Nusantara: Journal of Law Studies
Vol. 5 No. 2, 2026: 1714-1740
E-ISSN: 2964-3384
https://doi.org/10.66325/nusantaralaw.v5i2.388

Between Secularising Jurisprudence and Rooted Law: Referential Hybridisation in Contemporary Arab Legislative Discourses

Imran Jamal Hassan*
University of Kirkuk, Kirkuk, Iraq
*Corresponding Author: assistant@uokirkuk.edu.iq

Received: 24-04-2026 | *Revised: 27-09-2026* | *Accepted: 25-10-2026* | *Published On: 05-11-2026*

Abstract: The relationship between Islamic jurisprudence (*Fiqh*) and positive law has become increasingly complex due to the emergence of contemporary legislative models that combine religious legal references with modern statutory frameworks. Despite extensive scholarship on Islamic legal reform, constitutional recognition of Sharia, and legal modernisation, scholars have paid limited attention to how secularising tendencies within jurisprudential thought and the institutional rooting of Islamic legal principles interact to shape contemporary Arab legislative discourses. Accordingly, this study addresses three research questions: how contemporary Islamic jurisprudence has transformed under modern interpretative methodologies; how Arab legal systems have incorporated Islamic legal references into positive legislation through legal rooting; and how the interaction between these developments can be theoretically explained. Employing a qualitative doctrinal and comparative legal methodology, the study analyses classical Islamic jurisprudential sources, principles of *Usul al-Fiqh* , constitutional provisions, legislation, judicial practices, and relevant academic literature. The findings demonstrate that contemporary Arab legal systems have not followed a linear process of either secularisation or Islamization; rather, they have developed through a dynamic interaction between jurisprudential transformation and legislative integration. The study further reveals that this interaction produces a distinct phenomenon of referential hybridisation, characterised by methodological exchange, conceptual convergence, and institutional adaptation between Islamic jurisprudence and positive law. This research contributes by proposing referential hybridisation as a theoretical framework for understanding legally plural systems where multiple sources of authority coexist. This framework provides a new perspective for comparative legal studies and offers analytical tools for examining the future development of legislative systems operating between religious legitimacy and modern state authority.

Keywords: Arab legislative systems; Hybridisation Islamic Jurisprudence; Positive law; Legal Rooting; Referential Hybridisation.

Copyright (c) 2026 Imran Jamal Hassan
This work is licensed under a Creative Commons Attribution-ShareAlike 0 International License

INTRODUCTION

The relationship between Islamic jurisprudence (*Fiqh*) and positive law has emerged as one of the most significant areas of inquiry in contemporary comparative legal scholarship, particularly in light of the profound transformations that have reshaped legislative systems across the Arab and Islamic world. Historically, Islamic jurisprudence and positive law have represented two distinct sources of legal authority. Islamic jurisprudence derives its normative foundations from divine revelation and juristic interpretation based on the Qur'an and the Sunnah, whereas positive law derives its legitimacy from state institutions, legislative authority, and modern constitutional structures.[1] However, contemporary legal developments demonstrate that these two normative traditions no longer operate exclusively as separate systems. Instead, they increasingly interact within modern legislative frameworks, producing complex legal structures in which religious references and statutory principles coexist and influence one another. [2]

This evolving relationship has generated significant theoretical debates concerning the nature of legal authority, legislative identity, and the future trajectory of Islamic legal thought. Contemporary scholarship reveals two interconnected but seemingly opposing developments. The first concerns the emergence of secularising tendencies within Islamic jurisprudence through the adoption of modern interpretative methodologies, including historical analysis, hermeneutical approaches, linguistic criticism, and social scientific perspectives. These approaches seek to reconsider traditional mechanisms of legal interpretation by emphasising contextual, historical, and rational dimensions of legal meaning. The second concerns the continued institutional incorporation of Islamic legal principles into contemporary Arab legislation through constitutional recognition, statutory codification, financial regulation, and personal status legislation. This process, commonly described as the rooting of law, reflects the persistence of Islamic legal references within modern state-based legislative systems.

Although existing studies have extensively examined Islamic legal reform, secular approaches to religious interpretation, constitutional recognition of Sharia, and the incorporation of Islamic principles into modern legislation, these developments have generally been analysed as separate phenomena. Previous scholarship has often focused either on the transformation of Islamic jurisprudential reasoning under modern intellectual influences or on the

[1] Al-Alwani, T. J., *Islah Al-Fikr al-Islami: Madkhal Ila Nizam al-Khitab Fi al-Fikr al-Islami al-Mu'asir.* (Cairo, Egypt: Dar Al-Salam., 2010).

[2] Belqaziz, A., *Al-Dawla Wa al-Din Fi al-Ijtima' al-'arabi al-Islami* (Beirut, Lebanon: Center for Arab Unity Studies., 2018); E Hamid, *Electronic Agent* (Raya Higher Institute of Management and Foreign Trade, 2020).

https://doi.org/10.66325/nusantaralaw.v5i2.388

institutionalisation of Islamic legal principles within contemporary legal systems. Consequently, insufficient attention has been devoted to explaining the relationship between these parallel processes and how their interaction contributes to the emergence of new legislative models that combine religious and statutory sources of authority.

This study addresses this theoretical gap by proposing the concept of referential hybridisation as an analytical framework for understanding the interaction between secularising jurisprudential tendencies and rooted legal structures. Unlike approaches that interpret these developments as evidence of either the decline of Islamic legal authority or the restoration of traditional legal dominance, this study argues that contemporary Arab legislative discourse reflects a more complex process of negotiated interaction. Through this process, Islamic jurisprudence and positive law exchange methodological approaches, conceptual frameworks, and institutional mechanisms while maintaining distinct sources of legitimacy.

This research's novelty lies in developing an integrated theoretical model that moves beyond the traditional dichotomy between secularisation and Islamization. Rather than treating the transformation of Islamic jurisprudence and the rooting of law as contradictory movements, this study conceptualises them as interconnected trajectories that collectively reshape legislative reasoning, legal authority, and institutional practice within contemporary Arab legal systems[3]. The concept of referential hybridisation therefore offers a broader analytical perspective on how multiple normative references can coexist within a single legal order without necessarily resulting in the complete dominance of one system over another.

Accordingly, this study aims to critically examine the conceptual, historical, and legislative dimensions of the relationship between Islamic jurisprudence and positive law through a comparative critical-analytical approach. Specifically, it seeks to achieve three objectives: first, to analyse the methodological transformation of contemporary Islamic jurisprudence under the influence of modern interpretative approaches; second, to examine the mechanisms through which Islamic legal principles have been incorporated into contemporary Arab legislation through processes of legal rooting; and third, to develop a theoretical framework explaining the interaction between these two developments through the concept of referential hybridisation.

To achieve these objectives, this study examines how contemporary Islamic jurisprudence has evolved under the influence of modern interpretative and analytical methodologies, how contemporary Arab legal systems have incorporated Islamic legal references into positive legislation through various

[3] Hanafi, H., *Al-Din Wa al-Thawra Fi Misr. :* (Cairo, Egypt: Maktabat Madbouli., 2012).

forms of legal rooting, and how the interaction between secularising jurisprudence and rooted law can be theoretically understood through the concept of referential hybridisation. Addressing these interconnected questions provides a deeper understanding of the evolving relationship between Islamic jurisprudence and positive law, particularly by clarifying the boundaries and points of convergence between religious legal authority and state-based legislative authority. Furthermore, the study proposes a conceptual framework that contributes to broader scholarly debates on legal pluralism, legislative identity, and the transformation of legal systems operating at the intersection of inherited normative traditions and modern legislative institutions.

METHOD

This study adopts a qualitative doctrinal and comparative legal research approach to examine the evolving relationship between Islamic jurisprudence (*Fiqh*) and positive law in contemporary Arab legislative discourse. As a conceptual study, the research does not rely on empirical data collection but is based on critical analysis of primary and secondary legal sources. The primary sources include classical Islamic jurisprudential texts, principles of *Usul al-Fiqh*, constitutional provisions, statutory legislation, and judicial decisions from selected Arab legal systems. Secondary sources include academic books, peer-reviewed journal articles, and contemporary legal studies on Islamic legal reform, legal pluralism, constitutional recognition of Sharia, and comparative legislative developments. The analysis proceeds through three interconnected stages. First, the study applies a doctrinal analytical method to examine the methodological transformation of contemporary Islamic jurisprudence and to identify the extent to which modern interpretative approaches influence traditional mechanisms of legal reasoning. Second, a comparative legal method is employed to analyse how Islamic legal principles have been incorporated into contemporary Arab legislation through different forms of legal rooting, with particular attention to constitutional, civil, family, financial, and criminal law contexts. Third, the study develops a conceptual framework of referential hybridisation by synthesising the findings from jurisprudential and legislative analysis.

In analysing Sharia issues, the study applies the principles of *Usul al-Fiqh* as an interpretative framework. Sharia-related issues are examined through their classical legal foundations, including textual evidence (*nass*), juristic reasoning (*ijtihad*), legal objectives (*maqasid al-sharia*), public interest (*maslaha*), and legal maxims (*al-qawa'id al-Fiqh iyyah*). These principles are then analysed against modern legislative requirements to determine how Islamic legal concepts are preserved, adapted, or transformed within contemporary statutory frameworks. Through this methodological framework, the study seeks to explain not only the existence of Islamic legal references within modern legislation but also the mechanisms through which different sources of legal authority interact, negotiate, and produce hybrid legislative models in contemporary Arab legal

https://doi.org/10.66325/nusantaralaw.v5i2.388

systems. The selected jurisdictions were chosen for their different constitutional approaches to the relationship between Sharia and positive law, representing diverse models of legal integration ranging from direct reliance on Islamic jurisprudence to reform-oriented legislative adaptation.

RESULTS AND DISCUSSION

1. Transformation of Contemporary Islamic Jurisprudence

Alongside rationalist and historicist approaches, contemporary Islamic jurisprudence has seen a sustained response from scholars who seek to preserve the methodological integrity of the classical legal tradition while acknowledging the need for legal renewal.[4] Rather than rejecting modern intellectual developments outright, these scholars distinguish between methodological adaptation and epistemological reconstruction. From their perspective, contemporary analytical tools may legitimately contribute to jurisprudential reasoning provided that they remain subordinate to the principles of *Usul al-Fiqh* and do not replace the revealed texts as the ultimate source of legal authority[5], This distinction reflects the central theoretical premise advanced in the present study: legal renewal becomes problematic only when methodological innovation transforms the normative hierarchy governing Islamic legal reasoning.[6][7][8]

The comparative analysis further indicates that this contemporary response has developed through both constructive and critical engagement. On the one hand, traditional jurists have subjected historicism, hermeneutics, and secular theories of interpretation to detailed philosophical and methodological critique, questioning their

[4] Awat Mohamed Agha Baba and Ihsan Abdulmonem Abdulhadi Samara, 'The Renewal of Islamic Jurisprudence Between Originality and Modernity: A Comparative Study: ت', *International Journal of Fiqh and Usul Al-Fiqh Studies* 7, no. 1 (30 January 2023): 6–17, doi:10.31436/ijfus.v7i1.282.

[5] Al-Messiri, A. W., *Al-Falsafa al-Maddiyya Wa Tafkik al-Insan.* (Damascus: Dar Al-Fikr., 2002); Mahroof Athambawa, 'Ijtihād Maqāṣidī and Legal Adaptation: A Comparative Analysis of Contemporary Islamic Jurisprudence in Responding to Emerging Issues', *Mazahibuna: Jurnal Perbandingan Mazhab*, 1 June 2025, 89–103, doi:10.24252/mazahibuna.vi.54378; Taha, A. R., *Ruh Al-Hadatha: Al-Madkhal Ila Ta'sis al-Hadatha al-Islamiya.* (Beirut, Lebanon: Arab Cultural Center., 2007).

[6] Mustakim Mustakim et al., 'Integration of Islamic Law in Constitutional Judicial Review: Comparative Perspectives from Indonesia and Turkey', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13 (15 May 2026): 322, doi:10.29300/mzn.v13i1.10114.

[7] Ahmad Muhamad Mustain Nasoha et al., 'Criminal Law in Muslim-Majority Countries: Balancing Sharia, Human Rights, and Global Standards', *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 1 (2 June 2025): 1–18, doi:10.22515/shahih.v10i1.10038; Otto, J. M., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present.* (Leiden: Leiden University Press., 2010).

[8] Habib Ahmed, 'Islamic Normative Legal Theory: Framework and Applications', *Journal of Law and Religion* 40, no. 1 (January 2025): 28–58, doi:10.1017/jlr.2025.10056.

compatibility with the epistemological assumptions of Islamic jurisprudence.[9] On the other hand, they have expanded the internal mechanisms of Islamic legal theory by promoting disciplined applications of *maqasid al-sharia*,[10] contemporary *ijtihad*, jurisprudence of Muslim minorities, and jurisprudence of facilitation as legitimate instruments for responding to changing social realities.[11] These developments demonstrate that fidelity to the classical tradition has not prevented methodological development; rather, it has provided the conceptual foundation upon which contemporary legal renewal has been constructed. Within this framework, innovation is understood as an internal process of reinterpretation and methodological refinement rather than a departure from the epistemological foundations of Islamic jurisprudence. The application of *maqāṣid al-sharīʿah*, contextual *ijtihād*, and other contemporary juristic instruments illustrates that the classical tradition possesses inherent mechanisms of adaptation that enable Islamic law to respond to changing social conditions while maintaining the normative authority of revelation.[12]

Viewed comparatively, the contemporary jurisprudential landscape cannot be reduced to a simple opposition between traditionalism and modernism. Rather, it encompasses a continuum of methodological positions distinguished primarily by the source from which legal authority is derived. At one end are approaches that use modern analytical methods as supplementary instruments that enrich legal reasoning without altering its epistemological foundations. At the other end are approaches that relocate the centre of legal legitimacy from revelation to historical, linguistic, or rational theories of interpretation.[13] Between these poles lies a broad spectrum of intermediate models that combine elements of both traditions while differing in the extent to which classical jurisprudential methodology continues to regulate legal interpretation. This intellectual diversity demonstrates that contemporary Islamic jurisprudence has evolved simultaneously at two interconnected levels. The first is methodological, involving the incorporation of new analytical techniques that expand the explanatory capacity of Islamic legal scholarship without necessarily altering its normative

[9] Husnul Fatarib et al., 'Progressive Legal Reasoning in Contemporary Islamic Legal Reform: Negotiating the Maqāṣid and Hermeneutic Approaches', *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (17 December 2025): 277–294, doi:10.31958/juris.v24i2.16123.

[10] Abdul Kadir Jaelani et al., 'Social Justice Fiqh and Decent Living Needs: Reinterpreting Minimum Wage Policy in Indonesia', *Journal of Islamic Law* 7, no. 2 (25 August 2026): 361–98, doi:10.24260/jil.v7i2.6742.

[11] Athambawa, 'Ijtihād Maqāṣidī and Legal Adaptation'; Bin Bayyah, A., *Sina'at al-Fatwa Wa Fiqh al-Aqalliyyat* (Jeddah: Dar al-Minhaj., 2007).

[12] Abdullah Hemmet Abdullah, 'Renewal and Ijtihad Practices: An Analytical Study in Light of the Objectives of Islamic Sharia', *Journal of Scientific Development, 'for Studies and Research' (JSD)* 6, no. 21 (10 June 2025), doi:10.61212/jsd/336.

[13] Bambang, 'Ijtihad and the Dynamics of Islamic Legal Interpretation: An Epistemological Exploration in the Contemporary Context', *Nusantara: Journal of Law Studies* 3, no. 1 (31 July 2024): 56–67, doi:10.5281/zenodo.17373912.

foundations. The second is epistemological, involving alternative conceptions of language, history, and legal authority that redefine the criteria through which legal meaning is produced and justified. Distinguishing between these two levels explains why contemporary jurisprudential developments are better understood not as a single process of secularisation but as multiple trajectories of legal evolution characterised by varying degrees of continuity with the classical tradition. Interpreted through the theoretical framework advanced in this study, this continuum demonstrates that the decisive issue is not whether Islamic jurisprudence changes, but how the relationship between methodological innovation and the epistemological foundations of legal authority is conceptualised and maintained.[14]

From this perspective, the transformation of contemporary Islamic jurisprudence is best understood as a process of differentiated methodological evolution rather than uniform secularisation. Its defining characteristic is the continuing negotiation between continuity and change, textual authority and contextual interpretation, and inherited jurisprudential structures and contemporary modes of legal analysis.[15] This differentiated evolution provides the analytical foundation for examining the parallel process through which Islamic legal principles have been institutionalised within contemporary Arab legislation.[16]

2. Legal Rooting in Contemporary Arab Legislation

Building upon the differentiated transformation of contemporary Islamic jurisprudence identified in RQ1, the comparative analysis demonstrates that legal rooting has developed neither as a uniform process of legislative Islamization nor as a simple continuation of classical jurisprudence. Rather, it represents a gradual process of institutional adaptation through which Islamic legal principles have been incorporated into modern legislative structures with varying degrees of constitutional recognition, statutory implementation, and judicial enforcement. Interpreted through the theoretical framework advanced in this study, legal rooting is best understood as a dynamic interaction between religious legitimacy and modern legislative authority rather than a binary choice between Islamic law and positive law.[17]

The historical origins of legal rooting can be traced to the nineteenth-century transformation of legislative institutions throughout the Ottoman Empire and the

[14] Fatarib et al., 'Progressive Legal Reasoning in Contemporary Islamic Legal Reform'.

[15] Naufal Cholily et al., 'Bridging Fiqh and Religious Practice: Actualizing the Function of Ḥāshiyah as a Form of Worship in the Scribal Traditions of Madurese Pesantren Literature', *Journal of Islamic Law* 6, no. 1 (2 February 2025): 21–45, doi:10.24260/jil.v6i1.3749.

[16] Mohammad Hashim Kamali, *Maqasid Al-Shari'ah: Ijtihad and Civilization Renewal*, occasional papers series 20 (malaysia: International Institute of Advanced Islamic Studies, 2012), https://iiit.org/en/book/maqasid-al-shariah-ijtihad-and-civilization-renewal/.

[17] Rebaz Rasul Khdir, 'The Constitutional Status of Islam in the Iraqi Legal Order', *Journal of Legal and Political Studies* 12, no. 2 (4 May 2025): 226–62, doi:10.17656/jlps.10267.

Arab world.[18] Contrary to the assumption that legal modernisation necessarily required abandoning Islamic jurisprudence, early codification projects sought to reorganise juristic doctrine within systematic legislative frameworks that could meet the administrative and judicial requirements of the modern state.[19] This marked an important methodological shift: Islamic jurisprudence was no longer confined to traditional juristic literature but increasingly served as a substantive source for modern statutory legislation.[20]

The most significant manifestation of this transformation was the promulgation of the *Majalla al-Aḥkām al-ʿAdliyyah*between 1869 and 1876. As the first comprehensive attempt to codify Islamic civil jurisprudence within a modern state framework, the *Majalla* represented a fundamental shift from juristic doctrine as a scholarly tradition toward Islamic jurisprudence as an institutional source of statutory legislation. Developed primarily from the Hanafi legal tradition, the code translated classical juristic principles into a structured legislative framework consisting of 1,851 provisions governing civil transactions, obligations, and related areas of private law. [21] Its historical significance extended far beyond its immediate legal application. More fundamentally, the *Majalla al-Aḥkām al-ʿAdliyyah* demonstrated that Islamic jurisprudence could be reorganised into a modern legislative format without abandoning its underlying juristic foundations. Rather than simply preserving classical *Fiqh* or replacing Islamic legal authority with modern statutory models, the *Majalla* constituted a process of institutional translation through which juristic doctrines were transformed into codified legal rules applicable within the structures of the modern state. [22]

The *Majalla* therefore represents one of the earliest institutional expressions of legal rooting, showing that codification could preserve Islamic legal identity while also meeting the administrative, judicial, and organisational requirements of modern governance. By converting dispersed juristic opinions into a unified legislative framework, it changed how Islamic legal authority operated: from primarily scholarly interpretation to state-recognised legal norms. This transformation did not eliminate the connection between legislation and classical jurisprudence; rather, it created a

[18] Samy A. Ayoub, 'The Ottoman Rationale for Codification: The Mecelle', in *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence*, ed. Samy A. Ayoub (Oxford University Press, 2019), 0, doi:10.1093/oso/9780190092924.003.0005.

[19] Al-Zuhayli, W., *Al-Fiqh al-Islami Wa Adillatuh.* (Damascus: Dar Al-Fikr., 1989).

[20] Dr Hafiz Muhammad Zubair Muhammad Zubair, 'An Introduction to The Ottoman Civil Code', *Majallah-e-Talim o Tahqiq* 2, no. 1 (31 March 2020), https://ojs.cer.edu.pk/index.php/mtt/article/view/81.

[21] Al-Zarqa, M. A., *Al-Madkhal al-Fiqhi al-'amm.* (Damascus: Dar Al-Qalam., 1999); Zubair, 'An Introduction to The Ottoman Civil Code'.

[22] 'REPORT OF THE COMMISSION APPOINTED TO DRAFT THE MAJALLA', *MAJALLA.Org*, 31 January 2022, https://majalla.org/ilm/majalla/.

hybrid legal structure in which inherited Islamic references were embedded within modern legislative institutions. [23]

This legislative experience profoundly influenced subsequent Arab codification movements, particularly the work of Abd al-Razzaq Al-Sanhuri. Rather than reproducing European civil law through legal transplantation, Al-Sanhuri pursued a methodology of legislative synthesis that combined the systematic structure of continental civil codes with substantive principles derived from Islamic jurisprudence.[24] His approach reflected a deliberate attempt to reconcile legal modernisation with Islamic legal legitimacy, thereby transforming legal rooting from an exercise in codification into a broader legislative philosophy. The significance of Al-Sanhuri's contribution therefore lies not merely in incorporating Islamic legal rules into statutory legislation but in demonstrating that Islamic jurisprudence could serve as a continuing source of legislative development within modern constitutional states.

Viewed comparatively, these historical developments reveal that codification itself should not be interpreted as evidence of legal secularisation. Rather, codification constituted an institutional mechanism through which Islamic legal principles were reformulated in legislative language while preserving their normative influence. The evolution from the *Majalla* to Al-Sanhuri's legislative methodology illustrates that legal rooting has consistently operated through adaptation rather than replacement, allowing Islamic jurisprudence to participate in legislative modernisation without abandoning its intellectual foundations. Constitutional recognition of Sharia constitutes the principal institutional gateway through which legal rooting operates in contemporary Arab legal systems. Comparative analysis, however, demonstrates that constitutional recognition alone does not ensure substantive legislative Islamization because its practical significance depends upon judicial interpretation, constitutional review, and legislative implementation.[25] Similar constitutional formulations often produce markedly different legislative outcomes, depending on the institutional arrangements governing constitutional adjudication and legislative discretion. Consequently, constitutional references to Sharia should be understood as enabling conditions for legal rooting rather than conclusive evidence of its practical realisation.

The legislative expression of legal rooting is most evident in personal status law. Throughout the Arab world, rules governing marriage, divorce, inheritance, guardianship, wills, and child custody continue to derive predominantly from classical Islamic jurisprudence while being administered through modern statutory legislation

[23] Samy Ayoub, 'The Ottoman Rationale for Codification: The Mecelle', 2019, 129–53, doi:10.1093/oso/9780190092924.003.0005.

[24] Al-Sanhuri, A. R., *Masadir Al-Haqq Fi al-Fiqh al-Islami.* (Cairo, Egypt: Dar Al-Nahda Al-Arabiyya., 1998).

[25] Clark B. Lombardi, 'Constitutional Provisions Making Sharia "a" or "the" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?', 2013, https://digitalcommons.law.uw.edu/faculty-articles/713.

and judicial institutions.[26] This continuity shows that legal rooting achieves its greatest institutional stability where Islamic legal identity remains closely connected to social and constitutional legitimacy. At the same time, the comparative evidence indicates that even within family law, legislative codification has modified the traditional presentation of juristic doctrine by introducing procedural uniformity, statutory clarity, and greater judicial consistency.[27]

A comparable process is evident in the regulation of Islamic finance. The rapid expansion of Islamic banking has encouraged legislatures to incorporate classical jurisprudential concepts, including the prohibition of riba, murabaha, mudarabah, profit-and-loss sharing, and sukuk, into sophisticated regulatory systems governing contemporary financial institutions.[28] Rather than reproducing classical commercial jurisprudence in its original form, these legislative developments adapt traditional legal principles to the regulatory demands of modern financial markets. Islamic finance therefore shows that legal rooting is not confined to preserving historical doctrine; it also functions as a mechanism for legislative innovation that responds to new economic realities while maintaining Islamic legal legitimacy.[29]

The comparative picture becomes considerably more complex in criminal legislation. Whereas Saudi Arabia continues to rely extensively on Islamic criminal law as a primary legal source, many Arab jurisdictions have adopted criminal codes largely influenced by European legal traditions while selectively incorporating Islamic legal principles.[30] Other Muslim-majority states, including Sudan, Pakistan, Iran, Afghanistan, and parts of Nigeria, have pursued broader projects of criminal Islamization, generating continuing debates concerning constitutional legitimacy, procedural guarantees, and compatibility with international human rights standards.

These divergent legislative experiences demonstrate that legal rooting cannot be explained solely by constitutional commitment to Sharīʿah. Rather, its scope and practical operation are shaped by the interaction of political priorities, institutional capacity, judicial interpretation, and the broader constitutional environment within which criminal legislation is enacted and enforced. Consequently, similar constitutional

---

[26] Al-Zuhayli, W., *Al-Ahwal al-Shakhsiyya Fi al-Fiqh al-Islami.* (Damascus: Dar Al-Fikr., 2002).

[27] Ritika Tewari, 'LINGUISTIC MARKERS OF JUDICIAL REASONING IN INDIAN JUDGMENTS' 4, no. 4 (2024).

[28] El-Gamal, M. A., *Islamic Finance: Law, Economics, and Practice.* (Cambridge: Cambridge University Press., 2006); Hammad, N., *Mu'jam al-Mustalahat al-Maliyya Wa al-Iqtisadiyya Fi Lughat al-Fuqaha'.* (Damascus: Dar Al-Qalam., 2006).

[29] Mahmood Alaloosh, Govar Majed Ahmad, and Lara Adel Jabbar, 'Adapting Iraqi Law to Smart Contracts: A Comparative Analysis Incorporating Islamic Law Principles and Consumer Protection in the Contemporary Digital Era', *MILRev: Metro Islamic Law Review* 5, no. 1 (27 February 2026): 210–46, doi:10.32332/milrev.v5i1.13031.

[30] Athambawa, 'Ijtihād Maqāṣidī and Legal Adaptation'; Peters, R., *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century.* (Cambridge: Cambridge University Press., 2005).

references to Islamic law may produce markedly different legislative outcomes depending on the effectiveness of state institutions, the distribution of constitutional authority, and the balance between religious norms, democratic governance, and international legal obligations. Viewed comparatively, these variations confirm that legal rooting is an institutional process rather than a purely normative one, in which legislative design, constitutional practice, and judicial implementation mediate the incorporation of Islamic legal principles rather than constitutional text alone.[31]

Taken together, these constitutional and legislative patterns indicate that legal rooting functions through multiple institutional pathways rather than a single legislative model. The degree of Islamic legal influence varies not only across legal fields but also with the interaction among constitutional design, legislative policy, and judicial practice. Legal rooting should therefore be understood as a differentiated process of institutional integration whose practical operation depends upon the legal mechanisms through which Islamic jurisprudence is translated into enforceable statutory rules.[32]

Comparative evidence shows that contemporary Arab legal systems have adopted distinct legislative models reflecting different constitutional traditions and historical experiences, rather than a common pattern of legal rooting. The Egyptian experience represents perhaps the most influential model of legislative integration. Through Al-Sanhuri's codification methodology, Egypt combined the systematic organisation of continental civil law with substantive principles drawn from Islamic jurisprudence, creating a legislative framework that accommodates both legal traditions.[33] This legislative synthesis was later reinforced by Article Two of the Egyptian Constitution and the jurisprudence of the Supreme Constitutional Court, which distinguished between definitive (qat'i) and speculative (zanni) rules of Islamic law, preserving legislative flexibility while maintaining a constitutional commitment to Sharia.[34]

The Egyptian model differs from the Gulf experience in both its constitutional structure and its legislative methodology. Unlike Egypt, where judicial interpretation plays a decisive role in mediating the relationship between constitutional references to Sharia and statutory legislation, Saudi Arabia relies more directly upon Islamic jurisprudence as the primary source of legal authority. However, recent reforms have increasingly codified several legal fields without abandoning their Islamic

[31] Vivi Ariyanti and Supani, 'Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective', *Al-Manahij: Jurnal Kajian Hukum Islam* 18 (16 March 2024): 37–58, doi:10.24090/mnh.v18i1.8280.

[32] Ibid.; Fatarib et al., 'Progressive Legal Reasoning in Contemporary Islamic Legal Reform'.

[33] Al-Sanhuri, A. R., *Masadir Al-Haqq Fi al-Fiqh al-Islami.*

[34] Samy Ayoub, 'The Egyptian State as a Muǧtahid: Law and Religion in the Jurisprudence of the Egyptian Supreme Constitutional Court', 21 June 2022, doi:10.1163/15730255-bja10119.

foundations.[35] Other Gulf jurisdictions, including the United Arab Emirates, Kuwait, Qatar, Bahrain, and Oman, occupy intermediate positions, combining extensive statutory legislation with varying degrees of explicit reliance on Islamic jurisprudence.[36] These experiences show that constitutional recognition of Islamic law can coexist with markedly different legislative techniques and institutional arrangements.

By contrast, the Maghreb illustrates a more reform-oriented pattern of legal rooting. Morocco has preserved a strong Islamic legal reference in family law while introducing substantial reforms through the 2004 Family Code, which integrates classical jurisprudential reasoning with contemporary constitutional values and human rights considerations.[37] Tunisia pursued an even more expansive legislative reform strategy through the Personal Status Code of 1956, introducing innovative interpretations of Islamic legal principles, including the prohibition of polygamy, and thereby stimulating ongoing debate about the permissible scope of legislative interpretation within an Islamic legal framework.[38] These experiences show that legal rooting can accommodate substantial legislative innovation without following a single constitutional model.

The comparative evidence demonstrates that legal rooting in contemporary Arab legislation represents neither a uniform legislative project nor a simple continuation of classical jurisprudence. Rather, it encompasses a spectrum of constitutional and statutory models through which Islamic legal principles are incorporated into positive law, shaped by each state's constitutional structure, judicial practice, and legislative tradition. Interpreted through the theoretical framework adopted in this study, these findings indicate that legal rooting functions primarily as an adaptive legislative strategy whose effectiveness depends less upon constitutional declarations than upon the institutional mechanisms governing legislative drafting, constitutional review, and judicial interpretation. To facilitate comparison across the three analytical stages examined in this study, Table 1 synthesises the evolution from contemporary Islamic jurisprudence to legal rooting and finally to referential hybridisation. Rather than presenting these developments as isolated phenomena, the table demonstrates their progressive relationship and highlights how each stage contributes to the emergence of the proposed theoretical framework.

Table 1. Comparative Evolution from Contemporary Islamic Jurisprudence to Disciplined Referential Hybridisation

[35] Al-Jabr, M. B. A., *Tatbiq Al-Sharia al-Islamiyya Fi al-Nizam* (al-saudi. Riyadh: Dar Al-Obeikan., 2015).

[36] Vogel, F. E., *(). Islamic Law and Legal System: Studies of Saudi Arabia.* (Leiden: Brill., 2000).

[37] Al-Haqqawi, B., *Mudawwanat Al-Usra al-Maghribiyya: Qira'a Fi al-Ijtihad al-Tashri'i.* (Ministry of Justice Publications., 2010).

[38] Al-Sharfi, A. M., *Al-Islam Wa al-Hadatha. :* (Tunis: Tunisian Publishing House., 1998).

https://doi.org/10.66325/nusantaralaw.v5i2.388

Analytical Dimension	Transformation of Contemporary Islamic Jurisprudence (RQ1)	Legal Rooting in Contemporary Arab Legislation (RQ2)	Referential Hybridisation (RQ3)
Primary Objective	Renew Islamic legal reasoning while preserving the epistemological authority of the Qur'an, Sunnah, and *Usul al-Fiqh*.	Institutionalise Islamic legal principles within modern constitutional and legislative systems.	Establish a coherent methodology governing interaction between Islamic jurisprudence and positive law.
Normative Foundation	Revelation remains the ultimate source of legal authority; methodological innovation is accepted only within classical jurisprudential principles.	Constitutional recognition of Sharia, statutory legislation, judicial interpretation, and legislative policy jointly determine legal development.	Dual normative legitimacy based on constitutional legality and Islamic legal legitimacy while preserving the autonomy of each legal system.
Methodological Orientation	Contextual *ijtihad*, *maqasid al-sharia*, legal maxims (*qawa'id Fiqh iyyah*), jurisprudence of minorities, and jurisprudence of facilitation.	Legislative codification, constitutional incorporation, judicial interpretation, comparative legislation, and institutional adaptation.	Disciplined methodological integration combining modern legislative techniques with Islamic jurisprudential reasoning.
Institutional Actors	Jurists, Islamic legal academies, fatwa institutions, and scholars of *Usul al-Fiqh* .	Legislatures, constitutional courts, governments, ministries of justice, and judicial institutions.	Legislatures, constitutional courts, Islamic scholars, judicial institutions, and legislative drafting bodies operating collaboratively.
Representative Applications	Contemporary fatwas, Islamic finance jurisprudence, contextual interpretation of emerging legal issues,	Family law, inheritance, Islamic finance regulation, constitutional provisions recognising Sharia,	Constitutional adjudication, hybrid family law systems, Islamic banking legislation, public policy, and

https://doi.org/10.66325/nusantaralaw.v5i2.388

	and maqasid-based reasoning.	and selected criminal law reforms.	comparative legislative reform.
Relationship with Modern Legal Systems	Modern analytical methods are accepted as supplementary tools, not as replacements for revealed sources of law.	Islamic legal principles are translated into statutory legislation through codification and constitutional mechanisms.	Islamic jurisprudence and positive law interact through reciprocal methodological exchange while maintaining separate epistemological foundations.
Major Challenges	Preventing methodological renewal from becoming epistemological reconstruction or secularisation of legal authority.	Reconciling legislative modernisation with Islamic legal legitimacy across diverse constitutional systems.	Managing multiple normative references while avoiding legislative inconsistency and interpretative conflict.
Expected Legal Outcome	Dynamic jurisprudence capable of responding to contemporary realities while preserving doctrinal authenticity.	Hybrid legislative systems integrating Islamic legal identity within modern state institutions.	A coherent model of regulated legal pluralism that can guide future legislative development in Arab legal systems.
Contribution to the Present Study	Demonstrates that contemporary Islamic jurisprudence evolves through differentiated methodological development rather than uniform secularisation.	Demonstrates that legal rooting represents institutional adaptation rather than simple legislative Islamization.	The study makes its original theoretical contribution by proposing Disciplined Referential Hybridisation as a normative model for legally plural societies.

Source: author's interpretation

As Table 1 demonstrates, contemporary Arab legal development cannot be understood as a linear process of either secularisation or Islamization. Instead, it reflects a gradual transition from jurisprudential renewal to institutional legal rooting, culminating in a structured interaction between Islamic jurisprudence and positive law. This progression provides the conceptual basis for the Disciplined Referential Hybridisation model developed in the following section. Taken together, these comparative findings demonstrate that legal rooting should not be regarded as the

endpoint of legislative development. Rather, the institutional incorporation of Islamic jurisprudence into contemporary statutory systems has generated an increasingly complex interaction between Islamic legal reasoning and positive law. This evolving relationship gives rise to a distinct phenomenon of referential hybridisation, through which multiple normative references operate simultaneously within a single legal order. Accordingly, the analysis now shifts from describing legislative incorporation to explaining the theoretical structure that governs this interaction. The following section therefore examines referential hybridisation and develops the conceptual framework proposed in response to RQ3.

3. Referential Hybridisation and the Proposed Theoretical Framework

3.1. The Emergence of Referential Hybridisation

The comparative findings presented in Sections 1 and 2 indicate that neither the transformation of contemporary Islamic jurisprudence nor the institutional rooting of positive law independently explains the evolution of contemporary Arab legal systems. Rather, their interaction has generated a distinct legislative phenomenon characterised by the coexistence of multiple normative references within a single legal order. This study conceptualises this phenomenon as referential hybridisation. Referential hybridisation is defined as the structured interaction between Islamic jurisprudence and positive law through methodological, conceptual, and institutional exchanges while preserving the normative autonomy and epistemological integrity of each legal tradition.

This interaction first becomes evident at the methodological level. Contemporary Islamic jurisprudence increasingly employs analytical techniques developed in modern legal theory and the social sciences, including conceptual analysis, comparative reasoning, systematic classification, and functional interpretation, to address contemporary legal questions. At the same time, modern legislative institutions increasingly rely upon Islamic jurisprudential methods, including legal maxims (*al-qawa'id al-Fiqh iyyah*), analogical reasoning (*qiyas*), and the objectives of Islamic law (*maqasid al-sharia*), particularly in areas where constitutional legitimacy remains closely connected with Islamic legal values[39]. These reciprocal methodological influences demonstrate that legislative development no longer proceeds through a one-directional process in which either Islamic jurisprudence or positive law exclusively shapes legal reasoning. Instead, both systems increasingly exchange interpretative techniques while preserving distinct sources of legal legitimacy.

The interaction also extends to the conceptual structure of contemporary legislation. Comparative analysis reveals that numerous legal concepts now perform parallel functions within both Islamic jurisprudence and positive law despite originating from different epistemological traditions. The doctrine of *maslaha*, for

[39] Daraz, M. A., *Al-Din: Buhuth Mumahhada Li-Dirasat Tarikh al-Adyan.* (Kuwait: Dar Al-Qalam., 1991); Vogel, F. E., *(). Islamic Law and Legal System: Studies of Saudi Arabia.*

example, increasingly converges with the modern concept of public interest by directing legal interpretation toward the realisation of collective welfare, although each concept derives its authority from different normative premises. Similar interaction is evident between the principle of good faith in private law and the classical Islamic values of honesty and trustworthiness in commercial transactions, as well as between constitutional notions of public order and the objectives of Sharia concerning the protection of religion, life, intellect, lineage, and property. These conceptual convergences do not eliminate differences between the two legal traditions; rather, they facilitate legislative communication by creating a shared legal vocabulary that can operate across multiple normative references.[40]

Finally, referential hybridisation is clearest in legislative and judicial practice. Throughout much of the Arab world, personal status legislation combines codified statutory techniques with substantive rules derived from Islamic jurisprudence, while Islamic finance demonstrates how classical contractual doctrines have been incorporated into sophisticated regulatory frameworks governing modern financial institutions.[41] Similar interaction appears, albeit with varying intensity, in constitutional and criminal legislation, where Islamic legal principles frequently coexist with statutory norms derived from modern legislative systems. These examples indicate that referential hybridisation is not merely a theoretical construct but an observable characteristic of contemporary legislative development. Rather than functioning as mutually exclusive legal orders, Islamic jurisprudence and positive law increasingly regulate identical legal relationships through complementary institutional mechanisms, thereby producing hybrid legal systems that require new analytical approaches capable of explaining their internal coherence.

3.2. Explaining the Challenges of Hybrid Legal Systems

The coexistence of multiple normative references has generated three interconnected challenges that increasingly shape legislative development within contemporary Arab legal systems. These challenges concern legislative identity, judicial interpretation, and the relationship between constitutional legality and Islamic legitimacy. They arise not because hybrid legal systems combine different legal traditions, but because they often lack coherent methodological principles governing how those traditions interact.[42]

---

[40] Nasrullah et al., 'Reconstructing the Indonesian Legal System through the Lens of Maṣlaḥah Mursalah', *Al-Manahij: Jurnal Kajian Hukum Islam*, 23 June 2025, 117–132, doi:10.24090/mnh.v19i1.7861; Ardy Gunawan Tomagola et al., 'The Effectiveness of Indonesia's Anti-Corruption Law on Legal Reform and Implementation | West Science Law and Human Rights', 31 July 2024, https://wsj.westsciences.com/index.php/wslhr/article/view/1129.

[41] Al-Zuhayli, W., *Al-Ahwal al-Shakhsiyya Fi al-Fiqh al-Islami.*

[42] Fatarib et al., 'Progressive Legal Reasoning in Contemporary Islamic Legal Reform'; Nasrullah et al., 'Reconstructing the Indonesian Legal System through the Lens of Maṣlaḥah Mursalah'.

The first challenge concerns legislative identity. Cross-jurisdictional analysis reveals that many contemporary statutes simultaneously incorporate constitutional principles, international legal standards, and Islamic jurisprudential concepts without clearly defining the normative hierarchy governing their interaction. As a consequence, legislation often derives its authority from multiple legal references whose relationship remains insufficiently articulated. Several scholars therefore describe contemporary Arab legislation as experiencing a crisis of legislative identity because hybrid normative references increasingly replace unified legal philosophies.[43] Nevertheless, the comparative findings suggest that normative plurality should not itself be regarded as a defect. In legally plural societies, hybrid legislation may constitute an adaptive institutional response to diverse constitutional and social realities. The principal difficulty, therefore, lies not in the coexistence of different legal references but in the absence of transparent principles governing their interaction.[44]

A second challenge emerges within judicial practice. Courts in hybrid legal systems frequently confront disputes that require simultaneous consideration of constitutional provisions, statutory legislation, Islamic jurisprudence, and international legal obligations. Such tensions are particularly evident in family law, inheritance, mixed marriages, child custody, and matters involving international private law. Comparative experience demonstrates that constitutional courts have increasingly assumed responsibility for reconciling these competing references through interpretative doctrines designed to preserve both constitutional legality and Islamic legal legitimacy. The jurisprudence of the Egyptian Supreme Constitutional Court illustrates this approach by distinguishing between definitive (*qat'i*) and speculative (*ẓanni*) rules of Islamic law, thereby preserving legislative discretion while maintaining constitutional recognition of Sharia.[45] Although these judicial techniques reduce practical conflict, they also illustrate that courts have become central institutions in managing hybrid legal systems through interpretation rather than merely applying legislation.

The third challenge concerns the relationship between constitutional legitimacy and compliance with Islamic legal principles. Positive law evaluates legislative validity primarily by constitutional procedures and institutional competence, whereas Islamic jurisprudence measures legitimacy by conformity with the Qur'an, the Sunnah, and the principles of *Usul al-Fiqh*. Consequently, legislation may satisfy constitutional

[43] Al-Alwani, T. J., *Islah Al-Fikr al-Islami: Madkhal Ila Nizam al-Khitab Fi al-Fikr al-Islami al-Mu'asir.*; Hallaq, W. B., *Shari'a: Theory, Practice, Transformations.* (Cambridge: Cambridge University Press., 2009).

[44] Agus Sunaryo and Ahmad Hadidul Fahmi, 'Evaluation of the Maqāṣid Al-Sharī'ah Liberalization: An Examination of the Notion of "Prioritizing Public Interest over Textual Evidence"', *Al-Manahij: Jurnal Kajian Hukum Islam*, 13 March 2024, 1–16, doi:10.24090/mnh.v18i1.9886.

[45] Gianluca Parolin, 'A Second Violation of the Sharia Provision: Egypt's SCC 's Ruling of 12 May 2013, in the Case No. 37/ Xxxiii (Annotated and Translated)', *Arab Law Quarterly*, 2024, doi:10.1163/15730255-bja10166.

requirements while remaining controversial from particular juristic perspectives, just as certain classical juristic doctrines may require legislative adaptation before becoming compatible with contemporary constitutional systems[46]. Although many Arab constitutions seek to reconcile these forms of legitimacy by recognising Sharia as a constitutional source of legislation, the comparative findings further indicate that constitutional recognition alone cannot resolve interpretative disagreement concerning the meaning and scope of Sharia principles.[47] These three challenges collectively demonstrate that hybrid legal systems require more than constitutional accommodation or judicial balancing. They require a coherent methodological framework that regulates the interaction between Islamic jurisprudence and positive law while preserving the normative integrity of both. This analytical need underpins the theoretical model proposed in the following section.

3.3. Disciplined Referential Hybridisation as a Theoretical Model

The foregoing analysis shows that the principal challenge confronting contemporary Arab legal systems is not legal plurality itself, but the absence of a coherent methodology to regulate the interaction between Islamic jurisprudence and positive law. In response, this study proposes Disciplined Referential Hybridisation as a framework that conceptualises legal development as a process of regulated interaction between two autonomous normative systems, rather than the predominance of either tradition.

The proposed framework rests upon three complementary principles. First, it requires a clear distinction between the respective domains of Islamic jurisprudence and positive law through referential, methodological, and teleological criteria. Rules deriving their authority from the Qur'an, the Sunnah, and recognised methods of Islamic legal reasoning remain within the primary domain of Islamic jurisprudence, whereas statutory rules enacted through constitutionally competent institutions belong to the domain of positive law[48]. Second, these legal traditions should interact through disciplined methodological integration rather than unrestricted borrowing. Contemporary legislation may legitimately employ jurisprudential reasoning alongside modern legislative techniques, provided that the epistemological autonomy of each legal tradition is preserved, legislative transparency is maintained, and institutional mechanisms exist to reconcile competing legal references [49]. Third, reciprocal influence must remain subject to clearly defined limits. Islamic jurisprudence may benefit from legislative codification, institutional organisation, and procedural regulation without altering its revealed foundations. At the same time, positive law may incorporate the ethical principles and objectives of Sharia in areas such as family law, financial

[46] Al-Ashmawi, M. S., *Al-Islam al-Siyasi.* (Cairo, Egypt: Sina Publishing., 2004).
[47] Mallat, C., *Introduction to Middle Eastern Law.* (Oxford: Oxford University Press., 2007).
[48] Daraz, M. A., *Al-Din: Buhuth Mumahhada Li-Dirasat Tarikh al-Adyan.*
[49] Al-Turabi, H., *Tajdid Al-Fikr al-Islami.* (Khartoum: Sudanese Book House., 1987).

regulation, and public policy without compromising constitutional governance [50]. These principles transform referential hybridisation from an unstructured legislative phenomenon into a coherent methodology capable of regulating interaction between distinct normative traditions. Building upon the comparative findings discussed above, Table 2 operationalises the proposed Disciplined Referential Hybridisation framework by identifying its core principles, institutional mechanisms, fields of application, and expected legislative outcomes. The table translates the conceptual model into an analytical framework that can be applied in future comparative legal research and legislative evaluation.

Table 2. Disciplined Referential Hybridisation: Principles, Institutional Mechanisms, and Expected Legislative Outcomes

Framework Principle	Conceptual Definition	Institutional Mechanisms	Illustrative Legal Fields	Expected Legislative Outcome
Referential Differentiation	Islamic jurisprudence and positive law remain autonomous legal systems possessing distinct sources of authority, methods, and objectives.	Constitutional allocation of legislative authority, recognition of Sharia, legislative drafting guidelines, and judicial review.	Constitutional law, legislative drafting, constitutional adjudication.	Prevents confusion regarding the hierarchy and legitimacy of legal norms while preserving legal certainty.
Disciplined Methodological Integration	Reciprocal methodological borrowing is permitted without replacing the epistemological foundations of either legal tradition.	Comparative legal reasoning, maqasid-based interpretation, legal maxims, constitutional interpretation, and codification techniques.	Family law, commercial law, Islamic finance, civil transactions.	Enables legal adaptation while preserving both constitutional legality and Islamic legal identity.
Reciprocal but Limited Influence	Each legal system may benefit from the other's institutional strengths	Codification of Islamic legal rules, procedural modernisation, incorporation	Islamic banking regulation, personal status law,	Produces balanced legislative modernisation rather than replacement of

[50] Al-Qaradawi, Y., *Dirasa Fi Fiqh Maqasid Al-Sharia Bayn al-Maqasid al-Kulliyya Wa al-Nusus al-Juz'iyya.* (Dar Al-Shorouk., 2006); Al-Sanhuri, A. R., *Masadir Al-Haqq Fi al-Fiqh al-Islami.*

	without compromising its own normative foundations.	of ethical principles into statutory legislation, judicial harmonisation.	administrative law.	one legal tradition by another.
Institutional Coordination	Legislative development requires cooperation among legislatures, constitutional courts, and Islamic legal institutions.	Constitutional courts, supreme judicial councils, legislative committees, Sharia advisory bodies, legal academies.	Constitutional review, judicial interpretation, legislative reform.	Reduces institutional conflict and promotes coherent implementation of hybrid legislation.
Transparency of Normative References	Legislation should explicitly identify whether rules derive from constitutional authority, statutory policy, or Islamic jurisprudence.	Explanatory memoranda, constitutional interpretation, legislative drafting manuals, judicial reasoning.	Legislative drafting, judicial decisions, constitutional litigation.	Enhances legal predictability, accountability, and interpretative consistency.
Normative Evaluation	Legislative validity should be assessed through compatibility with both constitutional governance and Islamic legal principles where constitutionally recognised.	Constitutional review, proportionality analysis, maqasid evaluation, judicial balancing, comparative constitutional reasoning.	Constitutional law, human rights, public policy, legislative review.	Establishes objective criteria for evaluating hybrid legal systems and future legislative reforms.
Resolution of Normative Conflicts	Conflicts between legal references should be addressed through	Constitutional interpretation, judicial balancing, maqasid analysis, legal	Family disputes, inheritance, mixed marriages,	Minimises contradictions between constitutional legality and Islamic

	structured interpretative methodologies rather than hierarchical exclusion.	maxims, proportionality doctrine.	international private law.	legitimacy while preserving institutional coherence.
Overall Theoretical Contribution	Disciplined Referential Hybridisation explains legal development as regulated interaction between autonomous normative systems rather than legal competition or secularisation.	Integrated legislative design supported by constitutional institutions and jurisprudential methodology.		

Source: author's interpretation

The framework presented in Table 2 demonstrates that referential hybridisation should not be viewed as an unregulated coexistence of Islamic jurisprudence and positive law. Rather, it provides a structured methodology for governing their interaction while preserving each legal tradition's epistemological autonomy. Consequently, the model offers both an explanatory framework for existing hybrid legal systems and a normative guide for future legislative development in legally plural jurisdictions. Unlike existing approaches that primarily describe the coexistence of Islamic jurisprudence and positive law, the proposed framework establishes normative criteria for regulating their interaction and evaluating future legislative development. Accordingly, this study proposes Disciplined Referential Hybridisation as both an analytical and normative framework for understanding legislative development in legally plural systems. Rather than viewing Islamic jurisprudence and positive law as competing sources of authority, the framework explains how they may interact through disciplined methodological integration while preserving their respective epistemological foundations. In doing so, it provides a coherent basis for analysing, evaluating, and guiding future legislative development in contemporary Arab legal systems.

CONCLUSION

This study demonstrates that the contemporary relationship between Islamic jurisprudence and positive law cannot be adequately explained through the traditional dichotomy between secularisation and Islamization. The comparative analysis shows

that contemporary Arab legal systems have developed through a complex process of interaction between secularising tendencies in jurisprudential thought and the institutional rooting of Islamic legal principles in modern legislative structures. Rather than representing mutually exclusive trajectories, these developments have produced a dynamic legal environment in which multiple sources of normative authority coexist and influence legislative reasoning. The study's main theoretical contribution lies in introducing the concept of referential hybridisation as an analytical framework for explaining the interaction between Islamic jurisprudence and positive law. This framework demonstrates that hybrid legal systems are not merely transitional forms between religious and secular legal orders; rather, they represent structured systems of normative interaction in which methodological exchange, conceptual convergence, and institutional adaptation occur while maintaining distinct foundations of legal legitimacy. The proposed model contributes to comparative legal scholarship by providing a framework applicable to other plural legal systems where religious and state-based sources of law operate simultaneously. From a practical perspective, the findings suggest that the future development of Arab legislative systems requires a disciplined methodology to manage the relationship between Islamic legal references and modern legislative requirements. Such an approach may help legislators, constitutional courts, and legal scholars address conflicts between different normative sources while preserving both constitutional legality and religious legal identity. This study has certain limitations. As a conceptual and doctrinal analysis, it does not examine empirical data concerning judicial behaviour, legislative decision-making processes, or social perceptions of hybrid legal systems. Furthermore, although the comparative discussion covers several Arab legal experiences, it does not provide an exhaustive analysis of all jurisdictions. Future research may therefore employ empirical and socio-legal approaches to examine how referential hybridisation operates in judicial practice, legislative institutions, and public legal consciousness. Comparative studies involving other legally plural societies may also further develop and test the applicability of this theoretical framework beyond the Arab context.

ACKNOWLEDGEMENT

The author gratefully acknowledges the institutional support provided by the University of Kirkuk, College of Education for Humanities, which facilitated the completion of this research. No external funding, research grant, or financial support was received for this study. The author also appreciates the anonymous reviewers and editors for their valuable comments and suggestions, which helped improve the quality of the manuscript. The author declares that there are no additional acknowledgements regarding writing assistance, laboratory facilities, or other forms of support.

AUTHOR CONTRIBUTIONS STATEMENT

IJH: Conceptualisation, methodology, literature review, formal analysis, investigation, theoretical framework development, writing—original draft preparation, writing—review and editing, visualisation, and final approval of the manuscript.

AI USAGE STATEMENT

The author declares that Artificial Intelligence (AI) tools were used solely for language editing, grammar checking, and improving the manuscript's clarity, readability, and academic presentation. AI was not used to generate the research questions, develop the conceptual framework, conduct the literature review, perform the legal analysis, interpret findings, or formulate the conclusions. All scholarly content, arguments, interpretations, and conclusions are the original work of the author, who assumes full responsibility for the accuracy, originality, and academic integrity of the manuscript. In accordance with established ethical standards for academic publishing, AI tools are not credited as authors or contributors to this work.

CONFLICT OF INTEREST

The author declares that there are no financial, personal, professional, or institutional conflicts of interest that could have influenced the research, authorship, or publication of this article.

REFERENCES

Abdullah, Abdullah Hemmet. 'Renewal and Ijtihad Practices: An Analytical Study in Light of the Objectives of Islamic Sharia'. *Journal of Scientific Development, 'for Studies and Research' (JSD)* 6, no. 21 (10 June 2025). doi:10.61212/jsd/336.

Ahmed, Habib. 'Islamic Normative Legal Theory: Framework and Applications'. *Journal of Law and Religion* 40, no. 1 (January 2025): 28–58. doi:10.1017/jlr.2025.10056.

Alaloosh, Mahmood, Govar Majed Ahmad, and Lara Adel Jabbar. 'Adapting Iraqi Law to Smart Contracts: A Comparative Analysis Incorporating Islamic Law Principles and Consumer Protection in the Contemporary Digital Era'. *MILRev: Metro Islamic Law Review* 5, no. 1 (27 February 2026): 210–246. doi:10.32332/milrev.v5i1.13031.

Al-Alwani, T. J. *Islah Al-Fikr al-Islami: Madkhal Ila Nizam al-Khitab Fi al-Fikr al-Islami al-Mu'asir.* Cairo, Egypt: Dar Al-Salam., 2010.

Al-Ashmawi, M. S. *Al-Islam al-Siyasi.* Cairo, Egypt: Sina Publishing., 2004.

Al-Haqqawi, B. *Mudawwanat Al-Usra al-Maghribiyya: Qira'a Fi al-Ijtihad al-Tashri'i.* Ministry of Justice Publications., 2010.

Al-Jabr, M. B. A. *Tatbiq Al-Sharia al-Islamiyya Fi al-Nizam*. al-saudi. Riyadh: Dar Al-Obeikan., 2015.

Al-Messiri, A. W. *Al-Falsafa al-Maddiyya Wa Tafkik al-Insan*. Damascus: Dar Al-Fikr., 2002.

Al-Qaradawi, Y. *Dirasa Fi Fiqh Maqasid Al-Sharia Bayn al-Maqasid al-Kulliyya Wa al-Nusus al-Juz'iyya*. Dar Al-Shorouk., 2006.

Al-Sanhuri, A. R. *Masadir Al-Haqq Fi al-Fiqh al-Islami*. Cairo, Egypt: Dar Al-Nahda Al-Arabiyya., 1998.

Al-Sharfi, A. M. *Al-Islam Wa al-Hadatha. :* Tunis: Tunisian Publishing House., 1998.

Al-Turabi, H. *Tajdid Al-Fikr al-Islami*. Khartoum: Sudanese Book House., 1987.

Al-Zarqa, M. A. *Al-Madkhal al-Fiqhi al-'amm*. Damascus: Dar Al-Qalam., 1999.

Al-Zuhayli, W. *Al-Ahwal al-Shakhsiyya Fi al-Fiqh al-Islami*. Damascus: Dar Al-Fikr., 2002.

———. *Al-Fiqh al-Islami Wa Adillatuh*. Damascus: Dar Al-Fikr., 1989.

Ariyanti, Vivi and Supani. 'Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective'. *Al-Manahij: Jurnal Kajian Hukum Islam* 18 (16 March 2024): 37–58. doi:10.24090/mnh.v18i1.8280

Athambawa, Mahroof. 'Ijtihād Maqāṣidī and Legal Adaptation: A Comparative Analysis of Contemporary Islamic Jurisprudence in Responding to Emerging Issues'. *Mazahibuna: Jurnal Perbandingan Mazhab*, 1 June 2025, 89–103. doi:10.24252/mazahibuna.vi.54378.

Ayoub, Samy. 'The Egyptian State as a Muǧtahid: Law and Religion in the Jurisprudence of the Egyptian Supreme Constitutional Court', 21 June 2022. doi:10.1163/15730255-bja10119.

———. 'The Ottoman Rationale for Codification: The Mecelle', 129–53, 2019. doi:10.1093/oso/9780190092924.003.0005.

Ayoub, Samy A. 'The Ottoman Rationale for Codification: The Mecelle'. In *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence*, edited by Samy A. Ayoub, 0. Oxford University Press, 2019. doi:10.1093/oso/9780190092924.003.0005.

Baba, Awat Mohamed Agha, and Ihsan Abdulmonem Abdulhadi Samara. 'The Renewal of Islamic Jurisprudence Between Originality and Modernity: A

Comparative Study: ت'. *International Journal of Fiqh and Usul Al-Fiqh Studies* 7, no. 1 (30 January 2023): 6–17. doi:10.31436/ijfus.v7i1.282.

Bambang. 'Ijtihad and the Dynamics of Islamic Legal Interpretation: An Epistemological Exploration in the Contemporary Context'. *Nusantara: Journal of Law Studies* 3, no. 1 (31 July 2024): 56–67. doi:10.5281/zenodo.17373912.

Belqaziz, A. *Al-Dawla Wa al-Din Fi al-Ijtima' al-'arabi al-Islami*. Beirut, Lebanon: Center for Arab Unity Studies., 2018.

Bin Bayyah, A. *Sina'at al-Fatwa Wa Fiqh al-Aqalliyyat*. Jeddah: Dar al-Minhaj., 2007.

Cholily, Naufal, Mahbub Ghozali, Abd Kholid, Wan Khairul Aiman Wan Mokhtar, and Rami İbrahim Mahmut. 'Bridging Fiqh and Religious Practice: Actualizing the Function of Ḥāshiyah as a Form of Worship in the Scribal Traditions of Madurese Pesantren Literature'. *Journal of Islamic Law* 6, no. 1 (2 February 2025): 21–45. doi:10.24260/jil.v6i1.3749.

Daraz, M. A. *Al-Din: Buhuth Mumahhada Li-Dirasat Tarikh al-Adyan*. Kuwait: Dar Al-Qalam., 1991.

El-Gamal, M. A. *Islamic Finance: Law, Economics, and Practice*. Cambridge: Cambridge University Press., 2006.

Fatarib, Husnul, Zezen Zainul Ali, Nur Aziz Arifin, Abdul Najib, and Muhammad Nur Fathoni. 'Progressive Legal Reasoning in Contemporary Islamic Legal Reform: Negotiating the Maqāṣid and Hermeneutic Approaches'. *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (17 December 2025): 277–294. doi:10.31958/juris.v24i2.16123.

Hallaq, W. B. *Sharī'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press., 2009.

Hamid, E. *Electronic Agent*. Raya Higher Institute of Management and Foreign Trade, 2020.

Hammad, N. *Mu'jam al-Mustalahat al-Maliyya Wa al-Iqtisadiyya Fi Lughat al-Fuqaha'*. Damascus: Dar Al-Qalam., 2006.

Hanafi, H. *Al-Din Wa al-Thawra Fi Misr :* Cairo, Egypt: Maktabat Madbouli., 2012.

Jaelani, Abdul Kadir, Dostonjon Murodullayev, Nabila Khanan Mulachela, Andi Tri Haryono, and Sarjiyanto. 'Social Justice Fiqh and Decent Living Needs: Reinterpreting Minimum Wage Policy in Indonesia'. *Journal of Islamic Law* 7, no. 2 (25 August 2026): 361–398. doi:10.24260/jil.v7i2.6742.

Kamali, Mohammad Hashim. *Maqasid Al-Shari'ah: Ijtihad and Civilization Renewal*. occasional papers series 20. malaysia: International Institute of Advanced Islamic Studies, 2012. https://iiit.org/en/book/maqasid-al-shariah-ijtihad-and-civilization-renewal/.

Khdir, Rebaz Rasul. 'The Constitutional Status of Islam in the Iraqi Legal Order'. *Journal of Legal and Political Studies* 12, no. 2 (4 May 2025): 226–262. doi:10.17656/jlps.10267.

Lombardi, Clark B. 'Constitutional Provisions Making Sharia "a" or "the" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?', 2013. https://digitalcommons.law.uw.edu/faculty-articles/713.

Mallat, C. *Introduction to Middle Eastern Law*. Oxford: Oxford University Press., 2007.

Mustakim, Mustakim, Mas Prasetyo, Dayanto Dayanto, Kartika Jingga, and Ziyad Ravaşdeh. 'Integration of Islamic Law in Constitutional Judicial Review: Comparative Perspectives from Indonesia and Turkey'. *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13 (15 May 2026): 322. doi:10.29300/mzn.v13i1.10114.

Nasoha, Ahmad Muhamad Mustain, Ashfiya Nur Atqiya, Imam Abdullah, Muhammad Nur Ukasyah, and Viror Ghufron Assaifi. 'Criminal Law in Muslim-Majority Countries: Balancing Sharia, Human Rights, and Global Standards'. *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 1 (2 June 2025): 1–18. doi:10.22515/shahih.v10i1.10038.

Nasrullah, Moh Najib, Uu Nurul Huda, and Enceng Arif Faizal. 'Reconstructing the Indonesian Legal System through the Lens of Maṣlaḥah Mursalah'. *Al-Manahij: Jurnal Kajian Hukum Islam*, 23 June 2025, 117–132. doi:10.24090/mnh.v19i1.7861.

Otto, J. M. *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden: Leiden University Press., 2010.

Parolin, Gianluca. 'A Second Violation of the Sharia Provision: Egypt's SCC 's Ruling of 12 May 2013, in the Case No. 37/ Xxxiii (Annotated and Translated)'. *Arab Law Quarterly*, 2024. doi:10.1163/15730255-bja10166.

Peters, R. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*. Cambridge: Cambridge University Press., 2005.

Majalla.org. 'Report of the Commission Appointed to Draft the Majalla', 31 January 2022. https://majalla.org/ilm/majalla/.

Sunaryo, Agus, and Ahmad Hadidul Fahmi. 'Evaluation of the Maqāṣid Al-Sharī'ah Liberalization: An Examination of the Notion of "Prioritizing Public Interest over Textual Evidence"'. *Al-Manahij: Jurnal Kajian Hukum Islam*, 13 March 2024, 1–16. doi:10.24090/mnh.v18i1.9886.

Taha, A. R. *Ruh Al-Hadatha: Al-Madkhal Ila Ta'sis al-Hadatha al-Islamiya*. Beirut, Lebanon: Arab Cultural Center., 2007.

Tewari, Ritika. 'Linguistic Markers Of Judicial Reasoning In Indian Judgments' 4, no. 4 (2024).

Tomagola, Ardy Gunawan, Wahid Yaurwarin, Jakobus Anakletus Rahajaan, Agustinus Jonas Sahetapy, and Reni Wahyuni Kalauw. 'The Effectiveness of Indonesia's Anti-Corruption Law on Legal Reform and Implementation | West Science Law and Human Rights', 31 July 2024. https://wsj.westsciences.com/index.php/wslhr/article/view/1129.

Vogel, F. E. *(). Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill., 2000.

Zubair, Dr Hafiz Muhammad Zubair Muhammad. 'An Introduction to The Ottoman Civil Code'. *Majallah-e-Talim o Tahqiq* 2, no. 1 (31 March 2020). https://ojs.cer.edu.pk/index.php/mtt/article/view/81.