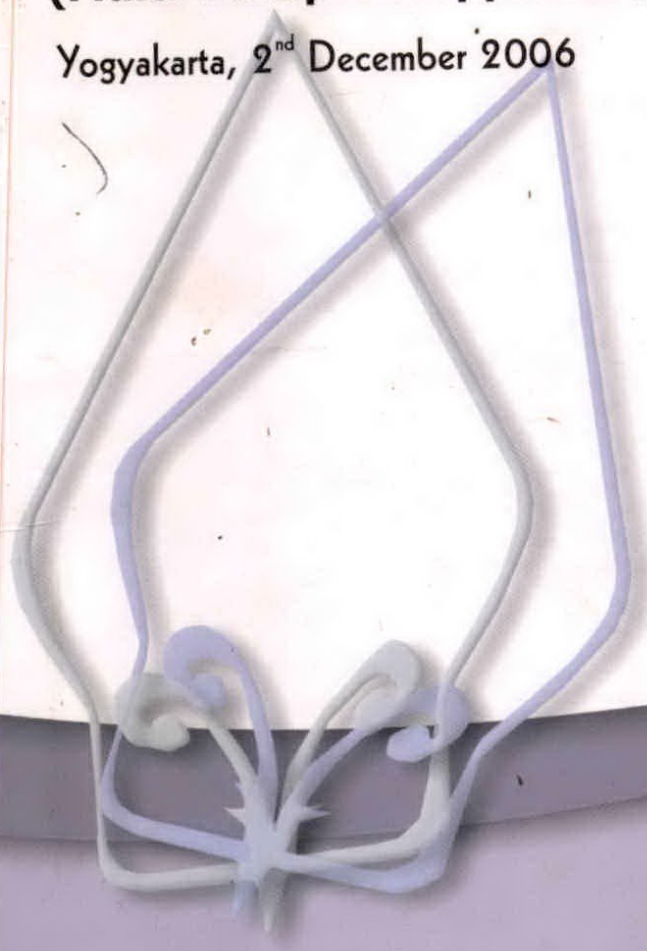


Proceeding

International Joint Seminar

**Muslim Countries and Development :
Achievements, Constraints and Alternative Solutions
(Multi-Discipline Approach)**

Yogyakarta, 2nd December 2006



Organized by:



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Universitas
Muhammadiyah
Yogyakarta



International
Islamic
University
Malaysia



Education and
Cultural Attache
Embassy of The Republic
Indonesia in Malaysia

**MESSAGE FROM THE RECTOR OF
UNIVERSITAS MUHAMMADIYAH YOGYAKARTA (UMY)**

Assalamu'alaikum warahmatullahi wabarakatuh

All praise be to Allah SWT, Lord of the world. Peace and blessings on Muhammad SAW, His Servants and Messenger.

First of all, as the rector of Universitas Muhammadiyah Yogyakarta (UMY), I would like to welcome to the honourable guests, Rector, Dean of Postgraduate Studies (CPS), Dean of ISTAC, Dean of IRKHS, Deputy Deans and Head Departments from various Kulliyah, lecturers, postgraduate students of International Islamic University Malaysia (IIUM), and all participants in this joint seminar.

Academic cooperation between UMY and IIUM started several years ago. The cooperation between us is based on a solid foundation; both us are Islamic universities having same missions to develop Islamic society, to prepare future generations of Islamic intellectuals, and to cultivate Islamic civilization. In fact, improving academic quality and strengthening our position as the producers of knowledge and wisdom will offer a meaningful contribution to the development of Islamic civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this joint program will be a giant step for both of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities.

I sincerely wish you good luck and success in joining this program

Wassalamu'alaikum Wr, Wb.

Dr. Khoiruddin Bashori

Rector, UMY

**MESSAGE FROM THE RECTOR OF
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)**

Assalamu'alaikum warahmatullahi wabarakatuh

In the name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmer bilateral tie between the International Islamic University Malaysia (IIUM) and Universitas Muhammadiyah Yogyakarta (UMY) after the MoU Phase.

I would also like to express my heartfelt thanks to Centre for Postgraduate Studies (CPS), Postgraduate Students Society (PGSS), contributors, paper presenters, participants and our Indonesian counterpart for making this program a prestigious event of the year.

This educational and cultural visit is not only an avenue to foster good relationship between organizations and individuals and to learn as much from one another but a step forward in promoting quality graduates who practices their ability outdoor and master his or her studies through first hand experience. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to our graduates. This comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

My utmost support is with you always. Looking forward to a fruitful meeting.

Ma'assalamah

Wassalamu'alaikum Wr, Wb.

Prof. Dato' Dr. Syed Arabi Iddid

Rector, IIUM

**MESSAGE FROM EDUCATION AND CULTURAL ATTACHE
EMBASSY OF THE REPUBLIC OF INDONESIA
KUALA LUMPUR**

Assalamu 'alaikum warahmatullahi wabarakatuh

All praise be to Allah SWT. This is the moment where implementation of MoU between Universitas Muhammadiyah Yogyakarta (UMY) and International Islamic University Malaysia (IIUM) comes in the form of action by organizing this Joint Seminar. The efforts of both sides to implement the MoU are highly appreciated, especially, in the context of which both universities effort to enhance the quality of education.

Substantially, I believe that this Joint Seminar will bring many benefits. In term of the development of knowledge, it is a means for developing academic quality, for exchanging of information on academic development, as well as for constructing intellectual atmosphere at both universities. In term of international relations, both universities have taken part in increasing close relationship between Malaysia and Indonesia. RUM and UNY as well are using 'soft power' to increase bilateral relations among citizens which brings a lot of benefits for both nations.

Therefore, I hope that both RUM and UMY can make use of this program as a 'kick-off' for other programs in the future, especially in using UMY's vast networks with other Muhammadiyah Universities in various cities in Indonesia as well as IIUM's network. The support of IIUM for UMY also means a progress for IIUM and UMY. I hope such joint program will continue in future for betterment of both Indonesia and Malaysia. Embassy of the Republic of Indonesia in Kuala Lumpur will always support these efforts.

To our honorable guests, Rector, Dean of Postgraduate Studies (CPS), Dean of ISTAC, Dean of IRKHS, Deputy Deans and Head Departments from various Kulliyah, lecturers and students of IIUM, I warmly welcome you to Yogyakarta. I hope you enjoy your stay in the cultural city of Yogyakarta.

Finally, as the Attache of Education and Cultural, Embassy of the Republic of Indonesia, Kuala Lumpur, I sincerely wish you good luck *and a successful program with unforgettable memories.*

*Wabillahit Taufiq Wal Hidayah
Wassalamu 'alaikum warahmatullahi wabarakatuh.*

M.Imran Hanafi

Education and Cultural Attache, Embassy of the Republic of Indonesia

MESSAGE FROM DEAN CENTRE FOR POSTGRADUATE STUDIES

Assalamu'alaikum warahmatullahi wabarakatuh

Praise be to Allah. May the peace and blessings of Allah be on the last prophet and messenger, our master Muhammad and on his household and companions. It is a great privilege for me to foreword this message to this wonderful event that is jointly organized by the Universitas Muhammadiyah Yogyakarta (UMY) and International Islamic University (IIUM).

First and foremost I would like to record my special gratitude to management of Universitas Muhammadiyah Yogyakarta for their co-operation.

In order to obtain comprehensive excellence, the Centre for Postgraduate studies has always facilitates postgraduate students of the university to achieve the highest quality in their academic work. This seminar is one of the many programs that Centre for postgraduate studies has to ensure quality graduates.

I would therefore like to thank all the participants and programme coordinators who have worked hard to realize this event.

May Allah SWT shower His blessing upon us.

Wassalamu'alaikum Wr, Wb.

Prof. Dato' Dr. Wan Rafei Abdul Rahman
Dean, Centre For Postgraduate Studies

**MESSAGE FROM THE ACTIVE
PRESIDENT OF POSTGRADUATE STUDENTS'**

Assalamu'alaikum warahmatullahi wabarakatuh

On behalf of Postgraduate Students' Society (PGSS), my gratitude and appreciation to our beloved Dean of Studies, the Embassy of Indonesia in Kuala Lumpur, Muhammadiyah Yogyakarta and the organizing committee of IIUM and the Universitas Muhammadiyah Yogyakarta for their huge success. Postgraduate Students' Society (PGSS) under the supervision of the Center for Postgraduate Studies (CPG) is pleased to host this event.

As I strongly believe that the initial stages of unity are the key to building the new generation, who will represent the future more, such programs, not only achieve the mission of our universities but to achieve the global mission and vision. Therefore, I believe today, we have to have understanding and then only we can appreciate our diverse cultures. We should acknowledge the different strengths and weaknesses through knowledge in this age of information. I am sure this joint seminar will initiate unity among the future leaders along with integrating them.

Thank you,

Mohd Nabi Habibi

Active President Postgraduate Students' Society (PGSS)

MESSAGE FROM PROGRAM DIRECTOR

Assalamu'alaikum warahmatullahi wabarakatuh.

Praise be to Allah. May the peace and blessings of Allah be on the last Prophet and Messenger, our master Muhammad and on his household and companions.

Honestly speaking, we are pleased to be trusted by Postgraduate Students' Society (PGSS) and Centre for Postgraduate Studies (CPS) to organize the programme named Educational and Cultural Visit to Yogyakarta, Indonesia. For this, We express our gratitude to the management of both PGSS and CPS. This programme is of immense value. It has the potentials to promote intellectual endeavor, develop leadership capabilities and enrich cross-cultural understandings. We sincerely believe and hope that program of this kind will be organized in a regular fashion in future.

It is a great privilege for us to play twofold role in organizing this event: *as a host* and *as guest*. In fact, this is a fascinating experience to manage this event. Since our inception here, we have found meaningful interaction of students in an interweaving of cultures into complicated, yet beautiful, embroidery of social fabric. We are proud to say that this dearly loved university has produced graduates of high quality, who are distinct from those of the local universities.

Finally, we wish to express our special thanks to Bapak M.Imran Hanafi, Education and Cultural Attache of Indonesian Embassy, Bapak Herdaus, S.H., Assistant of Immigration Attache of Indonesian Embassy, Bapak Tharian Taharuddin for their immensely valuable assistance and co-operation in making this program a success. I sincerely appreciate all local committees at Yogyakarta, the colleagues and program coordinators and committee members who worked diligently to materialize this event. We wish to pass on good wishes to the PGSS for their valuable efforts it expended for this event.

May Allah s.w.t shower His blessing upon us.

Wassalam,

Nasrullah

Programme Director

Todi Kurniawan

Co-Programme Director

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The Ruling on Refusal to Take an Oath in Islamic Jurisprudence and Its Application in The *Sharī'ah* Courts in Malaysia and Philippines

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Fiqh and Usul Al-Fiqh
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Abstract

This paper attempts to highlight the ruling on refusal to take an oath in Islamic Jurisprudence and its application in the Malaysian Sharī'ah Courts and the Procedures of Sharī'ah Courts in the Philippines. This paper is divided into three sections namely, introduction, the ruling on refusal to take an oath based on the jurists' opinions and law makers, conclusion and recommendation. In the ruling on refusal to take an oath, the researcher discusses (a) the nature on refusal to take the oath, (b) the ruling immediately after refusal to take the oath - except for retaliation and punishments (Qisās and Hūdūd), (c) the retortion of the oath to the suspect, and (d) the imprisoning or taking oath within the time of refusal. This paper discusses the issues among the Muslim jurists and law makers pertaining to the issue in question, and some cases and positions of the Sharī'ah Courts in Malaysia and in Philippine Sharī'ah Courts. Opinions of different Muslim jurists are examined and compared. The researcher utilizes classical and modern sources most of which are written in Arabic and English languages to find legal Islamic views on issues related to this research. Through the demonstration and the discussion of the jurists' opinions and the law makers, the study concludes that the ruling on refusal to take the oath is a disputed issue among the Muslim jurists. However, the predominant opinion is that the ruling on refusal to take the oath depends on the merits of each particular case. As such, returning the oath back to the plaintiff is for the purpose of settlement (Qulī).

Keywords: Sharī'ah Courts; Malaysia; Qisās and Hūdūd; Islamic Jurisprudence; oath.

Introduction

Before attempting to discuss the refusal to take the oath (*al-NukĒl ĤAn al-YamĒn*) in Islamic jurisprudence, it is essential to determine the meaning of oath in Islamic law and its application in the Malaysian *Sharī'ah* Courts and the Procedures of *Sharī'ah* Courts in the Philippines.

Christian in its nuances and contours.³⁰ It is plainly logical that in a majority Muslim country, guidance from the textual authorities has special place in their definition of law.

In a situation where one is not in the position of giving recognition on the importance of religion, then the whole story of right and wrong has to be redeveloped and explained. Perhaps the alternative is to say that certain act; take kissing in public as an example, is not right not because of it being morally unacceptable but because of the harm that it may cause to the public at large. The ultimate aim of law is now not to cause injury to the members of the public. And that since majority of the people in big cities, be it in Europe or Asia, have become more tolerant towards such activities, such act cannot be deemed injurious and thus, no sound reason to criminalize it.

Just take that argument on the degree of religiosity as true; still, there is something that makes the act deplorably unacceptable; the cultural values of a society. If religion plays no part in our system, can one really rely his daily measurement of right and wrong merely on the basis of it being injurious or otherwise to others? And if one's cultural practices that have been inherited for generations are now also irrelevant, than Hobbe's theory of man's origin is after all, not wrong. For that reason, the learned Chief Justice's remarks are not wrong either.

³⁰ Lord Devlin, *Morals and the Criminal Law*, from R.M. Dworkin, (Edit.), "The philosophy of Law", Oxford University Press, 1977, p. 69.

"Morals and religion are inextricably joined-the moral standards generally accepted in Western civilization being those belonging to Christianity. Outside Christianity other standards derive from other religions. None of these moral codes can claim any validity except by virtue of the religion on which it is based." Pope Benedict XVI was quoted to have said: "In Europe, while remaining open to other religions and their cultural contributions, we must unite our efforts to preserve Christian roots, tradition and values. . . In the face of this reality, we are called, together with all other christian communities, to renew Europe's awareness of its Christian roots, traditions and values, giving them new vitality." <http://www.turkishdailynews.com>

Oath is one of the principal means of establishing fact in Islamic law. The words¹: *yamĒn*, *qasam*, *ah'hd* and *half* are used for oath which means a solemn pronouncement in the name of AllĒh or His attributive names to affirm the truth of one's statement.

Prophet says: 'The burden of proof is on the complainant and the oath is on the one who denies'.²

This *hadĒth* illustrates that if the plaintiff has no burden of proof, the taking of the oath rests upon the defendant (*mudda'Ē alayhĒ*). And if he takes an oath, the judgment shall be given in his favor. If he (defendant) refuses to take oath (*NukĒl*), the jurists disagreed. This is the most significant issue to be emphasized later in this paper, *insha* AllĒh.

Oath is of two kinds: procedural oath and substantive oath.

A procedural oath may be either:

- (1) Pre-requisite oath or oath before trial;
- (2) Decisive oath (*YamĒn rafĒ'ah*), and
- (3) Suppletory oath.

Oath which was asked by the judge (*Qadi*) in court is one of the ways to prove something in process of judiciary. The effect of an oath done in court is different than the effect of those than at outside the court. The word said are generally the same that is using the name of AllĒh all his characters. Oath inside the court which applied to certain people is to do justice and to reconcile any argument³. It can be divided into three types:

- a. *TahlĒf as-Sha-hid* (Oath by the witness)
- b. *TahlĒf al-Mudda'Ē alayhĒ* (Oath by the defendant)
- c. *TahlĒf al-Mudda'Ēe* (Oath of the plaintiff)

Substantive oath is of three kinds:

- (1) *al-YamĒn al-Gamoos* or *as-ŌĒbirah* (false or false swearing)
- (2) *al-YamĒn al-Lagwoo* (misconjecture or mistake)⁴

An oath over something, past or present but it is proved to be a mistake, e.g. certainly, by AllĒh, Arif is coming when in fact, Arif is not coming – here, there is no sin.

- (3) *al-YamĒn al-Mun-aqedah*

¹Ibn al-ManĒoor, *LisĒn al-Arab* vol. 13, p.458, 'Abu Habib, Saed, *al-QĒmĒs al-FiqhĒ lugatan wa shar'an* (Dimascus: DĒr al-Fiqr, 4th ed., 1404H/1988M), p.395, SĒbiq, Saed, *Fiqh al-Sunnah* (Birut: DĒr al-Kutub al-Arabie, 7th ed., 1405H/1985M), p.11, BahansĒ, *NaĒariyat al-ithbĒt fi al-fiqh al-JinĒĒe al-Islamie*, p.217, al-SarkhasĒ, *al-MabsĒl*, p.116.

² al-BaihaqĒ, Ahmad bin Ali, bin Musa Abubakar, *as-Sunan al-KubrĒ*, TahqĒq: Muhammad abdulqĒdir Ata (Bairut: Darul Qutub al-Ilmiyyah, n.d., 1420H/1999M), vol.10, p.202.

³ Haron, Muhammad Sabri., *Al-yamĒn (The Oath) in Islam and its Application in the Shari'ah Court in Malaysia*, A Thesis submitted to the Kulliyah of Laws, International Islamic University Malaysia in partial fulfillment of the requirements of the Degree of Master in Laws, 1993, p. 44.

It is intentional oath to do or not to do a thing in the future. It is obligatory to fulfill the promise or agreement under oath. AllÉh says:

"And the fifth (testimony should be) the invoking of the curse of AllÉh on him if he be to those who tell a lie (against her) (*al-Qur'Én*, 24: 6).

Expiation is required otherwise, it remains a sin.⁵

Oath is permissible according to *Qur'Én* and *Sunnah*. In *al-Qur'Én* (apart from the previous verse), one of the verses mentioned the oath, AllÉh says: "But if they violate their oaths after their covenant, and attack your religion with disapproval and criticism then fight the leader of disbeliever..." (*al-Qur'Én*, 9:12), and in *Sunnah*, Muhammad (s.a.w.) said Ibn' Abbas reported that the Prophet (s.a.w.) said that: 'If men were to be granted what they claim, some will claim the wealth and lives of others, but an oath is incumbent on him to denies'.⁶ In other narrator or *riwayah*: 'The burden of proof is on the complainant and the oath is on the one who denies'.⁷ But an oath is incumbent on him to denies'. Another *HadÉth*, reported from Ibn Umar (R.A.) that the prophet (s.a.w.) had returned the oath to the plaintiff.⁸

In Malaysian law of evidence, the use of oath according to the administration's enactment of *Hukum syarak (Hukm Shar'É)* at the states of Malaysia, the states run the oath based on their own administration's enactment of *Hukum Syara*, for example in Teranganu, the latest law is Administration's Enactment of Islamic Affairs no.12/1986. Majority of Malaysian states are still using its main law to administer Islamic law of evidence except in Federal Territory⁹ and in Kelantan. In all states' main law there is one or more sections for the law of evidence, e.g. in Tranganu in section 94 and the 95 and in Johore in section 72 and 73.

In those sections the provisions are too general by mentioning the all condition of *Hukum syarak (Hukm Shar'É)* about the witness and evidence. This enactment also gives an opportunity to use the law of evidence in the state as guideline. Normally, evidence by an oath with special reasons can be allowed by the court.¹⁰

In the oath by the witness, witnesses are asked to take an oath to tell the truth. The oath must be read before beginning the duty as a witness. The word of this oath does not accord with the oath in Islamic law. It is just kind of admission (*Iqr'Ér*). The word of oath by the witness is:

"I.....(name) Promised that my statements are true, all are true and nothing unless the truth"

⁵Rasul, Jainal D, Ghadzali, Ibrahim, *Commentaries and Jurisprudence on the Muslim Code of the Philippines* (Quezon City: Central Law Book Publishing co., Inc., 1984 Edition), p.399.

⁶al-Baihakie, *as-Sunan al-KubrÉ*, vol.10, p.181.

⁷ See earlier, al-Baihaqi. p.181

⁸ Ibid, vol. p. 181.

⁹ Federal Territory of Malaysia are: Kuala Lumpur, Putra Jaya and Labuan.

¹⁰ Ibid, P.81.

Then the witness adds another admission.

"I.....(name) admit as a witness in the trial
.....against....."

Or anything which the same meaning.

The very famous oath in Malaysia which uses the names of AllÉh as the oath of Yang di Pertuan Agong (King), prescribed as follows:

We.....Ibni.....Yang di Pertuan Agong of Malaysia do hereby swear: *WallÉhi; WabillÉhi WatullÉhi*; and by virtue of that oath solemnly and truly declare that we shall justly and faithfully perform (carry out) our duty in the administration of Malaysian in accordance with its laws and constitution which have been promulgated or which may be promulgated from time to time in the future. Further we do solemnly and truly declare that we shall at all time protect the Muslim religion and uphold the rules of law and of law and order in the country.

In my opinion about this political oath (by yang dipartuan agong) based on the above definition of oath, can be considered as an oath in Islam. As long as the form of oath bring up the Allah's name, can be considered.

In Philippine *SharÉ'ah* Courts, some rules from the procedure in administration of oath according to the procedures as follows:

An oath (*Yamín*) legally binding in a manner and form observed under Muslim Law may by order of the court be administered upon any of the parties who are Muslims to establish a fact, or to affirm any evidence presented. Such oath may constitute as proof in the absence of any evidence.¹¹

In the Philippine man-made law particularly in the law of evidence, oath is not a strong proof but it is only a guide for oath-taking or sworn by the witness before a trial begins. This manner of oath taking can be noticed in other countries like United States of America (USA), Great Britain etc.¹² In the trial the witness is requested to swear to speak only the truth. In this situation, the prescribed procedures of oath in the Philippine Courts (except *SharÉ'ah* Courts) is determined at the following procedures:

Please raise your right hand!

"Do you swear to tell the truth? The whole truth and nothing but the truth in this investigation!

The answer: Yes / No Sir".

Then the court obliges the witness and dependant to sign any statement he made after the investigation or trial. But if he refuses to swear before the investigation, the judge ceases to grant permission on further investigation to the

¹¹Section 13-A (Administration of oath). See: Special Rule of Procedure in the *SharÉ'ah* Courts (*JURĀ'AT AL-MAHAKIM AL-SHAR'IYYAH*), August, 1983.

¹²Albanu, *Remedial Law Reviewer*, P. 827, Regalado, Florez D. *Remedial Law Compendium*.

witness.¹³ This manner to render oath-taking procedure which is similar to those in the civil courts cannot be considered in Islamic law of evidence as a means to provide strong proof defined in Islamic judiciary law.

In the existing *SharĒ'ah* Courts procedures under Philippine Supreme Courts, one of the cases that reached to this Supreme Court for review is all about suggestion to delete the oath-taking from the plaintiff. This court wanted to strip away the evidentiary oath (*al-YamĒn*). In *Tampar v. Usman, Gancayco, J.* pronounced by way of an obiter dictum that *al-YamĒn* is a derogation of litigant's right to due process, and hence, suggested that it be deleted from the plaintiff who affirmed his claim under oath, in which judgment was rendered in his favor.¹⁴ The Chief justice and four associate, including Bidin, J. who was then the only Muslim member of the Court, however upheld refuse of decision by judge C.D. Mason of the 5th *SharĒ'ah* District of Cotabato because petitioner was in estoppels.¹⁵ Therefore this suggestion to delete the *YamĒn* from the plaintiff was not approved due to the aforementioned reaction from the members of restricted *SharĒ'ah* Courts of the Philippine government.

Apart from the previous meaning of oath and its relevance, oath also accepted in Islamic law is an oath using the word Holy *Qur'Ēn* with Allah's name. It happened in southern Philippines during the pre-trial between "Heirs of Datu Dalandang Kuli" (Plaintiffs) versus "Heirs of Amal Palao and Angki Kambang" (Dependants) at 5th *SharĒ'ah* District Court of Cototabato. After the pre-trial with the plaintiff's challenged the dependants to take an oath, they (dependants) affirmed the oath with the following prescribed oath:

That we (individually), the undersigned "Heirs of Amal Palao and Angki Kambang", do hereby swear on the Holy *Qur'Ēn* that the Arabic signature of DALANDANG KULI affixed on the deed of absolute sale ratified before a notary Public in Dulawan, Cotabato in the year 1953 which caused the transfer of title and ownership over Lot 2324, Cad. 107, situated at Midsayap, Cotabato, in favor of our ascendant "Amal Palao" is the true, actual and genuine signature of Lot owner "Datu dalandang Kuli";

That we (individually) also swear on the *Qur'Ēn* that the signature thumbprint of "Mora Tonembang" on the deed of absolute sale aforementioned is the true, actual and genuine thumbprint of "Tinomimbang Sulmalong", the spouse of "Datu Dalandag Kuli".

That AllĒh will curse us if we (individually) are not telling the truth.¹⁶

Hence, this oath affirmation is considered an oath in Islam because the words *Qur'Ēn* and AllĒh's name are mentioned in the 'oath-taking statement' at above.

¹³ Albano, *Remedial Law Reviewer*, Rule 110, Section 3, P. 828.

¹⁴ Mohammad Ibrāhīm mad and 'Abdul Monīr Ya'cob (Editors)Ah, *Administration of Islamic Laws*, Institute of Islamic Understanding Malaysia (IKIM), Malaysia, 1997, P. 7.

¹⁵ Mohammad Ibrāhīm mad and 'Abdul Monīr Ya'cob (Editors)Ah, *Administration of Islamic Laws*, Institute of Islamic Understanding Malaysia (IKIM), Malaysia, 1997, P. 7.

¹⁶ 5th SharĒ'ah District Court of Cotabato.

In comparison, the procedure of oath-taking in the *Shar'É'ah* Courts in the Philippines is approximately the same with the procedure of the *Shar'É'ah* Courts in Malaysian. Therefore, there is no doubt on these two Courts in terms of oath-taking procedures based on Islamic jurisprudence.

The Ruling on refusal to take an oath and its retortion
In Islamic Jurisprudence

Before discussing the ruling on *al-NukÉ'l 'An al-YamÉ'n* or refusal to take an oath and the retortion of oath, it is required to define *AI-NukÉ'l*. The term *AI-NukÉ'l* originated from the word *Nakala*. *Nakala*, linguistically means *nakasa* or *rafadah*¹⁷ (refusal or denial), the word *YamÉ'n* means oath or sworn affirmation as mentioned earlier. So *al-NukÉ'l 'An al-YamÉ'n* legally means refusal or denial of the defendant to take an oath whereas in ordinary circumstances it is he who is supposed to do oath-thing.¹⁸

The *Muslim jurists* agreed in their views that after a plaintiff had successfully provided evidence to substantiate his claim; the judgment shall be given in his favor. If he (plaintiff) fails to forward evidence or witnesses then the court requested the defendant to render an oath and did so, the claim shall be dismissed.¹⁹ But if the defendant refused to take an oath, should the judgment be given in his/her favor or to the claimant? Or would the plaintiff then be asked to take an oath? There has been some disagreement over this issue. The jurists are of the following four opinions:

Opinion of the first group: The ruling against the defendant merely on his *NukÉ'l* merely based on his refusal to take an oath (*NukÉ'l*) but the oath shall be retorted to the Plaintiff as well,²⁰ as narrated by *Uthman bin affan* and *Ibn abbas*. It is the judgment of *Shuraih* and the opinions of *Abu Hanifa*, *Hanbali*, *Imam Al-RabÉ'* from *IbÉ'diyyah* and some from *al-Shi'ah al-Imamiyyah*²¹ etc.

They gave an argument (*adillah*) on *NukÉ'l* of the defendant that based on the following *ÉyÉ't* and *ahadith*, and the sayings of the *Øahabah*:

In *al-Qur'É'n*:

As for those who sell the faith they own to Allah and their own plighted word for a small price, they shall have no portion in the Hereafter. (3:77).

¹⁷ Ibn ManÐur, *LisÉ'n al-Arab*, vol.11. p. 677, al-RÉzÉ, FakhruddÉn, *MukhtÉ'r al-ØiÉ'l* (Birut: printed by the library of Lebanon, 1415H/1995M), p.598, yÉsuf, xusain and al-Øa'Éd, Abdul al-FatÉ'l, *al-IfØÉ'l fÉ Fiqh al-Lugah* (Maktab al-IlÉ'm al-IslÉ'mÉ, 1st ed., 1409H), p.175.

¹⁸ ibn abd al-Bur, Abu omar yÉsuf, *al-IstizkÉ*, taqÉq: Abdullah al-Mu'ti ÑAmin (Dimascus: Dar al Qutaibah, no ed., & pub.), vol. 22, p.70, Muhammad Salam Madkur, *AI-Madkhal FÉ AI-fiqh al-IslÉ'mÉ, Dar al-Nahdah al-'Arabiah, Qairo, 1969, P.352.* see: Othman, introduction to Islamic Law of Evidence, p.111.

¹⁹ al-JuhailÉ, al-Fiqh al-IslamÉ, wa 'adillatuhu, vol.6, p.602.

²⁰ al-Jaburi, Adullah, *al-QalÉ'h bi al-NukÉ'l 'An al-YamÉ'n Bina al-SharÉ'ah wa al-QanÉ'n "DirÉ'sÉ't Arabiyyah wa IslÉ'miyyah"*, p. 345-346, *al-BahÉ, min turoq al-ithbÉ't fi al-SharÉ'ah al-Islamie*, wa fi al-QanÉ'n, p.4.

²¹ al-KÉsanÉ, *Bada'eh al-ØanÉ'eh*, vol.6, p.225, al-TarÉbulisÉ, *Muain al-HukÉ'm*, p.96.

And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solidarity evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth (6). And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they lie (7). But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that (her husband) in telling a lie. (6-7, *ĪĒrat al-NĒr*).

According to them this AyĒt is about the ruling on refusal to take an oath.²²

In *al-Ahadith*:

Ibn 'Abbas reported that the Prophet (s.a.w.) said: If men were to be granted what they claim, some will claim the wealth and lives of others, but an oath is incumbent on him to denials.²³

In another *hadith*, also reported from Ibn Abbas that the prophet (s.a.w.) have said to the effect that, the evidence is on the claimant and the oath is on the person who denying.²⁴

The rationality of their argument from these *ahadith*: The Prophet (s.a.w.) made the sort of oath as a proof of dependant. If Allah made the oath as a proof of plaintiff only, should not be all the sort of oaths as a proof of defendant.²⁵

In the saying of the *Qahabah*:

Ibn Omar (r.a.) reported that he made judgment divorce for the husband when he said to his wife *Hublaki alĒ gĒribiki* (figurative or metaphoric divorce) upon his (husband) refused to take an oath to wish for the divorce.

Opinion of the second group: The oath shall be retorted to the plaintiff
According to them, the oath shall not be solely based on the *NukĒl* of the defendant but shall be ruled to the plaintiff to take an oath, if he (plaintiff) did so, the judgment shall be given to his favor. But if the plaintiff refused to affirm the oath the oath shall not be retorted to the defendant because the *al-Yamin al-MardĒd* can not be restored.²⁶

This idea is a narration of some of the *QahĒbah* namely, Omar, Ōli, MiqdĒd Bin Al-Aswad; an idea of as-Shah'bi Ibn SirĒn, a follower of Malaki and Shafi'I school (*majhab*); an idea of majority of *al-IbĒdiyyah*, and idea one of the two narration from *imĒm Ahmad* as a strong opinion from *al-Ja'fariyyah*.²⁷

²² al-Ūraifi, NĒĪr bin AqĒl, *al-MurĒfaĒt asShar'Ēyyah* (Riyadh: al-ImĒm Muhammad bin Soud Islamic University, 1st ed., 1405H/1985)

²³ Ibn al-Mulaqqab, *Khulasat al-Badr al-Munir*, Vol. 2, p.449.

²⁴ al-Baihaqi, supra, p. 181.

²⁵ Ibn al-Mulakkab, *Khulasat al-Badr al-MunĒr*, vol.2, p.449.

²⁶ al-Jaburi, Adullah, *al-QalĒh bi al-NukĒl 'An al-YamĒn Bina al-SharĒ'ah wa al-QanĒn: DirĒsal MuqĒranah bi al-qawĒnĒn al-Wad'Ēyyah fi al-IrĒq wa ba'd al-AqtĒr al-Arabiyyah "DirĒsĒt Arabiyyah wa IslĒmiyyah"*, vol.13, al-Lujina al-Wataniyyah lil-IhtifĒl bimatlah al-Qarn al-Khamis ashah al-Hijri, Bagdad, al-IrĒq, p.346, *al-BahĒ, min turoq al-ithbĒt fi al-SharĒ'ah al-Islamie*, wa fi al-QanĒn (al-QĒhirah: DĒR al-ShurĒk, 5th ed., 1409H/1983M), p.4.

²⁷ Ibn Rushd, Muhammad bin Ahmad bin Muhammad al-Qurtubi, *BidĒyat al-Mujtahid wa NihĒyat al-Muqtafid* (Birut: DĒR al-Fiqr, n.d.), vol. 8, p. 212.

This group their argument from *Qur'an*, *ahadith* and reason (Ma'kĒl)

In *Qur'an*:

"O ye who believe when death approaches any of you (takes) witness among your selves when making bequests, two just men of your own (brotherhood) or others from outside if ye are journeying through the earth, and the chance of death befalls you (thus). If ye doubt (their truth, detain them doth after prayer, and let them both swear by AllĒh: we wish not in this for any worldly gain, even though the (beneficiary) be our near relation: we shall hide not the evidence before Allah: if we do, then behold the sin be upon us (106). But if it is gets known that these two were guilty of the sin (of perjury), let two others stand forth in their places, nearest in kin from among those who claim a lawful right: let them swear by AllĒh: we affirm that our witness it truer than that of those two, and that we have not trespassed (beyond the truth): if we did, behold the wrong be upon us" (107).

In *ahadith*:

1) Ibn 'Abbas have reported that the Prophet (s.a.w.) have said that: If men were to be granted what they claim, some will claim the wealth and lives of others, but an oath is incumbent on him to denies.

ii) In another *HadĒth* Ibn .Abbas have also reported that the Prophet (s.a.w.) have said to the effect that, "The evidence is on the claimant and the oath is on the person denying.

iii) *Abi ŌamĒra* narrated that Ōli (r.a.), have said, "If the plaintiff cannot provide evidence, the oath shall be rendered by the defendant with witnesses...if both the plaintiff and the defendant cannot provide evidence the oath shall be rendered by the defendant but if he (defendant) refuses to do so the oath shall be retorted to the plaintiff.

The rational argument of the above three *ahadĒth* of the prophet (s.a.w.) stresses the importance of evidence to be burdened on the plaintiff while the oath should be taken by the defendant.

According to them there is no retortion of the oath being returned to the plaintiff when the defendant did the *NukĒl*. As such *NukĒl* would be the ground to place judgment against the defendant.²⁸

In the third of *hadĒth* at above Imam Ali (r.a.) says: if the defendant refusal to take an oath to accept the claim from *ahadith*....

In reason (Ma'kĒl):

The refusal of defendant to take an oath strengthens truthfulness of the plaintiff's claim. Hence, the oath shall be established in his (plaintiff) favor as it was in the favor of defendant beforehand.

Opinion of the third group: Defendant should be imprisoned or forced to take an oath in the time of *NukĒl*

According to them, the ruling on *NukĒl* by the defendant should be imprisonment or place under forced to take an oath in the midst of his denial. It is the opinion of *ibn Hazm* and some of *Ah'l al-ŪĒhir*, and others.²⁹

²⁸ al-Baha'i, *Min Turuq Al-Ithbat*,

This opinion is based on several exceptions to the general rule i.e. the oath shall be taken by the defendant except in several cases. As such if someone refuses to take the oath in matters which is not in the exclusion list then he can be detained in prison until he accedes to the law by taking the oath or by admitting the claim against him, as mentioned by *Ibn Hazm*.

In addition, *Ibn Hazm* accordingly, judgment shall not be given in cases of *al-NukÉl* except in three circumstances:

When the perpetrator of a murdered victim is not known, the oath shall be rendered by fifty people (*qasÉmah*) of the place where the murder took place.³⁰
al-Wassiyah fi al-Safar (legacy made during a journey) if there are non Muslim witnesses.

If the plaintiff could bring one witness and subsequently can affirm oath, the judgment shall be given in their favor. If the defendant refuses to take an oath he shall be released. In this instance, the oath shall be retorted to the plaintiff after the denial of the defendant.³¹

Their argument from *Qur'Én*, *Hadith*, as follows:

In *Qur'Én*:

Help you one another in al-Birr and attaqwa but do not help another in sin and transgression (al-Qur'an, 3:2).

The argument from this verse according them particularly *Ibn Hazm*, the defendant's refusal to take an oath is sin and adversary (*udwÉn*), for those who did not apply the oath for defendant's refusal to take an oath, they like supported them for sin and adversary and lifted what Allah's obliged him.³²

In *Hadith*:

HadÉth *Ibn .Abbas* have also reported that the Prophet (s.a.w.) have said to the effect that, "The evidence is on the claimant and the oath is on the person denying.

The argument for this *hadith*, shall not be affirmed the right of the plaintiff in defendant's denial and shall not affirmed to him also the right to the retortion of oath, so the right affirmation of the plaintiff is rebooked due to the denial of his opponent or his oath retorted after the denial.³³

Opinion of the fourth group: The refusal to take an oath in a certain case and the retortion of oath in another

The ruling on defendant's *Nukul* depends on merit of case and the retortion of oath also depends on merit of another case. Should the plaintiff is well aware of the case and that the oath has been retorted to him while the defendant affirmed

²⁹ *Ibn Hazm*, *al-MahallÉ*, vol. 6, p.373, *Ibn al-Qaim al-JauzÉ*, *al-Turq al-Hukmiyyah*, p. 131, *al-Bah'Ée*. *Min al-Turq al-IthbÉt fi al-SharÉ'ah wa al-QÉnÉn*, p.50.

³⁰ In this case, the defendants are asked to take the oath and upon their refusal the oath shall be returned to the claimants. See: See: *Othman*, *An Introduction to Islamic law of Evidence*, P. 116

³¹ *Ibid.*, pp. 56 -57

³² *Ibn Hazm*, *al-MahallÉ*, vol. 6, p.373.

³³ *Ibid*, vol. 6, p.374.

then the judgment shall be made in his (plaintiff) favor. In this instance, if the plaintiff does not render the oath the judgment neither be imposed to the defendant. This is the opinion of *Ibn Taimiyya*.³⁴

In addition to this, *ibn Taimiyya* says: "if the defendant denies the claim, the claim itself shall be investigated. If the case under investigation can be possibly known to both plaintiff and defendant and matter with which the oath is concerned, the oath shall be retorted to the plaintiff. If the defendant refuses to take an oath, the plaintiff shall not be entitled to anything unless he takes the oath."³⁵

Their argument is based on the *Hadith* and the sayings of *Qahabah*, as follows:

Muslima Bin Alqama narrated that Miqdad bin Amr al-Kindi borrowed an amount of 7,000 Dirham from Othman. the amount was 4,000 Dirham. So the case brought to Umar . Then miqdad asked Othman to swear in that the amount was 7,000 Dirham. Then Umar said that you are just indeed. However, Othman claimed to swear so umar told him to take back the amount which he lent³⁶.

According to Ubaidah, "That is Omar who judged the retortion of oath at the same time the repayment was observed by Miqdad, and never opposed by Othman."³⁷ At all of these are from the companions who are judged the retortion of oath.

Apart from this, there is no doubt with the plaintiff to search with the defendant for the knowledge of the matter to which the oath is related. For he knows that the debt was 4,000 or 7,000 and because of that, the oath was related, therefore the oath retorted to him (plaintiff).

The rationality of argument:

In this *hadith*, if the judgment is merely for refusal to take an oath, the judgment shall be rendered for defendant (Miqdad) in the right of the claimant on his denial and the oath shall not be retorted to the plaintiff.

This was the trial between Othman and Miqdad to indicate the judgment for the retortion of oath in another case. According to this tradition, the plaintiff can be known the matter to which the oath is related. That is surely because he actually claimed it. If the plaintiff does not take the oath, shall not just in his favor except on the bases of evidence and admission.³⁸

2. There is a story that Abdullah Bin Umar sold the slave to Zaid Bin Thabit an amount of 700 Derham with the condition that the slave is free (*shart al-Bara'ah*). Later on, Zaid found out the defect, then he wanted to return the slave claiming that the seller (Ibn Umar) knew the defect but he did not mention...In short they brought the case to Othman, then he said (Othman) to Ibn Umar, do you swear that you did not know the defect? He said no! Then Othman returned the oath to

³⁴ Ibn al-Qaim, *al-Torq al-Hukmiyyab*, p.133, Ibn Ma'jËz, Muhammad, *WasËil al-IthbËt fi al-Fiqh al-IslËmi* (al-QarwËn: DËr al-Hadith al-Sunniyyah, 1st ed., 1404H/1984), p.287.

³⁵ Ibn Ma'jËz, *WasËil al-IthbËt fi al-Fiqh al-IslËmi*, p.287.

³⁶ al-Baihaqi, *supra*, vol.1, p.184.

³⁷ Ibn Ma'jËz, *WasËil al-IthbËt fi al-Fiqh al-IslËmi*, p.287.

³⁸ al-Jaburi, *supra*, p.349.

Zaid Bin Thabit to swear to say that he sold by Ibn Umar (the slave) an amount of 15,00 Derham.

The discussion for general evidence (*adillah ammah*) on *NukĒl*:
 In previous four opinions about *al-NukĒl*, firstly is based on the ruling merely on *al-NukĒl*. This opinion with their *adillah* from the Qur'an is very general (*adillah ammah*). There is no existing difference from the aforementioned verse (*Help you one another in al-Birr and attagwa but do not help another in sin and transgression* (3:2), therefore, the defendant's refusal to take an oath shall not be judged based on their argument. Secondly is about *ayĒt mulĒ'annah* or *li'Ēn*. The said verses are specific only for *li'Ēn* after the oath of husband who accused his wife about *jinĒ* (fornication), thus, the verse can not apply concerning retortion of oath. Thirdly is based on the *hadith* (...the oath is on the defendant), this *hadith* is discussed about *the ibtidah al-Tada'i* that the requirement for defendant is to take the oath, likewise, the plaintiff required to submit the evidence according to the *hadith* (the burden of proof is on the plaintiff and the oath is for those who denying) if he (defendant) refused to take an oath, the *hadith* never contradicted particularly to the above *hadith*. Fourthly is concerning the *hadith* (*Rad al-yamin alĒ tĒlib al-Haqq*), this *hadith* according to Ibn Qudamah is weak *hadith* and has no clear authentication. Furthermore, the *hadith* contradicting with the previous story when Ibn Umar sold the slave (*bai'h al abd*) that did not mention the retortion of the oath to the plaintiff and also Othman did not retort the oath, as an indication that the said *hadith* is weak. Lastly is the argument particularly the *adillah* from the *hadith* was mentioned by Ibn hazm based on their idea (neither a ruling on the dependant's denial nor retortion of oath but to imprisonment etc...), this *adillah* did not mention any specific term that the actual wording of a general ruling is to be taken into consideration regardless of its cause, therefore, this *adillah* is not strong.

The strong opinion (*al-Ra'yu al-RĒjih*):

In the above four opinions, majority of the jurists adopted the view towards the ideals of justice as judgment should not be given on the defendant merely on the failure of the plaintiff to substantiate his claim and judgment shall also not be given merely on the refusal of the defendant to take an oath. But the other opinion enters more on retortion of oath due to the *NukĒl* of the defendant evidence. There is no doubt in accordance with original principle: "the burden of proof is upon the plaintiff..." Refusal to take oath does not mean that such a person is guilty, but may be due to somebody desired to protect their honor.

Finally, the researcher found out from the previous discussion that the fourth opinion (the refusal to take an oath in a certain case and the retortion of oath in another) is the strong opinion due to their strong argument within the discussion. This opinion of the fourth group is not big contradiction to the first and second groups. The *Hanafi* school and those among them, they rule against the defendant if he refuses to take an oath, but, consistent with the other jurist schools, they allow the defendant to retort the oath to the plaintiff. Therefore the fourth opinion is middle from these two opinions. *Wallahu 'alam*.

Taking an oath or refusing it in Malaysian *Shari'ah* Courts: Ruling, adjudication and their relevance to jurists' opinions

As mentioned earlier that the oath generally either by the defendant or by the witness is not strong proof in the states Civil Courts of Malaysia except in the Federal Territory and in Kelantan.³⁹ Therefore the main discussion here is "the Ruling on refusal to take an oath in the Malaysian shari'ah courts, how to adjudicate it and its relevance with the jurists' opinions".

Rules for taking oath or refusing it in Malaysian *Shari'ah* Courts
The Evidence Enactment of the *Shari'ah* Court in Federal Territory 1988 mentions the rules of oath (*Yam'En*) and its refusal (*Nuk'El*),⁴⁰ such as:
Section 87:

(1) In civil cases evidence shall be given by the plaintiff and the defendant. The defendant who denies the claim shall be asked to take oath according to Hukum syarak (*Hukm Shar'e*).⁴¹

(2) (a) When the defendant takes the oath, the claim of the plaintiff is rejected in toto. (b) If the defendant refuse to take oath, the court may ask the plaintiff to take the oath and after taking the oath the plaintiff claim shall be accepted.

The Draft *Shar'ah* Evidence Act (Federal Territory) have included in Section 87 (2) (b) which reads:

"If the defendant refuses to take the oath, the court may ask the plaintiff to take the oath and after taking the oath the plaintiff's claim shall be accepted."

The Evidence Enactment of the *Shari'ah* Courts 1991 in Kelantan, articles: 87, 88 and 129 are same with the above mentioned enactment of the *Shari'ah* Court (Federal Territory) as illustrated in the following:

Section 88 (*Shari'ah* Evidence Act, Federal Territory):

Evidence of only one witness for the plaintiff is admissible civil cases with a condition that it is made together an oath with the plaintiff.

It is the same with the "article 88" in the Evidence Enactment of the *Shari'ah* Court in Kelantan. This section or article illustrates that, the plaintiff who claims debt against another person and there is only one witness, the claim may be accepted with the witness together an oath with the plaintiff.⁴²
These *Shari'ah* Court Evidence enactments are same with the *Shari'ah* Court in Federal Territory based on the above mentioned illustrations. The only difference

³⁹amid, H amid, Maimoonah Ibrahim and H, *Law of Evidence* (Appendix A, Malaysian Statutes. Pertaining to Evidence), Control Law book in Malaysia, 1943, P. 610-613.

⁴⁰The Draft *Shar'ah* Evidence Act (Federal Territory) 1988. See: Othman, *An Introduction to Islamic Law of Evidence*, P. 110.

⁴¹Article 87 (*Shari'ah* Courts 1991 in Kelantan), same with the section 87, Evidence Enactment of the *Shari'ah* Court (Federal Territory).

⁴²Haron, *Al-Yamin* (the Oath), P. 20-21.

is that, the code of *Sharī'ah* Court in Federal Territory uses the term *section*, while the *Sharī'ah* Court of Kelantan uses the term *article* but both implies the same rules.

Section or article 129:

When it is necessary or examination on the witness is difficult to carry out or the defendant or the accused made application to the Judge to order the witnesses to take oath to speak the truth, as there are necessities to strengthen evidence, the Judge may direct the witnesses to take oath and the Judge may remind the witnesses if they refuse to take oath their evidence is not admissible.⁴³

Section 99 (*SharĒ'ah* Court Federal territory):

When the defendant or the defendants make application to the Judge to order the witnesses to take the oath to speak the truth, as there are necessities to strengthen the evidence, the Judge may direct the witnesses to take the oath and remind them that if they refuse to take oath their evidence will not be admissible.⁴⁴

The following section illustrates the indirect form of refusal to take an oath of any person when duly required the religious officer to do so. It is mentioned in *section 114* from *Laws of Malaysia Act 560*⁴⁵, that:

Whoever refuses to bind himself by an oath to state the truth when required so to himself by a religious officer legally competent to require that he shall so bind himself shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit (RM 2000) or to imprisonment for a term not exceeding one year or to both.⁴⁶

Retortion of oath and its relevance to the jurists' opinions

The retortion of oath in the Malaysian law particularly in the *SharĒ'ah* Court should be admissible as one of the means of proof in cases not involving the rights of *AllĒh*, such as *Hūdūd* and *Qisās*. The Draft Evidence Act of the *SharĒ'ah* Court (Federal Territory) 1988 accepts the returned oath. Section 87 (2) (b) of the Draft reads:

If the defendant refuses to take the oath, the court may ask the plaintiff to take the oath and plaintiff's claim shall be accepted thereafter.⁴⁷

By allowing the retortion of oath (mentioned in the book: *An Introduction to Islamic Law of Evidence*, by *Othman Saidon*)⁴⁸ we have therefore placed a barrier for the plaintiff so that he could not arbitrarily bring a case against an innocent party. This is because the plaintiff shall bear the burden of proving his case and further, if he fails to give evidence he should take an oath to substantiate his claim, i.e. after the defendant refuses to exercise his right to take the oath.

⁴³ Haron, *al-YamĒn* (the Oath), p. 21.

⁴⁴ Sect. 99, *The Draft SharĒ'ah Evidence Act* (Federal Territory) 1988. See: Othman, *An Introduction to Islamic Law of Evidence*, P. 111.

⁴⁵ *Laws of Malaysia Act 560, Sharī'ah Criminal Procedure*, Federal Territories Act 1997, P.75.

⁴⁶ *Ibid*, P.75.

⁴⁷ *Laws of Malaysia Act 560, Sharī'ah Criminal Procedure*, Federal Territories Act 1997, P.75.

⁴⁸ *The Draft Evidence Act of the Sharī'ah court* (Federal Territory) 1998, Section 87. See: Othman, *An Introduction to Islamic law of Evidence*, P. 116.

⁴⁹ *Ibid*, P.116.

Consequently, the retortion of oath illustrated in the above section shall not be carried on solely on dependant's refusal to take the oath but shall be returned to the claimant (plaintiff), as an opinion of as-Sha'labi, ibn sÊrÊn followed by, *al-MÊlikiyah*, *as-ShÊfi'Êyah* and etc.as one of the two *riwayah* from Aîmad.

In mÊlikiyah, the returning of oath shall be accepted in terms of property and any end up (cause) to it, such as option (*KhiyÊr*) and term ('ajal) aside from the *Qisâs*, *Hudûd* and *Ta'zÊr*. And in as-ShÊfi'Êyah; the returning of oath shall be accepted in all *HuqÊq* (rights) and *Ta'zÊr* except criminals (*Jin'Êy'Êt al-DimÊr*) and punishments (*Hudûd*), and can not just in *Qisâs* and also in *Had*.⁴⁹

How to adjudicate defendant's oath and its refusal

In this case, the researcher is trying to highlight the cases on oath and refusal to take an oath and the retortion of oath that are applied in the *Shar'Ê'ah* Courts in Malaysian. The researcher also brings out some cases which are recorded in this *Shar'Ê'a* Court of Malaysia. The cases and the decisions as follows:

1. Cases about oath (*YamÊn*)

A - The case of Hj. Abdullah bin Hj. Hamzah vs. Cik Bon bt. Yaakob
In this case, the defendant (Hj. Abdullah) divorced by his wife with one Talaq, without any reasonable ground. The plaintiff claimed for *Nafaqah Iddah*. Wife's *Nafaqah*, *Harta Sepencarian* (conjugal properties) and also *Mut'ah*.

The defendant failed to attend and send representative to the court for trial. The plaintiff brought two witnesses. After study of the case and listened to the witnesses' statement, the court requested the plaintiff to take an oath. It was concluded that the plaintiff has succeeded in her claim.⁵⁰

B - The case of Zabidah vs. Abdul Rahim

In this case, the plaintiff is asked for *TalÊq* (divorce). She claimed that her husband had abandoned her for 5 months. She brought two witnesses. The defendant (husband) brought three witnesses. Because of the plaintiff's statement did not conform to her whiteness' statement the court instead requested the defendant to take the oath and thereafter the case was dismissed.

2. Cases on refusal to take an oat and retortion of oath

A - The case of Maimunah vs. Wan'abdul Hamid

In this case, the plaintiff (Maimonah) claimed for her three children. She claimed that the income of her ex-husband is RM300 per month. The defendant (Wan Abdul Hamid) denied that and said his income is only RM100 per month. He said that he is only a rubber topper who can work only 20 days a month. He could give RM30 per month as a *nafaqah* for his three children. In trial, both parties did not bring any witness.

The court asked the defendant to take an oath by saying that his income was not RM300 per month but the plaintiff refused to do so (*nukÊl 'An al-YamÊn*). So the court returned the oath to the plaintiff. The plaintiff made an oath

⁴⁹ Ibn Rush'd, *Bid'Êyat al-Mujtahid*, vol.3, p.454, as-ShairÊzÊ, *al-Muhzib*, vol. 2, p.201-218

⁵⁰ Haron, *Al-Yamîn (The Oath)*, P. 87.

and the judgment was passed by the *qadi* that the sustenance (*nafaqah*) for the children is RM90 per month.⁵¹

B – The case of Salemawegam vs. Mohammd Anuar

In this case, the plaintiff asked for *TalÉq* (divorce) because of her husband had abandoned her and did not pay any *Nafaqah*. The husband (dependant) said, that he did that because the wife was *Nusyuz* (betray or disobey). The plaintiff brought 2 witnesses. The defendant did not bring any.

The court ordered the dependant to take an oath (to be repeated 3 times) but he refuses. The oath was returned to the plaintiff. The plaintiff made an oath. On the second day of the trial the defendant did not present. The court decided that the plaintiff was divorced by *TalÉq* with one *talqah*.⁵²

Through the demonstration of these previous cases, the discussions about the cases are based on the jurists' procedures particularly in *ShafÉe* school procedures which are following by the *SharÉ'ah* courts in Malaysia.

Refusal to take an oath in the procedures of Philippine *SharÉ'ah* Courts Prior to discuss the oath-taking procedure in Philippine *SharÉ'ah* courts it is essential to highlight the Philippine constitutional law.

In the Philippine Constitution, the power of legislation is vested in the congress of the Philippines, consisting of senate and House of Representatives. The congress extended its authority to define, prescribe, and apportion the jurisdiction of the courts but may not deprive the supreme court of its jurisdiction over certain cases enumerated in the constitution. While this power to enact laws rests in the legislative branch of the government, the constitution clothes the Supreme Court with the authority to:

“To promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admissions to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court”.⁵³

The above-mentioned constitutional law describes that a low level court such as the *SharÉ'ah* Courts has an exceptional rules to observe the supremacy of country's Supreme Courts. In other words, the *SharÉ'ah* Courts can not impose any rules based on the authority of the Supreme Court from the Philippine Constitution.

Procedures of trial in the *SharÉ'ah* Courts

The procedures of Philippine *SharÉ'ah* Courts, the Supreme Court set specific procedures based on the following Rules:
The trial shall begin after the submission of three copies of written complaint by the plaintiff (*mudda"É*) or his council (*wakÉl*), or by the clerk of court. The complain shall be the following acts.⁵⁴

⁵¹ Ibid, p. 83-84

⁵² Ibid, P. 90.

⁵³ Barra, *The Sharī'ah Courts System in the Philippines*, P. 276.

⁵⁴ Section 1, *Special Rules of Procedure in the Sharī'ah courts*.

Title of the case, its specific file's number, and the date registration to the court.

The name and the plaintiff address, or name and address of his council or any of his representative, then name and address of the dependant.

Summary of the case and the compensation which are requested by the plaintiff from the court.

Submission procedures of written complaint (claim):

After the submission of the complain to the courts or to the in-charge of the court, the plaintiff shall put it (claim) a specific number and the court shall send to the dependant with note and court seal, with the copy of complaint to reply it within the time limit, and if the dependant refuses to reply the summon (call) based on the specific limitation, the court shall have the right to make decision to the case according to the evidence provided by the plaintiff.⁵⁵

Some procedures of oath-taking and its refusal

Based on the administration of oath mentioned earlier, the Philippine *SharĒ'ah* court requires the plaintiff to submit the evidence (*bayyinah*) to confirm (*tathbĒt*) his complain. If the plaintiff without witness or proof and the dependant refuses to take the oath, the plaintiff shall affirm his claim under oath at the same time the case shall be decided in his favor.⁵⁶

And there are also some procedures this (Philippine *SharĒ'ah* courts) about oath-taking and refusal to an oath to settle the dilemma between the disputes. These are the following requirements:

The court shall request from the disputes if they are Muslims to take the recognize oath by wording and practical in accordance with Muslim Law. This oath shall replace in the absence of other proof.⁵⁷

Nobody shall be allowed to take an oath in accordance with Muslim law except if he is qualified and is fully aware of solemnity of the oath or the import of the solemn affirmation, and any body to do so in accordance with Muslim Law shall be given appropriate time to think it over.⁵⁸

The court shall set an appropriate time, date and place of oath taking or of solemn affirmation by such person. If, a set time before such appointed date, the party who is required to take an oath or a solemn affirmation refuses to do so (*Nukūl*), the court may in its discretion direct the person, if he is the plaintiff, to withdraw his claim, or in case of the defendant, to admit the claim of the plaintiff.⁵⁹

⁵⁵Nando, *Ibid*, p. 86.

⁵⁶ Rasūl & Ghadzali, *Commentaries and Jurisprudence on the Muslim Code of Law of the Philippines*, P. 400.

⁵⁷ *Ibid*, P. 400.

⁵⁸ *Ibid*, P. 400.

⁵⁹ ...

The oath and the refusal to take an oath in proper trial

The Special rules of procedures in the *SharĒ'ah* Courts provide that the burden of proof (*bayyinah*) rests upon the plaintiff, while the taking of an oath (*YamĒn*) is vested upon the dependant (*mudda'Ē alayhĒ*).⁶⁰ So these Rules and Procedures in the proper trial, one of the following should be considered:

The dependant admits the claim of the plaintiff. In this case, judgment will be rendered by the court in favor of the plaintiff without need of presenting evidence.

If the plaintiff has no evidence to prove his claim, in this case, the court shall request the defendant to take an oath and judgment shall be rendered in his favor.

If the plaintiff has no evidence or witnesses to prove his claim at the same time the defendant refuses to take an oath (*NukĒl*), in this situation, the court shall request the plaintiff affirm his claim to take an oath, therefore the judgment shall be rendered in his favor.

And if the plaintiff has no evidence and witnesses to prove his claim and the dependant refuses to take an oath at the same the plaintiff refuses to affirm his claim under oath, the complaint shall be dismissed by the court.

The defendant denies the claim of the plaintiff who desires to offer evidence. In this instance, there will be a form trial in which the plaintiff will offer his evidence and present his witnesses as a burden of proof rests with him. After presenting his evidence and formally offering such before the court, the plaintiff will rest his case. Thereafter, the defendant will offer his counter-evidence and present his witnesses, if there are, then formally offer the same before the court and the court and rest his case. The statements and affidavits submitted by the parties at the trial shall serve as the direct testimonies of the witnesses and constitute as basis for any cross examination. The party against whom a judgment would be given on the pleadings and admissions made, if no evidence is submitted, shall have the burden to prove his case.

In this instance, the application of oath (*yamin*) particularly *al-Nukul* case is never found out in this research except some cases about *al-Yamin*. One of those cases, is the case of "Heirs of Datu Dalandang Kuli" (Plaintiffs) versus "Heirs of Amal Palao and Angki Kambang" (Dependants) at 5th *SharĒ'ah* District Court of Cototabato, Philippines about (Quieting of the title, Declaration of nullity of the deed of absolute sale, or transfer of title no.T-1964, restoration of original certificate of title no.374 (N.A.) and damages). After the pre-trial, the plaintiff challenged the defendants to take oath on the ground of insufficiency of evidence as mentioned earlier. Therefore, the defendants accepted the challenged and they performed oath, then the court made decision in favor of defendants.

Although *al-NukĒl* case is not mentioned in the research, the ruling and its application are the same, based on the procedures of Philippine *SharĒ'ah* courts.

⁶⁰ Section 7 (1), *Special Rules of Procedure in the Shari'ah Courts*, Art. 80, *Presidential*

Decree No. 1092, Dated: July 11, 1976, The Official Gazette, Vol. 28, No. 130, pp. 1-2

Comparing the issue on refusal to take an oath: Comparison between the jurists' opinions and the practice of *SharĒ'ah* courts of Malaysia and Philippines

In this issue, the researcher comparing the ruling of refusal to take the oath between the Malaysian *SharĒ'ah* courts and the procedures of Philippine *SharĒ'ah* Courts prior to compare the procedures of these two courts to the al-Ra'yu al-RĒjih.

Based on the previous discussions, the Malaysian *SharĒ'ah* courts shall not be judged the defendant merely on his refusal to take an oath but shall be retorted the oath to the plaintiff as mentioned in the related civil cases in Malaysian *SharĒ'ah* courts articles particularly in articles or sections from Federal Territory and Kelantan.⁶¹

In the procedures of Philippine *SharĒ'ah* Courts, also shall not be judged merely on *NukĒl* but shall be retorted the oath to the plaintiff according to the procedures of Philippine *SharĒ'ah* courts particularly in section 7 of the procedures (*IJRĀ'ĀT AL-MAHAKIM AL-SHAR'IYYAH*).

These two courts in Malaysia and in Philippines are same directions based on their procedures and in application of ruling on refusal to take an oath. The principles of these courts never exceed from the second group which is based on the school of imam Malik *Sha'fiyyah* etc. mentioned previously.

Therefore, based on the discussion of the issue, the researcher chooses the fourth group "the ruling on refusal to take an oath in a certain case and the retortion of oath in another case based on their strong proof within the discussion. *Wallahu 'a'lam*.

Conclusion and Recommendation

Based on the jurists' opinions and the relevant cases and instances presented it can be concluded that the ruling on refusal to take an oath has no common procedure. However, the predominant opinion is the ruling on oath-taking procedure based on the merit of a certain case and the retortion is based on the merit of another case. Therefore, returning the oath back to the plaintiff is subject to settlement (*Sulh*).

The researcher recommends that all *SharĒ'ah* courts shall have a common oath-taking procedure and in accordance with the Islamic law empowered by the name of Allah (s.w.t) and shall be applied to all Muslim community. It is suggested that ruling on refusal to take an oath should be based on the merit of a certain case and the retortion of the oath should be based on the merit of separate or another case. This procedure should be adopted by all Malaysian Muslim Courts and the Philippine *SharĒ'ah* Courts. It is also recommended that the scope of judiciary of these courts shall be broaden and shall be applied not only on personal law but also all aspects of human affairs. It is suggested that *SharĒ'ah* and Law students of any intuitions, IIUM in particular, should take part in the effort to broaden the system of *SharĒ'ah* Courts that can be applied in Malaysia and in the Philippines.

⁶¹Section 87, 88 & 99, *The Draft SharĒ'ah Evidence Act* (Federal Territory) 1988. See: Othman, *An Introduction to Islamic Law of Evidence*, P. 110, Haron, *Al-Yamīn (the Oath)* P. 19-20.

References

- Abd Aziz, Md abri'd ŞYunus, Irwan Moh & 'Abdul Ghafar (Editors). (2003). *Studies in Shaī'ah and Law*. Fakulti Syariah Dan Kehakiman, Kolej Universiti Islam Malaysia (KUIM).
- Othman, Abdul Mu'in, Abdul. 1999. *Witnesses in Islamic Law of Evidence*. Selangor: Pelanduk Publications.
- Albanu, Edvenent S. (2001). *Remedial Law Reviewer*. Manila: Rex Book Store.
- Ali, Dingan & Co. (2001). *The Historical Evolution of Bangsamoro People in Mindanao and Sulu*, A paper presented during the 1st Bangsamoro Development Conference on 26-28 Safar 1422, Estosan Garden Hotel, Cotabato City, Philippines.
- Al-BaihaqĒ., Ahmad bin Ali, bin Musa Abubakar. (1420/1999). *as-Sunan al-KubrĒ*, TahqĒq: Muhammad AbdulqĒdir Ata. n.d. Bairut: Darul Qutub al-Ilmiyyah.
- Muhammed Burhān. (1999). Arbouna, Moh *Islamic Law of Evidence: The Function of Official Documents in Evidence (Comparative Study with Common Law)*. Kuala Lumpur: Nurulhas.
- Barra, Hamidan Aminoddīn. 1994). *The Sharī'ah Court System in the Philippines: A Study in Muslim Procedural Law*. A Dissertation submitted to the Kulliyah of Laws. International Islamic University Malaysia. In Partial fulfillment of the requirements of the degree of Doctor of Philosophy in Laws.
- _____. (1987). *The Code of Muslim Personal Laws: A Study of Islamic Law in the Philippines* (Marawi City: Mindanao State University (MSU)).
- Code of Muslim Personal Laws of the Philippines*. 1983. Metro Manila: Ministry of Muslim Affairs.
- Enactment No.5. (1996 *Sharī'ah Evidence*. State of Pinang: Enactment.
- Evidence of the Sharī'ah Court Enactment*. (1991). *Kelantan Enactment No.2*.
- Federal Constitution in Malaysia*. (1986). *A Commentary*. Kuala Lumpur: Malaysian Current Law Journal.
- Gowing, Peter. (1988). *Understanding Islam and Muslim in the Philippines*, Quezon City: New Day Publishers.
- Haron, Muhammad Sabri.(1993). *Al-yamīn (The Oath) in Islam and its Application in the Sharī'ah Court in Malaysia*, A Thesis submitted to the Kulliyah of Laws, International Islamic University Malaysia in partial fulfillment of the requirements of the Degree of Master in Laws.
- Ibn Hazm, Ali bin Ahmad, (n.d.) *al-MahallĒ*. Birut: al-Maqtab al-Tija'ri.

- Al-TarÉbulisÊ, Alauddin Abi Al-Hasan: (n.d.). *Muain al-HukÊm*. Birut: Dar al-Fik'r.
- Al-Jaburi, Adullah, *al-QalÊh bi al-NukÊl 'An al-YamÊn Bina al-SharÊ'ah wa al-QanÊn: DirÊsal MuqÊranah bi al-qawÊnÊn al-Wad'Êyyah fi al-IrÊq wa ba'd al-AqtÊr al-Arabiyyah "DirÊsÊt Arabiyyah wa IslÊmiyyah"*, al-Lujina al-Wataniyyah lil-IhtifÊl bimatlah al-Qarn al-Khamis ashar al-Hijri, Bagdad, al-IrÊq.
- Al-BahÊ, Ahmad abdulmunaim (1409/1983). *Min turoq al-ithbÊt fi al-SharÊ'ah al-Islamie*, wa fi al-QanÊn (al-QÊhirah: DÊr al-ShurÊk, 5th ed.
- Ibn Rushd, Muhammad bin Ahmad bin Muhammad al-Qurtubi.(n.d.) *BidÊyat al-Mujtahid wa NihÊyat al-MuqtaÊid*. Birut: DÊr al-Fiqr.
- Ibn Al-Qaim Al-JauzÊ, Shamsuddin, Abu Abdillah. (1973). *Al-Turq Aal-Hukmiyyah fi As-Siyasah Al-Shar'iyyah*. Tahqiq: Muhammad Jamil Gazi: Al-Qahirah: Math'bah al-Madani,
- Muhammad And Joned, Ahilemah Ibrahim.(1995). *The Malaysian Legal System*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 2nd edition.
- Ismail, Rose. (2002). *Hudûd in Malaysia: The Issue at Stake*. Kuala Lumpur: Ilmiah Publishers.
- Johore Enactment No.13 (1993). *Sharî'ah Evidence Enactment*, Government of Johore Gadzette, 1996.
- Jubair, Salah. (1999). *Bangsamoro: A Nation Under Endless Tyranny*. Kuala Lumpur: IQ Marten.
- Mahmassani, S. (1987). *Falsafat Al-Thasrî Fi Al-Isla (The Philosophy of Jurisprudence in Islam)*. Translated by: Farhat J. Ziadeh. Kuala Lumpur: Hizbi Publication.
- Majul, Cesar Adib.(1978). *Muslims in the Philippines*. Manila: St. Mary Publishers.
- Memorandum Order (No. 370). (1973). Office of the President, August.
- Muhammad and Abdul Monir Ya'cobammad Ibrahim AhMoh. (1997). *The Administration of Islamic Laws*. Institute of Islamic Understanding Malaysia.
- Oath and Affirmations (Act 194). 1949*. West Malaysia, Revised 1977.
- Muhammad Saedon. (1996). Othman, Mah *An Introduction to Islamic Law of Evidencemad Shauki R. Hisam*. Kuala Lumpue: Hizbi, translated: Raden Ah Publication.
- Ibn Ma'jÊz, Muhammad. (1404H/1984). *WasÊil al-IthbÊt fi al-Fiqh al-IslÊmi*. al-QarwÊn: DÊr al-Hadith al-Sunniyyah, 1st ed..
- Philippine Constitution. (1987). Ang Kontitusyon ng Republika ng Pilipinas*, Mandaluyong City: National Book Store, Quad Alpha Centrum Building.

- Rasūl, Jainal D. & Ghadzali, Ibrāhīm. (1984). *Commentaries and Jurisprudence of the Muslim Code of the Philippines*. Quezon City: Central Law Book.
- Regalado, Florez D. (2001). *Remedial Law Compendium*. Manila: Publication Metro Manila Philippines, 6 Ed.
- Sarkar, S. C. (1980). *A Concise Dictionary of Law*. Kuala Lumpur: Fajar Bakti.
- Sharī'ah District Court Module*, Civil Case No. 85-01 (1985), 5th *SharĒ'ah* District Court, Cotabato City, Philippines.
- Special Rule of Procedure in the SharĒ'ah Courts, IJRĀ'ĀT AL-MAHAKIM AL-SHAR'IYYAH, August, 1983.
- Ibn al-ManDoor, Abu al-Fadh'l, Jamaluddin . (n.d). *LisĒn al-Arab*. Birut: Dar Nashir.
- 'Abu Habib, Saed. (1404/1988). *al-QĒmĒs al-FiqhĒ lugatan wa shar'an*. Dimascus: DĒr al-Fiqr, 4th ed.
- SĒbiq, Saed. (1405/1985). *Fiqh al-Sunnah*. Birut: DĒr al-Kutub al-Arabi, 7th ed.
- BahansĒ, Ahmad Fathi. (1409/1983). *NaĎariyat al-IthbĒt fi al-fiqh al-JinĒĒe al-Islami*. Al-Qahirah: Dar al-Shuruq, 5th ed.
- Al-SarkhasĒ, Abu Bak'r. (n.d.). *al-MabsĒĒ*. Birut: Dar al-Ma'rifah.
- Al-Shafi'I, Muhammad Idris (1419/1996). *al-Umm*. Dar al-Qatibah, 1st ed.
- Ibn Abd Al-Bur, Abu Omar YĒsuf. (n.d.) *al-IstizkĒ*, tahqĒq: Abdullah al-Mu'ti NĒamin. Dimascus: Dar Al Qutaibah, pub.
- Muhammad Salam Madkur. (1969). *Al-Madkhal fi al-fiqh al-IsĒmĒ*. Dar al-Nahdah al-'Arabiah, Qairo.