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**REVISING THE FLAWS OF THE DIGITAL SIGNATURE ACT 1997 IN GOVERNING
SECURITY OF ELECTRONIC TRANSACTIONS**



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4. Report

4.1 Proposed Executive Summary

Notwithstanding the fact that Malaysia is one of the first countries to have the digital signature legislation, the current digital signature laws are flawed, which suggest their inability to secure electronic transactions. A considerable amount of literature has been published on this matter and these studies have shown numerous criticisms on the shortcomings of the Digital Signature Act 1997 (hereinafter the 1997 Act) and its Regulations 1998 (hereinafter the 1998 Regulations). In this regard, there has been a consensus in the literature for the past ten years that this Act is incomplete and has failed to recognize the fast changing pace of modern technologies.

This project aims to focus on the instrumental and the normative drawbacks of the Malaysian digital signature laws and propose some recommendations to address such flaws. Whilst the laws were created more than thirteen years ago, recommendations based on more advanced theoretical and conceptual frameworks, which are relevant in governing security of electronic transactions, are urgently needed in order to facilitate a far-reaching environment of paperless communications. Adopting a purely doctrinal legal research methodology, the project will triangulate the primary sources obtained from the relevant statutes including the 1997 Act and the 1998 Regulations, Hansard as well as a body of case law with the secondary sources such as journal articles, books and other written commentaries on the case law and legislation.

In ensuring a more thorough and systematic methodology of this legal research approach, the examination of the Singaporean Electronic Transactions Act 2010, the United Kingdom Electronic Communications Act 2000 and its Electronic Signatures Regulations 2002 will also become a central analysis of the project, which will be considerably significant in maintaining a high credibility of the outcome. The investigation into the Singaporean and the United Kingdom laws on electronic signature is greatly essential, considering the adoption of a hybrid approach by these jurisdictions, which will be enormously beneficial in rectifying the flaws of the current 1997 Act and the 1998 Regulations. At the theoretical level of analysis, several theories ranging from social theory to cyberspace theory such as the risk society and the theory of cyberspace governance will underpin the findings of the project, demonstrating methodical research processes, which will engage into both the practical and the theoretical levels of analysis.

4.3 Introduction

The Digital Signature Act 1997 (hereinafter the 1997 Act) and the Digital Signature Regulations 1998 (hereinafter the 1998 Regulations) were introduced more than thirteen years ago, showcasing an expeditious legislative effort of governing the use of a digital signature in Malaysia. Whilst other jurisdictions around the world kept to their “wait and see” attitude, the legislature had taken another level to create the 1997 Act as part of the plethora of cyberlaws in Malaysia, adopting the first wave of a prescriptive legislative approach of the Utah Digital Signature Act 1995. More interestingly, the Utah law, on which the Malaysian laws are greatly based, was already repealed in 2006 for the lack of its usage and the confusion that it has created (Winn & Wright, 2008-1 Supplement; Hartini & Zaiton, 2011). This development has indeed inspired the researcher to scrutinize the current 1997 Act and the 1998 Regulations in order to examine the strengths and weaknesses of the laws in governing security of electronic transactions.

The intention of the parliament to enact the digital signature law was explicitly highlighted when the bill was first presented to the House of Representative on March 25, 1997. As one of the commerce enabling laws, the law was designed to facilitate electronic commerce activities and enable businesses and the community to use a digital signature instead of a conventional hand-written signature in an electronic environment (Hansard, 1997). However, trans-border and boundary-free nature of communications have brought complex issues into the mainstream of security and risks (Brazell, 2008) particularly in securing electronic transactions. This concern has indeed formed the fundamental basis of the flaws of the 1997 Act and the 1998 Regulations, begetting an urgent call for a review of these laws. The need to revise the current laws is also heightened by a considerable series of literature, criticizing and highlighting numerous drawbacks of the laws, thus questioning their ability to fulfil the afore-mentioned legislative purposes.

The advanced move of the legislature to have a technology-specific legislation ahead of other developed or developing countries worldwide was interestingly seen as an anxious effort, intending to show their eagerness to response to the growth of technology (Zaba, 2006). A considerable amount of literature has been published, focusing on the flaws of the current legislation but very scarce of them has systematically offered any legislative solutions to these legal predicaments. These studies have shown numerous criticisms on the shortcomings of the 1997 Act, claiming that the Act is significantly defective. On the contrary, the United Kingdom Electronic Communications Act 2000 and its Electronic Signatures Regulations 2002 were created in line with the European Union Directive on a Community