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A New Paradigm of Jarimah Qadhaf: Opportunities and Challenges for the Integration of DNA Testing in Islamic Law and the Indonesian Judicial System

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ABSTRACT

Jarimah Qadhaf is a criminal act in Islamic law that is subject to hudūd sanctions and requires proof by presenting four fair male witnesses. This provision demonstrates the commitment of Islamic law in preserving the honor of individuals and preventing defamation, but it is difficult to apply in today's social and technological context. The development of forensic science, especially DNA testing technology, offers an alternative to evidence that is considered more relevant and objective. However, the use of DNA tests as a means of proof in qadhaf cases is still a debate in fiqh discourse, considering that it is not accommodated in the classical hudūd proof structure. Analysis of Qanun Aceh Number 6 of 2014 shows that there is a legal breakthrough that recognizes DNA tests as a substitute for shahadah under certain conditions. The maqāṣid al-shari'ah approach is an important instrument for assessing the urgency and limitations of the application of this scientific evidence in the corridor of Islamic law. The conclusion shows that DNA tests can be used in proving qadhaf in a limited way within the takzīr area, but cannot completely replace the position of four witnesses in the determination of hudūd.



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Abstrak: Jarimah Qadhaf adalah tindak pidana dalam hukum Islam yang dikenai sanksi hudūd dan memerlukan bukti dengan menghadirkan empat saksi laki-laki yang adil. Ketentuan ini menunjukkan komitmen hukum Islam dalam menjaga kehormatan individu dan mencegah pencemaran nama baik, namun sulit diterapkan dalam konteks sosial

dan teknologi saat ini. Perkembangan ilmu forensik, terutama teknologi uji DNA, menawarkan alternatif bukti yang dianggap lebih relevan dan objektif. Namun, penggunaan uji DNA sebagai sarana bukti dalam kasus qadhaf masih menjadi perdebatan dalam diskursus fiqh, mengingat hal ini tidak diakomodasi dalam struktur bukti hudūd klasik. Analisis Qanun Aceh Nomor 6 Tahun 2014 menunjukkan adanya terobosan hukum yang mengakui uji DNA sebagai pengganti shahadah di bawah kondisi tertentu. Pendekatan maqāsid al-shari'ah merupakan alat penting untuk menilai urgensi dan batasan penerapan bukti ilmiah ini dalam koridor hukum Islam. Kesimpulan menunjukkan bahwa uji DNA dapat digunakan dalam membuktikan qadhaf secara terbatas di wilayah takzīr, namun tidak dapat sepenuhnya menggantikan posisi empat saksi dalam penetapan hudūd.

Kata kunci: Jarimah Qadhaf, Tes DNA, Hudūd, Qanun Jinayah Aceh, Maqāsid al-Syarī'ah

Introduction

In the Islamic criminal law tradition, jarimah *qadhaf* plays an important role as it concerns the protection of personal honor and posterity. In terms of *qadhaf*, it refers to the act of accusing someone of adultery without valid evidence, namely by witnessing four fair witnesses directly. This accusation is considered a major crime in Islam and is classified as part of *hudud*, which is a violation of God's right to have a fixed punishment.¹

The punishment for those who commit *qadhaf* is 80 lashes and a lifetime ban from being a witness. Although *hudūd law* is doctrinally rigid and textual, the development of science and modern social needs demands a more flexible approach. One of the important innovations is the use of DNA technology in the evidentiary process, especially to verify the truth in cases of adultery allegations, which are closely related to *qadhaf*. DNA testing, which provides identification based on genetic material, is a widely used scientific method in many justice systems. These tests provide genetic identification that helps establish a person's identity, and is typically used in cases of verification, homicide investigations, and other serious crimes.² Several countries in the world have recognized DNA tests as admissible evidence in court and have also been applied in various national legal systems as the main tool in proving or rejecting accusations of adultery, including Indonesian law especially in Aceh.³

However, not all scholars and Islamic legal systems accept the application of DNA as evidence in hudūd cases. A clear example is the implementation of the qadhaf law in Pakistan, which allows whistleblowers to file charges of adultery based on good faith. In practice, this procedure is often abused, leading to women being victims of false accusations without adequate legal protection.⁴ This points to the need for a review of the protection of qadhaf victims and procedural justice in Islamic law, especially in the context of modern social and technological matters.

In the contemporary approach of Islamic law, for example, the *maslahah mursalah* approach is used as the basis for the formation of a more adaptive and contextual law. This principle allows the establishment of Islamic law not solely on the existence of explicit *nash*, but on considerations of the public interest that are in

¹ Syaik Abdillah Dahwadin et al., "Revisiting the Role of Women as Witnesses in Fiqh Justice," AULADUNA: Journal of Sharia Science, vol. 19, no. 1 (2019): 71–73, <https://doi.org/10.15408/ajis.v19i1.11768>.

² Fareed Ud Din Tariq, "The Sharia Status of DNA Test Evidence in Hudud, Qisas, and Ta'zir," Al-Qantara Journal 9, no. 4 (2023): 751, <https://alqantarajournal.com/index.php/alqantarajournal/article/view/39>.

³ Andi Gaddafi, "Reformulation of Qanun No. 6 of 2014 in the Framework of the Republic of Indonesia," *Justitia: Jurnal Hukum*, vol. 4, no. 2 (2020): 358-359, <https://doi.org/10.30651/justitia.v4i2.5625>.

⁴ Muhammad Zubair Abbasi, "Sexualization of Shari'a: Application of Islamic Criminal (Hudūd) Laws in Pakistan," *Islamic Law and Society* 29, no. 3 (2021): 4-5, <https://doi.org/10.1163/15685195-bja10016>.

line with the main purpose of the sharia. *Maslaḥah mursalah* is interpreted as a normative foundation that allows Islamic law to respond to social dynamics in a more humane manner, while maintaining the five main principles of sharia, namely the protection of religion, soul, intellect, descent, and property.⁵ With this approach, Islamic law can be developed to answer contemporary problems without losing the substance of its *maqāsid*. Therefore, this study aims to critically assess the opportunities and challenges of the integration of DNA tests in the *jarimah qadhaf* proof system, especially in the framework of the duality between Islamic law and the Indonesian national legal system.

Method

This study uses a juridical-normative approach with a qualitative method based on literature study. This approach was chosen because the focus of the study is on the analysis of legal texts and norms, both from the perspective of classical Islamic law and positive Indonesian law. This study is specifically directed to explore the opportunities and challenges of integrating DNA tests as a modern evidentiary instrument into the Islamic legal system, as well as its implications in national criminal justice practice. The data sources in this study consist of classical and contemporary *fiqh* literature, *ushul fiqh* books that examine the theory of *maslaḥah mursalah*, *maqāsid sharia*.

In addition, data were also obtained from relevant laws and regulations, jurisprudence documents, and the results of previous research, especially those that discuss the use of forensic evidence, including DNA, in Indonesian positive law. This approach allows the author to understand the text contextually and explore the relevance between sharia principles and the development of modern evidentiary technology, while assessing the extent to which such integration can be applied in the national legal framework normatively and applicatively.

Result and Discussion

Qadhaf as Jarimah Hudud: A Survey of Evidence and Social Relevance

In the Islamic criminal law system, *jarimah qadhaf*—that is, accusing another person of adultery without valid evidence—is classified as one of the *jarimah hudūd*. This crime is not only seen as an offense against an individual, but also as an attack on the honor of Muslim society as a whole. Therefore, the punishment is strict and severe, which is in the form of eighty lashes as stated in QS. An-Nūr (24): 4, and is reinforced by the consensus of scholars of the various sects.⁶

The evidentiary system in the case of *qadhaf* is very strict. The accusation of adultery is only valid according to *shari'a* if the accuser can present four fair male witnesses, who witnessed the act of adultery directly under certain conditions. If the proof fails to be met, then the accuser is subject to *dera* sanctions as the perpetrator of the *qadhaf* itself.⁷ This shows that the Islamic legal system truly protects the personal honor of every Muslim and is very careful about accepting accusations of immorality that can damage one's reputation socially.

⁵ Deri Wanto dkk., "Maqasid Shariah's Change as Theory: From Classical to Contemporary Maqasid Shariah," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (2021): 435, 439, <https://doi.org/10.29240/jhi.v6i2.3122>.

⁶ Topo Santoso, *Grounding Islamic Criminal Law*, Jakarta: Gema Insani Press, 2003, p. 25.

⁷ A. Jazuli, *Fiqh Jinayah (Efforts to Tackle Crime in Islam)*, Jakarta: PT Raja Grafindo Persada, 1997, p. 64.

Furthermore, there are a number of conditions that must be met to impose hudūd punishment on the perpetrators of qadhaf. First, the accuser must be a person of common sense, puberty, and make accusations consciously without pressure or coercion from other parties. If the accuser is a child, a madman, or in a forced condition, then the hudūd law does not apply to him. Second, the accused (maqdzūf) must meet certain qualifications: he is an independent, mature, sensible Muslim, and known to guard his honour from adultery. Even scholars stipulate that maqdzūf must have genitals that allow adultery to occur in order for accusations to be logically accepted.⁸

The process of proving qadhaf can be taken through three main ways. First, there is a confession from the accuser that he has indeed made accusations of adultery to someone. Second, by presenting four fair Muslim male witnesses. Third, through the refusal to swear by the accuser when asked to prove that he did not utter the accusation, and his refusal is considered as indirect evidence of the occurrence of qadhaf. If the proof cannot be carried out and no other reinforcing elements are found, then the perpetrator will still be subject to severe sanctions. However, Islamic law also recognizes the principle of forgiveness and abortion of punishment if an element of syubhat (legal ambiguity is found). For example, if the witness submitted retracts his testimony, or if the accused apologizes to the accuser, then the exercise of the limitation can be dropped. Even in the event that the accusation is proven but without the correct shari'i proof procedure, the qadhaf sanction is still not applied to the accuser. This is part of the principle of dar'u al-ḥudūd bi al-syubuhāt (aborting hudūd due to doubt).⁹

It should be noted that the Qur'anic verses regarding qadhaf do explicitly mention women as subjects protected from accusations of adultery. However, scholars explain that this provision is general and not limited to a specific gender. In this case, the method of finding the law (istinbāt al-ḥukm) through the al-bayān approach is used to explain that qadhaf also applies to good and faithful men. Therefore, the accuser, both male and female, will be subjected to the same punishment if he cannot prove the accusation of adultery to anyone who qualifies for maqdzūf.¹⁰

Indonesia's Positive Legal Perspective on Adultery Allegations

In contrast to the Islamic criminal law system which expressly regulates jarimah qadhaf as a criminal offense with the threat of punishment, Indonesia's positive legal system does not explicitly recognize the term qadhaf. Unproven accusations of adultery or infidelity are more often qualified into two categories: the crime of adultery as regulated in Article 284 of the Criminal Code, and the crime of defamation as regulated in Articles 310 and 311 of the Criminal Code.

The crime of adultery in the Criminal Code has a limited scope. Article 284 states that only sexual relations carried out by a party who already has a legal partner (marital status) and violates fidelity to his or her spouse can be categorized as adultery. Sexual relations outside marriage between two unmarried people are not included in the category of criminal acts according to the Criminal Code, in contrast to the view of Islamic law which still considers it as adultery and a violation of sharia.

Furthermore, the elements in Article 284 show that the crime of adultery is an absolute complaint offense, which can only be processed if there is a complaint from the aggrieved party, in this case the legal

⁸ Ibn Rusyd, *Bidayatul Mujtahid Volume II*, translated by Ahmad Abu Al Majdi, Jakarta: Pustaka Azzam, 2007, p. 893.

⁹ Haliman, *Criminal Law of Islamic Sjari'at According to Adjaran Ahlus Sunnah*, Jakarta: Bulan Bintang, 1971, p. 418.

¹⁰ Jazim Hamidi, *Legal Hermeneutics: Theory of New Legal Discovery with Text Interpretation*, Yogyakarta: UII Press, 2004, p. 51.

spouse of the adulterer.¹¹ Without such complaints, law enforcement does not have the authority to initiate investigations and prosecutions. This provision poses its own problems when accusations of adultery are made without evidence, but the accused suffers great moral and social losses.

Meanwhile, accusations of adultery that cannot be legally proven are more often included in the category of defamation. Article 310 of the Criminal Code states that a person who deliberately attacks the honor or good name of another person, either orally or in writing, by spreading false accusations, can be subject to a maximum of nine months in prison or a light fine.¹² If the defamation is carried out through writing or public media, such as leaflets, newspapers, or social media, then the criminal threat increases to one year and four months.

If the perpetrator of defamation makes an accusation in the belief that the accusation is true, but is unable to prove it in court, then he can be charged with Article 311 of the Criminal Code on defamation, with a criminal threat of up to four years in prison. This article emphasizes that bad faith and inability to prove the truth of the allegations are key to classifying his actions as defamation, not just defamation.¹³

However, articles on defamation often draw criticism from legal practitioners and freedom of expression activists. Articles 310 and 311 are considered to be able to limit public space and become a tool to silence criticism, especially in the context of journalism and social media. This is contrary to the spirit of Article 28 of the 1945 Constitution which guarantees freedom of opinion, expression, and obtaining information.¹⁴

With the growing digital world, accusations of adultery can be easily disseminated through social media. This magnifies the impact of reputational damage experienced by the alleged victim, but is not always accompanied by the victim's ability to obtain legal justice. On the other hand, sanctions against perpetrators of false accusations tend to be light and not proportional to the social burden experienced by the victim.

Comparison and Urgency of Legal Reformulation

When compared conceptually and normatively, Islamic criminal law and positive Indonesian law show very different approaches to the criminal act of adultery. Islamic law provides a very high level of protection for personal honor through strict evidentiary mechanisms, severe punishments, and strong principles of prudence. In contrast, Indonesia's positive law emphasizes an administrative approach and the protection of individual rights, but with relatively light and limited sanctions in practice.

Islamic law ideally protects society from the destructive effects of immoral accusations, and makes honor a part of *maqāṣid al-shari'ah*. In this context, *qadhaf* is a moral as well as a social evil. In Indonesia's positive law, although defamation is formally regulated in the Criminal Code, there is still a substantial void in terms of protection of honor in the context of accusations of immorality without evidence.

This comparison shows the need for legal reformulation or harmonization, especially in the moral and social criminal sphere. The preparation of norms that can accommodate the principles of Islamic law while maintaining the constitutional values of the Indonesian state is an urgent need. This reformulation must also

¹¹ Schaffmeister et al., *Criminal Law*, Yogyakarta: Liberti, 1995, p. 26.

¹² Ismu Gunadi and Jonaedi Efendi, *Criminal Law*, Jakarta: Kencana, 2014, p. 191.

¹³ Aziz Syamsuddin, *Special Crimes*, Jakarta: Sinar Grafika, 2011, p. 146.

¹⁴ Barda Nawawi Arief, *Criminal Law Policy*, Jakarta: Kencana, 2011, p. 325.

take into account the protection of human rights, substantive justice, as well as new challenges in the digital age.

Thus, qadhaf as a legal and social phenomenon needs to be reviewed not only from a legalistic perspective, but also from the aspects of values, culture, and ethics. Therefore, a comprehensive approach that considers Indonesia's socio-religious complexity is a strategic step in reforming national law that is more just, aspirational, and humane.

Reconstruction of Qadhaf Proof through DNA Test in Qanun Jinayah Aceh

Qanun Aceh Number 6 of 2014 concerning the Law of Jinayah is a concrete form of the implementation of Islamic sharia within the framework of special autonomy owned by the Province of Aceh. This Qanun substantively adopts the provisions of Islamic criminal law, including in the handling of hudud jarimah such as adultery and qadhaf. One of the provisions that attracts attention in this qanun is the permissibility of DNA tests as evidence in lieu of the shahadah (testimony) of four witnesses, as stated in Article 44 paragraphs (2) and (3).

In the article, it is emphasized that if a woman is pregnant and confesses to having committed adultery with someone, then she can appoint the man as her adulterous partner. If the man denies, then the woman is given the right to prove her allegations through a DNA test against the child she conceives. The results of this DNA test, according to the provisions of the qanun, can replace the need to present four witnesses as evidence as required in classical Islamic law.¹⁵

This arrangement was born in response to social realities that often make it difficult to prove cases of zina and qadhaf textually. In Acehese society, which is predominantly Muslim and has a commitment to sharia values, cases of out-of-wedlock pregnancy often cause severe social stigma. However, when a woman who becomes pregnant as a result of adultery wants to demand accountability from the man who defiled her, she often finds it difficult to meet the evidence through four witnesses, as required by Islamic law. It is in this situation that Article 44 is present as a legal solution that is contextual and based on cutting-edge technology.

Nevertheless, the recognition of DNA tests as a substitute for the shahadah of four witnesses remains a controversial issue from a fiqh perspective. In the view of the majority of scholars, the proof of jarimah zina and qadhaf is only valid through two methods, namely the voluntary confession of the perpetrator (iqrār) or the testimony of four fair male witnesses. These two methods are forms of proof that are qat'i (certain) and are explicitly established in the Qur'an, as in Surah An-Nūr verses 4 and 13. Meanwhile, evidence other than the two including pregnancy, video recordings, or forensic laboratory results such as DNA tests is classified as qarīnah, i.e. indicative evidence that cannot directly abort hudud.¹⁶

Scholars such as Ibnul Qayyim al-Jawziyyah in the monumental work *Zadul-Ma'ad* did open up space for the use of qarīnah in the Islamic judicial process, especially for matters of takzīr or mu'āmalah. However, he still insists that in the case of hudūd, such evidence should not be used as the primary basis for determining a permanent and severe shari'i punishment, unless it is supported by the explicit conditions of proof from

¹⁵ See Article 44 paragraphs (2) and (3) of Qanun Aceh Number 6 of 2014 concerning the Law of Jinayah

¹⁶ Abdurahman Aljaziri, *Alfiqhu 'ala Mazahibul Arba'ah*, Juz 5, Beirut: Dar al-Kutub Ilmiyyah, 2003, p. 57.

the nash.¹⁷ Thus, the replacement of shahadah with a DNA test in the context of hudūd is still difficult to accept in terms of ushul fiqh.

On the other hand, from the perspective of maqāṣid al-syarī'ah, new considerations have emerged regarding the urgency of using forensic technology such as DNA tests in order to protect basic human rights. In this case, DNA tests are considered to function to maintain nasab (hifzh al-nasl), honor (hifzh al-'ird), and prevent victims from tyranny due to weak conventional evidence. However, the use of maqāṣid as a legal basis cannot be used as a justification for violating nash qat'i. Therefore, the use of DNA tests in Qanun Aceh should be positioned not as evidence to impose hudūd, but as an administrative tool or strong qarīnah that applies in the case of takzīr.

The implementation of Article 44 itself is also limited to very specific conditions, namely when a woman admits to committing adultery and is pregnant. This provision cannot be used by third parties to accuse someone of adultery without evidence, because it has the potential to open up space for defamation and abuse of the law. Therefore, although this qanun is progressive in adapting Islamic law to technological developments, its application must still be within the corridor of prudence and the principles of shari'i justice.

From a scientific point of view, DNA technology does have high accuracy in determining the biological relationship between the child and the father. In the molecular biology literature it is explained that although humans have a DNA similarity of 99.9%, the remaining 0.1% difference is enough to produce a genetic identification that is very accurate and almost impossible to be wrong.¹⁸ Therefore, in many modern legal systems, DNA tests are used as the main evidence in cases of child confession, adultery, and sexual violence.

However, in the context of the Islamic legal system, the absolute truth of scientific truth is not the only consideration. Islamic law has an epistemological structure and shari'a authority that places nash as the primary source, so even if the DNA test is accurate, it still requires a proportionate placement in the evidentiary structure.

Thus, the acceptance of DNA test results in Qanun Jinayah Aceh is a bold legal ijtihad, but it must continue to be criticized so that it continues to run in the corridor of sharia principles. This Qanun shows how Islamic law can open up space for adaptation to the progress of science, as well as showing the importance of prudence in bridging the gap between the provisions of nash and the demands of the times.

Conclusion

The integration of DNA testing in the jarimah qadhaf evidentiary system reflects a methodological transformation in Islamic criminal law, from a textual-legalistic approach to one that considers the benefits and contemporary social realities. In the classical Islamic legal system, qadhaf belongs to the category of hudūd with very strict evidentiary requirements namely by presenting four fair male witnesses. This provision maintains the honor of individuals and prevents the community from slander. However, in practice, these provisions are difficult to apply, especially in the context of adultery allegations involving women, where the opportunity to present witnesses is almost impossible. Therefore, the approach of maqāṣid al-

¹⁷ Ibnul Qayyim Aljauziyyah, *Zadul Ma'ad fi Hadyi Khairil 'Ibad*, Volume 5, Jakarta: Pustaka al-Kautsar, 2008, p. 458.

¹⁸ Reynaldo Krissanca and Febe Fenyta (translators), *The Science Book: Explore and Learn the Big Ideas of Science*, ed. In, *Karya Besar Sains: Encyclopedia About Science*, Jakarta: Aku Bisa, 2015, p. 14

syarī'ah and maslaḥah mursalah is important in assessing the relevance of the use of DNA tests as scientific evidence. This test is capable of revealing biological truths with precision and has been recognized in many modern justice systems. In the context of Aceh, the receipt of DNA tests through Qanun Jinayah Number 6 of 2014, especially Article 44, shows the existence of progressive legislation *ijtihad* in adapting technology to answer the problem of proving *qadhaf* in a more humane manner. However, from the perspective of normative Islamic law, this acceptance remains problematic because it concerns the structure of *qat'i* in proving *hudūd*, so the DNA test is more appropriate if it is placed in the framework of *takzīr*, not *hudūd*.

On the other hand, in Indonesia's positive legal system, there are no special regulations that explicitly regulate the crime of *qadhaf*. Unproven accusations of adultery can only be processed through defamation articles in the Criminal Code, which have weaknesses in terms of the effectiveness of protection for victims of immoral defamation. Light legal sanctions and administrative approaches make the enforcement of justice for victims of adultery accusations weak. Thus, the integration of DNA testing in Indonesia's national legal system especially in autonomous regions such as Aceh is the first step towards a more adaptive, fair, and contextual legal formulation. However, its application must be carried out with careful theological and methodological limits so as not to violate the basic principles of *sharia*. The biggest challenge is how to build a legal system that can bridge the gap between the will of modern justice and Islamic normative values, without creating a conflict of authority or reducing the integrity of Islamic law itself. Therefore, the idea of a new paradigm of proving *qadhaf* is not only a matter of technical changes in evidence, but also touches on the philosophical aspect of rearranging the relationship between law, technology, and *maqāṣid al-syarī'ah* in the ever-evolving social order of law.

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