

## CHAPTER 2

### THE CONCEPT OF DOCUMENTARY EVIDENCE AND DOCUMENT FALSIFICATION FROM THE PERSPECTIVE OF SYARIAH LAW OF MALAYSIA AND MALAYSIAN LAW

#### 2.1 Introduction

This chapter answers the first objective of the study. Data were collected from the holy Qur'an, hadith, *turath* books, legal books, article journals, case laws, journals, conference papers, and other document references for the data collection phase. The collected data were then analysed using an inductive approach. Therefore, the discussion in this chapter focuses on the concept of documentary evidence from the Syariah law of Malaysia and Malaysian law's perspective. In addition, this chapter also discussed the idea of document falsification according to the view of the Syariah law of Malaysia and Malaysian law. Generally, evidence is a process that increases a judge's confidence in a person's claim or denial. This method of admitting the evidence is only applicable when the proof is presented before a government-appointed judge. The judge would accept the evidence only if the parties involved in the dispute submit evidence or methods of proof recognised by Syariah law, such as *syahadah*, *iqrar*, oath, *qarinah*, document, and expert opinion. Then, the discussion in this study focuses on documentary evidence and touches on issues related to it, especially document falsification.

## 2.2 The Concept of Documentary Evidence

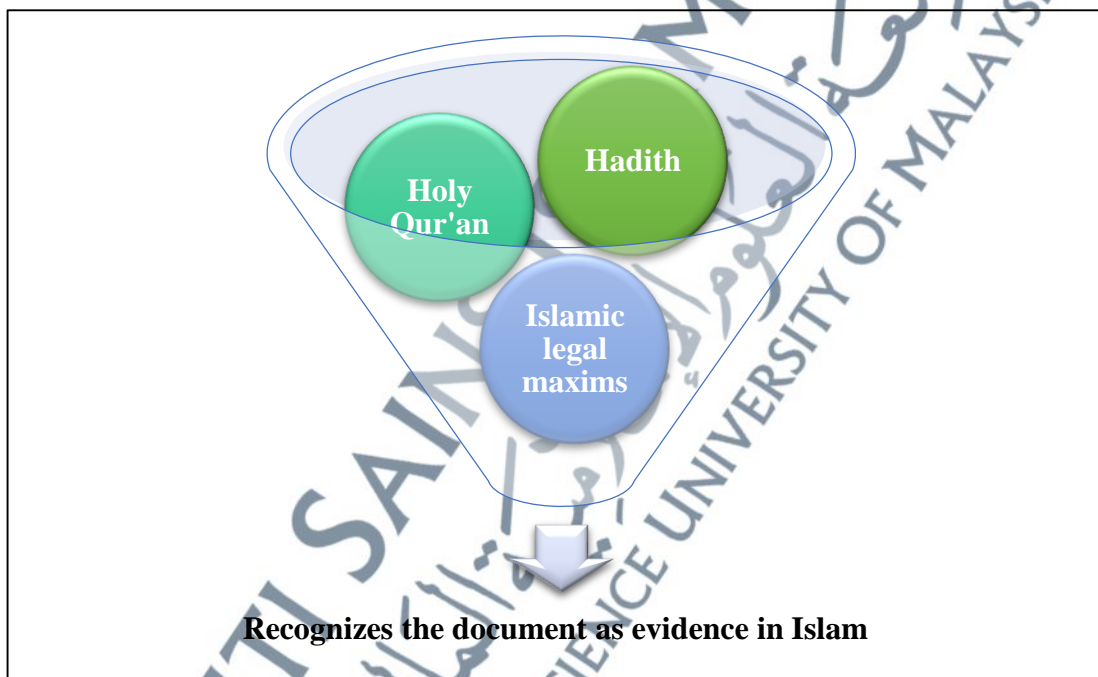
Aside from *syahadah*, *iqrar*, oath, *qarinah* and other evidence, documents are no less important as evidence in the process of convicting and rejecting an allegation. Even today, documents have become one of the essential methods compared to other types of proof in civil court or Syariah court. Meanwhile, documentary evidence is the evidence that is derived from a document produced for court examination in the matter. In other words, a document includes any written, printed or inscribed material that gives information (Ibn al-Qayyim, 2007). In this section, the researcher examined the concept of documentary evidence in depth from two perspectives: Syariah law of Malaysia and Malaysian law.

### 2.2.1 The Concept of Documentary Evidence according to Syariah Law of Malaysia

There is various similar term document in Islamic law, such as *kitabah*, *muharrar*, *asnad*, *hujaj*, *sakk*, *khat*, *sijil*, *wathiqah*, *auraq*, and *waraqah* (al-Zuhailiy, 1994). However, there is no significant difference between those terms because they all convey the exact meaning of the document. For example, the terms ‘*waraqah*’ and ‘*muharrar*’ are primarily used in Egypt, whereas Iraq, Syria, and Lebanon use the term ‘*asnad*’ in their laws. On the other hand, the term ‘*hujaj*’ is insufficient to describe a document because it is limited to written documents. Some jurists have defined a document, such as Ibn ‘Abidin (1995) and al-Zuhailiy (1994). Ibn ‘Abidin (1995) depicts a document as “a written note on a sheet, ground, or wall that can be comprehended if read”. Meanwhile, al-Zuhailiy (1994) defined a document as everything that may be communicated by words using certain letters provided that it is clear and understandable. Arbouna (1999: p. 17) also defined documents as statements or notes

written by someone who may be in a position of authority or a judge or an ordinary citizen. The use of the term document in the traditional sense is evident in the aforementioned definitions.

On the other hand, Islam recognises documentary evidence based on critical arguments in Syariah law such as from the holy Qur'an, hadith, and Islamic legal maxims. Figure 2.1 shows the Islamic legal perspective on accepting of documentary evidence based on the holy Qur'an, hadith, and Islamic legal maxims.



**Figure 2.1:** The Islamic Legal Perspective on the Acceptance of Documentary Evidence

These sources indirectly show that Islam accepts the documentary evidence.

Firstly, from the holy Qur'an, Allah S.W.T says:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ﴾

Translation: “O you who have believed, when you contract a debt for a specified term, write it down”.

(Al-Qur’an. Al-Baqarah 2:282)

Ibn al-Arabi (1967: p. 247), when interpreting the word "فَاكْتُبُوهُ" said that Allah S.W.T gives great emphasis to the record whenever there is a business transaction, debt, or the like. This emphasis is intended to prevent forgetting if the transaction occurs over a long period. According to Ibn Kathir (2003: p. 561), Allah S.W.T ordered to make notes on the matter of receivables because writing it can be used as evidence in terms of the amount and time the transaction took place and more strengthening for witnesses. Allah S.W.T also says in Surah al-Naml 27: 28-31:

﴿أَذْهَبَ بِكِتَابِي هَذَا فَأَلْقَاهُ إِلَيْهِمْ ثُمَّ تَوَلَّى عَنْهُمْ فَانظُرْ مَاذَا يَرْجِعُونَ (٢٨) قَالَتْ يَا أَيُّهَا الْمَلَأُ إِنِّي أُلْقِيَ إِلَيَّ كِتَابٌ كَرِيمٌ (٢٩) إِنَّهُ مِنْ سُلَيْمَانَ وَإِنَّهُ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ (٣٠) أَلَّا تَعْلَمُوا عَلَيَّ وَأْتُونِي مُسْلِمِينَ (٣١)﴾

Translation: “Take this letter of mine and deliver it to them. Then leave them and see what [answer] they will return (28). She said, “O eminent ones, indeed, to me has been delivered a noble letter (29). Indeed, it is from Solomon, and indeed, it reads: ‘In the name of Allah, the Entirely Merciful, the Especially Merciful (30). Be not haughty with me but come to me in submission [as Muslims] (31).”

(Al-Qur’an. al-Naml 27: 28-31)

This verse demonstrates that Prophet Solomon had previously used documents to convey *da'wah* and warnings to replace orally delivered *da'wah* (Al-Mawardi, 1972: p. 89). This shows that the document had been used as an argument since the Prophet’s

time. Furthermore, the explanation of hadith number 5197 in Musnad Imam Ahmad Ibn Hanbal (2001) demonstrates that Islam recognises documentary evidence. The Prophet PBUH says:

«ما حقُّ امرئٍ مُسلمٍ لهُ شيءٌ يُوصي فيه، يبيتُ ليلتينِ إلَّا ووَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ»

Translation: "It is the duty of a Muslim who has something to be left as a bequest not to have it for two nights without having his will written down about it." (Hadith. Ahmad Ibn Hanbal. Musnad Imam Ahmad ibn Hanbal: Chapter al-Wasaya: Vol. 9: #5197).

(Narrated by Imam Ahmad)

This hadith emphasises the importance of having a documented will. Ibn al-Qayyim (2007: p. 174) says: "why did the Prophet PBUH ask someone to record his will if the document is not accepted as proof?". This statement is also supported by Ibn Hajar (1996: 9), who believes that if a piece of information is important, it should be written down. This is because there is no better way to keep it than to record it. The Islamic legal maxims also mention (الكتاب كالخطاب) that a document is the same as a word in expressing the desires and intentions in the heart. This is because the document for the party who is not present, especially in a trial, is the same as the conversation of the person present (Ibn al-Qayyim, 2007: p. 174).

The above findings indicated that Islam recognises documentary evidence based on the holy Qur'an, hadith, and Islamic legal maxims discussed earlier. However, the definition stated by the *fiqh* scholars such as Ibn 'Abidin, al-Zuhailiy and Arbouna is only focused on the external records alone. The researcher opined that in modern

growth, documents need to be seen in a broader scope in terms of the function of the document itself and not just focused on the form of documents. The documents and equipment are used simply because the most important thing is that the conveyed information can be understood.

This statement is supported by Anwarullah (2010) in his book entitled “*Principles of Evidence in Islam*” stated that modern technology has opened up new possibilities in the form of adhesive tape, film and the like so that the variety of materials that can be written on has somewhat expanded the rather traditional understanding of the word, which is also permissible in Syariah law. Furthermore, electronic media such as computers, digital cameras, sound recording devices, and other types of recorded evidence are among the forms modern-day documents rely upon in the legal system (Haneef, 2006). Thus, the definition of a document issued by Wan Ismail (2020) is considered to be very appropriate for the current reality, which defines a document as: “anything that explains and describes something through the use of drawings or photocopies either found in the classic form such as the use from paper, wood, stone and the like, or documents in the modern form such as the use of floppy disks, CDs, the internet, and soon”.

This definition is very similar to the notion of a document as defined in Section 3 of the *Syariah Court Evidence Act 1997* (Act 561), which states a document as follows:

Section 3. Notice to show cause.

“document” means any matter expressed, described, or howsoever represented, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of:

- a) letters, figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;
- b) any visual recording (whether of still or moving images);
- c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;
- d) a recording, or transmission, over a distance of any matter by any,

or any combination, of the means mentioned in paragraph (a), (b) or (c), or by more than one of the means mentioned in paragraphs (a), (b), (c) and (d), intended to be used or which may be used for the purpose of expressing, describing, or howsoever representing.”

This section shows that the document is not restricted to the use of specific equipment. However, the text must be intelligible and physical in character, whether it can be comprehended directly or require special equipment. Therefore, digital documents such as sound recordings, cassettes, compact discs (CDs), and others can be included or classified as documents because their content can be comprehended even with the use of specific equipment to read it (Al-Humaidhi, 1989). For example, in the case of *Ahmad Faozi bin Mansor v Norhafizah binti Ahmad* (14002-058-0001-2004), the defendant had cheated and had sex with another man. In this instance, the plaintiff accuses the defendant of deception by attaching a telephone bill revealing that the defendant is constantly communicating with other men. The Syariah court accepted the

husband's claim based on evidence of behavior presented in document descriptions such as phone bills and SMS. It shows that the scope of a document in Syariah court is not only in physical form but also in digital form.

However, in the case of *Ajmawati Atan v Moriazi Mohamad* 1 CLJ (SYA) 54 (2005), the understanding of the admissibility of the digital description was unclear, which resulted in the case being ordered to be heard again with the submission of the supporting witnesses. This case shows that the Syariah law practitioners are still vague about implementing a new form of documents as electronic records as one of the methods of proof. Therefore, they need to be given greater exposure to electronic documents by creating specialised sections related to forensic electronics.

The findings indicated that when examining the arguments related to the use of documentary evidence according to the sources of Islamic law, namely the holy Qur'an, hadith and Islamic legal maxims, it is clear that Islam recognises the use of documents as a method of proof. In addition, the facilities available in the days of past scholars are seen to have impacted the understanding of the scope of document discussion as a method of proof. Previous *fiqh* scholars only defined a document in a small scope. That is, a document is only focused on the external. In modern times, the scope of documents has expanded, focusing on the physical and digital form. This is because the usage of documents for verification in daily affairs is becoming more common in everyday life. This is also supported by Section 3 of the *Syariah Court Evidence (Federal Territories) Act 1997* (Act 561), which defines a document with a bordering scope.

However, as happened in the case of *Ajmawati Atan v Moriazi Mohamad* 1 CLJ (SYA) 54 (2005), Syariah law practitioners are still less fully exposed to the new categories of evidence, such as digital documents, resulting in the case being ordered to

be heard again with the submission of expert testimony, particularly in the field of digital forensics. Furthermore, there is no particular provision in the Syariah court regarding the use of digital documents as evidence. Instead, it is contained in the overall definition of a document. Therefore, scholars and legal specialists in the field of evidence and proof must collaborate to develop a clear description of digital documents in accordance with Syariah law (Wan Ismail et al., 2021; Alias et al., 2021). This is the reality in Syariah courts, and the civil court practice must be examined in order to improve the institution of the Syariah courts.

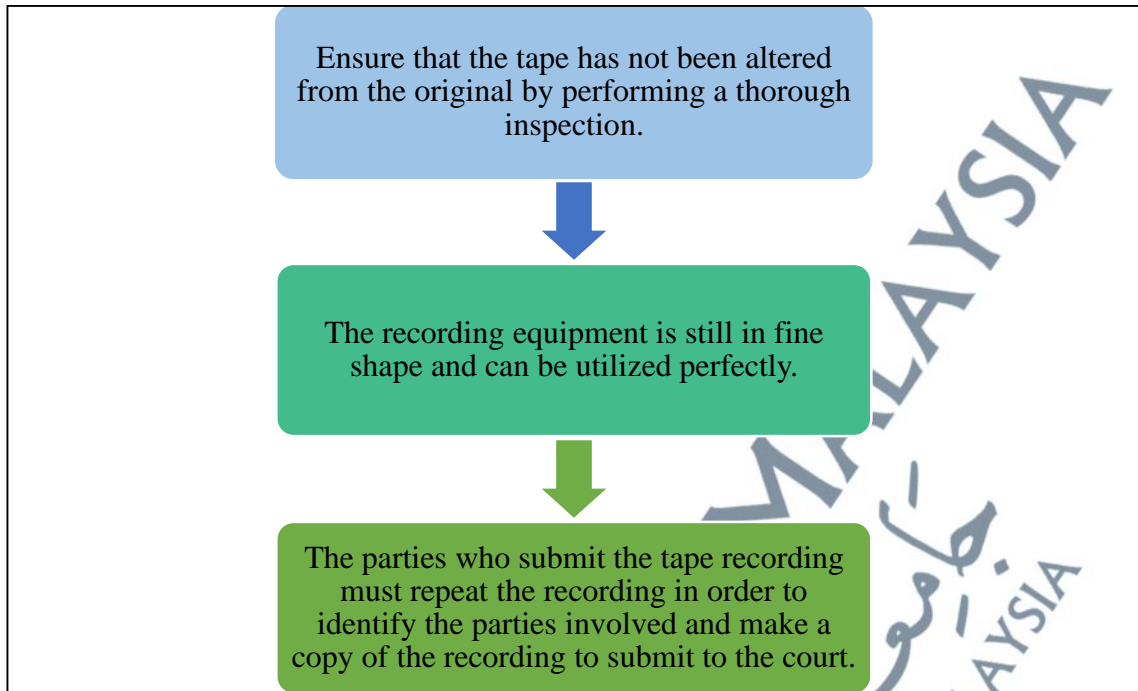
### **2.2.2 The Concept of Documentary Evidence according to Malaysian Law**

Document originally meant something fixed and static that could not be easily tempered (Omar et al., 2020). However, as modern technology advances, the scope of the document must be broadened and not be limited to written text alone (Alias et al., 2021). Various types of modern technology, such as computers and other devices, can be used as evidence. The *Evidence Act of 1950* (Act 56) was amended in 1993, and Section 3 now includes a new definition of the document. Section 3 of this Act defines ‘document’ as any matter expressed, described, or howsoever represented upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, soundtrack or other device.

This definition is similar to Section 29 of the *Penal Code* (Act 574) and *Interpretation Acts of 1948 and 1967* (Consolidated and Revised 1989). Therefore, it is possible to conclude that documents from Malaysian law carry the same meaning based on the provisions stated above. Moreover, the definition of ‘document’ is broader, as in the case of *R v Maqsd Ali* [1966] 1 QB 688. In this case, the Court of Appeal

determined that there was no difference between a photograph and a voice recording that was admissible as evidence. Similarly, in *PP v Datuk Haji Sahar Arpan* [2007] 1 *AMR*, the court determined that fax and microphone copies fall within the definition of a document as defined by Section 3 of the *Evidence Act 1950* (Act 56) and the *Penal Code* (Act 574). These two cases demonstrate that the definition of the document under Malaysian law carries a fairly broad meaning and is not limited to purely physical form as documents in electronic format are also accepted in civil court.

In terms of document admissibility in Malaysian law, they adopted documentary evidence as early as the 1950s. This makes their experience more extensive in handling cases related to documentary evidence. Furthermore, the increasingly modern era has given rise to a slew of new forms of documentation, including photographs, CCTV, video, audio, and recording, as can be seen in the case of *Mohd Ali Jaafar v PP* [1998] 4 CLJ 208, the court convicted the accused of corruption based on a tape recording. The Malaysian Anti-Corruption Commission (MACC) used a tape recording of their conversation as evidence to convict the accused. According to Mohamad (2019), the tape recording must be verified before the court accepts it as evidence to convict the accused of corruption. The procedure for receiving tape recordings as evidence is depicted in Figure 2.2.



Source: Paul, A. (2010)

Figure 2.2: Procedure for Receiving Tape Recordings as Evidence

Paul (2010) stated that a tape recording could be used as evidence in a civil court if it has gone through the following process. Therefore, this procedure must be followed, especially when submitting documentary evidence by tape recordings, so the court does not doubt its authenticity. On the other hand, a clear provision that adopts electronic documents submitted in civil courts, namely Section 90A of the *Evidence Act 1950* (Act 56), which explicitly provides for electronic documents in civil Courts.

Omar et al., (2020), in their books entitled “*Law of Evidence in Malaysia*”, also have outlined rules in admitting the documentary evidence as below:

1. To begin with, if a party seeks to prove the contents of a document, no other evidence is admissible unless when the document itself is tendered.

2. Second, the presence of the document's creator is critical to avoid any hearsay objections regarding its admissibility. The maker's presence allows for cross-examination regarding the authenticity of the documents and the accuracy of the content of the documents.
3. Thirdly, it is an established rule that primary evidence of the document to be tendered, for example, the production of the original documents, is required. This rule is subjected to a number of exceptions set out in the *Evidence Act 1950* (Act 56).
4. Fourth, if a document is signed or written by a specific person, the signature or handwriting must first be proved before the document can be admitted.
5. Lastly, documents admitted under Section 58 of the *Evidence Act 1950* (Act 56) do not need to be proved.

These are several rules that must be followed when using documentary evidence according to Malaysian law. If the prescribed procedure is not followed, then the validity of the document submitted will be questioned and can indirectly cause the court to reject the evidence presented, and the case has to be heard again.

The findings indicated that the definition and scope of discussion on documents under Malaysian law are expansive compared to Syariah courts. This was evident when they started handling related cases as early as the 1950s. The scope of documents under Malaysian law is not only focused on physical form alone. As discussed above, electronic records are widely accepted and debated in civil courts. Not only that, but there is a specific provision regarding the admissibility of a digital document Section 90A of the *Evidence Act 1950* (Act 56). In addition, there is also a rule in admitting the

documentary evidence under civil court. This shows that the discussion of documentary evidence under Malaysian law is discussed extensively and is very suitable for use as a model by the Syariah institution.

### **2.3 The Concept of Document Falsification**

One of the issues encountered when admitting documentary evidence is a falsification. Although the documentary evidence will be preserved in its original form, this does not mean that the document will be free from the element of falsification, which will ultimately benefit the person who commits fraud and harm the entitled party (Wan Ismail et al., 2015). This is due to the loss of religious and moral values in society (Alias et al., 2021). In addition, Anwarullah (2010) has stated that: any document presented in court as evidence also must be free of forgery. In this section, the researcher discusses the concept of document falsification from two perspectives: Syariah law of Malaysia and Malaysian law.

#### **2.3.1 The concept of Document Falsification according to Syariah Law of Malaysia and Malaysian Law**

In Arabic words, the term '*tazwir*' means forgery or falsification. It is derived from the term '*zawwara*', which denotes words or actions that are not true. Mahmoud Hasan (2010) states *tazwir* can also be meant as a disguise by stating that the object is gold, but it is iron coated with a golden-coloured object. The word *tazwir* has been mentioned clearly in the holy Qur'an:

﴿ذَلِكَ وَمَنْ يُعْظِمِ حُرْمَتِ اللَّهِ فَهُوَ خَيْرٌ لَهُ عِنْدَ رَبِّهِ ۖ وَأُحِلَّتْ لَكُمْ الْأَنْعَامُ إِلَّا مَا يُتْلَىٰ

عَلَيْكُمْ ۖ فَاجْتَنِبُوا الرِّجْسَ مِنَ الْأَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّورِ﴾

Translation: “Such (is the Pilgrimage): whoever honours the sacred rites of Allah, for him it is good in the Sight of his Lord. Lawful to you (for food in Pilgrimage) are cattle, except those mentioned to you (as exception): but shun the abomination of idols, and shun the word that is false”.

(Al-Qur’an. Al-Hajj 22:30)

From this verse, committing lies such as saying false statement and false words is a form of shirk to Allah S.W.T and it is included in the category of major sins (Ibn Kathir, 2003: 526). From the words of the Prophet PBUH:

«أَلَا أُتَبِّئُكُمْ بِأَكْبَرِ الْكِبَائِرِ؟ ثَلَاثًا، قَالُوا: بَلَىٰ يَا رَسُولَ اللَّهِ، قَالَ: الْإِشْرَاكُ بِاللَّهِ، وَعُقُوقُ الْوَالِدَيْنِ، أَلَا وَقَوْلُ الزُّورِ»

Translation: “Shall I inform you of the gravest of the major sins?” He repeated this three times. The companions replied, “Even O Messenger of Allah”. Then the Prophet SAW said, “committing shirk to Allah, disobedience to parents and false testimony”. (Hadith. Al-Bukhari. Chapter Syahadah al-Zur: Vol. 3: #2654).

This hadith had shown that false testimony or any false statement is included in major sins. In terms of terminology, Al-Tabari (2008) has defined *tazwir* as “the evidence presented is different from the original truth, so people who hear and see it

will believe it". Meanwhile, Imam Syafii stated that *tazwir* is plagiarism or imitation of writing (Al-Jamal, 1996). In the book *Al-Mausu'ah al-Fiqhiyyah* (1984: p. 254), *tazwir* refers to any words or actions that conceal the truth so that it does not appear, whether by words such as false witnesses or actions such as plagiarism to deceive in proof. *Tazwir* is also defined by Ibrahim (1928) as altering an original document by copying someone else's writing, signature, stamp, adding and eliminating original content, such as changing the child's father's name on the birth certificate to someone else. Based on the above description, it can be concluded that *tazwir* can be defined as changing the origin of a document with the intent to deceive by following the legal procedures and that such change will cause harm to others.

Under Islamic jurisprudence, *takzir* is reserved for offences with unspecified punishment rate rather than relying exclusively on the judge's discretion (Ibn al-Qayyim, 2007). The punishment of *takzir* is left to the wisdom and discretion of the judge to determine and choose the appropriate punishment to be imposed on the offenders commensurate with the offence committed by them (Haji Ibrahim, 1996). The punishment imposed under *takzir* for those found guilty shall be punished, such as whipping, imprisonment, fines, and threats. This is in contrast to *hudud* and *qisas* offences, where both the form and rate of punishment have been prescribed if found guilty of committing such crimes (Al-Sarkhasi, n.d.).

From the legal point of view, there is no explicit provision for the offence of fabricating documents under Malaysian Syariah law's authority. Instead, it is only placed under the violation of contempt of court. For the offence of contempt of court, Section 229 (1) of the *Syariah Courts Civil Procedure (Federal Territories) Act 1998* states:

Section 229 (1). Notice to show cause.

“The court shall have jurisdiction to institute proceedings against any person for contempt of court and may, in such proceedings, make an order of committal for a period not exceeding six months or may impose a fine not exceeding two thousand.”

From this section, an offender who falsifies documents can be convicted under this section. Meanwhile, forgery in civil court has specific provisions relating to document forgery, detailed in the following subsection.

The findings indicated that forgery is a challenge when presenting documentary evidence in court. Based on the evidence from the holy Qur'an and hadith discussed above, falsifying documents is one of the major sins in Islam. Offenders should be punished in proportion to their actions. In terms of punishment for forging a document, the researcher discussed it from two sides, namely the sentence imposed under *fiqh* and Syariah law of Malaysia.

For the offence of falsifying documents, according to *fiqh*, the offender will be sentenced to *takzir*, such as imprisonment, fines, whipping and threats. From a legal standpoint, there is generally no specific provision for the offence of falsifying documents under Malaysian Syariah law. Instead, it is convicted under Section 229 (1) of the *Syariah Courts Civil Procedure (Federal Territories) Act 1998*, which is the offence of contempt of court. According to the Islamic legal perspective, this is the reality and scope of the discussion regarding document forgery. The researcher opined that Syariah courts need to examine the provisions and look at the practice for forgery cases in the civil court so that Syariah court institutions can improve their handling of such cases in the future.

### 2.3.2 The Concept of Document Falsification According to Malaysian Law

Under Malaysian law, the word forgery has clearly defined based on Section 463 of the *Penal Code* (Act 574). Forgery means: “whoever makes any false document or part of a document with intent to cause damage or injury to the public or any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery”.

For example, according to a *Harian Metro* news article dated 28<sup>th</sup> May 2020, a civil servant was fined MYR 1,800 in a magistrate’s court for falsifying documents for inter-state clearance. This is because the accused was supposed to return to Putrajaya on 17<sup>th</sup> May 2020, but he is believed to have changed the date on the letter to 26<sup>th</sup> May 2020 to spend more time in the village celebrating Aidilfitri. The act of falsifying this document could be detected when the accused came to the Pendang District Police Headquarters (IPD) to apply for a letter of permission to return from Pendang to Putrajaya. However, the police requested that the man submit a letter of authorisation from Putrajaya and suspected something suspicious was contained in the letter. This is because the police found that there were different dates and confirmed that the individual was supposed to return on 17<sup>th</sup> May. Hence the action of the accused is termed forgery as defined under Section 463 of the *Penal Code* (Act 574). Black Letter Law also defines forgery as creating a false document with the intent to deceive. The act of fabricating a false document for deception must be read together (Rantanlal & Dhirajlal, 2007).

Under Malaysian law, it specifies penalties for each document forgery offence. Generally, if an accused is found guilty of falsifying documents, he or she may face punishment under Section 465 of the *Penal Code* (Act 574), which states:

Section 465. Punishment for forgery.

“Whoever commits forgery shall be punished with imprisonment for a term which may extend to two years or with fine or with both”.

However, the punishment imposed on the party found guilty has varied depending on the type of offence committed. Table 2.1 shows the provision for the type and punishment for the offence of document falsification according to the *Penal Code* (Act 574).

**Table 2.1:** Types and Punishment for Offense of Document Falsification based on the *Penal Code* (Act 574)

No.	Section	Types of offense committed	The punishment to be imposed
1.	Section 466	Forgery of a record of a court, or a public register of births, etc.	The guilty shall be sentenced to jail for a term that may extend to seven years, as well as a fine.
2.	Section 467	Forgery of a valuable security or will	The guilty shall be sentenced to imprisonment for a term that may amount to twenty years, as well as a fine.
3.	Section 468	Forgery for the purpose of cheating	The guilty shall be sentenced to jail for a term that may extend to seven years, as well as a fine.
4.	Section 469	Forgery for the purpose of harming the reputation of any person	The guilty shall be sentenced to jail for a time that may exceed to three years, as well as a fine.

Source: *Penal Code* (Act 574)

Each *Penal Code* (Act 574) clause specifies the type of forgery violation and the sentence to be applied. For example, in Section 466, forgery of a court record, or a public register of births, the guilty shall be punished with imprisonment for a term of up to seven years, as well as a fine. Furthermore, forgery of a valuable security or will is punishable by imprisonment for a time that may amount to twenty years, as well as a fine, according to Section 467. Meanwhile, under Section 468, forgery for the purpose of defrauding is punishable by imprisonment for a term that may amount to seven years, as well as a fine. Finally, under Section 469, forgery for the purpose of causing harm to a person's reputation is punishable by imprisonment for a term of up to three years, as well as a fine. As can be seen, Malaysian law has a special provision for each of the above-mentioned offences of falsification documents.

The findings indicated that the provisions on forgery contained in Malaysian law provisions are more detailed. The researcher found that the minimum punishment for document forgery is two years in prison or both. At the same time, the maximum prison sentence can reach up to 20 years, and a fine to be determined by a judge. This suggests that, under Malaysian law, the scope of the discussion of forgery is clearly stated in the statutes and the penalties imposed for such offences are strict and clear. As a result, the researcher believes that Syariah courts should examine the provisions and practices for cases involving document forgery to improve Syariah courts. The aim is also to increase the community's trust in Syariah courts' ability to handle cases in court, particularly those involving forgery.

## 2.4 Conclusion

In conclusion, the finding found that Syariah law of Malaysia and Malaysian law admit documents as evidence, and this method of proof is most important today. Provisions from the Qur'an, hadith, Islamic legal maxims and the *Syariah Court Evidence Act 1997* [Act 561] have recognised documentary evidence under the Malaysian Syariah Court. The same goes for civil courts, where there are clear provisions regarding documents in physical or electronic form. In addition, the existence of procedures for admitting a document under Malaysian law.

Meanwhile, document falsification is one issue that will be admitted when admitting the documentary evidence. Forgery is defined as altering the actual situation in a document with the intent to deceive whether the fraud was committed or altering the original meaning of the document to cause harm to the public or specific individuals. From the standpoint of *fiqh*, forgery is referred to as *tazwir*. The researcher had analysed the position of *tazwir* according to major Islamic references such as the holy Qur'an and hadith. It can be concluded that *tazwir* is one of the major sins and is included in the acts that Allah S.W.T does forbid. The punishment that will be imposed on the offender, according to *fiqh*, is that the guilty will be sentenced under the offence of *takzir*. According to Syariah law of Malaysia, the crime of forgery is only placed under the offence of contempt of court. Under civil jurisdiction, there is a clear definition of forgery in the statutory. Furthermore, there are specific provisions in Malaysian law for the offence of falsifying documents. The researcher can conclude that there are significant differences in two aspects, namely practice and provisions, where the Syariah court is recommended to make the civil court a model, particularly when dealing with such cases in the future.