

Evidence Of Adultery According To Qanun Jinayah No. 6 Of 2014 And Syafi'iyah Fiqh

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Info Articles	Abstract
<p>Article History Received : 2017-07-03 Revised: 2017-07-12 Published: 2017-07-30</p> <p>Keywords: <i>Aceh, Jurisprudence, Qanun, Jinayah, Syafi'iyah</i></p>	<p>This article aims to provide a comparison between the Aceh Qanun Jinayah and Shafi'iyah Jurisprudence, as implemented in Aceh. What are the provisions regarding evidence of adultery in Qanun No. 6 of 2014 and Shafi'iyah Jurisprudence, and what are the differences between the two? To obtain these answers, this research is a qualitative descriptive study using library research techniques (<i>library research</i>). All sources data obtained from literature available in the library. The method used to analyze data is descriptive analysis and interpretation methods. The descriptive analysis method is a method used in writing by presenting the data obtained and the problems that arise to be analyzed according to the discussion. Meanwhile, the interpretation method is drawing conclusions from the author's own understanding of the opinions quoted from a reference. The results of this research are that the evidence of adultery contained in qanun jinayah no. 6 of 2014 is the result of a combination of schools of jurisprudence including Shafi'i jurisprudence. However, the qanun jinyah does not contain in detail the criteria that will be used as evidence of adultery, in contrast to the Syafi'i fiqh which explains it in detail. Then in qanun jinayah no. 6 of 2014 added that DNA test results are evidence of adultery for pregnant women and these results are not found in Syafi'i jurisprudence.</p>

I. INTRODUCTION

Adultery is sexual relations between a man and a woman outside of marriage, so it is a very dangerous form of sexual deviation. Therefore, it is not surprising that all heavenly religions prohibit and eradicate adultery. Islam strictly prohibits adultery, even its warnings are very strong. Because adultery can cloud one's offspring, destroy one's offspring, destroy one's household, destroy family relationships, cause venereal disease, arouse crimes of lust and degrade human morals (Surtiretna, 2004). Therefore, it is precisely what Allah says, "and do not approach adultery. Indeed, adultery is an abominable act and a bad path (QS al-Isra'/17: 32). Allah clearly predicates the act of adultery through this verse as a heinous act. In fact, in this verse, Allah forbids committing acts that are leads to adultery. Apart from that, Allah also equates the status of the sin of adultery and other major sins and threatens the perpetrators with severe

torment on the Day of Judgment (Surtiretna, 2004)

Adultery is a dangerous social disease. There is only one way to eradicate it: eradicate everything that can grow the seeds of adultery. According to Ibn al-Qayyim, adultery encompasses all the evils that stem from minimal religious knowledge, lost morality, damaged self-esteem, and jealousy (toward others who commit sin). As a result, Allah is angry and the light in the heart is dimmed. The perpetrator's honor is revoked and his authority falls in the eyes of God and society. His good qualities such as 'iffah and birr (straightness in upholding religious teachings) are eliminated and replaced with bad ones, such as sinners, adulterers, and traitors. The faith in his heart is also removed from all goodness and replaced with evil.

Islamic law is very strict in its application to those who commit adultery, because the issue of maintaining offspring is one of the 5 objectives of sharia which must be given priority. (namely preserving religion, soul,

descendants, mind and wealth). Adultery is one of the seven major sins that are punishable by had (punishment whose type and kind are determined by religion and are the right of Allah SWT.) (Surtiretna, 2004). The act of adultery must be proven more accurately in order to be able to impose a punishment.

Proof is one of the series of proceedings in the trial which plays a role this is important because the evidentiary process determines whether someone is guilty or not. If the evidence presented in court is insufficient or does not meet the requirements, the suspect will be acquitted. However, if the evidence presented is sufficient, the suspect can be found guilty. Therefore, the evidentiary process is crucial to prevent a guilty person from being acquitted due to insufficient evidence, or even an innocent person from being found guilty.

In terms of proof, the systems differ from one country to another. This is usually adapted to the culture or beliefs adopted by the country. In general, the evidentiary system in a country is distinguished based on countries that adhere to civil law and countries that adhere to common law. In addition, it is also divided based on several theories of the evidentiary system. In theory, the evidentiary system can be divided into several theories, namely the evidentiary theory system based on positive law, based on the judge's belief alone, based on the judge's belief supported by logical reasons (Andi Hamzah, 2001). Evidence in Islamic law differs from the theories of evidentiary systems in general, not only because Islamic law is not a law based on the common law or civil law system, but also because the evidentiary system is based on the Qur'an, As-Sunnah, and ar-ra'yu or reasoning which is usually in the form of opinions of fuqaha or religious scholars (Zainuddin, 2007).

The evidence required for each case also differs. For example, the evidence required for adultery is stipulated in the Quran's Surah An-

Nisa. Article 15 requires that there be at least four witnesses who saw the incident directly with one's own eyes (Ahmad, 2005). Scholars agree that adultery is determined based on confession and witnesses. Then they disagree about determining adultery based on pregnancy in an unmarried woman, sometimes she is forced to commit adultery. They also disagree about the conditions for confession and the conditions for witnesses.

Regarding confession, they disagreed on two things. First, about the number of confessions that require a sentence. Second, should it be stipulated that the confession cannot be revoked until the sentence is carried out? Regarding the number of confessions that require a sentence, according to Malik and Shafi'i, one confession is sufficient to impose a sentence. This opinion was also expressed by Dawud, Abu Thawr, ath-Thabari, and a group of jurists. Abu Hanifah and his followers, and Ibn Abi Laila, argued that a sentence can only be imposed with four confessions made one after the other. This opinion was also expressed by Ahmad and Ishaq. Abu Hanifah and his followers added that the four confessions were made in different places (rusyd, 2007).

In Islam, proof of adultery can be provided by the confession and testimony of the perpetrators, with the presence of four male witnesses, under certain conditions. Some scholars also believe that proof can be provided by qarinah (a sign), such as pregnancy in an unmarried woman, without the need for prior complaint.

At this time Aceh has drafted several qanuns which regulate the implementation of Islamic law, including Aceh Provincial Qanun No. 11 of 2002 concerning the implementation of Islamic law in the fields of Aqidah, Worship and 6. Qanun is a type of regional regulation that regulates the administration and life of the Acehnese people. Also Aceh Qanun No. 3 of 2007 concerning Procedures for Establishing Qanun, Article 1 paragraph (14). Islamic Propagation, Aceh

Provincial Qanun No. 12 of 2003 concerning Khamar, and Aceh Provincial Qanun No. 13 of 2003 concerning Maisir and Aceh Provincial Qanun No. 14 of 2003 concerning Khalwat. In its long history, the Acehnese people have placed Islamic law as a guideline for their lives in all its forms of shortcomings and advantages (Mohd, 2013).

In light of the above issues, it is interesting to conduct a comparative study of evidence for adultery according to Aceh Qanun Jinayah No. 6 of 2014 and Shafi'i jurisprudence. This study is novel, as it has not been examined by other researchers in Aceh.

II. RESEARCH METHODS

A method is a thinking technique that is built into a particular research to carry out a procedure (Soerjono, 1986). In this thesis research, the library research method will be used, namely research that is carried out more on data sources obtained from literature that is in accordance with the topic being studied, namely the criminal law of Qanun No. 6 of 2014 with Shafi'i jurisprudence. In this discussion, a comparative approach will be used, namely a method that aims to compare the evidence in Aceh's Qanun Jinayah No. 6 of 2014 with Shafi'i jurisprudence, in order to be clearer and to know the points of similarities and differences. Data collection in this study is collecting data that is the source to be studied, both primary and secondary. Primary sources are Shafi'i jurisprudence books and Qanun Jinayah No. 6 of 2014. The rest are secondary sources as secondary legal materials which are mainly legal journals, in addition to legal dictionaries, court decisions. Data analysis is a very important part in addition to other activities in the research process. The data analysis used in this study is deductive. Deductive is an approach process that starts from a general truth about a phenomenon (theory) and generalizes that truth to a particular event or data that has the same characteristics as

the phenomenon in question (prediction) (Saifuddin, 2009). In data analysis, comparative analysis will be used which is a method and legal research. This analysis is useful for revealing the background of the legal provisions, namely Jinayah Law No. 6 of 2014 with Shafi'iyah fiqh.

III. RESULTS AND DISCUSSION

1. Evidence of Adultery in Shafi'i Jurisprudence

Evidence comes from two words, namely "tool" and "proof". Tool means tools, various things/tools. Meanwhile, evidence means a sign of truth, providing proof, and explaining with evidence (Depdikbud, 2008). Evidence can be defined as anything that can be used to prove the truth of an event in court. Regarding what constitutes evidence, each court's procedural law will regulate it in detail. Evidence in civil procedural law differs from evidence in criminal procedural law. Likewise, evidence in trials of certain cases such as the procedural law of the Constitutional Court, procedural law in corruption cases, adultery cases, procedural law in divorce cases, and many more (Eddy).

Definition of evidence according to legal experts varies. First, according to Yahya Harahap, evidence is something in the form and type that can help in providing information and explanation about a case problem to help provide a judge's assessment in court. So the parties in the case can only prove the truth of the arguments of the lawsuit and the arguments of the rebuttal as well as the facts they put forward in certain types or forms of evidence. The law of evidence that applies in Indonesia until now still applies to certain types or forms of evidence only (Yahya, 2010). Second, according to R. Atang Ranomiharjo, evidence is tools that are related to a criminal act, where the evidence can be used as evidence, in order to create confidence for the judge, on the truth of existence of a criminal act that has been committed by the defendant (darwan).

Third, according to Romli Atmasasmita, evidence is something that is used as a basis by the judge to declare the defendant guilty or not, and then becomes the judge's consideration in making a decision. Meanwhile, evidence serves to increase the judge's confidence in examining a case (Joko, 1998).

2. Proof in Adulter

In Islam, protection is granted to both parties in a dispute, as is the case with evidence. Etymologically, evidence comes from the word "bukti," meaning something that states the truth of an event. The word "bukti" is prefixed with "pe" and the suffix "an" mean the process, act, or method of proving. In the terminological sense, "proof" means the effort to show whether the defendant is right or wrong in court.

Proof according to the language, it comes from the word "proof" which means something that states the truth of an event; sign; real information. Proof is a process or method, an act of proving, an effort to show the truth or guilt of the accused in a court of law (Depdikbud, 2008). In the legal dictionary, proof is defined as something that states the truth of an event, real information, witnesses, signs, things that are signs of evil deeds (Sudarsono, 1996). Proof or in Islam which can also be called al-bayyinah, etymologically means information, namely everything that can be used to explain the truth. In technical terms, it means evidence in a court of law. Al-bayyinah is defined by Islamic jurists according to its etymological meaning. In terminology, it is proving a case by submitting reasons and providing arguments to the point of convincing (Sobhi, 1981).

The majority of Islamic jurists interpret al-bayyinah narrowly, namely as the same as testimony. According to Ibn Qayyim al-Jauziyah, al-bayyinah contains a broader meaning than the definition of *jumhur ulama*. According to him, testimony is only one type of al-bayyinah that can be used to support someone's accusations. According to him, al-bayyinah is anything that can

be used to explain the truth in front of a panel of judges, in the form of information, witnesses, and various indications that can be used as a guide by the panel of judges to return rights to their owners (Abdul, 1997). In the Koran, proof is not only in the sense of two witnesses, but also in the sense of information, arguments and reasons, both individually and in combination (Ibnu Qayyim, 2006). According to Hasbi as-Siddieqy, what is meant by proving something is providing information and arguments so that it can be convincing, and What is meant by certainty is something that is acknowledged to exist, based on investigation or argument. Something that has been confirmed to exist cannot disappear, unless another belief comes into existence (Hasbi, 1964). The purpose of proof is to obtain certainty that an event or fact that is proposed really happened so as to obtain the correct judge's decision and fair, the aim of the above proof is to obtain clarity and certainty about an event.

In court proceedings, the position of presenting evidence is very important, because from the process of proof it can be clearly known about an event, although sometimes the problem that arises is whether the evidence is reliable or false. This is what ultimately matters the accuracy of the judge in making a decision on a dispute because the judge's decision must be based on evidence and his beliefs so that a fair legal decision is created. Regarding the obligation of proof, it has been mentioned in several verses of the Quran, "O you who believe, if a wicked person comes to you with news, then investigate it carefully lest you afflict a people without knowing their condition, which makes you regret what you have done." (QS al-Hûjurât/49: 6). The above verse is the basis for the obligation to provide proof, because the act of proof is expected to be able to show the actual reality so that it will later become the basis for the judge to determine his decision based on the existing evidence and also his beliefs. This is a rule that must be implemented

by the judge, so that the problem can be resolved fairly and wisely without causing legal inequality.

Likewise, in the hadith of the Prophet SAW it is stated that: "If man were given whatever he wanted, man would certainly sue for what he wanted, both life and property. However, the oath is brought against the defendant." This is a general rule, although this rule sometimes causes danger. Because sometimes a claim that is actually true must be rejected if the plaintiff cannot prove its truth. We must justify claims that can be proven, even if the evidence is actually false. Burden to prove the truth of an accusation or lawsuit in Islamic procedural law is placed on the shoulders of the accuser or plaintiff. Among the general rules, evidence is to establish something that is contrary to reality, while the oath is taken to defend the original law (reality).

In every case brought before the court, there are at least two parties involved, namely the *mudda'i* (prosecutor) and the *mudda'a 'alayhi* (the one being sued). The *mudda'i* (prosecutor) is the party who, through his complaint, wants something taken from the hands of others or who claims something that is contrary to the real situation, while the *mudda'a 'alayhi* (the one being sued) is the person against whom a claim is based, the party who rejects what is being demanded or the party who must answer the lawsuit. The judge can force him to answer or provide the necessary information regarding the lawsuit brought against him by the *mudda'i*. Only the *mudda'a 'alayhi* can choose which judge he likes to try his case if there are two judges in their place. In Islamic judicial procedural law, it is the plaintiff's duty to prove the truth of his claim, because according to the origin of all The matter is taken from the one who was born, so it is obligatory for the person who submitted the lawsuit on something that was born to prove the truth of his claim.

Based on the hadith of the Prophet Muhammad (peace be upon him), narrated by Baihaqi, "proof is the obligation of the plaintiff,

and an oath is the obligation of the one who denies the claim." From this hadith, it can be understood that proof is the burden of the person who claims the existence of a right or event that is denied by the other party. In other words, if someone makes a claim against another person, the plaintiff is obliged to prove their claim, because the defendant is originally free from accusations. In today's conditions, it is impossible to expect a defendant to admit to the sins they are accused of, let alone expect them to confess without being accused of them, as often happened in the time of the Prophet Muhammad (peace be upon him). Even if there were witnesses, they would deny the testimony by asking for assistance from a defense attorney/legal advisor. The strict requirements imposed on the plaintiff suggest that Islam requires that news of crimes and sins not be spread among the public.

The evidentiary system is a regulation of the types of evidence that may be used, the analysis of the evidence and the ways in which the evidence is used and the way in which the judge must form his conviction (Sasangka, 1996). As has been mentioned in the definition and theory of evidence, this evidentiary system is not much different from western law and the legislation that is currently in force, because all of them are basically one large, interconnected whole.

In Islamic procedural law, a judge, in order to resolve the case submitted to him and be able to provide a fair decision, must master two things. First, the judge knows the nature of the accusation or claim. *Al-Da'wa* is a demand or lawsuit, or a statement that is a lawsuit intended to assert that there is a right of the plaintiff that is on the defendant, a statement or claim related to the rights of another person that is put forward before the court (Azis, 1997). The judge knows about the lawsuit or claim that is presented to him, can be by witnessing what is demanded personally, can also be through the news that has been received through *mutawatir*. If the news that is not

received through mutawatir, then it is certain that the news is not convincing, because it can give rise to various different perceptions of the story, and because obtaining news through mutawatir is necessary, then such a method will cause difficulties and will be able to omit some parts of the story, it is permissible for the judge to accept the information as long as it can give rise to strong suspicion or belief. To find out the lawsuit or demands that have been filed, it is sufficient to have the confession of the person being sued, or the fair statements of witnesses, even though there is a possibility that the person filing the case is lying and so are the witnesses.

Second, Judges must know God's law. Judges can know God's law by knowing the definitive texts or laws agreed upon by scholars and if the legal provisions are not found in the qath'i text and they are not found if the law is agreed upon by the ulama, then the path of ijtihad is followed, and this path of ijtihad must also be based on strong assumptions (zan) (Salam Madkur). In short, there are things that are determined by witnessing them with your own eyes and there are also things that require information to prove their truth. These two roads are actually at the same level (Haasbi).

3. Evidence of Adultery in the Aceh Jinayah Qanun

The mistake of a person who commits adultery is a very serious mistake, so determining the punishment for the perpetrator is also too difficult and severe. Therefore, to say that an adulterer is guilty, there must be some evidence that establishes the perpetrator's guilt, with the need for one of the following things: testimony, confession, proof and oath.

Evidence must be presented jointly during the trial process conducted in the Sharia Court (Religious Court). From there, it can be determined that the perpetrator's actions are guilty and can be categorized as adultery. According to the Qanun Jinayah, adultery is a

relationship between one man and one or more women without a valid marriage bond according to sharia. Testimony is also very important, which can be proven by the presence of four witnesses whose testimony can be accepted. This requires several conditions as follows. First, the witness must meet the criteria to be a witness, namely: Muslim, mature, sane, and just. Second, the testimony is conducted in the Sharia Court at the same time.

Confession A man or woman who admits to committing adultery may not be immediately linked to guilt by their confession alone, unless the confession is accompanied by the following conditions: it is carried out before a judge at the Sharia Court, by means of a conversation through one's own tongue. Next is the confession that comes from people who have a healthy mind. The Qarinah or reasons why someone may be linked to having committed adultery are pregnancy. Oath, which is carried out in a trial at the Sharia Court five times.

As has been mentioned, the requirements for imposing a sentence the punishment for adultery is very difficult to fulfill, and this is why the punishment is emphasized more as a preventive effort (preventive) rather than retaliatory. Being considered a preventive effort does not mean that Islamic provisions regarding punishment for adultery have no legal force or doctrinal value, but the difficulty of implementing the punishment due to these conditions shows that Islamic criminal law has considered various aspects of the implementation of the punishment. The existence of these severe punishment provisions is a kind of serious prevention so that people do not commit adultery. An act has many motives and factors, especially because the sexual instinct (one of the instincts that can be said to be raging in humans) is relevant If such a strong instinct is faced with such a heavy punishment.

Scholars have agreed (in ijma') that adultery cannot be proven except through four witnesses,

this is based on the word of Allah SWT in Surah An-Nisa: 15. Because they did not bring witnesses, they are in the sight of Allah as liars (QS An-Nur; 13). Thus, Islamic criminal law has determined four witnesses in adultery cases for no other reason than to prevent people from committing violence against others with various modes and factors. In fact, Islamic law highly respects and protects the soul from accusations that cannot be proven. Not only that, Islamic criminal law wants to show how important it is to guard and avoid oneself from the act of adultery.

4. Evidence of Adultery According to Shafi'i Jurisprudence

Adultery is a forbidden, forbidden act. It requires concrete proof in the legal process. The majority of scholars maintain that the primary proof is testimony or a confession from the perpetrator of adultery, which comes from the perpetrator's conscience, not through coercion from the court. Imam Shafi'i and Imam Maliki stipulate that a single confession is sufficient, not a second or subsequent confession. A single confession is sufficient to confirm the case of adultery (Sayyid, 1983).

To determine whether or not there has been an act of adultery or to determine whether someone has committed adultery, this can be done by taking an oath or confession, if it meets the following requirements. Firstly, a confession to be made before the Government or a judge is not sufficient to be made before someone other than that. Second, a reasonable person. If this confession comes from being crazy then the confession cannot be accepted, but people are sometimes crazy and sometimes sane in their minds. If he confesses when he is in good health that he has committed adultery, then at that time his confession is accepted and punishment can be imposed on him. Third, the puberty. Confessions of adultery that come from children are invalid because hudud punishment is required for jinayah acts, while acts committed by children are

not considered jinayah. Therefore, confessions of actions from children who have not reached puberty cannot be accepted. Fourth, with mouth and words. According to the Hanafi school of thought, confession must be made with the mouth and words alone are not sufficient with writing or gestures. Meanwhile, the Maliki and Shafi'i schools of thought state that the confession of a mute person may be accepted either in writing or with signs that can be understood. Fifth, the confession given is clear and clear enough about the act of adultery so that doubts and ambiguity disappear.

Scholars disagree about how many confessions must be made in order to accept the confession of an adulterer. Imam Abu Hanifah and Imam Ahmad stated that the confession must be made four times. Imam Malik and Imam Syafi'i is of the opinion that a confession is sufficient just once, there is no need for it to be repeated, this is based on the hadith: "Asif to which the Messenger of Allah said, go O Anis, if she confesses to that woman, then stone her." With the hadith in It is clear that the punishment is stoning even with one confession.

Imam Syafi'i said that this is the opinion that we uphold, that the punishment of stoning can be imposed on someone who admits to committing adultery, even if the confession is only made once, as long as he has definitely committed adultery. Adulterers who were previously married were sentenced to stoning and were not flogged (Syafi'i, 2008).

One way that cases related to adultery can be taken into account is pregnancy to unmarried women. Matters relating to pregnancy as an excuse for committing adultery are the words and actions of friends. Sayyidina 'Umar said that stoning is obligatory on every person who commits adultery, both men and women, the proof of which is pregnancy or confession.

According to the majority of scholars, pregnancy cannot be used as proof of a woman's

identity that is adultery. Even if a woman becomes pregnant due to rape and so on. If someone accuses a woman of adultery without bringing four male witnesses, then the accusation is called adultery *qazaf* namely accusing someone of adultery seriously and must be subject to *hudud* punishment 80 times as stated in the word of Allah SWT, "and those who accuse good women (of committing adultery) and they do not produce four witnesses, then they (who accuse them) will be beaten eighty times, and do not accept their testimony forever. and they are the wicked ones." (QS an-Nur/24: 4)

Apart from confession, the presence of witnesses is also very important to understand the adultery case. The witness's statement should be based on his own vision, not on the testimony of other people. Wrong information can bring down a person's dignity, causing the accused to be without witnesses, which can destroy their dignity. On the other hand, a person who does not have complete evidence regarding an adultery case can be said to be an accuser who has a bad influence on the accused, his family and descendants. That is why Islamic law places strict conditions on whether the accusation of adultery is accepted or rejected, and another requirement is testimony. In this case, the person who witnesses the act of adultery must be four witnesses, as stated in the Koran surah an-Nisa', and (towards) the women who do the work For an abominable act, there should be four witnesses among you (who witness it). Then when they have given testimony, then lock them (the women) in the house until they die, or until Allah provides another way to him (QS an-Nisa'/4: 15). The verse above states that for every adultery committed, four witnesses must be brought in to strengthen the accusation against the perpetrator. The presence of these witnesses is very important. to determine whether someone has committed adultery. Imam Shafi'i said: "An adulterer cannot be found guilty unless four just witnesses are

brought." The judge ordered them to explain their testimony until they determined that they had seen the male genitals enter the female genitals, just as a thread enters the eye of a needle. If they say so, the judge can sentence the man and woman who committed adultery to undergo punishment. An adulterer can also be found guilty based on the confession of the perpetrator himself, even if only once. As for if the man confesses and the woman denies it or vice versa. In such conditions, the punishment is carried out based on the confession of the person who confesses and is not carried out against the person who denies.

Proving the crime of adultery is carried out using three types of evidence: confession, testimony, and indication (Wardi, 2005). First, with testimony. In principle, witness evidence in proving the crime of adultery has the same requirements as witness evidence in general. However, there are several differences, such as the number of witnesses that must be presented. In the crime of adultery, the minimum number of witnesses is four people. These four witnesses must directly witness the incident. They must see the incident with their own eyes. They cannot simply hear about the incident from others, because it will raise doubts (*syubhat*) that can cause the *hudud* punishment to be dropped. The legal basis for this witness requirement is Surah An-Nisa verse 15, which states "and (as for) women who commit indecency, let there be four witnesses from among you (who witness it)." Second, confession. With confession, evidence has several requirements that must be met, including the confession must be stated four times and in detail to eliminate *syubhat* (doubt). However, in principle, it is the same as confession evidence in general. Third, with *qarinah* (indication). Evidence using clues in the crime of adultery can include the pregnancy of an unmarried woman. Regarding the burden of proof on whom the burden of proof should be placed, in the Islamic legal system of proof, the burden of proof is placed

on the plaintiff. This is based on the principle that everything is taken from birth. Therefore, in this case, the plaintiff must prove what he has sued for. This can be seen from the requirements for witnesses in adultery cases, which require that the plaintiff be the one to present witnesses. As stated in the Qur'an, Surah An-Nisa, verse 15.

If the lawsuit if the allegation cannot be proven, even if what is alleged actually occurred or is a fact, the defendant cannot be punished. This is the basis of proof in Islamic criminal law. The system of proof in Islamic criminal law differs from that in Indonesian criminal law. In Islamic criminal law, each crime may have different requirements regarding the evidence used in its proof.

The general requirements for a witness in any case are: Baligh, Berakal and Al-hifzhu, namely a witness must be able to remember what he witnessed and understand what happened, so that his words can be believed. Therefore, a person who makes many mistakes and forgets a lot cannot be accepted as a witness, because his words cannot be trusted, he can speak, can see, is just, and is Muslim. Things that hinder testimony: family, hostility and the existence of things that are considered to be able to warn or aggravate the demands on the accused. Special conditions for adultery testimony: male, witness directly, not expired, testimony given in one assembly, the number of witnesses is four people and must convince the judge.

Proof of hudud in qanun jinayah no. 6 of 2014 contains a number of unique features. Among other things, the judge can impose uqubat hudud on the basis of a mere confession (asking to be punished) and it can also be canceled if the person concerned withdraws his confession. This is something new in the context of criminal law evidence in Indonesia, as well as implying the existence of a religious dimension or worship (penance) as in the basic concept of hudud. Besides that, in qanun jinayah no. 6 of 2014 also

made a legal breakthrough by stating that he accepted the results of the DNA test as a substitute for four witnesses in the case of proving adultery.

Proof hudud in Shafi'iyah fiqh refers strictly to the provisions of sharak law. In terms of testimony, judges are required to carry out tazkiyah al-syuhud. The results of the syuhud tazkiyah and the judge's confidence determine whether the perpetrator of the hudud finger can be sentenced to a hudud crime. In Syafi'iyah jurisprudence, the criteria and conditions used as evidence are explained in detail in contrast to Qanun Jinayah No. 6 of 2014 only explains in general terms. However, there are similarities in the number of witnesses to reveal the adultery case, namely four witnesses.

It cannot be denied that the evidence of adultery contained in Qanun Jinayah No. 6 of 2014 and Syafi'iyah jurisprudence has weaknesses but also strengths. Among the advantages contained in the qanun jinayah is including DNA testing as evidence for adulterers who are pregnant, which is not found in Shafi'iyah jurisprudence. However, it is a weakness on the other hand in Qanun Jinayah No. 6 of 2014 which does not explain in detail the criteria used as evidence. The example of four witnesses who are used as evidence does not contain the criteria and conditions for being used as evidence and this is found in Syafi'iyah jurisprudence.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The evidence in the qanun jinayah emphasizes that to say someone is a guilty adulterer, there must be some evidence that determines the guilt of the perpetrator, with the need for one of the following cases. Testimony, confession, proof and oath. Evidence should be carried out jointly in the trial process conducted at the Syariah Court (Religious Court). From there it can be seen that the perpetrator's actions are guilty and

can be categorized as adultery. According to Qanun Jinayah, adultery is a relationship between one man and one or more women without a legal marriage bond according to sharia'. Testimony is also very decisive, it can be proven that with four witnesses whose testimony can be accepted, this requires several conditions as follows: following. First, the witness must meet the criteria as a witness, namely. Islam, puberty, reason and justice. Second, testimony is carried out at the Sharia Court at one time. The confession of a man or woman who admits to committing adultery cannot be directly linked to guilt by confession alone, unless the confession is accompanied by the following conditions: it is carried out before a judge at the Sharia Court, by speaking through one's own tongue. Next is the confession that comes from people who have a healthy mind. The Qarinah or reasons why someone may be linked to having committed adultery are pregnancy. Pregnancy is not necessarily used as proof of adultery, if there is no confession, oath and witness then a DNA test must be carried out. Oath, which is carried out in a trial at the Sharia Court five times.

The main process of proving adultery is the testimony or confession of the perpetrator of adultery. Imam Syafi'i and Imam Maliki stipulate that confession only needs to be said once and does not need to be said twice or more. One time, you can consider confirming the adultery case. Apart from confession, the presence of witnesses is also very important to understand the adultery case. The witness's statement should be based on his own vision, not on the testimony of other people. On the other hand, a person who does not have complete evidence regarding an adultery case can be said to be an accuser who has a bad influence on the accused, his family and descendants. That is why Islamic law places strict conditions on whether the accusation of

adultery is accepted or rejected, and another requirement is testimony. In this case, the people who witness the act of adultery must be four witnesses.

For every adultery committed, four witnesses must be brought in and the aim is to strengthen the accusation assigned to the perpetrator. The presence of the witness is very important to determine whether a person has committed adultery. Imam Syafi'i said: "An adulterer cannot be found guilty unless four just witnesses are brought." The judge ordered them to explain their testimony until they determined that they had seen the male genitals enter the female genitals. If they say so, the judge can sentence the man and woman who committed adultery to serve the sentence. An adulterer can also be found guilty based on the confession of the perpetrator himself, even if only once. As for if the man confesses and the woman denies it or vice versa. In such conditions, the punishment is carried out based on the confession of the person who confesses and is not carried out against the person who denies. Proof for the crime of adultery is carried out with three types of evidence, namely confession, testimony, and indications.

B. Suggestions

Based on the discussion regarding the evidence of adultery in Shafi'i jurisprudence and the Aceh Jinayah Qanun, several recommendations can be proposed. First, there is a need for a more comprehensive formulation of evidentiary provisions within the Jinayah Qanun, particularly concerning the qualifications, criteria, and procedural requirements of witnesses. While Shafi'i jurisprudence explains these requirements in detail, the Qanun tends to regulate them in a more general manner, which may lead to different interpretations in judicial practice.

Second, the integration of modern scientific evidence, such as DNA testing, should continue to

be developed through clear legal guidelines. Although DNA evidence has been recognized in the Aceh Jinayah Qanun as supporting evidence in adultery cases, its legal status, evidentiary value, and relationship with classical forms of proof should be further clarified to ensure legal certainty and fairness.

Third, judges, prosecutors, and legal practitioners involved in the implementation of Islamic criminal law should receive continuous education and training regarding both classical Islamic evidentiary principles and contemporary forensic developments. Such efforts would

enhance the quality of judicial decision-making and ensure that the application of Islamic criminal law remains consistent with the objectives of justice and legal protection.

Finally, future researchers are encouraged to conduct comparative studies between classical fiqh doctrines, contemporary Islamic criminal legislation, and modern evidentiary systems. Such studies would contribute to the development of a more responsive and balanced legal framework that preserves Islamic legal principles while accommodating contemporary legal and technological advancements.

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