

## CHAPTER 2

### LITERATURE REVIEW

#### 2.1 Overview

This chapter provides a review of the literature on the topics covered by this study, as well as the overall idea behind it. The researcher organised this chapter into two sections on the following topics: Fiqh forensic concept in Islamic law of evidence, and curriculum and training modules for Syariah officers in Malaysia. It examines the growth of Syariah law in Malaysia, the quality of Syariah officers' and Islamic affairs officers' human capital in Malaysia, and current guidelines on forensic and expert evidence in Syariah courts. Finally, the researcher will identify any academic deficiencies that need to be addressed via this study.

#### 2.2 Fiqh forensic concept in Islamic law of evidence

Baharuddin A. S. (2017c) was the first to suggest Fiqh Forensic (M. H. Ahmad, Baharuddin, Hashim, et al., 2020; Baharuddin, 2014, 2017a, 2017c, 2018; Baharuddin, Bidin, et al., 2015; Baharuddin, Ismail, Mutalib, et al., 2019b; Baharuddin, Ruskam, et al., 2015a).

Another term that he sometimes uses is '*Fiqh Forensik*' (Baharuddin, 2017a), but he also sometimes uses '*Fiqh Forensik*' (M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019a; Baharuddin, 2014, 2015a, 2015b, 2015c, 2016a, 2016b, 2016c, 2016d, 2016e, 2016f, 2016g, 2016h, 2016i, 2017b).

This notion combines study of Islamic jurisprudence with forensic science, encompassing Islamic legal maxims, relationships with Islamic law's purposes, and methods of interaction (M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019a, 2019b; Baharuddin, 2014, 2017c, 2018; Baharuddin, Bidin, et al., 2015; Baharuddin et al., 2018; Baharuddin, Mutalib, Ismail, Ahmad, & Saqib, 2021).

This notion is also transferred into the historical arrangement surrounding the application of forensic science in Islam as well as the fundamental principles of forensic science that must be understood within the context of Syariah law (M. H. Ahmad, Razak, Saharudin, & Baharuddin, 2019a, 2019b; M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019a; Baharuddin, 2017c).

According to previous Syariah manuscript discoveries, forensic science and Islamic jurisprudence may be combined on the article and complete plan of Islamic law (M. H. Ahmad, Razak, Saharudin, & Baharuddin, 2019b; M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019a; Baharuddin, 2017c, 2018; Baharuddin et al., 2018; Baharuddin, Ismail, Mutalib, Ahmad, & Razak, 2019; Baharuddin et al., 2021; M. F. Mohamed et al., 2019; Saharudin et al., 2019).

### 2.2.1 Epistemology in the field of Fiqh Forensic

The name 'Fiqh Forensic' is phraseology of the Arabic word 'fiqh' with the English word 'forensic'.

According to Ibnu Faris (1979), al-Fayūmi (1994), and al-Jurjāni (1983), the word 'fiqh' literally means *al-fahm* 'understanding'.<sup>7</sup>

As Ibnu Manzur (1994) explains, this literary term is often connected with religious knowledge for its sovereignty, splendour, and superiority over his academic pursuits.

Meanwhile, experts from distinct Islamic schools of thought have differing opinions on its technical meaning (al-Bayḍāwī, 2008; al-Nasafī, 2015; al-Qarāfī, 2000; Ibn Mufliḥ, 1997).<sup>8</sup>

<sup>7</sup> According to Nyazee (2003), the terms *fiqh* and *fahm* are interchangeable and refer to the same thing. This presupposes a familiarity with Islam in a more generic sense. In some contexts, it can also refer to the conclusions that a reasonable person would draw from the available evidence. In this context, the term is used in the Qur'an in Surah an-Niṣa', verse 78, and Surah al-A'raf, verse 179.

<sup>8</sup> Al-Nasafī, from Hanafī's School, defined in his *Kashf al-Asrār Sharḥ al-Muṣannif 'alā al-Manār*:

واصطلاحاً: العلم بالأحكام الشرعية العملية عن أدلتها التفصيلية بالاستدلال.

"Technically, it means the knowledge of legal rules pertaining to a conduct that have been derived from their specific evidences by inference." (al-Nasafī, 2015, p. 9)

Al-Qarāfī, from Maliki's School, defined in his *Sharḥ Tanqīḥ al-Fuṣūl*:

والفقه في الاصطلاح هو العلم بالأحكام الشرعية العملية بالاستدلال.

"Fiqh in its technical meaning is the knowledge of legal rules pertaining to a conduct by inference." (al-Qarāfī, 2000, p. 175)

Going deeper into their definition, the difference between their interpretations is only in the words they use. However, their implicit meanings carry the same meaning, which is the knowledge of Islamic legal rules (*ahkām al-syar‘iyyah*) relevant to a conduct, derived directly from specific evidence (*adillah al-tafṣiliyyah*) or extrapolated from its general principles in light of its intrinsic purposes (*maqāṣid*) (al-Ashqār, 1982; Kayadibi, 2018; Nyazee, 2003; Wahbah al-Zuhaylī, 2017c).

Additionally, al-Ashqār (1982) noted that sometimes both terms would be addressed simultaneously, and occasionally they will be discussed individually. Concerning Islamic legal rules, Fiqh and Syariah will be explained jointly. Meanwhile, Syariah should be considered independently in matters of belief, and fiqh shall be discussed separately in matters of ijtihad.

The term forensic is derived from the Latin word ‘*forensis*’, which means forum, court, public debate, and argumentative (Garner, 2009; Mahat & Huri, 2019). Forensics is alternatively characterised as an art of argumentative discourse or a field of law enforcement concerned with the examination of legal evidence (Aiyar, 2005). The term is said to have originated in the 17<sup>th</sup> century (Oxford University Press, 2019).

The Roman forum, as explained by Weizman (2014), is a political, legal, and multi-dimensional economic forum, yet through time, the noun has experienced a significant language shift. The forum is progressively becoming a courtroom with forensics for use of medicine and science. The basic meaning of forensic has vanished in the modernising process and has become the application of science in court procedures.

Accordingly, Richard Saferstein defined forensic science in the following manner:

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Al-Bayḍāwī, from Shafī’i School, defined in his *Minhāju al-Wuṣūli ilā ‘Ilmi al-Uṣūl*:

والفقه هو العلم بالأحكام الشرعية العملية المكتسب من أدلتها التفصيلية.

“The fiqh is the knowledge of legal rules pertaining to a conduct that have been derived from their specific evidences.” (al-Bayḍāwī, 2008, p. 51)

Ibn Muflīh, from Hanbali’s School, defined in his *al-Mubdi‘ fī Sharḥ al-Muqni‘*:

وفي الاصطلاح: العلم بالأحكام الشرعية الفرعية من أدلتها التفصيلية بالاستدلال.

“In technical meaning: the knowledge of subsidiary legal rules which derived from their specific evidences by inference.” (Ibn Muflīh, 1997, p. 17)

*“Forensic science is the application of science to the criminal and civil laws that are enforced by police agencies in a criminal justice system. Forensic science is an umbrella term encompassing a myriad of professions that use their skills to aid law enforcement officials in conducting their investigations.” (Saferstein, 2015, p. 22)*

Aside from that, forensic science is similar to other analytical sciences in terms of technological applicability. The objective of forensic science sets it apart from other analytical sciences (Bramley, Brown, Ellison, Hardcastle, & Martin, 2000). Forensic science can give impartial, reliable and relevant information to the criminal justice system. This enables lawyers to undertake study and develop the strongest arguments in trial (Asten, 2014).

The forensic sciences include forensic anthropology, forensic odontology, forensic accounting, forensic pathology, toxicology, forensic entomology, criminology, forensic computer and digital, forensic geology, DNA, physical, chemical, and biological analyses (Marasa & Miranda, 2014; Saferstein, 2015).

The phrase Fiqh Forensic is phraseology of the terms fiqh and forensics, both of which have been discussed before. In a word, Fiqh Forensic refers to the knowledge and comprehension of Islamic law about the practise of forensic science in the Muslim everyday life (Baharuddin, 2014, 2017a, 2017c). This terminology not only shows how science and Islamic law are integrated, but it also shows how Islam is flexible and comprehensive, which includes many different types of knowledge and is still relevant today (Baharuddin, 2017c; Baharuddin, Bidin, et al., 2015). It was stated in his thesis as follows:

*“Through this specification, the definition of fiqh forensics covers on the philosophical aspect in applying forensic science from the Islamic perspectives. It is more towards the relationship between complying with the practical knowledge revealed by the revelation towards adopting forensic science in realising maqāṣid al-sharī‘ah.” (Baharuddin, 2017c, p. 161)*

The branch of Islamic jurisprudence that is most ideal to be related with the notion of ‘Fiqh Forensic’ is the branch evidentiary, which is under the quarter of crimes, penalties, and the judiciary. This field of jurisprudence is often covered in detail in the chapter on prosecution and evidence (*ad-da‘awā wal bayyinah*).

According to Muhammad al-Zuhaylī (2016b), the phrase *al-Bayyinah* is synonymous with the term *al-Ithbāt*, and the two terms are often used

interchangeably. This is due to the fact that the application of Fiqh Forensic concentrates on the element of gathering evidence and using it as a form of evidence in Syariah courts rather than the other way around.

### 2.2.2 Forensic analysis as means of proof in Islamic primary sources

Several historical incidents demonstrate the use of forensic evidence in proving and convicting. In Surah Yusuf, verse 18, Allah (s.w.t.) mentions:

﴿وَجَاءُوا عَلَىٰ قَمِيصِهِ بِدَمٍ كَذِبٍ ۚ قَالَ بَلْ سَوَّلَتْ لَكُمْ أَنفُسُكُمْ أَمْرًا فَصَبْرٌ جَمِيلٌ وَاللَّهُ الْمُسْتَعَانُ عَلَىٰ مَا تَصِفُونَ﴾

*“They stained his shirt with false blood. He said: “Nay, but your minds Have made up a tale (That may pass) with you. (For me) patience is most fitting: Against that which ye assert, It is God (alone) Whose help can be sought”*

*(Al-Qur’an. Yusuf 12: 18)*

The brothers of Prophet Yusuf (p.b.u.h.) have presented Prophet Ya’qub with Prophet Yusuf’s (p.b.u.h.) garment. They used fake blood to prove Prophet Yusuf (p.b.u.h.) was devoured by a wolf (Rashid Ridā, 1999). Prophet Ya’qub (p.b.u.h.) compared the bloodstains on the garment (Baharuddin, 2017c).



Source: Mann (2010)

**Photo 1:** Bloodstain analysis on the fabric

His investigation discovered that the blood appeared to be from an animal, based on the morphology of the blood (Shamsuddin al-Qurtubī, 2006b). The fact that no

wolf bite marks were found on the garment further confirms the findings (al-Naḥḥās, 1988; al-Shawkānī, 2000; Ibnu Abi Ḥātim al-Rāzī, 1998).



Source: Sloan, Fergusson, & Robertson (2019)

**Photo 2:** Physical analysis on the damaged textile

After conducting a thorough investigation, Prophet Ya'qub (p.b.u.h.) disputed the false allegation made by his children about the death of Prophet Yusuf (p.b.u.h.) (al-Sa'dī, 2000).

As applied to today's forensic science applications, the analysis performed by the Prophet Ya'qub (p.b.u.h.) are referred to as bloodstain analysis on the fabric (Dicken, Knock, Carr, & Beckett, 2019; Wu, Michielsen, & Baby, 2019), and the physical analysis towards textile damage is referred to as textile damage analysis.

According to the Locard Exchange Principle, every contact leaves a trace. This concept is important in forensic science, especially in crime scene investigation. The exchange occurs when a criminal brings something into a crime scene and leaves with something (Mistek, Fikiet, Khandasammy, & Lednev, 2018).

There is no wiggle or biting impact on the mentioned garment, notwithstanding the narrative that the Prophet Yusuf (p.b.u.h.) was devoured by a wolf. Due to the lack of an interaction, Prophet Ya'qub (p.b.u.h.) denied the allegation. This premise also applies in Surah Yusuf verses 26-29.

﴿قَالَ هِيَ رَوَدَّتْنِي عَنْ نَفْسِي وَشَهِدَ شَاهِدٌ مِّنْ أَهْلِهَا إِن كَانَ قَمِيصُهُ قُدَّ مِنْ قُبُلٍ فَصَدَقَتْ وَهُوَ مِنَ الْكَاذِبِينَ (٢٦) وَإِن كَانَ قَمِيصُهُ قُدَّ مِنْ دُبُرٍ فَكَذَبَتْ وَهُوَ مِنَ الصَّادِقِينَ (٢٧) فَلَمَّا رَأَى قَمِيصَهُ قُدَّ مِنْ دُبُرٍ قَالَ إِنَّهُ وَمِن كَيْدِكُنَّ إِنَّ كَيْدَكُنَّ عَظِيمٌ (٢٨) يُوسُفُ أَعْرَضَ عَنْ هَذَا وَاسْتَغْفِرِي لِذَنبِكِ إِنَّكِ كُنْتِ مِنَ الْخَاطِئِينَ (٢٩)﴾

*“He said: “It was she that sought to seduce me – from my (true) self.” And one of her household saw (this) and bore witness, (thus): - “If it be that his shirt is rent from the front, then is her tale true, and he is a liar! But if it be that his shirt is torn from the back, then is she the liar, and he is telling the truth! So, when he saw his shirt, - that it was torn at the back, - (her husband) said: “Behold! It is a snare of you women! Truly, mighty is your snare! “O Joseph, pass this over! (O wife), ask forgiveness for thy sin, for truly thou hast been at fault!”*

*(Al-Qur’an. Yusuf 12:26-29)*

According to Locard’s Exchange Principle, there was an exchange between the perpetrator’s action and her trace.

The perpetrator was al-‘Azīz’s wife who tried to sexually harass Prophet Yusuf (p.b.u.h.). The Prophet Yusuf (p.b.u.h.) tried to flee, but his garments were pulled from his back by al-‘Azīz’s wife. The Prophet Yusuf’s garment has a rip from the collar to the cuff on the back (al-Ṭabarī, 2000). The rip was caused by the wife of al-‘Azīz attempting to stop him from fleeing (Ibnu Kathīr, 1999; Sayyid Quṭb, 2003).

The Locard’s Exchange principle dictates that a rip in a piece of clothing is regarded to constitute trace evidence.

Besides that, there were several Prophetic Traditions showed the use of forensic science in convicting or proving the claim.

عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ رَضِيَ اللَّهُ عَنْهُ فِي قِصَّةِ قَتْلِ أَبِي جَهْلٍ قَالَ: فَابْتَدَرَاهُ بِسَيْفَيْهِمَا حَتَّى قَتَلَاهُ، ثُمَّ أَنْصَرَفَا إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَخْبَرَاهُ، فَقَالَ: «أَيُّكُمَا قَتَلَهُ؟ هَلْ مَسَحْتُمَا سَيْفَيْكُمَا؟» قَالَا: لَا. قَالَ: فَنَظَرَ فِيهِمَا، فَقَالَ: «كِلَاكُمَا قَتَلَهُ، سَلَبُهُ لِمُعَاذِ بْنِ عَمْرٍو بْنِ الْجَمُوحِ»

*Abdul Rahman bin ‘Auf (r.a.) narrated regarding the story of the killing of Abu Jahal, ‘...they both (Mu‘az bin Amru bin al-Jamuh and Mu‘az bin ‘Arfa’) hastened to him with their swords till they killed him. Afterward, they went to the Prophet (p.b.u.h.) and informed him (of what they had done). The Prophet (p.b.u.h.) asked them, “Which of you killed him? Have you wiped your swords?” They said: “No.” The Prophet (p.b.u.h.) then*

looked at the swords and said, “Both of you killed him.” He then ordained the belongings (weapons, shields etc...) of Abu Jahal should go to Mu‘az bin Amru al-Jamuh.

(Hadith. al-Bukhari. *Bāb Man lam yukhammis al-aslāb, wa man qatala qatīlan salabuhu min ghayr an yukhamisa, wa hukmun al-imam fihi*: #3141; Muslim. *Bāb Istihqāq al-qātil salaba al-qatīl*: #1752)

Circumstantial evidence is allowed in court because the Prophet (p.b.u.h.) inferred bloodstains on their swords to identify who murdered Abu Jahal (‘Azzām, 2009). By inferring from the swords, the Prophet (p.b.u.h.) discovered that Mu‘az bin Amru Jamuh was the one who fatally struck Abu Jahal (Badruddin al-‘Aynī, 2001). Among the conclusions drawn was the depth to which the swords pierced Abu Jahal’s body (Badruddin al-‘Aynī, 2001). As a result, the Prophet (p.b.u.h.) bestowed upon him Abu Jahal’s possessions. Meanwhile, according to al-Nawawī (2010), the Prophet’s statement “Both of you murdered him” was intended to pacify Mu‘az bin Arfa’, who also had a role in the killing of Abu Jahal.

With today’s technology, prospective forensic science applications in this case include blood pattern analysis on suspected weapons to identify the owner of bloodstains on such swords (Comiskey, Yarin, & Attinger, 2019; Williams, Graham, Jermy, Kieser, & Taylor, 2019), and autopsy on a deceased person to ascertain the cause of death, which might have been caused by slicing or stabbing things (Banwari, 2017; Koehler, 2016).

In another tradition, an occurrence from the story of tribes’ ‘Ukl and ‘Uraynah may be used as a reference to the forensic study of the foot and shoe imprint.

عَنْ قَتَادَةَ، أَنَّ أُنْسًا رَضِيَ اللَّهُ عَنْهُ، حَدَّثَهُمْ: أَنَّ نَاسًا مِنْ عُكْلٍ وَعَرَبِيَّةٍ قَدِمُوا الْمَدِينَةَ عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَتَكَلَّمُوا بِالْإِسْلَامِ، فَقَالُوا يَا نَبِيَّ اللَّهِ: إِنَّا كُنَّا أَهْلَ صَرَخٍ، وَلَمْ نَكُنْ أَهْلَ رَيْفٍ، وَاسْتَوْخَمُوا الْمَدِينَةَ، «فَأَمَرَ لَهُمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِذَوْدٍ وَرَاعٍ، وَأَمَرَهُمْ أَنْ يَخْرُجُوا فِيهِ فَيَشْرَبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا»، فَأَنْطَلَقُوا حَتَّى إِذَا كَانُوا نَاحِيَةَ الْحَرَّةِ، كَفَرُوا بَعْدَ إِسْلَامِهِمْ، وَقَتَلُوا رَاعِيَّ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَاسْتَأْفُوا الذَّوْدَ، «فَبَلَغَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَعَثَ الطَّلَبَ فِي آثَارِهِمْ، فَأَمَرَ بِهِمْ فَسَمَرُوا أَعْيُنَهُمْ، وَقَطَعُوا أَيْدِيَهُمْ، وَتَرَكُوا فِي نَاحِيَةِ الْحَرَّةِ حَتَّى مَاتُوا عَلَى حَالِهِمْ» قَالَ قَتَادَةُ: بَلَّغْنَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعْدَ ذَلِكَ كَانَ يَحُثُّ عَلَى الصَّدَقَةِ وَيَنْهَى عَنِ الْمَثَلَةِ

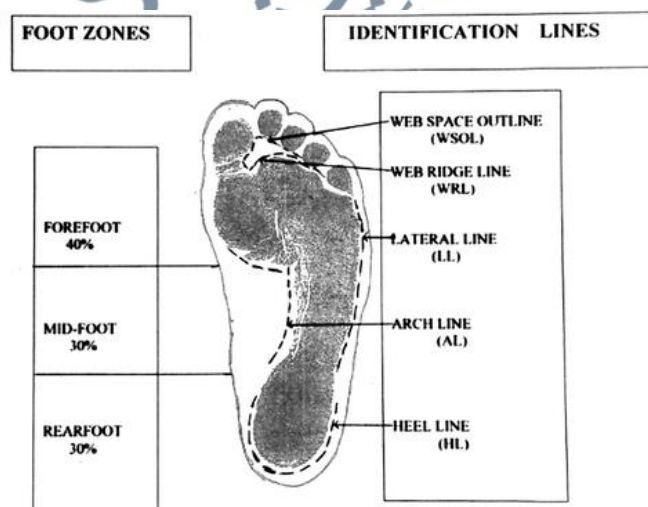
وَقَالَ شُعْبَةُ: وَأَبَانُ، وَحَمَّادٌ، عَنْ قَتَادَةَ، مِنْ عُرَيْبَةَ، وَقَالَ يَحْيَى بْنُ أَبِي كَثِيرٍ: وَأَيُّوبُ،  
عَنْ أَبِي قِلَابَةَ، عَنْ أَنَسٍ قَدِيمٍ نَفَرٌ مِنْ عُكْلٍ.

“From Qatadah, Anas (r.a.) narrated: Some people of the tribe of `Ukl and `Uraynah arrived at Medina to meet the Prophet (p.b.u.h.) and embraced Islam and said, "O Allah's Prophet! We are the owners of milch livestock (i.e., Bedouins) and not farmers (i.e., countrymen)." They found the climate of Medina unsuitable for them. So, Allah's Messenger (p.b.u.h.) ordered that they should be provided with some milch camels and a shepherd and ordered them to go out of Medina and to drink the camels' milk and urine (as medicine) So they set out and when they reached Al-Harra, they reverted to Heathenism after embracing Islam, and killed the shepherd of the Prophet and drove away the camels. When this news reached the Prophet, he sent some people in pursuit of them. (So, they were caught and brought back to the Prophet (p.b.u.h.). The Prophet (p.b.u.h.) gave his orders in their concern. So, their eyes were branded with pieces of iron and their hands and legs were cut off and they were left away in Harra till they died in that state of theirs.”

(Hadith. al-Bukhāri. Bāb Qiṣṣatun `Ukli wa `Urainah. #4192)

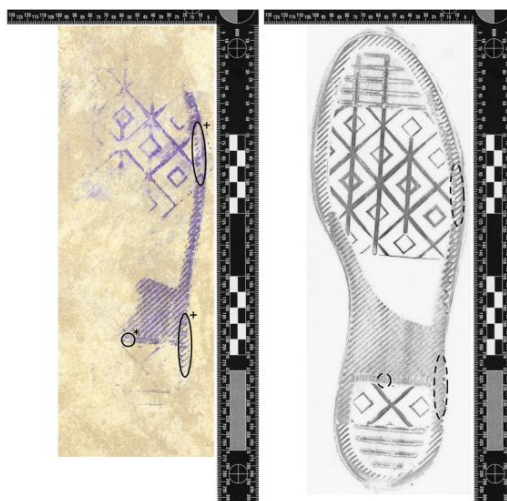
According to this narrative, the Prophet (p.b.u.h.) despatched men to find the `Ukl and `Uraynah people who had abandoned Islam, murdered the Prophet's shepherd, and drove away the camels (al-Qasṭallānī, 1905).

In addition, Ibnu Hajar al-`Asqālānī (2013) also reported that twenty Anṣār youngsters and a *qā'if* (tracker) were dispatched, but did not identify those participating in the tracking operation.



Source: DiMaggio & Vernon (2010)

Photo 3: Footprint analysis



Source: Richetelli, Hammer, and Speir (2020)

**Photo 4:** Shoes impression analysis

They found ‘Ukl and ‘Uraynah folks by following their footsteps home (Ibnu al-Mulaqqin, 2008; Mullā ‘Ali al-Qārī, 2002a).

The forensic foot and shoe imprint analysis revealed the Locard’s exchange principal. Footprints, foot imprints on insoles of footwear, such as shoes, on a range of surfaces, such as soils, sand, or snow, may also be collected as evidence (Kanz, 2015; Krishan & Kanchan, 2015).

Another tradition demonstrated the Prophet Muhammad (p.b.u.h.) used breath screening test to confirm drunkenness. The following tradition provides this:

عَنْ ابْنِ بُرَيْدَةَ، عَنْ أَبِيهِ، «أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتَنْكَهَ مَا عِزًّا»

*Narrated from Ibnu Buraidah, he said: “The Prophet (p.b.u.h) smelt the breath of Ma’iz”.*

*(Hadith. Abu Dāud. Bāb Rajmi Mā’iz bin Mālik: #4433)*

The term “*istinkah*” comes from the root word “*nakaha*”, which means to smell someone’s breath (Ibnu Faris, 1979). In addition, al-Fayūmi (1994) further mentioned that this is done to see whether the individual consumed the intoxicant. The narration from Muslim (2016), hadith number 1695,<sup>9</sup> has the lengthier version (al-‘Azīm Ābādī,

<sup>9</sup> In *Ṣaḥīḥ Muslim*, hadith number 1695, Muslim (2016) recorded the following verbatim:

فَقَالَ: «أَشْرَبَ حَمْرًا؟» فَقَامَ رَجُلٌ فَاسْتَنْكَهَهُ، فَلَمْ يَجِدْ مِنْهُ رِيحَ حَمْرٍ

*Allah’s Messenger said: Has he drunk wine? A person stood up and smelt his breath but noticed no smell of wine.*

1995). In this hadith, the Prophet (p.b.u.h.) doubted Maiz's confession and undertook *istinkah* to corroborate it (al-Khaṭābī, 1932; Ibnu Ruslān, 2016).



Source: Saferstein (2015)

**Photo 5:** Alcohol screening test by using Breathalyzer

This method is analogous to forensic toxicologists checking suspected drunken people's breath. The toxicologists used a breath tester to evaluate the alcohol levels in the pulmonary artery using alveolar breath (Millo, Jaiswal, Prasad, & Murty, 2010). The *Breathalyzer* is a frequently used device for measuring alveolar breath alcohol concentration (Harding & Field, 1987; Saferstein, 2015).

Aside from that, they use scientific evidence to substantiate their case or exonerate the innocent. Ibnu al-Qayyim al-Jawziyyah (2019b) narrates from Ja'far bin Muhammad:

وقال جعفر بن محمد: أُنِيَ عُمَرُ بْنُ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ بامرأةٍ قَدْ تَعَلَّقَتْ بِشَابٍّ مِنْ الْأَنْصَارِ كَانَتْ تَهَوَّاهُ، فَلَمَّا لَمْ يُسَاعِدْهَا احْتَالَتْ عَلَيْهِ، فَأَخَذَتْ بِيَضَّةٍ فَأَلْقَتْ صُفْرَتَهَا، وَصَبَّتِ الْبَيَاضَ عَلَى ثَوْبِهَا وَبَيْنَ فَخَذَيْهَا، ثُمَّ جَاءَتْ إِلَى عُمَرَ صَارِخَةً، فَقَالَتْ: "هَذَا الرَّجُلُ غَلَبَنِي عَلَى نَفْسِي، وَفَضَحَنِي فِي أَهْلِي، وَهَذَا أَثْرُ فِعَالِهِ". فَسَأَلَ عُمَرُ النِّسَاءَ فَقُلْنَ لَهُ: "إِنَّ بِيَدِنَهَا وَثَوْبَهَا أَثْرُ الْمَنِيِّ". فَهَمَّ بِعُقُوبَةِ الشَّابِّ فَجَعَلَ يَسْتَعِيثُ، وَيَقُولُ: "يَا أَمِيرَ الْمُؤْمِنِينَ، تَثَبَّتْ فِي أَمْرِي، فَوَاللَّهِ مَا أَتَيْتُ فَاِحِشَةً وَمَا هَمَمْتُ بِهَا، فَقَدْ رَاوَدْتَنِي عَنْ نَفْسِي فَاعْتَصَمْتُ"، فَقَالَ عُمَرُ: "يَا أَبَا الْحَسَنِ، مَا تَرَى فِي أَمْرِهِمَا؟"، فَنَظَرَ عَلَيَّ إِلَى مَا عَلَى الثَّوْبِ، ثُمَّ دَعَا بِمَاءٍ حَارٍّ شَدِيدِ الْعَلْيَانِ، فَصَبَّ عَلَى الثَّوْبِ فَجَمَدَ ذَلِكَ الْبَيَاضُ، ثُمَّ أَخَذَهُ وَاشْتَمَّهُ وَذَاقَهُ، فَعَرَفَ طَعْمَ الْبَيِضِ وَزَجَرَ الْمَرْأَةَ، فَاعْتَرَفَتْ.

*“A woman was brought to Umar bin al-Khattab (r.a.) and she was in love with a young man from al-Ansar. She was very fond to him, and when he did not obey her, she tricked him. The woman took an egg, threw away its yolk and put the white jelly of the egg on her dress and between her legs. Then she came to Umar (r.a.) shouting that: “This man assaulted and disgraced me among my family and this is the mark of what he did”. Umar consulted other women and they said that “there is a mark of the sperm on her body and dress”. Umar intended to punish the young man, but the man appealed for help and said: “O commander in chief of the faithful, verify (be sure) in my case, by Allah I never committed any sin nor intended to and she was the one who tried to seduce me but I refused.” Umar said: “O Abu al-Hassan, what do you think of these two?” Ali looked at what was on the dress (the mark) then he ordered for some boiling water then he poured it on the dress. The white solidified. Then Ali smelled and tasted it and he knew the taste of the egg and scolded the woman so she confessed.” (Ibnu al-Qayyim al-Jawziyyah, 2019b, p. 120)*

Based on the above narrative, Saidina Ali used boiling water to authenticate the evidences (Baharuddin, 2017a). It is used to induce or test a chemical reaction.

In this case, a forensic science application may be a screening test for semen. Acid phosphatase (AP) screening is one of the most often used screening tests for detecting sperm. This test is the principal presumptive test used in forensic science to identify semen stains. This is due to the presence of AP in the sperm.



Source: Schlagetter and Glynn (2017)

**Photo 6:** Acid phosphatase (AP) screening test using Brentamine

The Brentamine test is used to determine whether or not there is any AP activity. The screening test includes pushing dampened filter or blotting paper against the item's surface to transfer seminal fluid to the paper. The paper is next evaluated chemically (Lewis et al., 2013). The interaction of naphthol (in sodium a-naphthyl phosphate combined with brentamine salt) with acid phosphatase in semen stain produces purple colour (Davidson & Jalowiecki, 2012).

In the aforesaid scenario, Saidina Ali's tests revealed no semen but rather the egg's white jelly. So the case was dropped and the innocent guy was exonerated.

Additionally, an intoxication case had been presented before Abdullah bin Mas'ud, and he used the field sobriety test to substantiate the charge of drunkenness.

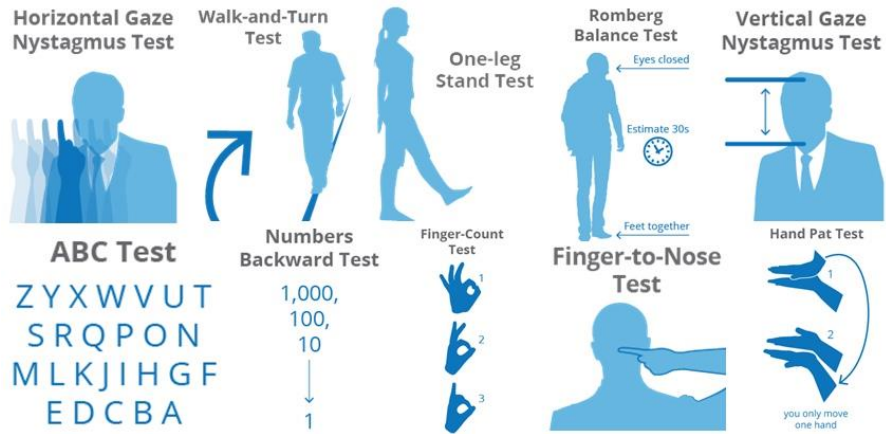
عَنْ أَبِي مَاجِدٍ الْحَنَفِيِّ قَالَ: جَاءَ رَجُلٌ بِأَخٍ لَهُ إِلَى عَبْدِ اللَّهِ سَكْرَانَ، فَقَالَ: إِنِّي وَجَدْتُ هَذَا سَكْرَانَ، فَقَالَ عَبْدُ اللَّهِ: "تَرْتَرُوهُ، مَزْمَزُوهُ، وَاسْتَنْكِهِوهُ". فَتَرْتَرَهُ وَمَزْمَزَهُ وَاسْتَنْكِهِهُ، فَوُجِدَ مِنْهُ رِيحُ الشَّرَابِ، فَأَمَرَ بِهِ عَبْدُ اللَّهِ إِلَى السِّجْنِ، ثُمَّ أَخْرَجَهُ مِنَ الْعَدْلِ، ثُمَّ أَمَرَ بِسَوْطٍ

*Narrated by Abu Majid al-Hanafi, "a man came to Abdullah bin Mas'ud to deliver his nephew who was inebriated, and then remarked, "Indeed, I found him drunk." Abdullah bin Mas'ud then issued the following command: "shake and move his body, then sniff his breath." Then he carried out the request and discovered the guy reeked of liquor. Abdullah bin Mas'ud afterwards ordered the man's imprisonment. The guy was returned to him the next day, and Abdullah bin Mas'ud requested a whip and ordered the man to be beaten.*

*(Hadith. Al-Ṭabrānī. Khuṭbah Ibnī Mas'ūd, wa min kalāmihi: Vol. 9: #8572)*

The words "tartara" and "mazmaza" relate to the activity of moving and shaking someone to smell their breath (Ibnu al-Athīr, 1979; Jalāluddīn al-Suyūṭī, 2004a).

These activities are inextricably linked to the present method of determining drunkenness, the field sobriety test. It was determined as a preliminary test before ordering a breath or blood test on the suspect. This examination usually includes psychophysical testing (Saferstein, 2015).



Source: FieldSobrietyTests.org (2022b, 2022d)

**Photo 7:** The psychophysical tests used in Field Sobriety Tests

Horizontal Gaze Nystagmus Test



Source: FieldSobrietyTests.org (2022a)

**Photo 8:** Horizontal gaze nystagmus test

Walk-and-Turn Test



Source: FieldSobrietyTests.org (2022e)

**Photo 9:** Walk-and-turn test



Source: FieldSobrietyTests.org (2022c)

**Photo 10:** One-leg stand test

These include the one-leg stand, horizontal gaze nystagmus, walk-and-turn, hand-pat, Romberg, and tracing of shapes test (Smith, Robinson, Bazdar, & Geller, 2016). Four trustworthy and effective psychophysical tests are horizontal-gaze nystagmus, walk-and-turn, and one-legged stand.

Involuntary jerking of the eye when it travels to the side is known as horizontal-gaze nystagmus (HGN). No one knows why nystagmus occurs, and no one can stop it. The individual is instructed to follow a penlight or any other object as far to the side as his or her eye can go. Less jerking or nystagmus is required when inebriated. When a person's blood alcohol level is 0.10% or more, the eye jerks before it moves 45 degrees to the side. Higher alcohol levels create smaller jerking angles.

Tasks like walk-turn and one-leg stand require the subject to pay attention to two or more basic instructions at once. Growing levels of alcohol in the blood greatly impair the capacity to comprehend and carry out more than two instructions at the same time. The suspect must keep his or her balance while standing heel-to-toe in order to walk and turn successfully. He must also pay attention to and grasp the exam instructions at the same time.

At this stage, the suspect must walk in a straight line, touching heel to toe for nine steps, then turn around and repeat the procedure on the other side of the line. It is necessary for the suspect to retain equilibrium while standing with his heels together and listening to the directions while doing the one-leg stand. This step requires the suspect to balance on one foot while lifting the other foot several inches off of the ground for 30 seconds, while also counting aloud throughout the 30-second time

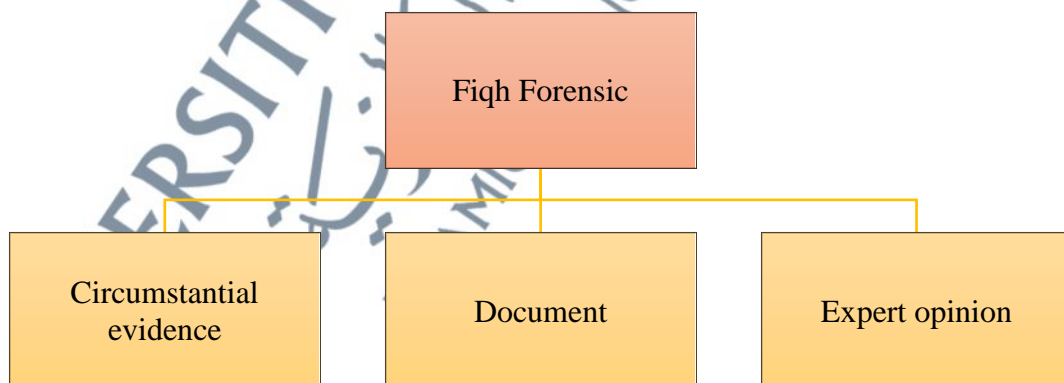
period. During the 30-second time period, the suspect must maintain his or her balance.

### 2.2.3 The relationship between Fiqh Forensic and Islamic law of evidence

Previous debate identified evidence as the most relevant area of Islamic law to be related with the notion of ‘Fiqh Forensic’. There were eight types of evidence available to convict a person under this branch (Bahnasi, 1989; Muhammad al-Zuhaylī, 2002, 2016c). Following are the most crucial ones connected to Fiqh Forensic: circumstantial evidence (*al-qarīnah*), document (*al-kitābah*), and expert opinion (*al-khibrah*).

According to the Figure 9 below, the application of forensic science as one of the types of evidence, based on the concept of legal adaptation, has significance to several forms of evidence in Islam, including circumstantial evidence, document, and expert opinion (Baharuddin, 2017c; Baharuddin, Ahmad, Ismail, Mutalib, & Harun, 2019; S. M. Yusof et al., 2019).

Circumstantial evidence or *al-qarīnah* (pl. *al-qarā'in*) is defined as any visible signals or indications analogous to an esoteric item that clearly imply it, whether used to prove or deny the existence of a fact (al-Zarqā, 2014; Muhammad al-Zuhaylī & Hamish, 2019). The Syariah Court Evidence (Federal Territories) Act 1997 defines *qarīnah* as “fact connected with the other fact in any of the ways referred to in this Act”, and this definition is included into Section 3(1) of the Act.



**Figure 9:** Relationship between Fiqh Forensic and forms of evidence in Islam

As science and technology have advanced at a fast pace, the idea and context of circumstantial evidence have also changed to incorporate scientific evidence (*al-Qarā'in al-'Alamiyyah*) that are now commonly employed in the area of forensic science (al-Ḥadād & al-Jābirī, 2015; al-'Ujlān, 2006; A. M. U. al-Umar, 2010; M. R. al-Umar, 2008; al-Zahrānī, 1994; Baharuddin, 2017a; Idrīs, 2010; IFA-MWL, 2003; IIFA, 2021, p. 496; Muhammad al-Zuhaylī, 2016c; Mutalib, Ismail, & Murad, 2018; Samrūt, 2007; Shabīr, 2020).

Physical evidence obtained at the scene, on the victim, or on the suspect will be gathered as questioned samples and evaluated using different methodologies and forensic analytical equipment (M. H. Ahmad, Baharuddin, Mahat, et al., 2020; M. H. Ahmad, Baharuddin, Zakaria, et al., 2020; M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019b; al-Mahmūdī & al-Taskhīrī, 2000; 'Awd Abdullah, 2000; Azhar & Hadi, 2017; Baharuddin, Ruskam, et al., 2015a; Hamzan, Khairuddin, & Muda, 2021; Wan Abdul Fattah Wan Ismail, Baharuddin, Mutalib, & Alias, 2021a; Korbatiéh, 2020; A. B. Mohamad & Ismail, 2021; Safar, 2000; Shariff, Azhar, et al., 2019; S. M. Yusof et al., 2019; S. M. Yusof, Rajamanickam, & Halim, 2021).

The indication of circumstantial evidence on its meanings varies greatly in terms of its strength and weakness, as well as its reliability (al-Buhūtī, 1983; *Hanipah Mohd Nor v. Baharom Aman*, 2011; Ḥaydar, 2003; Ibnu al-Qayyim al-Jawziyyah, 2019a; Ibnu Farḥūn, 2016b; *Maimunah bte Hamzah v. Mohammad bin Embong* 2005). Its strong implication may even rise to the level of a conclusive indicator in certain circumstances (al-'Izz Ibnī Abdissalam, 2020b; al-Qannawjī, 2001; al-Qarāfī, 2001b; al-Ṭūrī, 1997; Badruddin al-Zarkashī, 1985; *Dalam Perkara Ex P Fathilah Sidik*, 2006; *Dalam Perkara Ex P Siti Noor Aseera Awang*, 2007; Ḥaydar, 2003; Ibnu al-Qayyim al-Jawziyyah, 2019b, 2019d; *Nik Mansor Nik Ali lwn. Tuan Hafisah Tuan Man*, 2007; Taqiyuddin al-Hiṣni, 1997).

Nevertheless, it is possible that the indicator may be so faint that it will be reduced to the level of mere possibility (*Hanipah Mohd Nor v. Baharom Aman*, 2011; *Maimunah bte Hamzah v. Mohammad bin Embong* 2005; *Moriazi Mohamad lwn. Ajmawati Attan*, 2005).

In earlier times, academics gave a limited definition of document, since it is exclusively related with outward texts that may be read only by the senses (Wan Abdul Fattah Wan Ismail, 2011, 2020). When it comes to the document, Saifuddin et

al. (2019) said that scholars in the past didn't offer a particular description, instead defining the notes used as written evidence with different terminology such as *al-sakk*, *al-hujjah*, *al-mahdar*, *al-sijil*, and *al-wathiqah*.

The definition of a document in contemporary legislation, on the other hand, may be described as the act of explaining or describing anything by the use of external writing or drawings or copies, whether done traditionally with paper and wood or more recently using diskettes, compact discs, or the internet (Wan Abdul Fattah Wan Ismail, 2011; Wan Abdul Fattah Wan Ismail & Ramlee, 2013). Then, according to al-Sanhūrī (1968), the document for the purpose of evidence is separated into two categories: official documents and personal documents. The first kind of document is connected to forensic science since the papers utilised are in the form of formal analytical reports prepared by forensic professionals doing research and verified by the division head before being submitted to the court.

*Al-Khibrah*, on the other hand, refers to the disclosure of the fact of anything disputed at the request of a court (Muhammad al-Zuhaylī, 2016c; Shaniyur, 2005; Wahbah al-Zuhaylī, 2017b). In the realm of law, scientific evidence is evidence that has been demonstrated via the testimony of experts in a particular subject. These experts are called in at the judge's request to express their opinions as experts on the subject matter in dispute with the objective of maintaining the truth and supporting the judge with his or her decision-making (Bahnasi, 1989; Muhammad al-Zuhaylī, 2016c; Shaniyur, 2005; Wahbah al-Zuhaylī, 2017a).

Although there is an obvious and strong connection between forensic science and Islamic law of evidence, research on the topic were underdeveloped and inadequate. The researcher had difficulties in discovering the relevant publications outside his own. However, researcher believed that these studies are crucial. This will make it possible to use forensic evidence and strengthen the arguments for it to be admitted in the Syariah Court. In addition, it will boost efforts to apply it holistically to Syariah Court evidence law.

According to the researcher's observations, this lacuna in academia may be remedied by developing an instrument that can be utilised as a guide and reference for the general audience. The instrument should integrate forensic science with Shariah evidentiary law. Through the development of this instrument, the link between forensic science and Islamic law of evidence may be highlighted and better

comprehended. According to the researcher, this will help to reconcile the intellectual barrier that has emerged.

## **2.3 Curriculum and training modules for Syariah officers in Malaysia**

Generally, this section covers the existing curriculum and training modules taught and conducted on the targeted person either before the target began serving as a Syariah officer or during and after being admitted into service.

### **2.3.1 Syariah Legal Institutions in Malaysia**

Beginning July 3, 1996, the Malaysian Cabinet agreed with the proposal to restructure the management of Syariah Courts throughout Malaysia through numbers of measures. Among the measures is the establishment of the JKSM by the Federal Government (Jabatan Kehakiman Syariah Malaysia, 2018).

Among the main functions of JKSM is to coordinate the Islamic judiciary system and Islamic judicial procedures for adopted by all states as well as to develop and implement the training programmes to prosper all of human capital in Syariah judiciary post including Syariah Officers and staff that perform the duties whether at State Syariah Courts, Legal Aid Bureau, Islamic Religious Department or other agencies (Department of Syariah Judiciary Malaysia, 2011).

Since then, there has been a hierarchy for the Syariah court judges who each were dedicated to different roles, types of cases, qualifications, and court degrees. Section 41 to 44 of Administration of Islamic Law (Federal Territories) Act 1993 have provide the eligibility requirements for being a Syariah judge are to begin with the experience of being a regular Syariah officer first for a period of not less than ten years or must learned in Islamic Law. It is therefore desirable to review the forensic science curriculum that has been passed by Syariah Officers as referred to in the *Pekeliling Perkhidmatan Bilangan 1 Tahun 2016* (2016).

Although the Administration of Islamic Law (Federal Territories) Act 1993 does not specify any specific criteria regarding the core curriculum that Syariah officials should learned, but the circular of services issued requires the Syariah officers to have Syariah education background either professional diploma or a bachelor's degree in Syariah law from a recognized institution (Jabatan Perkhidmatan Awam Malaysia, 2016).

Looking at the curriculum modules for forensic science found in the curriculum currently underway, there are still no specific curriculum modules that assemble forensic science as integration in Islamic jurisprudence subjects especially *fiqh al-Jināyāt*, *fiqh al-Ithbāt*, and *fiqh al-Qadhā'*. It is as mentioned by Kadi (2006) among others due to the impact of separation of science with religion resulting from the world dualistic education system since the fall of the Islamic empire beginning in the 13<sup>th</sup> century after hijrah.

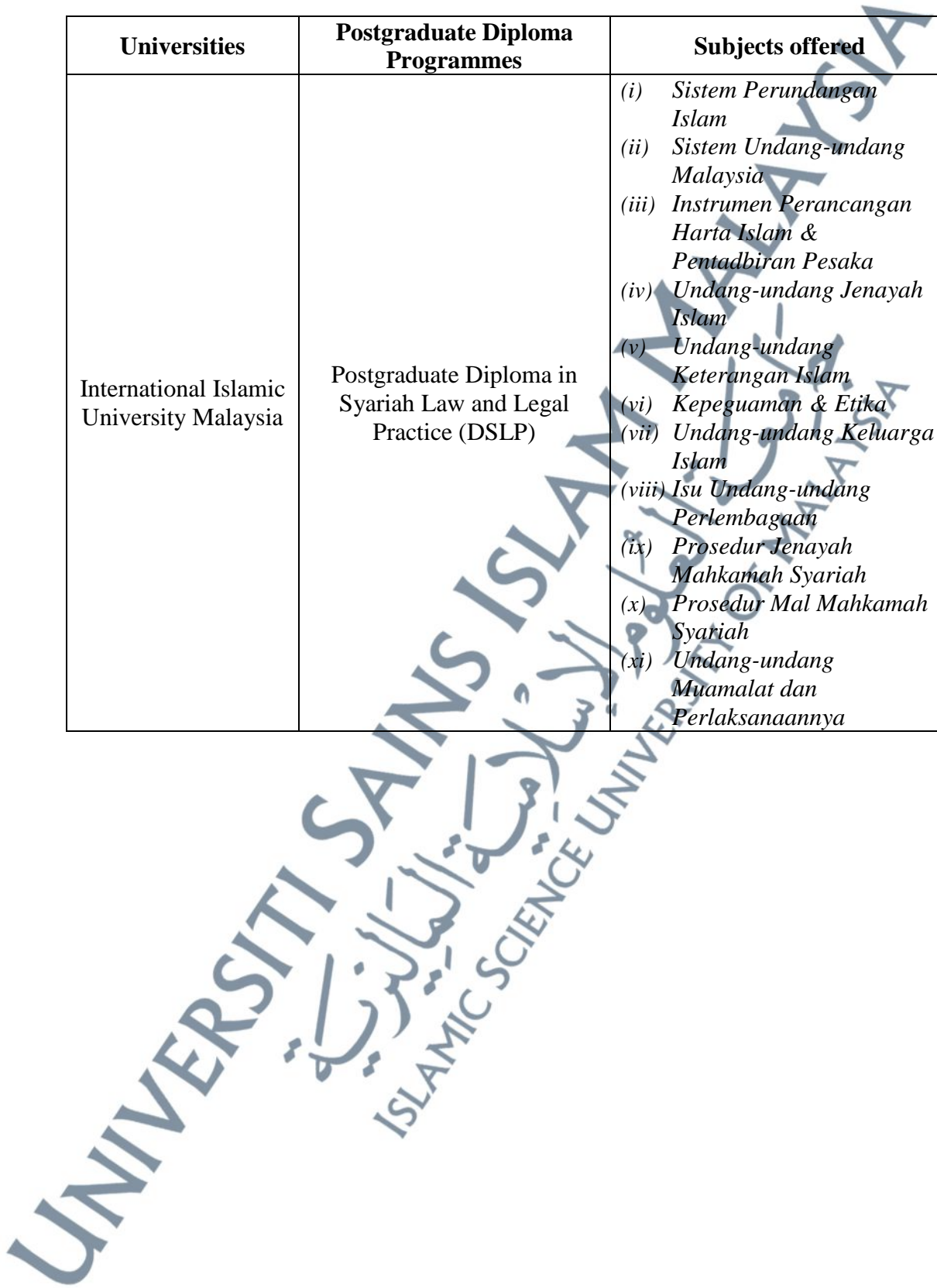
### 2.3.2 Curriculum programs for Syariah law available in Malaysia

If analysed curriculum programs passed by Syariah officers in Malaysia, a professional diploma program for Syariah employees has started more than a quarter (around year 1980) aimed at providing professional services to court officials (Najibah, 2012). The program is generally a structured program that offers knowledge and training to Syarie judges and administration.

Among the universities that offer such programs are Diploma in Syariah Law and Legal Practice (DSLPL) and Diploma In Law And Administration of Islamic Judiciary (DAIJ) at International Islamic University of Malaysia (UIAM) (IIUMCRESCENT, 2016a, 2016b), Diploma in Administration of Judiciary and Islamic Legal Practice (DAIJ) at National University of Malaysia (UKM) (Jabatan Syariah Fakulti Pengajian Islam UKM, 2016), Diploma in Islamic Judicial and Advocatory Practice (DIJAP) at Universiti Sains Islam Malaysia (USIM) (Center for Graduate Studies USIM, 2018), and Diploma Syariah Latihan dan Amalan (DSLAL) at Universiti Teknologi MARA (UiTM) (Fakulti Undang-Undang UiTM, 2017). In fact, some are restructured and placed under the Bachelor of Shariah and Law at the University of Malaya (UM) (Siti Zubaidah & Muhammad Zahiri, 2012). The detail has been provided in Table 3 to 7 below.

**Table 3:** Subjects offered under the Postgraduate Diploma Programmes

Universities	Postgraduate Diploma Programmes	Subjects offered
International Islamic University Malaysia	Postgraduate Diploma in Syariah Law and Legal Practice (DSLPL)	<ul style="list-style-type: none"> <li>(i) <i>Sistem Perundangan Islam</i></li> <li>(ii) <i>Sistem Undang-undang Malaysia</i></li> <li>(iii) <i>Instrumen Perancangan Harta Islam &amp; Pentadbiran Pesaka</i></li> <li>(iv) <i>Undang-undang Jenayah Islam</i></li> <li>(v) <i>Undang-undang Keterangan Islam</i></li> <li>(vi) <i>Kepeguaman &amp; Etika</i></li> <li>(vii) <i>Undang-undang Keluarga Islam</i></li> <li>(viii) <i>Isu Undang-undang Perlembagaan</i></li> <li>(ix) <i>Prosedur Jenayah Mahkamah Syariah</i></li> <li>(x) <i>Prosedur Mal Mahkamah Syariah</i></li> <li>(xi) <i>Undang-undang Muamalat dan Perlaksanaannya</i></li> </ul>



**Table 4:** Subjects offered under the Postgraduate Diploma Programmes

Universities	Postgraduate Diploma Programmes	Subjects offered
International Islamic University Malaysia	Diploma in Law and Administration of Islamic Judiciary (DAIJ)	<ul style="list-style-type: none"> <li>(i) <i>Teks Undang-Undang (Arabic)</i></li> <li>(ii) <i>Undang-Undang Keluarga</i></li> <li>(iii) <i>Sistem Perundangan Islam</i></li> <li>(iv) <i>Sistem Undang-Undang Malaysia</i></li> <li>(v) <i>Kaedah Kajian &amp; Mooting</i></li> <li>(vi) <i>Kaedah-Kaedah Feqah</i></li> <li>(vii) <i>Acara Jenayah Mahkamah Syariah</i></li> <li>(viii) <i>Undang-Undang Keterangan</i></li> <li>(ix) <i>Undang-undang Jenayah Islam</i></li> <li>(x) <i>Acara Mal Mahkamah Syariah</i></li> <li>(xi) <i>Pengurusan Harta Pesaka</i></li> </ul>

**Table 5:** Subjects offered under the Postgraduate Diploma Programmes

Universities	Postgraduate Diploma Programmes	Subjects offered
Universiti Kebangsaan Malaysia	Diploma in Administration of Judiciary and Islamic Legal Practice (DAIJ)	<ul style="list-style-type: none"> <li>(i) <i>Pentadbiran Kehakiman Islam</i></li> <li>(ii) <i>Guaman Islam</i></li> <li>(iii) <i>Metodologi Teks Fiqh</i></li> <li>(iv) <i>Undang-undang Keterangan di Mahkamah Syariah</i></li> <li>(v) <i>Pentadbiran Harta di Mahkamah Syariah</i></li> <li>(vi) <i>Bacaan Kes</i></li> <li>(vii) <i>Tatacara Jenayah di Mahkamah Syariah</i></li> <li>(viii) <i>Tatacara Mal di Mahkamah Syariah</i></li> <li>(ix) <i>Konflik Undang-undang Syariah dan Sivil di Malaysia</i></li> <li>(x) <i>Pengurusan Konflik</i></li> <li>(xi) <i>Moot/Mock dan Penempatan di Mahkamah Syariah</i></li> </ul>

**Table 6:** Subjects offered under the Postgraduate Diploma Programmes

Universities	Postgraduate Diploma Programmes	Subjects offered
Universiti Sains Islam Malaysia	Diploma in Islamic Judicial and Advocatory Practice (DIJAP)	<ul style="list-style-type: none"> <li>(i) Legal Firm</li> <li>(ii) Arabic Language for Judicial And Advocatory Practice</li> <li>(iii) Administration of Islamic Law In Malaysia</li> <li>(iv) Islamic Criminal Law in Malaysia</li> <li>(v) Islamic Law of Evidence in Malaysia</li> <li>(vi) Islamic Family Law in Malaysia</li> <li>(vii) Administration of Islamic Law of Property</li> <li>(viii) Syariah Court Civil Procedure</li> <li>(ix) Syariah Judiciary and Advocatory Practice</li> <li>(x) Syariah Court Criminal Procedure</li> <li>(xi) Negotiation Skills and Sulh</li> <li>(xii) Skills for Case Submission and Judgment</li> <li>(xiii) Industrial Training</li> </ul>

**Table 7:** Subjects offered under the Postgraduate Diploma Programmes

Universities	Postgraduate Diploma Programmes	Subjects offered
Universiti Teknologi MARA	<i>Diploma Syariah Latihan dan Amalan (DSLTA)</i>	(i) Islamic Jurisprudence I (ii) Islamic Family Law (iii) Islamic Criminal Law (iv) Mal Procedure (v) Islamic Judicial System and Advocacy (vi) Syarie Legal Writing (vii) Islamic Jurisprudence II (viii) Islamic Law of Property and Succession (ix) Islamic Law of Evidence (x) Islamic Criminal Procedure (xi) Trial and Advocacy

### 2.3.3 Limited curricular and trainings for Syariah officers

In the survey, there are modules for subjects or topics such as *al-qarānah* and *ra'yu al-khabīr* in offering the certificates that deal with issues related to forensic science. However, the modules are not built in detail due to some factors (Baharuddin, 2017c), inter alia:

- (a) Limited time to focus the concept of forensic science with Islamic jurisprudence
- (b) The rapid development of technology in forensic science that needs to be aligned with the current Islamic jurisprudence.
- (c) An enormous scope and more time are needed to deepen the concept of integrating Islamic jurisprudence and forensic science.

The modules for this subject, taught through the Islamic curriculum module of Islamic evidence, particularly the discussion of *Wasa'il al-Ithbāt*. It generally includes *istidlāl* using *al-qarānah* and its acceptance as well as applications and relationships with other means of proof in Islamic jurisprudence.

There is no specific elaboration found in aspects of forensic science education instead rather on the efforts of the teaching staff and initiatives carried out by students. It is also not available in the offering postgraduate diploma. There are no forensic

science-related modules either curriculum or training in those offers on the main course. This is probably because standard recognition through the guidelines suggested by the Malaysian Qualifications Agency (MQA) to the institution concerned.

Obviously, the whole of any legal-related curriculum needs to be consistent and meet the quality outlined by the Agensi Kelayakan Malaysia (2015) which recommends the guidelines for compulsory, requirement, and elective courses.

However, none focuses on the curriculum forensic science but rather from the ‘Evidence’ subject that gives limited space for forensic science to be learnt. In conclusion, whether it is a civil or Syariah law curriculum, there is no curriculum that really focuses scientific forensics or scientific proofs at any level.

Unlike in Syariah judiciary, officers in Malaysian civil judiciary have undergone intensive and on-going training provided by the Judicial and Legal Training Institute (ILKAP) under the Prime Minister’s Department (Baharuddin, 2017c).

This institution is established with the purpose to enhance the knowledge, expertise, and quality of officers who are engaged in judiciary, prosecution, and legal enforcement. Besides that, this government institution is consistently providing trainings in the field of forensic science towards the groups above-mentioned.

Table 8 below summarized programme reports from five consecutive years organized by ILKAP related to forensic science. The list is taken from ILKAP Training Book from 2017 to 2022. These programmes are undertaken by the officers who are engaged in civil judiciary, prosecution, and legal enforcement. From the list also revealed that these officers have been continuously exposed to the knowledge and experience in handling the scientific evidence. These courses shall be able to provide ample knowledge, understanding, and experience for the officers in handling scientific evidence. Meanwhile, in Syariah judiciary, as reported by Baharuddin (2017c), the JKSM has started to conduct forensics training course in 2015 with the course of *Kursus Forensik dan DNA Profiling*. However, this program is still in the beginning and not as has long been held by ILKAP.

**Table 8:** Programmes related to forensic sciences organized by ILKAP from 2017-2022

Year	Programmes
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2022	<i>Kursus Forensik Digital</i>
	Course on Crime Scene, Forensic Evidence and Investigation
	Course on Electronic Evidence
	<i>Kursus Pendakwaan Jenayah Siber</i>
2021	Course on Expert Evidence in the Civil and Criminal Cases
	<i>Kursus Forensik Digital</i>
	Course On Crime Scene Forensic Evidence and Investigation
2020	Course On Medico-Legal Issues
	Course On Crime Scene and Investigation
	Course On Expert Evidence In the Civil and Criminal Cases
2019	<i>Kursus Forensik Digital</i>
	Course On Electronic Evidence
	Course On Expert Evidence In the Civil and Criminal Cases
	Course On Crime Scene and Investigation
	<i>Seminar Pelupusan Barang Kes Bagi Kes-Kes Jenayah</i>
2018	<i>Kursus Forensik Digital</i>
	Course On Electronic Evidence
	Seminar Digital Forensik
	<i>Kursus Peranan Sains Forensik Dalam Kes Sivil dan Jenayah (PDRM / Jabatan Kimia)</i>
	Course On Crime Scene Evidence and Investigation
2017	Course On Expert Evidence In the Civil and Criminal Cases
	Course on Electronic Evidence
	<i>Kursus Peranan Sains Forensik Dalam Kes Sivil dan Jenayah (PDRM / Jabatan Kimia)</i>
	Course on Crime Scene Evidence and Investigation

#### 2.4 The application of forensic science in Syariah Courts

The use of forensic science in Syariah courts, the manner in which it is used, and the role it plays in determining guilt or innocence are all being more scrutinised by academics and legal practitioners.

The debate over the use of science in Syariah courts has piqued the curiosity and attention of academics of Syariah law. Every year, there will be a wave of publications

on forensic science in the Syariah courts, and this is obviously visible on the latest publication of books, journal articles, and conference proceedings.

Among those publications were the following: Saharuddin (2022), M. H. Ahmad et al. (2022), Shariff et al. (2022), W. A. F. W. Ismail, Baharuddin, Mutalib, and Kahar (2022), A. B. Mohamad and Ismail (2021), Hamzan et al. (2021), Baharuddin et al. (2021), N. Ismail, Mohamad, and Mohamad Tajuddin (2021), S. M. Yusof et al. (2021), Nasri and Noor (2020b), Nasri and Noor (2020a), Mutalib et al. (2020), M. H. Ahmad, Baharuddin, Zakaria, et al. (2020), M. H. Ahmad, Baharuddin, Hashim, et al. (2020), S. M. Yusof et al. (2019), M. H. Ahmad, Baharuddin, et al. (2019a), Shariff, Azhar, et al. (2019), M. H. Ahmad, Razak, Saharudin, Nasir, and Baharuddin (2019), Kallil and Yaacob (2019), Baharuddin et al. (2018), M. A. M. Ismail and Nasri (2018), Baharuddin (2018), and Mutalib, Ismail, et al. (2018a).

In the middle of this dynamism, there are certain articles that should be considered about forensic and expert evidence as they discussed related pertinent issues. These publications have been listed in the Table 9 below, whereas it indicated that there were gaps in information, skills, and training that need to be addressed, particularly in the areas of forensic and expert evidence, which are discussed in further detail below. This is highly crucial for people engaged in judicial and legal proceedings, particularly Syarie judges and lawyers, as well as religious enforcement officers and other religious officials.

**Table 9:** The issues within the practice of forensic and expert evidence in Syariah Court

Related issues	Publications
The lack of explicit guidelines on the management of forensic evidence and procedures for providing expert views	(M. H. Ahmad, Baharuddin, Hashim, et al., 2020; Baharuddin, Ismail, Mutalib, Ahmad, Nasir, et al., 2019; Saad, 2019; Shariff, Azhar, et al., 2019; S. M. Yusof et al., 2019)
Carelessness in the handling of scientific evidence	(M. H. Ahmad, Baharuddin, Hashim, et al., 2020; Baharuddin, Ismail, Mutalib, Ahmad, Nasir, et al., 2019; Nor & Man, 2008)
The need for legal practitioners to be educated on the scientific methods used by forensic scientists to verify the validity of a document as well as its contents	(M. H. Ahmad, Baharuddin, Hashim, et al., 2020; Wan Abdul Fattah Wan Ismail & Asutay, 2017; Wan Abdul Fattah Wan Ismail, Baharuddin, Mutalib, & al-Qubaty, 2019; W. A. F. W. Ismail et al., 2021a; Wan Abdul Fattah Wan Ismail, Baharuddin, Mutalib, & Saharudin, 2019)
Determining whether the scope of expert opinion is constrained to what is mentioned in Section 33 of Syariah Court Evidence Act/Enactment	(A. B. Mohamad & Ismail, 2021; Nasri & Noor, 2021; Saad, 2019; S. M. Yusof et al., 2019, 2021)
The need for expert opinions and their elaboration, the number of experts needed and their qualifications, conflicting opinions, voir dire proceedings, and the authority to appoint experts	(M. A. M. Ismail & Nasri, 2018; N. Ismail et al., 2021; Saad, 2019)
The framework of Section 33 is not being utilised to its full potential	(S. M. Yusof et al., 2019)
Encouraging reconciliation between traditional Syariah principles, modern evidence, and other scientific developments	(S. S. Ali, 2013; Johansen, 2002; Kamali, 2006, 2007; Korbatieh, 2020; Safian, 2016)
Misunderstanding and ambiguity surrounding language necessitates a practical and efficient remedy	(Mutalib, Ismail, et al., 2018a; Mutalib et al., 2020; Noor, 2015; Ramlee, 2011, 2015; Saifuddin et al., 2019)

## 2.5 Summary

In a nutshell, this chapter briefly expound the concept of Fiqh Forensic in the aspect of Islamic Law of Evidence. There were numbers means of proof available under Islamic law of evidence; however, the most significant and closely related to forensic science methods is *al-qarīnah*. Numerous literatures been reviewed, and the

deductive result is no studies and modules are actually been developed through the foundation of integration between fiqh and forensic science, based on the forefront 'Fiqh Forensic' concept. Besides that, this chapter also tackle the curriculum and training modules available in Malaysia and discussions on the application of forensic science in Islamic legal framework. There were six Syariah law programs offered at the postgraduate diploma level, and all of it offers almost similar subjects and courses. However, none of them were focusing on the curriculum forensic science within the subject Islamic Law of Evidence or *Fiqh al-Ithbāt* particularly on the part of Expert Opinion or *Ra'yu al-Khabīr* or *al-Khibrah* instead just giving general elaboration and reiterate the typical discussion in the Islamic classical books.

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