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ANALYSIS OF THE THOUGHTS OF IMAM AL-SARKHASI AND IMAM IBN RUSHD REGARDING LI'AN IN ISLAMIC LAW

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ABSTRACT

The concept of li'ān in Islamic law is a mechanism for resolving adultery allegations from a husband against a wife that cannot be proven through witnesses as a general requirement in Islamic criminal law. Scholars have different views in understanding the nature of li'ān, especially between Imam al-Sarkhasi and Imam Ibn Rushd. This study aims to analyze in depth the opinions of the two scholars, the arguments used, and the causes of the differences in views between the two. The research method used is qualitative research with an exploratory analysis approach, namely analyzing in depth the meaning of li'an from two different perspectives. The data sources used are secondary data sources, namely the Book of al-Mabsuth by Imam al-Sarkhasi and the Book of Bidayatul Mujtahid by Imam Ibn Rushd as well as books and articles based on OJS (Open Journal System) about li'an. Data processing techniques are carried out by processing library materials (library research). The technique in analyzing the data analyzed with exploratory descriptive analysis using reduction, display, and verification techniques. The results of his research are: Imam al-Sarkhasi interpreted li'ān as a form of testimony strengthened by an oath, based on a literal understanding of the wording of Surah An-Nur verse 6. On the other hand, Imam Ibn Rushd considered that li'ān is a special form of oath, not testimony in the sense of sharia, because it does not fulfill the elements of ordinary criminal law testimony using the same argument. This difference arises from different methodological approaches, namely the textual approach (zhāhir) of Imam al-Sarkhasi and the contextual-rational approach (ma'nā) of Imam Ibn Rushd. The interpretation of the wording of the verse and the istinbath method are the main factors causing these differences in views, and show the flexibility of Islamic law in responding to complex social and household problems.

KEYWORDS Imam al-Sarkhasi; Imam Ibn Rushd; Li'an,

INTRODUCTION

Li'an is one of the most controversial chapters in Islamic family law, not only because of its major implications—such as automatic divorce and severance of lineage—but also because of the fundamental debate in its legal construction: is li'an actually a form of testimony or an oath? On the one hand, the wording used in li'an is very similar to a testimony ("I bear witness by Allah..."), even the number is four times the number of

witnesses in an adultery case. This has led some scholars to argue that li'an is part of the category of shahadah, namely formal testimony that has legal force.(Lestari, 2021).

However, on the other hand, the structure and consequences of li'an indicate the presence of a very strong element of oath. In the procedure, the husband and wife do not submit statements under the obligation to present external evidence, but each swears by mentioning the name of Allah and inviting His curse or wrath if they lie. This brings it

closer to the category of yamin, namely an oath that has spiritual and ethical value in making legal decisions.(Mansyur, 2019).

This debate is not only theoretical, but also has major implications for the li'an procedure. If it is considered as a testimony, then the provisions of the law of testimony apply, such as the prohibition for a fasiq person to testify, the requirements of justice, and the possibility of being rejected by the judge. However, if it is considered as an oath, then the space is more flexible, because the oath rests on a person's personal responsibility before Allah, not merely on the objective value of the testimony.

These two schools of thought continued to develop in various schools of thought and became the basis for various differences in the procedures, validity, and legal implications of implementing li'an—which ultimately shows how Islam as a legal system has a rich dynamic of ijthadi and is responsive to human problems.

In the social life of Muslim society, the issue of accusations of adultery in the household is often the main trigger for a painful divorce. There are many cases where a husband accuses his wife of having an affair, but is unable to present four witnesses as required by Islamic law. Amid social pressure and shame, the accusation spreads without valid evidence, destroying the wife's good name, shaking the child's psychology, and causing prolonged trauma.(Faizin, 2014).

In such situations, the li'an mechanism—as a legal way out offered by Islam—is not always well understood and implemented in society. Many couples end up in court with emotional conflicts, but do not understand that Islam provides special procedures that can prevent women from unfounded punishments, as well as protect the rights of children from questionable lineages.

This social reality shows that li'an is not just a text law, but is directly related to the dynamics of family honor, household stability, and gender justice. The community's ignorance of the li'an

procedure, as well as the lack of socialization by religious institutions, causes many women to become victims of stigma without a fair legal process. This is where the urgency of discussing li'an becomes very important, not only as a classical fiqh discourse, but also as a practical solution in dealing with the crisis of trust in households in the modern era.

In Islamic law, li'an has a very strategic position in maintaining the balance between the husband's rights as the accuser and the wife's rights as the accused. When a husband accuses his wife of adultery, but cannot present four witnesses as stipulated in the Qur'an, then Islamic law does not immediately justify punishing the wife or granting immunity to the husband. It is precisely in this condition that li'an plays a role as a legal instrument that is an alternative to conventional evidence.

Normatively, li'an has been regulated in Surah An-Nur verses 6–9. This verse provides the procedure that must be followed by a husband and wife before a judge, namely by swearing four times that the husband is telling the truth and once swearing a curse if he is lying. The wife is also given full rights to defend herself by swearing a similar oath that her husband is lying, and once swearing a curse if she is the one who is lying. Thus, li'an not only provides space for justice for both parties, but also becomes a legal solution to prevent stoning punishment based on accusations that are not legally proven(Ghoni, 2023).

However, in contemporary Islamic judicial practice, including in Indonesia, li'an has not been explicitly part of positive law. The Compilation of Islamic Law (KHI) which is the reference for religious courts in Indonesia does not regulate in detail the li'an procedure, both in terms of the technical aspects of its implementation and its legal consequences. This has led to a legal vacuum in handling similar cases, so that judges tend to resolve them using general divorce articles such as irreconcilable disputes (syiqaq)(Putri et al., 2024).

The absence of positive regulations regarding li'an in the national legal system also creates legal losses for women. Not a few women have to bear the moral and social burden due to accusations of adultery from their husbands without a valid defense process according to sharia law. Likewise with the status of children born, which in the context of li'an should not be attributed to the father who has accused them, but in positive law, the status of nasab is often blurred because there is no clear legal reference.(Suriyani, 2011).

Therefore, li'an as a legal concept in Islamic jurisprudence actually has a dual function: as a form of legal protection for women's honor and at the same time as a legal instrument that maintains the integrity of the evidentiary system in Islamic criminal law.(Arifin, 2022). The importance of reconstructing positive law that is able to adopt li'an values as an academic and practical demand in order to realize a family law system that is fair, moderate, and oriented towards protecting rights.(Faizin, 2016).

The issue of the concept of li'an has become a hot topic that is widely discussed by academics. This is reflected in the various scientific works they have produced, which not only discuss the normative aspects of li'an, but also explore various other dimensions that arise from the concept. Thus, the discourse on li'an continues to develop, giving birth to new perspectives that enrich the scientific treasury in Islamic law studies. Among the previous studies that can be used as literature reviews based on their dimensions: First, concepts and theories:(Junaedi & Wasman, 2024);(Putri et al., 2024);(Faizin, 2014);(Borotan, 2019);(Lestari, 2021). Second, a comparison of the opinions of scholars and books:(Prakasa et al., 2021);. Third, its relation to positive law:(Suriyani, 2011);(Kusmayanti, 2020);(Anwar & Musip, 2024);(Arifin, 2022);(Rahayu et al., 2022). Fourth, Testimony of non-Muslims:(Mansyur, 2019). Fifth, cases and conflict resolution:(Ghoni, 2023);(Setiawan

et al., 2022);(Faizin, 2016). From various literature reviews that examine li'an from various aspects, this study complements the existing dimensions, namely examining the aspects of the opinions of scholars and books with a focus on the opinions of Imam al-Sharkhasi from the Hanafi School and Ibn Rushd from the Maliki School. So from the differences in dimensions discussed, this study is still worthy of being studied and becoming a discussion space related to the opinions of scholars about the understanding of li'an itself.

This research is also important to clarify whether li'an is a form of testimony or an oath—a debate that not only has implications on a theoretical level, but also on technical procedures in court. If li'an is understood as testimony, then it will be subject to strict standards of proof such as the requirement for the fairness of witnesses; but if it is an oath, then moral and spiritual aspects become the main determinants. This difference has a major impact on the validity of li'an and the validity of the severance of a child's lineage from his father.

In addition, this study is relevant amidst the lack of understanding of the community and legal apparatus towards the concept of li'an, especially in the context of Muslim-majority countries that have not adopted this rule positively in national law. By comprehensively examining the concept of li'an from the perspectives of two major schools of thought—Hanafi and Maliki—this study contributes to the enrichment of contemporary fiqh discourse and offers academic references for policymakers, legal practitioners, and judicial institutions to consider li'an as an alternative resolution of adultery cases that is fair, humane, and deeply rooted in Islamic tradition.

METHODS

The research method used is qualitative research with an exploratory analysis approach, namely analyzing in depth the meaning of li'an from two different perspectives. The data source used is a secondary data source, namely the Book*Al-*

Mabsuth written by Imam al-Sarkhasi and the Book *The Bidayatul Mujtahid* Imam Ibn Rushd's writings and books and articles based on OJS (Open Journal System) about li'an. Data processing techniques are carried out by processing library materials (library research). Techniques in analyzing data analyzed with exploratory descriptive analysis using reduction, display, and verification techniques.

DISCUSSION

Li'an Concept According to Imam al-Sarkhasi and Imam Ibn Rushd

Etymologically, the term li'an comes from Arabic, namely the verb la'ana – yal'anu – la'nan (لعن – يلعن – لعنا), which means to curse or condemn. (Munawwir, 2007). This word indicates a form of curse or request that someone be kept away from God's mercy. In the context of Islamic law, the term li'an is then used to refer to an oath process carried out by a husband and wife before a Sharia judge, as a form of resolution of accusations of adultery directed by the husband against his wife without accompanying evidence or witnesses as required by hudud law. (Nasution, 2000).

Terminologically, li'ān is defined as an oath mechanism carried out by a husband who accuses his wife of committing adultery with another man, or denies that the child conceived or born by his wife is the result of a relationship with him. (Ghazaly, 2010). In this process, the husband swore four times before the judge that he was telling the truth about the accusations. (Muhammad, 2017). Then in the fifth oath, he stated that if he lied in his accusation, then the curse of Allah SWT would befall him. After that, the wife was given the right to deny the accusation by swearing four times that her husband's accusation was a lie. In the fifth oath, she stated that if her husband was right, then the wrath of Allah SWT would befall her. (Faizin, 2016).

The li'an procedure occurs when a husband accuses his wife of committing adultery but is unable to present four

witnesses as required by the sharia. In such a situation, to maintain the self-respect and dignity of both parties, and to avoid the application of the qazaf punishment (accusing adultery without evidence), Islam provides a solution in the form of li'an, which is an oath made by both partners. (Prakasa et al., 2021). The husband swears four times that he is telling the truth and that his wife has really committed adultery, then on the fifth oath he says that if he is lying, then the curse of Allah will befall him. The wife then responds by swearing four times that her husband's accusation is a lie, and on the fifth oath she says that if her husband is telling the truth, then the wrath of Allah will befall her. (Setiawan et al., 2022).

The term li'an is used because the peak of the oath is the curse and wrath of Allah that is asked for each of them if they lie. Therefore, in addition to having a legal meaning, li'an also carries a deep spiritual dimension, because it involves a sacred oath that binds the heart and personal testimony before Allah. This process then becomes the basis for ending the marriage relationship permanently (faskh nikah), without the need for a divorce from the husband. (Al-Barudi, 2003). Thus, li'an becomes a very distinctive legal solution in Islam, which shows the caution of the sharia in maintaining individual honor while upholding justice.

According to Imam al-Sarkhasi, a great scholar from the Hanafi school of thought, li'an is terminologically understood as a form of testimony accompanied by an oath by a husband against his wife in the context of accusations of adultery. The meaning of li'an according to him is not merely a curse or curse linguistically, but rather a form of formal testimony carried out before a sharia judge. In this case, a husband who has been legally married and has an accusation against his wife for alleged adultery, is allowed to give his testimony directly before the judge, even though he is unable to present four witnesses as required in ordinary cases of adultery. He explains in the Book of al-Mabsuth (Al-Sarkhasi, 1995):

واستدال بقوله تعالى والذين يرمون المحصنات ثم في أية اللعان بيان الخرخ للزواج بأن تقام كلمات اللعان مقام أربعة من الشهود لأن في كلمات اللعان لفظة الشهادة و هي شهادات مؤكدة بالإيمان

Translation:

The argument from the word of Allah SWT: And those who accuse their wives of adultery..." Furthermore, in the verse discussing the li'an, the husband clearly conveys the li'an and presents four witnesses because the sentence li'an is a statement of testimony and is strengthened by an oath.

This view shows that for Imam al-Sarkhasi, the husband's testimony must be strengthened by four oaths that he is telling the truth, then continued with a fifth oath containing a request that Allah's curse befall him if he lies. Al-Sarkhasi's view emphasizes that the essence of li'an is not only the aspect of the curse, but more on giving personal testimony in a legal emergency, namely when evidence is not available but the honor and legitimacy of the family must be maintained. Thus, according to al-Sarkhasi, li'an is a form of defense or accusation that is legalized by the sharia in special situations, which replaces the presence of witnesses through a heavy oath imposed directly on the husband. This process is also not unilateral, because the wife is given the right to refute through a similar oath, which will ultimately determine whether the husband and wife relationship is terminated through faskh (annulment of marriage), and both can no longer live as a couple after that.

In special circumstances, the Shari'a provides a space for the husband to defend his honor through the mechanism of li'an, which functions equivalent to official testimony in cases of adultery. Imam al-Sarkhasi views li'an as a fair middle way when physical evidence or witnesses cannot be presented, but the accusation cannot be ignored because it concerns matters of honor and lineage. It is also important to note that li'an is not only a space for the husband to convey his accusations, but also gives the wife the opportunity to defend herself in the same way: by swearing four times that her husband is lying, and on the fifth oath she is willing to

accept the wrath of Allah if she herself is lying. This procedure then ends with a legal decision that permanently severing the marriage bond.

To support his opinion, Imam al-Sarkhasi used the evidence from the Qur'an, Surah an-Nur, verse 6:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ

Translation:

Those who accuse their wives of adultery, while they have no witnesses except themselves, then the testimony of each of them is to swear four times by Allah that he is one of the truthful.

In his view, Surah an-Nur verse 6 is the main legal basis for the practice of li'an. The verse explains that in certain situations, the husband's testimony can replace the presence of four witnesses, on condition that the testimony is delivered in the form of an oath four times before the judge, accompanied by a fifth oath stating his readiness to accept Allah's curse if he lies. This process shows that li'an is not just an emotional or spontaneous accusation, but has been systematically regulated in the sharia as a valid alternative proof.

According to al-Sarkhasi, the essence of li'an is the transformation of personal accusations into legally binding testimony. The testimony is not sufficient to be delivered verbally, but must be confirmed by a religious oath recited directly in front of the judge and the wife. This oath has serious spiritual consequences, because it includes a willingness to be cursed by Allah if the statement is proven to be a lie. Thus, the elements of spiritual responsibility and honesty become an inseparable part of the structure of li'an itself. Furthermore, Imam al-Sarkhasi sees that li'an has two main functions: first, as a valid means of proof in cases concerning honor and lineage; and second, as a mechanism to avoid the punishment of qadzaf (accusing adultery without witnesses) which should be received by the husband if he cannot prove his accusation. In this case, Islamic law shows

flexibility and precision in maintaining justice, both for the accuser and the accused.

By placing li'an as a form of testimony strengthened by an oath, Imam al-Sarkhasi also emphasized that Islamic law does not only demand external evidence, but also takes into account a person's internal accountability before Allah. This shows the depth of Islamic legal principles which are not only legalistic, but also spiritual and ethical.

In contrast to the opinion of Imam al-Sarkhasi who stated that li'an is a testimony, Imam Ibn Rushd clearly stated that the meaning of li'an is an oath. He explained this in his book *Bidayatul Mujtahid* (Rusyd, 1990):

عموم قوله تعالى (وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ) والجمهور يرون أنه يمين و إن كان يسمى شهادة فأن أحدا لا يشهد لنفسه

Translation:

The generality of the word of Allah SWT: "And those who accuse their wives of adultery while they have no witnesses except themselves" and the majority of scholars are of the opinion that li'an is an oath and if it is called testimony then a person's testimony against himself is not called testimony.

Imam Ibn Rushd, in his monumental work *Bidayatul Mujtahid wa Nihayatul Muqtaṣṣid*, places the discussion of li'ān in a very systematic and critical legal framework. He states that li'an is not a testimony in the sense of Islamic law (*syahādah*), but rather a sharia oath (*yamīn syar'iyyah*), which is used in special circumstances when a husband accuses his wife of adultery but does not have evidence in the form of four witnesses.

According to Ibn Rushd, testimony (*syahādah*) in Islamic law has very strict limitations. It must be delivered by two just men, free from personal interests, and carried out before a judge in a case involving a third party. Meanwhile, in the case of li'an, the husband acts as the accusing party and swears to the truth of his statement, without any supporting witnesses. In addition, the wife is also given the right to deny the accusation by swearing five times that her

husband is lying and is ready to accept the wrath of Allah if she is the one who lies. This structure, said Ibn Rushd, clearly shows that what is used in li'an is a battle of oaths, not a process of proof with external testimony.

Furthermore, Ibn Rushd emphasized that in li'an the specific principles of legal testimony do not apply, such as the requirement for justice from witnesses or the rules on the number of witnesses. In fact, in li'ān, the law only accepts personal oaths that are made repeatedly, as a form of direct responsibility before God. Therefore, he concluded that li'an is a special form of oath that is used as an alternative to resolve very sensitive and deep household conflicts, such as accusations of adultery that cannot be proven outwardly.

This understanding is rooted in Ibn Rushd's way of viewing sharia texts with a *maqāṣid* approach and social reality. He considered that sharia provides a space for resolution for married couples who are no longer able to be together due to a loss of trust, without having to plunge one party into injustice due to the inability to prove the accusation formally. Therefore, li'an as an oath allows for separation or divorce in a legitimate and honorable manner, without having to impose an absolute punishment for zina.

Ibn Rushd's view also shows the nuances of rationality in Islamic law. He conceptually distinguishes between *al-bayyinah* (evidence/testimony) and *al-yamīn* (oath), where li'an is clearly in the category of *al-yamīn*, because it emphasizes the aspect of spiritual responsibility rather than material proof. His view is an important distinction from the opinion of Imam al-Sarkhasi and some other scholars who include li'an in the form of testimony.

Thus, Ibn Rushd's thinking presents a sharp perspective that is rooted in the general principles of Islamic law: that oaths can be a means of legal resolution in very personal cases, such as husband and wife relations, while still maintaining the values of justice and honor of each party.

The evidence used by Imam Ibn Rushd is the same as that used by Imam al-Sarkhasi, namely the Qur'an, Surah an-Nur, verse 6:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ

Translation:

Those who accuse their wives of adultery, while they have no witnesses except themselves, then the testimony of each of them is to swear four times by Allah that he is one of the truthful.

Imam Ibn Rushd viewed the concept of li'ān as an oath, not a testimony. This is closely related to his understanding of Surah An-Nur verse 6, which provides guidance on how to resolve disputes between husband and wife in the case of accusations of zina, especially when there are no witnesses who can prove the accusation.

Ibn Rushd emphasized that in Islamic law, testimony is a form of proof given by witnesses who are free from personal interests and have moral credibility. In most cases, this testimony is given by people who are not directly involved in the case, and is regulated in a certain quantity and quality. However, in the case of li'ān, which involves the accusation of the husband against the wife made before the judge, there is no need for third-party testimony.

According to Ibn Rushd, Surah An-Nur verse 6 contains instructions that differ from the usual principle of testimony in Islamic law. In this verse, Allah commands the husband to swear four times to confirm that his accusation against his wife—that she has committed adultery—is true. Then, in the fifth oath, the husband must swear that he is ready to accept Allah's curse if he lies. This is what Ibn Rushd calls a forced oath, which serves to prove the husband's accusation against his wife.

Ibn Rushd's understanding is in stark contrast to other understandings, which see li'ān as a form of testimony. In Ibn Rushd's view, the oath taken by the husband has a different function and position from ordinary testimony. This oath is not only to prove the

truth of the accusation, but also to provide spiritual accountability for the husband. Because, he not only threatens himself with worldly punishment (namely, the possibility that his accusation is wrong and the wife becomes a victim of the accusation), but also binds himself religiously with the risk of receiving Allah's curse if he lies.

What is more interesting in Ibn Rushd's understanding is that he sees li'ān as a personal proof process, involving a direct relationship between husband, wife, and God, without the need for a third party to confirm the truth or falsity of the accusation. Ibn Rushd considers that the basic principle of li'ān is to avoid oppression of an innocent wife, while also giving the husband the opportunity to prove his accusation, but with a great risk of being cursed if he lies. This is different from testimony which requires more objective evidence and is witnessed by others.

Ibn Rushd also emphasized that the legal structure provided in the li'ān serves to maintain justice in this highly sensitive case. On the one hand, the husband is given the opportunity to express his accusations, but on the other hand, he must be prepared to bear serious consequences if his accusations are not true. This legal system, according to Ibn Rushd, reflects proportional justice, where not only the wife is considered, but also the husband's right to defend himself. However, the defense must be done with sincerity, which is manifested through an oath taken before God.

Overall, Ibn Rushd understands that li'ān combines two important elements: personal confession through an oath, and affirmation of the truth with the threat of damnation for the guilty party. This process is not simply about proving guilt, but also regulates the relationship between the two parties in a profound way, connecting them to God in carrying out the oath. Furthermore, Ibn Rushd also sees that li'ān places more emphasis on resolving problems directly and efficiently. Without involving many witnesses and material evidence, Islamic law in this case provides a practical solution for

couples who face serious accusations in the context of the household, which may be difficult to prove by conventional means. Therefore, li'an provides a way out for couples caught in such great tensions, in a way that preserves the dignity and honor of both parties, without having to get caught up in a more complicated and potentially problematic evidentiary process.

The Reason for the Difference of Opinion between Imam al-Sarkhasi and Imam Ibn Rushd Regarding the Nature of Li'an

The difference of views between Imam al-Sarkhasi and Imam Ibn Rushd regarding the concept of li'an is a reflection of different methodological approaches and principles of legal istinbat in understanding the syar'i texts, especially the verses in Surah an-Nur. This difference lies not only in the editorial aspect of the verses, but also in how they understand the structure of Islamic law, the technical meaning of the terms syahadah (testimony) and yamin (oath), and the role of li'an in the Islamic family law system.

Imam al-Sarkhasi, a great scholar from the Hanafiyah school, understands li'an as a form of testimony strengthened by an oath. This understanding is based on the sound of the verse which states that a husband who accuses his wife of adultery must testify four times that he is telling the truth, and in the fifth oath states that Allah's curse will befall him if he lies. In al-Sarkhasi's view, the husband's four statements were a form of shahadah, not just a personal statement or self-defense, but a form of formal proof that had legal value before a judge. Therefore, he places li'an as testimony with the strengthening of an oath, which under certain conditions can replace the minimum requirement of four witnesses in an accusation of adultery. This is because in a household context, presenting four witnesses is almost impossible, so the Shari'a provides a special alternative in the form of li'an.

Meanwhile, Imam Ibn Rushd, a scholar from the Malikiyah school and also known as a philosopher and great Andalusian qadhi,

criticized this understanding. According to Ibn Rushd, li'an is not a testimony in the sense of fiqh, but rather a legal oath. Testimony according to Islamic law must meet certain requirements such as the presence of other witnesses, openness in public, and the possibility of being refuted or rejected. Li'an, in its implementation, does not have these characteristics. The husband swears four times, then pronounces the fifth curse, and the wife, if she denies the accusation, replies with five oaths as well, not presenting witnesses or proving otherwise. This shows that the li'an process is a battle of oaths, not a confrontation of testimony.

Ibnu Rushd saw the word 'testimony' in this verse as a figure of speech or figure of speech, not in its syar'i meaning. In the Islamic legal system, majaz are often used to convey certain meanings symbolically. Therefore, for him li'an is a special form of yamin which replaces evidence in very private matters such as husband and wife relations.

Thus, the difference between the two reflects two main approaches in Islamic law: the literal textual approach (al-Sarkhasi) and the functional-substantive approach (Ibn Rushd). This difference is important in determining how Islamic law responds to complex and difficult-to-prove empirical household cases.

Table
The Reason for the Difference of Opinion between Imam al-Sarkhasi and Imam Ibn Rushd regarding Li'an

Objects	Imam al-Sarkhasi	Imam Ibn Rushd
Legal approach	Textual-literal	Functional-substantive
Meaning of li'an	Testimony supported by oath	Legal oath, not testimony
The term 'testimony'	Literally interpreted	Understood as language

		style (majaz)
The nature of li'an	Substitute witness in adultery charges	Form of oath (oath) in domestic conflict
Valid conditions for li'an	Based on the structure of the testimony	Based on the legitimacy of the oath
Legal implications	Has evidentiary value equivalent to the shahadah	Symbolic in nature and conflict resolution

According to Imam al-Syarkhasi, the conditions and pillars of li'an consist of formal elements that emphasize the structure of testimony before the judge. Li'an is considered valid if it is carried out by a husband and wife who have a valid marriage relationship, and the husband accuses his wife of adultery without being able to present four witnesses. The li'an process begins with the husband giving his testimony four times that his wife has indeed committed adultery, followed by a fifth oath stating that he is ready to be cursed by Allah if he lies. After that, the wife is given the opportunity to reject the accusation by swearing four times that her husband has lied, then closing with a fifth oath that she is ready to accept Allah's wrath if she lies. In al-Syarkhasi's view, the main emphasis lies in the formal aspect of testimony and the involvement of the judge as the party that validates the testimony before continuing with the oath (Al-Sarkhasi, 1995).

Meanwhile, according to Imam Ibn Rushd, li'an focuses more on the oath as the core of the legal process, not on testimony in the formal sense. For him, li'an is a means for husband and wife to state the truth or defend

themselves before Allah when there is no evidence in the form of witnesses. He sees li'an as a form of resolving moral disputes in the household that is framed with religious responsibility. In the procedures for its implementation, Ibn Rushd also explained that this process must still be before a judge, but its legal force lies in the oath taken by each party with full awareness of the spiritual consequences that they will bear. (Rusyd, 1990).

Indonesian Positive Law on Li'an

In the classical Islamic legal system, the concept of li'ān is a resolution mechanism when a husband accuses his wife of committing adultery but is unable to present four witnesses as required by Islamic criminal law. Li'ān is carried out by the husband swearing four times that he is honest in his accusations, then swearing on the fifth that he is ready to accept Allah's curse if he lies. Meanwhile, if the wife denies the accusation, she is also given the right to retaliate by swearing four times that her husband is lying, and on the fifth oath she declares that she is ready to accept Allah's wrath if she lies. The purpose of this procedure is to provide a fair resolution without arbitrarily plunging the wife into the punishment of adultery due to the lack of sufficient evidence. (Arifin, 2022).

In the context of Indonesian positive law, the term li'ān is indeed not explicitly mentioned in the legislation, but its substance is normatively accommodated in other forms. Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 and Number 50 of 2009, provides legal space for the settlement of divorce cases based on allegations of adultery through an oath mechanism. When a husband or wife files a divorce petition based on the grounds that the spouse has committed adultery, but does not have sufficient evidence and the accused party firmly denies it, the judge can judge that the case is difficult to prove with the available evidence. In such conditions, the judge has the authority to order the party filing the lawsuit to swear an oath in court as a

substitute for evidence that cannot be presented.(Ghoni, 2023).

The oath made by the plaintiff has legal force and can be used as a basis for the judge to grant a divorce petition. This means that, although it does not mention li'ān in textual terms, positive Indonesian law has provided a similar solution procedurally through the use of oaths as a substitute for evidence in divorce disputes for reasons of adultery. The judge continues to carry out his role with caution and upholds the values of justice, by giving space to both parties to defend themselves and present evidence if possible. When there is insufficient evidence from both parties, the oath is used as the main instrument to consider the truth of the accusation.(Putri et al., 2024).

This principle reflects that positive Indonesian law, especially in the religious court environment, adopts the values of substantive Islamic law and applies them in accordance with a more modern and contextual system of proof. The difference in terms does not change the essence that the state continues to uphold justice, the honor of the household, and the right of every individual to maintain their dignity and good name before the law. Thus, although the concept of li'ān is not present in the same terminology, legal practice in Indonesia still reflects the spirit and purpose of Islamic law in maintaining the rights of husbands and wives and preventing injustice in the household.(Affah, 2015).

CONCLUSION

In the study of Islamic law, the concept of li'ān has become an important concern among scholars, especially in understanding the meaning and essence of this process. Imam al-Sarkhasi views li'ān as a form of testimony reinforced by an oath. For him, the essence of li'ān is proof through a formal statement before a judge, which begins with the husband's testimony regarding the accusation of adultery against his wife, then strengthened through an oath to confirm the truth of the accusation. This opinion is based on a textual understanding of Surah An-Nur

verse 6, which explicitly mentions testimony (syahādah) four times and is followed by a fifth oath to call upon Allah's curse if one lies.

Meanwhile, Imam Ibn Rushd has a different view. He emphasized that li'ān is not a testimony in the sense of Islamic criminal law (syahādah) as is generally the case in hudud cases, but it is a special form of oath that has its own legal status. According to him, a husband who performs li'ān is not considered to be giving testimony in the Islamic framework that requires two or four witnesses, but rather is taking an oath that is determined as an alternative form of evidence in cases that are very sensitive and difficult to prove in general. Therefore, according to Ibn Rushd, the mention of the term "testimony" in the verse is not in the strict Islamic sense, but is figurative.

This difference of opinion stems from the method of istinbath (legal excavation) and the approach to the wording of the verse. Imam al-Sarkhasi understands the verse textually (zhāhir), by adhering to the literal meaning of "syahādah" as a testimony that is then strengthened by an oath. Meanwhile, Ibn Rushd understands the verse contextually and rationally (ma'nawī), and considers that in practice, li'ān does not fulfill the elements of testimony required in criminal law, but rather acts as a form of defense oath and accusation that has legal implications.

Thus, it can be concluded that the difference between the two lies in the understanding of the meaning of "syahādah" in the verse: whether it should be interpreted literally as a form of testimony or contextually as a form of oath that stands alone. Both agree that li'ān has major legal consequences, but differ in assessing the formal legal status of the process.

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