

# Fatwa, Qanun, Qadha, and Ijtihad: Understanding Their Differences and Functions

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## ABSTRACT

This research aims to discuss the concepts of *Fatwa*, *Qanun*, *Qadha*, and *Ijtihad*. These concepts require robust definitions to address the issues at hand. The biggest challenge lies in the differences in interpretation and the potential conflicts with Sharia principles, which must be approached with caution. In other words, the application of *fatwa*, *qanun*, *qadha*, and *ijtihad* in interpreting contemporary Islamic law has a significant impact on the sustainability and adaptability of the law amidst changing times. Therefore, their implementation must be carried out wisely to avoid violating the fundamental principles of Islamic law. This research employs a qualitative, literature-based research method to explore various journals, books, and historical developments of *fatwa*, *qanun*, *qadha*, and *ijtihad* within Islamic law, as well as their urgency and limitations in addressing the challenges of changing times and social contexts. The results are expected to provide a deeper understanding of their role in Islamic law while detailing their limitations to offer a comprehensive view of these concepts in an ever-evolving context. Additionally, this research is anticipated to contribute to academic discourse on Islamic law and serve as a foundation for further research in this field.

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## 1. Introduction

Islam, as a religion, serves as the primary source of Islamic law itself, differing from European law, which separates faith or religion from law and law from morality. Such separation is not possible within the Islamic legal system because, aside from Islamic law being derived from Islam, law is also an inseparable part of faith and religion. In the current global era, Islamic law faces more complex and serious challenges, which are natural consequences of advancements in science and technology. To address various new questions related to Islamic law, scholars do not solely rely on the knowledge of *Fiqh* or *Usul al-Fiqh* found in classical texts but also solve new problems that have not been previously addressed or opinions that are considered limited to specific contexts. These challenges must be tackled not only by studying the progress of civilization but also by examining the social history of Islamic law, enabling a comprehensive understanding of Islamic law[1].

Islamic law has long been studied scientifically, both by Muslims themselves and non-Muslims. Western non-Muslims, often referred to as Orientalists, study Islamic law for various purposes that have changed over time. Initially, they studied Islam and Islamic law to maintain the unity of their territories from the influence of Islamic power, later transitioning to attacking Islam from within by seeking or fabricating its weaknesses[2].

## 2. Method

The research method used in this article is a qualitative, literature-based research method with the following stages: First, selection of literature sources, identifying and selecting relevant literature sources such as classical Islamic law texts, scholarly papers, and related articles. Second, literature analysis, conducting an in-depth analysis of the selected literature sources to gain a better understanding of Islamic legal concepts. Third, synthesis of findings, combining the findings from the analyzed literature to formulate a comprehensive understanding of Islamic law. Fourth, preliminary conclusions, drafting preliminary conclusions based on the findings from the literature research as a basis for subsequent stages of this study.

## 3. Results and Discussion

### 3.1. Definition and Categories of *Fatwa* in Islamic Law

The term *Fatwa* (الفتوى) linguistically refers to an answer regarding an event or occurrence, derived from the root word as explained by Zamakhshari in *Al-Kashshaf* from the term *al-Fata* (الفتي), meaning youth, and used metaphorically or figuratively (*isti'arah*)[3]. From a Sharia perspective, a *fatwa* is defined as explaining Sharia law on a specific issue as a response to a question, whether the identity of the questioner is known or unknown, and whether the question is posed individually or collectively.

According to the Indonesian Dictionary, a *fatwa* is an opinion or decision given by a *mufti* or expert regarding a particular issue. A *fatwa* is not a simple legal decision and is usually not used as a legal basis[4]. According to Imam Ibn Manzur, the phrase *al-Arab akhtaf fi al-amr abanaf rahu* means "he gave a fatwa on a matter, that is, he explained it to him." Similarly, the phrase *Wa Aftaa Al-Rajulu Fi Al Mas'alah* refers to "a person who issued a fatwa on a particular issue." Meanwhile, *Wa Astaftainuhu Fiiha Fa Aftaaniy Iftaa'an Wa Futaa* translates to "I asked him for a fatwa on this matter, and he gave me one." The term *Wafataay* is derived from the words *Futya* or *Fatway*[5]. *Futya* and *fatwa* are two nouns (*ism*, or singular: *ismiyyah*) that are used in the context of *al-iftaa'* (the act of issuing a fatwa). *Iftaa'* comes from the verb *Iftaay*, which means "to explain." Indeed, it is challenging to define the term "fatwa" precisely. However, based on the explanations provided, we can summarize it as follows:

In other words, it is an effort to provide expert explanations of Sharia law to those who are not yet aware of it. In the book *Mafahim Islamiyah*, it is explained as follows: The word *al-fatwa* literally means "an answer to a difficult question about Sharia or law." Its plural forms are *fatawin* or *fataaway*[6]. After stating this, the term *Ahtay fi al-Masala* refers to explaining the law concerning a particular issue. The term *Al-Iftar* means providing legal explanations on Sharia-related matters, laws, and everything connected to the inquirer's question (*Ibaanat Al Ahkaam Fi Al-Mas'alah Al Syar'iyyah, Au Qanuuniyyah, Au Ghairihaa Mimmaa Yata'allaqu Bishar al-Sail*). A *mufti* is the person who delivers legal opinions or *fatwas* to the public.

According to the Sharia definition, there is no disagreement regarding the meaning of the terms *al-fatwa* and *al-iftaa'* based on their linguistic roots. As Professor Amir Sharifuddin notes, the word *fatwa* or *iftaa'* is derived from the word *Afta*, which means "to explain." Without a doubt, a *fatwa* represents an effort to provide expert clarification to individuals who are unaware of Sharia law[7].

### 3.2. The Role of *Qanun* and *Qadha* in the Islamic Legal System

#### 3.2.1 Definition of *Qanun*

*Qanun* is also referred to as *Kanun Wadri* or human regulations. *Qanun* means law, regulation, or decree. The term *qanun* is now used in the West to refer to Church law. The word has its roots in Arabic and Syriac, initially meaning "line," and later evolving to mean "rule." In Arabic, *qanun* means "measurement," which gave rise to terms like *qanun kesehatan* (health regulations), *qanun*

tabiat (natural laws), and others. However, it is rarely used in Islamic jurisprudence, where the term Sharia is preferred over qanun. In a narrower sense, qanun can also mean Sharia. Islamic jurists often use the terms Shari'ah and Qanun, while scholars of Usul al-Fiqh use the term hukum (law) in the context of qanun.

The term *qanun* today is used in the following senses: code or codex, syara' and syari'at, or jus, law, dro't, recht, and rules of conduct (mu'amalah): Legal or societal norms (lex, a law, loi, gezet).

Scholars who use the term *qanun* in the sense of "law-maker" equate it with the term *Shari'ah*. However, *qanun* as a legal principle differs from "principles of *fiqh*" because *fiqh* principles encompass ritual matters (*ibadah*) and social transactions (*mu'amalah*), while the term *qanun* primarily refers to social transactions. Al-Ghazali, a scholar from the *fuqaha* school, uses *qanun* to mean a general rule for governance[8].

### 3.2.2. Definition of *Qadha*

*Qadha* refers to a judgment or decision issued by a judge (*qadhi*) regarding a case or dispute between two or more parties. It is a binding decision made by a *qadhi* to resolve conflicts. In practice, a *qadhi* is bound by the applicable *qanun* or laws within a jurisdiction. Like *qanun*, *qadha* decisions made by a *qadhi* are binding[9].

Those subject to laws enforced by a *qadhi* are obligated to comply with them. For example, if the decision involves penalties such as imprisonment, flogging, or stoning, the individuals involved must carry out the ruling. This is different from a *fatwa*, which is not binding. A person seeking a *fatwa* from a *mufti* may choose to follow the *fatwa*'s recommendations but is not compelled to do so and faces no penalties for rejecting it.

Another distinction is that a *fatwa* typically begins with a question, to which the *mufti* responds. In contrast, *qadha* involves a dispute between two or more parties, where the *qadhi* resolves the case. One similarity between *fatwa* and *qadha* is that both are based on the Quran, the Sunnah and other sources of Islamic law.

### 3.2.3. The Role of *Qanun* and *Qadha* in the Islamic Legal System

Indonesian Islamic law fundamentally originates from Islamic law and consists of legal norms that have grown and evolved throughout Indonesian history. Indonesian Islamic law is shaped by the interplay between normative Islamic law (*Shari'ah*) and local Indonesian values. Hence, a historical perspective is essential for understanding Indonesian Islamic law holistically. All Muslims agree that Islam, as a religion, governs all aspects of societal life through a set of norms, including legal norms.

The Quran contains many general provisions, and from the beginning, the Prophets established legal structures to regulate the lives of their communities. Based on this theory, the existence of Islamic law in Indonesia aligns with the presence of Islam in the country. When an Indonesian citizen embraces Islam by pronouncing the *shahada* (the Islamic declaration of faith), it inherently implies acknowledgment of Islamic law's authority over them, as outlined in the *Shahada Theory*.

The judicial institutions of historical Islamic kingdoms in the Nusantara, such as the Sultanate of Samudra Pasai, the Banjar Kingdom, and the Mataram Sultanate, illustrate the significant role of Islamic law in resolving disputes. Thus, it is not an overstatement to say that the complex legal theories introduced by Van den Bergh during the early VOC era served as a reference for the government in regulating the affairs of Muslims. During this period, Islamic law was fully enforced among Muslims, as stipulated in Article 75 of the 1855 *Regulation Regulation (RR)*, which stated that "religious law (divine law) is applied by Indonesian judges." [10].

In the context of Islamic law, two concepts hold critical roles: *qanun* and *qadha*. While they are often misunderstood or seen as similar, their meanings and functions are distinct:

First, Qanun in the context of Islamic law, *qanun* refers to laws or regulations enacted by the government or state authorities. It encompasses various areas of law, including criminal, civil, and

administrative law. *Qanun* serves as a legal instrument to regulate social, political, and economic life in Muslim societies. It is often derived from Islamic sources such as the Quran and Hadith and interpreted by state legal authorities. *Qanun* governs the creation of laws, government regulations, and legal policies.

Second, *Qadha* refers to the judicial process of resolving disputes or legal cases through courts or judicial systems. This involves the enforcement of laws and judicial decisions. *Qadha* plays a crucial role in ensuring justice and resolving conflicts within society. It involves applying legal principles to resolve specific cases in accordance with Islamic legal norms. Judicial institutions and courts are key in handling disputes, legal violations, and delivering fair decisions based on Islamic law.

In practice, *qanun* and *qadha* are interconnected. *Qanun* provides the legal framework, while *qadha* acts as the enforcement mechanism that implements these laws. Together, they form a cohesive legal system that aligns with Islamic principles. *Qanun* establishes legal foundations, while *qadha* applies them in resolving conflicts and disputes[6].

The Quran and the Sunnah of the Prophet contain clear evidence supporting the necessity of judicial institutions. For instance, the Quran in Surah Shad (38:26) states:

يٰدَاوُدُ اِنَّا جَعَلْنَاكَ خَلِيفَةً فِى الْاَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوٰى فَيُضِلَّكَ عَنْ سَبِيْلِ اللّٰهِ اِنَّ الَّذِيْنَ يَصْلُوْنَ عَنْ سَبِيْلِ اللّٰهِ لَهُمْ عَذَابٌ شَدِيْدٌۢ اِمْا نَسُوْا يَوْمَ الْحِسَابِۙ

2019 Kemenag Translation:

26. (Allah said), “O Daud, indeed We have made you a khalifah (leader) on earth. So judge between people in truth and do not follow desires, as they will lead you astray from the way of Allah. Indeed, those who stray from the way of Allah will have a severe punishment because they forgot the Day of Reckoning.”

This verse highlights the importance of judicial institutions (*al-qadha*) in protecting the rights of the oppressed and resolving societal disputes. In Islamic legal practice, a judge (*hakam*) may be appointed to resolve disputes. Islamic law permits rulers to appoint judges to handle specific cases. Judges act as representatives of the ruling authority (*waliyyul amri*). A ruler may assign judges to handle specific types of cases, such as personal status (*ahwal al-shakhsiyyah*) or other civil and criminal matters, and within specific jurisdictions, as determined by the governing authority[11].

### 3.3. The Differences Between *Fatwa* and *Ijtihad*

In essence, there are clear distinctions between *fatwa* and *ijtihad*. According to Rifial Ka'bah, as cited by Huyun Kamilduddin, a *fatwa* is an effort to provide expert explanations of Sharia law to those who are not yet familiar with it. Siddique Amian defines *fatwa* as “a legal opinion,” specifically an official legal opinion. Thus, a *fatwa* is more specific than *ijtihad*, which refers to valid *istinbat* (derivation of rulings) that does not necessarily depend on a specific problem or question. A *fatwa* tends to be more flexible, as it is issued in response to a question raised by the seeker of the *fatwa*.

As mentioned earlier, a *fatwa* is non-binding, meaning that individuals or parties seeking it are not obligated to implement the legal guidance provided. Although *fatwa* is generally dynamic in addressing contemporary issues faced by society, its content may not always be dynamic or responsive. The formulation of a *fatwa* heavily depends on the legal and social vision of the scholars issuing it. According to Amir Syarifuddin, some scholars of *Fiqh* compare *fatwa* and *ijtihad*, stating that *fatwa* is more specific than *ijtihad*. The uniqueness of a *fatwa* lies in the fact that it is issued in response to a specific request, while *ijtihad* is conducted proactively without waiting for a question. Amir Syarifuddin rejects the notion that *ijtihad* is equivalent to *fatwa*, asserting that the two are fundamentally different due to their differing topics and objectives.

*Ijtihad* is the process of deriving legal rulings from Islamic sources and doctrines, while a *fatwa* serves as a method of communicating the findings of *ijtihad* to others, such as seekers of legal opinions. A *fatwa* is a way of orally conveying the outcomes of *ijtihad* to the public, while other forms of communication may take the form of actions. Scholars such as Al-Amidi and An-Nabhani argue that *ijtihad* entails exhausting all possible means in addressing Sharia rulings, starting from probable evidence (*dalil zanni*) until reaching a point where no further effort can be made.

A *fatwa* is more specific than *ijtihad* because it (*ifta'*) is only carried out when a real situation arises, prompting Islamic legal scholars to determine its ruling.

### **3.4. The Process of Issuing *Fatwa* and *Qadha* in Practice**

The process of issuing *fatwa* and *qadha* in the practice of Islamic law involves specific steps and the roles of scholars, judges, and religious authorities. Below is a general explanation of each process, the process of issuing a *fatwa* begins with a formal request from an individual or group seeking an Islamic legal opinion on a specific issue. This is followed by in-depth research and consultation conducted by competent scholars or muftis, who refer to the Qur'an, Hadith, and other sources of Islamic law to derive an appropriate ruling. In certain cases, the process involves collective consultation among scholars or *fatwa* councils to ensure consensus and accuracy in formulating the legal opinion. Once the research is complete and the context of the issue is thoroughly understood, the *fatwa* is officially issued and made available to the public through various channels such as mass media, religious lectures, or online platforms. However, it is important to note that a *fatwa* is non-binding, meaning that individuals have the choice to accept or reject it. Some may choose to follow the *fatwa*, while others may decide otherwise, depending on their personal beliefs or community practices.

The process of issuing *qadha* begins with a formal complaint or lawsuit filed by a party that feels wronged or is involved in a dispute. In some cases, before formal litigation, the disputing parties may attempt to resolve the issue amicably through mediation or negotiation. However, if these efforts are unsuccessful, the case is brought to a Sharia court, where a judge or *qadhi* examines the evidence, listens to the arguments presented by both parties, and issues a decision based on Islamic legal principles. Once the judgment is delivered, the losing party is obligated to comply with the decision. Failure to comply may result in the imposition of sanctions or further legal actions to enforce the ruling.

The *qadha* process emphasizes the enforcement of laws and justice within society. Sharia courts are responsible for delivering decisions that align with Islamic law and uphold fairness. It is important to note that the processes for issuing *fatwa* and *qadha* may vary across countries or Muslim communities, depending on their legal systems and practices[12].

### **3.5. Relevance of the Functional Differences Between *Fatwa* and *Qanun* in Modern Society**

In modern society, the functional differences between *fatwa* and *qanun* remain relevant, even though their roles and contexts may evolve. In the modern context, *fatwa* and *qanun* serve distinct roles within Islamic and legal frameworks. In terms of legal authority, a *fatwa* is a legal or moral opinion provided by scholars or religious experts, offering guidance on ethical and religious matters without possessing binding legal force. In contrast, *qanun* represents a law enacted by governments or state authorities, carrying enforceable legal power and covering various areas such as criminal, civil, and administrative law.

Regarding the scope of application, a *fatwa* typically addresses religious and moral issues and is issued by scholars or *muftis*. Its influence is often limited to voluntary adherence by individuals or groups. On the other hand, *qanun* applies universally to all members of society and is enforced by government authorities, encompassing legal regulations that govern societal affairs.



Another distinction lies in legal bindingness. A *fatwa* is non-binding, serving as advice or an opinion, leaving individuals or communities the discretion to follow or disregard it. In contrast, *qanun* is legally binding, and violations result in sanctions or penalties enforced by legal institutions.

Lastly, the source of law differs between the two. A *fatwa* is derived from religious interpretations and Islamic law as interpreted by scholars, and its application depends on the community's commitment to religious teachings. Meanwhile, *qanun* is based on government policies, official laws, and regulations, reflecting societal interests and modern values, with its enforcement rooted in state authority.

In modern society, while *fatwa* continues to serve as religious guidance, the enforcement and regulation of legal matters are often governed by *qanun* or state-enacted legal systems. Although both can complement each other, *qanun* is more closely tied to public order and governance[13].

#### 4. Conclusion

*Fatwa*, *Qanun*, *Qadha*, and *Ijtihad* play essential roles in the determination of Islamic law. A *fatwa* is the response of a *mufti* or expert to solve a problem, *qanun* refers to legislation enacted for governance in a specific region, *qadha* represents the verdict of a judge regarding a violation of rules, and *ijtihad* is the derivation of Sharia law using intellectual and physical effort by involved parties. While these elements hold value, their application in Islamic law has limitations and challenges. Differences in interpretation and potential conflicts with Sharia principles must be addressed carefully.

The application of these laws in contemporary Islamic legal interpretation has significant implications for the sustainability and adaptability of Islamic law to the changes of time. However, it must be implemented wisely to avoid violating the fundamental principles of Islamic law. Thus, recognizing the roles of these legal concepts in Islamic law should be approached cautiously, combining cultural heritage with Sharia principles to create a legal framework that is relevant and sustainable.

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