The Critique toward *Uṣūl al-Fiqh* Literacy of 1890–2023: An Offer for Development

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Abstract

Critique of *uṣūl al-fiqh* literacy is very crucial. The scarcity of critique can lead to the risk of intellectual stagnation and an inability to address the legal needs of a constantly changing society, simultaneously causing a lack of resonance with reconstructive ideas. The study aims: 1) to explore evidence of the scarcity of studies criticizing *uṣūl al-fiqh* from 1890 to 2023; 2) to explain the factors influencing the scarcity of critical works, and 3) to propose steps for the reconstruction of *uṣūl al-fiqh*. The data sources for this article are works collected from web publishers, digital libraries, and search engines. The data obtained was mapped and analyzed, and its trends were recorded. This study finds that during the period 1890-2023, criticism was the rarest aspect in *uṣūl al-fiqh* literature. The factors causing the scarcity of critique vary and complement each other, involving scholarly elements, *uṣūl al-fiqh* factors, and surrounding policies. Although criticism of *uṣūl al-fiqh* is relatively rare, it does not mean there is no space for reconstruction. Through this study, readers can understand the recent developments in *uṣūl al-fiqh* and assess the extent to which criticism has been undertaken while reflecting on how reconstruction can be initiated once again.

Keywords: critique; policy; rare issue; reconstruction; *uṣūl al-fiqh*


Kata Kunci: kritik; kebijakan; isu langka; rekonstruksi; *uṣūl al-fiqh*
Introduction

_Uṣūl al-fiqh_ is a very important and interesting field of Islamic studies. Some books have been published and reviewed many times. There are scholars whose thoughts are repeatedly reviewed by other scholars. There are also legal sources whose studies dominate publications compared to other sources. What's even more unfortunate is that these rare issues are crucial for the success of _uṣūl al-fiqh_ in addressing contemporary challenges. Based on the authors' search, 'Abd al-Wahhāb Khallāf's book, _'Ilm Uṣūl al-Fiqh_, for example, has been printed by Maktabah Da'wah al-Islāmiyyah eight times. Similarly, Hallaq's book, _A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh_, has been reviewed by other scholars eight times.¹ Robert Gleave's book, _Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory_, for instance, has also been reviewed seven times.²


Meanwhile, on the other hand, Yusufoglu Kazim, for example, without specifying a particular time frame, states that there is a common opinion that independent absolute juridical interpretation (al-ijtihād al-muṭlaq al-mustaqill) is practically impossible nowadays. According to him, this theme is rarely re-examined.3 Similarly, Alnaief Moath, Kotb, and Rissouni, without specifying a particular time frame, assert that the dynamics of society and the necessity to find new laws not explicitly mentioned in religious texts are also among the least discussed themes.4 However, as is well-known, ijtihād is indeed a crucial theme to answer the evolving needs of society.5 The two facts above indicate a gap that issues in the usūl al-fiqh literature are not going well.

So far, usūl al-fiqh works can be divided into three categories: language, form, and content. In terms of language, usūl al-fiqh works are divided into Arabic, English, Indonesian, Malay, Turkish, French, German, Persian, Uzbekistan, Russian, and Urdu. In terms of form, they are divided into books (textbooks and monographs), book reviews, and articles. In terms of content, this article differentiates them into the thoughts of prominent figures, thematic discussions, relations-relevance-comparisons, and critiques-developments. All Arabic-language works are accessible, but the language may not be understood by a wider audience. Several sources highlight the importance of understanding Arabic in understanding the concepts of usūl al-fiqh.6 English-language works are partially closed access, although the language is understood by more people.

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Some works criticize or propose developments in *uṣūl al-fiqh*, but are quite limited. As an example of criticism, Hallaq’s article challenges the common belief that al-Shāfi‘ī is the architect of *uṣūl al-fiqh*. Hallaq argues that this discipline came later and points to Ibn Surayj and his students as early exponents. While examples of works proposing developments are relatively more numerous, they are typically associated with scholars who have deviated from traditional methodological approaches and engaged in philosophical reflections on Islamic law. For example, Abū Zayd al-Dabūsī and Ibn Rushd have placed and systematized religious law within rationalist epistemology and legal theory. These scholars have sought to provide innovative contributions to ethics and general questions of legal philosophy within the realm of Islamic law.

However, although several works criticize and propose developments to *uṣūl al-fiqh*, as far as this research has been conducted, there is not a single work that examines the issue of *uṣūl al-fiqh* scarcity critique. Therefore, to address this literature gap, this article aims to: 1) explore the evidence of the scarcity of works that criticize and/or develop *uṣūl al-fiqh* from 1890 to 2023; 2) explain the factors that lead to the scarcity of such critical works; and 3) propose reconstruction measures against *uṣūl al-fiqh*. With this aim, the trend of the contemporary *uṣūl al-fiqh* literature map and its causes can be identified, so that the practical impacts can be anticipated.

This article is based on data collected by documenting literature found on web publishers, digital libraries, and search engines from November 6, 2023, to November 16, 2023. Arabic literature was found on 3 (three) websites, and literature in various languages was found on 12 (twelve) websites, see Table 1.
The Critique toward *Uṣūl al-Fiqh* Literacy of 1890–2023...

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**Table 1**

**Data Source Websites**

<table>
<thead>
<tr>
<th>Arabic Literature</th>
<th>Multilingual Sites</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>4. <a href="https://www.cambridge.org/core/publications/journals">https://www.cambridge.org/core/publications/journals</a></td>
</tr>
<tr>
<td>5.</td>
<td>5. <a href="https://journals.sagepub.com/">https://journals.sagepub.com/</a></td>
</tr>
<tr>
<td>6.</td>
<td>6. <a href="https://www.jstor.org/vlib.interchange.at/">https://www.jstor.org/vlib.interchange.at/</a></td>
</tr>
<tr>
<td>7.</td>
<td>7. <a href="https://garuda.kemdikbud.go.id/">https://garuda.kemdikbud.go.id/</a></td>
</tr>
<tr>
<td>10.</td>
<td>10. <a href="https://libgen.is/">https://libgen.is/</a></td>
</tr>
<tr>
<td>11.</td>
<td>11. <a href="https://www.sciencedirect.com/">https://www.sciencedirect.com/</a></td>
</tr>
</tbody>
</table>

In the Arabic-only websites, the literature has been categorized separately, so the data search was done by simply clicking on “*uṣūl al-fiqh*” button. In the multilingual websites, the data was searched by typing the keyword, “*uṣūl al-fiqh*”, into the search button. This article only counts open-access data. If a piece of literature is found multiple times on two or more websites, this article counts it only once. Literature that does not belong to *uṣūl al-fiqh* but is categorized as such by the website is not counted. As for works generated through the search button, since they are in order of highest relevance, the data were collected in that order until there was no relevance at all.

To get to the issue of the scarcity of critique, this article first examines the content of the found works (content analysis), then maps them (literature mapping), and finally, counts the number of works based on the categories created for comparison with other categories.

The year 1890-2023 was intentionally chosen as a reference because 1890 is the oldest year and 2023 is the most recent year when works were found and published on these websites. This reference year signifies the year a work was first published in its print edition by a publisher, not the first time it was displayed online. The oldest work found is an Arabic-language work titled *Sharḥ Manār al-
Anwār by Ibn Malik, published by Dār al-Kutub al-Ilmiyyah in 1890. The oldest work in another language than Arabic (English) is A Historical Sketch of Mohammedan Jurisprudence by Abdur Rahim, published in 1907. Meanwhile, the most recent works are "Uṣūl al-Fiqh Literacy for the Local Community: A Study on Shaykh Mukhtar Ambai’s Manuscript" by Repelita Repelita, Nuzul Iskandar, Mursal Mursal, dated October 2, 2023, and "In the Context of the Science of Uṣūl al-Fiqh, Textual and Numerical Interpretation of Some Verses and Hadiths, with an Example of Social Groups" by Hasan Özket, dated October 22, 2023.

The Rarest Discussed Issues in Uṣūl al-Fiqh of 1890-2023

This article uncovers the fact that works criticizing uṣūl al-fiqh are the least numerous during the period 1890-2023 compared to uṣūl al-fiqh works addressing other issues. This observation is made by accessing all uṣūl al-fiqh works from identified websites. Specifically, from two Arabic-language websites (Waqfeya and Maktabah Shamela/MS) and an Indonesian website (Perpustakaan Islam Digital/PID), it was found that not all works were uṣūl al-fiqh. Therefore, this article separates fiqh, maqāsid, and qawā'id al-fiqhiyyah works and does not include them in the count. Additionally, many works are displayed on two or more websites; hence, this article counts them only once. The number of works resulting from the conducted data search can be seen in Table 2 and Table 3.

After selecting works from the above three websites, only 490 works were found were truly belong to uṣūl al-fiqh, and none of them were identical to each other. These selected works were then combined with works found on various language websites, resulting in the total number of works used as data for this research can be seen in Table 4.

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15 This website in Indonesian language for the introduction, but it provides Arabic books, see more: https://perpustakaanislamdigital.com
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This article examines 872 works of *uṣūl al-fiqh* that have undergone the selection process and relevance assessment, ensuring their accuracy as data. These works are known to include the year of publication. It turns out that these 872 works were published in various years ranging from 1890 to 2023. The quantity of works varies each year, indicating the development of thought among *uṣūl al-fiqh* scholars (see Figure 1 and Figure 2).

<table>
<thead>
<tr>
<th>No</th>
<th>Source</th>
<th>Number of Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Waqfeya</td>
<td>404</td>
</tr>
<tr>
<td>2</td>
<td>Maktabah Shamilah (MS)</td>
<td>240</td>
</tr>
<tr>
<td>3</td>
<td>Perpustakaan Islam Digital (PID)</td>
<td>82</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>726</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No</th>
<th>Source</th>
<th>Calculated</th>
<th>Not calculated</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Waqfeya-MS-PID</td>
<td>41</td>
<td>82</td>
</tr>
<tr>
<td>2</td>
<td>Waqfeya-MS</td>
<td>85</td>
<td>85</td>
</tr>
<tr>
<td>3</td>
<td>Waqfeya-PID</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td>4</td>
<td>MS-PID</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>5</td>
<td>Waqfeya</td>
<td>220</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>MS</td>
<td>103</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>PID</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Not <em>uṣūl al-fiqh</em> in Waqfeya</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Not <em>uṣūl al-fiqh</em> in MS</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>490</strong></td>
<td><strong>236</strong></td>
</tr>
</tbody>
</table>

### Table 4
Total Number of Works as Data

<table>
<thead>
<tr>
<th>No</th>
<th>Source</th>
<th>Total Works</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Waqfeya</td>
<td>220</td>
<td>digital library</td>
</tr>
<tr>
<td>2</td>
<td>Google Scholar</td>
<td>112</td>
<td>search engine</td>
</tr>
<tr>
<td>3</td>
<td>MS</td>
<td>103</td>
<td>digital library</td>
</tr>
<tr>
<td>4</td>
<td>Jstor</td>
<td>86</td>
<td>digital library</td>
</tr>
<tr>
<td>5</td>
<td>Waqfeya-MS</td>
<td>85</td>
<td>digital library</td>
</tr>
<tr>
<td>6</td>
<td>Waqfeya-MS-PID</td>
<td>41</td>
<td>digital library</td>
</tr>
<tr>
<td>7</td>
<td>Garuda</td>
<td>32</td>
<td>digital library</td>
</tr>
<tr>
<td>8</td>
<td>Taylor and Francis</td>
<td>31</td>
<td>publisher</td>
</tr>
<tr>
<td>9</td>
<td>Mendeley</td>
<td>30</td>
<td>digital library</td>
</tr>
<tr>
<td>10</td>
<td>Waqfeya-PID</td>
<td>29</td>
<td>digital library</td>
</tr>
<tr>
<td>11</td>
<td>Springer</td>
<td>27</td>
<td>publisher</td>
</tr>
<tr>
<td>12</td>
<td>Wiley</td>
<td>18</td>
<td>publisher</td>
</tr>
<tr>
<td>13</td>
<td>Cambridge</td>
<td>18</td>
<td>publisher</td>
</tr>
<tr>
<td>14</td>
<td>DOAJ</td>
<td>15</td>
<td>digital library</td>
</tr>
<tr>
<td>15</td>
<td>Libgen</td>
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<td>digital library</td>
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<td>MS-PID</td>
<td>6</td>
<td>digital library</td>
</tr>
<tr>
<td>17</td>
<td>PID</td>
<td>6</td>
<td>digital library</td>
</tr>
<tr>
<td>18</td>
<td>Sage</td>
<td>3</td>
<td>publisher</td>
</tr>
<tr>
<td>19</td>
<td>Science Direct</td>
<td>1</td>
<td>digital library</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>872</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Figure 1
Development of Works 1890-2023 in Arabic Literature

![Specialized Arabic Literature (Waqfeya - MS - PID)](image)
In addition to varying publication years, the 872 works of *uṣūl al-fiqh* also use different introductory languages. It is permissible for Islamic studies works to use various languages globally, as demonstrated by various studies. For instance, Haque found that various languages have been used in Islamic studies, with Arabic and Urdu playing significant roles. The map of works based on the languages used can be seen in Figure 3.

Finally, to determine that works criticizing *uṣūl al-fiqh* are the rarest, this article should conduct content analysis and literature mapping on the works and compare the quantities among organizational works. Besides serving this purpose, this process can also help readers understand the recent developments in *uṣūl al-fiqh*, including evaluating the extent to which an issue is researched and how these issues evolve. Soaita et al. further emphasize the role of literature mapping in identifying research gaps and transforming conceptual approaches.

The results of content analysis and literature mapping along with the comparison of quantities can be seen in Table 5. Due to space limitations, here are examples of works that criticize *uṣūl al-fiqh* in Table 6.

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Figure 3
Total Comparison of Works by Language

Table 5
Total Number of Comparative Works by Issue

<table>
<thead>
<tr>
<th>Source</th>
<th>Books</th>
<th>Articles</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Text</td>
<td>Monograf</td>
<td></td>
</tr>
<tr>
<td></td>
<td>book</td>
<td>Book</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review</td>
<td>Nazam/</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mahataar</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>/Sharh/</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hashiyyah</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Figure’s Thought</td>
<td>Thematic</td>
<td>Relation/Relevance/Comparison</td>
</tr>
<tr>
<td>Waqfeya-MS-PID</td>
<td>170</td>
<td>229</td>
<td>91</td>
</tr>
<tr>
<td>Multi-language</td>
<td>13</td>
<td>23</td>
<td>46</td>
</tr>
<tr>
<td>Web</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>183</td>
<td>252</td>
<td>46</td>
</tr>
</tbody>
</table>

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Table 6

Three Examples of Criticism

<table>
<thead>
<tr>
<th>No.</th>
<th>Works</th>
<th>Criticism</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Was the Gate of <em>Ijtihād</em> Closed?</td>
<td>Critiquing the notion that <em>ijtihād</em> has been closed, it is argued that there is no evidence supporting the closure of <em>ijtihād</em> during the Middle Ages. Scholars of that time tended to prefer <em>taqlīd</em> because it provided a sense of certainty and stability in legal rulings.</td>
</tr>
<tr>
<td>2</td>
<td>A Critical Analysis of the Claim that Absolute Juristic Interpretation (<em>Ijtihād</em>) has Ended.</td>
<td>Critiquing the opinion that <em>al-ijtihād al-muṭlaq al-mustaqill</em> (independent absolute reasoning) is no longer possible. This view is deemed incorrect, as it is argued that this level of interpretation is necessary for the preservation and renewal of legal sources.</td>
</tr>
<tr>
<td>3</td>
<td>Scholarly Consensus: <em>Ijmā':</em> Between Use and Misuse.</td>
<td>Critiquing the use of <em>ijmā’</em> as a tool to maintain cultural and religious uniformity, highlighting that it has been misused by scholars and governors as a political tool to suppress dissenting religious voices.</td>
</tr>
</tbody>
</table>

Factors Leading to Scarcity of Critique toward *Uṣūl al-Fiqh* of 1890–2023

The scarcity of critique towards *uṣūl al-fiqh* is a concerning issue, given the importance of this field in Islamic legal studies. This article finds that the rarity of criticism ideas in *uṣūl al-fiqh* is influenced by three factors: scholar factors, *uṣūl al-fiqh* factors, and policy factors. Scholar factors consist of a combination of three interrelated elements: specialization and focus on other matters, reluctance to think critically, and a dismissive attitude towards criticism launched by the *maqāṣid* field. *Uṣūl al-fiqh* factors consist of a combination of three interrelated elements: Arabic language as the medium, lack of methodological innovation, and lack of practical relevance to contemporary needs. Meanwhile, policy factors consist of a combination of two interrelated...

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20 Alnaief and Rissouni, 'A Critical Analysis of the Claim that Absolute Juristic Interpretation (*Ijtihād*) Has Ended.'
elements: curriculum and accessibility provision. Identification of these factors is made with the understanding that there is no generalization and that these factors are variable.

**Scholar Factors**

One contributing factor to the scarcity of critique ideas is the diversification of scholars' specializations and focus within Islamic studies, such as theology, history, philosophy, comparative religion, and others. Scholars are more inclined towards fields considered more dynamic, relevant to contemporary issues, or with broader social implications. This can sometimes divert their attention from more specialized and technical fields like *uṣūl al-fiqh*. In addition to a broader focus on Islamic studies, the common conservative paradigm in Islamic boarding schools, for example, where the study of *uṣūl al-fiqh* is limited to consumption and memorization without contextualization and application, may contribute to this trend. It can also be considered a triggering factor. As a result, a dominance of specific sub-themes is found in works of *uṣūl al-fiqh*. While it must be acknowledged that scholars interested in broader Islamic studies may still incorporate *uṣūl al-fiqh* into their research, and critique can emerge from their interdisciplinary perspectives, specialization and focus on other areas have led to a lack of publications criticizing *uṣūl al-fiqh*.

In addition to specialization and focus, the reluctance of scholars to think critically has been a concern among scholars. Their reluctance to think critically is evident in the works of *uṣūl al-fiqh* with a traditional paradigm and static nature, which then hinders its ability to provide solutions to

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24 Nadiyah Mu'adzah, ‘Ushul Fiqh, Qaidah Fiqhiyyah, and Islamic Jurisprudence’, *Journal of Islamic Economic Literatures* 3, no. 2 (2022), https://doi.org/10.58968/jielv32.130.


contemporary social problems. They often remain literal in their interpretations and fail to adapt to new circumstances, resulting in a lack of relevant theoretical tools for changing situations. Furthermore, early scholars practiced critique in their works but replaced it with terms like evaluation and refinement, while contemporary scholars attempted to extract the connotations of critique from the works of their predecessors. Their reluctance was triggered by concerns about the emergence of partiality and politicization. They avoid potential controversy or challenges to established norms. This risk avoidance can lead to reluctance to engage in criticism of *uṣūl al-fiqh*, which, in turn, can be identified as one of the contributing factors to the scarcity of critique and development of *uṣūl al-fiqh*.

In addition to specialization, focus, and reluctance to think critically, there is another aspect of the scholar’s factor that plays a relative role in the scarcity of critique *uṣūl al-fiqh*. It is their disregard for criticism from *maqāṣid* scholars, while *maqāṣid* can answer the needs of society. On one hand, traditionalists believe that *uṣūl al-fiqh* is still richer than *maqāṣid*. *Uṣūl al-fiqh* has linguistic aspects and literal interpretations that are more operational, which *maqāṣid* does not possess as it only emphasizes the goals and purposes of the law. *Maqāṣid* itself has indeed received criticism from some modern and contemporary scholars, indicating a shift in focus towards a reevaluation of the traditional perspective of *maqāṣid*. They

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29 Elalaoui, ‘Fiqh Criticism according to the Malikis: Its Fields and Kinds’.


criticize maqāṣid more than uṣūl al-fiqh.\textsuperscript{35} It seems that the dominance of traditional approaches has hindered the development of new ideas and perspectives in uṣūl al-fiqh.\textsuperscript{36} On the other hand, non-traditionalist groups choose not to delve into criticisms directed towards uṣūl al-fiqh. Instead, they opt to use maqāṣid to address legal questions.\textsuperscript{37} This reality, in turn, makes the relationship between uṣūl al-fiqh, which should complement each other (takāmuliyyah), become less harmonious. Not to mention the primordial problem of maslahah as the mother of maqāṣid, which has been debated by scholars since ancient times,\textsuperscript{38} and the problem of maqāṣid itself, which is suspected to be vulnerable to secular influences in the form of utilitarianism\textsuperscript{39} and its arbitrary use by rulers.\textsuperscript{40}

The \textit{Uṣūl al-Fiqh} Factors

The use of the Arabic language as the primary language in the study of Islamic sciences, including uṣūl al-fiqh, is indeed rooted in historical and cultural reasons that cannot be ignored.\textsuperscript{41} Therefore, a strong foundation in the Arabic language is often considered crucial for a deep understanding of fiqh.\textsuperscript{42} It is important to note


\textsuperscript{36} Hamed et al., ‘Maqasid Research Methodology Challenges: A Survey Study’.


that the relationship between the language of instruction and the criticism of a particular field of knowledge is a complex one. Although the Arabic language is the traditional language in the study of āṣūl al-fiqh, it does not automatically hinder criticism or the development of new ideas. Scholars engage in critical analysis, debates, and the exploration of new ideas in āṣūl al-fiqh. In recent times, efforts have been made to translate classical Islamic texts into various languages to make them more accessible to a wider audience. Additionally, scholars proficient in languages other than Arabic also contribute to the criticism āṣūl al-fiqh in their linguistic and cultural contexts. Scholars continue to engage in critical analysis and contribute to the development of āṣūl al-fiqh in various linguistic and cultural backgrounds. This perspective emphasizes that linguistic diversity can enrich āṣūl al-fiqh.

However, on the other hand, for scholars outside the Arabic-speaking regions, language barriers can pose challenges in accessing and interacting with āṣūl al-fiqh. This may limit their contributions to this field. An example of such language barriers is Creswell's opinion that there is potential Arabic literature that cannot be translated. This second perspective highlights the idea that language diversity limits āṣūl al-fiqh. In essence, both statements acknowledge the importance of the Arabic language. However, the first statement emphasizes the active involvement of āṣūl al-fiqh scholars regardless of language, while the second statement underscores the potential limitations faced by scholars outside the Arabic-speaking regions. The complex nature of the Arabic language in āṣūl al-fiqh is highly likely to contribute to the lack of criticism in āṣūl al-fiqh.

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\[\text{\textsuperscript{44} Pradi Khusufi Syamsu et al., 'Scrutinizing Integrative Learning in Arabic Instruction', International Journal of Islamic Thought and Humanities 2, no. 1 (2023): 107–23, https://doi.org/10.54298/ijith.v2i1.78.}
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\[\text{\textsuperscript{45} Buhori Muslim et al., 'The Arabic Language Contribution to the Istinbāṭ in Islamic Law of Acehnese Scholars', Samarah: Jurnal Hukum Keluarga dan Hukum Islam 6, no. 1 (2022): 224–43, https://doi.org/10.22373/sjhk.v6i1.11732.}
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\[\text{\textsuperscript{48} Mohammed Salmeen Abdullah Bin Snh, Abdelali Bey Zekkoub, and Yousef Mohammed Abd, 'The Methodology of al-Imām Jamāl al-Dīn al-Ṣafadī's Use of Intrusion in the Interpretation of the Noble}
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In addition to the issue of language, the lack of methodological innovation in *usūl al-fiqh* is also highly likely to contribute to the scarcity of critique ideas. Although scholars engage in the analysis and debate of methodologies, the agreed-upon sources remain the Quran, Sunnah, consensus (*ijmāʿ*), and analogy (*qiyās*). Adherence to these sources may contribute to the perception of continuity rather than continuous methodological innovation. Scholars focus on interpreting and adapting existing methodologies to address contemporary issues rather than introducing entirely new methodologies.

Although the diversity of opinions in *usūl al-fiqh*, representing various schools of thought, can be considered a strength, it can also lead to differences in views extending to the methodological domain. Disagreements on methodological aspects may contribute to the scarcity of works criticizing *usūl al-fiqh* if consensus on these crucial issues cannot be reached. In other words, the absence of unanimous agreement on sources or methodologies further reinforces the scarcity of works that critique *usūl al-fiqh*. Consequently, the complexity of contemporary challenges may simply necessitate scholars to

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51 Nasiri, 'The Perfect Performance of Tariqat al-Mutakallimin according Fakhrudin al-Razi Perspective'.


adapt existing methods or propose different applications, rather than introducing entirely new methodologies.

In addition to language issues and lack of methodological innovation, there is another factor that plays a relative role, namely the lack of practical relevance of usūl al-fiqh to contemporary needs. It is not accurate to universally state that usūl al-fiqh lacks practical relevance, as opinions on this matter vary among scholars. In essence, while some argue that the fundamental principles of usūl al-fiqh are timeless and can be applied to address modern legal issues, others believe that adaptation and reinterpretation are needed to meet contemporary demands. In turn, although some scholars actively contribute to the evolution of usūl al-fiqh by addressing contemporary challenges and proposing developments, not all scholars are equally involved in this process. Some factions are more conservative or traditional in their approach. They highlight the prevalent conservative paradigm in the study of usūl al-fiqh, limited to consumption without contextualization and application.

In conclusion, while it can be debatable, this article tends to perceive that the lack of practical relevance of usūl al-fiqh to contemporary needs leads to the scarcity of critique and proposals for the development of usūl al-fiqh. It acknowledges that the relationship between usūl al-fiqh, practical relevance, and scholars’ engagement in criticism varies among scholars and schools of thought within the Islamic legal tradition.

56 Asni, ‘al-Syatibi Methodology Analysis in the Unification of Usul al-Fiqh Methods’.
57 Yaman, ‘Fıkıh Usûlü İşlevini Tamamladi Mı?’
60 Arifin, ‘Ushul Fiqh sebagai Kerangka Berpikir Santri Milenial dalam Memecahkan Problematika Sosial Keagamaan’.
The Policy-related Factors

The final factor that has led to the dearth of criticism *uṣūl al-fiqh* science is the policy of implementing the *uṣūl al-fiqh* curriculum in the educational system. Indeed, this perception is still subjective and cannot be generalized. However, as known, among Islamic educational institutions, some are comprehensive. Some also experience limitations, especially in curriculum, teaching methods, and resources. The limitations in the educational process are likely to hinder or limit the ability of scholars to produce critical and innovative works in *uṣūl al-fiqh.* It can be said that these limitations may give rise to relatively traditional scholars who do not contribute significantly to the critique *uṣūl al-fiqh.*

The above perception is highly relevant to what Rahman reported that the standard number of *uṣūl al-fiqh* subjects and the need for modules to produce competent Sharia students is lacking. On the contrary, Safian presents the case of Yusuf Qaradawi, a prominent scholar, who made a remarkably significant contribution to the development of *fiqh* despite the limitations in his education. Gaybullayev further complicates this issue by discussing the contributions of scholars from Mawarounnahr to the development of *uṣūl al-fiqh,* stating that the influence of education on scholarly contributions can vary depending on specific contexts and individuals.

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In addition to the curriculum policies above, policies related to providing access to *uṣūl al-fiqh* literature also contribute to the scarcity of works criticizing *uṣūl al-fiqh*. Some argue that policies regarding access to *uṣūl al-fiqh* reading materials do not seem to be the reason for the scarcity of works criticizing *uṣūl al-fiqh*. Research conducted by Staudt and Davis, for example, suggests that providing free and discounted access to scientific literature does not always result in higher article production or increased citations. Additionally, a study by Parker seems to support the findings above, focusing on the importance of removing access barriers to global research for developing countries.

Nevertheless, logical reasoning can understand the fact that some publications may be difficult for the general public to access due to limited distribution. This may include publications in less common languages or works that are not easily accessible online. Furthermore, from Gaybullayev's study, it can also be inferred that if policies providing widespread access to *uṣūl al-fiqh* literature are identified as a potential factor for the extraordinary development of the field, there may be varying impacts depending on specific contexts and individuals. Therefore, conversely, as inferred by this article, limited access can be a directing factor in the scarcity of works criticizing *uṣūl al-fiqh*. Inferences like the ones above can also be drawn from Rahman's study, indicating that if there is a lack of standardized curricula and the need for modules in *uṣūl al-fiqh* at universities, it may result in Sharia students who are not competent. Consequently, these students may be unable to produce critical and constructive works on *uṣūl al-fiqh* in the contemporary era.

**Steps to Reconstruct *Uṣūl al-Fiqh*: An Offer for Development**

The reconstruction of *uṣūl al-fiqh* in this article refers to rebuilding (*iʿādah al-bināʾ*) *uṣūl al-fiqh* with the aim that Islamic law (as a product of *uṣūl al-fiqh*) remains compatible with and useful for contemporary life. The author believes
that, as Mahmassani suggests, Islamic law is a living and evolving legal system, no different from any other legal system in the modern world, and therefore *uṣūl al-fiqh* should also be developed. In the past, when scholars reconstructed *uṣūl al-fiqh*, their motives were one of two things: to encourage the development of new legal methodologies, or to justify the legal doctrines of a madhhab. Although, most historians argue that *uṣūl al-fiqh* was largely, if not entirely, justificatory. Now, scholars have another motive: that Islamic law is no longer portrayed in a simplistic way, such as passive, conservative, and restraining social and political development, as well as so that Islamic law remains enforceable in modern states.

In broad terms, scholars can now be grouped into 3 (three): secular groups representing the view that Islamic teachings should be completely ignored; traditional groups highlighting the importance of restoring traditional forms of pure religion; and reformist groups trying to find new perspectives in formulating Islamic legal theories that are more relevant to current realities. Different approaches led to different reconstruction results. In Indonesia, for example, Hasbi Ash-Shiddieqy and Hazairin have put forward the idea of Indonesian fiqh madhhab as a form of reconstruction of *uṣūl al-fiqh* that reflects the social and cultural context of Indonesia. This article is inclined towards the third approach, although it must realize that the contribution it proposes is small. However, no matter how small the contribution of an idea on *uṣūl al-fiqh*, it deserves to be considered.

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73 Strawson, 'Revisiting Islamic Law: Marginal Notes from Colonial History'.


77 Fajri Matahati Muhammadin and Hanindito Danusatya, 'De-Secularizing Legal Education in Indonesian Non-Islamic Law School: Examining the “Introduction to Jurisprudence” Textbooks on the
Below are the steps that can be taken: first, re-systematization. While this step may seem simple, it is very meaningful. Scholars can now see and take an example of what the scholars of mā warā‘a al-nahr did. They systematized the topics, summarized all views and opinions, and revised them. More technically, they examined the factors that influenced the development, as well as introduced new concepts and methods that had not been found in previous uṣūl al-fiqh. Some of their new concepts and methods are taqlīd, ittiḥād al-madhāhib, and ijtiḥād which all play an important role in uṣūl al-fiqh. They also added rules to the method of istinbāṭ previously found in al-Shāfi‘ī’s al-Risālah, provided broader theological explanations, and introduced ratio and logic as a means to better understand religious teachings. Some of their works are maḥāsin al-sharī‘ah by Kaffāl al-Shāshī, Taqwīm al-‘Adillah by Abū Zayd al-Dabūsī and "uṣūl al-pazdawī" by Fakhr al-İslām al-Pazdawī. Because of this, their works are considered authoritative sources throughout the Muslim world. New research published is always related to their works. Their contributions are all the more important for having deeply revealed the purpose and essence of Islam in their uṣūl al-fiqh works.

Second, integration with other sciences. Many scholars advocate this. Uṣūl al-fiqh should indeed be developed by integrating it, for example, with the humanities. This is solely to address contemporary humanitarian issues. Multidisciplinary, interdisciplinary, or trans-disciplinary models of study are forms of such integration. Uṣūl al-fiqh that has been integrated with other sciences is even considered important for the successful implementation of the

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reconstruction of *uṣūl al-fiqh* in Indonesia.\(^{84}\) Ali Yafie, for example, proposes that the reconstruction of *uṣūl al-fiqh* involves integrating the text with reason, integrating the text with reality, and integrating the text with *maṣlaḥah*.\(^{85}\) Hassan Hanafi’s thoughts in *Min al-Naṣṣ ilā al-Wāqi’* can be categorized not only in this integration step because he uses the hermeneutic and phenomenological approaches, but also in the third step later, because he advocates the *maṣlaḥah* approach.\(^{86}\) In short, if Islamic law, as a product of *uṣūl al-fiqh*, is to be compatible with contemporary humanity, then its *uṣūl al-fiqh* must be integrated with current humanitarian sciences.\(^{87}\)

Third, making *maqāṣid* as an approach. Some Islamic scholars have tried to reconstruct *uṣūl al-fiqh*, but at least according to Hallāq, no one has produced a pragmatic and systematic *uṣūl al-fiqh* that considers different social, cultural, and political contexts. The most important aspect of pragmatic and systematic *uṣūl al-fiqh* is the public good and interest (*maqāṣid al-sharī'ah*).\(^{88}\) Therefore, *uṣūl al-fiqh*, which is perceived to be dysfunctional in responding to global challenges\(^{89}\) because it is heavily influenced by ‘*ilm al-kalām*,\(^{90}\) as well as its *qiyyās* method that merely transfers partial cases to other partial cases, and is not followed by a shift towards the experimental method.\(^{91}\) *The maqāṣid* is accommodative because it is

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84 Nasution, ‘Narsisme Ulama: Dilema dan Posibilitas Rekonstruksi Ushul Fiqh di Indonesia’.
91 al-‘Alwānī, ‘Muqaddimah’.

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based on wisdom rather than technical linguistic details so that it can answer a variety of new pragmatic issues,\textsuperscript{92} and has proven to encourage the flexibility, creativity, and dynamism of Islamic law,\textsuperscript{93} promising certainty\textsuperscript{94} and following human nature.\textsuperscript{95} Therefore, \textit{ijtihād usūlī} needs to be developed into \textit{ijtihād maqāṣidī},\textsuperscript{96} to play a more important role in producing Islamic law.\textsuperscript{97}

The steps proposed by this article are small, meager contributions. There is still much that can be done starting from: an in-depth understanding of the Qur’an and Sunnah; study of \textit{ijmā’} and \textit{qiyās}; study of classical fiqh books; understanding of the contemporary social and cultural context; involvement of scholars and jurists; discussion and consultation; legislation and implementation; public education; and evaluation and correction.\textsuperscript{98} Unfortunately, there is not enough space to review them here. This contribution is proposed efforts to reconstruct \textit{uṣūl al-fiqh} are multifaceted. Although criticism of \textit{uṣūl al-fiqh} is rare, it does not mean that there is no scope for reconstructing it. Many scholars have attempted to do so.\textsuperscript{99} It is just that perhaps the echo is less resounding.

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If scholars in a particular field, including *uṣūl al-fiqh*, never criticize their expertise, several implications may arise. While some of these implications are positive, such as the presence of stability and enduring traditions, the establishment of a consistent and robust understanding, and the consolidation of authority, this article is more inclined to highlight that the majority of implications are negative. These may include: 1) There is a risk of stagnation that could impede progress, innovation, and the evolution of ideas, eventually causing methodologies and practices to become outdated;100 2) The emergence of failures in addressing contemporary challenges;101 and 3) The narrowing of intellectual capacities among its scholars.102 In summary, although stability and criticism have their respective benefits, a healthy and dynamic field often requires a balance. Constructive criticism and developmental ideas can drive progress, encourage innovation, and ensure that a field remains dynamic and responsive to evolving challenges and opportunities.

It can be said that this article, on one hand, rejects what Asim stated that the comparison of different chapters of *uṣūl al-fiqh* is a favorite topic among legal experts today, and new books are published every day.103 However, on the other hand, it reinforces what he also said that the journey of *uṣūl al-fiqh* is shaped by a combination of historical developments, the influence of scholars, and critical thinking methodologies. Scholars engage in debates and discussions to refine legal methodologies, challenge opinions, and propose alternative interpretations. Therefore, critical thinking is crucial for all fields of study.104 Nevertheless, there is something more certain from this article, which is to note the current trends without explicitly rejecting or reinforcing existing theories. What this article finds serves as an observation of the current scholarly condition, highlighting that issues related to the criticism and development of *uṣūl al-fiqh* are not doing as well as other topics in this subject.

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100 Junaidy, 'Revitalisasi Uṣūl Fiqh dalam Menghadapi Perubahan Sosial'.
104 Hassam et al.
As the mother of maqāṣid, usūl al-fiqh should receive a larger portion of learning compared to maqāṣid. Usūl al-fiqh, being the foundation for maqāṣid, requires more intensive and critical teaching of its principles and methodology. The reality that courses, teaching curricula, faculty study programs, research, early dissemination, and publications (books, journal articles, and proceedings) about maqāṣid are booming, as reported by Kamalī and al-Khādimī, should not overshadow the essential importance of usūl al-fiqh. It should awaken the awareness of usūl al-fiqh scholars who are reluctant to move away from the comfort of established knowledge. Additionally, it is crucial to address this scarcity of critique and developmental proposals by fostering openness to accepting diverse opinions from various fields of knowledge, including science, social sciences, humanities, and technology. The last, but equally important, recommendation is government policy support to address the scarcity of critique and developmental efforts in this field.

Conclusion

Out of 872 examined works, only 19 addressed criticism ideas related to usūl al-fiqh. The identified themes of these 19 works include criticism of the notion that the doors of ijtihād are closed; the idea that independent ijtihād is impossible; the politicization of ijmā'; the assertion that al-Shāfi'ī is the founder of usūl al-fiqh; the categorization of agreed-upon vs. disagreed-upon sources, among others. The factors contributing to the scarcity of critique ideas are diverse and complementary. Scholars’ specialization and focus on other areas, reluctance to engage in critical thinking, and neglect of criticism from maqāṣid studies are internal factors. On the other hand, internal factors within usūl al-fiqh include the use of Arabic as the introductory language, the lack of methodological innovation, and the perceived lack of practical relevance to contemporary needs. Curriculum and access provision are policy-related factors. All these factors work together to contribute to the scarcity of critique in usūl al-fiqh. Although criticism of usūl al-fiqh is rare, it does not mean that there is no scope for reconstructing it. This article proposes some

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steps that can be taken immediately to reconstruct *uṣūl al-fiqh*. These steps have been initiated by previous scholars, namely: re-systematization, integration with other sciences, and the use of *maqāsid* as an approach.

This article has made a significant contribution to understanding the recent developments in *uṣūl al-fiqh* and evaluating the extent to which scholars of *uṣūl al-fiqh* engage in criticizing and reconstructing their field of expertise. Indeed, it is important to acknowledge that the development of *uṣūl al-fiqh* requires time and sustained contributions. Constructive criticism is needed to enrich and advance the existing *uṣūl al-fiqh*, as well as ensure that it meets the societal needs for relevant legal principles. There are some notes regarding the research methodology that could enhance diversity and depth of analysis. For instance, the study focused solely on open-access books and articles, while dissertations and works from reputable publishers could provide additional insights. If opportunities arise, other researchers can conduct more detailed analyses, identifying changes or patterns of criticism over time to gain a deeper understanding. Overall, this article provides a valuable initial overview, and further development could open space for more in-depth and comprehensive research in the future.[a]

**Author Contribution Statement**

**Tholkhatul Khoir**: Conceptualization; Data Curation; Formal Analysis; Funding Acquisition; Investigation; Methodology; Project Administration; Resources; Validation; Visualization; Writing Original Draft; Writing, Review & Editing.

**Lathifah Munawaroh**: Validation; Visualization; Writing, Review & Editing; Translation.

**Zainudin bin Hassan**: Methodology; Validation; Writing, Review & Editing.

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