

CHAPTER 3

THE LEGAL PROVISIONS FOR THE OFFENSE OF DOCUMENT FALSIFICATION IN MARRIAGE CASES

3.1 Introduction

This chapter addresses the second objective of this research. Generally, many forms of document falsification occur in a court. Therefore, this study focused on document falsification in marriage case issues. Then, the researcher examined the legal provisions under Syariah and civil jurisdiction for offenses involving document forgery, particularly in marriage cases, to achieve this research's second objective. The data was gathered through document analysis of legal provisions in Syariah law of Malaysia and Malaysian law that provide document falsification in marital cases. The collected data were analysed using an inductive approach and discussed in themes to meet the study's objectives.

3.2 The Legal Bases of Document Falsification in Marriage Cases under Malaysian Syariah Court

In Islam, no specific order requires that every marriage be recorded; whether officially or not, it is not required to be written (Ahmad Zakhi, 2015). However, in Malaysia, the IFLA provides that every Muslim marriage must be registered under an act or enactment for each state (Wan Abdullah, 1996). According to Mahmud (2011), in his study titled "*Opinions of Contemporary Muslim Jurists on the Registration of Marriages*" recording a marriage is necessary in today's world.

Despite the fact that marriage registration is only an additional condition to the IFLA and is not included in some of the pillars of the legal conditions of a marriage contract, this registration is crucial to prevent irregularities such as the forgery of marriage certificates, the forgery of signatures for polygamy and the use of fake accounts to obtain a marriage. For that reason, any couple who will get married must follow the provisions of the IFLA. Thus, several provisions explain the marriage application procedure according to the IFLA.

The marriage application procedure is divided into two parts: applying for permission to marry from the Registrar where the woman resides using the prescribed form and applying for permission to marry from the court. Before the marriage ceremony, the Syarie Judge will confirm following the IFLA. This matter is contained in Section 17 and Section 18 in some instances, such as underage marriage, widows, women who do not have a *wali nasab* according to *Hukum Syarak*, and polygamy. Because the IFLA procedure requires couples wishing to marry to obtain permission from either the Registrar or the Syarie Judge in such cases, some parties deliberately make false statements or declarations to obtain permission.

Therefore, the provision on false declarations or statements to obtain marriage in Section 38 of the IFLA is made to control the administration of the IFLA in Malaysia to be more procedural and systematic. This is because fraud will still occur to get the marriage's permission, like a man makes a statement or bachelor declaration for polygamy. But, in contrast, he already has a wife at that time. Then, they can be prosecuted under this Section:

Section 38. False declaration or statement for procuring marriage.

“Any person who for the purpose of procuring any marriage under this Act intentionally makes any false declaration or statement commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.”

Therefore, any individual found guilty of forging documents in marriage cases, they will be charged under this section. However, despite a provision for the offense of falsifying documents in marriage cases based on the IFLA, such as making false evidence or declarations to obtain permission to marry and polygamy without permission, the punishment is still at the discretion of the Syarie judge. This can be seen in some cases reported in Syariah courts, such as *Kholed bin Dinyati v Melaka Chief Syarie Prosecutor* (2009) 29 JH 2, *Syarie Prosecutor v Badiuzzaman b. Abdul Rajak* (Syariah Criminal Case No: 14003-149-0015-2010, *Syarie Prosecutor of Selangor v Moktar bin Radin & Ors*, [2010] 3 SHLR 148, and *Syarie Prosecutor v Azlan Daniels bin Abdullah* [2008] 2 SHLR 158 which had been discussed in detail in the next chapter.

Meanwhile, there are no specific provisions in the enactment or act relating to the punishment of document forgery under the Syariah law of Malaysia. Instead, this kind of offence is still under the jurisdiction of courts. Whether oral or written, false testimony is only classified as a contempt of court offense. For this kind of offense, Section 229 (1) of the *Syariah Court Civil Procedure (Federal Territories) Act 1998* (Act 585) is referred to as below:

Section 229. Notice to show cause.

“(1) The Court shall have the jurisdiction to commence 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 ringgits.”

Meanwhile, according to *fiqh*, the punishment for falsifying documents falls under the category of *takzir*. *Takzir* is reserved for offenses for which no form of punishment is prescribed; instead, the punishment to be convicted is based on the government's discretion, such as imprisonment, flogging, expulsion, displaying the offender in public places, and community service (Wan Ismail, 2020). Imam Al-Mawardi (1985) defined *takzir* as a method of educating offenders who commit offenses that are not classified as *hudud* offenses. The rate of *takzir* varies depending on the circumstances and the offender himself.

The researcher opined that although Islam does not require recording a marriage, modern technology makes it a requirement. This is because the documents that show the couple is married are important and can prevent the occurrence of irregularities such as forgery. In general, the offense of forgery, according to *fiqh*, is only imposed under *takzir*. That is, the punishment is imposed at the discretion of the judge. While under the Syariah jurisdiction, there is no specific provision for the offense of forgery in general. Instead, it is dropped under the offense of contempt of court alone. For offenses involving marriage cases in Syariah Courts, the IFLA is referred to. Therefore, there are provisions related to the offense of falsifying documents such as marriage certificates, signatures, and false accounts to obtain a marriage where any accused found guilty will be punished under Section 38 of the IFLA, which is a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment. However, according to an analysis of cases reported in the Syariah court (discussed in detail in chapter four of this thesis), the punishment imposed for the offence of falsifying marriage documents is still at the judge's discretion.

3.3 The Legal Bases of Document Falsification in Marriage Cases under Malaysian Civil Court

The issue of forgery is not foreign to civil court proceedings. Forgery cases reported in civil courts are not limited to marriage cases but include forgery of a valuable security or will, forgery for cheating, and forgery to harm a person's reputation (Alias et al., 2021). Furthermore, there are specific provisions regarding the punishment imposed for each such offence under Malaysian law. In civil courts, forgery of documents in marriage cases was also reported, such as in the case of *Deputy Public Prosecutor v Pasupathy A/L Kanagasaby* [1995] MLJU 541, *Re Estate of Chong Swee Lin*; *Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ 373; and *Yeoh v Chew* [2001] 4 MLJ 373 are all discussed in detail in chapter four of this thesis. In this section, therefore, the researcher analysed the existing provisions under Malaysian law relating to the offenses of document falsification in marriage cases.

Non-Muslim marriage is defined as a contract between a man and a woman recognized as valid by religion, customs, and law. For example, in *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130, civil marriage is defined as the voluntary union of one man and one woman for the life of one man and one woman to the exclusion of all others. The LRA is a provision for non-Muslim family law in Malaysia.

Before the implementation of the LRA on 1 March 1982, there were a variety of family laws in Malaysia for non-Muslims. Nonetheless, the LRA does not affect the legality of marriages performed before 1 March 1982. After the enforcement of the LRA, any issues related to family law for non-Muslims in Malaysia will refer to this provision. Essentially, the LRA provides for monogamous marriages and the solemnization and registration of such marriages; it amends and consolidates divorce

law; and provides for matters incidental to it. According to Section 3 of the LRA, this act only applies to:

Section 3. Application.

“1. Except as is otherwise expressly provided this Act shall apply to all persons in Malaysia and to all persons domiciled in Malaysia but are resident outside Malaysia.

2. For the purposes of this Act, a person who is a citizen of Malaysia shall be deemed, until the contrary is proved, to be domiciled in Malaysia.

3. This Act shall not apply to a Muslim or to any person who is married under Islamic law and no marriage of one of the parties which professes the religion of Islam shall be solemnized or registered under this Act; but nothing herein shall be construed to prevent a court before which a petition for divorce has been made under section 51 from granting a decree of divorce on the petition of one party to a marriage where the other party has converted to Islam, and such decree shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam.

4. This Act shall not apply to any native of Sabah or Sarawak or any aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom unless-

- i. he elects to marry under this Act;
- ii. he contracted his marriage under the Christian Marriage Ordinance; or
- iii. he contracted his marriage under the Church and Civil Marriage Ordinance.”

There are specific provisions in the LRA for falsifying documents in marriage cases. Section 42 of the LRA states that any person convicted of destroying or falsifying

a registered book may be sentenced under this section. According to Section 42 of the LRA:

Section 42. Destroying or falsifying register book.

“Any person who by himself or another-

- a) wilfully destroys or injures any register of marriages or any certificate thereout, or any part thereof or any authenticated extract therefrom;
- b) falsely makes or counterfeits any part of such register or certificate; or
- c) wilfully inserts any false entry in any register or certificate or authenticated extract,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years and to a fine not exceeding ten thousand ringgits”.

According to this Section, any defendant found guilty may be prosecuted and sentenced to a maximum of seven years in jail, a fine, or both. Meanwhile, Section 466 of the *Penal Code* (Act 574) has provided for offences related to forgery of documents in marriage cases, namely:

Section 466. Forgery of a record of a Court, or a public Register of Births, etc.

“Whoever forges a document, purporting to be a record or proceeding of or before a Court, or a Register of Birth, Baptism, Marriage or Burial, or a Register kept by a public servant as such, or a certificate or document, purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

The finding indicated specific and clear provisions under Malaysian laws for such offences. The accused can be prosecuted under Section 42 of the LRA and Section 465 of the *Penal Code* (Act 574) if found guilty of falsifying documents in marriage cases. For other forgery offenses, it had provided specified provisions based on *Penal Code* (Act 574). Furthermore, civil courts handle forgery-related cases in marriage cases and other cases. This situation differs from Syariah law of Malaysia, where the punishment for the offense of forgery is generally under the offense of contempt of court, and the punishment is imposed based on the judge's sentence alone. This is the gap between Malaysian law and Malaysian Syariah law. It's seen that Malaysian law has very clear provisions for the issue of forgery, whether in forgery in marriage or others. Their experience is also vast compared to Syariah court.

3.4 Conclusion

In conclusion, under the Syariah law of Malaysia, falsifying documents is generally considered contempt of court and is punishable under Section 229 (1) of the *Syariah Courts Civil Procedure (Federal Territories) Act 1998* (Act 585). On the other hand, Muslims are subject to the Islamic family act or enactment in their respective states, such as the IFLA, regarding marriage issues. Therefore, the forgery of documents in marriage cases is not left behind. There are also cases reported in Syariah courts, such as forgery of marriage certificates, signatures for polygamy, and false accounts to obtain marriage. Therefore, Section 38 of the IFLA is made to control the administration of the IFLA in Malaysia to be more procedural and systematic. As a result, anyone found guilty under this section faces a maximum fine of MYR 1,000 or six months in prison or both.

Compared with civil courts, they have handled document-related cases in marriage cases and other forgery cases. In addition, their experience in handling document-related cases is also as early as the 1950s and makes their experience broader compared to Syariah courts. In terms of provisions for the punishment of forging documents, civil jurisdictions have clear provisions for each type of forgery. For example, any individual found guilty of forging documents in marriage cases can be convicted according to Section 42 of the LRA, which shall be liable to imprisonment for a term not exceeding seven years and to a fine not exceeding ten thousand ringgits and Section 466 of the *Penal Code* (Act 574) that shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.