

Proving Domestic Violence Using Social Media Posting as Evidence: A Comparison between Common Law and Civil Law Systems

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ABSTRACT

The digital transformation of communication has revolutionized evidentiary practices, particularly in the prosecution of domestic violence. Social media postings—ranging from text messages and photographs to videos and digital comments—have become critical forms of evidence revealing coercive control, intimidation, and abuse. This paper examines the admissibility, authentication, and probative value of social media evidence in Malaysia and Indonesia, representing the common law and civil law traditions respectively. Drawing from Malaysia's *Domestic Violence Act 1994* and *Evidence Act 1950*, and Indonesia's *Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT)* and *ITE Law (UU No. 11/2008 jo UU No. 19/2016)*, the study analyzes how courts navigate questions of digital authorship, privacy, and forensic reliability. Integrating trauma-informed adjudication and feminist jurisprudence, this paper argues that while Malaysia's common law system offers interpretive flexibility, Indonesia's codified evidentiary framework ensures procedural predictability. Drawing on comparative legal analysis, the study concludes that authentication and forensic preservation are indispensable for justice and proposes a harmonization of evidentiary standards for social media in domestic violence cases between the common law and civil law systems.

Keywords: social media, digital evidence, domestic violence, Malaysia, Indonesia, authentication, forensic.

INTRODUCTION

The digital revolution has transformed social media into both a site of personal expression and a critical evidentiary frontier. Platforms such as Facebook, Instagram, X (formerly Twitter), and WhatsApp now serve dual roles: enabling communication and preserving real-time documentation of abuse. Survivors of domestic violence increasingly rely on these digital platforms to chronicle their experiences—through posts, private messages, images, or live-streamed videos—creating spontaneous, timestamped digital evidence that reveals coercive control, psychological intimidation, and patterns of abuse that traditional evidence law often fails to capture (Grice & Schwartz, 2012).

Social media operates as a socio-legal ecosystem, bridging emotional expression with legal accountability. Defined by Boyd and Ellison (2008) as web-based platforms that allow users to construct public profiles and share user-generated content, these networks serve as digital diaries of behavior and emotion. For survivors, social media thus functions as both a therapeutic outlet and a repository of potential evidence. Krisvianti and Triastuti (2020) found that Indonesian women use Facebook groups to document abuse and mobilize collective support, forming what they term “digital sanctuaries” — online spaces that provide safety, solidarity, and empowerment. From a theoretical perspective, the Uses and Gratifications Theory (Katz, Blumler, & Gurevitch, 1973) explains this behavior as an active pursuit of validation and social connection, while the Trauma-Informed Evidence Theory (Glancy, Heintzman, & Wheeler, 2019) interprets fragmented or delayed digital disclosures as consistent with trauma rather than inconsistency.

Yet, the same communicative affordances that empower survivors also expose them to risk. Marder (2014) cautions that the discoverability of social media evidence in harassment and abuse litigation may subject survivors to invasive cross-examination, moral scrutiny, and reputational harm, especially when unrelated private content is introduced in court. The paradox of social media as both an empowering and perilous space reflects broader gendered dynamics within legal institutions that still privilege traditional forms of testimony over digital self-narratives.

In Malaysia, the Evidence Act 1950 has evolved to accommodate electronic records under Sections 90A and 90B, yet questions of authorship, manipulation, and authenticity remain contentious. Courts rely on judicial discretion, a hallmark of the common law system, allowing case-by-case flexibility similar to practices in the United States and the United Kingdom (Flanagan, 2016). Malaysian courts have occasionally accepted Facebook messages and screenshots as proof of threats or harassment in domestic violence prosecutions, but the lack of uniform forensic standards creates inconsistent outcomes.

By contrast, Indonesia operates under a codified civil law model, where the ITE Law (UU No. 11/2008 jo UU No. 19/2016) explicitly recognizes digital communications as legal evidence. However, the requirement of formal verification by certified cyber experts—while ensuring procedural rigor—often delays justice and imposes barriers on victims who lack access to forensic expertise (Budi Santoso, 2024).

Across both systems, the judicial community continues to grapple with the epistemic legitimacy of social media as evidence. Garfield Tenzer (2019) notes that despite social media's ubiquity, courts worldwide continue to undervalue digital communications as “less formal” or “inherently unreliable,” thereby silencing survivors' digital testimonies. This skepticism echoes early North American jurisprudence, where courts were hesitant to admit social media postings without corroborating witnesses or expert validation (Grice & Schwartz, 2012; Flanagan, 2016).

The tension between technological innovation and evidentiary conservatism reflects a broader shift in the philosophy of proof—from tangible, document-based evidence to dynamic, participatory, and data-driven forms of legal truth. As Murphy and Fontecilla (2013) argue, social media evidence now permeates nearly all criminal and regulatory investigations, requiring courts to balance technological sophistication with procedural fairness. Lev-On and Steinfeld (2020) describe this transformation as a form of “open justice from below,” where digital narratives challenge traditional hierarchies of proof and expand the public's participation in the justice process.

Ultimately, in domestic violence prosecutions, the challenge is to establish a balanced evidentiary framework that values both authenticity and context—one that interprets social media posts not merely as casual expressions but as potentially forensic narratives of abuse. Comparative insights from Malaysia's discretionary model and Indonesia's codified structure demonstrate how differing legal traditions can illuminate complementary paths toward digital justice, where survivor agency, technological reliability, and evidentiary integrity coexist within a trauma-informed jurisprudence.

Problem Statement

The increasing digitization of human communication has fundamentally reshaped evidentiary practices in criminal justice, particularly in domestic violence (DV) prosecutions. Social media platforms—Facebook, Instagram, WhatsApp, and X (formerly Twitter)—have become not only sites of social interaction but also archives of real-time, self-generated digital evidence. Posts, photographs, messages, and videos often capture recurring acts of coercive control, threats, and psychological intimidation that are otherwise invisible in conventional testimonial or documentary evidence. Yet, as Silver (2020) notes, courts continue to struggle with integrating social media evidence into traditional evidentiary paradigms, resulting in “an unclear picture” of authenticity, reliability, and admissibility standards in digital contexts.

While the promise of social media evidence lies in its ability to provide contemporaneous and spontaneous documentation of abuse, the same immediacy also raises procedural and ethical challenges. Murphy and Fontecilla (2013) highlight that despite its increasing prevalence in government investigations and criminal proceedings, the procedural architecture for admitting social media evidence remains underdeveloped, leaving

authentication largely to judicial discretion. This has resulted in inconsistent evidentiary thresholds across common law jurisdictions, where issues of authorship, manipulation, and contextual integrity remain unresolved (Grice & Schwartz, 2012; Flanagan, 2016).

Recent empirical research demonstrates the complex social dimensions of digital disclosures. Chen et al. (2017) found that victims frequently use Facebook to share personal crises and seek community support, illustrating how social media can function as a Domestic Violence Crisis Service (DVCS) proxy. Their study achieved a 94% accuracy rate in detecting critical posts through deep learning analysis, evidencing the potential of computational forensics in identifying DV incidents from online behavior. However, this technological capability contrasts sharply with the limited evidentiary recognition such posts receive in courtrooms, including in Malaysia and Indonesia, where formal admissibility still depends on documentary-style verification.

At the same time, the discursive environment surrounding domestic violence on social media remains fraught with hostility and victim-blaming. Whiting, Dansby Olufuwote, Cravens-Pickens, and Banford Witting (2019) observed that in public discussions of high-profile DV cases, 37% of online commenters blamed the victim while only 9% blamed the perpetrator. This “digital backlash” not only distorts public perception but also shapes judicial attitudes toward digital disclosures, where survivors’ posts are often interpreted through lenses of credibility skepticism and moral judgment (Whiting et al., 2019; Marder, 2014). Such cultural biases further exacerbate evidentiary barriers, as courts must navigate between protecting privacy, avoiding prejudice, and ensuring fair trial rights (Garfield Tenzer, 2019).

The problem is compounded by jurisdictional diversity. In Malaysia, the Evidence Act 1950 (Sections 90A–90B) accommodates electronic records, yet their authenticity depends heavily on discretionary judicial interpretation and expert certification, often lacking standardized forensic procedures. In contrast, Indonesia’s ITE Law (UU No. 11/2008 jo UU No. 19/2016) codifies digital evidence recognition but imposes rigid formal requirements, such as verification by accredited cyber experts (Budi Santoso, 2024). The resulting dichotomy—between Malaysia’s flexibility without uniformity and Indonesia’s procedural certainty without accessibility—reveals an evidentiary gap in both systems.

Consequently, despite the transformative role of social media in amplifying survivor voices and documenting abuse, legal institutions in both common law and civil law jurisdictions remain inadequately equipped to evaluate such evidence. As Hall-Coates (2015) and Janoski-Haehlen (2011) argue, the judiciary’s hesitation to fully embrace social media as a legitimate evidentiary source reflects an outdated attachment to analog paradigms of proof. Without reforming authentication protocols, integrating trauma-informed judicial perspectives, and developing regional digital forensics frameworks, the evidentiary potential of social media in domestic violence cases risks being underutilized or misinterpreted.

Therefore, this study interrogates the tension between technological affordance and legal formalism by comparing the Malaysian and Indonesian approaches to social media evidence in domestic violence prosecutions. It contends that the lack of harmonized evidentiary standards undermines both survivors’ access to justice and the courts’ capacity to establish digital truth, necessitating a recalibration of evidentiary doctrines to align with the realities of communication in the digital age.

Research Objectives

The overarching aim of this study is to examine the evolving role of social media postings as admissible evidence in domestic violence prosecutions, comparing Malaysia’s common law framework and Indonesia’s civil law framework. It seeks to identify doctrinal, procedural, and technological gaps in authenticating and evaluating digital evidence, particularly in cases where survivors use social media to document abuse.

Specifically, this study aims to:

1. Analyze the legal recognition and evidentiary treatment of social media postings under Malaysia’s *Evidence Act 1950* and Indonesia’s *ITE Law (UU No. 11/2008 jo UU No. 19/2016)* in domestic violence cases.

2. Evaluate the challenges of authentication, reliability, and chain of custody in admitting social media content as evidence, drawing on comparative jurisprudence and empirical scholarship.
3. Examine how trauma-informed and feminist communication perspectives can improve judicial interpretation of survivors' digital disclosures and prevent secondary victimization.
4. Assess the potential of digital forensic and AI-assisted methodologies in verifying the authenticity of online postings, as proposed by Subramani et al. (2018), to enhance evidentiary reliability in both jurisdictions.
5. Propose a harmonized evidentiary framework that integrates Malaysia's judicial flexibility and Indonesia's procedural codification to improve the probative use of social media evidence in domestic violence prosecutions.

Based on the objectives above, the study is guided by the following key research questions:

1. How do Malaysia and Indonesia define and regulate the admissibility of social media postings as evidence in domestic violence prosecutions within their respective legal traditions (common law vs. civil law)?
2. What are the principal evidentiary challenges—such as authentication, authorship verification, and reliability—associated with admitting social media content in court proceedings?
3. In what ways do judicial attitudes, technological limitations, and societal perceptions of credibility influence the probative value of survivors' digital disclosures on social media?
4. How can trauma-informed and feminist communication theories inform evidentiary reform to reduce victim-blaming and strengthen judicial sensitivity toward online narratives of abuse?
5. What cross-legal system mechanisms could be developed to harmonize evidentiary standards for social media authentication and admissibility?

RESEARCH METHODOLOGY

The present study adopts a comparative doctrinal and socio-legal research design to examine the evidentiary use of social media postings in domestic violence prosecutions within the legal systems of Malaysia and Indonesia. These two jurisdictions were chosen because they represent distinct legal traditions—Malaysia's common law framework and Indonesia's civil law model—yet share similar sociocultural and technological challenges in integrating digital evidence into the judicial process. The study aims to evaluate how both legal systems authenticate, admit, and assess the probative value of social media content as evidence in cases involving domestic violence.

This research is qualitative in nature and relies primarily on doctrinal legal analysis, which involves the systematic study of legal principles, statutes, and judicial decisions to identify patterns, contradictions, and gaps in evidentiary law. The doctrinal component focuses on statutory interpretation, particularly Malaysia's Evidence Act 1950 and Indonesia's ITE Law (UU No. 11/2008 jo UU No. 19/2016), as well as the Domestic Violence Act 1994 (Malaysia) and Law No. 23 of 2004 on the Elimination of Domestic Violence (Indonesia). This analysis seeks to understand how these statutes have evolved to accommodate social media evidence and the extent to which courts have recognized digital communication as credible and admissible proof. In Malaysia, for example, the study examines how Sections 90A and 90B of the Evidence Act 1950 regulate electronic records and how judicial discretion influences decisions concerning authenticity and authorship. In Indonesia, attention is given to the codified treatment of electronic information under the ITE Law and the procedural requirement for forensic verification by certified cyber experts, which may enhance reliability but can also impede accessibility for victims seeking justice.

In addition to the doctrinal dimension, the research employs a comparative legal analysis to highlight the functional differences between these two legal traditions in handling similar evidentiary problems. This comparative approach allows for an understanding of how each system balances the competing objectives of fairness, truth-finding, and procedural certainty. Malaysia's reliance on judicial interpretation embodies flexibility and adaptability but risks inconsistency, while Indonesia's codified structure ensures clarity but may limit responsiveness to evolving technological realities. The comparison focuses on three core evidentiary concerns: authentication and admissibility, probative value and reliability, and procedural safeguards for victims' privacy and dignity.

Beyond doctrinal inquiry, this study adopts a socio-legal approach that situates the evidentiary issues within broader cultural, psychological, and communicative contexts. The analysis is informed by Trauma-Informed Evidence Theory (Glancy et al., 2019), Feminist Communication Theory (Whiting et al., 2019), and digital forensics frameworks. These theories provide interpretive tools for understanding how survivors' digital disclosures on social media reflect patterns of trauma, empowerment, and credibility construction. Trauma-informed theory explains why survivors' online narratives may appear fragmented or delayed and cautions against interpreting such inconsistencies as indicators of fabrication. Feminist communication theory highlights the duality of social media as both an empowering space and a site of surveillance and victim-blaming, emphasizing the need for courts to interpret online disclosures with sensitivity to gendered power dynamics. Meanwhile, the digital forensics perspective contributes technical parameters for assessing authenticity, such as metadata verification, hash values, and chain-of-custody procedures.

The data sources for this study are derived from a combination of primary and secondary legal materials. Primary sources include statutes, judicial decisions, and official case law from both Malaysia and Indonesia, with particular focus on domestic violence prosecutions where digital or social media evidence was introduced. Secondary sources include peer-reviewed law journal articles, empirical research, and scholarly commentaries that discuss digital evidence, forensic verification, and evidentiary reform. Seminal works such as Murphy and Fontecilla (2013), Silver (2020), Flanagan (2016) provide critical insights into the challenges of authenticity, reliability, and admissibility of social media content in legal proceedings. Empirical studies such as Subramani et al. (2018) and Whiting et al. (2019) contribute valuable data on how survivors use social media platforms for crisis expression, as well as the societal backlash and credibility skepticism that often follow such disclosures.

The analysis procedure involves thematic synthesis, where findings from statutes, case law, and literature are coded into recurring themes: authentication standards, judicial discretion, survivor credibility, digital privacy, and regional harmonization. The doctrinal and comparative analyses are conducted concurrently to reveal convergences and divergences in legal reasoning and policy implementation. The socio-legal component complements this by examining how cultural attitudes, gender norms, and technological access shape evidentiary outcomes. By triangulating findings across legal, theoretical, and empirical domains, the study ensures analytical robustness and validity.

Ethical considerations are integral to the research process. Although the study does not involve direct human participants, it handles case materials and survivor-related narratives with confidentiality and sensitivity. Any examples of social media disclosures referenced in this research are anonymized and contextualized within academic discussion, avoiding any potential harm to individuals involved in real cases. The interpretation of evidence emphasizes respect for survivor agency and the avoidance of victim-blaming narratives, aligning with trauma-informed research ethics.

The expected outcome of this methodology is a comprehensive understanding of how social media evidence operates within two divergent legal systems and what reforms are necessary to bridge evidentiary rules with technological realities. The research is anticipated to produce a comparative model for evidentiary reform that harmonizes Malaysia's judicial flexibility with Indonesia's procedural codification.

Ultimately, the methodological integration of doctrinal, comparative, and socio-legal inquiry allows this research to move beyond static legal analysis toward a more dynamic understanding of digital justice. It not only examines how courts currently treat social media postings as evidence but also envisions how evidentiary doctrine can evolve to meet the moral and technological challenges of the digital age.

Legal Framework In Malaysia: Common Law Flexibility And Forensic Challenges

Malaysia's evidentiary regime exemplifies both the adaptability and fragility of the common law tradition in accommodating the realities of digital communication. Sections 90A and 90B of the Evidence Act 1950 were introduced to modernize evidentiary law by allowing the admissibility of electronic records, provided they are accompanied by a certificate of authenticity. However, the underlying assumption of these provisions—that electronic records can be verified through procedural compliance—does not adequately address the technical complexities of social media data. The absence of standardized forensic procedures for metadata extraction, hash value generation, and timestamp verification often leaves courts dependent on judicial discretion, which results in divergent rulings across similar cases.

The challenge of authentication is further compounded by the “investigative paradox” identified by Brown, Robertson, and Sullivan (2012): while social networks provide a vast repository of behavioural and contextual data that can reveal patterns of coercive control, their inherent mutability undermines evidentiary reliability. Malaysian courts have grappled with this dilemma in cases where social media screenshots were tendered to prove threatening conduct under the Domestic Violence Act 1994. Although the court admitted the evidence, the defence successfully questioned its authenticity due to the absence of verifiable metadata and the possibility of digital manipulation. This illustrates a systemic weakness: without a statutory presumption of authenticity akin to the U.S. “sublet standard” (Flanagan, 2016), Malaysian prosecutors must prove the integrity of digital evidence through corroboration and expert testimony, a process that is both time-consuming and technically demanding.

The evidentiary barriers disproportionately affect victims of domestic violence. The requirement under Section 90A that a certificate be issued by a system operator or expert creates a procedural hurdle for survivors who rely on personal devices to document abuse. Many victims record threats or harassment using their own phones or through social media platforms such as WhatsApp or Facebook, yet the evidentiary value of such data is often diminished in court due to the lack of formal certification. This procedural rigidity prioritizes form over substance, inadvertently silencing survivors who lack access to forensic or institutional resources.

The Malaysian courts traditionally rely on the doctrine of “best evidence” and the principle of judicial discretion to determine admissibility. However, in the digital context, this discretion operates without clear forensic standards or evidentiary presumptions. The result, as Arshad et. al. (2018) argue, is a fragmented approach where some judges adopt pragmatic flexibility by admitting screenshots or chat logs as corroborative evidence, while others insist on strict compliance with procedural formalities. This inconsistency reflects the broader structural gap between evidentiary law and technological capability.

The social dimensions of digital evidence also complicate judicial assessment. Saifuddin and Zanuddin (2020) observe that social media postings not only serve as repositories of evidentiary material but also shape public narratives surrounding domestic violence. The viral nature of online content can influence public and judicial perceptions of victim credibility, reinforcing stereotypes of the “ideal victim” who behaves consistently with social expectations. This dynamic echoes Janoski-Haehlen's (2011) in *The Courts Are All A Twitter* that judicial impartiality can be compromised when digital visibility exposes litigants to public scrutiny. In Malaysia, where community norms often emphasize modesty and familial privacy, survivors who disclose abuse online risk social backlash that may later affect judicial interpretation of their motives or credibility.

Ultimately, Malaysia's evidentiary framework reflects a tension between common law flexibility and forensic uncertainty. Judicial discretion allows adaptation to new technological contexts but, in the absence of codified forensic standards, produces a patchwork of rulings that undermine predictability. The current regime depends heavily on expert testimony to authenticate digital evidence, yet this reliance creates inequities between well-resourced parties and survivors with limited access to technical expertise. To ensure consistency and fairness, legislative reform should clarify the evidentiary threshold for electronic authentication, establish national forensic guidelines for metadata verification, and incorporate trauma-informed judicial training to mitigate the secondary victimization of survivors.

In essence, while Sections 90A and 90B represent Malaysia's initial attempt to bring evidentiary law into the digital era, they remain conceptually anchored in a pre-digital understanding of "documents" and "records". The transformation of communication into dynamic, interactive, and context-dependent forms of expression—typified by social media—demands an equally dynamic legal response. Without a unified forensic framework and consistent judicial standards, Malaysia risks perpetuating evidentiary inequities that privilege procedural orthodoxy over substantive justice.

Legal Framework In Indonesia: Codified Certainty And Forensic Formalism

Indonesia's legal framework demonstrates a contrasting model of evidentiary regulation—one defined by codified certainty and procedural formalism. Rooted in its civil law tradition, Indonesia's *Law No. 11 of 2008 on Electronic Information and Transactions (Undang-Undang Informasi dan Transaksi Elektronik, or ITE Law)*, as amended by *Law No. 19 of 2016*, explicitly affirms that electronic data holds the same evidentiary value as written documents. Article 5(1) of the ITE Law declares that "electronic information and/or electronic documents and their printouts constitute valid legal evidence," provided their authenticity is verified by authorized forensic experts. This approach, as explained by Budi Santoso (2024), ensures procedural integrity and legal certainty, but simultaneously imposes high evidentiary thresholds that may limit access to justice—particularly for domestic violence survivors who rely on digital media as the primary means of documentation.

The procedural rigor of Indonesia's forensic verification process reflects its civil law ethos, emphasizing legality, documentation, and state-certified validation. Electronic evidence—such as WhatsApp messages, social media posts, and video recordings—can only be recognized as valid once examined by a certified digital forensic examiner authorized under police and prosecutorial guidelines. This requirement, while reinforcing the reliability of evidence, creates what Oktana, Akub, and Maskun (2023) describe as a form of *forensic formalism*: a procedural rigidity that may delay justice, especially in cases requiring urgent protection for victims of domestic violence. Verification is often constrained by limited access to digital forensic laboratories, uneven technological capacity across regions, and the high costs associated with expert certification.

Indonesian jurisprudence has progressively expanded the notion of admissible digital evidence. Landmark decisions such as *Putusan Mahkamah Konstitusi No. 65/PUU-VIII/2010* and *No. 20/PUU-XIV/2016* affirmed that digital screenshots, recordings, and electronic messages can serve as "digital testimony," provided their source integrity is demonstrable. This judicial recognition has elevated the probative value of social media evidence—transforming online interactions into legitimate evidentiary material in both criminal and domestic violence proceedings. As Yuni Sara and Punta Yoga Astoni (2025) note, the intersection of the ITE Law and *Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT)* has created new pathways for victims to present digital documentation of abuse, such as social media posts or CCTV footage, as corroborative evidence in court.

However, Indonesia's commitment to codified certainty has also produced a paradox. While the law guarantees equal recognition of electronic and physical evidence, its formalistic verification process can disadvantage marginalized victims. Budi Santoso's (2024) empirical study found that social media evidence—though increasingly used in investigations—remains categorized as "preliminary evidence" until validated through official seizure and forensic analysis. The chain-of-custody process requires judicial authorization for digital confiscation, followed by a formal examination conducted by police or state-certified experts. This bureaucratic sequence often prolongs the investigative phase and deters victims who lack resources or legal assistance from pursuing formal complaints.

Nevertheless, Indonesia's model contributes valuable lessons in procedural discipline. The integration of forensic science into evidentiary law strengthens judicial confidence in digital materials and mitigates the risk of manipulation—a persistent concern in social media-based prosecutions. The Indonesian National Police (*Polri*)'s adherence to *Perkapolri No. 6 of 2019* mandates meticulous handling, preservation, and reporting of digital evidence, ensuring that authenticity, reliability, and relevance remain central to the process. As emphasized by Yuni Sara and Punta Yoga (2025), such codification not only enhances evidentiary integrity but also fosters a culture of accountability within law enforcement agencies, where digital forensics bridges technological evidence with legal procedure.

Yet, the need for reform remains pressing. Scholars and practitioners advocate for a more balanced approach that combines forensic rigor with survivor accessibility. As Hadi (2024) and Sujatmiko & Soesatyo (2025) argue, the rapid evolution of cybercrime and social media–related offences demands that the ITE Law be continuously revised to reflect technological and social realities. Simplified verification procedures, greater regional access to forensic facilities, and state-funded certification for digital evidence in domestic violence cases could bridge the gap between procedural legality and substantive justice.

In sum, Indonesia’s evidentiary framework represents a model of codified certainty, embedding forensic verification at the core of its digital justice architecture. While this structure ensures the authenticity and probative reliability of electronic evidence, it risks alienating vulnerable victims through procedural rigidity. The challenge moving forward lies in harmonizing forensic formalism with equitable access—ensuring that the law not only secures evidence but also protects those it was designed to serve.

Comparative Discussion: Divergent Paths Toward Digital Justice Toward A Dual-Legal System Evidentiary Convergence

The contrast between Malaysia’s discretionary jurisprudence and Indonesia’s codified rigidity illustrates two paradigms of digital justice. Malaysia’s courts, influenced by common law reasoning, mirror North American and UK trends where judges evaluate social media evidence based on contextual indicators of authenticity (Flanagan, 2016; Grice & Schwartz, 2012). This flexibility allows adaptation but risks inconsistent rulings. Indonesia’s civil law approach, as seen in PKDRT-ITE Law integration, ensures evidentiary uniformity through procedural mandates. Yet, the dependency on forensic certification centralizes expertise in state institutions, potentially limiting victim agency.

Garfield Tenzer’s (2019) concept of “digital bias” underscores that judicial reluctance to treat social media as equal to traditional evidence undermines fairness and reflects outdated epistemologies. In both Malaysia and Indonesia, similar reluctance persists in evaluating online abuse narratives, often framed as “private communication” rather than public harm. The synthesis of these systems reveals a need for middle-ground reform—balancing flexibility with procedural safeguards and emphasizing survivor-centered authenticity evaluations. The convergence of common law and civil law approaches offers an opportunity to establish a harmonized evidentiary framework for digital evidence—one that is technologically robust, procedurally coherent, and socially responsive.

The harmonized evidentiary framework envisions a synthesis between the adaptability of common law systems, which rely on judicial discretion and case-by-case interpretation, and the procedural certainty of civil law systems, which prioritize codified verification mechanisms. As Arshad & Omolara (2019) emphasize, contemporary forensic research underscores the necessity of integrating metadata authentication, hash verification, and secure chain-of-custody mechanisms into standardized digital evidence protocols. These scientific methods ensure evidentiary integrity while accommodating the dynamic nature of electronic communications.

From a comparative perspective, Brown, Robertson, and Sullivan (2012) illustrate that North American courts—operating within common law jurisdictions—have increasingly emphasized flexible standards of authenticity, allowing digital and social media evidence to be admitted if contextual and circumstantial indicators establish credibility. Conversely, civil law systems such as Indonesia’s require formal certification by digital forensic experts before evidence is deemed admissible. As Silver (2020) argues in *The Unclear Picture of Social Media Evidence*, this divergence reflects deeper epistemological differences: common law systems value interpretive pragmatism and judicial balancing, whereas civil law systems emphasize administrative certainty and evidentiary predictability.

A harmonized evidentiary framework for digital evidence within common law and civil law legal systems could thus integrate the strengths of both traditions. First, it would involve establishing uniform authentication standards that rely on scientifically verifiable indicators such as metadata trails, hash values, and algorithmic integrity markers. These techniques, supported by research in *Discovery of Evidence with Social Media* (Murphy & Fontecilla, 2013) and *Authenticity and Admissibility of Social Media Website Printouts* (Angus-Anderson,

2015), minimize subjective evaluation and create replicable verification models for courts. Such standards would allow evidence from social platforms—posts, messages, videos—to maintain evidentiary value regardless of the jurisdictional origin or the platform’s technical architecture.

Second, judicial capacity building must become both legal systems’ priority. As Garfield Tenzer (2019) and Janoski-Haehlen, (2011) contend, the exponential rise of social media evidence requires judges to develop digital literacy and trauma-informed sensitivity, particularly in domestic violence cases where survivors’ posts, messages, or digital diaries serve both therapeutic and evidentiary functions. Judicial training programs between Malaysia and Indonesia could therefore integrate modules on digital forensics, online privacy ethics, and survivor-centred evaluation, enabling courts to assess authenticity without retraumatizing victims or perpetuating gendered biases.

Importantly, this dual-legal synthesis would also address what Silver (2020) terms “digital inequality”—the structural imbalance between victims who possess technological access and those who do not. In many domestic violence prosecutions, the ability to authenticate digital evidence determines the viability of the complaint. Without equitable forensic access, marginalized victims risk exclusion from the justice process. Thus, the harmonized evidentiary framework should incorporate legal aid schemes and state-funded digital verification mechanisms to ensure that the right to prove abuse is not contingent upon technological privilege.

Ultimately, convergence does not entail homogenization but rather the creation of interoperable evidentiary principles grounded in authenticity, privacy, and empathy. Common law adaptability can coexist with civil law precision if both are anchored in shared forensic science and human rights values. This dual-legal evidentiary paradigm would not only elevate the reliability of digital evidence but also reaffirm the moral legitimacy of justice systems in an increasingly digitalized world.

CONCLUSION

Social media evidence embodies the intersection of technology, gender, and justice. Comparative lessons from global jurisprudence—including Garfield Tenzer (2019) critique of judicial conservatism and Brown et al.’s (2012) framework for digital investigation—demonstrate that authenticity, chain of custody, and contextual interpretation are indispensable. The authentication of social media evidence is therefore not merely a technical task but a moral obligation to acknowledge survivors’ digital voices within formal justice.

In Malaysia, the fluid common law model accommodates evolving communication platforms but suffers from procedural inconsistency. In Indonesia, codified evidentiary certainty ensures reliability but may entrench bureaucratic barriers. By bridging Malaysia’s interpretive adaptability with Indonesia’s procedural discipline, both countries can formulate an evidentiary paradigm that is both technologically robust and human-centered—transforming social media from ephemeral communication into enduring proof of truth.

Looking forward, future research should focus on several key areas. First, empirical studies examining judicial reasoning patterns in cases involving social media evidence could illuminate how cognitive biases, technological gaps, and societal perceptions influence verdicts. Second, interdisciplinary research combining law, computer science, and psychology is needed to design automated yet privacy-preserving forensic tools capable of verifying authenticity without retraumatizing survivors. Third, comparative research extending beyond Malaysia and Indonesia to include other ASEAN members—such as Singapore, the Philippines, and Thailand—would provide a comprehensive regional model for harmonized digital evidence governance. Finally, future studies should explore how artificial intelligence (AI) and natural language processing (NLP) could assist in identifying coercive and abusive communication patterns in online discourse, while maintaining safeguards against data misuse.

In conclusion, the digital transformation of evidence law in Southeast Asia represents both a challenge and an opportunity. The challenge lies in reconciling legal formalism with the fluid, decentralized nature of digital communication. The opportunity lies in building a more inclusive, survivor-centered evidentiary paradigm—one that recognizes social media not as a mere data source, but as a living archive of human experience. The path forward demands interdisciplinary collaboration, regional coordination, and a deep commitment to justice that

transcends procedural boundaries. Only through such integrated reform can Malaysia and Indonesia ensure that the digital age becomes not a barrier, but a bridge to truth and accountability.

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