CHALLENGING
the Secular State

The Islamization of Law in Modern Indonesia

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Introduction

The relationship between religion and law has been a recurring theme in the history of the major monotheistic faiths. Judaism and Islam, in particular, have always considered law inseparable from religion and hold God to be the one and the only legitimate lawmaker. Since the rise of the modern nation-state in the nineteenth century, however, the supremacy of holy laws has been endlessly challenged. There has been a growing debate about whether the law of a state should remain closely related to religion or be wholly detached from it. In many Muslim countries and in the Jewish state of Israel, religious leaders are attempting to realize the former option; that is, to give religious law status as the law of the land.[1]

In Indonesia, home to more Muslims than any other nation in the world, attempts to give religious law (*shari'a*) a constitutional status have been undertaken several times since the nation's independence on 17 August 1945. Questions of the formal implementation of *shari'a* first appeared in the early days of Indonesian independence when some Muslim leaders (in June–August 1945) struggled to introduce the so-called *Piagam Jakarta* into the 1945 constitution. The *Piagam Jakarta,* or the Jakarta Charter, was actually the first draft of the preamble to that constitution and it contained what has since become a well-known seven-word phrase in Indonesia: *dengan kewajiban menjalankan syariat Islam bagi pemeluknya* [with the obligation of carrying out Islamic *shari'a* for its adherents]. This phrase, famous today simply as the 'seven words,' was eventually withdrawn from the final draft of the preamble on 18 August 1945.[2] Since then, however, the status of the seven words has been a constantly controversial issue.

One example of how the Jakarta Charter has remained an ongoing issue in Indonesian politics is the struggle that arose during the debates over the most appropriate ideology for the Indonesian state during sessions of the Constituent Assembly from 1957 to 1959. However, for those expecting a profound role for Islam in the modern nation-state, the struggle ended in failure. A decade later, the call for *shari'a* re-emerged in the Provisional People's Consultative Assembly (MPRS) sessions in 1966–1968, only to fail again. Although calls for implementa-

tion of *shari'a* rules were unsuccessful on both these occasions, they certainly did not end in the late 1960s. There have been four discernible Muslim constituencies demanding it in the aftermath of the New Order regime (1966–1998), namely Islamic political parties, certain regions with a majority of Muslim inhabitants, Muslim militant groups, and sections of the Islamic print media. Even though the People's Consultative Assembly (MPR) in its annual session in 2002 decided not to amend the 1945 constitution to give *shari'a* constitutional status, calls for the formal recognition of *shari'a* continue.

This book examines the interaction between *shari'a* and the nation-state and the profound and ongoing legal political dissonances that characterize this interaction. These dissonances can be traced back to the fact that the character of *shari'a* in the history of Islam has changed over the centuries and that the understanding of the role of the state is now fundamentally different from what it was at the time *shari'a* law developed in the seventh and eighth centuries.

This study of 'Islamization' focuses on the *shari'a* and the state laws of contemporary Indonesia and looks at the constitutionalization of *shari'a,* the nationalization of *shari'a,* and the localization of *shari'a* in Aceh. It argues that attempts to formally implement *shari'a* in Indonesia have always been marked by a tension between political aspirations of the proponents and the opponents of *shari'a* and by resistance from the secular state. The result has been that *shari'a* rules remains tightly confined in Indonesia.

Approach of the Study

As far as calls for the implementation of religious law in a modern nation-state are concerned, there are at least five perspectives.

First, judicial discourses related to the application of religious law can be seen as political expressions linked to the legitimization of either incumbent regimes or the religious opposition.[3] In the latter case, it is often suggested that calls for the implementation of religious law serve as a means of politicization and are often used as an ideological weapon to criticize the government (which, of course, has different political interests and religious goals).[4] In my view, to claim that calls for religious law result solely from the political activism of religious groups is superficial, as there is a whole range of motives (religious, psychological, and economic) that should also be taken into account. One must go beyond this purely political approach to examine what religious law really means for the individuals involved.

A second view is that religious revivalism,[5] or, more precisely, religious radicalism,[6] is the impetus behind the movement toward the application of religious law.[7] It has been observed that the emphasis upon morality and legal obedience is

the main objective of religious revivalist movements. These movements strongly believe that a return to religious law is the panacea for all modern evils. Moreover, through the application of religious law, the religious revivalists seek to transform the present reality of the religious community (which is deemed to have deviated or gone astray) into something that aligns better with the original teachings of the religion. However, to explain the growing aspirations for the implementation of religious law solely through a framework of religious revivalism is, again, unsatisfactory, as the term 'revivalism' is a concept that has almost no boundaries. Indeed, movements of religious revivalism in the contemporary world may include either attempts to purify religious beliefs (*tawhid*) [8] or, as in Sufi movements, attempts to escape from the worldly non-transcendent state.[9]

The third explanation is that the current resurgence of support for religious law is a symptom of the emergence of so-called fundamentalist movements, observable especially in religions such as Judaism, Christianity, Islam, and Hinduism.[10] These fundamentalist movements often support the restoration of elements of the past to contemporary reality, including the reintroduction of religious law. In order to legally transform religious law from the sacred texts into the law of the state, these movements disavow any distinction between public and private life. Therefore the state's lack of concern for the implementation of religious law has been a rhetorical device of the fundamentalist opposition.[11] Additionally, governments' attempts to incorporate religious law into national legal systems have been regarded as a symptom of fundamentalism.[12] The problem with this argument is that it often fails to distinguish between government campaigns and popular demands for the official implementation of religious law. The latter cannot be easily explained within the framework of a fundamentalist movement as it is often motivated either by emotional or practical reasons.

The fourth view is that the implementation of religious law can be seen as part of the reassertion of the religious identity of the state or society. As several states define themselves religiously, for example the Jewish state of Israel or the Islamic states of Pakistan and Iran, some nationals of these states see the implementation of religious law in these countries as a logical consequence, even a necessity.[13] Likewise, it has been observed that the implementation of religious law is an essential expression of religious people.[14] Therefore, the call for the implementation of religious law has often been claimed as the legitimate collective right of religious people to self-determination in terms of their religious identity.[15] The difficulty with this approach is that it mainly focuses on the reactions of religious people to a potential threat to their religious identity and does not adequately consider the fact that religious law itself is not identical to state law. Indeed, for religious law to function as state law and to be applied by judicial bodies, intricate preconditions are required, and political or demographic identity alone is not sufficient.

The fifth perspective considers that implementation of religious law is not a goal in itself, but simply a means to religionize (Islamize or Judaize) the modern nation-state.[16] A more or less similar approach is the argument that the hallmark of an authentically religious state system is the implementation of religious law, and not any particular political order.[17]

My theoretical position in this book shares much with this last approach in that I will mainly focus on the recent attempts of either Indonesian Muslim groups or the government apparatus to make the modern state of Indonesia more Islamized. These Islamization attempts, as further theoretically elaborated in chapters 2, 3, and 5, are viewed as the continuation of an ongoing process of Islamization that has been in progress since the coming of Islam to Indonesia in the thirteenth century.[18]

This book seeks to explore legal and political dissonances that occur in the attempts at Islamization of the Indonesian legal system. What I mean here by the term 'dissonance' is a spectrum between mild tension in meanings on the one hand and a direct contradiction in terms on the other hand. It becomes an umbrella term to cover a large range of meanings such as 'inconsistency,' 'incongruity,' 'ambivalence,' 'ambiguity,' 'conflict,' 'contradiction,' 'disagreement,' 'tension,' and 'inappropriateness.' Instead of using one of these words, I choose the term 'dissonance' because it relates to the profound inconsistencies of both theoretical and practical nature in Indonesia's pluralistic society.

I propose in this book that there are at least two types of dissonance that would take place in the formal implementation of *shari'a.* First is dissonant constitutionality, which would take place if the constitution required the state to standardize a number of Islamic practices by prioritizing a particular interpretation over other various religious interpretations. This situation would create an ambiguity since an individual Muslim would not be permitted to subscribe to an interpretation that does not comply with the state's standard. The individual Muslim would no longer be free to exercise his or her religious liberty based on his or her own conviction, as guaranteed by the constitution. In addition, since the Indonesian constitution, for instance, grants religious rights to individuals, the official implementation of *shari'a* would lead to an inconsistent application of the constitution as it deals with citizens as different religious groups. The way Islamic parties struggled for amending Article 29 on Religion of the constitution, as will be seen in chapters 10 and 11, demonstrates this dissonance.

Second is dissonant legislation in the sense that the formal implementation of *shari'a* in a nation-state often produces tensions between different legal sovereignties, causes contradiction in its enactment, creates disagreement between national laws, raises conflict with higher laws, results in inappropriate legal drafting, leads to ambivalences in practice, and brings inequality between citizens. The discussion

of complexities relating to the legislation of *zakat* in part IV and the formal implementation of *shari'a* in Aceh, discussed in part V, clearly show this.

The latter type of dissonance emerges because of a dislocation in the minds of the proponents of the formal implementation of *shari'a* about the role of the state and the meaning of law in the era of the modern nation-state. There is a mistaken perception that the modern nation-state is similar to the premodern nation-state, where the religious law as well as the religious elite played a major role. This leads to the mistaken view that the religious elite would have legitimate power to enact the law of the land in accordance with religious injunctions.[19] These two types of states are different. Unlike the traditional state, the modern nation-state is complex, with constitutions, parliaments, supreme courts, and legislatures that act as rival institutions to the position of religious law and religious elite in a traditional state.

There is also confusion over the term 'religious law,' which indicates either the divine meaning given by God's revelation on the one hand and the worldly meaning expanded by human interpretation on the other hand. Therefore, when proponents of religious law raise their demand, it is actually a call for the implementation of the acquired meaning of the term in human religious thought. This has further raised the issue of whether God alone imposes obligations for Muslims through divine revelation, or if human beings also have an authority to create obligations that have divine character.

Organization of the Book

After describing various explanations for calls for the implementation of religious law (*shari'a*) in this introduction, part I will develop the theoretical framework of this book. By explaining various conceptions of *shari'a* and its relation with the state, chapters 1, 2, and 3 will largely discuss why the implementation of *shari'a* rules in a modern nation-state often result in dissonances. Different approaches in different Muslim countries (Saudi Arabia, Iran, and Pakistan) toward the problem of dissonance will be considered as well. Yet, as chapter 3 argues, legal and political dissonance in the formal implementation of *shari'a* in a nation-state remains, in the end, inevitable. Chapter 4 will present a discussion of the millet system and its transformation to the nation-state. It is particularly important to demonstrate how many religious leaders were not aware of the implication of this shift and continued to seek privileges for their positions, which were no longer justifiable as the transition took place.

Part II consists of four chapters. It aims not only to describe early aspirations for the formal implementation of *shari'a* in Indonesia, but also how the conception

of religious law has since pre-independence Indonesia been perceived to be in conflict with the idea of the modern nation-state. Chapter 5 will look at the Islamization in Indonesia from both historical and theoretical points of view. Chapter 6 will present debates over the idea of nationalism and Islam-state relations in pre-independence Indonesia (from the 1920s to the early 1940s). Chapter 7 will trace the discourse between the nationalist groups and the Islamic groups on the formation of the Indonesian state in the important meetings of the Investigatory Committee for the Independence of Indonesia (BPUPKI) and the Preparatory Committee for the Independence of Indonesia (PPKI) in the early days of the new Republic of Indonesia in 1945. Focusing on the Ministry of Religious Affairs in Indonesia, chapter 8 will point out how the Ottoman millet system was reintroduced in an Indonesian context.

Part III has four chapters that focus on the efforts to have *shari'a* constitutionally acknowledged. Chapter 9 explores what Islamic constitutionalism means and its implications for Muslim countries. This chapter will look at the variety of Islamic constitutionalism available in the Muslim world and will demonstrate a basic dissonance in Islamic constitutionalism across the globe. Chapter 10 will present the historical facts of constitution making or reform in the Indonesian context, with particular reference to the position of *shari'a* in Article 29 on Religion. Chapter 11 will undertake a closer look at the stance of Islamic parties on amending Article 29 on Religion during consecutive Annual Sessions of the People's Consultative Assembly (MPR) from 2000 to 2002. Chapter 12 will be a comparative reference of the positions of Islamic parties on the amendment of Article 28 on Human Rights and an investigation of their maneuvers to put *shari'a* over warranties of religious freedom in the Indonesian constitution. Additionally, this last chapter of part III contains short remarks on the still vague nature of constitutional guarantees of religious freedom in Indonesia.

Part IV will explore the nationalization of *shari'a* in a modern nation-state by presenting a case study of the Zakat Administration Law (UU 38/1999). Rather than the Marriage Law (UU 1/1974), Religious Court Law (UU 7/1989), or the *Wakaf* or Religious Endowment Law (UU 41/2004), I prefer to focus on the Zakat Administration Law because it represents a test case of the complicated relationship between the religious duties of Muslim citizens and the non-religious character of the modern nation-state. There are three chapters in part IV that will not only look at how Islamization has been deepened with the enactment of *zakat* law, but also seek to demonstrate that incongruities have emerged from its implementation. To this end, by making a comparative reference to the experience of Pakistan in legislating *zakat,* chapter 13 explains how the institutionalization of *zakat* turns out to be a means of Islamization in Indonesia. Chapter 14 will briefly trace the historical background of the practice of *zakat* in Indonesia before independence,

and the rest of the chapter will discuss *zakat* administration under the New Order regime. Chapter 15 will present some issues of legislation that have emerged in the aftermath of the Soeharto government. And, focusing on the double burden of *zakat* and tax for Muslims living in a modern nation-state, chapter 16 shows a natural dilemma between dual circumstances as both an almsgiving adherent to religion and as a taxpaying citizen of the state.

Part V will discuss the efforts of certain Muslim local inhabitants to apply *shari'a* in their regions, such as in Aceh, Banten, West Java, and South Sulawesi. But it is Aceh that will receive particular attention in this book. Attempts at the Islamization of laws in Aceh are the most significant because Aceh is the only province in Indonesia that has been officially granted the opportunity to move toward a *shari'a*-based system. In order to examine the formal implementation of *shari'a,* one has to understand the position of *ulama* (religious scholars) in a political sphere of Muslim community. As the position of *ulama* becomes significant, the Islamization process in Aceh increases. Two chapters in this part (17 and 18), therefore, will focus on the reawakened role of the Acehnese *ulama* (represented by the MPU or the Ulama Consultative Assembly) in the formation of regional regulations (*peraturan daerah* or *perda*), known locally as *qanun,* in the post–New Order era. In fact, the MPU has almost created an Islamic territory within the secular state of Indonesia. Chapter 18, in particular, will show dissonant legislation in Aceh where some *qanun* of *shari'a* rules have already begun to restrict constitutional rights, not only by ruling out ideological freedoms but also by defining rights according to the *ulama*'s understanding of tolerable conduct and their view of Acehnese communal identity. Chapter 19 will close with some observations on how the tsunami generally affected the formal implementation of *shari'a* in Aceh.

Finally, in the conclusion, I will review the dissonances found in these motivations behind the process of Islamization. This last part will demonstrate how religious practices and sociopolitical life in Indonesia have been reconfigured by attempts to Islamize laws, and how this has meant as much an Indonesianization of *shari'a* as an Islamization of Indonesia.

1

The Notion of *Shari'a*

Many proponents of the formal implementation of *shari'a* characterize Islam as essentially a legal phenomenon.[1] This has much to do with the fact that many modern Muslim scholars emphasize only the legal subject matter in defining the *shari'a*.[2] No wonder then that the term *shari'a* is used interchangeably with 'Islamic law.' Yet this is not really accurate.

There is a variety in the degree of emphasis as to how much, and what kinds of, *shari'a* is legal. Many Muslim scholars have, on the one hand, held that *shari'a* means 'law' in its Western conception, though they are aware that the respective sources of *shari'a* and Western laws are different.[3] As they see *shari'a* as identical to the Western concept of law, the formal application of *shari'a* in a modern nation-state, for them, is reasonable. However, there are also those who hold that the application of *shari'a* requires a state that is distinctly structured to be a legitimate working operative of Islamic law.[4]

On the other hand, there are other Western scholars and a few reformist Muslims who are of the view that only certain parts of *shari'a* can appropriately be classified as law because *shari'a* is mixed with non-legal elements. This point of view asserts that in *shari'a* there exists all of religion, morality, and law, and that early Muslim scholars never distinguished between these.[5]

Legal subject matter actually constitutes only a moderate part of the Qur'an, the primary source of *shari'a*. Of the more than six thousand verses of the Qur'an, there are only about five hundred that are definitely legal subject matter. They can be classified into five areas: (1) worship and rituals; (2) family matters; (3) trade and commerce; (4) crimes and punishments; and (5) government and international relations.[6] However, according to Tahir Mahmood, these verses do not necessarily correspond with what in modern times is termed law. They "were supplemented, explained, interpreted and used as the basis for induction and deduction of legal rules" along the course of Islamic history. The Prophet, his companions, and the early Muslim jurists, one after the other, gradually developed the original law of the Qur'an into a wider legal fabric.[7]

Between *Shari'a* and *Fiqh*

One has seen that there is a gap between God as lawgiver and human beings as lawmakers. Coulson shows this clearly when he points out that there are six principal tensions and conflicts within the concept of Islamic jurisprudence itself: between revelation and reason; between unity and diversity; between authoritarianism and liberalism; between idealism and realism; between morality and law; and between stability and change.[8] In my view, this gap is inevitable if one has the perception that religious law in Islam is a monolithic concept. One has to accurately distinguish between *shari'a* and *fiqh* (Islamic jurisprudence) since the latter is not equivalent to *shari'a.* In fact, not all of *fiqh* is *shari'a.* They are distinctly different concepts.

The six categories illustrated by Coulson are not a set of dichotomies within the religious law of Islam, but they accurately reflect the distinctions between *shari'a* and *fiqh.* As many have explained, while *shari'a* comes from God through those verses of the Qur'an which do not need further clarification, *fiqh* (which literally means understanding) on the other hand is the interpretations of human beings of those Qur'anic legal verses that have imprecise or multiple meanings. Likewise, because *shari'a* is revealed, it takes only one form, while *fiqh* varies according to different individuals' reasoning. In addition, while it is imperative that *shari'a* be implemented, one can choose any legal understanding (*fiqh*) available and suitable to one's situation. Finally, *shari'a* is unchangeable and applicable to any time and any place, while *fiqh* is subject to change according to its local circumstances.[9] These distinctions help to clarify that there are two distinct concepts of religious law in Islam, the immutable, transcendent *shari'a* and the mutable, temporal *fiqh.* In this sense, although it is still a much broader concept since it also deals with ritual worship, it is *fiqh* that is more comparable to what is currently called 'law,' and hence, when the term 'Islamic law' is used in this study it will refer mainly to *fiqh,* except when it is quoted from the work of another author.

Two Kinds of *Shari'a*

Despite the differences between *shari'a* and law and between *shari'a* and *fiqh,* exactly to what extent a rule or law can be identified as *shari'a* remains unresolved. However, it is important to emphasize here that *shari'a* in legal rules is not only seen in legal texts, but is being found more in the substantive content of the legal rules. Here we have at least two kinds of *shari'a.* First it is mostly a set of legal rules, and second it is substantially a collection of principal values.

I propose here that the question of whether a rule contains *shari'a* values is twofold. First, the distinction between *shari'a* and secular law is not a decisive

criterion for what *shari'a* is. What is a determining factor, as pointed out by Ibn Qayyim al-Jawziyya (d. 1373), a disciple of Ibn Taymiyya (1263–1328), is *justice.* As he asserted, "If the indications of justice or its expressions are evident through any means, then the *shari'a* of God (Islam) must be there. . . . Any means that can produce justice and fairness is certainly part of the religion."[10] Thus, any provision that reflects the close affinity of Islam and justice could be identified as part of *shari'a.*

The second criterion is *legitimization,* that is, making a valid reference to the *shari'a* or at least taking inspiration from it. This means that a legal code is identified as *shari'a* by so-called incorporation by valid reference. The reason behind this is that not everything in this world is necessarily divine and to deny the existence of secular matters is impractical. Thus secular aspects might be religiously justified if there is legitimization or a valid reference is made to (the sources of) *shari'a.*[11] One example of this is the secular provisions in the marriage law of many Muslim countries. According to *al-fiqh al-munakahat* (Islamic rules of marriage), a husband can divorce his wife wherever and whenever he wishes. But the Indonesian marriage law, for instance, states that in order to be valid and lawfully enforceable, a divorce must be examined and executed only before the court.[12] Although not considered in line with the jurisprudence of Islamic marriage, this provision is religiously acceptable since its objective is to prevent the overly frequent occurrence of divorce. In fact, this provision was closer to the implied meaning of the *hadith: Abghad ul-halali ila-llahi al-talaq* [Of permitted matters the most loathsome before Allah is divorce].[13] From this example, it can be argued that such a secular provision (that is, divorce is considered valid only before the court) should be seen as *shari'a,* since it substantially refers to the source of *shari'a,* namely *hadith.*

We can justify this division of *shari'a* into two categories by relying on the analysis of Nathan J. Brown and Muhammad Sa`id al-Ashmawi. They claim there has been a major shift in the meaning of *shari'a* in the history of Islam over the centuries. They argue that the original broad meaning of *shari'a,* which included principal values, codes, institutions, practices, and legal rules, has been restricted to denote only fixed legal rules.[14] Ashmawi views evolution of the meaning of *shari'a* as taking place in four phases. First, the original meaning of *shari'a* in the Arabic language in the Qur'an "refers not to legal rules but rather to the path of Islam consisting of three streams (1) worship, (2) ethical code, (3) social intercourse." This proper meaning of *shari'a* was initially applied by the first generation of Muslims. Second, over time the meaning of *shari'a* extended to refer to the legal rules found in the Qur'an. Third, after some time, the meaning of *shari'a* expanded to incorporate more legal rules, both in the Qur'an and in the Prophetic traditions. Finally, the concept of *shari'a* came to include the whole body of legal rules developed in Islamic history, with all the interpretations and opinions of the legal schol-

ars. These four phases indicate that the way the term *shari'a* is applied today is not the way the word was used in the Qur'an and no longer corresponds to its original meaning in the Arabic language.[15] As a result, the concept of *shari'a* consisted of both its principal values and its legal subject matter, and it is this latter portion that has become widespread through the Muslim countries. It is no wonder then that this understanding of *shari'a* as meaning legal rules has inevitably had an impact on the current growing political demand for the implementation of *shari'a.*

The two kinds of *shari'a* above are important in this study. Both help determine what kind of *shari'a* is relevant or irrelevant to the concept of the modern nation-state. Given that the main concern of what is called law, in the modern sense, as it pertains to religion, is merely the right to worship and perform rituals,[16] I will argue that dissonance would be more likely to occur in response to the perception that sees *shari'a* mostly as legal rules, rather than the view that considers *shari'a* as a natural way of life or a collection of principal values. In present-day Indonesia, it appears that the notion of *shari'a* as legal subject matter has more support among the proponents of the formal application of *shari'a.*

As I put an emphasis on the notion of *shari'a* as a collection of principal values rather than as a set of legal rules, Figure 1.1 may clarify its position among the terms *fiqh* and Islamic legal codes in the modern sense.

Based on Figure 1.1, one can argue that:

1. Seen from top to bottom, the figure shows the historical development of the meaning of *shari'a* as propounded by Brown and Ashmawi.

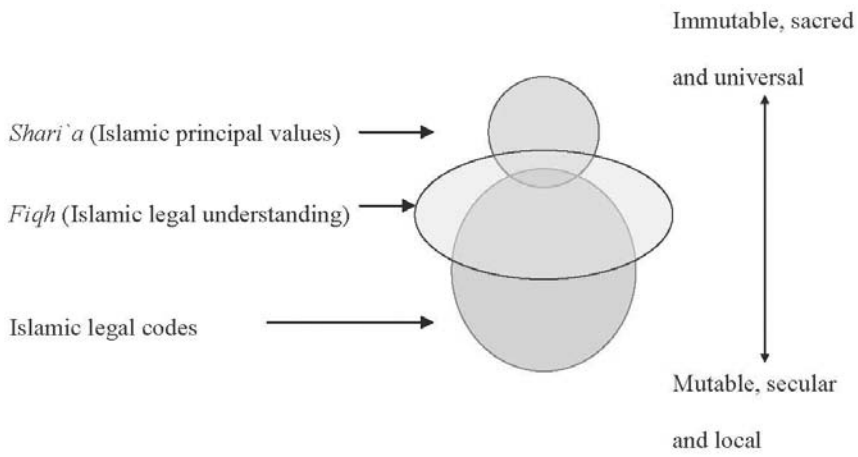

FIGURE 1.1. *Shari'a, fiqh,* and Islamic legal codes

2. *Shari'a* is not identical to *fiqh,* but some *fiqh* may be considered *shari'a,* as several classical legal understandings have successfully reached the status of acceptance by consensus (*ijma'*) of the majority of *ulama.*
3. Few Islamic legal codes may come under *shari'a* given that *shari'a* provides, or at least inspires, their basic forms and methods.
4. There are several areas of *fiqh* that are neither dependent on *shari'a* nor attached to Islamic legal codes, since such areas of *fiqh* are particular to a certain time and place.
5. Some areas of Islamic codes are *fiqh* because the state has codified a number of Islamic legal understandings and Islamic courts have applied certain *fiqh* doctrines to settle disputes between Muslims.
6. Many parts of Islamic legal codes are outside both *shari'a* and *fiqh.* These are the domains of contemporary *ijtihad* or legal improvisation based on, or inspired by, the Islamic principal values (*shari'a*) to meet new worldly situations and the challenges of modern civilization.
7. The vertical line on the right indicates that the higher the area along the line the more it becomes immutable, sacred, and universal, and conversely the lower the area the more it is mutable, secular, and local.
8. The secularization of law in Islam has nothing to do with the notion of separation of religion and politics, but mostly refers to the penetration of non-divine aspects (local customs and parliamentary human legislation) into the formation and the implementation of Islamic legal codes.[17]

The description above reflects both an understanding of *shari'a* as principally substantial values and a simplistic equalization of *shari'a* to legal subject matter, namely *fiqh* and Islamic legal codes. Both will be employed simultaneously as the working operational definition throughout this book.

2
Is There Unity of Islam and the State?

Neither of the primary sources of *shari'a,* the Qur'an and the *hadith* (Prophet's saying), have explicit or specific instructions regarding the establishment of a state. Although there are several Qur'anic verses that contain terms relevant to political concepts, such *khalifa* (leadership), *shura* (consultation), *umma* (community), *ulu al-amr* (commander), *sultan* (ruler), *mulk* (kingdom), and *hukm* (law), the interpretation of those terms has never reached the consensus that the Qur'an clearly commands the foundation of a state. It is agreed, however, that the Qur'an provides ad hoc concepts that relate to the principles of social life, such as *mushawara* (consultation), justice, equity, mutual assistance, and religious tolerance, which can be interpreted as guidance for government.[1] In addition, despite the *hadith* saying, "If three people are on a journey, they should choose one of them as a leader," [2] it is only through inferences drawn from this *hadith* that we can arrive at the understanding that the foundation of a state is required in Islam. However, it is clear that *hadith* like this are more concerned with leadership rather than state administration.

It is, therefore, difficult to draw a precise picture of so-called Islamic political theory, since Islamic political thought mostly concentrates on non-state unit analysis such as the community (*umma* or *jama'a*), justice (*'adl* or *shari'a*), and leadership (*khilafa, imama,* and *sultan*), rather than on "the state as a generic category or [on] the body politic as a social reality and a legal abstraction." [3] In the political thought of the medieval Muslim thinkers, ideas about the state, such as the origin of the state, mostly stemmed from the influence of the Greek philosophers, albeit with varying degrees of strength. The adoption of Greek philosophy by Muslim thinkers did not necessarily mean the abandonment of Islamic teachings. In fact, Greek philosophy on the origin of the state was Islamized by emphasizing that man is a social (or political) being created by God. The concept of a state that might link all those Islamic terms became important political tools only in the twentieth

century, though such a discourse did appear for the first time in Jamaluddin al-Afghani's writing in the nineteenth century.[4]

One basic important idea about Islamic political doctrine is the unity of religion and politics. The principle of *tawhid* (God's oneness) underpins this idea. In the context of Muslim political theory, *tawhid* implies that the community (*umma*) itself must reflect this unity. Interpreted in this way, no social divisions should be allowed to threaten the unity of the *umma.* Political Islam, accordingly, should make no distinction between religious and political orders. This led to the understanding that political Islam basically seeks to establish an Islamic political system (the Islamic state) with a single religious function, that is, to enable Muslims to live as good Muslims by implementing *shari'a.*[5]

Conceptualizing Unity

Through the course of Islamic history, three interrelated concepts, *umma, khalifa,* and *shari'a,* have represented and preserved the religious and political unity of Islam (*al-Islam din wa dawla*). Currently, these three concepts have become a vehicle for any individual or group with a political agenda of Islamizing the state to advance their political goals.[6] The notion of religious and political unity reveals that Islam does not recognize any separation of religion and politics, that Islam does not differentiate between public and private domains, that the state and the religious community (*umma*) are one and the same, and that political authority (*khalifa*) and religious authority (*shari'a*) are delegated to the same person. As a result, the Islamic community must be seen as unique and distinguished from non-Muslim society. This point of view is still dominant among many Western and Muslim scholars.[7] The following paragraphs will undertake an investigation of the historical application of the terms *umma, khalifa,* and *shari'a.*

Umma

The *umma* may have been the first religiopolitical concept to emerge in Islam, though it was originally a sociohistorical one. The term *umma* appears sixty-four times in the Qur'an[8] and twice in the Constitution of Medina,[9] with multiple and diverse meanings including followers of a prophet, followers of a divine plan of salvation, a religious group, a small group within a larger community of believers, a misguided people, and an order of beings.[10] Given the ambiguity of the meaning of *umma,* there have been different interpretations among scholars as to whether it originally had an inclusive sense (applicable to all human beings) or an exclusive sense (applicable only to Muslim believers) in the early Islamic period.[11]

In spite of this, most scholars share the opinion that over time the term *umma* has narrowed to denote exclusively a human group that is united by a prophet on the basis of divine guidance. This shift of meaning can be traced to the Constitution of Medina or to the first months of Prophet Muhammad's residence in Medina (ca. 622 CE). As Hassan writes:

> The term umma retained a universal application (while it only had a small following in Mecca) until, at least, the time of the *hijra* [Muhammad's emigration from Mecca to Medina]. . . . The Constitution of Medina was drawn up in order to incorporate the diaspora community of Medina into the already established geographical community of Mecca. . . . The result was that the religious term of umma . . . began to carry a more a specific connotation of a Muslim umma. Thus began the evolution of the term from a universal monotheistic religious term to a socio-religious one that would become even more specific with further political and sociological developments.[12]

Khalifa

Like the term *umma,* which not only became a framework for accommodating the cultural diversity of the believers but also a concept to maintain the unity of believers, the term caliph (*khalifa*)[13] turned out to be the symbol of Islam's religious and political unity throughout the Islamic empire.[14] In political practice, the term *khalifa* refers to the successor of the Prophet Muhammad, whose main duty was to provide non-divine guidance on the right path (Islam) for the *umma.* According to many Muslim legal scholars of the medieval period, it was the *khalifa* that sustained the Prophetic mission, formulating such concepts as *hifz al-din* (preserving the religion) and *siyasa al-dunya* (administering the world).[15] So the caliphs inherited the Prophet's executive authority to implement and defend the truth, along with the authority to 'announce' the truth or make public policy in matters not explicitly provided for in the Qur'an or the Sunna. The caliphs' authority applied to everything from individual piety to ritual, family, business, political, and military matters.[16]

This authority of the caliphs in legal and doctrinal matters was later considered to be the foundation of the concept of *al-siyasa al-shar'iyya,* which includes all measures undertaken by the Muslim leader to bring the people closer to beneficence and further away from harm, even if such measures were not approved by the Prophet nor regulated by divine revelation.[17] Thus, the caliph provided a unity of religious and political authority, enabling Muslims all over the world (one *umma*) to integrate in one community, bound by one law and governed ultimately by one ruler.[18]

The picture of Islamic political thought, which reflects the historical develop-

ment of early Islam, is one in which the unity of the people as one *umma* under a single caliphate with both religious and political authority is "accorded supreme value. [And for this reason], any subversion of this unity by heresy or rebellion is considered great evil." [19] This unity, however, was no longer tenable following the decline of the religious authority of the caliphate itself.

Shari'a

There are two explanations as to the precise date the caliphate lost its status as symbol of the unity of the community. The first explanation was put forward by Rosenthal and Ayubi. They mention that it was Ibn Taymiyya (d. 1328) who shifted the center of interest and importance from the caliphate to *shari'a.*[20] Ibn Taymiyya did so because of the fall of the caliphate in Baghdad (1258) under the Mongol invasion and the fragmentation of the Muslim world into several different caliphates and kingdoms. In fact, it was Ibn Taymiyya who emphasized the corresponding goals of *shari'a* and state. For Ibn Taymiyya, the form of caliphate or leadership was not his main concern. Rather, he focused mostly on the function and goals of the leadership (state), which was to realize all God's commands (*shari'a*), promote the good, and prohibit the evil (*amr ma'ruf nahy munkar*). Both the goals of *shari'a* and state were similar. Ibn Taymiyya therefore sought to create a new united religiopolitical symbol (i.e. *shari'a*) for the survival of the *umma.* As Rosenthal explained,

> The reforming zeal of Ibn Taymiyya was aimed at full restoration of the *shari'a* to secure the survival of Islam. . . . [He] even went so far as to deny the necessity of the *imama* [caliphate] by concentrating on the rule of the divine law. By going back to the Sunna and also by administrative reform, he tried to restore the *shari'a* to its full authority and efficacy. . . . He insisted that the welfare of the community [*umma*] depended on a Muslim's obedience to God and His *shari'a.*[21]

Henceforth, given that the integration of the *umma* could not be achieved politically, it had to be achieved religiously. So instead of *khalifa,* the emphasis of unity was shifted to the *shari'a* as the basis for ideological unity since political and human unity were no longer obtainable.[22]

Another explanation regarding the shift is supplied by Ira M. Lapidus, a renowned historian of Islamic societies. He argues that unity had begun to slip from the caliphs' control in the early centuries of Islam, specifically in the period of the four immediate successors of the Prophet Muhammad (*khulafa al-rashidun*), that is, from 661 CE onwards.[23] He mentions that there are three phases in which the unity of religion and state within the hands of the caliph gradually disappeared and the differentiation between religion and state started to manifest.[24]

The differentiation began first when the Umayyad dynasty (661–750) gained power. Following the Byzantine and Sassanian traditions, the Umayyads preferred the political authority of the caliphate to its religious authority.[25] Second, the emergence of the Muslim schools of law (*madhhabs*) [26] in the eighth and ninth centuries was important in the development of a religious life independent from the caliphate. In the post–*khulafa al-rashidun* era, many *madhhabs* came to oppose the authority of the caliphs in the elaboration of law. The *ulama* greatly influenced the Muslim people, who turned directly to them rather than to the caliphs for moral instruction and religious guidance as Muslims. This situation, from a religious and a communal point of view, reflected the fact that the caliphate (state) and religion were no longer wholly integrated.[27]

Third, the establishment of the Hanbali *madhhab* marked the next development of the termination of the union of religion and state in Islam. In the face of the inquisition (*mihna*) undertaken by the Abbasid caliph, al-Ma'mun in particular, who forced government officials and religious leaders to accept religious views (such as the 'createdness' of the Qur'an) and the caliph's authority in matters of religious ritual and doctrine, Ahmad ibn Hanbal (780–855), the founder of the Hanbali *madhhab,* not only confronted theological problems, but, more importantly, dealt with the problem of the nature of the religious authority of the caliphate and the limits of the obligation to obedience. He held that Islamic religious obligations stemmed not from caliphal declarations, but from the Qur'an and the Sunna (way or practice of the Prophet) as interpreted and explained by the *ulama.* The caliph might be requested to uphold the law, but not to define its content, because that was beyond his authority. For Ibn Hanbal, religious authority no longer belonged to the caliph, but was now under the direct command of the *ulama.* Although Ibn Hanbal himself did not articulate it as such, his views implied a practical distinction between secular and religious authority.[28] And so, from this time onwards, there was no need to look to the caliphate as the symbol of united religious and political authority.

It is worth considering here Vikør's analysis of the reason behind the shift of the hub of unity to *shari'a.* According to him, it was due to the *ulama*'s reluctance to attach the *shari'a* they developed to the authority of any specific ruler, as so doing would validate *shari'a* only where that particular ruler held power. Thus, *shari'a* would split into regional variants for the dynasties and political entities changed in rapid succession, which would be an unimaginable situation for such a divine law. Therefore, the *ulama* had to retain the *shari'a* since they were independent and international scholars moving from city to city without regard for political boundaries.[29]

Lapidus' explanation appears more historically inclusive, but his explanation cannot easily be reconciled with Rosenthal's and Ayubi's interpretation. Given that

Ibn Taymiyya was an adherent of the Hanbali *madhhab,* perhaps it is fair to say that it was he who later clearly formulated what his predecessor in the same *madhhab* had experienced regarding the crisis in the unity of caliphal authority. While Rosenthal and Ayubi interpret Ibn Taymiyya's emphasis on the *shari'a* as showing a shift of unity from the caliphate to the *shari'a,* Lapidus holds the view that the upshot of Ibn Taymiyya's theorizing was that "the state [caliphate] was not a direct expression of Islam, but a secular institution whose duty it was to uphold Islam."[30] This interpretation seems closer to what Ibn Taymiyya had said regarding the state and justice (i.e., Islam): "Verily God supports a just government even if it is infidel, but does not endorse a despotic government though it is Muslim," and "Justice even if combined with infidelity may sustain life, but unfairness though it comes with Islam will not do so."[31]

Seen through such a lens, Ibn Taymiyya did not actually argue about the union of religion and state in the light of *shari'a.* Indeed, he contended that religion and the state were discrete institutions and the relationship between them was merely mutual or functional, not organic.[32] The state or caliphate is thus not the ends of religion, but simply a means to realize the principal values of the religion (*shari'a*). This implies that the caliphate, including its ruler, is not only unequal to the religion itself, but is also not sacred and has no religious merit per se. Therefore, obedience to the caliphate is only given so long as the caliphate's commands do not contradict core Islamic teachings.[33] Although Ibn Taymiyya proposed a differentiated relationship, he maintained that obedience must be given first to religion and only then to the state. Hence, Ibn Taymiyya's ideal was actually for an unequal relationship between religion and the state, with religion having the ascendant position.

The distinction between religion and state (between sacred and secular) described above has led us to presume that the lack of differentiation between state and religious institutions in the history of Islamic societies is not a static phenomenon. In fact, the supposed integration of the state and religious authority accurately represents only a small segment of Islamic regions and Muslim populations. As pointed out by Lapidus,

> [I]n the 'Abbasid, Saljuq, Ottoman and Safavid empires the central fact is the differentiation of state and religious institutions. . . . The state-religion relations vary across a wide spectrum from a high degree of state control over a centrally managed religious establishment, to a more independent but co-operative relationship, to full autonomy and even open opposition to state policies.[34]

All the foregoing discussions show that there is no single relationship between religion and state in Islam. In fact, a historical review of religion-state relations in Muslim societies reveals that the permanently unitary relationship in Islam is more

likely to be theoretical than factual. Unity was an ideal that actually existed only in the period of the Prophet Muhammad at Medina, for about ten years (622–632). But that ideal was limited in a community in which state and society were not distinguished and in which government was identical with leadership. As Zubaida pointed out, when the state later acquired institutional and military forms distinct from the community, that ideal relationship collapsed.[35]

The ideal unitary relationship in Islam described above, though it was only practiced for a short time in the early history of Islam, has been a motivating force that has perpetually stimulated individuals as well as Islamic groups to struggle for achieving that ideal. As the next chapter illustrates, a number of Muslim leaders and their movements in different countries (Saudi Arabia, Iran, and Pakistan) sought to revive this imaginative model of the integration of political and religious authorities into one hand.

Categorizations of Islam-State Relations

Given that there is no single relationship pattern between religion and state in the historical record of Islam, it is plausible to have various categorizations of Islam-state relations. One categorization divides the relationship into two patterns. The first is an indissoluble relationship between state and religion under the unified leadership of the caliph, whose authority extends to all realms of personal and public concern. The second is a tacit separateness between the structures of state and religion that isolates the religious sphere as being only for personal and communal fulfillment.[36] This categorization of two types of relationship between religion and the state, however, makes a sweeping generalization and fails to recognize the dynamics between the two poles.

The other important categorization creates three types of relationships. The first type proposes *an integration* of Islam and state in which the state is both a religious and political institution at once. The second form *differentiates* between religion and state institutions and views them as being in mutual symbiosis. The state needs religion to progress, while religion needs the state because religion will not develop without the support of the state. The third outlook envisages *a separation* between religion and state. This last view rejects any efforts of religion to influence the state, since both religion and state have their own authority within their respective domains.[37]

Although this tripartite classification may more accurately reflect reality than the simpler dichotomous version of the relationship between religion and the state, there is still a problem with it. There is ambiguity regarding differentiation. Theo-

retically, the second form (differentiation) must be easily distinguishable from the third form (separation), but that is difficult in practice due to their subtle frontiers. Additionally, the first (integration) and the second form (differentiation) above are often indistinguishable and, in fact, many Muslims often subscribe to both at the same time depending on their own political circumstances. Further observation of the dynamics within this latter classification is therefore needed.