sessions, writing a book is never an individual affair. Every work represents not only the fruit of intellectual conversations with colleagues both living and long dead, but also less ethereal relationships with all those who help the writer along the way. The list of those to whom I have become indebted over the years spent in preparation of this volume is too long to be presented in full here. I am grateful to all of them, first and foremost to my family. My mother and father have supported me in so many ways since the beginning of my studies, and they deserve so much more than I could ever possibly repay. My maternal grandmother and those who gathered at her kitchen in Salem have been sources of great encouragement as well as inspiration, and she is very much missed. My wife, Mayuko, and our children John and Irene now provide me with much of both and so much more.

Like family, one's teachers give much that can never be adequately acknowledged, let alone repaid. I have been blessed with a number of truly great teachers over the years, foremost among them Merlin Swartz. Well beyond the specifics of anything he taught me about medieval Ḥanbalism and the parsing of classical Arabic texts, he continues to serve as a model for me of what one can become as a scholar and a human being. This work has also benefited from the influence of other mentors who have exerted extraordinary amounts of time and energy in teaching me and supporting my research. H. Moh. Koesnoe taught me much about Java, Islam, and perseverance, as well as almost everything I know about the fields of *adat* law and Dutch academic jurisprudence. I consider myself extremely fortunate to have had as my first teacher of Islamic Studies Fred Denny, who introduced me to Pak Koesnoe, as well as to a wider world of conversations that I have continued to explore ever since leaving his classroom in Boulder. Over the years many of these teachers have also come to accept me as a colleague, and I am particularly grateful for having my work benefit from discussions with Herbert Mason, David Eckel, Ray Hart,

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To all of them, and the many I cannot mention here by name, Thank you.

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A note on transliteration

Rendering the technical terminology of Indonesian Islamic scholarship into English poses some unique challenges to Islamicists because of the preponderance of Arabic loan words – sometimes via Persian, Tamil, or other intermediary usages – into Bahasa Indonesia and other languages of the region. While the origin of these terms is Arabic, many have become commonplace in contemporary Indonesian and in the process have taken on distinct local meanings. In ways analogous, for example, to that through which the Greek *πανδοκειον* was transmitted in the Arabic form *funduq* to become in Italian *fondaco* (foreign merchants' hostel), this same Arabic term was rendered into Malay and Javanese as *pondok*, which eventually came to refer to a rural residential school for the teaching of *fiqh* and other Islamic religious sciences. Thus when used in scholarly treatments of modern religious discourses in the Indonesian language – or other Muslim vernaculars for that matter – hyper-Arabization of technical terminologies can be considerably misleading and obscure important aspects of specific local usages.

When dealing with the uses of these terms in their Indonesian context, then, one is forced to decide whether to present them in a format recognized in English-language scholarship for the transliteration of the Arabic terms from which they are ultimately derived, or to simply give them in their contemporary Indonesian form. Those who adopt the first not only over-technicalize their presentations, but also risk assuming that the terms they are dealing with necessarily imply all the same fields of meaning in Indonesian as they do in the original Arabic. Those who opt for the second method, on the other hand, are in danger of making their work appear, cosmetically at least, less acceptable to other scholars who work on various aspects of Muslim societies outside of Southeast Asia and, more consequentially, to miss opportunities to connect local discussions of particular issues to broader discourses elsewhere in the Muslim world.

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In this book I have opted for something of a middle course between these two poles. It is inevitable that, in attempting this, occasions arise that simply demand apparently arbitrary judgment calls. Nevertheless I have attempted to maintain consistency throughout by means of the following system: When dealing with the contents of specific Indonesian texts in which Indonesianized Arabic terms are being used in distinct ways, they are reproduced here in the form that they were presented in the text immediately under discussion. In more general discussions, however, as well as in dealing with Indonesian-language examples in which certain Islamic technical terms are being used in direct dialogue with Arabic sources and debates carried out in that language, they will be given full diacriticals following the Arabic transliteration system used by the Middle East Studies Association (MESA). The same system of diacritics has been used to render the names of authors writing in Arabic and the titles of their works, as well as in reference to texts in Southeast Asian languages published in the modified forms of the Arabic script known as *jawi* (Malay) or *pegon* (Javanese), with the additional conventions of:

P = ف , G = گ , C = چ , Ng = غ , and Ny = ث .

For a catalog of Arabic and Persian loan-words adopted and adapted into the more general Malay-Indonesian vocabulary beyond those technical terms used in religious scholarship, see Russell Jones, *Arabic Loan-words in Indonesian: A Checklist of Words of Arabic and Persian Origin in Bahasa Indonesia and Traditional Malay, in the Reformed Spelling* (London: School of Oriental and African Studies, 1978).

For an overview of transliteration of more technical Arabic terms into Bahasa Indonesia and their equivalents in various standard systems employed in international scholarship, see Johannes den Heijer, and Ab Massier, *Pedoman Transliterasi Bahasa Arab* (Jakarta: INIS, 1992). While the title of this work is in Indonesian, the introductory texts explaining its methodology and the organization of the charts of transliterated words contained in it are all printed here both in Indonesian and English. The Roman-script Indonesian employed there reflects the most recent standardization developed during the New Order period.

Abbreviations

Ar.	Arabic
<i>BKI</i>	<i>Bijdragen tot de Taal-, Land- en Volkenkunde</i>
<i>BSOAS</i>	<i>Bulletin of the School of Oriental and African Studies</i>
<i>DB</i>	<i>Dictionnaire Biographique des Savants et Grandes Figures du Monde Musulman Peripherique, du XIXe siècle a nos jours</i>
DDII	Dewan Dakwah Islamiyah Indonesia
DPR	Dewan Perwakilan Rakyat
DPRD	Dewan Perwakilan Rakyat Daerah
Dt.	Dutch
<i>EI2</i>	<i>The New Encyclopaedia of Islam</i>
HMI	Himpunan Mahasiswa Islam
HTI	Hizbut Tahrir Indonesia
IAIN	Institut Agama Islam Negeri
ICMI	Ikatan Cendekiawan Muslim se-Indonesia
IIAS	International Institute for Asian Studies
<i>IJMES</i>	<i>International Journal of Middle East Studies</i>
<i>ILS</i>	<i>Islamic Law and Society</i>
Ind.	Bahasa Indonesia
INIS	Indonesia–Netherlands Islamic Studies
ISIM	Institute for the Study of Islam in the Modern World
ISTAC	International Institute of Islamic Thought and Civilization
IRCICA	Research Centre for Islamic History, Art & Culture
ITB	Institut Teknologi Bandung
JIL	Jaringan Islam Liberal
JIMM	Jaringan Intelektual Muhammadiyah Muda
Jp.	Japanese
<i>JMBRAS</i>	<i>Journal of the Malay Branch of the Royal Asiatic Society</i>
<i>JRAS</i>	<i>Journal of the Royal Asiatic Society</i>
<i>JSBRAS</i>	<i>Journal of the Straits Branch of the Royal Asiatic Society</i>
Jv.	Javanese

List of abbreviations

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KITLV	Koninklijk Instituut voor Taal-, Land- en Volkenkunde
<i>KHI</i>	<i>Kompilasi Hukum Islam</i>
KISDI	Komite Indonesia untuk Solidaritas Dunia Islam
LIPIA	Lembaga Ilmu Pengetahuan Islam dan Arab
LKiS	Lembaga Kajian Islam dan Sosial
LP3ES	Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial
Mal.	Malay
<i>MIDEO</i>	<i>Mélanges de l'Institut Dominicain d'Études Orientales</i>
NU	Nahdlatul Ulama
P3M	Perhimpunan Pengembangan Pesantren dan Masyarakat
PKI	Partai Komunis Indonesia
PERSIS	Persatuan Islam
<i>RMM</i>	<i>Revue du Monde Musulman</i>
<i>SI</i>	<i>Studia Islamika</i>
<i>TA</i>	<i>Tashwirul Afkar: Jurnal Refleksi Pemikiran Keagamaan dan Kebudayaan</i>
UIN	Universitas Islam Negara
UU	Undang-Undang
<i>WI</i>	<i>Die Welt des Islams</i>
YKF	Yayasan Kesejahteraan Fatayat

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*Preface: Toward an intellectual history of
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Over the past century, Muslim thinkers in the Indonesian archipelago have cultivated remarkable capacities for innovative work by integrating diverse strands of modern Muslim thought from around the world into communication with ideas developed in Europe, North America, and elsewhere by non-Muslim thinkers. In bookstalls surrounding the campus of the National Islamic University (Universitas Islam Negeri/ UIN) at Ciputat in South Jakarta, one can find not only classical Arabic *fiqh* texts and works by modern Middle Eastern authors, but also vernacular translations of Freud, Gramsci, and Foucault alongside hundreds of original Indonesian works that creatively engage with various combinations of these materials. Nowhere else in the Muslim world that I know of presents this kind of cosmopolitanism to such an extent. It is impossible, for example, to find Arabic translations of the Indonesian works of Hazairin on bilateral inheritance or Sahal Mahfudh' on "Social *Fiqh*" in Cairo. On the other hand, it is relatively easy to obtain Indonesian translations and discussions of the work of Muslim scholars from the Middle East and beyond, such as Ḥasan Ḥanafī (Egypt), Mohamed Arkoun (France), Muḥammad 'Ābid Jābirī (Morocco), AbdolKarim Shorouh (Iran), Khaled Abou El Fadl (US), Farid Esack (South Africa), and Nasr Abu-Zayd (the Netherlands), not to mention dozens of publications by non-Muslim scholars of Islamic Studies, and thinkers in other fields ranging from cultural anthropology to critical studies – all in an afternoon's browsing through bookshops in Jakarta or Yogyakarta.

This book aims to introduce major trends in Indonesian Muslim thought on issues of law and society over the past century to non-Indonesian readers, through the construction of a preliminary road map to some key trajectories through an immense body of heretofore understudied sources. Its scope is ambitious, admittedly perhaps overly so. Nevertheless such a risk is, I believe, worth taking at this point in attempting to remedy the relative neglect of this important material in a number of potentially relevant fields:

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Preface

History, Anthropology, and Islamic and Southeast Asian Studies. For well over a decade now international observers have written – for the most part in rather vague terms – of purportedly important developments in modern Indonesian Islamic thought. However, more nuanced understandings of the situation continue to be impeded by the dearth of works able to provide an overview of the vast and diverse corpus of Islamic religious texts published in the country over the full course of the twentieth and early twenty-first centuries. The relative inattention to the religious and social thought of the world's largest Muslim majority nation is of course a problem for obvious demographic reasons. It is, however, all the more regrettable given the fact that Indonesia presents a particularly vibrant and dynamic case through which to examine innovative interpretations of Islam in relation to transforming conceptions of education, epistemology, texts, and traditional authority that are relevant to modern developments in Muslim societies around the world.¹

Given the impossibility of producing a comprehensive survey of the immense amount of material produced by Indonesian Muslims on religious and social issues over the past century, any scholar approaching this area of study is unavoidably faced with considerable challenges of selection. In the pages that follow I have had to make innumerable choices as to which scholars to mention, and which of their respective works to discuss. Some Indonesia specialist readers will inevitably have cause to question specific instances of inclusion or omission. I heartily welcome scholarly disagreement with my choices, since one of my goals in researching and writing this book has been to energize further conversations on the development of Islamic thought in modern Indonesia. For the present work I have sought to strike a balance between works that continue to be popular today (as evidenced by a track record of reprints and citation in contemporary debates) and those whose popularity may have been eclipsed, but which my research shows to have been significant in earlier periods.

Throughout, my first and primary criterion for selection has been that of a work's relevance to the expansion of conversations in one particular field of Muslim discourse in Indonesia – namely, that of Islamic law. Unfortunately, however, this leaves beyond consideration in this book the work

¹ I have discussed some of the broader theoretical problems and possibilities of such work in "Cross-Cultural Contexts of Modern Muslim Intellectualism: Reflections on a History of Islamic Legal Thought in Indonesia," Paper prepared for the Modern Muslim Intellectual History conference held at Utrecht, September 2005. A synopsis of the issues raised in that presentation has been published as "Contemporary Islam and Intellectual History," *Institute for the Study of Islam in the Modern World Review* 17 (Spring 2006), 24–5.

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of a number of prolific Indonesian Muslim intellectuals whose publications are in areas outside of Islamic legal thought – for example, the work of scholars coming from a social science background including: Kuntowijoyo, Ahmad Syafi'i Ma'arif, Komaruddin Hidayat, Fachry Ali, Bahtiar Effendy, Masjkuri Abdillah, Abdul Munir Mulkhan, and others. Furthermore, attention is directed primarily to published written works and the ideas developed therein, rather than to the political careers and public personae of various figures discussed in the following chapters. Much has already been written about this in international scholarship, and rather than retracing those paths this study seeks to complement them by adding another dimension to the discussions.

The focus of this book is on tracking the dynamics of Indonesian conversations on Islamic legal thought, an important aspect of intellectual and broader public discussions in many Muslim societies. Taking legal thought as the central topic of this study is, however, not only a reflection of the long-established centrality of jurisprudence to the history of Islamic learning, but also of my own position in the field of Islamic studies, in which my work has been shaped by recent advances in the field of “Islamic law and society.” Over the past two decades a remarkable body of work has been produced in this area combining technical expertise and innovative analytical approaches to a wide range of developments across the classical and modern periods.² Despite the extraordinary quantity of this recent work on the history of Islamic legal theory and practice, however, very little of it has dealt with Indonesia or other areas of Southeast Asia.³ Studies of Islamic law in that part of the world have for the most part been produced either locally in the Indonesian language or by foreign Indonesia specialists.⁴ Generally speaking, however, these studies have tended to concentrate more on the development of legal institutions and positive legislation than on the intellectual and jurisprudential discourses of Islamic law in the country.⁵ The relationship between legal theory and practice is, of course, by

² Full citations to works of this type that have been influential in the formation of my own understandings of the historical development of Islamic law are included in the bibliography.

³ One very recent significant exception to this can be found in a theme issue of the journal *Islamic Law and Society* 12.1 (2005) ed. Nico J. G. Kaptein and Michael F. Laffan on the subject of “*Fatwas* in Indonesia”.

⁴ A collection of recent work of this type can be found in R. Michael Feener and Mark E. Cammack, eds., *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (Cambridge, MA: Harvard University Press, 2007).

⁵ One notable exception to this tendency has been the award-winning recent work of John Bowen, which combines ethnographic and textual studies in a theoretically informed discussion of Indonesian legal pluralism. John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (New York: Cambridge University Press, 2003). In the section of his book dealing with the

no means a determining one in Islam, any more than in any other tradition.⁶ Nevertheless the ongoing conversations about jurisprudence and its contemporary permutations remain important as a medium through which legal, religious, and social change is processed and re-integrated into evolving understandings of the tradition. The relevance of this material can, accordingly, be seen as much if not more in relation to broader understandings of Islam and local conceptions of the Muslim community than with law in its formal, institutional sense.

The chapters that follow comprise detailed examinations of the ways in which Indonesian Muslim scholars and activists have formulated new conceptions and interpretations of Islamic law through creative readings and syntheses of diverse materials including Islamic scriptural sources, texts of classical Muslim jurisprudence, and modern Middle Eastern and “Western” academic writings read in light of rapidly evolving social, economic, and political contexts. Thus, while its particular focus is on developments of legal theory, this book can also be read as an introduction to modern Indonesian Islam more generally, since its coverage of major currents in intellectual and public discourses among Muslims over the past century reflects a range of broader dynamics in the community’s changing understandings of religion and its role in contemporary society.

development of specifically Islamic legal discourses, Bowen refers to the general outline of that history that I presented in my 1999 Boston University dissertation. The present study further develops and considerably expands upon that earlier work.

⁶ This point has been made in connection with material from the medieval and modern periods in the work of Sherman Jackson in “Fiction and Formalism: Toward a Functional Analysis of *Usūl al-fiqh*,” *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss (Leiden: E. J. Brill, 2002), 177–201.