

The Transformation of *Qadzaf* into *Li'an* in Indonesian Religious Courts: A *Hudūd* Theory Perspective

Transformasi *Qadzaf* menjadi *Li'an* dalam Peradilan Agama di Indonesia: Perspektif Teori *Hudūd*

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Abstract: *This study examines the transformation of Qadzaf handling in Indonesian Religious Courts and analyzes its relevance through Muhammad Shahrur's Hudūd Theory. Employing a qualitative socio-legal approach, this field research combines juridical-normative analysis with empirical data collected through document analysis, semi-structured interviews with five key informants (three Religious Court judges and two Islamic law experts), and limited observation. Existing studies generally examine li'an within the framework of Islamic family law (fiqh munakahat), whereas this study analyzes the epistemological transformation of Qadzaf from a classical Islamic criminal offense into a civil litigation mechanism in Indonesia's contemporary Islamic legal system. The findings reveal that Qadzaf is not explicitly recognized in Religious Court practice but is institutionally represented through the li'an procedure. Instead of applying classical hudūd sanctions such as eighty lashes, disputes are resolved through mutual oaths and their legal consequences for marriage dissolution. This transformation reflects the adaptation of the principle of protecting human dignity (hifz al-'irdh) within Indonesia's national legal framework. Theoretically, this study demonstrates the continuing relevance of Shahrur's Hudūd Theory in explaining legal flexibility within normative Islamic boundaries. It also contributes to contemporary Islamic legal scholarship by showing how the classical doctrine of Qadzaf has been recontextualized into a family law mechanism that accommodates legal pluralism, maqāṣid al-sharī'ah, and the Indonesianization of Islamic law.*

Keywords: Qadzaf; Li'an; Religious Courts; Indonesian Islamic Law; Muhammad Shahrur's Hudūd Theory.



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Abstrak: Penelitian ini mengkaji transformasi penanganan Qadzaf di Pengadilan Agama Indonesia serta menganalisis relevansinya melalui Teori *Hudūd* Muhammad Shahrur. Penelitian menggunakan pendekatan kualitatif sosio-legal yang memadukan analisis yuridis-normatif dengan penelitian lapangan melalui analisis dokumen, wawancara semi-terstruktur terhadap lima informan kunci (tiga hakim Pengadilan Agama dan dua ahli hukum Islam), serta observasi terbatas. Berbeda dengan penelitian sebelumnya yang umumnya memandang li'an dalam perspektif hukum keluarga (*fiqh munakahat*), penelitian ini menganalisis transformasi epistemologis Qadzaf dari tindak pidana Islam klasik menjadi mekanisme litigasi perdata dalam sistem hukum Islam Indonesia. Hasil penelitian menunjukkan bahwa Qadzaf tidak diterapkan secara eksplisit dalam praktik Pengadilan Agama, melainkan direpresentasikan melalui mekanisme li'an. Penyelesaian perkara tidak menggunakan sanksi *hudūd* berupa dera, tetapi berorientasi pada sumpah li'an beserta implikasi hukum terhadap putusannya perkawinan. Transformasi tersebut menunjukkan adaptasi prinsip perlindungan martabat manusia (*hifzh al-'irdh*) dalam kerangka hukum nasional Indonesia. Secara teoretis, penelitian ini memperkuat relevansi Teori *Hudūd* Shahrur dalam menjelaskan fleksibilitas hukum Islam dalam batas-batas normatif. Penelitian ini juga berkontribusi pada kajian hukum Islam kontemporer dengan menunjukkan bagaimana konsep klasik Qadzaf direkontekstualisasikan menjadi mekanisme hukum keluarga yang mengakomodasi pluralisme hukum, *maqāṣid al-syarī'ah*, dan proses indonesianisasi hukum Islam.

Kata Kunci: Qadzaf; Li'an; Pengadilan Agama; Hukum Islam Indonesia; Teori *Hudūd* Muhammad Shahrur.

Introduction

Islam, as a religion of *rahmatan lil 'ālamīn*, upholds human dignity and strictly protects individual honor, including by prohibiting false accusations of adultery (*Qadzaf*) without valid legal evidence.¹ While adultery is regarded as a grave offense in Islamic law and is subject to severe sanctions depending on the offender's marital status,² the Qur'an likewise condemns unfounded accusations because they violate the dignity and reputation of others. Allah states:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ³

“Those who accuse chaste women and fail to produce four witnesses shall be flogged with eighty lashes, and their testimony shall never again be accepted, for they are indeed the transgressors” (Q. 24:4).

This provision demonstrates that Islamic law protects not only morality but also personal honor (*hifzh al-'irdh*), making *Qadzaf* one of the classical *hudūd* offenses intended to preserve social justice and public trust.³ Contemporary developments in

Islamic legal thought have encouraged renewed interpretations of Qur'anic legal texts in response to changing social realities. Hermeneutical approaches seek to contextualize Islamic legal norms while maintaining their normative foundations.⁴ Among the most influential contemporary Muslim thinkers, Muhammad Shahrur proposes *Nazhariyyat al-Hudud* (Theory of Limits), which conceptualizes Islamic law as operating within minimum (*al-hadd al-adna*) and maximum (*al-hadd al-a'la*) normative boundaries. Rather than treating legal rules as fixed and literal, this theory provides a flexible framework for *ijtihad* capable of accommodating social transformation while preserving the objectives of the Sharia.⁵ Shahrur's reinterpretation has therefore become an important reference in contemporary discussions on Islamic legal reform.⁶

The central issue addressed in this study concerns how Shahrur's *Hudud* Theory can explain the contemporary practice of handling *Qadzaf* within Indonesia's Islamic legal system. More specifically, this article asks how the classical concept of *Qadzaf* is understood through Shahrur's theory and how its implementation has shifted within the Indonesian Religious Court system, particularly through the mechanism of *li'an*.⁷ This issue is important because it reflects broader questions concerning legal reform, judicial adaptation, and the protection of human dignity in contemporary Islamic law.⁸

Existing scholarship generally treats *Qadzaf* and *li'an* as two separate legal institutions. Studies on *Qadzaf* primarily discuss it within the framework of *fiqh jinayah*, emphasizing its status as a *hudud* offense punishable by eighty lashes in order to protect human honor (*hifzh al-'irdh*).⁹ In contrast, research on *li'an* predominantly examines it within *fiqh munakahat*, viewing it as a family law mechanism that resolves marital disputes and denial of paternity through mutual oaths before the Religious Courts. Consequently, previous scholarship has largely maintained a strict distinction between *Qadzaf* as public criminal law and *li'an* as private family law.

At the same time, Muhammad Shahrur's *Hudud* Theory has attracted extensive scholarly attention in Indonesia. Most existing studies apply his theory to issues such as inheritance, gender equality, or the reinterpretation of corporal punishments in relation to contemporary human rights discourse.¹⁰ However, these studies generally remain at the conceptual level and rarely examine how Shahrur's theory explains institutional legal transformation within Indonesia's Religious Court system.¹¹

This situation reveals a significant research gap. Although *Qadzaf*, *li'an*, and Shahrur's legal theory have each been widely discussed, little attention has been given to the epistemological transformation through which the classical criminal offense of *Qadzaf* has effectively been institutionalized as the civil mechanism of *li'an* within Indonesian Islamic law.¹² Existing studies have therefore overlooked the broader

process through which public criminal sanctions are transformed into family law procedures under Indonesia's plural legal system.

Accordingly, this study offers a different perspective by demonstrating that the transformation from *Qadzaf* to *li'an* represents not merely a procedural legal adjustment but an epistemological reconfiguration of Islamic law itself. Using Muhammad Shahrur's *Hudūd* Theory as its analytical framework, this article argues that the Indonesian Religious Court system reflects a contextual reinterpretation of classical *hudūd* principles, allowing the protection of human dignity (*hifzh al-'irdh*) to be maintained through civil legal mechanisms rather than corporal punishment.¹³ This perspective contributes to contemporary Islamic legal scholarship by explaining how classical criminal doctrine is reformulated into an adaptive family law institution without abandoning the normative objectives of the Sharia.

Method

This study employs a qualitative socio-legal approach with a descriptive-analytical field research design to examine the contemporary handling of *Qadzaf* within the Indonesian Religious Court system. The analysis is guided by Muhammad Shahrur's *Hudūd* Theory, which conceptualizes Islamic law as operating within lower (*al-hadd al-adna*) and upper (*al-hadd al-a'la*) limits, thereby providing a flexible framework for contextual legal interpretation and judicial *ijtihad* in response to contemporary social change.¹⁴

The study combines juridical-normative analysis with empirical field research. Primary data were obtained through in-depth interviews and limited observation involving five purposively selected key informants: two senior Religious Court judges (INF-01 and INF-02), one Chief Registrar (INF-03), one Professor of Islamic Criminal Law (INF-04), and one scholar specializing in Muhammad Shahrur's *Hudūd* Theory (INF-05). Secondary data were collected from Religious Court decisions available in the *Direktori Putusan Mahkamah Agung Republik Indonesia*, classical *fiqh* literature, Indonesian statutory regulations, and Muhammad Shahrur's primary works.

Field research was conducted at a Class IA Religious Court in Indonesia, selected because it has handled family law disputes involving allegations of adultery and *li'an*. Informants were chosen through purposive sampling based on their expertise and direct involvement in adjudicating or analyzing such cases.

Data were analyzed using an interactive qualitative model involving data reduction, data display, and conclusion drawing. The findings were interpreted through Shahrur's *Hudūd* Theory to examine the transformation of *Qadzaf* from a classical *hudūd* offense into the *li'an* mechanism within Indonesia's Religious Court system. To enhance research validity, interview findings were triangulated with court

decisions, statutory provisions, and classical as well as contemporary Islamic legal literature.

Shahrur's *Hudūd* Theory as a Framework for Contemporary Islamic Law

Muhammad Shahrur (1938–2019) was one of the most influential contemporary Muslim thinkers in the field of Qur'anic hermeneutics and Islamic legal reform. Although academically trained as a civil engineer, having completed his studies in Moscow and later obtained his Master's and Doctoral degrees in Foundation Engineering and Soil Mechanics at the National University of Ireland, his interdisciplinary background significantly shaped his approach to Islamic thought.¹⁵ After returning to Syria, he became a lecturer at Damascus University while simultaneously developing an extensive body of scholarship on the Qur'an and Islamic law. His engineering background, combined with linguistic analysis and scientific reasoning, led him to formulate innovative approaches for interpreting Islamic legal texts in response to contemporary social challenges.¹⁶ His most influential work, *Al-Kitab wa al-Qur'an: Qira'ah Mu'asirah*, developed over nearly two decades, introduced *Nazhariyyat al-Hudūd* (Theory of Limits), which later became the foundation of his broader project of Islamic legal reform.¹⁷ Shahrur further elaborated these ideas in several important works, including *Dirasah Islamiyyah Mu'asirah fi al-Dawlah wa al-Mujtama'*, *Nahwa Usul Jadidah li al-Fiqhi al-Islami*, and *Al-Sunnah al-Rasuliyyah wa al-Sunnah al-Nabawiyyah*, as well as numerous academic publications addressing contemporary Islamic legal issues.¹⁸ His contribution lies in demonstrating that Islamic law remains capable of responding to changing social realities without abandoning the normative objectives of revelation.¹⁹

The concept of *hudūd* has traditionally been understood in classical Islamic jurisprudence as the category of fixed punishments prescribed for specific crimes, including adultery (*zina*), false accusation of adultery (*Qadzaf*), theft, drinking intoxicants, robbery, and intentional homicide.²⁰ Linguistically, *al-hadd* means a boundary or limit separating one thing from another, whereas in classical *fiqh* it gradually evolved into a technical legal term referring to prescribed criminal sanctions.²¹ Although the Qur'an repeatedly employs the expression *hudūd Allah* (the limits of God), the term itself does not exclusively denote criminal punishment. Rather, classical jurists subsequently interpreted these divine limits as fixed penal provisions applicable to certain offenses.²² Accordingly, *Qadzaf* became classified as one of the *hudūd* crimes based primarily on Qur'an 24:4, which prescribes eighty lashes for anyone accusing another person of adultery without presenting four witnesses.²³ Within this conventional framework, *hudūd* are generally treated as fixed

legal provisions whose implementation leaves little room for contextual interpretation.

Muhammad Shahrur challenges this conventional understanding by arguing that *hudūd* should not be interpreted primarily as fixed punishments but as normative legal boundaries established by God. According to Shahrur, the Qur'anic legal system provides minimum and maximum limits (*al-ḥadd al-adna* and *al-ḥadd al-a'la*) within which human beings may exercise *ijtihad* according to changing social conditions.²⁴ He maintains that Islamic teachings revealed to Prophet Muhammad are characterized by *hanafiyyah* (dynamism) and flexibility (*sahih li kulli zaman wa makan*), allowing Islamic law to remain relevant across different historical contexts while remaining within the boundaries established by revelation,²⁵ For this reason, Shahrur interprets *hudūd* not merely as penal sanctions but as legal limits that regulate the legitimate scope of human freedom and legal reasoning.²⁶

Shahrur divides his Theory of Limits into two principal categories.²⁷ The first, *al-ḥudūd fi al-'ibadah*, concerns acts of worship whose forms and procedures are permanently determined by revelation and therefore lie beyond the scope of legal reinterpretation. Ritual obligations such as prayer, fasting, and pilgrimage belong to this category because they constitute immutable acts of worship rather than social legislation.²⁸

The second category, *al-ḥudud fi al-aḥkām*, constitutes the central component of Shahrur's legal theory and is directly relevant to this study. Unlike ritual worship, legal regulations concerning social relations, sanctions, and public affairs remain open to contextual interpretation as long as they operate within the divine limits established by the Qur'an. To explain this flexibility, Shahrur introduces *al-taḥlīl al-riyādli* (mathematical analysis), through which legal norms are understood as operating within a range bounded by minimum and maximum limits rather than as rigid and singular prescriptions.²⁹ Within this framework, Islamic law becomes a dynamic legal system capable of adapting to social, cultural, and institutional change without violating the normative objectives of the Sharia. Consequently, *ijtihad* functions as a rational and creative process that remains constrained by *ḥudūd Allah*, thereby preserving both legal flexibility and normative certainty.³⁰

This theoretical perspective provides the analytical foundation for the present study. Rather than examining *Qadzaf* solely as a classical *ḥudūd* offense requiring literal corporal punishment, this article employs Shahrur's Theory of Limits to explain how the protection of human dignity (*ḥifz al-'irdh*) can be maintained through different legal mechanisms. From this perspective, the transformation of *Qadzaf* into the institution of *li'an* within Indonesia's Religious Court system represents not a departure from Islamic law but a contextual reformulation that remains consistent with the normative boundaries of the Sharia while responding to

the demands of the contemporary legal system. The following is the division of principles in Shahrur's version of *ḥuddūd* theory.

Table 1 Principles of *Ḥuddūd* Theory According to Shahrur

No	Principles of Theory	Equation Results	Results of the application of the law
1.	<i>Hallah al-ḥadd al-ala</i> (maximum limit position)	A closed curve line has a turning point that coincides with a line parallel to the X-axis, at its maximum position	It is permissible to decide on a law as long as it is below the maximum line, because this principle in determining a law only has a maximum limit.
2.	<i>Hallah al-ḥadd al-adna</i> (minimal limit position)	The curve is open, has a line that coincides with the X-axis, namely the minimum turning point.	It is permissible to decide on a law as long as it is above the minimum limit, provided that it does not exceed the minimum limit.
3.	<i>Hallah al-'ala wa al-adna ma'an</i> (the maximum and minimum limit positions occur simultaneously)	the two turning points of the maximum and minimum curves as group variables or commonly known as trigonometric theory	There are minimum and maximum limits in applying a law.
4.	<i>Hallah al-mustaqim</i> (straight position without any other alternative)	The X-axis is parallel to a straight line. That is, the minimum and maximum limits coincide.	Existing penalties cannot be reduced or exceeded.
5.	<i>Hallah al-ḥadd al-'ala duna al-mamas bi al-ḥadd al-adna abadan</i> (the position of the maximum limit without touching the minimum limit even a little)	An open curve line with its endpoints overlapping the Y-axis, and its starting point overlapping the X-axis.	A punishment that follows a certain law with the condition that when it is carried out it will cause that law to occur, or something close to it.
6.	<i>Hallah ḥadd al-'ala mujab mughlaq la yajuz tajawzuhu</i> (the maximum limit is positive and may not be exceeded and the minimum limit is negative and may be exceeded)	The maximum curve wave is in the positive region and the minimum is in the negative region.	A law may not be violated when it is at its maximum limit and may be exceeded when it is at its minimum limit.

Application of *Huddūd* Theory to *Had Qadzaf*

According to Muhammad Shahrur, the verses of the Qur'an containing the concept of *Huddūd* cannot be understood simply textually, but must be treated with attention to a broader epistemological framework. This is because, according to Shahrur, the concept of *Huddūd* contains a dual dimension of limitations, namely the existence of a maximum limit (*al-hadd al-a'lā*) and a minimum limit (*al-hadd al-adnā*) in the application of law. In other words, these verses provide room for the application and variation of the application of law that remains within the limits determined by sharia. From this perspective, the implementation of *ijtihad* remains valid and can be carried out by scholars or *mujtahids* as long as the results of the *ijtihad* do not deviate from the scope of the lower and upper limits outlined in the concept of *Huddūd*.³¹ Within the framework of the *Huddūd* theory developed by Shahrur, there is a principle that he calls *halāl al-mustaqīm*. This principle asserts that the Qur'an has, at certain points, detailed the forms of punishment associated with specific violations. Therefore, in this legal realm, the established punishments may not be reduced, relaxed, or increased or aggravated beyond the established limits. This principle aims to ensure that the implementation of Islamic law maintains a balance between justice and the protection of individual rights while remaining within the normative framework established in the sacred text. Therefore, Shahrur's *Huddūd* theory not only affirms the existence of specific sanctions but also presents a legal methodology that emphasizes specific limitations and legal certainty in areas explicitly outlined in the Qur'an.³²

The author's analysis indicates that this principle applies to verses that fall into the *muhkam* category, namely, verses that are detailed and do not require further explanation. Therefore, the author applies the verse that aligns with the principle of the *Huddūd* theory, *halah al-mustaqim*, to the Qur'an, Surah an-Nur, verse 4:

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ³³

Meaning: *And those who accuse good women (of committing adultery) and they do not bring four witnesses, then lash them (those who accuse them) eighty times, and do not accept their testimony forever.*

The essence of *hadd qadzaf*, contextually, focuses on regulating and imposing sanctions against the perpetrator of adultery without valid evidence, particularly within the marital relationship. *Qadzaf* can even be interpreted as any accusation against a Muslim, in any case.³³

From Surah an-Nur verse 4 above, it is explained in detail that the *hadd Qadzaf* is 80 lashes. When applied to the theory of *Huddūd*, this *hadd* cannot exceed the

maximum or minimum limits; in other words, there is no alternative. Wahbah al-Zuhaili provides his argument for the above verse as follows,

- a) in verse an-Nur verse 4 it is mentioned after the verse which discusses adultery.
- b) The term *muhsanah* means a woman who has distanced herself from things that involve adultery.
- c) There is a requirement to present 4 witnesses, whereas only in adultery cases four witnesses are required.
- d) Even though this verse is used in its general pronunciation, the *mawḍū'* can be explained by *asbāb al-nuzūl*. Because *asbāb al-nuzūl* this verse is an accusation against Aisyah ra. for committing adultery.

The above is also confirmed in the book *Rawā'i al-Bayān*, that Imam Syafi'i's view of *ḥad Qadzaf* is that it is an *adami's* right, where no punishment will be terminated unless the victim agrees. Following are Imam Syafi'i's details regarding *ḥad Qadzaf*:³⁴

- a) A judge or priest is not permitted to process the case if there is no lawsuit from the accused party.
- b) Because this law will be revoked when the defendant gives his consent.
- c) If before the punishment process occurs, the accuser has died, then the heir will replace the accuser.

In contrast to Abu Hanifah's opinion that *ḥad Qadzaf* is Allah's right, with the following details:³⁵

- a) When the accuser has filed a case, the Imam or judge is obliged to process the case without waiting for a lawsuit from the accused.
- b) Willingness on the part of the accused will not be able to abort the sentence of the accuser, because only repentance to Allah can alleviate everything in the hereafter.
- c) Referring to adultery, the punishment applied to slaves is half that of free people.
- d) Assets cannot be used to replace *ḥad Qadzaf*.
- e) According to the scholars of the final judgment, *ḥad Qadzaf* is a combination of the truth of Allah and the truth of the *adami*, because accusing someone of adultery is their matter with Allah, while the matter of being tapped by someone else is when it occurs, it will result in defamation.

The author believes that this problem can be categorized under Shahrur's theory of the limits of *Huddūd*, because in the verse there is the phrase “وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا” which means that his testimony will not be accepted forever. In the text, no matter how the process of following up on the punishment, it will still be defeated by the phrase “أَبَدًا” which means forever without anything that can invalidate the title.

Thus, when someone dares to accuse another person of committing adultery, and that person cannot present witnesses, then their testimony will not be accepted forever. This cannot be reduced or exaggerated.

The empirical reality within the Indonesian Religious Courts where the physical penalty of *Qadzaf* is systematically dismantled and absorbed into civil *li'an* procedures unveils a profound epistemological shift that validates Muhammad Shahrur's *Nazhariyyat al-Hudūd* (Limit Theory). Shahrur would argue that the classical punishment of eighty lashes for *Qadzaf* is not an immutable, transhistorical mandate, but rather a socio-culturally bound upper limit (*ḥadd al-a'la*). By operating below this maximal boundary, the Indonesian state exercises legitimate legislative flexibility to reformulate a desert-born penal text into a humane, modern statutory tool. However, this contemporary deconstruction faces a severe theological rebuttal from classical formalists represented by Wahbah al-Zuhaili. Al-Zuhaili rigidly maintains that *hudūd* penalties are non-negotiable divine rights (*ḥuququ'llāh*) that cannot be bartered or decriminalized by state authority (*waliyy al-amri*). From this traditionalist perspective, removing the punitive, deterrent corporal mechanism from *Qadzaf* constitutes an unauthorized suspension of divine text (*tathil al-nushush*), rendering the protection of human honor (*ḥifzh al-'irdh*) ontologically deficient by collapsing the sacred boundary between public criminal liability (*jinayah*) and private domestic law (*munakahat*).

Navigating the conceptual chasm between Shahrur's radical hermeneutics and al-Zuhaili's strict orthodoxy, Yusuf al-Qaradawi's framework of *wasatiyyah* (moderation) and *fiqh al-waqi'* (jurisprudence of reality) offers a pragmatic institutional reconciliation. Al-Qaradawi would view the dynamic of the Compilation of Islamic Law (KHI) in Indonesia not as an act of textual apostasy, but as a valid manifestation of *siyasah syar'iyyah* (shariah-oriented public policy) tailored for the modern nation-state. In an era where a comprehensive enforcement of classical Islamic penal codes is sociologically untenable, forcing physical corporal punishments would yield greater societal harm (*mafsadah*). Therefore, al-Qaradawi would validate the Indonesian mechanism as a necessary legal compromise, wherein the penal energy of a theological dispute is safely channeled into the civil courtrooms to secure public mass welfare (*maslahat ammah*) and ensure national legal uniformity without causing social instability.

This analysis achieves its theoretical climax when viewed through Jasser Auda's contemporary systems approach to *Maqasid al-Shariah* (Objectives of Islamic Law). Auda exposes the analytical failure of classical *ushul fiqh* as an atomistic limitation one that isolates *Qadzaf* and *li'an* into mutually exclusive legal silos. Applying a teleological lens, Auda asserts that the ultimate divine intent behind both concepts is not the execution of the whip or the mechanical recitation of oaths, but the

realization of universal values (*al-qiyam al-kuliyah*): namely, the verification of domestic truth, the restoration of a maligned spouse's dignity, and the legal safeguarding of child paternity. When the Indonesian judiciary employs *li'an* as an alternative dispute resolution mechanism to resolve *sengketa asal-usul anak* (paternity disputes) while neutralizing physical violence, it does not degrade Islamic law. Instead, it epitomizes a sophisticated epistemological transformation that shifts the paradigm of shariah from a punitive, formal-procedural system to a protective, values-driven matrix of substantive justice.

Compilation of Islamic Law in Indonesia related to *Had Qadzaf*

It's important to note that the meaning of "compilation" is "to gather together," such as collecting scattered regulations. The word is derived from the English word "compile." According to the Big Indonesian Dictionary (KBBI), "compilation" means a collection that has been arranged in an orderly manner, including information, statements, and so on. Therefore, a compilation of Islamic law is a collection compiled by a competent authority, encompassing existing Indonesian laws related to Islamic law. The Compilation of Islamic Law (KHI) covers three main topics: Book I, which covers marriage law; Book II, on inheritance law; and Book III, which covers waqf law. This book has been widely distributed and used as a guideline by religious court judges.

The KHI does not address *Qadzaf*, but Article 126 of Book I, on marriage, does address the law of *li'an*.³⁶ In Islamic jurisprudence, the two are indeed different. The above-mentioned definition of *Qadzaf* is a general one, but essentially, *Qadzaf* is an accusation by a husband or wife of having an affair and committing adultery with another person, or attributing their child to another person. It is not uncommon for jurists to attribute the meaning of *Qadzaf* in this way, so it is not a general definition,³⁷ although it is sometimes possible for such a situation to occur.³⁸

Meanwhile, "*li'an*" is a phrase that is a plural form of the verb "*la'ana*," which means "far." According to Islamic law, Imam Abu Abdillah bin Qasim defines it as follows:³⁹

كلمات مخصوصة جعلت حجة للمبضر إلى قذف من لطح فراشه وألحق العاربه

This phrase refers to a specific sentence that serves as the basis for someone who is forced to accuse someone of adultery who has damaged their honor and brought harm to them. Therefore, the author believes that a *li'an* is an oath taken by a husband or wife that the accusation of adultery is true.⁴⁰

While the two have different meanings, they are interrelated. A *li'an* oath is not necessary when there is no *Qadzaf* lawsuit. This is relevant when the plaintiff and the defendant are married. In other words, there is no connection between a *Qadzaf*

and a *li'an* when the accused is not the spouse or even someone else. Both a *li'an* and a *Qadzaf* also have nearly the same requirements for following up on the lawsuit, namely the need to present witnesses. Furthermore, a *li'an* oath has its own consequences, distinct from a *Qadzaf* oath.⁴¹ The following are the consequences of taking a *li'an* oath:⁴²

- a) The *ḥad Qadzaf* is waived for the spouse who is *li'aned*.
- b) The punishment for adultery is determined for the accused spouse.
- c) The permanent severance of the marital relationship.
- d) The severance of the relationship between the husband and the child who made the oath of *li'an*, while the child's lineage remains with the wife.
- e) It is forbidden for the wife to make the oath a second time, thus prohibiting either of them from remarrying under any circumstances.⁴³

The KHI then continues with Article 127, which contains the conditions for accepting the *li'an*. The end result of this lawsuit is not 80 lashes, but the permanent separation of the husband and wife.⁴⁴ Therefore, according to the author, *Qadzaf* and *li'an* are interrelated, although they are fundamentally different.⁴⁵

Table 2 Comparison between Shahrur's *Huddūd* Theory and KHI.

Shahrur's theory of <i>Huddūd</i>	Compilation of Islamic Law
The punishment for <i>Qadzaf</i> remains because it can tarnish a good name.	There is no <i>Qadzaf</i> law but it is linked to the <i>li'an</i> oath.
It is still necessary to carry out 80 lashes for someone who accuses and cannot produce witnesses.	There is no punishment of 80 lashes. This is because the concept has been changed in the <i>Li'an</i> oath.
Those who make accusations will not be accepted for that person's testimony forever. And this cannot be done.	For those who have taken the <i>li'an</i> oath, the relationship between husband and wife will be severed forever. And this cannot be done.

The deliberate omission of *ḥad Qadzaf* from the Compilation of Islamic Law (KHI) represents a highly calculated institutional compromise driven by the realities of Indonesia's legal pluralism. In a nation-state where Islamic law, customary law (*adat*), and a secular-Western penal framework coexist, the integration of physical *ḥudūd* sanctions into civil family statutes would trigger a catastrophic jurisdictional conflict (*anarki yurisdiksi*). Under the Indonesian constitutional framework, the codification of penal liabilities remains an absolute monopoly of the National Criminal Code (KUHP). By deliberately omitting the eighty lashes for false accusations of adultery from the KHI, the state avoided a dual criminal track, allowing the KUHP to handle the public punitive aspect of defamation, while channeling the domestic, socio-religious friction into the civil machinery of the Peradilan Agama. This strategic boundary-setting aligns with Yusuf al-Qaradawi's

siyasah syar'iyah, demonstrating how transcendental mandates must pragmatically negotiate with modern state-building structures to preserve national legal order.

The philosophical level, this legislative exclusion serves as a prime manifestation of the Indonesianization of Islamic Law (the indigenization of *fiqh*). The sociological fabric of Indonesian society, which fundamentally prioritizes communal harmony, deliberative consensus (*musyawarah*), and restorative mediation, naturally repels the rigid, punitive violence inherent in classical *hudūd* corporal punishments. Forcing the implementation of physical lashing within the Nusantara cultural context would generate severe societal resistance and disrupt family units rather than heal them. Through this indigenization process, the Indonesian state successfully deconstructed the punitive-repressive nature of classical *jinayah* and re-engineered it into a restitutive-rehabilitative family instrument. In the language of Muhammad Shahrur, this adaptive evolution demonstrates how a nation's collective consciousness can establish its own legal coordinates below the absolute upper limit (*ḥadd al-a'la*), transforming an ancient penal code into a localized, civil statutory system that reflects genuine Indonesian character.

The penal function of *Qadzaf* with the civil litigation of *li'an* represents a profound, systemic realization of *Maqasid al-Shariah* as conceptualized by Jasser Auda. While classical jurists like Wahbah al-Zuhaili feared that abandoning physical *hudūd* penalties would leave human honor (*ḥifz al-'irdh*) unprotected, the operational reality of Indonesian courts proves that the essence of shariah is not lost, but teleologically optimized. Instead of adopting an atomistic view that requires the execution of a physical whip to satisfy divine law, the KHI utilizes a holistic approach centered on protective justice. Through the *li'an* mechanism in the Religious Courts, an accused wife is granted the immediate civil right to clear her theological and social standing via counter-oath, while the absolute legal status and lineage protections of the child are immediately secured under positive family law. Consequently, the non-adoption of *ḥad Qadzaf* is not a degradation of divine law, but a high-level epistemological transformation that preserves the ultimate spirit of the shariah human rights, justice, and social welfare within a modern, humanistic family law framework.

Contextualization of *Qadzaf* in Religious Court Practices

Field research findings indicate that in religious court practice, the term *Qadzaf* is not explicitly used as a case category. All interviewed informants stated that in Indonesia's positive legal system, particularly in the Compilation of Islamic Law (KHI), there is no specific regulation regarding *Qadzaf* as a separate offense as in classical Islamic jurisprudence. Instead, cases related to accusations of adultery are

more often represented as *li'an* cases, namely the oath mechanism between husband and wife when allegations of infidelity or adultery occur without sufficient evidence.

Based on interviews, the judges explained that cases involving allegations of adultery typically arise in the context of divorce proceedings. In such situations, the accusing husband or wife is not required to prove the allegation through four witnesses as stipulated in *hudūd* law, but is instead directed to the *li'an* procedure as a legal resolution. This process involves oaths from both parties before a judge, which then results in the permanent dissolution of the marriage.

One informant stated that:

“In religious court practice, we don't use the term *Qadzaf*. Cases like this are more focused on *li'an* (unclear marriage) because they involve marital relations, and the resolution relies more on proof through oath, rather than criminal sanctions.”

These findings demonstrate a conceptual shift from *Qadzaf* as a criminal offense in classical Islamic jurisprudence to a civil matter in Islamic family law in Indonesia. In practice, no *hudūd* sanctions, such as eighty lashes as mentioned in the Quran, have been applied. The judges emphasized that Indonesia's national legal system does not adopt such physical sanctions, but rather places greater emphasis on conflict resolution and protecting the rights of the parties.

Furthermore, research findings also indicate that when deciding cases involving adultery allegations, judges adhere not only to normative legal aspects but also consider social and humanitarian dimensions. These considerations include protecting individual honor, preventing broader conflict within the family, and maintaining social stability. In this regard, judges tend to prioritize the principle of public welfare (*maslahah*) as the basis for legal considerations.⁴⁶

Furthermore, several informants also stated that the limited provisions in the KHI regarding *Qadzaf* are not considered a legal vacuum, but rather a form of adjustment to the context of Indonesian society. The *li'an* mechanism is considered adequate for resolving adultery allegations within the household, although it is not entirely identical to the concept of *Qadzaf* in classical Islamic jurisprudence.

Thus, the results of this study indicate that the practice of religious justice in Indonesia has undergone a process of legal contextualization, in which classical concepts such as *Qadzaf* are not applied literally, but rather adapted in a form that is more appropriate to the national legal system and the needs of contemporary society.⁴⁷

This transformation cannot be understood simply as the elimination of norms, but rather as a form of contextualization of Islamic law within the framework of the national legal system. In this regard, Islamic law in Indonesia does not ignore the fundamental value of *Qadzaf*, namely the protection of individual honor, but adapts

it through legal instruments more appropriate to the prevailing social and legal structure. The *li'an* mechanism, which leads to the dissolution of a marriage, reflects a restorative approach rather than a retributive one that emphasizes physical sanctions.

Analyzed using the *hudud* theory developed by Muhammad Shahrur, this phenomenon demonstrates that Islamic legal practice in Indonesia operates within a framework of elastic normative boundaries. Shahrur views *hudud* not as a single, rigid provision, but rather as a system of minimum and maximum limits that allows room for human *ijtihad*. In this context, the non-application of caning does not constitute a departure from the *hudud* framework, but can be understood as a form of *ijtihad* within these boundaries, taking into account social, cultural, and prevailing legal systems.

The principle of *halalah al-mustaqim* in Shahrur's *hudud* theory, which emphasizes the existence of permanent legal provisions, can be interpreted contextually in religious court practice⁴⁸. Although the textual sanction for *Qadzaf* is firm, its implementation in the modern legal system has been reinterpreted through a more humanistic and welfare-oriented approach. This is evident in the tendency of judges to prioritize the protection of honor, family stability, and the prevention of broader social conflict.

This perspective, the practice of *li'an* in the Compilation of Islamic Law can be understood as a concrete form of institutional *ijtihad* that seeks to balance the normativity of texts with social reality. In other words, Islamic law in Indonesia does not stop at normative texts but develops through a process of adaptation that takes into account the needs of society. This approach aligns with Shahrur's idea that Islamic law is a dynamic system responsive to changing times.⁴⁹

This study offers a new perspective: the transformation of *Qadzaf* into a *li'an* mechanism is not merely a conceptual reduction, but rather a form of legal reconstruction oriented toward protecting individual rights and social justice. This opens up space for the development of Islamic law that is more adaptive and relevant to the context of the modern state, without losing the essence of its fundamental values. Thus, this discussion confirms that the practice of Islamic law in Indonesia reflects the dialectic between text and context, between normativity and reality, ultimately resulting in a more applicable, humanistic, and contextual form of law⁵⁰.

The empirical findings of this study, particularly through the lens of Case No. 4231/Pdt.G/2024/PA.Smg at the Class IA Religious Court, unveil an intricate dialectic when brought into conversation with classical and contemporary Islamic legal philosophy.⁵¹ The case wherein a husband accused his wife of adultery and rejected child paternity without producing four witnesses presents a real-world legal puzzle. In classical *ushul fiqh*, as staunchly defended by traditionalist formalists like

Wahbah al-Zuhaili, this situation would trigger an immutable, *ta'abbudi* penal obligation: either the husband produces four male witnesses, or he must be subjected to the public *hudūd* penalty of eighty lashes for *Qadzaf*. Al-Zuhaili argues that abandoning this corporal deterrent amounts to an unauthorized suspension of divine text (*tathil al-nushush*), rendering the ontological protection of human honor (*hifzh al-'irdh*) fundamentally broken. Yet, as INF-01 explicitly noted in his interview, the contemporary Indonesian judiciary operates on an entirely different paradigm:

When a husband hurls an accusation of adultery in court without four witnesses, we do not treat him as a criminal defamer (*Qadzaf*) to be reported to the police. Our focus is to rescue the legal status of the human beings before us, especially the child. *Li'an* is the only liturgical scalpel provided by the KHI. The ultimate truth of the accusation is surrendered entirely to God's theological tribunal.

This judicial reality demonstrates a profound validation of Muhammad Shahrur's *Nazhariyyat al-Hudūd* (Limit Theory), which posits that the classical eighty-lash penalty is a socio-culturally bounded upper limit (*hadd al-a'la*) rather than a rigid, eternal mandate. By utilizing Articles 125–128 of the Compilation of Islamic Law (KHI) to substitute a criminal whip with a private civil oath, the Indonesian state successfully operates below that maximal boundary, proving that transcendental penal texts can be dynamically re-engineered into modern, humane statutory litigation.

The Indonesianization of Islamic law, and contemporary *Maqasid al-Shariah*, the resolution of Case No. 4231/Pdt.G/2024/PA.Smg transforms from a mere procedural alternative into a high-level philosophical milestone. From a legal pluralism perspective, the non-adoption of *had Qadzaf* in the KHI is a deliberate act of statecraft designed to prevent a catastrophic jurisdictional conflict with the National Criminal Code (KUHP), which maintains an absolute monopoly over penal sanctions. The court filters out the public criminal energy of the accusation, allowing the secular code to handle defamation while resolving the domestic, spiritual rupture safely within the civil boundaries of the *Peradilan Agama*.

This is closely intertwined with the Indonesianization of Islamic Law, a deliberate indigenization (*pribumisasi*) process wherein the punitive-repressive violence of *padang-pasir* jurisprudence is systematically replaced by a restitutive-rehabilitative family framework that aligns with the harmonious, consensus-driven (*musyawarah*) ethos of Nusantara society.

Finally, this transition achieves its ultimate teleological justification under Jasser Auda's systemic *Maqasid* approach. Yusuf al-Qaradawi notes that under *siyasah syar'iyah*, legal tools must adapt to modern state-building to secure public welfare (*maslahat ammah*). Auda goes further by illustrating that the divine objective behind *Qadzaf* and *li'an* is not the mechanical execution of corporal pain, but the realization

of universal justice. By choosing *li'an*, the Indonesian court transitions from an archaic physical tribunal to a protective sanctuary: the accused wife is granted the immediate civil right to salvage her dignity via counter-oath, while the child's legal status though severed from the father is immediately anchored to the mother's lineage under positive family law (Article 100 KHI). Thus, the institutionalization of *li'an* over *had Qadzaf* in Indonesia is not a secular retreat from shariah, but its ultimate systemic fulfillment.

Conclusion

This study concludes that religious court practice in Indonesia does not explicitly use the concept of *Qadzaf* as a case category, but rather represents it through the *li'an* mechanism within the context of family law. This demonstrates a conceptual transformation from *Qadzaf* as a criminal offense in classical *fiqh* to a more contextual civil matter within the Indonesian Islamic legal system. The absence of *hudūd* sanctions, such as caning, confirms that Islamic law in Indonesia has undergone a process of adaptation that takes into account the national legal system and social conditions. From the perspective of Muhammad Shahrur's *hudūd* theory, this practice can be understood as a form of *ijtihad* that remains within the normative boundaries of sharia, while also reflecting the flexibility of Islamic law in responding to changing times.

Theoretically, this study strengthens the argument that Islamic law is dynamic and contextual, as reflected in *hudūd* theory, which allows for limited interpretation. This research also contributes to the development of contemporary Islamic legal studies by demonstrating that legal practice in Indonesia has implicitly adopted a flexible approach to understanding sharia norms. Practically, these findings have implications for religious courts to continue prioritizing the principles of public welfare, protection of individual dignity, and social justice in handling sensitive cases such as adultery allegations.

This study has several limitations, including the limited number of informants interviewed and the focus on a single Religious Court location. Furthermore, this study did not comparatively examine judicial practices across regions, which may have different social and cultural characteristics. Another limitation lies in the study's focus on the judge's perspective, which does not fully encompass the views of other parties, such as advocates or litigants.

Study explicitly demonstrates that the epistemological metamorphosis of *Qadzaf* into *li'an* within the Indonesian positive legal framework offers an undeniable proof of the Indonesianization of Islamic Law, running perfectly in parallel with the constitutional spirit of the national legal system and the systemic vision of contemporary *Maqasid al-Shariah*. By consciously expelling the eighty-lash corporal

penalty from the Compilation of Islamic Law (KHI) to mitigate critical jurisdictional clashes with the National Criminal Code (KUHP), the Indonesian state exhibits an exceptional statecraft that converts an ancient, desert-born punitive system into a restorative, civil litigation mechanism. This legislative trajectory proves that the indigenous character of Islamic law in Indonesia—deeply rooted in social harmony, consensus (*musyawarah*), and peaceful resolution effectively triumphs over strict textual literalism. Analyzed through Muhammad Shahrur's Limit Theory and Jasser Auda's systemic teleology, this institutional transition does not degrade divine law; rather, it beautifully elevates the shariah from a penal-repressive tribunal to a protective statutory sanctuary, effectively preserving human dignity (*hifzh al-'irdh*) and child lineage within a progressive and modern constitutional democracy.

Future research is recommended to expand the scope of the study by involving several Religious Courts in various regions to obtain a more comprehensive picture. Furthermore, future research could employ a comparative approach between Islamic law in Indonesia and other countries that formally implement *hudūd* laws. Further studies could also develop an analysis of the integration of the concept of *Qadzaf* into Indonesian positive law and delve deeper into a multidisciplinary perspective that incorporates sociological, juridical, and theological aspects to understand the dynamics of contemporary Islamic law.

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