



Classical Fiqh, State Authority, and Digital Governance: Islamic Legal Discourse on Cyber Law in Malaysia

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Abstract

The rapid advancement of digital technology has generated legal challenges that are not explicitly addressed within classical Islamic jurisprudential texts (*fiqh*). These challenges have become increasingly complex, as the regulatory frameworks governing social practices in the nation-state era are no longer exclusively grounded on the religious legal norms upheld by the Muslim community. This study aims to analyze Malaysian cyber laws pertaining to various cyber-related issues, including cryptocurrency, personal data protection, and cyberbullying. By integrating the concept of *al-maskūt 'anhu*—a recognized space of legal silence in Islamic legal theory that permits contextual reasoning—with the notion of Islamic law as a discursive tradition, this study proposes a novel analytical framework for comprehending how modern state law can embody Islamic normative reasoning without reliance on explicit textual precedents. Empirically, it provides one of the first systematic analyses of Malaysian cyber law through this combined perspective, thereby repositioning the role of the state not as a competitor to Islamic legal authority but as a central agent in sustaining the continuity of Islamic legal discourse in the digital era. This study contributes to the field by demonstrating that contemporary cyber regulations in Malaysia should not be regarded merely as external or supplementary to Islamic law, but rather as integral components of an ongoing Islamic legal discourse shaped by state authority and bureaucratic governance.

Keywords

Classical Fiqh; State Authority; Digital Governance; Islamic Legal Discourse; Cyber Law; Malaysia

Introduction

Contemporary digital issues, including cryptocurrency, data privacy, and cyberbullying, have become integral to the social, economic, and legal frameworks of modern states.¹ Nevertheless, these phenomena are absent from the Qur'an, Hadith, and classical Islamic jurisprudence (*fiqh*) literature within the Islamic tradition.² Consequently, the evolution of the digital realm—with its

¹ Steven Feldstein, *The Rise of Digital Repression: How Technology Is Reshaping Power, Politics, and Resistance* (Oxford University Press, 2021), <https://doi.org/10.1093/oso/9780190057497.001.0001>; Margret R. Hoehe and Florence Thibaut, "Going Digital: How Technology Use May Influence Human Brains and Behavior," *Dialogues in Clinical Neuroscience* 22, no. 2 (June 2020): 93–97, <https://doi.org/10.31887/DCNS.2020.22.2/mhoehe>.

² Hussain Mohiuddin Qadri et al., "Exploring Crypto Currency through the Lens of the Shari'a Law: A Comparative Analysis of Scholarly Evaluations," *Articles, Journal of Islamic Thought and Civilization* 13, no. 2 (2023), <https://doi.org/10.32350/jitc.132.21>; Muhammad Khaeruddin Hamsin et al., "Shari'ah E-Wallet: The Issue of Shari'ah Compliance and Data Protection," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 53–68, <https://doi.org/10.24090/mnh.v17i1.7633>; Suryadi Nasution et al., "Millennial *Fiqh*: Bridging Islamic Tradition



distinctive features such as immaterial entities, algorithmic interactions, and detachment from spatial and temporal constraints—poses novel ontological and epistemological challenges that classical *fiqh* alone cannot adequately address.³ This limitation arises because the classical Islamic legal tradition is predicated on the assumption that actions are observable (*zāhir*), objects possess material identification, and legal relationships occur directly.⁴ The digital domain fundamentally disrupts this paradigm, as value is no longer contingent upon physical substance, harm may transpire without physical presence, and identities can function anonymously.⁵ This ontological discontinuity significantly impacts the epistemology of Islamic law, particularly regarding the identification of objective criteria (*illāh*) necessary for the application of legal analogy (*qiyās*), given that these digital phenomena lack historical precedent. Accordingly, the question of how Islamic jurisprudence should be applied within this unprecedented context has become an increasingly critical subject of discourse in contemporary Muslim societies.⁶

This challenge becomes increasingly complex when considered within the framework of the modern nation-state. In contrast to pre-modern Muslim societies, where social regulations typically emerged through legal discourse and communal norms, contemporary state governance centralizes legal authority within state institutions that oversee multiple communities concurrently.⁷ Consequently, the state assumes the power to define moral standards, regulate behavior, and enforce legal compliance not only for the Muslim community but also for all citizens irrespective of their backgrounds.⁸ Within this context, Malaysia presents a particularly intricate case for analysis. As a Muslim-majority country with a robust legal and bureaucratic infrastructure, Malaysia has developed a range of cyber laws aimed at regulating digital practices that have become integral to social life. Although this legal framework is established through modern legislative processes grounded in juridical principles, it simultaneously operates as an authoritative norm governing Muslim conduct in the digital realm.⁹ Accordingly, the responsibility for managing Muslim affairs has shifted from primarily being the domain of Islamic jurists (*fuqahā*) or religious institutions to statutory law, regulatory frameworks, and bureaucratic governance. This institutional transformation prompts fundamental epistemological inquiries within Islamic legal studies, specifically regarding how state regulations affecting Muslim lives—particularly those addressing

and Social Media in Madrasahs,” *Al-Hayat: Journal of Islamic Education* 9, no. 2 (2025): 309–30, <https://doi.org/10.35723/ajie.v9i2.154>.

³ Arditya Prayogi, Riki Nasrullah, and Singgih Setiawan, “The Evolution of Fiqh in the Digital Era: Challenges and Adaptations in Islamic Jurisprudence,” *The Journal of Religion and Communication Studies* 2, no. 1 (February 2025), <https://doi.org/10.61511/jorcs.v2i1.2025.1751>.

⁴ Wahbah al-Zuhayli and Abdul Hayyie Al-Kattani, *Fiqh Islam wa adillatuhu* (Kuala Lumpur: Darul Fikir, 2010).

⁵ Sungyong Ahn, *De Gruyter Handbook of Digital Cultures*, ed. Grant Bollmer, Katherine Guinness, and Yiğit Soncul (De Gruyter, 2025), 123–32, <https://doi.org/10.1515/9783111316857-013>.

⁶ Sheikh Inam Ul Mansoor, “Islamic Law in the Age of Blockchain: Exploring Shari’ah Compliant Cryptocurrencies and Digital Assets,” *SSRN Electronic Journal* 21, no. 1 (2025), <https://doi.org/10.2139/ssrn.5340253>; Safaruddin Harefa, “The Fundamental Principles of Islamic Law in the Digital Era: An Ushul Fiqh and Maqashid Shari’ah Approach,” *Journal of Islamic Law on Digital Economy and Business* 1, no. 1 (2025), <https://doi.org/10.20885/JILDEB.vol1.iss1.art6>; Achmad Nursobah, “Epistemological Integration of Ushul Fiqh and Blockchain: A Philosophical Approach to Digital Islamic Economic Ijtihad,” *Kartika: Jurnal Studi Keislaman* 5, no. 3 (2025): 490–510.

⁷ Adrian Kay, “The Changing Traditions of Islamic Public Administration: Observing Processes of Collision, Absorption and Adaptation,” *Asia Pacific Journal of Public Administration* 46, no. 1 (January 2024): 13–30, <https://doi.org/10.1080/23276665.2023.2275283>.

⁸ Christian Fjäder, “The Nation-State, National Security and Resilience in the Age of Globalisation,” *Resilience* 2, no. 2 (May 2014): 114–29, <https://doi.org/10.1080/21693293.2014.914771>.

⁹ Monique M. Smith and Maha Balakrishnan, *Malaysian Parliamentary Procedure: A Guide to the Standing Orders of the Dewan Rakyat* (Kuala Lumpur: Parliament of Malaysia, 2021).

phenomena not explicitly delineated in religious texts—should be situated within the broader framework of Islamic legal thought.

The legal status of cyber regulations within Islamic law remains theoretically ambiguous. On one hand, these regulations are neither derived through classical methods of legal deduction nor articulated in the traditional language of *fiqh*. On the other hand, digital phenomena have become integral to the social, economic, and legal frameworks of contemporary nation-states. This ambiguity has not been adequately addressed in existing scholarship, which often evaluates digital issues through isolated doctrinal rulings—for example, the works of Shuhufi,¹⁰ Musarrofa and Rohman,¹¹ and Fatarib and Sali,¹² who analyze the digital realm through *fiqh* concepts. Alternatively, other studies tend to approach cyber law exclusively as a matter of state policy, as seen in the research of Jiaxin,¹³ Jhaver et.al.,¹⁴ and Dommet & Zhu.¹⁵ Consequently, contemporary scholarship on cyber law frequently overlooks the deeper epistemological interplay among the digital domain, state authority, and Islamic normativity. This article seeks to fill that gap. Rather than proposing new *fiqh* rulings for specific digital practices, it conceptualizes cyber law as a contemporary form of normative reasoning operating within the domain of *al-maskūt ‘anhu*. By understanding Islamic law as a discursive tradition, the study examines how modern state regulation engages with unprecedented digital phenomena while maintaining orientation toward the ethical objectives historically associated with Islamic law. This article employs Malaysia as a case study to elucidate the epistemological status of cyber law within Islamic legal thought and to demonstrate how Islamic normativity is continuously negotiated, transformed, and institutionalized within the context of modern digital governance.

Literature Review

From a theological perspective, Muslims fundamentally assert that only Allah possesses the authority to establish laws that serve as guidelines for attaining benefits both in this world and the hereafter.¹⁶ Al-Shafī‘i, in his seminal work *Al-Risālah*, underscores that no aspect of human life lies beyond the purview of Sharia.¹⁷ Nevertheless, divine injunctions, as understood within the framework of Sharia, do not exist in isolation; rather, they invariably interact with the dynamic nature of humanity, which is subject to movement, change, and evolution over time. Consequently, every product of Islamic jurisprudence, known as *fiqh*, encompasses two dimensions: the divine dimension, as it originates from revelation, and the human dimension, since it is ultimately the

¹⁰ Muhammad Shuhufi et al., “Islamic Law and Social Media: Analyzing the Fatwa of Indonesian Ulama Council Regarding Interaction on Digital Platforms,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (December 2022): 823, <https://doi.org/10.22373/sjhc.v6i2.15011>.

¹¹ Ita Musarrofa and Holilur Rohman, “Urf of Cyberspace: Solutions to the Problems of Islamic Law in the Digital Age,” *Al-Ahkam* 33, no. 1 (April 2023): 63–88, <https://doi.org/10.21580/ahkam.2023.33.1.13236>.

¹² Husnul Fatarib and Meirison Alizar Sali, “Cryptocurrency And Digital Money In Islamic Law: Is It Legal?,” *Jurisdictie* 11, no. 2 (January 2021): 237–61, <https://doi.org/10.18860/j.v11i2.8687>.

¹³ Li Jiaxin, “Challenges and Responses to the Legal Regulation of Network Speech in the Digital Age,” *Journal of Economics and Law* 1, no. 2 (March 2024): 257–63, <https://doi.org/10.62517/jel.202414237>.

¹⁴ Shagun Jhaver, Seth Frey, and Amy Zhang, “Decentralizing Platform Power: A Design Space of Multi-Level Governance in Online Social Platforms,” version 4, preprint, arXiv, 2021, <https://doi.org/10.48550/ARXIV.2108.12529>.

¹⁵ Katharine Dommett and Junyan Zhu, “The Barriers to Regulating the Online World: Insights from UK Debates on Online Political Advertising,” *Policy & Internet* 14, no. 4 (December 2022): 772–87, <https://doi.org/10.1002/poi3.299>.

¹⁶ Yusuf Al-Qaradhawi, *Siyāṣah Al-Shar‘iyyah fī Dāw’ al-Sharī‘ah wa Maqāṣidihā* (Maktabah Wahbah, 1998), 12.

¹⁷ Muhammad Ibn Idris Al-Shafī‘i, *Al-Risālah* (Beirut: Dar al-Kutub al-‘Ilmiyyah, n.d.), 47.



outcome of human reasoning in practice.¹⁸ These dual dimensions must be judiciously balanced to ensure that *fiqh* remains anchored in its divine foundation while simultaneously maintaining relevance to human life across diverse socio-historical contexts.

The issue at hand is that the primary sources of Islamic law, namely the Qur'an and Hadith, are limited in number (*al-mutanāhī*). Conversely, the realities of life are continuously evolving and boundless (*ghayr al-mutanāhī*).¹⁹ This raises the question of how Muslims should address such changes. The constraints of these texts imply that not all aspects of life are comprehensively covered within the main sources of Islamic law. Moreover, when certain matters are mentioned, their scope is often limited and heavily influenced by their historical context, specifically the *asbāb al-nuzūl* for the Qur'an and *asbāb al-wurūd* for the Hadith. Within this framework, the significance of *ijtihād*, as undertaken by Muslim scholars to develop *fiqh*, becomes evident.²⁰ Scholars frequently engage in rigorous efforts to identify objective criteria (*'illah*) within existing jurisprudence to apply to new phenomena. Nevertheless, there are instances in which they are unable to ascertain an appropriate *'illah*, thereby precluding arbitrary judgments regarding a given phenomenon.²¹

To address this issue within the framework of *uṣūl al-fiqh*, scholars differentiate between matters explicitly mentioned in the text, referred to as *al-manṭuq bihi*, and those not mentioned, categorized as *al-maskūt 'anhu*. The former category, which is grounded in *qaṭ'ī* verses or *ṣaḥīḥ mutawātir ḥadīth*, is regarded as having definitive rulings, thereby precluding the scope for *ijtihād*. Conversely, when the text of the Sharia is *ẓannī*—either in terms of its *thubūt* (authenticity) or *dilālat* (meaning)—*ijtihād* remains permissible. The term *al-maskūt 'anhu* pertains to issues not explicated by the text and not encompassed within matters of certainty (*darūrāt*), either because they do not require elucidation or due to the presence of forgiveness (*'afw*) in these matters.²² Consequently, this domain unequivocally falls within the realm where human reasoning may be employed to perform *ijtihād*, aiming to achieve benefits in both this world and the hereafter.

Figure 1 demonstrates that the term *al-maskūt 'anhu* does not imply exclusion from the conceptual map of core principles in *uṣūl al-fiqh*. Rather, *al-maskūt 'anhu* functions as a foundational concept for discourse aimed at identifying elements valid for *ijtihād*.²³ Al-Ghazali elucidates that although these elements are not explicitly addressed in the Qur'an and Hadith, they may be inferred through the identification of general principles embedded within various dimensions of Sharia.²⁴ Moreover, Al-Shatibi contends that the silence of the Sharia should not be construed as a deficiency; instead, it signifies the law's completeness and adaptability across all contexts and eras. According to Al-Shatibi, the Sharia was revealed fundamentally to promote human welfare and prevent harm, both explicitly and implicitly. Consequently, when the Sharia remains silent on a particular issue, this silence indicates permissibility, especially in the absence of

¹⁸ Zarul Arifin and Abdurrahman Raden Aji Haqqi, "Islamic Law: Between Revelation and Human Thoughts," *Jurnal Akidah & Pemikiran Islam* 26, no. 1 (June 2024): 277–306, <https://doi.org/10.22452/afkar.vol26no1.9>.

¹⁹ Musthofa Abu Al-Zarqa, *Al-Madkhal al-Fiqhī al-'āmm* (Damaskus: Dar al-Qalam, 2004), 78.

²⁰ Ibnu Atiyah, *Al-Muḥarrar al-Wajīz Fī Tafsīr al-Kitāb al-'Azīz* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2001), 12.

²¹ 'Abd al-Wahhāb b. Aḥmad Khalīlī, *Al-Qawā'id Wa al-Ḍawābiṭ al-Fiqhiyya Fī Kitāb al-Umm Li All-Imām al-Shāfi'ī* (Riyadh: Dar al-Tadmuriyyah, n.d.), 179.

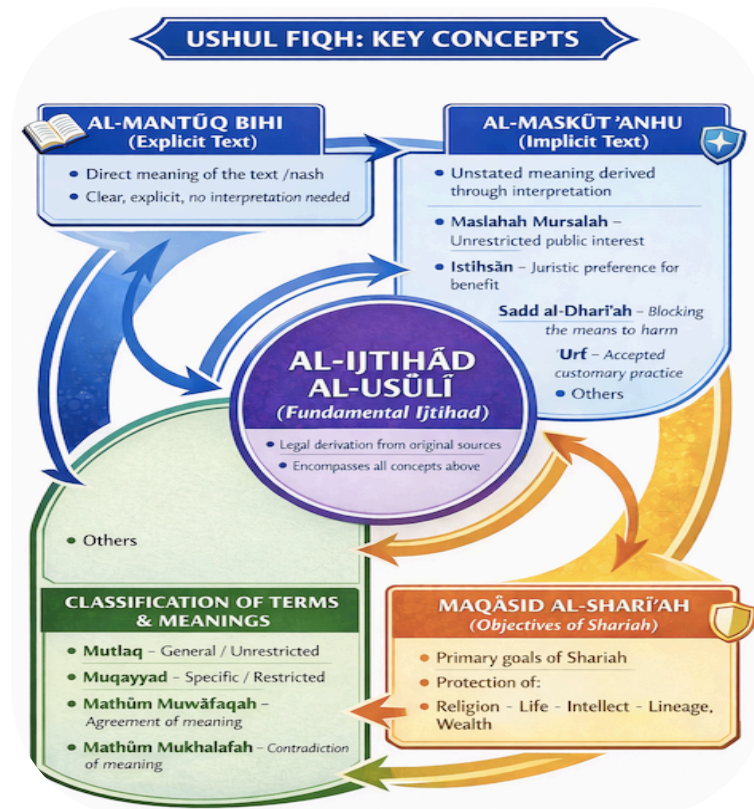
²² Muḥammad Muṣṭafā al-Zuhaylī, *Al-Wajīz Fī Uṣūl al-Fiqh al-Islāmī* (Damaskus: Dār al-Khayr, 2006); 'Abd al-Wahhāb Khallāf, *Ilm Uṣūl Al-Fiqh* (Kairo: Dār al-Qalam, 1986).

²³ Sayfuddin Al Amidi, *Al-Iḥkām Fī Uṣūl al-Aḥkām* (Beirut: Al Maktaba Al Islamiy, 1982), 95.

²⁴ Abu Hamid Al Ghozali, *Al-Mustasfā Min 'Ilm al-Uṣūl* (Madinah: Kulliyah Syariyyah fi jamiyyah Islamiyyah, 1993), 285.

evidence indicating prohibition or obligation. This principle is grounded in the maxim that the original state of all transactions is permissibility (*al-aṣl fī al-mu‘āmalah al-ibāḥāh ḥattā yadullu al-dalīl ‘alā taḥrīmih*). Al-Shatibi thus emphasizes that the lawmaker’s silence is not attributable to oversight but represents a deliberate legislative strategy designed to afford convenience and flexibility to Muslims.²⁵

Figure 1. The Methodological Architecture of *Uṣūl al-Fiqh*.



Source: Author's elaboration

Although Sharia does not explicitly address certain contemporary issues, scholars have developed an ethical framework grounded in Sharia values to guide *ijtihād*, known as the concept of *maqāṣid al-sharī'ah*. Within this framework, *maqāṣid al-sharī'ah* functions as a critical indicator and moral compass, helping to evaluate the various potential outcomes of *maṣlahah* (benefit) and *mafsadah* (harm) that may arise.²⁶ For instance, consider the prohibition of drug use. This issue cannot be resolved solely by reference to Sharia texts, as there is no explicit scriptural discussion of drugs, a phenomenon that emerged in the modern era. Nevertheless, a parallel can be drawn with the Prophet's era regarding the prohibition of *khamr* (intoxicants). Both cases share the same *illah* (effective cause), namely the impairment of human reasoning. In this context, *maqāṣid al-sharī'ah* serves as a normative guide to assess whether the *illah* connecting these two cases aligns with the overarching principles of Sharia.²⁷ These ethical principles within the Islamic legal tradition bridge generations and cultural contexts throughout Muslim history, embodying the normative values of Islam.

²⁵ Al-Shatibi, *Al Muwāfaqat*, vol. 2 (Beirut: Dar al-Kutub al-'Ilmiyyah, 2008).

²⁶ Jasser Audah, *Maqasid Al-Shariah As Philosophy of Islamic Law: A System Approach* (London: The International Institute of Islamic Thought IIT, 2008).

²⁷ M.S.B.A.B.M Al-Yubi, *Maqasid Syariah Al-Islamiyyah Wa Alaqatuha Bi Adillat Asy-Syar'iyyah* (Saudi Arabia: Dar al-Hijrah, 1998).

The discourse surrounding the definition of Islam and what constitutes Islamic identity in contemporary scholarship is often characterized by two predominant tendencies. On one side, numerous scholars conceptualize Islam as a pure system of doctrine and law, derived exclusively from normative texts, thereby rendering it immutable across time and space. Conversely, others reduce Islam to a social practice entirely shaped and determined by its historical and political context. This latter perspective assumes that Islam lacks a fixed essence, viewing it instead as a product of civilization, which accounts for its considerable diversity.²⁸ Amidst this debate, Talal Asad introduced the concept of Islam as a discursive tradition, offering an alternative framework. According to Asad, Islam is neither a static set of doctrines nor a wholly fluid social construct. Rather, it is a tradition originating from revelation, subsequently shaped and sustained through various practices of interpretation, debate, and authoritative institutions operating within specific historical contexts.²⁹ A practice may be deemed Islamic not solely because it formally adheres to a particular text or school of thought, but also due to its orientation toward the normative horizon inherited from the Islamic tradition, encompassing principles such as justice, benefit, and the prevention of harm.

Sharia is conceptualized not merely as classical *fiqh* or fatwas issued by scholars, but as a dynamic entity that persists through diverse forms of normative reasoning undertaken by multiple actors, including scholars, religious institutions, and state authorities. Consequently, Islamic law is neither singular nor definitive; rather, it necessitates ongoing negotiation to effectively serve the public interest of all humanity.³⁰ This study employs the concept of Islam as a discursive tradition not to evaluate the conformity of Malaysian cyber law with the provisions of classical *fiqh*, but rather to elucidate how Islamic normativity operates within a contemporary context wherein legal authority is exercised through state institutions and modern regulatory frameworks. Accordingly, the discursive tradition framework enables the interpretation of cyber law as part of a normative reasoning process occurring within the domain of *al-maskūt 'anhu*, where religious texts do not explicitly prescribe provisions, yet sharia values continue to serve as the ethical foundation guiding regulation. Consequently, the concept of discursive tradition functions as an analytical bridge linking state law, the principle of *maṣlaḥah*, and the normative continuity of Islamic law in Malaysia in the digital era.

Method

This study utilizes a qualitative, document-based research design, foregoing fieldwork and interviews in favor of textual analysis to investigate the operation of cyber law within a Muslim-majority legal context. The primary unit of analysis comprises selected state-issued cyber law and

²⁸ M. Amin Abdullah, *Studi Agama: Normativitas Atau Historitas?* (Yogyakarta: Pustaka Pelajar, 2004); Mohammed Sulaiman, "Between Text and Discourse: Re-Theorizing Islamic Orthodoxy," *ReOrient* 3, no. 2 (April 2018), <https://doi.org/10.13169/reorient.3.2.0140>; A. Kevin Reinhart, ed., "How Scholars Study Islam: Lived and Colloquial Islam," in *Lived Islam: Colloquial Religion in a Cosmopolitan Tradition* (Cambridge: Cambridge University Press, 2020), 11–36, Cambridge Core, <https://doi.org/10.1017/9781108629263.003>.

²⁹ Talal Asad, "The Idea of an Anthropology of Islam," *Duke University Press* 17, no. 2 (2009): 1–30, <https://doi.org/192.148.228.61>.

³⁰ Abbas Jong, "Reconfiguring Political Islam: A Discursive Tradition Approach," *American Journal of Islam and Society* 42, nos. 3–4 (November 2025): 6–41, <https://doi.org/10.35632/ajis.v42i3-4.3609>; Omer Awass, *Fatwa and the Making and Renewal of Islamic Law: From the Classical Period to the Present*, 1st ed. (Cambridge: Cambridge University Press, 2023), <https://doi.org/10.1017/9781009260923>; Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History*, 1st ed. (Cambridge University Press, 2013), <https://doi.org/10.1017/CBO9781139649711>.

regulatory documents from Malaysia that govern digital practices such as cryptocurrency, personal data protection, and cyberbullying. In this study, *al-maskūt ‘anhu* is employed not as a tool for generating new *fiqh* rulings but as a conceptual framework to analyze contemporary legal governance. It offers an epistemological foundation for understanding how modern cyber law, although developed outside the classical *fiqh* tradition, functions within a domain historically acknowledged by Islamic legal theory as amenable to contextual reasoning, institutional mediation, and considerations of public interest. By situating cyber law within the scope of *al-maskūt ‘anhu*, this study conceptualizes state-based digital regulation as a contemporary manifestation of Islamic legal reasoning that addresses unprecedented social realities.

The data sources comprise three categories of texts. First, Malaysian legal and policy documents related to cyber regulation, including statutes and regulatory instruments, which serve as the primary data for this study. Second, classical *uṣūl al-fiqh* texts that address the concept of the unspoken (*al-maskūt ‘anhu*), employed as conceptual frameworks. Third, contemporary academic literature on Islamic law, state governance, and digital transformation, which is used to support and contextualize the analysis. Legal documents were selected based on their relevance to everyday digital practices, their formal authority within the Malaysian legal system, and their engagement with issues not explicitly addressed in classical *fiqh*. Furthermore, classical *uṣūl al-fiqh* texts were chosen due to their authoritative status and their explicit discussion of *al-maskūt ‘anhu*.

The analysis is conducted in three interconnected stages. First, the study provides a descriptive examination of the pertinent legal and policy frameworks governing each issue. This stage emphasizes elucidating the scope, objectives, and regulatory rationale of Malaysian legal instruments related to cryptocurrency, data privacy, and cyberbullying. These legal texts constitute the primary data for the study. Second, the regulations are analyzed through the lens of *al-maskūt ‘anhu* to demonstrate that digital practices exist within a domain of legal openness that necessitates contextual interpretation. Third, the study situates Malaysian regulatory responses within a broader Islamic legal discourse by employing the concept of Islamic law as a discursive tradition. This stage explores how state regulation operates as a contemporary form of normative reasoning that prioritizes *maṣlahah* (public interest), harm prevention, and social order. Through this discursive approach, cyber law is positioned within the ongoing development of Islamic legal reasoning in the context of modern governance.

Result

The findings of this study reveal the Malaysian government's official responses to selected digital practices through various legal mechanisms recognized within Malaysia. These findings illustrate how cryptocurrency, personal data protection, and cyberbullying are regulated under the Malaysian legal system. Although Malaysia has additional regulations pertaining to the digital realm, the materials selected for further analysis represent concrete examples of the state's exercise of regulatory authority over digital phenomena that significantly impact everyday social life. Table 1 reveals that, from a socio-legal perspective, the three examined areas demonstrate a comparable pattern: the Malaysian state functions not as an interpreter of religious norms but as a regulator of social risks within the digital environment. Theoretically, this finding reinforces the argument that Malaysian cyber regulation operates within a domain of normative openness—an area which, within the framework of Islamic law as a discursive tradition, serves as a space of normative continuity without dependence on explicit textual sources.

Table 1. Cyber Law Regulations in Malaysia.

Regulatory Domain	State Legal Instruments & Institutional Actors	Socio-Legal Interpretation
Cryptocurrency	Capital Markets and Services (Digital Currency and Digital Tokens) Regulations 2019; Securities Commission Malaysia (SC); Bank Negara Malaysia (BNM)	Cryptocurrency is legally constructed as a regulatable digital asset rather than as money. The state exercises governance through market classification, licensing, and risk management, reflecting a preventive regulatory rationality aimed at financial stability, consumer protection, and market integrity rather than moral or religious adjudication.
Personal Data Protection	Communication and Multimedia Act (CMA) 1998; Computer Crimes Act (CCA) 1997; Personal Data Protection Act (PDPA) 2010 (Amended 2024); Personal Data Protection Department (JPDP).	Privacy emerges as a derivative constitutional value operationalized through statutory governance. Persistent data breaches reveal regulatory gaps that prompted legal reform, illustrating how digital risks reconfigure state obligations toward citizens through accountability mechanisms, rights expansion, and alignment with global data protection norms.
Cyberbullying	Criminal Code Amendment Act 2025 (A1750) Articles 507B–507G; Malaysian Communications and Multimedia Commission (MCMC)	Cyberbullying is reframed as a matter of public harm and social order, legitimizing punitive state intervention in digital spaces. The criminalization of online abuse reflects a shift toward moralized legal governance aimed at protecting dignity, psychological integrity, and vulnerable groups amid rising societal pressure and media scrutiny.

Source: Author's elaboration

In Malaysia, cryptocurrency is not recognized as legal tender and does not fall under the monetary regulatory authority of Bank Negara Malaysia (BNM). Since its official statement in January 2014, BNM has consistently emphasized that digital currencies, such as Bitcoin, are not considered legal tender under Malaysian law.³¹ However, this does not imply that Malaysia entirely rejects cryptocurrency. Instead, the Malaysian government treats cryptocurrency as a digital asset that may be traded within the country, provided that appropriate authorization is obtained from the relevant authorities. Regulatory oversight of cryptocurrency-related activities is conducted by the Securities Commission Malaysia (SC) within the framework of the capital market. This regulatory framework has been in effect since the issuance of the Capital Markets and Services Regulations 2019.³² This regulation is significant as it establishes a legal basis for classifying certain digital currencies and digital tokens as securities if they satisfy specific criteria, including their use in fundraising activities, profit expectations, and public offerings.³³

³¹ Bank Negara Malaysia, "Statement on Bitcoin," 2014, <https://www.bnm.gov.my/-/statement-on-bitcoin>.

³² Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019, P.U.(A) 12/2019 (2019), <https://www.sc.com.my/api/documentms/download.ashx?id=8c8bc467-c750-466e-9a86-98c12fec4a77>.

³³ Muhammad HafizuddinSufia Sufian, Nur Amisha Sutan Syahril, and Norhasliza Ghapa, "Regulatory Framework for Cryptocurrency: A Comparative Analysis of Malaysia, Indonesia and Singapore," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 9, no. 11 (November 2024): e003113, <https://doi.org/10.47405/mjssh.v9i11.3113>.

The regulation and oversight of cryptocurrency circulation are primarily the responsibilities of two key regulatory authorities. The first is the Securities Commission Malaysia (SC), which serves as the principal regulator of cryptocurrency trading within the country. The SC is charged with classifying digital assets as securities and ensuring compliance with the Capital Market and Services Regulations 2019. Additionally, the SC oversees the registration of digital asset exchanges, approves token offerings, and issues comprehensive guidelines aimed at safeguarding investors.³⁴ The second authority is Bank Negara Malaysia (BNM), the nation's central bank. Beyond its role in establishing the official currency, BNM plays a critical role in maintaining financial integrity by implementing anti-money laundering and counter-terrorism financing (AML/CFT) policies applicable to digital currency activities.³⁵ Collectively, the SC and BNM have developed a robust regulatory framework designed to uphold market integrity and protect consumers.

Recently, based on applicable regulatory data, the Securities Commission (SC) has conferred Recognized Market Operator (RMO) status upon six digital asset exchanges that have satisfied established compliance and operational standards. Under this regulatory framework, several digital assets—including Bitcoin (BTC), Ethereum (ETH), Litecoin (LTC), and Bitcoin Cash (BCH)—are authorized for trading on approved platforms within Malaysia.³⁶ The presence of clear regulatory guidelines has contributed to a substantial expansion in cryptocurrency development. Publicly available data indicate a rising adoption rate of cryptocurrencies among Malaysian internet users; in 2024, approximately 14.3% of internet users reportedly owned digital assets,³⁷ with participation predominantly among younger generations.³⁸ The total value of digital assets held in Malaysia is estimated to approach RM16 billion.³⁹ Furthermore, Malaysia has become the first country to enable zakat payments using cryptocurrency through approved channels, demonstrating a limited but notable institutional integration of digital assets within existing financial and religious frameworks.⁴⁰ Collectively, these regulatory measures suggest that cryptocurrencies in Malaysia are governed as digital assets within the capital market system. Rather than being classified as monetary instruments, cryptocurrencies are regulated through licensing, supervision, and consumer protection mechanisms aimed at mitigating financial risks, fraud, and ensuring market integrity.

In Malaysia, the right to privacy is not explicitly articulated within the Federal Constitution, unlike other rights that are specifically enumerated, such as the right to life and personal liberty, freedom of speech and assembly, and freedom of movement. Nevertheless, the right to privacy is implicitly recognized under Article 5(1) of the Federal Constitution. A notable judicial precedent is found in the case of *Sivarasa Rasiah v Badan Peguam & Anor* (2010), where Judge Sri Ram, in his obiter dictum, affirmed that the scope of personal liberty encompasses the right to privacy.

³⁴ Guidelines on Digital Assets (2024), <https://www.sc.com.my/regulation/guidelines/digital-assets>.

³⁵ Radhia Ghazali, "Cryptocurrency Legality in Malaysia: A 2025 Legal Overview," Kevin Wu & Associates Advocates & Solicitors, 2025, <https://share.google/V8F4UbbULwcjHO3O1>.

³⁶ Securities Commission Malaysia, "Digital Assets: The Trading, Issuance And Safekeeping Of Digital Assets In Malaysia Are Regulated By The Securities Commission.," accessed February 12, 2025, <https://www.sc.com.my/digital-assets>.

³⁷ "Indonesia Masuk 12 Besar Negara Pemilik Kripto Terbanyak Di Dunia Tahun 2024," Tradingview.Com, 2024, <https://share.google/fc5QykJChS1y0peWo>.

³⁸ Aris Riza Noor Baharin, "One in Five Crypto Investors Is from Gen Z," The Edge Malaysia, 2026, <https://theedgemaalaysia.com/node/787252>.

³⁹ Malaysia Digital Economy Corporation (MDEC), "Malaysia Attracts Rm16.2 Billion in Digital Investments — Solidifying Position as Asean's Tech Hub," MDEC.My, 2025, <https://share.google/nzB09BGHpPT6LOEUK>.

⁴⁰ The Securities Commission Malaysia, "List of Registered Digital Asset Exchanges," 2025, <https://www.sc.com.my/regulation/guidelines/recognizedmarkets/list-of-registered-digital-asset-exchanges>.



Further jurisprudence supports the recognition of privacy rights in civil matters, as demonstrated in *Lee Ewe Poh v Dr Lim Teik Man & Anor* (2010), wherein the court held that the plaintiff's surgeon's act of photographing the plaintiff's private areas constituted a violation of privacy.⁴¹ The principal legislative framework governing data protection in Malaysia is the Personal Data Protection Act (PDPA) 2010, which regulates the processing of personal data in commercial transactions.⁴² This legislation was enacted in response to escalating concerns regarding data breaches, identity theft, and the exploitation of consumer data for intrusive marketing practices. The PDPA is founded upon seven key principles: General Principle, Notice and Choice, Disclosure, Security, Retention, Data Integrity, and Access Principle. Additionally, the PDPA functions in conjunction with the Communications and Multimedia Act (CMA) 1998 and the Computer Crimes Act 1997.⁴³ The enforcement and administration of the PDPA are entrusted to the Personal Data Protection Department (JPDP), which oversees the private sector, issues technical guidelines, manages public complaints, and ensures compliance with the law.⁴⁴

Despite ongoing efforts, large-scale data breaches continue to occur. In 2017, approximately 46 million telecommunications customer records were leaked on the dark web. That same year, CIMB reported the loss of magnetic tapes containing customer information, and in 2018, data pertaining to 440,000 organ donors were exposed. In 2022, a significant breach involved the personal data of 22.5 million Malaysian citizens from the National Registration Department (NRD). Furthermore, in 2023, the Social Security Organization (SOCSSO) system was compromised by a cyberattack.⁴⁵ In response to these incidents, the Malaysian government enacted amendments to the Personal Data Protection Act (PDPA) 2010 in 2024.⁴⁶ This legislative revision represents a critical advancement in fortifying the nation's data protection framework. By aligning the Act with international standards and addressing contemporary challenges, the amendments enhance individual rights and impose greater obligations on organizations. Consequently, businesses are required to adopt proactive measures to ensure compliance, while individuals can anticipate improved protection and greater control over their personal data.⁴⁷

In December 2024, the Malaysian government formally introduced new regulations addressing cyberbullying. For the first time, doxing—defined as the malicious publication of an individual's personal information online—was criminalized through amendments to the Criminal Code and the Criminal Procedure Code. Under this legislation, individuals who threaten, insult, or defame others via digital communication may face penalties of up to ten years' imprisonment. These provisions were enacted through the Criminal Code Amendment Act 2025 (A1750), which received royal assent from the Yang di-Pertuan Agong on February 25, 2025, and came into effect

⁴¹ Nurkhairina Binti Noor Sureani et al., "The Adequacy of Data Protection Laws in Protecting Personal Data in Malaysia," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 6, no. 10 (October 2021): 488–95, <https://doi.org/10.47405/mjssh.v6i10.1087>.

⁴² Akta Perlindungan Data Peribadi 2010, Akta 709 (2010), <https://share.google/trWZEJ1sf9xTUwB45>.

⁴³ Fadhilah Abdul Ghani et al., *An Overview of the Personal Data Protection Act 2010 (PDPA): Problems and Solutions*, 12, no. 4 (2020).

⁴⁴ Alan Charles Raul, ed., *The Privacy, Data Protection and Cybersecurity Law Review*, Fifth edition (London, UK: Law Business Research Ltd, 2018).

⁴⁵ Ghani et al., *An Overview of the Personal Data Protection Act 2010 (PDPA): Problems and Solutions*.

⁴⁶ Personal Data Protection (Amendment) Act 2024, Act A1727 (2024), <https://share.google/OVmA4CTN9ISzaWqQ>.

⁴⁷ Siddharth Kanojia and Inas Afifah Zahra, "Economic Development and Privacy Regulations in Malaysia: The Case of PDPA 2010," in *Advances in Electronic Government, Digital Divide, and Regional Development*, ed. Safaa Najah Saud Al-Humairi, Asif Iqbal Hajamydeen, and Asmaa Mahfoudh (IGI Global, 2024), 443–62, <https://doi.org/10.4018/979-8-3693-6740-7.ch018>.

on March 7, 2025. The amendment introduced Articles 507B to 507G, which specifically address all forms of bullying, including physical, verbal, psychological, and online harassment. These articles criminalize harassment, threats, insults, identity theft, and other bullying behaviors that may contribute to attempted suicide. Perpetrators found guilty under these provisions may be subject to imprisonment for up to ten years, fines, or both.⁴⁸ This regulation was enacted in response to the increasing prevalence of cyberbullying in Malaysia. Data from the Malaysian Communications and Multimedia Commission (MCMC) indicate that approximately 27 cases of cyberbullying are reported daily, with a total of 8,339 cases recorded in 2024, representing a substantial rise from 3,199 reports in the previous year. Additionally, UNICEF data from 2023 reveal that three out of ten Malaysian adolescents have experienced cyberbullying, identifying teenagers as the most vulnerable demographic.⁴⁹

Of particular concern is the underreporting of such incidents, as victims often remain silent due to fear of judgment, insufficient legal protection, or the lack of clear and effective reporting mechanisms. A notable case illustrating the severity of cyberbullying involved the suicide of Rajeswary (known online as “Eesha”) following prolonged online harassment. This abuse included coordinated attacks, defamatory content, and manipulated images disseminated across social media platforms. The harassment primarily occurred on TikTok and involved doctored photographs used as backgrounds for live streams, as well as coordinated trolling that incited widespread ridicule.⁵⁰ In response, two individuals were arrested; one was charged with criminal intimidation and released on bail of RM 36,000, while the other was fined RM 100 for public insult. The perceived leniency of these penalties provoked public outrage, with many Malaysians questioning whether such consequences adequately reflect the value of human life. Ultimately, this development signifies a shift toward a more explicit and comprehensive legal framework addressing cyberbullying, underscoring the state’s increased commitment to regulating online conduct and safeguarding individual dignity within the digital environment.⁵¹ Overall, an examination of various cyber legal regulatory frameworks reveals a consistent pattern in Malaysia’s response to digital phenomena. Issues such as cryptocurrency, personal data processing, and cyberbullying are addressed primarily through institutional classification, risk management, and loss prevention strategies, rather than through explicit references to religious doctrine.

Discussion

Al-Maskūt ‘Anhu in Discourse: Cyber Cases in Malaysia

Digital phenomena—such as cryptocurrency, personal data, and cyberbullying—share a fundamental ontological characteristic: none have equivalents within the classical *fiqh* tradition. Their structures, mechanisms, and modes of existence were entirely unknown in pre-modern societies and, consequently, do not appear in any textual or juristic discourse from earlier periods. This absence situates them firmly within the category of *al-maskūt ‘anhu*, referring to matters

⁴⁸ Criminal Procedure Code (Amendment) Act 2025, Act A1751 (2025).

⁴⁹ Atiqah Sani, Anis Farita Muhamad Yatim, and Nur Aliyah Azizi, *Cyberbullying Awareness: Study of Students Knowledge and Prevention*, 7, no. 3 (2025).

⁵⁰ Arina Kamarudin, Irma Kamarudin, and Siti Khadijah Abdullah Sanek, “Bridging the Gaps in Malaysia’s Cyberbullying Laws: Challenges and Reform Proposals,” *International Journal of Law, Government and Communication* 10, no. 39 (March 2025): 133–47, <https://doi.org/10.35631/IJLGC.1039008>.

⁵¹ Rusreena Binti Rusli et al., “Public Perceptions of the Causes of Rising Bullying Cases and Solutions in Malaysian Schools: A Qualitative Study,” *International Journal of Research and Innovation in Social Science* 9, no. 24 (October 2025): 403–13, <https://doi.org/10.47772/IJRISS.2025.924ILEIID0042>.



unaddressed by religious texts due to their novelty and the impossibility of conceptualization at the time of revelation. Accordingly, *uṣūl al-fiqh* acknowledges the maxim *al-aṣl fī al-ashyā' al-ibāḥah* as the foundational legal principle, whereby new phenomena are presumed permissible unless specific harms or prohibitions can be established through further jurisprudential reasoning.⁵²

Cryptocurrency exemplifies this condition distinctly. As a non-physical cryptographic token recorded on decentralized ledgers, it bears little resemblance to traditional forms of currency or property. Its classification within the domain of *al-maskūt 'anhu* results in a default ruling of permissibility, which serves as a foundational basis for subsequent legal analysis. Within the discipline of *uṣūl al-fiqh*, the principle of *maṣlaḥah mursalah* provides a framework for evaluating its potential benefits—such as technological innovation and financial efficiency—alongside its possible harms, including volatility, fraud, and speculative abuse. The concept of *sadd al-dharī'ah* further justifies the imposition of precautionary restrictions on activities that may facilitate deception or manipulation. Concurrently, *maqāṣid al-sharī'ah* offers an ethical orientation for legal determinations, particularly emphasizing the protection of property (*ḥifẓ al-māl*), safeguarding the intellect from harmful speculative practices (*ḥifẓ al-'aql*), and preventing fraud and injustice in transactions, including the ethical dimension of *ḥifẓ al-dīn*.⁵³

These normative considerations within the *uṣūl al-fiqh* framework are reflected in contemporary regulatory approaches to cryptocurrencies in Malaysia. Under current regulations, certain categories of cryptocurrencies are classified as securities and are therefore subject to transparency requirements, reporting obligations, and licensing regimes. These regulatory measures demonstrate how the *uṣūl al-fiqh* framework functions within the context of *al-maskūt 'anhu*, wherein legal governance is informed by the objectives of public interest and harm prevention. Consequently, rather than imposing an outright prohibition, Malaysian regulations emphasize risk management and harm mitigation. Thus, cryptocurrencies are not regarded as inherently impermissible but as permissible activities whose implementation must be regulated to conform with broader ethical and legal objectives.⁵⁴

A comparable framework applies to the issue of personal data. Digital data does not align with any traditional category of assets, information, or material objects and thus falls within the domain of *al-maskūt 'anhu*. On one hand, when public data collection is conducted appropriately, it can be utilized to optimize government policy implementation. However, it also presents risks of adverse consequences, including financial loss, identity theft, psychological manipulation, and other forms of *mafsadah* that have widespread societal impact. When such harms escalate to the level of major *mafsadah*, *uṣūl al-fiqh* offers normative justification for regulatory intervention. At this juncture, the principle of *sadd al-dharī'ah* becomes particularly pertinent in legitimizing restrictions on practices such as unauthorized data collection, storage, or disclosure, insofar as these practices facilitate harm.⁵⁵ Within this context, the state's role, exercised through legal instruments such as the 2010 Personal Data Protection Act (PDPA) and its amendments, functions

⁵² Al-Shatibi, *Al Muwāfaqat*, vol. 2.

⁵³ Bakhrul Huda, Rianto Anugerah Wicaksono, and Mochammad Andre Agustianto, "Assessing the Legality of Cryptocurrency Trading in Indonesia's Commodity Market: An Analytical Study Based on Maqāṣid Al-Sharī'ah," *Syariah: Jurnal Hukum dan Pemikiran* 25, no. 1 (2025), <https://doi.org/10.18592/sjhp.v25i1.16759>.

⁵⁴ Muhamad Marwan and Galang Prayogo, "Justice and Legal Certainty in Regulating Cryptocurrency in Malaysia," *Lex Publica* 6, no. 2 (July 2019): 1–7, <https://doi.org/10.58829/lp.6.2.2019.1-7>.

⁵⁵ Mohammad Farid Fad, "Perlindungan Data Pribadi Dalam Perspektif Sadd Dzari'ah," *Muamalatuna* 13, no. 1 (June 2021): 33, <https://doi.org/10.37035/mua.v13i1.4674>.

as a mechanism to prevent harm and preserve social order. Given that Sharia sources do not provide technical tools for managing digital data infrastructures, regulatory intervention addresses a necessary normative gap. The orientation of such regulation aligns with the *maqāṣid al-sharī'ah*, particularly the protection of dignity (*ḥifẓ al-īrḍ*), property (*ḥifẓ al-māl*), and personal security (*ḥifẓ al-nafs*), which collectively offer an ethical framework for evaluating data governance in the digital era.⁵⁶

Cyberbullying can be analyzed within a similar framework. While digital interactions are generally permissible under the principle of *ibāḥah*, this presumption is overturned when such actions cause significant harm. The consequences of cyberbullying, ranging from psychological trauma to the potential loss of life, categorize it as a major *mafsadah*. Consequently, the principle of *maṣlaḥat mursalah* offers a robust justification for its prohibition. Furthermore, the concept of *Sadd al-dharā'ī* supports the closure of avenues that facilitate such harm, including unregulated anonymity and the lack of effective platform oversight. Legal interventions, such as criminal sanctions, reporting mechanisms, and content regulation, can thus be understood as measures aimed at preventing foreseeable harm. The role of *urf* further reinforces this perspective, as contemporary digital communities widely acknowledge cyberbullying as ethically unacceptable. These considerations align with the *maqāṣid al-sharī'ah*, particularly the preservation of life, intellect, and honor, thereby providing a coherent normative foundation for legal intervention.⁵⁷

Overall, these cases reveal a consistent pattern in which the absence of explicit textual guidance from religious sources situates digital phenomena within the category of *al-maskūt 'anhu*. Consequently, their legal treatment is developed through the application of established principles of *uṣūl al-fiqh*. This pattern exemplifies how Islamic legal reasoning engages with unprecedented digital realities by extending its normative frameworks to novel contexts while remaining anchored in its core ethical commitments. However, this normative framework cannot function effectively if confined solely to abstract legal reasoning or individual juristic opinions. In contemporary Muslim societies, particularly within the structures of modern nation-states, the practical realization of such reasoning necessitates implementation through legal institutions and promulgated regulations; absent these, it would lack the authoritative capacity for state-level enforcement. At this juncture, the inquiry extends beyond how Islamic law can respond to digital phenomena to encompass how it is articulated and operationalized in everyday life. This transition—from jurisprudential reasoning to institutionalized regulation—requires understanding cyber law not merely as a set of policy options but as part of a broader process wherein Islamic norms are continuously interpreted, negotiated, and enforced within the modern context.

Cyber Law as an Islamic Discursive Tradition

In contemporary nation-states, legal authority within the Islamic world is no longer derived exclusively from the social practices of Muslim communities, as was characteristic of pre-modern periods. The transition from the caliphate system to the nation-state framework necessitates the

⁵⁶ Mizan Islami Nurzihad et al., “Personal Data Protection in Indonesian E-Commerce Platforms: The Maqasid Shari’ah Perspective,” in *Proceedings of Eighth International Congress on Information and Communication Technology*, ed. Xin-She Yang et al., vol. 693, Lecture Notes in Networks and Systems (Springer Nature Singapore, 2023), https://doi.org/10.1007/978-981-99-3243-6_88.

⁵⁷ Noorlila Ahmad et al., “The Islamic Ethical Principles and Maqasid Al-Shari’ahh to Enhance Digital Competency Among Adolescents,” *Umran: Journal of Islamic and Civilizational Studies* 12, no. 3 (2025): 101–17, <https://doi.org/10.11113/umran2025.12n3.833>.



institutionalization of public life regulation through state law, administrative policies, and bureaucratic mechanisms.⁵⁸ While religious authority persists in the form of fatwas or normative opinions, these no longer directly dictate the binding rules governing society. Islamic normative perspectives now constitute merely one source of law and attain binding legal status only when enacted through legislation or, following Hans Kelsen's terminology, positivized.⁵⁹ Consequently, all religious communities today are subject to state regulations, including those pertaining to morality, economics, and the digital domain.⁶⁰ This development signifies a shift in the locus of authority responsible for defining and enforcing public welfare. The state currently functions not only as a technical executor but also as a normative agent that identifies social risks, delineates the boundaries of public interest, and establishes protective measures for society.⁶¹ In Malaysia, this role is particularly evident in cyber regulations, encompassing the governance of digital assets, personal data protection, and the prevention of online violence. The state actively determines what constitutes danger, harm, or necessitates restriction within the digital sphere.

When analyzed through the lens of Islam as a discursive tradition, as conceptualized by Talal Asad, this condition does not necessarily signify the complete secularization of law. According to Asad, Islam should not be understood merely as a fixed theological system; rather, it constitutes a living tradition that is continuously negotiated, shaped, and produced through the social practices of its adherents.⁶² Owing to its discursive nature, Islam invariably evolves in response to the socio-historical contexts in which it is situated. Nevertheless, this adaptability does not imply that Muslims possess unrestricted freedom to formulate their own versions of Islam arbitrarily.⁶³ The scope for change remains bounded by the values and constraints inherited from the Islamic tradition itself. Within this framework, the concept of *al-maskūt 'anhu* assumes particular significance. In Islam, numerous domains exist where the Sharia remains silent; however, such textual silence should not be construed as a void but rather as a creative space that enables Muslims to respond to changing circumstances.⁶⁴ In other words, while the Sharia provides normative continuity, human agents effectuate practical change through mechanisms such as *qiyās*, *maṣlahah mursalah*, and various other *istinbāt* methods, all guided by the *maqāṣid al-sharī'ah* as their ethical orientation.⁶⁵

This dynamic process has persisted from the early Islamic period to the present day. Islam continues to develop in accordance with the socio-historical structures that surround it. For instance, the *Khulafā' Al-Rāshidīn* upheld the principles of justice, consultation, and public morality inherited from the Prophet Muhammad, while simultaneously instituting administrative innovations such as the establishment of the *dīwān*, regulation of *ghanīmah*, and expansion of

⁵⁸ Kay, "The Changing Traditions of Islamic Public Administration: Observing Processes of Collision, Absorption and Adaptation."

⁵⁹ Hans Kelsen, *Pure Theory of Law* (Los Angeles: University of California Press, 1967).

⁶⁰ Talal Asad, *Formations of The Secular: Christianity, Islam, Modernity* (California: Stanford University Press, 2003); Ebrahim Moosa, "Review Book: The Ethical Soundscape: Cassette Sermons and Islamic Counterpublics. By Charles Hirschkind. Columbia University Press, 2006.," *Journal of the American Academy of Religion* 80, no. 1 (March 2012): 248–52, <https://doi.org/10.1093/jaarel/lfr102>.

⁶¹ Wael B. Hallaq, *The Impossible State* (New York: Columbia University Press, 2013).

⁶² Asad, "The Idea of an Anthropology of Islam."

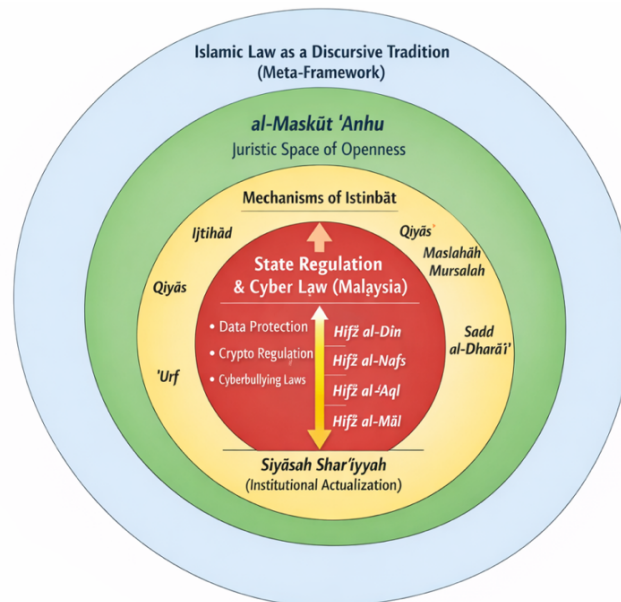
⁶³ Al-Shatibi, *Al Muwāfaqat*, vol. 2.

⁶⁴ Hijrian Angga Prihantoro, Noorhaidi Hasan, and Mohammad Yunus Masrukhin, "Islamic Law and The Politics of Nation-State: Debating Citizenship Fiqh Through the Al-Maskut 'Anhu Discourse," *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (December 2023), <https://doi.org/10.15408/ajis.v23i2.28139>.

⁶⁵ Audah, *Maqasid Al-Shariah As Philosophy of Islamic Law: A System Approach*.

state institutions. This pattern of evolution persisted during the Umayyad and Abbasid eras, which witnessed advancements in public law, financial administration, and increasingly complex bureaucratic systems. Thus, the transformations that occurred neither entirely departed from the foundational values of the Sharia nor remained static in their application.⁶⁶

Figure 2: Cyber Law in the Context of the Islamic Legal Discursive Tradition.



Source: Author's elaboration

Figure 2 illustrates the position of cyber law within the discursive tradition of Islamic law as situated in the modern state. In contemporary Malaysia, the state functions not only as an administrative body but also as the principal agent responsible for selecting, formulating, and enforcing public norms, including those governing the digital domain.⁶⁷ This role arises because the state's intervention in regulating moral and social issues within the digital sphere effectively entails operating within a normative space that was historically managed predominantly by community religious authorities. Consequently, cyber law in Malaysia should not be perceived as existing outside the framework of Islamic tradition. Rather, it represents a continuation of the manner in which Muslims articulate public interests at the institutional level of the modern state. This development signifies a shift in the locus of interpretative authority rather than a rupture with tradition. The state does not generate new *maqāṣid al-sharī'ah* but instead translates its ethical orientations into positive law. Within this conceptual framework, cyber law constitutes a contemporary modality through which public interests are understood and regulated in accordance with Islamic values in the context of digital governance.

Cyber law differs fundamentally from classical *fiqh*, as it represents a contemporary mechanism through which Muslims, via the state and its legal institutions, interpret *maṣlahah* within the digital realm. Nonetheless, it remains intrinsically linked to Islamic tradition, given that the principles of *maqāṣid al-sharī'ah* persist as the ethical framework guiding its development, even if they are not

⁶⁶ Antony Black, *The History of Islamic Political Thought: From the Prophet to the Present*, 2nd ed. (Edinburgh: Edinburgh University Press, 2011).

⁶⁷ Mohd Azizuddin Mohd Sani, *Islamization Policy and Islamic Bureaucracy in Malaysia*, 1st ed, Trends in Southeast Asia 2015 5 (Singapore: ISEAS Publishing, 2015); Dominik M. Müller and Kerstin Steiner, "The Bureaucratisation of Islam in Southeast Asia: Transdisciplinary Perspectives," *Journal of Current Southeast Asian Affairs* 37, no. 1 (April 2018): 3–26, <https://doi.org/10.1177/186810341803700101>.

always explicitly articulated. Regulatory measures concerning data protection, digital identity, online fraud prevention, and hate speech control constitute modern endeavors to uphold *ḥifẓ al-nafs*, *ḥifẓ al-ʿaql*, *ḥifẓ al-māl*, and *ḥifẓ al-ʿird* in novel contexts. From Asad’s perspective, Malaysian cyber law functions not only as state legislation but also as an integral component of the Islamic discursive tradition that remains vibrant within society—not because it explicitly contains *fiqh* arguments, but because it emerges from a socio-political milieu shaped by Islamic values and contemporary Muslim conceptions of the public interest. Based on the analyses presented, it is evident that cyber law regulation in Malaysia exemplifies a broader transformation in the locus of Islamic legal authority under contemporary conditions. As numerous scholars have observed, the emergence of the modern nation-state has fundamentally altered the production, exercise, and enforcement of normative authority within Muslim societies. Whereas in pre-modern periods the development of Islamic legal norms primarily occurred through the discourse of jurists within Muslim communities, in the present context the authority to regulate public life—including digital practices—is increasingly institutionalized through state law and bureaucratic mechanisms.

Conclusion

This study demonstrates that, although religious authorities continue to occupy normative religious roles, the state effectively determines the legal framework governing society. Employing the conceptual framework of Islam as a discursive tradition, this shift should be interpreted not as a rupture from Islamic legal tradition but rather as a transformation in the operation of Islamic normativity in the contemporary context. In this regard, the concept of *al-maskūt ‘anhu* is particularly significant, as it refers to areas not explicitly regulated by Sharia texts, thereby allowing for diverse forms of reasoning and innovation aimed at promoting the public interest. Contemporary digital issues such as cryptocurrency, personal data protection, and cyberbullying fall within the scope of *al-maskūt ‘anhu*. Although these phenomena are absent from classical *fiqh*, they nonetheless reflect a normative orientation consistent with *maqāṣid al-sharīʿah*, especially the protection of life, intellect, property, dignity, and social order. Accordingly, cyber law in Malaysia can be understood as a juridical response grounded in the normative values of the contemporary era, addressing legal domains previously unarticulated, with the state acting as the agent that translates general principles of welfare protection into concrete regulations.

The findings of this study hold significant implications for contemporary Islamic legal scholarship. Firstly, they challenge the prevailing tendency to assess current state laws solely through their alignment with classical *fiqh* or to regard cyber regulations as normatively distinct from Islamic law. By framing cyber law within the Islamic discursive tradition, this study underscores the ongoing negotiation, interpretation, and application of Islamic normativity from historical to contemporary contexts. Secondly, this framework provides an alternative perspective on the transformation of Islamic legal authority in the context of modern governance, wherein the state has assumed the central role traditionally held by imams and mujtahids in articulating public welfare within an Islamic ethical paradigm, even in the absence of explicit religious language.

Nevertheless, this study has several limitations that warrant further investigation in future research. It is based solely on document analysis and does not incorporate empirical data from legal practitioners, regulators, or affected communities, which could offer additional insights into the practical application of cyber law. Moreover, the exclusive focus on Malaysia as a single case study restricts the generalizability of the findings to other Muslim-majority contexts with differing legal and political frameworks. Future studies could address these limitations by employing a cross-

country comparative approach or by integrating empirical methodologies to examine the operation of Islamic normativity within diverse digital governance systems.

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