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## RECONSTRUCTION OF CULTURAL JURISPRUDENCE TO STRENGTHEN THE CONSTITUTIONAL GUARANTEE OF LOCAL CULTURE IN INDONESIA

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### ABSTRACT

This article aims to reconstruct the cultural fiqh approach as an integrative strategy to strengthen constitutional guarantees for local culture in Indonesia. This study uses a qualitative method with a juridical-conceptual and philosophical-cultural approach to examine the relationship between Islamic law (fiqh), local culture, and state legal norms. The analysis is carried out through a literature study of classical and contemporary fiqh texts, constitutional documents, and the thoughts of progressive fiqh figures. The research findings show that fiqh has epistemological flexibility that allows accommodation to local culture through rules such as al-‘ādah muhakkamah and maqāṣid al-syarī‘ah. The Indonesian Constitution, especially Article 28I and Article 32 of the 1945 Constitution, provides a strong legal basis for the preservation of regional culture. This article formulates an integrative model between fiqh and constitutional guarantees that allows the preservation and strengthening of local culture harmoniously within the framework of Islamic values and national law.

**Keywords:** Cultural Jurisprudence, Constitutional Guarantees, Local Culture

### ABSTRAK

Artikel ini bertujuan untuk merekonstruksi pendekatan fikih kebudayaan sebagai strategi integratif untuk memperkuat jaminan konstitusional terhadap budaya lokal di Indonesia. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis-konseptual dan filosofis-kultural guna menelaah relasi antara hukum Islam (fikih), kebudayaan lokal, dan norma hukum negara. Analisis dilakukan melalui studi literatur terhadap teks-teks fikih klasik dan kontemporer, dokumen konstitusi, serta pemikiran para tokoh fikih progresif. Temuan penelitian menunjukkan bahwa fikih memiliki fleksibilitas epistemologis yang memungkinkan akomodasi terhadap budaya lokal melalui kaidah seperti al-‘ādah muhakkamah dan maqāṣid al-syarī‘ah. Konstitusi Indonesia, khususnya Pasal 28I dan Pasal 32 UUD 1945, memberikan landasan hukum yang kuat bagi pelestarian kebudayaan daerah. Artikel ini merumuskan model integratif antara fikih dan jaminan konstitusional yang memungkinkan pelestarian dan penguatan budaya lokal secara harmonis dalam bingkai nilai-nilai Islam dan hukum nasional.

**Kata Kunci:** Fikih Kebudayaan, Jaminan Konstitusional, Budaya Lokal

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## Introduction

This research raises the theme of cultural fiqh reconstruction as an integrative approach that aims to strengthen constitutional guarantees for local culture in Indonesia. Fiqh in Islam is the result of the *ijtihad* of dynamic scholars, who should be able to adjust to space and time as well as the social reality of their society. In the context of a plural and culturally diverse Indonesia, fiqh has the strategic potential to form a pattern of harmonious relations between religions and local traditions. However, the approach to fiqh that has been developed tends to be universalistic and normative-textual, without much consideration of the cultural context of the people of the archipelago. Therefore, methodological reconstruction efforts are needed so that fiqh is not only a source of worship law, but also an instrument that protects and preserves local culture within the framework of Islamic values and the state constitution.

The purpose of this study is to analyze the relationship between fiqh and local culture in Indonesia's multicultural society, as well as identify the forms of constitutional guarantees provided by the 1945 Constitution for the existence of local culture. This research also aims to formulate an approach to cultural fiqh reconstruction based on *maqāṣid al-shari'ah* and the principles of *al-'urf* as the normative foundation of fiqh, as well as to develop an integrative model between Islamic values and constitutional principles to strengthen the sustainability of local culture in the national legal system.

Socially, Indonesia is faced with a major challenge in maintaining local cultural identity in the midst of globalization, transnational cultural penetration, and rigid religious ideological waves. Many expressions of local culture such as *tahlilan*, *selametan*, or traditional arts are considered incompatible with sharia by groups that understand fiqh narrowly. In fact, these cultural expressions not only reflect the noble values of society, but also become a medium of *da'wah* and social glue in the lives of Muslims in Indonesia. The tension between normative fiqh and local culture often leads to social conflicts and blurring of national identity. Therefore, an inclusive and contextual approach to fiqh is needed in order to maintain a balance between Islamic teachings and the cultural reality of local communities.

In terms of literature, a number of previous studies have shown that there is an early awareness of the importance of the relationship between fiqh and local culture. Riadi (2017) study Sasak Islam as a form of fiqh that synergizes with the local culture, while Junaedi (2018) offers a socio-cultural socio-cultural epistemological approach to Indonesian fiqh. Zuhri (2015) develop the discourse of fiqh *madhhab* Indonesia through the use of *al-'urf*, while

Rajafi (2016) emphasizing the urgency of dialogue between Islam and local wisdom. Kaco (2019) even commenting on Gus Dur's ideas about fiqh locality as a response to cultural diversity. However, the majority of these studies are still partial and have not touched deeply on the aspects of constitutionalism, and have not developed a methodological framework that is able to systematically synergize fiqh, local culture, and the national legal system. Therefore, this research offers a new approach that seeks to fill this void, namely by developing a framework for the reconstruction of cultural fiqh based on *maqāṣid al-syarī'ah* and in line with the constitutional guarantees of local culture in the 1945 Constitution.

## **Research Methods**

This research uses a normative qualitative approach with a juridical-conceptual and philosophical-cultural approach. This approach was chosen to examine the relationship between Islamic legal norms (*fiqh*), local culture, and state legal norms (constitution) in depth and reflectively. The juridical-conceptual approach is used to examine the norms in the 1945 Constitution that provide constitutional guarantees for local culture, especially Article 28I paragraph (3) and Article 32 paragraph (1), as well as other regulations such as the Law on the Promotion of Culture. Meanwhile, Islamic philosophical and hermeneutic approaches are used to reinterpret the principles of fiqh in the socio-cultural context of Indonesia based on *maqāṣid al-sharī'ah* and the principle of *al-'urf*.

The data sources in this study are in the form of secondary data, including literary literature such as classical and contemporary fiqh books, constitutional documents and laws and regulations, academic journals, and the thoughts of figures such as KH. Sahal Mahfudh, Abdurrahman Wahid, and other contemporary scholars who developed social fiqh and cultural fiqh.

The analysis techniques used are *content analysis* and *critical analysis* of Islamic legal texts, constitutional texts, and the results of previous research. With this method, the research is expected to be able to formulate conceptually an integration model between cultural fiqh and the constitutional guarantee of local culture within the framework of Indonesian national law.

## Fiqh and Local Culture

**Fiqh and local culture** is a concept that shows the relationship between Islamic teachings (fiqh) and the traditions or culture of the local community (Mubaroq, 2024). Fiqh is a science that regulates the practical aspects of the life of Muslims, including laws related to worship, muamalah, and social relations (Iftitah et al., 2022). Fiqh is sourced from the Qur'an, Hadith, Ijma' (the agreement of scholars), and Qiyas (analogy).

According to Squirrels (2016) Local culture encompasses all forms of traditions, customs, art, language, and values that grow and develop in a particular society. This culture not only becomes a part of daily life, but also serves as a marker of the collective identity of a social group. In this context, Islam as a universal religion shows flexibility in interacting with local cultures, as long as the culture does not conflict with the basic principles of sharia (Utari et al., 2019). The history of the development of Islam in various regions such as Arabia, Persia, India, Indonesia, and Africa shows that accommodation to local culture is part of the strategy of da'wah and the formation of an adaptive Islamic civilization. In the treasures of fiqh, there are a number of rules that support this accommodation, such as *Al-'ādah Muḥakkamah* (custom can be used as a legal basis) and *By Lā Yatimmu al-Wājib illā bihi fa huwa wājib* (Everything that is a means to carry out obligations is mandatory). These rules are the basis for argumentation that customs or traditions that do not conflict with the sharia can be integrated into religious practice. Furthermore, the principle *Tasāmuh* (tolerance) in Islam is also an important foundation in accepting local cultural diversity, as long as it does not contain elements that are contrary to monotheism or the main values of Islamic teachings.

Local culture that is contrary to the principles of sharia is a challenge to be straightened out, it can be seen as a tradition that involves superstition or shirk (Stuart, 2021). In fiqh, customs or customs that do not conflict with the sharia can be used as a legal basis. For example, in muamalah, local customs are often taken into consideration (al-'urf / accepted customs). Fiqh and local culture complement each other as long as the basic principles of Islam are maintained. The wisdom of understanding both allows Islam to remain relevant in various cultural contexts without losing its identity as a universal religion.

In Islam, the marriage contract has certain principles and conditions. However, traditional processions such as traditional Javanese, Sundanese, or Minang wedding ceremonies can still be carried out as long as they do not contradict the sharia (for example, they do not involve shirk matters). In addition, Muslim clothing in Indonesia tends to use traditional fabrics such as batik or songket which are adapted to the principle of covering the

awrah. Then there is also the celebration of the Prophet's Birthday or tahlilan which is part of the tradition of Indonesian society, although not explicitly taught by the Prophet, considered as part of an effort to remind the people to stay close to religion.

## **Constitution and Culture**

The Constitution is a legal framework that establishes the fundamental rules of state life, while culture reflects the values and identity of the people (Sihotang et al., 2019). The Constitution is the basic law that is the basis for the administration of the state. The constitution and culture are closely linked, especially in shaping and maintaining public governance (Widyastuti & Anam, 2024). The Constitution provides a framework for protecting and advancing culture, while culture provides legitimacy and the values that shape the content and implementation of the constitution. According to Collins (2024) Harmonious integration between the Constitution and culture is essential to maintain the stability and identity of a nation.

According to Sardjono (2019) The Constitution is the main reference in lawmaking. The Constitution protects the freedoms and basic rights of citizens. The Constitution provides a framework to prevent abuse of power. According to Dianto (2020) The Constitution reflects the national consensus on the basic principles of state life. Culture encompasses values, norms, customs, traditions, and practices that are passed down from generation to generation in society. Culture shapes the collective identity and way of life of a nation.

The constitution is drafted based on the values and norms that apply in the culture of a nation. For example, the first precept of Pancasila (The One Godhead) reflects respect for the religious values of the Indonesian people. The implementation of the constitution in Indonesia is influenced by local traditions and customs. This is reflected in Article 32 of the 1945 Constitution which affirms the state's obligation to advance national culture (Pragata, 2023). The challenge in the integration of the constitution and culture is the influx of foreign cultures that affect traditional values and the challenge of adapting them to the constitution. Thus, it is important to harmonize efforts between various local cultures and constitutional principles.

## **Strengthening Local Culture Through Fiqh Perspective**

Strengthening local culture through a fiqh perspective is an effort to maintain local identity and wealth while ensuring that Islamic values remain the main guide. **Fiqh** is the

study of Islamic law that discusses the issues of worship, muamalah, and various aspects of daily life based on the Qur'an, Hadith, Ijma', and Qiyas. Islam respects local culture as long as it does not contradict the basic principles of sharia. This principle is called **the rule of "Al-'Adah Muhakkamah"** (custom can be used as a law as long as it does not contradict the sharia). Fiqh can be used as a framework to assess, adapt, and strengthen elements of local culture, so that it remains relevant to Islamic values. Fiqh accommodates cultural differences through a diverse approach to madhhab. Example: The dominant Shafi'i school in Southeast Asia shows flexibility in dealing with local traditions.

**Local culture** refers to the customs, traditions, and values that grow in an area, which are the result of social and environmental interactions. Local traditions that are in harmony with the maqashid sharia (goals of sharia) such as justice, welfare, and humanity can be strengthened. With a thoughtful approach, local culture can not only be preserved but also empowered to strengthen harmony in community life. If a particular culture contains elements that are contrary to Islam (e.g., practices that are close to shirk), fiqh can be used to provide alternative guidance that is more in line with Islamic teachings.

The fiqh approach emphasizes the value of togetherness and prayer, while directing that its implementation be in accordance with monotheism. An example of strengthening local culture through a fiqh perspective is that in Javanese society, the "slametan" event is often carried out on various occasions. Gamelan or traditional dance is acceptable as long as it does not contain immoral elements or is contrary to Islamic values. Traditional processions such as siraman or other customs can be maintained, provided that they do not contradict the sharia.

The strategic approach of scholars and religious leaders provides a comprehensive knowledge of how Islam views culture. In addition, it involves artists and cultural experts to maintain local cultural identity within the framework of sharia, as well as involving Muslim scholars to study customs and culture according to the context of the times.

### **The Relevance of Fiqh to the Progress of Local Culture**

The relevance of fiqh to the advancement of local culture lies in the ability to adapt and accommodate positive cultural values while maintaining sharia principles. With this approach, fiqh not only supports the preservation of local culture, but also encourages its progress within an ethical and religious framework. The relevance of fiqh to the advancement of local culture can be seen from the discipline of Islamic law, how to interact with local culture in harmony without compromising the basic principles of sharia.

Fiqh is a discipline of Islamic law that has the principle of flexibility (*tasamuh*) and is oriented towards benefits (*mashlahah*). In its application in society, fiqh is able to adapt to local culture by considering applicable customs or customs, as long as it does not conflict with the principles of Islamic law. This flexibility is reflected in a number of rules of fiqh, such as *al-'adah muhakkamah* which states that customs can be used as a legal basis as long as they do not conflict with the sharia, and *dar'ul mafasid muqaddamun 'ala jalbil mashalih* which prioritizes the prevention of damage rather than the acquisition of benefits. Thus, fiqh is not only normative, but also contextual, responding intelligently to socio-cultural dynamics.

Islam values the diversity of local cultures and traditions. In the practice of fiqh, customs that do not contradict Islamic principles are often accommodated. For example: Local traditions such as traditional ceremonies, art, and traditional clothing can be preserved if they do not involve things that are contrary to the faith and worship. In the context of *muamalah* (social relations), fiqh adopts rules that are in harmony with the customs of the local community. Fiqh is a medium to strengthen universal values such as justice, compassion, solidarity, and cleanliness in local culture. This helps the community maintain traditions while integrating the positive values of Islamic teachings.

In the face of new problems that arise due to social and cultural changes, fiqh allows for a contextual process of *ijtihad* (legal reasoning). Thus, local culture can develop according to the times without having to abandon Islamic principles. Examples: the use of local languages in *da'wah* or religious lectures and the development of Islamic art that integrates elements of local culture, such as calligraphy and mosque architecture. Fiqh serves as a tool to protect local culture from negative influences that are contrary to Islamic values. In this case, fiqh provides guidance so that traditions that are in line with morality and morals are maintained. In the archipelago, fiqh law has adjusted to customs, such as: marriage contracts using local customs. In addition, the *halal bihalal* tradition as a form of gathering after Eid al-Fitr is the result of acculturation between Islamic teachings and local culture.

### **The Role of Fiqh in Preserving Cultural Heritage and Local Wisdom**

According to Hijriyana et al., (2023) Fiqh provides space for local traditions that do not conflict with the basic principles of Islam. In fiqh terms, this is known as the concept of *'urf* (custom or tradition). If a local custom does not conflict with the sharia, then the tradition can be accepted and even integrated into the practice of Muslim life. This principle is often

referred to as the rules of fiqh: "*Al-'adah muhakkamah*" (customs can be used as a legal basis). Example: the management of zakat is adjusted to the needs of the local community. In addition, the determination of worship times or muamalah adjustments that are relevant to the local culture. The following is presented what are the roles of fiqh:

**Table 1**  
**The Role of Fiqh in Maintaining Cultural Heritage and Local Wisdom**

No.	The Role of Fiqh on Culture
1	Adapting Islamic Law to the Local Context (Urf)
2	Increasing the Value of Cultural Diversity
3	Protecting Cultural Identities That Do Not Conflict with Sharia
4	Mediating Conflicts between Tradition and Sharia
5	Maintaining the Sustainability of Local Traditions with Worship Value

According to Huda (2019) Fiqh serves as a tool to spread Islamic universal values, such as justice, peace, and solidarity, through the medium of local traditions and culture. Thus, Islam does not exist as a force that replaces local culture, but reinforces existing positive values. Example: the use of local traditions to promote welfare, such as the use of local wisdom in environmental management. Fiqh also encourages the preservation of cultural values with Islamic values in society. Local culture that has long been inherent and aligned with Islam can be preserved and inherited as part of the identity of Muslim society.

According to Khomsinnudin et al., (2024) Fiqh serves as a tool to harmonize cultural differences and traditions in society, especially in pluralistic communities. With a flexible but still sharia-based approach, fiqh is a solution to maintain unity in the midst of diversity. Fiqh helps transform local wisdom to remain relevant in the modern era without losing its spiritual and traditional values. With this approach, fiqh is not only a legal instrument, but also a guardian of local cultural heritage and wisdom, as well as a tool to build harmony between Islam and community traditions. This role proves that Islam is very flexible and capable of coexisting with various cultures around the world.

**Constitutional Guarantees and Challenges of Cultural Fiqh in Indonesia**

The Indonesian Constitution (1945 Constitution) guarantees freedom of religion in Article 28E Paragraph 1 and Article 29 Paragraph 2. This provides a legal basis for a diversity of religious practices, including space for the interpretation of Islamic law (fiqh) that is



appropriate to the local cultural context. Indonesia is a pluralistic country, with a variety of ethnicities, religions, and cultures. The Constitution encourages the spirit of *Bhinneka Tunggal Ika*, which means respecting diversity in unity.

The main challenge of cultural jurisprudence is the emergence of groups that reject the pluralism of sharia interpretation and impose a single understanding. The influence of globalization can erode local cultural values that are the basis of cultural fiqh. A lack of understanding of cultural jurisprudence among the public and policy makers can hinder the development of this approach. The strategy of strengthening cultural fiqh can be carried out by increasing dialogue to build a common understanding of the importance of fiqh that is adaptive to culture. In addition, by encouraging Islamic educational institutions to teach contextual and culture-based fiqh. Meanwhile, those who play a role in this matter are Ulama and academics need to develop relevant and applicable cultural fiqh studies. Constitutional guarantees in Indonesia related to freedom of religion, the practice of Islamic law (fiqh), and culture include the following:

**Table 2**  
**Constitutional Guarantees in Indonesia**

No.	Constitutional Guarantees	Article	Fill
1	Freedom of Religion	Article 28E paragraph (1) of the 1945 Constitution	Guaranteeing the right of everyone to embrace religion and worship according to their religion.
		Article 29 paragraph (2) of the 1945 Constitution	The state guarantees the freedom of every citizen to worship according to his religion and beliefs
		Law No. 39 of 1999	Strengthening religious freedom as a human right
2	Cultural Diversity	Article 32 paragraph (1) of the 1945 Constitution	The state advances Indonesia's national culture by respecting and protecting regional culture.
		Article 28I paragraph (3) of the 1945 Constitution	Cultural identity and traditional people's rights are respected in line with the times.
3	Application of Islamic Law	Islamic jurisprudence can be applied through positive legal arrangements, such as the Compilation of Islamic Law (KHI) in certain civil matters (marriage, inheritance, waqf).	
		The existence of institutions such as the Sharia Court in Aceh as a form of special autonomy	

According to Ghoniah & Rohmah (2023) Cultural jurisprudence refers to an approach to Islamic law that considers the local cultural context. This principle is often associated with *maqashid sharia* (sharia goals) which emphasizes *maslahat* (common good). As a country with cultural richness, Indonesia needs *fiqh* that is not only textual, but also contextual. This includes the adaptation of Islamic law to local customs, arts, and traditions. The role of the state in this case ensures that the space for cultural expression is maintained while still promoting social harmony. Policies that support inclusivity and diversity of Islamic legal interpretations are essential.

## Conclusion

This study found that *fiqh* has a strategic role in maintaining and strengthening the existence of local culture, as long as it is based on the principles of *maqāṣid al-syarī'ah* and the rules of *al-'ādab mubakkamah*. The cultural *fiqh* approach is able to be a bridge between Islamic teachings and local traditions, so as not only to avoid socio-cultural conflicts, but also to strengthen national identity and social harmony. The constitutional guarantees contained in the 1945 Constitution have provided a clear legal framework to protect regional culture, and can be synergized with Islamic law constructively.

Methodologically, this research makes an important contribution to the development of a *fiqh* reconstruction model that is more contextual, dialogical, and relevant to the conditions of pluralistic societies such as Indonesia. The use of juridical-conceptual and philosophical-cultural approaches allows for an in-depth analysis of the relationship between Islamic law, local culture, and the constitution.

However, this study has limitations in empirical aspects and does not include field studies on the implementation of cultural *fiqh* in concrete society. Therefore, further research with a sociological or anthropological approach is needed to test the effectiveness of the integrative models offered in the social dynamics of Indonesian society.

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