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DIGITAL RECORDS
AND LEGAL ADMISSIBILITY
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**The Admissibility of Digital Documents as
Evidence in Malaysia Syariah Courts**



#IAW2024 #CyberArchives



TOPIC: ELECTRONIC EVIDENCE IN SYARIAH COURT IN MALAYSIA

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TYPES OF EVIDENCE UNDER SYARIAH PRINCIPLE

- SYAHADAH - Eye witness (direct)
- BAYYINAH - Generally an evidence in the form of testimony that does not fulfil the “syahadah” requirement
- QARINAH - Circumstantial evidence

Method of Proving Evidence

- ▶ Oaths (al-yamin)
- ▶ Witness testimony (shahadah)
- ▶ Circumstantial facts (qarinah)
- ▶ Expert views (ra'yu al-khabir)
- ▶ Judge's understanding (ilm al-qadi)
- ▶ Documentary evidence (al-kitabah)
- ▶ Oaths for analyzing and implementing for murder (qasamah)
- ▶ Public desecration (li'an)

Legal Basis for Admissibility of digital documents in Shari'ah

- ▶ There is no direct precedent for electronic evidence in the time of Prophet (peace be upon Him). But the saying of the Prophet “bayyinah (evidence) is on claimant” is broad enough to provide many things including modern means of proofs.
- ▶ Electronic evidence comes under two types of evidence and can be proven through them:
 1. Documentary evidence (al-Kitabah),
 2. Qarinah (Computer evidences and photographs are some strong analogous evidential foundations for electronic evidences).

Application of Islamic Principles of Documentary Evidence on Electronic Evidence in civil and criminal cases

- ▶ application of electronic evidence in case of civil cases and ta'zir crimes is agreed upon by jurists. But the same cannot be applied in case of Hudud (fixed crimes) and qisas (retaliation in kind) (retributive). Unless they are corroborated by other stronger pieces of evidence, such as oral testimony that are stipulated in Qur'an and confession of parties during cross examination

the general principle of accepting the digital document as evidence

- ▶ the general principle of accepting the digital document as evidence based on the concept of al-kitabah, circumstantial proof (al-qarinah), and expert opinion evidence (al-rakyu al-khabir). These are the method of acknowledging digital documents as evidence from an Islamic perspective have been practised in Syariah courts. Apart from that, the authenticity of the digital evidence should be verified before being submitted to the court by following the requirement needed. The enhancement of the legal rules of Syariah court must be provided in way to serve as a guide for Syariah legal practitioners when dealing with this form of method of evidence.

The practice of syariah court before admitting digital documents

- ▶ To produce the original device that collecting the digital data
- ▶ presenting and adducing. During the presentation, the proof will be shown electronically in the courtroom and will be accessible and online
- ▶ An expert maybe called if the authenticity of the device and the method of data collection is being challenged

ELECTRONIC EVIDENCE

Section 3 Syariah Court Evidence (Federal Territories) Act 1997 defines:

- **Definition of “Computer”:** means any device for recording, storing, processing, retrieving or producing any information or other matter, or for performing anyone or more of those functions, by whatever name or description such device is called; and where two or more computers carry out any one or more of those functions in combination or in succession or otherwise howsoever conjointly, they shall be treated as single computer;

Other related electronic documents

- “film”- means and includes a microfilm and any negative;
- “Microfilm” - means any transparent material bearing a visual image in reduced size either singly or as a series and includes a microfiche;
- “Negative” - means a transparent negative photograph on any substance or material, and includes any transparent negative photograph made from the original negative photograph;

➤ **Definition of Document :**

“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) .

Proof of Contents of Documents (section 48)

- ▶ The contents of documents may be proved either by primary or by secondary evidence

Primary evidence (section 49)

- ▶ 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.

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- Explanation 3—A document produced by a computer is primary evidence.
- ILLUSTRATION A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence (section 50)

- ▶ Secondary evidence includes—
 - (a) certified copies given under the provisions hereinafter contained;
 - (b) copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;
 - (c) copies made from or compared with the original;
 - (d) counterparts of documents as against the parties who did not execute them;
 - (e) oral accounts of the contents of a document given by some person who has himself seen or heard it or perceived it by whatever means.

ILLUSTRATIONS

- (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
- (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying machine was made from the original.
- (c) A copy transcribed from a copy but afterwards compared with the original is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

Proof of documents by primary evidence (section 51)

- ▶ Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given

- (1) Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases:
 - (a) when the original is shown or appears to be in the possession or power—
 - ▶ (i) of the person against whom the document is sought to be proved;
 - ▶ (ii) of any person out of reach of or not subject to the process of the Court; or

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- ▶ (iii) of any person legally bound to produce it, and when after the notice mentioned in section 53 such person does not produce it;
- ▶ (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative admitted in writing before a Judge or Commissioner for Oaths who is a Muslim;
- ▶
- ▶ (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot for any other reason not arising from his own default or neglect produce it in reasonable time;

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- ▶ (d) when the original is of such a nature as not to be easily movable;
- ▶ (e) when the original is a public document within the meaning of section 57;
- ▶ (f) when the original is a document of which a certified copy is permitted by this Act or by any other law in force for the time being in Malaysia to be given in evidence
- ▶ g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

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- ▶ (2) (a) In the cases referred to in paragraphs (1)(a), (c) and (d), any secondary evidence of the contents of the document is admissible.
- ▶ (b) In the case referred to in paragraph (1)(b), the written admission before a Judge or Commissioner for Oaths who is a Muslim is admissible.
- ▶ (c) In the case referred to in paragraph (1)(e) or (f), only a certified copy of the document is admissible.
- ▶ (d) In the case referred to in paragraph (1)(g), evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents

Proof of document

- (1) Where the executant of a document denies the writing or the liability created therein, the writing and the execution of such document shall be proved at least by two witnesses to the document.
- (2) Where witnesses to the document cannot be found, the writing and the execution of the document shall be proved by two persons who can identify the writing and signature of the writer and executant of the document.
- (3) Where witnesses to the document or the persons referred to in subsection (2) can identify the writing and signature, the executant of the document shall be bound by any liability created therein.
- (4) Where witnesses to the document or the persons referred to in subsection (2) do not completely identify the writing and signature on the document, the writing and signature on the document shall be authenticated by at least two experts.
- (5) Where the writing and signature on the document has been authenticated by the experts, the executant of the document shall be bound by any liability created therein.
- (6) Where a document cannot be proved in any of the aforesaid manner, the person who denies the writing and execution of the document shall, on the request of the person who alleges that the aforesaid person is the executant of the document, take the oath, and if he refuses to do so, the person who alleges may take the oath and thereafter establish his claim.

Thank You

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the slide, creating a modern, layered effect. The rest of the slide is a plain white background.