

Res Ipsa Loquitur: Evidence in Civil Law and Islamic Law; Viewed from a doctrinal point of view

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Article Info	Abstract
Received: 2023-04-29 Revised: 2023-05-31 Accepted: 2023-06-20 Keywords: Civil evidentiary; Islamic law; circumstantial evidence; medical malpractice; res ipsa loquitur	<i>In cases of suspected medical malpractice, it is tough to prove that there is an element of negligence because access to evidence is within or under the perpetrator's control, making it difficult for the victim to access it. In the legal field, the doctrine of res ipsa loquitur was introduced, which makes it easier for victims to prove who is guilty by showing indirect evidence, namely evidence of a fact or several facts from which a reasonable conclusion can be drawn. This research examines the application of res ipsa loquitur in terms of doctrine, civil evidence law, and Islamic law. This research is a literature study using a normative approach that refers to civil evidence law and Islamic law provisions. The legal analysis used is a conceptual, comparative and case study approach. This research found that applying res ipsa loquitur in judicial practice, as long as it is not regulated in procedural law, is a principle that becomes a source for judges to find the law. In civil evidence law, res ipsa loquitur can be implemented through presumptive evidence concluded by the judge. Meanwhile, in Islamic law, there are dalil (instructions) for qarinah, which are equated with presumptive evidence, so that res ipsa loquitur, which can be enforced through presumptive evidence, can also be enforced through qarinah evidence.</i>

I. Introduction

The practice of medicine, which involves caring for the sick and mending the ailing, is undeniably one of the most gratifying occupations. However, medical outcomes and treatment results may only sometimes align with expectations, even when all required measures are taken (Shenoy et al., 2022). In some instances, it is challenging to prove that there was an element of negligence because access to evidence is within or under the

perpetrator's control, making it difficult for the victim to access it. How can he request a doctor to draft a report detailing the negligence of another doctor in providing medical treatment? Furthermore, the judge presiding over such trials must possess a sufficient understanding of handling medical negligence matters, a rarity (Mokhtar, 2022).

One of the recent cases involved a midwife in South Tapanuli who reported the doctor who treated her to the local and regional police regarding allegations of malpractice because, according to the victim's testimony, the doctor operated on her right leg, even though the left leg was sore (Wisely, 2022). On the other hand, one of the legal principles is that whoever sues must provide evidence; convincing evidence is necessary for a lawsuit to succeed. To establish negligence, the victim must provide proof of the perpetrator's obligation to exercise care, the level of care that the perpetrator was expected to provide, and the violation of that duty of care towards the victim according to the law (Cheluvappa & Selvendran, 2020). In cases where a victim of doctor malpractice brings a lawsuit to court, the judge has the authority to apply the *res ipsa loquitur* doctrine. This doctrine relieves the victim from the burden of proving the specific elements of negligence as long as they can demonstrate the integrity of their claim (Sibarani & Sinamo, 2020). (Sibarani & Sinamo, 2020) The principle of *res ipsa loquitur* acknowledges that some types of circumstantial evidence can be used to establish legal responsibility (Sibarani & Sinamo, 2020).

Many researchers have studied the doctrine of *res ipsa loquitur*. Among other things, Wukir Prayitno found that the application of *res ipsa loquitur* in medical issues is necessary to address the unfair treatment of patients who are denied their right to utilize this doctrine. *Res ipsa loquitur* benefits damaged patients who lack medical expertise and are unaware of their condition's circumstances. If a patient is denied the use of this doctrine, it should be considered as unjust discrimination. *Res ipsa loquitur* might be interpreted as striving for the best possible health standards, considering both the process and outcomes (Prayitno, 2020). Furthermore, Patria Bayu Murdia, Supanto, and Widodo Tresno Novianto found that specific requirements must be met to apply the *res ipsa loquitur* in medical malpractice cases. These requirements include the presence of a physician mindset, the provision of medical treatment which encompasses the methods, procedures, and tools used in examinations to gather medical data, the utilization of medical data in making diagnoses, and the implementation of therapeutic strategies, procedures, and tools, including post-treatment actions (Patria et al., 2020).

This paper continues previous research that has yet to examine the doctrine of *res ipsa loquitur* with comparative studies from civil evidentiary law and Islamic law. This research examined the placement of the *res ipsa loquitur* doctrine within civil evidentiary law. The doctrine is considered a form of allegation evidence, one of the ways of evidence in civil evidentiary law as stated in Article 1866 of the Indonesian Civil Code. Islam is a religion that upholds justice. According to the Islamic view, a mistake can be proven in several ways, including through *iqrar* (confession), *shahadah* (testimony), and *Karina* (clue). *Qarinah* is a sign or address used as evidence of the existence or naivety of something. Facts in any form are deemed to be included in the definition of *qarinah*, which can be accepted as one of the ways of proving to expose an error (Anastasiya, 2017).

2. Research Method

This study is classified as normative or doctrinal research, also called dogmatic research,

examining *res ipsa loquitur* in doctrine, civil evidentiary law, and Islamic law using conceptual, comparison, and case studies approaches. Legal materials are classified into two; the first is primary legal material in the form of sources of Islamic law in the form of the Qur'an and hadith, rules and regulations include the *Herzien Inlandsch Reglement* (HIR), the Indonesian Civil Code, and the second is secondary legal material in the form of views of experts or doctrine obtained from legal articles from legal journals or books related to the issues raised.

3. Results and Discussion

The Doctrine Of Res Ipsa Loquitur

The principle of *res ipsa loquitur* means that when specific conditions related to an accident are met, certain legal conclusions regarding the responsibility of the person involved can be drawn. *Byrne v. Boadle* (1836) is a renowned case in tort law. This case is frequently mentioned as the first one to acknowledge the doctrine of *res ipsa loquitur*. In Black Law's dictionary, it is said that *res ipsa loquitur* came from the Latin Language, "the thing speaks for itself". The legal principle states that under certain conditions, an accident alone implies negligence and establishes a case supported by initial evidence.

Furthermore, *res ipsa loquitur* is a suitable type of circumstantial evidence that allows Plaintiff to prove the probable carelessness of Defendant in specific cases. This is in line with the indirect method of ascertaining whether or not medical malpractice has occurred in a case (Asgar & Putri, 2021). In the event of alleged medical malpractice, it must be traced and analyzed first to ascertain whether or not malpractice occurred through two ways, namely the direct method and the indirect method as follows:

- a. The direct method, namely proving an action by medical personnel who are considered negligent if they have fulfilled the 4 D doctrine as a benchmark, namely: Duty of Care (obligation); Dereliction of Duty (deviation from obligation; Damage; and Direct Causation.
- b. The indirect method is an easy way of proving for the patient by presenting the facts that he suffered due to treatment services (the *res ipsa loquitur* doctrine). Example: the *res ipsa loquitur* doctrine, which can become an indirect fact, for example, the case of scissors left in a patient's stomach, which is impossible without negligence, the scissors left behind are under the responsibility of the doctor while the patient is under anaesthesia so he can not contribute.

In some instances, the negligence on the part of the doctor is so evident that even a layperson can already tell there was an omission. Such cases are included in the doctrine of *res ipsa loquitur*. In this case, the doctor is deemed by law to have an inference of negligence (Guwandi, 2007). In the case of *Ybarra v Spangard* (1939), Joseph Ybarra experienced appendicitis and sought medical advice from Dr. Tilley, who intended to perform an appendectomy. While in the hospital, Mr Ybarra recollected being administered a hypodermic injection by the anesthesiologist, which caused him to lose consciousness and have no recollection of events after that subsequently. During the surgical procedure, his body was arranged where two rigid items supported his upper back. Before the surgical procedure, Mr. Ybarra did not experience any discomfort in his arms or shoulders. However, following a successful appendectomy, he lost the ability to control his arm. It was concluded that he experienced a severe and lasting neurological impairment due to compression on his brachial

plexus. Due to Mr. Ybarra's inability to provide evidence identifying a specific defendant responsible for the harm, the circumstances presented an insurmountable obstacle to obtaining legal compensation for his damages. To resolve this deadlock, the Ybarra court transferred the responsibility of providing evidence to the defendants, invoking the *res ipsa loquitur* concept. The Ybarra decision holds significant historical significance as courts had typically resisted using *res ipsa loquitur* in circumstances of medical malpractice (Bal & Brenner, 2015).

The principle of *res ipsa loquitur* is applicable only in cases where there is evidence indicating that the incident was unexpected, the accident could not have happened without negligence and errors on the part of the doctor, and the facts establish that the doctor, and no one else, was responsible. The judge has accepted the application of the principle of *res ipsa loquitur*, which implies the following: a. The nature of the injury indicates that it could not have occurred without negligence, as commonly understood. b. The patient did not contribute to the injury in any way. c. The doctor had complete control over the circumstances in which the act leading to the injury occurred, meaning that the injury was not caused by circumstances beyond the doctor's control (Rayamane & Chandrahekar, 2015).

The Plaintiff must establish three factors before the court can invoke the concept. The elements to consider are as follows: a. The matter is under the jurisdiction of the Defendant or their employee. This requires determining whether the object that caused the accident was under the Defendant's control. b. The existence of neglect (a lack of care). This suggests the injury is typical of negligence, and the Plaintiff cannot present an alternative reason. As a result, it is plausible to assume that the Defendant's irresponsible behaviour caused the occurrence. c. The occurrence must not have been caused by the Plaintiff's voluntary actions or contributions. There should be no evidence of the Plaintiff's carelessness. The injury must be solely attributed to the Defendant (Ibitoye, 2018). Applying the *res ipsa loquitur* doctrine in judicial practice, as long as it has not been regulated in Indonesian procedural law, has a position as a principle. All principles have value for judges. The judge's task is to explore various sources of law, including the appropriate principles. The principle has value and is significant if there is an impasse, and this principle is a source for judges to find the law. This can be done if the judge has scientific insight (Susila, 2007).

The application of the *res ipsa loquitur* doctrine in civil cases can be seen in the decision of the Cibinong District Court No. 126/PDT.G/2003/P.N.CBN where the Plaintiff underwent a tonsillectomy performed by doctor Ear Nose Throat Specialist (Defendant I) at a Hospital (Defendant II). Plaintiff argued that Defendant I had made a mistake when performing a tonsillectomy, which resulted in defects in Plaintiff. The panel of judges stated that given the position of the Plaintiff being weaker than the Defendants in proving technical matters, the burden of proof should more precisely be placed on the Defendants. However, if this is implemented, it is feared that the medical profession will experience many lawsuits from patients who fail their treatment. Therefore, for the middle approach, it is fair, suitable, and proportional if, in this situation, the doctrine or legal precepts of "*res ipsa loquitur*" are used with the premise that "the thing speaks for itself" (WV Putri, 2008).

The application of the *res ipsa loquitur* doctrine in criminal cases can be seen in the decision of the Supreme Court Number 455 K /Pid/2010 against the Defendant, a Gynecologist. In legal considerations, the Defendant was considered to have committed negligence during the cesarean section because the victim's abdomen had gauze pads 20 x 10

cm left in the scars of the old operation carried out by the Defendant. Concerning the doctrine of *res ipsa loquitur*, the presence of gauze (the thing) indicates negligence on the part of all parties involved in the cesarean operation (speaks for itself). It is understandable that because the closure of operations with sutures can only be carried out by authorized health/medical personnel, and it is appropriate that based on the precautionary principle and applicable operating standards, a thorough examination must be carried out so that nothing is left behind before the sutures are carried out postoperatively. In such a context, the person in charge of operations must be fully responsible before the law (Sylvana & Widjaja, 2022). The doctrine of *res ipsa loquitur* is a well-established legal principle in the Supreme Court of the Republic of Indonesia for cases involving medical negligence. It provides a straightforward method for patients to prove their claims by presenting the facts of harm they have suffered due to the care or treatment provided by doctors and hospitals. The judge presiding over a medical dispute can apply the doctrine of *res ipsa loquitur* when examining, hearing, and deciding the case (Prayitno, 2020).

RES IPSA LOQUITUR IN THE CIVIL EVIDENTIARY LAW

Based on the Indonesian Civil Code and the HIR, in civil procedural law, evidence is known as written evidence, evidence with witnesses, presumptive evidence, confessions, and oaths. Apart from the five pieces of evidence, HIR recognizes local inspections and expert testimony as evidence (Aristya, 2011).

First, written evidence or proof by letter is crucial in examining civil court cases. As previously stated, written evidence or evidence by letter is deliberately made for proof at a later date when a dispute occurs. Written evidence or proof by letter consists of two types, namely deeds and writings or other letters as stipulated in Article 1867 of the Indonesian Civil Code. Second, the witnesses referred to here are fact witnesses. In a civil case, if written evidence is insufficient, the following proof is the arguments presented before the court. Some witnesses are brought to court by chance to see, hear, or experience an event themselves. Still, some witnesses are presented who are intentionally asked to witness a legal event when the event was committed in the past (Momuat, 2014).

Third, presumptive evidence (Article 1915 of the Indonesian Civil Code). Subekti said, "A presumption is a conclusion drawn from an event that is clear and real." The presumption can be divided into two types: (1) Statutory presumption (Article 1916 of the Indonesian Civil Code) is a presumption connected with specific actions or events based on statutory provisions. In other words, the presumption of law is an event that, by law, concludes the evidence of another event. For example, in the case of rent payments, three consecutive payments prove that the previous instalments have been paid; (2) Presumptions that are not based on the law (Article 1922 of the Indonesian Civil Code), which are left to the judge's consideration and vigilance, which in this case may not pay attention to other presumption. In other words, it is called the judge's presumption, namely an event that the judge concludes proves another event. For example, divorce cases are filed on the grounds of continuous disputes. The Defendant denied this reason, and the Plaintiff could not prove it. Therefore, Plaintiff presented witnesses who testified that Defendant and Plaintiff had separated residences and lived separately for many years. From the testimony of witnesses, the judge concluded that there had been continuous disputes because the two of them could not be in harmony, living separately and separately for years.

Fourth, regarding confessions made by one of the parties, some were made before the court or outside the courtroom (Article 1923). The confession given before the trial is perfect proof against the party who has done it, either alone or through the intermediary of someone specially authorized. A confession made before a court cannot be withdrawn unless it is proven that the confession resulted from an oversight regarding the things that happened. An acknowledgement cannot be withdrawn on grounds as if the person made a mistake regarding the law. Meanwhile, oral confessions made outside of a courtroom cannot be used as evidence unless witnesses permit evidence. However, the strength of proof of an oral confession outside the trial is returned to the judgment and discretion of the judge. That is, assessing the evidentiary strength of confession as evidence rests entirely with the judge. Fifth, in general, the oath is divided into two, namely, the promotional oath and the confirmatory oath. A promissory oath is made by someone when they are about to occupy a position or about to testify in court. Meanwhile, a confirmatory oath is an oath as evidence.

Suppose the doctrine of *res ipsa loquitur*, which means "the thing speaks for itself," is to be applied when it is challenging for the victim to prove that harm has occurred. In that case, the judge can utilize "presumptive evidence" as outlined in Article 1915 of the Indonesian Civil Code. In this instance, the judge applies the 'presumptions that are not based on the law' stated in Article 1922 of the Indonesian Civil Code. This article states that any presumptions not grounded in the law are left to the judge's discretion and attentiveness. The judge should only consider significant, comprehensive, specific, and consistent assumptions while disregarding any other assumptions. The judge concluded the presumption in this case. Therefore, in civil evidentiary law, the doctrine of *res ipsa loquitur* can be implemented through presumptive evidence determined by judges in accordance with the relevant regulations.

The application of the *res ipsa loquitur* doctrine as presumptive evidence can be seen in the Court decision 281/Pdt.G/2012/PN.Bdg between the parties in the case against Plaintiff and an ophthalmologist (Defendant I) and Rajawali Hospital (Defendant II), where Plaintiff argued that he experienced blindness after treatment with Defendant I on Defendant II. In their legal considerations, the panel of judges stated that the panel received a presumption that Defendant I and Defendant II had terrible intentions to destroy evidence of the alleged malpractice committed by Defendant I by following a dispute between Plaintiff and Defendant I. There were indications of errors recorded in the medical record of Defendant II; Defendant I then moved Plaintiff's treatment to his private practice by making a new medical record. Furthermore, at the new place of therapy, Defendant I treated Plaintiff so that he could buy time so that five years had passed since the last time Plaintiff had treatment at Defendant II. This presumption was drawn based on the *res ipsa loquitur* principle, which states that in the event of an unlawful act, the Plaintiff only needs to prove the facts of the incident he experienced, from which a conclusion can be drawn which leads to a series of events of the unlawful act. As for the application of the *res ipsa loquitur* principle in the quo case, considering that Plaintiff has proven the following: Plaintiff received treatment from Defendant II and was handled by Defendant I and suffered blindness. During the treatment of Defendant II, a dispute occurred between Plaintiff and Defendant I, which was known to Defendant II. The Plaintiff then received treatment at the private practice of Defendant I. Five years after the last time Plaintiff had treatment with Defendant II, Plaintiff's medical records were destroyed. Based on the principle of *res ipsa loquitur*, Plaintiff does not need to prove

Defendant I and II's real intention to kill the alleged malpractice evidence. Still, from the systematic series of events, it can be drawn that there was an intentional destruction attempt by Defendant I and Defendant II to hide the truth facts required in the trial stored in Plaintiff's medical record.

RES IPSA LOQUITUR IN THE ISLAMIC LAW

Al-Bayyinah (proof) etymologically means information, that is, everything that can be used to explain what is right (true) (Saepullah, 2016). In terms of terminology, *al-bayyinah* means evidence in court. Fiqh scholars discuss evidence in court matters with all its instruments. In fiqh, evidence is also called *turuq al-itsbat*. The requirement for proof is based, among other things, on the word of Allah Glorious and Exalted is He: "... And testify with two witnesses from the men among you, if there are not two witnesses, then (maybe) one man and two women from the witnesses whom you are blessed so that if someone forgets, then another witness reminds him. Do not let the witnesses be reluctant (to give information) when they are summoned." (Q.S. Al-baqarah [2]: 282). The command to substantiate this is also derived from the hadith of the Prophet Muhammad: Peace be upon him (PBUH): "From Ibn Abbas that the Prophet PBUH said: If given to a human being whatever he sues, of course, humans will use whatever he wants, both life and property. However, the accuser requested the statement, and the oath was presented to the Defendant." (H.R. Muslim). The interpretation of the verses and hadiths suggests that anyone who initiates a legal action to assert their rights must substantiate their claims with compelling proof.

There are nine pieces of evidence: (a) testimony, (b) confession, (c) oath (*yamin*), (d) written document, (e) *Karina* (indicators, clues, presumptions), (f) to the judge's knowledge (the judge personally experienced the events he tried), (g) expert testimony (*al-'ibrah*), (h) knowledge of the judge (*al-Mahayana*), (i) judge's letter to another judge. From the composition of the various pieces of evidence presented above, it can be said that the evidentiary system in Islamic courts does not distinguish between the evidentiary system in criminal cases and the evidentiary system in civil cases, as widely adopted by countries that adopt continental European and Anglo-Saxon legal systems (Azhar, 2020).

Qarinah, in the language, is taken from the word *muqaranah*, which means *mushahabah* (understanding or guidance). Regarding *ijtihad*, *Karina* is defined as signs resulting from the judge's conclusion in handling various cases through *ijtihad*. This is based on the fact that humans are judged to be able to translate and utilize various propositions of *kauniyah* and *Aaliyah* in the Qur'an. The word of Allah Glorious and Exalted is He, indicated by signs or presumptions on something that shows and proves His truth. As Allah said, they came with their robes (stained) with fake blood (Q.S. Yusuf [12]: 18). In the view of Imam Qurtubi regarding this verse, when they brought this evidence to make evidence for the truth of the death of Prophet Yusuf, Allah gave a *qarinah* that contradicted this evidence, namely that the Prophet Yusuf's clothes were not damaged from wild animal attacks, which is instinctively impossible. The wolf's attack on the Prophet Yusuf only caused the Prophet Yusuf to die without damaging his clothes. Therefore, the Prophet Yaqub concluded that they had lied with the evidence of the clothes (Yudhatama, 2017).

In a hadith narrated by a Muslim from Abdur Rahman bin Auf, two people from the Ansar during the Badr War succeeded in killing Abu Jahal, then each reported to Prophet Muhammad PBUH. Answering the Prophet's question about which of the two killed him, each

claimed that it was he who killed him. Then the Prophet asked again: "Have you washed your swords?" Each answered: "Not yet." After seeing the marks or traces of blood on each sword, the Messenger of Allah said: "In that case, it is the two of you who kill him." In this hadith, Prophet Muhammad PBUH stipulates that the killer is not just one, but both people are the killer, based on *Karina*, namely in the form of blood marks on each sword. Wahbah al-Zuhaili explained that *qarinah*, in terms of its concept, consists of two elements, namely: (1) There must be clear facts that can be used as a basis for decision-making, and (2) There must be a relationship between facts and disputed or unknown facts. The two elements, as stated by Wahbah al-Zuhaili, must coexist. For example, A holds the murder weapon with the victim's blood on it. The fact (first element) is that the murder weapon was in A's hand. Meanwhile, the disputed or unknown fact (second element) is whether A killed the victim in question or not. Meanwhile, according to Abdul Karim Zaydan, *Karina* is "one piece of evidence that can determine whether there is a problem" (Nuriskandar, 2021).

Based on the strength of the proof, according to Wahbah az-Zuhaili, *qarinah* are grouped into two: strong *qarinah* and weak *qarinah*. A *Karina* with a substantial value will be equivalent to a *baying* (witness), which can be used as the basis for a judge's decision. While *Karina* is weak, it can only be used as material for the judge's consideration to strengthen his belief. Scholars differ on the use of *qarinah* evidence in criminal cases. The majority of scholars (Hanafi et al. Schools) reject the use of *Karina* as a basis for decisions to convict defendants in criminal cases with *hudud* and *qisas* punishments, except in cases of murder proven by *qasamah* (oath). This is because *hudud* and *qisas* punishments cannot be imposed based on evidence containing doubts (unclearness/doubt), in this case, *Karina*. In addition, this refusal is a form of being careful in determining punishments related to blood and life. Conversely, these *qarinahs* can be used in civil matters, such as *muamalah* (economic law) and *ahwal asy-syakhsyah* (family law), when *bayyinah* is not found.

Qarinah is a sign or object that exhibits a strong correlation with an occurrence, serving as a clue and enabling the determination of a certain threshold for making decisions on the event; in civil procedural law, *qarinah* evidence is called presumptive evidence. In detail, the evidence for this presumption is regulated in Articles 1915 to Article 1922 of the Indonesian Civil Code. *Qarinah* evidence is referred to as presumption, which, according to legal terms, are things that have a close relationship or affinity in such a way as to give a clue. The presumption is a conclusion drawn by law or a panel of judges regarding an event that is clear and evident towards an event that still needs to be made clear. In other words, a presumption is a conclusion drawn from an event proven from an unproven course of events. Unfounded presumptions are presented to the judge for consideration and then determined by the judge. Whereas in civil evidentiary law, the doctrine of *res ipsa loquitur* can be enforced through presumptive evidence concluded by the judge. Thus, a conclusion can be drawn that *qarinah* evidence is equated with presumptive evidence. At the same time, the doctrine of *res ipsa loquitur* can be enforced through presumptive evidence, and so can the doctrine of *res ipsa loquitur* implemented through *qarinah* evidence.

We can also conclude the similarities and differences in the doctrine of *res ipsa loquitur* and *Karina*. As previously mentioned, the doctrine of *res ipsa loquitur* relates to circumstance evidence, namely evidence about a fact or several facts from which a reasonable conclusion can be drawn. This is in line with *Karina*, interpreted as signs resulting from judges' conclusions in handling various cases through *ijtihad*. Furthermore, one of the conditions for

res ipsa loquitur to be used as a basis for evidence is that it was the result of circumstances that would not have occurred if there had been no negligence. Hence, the facts speak clearly, and by law, a presumption of negligence has been presumed. This is under the elements in the *qarinah*, namely that there must be clear facts to be used as a basis for decision-making.

The differences between the doctrine of *res ipsa loquitur* and *Karina*, among others, are as follows: First, as long as the elements of the *res ipsa loquitur* doctrine can be fulfilled, then it can be used as a principle or evidence, whereas *qarinah* only *qarinah wadhihah* can be used as evidence. Another difference is in terms of its application in criminal and civil cases. The *res ipsa loquitur* doctrine can be applied to both civil cases, such as Cibinong District Court Decision No. 126/PDT.G/2003/P.N.CBN and Court Decision 281/Pdt.G/2012/PN. Bdg, as well as criminal cases such as the Banda Aceh High Court Decision Number 181/PID/2009/P.T.BNA and the Supreme Court Decision Number 455 K/Pid/2010. Meanwhile, the majority of scholars (Hanafi et al. schools) reject the use of *Karina* as a basis for decisions to convict defendants in criminal cases with *hudud* and *qisas* punishments, except in cases of murder proven by *qasamah* (oath). Conversely, this *qarinah* can be used in civil matters, such as *muamalah* (economic law) and *ahwal asy-syakhsyah* (family law), when no *bayyinah* is found.

4. Conclusion

This study found that applying the *res ipsa loquitur* doctrine, which in English means the things speak for itself (the thing that speaks for itself), makes it easier for victims of alleged medical malpractice to prove who is guilty by showing circumstance evidence, namely evidence of a fact or several facts from which a reasonable conclusion can be drawn. It is very contrary to the principle of justice if a patient becomes a victim of an action because a doctor who has been negligent in carrying out his actions is forced to prove the negligence committed by the doctor.

This research method succeeded in bringing to the goal of the application *res ipsa loquitur* doctrine in judicial practice, as long as it has not been regulated in Indonesian procedural law, is positioned as a principle. All principles have value for judges. The judge's task is to explore various sources of law, including the appropriate principles. This principle is a source for judges to find the law. Furthermore, *res ipsa loquitur* is a well-established legal principle for medical negligence cases at the Supreme Court of the Republic of Indonesia. In civil evidentiary law, *res ipsa loquitur* can be enforced through presumptive evidence concluded by the judge.

Furthermore, in Islamic law, *qarinah* evidence is equated with presumptive evidence. Meanwhile, the doctrine of *res ipsa loquitur* can be enforced through presumptive evidence. Similarly, the doctrine of *res ipsa loquitur* can be enforced through *qarinah* evidence.

This research is limited to the discussion of the review of *res ipsa loquitur* from the point of view of doctrine, civil evidentiary law, and Islamic law. Differences with previous research can be seen in comparative studies from the point of view of civil evidence and Islamic law, so there are novelty and scientific contributions to this research, especially concerning evidentiary law. In the future, it is necessary to conduct a study regarding applying the *res ipsa loquitur* doctrine in the renewal of Indonesian civil evidentiary law.

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