



## Forms of document falsification in Malaysia's Syariah courts

Wan Abdul Fattah Wan Ismail<sup>1</sup>

<sup>1</sup>Fakulti Syariah dan Undang-Undang, Universiti Sains Islam Malaysia (USIM), Bandar Baru Nilai 71800 Nilai, Negeri Sembilan

Correspondence: Wan Abdul Fattah Wan Ismail (email: wanfattah@usim.edu.my)

### Abstract

Documents including old and outdated ones have come to be a vital means of proving evidence as long as the features are legible and permanent. This opens the door for document forgery or falsification. This article examined the forms of document falsification in Malaysia's Syariah courts as perceived by 181 randomly and purposeful sampled syariah judges, syariah officers, syariah lawyers, lecturers and syariah and law students, and forensic experts, Syariah and Civil Practitioners practitioners in Selangor, Negeri Sembilan, and Federal Territory of Kuala Lumpur and Putrajaya. The study found signature forgeries and factual alterations of medical certificates to be the most prevalent forms of document falsification. They were unpredictable and varied with time and opportunity. Such incidence of falsification was perceived as moderate by respondents. Interestingly, the Syariah courts had not given much attention to the document falsification when it is clear that this would impair judgements and decisions. It is time that a complete forensic model on document falsification, in line with principles of Islamic law, should be developed for the Syariah courts to serve as guidelines for Syariah legal practitioners and judges.

**Keywords:** document falsifications, incidence of falsification, rate of falsification, Syariah courts, Syariah law, Syariah legal practitioners

### Introduction

Falsification or forgery of documents can be defined as an action of changing an original document by way of imitating other people's writing, signature, stamp, adding and subtracting from the original content, such as changing the name of the father of a child on the birth certificate to someone else. (Ahmad Ibrahim Ibrahim, 1347h: 107).

According to legal practitioners, forgery is a modification made to the original documents with the intention to commit fraud, whether fraud is done explicitly by deleting or changing the meaning of a particular word or content which resulted in '*dharar*' damage or injury to either public or individuals. According to Harrison, a precise definition of forgery is when the definition meets the following five elements namely 1. Changes occurred to the original content, 2. These changes alter the terms of the original meaning of the relevant documents, 3. In the form prescribed by the law, 4. The changes will cause harm to the parties, and 5. Forgery committed intentionally (al-Abbudiyy, 1999: 191; al-Sywaribiyy, tt: 12; Fawziyyah Abd al-Sattar, 1988: 350; Wan Abdul Fattah Wan Ismail et al., 2015).

The issue of document forgery has recorded its own history that shocked the world at the time of the assassination of the third caliph Sayyidina Uthman r.a. Because of this bloody event, scholars who represent the majority of scholars (*jumhur ulama*) were very cautious in the usage and application of any document, which later led to the rejection of its application as a method of proof (Al-Syiraziyy, 1995. 3: 401, Ibn Farhun, 1995.1: 304, Ibn Qayyim, 1991. 2: 204 & Ibn Qudamah, 1996. 13: 605). Unlike Ibn Qayyim, Ibn Farhun and some other scholars, they were very eager to use the strength of documents in evidence. They have put forward strong evidences from verses of Al-Quran to support their views (Al-Syiraziyy, 1995. 3: 401, Ibn Farhūn, 1995.1: 304 and Ibn Qayyim, 1991. 2: 204).

The acceptance of document by the contemporary scholars in evidence much more suitable and practical. The obvious change of time, places and facilities make the documents, such as paper or other writing utensils in either traditional or electronic form become the main reference to any matter. The use of document as a method of proof is widespread among the public or the government. This change occurs because the main method of proof relied by scholar previously, i.e. method by witness cannot be trusted. The immorality and damages to the religious values in the society cause a doubt in the witness' credibility. Moreover, the witness could change their statement due to bribery, forget and maybe when the death happened. But, the method of proving by document will remain in their original condition despite the changing of times and it can prevent the witnesses from changing their testimony or if death happened.

However, it does not mean that the documents will survive from any elements of forgery and fraud that ultimately will benefit the evildoer and cause detriment to the party that has the right. Among the forms of fraud or falsification of documents are added or change the content of the document with the aim to change the original meaning. Another type of forgery, including falsifying signatures, done by another individual to imitate the original owner. In order to verify the authenticity and to avoid any falsification of documents, the court will refer the matter to forensic experts. Those documents include both electronic documents and non-electronic document.

There were several research done in relation to this topic. However, there was no specific research discussing the current form of forgery that happened in this day and age, especially in Syariah court, similar like the one written by Mohamad Bourhan Arbouna (1999) in his book "Islamic Law of Evidence: The Function of Official Document in Evidence". He stated clearly that document is one method of proof in Islamic judiciary, and documentary evidence is chosen as the main method of proof in Syariah Court and even in civil nowadays. Authentication of documents from forgery is important evidence in testimony. In an article titled "Pengesahan Keaslian Dokumen Urusniaga Elektronik Menurut Fiqh dan Undang-Undang keterangan Islam Di Malaysia" (Wan Abdul Fattah, 2013) emphasized the importance of verifying authenticity of electronic documents during transactions. The writers explained that the common verification used in a vow, witness, oath is mostly from an expert or forensic opinion.

An article from the Journal of the Malaysian Bar (INSAF) entitled "Kedudukan Bahan Bukti (Exhibit) Elektronik dan Digital Dalam Keterangan: Masalah dan Cabaran Masa Kini" (Ismail, 2006), explained in details about electronic document and its important. Moreover, proving through electronic documents can be accepted as evidence. Nonetheless, the author also expressed his worries regarding forgery documents and how important it is for practitioner of law to cooperate with forensic experts. The practitioner will be exposed to the method used by forensic experts in verifying document. Same goes with famous book written by al-Syawaribiyy (t.t) that explained the fundamental of forged documents and its types in civil and criminal cases according to fiqh and judiciary. Moreover, article in *Jurnal Hukum* written by (Wan Abdul Fattah, 2011), a document, especially electronic document is not necessarily will be accepted as evidence unless it has conformed with the verification process. The method widely used nowadays is verifying the authenticity by experts. Falsification of documents also discussed by Samir Bourhan in his research. Samir in his research examined the concept of forgery, the pillar and its forms that usually happened and punishment for those who convicted with the offence of falsifying documents (Samir Bourhan, 2010).

Based on the discussion above, most scholars did explain the concept of forgery and the method of proving the forgery, but only in brief. They simply discussed the forms of forgery in a theoretical sense, and it is to be noted that the research was done quite some time ago. Whereas, the form of forgery could change from time to time and with the help of the recent facility, especially in Syariah Court in Malaysia. This research will focus on the types of forgery happened in this day and age, according to legal practitioners and academician.

## Forms of document falsification

The forms of forgery of documents are not fixed and very difficult to trace as it changes from time to time and the current facility. However, in theory, forms of forgery can be divided into two parts, i.e. material forgery (*maddi*) and non-material forgery (*maknawi*) (Ma'mun Kamal, 1992: 49). Material and apparent (*al-Maddi*) forgery means changes made by someone to a particular document that so obvious and that changes leave a clear mark and can be seen. Examples of material forgery and apparent is imitate some else's handwriting or signature. These days, material forgery can be seen in several forms, for example, forgery by amending, forgery by removing or adding information and falsification of the stamp.

Forgery by amending can be done directly and indirectly. A direct amendment made by the way imitates handwriting or replacing signature and others. Sometimes, this form of forgery could confuse vision in distinguishing the original or fabricated documents. This form of imitation can be done by using carbon paper, which when writing, it will leave marks on the paper coated under it. There a few more ways used to directly copy and forge documents (Albert Osborn, 1943: 48 & Ron N. Ordway, 2000: 171).

Whereas indirect amendment is by replacing handwriting or signature from the original document to a fake document. This type of forgery actually quite similar with direct forgery, but a little bit different in terms of its methods. This form of forgery will use an intermediary in transferring information, especially for those that cannot directly be transferred. For instance, writing by pressuring the handwriting on the original document so that it will leave marks on the paper under it, sign using transparent paper or carbon paper coated under the original document or create images using a camera, photostat and transfer it to the other paper so that it will look like it is from the original paper (Al-Zanibat, 2005: 35).

Other than that, direct forgery can happen by removing or adding information. Removing information in documents can be done by using the typical rubber erasers or liquid paper to eliminate handwriting without leaving any trace in adding information. Adding information can be made by adding words, phrase, number, signature or remove a particular information and replace it with other information (Al-Hijaziyy, 2000: 37).

A direct forgery can happen by falsifying stamp. Most department, institution and company own a special stamp as their business official symbol. The function of the stamp is to disclose the identity of someone or organization and it is stamped to a particular document either for official or personal matters. Previously, a stamp usually made from metal like copper or silver, but now, it is made from plastic or rubber. Forgery of stamp can be easily done by bringing the sample or example of a stamp that wish to be copied on the paper (Al-Zanibat, 2005: 40). Whereas non-material forgery (*maknawi*) happen by changing the title or original meaning of a particular document. Non-material forgery will not affect the visible form of the document, unless if it is viewed carefully. This type of forgery usually happens in two forms, changing liability or responsibility of someone and write a false statement (Syiniur, 2005: 166).

This situation usually happens when a certain officer has ordered his worker to record a particular fact or statement. But that worker changes the original fact and the fake fact become as if it is the true one and original. This forgery sometimes happens to official documents that normally done by staff from that department, because it is difficult to be done by outsiders. For example, a translator can change the true meaning of documents that he or she translated such as changing the status of divorce three times pronounced at one time to divorce three times separately, changing loan record with banks and others. (Al-Muhaimin, 1982: 452; Faoziah Haji Idris et al., 2013).

The purpose of this article is to explain the concept of falsification of documents and its forms that usually happens in Syariah court. In addition, valuation to the respondents' perception of forms of forgery and forgery in general and diverse respondents' perception based on profession and level of education has also been done.

## Research methodology

This study has been done by using a mixed - method approach, a combination quantitative and qualitative approaches. For quantitative approach, respondents comprising of practitioner of law, including syarie judges, syarie officers, syarie lawyers and academician including lecturer and syariah and law students. Four areas in Negeri Sembilan, Federal Territory of Kuala Lumpur and Putrajaya and Seremban has been randomly selected to represent a fair division between syariah lower court and syariah high court. The respondents were selected randomly (random sampling).

Whereas for a qualitative approach, this study using a thorough interview on the main informants and content analysis. Key informants comprising of forensic experts, syariah and civil practitioners. The method of selection for main informants is through purposive sampling. Whereas content analysis has been performed to judicial documents, including syariah court and civil court decisions in cases involving fraud and forgery of documents. Quantitative data will be analyzed using SPSS computer software, while qualitative data was analyzed using QSR NVivo computer software. This research will be conducted in Federal Territories (Putrajaya, Kuala Lumpur and Labuan), Selangor and Negeri Sembilan.

This research is predicted to give a huge impact to the judiciary system in Malaysia, that is in giving suggestions on updating judicial procedure to investigate and solving cases involving fraud and falsification of documents. In addition, this research possibly leads to amendment of related provisions relating to acceptance of documents as a method of proof in Syariah court in Malaysia.

## Research outcome and discussion

### *Respondents demographic traits*

The total of 181 survey form has been distributed to respondent consist of syarie judges, syarie officers, syarie lawyers, lecturers and syariah and law students in Selangor, Negeri Sembilan, and Federal Territory of Kuala Lumpur and Putrajaya. Schedule 1 represents the demographic profile of the research to show percentage based on level of education, 9 respondents (5.0%) with a Ph.D, 24 respondents (13.3%) with a Masters, 119 respondents (65.7%) with a Bachelor Degree, 29 respondents (16.0%) with a Diploma, Certificate and other. Based on profession, 78 respondents (43.1%) working as academician and 103 respondents (56.9%) working as a law practitioner. (syariah).

**Table 1. Respondent demographic profile**

Demographic	Frequency	Percentage
<i>Level of education</i>		
Ph.D	9	5.0%
Masters	24	13.3%
Bachelor Degree	119	65.7%
Diploma, Certificate and others	29	16.0%
<i>Profession</i>		
Law Practitioner (Syariah)	78	43.1%
Academician	103	56.9%

### *Respondents' perception of forms of fraud and forgery*

Descriptive analysis involving mean and standard deviation used to determine respondents' perception regarding forms of fraud and forgery. Schedule 2 shows the highest forms of fraud and forgery, according to respondents' perception is forgery of medical certificate (min = 2.68 and sp = 1.16), forgery of signatures an official letter (min = 2.61 and sp = 1.19), forgery by adding a false statement (min = 2.57 and sp = 1.20) and forgery by changing facts in documents (min = 2.57 and sp = 1.19). Whereas among the lowest forms of fraud and forgery is forgery of grant of ownership (property/transportation) (min =

2.19 and  $sp = 1.07$ ), forgery of Islamic entrustment document, gift during lifetime, religious endowment and others (min = 2.31 and  $sp = 1.12$ ), forgery of birth certificate (min = 2.33 and  $sp = 1.12$ ), forgery of identity card (min = 2.34 and  $sp = 1.18$ ) and forgery of registration letter (etc. PATI) (min = 2.36 and  $sp=1.13$ ). Overall, the respondents' perception on forms of fraud and forgery is moderate (min = 2.45 and  $sp 1.07$ ).

**Table 2. Respondents' Perception on forms of fraud and forgery**

No	Form	Mean	Standard variation	Interpretation
1.	Forgery of identity card	2.34	1.18	Moderate
2.	Forgery of marriage certificate	2.46	1.21	Moderate
3.	Forgery of birth certificate	2.33	1.12	Moderate
4.	Forgery of degree (Bachelor, Master and PhD)	2.36	1.13	Moderate
5.	Forgery of international passport	2.42	1.17	Moderate
6.	Forgery of individual travel documents	2.42	1.16	Moderate
7.	Forgery of testimony	2.54	1.19	Moderate
8.	Forgery of official letter	2.52	1.13	Moderate
9.	Forgery of signature on official letter	2.61	1.19	Moderate
10.	Forgery by adding a false statement	2.57	1.20	Moderate
11.	Forgery by changing facts in documents	2.57	1.19	Moderate
12.	Forgery of medical opinion letter	2.49	1.13	Moderate
13.	Forgery of medical certificate	2.68	1.16	Moderate
14.	Forgery of grant of ownership (property/transportation)	2.19	1.07	Moderate
15.	Forgery of registration letter (etc. PATI)	2.35	1.11	Moderate
16.	Forgery of Islamic entrustment document, gift during lifetime, religious endowment and others	2.31	1.12	Moderate
	Total	2.45	1.07	Moderate

*Respondents' perception of forms of fraud and forgery based on profession*

Distinction of the respondents' perception on forms of fraud and forgery based on the profession has been identified by using an analysis independent t test. Schedule 3 shows that there is no significant distinction on respondents' perception regarding forms of fraud and forgery based on profession with  $t$  value = -0.063 and  $sig = 0.950$  ( $p>0.05$ ). In terms of mean, respondents who are academicians (min = 2.45 and  $sp = 1.15$ ) has a higher perception compare to law practitioners (Syariah) (min = 2.44 and  $sp = 0.97$ ). Nonetheless, such distinction is not that significant between respondents' perception on forms of fraud and forgery based on respondents' profession.

**Table 3. Distinction of the respondents' perception on forms of fraud and forgery based on the profession**

Profession	N	Min	Standard Variation	t	Df	Sig.
Law Practitioner (Syariah)	78	2.44	0.97	-0.063	179	0.950
Academician	103	2.45	1.15			

*Respondents' perception of forms of fraud and forgery based on educational level*

The analysis of the Kruskal Wallis test was conducted to identify distinction of the respondents' perception on forms of fraud and forgery based on level of education (Pallant, 2005). Schedule 4 shows

that there are not much significant difference with the respondents' perception on forms of fraud and forgery based on level of education with the value of Chi Square = 7.609 and sig = 0.055 ( $p > 0.05$ ). In terms of mean ranking, respondents with a Ph.D level (min ranking = 122.72) has a higher perception compared to respondents with a Diploma, Certificate and others (min ranking = 104.22), respondents with a Masters (min ranking = 97.02) and respondents a Bachelor Degree (min ranking = 84.16). Nonetheless, that difference is not apparent.

**Table 4. Kruskal Wallis Test. The distinction of the respondents' perception on forms of fraud and forgery based on level of education**

Level of education	N	Min rank	Chi square	df	Sig.
Ph.D	9	122.72	7.609	3	0.055
Masters	24	97.02			
Bachelor Degree	119	84.16			
Diploma, Certificate and others	29	104.22			

*Law practitioners' and academicians' opinions regarding forms of documents recorded in Syariah Court*

Although there are many forgery cases happen in court, be it Syariah court nor Civil court, but the most frequent is forgery involving signature and other forms. Signature is one of the important elements to ensure that a certain document has value in evidence or otherwise. As a result of interview conducted with individuals with experience such judges, civil and syarie lawyer, academician and forensic experts, each one of them has their own opinion regarding falsification of documents.

An academician with more than 20 years' experience in forensic field before entering academic field, I named as Officer A, in the opinion that the most frequent forgery cases are those cases involving signature and other documents. According to Officer A, forgery of documents that usually happen in Syariah court is cases involving forgery of marriage certificate or certificate of marriage outside Malaysia. Another forensic expert, although he is at the age of the end of the 60s, but still in forensic field for more than 30 years, I named as Officer B. According to Officer B, forensic experts can identify whether a particular document is genuine or otherwise. Mark as in the logo will not be the same if the colour is not clear, and the wording is sufficient to raise doubt to the status of genuineness in a certain document. Other than that, the quality of the paper and quality of printing is also an important element to determine the status of the document presented.

According to Syarie Court judge, I called as Officer C, there was one case involving forgery case of a certificate of marriage happened in the early 90s in the Federal Territory. In that case, the prosecutor failed to prosecute because of weak evidences presented and in the end, the defendant won the case. Among forgery cases recorded was the signature of the first wife's consent in polygamy case. According to Officer C, these forgery cases involving educated people because they are aware of important things needed in documents such signature and others.

According to Officer C, there was a case involving senior officer revealed on television and local newspapers who forged information in documents by giving a fake address. When the court was trying to serve the summon, it was discovered that he never live at that address and the address belong to a Chinese. In that case, the defendant pleaded guilty for falsifying information in the document that he produced. According to Officer C, another way done by certain people is by laminating certificate of marriage to avoid that their fraud action to be traced. By doing so, the authorities cannot detect the quality of the paper. Other than marriage certificate, gift during lifetime document, land grant also among victim of forgery. According to him, forensic experts will be consulted if there is a doubt about a particular document.

According one of Syarie lawyers who has a great experience, I named as Officer D, he said that forgery case did happen especially involving signature and marriage certificate. Suspicion over the genuineness of the certificate of marriage outside Malaysia, especially in Thailand always happens. But if

the couple claims that they got married, the court will request several documents. This document is the original marriage certificate that has been approved by Malaysia embassy in Thailand. Usually those who got married in South Thailand will verify their marriage certificate in Songkla and if that verification has been made by Malaysia Consulate, the court will usually accept it unless there is a doubt regarding its genuineness.

The outcome of the interview made directly to people with different background showed that forgery of document indeed happened. The most frequent forgery is involving verification certain document i.e. signature. Documents that frequently falsified that being recorded by syariah law practitioner is certificate of marriage. There are also cases involving forgery of gift during lifetime document, land grant and others.

The forms of document forgery are unpredictable as it changes from time to time. However, forgery can be declared so if original documents are modified with the intention to commit fraud, whether fraud is done explicitly by deleting or changing the meaning of a particular word or content which resulted in 'dharar' (damage or injury) to either public or individuals. The result of the survey of the 181 respondents showed that the highest forms of fraud and forgery was forgery of medical certificate, followed by forgery of signature in an official letter, forgery by adding a false statement, and forgery by changing facts in documents. Whereas among the lowest prevalent forms of fraud and forgery were forgery of ownership grants (property/transportation), forgery of Islamic entrustment documents, forgery of gifts during lifetime, forgery of religious endowment, forgery of identity card and forgery of registration letters.

Overall, the respondents' perception on forms of fraud and forgery was moderate. There was no significant distinction on respondents' perception regarding forms of fraud and forgery based on profession with  $t$  value = -0.063 and sig = 0.950 ( $p > 0.05$ ). In terms of mean, respondents who are academicians (min = 2.45 and sp = 1.15) had a higher perception score compared to law practitioners (Syariah) (min = 2.44 and sp = 0.97). Nonetheless, such distinction is not highly significant between respondents' perception on forms of fraud and forgery based on respondents' profession. The analysis of the Kruskal Wallis test conducted to identify distinction of the respondents' perception on forms of fraud and forgery based on level of education showed that there was not much significant difference, with the value of Chi Square = 7.609 and sig = 0.055 ( $p > 0.05$ ). In terms of mean ranking, respondents with Ph.D level (min ranking = 122.72) has a higher perception compared to respondents with Diploma, Certificate and others (min ranking = 104.22), respondents with Masters (min ranking = 97.02) and respondents Bachelor Degree (min ranking = 84.16). Nonetheless, that difference is not apparent.

## Conclusion

The study found signature forgeries and factual alterations of medical certificates to be the most prevalent forms of document falsification. They were unpredictable and varied with time and opportunity. Such incidence of falsification was perceived as moderate by respondents. Interestingly, the Syariah courts had not given much attention to the document falsification when it is clear that this would impair judgements and decisions. It is time that a complete forensic model on document falsification, in line with principles of Islamic law, should be developed for the Syariah courts to serve as guidelines for Syariah legal practitioners and judges.

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