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# Withdrawal from Testimony, Denial after Confession, and Retraction of Oath after the Issuance of a Judicial Decision

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## ABSTRACT

The issues of withdrawal from testimony, denial after confession, and retraction of an oath at any stage of judicial proceedings constitute significant legal matters. Statutory law has addressed certain aspects of these issues only briefly and in a fragmented manner, which has itself generated further ambiguities and may lead judges to uncertainty in decision-making or even result in the issuance of unjust judgments. This occurs despite the fact that classical Islamic jurisprudential sources have examined the dimensions of these matters more comprehensively. The legislator has deemed denial after confession inadmissible in civil matters; however, where it is proven that the confession was based on mistake, error, or justified excuse, the subsequent denial may be considered. Judicial practice has likewise generally rejected denial after confession. If, after taking an oath, the oath-taker declares that the oath was false, and no judgment has yet been issued on the basis of that oath, the court shall render its decision based on the individual's confession. However, where a judgment has already been issued but the period for appeal remains open, it appears that the convicted party may seek appellate review relying on the confession of the oath-taker. Conversely, if the judgment has become final, it is not unlikely that a new claim may be brought for restitution of what the oath-taker wrongfully obtained, since in such circumstances the basis of the new action is the confession itself rather than the oath administered in the previous proceeding.

**Keywords:** *Withdrawal from testimony; denial after confession; retraction of oath; issuance of judicial decision; Iranian criminal justice system.*

## Introduction

The evidentiary system constitutes one of the fundamental pillars of judicial proceedings, since the realization of justice largely depends on the reliability, stability, and legal validity of evidence presented before courts. Among the most significant means of proof in both civil and criminal proceedings are testimony, confession, and oath, each of which possesses a distinct juridical nature and evidentiary function within the Iranian legal system influenced by Islamic jurisprudence. These evidentiary tools not only serve as mechanisms for discovering truth but also operate as procedural guarantees intended to balance judicial certainty with the protection of individual rights. Consequently, any change in the status of these proofs—such as withdrawal from testimony, denial after confession, or retraction



of an oath—raises complex legal questions regarding the authority of judicial decisions and the preservation of procedural fairness (1, 2).

In Islamic jurisprudence, testimony has traditionally been regarded as a form of declarative evidence grounded in the moral integrity and credibility of the witness. Jurists have extensively discussed the conditions of admissibility, the qualifications of witnesses, and the consequences arising from subsequent retraction. Withdrawal from testimony after its presentation challenges the presumption of reliability upon which judicial adjudication relies. Classical jurists examined whether such withdrawal invalidates prior judicial reliance on testimony or merely creates liability for the witness. These discussions demonstrate that testimony is not merely a factual statement but a legally consequential act that may affect both private rights and public order (3-5).

Confession occupies an even stronger evidentiary position in both jurisprudential doctrine and statutory law. It is commonly described as the “master of evidence,” given that it represents a declaration against one’s own interest and therefore carries a high degree of evidentiary credibility. Iranian civil law generally treats confession as binding and irrevocable once validly made, reflecting the principle that acknowledgment of liability produces legal certainty and prevents endless litigation. Nevertheless, jurists and legal scholars have recognized exceptional circumstances in which denial after confession may be considered, particularly when the original confession resulted from mistake, coercion, misunderstanding, or legally recognized excuse. The tension between the stability of judgments and the prevention of injustice lies at the core of debates surrounding denial after confession (6-8).

The oath represents another unique evidentiary institution combining legal procedure with ethical and religious obligation. Unlike testimony or confession, the oath derives its authority from the moral accountability of the oath-taker before both law and conscience. Islamic legal sources emphasize that the oath functions as a decisive mechanism in situations where other forms of evidence are insufficient. However, complications arise when the oath-taker later admits that the oath was false. Such retraction raises fundamental procedural questions: whether the judicial decision based upon the oath retains validity, whether appellate review becomes available, and whether restitution claims may be pursued after final judgment. Jurisprudential discussions illustrate differing approaches depending on whether judgment has been issued, whether appeal periods remain open, and whether the subsequent confession constitutes a new legal cause of action (9-11).

Despite the rich doctrinal background provided by Islamic jurisprudence, statutory regulation in modern Iranian law addresses these issues only partially. Legislative provisions often appear scattered across civil procedure, criminal procedure, and evidentiary rules without presenting a unified analytical framework. This fragmentation may create interpretive uncertainty for judges, particularly when faced with conflicts between procedural finality and substantive justice. Judicial practice has therefore played a critical role in shaping practical solutions, yet inconsistencies in case law indicate the continuing need for doctrinal clarification and systematic analysis (1, 12).

Furthermore, contemporary legal systems increasingly emphasize the protection of procedural rights alongside the accuracy of judicial outcomes. Erroneous testimony, mistaken confession, or false oath may lead not only to wrongful judgments but also to broader erosion of public trust in the justice system. From a jurisprudential perspective, resolving these challenges requires reconciling two competing principles: the necessity of stability in judicial decisions and the moral imperative to correct injustice whenever credible evidence emerges after judgment. Islamic legal scholarship historically attempted to balance these considerations through nuanced distinctions regarding evidentiary hierarchy, judicial knowledge, and liability consequences for witnesses and litigants (13, 14).

Accordingly, examining withdrawal from testimony, denial after confession, and retraction of oath after the issuance of a judicial decision is essential for understanding how Iranian law negotiates the relationship between evidentiary certainty and corrective justice. By analyzing jurisprudential foundations, statutory provisions, and judicial implications, this study seeks to clarify the legal effects of these evidentiary transformations and to determine their impact on the validity, appealability, and possible reopening of judicial judgments within the Iranian legal system.

### **The Concept of Evidence and the Continuity of Its Validity**

At the outset, the concept and meaning of evidence are examined, followed by clarification of what is meant by the continuity of the validity of such evidence in the subsequent section.

#### *The Concept of Evidence*

Evidence (*dalil*) literally means a “guide,” “leader,” or that which is presented for the purpose of proving a matter (15). The plural form in Arabic is *adilla*. In criminal matters, evidence may be defined as any legally recognized means used to prove the occurrence of a crime, attribute it to an accused person, or negate the accusation, with the ultimate objective of discovering the truth (11).

The legislator has defined the term “evidence” in Article 194 of the Iranian Code of Civil Procedure as follows: “Evidence consists of any matter upon which litigating parties rely to prove or defend a claim.” This definition primarily concerns litigants themselves. Nevertheless, in both civil and criminal proceedings, judges may also obtain evidence independently in order to uncover the factual truth.

In criminal legislation, the term itself has not been expressly defined; rather, Article 160 of the Islamic Penal Code of 2013 enumerates the types of evidence for proving crimes, namely confession, testimony, *qasāmah*, oath in legally prescribed cases, and judicial knowledge. Thus, the legal system identifies evidentiary categories through enumeration rather than conceptual definition (1, 2).

#### *The Concept of the Continuity of Evidentiary Validity*

The continuity or discontinuity of evidentiary validity concerns whether, after evidence has been presented and all statutory conditions for its admissibility have been satisfied, the evidentiary force must continue to exist over time, or whether the establishment of validity at a single moment suffices without requiring its persistence after submission.

In the four evidentiary categories under discussion, a distinguishing characteristic separates them from issues such as conflicts between evidentiary proofs. In each instance, the validity of evidence is challenged by the very individual who originally established it—namely the witness, the confessor, the oath-taker, or even the source underlying judicial knowledge.

Accordingly, situations involving conflicts between different pieces of evidence fall outside the scope of the present discussion. First, evidentiary conflict concerns the *initial* validity of competing proofs rather than the persistence of an already established proof. Second, evidentiary conflict presupposes at least two opposing proofs, even if presented at different times; whereas in cases of withdrawal, denial, or retraction, only one piece of evidence exists, and that evidence is subsequently challenged by its own proponent.

It is self-evident that examining the necessity or non-necessity of continuity in evidentiary validity presupposes that the evidence was valid at a specific temporal and procedural moment—namely, at the time of presentation before judicial authorities during criminal proceedings.

### **The Concept of Retraction and Withdrawal from Testimony**

Linguistically, *rujū'* (retraction) signifies “return” (16), “withdrawal or return to a prior state” (17), or the act of reverting to a previous condition or position (18).

Having clarified the meanings of testimony and retraction, the question arises as to what is meant by withdrawal from testimony. Jurists have generally not provided an independent definition; instead, they addressed the concept within discussions of its legal consequences. Withdrawal from testimony occurs when witnesses, after delivering testimony, retract the statements they previously made. Iranian statutory law likewise provides no explicit definition.

Lexicographical and jurisprudential sources describe withdrawal from testimony as the negation by a witness of what had been established through that testimony (19). Some scholars have stated that withdrawal is realized merely by the witness declaring that the testimony was false or contrary to reality, whether or not the witness explains the reason—such as coercion, inducement, or mistake (6). Others define it as a situation in which a witness, after testifying before a judge, presents grounds demonstrating that the testimony was incorrect, whether arising from error or intentional falsehood (14).

Certain authors appear to require the presentation of additional proof beyond the mere declaration of withdrawal; however, jurisprudential discussions clearly indicate that simple retraction by the witness, even without supporting evidence, suffices. Accordingly, withdrawal from testimony may be defined as the negation of the substance of previously delivered lawful testimony by the witness, whether accompanied by admission of mistake or intentional falsity.

From this definition, several elements become evident. First, valid testimony must previously have been presented. Second, the testimony must have satisfied all legal and religious conditions of validity at the time it was delivered. Third, the challenge to the testimony’s validity must originate from the witness himself or herself. Consequently, if a judge independently questions the credibility of testimony, or if other witnesses provide contradictory testimony, the matter falls outside withdrawal from testimony and must instead be analyzed under the doctrine of conflicting evidence.

#### *Withdrawal from Testimony*

One conceivable scenario arises when a single witness retracts testimony while the remaining witnesses affirm that the retracting individual was not actually present at the scene of the alleged act—for example, in a case of adultery. In this situation, the remaining witnesses do not deny the occurrence of the event itself but merely assert that the retracting witness lacked firsthand observation. Jurisprudential opinions indicate that liability may fall upon the retracting witness alone, while the remaining witnesses bear no financial responsibility (3).

#### *Liability of Witnesses under Criminal Law*

Where a judicial decision has already been executed on the basis of witness testimony and the witnesses subsequently retract their testimony, Article 198 of the current Islamic Penal Code considers such retraction

inadmissible. This rule signifies that the evidentiary validity of testimony continues despite later withdrawal; therefore, retraction after enforcement of judgment does not invalidate the ruling.

However, the non-revocation of the judgment does not eliminate the responsibility of retracting witnesses. By retracting, witnesses effectively admit that they lacked certainty regarding their testimony, and under the principle that individuals are bound by their own admissions, they may incur legal liability (8).

Article 163 of the Islamic Penal Code provides that if, after execution of judgment, the evidentiary basis of a conviction is invalidated—for instance, where it becomes clear that another person committed the crime or that no crime occurred—those whose statements caused bodily injury, loss of life, or financial damage, including oath-takers, complainants, or witnesses, may be subject to retaliation, payment of blood money, legal punishment, or compensation for damages.

This provision concerns situations in which the evidentiary basis is proven false. In cases of withdrawal from testimony after execution of judgment, however, retraction itself is not accepted as sufficient to invalidate the testimony. The evidentiary proof is therefore not considered annulled merely by retraction, since no preference necessarily exists between the initial testimony and the later withdrawal; the latter may itself be false.

Accordingly, it appears that the liability framework established under Article 163 does not automatically apply to withdrawal from testimony. Nonetheless, many jurists maintain that witnesses who retract testimony after execution of judgment remain liable for the consequences of their statements. In such circumstances, pursuant to Article 167 of the Constitution, courts must refer to Islamic jurisprudence and authoritative legal opinions, and the nature and extent of witness liability will vary depending on the category of crime involved. Extensive jurisprudential analysis has addressed these matters in detail and is therefore not repeated here.

#### *The Position of Statutory Law Regarding Withdrawal from Testimony After the Issuance of Judgment and Before Its Enforcement*

It should be clarified that what is meant by withdrawal after the issuance of judgment and before its enforcement is withdrawal after the issuance of a **final** judgment. This is because, until a judgment becomes final, the person against whom testimony is given remains in the position of an accused, and paragraph (2) of the Single Article of the Law on Respecting Legitimate Freedoms and Protecting Citizens' Rights, adopted on **June 17, 2004**, confirms this point by providing that "... until the crime is proven before the competent court and ... the decision becomes final, the principle is the presumption of innocence of the accused ...". In criminal laws, mechanisms for overturning non-final decisions have been anticipated, including appellate review and applications for cassation. Accordingly, Article 426 of the Code of Criminal Procedure provides that the Provincial Court of Appeal is the competent authority to hear appeals against all non-final criminal decisions, except in cases falling within the jurisdiction of the Supreme Court. Pursuant to Article 490 of the same Code, final decisions are as follows:

A—A final decision issued by the court of first instance. To identify such decisions, reference must be made to Article 427 of the same Code. This provision considers two categories of first-instance judgments to be final and not subject to appeal:

1—Where the crime is a Grade Eight (*darajah-ye hasht*) discretionary (*ta'zir*) offense. To identify this category of offenses, reference must be made to Article 19 of the Islamic Penal Code adopted in **2013**, the final part of which classifies as Grade Eight those crimes punishable by a fine of up to ten million rials, imprisonment of up to three months, and also offenses punishable by up to ten lashes.

2—Crimes requiring payment of blood money (*diyyah*) or *arsh*, where the amount or aggregate is less than one-tenth of full blood money.

B—A decision for which no objection, appeal, or cassation request has been filed within the statutory time limit, or where an appeal/cassation request has been rejected.

P—A decision that has been affirmed by the appellate authority, or one issued after the first-instance decision has been quashed.

T—A decision that has been affirmed by the cassation authority.

Therefore, the assumption in the present discussion is that the issued judgment has become final.

As explained in detail in the previous assumption, the law provides that in the situation after the issuance of judgment and before its enforcement, the testimony will no longer be considered valid. The legislator's position appears correct, because the most important basis upon which jurists relied to treat withdrawal as effective was the hadith "avert *hudūd* by doubts" (20), and this Prophetic statement may be invoked across crimes generally. As Muhammad Taqi Majlisi interpreted this hadith, he understood the term "*hudūd*" to encompass *qiṣāṣ*, *ḥadd*, and *ta'zīr* (21). In addition, the legislative rationale of this rule—realization of justice and assistance to defendants—requires that this meaning extend to discretionary punishments as well. Third, the general statement attributed to the Prophet that "the ruler's error in pardon is better than his error in punishment" likewise encompasses discretionary punishments.

The legislator has also provided in Article 120 of the Islamic Penal Code adopted in **2013** that "whenever the occurrence of the crime ... becomes subject to doubt or uncertainty and no evidence is found to negate it, as the case may be, the crime ... is not established." Likewise, in *hudūd* cases—given the presumption of leniency and tolerance—Article 121 of the same Code considers the mere realization of doubt, without the need to obtain further evidence, sufficient to prevent the establishment of *ḥadd* crimes, insofar as *ḥaqq al-nās* is not implicated, such as in rape (*zinā bi'l-'unf*). It is evident that the phrase "the occurrence of the said crime" in Article 120 is absolute and covers all types of crimes. Therefore, no distinction remains among crime categories, and upon the occurrence of withdrawal before enforcement of the judgment, the judgment is quashed. The classification adopted by prominent jurists—treating withdrawal from testimony as effective in *hudūd* but not effective in private rights—has not been reflected in statutory law; rather, withdrawal appears to extinguish the evidentiary validity of testimony altogether and render it as though it had not been presented.

## The Concept of Denial

In language, denial (*inkār*) means "repudiation and professing unfamiliarity" (7) and also "not accepting, not recognizing, non-admission, and ..." (22). Accordingly, denial after confession in criminal matters means that a person confesses to committing a crime and then retracts the confession and repudiates the commission of the crime.

### *The Occurrence of Denial after Confession Before the Issuance of a Final Judgment*

In *ḥadd* crimes punishable by stoning or death, if before the issuance of judgment the accused confesses to committing the act and then denies committing it, since no decision has yet been issued on the basis of the confessions and the judge has not yet become *functus officio*, (12) the denial is effective and, as the case may be, the punishment is converted to one hundred lashes or a Grade Five discretionary imprisonment sentence. However,

if a non-final judgment has been issued on the basis of the offender's confession and thereafter denial occurs, it appears that the principle of judicial finalization (the *functus officio* rule) does not permit the issuing judge to alter the decision or convert the punishment, because the judge becomes discharged from adjudication upon issuing judgment and, under this rule, cannot change the judgment. For this reason, the legislator has sought to uphold this rule by specifying exceptions, including correction of a judgment containing a clerical error or computational mistake (Article 381 of the Code of Criminal Procedure) and removal of ambiguity or vagueness from a judgment (Article 497 of the same Code). Therefore, conversion of punishment by the same authority that issued the non-final judgment cannot be treated as an exception to the *functus officio* rule.

Nevertheless, where a judgment in *absentia* has been issued, since the convicted person was not present at the time of issuance to make a confession, the offender's confession alone cannot, in principle, serve as the basis for the judgment, because in cases where the accused's confession constitutes the evidentiary basis of the court's judgment, it must be heard directly by the judge who issues the decision, which necessitates the accused's presence (Note 2 to Article 119 of the Code of Criminal Procedure). The discussion of denial may become uncertain in situations where an absent convict confesses at the time of committing the crime. A confession in the objection stage (*vākhāhī*) would then constitute additional evidence beyond earlier evidence. Denial after confession in *ḥadd* crimes punishable by stoning or death is accepted but would have no effect.

Issuing a judgment in *absentia* in purely divine-right offenses (*ḥaqq Allāh maḥḍ*) is not permissible, unless the offense also involves private rights (*ḥaqq al-nās*). Article 406 of the Code of Criminal Procedure specifies this matter: it does not permit an in *absentia* judgment for purely divine-right crimes, but where private rights are also involved—such as rape (*zinā bi'l-'unf*)—an in *absentia* judgment is unobjectionable. Since (i) most crimes punishable by stoning or the *ḥadd* of death do not allow in *absentia* judgments, and (ii) even where such a judgment might be possible, the evidentiary basis of conviction is usually not confined to confession alone, it may be unlikely for denial after confession to produce effects at the objection stage.

In any event, where stoning or the *ḥadd* of death has been established at first instance based on the offender's confession, because such crimes are subject to cassation review, reference must be made to the rules governing cassation. Article 464 of the Code of Criminal Procedure enumerates grounds for cassation as follows:

A—Allegation of non-compliance with laws concerning the accused's culpability and the applicable legal punishment;

B—Allegation of non-compliance with procedural principles to such a degree of importance that it renders the judgment invalid;

P—Non-conformity of the judgment's grounds with the documents contained in the case file.

Even so, the occurrence of denial after the issuance of a non-final judgment does not appear to fall under any of the grounds for cassation, because paragraphs A, B, and P of Article 464 concern situations where, as the case may be, laws relating to culpability are not observed, procedural principles are not observed, or the judgment's grounds do not align with the documents existing **at the time of issuance**. In the scenario of denial occurring after issuance of a non-final judgment, at the time the judgment was issued the proving evidence—the offender's valid confession—was present, and the judgment was consistent with the documents and the law; rather, it is only after issuance that, due to the occurrence of denial, the punishment becomes disproportionate.

It seems possible—though with some leniency—to treat denial after confession occurring after issuance of a non-final judgment as falling under paragraph A, on the basis that at the time of cassation request the punishment

is no longer legally appropriate. On this interpretation, the phrase “allegation of non-compliance with laws” would cover both the time of issuance and the time of cassation request, thereby resolving the problem. Accordingly, the convicted person may submit the cassation request to the criminal court that issued the first-instance judgment, and the court office will forward the case file to the Supreme Court (Article 439 of the Code of Criminal Procedure). The Supreme Court, pursuant to paragraph B of Article 469 of the Code of Criminal Procedure, must quash the judgment and refer the file to a parallel court. The parallel court is likewise obliged, under Article 173 of the Islamic Penal Code, to give effect to denial after confession and convert the offender’s punishment.

A possible objection may be raised here: if the offender’s confession is the evidentiary basis for establishing guilt, then under Note 2 to Article 119 of the Code of Criminal Procedure, the judge issuing the judgment must have heard the confession; however, when the file is referred to the parallel court, the offender denies committing the act and, as a rule, will not confess again. In that case, convicting the person to a reduced punishment based on denial after confession would lack legal basis, because the cassation applicant did not confess before the parallel court so as to deny it thereafter. In response, it may be said that the requirement of hearing the confession by the judge issuing the judgment pertains to the first-instance stage, because under Articles 449 and 468 of the same Code, proceedings before the appellate court and the Supreme Court are not, in any event, contingent upon the presence of the complainant or the accused. It appears that the parallel court acts as a substitute for the Supreme Court, and its proceedings are likewise not contingent upon the presence of the convicted person, regardless of whether the file’s evidence consists of the convicted person’s confessions or other forms of proof. This indicates that there is no necessity for the parallel court to hear a confession anew.

#### *The Occurrence of Denial after the Issuance of a Final Judgment*

If, after a judgment becomes final, the convicted person denies committing an offense punishable by stoning (*rajm*) or the *ḥadd* penalty of death, then—given that the judge who issued the final decision has become discharged from adjudication and can no longer alter the ruling—it is necessary to resort to the mechanism provided in the Code of Criminal Procedure. In this situation, the rules governing retrial (*i’ādat-e dādrasī*) must be considered (12).

According to the explicit wording of Article 474 of the Code of Criminal Procedure, an application for retrial in respect of final convictions issued by courts—whether or not the judgment has been enforced—is accepted in the following cases:

- (a) A person is convicted of murdering someone and thereafter the alleged victim is proven to be alive;
- (b) Several persons are convicted of committing an offense that, by its nature, cannot rationally be attributed to more than one offender;
- (p) A person is convicted for attribution of an offense, and another person is also convicted by a judicial decision for attribution of the same offense, such that the contradiction between the two decisions establishes the innocence of one of them;
- (t) Different judgments are issued against a person for the same charge;
- (th) It is established before the competent court that forged documents or false witness testimony constituted the basis of the judgment;
- (j) After the issuance of a final judgment, a new event occurs or new evidence is presented which results in establishing the innocence of the convicted person or the absence of culpability;
- (ch) The act committed is not a crime, or the punishment imposed exceeds the legally prescribed punishment.

As can be seen, the grounds listed for retrial do not explicitly include the occurrence of denial after confession unless one adopts an expansive interpretation of paragraph (j) or (ch). Under paragraph (j), denial after confession might be regarded as a “new event,” but that new event does not straightforwardly establish the innocence of the convicted person or the absence of culpability. If denial after confession were capable of proving innocence, then upon denial the judgment would have to be overturned and an acquittal issued, rather than merely converting the punishment—unless it is argued that denial does not establish complete innocence but causes the offender to move from the highest level of culpability to a lower level, and that such reduction is itself a partial form of “establishing innocence.” This line of reasoning, however, may be methodologically weak.

With respect to paragraph (ch), although the punishment of stoning or *ḥadd* death for a person who, after issuance of a final judgment, retracts confession and denies the commission of the offense is arguably “more severe than the legally prescribed punishment,” it should be noted that at the time the judgment was issued, the punishment determined was fully consistent with the legally prescribed punishment. This is because, at the time of issuance, the basis of the judgment was the offender’s confessions, and up to that time the offender had not denied the offense. Therefore, if paragraph (ch) is understood to address cases where, at the time of issuance, the punishment fixed in the decision exceeds the statutory maximum, then the subsequent occurrence of denial cannot constitute an instance of that paragraph.

Moreover, given that the enumerated grounds for retrial are restrictive (*ḥaṣṣr*), one cannot add a new ground without express legislative authorization. For that reason, only if paragraph (ch) is interpreted broadly—so that “the punishment imposed exceeds the legally prescribed punishment” includes both (i) disproportionality at the time of issuance and (ii) disproportionality arising after the final judgment—would the problem be resolved. Under such an interpretation, whenever a convicted person denies the offense after the judgment becomes final and before enforcement of stoning or *ḥadd* death, the matter would fall under a ground for retrial and would be handled according to the relevant rules. It is evident that denial after a final judgment is, by its nature, possible only before enforcement, because after enforcement of stoning or *ḥadd* death, no convicted person remains to deny commission of the crime.

An application for retrial is submitted to the Supreme Court, and upon finding that the request corresponds to one of the cases listed in Article 474 of the Code of Criminal Procedure, the Supreme Court grants retrial and refers the matter for renewed adjudication to a parallel court of equal rank to the court that issued the judgment (1). Since the punishment contained in the final judgment is a deprivation-of-life sanction, the chamber of the Supreme Court, upon receipt of the retrial request and before making a decision on it, will order a stay of execution. The parallel court is then obligated, pursuant to Article 173 of the Islamic Penal Code, to convert the punishment of stoning or death, as the case may be, to one hundred lashes or Grade Five discretionary imprisonment.

It is possible, however, that an expansive interpretation of paragraph (ch) of Article 474 might not be accepted, and that one might instead argue for correcting the judgment by the issuing authority itself, on the following grounds. First, the legislator, in the sections concerning cassation and retrial, has not specified a case expressly corresponding to the occurrence of denial after confession. Second, in the conversion of stoning or *ḥadd* death to one hundred lashes or discretionary imprisonment, no substantive re-examination of guilt occurs; rather, the court would merely change the punishment irrespective of renewed fact-finding. Third, the legislator has explicitly treated comparable instances—where a form of mitigation is anticipated after a final judgment—as cases of correction of the decision by the same issuing court. For example, where in non-compoundable offenses the complainant, after

finality, announces waiver, the convicted person may request the court that issued the final judgment to reconsider the punishment, and the court—after holding a session—mitigates or converts the punishment within the legal framework. Likewise, where by subsequent legislation the punishment is reduced, the issuing court of the final judgment reduces the prior punishment in light of the later law. These examples reflect legislatively authorized exceptions to the *functus officio* rule (1).

On this basis, one may argue that after the occurrence of denial, the enforcement judge, while issuing an order staying execution, requests the issuing court to correct the judgment by applying Article 173 of the Islamic Penal Code, and the convicted person may also request correction. In addition, there are instances in which, after issuance of judgment and before it becomes final, the same first-instance court reduces the punishment—for instance, where the convicted person waives the right to appeal or cassation before finality, which results in a reduction of up to one quarter of the determined punishment. In such situations, the *functus officio* rule is overridden and the same court corrects its own decision. In the context of denial after confession, it may be said that there is likewise no substantive re-examination as to whether the offense is established; rather, the severe penalty is simply converted to a lighter one, similar to the foregoing situations. Hence, it might be concluded that the same issuing court should convert the punishment.

In response to this possibility, it may be argued, first, that in the matter of retraction of an oath—an issue similar to denial after confession—the legislator has expressly authorized retrial. Second, the *functus officio* rule is a general and foundational principle, and overriding it requires explicit legal justification; in the above-mentioned cases where *functus officio* has been overridden, it was overridden due to statutory authorization. Therefore, where doubt exists as to whether a statutory exception applies, recourse must be had to the general rule of *functus officio*.

In any event, it appears that, since judgments concerning offenses punishable by stoning or *hadd* death are subject to cassation review, and decisions subject to cassation are non-final while the cassation authority is the Supreme Court, denial after confession must either be treated under retrial rules or as an exception to the *functus officio* rule. In either approach, the request to apply Article 173 of the Islamic Penal Code should be submitted to the Supreme Court. Since the Supreme Court does not undertake substantive adjudication, it must refer the case to a parallel court, unless the convicted person did not file a cassation request within the statutory period after the non-final judgment and the judgment thereby became final. In that case, if the matter is treated as a ground for retrial, the file must be sent to the Supreme Court; but if it is treated as an exception to the *functus officio* rule, the first-instance court would correct the judgment. Thus, the practical consequences of adopting either approach become clear.

Some scholars have treated retraction of an oath as a new ground in addition to the grounds for retrial listed in Article 474 of the Code of Criminal Procedure (2). If that view is accepted, the difficulty concerning denial after confession and withdrawal from testimony would not be resolved. Because if retraction of an oath cannot be subsumed under any of the enumerated grounds for retrial, then denial after confession and withdrawal from testimony would likewise fail to qualify. Under that scenario, retraction of an oath would permit retrial only due to the existence of an explicit legal text, while the other two issues would remain doctrinally unsettled.

#### *Denial after Confession in the Executive Regulation of Article 297 of the Code of Criminal Procedure of 1999*

It should be noted that this provision is, in fact, conceptually a subset of the previous discussion; however, since it appears in the form of an executive regulation, it is appropriate to examine it independently. Note to Article 17 of

this regulation provides that if a person sentenced to death or stoning denies the attributed offense prior to execution, and the case falls within the scope of Article 71 of the Islamic Penal Code, execution of the sentence shall be suspended by order of the judicial authority responsible for enforcement, and the matter shall be reported to the judicial authority that issued the judgment. At first glance, this note may suggest that denial after confession constitutes an exception to the rule of *functus officio* of the judge.

In rejecting such an interpretation, it may be argued that the enforcement judge, acting on behalf of the public prosecutor, merely informs the issuing court of the occurrence of denial after confession, and such notification does not conflict with the *functus officio* rule. The obligation to report does not necessarily imply an obligation on the part of the recipient authority to take a particular substantive action. Since this note concerns denial occurring during the execution phase—and execution presupposes finality of judgment—the enforcement judge must notify not only the issuing court but also the prosecutor. The prosecutor is among the persons entitled, under Article 475 of the Code of Criminal Procedure, to request retrial, and may therefore initiate retrial proceedings. The convicted person likewise may submit a retrial request pursuant to the same provision.

This regulation relates to Article 293 of the Code of Criminal Procedure adopted in 1999. Article 216 of the Islamic Penal Code adopted in 2013, together with Article 549 of the Code of Criminal Procedure adopted in 2013, requires adoption of an executive regulation governing the implementation of life-deprivation punishments; however, such a regulation has not yet been enacted. The obligation stated in Note to Article 17 corresponds to the duty established in Article 491 of the Code of Criminal Procedure, which provides that whenever the criminal enforcement judge considers a judgment legally unenforceable, the matter shall be reported—with notification to the prosecutor—to the court issuing the final judgment, and action shall be taken in accordance with the court's decision (1).

If one were to accept that denial after issuance of a final judgment constitutes an exception to the *functus officio* rule, then Article 474 of the Code of Criminal Procedure—which establishes detailed retrial regulations—would effectively become redundant. For example, if at the time of execution the enforcement judge becomes certain that the alleged murder victim is alive, paragraph (a) of Article 474 explicitly treats this circumstance as a ground for retrial. In such a case, relying on Article 491, the enforcement judge would consider the judgment unenforceable and merely notify the issuing court. If Article 491 were interpreted as authorizing the issuing court to conduct substantive reconsideration and issue a new ruling, the legislatively established retrial mechanism would lose its purpose. Therefore, both Article 491 and Note to Article 17 should be understood as obligating the enforcement judge only to suspend execution and notify the issuing court so that action may proceed according to legally established mechanisms, rather than constituting an independent exception to *functus officio*.

## Retraction of Oath

### *The Concept of Retraction*

Linguistically, *'udūl* (retraction) means “to return” or “to turn back from a path.” The semantic meaning of this term appears close to that of *rujū'* (return), since both imply a return to a previous state.

### *Oath and Qasāmah in Linguistic Usage*

In language, an oath (*sawgand*) means “swearing” or “solemn affirmation,” and the word *yamīn* is mentioned as its equivalent (22). The term *qasam* (oath) derives originally from *qasāmah* and has been associated with beauty

and excellence; the naming of oath-taking in this manner reflects the idea that the person swearing draws symbolic strength or dignity from that which is invoked in the oath (23). The term *yamīn* came to signify oath because Arabs traditionally grasped one another's right hands when forming covenants or swearing mutual pledges, and thus the word was metaphorically used to denote oath-taking (18).

### *Qasāmah and Retraction in Statutory Law*

The Islamic Penal Code defines "oath" in Article 201 as invoking God as witness to the truthfulness of the oath-taker's statement. Article 313 of the same Code defines *qasāmah* as a series of oaths used, in the absence of other evidence and in the presence of *lawth* (circumstantial suspicion), either by the complainant to establish intentional or unintentional homicide or its characteristics, or by the accused to repel the accusation.

Despite explicit reference to retraction of oath within *qasāmah* proceedings in Article 346 of the Islamic Penal Code, no statutory definition of retraction of oath has been provided. Likewise, classical juristic discussions do not appear to treat the subject under a distinct conceptual heading. It seems that retraction of oath, similar to withdrawal from testimony, refers to a situation in which the oath-taker withdraws the oath after having taken it, whether attributing the retraction to mistake or withdrawing without providing justification.

### *Retraction of Oath from the Perspective of Criminal Procedure*

After examining the substantive question of whether retraction affects the validity of an oath already taken, it is necessary to clarify the procedural mechanisms through which legal effect may be given to such retraction. Pursuant to Article 2 of the Code of Criminal Procedure, criminal proceedings must be grounded in statutory law; therefore, any procedural action must occur within the framework of legal regulations.

Because retraction of oath may occur either before issuance of judgment or after issuance of judgment, each stage must be analyzed separately.

### Occurrence of Retraction of Oath before the Issuance of a Final Judgment

The stage prior to issuance of a final judgment includes both the period before issuance of a first-instance judgment and the period after its issuance but before finality.

#### **Before Issuance of the First-Instance Judgment**

Since retraction of oath does not eliminate the condition of *lawth*, when retraction occurs prior to issuance of a first-instance judgment, the previously administered oaths become invalid. Consequently, the court must request the party responsible for performing *qasāmah* to complete or replace the deficient number of required oaths so that evidentiary requirements are properly fulfilled.

#### **After Issuance of the First-Instance Judgment and Before Its Finality**

*Qasāmah* has been recognized as a valid evidentiary mechanism in cases of *qiṣāṣ* and *diyāt*. Pursuant to Article 428 of the Code of Criminal Procedure, crimes punishable by deprivation of life are considered non-final judgments and are subject to cassation before the Supreme Court. In cases involving *diyāh*, however, judgments are final where the amount is less than one-tenth of full blood money; otherwise, they remain non-final. Accordingly, whenever the offense entails payment of blood money or *arsh* amounting to less than one-tenth of full *diyāh*, the judgment is final and not subject to appeal or cassation (Article 427(b) of the Code of Criminal Procedure) (1).

It should be clarified that *qasāmah* also applies in injuries giving rise to *arsh*. First, Article 17 of the Islamic Penal Code adopted in 2013 defines *diyah* as including both predetermined and non-predetermined compensation, and Article 449 clarifies that non-predetermined *diyah* refers precisely to *arsh*. Therefore, *arsh* constitutes a subset of *diyah*. Second, under Article 449, the legal provisions governing fixed *diyah* apply equally to *arsh* unless a different rule is expressly provided, and no such distinction has been established regarding *qasāmah*. Third, the legislator refers to *qasāmah* as an evidentiary method for *diyah* without distinguishing between predetermined and non-predetermined forms. Jurisprudential opinions have likewise explicitly accepted the applicability of *qasāmah* to *arsh*.

If the amount of *diyah* or *arsh* equals or exceeds one-tenth of full blood money, the first-instance judgment becomes subject, depending on the case, to appeal or cassation review (Article 427 of the Code of Criminal Procedure). Where the offense is intentional and the amount of *diyah* reaches one-half of full blood money or more, cassation before the Supreme Court becomes available (Article 428). If the amount is less than one-half, appellate review before the Provincial Court of Appeal applies (Articles 426–428) (1).

Accordingly, regarding retraction of oath, when an offense proven through *qasāmah* in a first-instance judgment entails payment of *diyah* or *arsh* ranging from one-tenth to less than one-half of full blood money in intentional offenses—and in all amounts in unintentional offenses—the judgment is appealable before the competent Court of Appeal within statutory deadlines. In this situation, reference must be made to the legally defined grounds for appeal. Article 434 of the Code of Criminal Procedure provides that grounds for appeal include:

- (a) claim of invalidity of the evidence or documents relied upon by the court;
- (b) claim that the judgment is contrary to law;
- (c) claim of lack of jurisdiction or existence of grounds for judicial disqualification;
- (d) claim that the court failed to consider submitted evidence.

Because Article 346 of the Islamic Penal Code of 2013 considers retraction of oath to invalidate the oath itself, the occurrence of retraction undermines the evidentiary validity of *qasāmah*. Consequently, retraction of oath results in invalidity of the evidentiary basis relied upon by the court. It therefore appears that retraction of oath falls within paragraph (a) of Article 434. Although paragraph (b), referring generally to judgments contrary to law, is broader and may encompass other grounds, the essential point remains that once evidentiary validity disappears, the issued judgment becomes legally defective.

As discussed previously in relation to denial after confession, recognizing retraction of oath as a ground for appeal requires an expansive interpretation of appellate grounds. At the time of issuance, the judgment relied upon a *qasāmah* whose constitutive oaths had not yet been retracted and were therefore valid. In the present scenario, retraction occurs after issuance of the first-instance judgment; hence, for retraction to fall within Article 434(a), the concept of evidentiary invalidity must be interpreted as extending beyond the moment of issuance and encompassing the period between issuance and finality of judgment.

Accepting this interpretation, whenever retraction of oath occurs and the executor of *qasāmah* is the complainant, either the convicted person or the prosecutor may submit an appeal relying on paragraph (a) of Article 434. Since Article 346 of the Islamic Penal Code does not declare *lawth* (circumstantial suspicion) void upon retraction—unlike Article 344—the condition of *lawth* remains intact. The appellate court, upon quashing the first-instance judgment, must request the complainant to complete the required number of oaths according to law. If the complainant refuses or lacks the capacity to complete the oaths, he or she may request that the accused perform *qasāmah* (Article 317

of the Islamic Penal Code). Should the accused perform *qasāmah*, acquittal follows; refusal results in liability for payment of *diyah* (Article 319).

If the executor of *qasāmah* at the first-instance stage was the accused and retraction occurs thereafter, the appellate court, after overturning the judgment, must request the accused to complete the deficient oaths. Completion leads to acquittal; failure results in liability for payment of *diyah*. In this situation, once the complainant demands performance of *qasāmah* by the accused, the accused may no longer transfer the obligation back to the complainant. The reason that refusal leads to liability appears to be twofold: first, the existence of *lawth*; second, refusal combined with *lawth* creates attribution of the injury or homicide to the accused. Where the occurrence of killing is established but its type remains unproven, the law treats the act as quasi-intentional, thereby establishing liability for blood money. Article 472 of the Islamic Penal Code confirms that where the principle of the offense is proven but its type is not, payment of *diyah* becomes obligatory upon the perpetrator.

Where the executor of *qasāmah* in the first-instance stage was the accused together with relatives who participated as oath-takers, the foregoing analysis applies. However, where the accused lacks relatives, the accused personally may repeat the necessary number of oaths to reach the legal quorum (Article 338 of the Islamic Penal Code). If the accused completes all required oaths and subsequently retracts them, such retraction may be treated analogously to refusal to perform *qasāmah*, functioning as an indicator supporting the claimant's allegation and resulting in liability for *diyah*. Nevertheless, a stronger view suggests that the accused should again be summoned and requested to complete the missing oaths; if completed, acquittal follows, otherwise liability for *diyah* is imposed.

Paragraph (th) of Article 450 of the Code of Criminal Procedure regulates appellate procedure and provides that, in offenses punishable by *ḥudūd*, *qiṣāṣ*, unintentional crimes involving less than half of full *diyah*, and certain discretionary crimes, the appellate court shall schedule a hearing and summon parties whose presence is necessary. The parties may appear personally or through counsel, and proceedings continue regardless of absence. From this provision, it may be inferred that the appellate court should summon the parties in cases of retraction of oath, since such circumstances clearly necessitate judicial examination. Moreover, the concluding language of the article suggests that failure of the *qasāmah* executor to appear for completion of the oaths may be interpreted as refusal to perform *qasāmah*, in which case the rules governing refusal apply.

Where a judgment based on *qasāmah* entails punishment of *qiṣāṣ al-naḥs* or payment of half of full *diyah* or more in intentional offenses, it becomes subject to cassation before the Supreme Court within statutory deadlines (Article 428 of the Code of Criminal Procedure). In this context, reference must be made to Article 464, which defines cassation grounds as:

- (a) non-observance of laws relating to culpability or legal punishment;
- (b) violation of procedural principles rendering the judgment invalid;
- (c) inconsistency between the judgment's reasoning and the evidence contained in the case file.

Among these, only paragraph (a) appears capable of encompassing retraction of oath. Interpreted broadly, non-observance of law may include not only defects existing at the moment of issuance but also those arising afterward before finality. Under this expansive interpretation, retraction of oath falls within paragraph (a), thereby justifying a cassation request. Although such interpretation departs from the literal wording, expansive interpretation of procedural rules has generally been accepted in criminal procedure scholarship (1, 2).

Upon acceptance of retraction of oath as a cassation ground, the file is transmitted to the Supreme Court, which—after quashing the judgment—refers the case to a parallel court pursuant to Articles 469 and 470 of the Code of Criminal Procedure. The parallel court must request completion of the required oaths from the executor of *qasāmah* and proceed in accordance with the rules previously discussed for the appellate stage, ultimately issuing the appropriate judgment.

Nevertheless, if expansive interpretation of appellate and cassation grounds is not accepted, it appears that retraction of oath occurring before final judgment must be regarded as a new procedural ground implicitly recognized by the Islamic Penal Code of 2013 as permitting appeal or cassation. In such circumstances, the *functus officio* rule cannot be set aside so as to impose a new obligation upon the court that issued the non-final judgment.

#### The Occurrence of Retraction of Oath after the Issuance of a Final Judgment

If retraction of an oath occurs after the issuance of a final judgment, then, according to the express wording of Article 346 of the Islamic Penal Code adopted in 2013, the case constitutes a ground for retrial. The question that still arises here—similar to the previous issues—is whether Article 346, by authorizing retrial, introduces a **new** ground in addition to those enumerated in Article 474 of the Code of Criminal Procedure, or whether it should be treated as an instance of one of the grounds already listed in that article. According to one view, retraction of oath is an additional case anticipated by the Islamic Penal Code and must be added to the grounds listed in Article 474 of the Code of Criminal Procedure (2).

First, it is necessary to refer to the retrial grounds. Pursuant to Article 474, the grounds for retrial are as follows:

“(a) A person is convicted of murdering someone and thereafter the alleged victim is proven to be alive.

(b) Several persons are convicted of committing an offense that, by its nature, cannot rationally be attributed to more than one offender.

(p) A person is convicted for attribution of an offense, and another person is also convicted by a judicial decision for attribution of the same offense, such that the contradiction between the two decisions establishes the innocence of one of them.

(t) Different judgments are issued against a person for the same charge.

(th) It is established before the competent court that forged documents or false witness testimony constituted the basis of the judgment.

(j) After the issuance of a final judgment, a new event occurs or new evidence is presented which results in establishing the innocence of the convicted person or the absence of culpability.

(ch) The act committed is not a crime, or the punishment imposed exceeds the legally prescribed punishment.”

It appears that only paragraphs (th), (j), and (ch) could plausibly be discussed in relation to retraction of oath. Paragraph (th) expressly refers only to cases where the basis of the judgment was a document or testimony later proven forged or contrary to reality; the wording of this paragraph does not allow retraction of oath to be treated as an instance of it. Regarding paragraph (j), although retraction of oath is a new event occurring after the final judgment, it does not necessarily establish the innocence of the convicted person or the absence of culpability. This is because, during retrial, the prior judgment might be quashed and, subsequently, after the complainant completes the missing oaths, the accused may again be convicted. It is therefore unlikely that retraction of oath falls within paragraph (j). Moreover, retraction of oath does not necessarily invalidate *lawth* (circumstantial suspicion), such that one could claim it proves the “non-criminal” nature of the act under paragraph (ch). Therefore, if Article 346 of

the Islamic Penal Code adopted in 2013 had not authorized retrial in cases of retraction of oath, the case would not fall within the general retrial grounds set out in Article 474 of the Code of Criminal Procedure, and there would have been no option other than resorting to the special retrial mechanism under Article 477 of the Code of Criminal Procedure. That article provides:

“If the Head of the Judiciary determines that a final judgment issued by any judicial authority is manifestly contrary to Sharia, he may authorize retrial and refer the case to the Supreme Court so that, in a special chamber designated by the Head of the Judiciary for this purpose, it is reviewed and a final decision is issued. The special chambers, based on the declared manifest contrariety to Sharia, quash the prior final decision and conduct a new review, whether formal or substantive, and issue the appropriate ruling.”

Special retrial encompasses all final judgments, whether convictions or acquittals. Accordingly, absent authorization under Article 346 of the Islamic Penal Code, retraction of oath after a final judgment could only have constituted a ground for special retrial under Article 477 of the Code of Criminal Procedure and would have remained outside the scope of general retrial. This is because retraction of oath could not be aligned with the enumerated general retrial grounds: those grounds are specific and pre-defined in law, and their restrictive nature is rooted in the exceptional character of retrial and its interference with the principle of finality in criminal matters (2). Therefore, one cannot add a new case to the grounds listed in Article 474 without legislative authorization.

It appears that, since Article 346 of the Islamic Penal Code authorizes retrial in absolute terms, retraction of oath after a final judgment does not exclusively point to general retrial. This is because general retrial is accepted only in respect of final conviction judgments. In the situation where the executor of *qasāmah* is the accused and retraction of oath occurs, the accused would have been acquitted by the final judgment on the basis of *qasāmah*, and no conviction exists to invoke general retrial. In that case, the appropriate solution is to resort to special retrial: under Article 477 of the Code of Criminal Procedure, final judgments—regardless of conviction or acquittal—may be reopened. If the executor of *qasāmah* is the complainant, then the general retrial rules would apply.

Under this interpretation, the principle of finality is not undermined by informally adding a new item into the restrictive list of Article 474 under the label of general retrial. Moreover, the analysis remains consistent with the general framework: had Article 346 not expressly authorized retrial, retraction of oath after a final judgment would have had to be examined under the special retrial mechanism of Article 477. It may be argued that Article 346 merely authorizes retrial, without specifying whether it is general or special. Since the general retrial grounds cannot be aligned with the hypothesis of retraction of oath, but special retrial can encompass it, retraction of oath should be treated only as a ground for special retrial.

In response, it may be argued that the very breadth of Article 346 indicates that general retrial was also contemplated. Reconciling these points, the conclusion would be: where the complainant is the executor of *qasāmah* and retraction of oath occurs, it constitutes a ground for general retrial, whether one treats it as an instance of paragraph (j) of Article 474 or as a new ground created by Article 346 of the Islamic Penal Code.

However, where the accused is the executor of *qasāmah* and retraction occurs, one may argue it should be treated as a ground for special retrial authorized by Article 477 of the Code of Criminal Procedure. If, instead, one relies on the breadth of Article 346 and applies general retrial even in this hypothesis, two consequences follow: (1) as a matter of principle, general retrial is accepted only for conviction judgments, and extending it here would violate that premise, since the accused—being the executor of *qasāmah*—was acquitted and no conviction exists; and (2) retraction of oath cannot be aligned with the enumerated grounds of general retrial, and the restrictive and

exceptional nature of general retrial does not allow an expansive interpretation. If special retrial alone is accepted in this hypothesis, the analysis conforms to the logic of special retrial because that mechanism can encompass acquittal judgments as well. Nevertheless, the basis for invoking special retrial would still be the “manifest contrariety to Sharia” requirement, which, in this scenario, appears difficult to establish.

It may be argued that where retraction is made by the accused’s relatives (as oath-takers), the case will not constitute a retrial ground. First, retrial is principally designed to quash conviction judgments, not acquittals. Second, under Article 345 of the Islamic Penal Code, even if after *qasāmah* is performed by the accused the complainant produces evidence contrary to the substance of *qasāmah*, it is not accepted and the acquittal is not quashed. Retraction of oath does not necessarily reveal that the content of the oaths was false; therefore, a fortiori, the acquittal should not be quashed. This appears to be a plausible view.

Although retrial grounds commonly suggest retrial is directed at quashing convictions rather than acquittals (2), the legislator has provided in Article 480 of the Code of Criminal Procedure that: “Whenever the court, after substantive review, finds the retrial request well-founded, it quashes the judgment subject to retrial and issues the appropriate ruling... the court’s ruling, in terms of appeal or cassation, is governed by the relevant regulations...” Likewise, Article 477 on special retrial states that the special chambers quash the prior final ruling and conduct renewed review, whether formal or substantive, and issue the appropriate decision. Therefore, the outcome of retrial is not always limited to quashing a conviction and acquitting the convicted person; it may also result in quashing the prior ruling and issuing a different conviction.

Another issue is whether retraction of oath after execution of the judgment is admissible. From the broad wording of Article 346 of the Islamic Penal Code—providing that “if after issuance of judgment... they retract their oaths... it constitutes a ground for retrial”—it is inferred that retraction even after execution is included, because the phrase “after issuance of judgment” encompasses both pre-execution and post-execution stages. Moreover, Article 474 of the Code of Criminal Procedure provides that retrial in respect of final convictions is accepted whether or not the judgment has been enforced. Since Article 346 treats retraction of oath as a retrial ground, retraction after issuance of judgment—whether before or after execution—would also be capable of triggering retrial.

It is possible, however, that after execution, retraction of oath is no longer admissible, by analogy to withdrawal from testimony, where the legislator did not accept withdrawal after enforcement. In addition, Article 163 of the Islamic Penal Code provides that if, after execution, the evidentiary basis of conviction is invalidated and the accused, due to execution, has suffered bodily injury, loss of life, or financial harm, those to whom the harm is attributable—including, as the case may be, the oath-taker, complainant, or witness—shall be sentenced to retaliation, payment of blood money, legal punishment, and financial compensation. Therefore, withdrawal from testimony after execution does not, as such, invalidate the testimony previously given so that responsibility would arise merely due to the loss of evidentiary validity; rather, the witness becomes responsible where the testimony was false.

In retraction of oath, too, retraction does not necessarily invalidate *qasāmah*, because *qasāmah* is not composed solely of oaths; *lawth* is also a component. With the invalidity of certain oaths, *lawth* remains in force. Article 163 holds the oath-taker responsible after execution only where the evidentiary basis is invalidated; and the examples provided—such as proving that another person was the perpetrator or that no crime occurred—indicate that the falsity of the evidentiary basis must be established. Retraction does not necessarily entail that the oath was false. Accordingly, where judgment has been executed and the oath-takers later retract, the judgment will not be quashed

merely on that basis. Yet the non-quashing of the judgment does not imply absence of responsibility. By retracting, the oath-takers effectively admit that they either erred in the substance of the oath or knowingly swore falsely. In that event, they are bound by their admission and, depending on the circumstances, may be subject to retaliation or punishment and may be required to compensate financial losses.

Thus, an executed judgment will not be quashed solely due to retraction of oath unless the falsity of the oaths is proven by some method. In that case, relying on paragraph (j) of Article 474 of the Code of Criminal Procedure—providing that after a final judgment a new event occurs or new evidence is presented that establishes innocence or absence of culpability—the case would constitute a ground for retrial.

## Conclusion

When the question is raised regarding the effect of a witness's withdrawal from testimony, a confessor's denial of confession, an oath-taker's retraction of oath in *qasāmah*, and judicial knowledge (*'ilm al-qāḍī*) followed by discovery of its contradiction, the issue is essentially whether the occurrence of these acts by the proponent of the proof terminates the continuity of the evidentiary validity already established, or not. By referring to jurisprudential sources, criminal statutes, and judicial practice, the necessity of continuity in the validity of evidentiary proofs in criminal matters is understood, and depending on the type of offense and the procedural stage at which denial, withdrawal, or retraction occurs, the legal outcome differs.

Withdrawal from testimony—up to the point before enforcement of a judgment that is based solely on testimony—eliminates the evidentiary force of that testimony. Denial after confession, according to certain prominent jurists, statutory rules, and judicial practice, is effective only in *ḥadd* offenses punishable by stoning or death and naturally operates only until the time of enforcement, resulting in mitigation of the punishment. In jurisprudential literature, no specific discussion was found concerning retraction of oath in *qasāmah*; however, the Islamic Penal Code explicitly recognizes retraction of oath in *qasāmah* in homicide and bodily injury cases before enforcement of judgment as admissible and treats the oath as lacking evidentiary validity.

Nonetheless, with respect to retraction of oath after enforcement of judgment, there is no explicit statutory statement. If—consistent with judicial practice—it is accepted that retraction of oath follows the same rules as withdrawal from testimony, then retraction after enforcement is not admissible and does not lead to quashing the judicial ruling. In such cases, the evidentiary basis of conviction was witness testimony, and withdrawal or retraction after enforcement is not treated as admissible; accordingly, no defect is imposed upon the validity of the testimony or the issued judgment. However, the person who withdraws or retracts after enforcement remains liable for the harms and losses caused to the convicted person as a result of enforcement of the judgment, because through withdrawal or retraction they have effectively admitted that their testimony or oath was mistaken, and they are therefore bound by their own admission.

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All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

## Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

## Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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