

DOCUMENTING CONTRACTS IN SHARI'AH: RULES AND IMPLICATIONS IN AN ERA OF ADVANCES IN TECHNOLOGY

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Abstract

This paper examines the rules governing the documentation of contracts under Islamic law, situating its analysis within both classical jurisprudence and contemporary applications. The mandate to record contracts, particularly financial transactions, is founded on Islamic legal injunction in Qur'an verse 2:282 which instructs believers to write down deferred transactions. The paper explores how classical jurists interpreted this directive and extended its application to various forms of contracts, emphasizing its role in safeguarding the rights and obligations of contracting parties. By analyzing the works of renowned jurists, such as Ibn Taymiyyah, and sources like Lisan al-Arab and Tafsir al-Qurtubi, the study highlights the evolution of contract documentation from mere moral exhortation to a legally recognized mechanism for dispute resolution and evidence in Islamic law. The dual methods of documentation, witnessing (al-Ishhaad) and writing (al-Kitabah) are explored alongside their legal and evidentiary implications. Furthermore, the paper addresses the relevance of contract documentation in modern contexts, particularly with the advent of digital contracts, blockchain technology, and smart contracts. It examines how contemporary Islamic legal thought reconciles traditional doctrines with emerging technological realities, ensuring that the maqasid al-shari'ah (the higher objectives of Islamic law) are preserved in contractual dealings. The study concludes that the documentation of contracts in Islamic law transcends ritual obligation; it is a fundamental tool for ensuring justice, transparency, and the protection of rights. It also underscores the adaptability of Islamic legal principles in addressing contemporary contractual complexities, affirming the enduring relevance of Islamic jurisprudence in modern legal discourse please add one or two recommendations as well

Keywords: Contracts, Documentations, Islamic law, Legal Evidence, Islamic Jurisprudence

1.0 Introduction

Although Islamic law recognises oral agreements as legally valid, it strongly encourages the documentation of transactions, especially those of a commercial nature. The Qur'an explicitly commands believers to record their dealings to promote justice and prevent disputes. The verse in *Surah al-Baqarah* (2:282) instructs: “O you who believe, when you contract a debt for a fixed period, write it down.” This verse forms the earliest foundation for the practice of documenting agreements in Islam and underlines the ethical responsibility to ensure fairness and clarity between contracting parties.

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In the classical era, Muslim jurists developed a detailed system around the concept of *al-Tawthiq* (documentation), which covered both written agreements (*al-Kitabah*) and the use of witnesses (*al-Ishhad*).² The goal was not only to record rights and obligations but also to preserve trust and uphold justice, values deeply rooted in the *Maqasid al-Sharia*, the higher objectives of Islamic law. Through proper documentation, Islam seeks to protect faith, life, intellect, lineage, and property, ensuring that social and economic interactions are conducted with transparency and integrity.³

However, in the modern world, the nature of documentation has expanded far beyond its classical scope. The rise of digital technology, global trade, and electronic communication has transformed how contracts are created and authenticated. Today, agreements can be made through electronic signatures, verified by blockchain, or stored on digital platforms that have no physical equivalent.⁴ These developments raise important questions about how traditional Sharia principles apply to modern forms of documenting and verifying agreements.

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¹ The Qur'an, *Surah al-Baqarah* (2:282)

² Ibn al-Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Cairo: Dar al-Hadith, 1991) Vol. 3.

³ Al-Ghazali, *Al-Mustasfa min 'Ilm al-Usul* (Cairo: Al-Maktabah al-Tijariyyah al-Kubra, 1937) 174.

⁴ Aishath Muneeza, Rusni Hassan and Noorul Azmi Arshad, “The Application of Blockchain Technology in Islamic Finance” (2018) 34(4) *Humanomics* 294–307

It is, therefore, essential to revisit the rules governing documentation under Islamic law in light of these technological advancements. This paper examines the evolution and principles of contract documentation in Sharia, from its classical foundations to its modern applications. It highlights how emerging technologies such as electronic documentation, artificial intelligence, and block-chain can complement (rather than contradict) Islamic legal objectives. Ultimately, the study argues that while technology changes the form of documentation, the essence and objectives of Sharia, which are justice, clarity, and protection of rights, remain constant.⁵

2.0 Evolution of Legal Documentation

The process of documentation (or recording) contracts is referred to as *al-Tautheeq* which literally denotes ‘affirmation’ or ‘confirmation’⁶. It comes from the root word *wathaqa*, a verb also associated with words such as *al-Ahd* (covenant or treaty), *al-I’timaan* (trust), and *al-Shadd* (strengthening)⁷. Thus, the most relevant literal meaning of *Al-Tautheeq* is documentation which may be regarded as a tie/bind between the contracting parties⁸. However, in its technical meaning, it connotes reducing transactions into writing in such a way that it provides security to the transactions and binds the parties involved for the establishment of their rights and obligations⁹. *Al-Tautheeq* (recording of contracts) either resorts to witnesses (*al-Ishhaad*) alone or writing (*al-Kitabah*) alone or supported by witnesses to authenticate its validity¹⁰. The recording (documentation) here is however more related to *al-Kitabah* thus, it is defined by the jurists as

⁵ Mohammad Hashim Kamali, *Shari’ah Law: An Introduction* (Oxford: Oneworld Publications, 2008)

⁶ Wahbah Al Zuhayli, *Al Fiqh al Islami wa Adillatuh*, Vol 5 (Damascus Dar al Fikr, 1989) p3652

⁷ Ibn al-Manzoor, *Lisan al-Arab*, (Vol. 10, Cairo: Dar al-Ma’arif, 2002) 371.

⁸ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Cambridge Islamic Texts Society, 2003) p387

⁹ M N Al-Harithy ‘Hukm Tautheeq al-Dain wa al-Bay’i Kitabatan wa Shahadah’ *Al’adl Journal* (1422 AH) 22 10.

¹⁰ S A Al-Faransy, , “Al-Dalil al-Kitaby wa Dauruhu fi Ithbat al-Jareemah fi al-Nidham al-Sa’udy” (Unpublished Thesis, Naif University for Security and Sciences, K.S.A, 2008) 28.

“The art of writing relied upon in establishing rights which is admissible as proof or evidence. In other words, it is the type of writing that establishes rights in a normal way to be purposely referred to whenever the need arises”¹¹

Documentation in Islamic history evolved simultaneously with the development of human civilization and can be traced through the successive revelation given to various Prophets and communities.¹² The Shari’ah encourages the *Ummah* to reduce their transactions to writing. Thus the Holy *Qur’an* provides: “O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing....¹³” Likewise, the Holy Prophet (SAW) engaged in the practice of documenting and also instructed some of his companions to do so whenever the need arose.¹⁴

Al-Tautheeq basically caters for two important aspects of human life, namely, economic and social aspects and, specifically, safeguards their life and property. Thus, the practice of *Tautheeq* protects the honour and dignity of human beings and paves a solid means and method for establishing rights and claims in the courts of law.^{provide reference}

The Holy Prophet (SAW) was an excellent precursor in this regard. A good example of this is his documenting in respect of a ransomed slave, Aslam, popularly known as Abu Rafi’a; the text reads: “In the name of Allah the Beneficent the Merciful. This is a letter from Muhammad, the Messenger of Allah (SWA), to his servant, Aslam; I have freed you completely for the sake of Allah, and to Him the favour counts. Therefore, you are set free and nobody has any claim against you except that of Islam and protection of *Iman*. Abubakar Uthman and Ali stand as witnesses and Mu’awiya bin Abi Sufyan documents it. Thus, he (Mu’awiya) was among the draftsmen.”¹⁵

¹¹ Al-Harithy, (n 9) .12

¹² H A Al-Hammad, ‘Kitabatul Adl wa al-Tautheeq’ *Adl Journal* (1421) 8 7.

¹³ Qur’an 2: 282

¹⁴ *Al Bayhaqi in Al-Sunan Al-Kubra*, Vol. 6, p.72: Al-Nawawi, Sharh Sahih Muslim, Kitab al-Buyu’, commentary on hadith no 1531

¹⁵ A Al-Lahbay, *al-Tautheeq wa Fiqh al-Watha’iq* (Morocco: al-Rabitah al-Muhammadiyah li Ulama’ al-Maghrib, 2009) 19.

Similarly, some Companions (RA) carried out the conduct of documenting during the first period of Islam, among which are: Ali bin Abi Talib; who drafted the treaty of *Hudaibiyyah*. Again, in the profile of al-Ala' bin Uqbah (RA) "The Holy Prophet (SAW) used to send him alongside with al-Arqam to the residences of al-Anasar, where they documented debts and agreements for transactions among the people of al-Ansar¹⁶, additionally, they used to draft covenants and agreements relating to sea and land between the Ansar.¹⁷

According to Ibn Hajar al-Asqalani: "It is construed from the book of al-Qadha'iy (which he wrote on the scribes of the Holy Prophet) that, Hussain bin Nameer and al-Mughirah bin Shu'bah used to document debts and other transactions for parties in contracts¹⁸. The prominent scribes among the *Tabi'un* are Kharijah bin Zaid and Talhat bin Abdullah; they used to give legal opinion and distribute estates among the deserving legal heirs in properties like houses, dates, money and, as well, document all transactions for people¹⁹.

Arabs like other nations, were not familiar with documenting of contracts in marriages during the period before Islam. There are clear authorities supporting the assertion of the total absence of documenting regarding the conduct of marriages during these early periods of Islam including the fact that the Prophet's marriage (SAW) to Khadija bint Khuwailid before Islam and his subsequent marriages after Islam were not in any way documented²⁰. Ibn Taimiyyah states that: "The Companions of the Holy Prophet (SAW) did not bother to document marriages, and specifically, the dower agreed upon, because they did not usually marry out on a delayed or deferred dower, they always provided it promptly. However, even if they postponed the award of the dower, it was promulgated and made known. (Thus, there was no need to reduce it to writing). But later when

¹⁶ ibid at p. 20

¹⁷ ibid

¹⁸ AA Al-Asqalani, *Al-Isabah fi Tamyeez al-Sahabah*, (Vol. 2, Beirut: Dar al-Jeel, 1412 AH) 91.

¹⁹ SA Al-Dhahabi, *Siyar A'alam al-Nubala'*, (Vol. 7 Riyadh: Mu'assasat al-Risalah, 1985) 494; see also S Al-Baji, *al-Ta'deel wa al-Tajreeh*, (Vol. 2, Riyadh: Dar al-Liwa', 1986) 603.

²⁰ AY Al-Fasawi, *Al-Ma'rifah wa al-Tareekh*, (Vol. 3, Beirut: Dar al-Kutub al-Ilmiyyah, 1991) 282.

marriages were mainly contracted based on the deferred dowers for long period and people tended to forget, they began to document marriages and resorted to the use of the document as a means of proof to establish the amount of the dower and the existence of a valid marriage between the husband and the wife.²¹ This highlights one of the major reasons for documenting of contracts as a tool to ensure serve as a reminder to parties on the terms of their agreement.

With the advent of the Fatimids and their subsequent conquests in Egypt, they introduced documenting on marriages and divorces.²² This practice remains now in vogue in contemporary Muslim countries such as Saudi Arabia and Egypt, Morocco, Algeria, etc²³

3.0 Types of Contracts or Agreements in Islam

Under Islamic law, a contract represents a mutual obligation and engagement of two parties with reference to particular matter and a contract or agreement may be made to capture the consensus of parties in either an economic or social matter. provide reference In Islamic law, a contract is ‘an engagement and agreement between two persons in a legally accepted, impactful and binding manner’²⁴. Agreements may either be private or personal (such as contracts of marriage and guardianship) or economic contracts. They may also be unilateral such as a *wasiyya* (bequest) or bilateral.

An economic contract may be:²⁵

- i. A contract for sale (*bay*) which involves the transfer of the corpus for consideration
- ii. A gift (*hiba*) which is the transfer from one party to another without any consideration or

²¹Ibn Taymiyyah, *Taqi al-Din: Majmoo'u al-Fatawa*, (Vol. 32, Cairo: Dar al-Wafa', n.d.) 131.

²² Micheal Rustow, *Islamic law and the documentary record before 1500*, (Journal of Islamic Law, 2021

²³ World Bank & World Health Organization, *Global Civil Registration and Vital Statistics: Scaling up Investment Plan 2015-2024*, 28 May, 2014. available at <https://cdn.who.int/media/docs/default-source/documents/ddi/wb-who-scalingup-investmentplan-2015-2024.pdf>. Accessed 11/10/2025

²⁴ Ala' Eddin Kharofa, *Transactions in Islamic Law* (2nd Edn, Kuala Lumpur: A.S. Noordeen, 2000) 1–7

²⁵ Wahab al Zuhayli, (n,6)

- iii. A contract for hire (*Ijara*) involving the transfer of the use (usufruct) of an item or service in exchange for consideration
- iv. *'ariyya*, loan, is the transfer of the usufruct without a consideration.

Other contracts include:²⁶

- Contracts of exchange (*mu'awadat*);
- Contracts of security (*tawthiqat*);
- Contracts of partnership (*shirkah*);
- Contracts of safe custody (*wadi'ah*);
- Contracts pertaining to the utilization of usufruct (*manfa'ah*); and
- Contracts pertaining to do a work (e.g., *wakalah* and *ju'alah*).

Allah SWT has commanded that all transactions involving future payment or future consideration must be reduced to writing. This is prominently obvious in the provisions of Surat al Baqara thus:

O ye who believe when ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah has taught him, so let him write. Let him who incurs the liability dictate, but let him fear Allah his Lord and not diminish aught of what he owes. If the party liable is mentally deficient, or weak or unable himself to dictate, let his guardian dictate faithfully, and get two witnesses, out of your own men. And if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big; it is juster in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves. But if it be a transaction which ye carry out on the spot among yourselves, there is no

²⁶ Zaydan, Abd al-Karim, *Al-Madhkal li Dirasat al-Shari'ah al-Islamiyyah* (Beirut: Mu'assasat al-Risala, 1999)

blame on you if ye reduce it not to writing. But take witnesses whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear Allah; for it is Allah that teaches you. And Allah is well acquainted with all things. If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust, and let him fear Allah his Lord. Conceal not evidence; for whoever conceals it his heart is tainted with sin. And Allah knoweth all that ye do²⁷.

The above text directly discusses the conduct of documenting in loan and sale contracts. However, it covers, by extension, all other contracts relating to personal status, such as marriage and divorce and financial transactions whether profit-based contracts or gratuitous.²⁸

4.0 Rules of Drafting Documents in Islam

Documenting in Islamic law goes beyond the conventional scope of merely putting down the consensus of the contracting parties in the drafting of agreements into documents. Consideration must be given to both the form and substance. While form refers to the terms that will capture the essence of the transaction or agreement between the parties such as the expressions of the wills of the parties, substance implies the looking at the effect of the contract vis a vis the provisions and limitations on transactions placed by the Shari'ah. Therefore, the rules relating to drafting of document are succinctly discussed below.

4.1 Absence of vitiating elements

The general rule under the Shari'ah is that agreements must not contravene established legal principles particularly those relating to vitiating elements. Thus, an agreement must have a lawful subject matter (for example contracts for gambling, to sell wine or pork are

²⁷ *Qur'an* 2 : 282 - 283

²⁸ Al-Harithy, (n 9) 30.

prima facie illegal)²⁹ and must not contain elements of *riba* (usury)³⁰ and *gharar* (uncertainty). The contractual terms must also not contain elements of deceit or fraudulent misrepresentation³¹.

4.2 Nature of the Agreement

In addition to the absence of vitiating elements, the nature of the contract itself is a point of consideration. This is because certain types of transactions have been expressly or impliedly prohibited despite the absence of unlawful corpus or vitiating elements³². For example, the Prophet prohibited entering into two mutually inconsistent contracts such as the sale of two different items for two different prices in one agreement or the deferred sale of an object for two different prices³³.

With regards to substance on the other hand, an agreement must capture the underlying *maqasid* (intention) of the sharia³⁴. The objective of every legislation in Islam is to preserve one or more of the following five things vis religion, life, progeny, intellect and material wealth. This means that the intendment of the Shari'ah must be realised in the implementation of the terms of each contract or agreement relative to its purpose and transactions that fail to comply are considered void and unenforceable.

Furthermore, where the person drafting the document is not party to the agreement, he must know the purpose of recording those transactions to ensure that there is no harm to draftsman or any witnesses to the document. The draftsman must capture the exact terms as stipulated by the parties. In good faith and without any addition or subtraction. He should also be someone with a basic understanding of the Islamic rules regulating the

²⁹ Qur'an, 5:90.

³⁰ *Al-Nisa* verse 162

³¹ Muslim, *Sahih*, no. 102, vol. 1, p.99.

³² Abu Dawud, *Sunan*, no. 3540, vol. 3, p.769.

³³ Ibid

³⁴ Hafiz Ahmed, 'Maqasid al-Shari'ah and Islamic Financial Products: A Framework for Assessment' (2011) 3(1) *ISRA International Journal of Islamic Finance* 149–160.

transaction which he is helping them to reduce to writing to avoid any ambiguities or irregularities therein.³⁵

Concerning the actual drafting, terms and conditions must be couched in the past tense.³⁶ This is because majority of scholars insist that the use of other tenses, particularly the future tense, indicate a mere promise and not a legally binding agreement.³⁷ Terms must also be clear and ambiguous and phrases capable of having more than one meaning must be excluded.

4.3 The Form of the Agreement

Form here refers to the capacity of the parties to enter into such agreement as is reduced to writing. The parties must have legal capacity (*ahliyya*) and covers not only the capacity to enjoy rights, privileges but also the ability to deliver on responsibilities and obligations therein.³⁸ Factors that may affect legal capacity include minority and insanity. For example, a minor may be able to acquire legal rights such as those in inheritance or endowment but may not be able to deliver on some obligations (such as may be in a sales contract) till he reaches majority.

It also refers to a pre-determined or pre-required format (if any) necessary for validity of the agreement. For the requirement of format to be fulfilled, the agreement must have a clear offer and acceptance.

4.4 Witnesses

The role of witnesses in Islamic law is fundamental to the process of documenting contracts. The Quran explicitly emphasizes the importance of witnesses in contractual agreements, particularly those involving future obligations, to ensure transparency and prevent disputes. This is derived from the verse in Surah Al-Baqarah:

³⁵ Suhaib Sharaiyra, 'Contract Documenting Under Islamic Law: Redefining Its Role' <https://www.researchgate.net/publication> accessed 11/11/2023.

³⁶ Al-Kasani, Al ad-Din Abu Bakr Ibn Massud, *Bada'i al-Sana'i fi Tartibi al-Shara'i*, (Beirut, Dar al-Kutub al-Ilmiyya, 1986)

³⁷ Kamali Muhammad Hashim, (n,8)

³⁸ I A K Nyazee, *Outlines of Islamic Jurisprudence* (Islamabad: Advanced Legal Studies Institute, 2005).

"And call two witnesses from among your men. If two men are not available, then a man and two women from those whom you accept as witnesses, so that if one of them errs, the other can remind her."³⁹

This verse forms the basis for the requirement of witnesses in contracts and highlights key considerations regarding their role. For contracts involving immediate exchange, such as spot sales, the presence of witnesses is recommended but not mandatory. However, for contracts involving deferred obligations, such as loans, witnesses are considered essential to provide evidence in case of future disputes.⁴⁰

4.4.1 The Number and Composition of Witnesses

Islamic law traditionally requires two male witnesses for most financial and commercial contracts. However, in situations where two male witnesses are unavailable, one male and two female witnesses may suffice. This allowance for two women is often understood as a practical provision, considering the societal context of early Islam, where men were more likely to engage in financial matters. The presence of two women ensures additional verification in case of an oversight, thereby safeguarding the integrity of the agreement.⁴¹

4.4.2 Qualifications of Witnesses

Witnesses in Islamic contracts must meet specific qualifications to ensure their testimony is reliable and valid. These include:

- i. Maturity (*Bulugh*): Witnesses must have reached the age of maturity, as minors are generally not deemed capable of providing reliable testimony.⁴²
- ii. Mental Soundness (*Aql*): Witnesses must be of sound mind and free from conditions that impair their judgment or memory.⁴³
- iii. Integrity (*Adalah*): Witnesses should possess good moral character and be known for their honesty. Those with a history of deceit or dishonesty may be disqualified.⁴⁴
- iv. Knowledge of the Contract: Witnesses should have a clear understanding of the contract's terms and conditions to provide accurate testimony if required.⁴⁵

³⁹ Quran 2:232

⁴⁰ Ibn Kathir, Tafsir al-Qur'an al-Azim.

⁴¹ Qur'an 2:232

⁴² Al-Jaziri, Fiqh ala Madhahib al-Arba'a. incomplete citation

⁴³ *ibid*

⁴⁴ *ibid*

- v. Faith (*Iman*): While many scholars hold that witnesses in Islamic contracts must be Muslims, others permit non-Muslims to serve as witnesses in contracts involving non-Muslim parties, provided they meet the other qualifications.⁴⁶

4.4.3 Contemporary Considerations for Witnesses

In modern times, the role of witnesses must expand in recognition of technological advancements. Digital contracts may include electronic witnesses, such as block-chain systems that create an immutable record of the agreement.⁴⁷ While these innovations align with the spirit of Islamic law by ensuring transparency and accountability, their validity is still a matter of scholarly debate. Some argue that digital systems cannot replace human witnesses, while others contend that they serve as a reliable complement to traditional practices.⁴⁸

Moreover, in some jurisdictions, legal systems have incorporated alternative forms of evidence, such as video recordings and notarized documents, as substitutes for witnesses.⁴⁹ These methods provide additional layers of security and ensure that the contract's terms are preserved accurately particularly when it is considered that records preserved in the blockchain cannot be altered, changed or deleted making them a more reliable source of evidence.⁵⁰

4.4.4 The Ethical Role of Witnesses

Witnesses in Islamic law are not merely passive observers; they have an ethical obligation to uphold justice and truth. The Qur'an warns against concealing testimony, describing it as a grave sin:

⁴⁵ Al Mawardi, *Al-Ahkam al Sultaniyya* incomplete citation

⁴⁶ Al Qurtubi, Muhammad Ibn Ahmad, *Tafsir al Qurtubi: Introduction: The General Judgments of the Qur'an and Clarification of what it contains of the Sunnah and the Ayat of Discrimination*. Translated by Aisha and Abdul-Haqq Bewley (Diwan Press, 2018)

⁴⁷ Lui, Shuaiqi; Zheng, Qingxiao, *A Study of a Blockchain-Based Judicial Evidence Preservation Scheme*, *Bloch*

⁴⁸ J Truby, AM Dahdal, . & O Ismailov, , 'The Role and Potential of Blockchain Technology in Islamic Finance' (2022) 33 *European Business Law Review* 175–192.

⁴⁹ Section 9(a) Malaysia Evidence Act

⁵⁰E Hussein, 'Blockchains for Islamic Finance: Obstacles and Challenges' (2019) MPRA Paper No. 92676 <https://mpra.ub.uni-muenchen.de/92676/>. Accessed 3/2/2025

"And do not conceal testimony, for whoever conceals it—his heart is indeed sinful. And Allah is All-Knowing of what you do."⁵¹

Witnesses must remain impartial and truthful, even if their testimony goes against their own interests or those of their close relations. This reinforces the Qur'anic principle of justice, which is central to all aspects of Islamic law.

4.4.5 Witnesses in Specific Contracts

The role of witnesses varies depending on the type of contract. For example:

- i. Marriage and Divorce Contracts: Witnesses are mandatory to validate marriage contracts and provide evidence of their terms. Divorce proceedings also require witnesses to ensure that the process adheres to Islamic guidelines though there is dispute among Islamic scholars as to whether the absence of witnesses invalidates the pronouncement of the divorce or not⁵²
- ii. Financial and Commercial Contracts: Witnesses serve as a safeguard against disputes by confirming the terms of the agreement.⁵³
- iii. Wills and Bequests (*Wasiyya*): Witnesses ensure that the deceased's intentions are executed according to Sharia.

5.0 Documenting Islamic Contracts in Contemporary Times

The practice of documenting contracts under Islamic law has undergone significant evolution, particularly in response to advances in technology and the complexities of modern transactions.⁵⁴ While classical Islamic jurisprudence emphasized handwritten agreements supported by witnesses, contemporary practices incorporate digital tools and systems to ensure the security, authenticity, and enforceability of contracts⁵⁵.

⁵¹ Quran 2:283

⁵²ARM Saadi, and SF Muhammad 'The Parameter for Oral Divorce Considered a Means for Effecting Divorce in the Four Schools of Thought' (2023) 12(4) *International Journal of Academic Research in Progressive Education and Development* 1279–1297.

⁵³ Qur'an 2:282

⁵⁴ Wan Abdul Fattah Wan Ismail, Ahmad Shikran Baharuddin, Lukman Abdulmutallib & Muhammad Aniq Aiman Alias. An Appraisal of Digital Documents as Evidence in Islamic Law. *Academic journal of Interdisciplinary Studies*, Vol 10 No 3 (2021)

⁵⁵ Daoud, Hayel Abdel Hafeez Yousef, & Al b'ool Saba Muhammad Mostafa. Proof by Digital signature in Smart Contracts Using Blockchain Technology: A Comparative Study between Islamic Law and Jordanian Electronic Transactions Law and the Evidence law, *Dirasat Shariah and Law Sciences*, Vol 53 No 1(2025)

5.1 The Shift to Digital Documentation

Recent advances in digital technology have fundamentally redefined the scope and process of documentation. Contracts are no longer limited to physical documents but now include electronic formats such as e-signatures, scanned copies, and blockchain records. In contemporary Islamic jurisprudence, these modern forms of documentation may be permissible if they adhere to Shari'ah principles, including clarity, mutual consent, and the absence of prohibited elements like *riba* (usury) and *gharar* (uncertainty).⁵⁶

A number of Muslim countries have revised their legal frameworks to accommodate digital documentation and electronic contracting. For example, Malaysia's Digital Signature Act 1997 ensures that electronic contracts are both legally valid and compliant with Sharia law⁵⁷. Similarly, Saudi Arabia and the UAE have introduced block-chain technology for notarization, creating tamper-proof and verifiable records of financial and commercial agreements⁵⁸. These innovations align with the Qur'anic directive to reduce transactions to writing for the purpose of justice and fairness.⁵⁹

5.2 Challenges in Digital Contracting

Despite the widespread adoption of digital documentation, challenges persist. One issue is the admissibility of electronic records in Islamic courts, where traditional scholars may favor physical evidence over digital proof.⁶⁰ Additionally, the reliability of electronic signatures and the potential for fraud raise concerns about the security of these systems.⁶¹ However, advancements in encryption and cybersecurity are addressing these issues, ensuring that digital documentation meets the high standards of accuracy and integrity required by Islamic law⁶².

⁵⁶ *ibid*

⁵⁷ Malaysia's Digital Signature Act 1997

⁵⁸ Saudi Vision 2030 Blockchain Initiative Reports

⁵⁹ Quran 2:282

⁶⁰ Al Qurtubi (n,41)

⁶¹ A H G Alanesi, *Electronic Contract Controls in Islamic Jurisprudence and Law* (2024) 2(2) Syura: Journal of Law 80-97 <https://ejournal.staiduba.ac.id/index.php/syura/article/view/262> Accessed 11/10/2025

⁶² B Bakhruddin, *et al.*, 'Islamic Perspectives on Cybersecurity and Data Privacy: Legal and Ethical Implications' (2023) 1(04) *West Science Law and Human Rights* 166–172.

5.3 Role of Artificial Intelligence in Drafting Contracts

Artificial intelligence (AI) is increasingly employed to streamline the process of drafting contracts in Islamic law. AI tools analyze agreements to ensure compliance with Sharia principles, flagging problematic clauses and suggesting alternatives. For instance, in Islamic banking, AI systems help structure contracts for *sukuk* (Islamic bonds) or *ijara* (leasing agreements) to ensure they are free from *riba* and *gharar*⁶³. These tools not only enhance efficiency but also minimize the risk of non-compliance with Islamic jurisprudence.

5.4 Global Standardization and Regional Variations

The adoption of modern methods of documentation is now evident across various jurisdictions though significant differences in application remain⁶⁴. Countries with advanced legal and technological infrastructure, such as Malaysia, Saudi Arabia, and Turkey, have established robust systems for digital contracting.⁶⁵ Conversely, in less developed regions, traditional methods of documentation, such as handwritten agreements and physical witnesses, are still predominant.

To bridge this gap, international bodies such as the Organization of Islamic Cooperation (OIC) have called for standardized guidelines that incorporate contemporary practices into Shari'ah-compliant frameworks⁶⁶. These efforts aim to harmonize the documentation process while respecting regional differences and adhering to Islamic principles.

5.5 Ensuring Shari'ah Compliance in Contemporary Practices

For digital documentation to be valid under Islamic law, it must fulfill certain requirements. These include clarity in terms, mutual consent between parties, the lawful nature of the contract's subject matter, and the presence of reliable witnesses, even in digital formats. More so, the use of technology should not contravene ethical and moral

⁶³ H Shalboob, 'The Role of AI in Enhancing Sharia Compliance: Efficiency and Transparency in Islamic Finance' (2025) 9(11) *Journal of Infrastructure, Policy and Development* 11239.

⁶⁴ United Nations Economic and Social Commission for Western Asia (ESCWA), *Arab Digital Development Report 2022: Towards Empowerment and Inclusion for All* (Beirut, United Nations, 2024)

⁶⁵ See laws for different countries quoted herein

⁶⁶ Organization of Islamic Cooperation Reports

considerations outlined in Shari'ah, such as ensuring that all parties have equal access to the technology required for contract execution.⁶⁷

6.0 Conclusion and Recommendations

6.1 Conclusion

The study finds that documentation of contracts in Islamic law has deep classical roots anchored in both textual injunctions and juristic consensus. The Qur'ān, particularly verse 2:282 of Surah Al-Baqarah, provides the earliest and most comprehensive directive on documentation by mandating the writing of deferred financial transactions and the presence of witnesses to ensure accuracy and prevent future disputes. This verse, alongside corroborative prophetic practices, demonstrates that the principle of *tauthee'q* is not merely procedural but a substantive mechanism for achieving justice (*'adl*) and safeguarding rights (*hifz al-huquq*).

In the traditional period, Islamic societies developed various documentation practices reflecting this textual foundation. Contracts were typically reduced to writing by professional scribes, authenticated by witnesses, and preserved as legal evidence. Historical records from the Fatimid and Ottoman eras reveal the institutionalization of documentation through *qāḍī* registers and notarized contracts. These practices highlight that early Muslim jurists and administrators perceived documentation as an indispensable tool for certainty, transparency, and dispute prevention.

However, despite these robust mechanisms, documentation in traditional Islamic law remained dependent on manual writing, human witnesses, and physical archiving which methods are vulnerable to forgery, loss, and limited accessibility. The modern era has, therefore, witnessed a necessary evolution driven by technological advancement, global commerce, and legal modernization. Contemporary Islamic jurisdictions such as Malaysia, Saudi Arabia, and Turkey have integrated electronic documentation, digital signatures, and even block-chain technology into their legal frameworks for contracts.

⁶⁷ Z M Yussof and H M Amin, Legal Framework of Electronic Contracts in Malaysia: A Comparative Study with Islamic Law (2020) 5(1) Journal of Shariah Law Research 45-67; F A Al-Enezi, *digital Transformation and Legal Documentation in Saudi Arabia: Developments undre Vision 2030* (2022)36(3) *Arab Law Quarterly* 289-310; E Kaya & S Usta, *The Digitalization of Contracting in Turkey: Legal Adoption and Challenges* (2021) 18(2) *Ankara Law Review* 155-178

Jurists and legislative bodies have increasingly recognized the validity of such instruments under the *maqāṣid al-shari‘ah* principle of preserving wealth and ensuring justice, provided that they maintain authenticity, consent, and evidentiary reliability.

6.2 Recommendations

1. Harmonization of Traditional Principles and Modern Technology: Islamic legal systems should codify clear frameworks reconciling classical evidentiary requirements with emerging technologies such as e-signatures, smart contracts, and blockchain-based witnesses.
2. Development of Shariah-Compliant Digital Documentation Standards: Scholars and regulatory authorities should collaborate to develop guidelines ensuring that electronic documentation upholds *‘aqd* requirements of offer, acceptance, and certainty.
3. Capacity Building and Legal Literacy: Muslim jurisdictions should invest in judicial and administrative training on digital evidence and electronic contracting to ensure consistent application in courts and arbitration settings.
4. Preservation and Accessibility: A digital register system may be adopted, inspired by classical court record-keeping but supported by secure databases to prevent tampering and ensure permanence.
5. Further Research: Continuous doctrinal and empirical research is needed to evaluate how digital transformation aligns with the ethical objectives of *tautheeq* and *maqāṣid al-shari‘ah*, especially regarding confidentiality, consent, and equitable enforcement.