

## The Notion of Legal Subject in Islamic Jurisprudence and Modern Positive Law

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**Abstract:** *In Indonesia's legal system, every individual is recognized as a legal subject accountable under the law. Islamic law designates humans as mahkūm 'alayh or mukallaf, while the concept has evolved to encompass legal entities such as corporations. This study examines the similarities and differences in the notion of legal subjects between Islamic law and positive law in Indonesia. Employing a qualitative library research approach, primary data were drawn from authoritative written sources on the topic. Data analysis involved qualitative techniques, including coding, reduction, and conclusion drawing. The development of legal entities in Indonesia parallels the enactment of Islamic-related legislation, such as laws on waqf, zakat management, Religious Courts, Islamic Law Compilation, and Sharia Economic Law Compilation (KHES). Findings reveal that Islamic law constitutes divine commands (taklīf, takhyīr, wad'ī) regarding mukallaf actions—viewed by Usūliyyūn as God's legislative acts and by Fuqahā' as their effects. In contrast, positive law comprises commands and evaluations of actions, establishing relations between individuals and their deeds.*

**Abstrak:** Dalam sistem hukum Indonesia, setiap individu diakui sebagai subjek hukum yang bertanggung jawab terhadap undang-undang. Hukum Islam menetapkan manusia sebagai mahkūm 'alayh atau mukallaf, sementara konsep ini berkembang mencakup badan hukum seperti korporasi. Penelitian ini mengkaji persamaan dan perbedaan konsep subjek hukum antara hukum Islam dan hukum positif di Indonesia. Menggunakan pendekatan penelitian kepustakaan kualitatif, data primer diperoleh dari sumber tertulis otoritatif terkait topik. Analisis data melibatkan teknik kualitatif, termasuk pengkodean, reduksi, dan penarikan kesimpulan. Perkembangan badan hukum di Indonesia sejalan dengan pengesahan peraturan Islam terkait, seperti undang-undang wakaf, pengelolaan zakat, Pengadilan Agama, Kompilasi Hukum Islam, dan Kompilasi Hukum Ekonomi Syariah (KHES). Temuan menunjukkan bahwa hukum Islam merupakan titah ilahi (taklīf, takhyīr, wad'ī) terkait perbuatan mukallaf—dipandang Usūliyyūn sebagai aksinya Tuhan dalam menetapkan hukum, dan oleh Fuqahā' sebagai efeknya. Sebaliknya, hukum positif terdiri dari perintah dan penilaian terhadap perbuatan, yang membentuk hubungan antara individu dan perbuatannya.

**Keywords:** *Legal Subject, Mahkūm 'Alayh, Mukallaf, Islamic Law, Positive Law, Indonesia*





## Introduction

In contemporary legal scholarship, comparative analysis emerges as an indispensable approach, revealing similarities, differences, and convergences between legal systems while highlighting their respective strengths. A pivotal concept in jurisprudence is the legal subject the entity deemed competent to perform legal acts (Fadel, 2024). Methodologically, comparative law serves as a vital source of knowledge, functioning as a technique, discipline, and method to uncover human values, relationships, activities, and evaluations. As a research tool, it tests variances between variables, determining whether differences are statistically significant or mere coincidences. The value of comparative methods has been widely acknowledged across disciplines, reflected in the works of scientists, historians, economists, jurists, and researchers. Core ideas, concepts, principles, and theories in these fields often stem from comparative studies (Monateri, 2024). While Islamic law (*fiqh*) and positive law undeniably diverge in foundational principles, they exhibit notable parallels in specific domains. This article thus explores the concept of legal subjects in Islamic law and positive law, adopting a philosophy of law lens that employing fundamental, critical, comprehensive, and reflexive analysis (Mustofa et al., 2025).

In the Indonesian context, where positive law integrates Islamic elements, key research questions include, *first*, the notion of legal subjects in Islamic law and Islamically influenced Indonesian legislation; and *second*, legal subjects under the Sharia Economic Law Compilation (KHES). Prior to delineating comparisons between *fiqh*, the Islamic Law Compilation, and Indonesian regulations, it is essential to elucidate the fundamental distinctions between Islamic law and positive law. This study contributes to legal theory by bridging *ushul fiqh* perspectives on *mahkūm 'alayh* or *mukallaf* with modern legal entities, fostering deeper understanding for Sharia-compliant frameworks in Indonesia.

## Method

This study employed a qualitative library research design to examine the concept of legal subjectivity in Islamic law and positive law, with particular attention to Indonesian Islamic legal regulations. The research relied on primary written sources, including classical *fiqh* and *uṣūl al-fiqh* literature, statutory regulations, the Compilation of Islamic Law (KHI), the Compilation of Sharia Economic Law (KHES), and relevant legal texts on positive law and legal subject theory. Secondary sources consisted of scholarly books, journal articles, and academic commentaries that discuss the conceptual and doctrinal differences between the two legal systems. The analysis used a comparative-descriptive approach. First, the relevant concepts were identified and classified according to their doctrinal functions, such as legal subject, legal object, legal capacity, and legal authority. Second, the data were interpreted through a philosophical lens in order to examine the epistemological basis of each legal system, especially the relationship between divine command in Islamic law and state authority in positive law. Third, the findings were compared to determine points of convergence and divergence, particularly in relation to *mukallaf*, *ahliyyah*, natural persons, and legal entities. To ensure analytical rigor, the study applied qualitative data analysis techniques consisting of data reduction, coding, categorization, and conclusion drawing. The research emphasizes conceptual rather than empirical testing, since its primary aim is to explain and compare legal ideas within their normative and institutional contexts.

## Results and Discussion

### Conceptual Foundations of Islamic Law and Positive Law

Islamic law, in its technical sense, is not merely a translation of a generic religious law, but a distinct juristic concept rooted in *al-fiqh al-islāmī* and closely related to *al-hukm al-shar'ī*. In classical jurisprudence,

the term Islamic Law is rarely used by the compilers of fiqh works, instead the discourse centers on *shari'ah* and fiqh, which are often used interchangeably in modern usage despite their technical differences (Rasyid et al., 2024). Etymologically, *al-hukm* denotes judgment, determination, rule, authority, and normative prescription, while Islam refers to divine revelation brought by the Prophet Muhammad (Suchrulloh, 2024). When combined, Islamic law signifies divine prescriptions governing human conduct and binding upon Muslims as normative obligations. This understanding positions Islamic law as a transcendent normative system whose authority derives from God and is addressed to legally competent persons (*mukallaf*) (Majid et al., 2023). From the perspective of *uṣūliyyūn*, Islamic law is defined as the divine address (*khitaḅ Allāh*) related to the acts of the legally responsible person, encompassing obligation (*taklīf*), option (*takhyīr*), and declaratory rulings (*wad'ī*). In this framework, the legal subject (*mahkūm 'alayh*) is the mukallaf, namely a person who possesses legal capacity and is capable of bearing obligations under divine command. The legal object (*mahkūm fih*) is the act of the mukallaf, while the will of the lawgiver is expressed through commands, prohibitions, permissions, and legal conditions. Accordingly, Islamic law contains *taklīfī* rulings, such as *wājib*, *ḥarām*, *mandūb*, and *makrūh* (Hopipah & Nurkholis, 2025). *Takhyīrī* rulings, represented by *mubāḥ*, and *wad'ī* rulings, including cause (*sabab*), condition (*shart*), and obstacle (*māni'*) (Wibowo & Sugitanata, 2023).

A further distinction appears between *uṣūliyyūn* and *fuqahā'* in conceptualizing law itself. For *uṣūliyyūn*, law is the divine will that commands, forbids, permits, or establishes legal relations. For *fuqahā'*, however, law is the effect or consequence of that divine address rather than the address itself (Mohamed Shaarani & Ahmad, 2025). This difference is methodological rather than substantive, because both perspectives ultimately regulate the conduct of mukallaf and determine whether an act is mandatory, prohibited, permissible, or conditionally governed. In practical terms, this dual perspective makes Islamic law both a normative system and a classificatory system for human action (Aspandi, 2019). The sources of Islamic law are generally divided into agreed-upon and disputed sources, as well as into textual (*naqlī*) and rational (*'aqlī*) sources. The primary textual sources are the Qur'an and Sunnah, while consensus (*ijmā'*) and analogical reasoning (*qiyās*) are broadly accepted as secondary sources. Other juristic instruments, such as *istiṣlāḥ*, *istiḥsān*, *'urf*, *sadd al-dharā'ī'*, *istiṣhāb*, the opinion of a Companion, and pre-Islamic law, remain subject to scholarly debate (Wahidah, 2020). This layered structure demonstrates that Islamic law is not static; rather, it accommodates both revelation and interpretive reasoning in order to govern the full spectrum of human life, including worship, family law, civil transactions, criminal law, adjudication, governance, and economic relations (Ulumuddin et al., 2022).

Positive law, in contrast, is commonly understood as a man-made normative order established through authoritative institutions and enforced through sanctions (Alam et al., 2022). Legal theory has offered multiple definitions of law, reflecting different intellectual traditions, yet most converge on several core features: law regulates social behavior, is enacted by competent authority, is coercive, and is backed by sanctions. In this sense, positive law is a product of human reasoning, social consensus, institutional decision-making, and historical development, rather than a transcendent command. Within positive legal doctrine, the legal subject is any person or entity recognized by law as capable of holding rights and obligations. This includes not only natural persons but also legal entities, which are treated as juridical persons for the purposes of legal action, responsibility, and accountability. Legal theory also distinguishes between the subject of law, the object of law, legal acts, and legal events, thereby placing the legal subject at the center of legal relations (Executivo & Auer, 2024). Unlike Islamic law, where legal subjectivity is anchored in divine accountability, positive law derives subjectivity from legal recognition and institutional designation. Another important difference lies in the source of legal authority. Positive law arises from materially and formally identifiable sources such as legislation, custom, judicial precedent, treaties, and scholarly opinion. These sources indicate that law is constituted through social and institutional processes and becomes binding once formally recognized. Consequently, positive law is not derived from an external divine mandate, but from human-made mechanisms that organize legal life within the state (Chodir & Muhammad Arfan, 2025).

## Comparative Dimensions of Legal Subjectivity in Islamic and Positive Law

The comparison between Islamic law and positive law demonstrates that both systems are concerned with identifying the bearer of legal responsibility, yet they differ fundamentally in the source and meaning of that responsibility (Sarib et al., 2023). In Islamic law, the legal subject is the mukallaf, namely a person who has attained legal capacity and is addressed by divine command. In positive law, by contrast, legal subjectivity arises from legal recognition by the state, which allows both natural persons and legal entities to hold rights and obligations (Purnamawati et al., 2024). This distinction shows that Islamic law grounds legal subjectivity in moral-theological accountability, whereas positive law grounds it in juridical registration and institutional authority. The issue of capacity further reveals a significant overlap between the two legal systems. Islamic jurisprudence requires *ahliyyah* as the basis of *taklif*, meaning that a person must be capable of understanding the divine address and acting upon it (Nabilah et al., 2024). Positive law similarly distinguishes between persons who are legally capable and those who are not, such as minors, persons under guardianship, or other individuals whose legal competence is restricted. Although the terminologies are different, both systems operate with the same practical concern such as ensuring that legal consequences are imposed only on subjects who possess sufficient capacity to bear them (Killian et al., 2024).

The expansion of legal subjectivity to legal entities is especially important in the Indonesian legal context. Classical *fiqh* generally limits the legal subject to the human person, whereas modern legal thought and positive law recognize corporations, foundations, and public institutions as juridical persons (Nuroniyah, 2023). This development is reflected in Indonesian Islamic legal regulations, including KHES, which increasingly accommodates legal entities in economic and transactional matters. As a result, the contemporary Indonesian legal framework shows a significant intersection between classical Islamic doctrine and modern legal construction. In KHES, legal capacity is formulated in a more operational way, linking Islamic legal doctrine with modern legal administration. Article 4 KHES recognizes that persons who are unable to perform legal acts may be placed under guardianship, indicating that the compilation does not treat all legal subjects as equally competent. This provision aligns with the Islamic concept of *ahliyyah*, especially the distinction between *ahliyyah al-wujūb* and *ahliyyah al-adā'*, while also reflecting the positive-law concern for legal certainty and protection of vulnerable parties (Hazram, 2024). KHES also illustrates how Islamic law in Indonesia has moved beyond a purely classical conception of the mukallaf. In economic practice, legal subjectivity now includes entities that function as parties in contracts, institutions that manage assets, and organizations that bear legal consequences. This development suggests that the Indonesian adaptation of Islamic law is not merely doctrinal, but also institutional and functional. Therefore, KHES serves as a bridge between the normative structure of *fiqh* and the practical requirements of contemporary legal relations.

The broader implication of this comparison is that Islamic law and positive law are not entirely oppositional systems, but rather systems that organize legal life through different epistemological foundations. Islamic law establishes legal responsibility through divine speech and moral accountability, while positive law establishes it through formal recognition and state authority. Yet both systems require clarity about who may act, who may bear rights, and who may be held responsible. This shared structure makes comparative analysis particularly valuable in the Indonesian setting, where Islamic norms operate within a national legal framework. In this sense, the concept of legal subjectivity in Indonesian Islamic law reflects a layered synthesis. Classical *fiqh* provides the normative foundation through mukallaf and *ahliyyah*, while positive law contributes institutional mechanisms that recognize persons and legal entities as juridical actors. The result is a legal order that preserves Islamic values while adapting to modern legal needs. Such a synthesis is especially visible in KHES and related Islamic statutes, which demonstrate how Islamic legal concepts can be rearticulated within a modern codified system.

## Conclusion

This study concludes that the concept of legal subjectivity in Islamic law and positive law is rooted in different epistemological foundations yet converges in practical legal function. Islamic law positions the mukallaf as the legal subject whose capacity (ahliyyah) is determined by divine command, thereby linking legal responsibility to moral and spiritual accountability, whereas positive law recognizes natural persons and legal entities through state authority and institutional validation. The findings also show that, despite their different sources and methodologies, both systems aim to regulate conduct, determine legal competence, and protect the integrity of legal relations. In the Indonesian context, this conceptual intersection is reflected in Islamic legal instruments such as the Compilation of Islamic Law and the Compilation of Sharia Economic Law, which translate classical juristic ideas into a modern codified framework. Accordingly, the study affirms that Islamic law and positive law should not be viewed as competing structures, but as distinct legal traditions that interact constructively in shaping a more inclusive and context-sensitive legal order.

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## Conflict of Interest

This article has no conflicts of interest.

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