

CHAPTER 1

INTRODUCTION

1.1 Introduction

Most businesses and individuals use digital devices daily, such as computers in this era of globalisation. Furthermore, it is used in related court cases, which shows that digital documents are valuable and useful to both the defendants, plaintiffs and public prosecutors (Mohamad Ismail, 2013). Various phases are typically implemented in the current systems, which do not meet the expectations of a rapidly evolving digital world. The issue in admitting digital document as evidence may be challenged because of the weight or reliability of the evidence provided during the trial.

The effectiveness and reliability of digital evidence in court should be verified to ensure that digital document is admissible in the Syariah court. As a result, digital documents in both the civil and Syariah courts should be measured to protect them as evidence from being tampered with and manipulated to maintain their authenticity. Therefore, digital forensic approaches and digital evidence management should be standardised to ensure that the digital evidence generated is admissible in legal proceedings. This is to assess the need for a solution to the context of law enforcement institutions in the absence of a specific model. This study looks at the regulations for admitting digital documents as proof in the Malaysian Syariah court as well as the civil court procedure.

1.2 Background of the Study

The background of the study is important to determine suitability of research problems and required methods to conduct a research. This study is based on the following research backgrounds:

1.2.1 Issues on the Concept and Existing Law on Accepting the Digital Document as Evidence under Civil and Syariah Court

In Malaysia, it is undeniable that most civil court lawyers have more experience dealing with different forms of documentation, including digital documents than those practicing in the Syariah courts (Mursilaili Mustapa, 2020). According to Wan Abdul Fattah et al., (2018), Islam has no restrictions on the form of documents as long as they can be used as proof in transactions to avoid fraud and conflicts after a successful business transaction. The aim of using records as evidence is to avoid all types of disputes and fraud, including those that occur electronically, such as online financial transactions.

Furthermore, with regard to the existing law, Syariah court does not indicate that the practitioners have dismissed digital evidence due to a lack of expertise in cases, whereby digital documents were used as proof to be presented in court (Wan Abdul Fattah et al., 2021a). There is no specific law regarding digital documents in Syariah courts. As a basis, particular laws governing digital evidence were developed, such as the Digital Signature Act 1997 and Electronic Commerce Act 2006, which are separate from the civil courts. Therefore, it may need the Syariah court legal proceeding to deal

with civil court law for further improvements on the law in Syariah court itself (Wan Abdul Fattah et al., 2019).

This study focused on Section 3 of the Evidence Act 1950 [Act 56], which defined the meanings of evidence and documentary evidence. Furthermore, the same Act that refers to documentary evidence includes any evidence that was presented during a trial in the form of documents. Examples of documentary evidence are photographs (*R. v Maqsud Ali* [1965] 2 All ER 464, p. 469; *Schmidt v Schmidt* [1969] QWN 3, p. 5; *R. v Lambert* [1967] Crim. LR 480 and *R. v Howe* [1958] SASR 95, p. 125-126), tape recordings (*Mohd Ali Jaafar v PP* [1998] 4 MLJ 210; *Ghazali Bin Salleh v PP* [1993] 2 AMR 2037; *Z. B. Bukhari v B. R. Mehra* AIR [1975] SC 1788; *Yusufalli v State* AIR [1968] SC 147; *R. v Mills* [1962] 3 All ER 298; and *Gurbachan Singh v PP* [1966] 2 MLJ 125, p. 132), video recording (*R. v Fowden and White* [1982] Crim. LR 588), and facsimile letter (*Tempil Perkakas Sdn Bhd v Foo Sex Hong* [1996] 5 MLJ 542).

According to the Evidence Act 1950 [Act 56], evidence includes: (a) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry, whereby such statements are known as oral evidence; (b) all documents produced for inspection of the court, such documents are known as documentary evidence. 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, soundtrack, or other devices 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 recordings 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 that matter. The Evidence Act 1950 [Act 56] also provided various regulations pertaining to the admissibility of various types of evidence, including various types of documentary evidence, which includes computer-generated documents or digital evidence. Reference can be made to Section 90A, Section 90B and Section 90C of the Evidence Act 1950 [Act 56]. In the civil court, specific legislation was developed for several years to guide the submission of various kinds of evidence, including digital evidence.

Syariah court does not specify the purpose of a digital document; however, Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] provides that a document is defined 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, 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 recordings 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 paragraphs (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.”

Section 33 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] and other Syariah Court Evidence Enactments, regarding the admissibility of document as evidence provides that:

“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, who are specifically 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 expert is sufficient. If two experts give different opinions, a third expert shall be called to give evidence.”

Furthermore, the device is expressly considered primary evidence under Section 49 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561]. Primary evidence is a computer-generated document, according to Section 49 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561], as described below:

“Primary evidence means the document itself produced for the court inspection.

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

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

As aforementioned, all the stated provisions were specific laws on dealing with digital documents in a civil court. However, in Syariah court, the rules in accepting digital documents need to be improved to ensure that the Syariah court can also deal with digital evidence since digital documents are widely used nowadays. However, they were rarely presented cases in the Syariah court, which will be the focus of this research. Therefore, this study will explain the general concept of digital document and the existing law that had been used to solve the issue.

1.2.2 Issue on the Cases with Judicial Interpretation on Accepting Digital Document as Evidence

Computer evidence, output and computer printouts are all accepted and used by Malaysian courts to determine whether electronic evidence is admissible. This position is supported by various sections of the Evidence Act 1950 [Act 56], including Section 3, which explains the forms of documents that can be accepted as evidence in court, Section 45 defines situations in which expert's opinion evidence is admissible and Section 62 explains primary evidence. Furthermore, Section 63 explains secondary evidence and Section 90A explains condition of the forms of documents that can be accepted as evidence in court, Section 90B explains the purpose and manner of issuing a document to be used as evidence in court and Section 90C clarifies that all documents submitted in court are in full force and nothing can refute them as evidence in court.

In Islamic law, utilising a digital document as proof is permissible. The purpose behind admitting digital evidence as a proof is to back up or disprove claims. Digital documents are recognised as evidence under Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561], which explains the forms of documents as al-

bayyinah and document descriptions that can be accepted as evidence in court. Moreover, Section 33 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] explains the expert's testimony in convicting a document that requires a digital expert (ra'yu al-khabir) to verify the trustworthiness of the document issued before being accepted as evidence. Section 49 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] explains the primary evidence in accepting documents as evidence.

The admissibility of evidence is a legal question that is decided by the courts. The evidence presented in court should be relevant to the case at consideration. This has been stated clearly under Section 5 of the Evidence Act 1950 [Act 56]. Even if the evidence was obtained illegally, it is still admissible to the court of law as long as it is relevant to the case (*R. v Leatham* (1861) 8 Cox CC 498, p. 50; *Kuruma v The Queen* [1955] AC 197; *R. v Sang* [1980] AC 402, p. 437; *Public Prosecutor v Gan Ah Bee* [1975] 2 MLJ 106 (HC) 108).

The issue arises while there have been cases of document forgery. Even if a document is forged, it can still be accepted as evidence in court if it is verified that it is valid under Islamic law. This procedure is necessary to avoid cases of document forgery. Before a document can be accepted as evidence, firstly, it should be proven valid according to Islamic law. Therefore, the requirement in having a relevant rule is necessary to verify and ensure that the digital documents are qualified as evidence in court. This study will assist legal practitioners by studying cases related to accepting digital document in civil and Syariah court.

1.3 Problem Statement

In the 21st century, data information may be obtained and distributed to others directly, indirectly, or electronically. Digital document is not only on paper and ink, but also on discs, memory cards in computers, smartphones and other electronic devices. The use of digital documents has now become so prevalent that law enforcement should fix it (Mursilaili Mustapa, 2020). Firstly, issues on the concept and existing law of a digital document should be explained thoroughly. In contrast to the Syariah court, the principle of accepting digital evidence in Malaysian civil courts is already well-known. Therefore, this issue deviates from the Syariah court, whereby the definition of a digital document in Islamic law is relatively unclear in terms of its role as a form of proof. This is important in the discussion to generally comprehend the issues pertaining to digital evidence.

Apart from the issue in admissibility, the authenticity of digital documents also influences the courts decisions and judgements. In most cases, the issue is about the authenticity of digital documents as evidence of computer output. As acknowledged, the admissibility of a digital document is determined by the requirements that should be met by the court to ensure that the digital document is relevant as evidence, particularly in Syariah courts. This is in view of the fact that there are already specific laws associated on civil courts.

In the Malaysian courts, the issue of acceptance of a digital document as evidence recently increases. Therefore, there are several digital techniques in various areas, which are audio enhancement, photograph enhancement, forensic video analysis and digital enhancement of latent fingerprints that have been presented in the courts. Most

of the time, digital evidence is accepted because it provides specific information that can only be obtained through it. Therefore, this study will indirectly be referred to legal practitioners through a literature review approach to overcome the problems on the usage of digital documents.

Furthermore, in Malaysia, there are various cases on the admissibility of digital documents as means of proof in court. Therefore, with the advancement of technology, individuals have begun to use digital documents to store information and data electronically for specific purposes and further accessibility. According to the case of *PP v Chan Kam Yoe* [2020] 1 LNS 1733, the prosecution did not produce evidence to show any footage of the high-value cage where the shipment box containing the impugned dangerous drugs was kept despite the presence of a closed-circuit television (CCTV) camera in that area. Moreover, the static snapshot images of the CCTV recording confirmed the accused of the prosecution.

Therefore, as observed, it was demonstrated that there is a need to understand the general discussion and related provisions of digital documents as evidence. Furthermore, it is to study the comparison between the rules of acceptance of digital documents as evidence in the Malaysian Syariah courts with a comparative appraisal of the civil court process and to analyse relevant cases. This study applied a qualitative analysis, using a literature review approach to collect data from classical and contemporary legal texts to achieve this goal. Therefore, this study aims to shed more light on how digital document is used in Syariah courts by referring to a broader and clearer civil court process.

1.4 Research Questions

The main research questions are as follows:

1. What is the concept of the acceptance of digital document in civil and Syariah courts?
2. What is the existing law on the usage of digital document under civil and Syariah courts?
3. What are the rules in admitting digital document as evidence in Syariah court compared to civil court process in Malaysia?
4. What are the cases related to accepting digital document in civil and Syariah courts?

1.5 Research Objectives

This research attempts to achieve several objectives to ensure that the findings are precise. The research objectives are as follows:

1. To study the concept of the acceptance of digital document in civil and Syariah courts.
2. To analyse the existing law on the usage of digital document under civil and Syariah courts.
3. To analyse the rules in admitting digital document as evidence in Syariah court compared to civil court process in Malaysia.
4. To study the cases related to accepting digital document in civil and Syariah courts.

1.6 Methodology

1.6.1 Research Design

A fundamental element of any research project is the research design, which includes qualitative studies. Lisa Webley (2010) also stated that when conducting such research, it may be necessary to be more adaptable in the timing of conducting the research due to changing circumstances and considerations in the problems. Inaam Akhtar (2016) added that research design is a glue that sticks to a matter that relates to the research project as formation of the research, and it also defined the research proposal as a plan. Additionally, in another book by Inaam Akhtar (2014), it was mentioned that research design carries preliminary planning of the procedure to take on matter for collecting the most appropriate and relevant data by using the right techniques to be used in the analysis, analyse the research objective, audibility of staff, time and money. Therefore, the research main point is to achieve the study objectives, will be described in the following subtopics.

1.6.1.1 Qualitative Method

Qualitative method covers understanding of human being experiences in a humanistic and interpretive approach (Jackson et al., 2007). Furthermore, Lisa Webley (2010) mentioned that the quality of research served to accept this context, which was closely connected to natural sciences and judgements. Consequently, this study used a qualitative research approach to answer its objectives and the responses of the research questions.

This study is predicated on the assumption that it is appropriate to examine civil court practises to determine how common law current rules may be applied to enhance further the evidence process in the Syariah courts. According to Patrick Van Esch and Linda Van Esch (2013), qualitative research can provide powerful perceptions from real-life actions and preserve the intended meaning, forming an understanding of underlying social processes and meaning in a business/management environment. It can also provide captivating examples of important issues that enrich the business management field. Therefore, the researcher believed that qualitative method is the most suitable approach for this study.

Typically, this study used a qualitative research design by reviewing a variety of data obtained, including classical and modern law books, and scholarly opinions, including books, journal articles, reports, standards, internet publications and government documents.

1.6.2 Data Collection Method and Sources

The data collection method was used in this study. Data collection is a systematic process of collecting and evaluating specific information to provide answers to important questions and assess the outcomes. It focuses on learning everything there is to know about a specific subject. Data is gathered subject to hypothesis testing, which is used to understand a phenomenon. Data collection methods can be divided into two categories, i.e., primary and secondary data collection methods.

1.6.2.1 Library Research Method

Part of the study process required identifying and searching for relevant information, evaluating the findings, and then creating and sharing the data and ideas. These are the same skills that are required when writing a report or planning for a job.

Primary sources are original sources. These sources reflect original thoughts, report on observations, or analyse new data. The Al-Quran, Hadith, Islamic legal maxims, statutory materials from the Evidence Act 1950 [Act 56] and Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] and reported cases are typically the first formal appearances of basic discovery. Secondary sources refer to findings from other researchers. They identify, review and assess primary source material. Secondary sources provide more available knowledge by reissuing it, including classical and modern legal books, scholarly opinions, journal articles, reports, internet publications and government documents.

1.6.3 Data Analysis

The process of systematically applying statistical and/or logical methods to explain and demonstrate, compress and recap, and analyse data is known as data analysis. Although research techniques can be used in qualitative research, data analysis is mostly an ongoing effective approach, whereby data is collected and analysed almost simultaneously. Thus, this study will use qualitative content analysis to analyse data.

1.6.3.1 Qualitative Content Analysis (QCA)

Content analysis is commonly used in research qualitative methods. The author brightened this topic with definitions, topics appropriate for content analysis, sampling choices, unit of analysis, categories formulation, coding, intercoder reliability, and drawing inferences as the required criteria in certain research papers.

This study used inductive approach, whereby raw textual data were compressed into a brief summary format that established clear links between the evaluation or research objectives and the summary findings derived from the raw data. Furthermore, it developed a framework for the underlying structure of experiences or processes that were evident in the raw data (Thomas, 2006). Additionally, this study used content analysis. Some scholars who used content analysis as their research methods were Horvath and Meesig (1998) and in the field of Islamic studies were Ahmad Syukran Baharuddin (2017) and Syahirah Abdul Shukor (2021). Therefore, it showed that this method was widely used amongst scholars.

Basically, the purpose of a research methodology is to review the texts, surveys, experiments and other related studies. It also included a variety of techniques and tools used in conducting research (Goundar, 2012). The findings should complement the research objectives by choosing an accurate method (Neuman, 2006). This study used the content analysis methodology, known as highly flexible research on library and information studies to achieve the goals and objectives (White & Marsh, 2006).

Moreover, this study used the content analysis method for a variety of data obtained, including classical and modern legal books, scholarly opinions including books, journal articles, reports, standards, internet publications and government documents.

1.7 Literature Review

It should must follow the digital document legal proceeding to ensure the originality of digital documents as evidence. Basically, the main procedures of digital evidence are collection, preservation, analysis and presentation. This study will only be initiated if the following conditions are met that focused on the aspects relating to applications of digital document in court:

1.7.1 The General Concept of Digital Document as Evidence

There were several studies conducted with regard to this. However, comprehensive discussions still need to be made available on the acceptance rules of digital documents as evidence in the Malaysian Syariah courts as well as comparison on the process of digital documents acceptance as proof in the civil courts. Nevertheless, earlier scholars only described the general perception of the admissibility of digital documents as evidence in court. Digital document as evidence or digital evidence is also known as ‘electronic evidence’, ‘computer evidence’, ‘computer-related evidence’ and ‘computer-generated evidence’. These terms were used in various research, as

preferred by the authors. The goals remain the same, i.e., to observe the digital document as evidence using electronic means.

Boasiako and Venter (2017) stated that digital evidence will be more significant in legal proceedings with the development of information and communication technology. It was also explained by Radhakrishna (2012) that computer produce evidence from several sources were produced as digital evidence in legal proceedings. Digital documents are now facing a similar phenomenon. Moreover, information technology (IT) has been ingrained in our daily lives. This study only reviewed the legal structure for digital evidence admissibility in Malaysia by focusing on the related provisions. Furthermore, this study discussed several cases that illustrated the problems occurred in this field without mentioning the general concept in accepting the digital document as evidence.

Several studies explained the definition of digital document. Digital documents are known as electronic documents, which can be used as evidence in court. Wan Abdul Fattah et al. (2020) mentioned that according to Section 3 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561], digital documents should be recognised as evidence in the classification of documents. The main legislation in Malaysia is the Evidence Act 1950 [Act 56], which governs the proof that documentary evidence should be proven and presented in court as well as its relevance and consequences. Any matter stated, described, or howsoever represented on any substance, material, item, or object, including any matter included on a disc, tape, film, soundtrack, or other devices represents a document under the Evidence Act 1950 [Act 56].

Meanwhile, Mohamed and Ramlee (2014) stated that besides the words ‘electronic’, ‘computer’, and ‘computer output’, there is no clear definition for these words in Malaysian legislation. The term electronic is defined as “the technology of using electrical, optical, magnetic, electromagnetic, biometric, photonic, or other similar technologies”, according to Section 5 of the Electronic Commerce Act 2006. In terms of Syariah perspectives, according to Mohamad Azhan and Ahmad Azam (2021), the concept of digital document according to Syariah principles should be simplified and defined. The definition and acceptability of digital evidence should be agreed upon by the *ulama* and other professionals in the field of evidence and Syariah processes in the nation.

The issue of digital document acceptability refers to evidence that is not specifically mentioned in Syariah law for the description of a digital document; however, it is a description that is crucial in the process of establishing Syariah irregularities and violations. This is because digital documents aid in strengthening the facts and proof. Therefore, this study reviewed the definition on both civil and Syariah perspectives for a better understanding of dealing with digital document as evidence in court.

In an article entitled “*Al-Qarinah: Antara Kekuatan dan Keperluan dalam Mensabitkan Jenayah (Zina)*” by Lukman et al. (2020) stated that Maliki, Hanbali and recent scholars mentioned that methods of proof using documents are allowed. This is because nowadays, it is a necessity and without it, will invite hardship. Furthermore, Ibn Qayyim opined that it is flexible for the acceptance of evidence, which means that any proof on cases will be accepted with any method of proof presented, even though it is not stated in the Syariah court evidence statute. Ibn Taymiyyah also stated that any

explanation and anything that can reveal the truth is known as evidence. However, this statement only stated the general opinion of Islamic scholars in the context of the meaning document in Islamic law. However, for digital document to be accepted, proof of overall views on both perspectives in the civil and Syariah courts did not explain clearly.

As a result of the above study, only a few research has been done on the concept and general views of digital documents acceptance in both the civil and Syariah courts. Contrastingly, previous literature only discussed the broad definition of a digital document, including the standards and criteria for its admission by specific courts.

1.7.2 Rule of the Admissibility of Digital Document in Civil and Syariah Court

Generally, in this technological era, having specialised laws to solve problems, especially those related to technology in human life, has become a necessity. It involves components of IT systems that are typically easy to manipulate, such as computers and cell phones. As a result, verifying digital documents as evidence is becoming a key requirement to protect their authenticity (Kuntze & Rudolph, 2011). The article discussed advanced technology in general, which accepted the relevance of digital evidence in court to recognise means as proof in related cases, but they need to define rules for the admission of digital documents as evidence.

This was supported by Radhakrishna (2012), who mentioned that when electronic data is utilised as evidence, a rule to resolve difficulties with digital documents is

required. The evidence cannot be considered when the court does not recognise the reliability and admissibility of the digital document as means of proof. According to Ani Munirah Mohamad (2019), if the court does not verify the digital evidence, it will be rejected without prejudice. This study, however, did not delve into the rules referring to admitting digital evidence in the Malaysian courts.

Furthermore, an observation-based study by Al-Zuhaili and Al-Wasail Al-Ithbat (1994), stated that the admissibility issue is not really having an argument, the argument is about proving the authenticity of documents produced by either conventional means or by electronic means (Duryana & Zulfakar, 2014). The Muslim jurists are more concerned with the issue of whether it could be forged. The court should undergo certain procedures with the requirement that follows Syariah principles for proving the authenticity of digital evidence. Additionally, the judges have authority to accept or reject evidence in any legal cases (Wan Abdul Fattah & Asutay, 2017). However, both studies only focused on the digital documents rules of acceptance as evidence in general in the context of Islamic views, without mentioning the specific rules between Syariah and civil regarding the issue of digital documents.

According to Pantelis Mountrakis and Michael Ioannou (2019), reliability and relevancy are roles of digital evidence that should be accepted and achieved, even after the deletion or other changes. It is a requirement for this system that can function to produce accurate results for certain documents needed. It is because digital documents in legislation should be accepted as investigative evidence, as required in relevant cases. The confidentiality, reliability and integrity should be maintained to achieve the admissibility of a digital document as evidence (Granja & Rafael, 2017). According to the findings, the requirements for accepting digital documents as evidence were issues

to be addressed. However, they failed to acknowledge the rules that should be followed in achieving such goals, which were authenticity, reliability and credibility of a digital document as evidence in court.

These studies discussed the rules for admitting documentary evidence in Malaysian Syariah court in comparison to civil court process as well as the need to produce a guide in handling digital document cases systematically. The acceptance of digital documents as evidence contributed to the strength of other evidence presented in court hearings. As a result, the rules governing the acceptance of digital documents in civil and Syariah courts should be described in detail. Furthermore, this was supported by Wan Abdul Fattah et al. (2020), who claimed that science and technology improvements led to the roles of digital documents in the courts.

1.7.3 Relation and Cases Regarding the Issue of Digital Evidence on Civil and Syariah Law

Currently in Malaysia, digital document is widely used and actively developing in the civil or Syariah courts as evidence. Any digital document will be assessed using current and up-to-date techniques to ensure the evidence is sufficient, reliable and can be used as evidence in court (Bashah & Rajamanickam, 2017). In the civil and Syariah courts, there are different provisions of law. Syariah court sometimes implements laws from the civil court as a guide and harmonises it according to Islamic rules, as indicated in the Syariah court Evidence Enactment. This process is known as harmonisation and Islamisation of legislation that opens up a new dimension of Syariah law in the country

(Suhaizad et al., 2019). Therefore, this study suggested the acceptance of digital document in court by ensuring the authenticity according to the existing law.

According to Ani Munirah Mohamad (2019), the civil court provisions stated that digital evidence essentially represents a type of evidence that was generated electronically, originated from a computer or machine, which were the Digital Signatures Act 1997, Electronic Commerce Act 2006 and Evidence Act 1950. Conversely, in Syariah court, there is no specific provision on it. However, Mohamed et al. (2019) stated that there are many possibilities in Syariah court cases, which applied digital evidence that led to detailed specific data and information. The qualification should be persistently accurate and strengthened as evidence as well as systematic (Ahmad Syukran et al., 2019). Before a document may be considered as proof, it should be verified for its legitimacy, according to Islamic law. On the other hand, the difficulty of using digital documents as evidence can be seen in the falsification of such documents. Therefore, to ensure that digital documents are accepted as evidence in court, the digital documents rule of acceptance as means of proof in Syariah court and a comparative appraisal with the civil court process is important.

Furthermore, the courts will assess authenticity of the digital documents. This is one of the key elements for any evidence, including electronic evidence to be admissible. During the submission of evidence, this question might be debated and discussed by counsels or prosecutors. The evidence in a criminal case will be dismissed if there is a reasonable question because it requires sufficient evidence. Alternatively, the court has the authority to decide on the admissibility and relevance of any evidence. In the case of *Public Prosecutor v Dato Seri Anwar bin Ibrahim* (no 3) [1999] 2 MLJ

1, 170 (HC) was emphasised. The term 'relevance' refers to what is logically acceptable. Conversely, admissibility refers to what is judged appropriate for use in court (Hamid & Mainoonah, 1993).

Pursuant to Section 33 of the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561], such digital evidence should be accompanied by supporting evidence, such as an expert's evidence. This kind of testimony is used to verify the authenticity of digital documents. *Ajmawati binti Atan v Moriazi bin Mohamad* [2005] 1 CLJ (SYA) 415, whereby Ajmawati sought divorce for misunderstanding the admissibility of digital information. Therefore, the case was re-examined with the submission of supporting witnesses. Once the evidence has been supported by an expert's testimony to verify the authenticity of the document, it can be used in court.

Meanwhile, an experience case in the Syariah court, whereby an application for confirmation of the marriage of *Siti Adira Suhaimi v Adenan Abu*, the Syariah court Registrar, Luthfatul Hana Samsuddin ordered the polygamous marriage confirmation application that was stated abroad. The court wanted to see the original picture as well as other details of the marriage, according to the Syariah lawyer, Irsamuddin Ikhsan, who represented the two plaintiffs. This case mentioned the use of pictures as one of the types of evidence to strengthen the other evidence in the court. The requirement on digital document acceptance should be recognised in both the civil and Syariah courts (Mohamad Azhan et al., 2017).

In civil and Syariah criminal cases, digital document evidence is often submitted and because of that, such evidence is relevant and applicable in accordance with the principles and provisions of Syariah law. If the process in admitting digital document as evidence with clear rules can take place, it gives an indication that there is an

agreement amongst the evidence law experts and Syariah procedures in the country to expand the purpose of digital evidence in Syariah courts. Furthermore, it should include documentary evidence in electronic form as well as certify its admissibility in mal cases and Syariah crimes (Mohamad Azhan & Ahmad Azam, 2021). Therefore, this study is considered relevant for a clear guide to be produced and referenced in the trial through digital evidence in the Syariah courts.

1.8 Significance of the Research

1.8.1 Academician

The study observed a big role of digital evidence in the civil or Syariah courts. The demand for cases related to digital evidence requires specific provisions or rules for admitting digital document as proof. Based on the findings, the benefits could be seen in a variety of areas, including elementary and secondary education, universities, scholars and researchers, with a special focus on the final benefit, proving the worth and expansion of digital documents as evidence in court.

1.8.2 Policy Makers

Therefore, it is significant to accept digital document for court cases as technology becomes wider. Reinforcement of the rules in accepting digital evidence in Syariah court with comparative appraisal in the civil court process will assist the court in

elucidating any accurate and reliable justification and may improve the jurisdiction in Malaysian Syariah court.

1.8.3 People and Community

This study is important for it provided the Malaysian community with a comprehensive view of digital documents as evidence. They will have difficulty accepting digital documents as evidence in Syariah courts. This study provided a brief overview of digital evidence acceptance in Malaysian Syariah and civil courts to assist the public in addressing issues involving digital documents as evidence. Legal reform on the issue of digital documents as evidence may also assist Syariah courts in dealing with cases that related to digital documents as evidence.

1.9 Scope and Limitation

This study focused on the civil law application of the law of evidence to compare with Islamic law and Syariah court. The findings obtained at the end of this research can be used in the Syariah court related to digital evidence. With the existing provisions of the Syariah Court Evidence (Federal Territories) Act 1997, since there is no specific law to address related issues on digital evidence, the Syariah courts cannot deal with

Syariah criminal cases through digital documents to justify related jurisdiction. The Syariah Court Evidence (Federal Territories) Act 1997 should be strengthened as provisions of the civil court for they are more experienced in dealing with digital crime cases through provisions, which is the Evidence Act 1950. Therefore, this study aims to discuss related legal provisions, which are the Syariah Court Evidence (Federal Territories) Act 1997 and Evidence Act 1950.

This study used qualitative content analysis to obtain data until it reached saturation point of this research. Moreover, the study is expected to strengthen the existing Syariah law by making the civil court process as reference in handling criminal cases with digital evidence.

1.10 Conclusion

In conclusion, it showed that it is imperative for judicial institutions to implement certain legislations or procedures that require lawyers to work with IT professionals to resolve obstacles in admitting digital evidence in court. As a result, they should increase their use of digital data to keep up with technological developments and ensure that the procedures they use are constantly updated. Legal methods and procedures are also required to verify the admissibility of digital documents as evidence. Therefore, having procedures to admit digital documents in court, particularly in Syariah courts, by implementing civil court processes becomes a necessity, which will assist the courts in addressing challenges on the use of digital documents as means of proof.