

## A Brief Comparison of Religious Legal Systems

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### ABSTRACT

**A Brief Comparison of Religious Legal Systems.** Religion and law have a close relationship, where religious law provides a moral basis for social order. Religious legal systems have normative characteristics and function as a guideline for their adherents. However, in the increasingly secular modern world, the existence of religious law faces various challenges. Although some religious legal systems still survive, their implementation has different characteristics and often faces challenges of interpretation and adaptation. This study aims to analyze the comparison of religious legal systems in various parts of the world. By examining various sources of religious law, this study will identify similarities and differences in basic principles, the application of law in everyday life, and the challenges faced by each religious legal system in the modern context.

*Keyword: Religious Legal Systems, Jewish Law, Canon Law, Islamic Law*

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### ABSTRAK

Agama dan hukum memiliki hubungan yang erat, di mana hukum agama memberikan landasan moral bagi tatanan sosial. Sistem hukum agama memiliki ciri khas normatif dan berfungsi sebagai pedoman hidup bagi penganutnya. Namun, dalam dunia modern yang semakin sekuler, eksistensi hukum agama menghadapi berbagai tantangan. Meskipun beberapa sistem hukum agama masih bertahan, penerapannya memiliki karakteristik yang berbeda-beda dan seringkali menghadapi tantangan interpretasi dan adaptasi. Penelitian ini bertujuan untuk menganalisis perbandingan sistem hukum agama yang ada di berbagai belahan dunia. Dengan mengkaji sumber-sumber hukum agama yang beragam, penelitian ini akan mengidentifikasi persamaan dan perbedaan dalam prinsip-prinsip dasar, penerapan hukum dalam kehidupan sehari-hari, serta tantangan yang dihadapi oleh masing-masing sistem hukum agama dalam konteks modern.

**Kata Kunci:** Sistem Hukum Agama, Hukum Yahudi, Hukum Kanon, Hukum Islam

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## **Introduction**

A religion legal system is seldom implemented by a nation as the primary source of law; yet, some religious laws are acknowledged and accepted. Jewish law is still implemented in several regions of Israel and Morocco, Canon Law is used by Catholics and is present in ecclesiastical institutions, and lastly, Islamic Law is still in effect. Islamic law is among the most extensively adhered to religious legal systems in both the Arabian Peninsula and Asia, particularly in Indonesia, which has the biggest Muslim population globally.<sup>1</sup>

Religion and law are two essential foundations of human existence that are intricately interconnected. Religion establishes a moral framework and ideals that influence human perspectives on existence, while law governs social order and relationships. Both often collaborate to establish a cohesive social structure. In an ever evolving community, the interplay between religion and law is not always harmonious.<sup>2</sup>

The application of religious law in contemporary society encounters several obstacles. Disparities in the interpretation of holy texts among academics or religious leaders sometimes incite dispute. The pressures of modernity and changing circumstances compel religious law to confront a contradiction between preserving historic ideals and adapting to contemporary advances. The interplay between religion law and state law is a multifaceted subject, particularly in nations that implement a diverse legal framework.<sup>3</sup>

A significant issue in the implementation of religious legislation is reconciling traditional values with the imperatives of modernity. Religious law is anticipated to provide pertinent guidance for adherents of the faith. Conversely, religious legislation must possess the capacity to evolve with the times while preserving its fundamental tenets. The essential inquiry is the degree to which religious law can adapt to technological advancements, shifts in societal norms, and global challenges without sacrificing its core character.<sup>4</sup>

Religious pertains to religion. The legislation within this legal family originates from the holy writings of religious faiths. In several instances, religious law encompasses all facets of existence as part of the commitment to a transcendent, intimate, or profound philosophical truth, both personal and cosmic, which is seen to possess more force and dignity than humanity. This legal system governs human connections based on religious doctrines. Religious law mostly governs the duties of individuals as virtuous creatures in their interactions with others and as devout followers of God.<sup>5</sup>

## **Research methods**

**Methodology of Research** This article employs qualitative research via library research, specifically by collecting and aggregating data from diverse sources. The used approach is descriptive-analytical, aimed at succinctly comparing the religious legal system to elucidate the responsibility of devotion to transcendent, intimate, or profound philosophical truths, both personal and cosmic, which are seen to possess more force and dignity than humanity.

## **Jewish Law**

Jewish law, or halakha, is a legal framework that has developed dynamically over millennia. Its origins may be traced to the Torah, which encompasses the narrative of creation, the history of the Israelites, and regulations pertaining to different facets of life. The Torah forms the basis for the later evolution of Jewish law.<sup>6</sup>

Nonetheless, the Torah just marked the commencement of an extensive journey of Jewish jurisprudence. Over time, interpretations of the Torah evolved via court rulings, rabbinic enactments, and customary law. The rabbis, as authorities in Jewish religious law, were pivotal in interpreting the Torah and adapting it to changing social circumstances. The outcomes of this legal interpretation and application were articulated as *responsa*, which are compilations of

inquiries and responses on Jewish law presented to the rabbis.<sup>7</sup>

The responsa emerged as a significant source for the evolution of Jewish law. Subsequently, these responsa were collected and structured into more systematic legal systems. The Shulchan Aruch, compiled by Yosef Karo in the 16th century, is one of the most significant legal systems. The Shulchan Aruch articulates Jewish law in a more comprehensive and accessible manner, establishing it as the principal reference for the majority of Orthodox Jews and some Conservative factions to this day.<sup>8</sup>

Jewish law has historical significance and contemporary relevance. While several elements of Jewish law pertain to religious observance, it also governs other facets of everyday life, including family, marriage, commerce, and social regulations. In many nations, like Israel and Morocco, Jewish law continues to serve as a foundation for governing legal ties within the Jewish community, particularly with family law.<sup>9</sup>

However, the implementation of Jewish law in contemporary circumstances encounters several problems. Globalization, pluralism, and changing societal norms have prompted fresh challenges concerning the validity and interpretation of Jewish law. Rabbis and Jewish communities across endeavor to modify Jewish law to align with contemporary conditions while preserving its core ideals.<sup>10</sup>

Jewish law is a legal framework characterized by historical depth and intricacy. The extensive progression from the Torah to the Shulchan Aruch illustrates the evolution of legal interpretation and implementation under different social situations. Notwithstanding its limitations, Jewish law continues to be a fundamental component of Jewish identity and existence globally.<sup>11</sup>

### Canonical Law

The canon law of the Roman Catholic Church has a lengthy and intricate history, originating from the early evolution of the Church. Since the Middle Ages, canon law has undergone substantial evolution, shaped by theological advancements, societal transformations, and contacts with other legal frameworks.<sup>12</sup>

Canon law was first significantly shaped by Roman law, which served as the foundation for the legal system over most of Europe. Over time, canon law evolved distinct features, including parts of customary law and ecclesiastical tradition. The process of acculturation resulted in a distinctive and intricate legal system that governed the internal affairs of the church and significantly impacted civil society.<sup>13</sup>

A significant milestone in the history of canon law was the codification initiative executed by Gratian in the 12th century. Gratian effectively compiled a systematic compendium of canonical law, categorizing numerous norms and regulations. Gratian's work served as the foundation for the evolution of canonical law for centuries.<sup>14</sup>

Canon law has always adapted to contemporary developments. During the 20th century, the Roman Catholic Church executed two significant codifications of canon law. In 1917, Pope Benedict XV promulgated a new Code of Canon Law, which mirrored the changes within the Church and society. In 1983, Pope John Paul II promulgated the revised Code of Canon Law, with substantial modifications to enhance laity involvement, modernize liturgical customs, and address contemporary socioeconomic realities.<sup>15</sup>

During the Middle Ages, canon law was pivotal in the European legal system. Ecclesiastical courts had authority over a broad spectrum of situations, including criminal offenses that are now adjudicated by civil courts. Offenses like as adultery, blasphemy, and heresy were governed by canon law. The judicial procedure under canon law had distinct features, including the use of jurors to examine offenses. The notion of canonical acquittal, whereby the accused was

required to take an oath of innocent, was a defining characteristic of canon law proceedings. The interplay between canon law and secular law throughout this century influenced the intricate and evolving legal framework in Europe.<sup>16</sup>

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### **Islamic Law**

Islamic law is a fundamental foundation of Islamic beliefs, alongside aqidah (belief) and akhlak (morality). These three elements are interconnected and constitute a cohesive whole. Islamic law cannot be comprehended in isolation; it must be seen within the framework of the whole teachings of Islam. To comprehend Islamic law thoroughly, one must possess a solid grasp of its sources, including the Qur'an and hadith, together with the fundamental concepts that underpin Islamic jurisprudence.<sup>18</sup>

The primary sources of Islamic jurisprudence are the Qur'an and hadith. The Qur'an, being the sacred text of Muslims, contains universal principles applicable to all humanity throughout time. Hadith are the sayings, deeds, or rulings of the Prophet Muhammad (SAW) that serve as legal sources subsequent to the Qur'an. Alongside the Qur'an and hadith, further sources of Islamic law include ijma' (scholarly consensus) and qiyas (analogy). Ijma' refers to the consensus of academics on a legal matter, while qiyas involves the derivation of new rules by analogizing a situation to one that is previously established in the Qur'an or hadith.<sup>19</sup>

Islamic law exemplifies the practical application of sharia. Sharia is the primary source of all Islamic jurisprudence. All Islamic law, including worship, muamalah, and jinayah, fundamentally derives from sharia. While the two are interconnected, a distinction exists between sharia and Islamic law. Sharia is universal and everlasting, but Islamic law is derived from human interpretation of Sharia. Islamic law may evolve in accordance with societal advancements and circumstances, although the fundamental principles of sharia remain timelessly applicable.<sup>20</sup>

The notion of sharia in Islam encompasses a wide range of interpretations. Sharia, etymologically, signifies the correct road or method. In Islam, sharia encompasses the whole collection of laws and regulations established by Allah SWT to govern human conduct, both in regard to the divine and to other individuals. Sharia encompasses several facets of life, including worship, muamalah (transactions), family law, and criminal law. The primary objective of sharia is to lead individuals to fulfillment in both this life and the hereafter.<sup>21</sup>

Islamic law aims to achieve justice, welfare, and well-being for all humanity. Islamic law governs not just the connection between mankind and Allah but also the interactions among individuals throughout society. The concepts of justice, equality, and freedom are essential tenets of Islamic jurisprudence. The implementation of Islamic law is anticipated to foster human unity and facilitate pleasure in both this life and the hereafter.<sup>22</sup>

Islamic law has been in existence since the era of the Prophet Muhammad SAW and continues to evolve with the passage of time. The implementation of Islamic law encounters several problems in contemporary society. Nonetheless, the fundamental tenets of Islamic law continue to have significance and may provide solutions to several challenges confronting

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mankind. Consequently, endeavors to comprehend and apply Islamic law accurately are crucial for establishing a fair and civilized community.<sup>23</sup>

Fiqh is a discipline within Islamic science that examines the legal principles governing human conduct. Sharia encompasses the whole set of Allah's universal and everlasting rules, while fiqh represents the human endeavor to comprehend and implement sharia in daily life. A mujtahid, defined as a scholar capable of performing ijihad, is crucial in examining sharia rules via the ijihad procedure. Ijihad is a rigorous endeavor to comprehend Allah's law based on substantial evidence, including the Qur'an and hadith. The outcomes of ijihad are articulated as fatwas or legal rulings that serve as instructions for Muslims. Consequently, fiqh is dynamic and evolves in accordance with societal changes and temporal situations.<sup>24</sup>

Sharia and fiqh are two interconnected ideas that possess essential distinctions. Sharia is an unequivocal legal source that originates straight from Allah SWT. Sharia is derived from the Qur'an and hadith, serving as a law that is universally applicable and timeless. Fiqh is the product of human ijihad in comprehending and applying sharia. Fiqh is subjective and may differ among many mujtahids. This disparity arises from variations in the interpretation of evidence, the methodology of ijihad, and socio-cultural circumstances. The primary objective of fiqh is to attain proximity to Allah SWT and to actualize the *maslahah* (benefit) of the populace.<sup>25</sup>

### The Concept of Qanun in Islamic Law

The word "qanun" is often understood as a human-made law or rule. In the realm of Islamic jurisprudence, qanun denotes norms established by the government or rulers to manage communal life. It is essential to note that this qanun must adhere to the fundamental principles of Islamic law. A legislation that contradicts Islamic jurisprudence is unequivocally unacceptable.<sup>26</sup>

Islamic law has distinct qualities compared to the positive law implemented in secular nations. A notable distinction is the origin of law. Islamic law derives from the Qur'an, hadith, *ijma'*, and *qiyas*, while positive law originates from human legislation. Furthermore, Islamic law serves a comprehensive purpose, aiming to govern all facets of human existence, including interactions with Allah and with other people. Conversely, positive law primarily emphasizes the regulation of interpersonal connections within society.<sup>27</sup>

Islamic law has a significant role within the framework of the state. Islamic law may serve as the foundation for the establishment of laws and regulations. The implementation of Islamic law inside the state must consider the existing social, cultural, and political environment. The fundamental principles of Islamic law may serve as a framework for formulating public policies; yet, their implementation requires adaptations to the prevailing circumstances.<sup>28</sup>

Islamic law covers various aspects of human life, from worship to *muamalah*. Worship is a vertical relationship between humans and their God, while *muamalah* is a horizontal relationship between humans and other humans. *Muamalah* in Islamic law has a very broad scope, covering various fields.<sup>29</sup> such as:

- *Munakhah*: Marriage law
- *Wiratsah*: Inheritance law
- *Mu'amalat*: Transaction law (buying and selling, renting, etc.)
- *Jinayat* or *uqubat*: Criminal law
- *Al-ahkam as-shulthaniyyah* (caliphate): Government law
- *Siyar*: War law
- *Mukhasamat*: Judicial law

### Conclusion

The Religious Legal System is a legal framework derived from the holy writings of a

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certain faith. This legal system governs several facets of human existence, pertaining to both divine and interpersonal relations. A defining feature of the religious legal system is its normative character, whereby the governing rules are derived from the moral and ethical principles embedded in religion doctrines. Furthermore, the religious legal system serves as a framework for living for its members. Religious law governs both interpersonal connections and the relationship between people and the divine. Consequently, religious law serves both as an instrument of societal regulation and as a pathway to attain redemption in this life and the hereafter.

In the setting of an increasingly pluralistic and secular contemporary society, religious legal systems have several obstacles. Globalization, modernity, and secularization have led to the decline of religious values in society. The impact of religious law on individuals' lives is diminishing. A limited number of religious legal systems persist today, including Islamic law, Jewish law, and canonical law. The implementation of religious law under each system has distinct features. Canonical law is mostly implemented inside the church, while Jewish law is applicable only in certain Jewish communities. Islamic law is the only religion legal system that is legally acknowledged by many nations and implemented in societal practices. The implementation of Islamic law faces problems, including varying readings of holy scriptures and the need to adapt religious legislation to contemporary developments.

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