

**THE ACADEMICS WRITING OF THE ADMISSIBILITY OF DIGITAL DOCUMENTS  
IN COURT OF MALAYSIA: THE LITERATURE ANALYSIS**

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**Abstract**

*Digital evidence is now increasingly relevant and becoming a wide-ranging issue, such as crimes committed, the movement of suspects and criminal associates in different forms of crimes for investigation and prosecution. The purpose of this research is to systematically review recent literature relating to the requirement on the admissibility of digital document in court. This qualitative research uses systematic literature review to collect recent related literature, which was then evaluated by adapting deductive and inductive reasoning using the method of content analysis. The data gathered by using comparative research that aims to make comparisons across different two database. The result of the study the basic requirements on accepting the digital document in court. In order to ensure the validity and consistency of the digital evidence submitted to the court, this paper aims to clarify the admissibility of digital evidence in court, and then implement the process by collecting preserved and properly administered. Because digital evidence is continually expanding, the need for certain procedures is important. As a researcher, contributes to the development of knowledge by discuss recent academic writing that can cause more elaborate studies and connected on the issue of the admissibility of digital document in court.*

*Keywords: Digital, Document, Evidence, Admissibility, Court.*

**INTRODUCTION**

Information and communication systems are now breeding grounds for electronic evidence in audits, investigations, or lawsuits. Organizations are rapidly being instructed by law or lawsuit to preserve, retrieve, and hand-over appropriate electronic records (Volonino, 2003). this can be supported by Goodison, et.al (2015), over the past two decades, significant changes in the information technology environment have made digital evidence collection and analysis an increasing important tool for solving crimes and resolving court cases. As technology has become more portable and efficient, more information is produced, stored and accessed in greater quantities.

According to Mohamed and Ramlee (2014), as the admissibility of proof is a matter of law and is decided by the judge, the evidence submitted must be applicable to the case at issue. Therefore, even though the proof has been collected unlawfully, it is admissible if it is relevant. In placing more emphasis, Radhakrishna (2014), there has been a need for

relevant legislation to resolve problems resulting from the implementation of technology in different areas of science. The law of evidence has had to take cognizance of this because computer-generated evidence (digital evidence) has often to be obtained for use in legal proceedings from different sources, including extra-jurisdictional ones.

As for this result, briefly discuss on provide a scientific justification for digital evidence to be admissible and to ensure cross-jurisdictional acceptance and accessibility of digital evidence for determining digital evidence admissibility is needed. Legal criteria for the admissibility of digital evidence and basis for determining the admissibility of digital evidence were expected to lead to ongoing improvements in the standards of digital forensics and court in Malaysia.

**METHODOLOGY**

The question arises with respect to the admissibility or inadmissibility of that text. As is understood, the admissibility of the digital document depends on the court's aim to maintain that the digital document is valid as proof in the civil and Syariah court.

This qualitative research uses systematic literature review to collect recent related literature, which was then evaluated by adapting deductive and inductive reasoning using the method of content analysis. This paper also presents a comparative study of the recent on the admissibility of digital documents in court of Malaysia through literature analysis that obtained from two database, which are Scopus and HeinOnline. The data gathered will be seen deductively in the form of tables. The number of years included in this analysis is between time periods between 2010 until 2020.

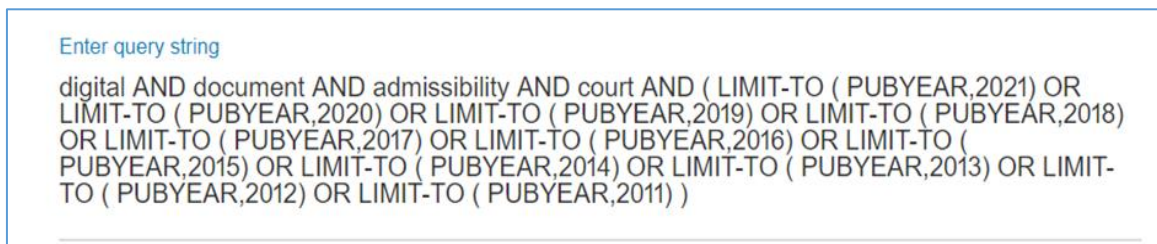


Figure 1: Example of query string obtain from Scopus



Figure 2: Example of search string from HeinOnline

The researcher collected data from two databases in the figures above, which are Scopus and HeinOnline by select five keywords (Digital Document, Electronic Document, Digital Evidence, Electronic Evidence and Digital Evidence) in phase of searching on the query string/search string. In total, the data obtained from Scopus reaches 128 and HeinOnline are 51. Therefore, the total for all recorded data is 179.

Criteria	Eligibility	Excluded
Year	2010-2020	2019 and below
Literature Type	Journal Article	Review, Conference Paper, Book Chapter, Book, Editorial and others.
Country	Malaysia	Other country

Table 1: List of Criteria, Eligibility and Excluded

From Table 1, according to the list of criteria, such as year, type of literature and region, the researcher collected data limits. The researchers' limit for the year between 2010 and 2020. In addition to that, the limit of literature type on journal article and country only focuses on Malaysia.

Data review starts with the collection of all the information of journal papers by exporting the data to Microsoft Excel. If papers are retrieved, the data on Scopus will remain, while Scopus will be removed on HeinOnline, as Scopus is more preferable to HeinOnline to prevent data from repeating during the review process. The total number of publications from the two databases is 179. Because of the repetition article on Scopus and HeinOnline, there are five articles that have been deleted. After the screening point, because of the subject, the researcher defined the eligibility by deleting 156. Thus, only 18 papers are eligible. The PRISMA flow diagram shows Figure 3 as below.

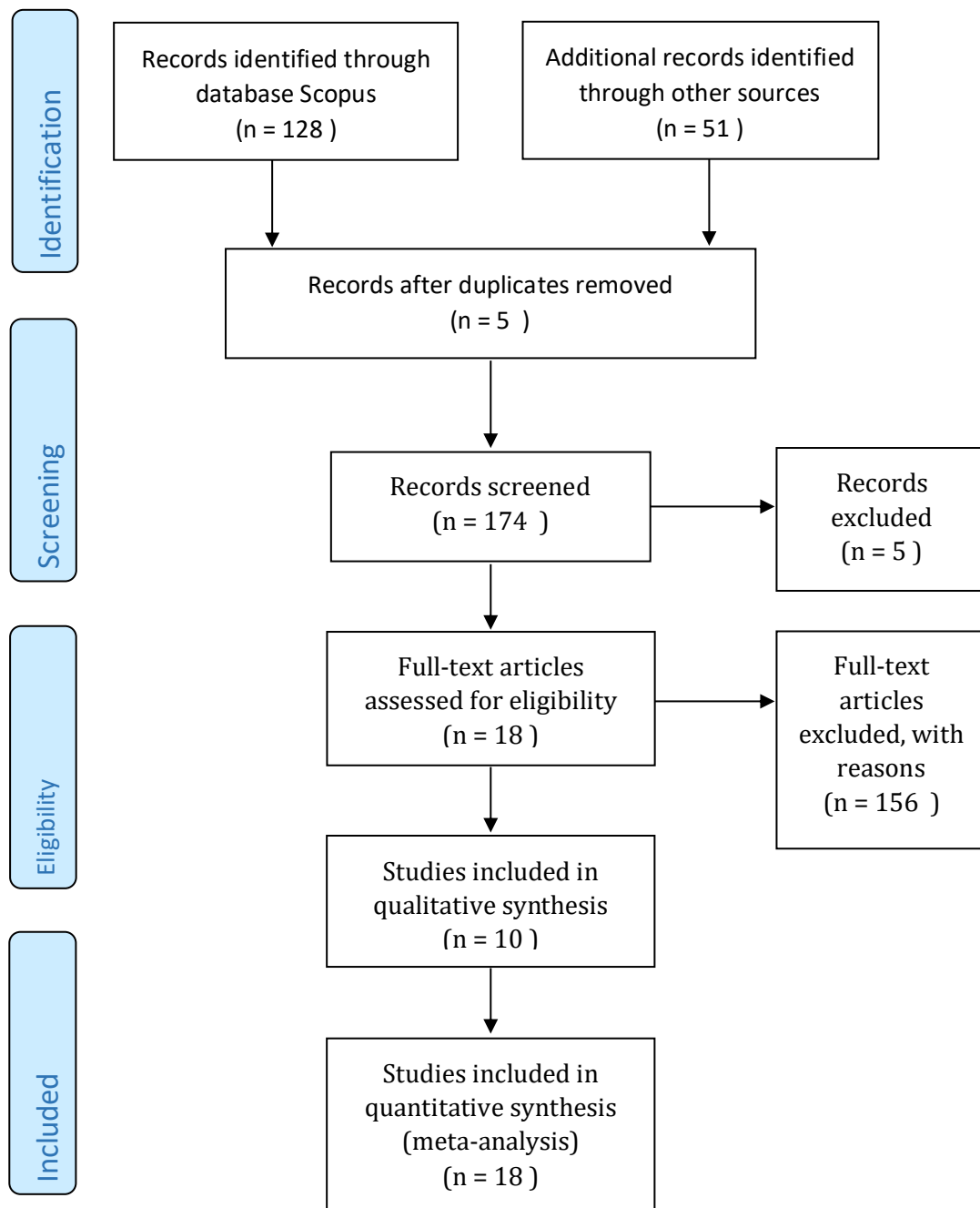


Figure 3: PRISMA flow diagram

## RESULTS

Paragraph 1 By entering the keywords in the database, a total of 179 articles have been found based on the search results. The comparison of papers published between 2010 and 2020 between Scopus and HeinOnline is shown in Table 2 while the amount of publication by keyword shown in Table 3.

Year of Publication	Number of Publication		Total	Percentage
	Scopus	HeinOnline		
2020	25	4	29	17.16%
2019	20	2	22	13.02%
2018	19	0	19	11.24%
2017	10	6	16	9.47%
2016	12	4	14	8.28%
2015	20	9	29	17.16%
2014	7	3	10	5.92%
2013	3	7	10	5.92%
2012	4	7	11	6.51%
2011	3	2	5	2.96%
2010	3	0	3	1.78%

Table 2: Number of Publication by Years

Keywords	Scopus	HeinOnline	Total
Digital Document	25	8	33
Digital Evidence	44	12	56
Electronic Document	22	15	37
Electronic Evidence	26	16	32
Digital Forensic	11	0	11
<b>Total</b>	<b>128</b>	<b>51</b>	<b>179</b>

Table 3: Number of Publication by Keywords

## DISCUSSION

Within the discussion regarding the admissibility of the digital document, there are numerous literary works written. As discussed and mentioned above, vast exploration, analysis and application was worked out towards the basic and early theory introduced by the scholar and practitioners of civil court and Syariah court.

### Implementation Digital Document in General

A lot of authors have written their masterpiece such as The Reality on Application and Challenges of Closed circuit Television (CCTV) Images as Evidence in Shariah Criminal Cases in Malaysia by Wan Ismail, et.al (2019). They expanded the discussion by pointed out how far visuals from Closed-Circuit Television (CCTV) are used as evidence and the challenges faced in convicting charges using this evidence in Syariah court. The issue risen when Malaysia's constitutional framework involves a dual civil and Syariah justice system that divides the administration and procedure of both legal systems, including the procedure for proof. In addition, the further their discussion on proven methods for implementing electronic documents, greater exposure to electronic documents should be authorized by having sections specifically related to forensic electronics.

Aside from that, by Henseler and Loenhout (2018) have written an article, title Educating Judges, Prosecutors and Lawyers in the Use of Digital Forensic Experts. In this study, they explained on how important digital forensic experts prepare judges, prosecutors and lawyers for justify cases in court related to digital document. It shows what the legal community may request from experts in the court, provides a demarcation of the digital forensic area based on digital document literature, and provides examples of specific

questions that an expert may or should be asked. They also added that the quality and credibility of the digital evidence can be improved by a critical analysis of an expert report by other experts.

### **Admissibility of Digital Document in Court in Malaysia**

In the study of Mohd Sharif (2014), title 'Visual Literacy on Photographic Images in Digital Forensic Investigation', explained in the field of forensic photography, the position and importance of visual literacy is as a means of plotting the evidence behind the crime scene. In the field of forensic photography in Malaysia, an image that can serve as evidence in court has a huge role in providing intended meaning. It is important since the images of digital forensics related to the digital document.

Another interesting article related to are Cases of Electronic Evidence in Malaysian Courts: The Civil and Syariah Perspective written by Duryana and Zulfakar (2013). This article discuss in both Islamic and Malaysian law, cases recognize electronic evidence. The discussion also involve the process in Malaysian courts to consider electronic evidence and few challenges in establishing the admissibility of electronic evidence. It also proposed that some provisions of the Evidence Act, in particular sections 90A and 90B, should be followed by the Syariah Criminal Evidence Act in order to prevent any potential conflicts in proving computer-generated documents or electronic proof.

Another article is Authentication of Electronic Evidence in Cybercrime Cases Based on Malaysian Laws by Sa'di, et.al (2015) explained the scope of electronic evidence in relation to criminal cases such as in cybercrimes, as far as its admissibility and weightage are concerned. They also added that apart from the modes for authenticating electronic evidence, Malaysia does not have a specific section concerning the authenticity of electronic evidence in respect of the weight to be attached to it compared to Singapore Evidence Act and the US Federal Rules of Evidence.

### **The Procedure Implementation of Digital Document in Court**

The paper of Radhakrishna (2012), Digital Evidence in Malaysia explores the legal structure for digital evidence admissibility in Malaysia and explains a variety of cases that illustrate the problems that have arisen in this context. In placing more emphasis, in the paper Digital Forensics Institute in Malaysia: The Way Forward, by Ariffin, et.al (2012) analyzes cybercrimes faced in Malaysia and cyber-related crimes that related to the digital evidence. The accomplishments of CyberSecurity Malaysia Forensics Department from 2000 to 2010 are discussed with the efforts to manage the problems. The purpose is to create recommendations for best practices and to develop a software tool to assist digital forensics specialists in their work.

In addition, the article Comparative Study of Digital Forensic Investigation on Cyber Criminal by Barkah, et.al (2019), review the digital forensic investigation model and compare it. The research also included interpretation and illustration of interpretation of fundamental principles that the framework or model requires by identify strengths and some weaknesses inherent in these investigation models. Apart from that, in the article A Review on Mobile Device's Digital Forensic Process Model by Farjamfar and Abdullah (2014), claimed that research into Windows mobile devices has become difficult for researchers and the forensic community because of their technical innovations and popularity.

Last but not least, in the article Digital evidence by DeGaine (2013), This article serves as a blueprint for military justice practitioners to use while advising personnel collecting digital evidence; in analyzing and evaluating collection procedures in preparation for trial; and in presenting digital evidence at trial. From the previous article, it can be said that the literature regarding the admissibility of the digital document should be discussed more since the technology widely arise today. The requirement for a procedures in dealing with digital document must be discovered.

## CONCLUSION

From the above discussion, the authenticity and the credibility as basis requirement for the admissibility of the digital document as evidence to be submitted in court by demonstrating the applicability of the document as proof is an important in digital evidence. Legal practitioners should have a procedures to consider digital proof at the court for significant developments in the science and technology field. However, determining the jurisdiction of the court to prosecute and charge the case need to classify the digital document through this new era to help the court apply the digital document as evidence in establishing the admissibility of digital or electronic evidence.

## ACKNOWLEDGEMENT

The researchers would like to express an acknowledgment to the Ministry of Education (MoE), Malaysia through the Fundamental Research Grant Scheme (FRGS) entitled "Pembinaan Model iDoc-Forensics (Kombinasi Al-Qarinah dengan Forensik Dokumen Digital) ke Arah Penyelesaian Kes-kes Kehakiman di Mahkamah Syariah Malaysia", (FRGS/1/2019/SSI03/USIM/02/6), (USIM/FRGS/FSU/055002/50319).

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