

ADMISSIBILITY OF ELECTRONIC DOCUMENTARY EVIDENCE IN THE SHARIAH COURTS OF MALAYSIA: LEGAL FRAMEWORK, JUDICIAL APPLICATION AND CONTEMPORARY CHALLENGES

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ABSTRACT

The advancement of digital technology has significantly reshaped evidentiary practices within Malaysia's judicial system, including the Shariah Courts. Electronic documents now function as an important mode of proof alongside traditional written instruments. Despite statutory recognition of electronic documents in the

Shariah Courts, significant legal and procedural uncertainties remain concerning authentication, evidential reliability, and digital integrity. This article analyses the application of electronic documents as evidence in the Shariah Courts from both Islamic jurisprudential and Malaysian statutory perspectives. It examines the doctrinal foundation of documentary proof under the concept of al-kitābah and situates electronic documents within the broader evidentiary framework of al-bayyinah. A comparative analysis is conducted between the Evidence Act 1950 and the Shariah Court Evidence Enactments. The analysis evaluates the differences in definitional scope, admissibility mechanisms, and procedural safeguards governing electronic documentary evidence. Selected Shariah Court cases are also analysed to assess judicial approaches in determining authenticity, chain of custody, and the necessity of digital forensic verification. The study adopts a qualitative doctrinal methodology based on statutory provisions, fiqh literature, and reported cases, employing content and comparative analysis to identify regulatory strengths and gaps. The findings indicate that while Malaysian Shariah law has formally incorporated electronic documents as primary evidence, its procedural framework remains less structured compared to the civil law regime. Challenges relating to digital manipulation risks, absence of standardised procedures, and inconsistent evidentiary practices highlight the need for legislative refinement and institutional capacity-building. The article concludes that the admissibility of electronic documents is consistent with Islamic evidentiary principles, provided that authenticity, reliability, and integrity are properly established. Strengthening statutory clarity and procedural standards is essential to ensure coherent digital proof management in the Shariah Courts.

Keywords: *evidence, electronic documents, al-kitābah, Shariah Courts, Shariah Court Evidence Enactment*

INTRODUCTION

In the contemporary digital era, documentary evidence constitutes one of the most significant modes of proof within the judicial system, both in the Shariah Courts and the Civil Courts. Historically, documents have served

as the primary medium for establishing rights, obligations, and legally relevant facts. However, advancements in information and communication technology have expanded the scope of documents from purely physical forms to electronic formats. Documents are no longer confined to printed materials or handwritten texts; rather, they now encompass digital records and electronically generated data. This evolution reflects the dynamic nature of the concept of documentation, which continues to develop in tandem with social and technological transformations.

Within the Malaysian legal framework, the admissibility of electronic documents as evidence has been formally recognised in court proceedings. The use of electronic documents has become increasingly prevalent in investigations, audits, enforcement actions, and prosecutorial processes. In principle, a document may be admitted as evidence provided that its authenticity, validity, and relevance can be satisfactorily established. This principle similarly applies within the Shariah judicial system, although the evidentiary standards in the Shariah Courts often require more rigorous scrutiny to ensure the preservation of justice for all parties. Accordingly, electronic documents play a crucial role in assisting courts in assessing the facts of a case objectively and on the basis of reliable evidence.

From the perspective of Islamic jurisprudence, the concept of documentation is firmly grounded in the evidentiary principle of *Al-Kitābah*. This principle emphasises the importance of written documentation in transactions as a means of safeguarding rights and preventing disputes. It demonstrates that Islamic law recognises documentary evidence as a legitimate mechanism for ensuring justice and legal certainty. Consequently, the development of electronic documentation may be regarded as a continuation of this foundational principle, provided that it satisfies the requirements of authenticity, reliability, and validity as prescribed by both Shariah principles and statutory law. Nevertheless, the use of electronic documents as evidence in the Shariah Courts raises several critical issues, particularly concerning admissibility procedures, methods of authentication, chain of custody, and the reliability of digital evidence.

The risks of electronic data manipulation, technological tampering, and the absence of specific procedural guidelines constitute significant challenges in the practical application of electronic evidence within Shariah proceedings. These concerns underscore the need for a clearer legal and procedural framework to ensure that the use of electronic documents remains consistent with the principles of Shariah justice while accommodating contemporary technological developments. Accordingly, this article seeks to analyse the application of electronic documents as evidence in the Shariah Courts,

focusing on legal issues, implementation challenges, and the need for reform in both statutory provisions and judicial practice. It is hoped that this study will contribute to strengthening the digital evidentiary framework within Malaysia's Shariah judicial system.

Despite the growing acceptance of electronic documents in judicial proceedings, existing scholarship on electronic evidence in Shariah Courts remains limited and fragmented. Most previous studies primarily focus on statutory admissibility and civil evidentiary principles under the Evidence Act 1950, with limited attention given to the doctrinal integration of Islamic evidentiary principles such as *al-kitābah* within the contemporary digital environment. In particular, insufficient discussion has been devoted to issues concerning authentication standards, procedural safeguards, and digital forensic verification in Malaysian Shariah Court proceedings. Accordingly, this study seeks to contribute to the existing body of knowledge by providing a doctrinal and comparative analysis of electronic documentary evidence from both Shariah and statutory legal perspectives.

RESEARCH METHODOLOGY

This study adopts a qualitative research design grounded in doctrinal legal analysis to examine the application of electronic documents as evidence in proceedings before the Shariah Courts in Malaysia. The doctrinal approach focuses on a systematic examination of statutory provisions, Shariah principles, relevant academic literature, and judicial decisions concerning electronic documentary evidence. This method enables a critical assessment of the current legal position and the identification of normative and procedural gaps in the framework governing digital proof within the Shariah judicial system. The research is conducted through library-based study, drawing upon both primary and secondary sources. Primary sources include the Evidence Act 1950 (Act 56), the respective Shariah Court Evidence Enactments of the Malaysian states, and reported Shariah Court judgments involving electronic documentary evidence.

Secondary sources comprise scholarly books, peer-reviewed journal articles, theses, and classical as well as contemporary fiqh literature, particularly in relation to evidentiary principles such as *al-kitābah* (documentary proof). The collected data are analysed using content analysis and comparative analysis methods. Content analysis is employed to evaluate the interpretation and scope of statutory provisions governing electronic documents, while comparative analysis is undertaken to examine differences and similarities between the Evidence Act 1950 and the Shariah Court Evidence Enactments in addressing

electronic evidence. This comparative approach assists in identifying procedural strengths, legislative limitations, and potential areas of harmonisation between the civil and Shariah evidentiary frameworks. In addition, case analysis is utilised to assess the practical application of electronic evidentiary principles in Shariah Court judgments, thereby enabling an evaluation of the consistency between doctrinal principles and judicial practice. Analytically, the study operationalises the Islamic evidentiary principle of *al-kitābah* as the central jurisprudential framework for evaluating the admissibility of electronic documentary evidence. This principle is utilised to assess whether contemporary electronic documents fulfil the Shariah requirements of authenticity, reliability, and evidential integrity within modern judicial proceedings.

FINDINGS AND DISCUSSION

THE ADMISSIBILITY OF DOCUMENTARY EVIDENCE UNDER ISLAMIC LAW

From a linguistic perspective, *al-Kitābah* derives from the trilateral root *kataba*, which denotes the act of writing or inscribing. The expression *kātābā al-shāy'* refers to writing or recording something in order to clarify or formalise it, while the noun *al-Kitābah* signifies the act of writing itself (Ibn Mānẓur, 2000: 699). Writing may therefore be understood as a recorded inscription intended to establish a right or obligation. In *al-Tā'rifāt*, al-Jurjānī (2000:140) defines writing (*al-khātt*) as the representation of uttered words through alphabetic characters. From a terminological standpoint, al-Qalqashandī. (1987:82) describes writing as a spiritual art manifested through physical instruments that convey intended meanings through structured arrangement. In this sense, writing may be conceptualised as a structured compilation of numerical or linguistic data which, whether independently or contextually, carries legal significance, proves legal facts, or substantiates legal acts (Shawqī, 1970: 141).

Writing has also been defined as a record relied upon to document rights and related matters for evidentiary reference (al-Fayrūzābādī., 1987: 165). In Islamic legal theory, it is described as original written characters accompanied by a signature affixed to a physical document, or any recorded inscription evidencing the existence of a legal transaction (Sa'īd, 2004: 4). This definition underscores that documentation is not confined to a specific medium but functions as a symbolic representation of thought and speech capable of legal verification.

Within Islamic evidentiary principles, *al-kitābah* refers to the use of written documents as instruments of proof to establish rights, obligations, or legally relevant facts before a judge. Classical jurists generally recognised that writing, when fulfilling certain conditions, may constitute binding proof. Muhāmmād Ahmād al-‘Umr (1993: 41) explains that *al-kitābah* concerns the method of proving contracts, transactions, and obligations through documents and records in a form capable of constituting valid evidence. This demonstrates that documentary proof occupies a formal position within the Islamic system of evidence rather than serving merely as informal record-keeping. The principal textual foundation of *al-kitābah* lies in Qur’anic injunction, particularly Surah al-Baqarah (2: 282), which commands the recording of debts. This verse affirms documentation as a mechanism for protecting rights and preventing disputes. Exegetes such as al-Mārāghi (1974:3) emphasise that the command to write indicates recognition of writing as a legitimate evidentiary tool when properly authenticated. Similarly, al-Shāwkāni (2002: 4653) affirms that written documentation may serve as judicial proof, particularly in cases of denial or dispute.

Nevertheless, juristic opinions diverged regarding the status of writing as an independent mode of proof. The first view, attributed to a majority of jurists and narrated from Imam Ahmad in one report (Ibn Farhun, 1958:363), contends that writing is not, in itself, a prescribed evidentiary method due to the risks of forgery or similarity of handwriting. Critics, however, argue that such risks are not unique to writing and may be mitigated through expert verification, similar to voice or image identification. Furthermore, limiting proof strictly to confession, testimony, and oath is inconsistent with Qur’anic endorsement of documentation and Prophetic administrative practice (Ibn Qāyyim, 1989: 205).

The second and more persuasive view, upheld by the Maliki school and reported from Imam Ahmad as well as certain early scholars (Ibn Fārhun, 1958:363), recognises writing as a valid and legitimate method of proof. This position relies on Qur’anic evidence and rational justification, arguing that writing is often more reliable than oral statements, as it typically involves deliberation and intentionality. While the Shafi’i school regarded writing as indicative rather than conclusive proof, the Hanbali school considered it binding evidence except in matters such as marriage and divorce (Ibn Qāyyim, 1989: 205). Ibn Tāymiyyāh (1985: 608) further asserts that acceptance of writing as proof represents the stronger juristic position and aligns with the practice of early Muslim scholars.

In addition to *Al-Kitābah*, the term *al-wathiqah* refers to formal legal documents such as financial guarantees, often authenticated by authorised officials. In contemporary legal contexts, documentation extends to various official instruments issued by competent authorities (Rinhat Dozy, 2000: 322). From a fiqh perspective, documentation plays a crucial role in preserving transactional stability and preventing disputes (Ḥusām Afānāh, 2010: 163). Terminologically, a document may be defined as a written record evidencing commitments, obligations, or the relinquishment of rights in accordance with Shariah principles (al-Subāy', 2014: 160). Although classical fiqh sources do not explicitly refer to “electronic documents,” Islamic evidentiary theory accommodates such developments under the broader concept of *al-bayyinah*.

As articulated by Ibn Qayyim (1989: 41), *bayyinah* encompasses any form of proof capable of clarifying truth and establishing certainty. Accordingly, electronic documents may be evaluated within this general evidentiary framework, provided that they satisfy the requirements of authenticity, reliability, and compliance with Shariah principles. The foregoing discussion demonstrates that Islamic evidentiary principles possess sufficient doctrinal flexibility to accommodate contemporary forms of electronic documentary evidence. Although classical jurists differed regarding the evidential status of written documents, the broader concept of *al-bayyinah* supports the admissibility of electronic records, provided that their authenticity and evidential integrity can be properly verified. This reflects the adaptive nature of Islamic evidentiary law in responding to technological developments within modern judicial proceedings.

ELECTRONIC DOCUMENTARY EVIDENCE UNDER THE SHARIAH COURT EVIDENCE ENACTMENT

Proof plays a fundamental role in litigation, as it forms the basis for determining the truth or falsity of disputed facts (Suhaizad, 2021: 89–108). In the contemporary digital era, electronic documentary evidence has increasingly assumed a central role in judicial fact-finding processes. In principle, electronic documents possess several advantages over oral testimony due to their relative stability, consistency, and reduced susceptibility to deterioration over time. Unlike witness testimony, which may be affected by memory lapses, confusion, bias, or the unavailability of witnesses, electronic records generally retain their original content unless deliberately altered or manipulated. Consequently, within modern evidentiary frameworks, electronic documents are frequently regarded as more objective and reliable sources of proof, subject to proper

authentication and verification of integrity (Wan Abdul Fattah, 2016: 338-355).

From a statutory perspective, Section 3(1) of the Shariah Court Evidence Enactments provides a broad definition of the term “document.” A document is defined as any matter expressed, described, or represented upon any medium, whether physical or electronic. This expansive definition demonstrates that the concept of documentary evidence in Islamic evidentiary law is not confined to written materials but extends to all forms of recorded information, including digital media. Such an approach reflects legislative recognition of technological developments that have transformed the methods through which information is created, stored, and presented as evidence in court.

The provision further elaborates the scope of documentary evidence through several categories. Paragraph (a) encompasses statements or representations conveyed through letters, numbers, symbols, signs, or other forms of communication. This includes traditional written documents such as contracts, letters, agreements, and records, as well as modern forms of digital data and computer codes. Paragraph (b) extends the definition to visual recordings, whether static or moving images, including photographs, video recordings, CCTV footage, and digital visual recordings. This explicitly recognises visual recordings as admissible evidence in judicial proceedings. Paragraph (c) includes sound recordings and any electronic, magnetic, mechanical, or other forms of recording.

This covers audio recordings, telephone call recordings, digital voice recordings, and electronically stored data. It further encompasses electronically generated impulses and digital data produced by computer systems. Paragraph (d) broadens the scope to include information recorded or transmitted remotely through any of the previously mentioned methods, thereby covering internet communications, digital transmissions, and electronic data transfers. These provisions demonstrate that Shariah evidentiary law acknowledges the realities of modern technology, where information may be recorded and transmitted without the existence of a traditional physical document. The illustrative section of the provision further clarifies the breadth of the term “document.” Handwritten texts, printed materials, maps, plans, charts, drawings, photographs, and inscriptions are categorised as documents. More importantly, the provision explicitly recognises telephone communication recordings, remote visual recordings, and information recorded, stored, processed, or generated by computers as documentary evidence. This clearly indicates that Malaysian Shariah law formally accepts electronic documents as part of the contemporary evidentiary system.

The Enactments also provide a functional definition of “computer,” referring to any device capable of recording, storing, processing, retrieving, or producing information. This functional approach emphasises the operational capacity of a device rather than its specific physical form or designation. Consequently, the definition encompasses modern technological devices such as smartphones, tablets, servers, digital storage systems, network devices, digital CCTV systems, and cloud computing platforms. In the context of Shariah Court proceedings, data generated or stored through these devices may therefore qualify as computer-generated documentary evidence.

Furthermore, Section 49 of the Shariah Court Evidence Enactments provides that primary evidence refers to the original document produced before the court for inspection. This principle aligns with the best evidence rule, which requires courts to examine the most original and proximate source of information in order to ensure accuracy, authenticity, and reliability. Traditionally, primary evidence referred to original physical documents such as contracts or written records. However, technological developments have altered the nature of documentary evidence from physical to digital forms. In this regard, explanation 3 under Section 49 expressly provides that a document produced by a computer shall also be regarded as primary evidence.

This provision carries significant implications, as it recognises electronic documents as having evidentiary status equivalent to original physical documents. Accordingly, digital records such as database entries, emails, digital files, video recordings, system logs, and automatically generated computer records may be admitted as primary evidence without the necessity of producing a corresponding physical original. Overall, the provisions of the Shariah Court Evidence Enactments demonstrate that Malaysian Shariah law has formally incorporated electronic documents as a legitimate and integral component of the modern evidentiary framework.

This demonstrates that the Shariah Court Evidence Enactments have progressively adapted to technological developments by recognising electronic documents as primary and admissible evidence. Nevertheless, the absence of a detailed procedural framework governing authentication, forensic verification, and evidential integrity may result in inconsistent judicial approaches in practice. Accordingly, clearer procedural guidelines and evidentiary standards may be necessary to strengthen legal certainty in the admissibility of electronic documentary evidence before the Shariah Courts.

ELECTRONIC DOCUMENTS UNDER THE EVIDENCE ACT 1950 AND COMPARATIVE ANALYSIS

Within the Malaysian legal system, the interpretation of the terms *document* and *computer* plays a pivotal role in determining the admissibility of electronic evidence in court proceedings. Broadly, the civil law framework under the Evidence Act 1950 (Act 56) established an earlier and more comprehensive foundation for interpreting electronic documents and computer-generated evidence (Mohamad Aniq Aiman et al., 2024: 689-700). These developments subsequently influenced the formulation of corresponding provisions within the Shariah Court Evidence Enactments across Malaysian states.

Under the Evidence Act 1950, the term *computer* is defined in technical and data-processing-oriented terms. It encompasses any electronic, magnetic, optical, electrochemical, or other data-processing device, including interconnected devices performing logical, arithmetic, storage, and display functions. The definition also extends to data storage facilities and communication facilities directly related to or operating in conjunction with the computer system. However, it expressly excludes devices that are not programmable or lack data storage capabilities, such as automatic typewriters or simple calculators.

This approach demonstrates that the Evidence Act 1950 emphasises technical capacity and data-processing functionality as the legal basis for recognising a device as a “computer”. With regard to the definition of *document*, the Evidence Act 1950 adopts a highly comprehensive approach. A document includes any matter expressed, described, or represented on any medium, including discs, tapes, films, soundtracks, or other devices. The definition encompasses information in the form of letters, numbers, symbols, or signs; visual recordings (whether still or moving images); sound recordings; and electronic, magnetic, mechanical, or other data recordings. It further includes information recorded or transmitted remotely through any combination of such methods. This expansive formulation clearly recognises electronic data, digital communications, and multimedia recordings as legally valid documents.

In terms of admissibility, the Evidence Act 1950 provides a detailed statutory framework through Sections 90A, 90B, 90C, and 114A, which collectively form the foundation for the admission of electronic evidence in Malaysia. Section 90A provides that in any civil or criminal proceedings, a document produced by a computer, or any statement contained therein, shall be admissible to prove the facts stated, provided that the document was produced in the ordinary course of the computer’s use. Such admissibility applies regardless of whether the person tendering the document is its maker.

However, the document must be accompanied by a certificate signed by a person responsible for its production, serving as *prima facie* evidence that the computer was operating properly and that the document is accurate (Ramalinggam et al., 2022: 111-125). Section 90B addresses the evidential weight of electronic documents admitted under Section 90A. The court may consider factors such as the manner and purpose of preparation, the time interval between the event and the creation of the document, and the source of information used. The court may also evaluate the intention of the person supplying the information or having custody of the document in determining its reliability. Section 90C further strengthens the status of computer-generated documents by providing that their admissibility overrides other inconsistent provisions of the Evidence Act 1950 (Ramalinggam et al., 2022: 111–125), thereby underscoring legislative recognition of the importance of electronic evidence in modern litigation.

Additionally, the introduction of Section 114A established statutory presumptions relating to digital publication, particularly in the context of internet and social media communications. Under subsection 114A(1), a person is presumed to be the publisher of digital content if it is published under an account bearing his or her name. Subsection 114A(2) extends this presumption to registered account holders with internet service providers, while subsection 114A(3) presumes that a person having custody or control of a computer is the publisher of content emanating from that computer, unless proven otherwise (Ramalinggam et al., 2022: 111–125). These presumptions have significant implications in cases involving cyber defamation and digital communications. Fundamentally, both the Evidence Act 1950 (Act 56) and the Shariah Court Evidence Enactments recognise electronic documents as part of the modern evidentiary framework. However, significant differences exist in their interpretative approaches, technical specificity, and admissibility mechanisms. These differences reflect not merely linguistic variation but distinct legal philosophies underpinning the civil and Shariah legal systems (Suhaizad et al., 2024: 11-22).

With respect to the definition of *computer*, the Evidence Act 1950 adopts a more technical and structured approach, emphasising data-processing capabilities and system architecture. In contrast, the Shariah Court Evidence Enactments employ a broader and more functional definition, describing a computer as any device capable of recording, storing, processing, retrieving, or producing information, irrespective of its name or physical form. Where multiple devices function together sequentially or jointly, they may be treated as a single computer system. This functional emphasis allows the Shariah framework to encompass contemporary technologies such as smartphones,

network servers, cloud storage systems, digital CCTV, and communication networks.

A similar distinction appears in the definition of *document*. While the Evidence Act 1950 articulates a highly detailed and technically exhaustive definition, the Shariah Court Evidence Enactments adopt comparatively concise language, yet with equally broad legal effect. The Enactments directly incorporate data recorded, stored, processed, retrieved, or produced by a computer into the evidentiary system. However, the principal divergence lies in the mechanism of admissibility. The Evidence Act 1950 provides a structured procedural regime through Sections 90A-90C and 114A, governing admissibility, evidential weight, and statutory presumptions.

Conversely, the Shariah Court Evidence Enactments do not contain an equally detailed admissibility framework. Instead, they recognise electronic documents as valid evidence primarily through provisions such as Section 3 and Section 49, which classify computer-generated documents as primary evidence (Suhaizad et al., 2025: 25-46). Overall, the Evidence Act 1950 reflects a more technical, procedural, and structured approach to regulating electronic evidence, emphasising evidentiary certainty and formal authentication mechanisms. In contrast, the Shariah Court Evidence Enactments adopt a more flexible and function-based model, prioritising informational functionality and substantive justice. Despite these differences, both systems ultimately complement one another in ensuring that electronic documents are admissible as evidence in line with contemporary technological developments.

The comparative analysis further reveals that the civil law framework under the Evidence Act 1950 adopts a more detailed and technically structured approach towards electronic evidence, particularly in relation to admissibility procedures and statutory presumptions. In contrast, the Shariah Court Evidence Enactments emphasise a more flexible and functional evidentiary model grounded in broader principles of justice and evidential reliability. This reflects the differing jurisprudential orientations of both legal systems while simultaneously demonstrating their shared objective of facilitating the admissibility of electronic evidence within contemporary judicial processes.

CASE ANALYSIS ON THE APPLICATION OF ELECTRONIC DOCUMENTARY EVIDENCE IN THE SHARIAH COURTS

In assessing the relevance and admissibility of electronic documentary evidence in Shariah Court proceedings, case analysis is essential to demonstrate how evidentiary principles are applied in practice. Under Islamic evidentiary

principles, documents may fall within the category of *qarinah* (circumstantial evidence), functioning to reinforce primary forms of proof such as *syahadah* (testimony) and *iqrar* (confession). Accordingly, electronic documents may be admitted as evidence provided that their authenticity and integrity are supported through verification mechanisms, including testimony from the maker of the document, expert witnesses, or digital forensic analysis (Mohd Azhan, 2020: 55-63).

In *Pendakwa Syarie Negeri Selangor v Khalid bin Abdul Samad [2019] 3 ShLR 39*, the accused was charged under Section 119(1) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 for delivering a religious lecture without proper accreditation. The prosecution relied on a video recording of the lecture, tendered together with its transcript and recording device as exhibits. The defence challenged the admissibility of the recording on the grounds that it was not supported by a digital forensic report and that the visual quality was unclear. The court, however, admitted the recording after being satisfied that the officer who recorded it testified under oath regarding its authenticity, proper functioning of the device, and continuous custody. The court held that forensic analysis was not mandatory in all circumstances where authenticity could be established through direct testimony and a reliable chain of custody. This case demonstrates a pragmatic and flexible judicial approach, emphasising verification of source and control over the recording device rather than imposing rigid technical requirements. The decision illustrates that the Shariah Court was prepared to accept electronic documentary evidence based primarily on witness testimony and evidential continuity, without insisting upon formal digital forensic examination. This reflects a flexible evidentiary approach prioritising practical verification and contextual reliability.

Meanwhile, in *SM Faisal SM Nasimuddin v Maria Chin Abdullah [2023] 7 MLJ 485*, the applicant sought a show cause order for contempt of court under Section 229 of the Shariah Court Civil Procedure (Federal Territories) Act 1998 in the Shariah High Court, Kuala Lumpur. The case concerned an online article allegedly containing statements that scandalised the Shariah Court. The key issue was whether the online publication constituted admissible electronic documentary evidence and whether it satisfied the elements of contempt. The court accepted the website article as a computer-generated document and treated it as primary evidence after establishing attribution to the respondent. The court then examined the substance of the publication and concluded that it had the potential to undermine public confidence in the judiciary. From an evidentiary standpoint, the case is significant because it confirms that online publications are recognised as primary electronic documents under the Shariah evidentiary framework, without requiring physical originals, thus reflecting

compatibility with modern principles of digital evidence. Unlike *Pendakwa Syarie Negeri Selangor v Khalid bin Abdul Samad*, the court in this case placed greater emphasis on attribution and publication responsibility in the digital environment, particularly concerning online content disseminated through electronic platforms. This demonstrates the expanding judicial recognition of internet-based publications as admissible electronic documentary evidence within contemporary Shariah proceedings.

Furthermore, in *Hisham Halim v Maya Ahmad Fuaad [2018] SHRU* the plaintiff filed a claim of *nusyuz* (disobedience) against his wife in Shariah Subordinate Court, Kuala Lumpur alleging that she had left the matrimonial home without lawful justification. The defendant relied on electronic evidence, including an audio recording of a marital dispute recorded on her mobile phone, together with a transcript of the recording. Unlike the earlier case, this matter involved detailed digital forensic verification. A forensic analyst from Cyber Security Malaysia testified and produced a digital forensic report confirming the integrity and authenticity of the audio file. Additionally, the transcript was verified and certified by the Malaysian Institute of Translation and Books (ITBM).

The court also considered CCTV recordings and screenshots tendered by the plaintiff, supported by witness testimony to confirm authenticity. The court assessed the electronic documents collectively, emphasising forensic authentication, expert verification, and corroborative testimony. This case illustrates a more comprehensive evidentiary approach, where electronic documents may function either as direct proof or as *qarinah*, depending on the strength of supporting evidence. Unlike *Pendakwa Syarie Negeri Selangor v Khalid bin Abdul Samad*, the court in *Hisham Halim* adopted a stricter evidential approach by requiring detailed digital forensic verification and expert authentication before admitting the electronic evidence. This demonstrates that the evidential treatment of electronic documents in Shariah Courts may vary according to the nature of the dispute, the probative value of the evidence, and the potential risk of manipulation or evidential uncertainty.

Collectively, these cases demonstrate that Malaysian Shariah Courts have progressively recognised the admissibility of electronic documentary evidence across various forms of proceedings, including criminal, family, and contempt matters. Nevertheless, the cases also reveal differing judicial approaches concerning the level of authentication and forensic verification required, reflecting the absence of a fully standardised evidentiary framework for electronic evidence in Shariah Court practice. This highlights the continuing need for clearer procedural standards to ensure consistency, reliability, and evidential certainty in the treatment of electronic documentary evidence.

ISSUES AND CHALLENGES

One of the primary issues concerns the chain of custody and evidential continuity of electronic documents. The chain of custody refers to the process of proving the handling of evidence from the stage of acquisition, storage, transfer, and analysis until its presentation before the court. In the context of Shariah criminal cases, the prosecution must demonstrate that each stage of handling electronic evidence has been preserved, continuous, and uncompromised in order to maintain evidential integrity (Ahmad Azam, 2022: 17–32). Unlike physical evidence, which is generally easier to identify and control, electronic documents are inherently vulnerable to alteration, deletion, duplication, or manipulation without leaving obvious physical traces. Therefore, the management of electronic chain of custody requires more sophisticated technical procedures. However, the absence of specific statutory provisions governing the management of electronic evidence within Shariah legislation creates a gap in technical evidentiary safeguards.

Additionally, a legislative lacuna exists regarding specific procedures for the collection and preservation of electronic documents under the Shariah Court Evidence Enactments. Current provisions primarily focus on definitions and admissibility without elaborating technical standards for the collection, storage, and authentication of digital evidence. As a result, judges and Shariah legal practitioners often rely on judicial discretion and interpretative reasoning (*ijtihad*) when determining admissibility based on case-specific circumstances (Mohamad Aniq Aiman et al., 2025: 69-108). While this approach offers flexibility, it may also lead to inconsistency in judicial decisions, particularly in cases involving complex digital technologies, thereby undermining legal certainty and uniformity of judicial practice across states. The foregoing discussion reveals that the principal challenges concerning electronic documentary evidence in the Shariah Courts do not arise from the lack of legal recognition, but rather from the absence of detailed procedural safeguards and technical evidentiary standards. This demonstrates the increasing need for a more structured digital evidentiary framework capable of ensuring consistency, authenticity, and evidential reliability within contemporary Shariah judicial proceedings

Furthermore, empirical findings indicate that the 2007 Standing Instructions of the State Islamic Religious Departments do not specifically regulate procedures for handling electronic documents. The absence of clear guidelines may result in inconsistent practices among religious enforcement officers, potentially weakening the prosecutorial strength of digital evidence (Mohd Azhan, 2020: 55-63). The lack of a dedicated Standard Operating Procedure

(SOP) for electronic evidence management further contributes to variations in collection and authentication practices. Case analyses such as *Pendakwa Syarie Negeri Selangor v Khalid bin Abdul Samad* and *Hisham Halim v Maya Ahmad Fuaad* demonstrate that the requirement for expert verification or digital forensic evidence depends largely on judicial discretion and factual circumstances rather than uniform procedural standards. The differing judicial approaches adopted in these cases further illustrate the absence of uniform evidentiary standards governing the admissibility and authentication of electronic documents in Shariah proceedings.

Another significant challenge concerns the risk of digital forgery and manipulation. Technological advancements have made it increasingly possible for individuals with technical expertise to alter digital data without leaving visible traces. This risk necessitates the adoption of robust technical verification methods, including digital forensic analysis, metadata examination, and authentication systems. From a Shariah perspective, this issue is closely linked to the principles of *sadd al-dhara'i* (blocking the means to harm) and *ihhtiyat* (prudence) in evidentiary matters. Accordingly, electronic evidence demands heightened scrutiny to ensure substantive justice and to eliminate elements of doubt (*syubhah*) in judicial determinations (Suhaizad & Hanifah, 2024: 27–46). The emergence of artificial intelligence-generated content, deepfake technology, and sophisticated digital manipulation techniques further complicates the authentication process of electronic evidence and may pose significant challenges to evidential certainty within future Shariah proceedings.

From a comparative legal standpoint, the Malaysian civil law framework particularly the Evidence Act 1950 and computer-related criminal legislation provides a more comprehensive procedural structure governing the admissibility and evaluation of electronic evidence (Suhaizad et al., 2025). Amendments to the Evidence Act in 1993, which formally introduced computer-generated documents, demonstrate the civil system's preparedness in addressing technological developments. In contrast, the Shariah Court Evidence Enactments remain comparatively general and do not provide an equally detailed procedural regime. This disparity underscores the need to expand interpretative and procedural mechanisms governing electronic evidence within Shariah legislation to align with technological advancements and contemporary judicial practice (Wan Abdul Fatah et al., 2023: 372-373).

RECOMMENDATIONS FOR IMPROVEMENT

Based on the legal analysis, judicial decisions, and discussion of issues and challenges concerning the application of electronic documents in the Shariah Courts, several reforms may be proposed to strengthen the digital evidentiary framework within Malaysia's Shariah judicial system. These recommendations address legislative, procedural, technical, and capacity-building dimensions to ensure that digital evidence is managed more systematically, consistently, and in accordance with both Shariah principles and contemporary evidentiary standards.

In this regard, there is a need to further refine statutory provisions relating to electronic documents within the Shariah Court Evidence Enactments. Although current provisions recognise computer-generated documents as primary evidence, the mechanisms governing admissibility, evidential weight, authentication standards, and statutory presumptions remain insufficiently detailed. The absence of structured procedural safeguards may lead to interpretative inconsistency and uneven judicial practice across jurisdictions. Consideration may therefore be given to introducing provisions comparable to Sections 90A, 90B, 90C, and 114A of the Evidence Act 1950 in order to establish a more comprehensive admissibility framework within the Shariah legal system (Suhaizad et al., 2025: 42–54).

Such incorporation would not undermine Shariah principles; rather, it would provide procedural clarity while preserving substantive justice. In addition, a formally structured Standard Operating Procedure (SOP) governing the collection, preservation, analysis, and presentation of electronic evidence should be developed. Such an SOP is essential to preserve the chain of custody of digital evidence from the investigation stage through to trial. It should include clear protocols for digital seizure, imaging of devices, secure storage of original and backup copies, forensic examination procedures, metadata preservation, and systematic documentation of evidential handling. A uniform SOP would also reduce inconsistencies in practice across states and enforcement agencies and strengthen prosecutorial reliability (Wan Abdul Fatah et al., 2023: 372–373).

Furthermore, technical guidelines on the authentication of electronic documents should be established at a national level. These may include standards for digital forensic analysis, metadata verification, hash value validation, digital signatures, encryption protocols, and secure electronic authentication systems. The development of such technical benchmarks is crucial in addressing risks of data manipulation and digital tampering. Importantly, these measures align with Shariah evidentiary principles that emphasise *yaqīn* (certainty) and the

elimination of *shubhah* (doubt) before evidence is accepted by the court. Moreover, professional training and capacity-building initiatives for Shariah judges, prosecutors, enforcement officers, and legal practitioners should be strengthened. Given the rapid advancement of digital technologies, adequate technical literacy is essential to properly assess the authenticity, integrity, and reliability of electronic evidence. Regular training in digital forensics, cyber investigation techniques, and electronic evidence management should form part of structured continuous professional development programmes. This institutional strengthening would enhance judicial confidence in handling technologically complex cases.

At the same time, strategic collaboration between Shariah judicial institutions and technical agencies such as Cyber Security Malaysia, digital forensic experts, and information technology research institutions should be enhanced. Such cooperation would ensure that evidentiary practices in the Shariah Courts remain aligned with current technological standards and international best practices in digital proof, while remaining grounded in Islamic evidentiary philosophy. Additionally, harmonisation of definitions and admissibility standards for electronic documents across all states should be prioritised through national-level policy coordination. Greater uniformity would enhance judicial consistency, legal certainty, and public confidence in the Shariah judicial system. This effort may be undertaken through structured collaboration among the Department of Shariah Judiciary Malaysia (JKSM), State Islamic Religious Councils, and academic institutions specialising in Shariah and legal studies.

A coordinated reform initiative would facilitate the development of a coherent and sustainable digital evidentiary framework that reflects both technological realities and the normative objectives of Shariah justice. Ultimately, these reforms are necessary to ensure that the Shariah judicial system remains responsive to technological developments while preserving the fundamental evidentiary principles of justice, certainty, and reliability under Islamic law. A more comprehensive digital evidentiary framework would strengthen judicial consistency, enhance public confidence, and promote greater procedural integrity in the administration of Shariah justice.

CONCLUSION

From a Shariah perspective, the acceptance of electronic documents is consistent with Islamic evidentiary principles that recognise the importance of documentation in safeguarding rights and preventing disputes. The concept of *al-Kitābah* demonstrates that Islam has long emphasised documentation

as a legitimate mechanism of proof, particularly in matters of *muamalat* (transactions). Accordingly, the evolution of electronic documents may be regarded as a contemporary extension of this foundational principle within the context of modern technology. From a legal standpoint, although the Shariah Court Evidence Enactments recognise electronic documents as a valid form of evidence, there remains room for improvement, particularly in relation to admissibility procedures, technical authentication mechanisms, and standards governing the handling of digital evidence.

A comparison with the Evidence Act 1950 reveals that the civil legal system provides a more detailed and structured framework for the admissibility of electronic evidence, which may serve as a useful reference point in strengthening the Shariah evidentiary regime. The case analyses discussed in this study demonstrate that the Shariah Courts in Malaysia have shown openness in admitting electronic documents as evidence. The judicial approach reflects a balance between evidentiary flexibility and the necessity of ensuring authenticity and reliability. Such an approach aligns with the principles of Shariah justice, which prioritise substantive fairness and the protection of the rights of disputing parties. Nevertheless, the rapid advancement of digital technology requires the Shariah judicial system to continuously adapt and improve. Strengthening the legislative framework, developing standard operating procedures, enhancing technical expertise, and harmonising digital evidentiary practices are essential measures to ensure that electronic documents can be effectively and consistently utilised in Shariah Court proceedings.

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