

Understanding the Principles of Digital Photography in Syariah Investigations: A Systematic Literature Review

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Abstract: *Digital evidence is now increasingly relevant and becoming a wide-ranging issue, such as crimes committed and the movement of suspects and criminal associates in different forms of crimes for the investigation process. The field of Syariah law also employs digital evidence in its investigations and prosecutions of Mal or Syariah offence cases. However, the practice of digital evidence primarily focuses on digital photography; it remains problematic and receives insufficient attention when evidence is not recorded appropriately, thereby impacting the investigation and prosecution process. This study focuses primarily on understanding the principle of digital photographs in the investigation process. This study adopts a systematic literature review methodology and successfully identifies 48 relevant articles from online published journals spanning the years 2008 to 2023. Data was collected and analysed by adapting inductive reasoning using the method of content analysis. Understanding the principle of digital photography itself is crucial to ensure its use as evidence in the investigation process.*

Keywords: *Digital Photographic, Digital Evidence, Syariah Offences, Investigation, Systematic Literature Review*

INTRODUCTION

The development and advancement of science and technology have changed the pattern of life in a modern, fast, and more challenging direction. Digital technology like cameras is also becoming increasingly essential for both individuals and organisations, particularly those engaged in criminal investigations. The advancement of technology has played a significant role in shaping a more efficient and structured lifestyle, as evidenced by the pioneering efforts of the human intellect [1]. Significant transformations within the realm of science and technology have made the acquisition and examination of digital evidence an increasingly crucial instrument in the resolution of criminal activities, as well as in the formulation of legal arguments for court proceedings [1]. The application of science and technology in Syariah law also has a significant effect on the process of gathering evidence to prove offences and helping to resolve conflicts [1]. The field of Syariah law also practices the use of cameras to produce a visual form of evidence, also known as a digital photograph, when investigating and prosecuting Syariah offences. From the Syariah perspective, a digital photograph is known as a relevant fact (*qarinah*) or documentary evidence (*alkitabah*) [2]. In the Malaysian practice of forensic photography, a crucial aspect is the ability of an image to serve as evidence in court and convey its intended meaning [2], identify suspects, and build cases against perpetrators of various crimes.

However, the use of digital photography, which is classified as the medium of digital documents, digital electronics, and digital forensics, is a new form of proof in the practice of the Syariah legal system [3]. Furthermore, according to a study conducted by [4] there is no proper discussion of the need to receive digital documents as evidence in the Syariah court. On the other hand, previous scholars only addressed the general understanding of the admissibility of digital documents as evidence in court. The issue of Syariah practitioners not knowing how to handle digital evidence has become a topic of discussion and argument. When the interpretation of a digital photograph becomes subjective, the problem becomes more crucial. This study focuses primarily on understanding the principle of digital photographs used in Khalwat cases for Syariah offences.

LITERATURE REVIEW

Digital Photographs as documents, digital documents, or electronic documents through Principle of evidence in Syariah Perspective

The sophistication of current technology has contributed to changes and advancements in the use of digital technology in daily affairs. It is no surprise that many cases arise involving the use of digital document evidence as society begins to utilize technology to gather data or information, which is then electronically stored and reused for specific purposes [5]. In Syariah legal systems, the admissibility of digital documents as evidence remains a topic of debate among academic researchers [5]; [3]. The definition of documents that only limit them to written records or statements recorded on official

paper has sparked various perceptions and opinions among scholars and academics [3]. However, this definition of documents needs to be viewed broadly because current situations and technological changes have brought about changes in the form of documents themselves. According to [6] the impact of modern digital technology has influenced society's reliance on electronic documents, thereby opening up broad definitions of documentary evidence, which Islamic scholars have incorporated into their definitions. The development and advancement of science and technology have brought about significant changes [8] and expanded the definitions and scope of documents [34], not limited to written mediums or records on parchment manuscripts alone [6]; [9]. Furthermore, documents have become an important method of proof used in both Syariah and civil courts in Malaysia [10] to substantiate evidence [10]. The forms of documentary evidence are diverse, including SMS, CCTV footage, DNA reports, and photographs [11]. However, the use of documentary evidence is still considered relatively new, especially in the practice of Syariah courts in Malaysia [11].

According to [3], digital evidence is a new method that has emerged in this era due to changes in current technology, resulting in no laws regarding its use found in any *fiqh* books. Syariah legal systems have accepted the use of both manual and electronic documents as evidence, despite differing views on their strength [11]. This statement is also supported by [3] who assert that digital documents should be considered an important form of evidence because they can assist the court in considering facts before making decisions and issuing judgements. Academic experts in Syariah legal evidence, such as [12], also explain that digital documents are also known as electronic documents and are admissible as evidence in court.

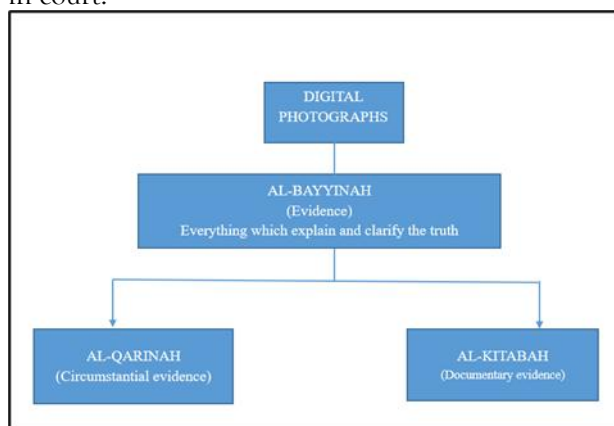


Figure 1 Summary of Concept Digital Photograph Evidence in Syariah Perspective

Understanding concept Digital photographs as a Kitabah (Documentary evidence) and Al-Qarinah (Circumstantial evidence)

According to [13], *alkitabah*, also known as documentary evidence, is one form of proof accepted in Islamic law for the purpose of describing and explaining something. The use of digital photographs as documents supporting oral testimony has also been accepted in the case of *Datuk Seri Anwar bin Ibrahim v. Wan Muhammad Azri bin Wan Deris* (2014, MLJU 177, 9 MLJ 605) and placed under the category of *alkitabah* (documentary evidence) [16].

Documentary evidence, or *kitabah*, is important evidence aside from *syahadah* and *bayyinah*. The Syariah Courts have now accepted *kitabah*, including electronic *kitabah*, as a form of evidence [17]. Therefore, documentary evidence, or *kitabah*, is substantial evidence aside from *syahadah* and *bayyinah*. The Syariah Courts have now accepted *kitabah*, including electronic *kitabah*, as a form of evidence [18]; [19]. In addition to *kitabah*, *qarinah* is another form of evidence in a Syariah court that can prove a prosecution's case. [15] that in all matters of rights and offences punishable by *ta'zir*, the testimony of a single witness or circumstantial evidence or any other evidence which proves the relevant fact. Therefore, the definition of electronic or digital evidence falls within the scope of documentary evidence (*al-kitabah*) as long as the data can be read and seen and contains relevant information [16].

In the Syariah judicial system, digital photographs are classified as *AlQarinah* because the characteristics specified in the definition of *Al-qarinah* are the same as those described by sharia law reviewers. The definition obtained from [20] defines *Al-qarinah* as an outward statement relating to a hidden fact. From the Syariah perspective, digital photographs are categorized as *Al-qarinah*, which carries the definition of an outward statement that has to do with the hidden fact statement [19]. The definition of *qarinah* through the scholar's perspective is a sign taken from the current situation (circumstance) associated with a single case, where the characters lead to a conviction of conclusions that can clarify a single fact of the matter in question or issues. [19]; [21]; [22]; [20].

According to [23], *qarinah* in its literal meaning means connection, conjunction, relation, union, affiliation, linkage or association. However, legally speaking, it refers to logical inference to be drawn from circumstances. Most Muslim jurists believe that circumstantial evidence such as presumption is one of the branches of *qārinah* and accepted in cases involving the punishment of *ta'zir*. Digital photographs taken at the scene during the Syariah criminal case investigation process are one form of *al-qarinah* according to the perception of Syariah law. According to [15];[24];[25], *Qarinah* is a sign taken from

the current situation (circumstance) associated with a single case, where the characters lead to a conviction of conclusions that can clarify a single fact of the matter in question or issues.

METHODS AND METHODOLOGY:

Qualitative Methodology Approach

The development of a research methodology is a fundamental foundation in conducting a study, and it must follow recognized processes and procedures to avoid issues related to the reliability of research findings [44]. This is because the reliability of the research findings is directly influenced by the application of the methodology [44]; [45]. According to methodology expert [46], social research is described as a systematic and empirical exploration that contributes to reliable data. Qualitative methods constitute the primary foundation utilized in this study and play a crucial role in the operational and data collection processes required to address the research questions and achieve the objectives outlined. The use of qualitative methods is recognized as appropriate for use in various social science disciplines such as anthropology, education, psychology, sociology, and marketing [47] to identify or explore complex phenomena [45]; [48]; [49]; [50], which cannot be measured using statistical value in quantitative methods [51]; [52].

Document Review from Academic Journal

Document review, derived from qualitative design approaches, is a systematic procedure for reviewing or evaluating documents from printed or electronic sources [53]; [54]. Documents can be analyzed and reviewed in various forms, such as Acts of Parliament, company reports, minutes of meetings [55], books, journals, articles, manuals, photographs, and organizational or institutional files [54]. In the first phase of this study, the researcher utilizes academic journals to identify the principles of digital photographs from the perspective of academic experts. This process is crucial for developing a comprehensive overview and understanding for the researcher.

Firstly, to get the related journal that focuses on academic discussion about digital photographs in the field of Syariah Law practice, this study implements a systematic literature review (SLR) to compile all the related journals. For clear explanation, Systematic Literature Review was developed from the need to ensure that decisions affecting people's lives are based on the current and comprehensive understanding of the available research [56]. A systematic literature review is a process that is used to gather reliable data by summing up all existing knowledge about a phenomenon as a whole [22] and is one of the strategies to undisclosed researcher bias [23]; [24]. Systematic literature reviews (SLRs) have an undeniable advantage over conventional methods due to their ability to be a duplicate, empirical, and transparent procedure [25]. A systematic literature review is also known as a specific process that creates a whole article based on a review of the literature rather than empirical data collection [26]. According to [27], a systematic literature review methodology to get accurate and transparent data in the review process. To conduct this study, [28] suggest seven key particulars of SLR, which are [1] the development and validation of the review protocol/publication standard/reporting standard/guidelines, [1] the formulation of research questions, [2] systematic searching strategies, [3] quality appraisal, [4] data extraction, [5] data synthesis, and [6] data demonstration.

To perform a literature study with four main phases and a document-based qualitative methodology, researchers used the following methods: Plan the review, execute the search, analyses the research choices, and present the results [26]. Initially, the selected keywords were based on the predetermined objective from Chapter 1. This study employed sophisticated searching using UiTM EzAccess (E-Resources: Online Databases) and manual searching databases like Google Scholar. In their advanced keyword search, the researcher additionally used the phrase searching function and the Boolean operator OR or/and AND to combine terms. The researcher employed keywords such as "photograph OR image", "digital photographs OR crime investigation AND syariah offences," "digital image OR digital evidence", "digital document OR digital electronic", and "photography OR photographic OR visual OR photograph". Finally, the researcher conducted a screening process to select the relevant journal from the raw search data. Below is the final screening result for the most relevant journal that meets the study's criteria.

RESULT

Table 1. List of literature compiled and reviewed.

No	Title	Source
1	Role of Forensic Evidence in Upholding Justice: Exploring Islamic Law and the Experience of Syariah Courts in Malaysia	Journal
2	A Method to Enhance the Accuracy of Digital Forensic in the Absence of Sufficient Evidence in Saudi Arabia	Journal
3	A Preliminary Analysis on The Admissibility of Documentary Evidence Via Forensic Science Method According to Islamic Syariah Law	Journal
4	A Systematic Analysis on the Admissibility of Digital Documents as Evidence in Malaysian Syariah Courts	Journal

5	Admissibility of Computer Evidence in Islamic Law and Common Law: A Preliminary Analysis	Journal
6	Admissibility of Electronic Evidence in Islamic Law and US Law Need for a New Corroboration Theory	Journal
7	An Appraisal of Digital Documents as Evidence in Islamic Law	Journal
8	<i>Analisis Proses Pengumpulan Keterangan Dokumen Elektronik dalam Kes Jenayah Syariah</i>	Journal
9	Analysis on Admissibility of DNA Evidence in Malaysian Syariah Courts	Journal
10	Authentication of Electronic Evidence in Cybercrime Cases Based on Malaysian Laws	
11	Cases of Electronic Evidence in Malaysian Courts: The Civil and Syariah Perspective	Journal
12	Catalyzing Global Peace Through The Strengthening Of Forensic Science Application In Shari'Ah Law	Journal
13	Circumstantial Evidence and Its Admissibility in Criminal Proceedings: A Comparative Analysis of the Common Law and Islamic Law Systems	Journal
14	Crime Scene Investigation Issues: Present Issues and Future Recommendations	Journal
15	Document forensic, the <i>fiqh</i> and the Syariah Courts	Journal
16	Evidence Rules in Sharia and the Impact of Modern Technology and DNA Testing	Journal
17	The Reality on Application and Challenges of Closed- Circuit Television (CCTV) Images as Evidence in Syariah Criminal Cases in Malaysia	Journal
18	Islamic Epistemology and Its Relations to Scientific Method in Islamic Law of Evidence	Journal
19	<i>Kaedah Pembuktian Dalam Undang-undang Keterangan Mahkamah Syariah Dan Mahkamah Sivil Di Malaysia: Suatu Kajian Perbandingan</i>	Journal
20	<i>Kebolehterimaan Keterangan Dokumen Elektronik di Mahkamah Syariah: Analisis Permasalahan dan Penyelesaiannya</i>	Journal
21	<i>Kebolehterimaan Keterangan Forensik dari Perspektif Maqāsid Syariah</i>	Journal
22	<i>Kedudukan Bayyinah, Syahadah Dan Qarinah Dalam Penggubalan Undang-undang Keterangan Islam di Malaysia</i>	Journal
23	<i>Keterangan Alternatif Menggunakan Sains Forensik Terhadap Kes Liwat Dan Musahaqah Di Mahkamah Syariah</i>	Journal
24	<i>Keterangan Dokumen Dalam Bentuk Digital Di Mahkamah Syariah: Analisis Berkaitan Definisi Serta Kebolehterimaannya Di Sisi Prinsip Syariah di Malaysia</i>	Journal
25	<i>Keterangan Melalui Kitabah: Menurut Fiqh dan Undang-Undang Semasa di Malaysia</i>	Journal
26	Legal Analysis of Syariah Court Evidence Law on Digital Document as Evidence and Its Admissibility in Court Proceedings	Journal
27	<i>Makmal Kriminologi (Forensik) Terakreditasi Bagi Kegunaan Mahkamah Shari'ah: Suatu Tinjauan Awal</i>	Journal
28	<i>Nafas Baru Kepada Tahap Pembuktian Qarinah dalam Undang-undang Keterangan Mahkamah Syariah</i>	Journal
29	<i>Pembuktian Dalam Kes Jenayah Syariah Malaysia: Isu Dan Penyelesaian</i>	Journal
30	<i>Pembuktian Melalui Dokumen Dalam Kes-Kes Pengesahan Hibah Di Mahkamah Syariah Di Malaysia</i>	Journal
31	<i>Pembuktian Melalui Televisyen/ Kamera Litar Tertutup (CCTV) Dalam Kes-Kes Jenayah: Tinjauan Umum Berdasarkan Undang-Undang Keterangan Islam</i>	Journal
32	<i>Penerimaan Dan Kekuatan Dokumen Elektronik Dalam Pembuktian Di Mahkamah Syariah Di Malaysia</i>	Journal
33	<i>Pensabitan Kesalahan Penyalahgunaan Tanda Halal: Kajian Awal Dari Aspek Undang-Undang Keterangan Islam</i>	Journal
34	<i>Prinsip Asas Sains Forensik dari Perspektif Islam: Suatu Sorotan Literatur</i>	Journal
35	Prosecuting Syariah Offences in Malaysia: Evidentiary Issues	Journal
36	Proving <i>Takhhib</i> Criminal Offense in Syariah Court Through Digital Forensic Evidence and Expert Opinion	Journal
37	Qarinah: Admissibility of Circumstantial Evidence in Hudud and Qisas Cases	Journal
38	Qarinah As Evidence in Deciding Case	Journal
39	Reception of Electronic Evidence from Islamic Perspective	Journal
40	Rejuvenating Human Capital in Syariah Legal Institutions Through Fiqh Forensics Fundamental Module: A Preliminary Review	Journal

41	Requirement That Needed to Admit the Digital Document as Evidence in Syariah Court	Journal
42	The Academics Writing of The Admissibility of Digital Documents in Court of Malaysia: The Literature Analysis	Journal
43	The Admissibility of Digital Document According to Syariah Law: A Preliminary Analysis	Journal

Table2. Literature matrix of most frequently reported principles of digital photographs evidence from online publish Journals.

AUTHOR	THEME							
	P1	P2	P3	P4	P5	P6	P7	P8
A1	/	/	/	/	/	/		
A2	/		/		/	/		
A3	/	/		/	/	/	/	/
A4	/	/	/	/	/	/		
A5	/	/	/	/	/	/		
A6	/	/		/	/	/	/	
A7	/	/	/	/	/	/	/	/
A8	/	/			/	/		
A9	/	/	/	/	/	/	/	
A10	/	/	/	/	/	/		
A11	/				/	/		
A12	/	/			/	/		
A13	/	/			/	/	/	
A14	/	/	/	/	/	/	/	/
A15				/	/		/	
A16			/	/	/			
A17	/	/	/	/	/	/	/	
A18					/	/		
A19					/		/	/
A20		/	/	/	/	/	/	/
A21	/	/	/	/	/	/	/	/
A22			/	/	/			
A23	/	/	/		/	/		/
A24			/	/	/		/	/
A25		/		/	/	/	/	
A26					/			
A27	/	/	/		/			/
A28	/	/	/	/	/	/	/	
A29	/	/	/	/	/	/		
A30		/	/	/	/	/	/	
A31					/		/	
A32					/			
A33		/	/	/	/	/		
A34			/	/	/	/	/	
A35					/	/	/	
A36	/	/	/	/	/	/	/	/
A37			/	/	/			
A38	/	/	/	/	/	/	/	
A39				/	/		/	
A40	/	/	/	/	/	/	/	/
A41	/	/	/	/	/	/	/	
A42	/	/	/		/	/	/	/
A43	/				/	/		/

P1: Authenticity
P2: Validity and Reliability
P3: Chain of Custody
P4: Chain of evidence

P5:	Probative	Value
P6: Corroborative Value		
P7: Accuracy		
P8: Clarity		

DISCUSSION

The presented data reveals a clear hierarchical emphasis on principles governing the discussion of digital photographs within the analysed journal. The analysis of published journal articles reveals eight key principles related to digital photography as evidence in Syariah practice. "Probative Value" demonstrably constitutes the paramount concern, being addressed in 100% of the analysed instances. This ubiquity underscores the fundamental importance attributed to the evidentiary or demonstrative capacity of digital photographs within the journal's discourse.

Following closely in prevalence are "Corroborative Value" (73%) and principles related to the integrity and management of evidence, namely "Chain of Evidence" (65%) and "Chain of Custody" (61%). The significant attention afforded to "Corroborative Value" highlights the journal's focus on the role of digital photographs in substantiating or reinforcing other forms of evidence. Similarly, the emphasis on both "Chain of Evidence" and "Chain of Custody" underscores the journal's recognition of the critical need for rigorous documentation and preservation protocols to ensure the admissibility and reliability of digital photographic evidence.

Principles pertaining to the inherent trustworthiness and accuracy of the digital photographs themselves, such as "Validity & Reliability" (65%) and "Authenticity" (57%), also receive substantial attention, indicating a significant concern for establishing the veracity of the digital images. The related principle of "Accuracy" (55%), focusing on the correctness of the information conveyed, further reinforces this emphasis on trustworthiness.

Conversely, "Clarity" (29%), concerning the visual quality and ease of interpretation of the digital photograph, appears to be the least emphasised principle within the journal's discussions. While not entirely disregarded, its lower prevalence suggests that it is considered secondary to the more fundamental aspects of evidential value and evidentiary integrity.

In summary, the analysis of principle prevalence within the journal indicates a primary focus on the evidential utility of digital photographs, coupled with a strong emphasis on maintaining their integrity, authenticity, and secure chain of custody. While visual clarity is acknowledged, it is demonstrably subordinated to these core principles concerning the evidentiary strength and trustworthiness of digital photographic evidence. This hierarchical structure suggests that the journal prioritises the legal and probative aspects of digital photographs over their purely visual characteristics.

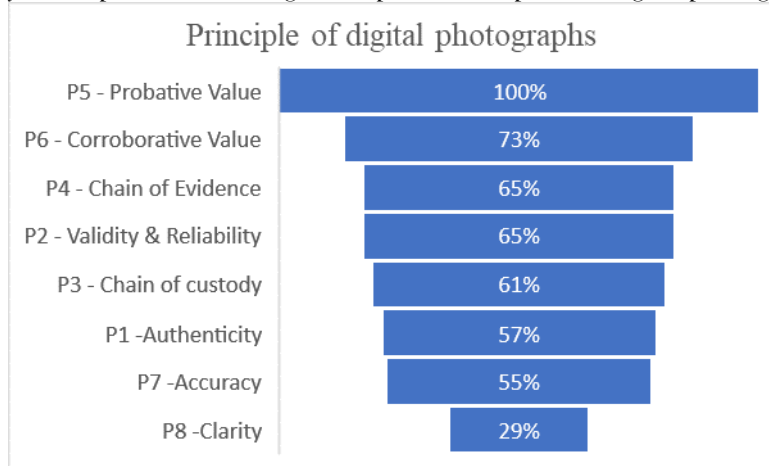


Figure 2. Percentage Principle of digital photographs

CONCLUSION

Overall, these findings confirm that digital images are an important and potentially significant necessity for use in the process of investigating Syariah offences, primarily due to their high probative value. However, due attention should be given to all the listed principles to ensure that the digital images submitted are authentic, reliable, and contribute effectively to justice within the Syariah legal system. Furthermore, a deep understanding of the content of the digital images themselves is a critical aspect that needs to be emphasized. Difficulties in objectively interpreting the content of crime scene images have the potential to significantly impact the smoothness and accuracy of the investigation process. Therefore, this study suggests the need for further research to specifically examine methods for understanding the visual content of digital images within the context of investigating Syariah offences. The focus of this research should include the development of methodologies for objectively analysing digital images to help provide a more critical understanding of the image content. It is also seen as highly significant in identifying potential interpretation biases that may arise.

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