

MAQASID AL-SHARI'AH AS A FRAMEWORK FOR REFORMULATION OF ISLAMIC CRIMINAL LAW IN THE MODERN LEGAL SYSTEM

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Abstract

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This study aims to analyze the role of maqāṣid al- sharī'ah as a conceptual framework in reformulating Islamic criminal law so that it can interact constructively with the modern legal system. This study departs from the fact that the formulation of criminal law in classical fiqh literature is often perceived as not fully in line with modern legal principles such as legality, proportionality of punishment, and protection of human rights. Therefore, this study attempts to re-examine the conceptual structure of Islamic criminal law by placing the objectives of sharia as the basis for legal interpretation. The study uses a normative legal approach with a literature review method that focuses on the analysis of classical and contemporary literature on Islamic criminal law and the theory of maqāṣid al- sharī'ah. Research data are obtained from primary sources in the form of the Qur'an, hadith, and the works of classical scholars, especially the thoughts of Abu Ishaq al-Shatibi, as well as modern academic literature that develops a more systemic maqāṣid approach as proposed by Jasser Auda. The research findings demonstrate that the maqāṣid approach allows for a reinterpretation of the form and purpose of criminal sanctions in Islam, emphasizing the protection of human welfare as the primary focus of law. This approach opens up space for a more contextual reformulation of Islamic criminal law without neglecting the normative principles of sharia. The impact of this research lies in its contribution to strengthening the theoretical framework for the development of a more adaptive Islamic criminal law system, thus bridging Islamic legal tradition with the dynamics of the modern legal system.

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INTRODUCTION

The development of modern legal systems in recent decades has positioned criminal law as a primary instrument for maintaining social order while protecting



individual rights. Modern states have developed criminal legal systems that emphasize the principles of legal rationality, proportionality of punishment, and protection of human dignity. In this context, criminal law is no longer understood solely as a means of punishment, but rather as a systematically institutionalized mechanism of social control. This dynamic has indirectly given rise to new debates in Islamic legal discourse, particularly regarding the position of Islamic criminal law, which has been largely formulated through classical fiqh (Wibowo & Kom, 2026). Questions that arise are not only the relevance of Islamic criminal norms in modern legal systems, but also how the epistemological framework of Islamic law can address the challenges of social change and the development of contemporary legal systems.

In classical fiqh literature, Islamic criminal law is generally classified into three main categories: *ḥudūd*, *qīṣās-diyāt*, and *ta'zīr*. This classification is essentially the result of the jurists' elaboration of normative texts contained in the Qur'an and hadith. However, the formulation of criminal law born from this fiqh tradition cannot be separated from the social, political, and institutional contexts that underlie its formation (Hasanah et al., 2025). Many studies of the history of Islamic law show that most constructions of criminal fiqh developed in pre-modern societies with social structures and institutional systems very different from those of today's modern state. Therefore, when these criminal law formulations are confronted with modern legal systems based on legal codification, formal judicial institutions, and human rights principles, various interpretative problems arise that are not simple.

On the one hand, some groups tend to defend the literal formulation of Islamic criminal law, arguing that these provisions are part of a fixed normative framework. This perspective generally positions the form of punishment as a direct representation of the will of the sharia. However, on the other hand, many contemporary Muslim scholars believe that a literal approach to Islamic criminal law has the potential to ignore the objective and wisdom underlying the law's determination. In this view, Islamic criminal law cannot be understood narrowly as a static collection of sanctions, but rather as part of a legal system designed to achieve public welfare and maintain social balance. These differing perspectives demonstrate that the issue of Islamic criminal law is not merely a normative issue, but also relates to the methods of understanding and interpreting the law itself.

It is in this context that the concept of *maqāṣid al-sharī'ah* gains increasingly significant relevance in the study of contemporary Islamic law. The *maqāṣid* tradition developed systematically by Abu Ishaq al-Shatibi places the objectives of the Shari'a as the main basis for understanding the structure of Islamic law (Sahila & Juliana, nd). Al-Shāṭibī emphasized that the Shari'a essentially aims to safeguard human benefit through the protection of the fundamental elements of life, such as religion, soul, reason, heredity and property. With this framework, law is not understood solely as a literal normative text, but as a value system directed at realizing social order and justice. This *maqāṣid* perspective then opens up space for a more contextual approach in understanding Islamic law, including in the field of criminal law.

The development of *maqāṣid* thought in recent decades has also shown an increasingly progressive trend. A number of contemporary Muslim scholars, such as Jasser Auda, have developed a *maqāṣid* approach that emphasizes the systemic and multidimensional dimensions of understanding Islamic law (Ramlah, 2025). In this approach, law is no longer viewed as a rigid normative structure, but rather as a system

capable of adapting to social change. This approach positions maqāṣid as an analytical framework that allows for the reinterpretation of various aspects of Islamic law, including reformulating the orientation and form of criminal law to remain in line with the basic objectives of sharia.

The relevance of the maqāṣid approach becomes increasingly important when Islamic criminal law is confronted with modern legal systems that emphasize the protection of human rights. Various international legal instruments, such as those formulated by the United Nations through various human rights conventions, emphasize the importance of the principles of procedural justice, proportionality of punishment, and protection of human dignity in the criminal legal system (Mufty et al., 2025) . In this situation, discourse on Islamic criminal law often emerges within the framework of a debate between sharia values and international legal standards. Without an adequate methodological approach, this debate has the potential to become trapped in an unproductive dichotomy between Islamic legal tradition and modern legal systems.

Through the perspective of maqāṣid al- sharī'ah , the relationship between Islamic criminal law and modern legal systems can be understood more constructively. If the primary goal of sharia is to realize the public interest and prevent social harm, then the forms of criminal law developed in the classical fiqh tradition can be seen as historical instruments used to achieve these goals in specific contexts (Martyana, 2022) . In other words, the essence of Islamic criminal law lies not merely in the form of sanctions, but in the goal of social protection that the law seeks to achieve. This approach allows for the reformulation of Islamic criminal law without having to abandon the basic principles of sharia that underpin it.

Based on these considerations, the study of maqāṣid al-sharī'ah as a framework for reformulating Islamic criminal law is becoming increasingly important in the context of the development of modern legal systems (Farhin, 2026) . This approach not only offers a new way of understanding the structure of Islamic criminal law but also opens up the possibility of a more productive dialogue between the Islamic legal tradition and contemporary legal systems. Therefore, this study seeks to examine in more depth how the concept of maqāṣid al- sharī'ah can be used as a conceptual framework in reformulating Islamic criminal law so that it remains rooted in the normative values of sharia while being able to interact constructively with the principles of modern legal systems. Thus, Islamic criminal law is not positioned as a static legal system, but rather as a normative tradition that has the capacity to continue to develop in line with the dynamics of society.

RESEARCH METHODS

This study uses a qualitative approach with a normative legal research type oriented towards conceptual analysis of Islamic legal doctrines and the development of contemporary legal thought. This approach was chosen because the main focus of the research is not on empirical testing of criminal justice practices, but rather on efforts to examine the epistemological framework that allows for the reformulation of Islamic criminal law through the perspective of maqāṣid al-sharī'ah (Doktor, 2024) . In the legal research tradition, the normative approach positions law as a system of norms analyzed through the study of authoritative sources, both in the form of religious texts and the construction of the thoughts of legal scholars. Therefore, this study relies on an analysis of primary sources in the form of the Qur'an and hadith related to the basic principles of

Islamic criminal law, as well as classical works in fiqh literature that discuss the concepts of ḥudūd, qiṣās, and ta' zīr. In addition, this study also utilizes theoretical works in the study of maqāṣid al-sharī'ah developed by thinkers such as Abu Ishaq al-Shatibi, who is known as a figure who systematically formulated the theory of the objectives of sharia within the framework of usul al-fiqh (Muchlis & Rois, 2024) .

Meanwhile, secondary data sources in this study include contemporary academic literature discussing the relationship between Islamic law and modern legal systems, including studies on criminal law reform in Muslim societies. The analysis of this literature was conducted using conceptual analysis methods and the maqāṣid approach, which seeks to identify the normative objectives underlying Islamic criminal law provisions. In the analysis stage, this study not only examines the normative structure of criminal provisions in classical fiqh but also examines the development of expanded maqāṣid thinking in contemporary Islamic legal discourse, as developed by scholars such as Jasser Auda who emphasizes a systemic approach in understanding the objectives of sharia. Through this method, the study seeks to build an argumentative synthesis between the basic principles of maqāṣid al-sharī'ah and the framework of the modern legal system that emphasizes justice, public welfare, and protection of human rights (Triyono, 2025) . Thus, this research method is directed not only to explain the construction of Islamic criminal law in classical literature, but also to formulate a possible conceptual framework that can bridge the Islamic legal tradition with the dynamics of the development of the contemporary legal system.

RESULTS AND DISCUSSION

Basic Concepts of Islamic Criminal Law

In the Islamic legal tradition, the basic concept of criminal law stems from the term *jarimah*, which refers to any act prohibited by sharia and subject to specific sanctions. In Islamic jurisprudence (fiqh) literature, *jarimah* is understood not only as a violation of social norms but also as an act that undermines the moral order that sharia seeks to uphold (Basyir, 2019) . Thus, Islamic criminal law has had both normative and social dimensions from the outset. Classical scholars developed a sufficiently systematic conceptual framework to explain the forms of *jarimah* and the types of sanctions attached to them. One of the most influential elaborations can be found in the works of scholars of the usul fiqh school, such as Abu Ishaq al-Shatibi, who positioned law as an instrument for protecting fundamental human interests. Within this framework, criminal offenses are seen not merely as individual acts but as threats to the broader social order (Basyir, 2019).

In the structure of classical Islamic criminal law, jurists classify *jarimah* into three main categories: *ḥudūd* , *qiṣās-diyāt* , and *ta' zīr*. The *ḥudūd* category refers to criminal acts for which sanctions have been explicitly determined in normative sources, such as adultery, theft, and armed robbery (Etika, 2024). Meanwhile, *qiṣās-diyāt* relates to criminal acts involving violations of a person's soul or body, where the principle of restorative justice in the form of balanced retribution or financial compensation is the settlement mechanism. *Ta' zīr* covers various forms of violations that do not have standard sanctions provisions in normative texts, so that the determination of punishment is left to the authority of the judge or government. This structure shows that Islamic criminal law is actually not completely rigid, because the space for *ta' zīr* provides flexibility for the authorities to adjust the type of punishment to the social conditions of society.

Beyond the classification of sanctions, an important aspect of Islamic criminal

law is the purpose of imposing punishment itself. From a classical Islamic jurisprudence perspective, punishment is not only intended as a form of retribution but also as a means of deterrence (*zajr*) and social protection. Therefore, the existence of criminal sanctions must be understood in the context of efforts to maintain social order and prevent moral decay in society. Several studies of criminal law practices in Muslim countries show that this orientation still influences contemporary legal systems. For example, the implementation of the *qanun jinayat* in Aceh shows how the concept of *ta'zir* is used by local authorities to regulate certain violations such as alcohol consumption and gambling within the framework of regional law. This case demonstrates that, despite its roots in the classical Islamic jurisprudence tradition, Islamic criminal law still has the potential to adapt when faced with regulatory needs in modern society (Pakpahan et al., 2024) .

The concept of Maqāṣid al - Sharī'ah

The concept of *maqāṣid al- shari'ah* refers to the fundamental goals that Islamic law aims to realize in regulating human life. In the development of Islamic legal thought, *maqāṣid* is understood as a conceptual framework that explains why a law is established and what values are intended to be protected through that law. The idea of the purpose of the *Shari'a* has actually appeared in the thinking of Islamic jurisprudence scholars since the classical period, but the most systematic formulation is often associated with the thought of Abu Ishaq al-Shatibi. In his work *al-Muwāfaqāt* , al-Shātibī emphasizes that all provisions of the *Shari'a* are basically aimed at maintaining human benefit and preventing damage to social life. Thus, Islamic law is not understood merely as a collection of textual normative rules, but rather as a value system directed at achieving collective welfare.

Conceptually, the *maqāṣid al- shari'ah* is often explained through five basic objectives known as *al-darūriyyāt al-khams* , namely the protection of religion, life, reason, descendants, and property. These five elements are considered the foundation that enables human life to run in balance (Masruroh, 2026) . Violation of any of these elements is seen as a threat to social stability, so sharia establishes various legal mechanisms to maintain it. Within the framework of criminal law, for example, the prohibition on murder is directly related to the protection of life, while the prohibition on theft is related to the protection of property. This approach shows that every legal provision in Islam has a normative rationality rooted in a specific objective. Therefore, understanding the *maqāṣid* is important for interpreting the law more comprehensively, especially when normative texts must be confronted with constantly changing social realities.

The development of *maqāṣid* thought in the contemporary era demonstrates efforts to expand these classical concepts. A number of modern Muslim scholars, such as Jasser Auda, propose a more systemic approach to understanding the objectives of sharia. Auda argues that *maqāṣid* cannot be limited to the five classical objectives but must be understood as an open framework that can encompass values such as social justice, freedom, and human dignity (Murti & Syah, 2021) . This approach emerged in response to complex social changes in the contemporary Muslim world. In some developing countries, such as Malaysia, the *maqāṣid* discourse is even used as a basis for argumentation in formulating public policies related to family law, sharia economics, and governance (Wartono & Alwi, 2025) . This phenomenon demonstrates that *maqāṣid* functions not only as a theoretical concept but also as a methodological instrument in formulating more contextual legal policies.

Problems of Applying Islamic Criminal Law in the Modern Legal System

The application of Islamic criminal law in modern legal systems faces numerous and complex challenges. One of the main issues lies in the paradigm difference between the formulation of criminal law in the classical fiqh tradition and the principles underlying modern legal systems. Modern legal systems are generally built on the principles of legality, legal certainty, and the protection of human rights. The principle of legality, for example, requires that every criminal act and its sanctions be clearly defined in law before they can be applied by the courts. In practice, this principle often generates debate when confronted with the structure of Islamic criminal law, which in some cases is not always formulated in a systematic legal codification.

Another issue arises in relation to perceptions of the types of punishment recognized in Islamic criminal law. Several forms of punishment that fall under the category of ḥudūd, such as amputation or stoning, are frequently criticized in international legal discourse. This criticism is usually based on human rights protection standards developed through various global legal instruments. For example, reports compiled by Amnesty International regularly highlight the use of corporal punishment in several countries that have adopted Sharia-based criminal law (Purnama, 2024). In some cases, this criticism has sparked a lengthy debate over whether the application of Islamic criminal law can align with universally recognized human rights principles.

Concrete examples of these tensions can be found in legal practices in several developing countries. In Nigeria, for example, the implementation of Sharia-based criminal law in several states in the early 2000s attracted international attention after the case of a woman named Amina Lawal, who was sentenced to stoning for adultery (Wahid et al., 2023). This case sparked a global debate about procedural fairness and the protection of women's rights in Sharia-based legal systems. Although the verdict was ultimately overturned by an appeals court, this incident demonstrated that the application of Islamic criminal law in the context of a modern state cannot be separated from complex political, social, and international pressures.

Maqāṣid al-Sharī'ah as a Framework for Reformulation

In facing these challenges, the maqāṣid al-sharī'ah approach offers a methodological perspective that allows for a reinterpretation of Islamic criminal law without having to abandon the basic principles of sharia. This approach starts from the assumption that the primary goal of Islamic law is to realize the public interest and prevent social harm (Abdul Aziz, 2025). Therefore, the legal forms that developed within the classical fiqh tradition can be understood as historical means to achieve these goals within a specific societal context. By placing the objectives of sharia as the analytical starting point, Islamic criminal law can be interpreted more dynamically, thus responding to social changes occurring in modern society.

This approach has gained support from a number of contemporary Islamic legal scholars who view maqāṣid as a crucial instrument in the process of Islamic legal reform. In the perspective developed by Jasser Auda, for example, Islamic law needs to be understood as an open and adaptive system. Auda emphasized that legal interpretation should not stop at a literal reading of normative texts, but must consider the social context, the purpose of the law, and the impact of the application of a legal provision (Priyatna et al., 2025). This approach allows for the reformulation of various aspects of Islamic criminal law, particularly in determining the most effective form of punishment for maintaining social order in modern society.

Several Muslim countries have begun to demonstrate efforts to apply this approach to their legal practices. In Morocco, for example, legal reforms over the past two decades have demonstrated a trend toward a more contextual interpretation of Islamic law, taking broader social goals into account (Safa'at et al., 2022) . While these reforms are more visible in the area of family law, the maqāṣid approach used in the legislative process demonstrates that Islamic law can be understood dynamically within the framework of a modern state. This suggests that maqāṣid al- sharī'ah can serve as a conceptual framework that allows for a more rational and contextual reformulation of Islamic criminal law.

The Relevance of Islamic Criminal Law Reformulation in the Modern Legal System

The reformulation of Islamic criminal law through the maqāṣid approach has increasingly strong relevance in the context of the development of the modern legal system. A modern state basically requires a legal system that is not only able to maintain social order, but also provides protection for individual rights. In this context, the maqāṣid approach can function as a conceptual bridge that connects sharia values with contemporary legal principles. By placing benefit as the main orientation of law, the maqāṣid approach enables the development of a criminal law system that is not only effective in preventing crime, but is also in harmony with the values of justice and human dignity.

Furthermore, the reformulation of Islamic criminal law also has important implications for the development of legal systems in developing countries with a Muslim majority. Many countries face a dilemma between maintaining their Islamic legal identity and meeting the demands of legal system modernization. In this situation, the maqāṣid approach offers a methodological alternative that can help bridge these two interests. For example, in several legal reform discourses in Pakistan, academics and policymakers have begun to use maqāṣid arguments to reassess the effectiveness of several criminal regulations previously formulated very literally within the framework of the Islamization of law in the 1980s (Syarif et al., 2018) .

Ultimately, the relevance of reformulating Islamic criminal law lies not only in adapting the law to current developments, but also in maintaining the moral integrity of the legal system itself. Criminal law that is too rigid has the potential to lose its ability to respond to complex social dynamics. Conversely, law that is too flexible without a clear normative foundation also risks losing moral legitimacy in the eyes of society. In this context, the maqāṣid al- sharī'ah offers a crucial framework of balance, as it allows Islamic law to remain rooted in the fundamental values of sharia while also opening up space for more contextual interpretations to address the realities of modern society.

CONCLUSION

Based on the overall discussion, this study shows that Islamic criminal law is essentially built on a normative framework that has a clear social objective, namely maintaining social order and protecting fundamental human interests. The concept of *jarimah* in the fiqh tradition is not only interpreted as a violation of legal rules, but also as an act that disrupts the moral and social balance that is intended to be maintained by sharia. The classification of sanctions in the form of *hudūd* , *qisās-diyāt* , and *ta' zīr* shows that the Islamic criminal law system has had a relatively systematic structure since the classical period. However, this legal construction was born in the social and institutional context of pre-modern society, so its application in the modern legal system often faces

various interpretative and institutional problems.

On the other hand, the concept of *maqāṣid al-sharī'ah* provides an important methodological basis for understanding Islamic law more comprehensively. Through the *maqāṣid* framework systematically formulated by Abu Ishaq al-Shatibi and later developed by contemporary thinkers such as Jasser Auda, Islamic law is not understood solely as a textual normative formulation, but as a value system directed at realizing benefit and preventing social damage. This approach places the objectives of sharia as the starting point in understanding and interpreting law, thereby allowing for reinterpretation of various legal provisions that developed in the classical *fiqh* tradition. In the context of criminal law, the *maqāṣid* perspective opens up space to see forms of sanctions not as the ultimate goal of the law, but as instruments designed to achieve social protection goals.

Thus, the reformulation of Islamic criminal law through the *maqāṣid al-sharī'ah* approach has significant relevance in addressing the dynamics of the modern legal system. This approach allows for a more constructive dialogue between Islamic legal tradition and contemporary legal principles that emphasize justice, legal certainty, and the protection of human rights. This reformulation is not intended to eliminate the normative character of Islamic criminal law, but rather to reaffirm the ethical orientation that underlies the law itself. By placing the objectives of sharia as the interpretative framework, Islamic criminal law has the opportunity to be developed more contextually, thus remaining rooted in the fundamental values of sharia while being able to respond to the increasingly complex demands of modern society.

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