

THE Use of Oath Evidence and Its Implementation (Study in Surakarta Religious Court)

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Abstract

The evidence of the oath considering that the oath is directly related to God, then all the risks and consequences that arise will be felt alone to the reciter of the oath. What makes the most basic problem is that oath evidence is set at the end of various other evidence. The method of approach in this research is normative juridical, which is legal research conducted by examining library materials / secondary data as a basis for research by conducting a search for regulations related to the issues discussed. The results of research on oaths in Islamic law are the fulfilment of Allah's commandments that have a strong foundation. The oath by which one party binds the other party to the decision of a case, which is made orally in the presence of the opposing party and before the judge in the ongoing trial, is called the deciding oath/dicissoir.

Keywords: Religious Courts; Oath Evidence; Islamic Law.

Abstrak

KUHPerdara tidak dijelaskan mengenai alat bukti sumpah mengingat sumpah berhubungan langsung dengan Tuhan YME, maka segala resiko dan akibat yang timbul akan dirasakan sendiri kepada pelafal sumpah tersebut. Yang menjadikan suatu permasalahan yang paling mendasar adalah alat bukti sumpah ditetapkan pada urutan yang paling akhir berbagai alat bukti lainnya. Metode pendekatan dalam penelitian ini adalah yuridis normatif, yaitu penelitian hukum yang dilakukan dengan cara meneliti bahan pustaka/data sekunder sebagai bahan dasar untuk diteliti dengan mengadakan penelusuran terhadap peraturan yang terkait permasalahan yang dibahas. Hasil penelitian sumpah dalam hukum Islam adalah pemenuhan perintah Allah yang memiliki landasan yang kuat. Sumpah yang dengannya satu pihak mengikat pihak lain pada keputusan suatu perkara, yang dibuat secara lisan di hadapan pihak lawan dan di hadapan hakim dalam persidangan yang berlangsung, disebut sumpah pemutus/*dicissoir*. Sumpah yang diambil oleh hakim berdasarkan kedudukannya kepada salah satu pihak melampirkan bukti yang dianggapnya kurang meyakinkan disebut sumpah *suppletioir*/sumpah tambahan.

Kata Kunci: Peradilan Agama; Alat Bukti Sumpah; Hukum Islam.

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INTRODUCTION

Technology serves to ease and address the needs of human life. Researchers and inventors in technology have diligently developed a range of technologies beneficial to society, spanning from steam engines, light bulbs, telephones, health devices, household appliances, to information and communication technology.¹ Inventors of various forms of technology then protect their creations as part of Intellectual Property Rights² in the form of a Patent.

The definition of Islamic law is a system of rules based on the revelation of Allah SWT and the Prophet regarding the behaviour of mukallaf (people who can be burdened with obligations) which are recognised and believed, which are binding for all adherents. In this case, it refers to what the Prophet has done to be implemented in total for Muslims.³ The word law etymologically comes from an Arabic word, namely *hakama-yahkumu* which then forms its mashdar into *hukman*. Lafadz *al-hukmu* is the singular form of the plural form *al-ahkam*. Based on the root word *hakama*, the word *al-hikmah* appears which means wisdom. This means that people who understand the law and practice it in everyday life are considered wise.⁴

In fulfilling the interests and needs of each community, we often find differences that ultimately lead to disputes, even violations of rights between them. On the other hand, human nature is interested in living prosperously, obtaining a sense of security, peace, and strengthening social relations. Therefore, the existence of a judiciary is a necessity that is needed to reject injustice and resolve (decide) disputes. In relation to the settlement of cases in court, there are provisions of procedural law that must be adhered to. Among the main provisions in procedural law that are very important for resolving disputes is that a person or litigant must prove the facts that occurred, which is called proof.

Evidence is one of the procedures in court proceedings. The process of proof exists in civil law cases, proof is used to reveal facts through evidence of an event where these facts can reveal the truth. The truth sought is juridical truth. Proof is carried out with various kinds of evidence. One type of evidence is an oath. Oath evidence is the last option that will be discussed regarding evidence contained in the Civil Procedure Law. An oath is a statement pronounced officially and by testifying to God by one of the litigants that what is said is true.

Evidence is a stage that has an important role for judges to make decisions. The process of proof in the trial process can be said to be the centre of the examination process in court. Evidence is central because the arguments of the parties are tested through the evidentiary stage in order to find the law to be applied (*rechtoepasing*) or found (*rechtvinding*) in a particular case. This is in accordance with what is stated in the book *Menguak Teori Hukum (Legal Theory) and Teori Peradilan (Judicialprudence)*.⁵

¹ Muhamad Amirulloh and Helita Novianty Muchtar, "Textbook of Intellectual Property Law", (Bandung: Unpad Press, 2016) p. 122.

² Hereinafter referred to as "IPR"

³ Aryani Eva, "Hukum Islam, Demokrasi Dan Hak Asasi Manusia," *Jurnal Ilmiah Universitas Batanghari Jambi* 17, no. 2 (2017): 24–31.

⁴ Mardani, *Hukum Islam : Pengantar Ilmu Hukum Islam Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2015).⁷

⁵ AchmadAli, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*, Volume 1 (Jakarta: Kencana, 2009).

The legal system of evidence adopted in Indonesia is a closed and limited system where the parties are not free to submit types or forms of evidence in the process of case settlement. The law has expressly determined what is valid and valuable as evidence. The restriction of freedom also applies to judges where judges are not free and free to accept anything submitted by the parties as evidence. If the litigant submits evidence outside the provisions of the governing law, the judge must reject and set it aside in case settlement.⁶

Evidence in its juridical sense is not intended to seek the absolute truth. This is because the evidence, whether in the form of confessions, testimony or letters submitted by the parties to the dispute, can be false or falsified. Meanwhile, the judge in examining each case submitted to him must give a decision that is acceptable to both parties. It is not uncommon in civil cases that emphasise the search for formal truth, namely through letter evidence, to experience difficulties. In the search for formal truth through evidence in civil trials, there are times when judges encounter difficulties in the event that one piece of evidence conflicts with other evidence submitted by both parties to the dispute.⁷

This proof can certainly be carried out in the presence of evidence and evidence. The evidence used as evidence will not be accepted without showing acceptable / valid evidence. Departing from this problem the compiler will discuss one means of proof, namely "oath". The existence of oaths as evidence, especially those used by the Religious Courts in civil proceedings, still has a place in the legal system. The existence of oaths with other evidence is only a last resort, because oaths are used when there is no other evidence and/or to complement existing evidence. However, oaths have very strong power as evidence, even if one party has taken an oath, no other evidence can be requested from them to corroborate what is justified by the oath. In general, an oath is a specific statement given or uttered at the time of making a promise or declaration by remembering the nature of God's power. In essence, oaths of a religious nature are used in court.⁸

The writing of this journal is about the existence of oaths as evidence, especially those that apply to civil law events in religious courts, which still have a place in the judicial system. It's just that the existence of oaths among other evidence is in the last position, because oaths as evidence are used if there is no other evidence and or to complement existing evidence. However, the oath as a means of evidence has a very strong power, even if the oath has been stated by one of the parties then the party may no longer be told to hold other evidence to strengthen what has been justified by the oath.

The hope of the author of this journal will provide an assessment and review of the oath evidence is important in Islamic procedural law for the development of national law. Because the oath in reality is still a mere idea, it cannot be satisfactory in proof. Therefore, the authors intend to describe the treasures of this oath evidence.

The type of research used by researchers is qualitative research, primary data sources where the author obtains directly from the research field, namely in the Surakarta Religious Court and secondary from books and literature related to oath evidence. Inductive data analysis of data, especially those in

⁶ M. Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2012).545-555

⁷ Winston Jeremia Towoliu, Hendrik Pondaag, and Roy Victor Karamoy, "Eksistensi Pengakuan Dan Sumpah Terhadap Pembuktian Dalam Perkara Perdata," *Lex Administratum* 10, no. 3 (2022).

⁸ R.Soebakti and R.Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata Burgelijk Wetboek*, Cet. 37 (Jakarta: Pradnya Paramita, 2006).487

the Surakarta Religious Court, is taken as a general conclusion, deductive rules or arguments that are general in nature are analysed and a specific conclusion is drawn, taking the rules that exist in the books as well as those that exist and apply in society, especially those that are closely related to the issue of oath evidence, comparatively collecting opinions and data then comparing opinions or other data and looking for similarities and differences then strengthening one of them and if necessary the author uses his own opinion.

METHOD

The type of research used by researchers is qualitative research, primary data sources where the author obtains directly from the research field, namely in the Surakarta Religious Court and secondary from books and literature related to oath evidence. Inductive data analysis of data, especially those in the Surakarta Religious Court, is taken as a general conclusion, deductive rules or arguments that are general in nature are analysed and a specific conclusion is drawn, taking the rules that exist in the books as well as those that exist and apply in society, especially those that are closely related to the issue of oath evidence, comparatively collecting opinions and data then comparing opinions or other data and looking for similarities and differences then strengthening one of them and if necessary the author uses his own opinion.

RESULT AND DISCUSSION

1. Oath Evidence in Religious Courts

In relation to the settlement of cases in court, there are provisions of procedural law that must be obeyed. Among the main provisions in procedural law that are very important to resolve disputes is that a person or litigant must prove the facts that occur, which is called proof. Therefore, the position or quality of evidence is very important, because this will lead to the correctness or incorrectness of the arguments that are denied and the disclosure of legal facts in the trial process which will then be outlined in the decision.⁹

The oath has perfect evidentiary power (*volleding*), binding (*binden*) and decisive (*beslissen*), therefore the truth or lie of the party who swears may not be judged by the judge as a false oath unless it can be proven based on a criminal decision, the oath as evidence in civil procedure is a pledge uttered by the party who swears and the pledge of oath is pronounced orally before the judge in the process of examining the court session, for this reason the oath as evidence is not valid if it is carried out in written form, meaning that it must be raised by one of the parties before the judge.¹⁰

The strength of oaths in court is of paramount importance in procedural law, as courts rely heavily on evidence in upholding law and justice. The majesty and power of the state is seen as a relationship of taste and virtue reflected in the positive outcomes of the government's objectives. The organisation of justice based on evidence dates back to the time of the Prophet and later developed into a formal system of evidentiary justice. A judge cannot decide a case in court without first proving it. In other words, if the plaintiff's claim is not based on evidence, the judge decides the case as well, but the claim

⁹ A H Basri, "Alat Bukti Elektronik Menurut Hukum Acara Perdata Dan Hukum Islam," *Indonesian Journal of Islamic Law* 2, no. 2 (2020): 60–67.

¹⁰ Riduan Syahrani, *Buku Materi Dasar Hukum Acara Perdata* (Bandung: Citra Aditya Bhakti, 2004).83

is rejected for lack of evidence. Taking an oath also has absolute evidentiary power (volleding), binding (bind) and decision-making (beslisse) whether or not the oath is true.¹¹

Not apart from these problems, M. Yahya Harahap, also defines in his book "Civil Procedure Law", that the last evidence mentioned in Article 164 HIR, Article 284 R.Bg or in Article 1866 of the Civil Code is the oath, its placement as the last evidence, gives the impression as if the role of this evidence is not important. Perhaps this is so, but in reality the trial practice is also applied to end dispute resolution. The oath as evidence is a statement that is corroborated in the name of God with the first purpose, if someone swears in giving information or statements is afraid of God's wrath, if he lies. Secondly, fear of God's wrath or punishment is considered as a driving force for those who swear to tell the truth. Perhaps with some truth, fear of God's wrath or punishment will influence people to tell the truth in explaining the truth, but on the other hand for those who do not tell the truth, the oath is not a guarantee that they will tell the truth, because for people like that, lies are already an inseparable part of their lives, let alone people who believe in God, lies for them are commonplace, because people who do not believe in God do not know and do not fear the coming of God's punishment.¹²

Thus it can be seen, no one can guarantee that the oath as evidence is true or false in terms of theory and practice. When a court actually swears an oath, no one can be sure materially what is pledged or recited in the oath. However, the law stipulates that if a person takes an oath in court in his capacity and certainty as a party to the case being tried. Article 1936 of the Civil Code prohibits proving that the oath is false, so formally, the sworn statement must be considered true. It is not possible to request additional evidence to prove what has been stated in the oath, as regulated in Article 177 HIR. Therefore, the oath has value as perfect, binding, and decisive evidence. Judges are prohibited from judging it as perjury, no matter whether the swearing party is true or false.

According to the majority of scholars, Bayyinah is synonymous with Shahadah (testimony). Whereas the meaning of Shahadah is the testimony of a trustworthy person in front of a court session with the recitation of testimony to establish the rights of others.¹³

قال الجوهري : الشهادة خبر قاطع و الشاهد حامل الشهادة و مؤديها لانه مشاهد لما عاب عن غيره

“Berkata Al-Jauhary: Syhadah adalah pemberitahuan yang tegas dan saksi adalah orang yang member kesaksian dan menyampaikannya, sedang orang lain tidak mengetahuinya”

So testimonial evidence is the testimony of a person who is present at an event, sees with his own eyes, feels and experiences it which makes him really know it and can be trusted in front of a court of law by reciting testimony to establish the rights of others. At first glance, bayyinnah and shahadah are synonymous in terms of being able to explain for the judge to decide a case and indeed most cases are decided by testimony. However, in this sense, bayyinnah is actually broader than shahadah and shahadah is implicitly included in it, namely that bayyinnah includes other evidence, while shahadah is only testimony which is one of the evidence, which is used in court. Ibn Qoyyim, on the other hand,

¹¹ Daud Daud, “Peranan Sumpah Sebagai Alat Bukti Di Dalam Proses Perdata,” *Juripol (Jurnal Institusi Politeknik Ganesha Medan)* 5, no. 1 (2022): 16–22, <https://doi.org/10.33395/juripol.v5i1.11303>.

¹² M. Yahya Harahap, *Hukum Acara Perdata : Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2007).774

¹³ Muhammad Salam Madkur, *Peradilan Dalam Islam*, Imron AM (Surabaya: Bina Ilmu, 1993).

defines bayyannah as anything that can explain a case, while shahadah means bearing witness to establish the rights of others.

2. *The Use of Oaths as Evidence in Surakarta Religious Court*

A good contract must meet several important criteria, including accuracy. An accurate contract has clarity in its structure and content. The accuracy level of a contract is determined by factors such as completeness, preciseness, and exactness. Completeness, in relation to a contract, means that it contains all necessary parts. A precise and certain contract implies that it precisely formulates the intentions and agreements of the parties involved. Certainty here has a broad scope, covering aspects like form, time, value, and limitations of rights and obligations according to the contract. With a high level of preciseness and exactness, the contract's content should not contain vague or ambiguous words, phrases, or sentences.¹⁴

In the Surakarta Religious Court, oaths can be used as evidence to decide a case based on the Prophet's Hadith:

حديث ابن عباس : ان امرأتين كانتا تحرزان في بيت او في الحجرة، فخرجت احدهما وقد انفذت باسفا في كفها، فادعت على اخري، فرفع الي ابن عباس. فقال ابن عباس: قال رسول الله صلى الله عليه وسلم : لو يعطى الناس بدعواهم لذهب دماء قوم و اموالهم، ذكروها با الله و اقرؤ عليها، ان الذين يشترون بعهد الله فذكروها فاعترفت، فقال ابن عباس: قال النبي صلى الله عليه و سلم اليمين على المدعى عليه. (اخرجه بخارى و مسلم)

“Hadist dari Ibnu Abbas ra. Bahwasannya ada dua orang wanita yang berkerja menjahit kulit di suatu rumah, tiba-tiba yang satu keluar sesudah menancapkan jarum kulitnya di tangan kawannya, lalu ia mendakwa kawannya lalu perkara ini disampaikan kepada Ibnu Abbas ra. Dan ia berkata : bersabda Rasolullah SAW, andaikan pengaduan semua orang diterima begitu saja, pasti akan hilang darah dan harta kaum yang lain. Ingatlah supaya wanita itu takut kepada Allah dan dibacakan ayat : Innaladziina yasytaruuna bi’ah dillahi, maka sesudah dibacakan ayat tersebut lalu wanita itu mengakui perbuatannya, maka berkatalah Ibnu Abbas : bersabda Nabi SAW. Seharusnya orang yang menolak tuduhanlah yang bersumpah” (HR. Bukhari dan Muslim)

Based on Article 155 HIR: (1) If the truth of the claim or the truth of the defence is not sufficiently proven, and there is absolutely no way to strengthen it with other evidentiary efforts, then the chairman of the District court may by office order one of the parties to take an oath, either for the purpose of deciding the case, or to determine the amount of money to be granted.

Article 156 HIR: (1) Even if there is no evidence to substantiate the claim or refutation or claim, one party may request that the other party be sworn before the judge to hang the verdict on that oath, provided that the oath is about the act committed by that person, so that the verdict will depend on the oath.

Oath evidence cannot stand alone, meaning that without other evidence, the judge cannot make a decision based solely on the oath without other evidence. The oath is a warning to those who swear by God that they are commanded to be fair and walk justly. In this case the oath is considered as information that is always true, because it is done in the name of God and thus someone will feel afraid so as not to mess with the words spoken.¹⁵

¹⁴ Ranti Fauza Mayana, Tisni Santika, and Zahra Cintana, “Notaries and Contracts Related to Intellectual Property-Based Financing”, (Bandung: Refika Aditama, 2023), p. 133.

¹⁵ ASHB Wicaksono, “Pembuktian Sumpah Di Peradilan Agama,” *Gema*, 2015, 1667–74.

The cases that are decided on the basis of an oath are:

a. Divorce Lawsuit

The divorce lawsuit at the Surakarta Religious Court was decided on the basis of *yamiinul istidhar*, which is an oath of the applicant that already has evidence, but is used as reinforcement. That *yamiinul istidhar* is needed in seven cases, one of which is a case about the absence of a person and the like.

An example of a case decided by *yamiinul istidhar* is: verdict no.10/Pdt.G/2020/PA.Ska (regarding divorce) a civil case between NIK.xxx, age 46 years, religion Islam, occupation private employee, address xxx as plaintiff, against NIK.xxx, age 46 years, religion Islam, original residence address in xxx now unknown address clearly and surely in the territory of the Republic of Indonesia, as defendant.

In this case the plaintiff requested the Surakarta Religious Court to determine the breakdown of the marriage between the plaintiff and the defendant due to divorce on the grounds that since March 2011 the domestic peace of the plaintiff and the defendant began to falter, between the plaintiff and the defendant there were continuous disputes and arguments caused by the defendant never providing alimony, and the defendant had a relationship with another woman and the defendant often committed acts of domestic violence both physically and psychologically. As a result of these disputes and arguments since July 2019 until now for 6 months the respondent has been away without permission until now his address is unknown. During the trial the defendant and his attorney were never present, so this is considered to have confirmed the arguments of the plaintiff's lawsuit. During the trial the plaintiff submitted 3 (three) pieces of written evidence (P.1, P.2, and P.3) and 2 (two) witnesses who testified under oath that they saw the plaintiff and defendant separated for approximately 6 months. And the last piece of evidence was the plaintiff taking an oath (*yamiinul istidhar*). Based on the aforementioned facts and considerations, the panel of judges is of the opinion that the defendant has been proven to have violated the shighat of talak points (1), (2) and (4), therefore the defendant's one *khul'i* divorce is imposed on the plaintiff. All divorce cases were decided with *yamiinul istidhar*.

b. Marriage/reconciliation validation cases

Marriage validation cases are usually decided in the religious courts based on the evidence of the witnesses presented and the oath of the applicant. During the trial, the applicant presented witnesses who gave evidence under oath to corroborate the applicant's testimony. The applicant and his wife took oaths to substantiate their claims. The applicant and his wife had taken oaths to substantiate his claim. Thus it had been proven that there was *rujuk bil fi'li* between the applicant and his wife. The court then referred to the provisions of Article 167, Article 168 and Article 169 of the Compilation of Islamic Law. After that, the Council decided that the *rujuk bil fi'li* between the applicant and his wife was valid.¹⁶

c. Inheritance Case

After the enactment of Law No. 7 of 1989, inheritance cases became the authority of the religious courts. The decision of the Surakarta Religious Court in the case of the applicant's letters, witnesses and oaths. In the trial, the applicant submitted evidence in the form of letters, witnesses and the applicant's oath.¹⁷

Surakarta Religious Court sworn evidence is often used in divorce cases. The oath used is an additional oath (*supletoir*) ordered by the judge because of his position to one of the litigants as

¹⁶ Interview with Drs Jaenuri, M.H, Judge of Surakarta Religious Court

¹⁷ Interview with Drs Jaenuri, M.H, Judge of Surakarta Religious Court

reinforcement even though there has been evidence at the beginning and the judge considers that there needs to be more evidence and at the initiative of the judge so that the judge can immediately decide the case and is used in the case of *verstek* cases where the defendant is not present at the trial or is not known to exist.

Marriage validation cases are usually decided in the religious courts based on the evidence of the witnesses presented and the oath of the applicant. During the trial the applicant presented witnesses who gave evidence under oath corroborating the applicant's testimony. The applicant and his wife had taken oaths to substantiate their claims. Thus it was proven that there was *rujuk bil fi'li* between the applicant and his wife. Then the majlis stated the provisions of the Compilation of Islamic Law Article 167, Article 168 and Article 169. After that, the court ruled that the applicant's *bil fi'li* reconciliation with his wife was valid.¹⁸ The parties to the dispute must prove every fact or event contained in the parties' claims, especially regarding the subject matter of the dispute. Regarding these facts or events, it is generally assumed that the judge does not know what the parties are disputing and that the facts presented in court regarding these events must be supported by evidence, including sworn evidence.

3. *The Evidentiary Power of Oath Evidence and Legal Effects*

The law of evidence in civil procedural law has a very important role. It is known that procedural law or formal law aims to support and enforce material law. Formally, the law of evidence regulates the submission of evidence according to R.Bg and HIR. While materially, the law of evidence regulates whether or not it is acceptable to prove with certain evidence in court how strong the proof of the evidence is.¹⁹

The purpose of proof is to provide a description of the truth of an event, so that from the event can be obtained truth that can be accepted by the mind.²⁰ Basically, the process of proof is carried out against a person who makes a claim to a right or event. In order to confirm his rights or to refute the rights of others, the right or event must be proven. Article 163 HIR, Article 283 R.Bg, and Article 1865 of the Civil Code). The context of proof is carried out when there is evidence presented by one party and then refuted by the other party. For example, when one party admits in a divorce suit, the law requires the judge to examine whether the admission submitted by that party is true. The essence of proof in the judicial process is none other than to seek material truth from the litigants, so that the judge gets a belief in the truth of the evidence submitted by the parties. In proving the existence of an event or right to handle a civil case, written evidence is first used in court hearings. If written evidence is unavailable or insufficient, a deposition will be used, if testimony is insufficient, presumptive evidence will be used. Article 164 HIR and in Article 284 R.Bg and Article 1885 of the Civil Code the kinds of evidence in civil proceedings are as follows: written evidence, witness evidence, presumptive evidence, confessional evidence, and sworn evidence.²¹

¹⁸ Interview with Drs. Musaddad Zuhdi, M.H, Judge of Surakarta Religious Court

¹⁹ Umarwan Sutopo, Martha Eri Safira, and Neneng Uswatun Khasanah, *Hukum Acara Peradilan Agama Dalam Teori Dan Praktik*, 2021.79

²⁰ Martiman Prodjohamidjojo, *Komentar Atas KUHAP Kitab Undang-Undang Hukum Acara Pidana* (Jakarta: Pradnya Paramita, 1990).

²¹ mega ayu ningtyas khairatin azizah, muammar bin mosni, kholili anam, "Ma'mal : Jurnal Laboratorium Syariah Dan Hukum Volume 02, Nomor 01, Februari 2021," *Ma'Mal: Jurnal Laboratorium Syariah Dan Hukum* 02, no. Vol. 2 No. 01 (2021): Februari (2021).

If written evidence, as well as witness statements and presumptive evidence, is insufficient, additional evidence from confessions is added. If the evidence is insufficient, it will be supplemented with evidence of an oath. This oath evidence is also regulated in HIR Articles 135-158, 177, R.Bg. Articles 182, 185, 314 and BW Articles 1929-1945.

If in the proof there has been preliminary evidence, but the judge still sees the need for further proof, but the parties can not submit any other evidence, then the judge can order one of the parties to swear, so that the proof can be perfect. If it turns out that the oath is false, which is declared by the criminal judge, then the defeated party can submit a review to the Supreme Court. However, if the oath is taken without any preliminary evidence or the parties have no evidence that can be presented to the judge in the trial to prove the truth of the event, then such an oath has perfect evidentiary power and does not open the possibility for the defeated party to prove the oath is false, without prejudice to the prosecutor's right to prove that the oath is false. Thus it can be said that in principle the evidentiary power of oath evidence is perfect.

If a person takes an oath then all of his or her speech can be used as evidence, thus completing the examination process and the judge can continue the trial which then has the right to impose a decision. For example, the decision of the Surakarta Religious Court No. 05/Pdt.G/2020/PA.Ska of the applicant xxx, age 58, Muslim religion, trade occupation, residence at the boarding house of Mr xxx, and the respondent xxx, age 52, Muslim religion, former residence at the boarding house of Mr xxx, now unknown address clearly and surely in the territory of the Republic of Indonesia. This case has been registered at the registrar of the Surakarta Religious Court with No. 05/Pdt.G/2020/PA.Ska so that the oath serves as a reinforcement of the evidence that has been submitted to the judge, and the decision of the case can be continued because the evidence submitted has been fulfilled, and the judge can immediately drop the decision.

In the Surakarta Religious Court all divorce cases are decided by the judge using *yamiinul istidhar*. Likewise, for the case of an application for determination of heirs and the case of an application for marriage validation, it is decided with an oath. The oath here is positioned as a complement to existing evidence, such as the existence of witnesses but according to the judge the evidence that has been submitted is considered insufficient. When viewed from the perspective of Islamic judicial law, it turns out that oaths are also used as evidence, be it *yamiinul hasimah* or *yamiinul mutammimah*. *Yamiinul hasimah* is an oath submitted by the plaintiff to his opponent to find a law that can resolve the dispute. *Yamiinul mutammimah* is an oath ordered by the judge to one of the parties to perfect the arguments or evidence that has been presented in the trial. Meanwhile, *yamiinul istidzhar* is part of *yamiinul mutammimah*. Thus, the *yamiinul istidzhar* conducted in the Surakarta Religious Court has the power as evidence to complete the truth of an event according to Islamic judicial procedural law. As in civil procedural law, the oath taken by the Surakarta religious court *yamiinul istidzhar* or the term according to civil procedural law *suppletioir oath* can also be used as evidence, because in article 164 HIR mentioned there are 5 kinds of evidence, namely: Written evidence, Evidence by witnesses, Presumptions, Confessions and Oaths.

Islamic justice is not just the demand of a group of people, but Islamic justice is the fulfilment of the commandments of Allah, the Lord of the universe. Therefore, Islamic law has a strong foundation based on the Qur'an, As-Sunnah and Ijma.²²

²² Asadulloh Al-Faruq, *Hukum Acara Peradilan Islam*, Cet 1 (Yogyakarta: Pustaka Yustisia, 2009).9

CONCLUSION

After the author has obtained the data and has analysed it, the author draws several conclusions: Oath can be used as evidence in Surakarta Religious Court based on Article 164 HIR. And used in 3 cases, namely: Divorce Lawsuit Case, Marriage/Reconciliation Validation Case, Inheritance Case. Based on the Law on Religious Courts Article 49 No. 7 of 1989. The legal force of the oath as evidence in the Surakarta Religious Court is as a complement to the existing evidence, so it can also be said that the evidentiary power of the oath evidence is perfect based on Article 155 HIR. The legal consequences that must be borne by the litigants after the implementation of the oath is that all of their conversations can be used as evidence. Thus the examination process is complete and the judge can continue the trial which then has the right to impose his decision based on Article 155 HIR. In Law Number 7 of 1989 jo Law Number 3 of 2006, there is no regulation that specifically regulates the evidentiary system. This means that the legal basis of the index is based on HIR / R.Bg. In fact, as has been described in the previous section on Islamic law, it has also been stated that Islamic law contains rules of evidence as part of formal law. Therefore, a special law is required in the procedural law of religious courts, the legal material of which can be derived from Western law, namely the HIR/R.Bg, as well as Islamic law which regulates the subsequent proceedings before the religious courts when deciding cases. Particularly for those who are Muslim, in defence of Islamic sharia law which falls under the jurisdiction of the religious courts. Islamic substantive law in religious courts is more appropriate and harmonious when the formal law governing it is adopted by formal Islamic law to the extent that it is governed by Islamic law.

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