

The Principle of *Al-Hudūd Tasqut bisy-Syubuhāt*: An Analysis of the Concept, Arguments, and Implications in Contemporary Islamic Criminal Law

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Abstract

The application of *hudud* in Islamic criminal law requires the highest level of legal certainty due to its direct relation to the protection of life, dignity, and individual freedom. The concept of *shubha* functions as a crucial safeguard to prevent judicial error in punishments that are fixed and irreversible. This study aims to analyze the concept, legal foundations, and contemporary implications of the maxim *al-hudud tasqut bi al-shubuhāt*. Using a qualitative descriptive literature study, the research reveals four key findings: *shubha* operates as a barrier to enforcing *hudud* when doubt exists in the act, intention, or evidence; classical and modern scholars consistently affirm that even minimal doubt nullifies *hudud* to preserve justice; the judicial practice of the Prophet's Companions demonstrates exceptional caution toward ambiguous cases; and the standard of proof for *hudud* must reach absolute certainty. The study concludes that *shubha* serves as a fundamental principle for ensuring substantive justice. Its main contribution lies in strengthening the relevance of this maxim within modern Islamic criminal law discourse.

Keywords: *Hudud*, *Shubha*, Islamic Criminal Law, Evidentiary Standards, Substantive Justice.

Abstrak

Penerapan *hudud* dalam hukum pidana Islam menuntut kepastian hukum yang sangat tinggi karena berkaitan langsung dengan perlindungan jiwa, kehormatan, dan kebebasan individu. Kehadiran konsep *syubhat* menjadi mekanisme penting untuk mencegah kesalahan dalam penjatuhan hukuman yang bersifat tetap dan tidak dapat dikurangi. Penelitian ini bertujuan menganalisis konsep, dasar hukum, serta implikasi kaidah *al-hudud tasqut bisy-syubuhāt* dalam kerangka hukum kontemporer. Metode yang digunakan adalah studi literatur dengan pendekatan deskriptif-kualitatif. Hasil penelitian menunjukkan bahwa *syubhat* berfungsi sebagai penghalang penerapan *hudud* ketika terdapat keraguan pada unsur perbuatan, niat, atau alat bukti. Kajian klasik dan kontemporer menegaskan bahwa keraguan sekecil apa pun menggugurkan *hudud* demi menjaga keadilan dan mencegah kekeliruan yudisial. Praktik sahabat Nabi juga memperlihatkan kehati-hatian tinggi dalam memutus perkara yang mengandung ambiguitas hukum. Temuan penelitian mengindikasikan bahwa standar pembuktian *hudud* harus mencapai tingkat keyakinan yang mutlak. Penelitian ini menyimpulkan bahwa konsep *syubhat* merupakan prinsip fundamental dalam menjaga keadilan substantif. Kontribusi penelitian terletak pada penguatan relevansi kaidah ini bagi pengembangan hukum pidana Islam modern.

Kata Kunci: Hudud, Shubha, Hukum Pidana Islam, Standar Pembuktian, Keadilan Materiil.

INTRODUCTION

Islamic criminal law possesses a highly unique system, which differs from the modern criminal law systems that have developed in various countries. One of its unique characteristics lies in the provisions for fixed punishments (hudud), which are stipulated in the Qur'an and the Sunnah of the Prophet Muhammad. Hudud punishments cover severe offenses such as *zina* (adultery/fornication), theft, *qadzaf* (false accusation of *zina*), drinking alcohol, apostasy (*murtad*), and *hirabah* (armed robbery). Since these punishments are *ta'abbudi* (unlimited/worship-oriented) and have been explicitly established by *nash* (textual evidence), their application requires extremely high standards of proof and extraordinary caution.

In the context of this caution, *fiqh* scholars formulated an important legal maxim in Islamic criminal law: "*Al-Hudūd Tasquṭ bisy-Syubuhāt*" which means "Hudud punishments are dropped due to doubt." This principle emerges as an embodiment of the principle of justice in Islamic law. Islamic law strictly regulates the principles of justice and caution (*ihtiyat*) in the execution of the law, particularly in major aspects concerning the most fundamental human rights, such as life, honor, and freedom.¹

This principle also demonstrates how Islamic law is not rigid and formalistic, but possesses a strong substantive and humanist side. Islam does not mandate the application of severe punishment unless the elements of the offense have been definitively proven without a reasonable doubt. Thus, if there is doubt, whether in the factual aspect (such as the unclarity of intent, ownership status, or consent) or the legal aspect (for example, differences in the interpretation of a text), the *hudud* punishment cannot be imposed. This principle is based on various narrations, both from the sayings of the Prophet Muhammad and the practice of the Prophet's companions, including Caliph Umar bin Khattab and Caliph Ali bin Abi Thalib, who consistently avoided the application of *hudud* punishment when there was doubt in the case being adjudicated.²

The application of this principle is highly relevant for addressing contemporary challenges in the Islamic criminal law system, especially concerning evidence, legal interpretation, and the protection of defendants' rights. The implementation of this principle is also a crucial solution to avoid fatal errors that could violate the principle of justice and humanity. In fact, this principle can be viewed as a tangible manifestation of "*dar'u al-mafāsid muqaddam 'alā jalb al-masālih*" (prioritizing the avoidance of harm over the achievement of benefits), because preventing a wrongful punishment is more

¹ Sibawaihi et al., "Hak Asasi Manusia Dalam Perspektif Al-Qur'an," *As-Salam: Journal Islamic Social Sciences and Humanities* 2, no. 3 (2024): 19–30.

² Lulu Nurul Ambiya et al., "Principles of Politics in Islam Based on the Qur'an and Their Application During the Caliphate Era: Prinsip-Prinsip Politik Dalam Islam Berdasarkan Al-Qur'an Dan Penerapan Pada Masa Kekhalifahan," *JSPH: Jurnal Sosial Politik Humaniora* 1, no. 1 (2024), <https://doi.org/10.59966/jspf.v1i1.1515>.

important than imposing a punishment merely to symbolically enforce the rule. Amidst the development of Islamic legal discourse and its application in national legal systems in various Muslim countries, this principle needs to be studied in depth.

Previous research has strengthened the understanding of the importance of the *syubhat* (doubt) principle in *hudud*. Research conducted by Ar-Razy et al. (2023) highlights how various forms of doubt become factors for nullifying the application of *hudud* and opening the door for *ta'zīr* sanctions as an alternative.³ The study by Aykul and Uddin (2023) also affirms that the element of doubt has been an integral part of the Islamic jurisprudence tradition since the *Tabi'in* period, especially in the thought of the jurists of Kufa.⁴ Gunawan et al. (2025), in their research on the offense of *qadzaf*, show how the ambiguity of meaning as a form of *syubhat* can nullify *hudud*.⁵ Meanwhile, Hikmah et al. (2025)'s research on Umar's *ijtihad* in adultery cases confirms that *hudud* should not be applied as long as there is an aspect of doubt, whether in the perpetrator's intent, knowledge, or circumstances of compulsion.⁶ Furthermore, the study by Saputra and Erlina (2023) underscores the value of *rahmah* (mercy) in the concept of *hudud*, including the caution manifested through the *syubhat* maxim,⁷ and the research by Fatah and Nisa (2023) also highlights the social dimension as an element of *syubhat* that can delay or nullify the application of fixed punishments.⁸ These various studies indicate a contemporary academic consensus that the maxim *al-hudūd tasqūt bi al-syubuhāt* is an integral principle in maintaining justice and humanity within the Islamic criminal law system.

Although these diverse studies have discussed the importance of doubt in the nullification of *hudud*, research that specifically examines the maxim *al-hudūd tasqūt bi al-syubuhāt* comprehensively from the conceptual aspect, textual evidence (*dalil nash*), the relevance of *maqāṣid al-syarī'ah*, and its implications in the contemporary legal context is still relatively limited. Most previous studies only highlighted one side—for instance, the causes of *syubhat*, the thought of a particular figure, the moral value of *hudud*, or the social context—without integrating all these elements into a coherent analysis capable of explaining how the *syubhat* principle can be applied in modern legal

³ Rofi Sabda Muhammad Ar-Razy et al., "Sebab Syubhat Dalam Penerapan Sanksi Jarimah Hudud Serta Pengaruhnya," *Tashdiq: Jurnal Kajian Agama Dan Dakwah* 1, no. 1 (2023): 81–90, <https://doi.org/10.4236/tashdiq.v1i1.1375>.

⁴ Abdulmuid Aykul and AHM Ershad Uddin, "Evaluating the Influence of Doubt (Shubhah) in the Implementation of Hudud Penalties," *AHKAM : Jurnal Ilmu Syariah* 25, no. 1 (2025): 87–104.

⁵ Hafid Gunawan et al., "Penerapan Kaidah Fiqih Jinayah Dalam Qadzaf Secara Kinayah," *Hidayah : Cendekia Pendidikan Islam Dan Hukum Syariah* 2, no. 2 (2025): 163–73, <https://doi.org/10.61132/hidayah.v2i2.944>.

⁶ Nur Hikmah et al., "Analisis Kaidah Dar'u al-Ḥudūd Bi al-Syubuhāt Dalam Kasus Perzinahan Menurut Ijtihad 'Umar Bin al-Khaṭṭāb: Analysis of the Legal Maxim Dar'u al-Hudūd Bi al-Syubuhāt in the Case of Adultery According to the Ijtihad of 'Umar Ibn al-Khaṭṭāb," *AL-FIKRAH: Jurnal Kajian Islam* 2, no. 1 (2025): 109–29, <https://doi.org/10.36701/fikrah.v2i1.2419>.

⁷ Adha Saputra and Lira Erlina, "Nilai-Nilai Rahmat Islam Dalam Konsep Hudud," *ZAD Al-Mufassirin* 5, no. 2 (2023): 267–91, <https://doi.org/10.55759/zam.v5i2.195>.

⁸ Nur Fauzi Fatah and Ulfatun Wahidatun Nisa, "Dimensi Sosial dalam Hudud: Analisis Dimensi Sosial dalam Penerapan Hudud," *Journal of Islamic and Occidental Studies* 1, no. 1 (2023): 17–40, <https://doi.org/10.21111/jios.v1i1.4>.

systems and the protection of defendants' rights. Therefore, this research seeks to fill that gap by presenting a more comprehensive study on the concept, evidence, wisdom, and implications of the maxim *al-hudūd tasqut bi al-syubuhāt*, while simultaneously affirming that Islamic criminal law pays close attention to substantive justice and the protection of individual rights. This approach is expected to demonstrate the contemporary relevance of the maxim and provide a scientific contribution to the understanding and implementation of Islamic law in the modern era.

RESEARCH METHOD

This study employs a descriptive qualitative method with a literature-based approach, as its primary focus lies in understanding the concepts, evidentiary foundations, and normative analysis of the principle *al-hudud tasqut bi al-shubuhāt* within the framework of contemporary Islamic law. Data collection in this research follows four stages: (1) Identification of data sources, in which the researcher first identifies various materials relevant to the research theme, such as scholarly journals, online articles, books, documents, previous studies, and others; (2) Literature collection, where all references related to the study—covering conceptual aspects, legal foundations, and their application—are gathered to construct a theoretical framework; (3) Source selection, in which the collected data are screened based on three criteria: relevance, credibility, and recency; and (4) Data recording and documentation, where each piece of information is documented and organized thematically according to the research focus, with proper referencing. The analysis then proceeds through data extraction, data classification, data presentation, interpretation, and conclusion drawing by identifying the main concepts associated with the principle *al-hudud tasqut bi al-shubuhāt*: an examination of its concept, evidentiary basis, and implications in contemporary Islamic criminal law.⁹

RESULTS AND DISCUSSION

The Definition of the Maxim *Al-Hudūd Tasqut Bisy-Syubuhāt*

The *Fiqh* Maxim *Al-Hudūd Tasqut Bisy-Syubuhāt* can be interpreted to mean that as long as no evidence has been obtained showing that the act committed by a person constitutes a violation of the rules, that person cannot yet be sentenced to the established prison punishment (prescribed by *Sharia*). *Syubhat* (doubt), which in etymology means similarity, doubt, or unclarity, is the plural form of *syubhah* derived from the word "syabaha-yasyabahu-syabhan-syubhatan", containing the meaning of similarity, hesitation, or ambiguity.¹⁰ Terminologically, *syubhah* is a combination of two evidences (*dalil*), between the *dalil* that permits and the *dalil* that prohibits an action. For instance, in a theft case, there is a clear prohibition against taking the property of others, while for

⁹ Zulfahmi Zulfahmi et al., "Criminal Sanctions for Extortionists in the Perspective of Positive Law and Islamic Criminal Law: A Comparative Analysis," *Al-Rasikh: Jurnal Hukum Islam* 14, no. 1 (2025): 1–16, <https://doi.org/10.38073/rasikh.v14i1.1978>.

¹⁰ Hikmah et al., "Analisis Kaidah Dar'u al-Hudūd Bi al-Syubuhāt Dalam Kasus Perzinahan Menurut Ijtihad 'Umar Bin al-Khaṭṭāb."

emergency conditions, there is a related *dalil* concerning the permissibility of taking the property of others due to pressing conditions for survival; this condition forms the basis of the *syubhat* criminal concept. According to Abu Zahrah, a *fiqh* expert, he explains specific circumstances experienced by the perpetrator of a crime or the target of criminal law that can lead to the nullification of the *hadd* punishment (dropped). In this condition, it may be replaced by another punishment, such as *ta'zīr*, based on the judge's decision.¹¹

Syubhat in this case, uncertainty does not always mean total uncertainty. Uncertainty encompasses various forms of doubt that can hinder the certainty regarding essential elements of a criminal offense, such as conditions (*syarat*), pillars (*rukun*), or evidence. For example, in a theft case, if there is doubt as to whether the stolen goods have reached the *nisab* (minimum threshold), then *hudud* is not applied.¹²

Meanwhile, in linguistics, *hudud* means prohibition. According to Islamic law, *hudud* constitutes sanctions that have been definitely established within certain limits because they violate the rights of Allah swt. Etymologically, the word *hudud* is the plural form of *had*, which means to separate something so that it does not mix with others or to not exceed the limit.¹³

There is also another *hadith* of the Prophet Muhammad ﷺ, including his saying:

اَذْرُغُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ فَإِنْ كَانَ لَهُ مَرْجُعٌ فَخَلُّوْ سَبِيلَهُ فَإِنَّ الْإِمَامَ أَنْ يُخْطِلَ فِي الْعَفْوِ خَيْرٌ مِّنْ أَنْ يُخْطِلَ فِي الْعَقُوبَةِ

Meaning: “Avert the application of *hudud* from the Muslims as much as you can. If there is a way out (that can avoid *hudud*), then let him go. Indeed, an error of the imam (ruler/judge) in pardoning is better than his error in imposing punishment.” (Narrated by al-Tirmidzi, Ibn Majah, al-Darāqutnī, with a *hasan* chain)

Although the *hadith* “اَذْرُغُوا الْحُدُودَ بِالشَّبَهَاتِ” (Avert *hudud* with *syubhat*) is very popular and serves as the main maxim, its status is debated among *hadith* experts. Some scholars, such as Al-Suyuthi citing Ibn Hajar, state that even though the individual narrations might be weak, the collection of these narrations mutually reinforces each other until they reach the level of *sahih* (authentic). However, other scholars like Al-Tirmidzi and Al-Baihaqi specifically rate some of its chains of narration as *dha'if* (weak). This difference in perspective in *takhrij* (hadith analysis) indicates that the *hadith* foundation itself is not free from methodological *syubhat*, although the maxim is accepted by *ijma'* (consensus) in practice.¹⁴

The Legal Foundations of the Principle *Al-Hudud Tasqut bi al-Shubhat*

¹¹ Deden Najmudin et al., “Syubhat Dalam Pelaksanaan Hudud Menurut Abu Zahrah,” *Tashdiq: Jurnal Kajian Agama Dan Dakwah* 2, no. 1 (2023): 1–18.

¹² Ayu Fifin Sonia et al., “Analisis Yuridis Tindak Pidana Pencurian Dalam Perspektif Hukum Pidana Dan Hukum Pidana Islam : Studi Kasus Putusan Nomor 87/Pid.B/2023/PN.Sbr,” *Edulaw : Journal of Islamic Law and Yurisprudence* 7, no. 2 (2025): 119–33, <https://doi.org/10.47453/edulaw.v7i2.2066>.

¹³ Muhammad Bin Mukram bin Manzur, *Lisan Al-Arab*, Juz II (Beirut;Dar 1409 Sadir, 1409).

¹⁴ Najmudin et al., “Syubhat Dalam Pelaksanaan Hudud Menurut Abu Zahrah.”

The basis for applying the legal maxim “*hadd* punishments may be annulled due to *shubuhat* (ambiguity)” can be found in Qur'an Surah al-*Isrā'* (17:15):

مَنِ اهْتَدَى فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ وَمَنْ ضَلَّ فَإِنَّمَا يَضْلُلُ عَلَيْهَا وَلَا تَرُرُ وَازْرَةُ وَزْرَ أَخْرَى وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولًا ﴿١٥﴾

Meaning: “Whoever is guided, he is guided only for the benefit of himself. And whoever goes astray, he goes astray only to his own detriment. No bearer of burdens will bear the burden of another. And We never punish (a people) until We have sent a messenger.”

The meaning of this verse in relation to the maxim that *hadd* punishments may be annulled due to *shubuhat* is that Allah emphasizes the principles of justice and caution in imposing legal punishment. No punishment may be applied without legal certainty and clear evidence. In contemporary Islamic legal practice, this principle serves as a foundation: if an act still contains *shubuhat*, then *hadd* punishment must not be enforced due to the ambiguity that remains unresolved. This maxim aligns with the meaning of QS al-*Isrā'* 17:15.

In addition to the Qur'an, this principle is also supported by the Prophet's saying narrated by Ibn 'Adī from the chain of Ibn 'Abbās RA:

إدْرِأْ الْحَدُودَ بِالشَّبَهَاتِ

Meaning: “Avoid applying *hadd* punishments due to the presence of ambiguity.” (Narrated by Ibn 'Adī)

A more complete narration is found in the reports of al-Tirmidhī, al-Ḥākim, and Ibn Ḥibbān, transmitted from 'Ā'ishah RA:

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدَ أَبُو عَمْرُو الْبَصْرِيُّ حَدَّثَنَا مُحَمَّدُ بْنُ رَبِيعَةَ حَدَّثَنَا يَزِيدُ بْنُ زِيَادٍ الْمَمْشِقِيُّ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اذْرِعُوا الْحَدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ فَإِنْ كَانَ لَهُ مَخْرُجٌ فَخَلُوْا سَبِيلَهُ فَإِنَّ الْإِمَامَ أَنْ يُخْطِلَ فِي الْعَفْوِ خَيْرٌ مِّنْ أَنْ يُخْطِلَ فِي الْعُقُوبَةِ

Meaning: “Prevent *hadd* punishments from being applied to the Muslims as much as you can. If you find a way out for a Muslim, then choose that way. Verily, a leader who errs on the side of pardoning is better than a leader who errs on the side of punishment.”

This hadith instructs caution in judging a Muslim through legal decisions. The Prophet's use of the imperative form (*amr*) in the hadith, according to the principles of *uṣūl al-fiqh*, indicates an obligation. However, this command is not absolute, since the phrase “as much as you can” introduces a condition: the presence of some possibility or gap. When combined, these narrations show that the “gap” refers to the existence of ambiguity (*shubuhat*).

The jurists differ regarding the definition and ruling of ambiguous property (*māl al-shubha*)—a matter relevant to theft (*sariqah*). Al-Suyūṭī, for instance, notes varying opinions: some deem transactions involving predominantly unlawful wealth as *makruh*

rather than *haram*, so long as the specific item used is not clearly proven unlawful. Others argue that if the unlawful portion is greater, the entire act becomes prohibited, and if the lawful portion is greater, the entire act becomes permissible. This diversity of legal opinions concerning the status of property may itself constitute *shubhat fi al-mahall* (ambiguity concerning the object), which nullifies the *hadd* punishment of amputation.¹⁵

The Application of the Maxim *Al-Hudūd Tasqūf Bisy-Syubuhāt*

The application of the maxim in Islamic *fiqh* dictates that when the severity of the *hadd* punishment established by Allah swt. is very serious and obligatory to execute, it must be carried out. However, if there is doubt (an unclear matter), the *hadd* punishment is dropped or reduced. Based on this legal mitigation, the doubt that can nullify *hadd* must also be strong and certain, so that the existing doubt becomes a major consideration to avoid *hudud*. Conversely, if the existing doubt is not strong in its evidence, then that doubt cannot nullify the existing *Hadd*, and the *Hadd* must still be upheld. The unclarity of the matter encompasses three aspects: (1) *Syubhat fi al-mahall* (Doubt concerning the locale of the prohibited act), which is skepticism related to the location of the prohibited act, such as having intercourse with a wife during menstruation, fasting, or anal sex with the wife. The skepticism here lies in the place of the prohibited act, because on one hand, the location belongs to the husband and he has the right to intercourse, and on the other hand, it is forbidden to have intercourse with her at that time. Thus, the prohibition of intercourse with the wife in that specific condition constitutes skepticism. (2) *Syubhat fi al-fa'il* (Doubt concerning the perpetrator), which is skepticism toward a man who performs an act, such as intimate relations with a woman he assumes to be his wife, but in reality, she is not. This skepticism exists because of the perpetrator's seriousness and conviction; on one hand, he believes he is not committing a prohibited act, and on the other hand, he assumes the person he is having relations with is his own wife. (3) *Syubhat fi al-jihah* (Doubt concerning the legal aspect) is doubt related to the status of permissibility or prohibition of an act, as this *syubhat* arises due to differences in *fiqh* opinions. For example, according to Abu Hanifah, marriage is permissible without a guardian (*wali*); according to Malik, it is permissible without witnesses; and Ibn Abbas also permitted *nikah mut'ah* (temporary marriage). If intimate relations occur under some of these types of marriages, it is not considered *zina* (adultery/fornication) that results in *hadd* sanction.¹⁶

Syubhat cannot nullify the obligation to pay *fidyah* (compensation/expiation), because *fidyah* is fundamentally compensation for loss, unlike *kaffarah* (expiation or fine), which can be categorized as a matter of *hadd* punishment. The subject and place of the act can nullify the sin and the prohibited ruling of the act committed. Imam At-Tajuddin as-Subky suggests that the doubt that can nullify *hadd* or *kaffarah* must be strong or truly tangible. If the doubt is weak, it has no impact on the *hadd* punishment. A strong doubt (*syubhat qawiyah*) is a doubt whose existence is trusted by one's conscience

¹⁵ Rabicha Hilma et al., "Analisis Pendapat Empat Madzhab Tentang Menggunakan Harta *Syubhat* Dalam Bermuamalah," *Jurnal Ilmiah Ekonomi Islam* 10, no. 2 (2024): 1778.

¹⁶ Najmudin et al., "Syubhat Dalam Pelaksanaan Hudud Menurut Abu Zahrah."

and can be proven by a meticulous person by providing arguments acceptable to others. Therefore, a person who "plays" in bed with someone else's female slave will still be sentenced to *hadd*, even if the owner gives permission, because the position of the one granting permission is considered very weak by the scholars.

The Maliki school of thought has a unique approach to determining law that influences how they view *syubhat*. Besides the Qur'an and *Hadith*, they heavily rely on '*Amal ahl al-Madinah* (the practice of the people of Medina) as a "living *sunnah*." This approach, coupled with the use of *istiṣlāh* (public interest/maslahah), means that *syubhat* in the Maliki view is not only judged by the text but also by its impact on the public interest and established communal practices in Medina during the early generations.¹⁷

Syubhat arises when there is a confusion between the original ruling that permits/absolves and a new *dalil* that appears to prohibit. As long as the doubt exists and the prohibitive *dalil* is not *qaṭhī* (definite/certain), the ruling reverts to its original state (free/permmissible). This approach places a very high burden of proof to overcome *syubhat* before *hadd* can be enforced.¹⁸ Although the maxim *al-hudūd tasquṭ bisy-syubuhāt* is often equated with the modern legal principle "beyond a reasonable doubt," there is a fundamental philosophical difference. In modern legal systems, "reasonable doubt" is a standard of proof that the prosecutor must overcome. Conversely, in the classic *fiqh* system, where there often is no formal prosecutor, *syubhat* functions more broadly as a mechanism where doubt—whether in fact, law, or evidence—is "ubiquitous" (present everywhere) and proactively utilized by the judge (*qadi*) to avoid the application of *hadd* for the sake of caution.¹⁹

The Wisdom (*Hikmah*) of the Maxim *Al-Hudūd Tasquṭ Bisy-Syubuhāt*

Shaykh al-Islam Ibn Taymiyyah stated that *hudud* punishments fundamentally stem from "the mercy of Allah for the welfare of His creatures." This philosophy provides an important context for the *syubhat* maxim. If the purpose of *hudud* is mercy and welfare, then imposing a *hadd* punishment in a state of doubt (*syubhat*) would actually contradict its basic purpose, as it carries a great potential of turning into injustice (*zulm*). Thus, the application of the *syubhat* maxim is a mechanism to ensure that *hudud* remains within the corridor of "mercy" and does not violate its objectives.²⁰

The wisdom derived from this maxim is as follows: (1) Upholding Justice and Preventing Injustice. The purpose of this rule is to avoid giving severe punishment to someone whose fault has not been definitively proven. Releasing a guilty person is considered a better option in Islam than punishing an innocent person. This aligns with the belief that "doubt nullifies punishment." (2) Encouraging Caution in Legal Application. Judges must be very cautious and meticulous in determining *hudud*

¹⁷ Miftakhul Arif, "Sejarah Sosial Teori Hukum Islam Mazhab Maliki," *El-Faqih : Jurnal Pemikiran Dan Hukum Islam* 10, no. 1 (2024): 202–21, <https://doi.org/10.58401/faqih.v10i1.1298>.

¹⁸ Ainaya Salsabella et al., "Syubhat in Education: Balancing Knowledge and Beliefs," *Islamologi : Jurnal Ilmiah Keagamaan* 1, no. 2 (2024): 575–86.

¹⁹ Intisar A. Rabb, "Reasonable Doubt in Islamic Law," *Yale Journal of International Law* 40 (2015): 41.

²⁰ Fiddini Izaturahmi et al., "Konsep Hudud Dalam Al-Quran," *Jurnal Budi Pekerti Agama Islam* 2, no. 1 (2024): 166–84, <https://doi.org/10.61132/jbpai.v2i1.78>.

punishment based on Islamic law. Based on this rule, *qadis* or judges must be more careful in imposing punishments, especially severe ones like stoning (*rajam*), hand amputation, or flogging. (3) Providing Space for Repentance and Self-Correction. By waiving the *hudud* punishment when doubt exists, a person is indirectly given an opportunity to repent and improve themselves. This is an example of the inherent compassion and mercy in Islam. (4) Preserving Human Dignity and Honor. *Hudud* has a considerable impact on an individual and society, and due to this principle, Islam protects human dignity from uncertain punishment for the mistakes they commit. (5) Minimizing the Abuse of Power. In practice, this principle also restricts rulers or officials from unjustly using *hudud* law to oppress or degrade their opponents.

Most scholars acknowledge that this principle is one of the most difficult to study. Some scholars question the significance of this principle; they ask whether there is a specific verse (*ayah*) that explains the importance of avoiding mistakes. Ibn Subuki finally answered this anomaly by saying that although there is no *nash* (textual evidence) explicitly mentioning the virtue or *sunnah* of avoiding scholarly mistakes, the virtue of avoiding these scholarly mistakes lies fundamentally in the substance of the *nash*—which is the substance of freeing oneself from differences of opinion among scholars regarding religious matters. Still according to Ibn Subuki, the act of avoiding scholarly mistakes by accommodating them is an act of *wira'i* (scrupulousness) commanded by the religion.²¹

Although Imam Al-Ghazali did not specifically discuss this maxim in the context of *jinayat* (criminal law), his philosophy of *wara'* (scrupulous caution) is highly relevant. Al-Ghazali emphasized the importance of staying away from anything unbeneficial or doubtful to purify the soul. For a judge, this *wara'* manifests as an obligation to avoid doubt (*syubhat*) when imposing punishment, especially *hudud*. Averting *hadd* due to *syubhat* is not just legal compliance; it is also an act of *wara'* to save the judge from a fatal error in the sight of Allah.²²

Legal Implications

The primary implication of this rule is that *hudud* sanctions can only be imposed if there is no doubt or ambiguity regarding the elements of the crime. For example, in a theft case, if there is doubt as to whether the stolen goods have reached the *nisab* (minimum threshold), the hand-amputation punishment cannot be imposed. Another concrete example is in the case of *zina* (adultery/fornication): if the perpetrator confesses to *zina* but subsequently retracts their confession before being punished, the stoning or flogging punishment will not be carried out because doubt exists in the confession.²³ Shaykh al-Islam Ibn Taymiyyah stated that *hudud* punishments fundamentally stem from

²¹ براعة الخلاف الخروج من الخلاف: كلام الشاطبي من الإشكال والسؤال إلى النصح والتحrir, "الملتقى الفقهي" July 15, 2008, <https://feqhweb.com/vb/threads/1355/>.

²² Achmad Yusuf, "Contribution Sufism Al Ghazali In Multicultural Society," *Journal Multicultural of Islamic Education* 1, no. 1 (2017), <https://jurnal.yudharta.ac.id/v2/index.php/ims/article/view/882>.

²³ Yahaya Ibrahim Abikan, "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 83–96, <https://doi.org/10.24090/mnh.v17i1.8172>.

"the mercy of Allah for the welfare of His creatures." This philosophy provides an important context for the *syubhat* maxim. If the purpose of *hudud* is mercy and welfare, then imposing a *hadd* punishment in a state of doubt (*syubhat*) would actually contradict its basic purpose, as it carries a great potential of turning into injustice (*zulm*). Thus, the application of the *syubhat* maxim is a mechanism to ensure that *hudud* remains within the corridor of "mercy" and does not violate its objectives.²⁴

In another example, this principle directly impacts the standard of proof in criminal cases. In Islamic criminal law, the application of *hudud* requires very strong evidence that leaves no doubt. For instance, in the case of *zina*, four eyewitnesses who clearly witnessed the act are required. If the number of witnesses is insufficient or the testimony does not meet the requirements, the *hudud* punishment cannot be imposed, and the perpetrator can only be subject to *ta'zīr* (discretionary punishment).²⁵

This principle also shows how Islam places great importance on the principle of caution and protection for the accused. Even in cases of confession, if the perpetrator withdraws their confession before execution, *hudud* is invalidated because of doubt regarding the intent or the clarity of the legal facts. This confirms that Islam does not desire punishment based on doubt, while simultaneously providing room for rehabilitation.²⁶ The application of this principle reflects the fulfillment of *maqāṣid al-syarī'ah* (the objectives of Islamic law), specifically concerning the preservation of life (*hifz al-nafs*), the preservation of honor (*hifz al-ird*), and the establishment of justice (*al-'adl*). By making doubt an impediment to the application of *hudud*, Islam emphasizes the importance of avoiding arbitrary punishment and encourages the implementation of humane and balanced law.

Analysis of *Syubhat* in *Hudud* Cases

In Islamic law, theft (*sariqah*) is considered a serious crime. The punishment for theft can include *hudud* punishment, depending on the value and nature of the stolen goods. However, the concept of *syubhat* (doubt) also plays a crucial role in Islamic criminal law. In the context of Islamic criminal law, *syubhat* refers to doubt or uncertainty regarding an action that could be considered a legal violation. If *syubhat* exists, the *hadd* punishment (a fixed punishment prescribed in the Qur'an or Hadith) can be nullified. This means that some crimes cannot be punished according to the text due to the existence of doubtful elements—a principle of caution that affirms that absolute punishment is not automatically imposed without considering doubt and the complexity of the case.

The imposition of sanctions in Islamic criminal law requires very careful consideration, especially concerning *hudud* offenses. Although, on one hand, the application of *hudud* punishment for theft is mandatory if its elements are proven, it must

²⁴ Izaturahmi et al., "Konsep Hudud Dalam Al-Quran."

²⁵ Musyafa et al., "Penegakan Hukum Zina Dalam Hukum Islam dan Hukum Positif: Kritik terhadap Putusan Hakim dan Tawaran Solusinya," *Jurnal Al-Qadaū: Peradilan dan Hukum Keluarga Islam* 11, no. 2 (2024): 94–114, <https://doi.org/10.24252/al-qadaū.v11i2.52493>.

²⁶ Muhammad Faishal Fadhli, "The Application of the *Maqāṣid al-Syarī'ah* Concept according to Imam al-Ghazali and Imam al-Syathibi in Contemporary Islamic Law Inferences," *Journal of Islamic and Occidental Studies* 1, no. 1 (2023): 63–91, <https://doi.org/10.21111/jios.v1i1.5>.

be avoided if there are factors that can nullify the imposition of the punishment, especially doubt (*syubhat*). In Abdi's study (2018) on the *hudud* of theft, it is mentioned that the value of the stolen goods, the social status of the perpetrator, and economic conditions can influence whether the punishment of hand amputation is actually applied.²⁷ This principle is rooted in the classic *fiqh* maxim "*al-hudūd tasquṭ bi al-syubuhāt*" ("hudud is dropped due to doubt"), which states that *syubhat* can nullify *hudud* punishment.²⁸ Another concrete example can be seen in practice when the perpetrator's confession of theft is retracted or when there is unclear evidence—in such conditions, the application of *hudud* can be replaced with *ta'zīr* (discretionary punishment), in line with the Islamic teaching that prioritizes justice and caution.

Traditional scholars also agree that a person who has sinned (e.g., stolen) is obligated to repent (*tawbah*) and not repeat the act. In cases of theft (*sariqah*), a study in the *Amnesti* journal mentions that if the perpetrator steals but there is an element of doubt (e.g., concerning the authority over the property or a state of necessity), they may be subjected to *ta'zīr* and not *hadd* punishment.²⁹ In some views of the Hanafi school, *syubhat* can arise in the form of *syubhat fil fi'l* (doubt concerning the act), which occurs when the perpetrator is uncertain whether their action genuinely violates *Sharia* law due to ignorance or incorrect interpretation of the *dalil* (textual evidence).³⁰ The principle "*al-hudūd tasquṭ bi al-syubuhāt*" provides the basis for the judge to consider both moral and formal legal aspects when imposing punishment, while also protecting the rights of the accused from severe wrongful punishment.

In more complex cases, *syubhat* does not only concern the action (*fi'l*) but can also be related to evidence—for instance, an error in the verification of witnesses or the stolen goods, or circumstances where the value of the goods has not reached the *nisab* (minimum threshold), making the *hudud* punishment unreasonable to apply. An article in the *Tashdiq* journal states that if there is uncertainty in the evidence of theft, amputation is not automatic, and the judge may impose *ta'zīr* as an alternative.³¹

This principle demonstrates how Islam highly values caution and protection for the accused. Even in cases of confession—for example, if a person confesses to theft but then retracts their confession before execution—*hudud* can be nullified due to doubt about the intent or the clarity of the legal facts. As explained in Islamic legal studies, justice demands that *hudud* punishment is only imposed when the elements of the crime are

²⁷ Fathuddin Abdi, "Keluwasan Hukum Pidana Islam Dalam Jarimah Hudud (Pendekatan Pada Jarimah Hudud Pencurian)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 14, no. 02 (2014): 369–92, <https://doi.org/10.30631/alrisalah.v14i02.456>.

²⁸ Mohammad Hashim Kamali, "Doubt (Shubha) and Its Impact on Punishment," in *Crime and Punishment in Islamic Law: A Fresh Interpretation*, ed. Mohammad Hashim Kamali (Oxford University Press, 2019), <https://doi.org/10.1093/oso/9780190910648.003.0017>.

²⁹ Husni Thamrin and Mari'e Mahfudz Harahap, "Kebijakan Pelaksanaan Pidana Penjara Bagi Pelaku Pencurian Guna Memberikan Efek Jera (Studi Kasus Di Lembaga Pemasyarakatan Kelas 1 Medan)," *Amnesti: Jurnal Hukum* 7, no. 1 (2025): 128–48, <https://doi.org/10.37729/amnesti.v7i1.6181>.

³⁰ Atika Atika, "Eksistensi Taubat Dan Syubhat Dalam Pelaksanaan Hudud (Studi Terhadap Pandangan Imam Abu Hanifah)," *Intizar* 21, no. 1 (2015): 119–32.

³¹ Ar-Razy et al., "Sebab Syubhat Dalam Penerapan Sanksi Jarimah Hudud Serta Pengaruhnya."

proven without *syubhat*, and if not, *ta'zīr* becomes the more just option. Furthermore, the application of the *syubhat* principle reflects the fulfillment of *maqāṣid al-syarī'ah* (the objectives of *Sharia*), especially in preserving life (*hifz al-nafs*), preserving honor (*hifz al-'ird*), and establishing justice (*al-'adl*). By regarding *syubhat* as an impediment to the execution of *hudud*, Islamic law emphasizes that judgment should not be done carelessly, but must consider human factors and doubt, so that severe punishment does not turn into injustice. From this perspective, *hudud* punishment is not merely an instrument of penalty, but a moral and legal mechanism integrated with the obligation to maintain substantive justice.

Mechanism of Proving *Syubhat* (Doubt)

The concept of doubt in the aspect of evidence cannot be directly linked to the elements of the crime; rather, it requires a separate process of proof that must be presented directly before the judge or in court. This proof must be carried out in a legitimate and accountable manner, supported by reasoning and accurate evidence. Many legal experts hold the view that conviction must be free from doubt from the beginning until the execution of the law. The proof of certainty consists of three important elements: first and most importantly, the words used in the proof must truly convey the intended meaning, paying attention to the linguistic or editorial context; second, the time elapsed between the commission of the crime and the submission of evidence must be shortened, in other words, the proving process must be expedited; finally, up until the final verdict, the witness or the swearer (confessor) must maintain their statements. For clarity, the forms of certainty are described as follows: (1) Witness Testimony (*Saksi*). As is known, witness testimony is a form of personal evidence, so the truth or falsity of the witness's statement entirely depends on the conviction of the judge. (2) Circumstantial Evidence (*Petunjuk*). Circumstantial evidence known to the judge both during and outside the trial strengthens the judge's conviction because, based on these indications, the judge cannot make a decision unless he is certain that the event has occurred and that the defendant committed it. This aligns with the meaning of *qarinah*, which means a sign to attain conviction. (3) Confession (*Pengakuan*). Confession is a form of evidence that is no longer denied by all *fujahā* (jurists). In practice, confession was given to the Prophet Muhammad ﷺ with the conditions that the confession must be detailed, repeated, and given by a person of sound mind. This was demonstrated in the previous discussion about the case of Maiz bin Malik, who confessed to adultery with a woman. In this case, the Prophet thoroughly interrogated him to further ascertain the certainty of Maiz's action. After being found guilty, he ordered his companions to strike him severely. (4) Judge's Knowledge (*Pengetahuan Hakim*): Although there is a dispute among legal experts as to whether the judge's personal knowledge can be used as a means of proof in criminal cases or not. (5) Oath (*Sumpah*). Unlike the defendant who is sued by the plaintiff in court, the swearer can free himself from responsibility and accusation if one of the parties, either the plaintiff or the

defendant, instructs the other party to swear an oath (a decisive oath, also known as *Sumpah Decisoir*).³²

In the field of evidence, the concept of doubt must be determined through an objective, rational, and direct process of proof presented before the judge. In this area, the concept cannot be directly linked to the elements of the crime. In definitive criminal proof, the process must be free from all forms of doubt through the use of legitimate evidence, such as witness testimony, circumstantial evidence (*qarinah*), confession, oath, and the judge's knowledge. Each piece of evidence must meet the conditions of validity, such as consistency of statement, clarity of meaning, and timeliness. In this regard, if one element of the evidence does not meet these conditions, doubt may arise, which means the *hudud* punishment need not be used because of the principle of caution and justice in Islamic criminal law.

CONCLUSION

The legal maxim “*al-hudūd tasquṭ bi al-shubuhāt*”—meaning “*hadd* punishments are annulled due to ambiguity (*shubhat*)”—is a foundational principle in Islamic criminal law that emphasizes the necessity of legal certainty before imposing severe fixed punishments (*hudūd*). *Shubhat*, meaning doubt or ambiguity, in this context does not require complete uncertainty; rather, it refers to any significant doubt concerning the essential elements of a criminal act, whether related to the perpetrator, the action, or the object of the offense. The application of this maxim in *fiqh* is crucial, particularly because *hudūd* punishments are fixed and severe—such as stoning, amputation, or lashing. This maxim allows the annulment of *hudūd* whenever substantial ambiguity exists, in which case a discretionary punishment (*ta’zīr*) may be applied, offering greater flexibility based on judicial *ijtihād*. From a legal perspective, this maxim plays a key role in establishing a very high evidentiary standard in *hudūd* cases. A *hadd* punishment may not be enforced unless the evidence is strong, clear, and leaves no room for ambiguity—for instance, the requirement of four eyewitnesses in adultery cases. Ultimately, this maxim reflects the objectives of Islamic law (*maqāṣid al-shari‘ah*), particularly the protection of life, dignity, and justice. It demonstrates that Islamic criminal law upholds strong humanitarian principles and highlights the rational and ethical character of Islamic legal practices in contemporary contexts.

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³² Jamal Jamil, “Pembuktian Di Peradilan Agama,” *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 4, no. 1 (2017): 25, <https://doi.org/10.24252/al-qadau.v4i1.4973>.

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