

**THE FALSIFICATION OF DOCUMENTS IN MARRIAGE
CASES UNDER THE CIVIL AND SYARIAH COURT IN
MALAYSIA: AN APPRAISAL ANALYSIS**

MOHAMAD ANIQ AIMAN BIN ALIAS

UNIVERSITI SAINS ISLAM MALAYSIA

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MALAYSIA: AN APPRAISAL ANALYSIS**

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Thesis submitted in fulfilment for the degree of
MASTER OF COMPARATIVE LAWS

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July 2022

AUTHOR DECLARATION

I hereby declare that the work in this thesis is my own except for quotations and summaries which have been duly acknowledged.

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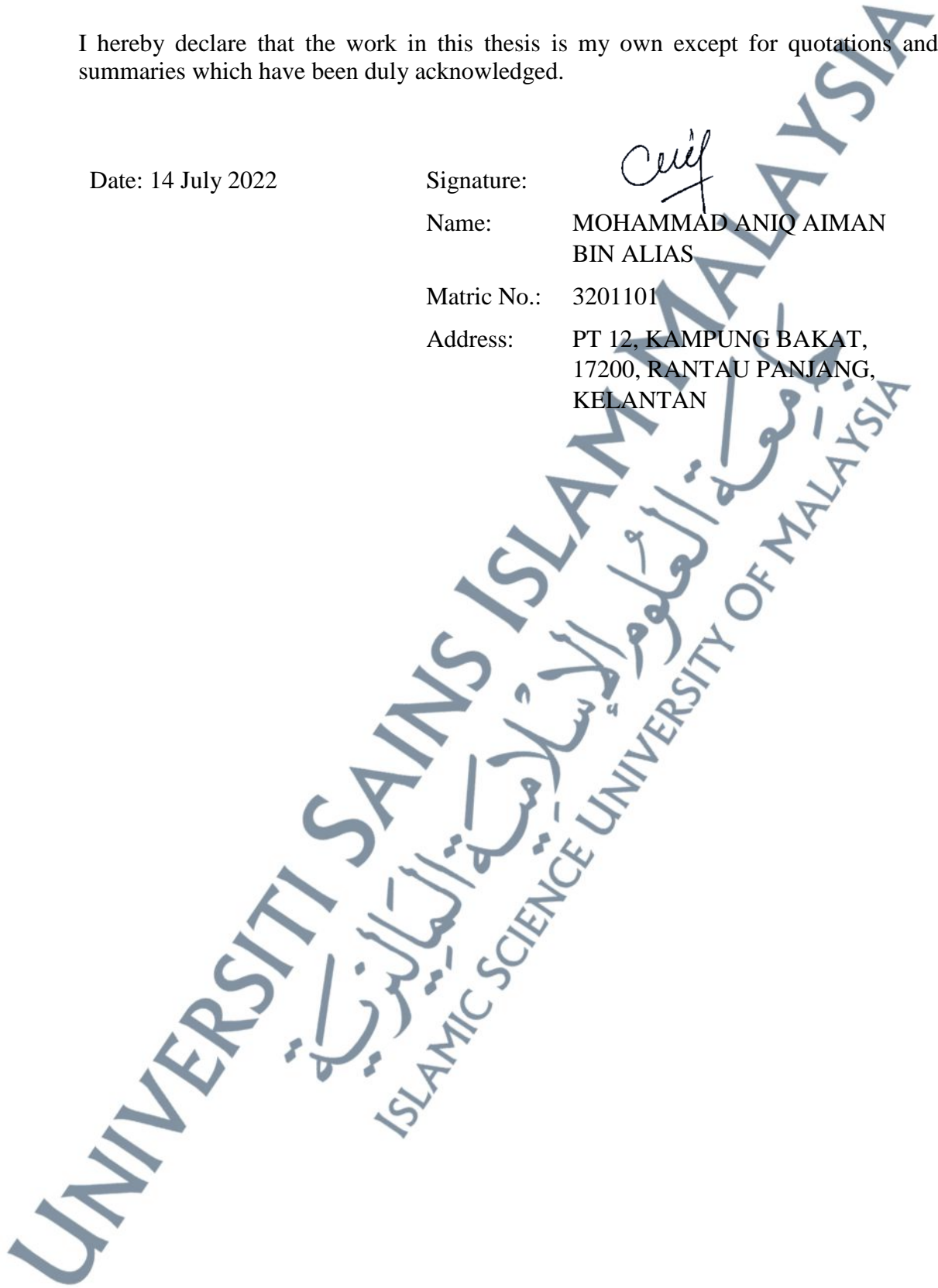
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ABSTRAK

Jika dahulunya dokumen hanya tertumpu pada bentuk fizikal semata-mata, namun pada zaman ini, skop dokumen semakin meluas dan secara tidak langsung membuka ruang kepada pemalsuan untuk berlaku. Walau bagaimanapun masih terdapat kelompangan dari segi perbincangan berkaitan konsep keterangan secara dokumentar dan pemalsuan dokumen di bawah perspektif undang-undang Syariah di Malaysia dan undang-undang Malaysia. Wujudnya jurang perbezaan dari segi peruntukkan dan amalan ketika mengendalikan kes-kes berkaitan pemalsuan dokumen antara Mahkamah Syariah dan Mahkamah Sivil, dan penambahbaikan perlulah dicadangkan di Mahkamah Syariah agar mereka dapat menangani kes-kes sebegini dengan lebih baik pada masa hadapan. Oleh itu, kajian ini bertujuan untuk mengkaji konsep keterangan dokumentar dan pemalsuannya mengikut realiti semasa berdasarkan perspektif undang-undang Syariah di Malaysia dan undang-undang Malaysia, menganalisis peruntukkan yang sedia ada di bawah bidang kuasa undang-undang Syariah dan undang-undang Malaysia berkaitan kesalahan memalsukan dokumen dengan menjadikan kes-kes perkahwinan sebagai sampel kajian, menganalisis beberapa kes yang dilaporkan di Mahkamah Syariah dan Sivil berkaitan dengan kes-kes sebegini, dan mengusulkan cadangan penambahbaikan di bawah institusi Mahkamah Syariah ketika mengendalikan kes-kes pemalsuan dokumen pada masa hadapan. Kajian kualitatif ini telah menggunakan metode analisis kandungan daripada sumber primer dan sekunder untuk mencapai objektif kajian. Data-data yang diperoleh ini kemudiannya dianalisis menggunakan pendekatan secara induktif, komparatif dan deduktif dalam mendapatkan kesimpulan. Hasil kajian menunjukkan, dalam dunia yang semakin moden ini, skop perbincangan dokumen semakin meluas dan secara tidak langsung mudah terdedah kepada unsur pemalsuan. Hal ini kerana, terdapat kelompangan di bawah bidang kuasa Mahkamah Syariah di mana tiada peruntukkan yang khusus di bawah undang-undang Syariah bagi kesalahan pemalsuan dokumen dan pengamal undang-undang Syariah juga masih kurang didedahkan dengan kes-kes berkaitan dengan pemalsuan dokumen. Selain itu, masih tiada tatacara yang jelas untuk mengesahkan keaslian sesuatu dokumen yang dikemukakan di Mahkamah Syariah menyebabkan dokumen yang dikemukakan terpaksa untuk didengar semula dan pemalsuan tidak dapat dikesan dengan lebih awal. Oleh itu, Mahkamah Syariah memerlukan satu anjakan yang baru agar mereka dapat menangani kes-kes berkaitan pemalsuan dokumen dengan lebih baik pada masa hadapan dan secara tidak langsung akan meningkatkan lagi martabat Mahkamah Syariah setaraf dengan Mahkamah Sivil. Kajian ini dilihat sangat signifikan sebagai rujukan berkenaan isu ini dan juga salah satu usaha untuk mengenal pasti kelemahan dari segi perundangan dan amalan sedia ada berhubung pemalsuan dokumen khususnya di bawah institusi Mahkamah Syariah.

ABSTRACT

If in the past documents only focused on the physical form alone, nowadays, the scope of documents is expanding and indirectly opens the door for forgery to occur. However, there is a lack of literature on the concept of documentary evidence and document falsification under the perspective of the Syariah law of Malaysia and Malaysian law. There are gaps in provisions and practices when dealing with cases involving document forgery between the Syariah court and the civil court, and improvements should be proposed in the Syariah court so that such cases can be handled more effectively in the future. Therefore, this study aims to examine the concept of documentary evidence and its falsification according to current realities from the perspective of Syariah law of Malaysia and Malaysian law, analyzing the existing provisions under the jurisdiction of Syariah law of Malaysia and Malaysian law relating to the offense of falsifying documents by making marriage cases as a sample of the study, analyzing several cases reported in Syariah and civil courts related to such cases, and proposing improvements under Syariah judicial institutions when handling cases of document forgery in the future. To achieve the study's objectives, content analysis methods from primary and secondary sources were used in this qualitative study. The collected data was then analyzed using inductive, comparative, and deductive approaches to reach conclusions. The study shows that the scope of document discussion in this increasingly modern world is increasingly broad and indirectly vulnerable to elements of forgery. This is because there are gaps under Syariah jurisdiction where there is no specific provision under Syariah law for document forgery offenses and Syariah law practitioners are also still less exposed to cases related to document forgery. Moreover, there is still no clear procedure to verify the authenticity of a document submitted in Syariah court, resulting in the submitted document having to be reheard and forgery not being detected in advance. Therefore, the Syariah courts need a new shift so that they can handle cases related to document forgery better in the future and will indirectly further enhance the credibility of the Syariah courts on par with the civil courts. This study is seen as very significant as a reference on this issue and also one of the efforts to identify weaknesses in terms of legislation and existing practices regarding document falsification, especially under the institution of the Syariah court.

الملخص

إذا كانت الكتابة في الماضي تركز فقط على الشكل المادي وحده، ولكن في الوقت الحاضر، يتوسع نطاق الكتابة ويفتح بشكل غير مباشر مساحة لحدوث التزوير. ومع ذلك، لا تزال هناك ثغرات فيما يتعلق بالمناقشات المتعلقة بمفهوم الأدلة الكتابة وتزوير الكتابة من منظور الشريعة الإسلامية في ماليزيا والقانون الماليزي. هناك ثغرات في الأحكام والممارسات عند التعامل مع القضايا المتعلقة بتزوير الكتابة بين المحكمة الشرعية والمحكمة المدنية، ويلزم اقتراح تحسينات في المحكمة الشرعية حتى تتمكن من التعامل مع مثل هذه القضايا بشكل أفضل في المستقبل. لذلك، تهدف هذه الدراسة إلى فحص مفهوم الأدلة الكتابة وتزويرها وفقًا للواقع الحالي بناءً على منظور الشريعة الإسلامية في ماليزيا والقانون الماليزي، وتحليل الأحكام الموجودة في نطاق اختصاص الشريعة والقانون الماليزي المتعلقة بجرائم تزوير الكتابة. من خلال جعل حالات الزواج عينات دراسة، وتحليل العديد من الحالات المبلغ عنها في المحاكم الشرعية والمدنية المتعلقة بهذه القضايا، واقتراح التحسينات في إطار مؤسسة المحاكم الشرعية عند التعامل مع قضايا تزوير الكتابة في المستقبل. استخدمت هذه الدراسة النوعية طرق تحليل المحتوى من المصادر الأولية والثانوية لتحقيق أهداف الدراسة. ثم يتم تحليل البيانات التي تم الحصول عليها باستخدام الأساليب الاستقرائية والمقارنة والاستنتاجية في الحصول على النتائج. تظهر النتائج أنه في هذا العالم الحديث بشكل متزايد، أصبح نطاق مناقشة الكتابة أوسع وأكثر عرضة بشكل غير مباشر لعناصر التزوير. ويرجع ذلك إلى وجود فجوة في اختصاص المحكمة الشرعية حيث لا يوجد نص محدد بموجب قانون الشريعة لجرائم تزوير الكتابة، كما أن ممارسي الشريعة لا يزالون غير معرضين للقضايا المتعلقة بتزوير الكتابة. بالإضافة إلى ذلك، لا يوجد حتى الآن إجراء واضح للتحقق من صحة الكتابة المقدمة في المحكمة الشرعية مما يؤدي إلى ضرورة سماع الكتابة المقدمة مرة أخرى وعدم إمكانية الكشف عن التزوير مسبقًا. لذلك، تحتاج المحاكم الشرعية إلى تحول جديد حتى تتمكن من التعامل مع القضايا المتعلقة بتزوير الكتابة بشكل أفضل في المستقبل، وستعمل بشكل غير مباشر على تعزيز وضع المحاكم الشرعية على قدم المساواة مع المحاكم المدنية. تعتبر هذه الدراسة مهمة للغاية كمرجع حول هذه القضية وأيضًا واحدة من الجهود المبذولة لتحديد نقاط الضعف فيما يتعلق بالتشريعات والممارسات الحالية فيما يتعلق بتزوير الكتابة، لا سيما في ظل مؤسسة المحكمة الشرعية.

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LIST OF ABBREVIATIONS

CCTV	Closed-circuit television
CD	compact disc
CLJ	Current Law Journal
DNA	deoxyribonucleic acid
HIV	human immunodeficiency virus
i.e.	that is
IFLA	Islamic Family Law (Federal Territory) Act 1984 (Act 303)
JHEAT	Jabatan Hal Ehwal Agama Terengganu
LRA	Law Reform (Marriage and Divorce) Act 1976 (Act 164)
MACC	Malaysian Anti-Corruption Commission
MOSTI	Ministry of Science, Technology and Innovation
MYR	Malaysian Ringgit
n.a.	no author
n.d.	no date/no year
p.	page
PBUH	Peace be upon Him
PP	Public Prosecutor
pp.	page
QCA	Qualitative Content Analysis
S.W.T	Subhanahu wa ta'ala
SMS	Short Message Service
SOP	Standard Operating Procedure
vol.	volume