

CHAPTER 6

CONCLUSION

6.1 Introduction

This chapter will discuss the study, implications and recommendations for future research. The researcher will summarise the study's findings and discussion from the preceding chapters for a study summary. Finally, the researcher will recommend suggestions for additional research in order to accomplish this study in the future.

6.2 Summary of the Research

6.2.1 Finding for Research Objective 1

The first chapter of this study looked at the concept of a digital document from both Syariah and civil law perspectives. Furthermore, the researcher demonstrated how far digital papers are accepted in Malaysia under both the civil and Islamic laws. At the end of this section, the researcher enlarged on the concept of accepting digital documents in Syariah and civil documents in Syariah and civil which normally occurs courts, which normally occurs in a court proceeding.

6.2.2 Finding for Research Objective 2

The second chapter explored the fundamental laws of both the Syariah and civil laws that govern the acceptance of digital documents as evidence in court. The legal practitioner, on the other hand, should apply the rules of civil law to the Syariah court. Although there have been several cases in which a digital document was used in a Syariah court, most were in limited cases. This is the difference between the existing requirements under the Syariah and civil laws regarding the use of a digital document as evidence.

6.2.3 Finding for Research Objective 3

The third chapter briefly discussed how the Malaysian Syariah and civil courts dealt with the issue of digital documents as evidence by reviewing instances from both courts. The researcher looked at a number of cases involving digital documents in both the Syariah and civil courts to obtain a general conclusion on how both courts handled this issue. Furthermore, the researcher compared how the Malaysian Syariah and civil courts dealt with the issue of digital documents as evidence.

6.2.4 Finding for Research Objective 4

Lastly, the fourth chapter analysed the cases related to admittance of digital document as evidence in the Syariah and civil courts. The researcher briefly analysed how the civil and Syariah courts dealt with the issue on admittance of digital document as evidence in both courts.

6.3 Discussions

6.3.1 The Acceptance of the Digital Document as Evidence in Civil and Syariah Court

The reliability, applicability and authenticity of digital documents as evidence are all issues that should be addressed. As a result of this study, the admissibility of digital documents required authorisation from legal experts and judges in the courts to assist lawyers dealing with this form of evidence during court procedures.

Before this, the admissibility of digital evidence was restricted to matrimonial issues and certain criminal offences only, with regard to Syariah evidence in the Malaysian Syariah court that have limited powers and jurisdictions to hear and try the cases discussions. However, it was suggested that the Syariah Court Evidence Act (Federal Territories) 1997 should take on and add certain provisions to the Evidence Act 1950 to avoid any future arguments to prove on digital evidence.

It could be seen in the case of *Ajmawati binti Atan v Moriazi bin Mohamad* [2005] 1 CLJ (SYA) 415, whereby the admissibility of digital description was disputed in the instance of Ajmawati's divorce claim, resulting in the case being reheard with the submission of supporting witnesses. The evidence could also be used in court if it is

backed up by an expert's backed up by expert testimony that verified the authenticity of the document.

6.3.2 The Implementation Rules of the Admissibility of the Digital Document in Syariah Court from Civil Court Process

The difficulty of using a digital document as evidence arises from concerns about its reliability, relevance and authenticity. Another debate is whether the digital document is acceptable in Islam as well as how it functions. Due to the weight or reliability of the evidence produced during trials, the admissibility of digital evidence as evidence in a court of law could be challenged. Through admissibility and reliability, this essential element determined the admissibility of digital document as evidence (Augustine, 2010).

Due to the limited powers and jurisdictions of the Malaysian Syariah courts to hear and try cases, arguments about the admissibility of digital evidence are limited to matrimonial disputes and some criminal offences. Nonetheless, the current Syariah Court Evidence Act (Federal Territories) 1997 shall be re-evaluated. It is recommended that the Syariah Court Evidence Act (Federal Territories) 1997 adopt some provisions from the Evidence Act 1950, particularly from Section 90A and Section 90B to avoid future difficulties in proving computer-generated documents, or digital document as evidence. The legal proceeding may improve in future because of the expanding need

for the admissibility of digital document as evidence, enabling the evaluation and interpretation of computer data.

In this research, by referring to Syariah law, the Syariah court recognised the admissibility of digital documents as a method of proof. According to the findings, the numerous cases reported on the use of digital documents as evidence suggested that this form of evidence is becoming to be accepted in courts. Therefore, this research discussed on the Syariah court whether to implement the rules on admissibility of digital document in the civil court for enhancement of the Malaysian Syariah court on the issue of digital document as evidence.

6.3.3 Cases on the Admissibility of the Digital Document as Evidence in Civil and Syariah Court

This section, the researcher analysed the cases related to digital evidence in the civil court. However, the findings revealed that there were many occurrences of acceptance of digital document cases in civil courts. In contrast to Syariah courts, the researcher found that the court only covered limited cases. The procedure of providing facts and filing a civil complaint is based on the court's rule, Practice Direction and relevant statutes in civil matters, such as internet defamation, breach of online contract and succession (will and probate).

In the case of *Ahmad Faozi bin Mansor v Norhafizah binti Ahmad*, file case no: (14002-058-0001-2004), proved that document descriptions, such as phone bills and SMS could be considered in a Syariah court as a digital form of evidence. Additionally, in the case of *Shamsudin Latif v Azida Fazlina binti Latif*, file case no: 10007-054-050-2003 (case not reported), whereby text messages were used as evidence to indicate that

a divorce occurred in the Syariah court. The court upheld and condemned the divorced spouse after the husband sent an SMS text seeking a divorce.

In conclusion, under civil law, it clearly stated that digital document as evidence was accepted, as provided under the Evidence Act 1950. Based on the analysis of various cases covered above, a better understanding could be ascertained on how the Malaysian civil court approaches the issue of digital evidence and the extent to which they manage cases including it. Therefore, the researcher showed that it was appropriate for the civil court to handle the rules regarding the acceptance of digital document in the civil court, which will indirectly serve as a guideline for the Syariah Law practitioners when dealing such cases.

6.4 Implication of the Study

Each research has its own values. Therefore, this study is expected to provide a positive implication towards the Malaysian academic literatures, legal authorities and community.

6.4.1 On Academic Literatures

From the perspectives of Syariah and civil laws, this research provided insight into the concept of digital document as evidence in court. The legal provisions for the digital document and cases in both the Syariah and civil courts were also examined in this study. Based on the research, the result might be an impact on a wide range of

fields, including elementary and secondary education, universities, scholars and researchers, with a particular focus on the ultimate benefit, demonstrating the value and growth of the fundamental of digital document as evidence in court.

6.4.2 On Legal Authorities

This research had implications for the legal authorities. Generally, the point of this research is the concept of accepting digital document as evidence in the Syariah and civil courts that is beneficial to the legal authorities. The analysis of the cases and comparison between the Syariah and civil laws and provisions also pointed to the law practitioners. As a result of the research, the Syariah law, regarding the acceptance of digital document as evidence will implement the civil law to ensure that digital documents are well governed either in the Syariah or civil court, which should be considered by the legal authorities. This is to ensure that the improved law in accepting digital document as evidence is achieved and to have a thorough understanding in accepting digital document as evidence, while promoting a better approach in the Syariah court.

6.4.3 Malaysian Community

This study briefly provided an insight in accepting digital document as evidence in the Syariah and civil courts towards the Malaysian community in resolving issues related to digital document as evidence. The challenge in accepting digital document as evidence in Syariah court will cause hardship to them. The importance of this research finding will provide an entire perspective on the digital document as evidence to the

Malaysian community. Improvements in the law regarding the issue related to digital document as evidence might specifically benefit the Syariah court.

6.5 Recommendation

The study suggested some recommendations for future consideration. As acknowledged, the big picture with regard to admitting of digital document as evidence had been captured before. This study discussed the general view of digital document acceptance as evidence in both the Syariah and civil courts. Additionally, the study analysed the provisions or rules that were related to this issue. Then, the study also gathered the cases on digital documents as evidence in the Syariah and civil courts.

As a result, the study found that the rules on admittance of digital document in the Syariah court should be implemented from the civil court process. This is for further improvements of the legal provision in the Syariah court pertaining to digital document as evidence to be accomplished. Therefore, there were several suggestions to be considered for the future, as indicated below:

6.5.1 The Need of the Implement the Rules from The Civil Court Process to Syariah Court relating to Admit the Digital Document as Evidence

Although the content of the Syariah principles that relate to such digital documents is unclear, they should be regarded as an essential type of evidence since digital document descriptions can aid the court in understanding the facts and evidence.

Section 90A of the Evidence Act 1950 [Act 56] should be introduced to the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] to improve the

implementation of electronic evidence in Syariah courts. This is due to the fact that Section 90A outlines a comprehensive provision on digital evidence, including financial transactions conducted online. The findings suggested that there was a considerable demand for digital documents to be accepted as evidence, particularly in Syariah courts. As a result, advances in science and technology necessitated this application. According to the studies, using a digital document as evidence assisted in strengthening the other evidence presented in court. However, in the context of the application of Syariah court in the implementation of the rules from civil court process to Syariah court, which is related to admittance of digital document as evidence, needs to be expanded.

6.5.2 The Need of the Procedure in Admitting the Digital Document as Evidence in both of Syariah and Civil Court

In courts, determining the relevance and credibility of electronic evidence is incredibly challenging. Specific security measures need be implemented to maintain the authenticity of digital evidence. Anyone who produces electronic, or computer-generated evidence should either produce a certificate guaranteeing its validity by calling witnesses to offer oral testimony on the evidence, or document presented in court (Duryana & Zulfakar, 2014). In the case of *Zabariah Binti Mat Piah v Syed Abas Bin Syed Ibrahim*, file case no: (06100-041-0422 -2008), the plaintiff claimed that he was injured to the extent of causing severe injury to his physicality. However, in this case, the plaintiff failed to submit a medical report from a medical institution or clinic, or visual document description or photographs to support his claims. Failure to submit the relevant documents, the support involved caused the court to rule that the plaintiff's allegations were unfounded and failed to be proven. The judge, Yang Arif Dato' Haji

Abdul Rahman bin Mohd Yunus, ruled that the claims relating to physical injury should be supported by a medical report or document description in visual form or picture. The writing found that the Syariah court accepted images or visuals that were considered as digital document description as evidence in court. It proved that the requirement on having a specific procedure by implementing the rules from the civil and Syariah courts would help to strengthen the judgement in courts.

In summary, if there is a disagreement or challenge on the authenticity of digital evidence in the future, digital forensics science can be used with references to the Syariah and Civil Procedure Act 1998 and Enactments, as described previously. Meanwhile, Syariah courts may adopt Standard Operating Procedures (SOP) for dealing with digital evidence instances. The enforcement officer unit may establish the digital forensics unit, or the court may approve any SOPs from other digital forensics services or agencies.

6.5.3 The Need of the Syariah Court Collaborated with Experts in the Field of Digital Evidence Challenges

Several related provisions of the Syariah Court Evidence (Federal Territories) Act 1997 or other Syariah Courts Evidence Enactments recognised digital forensics evidence in Syariah courts. The potential problems or barriers of digital forensics evidence are unclear amongst the judges, lawyers and parties involved due to a lack of challenges on digital evidence cases in the Syariah courts. They could resolve difficulties and produce verified digital forensics evidence by using SOP, qualified digital forensics experts and effective digital forensics tools and analysis.

For instance, in the case of *Moriazi bin Muhammad v Ajmawati bint Atan* [2005] 1 CLJ (SYA) 415, the appellate court also failed to recognise the appellate's lack of knowledge of the judges in the concept and application of digital documents. For example, all data was recorded in the system, or named as a digital document during the process of storing, withdrawing and transmitting money, either online or via cheques. It showed that the requirement for an expert is quite important in certain cases, which required confirmation on the authenticity of digital document as evidence.

6.6 Conclusion

In conclusion, firstly, the study discussed the general view of digital document as evidence in the civil and Syariah courts. In the Malaysian Syariah courts, the acceptance of digital document also has certain provision on the rules in admitting digital document as evidence. These suggestions and efforts should be aligned with the requirements of Syariah principles. All efforts of the researchers, law practitioners and legal authorities as well as other parties should further refine the definition and admissibility of digital document as evidence to be made as the basis of the case judgment. This development is significant to provide impact and positive effects on the process of judgement in a Syariah court.

As a result, the Syariah court needs to implement the civil court process due to being less stringent with regard to digital evidence in the Syariah court. This was because improvements from the Syariah law needed to ensure that the Syariah court could accept any kind of cases or issues related to digital evidence with reference to the cases that were discussed earlier. The law enforcement together with other agencies, which are related to digital experts, should assist the Malaysian courts to deal with this

issue. Furthermore, understanding the importance in admitting digital document as evidence in this era of technology is required for the future (Duryana, 2011).

