

The Application of Hudud in Indonesia

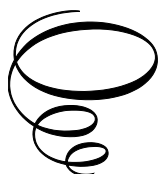
The Application of Hudud in Indonesia:

Managing Confluence

By

Manotar Tampubolon

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By Manotar Tampubolon

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CHAPTER ONE

DEVELOPMENT OF HUDUD AND ISLAMIC LAW

1.1 Historical Development of Hudud in Islamic Jurisprudence

The historical development of hudud in Islamic jurisprudence reflects a significant journey through the theological, historical, and legal foundations of Islamic law. Grounded in divine commandments, hudud refers to specific criminal offenses and their fixed punishments, as outlined in the Quran and Hadith. These offenses, which include theft, adultery, false accusations of adultery, alcohol consumption, robbery, and apostasy, signify violations of divine limits, underscoring the importance of moral and social order in Islamic society. The origins of hudud can be traced back to the early days of Islam, when these laws were established to uphold justice and deter wrongdoing in a burgeoning community. Over the centuries, interpretations of hudud have evolved significantly, shaped by scholarly debates, historical contexts, and legal traditions from various Islamic schools of thought.

The Quran and Hadith are the primary sources for hudud, but jurists have debated their application, the necessary standards of evidence, and the conditions for enforcement. This illustrates a complex interplay between adhering to the texts and adapting to various contexts. This chapter explores the origins and evolution of hudud laws, examines their theological foundations, and analyzes the punishments they entail, offering a deeper insight into how hudud has been interpreted and applied throughout Islamic history. In doing so, the chapter emphasizes the ongoing relevance and challenges of hudud in contemporary legal and moral discussions within the Muslim world.

1.1 The origins and evolution of *hudud* in Islamic law

Hudud refers to specific punishments that are clearly defined in Islamic law (Sharia) for certain offenses considered serious violations of God's

commandments¹. The term "hudud" (the plural of hadd) literally means "limits" or "boundaries" set by Allah to guide human behavior. Offenses that fall under hudud include theft (*sariqa*), adultery (*zina*), false accusations of adultery (*qazf*), consumption of alcohol (*shurb al-khamr*), apostasy (*ridda*), and highway robbery (*hirabah*)². Each of these offenses carries a specific punishment as outlined in foundational Islamic texts. The significance of hudud lies in its dual role of maintaining social order and ensuring justice within the framework of divine law.

Hudud punishments are fundamentally based on the teachings of the Quran and the Hadith. The Quran emphasizes that these boundaries have a divine origin, underscoring their importance in maintaining justice and morality. For instance, it prescribes amputation for theft, stating: "As to the thief, male or female, cut off their hands: a punishment by way of an example, from Allah, for their crime. And Allah is Exalted in Power³, Full of Wisdom⁴. Similarly, the punishment for adultery is outlined as: "The woman and the man guilty of adultery or fornication, flog each one of them with a hundred stripes"⁵. The Hadith provides further insights into the Quran, offering additional details and context for how these punishments should be applied⁶. For example, the statements and actions of Prophet Muhammad (PBUH) clarify procedural requirements, such as the necessity of having four witnesses in cases of adultery or the stipulation that theft must involve the unlawful taking of valuable property⁷.

Hudud punishments are essential in Islamic law, acting as deterrents aimed at preventing crime and fostering community harmony. Scholars argue that these punishments embody the ultimate authority of divine law, underscoring the belief that genuine justice is derived from Allah. By establishing fixed penalties for serious offenses, hudud seeks to create a just system where everyone is accountable to the law. Additionally,

¹ Okon, Effiong E. "Hudud Punishments in Islamic Criminal Law." *European Scientific Journal* 10, no. 14 (2014): 133–142

² Bennett, Clinton. "Crime and Punishment in Islamic Law: A Fresh Interpretation: by Mohammad Hashim Kamali." *Religion* 53, no. 1 (2022): 179–181.

³ *Qur'an* 5:38. Translated by Mustafa Khattab, *The Clear Quran*. 2025.

⁴ Mihálffy, András Róbert. *Contemporary Encyclopedia of Islam I: As Islam Can See the World and What I Can Comprehend from Islam*. Budapest, 2021.

⁵ *Qur'an* 24:2 (*An-Nur*). Quran.com. 2025

⁶ Muslim, Imam. *Kitab al-Hudud (The Book Pertaining to Punishments Prescribed by Islam)*. In *Translation of Sahih Muslim (Book 17)*.

⁷ Sudarman, R., and Z. Azwar. "The Law of Maninggian Janjang against Perpetrators of Adultery from Saddu al-Dzari'ah's Perspective." *Syarah: Jurnal Hukum Islam & Ekonomi* 13, no. 1 (2024): 49–62.

the procedural safeguards mandated by Sharia such as the high burden of proof and the encouragement of repentance highlight the importance of mercy and fairness. For example, Umar ibn al-Khattab, the second caliph, decided to suspend the punishment for theft during a famine, demonstrating how context is vital in ensuring that hudud functions as a tool for justice rather than oppression. This choice reflects the Islamic principle that societal challenges, like poverty or desperation, should be taken into account before imposing such severe penalties⁸.

The implementation of hudud has ignited significant debate among scholars, jurists, and policymakers. Critics argue that the harshness of these punishments conflicts with contemporary human rights standards. Others contend that the socio-economic conditions under which hudud punishments were originally established differ greatly from those in modern societies, suggesting a need to reevaluate their relevance. For example, in current Islamic nations like Pakistan and Nigeria, attempts to formalize hudud laws have sparked major controversies. Opponents highlight cases where socio-political factors or judicial mistakes have led to unjust outcomes, particularly affecting marginalized communities⁹. Conversely, proponents assert that hudud, when applied correctly and within a just societal framework, can serve as an effective deterrent to crime.

The range of interpretations among Islamic scholars has sparked deeper discussions about hudud. Traditionalists view hudud as unchanging divine commands, while reformist scholars advocate for a more contextual understanding. This approach involves reinterpreting texts with a focus on maqasid al-sharia (the objectives of Sharia), which prioritize justice, mercy, and public welfare. For instance, contemporary Islamic scholar, has proposed a moratorium on hudud punishments, emphasizing the importance of addressing social injustices and creating equitable judicial systems before enforcing such laws¹⁰. This perspective aligns with broader debates in Islamic jurisprudence regarding the need to balance strict interpretations of sacred texts with the evolving needs of society.

Hudud laws play a vital role in Islamic jurisprudence (Fiqh), representing a significant transition from the pre-Islamic tribal justice systems to a legal framework grounded in divine accountability to Allah.

⁸ Mawdudi, Abul A'la. "Human Rights in Islam." *Al-Tawhid Journal* 4, no. 3 (1987): Rajab–Ramadhan 1407.

⁹ Van de Donk, W. B. H. J., et al. *Dynamism in Islamic Activism: Reference Points for Democratization and Human Rights*. Amsterdam: Amsterdam University Press, 2006.

¹⁰ Amir, A. N., and Abdul Rahman, T. 2022. "Tariq Ramadan: Inclusive and Plural Value in Islamic Intellectual Tradition." *Al-Risalah* 13, no. 1.

These laws specify punishments for certain serious offenses and are deeply influenced by the socio-legal practices of pre-Islamic Arabian tribes, though they have undergone considerable reform and codification in line with Islamic principles. By examining the roots of hudud in tribal customs, the transformative influence of the early Islamic community in Medina, and the crucial role of Prophet Muhammad (PBUH) in enforcing these laws, one can better understand how hudud evolved from tribal justice to a divine legal system.

In pre-Islamic Arabia, the legal system was mainly grounded in tribal law, which depended on customary practices such as retaliation (qisas) and blood-money (diyya) to resolve disputes and maintain social order¹¹. Justice was a collective responsibility rather than a centralized one, with tribes collaborating to enforce their laws. This system placed significant importance on honor, kinship, and the safeguarding of tribal integrity. For example, theft could result in public humiliation or a requirement to pay compensation, while adultery was addressed through community-imposed penalties that varied from one tribe to another. Although this method was effective in preserving order, tribal justice often lacked consistency and was prone to bias, usually favoring stronger tribes over weaker ones. This disparity led to a situation where fairness and equity were often overshadowed by tribal loyalty. Eventually, Hudud laws were introduced to address these concerns by establishing divine commandments that took precedence over tribal customs, with the goal of creating a more universal sense of justice.

Islam, as conveyed through the Quran and Sunnah, took various elements of tribal justice and reformed them into structured laws with a divine emphasis. The Quran specifies hudud punishments for certain crimes, including theft, adultery, and false accusations, drawing from but refining earlier tribal customs. For instance, while theft was condemned in tribal law, the punishment under hudud was set as amputation of the hand, provided that strict conditions were met¹². The shift from tribal to divine justice is underscored by an emphasis on moral responsibility and social welfare. Hudud laws were crafted not only to punish but also to deter crime, aiming to discourage wrongdoing while upholding societal values. As Al-

¹¹ Pascoe, Daniel. "Is Diya a Form of Clemency?" *Boston University International Law Journal* 34, no. 1 (2016): 149.

¹² Astutik, Zulaikha Ayu, Mochammad Rifqi Wibowo, Ahmad Fauzi Izzuddin Mulloh, and Ayu Putri Diva. "Theft under Islamic and Indonesian Criminal Law." *ICLR (Indonesian Comparative Law Review)* 5, no. 1 (2022).

Dawoody notes¹³, “hudud laws reflect a shift from tribal justice to a divine legal framework, emphasizing accountability to Allah.” Unlike tribal practices, where enforcement could be inconsistent, Islamic law established clear standards of evidence, such as requiring four witnesses for adultery, to ensure fairness and prevent abuse.

The early Islamic community in Medina created a social and political environment that was crucial for the establishment of hudud laws. The diverse population of Medina, which included Muslims, Jews, and pagans, needed a cohesive legal system to overcome tribal divisions. The Constitution of Medina, formulated by Prophet Muhammad (PBUH), provided this structure by uniting the community under Islamic principles while respecting certain tribal traditions¹⁴. Hudud laws were integral to this legal framework, ensuring that justice was based on divine guidance rather than tribal affiliations. The community's acceptance of these laws reflected their acknowledgment of Islam's moral and legal authority. Furthermore, the idea of collective responsibility found in tribal customs was retained in Islam, but it was redirected to foster a just and harmonious society under Allah's guidance. Prophet Muhammad (PBUH) was instrumental in the application and interpretation of hudud laws. As both a religious and political leader, he made sure these laws were implemented with fairness and compassion. His perspective on hudud emphasized the significance of repentance and reform, illustrating that the primary goal of punishment was to encourage moral rehabilitation rather than merely to seek vengeance¹⁵.

A notable example is the case of Ma'iz ibn Malik, who confessed to adultery and sought the prescribed punishment¹⁶. The Prophet initially attempted to dissuade him from admitting his guilt, highlighting the importance of privacy and the possibility of repentance. However, when Ma'iz remained resolute, the punishment was carried out in accordance with Islamic law. This incident underscores the Prophet's emphasis on evidentiary standards and the broader aim of societal reform.

¹³ Al-Dawoody, A. 2011. "Islamic International Humanitarian Law." In *The Islamic Law of War*, Palgrave Series in Islamic Theology, Law. New York: Palgrave Macmillan.

¹⁴ Arjomand, Said Amir. "The Constitution of Medina: A Sociolegal Interpretation of Muhammad's Acts of Foundation of the Umma." *International Journal of Middle Eastern Studies* 41, no. 4 (2009): 555–575.

¹⁵ Laabdi, M. "The Shari'a and Islamic Criminal Justice in Time of War and Peace: By M. Cherif Bassiouni." *American Journal of Islam and Society* 32, no. 2 (2015): 107–110.

¹⁶ International Islamic University Malaysia. *Kitab al-Hudud: Pertaining to Punishments Prescribed by Islam (Book 17, Number 4191)*.

Moreover, Prophet Muhammad's (PBUH) application of hudud laws showcased his commitment to justice and fairness. He famously remarked, "If my daughter Fatimah were to steal, I would cut off her hand," which reinforced that hudud laws were applicable to all individuals, irrespective of their status or lineage¹⁷. This dedication to equality marked a significant departure from tribal customs, where powerful individuals often escaped punishment. While Islam did reform certain tribal practices, it did not entirely eradicate them. Elements of tribal justice, such as qisas and diyya, were integrated into Islamic law, ensuring continuity and familiarity for the early Muslim community. This pragmatic approach facilitated the community's acceptance of hudud laws, as they resonated with their existing legal traditions¹⁸.

The divine guidance that shapes Islamic law has been essential in refining practices to address their inequities. For instance, the Quran emphasizes justice and mercy, which has led to a more compassionate approach to tribal penalties, aligning them with Islamic ethical principles. Hudud laws represent a combination of tribal customs and divine directives, demonstrating the adaptability and universality of Islamic jurisprudence. The shift of hudud laws from pre-Islamic tribal traditions to a structured divine framework underscores Islam's profound impact on Arabian society. By reforming and enhancing tribal practices, Islam established a legal system rooted in fairness, accountability, and moral integrity. The early Islamic community in Medina, along with the exemplary leadership of Prophet Muhammad (PBUH), was instrumental in this transformation, ensuring that hudud laws served not only as deterrents but also as a means to foster societal harmony. Scholarly works on Islamic jurisprudence and early Islamic history, such as those referenced by Mojtabedi & van Wijk¹⁹, highlight the significance of this transition, illustrating the enduring relevance of hudud laws in contemporary discussions about justice and morality. As a testament to Islam's ability to merge tradition with divine guidance, hudud laws continue to inspire both academic inquiry and practical application in today's society.

¹⁷ Elias, Abu Amina. "Hadith on Justice: Legal Punishments Apply Equally in Society." *Daily Hadith Online*, September 19, 2012.

¹⁸ Nur, M. Taufiq. "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in the Law of Qiṣās." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 2 (2021): 335–365.

¹⁹ Mojtabedi, Mohammad H., and Joris van Wijk. "Islamic Law and the Balancing of Justice and Peace in Iraq's Post-IS Landscape." *International Journal of Transitional Justice* 15, no. 2 (2021): 407–427.

Hudud punishments are fixed penalties established for specific offenses in Islamic law, derived from the Quran and Sunnah²⁰. These penalties are applicable to crimes such as theft, adultery, false accusation (qazf), drinking alcohol, and apostasy. The Prophet Muhammad (PBUH) implemented hudud based on divine revelation and practical considerations, emphasizing justice and mercy. The Hadith and Sunnah, particularly from collections like Sahih Bukhari and Sahih Muslim as noted in Ramle & Huda²¹, offer detailed contexts for these punishments, underscoring their strict evidentiary requirements and the specific circumstances under which they should be applied. Scholars have long debated the nuanced interpretations of hudud, especially regarding their practical application to avoid unjust punishment. As Abu Huraira stated in Elias²², the Messenger of Allah advised, "Avoid applying legal punishments as long as you find an excuse to avoid them," highlighting the significance of caution and fairness.

The Prophet Muhammad (PBUH) implemented hudud punishments in a manner that harmonized divine laws with the complexities of human circumstances. A significant example is the case of Maiz ibn Malik, who confessed to adultery multiple times before facing punishment. This narrative, found in Sahih Muslim, highlights the Prophet's reluctance to hastily enforce hudud penalties. Even after Maiz's admission, the Prophet sought to confirm the details, probing whether there could have been any misunderstanding or coercion. Similarly, when a woman from the Makhzum tribe was apprehended for theft, the Prophet emphasized that all individuals are equal under Islamic law. He famously stated, "If Fatimah, the daughter of Muhammad, were to steal, I would cut off her hand."²³ These instances illustrate the Prophet's commitment to justice while ensuring that due process and fairness were maintained.

The standards for evidence needed to enforce hudud punishments are exceptionally high, emphasizing the importance of protecting the accused from wrongful convictions. For example, in cases of adultery (zina), both the Quran and Sunnah stipulate that four witnesses must have directly observed the act, a requirement that is nearly impossible to meet

²⁰ Okon, Effiong E. "Hudud Punishments in Islamic Criminal Law." *European Scientific Journal* 10, no. 14 (2014): 133–142.

²¹ Ramle, M. R., and M. Huda. "Between Text and Context: Understanding Ḥadīth through Asbab al Wurud." *Religions* 13, no. 2 (2022): 92.

²² Elias, Abu Amina. "Hadith on Hudud: Drop Legal Punishments If You Have an Excuse." *Daily Hadith Online: The Teachings of Prophet Muhammad*, December 16, 2015.

²³ Wahab, M. A. "Hajj, Emancipatory Education, and De-Feudalization." *Universitas Islam Negeri Syarif Hidayatullah Jakarta*, June 23, 2024.

without irrefutable evidence. This principle, based on Surah An-Nur (24:4) as referenced in Islamicstudies.info, aims to uphold societal morals while discouraging false accusations in the absence of four witnesses.²⁴ Additionally, in Sahih Bukhari, the Prophet demonstrated leniency in situations of uncertainty, opting for lighter penalties instead of the irreversible consequences of hudud punishments.

The context of the crime, including socioeconomic factors, was considered. The Prophet forgave a man who stole food during a famine, illustrating how situational elements influenced his decisions. These examples underscore the adaptability of hudud punishments based on circumstances and the primary aim of achieving justice²⁵. A fundamental aspect of the Prophet's approach to hudud was his dedication to preventing unjust punishment, even if it meant refraining from applying the hudud itself. In Sunan Abu Dawood, the Prophet's directive to "avoid implementing hudud punishments as long as there is doubt" highlights the significance of mercy over retribution²⁶. Islamic jurisprudence greatly depends on this principle, establishing the doctrine of *shubha* (doubt) as a barrier to enforcing hudud. For instance, if there is any uncertainty in witness testimonies or the specifics of the crime, lesser penalties or alternative forms of justice are recommended. Scholars like Imam Nawawi and Ibn Taymiyyah in Maevskaya & Aga have explored this doctrine, concluding that the Prophet's approach balances legal strictness with moral compassion²⁷. This method ensures that the potential for human error does not result in irreversible consequences, aligning the application of hudud with the broader Islamic goal of safeguarding human dignity and justice.

Scholars have closely studied the practices and sayings of the Prophet Muhammad regarding hudud, emphasizing their moral and social significance. Contemporary Islamic scholars argue that the Prophet's use of hudud served as a deterrent while also promoting a culture of repentance and forgiveness. For example, Yusuf al-Qaradawi, as referenced by Alwi et

²⁴ Islamicstudies.info. *Towards Understanding the Quran: Introduction to Tafheem*. Accessed January 12, 2025

²⁵ Nur, M. Taufiq. "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in the Law of Qisās." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 2 (2021): 335–365.

²⁶ Elias, Abu Amina. "Hadith on Hudud: Drop Legal Punishments If You Have an Excuse." *Daily Hadith Online: The Teachings of Prophet Muhammad*, December 16, 2015.

²⁷ Maevskaya, L., and K. Aga. "Concepts of What Is Permitted and Forbidden in Islam through the Analysis of Ibn Taymiyyah's Fatwa." *Trans/Form/Action* 47, no. 2 (2023)

al., notes in his examination of Sahih Muslim and Sahih Bukhari that hudud were rarely enforced during the Prophet's time, mainly due to the stringent evidentiary standards and his focus on repentance.²⁸ The Prophet's commitment to mercy is further demonstrated by his interactions with those who sincerely sought forgiveness, such as the Ghamidi woman who confessed to adultery and later repented. This legacy highlights the importance of viewing hudud not merely as punitive measures but as instruments for nurturing social harmony, accountability, and moral integrity.

Hudud punishments, as described in the Hadith and Sunnah, reflect a nuanced interplay between divine command, rigorous standards of evidence, and ethical considerations. The manner in which the Prophet Muhammad implemented these punishments demonstrates his commitment to justice, prioritizing mercy and repentance over simple retribution. By establishing stringent criteria for evidence and emphasizing the need to prevent wrongful punishment, he ensured that the application of hudud was grounded in fairness and compassion. Scholarly interpretations reinforce the notion that hudud, as contextualized by the Prophet, were not solely focused on deterrence but also on upholding moral integrity, highlighting their enduring relevance in discussions about Islamic law and ethics.

Hudud refers to the fixed punishments specified in Islamic law for certain offenses such as theft, adultery, and apostasy. These punishments have been interpreted differently across the four main Sunni Islamic schools of thought: Hanafi, Maliki, Shafi'i, and Hanbali. Each school, with its own unique approach to jurisprudence, showcases the diversity within Islamic legal traditions and their capacity to adapt to various sociopolitical contexts. While hudud punishments are considered divinely mandated, their actual enforcement has been shaped by differing standards of evidence, procedural norms, and judicial discretion within each school. These differences underscore the evolving nature of Islamic jurisprudence as it seeks to balance divine commands with the complexities of human society.

The Hanafi school is well-regarded for its adaptable and logical approach, particularly when it comes to applying hudud laws. For example, in theft cases, Hanafi jurists, including the notable Abu Hanifa, insisted on having solid evidence, like the testimony of trustworthy witnesses or a

²⁸ Alwi, Zainal, Rahman, Rahim, Darussamin, Zaid, Darusman, Deni, and Akbar, Arief. 2023. "Yusuf Al-Qardhawi's Methodological Reformulation of Hadith Thought and Its Influence on the Development of Hadith Science: An Analysis in the Book of *Kaifa Nata'amal ma'a al-Sunnah al-Nabawiyah*." *International Journal of Islamic Thought and Humanities* 2, no. 1: 88–106.

confession from the accused²⁹. This rigorous standard often resulted in the use of ta'zir, or discretionary punishments, instead of hudud when the evidence fell short. Classical jurists such as Al-Mawardi acknowledged this principle, emphasizing that upholding justice sometimes required refraining from enforcing hudud to avoid wrongful punishment³⁰. Today, modern scholars suggest that the Hanafi perspective showcases an early recognition of the difficulties in applying fixed penalties within complex social contexts³¹.

The Maliki school places a strong emphasis on local customs ('urf) and societal norms in its interpretation and application of hudud. Originating in Medina, where the community significantly influenced jurisprudential practices, Maliki jurists such as Malik ibn Anas focused on contextual factors. For instance, in cases of adultery, the Maliki school required clear evidence, like the testimony of four male witnesses, while also considering the broader moral implications of the offense. Additionally, the Maliki school often prioritized communal harmony, suggesting alternative penalties when hudud could result in social discord³². This viewpoint aligns with modern interpretations, where scholars like Hendrickson see the Maliki tradition as a model for balancing adherence to texts with the welfare of society³³.

The Shafi'i school, established by Imam al-Shafi'i, is recognized for its strong commitment to textual sources, the Quran and Sunnah as the primary basis for interpreting hudud. Shafi'i jurists maintained strict procedural standards, ensuring that hudud were enforced only under conditions of absolute certainty. For example, in theft cases, the Shafi'i

²⁹ Zakariyah, Luqman. "4 Legal Maxim Regarding Certainty and Doubt: 'Certainty Cannot Be Overruled by Doubt' (al-Yaqīn lā Yazūl bi-sh-Shakk)." In *Legal Maxims in Islamic Criminal Law: Theory and Applications*, 113–137. Leiden: Brill Nijhoff, 2015.

³⁰ Rabb, Intisar A. "The Jurisprudence of Doubt, Second/Eighth–Tenth/Sixteenth Centuries." In *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law*, 133–226. Cambridge: Cambridge University Press, 2014.

³¹ Ergene, Boğaç A. "Islamic Law in Action: A Historical Discussion." Review of *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*, by Kristen Stilt. *Law & Social Inquiry* 38, no. 4 (2013): 1041–1057.

³² Kamaruzaman, N. A. B. *Reconstructing the Theory of Hudūd and Its Application Within the Malaysian Legal Framework: A Case Study of the Syariah Criminal Code (II) 1993, State of Kelantan*. Doctoral dissertation, University of Leeds, 2020.

³³ Hendrickson, J. "Prohibiting the Pilgrimage: Politics and Fiction in Mālīkī Fatwās." *Islamic Law and Society* 23, no. 3 (2016): 161–238. <https://doi.org/10.1163/15685195-00233p01>.

school required clear evidence of both intent and the act of theft itself, demonstrating a dedication to safeguarding the rights of the accused. Al-Mawardi, a prominent Shafi'i jurist, highlighted that this level of precision was crucial for upholding the sanctity of hudud as divine laws³⁴. Contemporary scholars view the Shafi'i tradition as a standard for legal precision, ensuring that the implementation of hudud is in line with the ethical principles of fairness and justice³⁵.

The Hanbali school, founded by Ahmad ibn Hanbal, adopts a conservative view on hudud, emphasizing the role of judicial authority in enforcing Islamic law. Hanbali jurists often favored a literal interpretation of divine commands rather than considering the context. However, they also recognized the importance of evidentiary standards. For example, in cases of zina (adultery), the Hanbali school required corroborative evidence, such as the testimony of four witnesses, to impose the hudud penalty. Al-Mawardi's writings indicate that Hanbali scholars advocated for caution in applying hudud to prevent miscarriages of justice³⁶. Contemporary interpretations, such as those by Jackson, suggest that the Hanbali emphasis on judicial authority reflects a broader concern for maintaining the moral integrity of society while minimizing the potential for legal abuses³⁷.

The application of hudud differs significantly across various regions, influenced by the dominant schools of thought and the integration of local legal traditions. In South Asia, where the Hanafi school holds sway, stringent evidentiary requirements often result in the use of alternative penalties, reflecting a pragmatic approach to justice. Conversely, in North and West Africa, where Maliki interpretations emphasize community standards, there has been a more adaptable implementation of hudud, permitting contextual modifications. These regional differences highlight

³⁴ Ghannouchi, R., and Johnston, D. L. "The Basic Principles of Islamic Governance." In *Public Freedoms in the Islamic State*, edited by D. L. Johnston. Online ed. Yale Scholarship Online, 2020.

<https://doi.org/10.12987/yale/9780300211528.003.0005>.

³⁵ Syafi'i, I., and S. Subairi. "Epistemology of Hadith in Syafi'iyyah and Its Effect in Istinbāt al-Ahkām." *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 9, no. 1 (2024): 119–129. <http://dx.doi.org/10.29300/mzn.v9i1.2889>

³⁶ Gumilang, T. R., and Lamada, V. T. M. "Prevention of Miscarriage of Justice in the Implementation of Judges' Tasks." *Jurnal Hukum Prasada* 7, no. 2 (2020): 91–95. <https://doi.org/10.22225/jhp.7.2.2020.91-95>.

³⁷ Jackson, Sherman A. Review of *Shari'a: Theory, Practice, Transformations*, by Wael B. Hallaq. *Journal of the American Academy of Religion* 82, no. 1 (2014): 259–264. <http://www.jstor.org/stable/24488034>.

the flexibility of Islamic jurisprudence in addressing diverse social and cultural environments.

Al-Rashidi argues that the evolution of hudud in Islamic legal traditions offers valuable perspectives on contemporary issues related to criminal justice and human rights³⁸. The emphasis on rigorous evidentiary standards, judicial discretion, and the ability to adapt to different contexts, as noted by classical jurists like Al-Mawardi and modern scholars, provides a basis for rethinking how hudud can be applied today³⁹. This reassessment is particularly relevant when considering how hudud aligns with international human rights standards and the challenges of implementing divine law in varied societal contexts.

The contributions of the Hanafi, Maliki, Shafi'i, and Hanbali schools in interpreting and developing hudud illustrate the richness and diversity of Islamic jurisprudence. Each school offers unique perspectives on evidentiary standards, procedural requirements, and judicial discretion, which have shaped the understanding and application of hudud across different regions and historical periods. The writings of classical jurists like Al-Mawardi, along with those of modern scholars, emphasize the importance of balancing the divine nature of hudud with considerations of ethical and practical justice⁴⁰. In the contemporary world, this legacy offers valuable insights for integrating Islamic legal principles with current societal needs.

Hudud laws, which are the set punishments defined in Islamic law for certain offenses, have generated significant debate in contemporary Muslim-majority countries. These discussions address critical issues like human rights, state sovereignty, and cultural diversity. While some nations integrate hudud into their legal systems, others opt for a more flexible interpretation of these laws to better align with modern values and

³⁸ Al-Rashidi, Khalid S. 2023. "Criminology and Crime Science in the Arab World." *Asian Journal of Criminology* 18, no. 3: 327–348. <https://doi.org/10.1007/s11417-023-09407-9>.

³⁹ Kamaruzaman, N. A. B. *Reconstructing the Theory of Hudūd and Its Application Within the Malaysian Legal Framework: A Case Study of the Syariah Criminal Code (II) 1993, State of Kelantan*. Doctoral dissertation, University of Leeds, 2020.

⁴⁰ Jalili, I. "Imam Al-Mawardi on Leadership: Insights for Modern Islamic Governance through Fiqh Siyasaḥ." *El-Afkar: Jurnal Pemikiran Keislaman dan Tafsir Hadis* 13, no. 2 (2024). <https://doi.org/10.29300/jpkth.v13i2.4997>.

international standards. Saudi Arabia, Pakistan, and Nigeria exemplify the complexities surrounding the application of hudud⁴¹.

In Saudi Arabia, the legal system is firmly rooted in a strict interpretation of Sharia, with hudud laws playing a vital role in governance. Offenses such as theft, adultery, and apostasy are met with severe penalties, including amputations, flogging, and even execution. This stringent interpretation aligns with the Kingdom's adherence to Wahhabi Islam, which advocates for a rigorous application of Islamic law⁴². Critics argue that this approach often clashes with international human rights standards, particularly regarding women's rights and freedom of expression. For example, practices like public beheadings and stonings have drawn criticism from organizations such as Amnesty International, which highlight the lack of due process and the disproportionate nature of these punishments⁴³. Nonetheless, Saudi officials assert that the implementation of hudud laws reflects the Kingdom's cultural and religious identity, emphasizing their sovereignty in the face of external criticism.

Pakistan's experience with hudud laws illustrates the tension between traditional Islamic jurisprudence and modern human rights standards. The Hudood Ordinances, introduced in 1979 during General Zia-ul-Haq's Islamization campaign, made acts like theft, adultery, and false accusations criminal offenses. The evidentiary standards, particularly in zina (adultery) cases, have drawn considerable criticism for their disproportionate impact on women. As noted by Al Hakam⁴⁴, the requirement for four male witnesses to support a rape allegation often led to the prosecution of rape victims for adultery when they were unable to meet this proof standard. This situation sparked widespread protests from women's rights groups and prompted legal reforms, such as the Protection of Women Act in 2006, which sought to transfer certain hudud cases to the secular judiciary⁴⁵. Nevertheless, debates continue, reflecting broader societal

⁴¹ Kamaruzaman, N. A. B. *Reconstructing the Theory of Hudud and Its Application Within the Malaysian Legal Framework: A Case Study of the Syariah Criminal Code (II) 1993, State of Kelantan*. Doctoral dissertation, University of Leeds, 2020.

⁴² Alhussein, E. 2019. *Saudi First: How Hyper-Nationalism is Transforming Saudi Arabia*. Research Report. <https://www.jstor.org/stable/resrep21640>.

⁴³ Amnesty International. *Iran: End Executions by Stoning*. January 2008. <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde130012008en.pdf>.

⁴⁴ Al Hakam. 2022. "Islam Today: Does a Victim of Rape Need to Provide Four Witnesses?" *Al Hakam*, February 4. <https://www.alhakam.org/islam-today-does-a-victim-of-rape-need-to-provide-four-witnesses/>.

⁴⁵ Lau, Martin. "Twenty-Five Years of Hudood Ordinances: A Review." *Washington and Lee Law Review* 64, no. 4 (2007): 1291.

tensions regarding the role of religion in governance and the challenges of achieving gender equality.

In Nigeria, certain northern states enforce hudud laws under Sharia, creating a unique situation where Islamic principles coexist with a secular federal constitution. The introduction of Sharia criminal codes in states like Zamfara in the early 2000s was seen as a response to local demands for moral governance and cultural identity⁴⁶. However, this implementation has sparked controversies, especially regarding the rights of non-Muslims and issues of gender discrimination. A notable example is the case of Amina Lawal, who was sentenced to death by stoning for adultery in 2002, which attracted international attention and underscored the challenges of reconciling hudud with global human rights standards⁴⁷. Although such sentences are often overturned on appeal, the inconsistent enforcement of hudud laws raises concerns about legal pluralism and the potential erosion of judicial fairness.

The interpretation and application of hudud laws in modern Muslim-majority countries reveal a complex interplay between religious tradition, state authority, and the push for human rights. Legal experts emphasize the diversity of opinions within Islamic law, arguing that hudud should be understood in context rather than applied rigidly⁴⁸. This perspective challenges the strict interpretations seen in countries like Saudi Arabia and Nigeria, advocating for reforms that align Islamic values with contemporary ethical standards. However, these efforts often encounter resistance from conservative factions who view hudud as an immutable aspect of divine law. The broader conversation underscores the need for dialogue among human rights advocates, religious scholars, and policymakers to develop frameworks that respect cultural diversity while promoting justice and equity.

Historically, hudud laws are viewed as immutable due to their divine origins, with traditionalists emphasizing their enforcement as a

<https://scholarlycommons.law.wlu.edu/wluhr/vol64/iss4/2>.

⁴⁶ Idrissa, Abdourahmane. "Islamic Legal Radicalism: The Cases of Katsina and Maradi." In *Transnational Islam*, edited by Éloi Ficquet Apard, 14. IFRA-Nigeria, 2020. <https://doi.org/10.4000/books.ifra.2023>.

⁴⁷ Ibrahim, Hadiza. "Rule of Law Prevails in the Case of Amina Lawal." *Human Rights Brief* 11, no. 3 (2004): 39–41. <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1376&context=hrbrief>.

⁴⁸ Brown, Jonathan A. C. *Stoning and Hand Cutting: Understanding the Hudud and the Shariah in Islam*. Dallas: Yaqeen Institute for Islamic Research, 2017.

demonstration of fidelity to divine commands⁴⁹. However, the challenges of applying these laws in diverse sociopolitical contexts have led reformist scholars to advocate for a reevaluation of their implementation in light of modern realities. This perspective is grounded in the principle of maqasid al-shariah (the objectives of Sharia), which prioritizes justice, compassion, and public welfare over rigid textual interpretations. For example, Jamaludin, Buang & Purkon argue that ijtihad independent reasoning provides pathways to reinterpret hudud in ways that align with contemporary standards of justice, thus ensuring their relevance while minimizing the potential for misuse⁵⁰. These perspectives underscore an ongoing tension between upholding tradition and responding to the evolving needs of a globalized, multicultural society.

One of the main discussions about hudud revolves around their apparent clash with universal human rights. Critics often highlight the severity of these punishments, such as amputation or stoning, as conflicting with contemporary notions of human dignity and proportional justice. However, reformist scholars contend that a more nuanced understanding of the implementation of hudud reveals its ethical foundations. Historical records indicate that hudud were rarely enforced in early Islamic societies due to stringent evidentiary standards, showcasing an inherent caution designed to prevent injustice⁵¹. Furthermore, modern interpretations propose that the primary aim of hudud is deterrence rather than punishment, which paves the way for alternative methods like restorative justice. These approaches seek to harmonize Islamic ethical values with universal human rights principles, challenging the oversimplified perspective that hudud and global standards are inherently at odds⁵².

Ijtihad is essential for reconciling hudud with the complexities of modern societies. Traditional scholars emphasize the significance of revealed texts and caution against overly liberal interpretations, as they fear

⁴⁹ Okon, Effiong E. "Hudud Punishments in Islamic Criminal Law." *European Scientific Journal* 10, no. 14 (2014): 133–142. <http://ejournal.org/index.php/esj/article/viewFile/3405/3169>.

⁵⁰ Jamaludin, M. H., A. H. Buang, and A. Purkon. "Talfiq as a Method for Legal Solutions in Contemporary Islamic Law." *Al-Jāmi'ah: Journal of Islamic Studies* 24, no. 1 (2024). <https://doi.org/10.15408/ajis.v24i1.33608>.

⁵¹ Nur, M. Taufiq. "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in the Law of Qiṣās." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 2 (2021): 335–365. <https://doi.org/10.14421/ajish.v55i2.1011>.

⁵² Abou El Fadl, Khaled. 2017. "Qur'anic Ethics and Islamic Law." *Journal of Islamic Ethics* 1, no. 1–2: 7–28. <https://doi.org/10.1163/24685542-12340002>.

this could weaken Islamic identity⁵³. On the other hand, reformists see *ijtihad* as a means to uphold the fundamental principles of Sharia while addressing contemporary issues. For instance, scholars like Alfitri argues that the context-specific nature of hudud permits their reinterpretation in response to evolving social, economic, and political conditions⁵⁴. This perspective has gained traction in countries such as Malaysia and Tunisia, where legal systems incorporate elements of Islamic law alongside secular frameworks, demonstrating the potential for a dynamic interplay between tradition and modernity. Ultimately, *ijtihad* serves as a bridge, enabling Islamic law to retain its spiritual and moral essence while positively engaging with a globalized world.

The discussion about hudud highlights the broader tensions between reformist and traditionalist perspectives in Islamic law. Traditionalists view hudud as immutable divine commands, while reformists emphasize their historical context and the potential for reinterpretation. Bhojani, de Rooij, and Bohlander advocate for a balanced approach, suggesting that reform does not necessarily entail complete rejection; rather, it can mean adapting Islamic principles to align with contemporary realities⁵⁵. This search for common ground is evident in ongoing efforts to reconcile hudud with constitutional and international human rights standards in various Muslim-majority countries. For example, the concept of *maslahah* (public interest) has been employed to prioritize social harmony and justice over rigid adherence to penal codes⁵⁶. These integrative strategies underscore the enduring relevance of hudud, not as static rules but as adaptable expressions of Islamic ethics that can address the needs of modern society.

⁵³ Abderrazzaq, M. A. 2017. "The Revival and Evolution of Maqāṣid Thought: From al-Shāṭibī to Ibn ʿĀshūr and the Contemporary Maqāṣid Movement." PhD diss., University of Michigan. ProQuest Dissertations Publishing.

⁵⁴ Alfitri, A. 2021. "Can the Requirements of Shariah Law Regarding Criminal Punishments Be Interpreted in a Way That Is Compatible with the ICCPR and CAT?" *Indonesian Journal of International Law* 7, no. 1: Article 6. <https://doi.org/10.17304/ijil.vol7.1.230>.

⁵⁵ Bhojani, Ali, Laurens de Rooij, and Michael Bohlander, eds. *Visions of Shariʿa*. Leiden: Brill, 2019. <https://doi.org/10.1163/9789004413948>.

⁵⁶ Ariyanti, Vika, and Supani. "Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective." *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 37–58. <https://doi.org/10.24090/mnh.v18i1.8280>.

1.2 Theological, historical, and jurisprudential foundations of Hudud

From a theological perspective, Hudud laws derive their authority from divine revelation, underscoring their significance in Islamic law. The Quran, as referenced by Okon⁵⁷, outlines specific penalties, such as the amputation of a thief's hand (Quran 5:38) and flogging for adultery (Quran 24:2), which are designed to maintain moral and social order. The essence of Hudud is rooted in the belief that these punishments are divinely mandated, serving not only as retribution but also as a deterrent to crime and a means of promoting justice. The Hadith further elucidates these laws, with Prophet Muhammad providing details on procedural aspects and emphasizing the necessity of mercy in conjunction with justice. However, scholars note that the Quran frequently highlights the themes of repentance and forgiveness, indicating that Hudud punishments should be administered with caution and only after a thorough assessment of evidence. This dual emphasis on justice and mercy illustrates the inherent balance within Islamic legal thought⁵⁸.

Historically, Hudud punishments were part of the legal and administrative framework in early Islamic communities, established during the time of the Prophet and the Rashidun Caliphate. Leaders in these early Islamic societies aimed to integrate Hudud laws into their judicial systems while considering the cultural and societal contexts of their era. For example, Caliph Umar is known for suspending the Hudud punishment for theft during a famine, highlighting the importance of contextual understanding in applying these laws. Such examples demonstrate that Hudud were not rigidly enforced but were shaped by principles of fairness and justice. Additionally, historical records suggest that Hudud punishments were rarely carried out, reflecting the strict evidentiary standards required for their implementation. This cautious approach is consistent with the Prophetic tradition that advises against enforcing Hudud punishments in cases of uncertainty, summarized in the principle "Avert Hudud punishments in cases of doubt"⁵⁹.

⁵⁷ Okon, Effiong E. "Hudud Punishments in Islamic Criminal Law." *European Scientific Journal* 10, no. 14 (2014): 133–142.
<http://ejournal.org/index.php/esj/article/viewFile/3405/3169>.

⁵⁸ Alfitri, A. 2021. "Can the Requirements of Shariah Law Regarding Criminal Punishments Be Interpreted in a Way That Is Compatible with the ICCPR and CAT?" *Indonesian Journal of International Law* 7, no. 1: Article 6.
<https://doi.org/10.17304/ijil.vol7.1.230>.

⁵⁹ Qureshi, A. "Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law." *Islam21C*, December 31, 2016.

The foundations of Hudud law are based on the Quran, Hadith, consensus (ijma), and analogical reasoning (qiyas). Islamic jurists have developed comprehensive legal doctrines that specify the conditions and procedures for enforcing Hudud. For instance, in cases of theft, it is not sufficient for property to simply be taken; certain criteria must also be satisfied, such as the property having a specific value, being securely stored, and being taken with intent. Similarly, to establish adultery, four witnesses of high moral character must testify to the act, a requirement that is nearly impossible to meet in practice. These strict evidentiary standards emphasize that Hudud punishments are intended for clear and indisputable cases. Additionally, the concept of repentance is vital, with many scholars arguing that genuine repentance can exempt an individual from Hudud punishment. This balance between rigorous evidentiary requirements and the potential for repentance reflects the primary goal of these laws: to encourage moral reform and social harmony.

The discussion about Hudud from theological, historical, and legal angles reveals the tensions between their divine origins and their practical applications in different societal contexts. In the contemporary world, the use of Hudud has ignited significant debate among Islamic scholars and policymakers. Some advocate for strict enforcement of these laws as a means of expressing Islamic identity and authenticity, while others support a more contextual and reformist approach. For instance, modernist scholars argue that the Hudud punishments were designed for the socio-economic conditions of seventh-century Arabia and should be reinterpreted in light of today's realities. This perspective is supported by historical instances, such as Umar's suspension of theft punishments, and theological arguments that emphasize *maqasid al-sharia* (objectives of Sharia), which prioritize justice, welfare, and public interest over literal interpretations⁶⁰.

Critics of Hudud often express concerns about human rights, especially in relation to modern concepts of justice and individual freedoms. For example, the traditional punishment for adultery may clash with international human rights standards that protect privacy and freedom of expression. On the other hand, supporters contend that when understood and implemented correctly, Hudud laws align with the principles of justice and

<https://www.islam21c.com/islamic-law/doubt-in-islamic-law-a-history-of-avoiding-punishment/>.

⁶⁰ Wan Muhammad, R., and K. Abdul Salam. "The Concept of Retributive and Restorative Justice in Islamic Criminal Law with Reference to the Malaysian Syariah Court." 1, no. 4 (2018): 8–16.
<http://dx.doi.org/10.22259/2637-5893.0104002>.

human dignity. They highlight that Hudud are part of a broader Islamic legal framework that includes discretionary punishments (ta'zir) and compensatory penalties (qisas), which provide room for flexibility and context-sensitive application. This comprehensive approach underscores that Hudud are not standalone punishments but are woven into a complete system designed to promote justice and social harmony⁶¹.

The current significance of Hudud depends on how Islamic societies navigate the tension between tradition and modernity. Some nations, like Saudi Arabia and Pakistan, have incorporated Hudud into their legal systems, while others, such as Turkey and Indonesia, have chosen secular legal frameworks that restrict Hudud to personal and moral guidance. This diversity highlights the broader challenges of implementing classical Islamic jurisprudence in a contemporary world characterized by pluralism, globalization, and evolving social norms. It also emphasizes the need for continuous *ijtihad* (independent reasoning) to reinterpret and adjust Islamic legal principles to fit present-day realities. As Islamic jurisprudence evolves, the theological, historical, and jurisprudential foundations of Hudud will continue to be central in discussions surrounding justice, morality, and the role of religion in public life⁶².

Hudud represent a complex and nuanced aspect of Islamic law, rooted in theological principles, shaped by historical practices, and articulated through various jurisprudential doctrines. Their significance goes beyond the punishments they entail; they also fulfill moral and social functions. While debates about their implementation continue, the enduring importance of Hudud lies in their ability to provoke thoughtful discussions on justice, accountability, and the connection between divine law and human action. As Islamic societies navigate the challenges of the modern world, the dialogue around Hudud offers important insights into the dynamic relationship between tradition and reform.

⁶¹ Lestari, Wulan. "Ta'zir Crimes in Islamic Criminal Law: Definition, Legal Basis, Types, and Punishments." *Al-Qanun: Journal of Islamic Law* 5, no. 1 (2024). <https://doi.org/10.58836/al-qanun.v5i1.21486>.

⁶² Mattar, Mohamed Y. "Human Rights in Islamic Law, Specifically the Guarantee of Procedural Justice." *European Journal of Law Reform* 16, no. 2 (2014): 274–302. <https://doi.org/10.5553/EJLR/138723702014016002005>.

1.3 *Hudud* crimes and their specific punishments in the Quran and Hadith

Hudud crimes, derived from the Arabic word "hudud," which means "boundaries" or "limits," are considered the most serious offenses in Islamic law due to their explicit mention in the Quran and Hadith, along with the punishments that accompany them. These offenses are viewed as violations of the rights of Allah (Haqq Allah) and come with fixed, divinely-ordained penalties. Hudud encompasses crimes such as theft (*sariqah*), adultery (*zina*), false accusations of adultery (*qazf*), the consumption of intoxicants (*shurb al-khamr*), highway robbery (*hirabah*), and apostasy (*riddah*), although there are varying opinions among scholars regarding the latter two⁶³. This discussion explores these crimes and their prescribed punishments as detailed in Islamic scriptures, emphasizing the directives found in the Quran and Hadith.

Theft (*sariqah*) is one of the most clearly defined Hudud crimes in the Quran, with its punishment specified as the amputation of the hand. Surah Al-Ma'idah (5:38) states: "As to the thief, male or female, cut off their hands: a punishment by way of an example, from Allah, for their crime."⁶⁴ This punishment serves as a deterrent and aims to protect the sanctity of private property. However, the Hadith provides additional context, outlining specific conditions under which this punishment may be enforced. The Prophet Muhammad (peace be upon him) stated: "The hand should not be cut off except for stealing something worth a quarter of a dinar or more"⁶⁵. This highlights that the application of Hudud punishments requires strict evidentiary standards and consideration of mitigating factors, such as necessity or coercion. For instance, theft committed during a famine or by someone in dire poverty may not warrant the prescribed penalty, illustrating the nuanced and compassionate approach of Islamic jurisprudence.

Adultery (*zina*) is considered a Hudud offense, which means it carries serious consequences because of its potential to harm societal morals and family integrity. The Quran specifies lashing as a punishment for unmarried individuals who engage in *zina*: "The woman and the man guilty

⁶³ Izaturahmi, F., W. Sugiarti, Wismanto, Shafiah, and M. Putri. "Konsep Hudud dalam Al-Quran." *Jurnal Budi Pekerti Agama Islam* 2, no. 1 (2024): 166–184. <https://doi.org/10.61132/jbpai.v2i1>.

⁶⁴ *Surah Al-Ma'idah* (ﻝﻝﻝﻝﻝﻝ) 5:24. Quran.com. 2025. <https://previous.quran.com/5:24?store=false&translations=206,84,19,85,203,167,95,131,207,22,17>.

⁶⁵ *Sahih al-Bukhari* 6922. Book 88, Hadith 5. Sunnah.com. Accessed January 13, 2025. <https://sunnah.com/bukhari:6922>.

of fornication flog each one of them with a hundred lashes"⁶⁶. For married individuals, the Hadith states that the punishment is stoning to death (rajm). One Hadith recounts the Prophet saying: "If a married man or woman commits zina, the punishment is stoning to death"⁶⁷. However, the standards for proving zina are very stringent, requiring either a voluntary confession or the testimony of four male witnesses to the act of penetration. These strict conditions make the enforcement of Hudud punishments for zina quite uncommon, underscoring the significance of evidence and justice in Islamic law.

The crime of falsely accusing someone of adultery (*qazf*) is addressed in the Quran as a serious offense that aims to protect individuals' honor and reputation. Surah An-Nur (24:4) states: "And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation) flog them with eighty stripes; and reject their evidence ever after."⁶⁸ This punishment serves as a deterrent against baseless accusations and highlights the importance Islam places on maintaining dignity and social harmony. In the Hadith, the Prophet further stressed the seriousness of *qazf*, warning against its misuse: "Avoid suspicion, for suspicion is the gravest lie"⁶⁹. The penalties for *qazf* reinforce the Quranic principle of presumption of innocence and the need to protect individuals from defamation.

The Quran clearly prohibits the consumption of intoxicants (*shurb al-khamr*) because of their detrimental effects on individuals and society as a whole. In Surah Al-Ma'idah (5:90), intoxicants are denounced and labeled as "abominations of Satan's handiwork."⁷⁰ While the Quran does not specify a punishment for drinking alcohol, Hadith literature suggests that lashing is the recommended penalty. Anas ibn Malik recounts that the Prophet Muhammad prescribed forty lashes for alcohol consumption, a practice that was followed by Abu Bakr, who enforced it, while Umar later raised the

⁶⁶ *The Danger of Zina: Understanding the Islamic Perspective on Unlawful Sex*. Islamic Helper. 2025.

<https://islamichelper.com/sin/islamic-perspective-on-zina-unlawful-sex/>.

⁶⁷ *Sahih Muslim*. "The Hadd Punishment for Zina (Fornication, Adultery)." In *The Book of Legal Punishments*, Hadith 1690a. Sunnah.com.

<https://sunnah.com/muslim:1690a>.

⁶⁸ *Qur'an 24:4 (An-Nur)*. Quran.com. 2025. <https://quran.com/an-nur/4-9>.

⁶⁹ *Sahih al-Bukhari 6064, Good Manners and Form (Al-Adab)*. Sunnah.com. Accessed January 13, 2025. <https://sunnah.com/bukhari:6064>.

⁷⁰ *Qur'an 5:90 (Al-Ma'idah)*. Quran.com. Accessed January 12, 2025. <https://quran.com/al-maidah/90>.

penalty to eighty lashes⁷¹. These variations in the number of lashes illustrate the importance of *ijtihad* (independent reasoning) in adapting Hudud punishments to fit different social and temporal circumstances, all while remaining true to Islamic principles.

Highway robbery (*hirabah*) is addressed in Surah Al-Ma'idah (5:33), which states: "The punishment for those who wage war against Allah and His Messenger and seek to spread corruption on earth is execution, crucifixion, amputation of hands and feet on opposite sides, or exile from the land."⁷² *Hirabah* encompasses actions such as armed robbery and terrorism, which pose a threat to societal peace and security. The variety of punishments illustrates the flexibility of Islamic law in responding to the seriousness of the crime and its consequences. For instance, execution may be appropriate in cases involving murder, while exile or imprisonment might be sufficient for lesser offenses. This emphasis on proportionality and discretion ensures that Hudud punishments align with the principles of justice and fairness.

The inclusion of apostasy (*riddah*) as a Hudud crime sparks considerable debate among Islamic scholars. Certain Hadith, such as "Whoever changed his Islamic religion, then kill him."⁷³, appear to endorse capital punishment for apostasy. However, others interpret this within the framework of treason or rebellion against the Islamic state. In contrast, the Quran underscores the importance of freedom of belief, stating: "There is no compulsion in religion"⁷⁴. This divergence in interpretation reveals the complexities of understanding Islamic texts and the application of Hudud laws in the modern world. Many contemporary scholars promote a more nuanced approach to apostasy, emphasizing dialogue and reform over punishment, which aligns with Islam's fundamental values of mercy and individual responsibility.

Hudud crimes and their specific punishments, as outlined in the Quran and Hadith, play a vital role in Islamic law, emphasizing the significance of divine limits and the protection of societal values. The rigorous evidentiary requirements and emphasis on proportionality reflect the core principles of justice and fairness inherent in Islamic jurisprudence.

⁷¹ *Sahih Muslim 1706a*. "The Book of Legal Punishments: Chapter: Hadd Punishment for Drinking Alcohol." Sunnah.com. Accessed January 13, 2025. <https://sunnah.com/muslim:1706a>.

⁷² *Qur'an 5:33 (Al-Ma'idah)*. Quran.com. Accessed January 12, 2025. <https://quran.com/al-maidah/33>.

⁷³ *Sahih al-Bukhari 6922*. Book 88, Hadith 5. Sunnah.com. Accessed January 13, 2025. <https://sunnah.com/bukhari:6922>.

⁷⁴ *Surah Al-Baqarah 2:256*. Quran.com. 2025. <https://quran.com/al-baqarah/256>.

Moreover, the inclusion of compassion and flexibility in the application of Hudud punishments demonstrates the holistic nature of Sharia, striking a balance between accountability and mercy. This careful consideration of Hudud crimes highlights Islam's commitment to upholding both divine tenets and the overarching objectives of justice and social harmony.

CHAPTER TWO

THEORETICAL FRAMEWORK FOR THE IMPLEMENTATION OF HUDUD

The theoretical framework for implementing Hudud explores its relevance and application in today's legal contexts, emphasizing how it integrates with contemporary legal systems, human rights frameworks, and pluralistic societies. Hudud, which refers to fixed punishments specified in Islamic law for certain offenses, faces various challenges in modern states, where legal systems are often shaped by secular principles and global norms. The chapter begins by examining how Hudud is applied in modern states, particularly how traditional Islamic legal principles adapt to nation-states with diverse legal frameworks. It then looks into the compatibility of Hudud with current legal systems and human rights principles, highlighting the tensions and opportunities for coexistence. Finally, the chapter addresses the implementation of Hudud in pluralistic societies like Indonesia, emphasizing the complexities of reconciling Islamic law with various cultural, religious, and legal traditions, while also acknowledging that Hudud can sometimes neglect human rights. By exploring these elements, the chapter aims to provide a comprehensive understanding of Hudud's theoretical application across different sociopolitical and legal landscapes.

2.1 *Hudud* in modern states

The application of Hudud in modern states is quite complex and varies across different Islamic societies. Some countries, like Saudi Arabia and Iran, still integrate Hudud punishments into their legal systems, while others have chosen a more secular path⁷⁵. There are considerable challenges in reconciling the traditional view of Hudud with contemporary values such as human rights, legal pluralism, and political sovereignty. The presence of

⁷⁵ Otto, Jan Michiel. *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy*. Leiden: Leiden University Press, 2008. <https://hdl.handle.net/1887/20694>.