



The Concept of Testimony and Its Rulings in Islamic Jurisprudence

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ABSTRACT

Because some humans are inherently inclined to possess certain negative traits, such as selfishness and a willingness to unlawfully consume people's wealth, a great rule was established by the Messenger of God (peace and blessings be upon him and his family) to establish rights and prevent their loss. This principle is stated in his saying (peace and blessings be upon him): "If people were given what they claim, some would claim the wealth and blood of others. But the burden of proof is on the one who claims, and the oath is on the one who denies." The burden of proof here is the witnesses. The wisdom behind the burden of proof being on the plaintiff is that his side is weak because he claimed contrary to the original principle, so he is obligated to provide proof. The defendant's side is strong because a person's conscience is innocent unless he is preoccupied with something, in which case he is required to swear an oath. This is a weak argument, but it prevents harm from its owner and brings him benefit.

INTRODUCTION

The rule of law is an essential principle in a democratic system of the rule of law. This principle affirms that law is the supreme power that limits the actions of states, including executive, legislative, and judicial institutions. In the Indonesian context, this is explicitly affirmed in Article 1 paragraph (3) of the 1945 Constitution which states that "The State of Indonesia is a state of law."

After the 1998 reform, the rule of law agenda became the starting point for Indonesia's efforts to get out of the authoritarian system characterized by abuse of power and legal subordination to political power. Early reform efforts such as the establishment of the Constitutional Court (2003), the Judicial Commission (2004), and the Corruption Eradication Commission (2002) were a form of institutionalization of the rule of law as a pillar of a democratic state.

However, in the two periods of Joko Widodo's administration (2014–2024), the consolidation of the rule of law showed a complex and even contradictory direction. On the one hand, there have been administrative progress—such as digitizing legal services, reforming public services, and simplifying regulations. On the other hand, there is a phenomenon of legal instrumentalization by executive power, such as the weakening of anti-corruption institutions, the passage of controversial laws without public participation, and the criminalization of criticism and civil disposition.

This phenomenon raises a fundamental question: is Indonesia experiencing consolidation or regression in terms of the rule of law?

THEORETICAL REVIEW

Chapter One: The Concept of Testimony

This topic deals with the concept in two sections: the first is to define the testimony and the second is to define its legitimacy.

The first section: its definition, which is divided into two sections. The first section deals with its linguistic definition, while the second section is devoted to the technical definition, as follows:

The first section is its linguistic definition:

Shahid: One of the names of God Almighty is Al-Shahid. Abu Ishaq said: Al-Shahid is one of the names of God who is trustworthy in his testimony. It was also said that Al-Shahid is the one from whose knowledge nothing is hidden.

Al-Shahid: The present

Ibn Sidah: The knowledgeable witness who explains what he knows. Shahid testified.

A man is a Shahid, and the same applies to the female, because the most common of these is in the masculine gender. The plural is Ashhad and Shuhūd. Shahid, and the plural is Shuhda. He testified: He asked him to testify. Testimony is definitive information, such as: The man testified to such-and-such. They may also say: The man testified, with the Haa silent for ease.

And their saying: Ishhad bi-Kadha means swear. Al-Shahid: The witness, and the plural is Shuhda. I made him witness to such-and-such, so he testified against it, meaning he became a witness against it. I made the man witness to the debtor's

admission and made him a witness. Witness: testimony is conclusive information that testifies to such-and-such. I bear witness to such-and-such, meaning I swear. Observation means seeing, and a group of witnesses means attendance (2).

Section Two: Definition of testimony technically

Witness: The one who reports what he has seen, as testimony is a statement based on knowledge acquired through visual observation or insight (3). To bear witness to something: to give conclusive testimony. To testify to someone's case against someone else: to give testimony. It is also known as truthful testimony, to prove a right, using the word "testimony," in the presence of a judge.

It is also known as eyewitness testimony, using the word "testimony," in the presence of a judge, regarding a right of another against another. The sum total of what is perceived by the senses, from which comes the world of testimony: that is, the world of apparent worlds, as opposed to the world of the unseen.

In the Majalla (No. 1684): It is to report using the word "testimony," meaning by saying "I bear witness," to prove the right to take what is owed by another in the presence of the judge and in the presence of the litigants. The informant is called a witness, the one to whom the information is given is called the one to whom it is given, the one against whom it is given is called the one against whom it is given, and the truth is called the one to whom it is given. Its basis is either seeing or hearing, or both. The criterion for testimony is knowledge, and testimony without knowledge is not heard. Moreover, knowledge of something is usually acquired through the senses, so things seen are seen by sight, things heard by hearing, and so on. The requirement that the criterion is (knowledge) is that it is for sight and hearing.

There are several types of testimony, including:

Testimony by experience: A person testifies to what he or she saw or heard, not what someone else told him or her. Testimony by correction: Testimony in which witnesses are commended. Testimony by discredit: Testimony in which witnesses are challenged, so that their testimony is not accepted. Testimony in a funeral: Restricting attendance at funerals and funeral prayers. Testimony of sight: Testimony of a person based on what he or she saw with his or her own eyes, not what he or she heard or was told. False testimony: Intentionally false testimony. Testimony of a child: Testimony against the testimony of the original witness: Testimony of a son for or against his or her father. Testimony of a person's right against another based on observation and knowledge, not guesswork or calculation. Testimony by hearsay: Testimony based on a trustworthy hearsay testimony. False testimony: Intentionally lying in testimony.

The second requirement: its legitimacy

Its legitimacy has been established in the Qur'an, the pure Prophetic Sunnah, consensus, and reason, as follows:
First: Its legitimacy in the Holy Qur'an

God Almighty says: {And bring to witness two witnesses from among your men. But if there are not two men, then a man and two women from among those whom you accept as witnesses.}.

And God Almighty says: {And when you have handed over their property to them, bring witnesses against them. And sufficient is God as Accountant.} (8).

And the Almighty says: {So when they have reached their term, either keep them according to acceptable terms or release them according to acceptable terms. And bring to witness two just men from among you.}.

And the Almighty says: {And bring to witness when you make a transaction. Let neither scribe nor witness be harmed.}.

And the Almighty says: {And those of your women who commit an unlawful act - bring against them four witnesses from among you.}.

Second: The Sunnah

What was narrated on the authority of Al-Ash'ath bin Qais, who said: There was a dispute between me and a man over a well, so we took our dispute to the Messenger of God, may God bless him and his family and grant them peace, (Two witnesses or his oath). On the authority of Jabir, on the authority of Abu Ja'far, peace be upon him, who said: The Messenger of God, may God bless him and his family and grant them peace, said: (Whoever conceals a testimony or testifies to it in order to shed the blood of a Muslim, he will come on the Day of Resurrection with his face covered in darkness as far as the eye can see. And whoever bears witness to the truth in order to revive the right of a Muslim, he will come on the Day of Resurrection with his face covered in light as far as the eye can see, and creation will recognize him by his name and lineage).

Third: Consensus

Scholars of the Islamic nation unanimously agreed on the legitimacy of testimony, its desirability and its obligation in some cases, and no one disagreed with that.

Mind

If the claimant's word were his own, many people would have claimed false rights. However, the claimant must provide evidence. He needs witnesses, and to write down and dictate the rights. This indicates the need for witnesses, which is evidence. If the claimant's word were his own, he would not need witnesses, nor to write down and dictate the rights. The command to do this indicates the need for it, and this includes evidence for the claimant. Testimony is considered conclusive information because the witness sees what is hidden from others and knows from the testimony he has.

METHODOLOGY

This study employs a normative juridical research approach (doctrinal legal research) that focuses on the analysis of legal concepts, principles, and doctrines concerning testimony (shahāda) in Islamic jurisprudence. The research does not rely on empirical field data but instead examines primary and secondary sources of law.

Research Type and Approach

The research is qualitative in nature, using a doctrinal approach that seeks to describe, analyze, and interpret legal texts related to testimony. The method is descriptive-analytical, aiming to clarify the linguistic and technical definitions of testimony, its legitimacy, and its rulings within the framework of Islamic jurisprudence.

Sources of Data

Primary Sources: The Qur'an, the Prophetic Sunnah (Hadith), classical works of Islamic jurists (e.g., Bada'i al-Sana'i, Kashf al-Qina', Furu' al-Kafi, Mughni al-Muhtaj), and authoritative jurisprudential references.

Secondary Sources: Contemporary scholarly writings, legal dictionaries, journal articles, and relevant academic discussions on testimony and evidentiary law in Islam.

Data Collection Technique

The data were collected through library research, by reviewing, interpreting, and compiling information from authoritative Islamic legal texts and scholarly commentaries.

Data Analysis Technique

The data were analyzed using a qualitative content analysis method, involving interpretation and comparison across various schools of Islamic jurisprudence (Sunni and Shia). The analysis emphasizes harmonization between classical jurisprudence and contemporary legal contexts, while maintaining the doctrinal integrity of the subject.

Through this methodological framework, the research provides a systematic understanding of the concept and rulings of testimony in Islamic law, while highlighting both the consensus and the differences among jurists.

RESEARCH RESULTS AND DISCUSSION

Section Two: Provisions of Testimony

This section addresses several issues related to testimony, including its wording, the number of witnesses, the status of witnesses, and other matters. This was discussed in two sections: the first addressed the bearing of testimony, the number of witnesses, and the wording. The second section addressed the testimony of children and women, the testimony of the mute and the blind, the retraction of witnesses, justice, and false testimony.

Section One

It focused on three provisions of testimony: bearing testimony, its performance, the number of witnesses, and the wording of testimony.

Bearing and performing the certificate:

To bear witness is for a person to witness and memorize what he witnessed, provided that he is discerning when bearing witness, or that the original witness assigns a man or a man and two women to bear witness to his testimony. He would say, addressing the one he assigns to bear witness on his

behalf, "I bear witness to my testimony that I bear witness that so-and-so has such-and-such against so-and-so," or he would say, "I bear witness that so-and-so has such-and-such against so-and-so," so bear witness to my testimony to that, or the original witness would say, "I bear witness that so-and-so has such-and-such against so-and-so," "I bear witness to this testimony of mine and I order you to bear witness to this testimony of mine, so bear witness." This is permissible by agreement in matters of money, but in matters of limits, the Hanafis did not permit testimony to testimony, and their argument is that limits are prevented by doubts, and testimony is not free of doubt (14). The number of witnesses to testify must be two, even if one witness testifies from one witness and one from the other. This is not valid, because testimony is a right held by the witness, and rights held by liabilities can only be transferred to the judge by two witnesses. If two witnesses testify from one witness and then testify from the other, this is valid, because two witnesses have agreed to testify from each witness. However, being male is not a condition for testifying from a woman. Several conditions are required for the performance of testimony, including: puberty, so the testimony of a boy is not accepted, even if he is of sound mind, because he is not accountable and may lie; sanity, so the testimony of an insane person is not valid, by consensus, because he does not understand what he is saying; and justice, so the testimony of an immoral person is not accepted, as God Almighty says: "Bring to witness two just men among you". And if the witness is not accused in his testimony, that is, it brings him benefit or wards off harm from him, then the testimony of an enemy against his enemy is not accepted, nor the testimony of descendants for their origins, such as children for their parents or fathers for their sons, as some of them may collude with each other, and perhaps the testimony of some of them may bring benefit to each other or to one of them, and the testimony of some of them against others is accepted, that is, they testify against him and not for him, according to the saying of God Almighty (Be persistently standing firm in justice, witnesses for God, even if it be against yourselves or parents and relatives) and because his testimony against him is not accused and is more truthful, like his testimony against himself. The testimony of the just is accepted for the rest of his relatives who are not from his lineage, that is, neither sons nor fathers, such as his testimony for his brother, paternal uncle, cousin, maternal uncle, and the like. The testimony of one of the spouses is accepted against his partner in a claim of lineage in matters other than adultery, so his testimony against her for adultery is not accepted because he admits his enmity towards her for corrupting his bed. As for the Imami Shiites, the testimony of the husband for his wife is permissible, and the author of the Book of Testimonies mentioned the consensus on that, where he said: (There is no disagreement among us in the testimony of each spouse for the other is accepted, due to the existence of the reason and the absence of the obstacle, and the weakness of the accusation with the description of justice. As for the testimony against him, it is accepted with priority due to the absence of the accusation. The evidence for the acceptance of the testimony of each for the other is the generalities and absolutes mentioned in the texts, including what was narrated on the authority of Abu Abdullah, peace be upon him, who said: "The testimony of a man for his wife is

permissible, and the testimony of a woman for her husband is permissible if there is someone else with her”.

Number of witnesses

The number of witnesses varies according to the difference in the right being testified to, because rights are of two types: a general right, called the pure right of God, and a private right, called the right of the servant. As for the pure right of God, the testimony of women is not permissible in it, but is limited to men only. Some of it requires four witnesses, such as slander and adultery, according to the Almighty's saying: “And those who accuse chaste women and do not produce four witnesses - flog them with eighty lashes” (17). The punishment of flogging after the inability to produce four witnesses is evidence that adultery is not proven except with four witnesses. This is what the pure prophetic Sunnah confirmed in what was narrated in Sahih Muslim on the authority of Sa`d ibn `Ubadah, who said: O Messenger of God, if I find a man with my family, I will not touch him until I produce four witnesses. The Messenger of God, may God bless him and grant him peace, said: Yes. Ibn `Ubadah said: No, by Him who sent you with the truth, I would hasten to him with the sword before that. The Messenger of God, may God bless him and grant him peace, said: Listen to what your master says, he is jealous, and I am more jealous than him, and God is more jealous than me” (12). The wisdom behind not proving the crime of adultery except with four witnesses This crime is one of the most serious indecencies, so its punishment is very harsh. It is committed by two people, the perpetrator and the victim, and it is like testimony to two actions, so it requires four witnesses, two witnesses for each of them. It is also not permissible for those who witnessed this crime, and their number is less than four, to speak about what they saw, in order to protect the reputation of the servants. Even if their number meets the quorum for this crime, they have the right to report what they saw and they have the right to remain silent and cover up, because the witness in the limits of adultery, theft, drinking alcohol, and slander has the choice between testifying for God Almighty and covering up, because each of them is a recommended matter. God Almighty said: (And establish the testimony for God), and he said, peace and blessings be upon him: (Whoever covers up for a Muslim, God will cover him up in this world and the hereafter). The law has recommended him to each of them. If he wants, he can choose the direction of the direction of the direction of the direction of the direction, so God Almighty established it, and if he wants, he can choose the direction of covering up, so he covers up for his Muslim brother (14). As for the testimony based on the rights of the servants and their causes, it is necessary to request the one for whom the witness is testified, because it is obligatory to perform. If he requests, it is obligatory for him to perform, even if he refuses after the request, he is considered a sinner. Because God Almighty said: “And let not the witnesses refuse when they are called upon,” meaning if they are asked to give testimony, because testimony is a trust for the one being testified to in the witness's care. God Almighty said: “Let him who is trusted discharge his trust, and let him fear God, his Lord” (18).

The wording: The tongues of the nation, its predecessors and successors, have used "I bear witness" in performing the testimony, limiting themselves to it, without any other words that indicate the verification of something, such as "I know" and "I am certain." It is in accordance with the words of the Book and the Sunnah as well, so it was as if there was a consensus on specifying this word and not any other. It is not devoid of the meaning of worship, since nothing else has been reported that it is said: "I bear witness to God," meaning I swear (4). The Malikis did not stipulate a specific wording for performing the testimony, as it was stated in the commentary of Al-Dasuqi, which states: "Is the wording "I bear witness" specifically stipulated in performing the testimony, or is it not stipulated? There are two opinions, and the most apparent of them is that it is not stipulated. Rather, it depends on what indicates the witness's knowledge of what he testified to, such as "I saw such-and-such" and "I heard such-and-such," or "I am certain that this person has such-and-such," so a specific wording is not stipulated for performing it in the custom of the jurists." (19)

The second requirement

He devoted the remaining provisions of testimony, such as the testimony of children and women, the testimony of the mute and the blind, the retraction of witnesses, justice, and false testimony, as follows:

Witnesses retract their testimony: If one or all of them retract their testimony, they are obligated to be liable for compensation, whether for property or lives. It was narrated from Abu Abdullah, peace be upon him, that he said: "If the thing is still in place, it is returned to its owner, and if it is not still in place, he is liable for the amount of money that was destroyed from the man's property" (13). It was also narrated from Abu Abdullah, peace be upon him, when he was asked: "About four people who testified against a man for adultery, and when he was killed, one of them retracted his testimony. He said: 'The fourth shall be killed, and the three shall pay three-quarters of the blood money to his family'" (13). The reason for the obligation of compensation in this regard is the destruction of property or life through testimony, because compensation in Islamic law is only required by obligation or destruction. If there is no obligation, then the destruction is required as a reason for the obligation of compensation. If destruction occurs, it becomes a reason for the obligation of compensation" (14). (The first is the guarantee of the two witnesses if they return)

The investigator, may God sanctify his secret, said: (If they return together, they are equally liable. If one of them returns, he is liable for half. If it is proven by a witness and two women and they return, the man is liable for half and each one is liable for a quarter) (20).

False testimony: On the authority of Abu Abdullah, peace be upon him, who said: The Messenger of God, may God bless him and grant him peace, said: "The words of a false witness will not be fulfilled before the judge until he has taken his seat in Hellfire. The same applies to one who conceals testimony." (13)

Testimony of children: The testimony of children is not permissible except in murder cases, provided that the first words of the witness are accepted, i.e., the first testimony, because it is possible that someone prompted him. However,

if the witness is questioned before being prompted, then his testimony is permissible in murder cases. It is not permissible in other cases, because sanity is required at the time of testimony, which is not valid from an insane person or a child, because perception is the understanding and recording of the incident, and the instrument of understanding and recording is reason. This is not present in a person lacking discernment (20).

The second is that he be sighted at the time of testimony, according to us. Thus, testimony from a blind person is not valid. According to al-Shafi'i, may God have mercy on him, sight is not a condition for the validity of testimony or for the validity of performance, because sight is needed at the time of testimony to gain knowledge of the testimony, which is achieved by hearing. For a blind person, sound hearing is required, so his testimony is valid and he is able to perform it after the testimony.

Women's testimony: Their testimony alone is permissible in everything that men cannot see, such as the vagina and the genitals. The Messenger of God, may God bless him and his family and grant them peace, permitted women's testimony in matters of religion with an oath from the person demanding the debt (13). It is not permissible in matters of divorce and prescribed punishments. According to the Imami Shi'a, women's testimony alone is permissible in matters that men cannot or are forbidden to see, such as childbirth and women's internal defects (20).

The testimony of the blind and the mute: It is accepted by the Imamis, based on what was narrated on the authority of Muhammad bin Qais on the authority of Abu Ja'far, peace be upon him, who said: I asked him about the testimony of the blind, and he said: Yes, it is permissible if he proves it, and the same applies to the testimony of the deaf in murder. He said: The first part of his statement is accepted, but the second part is not accepted (13). While the Shafi'i is held that the testimony of the mute is not accepted. The author of Mughni al-Muhtaj said: (He should be able to speak, so the testimony of the mute is not accepted, even if his gestures are understood. He should be awake, as the author of al-Tanbih, al-Jurjani, and others said, so the testimony of an idiot is not accepted, and he should not be prevented due to foolishness (21). As for the Imamis, it is permissible for the mute to bear witness and give it, provided that the judge understands his gestures, and if that is not possible for him, he should seek the help of an interpreter who is familiar with the gestures of the mute (20).

Justice

Evidence requiring justice in testimony has been reported in the Holy Qur'an, the Prophetic Sunnah, and consensus, as follows:

The evidence for this from the Qur'an is the Almighty's statement, "And bring to witness two just men from among you" (9), and His statement regarding a will, "Two just men from among you" (22). Considering justice in a witness to a will requires that it be considered in all transactions with priority, and His statement, "From among those whom you accept as witnesses" (10).

As for what has been reported in the Prophetic Sunnah that requires justice in a witness for his testimony to be accepted, it is what Abdullah ibn Abi

Ya'fur narrated on the authority of Abu Abdullah (peace be upon him), who said: "I said to Abu Abdullah (peace be upon him): 'How do you recognize a man's justice among Muslims so that his testimony for and against them is accepted?' He said: 'You should recognize him by his modesty, chastity, restraint of the stomach, private parts, hand, and tongue, and by avoiding the major sins for which God has threatened Hellfire, such as drinking alcohol, adultery, usury, disobeying parents, fleeing from battle, and other such things. The evidence for all of this is that he should be modest. For all his faults, Muslims must praise him and show his justice among the people (16).

CONCLUSIONS AND RECOMMENDATIONS

After completing this modest research, with the help and guidance of God Almighty, the concept of testimony in language and terminology, and the evidence for its legitimacy in the Holy Qur'an, the Prophetic Sunnah, consensus, and reason, were presented in the first section. The rulings on testimony were explained in the second section. What the research reached was not something new, as books of jurisprudence have elaborated extensively on the rulings on testimony. This is the approach of Muslim jurists, who have left nothing related to the subject they are researching without encompassing it from all its aspects. However, it was presented in this research in a simplified and concise manner, without prolixity that would confuse the non-expert in the complex aspects of the subject, and in terms that are easily comprehensible to the reader, even if they are not specialists. Testimony is defined as truthful testimony, to prove a truth, using the word "shahada" (testimony) in the presence of a judge. Jurists unanimously agreed on its legitimacy, and the number of witnesses depends on the truth to be proven. Women may testify alone in certain rulings that men are not aware of. Justice is a condition for witnesses. Our final supplication is that all praise is due to God, Lord of the Worlds.

ADVANCED RESEARCH

Future studies should expand the concept of testimony beyond classical jurisprudence by linking it with modern legal systems and human rights frameworks. Comparative and interdisciplinary approaches can reinterpret witness credibility, gender roles, and justice conditions to address contemporary challenges while remaining rooted in Islamic tradition.

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