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UNIVERSITI
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FIQH MUQARAN (IMU 601)

**THE RULES OF COMPARATIVE FIOH IN MODERN FATWA AND LEGAL
REFORM**

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SUBMISSION DATE:	15 MAY 2025

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ABSTRACT

This study explores the role of *Fiqh Muqaran* (comparative Fiqh) in the formulation of modern fatwas and the reform of Islamic legal thought. It focuses on identifying the fundamental principles of comparative Fiqh and analysing its concept and historical development within Islamic scholarship. The research also examines the application of comparative Fiqh in addressing contemporary legal and social issues, particularly within pluralistic societies. Furthermore, it evaluates the strengths of this approach, such as its broad legal perspective and adaptability, as well as the challenges, including doctrinal differences and institutional constraints. The study also highlights how contemporary mujtahids and fatwa institutions approach inter-madhab differences in legal rulings to produce more comprehensive and context-sensitive decisions. This research aims to contribute meaningfully to the understanding of comparative Fiqh as a viable tool for contemporary Islamic legal reform.

Keywords: *Comparative Fiqh, Modern Fatwa, Legal Reform, Madhab Differences, Fatwa Institutions, Contemporary Issues, Mujtahid Approaches*

ABSTRAK

Kajian ini membincangkan peranan Fiqh Muqaran (Fiqh perbandingan) dalam konteks pengeluaran fatwa moden dan reformasi undang-undang Islam. Fokus utama adalah kepada prinsip-prinsip asas Fiqh Muqaran yang relevan serta analisis terhadap konsep dan perkembangan sejarahnya dalam tradisi keilmuan Islam. Kajian ini juga meneliti bagaimana Fiqh muqaran diaplikasikan dalam menangani isu-isu kontemporari yang kompleks, termasuk dalam masyarakat majmuk. Selain itu, ia menilai kelebihan pendekatan ini seperti keluasan perspektif dan fleksibiliti hukum, di samping mengkaji cabaran yang timbul seperti perbezaan pandangan mazhab dan kekangan institusi fatwa. Turut dikaji ialah pendekatan para mujtahid dan institusi fatwa dalam menangani perbezaan mazhab bagi memastikan penyelesaian hukum yang lebih menyeluruh dan kontekstual. Kajian ini diharap dapat memberikan sumbangan bermakna dalam memahami potensi Fiqh muqaran sebagai alat pembaharuan hukum Islam kontemporari.

Kata Kunci: *Fiqh Muqaran, Fatwa Moden, Reformasi Undang-Undang, Perbezaan Mazhab, Institusi Fatwa, Isu Kontemporari, Pendekatan Mujtahi*

1.0 INTRODUCTION

A field called *al-fiqh al-muqāran* (comparative jurisprudence), "focuses on collecting the opinions of scholars on various problems of jurisprudence and comparing them using a specific methodology." It involves systematically studying legal disagreements across Islamic legal institutions; presenting various perspectives with evidence to support them; analyzing areas that are acceptable and unacceptable; and evaluating the strength of each position based on scripture and logic. Comparative jurisprudence differs from conventional documentation of differences in that it uses analytical assessment to determine the dominant perspective or produce new ideas that are more relevant to contemporary needs while remaining true to Islamic principles.

Gradually, fatwa institutions and legislative bodies throughout the Islamic world turned to comparative jurisprudence as a tool for making decisions relevant to the modern world, including family law, finance, medicine, and human rights. This methodology helped to avoid rigid adherence to a single school of thought and instead encouraged a more nuanced and contextual application of Islamic law. In addition, it allowed for *ijtihad*, or independent reasoning, by allowing scholars to compare different legal perspectives and choose the one that best suited modern needs.

This introduction discusses the basic concepts of comparative jurisprudence, how it has developed throughout history, and how it is important today, especially for the making of fatwas and the development of the Islamic legal system. This study aims to show how comparative jurisprudence has contributed to both "legal pluralism" and "reformist thought." It also examines how comparative jurisprudence has played a significant role in creating a dynamic and dynamic contemporary Islamic legal discourse.

Overall, *fiqh muqaran* is a dynamic and highly potential method for addressing current legal issues, especially in a diverse and heterogeneous society like Malaysia. It not only enriches the source of Islamic legal knowledge, but it also promotes social harmony and broadens the discourse of Muslim thought. However, the success of *fiqh muqaran* depends on the level of scholarly knowledge of the scholars, cooperation between religious institutions and the government, and the existence of a strong and responsive legal framework. *Fiqh muqaran* can be an important tool for the development of a progressive, just, and inclusive Islamic society in the modern era if used in a prudent and comprehensive manner.

2.0 PROBLEM STATEMENT

In the age of globalization and rapid technological advancement, Muslim communities are increasingly confronted with complex and unprecedented issues that demand dynamic and contextually appropriate legal responses. However, traditional approaches that strictly adhere to a single school of thought (madhhab) may not always provide holistic or practical solutions, especially within pluralistic societies. In this context, *fiqh muqaran* (comparative fiqh) emerges as a valuable approach that allows for the critical analysis of diverse juristic opinions across madhhabs, aiming to arrive at more balanced and relevant legal rulings. Despite its potential, there remains a lack of clarity regarding the fundamental principles of comparative Fiqh, its historical development within Islamic scholarship, and its practical application to contemporary issues. Moreover, the implementation of this approach faces several challenges, including significant doctrinal differences among madhhabs, institutional limitations in fatwa issuance, and societal resistance toward cross-madhhab rulings. Therefore, this study seeks to explore the role of comparative Fiqh in modern fatwa-making and legal reform, while assessing the methods adopted by contemporary mujtahids and fatwa institutions in navigating juristic diversity in a more inclusive and effective manner.

3.0 RESEARCH OBJECTIVE

1. To describe the relevant basic principles of *Fiqh Muqaran*.
2. Assess the advantages and challenges when we use *fiqh muqaran* in the context of current law and a plural society.
3. Examining the Role of *Fiqh Muqaran* in Addressing Contemporary Issues
4. Evaluate the advantages and challenges when we use muqaran fiqh in the context of current law and plural society
5. To identify the approaches of mujtahids and fatwa institutions in dealing with differences of madhhab in legal rulings.