First International Convention on Islamic Jurisprudence for a Global Civilization

Is There a Need to Establish an Islamic Legal (*Fiqhi*) Foundation for Global Peace and Harmony?

"The view that Muslims should have a default attitude of enmity towards non-Muslims, and that infidels should be subject to discrimination, is well established within the tradition of Islamic jurisprudence."

~ KH. Yahya Cholil Staquf
General Chairman Nahdlatul Ulama Central Board

SURABAYA, East Java, Indonesia — On 6 February 2023 (15 Rajab 1444 H), over 300 Islamic scholars, political leaders, and international observers gathered to discuss the legal status of the modern nation state under Islamic jurisprudence and whether Muslims throughout the world have a religious duty to establish an Islamic caliphate. Titled the "First International Convention on Islamic Jurisprudence for a Global Civilization," the event was convened by the world's largest Muslim organization, Nahdlatul Ulama, and the G20 Religion Forum (R20).

Islamic law, or *fiqh* — often conflated with *shari'ah* — emerged during the centuries following the death of the Prophet Muhammad, at a time of endemic warfare between Muslims and non-Muslims. Still taught in Islamic seminaries worldwide, the principles of *fiqh siyasah* (laws of governance) remain authoritative tenets of Islamic orthodoxy and thus continue to shape the prevailing Muslim mindset in the 21st century.

Terrorist movements including ISIS, al-Qaeda, and al-Shabab seek to establish a universal Islamic caliphate, a goal they share with non-violent Islamist movements including the Muslim Brotherhood and Jamaat-e-Islami. Religious hatred, supremacism, and violence directed towards those regarded as non-Muslim (*kuffar*, or infidels) have long been associated with orthodox tenets of Islamic law.

These obsolete and problematic tenets of Islamic orthodoxy are so widely accepted within Sunni Islam that an open letter to Abu Bakr al-Baghdadi signed in September 2014 by prominent Islamic scholars and jurists from religious institutions throughout the Muslim world — including Bosnia, Chad, Egypt, India, Indonesia, Iraq, Jordan, Lebanon, Malaysia, Mauritania, Morocco, Nigeria, Palestine, Pakistan, Saudi Arabia, Sudan, Syria, Tunisia, Turkey, the United Arab Emirates, Uzbekistan, and Yemen — stated matter-of-factly: "22. The Caliphate: There is agreement (*ittifaq*) among scholars that a caliphate is an obligation upon the *Ummah* [the Muslim community worldwide]."

The First International Convention on Islamic Jurisprudence for a Global Civilization was the second of three major events held in conjunction with the centennial of Nahdlatul Ulama, according to the Islamic calendar. NU was established in Surabaya on 16 Rajab 1344 *hijriah* (31 January 1926). On 2 – 3 November 2022, Nahdlatul Ulama convened the first annual G20

Religion Forum (R20) Summit in Bali, Indonesia, to "help ensure that religion functions as a genuine and dynamic source of solutions, rather than problems, in the 21st century."

Unlike the majority of Islamic scholars in the Middle East, Nahdlatul Ulama has long accepted the legitimacy of the modern nation state and rejected Islamist calls to establish a universal caliphate. With over 21,000 *pesantren* (*madrassahs*) and tens of thousands of Islamic scholars, Nahdlatul Ulama is profoundly aware of the threat to international peace and security posed by "obsolete and problematic tenets of Islamic orthodoxy," which remain central to Islamic doctrine.

While governments and Islamic institutions in the Middle East, Europe, and North America responded to the rise of ISIS by portraying it as a religiously deviant organization with no claim to Islamic legitimacy, Nahdlatul Ulama was swift to recognize and acknowledge that the savage behavior and theological rationales depicted in ISIS propaganda videos represent a contemporary manifestation of how Muslim armies have behaved throughout history, acting in accordance with Islamic law.

In 2007, the Nahdlatul Ulama Bahtsul Masa'il — a body of senior jurists who deliver rulings on issues of pressing importance to contemporary Muslims — addressed the issue of "the Establishment of a Caliphate and the Formalization of *Shari'ah*." In answer to the question, "Do demands for the implementation of *shari'ah* constitute a '*nash*' argument [based on text in the Qur'an], requiring the establishment of a caliphate in the context of a system of government built on Islam?," the Bahtsul Masa'il ruled that "There is no *nash* argument, because the caliphal system is derived from human interpretation (*ijtihad*) and is not found in the Qur'an."

In regard to the historic procedure, acknowledged by *fiqh*, for selecting a caliph, the Bahtsul Masa'il quoted *Al-Din wa al-Daulah wa Tathbiq al-Shari'ah* (*Religion, Political Power and the Implementation of Shari'ah*), by Muhammad 'Abid al-Jabiri, who wrote that "the actual method used to select a caliph is related to the exercise of power. Whoever feels his power in the ascendant, demands that he himself be acknowledged as caliph; if he triumphs through the exercise of strength, and is able to unite the community beneath his power — either through the people's exercise of free will, or by force — then he becomes the new caliph."

This background may help readers understand the significance of the First International Convention on Islamic Jurisprudence for a Global Civilization, which sought to "build a *fiqh* foundation for global peace and harmony."

KH. Ma'ruf Amin, one of Indonesia's foremost Islamic jurists — as well as Vice President of the Republic of Indonesia and former head of the Nahdlatul Ulama Supreme Council — delivered a keynote address to the Convention titled "Renewing Religious Discourse within the Context of Modern Civilization."

Introduction

> Social order is constantly changing and evolving. What is suitable and relevant in one time or place may not be relevant in another, due to changes in society and the times. To impose a static way of life without taking into account such changes is to oppose

the nature of change itself, which amounts to opposing *sunnatullah* (the decrees or laws of God).

The same principle applies to the issue of religious understanding, especially matters related to social life (*mu'amalah*) that are *ijtihadiyyah* (i.e., subject to interpretation employing the human intellect). The formulation of religious norms (*fiqh*) will always undergo changes in accordance with developments that occur over time, impacting various places, motivations, traditions, and civilizations, in line with the legal theory:

تغيّر الفتوى واختلافها بحسب تغيّر الأزمنة والأمكنة والأحوال والنيات والعوائد.

"Changes in *fatwas* and their differences depend upon [and reflect] changes in time, place, conditions, intentions, and prevailing traditions."

This demonstrates that the characteristics of *fiqh* — which are the product of scholarly *ijtihad* [i.e., manmade] — are flexible (*murunah*) and dynamic (*tathawwuriyyah*), following the dynamics and developments of the times. Thus, *fiqh* can still address new or current issues (*al-masail al-jadidah wal mustajaddah*) that arise. This flexibility of *fiqh* contradicts the assumption of some people that *fiqh* is a rigid and sacred provision or norm that is impossible to change. *Fiqh* is often understood as a standardized compilation of Islamic law and is assumed to be the sacred *shari'ah* texts (*al-nusus al-shar'iyyah*) contained in the Qur'an and Hadith. This assumption is not in accordance with correct religious understanding.

The flexible characteristics of *fiqh* require new *fatwas* (laws) that are capable of responding to the dynamics of society and the times. The necessity for the existence of new *fatwas* occurs because the main source of law, namely the text of the Qur'an and Hadith, is very limited, while new and current problems continue to change and develop, as al-Shahrastani said:

لأن النصوص محدودة ولكن الحوادث والنوازل غير محدودة، او لأن النصوص تتناهى ولكن الحوادث والنوازل لا تتناهى.

"This is because the texts are limited, while the problems that arise are not. Or because the texts have stopped, while the problems will always arise and never stop."

In line with this, Imam al-Haramain al-Juwaini (d. 478 AH) stated that most of the *shari'ah* is a product of *ijtihad* created in response to changes and developments that have occurred within society. He said:

إن معظم الشريعة صدر عن اجتهاد، والنصوص لا تفي بالعشر من معشار الشريعة.

"Most of the *shari'ah* is the product of *ijtihad*. The texts [Qur'an and Hadith] relating to *shari'ah* are less than one-tenth."

Similarly, Imam Shihabuddin al-Qarafi (d. 684 AH) stated that rigidly adhering to textual religious formulae, without considering changes that occur over time, constitutes an error in the practice of religion as well as a failure to understand the explanations of previous scholars. He stated:

الجمود على المنقولات أبدا ضلال في الدين وجهل بمقاصد علماء المسلمين والسلف الماضين.

> "Rigid adherence to [non-Qur'anic] texts inherited from the past demonstrates a failure to properly understand religion and the intentions of previous scholars."

Mohammad bin Abdulkarim Al-Issa Secretary General of the Saudi-backed Muslim World League, delivered an address during the opening plenary of the conference in Surabaya:

> It is my distinct pleasure to celebrate, with you, the centennial of Nahdlatul Ulama's founding. Nahdlatul Ulama has undertaken countless blessed efforts to propagate its virtuous and immortal Islamic message. For the very name "Nahdlatul Ulama" means an Islamic renaissance founded upon knowledge….
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> You have with you at this convention *ulama* and intellectuals capable of covering the topic [of Islamic Jurisprudence for a Global Civilization] from every angle. Let me reiterate my joy at participating in this conference and my heartfelt wishes that Nahdlatul Ulama rise yet higher and be successful and aided upon its enlightened, blessed path. I beseech God Almighty to bestow His assistance and illumination upon us, and to render our works beneficial and immortal unto Him, that He may bless this convention and find it of use. May the peace, blessings and mercy of God be upon you.

At the start of the second plenary session, KH. Yahya Cholil Staquf, General Chairman of the Nahdlatul Ulama Central Board, presented a three-page document containing a number of questions for consideration by the assembled *ulama*, who had travelled to Indonesia from the Middle East, North Africa, Sub-Saharan Africa, Central Asia, South and Southeast Asia, Australia, Russia, Europe, and North America.

Titled "Is There a Need to Establish an Islamic Legal (*Fiqhi*) Foundation for Global Peace and Harmony?," the document consisted of seventeen points. Specifically, Mr. Staquf asked the assembled *ulama* to address whether Islamic scholars should revise Islamic jurisprudence regarding the status of infidels and change the norms that govern Muslim engagement with non-Muslims, as well as the normative views that Muslims generally hold regarding infidels; whether any mechanisms exist, whereby Islamic scholars may create a new *fiqh* suitable to the realities of our current civilization; and whether the Charter of the United Nations, if seen as a valid agreement between nations, may be positioned as the foundation for a new *fiqh*.

Read the complete text of this seventeen-point document.

Deliberations arising from the First International Convention on Islamic Jurisprudence for a Global Civilization led to the adoption of a one-page statement — the *Nahdlatul Ulama Centennial Proclamation* — which was recited in Arabic and Indonesian in the presence of His Excellency Joko Widodo, President of the Republic of Indonesia, at a gathering of two million Nahdlatul Ulama followers held on 7 February 2023.