

CHAPTER 4

THE PRACTICE OF SYARIAH AND CIVIL COURT IN MALAYSIA IN DEALING WITH DOCUMENT FALSIFICATION IN MARRIAGE CASES ISSUE

4.1 Introduction

This chapter responds to the third research objective of this study. The data collection method used was document analysis of cases from LexisNexis, Current Law Journal (CLJ), *Jurnal Hukum*, and related document references. The obtained data were then analysed using the inductive and comparative approaches, yielding several results. Therefore, this chapter discussed the practice of Malaysian Syariah and civil courts' practice in handling documents forgery, particularly in marriage cases. Generally, civil courts have long handled cases involving document forgery, and their experience in such cases is more widespread than in Syariah courts. This is because the cases heard in civil courts are not limited to marriage cases but also other cases such as forgery in banking cases, wills, and so on. By making marriage cases a sample for this study, the researcher has analysed several cases reported in Syariah courts and civil courts to examine the differences in both courts' practices when handling such cases.

4.2 Understanding on how the Malaysian Syariah Court Deal with Document Falsification in Marriage Cases Issue

With the advancement of science and technology, cases of document forgery are increasingly being reported in court. Syariah courts are not immune to such cases, as many forgery cases, such as forgery of marriage certificates, forgery of a signature in polygamy cases, and others, are also reported in Syariah Courts (Wan Ismail & Asutay,

2017). In reality, there is no specific provision for the offense of forgery of documents under Syariah court jurisdiction; instead, it is classified as contempt of court. In this study, the researcher specialized in marriage case issues and then analysed some cases reported in Syariah courts to determine the level of practice in Syariah courts when dealing with such cases.

On the other hand, marriage certificates are one of the most important documents in marriage because they serve as legal proof of marriage between two individuals (Patelkhana, 2020). This can be seen in the case of *Nuraizah Chin bte Abdullah v Jamry bin Ahmad* [2008] 1 SHLR 160, which is an application to dissolve the marriage due to doubts about their marriage. The marriage certificate, which serves as proof of the couple's marriage, is forged and was not issued by the Ipoh Islamic Religious Office. As a result, the court ruled that the applicant's marriage should be dissolved. In this case, the marriage certificate is significant enough to demonstrate that the couple is legally married.

The researcher then analysed the cases reported in Syariah court regarding the issue of punishment for forgery in marriage cases. For example, in the case of *Kholed bin Dinyati v Melaka Chief Syarie Prosecutor* (2009) 29 JH 2, the accused was brought before the court for making a false declaration to obtain a marriage certificate by using another person's identity card. For that purpose, the accused had cheated his future wife, parents-in-law, Imam, and the doctor to get a marriage certificate and HIV-free certification. Therefore, the Prosecutor of the Melaka State Religious Department has filed a charge against the accused under Section 38 of the *Islamic Family Law (State of Malacca) Enactment 2002*. Section 38 provides a maximum fine of two thousand ringgits, a penalty of six months' imprisonment, and a 20-day jail sentence if the fine is

not paid. However, the accused filed an appeal against the trial judge's decision, and the court decided to impose only a fine, with the accused's jail sentence being set aside. This is because the Syariah court argued that this was a first-time offense. The Syariah court set aside the imprisonment sentence because the accused had no prior criminal record.

Nonetheless, the imposed punishment was at the discretion of the Syarie judge, as the court set aside the jail sentence on him because the offense committed by the accused was his first offense and he had no criminal record. Not only that, but the punishment imposed by the court, in this case, is minimal, even though the offense committed by the accused is considered very serious because he had cheated some individuals such as future wives, parent in-laws, Imams, and doctors. The fines imposed are still ineffective in teaching a lesson to the community because most communities can now afford to pay the fines (Ahmad Zakhi, 2015). Therefore, the researcher opined, it is time to review the provisions under the jurisdiction of Syariah courts, especially the provisions relating to punishment for such offenses such as Section 38 of Islamic family law, to ensure its effectiveness and the relevance of the punishment imposed in the current situation.

Meanwhile in *Syarie Prosecutor v Badiuzzaman b. Abdul Rajak* (Syariah Criminal Case No: 14003-149-0015-2010, the accused was found guilty of making a false confession to obtain a marriage. This is because the accused's action made a statement and a bachelor's certificate while at that time the accused already had a wife. Therefore, the accused was convicted under Section 38 and read in conjunction with Sections 17 (Issue of permission to marry) and 23 (Issue of Polygamy). The accused has deceived the Marriage, Divorce, and Referral Officer who permitted him to marry.

Ideally, the accused should get prior permission from the Syariah court to have polygamy. The court, in this case, has ordered that the accused pay MYR 650.00 for the offense committed.

However, the accused filed an appeal because he only worked part-time as a tuition teacher and earned only MYR 2000.00. In this case, the court has the discretion to reduce the amount of the fine that has been imposed on the accused. The findings indicated that the offense committed by the accused was serious because the accused had deceived the Marriage, Divorce, and Referral officer and had lied to his wife. The act seemed to insult the institution of the court. Therefore, the researcher opined that strict punishment should be imposed on the accused to impact him and teach a lesson to the community significantly. Therefore, a review of Section 38 of the IFLA should be done to ensure that the punishment imposed on the accused effectively teaches a lesson to the accused and teaches a lesson to the community out there.

Next, the researcher also discusses cases involving the offense of giving false testimony for polygamy and not following procedures for polygamy. This can be seen in the case *Syarie Prosecutor of Selangor v Moktar bin Radin & Ors*, [2010] 3 SHLR 148, Moktar bin Radin, the first accused, was charged with polygamy without the permission of the Syariah Court, which is punishable under Section 124 of the *Islamic Family Law (Selangor) Enactment 2003*. While his partner Zizie Izette bt Abdul Samad was accused of marrying without the registrar's permission. He can be punished for an offense under Section 40 (2) of the *Islamic Family Law (Selangor) Enactment 2003*. Both accused were also charged with abetting under Section 134 for their respective offenses, namely the first accused was charged with abetting for offenses under section 40 (2) of the *Islamic Family Law (Selangor) Enactment 2003* while the second accused

was charged with abetting under Section 124 of the *Enactment Islamic Family Law (Selangor) 2003*.

All defendants in this case have pled guilty to the charges that were read aloud to them. As a result, the court ruled that the offense of polygamy without the permission of the Syariah court, as well as abetting the offense of polygamy without the permission of the Syariah court, is punishable under Sections 124 and 134 (polygamy bribery) of the *Islamic Family Law (Selangor) Enactment 2003*. As a result, the accused, Moktar bin Radin was sentenced to one month in prison. In contrast, the other accused who abetted polygamy without the permission of the Syariah Court, namely Zizie Izette bt A Samad, Ahmad Shahazmi bin Abdul Samad, Sazmy Fuzette bin A Samad, Saheizy Sam bin Abdul Samad, Sahari bin Ahmad, and Titing bin Putang were all sentenced to a maximum fine of MYR 1,000 or six months' imprisonment.

The accused was sentenced to a maximum fine of MYR 1,000 or imprisonment for one month if the fine was not paid on this day for the offense of marriage without the permission of the registrar of divorce. Referral imposed on Zizie Izette bt A Samad is under Section 40 (2) of the *Islamic Family Law (Selangor) Enactment 2003*. Meanwhile, Moktar bin Radin, the first accused charged with abetting the offense, was sentenced to an MYR 1,000 fine or one month in prison if he did not pay the fine today.

Nonetheless, the researcher opined that the accused's punishment was minimal. This is because the first accused in this case was a respected and well-known Member of Parliament who passed laws at the highest level in Parliament (the Legislature). Therefore, whether the law is passed in Parliament or the State Legislative Assembly, the first accused should have more respect for the law because the first accused is elected by the people obligated to support the national law codified by Syariah or

Malaysian law. While the second accused is a well-known and well-liked actor. The first accused should set a good example for society, particularly in adhering to the application of the law. Both accused are icons, and their actions will, of course, impact society. Suppose the two accused do not follow the Syariah rules and laws codified in the Act or Enactment. In that case, interested and influential parties can play the Syariah law in our country. In contrast, there is no distinction between one Syariah and another in Islam.

Based on the analysis, in this case, the finding indicated that the sentence passed by this court is minimal and less effective for the accused. The payment of fines amounting to a maximum of MYR 1,000 only is seen as less effective as many of us can afford to pay it. This is not the best solution to give awareness and educate the community. As a result, there is no awareness in society, and there will be an increase in counterfeiting cases. Therefore, improvements need to be made for Syariah institutions, such as proposing strict punishment for the offense of giving false testimony for polygamy or falsifying documents by re-examining Section 38 of the Islamic Family Law (focusing on IFLA). So that such cases can be reduced and able to teach a lesson to the accused.

Next, in the case of *Syarie Prosecutor v Azlan Daniels bin Abdullah*, [2008] 2 SHLR 158, the accused falsely stated in the application form for the man to obtain permission to marry that he was still single and unmarried. The accused made a false statement. Cheating and lying while applying for permission to marry at the Klang Islamic Religious Office is a big offense and challenging to forgive by the court. This is based on the effects and consequences of the accused's actions involving the accused and his wives, his wife's family, including the religious officials involved, and the

dignity of Islamic-oriented government departments tarnished, further seemingly insulting the Syariah law of Malaysia.

The court fined the accused MYR 999 and sentenced him to five months in prison and 30 days in jail if he did not pay the fine. However, the researcher opined that in this case, the accused is an educated, high-ranking individual who is well-liked in the community. This fine has been set in the last ten years, and it is no longer effective in preventing societal misconduct nowadays. Therefore, it is recommended that the authorities review the provisions under the jurisdiction of the Syariah court. Then, it is past time to increase the number of fines to deter anyone from committing an offense, such as the accused, who can bring down the dignity of religion.

Regarding the authenticity of a document, the researcher also contends that it is essential to protect a document's authenticity in a Syariah court. If the authenticity of a court document is questioned, the case must be reheard. In the case of *Ajmawati's divorce suit, Ajmawati Atan v Moriazi Mohamad* [2005] 1 CLJ (SYA) 54, the admissibility of the digital description was questionable. This is because the appellate judge has overlooked or lacked knowledge of the concept and implementation of electronic documents. Every process of storing, withdrawing, and sending money either online or by check, as in this case, all the data stored in the system, named electronic documents. As a result, the case was ordered to be heard again with the submission of the supporting witnesses.

This case illustrates that the Syariah courts are still-disclosed with verifying documents and verifying those documents submitted as evidence have to be re-heard due to doubts about their authenticity. Therefore, the researcher argues that Syariah

court institutions need to be exposed to document verification so that the issue of forgery can be curbed earlier.

The findings indicated that the cases discussed above show the reality in Syariah courts when dealing with document falsification, especially in marriage cases. The legal provisions regarding the punishment of forgery, especially in marriage cases, are minimal and less effective in the current reality. Meanwhile, the provisions of the law related to forgery are generally only imposed under the offense of contempt of court according to Section 229 (1) of the *Syariah Courts Civil Procedure Act (Federal Territories) 1998* and a maximum fine of MYR 2,0000 or imprisonment exceeding six months. While the offense of forgery in the marriage case issue, the accused was convicted under Section 38 of the IFLA, where a maximum fine of MYR 1,000 or imprisonment not exceeding six months.

Because the advancement of science and technology has altered the legal landscape, Syariah law must also need to change, and improvements must be made to the justice delivery system. This is due to the amount of punishment imposed under Section 38 being irrelevant to the current situation. This is because the rate of fines imposed cannot affect the offender. After all, almost all couples convicted of such offenses can explain the fines imposed. This is because the rate of fines imposed does not affect the offender. This opinion is supported by Ahmad Zakhi (2015). The author also argues that the current rate of fines should be increased and standardized in all states so that there is no injustice in implementation. In addition, disclosure of the manner or method of verifying a document must be applied in the Syariah court. The document submitted is not in doubt about its authenticity, and forgery can be prevented in advance.

4.3 Understanding on how the Malaysian Civil Court Deal with Issue Document Falsification in Marriage Cases

Under Malaysian civil court, forgery of documents is not only in marriage cases. Even forgery can also occur in the forgery of bank accounts, signatures, certificates, and many more (Abdul Hadi et al., 2016). However, the researcher focused solely on the case of document forgery in marriage cases as a study sample for this study. As a result, in this section, the researcher discussed cases reported in civil courts involving the forgery of documents in marriage cases.

A marriage certificate or registered marriage is generally required to ensure the couple is legally married (Abdullah, 2020). This is because it is crucial for divorce. For example, in *Yeoh v Chew* [2001] 4 MLJ 373, a married couple celebrated their so-called marriage union with a meal at a temple. However, their marriage had not yet been registered, and there was also no proof that the marriage had been solemnized by the LRA, such as a marriage certificate. In this case, the wife petitioned for a divorce. The question was whether the court was authorized to grant a divorce decree where the solemnization of the customary marriage was not performed as required by statute. The court held that it was a non-marriage from the beginning over which the matrimonial court did not exercise its jurisdiction. This is because there are four types of solemnization of marriage for non-Muslim in Malaysia as follows (Ibrahim et al., 2021):

- i. Solemnization upon the issuance of a marriage certificate;
- ii. solemnization upon the issuance of a license;
- iii. solemnization through a religious ceremony, custom and usage;
- iv. Solemnization of marriage abroad.

Therefore, the court lacked the authority to grant the requested decree. It is clear from this case that the marriage certificate is important enough to demonstrate that the couple is legally married. Furthermore, as demonstrated in these cases, the significance of a marriage certificate for divorce. If the marriage certificate was forged or did not comply with the LRA's marriage requirements, the divorce petition could not be filed because their marriage was not valid under the law, as was the case in this instance.

In terms of punishment under Malaysian law, there are specific provisions regarding document forgery offenses. For example, in the case of *Deputy Public Prosecutor v Pasupathy A/L Kanagasaby* [1995] MLJU 541, the accused was found guilty of three charges: falsifying two documents, namely a forged marriage certificate and Form 12 P.D.H.P. Pin 1/01, committing forgery in two rubber stamps, and making the mistake of forging two identity cards. As a result, the accused was sentenced under Section 466 (Forgery of a record of a Court, or a public Register of Births, etc.) and Section 474 of the *Penal Code* (Act 574) (Having possession of a valuable security or will be known to be forged, with intent to use it as genuine) for the first charge.

The accused was also convicted of committing forgery of two rubber stamps and shall be punished under Section 473 of the same provisions, i.e., “Whoever makes or counterfeits any seal, plate or other instruments for making an impression, intending that the same shall be used to commit any forgery which would be punishable under any section of this chapter other than Section 467, or with such intent has in his possession any such seal, plate or other instruments, knowing the same to be counterfeit, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine ” and was convicted of forging two identify cards convicted of an offense under section 24 (1) (e) of the *National Registration Regulation 1960*.

A civil court sentenced the accused by Malaysian law provisions from this case. The findings indicated that Malaysian law has a specific provision for each offense committed by the offender. For example, if an accused is found guilty of falsifying a marriage certificate, he or she can be charged under Section 466 of the *Penal Code* (Act 574), which states that the guilty shall be punished with imprisonment for a term of up to seven years and shall also be liable to fine. That provisions show that the punishment imposed under Malaysian law is firm and capable of teaching the accused.

Meanwhile, in civil courts, there are clear procedures and provisions for verifying the authenticity of a document. For example, in the case of *Re Estate of Chong Swee Lin; Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ, the petitioner, i.e., the deceased's husband, had filed a petition to obtain a letter of authority to administer the estate of the deceased. However, the opponents opposed the petition application, the deceased's legitimate child. They claim that they are the ones who are entitled to the deceased's property because the petitioner was never the deceased's lawful husband and thus is not entitled to be the administrator of the deceased's property. The petitioner, however, stated he was married according to the customary Chinese marriage, which involved a dinner party for some of their friends. In addition, the petitioner also produced a marriage certificate that he had purchased from a Chinese bookstore filled up and signed by the petitioner and the deceased as husband and wife. The signing is witnessed by two of the friends present at that dinner.

In this case, the court rejected the petition filed by the husband as there were doubts about the validity of the marriage certificate (exhibit P1) of the petitioner and his wife. Verification of the marriage certificate was made to verify the authenticity of the marriage certificate submitted by the petition. As a result, the court examined the

deceased's signature to determine whether it was the same as the signature on the petitioner's marriage certificate or vice versa. This court used various signatures of the deceased found in four of her previous passports (exhibit D10A-D), an insurance indemnity form (exhibit D9), and a power of attorney (exhibit P6), which she gave to the petitioner for comparison of the deceased's signature under Section 73(1) of the *Evidence Act 1950* (Act 56). After careful examination, this court concludes that the signature purported to be that of the deceased in exhibit P1 cannot be that of the deceased.

All the documents accepted for comparison by the parties, namely exhibits D10A-D, D9, and P6, place a strong emphasis on the capital letter 'C' to begin the word 'Chong'. This emphasis is so strong that a tail is attached to the letter 'C', as shown in exhibits D10A, D, C, and D9. At the beginning of the letter 'C', there is no emphasis in exhibit P1. The alphabet 'g' has a gradual hook on all of the signatures presented for comparison, whereas on exhibit P1, this hook is very irregular. Only two of the four people executed on exhibit P1 survived: the petitioner and PW2. The individual who signed as a 'witness' has also died. PW2, the 'introducer', who not only witnessed what happened but also signed on exhibit P1, testified unequivocally that he only signed one document similar to exhibit P1. However, the petitioner has refuted this, and in his testimony when questioned by this court, he stated:

"PI boleh diberi dari kedai buku. Saya beli dua buku. Semua pihak berkenaan ada tanda tangan ke atas dua buku. Satu buku saya simpan dan lagi satu disimpan oleh si mati."

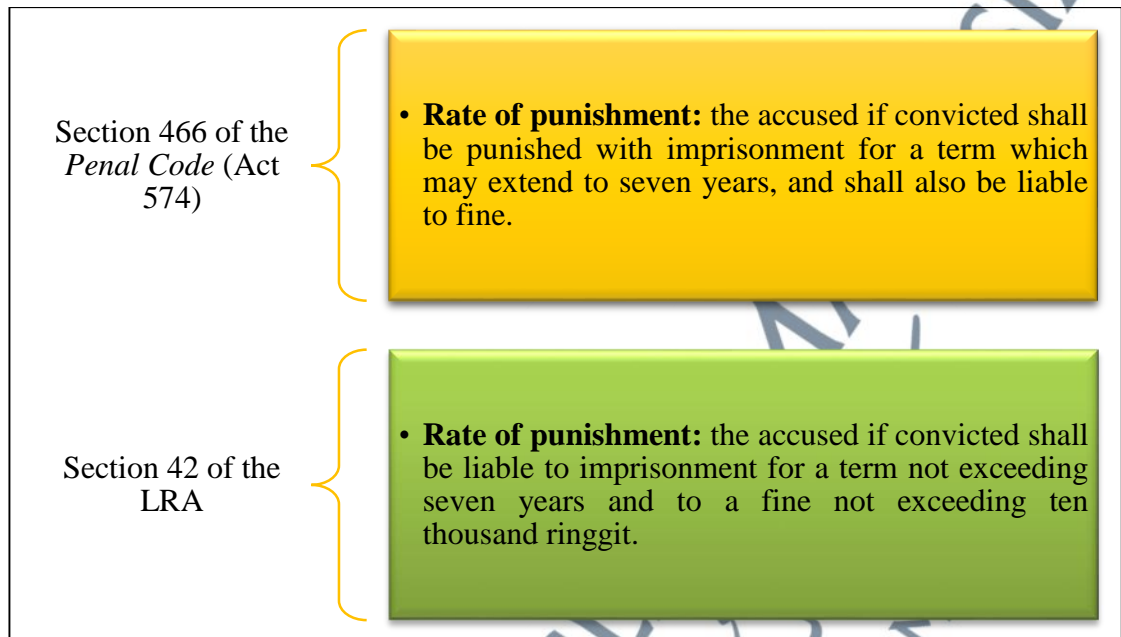
Translation: "PI can be given from a bookstore. I bought two books. All parties have signatures on the two books. I kept one book, and the deceased kept the other."

This is a material contradiction between the evidence of the only two surviving people who were supposed to be present at the scene to support a strong contention that the deceased and the petitioner had signed a vital piece of documentation to prove their consensual marriage. Because their evidence was contradicted such material details, this court was forced to cast serious doubts on the authenticity of Exhibit P1. Therefore, the petitioner's application to be said to be lawfully entitled to an interest in the residuary of the deceased's estate should be denied because he failed to satisfy this court that he was lawfully married to the deceased. As a result, in the absence of any other claimant, the undisputed children of the deceased will benefit from this estate's residuary. Therefore, the court dismisses the petition at the respondents' expense.

The findings indicated clear procedures and provisions for determining the validity of a document in civil court. This is because the document's evidence will be accepted as proof of its validity and authenticity are acknowledged (Anwarullah, 2010). If the authenticity of a document submitted in court is questioned, the cases will be rejected or re-heard (Yahya et al., 2017). Based on this case, it is clear that the court uses methods to certify a civil court document. As a result, counterfeiting will be caught sooner.

To summarise, under Malaysian law, document forgery does not only involve marriage cases; it can also occur in banking cases, signatures, real estate, and other areas. A marriage certificate, for example, is an important document for married couples. Marriage certificates are important because they serve as legal proof of a couple's marriage (Patelkhana, 2020). Under Malaysian law, however, there are specific provisions based on the type of forgery offence committed in terms of punishment for document falsification. For example, Section 466 of the *Penal Code*

(Act 574) and Section 42 of the LRA are provided for document forgery in marriage issues.



Source: Retrieved from the *Penal Code* (Act 574) and the LRA

Figure 4.1: The Rate of Punishment Imposed under Malaysian Laws in Relating to the Offense of Document Forgery in Marriage Cases Issues

The researcher opined that the rate of punishment imposed under Malaysian laws is also heavy and capable of teaching offenders a lesson, as shown in Figure 4.1. The issue of document authenticity is also important in maintaining a document's authenticity and preventing document forgery. According to the findings, there are clear procedures for verifying a document under Malaysian law, as discussed in the case of *Re Estate of Chong Swee Lin; Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ. This reality occurs in civil court when dealing with cases involving document forgery, particularly in the marriage issue. Based on the foregoing analysis, it is possible to conclude that this civil court practice can serve as a model and guide for the Syariah court.

4.4 Comparative Analysis Between the Syariah and Civil Court in Malaysia when Deal with Issue of Document Falsification

For this section, the researcher divided the differences in practice between the Syariah and civil courts in Malaysia when dealing with the issue of document falsification into three parts: provision, punishment, and procedure to validate a document.

4.4.1 In Term of Provision

In general, there is no specific provision in Syariah law of Malaysia for the offense of falsifying documents; instead, it is classified as contempt of court. Meanwhile, Section 38 of the IFLA is referred to when discussing document falsification in marriage cases. However, there are specific provisions for each type of document forgery offense under Malaysian law according to the *Penal Code* (Act 574). Therefore, Section 42 of the LRA and Section 466 of the *Penal Code* (Act 574) are referred to for the offense of document forgery in marriage issues.

The findings indicated that Malaysian Syariah law has no specific provision for the offense of forgery of documents, as it is included in the offense of contempt of court only. Although Section 38 of the IFLA provides for the offense of falsifying documents in marriage matters, the punishment imposed on the offender is still at the judge's discretion based on a preliminary analysis of the case. Meanwhile, civil courts have a clear provision for each type of forgery reported in civil courts. As a result, it can be concluded that civil courts have clear provisions regarding document forgery and have extensive experience in dealing with such cases. Therefore, it is not an offense for the

Syariah court to examine the provisions under Malaysian law to strengthen further the institution of the Syariah court in handling such cases in the future.

4.4.2 In term of Rate of Punishment

In terms of punishment, under Malaysian Syariah law, Section 38 of the IFLA (has been referred) has provided for anyone found guilty of falsifying documents in a marriage case to be sentenced according to this section. Therefore, the accused was sentenced to a maximum fine of MYR 1,000 or six months in prison or both. In my opinion, the punishment imposed is minimal in the current situation. It cannot teach the offender a lesson because the fine imposed is reasonable by the offender. Furthermore, the maximum sentence for this offense is six months in prison. As a result, the frequency of type errors will continue to rise.

Meanwhile, under Malaysian law, any accused found guilty will be punished by Section 466 of the *Penal Code* (Act 574), which provides for imprisonment for a term not exceeding seven years, as well as a fine, and Section 42 of the LRA, which provides for imprisonment for a term not exceeding seven years and a fine not exceeding ten thousand ringgits. This demonstrates that the punishment imposed on offenders under Malaysian law is severe and capable of making offenders aware of the offenses.

4.4.3 In Term of Procedure to Verification of a Document

There are procedures in the civil court for verifying a document. This can be seen in the case of *Chong Swee Lin's Real Estate; Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ, where the court confirmed the petitioner's marriage certificate despite

the document's doubts about its authenticity. In this case, the court verified the document by examining the deceased's signature (i.e., the petitioner's wife). This case demonstrates that there is a method in a civil court to certify a document if its authenticity is in doubt. As a result, the forgery will be curbed earlier, allowing the court to expedite the hearing of the case.

In contrast to the Syariah court, the method of document verification is not fully disclosed in court, as was the case in Ajmawati's divorce claim in *Ajmawati Atan v Moriazi Mohamad* [2005] 1 CLJ (SYA) 54 until the case had to be reheard and strengthened with expert opinion. Therefore, document verification in civil courts can be used as a model for procedures and implementation in Syariah court institutions.

4.5 Conclusion

To summarise, in general, Syariah courts do not have specific provisions for the offense of falsifying documents; instead, it is only placed under contempt of court. However, unlike Malaysian law, they have specific provisions for any forgery offense reported in civil court. Furthermore, the rate of punishment imposed by the Syariah court is very low, and the amount of fines imposed is seen to be less effective in light of current reality. For example, Section 38 of the IFLA imposes a maximum fine of MYR 1,000 or a maximum of six months in prison, or both, for the offense of falsifying documents in marriage cases. Meanwhile, in civil court, offenders face a maximum fine of 7 years in prison or a fine under Section 42 of the LRA or Section 466 of the *Penal Code* (Act 574). This demonstrates that Malaysian law imposes clear punishments for those convicted of making document forgery, particularly in marriage cases. Finally, there is no clear procedure in Syariah courts for determining the relevance and

authenticity of a document brought in courts, causing cases to be heard again, as happened in the case of *Ajmawati Atan v Moriazi Mohamad* [2005] 1 CLJ (SYA) 54. As a result, improvements must be made, particularly in Syariah court institutions, so that the wider community does not look askance at Syariah institutions' ability to handle such cases in the future.

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