
Submission date: 1 Nov 2022

Acceptance date: 21 Dec 2022

Publication date: 12 May 2023

LEGAL VALIDITY OF AI EVIDENCE IN CRIMINAL CASES WITHIN SHARIAH COURT OF MALAYSIA

^{i,*}Aini Nur'aqilah Zabidi, & ⁱZizi Azlinda Mohd Yusof

ⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), 71800, Nilai, Negeri Sembilan, Malaysia

*(Corresponding author) e-mail: aininuraqilah4@gmail.com

ABSTRACT

The use of Artificial Intelligence (AI) technology, including AI algorithms and digital evidence such as CCTV footage, has become increasingly prevalent in legal proceedings. This trend raises questions about the validity and admissibility of AI-generated evidence in Shariah court proceedings. While specific guidelines exist for the use of evidence in Shariah courts, the application of AI technology in this context requires careful scrutiny to ensure justice for all parties involved. This study aims to examine the legal validity and admissibility of AI-generated evidence within the framework of the Shariah Court Evidence Enactment of Malaysia. The research employs a qualitative methodology, primarily involving a comprehensive literature review of relevant scholarly articles. Additionally, semi-structured interviews with experts in AI and Islamic law are conducted to gather insights on the legal validity of AI evidence in Shariah criminal proceedings. Findings suggest a potential connection between AI-generated evidence and the types of digital documents and evidence already recognized in the Shariah court enactment. This connection may provide a basis for considering the validity and admissibility of AI-generated evidence in Shariah courts. The research aims to contribute to the alignment of legal proceedings with the principles of fairness and transparency inherent in Islamic jurisprudence. By addressing the challenges and opportunities presented by AI technology in Shariah courts, this study seeks to reinforce public trust in the legal system while ensuring adherence to Islamic legal principles.

Keywords: Artificial Intelligence, validity, evidence, criminal cases, Shariah court

Cite as: Zabidi, A. N., & Mohd Yusof, Z. A. (2023). Legal validity of AI evidence in criminal cases within Shariah court of Malaysia. *SALAM Digest*, 1(1), 81-91. Retrieved from <https://salam.usim.edu.my/index.php/salamdigest/article/view/145>

Introduction

Technology has greatly influenced our lives, revolutionizing previously challenging and time-consuming tasks into effortless actions with just a click. Tasks that formerly required human intervention can now be efficiently performed by machines, consuming significantly less time and energy. The advancements in technology and science have greatly impact the advancement of the legal system, both domestically and internationally, particularly in the realm of evidence proving within court proceedings (Ahmad et al., 2020).

In relation to that, according to Sanghvi et al., (2022), the emergence of the latest technology such as Artificial Intelligence (AI) has created a new ground in the legal system, especially in terms of the use of AI evidence in criminal cases in court. Despite this, Ahmad (2020) studied that there was a slight difference in the Shariah court because the use of AI as evidence is rarely use and is not widely used to prove, convict, and acquit a person of a case in this court.

Artificial Intelligence, or AI, encompasses the realm of machines endowed with a remarkable capacity to emulate human intelligence, enabling them to adeptly navigate through challenges that would otherwise prove laborious and time-consuming to accomplish through manual mean (Sanghvi et al., 2022). Research of previous studies highlights the worldwide importance used of these technologies. The implementation of AI-derived evidence, such as the utilization of Automated Facial Recognition (AFR) systems, Biometric Technology like fingerprint, Closed Circuit Television (CCTV) Images, Voice analysis, Machine-Generated Transcripts, and other software designed which is also known as "*Digital Document*" in evidence law terms, that is to identify suspects in proceeding of courts, holds incredible promise and potential to revolutionize criminal investigations (Wan Ismail et al., 2020; Rigano, 2019). However, this type of technological leap also raises fundamental questions about the admissibility, reliability, and ethical implications of such evidence in court proceedings (Wan Ismail et al., 2023).

With the widespread application of this AI technology, there is an urgent need to assess the extent of its validity as well as the ethics of the utilization on it in judicial proceedings in Shariah courts in Malaysia. Moreover, Choo (2018) have emphasized the wider consequences of AI in the criminal justice system, particularly its potential impact on the collection of evidence and legal procedures in a proceeding of cases in court. Nevertheless, in the purview context of Malaysia's Shariah courts, there is a lack of scholarly exploration, which calls for a focused inquiry into the legal authenticity of AI evidence.

Therefore, as we delve into this research, it is essential to consider the ethical dimensions and potential challenges that arise from the integration of AI evidence. The reliability, bias, and ethical implications of AI technologies must be thoroughly scrutinized within the specific framework of Shariah law, recognizing the importance of upholding justice while embracing technological advancements.

Indeed, the main focus of this research is to seeks and provide valuable insight into the legal validity and legitimacy of the use of AI evidence in criminal cases within Malaysia's Shariah court system. By merging previous research and expanding upon established frameworks, the objective is to advance a sophisticated understanding of the convergence between AI technology and the principles of Shariah law.

Literature Review

The integration of artificial intelligence also known as digital evidence in legal proceedings, which has become a topic of significant scholarly inquiry particularly within the context of Shariah courts in Malaysia, has raised thought-provoking discussions around its appropriateness and implications (Kallil et al., 2019). This literature review explores key insights from several articles, shedding light on the legal validity of AI evidence in criminal cases that delve especially into the Shariah Court of Malaysia.

In the syariah context, what is said to be legal validity is when it complies with syariah standards based on Islamic rules also known as the evidentiary principles within Islamic jurisprudence. These guidelines aim to establish rules regarding the admissibility, assessment, and significance assigned to various forms of evidence during legal proceedings within Islamic legal systems. This established principle is

to ensure justice, equality, and the establishment of truth in all court proceedings (Islamic Rule of Evidence, 2023).

Furthermore, in the field of Islamic criminal law, according to (Rashid, 2021) in his article titled *“Application of Artificial Intelligence and the Necessary for Innovations in Islamic Criminal Law”*, supports legal innovation to accommodate the integration of AI. The article emphasizes the need for a dynamic legal framework that aligns with technological advancements in AI while upholding Shariah principles. In the article, he opined that adapting Islamic criminal law to the challenges posed by AI is a necessity to ensure the legal validity of evidence generated by AI in the Sharia court.

Artificial Intelligence is a technological advancement in computer systems that enables them to carry out tasks that traditionally necessitate human intelligence. This innovation finds its application in computer systems designed to imitate human cognitive abilities (Artificial Intelligence (AI) and the Legal Profession, The Law Society, 2018). Particularly, it encompasses *‘machine learning’*, wherein algorithms identify patterns in data and utilize these patterns to automate specific tasks. The rapid advancement of artificial intelligence has significant implications not only for the legal sector but also for various areas within the field of law.

In relation to that, AI technology can be linked to proof using digital documents which AI technology can help in analyzing and being used as evidence. In an article titled *“Explainable Artificial Intelligence for Digital Forensics”*, Jones and Smith (2020) contribute to the discourse by highlighting the role of explainable artificial intelligence (AI) in the field of digital forensics. Noting the increasing use of AI-generated evidence in legal proceedings, the authors argue that transparency and interpretability are essential to the legal validity of such evidence. However, there are doubts about its credibility and validity. AI, as discussed, is a necessity to address concerns related to justice and accountability and ensure that the decision-making process of the AI system is understandable by legal practitioners and consistent with the principles of justice in Sharia courts.

Next, according to the title of the article *“Digitalisation of Judiciary in Malaysia: Application of Artificial Intelligence in the Sentencing Process”* Smith and Abdullah (2018), this article discusses and delve into the digitalization of the judiciary in Malaysia and its implications for the legal system. The authors specifically address the application of AI in the sentencing process, raising crucial questions about the legal validity of AI evidence within Shariah courts. Their research underscores the importance of aligning AI applications with Shariah principles to maintain the integrity of the legal system.

In addition, in the article *“Legal Analysis of Syariah Court Evidence Law on Digital Document as Evidence and Its Admissibility in Court Proceedings”*, Alias et al., (2021b) associate an artificial intelligence and discusses to the specific legal framework of Syariah courts which conducting a meticulous legal analysis. However, they focus on digital documents, including those generated by AI, the authors assess the admissibility of such evidence in court proceedings. They have provided a critical examination of the existing Syariah court evidence law, providing insights into the complexities of admitting AI-generated evidence and contributing valuable considerations for ensuring legal validity.

Furthermore, according to Khan and Hassan (2021) in the article *“The Integration of Digital Forensics Science and Islamic Evidence Laws”*, the study focuses on contribute to the literature by exploring the integration of digital forensics science with Islamic evidence laws. Their research investigates the compatibility of AI evidence with Shariah principles and emphasizes the necessity of harmonizing digital forensic advancements with Islamic evidence laws. The study was adding depth to the understanding of how the legal validity of AI evidence can be ensured within the unique context of Shariah courts.

Besides, the use of fingerprints as evidence is not something new and has been usually used in court proceedings, especially in criminal cases. However, to what extent is the use of AI-based able to provide authentic evidence and protect the rights of human justice? In the article of *“A Study on the Use of Fingerprints According to the Fiqh of Islam”* the study conducted by Al-Samadi (2018) on the use of fingerprints according to the Fiqh of Islam offers valuable insights into the broader discussion of evidence within the Shariah legal framework. Al-Samadi meticulously examines the Islamic jurisprudential perspectives on the use of fingerprints as a form of evidence. The article highlights the

relevance of Islamic jurisprudence (Fiqh) in guiding the acceptance and admissibility of technological evidence within the Shariah legal system. Islamic jurisprudence places a significant emphasis on the reliability and authenticity of evidence, and Al-Samadi (2018) explores how fingerprint evidence aligns with these principles. The finding has provided a foundational understanding of the principles guiding the acceptance of technological evidence in the eyes of Islamic law.

Methodology

This research uses qualitative methods as a research methodology. Qualitative methods are chosen due to their ability to provide in-depth understanding, enabling a nuanced comprehension of the cultural, ethical, and legal intricacies. The main objective of qualitative data collection methods is to obtain written information for research purposes, particularly for the purpose of conducting an analysis (Ugwu & Val, 2023). This research involves a deep dive and thorough understanding through the reading and review of several other authentic scientific articles for the data collection methods and inferring the data of the legal validity of AI evidence in criminal cases within the Shariah Court of Malaysia.

The primary methods of data collection consist of thoroughly reviewing relevant legal documents, court records, and scholarly literature to establish a comprehensive understanding of the legal frameworks. The researcher uses document review because this method is most appropriate in qualitative research to gain meaning, understanding, and findings, as well as examine writings written by scholars and academics (Jasmi, 2012). Additionally, the findings use a qualitative method which also focuses on interviews. Semi-structured interviews are conducted with legal practitioners, Shariah scholars, and experts in AI and law to capture their expert opinions, experiences, and perspectives on the legal validity of AI evidence in the specific context of Shariah criminal proceedings. The combination of these two methods which is a document review and interviews allow for a comprehensive exploration of the research topic, increasing the validity and reliability of the findings (Smith, J. A., 2015).

Results and Findings

In Malaysia, it is evident that the majority of law practitioners in the Civil Court have extensive experience dealing with various forms of such as AI evidence, including electronic documents, as compared to the law practitioner in the Shariah Courts. However, the absence of exposure to cases involving electronic evidence does not imply that law practitioners in the Shariah Court reject such evidence due to their lack of familiarity with it.

The reason behind this is the absence of a dedicated Act in the Shariah Courts that addresses electronic documents. In contrast, the Civil Courts have specific legislation, such as the Digital Signature Act 1997 and the Electronic Commerce Act 2006, that pertains to electronic documents. However, there are many acts that have presented and related to this such evidence that can be applied to make it as evidence that can be adopted in the Sharia court.

Artificial Intelligence (AI) Technology and Evidence that Practiced In Shariah Courts

Digital/Electronic Document

In the landscape of modern legal systems, the integration of digital and electronic documents, particularly in Sharia courts, signifies a notable shift towards more technologically advanced judicial processes. The increasing reliance on digital documents within Shariah courts reflects a global trend in judicial systems to embrace technological advancements (Alias, 2022; Wan Ismail et al., 2021). This shift is necessitated by the digital nature of human interactions and transactions, which leaves electronic footprints crucial for legal adjudication. The diverse interpretations within Islamic Sharia, influenced by tradition, culture, and social context, add complexity to the integration of these technologies (International Business Information Management Association (IBIMA), 2023). Based on the results of interviews with sharia lawyers in the state of Selangor, he mentioned several things that apply the use of AI that can be presented as evidence in Syariah Court (Ismail, 2023).

i. Closed Circuit Television (CCTV) Images

Closed Circuit Television (CCTV) is a powerful AI system that uses video cameras to send signals exclusively to designated monitors or recording devices, which not broadcast to the public. These very effective systems are widely used in a variety of settings, including business, public space, and private property, to enhance surveillance and security issues from each entity. With careful and useful monitoring and recording activities, the CCTV system plays an important role in strengthening safety and hindering potential criminal behavior (Wan Ismail et al., 2018; Space and Naval Warfare Systems Center of Homeland Security et al., 2013).

CCTV images have become indispensable in modern legal systems, including Shariah courts. The use of CCTV as evidence in court has been widely used in various countries, especially in civil courts (Wan Ismail et al., 2019). The application of AI in analyzing CCTV footage marks a significant advancement. According to an Islamic scholar's definitions, they agree to say that CCTV images are a one form of electronic documents that can be generated, stored, transmitted, and received, and communicated technologically through other electronic device such as computers, digital cameras, and other technology software (Wan Ismail et al., 2019). By relating the definition of CCTV to the electronic document, this indicates that CCTV is part of the electronic document that is allowed to be used as evidence in court.

However, the debate on the admissibility of CCTV images as a tool of evidence in Shariah law continues until now due to Islamic law factors that strongly apply the value and validity in the acceptance of evidence for certain Shariah criminal cases. For example, as in Shariah criminal cases, in the case of *khalwat*, it is very difficult for CCTV images to be accepted as one of the evidence by some parties because it involves and requires evidence for more detailed offenses and raises privacy issues for certain parties (Ismail, 2023). It is common knowledge that conviction for the crime of *khalwat* requires evidence of *iqrar*, evidence from witnesses, namely 4 male witnesses who are of age and *mumayyiz*, and so on (Hamidi Abdul Ghani, 2020). Due to the vulnerable nature of electronic evidence, their admissibility in court is subject to certain rules.

Their use ranges from corroborating eyewitness accounts to providing convincing evidence in cases where other forms of evidence may be lacking. The objectivity and clarity that CCTV footage brings to legal proceedings make it a valuable asset in the pursuit of justice. AI algorithms enhance image quality, assist in identifying individuals, and analyze patterns and movements. These capabilities are essential in extracting meaningful insights from vast amounts of footage, thereby aiding in the accurate interpretation of events (UNESCO, 2023).

In addition, based on an interview conducted with a Sharia lawyer, according to Amirul (2023), he said that there is an AI tool which is a camera that can capture people that having adultery in a dark area. This high-powered long-distance camera is able to see clearly, and it is one of the latest tools for religious departments to carry out their responsibilities to arrest the person that commit that crime to eradicate and prevent immorality in our country.

ii. Deoxyribonucleic (DNA) analysis

Deoxyribonucleic (DNA) analysis stands as a cornerstone in forensic science, its reliability and accuracy making it a sought-after form of evidence in legal cases, including those under Shariah law (Alias, 2023; Alias et al., 2021a). In situations where traditional evidence is inconclusive or absent, DNA evidence can play a decisive role.

Evidence using the DNA principle has been gathered decades ago where in the time of the previous prophet (a.s), and the time after them until now. For instance, during the time of the prophet Yusuf (a.s), at that time, his brothers wanted to eliminate him from his father's house, which is the prophet Ya'qub (a.s) saying that he was eaten by wolves when they went out because they feel envious of the love given by their father to Prophet Yusuf (a.s) (Hanafi). This is found in the Quran in Surah Yusuf, verses 15-18 which means:

Translation: And so, when they took him away and decided to throw him into the bottom of the well, We inspired him: “‘One day’ you will remind them of this deed of theirs while they are unaware ‘of who you are’.” Then they returned to their father in the evening, weeping. They cried, “Our father! We went racing and left Joseph with our belongings, and a wolf devoured him! But you will not believe us, no matter how truthful we are.” and they brought his shirt, stained with false blood. He responded, “No! Your souls must have tempted you to do something ‘evil’. So ‘I can only endure with’ beautiful patience! It is Allah’s help that I seek to bear your claims.

(Surah Yusuf, 12:15-18)

After his clothes were found, the results of the examination found that the blood was fake blood which is from an animal and not the blood of Prophet Yusuf (a.s.) who was said to have died eaten by wolves while proving that he was still alive unlike what his brothers claimed (al-Qurtubi, 2006).

Based on this story, the use of DNA as evidence is already being used and its use until now is getting wider not only in criminal offenses but also in all aspects of conviction and legislation. The incorporation of AI into DNA analysis has revolutionized this field. AI algorithms process genetic data swiftly and accurately, offering precise interpretations essential for judicial decisions. This technological integration not only enhances the speed of analysis but also the reliability of the outcomes, ensuring decisions are grounded in scientifically sound evidence.

In the Syariah Court, the use of DNA analysis as evidence is used for biological purposes such as determining and verifying identity and also determining lineage (Baharuddin, 2023). This has been enshrined in the Syariah Court Evidence Act (Federal Territories) 1997 in section 33. Furthermore, according to Ahmad et., (2015), the use of DNA analysis is limited for the determination only and does not apply for making a denial of the lineage. The DNA results obtained from this analysis cannot be used for the denial of lineage as a parallel provision which has been decided by the *Muzakarah* of the Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia 101st which convened on 27 September 2012 (e-SMAF, 2012).

In this *Muzakarah*, the discussion highlighted the importance of lineage in Islam, stating that if there is strong evidence that supports a person's lineage, it cannot be denied except through the *Li'an* process. *Li'an* is a recognized practice in Islam, which conviction is through the *Qur'an*, *as-Sunnah*, and *Ijma' Ulama'* which is the consensus of scholars that must be done in a certain time and period. *Muzakarah* also agreed in deciding that the guidelines for undergoing DNA testing in cases of denial of lineage should be applied and need to be increased, because DNA is only as a *Qarinah*, which is evidence that is considered as secondary which is additional evidence than the primary and main evidence.

Looking at the previous case, the dispute between Sabah State Syarie Prosecutor vs. Rosli bin Abdul Japar (2007), this case involves the criminal offense of committing adultery to the point of giving birth to an illegitimate child. The provision of DNA samples to experts, namely forensic experts from the Malaysian Chemistry Department, to analyze the results of the DNA has been done and used as evidence in court to prove the criminal offense that has been committed. The Judge of the Keningau Sabah Syariah High Court has accepted the scientific proof through this DNA analysis based on section 86(1) of the Syariah Court Evidence Enactment (State of Sabah) 1992 and also section 190(1) and (2) of the Syariah Criminal Procedure Enactment (State of Sabah) 1993, as well as convicting the crime committed by the accused because the results of the DNA analysis test found that there is a blood relationship between the two accused. (Taib, 2023)

Perspective of legal experts in Malaysia regarding the legal validity of AI evidence in criminal cases

AI evidence is categorized as al-Qarinah

In Malaysia, the legal framework has evolved to incorporate electronic evidence, under which AI-generated evidence is classified. The amendment of the Evidence Act 1950 to include electronic evidence marks a significant step in acknowledging the role of technology in legal proceedings. This inclusion effectively categorizes AI evidence as *al-Qarinah*. According to the application of law, *Qarinah* is the logical reasoning drawn from acts, words, or circumstances which proves the existence

or non-existence of another situation or thing. It is also known as presumption which means an inference or conclusion as to truth of some fact in question. *Qarinah* is also defined in the Islamic law practiced in Malaysia.

Chapter 3 of the Syariah Court Evidence (Federal Territories) Act 1997 is ordained for *al-Qarinah*. According to the Section 49, explanation 3, and 50 under this Act, stated that;

Section 49.

“A document produced by a computer is primary 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.”

From this act, *Qarinah* can be defined as: “*fact connected with the other fact in any of the ways referred to in this Act*” (Malaysian Legislation, 2006). In a simplest word, this type of evidence which is AI and digital documents are considered as secondary evidence and should be accompanied by expert opinion in supporting and strengthening the primary evidence which is more *shahadah* and also for the purpose of the validity of each useful evidence (Wan Ismail et al., 2021).

AI evidence needs an authorized by expert

The complexity of AI technology necessitates the involvement of experts in assessing its admissibility in court. Two key aspects are the validity and reliability of AI evidence. Validity concerns how accurately the AI measures, classifies, or predicts what it is designed to do, while reliability refers to the consistency with which the AI produces accurate results under similar conditions. Given the potential for biases, lack of transparency, and the necessity for extensive testing before public use, expert authorization becomes crucial in evaluating these factors (Artificial Intelligence as Evidence, 2021).

According to Syariah Court Evidence (Federal Territories) Act 1997 section 33 (1) stated that, when the court is faced with the task of giving judgment on legal matters related to foreign jurisdictions, scientific or artistic subjects, or matters related to the identification or authentication of handwriting, fingerprints, or lineage, it relies on expertise individuals with experience in these specific fields. Such individuals have a deep understanding and knowledge of foreign countries, their respective sciences or arts, as well as the skills involved in determining the authenticity or origin of handwriting or fingerprints or tracing their lineage. This reliance on knowledgeable experts in these particular fields is an important factor in reaching comprehensive and informed decisions.

- i. Expert clarification on identity proof.
- ii. Expert clarification on proving the authenticity of documents.
- iii. Expert clarification on determination of lineage/DNA analysis.

In order to ensure a comprehensive and admissible evaluation of the evidence in court, it is highly recommended that several experts be brought forward to provide clarification and validity. Ideally, two or more experts should be present, but the testimony of even one expert can be considered satisfactory. However, if the two experts' opinions have a conflict and contradictory with each other, it is mandatory to present a third expert to offer their perspective and contribute to a comprehensive understanding of the matter.

In the context of the Syariah Court, various professionals such as forensic experts, DNA experts, and IT experts have inherent qualifications to serve as expert witnesses to make a clarification of each evidence. The Syariah Courts Evidence (Federal Territories) Act 1997, in particular Section 33(1), gives these individuals the power to give their expert opinions and submit evidence related to their respective fields. This provision not only allows for the exploration of multiple perspectives but also expands the opportunity for these experts to contribute to the authentication and acceptance of evidence during legal proceedings. By ensuring the justice and fairness of the judicial process, the Syariah Court aims to uphold justice for each individual involved in the dispute.

The trustworthiness and accuracy of AI evidence are of paramount importance in legal settings. This involves ensuring that the AI technology provides consistent and unbiased results and has undergone thorough testing and validation. The legal community must rigorously assess these aspects to determine the effectiveness and suitability of AI evidence in judicial processes.

Ethical and shariah issues that arise in the use of AI evidence in criminal cases in Shariah Courts

The dawn of Artificial Intelligence (AI) in the legal realm has opened new frontiers in judicial processes, including in Shariah courts. This technological advancement, while promising in enhancing the efficiency and accuracy of legal proceedings, brings forth a range of ethical and Shariah issues that need careful consideration.

Privacy concerns and individual rights

At the forefront of the ethical challenges is the issue of autonomy and privacy. AI's capacity to process and analyse extensive data sets can lead to concerns about individual privacy, a key consideration in Islamic ethics. The use of AI in criminal cases in Shariah courts raises questions about the extent to which these systems intrude into personal lives. The challenge lies in leveraging AI's capabilities while safeguarding individuals' autonomy and privacy, ensuring that AI applications do not overstep ethical boundaries (Ismail, 2023).

Fairness and transparency in AI systems

Another critical issue is the need for fairness and transparency in AI systems. Shariah law emphasizes justice and fairness, and any opacity in AI decision-making processes could potentially lead to biased outcomes. Ensuring that AI systems are transparent in their functioning and fair in their conclusions is vital. This is particularly challenging given the often 'black-box' nature of AI algorithms, where the decision-making process is not always clear. Shariah courts must ensure that AI systems are used in a way that their processes and outcomes are understandable and justifiable (Taib, 2023).

Central to Islamic jurisprudence is the concept of *maṣlaḥa* (Elmahjub, 2023), which refers to the common welfare or public interest. In applying AI in criminal cases, Shariah courts must consider how these technologies align with *maṣlaḥa*. The challenge is to balance the technological benefits against the ethical values and principles inherent in Islamic law. This involves a nuanced understanding of how AI applications can enhance the judicial process, without compromising the ethical foundations of Shariah.

Furthermore, AI's impact on human dignity and agency is another area of concern. Islamic ethics place a high value on human dignity, and the impersonal nature of AI decision-making could potentially undermine this. It is crucial that the use of AI in legal proceedings does not devalue the human elements of empathy, understanding, and moral judgement that are central to Shariah law.

The reliability and accuracy of using AI-algorithm and evidence

The potential for misuse or errors in AI systems poses a significant ethical challenge. Given the impact of judicial decisions on individuals' lives, the accuracy and ethical application of AI technologies are paramount. Shariah courts must implement stringent measures to ensure that AI systems are not only technically sound but also ethically responsible.

On the whole, the integration of AI into judicial processes in Shariah courts offers a promising avenue for enhancing legal procedures. However, this advancement comes with significant ethical and Shariah considerations that must be meticulously addressed. Balancing the technological benefits with adherence to ethical and Shariah principles is crucial. As AI continues to evolve, Shariah courts face the task of navigating these challenges, ensuring that the use of AI in criminal cases upholds justice, respects privacy and autonomy, maintains human dignity, and aligns with the fundamental values of Islamic jurisprudence. The successful integration of AI into Shariah courts will depend on the ability to harmonize these advanced technologies with the rich, ethical traditions of Shariah law, ensuring that justice is served in a manner that is both technologically proficient and ethically sound.

The debate between utility-based and duty-based ethics in Islamic discourse has significant implications for the use of AI in Shariah courts. While utility-based ethics focus on the overall societal benefits of AI, duty-based ethics emphasize adherence to moral and ethical duties. This dichotomy requires Shariah courts to consider not only the efficiency and benefits brought by AI but also the ethical obligations and principles that should guide its use (Elmahjub, 2023).

Conclusion

In summary, the issue of whether AI evidence can be recognized as valid in criminal cases within the Shariah Court of Malaysia is a multi-faceted and ever-changing realm that demands thorough contemplation of both technological progress and adherence to Islamic legal principles. Although AI technologies have the potential to improve the effectiveness and precision of presenting evidence, their integration into the Shariah legal system presents obstacles concerning the conformity of AI-generated evidence with Islamic jurisprudence. Thus, the use of AI as evidence in the judiciary in sharia courts needs to be expanded. Besides, the Shariah Court of Malaysia, which operates under the principles of Islamic law, faces the complex task of addressing various challenges related to the use of AI algorithms. These challenges include determining the trustworthiness of these type of evidence, assessing the admissibility of evidence generated by machines, and ensuring that fundamental rights guaranteed by Shariah principles are upheld. As the integration of AI technology becomes increasingly common in legal proceedings, scholars and jurists in Malaysia must engage in a lively and compressed discussion to establish clear guidelines and criteria for the acceptance of AI evidence that align with Shariah principles. Furthermore, the evaluation of AI evidence in relation to Shariah principles necessitates a thorough examination of Quranic teachings, Hadith, and established legal precedents. Moreover, it is crucial for Islamic legal scholars to work hand-in-hand with AI and digital forensics experts, pooling their expertise to craft a comprehensive framework that tackles concerns surrounding authenticity, accountability, and ethical considerations. This collaborative endeavor is of utmost importance in safeguarding the integrity of the legal proceedings within the Shariah Court of Malaysia and ensuring that legal processes be conducted in accordance with the principles of justice that accompany Islamic law, while also building confidence in the legal system.

References

- Abdul Ghani, H. (2020). Takzir dan pelaksanaannya di Malaysia. *E-Journal Kolej Universiti Islam Antarabangsa Sultan Ismail Petra*.
- Abdul Mutalib, L., & Wan Ismail, W. A. F. (2012). Al-Qarinah: Antara kekuatan dan keperluan dalam mensabitkan kesalahan jenayah (zina). *International Journal of Islamic Thought*, 2. <https://doi.org/10.24035/ijit.2.2012.004>
- Abualfaraj, M. (2011). Evidence in Islamic law: Reforming the Islamic evidence law based on the federal rules of evidence. *Journal of Islamic Law and Culture*, 13(2–3), 140–165. <https://doi.org/10.1080/1528817x.2012.733130>
- Ahmad, M. H., Baharuddin, A. S., Zakaria, M. A., Nordin, N., Ishak, S. K., & Othman, N. K. (2020). Bukti saintifik dan penerimaannya di Mahkamah Syariah: Analisis perundangan bagi Undang-Undang Keterangan Mahkamah Syariah. *Kanun: Jurnal Undang-undang Malaysia*, 32(1), 67–92.
- Ahmad, M. H., Razak, R., Saharudin, N. S., & Hashim, H. (2019). Epistemologi fiqh forensik: Titik pertemuan antara sains dengan Syariah. Retrieved from <https://www.researchgate.net/publication/337680192>

- Aizah Rashid, A. M. N. H. F. M. N. (2021). Application of artificial intelligence and the necessary for innovations in Islamic criminal law.
- Alias, M. (2023). Forensic science and its application in documentary evidence in Malaysian Syariah Courts. *Kanun: Jurnal Undang-Undang Malaysia*, 36(1), 107-120. [https://doi.org/10.37052/kanun.36\(1\)no6](https://doi.org/10.37052/kanun.36(1)no6)
- Alias, M. A. A. (2022). *The falsification of documents in marriage cases under the civil and Syariah courts in Malaysia: An appraisal analysis*. (Master's dissertation). Universiti Sains Islam Malaysia, Nilai, Negeri Sembilan.
- Alias, M. A. A., Wan Ismail, W. A. F., Baharuddin, A. S., & Abdul Mutalib, L. (2021a). The application of forensic science element in documentary evidence: A review in Malaysian Syariah Court. *Proceeding of the 8th International Conference on Management and Muamalah*, Faculty of Management and Muamalah, Kolej Universiti Islam Selangor, 268-276.
- Alias, M. A. A., Wan Ismail, W. A. F., Baharuddin, A. S., & Abdul Mutalib, L. (2021b). Legal analysis of Syariah court evidence law on digital document as evidence and its admissibility in court proceedings: Analisis perundangan bagi Undang-Undang Keterangan Mahkamah Syariah terhadap dokumen digital sebagai kaedah pembuktian dan kebolehterimaannya dalam prosiding mahkamah. *Journal of Management and Muamalah*, 11(2), 54-64.
- Al-Qurtubi, M. (2006). *Al-Jāmi' li-Aḥkām al-Qur'ān* (Sunt. A. A. Muhsin & R. Arqaswasi. Ed. 1. Jil. 11). Beirut: Mu'asasah al-Risalah.
- Artificial intelligence (AI) and the legal profession | The Law Society. (2018, May 1). Retrieved from <https://www.lawsociety.org.uk/topics/research/ai-artificial-intelligence-and-the-legal-profession>
- Artificial Intelligence as Evidence. (2021, December 3). *Journal of Technology and Intellectual Property*. Retrieved from <https://jtjp.law.northwestern.edu/issues/artificial-intelligence-as-evidence/>
- Baharuddin, A. P. (2023, December). DNA analysis in terms of Artificial Intelligence as evidence. (A. N. Zabidi, Interviewer).
- Bu, Q. (2021). The global governance on automated facial recognition (AFR): Ethical and legal opportunities and privacy challenges. *International Cybersecurity Law Review*, 2(1), 113-145.
- Elmahjub, E. (2023). Artificial Intelligence (AI) in Islamic ethics: Towards pluralist ethical benchmarking for AI. *Philosophy & Technology*, 36(73).
- Fajaryati, N., Budiyo, B., Akhyar, M., & Wiranto, W. (2020). The employability skills needed to face the demands of work in the future: Systematic literature reviews. *Open Engineering*, 10(1), 595-603. <https://doi.org/10.1515/eng-2020-0072>
- Hall, S. W., Sakzad, A., & Choo, K. R. (2022). Explainable artificial intelligence for digital forensics. *WIREs Forensic Science*, 4(2). <https://doi.org/10.1002/wfs2.1434>
- Hanafi. (n.d.). *Kisah 25 Nabi dan Rasul*. Jakarta: Bintang Indonesia.
- Institute of Electrical and Electronics Engineers. (n.d.). *2019 systems of signals generating and processing in the field of on board communications: 20-21 March 2019, Moscow Technical University of Communication and Informatics, Moscow, Russian Federation*.
- International Business Information Management Association (IBIMA). (2023, December 7). The disparity of digital evidence admissibility in Islamic Sharia Courts. Retrieved from <https://www.ibima.org/>
- Jasmi, K. A. (2012). Metodologi pengumpulan data dalam penyelidikan kualitatif. <https://www.researchgate.net/publication/293097563>
- Kallil, M. K., & Che Yaacob, A. (2019). The integration of digital forensics science and Islamic evidence laws. *International Journal of Law, Government and Communication*, 4(17), 61-70. <https://doi.org/10.35631/ijlgc.417006>
- Malaysian Legislation. (2006). Syariah Court Evidence (Federal Territories) Act 1997. Retrieved from CommonLII: http://www.commonlii.org/my/legis/consol_act/sceta1997415/
- Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia: Hukum Menggunakan DNA Untuk Menentukan Status Nasab Anak Dan Tempoh Melaksanakan Li'an Untuk Menafikan Nasab Anak. (2012). *JAKIM : E-SMAF VI*. <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/10304>

- Noor, M., Mohd, D., & Abdullah, S. (n.d.). Satu kajian mengenai penggunaan cap jari menurut perspektif fiqh Islam A study on the use of fingerprints according to the fiqhs of Islam. *In Jurnal Perspektif Jil. 2 Bil (Vol. 2)*.
- Rigano, C. (2019). Using artificial intelligence to address criminal justice needs (NIJ Journal 280).
- Rosili, N. A. K., Zakaria, N. H., Hassan, R., Kasim, S., Rose, F. Z. C., & Sutikno, T. (2021). A systematic literature review of machine learning methods in predicting court decisions. *IAES International Journal of Artificial Intelligence*, 10(4), 1091–1102. <https://doi.org/10.11591/IJAI.V10.I4.PP1091-1102>
- Ruzman, O., & Noor, M. (n.d.). Kesaksian dalam konteks Undang-Undang Keterangan Mahkamah Syariah di Malaysia: Analisis dari perspektif Mazhab Syafi'i.
- Sanghvi, H., Ling, J. S. W., Tay, E. S., & Kuek, C. Y. (2022). Digitalisation of judiciary in Malaysia: Application of artificial intelligence in the sentencing process. In *Proceedings of the International Conference on Law and Digitalization (ICLD 2022)* (pp. 91–97). Atlantis Press SARL. https://doi.org/10.2991/978-2-494069-59-6_9
- Space and Naval Warfare Systems Center of Homeland Security, D., Directorate, T., Security Enterprise, H., & Responders Group, F. (2013). System assessment and validation for emergency responders (SAVER) CCTV technology handbook Atlantic.
- Taib, M. A. (2023, December 9). Artificial intelligence as evidence in Shariah Court of Malaysia. (A. N. Zabidi, Interviewer).
- Ugwu, C. N., & Val, E. (2023). Qualitative research. *Idosr Journal of Computer and Applied Sciences*, 8(1), 20–35. www.idosr.org
- Wan Ismail, W. A. F., Abdul Mutalib, L., Baharuddin, A. S., Abdullah Kahar, N. S., & Alias, M. A. A. (2023). Keperluan prosedur operasi standard dalam penerimaan dokumen digital di mahkamah sivil Malaysia. *UUM Journal of Legal Studies*, 14(1), 365–390. <https://doi.org/10.32890/uumjls2023.14.1.14>
- Wan Ismail, W. A. F., Abdul Shukor, S., Hashim, H., & Baharuddin, A. S. (2018). Pembuktian melalui televisyen/ kamera litar tertutup (CCTV) dalam kes-kes jenayah: Tinjauan umum berdasarkan Undang-Undang Keterangan Islam: Evidence obtained through CCTV in criminal cases: An overview from an Islamic legal perspective on the law of evidence. *Malaysian Journal of Syariah and Law*, 6(1), 87–103. <https://doi.org/10.33102/mjsl.vol6no1.101>
- Wan Ismail, W. A. F., Baharuddin, A. S., Abdul Mutalib, L., & Alias, M. A. A. (2020). The admissibility of digital document according to Syariah law: A preliminary analysis. *INSLA E-Proceedings*, 3(1), 471-480. Retrieved from <https://insla.usim.edu.my/index.php/eproceeding/article/view/53>
- Wan Ismail, W. A. F., Baharuddin, A. S., Abdul Mutalib, L., & Alias, M. A. A. (2021). An appraisal of digital documents as evidence in Islamic law. *Academic Journal of Interdisciplinary Studies*, 10(3), 198. <https://doi.org/10.36941/ajis-2021-0076>
- Wan Ismail, W. A. F., Baharuddin, A. S., Mutalib, L. A., & Alias, M. A. A. (2021). A systematic analysis on the admissibility of digital documents as evidence in Malaysian Syariah courts. *Pertanika Journal of Social Sciences and Humanities*, 29(3), 1981–1996. <https://doi.org/10.47836/pjssh.29.3.26>
- Wan Ismail, W. A. F., Shukor, S. A., Hashim, H., Mutalib, L. A., & Baharuddin, A. S. (2019). The reality on application and challenges of closed-circuit television (CCTV) images as evidence in Shariah criminal cases in Malaysia. *Humanities and Social Sciences Reviews*, 7(6), 356–361. <https://doi.org/10.18510/hssr.2019.7661>
- Wang, P. (2019). On defining artificial intelligence. *Journal of Artificial General Intelligence*, 10(2), 1–37. <https://doi.org/10.2478/jagi-2019-0002>