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ABSTRACT

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Name : Hartini Saripan, PhD

Title : The Application Of The Digital Signature Laws In Governing Internet Banking Security In Malaysia : With Special Reference To The Eu Directive And The Uk Laws On Electronic Signature

Faculty: Law

Supervisor : Associate Prof. Dr. Zaiton Hamin (MS)

Despite the recent trend in other jurisdictions such as the European Union and the State of Utah, USA in investigating into the issue relating to the application of the electronic signature laws, including a digital signature, such concern has never been methodically explored in Malaysia. This study aims at examining the application of the Digital Signature Act 1997 and its 1998 Regulations in governing the security of Internet banking. It underscores the extent to which the said laws were applied by the banks under study and the means in which governance was being exercised. The relationship between the adoption of a digital signature and its laws has somehow informed the application of the latter, which amplifies the debate concerning its under-utilization. A thesis statement of the study is the minimal application of the digital signature laws in securing Internet banking transactions in Malaysia has in turn informed the emergence of other governing modalities including technology, guidelines as soft law instrument, contractual terms and conditions, code of practice and security policy as well as netiquette and norms of Internet banking users. Employing a qualitative research, this study triangulates the case-study research approach and the doctrinal black letter approach, which focuses on the discrepancy between the "law in the books" and the "law in action". The empirical evidence from the eight multiple case studies in Malaysia is significantly reported in Chapter Five, showcasing the reality of

the issue within the realm of Internet banking. Whilst the doctrinal analysis provides emphasis on the 1997 Act and its 1998 Regulations in Chapter Four, the legal comparisons with the European Union Directive and the United Kingdom legislation on electronic signatures, which adopt a hybrid approach, are also examined in Chapter Three to compare and contrast between these jurisdictions. The central argument of this study is the negligible degree of the application of the digital signature laws, in particular, as the fall-back mechanisms, is greatly dependent, not only on the marginal adoption of the digital signature technology but also, various rationalities including law-related issues, lack of understanding of the laws, lack of legal expertise and inadequate enforcement. Whilst this issue is also shaped by the inconsequential adoption of a digital signature by the banks under study in managing the risks involved in Internet banking, there are technology-related, economy-related, security-related, business-related, user-related and societal-related issues on the criticisms of the technology, which can be precisely encapsulated under the notion of security versus cost versus convenience. At the theoretical level, the lack of the application of the laws has changed the ways in which security is being governed; from the central role of the formal laws to the fractions of governing modalities such as technology, contractual terms and etiquette of netizens. This could ultimately wither the role of nation-state as the primary guarantor of security. This study will not only contribute to the understanding of the role of the laws and other modalities in governing Internet banking security but also, to assist both the Malaysian Communications and Multimedia Commission (MCMC) and the Central Bank in promoting the application of the digital signature laws in Malaysia.