
THE ADMISSIBILITY OF DIGITAL DOCUMENT: REVIEW ON CURRENT CLASSIFICATION OF DIGITAL DOCUMENT FROM ISLAMIC PERSPECTIVES

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ABSTRACT

Digital document is now widely used and actively growing. Any digital document should be relevant, authentic and reliable before being presented in court as evidence. Thus, the basis of this study to determine the admissibility of a digital document from Islamic perspectives particularly the theory, opinion from scholars, law provisions, and the classification of the digital document from Islamic perspectives. This study used content analysis methods on a variety of data obtained including classical and modern legal books, scholarly opinions including books, journal articles, reports, standards, internet publications, and government documents. This study suggests whether the Islamic perspectives only highlight the official and unofficial documents and the is it required for having current classification in this new era? It because to ensure that we do not justify the wrong jurisdiction related to the digital document of topic Artificial Intelligence (AI), Virtual Reality (VR), and Augmented Reality (AR) for extensive view related to digital document from Islamic perspectives.

Keywords: *Digital document, Islamic perspectives, classification of digital document*

Introduction

Digital evidence or electronic evidence is now upbrining in information and communication systems and is mostly used by organizations to maintain, recover and pass-over relevant electronic records for jurisprudence in audits, investigations, or lawsuits (Linda, Volonino, 2003). In general, al-kitabah or document evidence is where digital documents come from. The meaning of document from The Essential Law Dictionary is a piece of written, recorded, printed or photographed information or evidence; a physical object or instrument on which information is recorded in letters, numbers, symbols, or images, including maps, letters, photographs, prints, x-rays, contracts, deeds, receipts, accounts, etc. Nowadays, digital evidence is extremely significant and becoming a wide-ranging issue like crimes committed, movement of suspects, and criminal associates for the investigation and prosecution in various types of crimes.

To increase the credibility and validity of digital information that plays a bigger role in any cases and to justify any cases as clear prosecution in court, there must be techniques that assist to improve the strength of the evidence in using digital as evidence like validating software (Sean E. Goodison et al., 2017). It is because currently the issue of the digital document in Islam only focuses on an official and not an official document. So, this paper will discuss digital document classification on Islamic perspectives in this new era. As digital devices become an essential part of people's lives that able to record our lives by gathering our information in detail (Saleem, Popov, Bagilli, 2014).

Digital Evidence under Islamic Evidence Law

According to Surah Al-Baqarah, verse 282 stated that the importance of a document regarding the basis of the rule for the repayment of a loan should be fixed at the time when the loan is transacted. Allah SWT says in the Holy Quran:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

O you who believe! When you deal with each other in contracting a debt for a fixed time, then write it down.

In Surah Al-Baqarah, verse 282, covered under al-kitabah. Al-kitabah or documentary evidence include with digital evidence. It is also covered under al-qarinah or circumstantial evidence and cooperatively with expert opinion that required (Mohamed Khairudin Kallil, Ahmad Che Yaacob, 2019). Since the time of Khulafa' ar-Rasyidin, expert opinion has been widely used and adopted. Based on the story of Saidina Ali, sort out a case where a man had spread egg whites on clothes and between a woman's thighs. That woman had accused the man had raped her. Saidina Umar asked Saidina Ali regarding the issue. Saidina Ali's opinion as an expert had proven the white patches were egg white. According to Imam Hanafi, Maliki, Syafie, and Hanbali agreed on the requirement of expert opinion for the judges to certain cases that need an explanation through expert opinion (Wan Abdul Fattah et al., 2015). However, this issue has been a challenge regarded to the authenticity of the digital document. Major of the scholars accept the digital document as evidence, and other scholars said it cannot be used because the digital document may be forged (Mohamed Khairudin Kallil, Ahmad Che Yaacob, 2019).

Rasulullah SAW also said that:

'Abdullāh ibn 'Umar RA reported that the Messenger of Allah PBUH said: "It is not befitting for a Muslim who has anything concerning which a will should be made, to abide for two nights without having his will with him." Imām Muslim added that ibn 'Umar said: "Not one night passed by me since I heard the Messenger of Allah (may Allah's peace and blessings be upon him) mention this, except that I had a written will with me."

The understanding of the importance of using a document in our life must be practiced. Islam never limits the forms of documents, as long as they can be used as evidence in transactions and can prevent fraud and disputes after business transactions are made. The purpose of the document to prevent

disputes and fraud can also be achieved even by electronically like financial transactions online (Wan Abdul Fattah et al., 2018).

Method on Using Digital Document in Islam

Evidence (al-bayyinah) is something that verifies the lawsuit, the jurists stated that there are 7 kinds of evidence which are Iqrar (confession), Shahada (testimony), Yamin (oath), Hit (rejecting an oath), Qasamah (oath), judge's belief and other evidence that can be used. Ibn Qayyim stated that testimony one of al-bayyinah can be used to support a person's claim and can also be interpreted as anything that can be used to explain what is true before a panel of judges, in the form of statements, witnesses, and various indications that can be used as a reference panel of judges for justice as majority jurist has widely meaning and understanding of al-bayyinah. Based on Islamic law, electronic evidence can be categorized as other evidence that can be used as an explanation in a trial.

It is also a powerful qarinah. (Wahbah Zuhaili, 2004) Anything points that clearly determine a certain meaning, either in the form of words, circumstances, acts or omissions are, called qarinah. Hence, any data that transfer into a disk or hard disk that point and explains itself as digital evidence is regarded as qarinah. Clearly syariah evidential principles uphold the relevancy and admissibility of qarinah as evidence and proof in syariah mal and criminal case. The authority is derived from Quranic verse in Surah Yusuf 12:28, qarinah on the Yusuf and Zulaikha case. Allah SWT says in the Holy Quran,

فَلَمَّا رَأَىٰ قَمِيصَهُ فُدًّا مِنْ دُبُرٍ قَالَ إِنَّهُ مِنْ كَيْدِكُنَّ إِنَّ كَيْدَكُنَّ عَظِيمٌ ۚ

So when he saw his shirt rent from behind, he said: Surely it is a guile of you women; surely your guile is great.

In the second section of Surah Yusuf, it was clear that there were circumstantial signs or qarinah that Zulaikha was the one who was assaulting Yusuf and not the other way round. This was because Yusuf's clothing was torn at the back and not at the front, proving that Yusuf was trying to escape from Zulaikha's assault on him. (Shah Haneef, 2007), Forensic science is one of the digital documents that have been used nowadays, that adopted in Islamic law on the grounds by expert view for the admissibility as textual validity in Surah Yusuf, verse 28.

Another reason is the fiqh method **الكتاب كالخطاب** according to the desires and intentions of the heart. This opinion is more relevant today (Wan Abdul Fattah, Zulfakar Ramlee, 2013).

To strength the digital document as evidence, expert opinion is needed. This is because expert opinion more appropriate because it is more consistent with the scientific arguments that logically acceptable carried by the latest technology than other methods in proofing the authenticity of the digital document. It was also practiced by the civil court. The Islamic scholars agreed expert is the capability in the lawsuit as their opinion are to be taken as evidence in court. According to Al-Zuhailiy, expert opinion can be accepted when it fulfills the condition, which is a Muslim, sane and has reached puberty, upright person, trustworthy and must more than one expert. (Wan Abdul Fattah et al., 2015)

In short, a digital document is a shred of evidence that admissible in Islam. It is because the authentication can be proved by the expert opinion and it is one of the qarinah that powerful during trials. Besides, the digital document also known as **الكتاب كالخطاب** which carries the meaning of 'the letter is considered as an oral expression' as include in Qawaid Fiqhiyyah (Wan Abdul Fattah et al., 2018). Thus, it can be related to a digital document, one document that represents oral expression.

The Challenge of Digital Document

The Muslim jurists are more concerned on the issue as to whether it could be forged Al-Zuhailiy said in his book, Al-Wasail Al-Ithbat, the admissibility issue does not really argue, the argument is about proving the authenticity of documents produced by either conventional means or by electronic means (Duryana Mohamed, Zulfakar Ramlee, 2014). Thus, a classification of the digital document is needed for solving the problem.

According to Maliki, some from Hanbali and the latest scholars said that methods of proof using documents are allowed. It is because a necessity nowadays, because without it, will invite hardship. Moreover, today's technology can distinguish between genuine and fake writing.

In the advancement of technology in the field of information and telecommunications, the originality or fake of a photograph and the result of recording sound or image can be known using certain techniques by experts (Mubarok, 2019). For the accuracy of the evidence through the data of the website, it can be verified through the testimony of witnesses or certificates by the party who created the website or webmaster (Abdul Manap, 2018).

According to Wan Fattah et al. (2019) since the technology wider, the issue of the validity of digital document frequently happen. The method has been practiced to ensure the authenticity of the digital document as evidence in the forms of confession, testimony, expert opinion, and oath, but the opinion of the expert is the most important means in verifying the authenticity and originality of documents.

Classification of Digital Document from Islamic perspectives

In this new era, there is a classification of a digital document that has develop and give a big impact today not only on the media but also effect to jurisdiction. There is Artificial Intelligence (AI), Virtual Reality (VR), and Augmented Reality (AR).

According to Agam Berry (2019), said that "AI is a field of computer science that focuses on the creation of intelligent machines that are similar to humans in terms of learning, reasoning, planning, perception, motion, manipulation, and other processes that humans naturally know how to do". ZeleznikowI (2017), said that in artificial intelligence happened when they made the intelligent system, copy the human expert's decision-making ability. AI also more vast than VR and AR.

The meaning of Visual Reality is "stimulation generally three-dimensional animations that are designed to place the viewer in a simulated environment that reacts in a visually appropriate fashion to the viewer's actions". Through VR, it will show the stimulation and the responding action of a witness (Joseph, 1996).

Then, the meaning of Augmented Reality is "a live view of a real-world environment that is supplemented by computer-generated elements like sensory or olfactory input, video graphics, and GPS data". For instance, when comes to a murder case. They can just simply make a digital 3D model of a corpse at the crime scene which provided that easier to access the crime scene.

Since the technology has improved, AI, VR, and AR can help to verify the admissibility of the digital document either as evidence or supporting document. This can be supported by Adjomi (2020), who said that evidence means everything that can show the truth of an event or action. In placing more emphasis, Duryana (2014) claimed that electronic evidence is sometimes referred to as 'digital evidence', 'computer evidence', 'computer-related evidence', and 'computer-generated evidence'. According to Islamic law that comprehensive and applicable throughout development and technology, the evidence in digital formats are acceptable unless they are reliable and authentic to impose fairly justice. There is no specific definition for this word in the Malaysian statutes except for the word 'electronic', 'computer', and 'computer output'. According to section 5 of the Electronic Commerce Act 2006, the word 'electronic' refers to 'the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology'.

So, the classification of the digital document from Islamic perspectives is admissible. It is because the term 'computer' is allowed as evidence, which is anything that can help to verify the judgment is accepted. As Ibn al-Qayyim (n.d), said that the definition of evidence is wide and comprehensive, anything that the judges can take as evidence for disputing parties refers to anything that explains or explains a right or interests. This definition is broad and comprehensive, the judges will take that evidence which can be covering anything that is explained, explain or prove for justice (Mohamad Azhan Yahya, Ahmad Azam Mohd Shariff, 2017).

Conclusion

In summary, the issue that challenges using the digital document is because of the reliability and authenticity. The method that showed before has been practiced to verify the validity of the digital document, which are digital document was classified as al-bayyinah, al-qarinah, al-kitabah and add on the expert opinion to strength the digital document. Islam also has accepted the digital document as evidence as long the authenticity can be proved. However, determining the jurisdiction of the court to prosecute and charge the case need to classify the digital document through this new era from Islamic perspectives to help the court apply the digital document as evidence in establishing the admissibility of digital or electronic evidence.

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