

Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Institute of Southeast Asian Studies, Singapore, 2007, ISBN 978-981-230-402-5, \$US49.90, i-x, 271 pages)

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Indonesia has the largest Muslim population of any country in the world. It is hardly surprising, then, that over the years Islam in Indonesia has been the subject of serious scholarly attention. A significant focus has been Islamic law or Shari'a, given its centrality to the Islamic faith.<sup>1</sup>

Since the attacks of 11 September 2001, and bombings in Bali and Jakarta from 2002, work on Islam and Shari'a in Southeast Asia and Indonesia has intensified.<sup>2</sup> Nadirsyah Hosen's book is a very welcome and worthy addition to the growing body of work on Shari'a in Indonesia. Further, in light of the recent 'bad press' Islam has faced in the West, Hosen's book is a particularly timely contribution to the general literature on constitutionalism in developing countries, and in particular, the compatibility of Islam with constitutionalism, human rights and the rule of law.

Most of the literature on Shari'a in Indonesia has provided perspectives on the contest between the Indonesian state and Islam for predominance as the source of 'legal and social meanings'.<sup>3</sup> Many scholars have focused on Indonesia's 1974 *Marriage Act* and the tensions it created between some Muslims, who believe that marriage law should be largely Islamic, and the State, keen to improve the legal status of women and to stamp its

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1 See Daniel S Lev, *Islamic Courts in Indonesia: a Study in the Political Bases of Legal Institutions* (1972); Michael Hooker, *Islamic Law in South-East Asia* (1983); B J Boland, *The Struggle of Islam in Modern Indonesia* (1971); Mark Cammack, Lawrence A Young & Tim Heaton, 'Legislating Social Change in an Islamic Society-Indonesia's Marriage Law' (1996) 44 *American Journal of Comparative Law* 45; Mark Cammack, 'Islamic Law in Indonesia's New Order' (1989) 38 *International and Comparative Law Quarterly* 53; Sebastiaan Pompe & J Otto, 'Some Comments on Recent Developments in the Indonesian Marriage Law with Particular Respect to the Rights of Women' (1990) 4 *Verfassung und Recht in Ubersee* 415; Anthony Johns, 'Indonesia: Islam and Cultural Pluralism', in John Esposito (ed), *Islam in Asia: Religion, Politics, and Society* (1987).

2 See John Thayer Sidel, *Riots, Pogroms, Jihad: Religious Violence in Indonesia* (2006); Virginia Hooker & Amin Saikal, *Islamic Perspectives on the New Millennium* (2004); Robert W Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (2000); Greg Fealy & Virginia Hooker (ed), *Voices of Islam in Southeast Asia: a Contemporary Sourcebook* (2006); Susan Blackburn, Belinda Smith & Siti Syamsiyatun (eds), *Indonesian Islam in a New Era: How Women Negotiate their Muslim Identities* (2008); Arskal Salim & Azyumardi Azra, *Shari'a and Politics in Modern Indonesia* (2003); Michael Hooker, *Indonesian Shari'a: Defining a National School of Islamic Law* (2008); Michael Hooker, *Indonesian Islam Social Change Through Contemporary Fatawa* (2003); R Michael Feener, *Muslim Legal Thought in Modern Indonesia* (2007); R Michael Feener & Michael E Cammack, *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (2007); John R Bowen, *Islam, Law, and Equality in Indonesia: an Anthropology of Public Reasoning* (2007); Abdullah Saeed (ed) *Approaches to the Qur'an in Contemporary Indonesia* (2005).

3 Cammack, Young & Heaton, above n1 at 53.

authority on marriage law.<sup>4</sup> Other scholars have also focused on the ‘contest’ as it has been waged in Indonesia’s Islamic courts, investigating the extent to which some Islamic court judges have applied traditional Islamic law and resisted State-sanctioned — some would say watered-down — versions of it as contained in the *Kompilasi* (Compilation of Islamic Law).<sup>5</sup>

The contest has arguably intensified since the fall of Soeharto, as many of the repressive measures his regime used against Islam have been broken down. However, the political aspirations of Islam have failed to find firm footing. This is partly because these aspirations lack widespread political support, as most Indonesian Muslims are relatively moderate in their beliefs; and partly because the State has largely retained structural control over the Islamic bureaucracy and judiciary.<sup>6</sup> Nevertheless, the State is almost constantly faced with vigorous attempts by more conservative Muslim groups to secure a larger role for Islam within national politics and the national legal system.

Most of the literature refers to the so-called Jakarta Charter — a provision requiring Muslims to follow Shari’a — which was dropped at the last minute from the Indonesian Constitution as independence was declared in August 1945, largely due to the fears of other religious groups and moderate Muslims alike.<sup>7</sup> In place of the Charter was *Pancasila* — a State philosophy of five principles, with its first principle being a ‘Belief in Almighty God’. The place of Islam within the state was revisited from 1955, when Indonesia’s Constituent Assembly (*Konstituante*) met to devise a new Indonesian constitution.<sup>8</sup> Again, Muslim aspirations were vocal, albeit in the minority, but the debates were never concluded as then-President Soekarno, amidst economic crisis and social unrest, unilaterally announced by Presidential Decree a return to the 1945 Constitution, including the *Pancasila*. In this way, Indonesia did not become an Islamic State, but the adoption of *Pancasila* ensured that neither did it become a secular one.

When Indonesia came to amend its Constitution four times from 1999 to 2002, some Muslim groups attempted again to secure a greater role in public life for Islam. They argued for the insertion of something resembling the Jakarta Charter, but again their appeals fell largely on deaf ears: the proposal was voted down by a majority of almost 90 per cent of Indonesia’s People’s Consultative Council. However, other reforms were

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4 June S Katz & Ronald S Katz, ‘The New Indonesian Marriage Law: A Mirror of Indonesia’s Political, Cultural, and Legal Systems’ (1975) 23 *American Journal of Comparative Law* 653; June S Katz & Ronald S Katz, ‘Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited’ (1978) 26 *American Journal of Comparative Law* 309; Cammack, Young & Heaton, above n1; Cammack, above n1; Simon Butt, ‘Polygamy and Mixed Marriage in Indonesia: Islam and the Marriage Law in the Courts’, in Timothy Lindsey (ed), *Indonesia: Law and Society* (2008); Sebastiaan Pompe, ‘Mixed Marriages in Indonesia: Some Comments on the Law and the Literature’ (1988) 2e & 3e *Bijdragen tot de Taal-, Land- en Volkenkunde* 259.

5 Hooker (2003), above n2; Hooker (2008), above n2; Pompe & Otto, above n1; Butt, above n4.

6 Butt, above n4; Simon Butt, ‘Indonesia’s Draft Criminal Code: Can Legal Diversity Exist within a Single National Law?’ (2003) 28 *Alternative Law Journal* 306.

7 H Muhammad Yamin, *Naskah Persiapan Undang-Undang Dasar 1945* (1959); M C Ricklefs, *A History of Modern Indonesia Since c. 1300* (1993).

8 Daniel S Lev, *Transition to Guided Democracy* (1966); Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-Legal Study of the Indonesian Konstituante, 1956-1959* (1992).

adopted, including a world-standard bill of rights<sup>9</sup> and a restructuring of key organs of state and their powers to provide for more accountability and democracy — key features of many conceptions of the rule of law.<sup>10</sup>

It is upon the most recent parliamentary debates about the political and legal place of Islam within the Indonesian State that Hosen lends his focus. Not only does he provide an impressively well-informed update on the contest, he also takes on the challenging and controversial issues of constitutionalism and human rights within Islam. Locating the Indonesian debates on these issues within the various streams of Islamic scholarship was previously largely uncharted territory and is, for this reader at least, the highlight of his work.

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9 Timothy Lindsey, 'Indonesian Constitutional Reform: Muddling Towards Democracy' (2002) 6 *Singapore Journal of International and Comparative Law* 244; Simon Butt, *Judicial Review in Indonesia: Between Civil Law and Accountability? A Study of Constitutional Court Decisions 2003-2005* (PhD Thesis, University of Melbourne, 2007).

10 David Clarke, 'The Many Meanings of the Rule of Law', in Kanishka Jayasuriya (ed), *Capitalism and Power in Asia* (1999).