



Evidence in Islamic Criminal Law

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Abstract

Evidence constitutes a fundamental element in the Islamic criminal justice system, serving as the primary basis for establishing criminal liability while safeguarding the rights of the accused. Islamic criminal law upholds the principle of the presumption of innocence, whereby no individual may be convicted without clear, valid, and convincing evidence. This study aims to examine the concept of evidence in Islamic criminal law, identify the recognized forms of admissible evidence, and analyze the mechanisms for their application in criminal proceedings. This research employs a normative legal research method using a library research approach by examining the Qur'an, Hadith, classical and contemporary Islamic legal literature, statutory references, and relevant scholarly publications. The findings indicate that Islamic criminal law recognizes several forms of evidence, including confession (iqrār), testimony (shahādah), oath (yamīn), refusal to take an oath (nukūl), collective oath (qasāmah), the judge's knowledge ('ilm al-qāḍī), and circumstantial evidence (qarīnah). Each form of evidence possesses specific legal requirements and varying evidentiary value depending on the nature of the criminal offense. The evidentiary process is governed by the principle that the burden of proof rests upon the claimant, while the defendant has the right to deny the allegation through legally recognized means. Particularly in cases involving ḥudūd and qisās, Islamic law requires a higher standard of proof to avoid wrongful convictions and ensure justice. The study concludes that the Islamic evidentiary system is designed not only to determine criminal responsibility but also to protect human rights, uphold fairness, and ensure that judicial decisions are based on certainty rather than suspicion.

I. INTRODUCTION

Islam is a religion that governs all aspects of human life, including the field of criminal law (jinayah). Islam holds that, by default, every individual is presumed innocent. No individual is deemed guilty unless supported by convincing evidence. (Syamsuri et al., 2020). In the Islamic criminal law system, evidence plays a crucial role as it serves as the foundation for establishing a person's guilt and ensuring justice is upheld. Islamic law places great emphasis on the validity of evidence, prudence in imposing penalties, and the protection of the accused from wrongful convictions. (Rahmatiah, 2026).

Evidence is a prerequisite for a qadhi to issue a legally binding decision. Evidence is also required by a prosecutor to prove their

charges. Evidence serves as proof for the prosecutor to strengthen their case. Something cannot qualify as evidence unless it is convincing and certain. A person may not give testimony unless it is based on something convincing. Testimony is invalid if it is based on doubt. (Saenah, 2020). Therefore, proof serves as a means to avoid errors in rendering a verdict and to prevent unjust treatment of the accused party. Evidence in Islamic criminal law is established through specific means of proof, such as confessions, testimony, oaths, and other forms of evidence recognized by Islamic scholars. Through valid evidence, the rights of every individual are protected, and errors in sentencing can be avoided.

II. RESEARCH METHOD

This study employs a normative legal research method using a literature review (library research) approach. Normative legal research involves examining legal norms found in regulations, literature, and relevant legal sources pertaining to the subject of study. The data used in this study consists of secondary data obtained from the Qur'an, hadith, books on Islamic criminal law, scientific journals, and other literature sources related to evidence in Islamic criminal law.

III. RESULTS AND DISCUSSION

A. The Concept of Evidence in Islamic Criminal Law

The term "evidence" originates from the Arabic word "*al-bayyinah*," which means "that which explains." Etymologically, it refers to evidence that is, anything that can establish the truth (correctness). (Lubis, 2005).

In legal theory, evidence is defined in various ways, including: (1) According to Hasbi Asshiddieqy, evidence is the provision of information and arguments to the point of being convincing. (2) According to Subhi Mahmasāni, evidence is the presentation of reasons and arguments to the point of being convincing. (3) According to Subekti, proof is convincing the judge of the truth of the arguments or evidence presented in a dispute.

Based on these definitions, the presentation of evidence is in the interest of all parties involved in a court case. For the litigants, the presentation of evidence is intended to ensure their claims are granted or their rights are fulfilled. For the judge, the presentation of evidence is intended as an effort to convince them to adjudicate the case correctly and fairly. There is an adage among legal experts that states, "Legal issues are matters of evidence in court." This is because a judge cannot simply decide a case without first undergoing the evidentiary process from both parties. It is during this evidentiary

process that the litigants have the opportunity to provide the judge with the basis for the certainty of the truth regarding a disputed event. In Islam, evidence is also a highly urgent legal issue. Many verses of the Qur'an and hadiths explain this, such as: Surah al-Nur (24): 4, which contains the command to bring witnesses for those who accuse others of adultery (*qazaf*):

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَا يَأْتُونَ
بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا
وَأُولَئِكَ هُمُ الْفَاسِقُونَ ﴿٤﴾

Meaning: "Those who accuse chaste women of adultery and do not produce four witnesses flog them (the accusers) eighty times and never accept their testimony. They are the transgressors."

As for Surah Al-Baqarah (2): 282, it contains a command that every non-cash transaction be recorded in writing and witnessed by qualified witnesses. The verse also emphasizes the prohibition against a person refusing to testify when summoned as a witness.

Then in Surah Al-Ma'idah (5): 106:

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنَكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ
الْوَصِيَّةِ اثْنِ ذَوَا عَدْلٍ مِّنكُمْ أَوْ آخَرِينَ مِنْ غَيْرِكُمْ إِنْ أَنتُمْ صَرَّرْتُمْ فِي
الْأَرْضِ فَأَصَابَتْكُمْ مُصِيبَةُ الْمَوْتِ تَحْسِبُوهُمَا مِنْ بَعْدِ الصَّلَاةِ
فَيُقْسِمَنِ بِاللَّهِ إِنْ ارْتَبْتُمْ لَا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَىٰ وَلَا
نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذًا لَمِنَ الْآثِمِينَ ﴿١٠٦﴾

Meaning: "O you who believe, when one of you is on the verge of death and wishes to make a will, let the testimony be given by two just persons among you, or by two others (non-Muslims) if you are traveling on earth and are struck by the calamity of death. If you have any doubt (regarding their testimony), detain the two witnesses after the prayer so that they may swear by the name of Allah, 'We will not seek any gain from this oath, even if he is a close relative, and we will not conceal the testimony

of Allah. Indeed, if we do so, we would surely be among the sinners.”

This verse highlights the crucial role of evidence in resolving matters that may lead to disputes. The solution to resolving disputes, as mentioned in the verse, is through evidence by presenting testimony and an oath. (Syamsuri et al., 2020).

As for some hadiths that discuss evidence, they are as follows:

عن ابن عباس أن رسول الله ﷺ قال: البينة على المدعى واليمين على من أنكر

(رواه الترمذي ومالك وأحمد)

Meaning: From Ibn 'Abbas, may Allah be pleased with him, that the Prophet, peace be upon him, said: "The burden of proof lies with the claimant, and the oath lies with the one who denies it." (Narrated by Malik, Ahmad, and al-Turmuzi)

عن ابن عباس رضي الله عنه أن رسول الله ﷺ قضى بيمين وشاهد (رواه مسلم)

From the examples of Quranic verses and hadiths above, it is evident that evidence plays a crucial role in the administration of justice. A claimant's demands, as stated in their lawsuit, cannot be granted directly by the judge without going through this process. On this basis, the judge must follow the evidentiary procedures to determine the truth of the claimant's allegations. The Prophet Muhammad (peace be upon him) himself, as stated in the hadith above, practiced this by adjudicating cases after hearing witness testimony and oaths. Witnesses and oaths serve as evidence. Thus, the Prophet Muhammad (peace be upon him) adjudicated cases after completing the evidentiary process. (Analiensyah, 2018).

B. Means of Evidence in Islamic Criminal Law

According to the majority of jurists, there are seven means of evidence in Islamic jurisprudence. These means of evidence, in order, are as follows:

1. Confession (*Iqrar*)

Linguistically, *Iqrar* means to affirm and acknowledge a right without denying it.

Terminologically, however, several definitions have been provided by scholars, including Sayyid Sabiq, who states that *Iqrar* is an acknowledgment of what is alleged. According to Roihan A. Rasyid, a confession is a statement by one of the parties or their legal representative who explicitly and unconditionally admits before the court that what is claimed by the opposing party is true. From the definitions put forward by the experts above, it can be understood that *Iqrar* is an acknowledgment of the existence of rights and obligations, whether on the part of the person making the admission or their legal representative, which binds them both at the time of the admission and in the future. An admission must contain the following elements: the person making the admission (*mungkar*), the person or party being admitted to, or the party benefiting from the admission, and the existence of the matter being admitted.

2. Testimony (*Syahdah*)

Linguistically, the term "*syahadah*" derives from the word "*musyahadah*," which means "to see with one's own eyes," because a "*syahid*" (witness) reports what he has seen and witnessed. This means that he conveys what he knows using the phrase "I bear witness" or "I have witnessed." In Article 1684 of the Islamic Civil Code of the Ottoman Caliphate Era (Hanafi School), testimony is defined as: "The presentation of information by a person before a court hearing attended by the disputing parties using specific words, namely, by officially stating 'I testify,' to prove the existence of a person to another." The obligation to serve as a witness is based on the verse of Allah SWT in Surah Al-Baqarah (2): 282. (Saenah, 2020).

The general requirements for testimony are as follows:

- 1) Being a Muslim is one of the requirements for a witness; therefore, the testimony of a non-Muslim is rejected. Regarding this, the jurists have agreed that being a Muslim is a

condition for the acceptance of testimony, and the testimony of non-Muslims is not permitted. The jurists make an exception only for testimony regarding the permissibility of making a will while traveling a matter still debated among them by referring to Allah's verse in Surah Al-Maidah: 106, which reads: O you who have believed, when one of you is on the verge of death and wishes to make a will, let it be witnessed by two just persons among you, or by two who are not of your religion, if you are traveling on the earth and are overtaken by the danger of death.

Imam Abu Hanifah opined that this is permissible as long as it is based on the conditions mentioned by Allah SWT. In line with this opinion, Ibn Abbas said: "What is permitted here is an emergency situation because while traveling, Muslim witnesses cannot be found." Meanwhile, Imam Shafi'i rejected the testimony of non-Muslims because non-Muslims have no authority over Muslims citing the verse of Allah SWT that reads:

Meaning: And Allah will never grant the disbelievers a way to destroy the believers. (QS. An-Nisaa" : 141)

- 2) Of legal age; therefore, the testimony of a person who has not reached legal age is not accepted.
- 3) Of sound mind; a witness must be of sound mind. A person of sound mind is one who knows what is obligatory and what is not, what is possible and what is not, as well as harm and benefit. Thus, the testimony of a person who is insane or mentally impaired (ma'tuh) is not admissible. Therefore, a witness must be of sound mind; the testimony of an insane person is invalid, as they cannot explain their own affairs, let alone those of others

- 4) Al-hifz (memory): A witness must be able to recall the case they witnessed, and their testimony must be credible. Therefore, the testimony of someone who frequently forgets is not accepted.
- 5) Ability to speak; regarding the testimony of the mute, scholars differ in opinion: (a) Abu Hanifah rejects the testimony of the mute. (b) The Maliki school accepts the testimony of a mute person through gestures, (c) The Shafi'i school is divided into two opinions; some accept the testimony of a mute person, while others reject it, (d) The Hanbali school accepts the testimony of a mute person if they can write.
- 6) Direct observation: regarding this, scholars disagree on the testimony of a blind person; (a) According to Abu Hanifah, the testimony of a blind person is not admissible because it involves doubt, (b) The Maliki school accepts the testimony of a blind person if they can confidently identify the sounds they hear, (c) The Shafi'i school accepts the testimony of a blind person regarding matters of lineage and death, but rejects their testimony in cases involving actions such as murder and statements such as those in marriage, (d) The Maliki school accepts the testimony of a blind person.
- 7) Just: A witness must be just; this is based on Allah's command in Surah At-Talaq, verse 2, which means: "And let two just witnesses bear witness." In this verse, Allah commands that the testimony of a just person be accepted. To be a just witness, one must meet five requirements, namely: 1) A just person is one who avoids major sins. 2) Avoids making a habit of minor sins. 3) Avoids acts of innovation (bid'ah). 4) Is truthful even when angry. 5) Possesses noble character.
- 8) Free: The majority of scholars hold that a witness must be free, and a slave cannot serve as a witness; however, the Hanbali school of thought holds that a

slave may serve as a witness in all cases except those involving qisas and hudud.

- 9) There must be no impediments to testimony, namely: (a) Kinship; thus, the testimony of a parent regarding their child or of a child regarding their parent is not accepted. (b) Enmity; thus, testimony between people who are enemies is not accepted. (c) Allegations or suspicions that the witness intends to benefit the person they are testifying for or, conversely, to deliberately harm them, such as a servant testifying against their master.

3. Oath (*yamin*)

An oath is an affirmation of the occurrence of something, validated by the testimony of Allah. In Arabic, this testimony is marked by the letters of the oath (*qasam*), namely *waw*, *ba'*, and *ta'*, which are combined with the names of Allah. In Indonesian, these letters are typically translated as "by." An oath is admissible as evidence based on the Prophet's hadith:

و حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ حَدَّثَنَا مُحَمَّدُ بْنُ بَشْرٍ عَنْ نَافِعِ بْنِ عُمَرَ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ

Meaning: And Abū Bakr b. Abī Shaibah narrated to us, and Muhammad b. Bishr narrated to us from Nāfi' b. 'Umar from Ibn Abī Mulaikah from Ibn 'Abbās, that the Messenger of Allah once ruled in a case by requiring the defendant to take an oath. (Narrated by Muslim). (Syamsuri et al., 2020).

Terminologically, an oath is a solemn declaration made or uttered when giving a promise or testimony, in recognition of God's omnipotence and in the belief that anyone who gives false testimony or makes a false promise will be punished by God (Allah). The legal basis for the oath in the Qur'an is found in Surah Al-Maidah: 89, which reads: "Allah does not punish you for oaths you did not intend to take, but He punishes you for the oaths you make intentionally; the expiation

for breaking such an oath is to feed ten poor people with the food you normally provide for your family, or to clothe them, or to free a slave. Whoever is unable to do so, the expiation is to fast for three days. That is the expiation for your oaths when you swear (and break them). (Saenah, 2020)

4. Refusal to Take an Oath (*nukul*)

Refusal to take an oath as evidence is the refusal by the accused to take an oath in denial of the charges brought by the plaintiff. According to Abū Hanīfah, if a plaintiff fails to present evidence for their claim and the accused does not admit to the charge, then the accused should take an oath regarding the falsity of the charge. If the defendant refuses to take the oath, the judge may grant the indictment based on the evidence of *nukul* (refusal to take the oath) by the defendant. Meanwhile, according to the schools of Imam Shafi'i, Malik, and Ahmad, the refusal to take the oath does not automatically serve as evidence leading to the acceptance of the charge, but must first be returned to the plaintiff to take the oath. If the plaintiff takes the oath, then the charge may be accepted.

5. Oath by a Group of People (*Qasamah*)

Qasamah is a form of evidence in criminal homicide cases where the identity of the murderer is not clearly known. The definition of *qasām ah* is an oath taken by several residents of the area where the accused resides. To clarify, *qasamah* can be described as follows: if a murder occurs where the identity of the murderer is not known with certainty, the victim's family selects 50 people among whom the murderer is likely to be found or from the same region to take an oath that they did not commit the murder and that they also do not know who the murderer is. If they take the oath, they are free from punishment. However, if they refuse to take the oath, all residents of that area are subject to *diat* punishment.

6. The Judge's Knowledge

Jurists differ on whether a judge's knowledge can serve as evidence. The Hanafi school holds that a judge's knowledge, whether gained through sight or hearing, can serve as evidence, and he may adjudicate a case based on such knowledge. According to them, the judge's knowledge can serve as evidence as long as it pertains to a civil case during the time he served as a judge and was within his jurisdiction. According to the Shafi'i school, the judge's knowledge cannot stand alone as evidence. Such knowledge can serve as evidence only if supported by the testimony of two just witnesses. Maliki scholars hold that a judge must not decide a case based solely on his own knowledge.

7. Presumptions/Signs/Indications (*Qarinah*)

Qarinah are signs that give rise to certainty. These signs serve as convincing evidence for the judge regarding the occurrence of a legal event. Legal scholars differ in their views regarding *qarānah* as evidence. The first group states that *qarānah* cannot serve as evidence for ḥad crimes and *qīṣāṣ*. This group consists of the followers of the Hanafi and Shafi'i schools. The second group argues that *qarānah* can be used as evidence in all cases, whether involving ḥad crimes, *qīṣāṣ*, or others. The followers of this group are the scholars of the Maliki and Hanbali schools of thought.

C. Mechanisms and Application of Evidence in Islamic Criminal Law

Evidence in Islamic criminal law is the process conducted to prove the truth or falsity of a criminal act alleged against a person before a judge. Evidence is a crucial aspect in resolving criminal cases because it is through this process that the judge can form a conviction regarding the facts of the case before rendering a verdict. In Islamic criminal law, the burden of proof aims not only to establish the perpetrator's guilt but also to protect the defendant's rights so that

they are not punished without clear and convincing evidence. Therefore, every accusation must be supported by evidence that is valid according to the provisions of Islamic law.

The mechanism of evidence in Islamic criminal law is a process conducted to determine whether a person has indeed been proven to have committed a criminal act (*jarimah*) or not. This process is crucial as it serves as the foundation for the judge in rendering a verdict. In Islamic criminal law, the burden of proof is not only intended to identify the perpetrator of a crime but also to protect the rights of the accused so that they are not sentenced without strong and convincing evidence. Therefore, every accusation brought must be accompanied by valid evidence in accordance with the provisions of Islamic law. (Ali, 2022).

Fundamentally, Islamic criminal law adheres to the principle that the accusing party is obligated to prove their allegations, while the accused party has the right to defend themselves or deny the allegations. This principle is based on a hadith of the Prophet Muhammad (peace be upon him) stating that the burden of proof lies with the party filing the lawsuit or accusation, while the oath is given to the party who denies the accusation. With this principle in place, a person cannot be found guilty based solely on suspicion or accusation; rather, it must be supported by verifiable evidence. (Muslich, 2016).

In practice, the judge will examine various pieces of evidence submitted during the trial process. Evidence recognized in Islamic criminal law includes confession (*iqrar*), testimony (*syahadah*), oath (*yamin*), and circumstantial evidence (*qarinah*). The defendant's confession holds very high probative value because it comes directly from the person alleged to have committed the criminal act. Additionally, testimony from qualified witnesses serves as an important piece of evidence to clarify a criminal

incident. If the available evidence is insufficient, the judge may consider an oath or other circumstantial evidence to strengthen their conviction regarding a case. (Santoso, 2019).

The application of evidence in Islamic criminal law is conducted with great caution, particularly in cases falling under the categories of hudud and qisas. This is because these two types of criminal offenses carry severe penalties, thus requiring stricter standards of proof. If there remains any doubt regarding the evidence presented, a hudud sentence cannot be imposed. This principle demonstrates that Islamic law prioritizes certainty and justice over the risk of punishing someone who is actually innocent. (Hanafi, 2010).

Thus, the mechanisms and application of evidence in Islamic criminal law are carried out through the examination of admissible evidence to establish the judge's conviction regarding a case. This evidentiary system is designed to ensure the upholding of justice, protect the rights of the parties, and guarantee that every ruling is based on clear facts and evidence, not merely on conjecture or prejudice. (Ali, 2022).

IV. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

Evidence in Islamic criminal law is a process to prove the truth of a criminal event in order to achieve justice and provide legal certainty. Evidence plays a crucial role because a person cannot be sentenced without valid and convincing evidence. The types of evidence recognized in Islamic criminal law include confession (*iqrar*), testimony (*shahadah*), oath (*yamin*), refusal to take an oath (*nukul*), collective oath (*qasamah*), the judge's knowledge (*'ilm al-qadi*), and signs or indications (*qarinah*). Each type of evidence has different requirements and levels of probative value in accordance with the provisions of Islamic law. The mechanism of proof in Islamic criminal law is carried out through the

examination of evidence submitted by the parties and the judge's assessment of that evidence. In making a decision, the judge must adhere to the principles of justice, prudence, and truth to prevent errors in rendering a verdict.

B. Recommendations

Evidence in Islamic criminal law must be deeply understood as it is a crucial element in the administration of justice. Therefore, students and the public are encouraged to study the concept of evidence in Islamic law to grasp the importance of evidence in resolving legal cases. Furthermore, studies on evidence in Islamic criminal law must continue to be developed to address various legal issues that arise with the passage of time, without neglecting the principles of Islamic Sharia.

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