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**FIQH FORENSICS MODULE FOR MALAYSIA SHARIAH
OFFICERS: A PRELIMINARY ANALYSIS**

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Abstract

The advancement in the field of forensic science affects the practicality and current situation in legal and enforcement matters. The world is expected to see investment growth in the field of forensic science reaching nearly USD 20 billion by the year 2022. Furthermore, in the field of shariah, shariah officers in Malaysia face challenges in controlling scientific-based exhibits and proofs. In fact, this has been seen as a result of lack of exposure, knowledge and comprehensive training in evidencing procedures using scientific-based qarinah. Therefore, this preliminary study discusses the proposal to establish a fundamental of fiqh forensics module for the use of shariah officers in Islamic legal institutions in Malaysia. This qualitative study applies inductive and deductive approaches in obtaining general and specific conclusion from primary and secondary sources of data. The findings from this preliminary analysis show that there is a need to propose for the development of a specific module to empower human capital in Islamic legal institutions. This includes enforcement officers, shariah prosecutors, judges and registrars within the integration framework of forensic science through the concept of 'fiqh forensics'. As such, this study addresses the proposed development of the fiqh forensics fundamental module for the use of shariah legislation to be on the same par with civil legislation in the country.

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Keywords: Fiqh forensic, fundamentals of forensic science, integration of science and islamic jurisprudence, sharia law.



1. Introduction

The world is expected to see investment growth in the field of forensic science reaching nearly USD 20 billion by the year 2022. As a result, government agencies around the world are racing to dominate the investments towards empowering research and human capital in the forensic science (BIS Research, 2017). On the same coin, the large gap of academia and practical has occurred in the application of forensic science in Islamic law. No renewal been made although the application of forensic science was first brought to the shariah court in 2007. In fact, various cases were dismissed due to the lack of knowledge and training in handling the exhibits related to forensic science in involved cases. The competencies of shariah officers are also disputed in conducting instruments related to forensic analysis at the scene. Ironically, all these negative impacts have been detected as a result of the absence of specific modules of curriculum and training for shariah officers handling the forensic evidence involved cases. If no proactive measures initiated, the shariah legal system, particularly in evidence, will left behind and may give negative impression to the public that it is not competent to solve the global problems. Looking to the needs, this study proposed the construction of a specific module to empower human capital the shariah officials, including enforcement, shariah prosecutors, judges and registrars integration framework between forensic science and Islamic jurisprudence that have been proposed based on the theory of 'fiqh forensics'.

2. Problem Statement

This preliminary analysis is based on the following problem statements:

- 2.1. The need for filling the academic gap of the integration theory forensic science with Islamic law (fiqh forensics) as an impact from present dualistic educational system.
- 2.2. The need for filling practical guidelines for the application of forensic science in Islamic law through a complete ready to use module.
- 2.3. Prioritize empowering and training human capital through the importance of science and evidence materials related to forensic science.
- 2.4. The absence of complete module prepared for forensic science application in Islamic law in Malaysia.
- 2.5. Improving Islamic legal system in Malaysia through forensic science aspects.
- 2.6. Challenges to Islamic legislation into handling the industrial revolution 4.0.

3. Research Questions

Several questions that may be pointed out in relation to this research are as follows:

- 3.1. What is the form of fiqh forensics module to be used by Shariah officers in the Shariah legal institutions in Malaysia?
- 3.2. As to what extent the level of the validity and reliability of fiqh forensics module for Shariah officers in the Shariah legal institutions in Malaysia?
- 3.3. As to what extent the effectiveness of fiqh forensics fundamental module for Shariah officers in the Shariah legal Institutions in Malaysia can be measured?
- 3.4. How does the complete and ready to be used form of fiqh forensics module for the curriculum and training in Shariah legal institutions in Malaysia?

4. Purpose of the Study

This analysis is conducted with numbers of purposes which are:

- 4.1. To develop a draft fiqh forensics fundamental module for Shariah Officers in Islamic Legal Institutions in Malaysia.
- 4.2. To assess the level of validity and reliability of the fiqh forensics module for Shariah Officers in Islamic legal Institutions in Malaysia.
- 4.3. To evaluate the effectiveness of fiqh forensics fundamental module for Shariah Officers in Islamic legal Institutions in Malaysia.
- 4.4. To produce a complete and ready-to-use module for the curriculum and fundamental training of fiqh forensics for Shariah officers in Islamic legal institutions.

5. Research Methods

This preliminary study used content analysis methods on primary and secondary sources of collected data. Data were collected using various methods. Then, data have been analyzed by using deductive approach to the literature that builds the concept of the study. While the inductive approach has been used on secondary sources that generates general conclusions from specific data.

6. Findings

The findings from this survey are the need to propose the construction of a specific module for empowering human capital such as shariah officers. This is based on some of the basic factors that are summarized as in the following discussion.

First and foremost, a brief epistemology explanation on the concept of 'fiqh forensics' would help to strengthen the understanding on this research. The 'fiqh forensics' term is not a new thing if conceptually assessed, however, it appears to be a modern and contemporary term as it is the result of a combination between the Arabic word 'fiqh' and the English word 'forensic'. Linguistically, according to Ibnu Faris (1979) and al-Fuyūmi (1994) literal meaning of 'fiqh' refers to the understanding on certain matter. Meanwhile, according to al-Ghazālī (1993), al-Juwaynī (1997), and al-Qarāfī (2004) 'fiqh' technically refers to the science of the derived legal rules as acquired or extracted from their particular legal sources. Meanwhile, the terminology of forensic is derived from the Latin word '*forensis*' which carry numbers of meaning such as courts of law, public debate and argumentative (Katz & Halámek, 2016). Franjić (2018) said that forensic science can be simply understood as the application of science to the law or legal matters. It involves examining the objects or substances that entangled in the crime (Ruwanpura & Vidanapathirana, 2018). In addition, Bramley, Brown, Ellison, Hardcastle, and Martin (2000) explained that forensic science does not differ fundamentally from analytical science in general in respect of its technical application. What distinguishes forensic science from other branches of analytical science is its purpose. Through forensic science the criminal justice system can be provided with objective, accurate and relevant information that allows legal professionals to conduct investigations and court cases correctly and effectively (Asten, 2014).

Baharuddin (2017a, 2017b) brings a new concept of 'fiqh forensics' which can be understood as an understanding through the context of Islamic religion which involves direct integration between forensic science and *sharī'ah islāmiyyah*. There are several events in Islamic histories that can be used as examples of the use of forensic evidence in proving and convicting. The first example is from surah Al-Nahl (The Bee) verse 43 and al-Anbiya (The Prophets) verse 7 regarding Allah's command to refer to an expert if we have no expertise in the particular field (al-Zuhaylī, 2009). al-Zuhaylī (1982) said that that this verse calls upon the general public who has no knowledge, skills or expertise in a given field to refer to those who are more knowledgeable, skilled and expert in that field. Consequently, this description emphasizes that human resources are enhanced with knowledge and experience from the aspect of training as a complementary condition of becoming an expert.

The second example can be taken through the story of Prophet Jacob p.b.u.h. with his other children after they left the Prophet Joseph p.b.u.h. in a well. This story was recorded in surah Yusuf (Joseph) verses 16 to 18. The findings show Prophet Jacob p.b.u.h. acted as forensic investigator to investigate the Prophet Joseph's clothes carried by his sons. He found that the shirt was in a good shape and no torn effect as if it were torn by wolves (Ibnu Kathir, 1999). He also found that the blood found on the garment was false and not a human blood even as it was the blood of goats or deer that had been slaughtered first (al-Qurtubī, 1964).

The third example is through an authentic hadith narrated by Al-Bukhari, the hadith number 6770 (and also through some hadiths from other narrators). Mujazziz Al-Mudlij, a well-known *qa'if* among the Arabs, has stated that Usamah and Zaid are father and son for having similarities to the same limbs. al-Khaṭīb al-Sharbinī (1994) defines that *qa'if* is an expert in analyzing abandoned human traits and trails. Rasulullah (p.b.u.h.) has also been a *qa'if* in the case of Hilal bin Umayyah related to the *li'an* where the Prophet states that if the child has a black pupil, big tights and solid calf, these attributes are more similar to Shuraik bin Sahma'. According to Baharuddin (2017b), in today's technology era, this *qa'if* expertise can be analogous to the expertise of genetic inheritance, footwear impression, footprint analysis, and tire track examination.

The fourth example is the story of Saidina Ali (r.a.) once settled the case of adultery during the reign of Saidina Umar (r.a.) Saidina Ali (r.a.) solve it by conducting a brief science analysis on the semen samples that are used as evidence for confession made by a woman. The woman was attracted to an Ansar, but she was ignored by that man, then she had egg white in some parts of her clothes and her limbs as evidence of the adultery between them. Then the woman claims that they have committed adultery (Ibnu Qayyim, 2011). Saidina Ali (r.a.) performed an analysis of the evidence by pouring hot water on it to test the authenticity of the evidence. The reaction between hot water (as reagents) with egg whites explains that the allegations are false (Baharuddin, 2017b).

These four examples show some of the applications of fiqh forensics concept. This concept can be seen as an application of understanding of fiqh from various aspects in the context of assimilation forensic science to Islamic legislation. Forensic evidence fulfils several roles in criminal investigations, *inter alia*, prove crime has been committed or set up elements of a crime, put the suspect in touch with the victim or with the crime scene, identify the identity of persons associated with a crime, absolve the innocent, corroborate a victim's testimony, and many more (Fisher & Fisher, 2012). In fact its application in resolving family and *muamalat* cases also shows the flexibility of forensic science in assisting the

settlement of the case. Thus, collectively, the intended concept of fiqh forensics may be translated as an application of forensic science within the framework of *fiqh al-Islami* (Lukman et al., 2018).

There are numbers of factors that lead to the need of proposing the construction of a specific module for empowering shariah officers. First of all, scientific evidence is not alien as part of proof in the Civil Courts. But the opposite happens in the Shariah Courts. Although Shariah law of evidence in Malaysia has provisions that are approximately the same as the provisions in the Evidence Act 1950 however, from the application aspect of this provision, the Shariah Court still left behind (Ruzman, 2008, 2015). This is evident when the judges of the Syariah Court neither discuss nor interpret in detail provisions related to the expert opinion in the Shariah law of evidence as compared to the judges in the Civil Courts (Nasri, Ismail, Samuri, & Yaziz, 2017). In fact, writings from the legal practitioners such as lawyers and academicians do not often interpret and discuss the relevant section of the expert's opinion contained in the Shariah Court's evidence Enactments (Nasri et al., 2017). Although the statutory interpretation is essential to enable us to easily understand the requirements of such provision. How to interpret it if they do not have enough knowledge and skills to handle such scientific matters? This shows that there is a curricular gap that needs to be improved in order to empower Islamic legal institutions in Malaysia.

If analysed curriculum programs passed by Shariah officers in Malaysia, a professional diploma program for Shariah employees has started more than a quarter (around year 1980) aimed at providing professional services to court officials (Najibah, 2012). The program is generally a structured program that offers knowledge and training to Syarie judges and administration. Among the universities that offer such programs are Diploma in Syariah Law and Legal Practice (DSLPL) at International Islamic University of Malaysia (UIAM) (Harun M. Hashim Law Centre IIUM, 2016), Diploma in Law and Administration of Islamic Judiciary (DAIJ) at National University of Malaysia (UKM) (Harun M. Hashim Law Centre IIUM, 2016), Diploma in Islamic Judicial and Advocatory Practice (DIJAP) at Islamic Science University of Malaysia (USIM)(Faculty of Syariah and Law USIM, n.d.), and Diploma Syariah Latihan dan Amalan (DSLAL) at MARA University of Technology Malaysia (UiTM) (Fakulti Undang-undang UiTM, 2015). In fact, some are restructured and placed under the Bachelor of Shariah and Law at the University of Malaya (UM) (Siti Zubaidah & Muhammad Zahiri, 2012).

In the preliminary analysis, there are modules for subjects or topics such as *al-qarinah* and *ra'yu al-khabir* in offering the certificates that deal with issues related to forensic science. But the modules are not detailed due to some factors (Baharuddin, 2017b):

- a. Limited time to focus the concept of forensic science with Islamic jurisprudence
- b. The rapid development of technology in forensic science that needs to be aligned with the current Islamic jurisprudence.
- c. An enormous scope and more time is needed to deepen the concept of integrating Islamic jurisprudence and forensic science

The modules for this subject, taught through the Islamic curriculum module of Islamic evidence, include the discussion of *wasā'il al-ithbāt*. It generally includes *istidlāl* using *al-qarānah* and its acceptance as well as applications and relationships with other proving methods in Islamic jurisprudence. There is no specific elaboration found in aspects of forensic science education but rather on the efforts of

the teaching staff and initiatives carried out by students. It is also available in the offering professional degrees. There are no forensic science-related modules either curriculum or training in those offers in the main course. This is probably because standard recognition through the guidelines suggested by the Malaysian Qualifications Agency (MQA) to the institution concerned. However, none focuses on the curriculum forensic science but rather from the 'Evidence' subject that gives minor space for proof through forensic science to be learnt. In conclusion, whether it is a civil or shariah law curriculum, there is no curriculum that really focuses scientific forensics or scientific proofs at any level.

On the other hand, particularly from the aspect of training, the Judicial and Legal Training Institute (ILKAP) established in 1993 has taken a step further in establishing a curriculum structure and additional training on forensic science for civil legislation. Although the focus of ILKAP is on civil and institutional legislation under the federal administration, however, the training still involves Shariah authority in a small amount. This is in line with ILKAP's objective of improving knowledge, skills and quality of government officials, legislative bodies, and local enforcement agencies involved with judicial and enforcement responsibilities to provide a fair and equitable service. These structures have been systematically designed and directed including modules involving forensic science (Judicial and Legal Training Institute, 2016a, 2016b). Through the targeting group method, ILKAP is very consistent in organizing training courses in forensic science. During the last five (5) years, ILKAP has been implementing forensic science-related exercises using the following modules (Judicial and Legal Training Institute (ILKAP), 2011, 2012, 2013, 2014, 2015):

- a. Blog Investigation and Computer Forensic.
- b. The Role of Forensic Science in Civil and Criminal Cases - (Module 1- Royal Malaysia Police).
- c. The Role of Forensic Science in Civil and Criminal Cases - (Module 2- Department of Chemistry Malaysia).
- d. DNA Profiling Course.
- e. A Forensic Lecture on Event Reconstruction from Images.'

This training module has always been enhanced by ILKAP and placed as a 'must know' and 'need to know' by the Attorney General Chambers of Malaysia in the list of Training Needs Analysis that have been conducted (Attorney General's Chambers of Malaysia, 2011).

Acceptance of scientific evidence is a challenge that must be faced by shariah officers existing in Islamic law institutions in Malaysia. This is because they previously focused only on the aspect of proof other than scientific proofs such as confession, testimony, documentary, and others. Malaysia has long practiced practical forensic science in Shariah legislation. However, the absence of specific modules on this matter and the outcome has led to various negative effects on shariah legislation in Malaysia. Not limited to that, the actual practicality practiced in several Islamic Religious Departments in peninsular Malaysia showed a rather critical situation. The study of Baharuddin (2017b) reports that there are various problems that may arise as a result of improper and inaccurate practice in managing evidence involving forensic science. Among the reported are:

- a. Dismissal of case to be brought to trial as a result of the expiration of evidence such as liquor seized turns into vinegar when analysed.

- b. Dismissal of case to be brought to trial due to loss of evidence in body fluids such as alcohol content lost from the blood in the body resulting from the misconduct of the alleged person in the custody of enforcement officers.
- c. Non-compliance with the calibration and service schedules for forensic science instruments such as breathalysers used in alcoholic beverages.

The absence of a complete practical module that covers all aspects involved clearly prompts a leak that needs to be addressed. Thus, the existence of this module is very relevant and critical today. As comparison, the Department of Syariah Judiciary Malaysia (JKSM), which also has the same role as ILKAP, which is developing the human capital under their administration, has also implemented a training approach in the field of forensic science (Department of Syariah Judiciary Malaysia (JKSM), 2011). A brief module titled, '*Kursus Forensik dan DNA Profiling*' was also implemented in 2015 and 2016 involving Syariah prosecution officers as well as judges and several other officers (Department of Syariah Judiciary Malaysia (JKSM), 2015, 2016). In fact, if observed, there is also a certain state Islamic Religious Department that has stepped up by introducing the forensic science course as done by the Selangor Department of Syariah Judiciary in 2015 (Selangor Syariah Judiciary Department, 2015) and special course on the concept of fiqh forensics at the Negeri Sembilan Islamic Religious Department for two sessions. No detailed module is provided, but preliminary introduction has been drafted and delivered in those sessions.

Although there are so many literature and studies focusing on the acceptance of forensic science in Islamic jurisprudence (Baharuddin, 2017b), until now, there is still no specific module for the curriculum and training. The absence of such modules indirectly signals that something needs to be done to overcome these problems. This is because, forensic science is one of the fastest growing areas. The abandonment in the application of forensic science in an organized and orderly manner will ultimately cause the negative impact on Islamic law.

Furthermore, the latest trend in Malaysian legal issues involves the integrity of Islamic law institutions. Aside from the overlapping jurisdiction on certain sensitive issues, the Islamic legal system is seen to be inexperienced in tackling the flows of technology and science. As discussed above, forensic science is seen as being alien to Islamic legislation and this can cause institutions to be left behind in giving appropriate appeals by applying current evidence applications.

In drafting the module, Alsagoff (1981) describes that a curriculum material or module should be appropriate to the level of capability and intelligence of the being module targeted person, in fact, the sequence of modules construction must also be observed as it will reflect the needs of the users, also the stated concepts, principles and skills will take into account the user's ability and the objective of the module is generated.

In addition, Noah and Ahmad (2017) also pointed out that before a module was created, it was necessary to take into account the individual difference factor. This is important so the module's goals will be achieved easily. This study proposes the construction of a module based on the framework in Figure 1:

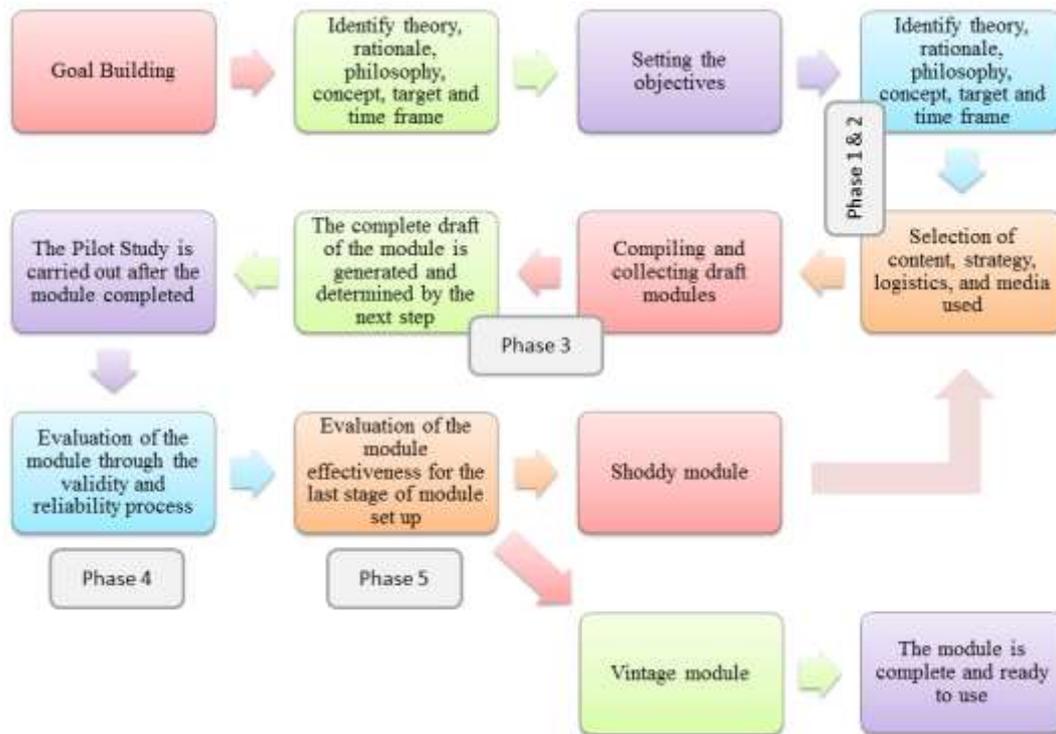


Figure 01. Construction of Fiqh Forensics Module adaptation from Sidek's framework (2017)

7. Conclusion

The conclusions that can be achieved through this preliminary analysis are the need to propose the construction of fundamental module to empower human capital (shariah officers) including enforcement, shariah prosecutors, judges and registrars within the integration framework of forensic science based on the concept of 'fiqh forensics'. The construction of the dedicated modules is Fiqh forensics Fundamental Module will be based on Sidek Model approach. Based on this preliminary analysis, there is a need for further research in this area so that a comprehensive module covering the curriculum and practical training can be achieved successfully.

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