

## **AN OVERVIEW ON THE FALSIFICATION OF DOCUMENT ACCORDING TO FIQH AND LEGAL PERSPECTIVES**

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### ***ABSTRACT***

Nowadays, the rapid development in the field of science and technology has made documentary evidence become one of the most important means of proof compared to the others either used in the Syariah court or in the civil court. This is because this description helps to support the other facts presented in a trial proceeding. Not only that, this kind of evidence also will remain in its original circumstances despite changing times and its can prevent witnesses from changing their witness arbitrarily or due to death. However, it does not mean that the document will be free from the element of falsification or forgery that will ultimately benefit the wrongdoers and harm the rightful. Therefore, this study aims to examine the concept of document falsification and its position from an Islamic point of view. Then, this study also will identify what is the forms of document falsification/forgery in general. Finally, this paper will examine the basic punishment for the offense of document falsification in accordance with *Fiqh* and the legal perspective. The methodology of this study is a qualitative approach by using document analysis of *fiqh turath* books, journals, article papers, books and related document references. At the end of this study, the reader will be exposed in general regarding to the offense of falsifying documents according to *Fiqh* and legal perspective. This study also indirectly will be a reference point for legal authorities, judges, other researchers, students and the public in Malaysia.

**Keywords:** *Falsification/forgery, Document, Fiqh, Legal, Perspectives*

## INTRODUCTION

Nowadays, documentary evidence has become one of the important parts in methods of proof either for use in the civil court or Syariah court. Not only that, with the advancement of science and technology also have made a various new form of a document such as closed-circuit television (CCTV), short message service (SMS), video or sound recorder, picture and others. This is because, this kind of method of proof can reinforce other facts and evidence in court proceedings (Wan Abdul Fattah *et al.*, 2020).

However, according to Azhan Yahya *et al.*, (2017), one of the challenges in admitting the document as a method of proof is its falsification. As a result, the use of a document as proof also will not escape from the element of falsification (Wan Abdul Fattah, 2020). Generally, document falsification is considered a crime when there are intent and mechanisms to commit fraud (Khairul Anuar & Halil Parno, 2016). On the other hand, in this increasingly challenging world, there are certainly some parties who try to falsify the document for personal gain by rejecting the original purpose of the document to the benefit of the party who should be guilty.

This paper aims to study the concept of documentary evidence and its falsification from Islamic views. Then, the researcher also will discuss the general forms of document falsification and finally will explore the basic punishment for the offense of documents falsification according to legal and Islamic jurisprudence (*fiqh*). This study indirectly will be a reference point for the legal practitioners, academicians, students and public in Malaysian related document falsification/forgery.

## THE CONCEPT OF DOCUMENT AS A METHOD OF PROOF

The document is one of the relatively new forms of evidence especially for use in the Malaysian Syariah courts. This is because, the document plays an important role in the process of proving a case either to convict or deny an allegation (Wan Abdul Fattah *et al.*, 2020). *Al-kitabah, kataba, katban, kitaban, kitabatan* and *maktubah* is the Arabic word for document that mean writing. These kinds of words refer to the word *maktubah* in the hadith of the Prophet SAW as below:

أَمَّا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

Translation: "It is the duty of a Muslim who has something which is to be given as a bequest not to have it for two nights without having his will written down regarding it".

(Narrated by Riwayat al-Bukhari)

The author also refers to the definition of a document that has been stated by Al-Zuhaili (1994) which means; the document can be expressed by words by using certain letters provided that it is clear and understandable. Besides, Ibn 'Abidin (1995) also defines a document as a written note on a sheet, ground, or wall that can be understood if read. However, these two definitions of documents mentioned above give a rather narrow picture. This is because, nowadays, there are various new forms of documents that can be used as evidence in courts such as CCTV, photos, videos, sound recorders and others.

Therefore, the author has referred to the definition that has been stated by Wan Abdul Fattah (2020) that define a document as explain or describe something by using writing or sketches or copies that are in appearance either classical form such as using paper, wood and other or the document in modern forms such as use diskettes, compact discs, internet and others.

In general, the definition stated by Wan Abdul Fattah is in line with the definition of the document as provided under Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] as below:

“document” means 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.

From this section, it is clear that the document as a method of proof has a broad enough meaning to be used in the Malaysian Syariah courts. With the advancement in science and technology have derived various forms of document. Consequently, this will indirectly pose a challenge when admitting the document as evidence such as falsification. This is due to irresponsible attitudes or individuals with low moral and religious values (Mubarak, 2005).

## DOCUMENT FALSIFICATION AND ITS POSITION IN ISLAM

In general, document forgery is one of the challenges that will be faced when using documents as evidence in court. Although the evidence through this document will continue to remain in its original state, this does not mean that the document will escape from the element of forgery which will ultimately benefit the oppressor and will harm the entitled party (Wan Abdul Fattah, 2020).

*Al-Tazwir* is the Arabic word for forgery or falsification which means lying and it is derived from the word *zawwara* which means words or deeds that deviate from the truth. The word *tazwir* has been mentioned clearly in the Holy Quran:

ذَلِكَ وَمَنْ يُعْظَمِ حُرْمَاتِ اللَّهِ فَهُوَ خَيْرٌ لَهُ عِنْدَ رَبِّهِ وَأُحِلَّتْ لَكُمْ الْأَنْعَامُ إِلَّا مَا يُتْلَى عَلَيْكُمْ  
فَاجْتَنِبُوا الرِّجْسَ مِنَ الْأَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّورِ

Translation: “That [has been commanded], and whoever honors the sacred ordinances of Allah - it is best for him in the sight of his Lord. And permitted to you are the grazing livestock, except what is recited to you. So avoid the uncleanness of idols and avoid false statement”.

(Surah al-Hajj 22:30)

Some scholars also have defined tazwir as an act of changes something so that it is seen as original to cover up the truth and expose falsehood as if it were true (al-Tabari, 1405H). In the book *Al-Mausuah al-Fiqhiyyah* (1984), falsification is defined as an act that obscures the truth so that it does not appear either in words such as false witnesses or acts such as plagiarizing writing with the intention of deceiving in proof.

Not only that, document falsification also is considered a crime when there is an intention to commit fraud. This is because, document falsification can be described as the act of destroying, modifying, mutilating, or falsifying any original documents (Khairul Anuar & Halil Paino, 2016). Therefore, anything that leads to fraud such as false testimony and forgery of signatures is also included in the category of document falsification.

According to Samir Burhan (2010), the act of falsifying documents is cruelty because it has wronged the right party by winning over the lying party. There are verses from the Holy Quran that warn of the punishment for those who commit lies, including forgery of documents. The words of Allah SWT in Surah al-Zumar verse 60:

أَلَيْسَ فِي جَهَنَّمَ مَثْوًى لِّلْمُتَكَبِّرِينَ ۗ وَيَوْمَ الْقِيَامَةِ تَرَى الَّذِينَ كَذَبُواْ عَلَى اللَّهِ وُجُوهُهُم مُّسْوَدَّةٌ

Translation: "And on the Day of Resurrection you will see those who lied about Allah [with] their faces blackened. Is there not in Hell a residence for the arrogant?"

(Surah al-Zumar 39:60)

In addition, this act will indirectly invite Allah SWT's wrath. The Prophet Muhammad SAW highlights this in the following hadith:

Translation: "Would you like me to tell you the greatest sin? Rasulallah repeated it three times. The companions replied, " Even O Rasulallah ". So Rasulallah SAW said, " Doing shirk to Allah, rebellion against parents and false testimony."

(Narrated by al-Bukhari. Hadith no. 2654)

In conclusion, based on the concepts and definitions of falsification discussed above, it can be understood that a document forgery is an act that changes the original meaning of a document to deceive and hide harm to others. In addition, the provision from the Holy Qur'an and the hadith mentioned above show that forgery of documents also is included in the act that invites Allah SWT's wrath. This shows that, Islam rejects such acts which are also included in the category of major sins (al-Zamakhshary, 1995).

## **THE GENERAL FORMS OF DOCUMENT FALSIFICATION**

Nowadays, the use of documents is becoming more widespread for use either at the government level or the public (Wan Abdul Fattah, 2020). Furthermore, advances in science and technology also have resulted in a variety of variations and new forms of documents, such as CCTV, photographs, video or sound recordings, and others. Consequently, the document is vulnerable to forgery.

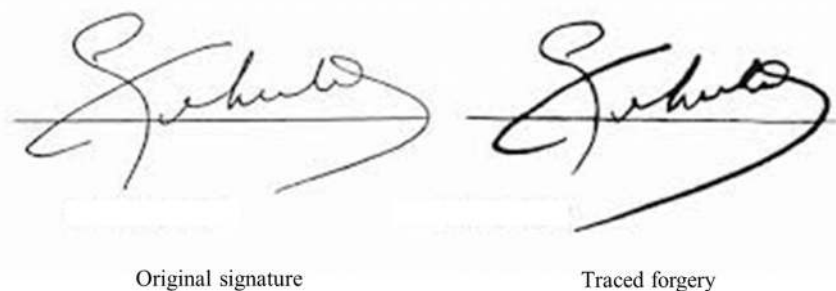
According to Ma'mun Kamal (1992), forms of forgery can generally be divided into two parts, namely, falsification is clearly committed (*Al-Maddi*) and falsification is unclearly

committed (*Al-Ma'nawi*). Therefore, in this section, the author will discuss in general terms the basic forms of document forgery.

### **Falsification is clearly committed (*Al-Maddi*)**

In general, *Al-maddi* can be defined as the falsification that is clearly committed or overtly. According to Wan Abdul Fattah (2015), a clearly committed falsification (*Al-Maddi*) is a change made by someone explicitly and the change leaves a tangible and visible impact. For example, copying the signatures of others is one form of document forgery in the category of *al-maddi*. Figure 1 shows the comparison between the original signature with a forged signature. The traced signature (forged signature) has less detail than the known signature and appears different when compared to the original signature.

**Figure 1: The Example of falsification that clearly committed (*Al-Maddi*)**



Source: Extracted and modified from internet

According to Wan Abdul Fattah (2020), the signature plays an important role because it is a basic requirement to ensure that a document is legitimate or not in law, particularly when dealing with official documents. Because the position of this signature is very important, then there are some parties who attempt to falsify the signature in order to make a profit for themselves and harm the person entitled.

Apart from that, this statement is also based on the murder of Sayidina Uthman when some parties had used his signature as caliph at that time without his knowledge. Therefore, from the discussion above, *al-maddi* is one of the forms of forgery that can be seen clearly about its falsity such as forgery of signatures, official stamps and so on.

### **Falsification is unclearly committed (*Al-Ma'nawi*)**

The falsification through *Al-Ma'nawi* is falsification that is done vaguely. The falsification of a document through *al-ma'nawi* is accomplished by changing the original title and meaning of a document (Wan Abdul Fattah *et al.*, 2015). In terms of the features of the document itself, it does not affect the form of the document outwardly unless if we viewed it carefully (Wan Abdul Fattah, 2020).

According to Syinyur (2005), the falsification through *al-ma'nawi* usually occurs in two situations which are changing the original meaning of the document and the written statement is forged. For example, a person who changes the original meaning of a translated document, such as changing the divorce status from talaq three at once to talaq three separately, is included in the category of falsification of unclearly committed (*Al-Ma'nawi*), which requires the document to be defined in detail.

Table 1 shows, the distinguish between clearly committed falsification (*Al-Maddi*) and unclearly committed falsification (*Al-Ma'nawi*).

**Table 1: The distinguish between clearly committed falsification (*Al-Maddi*) and unclearly committed falsification (*Al-Ma'nawi*)**

<i>Al-Maddi</i>	Distinguish	<i>Al-Ma'nawi</i>
The falsification is clearly committed	<b>Definition</b>	The falsification is unclearly committed.
The falsification/forgery can be seen directly	<b>Characteristics</b>	Such falsification/forgery must be carefully observed
Imitate signatures, fingerprints, official stamps <i>etc.</i>	<b>Examples of falsification</b>	Changing someone's loan record with a bank

In conclusion, with the facilities available today, there will undoubtedly be significant challenges to the use of documents as evidence, one of which is that the document is easily forgery-prone. Theoretically, these are the general forms of document falsification, namely maddi and ma'nawi, that must be considered in a trial court when determining the form and type of document falsification.

## **THE BASIC PUNISHMENT FOR THE OFFENSE OF DOCUMENTS FALSIFICATION ACCORDING TO LEGAL PROVISIONS AND ISLAMIC JURISPRUDENCE (*FIQH*)**

In this section, the researcher will discuss the basis for the punishment to be imposed for the offense of falsifying documents according to legal provisions and Islamic jurisprudence (*Fiqh*). Generally, civil courts have left the Syariah courts far behind in handling cases related to the used of a document as a means of proof especially in cases of document falsification. This is because civil courts are more exposed to cases related to it as there are specific provisions under civil jurisdiction for each case reported.

According to section 463 of the Penal Code [Act 574], falsification is defined as:

*Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

In general, the penalty for falsifying documents is specified in Section 465 of the Penal Code [Act 574], which states:

*Whoever commits forgery shall be punished with imprisonment for a term which may extend to two years or with fine or with both.*

However, the punishment that will be imposed on the party found guilty has varied depending on the type of offense committed. Table 2 shows, the provision provided for the

type and punishment for the offense of document falsification according to the Penal Code [Act 574].

**Table 2: Types and punishment for offense of document falsification based on the Penal Code [Act 574]**

No.	Section	Types of offense committed	The punishment to be imposed
1.	Section 466	Forgery of a record of a court, or a public register of births, <i>etc.</i>	The guilty shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine
2.	Section 467	Forgery of a valuable security or will	The guilty shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine
3.	Section 468	Forgery for the purpose of cheating	The guilty shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine
4.	Section 469	Forgery for the purpose of harming the reputation of any person	The guilty shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine

Basically, each provision from the Penal Code [Act 574] has specified the type of forgery offense and the punishment to be imposed. For example, in section 466 which is the forgery of a record of a court, or a public register of births, *etc.*, the guilty shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine. Besides, according to section 467, forgery of a valuable security or will, the guilty also shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Meanwhile in section 468, forgery for the purpose of cheating, the guilty shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine. Lastly, in section 469, forgery for the purpose of harming the reputation of any person, the guilty shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine. In conclusion, civil law has a specific provision for every offense of falsifying documents as mentioned above.

However, this situation is quite different from Islamic jurisprudence where the punishment for the offense of falsifying documents is under the punishment of *takzir*. According to Wan Abdul Fattah (2020), *takzir* is reserved for offenses for which no form of punishment is prescribed, instead, the punishment is based on the discretion of the government such as imprisonment, flogging, expulsion from the district, displaying offenders in public places, community service and other.

In addition, *takzir* is one method of educating offenders who commit offenses that do not fall under the category of hudud offenses, and the rate of *takzir* also varies depending on the circumstances and the offender himself (al-Mawardi, 1985). Therefore, this shows that there is no specific provision for the offense of falsifying documents under Islamic jurisprudence instead this gives full power to the judge to impose a sentence on the offender.



According to Fiqh scholars such as Imam Abu Hanifah, Imam Shafie, Imam Hanbali, and Imam Maliki, all of them have differing views on the punishment to be meted out to those found guilty of falsifying documents. However, they agreed to state that this false testimony is under takzir where the sentence is based on the decision issued by the judge (Wan Abdul Fattah, 2020).

In conclusion, the authors argue that the Malaysian Syariah courts need to look at the experience and refer to civil law regarding how civil legal practitioners handle cases related to document forgery and analyze the punishments prescribed thereunder. This aims to improve the institution of Syariah courts when dealing with cases involving document forgery.

## CONCLUSION

In general, documents are one of the most important forms of method of proof used in civil courts as well as Syariah courts. This is because, the document plays an important role as a means of proof in a court, in order to convict or deny an allegation. However, this kind of evidence also will not escape from the issue of forgery due to the presence of an immoral person committing such acts. *Al-tazwir* is the Arabic word that means falsification or forgery. From the Islamic view, document falsification is one of the heinous acts and also falls into the category of major sins. The researchers also present two common forms of document falsification that usually occur, which are *al-maddi* and *al-ma'nawi*. At the end of this paper, the researchers also discuss the base punishment for the offense of falsifying documents. In general, the punishment for the offense of falsifying documents under the law of Malaysian is Section 465 of the Penal Code [Act 574] and the punishment of *takzir* under Islamic jurisprudence (*fiqh*). It is hoped that there is a further study regarding the suggestion for an improvement for the Malaysian Syariah court in handling cases related to document falsification. This is because the Syariah courts still do not have specific punishments and lack of experience from Syariah legal practitioners in handling cases related to document falsification.

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