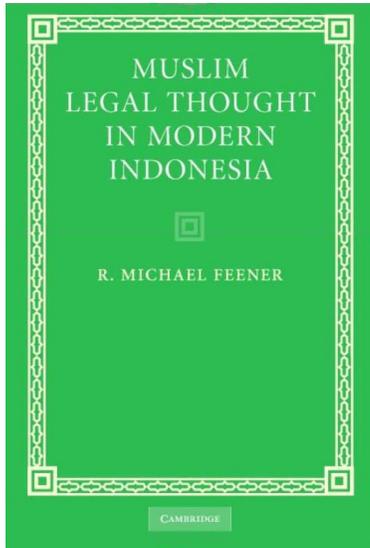


## Book Review

### HOW THE NEXT GENERATION OF *FIQH*?

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Title : Muslim Legal Thought in Modern Indonesia  
Author : R. Michael Feener  
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It is commonly acknowledged that human problems tend to be more complicated through times. A set of classical epistemology and methodology is indeed not enough to address. Developing knowledge, sciences, and technology which leads to the creating of brilliant ideas is necessary. In terms of Islamic law, it has been agreed among jurists that the construction of *fiqh* of the seventh century needs reconstruction and contextualization to make *fiqh* relevant with social dynamics. Reading Humphreys' book, *Islamic History: A Framework for Inquiry*,<sup>1</sup>

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<sup>1</sup> Stephen R. Humphreys, *Islamic History: A Framework for Inquiry*, London, New York: I.B. Tauris & Co. Ltd, 1991).

published in the early 90es, we might be convinced that *fiqh* produced by ulama' in the classical periods could not completely serve as a reference of social and economic lives. Even more extremely, regarding trade issues in the early Islam, he concluded that it is barely possible to use *fiqh* to respond to changes in the history of Islamic economic institutions. Ibn Rushd in his *Bidayat* had also noted that changing realities (*ghair mutanahiyah*) cannot be addressed static texts (*mutanahiyah*).<sup>2</sup> Reinterpretation of texts and reactualization of doctrines are absolute needs.

Realities of changes and dynamics in *fiqh* are unfortunately not well understood by scholars outside Southeast Asia. The necessity of the method of Islamic law (*ushul fiqh*), including *ijtihad*, which yang demands *fiqh* to have dialogues with social needs is not considered as *fiqh*'s capability of being adaptive and flexible. M. B. Hooker, while studying *fatwas* in Indonesia since the 1920es, on the rights and obligations of women for instance, concludes that there is no sources consistently used in the *ijtihad* process and that there exists contradiction of the border of law status. Hooker states that the choice of authorities (source and approach) referred to as in a *fatwa* is too eclectic.<sup>3</sup>

Holistic understanding of intellectual history of Muslims plays a key role, especially in Indonesia where the largest Muslim population and progressive ideas of Islamic law live. Based upon historical data, study of Islamic law thoughts in Indonesia should be developed. In this regard, R. Michael Feener<sup>4</sup> writes a book

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<sup>2</sup> Ibn Rushd, *Bidāyat al-mujtahid wa Nihāyat al-muqtaḥid* (Cairo: Maktabat al-khanji, 1994), p. 2.

<sup>3</sup> He says that “fatāwā from the 1920s to the present show us that no one source is consistent or entirely consistent” and that “there is a highly degree of ambivalence in defining the boundaries of what ‘may’ and ‘should’ of women.” See M.B. Hooker, M.B. Hooker, *Indonesian Islam: Social Change through Contemporary Fatāwā*, (Honolulu: University of Hawaii Press, 2003), mainly chapter III on Women: Status and Obligation.

<sup>4</sup> R. Michael Feener is a specialist of history of culture and intellectual of the Middle East and Southeast Asia. Born in Salem, Massachusetts, he studied Islam and foreign languages at Boston, Cornell, and Chicago Universities, including in Indonesia, Egypt, and Yemen. Presently, he is active in researching dynamics of the implementation of Islamic law in the NAD province institutionally. At National University of Singapore (NUS), he chairs as associate professor and works as senior researcher at The Asia Research Institute's 'Religion and Globalization'. Books and articles written comprise *Islam in World Cultures: Comparative Perspectives* (Oxford, UK: ABC-Clio, 2004), *Islamic*

entitled *Muslim Legal Thoughts in Modern Indonesia*. This edition was published by Cambridge University Press in 2007. As Feener writes, this book is aimed at introducing tendencies of Muslim intellectuals' thoughts on law and society issues to readers, mainly outside Indonesia. Feener shows a number of critiques of literatures on the development of Islamic thoughts in the country. To put simply, the book highlights contemporary debates as well as reformation of Islam occurring in the Archipelago from the last part of the 19<sup>th</sup> century to the current time.

### **From Printing Tradition to New Ulama'**

This book consists of seven chapters. The plot of chapters within the book can be simply understood in a chronological way. The first chapter entitled "Technology, training, and cultural transformation" is started with a quotation from J.G.A Pocock, "When a change in a society's self awareness has become at all widely disseminated, that society's styles of thinking and acting have been irreversibly altered." Feener notes that fundamental changes at the category and the structure of the traditional religious authorities had resulted in the remarkable development of history of Muslim's intellectual and institutional in the last 19<sup>th</sup> century and the early years of the 20<sup>th</sup> century (p. 1). Such development had had a big impact not only on religious social institution but also format and content of Islamic teachings and debates on law in the modern era. Therefore, it is not surprising that desire to perform *ijtihad* nowadays could not be dammed up. As the result, some ulama' such as Ahmad Rifa'i Kalisasak and Kiai Saleh Darat Semarang wrote *kitab*s which is essentially adapted to the real condition of the society at that time. This discussion can be further read in chapter two entitled "The open gate of *ijtihad*."

The increasing number of texts over the course of the eighteenth and the nineteenth centuries was facilitated by revolutions in technology. Print served to

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*Law in Contemporary Indonesia: Ideas and Institutions* (editor with Mark E. Cammack), Harvard University Press, 2007, and "Indonesian Movements for the Creation of a 'National *Madhhab*' in *Islamic Law and Society* 9: 1 (2001), pp. 83-115.

produce texts and expand readership. According to Feener, as Ian Proudfoot has noted,<sup>5</sup> the first Muslim printing in Southeast Asia, which dates from the 1840s, meant Muslim religious texts were massively produced which obviously could replicate many of the conventions of established chirographic culture. This means that Islamic religious texts were an important subdivision of a wider range of works from Malay presses, during the second half of the nineteenth century. More importantly, the publishing activities contributed to the wide spread of *kitab*s in *pesantren*. Aside from printing texts for readers, in the field of *fiqh*, the spread of print technology had an impact on the increasing availability of works outside of the Shafi'ite *madhhab*, which had been mainstream in the Archipelago (pp. 7-10).<sup>6</sup>

The next three chapters, “An ‘Indonesian *madhhab*’”, “Shari’a Islam in a *Pancasila* nation, and “New Muslim intellectuals and the ‘re-actualization’ of Islam” is generally concerned with the printing and intellectual tradition which existed during the twentieth century, especially after the Indonesian independence. In the early years of the independence, a number of scholars, including Hasbi ash-Shiddiqy and Hazairin, produced an idea of *fiqh* which is tailored to the nature of Indonesian Muslim (fikih Indonesian or national *mazhab fiqh*). Such *fiqh* renewal was undertaken by employing a social science approach in the *ijtihad* process. In the 70es-90es, this movement was continued by scholars, such as Nurcholish Madjid and Munawir Sadzali. Reactualization, contextualization, and codification serve as key words in their attempts. This group, in chapter six “The new ‘ulama’”, is called new ulama’. These attempts remain to exist until the twenty first century, mainly after the 1998 Indonesian reformation. Not only contextualization, the contemporary movement also struggles for a formulation of Islamic law which is liberal and sensitive with issues of gender equality, inter-religion, and civil rights.

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<sup>5</sup> See Ian Proudfoot, “A Formative Period in Malay Book Publishing”, in *JMBRAS* 59 (1986), pp. 101-132.

<sup>6</sup> A further exploration of the roles of ulama’ in the Archipelago in later part of the 19<sup>th</sup> century and the early years of the 20<sup>th</sup> centur can be read in Jajat Burhanudin, *Islamic Knowledge, Authority, and Political Power: The ‘Ulama in Colonial Indonesia*, Disertasi Ph.D. (Leiden: Leiden University, 2007).

### **The next generation of Indonesian Islamic law?**

The above question represents the title of the last chapter of the book. This part, in my opinion, is a remarkable contribution of Feener's work. He records products of Muslim intellectuals on Islamic law in the reformation era. Feener also gives exploration of major themes and social institutions, such as Islamic Liberal Network (JIL), P3M and Muhammadiyah's Young Intellectuals Network (JIM) which participate in the debates on Islamic law (pp. 182-207). Feener unfortunately does not explain why a question mark should be inserted in the end of the chapter title. We can merely surmise what meaning existing beneath it. It is likely that Feener, with the question mark, leads readers to freely think the future of Indonesian *fiqh* as it has established in the public sphere. It means that, as an impact of democracy, everyone has his/her rights to participate in such open discursive stage. Or, as the consequence of historical approach used, Feener tends not to draw conclusion whether the future thoughts of Indonesian *fiqh* will be dominated by groups of liberal Muslim or fundamentalist Muslim.

Aside from that, a comprehensive and academic perspective of the voyage of intellectuality is central to portray Indonesian Islamic law either in the past, present, or coming time. In addition, scholars of Islamic law to some extent have moral responsibility of determining the actual future. Religious communities, with problems they face, need concrete answers from the scholars. It is the time that intellectuals do not merely soar skyward and produce abstract ideas.

Though the theme is not a new one, this book is superior in terms of comprehensive coverage it contains, including the development of thoughts of Islamic law in Indonesia from the colonial era to the reformation era. The majority of existing books on the same issue focus on a certain episode of the long historical series. For instance, Mahsun Fuad's *Hukum Islam di Indonesia* makes comparison between scholars of Indonesian *mazhab* of Islamic law, such as Hazairin and Munawir

Sadzali from the developmental perspective.<sup>7</sup> Written in English, this Feener book is important for the actuators (mainly from the West) of the study of Islamic law and society, the study of Southeast Asia and the study of comparative law. Furthermore, Feener works on this book very seriously. This can be seen from references and new data he presented which not all authors, from Indonesia especially, could obtain. The riches of references somehow give a positive added value.

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<sup>7</sup> See Mahsun Fuad, *Hukum Islam di Indonesia*, (Yogyakarta: LKiS, 2005).