

## The Position of The Defendant's Statement as Evidence in The Perspective of Islamic Criminal Justice

**Nurul Hidayah Ritonga**

*Universitas Islam Negeri Sumatera Utara, Indonesia*

*email: [nurul0205213079@uinsu.ac.id](mailto:nurul0205213079@uinsu.ac.id)*

**Zulkarnain**

*Universitas Islam Negeri Sumatera Utara, Indonesia*

*email: [zulkarnain@uinsu.ac.id](mailto:zulkarnain@uinsu.ac.id)*

### Abstract

This study raises legal issues regarding the position and strength of defendant testimony as evidence in criminal cases through a comparative approach between the Indonesian criminal law system and Islamic criminal law. The purpose of this study is to examine the fundamental differences in the assessment of defendant testimony in both legal systems. The research method used is normative juridical. The results of the study show that in Indonesian criminal law, the defendant's testimony as regulated in the Criminal Procedure Code (KUHP) has the weakest position and can only be used as a basis for evidence if it is supported by at least two other valid pieces of evidence, in accordance with the provisions of Article 183 of the Criminal Procedure Code. Conversely, in Islamic criminal law, the defendant's testimony (iqrar) can be strong evidence and stand alone as perfect evidence, especially in ta'zir cases. However, in hudud and qishash-diyat cases, the confession must meet strict requirements, such as being made voluntarily, in detail, and repeatedly, as well as considering the consent of the victim's heirs in qishash cases. This comparison shows that despite differences in the weight of evidence, both systems place the principles of prudence and justice as the basis for assessing the defendant's statement to ensure the achievement of material truth. These findings contribute to the development of a criminal evidence system based on substantive justice and principles.

**Keyword:** Defendant's Statement, Evidence, Islamic Criminal Law

### INTRODUCTION

The defendant's testimony as a piece of evidence in criminal proceedings has sparked debate regarding its probative value, especially when it is used as the main basis for deciding a criminal case. In judicial practice in Indonesia, the defendant's testimony is often considered carefully because it ranks last in the hierarchy of evidence according to Article 184 of the Criminal Procedure Code. This shows that there's concern about the potential for manipulation or fabrication of confessions, either due to pressure from investigators or the defendant's defense strategy. On the other hand, in the Islamic criminal justice system, confessions or iqrar are actually really strong and, in certain situations, can stand alone as enough evidence to impose criminal sanctions (Darmawan et al., 2020).

In the Indonesian criminal justice system, the Criminal Procedure Code (KUHP) provides various types of evidence that can be used in court proceedings.

Article 184 paragraph 1 states that there are five types of valid evidence, one of which is the defendant's testimony. In accordance with the provisions of Article 184 paragraph 1 of the Criminal Procedure Code, it can be understood that the law specifies five types of valid evidence, and that evidence other than these five types cannot be used as valid evidence. However, the defendant's testimony has free probative force, meaning that the judge is not absolutely bound by the testimony and must consider it together with other evidence to reach a sufficient conviction in deciding the case, as stated in Article 183 of the Criminal Procedure Code, which reads *"The judge may not impose a criminal penalty on a person unless, based on at least two valid pieces of evidence, he or she is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it"* (Nugroho, 2018). Meanwhile, in Islamic criminal procedure law, evidence is better known as *"albayyinah."* Based on the meaning of the word bayyinah, it is clear that efforts to present arguments, evidence, or sufficient data, whatever their form, are referred to as proof. In Islamic law, there are several types of evidence that are recognized, one of which is confession (Iqrar), which is equivalent to the testimony of the defendant in the Indonesian legal system (Jami, 2018).

The evidence provided is either self-generated or generated by another party. Evidence generated by oneself is referred to in Islam as confession (iqrar). Confession (iqrar) is one of several types of evidence recognized in Islam. In Islamic law, there are differences of opinion among scholars regarding the types of evidence. Sayid Sabiq mentions in his book *"Fiqh Sunnah"* that there are four ways (means of evidence) to establish proof, namely;

1. *Iqrar* (confession)
2. *Syahadah* (testimony)
3. *Yamin* (oath)
4. *Wathiqah* (official document) (Sabiq, 2015)

Recognition, according to language, is to establish and acknowledge a right without denying it. In terms of terminology, recognition is to declare a right to another person. What is meant by recognition in the judicial world is to acknowledge the rights of others that exist within the person making the acknowledgment, either verbally or in writing, even if it is for the future (Siahaan, 2019).

Pengakuan merupakan bukti yang tidak diingkari lagi oleh seluruh fuqaha. Dalam prakteknya Nabi Muhammad SAW, menerima pengakuan dengan syarat harus terinci dan dikemukakan oleh orang yang berfikiran sehat serta berulang-ulang dilakukannya. Hal ini dapat kita lihat dalam kasus Maiz bin Malik yang mengaku telah berziana dengan seorang perempuan. Dalam menanggapi kasus ini Nabi ingin lebih meyakinkan dirinya terhadap perbuatan Maiz dengan cara menginterogasinya secara teliti. Setelah beliau memperoleh keyakinan, barulah menyuruh para sahabat untuk merajamnya (Jami, 2018).

The fundamental difference between the Indonesian criminal justice system and Islamic criminal law is evident in the assessment of the defendant's testimony. In Islamic criminal law, a voluntary confession by the defendant can be used as the sole evidence sufficient to impose a sentence, provided that certain conditions are met. These conditions include clarity and certainty of the content of the confession, that it is made consciously without coercion, and that it comes from a defendant who is legally competent. Even for mute defendants, confessions made through gestures are acceptable, as long as they are explained by an expert before the judge. Judges in this

system have the discretion to decide cases based solely on these confessions without requiring additional evidence (Djafri et al., 2024). The advantages of this approach lie in the efficiency of the evidence and the emphasis on personal honesty, but the disadvantage is the potential for abuse or subtle coercion of confessions that are difficult to prove. Conversely, the Indonesian criminal justice system adopts the principle of caution in evidence. The defendant's testimony does not have independent evidentiary value, but must be supported by at least one other piece of evidence that is valid according to the law. This aims to protect the rights of the defendant and prevent convictions based solely on confessions, which may have been obtained through psychological pressure or manipulation. Although this approach guarantees accuracy and formal justice, its weakness is the potential to hinder the judicial process when supporting evidence is difficult to find.

Thus, there is a striking contrast between the two systems: Islamic criminal law emphasizes moral substance and personal confession, while Indonesian criminal law emphasizes formal procedures and objectivity of evidence. A synthesis of the two could offer a middle ground in the form of an evidence system that respects the value of confession, but is still controlled by strict verification mechanisms to prevent potential arbitrariness. In the practice of Indonesian criminal justice, the defendant's testimony, as one of the means of evidence recognized in Article 184 of the Criminal Procedure Code, often faces challenges related to its credibility and probative value. A clear example can be seen in the analysis of the Ferdy Sambo criminal case, in which the Jakarta High Court Decision Number 53/PID/2023/PT DKI upheld the South Jakarta District Court Decision Number 796/Pid.B/2022/PN JKT. SEL, one of the aspects that weighed heavily against the defendant was "dishonesty in court" because Ferdy Sambo was deemed to have continued to deny his involvement and did not provide honest information throughout the examination process (Djiwa et al., 2025).

Another example can be seen in the review of Padang District Court Decision Number 372/Pid.B/2020/PN Pdg, in which the defendant's testimony was corroborated by other evidence such as witness testimony and documents. These two examples demonstrate the complexity and variation in judges' assessments of defendant testimony in the Indonesian criminal justice system (A. Wibowo & Akbar, 2022). In relation to the above, criminal procedural law also regulates matters relating to court proceedings. Among the procedures used in court proceedings is the examination of evidence to support a charge. The evidentiary hearing occupies a very important position in the course of the trial. This is because by proving an indictment, the truth of the events presented can be ascertained (Lubis et al., 2016).

The position of the defendant's testimony in evidence becomes a complex issue when considering the integration between national law and Islamic legal principles. In Indonesia, as a Muslim-majority country, there are efforts to accommodate Islamic values in the national legal system. This is reflected in several regional regulations that apply Islamic criminal law, such as the Qanun Jinayat in Aceh. However, this implementation raises questions about how the defendant's testimony is treated in the evidentiary process, given the differences in principles between the two legal systems. The different approaches to defendant testimony in these two legal systems pose challenges in judicial practice, especially in cases involving Islamic law. Judges are required to have a deep understanding of both legal systems in order to uphold justice

proportionally. Therefore, an in-depth study of the position of defendant testimony as evidence in the perspective of Islamic criminal justice is needed.

The defendant's statement is one piece of evidence that has sparked much debate in criminal court practice, particularly with regard to the extent to which such a confession can be used as a basis for sentencing. In Indonesian criminal procedure law, the status of the defendant's testimony is regulated in Article 189 paragraph (1) of the Criminal Procedure Code and only has limited evidentiary value, meaning that it cannot stand alone and must be supported by at least two other valid pieces of evidence. This is in line with the research by Janthamaro Situmeang, Faris Ali Sidqi, and M. Yusran bin Darham (2022), which emphasizes the importance of judges exercising caution in assessing the defendant's testimony because it only applies to the defendant himself and is susceptible to manipulation. Furthermore, in a case study conducted by Nurul Handayani Basri (2021), the defendant's testimony was also considered equivalent to other evidence in proving criminal negligence resulting in death, provided that it still met the minimum evidence requirements and the judge was convinced. Another study by Sholehah Isyanofa Putri (Putri, 2023) discusses the withdrawal of the defendant's testimony, in which the judge must assess the reasons for the withdrawal objectively and carefully, because the withdrawal can directly affect the final verdict. All three studies share a commonality in discussing the evidentiary weight of defendant statements within the scope of Indonesian criminal law alone, without mentioning other legal systems for comparison.

Based on this gap, this study aims to examine more broadly the position of the defendant's testimony in the Islamic criminal law system, particularly in relation to its strength as evidence in the criminal trial process. This study will also analyze the factors that influence the validity and credibility of such testimony in the context of Islamic law, as well as examine its contribution to the judge's conviction in determining the verdict. In the Islamic criminal law system, the defendant's confession or *iqrar* can have very strong power, even standing alone in *ta'zir* cases, although in *hudud* and *qishash-diyat* cases it must meet stricter requirements such as being voluntary, clear, and repeated. The comparison between these two legal systems is important because it shows a very different approach in assessing the evidentiary value of a confession.

Thus, this study has novelty in its comparative approach across legal systems, which has not been widely discussed in previous studies. In addition to broadening perspectives on the position of defendant testimony, this study is also expected to contribute to the development of a more fair, balanced, and responsive criminal procedure legal system that upholds the values of justice and humanity, as well as provide input for the reform of the criminal evidence system in Indonesia.

## **METHODS**

This study uses a normative legal research method with a qualitative approach, focusing on analyzing the position of defendant testimony in the Indonesian criminal justice system and Islamic criminal law (Turnip et al., 2021). A legislative approach was used to examine the provisions in the Criminal Procedure Code (KUHAP) that regulate evidence and the legal position of defendant testimony in criminal proceedings. Through this approach, the study sought to identify the positive legal basis that regulates the evidentiary value of defendant confessions in the context of Indonesian criminal law. In addition, this study also uses a conceptual approach to understand the principle of *iqrar* in Islamic law by referring to primary sources such as the Qur'an,

hadith, and classical and contemporary fiqh books. The analysis of Islamic law is carried out by utilizing the ushul fiqh framework to trace the normative basis of confession in Islamic law, as well as the maqashid syariah approach to assess the conformity of the principle of iqrar with the objectives of sharia, especially in terms of the protection of life, honor, and justice.

## **DISCUSSION AND RESULT**

### **The Position and Role of Defendant Testimony as Evidence in the Indonesian Criminal Justice System**

#### **1. The Position of Defendant Testimony in the Indonesian Criminal Justice System**

In the Indonesian criminal justice system, the defendant's testimony has a clearly defined status in the Criminal Procedure Code (KUHP). Article 184 paragraph (1) of the KUHP states that valid evidence consists of: witness testimony, expert testimony, documents, evidence, and the defendant's testimony. The defendant's testimony is placed last in the hierarchy of evidence, indicating that the defendant's testimony does not have the same probative value as other types of evidence (Rokhmadi, 2021). Article 189 paragraph (1) of the KUHP explains that the defendant's statement is what the defendant declares in court regarding the acts he has committed or that he knows or has experienced himself, and can only be used for his own benefit. Meanwhile, the defendant's statement made outside of court cannot be used as evidence, unless it is supported by other valid evidence (Nugroho, 2018).

The defendant's testimony in the Indonesian legal system has specific characteristics, whereby the defendant's confession is not considered perfect and conclusive evidence. Given that the defendant's testimony contains information about the criminal incident sourced from the defendant, judges must be careful in assessing the content of the defendant's testimony and be aware that there is a possibility of lies or false statements made by the defendant regarding the circumstances of the criminal incident or event that occurred (Murniasih, 2021).

#### **2. The Role of Defendant Testimony in the Evidence Process in Indonesian Criminal Courts**

The role of defendant testimony in the evidence process in court can be understood through the negative evidence system based on law (*negatief wettelijk bewijstheorie*) adopted by Indonesian criminal procedure law. In practice, judges are required to find at least two pieces of valid evidence in accordance with Article 183 of the Criminal Procedure Code, which states that "a judge may not impose a sentence on a person unless, based on at least two pieces of valid evidence, he or she is convinced that a criminal act has been committed and that the defendant is guilty of committing it." The judge's conviction does not arise by itself, but must arise from the valid evidence mentioned in the law and not from other circumstances (M. P. Wibowo & Sulistyanta., 2021).

The position of the defendant's testimony in the Indonesian criminal evidence system can be understood through examples of cases that have been studied in various studies. As an illustration, based on an analysis of the Ferdy Sambo case in the Jakarta High Court Decision Number 53/PID/2023/PT DKI,

the aspect of "dishonesty in court" was one of the aggravating considerations, where the panel of judges assessed that the defendant's testimony did not have sufficient probative value because some of his statements contradicted other evidence, particularly the testimony of the key witness Richard Eliezer Pudihang Lumiu (Djiwa et al., 2025).

On the other hand, a review of Padang District Court Decision Number 372/Pid.B/2020/PN PdG shows a different situation, in which the judge's consideration in handing down a criminal sentence was based on the defendant's testimony, which was then corroborated and reinforced by other evidence such as witness testimony and documents, thereby enabling the judge to be convinced that a criminal act had been committed and who the perpetrator was (A. Wibowo & Akbar, 2022). These two examples from the study clarify the fundamental principle stipulated in Article 183 of the Criminal Procedure Code, which states that "A judge may not impose a sentence on a person unless, based on at least two pieces of valid evidence, he or she is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it," so that the defendant's testimony must be carefully examined along with other valid evidence in the Indonesian positive law system.

### **The Position and Role of Defendant Testimony as Evidence in the Criminal Justice Process in Islamic Criminal Law**

#### **1. The Position of Defendant Testimony in Islamic Criminal Law**

In Islamic criminal law, the defendant's statement is known as "Iqrar," which means confession or statement. According to the fuqaha, Iqrar is a notification of the existence of another person's rights owned by the confessor, and can be conveyed through words or other equivalent means, including for future matters. In a criminal context, Iqrar means informing about actions that violate Islamic law. Although Iqrar is considered the strongest piece of evidence, its power only applies to the person who confesses (the defendant) and cannot be applied to others. If the confession concerns other people, additional evidence is still required. Thus, iqrar has an important position in the Islamic judicial system as the strongest piece of evidence, even though it only applies to the confessor (Afifah, 2020).

Confession in Islamic law is considered the strongest evidence because it contains a person's willingness to bear the legal consequences of their actions. The legal basis for the use of iqrar as evidence in Islamic courts is based on the Qur'an, Sunnah, and Ijma'. The source in the Qur'an is stated in Surah An-Nisa' verse 135:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أُولَىٰ بِهِمَّا فَلَا تُبْغُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ تَلَّوْا أَوْ تُعْرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ﴿١٣٥﴾

Meaning: "O you who believe, be truly upholders of justice, bearing witness for Allah even against yourselves, your parents, and your kin. Whether rich or poor, Allah is more aware of their welfare. So do not follow your desires, lest you deviate from the truth. And if you distort (the truth) or refuse to bear witness, then indeed, Allah is fully aware of all that you do." (Indonesia, 2018) This verse implies the importance of giving truthful testimony even if it is detrimental to oneself, which is the basis for the legitimacy of testimony as evidence (Nurdin & Hendra, 2018).

The validity of confessions in Islamic criminal law has several conditions that must be met, including: (1) the confession must be given by a person who is baligh (mature), (2) of sound mind, (3) of their own free will without coercion, (4) the confession must be clear and detailed, and (5) the confession cannot be revoked before the execution of the sentence. These conditions demonstrate the caution of Islamic law in accepting confessions as the basis for sentencing, especially in cases of hudud and qishash involving life and limb (Az-Zuhaili, 2011). Abdul Qadir Auda explains in his book *At-Tasyri' al-Jina'i al-Islami* that in Islamic criminal law (*fiqh jinayah*), the defendant's statement (*iqrar al-muttaḥam*) or confession has a very important position as evidence. However, he also emphasized that this statement is not automatically considered valid and binding, unless it meets certain conditions. Auda stated:

لَيْسَ إِعْتِرَافُ الْمُتَّهَمِ دَلِيلًا كَامِلًا مَا لَمْ يَكُنْ إِقْرَارًا صَرِيحًا وَصَحِيحًا بِجُرْمَةٍ مُخَدَّعةٍ، وَفِي هَذِهِ الْحَالَةِ فَقَطُّ يُعْتَبَرُ الْإِقْرَارُ بَيِّنَةً كَامِلَةً.

Meaning: "The defendant's confession is not considered perfect evidence unless it is a clear and valid confession to a specific criminal act; and only in such circumstances is the confession considered bayyinah (complete/perfect evidence)" (Audah, 1989).

## 2. The Role of the Defendant's Statement in the Evidence Process in Islamic Criminal Courts

The role of the defendant's statement or confession (*Iqrar*) in Islamic criminal law is very significant in the evidence process in court and varies depending on the category of the crime. The fundamental difference between the Indonesian criminal law system and Islamic criminal law lies in the evidentiary value of the defendant's testimony. In Indonesian criminal law, the defendant's testimony does not have full evidentiary value and must be supported by other evidence. Meanwhile, in Islamic criminal law, confessions (*Iqrar*) can be strong and independent evidence, especially in cases of *ta'zir* (Abu Abdillah Muhammad bin Ismail bin Ibrahim bin al-Mughirah bin Bardizbah al-Ju'fi al-Bukhari, n.d.)

In Islamic criminal law, the role of the defendant's testimony or confession (*Iqrar*) is very significant in the process of proving, especially for hudud crimes which have very strict standards of proof. Hudud comes from the word *haḍ*, which means to prevent or hinder, namely punishment that aims to prevent violations that could lead to sanctions. In terms of terminology, hudud is a punishment that has been determined in sharia with a definite measure, either for violating the rights of Allah or the rights of humans. The categories of hudud crimes include adultery, accusing someone of adultery (*qadzif*), theft (*al-sariqah*), robbery (*hirabah*), rebellion (*al-baghyu*), drinking alcohol (*surbah*), and apostasy (*riddah*). These crimes are considered violations of Allah's rights, which are also related to the interests of society at large (Marsaid, 2020).

Dalam kasus zina, pengakuan harus dilakukan sebanyak empat kali, sebagaimana dicontohkan Rasulullah SAW dalam kasus Ma'iz bin Malik. Namun, terdapat perbedaan pendapat di kalangan ulama mengenai jumlah pengakuan yang diperlukan. Menurut mazhab Syafi'i, satu kali pengakuan sudah cukup untuk menetapkan hukuman zina, karena tidak mungkin seseorang berbohong tentang dirinya sendiri atau mengakui perbuatan yang dapat menjatuhkan hukuman atasnya. Sementara itu, mazhab Hanbali berpendapat bahwa pengakuan harus diulang sebanyak empat kali, dengan

empat orang saksi yang adil, berdasarkan riwayat bahwa Ma'iz mengakui perbuatannya sebanyak empat kali (Akbar, 2022).

Dalam hukum pidana Islam, pengakuan (*iqrār*) merupakan salah satu alat bukti utama dalam menetapkan hukuman bagi pelaku pencurian (*sariqah*). Menurut Zahiri, pengakuan cukup dinyatakan satu kali dan tidak perlu diulang-ulang. Demikian pula pendapat Imam Malik, Imam Abu Hanifah, dan Imam Syafii. Akan tetapi Imam Abu Yusuf, Imam Ahmad, dan Syi'ah aidiyah berpendapat bahwa pengakuan harus dinyatakan sebanyak dua kali (Audina, 2020).

This confession must be conveyed clearly and in detail, including the manner, time, and place of the theft, as well as the identification of the stolen goods and their location. These details are important to ensure that the act fulfills the elements of theft that can be punished by *hudud* (Yusti & Sunnuwati, 2023). For the crime of drinking alcohol (*surbah*), the confession is sufficient once and does not need to be repeated up to four times. The provisions that apply to the confession of zina also apply to the crime of drinking *khamr* (Ariyanti, 2019). Tetapi harus disertai dengan bukti pendukung seperti bau khamar, keadaan mabuk, adanya bekas tumpahan dan botol *khamr*, atau saksi yang melihat terdakwa meminum *khamar* (Mentari, 2020).

In *qisas* and *diyat* criminal offenses, particularly in cases of murder and assault, confessions play an important role as evidence. Criminal acts that fall under jinayah and are subject to *qisas* or *diyat* are murder. The Malikiyah divide murder into intentional and unintentional, while the Hanafiyah, Shafi'iyah, and Hambali divide it into three categories: (1) intentional (*qatl al-amd*) assault with the intent to kill, (2) semi-intentional (*qatl syibh al-'amd*) assault without the intention to kill but resulting in death, and (3) due to error (*qatl al-khata'*) as a result of negligence or mistake. Wahbah Az-Zuhaili explains that confession is one of the valid means of evidence for determining crimes that result in *qisas* or *diyat*. The condition is that the confession must be clear and detailed, so that a confession that is general or causes doubt (*syubhat*) is not considered valid (Sudarti, 2021).

According to Sayyid Sabiq, qishash punishment becomes obligatory if the perpetrator confesses to his actions, because confession is considered the most concrete evidence in the view of jurists. In addition, this punishment can also be enforced with the testimony of two just men. Ibn Qudamah, in his book *al-Mughni*, emphasizes that in cases of jinayat such as this, the testimony of one man and two women, or one man accompanied by an oath, is not accepted. This is due to the nature of qishash punishment, which involves bloodshed and criminal acts, so its implementation requires extreme caution (Hardi, 2023). The penalties for intentional murder consist of several categories, namely the principal punishment, the substitute punishment, and the additional punishment. The primary punishment in this case is qishash. If the victim's family (*wali addam*) forgives the perpetrator, then the alternative punishment is *diyat*. If the qishash or *diyat* punishment is forgiven, then the applicable alternative punishment is *ta'zir*. In addition, the additional punishment for this crime is the loss of inheritance and will rights (Hifni et al., 2023). In cases of semi-intentional and unintentional murder, confessions can be used as the basis for determining *diyat*. However, because *diyat* also involves the rights of the



victim's family, the consent of the victim's guardian is required to determine the form and amount of diyat to be paid. This shows that although confessions have strong evidentiary value, their implementation must still take into account the aspect of justice for all parties (Qudamah, n.d.).

### **Confession (*Iqrar*) in the Category of *Ta'zir* Criminal Offenses**

*Ta'zir* literally means *ta'dib*, which is to teach a lesson, and can also be interpreted as *al-raddu wa al-man'u*, which means to reject and prevent. According to Imam al-Mawardi, *ta'zir* is an educational punishment for a sin (criminal act) for which the punishment has not been determined by Sharia law. Thus, *ta'zir* is a punishment that has not been determined in sharia, so the authority is left to the ruler (*ulil amri*). In addition, the main characteristics of *jarimah ta'zir* can be described as follows:

- a. A punishment that has no standard provisions and is not limited, which means that it has not been specifically determined in sharia and has no minimum or maximum limits.
- b. The authority to determine the punishment lies entirely with the ruler (*ulil amri*) (Saleh, 2018).

In this category, the defendant's confession has greater flexibility in the evidentiary process compared to hudud and qishash. In Islamic criminal law, the perpetrator's confession in a *ta'zir* crime can be the basis for sentencing. This confession must be obtained voluntarily, and the judge has the freedom to assess the validity and weight of the confession. If there are indications of pressure, the judge can disregard the confession and seek other evidence (Az-Zuhaili, 2011). In practice, confessions in *ta'zir* cases are often taken into consideration to reduce the sentence because they show the defendant's remorse and desire to repent. This is in line with the objectives of punishment in Islam, which are not only retributive (revenge), but also restorative (reparation) and preventive (prevention) (Ibnu Taimiyyah, n.d.).

To clarify the differences in the position and function of defendant testimony in the two legal systems analyzed, the following is a systematic comparison between Indonesian criminal law and Islamic criminal law based on several important aspects. This table summarizes the legal basis, the position of defendant testimony, and the purpose of evidence in each system:

| Aspect                                       | Indonesian Criminal Law                               | Islamic Criminal Law  |
|--|---|---|
| <b>Legal Basis</b>                           | Criminal Procedure Code (KUHP) Articles 183, 184, 189 | Al-Qur'an, Hadith, Fiqh   |
| <b>Name of Evidence</b>                      | Defendant's Testimony                                 | <i>Iqrar</i> (Confession)                                       |
| <b>Position in the Hierarchy of Evidence</b> | Weakest and cannot stand alone                        | Can stand alone (depending on the type of <i>jarimah</i> )      |
| <b>Validity</b>                              | Applies only to the defendant themselves              | Applies to a valid confession that meets legal requirements     |
| <b>Category of Cases</b>                     | Applies generally to all types of criminal cases      | Varies: <i>Hudud</i> , <i>Qishash-Diyat</i> , <i>Ta'zir</i>     |
| <b>Additional Provisions</b>                 | Requires two additional pieces of evidence            | Requires clarity, voluntariness, and repetition (especially for |

|                         |                           |  |
|-------------------------|---------------------------|--|
|                         |                           | <i>hudud</i> cases)  |
| <b>Purpose of Proof</b> | Objectivity of formal law | Public interest ( <i>maslahah</i> ), acknowledgment of guilt, and moral accountability |

From the table above, it can be concluded that there is a fundamental difference in the way the two legal systems position the defendant's statement or confession. Indonesian criminal law places the defendant's statement as the weakest piece of evidence and cannot stand alone, with the aim of ensuring objectivity and legal certainty in formal terms. Conversely, in Islamic criminal law, *iqrar* or confession has a stronger position and can stand alone under certain conditions, with validity depending on the honesty, clarity, and awareness of the perpetrator. The Islamic legal approach emphasizes moral values and benefit, so that the purpose of proof is not only limited to formal truth, but also to the admission of guilt and efforts at self-purification. Therefore, this difference shows that the Islamic criminal law system prioritizes substance and spirituality, while the Indonesian legal system is more oriented towards procedure and formal legality. Both have their own advantages, and understanding these characteristics is important in the development of a fair and balanced criminal law.

## CONCLUSION

In Indonesian criminal law, the defendant's statement is the weakest form of evidence and cannot stand alone without the support of at least two other forms of evidence, as stipulated in Articles 183 and 184 of the Criminal Procedure Code. This provision reflects the principle of caution in the evidentiary process, in order to prevent errors in criminal convictions. Conversely, in Islamic criminal law, *iqrar* or confession has a stronger position because it can function as a stand-alone piece of evidence, particularly in *ta'zir* cases, as long as it is made voluntarily, without coercion, and meets certain validity requirements. In *hudud* and *qishash-diyat* cases, the provisions for confession are stricter, requiring clarity and repetition to ensure that the confession is truly born of the perpetrator's consciousness and moral responsibility.

This fundamental difference illustrates two different paradigms of evidence: Indonesian criminal law, which is formalistic and procedural, and Islamic criminal law, which emphasizes moral dimensions and personal integrity. The formalistic approach in national law seeks to maintain legal certainty and avoid judicial errors, while the moralistic approach in Islamic law is more oriented towards substantive justice and spiritual responsibility. Therefore, it is important for the national legal system to adopt the values of justice in Islamic law, such as the balance between legal-formal aspects and humanitarian values. This integration is expected to produce a more just and proportional system of evidence that is in line with the principle of protecting human dignity.

## REFERENCES

- Abu Abdillah Muhammad bin Ismail bin Ibrahim bin al-Mughirah bin Bardizbah al-Ju'fi al-Bukhari. (n.d.). *Shahih Bukhori*. Dar al-Fikr.
- Afifah, H. (2020). Tinjauan Hukum Islam Terhadap Tes DNA Sebagai Alat Bukti Tindak Pidana Pembunuhan. *Al Ahkam*, 16(2), 38.
- Akbar, M. . (2022). Jumlah Pengakuan Yang Menuntut Dijatuhkannya Hukuman Zina

- (Studi Perbandingan Mazhab Syafi'i Dan Mazhab Hanbali). *Doctoral Dissertation, UIN Ar-Raniry*, 52-55.
- Ariyanti, V. (2019). Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam. *Al-Manahij: Jurnal Kajian Hukum Islam*, 13(1), 33-48.
- Audah, A. Q. (1989). *at-Tasyri'i al-Jina'i al-Islami*. Dar al-Kitab al-'Arabi.
- Audina, N. (2020). Perlindungan Hukum Terhadap Korban Pelanggaran HAM berat (Tinjauan Hukum Nasional dan Hukum Internasional). *Legalitas : Jurnal Perundang Undangan Dan Hukum Pidana Islam*, 5(1), 14.
- Az-Zuhaili, W. (2011). *Fiqih Islam Wa Adillatuhu* (A. H. Al-Kattani (ed.)). Gema Insani.
- Darmawan, D., Busroh, F. F., & Utoyo, M. (2020). Sistem Pembuktian Alat Bukti Elektronik. *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*, 2.
- Djafri, M. T., Asri, A., & Muhammad, I. (2024). Tinjauan Hukum Islam terhadap Rekaman Suara sebagai Alat Bukti Tindak Pidana di Peradilan. *AL-QIBLAH: Jurnal Studi Islam Dan Bahasa Arab*, 3(3), 336.
- Djiwa, S., Suwerjo, M., & Zakky, M. (2025). Analisis Yuridis Pertimbangan Hukum Dalam Putusan Perkara Pembunuhan Berencana Berdasarkan Perspektif Keadilan (Studi Kasus Pembunuhan Berencana Ferdy Sambo Putusan Nomor 796/Pid. B/2022/Pn Jkt. Sel.). *Jurnal Hukum Jurisdictie*, 7(1), 7(1), 156.
- Hardi, D. T. J. (2023). Pertanggungjawaban Pelaku Penyandang Retardasi Mental Dalam Kasus Pencabulan Anak dalam Studi Komparatif Hukum Islam dan Hukum Pidana. *Jurnal Ilmu Hukum Kanturuna Wolio*, 137.
- Hifni, M., Hibar, U., & Agustawan, M. N. (2023). Tindak Pidana Pembunuhan Dalam Hukum Pidana Islam Dan Hukum Pidana Positif. *Jurnal Res Justitia: Jurnal Ilmu Hukum*, 3(2), 34.
- Ibnu Taimiyyah, A. A. H. (n.d.). *Al-Siyasah al-Syar'iyah fi Islah al-Ra'i wa al-Ra'iyah*. Dar al-Afaq al-Jadidah.
- Indonesia, D. A. R. (2018). *Al-Qur'an dan Terjemahannya*. Lajnah Pentashihan Mushaf Al-Qur'an.
- Jami, J. (2018). Pembuktian di Peradilan Agama. *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 4(1), 29.
- Lubis, Z., Bakt, & i Ritonga. (2016). *Dasar-Dasar Hukum Acara Jinayah*. Kencana Prenada Media Grup.
- Marsaid. (2020). *Al-Fiqih Al-Jinayah (Hukum Pidana Islam): Memahami Tindak Pidana dalam Hukum Islam*. Amanah.
- Mentari, B. M. R. (2020). Saksi Pidana Pembunuhan Dalam Kitab Undang-Undang Hukum Pidana Dengan Hukum Islam. *Al-Ishlah: Jurnal Ilmiah Hukum*, 23(1), 65.
- Murniasih, S. (2021). Pembuktian Berdasar Keterangan Saksi Verbalisan Akibat Pencabutan Keterangan Terdakwa Di Persidangan Dalam Perkara Persetubuhan Terhadap Anak (Studi Putusan Pengadilan Negeri Brebes Nomor 27/Pid.Sus/2016/Pn.Bbs). *Jurnal Verstek*, 7(2), 194.
- Nugroho, B. (2018). Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP. *Yuridika*, 32(1), 17-36.
- Nurdin, R., & Hendra, H. S. (2018). Kedudukan Keterangan Saksi Ahli Forensik Dalam Penetapan Perkara Pidana Dalam Hukum Positifdi Tinjau Dari Pespektif Hukum Islam. *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, 7(1), 133.
- Putri, S. I. (2023). *Pencabutan Keterangan Terdakwa dalam Persidangan Perkara Pidana*.

- Universitas Islam Indonesia.
- Qudamah, I. (n.d.). *al-Mughnî wa al-Syarh al-Kabîr*, Juz XII. Maktabah al-Tijârah.
- Rokhmadi. (2021). *Hukum Acara Pidana Islam*. Lawwana.
- Sabiq, S. (2015). *Fiqh As-Sunnah*. Dar Al-Fikr.
- Saleh, M. M. (2018). Tindak Pidana Sihir Menurut Perpspektif Hukum Islam. *Al-Fikra: Jurnal Ilmiah Keislaman*, 9(1), 146.
- Siahaan, J. R. (2019). Sistem Pembuktian Tindak Pidana Perzinaan Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam. *Doctoral Dissertation, Universitas Islam Negeri Sumatera Utara*, 110.
- Sudarti, S. (2021). Hukum qishash diyat: sebuah alternatif hukuman bagi pelaku kejahatan pembunuhan berencana di Indonesia. *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam*, 12(1), 38–41.
- Turnip, I. R. S., Sukiati, & Irwan. (2021). *Urgensi Penerapan Teori Hukum Dalam Penulisan Skripsi Mahasiswa Fakultas Syari'ah dan Hukum*. UIN Sumatera Utara.
- Wibowo, A., & Akbar, R. (2022). PERTIMBANGAN HAKIM TERHADAP KETERANGAN TERDAKWA DALAM MENJATUHKAN PUTUSAN PEMIDANAAN. *Unes Journal of Swara Justisia*, 6(3), 344–345.
- Wibowo, M. P., & Sulistyanta. (2021). Jenis Dan Korelasi Korban Dengan Pelaku Pada Kejahatan Pelecehan Seksual Di Instagram. *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 10(2), 147.
- Yusti, A. G., & Sunnuwati, S. L. (2023). Analisis Fiqhi Jinayah terhadap Tindak Pidana Pencurian Handphone Akibat Game Online Higgs Dominos Island (Studi Putusan Nomor. 12/Pid.B/2022/Pn. *Delictum: Jurnal Hukum Pidana Dan Hukum Pidana Islam*.