



Comparative Study of the Method of Sharia Monitoring Over Laws in Islamic Countries (Indonesia, Malaysia, Egypt, Saudi Arabia, Pakistan, and Iran)

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Abstract

The methods of drafting Islamic laws and monitoring the nature of laws in Islamic countries worldwide are not the same. Each Islamic government operates differently when facing the challenge of legislation based on religious or customary laws. A comparative analysis of legal systems among Islamic countries and the Islamic Republic of Iran allows one to critique their performance in identifying challenges and opportunities. For this purpose, five well-known Islamic countries, either having a predominantly Muslim population or officially recognizing Islam as their state religion in their constitutions, have been selected for this study. These five countries are Malaysia, Indonesia, Egypt, Saudi Arabia, and Pakistan, each possessing its unique style and approach to legislation. The main question in this article is what method has been used in other countries to adapt laws to Islamic Sharia. In addition, we address how these countries resolve the conflict between the opinions of jurists. This article was prepared based on an analytical and descriptive approach. This research has tried to understand the comparative knowledge of Sharia supervision of laws in some Islamic countries by collecting library materials and English articles.

The performance of Islamic countries in adapting laws to Sharia implies a complex interaction between traditional Islamic legal principles and modern legal systems. The process of including Sharia in legal frameworks is different in Islamic countries. The rulers of Islamic lands seek to create a balanced system that includes contemporary legal norms and Islamic traditions. Based on the implementation of the legal system of the five countries mentioned in this article, it was clarified that:

Firstly, in Indonesia, there is no mechanism for religious supervision of laws, and the government solely relies on the assistance of certain non-governmental jurisprudential councils for its administration. Secondly, by creating a pluralistic method in Sharia legislation and delegating this authority to the states, Malaysia has exempted itself from codifying Sharia as a law such that no special Sharia supervision has been considered for federal laws. Thirdly, the Supreme Constitutional Court of Egypt considers itself



competent for sharia law monitoring. This approach is retrospective monitoring and is limited to cases where the said law is against the definitive text or the consensus of jurists and suspicious and suspected cases are outside the scope of this monitoring. Fourthly, in Saudi Arabia, since most of the laws are not codified and are based on Hanafi jurisprudence, there is no need for Sharia supervision. Nevertheless, regarding the approvals of the Parliament, this Sharia supervision is done by the Council of Ministers and the King. However, no specific and special mechanism has been established for this purpose. Fifthly, prior monitoring of laws from the point of view of Sharia is done only in Pakistan and the Islamic Republic of Iran. It is done in Pakistan through the Council of Islamic Ideology and in Iran through the Guardian Council. The Federal Sharia Court also conducts retrospective supervision of laws in Pakistan. In Iran, the Guardian Council is precise in its functioning and the Parliament's approvals are illegal in case of non-approval by the Guardian Council. Therefore, there is no need for retrospective supervision, only regarding the approvals before Iran's Islamic Revolution and the Guardian Council's establishment. Accordingly, the Council has the right to comment on the Shariah or illegitimacy of this category of laws based on Article 4 of the Constitution.

Based on this research, it can be said that the legal system most similar to the legal system of the Islamic Republic of Iran is Pakistan, which has a special Sharia supervision over the laws. Saudi Arabia is also highly committed to applying Sharia as the country's law to the extent that the highest existing law is the book of the Qur'an and the Sunnah of the Prophet And when necessary, issues concerning the people are addressed in the courts based on certain codified books prepared by the Council of Ministers, which encompass a comprehensive range of jurisprudential perspectives. In the legal system of other countries, a secular-oriented attitude has led to the preference of national laws over Sharia laws. In the meantime, Indonesia has the least obligation to apply Sharia law in its laws, as it does not have a special mechanism for Sharia supervision of laws among these five countries. Egypt and Malaysia have also chosen an intermediate method in the conflict between religious and secular attitudes.

Each country's response method regarding the conflict of jurists' opinions depends on that country's Sharia monitoring method regarding laws. According to the method used by Saudi Arabia, Indonesia, and Malaysia, there is no need to resolve the conflict of jurists' opinions. Egypt, being satisfied with the certainties and texts and consensus of the jurists, has practically not paid attention to the differences of opinion of the jurists. The structure of the Council of Islamic Ideology in Pakistan has solved this problem to some extent, considering that it includes scholars of all religions. Moreover, the majority vote will be the criterion in cases of disagreement. Finally, in the Islamic Republic of Iran, the opinion of the majority among the six jurists of the Guardian Council is the standard of action in cases of disagreement.

Keywords: Sharia, fatwa, law, supervision, Islamic countries, Guardian Council.

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