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Intellectual Pilgrimages and Local Norms in Fashioning Indonesian Islam

Résumé. *Pèlerinages intellectuels et normes locales dans la mise en forme de l'islam indonésien*

Depuis le début de la présence islamique dans l'archipel indonésien, les musulmans privilégient les rapports avec ce qu'ils voient comme les centres intellectuels de l'étude de l'islam, par les communications qu'ils entretiennent avec eux et leurs voyages. Je décris quelques uns des effets de ces «pèlerinages intellectuels» sur les débats concernant l'Islam et tout particulièrement la loi Islamique en Indonésie. L'influence du niveau global sur le local ne se résume pas à une simple transposition de catégories importées. En effet, les penseurs et acteurs dans le domaine du droit justifient l'application de la loi islamique en affirmant ses racines dans les valeurs et les traditions locales.

Abstract. Muslims living in the Indonesian archipelago have long placed considerable importance on their travels to and communications with what they saw as intellectual centers for the study of Islam. I trace some of the effects of these "intellectual pilgrimages" to Mecca, Cairo, and elsewhere on Indonesian deliberations about Islam, particularly concerning Islamic law. I argue that these references to abroad do not flatten out global Islamic discourse, but often stimulate an attention to local norms, or an effort to justify Islamic law as stemming from local traditions.

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From the very beginnings of an Islamic presence in the region, Muslims living in what is now Indonesia have placed considerable importance on their travels to and communications with what they saw as intellectual centers for the study of Islam. Pilgrims to Mecca not only brought back new ideas, but established Indies outposts in the holy city. Students have brought back with them the ideas of their teachers in Mecca, Cairo, and Riyadh, but also in university settings outside of the Muslim world, in Montreal and Chicago.

These intellectual pilgrimages have shaped subsequent deliberations among Indonesian Muslims, not by simply applying lessons learned abroad but by entering into dialogues about how global norms and traditions could or should be “fitted” with Indonesian practices and values. Debates among Indonesian Muslim intellectuals have reflected their own experiences abroad and their differing ideas about how best to balance global Islamic ideas and particular Indonesian values and norms.

In this essay I trace some of those effects. I do not try to summarize the history of Indonesian Islamic thought, but focus on the mechanisms of transmission and debate in several periods. I look at debates around modernist Islam the late 19th and early 20th centuries, developments of *dakwah* and “reformism” during post-war intellectual pilgrimages, and current debates around the “shariatization” of towns and cities across Indonesia and in the province of Aceh. In the last case, what might appear to be a flattening out of law and norms through globalization is, in fact, a more complex set of references to both supralocal Islamic normative traditions and local norms.

Study Pilgrimages in the 19th And 20th centuries

Islam always has been “transnational” in both its conception and the physical movement of scholars in pursuit of knowledge. The archipelago has been no exception. Travel by *ulamâ* between the Malay archipelago and the cities of Mecca and Medina probably began soon after the establishment of small Muslim states on the north coast of Aceh in the 14th century. At least by the 16th century, there were religious teachers in Mecca of Malay origin who taught new arrivals from the Indies, and so forth through the decades (AZRA 2001). Thus there was a genealogy of *ijazahs* (religious credentials) that linked Malay scholars to each other over time *by way of* Mecca.

These Indies genealogies at a distance contrast with the localized pathways of transmission more common in the Muslim world. In North Africa, for example (EICKELMAN 1985), ties of teachers to students are intimately rooted in specific local places. The student’s learning about *fiqh*, the adept’s acquisition of mystical knowledge, and even the succession of judges across generations are tied to local sacred places and centers of learning. Indies Sufi ties followed a mixed pattern: transmission within an Indies *silsilah* once the initial link to a foreign teacher

had been made – a link often made in Mecca (van Bruinessen 1998).

The importance of the journey to Mecca only increased over time. By the 19th century, many Muslims in the Netherlands East Indies pursued their studies in the *haramain*, Mecca and Medina (AZRA 1999, 2001; LATIF 2004). Only with such study could one be considered to have achieved the highest levels of religious knowledge and then find work as an *'alim* “back home.” At the same time, considerable numbers of native Arabic speakers had moved to Indonesia; their role as teachers, especially in the 1920s and 1930s, was of considerable importance to the reformist movement. By the end of the century, the number of pilgrims to Mecca had jumped from 1600 annually in the 1860s to over 7000. Steamship travel, the opening of the Suez canal, and the increased demand for *ulamâ* after the blood insurrections on Java increased both the pressures for traveling to Mecca and the possibilities for doing so (LAFFAN 2003).

This pattern of authority from afar not only echoes basic Malay ideas about the indigenous vis-à-vis the foreign sources of power (and doubtless supported and transformed these ideas). It also is reminiscent of patterns found throughout the world, documented for African politics by Jean-François BAYART (1993), for example, where strategic travels to and links with important foreign places underwrite local political authority.

I wish to underscore the importance of the “cohort effects” generated by these travels: scholars who had studied abroad at similar times shared certain experiences and perspectives, even if they disagreed on specifics. These effects are well documented by the late 19th century, when the growing number of Meccan residents who came from the Malay world, called the people of *Jawâh*, produced a respectable body of works in Arabic and Malay. Best known among them was Nawawi al-Bantani, who left behind at his death in 1898 about 20 works in Arabic, printed in Cairo and then in Mecca. The critical link back to Indonesian developments was provided by Syekh Achmad Khatib. Achmad Khatib was born in 1860 in West Sumatra, and became the imam of the Shafi'i school in Mecca. His authority made him the pole for Indies students coming to study in Mecca, including those who would later on take Indies Islam in different directions.

Meanwhile an alternative pole of knowledge production was developing in Cairo, inspired by the work of Jamal al-Din al-Afghani but established by his student Muhammad 'Abduh. The Islamic modernism developed by these thinkers combined a strong message of resistance to colonialism, the image of a *khalifah* (Islamic polity) extending outward from the Ottoman Sultan to other states, and a reform of Islam that had at its core not so much purity per se (the older reformist emphasis) but the rational reinterpretation of scripture. What became the *kaum muda* (“young group”, reformist) movement in the Malay world grew out of the Cairene synthesis of politics and theology. It differentiated between matters of *ibâdât*, for which scriptural evidence was essential, and other domains of life, in which Muslims were to “search for knowledge even in China”. It also promoted broad-ranging *ijtihâd*, the learned interpretation



of scripture by an individual, thus running up against the older direction to students that they stay within their *madhhab*, legal tradition, which for Malay-world students meant the Shafi'i tradition, with Achmad Khatib as its chief teacher and judge.

During the last decade of the 19th century, students arriving to study with Achmad Khatib in Mecca were introduced to the writings of `Abduh, despite the differences of opinion between these scholars. This encounter with both the chief Shafi'i scholar in the *haramain* and the leading scholar of modernism shaped scholars of *kaum muda* and *kaum tua* ("old group", traditionalist) persuasion. Modernist educators such as Djamil Djambek and Haji Rasul returned to the Indies to found new types of schools, forms of communication, and styles of *ijtihad*, and did so with a respect for and knowledge of the Shafi'i tradition. Traditionalist scholars who remained firmly wedded to a *madhhab*-based approach, such as the founder of the Nahdlatul Ulama (NU), Hasjim Asj`ari, learned of modernism from serious scholarly sources, and in Arabic. All these scholars spoke variants of the same religious language, and they had been intellectually and personally formed by many of the same experiences. They differed on interpretation, but could talk with each other (Noer 1978).

The early decades of the 20th century were stamped by this new Indies-Cairo-Mecca relationship. During the 1920s, Indonesian and Malay students at al-Azhar in Cairo published two journals, *Seruhan Azhar* and *Pilehan Timur*, that expressed political and religious pan-Islamic ideas. Furthermore, the modernist journal *al-Manar* published by Rashîd Ridâ from 1898 to 1935, although banned by the Dutch, reached Arabic readers in the archipelago through the travels of pilgrims and others and inspired the Malay-language journals *al-Imam* in Singapore and *al-Munir* in West Sumatra (AZRA 1999; FEDERSPIEL 1970).

In the Indies, the new ideas found a particularly important institutional expression in schools, nowhere more than in West Sumatra. There as elsewhere in the Muslim-majority world, forms of teaching served as indexes of approaches to learning. Older pedagogical forms featured circles of learning, a mixture of ages, and a focus on memorizing scripture. Newer forms featured rows of desks, seriated curricula and separate classes. In the new schools, pupils moved from memorization to learning hadîth and basics of jurisprudence at a rate that alarmed some of the old school. Beginning with Haji Rasul's Thawalib school in Padang Panjang in 1912 and continuing on throughout Sumatra, Java and elsewhere, modernist schools emphasized the study of Arabic, scripture, and modern subjects, emphases that armed graduates with the knowledge needed to themselves travel to Mecca and Cairo for further study. Cairo became a major source of authoritative Islamic knowledge for Islamic movements in the Indies, translating Arabic materials into Malay/Indonesian and publishing Islamic materials in local vernaculars for Indies consumption (BOLAND 1982; NOER 1978; and see FEDERSPIEL 1970).

The alumni of these religious institutions in Mecca, Cairo, and increasingly in the Indies developed the material conditions for a Malay-world Islamic public sphere (BOWEN 1993). These conditions were first and foremost the ability to produce and circulate printed newspapers and books in a language accessible to the broadest range of readers, Malay. When, in the late 1910s, the use of Latin script became acceptable (rather than being condemned as *huruf kafir*, “infidel writing”), mass production of newspapers and books became technically easier. A series of new publications flowed and flowered from Singapore, Malaya, Sumatra, and Java.

My own teacher in the Gayo highlands of Aceh told me of his introduction to modernism through hawking some of the modernist broadsheets from town to town throughout Sumatra. For him and many others these peregrinations were part of their training, for the common element linking the diverse ethnic groups he encountered was a commitment to a place-free version of Islam. And of course with the spread of the new modernist organization Muhammadiyah through the Indies, these students could call on a network of teachers and social activists (who of course also were political activists) as well as a print network that supported their worldview and their mobility.

The theme of mobility within the Malay Islamic world became linked to the message of religious modernism through the lived movement of these people and the imagined lives of the modernist heroes of novels by (largely) Sumatran writers. The writings of Haji Rasul’s son, Hamka, exemplify this merging (Steenbrink 1994). On the one hand, Hamka and his father undertook to create a new set of social and legal norms in West Sumatra that would be consistent with Islamic law and yet allow for the social continuity of Minangkabau adat. Hamka went on to become the best-known modernist scholar in Indonesia and yet also a proponent of *tassawuf* (as was, *nota bene*, Hassan al-Banna at about the same time in Egypt). On the other hand, Hamka wrote novels about the romance of couples who came from different ethnic backgrounds (usually Minangkabau and Javanese) and the problems they faced, the solution to which could only be a working upward to the common element, Islam. Mobility became a key trope for modernist Islam.

1924 was the watershed year in the spatial imaginary of Muslims, marked by both the end of the Ottoman Empire (and thus the Caliphate), and the seizure of Mecca by ‘Abd al-‘Aziz ibn Sa’ud. The first event destroyed that last faint image of a Muslim realm and of a historic Muslim continuity. The second threatened all Muslim followers of a madhhab, as Ibn Sa’ud’s Wahhabi leanings at least promised to make scholarly life difficult for the Shafi’i imam. These events prompted traditionalist (kaum tua) ulamâ on Java to form a committee to appeal to the Saudi king to permit Shafi’i ulamâ to continue their functions, a committee that then became the Nahdlatul Ulama. The schools (*pesantrens*) of NU soon took on the modern formal characteristics of the schools (*madrasahs*) of the modernists, a transition aided by the personal ties from student days in Mecca across the modernist/traditionalist divide (FEILLARD 1995).



Dakwah and Universities since the 1970s

I now wish to skip ahead from the 1890s-1920s to the 1960s-1990s, when new study pilgrimages produce new religious ideas and practices². Beginning already in the late 1960s, the *dakwah* (“call”) movement, and in particular the *Dewan Dakwah Islamiyah Indonesia*, benefited from the role played by their leader, Muhammad Natsir, in the Muslim World League. The League provided funds for the DDII to sponsor students who wished to study in the Middle East. Natsir sent students to Riyadh in particular, where they learned the ideas and methods of the *Ikhwan ul-Muslimin* (Muslim Brotherhood), especially the methods of neighborhood-based *dakwah*.

Students returning to Indonesia reproduced these methods of spreading “the call” to return to Islam and influenced a new generation of *dakwah* activists. The veterans of these DDII pilgrimages began to translate the works of thinkers of the “New Islam” in Cairo as well as the *Ikhwan* founders. Abu Ridho, for example, translated works by Hassan al-Banna; other, related publishing ventures published “New Islam” works by Yûsuf al-Qardâwî and others (LATIF 2004). During the 1980s, the number of Indonesian students in Saudi Arabia and Egypt rose sharply, nearing 1000 each, but these were mainly undergraduates; the Islam they returned with was learned in Brotherhood circles or discussion groups.

In contrast with this new Arabia-Cairo pole were the smaller numbers of more highly-trained intellectuals sent to universities in North America from the late 1960s. Some of these, such as Amien Rais and Imaduddin Abdul Rahim, were indeed active in the *dakwah* movement. Others, such as Jalaluddin Rakhmat and Nurcholish Madjid, were better thought of as “public intellectuals”. The key figure in developing this pole was Mukti Ali, the Indonesian Minister of Religious Affairs in the 1970s. It was Mukti Ali who sent students for post-graduate training in religious studies in North America, to McGill and especially to Chicago.

These students were supposed to return with pragmatic ideas about Islam that could fit with reigning New Order technocratic ideas about society and development, and many did so. Some of them bridged divergent communities. For example, Amien Rais and Syafi’i Maarif had developed close ties with the DDII but then received their degrees under “liberal” teachers at Chicago. Most of them returned from America eager to work within some version of “the system”, either by starting associations to develop religious thinking, by vying for leadership positions in Muhammadiyah, or by working with the government. Despite their different starting points in Indonesia – some came out of *dakwah* work, others out of universities – and their different approaches to pluralism – Rais far less clear on this matter than Madjid, for example – they have worked within a common set of assumptions about religion and politics since their

2 On the intellectual ferment of the intervening period, see two recent accounts by younger Indonesian scholars: Latif (2004) and Salim (2006).

return, which have involved working to Islamize society but not promoting the creation of an Islamic state. The slogan “Islam yes, Islamic party no” characterizes the positions most of the American students have taken most of the time, and, even if also consistent with mainstream Indonesian Islamic thinking of the 1950s, was reinforced by the liberal positions concerning religion and politics they imbibed during their foreign studies.

The promotion of overseas studies in the 1970s was part of the movement to professionalize Islamic teaching. The other major element in this movement was the expansion of the state Islamic universities (IAIN) to many of Indonesia’s many cities. These institutes, some of which now have become universities, deliver diplomas in theology, jurisprudence, and education. The presidents of the major such institutes have undertaken studies abroad, which has led them to argue for relatively liberal interpretations of Islamic law. The expansion of the IAINs and the simultaneous expansion of law faculties at the public universities also created a cohort of judges and jurists with training in both civil law and Islamic jurisprudence. This dual training has enabled them to base their arguments in one or the other domain, and to give them a certain margin of maneuver, particularly when creating the Indonesian Compilation of Islamic Law in the 1980s (see below).

This brief overview of the study pilgrimages taken by Indonesian Islamic intellectuals over the past century highlights two processes at work. First, the very fact of mixing with other Indonesians of different ethnic origins has led scholars who were trained overseas to favor more generalized and relatively reformist versions of Islam rather than practices rooted in local customs and social norms (see BOWEN 1993). Secondly, the specific places these scholars have studied exercised a great deal of influence over the religious positions they subsequently took in Indonesia. The “cohort effects” produced by these pilgrimages have to some extent cross-cut their divisions and differences in opinion.

Let us consider three examples. Nurcholish Madjid, who until his death in 2005 was the most influential Indonesian Islamic theologian, began his career by studying classical Islamic sciences and serving as president of the Association of Muslim Students (*HMI, Himpunan Mahasiswa Islam*), before studying at the University of Chicago, where he received his doctoral degree from the Pakistani reformist scholar Fazlur Rahman. Madjid studied the thinking of Ibn Taymiya, usually classified as one of more “hard-line” of Islamic theologians. Madjid argued that one could find in Ibn Taymiya the bases for a more open reading of scripture. Together with other advocates of new Islamic interpretations such as Djohan Effendi and Dawan Rahardjo, Madjid (1994) created an Indonesian school of historical interpretations of the Qur’ân that emphasized the historical context of revelation, an emphasis that in many respects continued the work of Rahman³.

3 For developments of his thinking by others in the direction of gender equality, see Mulia (1999) and Munawar-Rachman (1996).



The current president of the State Islamic University of Jakarta (formerly the Jakarta-area IAIN), Azyumardi Azra, studied Islam in Indonesia and then pursued doctoral studies at Columbia University, where he wrote a dissertation on the colonial era exchange of knowledge between the Indies and the Middle East. He probably is the scholar of Islam most frequently solicited by the mainstream Indonesian press, and takes a relatively liberal line with respect to the application of Islamic law in Indonesia.

Both these figures ground their thinking in history and theology. Quite different are those with legal training. Let me turn to one of the most important provinces in current debates about the future of Indonesian Islam, Aceh. The director of the Shariah Council of Aceh, Al Yasa' Abubakar, began his studies in Cairo, and although he finished his doctoral studies in Indonesia, his thinking has been marked by his Cairene training in jurisprudence. Unlike Madjid and Azra, trained in history and theology, Abubakar insists on the importance of following classical rules for scriptural interpretation. However, as we shall see below, he also has based his views about the appropriate shape of Indonesian laws on his reading of the social norms of Indonesian societies. He thus joins Azra and Madjid in stressing the social and historical contexts for the implementations of laws.

The broader field of intellectuals and activists encompasses other types of actors as well, both more liberal and more conservative, and not as focused on context. On the liberal end are many younger activists, particularly those who work within the traditionalist NU organization and have graduated from Indonesian Islamic universities or IAINs but with a new vision of Islam, as feminist and pluralist. For example, Ratna Batara Munti and Ciciek Farha both work within NGOs that try to change the opinions of traditionalist teachers with respect to women's issues. They do so by starting from what they see as feminist interpretations of scripture (Bowen 2003).

On the other end of the spectrum is the Laskar Jihad and the social movement out of which it developed, the FKAJW (*Forum Komunikasi Ahlul Sunnah wal-Jamaah*, Forum for Communication of those who follow the Sunna and the Community). The movement was created in the late 1990s by a young student of mixed Hadrami-Javanese, Ja'far Umar Thalib. Ja'far's career underscores the new presence of Saudi Arabia in Indonesia, because he studied at an Islamic and Arabic Studies Institute in Jakarta subsidized by the Saudi government. In 1986 he was given a scholarship by the DDII to continue his studies at Riyadh with two of the most important conservative Saudi theologians, Muhammad al-Albani et 'Abd al-'Aziz 'Abd Allah bin Baz. Bin Baz was very close to the Saudi regime, and his fatwas along with those of al-Albani are transmitted and translated throughout the Muslim world. They mark out the conservative and (in contemporary terminology), « salafi » pole in Europe as well as in Southeast Asia. (FEILLARD and MADINIER 2006: 99-108).

From Saudi Arabia, in 1987 Ja'far traveled to Afghanistan, where he participated in the jihad against the Soviet Union. Upon his return to Indonesia in 1993, he established a school in Central Java from which his followers practiced dakwah among students in university departments of sciences and information technology (HEFNER 2003). Ja'far's dakwah message attacked secular society and government for giving non-Muslims and Muslims equal rights, a policy that he considered to violate the Qur'ân. In Muslim society, according to Ja'far and other radical salafists, non-Muslims have the rights of a protected community or *dhimmi*, that remains subordinate to the dominant community, the Muslims.

In contrast to those carrying out dakwah during the 1970s and 1980s, Ja'far Umar Thalib's followers urged the jihâd against unbelievers, meaning Indonesian Christians who, although a small minority in Indonesia, in some regions equal or outnumber Muslims. Competition over political and economic resources between Muslims and Christians during the 1990s led to armed conflicts in 2000, particularly in the Moluccan islands in eastern Indonesia. Ja'far urged his followers to enter these conflicts to prevent Christian victories, citing each Muslim's obligation to carry out jihâd. He succeeded in attracting thousands of Muslims to enter the conflict, and in turning the conflict in favor of the Muslims. It was his support by certain elements of the army that permitted him to freely send followers and arms to the east. The moment that the army withdrew their support, for political reasons, his power collapsed, to the benefit of even more radical movements tied to al-Qaeda, such as Jema'ah Islamiyya, probably responsible for the bombings in Bali. Ja'far Umar Thalib is perhaps the best example of the growing intellectual influence of salafist `ulama in Indonesia, and shows that this influence spreads by way of Islamic schools financed by the Saudi government itself.

Developing Indonesian Islamic Law

The connections with the Arabic-speaking world could produce a sense of difference as well as similarity. The best example of the "diacritic" effect of knowledge about the Arabic "center" are the mid-20th century debates over how best to develop Islamic laws for Indonesia. These proposals took account of the contrasts between the Malay-Indonesian culture area and the Arabic-speaking world, and drew on the experiences of pilgrimage described above.

Gender-related issues drove these innovations. In Indonesia, some local systems of adat and some tenets of Islamic law conflicted with the general sense that women and men had equal claims on property and in married life. One can say that relative to some other world areas, Southeast Asian societies enjoy great gender equality: women and men work together in the fields, in child care, and in commerce and education. As interpreted in the early 20th century, Islamic law, by contrast, offered women a post-divorce payment rather than a



share of property, and gave men rights to initiate divorce not also possessed by women. Adat was not always any better, in that some systems gave only sons rights to land, although generally women had secure inheritance rights (and inheritance and status passed through the matriline among the Minangkabau people of West Sumatra).

Beginning in the 1930s, women's groups demanded equal property rights for women and reform of marriage and divorce laws. After independence, the Indonesian Supreme Court proclaimed that a new, post-Revolutionary "living adat" held the equality of men and women as a notable principle. Others tried to develop a new Indonesian tradition of Islamic jurisprudence, and they did so by pointing to the cultural specificity of Indonesian values and practices vis-à-vis the Arab world. Differences in the global sphere of Islamic reference thus could justify innovation in Indonesian Islamic norms.

Of particular importance was the work of the jurist Professor Hazairin at the University of Indonesia Law School. Hazairin had been trained as a scholar of adat law but also taught Islamic law. In the 1960s he turned his attention increasingly to Islamic law. He urged his fellow jurists to develop an "Indonesian madhhab" based on the bilateral principle that rights to property extend through sons and daughters. He argued that Islamic inheritance law contains general and universal principles, notably the principle that both women and men inherit property, and also specific rules. The rules derive from the Arab culture within which early jurists wrote, and in a different time and place they may be discarded, he argued. Cultural difference could explain differences in interpreting Islam and justify a departure from the majority view.

Hazairin pointed out that that in classical fiqh, after certain fixed shares of an estate have been awarded, the remainder of the estate is divided in such a way that agnatic relatives (related through males) take priority over uterine relatives (related through females). Arab jurists decided on this priority because Arab society is patriarchal, he continues, an analysis he finds confirmed by the fact that Iran-based Shī'ī jurisprudence does not favor agnatic over uterine relatives. Both legal traditions are right for the society concerned: "The Sunnī approach is correct because it is in accord with their Arab society and so is the Shī'ī one because it fits their society's needs. I believe that had there been a Minangkabau [West Sumatran] person among the Messenger's apostles, that person would have constructed a fiqh for his group that would have met the demands of the Qur'ān and Sunna but then would have favored not the agnates but to the contrary the uterine relatives according to the maternal adat of the Minangkabau" (Hazairin 1950).

Hazairin's students became the leading architects of fiqh reform in the 1980's and 1990's. They include many in today's older generation of law professors and Supreme Court justices, who draw on Hazairin's argument in advocating current reforms, including the 1992 Compilation of Islamic Law. Consider how law professor Muhammad DAUD ALI (1993) described the way the formulators

of the Compilation drew on history and culture in determining the new rule that orphaned grandchildren should inherit the share their parents would have received:

«We took as our primary sources the text of the Qur'ân and Sunna. But in practice we were flexible because the Qur'ân, as we all know, is not a law book, nor is the hadîth. They are the «mother books» containing fundamental messages for people everywhere and throughout time. . . . [We] always considered the conditions under which verses were revealed and hadîth pronounced. In this way the general principles contained in these two sources could be developed according to the changing conditions of time and place.

«If something was not fixed in the text of Qur'ân and hadîth but was felt to be among the needs of Muslim society today, we developed a «new line of law», such as the right of a child to take over the status of a predeceased parent when an estate is divided. We used the fiqh principle of al-'adat muhakkamat, adat that is good can be made into (Islamic) law--for community property, for example, which is not regulated in the Qur'ân or hadîth, nor in the jurists' books, but is to be found in the adat of Muslim Indonesians and lives in the legal consciousness of Muslim society in our country.»

This «fiqh principle» sometimes is cited in the form of “adat is sharî'a that is made into law” (al-'âdah syarî'ah muhakkamah). It is a basis for declaring certain local social practices to be Islamic law as well as positive law if they do not conflict with tenets of the Qur'ân or hadîth. However, it encounters two sorts of problems. The first is the historical baggage of the Dutch colonial «reception doctrine», the principle that Islam could be the law of the land only if already “received” into adat. Here is where the Hazairin approach to jurisprudence comes in: if all fiqh can be shown to depend on local practices as well as on sacred texts, then those Indonesian practices that differ from Arabian ones can serve as the basis for a new fiqh.

Let us listen again to Professor Daud Ali, this time in a discussion with me in 1994 about marital property. Daud Ali justified the Compilation's rule of equal division of marital property after divorce or death by drawing on a general Islamic principle of equity plus the social practices in Indonesia that underlie a local sense of justice. This Hazairin-style argument combines empirical reality with Islamic values⁴.

«We differ from classical jurisprudence on common property. The fiqh texts say that the wife takes care of the house and of her husband's wealth, and if she divorces she leaves with nothing. Well maybe in Arabia the wife does not do anything, but in Indonesia it is not like that. If a man takes up a machete to go out to the fields, his wife comes with him, carrying a bundle on her back. So she has contributed

4 Not all proposed reforms of Islamic law were adopted; for a fuller discussion see Bowen (2003).



to the wealth, either by working on the fields or by taking care of the family, and she should receive some of the inheritance--and then we set specific amounts. Here we differ from fiqh, we take account of culture».

In his explanation of the new rule, Daud Ali recognizes that Islamic law as transmitted in fiqh books already included Arab-world customary law and customary practices, and for that reason can be further modified to converge with Indonesian norms. This understanding of the place of custom's place in fiqh allows him to admit the Indonesian practices (men and women working together), indicative of a general sense of gender equity (equal work means equal rewards), as constitute elements of Islamic law.

Now, this type of reasoning could lead to the creation of slightly different Islamic law rules for different parts of Indonesia. This is a potential problem confronting this approach to interpretive pluralism: each society its own fiqh. Even under former President Suharto, judges in Aceh province told me that they tried not to apply the new fiqh doctrine about "replacement heirs", because it was not in tune with the opinions and practices of most Acehnese people. Since early 2002, Aceh has been empowered to exercise a great deal of freedom in passing its own laws, now called "qanun", and to base them on "sharî`a," based on local ideas of what sharî`a should be (see below).

Here the cultural differences between Indonesia and the "Arab world" are cited in order to justify a departure from the jurisprudential positions followed in the four Sunni *madhâhib*. For Hazairin and Daud Ali, the cultural gap between Indonesians and "Arabs" makes it imperative to reinterpret fiqh in light of adat. At stake are basic values, such as gender equality or bilateralism. Others make similar arguments to different ends: for example, Muslims opposed to feminist Muslim "analisis jender" claim that this approach comes from "the West" and is thus unsuitable for Indonesia.

Islamizing Indonesian Laws

Current efforts are intended to broaden the degree to which Muslims are governed by Islamic law. Although their proponents do cite the universal applicability of sharî`a, notable is the degree to which *local* norms and history are cited as the justification for implementing sharî`a – much as did the authors of the 1992 Compilation of Islamic law, but now with a different goal.

Although since 1989 Islamic courts throughout the country have heard cases brought by Muslims regarding marriage, divorce, inheritance, and the division of property at divorce (in effect rendering national and uniform what had been a patchwork of Islamic courts), some Muslims have sought to extend the reach of sharî`a. Local officials in several cities have passed regulations designed to "enforce morality" or that "have sharî`a aspects". These regulations ban gambling,

forbid women to be out by themselves late at night, or require restaurants to close during the fasting month. Most commentators agree that the politicians behind these regulations saw such measures as popular, given the local perception that the police cannot deal effectively with moral crimes.

The local Islamic regulations are highly controversial among Islamic leaders. The largest Islamic association, the Nahdlatul Ulama (NU), has opposed them as undercutting national unity. Muhammadiyah, the other major Islamic association, has not taken an official stand. It is the smaller groups that long have called for the enforcement of Islamic law for Muslims that loudly support the measures and attack those national legislators and other figures who have come out against them.

The supporters of these local laws see them as a way to finally make up for long-resented elimination of a clause in the draft preamble to the 1945 Constitution that would have provided for the “enforcement of shari’a law for Muslims”, a clause referred to often by the name for the entire document, the “Jakarta Charter.” This clause – already partially legislated for civil law – is seen by these groups as the final step in ridding Indonesia of its colonial past. In mid-2006 the key magazines of these pro-shari’a groups (*Sabili*, *Media Dakwah*, *Gontor*, among others) could hardly write of anything but this issue. They protested a little too loudly? – that enforcing Islamic law for Muslims would not threaten national unity. The covers of three of these magazines allow us to triangulate on the arguments: *Gontor* for August 2006 depicted Indonesia surrounded by prayer beads and read “The ‘Ulama care for the Unitary State of the Indonesian Republic” (using the military’s favorite phrase). *Media Dakwah* in its July 2006 issue reviewed the history of post-independence Islamization in Indonesia, and proclaimed that the Jakarta Charter was “the solution, not the problem.” *Sabili* attacked those opposed to these local laws as “attacking shari’a” and emphasized that the implementation of the Jakarta Charter posed no danger to non-Muslims.

The pro-shari’a movements argue explicitly that Islamization does not undermine national unity, because the state ideology, the Pancasila, has as its first plank “monotheism”, and that this concept is moral in nature. One writer in *Media Dakwah* pointed out that each community has its own shari’a, and that Vice President Jusuf Kalla has called for opposition to shari’a to cease, because “in truth we have always each carried out our own shari’as, with everyone respecting those of other groups.”¹ In this view, then, participatory membership in distinct religious communities warrants a dhimmi-like segmented citizenship. Finally, these authors point out that the state has been implementing shari’a with its creation of Islamic courts, its promulgation of an official Compilation of Islamic Law in 1991, and with the laws giving Aceh special rights in this regard.

Since 2001, the province of Aceh has been permitted to base its laws and decisions on shari’a. (No legal definition of that term was provided in the enabling legislation.) Some view this development as an experiment – perhaps



a risky one – for the country as a whole: can Islam become the predominant basis of political community in one province without endangering national citizenship? Those who argue for the change say that the Acehese people always practiced an adat that had been made consistent with shari’a, until the Dutch invaded the province in the late 19th century. The head of the Aceh Shari’a Board (*Dinas Syariah Islam*), Al Yasa’ Abubakar (profiled above), argues that it was the Dutch erasure of this complementary mixture of adat and shari’a that has made enforcement of shari’a difficult. But many others in national leadership positions (most visibly, Azyumardi Azra and Shafi’i Maarif) condemn the movement toward shari’a.

If shari’a has its political legitimacy in its historical embeddedness in Acehese society rather than merely, or even primarily, in its divine origins, as Abubakar argues, then we can understand why so many of the examples he advances would be considered by most to be instances of adat rather than Islam. In 2000 he told me that one of the first measures he would pass would be the rebuilding of the older system of village administration that featured a supra-village office, the *mukim*. In a 2006 interview he gave as a prime example of how Acehese do not understand the Islamic roots of their own society their confusion concerning the building called the *meunasah* – that it was not a sacred space and indeed was used for any activity.

As further evidence of his reasoning from local norms is the wide gap between how Abubakar interprets the Qur’an and hadith and the rules he proposes to become part of Islamic law for Aceh. In the 2006 discussions with me, he argued that scripture allows marriages of Muslims men or women with non-Muslims, a position more liberal than that currently enshrined in Indonesian law (or that accepted by Muslims worldwide), but also that Acehese would not accept any marriages across religious boundaries, and that the laws for Aceh ought to reflect the state of societal opinion, not his reading of scripture. Thus what appears to be an effort to impose scripture on society is in effect the other way around!

One could infer from these examples that Islamic law is the realization of the true norms of Acehese society, long dampened down by colonial rule and its aftermath. This argument parallels the historical argument made by pro-shari’a national groups to the effect that the Jakarta Charter was the real constitution of the Indonesian people because it had been agreed on by the people’s representatives, and that various machination, still unclear, led to its being dropped. In other words, these proponents of shari’a are saying that Islam is a legitimate basis for laws regarding Muslims because it already had been granted that legitimacy by the people of Indonesia, or of Aceh. The political community of Aceh predates the territorial state of the Republic of Indonesia, it was based on Islam, and thus is the legitimate form of self-government for the Acehese people. The political community of Indonesian Muslims, as it was developing its political consciousness during the Revolution, sought the enforcement of Islamic law for Muslims, and was thwarted only by some still-

cloudy machinations. Today, cities wishing to give expression to their norms and values pass ordinances with an Islamic color to them, and these are legitimate because they reflect those norms and values.

If Indonesia is a multi-religious society, continues this argument, than the solution is not to forbid each community from creating its own legal framework, but to allow each to do so, such that a Protestant community would be governed by its version of shari'a, and so forth, as the quote from the Vice President suggests. The Medina Constitution often cited by the much-hated "liberals" as a model for a pluralistic society in fact proves the case for Islamic law, argue the writers for the pro-shari'a publications, in that Jews and Christians had their rights protected precisely because shari'a was the law of the land under the rule of the Prophet Muhammad.

Now, this view of things is hotly contested by many others, including many local leaders in Aceh. When Irwandi Yusuf was inaugurated governor in 2007, he brought to the office his experience and positions taken as a leader of GAM (*Gerakan Aceh Merdeka*, Free Aceh Movement). These positions included opposition to the broadening of shari'a in Aceh, on grounds that the impetus came from the central government and that it was not demanded by the Acehnese people. The greatest publicity has been given to recent Islamic statutes (qanun) that include public caning as a punishment for gambling, drinking, or being found alone with a non-relative of the opposite sex. Village and town canings are timed to attract the largest crowds. Women walking alone at night have been picked up by the "Islamic police", the *Wilayatul Hisbah*, on suspicion of prostitution. These events have caused the widest criticism.

In early February, 2007, a lively debate occurred at a conference held to chart new directions for research on Aceh that showcased the opposed positions on shari'a among Muslim intellectuals in Aceh. In his formal presentation, Al Yasa' Abubakar claimed that it was the "wish of the Acehnese people to have Islamic law, not that of the central government," and that in any case, because Islamic law in Aceh takes the legal form of qanun, and these are passed by the local Parliament and could be overturned by the Indonesian Supreme Court. In Aceh, he said, "Islamic law is adapted to the understandings of the *'ulama* in Aceh, not just taken from a *madhhab* or from laws of other countries." In other words, these are laws like any other and can be held to the same standards.

But many in attendance did not see things this way. A lecturer at the Aceh State Islamic Institute (*IAIN ar-Raniry*) agreed with Abubakar that human rights and gender equality were not in conflict with Islamic law, because the five major objectives of Islamic law included the protection of the person. She argued that Muslim in Aceh needed to give highest priority to measures that protected lives, such as doing away with illegal logging, and not the measures passed so far. Other IAIN staff pointed to a poll that showed that the majority of Acehnese did not favor the implementation of Islamic law, and that the new governor won because he did not favor its implementation.



A lecturer at Universitas Syiah Kuala, the provincial university, said: “I was raised to obey God’s commands so I do not need the government to tell me what to do. I never asked for Islamic law in Aceh. Sexual disease and births out of wedlock are on the rise in Aceh since the implementation of Islamic law, because whereas before social control mechanisms stopped people from doing these things, now people wait for the government.” Abubakar responded that it was the people’s representatives in the provincial Parliament who passed the laws: “if the people do not want it then fine, we will leave it up to them.”

A “focus group” discussion was held after the large session. Several speakers said that Islamic law “must be applied in contextual fashion” with priorities made clear in terms of the logic of the Qur’an’s objectives (*maqâsid*): emergency matters first, optional matters later on. One university lecturer and NGO activist said: “When 40% of the people of North Aceh are poor, why is drinking alcohol the object of qanun?” Another pointed to environmental concerns as following into the top priority of “emergency” (*darurat*), because they endanger human lives. The former head of a district Religious Affair Office in north Aceh said that the majority of cases that come to them involved child abuse, thus here was a top priority item. Most speakers said that the state should not intervene in “private affairs.” Abubakar responded to the objections by saying that the state had adopted Islamic law on the matters under debate – couples found alone, drinking and gambling – because people were starting to take matters into their own hands and administer justice in an illegal way. “The state needed to put things in order.”

The debate turned not on whether or not Islam should serve as a or even the primary norm for life in Aceh, but on how far the state should go in turning norms into enforceable laws, and whether it had correctly determined the priorities for Aceh. Both sides, Abubakar and those objecting to the laws, agreed that it mattered what the Acehnese thought, that legitimacy of Islamic law depended on local acceptance and perhaps even a history of a local call for its implementation. This bottom-up idea of legitimacy is not inevitable or world-wide: many efforts at Islamization start with the premise that popular opinion is not really pertinent to deciding whether to implement God’s law.⁵

Conclusion

The differing positions taken by Indonesian Muslim intellectuals and activists today reflect a long history of intellectual pilgrimages and communications involving a shifting set of external sources of knowledge and funding. If the early importance of Mecca strengthened the arguments for reliance on the traditional legal school followed in Indonesia, it also set the stage for debates

5 See in this regard Zubaida (2003), in particular his analysis of the Egyptian case, and Charrad’s (2001) comparative study of legal debates across northern Africa.

about the best ways to interpret scripture, debates that led to the rise of the modernist alternative. This rise came only because of the new possibilities for study in Cairo.

The two positions set down in the 1920s in Indonesia continue to provide one of the available frameworks for debates in Indonesia about Islamic ritual practices, but by the 1950s and 1960s there appeared new poles of learning and thus new positions. The Dakwah movement drew on new ideas developed in Cairo but above all on study possibilities in Riyadh and elsewhere in Saudi Arabia. The Saudi connection continues to nourish a relatively hard-line approach in Indonesia that argues for the shariatization of positive law. At the same time, the American pole produced the foundations for, first, a social-contextual approach to Islamic history and, thereafter, a more universalistic liberal approach grounded in human rights norms.

The most important interplays in Indonesia occur when scholars, returning from afar, seek to apply their new learning to the norms and conditions of the Indonesian society where they live. Those interplays produce attempts to rethink Islamic law, or to produce laws that are justified by reference to scripture but that are chosen with local social norms in mind. Justification of Islamic norms and laws in the 1990s and the 2000s turns on the success of competing claims that such norms and laws do or do not fit local norms and respond to local norms. Islamic law may be God's law, but for many Indonesians the decisions about scriptural interpretation and priorities for implementation need to respond to the character of Indonesian society. The globalization of Islam (ROY 2004) passes by way of a continuing dialogue with local ways of life.

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Religious discourse and the public sphere in contemporary Pakistan

Résumé. *Discours religieux et sphère publique dans le Pakistan contemporain.*

Cet article traite des lettrés religieux musulmans formés traditionnellement, les oulémas, au Pakistan. Il examine comment ils ont produit leurs propres conceptions de la tradition lettrée islamique et il compare leurs discours avec ceux qui leur font concurrence et qui sont produits par d'autres types d'intellectuels religieux. L'article analyse l'incommensurabilité du style et du discours des oulémas avec ceux de leurs critiques modernistes, à travers les débats pakistanais sur l'interdiction coranique de l'usure (*riba*) et son application aux formes modernes d'intérêt financier. Les efforts de rapprochements n'ont pas eu de résultats concluants, ce qui permet de mettre en lumière comment les oulémas continuent de défendre leur autorité dans la sphère publique au Pakistan et comment leurs concurrents modernistes ont dû y faire face.

Abstract. This article examines some of the ways in which the traditionally educated Muslim religious scholars, the `ulama, of Pakistan have articulated their conceptions of the Islamic scholarly tradition and how their modes of discourse compare and compete with those of other religious intellectuals. Focusing on extensive debates in Pakistan on whether the Qur'an's prohibition of usury (*riba*) also covers modern forms of financial interest, the article analyses facets and consequences of the "incommensurability" between the `ulama's styles of discourse and those of their modernist critics. Efforts to remedy this incommensurability have had mixed results, shedding considerable light as much on how the `ulama have continued to defend their authority in the public sphere as on how their modernist challengers have fared in Pakistan.

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This paper examines certain facets of the language of discourse that the traditionally educated Muslim religious scholars, the *`ulama*, use in the public sphere and how it contrasts but also overlaps with the discursive languages of the “new’ religious intellectuals” (on the latter, see Eickelman and Piscatori 1996: 13, 43-44, 77, 180). Focusing on Pakistan, I consider some of the ways in which the *`ulama* articulate their discourses in the context of what professes to be an “Islamic state” – a state in which the very definition of Islam, let alone the public roles it ought to have, has long remained a matter of severe, multifaceted contention. My central question here concerns the limits of mutual intelligibility in the discourses of the *`ulama* and their critics in the Pakistani public sphere.

In reflecting on the difficulties inherent in representing or translating the ideas and beliefs of one “linguistic community” into those of another, the moral philosopher Alasdair MacIntyre has suggested that “the outcome in each case of rendering those beliefs sufficiently intelligible to be evaluated by a member of the other community involves characterizing those beliefs in such a way that they are bound to be rejected” (MacIntyre 1987: 390). This is so, he says, because the communities in question are defined by and embody distinct traditions:

[W]hen two ... distinct linguistic communities confront one another, each with its own body of canonical texts, its own exemplary images, and its own tradition of elaborating concepts in terms of these, but each also lacking a knowledge of, let alone linguistic capacities informed by, the tradition of the other community, each will represent the beliefs of the other within its own discourse in abstraction from the relevant tradition and so in a way that ensures misunderstanding (MacIntyre 1987: 392).

Though MacIntyre does not concern himself with Islam, his conception of distinct linguistic communities guided by their own traditions illuminates some of the contestation among Muslim groups in contemporary societies. Despite the major transformations that modernity has forced onto their institutions and their discourses, the *`ulama* have retained a discursive tradition of their own – a tradition constituted by a long and complex history of commentary, debate, agreements, and disagreements about the foundational texts and about all matters Islamic. This is not a closed, frozen, or monolithic tradition, yet it is with reference to it that any given reading of the foundational or other texts finds meaning or legitimacy in their discourses. Even as it takes many different expressions, this commitment typically sets the *`ulama* apart from the