

Virtual Zina in the Perspective of Maqāṣid al-Sharī'ah: Reconstructing the Islamic Criminal Law Approach to Contemporary Sexual Crimes

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Abstract

This study aims to reconstruct the Islamic criminal law approach to adultery from the perspective of maqāṣid al-sharī'ah in order to do justice to the complexity of contemporary sexual offenses. The classical fiqh approach, which is based on textual and normative principles, is considered insufficient to address non-consensual forms of sexual violence such as rape, harassment, and digital exploitation. Using a qualitative method based on literature review and maqāṣidī analysis, this study combines authoritative sources of Sharia with modern criminological literature. The results of the study show that the maqāṣidī approach allows for a reinterpretation of the boundaries of zina, the mechanisms of proof, and the types of punishments that are better adapted to the principles of protection of life (ḥifẓ al-naḥs), reason (ḥifẓ al-'aql), and honor (ḥifẓ al-'irdh). However, methodological challenges and resistance from traditional fiqh authorities pose obstacles to the operationalization of this approach. The limitations of this study lie in its conceptual nature without empirical investigation of its application in Muslim countries. These findings make a normative contribution to strengthening victim protection and promote epistemological renewal in Islamic criminal law. The novelty of this research lies in its systematic approach to integrating maqāṣid al-sharī'ah into the redesign of adultery offenses to reflect the reality of modern sexual crimes.

Keywords: Adultery, maqasid al-Shari'ah, Islamic criminal law, reconstruction of legal approaches

Abstrak: Penelitian ini bertujuan merekonstruksi pendekatan hukum pidana Islam terhadap delik zina melalui perspektif maqāṣid al-sharī'ah dalam merespons kompleksitas kejahatan seksual kontemporer. Pendekatan fikih klasik yang berbasis tekstual-normatif dinilai belum memadai dalam menangani bentuk-bentuk kekerasan seksual non-konsensual seperti pemerkosaan, pelecehan, dan eksploitasi digital. Menggunakan metode kualitatif berbasis studi pustaka dan analisis maqāṣidī, kajian ini memadukan sumber otoritatif syariah dengan literatur kriminologi modern. Hasil penelitian menunjukkan bahwa pendekatan maqāṣidī memungkinkan reformulasi

batasan zina, mekanisme pembuktian, serta jenis hukuman yang lebih adaptif terhadap prinsip perlindungan jiwa (*ḥifẓ al-nafs*), akal (*ḥifẓ al-‘aql*), dan kehormatan (*ḥifẓ al-‘irdh*). Meski demikian, tantangan metodologis dan resistensi dari otoritas fikih tradisional menjadi kendala dalam operasionalisasi pendekatan ini. Keterbatasan studi ini terletak pada sifatnya yang masih konseptual tanpa eksplorasi empirik terhadap penerapannya di negara-negara Muslim. Temuan ini memberikan kontribusi normatif bagi penguatan perlindungan korban dan mendorong pembaruan epistemologis dalam hukum jinayah Islam. Kebaruan penelitian ini terletak pada pendekatannya yang sistematis dalam mengintegrasikan *maqāṣid al-sharī‘ah* ke dalam rekonstruksi delik zina untuk menjawab realitas kejahatan seksual modern.

Kata Kunci: Zina, *maqasid al-Shari’ah*, hukum pidana islam, rekontruksi pendekatan hukum

Introduction

The development of digital technology has triggered a significant increase in the forms of modern sexual crimes. Today, adulterous behavior is no longer limited to physical relations between two people in the real world, but has also penetrated into the digital realm. The forms include cybersex, sexting, and online pornography. The ease of access to the internet, social media, and personal communication platforms makes these practices more frequent, especially among young people. This condition shows that the practice of sexual relationships outside of marriage has now experienced changes in form and media, becoming more complicated, and difficult to track, but still has a major impact on morality, social life, and the spirituality of society.

Meanwhile, Islamic criminal law has clear and firm rules governing and criminalizing adultery. In Islamic legal tradition, adultery is categorized as a hadd crime, which carries very severe penalties. However, these rules primarily regulate adultery that occurs physically and require very strict proof, such as four witnesses or a direct confession from the perpetrator. In the context of digital sexual crimes such as cybersex, this classical

approach is inadequate to address new phenomena that do not always leave physical evidence or are not directly witnessed by others.

This situation demonstrates a gap between the reality of contemporary sexual crimes and the conventional approach of Islamic criminal law. Most studies in Islamic jurisprudence (fiqh jinayah) still focus on physical forms of adultery and have not yet thoroughly discussed how Islamic law responds to digital forms of adultery. While some previous studies have addressed adultery from a fiqh perspective, they have not developed an approach that uses the maqasid sharia as a methodological basis for reformulating Islamic criminal law regarding digital forms of adultery. This research specifically discusses efforts to reconstruct Islamic criminal law regarding adultery (zina) in the form of digital sexual crimes, particularly cybersex, using the maqasid sharia approach. This research does not focus on all types of sexual crimes such as rape or sexual violence, but rather only on consensual sexual acts committed by unmarried individuals through digital media. Therefore, the legal analysis used will be directed at adultery in digital form, not all categories of sexual crimes.

The maqasid sharia approach in this research is used not only as a normative foundation but also as a framework for reformulating legal concepts. With this approach, legal rules are understood not only in terms of text but also in terms of the primary objectives of sharia, such as safeguarding the soul (hifzh al-nafs), protecting honor (hifzh al-'irdh), and protecting religion (hifzh al-din). The goal is to build a legal basis that is appropriate to the current socio-religious context, making it more relevant and applicable.

This research also seeks to find a balance between Islamic moral values and modern realities, without falling into a narrow textual understanding or an overly liberal approach to the basic

principles of Sharia. By embracing the maqasid of Sharia as the primary perspective, it is hoped that the reform of Islamic criminal law regarding adultery will not only be a response to contemporary issues but also a manifestation of substantial justice and remain grounded in Islamic teachings.

Through this research, it is hoped that a model of Islamic criminal law approach can be formulated that can address the challenges of digital sexual crimes fairly and contextually. This model is crucial for maintaining the relevance of Islamic criminal law in regulating the dynamics of modern life, while preserving the core values of Sharia amidst rapid and complex changes.

Methods

This research uses a qualitative-normative approach with a library research design. This approach was chosen because the study focuses on Islamic legal norms, particularly in the field of Islamic jurisprudence (*fiqh jinayah*), and their relevance to the contemporary phenomenon of digital sexual crimes. The purpose of this research is to reconstruct the Islamic criminal law approach to acts of adultery (*zina*) occurring through digital media, such as cybersex, using the maqasid sharia framework as the primary analytical tool.

Data collection was conducted through a literature review of various primary and secondary sources. Primary sources include the Quran and hadith, as well as the works of maqasid scholars such as al-Syatibi, Ibn 'Ashur, and Jasser Auda. Additionally, secondary data was collected from scientific journals, contemporary books, and relevant national regulatory documents (the Electronic Information and Transactions Law, the Pornography Law, and the Criminal Code). This data was selected to provide a comprehensive overview of the dynamics of digital adultery and the applicable Islamic legal framework.

Data analysis was conducted using two main approaches: content analysis and maqashid-based analysis. First, the researcher described and examined the legal structure of zina (adultery) in classical Islamic jurisprudence, then compared it with contemporary zina phenomena. Next, maqashid values, such as hifzh al-nafs (protection of the self), hifzh al-nasl (protection of the nasl), and hifzh al-din (protection of the divinity), were used to evaluate the adequacy of Islamic legal norms in responding to digital sexual crimes. This process led to the reconstruction of a more contextual and benefit-oriented approach to Islamic criminal law, while adhering to the basic principles of sharia. Data analysis was conducted using two main approaches: content analysis and maqashid-based analysis. First, the researcher described and examined the legal structure of zina (adultery) in classical Islamic jurisprudence, then compared it with contemporary zina phenomena. Next, maqashid values, such as hifzh al-nafs (protection of the self), hifzh al-nasl (protection of the nasl), and hifzh al-din (protection of the divinity), were used to evaluate the adequacy of Islamic legal norms in responding to digital sexual crimes. This process led to the reconstruction of a more contextual and benefit-oriented approach to Islamic criminal law, while adhering to the basic principles of sharia.

Result and Discussion

The Concept of Adultery and Its Development

Etymologically, the word zina comes from the Arabic يزني-زنا which means a crime that is highly emphasized in Islamic criminal law (jurisprudence). Zina is a sexual act between a man and a woman who are not bound by a legal marriage, either religiously or legally. Zina is defined as a relationship without status or elements of doubt based on marriage and there is no ownership relationship between the master and the female slave. (Dinda, 2024).

In shar'i terms, the scholars define zina as the voluntary insertion of the penis into the private parts between a man and a woman who is not his wife, without a valid marriage according to Islamic law. This definition is agreed upon by the four main schools of thought (Hanafi, Maliki, Syafi'i, dan Hambali), According to Ibn Rushd, adultery is the act of having sexual intercourse outside of marriage or a pseudo-marriage and not because of a slave (Huda, 2015). Meanwhile, according to Hamka, all kinds of intercourse outside a legal marriage or a marriage that is carried out without fulfilling the terms and conditions of marriage (Hamka, 2019).

The distinction between adultery and other forms of sexual offenses is important in jinayah fiqh. For example, adultery is different from rape (ikrah), because in adultery there is an element of willingness of both parties. Meanwhile, if it is done by force, then the perpetrator is blamed for the jarimah of rape and not adultery in the technical sense. Proof of adultery in classical Islamic law is strict and rigid, with two main methods agreed upon by the majority of fuqaha:

1. Confession (i'tiraf) from the adulterer four times consciously and not under duress. This confession must be made explicitly and can be revoked at any time by the perpetrator.
2. There are four fair male witnesses who witnessed the penetration of sexual intercourse directly and simultaneously (the arrow entering the inkwell). These witnesses must meet the requirements of being just, pubescent, sensible, Muslim, and not having committed a major sin. If the number of witnesses is less than four, then the witnesses are subject to the punishment of qadzaf (accusing adultery without evidence), in the form of 80 lashes (Apriyanti, 2023).

In addition, Islamic law also differentiates the punishment for adultery based on the status of the perpetrator. If the perpetrator is muhshan (a married person who has had sex in a legal marriage), then he is subject to stoning (stoned to death). As for ghairu muhshan (never

married), then the punishment is whipped 100 times and exiled for one year (Amelia et al., 2024).

However, the definition of adultery according to these classical scholars tends to be limited to physical adultery. The rise of digital technology has significantly changed the landscape of sexual harassment, challenging the traditional definition of adultery. In the digital age, behaviors such as cybersex, sexting and sharing sexual content have emerged, complicating the understanding of sexual morality and infidelity. These developments necessitate a review of existing frameworks to address these new forms of sexual expression and offenses (Powell & Henry, 2017). Therefore, contemporary thinkers suggest a reinterpretation of the meaning of adultery, while still based on maqashid sharia as a method of legal development that is able to respond to new realities.

Thus, understanding the definition of zina in Islamic law cannot be separated from its textual and contextual dimensions. On the one hand, Islamic law provides strict legal boundaries and provisions. On the other hand, the maqasid sharia (the principle of sharia) provides the opportunity to adapt the law to social developments in order to uphold the objectives of sharia welfare. This is a crucial foundation in efforts to reconstruct the Islamic criminal law approach to contemporary sexual crimes.

The phenomenon of zina in the digital era has undergone significant changes in form and pattern compared to its traditional context. While in classical fiqh, zina was narrowly defined as sexual relations between a man and a woman who are not physically married, in contemporary reality, sexual behavior has expanded into the virtual realm. Advances in information technology have opened up space for new forms of non-physical sexual crimes, although in substance they still reflect sexual behavior outside the boundaries of sharia. This aligns with Surah Al-Isra', verse 32, which reads, "And do not come near zina; indeed, zina is a despicable act and an evil path." This verse makes sexual crimes

a path to zina. This creates new challenges in the enforcement of Islamic criminal law, which has so far relied heavily on physical and literal evidence.

One of the main forms of digital adultery is cybersex, which is sexual activity carried out online (remotely) through text, sound, images, or video, which contains elements of sexual stimulation between two or more people without direct physical contact (Amanatillah, 2022). Although it does not involve physical intercourse, this activity is often done with deliberation, awareness and the aim of gaining sexual gratification. From a Shari'ah perspective, these actions clearly undermine moral values and have the potential to lead to actual physical adultery (*sadd al-dzari'ah*), as they encourage sexual stimulation and undermine honor (*irdh*).

In addition, the phenomenon of sexting - sending sexually charged messages, images or videos via electronic means such as WhatsApp, Instagram or Telegram is increasingly prevalent among teenagers and young adults. Sexting is usually done voluntarily between two people, but the consequences can be very dangerous (Anjani et al., 2022). Many cases occur when the content is leaked or spread, leading to pornography, blackmail (*sextortion* or *cyberbullying*). In the context of *jinayah fiqh*, although it does not meet the criteria of *zina hudud*, the practice of sexting can be categorized as a *fahisyah* (abominable) act that can lead to *zina* (*muqaddimat al-zina*).

Another phenomenon is virtual/digital adultery, which is an intensive romantic and sexual relationship through digital media without marriage. This activity is known as Video Call Sex (VCS), a form of sexual intercourse conducted online by unauthorized partners (Hamidi & Shobri, 2022). This practice is not limited to intimate conversations, but often extends to the exchange of sexual fantasies and mutual masturbation through online media. In many cases, this virtual adultery generally goes unnoticed by legal spouses or family members, and although it does not involve direct contact, it has a

serious impact on household harmony, individual moral integrity, and the social order at large. From the perspective of maqashid sharia, this action is classified as damaging three important aspects including hifzh al-nasl (preservation of offspring), hifzh al-'irdh (preservation of honor), and opens the potential for further damage to hifzh al-nafs (soul).

One of the greatest challenges in enforcing Islamic criminal law against digital sexual crimes lies in the evidentiary aspect. In classical Islamic jurisprudence, proving adultery requires four honest male witnesses who directly witnessed the sexual intercourse (wath'i), as in the analogy of "a thread passing through the eye of a needle." Another alternative is through four voluntary confessions by the perpetrator. This standard is extremely high and nearly impossible to apply in cases of digital adultery, which do not involve direct physical interaction.

Consequently, various forms of contemporary adultery, such as cybersex, sexting, and virtual adultery, cannot be prosecuted under hadd law because they do not meet the evidentiary requirements stipulated in classical Islamic jurisprudence. This makes law enforcement against digital sexual crimes weak or even virtually impossible within the context of classical Islamic criminal law. Yet, the social, moral, and psychological impacts of digital adultery can cause even greater harm than physical adultery. This situation demonstrates the need for serious legal ijthad, adhering to the principles of maqasid sharia, to formulate a more responsive and welfare-oriented legal approach.

Furthermore, classical evidentiary systems do not yet accommodate digital evidence such as screen recordings, online conversations, or photos/videos, which are recognized as valid electronic evidence in modern legal systems. In the context of contemporary Islamic law, several Islamic scholars and fatwa institutions have begun to allow for the use of digital evidence as a basis for imposing ta'zir sanctions, although not yet for the implementation of hadd punishments. This creates room for reformulating the norms for

proving adultery to ensure they remain in line with the maqasid of sharia, namely maintaining public morality and preventing broader social harm. Therefore, an Islamic criminal law approach is needed that can address forms of digital sexual crimes based on the maqasid, while still upholding the essence of substantive justice.

Maqashid Sharia as a Foundation for Legal Reconstruction

In the khazanah of ushul fiqh, maqashid sharia occupies an important position as a representation of the main objectives of the establishment of Islamic law. Terminologically, maqashid means purpose, intention, or goal, while sharia refers to the Islamic legal system that comes from revelation (Gusnadi et al., 2023). Therefore, maqashid sharia can be understood as the objectives that Islamic law seeks to achieve in each of its legal provisions, both in aspects of worship, social relations (muamalah), and criminal law (jinayah). Maqashid Sharia aims to bring benefits to mankind and prevent people from damage, by focusing on key aspects such as protection of religion, mind, soul, property, and offspring. This approach seeks welfare both in this world and in the hereafter, and emphasizes the interconnectedness of its elements (Asy'ari, 2022).

Scholars from both the classical and contemporary eras of fiqh generally divide maqashid sharia into three levels: dharuriyyat (primary), hajiyyat (secondary), and tahsiniyyat (complementary). This division serves to prioritize human needs related to survival and social welfare. The dharuriyyat level is the most basic as it encompasses the protection of five fundamental elements such as religion, soul, mind, offspring, and property. This framework ensures that these essentials can be maintained to prevent societal disruption and promote overall well-being (Amin et al., 2024). In the context of criminal jurisprudence, this maqashid is an important reference for determining whether an action should be prevented or punished, depending on its impact on the public interest and the core values.

The concept of maqashid has also undergone methodological development in the contemporary era. Scholars such as Ibn 'Ashur and Jasser Auda have significantly expanded the scope of maqashid from merely normative principles to a comprehensive approach to legal development, known as *ijtihad maqashidi*. Auda's systemic approach combines six dimensions: cognitive, holistic, open, multidimensional, objective, and hierarchical. These dimensions are designed to address the challenges of the times, including complex contemporary legal issues (Nur'aini, 2024). This approach allows the maqasid of sharia to become a dynamic instrument in reconstructing Islamic law to address changing realities, including addressing contemporary sexual crimes such as digital adultery (cybersex), which are not yet recognized within the classical legal framework.

The application of maqasid in the context of Islamic criminal law is not a form of legal liberalization, but rather part of an effort to reform (*tajdid*) that remains firmly grounded in sharia principles. For example, if a form of digital sexual crime is proven to endanger offspring (*hifzh al-nasl*), damage public morals (*hifzh al-din*), or disrupt social stability (*hifzh al-nafs*), then such actions can be legally assessed even if they do not fit the classical definition of *zina*. This is where maqasid becomes a primary instrument in assessing benefits and harms, as well as establishing preventive measures (*ta'zir*), or even opening up space for the reconstruction of *hudud* regulations that are fixed but contextualized.

Thus, the maqashid of sharia is not merely a theoretical framework, but rather a normative and methodological foundation for Islamic law to remain substantively alive to the challenges of the times. In this study, the maqashid will serve as the primary foundation for reevaluating the Islamic criminal law approach to contemporary forms of adultery, as well as the basis for designing a legal reconstruction strategy that is not merely legalistic but also oriented toward the public interest and context.

There are five main principles of Maqashid Syariah which play a role in the reconstruction of the Islamic jurisprudence approach, namely: (Masriani, 2023)

1. Hifzh al-Din (Protection of Religion)

Hifzh al-Din is Islamic law that aims to maintain the continuity of religious values and the purity of religious teachings. Sharia was revealed so that humans always adhere to God, both personally and socially. In the context of sexual crimes, including digital adultery, such behavior can damage religious moral integrity, violate the values of purity held dear in Islam, and open the door to systematic sin. Therefore, efforts to combat this form of crime are part of protecting religion so that Islamic values remain alive in society.

2. Hifzh al-Nafs (Protection of the Soul)

Islam highly values human safety and dignity. Islamic law prohibits all forms of behavior that could endanger life, degrade dignity, or cause physical or psychological harm. Acts of adultery, whether conventional or digital, can have detrimental effects on individuals, particularly in the form of sexual exploitation, the spread of immoral content, and even suicides due to online harassment. Therefore, protecting the soul, state, and society requires establishing strict regulations against modern sexual crimes.

3. Hifzh al-'Aql (Protection of Intellect)

This principle of Maqasid (intellect) ensures that the human mind remains healthy, clear, and free from anything that could harm it. In the contemporary context, exposure to extreme digital sexual content can damage societal thought structures, normalize adultery, and disrupt psychological development. Acts of digital adultery often occur in the form of the systematic consumption and production of pornography. Therefore, an Islamic criminal law approach needs to

address this aspect to prevent collective damage to the human mind through digital literacy, Islamic sexual education, and media regulations that support the protection of the mind.

4. Hifzh al-Nasl (Protection of Offspring and Honor)

This principle emphasizes the importance of safeguarding personal honor, family lineage, and the social order from sexual deviation. Zina is criminalized under Islamic law because it damages the family structure, leads to out-of-wedlock pregnancies, children without a lineage, and undermines the dignity of women. In digital form, adultery often leads to defamation, doxing, revenge porn, or sexual blackmail based on personal data. Therefore, protecting lineage and honor must be part of the agenda for reconstructing Islamic criminal law.

5. Hifzh al-Mal (Protection of Property)

Islam protects property as a basic human right. Digital sexual crimes such as online prostitution, the trafficking of sexual content, or sextortion are often economically motivated. In this context, the maqasid (maqasid) encourages Islamic law not only to punish the perpetrators but also to dismantle the economic system that supports these sexual crimes, so that the protection of property goes hand in hand with the protection of morality.

In the study of Islamic jurisprudence (fiqh jinayah), Islamic criminal law is not designed solely to punish, but also to create justice, social order, and protect human values. Therefore, in the context of criminal law, the maqasid sharia holds a central position as a reference in assessing whether an act brings maslahat (good) or mafsadat (harm). Protection of life, intellect, descendants, honor, and religion are the primary parameters in determining whether an act is criminalized and what form the sanctions will take.

This is increasingly important in addressing contemporary forms of sexual crimes whose methods are not recognized in classical fiqh texts, such as cybersex, sexting, and other digital technology-based sexual crimes. Classical jinayah law requires very strict proof of zina, such as the presence of four witnesses who witnessed the act directly, or four confessions from the perpetrator. While these requirements reflect the prudence of sharia, they are inadequate to address non-physical forms of zina that now occur online and in secret. In this regard, the maqashid sharia (Islamic law) allows for a method of legal reinterpretation that paves the way for a contextual rereading of the texts and concepts of Islamic jurisprudence (jurisprudence) of criminal law.

As a method of legal reinterpretation, maqashid sharia provides space for ijtihad that focuses not only on form (legal formalism) but also on its impact and purpose (legal substance). For example, if an act does not meet the literal definition of zina (adultery) but is proven to contain elements of moral and hereditary corruption and trigger social rifts, then maqashid allows for the categorization of the act as a crime through the ta'zir approach. Maqashid also encourages the development of preventive and rehabilitative policies. With this approach, the reconstruction of Islamic law can encompass new acts not yet recognized in classical literature but proven to be harmful to society.

This idea has been developed by contemporary scholars such as Yusuf al-Qaradawi and Jasser Auda, who emphasize that Islamic law is not rigid and bound by texts, but is able to move dynamically according to the objectives of sharia (Zuhdi & Nasir, 2024). In the context of criminal activity, assessing a crime is not sufficient by merely examining its outward manifestations; it must also consider its social and moral impacts. Based on the principles of maqasid (Islamic principles), the reconstruction of criminal law for digital adultery is not a deviation from sharia, but rather a strengthening

of its essence in safeguarding the public interest and preventing the path to corruption (sadd al-dzari'ah).

Thus, the maqasid of sharia serves as a bridge between tradition and innovation in ijtihad. It is able to address the challenges of the times, including in the field of criminal activity, without losing its epistemological roots in sharia. A legal approach based on maqasid enables a more just, responsive, and contextual renewal of Islamic criminal law, particularly in addressing sexual crimes that are developing in the digital landscape..

Reconstruction of the Islamic Criminal Law Approach to Virtual Adultery

The concept of adultery has evolved significantly with the advent of digital media. Adultery is no longer limited to physical relationships, but also encompasses various forms of virtual sexual engagement. This transformation is evident in three main forms: (Swardhana, 2020)

1. Cyber adultery is a form of virtual sexual intercourse between two parties via video calls, intimate messages, or other online communication media. Although voluntary, this violates religious and social norms. This includes any form of sexual or romantic interaction conducted online by a person, whether married or not, with an individual other than their legal spouse.
2. Digital and participatory pornography refers to sexual content created, disseminated, or consumed through digital media (such as the internet, social media, or video platforms). In this case, the perpetrator is consciously and actively involved in the production or distribution of such content. Typically, this activity involves sexual acts outside of marriage or a legally and religiously valid relationship.
3. Sexual interaction through online media encompasses all forms of sexual expression that have rapidly evolved with advances in information and communication technology. This

form of interaction encompasses a variety of virtual activities of a sexual nature, whether through text, voice, images, or video. This activity is voluntary between two consenting parties, but it can also lead to exploitation, abuse, or digital crime.

Although these crimes do not involve physical contact, they have consequences such as moral damage, violation of the sanctity of sexual relations, and paving the way for the actual practice of zina (adultery). Therefore, the emergence of digital sexual crimes demands a reconsideration of the concept of zina (adultery) in classical Islamic jurisprudence (jurisprudence) to ensure its relevance to the challenges of the times.

In classical Islamic jurisprudence, zina is narrowly defined as biological sexual intercourse (penetration) between a man and a woman who are not legally married. Determining the hadd punishment for this crime requires strict proof: four male witnesses who directly witnessed the act, or four confessions from the perpetrator. This requirement is intended to ensure justice and prevent slander.

However, in today's digital age, many deviant sexual practices are widespread in the digital space. If the definition of zina is only understood textually in classical Islamic jurisprudence, many forms of moral damage will escape the reach of Islamic criminal law. Therefore, it is necessary to expand the meaning of zina through a more contextual methodological approach, especially through the ta'zir approach, namely the imposition of sanctions by judges for sinful acts that do not fulfill the elements of hudud, but are clearly harmful to society. The maqashid sharia approach can be used as a measuring tool to evaluate virtual zina from the aspect of the benefits and mafsadat it causes. Virtual sexual behavior in the real world can damage the protection of religion (hifzh al-din), life (hifzh al-nafs), honor and descendants (hifzh al-'irdh and hifzh

al-nasl), and property (hifzh al-mal). These impacts make digital zina contrary to the main objectives of sharia and should be considered a crime that must be regulated by Islamic criminal law.

For this reason, it is necessary to reconstruct Islamic criminal law regarding digital adultery with the following three main approaches (Sirajuddin et al., 2024)

1. Tajdid (Reform) Approach

Tajdid in the context of Islamic criminal law means updating the methodological and substantive approaches to the law to suit social realities. This does not mean changing the text of Sharia, but rather adapting its application to a maqashid-based approach.

2. Maqashidi Ijtihad on Contemporary Zina

This approach emphasizes the importance of understanding the law based on its objectives. Digital zina can be positioned as an act that violates the provisions of maqashid, even though it does not meet the physical elements in the classical definition of zina. In this case, the perpetrator can be subject to ta'zir sanctions according to the level of harm caused.

3. Harmonization of Maqashid and Sadd al-Dzari'ah

Sadd al-dzari'ah (closing the path to evil) is an important principle in preventing actions that lead to actual zina. Maqashid and sadd al-dzari'ah reinforce each other as the basis for legitimizing legal action against digital sexual activity.

In order to actualize legal reconstruction, criminal policies are needed that can address this new phenomenon (Reyhanif & Nisrina, 2024), including:

1. Renewal of the Evidence System

The evidence system does not have to rely on four witnesses, but can instead utilize digital evidence such as recordings, screenshots, or digital traces, while upholding the principles of prudence and substantive justice.

2. Preventive Measures Based on the Maqasid

In addition to punishment, preventive policy strategies need to be developed, such as Islamic-based sex education, digital literacy, campaigns to maintain personal purity, and the involvement of families and educational institutions in maintaining community moral resilience.

3. Harmonization with the National Legal System

The formulation of Islamic law also needs to be synergized with national laws, such as the ITE Law, the Pornography Law, and the Criminal Code. Adjustments (taqyid) to state law can be made as long as they do not conflict with the maqasid of sharia. It can even be an effective means of practically protecting the objectives of sharia in a pluralistic society..

Conclusion

This research reveals that digital sexual crimes, such as virtual adultery through cybersex, sexting, sexual video calls, and online pornography, pose a new challenge to classical Islamic jurisprudence (jurisprudence) that developed in the past. This phenomenon substantially violates Sharia values, undermines public morals, and endangers social honor and stability. However, classical adultery law has not been able to comprehensively address these new forms, particularly in terms of definition, evidence, and sanctions. The Maqasid Sharia approach provides an important solution for contextually reinterpreting Islamic criminal law. Maqasid principles, such as protection of religion (hifzh al-

din), life (hifzh al-nafs), intellect (hifzh al-'aql), honor (hifzh al-'irdh), and lineage (hifzh al-nasl), emphasize that digital adultery is also classified as a crime that requires action. Through this approach, the meaning of zina (adultery) can be expanded, and ta'zir sanctions can be applied to deviant sexual behavior not covered by hudud (laws of the law), but still harmful.

This research proposes a reconstruction of Islamic criminal law using maqashidi ijihad (the principle of ijihad), the principle of sadd al-dzari'ah (prevention of harm), and a renewal of the evidentiary system through the validity of digital evidence. Furthermore, a holistic policy is needed, encompassing prevention, education, victim protection, and synergy between the maqashid of sharia and the national legal system. Thus, Islamic jurisprudence (fiqh jinayah) possesses epistemological flexibility and adaptability to the dynamics of the times. The maqashid approach enables Islamic law to respond to digital sexual crimes fairly, substantially, and with solutions, and serves as a new direction for progressive and relevant Islamic legal reform.

References

- Amanatillah, R. (2022). *Hubungan Kesepian dengan Kecanduan Internet dalam Mengakses Cybersex pada Remaja di MAN 1 Aceh Besar*. UIN Ar-Raniry.
- Amelia, N. I., Sholehah, R., & Khairunnisa, K. (2024). Tindak Pidana Zina dan Penuduhan Zina: Kajian Hukum Pidana Islam. *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora*, 1(2), 140–150.
- Amin, I., Salma, S., Bahar, M., & Lendrawati, L. (2024). Stratification of Al-Maqashid Al-Khamsah (Preserving Religion, Soul, Reason, Heredity and Property) and Its Application in al-Dharuriyah, al-Hajiyah, al-Tahsiniah, and Mukammilat. *AJIS: Academic Journal of Islamic Studies*, 9(1), 264–281. <https://doi.org/10.29240/ajis.v9i1.8941>

- Anjani, F. D., Raharjo, S. T., & Fedryansyah, M. (2022). Faktor Individu Dan Lingkungan Sosial Sebagai Penyebab Perilaku Sexting Di Kalangan Remaja. *Share : Social Work Journal*, 12(1), 12. <https://doi.org/10.24198/share.v12i1.33684>
- Apriyanti. (2023). PROOF OF ADULTERY: AN ISLAMIC LEGAL PERSPECTIVE ON THE DILEMMA BETWEEN NORMS AND HUMAN DIGNITY. *Islam Realitas: Journal of Islamic and Social Studies*, 9(2), 153–168.
- Asy'ari, R. (2022). Mashlahah dalam Maqasid Syari'ah. *Ta'wiluna: Jurnal Ilmu Al-Qur'an, Tafsir Dan Pemikiran Islam*, 3(1), 1–13. <https://doi.org/10.58401/takwiluna.v3i1.593>
- Dinda, P. A. (2024). HUKUM ZINA DALAM PERSPEKTIF JINAYAH : KONSEP DAN PENERAPANNYA DI NEGARA INDONESIA. *JURNAL MULTIDISIPLIN SOSIAL HUMANIORA*, 1(2), 74–83.
- Gusnadi, S., Kurniawan, A., & Ridwan, M. (2023). HUBUNGAN MAQASHID AL-SYARIAH DENGAN FILSAFAT HUKUM ISLAM Surya. *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial*, 9(1), 1–11. <https://jurnal.uinsyahada.ac.id/index.php/elqanuniy/article/view/PDF/pdf>
- Hamidi, & Shobri, A. (2022). Zina Online di Era Informasi Transaksi Elektronik (ITE) Perspektif Hukum Islam. *Al-Fikrah : Jurnal Studi Ilmu Pendidikan Dan Keislaman*, 5(1), 21–35.
- Hamka. (2019). *Tafsir Al-Azhar Jilid 6 Juz 15*.
- Huda, S. (2015). Zina dalam Perspektif Hukum Islam dan Kitab Undang Undang Hukum Pidana. *HUNafa: Jurnal Studia Islamika*, 12(2), 377. <https://doi.org/10.24239/jsi.v12i2.401.377-397>
- Masriani, Y. T. (2023). Sinergi Maqashid Syariah Asy-Syatibi Dengan Pancasila Sebagai Falsafah Negara Indonesia. *Jurnal Ius Constituendum*, 8(1), 19.
- Nur'aini, A. (2024). Reinterpreting the Amputation Punishment in Qur'an Surah Al-Maidah Verse 38: A Systems Approach by

- Jasser Auda. *Jurnal Ilmiah Mahasiswa Raushan Fikr*, 13(2), 512–523. <https://doi.org/10.24090/jimrf.v13i2.11895>
- Powell, A., & Henry, N. (2017). *Sexual violence in a digital age* (Vol. 25). Springer.
- Reyhanif, A. A., & Nisrina, F. (2024). Legalitas Alat Bukti Elektronik dari Hasil Penyadapan dalam Proses Peradilan: ditinjau dari Perspektif Hukum Pidana. *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA*, 2(2), 353–363.
- Sirajuddin, S., Risdayani, R., & Indriani, D. (2024). Delik Aduan Tindak Pidana Perzinahan dalam Pandangan Hukum Pidana dan Hukum Islam. *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam*, 5(2), 359–372.
- Swardhana, G. M. (2020). Kebijakan kriminal dalam menghadapi perkembangan kejahatan cyber adultery. *Kertha Wicaksana*, 14(2), 87–95.
- Zuhdi, M. H., & Nasir, M. A. (2024). Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context. *Samarah*, 8(3), 1818–1839. <https://doi.org/10.22373/sjhg.v8i3.24918>

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