

THE ADMISSIBILITY OF DIGITAL DOCUMENT AS EVIDENCE UNDER MALAYSIAN CIVIL COURT

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ABSTRACT

The technological revolution has changed the way data is communicated and transmitted. When people have begun to use technology to store information and data securely and then restore data for a particular reason, certain cases of digital evidence occur. Multiple steps are often used in existing processes on the admissibility of the digital document as evidence, which may not serve the needs of the rapid advancements' era. Therefore, to ensure the validity of the digital document, it must be analyzed in a way to prevent the evidence from being tampered with or changed by using specific procedures for the acceptance of digital evidence in civil court. The requirement that digital records can be usable and reliable in court is a key factor in their admissibility as evidence. This paper aims to establish the legal status of digital documents in civil court, as well as relevant legislation and cases that related to digital documents as evidence. The research is based on expert opinion and procedural law, with a focus on provisions relating to the admissibility of digital documents as evidence. According to the findings of the research, it is necessary to explain the admissibility of digital documents in civil court under legal requirements to ensure that the evidence presented in court is accurate and reliable as required by the court.

Keywords: Digital document, digital evidence, evidence, admissibility, civil court

INTRODUCTION

Digital documents are one of the most commonly used types of evidence in Malaysia, and their use is increasingly rising in both the Civil and Syariah courts. Every type of this digital document will be decided advance using the most relevant method to demonstrate that the proof is valid, accurate, and reliable for the admissibility of the digital document in court.

Many other countries' legal frameworks have widely considered electronic and digital

evidence as one of the most important and effective means of proof in court (Ismail, 2013). This can be supported by Wan Ismail (2013), in order to prevent the factor of forgery, it is essential to examine the authenticity of the digital document.

In addition, there are several cases in Malaysia involving the use of digital evidence in court. This is because, with the ever-evolving technology, many people have used digital documents to store their information and data electronically, which they can then access for a particular purpose. Besides, according to Azhan *et al.*, (2017), the use of digital document as evidence assists in the reinforcement of certain facts and proofs. Whereas, if the digital document's proof is directly related with facts and other available evidence, it will support in attempting to persuade the court to consider those facts and evidence and assisting the court in making a decision. Thus, to seek fairness in the trial process in court, facts or issues on the evidence must be confirmed by current processes and applicable techniques to be brought before a judge.

As a result of this research, it is important of the admissibility of digital document for having approval from legal experts and judges in Civil Courts. This research would also look at the need for procedure in the acceptance of digital records, which may support lawyers dealing with this type of evidence during the court proceedings.

LITERATURE REVIEW

Digital documents have been explored as a form of evidence in Civil Courts in many previous studies. However, previous authors have not adequately addressed studies on the procedure specifically on the admissibility of digital documents, especially in the Civil Court.

The special nature of electronic data, it is susceptible to harm or alteration, as well as loss, as a result of improper handling or storage. Since it is easily tampered with or self-destructs (Sa'di *et al.*, 2015). In addition, according to Molino & Rodriguez (2017), the problems faced by the protection of digital evidence that could be damaged for a range of factors are causing a lot of discussion in the data management area. However, preservation is concerned not only with the preservation of digital evidence in order to ensure that they can be used adequately in the future, but also with the electronic data that should be maintained in their current state. The authors of the study addressed the evolution of technology in general terms and the challenges that may happen which makes digital documents relevant in court in convicting a case to be used as evidence. However, they did not clarify the rules for admissibility of digital documents as evidence and do not go into considerable detail about the court's procedures on the admissibility of digital document as evidence.

Sections 3 and 62 of the Evidence Act 1950 in Malaysia provide the admissibility of digital records as documentary and primary evidence (Act 56). "Computer," as defined in Section 3 of the provision, is an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of interconnected or related devices, that performs logical, arithmetic, storage, and display functions, and data storage facilities or communication facilities that are directly linked to or operate in conjunction with certain interconnected or related devices or groups of devices are included, but automatic typewriters or typewriters are not included, or non-programmable portable hand-held calculators or other similar devices without data storage facilities 'and on the highlighted illustrations, items documented, stored, processed, retrieved, or generated by a computer are documents' (Duryana, 2011).

This implies that the recording of a computer or a printed document may be used as documentary evidence. Furthermore, primary evidence is described as self-produced documents for court review in section 62 of the Evidence Act 1950 (Act 56), and 'computer-generated documents are primary evidence,' according to section 3 Evidence Act 1950 (Act

56). This act clarifies the concept of digital documents in general in civil court legislation. The authors of this study have stated the generate data in general without providing details about the process for accepting digital documents as evidence in court.

Courts and lawyers seeking to challenge the admissibility of such "computer generated documents" have evidently overlooked the difference between authenticity and admissibility (Radhakrishna, 2016). It can be emphasized by Sa'di *et al.* (2015), relevant authorities must first prove the validity of such data, followed by its reliability and relevancy, in order to ensure that it is admissible and carries the expected weight. As a result of this research, it is clear that the admissibility of digital documents as evidence in court requires the use of some approaches as a reference. The research, however, does not go into depth about the process for the admissibility of digital documents as evidence in court.

Furthermore, as electronic data is used as evidence, it is desirable to have a regulation in place to address problems with digital documents. If the court or legal practitioners have not accepted the validity and admissibility of digital documents as evidence in court, that evidence cannot be submitted in court (Radhakrishna, 2012). This can be supported by Suhaizad *et al.*, (2019) further argue that in order to seek fairness in the legal process, all facts and questions must be validated by thorough evidence and presented to the judge. Current provisions specify that proof must be provided using specific methods. As a result of this research, it is clear that the admissibility of digital records as evidence in court requires the use of some approaches as a reference. However, the study does not describe specifically in relation to the procedure of admissibility of digital documents as evidence in court.

Finally, the findings indicate that few scholars have previously investigated the admissibility of digital records as evidence in civil courts in relation of procedures as a reference for legal professionals to help them make better decisions in trials. In comparison, previous literature only describes in general way the concept of digital documents, as well as the criteria and conditions for their acknowledgement in court. As a result, this article is critical in explaining the procedure for accepting digital documents as evidence in court, especially in Malaysia's Civil Court, by ensuring the discovery of digital documents through a careful and clear process before accepting a digital document as evidence.

RESEARCH METHODOLOGY

This study applies a qualitative approach. Since qualitative approaches are closely linked to natural science and assessment, they help to accept this significance of this research (Lisa Webley, 2010). In shaping an interpretation of the social processes and meanings underlying the world, business, or management, a qualitative approach may also provide a clear view of behaviour that have occurred in real-life contexts and maintain intended significance. In terms of the sources used, this research uses both primary and secondary sources. The primary references include the legal provisions of the Evidence Act 1950 (Act 56), as well as examples of court cases. This is because the primary data is obtained from credible sources and is unaffected by other influences. Furthermore, secondary data from books, journal papers, surveys, standards, internet publications, and government sources were used in this research. The data obtained will be analyzed using content analysis methods. A number of scholars use document analysis as their method. Thus, this approach is commonly used by academics and scholars in evaluating books or documents written by academics and scholars.

DISCUSSION AND FINDING

Concept of Digital Document in Civil Court

Documentary evidence can now be generated and transmitted electronically with relative ease. This is due to advances in science and technology, which have been followed by changes in human behaviour, resulting in digital documents being one of the most popular types of documentaries in our everyday lives. One of the technologies for storing data or information is the computer. This information is accessible at a later time for a particular reason. The information in the printed copy is admissible in Malaysian courts as evidence (Mohamed & Ramlee, 2014).

Each technology, according to Buckland (1998), has its own capabilities and limitations. If we understand the functional nature of a document, we should assume that it can take several different forms in various technical contexts, and that it will be referred to as documents in both the digital and paper environments.

According to Duryana and Ramlee (2014), the concept of digital document focuses on a technical term, while the term "digital system" comprises more than just electronic evidence. This means that digital evidence is limited to evidence generated using digital media, but it has a wider application than electronic evidence because it includes mobile phones, digital audio, and video. Generally, digital documents are one of the current forms of actual evidence methods in use today, and they are generated electronically using a computer or machine (Mohamad, 2019).

The Malaysian Evidence Act 1950 (Act 56) was amended in 1993 to allow the admission of computer-generated evidence, based on a common court presumption that digital documents are admissible as evidence under evidence law. The Evidence Act of 1950 provides the foundation for evidence law in Malaysia (Act 56). Furthermore, any clause of the Evidence Act 1950 would refer to the admissibility of digital documents as evidence (Act 56) (Radhakrishna, 2017). Therefore, the Evidence Act of 1950 serves as the basis for evidence law in Malaysia (Act 56). Furthermore, any clause of the Evidence Act 1950 (Act 56) would apply to the admissibility of digital documents as evidence. Sections 90A, 90B, and 90C of the Evidence Act 1950 provide the admissibility of electronic documents derived from this device as evidence in Malaysian courts (Act 56).

In general, the role of digital documents in the Civil Court has been introduced and practised in the past because they are crucial in proving a criminal case. The admissibility of electronic evidence needs further research and review in terms of its role and level of acceptance in court as a means of evidence.

Legal Rules on the Admissibility of the Digital Document in Civil Court

Across the world, there have been arguments on the use of modern methods of evidence and developments in methods for evaluating digital documents as evidence by evidence-related acts. This is because electronic evidence can be considered one of the current sources of evidence, and courts are working hard to resolve problems related to these new facts without hesitation.

Both civil and Syariah laws in Malaysia allow for the admissibility of electronic evidence or computer evidence. The Evidence Act of 1950, the Criminal Procedure Code, the Rules of Court 2012, and the Penal Code are all applicable laws for civil courts. While, the Administration of Islamic Law Act, Syariah Court Evidence Act, Syariah Court Civil Procedure Act, Syariah Criminal Procedure Act, and Syariah Criminal Offences Act are the governing laws in Syariah courts Duryana & Ramlee, 2014).

Based on section 3 of the Evidence Act 1950 (Act 56) it is stated that case evidence is one of the forms of documents as specified in this law. It is also included in the Islamic law of evidence in the acceptance of *al-kitabah* as evidence in court. Documentary evidence is classified as all documents submitted for court review and is a form of evidence under this section (Suhaizad, et.al, 2019). This section has discussed specifically regarding the document that can be accepted as 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, 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, that matter.

Computer evidence is also known as digital evidence in Malaysian civil courts and is classified as one of the electronic evidences forms. The word "computer evidence" refers to any display or print from a computer, regardless of whether it is admissible in court. Sections 90A, 90B, and 90C of the Proof Act 1950 contain provisions relating to digital documents (Act 56).

According to Mohamad (2019), Section 90A also states, that machine printing must be performed from a widely used computer. The document must also be approved by the person in charge, with the provision that the person signing it is aware of the computer management operation's activities. The admissibility of the digital documents and the claims found within 90A with seven subsections:

(1) In any criminal or civil proceeding a document produced by a computer, or a statement contained in such document, shall be admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement.

(2) For the purposes of this section it may be proved that a document was produced by a computer in the course of its ordinary use by tendering to the court a certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used.

(3) (a) It shall be sufficient, in a certificate given under subsection (2), for a matter to be stated to the best of the knowledge and belief of the person stating it.

(b) A certificate given under subsection (2) shall be admissible in evidence as prima facie proof of all matters stated in it without proof of signature of the person who gave the certificate.

(4) Where a certificate is given under subsection (2), it shall be presumed that the computer referred to in the certificate was in good working order and was operating properly in all respects throughout the material part of the period during which the document was produced.

(5) A document shall be deemed to have been produced by a computer whether it was produced by it directly or by means of any appropriate equipment, and whether or not there was any direct or indirect human intervention.

(6) A document produced by a computer, or a statement contained in such document, shall be admissible in evidence whether or not it was produced by the computer after the commencement of the criminal or civil proceeding or after the commencement of any investigation or inquiry in relation to the criminal or civil proceeding or such investigation or inquiry, and any document so produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.

(7) Notwithstanding anything contained in this section, a document produced by a computer, or a statement contained in such document, shall not be admissible in evidence in any criminal proceeding, where it is given in evidence by or on behalf of the person who is charged with an offence in such proceeding the person so charged with the offence being a person who was—
(a) responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used; or
(b) in any manner or to any extent involved, directly or indirectly, in the production of the document by the computer.

To be summary, section 90A relates to the situation of types of digital documents that are admissible in court and there is actual evidence in the form of digital documents presented therein in criminal or civil proceedings, whether the documents are produced by computers during their usual use, regardless of whether the individual issuing the document or statement is the producer of the document or statement (Mohamad, 2019).

Furthermore, section 90B clarifies that the decision in deciding the significance is made under section 90A, which is a logical matter derived from the document's state that must be verified in order to obtain relevant information in order to create a digital document that can be proved in court as the reason for its production. Each of these is indicated by the information data input. In determining the weight, if any, to be added to a document or a statement contained in a document that is admissible under section 90A:

(a) may draw any reasonable inference from circumstances relating to the document or the statement, including the manner and purpose of its creation, or its accuracy or otherwise; (b) shall have regard to—

(i) the interval of time between the occurrence or existence of the facts stated in the document or statement, and the supply of the relevant information or matter into the computer; and

(ii) whether or not the person who supplies, or any person concerned with the supply of, such information or the custody of the document, or the document containing the statement, had any

incentive to conceal or misrepresent all or any of the facts stated in the document or statement.

While, in section 90C stated that:

Sections 90a and 90b shall prevail and have full force and effect notwithstanding anything inconsistent therewith, or contrary thereto, contained in any other provision of this Act, or in the Bankers' Books (Evidence) Act 1949 [Act 33], or in any provision of any written law relating to certification, production or extraction of documents or in any rule of law or practice relating to production, admission, or proof, of evidence in any criminal or civil proceeding.

This can be emphasizing that, section 90A, which has seven subsections, is the primary rule relating to the acceptance and evidence of computer-generated documents. Section 90B provides guidelines on how to provide facts evidence validity, while section 90C specifies that the rules of sections 90A and 90B supersede all other laws (Radhakrishna, 2016).

According to Michael Factor (2009), the credibility of the digital document can be determined when authentic information is obtained without misrepresentation, fraud, or damage. As a result, even as technology evolves at a rapid pace, evidence validation is needed to properly assess the admissibility of the digital document as evidence. The author, Steven Goode (2009), has mentioned that the acceptance of digital documents as evidence should have special requirements because it is very relevant in deciding a case involving it as evidence. In general, judges can ensure that the evidence is genuine based on the evidence submitted is necessary for a claim in the trial court.

The issue begins with a digital document's authenticity and how it can be converted into accurate evidence using particular methods or procedures. Sections 90A, 90B, and 90C of the Evidence Act 1950 (Act 56) have been introduced to ensure that electronic evidence is authentic by ensuring that the digital document is recognised as evidence first before determining the truth of its quality for electronics. As previously stated, computer evidence, computer output, and computer printout are acknowledged and used in Malaysian courts to determine the admissibility of electronic evidence. This argument is backed by several parts of sections 3 and sections 90A, 90B, and 90C of the Evidence Act 1950 (Act 56).

Cases that related to the Admissibility of the Digital Document in Civil Court

All the facts of the case must be given evidence to the judge to achieve justice. Such proof must be submitted using specific methods that have been decided in accordance with current provisions as prescribed in the legislation. This is because an irrelevant method of proof can invalidate a document and cause it to be dismissed by the court (Suhaizad et al., 2019).

Researchers also cite the case of *Geoforce East Sdn Bhd v. Melati Evergreen Sdn Bhd & Another Appeal* [2020] 1 LNS 862, in which THK used MESB's digital signature instead of signing the document for and on behalf of MESB; and documents that issued by THK are legitimate and binding. It demonstrates that civil courts recognise digital documents.

Furthermore, in other issue on the prosecution failed to adduce electronically generated check-in baggage tags in evidence in *Public Prosecutor v Goh Hoe Cheong & Anor* [2007] 7 CLJ 68. The court determined that the electronically generated baggage tags could not be admitted into evidence because there was no oral evidence and no certificate under s 90A(1) to establish the chain of custody and control of the checked-in bags (Radhakrisna, 2013).

In the case of *Hanafi bin Mat Hassan v Public Prosecutor* [2006] 4 MLJ 134 summaries that the most common question about machine performance is whether the plaintiff or defendant has met the requirements of Section 90A (2) of the EA 1950. This section necessitates the creation of a certificate from the individual in charge of the computer's

operation. The certificate is not required if the individual in question is present during the case hearing (Mohamed & Ramlee, 2014).

Establishing the relevance and reliability of electronic evidence in courts is quite challenging nowadays. As a result, to ensure the admissibility digital evidence, such security measures should be implemented to prevent it from being damaged or manipulated. Thus, a digital document must be sent to the court before it can be used in a courtroom. Any evidence must satisfy the requirements of authentication by a specific application in addition to being relevant before it can be submitted in court.

CONCLUSION

In conclusion in this era of rapidly changing technology, it is becoming increasingly necessary for court institutions to develop provisions or specific procedure in which lawyers must collaborate with IT experts to resolve issues related to the admissibility of digital documents as evidence submitted in court. As a result, they should increase the use of digital files in line with technological advancements and ensure that the procedures used are relevant. Furthermore, a legal process and system are required to ensure the document's suitability. This is because, in order to achieve the admissibility of digital documents as evidence in court should include aspects such as secure processing of evidence by properly storing data from devices, detecting any manipulation or falsification from evidence, and checking evidence by judge verification. The acceptance of a digital document as evidence to guarantee the admissibility of the authority in the jurisdiction. As result, the requirement on having procedure in place to ensure the admissibility of digital documents in court is becoming a necessity, indirectly help the court in dealing with issues related to digital documents as evidence, especially in civil courts in Malaysia.

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