

***Al-Qarinah* (Circumstantial Evidence) and Its Capacity in Criminal Cases, *Munakahat* and Wealth Convictions According to Islam**

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Abstract

The most crucial goal of the Islamic judicial system is to uphold justice. Reasonable judgment is a form of justice. Judgment signifies judging in a prudent, meticulous, accurate and appropriate manner as Allah Almighty has determined. According to the law, the claimant or prosecution must prove his or her claim. There are several types of proof methods. Among them is *al-Qarinah*. *Al-Qarinah* in language means sign. From a terminology perspective, it is a description of the situation that reached the level of confidence. Nonetheless, scholars differ in the extent to which *al-qarinah* is accepted in the law conviction, especially in the case of *hudud* and *qisas*. The Islamic evidence law is, in fact, dynamic and current. It is entirely independent of its reality and its environment. It demands change in keeping with the rapid development of science and technology. Today most of the evidence for criminal cases such as adultery, rape, theft and so on is not proven by *syahadah*, pledge or oath, but it is calling for *al-Qarinah*. Science and technology have changed human civilization and their attitudes. Crime is increasingly complex and challenging to prove. At the same time, the discovery of science is becoming more and more powerful. DNA evidence, fingerprints, blood tests, CCTVs and more have replaced the role of *syahadah*, pledge even when the evidence presented by *al-Qarinah* is sometimes more accurate and convincing. Therefore, this paper attempts to evaluate *fuqaha* practices of *al-qarinah* and to obtain a distinct illustration of its position as a method of proving in Islam. The research method used is the literature study which is to evaluate the past and current texts related to *al-Qarinah* using comparative and descriptive techniques. The findings of the research show that *al-Qarinah* was adopted as a law conviction from a trivial issue to a *hudud* problem.

Keywords: *al-Qarinah*; *al-Qarinah al-Qati'ah*; *circumstantial evidence*; *description of the situation*

1. Introduction

Al-Qarinah or 'circumstantial evidence' is not a foreign title in Islamic law. Former scholars have debated it to this day. One of the factors that make *al-qarinah* so dynamic and evolving is its environment-dependent nature. As things change, it becomes a new dimension for *al-qarinah* to explore. The rapid development of science and technology, coupled with increasingly sophisticated and complex criminal behaviour, has made *al-Qarinah* increasingly urgent,

perhaps even a key for conviction proof in the law of adult witnesses. Professor Robert Precht who is a professor of law at the University of Michigan states that “Circumstantial evidence can be, and often is much more powerful than direct evidence”.

2. *Al-Qarinah*’s Definitions

Al Qarinah is etymologically derived from the word *al-muqaranah* which means together, connected, related and befriended [1]. In a hadith, it is stated that [2] *ما منكم من أحد إلا وقد وكل به قرينه من الجن... أي مصاحب* means every single one of you is included with him a *qarin* among the jinn, one who was always friendly and stayed with him.

Whereas, the word of Allah [3] *وَمَنْ يَعْشُ عَنْ ذِكْرِ الرَّحْمَنِ نُقَيِّضْ لَهُ شَيْطَانًا فَهُوَ لَهُ قَرِينٌ* which means that whoever turns away from the teaching of the Most Gracious Allah, we (Allah) create for him the devil (who misleads) him, and the devil will always be his companion.

Whereas, in Arabic, when pronounced *قرينة الرجل* which means wife. It is because wives and husbands are in constant contact with one another, always together and always practice a close relationship [4], [5].

From the terminology point of view, the earlier *fuqaha* did not define it in detail, in discussing this title, they used only words such as *العلامات* and *الأمارات* which meant signs [6]. It may be because the phrase *al-qarinah* is so distinctive and explicit that it is not necessary to the definition or because no scholar speaks of it as a separate topic [7].

However, today, when *al-qarinah* has become a topic of a particular discussion, then there are various definitions derived, *كل أمانة ظاهرة تقارن شيئاً خفياً فتدل عليه* (Every clear sign, pointing with him to something hidden) as being mentioned by Dr Wahbat al-Zuhayli [8].

According to the *Majallat al- Ahkam al-’Addliyyah* in the chapter 1741 *al-qarinah* is pronounced as *القرينة القاطعة هي الأمانة البالغة حد اليقين* which means *al-Qarinah al-qati’ah* is any sign or indication that it attains certainty [9].

Some scholars have criticized both definitions given above. It is because the first definition is *al-daur* in nature (repetitive), while the second one is not *jami’* in nature (comprehensive) [7].

Another definition of *al-qarinah* that is taken by ‘Adnan Hasan ‘Azayizah, by shifting Dr Wahbat Zuhayli’s definition is *كل أمر ظاهر يصاحب شيئاً خفياً* (Every seen and obvious thing carries with it something hidden). In comparison with western law, the meaning of unseen here is the relevant fact while the hidden meaning is the fact in issue [7].

The final definition brought by ‘Adnan Hasan ‘Azayizah is the definition of *jami’* and *mani’*. It is because it encompasses all forms of *al-qarinah* regardless of whether it is a type of *al-qarinah al-qanuniyyah*, *al-qarinah al-qada’iyyah*, *al-qarinah al-qawiiyyah*, *al-qarinah al-da’ifah*, *al-qarinah al-qliyyah*, *al-qarinah al-’urfiyyah*, *al-qarinah al-haliyyah* and *al-qarinah al-maqaliyyah*.

The example of *al-qarinah* is that the silence of a lady, being shy when she wants to get married is a clear sign of her happiness and willingness. Happiness is

something that is hidden and cannot be known except when expressed, but through these signs, we can identify the hidden truth. These signs are called *al-qarinah*.

Al-Qarinah in legal terms can also be found in Selangor State Syariah Court in section 3 (1) of the Statement Enactment as follows:

“Qarinah” means a fact relating to another point in any manner specified in this Enactment [10];

Because of the definitions given, it is clear that the meaning of *al-qarinah* following this enactment is under the relevant fact in the Malaysian act 1950, section 3 that states:

Statement ‘relatedness’ occurs when it is related to others in any manner specified in the provisions of this Act in regard to the relevance of the facts [11].

In defining the ‘relevant fact’ Ratanlal said: “The relevant fact are all those facts which are in the eye of the law so connected with or related to the fact in issue that they render the latter probable or improbable” which implies that related Fact that is those that has connections with issue facts which subsequently led to the possibility that it (issue fact) happened or not [12].

In conclusion, from the whole meaning already stated, we can see that the sense of *al-qarinah* used in the Syariah court is following relevant facts. The use of *al-qarinah* in Islam is much broader as it also involves the notion of a law called القرينة القانونية (Presumption of law) as well as a presumption of facts called القرينة القضائية (Presumption of fact).

In the author’s view, the real meaning of *al-qarinah* is ‘circumstantial evidence’ rather than ‘relevant fact’. It is because *al-qarinah* in Islam is one of the forms of self-disclosure, while the relevant fact has a condition of admissibility which has to do with it being discussed.

3. Components of *al-Qarinah*

Al-Qarinah has two components, namely the *maddi* and the *maknawi*. The *maddi* elements of *al-qarinah* are:

- i. Issues of research that need to be related to the law - they are also referred to as facts in Issue. For example; in the case of a proposal of a maiden, the issue is whether she agrees or not? The consent of the maiden is essential in determining the validity of the marriage.
- ii. An event that is a sign or proof¹, it is also called a relevant fact. For example; The silence of the maiden when being proposed is a sign of her consent.

The components of the *maknawi* are:

¹The law provides for the judge to choose any event that is to be relied upon and to hold *al-qarinah* on the subject matter. Sometimes the incident is an event, it could be that the incident that is occurring, or it could have happened before the incident, such as there was a significant animosity between the accused and the victim and it could be that the incident occurred after the event such as the stolen objects by theft and that he failed to defend himself of the charges. The judge has the power to decide any event that is thought to have a strong *al-qarinah* in enacting a law.

The involvement of the judge in the trial of a law by the circumstances of the case. In short, it is an attempt to uncover the connection between the events of the incident and the law issue. It requires the ingenuity and refined observation through the *ijtihad* and *istinbat* nature of a judge. Consequently, the sentence decided to may vary from one judge to another.

For example, the sentence imposed by the prophet Dawud and the prophet Solomon was declared by the Prophet s.a.w. in a hadith:

كانت امرأتان معهما ابناهما جاء الذئب فذهب بابني إحداهما وقالت صاحبتها إنما ذهب بابنك وقالت الأخرى إنما ذهب بابنك فتحاكما إلى داود فقضى به للكبرى فخرجتا على سليمان بن داود فأخبرته فقال اتتوني بالسكين أشقه بينهما فقالت الصغرى لا تفعل يرحمك الله هو ابنها فقضى به للصغرى

Meaning:

Two ladies (relatives) were sitting with their two children, and suddenly a wolf came and took away one of them, and one of them said, “The wolf has taken your child”, and another said, “(No) it is your child that has been taken away.” So, they went to meet prophet Dawud, and it was decided that the surviving child belonged to the older lady. Then, they went to meet prophet Solomon, and they told the situation to him. Then, prophet Solomon ordered, “Give me a knife for me to divide the child.” (to be divided equally). Quickly, the younger lady mentioned: “Please do not do it, may Allah have mercy on you, O Prophet of Allah, this child is hers (older lady)”. Seeing this situation, the prophet Solomon decided that the child belongs to a younger relative [13].

Through this hadith, we see how the judgment of the prophet Dawud was decided. He saw the older lady’s confession is inclining towards the truth as she is more mature. Still, Prophet Solomon saw the younger lady’s affection and compassion toward the child in comparison with the older lady (who agreed to split the child) to prove that the child was hers. This attempt to link these events with legal issues is called the rule of law.

However, in *al-qarinah al-qanuniyyah* (presumption of fact), this principle of *maknawi* does not exist because the Syariah or legal texts have determined the connection between the events of the incident and the law issues [6].

4. The Division of *al-Qarinah*

Al-Qarinah is made up of different types when viewed from various aspects. It has been covered slightly, previously. But here, the author will discuss the division of *al-Qarinah* in terms of its ‘indication strength’. It is because it is a determining factor in whether or not *al-qarinah* is acceptable.

When viewed through this aspect, *al-qarinah* can be divided into three forms, namely, *al-Qarinah al-qawiyah* / *al-qati’ah* (strong/sure). It is defined as a guide that reaches certainty to a certain extent [9]. For example, a single woman is pregnant and being unmarried without any reasonable defence (any argument to reject the notion that she has committed adultery) there is a strong *al-qarinah* of adultery [14-15]. Some contemporary scholars have also classified the evidence through fingerprints as evidence has reached a certain level of confidence [16]. Examination of blood and urine can also prove a person’s denial of a lineage or show that a person has consumed intoxicating food or drink [6]. In interpreting the belief here, the scholars, are dedicated to *zan al-ghalib*. It is because the true belief

is difficult to obtain and in every method of conviction, even when the high strength is pertinent, it is not going beyond the scope of *al-ghalib* [6-7, 17-18]. The discussion of the *fuqaha* on *al-qarinah* is focused solely on *al-qarinah* of this type.

Second, *al-Qarinah al-da'ifah* (the weak one). That is, an indication of uncertainty and contains some assumptions, and the sign cannot prove or disprove those assumptions. It cannot be taken as a proof but can be used to present (an inclination) of an opinion. For example, when it comes to disputes between spouses regarding ownership of household goods that do not provide any evidence of both parties. In such cases, scholars argue that what is commonly used by husbands is the right of the husband and what is widely used by the wife is the wife's rights based on this *al-qarinah* [19].

Third, *al-Qarinah al-batilah* (false / void). That is an indication that gives no strength even if it is merely an incorrect assumption or at times it is grounded, but contrary to the stronger *al-qarinah*, then the weak one is nullified. For example, the Prophet Yusuf's relative claimed that wolves had eaten the Prophet Yusuf by carrying some *al-qarinah* such as tears, sadness and bloodstains, but he contradicted *al-qarinah* with the most definite denial appeared in the form of Prophet Yusuf's clothes which was not torn. If it were true that the wolf had eaten the Prophet Yusuf, surely his clothes would have been torn to pieces by the wolf. Islamic law entirely ignored this type of *Al-Qarinah al-batilah*.

The Islamic law does not adopt all *al-qarinah*. The accepted *al-qarinah* is the only one that can fulfil that level of confidence. Therefore, the question of *al-qarinah* is unacceptable, does not arise at all, in convicting a *hudud* because the level of confidence reached by him is purely a *zan*. Therefore, *al-qarinah*, which reached the level of confidence or *zan al-ghalib* could convict *hudud* based on the arguments that we will discuss later.

5. Terms of Practice with *al-Qarinah*

The *fuqaha* have set two conditions for *al-qarinah* to be adopted as one of the methods of conviction in Islamic law:

- i. *al-Qarinah* must be of a specific type of *al-qarinah*. (القرينة القاطعة) The *fuqaha* classify the definite/strong sense (قطعي) into two forms. The first is Confident knowledge- which is explicit knowledge and does not have any other assumptions that contradict that original knowledge. The second science *ṭama'ninah* - namely an almost certainty of knowledge, although some assumptions are contrary to it, they are not based on a reasonable assumption. This knowledge of *ṭama'ninah* belongs to the category of *Al-Qarinah al-qati'ah* because the entire method of incorporation in Islamic law does not go beyond *zan*.
- ii. The *Al-Qarinah* cannot contradict the other *al-qarinah* or other stronger arguments. For example, the story of the wolves ate Prophet Yusuf.

In conclusion, practising *al-qarinah* is not an easy task. Each *al-qarinah* that is to be used must have specific characteristics and conditions that must be met in advance, aimed at ensuring the accuracy of a sentence and also to uphold justice and truth.

6. The Practice of *al-Qarinah* in a Crime Context

The criminal field is divided into three forms: *hudud*, *qisas* and *takzir*. According to the general opinion of *hudud* scholars, there are seven (7) forms of major misconduct that would be detrimental to the harmony and stability of society. *Hudud* offences range from crimes of adultery, *qazaf*, stealing, robbery, liquor consumption, rebellion and apostasy. As such, it touches on the basics of life, so Allah Almighty has prescribed the form of punishment that needs to be imposed. Allah Almighty does not allow human intervention in this matter to avoid the influence of lust in any action.

Among the seven *hudud* offences, the most serious of his methods of proof are adultery and *qazaf*. In other words, if adultery and *qazaf* can be proved through *al-Qarinah* then other offences can undoubtedly be implemented. In Shariah studies, this method is referred to as ‘the priority chapter’ (من باب الأولي).

In the matter of adultery, through *athar* narrated by Ibn Abbas r.a. that Umar ibn al-Khattab said in a Friday sermon after returning from performing the pilgrimage:

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: قَالَ عُمَرُ: لَقَدْ خَشِيتُ أَنْ يَطُولَ بِالنَّاسِ زَمَانٌ، حَتَّى يَقُولَ قَائِلٌ: لَا نَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ، فَيَصْلُوا بِتَرْكِ فَرِيضَةِ أَنْزَلَهَا اللَّهُ، أَلَا وَإِنَّ الرَّجْمَ حَقٌّ عَلَى مَنْ زَنَى وَقَدْ أَحْصَنَ، إِذَا قَامَتِ الْبَيْتَةُ، أَوْ كَانَ الْحَبْلُ أَوْ الْإِعْتِرَافُ

Meaning: I really worry that over time, people will say that we have not met the law of stoning in the book of Allah, so they have left behind Allah’s given compulsory actions, keep in mind that the punishment is just for those who commit adultery under the circumstances of *muhsan* with sufficient evidence (witness), pregnancy (without husband/master) or confession [13, 2].

Pregnancy in the absence of a husband or master (for a servant) is a clear *al-qarinah* against adultery. Sayidina Umar has accepted *al-qarinah* as a conviction in the case of adultery.

Ibn Mas’ud reported that ‘Ali said:

عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، عَنْ عَلِيٍّ، قَالَ: "يَا أَيُّهَا النَّاسُ، إِنَّ الرِّثَا زِنَاءَانِ: زِنَا سِرٍّ وَزِنَا عَلَانِيَةٍ، فَرْنَا السِّرَّ أَنْ يَشْهَدَ الشُّهُودُ فَيَكُونَ الشُّهُودُ أَوْلَ مَنْ يَرْمِي، ثُمَّ الْإِمَامُ ثُمَّ النَّاسُ، وَزِنَا الْعَلَانِيَةِ أَنْ يَطْهَرَ الْحَبْلُ أَوْ الْإِعْتِرَافُ، فَيَكُونَ الْإِمَامُ أَوْلَ مَنْ يَرْمِي"، قَالَ: وَفِي يَدِهِ ثَلَاثَةُ أَحْجَارٍ، قَالَ: فَرَمَاهَا بِحَجَرٍ فَأَصَابَ صِمَاحَهَا فَاسْتَدَارَتْ، وَرَمَى النَّاسُ

Meaning: O people, indeed there are two types of adultery, secret adultery and open adultery, secret adultery is a type of adultery which is proved by the witness, then the witness is the first to stone the doer, then the *imam* and then the public. Open adultery is adultery that is proven through pregnancy or guilty confession, so the *imam* is the first to stone the doer. Then Ibn Mas’ud said: In Ali’s hand there were three pebbles and he threw a hole in the earlobe of the adulterer and turned his face away. After that, the public also throws the stones to the doer [20-22].

This *Athar* clearly shows that Ali accepted *al-qarinah*’s pregnancy as proof against adultery.

While, *athar* from Uthman says:

وَحَدَّثَنِي مَالِكٌ أَنَّهُ بَلَغَهُ أَنَّ عُمَانَ بْنَ عَفَّانَ أَبِي بَامِرَةَ قَدْ وُلِدَتْ فِي سِنَةِ أَشْهُرٍ فَأَمَرَ بِهَا أَنْ تُرْجَمَ. فَقَالَ لَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ لَيْسَ ذَلِكَ عَلَيْهَا "إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى يَقُولُ فِي كِتَابِهِ { وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا }

[الأحقاف: 15] وَقَالَ {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّ الرِّضَاعَةَ} [البقرة: 233] فَالْحَمْلُ يَكُونُ سِتَّةَ أَشْهُرٍ فَلَا رَجْمَ عَلَيْهَا ”. فَبَعَثَ عُثْمَانُ بْنُ عَفَّانٍ فِي أَثَرِهَا فَوَجَدَهَا قَدْ رُجِمَتْ

Meaning: There came a woman who gave birth to a child within six months (of their marriage) to meet Uthman b. ‘Affan and he ordered that she be stoned. Saidina Ali said to him; “It is not a punishment for her, for Allah has said (meaning) the time of her pregnancy and her breastfeeding is thirty months and Allah has said that the Mothers who desire to breastfeed have two years old to do so. Therefore (as mentioned by ‘Ali), at least pregnancy requires six months, so she cannot be punished”. Then, Uthman sent an envoy to track her down and found that she had been stabbed [23].

It was through this *athar* that Uthman sentenced the woman for stoning on the basis of *al-qarinah* pregnancy/childbirth. Although the sentence was objected to by Ali’s opinion, the objection was not because he did not approve of *al-qarinah*’s pregnancy, but rather that he had given birth within six months.

7. The Practice of *Al-Qarinah* in the Contexts of *Munakahat* and the Family

Among the issues related to *al-Qarinah* in family matters are the conviction of lineage through the *istifadhah* system. *Istifadhah* is defined as a prevalent message [24]. In terms of Islamic law, it is a message by a large group of people that they can’t agree to lie [25]. The Shafi’ie sect adopts *istifadhah* as one of the methods of lineage conviction. In the event of a dispute over the validity of the marriage, it is sufficient for the judge to obtain public acknowledgement of the respondents surrounding their marital status. The judge may accept the confession of the surrounding community only by ‘hearing’ or some of them attending the respondent’s wedding or the presence of a photograph of the reception while looking at some of the *qarinah* present to the respondent such as having a child or the couple’s family situation [26].

The issue of identity through the process of DNA is also part of the point of *al-Qarinah*. Indeed, DNA cannot be used for lineage conviction because lineage matters are *ta’abbudy* or worship in nature. However, DNA can be used for the process of identification and affects relevant *muamalat* laws. An example is the issue of *awrah*. In a long hadith of the history of Aisha r.a. tells:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، قَالَتْ: كَانَ عُثْبَةُ بْنُ أَبِي وَقَّاصٍ، عَهْدَ إِلَى أَخِيهِ سَعْدُ بْنُ أَبِي وَقَّاصٍ أَنَّ ابْنَ وَليدَةَ رَمَعَةَ مِثِّي فَأَقْبَضَهُ، قَالَتْ: فَلَمَّا كَانَ عَامَ الْفَتْحِ أَخَذَهُ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَقَالَ: ابْنُ أَخِي قَدْ عَهَدَ إِلَيَّ فِيهِ، فَقَامَ عَبْدُ بْنُ رَمَعَةَ، فَقَالَ: أَخِي، وَابْنُ وَليدَةَ أَبِي، وُلِدَ عَلَيَّ فِرَاشِيهِ، فَتَسَاوَقَا إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ سَعْدُ: يَا رَسُولَ اللَّهِ، ابْنُ أَخِي كَانَ قَدْ عَهَدَ إِلَيَّ فِيهِ، فَقَالَ عَبْدُ بْنُ رَمَعَةَ: أَخِي، وَابْنُ وَليدَةَ أَبِي، وُلِدَ عَلَيَّ فِرَاشِيهِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «هُوَ لَكَ يَا عَبْدُ بْنُ رَمَعَةَ»، ثُمَّ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْوَالِدُ لِلْفِرَاشِ وَاللِّعَاهِرُ الْحَجْرُ» ثُمَّ قَالَ لِسَوْدَةَ بِنْتِ رَمَعَةَ - رَوْجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اِخْتَجِبِي مِنِّي» لِمَا رَأَى مِنْ شَبَهِهِ بِعُثْبَةَ فَمَا رَأَاهَا حَتَّى لَقِيَ اللَّهَ

Meaning: That is, “From ‘Aishah RA she said, “Utbah bin Abi Waqqas affirmed to his brother Sa’ad bin Abi Waqqas, that Zam’ah (who was a servant) and she has a son was of his lineage, so take him away. ‘Aisyah RA said: In the year of the opening of the city of Mecca Sa’ad bin Abi Waqqas took the child and said; “My brother has ordered that I take the child”. Then ‘Abdun bin Zam’ah replied to him by saying: “He is my relative, he is the son of my father’s servant. He was born on my father’s overlay (ownership). Then they went to meet the Messenger of Allah. Sa’ad said: “O Messenger of Allah, my brother has assured

me that this child is his son". Meanwhile, 'Abdun bin Zam'ah said: "he is my brother, son of my father's servant, he was born on my father's overlay." Then Messenger of Allah said: This child belongs to you, 'Abdun bin Zam'ah. Then the prophet said, "The child is attributed to the man who has *al-firash* (i.e. marriage or slave ownership), while the adulterous man will get *al-hajar* (disappointment, that is, has no claim over the child)". Then when the Messenger of Allah saw the boy's face very much like 'Utbah bin Abi Waqqas, he said to the Umm al-mu'inin Sawdah binti Zam'ah: "Please cover yourself with hijab and take care of your awrah when you are with this boy". So, the child did not see Sawdah until he died [27].

The above Hadith shows that the Messenger of Allah (may peace be upon him) ascribed the lineage of the boy to Zam'ah solely based on the existence of *firash*. However, the Messenger of Allah (may peace be upon him) ordered the Umm al-mu'inin Sawdah binti Zam'ah to take care of her awrah with the boy because his appearance was very similar to 'Utbah bin Abi Waqqas. The Umm al-mu'inin of Sawdah binti Zam'ah should not wear hijab because Sawdah and the boy are relatives. This second statement shows that the Messenger of Allah (may peace be upon him) recognized the proof of *qiafah* in the matter of *muamalat* but rejected it in the process of determining lineage.

In this age, *qiafah* can be said to be DNA analysis. It is because the *qiafah* is the instinct of human nature, while DNA is the essence of their inner life. Of course, DNA finding is more accurate and dependable than *qiafah*. Thus, practising DNA is referred to 'the priority chapter' category.

At the same time, DNA can also be used to determine lineage ownership in 3 circumstances [28]:

- i. When there is a dispute over the determination of a child's lineage.
- ii. There is doubt when these children are mixed in a baby care centre or hospital. DNA can determine the child's family.
- iii. In an emergency and disaster circumstances where many children are left without parents. In this case, DNA can determine the child's lineage.

However, it is crucial to understand that there is a difference between conviction and determination. Conviction means making decisions from no lineage to existence, whereas determinations, lineage decisions exist only to determine which family they belong to.

8. The Practice of *al-Qarinah* in Context of Wealth Convictions

In determining ownership of a scholar's wealth, it also often use *al-qarinah*. In the presence of a dispute between husband and wife regarding ownership of wealth, but none of them can give evidence, Imam Ahmad bin Hanbal says that the property will observe the nature of men and women. For instance, for things that reflect man's character such as the turban, robe, arms and so on are subjected to the word of the husband with his vow. While the wealth which is following the nature of women such as jewellery, women's clothing and so on, is subjected to the word of the wife with her vow. Any property that is not special to either man or woman is, therefore, joint property [22]. The same depends on the form of work. If either or both partners work, then the property that corresponds to the job is theirs.

On the issue of goods being dropped, the Messenger of Allah (may peace be upon him) ordered the person who found the lost item to return the item to him when he described his properties [29]. This view is based on the Prophet's hadith:

عَنْ زَيْدِ بْنِ خَالِدِ الْجُهَنِيِّ رَضِيَ اللَّهُ عَنْهُ، قَالَ: جَاءَ أَعْرَابِيٌّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَسَأَلَهُ عَمَّا يَلْتَقِطُهُ، فَقَالَ: «عَرَّفْهَا سَنَةً، ثُمَّ أَحْفَظْ عِفَاصَهَا وَوَكَاءَهَا، فَإِنْ جَاءَ أَحَدٌ يُخْبِرُكَ بِهَا، وَإِلَّا فَاسْتَنْفِقْهَا»

Meaning: from Zaid bin Khalid al-Juhany r.a. that a *badwi* met Prophet S.A.W. about luggage. Then the prophet said, “You shall advertise it for a year. Know exactly what the bag is (the nature of the item and its sac). If someone came to claim the property by mentioning the features of his goods, then it was his. If not, (after a year), then you can take the property.” [27].

9. Conclusion

There are too many hadiths and views of scholars which explain the need to practice *al-Qarinah*. *Al-Qarinah*, which was one of the less critical convictions of ancient times, has become very important today. The rapid development of science and technology and the changing complexities of society have changed not only the lifestyle of the people but also the systems and structures of life.

Islamic law is dynamic actually. This nature of dynamism exists because of its inherent resilience to the principles of Islamic law itself. Therefore, Islamic law is always in line with its reality, social and environmental conditions. Islamic law is *waqi'iy*. The same is true of Islamic principles.

The narrowing of the principle of narration by limiting it to the *shahadah* and the vow alone will not help to uphold the justice that Islam requires. Instead, it would give a negative impression of the Islamic judiciary itself. It is clear when most of the court's evidence in cases such as adultery, rape, theft, alcohol consumption and the like fail to be proven by *shahadah* or vow. In this context of relieving, someone who commits a mistake because of technical weaknesses, in one aspect, will promote unlawful misconduct.

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