CHAPTER 2
LITERATURE REVIEW

2.1 Introduction

This chapter reviews the literatures on Islamic law of evidence, documentary evidence or *kitābah* and forensic document examination. It is divided thematically into several sections. The first section discusses on the meaning of evidence as well as its principles and types accordingly. The next section reviews the concept of document, *kitābah* and documentary evidence, statutory definition and its admissibility as evidence. The final section is about forensic document examination and its background along with the discussion of forgery issue in document. At the end of this chapter, the literatures found were analysed to establish the importance of the present study and evaluate the necessity of applying forensic document examination in Syariah courts.

2.2 Islamic Law of Evidence

2.2.1 Introduction to evidence

In any legal system, evidence is extremely important as it is the principal mean for preserving justice and nurturing integrity within society. It is required in any legal action to ascertain the truth or facts. In Islam, evidence is known as *al-bayyinah*. *Bayyinah* comes from the words *bayyana* which means state, show or describe (al-Farouqi, 1983; Mutalib, Ismail, & Abd Murad, 2018). Literally, *bayyinah* means clearness, proof or argument that by inference with intellect or action or sense, manifests, clarifies, or shows the existence or non-existence of something (Arbouna, 1999). In

Islamic law of evidence, *bayyinah* refers to a thing which elucidates or explains a right or interest.

Muslim scholars have several views in understanding the term *bayyinah*. The first view belongs to the *jumhūr ulama'* (most scholars) who define *bayyinah* as *shahādah* or witness (al-Zuḥayli, 1982). Second, according to Ibn Hazm, *bayyinah* refers to witness and *'ilm al-qadhi* (knowledge of the judge) (Ibn Ḥazm, n.d.). The final view, according to Ibn Qayyim, the definition of *bayyinah* summarizes all forms of evidence in Islam including those types agreed upon by the scholars such as *iqrār, yamin* and *shahādah* and also the forms of evidence on which the scholars disagree such as *'ilm al-qadhi, khabar mutawatir, fīrāsah* and others. It is interesting to note that Ibn Qayyim defines *bayyinah* comprehensively as anything which clarifies, explains or proves a position, right or interest which a court or judge may consider in delivering a judgment. This definition does not restrict the meaning of *al-bayyinah* to two witnesses or four or one. He argued that the word *al-bayyinah* in the Qur'an did not appear with the meaning of two witnesses at all, but it came in the sense of evidence, and proof singular and plural (al-Qayyim, 1953; Kharofa, 2000). Ibn Qayyim follows his mentor, Ibn Taimiyyah reiterated that *al-bayyinah* in Shariah law is anything that explains and brings about truth. Similarly, Ibn Farhun stated that *al-bayyinah* is a term employed to mean anything that manifests and bring a right into light (Ibn Farḥun, 1986).

Based on these views, the third view of Ibn Qayyim is considered as the most relevant definition which suits the current technological advancement (Mutalib et al., 2018). The definition consists of all forms of proof including written documents which is the central discussion of this study.

Apart from these views, the researcher believes that it is important to look at the definition of evidence from common law perspective. In Mozley & Whiteley's Law Dictionary (10th Edn), evidence has been defined as follows:

> *"that which, in a court of justice, makes clear, or ascertains the truth of, the very fact or point in issue, either on the one side or on the other. Any matter, lawfully deposed to on oath or affirmation, which contributes (however slightly) to the elucidation of any question at issue in a court of justice, is said to be evidence. Evidence is either written or parol ...may also be primary, ie, best evidence, or secondary; direct, circumstantial, or hearsay; real or extrinsic"* (Mozley, 1988).

Blackstone similarly defined evidence as that which demonstrates, make clear or ascertains the truth of the very fact or point in issue. According to Bentham, the term evidence may be understood as "any matter of facts, the effect, tendency or design of which, when presented to the mind, is to produce a persuasion concerning the existence of some other matter of fact, a persuasion either affirmative or disaffirmative of its existence" (Tamlyn, 1846). Other than that, Taylor stated that evidence is "all the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation" (Thayer, 1889).

Based on these meanings, it can be construed that the main purpose of evidence is to discover the truth. Albeit scholars have different ways in conveying the meaning of evidence, the common key term of 'ascertaining truth' were used consistently. The presence and use of evidence during the course of trial is essential to aid the judges in rendering a just decision. Besides, there is no clear difference between the term of evidence in Islamic law and common law perspectives.

2.2.2 Principles and types of evidence

There is a large volume of published studies describing the principles and types of evidence in Islamic law. Abdul Karim Zaydan (2007) in his renowned work, *Niẓām al-Qaḍā'ī fī al-Sharī'ah al-Islāmiyyah* listed nine methods of proof which are *iqrār* (confession), *shahādah* (testimony), *yamin* (oath), *nukūl 'an al-yamin* (refusal to take an oath), *al-'ilm al-qadhi* (personal knowledge of a judge), *qarīnah* (circumstantial evidence), *al-qasamah* (oath to deny involvement in murder), *al-qiyāfah* (paternity establishment) and *al-qur'ah* (voting). In other prominent book of al-Zuhayli (1982), it is stated that among the means of proof under Islamic law of evidence include confession, testimony, oath and circumstantial evidence. Othman and Hisam (1996), in a well-known introductory work addressed the principles of Islamic evidence as mentioned in the authorities from the Qur'an and Sunnah and the types of evidence recognized in Syariah law. Besides, this work also explained on the other means of proof such as *khabar* (information to the court) and *li'an* (imprecation). Meanwhile, according to Arbouna (1999), the types of evidence received by a court of law are in the forms of *iqrār*, *shahādah*, *yamin*, *watha'iq al-Ithbat* and *qarīnah*. In the same vein, Anwarullah (2004) in his book explained the Islamic principle of evidence in modern context and described the forms of evidence including testimony, admission and confession, circumstantial evidence, documentary evidence, evidence by expert, oath, and knowledge of justice.

These various studies demonstrates that there are variation in terms of types of evidence used by the scholars in their writing. Most of them classified the types of evidence similarly. Some of the scholars came out with more types of evidence and the rest came out with fewer. The different approaches in explaining the types of evidence is due to the scholars are divided in opinions when it comes to certain modes of proof.

For instance, scholars agree that *iqrār*, *yamin* and *shahādah* are methods of proof under evidence law (Hamidon, 2017) while the admissibility of methods such as *qarīnah*, *qasamah* and *'ilm al-qadhi* were considered by scholars differently. It is also important to note that in classifying *al-bayyinah* or evidence, both Islamic law and common law are principally in conformity as to the types of evidence (Arbouna, 1999).

2.2.3 Partial focus on documentary evidence in Islamic law

Some argued that Islamic law of evidence is a largely neglected subject or an understudied area of Islamic law (Abualfaraj, 2011; Haykel, 2002). Researchers have consistently emphasized on the significance of evidence to aid the judge in making decisions (Arbouna, 1999; Othman & Hisam, 1996).

Several researchers carried out their studies on specific area under the field of Islamic evidence such as circumstantial evidence or *al-qarīnah* (Mayanja, 2017; Mutalib et al., 2018; Ramlee, 1997). For instance, researches on admissibility of circumstantial evidence in *ḥudūd* and *qisās* cases showed that *qarīnah* is an admissible type of evidence under Islamic law principles and can be applied in criminal cases involving *ḥudūd* and *qisās* provided that it is strong in nature (Muhamad et al., 2015; Mutalib et al., 2018). Mayanja (2017) conducted a study on circumstantial evidence within the context of its admissibility in criminal proceedings. Similarly, a work by Mutalib et al. (2018) provides discussion on the use of *al-qarīnah* as a method of proofing in Islamic criminal law. Meanwhile, a study conducted by Nurullah (2019) comparatively analysed the rule of circumstantial evidence under common and civil law.

Besides, several studies have been published on the admissibility of deoxyribonucleic acid (DNA) evidences as *al-qarīnah* in Syariah court. Shabana (2012) in his well-designed study stated that the DNA tests is approved or admitted only when

it does not violate the rulings of Islamic law. Shariff, Rahman, and Rajamanickam (2015) carried out a study which touched on the relevancy and admissibility of DNA evidence in Syariah court. The study found that DNA evidence as *qarīnah* should be ruled as relevant and admissible in the eyes of syariah principles subject to correct application of related principles and strict adherence to pre-determined conditions. A study conducted by Azhar and Abdul Hadi (2017) agreed that DNA tests were received as evidence in the form of *qarīnah* which serves to strengthen existing evidence in Syariah court. M. H. Ahmad et al. (2019) further explained the issues that need to be addressed to ensure effective and practical solution to bring and applied the use of DNA evidence in Syariah court successfully.

A comparative study conducted by Mohammed Burhan Arbouna (1999) focused on the function of official documents in Islamic law. The importance of documentary evidence is clearly emphasized throughout the study. While this is a good study done, it is limited to the function of official documents. Abualfaraj (2011) in his work discussed Islamic law of evidence from another perspective. He suggested that there is little reform has been made to the rules of Islamic evidence. He further argued that there has been no real critique on its applicability in modern societies and court rooms.

From these literatures, it can be inferred that the focus of studies on Islamic evidence is directed to certain topic such as *qarīnah* or circumstantial evidence. There have been no studies specifically discuss and relate the field of forensic document examination with Islamic legal system. Since there has been no real discussion on the applicability of forensic document examination on questioned document cases in Syariah court, the present study contributes to a new knowledge and thus, is vital to fill the gap exists in the knowledge.

2.3 Documentary Evidence (*Kitābah)*

2.3.1 Document as evidence and *kitābah*

Since the scholars borrowed words from Latin and Greek, there are many Latin and Greek words were introduced into English. The word 'document' has several origins. Document in the Old French means lesson and written evidence. It also comes from Latin word '*documentum*' which means example, proof and lesson. The Merriam-Webster Dictionary defined 'document' as proof or evidence. It is an original or official paper relied on as the basis, proof, or support of something (Merriam-Webster, n.d.-b). A document is a physical item that contains written or printed information (Ellen et al., 2018). Document is also construed as an official paper that gives information about something or that is used as proof of something. It is literally a piece of written, printed, or electronic matter that provides information or evidence or that serves as an official record (Oxford University Press, 2020). Although the term document is generally understood to mean writings on paper (such as an invoice, a contract or a will), the term may also include any media by which information can be preserved (Kallil & Yaacob, 2019). In short, documents can be defined as representations of information about persons, places, or things.

In Islamic law, the equivalent term for document is *kitābah, sāq, khat, muharrar, asnād, hujaj, aurāq, sijjil* and *wathiqa* (W. A. F. W. Ismail, 2019; W. A. F. W. Ismail & Ramlee, 2013; Mustapa Sa'di, Kamarudin, & Ramlee Saad, 2015). In this study, the researcher focused on the term *kitābah* as it has been used in many studies to refer to a document or documentary evidence. It is recognised as a form of legal proof (al-Rāzī, 1997; Arbouna, 1999; Baharuddin, 2015; Bahnasi, 1989; Hooper, 1990; W. A. F. W. Ismail, 2019; Mohamad Yunus, 2019; Mohd Safie, 2010; Othman & Hisam, 1996).

Previously, jurists have indicated that document in Islam is confined to any physical written document only and that was given based on their observation, need and situation at that time (W. A. F. W. Ismail & Ramlee, 2013; Mustapa Sa'di et al., 2015). *Kitābah* or document is derived from the word *kataba* which means to write, to record or to draft (W. A. F. W. Ismail, 2019; W. A. F. W. Ismail & Ramlee, 2013). The term *kitābah* is referred to as documents, statements or notes written by a person who may be in a position of authority or a judge or an ordinary citizen (Arbouna, 1999; Othman & Hisam, 1996). Traditionally, *wathiqa* is defined as:

> *"a writing on pieces of paper whereby debt, right, property or contractual obligations are recorded or created by people involved with the intent of creating evidential medium, so that the matter it recorded might be proven in any subsequent dispute."*
>
> (Arbouna, 1999)

On the other hand, Mohamed Berween in his study use the term *al-wathiqa* to indicate the first Islamic state constitution established by the Prophet Muhammad SAW which is The Constitution of Madinah, also known as The Charter of Madinah. *Al-wathiqa* historically contains the meaning of a social contract between all members of the community in Al-Madinah (Berween, 2003). However, it remains the case that the term *al-wathiqa* literally refers to document.

With the recent technology advancement, people began to depend more and more upon documents in their transaction. Moreover, electronic media such as computers, digital cameras, sound recording devices and other types of recorded evidence are among the forms of modern day documents relied upon in the current legal system (Haneef, 2006). Research has shown that documentary evidence has become an

increasingly important modes of proof (Arbouna, 1999; W. A. F. B. W. Ismail et al., 2015; W. A. F. W. Ismail & Ramlee, 2013; Muda, 1998). Hence, the current study is relevant to address the importance of regulating evidence especially in the form of document through forensic examination perspective.

2.3.2 Documentary evidence under statutes

From the legal point of view, document is statutorily defined under section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] as 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, that matter. This definition can also be found in Syariah Evidence Enactments of each states in Malaysia and the Evidence Act 1950.

Under section 29 of the Penal Code [Act 574], the word “document” has been defined as 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. Meanwhile, section 3 of Interpretation Act 1948 and 1967 [Act 388] stated that “document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. It can be concluded that the meaning of documents in the mentioned statutes are similar in terms of the wording used.

The word "document" has been defined not only in several statutes, but also in court decisions. What constitute a document is a relevant discussion in many cases. In the case of **Nadimuthu v Public Prosecutor [1974] 1 MLJ 20**, the meaning of document received judicial attention where Ong Hock Sim FJ ruled that a medical certificate is a document that cannot be disputed. At common law, the main characteristic of a document is that it should contain and convey information. The concept of a document for the purposes of English common law was described by Darling J in **R v Daye [1908] 2 KB 333** as comprising any written thing capable of being evidence. Humphreys J in **Hill v R [1945] KB 329** decided that a document must be something which teaches you and from which you can learn something, that is, it must be something which affords information. His Lordship also emphasized that to constitute a document, the forms which it takes seems to be immaterial; it may be anything on which the information is written or inscribed - paper, parchment, stone or metal. Similarly, in the English case of **Grant v. Southwestern & County Properties [1974] 3 WLR 221**, the plaintiff contended that the tape-recording was not a ‘document’. However, the judge held that tape-recording was a document. These cases

signifies that the statutory interpretation of "document" can affect decisions of presiding judges. Moreover, the term document are judicially interpreted in liberal manner.

Documentary evidence can be simply described as all documents produced for the investigation of the court. It does not only constitute information written on paper, such as letters, a contract or a will, but also embodied information recorded on any media on which information can be stored (Querijero, 2013). It is the matter represented on the substance that constitutes the document and not the substance itself. Since the manner of expression or description of the matter has not been restricted in any way, document includes expressions or descriptions of any matter upon any substance whether they are manually or automatically done (S. Augustine Paul, 1992). In fact, most researches emphasized that the ambit of the meaning of "document" is defined broad enough to include anything which embodies sound or other data or visual images capable of reproduction (Arbouna, 1999; Chasse, 2007; W. A. F. W. Ismail, 2016; W. A. F. W. Ismail, Shukor, Hashim, & Baharuddin, 2018; W. A. F. W. Ismail, Shukor, Hashim, Mutalib, & Baharuddin, 2019; Mohamed, 2011; Mohd Yunus, 2011; Querijero, 2013; Radhakrishna, 2016; Yahya, Shariff, & Abdullah, 2017).

Due to the rapid growth of technology, nowadays information may be contained in devices such as discs, tapes or films, and may be conveyed through symbols or diagrams and also by words or figures. With the ever increasing amount of documentary material coming before the courts, the stipulated legal provision is considered broad enough to include all forms of technological device capable of being tendered as evidence in court.

2.3.3 The admissibility of documentary evidence

Scholars indicate that documentary evidence forms an important evidential medium in the administration of justice. In fact, the majority of evidence adduced before any court of justice for evidential purposes is in the form of documentary evidence. Compared to another methods of proof, *kitābah* or documentary evidence has its own unique history. Some of the jurists do not consider writing as a mean of proof because handwriting resembles one another and thus, can be easily copied and forged (Anwarullah, 2004; Othman & Hisam, 1996). Moreover, the handwriting itself reproduced the original oral evidence which was primary evidence of the writing itself. However, as the people later began to be dependent the evidence of documents in their transactions, the jurists accepted documentary evidence by way of favourable constructions or "*istiḥsān*" (Nelson, 1992).

Even though not all jurists discussed the topic of *kitābah* in particular, nevertheless, Muslim jurists unanimously agree that documents are admissible means of proof in Islamic law of evidence (W. A. F. W. Ismail & Ramlee, 2013; Mustapa Sa'di et al., 2015; Zaydān, 2007). Yet, the extent of their application depends on the nature of the claim; either civil or criminal (Haneef, 2006). The practical significance of documents as a mean of proof is all too clear and the fundamental need of documentary evidence has never been underestimated by the jurists (Arbouna, 1999). In general, document is accepted in Islamic law as a mode of proof on the basis of evidence from the Qur'an, the Sunnah and the practice of companions of Prophet Muhammad SAW (Arbouna, 1999; Haneef, 2006; Mustapa Sa'di et al., 2015; Nelson, 1992).

Ibn Qayyim stated in his work that acceptance of *qarīnah* is the ground for the admissibility of documentary evidence as a means of proof (al-Qayyim, 1953). Likewise, there are six articles in the Mejelle dealing with written admissions and the

effect of documents in the law of evidence (Othman & Hisam, 1996). Documentary evidence is treated as *qarīnah* whenever it helps to establish the circumstances related to particular points or even other evidence. This is also ascertained by Haneef (2006) who stated that documentary evidence is treated as a piece of circumstantial evidence, from which the court come to a conclusion as to its existence, condition, or value. Circumstantial evidence gives information regarding circumstances that allow for presumptions to be made about the other types of evidence. This form of evidence presents indirect proof and usually cannot be used as the sole evidence in a case (Conrad, Misenar, & Feldman, 2012).

In addition, relevancy and admissibility of documentary evidence is justified by the presence of legal provisions under Malaysian Syariah courts which clearly acknowledge the admissibility of documentary evidence. Section 3 the Syariah Court Evidence (Federal Territores) Act 1997 [Act 561] clearly explained that documentary evidence is acceptable in Syariah court. According to section 90 of the same act, the court shall admit evidence if it thinks that the fact, if proved, would be relevant and not otherwise. Admissibility of such documentary evidence is therefore subject to issues of relevancy and proof under Islamic law. It is up to the court to determine whether the evidence is relevant, reliable and authentic.

Previous scholars tend to emphasize that the role of testimony or *shahādah* is superior to the written documents in terms of jurisprudence and practice (Burak, 2016; Marglin, 2017). The forms of evidence agreed upon by the jurists are *iqrār*, *yamin* and *shahādah* (Othman & Hisam, 1996) and documentary evidence does not fall within this category. Some of the Shafie's jurists conceded that if the judge is convinced that if the document has been preserved under the supervision of the judge (or his representative) or the witness, it serves as valid means of proof, albeit the judge or witness may not

recall its contents (Ibnu Hajar, 1960). In the same vein, Ibn Qayyim (1953) states that the prevalent view of Imam Ahmad is in accordance with the validity of written documents as means of proof , although the judge may not recollect the event in which his legal decision was delivered or the witness to the making of the document did not recall the circumstance in which his deposition was given. Sayyid Uthman declares that a written document (*khaṭ*) cannot be utilized by itself as a legitimate basis for a legal judgment if its contents cannot be recollected from memory and verified by the oral testimony of two witnesses (Kaptein, 1997).

It can be deduced that Muslim scholars accept the validity of documentary evidence with certain conditions or exceptions. It is difficult to identify any Islamic legal school which has denied the validity of documentary evidence, and restricted legal proof to oral evidence only (Arbouna, 1999). Although Muslim jurists did not give adequate attention to documentary evidence, they did not disregard the importance of documentary evidence as an evidential medium. In sum, research shown that documentary evidence is a significant form of legal proof. The currents study seeks to address its importance and eventually add to the literature on documentary evidence.

2.4 Forensic Document Examination/ Questioned Document

2.4.1 Forensic Document Examination and its background

Forensic science in general is the application of science to the law (J. Lewis, 2014). It is about basic scientific research and how that research is transformed into practical use in a legal context (Zonderman, 1990). In forensic science, the field of forensic document examination is considered as one of the oldest disciplines. The discipline of forensic document examination is more often referred to as “questioned document”. It is usually associated with the illegal activities such as check fraud, contested will and

fake certificate. Any means of communication that is suspected, entirely or in part, as to authenticity or origin is identified as questioned document (Gaensslen, Harris, & Lee, 2008).

A considerable amount of literature has been published on forensic document examination. Albert S. Osborn, with his book *Questioned Document* published in 1910 is considered as the father of questioned documents (J. Lewis, 2014). There are plenty recent works deal with general explanation of forensic document examination such as the types of examination conducted, the origins of modern forensic document examination and the qualifications of a forensic document examiner (Ellen et al., 2018; Hammond, 2013; Houck & Siegel, 2015; Koppenhaver, 2007; Leaver, 2006; J. Lewis, 2014). All of these works have variable quality and thus, have variable importance.

The field of forensic document examination has been referred to in more general books of forensic science such as the work of Keith Inman and Norah Rudin entitled *Principles and practice of criminalistics: the profession of forensic science*, Stuart H. James and Jon J. Nordby's book of *Forensic science: an introduction to scientific and investigative techniques*, and R. Saferstein's work entitled *Criminalistics: An introduction to forensic science* (Inman & Rudin, 2000; James & Nordby, 2002; Saferstein, 2015).

Once the genuineness of a document is suspected or the content of the document does not represent what it is, the document is known as questioned document (U. K. Ahmad & Yacob, 2003). In other words, documents suspected of being fraudulent or source is unknown, or background is disputed are known as questioned documents. Thus, questioned document can be construed as any document that may be disputed or queried, especially as to its source and authenticity. The meaning of document here

includes every object which contains handwriting or printed materials which are disputed.

A questioned document is not necessarily a piece of a paper, it can be any object. It can be any material, signature, handwriting, and typewriting or marks whose source or authenticity is in dispute or doubtful (Saferstein, 2015). Questioned document examination comprises of numerous examinations that can be done by questioned document examiners. Since technological equipment are highly accessible, evidences in the form of documents are highly vulnerable to alteration and tampering.

Within the wide field of forensic science, the scientific examination conducted on documents has one objective that is to furnish information about the history of a document to an investigating police officer and eventually for the benefit of a court of law (Ellen et al., 2018). Among the typical cases submitted to the forensic document examiners include forged checks, threatening letters, disputed signatures on wills, trusts, business documents, mortgage documents, typewritten documents, altered business documents, medical records and photocopied documents (J. Lewis, 2014). Questioned document examiners are often asked to authenticate the author, the signer or the contents of a document, determine the timeframe in which it was created, identify the materials used in its preparation or uncover modifications to the original text (Gaensslen et al., 2008; Hammond, 2013).

Questioned document examination is considered as an underutilized area of forensic science since questioned document examiners must be quite demanding, especially in the quality and quantity of the known control samples they need (Gaensslen et al., 2008). It is important for the document examiners to have enough known samples or exemplars to determine whether or not the two samples match. There

are numerous examinations that can be done by the questioned document examiners other than handwriting examination.

Notwithstanding the fact that majority of task conducted by forensic document examiners is examination and comparison of handwriting and hand printing, there are other examinations performed such as deciphering of obliterations and erasures, typewriting, printing processes, computer printing, machine printing, machine impressions, office machine copies, fraudulent credit card manufacture/alteration, identification cards, ink, paper, and, in some agencies, footwear impressions (Leaver, 2006). The different types of examination will be discussed further in the findings and discussion sections.

Even though the literature of forensic examination has reached the maturity in forensic science and civil law research fields, there is still loopholes in the Syariah legal field. No study of forensic document examination has yet to be found in the context of Syariah legal system that explained on the principles and its application in Syariah court.

2.4.2 Increasing number of cases relating to forgery of documents

Previous studies found that forgery of document has become increasingly common in this era (Hammond, 2013; W. A. F. W. Ismail, Mutalib, Abdullah, Amani, & Khir, 2015; Leaver, 2006; Nickell, 1996). Since social life and commercial practice became more complicated, crimes and offences today are more sophisticated and refined. Some authors (CheHashim & Mahdzan, 2014; Hadi & Paino, 2016; Harun, Ismail Nawang, & Hassim, 2015; W. A. F. W. Ismail et al., 2015) have mainly been interested in the issue concerning forgery of document. In Malaysia, forgery cases reported in Syariah courts have been associated with transfer of land ownership, entrustment, transfer of shares in a company, forgery of signatures on a particular

document, and the forgery of personal details on a personal identification document (W. A. F. W. Ismail & Asutay, 2017).

Wan Abdul Fattah (2017) in his study identified several forms of document forgery happened in Malaysia Syariah Courts. Among the prevalent forms of forgery are signature forgeries and factual alterations of medical certificates (W. A. F. W. Ismail, 2017). Although the author did suggest a development of forensic model on document forgery to cater the issue, but this study does not explain in detail the principles and scientific analysis involved in forensic document examination that may solve the questioned documents cases.

In a study conducted in 2019, it has been found that the knowledge and awareness of legal practitioners, academicians and students on document authentication methods according to the Islamic law is only at par and requires further attention (W. A. F. W. Ismail, Baharuddin, Mutalib, & Saharudin, 2019). This study indicated the significant of documents verification but did not touch on the scientific methods used by the forensic experts in dealing with the authenticity of documents.

Harun et al. (2015) carried out a study on land scams involving the use of Power of Attorney document to enable fraudulent land transactions. This study merely identified the modus operandi use by the land scammers without linking it to any possible method to verify the documents.

A study by Muhammad Serji and Shapiee (2018) identified the problem involving *hibah* transaction that may arise due to the fabrication of document from legal point of view. Nevertheless, this study is purely relating to law and does not address the methods of handling the questioned document through forensic investigation.

Mohd Zahiruddin Fahmi (2015) reported in his study a case involving the falsified letter of certificate used by the defendant to enable a marriage that is **Pendakwa Syarie**

v Badiuzzaman B. Abd Rajak. In this case, defendant admitted the letter of certificate declaring that he is a bachelor while apparently, he is a married man. Generally, this study is about the marriage against the Syariah court procedure where the scope of study is limited to analysing the factors of non-compliance of the procedures and the efficiency of punishment of this offense in Syariah court. Importantly, it did not cater the issues on questioned or disputed document cases in courts of proceeding. In the same vein, a study by CheHashim and Mahdzan (2014) explored the issue of fraud in letter of credit transactions in Malaysian bank and showed that financial institutions did face the issue of falsified documents in their dealings.

Collectively, these studies provide important insights into the necessity to authenticate documents especially when these documents are being tendered in courts as evidences. Since documents are fragile in nature, high chances are that documentary evidence are exposed to the forgery and fabrication. Hence, it is best for Syariah judicial system to employ forensic document examination to cope with the issues of questioned document.

2.5 Summary

In conclusion, this chapter briefly elaborated important aspects to demonstrate how the present study advances or refines what is already known. Current literatures and issues related to the background of this study have been mentioned accordingly. The reviews have concluded that the present study is necessary and important to undertake since the previous studies in the field of forensic document examination have not been linked to the Islamic law or Syariah legal system. Besides, the studies mentioned so far provide important insights into the necessity to authenticate documents especially when these documents are being tendered in courts as evidences.

The studies presented thus far provide evidence that this research is relevant to be conducted. Thus, next chapter explains on the methodology of this research in details.