



EXAMINING WITNESS INTEREST: THE OBSTACLES OF TESTIMONY IN ISLAMIC JURISPRUDENCE AND POSITIVE LAW

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Abstract: This study compares Islamic jurisprudence and positive law to explore the obstacles of testimony, focusing on the complexity and controversy surrounding witnesses' interests. Employing a legal comparative method, the research examines self-interest in testimony, emphasizing authoritative sources like *fiqh* books and Jordanian law, shedding light on the concept of self-interest as its primary focus. It highlights the differences between Islamic jurisprudence and contemporary legal frameworks, providing a nuanced understanding of witness actions in legal processes. This research's findings reveal that testimony's self-interest predominantly relates to lineage, siblinghood, marital relationships, hostility, and partisanship. The results show both Islamic jurisprudence and positive law recognize the prohibition of testimony due to self-interests is not absolute; there are many interpretations and exceptions to this restriction, with differences stemming from the reliance on religious texts in Islamic jurisprudence and legal reasoning in positive law. This gap arises from the ability of contemporary law to examine the interests of witnesses from various perspectives and through the use of different evidentiary tools. This research contributes practically that the application of law that is different from what has been formulated by *fiqh* scholars in Islamic jurisprudence does not necessarily indicate that the legal decision is at odds with Islamic law.

Keywords: self-interest; testimony; Islamic jurisprudence; positive law.

Abstrak: Penelitian ini membandingkan yurisprudensi Islam dan hukum positif untuk menelusuri hambatan-hambatan yang memengaruhi kesaksian, dengan fokus pada kompleksitas dan kontroversi seputar kepentingan saksi. Dengan menggunakan metode perbandingan hukum, penelitian ini mengkaji kepentingan diri (*self-interest*) dalam kesaksian dengan merujuk pada kitab-kitab fikih dan Undang-Undang Yordania. Studi ini menyoroti perbedaan antara yurisprudensi Islam dan hukum positif dalam memberikan penjelasan mengenai persoalan

kepentingan diri dalam kesaksian. Temuan penelitian ini mengungkapkan bahwa kepentingan pribadi dalam kesaksian secara dominan berkaitan dengan garis keturunan, persaudaraan, hubungan perkawinan, permusuhan, dan keberpihakan. Hasil penelitian menunjukkan bahwa baik yurisprudensi Islam maupun hukum positif mengakui pelarangan kesaksian sebab kepentingan diri namun hal itu tidak bersifat mutlak. Karena ternyata terdapat penafsiran dan pengecualian terhadap restriksi tersebut. Perbedaan keduanya terletak pada ketergantungan pada teks agama dalam yurisprudensi Islam dan penalaran hukum dalam hukum positif. Kesenjangan ini muncul dari kemampuan hukum kontemporer dalam menguji kepentingan saksi dari beragam perspektif dan penggunaan alat-alat pembuktian yang berbeda. Penelitian ini berkontribusi secara praktis bahwa penerapan hukum yang berbeda dari apa yang telah dirumuskan oleh ulama fikih dalam yurisprudensi Islam tidak lantas mengindikasikan bahwa putusan hukum tersebut berseberangan dengan syariat Islam.

Kata Kunci: kepentingan diri; kesaksian; fikih; hukum positif.



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INTRODUCTION

Testimony is crucial in legal proceedings. It enables individuals to safeguard their rights and aids judges in making informed decisions.¹ It authenticates legal facts for litigants, guiding judges within their discretionary authority and legal provisions.² In judicial proceedings, testimony is pivotal in affirming contested rights and carrying legal weight as permissible evidence.³ However, a legal issue arises when there is suspicion that a witness may have a personal interest in the testimony they offer. An individual can be labeled as an interested witness if they stand to gain something from the outcome of a legal proceeding, such as a favorable judgment in a civil case or the conviction of an accused person.⁴ An interested witness is someone involved in a case who has a personal stake in its result.⁵

¹ Ian Patel, "The Role of Testimony and Testimonial Analysis in Human Rights Advocacy and Research," *State Crime Journal* 1, no. 2 (2012): 235–65.

² Rick Kennedy, *A History of Reasonableness: Testimony and Authority in the Art of Thinking*, Rochester Studies in Philosophy, v. 7 (Rochester, N.Y.: University of Rochester Press, 2004), 5.

³ Douglas N. Walton, *Witness Testimony Evidence: Argumentation, Artificial Intelligence, and Law* (Cambridge; New York: Cambridge University Press, 2008), 3.

⁴ Alvin E. Evans, "The Competency of Testamentary Witnesses," *Michigan Law Review* 25, no. 3 (January 1927): 238, <https://doi.org/10.2307/1279034>.

⁵ "Interested Witness," LII / Legal Information Institute, accessed February 2, 2024, https://www.law.cornell.edu/wex/interested_witness.

Several studies have explored witnesses' interests from various perspectives. Bobbe's research critically examines whether the uncontradicted testimony of such a witness was entitled to the same conclusive effect as the uncontradicted testimony of a disinterested witness.⁶ Concerning the main topic, Malik⁷ and Vyas et al.,⁸ focusing on the Indian Evidence Act, emphasized the necessity for such testimony to be supported by additional evidence, cross-examination, and other factors to validate its reliability. Regarding this issue, Graham studied the use of the expert witness and dealt with how it is now permissible to establish that a professional expert called to testify in a particular matter is biased because of financial interest.⁹ A little further, Weidman et al. analyzed how close relationships can influence moral shifts in one person's testimony in protecting or punishing another person.¹⁰ Focusing on the topic of testimony, Al-Rashidi¹¹ and Elgaraybeh¹² have approached it through a comparative lens. Nevertheless, they have yet to delve into the connection between how self-interest affects the reception or dismissal of testimonies and the hurdles involved.

In contrast to previous studies, this study examines the concept of self-interest in taking testimony. It delves into the statements of Islamic jurists and the viewpoints of legal experts concerning the degree to which a witness's interests might obstruct their ability to provide testimony. This study falls under the qualitative research category and employs a comparative legal approach to scrutinize the distinctions between Islamic jurisprudence and positive law concerning witnesses' interest in testifying. Jordanian law was chosen for comparison for several significant reasons. Firstly, from a legal perspective, Jordanian legislation integrates Islamic jurisprudence (*fiqh*) principles into its

⁶ Sidney S. Bobbe, "Uncontradicted Testimony of an Interested Witness," *Cornell Law Review* 20, no. 1 (1934): 33-51.

⁷ Neeraj Malik, "Evidentiary Value of the Testimony of an Interested Witness," *Indian Journal of Health & Wellbeing* 9, no. 2 (2018): 217-18.

⁸ Shantanu Vyas, Priyanshu Kumar, and Osheen Jain, "Tesimony of Interested Witnes," *Indian Journal of Integrated Research in Law* 3, no. 1 (n.d.): 1-7.

⁹ Michael H Graham, "Impeaching the Professional Expert Witness by a Showing of Financial Interest," *Indiana Law Journal* 53, no. 1 (1977).

¹⁰ Aaron C. Weidman et al., "Punish or Protect? How Close Relationships Shape Responses to Moral Violations," *Personality and Social Psychology Bulletin*, September 19, 2019, <https://doi.org/10.1177/0146167219873485>.

¹¹ Muhammad Abdullah Al-Rashidi, "Wetness as a Means Approving Means: A Comparative Study between Islamic Principles and Law" (Jordan, Middle East University, 2011).

¹² Enas Mohamed Elgaraybeh, "The Attitude of The Hanafia Doctrine of The Justice of The Witness and Its Applications in The Jordanian Legitimate Trials Principles Law," *Journal of Sharia and Law* 33, no. 4 (December 1, 2018): 2218-69, <https://doi.org/10.21608/mksq.2018.30626>.

statutory laws. Secondly, Jordanian law provides a basis for a comparative analysis supported by references written by Jordanian scholars on statutory law and Islamic jurisprudence. The data collection process followed several steps. Initially, I collected Islamic jurisprudential books that discuss testimonies. Subsequently, I reviewed commentaries related to Article 80 of the Jordanian Civil Law. In the interpretation section, I compared the witnesses' interests described in the data sources by examining legal cases pertinent to the research topic.

THE CONCEPT OF TESTIMONY

The concept of testimony, in the views of Western scholars, explores how information and knowledge are conveyed through an individual's testimony. Most studies revolve around the epistemic status of the internal states of speakers, such as their beliefs and knowledge. However, there are differing voices, such as Jennifer Lackey's perspective. She introduces a new theory focusing on linguistic or communicative elements in testimonial exchanges, such as statements and other communication acts. The upshot of Lackey's view is that we do not learn from one another's states of believing or knowing strictly – we learn from one another's words. To make genuine progress in the epistemology of testimony, we need to stop looking at what speakers believe or know and focus, instead, on what speakers say.¹³

The term testimony in Arabic is known as "الشهادة" (*al-shāhadah*). It originates from the Arabic verb "شهد" (*shahida*), encompassing various meanings such as presence, conveying definite information, and serving as evidence.¹⁴ The individual providing testimony, referred to as "الشاهد" (*al-shāhid*), is named so because they disclose, before the judge, what is true and what is false. In Islamic jurisprudence, testimony is a crucial means of substantiating rights.¹⁵ It functions as legal proof to illustrate and clarify the asserted right.¹⁶ The Quran enhanced the status of testimony in Islam, attributing it directly to God. The Quranic verse states, "But God bears witness to what he has revealed to you. He has sent it down with his knowledge, and the angels also bear witnesses. And sufficient is God as a witness."¹⁷

¹³ Jennifer Lackey, *Learning from Words: Testimony as a Source of Knowledge* (Oxford; New York: Oxford University Press, 2008), 1-3.

¹⁴ Jamaluddin Ibn Mandzur, *Lisān al-'Arab*, vol. 3 (Beirut: Dār Ṣādir, 2010), 238.

¹⁵ Manshur Bin Yunus Al-Buhutiy, *Sharḥ Muntahā Al-Irādāt*, vol. 3 (Beirut: Alām Al-Kutub, 1993), 574.

¹⁶ 'Iwadh Abdullah Abu Bakar, *Nizām Al-Ithbāt Fi al-Fiqh al-Islāmī* (Article, 2021), 21.

¹⁷ An-Nisā: 166.

This underscores the significance of testimony as a divine mechanism for establishing the truth and justice in Islam.¹⁸

In Islamic jurisprudence, the interpretations of testimony vary among scholars regarding the terminology employed. The Hanafite School characterizes testimony as an honest statement that establishes a right, even without a formal lawsuit, using the precise language of testimony within a legal context. It is depicted as a sincere declaration made in the ruler's court, utilizing testimonial language to substantiate the rights of one party over another.¹⁹ In the Malikite School's views, testimony is defined as the pronouncement of a just ruler based on his knowledge, even if communicated through a general directive, to render a judgment accordingly. It is also proposed that testimony involves the ruler's declaration based on factual knowledge, indicating that the witness informs the ruler based on actual information and not merely conjecture.²⁰ The Shafi'ite school characterizes testimony as the declaration of a right by one party against another, employing the specific phrase "I bear witness."²¹ Lastly, the Hanbalite school delineates testimony as communicating what the witness knows using precise language.²²

Testimony is of great importance in criminal proceedings, serving as crucial evidence.²³ It is considered a fundamental tool in criminal law and provides a basis for evidence. Testimony plays a vital role in addressing factual aspects during investigations, especially when there is a lack of documentation, with witness statements being the primary means of establishing these facts. Its significance is that many criminal incidents cannot be documented for evidentiary purposes.²⁴ It differs from civil cases, in which outcomes often result from agreements and rely on written documentation. In civil matters, details are typically prepared in advance, reflecting mutual acceptance between contractual parties. Arab laws do not differentiate between the duty to testify to ordinary individuals and those in prominent positions. All summoned individuals must comply regardless of social status; noncompliance may lead to legal repercussions. Therefore, responding to the

¹⁸ Bassam Nahar Al-Buthun, *Al-Shahādah Fī al-Sharī'ah al-Islāmiyyah: Dirāsah Muqāranah Bi al-Qānūn al-Wadh'iy* (Amman: Dār Thaqāfah, 2010), 64.

¹⁹ Muhammad Bin Abdul Wahid, *Fath Al-Qadīr Sharḥ al-Hidāyah*, vol. 7 (Cairo: Musthafa al-Halabiy, n.d.), 364-365.

²⁰ Ibrahim Bin Ali Ibn Farhun, *Tabṣīrah Al-Ḥukkām Fī Uṣūl al-Aqḍīyyah Wa Manāhiij al-Aḥkām*, vol. 1 (Beirut: Dār Al-Kutub, 1995), 164.

²¹ Shamsuddin Al-Ramliy, *Nihāyah Al-Muhtāj Ilā Sharḥ al-Minhāj*, vol. 4 (Beirut: Dār Al-Fikr, 1984), 318.

²² Manshur Bin Yunus Al-Buhutiy, *Kashāf Al-Qinā' 'an Matan al-Iqnā'*, vol. 6 (Beirut: Dār Al-Kutub, n.d.), 404.

²³ Faruq Al-Kailaniy, *Muhāḍarāt Fī Qānūn Uṣūl Al-Muhākamāt al-Jazā'īyyah al-Urdūniy*, vol. 2 (Beirut: Dār Al-Muruḥ, n.d.), 5.

²⁴ See 'Imad Muhammad Rabi', *Ḥujjiyah Al-Shahādah Fī al-Ithbāt al-Jazā'iy* (Amman: Dār Thaqāfah, 2011).

summons and appearing as witnesses is not optional; it is a duty mandated by religious and legal principles.²⁵

In line with witness commitment, modern legal codes underscore the safeguarding of witnesses and the lack of legal repercussions for statements made under duress.²⁶ It was problematic if a witness experienced physical or moral coercion during the testimony.²⁷ It decreed that statements serving as witness testimony must be voluntary. Any statement given under coercion, intimidation, or threat, regardless of the extent of the coercion or threat, is not regarded as such.²⁸ Notably, according to Al-Buthun, statutory law closely parallels the perspectives of the Hanafite and Zahirite schools, along with some Hanbalite scholars, in treating testimony as an obligation imposed on those summoned. Once accepted, the witness is bound by judgment. Contrary to Islamic jurisprudence, statutory law does not distinguish between testimony that is an individual's right and testimony that is the right of God. All testimonies were treated equally before the law.²⁹

THE CORRELATION BETWEEN SELF-INTEREST AND FALSEHOOD IN TESTIMONY

An action is considered self-interested when carried out solely to achieve personal advantages, whether tangible (like money or promotion) or intangible (such as community standing or group status).³⁰ The crucial aspect is identifying who the intended beneficiary of the action is. If the act is meant to benefit another person in any way, it cannot be classified as exclusively self-interested. Self-interest affects how people behave, what they think, and how they explain their actions and thoughts. It often leads them to act and talk as if they prioritize their material gain more than they do.³¹ Self-interest can be understood from both psychological and economic perspectives. It encompasses individual actions and behaviors driven by

²⁵ See Yusuf Al-Hamud, "Majmū'ah Muhāḍarāt Ulqiyat Fī Ma'had al-Qadhā'iy al-Urdūniy," 2007.

²⁶ Christine Chinkin, "The Protection of Victims and Witnesses," in *Substantive and Procedural Aspects of International Criminal Law*, ed. Gabrielle Kirk McDonald and Olivia Swaak-Goldman (BRILL, 2000), 451-78, https://doi.org/10.1163/9789004531413_013.

²⁷ Stuart P. Green, "Lying, Misleading, and Falsely Denying: How Moral Concepts Inform the Law of Perjury, Fraud, and False Statements," *UC Law Journal* 53, no. 1 (2001): 157-212.

²⁸ Brendan O'Flaherty and Rajiv Sethi, "Witness Intimidation," *The Journal of Legal Studies* 39, no. 2 (June 2010): 399-432, <https://doi.org/10.1086/649032>.

²⁹ Al-Buthun, *Al-Shahādah Fī al-Sharī'ah al-Islāmiyyah: Dirāsah Muqāranah Bi al-Qānūn al-Wadh'iy*, 45.

³⁰ Russell Cropanzano, Barry Goldman, and Robert Folger, "Self-Interest: Defining and Understanding a Human Motive," *Journal of Organizational Behavior* 26, no. 8 (December 2005): 985-91, <https://doi.org/10.1002/job.353>.

³¹ Dale T. Miller, "The Norm of Self-Interest," *American Psychologist* 54, no. 12 (1999): 1053-60, <https://doi.org/10.1037/0003-066X.54.12.1053>.

the pursuit of personal benefits.³² In this way, self-interest emerges as a predominant factor influencing individual motivation, shaping personal identity, and gaining social legitimacy.³³

The term interest in testimony is associated with various issues and obstacles related to truthfulness and falsehood. Interest can significantly impact testimony's honesty and may lead to complex situations that require a balance between truth and personal or professional gains.³⁴ Interest may encourage some individuals to provide false testimony to manipulate facts or protect their personal or professional interests. For example, a witness might alter or distort facts to avoid legal consequences or to preserve their reputation. On the other hand, commitment to truth may conflict with individual and societal interests. In such cases, questions may arise regarding whether lying is permissible or justifiable to achieve more significant goals or interests. Historically, there have been discussions in religion and philosophy about whether lying can be justified if it serves the public interest or achieves positive outcomes. However, a strong emphasis remains on honesty and integrity as ethical and legal values in testimony.³⁵

False testimony can be linked to several factors that impact the witness and drive them to intentionally present inaccurate statements, with personal interest being one of the most notable contributors. In this scenario, interest refers to a characteristic of the witness that might hinder them from conveying the truth. Consequently, such an interest can serve as an obstacle to accepting their Testimony in a legal context. Some characterize lying as a distortion of reality, motivated by personal interest, social bonds, or familial connections, or as a manifestation of a psychological disorder where lying becomes a symptom. Regarding false testimony, also known as perjury, some define it as the intentional act of an individual summoned to testify in either civil or criminal proceedings before the court, deliberately asserting something contrary to the truth to cause harm to others and obstruct the course of justice.³⁶

³² "Self-Interest: What It Means in Economics, With Examples," Investopedia, accessed February 5, 2024, <https://www.investopedia.com/terms/s/self-interest.asp>.

³³ Jack Barbalet, "Self-Interest and the Theory of Action," *The British Journal of Sociology* 63, no. 3 (September 2012): 412–29, <https://doi.org/10.1111/j.1468-4446.2012.01417.x>.

³⁴ Rauf Ubaid, *Jarā'im al-l'fidā' 'alā al-Ashkhāṣ Wa al-Amwāl* (Beirut: Dār Al-Fikr, n.d.), 238.

³⁵ Johannes B. Mahr and Gergely Csibra, "Witnessing, Remembering, and Testifying: Why the Past Is Special for Human Beings," *Perspectives on Psychological Science*, January 21, 2020, <https://doi.org/10.1177/1745691619879167>.

³⁶ See Chapter 2 about Telling and Detecting Lies in Amina Memon, Aldert Vrij, and Ray Bull, *Psychology and Law: Truthfulness, Accuracy and Credibility*, 2nd ed (Chichester, West Sussex, England; New York: Wiley, 2003), 7-35.

Islamic jurisprudence strongly opposes lying and praises truthfulness as a virtue connected to holiness. The Quran encourages believers to "fear God and be with those who are true."³⁷ In Islam, truthfulness is seen as the path to righteousness, leading to positive outcomes and, ultimately, Paradise, as highlighted by Prophet Muhammad. On the flip side, falsehood leads to sin and immorality, ultimately resulting in Hellfire, according to the Prophet's teachings. Providing false testimony in Islamic law is a significant sin linked to the serious offense of associating partners with God. The Quran explicitly advises against false statements, instructing believers to "avoid false statements, inclining [only] to God, not associating [anything] with Him."³⁸ The prohibition of false testimony is stressed alongside the prohibition of idolatry, with God warning believers to "avoid the uncleanness of idols and avoid false statements."³⁹

Engaging in falsehood is a condemnable and socially detrimental behavior ingrained in specific individuals, presenting a notable menace to principles of justice, ethics, and humanity.⁴⁰ Self-interest can manipulate the truth of testimony, leading to falsehood and deceiving the legal system in various contexts. One could say that the moral urge is an inner guide toward something meaningful to the person, possibly even more than their self-interest. Yet, there could be times when acting morally means putting aside personal gain. However, this does not imply that prioritizing moral values does not benefit one's well-being.⁴¹

Additionally, deliberate fabrication of untruths might occur to harm the defendant, motivated by hatred and a desire for revenge. Falsehood in testimony for personal gain is an intentional form of deception. The speaker intentionally distorts the truth with the aim and malicious intent of undermining it to pursue personal advantage or benefit. It may also manifest in providing untruthful testimony driven by emotional ties, such as familial or friendship bonds, leading the witness to clear a relative or friend facing accusations.⁴²

³⁷ At-Tawbah: 120.

³⁸ Al-Hajj: 31.

³⁹ Al-Hajj: 30.

⁴⁰ See Jonathan Higgs, "The Interests of Justice? When Should the Court Issue a Witness Summons?" *Criminal Law Review*, no. 12 (2019): 141-45; Weidman et al., "Punish or Protect?"; Weidman et al.; Mahr and Csibra, "Witnessing, Remembering, and Testifying"; Patel, "The Role of Testimony and Testimonial Analysis in Human Rights Advocacy and Research."

⁴¹ Paul Bloomfield, ed., *Morality and Self-Interest* (New York: Oxford University Press, 2008), 8.

⁴² Axel Gelfert, *A Critical Introduction to Testimony*, Bloomsbury Critical Introductions to Contemporary Epistemology (London; New York: Bloomsbury Academic, 2014), 30.

THE INTERESTS OF WITNESSES IN THE REALM OF ISLAMIC JURISPRUDENCE

The Islamic legal system emphasizes the need for truthful testimonies to maintain a fair legal structure. Even though a witness may have personal interests, Islamic law insists that honesty and religious duties should not be compromised. While there's a general commitment to providing testimony, there are exceptions based on suspicion. If there's a perception that a witness may be biased or has an interest that benefits from their testimony, their testimony might not be accepted. In these cases, the witness's interest becomes an obstacle to accepting their testimony in a legal context. Islamic jurists have outlined these issues as follows:

1. Lineage

This concept pertains to the connection between the source and its offshoots, with the source symbolized by the parents and the offshoots by the offspring. Allegations can arise based on this lineage, involving the source or the offshoots. Scholars of Islamic jurisprudence have debated the acceptance or rejection of testimony concerning lineage, encompassing both from the source to the offshoots and from the offshoots to the source. This divergence in opinion manifests in three principal perspectives:

The first side is not accepting testimony from certain relatives, specifically parents and offspring. This "vertical lineage" principle applies to fathers and their children, regardless of their roles or genders. Under this rule, testimonies given by parents, grandparents, mothers, and grandmothers are not recognized for their children and grandchildren, and vice versa. Scholars from various Islamic jurisprudence schools unanimously support this rule. They base their reasoning on a hadith from the Prophet, and peace be upon him, which says, "The testimony of a child for their parent, a parent for their child, a woman for her husband, a husband for his wife, a slave for their master, and a dependent for the one who employs them is not accepted."⁴³ This is because emotions and preferences can create biases between parents and children.⁴⁴

⁴³ This hadith was narrated by Al-Khashaf with an uninterrupted chain of transmission back to the Prophet. For details on the chain of narrators of this hadith, refer to Jamaluddin Az-Zayla'iy's "*Naṣb al-Rāyah li Aḥādīth al-Hidāyah*," Volume 5, 86-87.

⁴⁴ Abu Ishaq Al-Shirazy, *Al-Muḥadḍab Fī Fiqh al-Imām al-Shāfi'iy* (Beirut: Dār Iḥyā' Turāth, n.d.), 330; Abdurrahman Muhammad Abdul Qadir, *Mawānī' al-Shahādah fī al-Fiqh al-Islāmī* (Cairo: Dār Al-Nahḍah, n.d.), 8; Burhanuddin Al-Marghinaniy, *Al-Hidāyah Sharḥ Bidāyah al-Mubtadi'*, vol. 7 (Beirut: Dār Iḥyā' Turāth, 2010), 405.

The second is acceptance of the son's testimony for his father, excluding the reverse. This perspective acknowledges the admissibility of a son's testimony for his father while rejecting the father's testimony for his son. Attributed to Imam Ahmad and Malik, this view is grounded in the son's authority over his father's wealth. The son's testimony is seen as a testament to himself or a means to further his interests. This aligns with the Prophet's statement, "You and your wealth belong to your father."⁴⁵ Accepting a son's testimony for his father stems from the notion that the son's wealth is inherently intertwined with the father's, allowing the son the autonomy to testify on his behalf or in his favor.⁴⁶

The third is acceptance of testimony among certain relatives. The Dhahirite,⁴⁷ Imamite,⁴⁸ and Zaydite⁴⁹ schools contend that testimony from origins (parents) is valid for their branches (offspring) and vice versa. They draw support from Quranic verses emphasizing justice in testimony, such as "O believers! Stand firm for justice as witnesses for Allah, even if it is against yourselves, your parents, or close relatives."⁵⁰ According to Umar ibn al-Khattab, testimony from a father for his son, a son for his father, and a brother for his brother is permissible. This perspective underscores the witness's credibility, with justice as the criterion for accepting their testimony, allowing relatives to testify for each other when deemed just.⁵¹

2. Siblinghood

Two perspectives exist regarding the testimony of various other relatives, such as siblings, uncles, and paternal uncles. Firstly, the predominant view, upheld by the majority of Islamic jurists, is to acknowledge the testimony of some siblings for others or the testimony of specific individuals on behalf of others to dispel any suspicions.⁵² Secondly, the alternative perspective, advocated by the Maliki jurists, asserts that the testimony of some siblings for others is only acceptable under specific conditions: (1) The witness must exhibit a clear commitment to justice, and

⁴⁵ This hadith, narrated by Jabir bin 'Abdillah, mentions a man who said to the Prophet Muhammad (PBUH), "O Messenger of Allah, I have wealth and a son, and my father wants to take all my wealth." The Prophet (PBUH) responded, "You and your wealth belong to your father". Refer to Sunan Ibn Majah, hadith number 2291.

⁴⁶ Abu 'Abdullah Ibn Qayyim Al-Jawziyah, *I'lām al-Muwaqqi'in 'an Rabb al-'Ālamīn*, vol. 1 (Beirut: Dār Al-Kutub, 1991), 88.

⁴⁷ Ali Bin Ahmad Ibn Hazm, *Al-Muḥalā*, vol. 9 (Beirut: Dār Al-Fikr, n.d.), 415.

⁴⁸ Ja'far Ibn Al-Hasan, *Sharāi' al-Islām Fī al-Fiqh al-Islāmiy al-Ja'fariy*, vol. 2 (Beirut: Dār Maktabah Al-Ḥayāh, n.d.), 233.

⁴⁹ Ahmad Bin Yahya Ibn Al-Murtadha, *Al-Baḥr Al-Zakhār*, vol. 5 (Beirut: Dār Al-Kutub, 2001), 35.

⁵⁰ An-Nisā': 135.

⁵¹ Abu Muhammad Abdullah Ibn Qudamah, *Al-Mughnī*, vol. 10 (Beirut: Dār Iḥyā' Turāth, 1985), 186.

⁵² Mas'ud Ibn Ahmad Al-Kasaniy, *Badāi Al-Ṣanāi' Fī Tartīb al-Sharāi'*, vol. 6 (Beirut: Dār Al-Kutub, 1987), 272; Muhammad Ibn Ahmad Al-Sarkhasiy, *Al-Mabsūṭ*, vol. 12 (Beirut: Dār Al-Ma'rifah, 1993), 125.

(2) The witness should not be a child of the individual about whom the testimony is given.⁵³

3. Marital Relationship

Islamic jurists have divergent opinions on the testimony of each spouse to the other, with three main perspectives. The first tenet, represented by the majority of Islamic jurists, rejects the testimony of each spouse for the other based on the Prophet's saying, "The testimony of a child for their parent, a parent for their child, a woman for her husband, a husband for his wife, a slave for their master, and a dependent for the one who employs them is not accepted."⁵⁴ They argue that each spouse inherits from the other without hindrance, and their wealth commonly intermingles. Thus, each may benefit from testifying for the other, making their testimony unreliable. Given these factors, they contend that the benefits between spouses are interconnected, leading to potential bias in testimony.⁵⁵

The second viewpoint, supported by the Dhahirite,⁵⁶ Zaydite,⁵⁷ and Ahmad in another narration,⁵⁸ argues that marriage does not stop someone from giving valid testimony. Those who support this view refer to general Quranic verses that stress accepting fair testimony without making distinctions based on marital relationships. For instance, "O believers! Stand firm for justice as witnesses for Allah, even if it is against yourselves, your parents, or close relatives."⁵⁹ According to this perspective, marriage should not affect testimony acceptance. The third notion, advocated by Imam Sufyan al-Thawri and Ibn Abi Layla, allows a husband to testify for his wife because he is not seen as biased, given that the wife maintains her property. However, it doesn't allow a wife to testify for her husband, as she could benefit through such testimony, potentially increasing her husband's generosity.⁶⁰

4. Hostility

The testimony of a person with an adversarial relationship, an enemy, or someone with a personal interest is not considered valid. Concerning adversaries,

⁵³ Ibn Farhun, *Tabṣīrah Al-Ḥukkām Fī Uṣūl al-Aqḍīyyah Wa Manāhij al-Aḥkām*, 224.

⁵⁴ This hadith was narrated by Al-Khashaf with an uninterrupted chain of transmission back to the Prophet. For details on the chain of narrators of this hadith, refer to Jamaluddin Az-Zayla'iy's "*Naṣb al-Rāyah li Aḥādīth al-Hidāyah*," Volume 5, 86-87.

⁵⁵ Ahmad Muhammad Ali Dawud, *Al-Qaḍā' Wa Al-Da'wā Wa Al-Ithbāt Fī Al-Sharī'ah Al-Islāmiyyah*, vol. 2 (Amman: Dār Thaḳāfah, 2012), 116-117.

⁵⁶ Ibn Hazm, *Al-Muḥalā*, 415.

⁵⁷ Ibn Al-Murtadha, *Al-Baḥr Al-Zakhār*, 36.

⁵⁸ Abu Muhammad Abdullah Ibn Qudamah, *Al-Kāfī Fī Fiqh al-Imām Aḥmad al-Ḥanbalī*, vol. 4 (Beirut: Dār Al-Kutub, 1994), 529.

⁵⁹ An-Nisā': 135.

⁶⁰ Ibn Qudamah, *Al-Mughnī*, 68.

there are two categories. Firstly, an adversary engaged in a legal dispute is not deemed a credible witness in that particular dispute. This includes the testimony of an agent in matters where they act as an agent and the testimony of a guardian in matters where they act as a guardian. The rationale is that they have a vested interest in the dispute, making their testimony unreliable, similar to the owner's testimony in matters related to ownership. Secondly, enmity, in this context, refers to worldly enmity. Rejecting testimony based on hostility is rooted in the principle that justice is ultimately for the sake of God. Engaging in enmity for worldly reasons is prohibited, and individuals involved in such actions are not considered trustworthy.⁶¹

Nevertheless, religious hostility, such as a Muslim providing testimony against a non-Muslim testifying, does not hinder the acceptance of testimony. This is supported by several reasons: testifying against an enemy on religious grounds demonstrates the strength of the witness's faith and their commitment to justice; justice in religious matters acts as a preventative measure against violating religious prohibitions; there is a consensus among Muslims to accept the testimony Of a Muslim against a non-Muslim, illustrating that religious enmity does not impede the credibility of the testimony.⁶²

5. Partisanship

The testimony of someone known for excessive partisanship, such as tribal, ethnic, and racial bias against another, is not accepted, even if it does not reach the level of hatred. The Hanbalite school adopted this view,⁶³ They support this stance with the Prophet's saying, "The testimony of an untrustworthy man, an untrustworthy woman, an individual with animosity towards their sibling, or a biased person's testimony in favor of their family is not allowed."⁶⁴

Based on the preceding, Islamic jurists unanimously agree not to accept the testimony of someone accused of testifying to benefit themselves or others, whether this benefit is material or moral. Likewise, they concur on the rejection of the testimony of someone accused of causing harm to themselves or others concerned with the matter, whether this harm is material or moral. The testimony of an accuser

⁶¹ Ibn Qudamah, 182.

⁶² Al-Buthun, *Al-Shahādah Fī al-Sharī'ah al-Islāmiyyah: Dirāsah Muqāranah Bi al-Qānūn al-Wadh'iy*, 213.

⁶³ Ali Bin Sulaiman Al-Mardawiy, *Al-Inshāf Fī Ma'rifah Al-Rājiḥ Min Al-Khilāf*, vol. 12 (Beirut: Dār Ihya' Turāth, 1956), 47.

⁶⁴ Qutaibah narrated to us, Marwan al-Fazari narrated to us, from Yazid bin Ziyad ad-Dimashqi, from Az-Zuhri, from Urwah, from Aisha. Refer to Sunan Tirmidhi, hadith number 2298.

is not acceptable, as indicated by the Prophet's saying, "The testimony of an adversary and someone with ill intentions is not valid."⁶⁵

THE INTERESTS OF WITNESSES IN THE REALM OF LEGAL JURISPRUDENCE: THE JORDANIAN CIVIL LAW AS A MODEL

Article 80 of the Jordanian Civil Law explicitly states that any testimony entailing personal gain or the discharge of a debt on behalf of the witness shall be rejected. The article dictates that testimony must be rejected if it involves an interest for the witness related to the case. The prohibition is not absolute; there is an exception to this restriction. The testimony of witnesses is not automatically dismissed based solely on their familial ties to the party involved.⁶⁶ There does not impede admitting the testimony of a son for his father unless it can be proven that he harbors a direct financial interest in providing that testimony. Likewise, the stipulations of Article 80 do not conflict with the acceptance of testimony from the plaintiff's siblings, provided it is not demonstrated that the testimony of either of them leads to personal gain or the settlement of a debt. Their testimony should not be summarily rejected solely based on their sibling relationship with the plaintiff.⁶⁷

As per the explicit wording of Article 80, the rejection of testimony requires that its purpose be to secure personal gain for the witness or settle a debt on their behalf. This rule applies irrespective of the familial relationship between the witness and the party involved, like the constraints of Article 1700 of the Judicial Decisions Journal (*majallah al-ahkām al-'adliyah*).⁶⁸ The legal interpretation has solidified the understanding that testimony considered unacceptable under the regulations outlined in Article 80 is that which leads to personal gain or the resolution of a debt for the witness. Consequently, if the son of the plaintiff and his sister are not involved parties in the lawsuit, their testimony does not result in personal gain or debt settlement for them individually. Therefore, the nephew's testimony is not dismissed under Article 80 unless it entails personal gain or the settlement of a debt for him, contingent on his relevance to the case.⁶⁹

Article 80 dictates that any testimony implicating personal gain for the witness or the settling of a debt on their behalf is dismissed. This indicates that the accrual of gain or the debt settlement is relevant to the witness alone and does not extend to

⁶⁵ Refer to Ibn Hajar Al-'Asqalani's *Talkhīṣ al-Ḥabīr*, hadith number 2662.

⁶⁶ Cassation Rights No. 752, June 1, 1998, 'Adalah Publications.

⁶⁷ Cassation Rights No. 217, April 11, 1995, 'Adalah Publications.

⁶⁸ Ali Haidar, *Durar Al-Ḥukkām Sharḥ Majallah Al-Aḥkām* (Beirut: Dār 'Alam Al-Kutub, 2003), 393.

⁶⁹ Cassation Rights No. 341, June 8, 1985, 'Adalah Publications.

others. Consequently, testimony falling under the prohibition of Article 80 is that which is presented by a party involved in the case for their benefit. The legal rulings of the Court of Cassation have confirmed this interpretation. Hence, merely being the plaintiff's spouse does not render the husband's testimony objectionable.⁷⁰

In a company context, it's considered a juridical person with financial liability separate from the personal finances of the witnesses.⁷¹ As employees within the company, the witnesses do not personally benefit from their testimonies. Legal precedents from the Court of Cassation clarify that testimony banned under Article 80 involves situations where the witness gains personally or settles a debt within the same case. So, the employment status of the witnesses in the plaintiff's company does not make their testimonies unacceptable. Their financial responsibilities are distinct from the defendant's, and any losses or gains in the lawsuit don't affect the witnesses personally.⁷²

Regarding the wife's testimony, the Court of Cassation has determined that the testimony given by the defendant's wife is unacceptable according to Article 80. This is due to her cohabitation with her husband on the property, establishing her as an individual with a direct interest. Consequently, the wife's testimony, mainly when provided to validate a contractual commitment with her husband exceeding the value of ten dinars, cannot be considered in the judgment, as it involves personal gain for her. This aligns with the fundamental principles outlined in Article 80.⁷³

The legal precedents set by the Court of Cassation affirm that the restrictions on testimony under Article 80 apply to witnesses from both parties involved in a lawsuit. Hence, the testimonies of the first witness, the defendant's husband, and the second witness, the son-in-law, remain admissible. Consequently, the court has the authority to consider the testimony of a witness, even if they have a familial or marital relationship with the opposing party, as the law does not expressly disqualify kinship as a reason for rejecting a witness.⁷⁴ The well-established legal principles upheld by the Court of Cassation emphasize that being a witness and a litigant in another case does not suffice to demonstrate personal gain or debt settlement for them. In contrast, the other two witnesses are siblings of the defendant. Consequently, the stipulations of Article 80, requiring the rejection of

⁷⁰ Cassation Rights No. 1398, September 30, 1997, 'Adalah Publications.

⁷¹ 'Iwadh Ahmad Al-Za'biy, *Madkhal Ilā 'Ilm al-Qānūn* (Amman: Dār Al-Isra', 2011), 236.

⁷² Cassation Rights No. 3545, November 15, 2006, 'Adalah Publications.

⁷³ Cassation Rights No. 395, September 28, 2000, 'Adalah Publications.

⁷⁴ Ahmad Nasy'at, *Risālah Al-Ithbāt* (Beirut: Dār Al-Fikr, 1972), 442.

testimony involving personal gain or debt payment on behalf of the witness, do not apply in such scenarios.⁷⁵

The foundational principle asserts that testimony from an individual known for tribal bias is deemed inadmissible, as advocated by the Hanbalite school of thought.⁷⁶ Nevertheless, the positive legal system upholds the principles of justice, equality, and non-discrimination in treatment, encapsulated in the concept of equality before the law. As a result, everyone is expected to be treated equally under the same legal framework, irrespective of gender, religion, ethnicity, economic or social standing, and other variables, without any form of privilege. Equality before the law is a fundamental tenet in human rights legislation, as articulated in Article 7 of the Universal Declaration of Human Rights.⁷⁷ Therefore, the testimony of a witness with tribal affiliation does not automatically render their statement inadmissible based solely on their tribal identity.

COMPARATIVE REFLECTION OF THE STUDY

In legal systems, the qualifications of witnesses play a pivotal role in ensuring the integrity and reliability of judicial proceedings. Islamic jurisprudence, deeply rooted in religious principles and moral values, places paramount importance on the character of witnesses. It mandates that witnesses possess sound moral character, thus emphasizing integrity and trustworthiness as essential prerequisites.⁷⁸ Furthermore, Islamic law often necessitates multiple witnesses for some instances, recognizing the significance of corroboration in establishing the truth.⁷⁹ This emphasis on moral character and corroborative testimony bolsters the credibility of witnesses and safeguards against false accusations or erroneous judgments.

Conversely, while valuing credibility and reliability in witnesses, positive law adopts a more pragmatic approach. It focuses primarily on the competency and relevance of witnesses, utilizing detailed rules to assess their credibility and

⁷⁵ Cassation Rights No. 2019, October 12, 2006, 'Adalah Publications.

⁷⁶ "Al-Mawsū'ah Al-Fiqhiyyah" (Kuwait: Wizārah Al-Awqāf, 1983), 225.

⁷⁷ Suhail Husain Al-Fatlawiy, *Mawsū'ah Al-Qānūn Al-Duwalī Al-Islāmi: Mabādi' Huqūq al-Insān*, vol. 4 (Amman: Dār Thaḳāfah, 2014), 365.

⁷⁸ Khairul Huda, Bambang Tri Bawono, and Achmad Arifullah, "Implementation of Judge Independence in the Process of Implementing Justice in Islamic Law Perspective," *Law Development Journal* 4, no. 3 (August 25, 2022): 518, <https://doi.org/10.30659/ldj.4.3.518-525>.

⁷⁹ Hajed A. Alotaibi, "The Challenges of Execution of Islamic Criminal Law in Developing Muslim Countries: An Analysis Based on Islamic Principles and Existing Legal System," ed. Francis D. Boateng, *Cogent Social Sciences* 7, no. 1 (January 1, 2021): 1925413, <https://doi.org/10.1080/23311886.2021.1925413>.

admissibility.⁸⁰ This approach emphasizes procedural fairness and legal technicalities, ensuring that witness testimony adheres to strict standards of reliability and relevance. Positive law relies on rigorous cross-examination and rules of evidence to scrutinize and evaluate the veracity of testimony, thereby mitigating potential biases and inaccuracies. This is evident in how expert witnesses are summoned to provide professional opinions and analyses in forensic evidence cases.⁸¹

The treatment of bias and interest further distinguishes the two legal frameworks. Islamic jurisprudence acknowledges potential bias from relationships or financial interests, often disqualifying witnesses with vested interests to maintain impartiality and fairness.⁸² This stringent approach reflects a commitment to upholding justice and integrity, prioritizing the sanctity of truth above all else. In contrast, positive law employs mechanisms such as cross-examination and rules of evidence to manage and mitigate biases yet does not impose rigid disqualification criteria based solely on relationships. Instead, it relies on procedural safeguards to uncover and address any biases that may arise during proceedings.⁸³ This is apparent in how cases involving witnesses with a particular relationship entail interpreting their language alongside legal texts during trials. Here, the judiciary bears a vital role in interpreting legal texts based on presented facts to address any shortcomings, uncertainties, or conflicts within those texts and testimonies.⁸⁴

Moreover, the issue of relationships and the number of witnesses underscores another fundamental difference between Islamic jurisprudence and positive law. Islamic law frequently mandates specific regulations of relationships and the number of witnesses for different types of cases, recognizing the significance of corroborative testimony in establishing legal certainty. This fixed requirement reflects a belief in the collective wisdom and reliability of multiple witnesses, thereby enhancing the credibility and robustness of legal judgments. Conversely,

⁸⁰ Kiel Brennan-Marquez and Julia Ann Simon-Kerr, "Judging Demeanor," *Minnesota Law Review* 19 (March 28, 2024), <https://papers.ssrn.com/abstract=4776770>.

⁸¹ Dr Mohammad Mostafa Mohammad Airout and Dr Sadam Ibrahim Abdulkhaleq Abu Azam, "The Use of Forensic Evidence in Jordanian Criminal Investigations and Trials," *Migration Letters* 20, no. S10 (November 22, 2023): 1168–82, <https://doi.org/10.59670/ml.v20iS10.5515>.

⁸² See Saadia Yacoob, *Beyond the Binary: Gender and Legal Personhood in Islamic Law* (Oakland, California: University of California Press, 2024).

⁸³ Cesare Cavallini and Stefania Cirillo, "Reducing Disparities in Civil Procedure Systems: Towards a Global Semi-Adversarial Model," *Florida Journal of International Law* 34 (2022): 99–151.

⁸⁴ Mashal Mufleh Jarrah, Safa Hakem Mestarih, and Ghazi Ayed Alghathian, "Judicial Interpretation of Legal Texts: A Study in Jordanian Legislation," *Cogent Social Sciences* 10, no. 1 (December 31, 2024): 2354359, <https://doi.org/10.1080/23311886.2024.2354359>.

positive law does not prescribe a fixed number of witnesses. Still, it evaluates the sufficiency and weight of evidence presented on a case-by-case basis, allowing flexibility to adapt to diverse circumstances and evidentiary considerations. For instance, this is evident in how cases concerning women's testimony.⁸⁵ And minors are regarded as evidence in legal judgments.⁸⁶

In conclusion, the contrasting approaches of Islamic jurisprudence and positive law to witness qualification, bias, and the number of witnesses reflect broader philosophical and cultural differences in legal thought. While Islamic law emphasizes moral character, corroboration, and stringent disqualification criteria to uphold justice and integrity, positive law prioritizes procedural fairness, competency, and flexibility in assessing witness testimony. Understanding these divergent perspectives enriches our appreciation of the complexities inherent in legal systems and underscores the importance of balancing tradition with innovation in pursuing justice.

CONCLUSION

The interests of witnesses in Islamic jurisprudence and positive law have various interpretations and exclusions when rejecting their testimony. This study follows Jennifer Lackey's perspective, emphasizing that the significance lies not in the status of the person giving testimony but rather in the content conveyed through their testimony. Individuals often maintain false statements and avoid correcting them to align with the truth. However, a wise investigator with expertise in forensic psychology, particularly in lie detection, can uncover this deception by examining inconsistencies or coherence issues in the witness's statements.

Legal experts might sometimes deviate from most Islamic jurists' opinions concerning accepting a witness's testimony in court. This deviation does not contradict Islamic jurisprudence, as the appropriate judgment entails applying principles that align with the prevailing reality. The critical aspect here is making a choice rather than outright denial. The legal system employs means to examine and scrutinize the witness's interest in their testimony by collecting information and conducting inquiries, ensuring the pursuit of justice and the avoidance of personal bias in delivering testimony.

⁸⁵ See Amira El-Azhary Sonbol, *Women of Jordan: Islam, Labor, and the Law* (New York: Syracuse University Press, 2003).

⁸⁶ Mohammad Abu Lail and Atallah Ma'aytah, "Mutual Testimony of Minors in Islamic Law and Jordanian Civil Law," *Dirasat: Sharia and Law Sciences* 39, no. 1 (September 20, 2012), <https://archives.ju.edu.jo/index.php/law/article/view/3148>.

Nonetheless, this study faces certain constraints regarding its research subjects. This study's examination of positive legal aspects is confined solely to Jordanian civil law. Additional research is necessary to juxtapose favorable laws across other Arab nations. Additionally, a comparative analysis of countries within ASEAN with a predominantly Muslim population is warranted. Furthermore, this research lacks support from court rulings containing specific instances of witness testimony. Hence, further investigation is imperative, with a primary focus on data derived directly from court decisions in nations where the populace is predominantly Muslim.

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