

Islamic Criminal Law in Contemporary Academic Discourse: Conceptual and Implementation Challenges

Pramidazzura Alifa Rifqi✉

Universitas Sebelas Maret
e-mail: pramdzzr@gmail.com

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ABSTRACT

Islamic criminal law remains one of the most contested areas within contemporary legal and academic discourse, particularly regarding its conceptual foundations and feasibility of implementation in modern legal systems. This article examines the conceptual ambiguity and structural challenges surrounding Islamic criminal law by employing a normative juridical approach with statute, conceptual, and case analyses. The study finds that contemporary debates frequently reduce Islamic criminal law to its punitive dimensions, neglecting its jurisprudential foundations rooted in ethical objectives, interpretive reasoning, and procedural restraint. Such reductionism contributes to fragmented academic discourse and directly influences implementation failures in modern state systems. Experiences from jurisdictions such as Aceh and Malaysia demonstrate that the incorporation of Islamic criminal law without methodological adaptation generates legal inconsistency, selective enforcement, and normative conflict. This article argues that the crisis of Islamic criminal law is fundamentally methodological rather than doctrinal. It proposes a prescriptive reconstruction framework grounded in maqāṣid al-sharī'ah, contextual ijtihād, and restorative justice principles to reconcile Islamic criminal law with contemporary legal standards. By repositioning Islamic criminal law as a dynamic and ethically grounded legal tradition, this study contributes to a more coherent and sustainable model of criminal justice reform.

INTRODUCTION

Islamic criminal law occupies a controversial position within contemporary academic discourse, particularly in relation to its conceptual foundations and feasibility of implementation in modern legal systems. Classical Islamic criminal law, encompassing the doctrines of ḥudūd, qisās, and ta'zīr, was developed within a socio-legal context characterized by moral communitarianism and decentralized judicial

authority.¹ In contrast, modern criminal law is embedded within the framework of the nation-state, emphasizing codified legality, constitutional supremacy, procedural safeguards, and human rights norms.² This historical divergence has generated sustained debates on whether Islamic criminal law can be meaningfully integrated into contemporary legal systems.

At the conceptual level, Islamic criminal law is frequently portrayed as rigid and punitive, particularly due to its association with corporal punishments prescribed under ḥudūd.³ Such portrayals, however, often neglect the broader jurisprudential architecture of Islamic criminal law. Classical fiqh conceptualized punishment not merely as retribution, but as a mechanism to protect essential human interests, preserve public order, and prevent social harm.⁴ Strict evidentiary standards, high thresholds of proof, and the prioritization of doubt (shubha) functioned as normative safeguards against arbitrary punishment.⁵ The abstraction of punitive norms from these methodological constraints has contributed to conceptual ambiguity within contemporary academic discourse.

This ambiguity is further intensified by conflicting interpretive paradigms. Doctrinal formalism tends to treat classical formulations of Islamic criminal law as immutable expressions of divine command, thereby resisting contextual reinterpretation.⁶ Conversely, reformist critiques often frame Islamic criminal law as incompatible with modern legal principles, advocating its marginalization within positive law.⁷ Both approaches overlook the juristic nature of Islamic criminal law as a product of interpretive reasoning shaped by methodological principles rather than textual literalism alone. The absence of a shared methodological framework has resulted in fragmented academic discourse and polarized normative positions.

Implementation challenges compound these conceptual tensions. Empirical experiences in Aceh and Malaysia demonstrate that incorporating Islamic criminal law into modern legal systems often produces selective enforcement, procedural deficiencies, and conflicts with constitutional guarantees.⁸ Enforcement practices in cyberspace-related offenses and human trafficking further illustrate the difficulty of applying classical doctrines to contemporary forms of crime.⁹ These implementation gaps reveal that the problem lies not solely in doctrinal content, but in the absence of a coherent framework for institutional translation.

¹ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law* (Oxford: Oxford University Press, 2019).

² B. Dermawan and M. Harisudin, "Transformasi Pemikiran Hukum Pidana Islam Terhadap Hukum Pidana Nasional," *RCH* 1 (2021).

³ B. Khodadadi, "Between Divine Mandate and Modern State: Islamic Criminal Law and the Contested Legacy of Ḥudūd," *Journal of Islamic Law* 6 (2025).

⁴ Mohamad Hashim Kamali, *Ibid.*

⁵ M. Musa, "The Islamic Penal Code and Sharī'ah Law," *Middle East Journal of Islamic Studies and Culture* (2025)

⁶ L. Anisa, "Reformasi Hukum Pidana Islam," *Journal of Islamic Economic and Law* 2, no. 1 (2025).

⁷ S. Supardin and A. Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law," *Samarah* 5, no. 2 (2021).

⁸ S. Efendi, "Transformation of Islamic Criminal Law in Modern Society in Aceh," *Al-Qanun* 5, no. 2 (2024); K. Mokhtar, *Implementation of Islamic Criminal Law in Malaysia* (2015).

⁹ N. Insani et al., "Islamic Law Challenges in Addressing Human Trafficking," *Jurnal Hukum Islam* 21, no. 2 (2023); S. Saifuddin et al., "Enforcement of Sharia Criminal Offences in Cyberspace," *Prophetic Law Review* 7, no. 1 (2025)

Recent scholarship increasingly acknowledges these challenges. Kamali emphasizes *maqāṣid al-sharīʿah* as an ethical framework capable of restraining punitive excess. Khodadadi interrogates the contested legacy of *ḥudūd* within the modern state, while Mahil and Mohamed explore reform mechanisms that reconcile Islamic criminal law with positive legal systems.¹⁰ Despite this growing literature, most studies address conceptual legitimacy and implementation problems separately, without examining how conceptual ambiguity directly shapes implementation failure.

The research gap addressed in this article lies in the lack of an integrated normative analysis connecting contemporary academic discourse on Islamic criminal law with its implementation challenges. This article argues that the crisis of Islamic criminal law is fundamentally methodological, arising from unresolved tensions between divine normativity, juristic interpretation, and modern legal institutions. Accordingly, this study seeks to analyze Islamic criminal law as a normative legal system confronted with modernity and to propose a prescriptive framework grounded in Islamic legal methodology to address both conceptual and implementation challenges.

METHODOLOGY

This research employs a normative juridical method to examine Islamic criminal law within contemporary academic discourse, focusing on conceptual ambiguity and implementation challenges. The normative approach is adopted because the primary issues concern legal norms, doctrinal authority, and interpretive methodology rather than empirical enforcement patterns.¹¹

The study applies three complementary approaches. First, the statute approach analyzes positive legal frameworks governing the application of Islamic criminal law to identify conflicts of norms and legal vacuums. Second, the conceptual approach examines foundational concepts such as punishment, justice, *maqāṣid al-sharīʿah*, and *taʿzīr* within classical and contemporary jurisprudence. Third, the case approach reviews representative implementation experiences to reveal structural discrepancies between doctrine and institutional practice.¹²

Through critical interpretation and normative evaluation, this research formulates prescriptive recommendations grounded in Islamic legal methodology to address both conceptual and implementation challenges of Islamic criminal law in contemporary legal systems.

RESULTS AND DISCUSSION (Times New Roman, 12, bold, space 1)

Conceptual Ambiguity in Contemporary Academic Discourse on Islamic Criminal Law

The first major result of this study reveals that contemporary academic discourse on Islamic criminal law is marked by deep and persistent conceptual ambiguity regarding its normative character, legal objectives, and interpretive boundaries. This ambiguity primarily arises from the unresolved tension between the perception of

¹⁰ B. Khodadadi, “Between Divine Mandate and Modern State”; Y. Mahil, “Contemporary Mechanisms to Reform Islamic Criminal Law,” *Journal of Islamic Law* 6 (2025); G. Mohamed, “Sheikh al-Qaraḍāwī’s Independent Reasoning,” *Journal of College of Sharia and Islamic Studies* (2025)

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

¹² S. Anggraini et al., “Penerapan Asas Hukum Pidana Islam dalam Mengatasi Kejahatan Kontemporer,” *Mediation: Journal of Law* 3, no. 2 (2025); W. Lestari, “Taʿzīr Crimes in Islamic Criminal Law,” *Al-Qanun* 5, no. 1 (2024).

Islamic criminal law as a divinely fixed system and its actual historical development as a juristic construct shaped through interpretive reasoning. In much contemporary literature, Islamic criminal law is frequently reduced to a set of prescribed punishments, particularly ḥudūd, which are then assessed in isolation from their broader jurisprudential framework.¹³ This reductionist approach obscures the methodological foundations of Islamic criminal law and contributes to distorted scholarly debate.

Classical Islamic jurisprudence did not conceptualize criminal law as a codified penal system in the modern sense. Rather, it emerged as part of a comprehensive normative order aimed at safeguarding essential human interests, maintaining social harmony, and preventing moral and social harm. Kamali emphasizes that punishment in Islamic law was never intended to function as a primary instrument of governance, but rather as a last resort after preventive and restorative mechanisms failed.¹⁴ Strict evidentiary standards, the doctrine of doubt (shubha), and the prioritization of repentance demonstrate that Islamic criminal law was designed to limit punishment rather than expand it. Contemporary discourse that isolates punitive outcomes from these constraints produces conceptual misunderstanding.

This misunderstanding is further reinforced by doctrinal formalism within certain strands of scholarship. Formalist approaches treat classical formulations of Islamic criminal law as immutable expressions of divine will, thereby rejecting contextual reinterpretation.¹⁵ Such approaches conflate divine revelation with juristic interpretation, ignoring the fact that fiqh itself is a human endeavor grounded in methodological reasoning. As a result, Islamic criminal law is presented as normatively closed, leaving no space for adaptation to changing social realities.

Conversely, reform-oriented critiques often adopt an external evaluative framework rooted in modern positivist criminal law and human rights discourse. These critiques frequently conclude that Islamic criminal law is inherently incompatible with contemporary legal standards, advocating its marginalization or symbolic retention.¹⁶ While such critiques raise important ethical concerns, they often fail to engage Islamic criminal law on its own jurisprudential terms. By neglecting internal legal methodologies such as maqāṣid al-sharīʿah and ijtihād, reformist discourse risks replacing one form of reductionism with another.

The coexistence of these opposing paradigms has produced fragmentation within contemporary academic discourse. Bibliometric analysis confirms that Islamic criminal law scholarship is polarized between doctrinal defense and reformist critique, with limited engagement on methodological reconciliation.¹⁷ As a consequence, debates surrounding Islamic criminal law remain trapped in binary narratives that obscure its complexity as a legal system.

This conceptual ambiguity has significant normative implications. When Islamic criminal law is understood either as an untouchable divine mandate or as an obsolete legal relic, meaningful legal development becomes impossible. The absence of a shared conceptual framework undermines scholarly dialogue and prevents the formulation of

¹³ B. Khodadadi, "Between Divine Mandate and Modern State," *Journal of Islamic Law* 6 (2025).

¹⁴ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law* (Oxford: Oxford University Press, 2019).

¹⁵ L. Anisa, "Reformasi Hukum Pidana Islam," *Journal of Islamic Economic and Law* 2, no. 1 (2025)

¹⁶ S. Supardin and A. Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law," *Samarah* 5, no. 2 (2021).

¹⁷ L. Judijanto and Z. Zuwanda, "Bibliometric Analysis of Islamic Criminal Law Research," *West Science Islamic Studies* 3, no. 1 (2025).

coherent reform strategies. This study therefore concludes that resolving conceptual ambiguity is a prerequisite for addressing implementation challenges in Islamic criminal law.

Structural and Institutional Challenges in Implementing Islamic Criminal Law

The second result demonstrates that the primary obstacles to implementing Islamic criminal law in contemporary legal systems are structural and institutional rather than purely doctrinal. Empirical experiences from jurisdictions such as Aceh and Malaysia illustrate that the incorporation of Islamic criminal norms into modern state legal systems often produces legal inconsistency, selective enforcement, and procedural tension.¹⁸ These challenges are rooted in the transplantation of juristic norms developed in pre-modern contexts into institutional frameworks designed for positivist criminal law.

In Aceh, the codification of Islamic criminal law through regional regulations has generated persistent tension with national constitutional principles. Efendi observes that enforcement practices often prioritize symbolic compliance over substantive justice, resulting in uneven application and public contestation.¹⁹ The institutional emphasis on visible punishment has overshadowed the ethical and preventive objectives of Islamic criminal law, reinforcing public perceptions of punitive excess.

Similarly, in Malaysia, the dual legal system creates jurisdictional fragmentation that constrains the scope of Islamic criminal law. Mokhtar demonstrates that constitutional limitations and overlapping authority between civil and Sharia courts restrict the effective implementation of Islamic criminal norms.²⁰ These constraints are particularly evident in addressing contemporary offenses such as cybercrime, where jurisdictional boundaries and procedural requirements complicate enforcement. Saifuddin et al. highlight that classical categories of crime provide limited guidance for regulating offenses committed in digital spaces.²¹

Implementation challenges are further exacerbated by the nature of contemporary crime itself. Transnational offenses such as human trafficking and sexual exploitation require complex regulatory responses that extend beyond classical doctrinal categories. Studies by Insani et al. and Qasim et al. demonstrate that without reinterpretation, Islamic criminal law risks irrelevance in addressing these crimes.²² The failure to adapt legal categories reflects deeper methodological stagnation rather than doctrinal inadequacy.

Importantly, this study finds that implementation failure is closely linked to conceptual ambiguity. When Islamic criminal law is understood merely as a set of punishments, institutional actors lack normative guidance for enforcement. This disconnect undermines legal certainty and erodes public trust. Conversely, when Islamic criminal law is framed as a normative system guided by justice and public welfare, implementation can be aligned with modern procedural standards.

¹⁸ S. Efendi, "Transformation of Islamic Criminal Law in Modern Society in Aceh," *Al-Qanun* 5, no. 2 (2024); K. Mokhtar, *Implementation of Islamic Criminal Law in Malaysia* (2015)

¹⁹ Efendi, "Transformation of Islamic Criminal Law," 2024.

²⁰ Mokhtar, *Implementation of Islamic Criminal Law in Malaysia*.

²¹ S. Saifuddin et al., "Enforcement of Sharia Criminal Offences in Cyberspace," *Prophetic Law Review* 7, no. 1 (2025).

²² N. Insani et al., "Islamic Law Challenges in Addressing Human Trafficking," *Jurnal Hukum Islam* 21, no. 2 (2023); N. Qasim et al., "Examining Legislation and Enforcement Mechanisms," *Al-Istinbath* 10, no. 1 (2025)

This result underscores that successful implementation requires more than legal transplantation. It demands institutional reform, methodological adaptation, and a clear conceptual understanding of Islamic criminal law’s objectives. Without these elements, implementation efforts will continue to generate legal tension rather than coherence.

Prescriptive Framework for Reconstructing Islamic Criminal Law

The third result proposes a prescriptive framework for reconstructing Islamic criminal law to address both conceptual ambiguity and implementation challenges. The analysis confirms that the crisis surrounding Islamic criminal law is fundamentally methodological. Reconstruction must therefore prioritize juristic reasoning and ethical objectives over punitive symbolism.

Central to this framework is the repositioning of *maqāṣid al-sharī‘ah* as the normative benchmark for criminal law. Thamsir et al. demonstrate that *maqāṣid*-based reasoning enables proportional punishment and prioritizes harm prevention, particularly in corruption cases.²³ This approach allows Islamic criminal law to engage contemporary crimes without abandoning doctrinal integrity.

Institutional reform is equally critical. Fauzi et al. argue that restorative justice aligns closely with Islamic legal philosophy and offers a viable alternative to retributive excess.²⁴ Additionally, *ta‘zīr* provides a flexible juristic category capable of addressing modern offenses when guided by ethical constraints.²⁵

The following table summarizes the prescriptive reconstruction framework:

Table 1. Prescriptive Reconstruction Framework of Islamic Criminal Law

| Dimension | Classical Orientation | Contemporary Challenge | Prescriptive Strategy |
|--------------------|-------------------------|-------------------------|---------------------------------|
| Normative Basis | Divine command emphasis | Perceived rigidity | Maqāṣid-based interpretation |
| Legal Method | Text-centered fiqh | Complex modern crimes | Contextual ijtihād |
| Punishment Model | Retributive sanctions | Human rights scrutiny | Restorative justice integration |
| Institutional Form | Pre-modern adjudication | State legal system | Procedural harmonization |
| Scope of Crimes | Classical categories | Cybercrime, trafficking | Expanded ta‘zīr framework |

This framework demonstrates that Islamic criminal law can function as a coherent and just legal system when reconstructed through its own methodological resources. Rather than abandoning or symbolically enforcing Islamic criminal law, principled reconstruction offers a sustainable path forward.

²³ M. Thamsir, M. Latif, and P. Muhammad, “Islamic Criminal Law Reform in Corruption Cases,” *Jurnal Ius Constituendum* 10, no. 1 (2025).

²⁴ R. Fauzi, W. Marpaung, and N. Prasetya, “Restorative Justice Concept in Islam,” *Jurnal Akta* 12, no. 1 (2025).

²⁵ W. Lestari, “Ta’zir Crimes in Islamic Criminal Law,” *Al-Qanun* 5, no. 1 (2024).

CONCLUSION

This study concludes that the challenges surrounding Islamic criminal law in contemporary academic discourse are fundamentally conceptual and methodological, rather than merely normative or political. The analysis demonstrates that Islamic criminal law is frequently mischaracterized as a rigid and punitive system due to the isolation of its sanctions from the broader jurisprudential framework in which they were originally developed. Such conceptual reductionism obscures the juristic nature of Islamic criminal law as a product of interpretive reasoning aimed at achieving justice, social order, and the protection of essential human interests.

The findings further confirm that implementation failures in contemporary legal systems are closely linked to this conceptual ambiguity. Experiences from Aceh and Malaysia reveal that the transplantation of Islamic criminal norms into modern state institutions without methodological adaptation results in selective enforcement, procedural inconsistency, and normative conflict with constitutional principles. These problems indicate that the incompatibility often attributed to Islamic criminal law stems not from its ethical foundations, but from the absence of a coherent framework that aligns juristic reasoning with modern legal structures.

Based on these findings, this study recommends several normative and practical measures. First, Islamic criminal law should be reconstructed through a *maqāsid al-sharī'ah*-oriented approach that prioritizes justice, proportionality, and harm prevention over punitive symbolism. Second, *ta'zīr* should be strengthened as a flexible juristic mechanism to address contemporary crimes, including cybercrime and transnational offenses, within ethical constraints. Third, legal institutions implementing Islamic criminal law must integrate procedural justice and restorative principles to ensure legal certainty and public legitimacy. Finally, future academic discourse should move beyond doctrinal binaries by developing an integrated methodological framework that connects conceptual interpretation with institutional practice.

Through these recommendations, Islamic criminal law can be repositioned as a dynamic legal tradition capable of principled adaptation, rather than as an anachronistic or purely punitive system.

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