

The Position of Defendant's Statement in the Proof of Adultery Case (The Analysis of Syar'iyah Court Verdict Banda Aceh)

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ABSTRACT

In Article 37 Paragraph (1) Aceh Qanun Number 6 of 2014 on Jinayat Law mentioned that the moslems who confess of doing zina then their confession is considered as the request to be sentenced with zina punishment. However in its practice, the researcher finds out that some verdicts decided by Sharia Court Banda Aceh, the defendant who testifies/confesses of zina is sentenced with tazir punishment, not hudud punishment. The main purpose of this study is to find out the answer based on Islamic shariah regarding the provision of jarimah zina verification with the defendant's statement and the consequence that will be certified by the defendant when hudud punishment is applied. The research employs a descriptive-comparative analysis method. Based on the study on 55 verdicts of jarimah ikhtilath decided by the Sharia Court of Banda Aceh, the researcher found that there were 12 verdicts in which the defendants stated that they had committed to zina before they got caught, however they were sentenced with jarimah ikhtilath article not jarimah zina article. Whereas, referring to normative fiqh provisions, they suppose to be sentenced with hudud punishment in the world in order to abort the punishment in the afterlife.

Keywords: *confession, defendant's statement, zina*

1. INTRODUCTION

Islamic law forbids the act of adultery and all things that can plunge someone into the act of adultery. The way that is legalized by Islam to fulfil human sexual needs is through legal marriage. Therefore, God and His Messenger propagate the marriage as it is the only way that sexual needs can be channeled lawfully and safely. In Islamic Sharia, adultery is included as part of the classification of criminal law or commonly referred to as the jinayat law in which if the culprit is proven to have committed to the unlawful act will be subjected to hudud. The hudud punishment here means 100 times of whipping for the those perpetrators who are not *muhsan* and stoning for those who are *muhsan* (married perpetrators).

Penalties for adulterers based on Islamic law have been applied in Aceh with the enactment of Aceh Qanun Number 6 of 2014 on Jinayat Law in the form of slashing 100 times without distinguishing between those who are *muhsan* and those who are not. However, in its application, the researcher found that there were decisions of the Syar'iyah Court where defendants were not convicted in accordance with the provisions of Islamic Sharia as mentioned above.

From the description above, the research focus of this paper is a copy of the verdict in the Jarimah ikhtilath cases determined by the Syar'iyah Court of Banda Aceh from March 16, 2016 to April 30, 2019. There are 53

copies of the verdicts, of which 12 copies of them are the cases where the defendants confessed their adultery acts before being arrested, and the Panel of the Judges actually sentenced the defendants to takzir, not hudud. The purpose of this research is to find out and understand how the position of the defendants in the ikhtilath case that claim to have committed adultery before being arrested in front of the Panel of the Judges and analyzing the consequences borne by the defendants when they are not convicted with a hudud sentence.

2. Research Method

The author used two types of data in this study, namely primary data and secondary data. Primary data were obtained from the decision directory of the Supreme Court of the Republic of Indonesia in the form of a copy of the decision in the case of jarimah ikhtilath determined by the Syar'iyah Court of Banda Aceh from March 16, 2016 to April 30, 2019. While secondary data were obtained through library studies that are relevant to the research study materials.

All data obtained in this study both primary and secondary data were processed and analyzed using the descriptive-comparative analysis method. This method was used to provide a clear and concrete picture of the object discussed qualitatively. After the data analysis was conducted, then the data was described by examining the existing problems, describing, elaborating, and explaining

the problems that relate to the position of adultery confession explained by the defendants before Panel of Judges in the case of jarimah ikhtilath according to the law of fiqh.

3. Proofs Of Adultery In The Normative Islamic Law Perspective

The proof in Islam is commonly called *al-Bayyinah*. Etymologically it means information, that is everything that can be used to explain the truth. In technical terms, it means evidence in a court hearing. Terminologically, *Al-Bayyinah* is to prove a case by making a reason and giving arguments to the convincing limit [1]. According to Ibn al-Qayyim, *al-Bayyinah* is everything that can be used to explain the truth in front of the judges, in the form of information, witnesses, and various indications that can be used as guidelines by the panel of judges to decide cases [2]. As-Siddieqy stated that what is meant by proving something is to provide information and arguments so that it can be convincing and what is meant by certainty is something that is recognized, based on investigations or arguments [3]. Something that is already believed to exist cannot disappear, except with the arrival of other beliefs. From the statements of the experts above it is known that the purpose of the proofs is to obtain clarity and certainty that an event or fact that was submitted actually happened so that the judge can give a correct and fair decision.

The proof of adultery needs concrete evidence in the process of determining the law. When referring to the books of fiqh as the source of the formulation of Islamic law, it says that there are only two agreed ways to prove the crime of adultery, namely: Confessing and witnessing [4]. These procedures will be explained below.

3.1. Proofs Of Adultery By Confession

Confession in Arabic is called *al-iqrar* or *al-'itiraf*. In the case of adultery then what is meant by a pledge or *iqrar* is the confession of someone both male and female that they have committed to adultery.

This confession, in order to be accepted by the judge must fulfill several conditions [5], namely:

- 1) The Confession must be made in front of a judge.
- 2) The Confession is made by people who are sensible and old enough (already mature).
- 3) The Confession is conveyed by mouth and words.
- 4) The confession must be clear.
- 5) The Confession is made not because of coercion from any party.
- 6) The Confession is submitted at least once.

3.2. Proofs of adultery by witnessing

Principally, the conditions that must be fulfilled by witnesses in proving an adultery act are the same as the requirements for witnesses in other crimes. However, in proving the adultery acts, there is a number of witnesses that needs to be met in order to make the proof is reliable

and acceptable. The witnesses must be present not less than four people, and all the witnesses must see the incident of adultery with their own eyes. They also must be clear to see the adultery firsthand. It is not enough just to hear the incident from someone else, because it can cause obscurity that can abort the punishment of hudud. The necessity to present these witnesses is based on the word of God contained in the Qur'an chapter 4 verse 15 and chapter 24 verse 13.

4. Analysis Of The Court's Decision At Syari'ah Court Banda Aceh In The Criminal Offense On Illicit Intimate Bonding (Jarimah Ikhtilath) Case

As mentioned in the introduction above, that from March 16, 2016 to April 30, 2019, the Syari'ah Court of Banda Aceh had trialled and determined approximately 53 decisions in the Jarimah ikhtilath case, out of 53 decisions, it is found that 12 of them are the case where defendants had confessed their adultery crimes before being arrested (**Table 1**). The data in Table 1 show that the defendants who had testified/confessed before the Panel of the Judges that they had committed to sexual intercourses before they were arrested. The purpose of a "husband and wife-like relationship" is actually an act of adultery, in which a male perpetrator inserts his penis into his female partner's faraj (vagina). This is known from the testimony of the defendant's spouse who becomes a witness in the trial.

The act of a man putting his penis into a women's vagina who is not his legal wife is an act of adultery according to fiqh terminology, as well as in Aceh Qanun No. 6 of 2014 on Jinayat Law. According to the terminology of Hanafi jurisprudence, adultery is an intercourse of a man and woman in his vagina, where the woman is not his slave and there is no of doubt [6]. According to the Maliki school of thoughts, an adultery is the intercourse of a Muslim who has converted to the human soul deliberately, where the woman is not his slave, and there is no element of doubt in the act [7]. According to Shafi'i scholars, an adultery is the act of inserting the penis into the forbidden vagina, which has no element of doubt and on the basis of lust [8]. According to the Hanbali madhab, an adultery is a vile act (*fahisyah*) on the vagina or rectum [9]. In Article 1 number 26 of the Aceh Qanun Number 6 of 2014 on Jinayat Law, it is explained that an adultery is "the intercourse between a man or more with a woman or more without marriage ties with the willingness of both parties". Therefore, based on the definition of adultery defined by the school of thought of the scholars above, as well as the definition of adultery listed in Aceh Qanun Number 6 of 2014 concerning Jinayat Law, the defendants in the ikhtilath case who explained that they had been related as husband and wife, actually had committed adultery is not just an advertisement, what is meant by advertisement based on Aceh Qanun Number 6 of 2014 on Jinayat Law Article 1 number 24 is limited to intimacy, such as making out, touching, hugging and kissing between men and women who are not in marriage tie with the willingness both parties, whether it is conducted in closed or open areas.

Therefore, the defendants in the case of ikhtilath then explained to the Panel of Judges that they had engaged in marital relations before being arrested should be sentenced to hudud instead of takzir, because they had confessed his actions in front of the Panel of Judges.

The factor that made the Panel of Judges of the Banda Aceh Syar'iyah Court did not convict the defendant jarimah ikhtilath who testified that they had committed adultery before being arrested was due to restrictions on the definition of "accused confession" in Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law. In Article 187 paragraph (1) of the Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law, it is explained that what is meant by "defendant's confession" is what the defendant states at the hearing on his own initiative about the acts he had done, or known or experienced himself. However, if the defendant's statement in a hearing is about an act that he had done or known or experienced himself, but firstly being requested or asked by the judges, then this is referred to as "the defendant's statement" (Article 188 paragraph (1) Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law). The difference between the confession and statement of the defendant in the Qanun is on the initiative to give a statement. If the initiative came from oneself without first being requested or asked, then it is called "the defendant's confession", whereas if it is firstly requested or asked then it is called "the defendant's statement".

Normative Islamic law (Fiqh) does not differentiate between the defendant's confession and the defendant's statement in adultery case. What the defendant states in the hearing about the act he had done or known or experienced himself, whether it is stated on his own initiative or after being requested or asked by the judges, then all of those are considered as recognition or confession. The proposition which states that "confessions made on one's own initiative" can be evidence of adultery as in a hadith narrated by al-Bukhari from Abu Hurayrah, about a man who came to see the Prophet and later claimed to have committed adultery, even he repeated his confession four times, until finally he was sentenced to a stoning because he was *muhsan* and had sufficient conditions to be a subject of the sentence [10]. The proposition which states that the "defendant's statement" begun by the question from the judges is also included as "confession" in proving an adultery act as it was narrated in an authentic hadith narrated by al-Bukhari from Abu Hurayrah and Zayd bin Khalid, that the Messenger of Allah once asked one of his friends named Unays to come and ask a woman who had a husband, if she had committed adultery with her maid, then the woman admitted her actions and then stoned [11].

As a result, the defendant ikhtilath who confesses to have committed to adultery but is not convicted with hudud, is a takzir sentence, where this sentence will not abort the punishment in the afterlife. God will not punish His servants who have repented of the sins they have committed. Thus, the defendant who claims to have committed adultery but was punished with a sentence of takzir, must repent once again for his guilty, because the

takzir punishment is not considered as his repentance for the sin of adultery he had committed.

5. CONCLUSION

In the perspective of normative Islamic law (fiqh), the conscious confession and statement of the defendant in front of the Panel of the Judges that he had committed to adultery and without coercion from any party, become a very strong evidence to prove adultery. With his confession or statement, the defendant deserves to be punished with hudud when his conditions are met.

Likewise, in the Aceh Qanun Number 6 of 2014 on Jinayat Law, the defendant's recognition also occupies an important position in proving an adultery, but in the Qanun there are additions to the normative fiqh law, namely the obligation of the perpetrators or defendants to swear their confession. These additions do not reduce the significance of recognition in proving adultery acts.

After conducting a review of 12 decisions regarding Jarimah ikhtilath issued by the Banda Aceh Syar'iyah Court as discussed above, the researcher found that the application of Islamic law in Aceh Qanun Number 6 of 2014 on Jinayat Law and Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law is seemed to have neglected the significance of the confession of the defendant who had committed to adultery to later apply the hudud punishment upon him when his conditions were met. The abandonment of "statements of adultery" of the defendants as "confession of adultery" is due to the limitation of the definition of "confession" in Aceh Qanun Number 7 of 2013 on Jinayat Procedural Law, which defines confession of an adultery only where the defendant confesses on his own initiative and not firstly being questioned or requested by the judges.

This negligence eventually leads to the condition where the hudud punishment is not being applied to adulterers in Banda Aceh. Defendants who must have stated that they had committed adultery before being arrested were asked to swear an oath, and when he did not withdraw his confession then a hudud was applied to him (Clarity matter??). Hudud punishments applied to convicts in the world will become a medium of his repentance, and it will remove his adultery sin in the afterlife.

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Appendix, Table 1: A Brief Overview Table Of Decisions That Are Analyzed.

No	Date of Verdict	Number of Verdict	Defendant's Description in Court	Charge	Sentence
1	28 September 2016	42/JN/2016/Ms.Bna	All defendants in these verdicts explain that they had done sex like husband and wife with their ikhtilath spouse before getting arrested.	All defendants in these verdicts are stated disobeying Paragraph 25 Article (1) Qanun Aceh No. 6 in 2014 about Jinayat Law	Caning 28 times
2	8 March 2017	0011/JN/2017/MS.Bna			Caning 25 times
3	15 August 2018	25/JN/2018/Ms.Bna			Caning 28 times
4	27 February 2019	10/JN/2019/MS.Bna			Caning 25 times
5	27 February 2019	11/JN/2019/MS.Bna			Caning 25 times
6	27 February 2019	12/JN/2019/MS.Bna			Caning 28 times
7	13 March 2019	22/JN/2019/MS.Bna			Caning 25 times
8	13 March 2019	23/JN/2019/MS.Bna			Caning 25 times
9	13 March 2019	36/JN/2019/MS.Bna			Caning 23 times
10	13 March 2019	37/JN/2019/MS.Bna			Caning 23 times
11	27 March 2019	25/JN/2019/Ms.Bna			Caning 25 times
12	30 April 2019	41/JN/2019/Ms.Bna.			Caning 25 times