

The Legal Forensic Model in Determining the Genuineness of Islamic Banking Documents and Their Application in Shariah Courts

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Abstract

Falsification of documents does not only happen in civil courts. Shariah courts also face the same problems despite being 'religiously'-oriented courts. It can be argued that, in the case of Malaysia, civil courts have clearer guidelines regarding the authentication of documents compared to Shariah courts. This study utilised a questionnaire survey as well as interviews in collecting data to measure the perceptions and opinions of relevant respondents with various stake holdings from those who practice law, with a Shariah and civil background. It should be noted that the key informants were comprised of forensic experts Shariah and civil practitioners. Analysis of the collected data indicates that the necessity of forming a legal forensic model is supported by the majority of the participants, which, therefore, implies that a forensic model that makes the authentication of documents more structured, clear and practical must be formed in Shariah courts. The practice of civil courts in relation to the authentication of documents should be used as a model in Shariah courts so long as they comply with the principles of Islamic law.

Keywords: Authenticity of documentation, Shariah Courts, Malaysia, Falsification, Kitabah.

Introduction

Managing daily routines has been greatly facilitated and simplified by the existence of electronic media. Regardless of time and place, many dealings involving documents to facilitate transactions, especially in Islamic banking transactions, have been rapidly concluded due to the electronic environment and visual space. However, in certain cases, hard copy documents are utilized as evidence, and therefore they are generally kept in physical form and will be referred to in order to prove the genuineness or the existence of something or a situation. Therefore, the authentication process of identifying the genuineness of a particular document is very important. Some people forge documents in order to gain 'profit' or 'interest'.

In Malaysia, forgery cases reported in Shariah courts have been related to 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. The issue is thus on whether the current practice of law of evidence in Shariah court is sufficient enough to handle cases involving forgery, especially in relation to banking documents, and this is further explored in this study. Therefore, this study poses the question of whether the Shariah courts can be given the jurisdiction to handle such cases in the future.

As is common knowledge, evidence is important in order for judges to make a wise decision in a case. This, therefore, forces scholars within the Islamic legal understanding and theory to develop a particular framework. The Islamic Law of Evidence, therefore, outlines methods and types of evidence which can be submitted before judges in Shariah court. Ibn Qayyim (2001), a scholar of the 14th century, explained that the Islamic Law of Evidence refers to the purpose of explaining a particular truth and that such a truth must be disclosed before the judge. Islamic scholars have outlined a method of providing proof based on verses of the Al-Qur'an. According to Ikrimah (2009), among the types of proof that can be accepted in Shariah courts are vows, oaths (*al-yamin*), witness testimonies (*shahadah*), circumstantial evidence (*qarinah*), expert opinions (*ra'yu al-khabir*), writing (*al-kitabah*), judge's knowledge (*ilm al-qadi*), oaths for establishing the responsibility for murder (*qasamah*), and public imprecation (*li'an*).

Among the types of proof mentioned above, the most used method of proof in court is documentary evidence. Therefore, it is necessary to form a structured, legal forensic model in Shariah courts for use during the authentication process of a particular document. The former prime minister of Malaysia, Mahathir Mohamad, in his opening speech to the Law of Evidence and Procedure Seminar at the *Institut Kefahaman Islam Malaysia (IKIM)* on 14th October 1994 acknowledged that the law of evidence and the procedure used by Shariah courts in the past was no longer applicable, and therefore the Shariah judiciary must study a new law of evidence and procedure that is more structured, as long as it is consistent with the principles of Islamic law.

There have been several researches conducted in relation to this issue. However, there has been no specific research discussing a legal, forensic model for determining the genuineness of documents, especially in Shariah courts. Arbouna (1999) states clearly that the document is one method of proof in Shariah courts and

even in civil courts. However, the authentication of documents remains an important piece of evidence for testimony. Therefore, Wan Abdul Fattah, Raja Raziff & Norma. (2013) emphasized the importance of verifying the authenticity of electronic documents during transactions, explaining that common methods of verification used comprised of vows, witness testimonies, or oaths mostly from experts or otherwise forensic opinion.

Muhammad Ismail (2006) provided a detailed explanation on electronic documents and their importance which necessitates a method of proof through which electronic documents can be accepted as evidence. Nevertheless, considering the everyday practice of law and forged documents, it is important for practitioners of law to cooperate with forensic experts. According to Muhammad Ismail (2006), legal practitioners must be exposed to the methods used by forensic experts in verifying documents in legal cases as well. In a similar manner, al-Syawaribiy (n.d) explained the fundamentals of forged documents and their consequences as well as the types of their civil and criminal cases according to the fiqh and judiciary.

Wan Abdul Fattah Wan Ismail (2011) states that a document, especially an electronic document, will not be accepted as evidence unless it has been confirmed by the verification process, and a method widely used nowadays is by verifying the authenticity with experts. Falsification of documents is also discussed by Bourhan (2010) who examined the concept of forgery, the pillar and the forms it takes, and the punishment for those convicted with the offence of falsifying documents. According to Jal Zabdi (2008), testimony in relation to handwriting must be accepted with caution and it must be supported by other evidence as well. Anwarullah (2004) also mentioned that expert opinion is one of the methods of proof accepted by the court, including in cases involving the authentication of documents. Furthermore, he also stated that the opinion of scholars regarding the weight of evidence from expert opinion can be consulted

and that cases can be proved by using expert opinion.

Nevertheless, most authors discuss the importance of documents. The court must also ensure that the genuineness and the level of reliability of submitted documents are high. The available research has explained that methods must be adhered to during the authentication process, but this, however, does not explain or suggest models that must be carried out during the authentication process in Shariah courts in a clear and detailed manner. Thus, this research aims at exploring the need of using and consulting forensic law by the Malaysian Shariah legal system. In doing so, this paper explores the methods that have been used in civil courts during the authentication process with the objective of proposing this as a model for Shariah courts provided that the procedure is compliant with Islamic law. In responding to the aims of the study, primary data was collected through questionnaires and interviews with relevant respondents with various stakeholdings from those who practice law with a Shariah and civil background. This had the objective of measuring the perceptions and opinions of forensic experts and Shariah and civil practitioners on the subject matter.

This research, hence, is expected to have a positive impact on the judicial system in Malaysia by providing suggestions on updating judicial procedure to investigate and solve cases involving fraud and the falsification of documents. In addition, this research will possibly lead to the amendment of related provisions relating to the acceptance of documents as a method of proof in Shariah courts in Malaysia.

The Method to Determine the Genuineness of Banking Documents According to Islamic Law

Section 55 of the Shariah Court Evidence (Federal Territories) Act 1997 provides several methods to verify a particular document through vows, witnesses, oaths, and expert opinion. The vow (*ikrar*) refers, among others, to the notification and acknowledgement of someone else's right over something. There are many authorities (*dalil*), Qur'anic verses, prophetic traditions (*sunnah*), and scholarly consensus (*ijma*) which mention vows as a method for verifying documents. The Qur'anic verse, "Rather, man, against himself, will be a witness. Even if he presents his excuses," (al-Qiyamah. 75: 14) also substantiates this.

Khulafa' al-Rasyidin, the companions (*sahaba*), the scholars from the schools of jurisprudence (*mazhab*), and other such scholars have always unanimously asserted the validity of a vow as a method of proof in all cases (Ibn Qudamah, 1996). However, the submission of a vow as a method of proof is only applicable to those who make the admission. The implication of the vow will not affect the other party because the effect of such an admission will only be borne by that person alone (al-Mausu'ah al-Fiqhiyyah, 1988). Section 55 of the Shariah Court Evidence (Federal Territories) Act 1997 states that, "(1) Admission as to writing, signature or seal shall be admissible as an admission of the person who wrote or executed such document. (2) An admission made in a document which is written or caused to be written by a person under his signature or seal and handed over to another person shall be admissible as an *ikrar*, provided that subsection 17(2) is complied with."

According to Abdul Mutalib (2007), the second method used to verify documents is testimony, which is defined as "the notification of a particular right or interest of another person by using the word 'I testify.'" There are many authorities relating to testimony as a method of proof. For instance, there is the Qur'anic verse

“And do not conceal testimony, for whoever conceals it – his heart is indeed sinful, and Allah is Knowing of what you do” (Qur’an, 2: 283).

A prophetic tradition (the hadith) has it that a Companion of the Prophet of Islam, al-Asy bin Qais, once stated that, “There was a dispute between me and a man in relation to a well. We reported to Allah’s Apostle, who said to either of us to bring forward two witnesses or their testimonies,” (Al-Kasaniyy, 1997). Islamic scholars, therefore, agree regarding the weight of testimony in denying or convicting a particular accusation (Ibn Qudamah, 1996). According to the Shariah Court Evidence (Federal Territories) Act 1997, the number of witnesses to verify documents, including signatures, is two witnesses without specifying either man or woman as Section 56(1) states that, “Where the executant of a document denies the writing or the liability created therein, the writing and the execution of such document shall be proved at least by two witnesses to the document”.

Oaths have also been used in court to verify documents. Oaths are defined as “a statement to verify his right over something or denying something before the judges by using the name of Allah (swt) and His Attributes.” Oaths also mean to strengthen a doubtful statement by mentioning one of the names or attributes of Allah (Al-Khin and al-Bugho, 1996. 3: 574), which is either related to the past or future, or the truth or lies,). The reason for using the strengthening works mentioned above is to disregard a vain oath, namely an oath pronounced without the intention of implementing it or the intention of allowing it. This statement is based on the Qur’anic verse that “Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for (breaking) what you intended of oaths,” (al-Maidah, 5:89). The Prophet once said: “if every complaint is accepted, then every person will complain that the property is their race and blood, and because of that (so that it will not happen) the person who claimed come with

evidence and oath for those who deny it,” (Al-Tirmizi, 1992). The Shariah Court Evidence (Federal Territories) Act 1997, Section 56(6) states that “where a document cannot be proved in any of the aforesaid manner, the person who denies the writing and execution of the document shall, on the request of the person who alleged that the aforesaid person is the executant of the document, take the oath, and if he refuses to do so, the person who alleges may take the oath and thereafter establish his claim.”

Other than vows, testimonies and oaths, expert opinion is also a method of proof for verifying signatures. However, nowadays, expert opinion is also the most popular method for verifying the status of a particular document. Expert opinion, or Ra’yu al-Khabir, is “a method of proof done by scholars or experts, requested by judges to give their opinion on certain issues involving disputes between several parties, which their opinion will help the judges make a wise decision. Judges will request some help from a forensic expert for cases which is outside their expertise. With their help, it is easier for the court to make an assessment of each claim accurately and fairly,” (Syiniur, 2006). There are several authorities from the Qur’an and Sunnah concerning expert opinion. While the Qur’anic verse states that: “So ask the people of the message if you do not know,” (al-Nahl, 16: 43), the Prophet’s acknowledgement of the verification of family lineage (nasab) through qiyafah by madjaz al-madlai proved that the Prophet accepted expert opinion, as the hadith narrated by Aisyah evidences: “One day the Prophet (pbuh) met Aisyah with happiness that was clearly reflected in his face: “madjaz al-madlaji observed Zaid and Usamah after their heads were covered and feet were shown. After observing and examining their feet he said: These feet belong to the same family,” (Muslim, 1997). The Shariah Court Evidence (Federal Territories) Act 1997, Section 33(1) states that “When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions or relating to determination

of nasab, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions or relating to determination of nasab, are qarinah”.

According to the Shariah Court Evidence (Federal Territories) Act 1997, Section 33(2) such person are called experts:

To verify documents, usually the experts will use several methods. Among others: The expert will request the parties involved to redo their signature. Then the expert will compare the signature produced with the one on the disputed document. The expert will request that the signature be done several times. The original owner of signature will definitely produce the same signature even when asked to repeat the same thing repeatedly because he is familiar with that signature, as opposed to the parties that imitate or forge the signature. This study was done with the purpose of examining the methods used by the civil court during the verification process. Then, an analysis is made on the method to ensure that it is consistent with the Principles of Islamic Law. After that, it will become a model for the verification of documents in Shariah court.

The Origin of the Malaysian Islamic Law of Evidence: An Introduction

As a colonial power, British rule separated the jurisdictions of state and religion in ruling Malaysia. As a result, until now, Islamic law only remains in governing the private spheres of everyday life including aspects of marriage, divorce, estate distribution and inheritance, and religious practice. Meanwhile, other matters such as commercial law and contract law (including Islamic business management (muamalat) and Islamic banking) fall under civil jurisdiction (Zulkifli, 2015). After independence in 1957, the development of Islamic law evolved gradually. In line with this gradual change, the amendment of Article 121 of the Federal Constitution made under the Constitutional

Amendment Act in 1988 (Act A704) states that: “The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Shariah courts.” Thus, the current operational and jurisdictional position of Shariah courts is stronger and more influential. Nonetheless, considering the particular way Malaysian society is developing, and in particular the way Islamic financial activity is developing, there is certainly still room for further improvement, enhancement and stabilization. Thus, Shariah courts must be restructured and be given greater and more comprehensive authority (Monir, 2009).

In fact, so far, no attempts have been made to bring cases involving Islamic banking (including cases in relation to the forgery of documents) to Shariah courts. The reason for this is that it is under the federal jurisdiction, especially when one of the parties is not a Muslim. The issue here is whether the judges in civil courts have the expertise to resolve financial criminal issues relating to Islamic principles for Islamic business management and Islamic banking? It is certain that such judges have no capability in that area since they are not experts in Islamic law. Therefore, it is suggested that a tribunal be formed to handle cases involving Islamic business management (*muamalat*) and Islamic banking cases where the chairman is a civil court judge assisted by Islamic law experts as members (Hidayat, 1998).

As mentioned, considering the development of Islamic finance and business, Shariah courts should be prioritised as a platform to handle cases involving Islamic banking, including cases in relation to forgery of documents and their verification by using forensic experts. Even if Shariah courts are not given such jurisdiction, at least Shariah courts should be given the right to be involved in handling cases in relation to Islamic banking in civil courts. Therefore, the formation of a model to verify documents is a good effort to convince others of the capability of, and amount of preparation conducted by, Shariah courts to handle Islamic banking cases.

Methodology

The empirical part of this study is conducted by using a mixed method approach, namely a combination of quantitative and qualitative approaches. For the quantitative approach, respondents were comprised of practitioners of law including Shariah judges, Shariah officers, Shariah lawyers, and academicians, the latter of whom included lecturers and Shariah and law students, sampled through a random sampling process. The research was conducted in three areas, Negeri Sembilan, Kuala Lumpur and Putrajaya, through a random selection in order to represent a fair division between the Shariah lower court and Shariah high court as the areas mentioned have either a lower Shariah court or high Shariah court depending on their administrative status.

For the qualitative approach, this study utilised data collected through interviews from participants such as forensic experts and Shariah and civil practitioners. In order to improve the efficiency of data selection, a purposive sampling was used in identifying the participants. The assembled data was subjected to an interpretative analysis while a content analysis was used to analyse the judicial documents, and these included Shariah court and civil court decisions in cases involving the fraud and forgery of documents.

Quantitative data was analysed using the SPSS computer software while qualitative data was analysed using the QSR NVivo computer software.

Results and Discussion

Based on the explanations provided above and also as mentioned in the data collection process, this section aims to present the data analysis through meaning making to respond to the aims of the study.

Demographic sample feature

A total of 181 survey questionnaires were distributed to respondents consisting of Shariah judges, Shariah officers, Shariah lawyers, lecturers, and Shariah and law students in Negeri Sembilan, Kuala Lumpur and Putrajaya. Table 1 depicts the distribution of the demographic profile of the participants. As can be seen, 5.0% of the participants held Ph.D degrees while 13.3% of them had Master's degrees. In addition, 65.7% had Bachelor's degrees and 16.0% had diplomas, certificates or other degrees. With regards to the professional distribution of the respondents, 43.1% of the respondents worked as academics and 56.9% of them worked as Shariah law practitioners.

As can be seen in Table 1, the respondents in Shariah Courts were mostly from younger generations compare to those in civil courts because the legal field in Shariah courts is still new. It can be said that the Shariah legal practice in Malaysia, including the courts, are dominated by young practitioners due to the relatively younger Shariah practice and court system in the country.

As regards to the gender distribution, as the finding in Table 1 depict, the respondents were mostly women as these were practitioners from those working in Shariah courts and final year students from public universities in Malaysia. These students were selected from those with a Shariah background or law students with a Shariah and law background in their studies. Moreover, it is undeniable that the officers in Shariah courts were mostly women.

Table 1: Research Demographic Profile

Demographic	Frequency	Percentage
Level of education		
Ph.D	9	5.0%
Master's	24	13.3%
Bachelor's Degree	119	65.7%
Diploma, Certificate and others	29	16.0%
Profession		
Law Practitioner (Shariah)	78	43.1%
Academician	103	56.9%

Table 2: Perceptions towards the Necessity to Form a Legal Forensic Model in Shariah Court

No	Statement	Mean	Standard Deviation	Interpretation
1.	I agree that a new model to determine the genuineness of documents in Shariah Court should be formed.	3.39	0.55	High
2.	I agree that a special model to determine the genuineness of documents in Shariah Court could minimize faults in deciding a case.	3.35	0.57	High
3.	The implementation of a special legal forensic model in Shariah Court in line with Civil Court is important.	3.30	0.63	High
4.	The current method in Shariah Court to determine the genuineness of documents is not being implemented effectively.	2.92	0.69	Moderate
5.	Shariah legal officers have no high level of awareness regarding the importance in proving the genuineness of documents.	2.67	0.78	Moderate
6.	The process to verify the genuineness of documents is not being implemented as required under Section 33 and Section 56 (4) of the Shariah Court Evidence (Federal Territories) Act 1997.	2.61	0.70	Moderate
Total		3.04	0.45	High

The Perceptions towards the Necessity of Forming a Legal Forensic Model in Shariah Courts

A descriptive analysis involving mean and standard deviation was used to determine the perceptions towards the necessity of forming a legal forensic model in Shariah courts. Table 2 above shows that the highest level of perception regarding the necessity of forming a legal forensic model in Shariah court was attributed to the statement stating 'I agree that a new model to determine the genuineness of documents in Shariah court should be formed' with mean value of 3.39 (sd = 0.55) while the statement 'I agree that a special model to determine the genuineness of documents in Shariah Court could minimize faults in deciding

a case' scored a mean value of 3.35 (sd = 0.5). This was followed by the statement that 'the implementation of a special legal forensic model in Shariah Court in line with Civil Court is important' with a mean value of 3.30 (sd = 0.63). As can be seen, the lowest importance was given to the statement that 'the necessity to form a legal forensic model is the current method in Shariah Court to determine the genuineness of documents is not being implemented effectively' with a mean value of 2.92 (sd = 0.69) while 'the Shariah legal officers have no high level of awareness regarding the importance in proving the genuineness of documents' scored a mean value of 2.67 (sd 0.78). Lastly, 'process to verify the genuineness of documents is not being implemented as required under Section 33 and Section 56 (4) of the Shariah Court Evidence

(Federal Territories) Act 1997' scored a mean value of 2.61 (sd = 0.70). As can be seen, the overall mean value in terms of respondents' perceptions towards the necessity of forming a legal forensic model remains at a mean value of 3.04 (sd = 0.45), indicating that the participants have not formed a firm opinion on the necessity of forming a legal forensic model in Shariah courts.

Based on the results of this observation, there is a significant difference between the perception of respondents in relation to the necessity of forming a legal forensic model involving fraud and forgery of documents in Shariah courts, which implies that there is room for the development of knowledge and perceptions in relation to fraud and forgery of documents. In particular, in responding to the current development of technology, the question of whether electronic documents are admissible as evidence in Shariah court must be answered. Having such knowledge is very important to ensure the effectiveness of law enforcement among Shariah law practitioners. The legal model related to the verification of forged documents that will be implemented in Shariah courts could reduce the rampant forgery of documents syndicated in Shariah courts while also ensuring the credibility of Islamic judicial institutions in Malaysia.

Law Practitioners and Academicians' Opinions Regarding the Necessity of Forming a Legal Forensic Model in Shariah Court

In addition to the findings presented in the preceding section that were developed from the questionnaires, a number of interviews were also conducted with individuals with experience in the field such as judges, civil and Syariah lawyers, academicians, and forensic experts, each of whom had their own opinion regarding the necessity of forming a legal forensic model in Shariah court, especially involving the verification of documents. According to a Syariah lawyer, coded as Officer A, the Shariah courts have no specific law

in relation to forensic documents except in several sections mentioning expert opinion. Both the Shariah and civil courts recognize expert opinion. Moreover, expert opinion plays an important role in assisting judges to make a decision, especially in civil court. However, this implementation is rare in Shariah courts based on previous cases. According to Officer B, a lecturer with 20 years of experience, Shariah courts practice less forensic law as compared to civil courts, which are supported by a forensic expert. Officer C has experienced the handling of cases involving the forgery of documents for almost 25 years. According to one chief judge, Officer D, the process of applying for the verification of documents, especially in the Shariah courts, is similar to the Civil courts. In addition, the responsible officer will be summoned to provide testimony before the judge. The judge will later decide on whether to accept the evidence or not.

According to Officer A, the legal forensic model applied in civil court can be used as a guide in Shariah courts since expert opinion is admissible as one of the methods of proof in Shariah court. This opinion was supported by Officer B, Officer C and Officer D. Officer D also mentioned that the Shariah courts follow the guidelines for forensics in civil courts since the Shariah court does not have its own guidelines.

Regarding the question on the fact that existing methods in Shariah courts for determining the genuineness of documents were practiced less effectively, Officer A was unsure of the method used since he had yet to be involved in cases which required verification from experts. Officer B was of the opinion that the procedure to decide forensic evidence was not sufficient enough to handle the forgery of documents. This opinion was supported by Officer C who was a forensic expert. Officer D also added that, in practice, the verification of documents could be done through a witness, expert witness, or an oath as the testimony of a living witness is stronger than a document. The role of documents is only to strengthen the testimony from witnesses. If it

is found that witness testimony cannot be used or is contradictory with documentary evidence, then the court will summon a new witness.

According to Officer A, the existing system in Shariah courts is becoming stricter. Meanwhile, Officer B and Officer C agree that a new model to determine the genuineness of documents should be formed in Shariah courts. Officer D also said that he would agree with any effort for improvement, although at this time a new legal forensic model was not a matter of high priority.

Based on the interviews conducted, the conclusion that can be drawn is that the Shariah courts are faced with the forgery of documents such as marriage certificates, consent for polygamy, signatures, and others. But in practice, Shariah courts lack enforcement in accepting expert opinion as a method of proof, although expert opinion is also one of the methods of proof accepted under Islamic law. A legal forensic model must be formed as a guideline to assist the court in the verification process and to avoid harm coming to the wrong parties.

Suggestion and Conclusion

The issue regarding the forgery of documents is not new. This can be seen through cases involving the forgery of documents in Shariah court, such as that of the forgery of marriage certificates, the forgery of a signature in polygamy cases, and the forgery of paychecks in *hadhanah* and polygamy cases, which have all been reported, and this could affect the decision of a particular case. When the authenticity of a document is disputed, the party making such claims must present strong evidence before the judge. The judge has the power to accept or reject the evidence based on legal provisions. To prove the authenticity of documents, the court must go through certain processes in line with Shariah requirements. For instance, in Malaysia, the Chemistry department should be the responsible agency for verifying the disputed

documents. This is in line with Section 33 of the Shariah Court Evidence Act 1997 where expert opinion (*ra'yu al-khabir*) is one of the methods used to verify evidence based on the demand of judges to settle disputes between parties.

Other than physical documents, the court also handles cases in relation to documents in digital form. This is because evidence such as certificates or any document that does not require a signature, image, or video to be uploaded requires forensic expertise to determine their genuineness. This is important especially in cases involving *khalwat* and *zina*. This is the reason why the Shariah courts adopt the provisions under Section 90A of the Law of Evidence 1950, where in any criminal or civil proceeding a document produced by a computer, or a statement containing such a document, shall be admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use. Even though Shariah courts have no jurisdiction over Islamic banking cases in Civil courts, it is still necessary to prepare the Shariah court. In any case, civil courts could refer to Shariah courts any cases related to Islamic banking that should be heard in a Shariah court.

As the outcome of the survey conducted showed, the respondents' perceptions towards the necessity of forming a legal forensic model in Shariah courts is at a high level (mean = 3.04 and sd = 0.45). In addition, the formation of a special model to determine the genuineness of documents in Shariah courts could minimize faults in deciding a case (mean = 3.35 and sd = 0.57) and the implementation of a special legal forensic model in Shariah courts to bring them in line with civil courts is important (mean = 3.30 and sd = 0.63).

The following models depicted in figures 1 and 2 are based on the manual working to verify disputed documents for cases in Shariah courts and is the one utilized by civil courts where the judges and legal practitioners are recommended to use it in order to verify the genuineness of

the document and to ensure smooth proceedings in court. As the process shows, this will be an efficient method that can be adopted by the Shariah courts in ensuring the effectiveness of detecting the genuineness of any disputed documents. We also suggest that the court make it compulsory for the parties in dispute to bring the document to the Chemistry Department for review and receive verification of the authenticity of the document before using it as evidence in court. This will apply not only to physical documents but also digital documents.

As can be seen in Figure 1, the authentication process should commence at the Shariah courts whether it involves either civil or criminal cases. If the documents submitted to the Shariah court have raised doubts in terms of their authenticity, the court will ask for it to be confirmed. Because the Shariah court does not have any expertise in the verification of documents, it will ask the Department of Chemistry Malaysia to verify the status of the document. The results obtained by the Department of Chemistry Malaysia will be returned to the Shariah court. Consequently, based on the reports received from the Department of Chemistry Malaysia, the Shariah Court will decide on whether the documents submitted may be used as evidence or not.

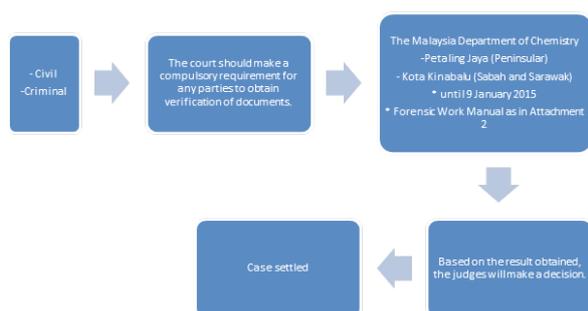


Figure 1: Manual Working to Verify the Disputed Documents for Cases in the Shariah Court

Figure 2 shows the procedure or manual method used by the Department of Chemistry Malaysia in a document when there is a dispute. Any application made to the Department of Chemistry Malaysia is accompanied by an

official letter and a list of items that should be clearly marked. Examples of disputes that require identification among others include handwriting, signatures, typewriter writing, forgery and alteration of documents, forgery of official documents, analysis of ink and paper, identification of the printing process, and the interpretation of the pressure of the hand or the signature. In addition, the list of items must also state clearly the kind of inspection required.

According to Figure 2, every item sent for identification needs to be accompanied by the original document. For example, in the case of handwriting and signature verification, 10 samples of signatures and 20 samples of handwriting are required by the Department of Chemistry Malaysia. In the case of paper using a typewriter, 5 specimen texts are requested by the Department of Chemistry Malaysia; in the case of falsification of official documents, specimens of the same type are required for the purposes of comparison; and in cases using ink and paper, a sample of ink and paper are needed for analysis. In the case of forgery and the alteration of documents, the process of printing used and the interpretation of the handwriting or signature pressure are identified, and original documents or documents related to the parties to the dispute shall be submitted together to the Department of Chemistry Malaysia.

It should be noted that each application takes about ninety days to be assessed by the Chemistry office, and the process is completed with a report issued by the Department of Chemistry Malaysia. This paper, hence, suggests that this procedure should be internalised by the Shariah courts as long as there is no particular clash with a Shariah rule in overcoming the observed shortcomings in the detection of disputed documents and their effective treatment. Having said that, it should be noted that the depictions provided in the figures relate only to 'procedures' regardless of the 'content' being 'secular' or 'Shariah'-oriented.

In conclusion, as mentioned, legal practitioners, especially judges, must be aware of the consequences of taking this issue lightly as the forgery of documents could affect the decision of cases and, as a result, will affect the parties involved and even negatively affect society. We also suggest that the authorities be more proactive in dealing with cases involving the forgery of documents in banking cases and other

cases such as marriage certificates, divorce certificates, family lineage, and others. The implementation and enforcement of law should be more strict in terms of punishment and tougher penalties to commensurate with the offence of forging documents should be considered so that it will prevent crimes involving the forgery of documents (forgery syndicate) that is rampant in today's society

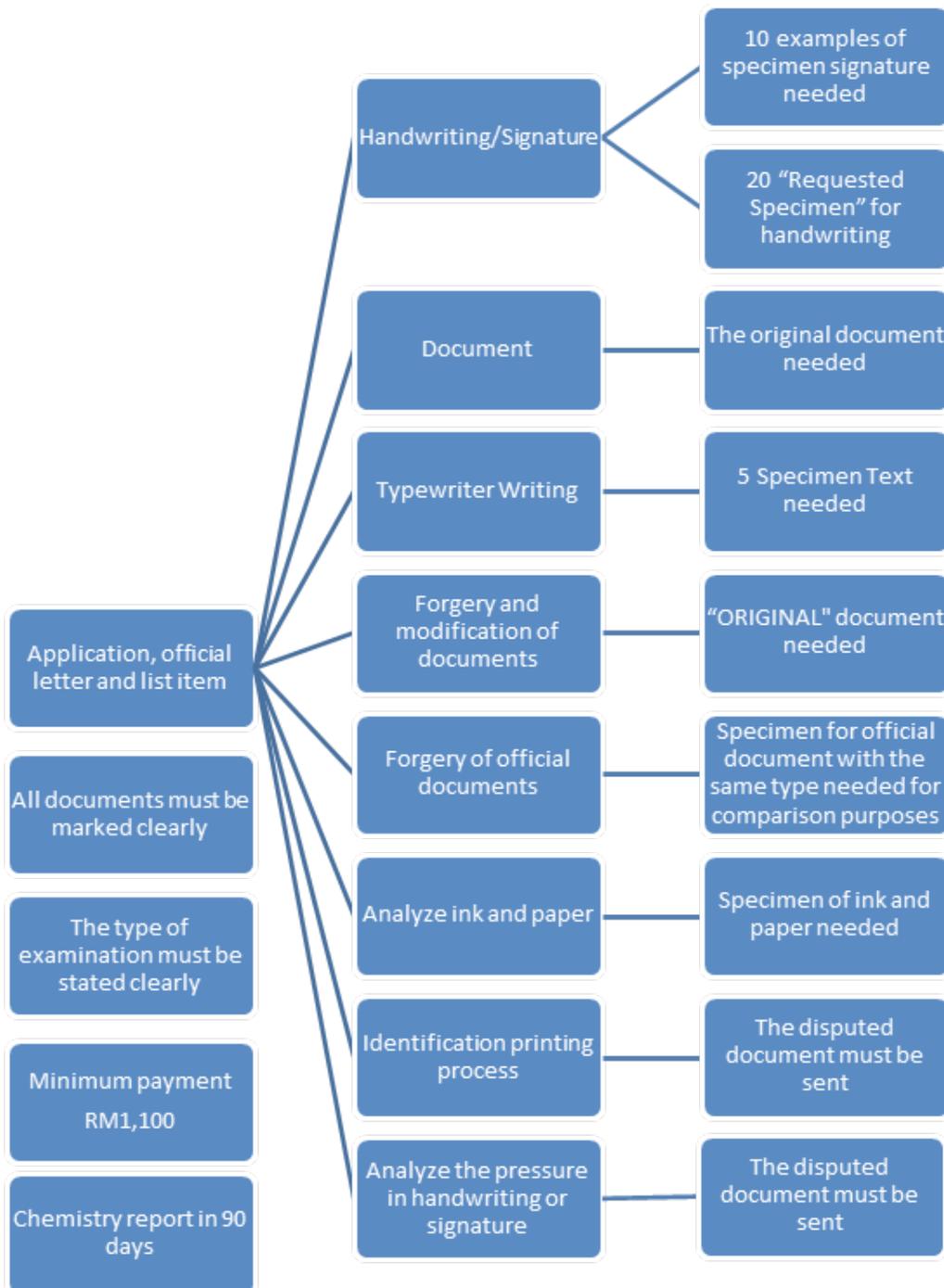


Figure 2: Verification Process of Documents at the Department of Chemistry Malaysia

References

Abdul Monir Yaacob. (2009). Pelaksanaan Perundangan Islam di Malaysia: Satu Penilaian. *Jurnal Fiqh*, No. 6. 1-20

Abdul Mutalib Abdul Razak Hamdan. 2007. *Al-Da'wa wa Ithbatuha fii al-Fiqh al-Jina'iyy al-Islamiyy*. Al-Iskandariyyah: Dar al-Fikr al-Jami'iyy.

Ahmad Hidayat Buang. (1998). *Muamalat Islam Di Mahkamah-Mahkamah Malaysia*. Universiti Malaya: Jabatan Syariah & Undang-Undang.

Anwarullah. (2004). *Principles of Evidence In Islam*. Kuala Lumpur: A.S. Nordeen.

Arbouna, Mohameh Borhan. (1999). *Islamic Of Evidence: The Function Of Official Document In Evidence (A Comparative Study With Common Law)*. Kuala Lumpur: Maju Jaya Indah Sdn. Bhd.

Al-Kasaniyy, Abu Bakar bin Mas'ud al-Kasaniy al-Hanafiy, 1997. *Bada'i' al-Sana'i' fi Tartib al-Syara'i*. Beirut: Dar al-Kutub al-'Ilmiyyah.

Al-Mausu'ah al-Fiqhiyyah. (1988). Kuwait: Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah.

Al-Syawaribiyy, Abd. Hamid. *al-Tazwiir wa al-Tazyiif Madaniyyan wa Jina'iyyan fi Dhau' al-Fiqh wa la-Qadha'*. Al-Iskandariyyah: Mansyaah al-Ma'arif.

Al-Tirmizi, Muhammad bin 'Isa, 1992. *Sunan al-Tirmizi*. Istanbul: Dar Sanun.

Al-Zuhailiy, Wahbah, 2007. *Fiqh al-Islamiy wa Adillatuh*. Damsyiq: Dar al-Fikr.

Ibn Qayyim, Abu Abdullah Muhammad ibn Abu ibn Ayyub (1991). *'Alam al-Muwaqqi'in 'an Rabbi al-'Alamiin*. Dar al-Kutub al-'Ilmiyyah, Beirut.

Ibn Qudamah, Abdullah. (1996). *al-Kafii fii al-Fiqh al-Imam Ahmad bin Hanbal*. Makkah al-Mukaramah: al-Maktabah al-Tijariyyah.

Ikrimah Sa'id Sobri. (2009). *Al-Yamin fii al-Qadha' al-Islamiyy*. Amman: Dar al-Nafaes.

Muslim, Muslim bin al-Hujjaj al-Qushairiy al-Nisaburiy, 1997. *Sahih Muslim*. Al-Qaherah: Dar al-Hadith.

Syiniur, Abd al-Nasir Muhammad. (2006). *Al-Ithbat bi al-Khibrah baina al-Qadha' al-Islamiyy wa al-Qanun al-Dawliyy wa Tadbiquha al-Muasirah*. Amman: Dar al-Nafa'is.

Mohamad Ismail Bin Mohamad Yunus. (2006). *Kedudukan Bahan Bukti (Exhibit) Elektronik Dan Digital Dalam Keterangan: Masalah Dan Cabaran Masa Kini*. *The Journal of The Malaysian Bar (INSAF)*. Volume 35(1). . p. 1-14

Jasri bin Jamal. (2011). *Kebolehterimaan Teknologi Dalam Undang-undang Keterangan Islam di Mahkamah Syariah dalam Jurnal Hukum Jilid 33, Bhg. 1*.

Mustafa al-Khin & Mustafa al-Bugho. 1996. *al-Fiqh al-Manhaji*. Cetakan kedua. Damsyiq: Dar al-Qalam.

Wan Abdul Fattah Wan Ismail. (2011). *Kaedah Pembuktian Melalui Kitabah Elektronik Di Mahkamah Syariah dalam Jurnal Hukum Jilid 33, Bhg. 2, November 2011*. p. 1-10

Wan Abdul Fattah, Raja Raziff dan Norma. (2013). *Pengesahan Keaslian Dokumen Urusniaga Elektronik Menurut Fiqh dan Undang-Undang Keterangan Islam Di Malaysia dalam Jurnal Muamalat Bil. 6*. p. 33-45.

Jal Zabdi Mohd. Yusoff. (2008). *Pengenalan Undang-Undang Keterangan di Malaysia*. Kuala Lumpur: Penerbit Universiti Malaya.

Zulkifli Hasan, (2008) *Sejarah Undang-Undang Keterangan Islam Di Malaysia*. Dimuat turun

pada April 2015, dari <https://zulkiflihasan.files.wordpress.com/2008/05/sejarah-undang-undang-keterangan-islam-di-malaysia-isi-kandungan1.pdf>

