

Reconstructing the Role of *Al-'Adah Muhakkamah* in Islamic Criminal Law: An Integrative Framework of *Naṣṣ*, Living Law, and *Maqāṣid al-Sharī'ah*

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Abstract: The increasing complexity of contemporary society has generated new forms of criminal conduct that cannot always be addressed adequately through the classical formulation of Islamic criminal law. This condition requires a methodological framework capable of preserving the normative authority of the Qur'an and Sunnah while accommodating dynamic social realities. Although the legal maxim *al-'adah muhakkamah* (custom is recognized as a legal consideration) has long been acknowledged as one of the fundamental principles of Islamic legal maxims (*qawā'id fiqhīyyah*), limited scholarly attention has been devoted to reconstructing its function as an integrative instrument connecting *nash*, *living law*, and *maqāṣid al-syarī'ah* in contemporary Islamic criminal law. This study aims to reconstruct the function of *al-'adah muhakkamah* as a methodological framework for harmonizing normative Islamic legal authority with evolving social realities. This research employs normative legal research using conceptual, statutory, and philosophical approaches through qualitative library research based on classical juristic works, *uṣūl al-fiqh*, *qawā'id fiqhīyyah*, legislation, and recent scholarly publications. The findings demonstrate that *al-'adah muhakkamah* should no longer be viewed merely as a supplementary legal maxim but as an epistemological bridge integrating scriptural authority, the objectives of Islamic law (*maqāṣid al-syarī'ah*), and *living law*. Such reconstruction enables Islamic criminal law, particularly within the sphere of *jarīmah ta'zīr*, to respond adaptively to contemporary crimes while maintaining immutable Islamic legal principles (*ṭawābiṭ*). This study proposes an integrative model positioning *al-'adah muhakkamah* as the methodological nexus between universal Islamic legal norms and contemporary social realities, thereby strengthening the adaptability and sustainability of Islamic criminal law in modern society.

Keywords: *al-'adah muhakkamah*; Islamic criminal law; *living law*; *maqāṣid al-syarī'ah*; *qawā'id fiqhīyyah*.

Introduction

The development of global society, characterized by advances in information technology, economic digitalization, social mobility, and the increasing complexity of human interactions, has given rise to various new forms of criminal offences that cannot be entirely explained through the framework of classical Islamic criminal law. Cybercrime, money laundering, digital asset trading, crimes involving artificial intelligence, and various forms of transnational crime demonstrate that social transformation is progressing more rapidly than the development of both positive law and Islamic legal formulations. This condition necessitates a legal methodology that is not only capable of preserving the normative authority of *nash* but also possesses the capacity to adapt to social dynamics without compromising the fundamental principles of the Shari'ah.¹

Within the tradition of Islamic law, the relationship between revealed norms and social realities has, in fact, received considerable attention since the formative period of classical Islamic jurisprudence. Muslim jurists developed various methodological instruments to ensure that Islamic law remained relevant to changing circumstances, including the concepts of *maṣlaḥah mursalah*, *istiḥṣān*, *sadd al-dhari'ah*, *istiṣhāb*, and *'urf*. One of the legal maxims that occupies a significant position in this context is *al-'adab mubakkamah*, namely the principle that recognizes custom or societal practice as a legal consideration, provided that it does not contradict the Qur'an, the Sunnah, *ijmā'*, or the fundamental principles of the Shari'ah.² This legal maxim not only reflects the flexibility of Islamic law but also demonstrates that, from its earliest development, the Shari'ah has acknowledged the social dimension as an integral part of the process of legal formulation and implementation.

Nevertheless, scholarly discussions concerning *al-'adab mubakkamah* continue to be dominated by normative analyses that regard this legal maxim merely as one branch of *qawā'id fiqhīyyah*. The majority of both classical and contemporary literature primarily discusses its definition, the conditions of *'urf*, the classification of customs, and examples of its application in the fields of *mu'āmalāt*, family law, and Islamic commercial transactions.³ Studies that specifically position *al-'adab mubakkamah* as a methodological instrument in the formulation of Islamic criminal law remain relatively limited. Consequently, the adaptive capacity of Islamic criminal law to respond to the development of modern society has yet to receive an adequate theoretical explanation.

This limitation becomes increasingly significant when viewed in relation to the characteristics of Islamic criminal law, which is often perceived as a rigid legal system due to its orientation toward *hudud* punishments explicitly prescribed by

¹ Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009).

² Jalal al-Din 'Abd al-Rahman ibn Abi Bakr al-Suyuti, *Al-Ashbah Wa al-Naẓa'ir Fi Qawā'id Wa Furu' Fiqh al-Shafi'iyyah* (Dar al-Kutub al-'Ilmiyyah, 1983), h. 119-126.

³ Mustafa Ahmad al-Zarqa, *Al-Madkhal al-Fiqhī al-'Am: Ikbrāj Jadīd Bi-Tatwīr Fi al-Tartīb Wa al-Tabwīb Wa al-Ziyādāt*, vol. 2 (Dār al-Qalam, 1998), h. 841-864.

textual sources. Such a perception is not entirely accurate, however, because the structure of Islamic criminal law consists not only of *jarimah hudud* but also of *qisas-diyat* and, more importantly, *jarimah ta'zir*, which grants judges and legitimate authorities the discretion to determine the form and severity of punishment based upon public welfare (*maṣlaḥah*).⁴ Accordingly, the flexibility of Islamic criminal law does not lie in altering immutable legal norms (*thawābiṭ*), but rather in the mechanism of interpreting social realities that continuously evolve over time.

The dynamic transformation of society has also contributed to the development of the theory of *living law* within modern legal scholarship. Eugen Ehrlich argued that the law which genuinely governs society is not merely the law codified in legislation but rather the law that develops and is observed by the community in everyday life.⁵ This perspective was subsequently developed by numerous legal scholars through the theory of legal pluralism, which recognizes social norms, customs, community practices, and traditions as integral sources of legal formation. Within the context of Islamic law, this idea shares common ground with the concept of *'urf* and the legal maxim *al-'adab mubakkamah*, since both acknowledge social reality as a legitimate consideration in legal determination.

Nevertheless, there exists a fundamental distinction between the concept of *living law* in the modern legal tradition and the concept of *'urf* in Islamic law. Within Western legal theory, the validity of social norms is primarily determined by their acceptance within society. In contrast, under Islamic law, the validity of a custom depends not only upon its social acceptance but also upon its conformity with the normative requirements established by the Shari'ah. Therefore, not every societal practice may serve as a legal basis; only *'urf ṣaḥiḥ* that does not contradict the Qur'an, the Sunnah, or the objectives of the Shari'ah (*maqāṣid al-shari'ah*) may be recognized as legally authoritative.⁶ This epistemological distinction demonstrates that the integration of *living law* and *al-'adab mubakkamah* requires a methodological framework capable of maintaining a balance between the normative authority of divine revelation and the continuously evolving needs of society.

Over the past several decades, scholarly studies concerning the relationship between Islamic law and social change have developed considerably. Mohammad Hashim Kamali argues that the flexibility of Islamic law is largely determined by the instruments of *ijtibād*, which enable the Shari'ah to remain relevant to social transformation without losing its normative legitimacy.⁷ Through his systems approach, Jasser Auda likewise emphasizes that the implementation of *maqāṣid al-shari'ah* must be understood dynamically in order to respond effectively to the

⁴ Wahbah al-Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuhu*, VII (Dar al-Fikr, 1996), h. 5307-5319.

⁵ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Harvard University Press, 1936).

⁶ Ahmad al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought, 2005), h. 102.

⁷ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld, 2008), h. 45.

complexity of modern society.⁸ Meanwhile, numerous studies on *living law* demonstrate that the effectiveness of any legal system is significantly influenced by its capacity to accommodate the social values that exist within society.⁹ Nevertheless, these studies generally discuss *maqāṣid*, *living law*, or *'urf* separately, and therefore have not yet produced a conceptual model integrating these three elements within the framework of Islamic criminal law.

Previous studies also demonstrate a tendency to discuss *al-'adab mubakkamah* primarily within the contexts of Islamic commercial law, contractual law, and family law. Studies that position this legal maxim as a methodological instrument for formulating contemporary Islamic criminal policy remain exceedingly limited. Yet, the emergence of modern forms of crime indicates that the broadest scope for the application of *al-'adab mubakkamah* lies precisely within the domain of *jarimah ta'zīr*, namely offences whose forms and sanctions are not explicitly prescribed by *nash*. This condition reveals the existence of a research gap between the development of the theory of *qawā'id fiqhīyyah* and the need to reconstruct contemporary Islamic criminal law.

Based on the foregoing discussion, this study proceeds from the assumption that the function of *al-'adab mubakkamah* is no longer sufficient if it is understood merely as a supplementary legal maxim in legal determination. Rather, this legal maxim should be reconstructed as a methodological instrument that integrates the three principal dimensions of Islamic legal formation, namely the authority of *nash* as the normative source, *maqāṣid al-shari'ah* as the orientation of public welfare, and *living law* as the representation of evolving social realities within society. Such a reconstruction is expected to strengthen the adaptive capacity of Islamic criminal law in responding to social transformation without sacrificing legal certainty or the integrity of the fundamental principles of the Shari'ah.

Based on this background, the present study aims to reconstruct the function of the legal maxim *al-'adab mubakkamah* in Islamic criminal law through the integration of *nash*, *living law*, and *maqāṣid al-shari'ah*. This study not only explains the position of this legal maxim within the tradition of *qawā'id fiqhīyyah* but also proposes a conceptual model that positions *al-'adab mubakkamah* as a methodological bridge between the universal norms of Islam and the dynamics of contemporary society. Accordingly, this study is expected to contribute to the development of Islamic criminal law theory, enrich scholarly discourse on the renewal of the methodology of *ijtihad*, and provide a conceptual foundation for the development of Islamic criminal law policies that are more responsive to social transformation while preserving the normative character of the Shari'ah.

⁸ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008), h. 67.

⁹ Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press, 2001), h. 56.

Research Method

This study employs normative legal research (*normative legal research*) with the objective of reconstructing the function of the legal maxim *al-'adah muhakkamah* in Islamic criminal law through the integration of *nash*, *living law*, and *maqāṣid al-shari'ah*. The research adopts three complementary approaches, namely the conceptual approach, the statutory approach, and the philosophical approach. The conceptual approach is employed to analyze the concepts of *al-'adah muhakkamah*, *'urf*, *living law*, and *maqāṣid al-shari'ah* within the framework of Islamic law. The statutory approach is utilized to examine various legal regulations related to Islamic criminal law in Indonesia, particularly the Aceh Qanun on Jinayat Law and other relevant statutory provisions. Meanwhile, the philosophical approach is applied to identify the fundamental values underlying the relationship between the normative authority of *nash* and the dynamics of social reality.¹⁰

The legal materials employed in this research consist of primary legal materials, including the Qur'an, the Hadith, classical works of *fiqh*, *uṣūl al-fiqh*, and *qawā'id fiqhiyyah*, the Aceh Qanun on Jinayat Law, as well as statutory regulations concerning Islamic law. The secondary legal materials comprise reputable scholarly articles indexed in Scopus, Web of Science, and SINTA, academic books, and previous studies relevant to the research topic. All legal materials are analyzed qualitatively through systematic, conceptual, and teleological methods of interpretation, using *maqāṣid al-shari'ah* as the analytical framework to reconstruct the function of *al-'adah muhakkamah* in the formulation of Islamic criminal law that is adaptive to social change without disregarding the immutable principles of the Shari'ah.¹¹

Discussion

Reconstructing the Position of the Legal Maxim *Al-'Adah Muhakkamah* within the Theory of *Qawā'id Fiqhiyyah*

The historical development of Islamic law since the formative period of the legal schools (*madhāhib*) demonstrates that the Shari'ah has never been conceived as a legal system detached from the realities of social life. Although the Qur'an and the Sunnah constitute the primary sources of Islamic law, the process of *istinbāt* (legal reasoning) undertaken by Muslim jurists has consistently taken social change into account as an essential context for the application of legal rulings. One of the methodological instruments that reflects this adaptive character is the legal maxim

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, cet. 4 (Kencana, 2008), h. 133-214.

¹¹ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119, <https://doi.org/10.21153/dlr2012vol17no1art70>.

al-'adab mubakkamah, namely the principle that recognizes societal custom (*'urf*) as a legal consideration, provided that it does not conflict with the provisions of the Shari'ah.¹² This legal maxim developed as the cumulative result of the *ijtihad* practices of Muslim jurists, who recognized that social life continually evolves while Islamic law must remain capable of safeguarding public welfare (*maṣlahah*) without losing its normative legitimacy.

Within the literature of *qawā'id fiqhīyyah*, *al-'adab mubakkamah* is recognized as one of the five universal legal maxims (*al-qawā'id al-kullīyyah al-khams*) that constitute the foundation for the development of Islamic law. Al-Suyūṭī places this maxim alongside *al-umūr bi maqāṣidihā*, *al-yaqīn lā yuẓālu bi al-shakk*, *al-mashaqqah tajlīb al-taysīr*, and *lā ḍarar wa lā ḍirār*, all of which function as general principles guiding the process of legal determination.¹³ The existence of *al-'adab mubakkamah* demonstrates that custom is not merely a social phenomenon but also constitutes a methodological instrument through which Islamic law may be understood and implemented in a contextual manner.

Etymologically, the term *'ādah* derives from the Arabic root *'ada-ya'ūdu*, meaning something that is repeatedly practiced until it becomes habitual. In its subsequent development, the majority of Muslim jurists did not distinguish substantively between *'ādah* and *'urf*, since both refer to practices that are widely accepted within society. Nevertheless, some scholars of *uṣūl al-fiqh* maintain that *'urf* emphasizes the social recognition of a particular custom, whereas *'ādah* places greater emphasis on the repetitive nature of human conduct. This terminological distinction, however, does not affect their function as legal considerations, provided that they satisfy the requirements prescribed by the Shari'ah.¹⁴

Muslim jurists have established that a custom may serve as a legal basis only when it fulfills several criteria: it must be generally or predominantly observed within society, continuously practiced over time, not contradict the provisions of the Qur'an and the Sunnah, and not result in harm (*mafsadah*).¹⁵ Accordingly, the legal maxim *al-'adab mubakkamah* cannot be understood as granting legitimacy to every form of custom that develops within society. Rather, this maxim demonstrates that the Shari'ah conducts a process of normative selection through the distinction between *'urf ṣaḥīḥ* and *'urf fāsid*. Only those customs that are consistent with the values of justice, public welfare, and the objectives of the Shari'ah are recognized as legitimate legal considerations.

Although this legal construction has long been established in classical Islamic legal literature, the majority of scholarly studies continue to regard *al-'adab*

¹² Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu*, Vol. 1 (Dar al-Fikr, 1985), h. 284-290.

¹³ Jalal al-Din 'Abd al-Rahman ibn Abi Bakr al-Suyuti, *Al-Ashbah Wa al-Naẓa'ir Fi Qawā'id Wa Furu' Fiqh al-Shafi'iyyah*, h. 119-126.

¹⁴ Mustafa Ahmad al-Zarqa, *Al-Madkhal al-Fiqhī al-'Am: Ikrāj Jadīd Bi-Taṭwīr Fi al-Tartīb Wa al-Tabwīb Wa al-Ziyādāt*, vol. 2, h. 841-856.

¹⁵ Abdul Karim Zaidan, *Al-Wajiz Fi Uṣul al-Fiqh* (Mu'assasah al-Risalah, 2015), h. 252-260.

mubakkamah merely as a supplementary legal maxim for resolving issues of Islamic jurisprudence. Such a perspective has prevented the methodological function of this maxim from developing optimally, particularly within the field of Islamic criminal law. In fact, a closer examination reveals that the existence of *al-'adah mubakkamah* demonstrates that Islamic law has, from its earliest development, recognized the importance of a dialectical relationship between revealed norms and social dynamics. In other words, the flexibility of Islamic law does not arise from altering *nash* but rather from the existence of a methodological mechanism that enables legal rules to be applied contextually in accordance with the evolving conditions of society.

This perspective becomes increasingly relevant within the context of modern society. Globalization, digitalization, and advances in information technology have generated new forms of custom (*digital custom*) that were unknown during the classical period, including electronic transactions, digital identity, virtual communication, and the use of artificial intelligence in economic and social activities. These practices have created patterns of collective behavior which, from a sociological perspective, may be regarded as new forms of *'urf*. Consequently, restricting the application of *al-'adah mubakkamah* solely to traditional customs would undermine the adaptive function that constitutes the essential characteristic of this legal maxim. The reconstruction of the function of *al-'adah mubakkamah* should therefore be directed toward accommodating the development of these new forms of custom, provided that they do not contradict the principles of the Shari'ah and remain oriented toward the realization of *maqāṣid al-shari'ah*.

Furthermore, the recognition of changing forms of *'urf* does not imply that society itself becomes an independent source of law. Within the epistemology of Islamic law, legal legitimacy continues to derive from the Qur'an and the Sunnah, whereas custom functions as an interpretative instrument for explaining matters that are not explicitly regulated by *nash*. Consequently, the function of *al-'adah mubakkamah* is not to replace the authority of divine revelation but rather to bridge the application of the universal norms of Islam with the factual conditions of society, which are continuously evolving. It is precisely this methodological position that distinguishes the concept of *'urf* in Islamic law from sociological theories of law, which regard society as the primary source of legal legitimacy.

Based on the foregoing discussion, it can be understood that reconstructing the function of *al-'adah mubakkamah* cannot be confined merely to the level of definition but must instead be directed toward strengthening its position as a methodological instrument in the process of Islamic legal formation. This legal maxim should no longer be regarded merely as a complementary principle within Islamic jurisprudence; rather, it should be reconstructed as an integrative mechanism that connects the authority of *nash*, the orientation of *maqāṣid al-shari'ah*, and the dynamics of *living law* within society. Through this perspective, *al-'adah mubakkamah* acquires a broader function as an epistemological foundation for the development of Islamic criminal law that is responsive to social transformation while simultaneously preserving the normative character of the Shari'ah.

The Dialectic of *Nash*, *Living Law*, and *Maqāṣid al-Sharī'ah* as a Framework for the Reconstruction of Islamic Criminal Law

The relationship between *nash* and social reality constitutes one of the fundamental issues in the epistemology of Islamic law. From the time of the Prophet Muhammad (peace be upon him) through the development of the various schools of Islamic jurisprudence (*madhābīh*), Muslim jurists recognized that not every legal issue could be resolved solely through a textual reading of the Qur'an and the Sunnah. Although these two sources possess the highest authority in the formation of Islamic law, their application has always required a process of legal understanding (*fiqh*) that takes into account social context, changing circumstances, and the objectives of the Sharī'ah (*maqāṣid al-sharī'ah*).¹⁶ Accordingly, the dynamism of Islamic law should not be understood as a conflict between textual authority and social reality but rather as a process of integrating both through a systematic methodology of *ijtihād*.

From the classical perspective, the majority of Muslim jurists distinguished between the immutable provisions of the Sharī'ah (*al-thawābit*) and those legal rulings that may change in response to evolving social conditions (*al-mutaghayyirāt*). Rules concerning the principles of faith (*'aqīdah*), ritual acts of worship (*'ibādah mahḍah*), and certain categories of *hudud* crimes are regarded as possessing a fixed normative character that cannot be altered. Conversely, various aspects relating to the implementation of law, public administration, criminal policy (*al-siyāsah al-shar'īyyah*), and *ta'zīr* sanctions provide broad scope for *ijtihād* in accordance with societal development.¹⁷ This distinction demonstrates that the flexibility of Islamic law does not signify legal relativism but rather reflects a balance between normative certainty and the necessity of responding to social change.

Within this framework, *al-'adab mubakkamah* performs a strategic function as a methodological instrument that connects universal legal norms with social realities. This legal maxim operates at the level of legal implementation rather than at the level of modifying the substance of *nash*. Accordingly, custom possesses no authority to alter provisions that have been explicitly established by the Qur'an and the Sunnah; instead, it serves to clarify, supplement, and concretize those matters that the Sharī'ah has left to social development.¹⁸ This understanding is essential to avoid the misconception that recognizing custom is equivalent to subordinating divine revelation to local culture.

¹⁶ Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge University Press, 2009), h. 31-58.

¹⁷ Ibnu al-Qayyim al-Jauziyyah, *I'lām al-Munawwīn 'an Rabb al-'Alamin*, Juz. III (Dār Al-Kutub al-'Ilmiyyah, 1993), h. 11-39.

¹⁸ Mustafa Ahmad al-Zarqa, *Al-Madkhal al-Fiqhī al-'Am: Ikbrāj Jadīd Bi-Taṭwīr Fī al-Tartīb Wa al-Tabwīb Wa al-Ziyādāt*, vol. 2., h. 852-864

When examined more closely, this mechanism bears considerable resemblance to the theory of *living law* introduced by Eugen Ehrlich. Ehrlich argued that the law which genuinely governs society is not merely the law codified in legislation but rather the social norms that are observed and practiced by members of society in their daily lives.¹⁹ This perspective subsequently developed into one of the principal foundations of modern sociology of law, which regards society as the primary arena of legal formation. In practice, the effectiveness of a legal system is determined not only by the quality of state-enacted legal norms but also by the extent to which those norms are accepted within society.

Despite these similarities, the concepts of *living law* and *al-'adab mubakkamah* are founded upon different epistemological bases. Within modern legal theory, the legitimacy of social norms derives primarily from their acceptance by society. By contrast, under Islamic law, the validity of a custom is determined not only by its sociological acceptance but also by its conformity with the principles of the Shari'ah. In other words, Islamic law does not recognize every form of *living law* as a source of law; rather, it accepts only '*urf ṣaḥiḥ*', namely customs that do not contradict the Qur'an, the Sunnah, *ijma'*, or the objectives of the Shari'ah.²⁰ This distinction demonstrates that the concept of *living law* in Islamic law is normative-sociological, rather than merely sociological.

This epistemological distinction, in fact, highlights the methodological superiority of Islamic law. The Shari'ah does not isolate itself from social change, yet neither does it allow social transformation to become the sole basis for legal formation. The role of *maqāṣid al-shari'ah* therefore becomes crucial as the principal criterion for assessing whether a particular custom deserves legal recognition. According to al-Shāṭibī, all provisions of the Shari'ah are ultimately directed toward the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).²¹ Consequently, any custom that undermines these five fundamental objectives cannot serve as a basis for legal consideration, regardless of how widely it may be accepted within society.

This analysis demonstrates that the relationship between *living law* and *maqāṣid al-shari'ah* is complementary in nature. *Living law* provides information concerning the changing needs of society, whereas *maqāṣid al-shari'ah* functions as an instrument of normative evaluation for assessing those changes. Accordingly, *al-'adab mubakkamah* occupies the point of convergence between these two dimensions. This legal maxim recognizes social dynamics as a legal reality while simultaneously filtering them through the objectives of the Shari'ah, thereby granting legal legitimacy only to those customs that promote public welfare (*maṣlaḥah*). This methodological position

¹⁹ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, h. 390-506.

²⁰ Wahbah Zuhaili, *Ushul Al-Fiqh al-Islami*, II (Dār al-Fikr, 1986), h. 828-846.

²¹ As-Syatibi, *Al-Muwafaqat Fi Usul al-Shariah*, Vol. II (Dar al-Kutub al-'Ilmiyyah, 1997), h. 8-39.

establishes *al-'adab mubakkamah* as an integrative instrument rather than merely a supplementary principle within *qawā'id fiqhīyyah*.

The methodological implications of this reconstruction are highly significant for the development of contemporary Islamic criminal law. Advances in digital technology have generated numerous forms of crime that were unknown in the classical literature of Islamic jurisprudence, including digital identity theft, electronic data manipulation, cyberattacks against public infrastructure, artificial intelligence-based fraud, and the trade of virtual assets. None of these offences are explicitly addressed within the classical classifications of *jara'im*, and therefore their legal treatment requires an *ijtihād*-based approach that takes into account the characteristics of modern society and technological development.²² In this context, *al-'adab mubakkamah* provides the methodological foundation for understanding changes in societal patterns of life as part of the legal reality that must be considered in determining *ta'zīr* sanctions.

Nevertheless, the application of *al-'adab mubakkamah* should not be interpreted as legitimizing every social practice that emerges within society. Globalization has also produced various new cultural practices that conflict with the principles of the Sharī'ah, including the normalization of digital gambling, the misuse of information technology, illicit economic transactions, and the dissemination of content that undermines public morality. If every form of *living law* were accepted without normative evaluation, Islamic law would lose its essential function as a guardian of public welfare. Therefore, the reconstruction of *al-'adab mubakkamah* must continue to regard *maqāṣid al-sharī'ah* as the primary criterion for determining the legal validity of any custom.

From this perspective, the relationship between *nash*, *living law*, and *maqāṣid al-sharī'ah* should no longer be understood as three independent concepts but rather as a unified methodological framework in the process of formulating Islamic criminal law. *Nash* provides normative legitimacy, *living law* supplies the empirical context, while *maqāṣid al-sharī'ah* serves as the evaluative instrument for assessing social transformation. The legal maxim *al-'adab mubakkamah* subsequently functions as the integrative mechanism that bridges these three elements, thereby enabling Islamic criminal law to preserve continuity between the authority of divine revelation and the needs of contemporary society.

This reconstruction further demonstrates that the flexibility of Islamic law is not the result of compromising with social change but rather the logical consequence of the methodology of *ijtihād* that has developed since the classical period. Accordingly, the principal challenge facing Islamic criminal law today does not lie in altering the fundamental principles of the Sharī'ah, but in strengthening a

²² Mohammad Hashim Kamali, "Sharī'ah And Civil Law: Towards A Methodology Of Harmonization," *Islamic Law and Society* 14, no. 3 (2007): 391–420, <https://doi.org/10.1163/156851907782792508>.

methodology capable of translating the universal values of Islam into the continually evolving realities of society. It is within this context that *al-'adab muhakkamah* acquires a renewed significance as a methodological foundation for the renewal of Islamic criminal law that is adaptive, just, and consistently oriented toward the objectives of the Shari'ah.

Reconstruction of the Implementation of *Al-'Adab Muhakkamah* in Islamic Criminal Law: An Analysis of *Hudūd*, *Qisās-Diyāt*, and *Ta'zīr*

1. The Implementation of *Al-'Adab Muhakkamah* in *Jarimah Hudūd*: The Limits of Adaptation toward Fixed Norms

Within the discourse of Islamic criminal law, *jarimah hudūd* is positioned as a category of criminal offenses whose legitimacy originates directly from the Qur'an and Sunnah. Consequently, the forms and types of punishments prescribed under *hudūd* cannot be altered by human authorities. This characteristic has often led to the perception that *hudūd* represents an absolute dimension of Islamic law that provides little room for adaptation to social change. Such a view is only accurate when referring to the substantive aspect of punishment (*al-thawābit*), but becomes problematic when applied to the entire process of legal implementation. Classical Islamic jurisprudence demonstrates that jurists (*fuqahā'*) actually provided considerable space for social considerations in determining the conditions required for the application of *hudūd*, particularly in aspects that are not explicitly regulated in detail by textual sources (*naṣṣ*).²³

This phenomenon demonstrates that the flexibility of Islamic criminal law does not lie in modifying legal norms, but rather in interpreting the legal facts that constitute prerequisites for the enforcement of punishment. The legal principle of *al-'adab muhakkamah* operates within this domain by assisting judges in understanding evolving social circumstances, ensuring that the implementation of *hudūd* remains connected with the realities of society. Therefore, custom does not alter criminal provisions; rather, it provides an interpretative framework for assessing factual elements that constitute part of legal evidence and the application of law.

One of the most frequently discussed examples among Muslim scholars concerns the concept of *ḥirz* (a secure place for safeguarding property) in the offense of theft (*sariqah*). The Qur'an establishes the punishment of amputation for qualified cases of theft (Q.S. al-Mā'idah [5]: 38), yet it does not provide a detailed definition regarding the standard of security required for property protection. Jurists subsequently explained that the determination of *ḥirz* depends on prevailing social customs (*al-'urf*), because methods of protecting property continuously change according to historical and technological developments.²⁴ In classical societies,

²³ Zuhaili, *Al-Fiqh Al-Islamiy Wa Adillatuhu*, vol. 7., h. 5307-5338.

²⁴ Ibn Qudāmah, *Al-Mughnī*, vol. 10 (Dar 'Alam al-Kutub, 1997), h. 278-289.

houses, warehouses, or animal shelters could be categorized as forms of *hirz*. Conversely, in modern societies, such standards have expanded to include security vaults, electronic security systems, bank accounts, digital wallets, and cloud-based data storage systems.

The transformation of the concept of *hirz* demonstrates that Islamic law from the beginning did not intend to restrict the meaning of security to a particular physical form. Instead, it delegated its determination to the living customs and practices of society. Therefore, the existence of *al-'adab mubakkamah* indicates that Islamic law possesses an internal mechanism to accommodate technological developments without altering the substantive principles contained in the revealed texts. This analysis also challenges the assumption that Islamic criminal law is entirely static. What remains permanent is the legal norm itself, whereas the factual parameters that determine its application may evolve in accordance with social transformation.

Another example can be found in determining the value of property considered legally significant in theft cases. Although prophetic traditions mention a specific threshold (*niṣāb*), its implementation throughout various Muslim societies historically demonstrates adjustments based on economic conditions, currency values, and purchasing power.²⁵ Such adjustments do not constitute modifications of prophetic traditions; rather, they represent a process of contextualization to ensure that the legal objective (*maqṣad*) of protecting property (*ḥifz al-māl*) continues to be achieved proportionally.

From the perspective of *maqāṣid al-sharī'ah*, such flexibility possesses a strong philosophical foundation. The primary objective of *hudūd* punishment is not merely retaliation against offenders, but also the preservation of social stability, protection of public rights, and prevention of broader social harm (*fasād*). Therefore, interpretation concerning the requirements for implementing *hudūd* must be directed toward achieving these objectives. The principle of *al-'adab mubakkamah* ensures that legal enforcement does not lose its relevance due to transformations in social life.

Nevertheless, this adaptive space is not unlimited. Contemporary discussions sometimes demonstrate a tendency to expand the function of *urf* to the extent that it appears capable of modifying the substantive provisions of *hudūd*. Such an approach risks blurring the distinction between permanent elements (*al-thawābit*) and changing elements (*al-mutaghayyirāt*). Methodologically, this position is difficult to justify because it contradicts the majority scholarly consensus regarding the normative character of *hudūd*.²⁶ Therefore, *al-'adab mubakkamah* must be understood as an interpretative instrument rather than a legal basis for changing the types or degrees of punishment explicitly established by Islamic law.

²⁵ Yusuf Qardhawi, *Fiqh Al-Zakat*, vol. 1 (Dar al-Muassasah, 2006), h. 344-352.

²⁶ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law* (Oxford University Press, 2019), h. 87-112.

This analysis produces an important reconstruction of the function of *al-'adah muhakkamah*. The principle has often been understood merely as a form of recognition of customary practices. However, within the context of *budūd*, its primary function lies in its ability to bridge universal legal norms with changing social realities. In other words, *al-'adah muhakkamah* maintains the normative certainty of Islamic criminal law while simultaneously ensuring its responsiveness to societal development.

Furthermore, the emergence of digital technology demonstrates the necessity of expanding the interpretation of the concept of *hirz*. In the digital economy era, objects requiring legal protection are no longer limited to tangible property, but also include digital assets, electronic identities, personal data, and virtual currencies possessing economic value. These developments raise new questions regarding how the concept of theft in Islamic law should be understood. A purely textual approach is insufficient to address such contemporary issues. Therefore, employing *al-'adah muhakkamah* as a methodological instrument enables judges to understand changing characteristics of property based on modern social practices without abandoning the fundamental principle of property protection established by Islamic law.

Accordingly, the implementation of *al-'adah muhakkamah* within *jarimah budūd* demonstrates that Islamic criminal law has possessed an adaptive mechanism since the classical period. Such adaptation is not directed toward modifying legal norms, but toward interpreting factual dimensions that evolve alongside societal changes. This reconstruction confirms that the flexibility of Islamic law represents an inherent aspect of the methodology of *ijtihad*, rather than a compromise with the authority of revealed texts. Through this approach, Islamic criminal law is able to preserve legal certainty while maintaining its relevance in addressing the complexities of modern life.

2. The Implementation of *Al-'Adah Muhakkamah* in *Jarimah Qiṣās* and *Diyāt*: Adaptation in Procedural Aspects and the Restoration of Justice

Unlike *jarimah budūd*, which is predominantly associated with the rights of God (*ḥaqq Allāh*), *jarimah qiṣās* and *diyāt* place individual rights (*ḥaqq al-ādami*) as a highly dominant element. Therefore, the legal character of *qiṣās* is not solely oriented toward imposing punishment upon offenders, but also toward restoring the balance of relationships between perpetrators, victims, victims' families, and society. The Qur'an emphasizes that *qiṣās* serves as an instrument for preserving life (*wa lakum fi al-qiṣāsi ḥayāt*) while simultaneously providing space for forgiveness (*al-'afw*) and the payment of *diyāt* as alternative mechanisms that may better achieve public benefit (*maṣlahah*). This normative construction demonstrates that Islamic criminal law, from its inception, has accommodated a restorative dimension by allowing peaceful conflict resolution without eliminating legal certainty.

In classical Islamic jurisprudence, the implementation of *qiṣās* and *diyāt* was never separated from the social conditions of the community. Jurists acknowledged

that the forms of *diyāt* payment, mechanisms for delivering compensation, procedures for consultation with victims' families, and the system of collective responsibility (*'āqilah*) were significantly influenced by the social structures prevailing in each region.²⁷ This demonstrates that although the legal foundations of *qīṣāṣ* and *diyāt* originate from revealed texts, their implementation still provides space for social customs through the application of the principle *al-'adab mubakkamah*.

The presence of *al-'adab mubakkamah* in the context of *qīṣāṣ* does not aim to alter the rights of victims or eliminate the obligations of offenders. Rather, it ensures that dispute resolution mechanisms remain capable of achieving substantive justice. In classical Arab society, *diyāt* payments were commonly made in the form of camels because camels represented a recognized standard of wealth and economic value. However, as economic structures transformed, the majority of Muslim jurists permitted replacing such forms of payment with gold, silver, money, or other assets possessing equivalent value based on prevailing social practices.²⁸ Therefore, the transformation of payment methods does not constitute a modification of Islamic legal principles, but rather represents an adaptation to the evolution of economic systems within society.

This analysis demonstrates that the flexibility of Islamic law fundamentally lies in its orientation toward protecting legal objectives rather than maintaining specific technical forms of implementation. The primary purpose of *diyāt* is to restore the losses suffered by victims while preserving social harmony. Therefore, when modern societies develop payment mechanisms through bank transfers, escrow accounts, or state-regulated compensation systems, these instruments may, from a methodological perspective, be considered contemporary implementations of the principle of *diyāt*, provided that they continue to fulfill the values of justice and public benefit (*maṣlahah*).

Furthermore, the development of modern judicial systems indicates that criminal justice is no longer exclusively oriented toward punishment (*retributive justice*), but increasingly emphasizes the restoration of social relationships through restorative justice approaches. This approach highlights dialogue between offenders, victims, victims' families, and communities in order to achieve fair resolution and restore social balance.²⁹ Interestingly, this principle shares substantial similarities with the mechanisms of *qīṣāṣ* and *diyāt* in Islamic law, which from the beginning provided opportunities for reconciliation (*ṣulh*), forgiveness, and compensation as alternative methods of resolving criminal disputes.

This similarity demonstrates that Islamic criminal law had already recognized the concept of restorative justice long before it emerged as a modern legal theory.

²⁷ Zuhaili, *Al-Fiqh Al-Islamī Wa Adillatuhu*, vol. 7, h. 5539-5578.

²⁸ Ibn Rushd, *Bidayat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*, vol. 2 (Dar al-Kutub al-'Ilmiyyah, 2004), h. 401-417.

²⁹ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002), h. 11-38.

Nevertheless, previous studies have generally treated this similarity merely as a historical fact without developing its broader methodological implications. In fact, through the framework of *al-'adab mubakkamah*, restorative mechanisms can be reconstructed to respond to contemporary social needs while maintaining their legitimacy within Islamic legal principles. In other words, social customs and developments in modern legal systems are not positioned as substitutes for Islamic law, but rather as instruments for implementing the objectives of law established by the Shari'ah.

However, the application of *al-'adab mubakkamah* in cases of *qisās* and *diyāt* remains subject to clear limitations. Not every form of reconciliation practiced within society can be accepted under Islamic law. Agreements obtained through coercion, unequal power relations, or those contradicting principles of justice cannot be considered valid forms of *ṣulh*. Likewise, dispute resolutions that unilaterally eliminate victims' rights or perpetuate discrimination do not fulfill the criteria of valid custom (*'urf ṣaḥiḥ*). Therefore, the validity of a particular custom must always be evaluated through the parameters of *maqāṣid al-shari'ah*, particularly the protection of life (*ḥifẓ al-naḥs*), property (*ḥifẓ al-māl*), and human dignity (*ḥifẓ al-'ird*).³⁰³¹

From a methodological perspective, this condition demonstrates that the function of *al-'adab mubakkamah* in *qisās* and *diyāt* extends far beyond merely recognizing social practices. This legal principle functions as an instrument that connects Shari'ah-based norms with the development of modern dispute-resolution systems that increasingly emphasize victim restoration. This reconstruction further confirms that Islamic criminal law possesses the capacity to engage with contemporary legal theories without losing its normative identity.

Broader implications can also be observed in the development of national legal systems across various Muslim-majority countries. The emergence of penal mediation mechanisms, victim compensation schemes, witness protection frameworks, and community-based dispute resolution demonstrates that restorative orientations are increasingly gaining recognition within modern criminal justice policies. These principles may be enriched through the concepts of *qisās*, *diyāt*, and *al-'adab mubakkamah*, allowing criminal law reform not merely to focus on enforcement effectiveness but also to pursue substantive justice in accordance with the objectives of Islamic law.

Therefore, the reconstruction of the implementation of *al-'adab mubakkamah* in *qisās* and *diyāt* demonstrates that the flexibility of Islamic criminal law does not emerge from modifying legal norms, but from the ability of Islamic legal methodology to adapt dispute-resolution mechanisms according to societal developments. The principle of *al-'adab mubakkamah* functions as a bridge connecting textual authority (*naḥs*), the values of *maqāṣid al-shari'ah*, and the needs of modern legal systems that increasingly emphasize victim protection and the restoration of

³⁰ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, h. 45-78.

social relationships. This position strengthens the relevance of Islamic criminal law as a legal system that not only guarantees legal certainty but also provides contextual and sustainable justice.

3. The Implementation of *Al-'Adab Muhakkamah* in *Jarimah Ta'zir*: Reconstruction of the Integration between *Naṣṣ*, Living Law, and *Maqāṣid al-Sharī'ah*

If *jarimah hudud* reflects the dimension of normative certainty (*legal certainty*) and *qisāṣ-diyāt* represents the balance between individual rights and public interests, then *jarimah ta'zir* constitutes the most dynamic domain within the Islamic criminal law system. This is because the Shari'ah does not determine in detail the forms of conduct or the types of punishment applicable to *ta'zir* offenses; rather, it delegates such authority to *ulil amri* (legitimate authorities) or judges based on considerations of public welfare (*al-maṣlahah al-'ammah*).³¹ Consequently, the success of contemporary Islamic criminal law development highly depends on the methodology employed in determining criminalization processes, forms of sanctions, and the objectives of punishment. Within this context, the principle of *al-'adab muhakkamah* obtains its greatest methodological significance.

Classical Islamic jurisprudence generally explains that *ta'zir* refers to punishments imposed for acts that do not fall within the categories of *hudud* or *qisāṣ*, yet are considered harmful to individuals, society, or public order.³² This definition demonstrates that the scope of *ta'zir* is inherently characterized by an open legal policy. The forms of conduct classified as criminal offenses may evolve according to societal developments, provided that they remain consistent with the objectives of the Shari'ah. Therefore, from the early stages of Islamic legal thought, jurists (*fuqahā'*) have provided broad authority for governments to determine various forms of *jarā'im ta'zir* based on the social needs of each historical period.

Nevertheless, studies on *ta'zir* have generally been limited to discussions concerning the authority of judges or governments in determining punishments. Such approaches remain predominantly normative because they do not sufficiently explain the methodological process through which social phenomena can be transformed into objects of criminalization within Islamic law. As a result, the relationship between social change, the development of custom (*'urf*), and the formation of criminal law has not yet received a systematic analytical framework. This study therefore offers a conceptual reconstruction by positioning *al-'adab muhakkamah* as an epistemological mechanism that connects *naṣṣ* (textual sources), living law, and *maqāṣid al-sharī'ah* in the process of constructing *jarimah ta'zir*.

Methodologically, this reconstruction begins with the recognition that society represents a space in which various forms of customary practices (*living law*) emerge

³¹ Mustafa Ahmad al-Zarqa, *Al-Madkhal al-Fiqhī al-'Am: Ikbrāj Jadīd Bi-Taṭwīr Fī al-Tartīb Wa al-Tabwīb Wa al-Ziyādāt*, vol. 2, h. 1007-1015.

³² Al-Mawardi, *Al-Ahkām al-Sultāniyyah* (Dar al-Kutub al-'Ilmiyyah, 1989), h. 219-226.

and continuously transform. Developments in information technology, economic digitalization, artificial intelligence, virtual asset transactions, social media, and financial technology have created patterns of social interaction that differ significantly from those of classical societies. Alongside these transformations, new forms of criminal behavior have emerged, including digital identity theft, phishing, ransomware attacks, algorithmic manipulation in financial markets, misuse of personal data, dissemination of deepfake technology, exploitation of artificial intelligence for fraudulent activities, and various other forms of cybercrime. These forms of crime are not explicitly addressed in classical Islamic jurisprudential literature, not because the Shari'ah ignores them, but because the social realities that generated them did not yet exist during that period.³³

If legal interpretation relies solely on a literal reading of classical classifications of *jarā'im*, many forms of modern crime would encounter difficulties in obtaining a basis for criminalization within Islamic criminal law. Such an approach risks creating a gap between societal development and the ability of law to provide protection for public welfare. Conversely, if social change is accepted without normative parameters, Islamic law would lose its transcendental character. Therefore, a mechanism is required to bridge these two dimensions. This study argues that such a function is fulfilled by *al-'adab mubakkamah*.

Unlike conventional understandings that view *al-'adab mubakkamah* merely as a basis for recognizing customary practices, this study reconstructs the principle as a legal reality identification mechanism. In other words, *al-'adab mubakkamah* does not merely function to acknowledge social customs, but first identifies social transformations that have developed into collective patterns of behavior (*living law*). This identification process subsequently becomes a consideration within the *ijtihād* process to determine whether a newly emerging behavior possesses characteristics that threaten public welfare and therefore deserves to be classified as a *jarimah ta'zir*.

However, this identification process does not end at the sociological level. Social transformation must undergo normative evaluation through the framework of *maqāṣid al-shari'ah*. From this perspective, *maqāṣid* functions as a normative filtering mechanism that distinguishes between customs producing benefit (*'urf ṣaḥiḥ*) and those generating harm (*'urf fāsid*). Accordingly, not every form of living law obtains legal legitimacy. Practices involving exploitation, fraud, digital gambling, hate speech dissemination, human trafficking, or misuse of information technology cannot become legitimate legal foundations merely because they have become widespread social practices.³⁴

The subsequent stage involves integration with *naṣṣ*. At this stage, textual sources are not positioned merely as formal legitimations of socially identified

³³ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, h. 167-182.

³⁴ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1974).

phenomena, but rather as sources of values that determine the direction of criminalization. The protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and, according to contemporary developments in *maqāṣid* theory, human dignity (*ḥifẓ al-'ird*) and fundamental human rights, become parameters in determining whether a social phenomenon deserves classification as a criminal offense.³⁵ Thus, criminalization within *jarimah ta'zīr* is not merely a product of political authority, but rather the outcome of integration between social realities, the objectives of the Sharī'ah, and the authority of revealed texts.

Through this framework, *al-'adab muhakkamah* acquires a new and broader function compared to its traditional position in classical legal literature. This principle no longer merely explains the validity of customs in particular *fiqh* matters, but also serves as a methodological instrument for constructing contemporary Islamic criminal law. This reconstruction simultaneously responds to criticisms that discussions of *al-'adab muhakkamah* have remained overly normative and have lacked practical implications for criminal law development. Instead, this study demonstrates that almost every process of criminalizing new forms of crime within the domain of *ta'zīr* fundamentally requires the role of *al-'adab muhakkamah* as a bridge between social transformation and the objectives of the Sharī'ah.

An Integrative Reconstruction Model of *Al-'Adab Muhakkamah*

Based on the preceding analysis, this study proposes a reconstruction model of the function of *al-'adab muhakkamah* consisting of four methodological stages:

Stage	Methodological Function	Output
Living Law	Identifying social transformations and evolving societal practices	Emerging legal phenomena
Al-'Adab Muhakkamah	Validating social transformations as legally relevant forms of <i>'urf</i>	Legally considered factual realities
Maqāṣid al-Sharī'ah	Assessing benefits and harms based on the objectives of Islamic law	Normative selection process
Naṣṣ and <i>Ijtihād</i> in <i>Ta'zīr</i>	Determining forms of criminalization and applicable sanctions	Adaptive Islamic criminal law policies

³⁵ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, h. 489-506; Apipuddin Apipuddin et al., "Integrating Electronic Information and Transaction Law (UU ITE) and Islamic Criminal Law: Addressing Malware-Based Data Theft," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 9, no. 2 (2024): 154–70, <https://doi.org/10.22515/alahkam.v9i2.10269..>

This model represents the novelty of this study. Unlike previous studies that have positioned *al-'adab muhakkamah* merely as one of the subsidiary legal maxims (*qawā'id fiqhīyyah*), this research reconstructs it as an epistemological mechanism that connects three fundamental dimensions in the formation of Islamic criminal law: social reality (*living law*), the orientation toward public welfare (*maqāṣid al-sharī'ah*), and normative authority (*naṣṣ*). Through this framework, Islamic criminal law is no longer understood as a legal system exclusively oriented toward textual sources, but rather as a legal system capable of adapting to societal transformations through a methodology that preserves the integrity of the Sharī'ah.

The academic implications of this reconstruction are significant. First, *al-'adab muhakkamah* is no longer positioned merely as a supplementary legal maxim, but rather as a legal reconstruction instrument. Second, this study expands the function of *maqāṣid al-sharī'ah* from merely representing the objectives of law into serving as an evaluative parameter within the criminalization process. Third, the concept of *living law* is not regarded as an independent source of law, but as an empirical social reality that obtains legal legitimacy through the mechanism of *al-'adab muhakkamah*. Therefore, the integration of these three elements produces a more systematic and responsive model for the development of Islamic criminal law while remaining consistent with the fundamental principles of the Sharī'ah.

Implications of the Reconstruction of *Al-'Adab Muhakkamah* for the Reform of Islamic Criminal Law in Indonesia

The reconstruction of the function of *al-'adab muhakkamah* as an instrument integrating *naṣṣ*, living law, and *maqāṣid al-sharī'ah* not only has theoretical implications for the development of Islamic legal epistemology but also provides practical contributions to the reform of Islamic criminal law in Indonesia. As a country adopting a pluralistic legal system, Indonesia demonstrates a complex interaction between state law, customary law, and Islamic law. This dynamic makes the development of criminal law inseparable from the social realities that exist within society. Therefore, approaches that emphasize formal legality alone without considering living law often produce legal norms that are difficult to implement effectively.³⁶ Within this context, *al-'adab muhakkamah* offers a methodological foundation that enables Islamic criminal law to develop adaptively while maintaining its normative legitimacy.

The development of national law in recent years demonstrates an increasingly strong tendency to accommodate values living within society. The enactment of the National Criminal Code (*Kitab Undang-Undang Hukum Pidana* / KUHP) through Law

³⁶ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Publishing, 2009), h. 87-102.

Number 1 of 2023 represents a concrete example that legislators no longer perceive law merely as a product of formal legislation, but also as a reflection of evolving social values. Several provisions in the new Criminal Code accommodate restorative justice approaches, expand the space for penal mediation, and provide greater attention to victim protection and community interests.³⁷ This shift in orientation indicates a paradigm transformation from a purely retributive punishment system toward a more restorative and corrective approach.

From the perspective of Islamic law, these developments share common ground with the concepts of *ta'zīr*, *ṣulh*, and *maqāṣid al-sharī'ah*. Nevertheless, the integration between national law and Islamic law cannot be achieved merely through normative approaches. A methodological framework is required to explain how evolving social values can obtain legitimacy within the Sharī'ah framework. In this regard, *al-'adab mubakkamah* functions as a mechanism connecting social transformation with the process of legal formation. In other words, the reform of Islamic criminal law in Indonesia cannot rely solely on references to *maqāṣid* or *maṣlahah*, but must also be based on the identification of living law that genuinely develops within Indonesian society.

A more concrete implication can be observed in the implementation of Islamic criminal law (*jīnayat*) in Aceh. Aceh Qanun Number 6 of 2014 concerning Jinayat Law represents a concrete form of Islamic criminal law implementation within Indonesia's national legal system. The existence of this Qanun demonstrates that Islamic law is not implemented through a purely textual application of classical jurisprudential texts, but rather undergoes adaptation through modern legislative mechanisms, state institutional structures, and the social conditions of Acehnese society.³⁸ For example, provisions concerning evidentiary procedures, punishment implementation mechanisms, judicial processes, protection of defendants' rights, and the administrative execution of *'uqūbāt* represent legal constructions that consider both the national legal system and local social needs.

This phenomenon demonstrates that the practice of Islamic criminal law in Indonesia has essentially adopted an approach consistent with the principles of *al-'adab mubakkamah*, although it has not yet been explicitly formulated as a methodological framework. These regulations emerged through dialogue between *naṣṣ*, state policy, social developments within Aceh, and the objectives of the Sharī'ah. Therefore, Aceh's *jīnayat* law can be understood as an example of how living law may be integrated into Islamic law through legislative mechanisms while maintaining respect for the normative principles of the Sharī'ah.

Nevertheless, the implementation of *jīnayat* law in Aceh continues to face several challenges. Several studies indicate that criticisms of the Aceh Jinayat Qanun

³⁷ Republik Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

³⁸ Nanggroe Aceh Darussalam, Qanun Aceh Nomor 6 Tahun 2014 tentang Hukum Jinayat.

are primarily directed toward procedural aspects, legal certainty, human rights protection, and the compatibility between punishment implementation and modern social developments.³⁹ These criticisms do not necessarily indicate weaknesses in the substance of Islamic law, but rather demonstrate the need to strengthen legal formation methodologies so that every criminal policy is genuinely based on an analysis of social realities, the objectives of the Shari'ah, and the effectiveness of law enforcement.

Within this context, this study offers a different reconstruction. *Al-'adab mubakkamah* is no longer understood merely as a means of legitimizing Acehese customs or local cultural practices, but as a method for identifying relevant social transformations before criminal policies are formulated. Therefore, the legislative process of *jinayat* law should not rely solely on textual interpretations of classical jurisprudential works, but should also be based on empirical research concerning crime patterns, social needs, technological developments, local social characteristics, and their implications for the protection of the five fundamental objectives of the Shari'ah (*al-kulliyāt al-khams*). This approach would produce Islamic criminal law policies that are more responsive, proportional, and socially legitimate.

Another implication can be observed in the emergence of various forms of crime unknown in classical Islamic jurisprudence, such as digital asset theft, misuse of personal data, artificial intelligence-based fraud, electronic transaction manipulation, and cyberattacks targeting public service systems. All of these crimes have developed as consequences of digital social transformation. Since they do not fall within the categories of *budūd* or *qisās*, their regulation belongs to the domain of *jarimah ta'zīr*. Under such circumstances, *al-'adab mubakkamah* has a strategic function as an instrument for identifying living law, which is then integrated with *maqāṣid al-shari'ah* to determine appropriate forms of criminalization and models of punishment. This approach enables Islamic criminal law to remain adaptive without requiring modifications to the permanent principles of the Shari'ah.

This reconstruction also carries implications for criminal policy (*criminal policy*) development in Indonesia. Thus far, criminal law reform has been significantly influenced by Western legal theories, such as deterrence theory, retributive justice, and restorative justice. Although these theories provide important contributions, they do not fully accommodate the ethical and religious dimensions that characterize Indonesian society. The integration of *al-'adab mubakkamah* with *maqāṣid al-shari'ah* enables the development of a criminal policy model that considers not only law enforcement effectiveness but also the protection of moral values, social justice, and comprehensive public welfare.

Based on this perspective, this study proposes that Islamic criminal law reform in Indonesia should be developed through four methodological stages. First, identifying living law through empirical research concerning social developments and

³⁹ Tim Lindsey, *Indonesia: Law and Society*, 2nd ed. (The Federation Press, 2008), h. 262-276.

emerging forms of crime. Second, evaluating these identified phenomena through the parameters of *maqāṣid al-sharī'ah* to ensure that criminalization is directed toward protecting public welfare. Third, integrating the results of such analysis with *naṣṣ* and general principles of Islamic law through the mechanism of *ijtihād*. Fourth, formulating criminal policies through legislation or regulations that fulfill the principles of legal certainty, justice, utility, and proportionality. This model demonstrates that Islamic criminal law reform cannot be achieved through a purely textual approach, but must be constructed through systematic interaction between revelation, social reality, and the objectives of the Shari'ah.

Based on the analysis above, the reconstruction of the function of *al-'adab mubakkamah* not only expands the scope of studies on *qawā'id fiqhīyyah*, but also offers a new paradigm for the development of Islamic criminal law in Indonesia. This principle should no longer be understood as merely a supplementary rule in resolving particular jurisprudential issues, but rather as an epistemological instrument integrating the authority of *naṣṣ*, the dynamics of living law, and the orientation of *maqāṣid al-sharī'ah*. Through this paradigm, Islamic criminal law is capable of responding to the challenges of modern society in a more adaptive manner, preserving the normative certainty of the Shari'ah, while simultaneously providing a conceptual foundation for national criminal policy reform that is more contextual, just, and oriented toward public welfare.

Conclusion

This study demonstrates that the principle of *al-'adab mubakkamah* is no longer sufficient when understood merely as one of the *qawā'id fiqhīyyah* (legal maxims) functioning to accommodate social customs in resolving particular jurisprudential issues. Within the context of contemporary Islamic criminal law development, this principle possesses a far more strategic function as a methodological instrument connecting the authority of *naṣṣ*, the dynamics of living law, and the orientation of *maqāṣid al-sharī'ah*. This reconstruction reveals that the flexibility of Islamic criminal law does not lie in modifying the permanent norms of the Shari'ah (*al-thawābit*), but rather in the capacity of Islamic legal methodology to adapt legal implementation to changing social realities through a structured process of *ijtihād* that remains grounded in the Qur'an and Sunnah.

The analysis of the implementation of *al-'adab mubakkamah* across the three main classifications of *jarā'im* demonstrates different levels of adaptation. In *jarimah hudūd*, this principle functions in interpreting factual aspects that are not explained in detail by *naṣṣ*, such as the concept of *ḥirṣ*, standards of property security, and the evolving forms of legally protected objects resulting from technological and social transformations. In *jarimah qiṣāṣ* and *diyāt*, *al-'adab mubakkamah* plays a role in adapting dispute-resolution mechanisms, forms of compensation, and models of victim restoration according to changing social structures without altering the

normative rights established by the Shari'ah. Meanwhile, in *jarimah ta'zir*, this principle possesses the broadest function because it serves as a methodological foundation for identifying social transformations, qualifying new forms of crime, and determining models of criminalization and sanctions based on considerations of public welfare (*maṣlahah*). Therefore, the broadest scope of implementation of *al-'adab mubakkamah* within Islamic criminal law is found in the domain of *ta'zir*, a field that explicitly provides space for *ijtihad* and legal policy development.

Based on these findings, this study proposes a conceptual reconstruction that positions *al-'adab mubakkamah* as an epistemological instrument in the formation of contemporary Islamic criminal law. Unlike conventional approaches that merely position this principle as a justification for customary practices (*'urf*), this research develops an integrative model consisting of four methodological stages: (1) identifying social transformations through living law; (2) validating these transformations through *al-'adab mubakkamah* as a mechanism for recognizing legally relevant forms of *'urf*; (3) conducting normative evaluation through *maqāṣid al-shari'ah* to assess public benefit and prevent the legitimization of harmful customs (*'urf fāsid*); and (4) formulating criminal policies through integration with *naṣṣ* and mechanisms of *ijtihad*, particularly within the domain of *jarimah ta'zir*. This model demonstrates that criminalization within Islamic criminal law does not rely solely on textual interpretation of legal sources, but also systematically considers evolving social realities within the framework of the objectives of the Shari'ah.

This reconstruction carries significant implications for Islamic criminal law reform in Indonesia. Within the context of the implementation of Aceh's *Qanun Jinayat*, the development of the National Criminal Code (*KUHP Nasional*), and contemporary criminal policy formation, *al-'adab mubakkamah* can serve as a methodological framework for integrating values living within society with the principles of Islamic law. This approach enables the formulation of criminal law that is more responsive to contemporary forms of crime, including cybercrime, misuse of digital data, artificial intelligence-related offenses, and various forms of transnational crime, without compromising the normative certainty of Islamic law. Accordingly, Islamic criminal law should not be understood as a static legal system, but rather as a legal system possessing internal mechanisms for adapting to social transformation through a structured methodology of *ijtihad*.

The novelty of this study lies in reconstructing the function of *al-'adab mubakkamah* as an integrative methodological model connecting *naṣṣ*, living law, and *maqāṣid al-shari'ah* in the development of contemporary Islamic criminal law. This model expands the function of *al-'adab mubakkamah* from merely a jurisprudential maxim into an epistemological instrument for criminalization processes, criminal policy formulation, and Islamic legal reform. This contribution enriches the theoretical development of *qawā'id fiqhīyyah* while offering a new paradigm for Islamic criminal law reform that is adaptive to social change while maintaining the integrity of fundamental Shari'ah principles.

This study has limitations because it employs a normative legal approach based primarily on textual and literature analysis; therefore, it does not empirically examine the implementation of the proposed reconstruction model within judicial practice or legislative policymaking. Future studies are encouraged to employ empirical or socio-legal approaches to investigate the application of the integrative model of *al-'adab mubakkamah* in the practices of the Aceh *Mahkamah Syar'iyah*, national criminal policy formulation, and Islamic legal responses to the development of digital crimes and artificial intelligence technologies. Such empirical investigations would strengthen the validity of the proposed model while expanding its theoretical and practical contributions to the development of Islamic criminal law in an era of social and technological transformation.

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