

**AN APPRAISAL OF THE LEGAL FRAMEWORK  
GOVERNING THE ADMISSIBILITY OF ELECTRONIC  
DOCUMENTS AS EVIDENCE IN MALAYSIAN SHARIAH  
COURTS: CURRENT PRACTICES AND FUTURE LEGAL  
DIRECTIONS**

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[Received: 14 June 2025, Accepted: 27 October 2025, Published: 30 November 2025]



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## ABSTRACT

The rapid advancement of science and technology has significantly impacted various aspects of human life, including the legal system. While documentary evidence was once confined to physical form, the emergence of electronic documents has introduced new dimensions to evidentiary practices. In Malaysian civil courts, the admissibility of electronic documents has been recognised since the 1950s through the Evidence Act 1950 (Act 56) and continues to be widely practised. However, this situation differs in Shariah courts, where legal practitioners remain relatively less exposed to accepting electronic documents as evidence. This study aims to analyse the existing legal framework and the concept of electronic documents as evidence in Malaysian Shariah courts, identify the key challenges in their application, and propose improvements to strengthen relevant legal practices and frameworks. A qualitative approach was adopted through document analysis and semi-structured interviews with Shariah judges, prosecutors, religious enforcement officers, and lawyers. The data collected were thematically analysed using content analysis methods. The findings reveal the absence of a specific provision explicitly referring to “electronic documents” under the current Shariah evidence law. Instead, their admissibility is inferred through the general definition of “documents” and applied on a discretionary basis. The study also identifies major challenges related to authenticity, admissibility, and verification of electronic documents. To address these issues, it proposes re-examining Shariah evidence provisions with reference to civil law, strengthening comparative research between Shariah and civil courts, and enhancing institutional capacity through technology training and the engagement of digital forensic experts. This study is therefore significant in improving the existing legal framework for managing electronic evidence more effectively in the future.

**Keywords:** Legal framework, Admissibility, Electronic Document, Evidence, Shariah Court.

**ANALISIS TERHADAP KERANGKA PERUNDANGAN  
BAGI KEBOLEHTERIMAAN DOKUMEN ELEKTRONIK  
SEBAGAI KETERANGAN DI MAHKAMAH SYARIAH  
MALAYSIA: AMALAN SEMASA DAN KE ARAH  
REFORMASI UNDANG-UNDANG**

**ABSTRAK**

Kemajuan pesat dalam bidang sains dan teknologi telah memberi impak yang ketara terhadap pelbagai aspek kehidupan manusia, termasuk sistem perundangan. Jika dahulu keterangan dokumen hanya wujud dalam bentuk fizikal, kemunculan dokumen elektronik telah memperkenalkan dimensi baharu dalam amalan pembuktian. Di Mahkamah Sivil Malaysia, kebolehterimaan dokumen elektronik telah diiktiraf sejak tahun 1950 melalui Akta Keterangan 1950 (Akta 56), dan terus diamalkan secara meluas sehingga kini. Namun begitu, situasi ini berbeza di Mahkamah Syariah, di mana para pengamal undang-undang masih kurang terdedah kepada penggunaan dokumen elektronik sebagai bahan keterangan. Kajian ini bertujuan untuk menganalisis kerangka perundangan sedia ada serta konsep dokumen elektronik sebagai bahan keterangan di Mahkamah Syariah Malaysia, mengenal pasti cabaran utama dalam pelaksanaannya, dan seterusnya mencadangkan penambahbaikan untuk memperkukuh amalan dan kerangka perundangan yang berkaitan. Pendekatan kualitatif digunakan dalam kajian ini melalui analisis dokumen dan temu bual separa berstruktur bersama hakim, pendakwa, pegawai penguat kuasa agama dan peguam Syariah. Data yang diperoleh dianalisis secara tematik menggunakan kaedah analisis kandungan. Dapatan kajian menunjukkan bahawa tiada peruntukan khusus yang secara eksplisit merujuk kepada “dokumen elektronik” dalam undang-undang keterangan Syariah sedia ada. Sebaliknya, kebolehterimaan dokumen elektronik hanya ditafsirkan melalui takrif umum “dokumen” dan diaplikasikan mengikut budi bicara mahkamah. Kajian ini mengenal pasti beberapa cabaran utama yang merangkumi aspek ketulenan, kebolehterimaan dan pengesahan dokumen elektronik. Di akhir kajian ini, penyelidik telah mengemukakan cadangan ke arah reformasi perundangan iaitu menilai semula peruntukan undang-undang keterangan Syariah dengan merujuk kepada pendekatan undang-undang sivil, memperkukuh kajian perbandingan antara Mahkamah Syariah dan Mahkamah Sivil, serta melaksanakan latihan teknologi bersama penglibatan pakar forensik digital dalam pengurusan bahan bukti elektronik. Kajian ini penting dalam usaha memperkasa dan memperkemaskan kerangka perundangan

sedia ada agar pengurusan keterangan elektronik dapat dilaksanakan dengan lebih berkesan pada masa hadapan.

**Kata Kunci:** Kerangka perundangan, Kebolehterimaan, Dokumen Elektronik, Keterangan, Mahkamah Syariah

## INTRODUCTION

Rapid developments in science and technology have significantly transformed various aspects of human life, including the legal landscape. Traditionally, documents were predominantly physical; however, the advancement of technology has led to the emergence of electronic documents.<sup>1</sup> According to Mohamad Azhan Yahya and others, electronic documents are increasingly presented in court proceedings, especially in civil and criminal cases in order to assist judges in making decisions.<sup>2</sup>

Nevertheless, this development raises concerns about the effectiveness and relevance of the existing legal framework in regulating the admissibility of electronic documents as evidence, particularly within the context of the Malaysian Syariah courts.<sup>3,4</sup> For

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<sup>1</sup>Premanand Narasimhan, and N. Kala, "Ensuring the Integrity of Digital Evidence: The Role of the Chain of Custody in Digital Forensics," *International Journal of Scientific Research in Computer Science, Engineering and Information Technology* 10, no. 6 (2024): 2438–2450, <https://doi.org/10.32628/CSEIT2410612443>.

<sup>2</sup>Mohamad Azhan Yahya, Ahmad Azam Mohd Shariff, Azizah Mat Rashid, and Fatimah Yusro Ashim, "Pengemukaan Dokumen Elektronik sebagai Keterangan dalam Perbicaraan Mahkamah Syariah: Tendering of Electronic Documents as Evidence in Syariah Court Trials," *Jurnal Undang-Undang dan Masyarakat* 27 (2020): 55–63,

<sup>3</sup>Wan Abdul Fattah Wan Ismail, Ahmad Syukran Baharuddin, Lukman Abdul Mutalib, and Mohamad Aniq Aiman Alias, "A Systematic Analysis on the Admissibility of Digital Documents as Evidence in Malaysian Syariah Courts," *Pertanika Journal of Social Sciences & Humanities* 29, no. 3 (2021): 1981–1996, <https://doi.org/10.47836/pjssh.29.3.26>.

<sup>4</sup>Mohamad Aniq Aiman Alias, Wan Abdul Fattah Wan Ismail, Ahmad Syukran Baharuddin, and Muzaffar Syah Mallow, "Wasa'il Ithbat dalam Undang-Undang Keterangan Islam: Analisis Perundangan terhadap Kebolehterimaan Dokumen Elektronik di Mahkamah Syariah Malaysia,"

instance, in *Ajmawati Atan v. Moriazi Mohamad* (2005) 1 CLJ (SYA) 54, it was observed that the Shariah legal practitioners lack adequate exposure to using electronic documents as evidence. The ambiguity regarding the admissibility of electronic evidence resulted in the case being ordered for retrial, with additional instructions for submitting supporting evidence in the form of witnesses. On the other hand, the absence of a clear Standard Operating Procedure for the acceptance of electronic documents has led to inconsistencies in their admissibility in Shariah courts.

This situation contrasts with Malaysia's Civil courts, which operate under a clearer and more structured legal framework for handling electronic evidence pursuant to the Evidence Act 1950 (Act 56).<sup>5,6</sup> Civil Courts also demonstrate greater exposure and experience in comparison, as specific statutory provisions regulate the acceptance of such evidence before it can be admitted. According to S. Augustine Paul, precise rules on admissibility highlight the importance of ensuring the integrity and authenticity of electronic evidence, which should serve as a reference point for Shariah courts in enhancing their evidentiary framework.<sup>7</sup>

Accordingly, this article aims to analyse the current legal framework and the concept of electronic documents as evidence in the Shariah courts, while also addressing the practices and challenges encountered in presenting electronic documents in Shariah criminal cases. It further examines proposals for strengthening the legal framework and practices concerning electronic documentary evidence within Malaysia's Shariah judicial institutions. Specifically, this article critically examines the existing legal framework governing the admissibility of electronic documents in Malaysian Shariah courts, incorporates perspectives from Shariah legal practitioners and current

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*Malaysian Journal of Syariah and Law* 12, no. 3 (2024a): 689–700, <https://doi.org/10.33102/mjssl.vol12no3.792>.

<sup>5</sup>Ani Munirah Mohamad, "Admissibility and Authenticity of Electronic Evidence in the Courts of Malaysia and United Kingdom," *International Journal of Law, Government and Communication* 4, no. 15 (2019): 121–129, <https://doi.org/10.35631/ijlgc.4150013>.

<sup>6</sup>Mariette Peters, *Law of Evidence in Malaysia* (Petaling Jaya, Selangor: LexisNexis Malaysia, 2013).

<sup>7</sup>S. Augustine Paul, *Evidence: Practice and Procedure*, 4th ed. (Petaling Jaya, Selangor: LexisNexis Malaysia, 2010).

practices, and proposes future directions for more effective and comprehensive regulation.

## LITERATURE REVIEW

Prior to this study, several research efforts have examined the admissibility of electronic documents as evidence in Malaysian Shariah courts. However, a significant gap remains in the comprehensive appraisal of the existing legal framework, particularly regarding current court practices and future legal directions aimed at improving case management involving electronic evidence. Most previous studies have primarily focused on conceptual definitions, types, and general criteria for admissibility without thoroughly addressing procedural complexities and practical challenges faced by Shariah legal practitioners in actual scenarios. Given these limitations, it is essential to first examine how various scholars have defined and conceptualised electronic documents, as such definitions shape the foundation upon which admissibility is argued.

Abd al-Rahman Ibrahim Al-Humaidi defines electronic documents as including sound recordings, cassettes, compact discs, and electronically displayed content, provided their meanings are comprehensible upon review.<sup>8</sup> Similarly, Ani Munirah Mohamad defines electronic documents as evidence presented in electronic format, comprising materials generated by computers, machines, and other digital devices.<sup>9</sup> Expanding on these definitions, Mohamad Ismail identifies numerous examples, such as Very Large-Scale Integration (VLSI) chips, hard disks, digital cameras, mobile phones, scanners, compact discs (CDs), digital video discs (DVDs), internet networks, video compact discs (VCDs), and software interfaces like the Common Gateway Interface (CGI).<sup>10</sup> In a more contemporary view,

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<sup>8</sup>Abd al-Rahman Ibrahim Al-Humaidi, *Al-Qada' wa Nizamuhu fi al-Kitab wa al-Sunnah* (Makkah: Maahad al-Buhuth al- 'Ilmiyyah, 1989), 437.

<sup>9</sup>Ani Munirah Mohamad, "Admissibility and Authenticity of Electronic Evidence in the Courts of Malaysia and United Kingdom," *International Journal of Law, Government and Communication* 4, no. 15 (2019): 121–129, <https://doi.org/10.35631/ijlgc.4150013>.

<sup>10</sup>Mohamad Ismail, "Kedudukan Bahan Bukti (Exhibit) Elektronik dan Digital dalam Keterangan: Masalah dan Cabaran Masa Kini," *The Journal of the Malaysian Bar* 35, no. 1 (2006): 1–14.

Beibit Birzhanov and others conceptualise electronic documents—or electronic evidence—as information in electronic digital form suitable for communication, interpretation, or processing, encompassing data sets, files, and programs within electronic systems and networks.<sup>11</sup> Similarly, Wan Abdul Fattah Wan Ismail expands the legal scope of the term “document” to include materials in electronic format, recognising that admissible documentary evidence is not confined to physical or printed form but extends to digital files generated or stored through technological means. This modern understanding underscores that the essence of electronic documents lies not in their tangible existence but in their digital form, which facilitates transmission, processing, and authentication through technological mechanisms.<sup>12</sup> These conceptual definitions are important in framing the scope of electronic evidence, but questions remain regarding their actual admissibility and practical use in legal proceedings.

Furthermore, Mursilalaili Mustapa Sa’di, Abd. Rani Kamarudin and S. Augustine Paul emphasise that electronic documents are admissible as evidence only if they provide clear, reliable, and verifiable information.<sup>13,14</sup> These studies provide foundational insights into the scope, nature, and general acceptance of electronic documents within legal proceedings, contingent upon their authenticity and evidentiary value. While these perspectives highlight theoretical acceptance, they stop short of addressing systemic challenges faced in Shariah courts, particularly in the absence of clear statutory provisions.

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<sup>11</sup>Beibit Birzhanov, Assemgul Sakenova, Erkin Abeuov, Kairat Birzhanov, Assel Sopyhanova, and Gulmira Talapova, “Electronic Proves as One of the Modern Independent Means of Evidence,” *Journal of Law and Sustainable Development* 11, no. 10 (2023): 1–16,

<sup>12</sup>Wan Abdul Fattah Wan Ismail, *Keterangan Dokumentar Menurut Fiqh dan Undang-Undang Keterangan Islam di Malaysia* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2020).

<sup>13</sup>Mursilalaili Mustapa Sa’di and Abd. Rani Kamarudin, “The Authenticity of Electronic Document under Islamic Law and Malaysian Law of Evidence,” in *Prosiding Seminar Kebangsaan Penyelidikan Pengurusan Hal Ehwal Islam di Malaysia*, ed. Khairunneezam Mohd Noor, Zukiple Abdul Ghani, and Suhailiza Mohd Hamdani (Nilai: Fakulti Kepimpinan dan Pengurusan, Universiti Sains Islam Malaysia, 2020), 295–315.

<sup>14</sup>S. Augustine Paul, *Evidence: Practice and Procedure*, 4th ed. (Petaling Jaya, Selangor: LexisNexis Malaysia, 2010).

In contrast, a systematic literature review (SLR) conducted by Wan Abdul Fattah Wan Ismail and others analysed the admissibility of electronic documents in Malaysian Shariah courts.<sup>15</sup> From an analysis of 241 articles retrieved from the Scopus and MyJurnal databases, the study identified only 21 articles directly addressing issues related to electronic document admissibility. However, this study was limited to a systematic literature-based analysis. This reveals a significant scarcity of empirical research that examines how admissibility issues unfold in practice.

Another significant study by Mohamad Azhan Yahya and others discussed the use of electronic documents as evidence in Shariah courts<sup>16</sup>. Their findings indicated that electronic documents have generally been accepted in Shariah court proceedings based on case analyses and existing legal provisions. The study highlighted challenges, notably the absence of specific statutory provisions governing electronic document admissibility. However, it did not discuss empowerment strategies or legal reforms needed to address these issues. Similarly, Nurul Izzati Kholdun and others also proposed several recommendations to strengthen electronic document management in Shariah courts, including reviewing existing provisions regarding electronic document use.<sup>17</sup> Nonetheless, this study lacked a detailed analysis of how legislative amendments could be practically drafted or implemented to support these reforms. Hence, while these contributions enrich the academic discourse, they collectively highlight a gap in translating theoretical recommendations into workable legal mechanisms.

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<sup>15</sup>Wan Abdul Fattah Wan Ismail, Ahmad Syukran Baharuddin, Lukman Abdul Mutalib, and Mohamad Aniq Aiman Alias, "A Systematic Analysis on the Admissibility of Digital Documents as Evidence in Malaysian Syariah Courts," *Pertanika Journal of Social Sciences & Humanities* 29, no. 3 (2021): 1981–1996, <https://doi.org/10.47836/pjssh.29.3.26>.

<sup>16</sup>Mohamad Azhan Yahya, Ahmad Azam Mohd Shariff, and Fatimah Yusro Hashim, "Keterangan Dokumen Elektronik: Proses Pengumpulannya di Peringkat Pra Perbicaraan dalam Kes Mal Syariah di Malaysia," *Jurnal Undang-Undang dan Masyarakat* 28 (2021): 67–77.

<sup>17</sup>Nurul Izzati Kholdun, Nur Aina Zafirah Azmi, and Intan Shafinaz Mohammad, Suhaizad Saifuddin, and Lukman Abdul Mutalib, "Pemakaian Keterangan Dokumen Elektronik dalam Pembuktian: Kajian Kes di Mahkamah Syariah Malaysia," *CFORSJ Procedia* 2, no. 1 (2024): 571–582, <https://alnadwah.usim.edu.my/cforsjconf/paper/view/4>.

Based on previous research, it is evident that the concepts, admissibility, and general challenges associated with electronic documents in Shariah courts have been explored. However, a notable gap remains regarding the practical experiences and real-world challenges legal practitioners encounter within the Shariah legal system. Therefore, this study aims to bridge this gap by analysing current practices, identifying practical challenges, and proposing structured legal and procedural reforms to strengthen the admissibility of electronic documents in Malaysian Shariah courts.

## METHODOLOGY

To achieve the objectives of this study, the researcher employed a qualitative research approach utilising document analysis and semi-structured interviews. According to Glenn A. Bowen, document analysis involves a systematic procedure for reviewing or evaluating documents in either electronic or physical forms.<sup>18</sup> This article's document analysis encompassed legal cases, statutory provisions, theses, books, journal articles, and other relevant documents. This approach was used to critically examine the existing legal framework and the concept of electronic documents as evidence in Shariah courts. Through an in-depth review of these documentary materials, a foundational understanding was developed, guiding the formulation of interview questions and designing a comprehensive legal framework for electronic evidence in the Shariah court proceedings.

Additionally, semi-structured interviews were conducted with the Shariah legal practitioners, including judges, prosecutors, religious enforcement officers, and lawyers, to obtain comprehensive insights into current practices and challenges regarding the admissibility of electronic documents in Shariah criminal cases. These interviews also aimed to identify potential areas for reform and enhancement in applying electronic documents in future legal proceedings. The interview data were transcribed verbatim and analysed using thematic analysis. This analytical approach was chosen because it enables the researcher to systematically identify, organise, and interpret patterns of meaning within qualitative data, offering flexibility to capture both

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<sup>18</sup>Glenn A. Bowen, "Document Analysis as a Qualitative Research Method," *Qualitative Research Journal* 9, no. 2 (2009): 27–40.

explicit and implicit dimensions of respondents' perspectives. Key themes and sub-themes were identified, and direct quotes from informants were selected to illustrate and substantiate each thematic finding, following the qualitative analysis framework proposed by Patricia Leavy.<sup>19</sup>

## FINDINGS AND DISCUSSION

### **Existing Legal Framework and the Concept of Electronic Documents as Evidence Under the Malaysian Shariah Courts**

In the context of Islamic evidence law in Malaysia, there is no specific provision explicitly defining the term “electronic documents”. Nonetheless, electronic documents generally fall within the broad definition of “documents” as provided under Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561). This provision defines a document as “any matter expressed, described, or howsoever represented upon any substance, material, thing, or article, including any matter embodied in a disc, tape, film, soundtrack, or other devices whatsoever”.

According to this provision, the term “document” encompasses any form of matter expressing or describing information, whether represented through letters, numbers, symbols, or combinations thereof, intended to record information. Consequently, printed texts, lithographs, and photographs are classified as documents under this definition. Such a comprehensive definition facilitates a broad interpretation, extending beyond traditional handwritten materials to incorporate digital and electronic media.

Supporting this interpretation, Sulaiman Marqus argues that a document should be evaluated based on its function and information conveyed rather than its physical form or production method<sup>20</sup>. Similarly, Wan Abdul Fattah Wan Ismail suggests that the phrase “expresses or describes information” should inclusively cover

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<sup>19</sup>Patricia Leavy, *Research Design: Quantitative, Qualitative, Mixed Methods, Arts-Based, and Community-Based Participatory Research Approaches* (New York: Guilford Press, 2017).

<sup>20</sup>Sulaiman Marqus, *Usul al-Ithbat wa Ijra'atuhu fi al-Mawad al-Madaniyyah fi al-Qanun al-Misri* (Al-Qaherah: 'Alam al-Kutub, 1981).

automated, electronic, and digital processes aligned with technological advancements.<sup>21</sup> Thus, electronic documents fall within the general definition of “documents” as defined in Section 3.

However, despite this inclusive reading, a significant legal lacuna remains. The Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] does not explicitly define “electronic documents.” Instead, electronic records are implicitly subsumed within the general term “document”. This absence of a clear legislative definition has created interpretive inconsistencies among the Shariah legal practitioners, as reflected in the following interview excerpts:

“Our weakness is the absence of a specific definition, which causes people not to understand what is actually meant by electronic documents”. (Informant 1, interview, 2023)

“If we look at the Syariah Court Evidence Act, it does not explicitly state the identity of electronic (evidence) in that way... perhaps if there were amendments, it could clearly define what an electronic document actually is...”. (Informant 6, interview, 2025)

“In our law, there is no specific definition for electronic documents... it is only mentioned briefly here and there. Nothing specific”. (Informant 7, interview, 2025)

This definitional ambiguity becomes more pronounced when contrasted with the Civil courts’ approach. Although the definition in Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) is largely derived from Section 3 of the Evidence Act 1950 (Act 56), the legal and procedural framework surrounding it differs significantly. Civil courts in Malaysia have long implemented supplementary provisions such as Sections 90A, 90B, and 90C, which collectively govern the admissibility, authentication, and legal presumption of electronic and computer-generated documents. Section 45 of the same Act also permits a wide range of expert testimony—including that of digital forensics experts—to support evaluating such evidence.

In the Shariah context, however, statutory reliance is more limited. From a legislative perspective, three key provisions within

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<sup>21</sup>Wan Abdul Fattah Wan Ismail, *Keterangan Dokumentar Menurut Fiqh dan Undang-Undang Keterangan Islam di Malaysia* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2020).

Malaysian Shariah evidence law explicitly allow for the admissibility of electronic documents, as depicted in Figure 1. These provisions provide the legal basis for recognising and regulating electronic documents in Shariah court proceedings. Specifically, Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) explicitly includes electronic elements such as electronic recordings, data, and remote transmissions (e.g., emails and digital messages). Consequently, electronic documents are recognised as valid evidence in Shariah courts under the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561).

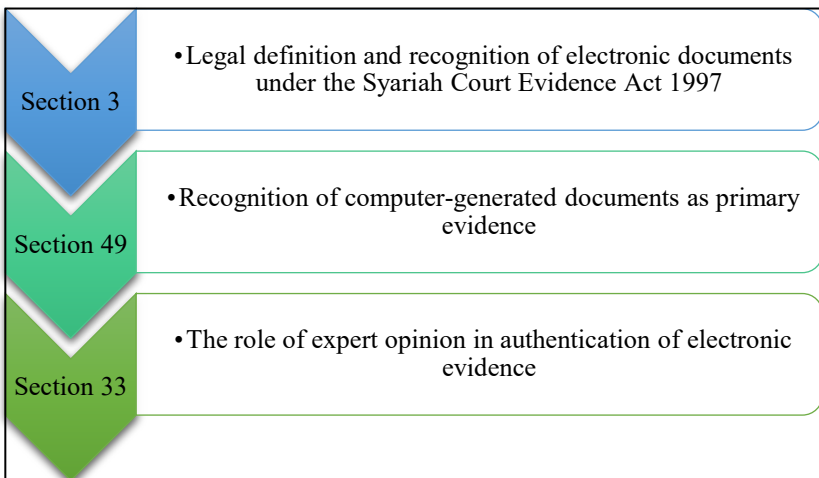


Figure 1. Key Provisions of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) Governing the Recognition and Authentication of Electronic Documents

Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) provides a detailed definition of a “document” as follows:

***Section 3. Notice to show cause.***

“document” means any matter expressed, described, or howsoever represented, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of:

- a) letters, figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;
- b) any visual recording (whether of still or moving images);
- c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;
- d) a recording, or transmission, over a distance of any matter by any,  
or any combination, of the means mentioned in paragraph (a), (b) or (c), or by more than one of the means mentioned in paragraphs (a), (b), (c) and (d), intended to be used or which may be used for the purpose of expressing, describing, or howsoever representing.”

This section demonstrates that the definition of “document” under the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) is sufficiently broad to encompass electronic and digital elements. As reflected in *Halijah binti Abdul Rahman v. Zambree bin Baharom* [2009]1CLJ (SYA) 402, the Port Dickson District Syariah Subordinate Court considered the admissibility of an electronic communication—specifically a short messaging service (SMS)—as evidence of divorce. In this case, the defendant had sent an SMS pronouncing *talaq* on 12 January 2008, followed by the wife’s breach of the *taklik* condition on 13 March 2008. After considering the parties’ submissions, the court accepted the SMS as valid evidence to establish the occurrence of divorce, even though the husband claimed he had no such intention.

The judgment underscores that electronic communications, such as SMS, are admissible forms of evidence capable of substantiating claims and resolving disputes within the Shariah judicial framework. This illustrates how electronic documents have been integrated into Shariah court proceedings to uphold justice in contemporary contexts where digital communication is increasingly prevalent. Accordingly, the statutory language of Section 3—referring to electronic recordings, digital data, and transmissions—clearly affirms the admissibility of electronic documents, including emails, audiovisual files, and other electronic communications, in Shariah legal proceedings.

Figure 2 below categorises the types of electronic documents encompassed by this statutory definition.

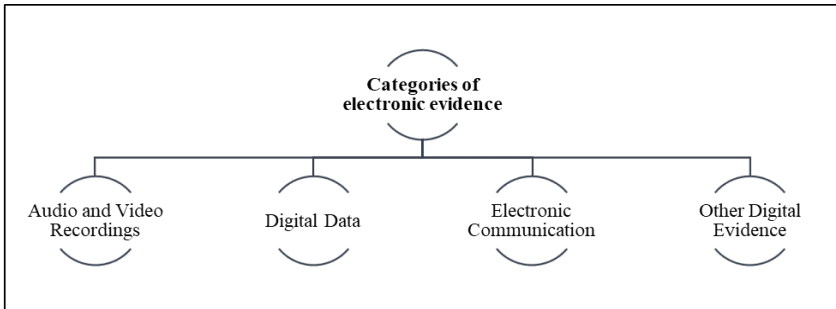


Figure 2: Categories of Electronic Documents under Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561)

This shows that electronic documents are recognised as evidence in Shariah courts, falling within the statutory general definition of a “document” under Act 561. The definition provided in Section 3 is further reinforced by Section 49, which acknowledges computers as sources of primary evidence.

#### ***Section 49. Primary evidence.***

Primary evidence means the document itself produced for the inspection of the Court.

**Explanation 1-**Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

**Explanation 2-**Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

**Explanation 3-**A document produced by a computer is primary evidence.

Electronic documents can be admitted as primary evidence without needing physical originals. This provision implicitly confirms the Shariah court's recognition of electronic documents as valid proof. Additionally, this provision facilitates submitting electronic documents in civil and criminal Shariah cases, including maintenance claims, divorce, and criminal offenses such as *zina* (illicit sexual relations) and *khalwat* (close proximity).<sup>22</sup> Thus, electronic documents generated or stored via computers are legally recognised and accepted as credible evidence.

Mohamad Aniq Aiman Alias and others emphasise that electronic documents require corroborative evidence, including expert testimony, to ensure reliability, particularly when such evidence is disputed.<sup>23</sup> This requirement is supported by Section 33 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561], which deals with expert opinion. Section 33 provides that:

***Section 33. Opinion of experts.***

1. When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions or relating to determination of *nasab*, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions or relating to determination of *nasab*, are *qarinah*.
2. Such persons are called experts.
3. Two or more experts shall be called to give evidence where possible but if two experts are not available, the evidence of one

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<sup>22</sup>Suhaizad Saifuddin, Hanifah Haydar Ali Tajuddin, Mohamad Azhan Yahya, Mohamad Rizal Abd Rahman, and Fatimah Yusro Hashim, "Examining the Application of Standard of Proof in Criminal Cases: A Comparative Analysis of Islamic Law and Common Law in Malaysia," *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 11–22,

<sup>23</sup>Mohamad Aniq Aiman Alias, Wan Abdul Fattah Wan Ismail, Ahmad Syukran Baharuddin, and Lukman Abdul Mutalib, "Legal Analysis of Syariah Court Evidence Law on Digital Document as Evidence and Its Admissibility in Court Proceedings," *Journal of Management & Muamalah* 11, no. 2 (2021): 54–64.

expert is sufficient. If two experts give different opinions a third expert shall be called to give evidence.

This provision illustrates the necessity of corroborative expert testimony in the context of electronic documents. For instance, in *Ajmawati Atan v. Moriazi Mohamad* (2005)1CLJ(SYA)54, ambiguous electronic evidence led the court to order a retrial, during which expert testimony was required to establish authenticity and reliability. Similarly, Jasri Jamal contends that electronic documents must be substantiated with expert opinions to test the credibility and reliability of the evidence presented adequately.<sup>24</sup> Thus, expert involvement is not only supplementary but essential in safeguarding both the authenticity of electronic documents and the integrity of judicial determinations in Shariah courts.

In contrast, Malaysian civil courts operate under a more structured legal framework. The Evidence Act 1950 (Act 56), particularly Sections 90A, 90B, and 90C, explicitly governs the admissibility of electronic evidence.<sup>25,26</sup> Section 90A recognises the admissibility of computer-generated documents provided they are produced during ordinary operations and certified by a responsible individual. Such certification serves as *prima facie* evidence of the authenticity and integrity of the documents. Section 90B outlines criteria for assessing the probative value of electronic documents, while Section 90C establishes that documents admissible under Section 90A supersede conflicting provisions.

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<sup>24</sup>Jasri Jamal, “Kebolehterimaan Teknologi dalam Undang-Undang Keterangan Islam di Mahkamah Syariah,” *Jurnal Hukum* 33, no. 1 (2011): 1–12.

<sup>25</sup>Mohamad Aniq Aiman Alias, Wan Abdul Fattah Wan Ismail, Ahmad Syukran Baharuddin, Hasnizam Hashim, and Tuan Muhammad Faris Hamzi Tuan Ibrahim, “Evaluating Electronic Evidence in Malaysian Civil Courts: Current Admissibility and Future Legal Directions,” in *Proceedings of International Conference on Syariah, Law and Science (CFORSJ I-CONF) – CFORSJ Procedia* 2, (Nilai: Penerbit USIM, 2024b), 13–21, <https://alnadwah.usim.edu.my/cforsjiconf/paper/view/63>.

<sup>26</sup>Mohamad Khairudin Kallil, and Ahmad Che Yaacob, “The Integration of Digital Forensics Science and Islamic Evidence Laws,” *International Journal of Law, Government and Communication* 4, no. 17 (2019): 61–70, <https://doi.org/10.35631/ijlgc.417006>.

Anita Harun and others highlight that these provisions offer clear guidance on presenting and evaluating electronic documents in civil courts.<sup>27</sup> Conversely, the Shariah courts still require legislative reforms to regulate electronic evidence acceptance and management consistently and comprehensively.

In conclusion, despite lacking specific provisions addressing electronic documents, the broad interpretation of “document” under the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) implicitly allows their admissibility in the Shariah court proceedings. Sections 3, 33, and 49 collectively recognise the admissibility of electronically generated, stored, or transmitted documents, particularly when supported by corroborative evidence such as expert testimony. Nonetheless, compared to the detailed legislative framework in civil courts under the Evidence Act 1950 (Act 56), Shariah courts require further legal and procedural enhancements to streamline the admission and evaluation of electronic evidence, especially in complex criminal cases prevalent in today’s digital era.

### **Current Practice and Challenges in Admitting Electronic Documents in Shariah Criminal Cases**

In the previous section, the researchers analysed the existing legal framework concerning electronic documents as evidence in Shariah courts, finding that electronic documents are generally accepted in court proceedings. This section examines the practical experiences of Shariah legal practitioners in handling electronic documents as evidence, based on interviews with Shariah judges, prosecutors, religious enforcement officers, and lawyers. Several key observations emerged regarding current practices in Shariah courts.

Informants 1 through 9 noted that electronic documents are accepted in court proceedings and significantly assist judges in understanding case facts, thus contributing to decision-making. Informants 1, 2, 4, and 9 elaborated:

“...Electronic documents provide stronger probative value compared to traditional methods like *iqrar* (confession) or *syahadah*

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<sup>27</sup>Anita Harun, Ramalinggam Rajamanickam, and Insyirah Mohamad Noh, “Admissibility of Electronic Evidence in Malaysia,” *Baltic Journal of Law & Politics* 15, no. 7 (2022): 1352–1360,

(testimony). However, the challenge lies in ensuring these documents are genuinely authentic and have not been manipulated”. (Informant 1, interview, 2023)

“...Images and videos are highly useful in providing a clear depiction of an event. For example, photographs showing a location’s condition or state can support witness testimony”. (Informant 2, interview, 2023)

“...In Syariah’s criminal cases, recordings such as images and videos can be presented in court to strengthen the evidence. For example, in *khalwat* (close proximity) cases, the prosecution may use photographs showing the presence of individuals at the scene as supporting evidence for witness testimony”. (Informant 4, interview, 2024)

“So far, in cases like *khalwat*, most of the images and videos we have tendered in court are accepted. The judge will usually assess both the prosecution and the defence. If the defence lawyer is sharp, they may challenge it on technical grounds”. (Informant 9, interview, 2025)

These statements indicate an increasing reliance on electronic evidence as concrete and visual elements that enhance the credibility of testimonies and case facts in Shariah court proceedings. Nevertheless, the authenticity and integrity of such documents pose significant concerns. Ani Munirah Mohamad emphasises the high potential of electronic evidence but also notes the primary challenge of forgery and manipulation.<sup>28</sup> Mohamad Aniq Aiman Alias similarly highlights document falsification as a critical concern when presenting electronic evidence in court.<sup>29</sup>

Additionally, Informants 1 and 5 shared their experiences regarding document integrity:

“...Electronic documents can be easily manipulated using certain applications. We once encountered a falsified marriage certificate,

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<sup>28</sup>Ani Munirah Mohamad, “Admissibility and Authenticity of Electronic Evidence in the Courts of Malaysia and United Kingdom,” *International Journal of Law, Government and Communication* 4, no. 15 (2019): 121–129, <https://doi.org/10.35631/ijlgc.4150013>.

<sup>29</sup>Mohamad Aniq Aiman Alias, “Forgery of Marriage Documents: Analysis of Related Provisions and Case Study under the Malaysian Shariah Courts,” *Kanun: Jurnal Undang-Undang Malaysia* 36, no. 2 (2023): 161–180, [https://doi.org/10.37052/kanun.36\(2\)no1](https://doi.org/10.37052/kanun.36(2)no1).

which was only exposed as fraudulent after thorough verification with the issuing authority”. (Informant 1, interview, 2023)

“The prosecution may submit evidence via a link or materials uploaded on CD as part of the evidentiary process in court...”. (Informant 5, interview, 2025)

Translation: “For example, the authenticity and originality of documents. That is, forgery is much easier to carry out and can result in errors concerning the integrity of the evidence, potentially leading to wrongful convictions that should not have occurred”. (Informant 5, interview, 2025)

These statements indirectly underscore the vulnerability of electronic documents to manipulation, highlighting the necessity for comprehensive authentication mechanisms within the Shariah judiciary. Several informants point out that the application of emerging technologies such as blockchain, electronic signatures (e-signatures), and metadata analysis can enhance the verification and integrity of digital evidence. Blockchain, for instance, provides an immutable record that can increase transparency and traceability of electronic transactions, while e-signatures confirm authorship and ensure non-repudiation. Metadata analysis, meanwhile, offers valuable forensic information such as timestamps, file origin, and modification history that can be used to verify authenticity. Integrating these technologies into the Shariah legal framework could strengthen verification procedures and align Malaysia’s practices with contemporary international standards in electronic evidence management.

From a technological and forensic view, the admissibility of electronic documents increasingly relies on advanced verification tools and digital forensic methodologies. Contemporary practices in civil and criminal courts globally demonstrate using hash algorithms (such as SHA-256) to confirm data integrity, metadata analysis to determine document origin and modification, and digital signatures to authenticate authorship.<sup>30</sup> In some jurisdictions, blockchain-based evidence chains are also employed to preserve immutability and

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<sup>30</sup>A. Yeboah-Ofori and A. D. Brown, “Digital Forensics Investigation Jurisprudence: Issues of Admissibility of Digital Evidence,” *Forensic Legal & Investigative Sciences* 6, no. 45 (2020): 1–8.

maintain chain-of-custody records.<sup>31</sup> These forensic mechanisms ensure that the document's integrity remains intact from the point of collection to its presentation in court, thereby enhancing its probative value. Integrating similar approaches within the Shariah legal framework could significantly strengthen the evidentiary process and improve judicial confidence in electronic documents.

Despite the promising potential of these technologies, their implementation within Malaysian Shariah courts remains limited. Specialised software to enhance the probative value of digital documents and ensure data reliability is critically required, particularly in criminal prosecutions. Informant 5 also reinforced this concern by noting that Malaysian Shariah courts currently lack specialised mechanisms for the acceptance and evaluation of electronic documents:

“In terms of management, there is no specialised handling... Cooperation has not been adequately established... We recommend establishing MOUs with relevant authorities...”. (Informant 5, interview, 2025)

This statement aligns with the case of *Kholed bin Dinyati v. Ketua Pendakwa Syarie Melaka* (2009) 29 JH 2, which underscores the necessity for comprehensive document management procedures to safeguard the authenticity of submitted documents and prevent falsification. In this case, the accused submitted false statements and used another individual's identification card to obtain a marriage certificate. The incident illustrates the critical importance of implementing robust verification processes in Shariah courts to address document falsification effectively.

Informant 3 further highlighted the absence of standard operating procedures (SOPs) for assessing the authenticity of electronic documents:

“...We rely on conventional methods to evaluate electronic documents, but without SOPs or specific guidelines, judges often rely on personal understanding, leading to potential inconsistencies”. (Informant 3, interview, 2023)

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<sup>31</sup>Aradhya Sethia, “Rethinking Admissibility of Electronic Evidence,” *International Journal of Law and Information Technology* 24, No. 3 (2016): 229–250.

This situation highlights the urgent need to develop clear SOPs or a comprehensive mechanism for administering and assessing electronic evidence in Shariah courts to ensure consistency, authenticity, and reliability. Azhan Yahya and others advocate for such mechanisms, particularly in Shariah criminal proceedings.<sup>32</sup> Additionally, findings indicate that Practice Direction No. 7 of 2018: Digital/Electronic Management in Syariah Courts was introduced to provide structured guidance on the management and admissibility of electronic documents. This directive offers a more systematic approach to handling digital evidence in Shariah judicial proceedings (see Figure 3).

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<sup>32</sup>Mohamad Azhan Yahya, Ahmad Azam Mohd Shariff, and Nurul Nisa' Khalid, *Proses Pengumpulan Keterangan Dokumen Elektronik* (Bangi: Penerbit UKM, 2024).



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Ruj. Kami : JKSM.600-1/2/4 JLD 4 ( 39 )  
 Takwim : 33 Rabi'ul Akhir 1440H  
 Tarikh : 31 Disember 2018

Y.A.A Ketua -Ketua Hakim Syarie,  
 Mahkamah-mahkamah Syariah Negeri-negeri

**ARAHAN AMALAN NO. 7 TAHUN 2018**

**Pengurusan Digital/Elektronik Di Mahkamah Syariah**

Saya ingin menarik perhatian Y.A.A. kepada keputusan Mesyuarat Jawatankuasa Induk Arahan Amalan Mahkamah Syariah Tahun 2018 pada 13 Rabi'ul Awal hingga 15 Rabi'ul Awal 1440H bersamaan 21 November hingga 23 November 2018 di Jabatan Kehakiman Syariah Malaysia (JKSM) Wilayah Persekutuan Putrajaya telah bersetuju dan mengesahkan untuk menerima pakai arahan amalan berhubung pengurusan digital/elektronik di mahkamah syariah seperti di Lampiran.

Arahan Amalan ini berkuat kuasa serta merta.



**(DATO' HAJI MUKHYUDDIN BIN HAJI IBRAHIM)**  
 Ketua Pengarah/Ketua Hakim Syarie  
 Jabatan Kehakiman Syariah Malaysia  
 PUTRAJAYA

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SYARIAH ASAS KEADILAN




CERTIFIED TO ISO 9001:2008  
 CERT. NO. AR 3350

Figure 3. Practice Direction No. 7 of 2018: Digital/Electronic Management in Syariah Courts

Source: Official Website of the Department of Syariah Judiciary Malaysia

This Practice Direction establishes the fundamental requirements for managing digital evidence to ensure that electronic documents are handled systematically and in accordance with Shariah legal principles. However, despite its issuance, exposure to and experience with the directive among the Shariah legal practitioners remain limited. Some Shariah legal practitioners face uncertainty regarding the operational procedures required to comprehensively implement digital and electronic document management.<sup>33</sup>

This shortcoming is further evidenced by the absence of clear protocols or standardised guidelines in certain Shariah court institutions, as noted by several informants during interviews. To address these gaps, Practice Direction No. 4 of 2020: Submission of Forensic Evidence in Syariah Court Proceedings was introduced to provide a formal framework for the submission of forensic evidence—including electronic records—thereby emphasising the importance of accurate and verifiable digital authentication procedures (see Figure 4).

Nevertheless, in the absence of uniform implementation, Malaysian Shariah courts face significant challenges in authenticating electronic documents. The lack of standard procedures allows judges to exercise broad discretion in deciding whether to admit or reject electronic evidence.<sup>34</sup> According to Informant 1, this inconsistency may lead to divergent interpretations across courts and heighten the risk of subjective judicial outcomes. Furthermore, the lack of digital forensic expertise among Shariah judicial officers exacerbates efforts to conclusively verify electronic evidence.<sup>35</sup>

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<sup>33</sup>Mohamad Azhan Yahya, Ahmad 'Azam Mohd Shariff, and Mohd Abu Hassan Abdullah, “Keterangan Dokumen dalam Bentuk Digital di Mahkamah Syariah: Analisis Berkaitan Definisi serta Kebolehterimaannya di Sisi Prinsip Syariah di Malaysia,” *Current Legal Issues* 1 (2017): 1–12.

<sup>34</sup>Nurul Izzati Kholdun, Nur Aina Zafirah Azmi, and Intan Shafinaz Mohammad, Suhaizad Saifuddin, and Lukman Abdul Mutalib, “Pemakaian Keterangan Dokumen Elektronik dalam Pembuktian: Kajian Kes di Mahkamah Syariah Malaysia,” *CFORSJ Procedia* 2, no. 1 (2024): 571–582, <https://alnadwah.usim.edu.my/cforsjconf/paper/view/4>.

<sup>35</sup>Wan Abdul Fattah Wan Ismail, and Mehmet Asutay, “The Legal Forensic Model in Determining the Genuineness of Islamic Banking Documents and Their Application in Shariah Courts,” *Global Journal Al-Thaqafah* 7, no. 2 (2017): 115–127, <https://doi.org/10.7187/GJAT122017-6>.

Mohamad Khairudin Kallil and Ahmad Che Yaacob,<sup>36</sup> and Naeem Allah Rakha<sup>37</sup> emphasise that digital forensics must be integrated with Islamic evidentiary law to ensure fairness in judicial decision-making. This underscores the urgent need to equip Shariah legal practitioners with digital forensic expertise to accurately verify electronic evidence and its admissibility in court.

The informant in this study also recommended that Shariah courts refer to existing practices and legal provisions in civil courts regarding the admissibility of electronic evidence. In Malaysian civil courts, the Evidence Act 1950 (Act 56) provides clear guidelines on electronic evidence admissibility, particularly under Section 90A, which details certification and authentication requirements. For example, in *Public Prosecutor v. Goh Hoe Cheong & Anor* (2007) 7 CLJ 68, the court excluded digital evidence due to procedural non-compliance, emphasising the importance of adhering to legal protocols. Similarly, in *Hanafi bin Mat Hassan v. Public Prosecutor* (2006) 4 MLJ 134, the court affirmed that proper certification is essential to ensure electronic documents meet statutory admissibility standards.

In the Shariah context, the case of *Pendakwa Syarie Selangor v. Mohd Kamil Zuhairi Bin Abdul Aziz and Mohamed Mohsen Bin Radmard* (Syariah Criminal Case Nos: 10002-136-0015-2011 and 10002-136-0016-2011) serves as a significant example in which electronic images were submitted as evidence. The court ultimately admitted the photographs after verifying the testimony of the enforcement officer who captured the images and confirming the chain of custody. This case underscores the critical role of chain-of-custody verification in Shariah courts and highlights the need for consistent authentication protocols in managing electronic documents.

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<sup>36</sup>Mohamad Khairudin Kallil, and Ahmad Che Yaacob, “The Integration of Digital Forensics Science and Islamic Evidence Laws,” *International Journal of Law, Government and Communication* 4, no. 17 (2019): 61–70, <https://doi.org/10.35631/ijlgc.417006>.

<sup>37</sup>Naeem Allah Rakha, “Cybercrime and the Law: Addressing the Challenges of Digital Forensics in Criminal Investigations,” *Mexican Law Review* 16, no. 2 (2024): 23–54,


	<p><b>جابتن كحاكيمن شرعية مليسيا</b>  <b>KETUA PENGARAH/KETUA HAKIM SYARIE</b>          Jabatan Kehakiman Syariah Malaysia  <i>Department Of Syariah Judiciary Malaysia</i>          Aras 7, Blok C, Kompleks Islam Putrajaya          No. 20, Jalan Tunku Abdul Rahman, Presint 3          62100 PUTRAJAYA          MALAYSIA</p>	PERBICARAAN
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YAA Ketua-Ketua Hakim Syarie, Mahkamah-Mahkamah Syariah Negeri-Negeri		
<p align="center"><b>ARAHAN AMALAN NO. 4 TAHUN 2020</b>  <b>PENGEMUKAAN BUKTI FORENSIK DALAM PROSIDING DI MAHKAMAH SYARIAH</b></p>		
<p>Saya ingin menarik perhatian YAA kepada keputusan Persidangan Ketua-Ketua Hakim Syarie Seluruh Malaysia Kali Ke-75 Bil. 3 dan Mesyuarat Jawatankuasa Induk Arahan Amalan Mahkamah Syariah Seluruh Malaysia Tahun 2020 pada 14 hingga 15 Safar 1442H bersamaan 3 hingga 4 Oktober 2020 di Johor Bahru, Johor Darul Takzim yang telah bersetuju dan mengesahkan untuk menerima pakai Arahan Amalan berhubung dengan bukti forensik dalam prosiding di Mahkamah Syariah bagi kes mal dan jenayah syariah sebagai salah satu pembuktian yang boleh didengar, dipertimbangkan, dinilai dan boleh diterima di Mahkamah Syariah.</p>		
Arahan Amalan ini berkuat kuasa dengan serta-merta.		
<p align="center">   <b>DATO' SETIA DR. HAJI MOHD. NA'IM BIN HAJI MOKHTAR</b>          Ketua Pengarah/ Ketua Hakim Syarie,          Jabatan Kehakiman Syariah Malaysia.          PUTRAJAYA       </p>		
13		
<p align="center">SYARIAH ASAS KEADILAN</p>		

Figure 4: Practice Direction No. 4 of 2020: Submission of Forensic Evidence in Syariah Court Proceedings (Source: Official Website of the Department of Syariah Judiciary Malaysia)

The research indicates that while electronic documents are increasingly significant in Shariah court proceedings, challenges persist in ensuring their authenticity and integrity. Excessive reliance on judicial discretion and the absence of standard procedures may result in inconsistent treatment of electronic evidence. Given the rapid pace of technological advancement, Shariah courts must adopt proactive measures to enhance the judiciary's credibility in managing electronic documents effectively, including developing a comprehensive legal framework. By addressing these issues and strengthening institutional frameworks, Shariah courts can safeguard the authenticity of electronic evidence while upholding the core principles of Shariah law. The following section will explore the key issues and challenges surrounding the admissibility and authentication of electronic documents in Malaysian Shariah courts.

### **Recommendations for Strengthening the Legal Framework and Practice in Malaysian Shariah Courts**

Based on the preceding discussion, it is evident that while electronic documents have been accepted as evidence in Shariah courts, procedural and legal limitations persist. Therefore, the researchers propose several recommendations for strengthening the legal framework and practice in Malaysian Shariah courts, especially in criminal cases. Figure 5 summarises these key proposals:

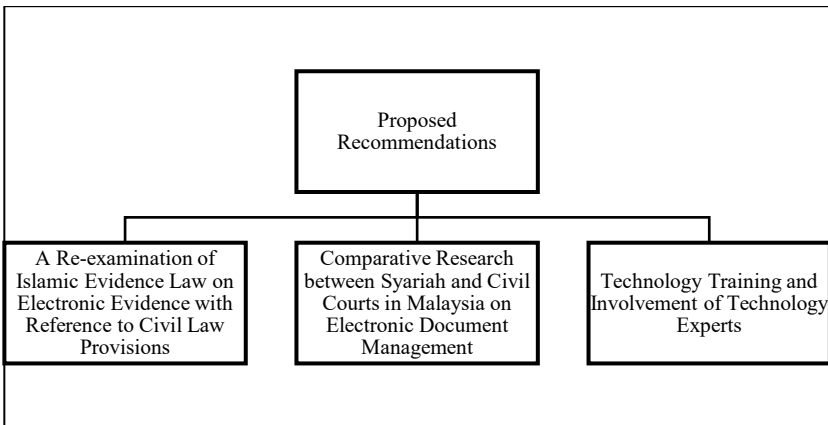


Figure 5. Proposed Enhancements for Strengthening the Legal Framework and Practice Regarding the Acceptance of Electronic Documents in Malaysian Syariah Courts

### *A Re-examination of Islamic Evidence Law on Electronic Evidence with Reference to Civil Law Provisions*

The admissibility of electronic evidence in Malaysian Shariah courts remains a developing area that requires alignment with contemporary legal standards. To uphold the integrity of electronic documents, it is recommended that the relevant Shariah authorities review the provisions under the Syariah Court Evidence (Federal Territories) Act 1997 (Act 561) in relation to the admissibility of electronic documentary evidence, with appropriate reference to the Evidence Act 1950 (Act 56).

In Malaysia, the law of evidence is generally bifurcated into two systems: Islamic evidence law (applicable to Muslims within each state jurisdiction) and the Evidence Act 1950 (Act 56), which governs evidentiary rules in civil courts.<sup>38</sup> Ani Munirah Mohamad identifies specific provisions in the civil legal system that directly address electronic evidence, particularly Sections 90A, 90B, 90C, and 45 of the Evidence Act 1950 (Act 56).<sup>39</sup> These provisions could be a foundational reference to strengthen the existing Shariah legal framework—provided they remain consistent with the Shariah principles.

Several informants supported this recommendation, highlighting the need for legal integration:

“...I believe it is necessary to review civil court provisions and incorporate them into Syariah courts”. (Informant 4, interview, 2024)

“...Suppose we have specific guidelines. For instance, civil courts have Sections 90A, 90B, and 90C of the Evidence Act. In Perak, Sections 73, 74, and 75 apply specifically to Shariah court evidence regarding computer-generated documents. However, for most Shariah courts, we only have basic provisions without comprehensive guidelines...”. (Informant 3, interview, 2023)

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<sup>38</sup>Mohammed Burhan Arbouna, *Islamic Law of Evidence: The Function of Official Documents in Evidence (A Comparative Study with Common Law)* (Kuala Lumpur: Syarikat Nurulhas, 1999).

<sup>39</sup>Ani Munirah Mohamad, “Admissibility and Authenticity of Electronic Evidence in the Courts of Malaysia and United Kingdom,” *International Journal of Law, Government and Communication* 4, no. 15 (2019): 121–129, <https://doi.org/10.35631/ijlgc.4150013>.

Translation: “From what I observe, the Shariah courts are overly simplistic. In the civil courts, we have Sections 90A, 90B, 90C...”. (Informant 8, interview, 2025)

Based on the above, the researchers recommend that the following sections from the Evidence Act 1950 (Act 56) be adapted to the Shariah context:

- 1) Section 90A: Admits computer-generated documents if produced during normal computer operations, requiring certification by personnel responsible. Syariah courts could adopt a similar certification process to verify document reliability.
- 2) Section 90B: Enables the court to assess electronic documents’ probative value based on their creation method, purpose, and timing, ensuring document authenticity consistent with Islamic justice principles.
- 3) Section 90C: Reinforces Sections 90A and 90B, establishing that admissibility under Section 90A prevails over conflicting provisions, thus ensuring legal clarity in Syariah courts.
- 4) Section 45: Allows expert opinions on technical issues, including digital forensics. Expert testimony would enhance document authenticity verification and integrity compliance within Syariah’s legal proceedings.

Adapting Sections 90A, 90B, 90C, and 45 of the Evidence Act 1950 (Act 56) would provide a structured and practical framework for effectively managing electronic evidence in Shariah courts. By integrating these provisions within Shariah legal contexts, courts can confidently address challenges posed by electronic evidence, ensuring justice administration remains aligned with Islamic principles and contemporary technological standards.

### ***Comparative Research between Shariah and Civil Courts in Malaysia on Electronic Document Management***

Comparative research between Malaysian Shariah and civil courts on electronic document management represents a crucial strategy for strengthening the Shariah legal system in the digital age. This approach allows Shariah courts to benefit from the extensive experience of civil courts in systematically managing the admissibility of electronic

documents. This assertion is supported by Wan Abdul Fattah Wan Ismail, who highlighted that Shariah courts in Malaysia remain relatively less exposed to electronic documents as evidence compared to civil courts, which have recognised electronic documentation since the 1950s.<sup>40</sup> The study further recommends that Shariah courts examine and adapt the principles and practices applied in civil courts to enhance the administration and admissibility of digital documents as evidence consistent with the principles of Islamic justice.

Several landmark cases support this comparative perspective. For instance, in *Gnanasegaran A/L Pararajasingam v. Public Prosecutor* (1997) 3 MLJ 1, the court admitted printed bank transaction records despite the absence of formal certification, as long as the production process was proven reliable. The key evidence comprised computer-generated bank printouts, and the court held the documents admissible under Section 90A of the Evidence Act 1950 (Act 56), stating:

“Section 90A of the Evidence Act 1950 makes computerised records admissible if: (i) the documents were produced by a computer; and (ii) the records were produced during the computer’s ordinary operation”.

Shariah courts are encouraged to adopt similar principles by allowing electronic documents to be substantiated through credible oral testimony, even in the absence of formal certification. Another pertinent case is *Mohd Ali Jaafar v. Public Prosecutor* (1998) 4 CLJ 208, where the accused was convicted of corruption based on a tape recording presented as evidence. In this case, the Malaysian Anti-Corruption Commission (MACC) submitted a tape of the accused’s conversation, which played a key role in securing the conviction.

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<sup>40</sup>Wan Abdul Fattah Wan Ismail, Lukman Abdul Mutalib, Zulfaqar Mamat, Hasnizam Hashim, Ahmad Syukran Baharuddin, Baidar Mohammed Mohammed Hasan, and Mohamad Aniq Aiman Alias, “Analisis terhadap Konsep Penerimaan dan Pengesahan E-Kitabah sebagai Kaedah Pembuktian Menurut Perundangan Islam di Malaysia: Analysis of the Concept of Acceptance and Verification of E-Kitabah as a Method of Proof According to Islamic Legislation in Malaysia,” *LexForensica: Journal of Forensic Justice and Socio-Legal Research* 1, no. 1 (2024): 1–12, <https://doi.org/10.33102/3rh8f970>.

According to Ahmad Fekry Moussa, such recordings must be properly authenticated prior to admission.<sup>41</sup> The procedure involves:

- 1) Thorough inspection to ensure the tape has not been altered;
- 2) Verification that the recording equipment was functional and reliable;
- 3) Identify the voices and parties involved and create a duplicate for court submission.

As S. Augustine Paul noted, this case illustrates that tape recordings are admissible if the authentication procedures are properly observed, thus minimising doubts regarding their integrity.<sup>42</sup> This approach may guide Shariah courts in admitting audio recordings as part of electronic documentary evidence.

Similarly, in *Koong Swee Kwan v. Public Prosecutor* (2020) MLJU 648 and *Ahmad Najib bin Aris v. Public Prosecutor* (2009) 2 MLJ 613, CCTV footage was accepted as evidence since its authenticity was not challenged. Civil courts place great emphasis on document authenticity as a central element in determining admissibility. A similar approach should be adopted in Shariah courts for audio and visual materials, provided no doubts are raised regarding their authenticity.

In *Public Prosecutor v. Nor Aini bt Ali* (2024) MLJU 93, WhatsApp messages and bank transaction slips were admitted into evidence after expert forensic verification. This highlights the importance of involving digital forensic experts in the validation process, a practice that should also be emulated in Shariah court proceedings.

From a legal perspective, Malaysian civil courts primarily rely on the Evidence Act 1950 (Act 56), the Criminal Procedure Code, and the Rules of Court 2012 when managing electronic documents. The Evidence Act 1950 (Act 56), particularly Sections 90A, 90B, and 90C, provides the foundational legal framework for the admissibility of

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<sup>41</sup>Ahmad Fekry Moussa, "Electronic Evidence and Its Authenticity in Forensic Evidence," *Egyptian Journal of Forensic Sciences* 11 (2021): Article 20, <https://doi.org/10.1186/s41935-021-00234-6>.

<sup>42</sup>S. Augustine Paul, *Evidence: Practice and Procedure*, 4th ed. (Petaling Jaya, Selangor: LexisNexis Malaysia, 2010).

computer-generated documents in court proceedings.<sup>43</sup> These provisions outline the conditions under which electronic records are considered admissible, emphasising the importance of authenticity and reliability. The Criminal Procedure Code complements this by detailing procedural aspects related to the handling and presenting evidence in criminal trials. Additionally, the Rules of Court 2012 incorporate provisions that facilitate electronic evidence management, such as guidelines for electronic discovery and the use of electronic means in court procedures.

In this regard, several core legal principles underpin the civil court's approach to electronic document management, which can be instructively adapted into the Shariah legal context:

- 1) Document Authenticity: Under Section 90A of the Evidence Act 1950 (Act 56), computer-generated documents are admissible if their authenticity is verified. This is crucial for ensuring that the document has not been tampered with, consistent with Islamic principles of justice.
- 2) Evidence Free from Doubt: Electronic documents must undergo stringent authentication to eliminate doubts about their credibility. For example, in *Hanafi Mat Hassan v. Public Prosecutor* (2006) 4 MLJ 134, a disputed bus ticket was admitted after convincing testimony by the ticketing officer. Shariah courts may consider similar testimony when validating digital evidence.
- 3) Document Preservation Ensuring Integrity: Premanand Narasimhan and N. Kala point out that electronic documents must be securely stored with proper audit trails to preserve their integrity.<sup>44</sup> Maintaining a clear and documented chain of custody

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<sup>43</sup>Gita Radhakrishna, Myint Zan, and Dennis Wye Keen Khong, "Computer Evidence in Malaysia: Where Are We?" SSRN, January 30, 2013, <https://doi.org/10.2139/ssrn.2208973>.

<sup>44</sup>Premanand Narasimhan, and N. Kala, "Ensuring the Integrity of Digital Evidence: The Role of the Chain of Custody in Digital Forensics," *International Journal of Scientific Research in Computer Science, Engineering and Information Technology* 10, no. 6 (2024): 2438–2450, <https://doi.org/10.32628/CSEIT2410612443>.

is essential to ensure the credibility and admissibility of digital evidence in court proceedings.

In sum, comparative research between Shariah and civil courts is vital for identifying the best practices in electronic document management. Case studies show that civil courts have adopted mechanisms emphasising document authenticity, expert validation, and secure storage. When carefully adapted to the Shariah context, these principles can significantly strengthen the administration of justice without compromising Islamic legal values.

This approach also broadens the understanding of electronic evidence's technical and legal nuances. By leveraging civil court experience and tailoring it to Shariah requirements, courts can ensure that electronic documents are managed with the highest standards of integrity and professionalism.

Ultimately, this comparative research offers a strategic path for Shariah courts to manage electronic documents more effectively. By adapting structured civil court practices to the Shariah framework, courts can enhance the admissibility of electronic evidence, uphold judicial integrity, and maintain their relevance in navigating the challenges of the digital age.

### ***Technology Training and Involvement of Technology Experts***

Building upon the earlier discussions on evidentiary challenges and expert validation, it is crucial to address the institutional capacity of Shariah courts through technological training and expertise. In line with the necessity for empowerment, it is essential to establish comprehensive technology training programmes for Shariah judges, lawyers, and court officers. These training initiatives should equip legal practitioners with fundamental knowledge of digital technology and forensic practices, enabling them to critically assess and effectively manage electronic evidence in judicial proceedings. With these enhanced skills, Shariah legal professionals will be better positioned to detect and prevent digital document forgery, tampering, or manipulation.

Additionally, the involvement of technology experts must be strengthened. These experts play a pivotal role in verifying electronic documents' authenticity and ensuring the integrity, accuracy, and

reliability of evidence submitted in court. Establishing an independent expert body specifically tasked with auditing electronic documents is highly recommended to further enhance the credibility of legal processes. This structured approach to technological capacity-building and expert verification will significantly improve the Shariah courts' ability to manage electronic evidence professionally and in accordance with both legal standards and Shariah justice principles.

Effectively managing electronic documents as evidence in Shariah courts necessitates substantial reforms in legal frameworks, procedural guidelines, and institutional capacities. Adapting selected provisions from the Evidence Act 1950 (Act 56)—particularly Sections 90A to 90C and Section 45—could serve as a robust foundation for a Shariah legal framework responsive to digital evidentiary needs while remaining anchored in Islamic legal principles. Comparative research between Shariah and civil courts further supports adopting the best civil practices concerning document authenticity, expert testimony, and secure evidence handling.

Moreover, institutional strengthening through systematic technology training and the active involvement of digital forensic experts is indispensable. These measures will not only enhance the efficiency and credibility of the Shariah courts in handling electronic evidence. However, they will also help foster greater public confidence in the Shariah justice system in the face of complex digital-era challenges.

## CONCLUSION

In conclusion, the effective management and admissibility of electronic documents, as evidenced in Shariah courts, necessitate comprehensive reforms to meet contemporary digital demands while upholding Islamic justice principles. Analysis of the existing legal framework indicates that although provisions for accepting electronic documents exist, the lack of specific guidelines, robust authentication mechanisms, and technical expertise has resulted in significant challenges, especially in criminal cases within the Shariah courts. This study recommends the strategic adaptation of provisions from the Evidence Act 1950 (Act 56), comparative analysis with civil court practices, and systematic technology training alongside greater

involvement of digital forensic experts. These measures are essential to strengthen electronic evidence management's authenticity, reliability, and efficiency in the Shariah proceedings. Implementing these reforms will ultimately enhance judicial integrity and credibility, ensuring that the Shariah justice system remains effective and responsive to the complex evidentiary demands of the digital age.

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