

The Position of Testimony in the Court Evidentiary System: A Juridical-Normative Analysis of Indonesian Law and Islamic Courts

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Abstract

Testimony constitutes an essential evidentiary instrument within Indonesian and Islamic judicial systems, yet its application encounters practical complexities. This research aims to analyze the position of testimony in court evidentiary systems through a juridical-normative approach by comparing Indonesian positive law and Islamic law. The method employed is normative juridical with qualitative analysis of legal norms, testimony concepts, and case studies. Research findings indicate that: (1) Testimony regulation in KUHAP adheres to the negative legal system, while Islamic judiciary implements testimony hierarchy based on case types with more rigid standards; (2) Validity requirements for testimony in positive law emphasize procedural-formal aspects, whereas Islamic law applies the principles of 'adalah and dhabt with comprehensive tazkiyah al-syuhud mechanism; (3) The evidentiary position of testimony in Indonesian system is flexible with Constitutional Court Decision No. 65/PUU-VIII/2010 expanding acceptance of testimonium de auditu, while Islamic system applies the principle of "dar'u al-hudud bi al-syubuhah" for maximum prudence. This research concludes that despite different approaches, both systems converge toward justice objectives through mutually complementary mechanisms within Indonesia's legal plurality context.

Keywords: testimony, evidentiary system, criminal procedural law, Islamic judiciary, testimonium de auditu

Abstract

Kesaksian merupakan alat bukti esensial dalam sistem peradilan Indonesia dan peradilan Islam, namun penerapannya menghadapi kompleksitas dalam praktik. Penelitian ini bertujuan menganalisis kedudukan kesaksian dalam sistem pembuktian pengadilan melalui pendekatan yuridis-normatif dengan membandingkan hukum positif Indonesia dan hukum Islam. Metode yang digunakan adalah yuridis normatif dengan analisis kualitatif terhadap norma hukum, konsep kesaksian, dan studi kasus. Hasil penelitian menunjukkan bahwa: (1) Pengaturan kesaksian dalam KUHAP menganut sistem negatif menurut undang-undang, sementara peradilan Islam

menerapkan hierarki persaksian berdasarkan jenis perkara dengan standar lebih rigid; (2) Syarat sahnya kesaksian dalam hukum positif menekankan aspek prosedural-formal, sedangkan hukum Islam menerapkan prinsip 'adalah dan dhabit dengan mekanisme tazkiyah al-syuhud yang komprehensif; (3) Kedudukan pembuktian kesaksian dalam sistem Indonesia bersifat fleksibel dengan putusan MK No. 65/PUU-VIII/2010 memperluas penerimaan testimonium de auditu, sementara sistem Islam menerapkan prinsip "dar'u al-hudud bi al-syubuhah" untuk kehati-hatian maksimal. Penelitian ini menyimpulkan bahwa meskipun kedua sistem memiliki pendekatan berbeda, keduanya konvergen pada tujuan keadilan melalui mekanisme yang saling melengkapi dalam konteks pluralitas hukum Indonesia.

Kata Kunci: kesaksian, sistem pembuktian, hukum acara pidana, peradilan Islam, testimonium de auditu

INTRODUCTION

In the Indonesian judicial system, testimony has a strategic position as an essential evidence in court decisions, both in civil and criminal cases. The power of testimony evidence is a central aspect that determines the direction and outcome of the trial process. The Criminal Procedure Code (KUHP) expressly recognizes witness testimony as a form of valid evidence, as stipulated in Article 184. Meanwhile, in civil cases, witness testimony is also regulated as valid evidence under Article 164 of the HIR (Herziene Indonesisch Reglement) along with other evidence (Marda & Dewangga, 2023). This formal arrangement shows the Indonesian legal system's recognition of the importance of testimony in uncovering material truth.

The strategic position of testimony is not only recognized in Indonesia's positive legal system, but also in the Islamic justice system that has been established for centuries. In Islamic law, testimony (shahadah) is one of the main evidence that gets direct legitimacy from the Qur'an and the Hadith of the Prophet Muhammad (saw) (Al-Zuhaili, 2011). The Islamic evidentiary system pays special attention to the quality and quantity of witnesses adapted to the type of case, reflecting the principle of prudence in upholding justice.

The comparison between these two systems is important to understand how the universal values of justice can be realized through different but complementary approaches, especially in the context of Indonesia as a country with a majority Muslim population that has a Religious Court as an integral part of the national justice system (Manan, 2006).

Although testimony has an important position in the evidentiary system, its application in judicial practice is inseparable from various complexities and challenges. One of the fundamental issues is the requirement of oaths for witnesses which can make it difficult to receive testimony, especially in cases involving vulnerable individuals such as victims of sexual violence or those with mental disabilities (Wijayanti, 2020).

This condition creates a legal paradox in which procedural provisions can actually hinder the realization of substantive justice for those who are most in need of legal protection. Judges are often faced with a dilemma in evaluating the credibility of testimony, especially when involving witnesses with mental retardation, which requires the evaluation of psychiatrists to support the assessment of the testimony (Wijayanti, 2020). This reliance on expert judgment indicates that the process of proving through testimony cannot be done mechanically, but rather requires a comprehensive multidisciplinary approach.

In the perspective of Islamic justice, similar complexities are also faced but with different settlement mechanisms. The Islamic judicial system recognizes the concepts of *tazkiyah al-syuhud* (investigation of the character of witnesses) and *jarh wa ta'dil* (criticism and appreciation of witnesses) which provide a mechanism for verifying the credibility of witnesses in a more comprehensive manner (Khallaf, 2002; Syafi'i, 2015). This approach not only assesses testimony based on formal-procedural aspects, but also considers the moral integrity and reputation of witnesses in everyday life. A comparison between the witness verification mechanisms in the two systems shows a fundamental philosophical difference: the positive legal system tends to be more formalistic and procedural, while the Islamic system is more holistic by taking into account the moral-spiritual dimension of witnesses.

Indonesia's legal framework has actually provided flexibility by allowing the use of affidavits as supporting evidence, as long as it is corroborated by other legitimate evidence. However, this practice highlights the urgent need for more comprehensive legal reform to accommodate substantive justice and provide maximum protection to vulnerable witnesses (Dewi et al., 2025). This kind of procedural flexibility should be the first step towards a more inclusive evidentiary system that is responsive to the diversity of witness conditions. In the context of civil cases, even though the evidentiary process has been formally regulated, the judge's personal knowledge can sometimes still play a role in the decision-making process, raising questions about the objectivity of the verdict (Marda & Dewangga, 2023). This phenomenon indicates that there is a grey area in judicial practice that requires further clarification and standardization.

The complexity of testimony is increasingly evident in special cases such as corruption cases involving crown witnesses. The use of crown witnesses can fill evidentiary gaps that are difficult to obtain through other evidence, but on the other hand raise serious concerns about procedural fairness and the protection of the rights of defendants (Putri et al., 2025). This dilemma reflects the battle between the effectiveness of crime eradication and the guarantee of due process of law, which is the fundamental right of every individual in the justice system. In addition to the testimony of

ordinary witnesses and crown witnesses, the role of expert testimony is also crucial in the criminal justice process. Expert testimony provides technical and scientific insights that can significantly influence the outcome of trials, although in practice their existence sometimes receives less attention than the testimony of factual witnesses (Prananto et al., 2023). This marginalization of expert testimony has the potential to reduce the quality of court decisions, especially in cases that require a deep technical or scientific understanding.

A comparative study of the evidentiary system through testimony in positive Indonesian law and Islamic law is very relevant considering that Indonesia has a dualism of the judicial system that accommodates both approaches. The Islamic judicial system, especially in the Religious Courts, has long practiced the principles of shari'i proof sourced from the Qur'an and Hadith (Syarifuddin, 2014). The principle of "*dar'u al-hudud bi al-syubuh*" (rejecting hudud punishment due to doubt) in Islamic law shows extreme prudence in imposing judgments, which have philosophical similarities with the negative legal system of proof in the Criminal Code (Qardhawi, 2001; Al-Tirmidhi, 1998). However, there are significant differences in terms of the flexibility and freedom of judges in assessing evidence, where the positive legal system provides broader discretion while the Islamic system provides more structured and rigid provisions based on the type of case.

Based on these issues, it can be concluded that although testimony is a fundamental element in Indonesian court decisions, its application still faces a number of complex challenges that require careful judicial consideration. Furthermore, comprehensive legal reform is needed to ensure that the use of testimony as evidence can realize substantive justice and uphold human rights, especially for vulnerable groups in the justice system (Wijayanti, 2020). The reform is not just an academic need, but a real demand to build a fairer, more inclusive, and humane justice system. A comparative study of the Islamic justice system can provide valuable insights into how the values of universal justice can be realized through different mechanisms, as well as open up opportunities to learn from each other and adopt best practices from each system in order to improve a pluralistic and responsive national justice system to the diversity of Indonesian society.

METHODS

The research methods used in this study include a variety of approaches. Notably, normative juridical methods are used, focusing on the examination of legal norms and concepts relevant to witness testimony, as seen in studies that discuss the validity of unsworn statements and the testimony of mute individuals (Hanafi et al., 2024). In addition, qualitative analysis was applied to assess the implications of these testimonies on justice, especially for vulnerable groups (Hanafi et al., 2024). Some studies also combine case studies and documentary studies to explore specific

legal cases, such as the use of *istifāḍah* witnesses in marriage validation, highlighting judges' discretion in accepting testimony that does not meet traditional criteria (Mubarak & Rahmadani, 2022)]. Overall, these methods collectively aim to provide a comprehensive understanding of the complexities surrounding witness testimony in the context of civil and Islamic law in Indonesia.

RESULTS AND DISCUSSION

Arrangements for Testimony in the Indonesian Procedural Law System of the Islamic Judiciary

The regulation of participation in the Indonesian procedural law system, especially regarding testimony in criminal proceedings, is mainly regulated by the Criminal Code. Article 184 of the Criminal Code outlines five valid ways of evidence: witness testimony, expert testimony, letters, instructions, and defendant testimony (Juliana & Kirana, 2023). This limiting arrangement shows that Indonesia's evidentiary system adheres to a negative system according to the law, where judges are not free to determine evidence outside of what has been normatively determined. However, there are specific restrictions on who can testify, as detailed in Article 168, which allows certain family members of the accused to refrain from testifying (Juliana & Kirana, 2023).

This provision reflects a legal policy that prioritizes the protection of family relations over the importance of proof, although in practice it can create a dilemma between moral obligations and legal obligations. Constitutional Court Decision No. 65/PUU-VIII/2010 expands the definition of witness, allowing testimony from individuals who may never have experienced events firsthand, thereby expanding the scope of admissible evidence and protecting the rights of defendants through the inclusion of mitigating witnesses (Johan et al., 2023). This progressive ruling proves that the judiciary has a vital role to play in filling legal gaps and adapting the interpretation of norms to the evolving needs of justice, while strengthening the principle of effective defense for defendants.

The regulation of testimony in the Indonesian procedural law system shows the dynamics between legal certainty and substantive justice. Although the Criminal Code has provided a clear foundation regarding valid evidence, the development of the Constitutional Court's decision proves that the law must be responsive to the practical needs of the judiciary (Rohman et al., 2024). This responsiveness indicates that positive law cannot be static, but must be able to adapt to the complexity of concrete cases faced in judicial practice.

The restriction of the right to testify for the defendant's family in Article 168 of the Criminal Code reflects the balance between the importance of proof and protection against personal conflicts of interest, but on the other hand it can create obstacles in the disclosure of material truth

(Purba et al., n.d.). This dualism shows that Indonesia's criminal procedure law system is still looking for a point of equilibrium between the protection of individual human rights and the achievement of criminal goals oriented towards objective truth. This shows that the principle of justice is not always in line with the effectiveness of evidence in judicial practice.

Despite these provisions, the Indonesian legal system faces challenges such as inconsistencies in the evaluation of evidence and the need for better regulation of digital evidence (Rohman et al., 2024). These inconsistencies have the potential to create legal uncertainty and disparities in verdicts, which in turn can erode public trust in the criminal justice system. These contemporary challenges indicate that Indonesia's procedural law system still needs to be refined to accommodate technological developments and social dynamics (Johan et al., 2023). The need for this improvement is becoming even more urgent given the rapid digital transformation that has changed the way people communicate and document events, so that the law of proof must not be left behind from social reality.

Witness protection is another important aspect, as witnesses often face intimidation, requiring comprehensive legal protection to ensure their safety and the integrity of their testimony (Purba et al., n.d.). Weak witness protection mechanisms can have a systemic impact on the effectiveness of the judicial process, as fear and threats can distort testimony or even prevent witnesses from giving real testimony.

The weak aspect of witness protection shows that there is a gap between legal norms and implementation in the field, which has the potential to hinder public participation in the judicial process and can ultimately reduce the effectiveness of testimony as evidence (Juliana & Kirana, 2023). This implementation gap underscores the importance of not only regulatory reform, but also the strengthening of institutional capacity and supporting infrastructure to realize substantive witness protection. Law No. 1 of 2023 recently aims to harmonize substantive and procedural law, address differences and increase legal certainty (Rohman et al., 2024). This harmonization effort is a strategic step to overcome regulatory fragmentation that has been a source of conflict of norms and procedural ambiguities in law enforcement practices.

Overall, while Indonesia's legal framework provides a structured approach to evidence in criminal proceedings, ongoing reforms and challenges highlight the need for continuous improvement to ensure fairness and protect participants in legal proceedings (Johan et al., 2023). The continuity of this improvement must be seen as a long-term commitment to build a justice system that not only formally meets the standards of the rule of law, but also is substantively able to realize justice for all justice seekers.

The harmonization between normative provisions and empirical realities in judicial practice is key to strengthening testimony as a reliable evidence tool in the Indonesian criminal justice system (Purba et al., n.d.). Thus, testimony as evidence cannot be separated from the broader systemic context, which includes aspects of regulation, protection, and legal culture that support the integrity of the evidentiary process in the achievement of true justice.

In a comparative context, the testimony system in Islamic justice has its own characteristics that are different from the Indonesian positive legal system. The Islamic system of proof contained in the Qur'an and Hadith places testimony (shahadah) as one of the main evidence that has a very fundamental position in the judicial process (Al-Zuhaili, 2011). In contrast to the Criminal Procedure Code system, which places testimony as one of five equivalent pieces of evidence, in Islamic law, testimony has a more detailed hierarchy and classification based on the type of case and witness status.

The Islamic judicial system recognizes the concept of testimony with varying standards depending on the type of case being faced. For hudud cases (crimes whose punishment is expressly determined in the Qur'an), a minimum of four male witnesses are needed for adultery cases, while for qisas (murder or persecution) and property cases, two male witnesses or one male witness and two female witnesses are required (Sabiq, 2008). These differences in the quantity and quality of witness requirements reflect varying degrees of prudence in determining the type of punishment, where crimes threatened with severe punishment require a stricter standard of proof.

A comparison of the evidentiary system shows that although both recognize the importance of testimony, the approach used differs fundamentally. Indonesia's positive legal system emphasizes more on the flexibility and freedom of judges in assessing the strength of evidence, while the Islamic judicial system provides more rigid and structured provisions regarding the number and qualifications of witnesses (Syarifuddin, 2014). This difference has implications for the evidentiary process, where the Indonesian system gives a wider scope of interpretation to judges, while the Islamic system emphasizes more on compliance with sharia standards that have been normatively established in religious nash-nash.

The adaptation of the concept of Islamic justice in the context of modern Indonesia can be seen in the Religious Court system that handles certain civil cases for Muslims. Although subject to the same procedural legal framework as the general court, the Religious Court applies the principles of Islamic law in substantial aspects, including in the assessment of testimony (Manan, 2006). The dualism of this system shows an effort to harmonize Islamic sharia values with a

pluralistic national legal system, although in practice there are still challenges in finding a point of equilibrium between the two systems.

Conditions for the Validity of Testimony According to Indonesian Positive Law and Islamic Law

The juridical-normative perspective on testimony as evidence in court decisions emphasizes the important role of witness testimony in the judicial process, especially in criminal proceedings. Testimony is considered the primary source of evidence, as it provides a direct account of events, which is crucial for establishing the facts of a case (Habrelian & Chepel, 2023). This shows that the presence of witnesses who can provide factual information directly becomes the foundation in the disclosure of material truth in court.

The legal framework mandates that witnesses take oaths or make promises to ascertain the truth of their statements, thereby binding their consciences and subjecting them to the moral and legal consequences for false testimony (Yamin et al., 2024). This mechanism of oaths is not just a procedural formality, but a legal instrument that has an ethical and juridical dimension at the same time, which aims to ensure the integrity of the evidentiary process in court.

This requirement is rooted in the principles of immediacy and orality, which dictate that testimony must be delivered directly in court, allowing judges to assess the credibility of witnesses directly (Franjić, 2024). The principle of immediacy ensures that the judge can observe the body language, intonation, and spontaneous responses of witnesses, all of which are important indicators in assessing the veracity of testimony. Nonetheless, there are exceptions to this principle, such as when a witness is unable to be present for legitimate reasons, in which case an alternative arrangement is made (Yamin et al., 2024). This exception demonstrates the flexibility of the legal system in accommodating special situations without sacrificing the substance of justice.

Testimony evaluation involves a complex process that considers the reliability and admissibility of evidence, ensuring it meets applicable legal standards (Habrelian & Chepel, 2023). This complexity includes testing the consistency of testimony, the capacity of witnesses to observe, recall and recount events, and the possibility of interests or biases that could affect the objectivity of the testimony.

The role of expert witnesses, such as linguists in defamation cases, further illustrates the application of nuanced testimony in legal proceedings, where expert opinions are used to support claims and guide judicial decisions (Putra & Kristiyadi, 2023). The presence of expert witnesses enriches the evidentiary process with a technical and scientific perspective that is not possessed by the judge or the parties to the case, thus helping the court in understanding the complex aspects of a case.

In addition, the expansion of the definition of witness testimony to include *testimonium de auditu* (testimony from hearing) reflects a broader interpretation of the evidentiary rule, allowing for greater flexibility in the types of testimony that are considered admissible (Agusta & Umara, 2022; Johan et al., 2023). These developments indicate that the law of proof is not static, but responsive to the dynamics of judicial practice and the need for more comprehensive justice.

This expansion underscores the evolving nature of legal norms in response to practical challenges in the judicial process, highlighting the balance between procedural rigidity and the pursuit of substantive justice (Arkadia, 2022). Thus, the system of proof through testimony in court reflects the dialectic between legal certainty and justice, where formal procedures are maintained but do not hinder the achievement of truth and material justice.

The Islamic judicial system has very detailed and comprehensive requirements regarding the validity of testimony which is based on the principles of *'ay* (justice) and *dhabt* (accuracy). The requirements of witnesses in Islam include: puberty (adulthood), common sense, independence, Islam (for certain cases), fairness, trustworthiness, and no hostile relationship with the litigant (Jaziri, 2003). The requirement *'is*' in this context not only means being honest in testifying, but also includes the overall moral integrity of the witness, whereby the witness must be known as a person who maintains self-respect, performs religious obligations, and avoids grave sins.

The concept of oaths in Islamic jurisprudence has a stronger spiritual dimension compared to the positive legal system. In Islam, a vow (*yamin*) is not only a legal commitment but also a covenant with Allah SWT which has worldly and *ukhrawi* consequences (Audah, 1992). Witnesses who give false testimony after taking an oath face not only legal sanctions but also great sins that will be accounted for in the hereafter. This transcendental dimension puts deeper moral pressure on witnesses to give honest testimony, because they are accountable not only to the institutions of human justice but also to God the All-Knowing.

Another fundamental difference lies in the concept of *tazkiyah al-syuhud* (investigation of the character of witnesses) in the Islamic judicial system. Before the testimony is received, the Islamic judge (*qadhi*) has the authority to conduct an in-depth investigation into the moral reputation and credibility of the witness through the mechanism of *tazkiyah* (Khallaf, 2002). This process involves collecting information from the public regarding the behavior of witnesses in daily life, honesty in *muamalah*, commitment to religious teachings, and whether or not there is a record of hostility with the parties to the case. This *tazkiyah* mechanism is more comprehensive than the witness verification procedure in the positive legal system which tends to be more formalistic.

The Islamic judicial system also recognizes the concept of *jarh wa ta'dil* (criticism and appreciation) of witnesses, where the opposing party can raise objections to the credibility of witnesses by presenting facts that damage the reputation of the witness (*jarh*), and conversely the party who submits witnesses can defend the credibility of the witness (*ta'dil*) (Shafi'i, 2015). This dialectical process ensures that the assessment of witnesses is not carried out unilaterally, but through comprehensive testing from various perspectives, so that the truth of the testimony can be assessed more objectively and thoroughly.

The Position of Testimony Evidence in the Indonesian and Islamic Judicial System

In the Indonesian legal system, testimony holds a significant position in the framework of evidence, especially under the negative evidentiary system (*negatief wettelijk*) as outlined in Article 183 of the Criminal Code. This system mandates that the judge can only convict if there are at least two valid pieces of evidence and the judge is convinced of the defendant's guilt (Hawasara et al., 2022; Triantono & Marizal, n.d.). The negative proof system according to the law (*negatief wettelijk bewijstheorie*) is a combination of a system of proof based on the law positively and a system of proof based on the judge's beliefs. This reflects the principle of prudence in imposing a criminal verdict, where the judge should not rely solely on his subjective beliefs without the support of valid evidence, but also not be rigidly bound by mere formal evidence without deep conviction.

Testimonium de auditu, which is evidence of rumors or indirect testimony, has been the subject of debate in judicial practice. Traditionally, such testimony has been inadmissible because it does not meet the requirements of first-hand experience, which has the potential to lead to injustice due to its nature of relying on information from other parties (Agusta & Umara, 2022; Yulianti, n.d.). *De auditu* testimony is witness testimony heard from other people, not from the witness's direct experience. In criminal procedure law terminology, this is often referred to as hearsay evidence.

The main concern with this type of testimony is the potential for information distortion that occurs through the news delivery chain, as well as the lack of opportunities to directly test the credibility of the original source of information. This concern is very reasonable considering the basic principle of criminal proof which requires certainty and accuracy. However, the absolute rejection of *de auditu* testimony in practice can hinder the disclosure of material truths, especially in complex cases or crimes committed in secret.

The Constitutional Court's Decision No. 65/PUU-VIII/2010 brought an important breakthrough by expanding the definition of a witness to include *testimonium de auditu*, allowing it to be used as indicative evidence when corroborated by other evidence (Keumala et al., n.d.;

Supranto, 2014). The Constitutional Court's decision was born from a judicial review of Article 1 number 27 of the Criminal Code which defines witness testimony as one of the pieces of evidence.

The Court considered that in certain cases, particularly criminal acts committed behind closed doors or against vulnerable victims, *de auditu* testimony may be the only way to uncover the truth. This ruling reflects the Constitutional Court's progressive approach in interpreting criminal procedure law in a contextual and teleological manner. The court does not just look at the textual sound of the article, but explores the substantive purpose of the evidentiary system, namely the achievement of material justice without sacrificing legal certainty. This is a manifestation of a living constitution that is responsive to the needs of contemporary law enforcement.

This decision reflects the practical challenges of obtaining direct witnesses in certain crimes, such as child sexual abuse, where auditing testimony can provide important clues (Keumala et al., n.d.). In cases of sexual violence against children, often the victim is unable or unwilling to testify directly due to psychological trauma, limited verbal abilities of the child, or pressure from the perpetrator.

In situations like this, the testimony of parents, teachers, psychologists, or the first person to hear the victim's complaint becomes crucial to uncover the true incident. The flexibility in accepting *de auditu* testimony for these particular cases demonstrates the sensitivity of the legal system to the characteristics of the victim and the *modus operandi* of a particular crime. This is in line with the principles of child-friendly justice and a victim-centered approach, where the justice system must be adaptive to the psychological conditions and vulnerabilities of victims, especially children.

Although formally accepted, the use of *de auditu* testimony remains debated in judicial practice. Some judges accept it while others do not, depending on the context of the case and the supporting evidence available (Agusta & Umara, 2022; Nufaida, 2018). This difference in the attitude of judges reflects the judge's freedom in assessing the evidentiary strength (*vrije bewijskracht*) guaranteed in the Criminal Code system. Article 184 paragraph (1) of the Criminal Code does mention witness testimony as valid evidence, but the assessment of the strength and relevance of the testimony remains within the judge's realm. This variation in the judge's attitude actually reflects the internal check and balance system in the judiciary. The independence of the judge in assessing the evidence is an important guarantee that the verdict is not mechanical, but is based on a thorough consideration of each fact and evidence submitted. However, this disparity also requires clearer guidelines or jurisprudence in order to create consistency in the application of the law and ensure legal certainty.

The strength of *de auditu* testimony lies in its ability to guide judicial decisions when supported by other evidence, so that it does not stand alone but contributes to the overall evidentiary framework (Yulianti, n.d.; Chrisnanto et al., n.d.). *De auditu* testimony functions as evidence of instructions (*aanwijzing*) as referred to in Article 188 paragraph (2) of the Criminal Code, which states that an instruction is an act, event, or circumstance that, because of its conformity with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. Thus, this testimony cannot be the only basis for a conviction, but must be supported by other valid evidence.

Limiting the function of *de auditu* testimony as evidence of clues that must be confirmed with other evidence is an important safeguard to prevent arbitrariness and protect the human rights of the accused. This principle maintains a balance between flexibility in proof and guaranteed protection against possible errors or abuse of power. This approach is also consistent with the principle of beyond reasonable doubt which is the standard of proof in criminal law.

In the Islamic criminal evidentiary system, the position of testimony has a very central role but with strict restrictions in accordance with the principle of prudence (*ihtiyath*) in imposing punishment. The Islamic proof system does not recognize the concept of negative proof according to the law as in the Criminal Code, but applies a more rigid proof system with different standards of proof depending on the type of criminal act (Al-Mawardi, 1996). For *hudud* crimes such as adultery, theft, and drinking *khamr*, the standard of proof is very high and strict, while for the crime of *ta'zir* (a crime whose punishment is left to the discretion of the judge) the standard of proof is more flexible.

The concept of *testimonium de auditu* or testimony from hearing in the Islamic judicial system has a long discourse among scholars. The majority of *fiqh* scholars from the Hanafi, Maliki, Shafi'i, and Hanbali schools are of the opinion that the testimony of *de auditu* (*shahadah al-istifadhah*) is acceptable in certain cases, especially in civil matters such as marriage, birth, and death, but is not acceptable in *hudud* and *qisas* cases that require full conviction (Ibn Qudamah, 2004). This restriction is based on the principle of prudence in imposing severe penalties, where direct testimony is considered more credible than indirect testimony that is vulnerable to information distortion.

The principle of "*dar'u al-hudud bi al-syubuhah*" (rejecting *hudud* punishment due to doubt) is a fundamental rule in the Islamic criminal proof system that has significant implications for the position of testimony (Qardhawi, 2001). This rule mandates that if there is the slightest doubt in the evidence, then the *hudud* punishment must be dropped and replaced with a lighter *ta'zir*

punishment. This principle is in line with the hadith of the Prophet Muhammad PBUH narrated by Tirmidhi: "Avoid hudud punishment from Muslims as much as you can, if there is a way out for them then release them, because indeed the error of the imam in forgiving is better than his mistake in punishing" (Al-Tirmidhi, 1998).

A comparison of the criminal proof system between Indonesian positive law and Islamic law shows that there are similarities in the principle of prudence, albeit with different approaches. The negative system according to the law in the Criminal Code which requires a minimum of two pieces of evidence plus the judge's conviction has philosophical similarities with the Islamic evidentiary system which also requires strict evidentiary standards (Ramulyo, 2004). However, the fundamental difference lies in flexibility, where the Criminal Code system gives judges greater freedom in assessing the strength of the evidence, while the Islamic system provides more rigid and structured limits based on the type of crime and the type of punishment to be imposed.

The concept of "qadha' bi al-'ilm" (deciding cases based on the judge's knowledge) in the Islamic judicial system also provides an additional dimension that is different from the positive legal system. Under certain conditions, Islamic judges are allowed to decide cases based on their personal knowledge of an event without having to rely on formal evidence, as long as the knowledge is obtained confidently and is not based on prejudice (Al-Sarakhsi, 1993). However, this ability only applies to matters of ta'zir and does not apply to hudud matters that require a very strict standard of proof. This concept suggests that the Islamic judicial system allows room for contextual consideration of judges within certain limits, while maintaining the principle of prudence in cases threatened with severe punishment.

CONCLUSION

Based on the discussion that has been described in this paper, several conclusions can be drawn, first, the Regulation of Testimony in the Indonesian Procedural Law System and the Islamic Courts of Testimony in the Indonesian procedural law system is regulated in Article 184 of the Criminal Code as one of the five valid evidence, adhering to a negative system according to the law (negatief wettelijk bewijstheorie) which combines evidence based on the law with the conviction of the judge. The Constitutional Court Decision No. 65/PUU-VIII/2010 has expanded the definition of a witness, showing the responsiveness of the legal system to the practical needs of the judiciary. The Islamic judicial system places testimony (shahadah) as the main evidence with a more detailed hierarchy based on the type of case: four witnesses for hudud adultery, two male or one male witnesses and two women for qisas and muamalah. The fundamental difference lies in flexibility: the Indonesian system gives judges greater freedom, while the Islamic system provides more rigid and structured provisions. The harmonization of the two can be seen in the practice of Religious Courts which integrate Islamic sharia values with the national legal system.

Second, the Conditions of Validity of Testimony in Positive Law and Islamic Law Valid testimony according to positive law in Indonesia must meet the following requirements: an oath or promise, delivered directly in court (principles of immediacy and orality), based on the witness's direct experience, and meeting standards of reliability and consistency. Flexibility is granted for *testimonium de auditu* under certain conditions. The Islamic system has more comprehensive requirements based on the principles of 'is (justice) and dhabt (precision): puberty, common sense, independence, Islam, fairness, trustworthiness, and not hostile to the parties to the case. Oaths in Islam have a spiritual dimension with ukhrawi accountability to Allah SWT. The fundamental difference lies in the mechanism of *tazkiyah al-syuhud* (investigation of the character of witnesses) and the concept of *jarh wa ta'dil* which allows for a dialectical and more comprehensive test of the credibility of witnesses.

Third, the position and power of proof of testimony The power of proof of testimony in the Indonesian system is relative based on Article 183 of the Criminal Code which requires a minimum of two pieces of evidence and the judge's conviction. Constitutional Court Decision No. 65/PUU-VIII/2010 expands the acceptance of *de auditu* testimony as indicative evidence, in line with the principles of child-friendly justice and victim-centered approach, although it still causes disparities in judicial practice. The Islamic system applies different standards depending on the type of crime: very strict for *hudud*, flexible for *ta'zir*. Testimony *de auditu* (*shahadah al-istifadhah*) is admissible for civil matters but not for *hudud* and *qisas*. The principle of "*dar'u al-hudud bi al-syubuhah*" mandates the abolition of *hudud* punishment if there is the slightest doubt. The concept of "*qadha' bi al-'ilm*" allows the judge to decide based on personal knowledge for *ta'zir* cases.

Fourth, the comparative synthesis of the two systems has a different but convergent approach to the goal of justice. The Indonesian system emphasizes the flexibility of judges, the Islamic system provides a rigid structure but remains contextual. Both uphold prudence in the verdict of serious crimes and the protection of the rights of the accused. The harmonization of the two systems in the Religious Court shows that the universal values of justice can be realized through a complementary approach in the context of Indonesia's plurality of law.

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