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**QARINAH: ITS FUNCTIONS IN ESTABLISHING A CLAIM AND  
CONVICTING A CRIME**

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I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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## ABSTRAK

Qarinah adalah salah satu cara atau kaedah pembuktian yang diguna pakai di dalam undang-undang keterangan untuk menegakkan dakwaan dan mensabitkan sesuatu kesalahan. Kajian ini merupakan satu kajian mengenai fungsi-fungsi qarinah di dalam menegakkan dakwaan dan mensabitkan kesalahan. Ini adalah kerana qarinah telah diiktiraf oleh ‘ulama-‘ulama Islam sebagai kaedah pembuktian yang telus seandainya menepati dan memenuhi syarat-syarat yang telah ditetapkan oleh syarak. Kajian ini dilakukan bertujuan untuk mengenalpasti penggunaan qarinah di dalam undang-undang keterangan disamping melihat sejauh manakah ianya diguna pakai dan diterima di dalam Mahkamah Syariah di Kota Bharu, Kelantan khususnya. penulis ingin membawa masyarakat di Malaysia khususnya agar mengetahui dan sekaligus memahami apakah yang dimaksudkan dengan qarinah dan kedudukannya sebagai kaedah pembuktian. Untuk memperolehi data dan maklumat yang lengkap, beberapa kaedah kajian telah digunakan iaitu melalui kajian perpustakaan dan kajian lapangan dengan melihat fail-fail kes yang terdapat di Mahkamah Syariah, Kota Bharu Kelantan. Hasil kajian ini telah menunjukkan bahawa qarinah diterima sebagai salah satu kaedah pembuktian khususnya di dalam undang-undang keterangan Islam. Hasil daripada kajian ini juga mendapati bahawa mana-mana Mahkamah Syariah di negara ini tidak mempunyai bidangkuasa untuk membicarakan atau memutuskan kes-kes yang berkaitan dengan hudud dan qisas sebagaimana yang telah digariskan oleh undang-undang Islam.

## ABSTRACT

*Qarinah* is a tool of proof that applicable in Law of Evidence in order to establish a claim and convict a crime. This study is done on the functions of *qarinah* in establishing a claim and convicting a crime. It is because *qarinah* was attested by the *'ulama* as a great proving method whenever it fulfills and appropriate with the conditions that rules by the *syarak*. The study sought to understand the application of *qarinah* in the Law of Evidence besides viewing how far it's applicable in Syariah Court of Kota Bharu, Kelantan. The writer wants to bring the society particularly in Malaysia to understand well about the meaning of *qarinah* and its position as a tool of proof. Library research and field research through observation on the case files in the Syariah Court of Kota Bharu, Kelantan were the methods employed for data gathering purposes. The findings indicate that *qarinah* is accepted as a tool of proof in Islamic Law of Evidence particularly. Finally, this study found out that any Syariah Court in this country have no jurisdiction to try and hear the *hudud* and *qisas* cases as commanded and ruled by the Islamic Law.

## ملخص البحث

القرينة هي إحدى القواعد أو الأساليب المستعملة لإثبات الدلالة على المدعى صواباً أو خطأً عند الإجراء القانوني. فهذا البحث يعتبر دراسة حول عناصر القرينة لإثبات الدعوة على الإجماع. وقد اعترف العلماء المسلمون أن القرينة تدل على إثبات الدليل بالعدالة بشرط أن تكون موافقة بالأحكام الشرعية. وتهدف هذه الدراسة إلى معرفة أسلوب استعمال القرينة في الإجراء القانوني بجانب معرفة مدى إستعمالها وقبولها في قضايا المحكمة الشرعية بكويتا بهارو , كلتن خاصة. فقد ترغب الباحثة في تعرف القرينة للمجتمع الماليزي وتفهمهم على حقيقة القرينة ومكانتها كقاعدة لإثبات الدلالة. وللحصول على كمال المعلومات قد استعملت الباحثة المناهج المتعددة كالمنهج المكتبي والمقابلات الشخصية ومطالعة المستندات المتعلقة بها في المحكمة الشرعية كويتا بهارو , كلتن. ونتيجة هذا البحث تدل على أن القرينة تستخدم كقاعدة الدلالة خصوصاً في تشريع القانون الإسلامي. وإضافة إلى ذلك فإن هذا البحث يستنتج أن أي محكمة من محاكم شرعية في ماليزيا ليست لديها طاقة أوسع لمناقشة أو مباحثة وقضاء القضايا المتعلقة بالحدود والقصاص كما قررها القانون الإسلامي.

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## GLOSSARY

<i>Ayah</i>	Signs.
<i>Bayyinah</i>	Evidence.
<i>Dalil</i>	Authorities.
<i>Fasiq</i>	A person who habitually breaks religious prohibitions.
<i>Fiqh</i>	Jurisprudence.
<i>Hadd</i>	A specific form of punishment laid down in the Qur'an.
<i>Hadith</i>	Sayings of the Prophet Muhammad S.A.W.
<i>Hudud</i>	Several specific crimes and punishments laid down in the Qur'an.
<i>Hukm</i>	Legal rule.
<i>Iqrar</i>	Admission.
<i>Khalwat</i>	Close Proximity.
<i>Lauth</i>	Signs.
<i>Madhahib</i>	Schools of jurisprudence / legal school.
<i>Mu'amalat</i>	Transactions.
<i>Muqaddimah zina</i>	Introduction of adultery.
<i>Muqarrun bihi</i>	The person deriving benefit from an <i>iqrar</i> .
<i>Muqirrun</i>	The person deriving benefit from an <i>iqrar</i> .
<i>Muqirrun lahu</i>	Contract for farming services.
<i>Nasab</i>	Paternity or lineage.
<i>Nusyuz</i>	Disobedient / récalcitrant.
<i>Qadhf</i>	False accusation of illicit sexual.
<i>Qadi</i>	Judge.
<i>Qarinah</i>	Circumstantial evidence.

<i>Qasamah</i>	Oath to deny involment in murder.
<i>Qisas</i>	Law of retaliation or retribution.
<i>Qiyafah</i>	Evidence or to prove paternity.
<i>Rajm</i>	Stoning.
<i>Sariqah</i>	Theft
<i>Shahadah</i>	Testimony of a witness.
<i>Shari'i</i>	Legally recognised by the <i>shari'ah</i> .
<i>Shubhah</i>	Doubt.
<i>Shurb</i>	Drinking intoxicants.
<i>Sunnah</i>	Sayings, deeds and approvals of the Prophet S.A.W.
<i>Ta'zir</i>	Discretionary punishment for offences not amounting to <i>hudud</i> .
<i>'Ulama</i>	Plural of <i>'alim</i> , Islamic jurists.
<i>Yamin</i>	Oath.
<i>Zina</i>	Adultery or fornication.

**ABBREVIATION**

H	hijriyyah
n.d	no date
n.pl.	no place
n.pb.	no publisher
p.	page
pp.	pages
S.W.T	subhanahu wa taala
S.A.W	salla Allah alayh wa sallam
Vol.	volume
Juz	juzu'
#	<i>hadith</i> number

# **CHAPTER ONE**

## CHAPTER ONE

### INTRODUCTION

#### 1.1 BACKGROUND OF RESEARCH

During the judicial process, the law of evidence aids the judges in the quest for the truth and the rendering of a just decision as ordained by Allah. Islam views the giving of evidence as the discharge of a trust on behalf of Allah and to be a witness in accordance with His Supreme Will.

As Allah says in the Al-Qur'an:

" إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ  
 إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا "

**Translation:** "God doth command you to render back your trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For God is He Who heareth and seeth all things".<sup>1</sup>

There are a few methods that had been used in Islamic law of evidence in establishing a claim and convicting a crime. The Islamic law of evidence as it formerly known has become a long way from the time when our Messenger Nabi Muhammad S.A.W came and brought Islamic religion. The Islamic law of evidence was also practiced well under the governance of the Caliphs and Companions of the prophet.

<sup>1</sup> Al-Qur'an. Al-Nisa' 4 : 58. (All Quranic translation in this writing are based on 'Abdullah Yusuf Ali. 1994. *The Holy Qur'an, Text and Translation*. Selangor: Islamic Book Trust. Translation from other sources will be cited accordingly)

Hence, one of the important elements in Islamic law of evidence is a *qarinah* that has its own functions in establishing a claim and convicting a crime. In this research, the writer will study about the functions of *qarinah* whether it is acceptable or not in convicting or denying a crime. The writer in this research will describe the question on the function of *qarinah* whether it can be applied in judicial proceeding.

Nowadays, *qarinah* plays an important role in solving crimes such as *qisas*, *mal* and *hudud* cases. Even though its implementation was not consistent in each state in Malaysia, *qarinah* has its own provision in the Act and Enactment of each state. The concept of testimony (*shahadah*), *bayyinah* and especially *qarinah* whether in the Act or the Syariah Court Enactment as well as Rules should be streamlined, that an Act for reciprocal enforcement of judgment be enacted.

Accordingly, the writer had chosen this topic for her research because it is interesting to study about the functions of *qarinah* in establishing a claim and convicting a crime according to Islamic law of evidence.

## **1.2 AIM OF RESEARCH**

To complete this research, the writer has her own target for her research. The final aim that the writer wants to achieve by doing this research is to reveal and make the public understand the definition, concept and functions of *qarinah* in our judicial system.

In order for it to be accepted as such, the writer really hope this writing will be a useful reference for readers who want to know about all aspects of *qarinah* in our life today, especially in judicial system.

### 1.3 OBJECTIVE OF RESEARCH

- 1) To know the positions of *qarinah* in Islamic law of evidence and its functions in Islamic judicial system. In Islamic law of evidence there is a few evidence principles, which are acceptable in Islam such as *shahadah*, *iqrar*, *qasamah*, and *qarinah* where it's be an evidence to convict.
- 2) To view how far Islamic jurist in *hudud* and *qisas* cases can accept the approach of *qarinah* principle.
- 3) To explore the advantages of *qarinah* in Islamic law of evidence and the consequences when *qarinah* was not acceptable in judicial system especially in modern society such today. It can also answer the questions on whether the fairness and justice are really established in judicial system.

### 1.4 SCOPE OF RESEARCH

During the period to complete this research, the writer concentrated her study in Syariah Court of Kota Bharu, Kelantan in order to gather on about the actual civil and criminal cases that apply *qarinah* in the conviction and decision.

The issue raised in this research is, on the functions of *qarinah* in establishing a claim and convicting a crime according to the Islamic law of evidence. The functions of *qarinah* are important to be discussed because it will be affect the judges in deciding a case.

The second matter was being raised and discussed in this research is the positions of *qarinah* in *hudud* cases and its implementation in Syariah court especially in Kelantan. The writer whether it's acceptable and really existed in Syariah Court will cover the debate of applying or implementation in Syariah Court.

## 1.5 RESEARCH METHODOLOGY

In order to ensure that the writer gets exact information to complete this research, a few of methods were used to collect data. The methodology that has been used to collect a data is through secondary data and sources from magazines, daily newspaper, journal and books on specific research. All of secondary data or sources was applied to complete the research.

Besides that, all of information that got either from secondary, primary and general sources are used by library research. The writer has referred to many Arabic books to find information about the concept and *dalil* as a proof in Islam. The writer went to the University of Malaya (UM) library, Islamic Centre Library, National Library, International Islamic University of Malaysia (IIUM) Library, Islamic University College of Malaysia (KUIM) Library, Public Library of Kelantan and National University of Malaysia (UKM) Library.

Finally, the writer made field research. By this method, the writer went to Syariah Court of Kelantan and collect data on how the *qarinah* was applied in Islamic law of evidence and its positions in Syariah Court of Kelantan.

## 1.6 LITERATURE REVIEW

The functions of *qarinah* in establishing a claim and convicting a crime wee play an important role to establish a fair and justice. Tahirah binti Abdullah (1993) had examined the issue of *qarinah* in he thesis in the aspect of positions of *qarinah* in Islamic law of evidence. In her thesis, she has used an approach by doing case study in the Syariah Court in Kota Bharu, Kelantan to get exact data. Her study was different by the writer's study because the writer analyzed the approach of *qarinah* functions in establishing and convicting a crime without doing a case study in any specific area.

On the other hand, Halimi binti Mohd Khalid (1994) had done a research about *qarinah* but in the methods of convicting of *qisas* cases. In her research, she had

described clearly about how the *qarinah* was used in convicting *qisas* cases only and not to other crimes. However, the writer was doing a research on the application of *qarinah* in civil cases and criminal cases.

Lastly, Abdul Basir Mohamad (2002) in his book “Falsafah Perundangan Islam” also discusses the terms of *qarinah* in Islamic judicial proceeding. He has make an approach and focused about the *hikmah* and philosophy of *qarinah* in Islamic judiciary system and its important in the modern society today. He is more focused to the *hikmah* of *qarinah* in his discussion. Actually, it is different with the writer approach because the writer has discussed the functions and how *qarinah* apply in establishing a claim. Even, the writer also discusses about the *hikmah* of *qarinah*, but it’s totally different if we read all of the contents both writing.

# **CHAPTER TWO**

## CHAPTER TWO

### THE CONCEPT OF *QARINAH* AND ITS POSITION IN ISLAMIC LAW

#### 2.1 DEFINITION OF *QARINAH*

Islam is a complete code of life and it guides its believers in every temporal and spiritual matter. Its norms and precepts are universal and are fit for every time and place. The concept of justice in Islam is all pervading and has to be manifested in every sphere of human life.

Circumstantial evidence (*al-qarain*) is one of the main sources of the proof of a crime or a right. *Qarinah* (presumption) literally means together, accompany or related.<sup>2</sup>

The meaning of *qarinah* in technical sense according to ‘Abdul Karim Zaidan is indeed wide and all embracing as it covers anything which may be used as proof or evidence to establish the existence or non-existence of a thing.<sup>3</sup> This means that *qarinah* may establish the existence or non-existence of a thing. The terms of words “thing” that can be used as proof must be given a general meaning so that it would include things that could be seen, felt, heard, touched and others.

In order to ensure justice in judicial system, Islam has laid down a fair and clear law of evidence to prove the facts relevant for the decision of the court. The main aim of this law is that an innocent person must not be punished and a guilty must not escape punishment. Islamic Law of Evidence has laid great stress on evidence to prove the facts relevant for the judgment of a court. In this research, the writer will concentrated

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<sup>2</sup> Ahmad Fathi Bahansi. 1989. *Nazariyyah Al-Ithbat fi Al-Fiqh Al-Jinai Al-Islami*. Kaherah: Dar Al-Shuruq. p. 191.

<sup>3</sup> ‘Abdul Karim Zaidan. 2000. *Nizam Al-Qada Fi Al-Shari’ah Al-Islamiah*. Beirut Lebanon: Resalah Publisher. p. 185.

to the *qarinah* as a one of tools in convicting a crime and establishing a claim besides the testimony and admission made by his own confession or the evidence of the witnesses against him.

After testimony and admission an authoritative source of the proof of a fact in Islamic Law is circumstantial evidence (*al-qarain*). The confession of the accomplice can be considered as presumption or (*qarinah*) which can be accepted for discretionary punishment for offences not amounting to *hudud* (*ta'zir*) punishment if it is corroborated with other circumstances.

Next, the meaning of *qarinah* was applicable in our country as mentioned in the Evidence Act 1950 (ACT 56). In that Act, the term of *qarinah* was provided under section 4 that known as presumption. Section 4 (1) provide that “Whenever it is provided by this Act that the court may presume a fact, it may either regard the fact as proved unless and until it is disproved, or may call for proof it”.

Accordingly, section 4 (2) provide that “Whenever it is directed by this Act that the court shall presume a fact, it shall regard the fact as proved unless and until it is disproved” and the section 4 (3) provided that “When one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it”.

According to the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] under Section 5, *qarinah* is evidence may be given of facts in issue and *qarinah*.<sup>4</sup> It means *qarinah* is evidence that may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be *qarinah*, and of no others. This section shall not enable any person to give evidence of a fact, which he is disentitled to prove by the law relating to civil procedure.

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<sup>4</sup> Malaysia. 2003. *Syariah Court Evidence (Federal Territories). Act 1997 (Act 561). Section 5.*

For example, Ali is charged with beating Kalsom, his wife, with a club with the intention of ill-treating her. At Ali's trial, the facts issue that should be considered is Ali's beating Kalsom with the club and also Ali's hurting Kalsom with the beating with the intention of ill-treating her.

## **2.2 THE APPLICATION OF QARINAH AS OUTLINED IN THE QUR'AN, THE *SUNNAH* AND THE PRACTICE OF THE COMPANIONS OF THE PROPHET S.A.W.**

Basically, legal rule recognized by the *shar'i* was considered all of *qarinah* types and never neglected it. The proof for this statement is the existence of legal rule (*hukm*) decision, which decides, based on *qarinah*. This is because *syara'* was never ignored any event that have particular proof and also never leave the truth that can be proved by truly indicate or proof.

On other hand, the Holy Qur'an, *Sunnah* and practice by the companions of the Prophet s.a.w was showed that all of *qarinah* should be considered in judicial proceeding. The majority of the '*ulama* have accepted *qarinah* as one of the means of proof while there are also other '*ulama* who have rejected *qarinah*.

The majorities who have accepted *qarinah* are those from the four main schools of law. Their proof for admitting *qarinah* as a type of evidence is based on the Al-Qur'an, *Sunnah* and the practice of the Companions. The authorities that relate with the *qarinah* in convicting a crime and establishing a claim is as followed:

## 2.2.1 AUTHORITIES FROM AL-QUR'AN

i. Allah says:

" وَجَاءُوا عَلَى قَمِيصِهِ بِدَمٍ كَذِبٍ قَالَ بَلْ سَوَّلَتْ لَكُمْ أَنْفُسُكُمْ أَمْرًا فَصَبِرْ جَمِيلٌ وَاللَّهُ الْمُسْتَعَانُ عَلَى مَا تَصِفُونَ "

**Translation:** *They stained his shirt with false blood. He said: "Nay, but your minds have made up a tale (that may pass) with you. (for me) patience is most fitting: Against that which ye assert, it is Allah (alone) whose help can be sought..."*<sup>5</sup>

According to Al-Qurtubi in his commentary, the jurist have employed this ayah as justification for using "signs which points to the existence of something" in solving *fiqh* problem, such as using the circumstantial evidence of *qasamah* and others. In this concept, the *ulama'* are unanimous in their view that the Prophet Ya'qub (Jacob) a.s have treated the bloodstained shirt of Yusuf a.s as evidence that Yusuf a.s is still alive as the shirt though bloodstained is not torn as it should be if Yusuf a.s was really attacked by wolves as had been claimed by his brothers confidently. Rather to this ayah, in one narration it was said that the prophet Ya'qub a.s had asked Yusuf a.s brothers "When did wolves became so clever that they could eat Yusuf a.s without tearing open his shirt?"<sup>6</sup>

The witnesses as Allah said in Yusuf a.s story is clearly showed that the Prophet Ya'qub had resorted to *qarinah* as a means of proving that the allegations by brothers of Yusuf a.s are false. In this case the fact is clearly raises a doubt on the allegations coming from his brothers.

In other verses (*ayah*) in Qur'an showed that *qarinah* is really resorted and applicable in establishing a claim and convicting a crime. As Allah says in another ayah,

<sup>5</sup> Al-Qur'an. Yusuf 12:18.

<sup>6</sup> Abdul Karim Zaidan. 1993. *Prinsip-prinsip Pendakwaan Dan Pembuktian Dalam Sistem Kehakiman Islam*. Selangor: Penerbitan Hizbi. p. 154.

ii. Allah says:

" وَاسْتَبَقَا الْبَابَ وَقَدَّتْ قَمِيصَهُ مِنْ دُبُرٍ وَأَلْفَيَا سَيِّدَهَا لَدَى الْبَابِ قَالَتْ مَا جَزَاءُ مَنْ أَرَادَ بِأَهْلِكَ سُوءًا إِلَّا أَنْ يُسْجَنَ أَوْ عَذَابٌ أَلِيمٌ قَالَ هِيَ رَاوَدْتَنِي عَنْ نَفْسِي وَشَهِدَ شَاهِدٌ مِّنْ أَهْلِهَا إِنْ كَانَ قَمِيصُهُ قُدًّا مِنْ قَبْلِ فَصَدَقَتْ وَهُوَ مِنَ الْكَاذِبِينَ وَإِنْ كَانَ قَمِيصُهُ قُدًّا مِنْ دُبُرٍ فَكَذَبَتْ وَهُوَ مِنَ الصَّادِقِينَ "

**Translation:** "So they both raced each other to the door, and she tore his shirt from the back: they both found her lord near the door. She said: "What is the (fitting) punishment for one who formed an evil design against thy wife, but prison or a grievous chastisement?" He said: "It as she that sought to seduce me from my (true) self." And one of her household saw (this) and bore witness, (thus) "If it be that his shirt is rent from the front, then is her tale true, and he is a liar!" "But I it be that his shirt is torn from the back, then is she the liar, and he is telling the truth!"<sup>7</sup>

Accordingly, based on the fact that Yusuf a.s.'s shirt as torn from the back shows that is *qarinah* leading to the conclusion that Yusuf a.s did not try to molest Zulaikha, the wife of the nobleman. So, the nobleman can decide who was in the right side.

## 2.2.2 AUTHORITIES FROM SUNNAH OF THE PROPHET (S.A.W)

In the context of application of *qarinah*, the Holy Prophet Muhammad S.A.W has recognised circumstantial evidence as a source of proof in many cases. The 'ulama have also argued that in several *Sunnah* of the Prophet S.A.W we can find the evidence that *qarinah* may be used as one of the means of proof. Some of these cases are as under:

i) It has been related that in the battle of *Badar* the two sons of *Afra'a* claimed that they have killed *Abu Jahal*. This Hadith translation found in the book *Principles of*

<sup>7</sup> Al-Qur'an. Yusuf. 12 :25-27.

Evidence in Islam written by Dr. Anwarullah: The Holy Prophet said to them, “Have you cleaned your swords?” They said, “No”. The Holy Prophet said, “Show me your swords.” When Holy Prophet saw the swords being bloodstained, he said, “You have killed him”.<sup>8</sup> According to this *hadith*, it’s clearly showed that the circumstantial evidence was applied before the Holy Prophet makes a decision.

ii) The Prophet s.a.w had once decided on the paternity of someone on the basis of *qiyafah*. This would mean that such judgment that was based on *qiyafah* is also based on *qarinah* as *qiyafah* relies on circumstantial evidence to establish the paternity of someone.

The Righteous Caliphs have also followed the footsteps of the Prophets s.a.w by applying *qiyafah* as a means of proving *nasab*. Imams Malik, Ahmad, Al-Shafi’i and others have also accepted that applying *qiyafah* amounts to applying *qarinah* as well.

iii) Next, the case that used *qarinah* to make decision as follows:

"حدثني زهير بن حرب . حدثني شبابة . حدثني ورقاء عن أبي الزناد , عن الأعرج , عن أبي هريرة , عن النبي صلى الله عليه وسلم قال: (بينما امرأتان معهما ابناهما . جاء الذئب فذهب بابن إحداهما . فقالت هذه لصاحبتها: إنما ذهب بابنك أنت . وقالت الأخرى: إنما ذهب بابنك . فتحا كمتا إلى داود . فقضى به للكبرى . فخرجتا على سليمان ابن داود عليهما السلام . فأخبرتا . فقال: اتتوني بالسكين أشقه بينكما . فقالت الصغرى: لا . يرحمك الله ! هو ابنها . فقضى به للصغرى " .

“Abu Huraira reported that Allah’s Apostle (saw) had said: while two women had been going a long with their two sons, a wolf came and took away the child of one of

<sup>8</sup> Dr. Anwarullah. 1999. *Principles of Evidence in Islam*. npl: n.pb. p.109.

them. One of the women said to her companion: It is but (the wolf) was has run away with your child. The other one said: It has run away with your child. They brought the matter to (Hadrat) Dawud (David) for decision. He committed in favour of the elder one. They then went to Sulaiman b. Dawud (may there be peace upon both of them) and told (the story). He said: Bring me a knife so that I may cut him (the child) (into two parts) for you. The younger one said: No, it can't be, may Allah have mercy upon you, he (the child belongs to her (the elder). So he committed for the younger one. Abu Huraira said: If ever I heard of the word the knife at all, it was that day. We called it by no other name but Al-Mudya. (It was called so because it cuts the length of the animal's life)." (Hadith. Muslim. Kitab Pertaining to Judicial Decision: Vol III: #1720)<sup>9</sup>

According to the above *hadith*, it is clear showed that the application of *qarinah* is accepting in establishing a claim in deciding a case. The dispute between two women can be solving through the *qarinah* based on this above case. After hearing the fact of that case, the Prophet Solomon decided in favour of the younger one.

iv) On other occasions the Prophet S.A.W had also given judgment in a *qasamah* case based on *lauth* (signs), which is also a type of *qarinah*.<sup>10</sup> Hence, it is therefore clear that signs are also a part of the *qarinah*, which plays an important part in the *qasamah* procedure.

### 2.2.3 AUTHORITIES FROM PRACTICE OF THE COMPANIONS OF THE PROPHET (S.A.W)

Beside the two important elements namely Al-Qur'an and *Sunnah* in establishing a claim, there is one matter that is also important. The Companions of the Prophet S.A.W had also on other occasions given their judgment on the basis of *qarinah*.

<sup>9</sup> Al-Muslim. Sahih Muslim (trans.) Abdul Muhamad Sidiqqi. 1999. *Terjemah Hadith Shahih Muslim*. India: Adam publisher and distributor. Vol. III. p. 155.

<sup>10</sup> Mahmud Saedon A. Othman. 2003. *An Introduction to Islamic Law of Evidence*. (trans). Raden Ahmad Shauki R. Hisam. Selangor: Open Press. p.123.

i) ‘Umar r.a. had once imposed the *hadd of zina* on a woman who become pregnant without having a husband, according to the *qarinah* which is self-evident. This is also according to opinion of Imam Malik and one opinion of Imam Ahmad Ibn Hanbal.<sup>11</sup>

ii) In other case, ‘Umar r.a. and ‘Abdullah bin Mas’ud r.a had at one time imposed the *hadd* of liquor drinking on the basis of the smell of liquor on the breath of the accused, or the contents of the suspect’s vomit in which liquor is found. This is also support by the opinion of Imam Malik and his followers.<sup>12</sup>

In more amusing example, if we are to find a man who is bare-headed while it is unusual for us to find him in such a state and there is another man running away from the scene clutching a turban in his hand then obviously the conclusion that we would draw from this spectacle is that the man who was running away with the turban is actually by apparent *qarinah* the thief of the bare-headed man’s turban.<sup>13</sup> Hence, this kind of *qarinah* is stronger than *shahadah* or *iqrar*.

#### 2.2.4 JURISTS (‘ULAMA) VIEWS ON QARINAH

The Holy Prophet S.A.W was used the word “*bayyinah*” for the proof of an offence or a right which means anything that proves or disproves the commission of an offence or violation of a right whether it be witness or something else such as circumstantial evidence, oath, documents.

Most all of *fiqh* jurists was resorted and apply *qarinah* as a one of methods as a tools of proves in judicial proceeding. It is because some of them were taken directly and clearly a *qarinah* as founded in Mazhab Malik and in others example as reported by Ibnu Farhun in “*Tabsirah al-Hukkam*” which means “ Some of the methods in judicial proceeding in Mazhab Maliki by resorted to the *qarinah*”.

<sup>11</sup> Mahmud Saedon A. Othman. 2003. *An Introduction to Islamic Law of Evidence*. p. 123.

<sup>12</sup> Mahmud Saedon A. Othman. p. 123.

<sup>13</sup> Ibid. p. 124.

According to the Mazhab Hanafi, Shafi'i and some followers of Hanbali was not accepted *qarinah* in *hudud* and *qisas* cases, whenever they in opinion allowing only witnessed and confession as evidence as similarly with giving admission by the offence and evidence "*bayyinah*" of witnesses.<sup>14</sup> It is because *qarinah* as a means of proof contends that *qarinah* is not a reliable form of evidence and if subjected to stringent tests then its weaknesses would surely exposed. Thus, the application of *qarinah* as proves, for them is preferred not valid in the *hadd* cases.

The second view of 'ulama including Mazhab Maliki, Shi'ah Imamiyyah and some of the followers of Mazhab Hanbali was freely recognised the validity of presumption in all cases including *hudud* cases.<sup>15</sup> It is argued that evidence is whatever brings the truth to light including presumption. They were argued that if a presumption is susceptible of doubt, so is the testimony of witnesses is more susceptible of doubt, so is the testimony of witnesses is more susceptible to illusions, lies and errors than *qarinah* (presumption). So, practically *qarinah* have at least as much validity as testimony by witnesses.

The third view would permit certain types of *qarinah* to be used in proving had cases. According to the Mazhab Maliki and Hanbali, those who pregnancy of an unmarried woman is sufficient poof on her adultery provided she does not claim rape.<sup>16</sup> Next, the smell of alcohol or regurgitated wine presumptively proves drinking. This view was based on the statement of Hadrat 'Umar who said "Adultery is public (proved) when pregnancy appears (in case of an unmarried woman without being coerced) or confession is made".<sup>17</sup>

The general rule in judgement of criminal cases can be proven through *iqrar* or *shahadah*. The issue here is whether *qarinah* could also be used as one of the means of proving murder. According to the *fiqh* jurist of four Schools, they in the views that a murder can be proven by way of *qarinah*, but *qarinah* however may be *lauth*

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<sup>14</sup> Dr. Anwarullah. 1994. *Islamic Law of Evidence*. Islamabad: Shariah Academy International Islamic University. p. 65.

<sup>15</sup> Dr. Anwarullah. 1994. *Islamic Law of Evidence*. p. 66.

<sup>16</sup> Dr. Anwarullah. p. 66.

<sup>17</sup> Ibid. p.66.

(circumstantial evidence), which will entitle the family of the victim to demand the process of *qasamah*.<sup>18</sup>

Imam Abu Hanifah in the cases of murder or limb hurt supported this opinion. It will be decide in the case of averse of accused person (*al-nukul*) because he assume that *qarinah* can resorted in convicting a crime.<sup>19</sup>

Lastly, in the transactions (*mu'amalat*) and wedding circumstances, the majority of the *'ulama* also agreed with the application of *qarinah* in establishing a claim and convicting a crime if there is no witness come to give evidence. But, for the reason that admitting a weak *qarinah* is still in a doubt, so that it's convicting should not apply if there is others proof become strong as evidence.<sup>20</sup>

As a conclusion, the *'ulama* have a different views about the application of *qarinah* before convict such crime. If the *qarinah* is weak they will automatically reject and cannot been apply in prove the fact.

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<sup>18</sup> Dr. Mat Saad Abd. Rahman. 2000. "Acara Keterangan Dalam Pembuktian Kes Pembunuhan Dan Kecederaan". *Tinjauan Kepada Perundangan Islam*. Kuala Lumpur: Institut Kefahaman Islam Malaysia (IKIM). p. 397.

<sup>19</sup> Dr. Mat Saad Abd. Rahman. 2000. "Acara Keterangan Dalam Pembuktian Kes Pembunuhan Dan Kecederaan". *Tinjauan Kepada Perundangan Islam*. p. 397.

<sup>20</sup> Dr. Mat Saad Abd. Rahman. p. 397.

# **CHAPTER THREE**

## CHAPTER THREE

### GENERAL POSITIONS OF *QARINAH*

#### 3.1 POSITION OF *QARINAH* AS A TOOL OF PROOF

*Qarinah* was attest previously by Islamic law of evidence as a tool of proof. The position of *qarinah* as a tool of proof is really important and applicable in establishing a claim and convicting a crime if the claim cannot be prove through admission and testimony. Being the last divinely revealed law, the *shari'ah* seeks to achieve a number of temporal goals, the most importance of which is the pursuit of justice. Both the Holy Qur'an and the *Sunnah* of the Holy Prophet, Muhammad S.A.W repeatedly demand *qarinah* in achieving of justice and condemn injustice.

Before the terms of *qarinah* acceptable in proving a fact, the judges should consider the applying of admission or *iqrar* first. Generally, *iqrar* also known as confession is a form of admission for the purpose of proving a fact in order to establish a right or interest of another person against the maker of the admission himself, for example an admission of *zina* or adultery.

But in other circumstances an *iqrar* may also involve a second party, for example if someone who his name Busu admitted committing theft and such an admission has been acknowledged by the court then the offence of theft is thus established as against the confessor Busu but such an *iqrar* cannot however have any implications on any other party.

In establishing a right, interest, liability or offence through the use of *iqrar* should fulfill of three elements, namely *muqirrun* (the maker of the *iqrar*), *muqirrun lahu* (the person deriving benefit from such an *iqrar*), and *muqarrun bihi* (the subject – matter of the *iqrar*, such as right, interest or liability). The position of *iqrar* as a first

tool of proof was recognised by Shar'ī evidence that can be found in many verses of the Al-Qur'an and in the *Sunnah*. Indeed, the example of *ayah* relate with *iqrar*

As Allah says:

" بَلِ الْإِنْسَانُ عَلَىٰ نَفْسِهِ بَصِيرَةٌ ۖ وَلَوْ أَلْقَىٰ مَعَاذِيرَهُ "

**Translation:** "Nay, man will be evidence against himself. Even though he were to put up his excuses".<sup>21</sup>

Rather than this also we can found the resorted of *iqrar* in Islamic law of evidence in a *hadith* of the Prophet S.A.W concerning one Maiz, the Prophet S.A.W said to the effect:

"It has come to my knowledge that you have had sexual relations with a certain slave woman?" Maiz replied: "Yes," He admitted the fact four times and as such it was ordered that the punishment of stoning be inflicted on him.<sup>22</sup>

Next, the second standard position a tool of proof is evidence by testimony or *Al-shahadah*. Generally, *shahadah* means news or information, which is authentic (undoubted) it is a speech which describes an event that was previously witnessed. Some of the 'ulama have also defined *shahadah* from the technical sense with a multitude of meaning. For example, according to Ibn Al-Humam who is a Hanafi jurist, *shahadah* is a form of notice (which is authentic) to prove a right or interest through the use of specific words in the case of a judicial proceeding.<sup>23</sup>

The 'ulama are unanimous in their view that *shahadah* is the next best evidence after *iqrar* or confession.

<sup>21</sup> Al-Qur'an. Al-Qiyamah 75: 14-15.

<sup>22</sup> Al-Shaukani, Muhammad bin 'Ali bin Muhammad. 1961. *Nail Al-Autaar*. Egypt: Mustaffa Al-Babi Al-Halabi. Vol 7. p.100.

<sup>23</sup> 'Abdul Wahid. 1317 H. *Fathu Al-Qaadir*. Egypt: Matba'ah Al-Kubra Al-Amiriyah. p. 2.

As Allah says in Al-Qur'an:

" وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَى وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ. "

**Translation:** "And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her".<sup>24</sup>

Before a testimony or *shahadah* acceptable as a tool of proof, there is five conditions must be fulfilled to attest its validity. They are, the party who gave that testimony, the party for whose benefit the testimony was given, the party against whom the testimony was given, the specific words indicating a testimony and lastly is the subject matter of the testimony.<sup>25</sup> Besides that, there are other conditions for acceptance of *shahadah* and mode of giving *shahadah* also must fulfill before it can be accepted by the court that not been discussed here.

*Shar'i* evidence was attesting the validity of *Al-shahadah* as one of the means of proof. Islamic law of evidence was assuming *shahadah* as one of the stronger means of proof in Islamic law of evidence. The 'ulama are unanimous in their view that *shahadah* is the next best evidence after *iqrar* or confession and there are example evidence to support this view.<sup>26</sup>

<sup>24</sup> Al-Qur'an. Al-Baqarah 2: 282.

<sup>25</sup> Muhammad Al-Shabini Al-Khatib. 1954. *Mughni Al-Muhtaj*. Egypt: Mustaffa Al-Babi Al-Halabi. Vol 4. p. 420.

<sup>26</sup> Mahmud Saedon A.Othman. 1996. *An Introduction To Islamic Law Of Evidence*. (trans) Raden Ahmad Shauki R. Hisam. Selangor: Open Press. p. 47.

As Allah says:

" يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ  
وَالْأَقْرَبِينَ إِنْ يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ تَلَوُّوا أَوْ  
تُعْرَضُوا فَإِنَّ اللَّهَ كَانَهُ بِمَا تَعْمَلُونَ خَبِيرًا "

**Translation:** "O ye who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that ye do".<sup>27</sup>

Allah says further:

" فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِّنكُمْ  
وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ "

**Translation:** "Thus when they fulfill their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two parsons from among you, endowed with justice, and established the evidence (as) before God".<sup>28</sup>

After testimony and admission an authoritative source of the proof of a fact in Islamic law is circumstantial evidence (*al-qarain*). *Qarinah* was acceptable in the Islamic law of evidence for the purpose of proving a fact in order to establish a right or interest. But the application of *qarinah* was apply if such cases cannot be proving through the evidence by *iqrar* or admission and evidence by *shahadah* or testimony.

Muslim jurist have done significant work on the Islamic law of evidence. They have derived certain principles of *qarinah* in convicting a crime from the relevant texts of

<sup>27</sup> Al-Qur'an. Al-Nisa' 4: 135.

<sup>28</sup> Al-Qur'an. Al- Talaq 65: 2.

Qur'an, *Sunnah* and practice of the companions of the Prophet S.A.W. They also have developed the position of *qarinah* as a tool of proof in their respective periods and circumstances.

Accordingly, Islamic Shari'ah recognised *qarinah* as evidence in a number of diverse situations.

Allah says in the Holy Qur'an:

" وَجَاءُوا عَلَىٰ قَمِيصِهِ بِدَمٍ كَذِبٍ قَالَ بَلْ سَوَّلَتْ لَكُمْ أَنفُسُكُمْ أَمْرًا فَصَبِرْ جَمِيلًا وَاللَّهُ الْمُسْتَعَانُ عَلَىٰ مَا تَصِفُونَ "

**Translation:** "They stained his shirt with false blood. He said: "Nay, but you minds have made up a tale (that may pass) with you, (for me) patience is most fitting: Against that which ye assert, it is God (alone) Whose help can be sought..."<sup>29</sup>

Accordingly, *qarinah* was acceptable in the Islamic law of evidence for the purpose of proving a fact in order to establish a right or interest. But, the application of *qarinah* was apply if such cases cannot be proving through the evidence by admission or *iqrar* and evidence by testimony or *shahadah*.

But sometimes, the issue being raised in the application of *qarinah* is, for example, on someone's going into an empty house, immediately after a man has come from the house with fear and haste, and with a bloodstained knife in his hand, if there is seen a person with his throat recently cut, there is no doubt that man is the murderer of the person. Here, it is clearly shown that no attention is paid to the mere possible chance that person killed himself. So that, the question is which one is more acceptable between confession, *shahadah* or *qarinah* in establishing a claim and convicting a crime in that murderer case.

<sup>29</sup> Al-Qur'an. Yusuf 12: 18.

Hence, the refuses of the murderer in giving admission (*iqrar*) and there is no witness to give testimony (*shahadah*) in that case will automatically become *qarinah* to the truth of assertion. The refuses of testimony was assume included as a part of *qarinah*.<sup>30</sup> It's means, the refuses of such accused party to take an oath when command by the judges or *qadi* without reasonable excuses such as handicap, or fear with the court situation.<sup>31</sup>

### 3.2 THE HIKMAH OF QARINAH

As a peace religion, Islam was deciding a rule whenever all of persons should established a justice in their life. Those who win in any court proceeding or trial in the manners of such cases means, success in establish justice and give a rights to the right behalf without any lying. Islam also has laid down a fair and clear law of evidence to prove the facts relevant for the decision of a court. The main aim of this law is that an innocent person must not be punished and a guilty person must not escape punishment.

Here, there are a few of *hikmah* or advantages of *qarinah* according to its function in establishing a claim and convicting a crime in Islamic law of evidence. As every one is presumed to be inherently innocent, only conclusive and convincing evidence such as *qarinah* without flaw can overcome this presumption.

The evidence through *qarinah* includes the post mortem examination, dying statement, recovery of blood stained clothes, razor, spear, lath chopper and others.<sup>32</sup> It means, Islamic law of evidence was not burden Muslims if such crime cannot be proof through *iqrar* or *shahadah* in order to establishing a justice.

<sup>30</sup> Dr. Mat Saad Abd. Rahman. 2000. "Acara Keterangan Dalam Pembuktian Kes Pembunuhan Dan Kecederaan". *Tinjauan Kepada Perundangan Islam*. Kuala Lumpur: Institut Kefahaman Islam Malaysia (IKIM). p. 397

<sup>31</sup> Dr. Abd al-Fattah Muhammad Abu al-Ainain. 1991. *Al-Qada' Wa Al-Ithbat fi Al-Fiqh Al-Islami wa Al-Qanun Al-Yamani*. Kaherah: n.pb. p. 282.

<sup>32</sup> Dr. Anwarullah. 1994. *Islamic Law Of Evidence*. Islamabad: Shariah Academy International Islamic University. p. 67.

Next, *qarinah* also plays its roles in existing of injuries on the body of the suspect or accused, recovery of a gun or other weapon can be considered in a murder case as circumstantial evidence, which can be linked and corroborated with other circumstances.

The principles forms of the circumstantial evidence in criminal cases such as motives of the accused, his threat, his preparations, false statement, his silence, his possession of stolen, his attempts etc is example of fact that cannot be prove by others way accept *qarinah*. We can see here that there is a big *hikmah* that hide behind *qarinah* in establishing a claim and convicting a crime in order to insure justice in judicial system.

The last one *hikmah* of *qarinah* is the dependence should be on the *qarinah* which is absolutely certain and capable of only one interpretation. It is because if there is any weakness in these aspects as mention before, the *qarinah* can be rejected. Moreover, we depend on the quality of *qarinah* at the time of passing judgement in judicial proceeding.

If any flaw appears or existed later, the judgement itself will be open for reconsideration. The situation is like in all other modes of proof such as testimonies or confession where the judge decide according to the preponderance such they create. The preponderance can also be false if the witnesses are dishonest or the confession is not really true. In this situation, the truth cannot be prove accept applying the *qarinah* concept in proving a fact. Therefore, the terms of *qarinah* is really independence and flexible in its application because its will accept by judge if fulfill its conditions and will be rejected if not.

### 3.3 TYPES OF *QARINAH*

#### a) In general:

Generally, in the Arabic language *'ulama* are divided *qarinah* into two types. The first type is the *qarinah maqaliyyah* (مقالية), *qarinah lafziyyah* (لفظية) or *qarinah ma'nawiyyah*<sup>33</sup> (معنوية). These types of *qarinah* were based on metaphor. For example, someone says, "I have seen a flower writing." "A flower" here means "someone who is a pretty woman as a flower is writing."

Next, the second type of *qarinah* is known as the *qarinah haliyyah* (حالية)<sup>34</sup>. This type of *qarinah* is based on circumstances and surroundings. The terms of circumstances in this situation brings a certain meaning, as for the example of a man who says to his friend who is about to leave on a voyage, "May Allah protect you." The words in this situation are spoken in an atmosphere where the speaker expresses his wish that he could accompany his friend on the voyage.<sup>35</sup>

According to the explanation about both of types of *qarinah* above, it is clear shown that anything which points to a certain meaning, either in the circumstances, form words, acts or omission are therefore *qarinah*.

Beside that, in terms of law, the *qarinah* is the logical inference to be drawn from something done, or from circumstances by virtue of which the matter becomes definitive, a sign that makes the matter certain. It is also called presumption, which means a conclusion or inference as to the truth of some fact in question, drawn from other facts proved or admitted to be true. This type of *qarinah* may be weak or strong.

<sup>33</sup> Mahmud Saedon A. Othman. 1996. *Islamic Law Of Evidence*. (trans) Raden Ahmad Shauki R. Hisam. Selangor: Open Press. p.117.

<sup>34</sup> Mahmud Saedon A. Othman. 1996. *Islamic Law Of Evidence*. p.117.

<sup>35</sup> Ahmad 'Abdul Mun'im Al- Bahai. 1965. *Min Turuq Al-Ithbat Fi Al-Shari'ah Wa Fil Al-Qanun*. Egypt: Dar Al-Fikr Al-'Arabi. p. 73.

From two type of circumstantial evidence or *qarinah* we can differ it in their application in establishing a claim and convicting a crime beside prove a fact.

### 3.4 THE FORM OF *QARINAH* PARTICULAR IN “ ‘*ILM AL-QADHI*”

In this following sub-topic, *qarinah* will be discussed as one of the means of proof in Islam regarding to its form in “ ‘*Ilm Al-Qadhi* ” particularly. The form of *qarinah* can be divided into two types namely *qarinah iqnaiyyah* and *qarinah qanuniyyah*.

#### 3.4.1 *QARINAH IQNAIYYAH*:

This type of *qarinah* is also known as a *qarinah qadaiyyah*. *Qarinah qadaiyyah* is an effort of judges in making a conclusion for the matters which not sure or confuse in the fact of such cases based on the *qarinah* that existed.<sup>36</sup>

Otherwise, the judges have their own powers to decide and make any decision based on the conclusion that done through *ijtihad* which means extracting legal rules from the original sources and also through their own expert and knowledge. The powers to refer to the past cases that have been trial in any proceeding before them were given in pursuit a justice besides their expert and knowledge.

#### 3.4.2 *QARINAH QANUNIYYAH*:

This form of *qarinah* is relate with the power and jurisdiction of judges as decide by *syara'* without any consideration. Its means the judges can't make a decision out of *syara'* rules.<sup>37</sup> For example, Islam was recognised the conditions of *mumaiyyiz* for a child is around the age of seven years old. So that, the child that their age was

<sup>36</sup> Sidi Ahmad Abdullah. 1998. *Pembuktian Dan Keterangan Dalam Undang-Undang Islam, Rujukan Khusus Kepada Qarinah*. (Bachelor Thesis). Universiti Malaya. p. 38.

<sup>37</sup> Youm Rashidah Sulaiman. 1990. *Beban Pembuktian: Satu Kajian Mengenai Qarinah Dan Amalannya Di Mahkamah Syariah Wilayah Pesekutuan*. (Bachelor Thesis). Universiti Malaya. p. 50.

achieved seven years old was considered as *mumayyiz* person according to *hukm syara'*.

Rather than this, nobody was given consent to change this statement or *hukm*. From the meaning of both types of this *qarinah*, we can conclude that *qarinah Iqnaiyyah* is, where the judges can make their own decision based on their '*ijtihad*'. But, the *qarinah Qanuniyyah* was given a rules where the judges should follow all the *shari'* ruling in deciding any decision and they have no power to make a decision for the case which there is no evidence to prove it as claim by *shar'i*.

### **3.5 GENERAL CONDITIONS OF *QARINAH*.**

**i)** The first condition of resorted *qarinah* is to ensure appearance signs are really exists to convicts for the reason there is indicate, signs or *lauth* (circumstantial evidence) shows it is relevant.

**ii)** The second one is it should have a relation between the appearance and hiding matters, whether by the evaluation and attention methods at that time of event occurs. This types of condition is needed to those who really expert in the evidence and judicial field. The purpose of this condition is to avoid a misevaluation, which can give a bad consequences or effect to the society.