

CHAPTER 5

IMPROVEMENTS FOR MALAYSIAN SYARIAH LAWS ON MATTERS INVOLVING DOCUMENT FALSIFICATION

5.1 Introduction

This chapter responds to the fourth research objective of this study. The data were collected from the sources in phases 1, 2 and 3, and several outcomes were developed in this chapter. The researcher had suggested the area of improvement that can be made under existing Malaysian Syariah law in relation to document forgery, which is: a review on the effectiveness of existing provisions in Syariah court in addressing cases of document falsification for marriage cases, the requirement for Syariah courts to develop a forensic legal model for dealing with document forgery issues, and initial disclosure to Syariah officers on document forgery issues and methods for determining document authenticity based on civil court practice.

5.2 Improvement for The Existing Malaysian Syariah Laws in Relation to Document Falsification

In chapter 4, the researcher examined several cases reported in Syariah courts involving document forgery in marriage cases. The researcher opined that the level of practise of Syariah officers in dealing with such cases had not been fully disclosed. Not only that, but the punishment for forgery of documents is under the category of *takzir* and contempt of court. Simultaneously, the offence of falsifying documents in a marriage case is punishable under Section 38 of the IFLA, where the offender is only sentenced to a MYR 1,000 fine or six months' imprisonment or both. The researcher

then proposed some improvements that can be made under Syariah jurisdiction to deal with such cases in the future, namely:

5.2.1 Review on the Effectiveness of Existing Provisions in Syariah Court in Addressing Cases of Document Falsification in Marriage Cases

Based on previous analyses of cases heard in Syariah courts, the rate of fines imposed is irrational as almost all offenders convicted of forgery are able to pay the penalties imposed. Given the current situation, many people can afford it, and the punishment imposed does not affect them. Therefore, the rate of penalties in Section 38 of the IFLA must be revised in order to be effective in light of current realities. This is because the accused deceived many parties, including the Marriage, Divorce, and Referral Officer, who permitted him to marry and lied to his wife, as in the case of *Syarie Prosecutor v Badiuzzaman b. Abdul Rajak* (Syariah Criminal Case No: 14003-149-0015-2010). As a result, it is proposed that the rate of punishment for this offence be increased and standardised in all states to ensure that implementation is not unjust.

This viewpoint is supported by the court Judge's statement in the case of *Syarie Prosecutor v Azlan Daniels bin Abdullah* [2008] 2 SHLR 158, in which he argued to amend the existing provisions by increasing the number of fines for the offence of falsifying documents, particularly in marriage cases. He stated:

“Untuk kes ini, mahkamah berpendapat sudah sampai masanya jumlah denda wajar dinaikkan bagi memberikan sedikit rasa hormat mana-mana orang dari melakukan kesalahan seperti tertuduh yang boleh menjatuhkan maruah agama seolah-olah mudah diperkotak-katikkan untuk kepentingan peribadi. Apatah lagi, tertuduh adalah orang yang berpelajaran dan berjawatan besar dan dihormati oleh masyarakat. Jumlah denda ini telah ditetapkan pada 10 tahun yang lampau yang mana pada masa kini tidak lagi dapat membantu mencegah kemungkaran di kalangan masyarakat. Mahkamah menyarankan supaya pihak berkuasa

meminda hukuman ini kepada hukuman yang lebih setimpal dan mampu memberi keinsafan kepada pesalah. Walaupun tertuduh mengaku insaf di atas kesalahan tersebut namun mahkamah percaya tanpa hukuman yang setimpal akan menyebabkan kesalahan seperti ini berulang sepertimana ramainya lelaki-lelaki Islam di Selangor khususnya dan Malaysia amnya berpoligami tanpa kebenaran di luar negara.”

Translation: “For this case, the court opined that it is time the amount of the fine should be increased to give a little respect to any person from committing an offense such as the accused who can bring down the dignity of religion seems to be easily boxed in for personal gain. What's more, the accused is an educated and high-ranking person and is respected by the community. The amount of this fine has been set in the past 10 years which at present can no longer help prevent misconduct in society. The court recommended that the authorities amend this sentence to a more commensurate and capable of giving remorse to the offender. Although the accused confessed to the offense, the court believes that without appropriate punishment, such offenses will be repeated as many Muslim men in Selangor in particular and Malaysia, in general, have polygamy without permission abroad”.

According to Ahmad Zakhi (2015), polygamy offenders are usually unafraid of the fines enshrined in the Islamic Family Law Act. However, they are more afraid of the first wife knowing his second marriage (polygamy). Eventually, in order to conduct polygamy, they are desperate to the point of being willing to falsify documents. Therefore, if Section 38 is tightened by increasing the number of sentences, it will not be very comfort to the public and, at the same time, can eradicate such cases from continuing to grow.

Furthermore, using another person's Identity Card to obtain a marriage certificate, as in the case of *Kholed bin Dinyati v Melaka Chief Syarie Prosecutor* (2009) 29 JH 2, is considered an irresponsible act because the accused lied to many parties, including his future wife, parents-in-law, Imam, and doctor, in order to obtain a marriage certificate and HIV-free certification. Therefore, the penalty for such offences should

be increased so that offenders are aware of the acts committed and the public is further intimidated not to commit such acts. As a result, such cases can be reduced.

In conclusion, the proposed improvement is intended so that the punishment imposed on the accused will serve as a lesson to them not to repeat the same mistakes in the future. It is also intended to educate the community about the importance of the rule of law.

5.2.2 The Requirement for Developing a Legal Forensic Model in Determining the Authenticity of Documents

Under to Islamic law, the use of forensic experts to verify the validity of documents in the Syariah Court is a foreign matter in the legal system in Malaysia. At the same time, this approach is vital in dealing with cases of document forgery. So far, the Syariah Court has no specific procedure for verifying a document regarding its validity status. Unlike civil courts, they have clear guidelines for ascertaining the authenticity of a document. In this section, the researcher identified the methods for determining the validity of an existing document according to Syariah law of Malaysia and saw its relevance to this era. Following this, the researcher proposed developing a legal forensic model to determine the authenticity of the document.

5.2.2.1 Method of Determining the Validity of a Document according to Syariah Law

In Islam, there are several methods for determining the authenticity of a document. According to Wahbah Zuhaili (1985: p. 555), such methods include *al-iqrar*, *al-Syahadah*, *al-Yamin*, and *al-Qarinah*. Meanwhile, Section 56 of the *Syariah Court*

Evidence (Federal Territories) Act 1997 (Act 561) also contains provisions relating to the method of document verification.

Section 56. Proof of document.

“(1) Where the executant of a document denies the writing or the liability created therein, the writing and the execution of such document shall be proved at least by two witnesses to the document.

(2) Where witnesses to the document cannot be found, the writing and the execution of the document shall be proved by two persons who can identify the writing and signature of the writer and executant of the document.

(3) Where witnesses to the document or the persons referred to in subsection (2) can identify the writing and signature, the executant of the document shall be bound by any liability created therein.

(4) Where witnesses to the document or the persons referred to in subsection (2) do not completely identify the writing and signature on the document, the writing and signature on the document shall be authenticated by at least two experts.

(5) Where the writing and signature on the document has been authenticated by the experts, the executant of the document shall be bound by any liability created therein.

(6) Where a document cannot be proved in any of the aforesaid manner, the person who denies the writing and execution of the document shall, on the request of the person who alleges that the aforesaid person is the executant of the document, take the oath, and if he refuses to do so, the person who alleges may take the oath and thereafter establish his claim.”

First and foremost, *iqrar*. *Iqrar* is a pledge given to another person until they fully comprehend it (Ibn Manzur, n.d.: p. 84). In terms of terminology, *iqrar* can be defined as acknowledging or recognising others' rights or interests towards oneself or as convicting oneself of an offence or liability, such as confessing to adultery (Mahmud

Saedon, 2003). This demonstrates that *iqrar* plays a significant role as one of the most critical methods of proof because some claims or allegations have no evidence like testimony and others.

This can be seen in the case of *Pendakwa Syarie Pahang v Kartika Sari Dewi Shukarno* (06100-139-0010-2008), the accused was charged with drinking alcohol in public places. The accused's direct confession is referred to as *iqrar*. *Iqrar* refers to the accused's direct confession. The same can be said for document verification. If a person admits that he has sent a letter threatening to kill someone or confesses that he has falsified a sale and purchase document and the like, it is also called an affidavit (Wan Ismail, 2020).

For example, if a person has confessed that he sent his wife a short message stating, "*I am divorcing you*", the court must accept the confession and affidavit. However, *iqrar* can only be used as a document verification method by the party confessing alone. This is because, according to the book *al-Mausu'ah al-Fiqhiyyah* (1988: p. 49), the effect of the pledge will not involve other parties because the impact of the confession will be borne by himself.

Next, testimony or *al-syahadah* is also used to verify a document's authenticity. According to Abd al-Mutalib (2007), *al-syahadah* is the notification of a right or interest for another person using the phrase "*asyhadu*". The legal definition of testimony can be found in Section 3 of the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561), which states "any evidence adduced in Court by uttering the expression '*asyhadu*' to establish a right or interest". In court, testimony plays a significant role in convicting or denying an allegation (Ibn Qudamah, 1996). Furthermore, the holy Qur'an and hadith explicitly express the stipulation of testimony as a method of proof in all

instances, including the validation of a document is clearly stated in the holy Qur'an and hadith. Among them in the words of Allah S.W.T:

﴿وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ﴾

Translation: "And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allah is Knowing of what you do".

(Al-Qur'an. Al-Baqarah, 2: 283)

The Prophet PBUH words in the hadith number 2515:

« كان بيني وبين رجل خصومة في بئر، فاختصمنا إلى رسول الله صلى الله عليه وسلم، فقال رسول الله صلى الله عليه وسلم: "شاهدك أو يمينه" »

Translation: From al-Asyh bin Qais, he said: "There was a dispute between me and a man about a well, then we made a complaint to the Prophet PBUH, then he said to bring on your behalf two witnesses or his oath." (Hadith. Al-Bukhari. Chapter Idha Ikhtalafa al-Rahin wa al-Murtahin: Vol. 3: #2515).

(Narrated by Al-Bukhari)

Section 56 (1) of the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561) stipulates that two witnesses are required for the verification of papers including signatures, without stating whether the witnesses must be male or female as in Section 56 (1): "where the executant of a document denies the writing or the liability created therein, the writing and the execution of such document shall be proved at least by two witnesses to the document." Therefore, testimony plays a significant role in verifying a

document. The individual who witnesses the document made or falsified should be a witness to what he sees because hiding the testimony is one of the great sins (Wasil, 1968: p. 60). However, there are still individuals who make *syahadah al-zurr*, which is false testimony. The effect harms others and persecutes them by depriving others of their rights (Ibn ‘Abidin, 1995: p. 435). This is the disadvantage of this method.

Following that, the *syarie* oath, or in Arabic word ‘*al-yamin*’, is also used by the court to certify a document. During the judgement session, *al-yamin* is sometimes performed by the plaintiff and sometimes by the defendant (Md. Nor, 2019). Al-Zuhaily (1997: p. 6064) also had defined oath as an expression used before a judge to express (convict) his right to something or deny something by mentioning the name of Allah S.W.T or His attributes. Section 56 (6) of the *Syariah Court Evidence (Federal Territories) Act 1997 (Act 561)* states the importance of oath as a method of verifying a document, namely: “where a document cannot be proved in any of the aforesaid manners, the person who denies the writing and execution of the document shall, on the request of the person who alleges that the aforesaid person is the executant of the document, take the oath, and if he refuses to do so, the person who alleges may take the oath and thereafter establish his claim”.

This demonstrates that the court uses a *syarie* oath to certify a document. On the other hand, a futile oath is uttered without the intention of performing it or allowing it to be performed (Mustafa al-Khin & Mustafa al-Bugho, 1996). This statement is based on Allah S.W.T’s words:

﴿لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّعْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَّدْتُمُ الْأَيْمَانَ﴾

Translation: “Allah will not impose blame upon you for what is meaningless in your oaths”.

(Al-Qur’an. Al-Ma’idah, 5: 89)

Also:

﴿وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ﴾

Translation: “And fulfil the covenant of Allah when you have taken it, [O believers], and do not break oaths after their confirmation while you have made Allah, over you, a witness. Indeed, Allah knows what you do”.

(Al-Qur’an. An-Nahl, 16: 91)

The above arguments show that Islam recognised *al-yamin* as a method of verifying documents in the context of the Islamic judiciary. However, the oath may only be administered in the presence of a judge or court. If a person takes an oath outside of court and then presents it to the judge, the judge will not accept it (Hasan & Wan Ismail, 2007).

Aside from *iqrar*, *syahadah*, and *al-yamin*, expert opinion or *rakyu al-kabir*, is another widely used method for document verification today. Ibn al-Qayyim, in his book entitled “*al-Turuq al-Hukmiyyah*”, interprets *al-Ra’yu al-Khabir* as “the testimony of a person who is knowledgeable about a field” (Ibn al-Qayyim, 1977). Therefore, the testimony was given in relation to some scientific, technical, and professional matter by experts, for instance, persons qualified to speak authoritatively

due to their special training, skill, or familiarity with the subject, and it assists the court in determining a fact in issue (Anwarullah, 2010). With this assistance, the court can assess the allegations more accurately and fairly (Syinyur, 2006: p. 39).

There are several Qur'anic propositions on the use of expert opinion as a method of proof, particularly in document verification. The holy Qur'an states:

﴿وَمَا أَرْسَلْنَا مِنْ قَبْلِكَ إِلَّا رِجَالًا نُوحِيَ إِلَيْهِمْ ۖ فَسَلُّوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾

Translation: "And We sent not before you except men to whom We revealed [Our message]. So ask the people of the message if you do not know".

(Al-Qur'an, An-Nahl, 16: 43)

This text from the holy Qur'an demonstrates that Islamic law recognises document verification through the services of experts. Therefore, in order to ensure about the authenticity of a document, the judge should consult an expert. However, its application in Syariah courts is seen as less efficient than in string civil courts due to the limited provisions against it as well as cases in Syariah courts being less complex than in civil courts.

Pursuant to Section 33 (1) of the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561), when a court is required to form an opinion on a matter of foreign law or of science or art, or of the identity or authenticity of handwriting or fingerprints or in relation to lineage, then the opinion on the matter from a person whose special skills in the aforesaid matter is *qarinah*. At the same time, Section 32 (2) states that people who do so are called experts.

This is because expert opinion plays a crucial role when the court is unable to decide an issue that is beyond the knowledge of the court. The court will usually ask the prosecution and accuser to present expert evidence to support their case, or the court itself will call witnesses from among experts or parties on their own initiative (Nasri et al., 2017). For example, in the case of *Sabah State Syarie Prosecutor v Rosli Bin Abdul Japar* ([1428H] JH XXIII/II), who adopted forensic expert testimony. In this case, the accused was convicted of having illicit intercourse until giving birth to a child out of wedlock. Decisions were made based on expert testimony and scientific evidence from DNA test reports on the three blood specimen contributors. In this case, a DNA expert from Malaysia's Department of Chemistry carried out the DNA test. The court also accepted the Syarie Prosecutor's argument that the existence of a strong *qarinah* linked the accused's wrongdoing (to the point of having a child out of wedlock), which was successfully proven through scientific methods. It is shown, via evidence through expert testimony scientifically, which is DNA testing, is the most appropriate way to prove the accused's illicit intercourse offence. According to Mohd Noor (2015), expert testimony is the burden of proof to convict an offence or crime, and *qarinah* is recognised in Syariah law.

In terms of the expert requirements for verifying a document under the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561), Section 33 (3) under this provision clearly states that two or more experts shall be called to testify if possible. However, if there are no two experts, then the testimony of one expert is sufficient. If two experts give different opinions, a third expert should be called to testify. Section 56 (4) of the same act also mentions; if the witnesses to the document or the persons referred to in subsection (2) do not fully identify the writing and signature on the

document, then the writing and signature on the document shall be certified by at least two experts. Section 56 (5) states; if the writing and signature on the document have been certified by an expert, then the person who has completed the document is bound by any liability created in the document.

The finding discovered that adopting expert opinion will also speed up the trial process and case decision in court (Nasri et al., 2017). This is because, according to the study by Md. Noor and Mokhtar (2011), one of the reasons for the delay in resolving a case is insufficient evidence and proof submitted. As a result, the recognition of the use of expert evidence, particularly in Syariah courts, as well as the judge's approach to applying Section 33 optimally, is seen as aiding in the decision of a case. Therefore, the researcher opined, the category of the form and type of expert evidence such as forensic evidence to analyse the authenticity of a document, whether in physical or digital form, should also be expanded to enhance the dignity of the Syariah court and further speed up a decision is decided fairly to the parties.

This shows that the Syariah courts have, in fact, already adopted the opinion of experts. This is because expert testimony plays a critical role in the process of verifying a document that will guide the judge throughout the trial process from inaccurate judgment. This is because, in the age of evolving technology, various things can be manipulated and falsified by irresponsible parties in order to satisfy their own desires and lusts (Alias et al., 2021; Wan Ismail, 2020). Thus, documents such as signatures, photographs and writings can be forged. The judges generally cannot assess these elements unless they use the services of experts in the field to verify their validity. Thus, applying expert evidence, such as forensic experts, can guide judges to obtain accurate facts and avoid errors in making string decisions from document forgery made by

irresponsible parties (Nasri et al., 2017). This statement coincides with the directive to present forensic evidence such as forensic experts in proceedings in Syariah courts.

UNIVERSITI SAINS ISLAM MALAYSIA
جامعة العلوم الإسلامية الماليزية
ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA



جابتن كحاكيمن شرعية مليسيا

KETUA PENGARAH/KETUA HAKIM SYARIE
Jabatan Kehakiman Syariah Malaysia
Department Of Syariah Judiciary Malaysia
Aras 7, Blok C, Kompleks Islam Putrajaya
No. 20, Jalan Tunku Abdul Rahman, Presint 3
62100 PUTRAJAYA
MALAYSIA

PERBICARAAN

Tel : 603-8870 9300
Faks : 603-8870 9316
Portal Rasmi : www.jksm.gov.my
E-mel : naim1@esyariah.gov.my


Ruj. Kami : JKSM.600-1/2/4 JLD 6(14)
Takwim : 6 Jamadil Awal 1442H
Tarikh : 21 Disember 2020

YAA Ketua-Ketua Hakim Syarie,
Mahkamah-Mahkamah Syariah Negeri-Negeri

**ARAHAN AMALAN NO. 4 TAHUN 2020
PENGEMUKAAN BUKTI FORENSIK DALAM PROSIDING DI MAHKAMAH SYARIAH**

Saya ingin menarik perhatian YAA kepada keputusan Persidangan Ketua-Ketua Hakim Syarie Seluruh Malaysia Kali Ke-75 Bil. 3 dan Mesyuarat Jawatankuasa Induk Arahan Amalan Mahkamah Syariah Seluruh Malaysia Tahun 2020 pada 14 hingga 15 Safar 1442H bersamaan 3 hingga 4 Oktober 2020 di Johor Bahru, Johor Darul Takzim yang telah bersetuju dan mengesahkan untuk menerima pakai Arahan Amalan berhubung dengan bukti forensik dalam prosiding di Mahkamah Syariah bagi kes mal dan jenayah syariah sebagai salah satu pembuktian yang boleh didengar, dipertimbangkan, dinilai dan boleh diterima di Mahkamah Syariah.

Arahan Amalan ini berkuat kuasa dengan serta-merta.


DATO' SETIA DR. HAJI MOHD. NA'IM BIN HAJI MOKHTAR
Ketua Pengarah/ Ketua Hakim Syarie,
Jabatan Kehakiman Syariah Malaysia.
PUTRAJAYA

13

SYARIAH ASAS KEADILAN

Source: Official Website Department of Syariah Judiciary Malaysia

Figure 5.1: Practice Direction No. 4 of 2020 namely Submission of Forensic Evidence in Proceedings in Syariah Courts

The findings indicate that scientific evidence, such as forensic experts, has been accepted by the Syariah Court. However, exposure and experience, particularly for Syariah law practitioners, are still lacking. This is because, there is no specific procedures or guidelines for accepting scientific evidence as such forensic experts under the Syariah court institutions. Syariah legal practitioners themselves are less exposed to cases involving it (Ahmad et al., 2019; Yahya et al., 2017).

Recognising the importance of forensic evidence, especially in tracking the authenticity of documents, the researcher argues that developing a forensic legal model to address the issue of document forgery and other cases, is a must. The civil court model or document verification methods used by civil courts can be used as guidelines and benchmarks by Syariah courts in developing Syariah court forensic legal models, particularly in addressing forgery issues in the future.

5.2.2.2 The Requirement for Syariah Courts to Develop a Forensic Legal Model for Dealing with Document Falsification Issues

The term 'forensic' is derived from the Latin word *forensis*, which means "forum" and was initially used to govern the debate mechanism in a trial (Baharuddin, 2017). Metwally (2019) defined forensic science as applying scientific or technical practices to the identification, collection, evaluation, and interpretation of evidence for civil and criminal law or administrative issues. Thus, a forensic expert is skilled and knowledgeable in the field of forensics and can be consulted to resolve or assist in a court proceeding (Wan Ismail et al., 2021). Generally, the appointment of experts or forensic experts at the judge's request is intended to obtain their opinions on disputed

cases. In the document proof process, forensic experts will be called in by judges for cases that are beyond their ability and expertise to describe issues such as:

- i. Forgery of signatures in official documents;
- ii. Amendments and additions of phrases/sentences in the document by those interested;
- iii. Identify the authenticity of an electronic document presented as evidence (Baharuddin, 2017).

Furthermore, the role of forensic science is significant because it can expedite the process of justice brought to court (Baharuddin et al., 2015). It is the domain of forensic scientists to elaborate on this issue. With this assistance, the court will be able to make accurate and fair assessments and judgments based on the allegations (Syinyur, 2005). In Malaysia, under the Ministry of Science, Technology, and Innovation (MOSTI), the Department of Chemistry divides forensic services into five divisions. The divisions include narcotics, toxicology, forensic DNA, criminalistics, and document examination (Department of Chemistry Malaysia, 2021). As depicted in Figure 5.2, the Malaysian Department of Chemistry has provided several services for document examination.

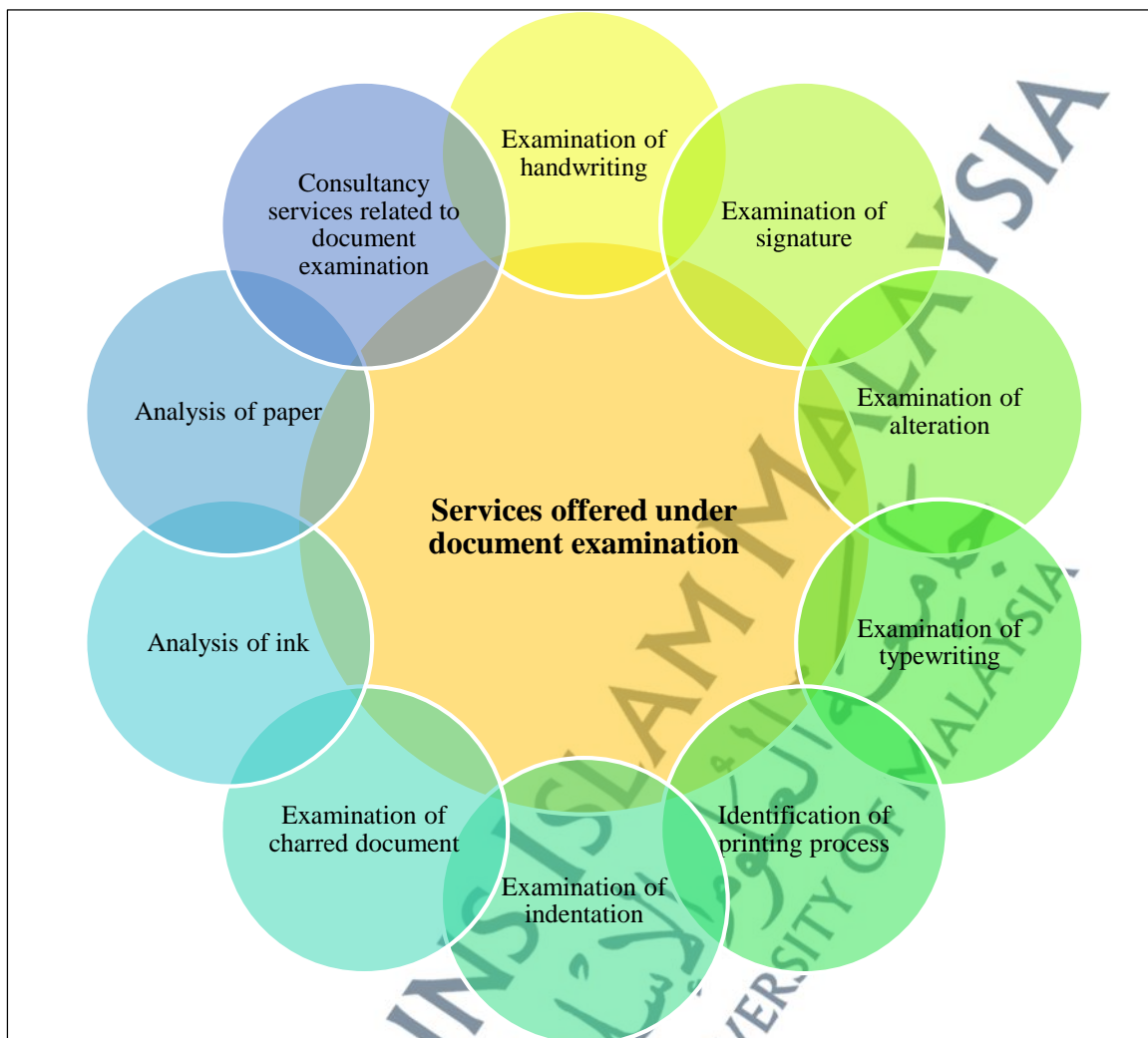


Figure 5.2: Services Offered under Document Examination, Department of Chemistry Malaysia

Moreover, with modern technology, the court cannot run away from managing documents in digital form. However, Syariah law practitioners are still vague about implementing electronic records. Its validity as a method of proof is doubted, as happened in the case of *Moriazi bin Muhammad v Ajmawati binti Atan* 10000-41-04,10000-41-07. Consequently, Syariah courts are also advised to adopt the provisions of Section 90A of the *Evidence Act 1950* (Act 56), wherein criminal or civil proceedings. Any computer-generated document may be admissible as evidence even if the document maker is absent from testifying. To further strengthen the

implementation of document digitals in Syariah courts, Section 90A of the *Evidence Act 1950* (Act 56) should be added to the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561), as it contains a relatively clear provision regarding digital documents. This is also one of the reasons why it is necessary to create a forensic legal model so that the authenticity of documents can be curbed earlier and forgery can be avoided whether the document is in physical or digital form. Therefore, the role of forensic science is significant for that purpose.

Therefore, the researcher had proposed a work manual for proof of disputed documents for Syariah court cases, as shown in Figure 5.3, where judges and legal practitioners are advised to adopt to ensure the smooth running of a case involving proof of document authenticity. The researcher also proposed that the court order the disputing parties to bring the document to the Department of Chemistry Malaysia to verify its authenticity before accepting it as evidence.

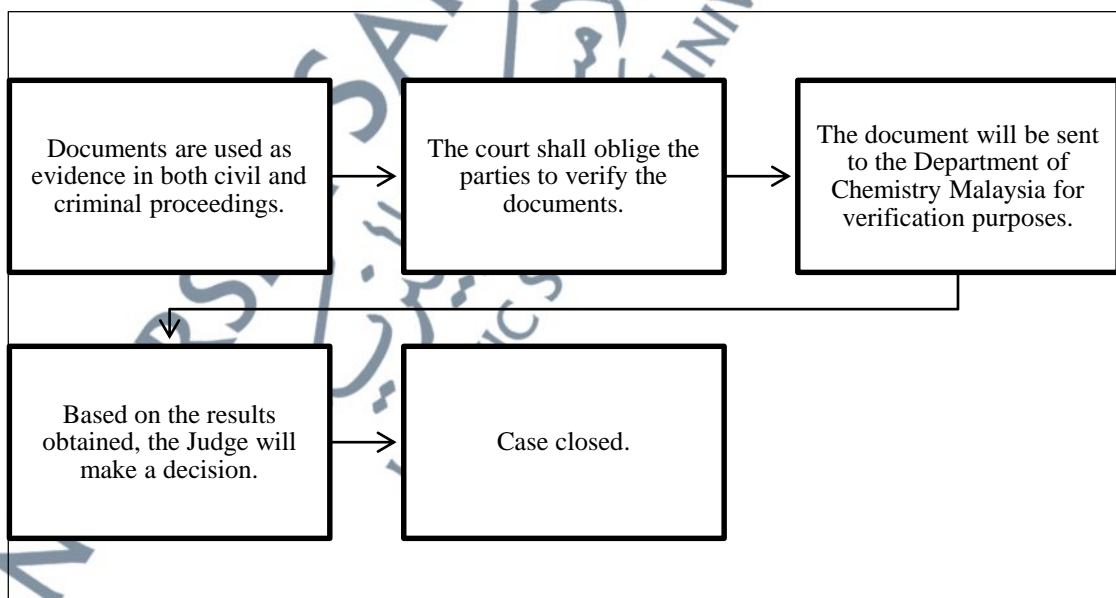


Figure 5.3: Work Manual Proposal for Proof of Disputed Documents in Syariah Court Cases

In particular, the Syariah officers must be educated on the subject rather than focusing solely on traditional methods alone. They need to cooperate proactively with the Department of Chemistry Malaysia to gain more exposure to forensics as well as the technique of document verification through forensic experts. The purpose and issue of this document's forgery can be detected earlier. This is because fraud is no longer limited to handwriting but includes digital documents. Thus, they should be given as much exposure as possible to the use of forensic experts in Malaysian Syariah law.

In conclusion, the attitude of taking the issue of document forgery lightly will cause such cases to continue to increase and benefit those who commit fraud. Furthermore, the scope of documents is broadening and is no longer limited to physical documents; documents in electronic form are also accepted. This situation has indirectly created a large space for forgery to occur. To curb this problem from increasing, the expertise of forensic scientists is seen to play a significant role in elucidating the issues involving the authenticity of a document presented as evidence. Recognising the importance of using forensic experts in the courts, it is proposed to develop a comprehensive forensic legal model, especially for addressing the issue of document forgery in Syariah Courts in the future.

5.2.3 Preliminary Disclosure to Syariah Officers on Document Forgery Issues and Civil Court Practice Methods for Determining Document Authenticity

If the previously proposed forensic legal model is successfully formed, it will indirectly be used to guide Syariah officers in dealing with cases involving document forgery and the existence of clear procedures to determine the authenticity of a document brought to court. Although Syariah courts have already adopted forensic

evidence, the procedures for its implementation are still not fully disclosed (Wan Ismail et al., 2021; Nasri et al., 2017). To fill this gap, it is proposed to send Syariah officers to collaborate with civil courts to determine a document's authenticity and handle cases involving document forgery.

Generally, there are procedures of proof of document under Malaysian law to determine its validity and relevance. It was then legally admissible. The document must first be relevant to prove the facts in the issue of any relevant facts. The content of the document can be established using either primary evidence (the original document submitted) or secondary evidence (copy of original document), according to Section 61 of the *Evidence Act 1950* (Act 56). The best evidence rule requires that primary evidence be presented first, if possible. Secondary evidence can be presented only in the absence of primary evidence.

Omar et al., (2020) have stated the requirement or procedure of the best evidence rule as below:

1. The maker of a document itself must be called to tender the document.
2. Section 60 of the *Evidence Act 1950* (Act 56) states that if oral evidence based on the contents of the document is not submitted, the document is considered a mere rumour and cannot be accepted. However, Sections 32, 33, and 73 A of the *Evidence Act 1950* (Act 56) provide an exception to this rule (in civil cases).
3. Section 73A provides that the document maker must be called as a witness to make it admissible as evidence unless the party can prove that the presence of the document maker can be waived because the situation is included in the provisions of Section 73A (1).

4. However, the court can still use its discretion to accept the document even if the document maker is not called to tender the documents.
5. Finally, when the document has been convinced of its authenticity and relevance as evidence, the document is marked as an exhibit, and the court must give it due consideration. On the other hand, if the document review results have not been appropriately proved, they will be rejected.

This demonstrates a clear procedure for determining the validity of a document before it is presented as evidence in court under Malaysian law. As a result of the findings, the Syariah court and the civil court should collaborate by sending Syariah officers to study and be given disclosure about the methods used by the civil court to verify a document. In-depth disclosure should also be given to Syariah officers on the latest verification methods, namely forensic evidence, and not focus on testimony alone, as stated in Section 56 of the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561).

In terms of civil court cases involving document forgery, they have handled such cases since the 1950s, broadening their experience (Wan Ismail, 2020). Furthermore, forgery cases reported in civil courts are not limited to marriage cases but include banking cases, identity cards, official letters, medical letters, signatures, and others. The case of *Dato' Raja Azwane bin Raja Ariff & Anor, Dato' Tan Kim Kuan v Dato' Man Bin Mat* [2009] MLJU 1480 is an example of document forgery in civil court, where the learned counsel for the petitioners detailed the oppression by falsifying the company resolution and director signatures. As a result, this is a white-collar crime that must be proven beyond a reasonable doubt. Thus, having forged documents does not hold the

accused accountable for falsification unless the prosecution can prove the case beyond a reasonable doubt (Khairul Anuar et al., 2015).

Therefore, Syariah courts must send Syariah officers to learn the techniques and be exposed to civil courts' experience in dealing with forgery cases so that they can detect earlier that the document is fake or otherwise. Aside from that, this involvement will positively impact the Syariah court institution because it will increase the community's confidence in the Syariah court's ability to handle similar cases in the future. This situation will indirectly elevate the status of Syariah courts on par with civil courts.

5.3 Conclusion

To conclude, there are gaps in the institution of Syariah courts, mainly when dealing with cases involving document forgery. The gap can be seen in three areas: provisions, the rate of punishment imposed, and no clear procedure to ensure the validity of a document before it is submitted in court. This chapter has suggested some changes that can be made to Syariah court institutions. The proposal is a review of the effectiveness of existing Syariah court provisions in addressing cases of document falsification in marriage cases, the requirement for developing a legal forensic model in determining the authenticity of documents, and preliminary disclosure to Syariah officers on document forgery issues and civil court practice method of determining the authenticity of a document. This proposal aims to ensure that such cases can be reduced and that document forgery is avoided sooner if the document submitted is recognised as authentic. The proposed improvements are also intended to guide Syariah officers in handling such cases in the future. Hence, the community will be more confident in the

court's ability and credibility in making fair decisions without doubts in the documentary evidence.

