



BURDEN AND STANDARD OF PROOF IN
ZINĀ OFFENCE

BY

AZIZAH MOHD RAPINI

A DISSERTATION SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR
THE DEGREE OF
MASTER OF COMPARATIVE LAWS

AHMAD IBRAHIM KULLIYYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA

JULY 2002

ABSTRACT

The crime of *zinā* which is classified under *ḥudūd* offence requires a very strict method, burden and standard of proof. The offence has somehow resulted in a bulk of studies and researches since several methods of proof other than what have been unanimated by classical Islamic jurists have been discovered. Issues arise whether such methods of proof would somehow affect the implementation of *ḥadd* punishment.

This dissertation is intended to explore into the legal rules regarding methods of proof required to establish the offence of *zinā* including the use of testimony (*shahādah*), confession (*iqrār*) and circumstantial evidence (*qarīnah*) as well as some views from classical and modern jurists. Since proof is an important element to the administration of justice, this dissertation will also explain the concept of burden of proof under Islamic law of evidence peculiarly in criminal matters and to compare with the common law.

Unlike common law, the offence of *zinā* requires exclusive rules regarding its standard of proof that is proof beyond shadow of doubt or certainty. Hence, question arises whether evidence which could not reach the high degree of certainty would be admissible to convict *zinā* offence. The principle of eliminating doubt to convict *ḥadd* of *zinā* is believed as a very strict rule which results another issue whether *ta'zīr* could be as an alternative when *ḥadd* punishment could not be implemented. Thus, this dissertation is also trying to explore the sources under Islamic legal rules and several current issues pertaining to the concept of burden and standard of proof required in *zinā* offence.

خلاصة البحث

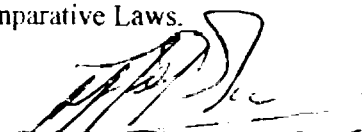
تعتبر جريمة الزنا من إحدى جرائم الحد التي تحتاج إلى تحقيقات صارمة ودراسات عميقة. من أجل ذلك، فقد صدرت بحوث كثيرة تعالج تلك الجريمة المشينة جراء ظهور طريقة الإثبات الجديدة التي تختلف عن الطريقة القديمة والتي أجمع عليها علماء السلف. والنقطة التي أثبتت هنا هي هل هذه الطريقة الجديدة في إثبات تلك الجريمة ستؤثر على آلية تنفيذ لشرعيته.

سيقوم هذا البحث بتقريب طرق إثبات جريمة الزنا منها الشهادة والإقرار والقرينة وبعض آراء فقهاء المتقدمين والمعاصرين. ويناقش هذا البحث أيضا عن مبدأ أعباء إثبات الجنابة في الإسلام ومقارنتها بالقوانين الوضعية.

حماية الزنا تحتاج في إثباتها إلى حد يصل إلى حد اليقين وليس شأنه في ذلك كشأنه في القوانين الوضعية. وكما أن المبدأ في الفقه الإسلامي بأن يوجب درء الحدود بالشبهات. فالنقطة الآخر التي أثبتت هنا هل يقوم حد الزنا بدليل آخر من أدلتها التي لا يصل إلى حد اليقين أو يعاقب الزاني في ذلك بعقوبة التعزير دون الحد. ولذلك يحاول هذا البحث في مناقشة المصادر في الشريعة الإسلامية والقضايا المعاصرة التي تتعلق بمبادئ حد الإثبات في حماية الزنا.

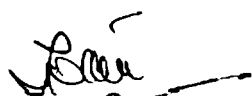
APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.




Zulfakar Ramlee
Supervisor

I certify that I have read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.



Ismail Mohd @ Abu Hassan
Examiner

This dissertation was submitted to the Kulliyyah of Laws and is accepted as partial fulfilment of the requirements for the degree of Master of Comparative Laws.




Nik Ahmad Kamal Nik
Mahmod
Dean, Ahmad Ibrahim
Kulliyyah of Laws

DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and bibliography is appended.

Name..... AZIZAH MOHD RAPINI

Signature.....  Date..... 9 . 08 . 2002

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF FAIR USE OF
UNPUBLISHED RESEARCH**

Copyright © 2002 by AZIZAH MOHD RAPINI All right reserved

BURDEN AND STANDARD OF PROOF IN *ZINĀ* OFFENCE

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the copyright holder except provided below.

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purposes
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

Affirmed by AZIZAH MOHD RAPINI



Signature

9/08/2002

Date

My beloved husband,

Sahrul Nizam

and my sweet baby girl,

Zahratul Hanan

..... I've learned the meaning of *sacrifice* and *patience*

Thanks for your love and care.

May Allah bless us.

ACKNOWLEDGEMENTS

In the name of Allah, the Most Gracious Most Merciful. Praise be to Allah, Lord of the universe, and peace and prayers be upon His Final Prophet and Messenger, Muhammad Sallallāhu 'alaihi wa Sallam.

First and foremost, I wish to express my utmost appreciation and thankfulness to my academic supervisor, Assist. Professor, Dr. Zulfakar Ramlee for his assistance, direction, consideration, precious guidance and encouragement throughout my research. His insightful remarks, scrupulous accuracy and constructive suggestions for alteration and additions in writing this thesis were instrumental in shaping this work into its final form. Needless to say, for any errors and omissions. I hold myself fully responsible.

I also wish to convey my grateful acknowledgement to all lecturers of the Kulliyah of Laws, IIUM, especially Prof. Dr. Mohd Akram Shair Mohamed, Assoc. Professor Dr. Nik Ahmad Kamal, Assoc. Professor Dr. Mohd Daud Bakar, Assoc. Professor Dr. Aziz Bari and all academic staff of Kulliyah and the Center Of Language Department including Miss Romaiza, for their assistance and kindness throughout the period of my study in IIUM.

I would also like to express my appreciation and indebtedness to my previous lecturer in University of Malaya, including Prof. Dato' Paduka Dr. Mahmood Zuhdi Abdul

Majid, Assoc. Prof. Mohd Salleh Ahmad, Mdm. Raihanah Azahari and all lecturers and academic staff of Academic of Islamic Studies, UM.

I would also like to **acknowledge** my special debt of thankfulness to my employer, **Darul Ehsan Islamic College (KISDAR)** whose **financial support and encouragement** has **enabled** me to **undertake** my studies **and** research **in** IIUM. Also **sincere** thanks to **Mr. Syukri Abdul Rahman (Dean of Islamic Studies), Mdm. Norainan Bahari (Deputy Dean of Islamic Studies), Mr. Muhiden Mokter (Head of Syariah Department), Mr. Raj Ali** and all lecturers and academic staff of the **School of Islamic Studies, KISDAR.**

Last but not least, the debt of appreciation and **gratitude** to my beloved husband, **Mr. Sahrul Nizam Nayan.** His **unfailing support, encouragement, assistance** are **unforgettable.** My baby daughter, **Zahratul Hanan,** her **unexpressed understanding and patience** have kept my life **delightful and enjoyable.**

Finally, my gratefulness is also dedicated to my father, Hj. Mohd Rapini Hj. Darus, who has **given** all his **support and encouragement,** my mother, **Hjh. Mukminah Hj. Barindi,** my **brothers, Azizullah** for his **technical assistance** , **Azimullah, Amanullah** **and also my parents-in-law, Mr. Nayan bin Hassan and Mdm. Samsiah binti Masri.**

TABLE OF CONTENTS

Abstract	ii
Abstract (Arabic)	iii
Approval Page	iv
Declaration	v
Acknowledgements	viii
List of Cases	xii
List of Statutes	xiii
List of Abbreviation	xiv
Transliteration	xv
CHAPTER 1 : INTRODUCTION	1
1.1. Statement of Problem	1
1.2. The Objectives of The Research	3
1.3. Literature Review	4
1.4. Hypothesis	7
1.5. Scope And Limitation of The Study	8
1.6. Methodology	10
CHAPTER 2 : ZINĀ UNDER ISLAMIC LAW	13
2.0. Introduction	13
2.1. Definition of <i>Zinā</i>	13
2.2. <i>Zinā</i> Versus Rape	15
2.3. <i>Zinā</i> Versus Homosexuality	17
2.4. <i>Zinā</i> Versus Lesbianism (<i>al- Sahāq</i>)	18
2.5. <i>Zinā</i> Versus Sodomy (<i>al-Liwāt</i>)	19
2.6. <i>Zinā</i> Versus Bestiality	20
2.7. Punishment of <i>Zinā</i>	21
2.8. <i>Zinā</i> : Methods of Proof	23
2.8.1. Testimony (<i>Shāhādah</i>)	24
2.8.2. Confession (<i>Iqrār</i>)	31
2.8.2.1 Retraction From Confession	35
2.8.3. Circumstantial Evidence (<i>Qarīnuh</i>)	36
2.9. Conclusion	39
CHAPTER 3 : BURDEN OF PROOF IN ZINĀ OFFENCE	41
3.0. Introduction	41
3.1. Burden of Proof Under Islamic Law	41
3.2. Burden of proof Under Common Law	49
3.3. Burden of Proof In <i>Zinā</i> Offence	52
3.4. Conclusion	60

CHAPTER 4 : STANDARD OF PROOF IN <i>ZINĀ</i> OFFENCE	61
4.0. Introduction	61
4.1. Standard of Proof Under Islamic Law	61
4.1.1. <i>Yaqīn</i>	62
4.1.2. <i>Ẓan</i>	64
4.2. The Position of <i>Shak</i> and <i>Wahm</i> Under Islamic Law of Evidence	68
4.2.1. <i>Shak</i>	69
4.2.2. <i>Wahm</i>	70
4.3. Standard of Proof Under Common Law	71
4.4. Standard of Proof In <i>Zinā</i> Offence	73
4.5. Can <i>Qarīnah</i> Attain A Degree of Certainty.....	77
4.6. Conclusion	81
CHAPTER 5 : CONCLUSION	82
BIBLIOGRAPHY	87

LIST OF CASES

1. *Ikau Anak Mail v. Public Prosecutor* [1973] 2 M.L.J. 153.
2. *Miller v. Minister of Pensions* [1947] 3 All E.R. 372,373.
3. *Pegawai Pendakwa MUIS v. Haji Adib Datuk Said Besar Sigoh* (1989) 2 JH 306.
4. *Pendakwa Mahkamah Kadi Perak v. Ajmee Hamid & Fariha Sulaiman* (1991) 1 JH 49.
5. *Pendakwa Mahkamah Kadi Perak v. Amran Aziz & Rosnah Ismail* (1991)1 JH 32.
6. *Pendakwa Mahkamah Kadi Perak v. Jaffary & Hasliza* (1991) 1 JH 105.
7. *Pendakwa Syarie v. Mahadi dan Noridah* (1998) 1 JH 55.
8. *Public Prosecutor v. Teo Eng Chan* [1988] 1 M.L.J. 156.
9. *Tun Datu Mustapha bin Datu Harun v. Tun Datuk Haji Mohd Adnan Robert* [1986]2 MLJ 420.
10. *Wong Sieng Ping v. Public Prosecutor* [1967] 1 M.L.J. 56.

LIST OF STATUTES

1. Enforcement of Hudood Ordinance 1979 (Pakistan)
2. Evidence Act 1950
3. Islamic Family Law (Federal Territory) Act 1984 (Act 303)
4. Penal Code (F.M.S. Cap. 45)
5. Syariah Court Evidence (Federal Territories) Act 1997 [Act 561]
6. Syariah Criminal Code (II) Enactment 1993 Kelantan
7. Syariah Criminal Offence (Federal Territories) Act 1997 [Act 559]
8. Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560]
9. The Mejelle

LIST OF ABBREVIATIONS

Ed.	Edition
ER	All England Reports
et. al.	<i>(et alia)</i> :and others
F.M.S.	Federal Malay States
ibid	(ibidem) : in the same place
JH	Jurnal Hukum
M.L.J.	Malayan Law Journal
n.d.	no date
n.p.	no place/no publisher
p.	page
pp.	pages
S.A.W	Sallallahu 'alaihi wasallam
sc.	section
Trans.	Translator translated by
v.	versus
Vol.	Volum/Volums.

TRANSLITERATION

Letters of the Alphabet

ب	b
ت	t
ث	th
ج	j
ح	h
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	ṣ
ض	ḍ
ط	ṭ
ظ	ẓ
ع	‘
غ	gh

ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	h
و	w
ء	‘
ي	y

Vowels and Diphtongs

اَ	a	آ	ā	أى	ī
أُ	u	أى	á	أو	aw
إِ	i	أو	ū	أى	ay

CHAPTER 1

INTRODUCTION

1.1. Statement of Problem

Zinā is one of *ḥudūd* offences which provides a severe punishment that is lapidation and stoning. Thus, to convict someone who has committed *zinā* needs a serious and strict investigation, a very technical procedure and rules of evidence. Judges, legislators, prosecutors and any person involved in this area should know the concept of the crime itself and all matters relating to the execution of *zinā* offence including the methods, burden and standard of proof required, so that justice will be attained.

There are many studies regarding the methods, burden and standard of proof required in *zinā* offence which are conducted by Islamic classical and modern jurists and scholars as well as Islamic legal professors and researchers. Each of them came out with different views and opinions. Such different views and arguments have resulted in confusion among judges, legislators, recent legal researchers and students particularly in determining appropriate views and approaches to be applied into present situation.

Since the crime is considered as a very serious offence, Islam provides a severe punishment for a person who has committed *zinā*. The punishment is either hundred stripes for an unmarried guilty person or stoning to death for a married one.

Because of the severe punishment, proof is the most important part in any execution and conviction of *zinā*. One should know the concept of proof and all matters relating to proof including methods, burden and standard of proof required.

In a case of *zinā*, it was agreed by the majority of Islamic jurists that the method of proof is either by testimony (*shahādah*) or confession (*iqrār*). However, there are some juristic views saying that circumstantial evidence (*qarīnah*) can be used as a method of proof if such proof can be upgraded to strong probability. This kind of view has resulted in some arguments whether *qarīnah* can or cannot be used as a method of proof in a case of *zinā*.

Before the conviction of *zinā*, burden of proof should first be identified. Under Islamic law of evidence, the burden of proof in criminal matters lies on the prosecution. The majority of Islamic jurists, agree that in a case of *zinā* which is categorized under *hudūd* offences, which purely involves the right of Allah, a high degree of proof is required to reach the state of certainty. Thus, the standard of proof required in a case of *zinā* is beyond any shadow of doubt whereas in criminal matters under modern secular law, the standard of proof required is beyond any reasonable doubt.

Certainty as is required in a case of *zinā* is a high degree of proof which can only be obtained by direct evidence either by admissible *shahādah* or *iqrār*. It is generally accepted that it is difficult to reach the degree of certainty, otherwise the conviction into *hudūd* punishment will be dispelled and the punishment of *ta'zīr* will alternatively take place.

There are some juristic views, however, that in a case of *zinā* or other *hudūd* offences, there is no need to reach the level of certainty but only to the degree of doubt or plausible conjecture on the basis of the presence of strong *qarīnah* where certainty is unattainable because of the strict rules of testimony and retraction of confession. For example the pregnancy of an unmarried woman; or with the advancement of science and technology like the use of chemical experiment and video camera.

Since there are a lot of arguments arising which touches upon methods, burden and standard of proof required, it is important to identify an applicable approach to the understanding of the Islamic law of evidence in *hudud* offence specifically in a case of *zinā* and to clarify such arguments which have resulted in confusion among modern Muslim jurists, professors, judges, legislators and researchers. Thus, in this dissertation, researches and studies have been conducted on some modern sources and references in order to explore all classical and modern views as to obtain a successful new research on this topic.

1.2 The Objectives of The Research

The main objective of this research is to examine the existing rules and regulations concerning the methods, burden and standard of proof required in *zinā* offence. The other objectives are :

- i. To explain the agreed and disputed methods of proof required in *zinā* offence and arguments arises from such methods.
- ii. To identify what is the basic of argument arises in methods of proof peculiarly in the use of *qarīnah* .
- iii. To identify the methods of proof appropriate in present situation.
- iv. To explain the concept of burden of proof under the Islamic Law of Evidence especially in criminal matters.
- v. To explain the standard of proof required in a case of *zinā* .
- vi. To identify the best alternative in solving problems arising in implementation of *zinā* punishment in case of the absence of the high degree of certainty required for its conviction.

1.3. Literature Review

It is not disputed that testimony (*shahādah*) and confession (*īqrār*) are two methods of proof in *zinā* offence. *Shahādah* as defined by Mahmud Saedon in his book “ An Introduction of Islamic Law of Evidence”, as a form of knowledge based on the truth and certainty and it does not stand on conjecture by using the words specific to testimony during a judicial proceeding and it is given to secure the right of another person against yet another person and not for the benefit of witness to prove a right or interest with regards to right of Allah or rights of individuals.¹

Shahādah in *zinā* offence is different from other *ḥudūd* offences. It is given by at least four Muslim male witnesses who are :²

- i. sound of mind
- ii. sane
- iii. credible
- iv. in possession of a good memory
- v. beyond suspicion
- vi. having good morals and honour
- vii. free from slavery
- viii. capable of speech
- ix. capable of seeing.

One of the basic principles in a conviction of *ḥudūd* offence is if the witnesses are unable to fulfill the condition of four witnesses they will be convicted to another form of *ḥudūd* punishment that is defamation or *qadhaf* and will be sentenced with eighty stripes.³

¹ Mahmud Saedon A. Othman, *An Introduction to Islamic Law of Evidence*, Hizbi, Shah Alam, 1996, p. 46.

² Ibid, pp. 55 – 61.

³ al-Ghazālī, Muḥammad, al-Muḥāmi, Hāmid ‘Akāz & ‘Awd Muḥammad ‘Awd, *Niẓām Ithbāt al-Da’wā wa Adillatuh*. Dār al-Da’wah, Cairo, 1996. p. 131.

The second method of proof that is not disputed either by classical and modern jurists is *iqrār* or confession. Mahmud Saedon defines *iqrār* as a form of admission for the purpose of proving a fact in order to establish a right or interest or another person against the maker of the admission himself.⁴

Iqrār is considered as the best evidence⁵ in *zinā* offence because the offender comes voluntarily admitting what he has done or committed, so that the judge can convict him with the *hudūd* punishment without any doubt unless the *iqrār* made is retracted or made by a person who is under duress or unsound of mind.

The third method of proving that has resulted some disputes among classical and modern jurists is *qarīnah* or circumstantial evidence. *Qarīnah* means a thing which explains something.⁶ Anything which points to a certain meaning either in the form of words, circumstances, acts or omission can be said as *qarīnah*. Under section 3 of the Syariah Court Evidence (Federal Territories) 1997, *qarīnah* is defined as fact connected with the other fact in any ways referred to in this act.

Question arises whether an unmarried pregnant woman can be convicted of *zinā* based on *qarīnah* that is pregnancy. Imam Abū Ḥanīfah, Imam Shāfi'ī and Imam Aḥmad came out with a view that it is not sufficient proof to convict *zinā* because of doubt. Furthermore, they added that even the *qarīnah* reaches the degree of certainty, a pregnant woman cannot be convicted to *hudūd* punishment based on the *Hadith* wherein the Prophet said :⁷

⁴ Mahmud Saedon, *An Introduction to Islamic Law of Evidence*, p. 31.

⁵ See section 44 (1) of the Syariah Criminal Code (II) Enactment 1993 Kelantan.

⁶ Abdul Nāsir Abū al-Baṣl, *Masā'il fī al-Fiqh al-Muqārrn*. Dār al-Nafāis, Urdun. n.d., p. 283.

⁷ *Ibid.*, pp. 284 – 286.

لو كنت راحما بعير بينة لرجمت فلانة فقد ظهر منها الرية في منطقتها وهيتها
ومن يدخل عليها.*

Were I to stone anyone to death without evidence, I would stone so-and-so to death for her speech , appearance and cohabition which raise suspicion.

On the contrary, Imam Mālik came out saying that the pregnancy of unmarried woman is sufficient proof for *ḥadd* of *zinā* provided there is no sign of coercion on her body and she is local and not stranger.⁹

Ibnu Qayyim al-Jawziyyah in his book *al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Shar'iyyah*, was in the same opinion with Imam Mālik that *qarīnah* can be used as a method of proving to convict *zinā*.¹⁰ The use of *qarīnah* as a method of proving is based on the case of Prophet Joseph. In this case the *qarīnah* of Prophet Joseph's torn clothes, was used to identify the guilt.¹¹

The Syarah Criminal Code (II) Enactment 1993 of the state of Kelantan has taken the later view of using *qarīnah* as a method of proving to convict *zinā*. It is provided under section 46 (2) that in a case of *zinā* , unmarried pregnant woman can be used as evidence to convict such offence, applying Mālikī's view.

The views and provision of using *qarīnah* as a method of proving have raised the issue on how much proof is actually required in a case of *zinā* and other *ḥudūd* offences especially in the present situation when the finding of four credible Muslim male

⁸ Ibnu Majah, *Sunan Ibnu Mājah*, Dār al-Ma'rifah, Beirut, 1996, Vol. 3, p. 228.

⁹ Abdul Nāṣir Abū al Baṣl, *Masā'il fi al-Fiqh al-Muqārin*, pp. 284 – 287.

¹⁰ ai-Jawziyyah, Ibnu Qayyim, *al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Shar'iyyah*, Dār al-Kutub al-'Ilmiyyah, Beirut, n.d., p. 6

witnesses is merely impossible and with the development of science and technology which can establish evidence.

Muhammad al-Ghazālī et. al. in their book, *Niẓām al-Ithbāt al-Da'wā wa Adillatuh*, pointed that due to the severe punishment provided by Islamic Law in *hudūd* offences including *zinā* and its strict rules in convicting, so, *ta'zīr* punishment will be applied if the case does not reach a degree of certainty.¹²

Concerning the issue that has been discussed by the previous jurists and writers regarding methods, burden and standard of proof required in *zinā* case, this research will explore current issues and situation that may change the use of such methods and its concept of burden and standard of proof. Thus, this research will identify which opinion is appropriate to be applied without ignoring the basic principles provided by Islamic Law.

1.4. Hypothesis

- i. Due to current situation and its development of science and technology, the standard of proof required in *hudūd* and *ta'zīr* cases should be taken into account peculiarly the use of *qarīnah* as a method of proof.
- ii. If *zinā* punishment is to be implemented, how strong standard of proof required especially when the evidence is adduced, solely on the use of *qarīnah* which is known as a method of proving which cannot reach the degree of certainty, and does a degree of plausible conjecture or *ẓan al-ghālib* can be upgraded, so that *hudūd* punishment can be executed.

¹¹ See al-Qur'an, Surah Yūsof, 12 : 26-27

¹² al-Ghazālī, Muhammad, *Niẓām Ithbāt al-Da'wā wa Adillatuh*, p. 138.

- iii. If *qarīnah* is to be accepted as a method of proving *zinā* , is there a possibility of changing the burden of proof from prosecution to the accused ?

1.5. Scope And Limitation of The Study

Since the topic of the dissertation will touch upon *zinā* offence under its law of evidence, this research will first deal with the background of the offence to look at the concept and definition and to what extent such definition of *zinā* can be used in similar offence like rape, sodomy, homosexuality and bestiality. This research will also explain the punishment provided under Islamic Criminal Law against the crime of *zinā*, but the discussion of such punishment will only be explained in general to examine the concept of its severe punishment which requires a strict rules of methods, burden and standard of proof .

One of the major discussions under this topic is on the methods of proof required for *zinā* offence and this will cover the agreed methods those are *shahādah* and *iqrār* and the disputed method that is *qarīnah* . The definition and concept of such methods will also be explained in detail. References will be made to some verses in the Qur'an regarding the use of the methods required and some of Hadith narrating relevant cases. This discussion will also figure out some arguments regarding the methods required and such argument will be taken from the classical and modern scholars. This research will also attempt to identify how such methods may or can be used in current situation with the changing of society and the development of science and technology.

The second major discussion is on the burden of proof required in a case of *zinā* covering the concept of burden of proof under Islamic Criminal Law including *hudūd* punishment