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The journal evaluates research articles, research notes and book reviews. The target group of the journal consists of academicians, researchers, students, related professional and academic bodies and institutions. Turkish and English are welcome within the journal.

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DiHA: Disiplinlerarası Hukuk Araştırmaları Dergisi'nin ikinci sayısını sunmanın kıvancını yaşıyoruz. Bu sayı, beş araştırma makalesi ve bir araştırma notundan oluşuyor.

Sayının ilk makalesi, İslam hukuku ve Endonezya hukuk sistemi çerçevesinde e-ticaretteki sahte sipariş uygulamalarını normatif açıdan ele alarak, hukuk ve teknoloji etkileşimini dinî-hukukî bir perspektiften tartışıyor.

Ardından gelen çalışma, ceza hukuku ve psikiyatri kesişiminde, parçalanmış kimlik bozukluğunda cezaî sorumluluk sorununu Bangladeş hukuk sistemi üzerinden inceliyor.

Üçüncü makale, Osmanlı şeyhülislam fetvalarını analitik mantık ve hesaplamalı yöntemlerle ele alarak hukukta karar algoritmaları fikrine özgün bir katkı sunuyor.

Dördüncü makale, uluslararası hukuk ve siyaset bilimi ekseninde Çin'in yeni dış ilişkiler yasasını mevzuattan stratejiye geçiş süreci üzerinden değerlendiriyor.

Beşinci makale ise, mimarlık ve hukuk sosyolojisi arasında kurduğu özgün ilişkiyle hukuk-toplum etkileşimine tipomorfolojik bir bakış getiriyor.

Bu sayı, Osmanlı hukuk literatürü ile diplomasi tarihi arasında köprü kuran bir araştırma notu ile son buluyor. Caroline Davası'nı Osmanlı kaynakları üzerinden yeniden gündeme getiren bu kısa çalışma, hukuk tarihinin sınırlarını aşan bir diplomatik okuma örneği.

İkinci sayımızın farklı disiplinlerin kesişiminde gelişen hukuk araştırmalarına katkı sağlamasını dileriz.

Yayın Kurulu Adına

Yasin Yılmaz

From Editor

We are pleased to present the second issue of the *DiHA: Journal of Interdisciplinary Legal Studies*. This issue consists of five research articles and one research note, reflecting the journal's commitment to exploring law through multiple disciplinary perspectives.

The opening article examines fake order practices in e-commerce within the frameworks of Islamic and Indonesian law, situating the discussion at the intersection of law, technology, and ethics.

The second study addresses criminal liability in Dissociative Identity Disorder, bridging criminal jurisprudence and psychiatric insight within the context of Bangladesh's legal system.

The third article introduces a computational perspective by analyzing Ottoman Sheikh al-Islam fatwas as a form of legal algorithmic reasoning.

The fourth explores China's new law on foreign relations, interpreting it as a shift "from legislation to strategy" in the field of international law and political studies.

The fifth contribution takes a typomorphological approach, linking architecture and law to offer a fresh reading of the law–society relationship.

The issue concludes with a research note revisiting the *Caroline Case* through Ottoman legal sources, uncovering a neglected episode of maritime insurance fraud and diplomatic corruption in American diplomatic history.

We hope this issue continues to foster meaningful dialogue across disciplines and deepens the understanding of law as an evolving, interconnected field of study.

On behalf of the Editorial Board

Yasin Yılmaz

Normative Review of Fake Order Practices in e-Commerce: An Examination Through Islamic and Indonesian Legal Frameworks

Alvia Nurhidayah* & Soleh Hasan Wahid**

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Abstract: This study analyzes business actors who use fake order marketing strategies from the perspective of Islamic law and consumer protection law in Indonesia. It also examines the strategies of e-commerce platforms in addressing these practices through internal policies and rating systems from the same legal perspectives. E-commerce, as a rapidly growing digital marketplace, connects consumers and companies through technology and applications, offering convenience in transactions but also creating risks, such as buyers' inability to inspect goods directly. This reliance on reviews and ratings has enabled the rise of fake orders—deliberate fictitious transactions and reviews aimed at boosting store reputations, manipulating consumer perceptions, and inflating sales metrics. Such practices distort market fairness and mislead consumers, raising ethical and legal issues. Using a qualitative method grounded in normative legal and ethnographic approaches, data were collected through observation, interviews, and documentation, and analyzed inductively. From the perspective of Islamic law, fake orders are invalid because they do not fulfill the pillars and conditions of the *ijārah bil al-amāl* contract, as the services purchased lack direct and lawful benefits. Under Indonesian consumer protection law, fake orders violate consumer rights and breach business actors' obligations. Platform strategies studied adhere to Islamic principles and comply with the Information and Electronic Transactions Law (UU ITE).

Keywords: Consumer Protection, E-commerce, Fraud, Indonesia, Islamic Law, Marketing.

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E-Ticarette Sahte Sipariş Uygulamalarının Normatif İncelemesi: İslam Hukuku ve Endonezya Hukuk Çerçevesi Üzerinden Bir Değerlendirme

Özet: Bu çalışma, sahte sipariş pazarlama stratejileri kullanan ticari aktörleri, İslam hukuku ve Endonezya tüketici koruma hukuku perspektifinden incelemektedir. Ayrıca e-ticaret platformlarının bu tür uygulamalara karşı iç politikalar ve derecelendirme sistemleri yoluyla geliştirdiği stratejileri de aynı hukuki çerçeveler ışığında değerlendirmektedir. Dijital pazaryeri olarak hızla büyüyen e-ticaret, tüketiciler ve şirketleri teknoloji ve uygulamalar aracılığıyla buluşturmakta; işlemlerde kolaylık sağlarken, tüketicilerin ürünleri doğrudan inceleyememesi gibi riskler de doğurmaktadır. Bu durum, tüketicilerin değerlendirme ve puanlamalara bağımlı hale gelmesine yol açmış; mağaza itibarını artırmak, tüketici algısını manipüle etmek ve satış istatistiklerini yapay olarak şişirmek amacıyla kurgulanan sahte işlemler ve yorumlar anlamına gelen sahte siparişlerin ortaya çıkmasına zemin hazırlamıştır. Bu tür uygulamalar piyasa adaletini bozmakta ve tüketicileri yanıltmakta, dolayısıyla etik ve hukuki sorunlar doğurmaktadır. Normatif hukuk ve etnografik yaklaşımlara dayalı nitel yöntem kullanılarak yürütülen araştırmada veriler gözlem, mülakat ve dokümantasyon yoluyla toplanmış, tümevarımsal olarak analiz edilmiştir. İslam hukuku perspektifinden sahte siparişler, satın alınan hizmetlerin doğrudan ve meşru bir fayda sağlamaması sebebiyle icare bil-amel akdinin rükün ve şartlarını karşılamadığından geçersiz kabul edilmektedir. Endonezya tüketici koruma hukuku açısından ise sahte siparişler, tüketici haklarını ihlal etmekte ve ticari aktörlerin yükümlülüklerini ihlal etmektedir. İncelenen platform stratejileri, İslami ilkelere uygunluk göstermekte ve Endonezya Bilgi ve Elektronik İşlemler Yasası'na (UU ITE) riayet etmektedir.

Keywords: Tüketici Koruma, E-ticaret, Dolandırıcılık, Endonezya, İslam Hukuku, Pazarlama.

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Introduction

Online buying and selling or often known as e-commerce is a combination of technology, applications, and businesses that connect companies or individuals as consumers to conduct electronic transactions, exchange goods, and exchange information via the internet.¹ The convenience offered by in this transaction makes e-commerce increasingly attractive to the public. However, behind this convenience, there are some disadvantages, one of which is the limitation of buyers in seeing the condition of the goods directly. As a result, they must rely on reviews and ratings given by other consumers to assess the quality of a store.

Consumer ratings and reviews are the main factors that potential buyers consider before making a transaction. Recently, there have been many fictitious consumer reviews circulating. Buyers never feel, hold or use the goods but can easily give positive reviews and ratings to the store. Finally, this phenomenon has become one of the strategies that are considered to increase the credibility of the platform rating. This strategy is known as fake orders or fictitious orders.

Fake orders are a deliberate attempt to create fake orders on an e-commerce platform for a specific purpose, such as enhancing a seller's reputation, increasing store ratings, manipulating reviews, or giving the impression that a product has a high sales rate. This strategy involves fictitious orders placed by certain parties, either independently by the seller or through other parties, with or without actual payment.

In practice, online shop owners cooperate with fake order service providers to make purchase orders, such as purchasing goods in general, using the destination address and name that has been provided, then fake order service providers can also provide fake reviews of products in the store. After that, the shop owner pays a service fee or fee to the service provider according to the conditions provided by the fake order service provider.²

This strategy is a form of digital marketing that intersects with the principles of Islamic law. When viewed from the *ijarah bil al-amāl* contract, the services offered in

¹ Taufiq Agusman Damanik, Fake Order Law to improve store reputation in *Online Shop Shoes*, (North Sumatra: Repository UIN North Sumatra, 2023), 5

² Initial D (identity disguised), *Interview*, Wonogiri, February 28, 2024.

fake orders intersect with the principle of usefulness. In the *ijārah bil amāl* contract, there are provisions regarding the benefits of services that must be felt directly, while in the fake order itself, the services purchased from the fake order service seller are not directly felt by the business actor. The store of the business actor himself is not guaranteed to get a high store rating.

In addition to Islamic law, Law Number 1 of 2024 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions or ITE Law is the main legal basis for trade transactions using electronic media. Article 9 of the ITE Law explains that "Business actors offering products through the Electronic System must provide complete and correct information relating to the terms of the contract, producers, and products offered". Meanwhile, in the context of positive law in Indonesia, consumers have the right to obtain correct, clear, and honest information regarding the products and services they will buy.³

Considering the negative impact caused, Indonesia should be more serious in enforcing the law against the practice of fake reviews so that fake orders are not considered as something normal and as if they do not harm any party. In fact, many business actors abuse the e-commerce system by placing fake orders. This practice contradicts the principle of honesty in Islamic law and consumer protection law, which requires true and not misleading information. The lack of law enforcement against fake orders shows the gap between existing regulations and the reality of their implementation.

Some relevant studies that support the research include: *first*, researcher Febrian Fitri Permatasari in her research on *online* buying and selling with *hoax* images and testimonials in Ponorogo, concluded that buying and selling with *hoax* images is not valid because it contains elements of *gharar* and *hoax* testimonials reflect dishonest efforts to gain profit.⁴

³ Law Number 1 Year 2024 on the Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions, Article 9.

⁴ Febrina Fitri Permatasari Santoso, Review of Islamic Law on *Online* Buying and Selling that Includes *Hoax* Pictures and Testimonials in Ponorogo, *Thesis*, (Ponorogo: Ponorogo State Islamic Institute, 2018), 2.

Second, Jainal Shahroni's research on online motorcycle taxis in Ponorogo concluded that the practice of wages is legal, but fictitious orders are void because they include defaults that harm drivers.⁵

Third, Desi Alfiani's research on the sale and purchase of random clothing at Ekifashion Ponorogo shows that this practice is not valid in Islamic law because it contains gharar and uncertainty of goods.⁶

Fourth, Amelia Pramesty Putri's research on the practice of fake orders at @laziah shop concluded that this action contains gharar, violates Islamic business ethics, and shows the non-application of the principles of divinity and truth.⁷

Fifth, Diah Lailatul Awallia's research entitled research on the effect of testimonials and celebrity endorsement on purchase interest shows a significant relationship between the two and an increase in student purchase interest.⁸

Sixth, Roudhotul Ummah's research on dropshipping at ZM Store concluded that this practice is in accordance with muamalah fiqh because the pillars of the contract are fulfilled and the goods are clear according to the description.⁹

Seventh, Muhammad Shofiyulloh Al Lu'lu'iy's research on fake orders shows that this practice causes harm according to Islamic law, and violates Article 28 of the ITE Law and Article 62 of the GCPL Law, with a criminal threat of up to 6 years or a maximum fine of IDR 2 billion.¹⁰

⁵ Jainal Shahroni, Islamic Law Review of Online Ojek Services in Ponorogo Regency, *Thesis*, (Ponorogo: Ponorogo State Islamic Institute, 2020).

⁶ Desi Alfiani, Review of Islamic Law on the Sale and Purchase of Clothing by Random at the Eksifashion Ponorogo *Online Shop*, *Thesis*, (Ponorogo: Ponorogo State Islamic Institute, 2022).

⁷ Amelia Pramesty Putri Wardani, Review of Sharia Economic Law on the Practice of Fake Orders to Raise Store Ratings (Case Study at @laziah shop Online Store), *Thesis*, (Semarang: Walisongo State Islamic University, 2023).

⁸ Diah Lailatul Awllia, The Influence of Testimonials and *Endorsement Celebgrams* on Purchasing Interest in Online Shops through *Instagram* Social Media at the Faculty of Sharia IAIN Ponorogo, *Thesis*, (Ponorogo, Institut Agama Islam Negeri Ponorogo, 2018).

⁹ Roudhotul Ummah, Review of Muamalah Jurisprudence on Selling and Buying *Dropshipping* System at *Online Shop ZM Store Ronowijayan Siman Ponorogo District* *Thesis*, (Ponorogo, Ponorogo State Islamic Institute, 2018).

¹⁰ Muhammad Shofiyutulloh Al Lu'lu'Iy, *Fake Order Practices to Increase Online Store Ratings in the Perspective of Islamic Law and Positive Law*, *Thesis* (Yogyakarta: State Islamic University Sunan Kalijaga, 2024)

The difference between previous studies and the research conducted by the author lies in the focus of the research. This research focuses on the digital marketing strategy of fake order practices in e-commerce from the perspective of Islamic law and consumer protection based on Law Number 8 of 1999 concerning Consumer Protection and Law Number 11 of 2008 concerning Electronic Information and Transactions. In addition, this research also discusses e-commerce platform policies in overcoming fake orders through internal policies and scoring systems.

In this research, the author uses qualitative research (field research). Data collection techniques by observing the practice of fake orders, interviews with the parties involved, and documentation to obtain data on the practice of fake orders and collect evidence of legal regulations relating to orders. The analysis process is carried out with three steps, namely data reduction, data presentation and conclusion drawing on how the practice of fake orders in e-commerce buying and selling is reviewed from Islamic law and consumer protection law in Indonesia and how e-commerce platform strategies in overcoming fake order practices through internal policies and rating systems from the perspective of buying and selling in Islamic law and consumer protection.

1. *Ijārah Bil Al-Amāl*

The definition of *ijarah* from the Arabic word *al-ajru* means *al-iwadh* which means compensation and wages.¹¹ Meanwhile, according to the Big Indonesian Dictionary is a wage or rent given after cooperation in accordance with Islamic law. *Ijarah al amal* is hiring someone to do a job.¹² This *ijarah* agreement is closely related to the issue of wages in several ways. Therefore, the discussion is more focused on work or labor (*ajir*).

One of the legal bases for *ijarah bil al-amal* is Qs. At-Thalaq verse 6, which states: "*If they nurse your children for you, then give them their wages.*" In order for the *ijarah bil al-amal* contract to be valid according to Sharia, the pillars and conditions must be met. According to the majority of scholars, the pillars of *ijarah* consist of four elements, namely the parties to the contract, namely the existence of the parties to the contract, namely the *mu'jir* (the one who gives the wage) and the *musta'jir* (the one who receives the wage), the *sighat* (*ijab* and *qabul*), the wage (*ujrah*), and the benefit of the goods that

¹¹ Subairi, *Fiqh Muamalah*, (Pamekasan: Duta Media Publishing, 2021), 92.

¹² Ibid., 142.

are not contrary to Islamic law and can be utilized directly.¹³ In addition, there are several conditions in *ijarah bil al-amal*, including the parties to the contract must be *mature* and intelligent, both parties are mutually willing and there is no element of coercion, the benefits of the object of *ijarah* must be perfectly known and halal according to *Shara'*.¹⁴ In its implementation, the *ijarah* contract must also pay attention to several principles of engagement in Islamic law, such as the principle of equality or equality (*Al-Musawah*), the principle of justice (*al-adalah*), the principle of freedom of contract (*hurriyah*), and the principle of benefit.¹⁵

2. Consumer Protection

Law No. 8/1999 on Consumer Protection (UUPK) regulates the rights of consumers and the obligations of businesses to ensure consumer protection. According to AZ Nasution, consumer protection is a law that contains principles and rules that regulate and protect consumer interests.¹⁶ Purba emphasizes that this protection aims to create a mutually beneficial relationship between consumers and business actors.¹⁷

Some consumer rights are regulated in Article 4 of the GCPL, including the right to comfort, security, and safety in obtaining goods or services; the right to correct, clear, and honest information; and the right to receive guidance and consumer education.¹⁸ On the other hand, in Article 7 of the GCPL, business actors also have the obligation to provide clear information, maintain the quality of goods and services, and serve consumers honestly and non-discriminatorily.¹⁹ As well as Article 8 paragraph 1 letter (f), it is explained that business actors are prohibited from producing and / or trading goods or services that are not in accordance with the promises stated in the label,

¹³ Akhmad Farroh Hasan, *Fiqh Muamalah from Classic to Contemporary (Theory and Practice)*, (Malang: UIN-Maliki Malang Press), 53-54.

¹⁴ Syaikh, Ariyadi, Norwili, *Fikih Muamalah Understanding Concepts and Contemporary Dialectics*, 138-141.

¹⁵ Suryaningsih, *The Practice of Renting Kos with a Per-Hour System in the Perspective of Sadd Adz-Dzari'ah, Thesis*, (Kediri: IAIN Kediri, 2021), 17-19.

¹⁶ Puteri Asyifa Octavia Apandy, et al, "The Importance of Consumer Protection Law in Buying and Selling," *Jakarta Management & Business Journal* 3, no. 1 (7 July 2021), 15. <https://doi.org/10.53825/jmbjakarta.v3i1.85>

¹⁷ Abdul Halim Barakatullah, *Consumer Protection Law: Theoretical Studies and Development of Thought*, (Bandung: Nusa Media, 2008), 47.

¹⁸ Ahmad Miru and Sutarman Yodo, *Consumer Protection Law*, (Depok: PT Raja Grafindo Persada, 2004), 38

¹⁹ Ibid. 52

information etiquette, advertising or sales promotion of these goods and / or services. Actors who violate these provisions will receive sanctions in accordance with Article 62 of the GCPL.²⁰

In addition, Law Number 11 of 2008 concerning Electronic Information and Transactions, according to Article 1 paragraph 10 of the ITE Law, electronic transactions are legal actions carried out using electronic media. Article 15 regulates electronic system organizers who are obliged to ensure safe and reliable operations, except in force majeure or negligence. Article 16 regulates organizers to meet certain requirements. Article 28 paragraph 1 prohibits the dissemination of false information that harms consumers. Article 45 paragraph 1 of Law Number 1 Year 2024 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions adds the provision of criminal sanctions for those who deliberately distribute misleading information, with imprisonment of up to six years or a maximum fine of one billion rupiah.

3. Fake Order

Fake orders are a fraudulent practice in the *e-commerce* world, where sellers make fictitious purchases of their own products. The goal is to trick potential buyers into buying goods at the store. The order is placed using another account or the services of a *fake buyer* to rate the store.²¹

4. Business Actors Who Use Fake Order Marketing Strategies Viewed from the Perspective of Islamic Law and Consumer Protection Law in Indonesia

4.1. Fake Order Viewed from the Perspective of Islamic Law

The phenomenon of fake orders in e-commerce is also rampant on social media such as Facebook. Online shop owners use this service to boost their reputation instantly. The process is simple, they just comment "want" or "interest" on the service provider's post, then are directed to the inbox or WhatsApp. The service provider explains that fake orders are made by sending products to a certain address. The rate is Rp 3,000-Rp 6,000 per account, depending on the number of accounts. Each account provides five-star

²⁰ Law of the Republic of Indonesia Number 8 Year 1999 on Consumer Protection, Article 62.

²¹ Digifolium, 5 Reasons Why Shopee Fake Order Service is Quite Dangerous, https://digifolium.com/5-alasan-mengapa-jasa-fake-order-shopee-cukup-berbahaya/#Pengertian_Fake_Order , (accessed on March 30, 2024, at 18:58).

reviews and ratings to improve the store's image, and one transaction can even include several products to make it look genuine.

Looking at this mechanism, it is important to analyze the *fake order marketing* strategy from the perspective of Islamic law, especially the *ijarah bil al-amal* contract. In Islam, *ijarah* is valid if it fulfills the predetermined pillars and conditions. However, if based on the principle of *ijarah bil al-amal*, the fake order strategy does not comply with the provisions of the contract because the benefits provided must be clear, real, and not cause disputes

The benefits promised in the *fake order marketing* strategy such as increased consumer confidence and potential increase in sales, however, cannot be ascertained, thus containing *gharar* (uncertainty). The benefits in *ijarah* must be able to be delivered and used directly without defects, while fake orders only create a false impression without real customer experience. The object of *ijarah* must also be something that is legalized by Shara', while *fake orders* are included in the practice of *tadlis* (deception) which is contrary to the principle of transparency in Islam.

In addition, the object of *ijarah* is required to be halal and can be leased in a legal transaction. However, the fake order marketing strategy includes the practice of *tadlis* (deception) which is contrary to the principle of transparency in Islam and provides misleading information that has the potential to harm other parties. Thus, fake orders do not fulfill the pillars and conditions of *ijarah*, so the contract is considered void.²²

4.2. Fake Order Practices Viewed from the Perspective of Consumer Protection Law in Indonesia

4.2.1. Legal Regulation of Consumer Protection Against Fake Order Practices Law Number 8 Year 1999 on Consumer Protection

The rise of fake order marketing strategies on e-commerce platforms violates Law Number 8 Year 1999 on Consumer Protection, which regulates the obligations of

²² Noviyanti Ramdhani, Panji Adam Agus Putra, and Ira Siti Rohmah Maulida, "Analysis of the DSN-MUI Fatwa on Akad Ijarah on the Practice of Endorsement Services," *Journal of Sharia Economic Research*, (2023), 83. <https://doi.org/10.29313/jres.v3i2.2789>

business actors and consumer rights. Article 7 letter (b) requires business actors to provide correct, clear and honest information about goods/services.²³

Sellers of *fake order* services manipulate consumer trust with positive reviews and five-star ratings without knowing the actual quality of their products. *Online* shop owners also use this service to create a positive impression by creating fake orders and providing five-star reviews and ratings. According to content creator with TikTok account @ *Andr** Yud***s said that:

"In addition to creating a positive impression, the purpose of fake orders is to increase sales traffic, as well as ensure that the store's live stream will appear on the For You Page (FYP), which can expand the reach of the audience, and attract more consumer attention, so as not to lose competition with other online stores."

This violates the obligation of business actors to provide true, clear, and honest information to consumers.

This practice violates Article 8, Paragraph 1, Letter (f), which prohibits the sale of goods/services that do not match the promotional information. Sellers of *fake order* services often do promotions using sentences such as:

"We open fake order and review shot services to increase the trust of the store to customers, increase store and product traffic, and attract orders. We provide fake order and review services without the need to send goods. If you want your store to increase ratings and increase sales, we are ready to help."

However, the reality is that there is no guarantee of success after using such services and the stores involved may provide misleading information, harming consumers.

In addition, consumers are entitled to correct information according to Article 4 letter (c), which is not fulfilled in this practice. Despite using *fake order* services, some stores still do not experience an increase in sales, and some are even at risk of account blocking and legal sanctions.²⁴ The practice of *fake orders* damages the trade ecosystem because consumers become hesitant when shopping *online*, for fear that other stores are also involved in *fake orders*.

²³ Ahmad Miru and Sutarman Yodo, *Consumer Protection Law*, 51.

²⁴ Des, *Interview result*, WhatsApps, November 30, 2024

In addition to this, losses occur to consumers who buy goods at the store if the goods sold do not match the promised quality. In *fake orders*, the information provided to consumers often does not reflect the actual quality. This can mislead consumers who buy products based on false information, and in the end consumers receive products that do not match the reviews and descriptions that have been given.

According to Article 62 paragraph 1 of the GCPL, the perpetrators of *fake orders*, both admins and members as well as the parties involved can be subject to a maximum imprisonment of 5 years or a maximum fine of 2 billion.

4.2.2. Legal Regulation of Consumer Protection Against *Fake Order Practices* Electronic Information and Transactions Law

Legal regulations governing electronic transactions in Indonesia are important to ensure legal certainty. Article 1 point (2) of Law Number 11/2008 on Electronic Information and Transactions stipulates that legal acts in electronic transactions are conducted through computers and other electronic media. Andi Nugroho explains that electronic transactions are buying and selling agreements between buyers and sellers through a personal computer network, using payment methods such as credit cards or digital money.²⁵

Article 28 paragraph 1 of the ITE Law prohibits the dissemination of false news that harms consumers in electronic transactions.²⁶ In the practice of *fake orders*, *fake order* services are used to manipulate consumer confidence about the quality of a product on an *e-commerce platform* by providing positive reviews and five stars, where the seller of the service does not know the actual quality of the goods, which can influence consumer decisions to buy the product. This *fake order* practice violates Article 28 paragraph 1 of the ITE Law, regarding the dissemination of misleading information.

Business actors who violate Article 28 paragraph 1 may be subject to sanctions in the form of imprisonment for a maximum of 6 years or a maximum fine of 1 billion in

²⁵ Afrineldi, "Consumer Protection in Electronic Commerce (E-Commerce)," *Publika 9 Scientific Journal*, Vol. 9 No. 1 (2021). 107. [https://doi.org/10.33603/publika.v9i1.5719](https://frineldi, \)

²⁶ Law of the Republic of Indonesia Number 11/2008 on Consumer Protection, Article 28 paragraph 1.

accordance with Article 45 paragraph 1 of Law Number 1 of 2024 Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.²⁷

The practice of *fake orders* causes two legal consequences, namely the agreement can be canceled and null and void. The agreement can be canceled if the subjective conditions are not fulfilled, which include their agreement to bind themselves and the ability to make an agreement.²⁸ Meanwhile, the agreement is null and void if the agreement does not meet the objective requirements, such as a certain thing and a halal cause. Agreements that are null and void are considered to have never existed, are invalid, and invalid.²⁹

In the practice of *fake orders*, consumers can cancel the agreement if their rights are not fulfilled. Meanwhile, the null and void agreement applies to sellers or business actors involved in *fake orders* because it does not meet the objective requirements, namely non-halal transactions. Services related to *fake orders* are clearly forbidden and contrary to applicable regulations, as stated in Law Number 8 of 1999 concerning Consumer Protection and Law Number 11 of 2008 concerning Electronic Information and Transactions.

5. E-Commerce Platform Strategies in Overcoming Business Actors Who Use Fake Order Marketing Strategies Through Internal Policies and Rating Systems from the Perspective of Islamic Law and Consumer Protection Law in Indonesia

5.1. E-Commerce Platform Strategies in Overcoming Business Actors Who Use Fake Order Marketing Strategies Through Internal Policies and Assessment Systems in the Perspective of Islamic Law

In response to sellers who commit several fraudulent practices in *online* buying and selling transactions, the Shopee, Lazada, and TikTok Shop *platforms* implement strict policies and careful supervision to prevent and handle fraudulent practices, including

²⁷ Law of the Republic of Indonesia Law Number 1 of 2024 Second Amendment to Law Number 11 of 2008 concerning Consumer Protection, Article 45 paragraph 1.

²⁸ Stephanie Nathania Maramis, et al, "Legal Study on the Validity of Online Buying and Selling on Facebook Applications", *Lex Privatum*. 11. no.4 (May 8, 2023), 5.

²⁹ Ridwan, *Indonesian Contract Law in Comparative Perspective* (Part One), 192

fake orders. These policies are designed with each *platform's* requirements in mind to maintain the integrity of the *e-commerce* ecosystem and ensure fair transactions.

The strategy of *e-commerce platforms* such as Lazada, Shopee and TikTok Shop has the principle of justice and the principle of benefit in accordance with Islamic law. These three platforms implement *Anti Brushing* policies to prevent falsification of store performance, including *fake orders*. They also have systems that detect unnatural spikes in orders and monitor seller and buyer account behavior, including purchase history and patterns.

This policy reflects the principle of benefit in *ijarah*, which emphasizes that transactions should bring benefits and avoid harm. With such detection and monitoring systems, the *platform* protects consumers from fake reviews and encourages healthy competition among sellers, creating a transparent and fair *e-commerce* ecosystem.

In addition, the platform implements a penalty point system, which allows users to be aware of violations on their accounts, and provides an appeal system as a remedy mechanism. This system reflects the principle of fairness, which demands transparency, fulfillment of agreements, and the right of users to appeal the sanctions.

5.2. E-Commerce Platform Strategies in Overcoming Business Actors Who Use Fake Order Marketing Strategies Through Internal Policies and Assessment Systems from the Perspective of Consumer Protection Law

The policies implemented by Shopee, Lazada, and TikTok aim to protect consumers and business actors, as well as ensure rights, fairness, security, and safety in transactions. This policy is in line with Law Number 11 of 2008 concerning Electronic Information.

5.2.1. Lazada Platform

Lazada is a Singapore-based *e-commerce platform* founded by *Rocket Internet* in 2011 and started operating in Indonesia in 2012. Lazada implements 2 two *business models*, namely *business to consumer* (B2), which sells goods and services *online to end consumers*, and *business to business* (B2B), which Lazada conducts business *online* in collaboration with other companies.³⁰

³⁰ Muhammad Iqbal Nasution, Indriani Suci, and Nurbaiti Nurbaiti, "E-Commerce Facilities (Lazada) Increase the Purchase Interest of Indonesian People," *Scientific Journal of Management, Business and Accounting Students (JIMMBA)*, Vol. 3, No. 6 (24 December 2021), 1231. <https://DOI:10.32639/jimmba.v3i6.989>

Lazada provides various features to facilitate *online* shopping and implements policies to prevent losses due to fraudulent practices such as *fake orders*, Law Number 11 of 2008 concerning Electronic Information and Transactions.

Article 15 paragraph 1 states that "Every Electronic System Operator must operate the Electronic System reliably and safely and is responsible for the proper operation of the Electronic System." Paragraph (2) confirms that "Electronic System Operator is responsible for the Operation of its Electronic System". While Paragraph (3) provides an exception that "The provisions referred to in paragraph (2) shall not apply in the event that it can be proven that force majeure, fault, and/or negligence of the Electronic System user occurred."³¹

Lazada's *Anti-Brushing* Policy and having a system to detect any cheating for *platform* users is in line with Article 15 paragraph 1 of Law Number 11 Year 2008 on Electronic Information and Transactions, which emphasizes the importance of the integrity and reliability of electronic systems. Lazada's implementation of penalty points is in accordance with Article 15 paragraph 2, to ensure users comply with the rules and maintain legitimate transactions. In addition, as per Article 15 paragraph 3, losses due to user violations are not the responsibility of the *platform*.

Article 16 paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions stipulates that every Electronic System Operator must operate a system that meets minimum requirements. Article 16 paragraph 1 letter (a) states that it *can display back Electronic Information and/or Electronic Documents intact in accordance with the retention period stipulated by laws and regulations*". Letter (b) states that "*can display back Electronic Information and/or Electronic Documents intact in accordance with the retention period stipulated by the Laws and Regulations*". Letter (c) states that "*can operate in accordance with the procedures or instructions in the Implementation of the Electronic System*." Letter (d) states that "*equipped with procedures or instructions announced in language, information, or symbols that can be understood by the party concerned with the Electronic System*

³¹ Law of the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 15.

Implementation." Finally, letter (e) states that ""has an ongoing mechanism to maintain the novelty, clarity, and accountability of the procedures or instructions."³²

Lazada's provisions are in line with Article 16 paragraph 1. In article 16 paragraph 1 letter (a) which regulates the information displayed must be intact through the Store Health feature. Through *Anti Brushing*, which prohibits falsification of store performance, which aims to protect the integrity, confidentiality, and accessibility of electronic information, with letters and has an unnatural order surge detection system, monitoring suspicious transaction patterns. Lazada provides consequences for sellers who violate the *platform's* terms of use (b). Through the point penalty system, Lazada can ensure that the *platform* operates in accordance with the set procedures or instructions, as stated in letter (c). Lazada's terms of use of the *platform* governing user obligations and prohibited activities are in line with letter (d) and letter (e). which require electronic systems to be equipped with clear procedures and ongoing mechanisms to maintain the novelty and clarity of the procedures.

5.2.2. Shopee Platform

By downloading and registering on the Shopee *platform*, users are deemed to have understood, understood, and agreed to the entire contents of the terms and conditions. These terms and conditions are a form of legal and binding agreement between the user and Shopee.

These terms and conditions cover various aspects, such as: definitions, accounts, *passwords* and security, sales transactions, storefront arrangement, commissions, prices, shipping rates, content, types of goods, *gold merchants*, credit cards, forms of promotion, delivery of goods, withdrawal of funds, disclaimer of warranties and limitation of liability, release, indemnification, choice of law and renewal.³³ This policy is designed to be in line with the applicable provisions, namely Law Number 11 of 2008 concerning Electronic Information and Transactions.

³² Law of the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 16 paragraph 1.

³³ Ari Apriatman Molle, et al, "Legal Protection of Shopee Consumers for Goods That Do Not Match Product Descriptions," *Pattimura Law Study Review*, Vol. 1, No. 1 (August 1, 2023), 10. [https:// DOI: https://doi.org/10.47268/palasrev.v1i1.9969](https://doi.org/10.47268/palasrev.v1i1.9969)

Article 15 of Law Number 11/2008 on Electronic Information and Transactions (ITE Law) regulates the responsibility of electronic system organizers, which is regulated in three paragraphs. Paragraph (1) states that "*Every Electronic System Operator must operate the Electronic System reliably and safely and is responsible for the proper operation of the Electronic System*". Article 15 paragraph (2) confirms that "*The Electronic System Operator is responsible for the Operation of its Electronic System*". However, Article 15 paragraph (3) provides an exception, "*The provisions referred to in paragraph (2) shall not apply in the event that it can be proven that force majeure, fault, and/or negligence of the Electronic System user occurred*".³⁴

In that Article, the ITE Law embraces a conditional liability system, where providers are responsible for the systems they operate, but can avoid liability if the actions of third parties cause interference. This also applies in *e-commerce* transactions, where service providers can also be held liable based on agreements with sellers. This provision emphasizes the importance of clarity of responsibility and protection in the digital ecosystem.

Shopee implements an account blocking and fake review reporting policy to maintain and integrity of transactions on the *platform*. The Anti-Brushing policy is also implemented to prevent order forgery and fraud, including *fake orders*. To detect it, Shopee regularly checks the review history and purchase patterns of suspected stores. Analysis is done on suspicious patterns, such as spikes in positive reviews, unnatural review language, or similarities in transactions from certain accounts.

Shopee also provides an account recovery mechanism for users who experience restrictions or blocks. Reporting fake reviews is an important step to prevent review manipulation and maintain the integrity of *e-commerce* transactions. This policy is in line with Article 15 of Law Number 11/2008 on Electronic Information and Transactions (UU ITE), which requires electronic commerce *platforms*, such as Shopee, to conduct electronic commerce in an open and secure manner

Article 16 paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) stipulates that every Electronic System Operator must

³⁴ Law of the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 15.

operate an electronic system that meets certain minimum requirements. In paragraph 1 letter (d), it is explained that "*equipped with procedures or instructions announced with language, information, or symbols that can be understood by the parties concerned with the Electronic System Implementation.*" In addition, article 16 paragraph 1 letter (e) emphasizes that "*has an ongoing mechanism to maintain the novelty, clarity, and accountability of procedures or instructions*"³⁵

With various mechanisms in place, the electronic system is expected to be continuously updated according to technological developments and user needs. These updates include features to handle *Anti-Brushing* activities, strict monitoring of fraud in reviews and transactions, and fraud reporting by sellers.

One of the measures taken is to provide an appeal form for users who feel aggrieved by account restrictions, so that they can restore access by filling out the form provided. In addition, through the ratings and reviews feature, consumers can report fraudulent activities.

5.2.3. TikTok Platform

TikTok Shop was introduced as a new feature in the TikTok app on April 17, 2021. This feature is known as a social *commerce* product that is able to connect producers, sellers, buyers, and creators, while providing an easy, fun, and convenient shopping experience. TikTok Shop allows producers and sellers to grow their business through short video content, *live shopping* features, and collaboration with YouTubers on their TikTok business accounts.³⁶

TikTok Shop has a policy against misuse of Tokopedia's TikTok Shop platform that applies to sellers and creators on the TikTok Shop *platform*. This policy is also included in the Seller Terms of Service / Creator Terms of Service which all Sellers and Creators must comply with. Tokopedia's TikTokShop| policies and guidelines are regularly updated. This policy is designed to be in line with the applicable provisions, namely Law Number 11 of 2008 concerning Electronic Information and Transactions.

³⁵ Law of the Republic of Indonesia Number 11 of 2008, Article 16.

³⁶ Laury Kaniasti/Mg2, "History of TikTok Shop in Indonesia, from Banned to Present Again," [in https://bekasi.inews.id/read/382453/sejarah-tiktok-shop-di-indonesia-dari-dilarang-hingga-hadir-kembali](https://bekasi.inews.id/read/382453/sejarah-tiktok-shop-di-indonesia-dari-dilarang-hingga-hadir-kembali), (accessed on November 23, 2024).

The TikTok Shop *platform* policy is in line with Law Number 11 of 2008 concerning Electronic Information and Transactions, especially article 15 paragraph 1, *which states that "Every Electronic System Operator must operate the Electronic System reliably and safely and is responsible for the proper operation of the Electronic System."* Paragraph (2) confirms that *"Electronic System Operator is responsible for the operation of its Electronic System"*.

Article 15 paragraph (1) has been realized through the *Milestone* system, which works to ensure compliance with *platform* policies, including in preventing fake reviews aimed at increasing consumer interest. The system monitors seller activity in *real-time* and detects suspicious behavior that violates policies, such as review manipulation.

Meanwhile, Article 15 paragraph (2) is in line with the penalty point policy that TikTok Shop implements as a form of responsibility. By sanctioning violators, the *platform* seeks to enforce rules designed to protect other users from fraudulent acts. In addition, the provision of the appeal feature reflects TikTok Shop's efforts to take full responsibility for its system.

Article 16 paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions stipulates that every Electronic System Operator must operate a system that meets minimum requirements. Article 16 paragraph 1 letter (a) states that it *can display back Electronic Information and/or Electronic Documents intact in accordance with the retention period stipulated by laws and regulations*". Letter (b) states that *"can display back Electronic Information and/or Electronic Documents intact in accordance with the retention period stipulated by the Laws and Regulations"*. Letter (c) emphasizes *"can operate in accordance with the procedures or instructions in the Implementation of the Electronic System"*.

The TikTok Shop *platform* has complied with the provisions of Article 16 paragraph 1 subparagraphs (a), (b), and (c) by providing a "Violation Record" feature that allows sellers to access information regarding violations and their causes. TikTok Shop prohibits subsidy abuse, such as price manipulation, and requires sellers and creators to comply with its Terms of Service. TikTok Shop's policies and guidelines are regularly updated to keep them in line with the latest developments.

5.3. Blocking of Online Stores Involved in Fake Order Practices by E-Commerce Platforms

The case of blocking one of the store accounts named Orip*rf*um.INDO due to the *fake order* strategy to increase ratings reflects the application of the principles of benefit

and justice in *ijārah bil al-amāl* and compliance with consumer protection law. The principle of benefit emphasizes that transactions must provide benefits and avoid *harm*. In this case, Shopee blocks accounts and removes products that are detected as *fake orders* to protect consumers from misleading reviews. The principle of justice is reflected in the application of sanctions for violators according to the *platform's* rules, while still providing an opportunity for users to appeal.

Meanwhile, from positive law, Shopee's steps in handling *fake orders* made at one of these perfume shops are in accordance with Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). In Article 15 paragraph (1) that the electronic system organizer must organize a reliable and secure system and be responsible for its operations. In this case, Shopee implements an automatic detection system that allows blocking accounts that are indicated to have made *fake orders*, where the perfume shop account owner cannot access his account again because a violation was detected. In addition, Article 16 paragraph (1) of the ITE Law regulates that electronic systems must have a mechanism to maintain the clarity and accuracy of information, which in this case is realized through the elimination of fake products.

Although Lazada, Shopee, and TikTok Shop *platforms* have implemented policies and systems to detect fraud in their use such as *fake order* strategies. However, the three *platforms* have not been able to fully detect fraudulent *fake order* practices. Perpetrators continue to find ways to avoid detection, as shared by the @@E-Comm****e Gude** account, which suggests using different IPs, User IDs, Product IDs, and buyer addresses.

Given the prevalence of this practice, e-commerce platforms need to tighten detection systems, update algorithms, security, and increase transparency and education for users. Weak sanctions also deter the perpetrators, so policies must be stricter to prevent fraud from continuing.

The *fake order* strategy has a negative impact on all parties, including consumers, businesses, and the *e-commerce* ecosystem as a whole. Consumers are at risk of getting inappropriate products, which results in a loss of trust in the rating and review system. Honest sellers also feel the impact, as they lose buyers due to competition with stores that use *fake order* strategies. As a result, the reputation of *e-commerce* decreases, which can reduce the number of users

To avoid losses, consumers are advised to shop at official stores marked with the "Mall | ORI" logo and be more selective in reading reviews. Fake reviews usually have similar language patterns and accounts with unusual names.

Conclusion

This research is used to find out how business actors who use fake order marketing strategies from the perspective of Islamic law and consumer protection law in Indonesia, are not in accordance with the pillars and conditions of *ijārah bil amāl* because the promised benefits in the form of increased consumer confidence and potential sales increases cannot be ascertained, so they contain *gharar* (uncertainty) and create a false impression without real customer experience. Meanwhile, consumer protection law violates articles 4, 7, and 8 of Law Number 8 of 1999 concerning Consumer Protection, which results in a maximum criminal sanction of 5 years in prison or a maximum fine of Rp 2 billion in accordance with article 62 of the GCPL. Based on Law No. 11 of 2008 on Electronic Information and Transactions, violating Article 28 regarding the dissemination of false news that can be detrimental in electronic transactions. This is punishable by a maximum prison sentence of 6 years or a maximum fine of Rp. 1 billion. In the practice of *fake orders*, the agreement can be canceled by law if the aggrieved consumer reports the shop involved in the *fake order* for non-fulfillment of consumer rights and business obligations. The *e-commerce* policy strategy implemented by the Shopee, Lazada, and TikTok Shop platforms has fulfilled the principles of the *ijārah bil al-amāl* agreement, namely the principle of benefit and the principle of justice. In the perspective of consumer protection, *the platform's* policy has also referred to the Implementation of Electronic Systems regulated in Article 15 and Article 16 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE).

This research uses a qualitative method based on observation to explore the *fake order marketing* strategy in depth, interviews with the parties involved to obtain clearer information, and documentation to collect data related to the practice and relevant legal regulations. This method is effective in analyzing the *fake order* strategy from the perspective of Islamic law and consumer protection and understanding the steps if taken by the *platform* related to fraud. The theories of Islamic law and consumer protection were used to analyze the *fake order* strategy and *the platform's* policies, in order to determine the response of both laws to this case.

In future research, it is recommended to use quantitative methods through surveys to measure how much influence *reviews* and ratings have on the decision to purchase goods or services, as well as the influence of *fake orders* to increase sales at online stores, and how the practice of *fake orders* affects the increase in sales at *online stores*.s In addition, further research can examine the economic impact of *fake order* practices on the e-commerce industry and conduct comparative studies with *fake order* policies in other countries.

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Navigating Criminal Liability and Trial Procedure in Dissociative Identity Disorder: Framework and Proposals for Bangladesh

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Abstract: Dissociative Identity Disorder (DID) poses unique challenges to the traditional criminal jurisprudence both from the substantive and procedural dimensions. The legal literature in Bangladesh has been quite silent, if not nonchalant, in addressing this issue of concern. The paper aims at bridging the gap between the existing penal laws of Bangladesh and DID patients as far as their criminal liability is concerned. It begins with shedding light on DID and the interplay between personalities living inside. Afterwards, it establishes the personhood of alter personalities through a right-duty-based analysis. Unlike other studies on this issue, it develops a new measurement framework of criminal liability for different DID conditions like mutual amnesic, unidirectional amnesic and co-conscious. Reflecting on the police interrogation phase and the evidentiary value of expert opinion, it suggests the trial procedure of DID patients in line with the Code of Criminal Procedure 1898 (CrPC 1898). Finally, it highlights an optimal outcome of such cases premised on reformatory theory and recommends a few amendments in the legal architecture. This paper concludes by pointing out some recommendations for amendments that, when viewed through the lens of DID, could be incorporated into our corpus juris to address the existing lacuna in this area.

Keywords: DID (Dissociative Identity Disorder), Alter-in-control Approach, NGRI-DID (Not Guilty by Reason of Insanity due to DID), Preventive Theory of Punishment, Reformatory Theory of Punishment.

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Parçalanmış Kimlik Bozukluğunda Cezai Sorumluluk ve Yargılama Usulünü Yönlendirmek: Bangladeş İçin Çerçeve ve Öneriler

Özet: Parçalanmış Kimlik Bozukluğu (PKB), ceza hukukunun hem maddi hem de usul boyutunda geleneksel yargı anlayışına özgün zorluklar getirmektedir. Bangladeş'teki hukuk literatürü, bu kaygı verici konuyu ele almakta büyük ölçüde sessiz kalmış, hatta kayıtsız görünmüştür. Bu makale, Bangladeş'in mevcut ceza yasaları ile PKB hastalarının ceza sorumluluğu arasındaki boşluğu kapatmayı amaçlamaktadır. Çalışma, öncelikle PKB'nin doğasına ve içsel kişilikler arasındaki etkileşime ışık tutarak başlamaktadır. Ardından, hak-ödev temelli bir analizle bu alternatif kişiliklerin "kişilik" statüsünü ortaya koymaktadır. Bu alandaki diğer çalışmalardan farklı olarak, karşılıklı amnezik, tek yönlü amnezik ve eş-bilinçli gibi farklı PKB durumları için yeni bir ceza sorumluluğu ölçüm çerçevesi geliştirmektedir. Polis sorgusu aşaması ve uzman görüşünün delil değeri üzerine düşünerek, PKB hastalarının yargılanma usulünü 1898 Ceza Muhakemeleri Usul Kanunu (CrPC 1898) ile uyumlu şekilde önermektedir. Son olarak, bu tür davalarda reformcu teoriye dayalı en uygun sonucu vurgulamakta ve hukuki yapıda bazı değişiklikler önermektedir. Makale, mevcut boşluğu gidermek amacıyla PKB perspektifiyle bakıldığında Bangladeş hukuk sistemine dahil edilebilecek bir dizi değişiklik önerisiyle sona ermektedir.

Anahtar Kelimeler: PKB (Parçalanmış Kimlik Bozukluğu), Kontroldeki-Alter Yaklaşımı, PKB Nedeniyle Cezai Ehliyetsizlik (NGRI-DID), Önleyici Ceza Teorisi, Reformcu Ceza Teorisi.

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Introduction

Liability, whether civil or criminal, is the legal bond or *vinculum juris* that exists between the wrongdoer and the evil consequences of his wrong.¹ The object of criminal or penal liability is the punishment of the wrongdoer.² The liability of a murderer to be punished, for example, is penal in nature. While with this end in view, measuring liability may sound to be a script-fueled mechanical task, life does not always go the way we want. Complexity may arise as to determining the criminal liability of a person affected by DID. A psychiatric examination of the offender may reveal that the crime was perpetrated not by him, but by his alter ego, who at the time of the offence might have been in a dormant state within the offender himself.

This paper is structured into five parts. The first part explores the nature of Dissociative Identity Disorder (DID) and the reciprocal functionalities of the alter personalities that resides within. It lays the groundwork for the analyses that follow by establishing the personhood of alter personalities in the legal jurisprudence. The second part dissects the applicability of the defence of insanity across the three different states of DID. The fourth part delineates the procedural framework for the trial of individuals with DID. Finally, this paper concludes by pointing out some recommendations for amendments that, when viewed through the lens of DID, could be incorporated into our corpus juris to address the existing lacuna in this area.

1. Dissociative Identity Disorder (DID)

Dissociative Identity Disorder (DID) is characterized by the presence of two or more distinct identities or personality states, each with its own patterns of perceiving, thinking, and relating to the environment and the self where at least two of these identities or personality states recurrently take control of the person's behavior.³ It has also been shown that the identities may also differ in age, gender, preferences, and even handwriting.⁴ Hence, persons coming down with DID have one physique, but not one

¹ Jayakumar, N. K. *Lectures in Jurisprudence*. 3rd ed. Gurgaon: LexisNexis, 2015.

² Jayakumar, *Lectures in Jurisprudence*.

³ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. (Arlington, VA: American Psychiatric Publishing, 2013), 292.

⁴ Corbett H. Thigpen and Hervey Cleckley, "A Case of Multiple Personality," *Journal of Abnormal and Social Psychology* 49, no. 1 (1954): 135.

psyche. Dissociation operates as a defense mechanism when an individual confronted with severe trauma shuts himself off and ends up creating any one or more personalities inside his mind to help him avoid the traumatic experiences.⁵ Resultantly, personalization of an individual does not get fully developed because the traumatic information is stored in different parts of the identity, so called alters.⁶

1.1. The Interplay of the Minds Inside

DID is marked by the coexistence of the host and alter identities that are fragmented from each other with limited or no communication.⁷ Host personality is the one that remains present from birth and for the maximum time afterwards, whereas alter personalities are those that develop in course of time as a shield to combat trauma.⁸ Putnam conceptualizes alter personalities as highly discrete states of consciousness organized around a prevailing affect, sense of self (including body image) with a limited repertoire of behaviors and a set of state dependent memories.⁹ Ozturk and Sar have identified three forms of awareness of the personalities:¹⁰

- A) **Mutual Amnesic:** Where host and alter personalities are not aware of the existence of one another.
- B) **Unidirectional Amnesic:** Where host personality is unaware of others but other personalities are aware of him.
- C) **Co-conscious:** Where all personalities are reciprocally aware of one another.

These states of DID, it is submitted, might function as catalyst in determining criminal liability of those who perpetrate crime under the influence of their alter.

⁵ Mudit Saxena, Sachin Tote, and Bhagyesh Sapkale, "Multiple Personality Disorder or Dissociative Identity Disorder: Etiology, Diagnosis, and Management," *Cureus* 15, no. 11 (2023).

⁶ Stefane M. Kabene, Nazli Balkir Neftci, and Efthymios Papatzi, "Dissociative Identity Disorder: Guilty or Not Guilty," *Frontiers in Psychology* 13 (2022).

⁷ Kabene, Neftci, and Papatzi, "Dissociative Identity Disorder".

⁸ Kabene, Neftci, and Papatzi, "Dissociative Identity Disorder".

⁹ Erdinç Öztürk and Vedat Sar, "Formation and Functions of Alter Personalities in Dissociative Identity Disorder: A Theoretical and Clinical Elaboration," *Journal of Psychopathology and Clinical Psychology* 6, no. 6 (2016): 385.

¹⁰ Öztürk and Sar, "Formation and Functions," 385.

1.2. Are ‘Alter Personalities’ Persons in Jurisprudence?

Salmond defines person as ‘any being whom the law regards as capable of rights and duties’.¹¹ To put it simply, persons are the substances of which rights and duties are the attributes.¹²

When alters are present, they are adequately capable of rights and duties. As an illustration, Article 31 of the Constitution sanctions equal protection of law and admits of no restrictions to be imposed by the legislators. If a host personality in the face of extreme physical and sexual abuse develops an alter personality, makes the alter suffer the abuse and subsequently that alter personality carrying the body moves to the court to punish the wrongdoer, can the court deny his constitutional right? Let us think it from the other way around. If the alter perpetrates any other offence, can the court say that he was under no duty to respect the right of others just because he is an alter? Both of these questions, it is submitted, seem to have a negative answer.

Daniel Dennett (1976), a philosopher, has identified six theme that are prominent in philosophical discussions of personhood –

- i) rationality;
- ii) subject of intentional predicates;
- iii) recipient of a certain stance or attitude — a person is a moral object;
- iv) capable to reciprocate when such a stance if taken a person is a moral subject or agent;
- v) usage of language;
- vi) having a special kind of consciousness, perhaps self-consciousness.¹³

The case of Billy Milligan, charged with rapes and robberies at Ohio State University in 1977, starkly illustrates how alters come within the purview of Dennett’s theme. It was found that the crimes were committed not by Billy, the host personality long absent from

¹¹ Salmond, John William. *Jurisprudence*. 7th ed. London: Sweet & Maxwell, 1924, p. 329.

¹² Khan, Hamiduddin. *An Introduction to Jurisprudence*. 2nd ed. Dhaka: Ideal Library, 1973, 167.

¹³ Dennett, Daniel C. *Brainstorms: Philosophical Essays on Mind and Psychology*. Cambridge, MA: MIT Press, 1978, pp. 267–285.

consciousness due to suicidality, but by his alters Adalana and Ragan.¹⁴ Each alters had different handwriting, accents, and physical mannerisms.¹⁵ After blackouts when one of the alters acted, the others had no recollection of those events.¹⁶ It therefore follows that alters have different memories, different emotions, different likings and when they intend to do any act, they do so with their own intent only, and not with that of the host or of any other. *Mens Rea* (Guilty Mind), a constituent element of crime, can also be formed by the alter alone. The sole deprivation of alters lies in their lack an external vessel, a separate body capable of being perceived by senses. However, Salmond rightly excludes human body to be determinative of personhood as slaves, for example, are destitute of personhood in any legal system which regards them incapable of rights and duties.¹⁷ Therefore, the fact that alters do not have separate bodies does not by itself operate to be deprive them of legal personhood.

The Supreme Court of Bangladesh (SCB) has already manifested its liberal stance towards granting personhood to entities. In the landmark Turag River case, the SCB declared all rivers flowing through Bangladesh as legal or juristic persons.¹⁸ The SCB went on to designate the National River Commission as their *loco parentis* or legal guardians with the responsibility to protect, conserve, and develop rivers, safeguarding them from encroachment and pollution.¹⁹

It is, in fine, submitted that alters may well withstand the threshold of personhood, both from the right-duty based jurisprudential perspective and under the philosophical framework of Dennett.

2. A Measurement Framework of Criminal Liability: Bringing DID in Harmony with the Penal Code 1860

Reflecting the legal acumen of Lord Macaulay, the Penal Code of 1860 stands as a beacon of certainty. Nevertheless, time is not like stagnant water, neither should the

¹⁴ Elyn R. Saks & Stephen H. Behnke, *Jekyll on Trial: Multiple Personality Disorder and Criminal Law* (New York University Press 1997), p. 6.

¹⁵ Keyes, Daniel. *The Minds of Billy Milligan*. New York: Bantam Books, 1995. p. 8.

¹⁶ Keyes, p. 27.

¹⁷ Salmond, John William. *Jurisprudence*. 329.

¹⁸ *Human Rights and Peace for Bangladesh v Bangladesh* [2019] Writ Petition No. 13989/2016 (SCB).

¹⁹ *ibid*.

statutes be. In course of time, statutes need to be reinterpreted so as to cater the needs of the present time. Multiple Personality Disorder (MPD) was first introduced to *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in 1980²⁰ and re-named Dissociative Identity Disorder (DID) in subsequent editions of the diagnostic manual.²¹ Thus, the term itself was not coined in 1860. However, DID is being used as a defence in criminal cases all over the world,²² and so it is pertinent to analyze relevant provisions of the Penal Code 1860 to decipher to what extent it admits DID as a defence from criminal liability.

2.1. The Defence of Insanity

Incorporating the crux of McNaughten case,²³ section 84 of the Penal Code 1860 runs-

Nothing is an offence which is done by a person who, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Alters may, as shown earlier, be viewed as persons in the legal parlance. The challenge now lies in exploring the nuances of criminal liability across different states of DID.

2.2. Criminal Liability in case of Mutual Amnesic

Some DID patients' host and alter personality are totally ignorant as to the existence of one another.²⁴ It may appear prima facie that in such circumstance, the personality of the alter who was in control at the time of the offence should be put into examination to determine whether he could understand the nature of his act. But what will wait ahead if that personality is found sane? The prominent English jurist William Blackstone

²⁰ American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders*. 3rd ed. American Psychiatric Publishing, 1980, 257.

²¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., 292.

²² *State v Miligan* (1978) No 77-CR-11-2908 (Ohio Court of Common Pleas); *State v Rodrigues* (1984) 67 Hawaii 70; *State v Badger* [1988] 551 A2d 207 (Vermont Supreme Court); *Orndorff v Commonwealth* [2010] 691 SE 2d 177 (Virginia Supreme Court).

²³ *R v McNaughten* [1843] RR 59, 8ER 718 (HL).

²⁴ Öztürk and Sar, "Formation and Functions," 385.

observed, ‘[B]etter that ten guilty persons escape, than that one innocent suffer.’²⁵ Like many other common law countries, our criminal jurisprudence also stands on this well-formed Blackstonian foundation. This ‘alter in-control approach,’²⁶ quite glaringly, runs counter to quintessence of criminal jurisprudence. It is impossible to punish only the criminal alter, because nobody can, with reasonable certainty, claim that the criminal personality will be present all throughout and others will remain dormant. Thus, an approach to punish the alter will result in punishing the criminal at the cost of an innocent.

In *State v Milligan*,²⁷ Billy, accused of three rapes, was argued to be NGRI-DID (Not Guilty by Reason of Insanity due to DID) because it was his alter, and not he, who perpetrated the offence. It was revealed that during his childhood, Billy’s stepfather raped him, hanged him and even buried him alive. Billy was led by these traumatic events to develop alter personality as a shield. Examining expert opinion and other collaborative evidence, the court absolved Billy from criminal liability since both criminal and non-criminal personality co-existed within himself.

The view of the Indian Supreme Court in a comparable psychiatric condition is also apt to mention in this regard. In *Re Pappathi Ammal v. Unknown*,²⁸ the court held that if a person commits an offence under the effect of somnambulism (sleep-walking), he shall be considered not guilty under Section 84 of the Penal Code 1860. A person who is the victim of a somnambulist habit has generally no recollection of the events occurring during the fit after he awakes.²⁹ Similar to somnambulism, mutual amnesic in DID also causes as a disruption in the memory and bodily control. Although these views are not binding upon our courts, they hold significant persuasive value in adjudicating criminal cases involving mutual amnesic.

²⁵ Blackstone, William. *Commentaries on the Laws of England*. 1st ed. Clarendon Press, 1769.

²⁶ Kabene, Neftci, and Papatziki, “Dissociative Identity Disorder”.

²⁷ (1978) No 77-CR-11-2908 (Ohio Court of Common Pleas).

²⁸ [1959] AIR Mad 239.

²⁹ Modi, Jaising P. *A Textbook of Medical Jurisprudence and Toxicology*. 12th ed. LexisNexis, 1955.

2.3. Criminal Liability in case of Unidirectional Amnesic

In some DID cases, one personality knows about the existence of the other, while the other remains unaware of it.³⁰ In examining criminal liability involving unidirectional amnesic, two situations may arise-

- A) The criminal alter is aware of the innocent one, and not vice versa.
- B) The innocent personality is aware of the criminal alter, and not vice versa.

In the first instance, the mere fact that the criminal alter is aware of its innocent counterpart does not make any difference. As the criminal alter knows of every detail about the other, it is quite possible for him abet the innocent alter by pressing any emotional or behavioral trigger such as creating a situation of extreme anger, or by manipulating the environment to entrap the other into committing any crime. It is submitted that only when the criminal alter abets its counterpart by instigating in any manner and the counterpart does the act abetted, the guilt becomes reciprocated and comes within the purview of the Penal Code 1860. If the very act abetted is done, the individual is punishable as per section 109³¹ and 110;³² whereas, if a different but naturally following act is done, the individual is punishable as per section 111,³³ 112³⁴ and 113³⁵ of

³⁰ Öztürk and Sar, "Formation and Functions," 385.

³¹ "Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

³² "Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other."

³³ "When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it: Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment."

³⁴ "If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences."

³⁵ "When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had

the Penal Code 1860. As both personalities are guilty at this juncture, the punishment of abetment according to the relevant sections of the Penal Code may be inflicted while violating no principle of criminal jurisprudence. However, cases where one alter personality intentionally manipulates the other may appear to be less common as this situation is likely to arise only when the criminal alter has very limited and unstable control over the body.

In the second instance, the innocent personality can only be held criminally liable when he, not only knows that the act being done by his alter is wrong or contrary to law, but he has effective control over his alter as well. Only when he has effective control over his alter can he attempt to prevent the crime commission by regaining control of the body, alerting others, placing himself in a safe environment or voluntarily incarcerating himself. But if he fails to do so, he intentionally aids by omission the commission of the offence. Therefore, the weapon of section 107³⁶ of the Penal Code 1860 holds him as an abettor by omission and makes him punishable accordingly.

2.4. Criminal Liability in case the Personalities are Co-conscious

In this state of DID, every personality prevalent within oneself remains vigorously cognizant of one another's presence.³⁷ In cases, they may even talk to one another.³⁸ Even then, prudence must grace the halls of justice. Just because the host is aware of the alter and vice versa, the court cannot punish the innocent counterpart. As a general rule, criminal law does not recognize the principle of vicarious liability.³⁹ To punish the

abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect."

³⁶ "A person abets the doing of a thing, who

Firstly.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.-A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

³⁷ Öztürk and Sar, "Formation and Functions," 385.

³⁸ Öztürk and Sar, "Formation and Functions," 385.

³⁹ Jayakumar, *Lectures in Jurisprudence*, 317.

individual, it must be shown that each personality formed the requisite *mens rea* (guilty mind), or else there cannot be any criminal liability.

It is therefore submitted that the Court has to enquire into whether both shades of the personalities shared the common intention and conjointly perpetrated the crime. If the answer appears in the affirmative, the principle of joint liability as elucidated in section 34⁴⁰ of the Penal Code may be called into action and the individual, whether carrying the host or alter personality, may be punished as principal offender. In *Abul Bashar v State*,⁴¹ a prior concert was deemed a precondition of a common intention before anyone can vicariously be convicted for a criminal offence committed by another. Hence, the personalities must concert prior to the commission of the offence. It falls upon psychiatrists to cumulatively decipher from his conduct and behavior whether any prior concert took place. After the offence is perpetrated, it becomes immaterial who perpetrates the crime since both thereafter stands on the same footing as regards criminal liability.

3. Paving Procedural Pathway for DID Cases

3.1. Police Interrogation

Interrogating a person with DID requires specialized expertise. In the renowned case of Billy Milligan,⁴² police officials were at a fix during interrogation and could not understand whom they are talking to at different times.⁴³ Unfortunately, the police officials of Bangladesh often disregard Article 35(5) of the constitution and resort to third-degree treatment to extract confession.⁴⁴ In *Saifuzzaman v State*,⁴⁵ the SCB also vehemently criticized torture in police custody and termed it as ‘state terrorism’.⁴⁶ Inflicting such treatment on an accused with DID would only exacerbate his trauma and

⁴⁰ “When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

⁴¹ (1980) 32 DLR 182.

⁴² *State v Miligan* (1978) No 77-CR-11-2908 (Ohio Court of Common Pleas).

⁴³ Keyes, Daniel. *The Minds of Billy Milligan*. 1st ed. Bantam Books, 1981.

⁴⁴ Badsha Mia, “Custodial Torture: Laws and Practice in Bangladesh,” *ER/SSH* 2, no. 2 (2020): 232, 241.

⁴⁵ (2004) 56 DLR 324.

⁴⁶ *ibid* [9] (Surendra Kumar Sinha J).

worsen his mental disorder. Hence, some legislative changes are required in this regard which will be proposed in the latter section of the paper.

3.2. Expert Opinion of Psychiatrists

Law and psychiatry come into interface more often than many other fields in the medical discipline.⁴⁷ Under section 45 of the Evidence Act 1872, expert opinion is sought when the court has to form an opinion upon a point alien to the court's expertise. In most of the cases, psychiatrists are called in aid to testify the defence of insanity.⁴⁸ In DID cases, psychiatrists may accordingly be called in aid to elicit, from the diagnostic feature elucidated in DSM,⁴⁹ whether the accused suffers from DID and explain to the court the reasons supporting his decision. Section 510 of CrPC 1898 also solidifies report of an expert as an evidence usable in enquiry or trial which carries heavy weightage. However, expert opinion is one piece of evidence and should be considered with other evidence on record.⁵⁰

3.3. The Trial

The trial procedure designed for lunatics in CrPC 1898, it is submitted, squarely fits for DID patients as well.

Under section 464 of CrPC 1898, when a person is of unsound mind at the time of trial, the trial gets postponed by Magistrate. The rationale underlying this section is not difficult to locate, that is, the accused cannot simply defend himself. Coming to DID, the personality other than the perpetrator cannot also defend himself. As alters are competent to be considered persons and they, if dormant, cannot defend themselves, it will be a severe violation of the Article 33(1) of the Constitution to keep the trial in motion. Hence, DID patients do also come under the umbrella of section 464. Section 465 is couched in similar terms as the previous one, but applies to the Court of Sessions. As per section 466, lunatics, when the trial is postponed, are released on sufficient security being given that he shall be properly taken care of and shall be prevented from

⁴⁷ Narayani Sepaha, "Psychiatric Expert Opinion: Admissibility and Relevancy," *LCJLS* 1, no. 1 (2021): <https://lawcolloquy.com/journals/psychiatric-expert-opinion-admissibility-and-relevancy-narayani.pdf> accessed September 28, 2024.

⁴⁸ *ibid.*

⁴⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., 292-94.

⁵⁰ *Masud Haider (md) v. Md Golam Ambia (Harun)* (2015) 67 DLR 395.

doing injury to himself or to any other person or are kept in jail or mental asylum. Accordingly, DID patients may be released in the similar conditions if the criminal alter is asleep and it will sufficiently prevent them from committing further crimes. Whenever it appears to the person-in-charge that the criminal alter has taken over, the trial may be resumed as section 473 suggests in case of lunatics. If the alter again goes asleep, the trial may again be postponed on the touchstone of section 468(2).

3.4. An Optimal Outcome

On one hand, if the individual is found guilty following the previously articulated framework of the Penal Code 1860 (either there was active complicity between the personalities or one personality intentionally aided by omission the commission of the offence), the defence of NGRI-DID is not available and as such it is expedient to bring him to book accordingly.

On the other hand, if it is proved beyond reasonable doubt that the body perpetrated the offence but the individual is found not guilty following the previously articulated framework of the Penal Code 1860 (either the personalities were unaware of one another or the innocent personality knew about, but had no effective control over, the criminal alter), the defence of NGRI-DID absolves him from criminal liability. Then again, leaving him to the society at large does not seem to be a wise action. To arrive at an optimal outcome in this regard, a conglomerate of preventive and reformatory theory has to be made within the legal framework. Preventive theory of punishment aims to prevent a repetition of the offence by rendering the offender incapable of its commission.⁵¹ In contrast, the reformatory theory of punishment is an alternative approach to criminal justice that emphasizes rehabilitation and social reintegration rather than retribution and incapacitation.⁵² The two theories get amalgamated at law in the treatment of criminal lunatics under CrPC 1898 and the Mental Healthcare Act 2018 (MHA 2018). Firstly, like lunatics, he might be kept in an asylum by the reception order of the magistrate or court under section 471(1) of CrPC 1898 read with section 15(1) of MHA 2018. Secondly, under section 474(1) of CrPC 1898, he might form a ground for release from asylum if the person-in-charge (Inspector General or Visitors) finds him

⁵¹ Jayakumar, *Lectures in Jurisprudence*, 187.

⁵² Weihofen, Henry. "Punishment and Treatment: Rehabilitation." In *Theories of Punishment*, edited by Stanley E. Grupp. London: Indiana University Press, 1971, 255.

rehabilitated and no longer a threat to the society. Furthermore, in light of section 475(1), he might also be handed over to his friends or relatives on their giving security to the satisfaction of the Government with some conditions superadded i.e. he shall be prevented from harming anyone further and shall be produced at any time the government directs.

Moreover, he must be accorded proper treatments like psychotherapy, medication etc. by the psychiatrist. Psychotherapy, considered the primary treatment for DID, involves sessions talking to various alters and trying to reconciling them.⁵³ A case study from Bangladesh further necessitates this requirement of psychotherapy. A second-year medical student admitted in the psychiatry department of the Bangabandhu Sheikh Mujib Medical University (BSMMU) was diagnosed as a case of DID. However, frequent psychotherapy and relaxation techniques at the psychiatry department made him come round the identity disturbance.⁵⁴ Therefore, DID patients have considerable possibility of coming round the disorder if proper treatment and facilities are provided.

Concluding Remarks

Although the plea of this disorder in our domestic legal spectrum still remains to be seen, the urgency for reform is far from remote. Since criminal liability of a person has always to be measured with an arithmetic exactitude, the proposed measurement framework of criminal liability suggests that determining liability in such cases requires a careful scrutinization into the states of awareness between the personalities. If the subject suffered from mutual amnesic, the defence of NGRI-DID (Not Guilty by Reason of Insanity due to DID) may be invoked to exonerate him from liability. It is in cases of unidirectional amnesic and co-conscious that an enquiry into the interaction, if any, between the alters becomes necessary. With regard to the procedural law, the trial procedure and outcome applicable to the lunatics can squarely be attributed to DID patients except for the fact DID patients need additional psychotherapy for reformation.

Finally, the following recommendations are proposed to be introduced to facilitate adjudication of DID-related cases:

⁵³ Saxena, Tote, and Sapkale, "Multiple Personality Disorder," 2023.

⁵⁴ MS Ahsan, MSI Mullick, MA Sobhan, M Khanam, JS Nahar, M Islam, and M Ali, "Multiple Personality Disorder: A Case Report," *Bangladesh Journal of Psychiatry* 20, no. 2 (2006): 96.

1. **Psychiatric Examination during Investigation:** It is difficult, if not impossible, for the police officials to identify a person with subtle personality disorders like DID. To ensure an empathetic interrogation phase to an accused alleged to be suffering from DID, a provision may be inserted to CrPC 1898 requiring psychiatric examination of the accused if he shows signs of DID. If the examination reveals that the accused suffers from DID, the interrogation may thereafter be handed over to the psychiatrist.
2. **Redefining 'Mental Disorder':** The definition of mental disorder appearing in section 2(16) of MHA 2018 recognizes the ability to lead normal life as an identifying criterion to mental disorder. The definition lacks clarity and inadvertently excludes all personality disorders, for individuals with these disorders may often lead normal lives. Therefore, the definition needs reconsideration.
3. **Separate Custody:** Since DID patients are not like conventional lunatics, confining them together may add to their trauma and worsen their psychiatric condition. Like the provisos to section 7(1) of MHA 2018 which demand separating children, criminal lunatics and drug-addicts from others, a provision may further be inserted to separate DID patients from other criminal lunatics as well.

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- (1959) AIR Mad 239.
- (1980) 32 DLR 182.
- (2004) 56 DLR 324.

Binary Logic as Legal Algorithm: Computational Evidence of Systematic Decision-Making in Ottoman Sheikh al-Islam Fatwas

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Abstract: Bridging computational linguistics, machine learning, and Islamic legal studies, this interdisciplinary investigation examines the algorithmic structure underlying Ottoman Sheikh al-Islam fatwa reasoning. Analysis of 9,913 fatwas from authoritative collections—including Fetâvâ-yı Feyziye, Fetâvâ-yı Ebüssuûd Efendi, and Behcetü'l-Fetâvâ—establishes that nearly 87% of rulings follow binary prohibition/permission logic. This binary architecture exhibits notably low entropy (1.599 bits), falling 66% below maximum possible entropy, which suggests highly structured decision patterns characteristic of the centralized Sheikh al-Islam authority. Machine learning models achieved considerable predictive accuracy (87.6% with XGBoost), with simple linguistic markers ("olmaz"/"olur") emerging as the strongest predictors. Among binary cases, prohibitions (4,410) and permissions (4,199) appear balanced, challenging assumptions about Islamic law's supposedly restrictive nature. Financial matters pointed to even higher binary classification rates than non-financial cases (88% versus 84%), likely reflecting commercial law's demand for clear guidance. Such systematic patterns, developed centuries before digital computing, suggest that algorithmic legal reasoning may represent an ancient practice rather than a modern innovation. These results carry implications for contemporary debates around legal automation and the appropriate role of Artificial Intelligence (AI) in religious jurisprudence, while documenting how pre-modern institutions achieved systematization through human rather than technological means.

Keywords: Sheikh al-Islam, Ottoman Fatwas, Computational Jurisprudence, Islamic Law, Legal Algorithms, Binary Logic, Machine Learning.

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Yasal Bir Algoritma Olarak İkili Mantık: Osmanlı Şeyhülislam Fetvalarında Sistematik Karar Vermenin Hesaplanabilir Kanıtları

Özet: Bu disiplinlerarası araştırma, Osmanlı şeyhülislamlarının fetva mantığının temelindeki algoritmik yapıyı açığa çıkarmak amacıyla hesaplamalı dilbilim, makine öğrenmesi, İslam hukuku ve bilgi teorisi arasında bir köprü kurmaktadır. Fetâvâ-yı Feyziye, Fetâvâ-yı Ebüssuûd Efendi ve Behcetü'l-Fetâvâ gibi otoriter kaynaklardan seçilen 9.913 fetvanın incelenmesi sonucunda, İslam hukukunun özünde ikili bir algoritmik düzen üzerine işlediği ve kararların %86,8'inin "yasaklama/izin" mantığına dayandığı ortaya konmuştur. Sistem, olası en yüksek entropi düzeyi olan 4.755 bitten %66,4 oranında daha düşük bir seviyeyi temsil eden 1.599 bitlik dikkat çekici bir düşük entropi sergilemektedir. Bu durum, Osmanlı'daki şeyhülislamlık kurumunun merkezinde gelişen hukuk hiyerarşisinin, oldukça yapılandırılmış ve öngörülebilir karar kalıpları ürettiğini göstermektedir. Makine öğrenmesi modelleri, fetvaları tahmin etmede %87,6 doğruluk oranına (XGBoost) ulaşmakta; özellikle "olur/olmaz" gibi ikili dilsel işaretler en güçlü belirleyici öğeler olarak öne çıkmaktadır. Yasaklama-izin ayrımı, 4.410 yasaklama ve 4.199 izin kararıyla dengeli bir içtihat dağılımı göstermektedir. Ayrıca, finansal davalarda ikili sınıflandırma oranı %88,3 iken, finansal olmayanlarda bu oran %84,3'tür. Bu fark, ekonomik işlemlerin daha net hukuki açıklığa ihtiyaç duyduğunu işaret etmektedir. Sonuç olarak bu çalışma, Osmanlı şeyhülislam sistemi üzerinden kurumsallaşan İslam içtihadının, modern bilişimden yüzyıllar önce algoritma benzeri karar yapıları geliştirdiğine dair hesaplanabilir kanıtlar sunmaktadır. Bulgular aynı zamanda günümüz yasal otomasyonu ve dini bağlamlarda yapay zekâ etiği üzerine de önemli çıkarımlar barındırmaktadır.

Anahtar Kelimeler: Şeyhülislam, Osmanlı Fetvaları, Hesaplamalı İctihat, İslam Hukuku, Yasal Algoritmalar, İkili Mantık, Makine Öğrenmesi.

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Introduction

The intersection of law and technology has reached an inflection point with the advent of large language models achieving human-level performance on legal examinations¹. GPT-4's success in passing the Uniform Bar Examination with scores in the 90th percentile¹ suggest that legal reasoning may be more algorithmic than previously assumed. This study provides historical evidence for this hypothesis by demonstrating that Ottoman Islamic law exhibited algorithmic patterns centuries before digital computing.

Analysis of 9,913 Ottoman Sheikh al-Islam fatwas suggests that approximately 87% may be classified within a binary prohibition/permission logic, this outcome corresponds to recent scholarship on the computational nature of legal rules². The discovery that simple linguistic markers achieve significant classification accuracy parallels outcomes that legal language contains systematic patterns amenable to computational analysis³. Such convergence between historical and contemporary evidence documents algorithmic thinking in law may represent a rediscovery of ancient patterns rather than modern innovation, echoing theories on the rationalization of law⁴.

Sheikh al-Islam institution, which emerged in the fifteenth century and reached its zenith under Ebüssuûd Efendi (1490-1574), functioned as the supreme religious-legal authority in the Ottoman Empire⁵. Unlike local muftis whose opinions carried persuasive but not binding authority, the Sheikh al-Islam's fatwas possessed quasi-legislative force, creating what is described as "a hierarchical system of legal authority unprecedented in Islamic history"⁶. This centralization was a key mechanism in the

¹ Katz, D. M., Bommarito, M. J., & Blackman, J. "GPT-4 passes the bar exam". *Philosophical Transactions of the Royal Society A*, 382 (2024): 20230166; Choi, J. H., Hickman, K. E., Monahan, A., & Schwarcz, D.

² Bommarito, M. J., & Katz, D. M. "Measuring and modeling the US regulatory ecosystem". *Journal of Statistical Physics*, 168, no. 5 (2022): 1125-1135.

³ Chalkidis, I., Jana, A., Hartung, D., Bommarito, M., Androutsopoulos, I., Katz, D., & Aletras, N. "LexGLUE: A benchmark dataset for legal language understanding". *Proceedings of the 60th Annual Meeting of the Association for Computational Linguistics* (2022): 4310-4330.

⁴ Weber, M. *Economy and Society: An Outline of Interpretive Sociology*. Berkeley: University of California Press (1978).

⁵ Imber, C. *Ebu's-su'ud: The Islamic Legal Tradition*. Stanford: Stanford University Press (2009); Hallaq, W. B. *Shari'a: Theory, Practice, Transformations*. Cambridge: Cambridge University Press (2009).

⁶ Gerber, H. *State, Society, and Law in Islam*. Albany: SUNY Press (1994).

state's effort to produce "legibility"—the standardization of legal and social practice across a vast empire⁷.

Ottoman legal reasoning drew on diverse sources—including *kanunnames* (imperial codes), local mufti fatwas, court rulings, and regulations of the *nişancı* (imperial chancellor) —yet this study focuses on Sheikh al-Islam fatwas as a distinct institutional form of centralized religious-legal authority.

Recent scholarship has revised earlier orientalist narratives about Islamic law's supposed rigidity. It has been established that the Ottoman transformation of Islamic law involved creative adaptation rather than mechanical application of classical doctrine⁸. Ottoman legal institutions balanced textual authority with social reality⁹. Computational analysis quantifies these qualitative observations: among the binary rulings, nearly equal numbers of prohibitions (4,410) and permissions (4,199) emerge, highlighting a near equilibrium legal system that challenges stereotypes about Islamic law as primarily restrictive.

The preservation of Sheikh al-Islam fatwas in authoritative collections enables large-scale computational analysis for the first time. Critical editions of Ebüssuûd's fatwas¹⁰, *Fetâvâ-yı Feyziye*¹¹, and *Behcetü'l-Fetâvâ*¹² provide reliable texts essential for computational analysis.

This study addresses three fundamental research questions grounded in interdisciplinary theory:

Research Question 1: Structural Patterns in Historical Legal Reasoning

To what extent do Ottoman Sheikh al-Islam fatwas manifest binary logical structures identifiable through computational methods? Drawing on legal formalism¹³ and

⁷ Scott, J. C. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press (1998).

⁸ Hallaq, W. B. *Shari'a: Theory, Practice, Transformations*.

⁹ Tucker, J. *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press (2008).

¹⁰ Akgündüz, A. *Sheikh al-Islam Ebüssuûd Efendi Fetvaları*. İstanbul: Osmanlı Araştırmaları Vakfı (2018).

¹¹ Kaya, S. (Ed.). *Fetâvâ-yı Feyziye*. İstanbul: Klasik Yayınları (2009).

¹² Kaya, S., Algin, B., Trabzonlu, Z., & Erkan, A. (Eds.). *Behcetü'l-Fetâvâ*. İstanbul: Klasik Yayınları (2011).

¹³ Hart, H. L. A. *The Concept of Law*. Oxford: Oxford University Press (1961); Dworkin, R. *Taking Rights Seriously*. Cambridge: Harvard University Press (1977).

computational legal theory¹⁴ this explores whether pre-modern legal systems already embodied algorithmic thinking.

Research Question 2: Information-Theoretic Measures of Legal Predictability

How can entropy and information theory quantify the systematicity of Islamic legal reasoning? Building on the mathematical theory of communication¹⁵ and recent applications to legal complexity¹⁶, we measure the predictability of Ottoman legal decisions.

Research Question 3: Implications for Contemporary Legal Technology

What insights do historical algorithmic patterns offer for modern legal automation and AI ethics? This question connects historical analysis with contemporary debates about algorithmic justice¹⁷, legal technology¹⁸, and AI governance¹⁹.

1. Literature Review

The application of transformer-based models to legal text has accelerated dramatically. The LEGAL-BERT family of models achieves state-of-the-art performance on legal document classification, outperforming general-purpose language models by 7-9% on domain-specific tasks²⁰. This domain advantage parallels the findings that simple domain-specific markers ("olmaz"/"olur") outperform complex features in Ottoman fatwa classification.

A foundational study in legal case outcome prediction achieved approximately 79% accuracy in predicting decisions of the European Court of Human Rights by analyzing the text of the cases²¹. At 87.6% accuracy on historical the Sheikh al-Islam fatwas, these results exceed contemporary benchmarks, potentially indicating the Sheikh al-Islam

¹⁴ Ashley, K. D. *Artificial Intelligence and Legal Analytics*. Cambridge: Cambridge University Press (2017).

¹⁵ Shannon, C. E. "A mathematical theory of communication". *Bell System Technical Journal*, 27, no. 3 (1948): 379-423.

¹⁶ Katz, D. M., Ruhl, J. B., & Vivo, P. (Eds.). "Complexity science approaches to law and governance". *Philosophical Transactions of the Royal Society A*, 382, no. 2270 (2024).

¹⁷ Pasquale, F. *The Black Box Society*. Cambridge: Harvard University Press (2015).

¹⁸ Susskind, R. *Online Courts and the Future of Justice*. Oxford: Oxford University Press (2019).

¹⁹ Russell, S. *Human Compatible: AI and the Problem of Control*. New York: Viking (2019).

²⁰ Chalkidis, I., Fergadiotis, M., Malakasiotis, P., & Androutsopoulos, I. "LEGAL-BERT: The muppets straight out of law school". *Findings of the Association for Computational Linguistics: EMNLP* (2023): 2898-2904.

²¹ Aletras, N., Tsarapatsanis, D., Preotiuc-Pietro, D., & Lampos, V. (2016). "Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective." *PeerJ Computer Science*, 2, e93.

institution achieved systematization than modern courts. This difference may reflect the hierarchical authority structure of Ottoman law versus the adversarial nature of contemporary legal systems.

The emergence of legal prompt engineering indicates that effective legal AI requires understanding domain-specific reasoning patterns²². The identification of category-specific entropy variations provides historical precedent for this domain specificity.

Recent scholarship has fundamentally revised understanding of Ottoman law. It has been shown that the Ottoman legal system involved creative adaptation and synthesis rather than a rigid application of classical doctrines²³, and that local courts balanced imperial law with customary practice²⁴. Notably, about one-eighth of cases fall outside binary classification, quantifying the system's inherent flexibility.

Digital humanities approach to Islamic texts have advanced significantly. The OpenITI project has created a corpus of over 10,000 pre-modern Arabic texts, enabling computational analysis at a big scale²⁵. Similar efforts for Ottoman Turkish texts, such as those by the Open Islamicate Texts Initiative (OpenITI), have developed robust OCR/HTR models, making large-scale analysis feasible²⁶.

Information-theoretic approaches to historical texts, pioneered for natural language²⁷ and extended to historical corpora²⁸, provide methodological foundations for the entropy analysis. The application of these methods to legal texts represents a novel contribution bridging computational linguistics and legal history.

Shannon's entropy measure, originally developed for communication systems, has found increasing application in legal analysis²⁹. It has been clearly showed that legal rules

²² Henderson, P., Krass, M. S., Zheng, L., Guha, N., Manning, C. D., Jurafsky, D., & Ho, D. E. "Pile of law: Learning responsible data filtering from the law and a 256GB open-source legal dataset". *Advances in Neural Information Processing Systems*, 36 (2023).

²³ Imber, Colin. *Ebu's-su'ud: The Islamic Legal Tradition*. Stanford: Stanford University Press, 2009.

²⁴ Ergene, B. *Local Court, Provincial Society and Justice in the Ottoman Empire*. Leiden: Brill (2003).

²⁵ Romanov, M. (2017). "Digital History of the Islamicate World and the OpenITI Project."

²⁶ Kiessling, B., Miller, D., & Pouyi, M. "Kraken - A Universal Text Recognizer for the Humanities". *In Proceedings of the 2019 Digital Humanities Conference (DH2019)*. Utrecht, Netherlands (2019).

²⁷ Piantadosi, S. T., Tily, H., & Gibson, E. "Word lengths are optimized for efficient communication". *Proceedings of the National Academy of Sciences*, 108, no. 9 (2011): 3526-3529.

²⁸ Koepf, A. "Entropy-based approaches to historical linguistics". *Annual Review of Linguistics*, 9 (2023): 123-144.

²⁹ Shannon, C. E. "A mathematical theory of communication".

exhibit power-law distributions characteristic of complex systems³⁰, and that legal complexity follows predictable patterns across jurisdictions³¹.

The entropy calculation of 1.599 bits for Ottoman Sheikh al-Islam is comparable to quantitative measurements of legal complexity found in contemporary systems, lending empirical weight to the idea that legal information processing may have universal constraints.³² This similarity across centuries and legal traditions suggests universal constraints on legal information processing, possibly reflecting cognitive limitations³³ confirmed by recent neuroscience³⁴.

The relationship between entropy and predictability in legal systems connects to fundamental questions in jurisprudence. The principles of legal certainty³⁵ and the rule of law³⁶ both emphasize predictability as essential to legitimate law. These quantitative measures of Ottoman legal predictability lend empirical support to longstanding theoretical claims.

2. Methodology

2.1. Dataset

The dataset comprises 9,913 fatwas, which may be considered among the largest machine-readable collections of pre-modern Islamic legal texts currently available. The dataset includes fatwas distributed across 42 legal categories, with 27 distinct ruling types identified. An overview of the dataset, including the distribution of categories, binary classification rates, entropy, and source collections, is presented in Figure 1.

³⁰ Katz, D. M., & Bommarito, M. J. "Measuring the complexity of the law". *Artificial Intelligence and Law*, 22, no. 4 (2014): 337-374.

³¹ Ruhl, J. B., & Katz, D. M. "Scaling laws: Legal complexity in US localities". *Philosophical Transactions of the Royal Society A*, 382 (2024): 20230151.

³² Katz, D. M., & Bommarito, M. J. (2014). "Measuring the complexity of the law". *Artificial Intelligence and Law*, 22(4), 337-374.

³³ Miller, G. A. "The magical number seven, plus or minus two". *Psychological Review*, 63, no. 2 (1956): 81-97.

³⁴ Cowan, N. "The magical mystery four: How is working memory capacity limited?". *Current Directions in Psychological Science*, 19, no. 1 (2010): 51-57.

³⁵ Fuller, L. L. *The Morality of Law* (Revised ed.). New Haven: Yale University Press (1969).

³⁶ Raz, J. *The Authority of Law*. Oxford: Oxford University Press (1979).

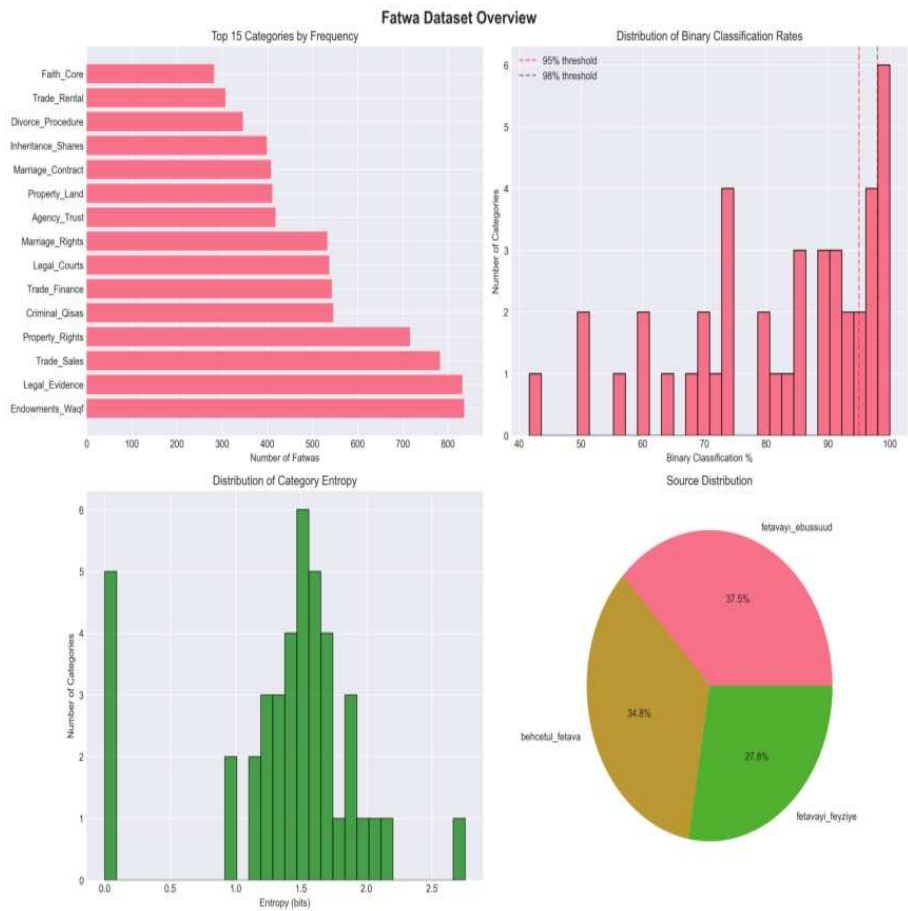


Figure 1: Overview of the fatwa dataset, showing the distribution of categories, binary classification rates, entropy, and source collections.

The major categories by volume include:

- Endowments_Waqf: 836 fatwas
- Legal_Evidence: 832 fatwas
- Trade_Sales: 782 fatwas
- Property_Rights: 716 fatwas
- Criminal_Qisas: 546 fatwas

- Trade_Finance: 543 fatwas
- Legal_Courts: 537 fatwas
- Marriage_Rights: 533 fatwas

Each fatwa in the dataset contains: a unique identifier, the fatwa ID, the original question text, the Sheikh al-Islam's answer, categorical classification, extracted key terms, source attribution, ruling type classification, and an indicator for financial involvement. The validation process involved comparison against published critical editions, expert review by Ottoman Turkish specialists, and automated consistency checking using rule-based validation scripts.

2.2. Natural Language Processing Pipeline (NLP)

Processing Ottoman Turkish required developing specialized NLP tools addressing three primary challenges: Morphological Complexity, Legal Terminology, and Feature Engineering:

- *Morphological Complexity.* Ottoman Turkish combines Turkic agglutination with Arabic-Persian vocabulary. A hybrid tokenizer was developed using finite-state transducers³⁷ adapted for Ottoman morphology.
- *Legal Terminology.* A dictionary of Islamic legal terms with contextual variants was compiled. The approach adopted combines rule-based stemming with statistical co-occurrence patterns³⁸ to handle the morphological complexity of legal terminology.
- *Feature Engineering.* Feature extraction covered lexical, syntactic, semantic, structural, and pragmatic dimensions, including binary markers, legal category indicators, and certainty or exception markers.

The resulting algorithmic architecture derived from the employed analysis is visualized in Figure 2, illustrating the flow from a legal question to a binary prohibition or permission outcome.

³⁷ Beesley, K. R., & Karttunen, L. *Finite State Morphology*. Stanford: CSLI Publications (2003).

³⁸ Church, K. W., & Hanks, P. "Word association norms, mutual information, and lexicography". *Computational Linguistics*, 16, no. 1 (1990): 22-29.

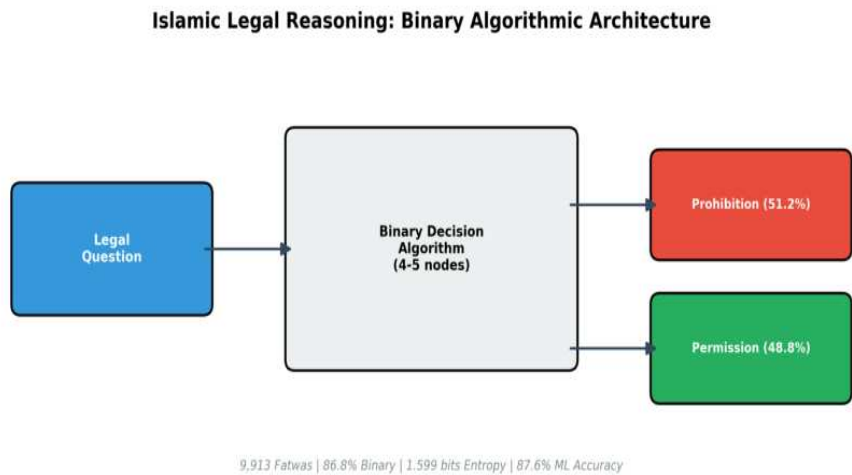


Figure 2 The algorithmic architecture of Islamic legal reasoning derived from the fatwa analysis.2

2.3. Information-Theoretic Analysis

Information theory offers a quantitative lens for examining legal predictability and complexity. Shannon entropy (a measure of unpredictability), expressed as $H(X) = - \sum p(x_i) \log_2 p(x_i)$, quantifies the average information content in a system. In the context of legal rulings, lower entropy indicates greater predictability—a desirable characteristic for legal systems that must provide clear guidance to society. According to the analysis, multiple information-theoretic measures, including a system entropy of 1.5992 bits and a 66.37% reduction from the maximum possible entropy. A detailed breakdown of these metrics, including system entropy comparisons, entropy by category, and trend analysis, is provided in Figure 3.

The data produces several information-theoretic measures (mathematical methods for gauging decision predictability):

Primary Entropy Metrics:

- System entropy: 1.5992 bits

- Maximum possible entropy (for 27 ruling types): 4.7549 bits
- Entropy reduction from maximum: 66.37%
- Gini coefficient: 0.9050 (indicating high concentration)
- Simpson diversity index: 0.6115
- Shannon diversity index: 1.1085

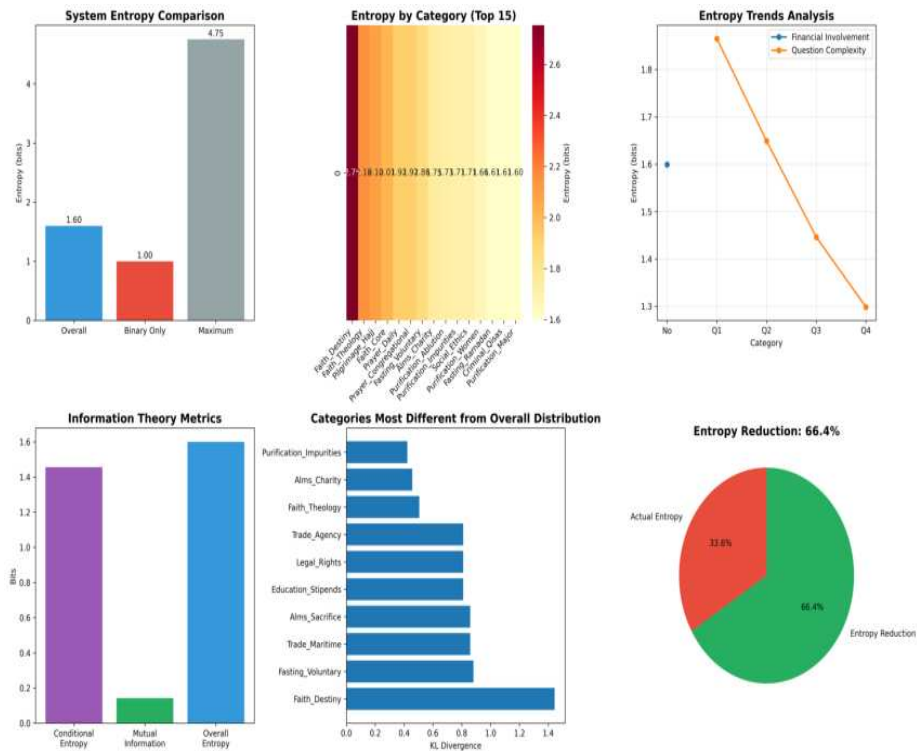


Figure 3 Comprehensive entropy analysis of the fatwa dataset.

2.4. Machine Learning Implementation

From 9,913 Ottoman fatwas, 47 linguistic, structural, and semantic features were engineered, with predictive power concentrated in binary markers (*olur/olmaz*), text length, legal category, and financial indicators. These features were then tested through three complementary machine learning approaches to assess the potential algorithmic character of Ottoman legal reasoning:

- *Logistic Regression*: This statistical method achieved 86.2% accuracy in predicting fatwa rulings. The model revealed that the presence of the word "olmaz" (not permissible) was the strongest predictor of prohibition rulings, while "olur" (permissible) predicted permission rulings.
- *Random Forest*: This ensemble method combines multiple decision trees³⁹. Achieving 84.7% accuracy, this approach revealed that answer length served as an important predictor: shorter answers typically indicated prohibition (average: 31 characters) while longer answers suggested permission or explanation (average: 78 characters).
- *XGBoost (Extreme Gradient Boosting)*: This advanced technique achieved the best performance at 87.6% accuracy. For comparison, contemporary legal prediction systems analyzing modern court decisions typically achieve 70-75% accuracy,

suggesting that Ottoman fatwas exhibited greater systematization than modern case law.

Such consistent accuracy across models strongly suggests that Ottoman legal reasoning followed algorithmic patterns discernible to computational analysis. Figure 4 offers a comparative performance overview of these models, including accuracy scores, confusion matrices, feature.

³⁹ Breiman, L. "Random Forests". *Machine Learning*, 45, no. 1 (2001): 5-32.

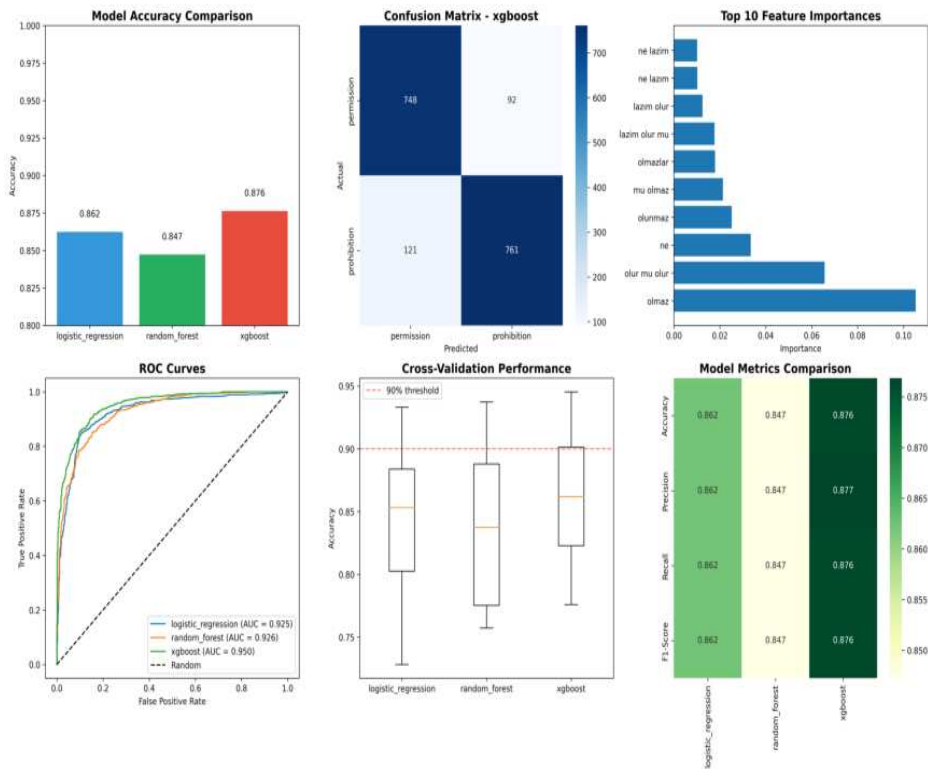


Figure 4 Comparative performance of the machine learning models.

2.5 Statistical Validation Framework

Statistical testing confirmed the binary pattern's significance. We conducted tests for binary dominance, category-ruling independence, prohibition-permission balance, financial-ruling association, and complexity difference. The results of these tests, including their statistical significance and effect sizes, are summarized in Figure 5.

The statistical analysis resulted in the following results: (1) a binary dominance test indicating highly significant structure ($p < 0.001$); (2) a category–ruling independence test showing dependence between legal categories and rulings ($p < 0.001$); (3) a prohibition–permission balance test suggesting a slight imbalance ($p = 0.023$); (4) a financial–ruling association test revealing no detectable association ($p = 1.00$); and (5) a complexity difference test confirming variation in complexity across ruling types ($p <$

0.001).

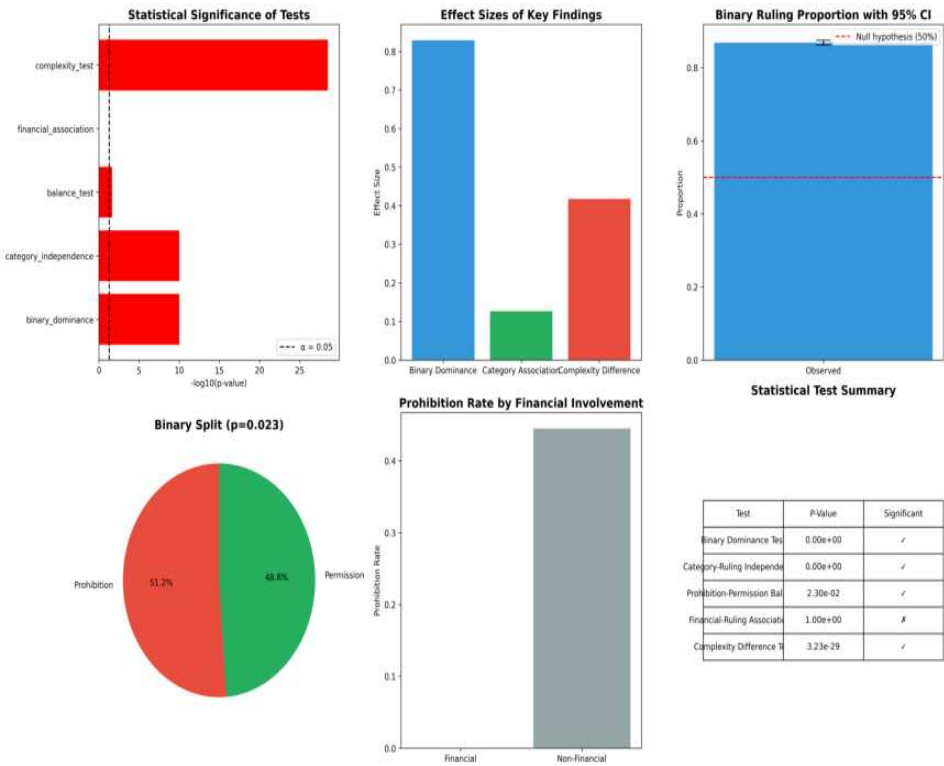


Figure 5 Statistical significance and effect sizes of the key findings

3. Results

3.1. Binary Dominance in Sheikh al-Islam Fatwas

Among the 9,913 fatwas analyzed, approximately 87 percent follow binary prohibition/permission logic, while 1,304 cases (13.15%) employ more nuanced classifications. This pattern constitutes perhaps the study's most striking discovery, demonstrating that Ottoman Sheikh al-Islam fatwa operated primarily through binary decision-making. Figure 6 provides a detailed analysis of these binary patterns, showing the distribution of ruling categories, the prohibition versus permission split, and categories that deviate most from the binary pattern.

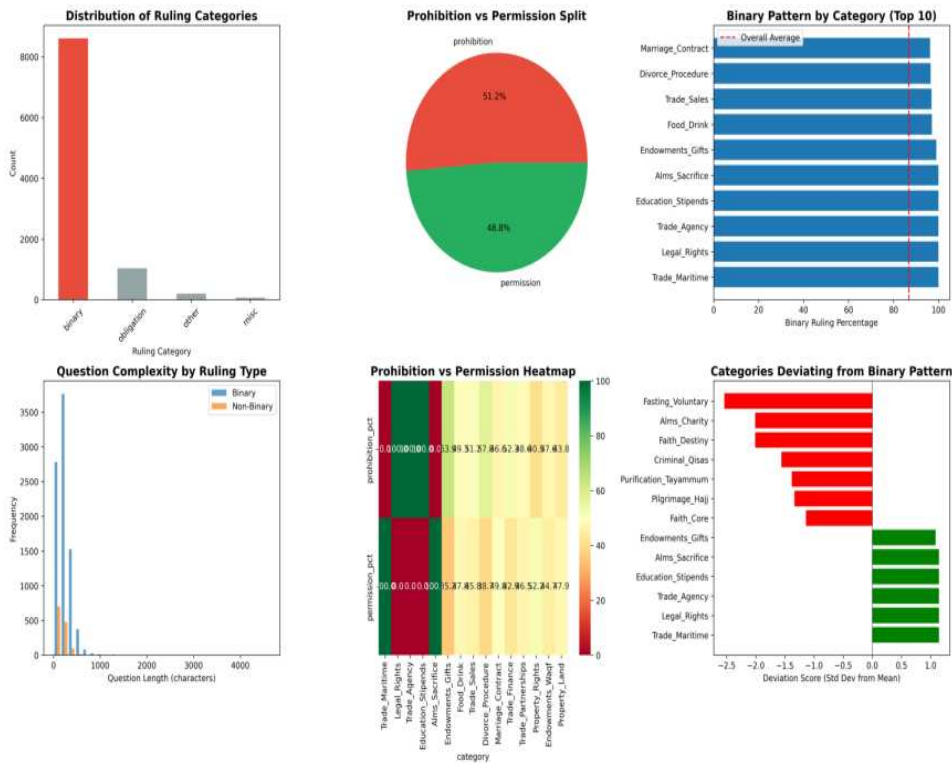


Figure 6 Analysis of binary patterns in the fatwa rulings.

Rulings distribute as follows:

- Prohibitions comprise 4,410 cases, nearly 45% of the total
- Permissions number 4,199, or about 42% of cases
- Obligation number 1,040, nearly 11% of the total
- Recommendation comprises 135 cases, 1.36% of the total

Other categories: 129 (1.30% of total dataset)

To illustrate this binary logic in practice, consider these three representative examples from the dataset:

- **Trade:** A question asks, 'Is it permissible for a Muslim farmer to sell his grapes to a known wine-maker?' The fatwa: 'Olmaz' (Not permissible).

- **Marriage:** A query asks, 'If a man and woman consent to marriage without official witnesses, is their union valid?' Answer: 'Olmaz' (Not valid).
- **Property:** A petitioner asks, 'Can a daughter who inherits land from her father sell it freely?' Response: 'Olur' (Permissible).

This variation across legal domains suggests functional specialization. Further analysis across different legal categories, as shown in Figure 7, highlights the top categories by volume, those with the highest binary logic, and those with the highest legal uncertainty (entropy).

The binary pattern reflects not only algorithmic reasoning but also a protective strategy: concise rulings such as *olmaz* or *olur* shield lay audiences from complex debates, preserving both legal integrity and communal welfare.

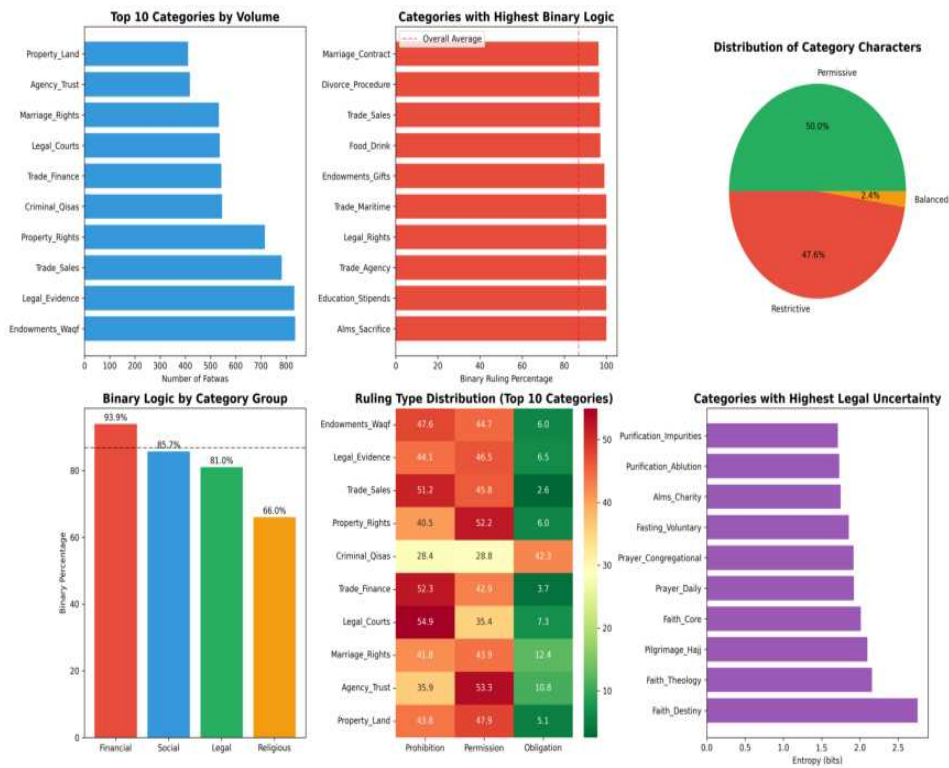


Figure 7 Analysis of patterns across different legal categories.

3.2. Information Theory Highlights Institutional Systematization

Information theory quantitatively confirms the systematic nature of Sheikh al-Islam fatwa reasoning. The system-wide entropy of 1.5992 bits represents a 66.37% reduction from the maximum possible entropy. The inverse relationship between the rate of binary classification and entropy is clearly illustrated in Figure 8, where categories with higher binary rates exhibit lower entropy, indicating greater predictability.

Table 2 presents a detailed breakdown of these information-theoretic measures across key legal domains, showing the number of fatwas, binary rate, and entropy for each.

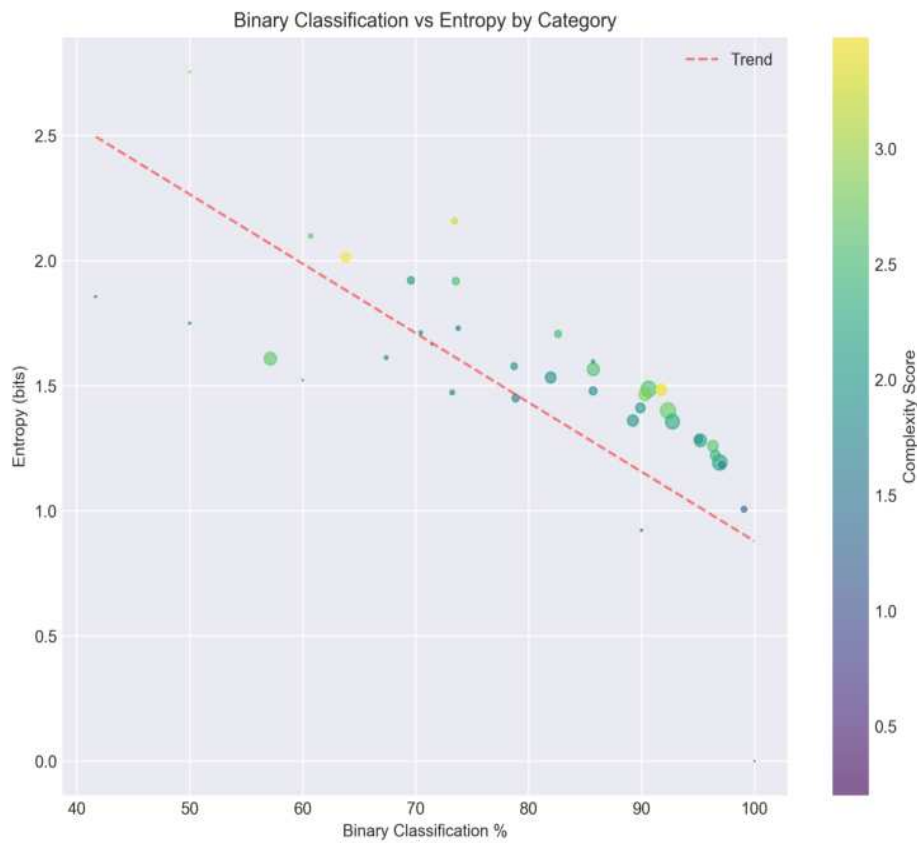


Figure 8 The inverse relationship between binary classification and entropy by category.

Table 2: Information-Theoretic Measures by Legal Domain

Legal Domain	N	Binary Rate (%)	Entropy (bits)	Normalized Entropy
Endowments/Gifts	108	99.07	1.006	0.335
Food/Drink	138	97.10	1.184	0.395
Trade Sales	782	96.93	1.193	0.398
Divorce Procedure	346	96.53	1.221	0.407
Marriage Contract	408	96.32	1.259	0.420
Trade Finance	543	95.21	1.281	0.427
Trade Partnerships	243	95.06	1.285	0.428
Property Rights	716	92.74	1.356	0.452
Endowments/Waqf	836	92.34	1.400	0.467
Property Land	411	91.73	1.483	0.494
Criminal Law	546	57.14	1.608	0.536
Faith Core	282	63.83	2.013	0.671
Faith Destiny	14	71.43	2.753	0.918

The inverse relationship between binary classification rates and entropy confirms theoretical expectations from information theory. Categories with the highest binary rates exhibit the lowest entropy, indicating maximum predictability. Commercial categories cluster at the low-entropy end of the spectrum, while theological categories show higher entropy, reflecting their greater interpretive complexity.

3.3 Machine Learning Validates Algorithmic Hypothesis

The application of machine learning models to predict fatwa outcomes provides empirical validation of the utilized algorithmic hypothesis. Three complementary approaches resulted in consistent results, demonstrating that Ottoman legal reasoning patterns are sufficiently systematic to enable automated prediction with high accuracy. The performance metrics for each model are detailed in Table 3, which compares their accuracy, precision, recall, and F1-scores.

Table 3: Machine Learning Model Performance

Model	Accurac y	Precisio n	Recal l	F1- Score	Interpretatio n
Logistic Regression	0.862	0.862	0.86 2	0.86 2	Strong linear relationships
Rando m Forest	0.847	0.847	0.84 7	0.84 7	Complex decision patterns
XGBoos t	0.876	0.877	0.87 6	0.87 6	Best overall performance

All three models converging near 85-87% accuracy indicates genuinely robust patterns rather than artifacts of any particular algorithmic approach. This performance exceeds typical accuracy rates for contemporary legal prediction systems (70-75%), indicating that Ottoman fatwas exhibited greater systematization than modern case law.

Feature importance analysis revealed a hierarchy of predictive elements, with binary linguistic markers ("olmaz"/"olur") and answer length being the most significant. **Figure 9** provides a deeper analysis of the decision tree model, illustrating the distribution of tree depths, model complexity versus accuracy, and the top predictive features.

Predictive elements emerged in clear hierarchy:

- **Binary linguistic markers:** The terms "olmaz" (not permissible) and "olur" (permissible) emerged as the strongest predictors across all models, suggesting that Ottoman legal language encoded outcomes in standardized formulaic expressions.
- **Answer length patterns:** Prohibition rulings averaged 31 characters while permissions averaged 78 characters, reflecting the Islamic legal principle that prohibitions require less justification than permissions.
- **Question complexity:** Measured by character count (mean: 236, median: 204), with more complex questions correlating with non-binary rulings.

- **Category indicators:** Legal domain served as a moderate predictor, confirming domain-specific reasoning patterns.

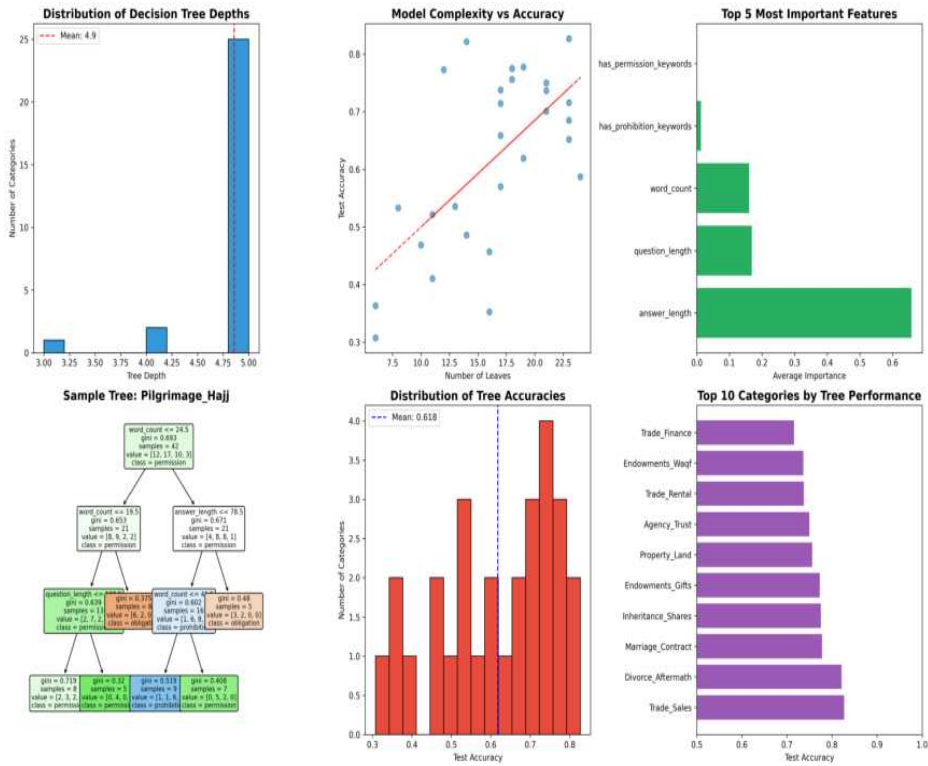


Figure 9 Analysis of the decision tree model, showing feature importance and model complexity.

3.4 Temporal Evolution Across Fatwa Collections

Three major fatwa collections in the dataset, representing different periods of Ottoman history, reveal both institutional continuity and systematic evolution in legal reasoning:

Table 4: Comparative Analysis of Historical Fatwa Collections

Collection	Period	N	Binary (%)	Entropy (bits)	Prohibition (%)	Permission (%)
Fetâvâ-yı Ebüssuûd	16th c.	3,716 (37.5%)	82.9	1.739	40.6	42.3
Behcetü'l-Fetâvâ	17th-18th c.	3,446 (34.8%)	87.2	1.564	43.1	44.1
Fetâvâ-yı Feyziye	18th c.	2,751 (27.8%)	91.7	1.364	51.5	40.2

The temporal progression presents increasing systematization: binary classification rises from 82.9% in Ebüssuûd's era to 91.7% in the Feyziye collection, while entropy decreases from 1.739 to 1.364 bits. This trend toward greater predictability suggests that the Sheikh al-Islam institution refined its decision-making processes over time, developing increasingly efficient algorithmic patterns.

Statistical analysis confirms these differences are not random. The chi-square test for independence between source collection and binary classification yields $\chi^2 = 109.30$ ($df = 2, p < 0.001$), indicating significant variation across periods. This evolution likely reflects both institutional learning and changing societal needs—later periods required greater legal clarity as the Ottoman Empire faced increased administrative complexity.

Each collection exhibits distinct characteristics reflecting its historical context:

- *Ebüssuûd's collection* shows balanced prohibition/permission ratios (40.6%/42.3%), reflecting the classical period's jurisprudential equilibrium.
- *Behcetü'l-Fetâvâ* represents a transitional phase with moderate systematization.
- *Feyziye* shows the highest prohibition rate (51.5%), potentially reflecting late Ottoman responses to social change and Western influence.

These patterns establish institutional knowledge transmission across centuries, achieving increased efficiency while maintaining doctrinal consistency.

3.5 Economic Transactions and Legal Clarity

The relationship between financial involvement and legal systematization illuminates how economic imperatives shaped Ottoman jurisprudence. Nearly two-thirds of fatwas address monetary, underscoring the central role of commercial regulation in Sheikh al-Islam fatwa practice.

Financial Involvement and Binary Classification Patterns:

Economic content correlates notably with legal clarity. Fatwas involving financial transactions uncover 88.3% binary classification, compared to 84.3% for non-financial matters. While this 4% difference may appear modest, it represents hundreds of cases where commercial considerations prompted clearer legal determinations.

Categories exhibiting complete financial involvement show systematization:

- Trade Finance: 100% monetary involvement, 95.21% binary classification, 1.281 bits entropy
- Trade Partnerships: 100% monetary involvement, 95.06% binary classification, 1.285 bits entropy
- Trade Sales: 99.62% monetary involvement, 96.93% binary classification, 1.193 bits entropy
- Alms/Zakat: 100% monetary involvement, 84.51% binary classification, 1.633 bits entropy

Correlation analysis ($r = 0.395$) provides evidence of a moderate positive association between financial involvement and binary classification, suggesting that commercial cases systematically benefited from simplified legal frameworks that reduced uncertainty. This tendency accords with Islamic legal theory's distinction between *mu'āmalāt* (social and transactional matters), where precision safeguards individual rights, and *'ibādāt* (ritual acts), where greater interpretive flexibility is permitted. Textual analysis shows that financial petitions averaged 267 characters compared to 189 for non-financial ones, reflecting the detailed factual narratives petitioners supplied when monetary issues were at stake. Despite longer inputs, responses remained concise (mean: 59 characters), pointing to efficient formats for commercial rulings. Such systematization enhanced predictability across trade networks from Budapest to Baghdad, enabling sustained economic activity while upholding Islamic legal principles.

4. Discussion

4.1. Theoretical Implications for Legal Philosophy

An entropy measurement of 1.599 bits provides empirical support for the principles of legality, particularly the requirements of clarity and consistency⁴⁰. The 66.4% entropy reduction quantifies what has been described qualitatively as the "inner morality of law." The near-balance between prohibition (4,410 cases) and permission (4,199 cases) challenges prevailing narratives about Islamic law. This balance reflects what has been termed the "impossible state"—the pre-modern Islamic legal system's achievement of moral authority without modern state apparatus⁴¹.

These algorithmic patterns in Sheikh al-Islam fatwas should be situated within the wider Ottoman legal ecosystem, which encompassed kanunnames (imperial codes), local mufti opinions, court rulings, regulations of the nişancı (imperial chancellor), and customary law. Within this pluralistic context, the finding that approximately 87% of fatwas followed binary logic may be seen as supporting the conceptualization of legal rules as primarily binary directives⁴², while the 13.2% of non-binary cases exemplify the 'penumbra of uncertainty' in which interpretation is required. In this sense, the discovery of algorithmic patterns in Ottoman law contributes to foundational debates in jurisprudence, illuminating how pre-modern Islamic legal systems balanced rule-based clarity with interpretive flexibility.

4.2. Implications for Contemporary Legal Technology

These patterns suggest concrete guidance for legal automation initiatives. Based on the empirical patterns observed, we can categorize legal domains by automation readiness:

- *High Automation Potential*: Domains with binary classification above 95% and low entropy (below 1.3 bits), such as commercial transactions and property transfers, demonstrate characteristics amenable to automated processing.

⁴⁰ Fuller, L. L. *The Morality of Law*.

⁴¹ Hallaq, W. B. *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press (2013).

⁴² Hart, H. L. A. *The Concept of Law*.

- *Medium Automation Potential:* Domains with 85-95% binary classification and moderate entropy (1.3-1.7 bits), including family law and standard civil disputes, suggest hybrid human-AI collaboration approaches.

Low Automation Potential: Domains with binary classification below 85% and high entropy (above 1.7 bits), particularly criminal law and religious matters, require human-centered approaches with AI serving primarily in support roles.

4.3. Cultural and Ethical Considerations in Religious Legal AI

The intersection of artificial intelligence with religious law raises profound ethical questions. Historical analysis indicates algorithmic consistency in religious law has deep precedent—the Sheikh al-Islam system achieved 86.8% binary classification through human institutional mechanisms. This finding provides historical context for contemporary debates about AI-generated fatwas.

Binary format serves dual purposes: administrative efficiency and religious authority. By providing concise rulings without extensive justification, the Sheikh al-Islam prevented laypeople from attempting independent legal derivation (ijtihad), which could lead to doctrinal confusion or social discord. This protective simplification aligns with the principle that exposing the public to lengthy juristic debates was not considered appropriate in Islamic legal culture.

The key distinction lies not in the presence of algorithmic patterns but in the locus of authority. The Sheikh al-Islam's legitimacy derived from scholarly credentials, spiritual authority, and communal recognition—elements that cannot be replicated computationally. This suggests that AI systems might assist in identifying patterns and precedents while preserving human authority for final determinations, a view supported by scholarship on the sociology of professions⁴³.

4.4. Limitations and Future Directions

Several limitations constrain the findings:

- *Selection Bias:* Published fatwa collections may overrepresent clear cases while underrepresenting ambiguous situations.

⁴³ Abbott, A. *The System of Professions: An Essay on the Division of Expert Labor*. Chicago: University of Chicago Press (1988).

- *Temporal Scope*: Focusing on the Ottoman period captures a specific historical moment that may not generalize to all Islamic legal traditions.
- *Linguistic Challenges*: The complexity of Ottoman Turkish introduces potential classification errors.
- *Cultural Specificity*: Patterns identified in Ottoman Hanafi jurisprudence may not transfer to other legal schools or traditions.

Future research directions include:

- Comparative analysis of other Islamic legal traditions
- Investigation of cognitive foundations for binary legal classification
- Development of culturally-aware legal AI systems
- Application of information-theoretic methods to other historical legal corpora

Machine learning applied to Ottoman fatwas suggests notable predictive accuracy (87.6%), yet significant limitations remain in capturing the full scope of Islamic legal reasoning. Decision-making in this context draws not only on textual precedent but also on custom (*‘urf*), public interest (*maṣlaḥa*), social and emotional context, and higher objectives of the law (*maqāṣid al-sharī‘a*). While standardization by the Sheikh al-Islam may have facilitated computational predictability, the 12.4% of non-predictable cases highlight the irreducible role of human wisdom, empathy, and contextual insight. In such a system—where ‘emotions must also be included in the equation’—machine learning can at best function as an assistive tool rather than a substitute for human judgment.

Conclusion

Investigating 9,913 Ottoman Sheikh al-Islam fatwas through an interdisciplinary lens suggests that algorithmic reasoning in law predates modern computing by centuries. Roughly 86.8% of rulings follow a binary prohibition–permission logic, supported by a remarkably low entropy score of 1.599 bits and a machine learning predictability rate of 87.6%. Together, these results point to the Ottoman legal system’s ability to develop systematic, algorithm-like patterns of decision-making through institutional design rather than technological innovation.

The implications extend well beyond historical curiosity. They raise fundamental questions about the nature of legal reasoning itself: whether algorithmic thinking is an intrinsic feature of law rather than an artifact of modern computing. The findings also have practical relevance for contemporary legal technology. Simple linguistic markers emerge as the strongest predictors, suggesting that effective legal AI may depend less on opaque 'black box' models and more on the careful identification of consistent decision points. In this sense, Ottoman practice offers both a historical precedent and a methodological lesson.

For the ongoing debate about AI in religious law, these findings provide historically-informed perspective. The Sheikh al-Islam institution's achievement of algorithmic consistency through human mechanisms provide evidence that systematic legal reasoning has deep historical roots in Islamic tradition. Understanding these historical legal algorithms provides crucial lessons for today's legal technology development. These patterns indicate that successful legal automation does not necessarily require complex 'black box' AI but rather careful identification of consistent decision patterns within a legal framework. This insight can help modern developers create more transparent, explainable, and culturally-sensitive legal tech solutions that focus on systematic reasoning rather than computational brute force.

The methodological contributions of this study indicate the value of interdisciplinary approaches to legal research. By combining computational linguistics, machine learning, information theory, and traditional legal scholarship, we have uncovered patterns that remained invisible to any single disciplinary lens.

Looking forward, the Ottoman case illustrates that human-designed legal algorithms—crafted for clarity, predictability, and justice—can guide the development of modern legal technologies. The Sheikh al-Islams of the Ottoman Empire effectively created algorithms before algorithms existed, a testament to the enduring human capacity to bring order to complexity. As new legal technologies emerge, the lesson is clear: progress lies not in replacing human judgment, especially in contexts where spiritual and social dimensions matter, but in enhancing the systematic reasoning that has always been at the heart of law.

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Maritime Insurance Fraud and Diplomatic Corruption: The Caroline Case as Preserved in Ottoman Legal Literature and Overlooked in American Diplomatic History

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Abstract: Almost all significant events in the history of international law are recorded, but some, regardless of their importance, are not included in the records. One of these neglected events is the “Caroline Case”, which took place in the port of Santa Catarina, Brazil, and touched upon various areas of international law, from maritime law to diplomatic law and ship insurance fraud. Although this event is not mentioned in almost any modern international law sources, it was meticulously documented by an Ottoman statesman, Hasan Fehmi Pasha, who was far from the American continent. Hasan Fehmi Pasha documented the event in such detail that there is almost no other source that covers the subject more extensively. Pasha's interest in this matter was not a coincidence. During the 19th century, the Ottoman Empire was in a process of modernization, closely examining Western legal systems and following international legal developments. This situation clearly demonstrates how closely 19th-century Ottoman intellectuals and statesmen followed developments in international law, their deep interest in global legal matters, and their competence in this field. This example also reveals the international dimension of Ottoman legal literature, the capacity of Ottoman jurists operating in a multilingual academic environment, and their original contributions to contemporary legal debates. This also proves that 19th-century Ottoman intellectuals were an active part of the global legal network. In this context, this work aims to introduce into modern international law literature an event that is almost non-existent in 21st-century English literature and has been overlooked by modern jurists. It achieves this by using a comparative methodology to evaluate how the event was detailed in a work written in Ottoman Turkish and comparing the similarities and differences in other contemporary works that touch upon the subject.

Keywords: Hasan Fehmi, Caroline Case, Santa Catarina, Brazil U.S. Relations, Maritime Insurance Fraud.

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Deniz Sigortası Dolandırıcılığı ve Diplomatik Yolsuzluk: Osmanlı Hukuk Literatüründe Kayıtlı, Amerikan Diplomasi Tarihinde İhmal Edilmiş Caroline Davası

Özet: Uluslararası hukuk tarihinde önemli olaylar neredeyse eksiksiz olarak kaydedilir ancak kimi olaylar ne kadar önemli olursa olsun kayıtlarda yer almaz. Bu ihmal edilen olaylardan biri de Brezilya'nın Santa Catarina limanında yaşanan ve gemi sigortası dolandırıcılığından diplomasi hukukuna ve deniz hukukuna kadar geniş bir düzlemde uluslararası hukukun farklı alanlarına temas eden "Caroline Davası"dır. Bu olay neredeyse modern uluslararası hukuk kaynaklarının hiçbirinde yer almamasına rağmen Amerika kıtasından çok uzakta bir Osmanlı devlet adamı Hasan Fehmi Paşa tarafından titizlikle kaleme alınmıştır. Hasan Fehmi Paşa olayı o kadar detaylı ve geniş biçimde kaleme almıştır ki konunun daha detaylı ele alındığı neredeyse başka kaynak yoktur. Paşa'nın bu meseleye olan ilgisi tesadüfi değildir; 19. yüzyılda Osmanlı İmparatorluğu modernleşme sürecinde Batı hukuk sistemlerini yakından incelemekte ve uluslararası hukuki gelişmeleri takip etmekteydi. Bu durum özellikle 19. yüzyılda Osmanlı entelektüellerinin ve devlet adamlarının uluslararası hukuka dair gelişmeleri ne kadar yakından takip ettiklerini, küresel hukuki meselelere olan derin ilgilerini ve bu alandaki yetkinliklerini açıkça göstermektedir. Ayrıca, bu örnek Osmanlı hukuk literatürünün uluslararası boyutunu, çok dilli akademik ortamda faaliyet gösteren Osmanlı hukukçularının kapasitesini ve çağdaş hukuki tartışmalara özgün katkılarını ortaya koymaktadır. Bu durum aynı zamanda 19. yüzyıl Osmanlı aydınlarının küresel hukuki ağına aktif bir parçası olduklarını da kanıtlamaktadır. Bu bağlamda bu çalışma, 21. yüzyılda İngilizce literatürde neredeyse hiç yer almayan ve modern hukukçular tarafından gözden kaçırılmış bir olayın Osmanlı Türkçesiyle kaleme alınmış bir eserde nasıl detaylı biçimde yer aldığını, konuya temas eden diğer dönem eserlerindeki benzerlikler ve farklılıkları karşılaştırmalı metodoloji kullanarak değerlendirerek modern uluslararası hukuk literatürüne kazandırılması amacını taşır.

Anahtar Kelimeler: Hasan Fehmi, Caroline Davası, Santa Catarina, Brezilya A.B.D İlişkileri, Deniz Sigorta Dolandırıcılığı

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Introduction

The Caroline case is a striking example of how little-known diplomatic incidents can persist in unexpected places while remaining virtually absent from mainstream sources. This 19th-century episode of US–Brazil diplomatic relations, involving maritime insurance fraud, judicial corruption and diplomatic malfeasance, appears to have been overlooked by contemporary international relations historians. However, it is given extraordinary detail in an Ottoman Turkish legal text, showing how diplomatic knowledge circulated globally and challenging conventional assumptions about historical documentation.

This research note examines two accounts of the same case. The first is a detailed narrative from the Ottoman legal scholar *Hasan Fehmi Pasha's Telhis-i Hukuk-ı Düvel* (1910/1326 AH), which devotes almost five pages to the incident. The second is a shorter but substantial account from Lawrence F. Hill's *Diplomatic Relations Between the United States and Brazil* (1932). The significant difference between the detailed Ottoman documentation and the lack of information in American diplomatic historiography raises important questions about how historical knowledge is preserved and transmitted across different scholarly and linguistic traditions.

1. The Ottoman Documentation: An Unexpected Archive

The most remarkable aspect of the Caroline Case is perhaps the extraordinary level of detail with which it is recorded in Hasan Fehmi Pasha's Ottoman Turkish legal book¹. As demonstrated in the following analysis, the account in question is of a more detailed nature than that of most Western diplomatic histories of the period, as evidenced by its coverage of pages 78–82 of *Telhis-i Hukuk-ı Düvel*. The Ottoman text provides a factual account of the case, as well as the Brazilian commission's examination of the vessel. Additionally, it addresses the judicial corruption and insurance company transactions that ensued².

¹ This work is considered one of the most important works of Turkish international law literature. Written in Ottoman Turkish, it is the first international law textbook in the literature. The work summarizes the international law courses taught by Hasan Fehmi Pasha at the School of Law. For more detailed information, see: Erozan, Boğaç. "Türkiye'de Uluslararası İlişkiler Disiplininin Uzak Tarihi: Hukuk-ı Düvel (1859-1945)". *Uluslararası İlişkiler Dergisi* 11, sy. 43 (Aralık 2014): 53-80. <https://doi.org/10.33458/uidergisi.552667>.

² Hasan Fehmi, *Telhis-i Hukuk-ı Düvel*, Tab'-ı sâni (Dersaadet: Mahmud Bey Matbaası, 1326 [1910]), pp.78-82.

It is particularly important that this incident is recorded in such detail in Ottoman legal literature, because it is virtually not mentioned in standard American diplomatic histories and international law casebooks. The fact that an Ottoman legal scholar thought this incident was important enough to write about so much suggests that it was seen as setting a legal precedent for how countries are responsible for the decisions made in their courts. This suggests that the diplomatic intelligence networks of the late 19th and early 20th centuries were more sophisticated and far-reaching than we usually think. We know this because Ottoman lawyers had access to detailed information about disagreements between American countries.

The Ottoman Empire and the U.S.A. were very different places, and this makes the documentation in this case even more extraordinary. The fact that Hasan Fehmi Pasha had access to such detailed information about a relatively minor US-Brazil diplomatic incident suggests that there are either extensive networks of diplomatic correspondence or that legal precedents are being circulated through international legal scholarship in ways that have not been studied enough by modern public international law scholars.

A commission was established with the purpose of examining the vessel's condition, as outlined in the Ottoman account. The commission ultimately declared the vessel irreparable and ordered its sale as wreckage. This was in accordance with local maritime commercial law. The captain, who had previously obtained insurance for the vessel in New York and Philadelphia, received a greater sum from the insurance company as a result of this decision. However, it was subsequently discovered by the insurance companies that the decision declaring the ship unsalvageable had been obtained through fraud. It has been alleged that the captain and the judge had colluded in this matter³.

The narrative then progresses to the involvement of Mr Wells (referred to as Wels in the Ottoman text), a former US consular official who was dismissed from service in 1849 for misconduct. He proceeded to purchase the insurance companies' claims and petition the Brazilian government, arguing that the corrupt judge's decision rendered the government liable for the resulting damages, as it had appointed the judge in question⁴.

³ Ibid., 78-82.

⁴ Ibid.

2. The American Historical Account

In his well-researched study *Diplomatic Relations Between the United States and Brazil*, Lawrence F. Hill backs up the main points of the Caroline case and adds more information about the wider picture of US diplomatic pressure on Brazil during the Paraguayan War (1864-1870)⁵. Hill's account places the Caroline case among several dubious claims pressed by US Minister James Watson Webb, including the Nebo, Edna, and Canada cases.

According to Hill, the Caroline claim "had less basis in justice than either of the preceding cases" and had been "purchased from insurance companies which had given up hope of an adjustment"⁶. The purchaser, who has been described as an individual "who had been let out of the consular service of the United States because of irregularities", corresponds to the description given in the Ottoman account of Wells's background. Hill observes that this individual "had previously offered to accept a significantly lower amount for his claim than the amount ultimately secured from the Brazilian government"⁷.

The American account places particular emphasis on Webb's assertive diplomatic strategy, which included the use of threats to sever diplomatic relations during Brazil's vulnerable period while engaged in the Paraguayan War. Hill's account asserts that Webb conducted an interview with a prominent member of the opposition party, thereby securing their support. Furthermore, he states that the imperial government, largely due to the embarrassments arising from the war, made a reluctant decision to concede to the claim⁸.

3. Discrepancies and Comparative Analysis

There are a number of important differences between the two accounts. The biggest difference is when we look at the time the incident happened. The Ottoman source says 1842, but Hill's account suggests the 1850s. The Ottoman text specifically identifies Santa Catarina as the port of refuge, a detail that is missing from Hill's more general reference

⁵ Lawrence F. Hill, *Diplomatic Relations Between the United States and Brazil* (Durham, N.C.: Duke University Press, 1932), pp. 207-210.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

to Brazil. What's more, the Ottoman account gives a lot of detail about the supposed legal corruption and the exact situation of the shipwreck. But Hill's main focus is on the diplomatic actions taken to solve the problem.

A close look at the financial data shows that it is quite consistent, even though it comes from different sources. The Ottoman account says that the amount was about fourteen thousand British pounds. Hill's records show that Webb received three bills for a total of fourteen thousand one hundred and fifty-two pounds. This level of precision suggests that both accounts come from real diplomatic records, even though they refer to different periods of time.

4. The Resolution and Its Aftermath

It is clear from both sources that the US eventually admitted that the compensation had been obtained incorrectly. The Ottoman account says that in 1872, the US government, after looking at the case with its legal advisors, decided that Brazil was not responsible for any legal mistakes unless there was proof that the government had deliberately done something wrong. It was observed by the advisers that in the US judicial system, "foreigners and natives are treated equally" and that "the government cannot guarantee either the intelligence and competence of judges or the correctness of their decisions to foreigners any more than to natives⁹."

Hill's account provides greater detail about the aftermath, revealing Webb's personal appropriation of most of the compensation. In the process of ascertaining the rightful recipient of a £5,000 bill of exchange, it came to light that Webb had received a sum in excess of £14,000. This led to the allocation of Congressional appropriations in 1874 for the return of approximately \$70,000 to Brazil, along with interest, and the initiation of legal proceedings against Webb that seemingly never materialised.

Conclusion

The Caroline case shows how you can find out about history in places you wouldn't expect, even if the people who study that history don't know about it. The amazing level of detail in Hasan Fehmi Pasha's Ottoman Turkish legal text, compared to the lack of information about this case in American diplomatic history, makes us question long-

⁹ Hasan Fehmi, *Telhis-i Hukuk-ı Düvel*, 78-82.

held ideas about where knowledge of the past can be found. It is very interesting that a late legal scholar from the Ottoman Empire had more detailed information about this US-Brazil diplomatic incident than appears in most modern American diplomatic histories.

The case shows how people tried to trick the insurance company, how judges were bribed, and how some people used their power to get what they wanted. It also shows how international legal precedents are shared through academic networks. The documents from the Ottoman Empire show that this case was seen as an important example for questions of state responsibility. This is something that Western legal scholars have forgotten.

The differences between the sources, especially when it comes to timing and details, highlight two things. Firstly, they talk about how tricky it is to recreate what happened in historical diplomatic incidents. Secondly, they emphasise how important it is to consult sources from different linguistic and cultural traditions. The financial details and story structure in both the Ottoman and American accounts are very similar, which provides strong evidence from history that this diplomatic event was important.

This case led to important legal decisions about what countries are responsible for their courts' decisions, how diplomats can't be sued, and how they should behave. These ideas were important in different legal traditions, from Istanbul to Washington. It is interesting that while it was kept in the law books of the Ottoman Empire, it is not often mentioned in American books about international relations. This shows that in the 19th century, knowledge was shared in ways that we now find surprising, and that we can still learn a lot about public international law from this.

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Hasan Fehmi, *Telhis-i Hukuk-ı Düvel*, Tab'-ı sâni (Dersaadet: Mahmud Bey Matbaası, 1326 [1910]), pp. 78-82.

Lawrence F. Hill, *Diplomatic Relations Between the United States and Brazil* (Durham, N.C.: Duke University Press, 1932), pp. 207-210.

From Legislation to Strategy: Understanding China's New Law on Foreign Relations

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Abstract: States require both international and domestic legal frameworks to regulate interactions between national and international institutions, citizens, and foreign actors. The Law on Foreign Relations of the People's Republic of China (中华人民共和国对外关系法), enacted in June 2023 and effective from July 1, marks the first and most comprehensive legal framework in China's legislative history for governing its external engagements across political, economic, legal, and security dimensions. More than a domestic measure, the law reflects China's ambition to institutionalize its expanding global role and harmonize domestic legal mechanisms with international commitments. Introduced during a period of intensified engagement with global governance, it coincides with President Xi Jinping's shift from Deng Xiaoping's Tao Guang Yang Hui ("hide-and-bide") approach toward a more proactive international presence, while maintaining the discourse of peaceful development and win-win cooperation. This study examines the strategic, political, and legal motivations behind the law's adoption, positioning it within China's broader foreign policy trajectory. Using a qualitative, document-based methodology, it draws on official statements, speeches, policy reports, and academic literature. The analysis considers the law not only as a legal instrument but also as a strategic tool to strengthen domestic-international linkages, consolidate foreign policy under centralized leadership, and project a coherent international image aligned with China's long-term vision.

Keywords: International Law, China, China's Law on Foreign Relations, Foreign Policy, International Politics.

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Mevzuattan Stratejiye: Çin'in Dış İlişkilerle İlgili Yeni Yasasını Anlamak

Özet: Devletler, ulusal ve uluslararası kurumlar, vatandaşlar ve yabancı aktörler arasındaki ilişkileri düzenlemek için hem uluslararası hem de ulusal hukuk çerçevelerine ihtiyaç duyar. 2023 yılı Haziran ayında kabul edilip 1 Temmuz'da yürürlüğe giren Çin Halk Cumhuriyeti Dış İlişkiler Yasası (中华人民共和国对外关系法), Çin'in yasama tarihinde dış ilişkilerini siyasi, ekonomik, hukuki ve güvenlik boyutlarında düzenleyen ilk ve en kapsamlı yasal çerçeveyi temsil etmektedir. Bu yasa, salt bir iç hukuk düzenlemesi olmanın ötesinde, Çin'in küresel rolünü kurumsallaştırma ve ulusal hukuk mekanizmalarını uluslararası taahhütleriyle uyumlu hâle getirme arzusunu yansıtmaktadır. Küresel yönetimle artan etkileşim döneminde yürürlüğe giren yasa, Devlet Başkanı Şi Cinping'in Deng Şiaoping'in Tao Guang Yang Hui ("gizlen ve zamanını bekle") yaklaşımından, barışçıl kalkınma ve kazan-kazan söylemini sürdürmekle birlikte, daha etkin ve görünür bir uluslararası varlığa yönelik stratejisine denk düşmektedir. Bu çalışma, yasanın kabul edilmesinin ardındaki stratejik, siyasi ve hukuki motivasyonları inceleyerek onu Çin'in genel dış politika çizgisi içinde konumlandırmaktadır. Nitel, belge temelli bir yöntemle yürütülen araştırma; resmi açıklamalar, lider konuşmaları, politika raporları ve akademik literatürü temel almakta; yasayı yalnızca bir hukuk metni olarak değil, aynı zamanda iç-dış bağlantıları güçlendiren, dış politikayı merkezi liderlik altında pekiştiren ve Çin'in uzun vadeli vizyonu ile uyumlu tutarlı bir uluslararası imaj oluşturan stratejik bir araç olarak değerlendirmektedir.

Anahtar Kelimeler: Uluslararası Hukuk, Çin, Çin Dış İlişkiler Yasası, Dış Politika, Uluslararası Politika.

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Introduction

In June 2023, the People's Republic of China introduced a major legislative initiative in terms of foreign affairs by enacting the Law on Foreign Relations of the People's Republic of China, which officially came into effect on July 1, 2023. This law marks a significant development in China's legal and strategic posture, aimed at regulating its external engagements across political, economic, legal, and security dimensions. More than a domestic legislative action, the law reflects China's ambition to institutionalize its expanding role and influence in global affairs. Its scope is unlikely to be confined solely to China's international interests and role; it is also expected to foster a conducive environment for strengthening both domestic and external engagement.¹ This development is closely linked to China's deepening relations with international actors, institutions, and foreign individuals as an outcome of accelerating globalization and the rapid rise of China's economy and technological capabilities.

This legislation represents the first and most comprehensive legal framework of China's foreign relations in its legislative history. It is designed to harmonize China's domestic legal system with its international legal commitments by providing a unified and coherent legal structure for China in the context of managing both internal and external dimensions of its foreign policy.² Accordingly, the motivations behind the enactment of this law are rooted in China's long-standing strategic vision under the leadership of President Xi Jinping. While discussions on the need for such a law have circulated in Chinese political and academic committees for several years, its formalization coincides with a period of intensified Chinese engagement with global governance and international institutions. The law signals China's intention to play a more assertive and structured role in shaping the international legal order.³ In this context, one of the central questions addressed in this study is: What strategic, political, and legal factors prompted China to adopt this law at this historic juncture?

¹ Tang Zheng, "Foreign Relations Law of the People's Republic of China." *International Legal Materials*, 63, (2024): 627-636.

² Huang Huikang, "Milestone of China's Foreign-Related Legislation-A Review of the Law of the People's Republic of China on Foreign Relations." *Chinese Journal of Transnational Law*, 1 No 2 (2024): 95-116.

³ Wang, Zhiqiong June., Chen, Jianfu, "China's Foreign-Related 'Rule of Law': The Evolution of an Idea." *Hague Journal on the Rule Law*, (2025).

President Xi Jinping's approach represents a departure from the guiding principle of Tao Guang Yang Hui (韬光养晦) or "hide-and-bide" which was a hallmark of Deng Xiaoping's foreign policy strategy and followed by his successors. This principle emphasized maintaining a low international profile while focusing on internal development and avoiding confrontation.⁴ In contrast, Xi's foreign policy signals a shift toward a more proactive and visible global presence, while still adhering to the discourse of peaceful development and win-win cooperation. The Law on Foreign Relations must therefore be understood not only as a legal instrument, but as part of China's broader strategic effort to reshape its international image, consolidate legal mechanisms to support its global ambitions, and promote a more coordinated foreign policy apparatus under centralized state leadership.

This study implements a qualitative, document-based research methodology by integrating legal, policy and discourse analysis. It also examines official government statements, speeches by state leaders, and reports from key policy-making entities such as the Ministry of Foreign Affairs and the Ministry of Justice to analyze the Law on Foreign Relations within China's broader foreign policy strategy. The analysis also includes relevant academic literature and policy documents to identify the legal, political, and strategic motivations underlying the enactment of this new law. This study is structured into four main sections. The first section begins with introduction by outlining the general framework, research question, and the design of the study. The second section explores the key messages and strategic considerations underpinning the Law on Foreign Relations of the People's Republic of China. The third section offers a critical analysis of the main arguments and policy implications embedded within the law. Finally, the fourth section concludes the study by summarizing the key findings and assessing the broader consequences of the law for the future direction of China's foreign policy.

1. The Law on Foreign Relations of the People's Republic of China

The Law on Foreign Relations of the People's Republic of China was a necessary step for China to further adapt to the evolving global order and the framework of

⁴ Wang, Zhiqiong June., Chen, Jianfu. "China's Foreign-Related 'Rule of Law': The Evolution of an Idea." *Hague Journal on the Rule Law*, (2025). Ming, Du. "International Economic Law in the Era of Great Power Rivalry." *Journal Of Transnational Law*, 57, No 3, (2024): 730-739.

international law. The Chinese leadership, under the administration of President Xi Jinping, sought to formulate a new approach to its engagement with the international community. Recognizing the ongoing transformation of the global landscape, President Xi emphasized the importance of multilateralism, the role of international organizations, and the development needs of Global South countries. He also underscored the significance of promoting a more equal, multipolar world order based on shared development and win-win cooperation.⁵ In the context of this strategic foresight, the Chinese government enacted a new law to govern its relations with the external world. The Law on Foreign Relations of the People's Republic of China includes six parts, namely:

- ⇒ Part One: General Principles
- ⇒ Part Two: Functions and Powers for the Conduct of Foreign Relations
- ⇒ Part Three: Goals and Mission of Conducting Foreign Relations
- ⇒ Part Four: The System of Foreign Relations
- ⇒ Part Five: Support for the Conduct of Foreign Relations
- ⇒ Part Six: Supplementary Provision

In the first section, key principles such as safeguarding China's sovereignty, ensuring national security, protecting the interests of the state and the Chinese people, promoting national development, and striving toward the great rejuvenation of the Chinese nation are strongly emphasized.⁶ These objectives are framed within the broader commitment to maintaining global peace and development. By prioritizing these principles, China aims to communicate its core foreign policy stance with the international community by highlighting its political and economic orientation centered on defending national values, securing both domestic and international interests, and promoting peaceful cooperation based on the concept of win-win development.

This section not only emphasizes the principles of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, but also emphasizes China's adherence to

⁵ Xinhua News Agency. "Ministry of Foreign Affairs of People's Republic of China, Foreign Ministry Spokesperson Mao Ning's Regular Press Conference on December 10, 2024." Accessed: August 5, 2025, https://www.fmprc.gov.cn/mfa_eng/xw/fyrbt/202412/t20241210_11541931.html

⁶ Ministry of Justice of the People Republic of China. "The Law on Foreign Relations of the People's Republic of China." Accessed: July 10, 2025, http://en.moj.gov.cn/2023-07/11/c_901729.htm

Marxism-Leninism, the principles and thoughts of Mao Zedong, as well as the thoughts and principles of Deng Xiaoping.⁷ Furthermore, it strongly outlines the Five Principles of Peaceful Coexistence, which includes mutual respect for sovereignty, mutual non-aggression, mutual non-interference in internal affairs, territorial integrity, equality and mutual benefit, as well as supporting peaceful coexistence. These are presented alongside commitments to defending China's sovereignty, national security, dignity, honor, and the interests of the Chinese people.

The second section provides a general overview of the authority and functioning of the Chinese government in the context of foreign relations. It outlines the powers and responsibilities of various government entities as defined by the Constitution, relevant laws, and administrative structures. This section details the roles of national institutions at multiple levels, including provinces, autonomous regions, ministries, military commissions, and the State Council, highlighting how they operate within the broader framework of China's foreign policy.⁸ It also covers the functions of China's external institutions abroad, such as embassies and consulates, in representing and safeguarding national interests.

The third section sets out the goals and mission underlying the implementation of the Law on Foreign Relations of the People's Republic of China. It codifies China's foreign policy objectives by emphasizing the safeguarding of national sovereignty, security, territorial integrity, and the advancement of development goals. Rooted in the Five Principles of Peaceful Coexistence, this section prioritizes multilateralism, international development cooperation—particularly within the framework of the Belt and Road Initiative (BRI) as well as China's Global Security Initiative, Global Civilization Initiative, and commitments to global environmental governance.⁹ These objectives

⁷ Official Website of Communist Party of China (中国共产党新闻网). "The Law on Foreign Relations of the People's Republic of China." (《中华人民共和国对外关系法》), Accessed: June 30, 2025, <http://cpc.people.com.cn/n1/2023/0629/c64094-40023665.html>

⁸ Ministry of Justice of the People Republic of China. "The Law on Foreign Relations of the People's Republic of China." Accessed: July 10, 2025, http://en.moj.gov.cn/2023-07/11/c_901729.htm

⁹ Ministry of Foreign Affairs of the People's Republic of China (中华人民共和国外交部). "The Law on Foreign Relations of the People's Republic of China." (《中华人民共和国对外关系法》). Accessed: July 15, 2025, http://www.mfa.gov.cn/web/wjtb_673085/zfxxgk_674865/zcfg/fl/202306/t20230628_11105189.shtml

collectively reflect China's ambition to shape a more balanced and cooperative international order.

The third section of this law also highlights the importance of strengthening human resource capacity in the field of foreign affairs, including measures related to the training, employment, management, and overall support of personnel engaged in international work. These provisions also reflect a strategic effort to professionalize and institutionalize China's foreign policy and prepares it to meet the demands of a more complex global environment.

The fourth section, in general, outlines the legal and institutional mechanisms for managing China's foreign relations in accordance with the Chinese Constitution and its relevant laws. It affirms that the state concludes or agrees international treaties and agreements and fulfills its obligations under such instruments in faith. The law also stipulates that the People's Republic of China shall protect the legitimate rights and interests of foreign citizens and organizations within its territory in accordance with domestic law. Additionally, it emphasizes China's commitment to strengthening both bilateral and multilateral dialogue on the rule of law by promoting international legal exchanges and cooperation. It also includes the engagement of China in law implementation and judicial affairs with other countries and international organizations in the context of concluded treaties or principles of equality and reciprocity. This section also underscores that all state institutions and societal entities bear responsibility for protection national interests in foreign exchanges. Individuals or organizations, whether within or outside China's borders that harm China's national interests may be held legally accountable.¹⁰ The law further encourages the development of robust legislation and institutional frameworks to support international legal cooperation, treaty implementation, general compliance in foreign affairs, as well as protecting China's external interests.

This section of the Law introduces important provisions aimed at enhancing China's institutional and legal capacity in foreign relations. It also grants the state the authority to impose "countermeasures and restrictive measures" in response to foreign actions

¹⁰ Official Website of Communist Party of China (中国共产党新闻网). "The Law on Foreign Relations of the People's Republic of China." (《中华人民共和国对外关系法》), Accessed: June 30, 2025, <http://cpc.people.com.cn/n1/2023/0629/c64094-40023665.html>

deemed detrimental to China's sovereignty, security, or development interests. Furthermore, it also emphasizes establishing a special financing mechanism to support foreign relations activities and ensuring that financial resources are aligned with China's economic development and global goals.

The fifth section extends the extraterritorial scope of the Law on Foreign Relations by asserting that entities and individuals abroad may fall under its jurisdiction if their actions are deemed harmful to China's national interests. This provision applies broadly across various domains, including diplomatic, commercial, cultural, military, and non-governmental interactions. It reflects China's growing importance on protecting its interests beyond its borders and signals a more assertive legal posture in international affairs. Moreover, the law requires that foreign nationals and organizations operating within China comply with Chinese laws. Failure to do so may result in restrictions on their travel, residency, or operational activities within Chinese territory.¹¹

Chapter Six of the Law on Foreign Relations of the People's Republic of China was only consisting of the Supplementary Provision, which specifies the date on which the law comes into effect. According to this provision, the Law on Foreign Relations of the People's Republic of China officially entered into force on July 1, 2023.

2. China's Political Strategies Through the Lens of Law

The right to defend national sovereignty has become a significant subject of discussion for nearly all nations and states, and it remains one of the most prominent issues within the legal and constitutional frameworks of independent states worldwide. In this context, the Law on Foreign Relations of the People's Republic of China reaffirms China's firm commitment to safeguarding state sovereignty and protecting the rights and interests of the Chinese people. On the other hand, it is argued that the law also serves as a strategic tool to counterbalance and challenge Western-led unilateral sanctions and restrictive measures, positioning China to assert greater influence in shaping the global legal and political order.¹² However, the purpose of this law may also aim to bring China

¹¹ Ministry of Justice of the People Republic of China. "The Law on Foreign Relations of the People's Republic of China." Accessed: July 10, 2025, http://en.moj.gov.cn/2023-07/11/c_901729.htm

¹² Samovich Yu, V., "The Law on International Relations of the People's Republic of China: what worries the West?" *Juridical Journal of Samara University*, 10, No 2, (2024): 79-83.

closer to the Western world by fostering its multilateral cooperation, as well as promoting more constructive multilateral relations.

Since the 1990s, the ongoing advancement of globalization has significantly transformed the nature of foreign relations, expanding the range of actors involved, the scale of interactions, and the content and form of engagement. As a result, the interaction between domestic legal systems and the international order has become increasingly frequent and complex. In this context, strengthening foreign relations legislation and enhancing the rule of law in external affairs has emerged as a global trend. This shift seeks to align foreign relations practices with the broader domestic legal environment, although the legal logic applied to international affairs often differs from that governing internal matters. In recent years, globalization has encountered serious challenges, while strategic competition among major powers has intensified, giving rise to a more adversarial approach to foreign relations law. Despite these developments, prior to China's enactment of its Foreign Relations Law, few states had adopted comprehensive foundational legislation specifically governing their foreign relations.¹³ As a result of these development in international arena, to maintain and expand its multilateral engagement with international actors, China has increasingly recognized the need to pursue a more proactive and strategically coordinated foreign policy.

China is actively working to improve its law of foreign relations to create a legal framework that protects both national and international interests while enhancing its competitiveness in the global economy.¹⁴ As part of this effort, China seeks to strengthen its relations with international actors, organizations, and institutions to sustain economic growth and advance cooperative initiatives such as the BRI. Like many other nations, growing interdependence has prompted China to reassess its foreign policy and related legal structures. Consequently, to foster more effective international dialogue and cooperation, it was essential for China to make its legal and political intentions more

¹³ Cai Congyan (蔡从燕), "Foreign Relations Law: Six Comments." (对外关系法: 六点评论), *International Law Studies (国际法研究)*, 2 (2024):41-51

¹⁴ Jia Shaoxue, "Regulation of relations complicated by a foreign element in the People's Republic of China: legislative basis and practice." *Lomonosov Law Journal*, No 4, (2024): 149-173, <https://doi.org/10.55959/msu0130-0113-11-65-4-9>.

transparent and comprehensible to the global community.¹⁵ Consequently, this was expected to facilitate deeper political, economic, and cultural engagement between China and the rest of the world.

The Chinese government views the Foreign Relations Law as a timely response to the evolving global context. As it is declared by the Ministry of Justice of People's Republic of China, the world is currently undergoing in a century that profound changes unseen, and it is marked by unprecedented instability and uncertainty. Within this complex and volatile international environment, China faces mounting external pressures and challenges. While many states possess well-developed legal systems governing foreign relations, enabling them to pursue strategic objectives through legal instruments that China had long lacked a foundational legal framework in this domain. The Foreign Relations Law aims to rectify this gap, equipping China with the legal tools necessary to respond more effectively to external challenges and mitigate associated risks. By formalizing core legal systems related to foreign affairs, this legislation enhances China's capacity to engage in legal struggles with strategic focuses. It is expected to play a crucial role in safeguarding national sovereignty, security, and development interests, while also reinforcing national dignity and honor of China on the global stage.¹⁶

In line with this political approach, the Ministry of Foreign Affairs of People's Republic of China spokesperson stated that under the leadership of President Xi Jinping, the Chinese government has actively sought to influence the development of the global economy. It advocates for the construction of an open world economy grounded in cooperation, economic interdependence, and the pursuit of mutual benefit and win-win outcomes. Within the framework of genuine multilateralism, China emphasizes the importance of equal rights, opportunities, and rules for all nations, aiming to foster a more inclusive and balanced global economic order.¹⁷ To this end, China aims to

¹⁵ Jorgensen, Malcolm. "Political Framing in China's Foreign Relations Law: International Law and 'Fundamental Norms Governing International Relations.'" *Chinese Journal of Transnational Law*, no1, (2024):117-136. <https://doi.org/10.1177/2753412X241261033>.

¹⁶Ministry of Justice of People's Republic of China (中华人民共和国司法部). "The Significance and Role of Foreign Relations Law." (对外关系法的重大意义和作用), Accessed: June 8, 2025, https://www.moj.gov.cn/pub/sfbgw/zwgkztzl/xxcgcxjpfzsz/fzsxllqv/202307/t20230703_481901.html

¹⁷ Xinhua News Agency. "Ministry of Foreign Affairs of People's Republic of China, Foreign Ministry Spokesperson Mao Ning's Regular Press Conference on December 10, 2024." Accessed: August 5, 2025, https://www.fmprc.gov.cn/mfa_eng/xw/fyrbt/202412/t20241210_11541931.html

establish more expanded political, economic and cultural relations with more international orders, with the aim of pursuing a relatively more proactive posture compared to the past decades.

The enactment of the Foreign Relations Law represented a significant legislative development not only for China but also within the broader context of global legal practice. At its core, this legislation is a necessary step for China as it continues to pursue deeper relations with international actors, to improve the institutional and legal frameworks to manage its foreign relations, and to safeguard its national sovereignty, security, and development interests. It also reflects China's effort to modernize its national governance system and capacity while promoting greater coordination between domestic legal development and its engagement with the international legal order. Moreover, in light of the shifting dynamics of great power competition, the Foreign Relations Law of China functions as a vital legal instrument, establishing a new front in the legal dimensions of international strategic rivalry.¹⁸ As Jorgensen conveyed, according to President Xi Jinping, the guiding principles of China's approach to international law are rooted in the Five Principles of Peaceful Coexistence, that were a component of the a legal struggle which is regarded not as an end in itself, but as a necessary means to safeguard core national interests and to contribute to the establishment of a more equitable and rational international order and Principles adopted at the Bandung Conference in 1955.¹⁹ in this context, in the modern era, China revisits and compares its new and old law to enact the better legislation for its increasing influence in international affairs.

Some researchers argue that the efforts by the United States and certain Western countries in recent years have provided a critical backdrop for the enactment of China's new Law on Foreign Relations. In this context, safeguarding national sovereignty, security, and development interests stands as a central objective of the legislation. As

¹⁸ Cai Congyan (蔡从燕), "Foreign Relations Law: Six Comments." (对外关系法: 六点评论), *International Law Studies (国际法研究)*, 2 (2024):41-51.

¹⁹ Jorgensen, Malcolm. "Political Framing in China's Foreign Relations Law: International Law and 'Fundamental Norms Governing International Relations.'" *Chinese Journal of Transnational Law*, no1, (2024):117-136; Huang Huikang, "Milestone of China's Foreign-Related Legislation-A Review of the Law of the People's Republic of China on Foreign Relations." *Chinese Journal of Transnational Law*, 1 No 2 (2024): 95-116.

China's development trajectory enters a phase marked by both strategic opportunities and heightened risks, alongside growing uncertainty in the international environment, the concept of "struggle" has assumed greater importance in foreign-related legal practices and the formulation of this law. Nevertheless, cooperation remains the underlying goal of China's foreign relations legal framework. Legal struggle is regarded not as an end in itself, but as a necessary means to safeguard core national interests and to contribute to the establishment of a more equitable and rational international order.²⁰ The recent attempts to improve the laws governing China's foreign relations and its new cooperation initiatives reflect the Chinese government's principle of striving for continuous improvement.

On the other hand, China's decision to promulgate the Foreign Relations Law is not solely driven by the need to establish a legal framework to support its expanding global presence; it is also closely tied to the broader strategic vision reflected in its recent international initiatives, namely, the Global Security Initiative (全球安全倡议), the Global Development Initiative (全球发展倡议), and the Global Civilization Initiative (全球文明倡议). These initiatives collectively aim to reshape global governance in line with China's values and interests. Additionally, the evolving dynamics of China–United States relations, coupled with the increasing uncertainty surrounding the effectiveness and stability of international treaties and legal norms, have further influenced China's decision to codify its foreign relations through domestic legislation.²¹ Accordingly, such an adaptation to the realities of world politics represents a significant transformation of the international image of China as an emerging power, with implications for its political, economic, technological and military posture.

It is also argued that China's recent legal and strategic initiatives, including the Foreign Relations Law, are closely linked to the broader ideological framework of socialism with Chinese characteristics and the pursuit of common prosperity and

²⁰ Cai Congyan (蔡从燕), "Foreign Relations Law: Six Comments." (对外关系法: 六点评论), *International Law Studies (国际法研究)*, 2 (2024):41-51.

²¹ Moritz Rudolf, "China's Foreign Relations Law: Balancing Struggle with Beijing's Responsible Great Power Narrative." Accessed: August 1, 2025. <https://npcobserver.com/2023/07/03/china-foreign-relations-law-struggle-responsible-great-power-narrative/>

following a more proactive foreign policy.²² These developments reflect China's long-term objectives to reduce its reliance on foreign technology, enhance its dominance in high-tech manufacturing, and promote indigenous innovation in areas such as advanced robotics and digital infrastructure. As part of this strategy, China aims to achieve 70 percent self-sufficiency in high-tech industries by 2025 and seeks to attain a leading position in global markets by 2049, which is the centenary of the founding of the People's Republic of China. In parallel, China has adopted a more assertive foreign policy posture in recent years. This shift underscores the necessity of reassessing and recalibrating its legal frameworks in engagement with international actors, organizations, and communities to align with its evolving global ambitions.²³

The motto "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era" (习近平新时代中国特色社会主义思想) has become synonymous with the model of socialism advanced under Xi Jinping's leadership.²⁴ This ideological framework is closely linked to the Four Comprehensive Strategies (四个全面战略布局), which were formally introduced during the 19th National Congress of the Communist Party of China in 2017. These strategies include building a moderately prosperous society, deepening reform, governing the nation according to the rule of law, and strictly governing the Party.²⁵ Another central objective of Socialism with Chinese Characteristics is to adapt core socialist principles to China's unique historical, cultural, and economic conditions. Under Xi's leadership, this vision also encompasses the modernization of China's governance system and its transformation into a more globally influential power. Its ultimate aims include eradicating poverty, improving living standards, and positioning

²² Fan Xin, and Song, Xiaoyu. "The Development Logic of Capital under Socialism with Chinese Characteristics." *Marxism & Reality*, 01, (2023): 93-101.

²³ Ming Du, "International Economic Law in the Era of Great Power Rivalry." *Journal Of Transnational Law*, 57, No 3, (2024): 730-739.

²⁴ Han, Zhenfeng (韩振峰). "Comprehensively study and understand Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era (全面学习领会习近平新时代中国特色社会主义思想). People's Official Website, (人 民 网) Accessed: April 12, 2023, <http://theory.people.com.cn/n1/2023/0412/c4053132662345.html?eqid=cf6f468800036f5800000005648f3224>

²⁵ John Garrick, and Chang Bennett Yan. "Xi Jinping Thought." *China Perspectives*, 01, (2018): 99-105.

China as a leading force in global political and economic affairs.²⁶ Many of these goals, such as poverty eradication, progress in political and economic development, and improved living standards, have been largely achieved. However, these achievements are based on Deng Xiaoping's reform and opening-up policies. It is also important to note that progress in these areas has accelerated significantly under Xi's administration.

A comparison between China's current legal system and that of three decades ago reveals significant progress, marking a transition from a system predominantly characterized by the "rule of man" to one increasingly guided by the "rule of law."²⁷ Since the introduction of the reform and opening-up policies, China has developed a socialist legal system with Chinese characteristics, which has undergone continuous refinement. This system, while rooted in socialist ideology, is often seen as incorporating certain elements of Western legal traditions, resulting in a hybrid model that blends domestic and international legal principles. Through this legal transformation, China aims to demonstrate to the international community that it values the rule of law. At the same time, the Chinese leadership emphasizes that legal norms must be adapted to the country's unique national conditions and cultural values.²⁸ Therefore, the new Foreign Relations Law was designed with this dual objective in mind of aligning with China's national conditions and cultural traditions, while also addressing the demands of contemporary foreign relations.

According to the conveyance of Hu, President Xi Jinping, China's path to modernization reflects both the specific national conditions of socialism with Chinese characteristics and the common features shared by the modernization processes of other countries.²⁹ In this context, modernization with Chinese characteristics entails the modernization of a large population and the achievement of common prosperity. It also emphasizes harmonious coexistence between humanity and nature, as well as a

²⁶ Yildirimcakar, Emrah and İnan, Erkan. "Socialism with Chinese Characteristics and its Impact on the Rise of China." *Erciyes Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi*, 70, (2025): 47-54.

²⁷ Cohen, Jerome Alan. "Chinese Law: At the Crossroads." *The China Quarterly*, no. 53 (1973): 139-43; Zhang Mo, "The Socialist Legal System with Chinese Characteristics: China's Discourse for the Rule of Law and a Bitter Experience." (December 1, 2010). *Temple International & Comparative Law Journal*, 24, (2010): 1-60.

²⁸ Zhang, Mo, "The Socialist Legal System with Chinese Characteristics: China's Discourse for the Rule of Law and a Bitter Experience." (December 1, 2010). *Temple International & Comparative Law Journal*, 24, (2010): 1-60.

²⁹ Hu Angang, *Modernization with Chinese Characteristics and Great Power: Understanding Xi Jinping's Governance*. Singapore, 2023, Springer.

commitment to peaceful development.³⁰ This model seeks to offer an alternative to Western modernization paradigms by aligning economic growth with social equity, environmental sustainability, and national stability.

In line with the developments in Chinese Foreign affairs and its law of foreign relations, the characterization of modern China is claimed to have connection with eight key factors. First, China has experienced significant growth in its GDP and per capita income. Second, the social and economic conditions of the Chinese population have undergone remarkable improvements. Third, the living standards of approximately 800 million people have changed substantially, with the majority no longer residing in rural areas. Fourth, the illiteracy rate has dramatically declined from 22.81% in 1982 to 2.67% in 2020, while the number of college students and above has surged from 6.2 million to 218 million. Fifth, China's social security system has become the largest globally. Sixth, China's comprehensive development trajectory is expected to elevate it to the status of a modern, moderately developed country by 2035. Seventh, having never experienced colonialism, China is perceived as possessing a unique potential to contribute to global peace and development. Eighth, China has transitioned from a low-income country to the world's largest developing country and emerging economy.³¹ These eight factors summarize modern China's approach to contemporary principles of foreign affairs. Moreover, they offer a concise ideological perspective on the Chinese government's domestic and foreign policies.

3. Legal Basis and Discussions

The inferences reached and the interpretations made in this study are based directly on the provisions of the Foreign Relations Law of the People's Republic of China, as well as its political rhetoric. Firstly, the emphasis placed on sovereignty, security, and development objectives in the general principles section aligns with the inference that China's security-oriented approach to foreign policy is strengthening and its pursuit of

³⁰ Moritz Rudolf, "China's Foreign Relations Law: Balancing Struggle with Beijing's Responsible Great Power Narrative." Accessed: August 1, 2025. <https://npcobserver.com/2023/07/03/china-foreign-relations-law-struggle-responsible-great-power-narrative/>

³¹ Hu Angang, *Modernization with Chinese Characteristics and Great Power: Understanding Xi Jinping's Governance.* Singapore, 2023, Springer.

international harmony through the "win-win" rhetoric continues.³² The prominent role assigned to central state bodies in the conduct of foreign relations in the Powers and Duties section directly supports the finding that foreign policy is increasingly taking on a centralized structure. The explicit codification of multilateralism through the BRI and other global initiatives in the Objectives and Duties section provides the legal basis for the findings related to development and global governance.³³ Both the commitment to international agreements and the authority to take countermeasures, when necessary, regulated under the section titled Foreign Relations System, support the conclusion that China is both seeking compliance with international law and developing a more assertive legal challenge against Western sanctions. Furthermore, the financing and human resources arrangements envisioned in the Support Mechanisms section are linked to the interpretation that foreign policy is becoming more professional not only legally but also institutionally, politically, and economically.

The enactment of the Foreign Relations Law reflects the Chinese Communist Party's intention to institutionalize a more formalized framework for the conduct of foreign policy. The law seeks to align China's international engagement with its core security and development interests, while also enhancing the legal basis for countering external pressures. Formally, it is presented as a measure to strengthen China's capacity to resist foreign interference and unilateral sanctions, which Chinese authorities often characterize as part of a broader containment strategy pursued by the United States and its allies.³⁴ According to some analysts, the newly enacted law, which China frames as necessary to confront global uncertainty and external pressures is paradoxical when measured against its stated aspiration to promote a "harmonious international order."³⁵

³² Andrea Ghiselli, "Diplomatic Opportunities and Rising Threats: The Expanding Role of Non-Traditional Security in Chinese Foreign and Security Policy." *Journal of Contemporary China*, 27, (2018): 611 - 625. <https://doi.org/10.1080/10670564.2018.1433584>.

³³ Gesti Anggraini, Adi Rio Arianto, Pradono Budi Saputro, "China's Global Strategy for The 21st Century of Silk Road: China and The Asia Security Architecture in Xi Jinping Government." *Bhuvana: Journal of Global Studies*. 1(1), (2023): 82–131. <https://doi.org/10.59408/bjgs.v1i1.59>.

³⁴ S. Glaser Bonnie, Moritz Rudolf, Interpreting "China's New Foreign Relations Law." The German Marshall Fund of the United States, July 15, 2023. <https://www.gmfus.org/news/interpreting-chinas-new-foreign-relations-law>,

³⁵ Robert Rust, "What China's Foreign Relations Law Tells Us About Its View of the International Community." September 11, 2023. <https://blog.ucs.org/robert-rust/what-chinas-foreign-relations-law-tells-us-about-its-view-of-the-international-community/>

In line with such critiques, it has also been argued that China's foreign-related "rule of law" create mixed implications for the promotion of United States-style rule of law and democratization. While the law may represent an alternative model of legal governance rooted in Chinese priorities, it may also reveal significant capacity limitations and contradictions in practice.³⁶

In sum, while the law aims to strengthen China's global influence, consolidate its sovereignty, and reshape international legal norms, it has also sparked renewed debate about China's ability to pursue a balanced strategy between protecting national interests and promoting global cooperation. While the Foreign Relations Law of the People's Republic of China is officially presented as a framework for peaceful development and multilateral cooperation, some of its provisions may have controversial implications under international law. Regulations regarding countermeasures and extraterritorial jurisdiction could potentially create tensions with the principles of sovereign equality and non-interference in internal affairs. On a practical level, this law could also provide China with the legal basis to defy Western sanctions, more assertively advocate in maritime law disputes, and promote its normative agenda in international organizations.

Conclusion

The new Law on Foreign Relations of the People's Republic of China was enacted to redefine the relationship between the Chinese people, institutions and foreigners, foreign institutions. It is deeply influenced by the doctrine of Socialism with Chinese Characteristics as well as Xi Jinping Thought on Diplomacy. While its primary aim is to safeguard China's national and international interests, the law also seeks to pursue a more proactive and self-confident foreign policy with the aim of advancing the principles of harmony, peaceful coexistence, and win-win cooperation. By emphasizing core principles such as non-interference, the protection of national security, the safeguarding of development interests, and the promotion of multilateral cooperation, the legislation not only consolidates domestic policy coherence but also signals to the international community a more codified and predictable diplomatic posture. This law

³⁶ Matthew S. Erie, "Foreign Policy Implications for China's Foreign-Related 'Rule of Law'." *Orbis*, 67, no.4, (2023): 565-578. <https://doi.org/10.1016/j.orbis.2023.08.006>.

reflects China's determination to align its legal framework with its long-term strategic objectives, indicating that future foreign relations will be shaped by an increasingly symbiotic relationship between law and policy.

There are also some limitations for this study. One of the key limitations of this study, for instance, is the lack of empirical data on the long-term consequences of China's Foreign Relations Law due to its relatively recent nature. Since the analysis relies heavily on official documents, speeches of leaders, and policy reports, it is unlikely that the distinctions between strategic rhetoric and actual implementation can be adequately tested. Additionally, Moreover, the limited academic literature in the field of law leaves assessments largely at the normative and discursive level. These limitations suggest that the findings should be considered predictive rather than definitive, offering inferences about the potential relationship between law and the trajectory of Chinese foreign policy.

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Mimarinin İzinde: Hukuk ve Toplum İlişkisine Tipomorfolojik Bir Bakış

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Özet: Tarih boyunca insanların düzen ihtiyacı ve adalet arayışı neticesinde oluşan kimi kurallar toplumsal tercihlerle şekillenerek farklı hukuk pratikleri ortaya çıkarmıştır. Mimari tasarımlarla oluşan mekânlar ise bu tercih ve pratiklerle toplumsal yapıyı somutlaştırmıştır. Hukuk ve mimari, her ikisi de sosyolojik ihtiyaçlardan türeyip insan davranışı üzerinde etkili olarak hem bireysel hayata tesir etmiş hem topluma mesajlar iletmıştır. Etkileşim çift yönlü şekilde bireysel ve toplumsal algıları değiştirirken hukuk ve mimari yapı da bu algılarla dönüşmüştür. Tipomorfoloji ise mimari bir terim olarak mimarlık ve diğer disiplinler arasında etkileşim kurmak suretiyle toplumsal yapıya uygun, etkili bir mimari tasarım ortaya çıkarma yöntemidir. Tarihsel ve kültürel kopuşa tepki olarak gelişen tipomorfoloji yaklaşımı vesilesi ile mimarinin toplum yapısı ile uyumlu şekilde icra edilmesi amaçlanmaktadır. Bu çalışmada hukuk ve mimarlık disiplinlerinin benzer niteliklerinden hareketle tipomorfolojik yöntem kullanılarak hukuk ve toplum ilişkisinin mimari izleri sürülmüştür. Soyut bir mefhum olan hukuk kavramının toplumdaki algılanış biçimi mimari eserler üzerinden somutlaştırılmaya çalışılmıştır. Eski camilerin değişen yapılarından günümüz adliye mimarilerine kadar geniş bir perspektifte ve multidisipliner yaklaşımla mimarinin hukuk ve toplum ilişkisindeki ehemmiyeti vurgulanmıştır. Hukukun görünür kılınmasında mimarinin etkili bir araç olduğu ve günümüzde adli yapıların tipomorfolojik yaklaşımla tasarlanmasının toplumun hukuk algısındaki önemli rolü ortaya koyulmuştur.

Anahtar Kelimeler: Hukuk-Toplum İlişkisi, Mimarlık, Tipomorfoloji, Hukuk Algısı, Adli Mimari.

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Tracing Architecture: A Typomorphological Perspective on the Law-Society Relationship

Abstract: Throughout history, certain rules emerging from humanity's need for order and pursuit of justice have been shaped by social preferences, giving rise to diverse legal practices. Spaces created through architectural designs, in turn, have materialized these preferences and practices, reflecting the social structure. Both law and architecture, deriving from sociological needs and influencing human behavior, have affected individual lives while simultaneously conveying messages to society. This interaction, operating bidirectionally, has transformed both individual and collective perceptions, and in response, legal and architectural structures have themselves evolved. Typomorphology, as an architectural concept, is a method that facilitates interaction between architecture and other disciplines to produce designs that are socially appropriate and effective. Developed as a response to historical and cultural ruptures, the typomorphological approach aims to execute architecture in harmony with the social fabric. In this study, drawing on the shared characteristics of the legal and architectural disciplines, a typomorphological method is employed to trace the architectural imprints of the relationship between law and society. The societal perception of the abstract concept of law is concretized through architectural works. From the changing structures of historical mosques to contemporary courthouses, this study emphasizes the significance of architecture in the law-society relationship from a broad and multidisciplinary perspective. It demonstrates that architecture is a powerful tool in making law visible and highlights the crucial role of designing judicial buildings through a typomorphological approach in shaping society's perception of law today.

Keywords: Law-Society Relationship, Architecture, Typomorphology, Perception of Law, Judicial Architecture

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Extended Summary

This study explores the intricate relationship between law, society, and space, tracing its historical roots and contemporary manifestations through an interdisciplinary lens. It posits that spaces, shaped by societal needs and preferences, serve as tangible expressions of law, influencing both individual and collective perceptions. Law, as a communicative mechanism that establishes social order, shares functional parallels with spaces, as both regulate behavior, convey messages, and shape societal norms. The study draws on historical and modern examples to illustrate how spaces reflect and influence legal and societal structures, emphasizing their role as mediators between abstract legal principles and lived experiences.

Historically, spaces have been pivotal in reflecting societal and legal frameworks. Archaeological discoveries like Göbeklitepe, a prehistoric monumental structure, challenge conventional narratives about early human societies, suggesting that belief systems, potentially tied to legal concepts like sanctions, preceded settled communities. This raises questions about the centrality of law in ancient societies, as evidenced by symbols like the relief of a punitive deity. Similarly, historical accounts, such as the Ottoman Empire's architectural shifts during the Tanzimat period from stone to Baroque and Rococo styles, reflect changing societal and legal paradigms influenced by Westernization. The 1855 Bursa fire, described by Fuad Pasha as the loss of "the preface of Ottoman history," underscores the symbolic weight of spaces as embodiments of cultural and legal identity. This event also highlights the disconnect between reformist policies and their practical impact, as the state's failure to respond effectively to the crisis revealed limitations in legal and administrative systems.

In contemporary contexts, judicial architecture, particularly courthouses, serves as a primary spatial manifestation of law. The design of these spaces—encompassing location, materials, and aesthetics—shapes public perceptions of justice and authority. For instance, the U.S. Supreme Court's axial architecture, with its Greek temple-like columns, projects control, prestige, and ideological power, reinforcing the state's authority. In contrast, the Australian High Court's accessible design, which encourages public activities like concerts and exhibitions, fosters civic engagement and positions the court as a public space. These examples illustrate how spatial design can either reinforce hierarchical control or promote inclusivity, reflecting differing societal values and legal philosophies.

The study argues that spaces and law function as communication forms, conveying messages that vary based on cultural and societal contexts. Drawing on scholars like Umberto Eco, who views architecture as a communicative act, and Mark Van Hoecke, who conceptualizes law similarly, the analysis highlights how spaces make abstract legal

principles tangible. Physical structures, from courthouses to public buildings, embody societal values like justice and equality, influencing how law is perceived and experienced. For example, the presence of symbolic elements, such as portraits of leaders in Iranian courtrooms or paintings commissioned by Sultan Mahmud II in Ottoman public buildings, reflects the interplay of power, ideology, and law within specific socio-political contexts.

The aesthetic and symbolic dimensions of spaces also contribute to the legitimacy of legal systems. Courthouses, described as “monuments of legal tradition,” reinforce the mythology of justice and position courts as guardians of societal ideals. However, poorly designed judicial spaces, such as those repurposed from non-legal buildings, can undermine public trust and accessibility. The study emphasizes the need for intentional design in judicial architecture, incorporating principles like accessibility, transparency, and equality to enhance public engagement with the law. As societies evolve, legal spaces must adapt to technological and cognitive advancements, ensuring they meet contemporary needs and foster positive legal experiences.

By integrating insights from archaeology, sociology, philosophy, and architecture, the study underscores the transformative potential of spaces in shaping the law-society relationship. It advocates for a dynamic approach to judicial architecture, where spaces are designed to reflect societal values and facilitate effective legal interactions. Historical and contemporary examples demonstrate that spaces are not passive backdrops but active agents in constructing legal and social realities. Ultimately, the study concludes that the strategic use of spaces can enhance the visibility and legitimacy of law, fostering a stronger connection between society and its legal frameworks, while interdisciplinary research continues to uncover new dimensions of this relationship.

Giriş

Hukuk ve toplum ilişkisi tarihin her aşamasında ilgi çekici bir felsefi uğraş olarak araştırma nesnesi yapılmıştır. Dönemsel ve mekânsal farklılıklar konuya dair yaklaşımları da farklılaştırmıştır. Günümüzde ise anılan ilişkinin incelenme metotları, konuların marjinal bir yapıya bürünerek çoğu zaman hayattan kopuk bir nitelik arz etmesine neden olmaktadır. Ülkemizde hukuk ve toplum ilişkisi denildiğinde belirli kişiler, belirli teoriler ve belirli disiplinlerin dışına çıkmanın pek makul görülmemesi de mevcut durumu pekiştirmektedir. Felsefe meşgalesinin özüne tamamen zıt gibi görünen bu yapı, hukuk ve toplum ilişkisinin gerçeklikten kopuk algılanmasına da sebep olabilmektedir. Modern bilimin gereği olarak parçalanıp ayrıştırılan disiplinler, hukuk

felsefesinin esnek yapısına rağmen birbiriyle bağlantılı yapıların analizinde işlevsiz kalabilmektedir. Fakat insandan ve insani etkileşimlerden oluşan toplum ile bu etkileşimlerin ortaya çıkardığı hukuk mefhumu birbiriyle bağlantılı birçok disiplinin ilgi alanına girmektedir. Bu niteliği itibarıyla hukuk ve toplum ilişkisine dair çalışmalar farklı sahalarda etkileşimi zorunlu kılmaktadır. İlgili bağlamda makale kapsamında incelenen ve modern mimarının parça ile bütün arasındaki bağı koparan yapısına tepki neticesinde gelişen tipomorfolojik yaklaşım ise bahsedilen sorunların çözüm arayışına mimarlık disiplini içerisinde cevap üretmektedir.

Bu makalede mimariden ve mimari tasarım disiplinin imkanlarından faydalanılarak multidisipliner bir yaklaşımla hukuk ve toplum ilişkisinin mahiyetine dair cevaplar aranmaya çalışılmıştır. Yabancı literatürde mekândan hareketle toplum ve hukuk ilişkisine dair oldukça geniş perspektifte çalışmalar bulunmaktadır. Konuya dair mimarlık, sanat tarihi, felsefe, sosyoloji gibi çeşitli alanlara yoğunlaşan birçok esere rastlanabilir. Bunların bazıları mimarlık ve hukuk ilişkisi bağlamında, bazıları küreselleşme olgusuna mündemiç, bazıları ise adliye binaları üzerinden araştırma konusu edilmiştir. Bazı çalışmalarda tarihsel süreç irdelenirken bazılarında günümüzde kullanılan farklı mekanlar mukayese edilmiştir. İngilizce literatürün aksine konuya dair Türkçe çok fazla çalışma bulunmamaktadır. Özellikle ülkemizdeki hukuk eğitimi pratiklerinin disiplinlerarası çalışmaya pek fazla imkân tanımayan yapısı bu tür soruların cevaplanmasında Türk literatüründe bir boşluk bırakmaktadır. Türkiyede hukukun salt normatif bir alana itilmemesi için farklı disiplinlere dair konuların hukuku da kapsayacak şekilde ele alınması hukuk pratikleri için önemli imkanlar barındırmaktadır.

Çalışma kapsamında Nureddin Topçu'nun toplumu anlamak için kullandığı “kültür felsefe ile başlar ancak ilham kaynaklarımızın çoğu tarihtedir”¹ sözünden hareketle tarihe de müracaat edilerek mimarının hukuk ve toplum ilişkisini anlamadaki değeri incelenmiştir. Üç ana bölümden oluşan çalışmanın ilk kısmında toplum ve hukuk ilişkisinin soyut yapısı irdelenmiştir. Soyut bir yapının nasıl görünür kılındığına dair farklı yaklaşımlardan hareketle mimarının konuya ilişkin mahiyeti sorgulanmıştır. İkinci kısımda mimari tasarım literatüründe bir analiz metodu olarak kullanılan tipomorfoloji yaklaşımına odaklanılmıştır. Kavram açıklanarak inşa ettiği metodun hukuk ve toplum ilişkisini anlamada nasıl bir katkı sağlayabileceği örnekler üzerinden incelenmiştir.

¹ Nureddin Topçu, *Ahlak Nizamı*, (İstanbul: Dergâh Yayınları, 2020), 130.

Üçüncü ve son bölümde elde edilen verilerden yola çıkılarak mimarlık- hukuk ve mekân- hukuk ilişkisi üzerinde durulmuş, incelenen yaklaşımın hukuk ve toplum ilişkisine katkısı irdelenmiştir. Veriler neticesinde mimarının toplumların hukuk algısındaki etkisi aktarıldıktan sonra toplum-hukuk ilişkisinin nitelikli seyrinde tipomorfolojik yaklaşımın önemi günümüz adli yapıları üzerinden vurgulanarak çalışma noktalanmıştır.

1. Toplum ve Hukuk İlişkisi

İnsanlar bir araya gelerek sosyal bir yapı oluştururlar. Toplum adı verilen bu yapının belli bir düzen içinde devamlılığını sürdürmesi hukukun o toplum içinde hem bir zorunluluk hem de bir ihtiyaç olarak gelişip oluşmasını sağlar. Bu toplumlar yapı ve alışkanlıklarına göre kendi hukuk pratiklerini oluştururlar. Oluşan hukuku, iki kişi arasındaki satım akdinde görebileceğimiz gibi iki devlet arasındaki herhangi bir sözleşmede de müşahade etmemiz mümkündür. Dolayısıyla hayatın her safhasında hukuk bir şekilde toplumlarda etkili olarak bireylerin algılarında farklı şekillerde yer edinmiştir. Bu nedenle hukuk, günümüze değin bireysel ve toplumsal çeşitli konulardaki farklı uygulamalarla geniş bir yelpazede varlığını sürdürmüştür.

İki insan arasındaki basit gündelik bir ilişkide dahi hukuk kavramından söz etmek, hukuk mefhumunun insanlık tarihi ile paralel seyrirde oluşup değiştiğini göstermektedir. Toplum değiştikçe farklılaşan hukuk, yeni formlarıyla bir nevi değişimin de tetikleyicisi olmuştur. Dolayısıyla toplum ve hukuk ilişkisi, karşılıklı ve dinamik bir şekilde tarihten günümüze varlığını sürdürmektedir. Bu soyut ilişki sosyal pratiklerin çeşitli veçheleriyle gün yüzüne çıkmaktadır. Örneğin kültürünü, geleneklerini ve gündelik alışkanlıklarını takip etmek bir toplumun hukukla etkileşiminin niteliğine dair fazlasıyla veri sunabilir. Toplumun hukuk algısını anlamak ise kimi zaman bir kanun maddesinin gerekçesini okumak kadar faydalı olabilir. Zira soyut bir kavramın toplumu devamlı etkileyici bir yapıya sahip olması, etkilenenlerin neler olduğu ve nasıl bir görünüm kazandığı sorularını gündeme getirmektedir. Bugün bir adliye binasına girdiğimizde yahut elimize kanun kitapçığı aldığımızda hukuk bizler için görünür form kazanabilir. Soyut hukuk kurallarının insanda nelere mal olabileceğini dolayısıyla normların nasıl bir etkisi olduğunu ağır ceza mahkemesinde izlediğimiz duruşmayla müşahade edebiliriz. Araba almak istediğimizde noterde imzaladığımız kağıtlar kolayca hukukla etkileşim içerisinde olduğumuzu gösterebilir. Fakat bir hukukçu olmadan da adliye binasına girip duruşma izleyebileceğini, kanunlara nereden erişebileceğini bilmek ya da noterde aslından farklı

bir ücret üzerinden satış vermek toplumun hukuku nasıl algıladığına dair bir mesele olarak karışımıza çıkmaktadır. Dahası tarihe paralel bir seyrirde değişim gösteren hukukun toplumla ilişkisinin nasıl bir süreç geçirdiği kanun maddelerinden de anlaşılamamaktadır. Dolayısıyla hukukun insan ve toplumla ilişkisini anlamak salt normatif değerlendirmelerden çok daha fazlasını gerektirmektedir. Peki soyut ve genel kurallardan oluşan hukukun toplumla ilişkisi, toplumların hukuk algısı ve hukukun değişen yapısı nasıl anlaşılmaktadır? Bu soruya tarih boyunca farklı izleklerden çeşitli cevaplar aranmıştır. Genellikle konunun soyut kavramları somut tezahürleri üzerinden anlaşılmaya çalışılmış, maddi veriler cevap arayışında etkili olmuştur.

***"Görünen Şeyler Görünmeyen Şeyleri Gösterir"*²**

Eski çağlardan günümüze pek çok eserde toplumların yapısı coğrafya ve mekanlar üzerinden incelenmiştir. Herodotos, Platon, Aristo, İbn Haldun gibi düşünürler fiziki şartlara göre kimi olguları açıklamış, bu kapsamda farklı mekân tanımları yapmışlardır. Örneğin İbn Haldun mekânı medeniyetin sosyolojik ögesi olarak nitelemiş, insanın sübjektif zemini olarak yorumlamıştır.³ Geçmişte olduğu kadar yakın tarihte de Durkheim, Heidegger, Lefebvre, Foucault, Bourdieu, Giddens, Harvey gibi düşünürler mekân ilişkisi bağlamında topluma dair sosyolojik cevaplar aramışlardır.⁴ Günümüzde çeşitli disiplinlerde yaşanan gelişmelere bağlı olarak mekânın gösterdikleri yeni tartışmaları da ortaya çıkarmaktadır. Bilinen en eski tarihi yapı olan Göbeklitepe'nin buluşu bu konuda önemli bir örnektir. Zira arkeolojik kazı neticesinde Göbeklitepe'de ortaya çıkan yapılar çeşitli sorularla tarih yazımı başta olmak üzere farklı konularda birçok sorgulamayı beraberinde getirmiştir.⁵ Devam eden kazılarla bilim insanları, çeşitli

² Milattan önce beşinci yüzyılda yaşamış Yunanlı filozof Anaksagoras'a atfedilen bu ifade insanların asırlardır soyutla kurduğu ilişkiyi anlama cabası içerisinde olduğunu göstermektedir. Raible, Wolfgang. "Metaphors as models of thinking." (2016): 21.

³ İbn Haldun, Mukaddime, haz. Süleyman Uludağ, (İstanbul: Dergâh Yayınları, 2019).

⁴ Marie Bels ve Patricia Branco "Law and Architecture: Courthouse Architecture, Searching for a New Balance Between Representation and Functionality", *Law and the Arts. Elective Affinities and Relationships of Tension*, (2017), 178-185.

⁵ Genel kaniya göre Göbeklitepe'nin bir yerleşim yeri olmadığı, tapınak benzeri anıtsal bir yapı olduğu düşünülmektedir. (Andrew Curry, "Gobekli Tepe: The World's First Temple", *Smithsonian Magazine*, 3, (2008), 1-4). Kazıya dair öncelikli tartışmalardan biri de bu bağlamda yerleşik yapıya sahip olmayan bir avcı-toplayıcı toplumun neden konut veya tarımsal üretim yerine inanç temelli bir yapı inşa ettiğidir. Dolayısıyla sulak araziler ve tarım üretimi ile ilk kez yerleşik yaşama geçilerek inşa edildiği düşünülen Çatalhöyük gibi kazılardan daha eski bir yapı olmasıyla Göbeklitepe, insanlığın medeniyet gelişim kriterleri üzerine bilim insanlarını bir sorgulamaya sevk etmiştir. Dahası tapınak olarak nitelenen yapının kullanım maksadı hakkında

soruların peşinde Göbeklitepe toplumunun nasıl bir kültüre sahip olduğundan inanç dünyasına ve hukuki yapısına kadar farklı alanlarda fikir üretmeye çalışmaktadır.⁶ Toplum yapısının somut bir göstergesi olmak bakımından mimari yapı adeta bir toplumun soy kütüğünü ortaya çıkarmaktadır.

Hukukun görünmez gerçekliğinin mekân aracılığıyla fiziksel gerçekliğe bürünmesi sosyolojik etkileşimlerle meydana gelmektedir. Hukuki pratikler ve prosedürler, ideolojiler ve güç dinamiklerinin etkileri ile şekil almaktadır. Ortaya çıkan şekil; siyasi, mesleki, kurumsal, kültürel, ekonomik ve sosyal birçok temsili yansıtmaktadır.⁷ Bu bakımdan mimarinin estetik yönü ve sembolizmi kurumsal bir düzenin otoritesi ve meşruiyetini hissettirme amacını da bünyesinde barındırmaktadır. Hukukun ve dolayısıyla adaletin mekanlar vasıtasıyla temsiliyeti, mimarinin çeşitli özelliklerinden hareketle hukukun o toplum nezdindeki yerini de göstermektedir. Bu düşünceden hareketle mimarinin hukuk ile toplum arasında bir nevi arayüz olarak nitelendiği yaklaşımlar bulunmaktadır.⁸ Mekânın nasıl tasarlandığı, nelere dikkat edilerek inşa edildiği, konumu, yapımında kullanılan malzemeleri, duvarlarını süsleyen tablo tercihlerine⁹ kadar birçok mimari gösterge toplumun ve güç dinamiklerinin algıları hakkında fikir vermektedir.¹⁰ Dolayısıyla düzen tesisi yanında sınırlama ve engelleme

da bir uzlaşa bulunmamaktadır. İnanç merkezli inşa edildiği genel kabul görmekle birlikte bu inancın din olarak mı niteleneceği de bir diğer tartışmalı husustur. Konuya dair değerlendirme için bkz. Hasan Özalp, "İnsanlığın En Eski Tapınağı Göbeklitepe Teolojik Olarak Bize Ne Söyler?", Bilimname, (2016) Çalışma kapsamında asıl merak uyandıran nokta da bu doğrultuda yapıda bulunan ve kadim sembollerde ceza tanrısı olarak kabul edilen bir kabartmanın bulunmasıdır (Klaus Schmidt, Göbekli Tepe, (Arkeoloji ve Sanat Yayınları, 2007), 222). Ayırt edici bir özelliği olan yaptırım boyutuyla hukukun, kadim toplumlarda inanç eksenli ve dolayısıyla merkezi bir konumda mı olduğu sorusu hukuk-toplum ilişkisi bakımından bahsi geçen kabartmayla beraber cevaplanmayı bekleyen bir araştırma konusu teşkil etmektedir.

⁶ Elif Bengisu, "Human History and Göbeklitepe" *International Journal of Social, Political and Economic Research*, 7.1. (2020)

⁷ Bels ve Branco, 182, 183.

⁸ Duygu Hatipoğlu Aydın, "Mimarlık ve Hukuk İlişkisi Bağlamında Ankara Adliyesi Balgat Ek Hizmet Binası Üzerine Notlar", *Ankara Barosu Dergisi*, 78.2. (2020), 139.

⁹ Tarihte II. Mahmud'un kamu binalarına tablolarını astırması, otoritesini görünür kılma yöntemi olarak yorumlanabileceği gibi günümüzde İran mahkemelerinde Ruhullah Humeyni'nin tablolarının bulunması da molla rejiminin hukuk pratikleri ve halka yansıttıkları açısından ipuçları barındırmaktadır. Bkz. Yunus İnce, "II. Mahmud Devri Reformlarının Tebaa Tarafından Algılanışı", *Tarih İncelemeleri Dergisi*, 32.2. (2017); İran Yüksek Mahkemesi:

wikimedia.org/wikipedia/commons/2/29/Supreme_Court_of_Iran_1399032711131039520604224.jpg

¹⁰ Oğuz Ongun, *Bir Adaletle Erişim Meselesi Olarak Adliye Mimarisi: Çağlayan Adliyesi Örneği*, Yüksek Lisans Tezi, (İstanbul: İstanbul Bilgi Üniversitesi, 2019), 81-88.

yönleri düşünüldüğünde mekanların hukuk-toplum ilişkisinde önemli bir etkisi olduğu ve mimarının hukuk ile topluma yönelik benzer işlevler taşıdığı görülmektedir.

2. Mimarlık ve Toplumsal İlişki: Tipomorfoloji Yaklaşımı

Tipomorfoloji, bir mimari terim olarak 20. yüzyılın ikinci yarısında modern mimarlık anlayışına tepki olarak ortaya çıkmıştır. “Morfolojik bir analiz metodu” öneren tipomorfoloji kavramı parça ve bütün arasındaki bağlantılara önem veren bir mefhumla işaret etmektedir.¹¹ Kavram, modern mimari yaklaşımının geçmişle bugün arasında çatlak oluşturduğunu düşünen bir grup mimari çevre tarafından oluşan boşluğu kapatma amacıyla eleştirel bir düşünce olarak geliştirilmiştir. Bahsekonu çevre, modern mimarının yalnızca kendine gönderme yapan ve tarihin rolünü yadsıyan yapısına karşın mimaride multidisipliner bir yaklaşıma önem vermiştir.¹² Kavramın öncüsü Saverio Muratori, 1960 yılında basılan eseri ile mimari tasarımda iki hedefe ağırlık verilmesi gerektiği fikriyle tipomorfolojik yaklaşımın ana hatlarını belirlemiştir:

- Teknik konularla tarihi ve kurumsal etmenler arasındaki bağlantıyı sağlamak,
- Mimarlığı kentin sorunlardan bağımsız olmadan, kent sorunları içerisinde geliştirmek.¹³

Sonuçta “*Tipomorfoloji kent biçiminin tipik mekân ve yapıların analizinden yola çıkarak incelenmesidir.*”¹⁴ Mimaride, geçmişten bağı koparan modern yaklaşıma tepki olarak gelişmeye devam eden bu fikirler “kentsel yapıyı zamansal bir varlık olarak” algılayarak kentsel doku içerisindeki ortaklıklara dikkat çekmektedir. Böylece parça ile bütün arasındaki ilişki salt formel alandan çekilerek kent ve mekân, yapısal olarak yani “tipomorfolojik” analizle irdelenebilmektedir.¹⁵

Tipomorfolojik yaklaşım, araştırmacıların araştırma nesnesi bölgelerine göre yapılan farklı disiplinler ve kültürel eğilimler sayesinde kentlerin nasıl üretildiği/inşa edildiği üzerine farklı analiz imkanları vermektedir. Örneğin İtalyan ekolünden Muratori’nin ardılı Gianfranco Caniggia, insan çevresini birbiri ile ilişkili küçük organizmaların bir

¹¹ Özgür Bingöl, *Mimarlıkta tip kavramı ve tipoloji*, Doktora Tezi, (İstanbul: Mimar Sinan Güzel Sanatlar Üniversitesi, 2017), 82.

¹² Tan Kamil Gürer, “Tipomorfoloji: Kentsel Mekânın Yapısını Anlamak”, *İdealkent*, 18.7. (2016), 9-12.

¹³ Bingöl, *Mimarlıkta Tip Kavramı ve Tipoloji*, 80.

¹⁴ Gürer, “Tipomorfoloji: Kentsel Mekânın Yapısını Anlamak”, 12.

¹⁵ V. Moudon, “*Getting to know the built landscape: Typomorphology.*” *Type and the Ordering of Space* (1994). 288,289.

araya geldiği büyük organizma olarak tanımlamıştır. Organizmaları oluşturan mekânsal yapıları sırasıyla; bina, bina grupları, şehir ve bölge şeklinde dört kategoriye ayırarak parçadan bütüne, toplumsal yapının topografyasını çıkarmayı amaçlamıştır. Zira düşünüre göre kent tamamlanmış bir obje değil, bir süreçtir.¹⁶ Bu şekilde tipomorfolojik yaklaşımın özünü oluşturan disiplinlerarası çalışma bir zorunluluk olarak ortaya çıkmıştır. Zira düşünürler, kente atfedilen nitelik vesilesi ile mimari-formel bir değerlendirmenin ötesinde mekân ve onu üretenler ile kullananlar arasındaki zorunlu korelasyonu gözler önüne sermeyi amaçlamıştır. Bu anlayışa göre modernitenin mimariyi ve kent tasarımını teknik bir meseleye indirgeyerek toplumsal yapıya uymayan algılanışı onarılarak etkili bir mimarlık anlayışı sürdürülebilecektir. *“Kent biçim ve yapısı binalar ve onların açık alanlarında meydana gelen birçok eylem, seçim ve fikrin toplamından ibarettir.”*¹⁷

2.1. Hukuk ve Toplum İlişisini Tipomorfolojik Olarak Okumak

Mimarının diğer disiplinlerle irtibatının gereğini ortaya koyan tipomorfolojik yaklaşım, hukuk ve toplum ilişkisini mekanlar üzerinden anlamada da etkili bir yöntem olarak kullanılabilir. Dahası mimarlık ve hukukun birbirine benzer bir yapı olduğunu savlayan fikirlerden¹⁸ hareketle hukukun, mimari terimlerle tipomorfolojik okuması yapılabilir. Fakat uzun soluklu ve ciddi çalışma gerektiren bu uğraş, çalışma kapsamını aşmaktadır. Elinizdeki çalışmada tipomorfoloji mantığından hareketle hukuk dışı “görünen” alanların hukuku görünür kılan ve toplumların hukuk algısına dair ipuçları barındıran yönleri mekanlar üzerinden incelenmeye çalışılmıştır. Bu bağlamda bina, bina grupları, şehir ve bölge şeklindeki kategorizasyonu ile insan çevresini parçadan bütüne tanımlayan Caniggia’nın tasnifinden mülhem seçilen örneklerle toplum-hukuk-mekân arasında bir çerçeve çizilmiştir.

2.1.1. Bina ve Bina Grupları

Binayı kişisel bir anlatım olarak tanımlayan Günther Fischer, mimariyi de böylece dilsel bir edim olarak nitelemektedir. Bir yapının -binanın- kendinde barındırdığı nitelikleri (büyüklük, biçim, yapı, malzeme, vb.) hem mimarının kişisel tercihlerine hem

¹⁶ Güner, 13-15.

¹⁷ Güner, 13.

¹⁸ Bkz. Ali Günvar, *Söylemin İktidarı Dil Mimarlık ve Edebiyatta Otoritenin Analizi*, (İstanbul: Ötüken, 2023).

de o yapıyı ortaya çıkaran şartlara işaret etmektedir.¹⁹ Bu bakımdan örneğin Memlük, Selçuklu ve Osmanlı devletleri tarafından en ihtişamlı dönemlerinde taş mimarinin tercih edilmesi, Osmanlı'nın Tanzimat dönemiyle birlikte barok ve rokoko tarzına yönelmesi tesadüfi tercihler değildir.²⁰ Etkili bir inşa malzemesi olan taş yerine dönemin batılı modası olan mimari tarzların tercihi, devlet kademelerindeki aydınların batı seyahatleriyle doğrudan ilişkilidir.²¹ Taşın en üst seviyede kullanıldığı, Mimar Sinan'ın ustalık eserim dediği Selimiye Camii'nin içerisindeki süslemeler ve yazıların klasik formdan değişimi ise kimi yazarlara göre İmparatorluğun en ihtişamlı zaferlerinin ardından tahta geçtiğinde İnebahtı yenilgisi yaşayan Sultan II.Selim'in, iktidarını pekiştirme niyeti ile özel olarak tercih edilmiştir.²² Buna paralel İnebahtı'da zafer kazanan Haçlı birlikleri anıtsal Kiliseler inşa ederek²³ toplumlara mimari vasıtaıyla mesajlar iletmıştır.²⁴

Bina gruplarına bakılacak olduğunda Osmanlı devletindeki cami-küllie mimarisinin değişim izlerini sürmek ilginç veriler sunmaktadır. Osmanlı'da klasik dönemde tercih edilen zaviyeli (T biçimli) cami mimarisi zamanla yerini yeni tip bir külliye formuna bırakmıştır. Kanuni Sultan Süleyman devrine kadar zaviyeli camiler azalsa da tamamen terk edilmemiş, Süleymaniye Camii'nin yapımı ile şehirde artık tamamen yeni mimari yapılar etkin kılınmıştır.²⁵ Kademeli olarak terk edilen zaviyeli camiler ile yaygın hale gelen selatin camiler arasındaki fark, yalnızca camileri çevreleyen külliyelerin mimari

¹⁹ Günther Fischer, *Mimarlık ve Dil*, Daimon Yayınları, (2015), 12-20.

²⁰ Bkz. Uğur Tuztaş ve İlgi Yüce Aşkun. "Klasik Dönemden Batılılaşmaya Osmanlı Mimarlığında İdealleştirme Olgusu ve Batı Mimarlığıyla Olan Mukayesesi". *Osmanlı Araştırmaları* 38, (Aralık 2011); Ersin Kalaycıoğlu ve Ali Yaşar Sarıbay, *Türkiye'de Politik Değişim ve Modernleşme*, (İstanbul: Alfa Yayınları, 2019), 60 vd.

²¹ Kalaycıoğlu ve Sarıbay, *Türkiye'de Politik Değişim ve Modernleşme*, 70- 73.

²² Günvar, 282.

²³ Cervantes, Don Kişot romanındaki ifadeleriyle İnebahtı deniz savaşını "Hristiyanlar için Türklerin yenilmez olmadığını gösteren en talihli gün" olarak nitelemiştir. İtalyanların bu destansı zaferi anımsatmak için çok sayıda kilise yaptığından bahseden yazar, mekanların anıtsal ve sembolik değerine dikkatleri çekmiştir. Oral Sander, Anka'nın Yükselişi ve Düşüşü (Osmanlı Diplomasi Tarihi Üzerine Bir Deneme), *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları*, (1987), 185.

²⁴ Mimarlık ve dil arasında ilişki kuran Ali Günvar'a göre mimari tasarımın üç boyutlu ürünü olan bina ayrıntıları ile okunabilecek bir sistemdir. "Her bina en az bir metinden ya da çok kez değişik aşamalarında kendini gösteren birbirinden farklı düzlemlerde metinlerden oluşan bir kompozisyonudur. O nedenle birbiriyle örtüşen ya da iç içe geçen bir metinler arasılık içerir." Günvar, 244.

²⁵ Semavi Eyice, "İlk Osmanlı Devrinin Dini ve İçtimai Bir Müessesesi: Zaviyeler ve Zaviyeli Camiler", *İÜ İktisad Fakültesi Mecmuası*, 23, (1963), 23.

tasarımlarında ortaya çıkmamıştır. Aynı zamanda başlangıçta camilerin içerisinde bulunan tabhane adı verilen yapılar da devletin yapısındaki dönüşümlere paralel bir değişim göstermiştir. Tabhaneler zaviyeli camilerde, caminin ana binasının bir parçası şeklinde inşa edilmekteyken yeni tipteki külliye mimarisi ile kademeli olarak ana plandan ayrılmıştır. Toplumun sosyo-ekonomik, siyasi meselelerinin çözüldüğü ve cami içerisinde adeta hakemlik-arabuluculuk faaliyetinin icra edildiği yapılar olarak tabhanelerin zamanla camiden kopuk bir forma bürünerek işlevsiz hale gelmesi, Osmanlı devletinde toplum ve hukukun geçirdiği dönüşüme dair fikirler vermektedir.²⁶

2.1.2. Şehir ve Bölge

Toplumun mekânsal biçimi olan şehirler toplumsal pratiklerin ötesinde belirli normlar çerçevesinde ve ideolojilerle inşa edilerek çeşitli karakteristik bölgeler haline gelmektedir.²⁷ Bunların topluma yansıyan algılarını anlayabilmek için ilgili şehrin felsefi ve sosyolojik gelişim süreçleri ve dönüşümlerini anlamak önemlidir.²⁸ Ahmet Cevdet Paşa'nın 19. yüzyıl devlet yönetimini yazdığı kitabında Bursa yangınından sonra toplumun ve devletin tavrını anlattığı olay, şehrin anlamına dair çarpıcı bir örnektir. Cevdet Paşa, 1855 yılında meydana gelen Bursa yangınına gören Fuad Paşa'nın "Osmanlı tarihinin dibacesi zayı oldu" sözleriyle üzüntüsünü dile getirdiğini aktarmıştır.²⁹ Dibace etimolojik köken itibarıyla Farsça başlangıç duası manasına gelen kelimeden türemiştir.³⁰ Günümüz Türkçesiyle giriş, başlangıç, önsöz gibi manalara gelen kelime

²⁶ Çalışma kapsamını aşacak nitelikteki incelemeyi gerektiren konu hakkında ve tabhanelerin işlevi ile Osmanlı Devleti'nde hukukun toplumsal yapısına dair karşılaştırmalı bir okuma için bkz. Günvar, Söylemin İktidarı: Dil Mimarlık ve Edebiyatta Otoritenin Analizi, 256-268; Wael B. Hallaq, Şariat Uygulama- Teori- Dönüşüm, (Ekin Yayınları, 2024), 175-179, 407-425.

²⁷ Manuel Castells, *The City and the Grassroots*, (USA: University of California Press, 1983), 103. Dördü de Ankara'nın Altındağ semtinde bulunan Arslanhane Camii, Karacabey Camii, Cenabı Ahmed Paşa Camii ve Melike Hatun Camii, bölgelerin ve mimarilerin karakteristik yapısını en canlı ve keskin hissedebileceğimiz dört örnek olarak karşımıza çıkmaktadır. Birbirlerine yürüme mesafesinde bulunan bu camilerin arasında adımlarken insan zamanda yolculuk yapmış gibi bir intibaya kapılmaktadır. Her biri farklı bir medeniyetin izini taşıyarak ilgili dönemlerin anlayışına göre inşa edilen bu yapılar kendi dönemlerini gösterme konusunda adeta bir ayna hüviyetindedir. Öyle ki Ankara şehrinin tarihi, yalnızca bu camiler üzerinden incelense konunun çok fazla veri ortaya çıkartılabilecek nitelikte bir araştırma potansiyeli bulunmaktadır.

²⁸ "Maddeden önce ne zaman ne de mekân, anlamı olmak bir yana, mevcut değildi; dolayısıyla, fiziksel zaman-mekânın nesnel özelliklerini, maddi süreçlerin özelliklerinden bağımsız olarak kavramak mümkün değildir." David Harvey, *Postmodernliğin Durumu*, (İstanbul: Metis Yayınları, 2019), 230.

²⁹ Ahmet Hamdi Tanpınar, *Beş Şehir*, (İstanbul: Dergâh Yayınları, 2017), 112.

³⁰ Etimoloji Türkçe, "Dibace", <https://www.etimolojiturkce.com/kelime/dibace>

geçmişte kitapların mukaddime, sunuş gibi bölümlerinin yazıldığı kısımlar için kullanılmıştır. Eserin yazılış amacı ve sebeplerinin anlatıldığı bu bölümlerde yazarın dünya görüşü, sanat anlayışı, okuyucudan istekleri gibi hususlar da bulunmuştur.³¹ Bu bağlamda dibaceler kitaba başlamadan önce kitabın mahiyeti, yazarın zihniyeti ve kitabı oluşturma gayesi hakkında okuyucuya ipuçları vermiş, metni anlamayı kolaylaştırmıştır. Bir şehrin bir devletin dibacesi olarak nitelenmesi ise o şehrin toplumsal yapısıyla birlikte mekânsal biçiminin devlete dair önemini göstermektedir. Bunun ötesinde Tanzimat döneminin önemli yöneticilerinden olan Fuad Paşa'nın şehre dair tepkisi³² ve Islahat Fermanından bir yıl önce yaşanan olay dönemin hukuki ve toplumsal yapısına ışık tutmuştur.

1839 yılında yayımlanan Gülhane Hatt-ı Hümayunu ile devlet resmen reform faaliyetlerine başlamıştır. Modernleşme bağlamında yapılan reformlar, devletin kendine dair bir eleştirisi ve iyileştirme arayışı olmuştur. Fermanla devlet tarafından yaşanan sorunların farkında olduğu ve dikkate alınacağı topluma ilan edilmiştir. Bu kapsamda devlet hukuki yapısında yenilenmeye giderek toplumsal, ekonomik, siyasi pek çok alanda düzenlemeler yapmıştır. Avrupa'da yaşanan gelişmelere bağlı olarak merkezi otoriteyi güçlendirecek adımlar atılmaya çalışılmıştır.³³ Zayıflayan hukuki sistemle birlikte siyasal güç resmi yapılar ve devlet daireleriyle toplum nezdinde görünür kılınmaya çalışılmıştır. Fakat Bursa yangını çerçevesinde yaşananlar reformların halk nezdinde etkisini sorgulattır niteliktedir. Devletin kökenine, ideallerine, yapısına atfen önem verilen şehrin harabiyetine yetkililer müdahale edememiş, büyük bir felaket yaşayan halk yönetime

³¹Tahir Üzgör, "Dibace", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi*, 9, (1994), 277, 278.

³²Ahmet Cevdet Paşa, Fuad Paşa'nın sözlerini o döneme dair üzüntülerin şairane bir tepkisi olarak yorumlamıştır. Zira durumun ehemmiyetinin farkında olunmasına rağmen şehri incelemek için bir memur dahi gönderilmemiş, yönetim tarafından halk yalnızlığa terk edilerek başka işlerle ilgilenilmiştir. Bu duruma bir de halkın İstanbul'a resmi belge gönderememesi de eklenince süreç bölgeye yalnızca İngilizlerin yardım göndermesi ile neticelenmiştir. Yaşananlar nedeniyle artık yabancılardan utandıklarını yazan Cevdet Paşa, "ne vakit gaflet uykusundan uyanacağız" ifadeleriyle rahatsızlığını dile getirmiştir. Ahmet Cevdet Paşa, *19. Yüzyılda Osmanlı Devlet Yönetimi Tezahir I.Cilt*, (İstanbul: Yeditepe Yayınları, 2021), 68, 69.

³³ Halil İnalcık, *Tanzimat'ın Uygulanması ve Sosyal Tepkiler*, *Belleten*, 28. 112, (1964); Şerif Mardin, *Türk Modernleşmesi*, (İstanbul: İletişim Yayınları, 2018), 11-14.

resmî belge dahi gönderememiştir. Şehrin ahvalı, reformların etkililiği ile halkın hukuk ve devletle etkileşiminde yaşadığı sıkıntıları gözler önüne sermiştir.³⁴

Benzer örnekler çoğaltılarak ilgili tasnif içerisinde binadan bölgeye ulaşan metodolojik bir uygulama ile belirli bir toplumun hukukla ilişkisi, kültürel yapısı gibi konularda sistematik sonuç üretmek tipomorfolojik yaklaşımın imkanları dahilindedir. Bu bağlamda konuyu parçadan bütüne nihayete erdirmek için elverişli bulunan ve halk arasında “Fatih’in Mahkemesi” olarak bilinen yapıyı incelemek faydalı olabilir. İstanbul’un Üsküdar semtinde, meydana birkaç dakika yürüme mesafesindeki bir ara sokakta bulunan iki katlı küçük bir bina formundaki bu yapı, tarihte mahkeme binası olarak kullanılmıştır. Günümüzde ise Üsküdar Belediyesine bağlı bir kütüphane olarak hizmet vermektedir. Zamanında Padişahın yargılandığı mahkeme binası Osmanlı hukuk sistemi ve şeriat mahkemelerinde yaşanan değişimlere paralel olarak bir dönemden sonra terk edilerek uzun bir müddet harap halde kalmıştır.³⁵ 2000’li yılların başında restore edilerek adalet müzesi haline getirilen yapı daha sonra kütüphaneye çevrilmiştir. Uzun bir restorasyon sürecinin ardından yapı 2024 yılından itibaren tekrar kütüphane olarak kullanılmaya başlamıştır.

Fatih Sultan Mehmed’in yargılandığı mahkeme olarak bilinen eski mahkeme binası, şehrin merkezinde, ulaşımı rahat bir bölgede bulunmaktadır. Yapı her ne kadar günümüzde dar bir ara sokakta gözlerden ırak bir yerde bulunsada konumu itibarıyla geçmişte etkin bir mahkeme olduğu intibai vermektedir. Zira meşhur rivayete göre padişahın şikayetçi olan bir mimarın şikayetini bu mahkemeye taşıması yapının canlılığını da kanıtlar niteliktedir. Farklı rivayetler olmakla birlikte Fatih Sultan Mehmed’in mahkemede yargılanmış olması çoğunlukla mutabık olunan bir vakadır.³⁶ Bu rivayetle Üsküdar’da bizleri karşılayan mahkeme binası, Osmanlı yükselme devrinde hukukun mahiyeti ve toplumla ilişkisi hakkında yapılan araştırmaların güvenilirliği açısından kaynak potansiyeli barındırmaktadır. Öte yandan mahkeme binasının son asırlarda geçirdiği süreç ise toplumumuzun hukukla ilişkisine benzer bir nitelik arz etmiş benzemektedir. Zira yapı Osmanlı hukukundan modern hukuka geçiş sürecinde

³⁴ Tanzimat devrinde hukuk zihniyetindeki değişime dair bkz. Hilmi Ziya Ülken, *Türk Tefekkürü Tarihi*, (İstanbul: Yapı Kredi Yayınları, 2017); Niyazi Berkes, *Türkiye’de Çağdaşlaşma*, (İstanbul: Yapı Kredi Yayınları, 2023). İsmail Kara, *Biraz Yakın Tarih Biraz Uzak Hırafe*, (İstanbul: Dergâh Yayınları, 2024).

³⁵ Mehmet İspirli, *Üsküdar Mahkemesi*, Uluslararası Üsküdar Sempozyumu, 2007.

³⁶ İspirli, *Üsküdar Mahkemesi*, 2007.

önce işlevsiz hale gelmiş ardından terk edilerek harap bir vaziyete düşmüştür. Nihayetinde kendi işlevi dışında bir forma büründürülerek modern eğitim sisteminin olmazsa olmaz unsuru olan test çözme merkezi haline getirilerek araçsallaştırılmıştır. Örneği mahkeme binası yerine devletin ve toplumun modern hukukla ilişkisi bağlamında değiştirerek ele aldığımız takdirde vardığımız sonuçların pek de farklı bir nitelik arz etmeyecek gibi görünmesi, tipomorfolojik yaklaşımın imkanları açısından da bir gösterge olmaktadır.

3. Mimarlık ve Hukuk İlişkisi

Bir binanın sunduğu ipuçları ya da tarihte bir şehre dair yaşananlardan çıkarılabilecek sonuçlar doğrultusunda mimari bir metot olan tipomorfolojiden ilhamla yapılan analizlerin, toplumların inançlarından gündelik alışkanlıklarına kadar birçok açıdan fikir verebildiği anlaşılmıştır. Zira renkleri, şekilleri, ölçüleri, ikonik ve sembolik temsilleriyle güç, egemenlik, ideoloji ve benzerlerini ileten üç boyutlu nesneler olma³⁷ yönüyle mimari yapılar, kolektif mevcudiyetin görünür biçimi ve göstergesel anlamıyla soyut olan kavramların somutlaşması işlevini de ihtiva etmektedir.³⁸ Dahası Giddens'a göre fiziksel yapılar tıpkı hukuk gibi itaati sağlamada önemli bir işleve sahiptir ve modern mimari gözetimle yakından ilişkilidir; gözetim ise insanların kendi davranışlarını sınırlamasını sağlamaktadır.³⁹ Bu minvalde Foucault'nun mimari tasarımların birey ve toplumlarda mekanla etkileşime girme şeklini ve mekânın işlevini belirlediği fikrinden hareketle mimarinin toplumsal bir kontrol amacı olduğu dahi savunulabilir. Bu amaca matuf, mekanların tasarımı insanlarda belirli davranışlar ortaya çıkarabildiği gibi bazı davranışları da engelleme gücüne sahip olmaktadır.⁴⁰ Dolayısıyla mekân ve hukuk arasında da benzer bir yapı ortaya çıkmaktadır.

3.1. Mekân ve Hukuk İlişkisi

İnsanlar, hayatlarını sürdürebilmek için ihtiyaç duydukları nesneleri üretmişlerdir. Coğrafyaya ve zamana göre değişiklik gösteren ihtiyaçlar neticesinde farklı ürünler ortaya çıkmıştır. İhtiyaçların şekillenmesinde ise tercihler etkili olmuştur. Benzer

³⁷ Bryan Lawson, *Language of Space*, (Routledge, 2007), 95.

³⁸ Peter Goodrich, *Postmodern Justice, Law and the Humanities: An Introduction*, (Cambridge University Press, 2009)

³⁹ Anthony Giddens, *Sosyoloji*, (İstanbul: Kırmızı Yayınları, 2012), 725.

⁴⁰ Paul Hirst, *Foucault and Architecture*, 26 AA Files, (1993), 55.

biçimde toplumlar da yaşam alanlarını ihtiyaçları ve tercihlerine göre şekillendirmişlerdir. Boş bir arazinin nasıl değerlendirilebileceği toplumların kendi yapılarına göre değişiklik göstermiştir. Kimi toplumlarda çadır hayatı tercih edilirken kimilerinde sağlam evler ve büyük şehirler inşa edilmiştir.⁴¹ Kimilerinde renkli desenler kullanılırken kimilerinde sade çizgiler tercih edilmiştir. Bu ihtiyaç ve tercihler, mekanlarla somut bir nitelik kazanmıştır. Mekanlar ise değişen şartlara göre işlevsel, yapısal ve biçimsel pek çok açıdan farklı şekillerde ortaya çıkmıştır. Sosyal, fiziksel birçok faktörle daimi değişim içerisindeki toplumlar hem mekanları etkilemiş hem de mekanlar tarafından etkilenmiştir.⁴² Fiziki mekanların kolektivitelerinden ortaya çıkan toplumun mekânı yani şehir ise yalnızca bireylerle değil politikalarla da inşa edilmiştir.⁴³ Değişen anlayışlara göre değişen mekanlar, yöneticilerin istek ve arzuları doğrultusunda da başkalaşımlara uğramıştır. Yönetici kadroların soyut siyasaları mekanlar vasıtasıyla somutlaşarak kimliğe bürünmüştür.⁴⁴ Dolayısıyla ihtiyaçlar ve tercihler içerisinde oluşan hayat pratikleriyle toplumlar ve yönetimler kendi kültürlerini inşa etmiş, kendi kurallar sistemini ortaya çıkarmıştır.

Dışsal yapılarla karşılıklı etkileşim halindeki insan, toplumsal düzen tesis ederek bunları hukuk kurallarına tahvil etmiştir.⁴⁵ “Nerede bir toplum varsa orada hukuk vardır” minvalindeki Latince vecize, toplumun her sahasında hukukun var olduğunu gözler önüne sermektedir.⁴⁶ Hukukun mekânla ilişkisi de bu bağlamda ele alınmıştır. Hoebel’in hukuku “toplumsal gereksinimlere cevap”⁴⁷ olarak nitelemesi gibi mekanlar da bu cevapların farklı bir vechesidir. Her ikisi de toplumsal etkileşimin düzenleyicisi ve ürünleridir. Artun Ünsal ise işlevinden hareketle hukuku toplumsal yaşamın bir çeşit oksijeni olarak yorumlamıştır. Bu yoruma göre insanlar bilinçli veya bilinçsiz bir şekilde hukuk kurallarına uysa da oksijenin ne denli etkili olduğunu fark etmediği gibi kuralların

⁴¹ İbrahim Kalın, *Barbar Modern Medeni*, (İstanbul: İnsan Yayınları, 2018), 119.

⁴² Henri Lefebvre, *The Production of Space* (Massachusetts: Blackwell, 1991), 35.

⁴³ Ahmet Davutoğlu, *Medeniyetler ve Şehirler* (İstanbul: Küre Yayınları, 2016), 53; S. Seyfi Ögün, *Türk Politik Kültürü* (İstanbul: Alfa Yayınları, 1999), 213.

⁴⁴ Dursun Çiçek, “Görüntünün Siyasal Bağlamı: Fotoğraf, Oryantalizm ve Siyaset,” *Teklif Dergisi, Siyaset-7*, (2023), 175.

⁴⁵ Kalın, *Barbar Modern Medeni*, 118-119.

⁴⁶ Artun Ünsal, “Hukuk ve Toplumsal Yaşam (Hukuksal İlişkilerin Kaynakları Üzerine Bir Deneme)”, *Ankara Üniversitesi SBF Dergisi*, 29.2, (1974), 143,144.

⁴⁷ Adamson E. Hoebel, *The Law of Primitive Man: A Study in Comparative Legal Dynamics*, (Cambridge: Harvard University Press, 1954), s. 292-293.

da topluma ve yaşama etkisini çoğu zaman fark etmemektedir.⁴⁸ Benzer şekilde bir şehrin tasarımının, günlük yaşamda fark edilmez ancak kalıcı ve yaygın etkiye sahip olduğunu düşünen Juszcyk mekanın sosyal kuralları fiziksel sınırlarla güçlendiren bir sosyal organizasyon biçimi ortaya çıkardığını ifade etmiştir.⁴⁹ Böylece çoğu zaman etkileri günlük yaşamda fark edilmeyen hukuk ve mekan kavramları, birey ve toplumun deneyim ve algılarındaki şekillendirici mahiyetiyle ortak nitelikler taşımaktadır. Sonuçta toplumların mekânsal yapılarına bakmanın o toplumun hukuki pratikleri ve hukuk algısına dair ipuçları vermesi olağan hale gelmektedir.

3.2. Mimarinin Hukuk Algısına Etkisi

Hukukun günümüzdeki mimari tezahürü olan mahkeme binaları incelenen işlevlere yönelik ipuçları barındırmaktadır. Bulunduğu konumdan iç mekân tasarımına kadar bir mahkeme binası devletin hukuku yorumlayışında ve toplumun hukukun algılamasında etkin bir faktör olarak ortaya çıkmaktadır. Örneğin ABD Yüksek Mahkemesi'nde tercih edilen eksenel mimarinin insanlar üzerinde kontrol ve etki sağlamaya yaradığı, salon içerisindeki Yunan tapınaklarına benzer sütunların da yine kontrol, prestij ve ideolojik güç imajı yansıttığı zikredilmektedir. Bunun aksine Avustralya Yüksek Mahkemesi'nin eksenel şekilde yapılandırılmaması ve kolay erişilebilir tasarımı mahkemenin sivil alan olarak kullanılmasını sağlamaktadır.⁵⁰ Bina tasarımında halkın katılımını teşvik eden bir yapının amaçlandığı ifade edilmektedir. Bu doğrultuda mahkeme binası ve çevresinde sık sık konser, konferans, fotoğraf sergisi gibi etkinlikler düzenlenmektedir.⁵¹ Dolayısıyla hukukun benzer alanlarında dahi toplumların mimariyle ilişkisi farklı deneyimler ortaya çıkarmaktadır.⁵²

Amerika ve Avusturya örneği mekanların mimari özelliklerinin, algı ve deneyimlere etki ettiğini göstermektedir. Bu nedenle benzer örneklerden hareketle mekanlar kimi

⁴⁸ Ünsal, "Hukuk ve Toplumsal Yaşam (Hukuksal İlişkilerin Kaynakları Üzerine Bir Deneme)", 145-147.

⁴⁹Georgie Juszcyk, "Power on a Pedestal: How Architecture Creates, Reinforces, and Reflects Power Structures in the Legal System", *ANU Undergraduate Research Journal*, 11.1. (2021), 40.

⁵⁰ Juszcyk, "Power on a Pedestal: How Architecture Creates, Reinforces, and Reflects Power Structures in the Legal System", 41-54.

⁵¹Avusturya Yüksek Mahkemesi etkinlik kataloğu için bkz. High Court of Australia, <https://www.hcourt.gov.au/upcoming-events/2-events>

⁵² Bels ve Branco'nun ifadeleriyle "mekânlar, deneyimlerimizle doludur ve biz de mekân(lar)la doluyuz." Bels ve Branco, "Law and Architecture: Courthouse Architecture, Searching for a New Balance Between Representation and Functionality", 180.

yazarlarca mesajlar ihtiva eden bir iletişim biçimi olarak tanımlanmıştır. Barındırdığı ilkelerle insan davranışlarını düzenleyen ve bir düzen tesis eden hukuk da bir yaklaşıma göre iletişim biçimi olarak nitelenmiştir.⁵³ İletişimde mesajlar alıcılarına göre farklı anlamlara gelebilmektedir. Bu vesileyle toplumların kendi yapılarına göre farklı mekân pratikleri olduğu gibi söylemsel olarak adalet, eşitlik, insan hakları gibi genel soyut normları ihtiva eden modern hukukun da farklı algılanış ve pratikleri ortaya çıkmaktadır.⁵⁴ Fakat iletişim biçimi⁵⁵ olarak tanımlandığında hukuk, soyut yapısı nedeniyle toplumda karmaşık bir forma bürünebilir. Bu karmaşıklık fiziki yapıların mevcudiyeti ile bertaraf edildiği takdirde hukuk daha hissedilir ve görünür kılınabilir. Zira evrensel ve soyut manaları somut ve maddi araçlarla anlatmak mümkündür.⁵⁶ Çünkü her nesnenin kendine ait bir referansı bulunmaktadır ve her toplum, kendi algıları neticesinde mekanlar inşa etmektedir. Soyut kurallarla toplum nizamının tesisine amaçlayan hukuksa, mekanlarla somutlaşmaktadır. Haddizatında mekân, referansından bağımsız vücut bulamamakta, sosyolojik gerçekleriyle hukukunu üreten toplum ürettiğini maddi alana taşıyarak referansını görünür kılmaktadır.

Adalet ve insan hakları gibi kavramlara referansla inşa edilen fiziksel yapılara sahip modern hukukun toplumda nasıl bir hukuk algısı inşa ettiği de mekânsal tasarımlar üzerinden anlaşılabilir. Aksi olarak mimari tasarımları, sembolleri, toplumsal ritüelleri hukuk dışına taşımak toplumların hukuku algılayış biçimini salt metin formatına

⁵³ Mark Van Hoecke, *Law as Communication*, (Bloomsbury Publishing, 2002).

⁵⁴ Bu bakımdan Eco'nun mimarlığı iletişim (Umberto Eco, "Function and Sign: Semiotics of Architecture" *The City and the Sign*, (Columbia University Press, 1986), 174.), Lawson'un mekânı bir iletişim biçimi şeklinde (Lawson, *Language of Space*, 5,6.) tanımlamasına benzer biçimde Van Hoecke'un da hukuku bir iletişim biçimi olarak (Van Hoecke, *Law as Communication*, 3 vd.) nitelemesi deneyimlerin algı farklılıkları üzerindeki etkisi açısından şaşırtıcı değildir.

⁵⁵ Evde aile içerisindeki ilişkiden dışarıda yapılan bir alışverişe kadar insan her daim iletişim içerisinde. Mesajlar ve iletilerden oluşan iletişimin farklı çeşitleri bulunmaktadır. Sözlü, yazılı, işitsel, görsel pek çok iletişim türünden bahsetmek mümkündür. Bireyin kendini açıklaması, anlatması, anlaşılması gibi özelliklere yarayan iletişim aynı zamanda bir etkileşim imkanıdır. İnsan iletişim kurdukça kendi dışındaki dünya ile etkileşim haline girebilmektedir. İnsanların etkileşim kurarak iletişim halinde olması toplumsal yapıyı meydana getirmektedir. Bu iletişim ve etkileşimin karmaşaya neden olmadan varlığını devam ettirebilmesi toplumların belirli bir düzen sahibi olması ile yakından ilişkilidir. Toplumlardaki bu düzenin tesisine yarayan kültür, gelenek, görenek ve kurallar hukuki yapıyı oluşturmaktadır. Bu nedenle insanlar hayatın hemen hemen her alanında hukuki iletişim içerisinde. Çoğu zaman bunun farkında olunmasa da hukukun gündelik yaşama etkileri yadsınamaz derecededir.

⁵⁶ Kalın, *Barbar Modern Medeni*, 200.

indirmekle sonuçlanabilir.⁵⁷ Bu durumsa hukuku belli bir zümreye hapsederek dezavantajlı gruplar ortaya çıkarabilir.⁵⁸ Bu nedenle mekânın efektif kullanımı toplumsal algıları şekillendirme ve hukuki meşruiyet sağlama açısından önemli bir rol oynamaktadır.⁵⁹ Bels ve Branco'nun ifadeleriyle "mahkemelerin yapısı, 'hukuk geleneğinin anıtları' olarak işlev görerek bu mitolojiyi güçlendirir ve mahkemeleri bu ideallerin koruyucusu olarak tanıtop topluma sunar".⁶⁰

3.3. Günümüz Hukuk ve Toplum İlişkisinde Mimari Etkinin Mahiyeti

Hukukun belirli mekanlar vasıtasıyla yalnız kendi amacına özgü olarak pratiğe yansması yaklaşık 300 yıl öncesine dayanmaktadır.⁶¹ Geçmiş zamanlarda yargı işleri sabit olmayan yapılarda forum, konak, medrese, kilise gibi yerlerde yerine getirilmekteyken⁶² modern zamanlarda "adliye"ler/"adalet saray(lar)ı" salt hukuk mekanları olarak inşa edilmektedir. Nüfusun artması ve değişen hayat pratikleriyle birlikte dava sayıları artmış, yeni dava türleri ve farklı hukuki meseleler ortaya çıkmıştır. Bu nedenle hukuki mekanlar için yeni kamu politikaları üretilmiş,⁶³ küresel sistemin bir getirisi olarak ulusal mekanların yanında Avrupa Adalet Divanı, Uluslararası Ceza Mahkemesi gibi ulusüstü yapılar da inşa edilmiştir. Zamanla bu yapıların sayısı ve çeşidi artmıştır. Çeşitliliğin artmasıyla özgün ve farklı tarzlar ortaya çıkmıştır. Günümüzde ülkeden ülkeye değişiklik gösteren hukuki yapılar değişen algılara göre bir ülkedeki bölgeler arasında dahi farklılaşabilmektedir. Bu farklılıklarıyla hukuki mekânlar toplumsal kültürün ürünü olarak devamlı değişim dönüşüm halindedir. Değişimler toplumların yapıları gereği doğal olsa da hukuki mekanların tasarımında ve inşasında birtakım ortak kriterlerin

⁵⁷ Zira "varlıklar kendi hususi mevcudiyetlerinin ötesinde bir varlık düzenine işaret ederler." Kalın, 134.

⁵⁸ B. Woodson ve diğerleri, Judicial Symbols and the Link Between Legitimacy and Acquiescence. In: *APSA 2011 Annual Meeting Paper*. (2011); Piyel Haldar. "In and out of court: on topographies of law and the architecture of court buildings (a study of the Supreme Court of the State of Israel)" *Int'l J. Semiotics L.* 7, (1994).

⁵⁹ Juszczuk, "Power on a Pedestal: How Architecture Creates, Reinforces, and Reflects Power Structures in the Legal System", 54.

⁶⁰ Bels ve Branco, "Law and Architecture: Courthouse Architecture, Searching for a New Balance Between Representation and Functionality", 197.

⁶¹ Bels ve Branco, 184.

⁶² Richard Mohr, "In Between Power and Procedure: Where the Court Meets the Public Sphere", *Journal of Social Change and Critical Inquiry*, (1999), 1-13; İlber Ortaylı, Osmanlı'dan Bugüne Hükümet Konakları, *Mimarlık Dergisi*, 203 (1984), 1-15.

⁶³ Bkz. Judith Resnik ve Denis Curtis, *Representing Justice: Invention, Controversy, and Rights in City-states and Democratic Courtrooms*, (Yale University Press, 2011).

benimsenmesi toplumların hukuk algılarında olumlu neticeler doğurabilir.⁶⁴ Bu nedenle günümüzde adliye tasarımı yarışması gibi etkinliklerle ideal bir adliye binasının nasıl olabileceği sorusuna cevaplar aranmaktadır.⁶⁵ Cevaplar, hızlı teknolojik ve bilişsel gelişmelerin yaşandığı çağımızın dinamiklerine göre farklı bağlamlarda ortaya çıkabilmektedir.

Toplumsal gelişmelere bağlı olarak mevzuatlarda güncellemeler ve yenilikler yapılmaktadır. Aynı durumun mekanlar açısından da yaşanması hukuka erişim ve etkili bir hukuk deneyimi bakımından önemlidir. Kalabalık şehirler ve hızlı ihtiyaçlar nedeniyle günümüzde özensiz adli binalardan söz etmek mümkündür. Hukukun önemine binaen özel olarak tasarlanması gereken mekanların kimi zaman başka amaçlara matuf binalardan devşirilerek kullanılması olumsuz neticeler ortaya çıkarabilmektedir.⁶⁶ Adli yapıların günümüzde kullanıcılarının ihtiyaçlarına göre düzenlenmesi, bireylerin deneyimlerinden hareketle iyileştirilerek tasarlanması toplum nezdinde olumlu hukuki algılar oluşturabileceği gibi hukuk mesleği ve etiği açısından önemlidir.⁶⁷ Erişilebilirlik, belirlilik, şeffaflık gibi temel hukuki kaidelerin mekâna daha etkili yansıtılması toplum-hukuk ilişkisi bakımından olumlu gelişmelere zemin hazırlayabilir. Bu konuda yapıların zamandan ve toplumdan kopuk olmadan etkin bir şekilde inşa edilmesini amaçlayan tipomorfolojik yaklaşım, mimarlık- hukuk etkileşimi vasıtasıyla hukuk pratikleri ve hukuki yapıların etkinliği açısından da yol gösterici niteliktedir.

⁶⁴Sevim Büyüktaş Demir, *Kullanıcıları Adliye Binalarını Anlattı, Mimarizm Mimarlık ve Tasarım Yayın Platformu*, https://www.mimarizm.com/haberler/gundem/kullanicilari-adliye-binalarini-anlattı_127500 (Erişim Tarihi: 03 Ekim 2016).

⁶⁵ Bursa Adliye Binası Serbest, Ulusal Mimari Proje Yarışması, Bayındırlık ve İskan Bakanlığı Yapı İşleri Genel Müdürlüğü, (1986); Melike Davarcı, *Türkiye’deki Adliye Binalarının Tasarım ve Yönetimi İyileştirmesine Yönelik Çıkarımlar*, Yüksek Lisans Tezi, (Ankara: Gazi Üniversitesi Fen Bilimleri Enstitüsü, 2020), 113-121.

⁶⁶ Bkz. Hatipoğlu Aydın, “Mimarlık ve Hukuk İlişkisi Bağlamında Ankara Adliyesi Balgat Ek Hizmet Binası Üzerine Notlar”.

⁶⁷ Aziz Bacak, Adliyelerin Fiziksel ve Mimari Koşulları Bağlamında Yargısal Memnuniyet, *TBB Dergisi*, (2015), 268.

Sonuç

“İnsanın hem kendisine hem de hareket, süreç hâlindeki mekâna kendisini kazıması, işlemesi; mekân ile özünü bütünleştirmesiyle zamanı oluşturur. Zaman, insanın maddi, manevi yapıp etmelerinin tümü demek olan kültürün hülâsasıdır.”⁶⁸

Toplum ve birey hukuktan etkilendiği kadar hukuku etkileyen de bir yapıya sahiptir. Toplamların/devletlerin ihtiyaçlarına ve gelişimlerine göre kanunlar değişmekte, yeni düzenlemeler yapılmaktadır. Bu değişikliklerin yasama, yürütme ve yargı erklerine indirgenmesi hukuku toplumdan kopartarak soyut bir alana itebilmektedir. Soyut yapısıyla hayatın her alanında etkileşim halinde olunan hukukun maddi tezahürleri onu görünür ve hissedilir kılmaktadır. Bu maddi görünümünden biri olan mekân, toplumların algısını etkilemede tarih boyunca bir vasıta olarak kullanılmıştır. Kimi zaman bir mekânın mimarisinde kullanılan malzeme dönemin hâkim anlayışına göre düzenlenirken kimi zaman toplumun hukuk deneyimini olumlu hale getirmek için bir mahkemenin inşa edileceği konumu dahi stratejik olarak kullanılmıştır.

Bu çalışmada mimari tasarımda bir analiz yöntemi olan tipomorfolojiden yararlanılarak soyut nitelikteki hukuk-toplum ilişkisi mimarlık vasıtasıyla görünür kılınmaya çalışılmıştır. Tarihten günümüze mimarının hukuk-toplum ilişkisinde etkin bir konumda olduğu örneklerle ortaya koyulmuştur. Mimarının hukuka benzer işlevleri saptanarak mekân ve hukukun bir iletişim biçimi olarak birbirlerine benzediği anlaşılmıştır. Her iki alanın hayatın çoğu alanında birey ve toplumu etkilediği ve ondan etkilendiği aktarılmaya çalışılmıştır. Bu minval üzere toplum ve hukuk ilişkisinin olumlu yönde gelişiminde mekânın toplumsal yapıya uygun inşası için tipomorfolojik bir hukuk-mimarlık ilişkisinin önemi vurgulanmıştır. Neticede bu çalışma ile mimarının insan ve toplumun hukuk algısını etkilemede ve hukuku görünür kılmada önemli bir vasıta olduğu/olabileceği ortaya koyulmuştur.⁶⁹

⁶⁸ Şaban Teoman Duralı, *Çağdaş Küresel Medeniyet*, (İstanbul: Dergâh Yayınları, 1999), 27.

⁶⁹ İskeleti itibarıyla hukuk ve toplum ilişkisinin mimari izlerinin sürüldüğü çalışmada hatıra, edebi roman, blog yazısı gibi çeşitli kaynaklardan yararlanılmasıyla, bahsedilmese de bu ilişkinin anlaşılmasında farklı araştırma nesnelerinin ortaya çıkarılmasının imkânı ve konunun daha başka hangi alanlarda incelenebileceği sorusu da gündeme getirilmeye çalışılmıştır.

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