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**SYSTEMATIC LITERATURE REVIEW OF FORENSIC SCIENCE AND AL-QARINAH  
IN PROMINENT SHARIAH LITERATURE**

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**ABSTRACT**

Islamic law truly recognizes and appreciates the existence of science. This article explored the existence of forensic science elements in prominent shariah literature. The elements were existed to be integrated with the principles of evidence in Islam. Based on the reviews, prominent scholars views in *al-qarīnah* can best be organised under the three themes namely; the admissibility of *al-qarīnah* on civil, *ta'zīr*, and *hudūd* cases. In fact, that there are several literatures found to highlight the forensic science elements, but the discussion was very limited and unorganised. It is evident that the assimilation between science and Islam existed through the integration of forensic science and *al-qarīnah*. These findings can become the foundation of further theory of forensic science admissibility in Islamic law. This study suggests more research to be conducted within a wider scope to explore more in this field.

**Keywords:** *Fiqh Forensics, Islamic law of evidence, grounded theory, systematic literature review, al-qarīnah*

## Introduction

Islam, of course, represents a faith, promotes set of daily rituals, provides a set of guidelines on ethics and morality, and a framework of reference or a worldview. It is, indeed, a spiritual guide to life. It educates how to enjoy being alive in harmony with ourselves, fellow humans and the world. It demands, at the same time, use of intelligence to explore the world around us. Moreover, it calls for utilizing scientific methodology and logic in our approach to appreciate the world (Dajani 2012). Science and Islam are not strange bedfellows by any stretch of explanation. Although science is rooted on queries while Islam based on faith (Ali 2006), the stand of the *Qur'ān* in respect of query is very clear. If someone wants to understand what is *Halāl* (permitted) and what is *Harām* (forbidden) in the *Qur'ān*, he/she is encouraged to do so, namely, to enquire. The answers, obtained through such means, may make up one's mind on much confusion and embolden the faith of the questioner. Studying the nature and investigating the truth has already been exhorted in Islam as mentioned in verse 260, *surah al-Baqarah* (Ali 2006). In fact, scholars often cite verse 239 from *Surah Al-Baqarah* – *He has taught you what you did not know* – in support of their view that *Qur'ān* promotes the acquisition of new knowledge.

Linguistically, '*al-qarīnah*' (plural: *al-qarāin*) is a noun, derived from the word '*qarānā*' that carries various meanings. According to Ibnu Faris (1979), it indicates the gathering of something into something, and picking the other something from its strength and intensity. '*Al-qarīnah*' also derived from word '*qārīn*' which has been used in *Qur'ān* and *hadīth* (Zulfakar 1997). It refers, in view of some scholars, to spouse, connection, comparison, and what accompanies speech and demonstrates it (al-Jurjānī 1983, Ibnu Manzur 1994, Omar 2008). Besides that, the word '*al-qarīnah*' is also known as circumstantial evidence (Anwarullah 2010). There are certain words that closely related to *al-qarīnah* i.e., *al-amārāt* (verbal express), *al-'alāmāt* (factual expressions) and *Shawāhid al-ḥāl* (al-Zuḥaylī 2011, Baharuddin 2017, Idrīs 2010). It is understood, herein, that the context indicates a language that is closely related to two things in terms of congruence and association, so that the existence of one is related to the existence of the other (Radwan and Ahmad 2013). In view of Md. Saleh (2003) *qarīnah* is a sign and address which can be proved or denied the existence of something. In the legal context, it indicates to what is searched for, either in circumstance, description - in other words either implied or explicit (Baharuddin A. S. et al. 2015, Samrūt 2007, Shawarbi 2003).

On the other hand, forensic science can be simply understood as the application of science to the law or legal matters. It involves, broadly, examining the objects or substances that entangled in the crime (Ruwanpura and Vidanapathirana 2018). Through forensic science, the criminal justice system can be provided with objective, accurate and relevant information that allows legal professionals to conduct investigations and court cases correctly and effectively (Asten 2014). Many authors have explained on the relationship of forensic science and *al-qarīnah* but none of them has yet systematically reviewed the forensics element in prominent literature. This article explored the existence of forensic science elements in prominent shariah literature in the form of systematic review. Viewing the literatures from the four prominent Islamic schools and their *magnum opus*, this study has found that scholars of all these schools have shown their concern on various aspects of *al-qarīnah*.

## Methodology

This study employs the systematic literature review (SLR) in a form of qualitative. According to Jesson and Lacey (2006), SLR is a comprehensive review of published articles selected to address a specific question that uses a systematic method of identifying relevant studies in order to minimise biases and error. Systematic reviews are often referred to as 'original empirical research' because they review primary data, which can be either quantitative or qualitative (Aveyard and Sharp 2013). Systematic reviews can be considered as the 'gold standard' for reviewing the extant literature on a specific topic as it synthesises the findings of previous research investigating the same or similar questions (Boland et al. 2014). In this study, a comprehensive literature is offered on the issue under probe, including literature available in four schools of thought. Systematic literature analysis is made at the end at the shape of matrix table. The said table is designed to clarify the content of the major issues in each literature. Through this approach, deductive conclusions can be made.

**Discussion**

Category	Literatures	Reviews area/scope				
		Al-Qarīnah		Forensic science		
		Civil	Criminal	Civil	Criminal	
Prominent Scholars' view	Hanafi	(al-Bābarti n.d.)	/	/	/	/
		(Mulla Khasru n.d.)	/	/	/	/
		(al-Zayla'i 1895)	/	/	/	/
		(n.a. 1968)	/	/	/	/
		(al-Kāsānī 1986)	/	/	/	/
		(Haydar 1991)	/	/	/	/
		(Ibnu 'Abidin 1992)	/	/	/	/
		(al-Sarkhasī 1993)	/	/	/	/
		(al-Marghinānī 1996)	/	/	/	/
		(Ibnu Nujaym 1997)	/	/	/	/
		(Damad Afandi 1998)	/	/	/	/
		(Ibnu al-Humām 2003)	/	/	/	/
	Maliki	(al-Kharshī n.d.)	/	/	/	/
		(Ibnu Farḥūn 1986)	/	/	/	/
		(al-Hattāb 1992)	/	/	/	/
		(Mālik 1994)	/	/	/	/
		(al-Qarāfi 1994)	/	/	/	/
		(al-Ṣawī 1998)	/	/	/	/
		(al-Husayn al-Malik 1998)	/	/	/	/
		(al-Zarqānī 2002)	/	/	/	/
		(al-Dusūqī 2003)	/	/	/	/
		(Ibnu Abī Zaid al-Qairawānī 2005)	/	/	/	/
		(Khalīl 2005)	/	/	/	/
		(al-Qarāfi 2010)	/	/	/	/
	(Ibnu Rushd 2014)	/	/	/	/	
	Shafi'i	(al-Sharwānī and al-'Ibādī 1938)	/	/	/	/
		(al-Ramlī 1984)	/	/	/	/
		(al-Shāfi'ī 1990)	/	/	/	/
		(al-Khaṭīb al-Sharbinī 1994)	/	/	/	/
		(al-Bujayrimī 1995)	/	/	/	/
		(al-Ghazālī 1996)	/	/	/	/
		(al-Rafī'i 1997)	/	/	/	/
		(Abū Zakariyya al-Anṣārī 1997)	/	/	/	/
		(al-Māwardī 1999)	/	/	/	/
		(al-'Imrānī 2000)	/	/	/	/
		(al-Shīrāzī 2001)	/	/	/	/
(Abū Zakariyya al-Anṣārī 2001)		/	/	/	/	
(Abū al-Ma'ālī al-Juwaynī 2007)	/	/	/	/		

Table 1: Systematic Review of Forensic Science elements and *al-qarīnah* in Prominent Shariah Literature

Table 1 summarised all findings in of forensic science elements and *al-qarīnah*. It has been revealed that scholars from all four prominent Islamic schools and their masterpiece have all expressed their interest in *al-qarīnah*.

The study of *al-qarīnah*, in the Shāfi'ī School of thought, can be extensively found in numerous prominent literatures offered by their prominent scholars. These include, not exhaustively, *al-Hāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfi'ī wahuwa Syarh Mukhtaṣar al-Muzānī* by al-Māwardī (d. 450 AH/1058 CE), *al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'ī* by al-Shīrāzī (d. 476 AH/1083 CE), *Nihāyat Maṭlab fī Dirāyat al-Madhhab* by Abū al-Ma'ālī al-Juwaynī (d. 478 AH/1085 CE), *al-Wasīṭ fī al-Madhhab* by al-Ghazālī (d. 505 AH/1111 CE), *al-Bayān fī Madhhab al-Imām al-Shāfi'ī* by al-'Imrānī (d. 558 AH/1163 CE), *Sharh al-Kabīr* by al-Rāfi'ī (d. 623 AH/1226 CE), *Rawḍah al-Ṭālibīn* by al-Nawāwī (d. 676 AH/1277 CE), *al-Ghurur al-Bahīyah fī Sharh Manzūmah al-Bahjah al-Wardiyyah* by Abū Zakariyya al-Anṣārī (d. 926 AH/1520 CE), *Mughnī al-Muḥtāj ilā ma'rifah ma'ānī alfāz al-Minhāj* by al-Khaṭīb al-Sharbinī (d. 977 AH/1570 CE), *Nihāyat al-Muḥtāj ilā Sharh al-Minhāj* by al-Ramlī (d. 1004 AH/1596 CE), *Hāshiyatā Qalyūbī wa 'Umairah 'alā Kanz al-Rāghibīn* by al-Qalyūbī (d. 1069 AH/1659 CE) and 'Umairah (d. 957 AH/1550 CE), *Hawāshī Tuḥfah al-Muḥtāj bi-Sharh al-Minhāj* by al-Sharwānī (d. 1301 AH/1884 CE) and al-'Ibādī (d. 992 AH/ 1584 CE), and etc.

With regard to the admissibility of *al-qarīnah*, this School has diverse views varied according to the cases. For instance, this school do not accept *al-qarīnah* of pregnancy for conviction in illicit intercourse cases (al-Bujayrimī 1995), on the contrary, they accept wife refusal to take oath (*nukul 'an al-li'an*) as *al-qarīnah* for conviction in same cases (al-Shāfi'ī 1990). Additionally, al-Ramlī, well known as *al-Shāfi'ī al-Saghīr* (al-Shāfi'ī Jr.), has the opinion that *al-qarīnah* of breath, vomit and drunkenness are irrelevant in Shāfi'ī School as means of proving in intoxicant cases ('Awdah 2005, al-Khaṭīb al-Sharbinī 1994, al-Qalyūbī and 'Umairah 2014, al-Ramlī 1984). In addition, Abū Zakariyya al-Anṣārī (2001) has the opinion that *al-qarīnah* of existence of stolen goods in theft cases is also irrelevant. Similarly, the accused refusal to take oath (*nukul 'an al-yamin*) cannot be considered as *al-qarīnah* in theft cases (Abū Zakariyya al-Anṣārī 1997, Ibnu Hajar al-Haithamī 1983). However, there is one opinion from this school that allows taking *al-qarīnah* from *nukul 'an al-yamin* as means of proving in theft cases (Abū Zakariyya al-Anṣārī 2001).

As per al-Khaṭīb al-Sharbinī (1994), Shāfi'ī School does not accept *al-qarīnah* in *al-qiṣāṣ* cases. However, they accept *al-qarīnah* in *al-mu'āmalāt* and *al-Ahwāl al-Shakhṣiyyah* cases (al-Zuḥaylī 2011). Two people, for instance, are fighting over the ownership of a camel, carrying a burden belonging to one of them. In this case the judge decides camel's ownership in favour of the same person owing to the fact that he has a strong case comparatively to the other. The lost person is considered as a dead one at a certain age with the death of his friends. Moreover, his property is divided in his legal heirs.

Moving on to the Hanbali School of thought, *al-qarīnah* has been discussed in miscellaneous prominent sources of this School. The analysis on this subject matter can be observed, for instance, from the books of *al-Mughnī* and *al-Kāfi fī Fiqh al-Imām Ahmad* scribed by Ibnu Qudāmah (d. 620 AH/1223 CE), *al-Muḥarrar fī Fiqh 'alā Madhhab al-Imām Ahmad bin Hanbal* by Ibnu Taimiyyah (d. 652 AH/1254 CE), *I'lām al-Muwaqī'in 'an Rabb al-'Alamīn* and *al-Ṭuruq al-Hukmiyyah fī al-Siyāsah al-Shar'iyyah* both by Ibnu Qayyim (d. 751 AH/1350 CE), *al-Inṣāf fī Ma'rifat al-Rājiḥ min al-Khilāf* by al-Mardāwī (d. 885 AH/1480 CE), *Muntahā al-Irādāt* by al-Najjār (d. 972 AH/1564 CE), *Kashāf al-Qanā' 'an Matn al-Iqna'* by al-Buhūtī (d. 1051 AH/1641 CE), *Ghāyah al-Muntahā fī Jam'i al-Iqnā' wa al-Muntahā* by al-Karamī (d. 1033 AH/1624 CE), *al-Sharh al-Mumtī' 'alā Zād al-Mustaqni'* by al-'Uthaimīn (d. 1421 AH/2001 CE), and etc. In alluding the admissibility of *al-qarīnah*, this School has their own opinion. Ibnu Qudāmah (2000), Abdul Rahman al-Maqdisī (d. 682 AH/1283 CE) (1995), and al-Mardāwī (1995) have stated that *al-qarīnah* of pregnancy is not recognised upon the conviction of illicit intercourse cases due to uncertainty. However, if there is certainty, Ahmad allows the conviction; relying on judgment held by Umar (RA). Abdul Rahman al-Maqdisī (1995) and al-Mardāwī (1995) further state that if the wife refuses to take oath (*nukul 'an al-li'an*), such refusal cannot amount to *al-qarīnah* in illicit intercourse case. Moreover, the wife shall be imprisoned until she takes such oath or ratifies the conviction against her. On the same way, in intoxicant cases, there are two opinions

regarding *al-qarīnah* of breath, vomit and drunkenness condition (Ibnu Qudāmah 2000). First, majority scholars in this school have the opinion that it is not relevant and, therefore, hudūd punishment cannot be imposed (Ibnu Qudāmah 1994). Second, one of Ahmad’s narrations says it is relevant as long as it is certain *hudūd* punishment can be imposed (al-Mardāwī 1995). Furthermore, this school does not accept *al-qarīnah* of the existence of stolen goods and the accused refusal to take oath (*nukul ‘an al-yamin*) in theft cases.

As for the *al-qishāsh* cases, Ibnu Qayyim (2011) accept *al-qarīnah* as means of proving. However, Ibnu Muflih (2003), contrary to this, elucidates that most of scholars in Hanbali School do not opt this. As for the cases other than *al-hudūd* and *al-qishāsh* cases, numbers of example have been listed in their books as cited above, *inter alia*, if there is a dispute between the lessor and the lessee on who caused the recessed shelf, or a shutter formed in the house; it is the lessee due to *al-qarīnah* i.e., existence of lessee staying in that house. In addition, if there a dispute between a judge and a soldier over ownership of the spear; such spear belongs to the soldier based on the *al-qarīnah* nature of occupation and daily duties. Similarly, if there is a dispute over a needle and scissor, it shall belong to the tailor – based on the same philosophy. Furthermore, if different ways of manufacturing between the two makers are implemented on a product, then the identity of the manufacturer will be determined through the evaluation of the design, the way of manufacture and other *al-qarīnah* of the product. More examples may be found in *I’lām al-Muwaqī’in ‘an Rabb al-‘Alamīn* and *al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar’iyyah* written by Ibnu Qayyim. A novel view from Ibnu Qayyim (2011) and Ibnu Taimiyyah (1995) have refreshed the idea of admissibility and acceptance of *al-qarīnah* for all cases.

Classical literatures written by the prominent scholars, as mentioned above, have highlighted the element of *al-qarīnah*; some of them only mentioned few points, while some of them provide further elaboration, explanation and examples. It is also found that scientific and non-scientific elements have appeared in disorganized and unsystematic order, where the points are jumbled and scattered all over the literatures (Baharuddin 2017). Undoubtedly, *al-qarīnah* in Islamic perspective has been discussed thoroughly in numerous literature. On early year 700 AH, Ibnu al-Qayyim (2011) in his magnum opus known as “*al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar’iyyah*” has been a pioneer to make extensive artworks in this particular area. Albeit, the explanations of the concept of *al-qarīnah* are neither systematically nor specifically arranged, the styles and the way of *al-qarīnah* being interpreted and illustrated, are wonderfully its own values and appraisals towards further analysis of the issue. This mastermind has influenced another renowned scholar i.e., Ibnu Farḥūn where another critical discussion on the application of *al-qarīnah* has been done in his masterpiece, known as, “*Tabṣirat al-Ḥukkām fī Uṣūl al-Aqdiyah wa Manāhij al-Aḥkām*”. These two sources has been mainly referred by many researchers in the field *al-qarīnah*. In fact, some part from these books have been implemented and adopted in Islamic law and regulations in certain country or state all over the world, particularly, in Malaysia, where it can be found in Syariah Court Evidence (Federal Territories) Act 1997. Moreover, numbers of provisions in this statute applied the concept of *al-qarīnah* introduced by Ibnu al-Qayyim and Ibnu Farḥūn.

## Conclusion

In a nutshell, Islamic law truly recognizes and appreciates the existence of science. Moreover, it indicates that science and Islam are not strange bedfellows. Based on the reviewed books and literatures mentioned in the above lines, it is evident that the assimilation between science and Islam existed through the integration of forensic science and *al-qarīnah*. Furthermore, by referring to the matrix tables, it clearly portrays forensic science is related with *al-qarīnah*. This study suggests more research to be conducted within a wider scope to explore more in this field.

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