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Introduction by Guest Editors

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INTRODUCTION BY GUEST EDITORS

Mark E. Cammack, R. Michael Feener, and Clark B. Lombardi

Southeast Asia has enjoyed a rich Islamic intellectual history and continues to enjoy vibrant debates around questions of Islamic legal interpretation and practice. The region is also home to robust political movements, some of which actively push for the state to “Islamize” its legal systems. At the same time, the institutions that apply Islamic law in the region have also been subject to pressure from other elements within society to respond to changing social realities, particularly changing views about cultural pluralism, gender issues, and the management of religion in the public sphere. Finally, there have been efforts across the region to professionalize Islamic legal institutions to enable them to function effectively within the bureaucratic environment of the modern state. These changes have raised hard questions for legislators, judges, and administrators about the content of Islamic law and the qualifications and training of those who apply it.

This book grew out of conversations among the three guest editors, Mark Cammack, Michael Feener, and Clark Lombardi, in the summer of 2008 about the general lack of attention among scholars of Southeast Asian Islam on important questions about the foundations of the region’s Islamic legal structures. First, despite its evident importance, there has been little research on the process by which legislators and judges decide which interpretation of Islamic law will be formally applied by the state apparatus. Another important question that has been largely ignored by scholars concerns the qualifications of Islamic legal professionals. The three Southeast Asian states treated in this volume—Indonesia, Malaysia and Singapore—have separate systems of Islamic courts. Although the educational background of those who staff these courts will clearly inform the way they understand, interpret, and apply the law, to date little research has been done on the educational processes by which judges who serve on Islamic courts are trained to think about Islamic law. Studies on the means by which judges are appointed and regulated have also been lacking—even though the decision to favor one type of candidate surely affects the interpretation and application of Islamic law in the courts. Finally, lawyers who practice before Islamic courts play a crucial role in framing and presenting the issues for decision and in mediating between the courts that apply Islamic law and the public who have recourse to the state’s official

Islamic legal institutions, but research on the professional training and governance of these lawyers is almost entirely lacking.

In 2009, with the generous assistance of the Asia Research Institute (ARI) of the National University of Singapore and the Carnegie Corporation of New York, the editors of this volume organized a series of workshops that were designed to gather data about the way in which Islamic law was coming to be applied in the Islamic courts of the region. The first major workshop was held at the National University of Singapore in February 2009. Participants included leading Southeast Asian academics, judges and members of bar associations from Singapore, Malaysia, and Indonesia. Participants were asked to present research on a) the increasing scope of self-styled “Islamic law” in the legal systems of Singapore, Malaysia, and Indonesia, and b) the training and selection process for judges and lawyers who worked in the courts that were applying these ever-expanding bodies of Islamic law.

After that workshop, the editors sketched out three templates of questions designed to flesh out the issues discussed in the sessions. The first template of questions related to the evolving institutional structure of the Islamic sectors of the legal systems of Indonesia, Malaysia, and Singapore. The second dealt with the training of the judges who serve on Islamic courts in the three countries, and a third posed questions about the evolving role and training of lawyers operating in the Islamic sectors of the three systems. The purpose of the templates was to ensure comprehensive coverage of the issues and facilitate cross-country comparison. The answers to the questions contained in the three templates for each of the three countries became the basis for this book consisting of three parts of three chapters each. Each of the three parts addresses one of the countries covered in the study. The chapters within each part present the answers to the questions contained in the three templates. Thus, Part I focuses on the evolution of the legal system of Indonesia and addresses the questions posed in the first template in the first chapter, the questions posed in the second template in the second chapter, and the questions posed in the third template in the third chapter. The same structure is followed in Part II focusing on the Islamic sectors of the legal system of Malaysia, and in Part III on the Singaporean system, each following the same sequence of templates as Part I. By ensuring that the different parts of the book address the same set of issues with respect to each of the three countries, the editors hope to provide readers with useful comparisons. We also hope to provide a road map for scholars who specialize in other parts of the Muslim world and might want to generate parallel case studies of the evolution of formal Islamic legal systems in those

countries. Future studies along these lines could facilitate the development of more sophisticated comparisons of formal Islamic legal institutions and professional training in a broad range of contemporary Muslim societies.

The editors were fortunate enough to identify specialists uniquely situated to assist in the writing of such a book. From August through October 2009, these contributors were invited to a further series of smaller workshops at ARI where they worked through the templates to ensure thorough treatment of all relevant questions. As we delved more deeply into the issues during the course of these workshops, we also made a number of modifications to the templates. It became clear that providing accurate descriptions of the evolution of the Islamic legal sectors of these countries and laying out the background necessary to understand why judges and lawyers are trained in the manner that they are was more complicated than we anticipated. We also discovered that the training, functions, and organization of lawyers in these countries are undergoing rapid change, and it may be premature to draw firm conclusions with respect to the outlook and significance of these important actors.

The material presented in this book is unique and presented in a user-friendly fashion. It demonstrates how far the process of Islamization has gone in these three countries of Muslim Southeast Asia. At the same time, it demonstrates that Islamization of the legal system has progressed to different degrees and in some strikingly different ways. Although the legal systems of Muslim Southeast Asia ostensibly share a common Malay-Muslim heritage, the courts that handle questions of Islamic law in these countries are structured in remarkably diverse ways and conceptualize the roles of various legal professionals quite differently. This is in large part because the Islamic courts are being integrated into different national legal systems that developed under different colonial regimes with backgrounds in both common law and continental civil law traditions. These systems have since further evolved in very different post-colonial environments.

The materials presented in this book make it clear that while many Muslims in Southeast Asia live in nations that apply “Islamic law” through formal state institutions, the form, content, and experience of “Islamic law” across the region is diverse. In each of the three countries treated here, the people’s experience of Islamic law is mediated by the legal institutions that are entrusted with the task of interpreting the law, and the character of legal institutions is shaped by the educational institutions that train the personnel who staff them. Both the legal institutions and the educational institutions are, in turn, heavily influenced by the state. Changes in state policy with

regard to the institutions that apply the law have a profound impact on the way citizens experience Islamic law today.

The research that is presented in this book could never have been gathered or presented without the generous assistance of many sources of support. The Asia Research Institute of the National University of Singapore has been extremely generous. In addition to critical financial assistance, ARI has also provided planning and administrative help during the preparation of multiple, highly productive workshops. The Carnegie Corporation of New York has also provided generous financial and moral support for various stages of its project. Further support has been received from the editors' home institutions: Southwestern Law School, the National University of Singapore, the University of Washington School of Law, and the University of Washington Asian Law Center. We would also like to thank Zaide Joyce Iris Solomon for her help with the editing and formatting of the manuscript for publication. Finally, we would like to acknowledge the editors and staff of the Pacific Rim Law & Policy Journal, including but not limited to Tia Aneja Sargent, Marcus T. Pearson, Joe Stockton, Elizabeth Sher, Gregory M. Chiarella, Matthew J. McCauley, Kersti Harter Kennedy, Marek E. Falk, Eric Mapes, Ada Ko Wong, and Priyanka Prakash. They embraced this project and worked with great energy and professionalism to bring it to fruition. They also identified a student comment by a current member of the journal that complements the articles collected in this book and arranged for it to be included at the end of this special issue. Although it is not structured according to the template used by the authors of the other articles in this volume, it discusses the Islamic court system in the Philippines, and it adds to our understanding of the diversity of ways in which Islamic legal issues are adjudicated in Southeast Asia.