



# THE POSITION OF WITNESSES IN SYARIAH AND CIVIL COURTS: PROCEEDINGS IN MALAYSIA

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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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## ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

*In the name of Allah, The Most Gracious, The Most Merciful*

Praise be to Allah, the Lord of the world and may peace and blessings be upon the believed Prophet Muhammad S.A.W, the Messenger of Allah.

First and foremost, I would like to dedicate my appreciation to Dr. Mariam Saidona Tagoranao as my supervisor of this Academic Project for her continued support and guidance during this project. Only Allah will bless her.

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Last but not least, perfection come from Allah and weakness from me and nobody is perfect but the Creator, Allah S.W.T.

For those whom have given a hand, are due all praise and gratitude from me. May Allah bless them all.

## ABSTRAK

Kajian perpustakaan ini merupakan kajian yang membincangkan tentang kedudukan saksi-saksi di mahkamah syariah dan sivil sebagaimana prosiding di Malaysia. Kajian ini bertujuan untuk mengenalpasti permasalahan dan jurang kedudukan saksi antara mahkamah syariah dan sivil di dalam sistem perundangan di Malaysia. Penulis juga mengkaji tentang kedudukan saksi dari segi Hukum syarak dan Undang-undang keterangan sedia ada. Untuk memperolehi data, penulis telah merujuk kepada pemerhatian, specialist informants, dokumen, senarai kes-kes dan enakmen-enakmen yang berkaitan. Untuk memantapkan lagi kajian, penulis juga memberi contoh isu-isu semasa yang mempunyai hubungan dengan kajian. Hasil kajian telah menunjukkan bahawa terdapat banyak khilaf dan jurang antara saksi-saksi di kedua-dua mahkamah antaranya dari segi syarat-syarat kelayakan menjadi saksi, bilangan saksi dan cara pemeriksaan ke atas saksi. Kajian juga mendapati masih banyak kekurangan yang mana memerlukan perubahan dan peningkatan sebagai langkah untuk memastikan sistem keadilan Negara tidak terjejas. Dengan itu, penulis telah memberikan beberapa cadangan idea dan cara mengatasi untuk memastikan system perundangan Negara akan lebih cemerlang dan berkualiti sejajar dengan Hukum Syarak.

## ABSTRACT

This library research provides an in-depth discussion of the position of witnesses in Syariah and Civil courts, proceedings in Malaysia. The study sought to find the problems and gaps pertaining to the position of witnesses in the Syariah and civil courts in the Malaysian Legal System. The writer also researched the position of witnesses based on The Law of Allah (*Hukum Syarak*) and the current Law of Evidence. Observations, specialist informants, documents, lists of cases and enactments which are related to the study were tools employed for data gathering purposes. The findings indicate that there are many contradictions and gaps among witnesses in both courts such as the conditions for being witnesses, the number of witnesses and the examination of witnesses. The study found that there are many changes and improvements that need to be taken which are preventing the effectiveness of Malaysian system of justice. At the end of this research, the writer has given recommendations, ideas and some suggestions and solutions in order to make sure that the Malaysian Legal System is excellent based on the Law of Allah (*Hukum Syarak*).

## ملخص البحث

يبحث هذا الموضوع موقع الشهادة في المحكمة الشرعية والمحكمة الوضعية في ماليزيا. ويهدف البحث إلى معرفة المسائل والفاصل في موقع الشهادة في محكمتين في نظام القانون في ماليزيا. ويدرس الباحث أيضا موقع الشهادة من الأحكام الشرعية والقانون البينة في ماليزيا. وقد تم الرجوع إلى الوثائق والرأى الخبير, والحالة, والقانون الذي يتعلق به في البحث. وإثبات البحث, يعطي الباحث المعلومات الواقعة والمعاصرة التي تتعلق بالبحث. وتشير النتائج إلى أنه يوجد عدد من الخلافات بين الشهادة في المحكمتين, ومنها: من شروط المناسب على الشهود, عدد الشهود, وكيفيات تزكية الشهود. وتوصل هذا البحث أيضا إلى أنه يوجد نقض يحتاج إلى التجدد والتبديل ليؤكد نظام العدالة للدولة. بذلك, يقدم الباحث عددا من الإقتراحات وطرق علاجها ليكون نظام القضاء بماليزيا متفقا مع أحكام الشريعة.

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## GLOSSARY

Alamah	Signs
Al-Ilm Al-Qadi	Personal knowledge of a judge
Al-Iqrar	Admission and Confession
Al-Khabar	Information
Al-Kitabah	Documentary Evidence
Al-Qarinah	Circumstantial Evidence
Al-Qiyafah	Evidence to establish paternity
Al-Yamin	Oath
Amarah	Sign
Ar-Ra'yu Al-Khabir	Evidence by an expert
As-shahadah	Evidence by testimony
Ayah	Sentence
Bayyinah	Evidence
Burhan	Proof
da'wa	Charge
Dilalah	Path or proof
fitrah	Nature
hadd	limitation
Hirabah	Spear-hand
Hujjah	Argument
ibadah	Worship
Khalif	Slave
Lian	Oath to deny paternity of a child
Murtad	Apostasy
Nas	Sentence
Nazar	To vow
Qazaf	To throw
Rashid	The right way
Sahih	Right
Syarak	The law of Allah
Ta'zir	Punishment

Tabsirah	Sign
Tazkiyat	Examination
Ulama'	Islamic jurists
Wakaf	Land property
Zina	Sexual intercourse

## Transliteration

ARABIC WORD TRANSLATION SYSTEM  
TRANSLATION TABLE

## 1. ALPHABET

Arabic	Latin	Example	Translation
ء	,	فرقة	fa`r
ب	b	بلغ	burd
ت	t	تل	tall
ث	th	ثوب	thawb
ج	j	جهد	juhd
ح	h	حليب	halib
خ	kh	خاتم	khadim
د	d	ديك	dik
ذ	dh	ذهب	dhabab
ر	r	رفيق	rafiq
ز	z	زميل	zalim
س	s	سلام	salam
ش	sh	شعب	sah`b
ص	s,	سنة	sa`nnah
ض	.d	دين	din
ط	t	طالب	talib
ظ	.z	ظالم	zalim
ع	،	عدل	`adl
غ	gh	غزوة	ghazwh
ف	f	فضل	fadl
ق	q	قلب	qallb
ك	k	كبير	kabir
ل	l	لب	lubb
م	m	مال	mal
ن	n	نجم	najm
ه	h	هزل	hawl
و	w	ولي	wali
ي	y	يوم	yaumi

## 2. SHORT VOWEL

Arabic	Latin	Example	Transliteration
ـَ -----	a	كَتَبَ	kataba
ـِ -----	i	عَلِمَ	`alima
ـُ -----	u	غَلِبَ	ghuliba

## 3. LONG VOWEL

Arabic	Latin	Example	Transliteration
ا، آ	a	عالم، فتى	'alim, fat a
ي	i	عليم، داعي	'al im, da'i
و	u	علوم، أدعو	'ul um, ad'u

## 4. DIPTHONG

Arabic	Latin	Example	Transliteration
و	aw	نوم	nawm
ي	ay	ليل	layl
يَّ	iyy	شافعي	shafi'iyy (ending)
وَّ	uww	علوَّ	'ulluw

## LIST OF SYMBOL

#      Written by

# CHAPTER ONE

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background Research

Muslims, who now constitute one-fifth of the human race, have no jurisdiction to exist as a community but they should bear witness, before humankind, to the Truth and guidance, which God has given them. For this purpose, God sent all the Prophets. They showed men the right way of life, the path of his Creator, so that he could live by it and not plead ignorance when called to account on the Day of Judgment. Muslims when failure to do their duty and instead giving false witness, he holds, is the sole cause of their present state of ignominy and backwardness. (Sayyid Abul A'la Mawdudi, 1985).

*Shahadah* of which 'witness' is the English equivalent, is central to Islam. It plays a crucial role in defining and shaping the Islamic life and discourse, a life and discourse, which extends from the existential to the cosmic. 'Witnessing' thus lies at the heart of Islam, it constitutes the precincts of Islam. One can enter Islam only by upon saying the *shahadah* and one can remain in Islam only by saying and doing the *shahadah*. Five times a day it must be proclaimed to the world from minarets and rooftops wherever a Muslim might happen to be, still much more often it must be uttered in the deep silence of the heart. In between every aspect of his life should be shaped by the *shahadah*.<sup>1</sup>

*Shahadah* in the side of Islamic evidence is the person who gives evidence in the court as a proof and argument in judicial hearing.

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<sup>1</sup> Khurram Murad, 1994. *Witnesses Unto Mankind, The Purpose and Duty of Muslim Ummah*. Nigeria. Quran House, Kenya. p. 13.

Some scholars pointed out that the evidence of witness is the strongest argument because there was no objection among scholars about the obligation to give evidence through witness especially in the cases of *hudud*, *qisas*, *mal* and *furuj*. Giving evidence by witnesses is clearer than other methods.

In the judiciary and justice, every case that brought to the court, the witness took an important role to strengthen and support the evidence as a proof to convict the offender by the judge according to the evidence by witnesses. In Islam, the witnesses cannot hide the evidence which they have witnessed and must fulfill their witnesses because of Allah. This is based on the Al-Quran , which reads:

﴿وَلَا تَكْتُمُوا الشَّهَادَةَ، وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثَمٌ قَلْبُهُ﴾

‘Do not conceal testimony, For whoever conceals it, His heart is stained with sin. And Allah knows all that you do’.<sup>2</sup>

## 1.2 Significance of Study

The assertion of a witness in court offered as evidence of the truth. This academic project concerned with who may be a witness, what support may be required for them, how witnesses give evidence and others.

According to the important of the witness in court, the writer already acknowledges the previous researchers who did the academic projects related to the issue of witness.

Some of theses are as follows:

1. Kesaksian wanita: Prinsip dan amalan-amalan di Malaysia, Mohd Azli Adnan, 1992.
2. Kesaksian wanita: Satu kajian perbandingan antara undang-undang jenayah dan sivil, Ahlaami Abdul Halim, 1996.
3. Kesaksian dan keterangan: Benarkah wanita dianaktirikan di Mahkamah Syariah? Suzana Ghazali, 1998.

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<sup>2</sup> Al-Quran. Al-Baqarah 2:283.

Yet the witnesses are the most fundamental witnesses in the administration of justice. Without them, there will be no evidence. Without evidence, there will be no case and without the case, there will be no justice done. There is therefore here a need to infuse in the minds of the public, especially in our young ones, of the role of civic duties they have to play with regard to giving evidence in court. Every member of the public should realize that it is the duty to come forward and give evidence. On the other hand, this duty must be compensated in some ways by the loss of earnings because they have to attend the court. To make them less reluctant to come to court, judges and counsel should refrain from mistreating witnesses and if counsels do so, the opposite counsel should come to their rescue. If not, the court itself should take upon itself this responsibility.

### 1.3 Aim of Research

- To make sure in the administration of justice that the one who relies upon the evidence of witnesses must go on successfully.
- To explore the effectiveness of witnesses and their position in *Syariah* and Civil courts in Malaysia.
- To define the reasons of reluctant by witnesses in presenting themselves to court.

### 1.4 Objectives of Research

The most objective of this research is to know and explore the position of witnesses in *Syariah* and civil courts, including their importance, status and effectiveness of witnesses when giving their evidence in court.

As we know, the *hukm* of giving evidence was *Fardhu Kifayah* for the peek of Allah. Allah said to the effect:

## ﴿ولا يَأْبُ الشُّهَدَاءُ إِذَا مَا دُعُوا﴾

“All the Witnesses was not permissible to be reluctant in giving evidence When they were invited”<sup>3</sup>

*Syahid* means the name given to the person who gives the evidence and as a Muslim, giving evidence is trustworthy. <sup>4</sup> Therefore, it must be fulfill by Muslim to perform their responsibility in giving proof to have justice. Despite of this, there are still people who try to deny their obligation as a witness whether in Civil and *Syariah* courts. Therefore, by this research, I will try to find out the reasons why this situation still exists.

### 1.5 Scope of Research

Research scope is an area of limitation of certain research. In this research, the writer will examine the effectiveness of witnesses in *Syariah* and Civil courts in Malaysia according to their credibility, competence and qualifications that are admissible in giving evidence during judicial hearing.

There are also contradiction between witnesses of Civil and *Syariah* Courts. As we know, there is a dual legal system in Malaysia, which divided into the general civil courts and the *Syariah* Courts. The *Syariah* Courts have jurisdiction only over persons who are Muslims and its main area of jurisdiction is in the area of family law.

In civil cases, until fairly recently, according to Section 96(2)<sup>5</sup> a child who understands the nature of an oath and that it is his duty to speak truth and he has sufficient understanding to justify his evidence being heard may be heard by the court. A child under the age of 18, whether or not a child understands the nature of an oath, it is submitted that the common law authorities, which governed in criminal cases as well as civil cases prior to parliamentary intervention, should guide the court. There is

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<sup>3</sup> Al-Quran. Al-Baqarah 2:282

<sup>4</sup> Majallat al-Ahkam al-Adliyyah. 1967. (English trans). Lahore: Punjab Education Press. Article 1684

<sup>5</sup> Children Act 1989.

no fixed age above which a child should treat as competent and below which a child should be examine.

However, in *Syariah* Court, the compulsory conditions for witnesses is puberty which means, person who have not attain the age of maturity is not competent to be a witness. It is because based on their childhood period; they were not aware to make the sin to lie when giving an oath and evidence to the court. Here, I will discuss and find more contradiction of their positions in giving evidence before the court.

### 1.6 Literature Review

The law of civil and *Syariah*, both have their own privileges and sovereignty. Both were in one opinion about the legal maxim to produce justice. The first maxim is an accused person is presumed to be innocent until he is proven to be guilty and another one is in the early case, that someone was considered as innocent. Both legal maxims were in accordance with Allah injunction to the effect:

﴿ولا تزر وازرة أخرى وما كنا معذيين حتى نبعث رسولا﴾

“No bearer of burdens can bear the burdens of another, nor would we visit our wrath until we had sent an apostle (to give warning)”.<sup>6</sup>

This *ayat* shows that the principle of Islamic justice is concern about the maxim of an accused person and considers him or her as innocent until the offence was decided by the court as long as before the court they were given a chance to defend themselves (Tan Sri Dato’ Syed Agil Barakbah, 1995).

The general feature of the Islamic law of evidence is testimony of a witness (*shahadah*) which means a juristic act of the category of information (*akhbarat*). This information may be supplied either by the statements of some one who perceived the fact or by perceptible nature or all traces accompanying or immediately following the event or by both. The necessity for evidence mostly arises when the fact in question

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<sup>6</sup> Al-Quran. Al-Isra’ 23:15

has originated a right in some one against another. The right of the witnesses, however is to give true evidence, but as men do not always give correct information either from error of perception or some moral aberration, it is incumbent on the law to take precautions with a view to prevent the Court as far as possible from being misled by falsehoods.

However, nowadays, people are not aware about the importance of witnesses and their position in *Syariah* and Civil courts whether they are responsible to give the evidence as a proof in trial. Some people, going to court is a troublesome task, therefore the less they have to do with the court, the better it is for them. Given this attitude of mind, witnesses will be further unwilling to attend the court where their colleagues being ill-treated by counsel and sometimes by judges. They are also keeping themselves away from the court if they are required to testify in a case involving influential people and secret society members who will be in a position to harm their livelihood (Tun Salleh Abas, 1978).

The problem arose here also such the facilities for witnesses today are inadequate and their rooms in the court are often uncomfortable. Their allowances fixed by the law are also inadequate.

## **1.7 Research Method**

The term “methodology” comes from Greek. Word “methods” which means ‘style’, ‘way’, and ‘logos’, namely as knowledge. By this guidance, we can define the meaning of methodology is ‘a system of methods’ used (Oxford Student Dictionary, 2001) or linking the way of observation and presentation.

The research methodology that has been used in this academic project is qualitative and interview. Qualitative methods were investigated with respect to find the causes and solutions for weakness of the administration of justice to make sure the competence and commitment of witnesses to present to the court. It also developed based on instruments reviewed in the literature. Further, it was also adapted to the Malaysian culture, the position of educations, ages and races and the focus group was

advocate and solicitor that involve both genders, *Syariah* Subordinate Court officers, Magistrate Court officers and others. Another method that has been used is interview. This interview session will be held with advocate and solicitor in firm, the officers of *Syariah* Subordinate Court and the officers of Legal Aid Bureau to collect the data.

### **1.7.2 Method of Data Collection**

To realize and get some facts and data through this study, the writer has used two ways of methods to collect the data. These are library research and field research.

#### **1.7.2.1 Library Research**

This research will be completed by collecting the data, information and knowledge through libraries around Kuala Lumpur. It also includes the Institution of Public High Education (IPTA) libraries such as:

- I. Library of Tun Sri Lanang, National University of Malaysia (UKM)
- II. Library of Malaya University (UM)
- III. Library of International Islamic University of Malaysia (UIAM)
- IV. Library of Islamic University College of Malaysia (IUCM)

#### **1.7.2.2 Field Research**

To achieve the objectives of the study, field research is also important to get data and useful information and will be applied in this academic project as a primary method. Field research means, the writer critically take part in the case that studied to get more imagination to implement what is going to be explained in the academic project. There are many ways to gather the information, for instance through interview, observations, providing documents and others.

### **1.7.2.3 Documentation Method**

To make a research towards the documents that has relation with problem and significance of research. Documents mean something written which could explain something.

### **1.7.2.4 Interview Method**

This method used to get knowledge from the expert who could give explanation about some topic, which the researcher request from them. Based on their personal knowledge, the researcher gained a lot of information verbally on non-verbally from interviewer and could ask any questions related to the research.

### **1.7.2.5 Observation Method**

Observation method means observation made by researcher towards certain case whether in Civil or *Syariah* courts. This method was important to know the real ways of the justice process and to find how far the effective of witnesses and evidence applied in Civil and *Syariah* Courts, proceedings in Malaysia.

# CHAPTER TWO

## CHAPTER TWO

### PROOF AND EVIDENCE BY TESTIMONY

#### 2.1 Introduction

It is human nature to be faced with problems in life. It is stated in the Al-Quran when Allah S.W.T. informed angels about the creation of Prophet Adam A.S, as they were faced with thousands of questions but accepted it because of Allah S.W.T. It could be concluded that human being cannot runaway from facing problems (Suzana Ghazali, 1998). There are numerous *ayah* in the Al-Quran that explained the problems faced by humans.

‘Look your Lord said to the angels, “I will create a vicegerent on earth”. They said: “Will You place in there, One who will make mischief And shed blood in there? While we (indeed) celebrate Your praises And glorify Your Holy (Name)? He said: “I do know what you do not know’.<sup>1</sup>

The above *ayah* states that human would always be fettered with problems and as a *Khalif* of Allah, it is recommended that humans to overcome it with justice and return the trust of Allah to those who are entitled to it.

On justice and evidence, Islam views the giving of evidence as the discharge of a trust on behalf of Allah and to be witness in accordance with His Supreme will. It is because, during the judicial process, the law of evidence aids the judge in the quest for the truth and the rendering of a just decision as ordained by Allah.

Allah doth command you to render back your trust 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 Allah is He who heareth and seeth all things.<sup>2</sup>

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<sup>1</sup> Al-Quran. Al-Baqarah 2:30.

<sup>2</sup> Al-Quran. An-Nisa’ 4:58

### 2.1.1 Types of Evidence by Islamic Jurists

Evidence is important to have a just decision. In the literal sense, evidence means '*Bayyinah*' which refer to a thing which clarifies or explain a right or interest. *Al-Bayyinah* did not appear in Al-Quran with the meaning of two witnesses at all, but it came in the sense of evidence, and proof singular and plural. Also, the saying of the Prophet (Pbuh); "The Proof (*al-Bayyinah*) is the burden of the plaintiff" means that the plaintiff has the burden to prove his case in order to win a judgment in his favour.<sup>3</sup> The two witnesses are part of *al-Bayyinah*. No doubt, some other kinds of proof could be stronger, such as the evidence of the facts about the truth of the plaintiff, if it is stronger than the statement of the witness. The proof, the evidence, the sign (*Tabsirah*) is similar meaning.<sup>4</sup>

Islam already stated few types of evidence that can be used in the court by the judge to a certain case. They are:

1. Types of evidence agreed upon by the *Ulama*'
2. Types of evidence which are not agreed upon by the *Ulama*'

The types of evidence agreed upon by the *Ulama*' can be divided into three types, they are *As-shahadah* (witness), *Al-Iqrar* (admission or confession) and *Al-Yamin* (oath). On the other hand, the types of evidence which are not agreed upon by the *Ulama*' are *Al-Ilm Al-Qadi* (personal knowledge of Qadhi), *Al-Kitabah* (Documentary evidence), *Al-Qarinah* (Circumstantial Evidence), *Ar-Ra'yu Al-Khabir* (Evidence by an expert), *Al-Khabar* (Information), *Al-Qiyafah* (Established Paternity), *Lian*.

### 2.1.2 The separation between *Bayyinah* and the Witnesses (*Shahadah*)

Some jurists are of the opinion that *shahadah* is a synonym for *bayyinah*, and *bayyinah* is said to be *shahadah*. This is mainly due to the similarities between *bayyinah* and *shahadah* from which it can be seen that a large part of the evidence given by the witnesses is in the form of *shahadah*. In fact, the terms which are used

<sup>3</sup> Ahmad Fathi Bahnasi. 1983. *Nazariyyat al-Ithbat fi al-Fiqh al-Jina'I al-Islami*. Dar as-Shuruq. Cairo

<sup>4</sup> Dr. Ala'eddin Kharofa. 2000. *The Legal Methods in Islamic Administration*. Kuala Lumpur. International Law Book Services. p. 12

for evidence, such as *bayyinah*, *dilalah*, meaning, *hujjah*, argument, *burhan*, decisive proof, *ayat*, indication, *tabsirat*, *'alamah* and *amarah*, are close in meaning to each other.<sup>5</sup>

Accordingly, there are two views as to whether the term *bayyinah* is a synonym for *shahadah* or otherwise.

The first view considers that *bayyinah* is a synonym for *shahadah*; this view is held by the majority of Hanafis, Malikis, Shafi'is, and Hanbalis who based their claim on the usage of this term in the Qur'an and Sunnah.<sup>6</sup>

For example, the Qur'an uses the word *shahadah* to mean *bayyinah* in the following verse.

“And those who launch a charge against chaste women and do not produce four witnesses (*shahadah*) flog them with eighty stripes and reject their evidence (*shahadah*) ever after, for such men are wicked transgressors”<sup>7</sup>

From this verse, it can be seen that in order to convict someone of adultery, the evidence should be given by four witnesses.

On the other hand, according to Ibn al-Qayyim who considers *bayyinah* to be wider in scope than *shahadah*, and whatever is given to clarify, explain or to show the existence of a right or any proof or argument through whatever means which is given before a judge, is called *bayyinah*.<sup>8</sup> This is clearly stated in the Qur'an as follows;

“And we have left thereof an evident sign, for any people who (care to) understand”.<sup>9</sup>

Similarly al-Hurri, *bayyinah* is not the same as *shahadah*. In fact *shahadah* is one of the kinds of *bayyinah*, and *bayyinah* is conclusive proof which clarifies truth.

<sup>5</sup> Ibn al-Qayyim al-Jawziyyah. *Al-Turuq al-Hukmiyyah*. p.21

<sup>6</sup> Uthman. 1990. *Al-Qada' fi al-Fiqh al-Islami*. Cairo: al-Azhar University. p.164

<sup>7</sup> Al-Quran. Al-Nur 24:4

<sup>8</sup> Ibn Qayyim. *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Syar'iyyah*. Ed. Beirut. Dar al-Fikr. p.21

<sup>9</sup> Al-Quran. Al-Ankabut. 29:35

From the verse mentioned above, it can be concluded that when the Qur'an uses the term *bayyinah*, it does not only mean *shahadah*, but in fact, it also means arguments, evidence and guidance.<sup>10</sup>

## 2.2 Definition of Witnesses in the Dictionary

The Oxford Advanced Learner's Dictionary of Current English states witness means a person who sees something happen and is able to describe to other people. Oxford Concise English Dictionary (Tenth Edition), says witness means a person who sees an event take place or a person giving sworn testimony to a court of law or the police. While Collins Cobuild English Dictionary, says the definition of witness is a person who saw an event such as an accident or crime or a witness is someone who appears in a court of law to say what he or she knows about a crime or other event. The New Penguin English Dictionary defines witness as the act of certifying that a fact is true or an event has happened; testimony, something that serves as evidence, proof.

## 2.3 Definition of Witnesses in *Syariah* Law

*Shahadah* literally means information about something, which one has witnessed, or seen with one's own eyes, or giving testimony about what one has witnessed. *Shahadah* according to *Syarak* perspective is giving true or *sahih* information in front of *Qadi* to convict a person with an offence by pronouncing *shahadah*. *Shahadah* is different from *iqrar* and *da'wa* because *iqrar* holds when a man testifies against himself in support of a claim made against him, while *da'wa* is defined as demand by a person of his right from another in the presence of a judge. By conclusion, witness is the third person in a dispute between plaintiff and defendant. Witness is the person who delivers or informs what he had witnessed about the right of a person in dispute. Witnesses in Islam should be true and *sahih*, because by giving wrong evidence, it is

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<sup>10</sup> Abdul Muin Abdul Rahman. 1999. *Witness in Islamic Law of Evidence*. Selangor. Pelanduk Publications Sdn. Bhd. p.5

equivalent to big sin and if convicted, the person would get the punishment of *ta'zir* (Dr. Mohd Daud Bakar, 1997).<sup>11</sup>

Some other *ulama'* gave their views about *shahadah* in which they mean that they treat it as a form of knowledge. This is because the word *shahadah* is itself is taken from the word "*al-ilm*". This word was used in the *Al-Quran*, as it says;

There is no god but He: That is the witness of Allah, His angels, and those endowed, standing firm on justice. There is no god but He The Exalted in Power, The Wise.<sup>12</sup>

Some jurists say, *shahadah* means "presence", namely being present at an event, a place or an assembly.<sup>13</sup> This is based on the Qura'nic *ayah* which reads:

So every one of you Who is present (at his home) During that month should spend it in fasting.<sup>14</sup>

In the sense, it also means attendance, as when a person says, "I have witnessed a meeting" it means, "I have attended the meeting".<sup>15</sup>

### 2.3.1 Defitions of *Shahadah* by Islamic Jurists

According to a Hanafi jurist, Ibn Al-Humam, *Shahadah* is a form of notice (which is authentic) to prove a right or interest by specific words in the course of a judicial proceeding.<sup>16</sup>

While Shafi'i jurist says, Sheikh Shihabuddin, *Shahadah* is information about a right or interest for the benefit of another person preceded by the words "I bear witness....."

<sup>11</sup> Ahmad Ibrahim. 1997. *Al-Ahkam, Penghakiman dan Kepeguaman, Jilid 5*. Kuala Lumpur. Dewan Bahasa dan Pustaka. p.145

<sup>12</sup> Al-Quran. Ali Imran 3:18

<sup>13</sup> Muhammad Al-Sharbini Al-Khatib. 1994. *Mughni al-Muhtaaj*. Mustafa Al-Babi Al-Halabi. Vol.4. Egypt. p.426

<sup>14</sup> Al-Quran. Al-Baqarah 2:185

<sup>15</sup> Ahmad Fathi Bahnasi. 1983. *Nazariyyat al-Ithbat fi al-Fiqh al-Jina'I al-Islami*. Dar as-Shuruq. Cairo.p.17

<sup>16</sup> Ibnu al-Humam. 1317H. *Fathu al-Qaadir*. Matba'ah al-Kubra al-Amiriyyah. Egypt. p.2

Another Shafi'i jurist defined *shahadah* as a statement pertaining to something accompanied by a specific word.<sup>17</sup>

Maliki jurists opinioned, said Ibn 'Arafah, *shahadah* is a binding statement which makes it obligatory for a judge to hear it and give a judgement based upon it, provided the witness is just and the statement is made by more than one person or when the claimant is supported by an oath.<sup>18</sup>

The Hanbali jurist stated that *Shahadah* is giving information where the witness was accompanied by specific words such as "I bear witness" or "I testify".<sup>19</sup>

### 2.3.2 Definitions of Witness by Ulama'

Muhammad Salam Madkur defined *shahadah* as truthful information which is given in a court of law accompanied by the word *shahadah*, in order to prove the right or interest of another person.<sup>20</sup>

Az-zuhaily defines *shahadah* as truthful information which is given in a court of law together with the word *ashhadu* in order to prove the right or interest of another person.<sup>21</sup>

Al-Jurjani also gives a similar definition, as he says that *shahadah* is reliable information, which was given with the word *shahadah*, in a court of law to support the rights of another.<sup>22</sup>

According to Fathi Bahnsi, *shahadah* is information pertaining either to tell about a right or interest for the benefit of another person against another person's interest

<sup>17</sup> Al-Qalyuybi. n.d. *Qalyubi Wa Umairah*. Matba'ah Dar al-Kutb al-Arabuyyah. Egypt. P.318

<sup>18</sup> Ali Ahmad al-Khatib. 1991. *Al-Qada' bi al-Shahid wa al-Yamin*. 'Adu Lujnah al-Fatwa bi al-Azhar. p.7

<sup>19</sup> Al-Husairi. 1986. *Ilm al-Qada'*. Vol.1. Bairut. Dar al-Kitab al-'Arabi. p.69

<sup>20</sup> Muhammad Salam Madkur. 1966. *Al-Qada' fi al-Islam*. Cairo: Dar al-Nahdah al-'Arabiyyah. p.84

<sup>21</sup> Al-Zuhayli. 1985. *Al-Fiqh al-Islam fi Uslubih al-Jadid*. Vol.2. Bairut. Dar al-Fikr. p.656

<sup>22</sup> Al-Jurjani. Al-Sharif Ibn Mahmud al-Husayni. 1988. *Kitab al-Ta'rifat*. P.87

concerning the rights of Allah or a fellow human being, which must be based on certainty and not on ambiguity.<sup>23</sup> This is based on what is said by the prophet S.A.W;

“When you see something as clearly as you see the sun, then you can bear witness about it. If not leave it alone”.

### 2.3.3 Other definitions of Witness

The code of Majallat al-Ahkam al-Adliyyah defines *shahadah* as a statement accompanied by the word “*ashhadu*” in order to prove the rights of another person in a court of law.<sup>24</sup>

The Majelle also gave the definition of “*shehadet*” as giving information by the word “*shehadet*”, the two parties being face to face, and in the presence of the judge, when proving the right which one person has against another. That is to say, by saying “*shehadet iderim*” (give evidence).<sup>25</sup>

The Kelantan Evidence of Shariah Court defines *shahadah* as evidence with the quality of truth given in a court using the word “*ashhadu*”, pertaining to the rights of one person against another which binds a judge to give a judgment accordingly.<sup>26</sup>

### 2.3.4 Conclusion

The phrase “*ashhadu bi Allah*” means taking an oath about one’s concerns in the name of God, and when “*ashhadu*” is used alone it means to testify. From the above explanations, it could be concluded that the term *shahadah* literally means witness, information, declaration, knowledge, presence, trustworthiness and taking an oath.

*Shahadah* also is truthful information, based on certainty and not based on guesswork. It must be given in a court together with the word “*ashhadu*” or I testify orally, and not in writing or by signs. It is given to support the rights and interest of another

<sup>23</sup> Ahmad Fathi Bahansi. 1983. *Nazariyyah al-Ithbaat*. Sharikah Al-‘arabiyyah Al-Tiba’ah. Egypt. p.5

<sup>24</sup> Majallat al-Ahkam al-Adliyyah. 1967. (English trans). Lahore: Punjab Education Press.

<sup>25</sup> *Ibid.* Article 1684.

<sup>26</sup> Syariah Court Evidence State of Kelantan 1991. Section 3.

person whether with regards to the rights of Allah or other human being. *Shahadah* also was given to secure the right of another person against yet another person and not for the benefit of the witness himself during a judicial proceeding or in court.

## 2.4 Definitions of Witnesses under Civil Law

A witness is a person who testifies on oath or affirmation in a court of law or in a judicial tribunal.<sup>27</sup> The word ‘witness’ like many words in the English language, is capable of a broad or a narrow meaning, depending on the context in which it is used. In a broad sense, it means a person who has seen a thing or an event and is able to testify to it when called upon to do so; he is a potential witness if that fact or thing is required to be proved.<sup>28</sup>

The underlying premise of the common law trial is that the fact finder is best able to get to the truth of a matter through the process of observing witnesses relating what they have perceived under direct examination and then to have that evidence tested under cross-examination. The primary vehicle of proof in common law is testimonial evidence of what witnesses saw, heard, felt or smelt, insofar as it relates to the facts in issue of the case. Witnesses are expected to give this evidence without opinions as to what may be concluded from what they sensed.<sup>29</sup>

In civil law, a witness is considered one of the most fundamental tenets of the adversary system that proof of facts depends on the presentation of the oral testimony of eyewitnesses to an event, given their evidence orally in court at some point in time after the event in question rather than relying on some contemporaneous account given by a witness.

The civil law of evidence defines the witness as a person who is giving evidence an oath or affirmation in a court of law or in a judicial tribunal, the person will be orally examined in court during the examination-in-chief, cross-examination and re-

<sup>27</sup> RK Nathan. 1993. *A Practical approach to Evidence in Malaysia and Singapore*. Malayan Law Journal Sdn. Bhd. Kuala Lumpur. p. 204

<sup>28</sup> *The Evidence Act 1950*. Section 132

<sup>29</sup> Vicki Wayne. 1998. *Evidence Handbook*. 2<sup>nd</sup> Edition. LBC Information Service. Adelaide.

examination. A witness is also known as any person who is potentially able to provide the police or the court with information about an alleged offence or an offender. Suspects and victims are often important witnesses in that they may provide the police and the court with information which is pertinent to the case.<sup>30</sup>

The word witness is also defined as a person who has seen a thing or an event and is able to testify when called upon to do so. On the other hand, the witness is defined as a person who gives oral evidence in open court, which is confirmed by an oath.

It is also defined as a person who volunteers to give evidence or who is asked to do so. All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions.

#### **2.4.1 Conclusion**

The word witness is employed to mark two different individuals, or the same individual in two different situations. The one, that of a perceiving witness, that is of one who has seen, or heard, or learned by his senses, the fact concerning which he can give information when examined and the other, that of a deposing witness who states in a court of justice the information which he has acquired. The term witness then may be applied to the parties themselves, who have an interest in the case, as well as to those whom it is commonly employed to designate.<sup>31</sup>

Thus, it can be concluded that the above definition of witness means that testimony given by a witness in the civil law of evidence is a witness that is given an oath in a court of law, whether voluntarily or when compelled to do so. It must also be given in the form of an oral statement and not by only producing a document.

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<sup>30</sup> Anthony Heaton-Armstrong, Eric Shepherd, David Wolchover. 2001. *Analysing Witness Testimony: A guide for Legal Practitioners and other Professionals*. Blackstone Press Limited. p.63

<sup>31</sup> M. Dumont. 1981. *A treaties on Juducial Evidence, Extracted from the Manuscripts Jeremy Bentham, Esq.* Fred b.Rothman & Co. Littleton, Colorado. p.88

## 2.5 Justifications of witnesses

There are many justifications of witnesses whether in *Al-Quran* or *Hadith*, which explains the importance of giving evidence and testimony that, should be applied by Muslims with the duty of upholding the truth and justice.

### 2.5.1 Justifications of witnesses by *Al-Quran*

Justice can never be therefore achieved without clear and convincing proof. Witnesses must consider themselves while giving testimony as witnesses for Allah and such act as a form of *'ibadah* to Allah. To this effect Allah says:

O ye who believe! Stand out firmly for justice, as witnesses to Allah even against yourselves or your parents or your kin and whether it be (against) rich or poor. For Allah 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 Allah is well-acquainted with all that ye do.<sup>32</sup>

The above *ayah* explains that evidence and testimony must be given without favour against one or kinfolk and without regard to the fact that it could be injurious to the witness own interest and it also should be given as witnesses for Allah.

People who possess information and evidence must cooperate by giving testimony or evidence. Justice cannot be achieved without their help. The Quran says:<sup>33</sup>

The witnesses should not refuse when they are called on (for evidence).

The witness is also prohibited to refuse to accept to be a witness in some cases as a *Khalif* of Allah. It is because; maybe the truth stands behind his evidence. But, if he or she refuses to do so, this is tantamount to an act of disobedience against Allah and he or she has therefore committed a sin. The Qur'an clearly says:

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<sup>32</sup> Al-Quran. An-Nisa' 4:135

<sup>33</sup> Al-Quran. Al-Baqarah 2:282

Conceal not evidence, for whoever conceals it his heart is tainted with sin and Allah knoweth all that ye do.<sup>34</sup>

This *ayah* mentions that giving evidence and testimony is a crucial factor in the quest for justice. Giving evidence and testimony means being witnesses for Allah and withholding or giving evidence impartially is an offence and considered as a sin.

### 2.5.2 Justifications of witnesses by *Hadith*

There are few Hadith that explain about the obligations of Muslim to give evidence and testimony as a proof during judicial hearing. From a report by Zaid bin Khalid Al-Juhanni says to the effect:<sup>35</sup>

ألا أخبركم بخير الشهداء؟ هو الذي يأتي بالشهادة قبل أن يسألها.

Did I never inform you about the best witness? He is the person who is gives testimony before being is called upon.

It can be concluded that the witness should testify as a witness to admit as evidence in order to give fair judgment.

## 2.6 The importance and obligation in giving *Shahadah* among Muslims

Witness and evidence, both are important to uphold justice. Allah S.W.T stressed that witness and evidence was given as the rights of Allah.<sup>36</sup> So, it is the duty of a person not to withhold any evidence or proof when he or she is called upon to provide one. It is clearly stated in the Qur'an, as mentioned above in Surah Al-Baqarah: 282, that there must be full cooperation in the matter of giving *shahadah* or evidence. Allah considers that whoever conceals or hides the *shahadah* is regarded as a sinner. In Al-

<sup>34</sup> Al-Quran. Al-Baqarah 2:282

<sup>35</sup> Muslim, M. I. n. d. *Sahih Muslim*. Egypt. Kitab al-aqdiyah. Bab Ma Ja'a fi as-Shahadah.. # 3244. See also. Malik. M. I. *Al-muwatta'*. 2000. Egypt. Kitab al-aqdiyah. Bab Ma Ja'a fi as-Shahadah. Hadith 1404. p. #275

<sup>36</sup> Paizah Haji Ismail. 2004. *Satus Wanita Dalam Undang-undang Jenayah Islam*. Yayasan Dakwah Islamiah Malaysia. Kuala Lumpur. p.187

Baqarah, which was the latest ayah revealed by Allah, 30 *hukms* have been included as mentioned by *Khuwayz Mindad* in *Tafsir al-Qurtubi* and one of them was *shahadah*.

It would thus be more accurate to say that while the law was revealed in the specific context of the Qur'an and the Sunnah as the will of God, the Muslims' duty is to embody it in legal enactment in their own context. Indeed, a number of legal rules have been given by the Qur'an to embody the will of God.<sup>37</sup>

## 2.7 The *hukm* of giving *shahadah*

The implementation of *shahadah* was *fardh kifayah*. As Allah says in an *ayah* of the Quran:

﴿ولا يَأْبَى الشَّهَادَةَ إِذَا مَا دُعُوا﴾

“All witnesses were not permissible to be reluctant in giving evidence When they were invited”.<sup>38</sup>

This is because *shahadah* was as a trust given by Allah to human beings, and human beings should implement it as such, means this people who refuse to give testimony commit a sin and sins are prohibited in Islam, and moreover, if it will lead to damage among Muslims. Therefore, it is not permissible for Muslims to damage themselves to give benefit for others.<sup>39</sup>

## 2.8 The Role of witnesses in court

A witness has an active role in the court to give testimony of what he or she had seen, in which the witness should not hide what he or she had witnessed by his or her own eyes and must discharge his or her responsibility because of Allah. Allah says to the effect:

<sup>37</sup> Ahmad Hasan. 1970. *The Early Development of Islamic Jurisprudence*. Islamic Research Institute. Islamabad, Pakistan. p.33

<sup>38</sup> Al-Quran. Al-Baqarah 2:282

<sup>39</sup> Dr. Abdul Karim Zaidan. n.d. *Nizam Al-Qada' Fi As-Syariah Al-Islamiyah*. p 141.

## ﴿وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ﴾

“And take for witness two persons from among you, blessed with (a sense of) justice, and establish the evidence (as if you are) before Allah”.<sup>40</sup>

According to the provisions of *Hukum Syarak*, to be a witness of a certain case is compulsory, especially when one is called to attend court to give testimony whether on the side of plaintiff or respondents, or prosecutor on accused. In Islam, it is considered as *Fardhu ‘Ain*.<sup>41</sup>

### 2.9 The importance and philosophy of *Shahadah*<sup>42</sup>

In the system of Islamic justice, *shahadah* has an important role in the process of arriving at the truth. The existence of *shahadah* in Islam because is of its own importance and philosophy. For instance:

#### 1. For justice

*Shahadah* plays an active role to produce justice, right, peace and harmony. The existence of *shahadah* with tight options will settle a case well and with justice and individuals in society cannot easily accuse, claim and sue a person because every action needs the existence of witnesses or *shahadah*.

With the production of a witness, the decision made by a judge in court will not be bias, and justice will be achieved as best he could even though he cannot guarantee achieving one hundred percent of justice, because nobody is perfect except Allah S.W.T.

<sup>40</sup> Al-Quran. Al-Talaq 65:2

<sup>41</sup> Haji Said bin Ibrahim. 1996. *Kanun Jenayah Syariah dalam Sistem Kehakiman dan Perundangan Islam berdasarkan Al-Quran dan Hadith*. Darul Ma’rifah. Kuala Lumpur. p. 316

<sup>42</sup> Dr. Amir Husin Mohd Nor. Dr. Abdul Basir Mohamad. Dr. Mohd Nasran Mohamad. Zaini Nasohah. 2002. *Falsafah Perundangan Islam*. Mahzum Book Service. Selangor. p.271

The aim of *shahadah* is to satisfy both the disputing party and to avoid continuous hostility. The relationship of *shahadah* with justice is in Al-Quran, verse An-Nisa',

O ye who believe! Stand out firmly for justice, as witnesses to Allah even against yourselves or your parents or your kin and whether it be (against) rich or poor. For Allah 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 Allah is well-acquainted with all that ye do.<sup>43</sup>

In this *ayah*, we can conclude that Allah appeals people to stand out for justice and be a witness is the best way to achieve it.

In a Hadith narrated by Ibn Abbas RA, Rasulullah SAW was asked about *shahadah*, then he said to the man who asked: "Do you see the sun? The man answered: "Yes". Rasulullah SAW said: "if you see such, be a witness, if don't, leave it".<sup>44</sup>

## 2. To create benefits, advantages and peace in society

To prove any prosecution and claim, the prosecutor must bring clear and strong proof and witnesses to support his case. Such was stated in Al-Quran, verse al-Talaq, *ayah* 2 by which can conclude that *shahadah* was a trust of Allah, because in certain cases, decision were based on the testimony of witnesses whether the prosecution was right or wrong. As such, false witnesses will be condemned by Allah and being a false witness is a big sin and if a person was convicted, as a result of false testimony, the witness will be punished as *ta'zir*. Rasulullah SAW says:<sup>45</sup>

"False witness is the biggest sin from other sins"

This is because, the false witness will give benefit to cruel people to deny the right of the people, abolish justice and real evidence, the act of which leads to continuous hostility. This situation is contrary to Islam, Allah says to the effect:

<sup>43</sup> Al-Quran. An-Nisa' 4:135

<sup>44</sup> Hadith. Ibn Hajar. n.d. *Bulugh al-Maram* #310

<sup>45</sup> *Ibid.* #309

﴿فاجتنبوا الرجس من الأوثان واجتنبوا قول الزور﴾

“But avoid all the (intensely) hateful things about idols, and avoid the word that is not true”.<sup>46</sup>

3. The main objective in the system of Islamic justice is not to be punished

*Hikmah*, the punishment and the ways to prove an offence is not aimed at punishing, causing pain or injury people’s body and blemishing the human dignity. It is to make people correct themselves and to be right and dutiful persons on the side of Allah.

This we can see when Allah strengthens the requirements and conditions of witnesses and also the number of witnesses which must be produced, such as in the case of lewdness or *zina*. This is based on the *nas* of *Shari’ah* as says by Allah:

﴿والتي يأتين الفحشة من نسائكم فاستشهدوا عليهن أربعة منكم﴾

“If any of your women is guilty of lewdness (*zina*), take the evidence of four (reliable) witnesses from amongst you against her...”.<sup>47</sup>

In this *ayah*, Allah orders the person who wants to allege a woman of *zina*, to produce four male witnesses. The witnesses must also really saw the act, such as “the rope falling into the well”. This is how important a witness is.

<sup>46</sup> Al-Quran. Al-Hajj 22:30

<sup>47</sup> Al-Quran. An-Nisa’ 4:15

# CHAPTER THREE

## CHAPTER THREE

### LEGAL ADMISSIBILITY AND REQUIREMENTS OF WITNESSES

#### 3.1 Introduction

*Shahadah* is 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. But to be a *shahid*, there are requirements and several conditions which must be fulfilled by a person before giving testimony according to jurists. Generally, there is disagreement among the jurists concerning the legal admissibility and requirements of the testimony of a witness. A *shahadah* or testimony shall be accepted by the court or once *tazkiyyah* has been completed and the judge has no choice but to give a ruling based on such *shahadah*.

A decision on the basis of *shahadah*, once it is established, should not be delayed unless three conditions are present: (i) if there is a possibility that the litigating parties may be able to resolve their dispute through *sulh* (compromise); or (ii) the claimant in the case asks the court for an adjournment; or (iii) the character and conduct of the judge is questionable in the eyes of other judges.<sup>1</sup>

#### 3.2 The pillars of witness

Five conditions must be fulfilled before a *shahadah* can be validly accepted. They are as follows:

1. The party who gave the testimony
2. The party for whose benefit the testimony was given
3. The party against whom the testimony was given
4. The specific words indicating a testimony; and
5. The subject matter of the testimony.<sup>2</sup>

<sup>1</sup> Ahmad Fathi Bahansi, n.d. *Nazariyyah al-Ithbaat*. Sharikah Al-'arabiyyah Al-Tiba'ah. Egypt. p.14

<sup>2</sup> Muhammad Al-Sharbini Al-Khatib. 1994. *Mughni al-Muhtaaj*. Mustafa Al-Babi Al-Halabi. Vol.4. Egypt. p.420

### 3.3 The conditions for the witness in *Syariah* Law

A Muslim is deemed to be '*adil*' if he carries out his religious obligation, performs the prescribed religious duties, abstain from committing capital sins and is not perpetually committing minor sins. Islamic law of Evidence stated that all Muslim shall be competent to give *shahadah* or *bayyinah* as witnesses provided that they are '*aqil*, *baligh*, '*adil*, and have a good memory and are not prejudice.<sup>3</sup>

A witness shall fulfil several conditions before his testimony can be accepted by the court. The conditions for acceptability of the testimony are as follows:

#### 1. *Mukallaf*<sup>4</sup>

*Mukallaf* means a person who is of sound mind and *baligh* (age of majority) according to *Hukm Syarak*. So it is void and not acceptable for a person of unsound mind or child to be a witness because children are not matured and cannot distinguish between right and wrong, valid or invalid things. A person who is not *baligh* or a person who is of unsound mind is competent to give *bayyinah* but not competent to give *shahadah*.<sup>5</sup>

In civil proceedings in a civil court, in deciding on the competence of a person of unsound mind, it is submitted that the courts should be guided by the common law authorities governing criminal as well as civil cases prior to parliamentary intervention. It is competent to give evidence on a charge of manslaughter. Three principles of competence of a person of a sound mind: (1) if in the opinion of the judge a proposed witness, by reason of defective intellect, does not understand the nature and sanction of an oath, he is incompetent to testify; (2) a person defective intellectually who does not understand the nature of an oath may give evidence and it will be left to the jury to attach such weight to the testimony as they see fit; (3) if his evidence is so tainted with insanity as to be unworthy of credit, the jury may properly disregard it.<sup>6</sup>

<sup>3</sup> *Syariah Court Evidence State of Malacca 2002*. Section 83 (1)

<sup>4</sup> Dr. Abdul Karim Zaidan. 1984. *Nizam al-Qada' Fi as-Syari'ah al-Islamiyah*. Matba'ah al-'Ani. Baghdad. p.149.

<sup>5</sup> *Syariah Court Evidence State of Malacca 2002*. Section 83 (4)

<sup>6</sup> R v Hill. (1981) 73 Cr App R 190