

CHAPTER 1

INTRODUCTION

The fact is proven before a judge by various means of proof. This includes *kitābah* (documentary evidence), *qarīnah* (circumstantial evidence), *ra'yu al-khabīr* (expert opinion), and *mu'āyanah* (inspection). It also has significant influence on the Islamic legal system. About 600 years ago, prominent jurists in the Islamic legal studies including Ibnu Qayyim (d. 751 A.H./1350 C.E.), Ibnu Farhun (d. 799 A.H./1397 C.E.), and al-Tarabulusi (d. 844 A.H./1440 C.E.) have emphasized the importance of mastering every knowledge that can help in proving the cases. In fact, this is aligned with the *maqāṣid al-syarī'ah* in the judiciary that it should include everything that helps to reveal the truth and eliminate untruth, whether it is manifest or hidden.

In this age of science and technology, one form of modern evidence used in the judicial process is forensic evidence. This type of evidence is born from the use of scientific methods and techniques by forensic experts. Forensic evidence is indeed acceptable as a form of evidence in Malaysian Syariah courts. It comprises of combination between several means of proof in Islamic law of evidence such as *qarīnah*, *kitābah*, *ra'yu al-khabīr*, and *mu'āyanah*. The previous researchers like Wan Abdul Fattah Wan Ismail and Asutay (2017), Baharuddin (2017c), Hamidon (2017), Mutalib, Ismail, et al. (2018a), S. M. Yusof, Rajamanickam, and Halim (2019), and Kallil and Yaacob (2019) have produced several theories related to the integration between Syariah and science, including the integration between fiqh and forensics. However, theories related to the integration of fiqh and forensics such as Fiqh Forensic have not yet been applied into a more practical form although it has long been introduced by the previous researchers.

1.1 Background of the Study

Engineering, Medicine, Chemistry, Physics, Toxicology, Anthropology, Biology, and the social sciences: Sociology, Economics, Psychology, Linguistics, Statistics, and Accounting are among the scientific and technical areas that now enter our Syariah Courts.

According to Lacey (1984), a judge will be faced with three issues when determining whether scientific evidence would be accepted at trial. First and foremost, is the scientific concept that underpins it valid? If the premise is incorrect, then the evidence is not trustworthy. Second, is the approach that is being used to apply the scientific concept legitimate? Finally, does the individual who is implementing the method possess the essential abilities to apply the technique and understand the outcomes of the use of the technique?

The following issue emerges as a result of this statement: how is the judge to inquire or ascertain these three things if he has not previously obtained sufficient knowledge and understanding about the scientific evidence that were presented? In a similar vein, how is the opponent's lawyer going to dispute such scientific evidence if he hasn't previously learned about and comprehended it?

Is it true that persons summoned to court as experts do not need to have expertise and information on substantive law and procedure merely because they are not lawyers or court employees?

A valid argument might be made that an expert witness does not need to be familiar with the legal criteria for providing testimony. However, having some understanding of the legal process has three significant benefits for the expert. First and foremost, giving testimony may be a frightening experience, and being acquainted with certain aspects of the procedure may be beneficial on the day in question. To put it another way, it is important for historical purposes. Second, having a basic grasp of some of the legal problems will enable the expert to prepare for and give his testimony in a manner that is more likely than not to be accepted and understood by the audience. Third, individuals developing scientific methodologies for material discovery and analysis need to know the questions the court will be asking when the procedure is presented to the judge.

This means that all persons involved must be knowledgeable and skilled in the field of forensic and expert evidence. This is in accordance with the following Ibn al-Munāṣif's (d. 620 A.H./1223 C.E.) statements:

يحق على من ولي اليوم القضاء، وابتلي بعظيم هذا البلاء، أن يتقدم في علاج نفسه، ويجهد لصلاح حاله، ويكون ذلك من أهم ما يجعل من باله ... بل يأخذ بالمجاهدة على نفسه، ويتأهب لما يليق من منصبه، ويسعى في اكتساب الخير وتطلبه. إن كان جاهلاً، استحضر من يفقه في دينه وعلمه، وحسن نظره؛ واستكثر من الشورى؛ وتفقد أموره أبدأ وأحواله.

“It is the prerogative of the person who now presides over the judiciary and has been affected by this enormous tribulation, to advance in treating himself and striving for the rectification of his condition; and this is one of the most significant aspects impacting his decision-making. More than that, he should strive diligently for himself, prepare what is necessary for his position, as well as endeavour to attain and discover goodness. If he is ignorant, he should confer with a person he trusts for his faith, knowledge, and outstanding contemplation; engage in numerous discussions; and continually assess his circumstances.” (Ibn al-Munāṣif, 2020, p. 41)

This is done in order to assist the smooth progression of the parties' trial, as well as to further guarantee and safeguard their interests from any potential risks.

1.1.1. Strive for achieving Syariah objectives in the judicial system

In their publications, classical and contemporary scholars have articulated some of the fundamental wisdom inherent in Islamic judicial law. Some extracts from their remarks were included below to provide a preliminary impression of the objective of Islamic law in the establishment of a judicial system.

In his *Qawā'id al-Aḥkām fī Islāh al-Anām*, al-'Izz Ibn Abdissalam has made the following remarks in relation to the wisdom inherent in Islamic judicial law:

الغرض من نصب القضاة إنصاف المظلومين من الظالمين، وتوفير الحقوق على المستحقين، والنظر لمن يتعذر نظره لنفسه، كالصبيان والمجانين والمبذرين والغائبين، فلذلك كان سلوك أقرب الطرق في القضاء واجبا على الفور، لما فيه من إيصال الحقوق إلى المستحقين، ودرء المفاسد عن الظالمين والمبطلين. وقد تقدم أن الأمر بالمعروف والنهي عن المنكر واجبان على الفور، وأحد الخصمين ههنا ظالم أو مبطل، وتجب إزالة

الظلم والباطل على الفور، وإن لم يكن آثما بجهله، لأن الغرض إنما هو دفع المفساد، سواء كان مرتكباً آثماً أو غير آثم.

“The appointment of judges is intended to deliver justice to those who have been oppressed by their oppressors, to pass over rights to those who deserve them, and to care for those who are unable to care for themselves, such as children, insane persons, excessive spenders, and missing individuals. As a result, it is immediately obligatory to follow the shortest path of justice because doing so entails obtaining rights for those who deserve them while also preventing harm from oppressors and a nullifier. So, even if the nullifier does not get sin due to his ignorance, it is immediately obligatory to remove his oppression or falsehood. The purpose is to prevent the harm regardless of whether the doer gets sin or not.” (al-‘Izz Ibn Abdissalam, 2020b, p. 77)

In the meantime, Ibnu Farḥūn (d. 799AH/1397CE) in *Tabṣirah al-Ḥukkām*, al-Ṭarābulusi (d. 844AH/1440CE) in *Mu‘īn al-Ḥukkām*, and Abdul Karim Zaydān in *Nizām al-Qaḍā’* has pointed out to the following remarks:

وأما حكمته: فرفع التهاج ورد النوائب وقمع الظالم ونصر المظلوم وقطع الخصومات والأمر بالمعروف والنهي عن المنكر.

“As for the underlying wisdom of the judiciary: it lifts frivolity, repels disasters, subdues the oppressor, aids the downtrodden, puts an end to conflicts, and encourages good as well as prohibits evil.” (al-Ṭarābulusi, 2018a, p. 113; Ibnu Farḥūn, 2016a, p. 117; Zaydān, 2011, pp. 18-19)

The above statement seems to be similar to the statement given by Ibnu Qudāmah (d. 620AH/1223CE) in *al-Mughnī*, where he once stated as follows:

ولأن فيه أمراً بالمعروف، ونصرة المظلوم، وأداء الحق إلى مستحقه، ورداً للظالم عن ظلمه، وإصلاحاً بين الناس، وتخليصاً لبعضهم من بعض.

“Because in judiciary, it encourages good, aids the downtrodden, restores the rights to its rightful ones, refutes the oppressor from his wrongdoing, reconciles people, and liberates them from one another.” (Ibnu Qudāmah, 1997, p. 5)

Ibnu Taimiyyah has also elucidated the purpose of judiciary in his *Majmū‘ al-Fatāwā* as followed:

المقصود من القضاء وصول الحقوق إلى أهلها وقطع المخاصمة. فوصول الحقوق هو المصلحة وقطع المخاصمة إزالة المفسدة. فالمقصود هو جلب تلك المصلحة وإزالة هذه المفسدة.

“The judiciary’s goal is to return rights to their rightful owners and put an end to disputes. Giving the right is in the interest, and putting an end to disputes is removing the harm. The objective is to generate interest while removing the harm.” (Ibnu Taimiyyah, 1995b, p. 355)

According to Ibnu Daqīq al-‘Id (d. 702AH/1302CE), one of the prominent *mujtahids* during his time, in his *Ihkām al-Ahkām*:

والمقصود الأكبر في القضاء: إيصال الحق إلى مستحقه.

“The primary purpose of the judiciary is to deliver the right to the party who deserves it.” (Ibnu Daqīq al-‘Id, 1987, p. 209)

Meanwhile, according to Shah Waliyullah al-Dehlawī, he described the underlying wisdom of judiciary in his *Hujjatullah al-Bālighah* as follows:

اعلم أن من الحاجات التي يكثر وقوعها، وتشتد مفسدتها المناقشات في الناس، فانها تكون باعثة على العداوة والبغضاء، وفساد ذات البين، وتهيج الشح على غمط الحق، وألا ينقاد للدليل، فوجب أن يبعث في كل ناحية من يفصل قضاياهم بالحق، ويقهرهم على العمل به، أشاؤوا أم أبوا؛ ولذلك كان النبي صلى الله عليه وسلم يعثي ببعث قضاة اعتناء شديدا، ثم لم يزل المسلمون على ذلك.

“Human disputes result in a range of negative consequences, including hatred, harm to good relationships, greed, rejection of the truth, and denial of evidence. Thus, each district requires a judge capable of reaching an accurate decision. Rasulullah (p.b.u.h.) ensured this by appointing judges in each state. This is the strategy used by subsequent Muslims.” (Shah Waliyullah al-Dehlawī, 2012a, p. 505)

Analysing the above-mentioned excerpt, it is actually having similar concern with what have been elucidated by al-Damīrī (d. 808AH/1405CE) in *al-Najmu al-Wahhāj*, Ibnu Hajar al-Haitamī (d. 974AH/1567CE) in *Tuhfah al-Muhtāj*, al-Khaṭīb al-Shirbīnī (d. 977AH/1570CE) in *Mughnī al-Muhtāj*, and Syamsuddin al-Ramlī (d. 1004AH/1596CE) in *Nihāyah al-Muhtāj* when they were explaining the wording of al-Nawawī (d. 676AH/1277CE) in *Minhāj aṭ-Ṭālibīn*, they said:

ولأن طباع البشر مجبولة على التظالم ومنع الحقوق وقل من ينصف من نفسه، ولا يقدر الإمام على فصل الخصومات بنفسه فدعت الحاجة إلى تولية القضاء.

“Human beings are by their own nature inclined to oppress and deny rights, and it is quite unusual for a person to be able to awaken them. At the same time, the Ruler is unable to settle the dispute on his own. As a result, he is in desperate need of someone who is willing to devote his time

to settle the disputes. It was for this reason that the judges were appointed.” (al-Damīrī, 2004, p. 137; al-Khaṭīb al-Shirbīnī, 2000, p. 258; Ibnu Hajar al-Haitamī, 2016, p. 412; Syamsuddin al-Ramlī, 2003, p. 236)

As for Ibnu ‘Ashūr, he provided the following remarks with regard to the objectives of Islamic law for the whole judiciary:

ومقصد الشريعة من نظام هيئة القضاء كلها على الجملة أن يشتمل على ما فيه إعانة على إظهار الحقوق وقمع الباطل الظاهر والخفي.

“To put it another way, the goals of Islamic law for the whole judiciary are that it should contain everything that contributes to the discovery of truth and the elimination of falsehood, whether it is visible or concealed.” (Ibnu ‘Ashūr, 2016, p. 520)

Meanwhile, Wahbah al-Zuḥaylī and Muhammad al-Zuḥaylī, both of them are among the prominent contemporary scholars, have noted the underlying purpose of judiciary in their works. Wahbah Zuhayli has merged his remark in *al-Fiqh al-Islāmiyy wa-Adillatuhu* with that of Abd al-Ghani al-Maydānī (d. 1298AH/1881CE) in his seminal book *al-Lubāb fī Sharḥ al-Kitāb*, which discusses the judiciary’s objectives:

فلأنه أمر بمعروف، أو نهي عن منكر، وهما واجبان كفائيان. قال بعضهم: «القضاء أمر من أمور الدين، ومصلحة من مصالح المسلمين، تجب العناية به؛ لأن بالناس إليه حاجة عظيمة»، وهو من أنواع القربات إلى الله عز وجل، ولذا تولاه الأنبياء عليهم السلام، قال ابن مسعود: «لأن أجلس قاضياً بين اثنين أحب إليّ من عبادة سبعين سنة».

“This is because the judiciary is an integral aspect in encouraging virtue and prohibiting evil. These two responsibilities lie under the umbrella of collective duty. According to some scholars, “The judiciary is a religious affair that is concerned with the well-being of Muslim citizens. As a result, it requires attention since human beings are in desperate need of it”. It was claimed by Ibn Mas‘ud that “Resolving disputes between two persons is more gratifying to me than worshipping for seventy years”.” (Wahbah al-Zuḥaylī, 2017b, p. 396)

As for Muhammad al-Zuḥaylī, he mentioned in his *Tārīkh al-Qaḍā' fī al-Islām* as follows:

ويهدف القضاء إلى إقامة العدل، وتحقيق القسط، وحفظ الحقوق والأموال والأنفس والأعراض، وحماية الحقوق العامة، وتطبيق أحكام الشرع وآدابه، وقيم حدود الله تعالى، ويصون القيم والأخلاق، ويمنع العدوان والظلم والبغي بمختلف أشكاله وصنوفه.

“The judiciary seeks to establish justice, achieve equity, protect rights, wealth, souls, and dignity, protect public rights, apply Islamic law and etiquette, stay within Allah’s predetermined boundaries, preserve values and morals, and prevent aggression, injustice, and oppression in all of its forms and manifestations.” (Muhammad al-Zuḥaylī, 2016a, pp. 13-14)

In *al-Tanzīm al-Qaḍā’ fī al-Fiqh al-Islām*, another of his prominent works, Muhammad al-Zuḥaylī wrote his following opinion:

إن الهدف الذي وجد من أجله القضاء في الإسلام، والمقصد الذي يسعى إليه، هو تحقيق العدل، وإقامة القسط، وحفظ الحقوق، واستتباب الأمن، والمحافظة على الأنفس والأموال، ومنع الظلم والطغيان، وإقامة الحدود والأحكام، والأخذ على يد الجناة ومعاقبتهم على ما جنت أيديهم، بهدف منعهم من العودة إلى مثل هذا العمل الممنوع المحرم، وزجر غيرهم من الإقدام على مثل ذلك، فالعاقل من اتعظ بغيره.

“The purpose for which justice was legislated in Islam, and the objective for which it seeks, is to achieve justice, establish equity, preserve rights, maintain security, safeguard lives and property, prevent oppression and tyranny, enforce Allah’s boundaries and Islamic rulings, and arrest and punish the perpetrators for their criminal actions, with the intention of preventing them from relapsing into such forbidden work and reprimanding others from doing the same.” (Muhammad al-Zuḥaylī, 2002, p. 25)

After analysing the aforementioned passages and some more references from important Islamic law textbooks and literature not included above, the researcher therefore has deduced and listed, in Figure 1 below, several objectives of Islamic law in judiciary, which are:

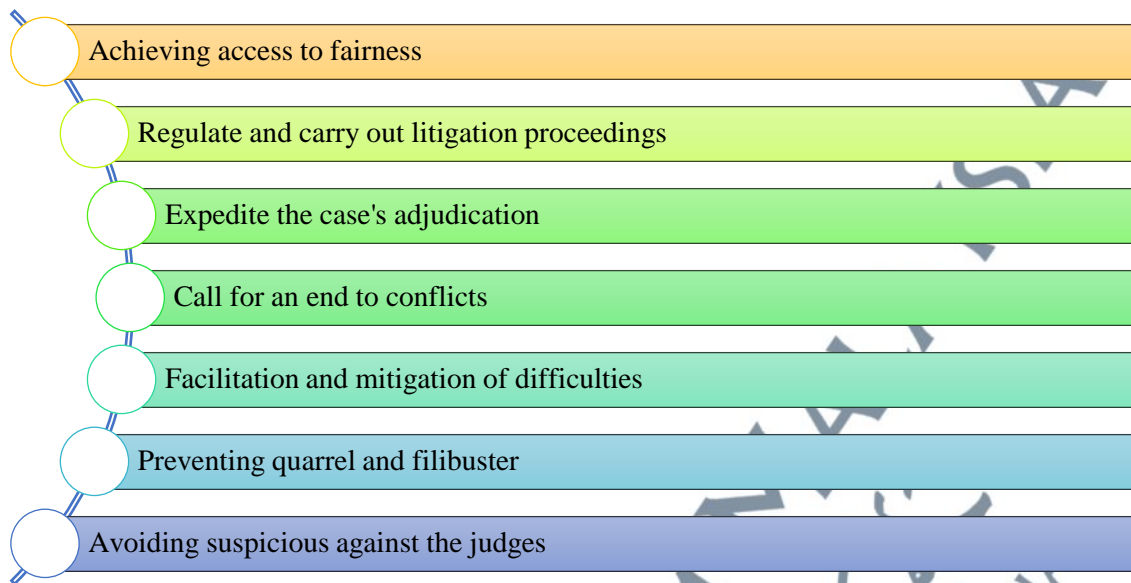


Figure 1: Objectives of Islamic law in judiciary

Additionally, as noted above, inductive reasoning from numbers of Malaysian Syariah cases, such as *Ahmad bin Shapiai lwn. Hani Binti Itam Ali Husin dan Dua Yang Lain* [2004] 18(2) JH 213, *Amanah Raya Bhd v. Muhamad Suhaimi bin Abdul Aziz & Ors* [2009] 2 ShLR 68, *Dato' Seri Anwar bin Ibrahim v. Shamsuddin bin Hussain & Ors* [2010] 4 ShLR 119, *Juliah Abdullah v. Omar Charles Abdullah* [2011] 1 CLJ (Sya) 307, *Kerajaan Negeri Terengganu lwn. YAM Tengku Ibrahim Sultan Ismail Nasaruddin Shah* [2008] 1 CLJ (Sya) 172, *Muzzalman Shah Bin Ismail Muzani lwn Nornisamsila Binti Osman* [2010] 31(2) JH 201, *Nony bt Ismail @ Abdul Wahab v. Zubir bin Embong* [2014] 1 ShLR 77, *Noraini Hanipah lwn. Nasruddin Shah Bhagjit Abdullah* [2007] 1 CLJ (Sya) 230, *Rita Rudaini binti Mohamad @ Mokhtar v. Mohamad Aidil Zafuan bin Abd Radzak* [2018] 47(1) JH 117, *Sharifah Laila Syed Shamdin lwn. Abdul Latif Arshad* [2004] 1 CLJ (Sya) 301, *Sharifah Mariam bt Syed Ibrahim v. Abdul Malik Robinson* [2009] 3 ShLR 56, *Tengku Zainul Akmal bin Tengku Besar Mahmud & Anor v. Majlis Agama Islam dan Adat Melayu Terengganu & Anor* [2012] 3 ShLR 39, *A v. KZ* [2018] 4 ShLR 10, exposed some of the objectives that need to be reached.

Furthermore, in Arahan Amalan No. 1 of 2001 and No. 4 of 2002, JKSM has reiterated similar points as listed above (Department of Syariah Judiciary Malaysia, 2001, 2002).

1.1.1.1. The judges must be aware with the objectives of Islamic law in judiciary

The majority of earlier jurists from the Maliki, Syafi'i, and Hanbali schools, as well as few from the Hanafi school, insisted on judges being competent of *ijtihad* (Ibnu 'Ashūr, 2016; U. Ismail, 2013; Muhammad al-Zuhaylī, 2002). In fact, al-Khaṭīb al-Shirbīnī maintains that a judge's competence to use *ijtihad* in certain circumstances satisfies the adequate criteria of *ijtihad*. As he explained in *Mughnī al-Muḥtāj ilā Ma'rifah Ma'ānī Alfāz al-Minhāj*:

يجوز أن يتبع الاجتهاد بأن يكون العالم مجتهدا في باب دون باب، فيكفيه علم ما يتعلق بالباب الذي يجتهد فيه

"A person who is knowledgeable only about one issue is permitted to make *ijtihad* on that issue, even though he is ignorant of other issues." (al-Khaṭīb al-Shirbīnī, 2000, p. 265)

This demonstrates judges are regarded as *mujtahids* (Jalāluddīn al-Suyūṭī, 2020). As a *mujtahid*, the judge must comprehend the objectives of Islamic law in order to better understand the meaning of the law and issue appropriate decisions (al-Bakri, 2014; al-Qaraḍāwī, 2008; al-Raysūnī, 2009, 2010, 2014, 2016a; Khunain, 2010; Nuruddin al-Khādimī, 2000, 2002, 2005; Wahbah al-Zuhaylī, 2013a).

As a tool for the maturity and evaluation of *ijtihad*, the objectives of Islamic law are very important in formulating and deciding rulings. Whoever understands and becomes an expert in it while taking in the partial evidence has become one of the people of solid knowledge. It's easy for him to get the rulings and figure out what they are with complete clarity.

At this juncture, Shaykh al-Islam Taqiyuddīn al-Subkī (d. 756AH/1355CE) provided the following remarks:

واعلم أن كمال رتبة الاجتهاد تتوقف على ثلاثة أشياء... الثالث: أن يكون له من الممارسة والتتبع لمقاصد الشريعة ما يكسبه قوة يفهم منها مراد الشرع من ذلك

"And bear in mind that the complete stature of *ijtihad* is based on three factors: ... Third: That he should be practising and adhering to the objectives of Islamic law, as this would provide him the strength, he needs to grasp what is the intention of the legislature by legislating such provision." (Taqiyuddīn al-Subkī & Tājuddīn al-Subkī, 2004, pp. 17-18)

A similar sentiment is expressed by al-Shātibī, whereas he reminded us the necessity of having learned about, practised, and adhered to the aims of Islamic law by making the following feedback:

فإذا بلغ الإنسان مبلغا، فهم عن الشارع فيه قصده في كل مسألة من مسائل الشريعة،
وفي كل باب من أبوابها فقد حصل له وصف هو السبب في تنزله منزلة الخليفة للنبي
صلى الله عليه وسلم في التعليم والفتيا والحكم بما أراه الله.

“A person knows the Lawgiver’s intent in every topic and chapter of Islamic law when he reaches a particular degree. When he reached this point, it became clear to him that he had the qualifications to be the Prophet’s successor in terms of teaching, issuing Syariah rulings, and adjudicating between people, as guided by Allah.” (al-Shātibī, 2017a, p. 46)

Without recognising the aims of Islamic law, standing on them, or taking them into account, the one who makes judgements on people appears to stumble and make numerous errors. Additionally, according to Khunain (2010), such a person would take parts of Islamic law while destroying the whole, until all that matters is what appears to him, and he uses it in his legal opinion without neither knowing its significance nor understanding its meaning. This is, as al-Shātibī (2017a) said, due to the lack of comprehension of Islamic law’s objectives and a desire to accomplish ijtiḥād hastily.

Furthermore, Abū al-Ma’ālī al-Juwaynī has emphasised the significance of Islamic law’s objectives in comprehending Islamic legal texts. He said that:

ومن لم يتفطن لوقوع المقاصد في الأوامر والنواهي فليس على بصيرة في وضع الشريعة
“Whoever is unaware of the objectives inherent in Syariah commandments and prohibitions lacks a clear and accurate prospect of Islamic law ...”
(Abū al-Ma’ālī al-Juwaynī, 1997, p. 101)

Besides that, Shah Waliyullah al-Dehlawī (d. 1176AH/1762CE) reinforced the same point when he remarked as follows:

وأولى العلوم الشرعية عن آخرها – فيما أرى – وأعلها منزلة، وأعظمها مقدارا، هو
علم أسرار الدين الباحث عن حكم الأحكام ولياقتها، وأسرار خواص الأعمال ونكاتها
... إذ: به يصير الإنسان على بصيرة فيما جاء به الشرع

“The most important religious knowledge in its entirety, in my opinion, with its highest position and supreme rank, is knowledge of the underlying

meaning of Islamic law, which discusses the wisdom and philosophy of all Islamic laws and their facts, as well as the underlying benefits of the practise and the effects derived therefrom ... This is because with this knowledge, a person will be clear about the Islamic laws imposed by the Lawgiver ...” (Shah Waliyullah al-Dehlawi, 2012b, pp. 36-37)

In light of the above-mentioned extracts, it can be inferred that understanding the objectives of Islamic law is necessary in order to accurately appreciate the Islamic legal texts and draw the right decisions from them.

1.1.1.2. Evidence as means to achieve the Syariah objectives in judicial proceedings

Through the use of the appropriate means (*wasīlah*), every objective (*maqṣid*) set under Islamic law may be achieved (al-Qarāfi, 1994b, 2001a; al-Raysūnī, 2014, 2016b). This indicates that each objective may be achieved via the use of specific mechanisms (al-‘Izz Ibn Abdissalam, 2020a; Ibnu ‘Ashūr, 2016). The same may be said about the goals of the judiciary.

In this regard, Zaydān (2011) has given five strategies to achieve those aims, three of which are connected to evidential aspects.¹

Evidence is very essential in the Islamic legal system (Abu Ya‘lā al-Farrā', 2000; al-Māwardī, 2006; al-Qarāfi, 1994a; Bahnasi, 1989; Mayanja, 2017;

¹ In his *Nizām al-Qadā'ī fī al-Sharī'ah al-Islāmiyyah*, the late Dr. Abdul Karim Zaydān mentioned as follows:

وحكمة القضاء التي ذكرناها يمكن تحقيقها بتواتر ما يأتي: أولاً: القاضي الصالح لمنصب القضاء القادر على القيام بمسؤولياته، وهو الذي تتوفر فيه شروط القاضي التي سنذكرها فيما بعد. ثانياً: الحكم بالعدل: وهذا يستلزم حرص القاضي على الحكم بالعدل وقصده له وإرادته إياه وعزمه عليه وإصداره له بالفعل. وأن يكون نظر في الدعوى من حين رفعها إليه إلى حين صدور الحكم فيها وفقاً لقواعد الترافع ووسائل الإثبات الشرعية التي سنذكرها فيما بعد. ثالثاً: استقلال القاضي: بمعنى أن يكون القاضي بعيداً عن تدخل أصحاب النفوذ والسلطان في شؤون عمله حتى من إصدار حكمه العادل وفقاً لاجتهاد وبناء على البيانات المقدمة إليه.

“The underlying wisdom inherent in judiciary, as noted before, may be achieved by observing the following means: First, judges who are competent for the judicial office, that is, those who satisfy the qualifying standards as judges, as we shall discuss later, are capable of carrying out their responsibilities properly. Second, judge with justice. This ensures that the judge has the persistence, dedication, and determination to carry out the trial fairly and effectively, and that the judge should hear the allegations from the time it was brought before him until a decision is reached in accordance with the prosecuting regulations and the admissible evidence, which we will discuss later. Third, the judge’s freedom, or the position of the judge who is free from the intervention of the authorities and the ruler in his duties, allowing him to make a fair judgement based on his ijtihad and the evidence that has been submitted to him.” (Zaydān, 2011, p. 19)

Muhammad, 2001; Nasohah, 2006; Nurullah, 2019; Othman, 1996; Saifuddin, Shariff, Said, & Yahya, 2021; Tajuddin & Rahman, 2021). The Islamic legal system, according to al-Qarāfi (1994a), Ibnu Farḥūn (2016a), and al-Ṭarābulusi (2018a), is divided into three stages: evidence, judgement, and execution. Based on this divide, the evidence is in the first stage, demonstrating its significance in the Islamic legal system. If the first stage isn't done well and excellently, then the next stages will be thrown off and the objectives of Islamic law in judiciary won't be met. This evidence-gathering stage involves a number of steps, including the filing of a complaint, conducting an investigation, gathering evidence, making an allegation or bringing charges, and presenting a case based on the evidence gathered.

In Islamic legal discourse, numerous evidentiary procedures have been addressed (Bik, 2003; Ḥaydar, 2003; Ibnu 'Ashūr, 2016; Ibnu al-Qayyim al-Jawziyyah, 2019b; Muhammad al-Zuhaylī, 2016c; Shabīr, 2020). According to the study conducted by Shabīr (2020), Muslim jurists agreed that numerous forms of evidence may be presented in court, but they disagreed on how to quantify them. Shabīr (2020) then lists seven schools of thought that vary in how many pieces of evidence are allowed in court, ranging from three to infinity. Ibnu 'Abidin, on the other hand, has established a guideline for identifying the most acceptable type of evidence for a trial:

يختلف بحسب اختلاف المحكوم به والطريق فيما يرجع إلى حقوق العباد المحضة عبارة
عن الدعوى والحجة

“Based on the subject being tried and the individual rights included in a claim or argument” (Ibnu 'Abidin, 2003, pp. 22-23).

Using the aforementioned guidelines, the manner of evidence utilised depends on the kind of case and the rights concerned. Thus, in Syariah criminal cases today, the technique of evidence via forensic science is seen as very suited for establishing the truth about the criminal conduct committed and resolving any disputed rights. The Islamic legal sources that established Islamic evidential law did not do that by coincidence or in vain; rather, they serve to highlight the significance of evidence in Islamic law.

The primary objective of passing law of evidence is to make sure that Islamic law objectives are achievable in the court system. This is clear from the fact that

Rasulullah (p.b.u.h.) has commanded any Muslim who finds themselves in a legal dispute, whether they are claiming rights or facing criminal charges, to produce evidence and substantiate their claim, as well as the indictment against them. In this regard, Ibnu ‘Ashūr (2016) provided the following statement in his *Maqāsid al-Syarī‘ah al-Islāmiyyah*:

ومقصد الشريعة من نظام هيئة القضاء كلها على الجملة أن يشتمل على ما فيه إعانة على إظهار الحقوق وقمع الباطل الظاهر والخفي. وذلك مأخوذ من حديث الموطأ: "أن رسول الله - صلى الله عليه وسلم - قال: «إِنَّمَا أَنَا بَشَرٌ. وَإِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ، وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ. فَأَقْضِي لَهُ عَلَى نَحْوِ مَا أَسْمَعُ، فَمَنْ قَضَيْتُ لَهُ بِحَقِّ أَخِيهِ، فَلَا يَأْخُذْهُ، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ». ففي هذا الحديث دلالة على أن طرق إظهار الحق مختلفة، وأن تلقى القاضي لأساليب المرافعة أحسنه ما أعانه على تبين الحق، وأن القاضي إنما يقضي بحسب ما يبدو له من الأدلة والحجج، وأن على الخصوم إبداء ما يوضح حقوقهم، وأن التَّحْيِيلَ على الباطل ضلال وملق في النار

"Generally speaking, the Islamic law objectives for the whole judiciary are that it should include everything that helps to reveal the truth (ḥuqūq) and eliminate untruth (bāṭil), whether it is manifest or hidden. This has been understood from the Prophetic tradition narrated in Muwaṭṭa' in which the Prophet said: "I am but a man to whom you bring your disputes. Perhaps one of you is more eloquent in his proof than the other, so I give judgment according to what I have heard from him. Whatever I decide for him which is part of the right of his brother, he must not take any of it, for I am granting him a portion of the Fire." (Hadith. Malik Bāb at-Targhībi fī al-Qadā'i bil-Haqqi: #1470). This tradition clearly shows that there are different ways of arriving at the truth. It also shows that the best procedure to be followed by the judge is that enabling him to discover the truth, which the judge can decide only from the body of evidence available to him. Lastly, this Tradition clearly shows that litigants are required to produce proof of their rights and that trickery is indeed a transgression that will lead only to perdition and Hellfire." (Ibnu ‘Ashūr, 2016, p. 520)

Apart from the hadith cited by Ibnu ‘Ashūr (2016) above, there are other hadiths that demonstrate the use of evidence to achieve objectives in the judiciary, *inter alia*, as follows:

عن ابن عباس رضي الله عنهما أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ؛ لَادَّعَى رِجَالٌ أَمْوَالَ قَوْمٍ، وَدِمَاءَهُمْ، لَكِنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي، وَالْيَمِينَ عَلَى مَنْ أَنْكَرَ»

On the authority of Ibn Abbas (may Allah be pleased with him), that the Messenger of Allah (peace and blessings of Allah be upon him) said: "Were people to be given everything that they claimed, men would [unjustly] claim the wealth and lives of [other] people. But, the onus of proof is upon the claimant, and the taking of an oath is upon him who denies."

(Hadith. Al-Baihaqī. Kitab Maʿrifat al-Sunan wa al-Athār: #20248 & 20253)

The foregoing hadith clearly requires parties to substantiate their claims (al-Nawawī, 2010; al-Ṭarābulusi, 2018a; Ḥaydar, 2003; Ibnu al-Mundhir, 1999; Ibnu al-Qayyim al-Jawziyyah, 2019b; Ibnu Farḥūn, 2016a; Ibnu Rushd al-Ḥafīd, 1994; Ibnu Taimiyyah, 1995b). Furthermore, this legal obligation has also attained the consensus from Muslim scholars (al-Baghawī, 1983; Ibnu al-Mundhir, 1999; Ibnu al-Qāṣ, 1989; Ibnu al-Qayyim al-Jawziyyah, 2019b; Ibnu Hubairah, 2002; Ibnu Rushd al-Ḥafīd, 1994). Additionally, this hadith demonstrates that any unsubstantiated claims will be immediately rejected (Abu al-Walīd al-Bājī, 1914; al-Nawawī, 2010; al-Zurqānī, 2015; Ibnu Abd al-Bar, 2000; Ibnu al-Qayyim al-Jawziyyah, 2019d). This hadith is also an interpretation of the “*wa-faṣṣal-khiṭāb*” revealed in Surah al-Sad verse 20 (al-Baghawī, 1983; al-Mullā Ali al-Qārī, 2019; Ibnu al-Qayyim al-Jawziyyah, 2019c, 2019h; Ibnu Hajar al-Haitami, 2008; Ibnu Taimiyyah, 1995a; Murtaḍā al-Zabīdī, 2005).

As a part of Malaysia’s Syariah evidence law, this hadith has been adapted and incorporated to the legislation. This is done through Section 87 of the Syariah Court Evidence (Federal Territories) Act 1997, which says:

“(1) In a civil case, evidence shall be given by the plaintiff and the defendant, and if the defendant denies the claim made against him he shall be required to take an oath according to Hukum Syarak.

(2) (a) Where the defendant takes the oath under subsection (1), the claim made by the plaintiff shall be dismissed.

(b) If the defendant refuses to take such oath, the Court may ask the plaintiff to take the oath upon which his claim shall be accepted.

(3) *In a criminal case, evidence shall be given for the prosecution and the accused unless the accused pleads guilty.*”

Aside from that, the legal principles included in this hadith, namely, the burden of proof, have also been incorporated in Sections 72 to 76 of the same Act.

According to the above-mentioned legislation, Syariah judges in the Syariah Courts have decided that parties claiming for rights or attempting to convict charges must provide evidence to substantiate their claims or allegations. This concern has been decided in numerous reported Malaysian Syariah cases; *inter alia*, *Azlina binti Mukhtar lwn. Razali bin A. Rahman* [2017] 44(2) JH 269, *Fazeya Hassn Ahmed Moustafa lwn. Suzeiri A Samad* [2008] 1 CLJ (Sya) 371, *Kerajaan Negeri Terengganu lwn. YAM Tengku Ibrahim Sultan Ismail Nasaruddin Shah* [2008] 1 CLJ (Sya) 172, *Mai Jantan lwn. Marina Mohd Arif dan Satu Lagi* [2007] 1 CLJ (Sya) 182, *Mariam bt Yaacob v. Wahi bin Samah* [2010] 1 ShLR 96, *Mohammad Kamal bin Hossain lwn. Siti Farhah binti Mohd Amir Ab Hadi* [2016] 43(2) JH 290, *Suriah bte Hassan v. Hamzah bin Mohd Nor* [2007] 3 ShLR 81 and *Zalela binti Abd. Aziz lwn. Kaharudin bin Md Saleh* [2016] 43(1) JH 63. In other words, a person’s claim must be supported by evidence before it is accepted. If he fails to meet this standard, his accusation or claim will be dismissed immediately.

Then, while elaborating on the meaning of “*bayyinah*”, Ibnu al-Qayyim al-Jawziyyah stated:

فالبينة اسم لكل ما يبين الحق ويظهره

“*In short, al-Bayyinah is a term for everything which can explain the right and clarifies it*”² (*Ibnu al-Qayyim al-Jawziyyah, 2019b, p. 25; 2019c, p. 1038; 2019h, pp. 412-413*)

Later scholars such as Ibnu Rajab al-Hanbali (2001), Ibnu Farḥūn (2016b), and al-Ṭarābulusi (2018b) also agreed on this point. Apart from that, it was also codified in *Majallah al-Aḥkām al-‘Adliyah*, Section 1699:

إِنَّمَا جُعِلَتِ الْبَيِّنَةُ مَشْرُوعَةً لِإِظْهَارِ الْحَقِّ

“*Evidence is made lawful for the purpose of proving a right.*”³

² Additionally, this definition has been adapted, with a slight adjustment, into the Section 3 of of the Syariah Court Evidence (Federal Territories) Act 1997, which stated:

“*bayyinah*” means evidence which proves a right or interest and includes *qarinah*;

The evidence may also uncover and clarify the rights and facts concealed beneath the conflict (A. M. U. al-Umar, 2010). The judge will make his decision based on the parties' evidence (Shah Waliyullah al-Dehlawī, 2012a). Similar point has been discussed in several Syariah cases like *Ahmad @ Ahmad Zukni bin Johari lwn. Rosnah binti Esahak* [2009] 28(2) JH 163, *Ahmad bin Shapiai lwn. Hani Binti Itam Ali Husin dan Dua Yang Lain* [2004] 18(2) JH 213, *Mariam bt Yaacob v. Wahi bin Samah* [2010] 1 ShLR 96, and *Suriah bte Hassan v. Hamzah bin Mohd Nor* [2007] 3 ShLR 81. As a consequence, parties may settle conflicts and rights can be restored to their rightful owners. Thus, with the relevant evidence, all of Islamic law's purposes may be effectively achieved. It is apparent that the Qur'an and Sunnah include specific realistic aims in every evidence provision. They are all founded on the Islamic ideal of protecting the interests of humanity through obtaining benefits and avoiding harm.

1.1.2. Insights into the JKSM's Arahan Amalan No. 4 of 2020

As recommended by M. N. A. R. Ibrahim (2020), the Arahan Amalan provided by the Department of Syariah Judiciary Malaysia (JKSM) may be classified into seven categories, as illustrated in Figure 2 below:

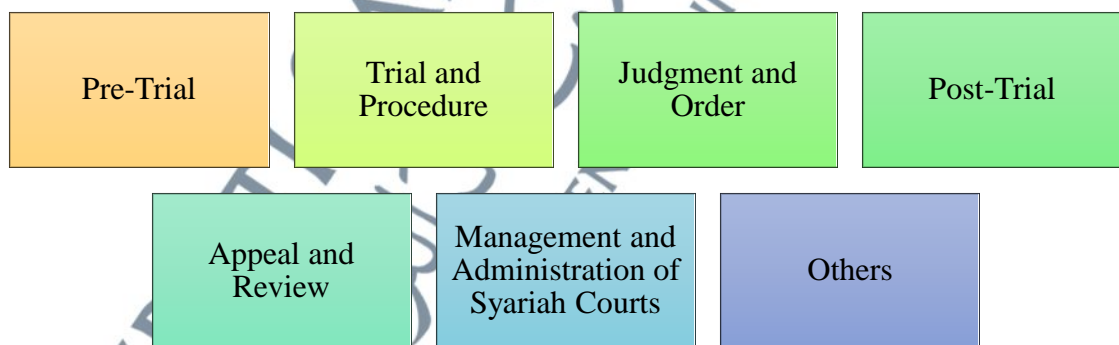


Figure 2: Categories of JKSM's Arahan Amalan

Then, for each of these categories, it is further subdivided into smaller subcategories of specialisation and organised by relevant and pertinent subjects.

³ All English translations from the *Majallah al-Ahkām al-'Adliyah* in this thesis are based on C. R. Tyser's translation of *The Mejelle*, published by The Other Press, Kuala Lumpur.

The JKSM's Arahan Amalan was developed with several primary goals in mind, including: standardising administrative management of Syariah Court cases; expediting case resolution; assisting judges in making referrals; and providing explanations and clarifications to vague and perplexing legal provisions (M. N. A. R. Ibrahim, 2020; Rahman, 2005; Sulaiman & Buang, 2021; Wahab, 2016; Wahab & Buang, 2020). Some of these points were also being held by the Syarie judges in the cases of *Jaafar bin Haji Ibrahim dan lain-lain lwn. Yazelin binti Mohd. Ghazi* [2009] 29(2) JH 195 and *Tauran bin Abdul Hamid v. Junaida bt Isa* [2012] 1 ShLR 76.

These objectives are consistent with Islamic principles, which emphasise the importance of convenience and the avoidance of inconvenience. Allah has revealed the following:

﴿يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ﴾

“Allah intends every facility to you; He does not want to put to difficulties...”⁴

(Al-Qur'an, Al-Baqarah 2: 185)

This study falls under the second category of Arahan Amalan, namely Trial and Procedure. According to M. N. A. R. Ibrahim (2020), this category accounts for 30% of JKSM's overall Arahan Amalan. This category, he maintains, is the most important since it contains explicit instructions for Syarie judges, Syarie lawyers, and court personnel who deal directly in the courts (M. N. A. R. Ibrahim, 2020). At this point, the researcher believed that the purpose of issuing Arahan Amalan in this category is to offer guidance to individuals who are directly engaged and working with the court.

The JKSM has approved and verified an Arahan Amalan titled “*Arahan Amalan No. 4 Tahun 2020 – Pengemukaan Bukti Forensik Dalam Prosiding di Mahkamah Syariah*” on 21 December 2020 (Department of Syariah Judiciary Malaysia, 2020). By enforcing this Arahan Amalan, forensic evidence is explicitly recognised as an acceptable form of evidence in Syariah Courts.

However, this Arahan Amalan just makes a statement without describing the practises and procedures that must be followed when employing forensic evidence in Syariah Court. The Arahan Amalan leaved out a lot of vital information. Even though

⁴ All Quranic translations in this thesis are based on the translated version of Yusuf Ali (1990) in his *The Holy Qur-ān - English Translation of the Meanings and Commentary*. Translations from other sources will be cited accordingly.

numerous researchers had indicated this long before this Arahan Amalan was created (A. Ahmad, Markom, Muhamad, & Shariff, 2018; M. H. Ahmad, Baharuddin, Razak, Saharudin, & Hashim, 2019a, 2019b; M. H. Ahmad, Razak, Saharudin, & Baharuddin, 2019a; M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019a, 2019b, 2019c; M. H. Ahmad, Zakaria, et al., 2019; Ahmad Syukran, 2018; Baharuddin, 2018; Baharuddin, Anan, Harun, Ruskam, & Yacob, 2015; Baharuddin, Bidin, Dagang, Ruskam, & Yacob, 2015; Baharuddin, Harun, Ruskam, & Yacob, 2015; Baharuddin, Ruskam, & Yacob, 2015a, 2015b; M. A. M. Ismail & Nasri, 2018; Muhamad et al., 2015; Mutalib, Ismail, et al., 2018a, 2018b; Nasri, Ismail, Samuri, & Yaziz, 2017; Saharudin, Ahmad, Razak, Ismail, & Baharuddin, 2019; Shariff, Azhar, et al., 2019; Shariff, Rahman, & Rajamanickam, 2015; Shariff, Rajamanickam, et al., 2019; Suleiman, 2014).

These include who are the Syariah Court-recognized experts, whether the scope of expertise is limited to Section 33, what type of evidence is accepted and rejected, the level of material strength forensic evidence, equivalence of forensic evidence with *Qarinah*, procedures for handling scientific evidence, procedures for giving evidence of forensic experts, and what qualifications required for the forensic expert to give expert opinion.

The lack of such factors has made the Arahan Amalan seem to have failed to achieve the objectives specified in either the legal or Islamic perspectives. It also seems to fall outside the Arahan Amalan's "Trial and Procedure" category. Other Arahan Amalan in the same category, such as Arahan Amalan No. 1 of 2006: *Amalan Hakam Mahkamah Syariah* and Arahan Amalan No. 2 of 2006: *Amalan Sumpah Mahkamah Syariah*, feature a statement and a full explanation of the practises and procedures to be followed.

According to Table 1 below, there are certain similarities and differences between the Arahan Amalan No. 4 of 2020 and the Arahan Amalan Nos. 1 and 2 of 2006. The evident resemblance is that they all have a firm foundation in the laws of Malaysian Syariah law and are among the evidence accepted in Islam.

Furthermore, the Arahan Amalan No. 2 of 2006 and the Arahan Amalan No. 4 of 2020 are both classified as "Trials and Procedures", whereas the Arahan Amalan No. 1 of 2006 is classified as "Other". Meanwhile, the Arahan Amalan No. 1 of 2006 and the Arahan Amalan No. 4 of 2020 are linked to expert opinion, while the Arahan

Amalan No. 2 of 2006 is related to oaths. The emphasis here is on the exposition offered in these Arahan Amalan. The Syariah Court has a clear exposition of its practise in Arahan Amalan Nos. 1 and 2 of 2006.

Table 1: Comparison between Arahan Amalan No. 4 of 2020 with Arahan Amalan No. 1 & 2 of 2006

	Arahan Amalan No. 1 of 2006	Arahan Amalan No. 2 of 2006	Arahan Amalan No. 4 of 2020
Subject Matter	The practice of <i>Hakam</i>	The practice of taking oath	The practice of forensic science
Relevant Legal Provisions	Section 48 of Islamic Family Law (Federal Territory) Act 1984	Sections 88 and 129 of Syariah Court Evidence (Federal Territories) Act 1997	Section 33 of Syariah Court Evidence (Federal Territories) Act 1997 ⁵
Category of Arahan Amalan	Others	Trial and Procedure	
Category of Evidence	Expert opinion (<i>Al-khibrah</i>)	Oath (<i>Al-yamīn</i>)	Expert opinion (<i>Al-khibrah</i>)
Expositions	Provided		Not provided

Unfortunately, there is no exposition contained in the Arahan Amalan No. 4 of 2020. In fact, the exposition is critical for the forensic scientific practise in the Syariah Court. This demonstrates that it has a serious flaw, and it has to be amended or restructured so that it may effectively serve as a guide for Shariah officers and meet the previously discussed objective of constructing an Arahan Amalan.

1.1.3. Enforcement of the Syariah Court's evidence law on a broad scale

Since 1996, the Government of Malaysia in collaboration with the State Government has been engaged to developed specific statutes to regulate evidential process for the Syariah Court which is based on Islamic law and principles. This is implemented so that the law of evidence used by the Syariah Court will be more in line with Islamic requirements and will be easier to understand by Islamic law officers and Syariah Court judges. In addition, the enactment of this law also directly stops previous practices that often use the Evidence Act 1950 as reference material

⁵ This is one of the legal provisions related to the forensic evidence. In paragraph 5.3.2.1 of this thesis, the researcher has presented a detailed list of pertinent legal provisions.

regarding evidence in the Syariah Court. This is clearly stated in Section 131 Syariah Court Evidence (Federal Territories) Act 1997 as follows:

Section 131. Discontinuance of application of Evidence Act 1950.

With the coming into operation of this Act, the Evidence Act 1950 [Act 56] shall not be applicable to the Court.

In addition, the amendment to Article 121 (1) of Federal Constitution which was made in 1988 by inserting clause (1A) through the Constitution (Amendment) Act 1988 [A704] has created a requirement for a separate, neat, and concise Syariah Court Evidence law that makes Islamic law as the conclusive reference (Osman, 1996). This need is further strengthened by several amendments to the Syariah Courts (Criminal Jurisdiction) Act 1965 through Acts A612, A730, and A996. These amendments have also given more power to the Syariah Court to impose heavier sentences up to three years imprisonment. Therefore, to ensure that justice can be upheld, it must require a separate, neat, and concise Syariah Court evidence law.

In essence, as explicated by Osman (1996), this enactment is implemented to overcome or reduce some of the problems that have occurred in the Syariah legal system, including the difficulty of understanding the requirements of the Evidence Act 1950 as well as practicing it, the conflict of two types of evidence law namely Malaysian evidence law and Islamic evidence law in the Syariah Court, and the appointed Syariah officers are not given professional training in the field of Islamic judiciary.

In this era of modernization, the era has become more advanced and loaded with modernity in terms of science and technology. Not to be outdone, the crimes committed are also becoming more modern resulting in inadequate existing evidence methods to be used in criminal convictions (M. H. Ahmad, Baharuddin, et al., 2019a). Crime can occur without having to be committed in front of witnesses. Reliance solely on evidence through witnesses or confessions can no longer guarantee justice in this day. It requires other evidences that are more appropriate and in line with the passage of time to substantiate the convictions. In fact, Islamic law of evidence is not limited to witnesses and confessions. There are several other means of proof in Islam that can be used in this advanced age such as *qarīnah*, *kitābah*, *ra'yu al-khabīr*, and *mu'āyanah*. These methods have long been provided for in the Syariah Court's law of evidence. However, its application in Syariah Courts is seen as less efficient. This is

due to the limited legal provisions therein as well as cases in Syariah Courts are not so complex as compared to the civil courts (Nasri et al., 2017).

Furthermore, since 26 May 2016, Datuk Seri Abdul Hadi Awang had proposed to amend Act 355 in the Dewan Rakyat. The proposal is to increase the existing limited Syariah Court criminal jurisdiction to a fine of RM100,000, imprisonment for 30 years, and whipping 100 times (Adil, 2020; BERNAMA, 2019). Unfortunately, this matter is still at the debate stage and often faces obstacles from various political parties. If this amendment is successful, it will be the 4th amendment to Act 355. This will further strengthen the need to enforce the existing evidence law Syariah Court evidence law effectively and comprehensively by taking into account various aspects especially the use of scientific evidence in convicting a particular crime.

Evidence is very important in the trial process. Without evidence, punishment cannot be carried out fairly and equitably. It is the evidence that helps the judges to find the truth and impose the sentence fairly and accurately. The commission of a criminal offense or a severe penalty requires strong and clear proof (Saifuddin, Shariff, Said, Rajamanickam, & Zainudi, 2020). This is because the accused is still bound under the principle of presumption of innocence as long as the solid and reasonable evidence fails to prove (W. Yusof & Rahim, 2016).

1.1.4. Forensic science's applicability in Syariah Courts

In general, Saifuddin, Markom, and Muhamad (2019) has listed eight forms of evidence that have been provided in the Syariah Court Evidence Act/Enactment and can be practiced in Syariah Courts, namely, confession (*al-iqrār*), witness (*al-syahādah*), circumstantial evidence (*al-qarīnah*), documentary evidence (*al-kitābah*), expert opinion (*ra'yu al-khabīr*), oath (*al-yamīn*), refusal to take oath (*nukl 'an al-yamīn*) and returned oath (*al-yamīn al-mardūdah*). However, the forms of evidence in the Syariah Court are not limited to these eight matters. In this circumstance, Section 130 of the same Act has clear provisions as follows:

(1) Any provision or interpretation of the provision of this Act which is inconsistent with Hukum Syarak shall, to the extent of the inconsistency, be void.

(2) In the event of a lacuna or where any matter is not expressly provided for in this Act, the Court shall apply Hukum Syarak.

If there is any matter which is not provided for or is not clearly stated in this Act, the Court shall refer to Hukum Syarak.

This Section clearly allows legal practitioners to refer to the other Islamic forms of evidence that appropriate to the case. This can be done if there is a lacuna or where any matter is not expressly provided for in this Act.

The most typical means of proof applied in Syariah Courts are witness (*syahādah*) and confession (*iqrār*). These are due to the arguments contained in the Quranic verses and Prophetic traditions that mostly refer to testimony and confession. Later, this practice has created a mainstream in the Malaysian Syariah Courts where syariah legal practitioners are more prefer to have evidence from witness and confession (Wan Abdul Fattah Wan Ismail, Baharuddin, Mutalib, & Alias, 2021b; Korbatiéh, 2020; Muhamad et al., 2015; Mutalib, Ismail, Mohamed, & Wafa, 2020, pp. 389-390; S. M. Yusof et al., 2019). This matter had occurred in several cases, and notably in the case of *Moriazi Mohamad lwn. Ajmawati Attan* [2005] 1 CLJ (Sya) 415.

Nevertheless, this matter does not negate the application of other means of proving such as the application of forensic science methods which have begun to get attention in the Syariah Court. There is an improvement with regards to the application of circumstantial evidence and expert opinion in the Malaysian Syariah Courts (M. H. Ahmad, Razak, Saharudin, Shah, Hashim, et al., 2019c; M. H. Ahmad, Razak, Saharudin, Shah, Hashim, Kamaruzaman, et al., 2019; M. H. Ahmad, Zakaria, et al., 2019). The said improvement is with regard to the admissibility of forensic science as part of the evidence in Malaysian Syariah Courts. Besides that, the researcher has found 24 case reports that deals with forensic evidence and expert opinion from three major Malaysian law journals: Jurnal Hukum (JH) (published by the Department of Syariah Judiciary Malaysia), Shariah Law Reports (ShLR) (published by Malayan Law Journal Sdn Bhd), and Legal Network Series (LNS) (published by CLJ Malaysia Sdn Bhd). There were cases that admitted them and there are also cases that rejected them. Here is a list of 24 cases that deal with expert opinion and/or forensic evidence:

1. *AHMG v. AGMG & Ors* [2019] 3 ShLR 1, Case No. 10000-044-0063-2016, (Syariah Court of Appeal, Shah Alam).
2. *Ainun bt Abd Majid v. Mohamad Adam bin Bakar* [2008] 4 ShLR 141, Case No. 10005-014-229-2004, (Syariah Subordinate Court, Kajang).

3. *Hisham Halim v. Maya Ahmad Fuaad* [2018] 3 LNS 15, Case No. 14006-058-0043-2017, (Syariah Subordinate Court, Federal Territory of Kuala Lumpur).
4. *Indastri bin Saion v. Sharifalaili bt Hussin @ Mukhtar* [2018] 2 ShLR 70, Case No. 10003-058-1484-2013, (Syariah Subordinate Court, Klang).
5. *Jimmy Shanley bin Norjahan Saleh lwn. Nursuhaila Eliani binti Suhaimy* [2018] 47(1) JH 77, Case No. 10300-036-0236-2013, (Syariah High Court, Shah Alam).
6. *Kerajaan Negeri Terengganu lwn. YAM Tengku Ibrahim bin Sultan Ismail Nasiruddin Shah* [2004] 18(1) JH 65, Case No. 040(2)-6/2003, (Syariah Court of Appeal, Terengganu).
7. *Khalid bin Abdul Samad v. Ketua Pendakwa Syarie Selangor* [2018] 2 ShLR 47, Case No. 10500-137-0007-2017, (Syariah High Court, Shah Alam).
8. *Marlia Akmar bt Ramli v. Ramli bin Abdul Rashid* [2008] 3 ShLR 128, Case No. 10005-052-0747-2005, (Syariah Subordinate Court, Hulu Langat).
9. *Mohd Zulhaini Uzir v. Fadzlina Mohd Fadzil* [2012] 1 CLJ (Sya) 368, Case No. 07500-077-0001-2012 & 07500-054-0002-2012, (Syariah High Court, Pulau Pinang).
10. *Mustafah Batcha lwn. A Habeba Abd Rahman* [2004] 1 CLJ (Sya) 152; [1991] 7(2) JH 255, Case No. 7/90, (Syariah Court of Appeal, Negeri Sembilan).
11. *Nor Faizah bt Abdul Samad v. Abu Bakar bin Abdul Ghaffar* [2010] 1 ShLR 132, Case No. 10003-055-14-2002, (Syariah Subordinate Court, Klang).
12. *Nurhisam Johari lwn. Shamliza Shafie* [2017] 3 LNS 37, Case No. 11008-054-0683-2015, (Syariah Subordinate Court, Marang).
13. *Nurul Huda bt Ismail v. Nurrizal bin Ahmad Imran* [2009] 1 ShLR 108, Case No. 10008-014-0052-2005, (Syariah Subordinate Court, Hulu Selangor).
14. *Pendakwa Syarie Negeri Sabah lwn. Rosli bin Abdul Japar* [2007] 23(2) JH 237, Case No. 8-3/95-7(7)-2001, (Syariah High Court, Keningau).
15. *Pendakwa Syarie Negeri Selangor v. Khalid bin Abdul Samad* [2019] 3 ShLR 39, Case No. 10003-137-0105-2013, (Syariah Subordinate Court, Klang).
16. *Ramli bin Abdul Rahman lwn Marlia Akmar binti Ramli* [2010] 30(2) JH 199, Case No. 10000-052-0001-2008, (Syariah Court of Appeal, Shah Alam).
17. *Re Tamrin bin Tanni* [2016] 43(1) JH 25, Case No. 12000-003-004-2012, (Syariah Court of Appeal, Sabah).

18. *Salim lwn. Masiah* [1982] 3 LNS 13, Case No. 1/75, (Syariah Court of Appeal, Terengganu).
19. *Shahnaz bt Majid v. Dato' Sri Mahmud Abu Bekir Taib* [2018] 3 ShLR 15, Case No. 14100-016-0107-2011, (Syariah High Court, Federal Territory of Kuala Lumpur).
20. *Sharimah Muhamad lwn. Ahmad Burhanuddin Abdullah* [2007] 23(2) JH 263, Case No. 03000-055-0003-2006, (Syariah Court of Appeal, Kota Bharu).
21. *Suraiya bt M. Shafie lwn Abd Shukor Bin Mohd Hashim* [2009] 27(2) JH 331, Case No. 05100-016-0489-2006, (Syariah High Court, Seremban).
22. *Tunku Noor Hayati bt Almarhum Tunku Abdul Rahman Putra & Ors v. Tunku Khadijah bt Tunku Abdul Rahman Putra (administrator for the estate of Almarhum Tunku Abdul Rahman Putra) & Anor* [2016] 2 ShLR 112, Case No. 24-642-06-2014, (High Court of Malaya, Shah Alam).
23. *Zakaria @ Supar bin Ali v. Haznah @ Maznah bt Embong* [2011] 2 ShLR 12, Case No. 11300-0003-0021-2009, (Syariah High Court, Kuala Terengganu).
24. *ZZ v. NA* [2019] 1 ShLR 57, Case No. 10500-006-0013-2016, (Syariah High Court, Shah Alam).

Dabbūr (1985), 'Uzāyazah (1989), Anwarullah (1999), Haneef (2005, 2006, 2007), Mutalib and Ismail (2012), Muhamad et al. (2015), Baharuddin (2017c), S. M. Yusof et al. (2019), and Baharuddin, Ismail, Mutalib, et al. (2019b) were consistently state that scientific proof through forensic science is part of the *qarīnah*. This is in line with the provision of Section 33(1) and (2) of Syariah Court Evidence (Federal Territories) Act 1997 which provides expert opinion evidence as part of *qarīnah* (A. A. Mohamed & Nawasdeen, 2005):

(1) When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions or relating to determination of nasab, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions or relating to determination of nasab, are qarīnah.

(2) Such persons are called experts.

Although there has been some improvement in the application of scientific evidence in the Syariah Court, there are aspects that still need to be taken into account in the handling of scientific evidence from the stage of investigation until the trial

before the Syarie judge. In addition, matters pertaining to the management of scientific evidence must also be taken into account as they involve very practical and technical procedures which, in the event of negligence, will cause the scientific evidence to be contaminated or altered. As a result, these materials shall not be admissible as evidence to convict the accused person or to exonerate the innocent person. These issues have been addressed and highlighted by previous studies which will be discussed in detail in further topics and subtopics in this study.

This has directly and indirectly revealed a need for proactive measures to address and resolve all issues highlighted to facilitate the affairs of the various parties, especially the Syariah officers at Syariah legal institutions in Malaysia. These officers are individuals who are directly involved in the handling of evidence for a case from the investigation stage to the trial. Therefore, they should have sufficient knowledge and skills in the scientific evidence so that they can perform their duties and roles accordingly.

1.1.5. Integrating forensic scientific theories with Islamic legal principles

Islam's accomplishments during its nearly five centuries-long Golden Ages (from the mid-7th century to mid-13th century) have been a source of substantial pride among Muslims worldwide (Renima, Tiliouine, & Estes, 2016). It is a period where the Muslims gave great appreciation to all kinds of knowledge chiefly in applied science and technological subjects also the theoretical studies (Banu & Shuriye, 2017). However, after the 14th century, the golden age has gradually disappeared with the downsizing of the regions and the Islamic states around the world due to occupation or exchange with other governments for various factors. So, the study of science applied to religious elements also gradually disappeared.

Further, the effect of the dichotomization of knowledge into religion and science in the world history has caused a wide range impact against the religion of Islam (Adebayo, 2015). Furthermore, al-Fārūqī (1988) and M. M. Ali (2019) are among the scholars who argue that separation of knowledge is the root cause of Muslim backwardness. The dichotomization also caused the production of dualism in education; Traditional Islamic education system and Secular education system (Peter, Rohana, & Amirmudin, 2011). The dichotomy between the flow of religion and

science has produced huge gap of between science and religion (Hamdan, Samian, & Muslim, 2018; Ramli et al., 2014).

Looking from the legal perspective, the legal adaptation has also been influenced from this dichotomization of educational system. Science and law do not enjoy a complacent relationship (Oniha, 2018). Furthermore, the cultural divide that separates law and science are among the factors lead to the courts' empirical ineffectuality in handling the forensic evidence (Baharuddin, Ismail, Johari, & Mas'ad, 2018). This is due to the explanation given by Saks and Faigman (2008) that outside of legal content areas, legal practitioners have little training in the basic precepts of research methodology and statistics related to forensic science.

In addition, this secularization also led to the unfavourable relationship between law and religion. According to Zubaida (2005), historically, the law in the lands of Islam was held to be of divine origin and derivation, based on the Quran and the examples and narratives of the Prophet and his companions. What is meant here is that religion is made part of the law, and the law enforced contains religious-based elements derived from the Quran, Sunnah, and other sources of Islamic law. However, Western colonial masters who hold the idea of secularism did their best to propagate the ideologies of modernism, nationalism, and secularism through the media. Not only that, they also introduced a deliberate and systematic change in the educational system as a weapon to propagate their ideologies. These colonial masters ensure that the products of the new secular educational system were people who had been duly instilled with modern Western ideas and who would become officers, public servants, and workers serving the interests of their masters.



Figure 3: Relationship between religion, science, and law through forensic science

This problematic circumstance could result to the misunderstanding and misinterpretation of forensic evidence in any trial either in Syariah law or common

law. Obviously, it is important to establish the connection between religion, science, and law, especially in the field of forensic science as in Figure 3 above.

This is because of the need to revitalize the connection between religions, science, and law in order to guide people in more harmonious way. At this point, the study conducted by Baharuddin (2017c) has presented a concept of ‘Fiqh Forensic’ which concerning on the interdisciplinary of forensic science with Syariah law. The theories presented include the relevant Islamic legal maxims, realization of *maqāṣid al-syari‘ah* in the forensic sciences, related ethical conduct, and proposed level of proof.

However, the proposed theory is still incomplete if it is not been applied, taught in the form of structured module and changed into the training form. The reason is forensic science itself is principally practiced and analyses using certain skills.

Thus, the involvement of Syariah officials in this venture is a compulsory element to fill the gap in academic theory of ‘Fiqh Forensic’ itself.

1.1.6. Curriculum and training modules are still unavailable

Although there are so many literatures and studies focusing on the acceptance of forensic science in Islamic law (Baharuddin, 2017c, 2018), until now, specific module used for curriculum and training is absence.

The absence of such module indirectly signalled that something needs to be done to overcome the problems. This is because forensic science is one of the fastest growing areas.

The ignorance on the application of forensic science in an organized and orderly manner will caused the negative impact on Islamic law. Taking a great lesson from the “Innocence Project” where its main objective is to exonerate the innocent people (Hewitt & McGourlay, 2021; Innocence Project, 2022b; Shea, 2022; Singh & Majumdar, 2018). One of their key methods that had been used in deciding the case is through reevaluating of scientific evidence like DNA testing (Derenčinović, Vidlička, & Prtenjača, 2017; Durdevic, 2019; Shea, 2022).

Since 1989 up to this date (as on 20th July 2022), there were 375 DNA exonerees reported in the United States of America who were wrongly convicted (Allison & Hawes, 2022; Goswami & Goswami, 2022; Innocence Project, 2022a).

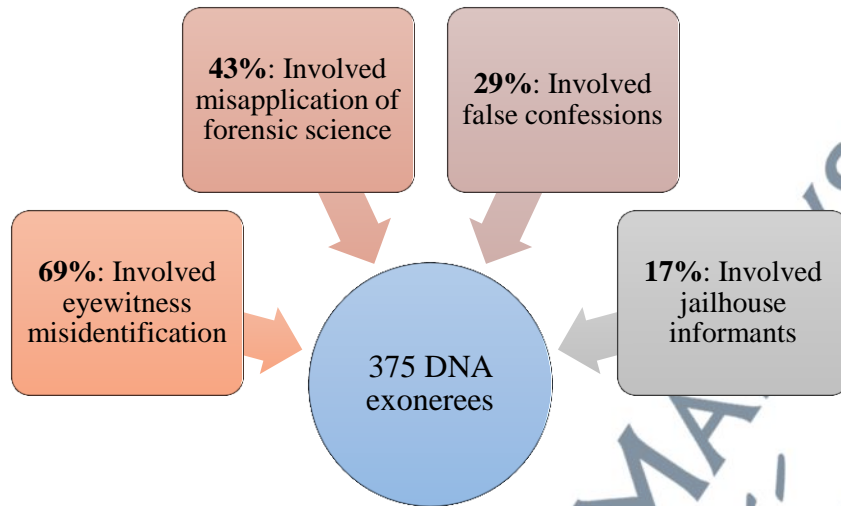


Figure 4: Statistic of DNA exoneration cases from 1989 to date by the Innocence Project

According to the data provided by the Innocence Project (2022a) in the Figure 4 above, the misapplication of forensic science is the second leading cause of many erroneous convictions in DNA exoneration cases. Additionally, forensic science, or more particularly, issues with forensic science, led to many erroneous convictions, as demonstrated in almost half (43%) of DNA exoneration cases and one-fourth of all exonerations in the United States (Innocence Project, 2022c).

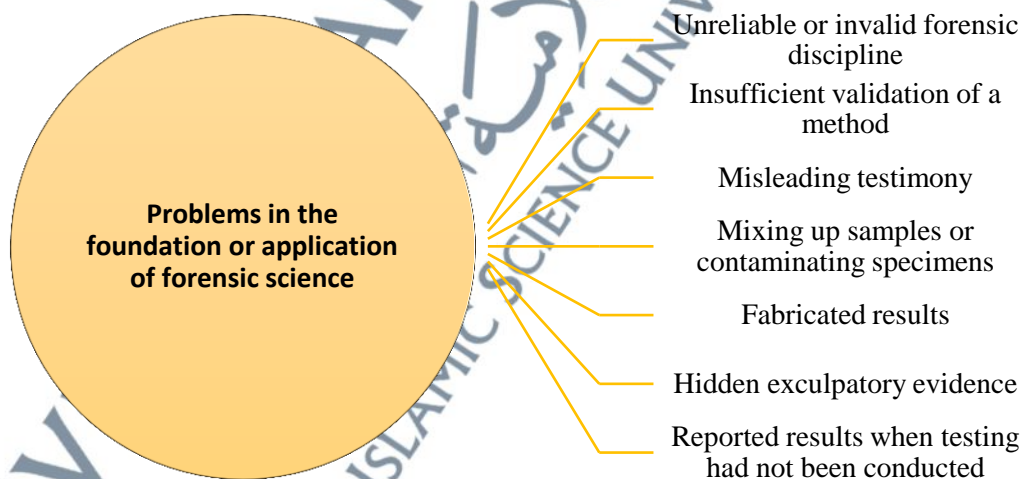


Figure 5: Examples of problems in the foundation or application of forensic science

Furthermore, Figure 5 above detailed the misapplication of forensic science as the second highest contributor to many erroneous convictions in DNA exoneration cases (Innocence Project, 2022c). The Innocence Project has identified several

instances of issues with the theoretical basis or practical application of forensic science through its investigation of the DNA exoneration cases (Innocence Project, 2022c).

Among them were inaccurate or unreliable forensic disciplines, inadequate method validation, deceptive testimony, errors made by forensic practitioners such as mixing up samples or contaminating specimens, and fabrications made by forensic analysts such as fabricating results, concealing exculpatory evidence, or reporting results when testing had not been done.

In fact, these misapplications are actually involving the human capital in the related industries. In order to overcome this problem from happening in Syariah legal system in Malaysia, human capital in Syariah Legal Institutions must be equipped with sufficient knowledge and adequate training in order to lead the fundamentals of the forensic science in Syariah Courts to an appropriate platform.

1.1.7. Theoretical and practical guidelines on forensic and expert evidence are required

Syariah law of evidence in Malaysia, as illustrated in Table 2 below, has almost the same provisions as in the Evidence Act 1950 on the expert evidence (Saifuddin et al., 2019), however, from the application aspect of this provision, the Syariah Court still left behind to compare with the civil courts.

Table 2: Comparison scope expert opinion between Syariah Court Evidence (Federal Territories) Act 1997 and Section 45(1) Evidence Act 1950

No.	Section 33(1) Syariah Court Evidence (Federal Territories) Act 1997	Section 45(1) Evidence Act 1950
1	Foreign law	Foreign law
2	Science	Science
3	Art	Art
4	Identity	Identity
5	Genuineness of handwriting	Genuineness of handwriting
6	Finger impressions	Finger impressions
7	Determination of <i>nasab</i>	-

This is evident when the judges of the Syariah Court neither discuss nor interpret in detail provisions related to the opinion of expert in the Islamic law of evidence as compared to the judges in the Civil Courts (Nasri et al., 2017).

In fact, literatures from the legal practitioners and academicians do not frequently interpret and discuss the relevant sections of the expert opinion provided under the Syariah Court Evidence Enactments (Nasri et al., 2017).

Syariah legal institutions in each state have their own laws on this matter; unfortunately, there is no detail interpretation or explanation from the Syariah officers on such provisions (M. H. Ahmad, Baharuddin, Hashim, et al., 2020; Baharuddin, Ismail, Mutalib, et al., 2019a; Nasri et al., 2017).

Statutory interpretation and clarification on legal provisions are required to enable their application to a specific factual situation, acquire and comprehend its implicit and explicit meaning and purpose, and offer assistance to the parties in need (Azri & Samuri, 2017; Deris & Tajuddin, 2015; Jamal, 2014; Shuaib, 2007; Viswanathan, 2007; Z. I. Zakaria & Nasohah, 2020).

Although the statutory interpretation is essential to enable us to easily understand the requirements of such provision (Abū al-Ma‘ālī al-Juwaynī, 2011; al-Shāṭibī, 2017a; al-Ṭarābulusi, 2018a; Ibnu al-Najjār, 1997; Ibnu al-Qayyim al-Jawziyyah, 2019b, 2019e, 2019j; Ibnu Farhūn, 2016a; Khunain, 2006, 2015), but how to interpret it if they do not have enough knowledge and skills to handle such scientific matters? This indicates that there is a curricular gap that needs to be improved in order to empower Islamic legal institutions in Malaysia.

These facts elucidate how forensics may be alien and unfamiliar to Syariah cases. Furthermore, the former Chief Justice Tun A. H. Mohamad (2014) mentioned in his speech:

“The biggest challenge for Brunei (in the implementation of Islamic law) is how the Syariah Investigating Officers, Syariah Prosecutor Officers and Syariah Judges will carry out their duties in investigating, prosecuting and try the cases, at least, at the early stages. Over the years, their experience was limited to minor criminal cases like conclave (khalwat). When the law is implemented, they will suddenly be forced to deal with more complicated cases such as murder, rape and causing injury which will also involve the receipt of scientific evidence unless they will only wait for suspected persons to make confessions via iqrar, which is impossible to be happened. The judgments will reflect the quality of their administration of justice.”

The cited text refers to his opinion on the implementation of the Syariah Criminal Code 2013 by the Brunei government. He questioned the practicality for Syariah officers, including judges, to handle scientific evidence in court. Any decision

made will then display the quality of judgment and will be seen throughout the world. Hence, the failure to understand the forensic fundamentals leads to irrelevant and misinterpretation in legal arguments and judgments (Baharuddin et al., 2018).

Furthermore, Shariff and Rahman (2005) elucidates that in the context of Syariah criminal offense, apart from emphasizing the aspect of proof, the success of a prosecution case is also closely related to the accuracy of a religious enforcement officer in conducting his investigation. This is because any negligence or mistake made by a religious enforcement officer while conducting an investigation can result in the prosecution case becoming weak, thus resulting in failure to achieve justice.

Through this statement, it is understandable that the curriculum and training modules need to be established in order to give a clear understanding to the target groups especially Syariah officers. Despite its context in Brunei, Malaysia has long practiced practical forensic science in Syariah legislation. In fact, Malaysia has number of sections provided under Syariah Court Evidence law related to forensic science. This has been illustrated under Figure 6 below. However, there is no specific module on this matter and the outcome has led to a number of negative effects on Syariah legal institution in Malaysia.

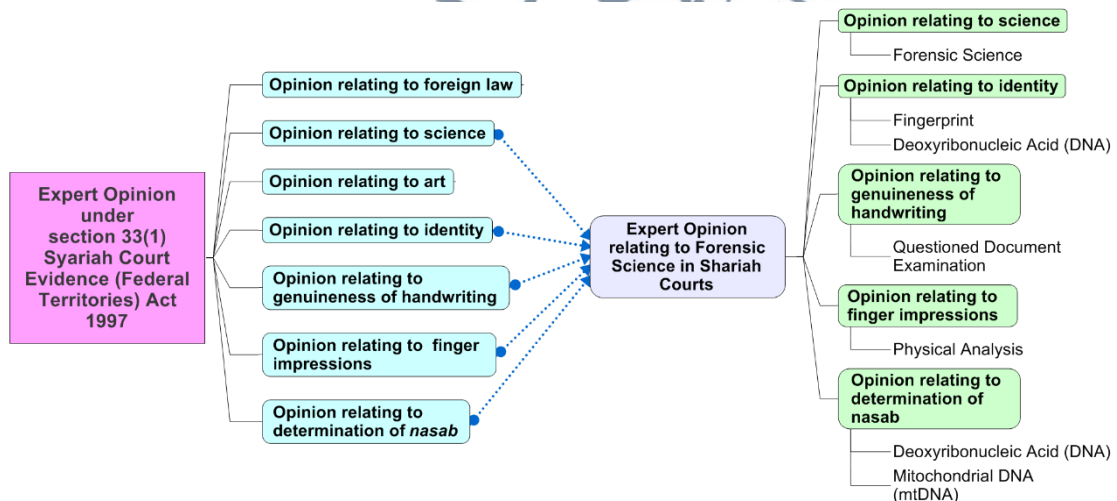


Figure 6: Expert Opinion relating to Forensic Science in Syariah Courts

Apart from that, the actual practice in some Islamic religious departments in the peninsular Malaysia has shown to be quite challenging. The study of Baharuddin (2017c) indicates various problems arising from improper and inaccurate practice in managing evidence related to forensic science. Among the reported are:

- (a) Dismissal of the case to be brought to trial as a result of the expiration of evidence such as liquor seized turns into vinegar when analysed.
- (b) Dismissal of the case to be brought to trial due to loss of evidence in body fluids such as alcohol content lost from the blood in the body resulting from the misconduct of the alleged person in the custody of enforcement officers.
- (c) Non-compliance with the calibration and service schedules for forensic science instruments such as breathalysers used in alcoholic beverages.

The absence of a complete practical module that covers all aspects involved clearly prompts a leak that needs to be addressed. Thus, the existence of this module is very significant and critical today.

1.2 Problem Statements

The excogitation of research problem is the first and most paramount step of the research process. It cut the frills of the gap encountered in the selected research field into concise statements. The said gap is what the researcher perceives as wrong, missing, puzzling, or requires changing, in the particular field of study. Based on earlier literatures and background of studies, there are several gaps have been identified. These statements should be read along with the background of study for more explanation.

The first gap that has been identified is related to the effect of the dichotomization of knowledge which has caused the world to have a dualism in education system; Traditional Islamic and Secular education system (Peter et al., 2011). This dichotomy has produced huge academic gap of between science and religion (Hamdan et al., 2018; Ramli et al., 2014). This separation of knowledge is the root cause of Muslims suffered a setback on the intellectual aspects (al-Fārūqī, 1988). Other that education perspective, it also has significant influence on the legal perspective where science and law do not enjoy a complacent relationship (Oniha, 2018). When this happened, it has led to the courts' empirical ineffectuality in handling the forensic evidence (Baharuddin et al., 2018).

Apart from that, Saks and Faigman (2008) also realized that legal practitioners have little training in the basic precepts of research methodology and statistics related to forensic science. These problematic circumstances could result to the

misunderstanding and misinterpretation of forensic evidence in any trial either in Syariah law or common law. Obviously, it is important to establish the connection between science and religion, especially in the field of forensic science. Efforts to reunite the elements of religion with science as well as the law with science should be recommended through the development of a structured module so that the intellectual quality of Muslims can be improved.

Another ascertained issue is relating to the practical guidelines for the application of forensic science in Islamic law. Scientific evidence has been widely admitted in civil courts since early 1950s which dealt with forensic entomology (Bashah & Rajamanickam, 2017). In the meantime, this practice is very limited in the Syariah courts. The fact that Syariah law of evidence in Malaysia has approximately the same provisions as in the Evidence Act 1950 on the expert evidence (Saifuddin et al., 2019), however, from the application aspect of this provision, the Syariah Court still left behind to compare with the civil courts. This is evident when the Syarie judges neither discuss nor interpret provisions related to the expert opinion (Nasri et al., 2017).

In fact, literatures from the legal practitioners and academicians do not frequently interpret and discuss the relevant sections of the expert opinion provided under the Syariah Court Evidence Enactments (Nasri et al., 2017). Although the statutory interpretation is essential to enable us easily understand the requirements of such provision. How to interpret it if they do not have enough knowledge and skills to handle such scientific matters? This indicates that there is a curricular gap that needs to be improved in order to empower Islamic legal institutions in Malaysia.

Apart from that, the actual practice in some Islamic religious departments in the peninsular Malaysia has shown to be quite challenging. The study of Baharuddin (2017c) indicates various problems arising from improper and inaccurate practice in managing evidence related to forensic science. The absence of a complete practical module that covers all aspects involved clearly prompts a leak that needs to be addressed. Thus, the existence of this module is very significant and critical today.

The last issue is the absence of a complete module related to the application of forensic science in Malaysian Syariah law. Although there are numerous literatures and studies focusing on the acceptance of forensic science in Islamic law (Baharuddin, 2017c, 2018), until now, specific module used for curriculum and training is absence.

The absence of such module indirectly signalled that something needs to be done to overcome the problems. This is because forensic science is one of the fastest growing areas. The ignorance on the application of forensic science in an organized and orderly manner will caused the negative impact on Islamic law.

These issues need to be addressed and solved as it is the crux of the matter in handling the scientific evidence. Furthermore, these issues are closely related to the human capital in Syariah Legal Institutions.

1.3 Objectives of the Study

The focal point of this study is to develop a Fiqh Forensic module for Syariah Officers in the Syariah Legal Institution in Malaysia. With such salient objective in mind, this study aims:

- i. To analyse the issues that led to the need to build Fiqh Forensic module for Syariah Officers in Malaysian Syariah Legal Institutions.
- ii. To examine the content of the module based on the selected source.
- iii. To produce Fiqh Forensic module for Syariah Officers in Syariah Legal Institutions.

1.4 Research Questions

As for this study, at the end of research, findings will accomplish to develop Fiqh Forensic module for Syariah Officers in the Syariah Legal Institutions and able to answer the following questions:

- i. Why does this Fiqh Forensic module need to be developed?
- ii. What are the contents that need to be included in the module?
- iii. What is the form of Fiqh Forensic module to be used by Syariah Officers in the Syariah Legal Institutions in Malaysia?

1.5 Significant of the Study

This study is significant based on the following reasons:

1.5.1. Produced a practical guideline for Syariah officers in Syariah Courts

As has been mentioned and will be extended further, there is yet no comprehensive module for the use of Syariah officers in Syariah Courts. The concerned module deals with forensic evidence and expert testimony. The lack of

such a module could impede the growth of Syariah legislation in Malaysia. As a result, in order to address this concern, the researcher yielded the Fiqh Forensic Module in this study.

The module may be utilised by Syariah officers in Syariah Courts as a useful practical guidance. It can be a starting point for empowering human capital involved with the scientific evidence in the Syariah legal system in Malaysia.

This module addressed forensic evidence and expert testimony within the Syariah legal framework, as well as numerous substantive and procedural concerns. This module will be able to equip Syariah officers with an in-depth grasp of forensic science and expert evidence, provide extensive explanations of important legal provisions, and further improve the value of human capital in the Syariah Court.

1.5.2. Bridged the academic gaps relating to the module development

Despite the fact that there is a large body of literature and study on the adoption of forensic science in Islamic law, specific module for curriculum and training is still absent. This has also been explored previously and will be further examined in subsequent chapters. It is apparent that one of the academic inadequacies in the subject of Syariah law must be solved, namely in the aspect of establishing a specialised instrument for the purpose of curriculum and training of Syariah officers in Syariah Courts.

The development of the Fiqh Forensic module in this research should serve as a link to fill in the existing academic deficiencies. In addition to integrating theory and information connected to expert and forensic evidence into the form of module, the researcher in this study has mentioned and commented on some of the findings of prior studies related to the topic. The researcher also analysed in detail the relevant research proposals that have been implemented by previous researchers.

Furthermore, this study has established the connection between the research's ideas, theories, and practises. All of this demonstrated the significance of this study in attempts to bridge and fill in the academic gaps around issues involving expert and forensic evidence.

1.5.3. Broaden the scope of intellectual discourses on forensic and expert evidence

This study is significant as it widened the scope of intellectual discourses linked to forensic and expert evidence. In this study, the researcher discussed some of the related findings of earlier studies, as well as some of the gaps that still remain. The researcher has also thoroughly examined the pertinent suggestions that have been carried out by earlier researchers. In essence, this study encompasses a set of suggestions and recommendations that researchers may take into account when planning future studies.

Future researchers are able to discern between what has been examined and what remains to be explored thanks to the portrayal of these academic gaps. They will be able to acquire innovative and new ideas from this for their studies. Consequently, they will be able to avoid studying about recurrent, outdated, and saturated issues. As a result, they will be able to adopt new ideas, and the breadth of the discussion surrounding Syariah law may even broaden.

1.6 Scope of the Study

The researcher has noted that forensic science is a field that has a very wide scope. This is because it encapsulates two main aspects namely substantive and procedural. By restricting the scope of this study, this research will not only be more focused and precise, but the findings will also be succinct and concise. The scope of forensic science in this study is focused on the substantive and procedures aspects related to and in accordance with the Malaysian Syariah law.

Furthermore, the researcher also aware that there were several types of Syariah law in Malaysia, these include administrative law, family law, property management law, criminal law, evidence law, law of civil and criminal procedures. As for the purpose of this study, the researcher will use Syariah criminal and evidence law. The Acts to be referred to are the Syariah Criminal Offences (Federal Territories) Act 1997 and the Syariah Court Evidence (Federal Territories) Act 1997. Both of these Acts are referred to as the means of uniformity in Syariah criminal law as well as the Syariah Court evidence law in Malaysia.

This is because each state has their own Enactment in governing both types of laws, and the fact is that the Syariah Enactments in each state in Malaysia have almost

the same or *in pari materia* provisions among them. On the basis of unity in diversity, these statutes will be referenced and applied throughout this study.

In addition, this study will focus on the scope of the debate to the context of Syariah Court evidence law as well as Islamic principles in matters related to evidence. The researcher did not intend to make comparisons with the legal context of evidence in civil courts. If civil laws as well as practice in civil cases are referred to, it is meant as an additional reference. It is not meant to create a comparative study.

In addition, in building a module, there are several models of module development introduced by the researchers from various fields, among them are Rusell (1974), Alsagoff (1981), *Analyze, Design, Develop, Implement, Evaluate* (ADDIE) approach (Branch, 2009; Dick & Carey, 1996), and Noah and Ahmad (2019). In this study, the researcher used the model founded and constructed by Noah and Ahmad (2019).

The researcher chose this model because it is a flexible and more comprehensive integration model than existing models. This approach model has two different stages of purpose. The first stage is the stage of preparing the draft module, and the second stage is to test and evaluate the draft module. The researcher will elaborate on this in more detail in Chapter 3 of this thesis.

Apart from that, the researcher also aware that there are eleven Syariah legal institutions in Malaysia as explained by K. A. Mokhtar (2006), A. Ibrahim and Joned (2005), and Shuaib, Bustami, and Kamal (2010). The institutions in question are Malay Rulers as the Heads of the religion of Islam, Conference of Rulers, Mufti, Council of Islamic Religion (*Majlis Agama Islam*), Department of Islamic Religion (*Jabatan Agama Islam*), Syariah Courts, State Department of Syariah Judiciary (*Jabatan Kehakiman Syariah Negeri*), Department of Syariah Judiciary Malaysia (*Jabatan Kehakiman Syariah Malaysia* (JKSM)), National Council of Islamic Religious Affairs Malaysia (*Majlis Kebangsaan Hal Ehwal Agama Islam Malaysia*), Department of Islamic Advancement of Malaysia (*Jabatan Kemajuan Islam Malaysia* (JAKIM)), and the Syariah section under the Research Division in the Attorney General's Chambers.

Meanwhile, the institutions related to this study are limited to the Syariah Courts, Council of Islamic Religion, and Department of Islamic Religion. This is because the researcher has found that scientific evidence and forensic analysis are

closely related and relevant to be implemented in these three institutions. The Syariah judges in the Syariah Court will inevitably be involved with the scientific evidence presented by the disputing parties. In addition, the Syariah prosecution and religious enforcement officers at the institutions of the Council of Islamic Religion and the Department of Islamic Religion are also involved in the collection of scientific evidence to be used as evidence to convict a charge.

Last but not least, Syariah officers in this study refer to the Syariah officers' position of LS41, LS44, LS48, LS52, and LS54 as prescribed under *Pekeliling Perkhidmatan Bilangan 1 Tahun 2016*. Generally, there are seven types of positions included in the "Syariah Officer" service scheme from grade LS41 to LS54 and JUSA C. As for this study, the scope of Syariah officers is limited to three positions namely Syarie Judge, Syarie Prosecutor, and Religious Enforcement Officer. This is because, the individuals who hold these positions are those who are directly involved in the trial process of a criminal case starting from the investigation stage to the judgment. In fact, they will also handle matters related to scientific evidence for a criminal case.

1.7 Research Theoretical Framework

A theoretical framework is a reflection of the work the researcher engages in to use a theory in a given study (Green, 2014; Lederman & Lederman, 2015; Varpio, Paradis, Uijtdehaage, & Young, 2019). In this study, the researcher will not develop a specific theory, instead adapt and adopt the existing theory. The theory in question is referring to theory of Fiqh Forensic developed by Baharuddin (2017c) in his Doctoral thesis.

1.7.1. Theory of Fiqh Forensic

The theory of Fiqh Forensic consists of four main components as shown in Figure 7 below, namely Forensics Jurisprudence, Human Capital, Forensic Analysis, and Accreditation. This theory was introduced and developed by Baharuddin (2017c) in his doctoral study.

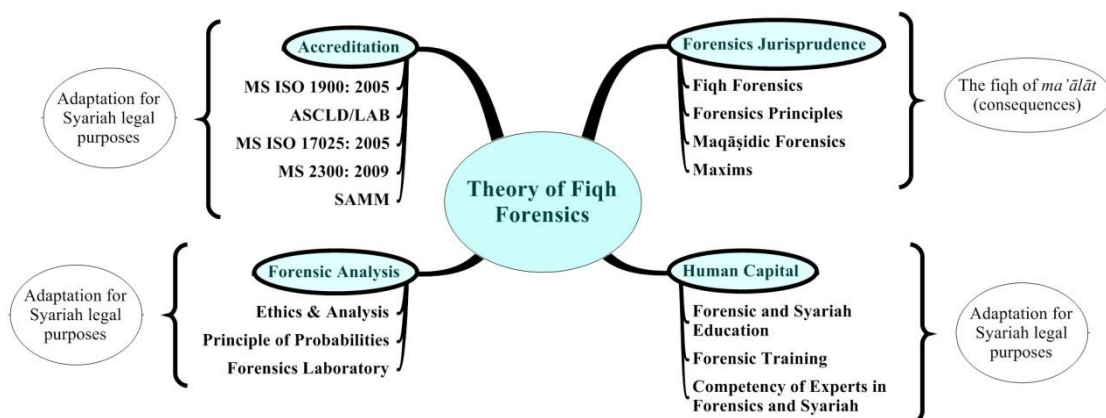


Figure 7: Theory of Fiqh Forensic

Furthermore, in another literature, Baharuddin (2014) has defined “Fiqh Forensic” as follows:

“Accordingly, the fiqh forensics can be summed up as the understanding of the Islamic rulings relating to forensic practice in the lives of Muslims.” (Baharuddin, 2014, p. 69)

The first component deals with the basic knowledges to be learned and acquired such as *fiqh al-ithbāt*, *maqāsid al-syari’ah*, forensic science, and Islamic legal maxims (*qawā’id al-fiqhiyyah* and *qawā’id al-uṣūliyyah*). These sciences need to be studied and acquired to realize the theory of Fiqh Forensic.

The second component deals with Syariah officers in Syariah legal institutions. They need to get integrated education based on Syariah and forensic science. Next, the theoretical knowledge cannot be sharpened without practical training. These officers are required to undergone intensive practical training at regular intervals so that they can establish an understanding of the integration of Syariah and forensics.

Next, the third component is forensic analysis. This component focuses on the areas of forensic science including fundamentals of forensic science, forensic science principles, ethics in conducting forensic analysis, and the establishment of forensic laboratories.

The last component is accreditation. Accreditation is proposed as a guideline to the development and strengthening of human capital in Islamic legal institutions. This initiative aims to produce skilled and knowledgeable human capital in handling the exhibits of scientific evidence carefully and orderly. In addition, the accreditation also

focuses on several standards that must be met in establishing a Syariah forensic laboratory.

1.7.2. Theoretical and operational framework

Theoretical framework for this study is a result of integration between the theory of Fiqh Forensic and the Sidek module development model. Sidek's model is considered as an operational framework for this study.⁶

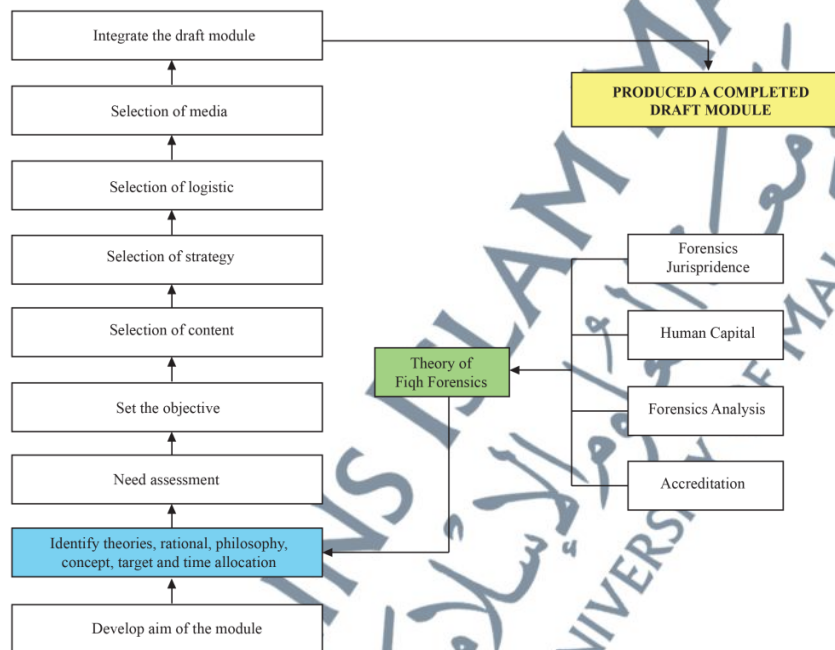


Figure 8: Theoretical Framework for Development of Fiqh Forensic Module

Based on the Figure 8 below, the theoretical framework for developing of Fiqh Forensic Module will be integrated with the First stage of Sidek's Module Development Model which will be explained in detail on chapter 3.2.3 of this thesis.

1.8 Operational Definition

There are several key points in this study that require an operational definition. Thus, the researcher elucidates the required definitions on this section.

⁶ Sidek's Modul Development Model will be explained and discussed in detail on Chapter 3.2.3 of this thesis.

1.8.1 Fiqh Forensic

The term is derived from the combination of the words ‘fiqh’ and ‘forensic’. Technically, it refers to knowledge and understanding of Islamic law regarding the practice of forensic science in the Muslims daily life based on Islamic legal sources. A lengthy discussion relating to this term will be provided under Chapter 2.2. of this thesis.

1.8.2 Module

According to Rusell (1974), module is a teaching package related with syllabus and it takes effort to teach them to an individual in order to help them master the content of a lesson before moving on to the next unit. Furthermore, Alsagoff (1981) opined that module is separate but complete parts and closely related to one small part with other small parts. Creager and Murray (1985), on the other hand, stated that module is a complete and flexible teaching unit with the main focus of achieving some clearly devised objectives. Husén and Postlethwaite (1985) summarised that module represent a complete teaching package for a subject. Kamil (1990) also defines the module as a teaching and learning package or self-study bulk complete with teaching and learning components. Meanwhile, Noah and Ahmad (2019) conclude that a module is a teaching and learning unit that discusses a particular topic systematically and sequentially to make it easier for students to learn on their own so that they can master a learning unit easily and accurately.

Hence, module can be understood as a teaching and learning set, package, or unit which related to a particular subject, topic, or syllabus and discuss the matter systematically and sequentially. Each module has its own objectives that need to be achieved. The main purpose of a module is to make it easier for students to learn on their own so that they can master a learning unit easily and accurately.

1.8.3 Syariah Officers

An officer or *al-muwazzaf* refers to whoever is assigned a job to perform it according to his specialization in one of the governmental departments or others (Umar, 2008). This is aligning with the definition given by al-Zamakhshari (1998) and al-Zabīdī (1987) in which a person employed to perform a particular task or

occupation. Meanwhile, al-Fārūqī (2014) defined it as any person who is affiliated to a government agency or municipal authority.

Syariah is traditionally and technically referring to what been ordained by Allah to His slaves encovering faith, worship, manners, interaction, and system of life to organize relationship between people with their Lord and their relations with one another (al-Jurjānī, 1983; al-Qattān, 2001; al-Suyūfī, 2004). Meanwhile, Rauf (2015) signify another sense used by the Muslim in defining Syariah, where it refers to everything that is encompassed within the expression “Islamic law”. This includes all the laws Muslims have lived under throughout history, ranging from laws derived from non-Islamic sources to laws that were subject to differences of opinion and context.

When these two words are combined into “Syariah Officer”, then it can be understood that the Syariah Officer is a position held by individuals responsible for the empowering, managing, and enforcing Syariah law within its jurisdiction.

1.9 Summary

In a nutshell, this chapter deals with the introductory part of this study. It contains background and statement of problem, objective, research questions, significance, and scope of the study. Five issues have been highlighted and discussed in the problem statements. This study also aims to achieve and answer four research objectives and questions. Under a specific scope, this study also had been narrowed into several limitations. In fact, this study also originally contributes to two prominent aspects. Specific theoretical framework has been developed in this chapter to portray how the research will be conducted by using the existing research theories. Operational definition has been explained through the final subchapter. Hopefully, the elaboration in this chapter can give an overall view of the study.