

CHAPTER 6

CONCLUSION

6.1 Introduction

This is the final chapter of this thesis. The researcher goes over the study's summary, discusses the findings, implications, and future study recommendations. The discussion begins with a summary of the study's findings regarding the objectives. The researcher has systematically concluded every necessary fact in a compact chapter to make it succinct and well-presented. Following that, the researcher discussed findings from all four subsections of the objectives. The discussion then shifts to the study's implications for a variety of areas, including academic literature, legal authorities, and the public in Malaysia. This chapter ended with recommendations for future research that could be conducted to complete this study.

6.2 Summary of the Study

This section summarises research findings in accordance with the objectives of the study. This aids comprehension and organisation of the findings into a concise form.

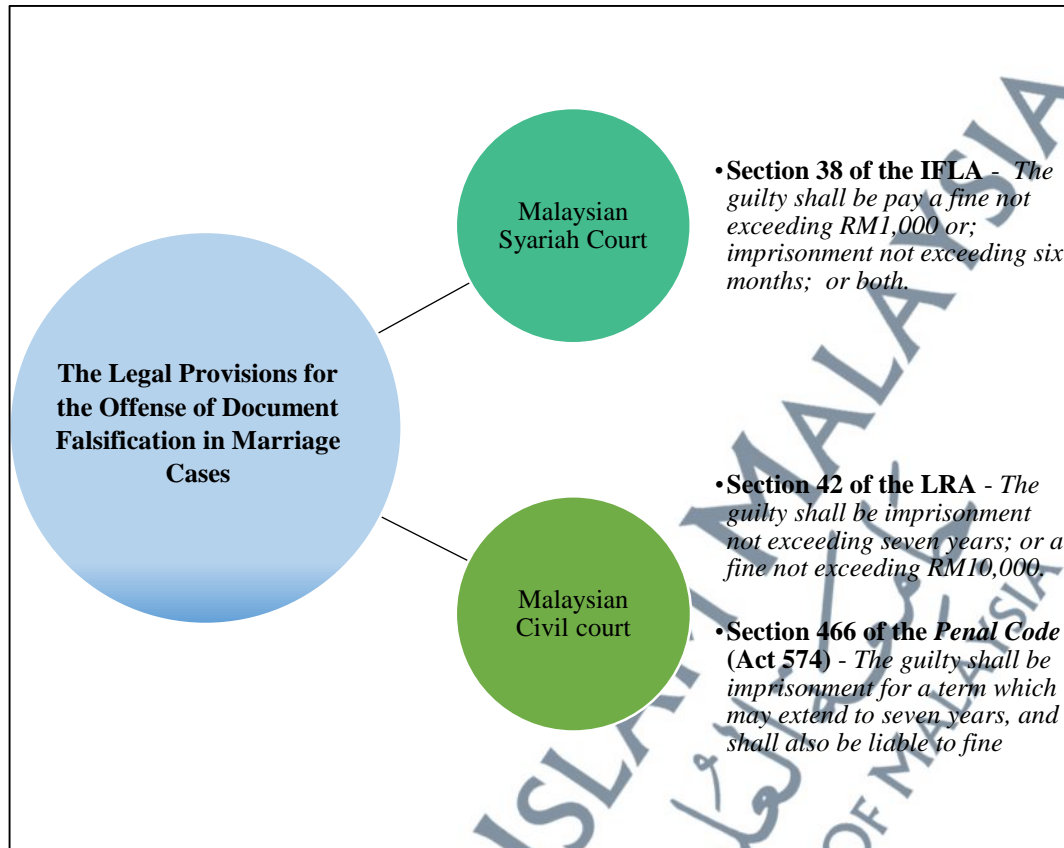
6.2.1 Findings for Research Objective 1

This research concludes that both Syariah law of Malaysia and Malaysian law accept documentary evidence as one of the forms of evidence in court. The document's characteristics of being permanent and clear over a long period of time make it the primary choice for use as evidence. The document is widely used in many daily human

affairs. Because of that, some parties falsify documents in order to profit and persecute others. Furthermore, forgery is a significant issue that will be encountered when using documents as a method of proof. The difference between the jurisdiction of Syariah law of Malaysia and Malaysian law in document falsification's offence is that Syariah law of Malaysia generally has no specific provision for related crimes because the offence of document forgery is placed under the offence of contempt of court alone. In contrast, Malaysian law has explicit provisions for every forgery that occurs. These findings then achieved the first objective of this study.

6.2.2 Findings for Research Objective 2

There are many cases of document forgery that occur. However, this study only focuses on marriage cases as a sample study by looking at the provisions allocated for this offence and its cases. Therefore, the findings of the second objective could be summarised as below.



Source: Provision from IFLA, LRA and *Penal Code* (Act 574)

Figure 6.1: The Legal Provisions for the Offense of Document Falsification in Marriage Cases under Malaysian Syariah and Civil Courts

Figure 6.1 above is a summary of the findings of this objective. Significant differences can be seen between the two jurisdictions, where strict punishment is imposed under Malaysian law. In contrast, the sentence imposed under Syariah law is quite minimal based on the current situation.

6.2.3 Findings for Research Objective 3

Next, the practice of Malaysian Syariah courts and civil courts when dealing with document falsification were analysed by making marriage cases as a study sample. This summary is demonstrated in Table 6.1 below.

Table 6.1: Comparison of the Practice between Syariah and Civil Courts in Dealing with Document Falsification in Marriage Cases

Malaysian Syariah court		Differences	Malaysian Civil Court	
IFLA	Section 38	Provision Provided	LRA	Section 42
			Penal Code (Act 574)	Section 466
Very minimal		Rate of Punishment	Strict and effective	
No specific procedure for determining the authenticity of a document		Existing of procedures to validate a document	Yes	

Source: IFLA, LRA and *Penal Code* (Act 574)

From this table, it can be concluded that, as a result of the analysis made on several cases reported in the Syariah courts as well as the civil courts, there are significant differences that can be seen between these two jurisdictions. This summary was constructed for the third objective of this study.

6.2.4 Findings for Research Objective 4

As explained before, suggestions have been made for the Malaysian Syariah court in dealing with document falsification issues in the future. The intended recommendations are as follows: a review of the effectiveness of existing Syariah court

provisions in addressing cases of document falsification in marriage cases, the requirement for developing a legal forensic model in determining document authenticity, and preliminary disclosure to Syariah officers on document forgery issues and civil court practice methods for determining document authenticity. This proposal aims to further strengthen the Syariah Court, especially in dealing with forgery issues in the future. Added to this is the existence of new forms of documents such as documents in an electronic format that will make the document vulnerable to forgery. This proposal indirectly raises the status of Syariah courts on par with civil courts.

6.3 Discussion

This section is divided into four subsections that follow one another. It is organised in accordance with the objectives of the study.

6.3.1 Documentary Evidence and Its Falsification according to Syariah Law of Malaysia and Malaysian Law

The first objective of this study is to discuss in detail the concept of documentary proof and its falsification according to the Syariah law of Malaysia and Malaysian law. The findings indicate that documentary evidence plays an important role in court nowadays, whether in Syariah or civil courts. The results show that Islam recognised documentary evidence, although some previous *fiqh* scholars had rejected it in court. This was demonstrated by the discovery of provisions from Islamic legal sources such as the holy Qur'an, hadith, and Islamic legal maxims that recognised the document as a means of proof. The document significantly facilitates our daily life, such as buying and selling, rent, loans, and others. On average, the document issued from the matter is

counted as evidence (Wan Ismail, 2020). Meanwhile, under civil court, this form of proof has been used since 1950, meaning that they are more experienced than Syariah courts.

Furthermore, suppose the document was solely focused on its physical form in the past. In that case, document equipment is expanding in the modern era, and document forms are becoming more widespread, such as documents in electronics, which are also considered documents. The findings show that under Malaysian law, there are explicit provisions relating to the receipt of documents in electronic form according to Section 90A of the *Evidence Act 1950* (Act 56). Therefore, the Syariah Court is also advised to adopt this provision, which states that in criminal or civil proceedings, any document generated by a computer can be accepted as evidence even if the document's creator is not present to testify. This statement is also supported by Yahya et al., (2017), where the author discusses the admissibility of digital documents in Syariah court. The study also suggested that Syariah court institutions look at Malaysian law provisions such as Section 90A of the *Evidence Act 1950* (Act 56) to strengthen further the acceptance of digital documents under the Syariah court. This is important because the new form of document will be vulnerable to forgery and fraud.

Therefore, despite the strength of documents as the most crucial method of proof in this millennium, some irresponsible parties will try to falsify documents for profit and persecute others. The findings illustrate that a person can be said to have committed the offence of forging a document if:

- i. Changing actual content with the intent to deceive;
- ii. Changes that are harmful or potentially harmful;
- iii. The perpetrator had the intent to commit a crime.

The findings shown that there is no specific provision for the offence of falsifying documents under the Syariah law of Malaysia. Instead, it is charged under contempt of court. While according to *fiqh*, this type of offence is classified as *takzir*, where the punishment imposed is at the judge's discretion. In comparison with Malaysian law, there are very clear provisions for this offence, and any forgery committed will be prosecuted in accordance with the provisions laid down thereunder. This statement is supported by Abdul Hadi and Paino (2017), where every offence of falsifying a document has its punishment under the statutory provision.

From the findings, when examining the concept of documentary evidence and its falsification from the perspectives of Malaysian Syariah law and Malaysian law, there is a huge gap that can be seen under Malaysian Syariah law where the concept of receiving documents in electronic form is still less fully disclosed, and there are no solid provisions below Syariah law of Malaysia. Moreover, there is still no explicit provision under Islamic rules relating to the forgery of documents which ultimately wins over the oppressors if there is no effort to eradicate or reduce such issues. The results indicated that Malaysian law is very suitable as a model and reference for Syariah court institutions in dealing with such cases.

6.3.2 Existing Provisions for the Offense of Forgery of Documents in Marriage Cases Issue

As for this study, the researcher focused on document forgery cases in marriage cases as a sample study. Therefore, the researcher analysed the existing provisions under the Syariah law of Malaysia and Malaysian law for this offence. The analysis of this allocation was made in order to fulfil the second objective in this study and has

brought out this study into several summing-up points. Significant differences that can be seen between these two jurisdictions, as shown in the table below.

Table 6.2: Provisions for the Offense of Falsifying Documents in General under Syariah law and Malaysian Law

Syariah law		Malaysian law		
<i>Fiqh</i>	<i>Takzir</i>			Section 466
Syariah law of Malaysia	<ul style="list-style-type: none"> The is no specific provision for the offence of document falsification. Instead, it falls under the contempt of court offence. For this kind of offence, Section 229 (1) of the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585). 	Malaysian law	<i>Penal Code</i> (Act 574)	Section 467 Section 468 Section 469

Source: IFLA, LRA and *Penal Code* (Act 574)

Table 6.3: Provisions for the Offense of Falsifying Documents in Marriage Cases under Syariah Law of Malaysia and Malaysian Law

Syariah Law of Malaysia	Differences	Malaysian Law	
IFLA	Provisions referred	LRA and <i>Penal Code</i> (Act 574)	
Section 38	Provisions provided for such offences	Section 42 of the LRA and Section 466 of the <i>Penal Code</i> (Act 574)	
Fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment both.	Rate of punishment	LRA	Shall be liable to imprisonment for a term not exceeding seven years and to a fine not exceeding ten thousand ringgits.
		<i>Penal Code</i> (Act 574)	Shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Source: IFLA, LRA and *Penal Code* (Act 574)

The table above is the result of an analysis of the provisions under Syariah law of Malaysia and Malaysian law in relation to provision provided for the offence of document forgery in general and provision provided for the offence of document forgery in marriage cases issue. The analysis results found significant differences between the two jurisdictions where there is no specific provision according to *fiqh* and enactments or acts in the Syariah courts in Malaysia related to the punishment of forgery in general. Under Malaysian law, there is an evident provision for every forgery that occurs in civil court. This statement is supported by Wan Ismail (2020), where the provisions on forgery under Malaysian law are more detailed than the provisions under the Syariah law of Malaysia.

In a marriage cases issue, Section 38 of the IFLA has provided for the offence of falsifying documents, namely a maximum fine of MYR 1,000 or imprisonment not exceeding six months or both. While under Malaysian law, Section 42 of the LRA and Section 466 of the *Penal Code* (Act 574) are referred to for this offence and the amount of punishment is also seen as very strict and able to teach a lesson to the offender. This is the gap that can be seen between Malaysian law and the Syariah law of Malaysia.

6.3.3 The Level of Practice of Syariah and Civils' Courts in Malaysia deal with the Issue of Document Falsification

Following that, the researcher examined some cases reported in Syariah courts and civil courts concerning the offence of falsifying documents in a marriage case. The goal is to see the extent of both courts' practice when dealing with such issues. Based on the analysis findings, the researcher can conclude that there are differences between

Syariah and civil courts when dealing with such cases. Significant differences can be seen in three main aspects:

- i. provision;
- ii. rate of punishment;
- iii. the existence of procedures for verifying a document submitted in court.

First of all, in terms of the provision provided and the rate of punishment imposed for that offence. In general, the violation of falsifying a document under the Syariah law of Malaysia is only placed under contempt of court. While for the offence of falsifying documents in marriage cases, Section 38 is referred. An accused who is found guilty under this Section will be fined not more than MYR 1,000 or imprisoned for a maximum of 6 months or both. In the researcher's study, the rate of fines imposed is seen as irrelevant to the current situation. This is because most of them can pay for it, and the goal of accomplishing awareness for the wrongdoings committed is not achieved. This statement is supported by Ahmad Zakhi's (2015) statement, where the author opined that the punishment imposed under the Syariah court related to the offence of falsifying documents is seen as very minimal and unable to teach a lesson to offenders.

In Malaysian law, forgery cases are not only focused on marriage issues, as forgery can also occur in banking cases, wills, and others. Studies show that there are strong provisions under Malaysian law. For example, any individual found guilty of committing forgery in a marriage issue shall be punished under Section 42 of the LRA as well as Section 466 of the *Penal Code*. In addition, in terms of the rate of punishment imposed under Malaysian law, any accused found guilty of falsifying documents in marriage cases issues can be fined according to Section 42 of the LRA, which is imprisonment not exceeding 7 years and a fine not exceeding MYR 10,000 or Section

466 of the *Penal Code* (Act 574), which is imprisonment for a term which may extend to seven years and shall also be liable for a fine. This shows that there are significant differences in Syariah and civil court practice in dealing with document falsification's issues in terms of provisions and the rate of punishment imposed.

Finally, a document that is brought to the court must be verified. If the document is doubtful of its authenticity, it will prove that the document will be rejected as evidence. This is supported by Anwarullah (2010), where any document produced in evidence in the court must be free from forgery. In addition, the importance of validating a document is also so that fraud can be prevented earlier. Under the civil court, there is a straightforward procedure for certifying a document submitted in court. In contrast to the Syariah court, where new document verification methods such as the application of forensic science are still not fully disclosed, and there are still no specific procedures related to it. This shows that the civil court is very suitable as a model and reference for the institution of Syariah courts on this issue.

6.3.4 The Suggestion of Improvement under Malaysian Syariah Laws on the Matter Involving Document Falsification

As a result of the analysis of the concept, provisions and practice of the Syariah and civil courts in dealing with document falsification issues, there is a gap between the two jurisdictions where the civil court is more exposed compared to the Syariah court. Based on the findings, a new shift under the jurisdiction of the Syariah courts should be proposed to better deal with such cases in the future. As a result of case analysis on the issue of forgery in marriage cases, the punishment imposed for this offence is seen as very minimal and less effective in teaching a lesson to the accused in this current

situation. Therefore, the authorities are advised to re-examine the effectiveness of Section 38 of the IFLA, which is the offence of falsifying documents in marriage issues, so that the punishment imposed is commensurate with his actions. This statement was supported by Ahmad Zakhi (2015), who stated that the rate of fine imposed under this section is not reasonable because almost all couples can pay the fine imposed and that a review should be conducted under this section.

Second, forensic science is generally a skill to solve a case or investigation that uses the application of science (Baharuddin, 2017). Therefore, it is required to develop a legal forensic model in determining the authenticity of the document under Syariah court. This model will indirectly serve as a guide for Syariah officers regarding the disclosure of the application of forensic science in documentary evidence (Baharuddin et al., 2019). The results also discussed the methods used under Syariah law such as *iqrar*, *syahadah*, oath and expert opinion. The findings indicated that expert opinion is the most widely used today. This is because forensic expert, for example, is significant to confirm the authenticity of a document and prevent the document from happening. This is supported by Ahmad et al., (2019) and Ali (2008), where forensic experts play an essential role in verifying a document because they have the skills and knowledge of science and technology to prove criminal cases in this modern times. However, Syariah law practitioners are still less exposed to the application of expert forensics, although this method greatly helps the court speed up the trial of cases, and forgery can be detected earlier. Therefore, it is appropriate that a legal forensic model is formed to determine the authenticity of a document in Syariah court.

Finally, the findings indicated that the civil court's jurisdiction is very suitable as a guide and model in relation to the issue of document forgery. Therefore, if the Syariah

court collaborates with the civil court, they will be exposed to methods that the civil court employs to deal with such cases and the procedures to determine the authenticity of a document submitted in court. This is supported by Wan Ismail and Mehmet's (2017) statement that the Syariah court should make the civil court a model and improve the Syariah courts' institution. This improvement is proposed so that the Syariah court can handle cases involving document forgery better, and the community out there does not look askance at the Syariah court's ability to manage cases of documentary evidence and its falsification.

6.4 Implications of Study

Each study has its own set of values. Therefore, this study is expected to positively impact academic literature, legal authorities, policy makers and the public in Malaysia.

6.4.1 Implication towards Academic Literature

This study has deeply discussed the concept of documentary evidence and its falsification from the perspectives of Syariah law of Malaysia and Malaysian law. In addition, this study examines the legal provisions for the offence of document falsification in marriage cases under Malaysian law and Syariah law. This is by means of added literature regarding documentary evidence, especially in document falsification. Thus, scholars and novice researchers may benefit from these suggestions.

6.4.2 Implications towards Legal Authorities

This study also has several implications for legal authorities that have been identified generally and specifically. Generally, the concept of a document and its falsification can be a reference point towards the legal authorities. Then, the analysis of the legal provision regarding the offence of falsifying documents under civil and Syariah courts also indirectly may be referred by the legal practitioners and judges.

Apart from that, the result of a discussion on understanding how the Malaysian Syariah and civil courts deal with document falsification by looking at marriage cases as a sample can also be considered by the legal authorities in order to improve the gaps that arise, especially in Syariah courts. In the end, the suggestion of improvement proposed by the researcher in this study regarding this issue can be considered by the legal authorities to make an amendment to ensure justice in Syariah courts is achieved.

6.4.3 Implications towards Policy Makers

This study demonstrates that the scope of documents is expanding in modern technology, and it is indirectly exposed to forgery elements. Based on the justification presented in this study, the findings of this study indicate that the Syariah court is suggested to re-examine the provisions relating to document forgery. The purpose is for the Syariah Court to deal with counterfeiting issues better in the future. This study displays the concept of documentary evidence and its falsification according to Syariah law of Malaysia and Malaysian law's perspectives in giving the understanding specifically toward the public in Malaysia. This study will show that falsification is one of the significant challenges when admitting documents as a means of proof in a court, especially in marriage issues. Hence, by analysing the legal provision and cases from

both courts, there is a greater picture towards the public in Malaysia that Syariah's court institution needs to improve when dealing with the cases involving document falsification by referring to civil courts.

6.4.4 Implications towards Public in Malaysia

This study displays the concept of documentary evidence and its falsification according to Syariah law of Malaysia and Malaysian law's perspectives in giving the understanding specifically toward the public in Malaysia. This study will show that falsification is one of the significant challenges when admitting documents as a means of proof in a court, especially in marriage issues. Hence, by analysing the legal provision and cases from both courts, there is a greater picture towards the public in Malaysia that Syariah's court institution needs to improve when dealing with the cases involving document falsification by referring to Malaysian law.

6.5 Suggestions for Future Research

This section will explore some recommendations that can serve as guidelines for future researchers and fill in the gaps in this study. In this study, the researcher examined the concept of documentary evidence and its falsification from the perspectives of Syariah law of Malaysia and Malaysian law. Aside from that, the researcher has analysed the existing provisions for the offence of falsifying documents under Syariah and Malaysia law, as well as an examination of some cases to see the practice-related cases in both courts.

The findings indicate that practices under Syariah jurisdiction are viewed as less effective for offenders today. The amount of penalties imposed for these offences is very low compared to current reality, and Syariah courts are still less exposed to methods in determining the authenticity of a document. The implication is that the submitted cases must be heard again. The researcher also discovered that civil courts are much more advanced than Syariah courts in handling documents forgery cases and that there are specific provisions for these offences under Malaysian law. Therefore, the researcher also suggests improvements that can be made in Syariah courts based on civil courts. However, further studies are needed to expand the area of these suggestions as below.

6.5.1 The Need for Syariah Courts to Examine the Provision for Document Forgery Cases in Civil Courts

The findings show that civil courts have been handling document-related cases for a long time, making them more experienced with such issues. As can be seen, they do not only handle forgery cases in marital disputes but also other matters. Therefore, it is suggested that Syariah court institutions examine the provisions provided for forgery cases in civil courts. This analysis seeks to strengthen Syariah courts, particularly in dealing with issues of document forgery. The Syariah courts must also strengthen the existing provisions on document forgery so that the public has confidence in the Syariah Court's ability to handle cases brought before it.

6.5.2 The Need to Form a Fundamental Framework to Realise the Formation of a Forensic Legal Model Under the Syariah Court

The authenticity of a document is the main feature for the admissibility of a document in a court proceeding. Therefore, the researcher would like to suggest a further study on the formation of a fundamental framework in forming a forensic legal model to identify the validity of the document presented before a court, especially in Syariah courts. This is due to previous analysis and discussions. Some cases reported in Syariah courts that had to be re-heard due to doubts about their validity. Therefore, to protect the document's authenticity from forgery, a comprehensive model must be realised to be used as a guideline in Syariah courts in the future.

6.5.3 The Need to Build Standard Operating Procedure (SOP) in Handling Document Forgery Cases in Malaysian Syariah Courts

The need to have an appropriate Standard Operating Procedure (SOP) is essential to guide Syariah law practitioners and Syariah judges when handling such cases in the future. As a result of previous researchers' proposals to increase the number of penalties, the need to establish a comprehensive forensic legal model and also early disclosure to Syariah officials on document forgery issues based on practice from civil courts will be harmonised to produce a clear SOP when handling such cases in the future. Thus, further study should be drafted for this purpose.

6.6 Conclusion

In conclusion, this chapter summarised and discussed the findings in light of the study's objectives. This study will indirectly significantly impact several parties such as academic literature, legal authorities, policy makers, and the public in Malaysia. This study also recommends further study to fill the gaps available for this study and realise the suggestions that have been submitted by the previous researcher related to improvements under the existing Malaysian Syariah laws on the matter involving document falsification. It is hoped that this study will be one of the solutions to reduce this kind of case in court.

