

A Study of the Socio-legal Impacts of ICT Adoption by Malaysian Courts

Zaiton Hamin ^a, Mohd Bahrin Othman ^b, Ani Munirah Mohamad ^c *

^aAccounting Research Institute HICoE and Faculty of Law, Universiti Teknologi MARA 40450 Shah Alam, Selangor, Malaysia

^bStudents' Affairs and Alumni Division and Faculty of Law, Universiti Teknologi MARA 40450 Shah Alam, Selangor, Malaysia

^cUUM College of Law, Government and International Studies, Universiti Utara Malaysia, 06010 Sintok, Kedah and Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia

Abstract

Drawn from an ongoing research which attempts to examine the socio-legal implications of the current adoption of ICT on the delivery of the civil justice system of the High Courts in Malaysia, this research aims to examine the socio-legal implications of ICT adoption in the abovementioned courts. The research adopts a qualitative method, comprising of the collection of primary data (which involves field work adopting case study design at two High Courts of West and East Malaysia) and secondary data (which involves library-based research). The primary data which have been generated is analysed by using the computer aided qualitative data analysis software ATLAS.ti version 7 prior to reporting of the same. It was found that there are several social and legal implications arising from the ICT adoption by the courts, including both advantages and disadvantages. Among others, ICT helped to speed up the disposal rate of proceedings, and reduce the backlog of cases. On the other hand, ICT at the courts also raised novel risks and uncertainties such as security and privacy risks, as well as risks associated with the transformation from a conventional system to ICT-based system. The findings will assist the researchers to propose recommendations for the amendment to the relevant statutes, improvement to the practice directions, and to propose best practices and code of conduct in implementing ICT in the Malaysian courts.

© 2013 AARESOC.

Keywords: eGovernment, eCourt, eJustice, socio-legal, impact study

1. Introduction

The information and communication technologies (ICT) have connected people around the world in a way never before envisaged (Bhatt, 2005) and recently have made its way to the courtrooms. It is admitted that while ICT provides ample opportunities for communication and new ways of doing things, at the same time they also generate novel uncertainties and insecurities (Zaiton, 2009). Hence, this research attempts to address the question of what socio-legal implications the current adoption of ICT has on the delivery of the civil justice system of the Malaysian courts. In this context, this research aims to examine the socio-legal implications of ICT in the civil justice system of the Malaysian courts.

Accordingly, the first section discusses the literature review on the impacts of ICT adoption by the courts. The second section describes the research methodology chosen for this study, followed by the third section which discusses the findings of the research. The paper concludes with the significance and future directions of the study.

2. Literature review

In general, a number of literatures suggest that the technologies will make the courtrooms geographically accessible anywhere and anytime – omnipresent and available to all (Bhatt, 2005) in particular to introduce more

* Corresponding author (*) Tel: +604-9284201; fax: +604-9284205
E-mail address: animunirah@uum.edu.my

efficiency into the judiciary (Kiskis and Petrauskas, 2004), reducing delay, improving the economy, and the more general objective of promoting confidence in the justice system through the use of technologies (Velicogna, 2007). On the same notion, researchers advocate that technologies would lead to a more efficient and effective judicial system, improved transparency of the way the judiciary works, increase in the citizen's level of access to the judiciary and increase in the confidence of the citizens and business in the judicial system (Cerrillo and Fabra, 2009). In addition to this, Carnevali (2009) believes that these technologies will contribute towards improving the quality of justice. In this context, Velicogna (2007) contends that ICT is used to enhance efficiency, access, timeliness, transparency and accountability.

Nevertheless, being a double-edged sword, at one end ICT promises benefits and advantages, at the other end it raises a number of social and legal issues, such as security and privacy risks. In respect of the security risks, it is argued that the use of technologies could facilitate many computer crimes or computer-related crimes including hacking, denial of service, phishing, pharming, identity theft, computer fraud and stalking (Zaiton, 2009). In this context, it is admitted that technologies at the courts, especially digital documents, come together with speed and efficiency, but it is also cautioned that there are security issues that are yet to be resolved to the satisfaction of many judges (West, 2002).

Traditionally, security risks involving the courts would mean qualified guards watching over the accused persons, the protection of the security of the courts, proper record keeping and management of the court documents and court buildings as well as the security of the court officers. With the advent of the ICT into the courts setting, the security infrastructure has become more complex. Depending on the various ICT applications adopted by the courts, different security risks would entail, such as risks of authentication, non-repudiation, confidentiality, privacy protection, and data integrity (Suh and Han, 2003).

These various risks are in line with the theory of risk society, which are explained by Beck (1992) and Giddens (1994). Beck suggests that in the advanced modernity, the social production of wealth is systematically accompanied by the social production of risks. In other words, while the society is vigorously engaging in the information economy and knowledge economy, risks are inevitable to accompany the social production of wealth in the network society. Meanwhile, Giddens advocates that manufactured risks is a new form of risk created by the evolution of human development and includes the growth of science and technology in the late modernity.

Another implication of the use of ICT by the courts is the risk of privacy encroachment relating to the access to the court records, real-time broadcast, real-time transcript and real-time evidence (Hulse, 2009). As ICT is increasingly being adopted in the court's work routine, court records including pleadings, order, affidavits, judgments and etc. are electronically kept in the court's database. Once becoming electronic in nature, the records can be immediately transmitted, stored, and retrieved, which inevitable increases privacy concerns (Lederer, 2003). These records include those documents created by the parties, their counsels, or a judicial officer or his/her designate. While it is the right of the public to open courts as it is an important constitutional rule, it needs to be balanced with the right of an individual to privacy which is a fundamental value (Judges Advisory Technology Committee, 2003).

Within the Malaysian context, the right to privacy is a fundamental right provided by the Federal Constitution of Malaysia. His Lordship Gopal Sri Ram FCJ (as he then was) in the case of *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507 at 519 presided that the right to personal liberty includes the right to privacy. This case is viewed to have overruled a number of previous High Court cases for instance *Ultra Dimension Sdn Bhd v Kook Wei Kuan* [2004] 5 CLJ 285 and *Lew Cher Phow @ Lew Cha Paw & 11 Ors v Pua Yong Yong & Anor* [2009] 1 LNS 1256 which held that invasion or violation of privacy is not a recognised tort or a cause of action in Malaysia and also the case of *Dr Bernadine Malini Martin v MPH Magazines Sdn Bhd & Ors* [2006] 2 CLJ 1117 which held that invasion of privacy is not an actionable wrongdoing in Malaysia. Consequently, the principle in *Sivarasa's* case may be used as a remedy against those who had breached the recent Malaysian Personal Data Protection Act 2010.

Another implication of ICT relates to the transformation from a conventional system of judiciary into the adoption of modern courtroom technologies. The inevitable issue raised is the acquisition of skills and readiness of the court officials and legal practitioners. In this regard, it is contended that the successful implementation of the

technologies requires the concerted effort of judges, court administrators, court users, system developers and information technology experts (Wong Peck, 2008). There is definitely the need for effective training for judges, court staff and practitioners hence the need for a close liaison and good communication between courts and law firms towards the implementation of ICT in the courts (MacDonald and Wallace, 2004).

3. Research methodology

This research adopts a qualitative method, which engages in both primary and secondary data. The collection of primary data involves field work in which the data are generated from a case study that focuses on two units of analysis representing the High Courts, one being the High Court in West Malaysia i.e. High Court in Kuala Lumpur, and another being the High Court in East Malaysia i.e. High Court in Kuching, Sarawak. The units of analysis for the case study are described in Figure 1.

The instrument used was face-to-face semi-structured interview. The respondents are individuals involved directly with the application of courtroom technology at each of the courts, being the judge, the court officer, the information technology officer at the court, the system developer, the legal practitioner, and the client.

The interviews enquired into the perception of the respondents on relevant issues including their involvement in the technology adoption at the courts, their experience using the systems, the risks of the application of court technologies, and how do they cope with the risks at hand.

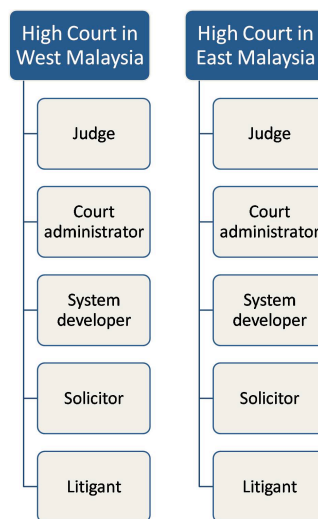


Figure 1. The units of analysis for the case study

Apart from triangulating the primary data within the units of analysis, the triangulation was also made with the secondary data which was drawn upon both primary and secondary sources. Primary sources include the laws in Malaysia while secondary sources include documents collected from the respondents during the semi-structured interviews, reports of the government, the state and the judiciary, the rulings of the Malaysian Bar Council and the state bars, practice directions and online databases such as Lexis.com, Ebscohost, CLJ Legal, Lawnet, Springer Link and ProQuest.

4. Findings

The data obtained from the field visits and observation revealed that there are currently six technology applications which are adopted at the High Courts in Kuala Lumpur and in Kuching Sarawak. Five similar applications could be found in Kuala Lumpur and Kuching, namely the e-filing system, case management system, queue management system, court recording and transcription and audio and video conference system. In Kuching, there is an additional application called the integrated community and advocates' portal. Each of the applications are designed for different kinds of users.

The e-filing application allows for electronic submission of court documents for the purpose of filing and registration by the litigants and/or their lawyers using the Internet medium (Hamidah, 2011). On the other hand, the case management system is used by judges and the court officers for case management and hearings before the registrars to manage all cases managed by the court through computer system (Kuala Lumpur High Court, 2010). Meanwhile, the queue management system is mainly used by the lawyers. Under the system, numerous kiosks were placed within the court complex to facilitate the attendance of the lawyers for the particular cases.

The court recording and transcription application is mainly used by the judges and court interpreters. The application consists of video and audio recording both in open court and chambers hearings. It was found that there is a difference in the features of the application at each of the court settings. For the High Court in Kuala Lumpur, the recordings will be kept in the court's database and controlled by the interpreter during proceedings (Nik Imran, 2011). As for the case at the High Courts of Sarawak, a steno machine is placed within the court and operated by trained transcribers. The transcription will be made real time during court proceedings. Another application is the audio conference system is used at both High Courts of Kuala Lumpur and Sarawak for court hearings among judges, lawyers and other persons involved in the session who are at different locations (Zaki, 2010). The system also allows users to share documents, picture files, images and the like among those in remote locations, which constitutes a very crucial feature for court hearings (Kuching High Court, 2010). Finally, the community and advocates portal serves as an information technology channel of communication and operations among the public community, including the clients, the advocates who represent the clients and the judiciary (Kuching High Court, 2010).

Meanwhile, as for the interview with the respondents, the data was analysed using ATLAS.ti qualitative data analysis software version 7 before the research findings were prepared (Friese, 2012). To begin with, the primary data was transcribed and coded into their respective themes using the constant comparative analysis method. During this process, the researchers began to look at what makes a specific piece of data different and/or similar to other pieces of data. This method of analysis is inductive, as the researchers began to examine data critically and draw new meaning from the data (Glasser, 1965). Once the analysis is completed, the findings were sent for output for reporting purposes.

For the purpose of this paper, five findings are derived from the primary data representing the socio-legal implications arising from the ICT adoption by the Malaysian courts.

4.1. ICT helped to speed up the disposal rate of proceedings

It was found that the technologies at the courts helped to speed up the disposal rate of proceedings particularly because the system 'forces' the judges to dispose cases within a specified timeframe allocated for such cases by generating occasional reminders to the judges and automatic updates to the Chief Judge. This findings seem to

confirm the recent statistics by the High Court of Kuala Lumpur that the rate for disposal of cases has doubled within one month of the adoption of the case management system compared to the position prior its adoption. Table I shows the number of cases disposed each in May, June and July 2009 as being 242, 347 and 508 which is prior to the implementation of the system. After the implementation of the system, the number of cases disposed is increased to 793, 682 and 637 for each September, October and November 2009, indicating an increase of nearly 200%.

Table 1. Comparison of Number of Cases Disposed at the Kuala Lumpur High Court (Civil) before and after CMS

Month	Disposal before CMS	Month	Disposal after CMS
May '09	242	September '09	793
June '09	347	October '09	682
July '09	508	November '09	637
Total	1,097	Total	2,112

4.2. ICT helped to reduce the backlog of cases

The findings from the interviews indicated that there has been a significant reduction of backlog of cases since implementing the ICT applications at the courts. This finding is consistent with the statement by the former Chief Justice of the Federal Court of Malaysia Tun Zaki Tun Azmi (2010) that technology plays an important role in reducing the problem of backlog of cases which has been haunting the Malaysian courts over the years. This finding is also in line with the statistics by the Federal Court as shown in Table II describing the number of backlog of cases as 422,645 as at 31 December 2008, and after less than two years later, as at 30 September 2010, the number is reduced by 45.6% to 229,941.

Table 2. Comparison of Number of Backlog of Cases as at 31 December 2008 and 30 September 2010

Court	Cases	As at December 2008	As at September 2010
High Court	Civil	93,523	38,267
	Criminal	4,544	3,345
Sessions Court	Civil	94,554	44,921
	Criminal	8,750	7,267
Magistrates Court	Civil	156,053	93,267
	Criminal	65,221	42,874
Total		422,645	229,941

4.3. Security risks

It was found that the ICT applications such as the e-filing and the audio and video conference system at the courts could raise security risks. It was further found that since some of court technologies are available on the Internet, the technologies are also exposed to the risks associated with the Internet. This finding confirms the views by West (2002) that there are security issues of ICT adoption by the courts that are yet to be settled.

4.4. Privacy risks

The findings revealed the vulnerability of digitized information in the court's database to the intrusion of third parties, such as hackers, which could impinge on the privacy rights of the respective parties to the information such as the litigants, the lawyers and the judges. It is also evident from the findings that there is a need to balance the

competing interests between the individual rights to privacy and the public's right to information in the digitized court documents.

This finding seems to be in line with the view by Lederer (2003) that electronic court records could very well pose privacy threats. The findings also confirm the report by the Judge's Technology Advisory Committee (2003) that while it is the right of the public to open courts being an important constitutional rule, it needs to be balanced with the right of an individual to privacy which is a fundamental human right.

4.5. Administrative issues

It was found that different court settings have different needs in meeting the transformation of the court from a conventional system to ICT-based system. At the High Court in Kuching, the findings showed that there was higher need for training which is likely due to the lack of ICT skills and low level of ICT literacy among some judges, court officials and lawyers alike. In contrast, at the High Court of Kuala Lumpur, there was less need for training which could partly be due to the vigorous and proactive adoption of the ICT applications through trial and error by the court staffs and the lawyers. The findings also indicate that there was a higher level of ICT literacy among the judges, court officials and the lawyers who utilise the system.

Such findings confirm the view by Wong Peck (2008) that there need to be in place a proper training system for the users of the system – judges, court officers and the lawyers – in order to ensure the smooth implementation of the ICT applications at the court, and eventually to increase the efficiency and effectiveness of the civil justice system as a whole in such ICT-based courts.

5. Conclusion

In conclusion, the adoption of ICT by the courts of Malaysia is shown to have raised a number of social and legal implications. The research found that a number of implications arise from such adoption, including both advantages and disadvantages. By adopting the technologies, the disposal rate of proceedings has sped up compared to prior the adoption, as well as the backlog of cases has significantly reduced with the help of ICT. On the other hand, ICT also raised security and privacy risks, as well as administrative issues associated with the transformation from a conventional system to an ICT-based system.

The research highlights that it is pertinent to identify these implications in order to better govern the ICT adoption by the Malaysian courts, of which the researchers would propose amendment of the existing or creation of new laws to govern the use of the technologies, improvement to the practice directions, and to propose best practices and code of conduct in implementing ICT in the Malaysian courts.

Acknowledgements

This research is financially supported by the Ministry of Science, Technology and Innovation (MOSTI) of the Government of Malaysia under the eScienceFund Grant No. 100-RMI/SF 16/6/2 (2/2012) and the Research Management Institute, Universiti Teknologi MARA Shah Alam, Selangor, Malaysia.

References

- Beck, U. (1992) *Risk Society: Towards a New Modernity*. Sage Publications, London.
- Bhatt, J.K. (2005) "Role of Information Technology in the Malaysian Judicial System: Issues and Current Trends", *International Review Of Law Computers & Technology*, 2005, vol 19, No. 2, pages 199-208.
- Carnevali, D. (2009) "E-Justice and Policies For Risk Management" in Cerrillo, A and Fabra, P (eds.), *E-Justice: Information and Communication Technologies in the Court System*. United States of America: Information Science Reference, 2009.
- Cerrillo, A and Fabra, P. (eds.) (2009) *E-Justice: Information and Communication Technologies in the Court System*. United States of America: Information Science Reference, 2009.
- Friese, S. (2012) *Qualitative Data Analysis with ATLAS.ti*, Sage, UK.
- Giddens, A (1994) *Beyond Left and Right: The Future of Radical Politics*. Polity Press, Cambridge.

- Glasser, B.G. (1965) "The Constant Comparative Method of Qualitative Analysis" *Social Problems*, Vol. 12, No. 4.
- Hamidah Md Deril (2011) "Contributions and Roles of the Court in the Development of E-Court" Round Table Conference on Transformation of Dispute Resolution Mechanism: Roles of the E-Court, Bangi, Selangor, 14 July 2011.
- Hulse, R. (2009) "Real Time Technology, Trials and the Question of Privacy", Courtroom 21 White Paper, online, available at www.legaltechcenter.net/ accessed on 1 November 2009.
- Judges Technology Advisory Committee (2003) 'Discussion Paper on Open Courts, Electronic Access to Court Records, and Privacy' Canadian Judicial Council.
- Kiskis, M. and Petrauskas, R. (2004). "ICT Adoption in the Judiciary: Classifying of Judicial information", *International Review of Law, Computers & Technology*, Volume 18, No. 1, Pages 37-45.
- Kuala Lumpur High Court (2010) "CMS Briefing", Kuala Lumpur Courts Complex, 2010.
- Kuching High Court Document (2010) "Brief Introduction On the Integrated Court System (ICS) in the Courts of Sabah and Sarawak". Kuching High Court. Accessed in February 2010.
- Lederer, F.I. (2003) "High-Tech Trial Lawyers and the Court: Responsibilities, Problems and Opportunities, An Introduction" Courtroom 21 White Paper, online, available at www.legaltechcenter.net/ accessed on 1 September 2010.
- Macdonald, R. and Wallace, A. (2004) "Review Of The Extent Of Courtroom Technology In Australia" 12 Wm. & Mary Bill of Rts. J. 649.
- Nik Imran Abdullah (2011) "New System to Speed Up Trials Four Times Faster", *The New Straits Times*, 17 February 2011.
- Suh, B. and Han, I. (2003) "The Impact of Customer Trust and Perception of Security Control on the Acceptance of Electronic Commerce" *International Journal of Electronic Commerce*, 2003. vol 7(3), pp. 135-161.
- Velicogna, M. (2007) "Justice Systems and ICT: What Can Be Learned From Europe?" *Utrecht Law Review*, Volume 3, Issue 1 (June) 2007, online, available at <http://www.utrechtlawreview.org/publish/articles/000041/article.pdf> Accessed on September 1, 2009.
- West, R. (2002) "Tradition, Security Stall Court Technology" *American City & County*, 0149337X, Mar 2002, Vol. 117, Issue 3.
- Wong Peck, "E-Justice – Transforming the Justice System", Australian Institute of Judicial Administration Law & Technology Conference, Sydney, June 26, 2008.
- Zaiton Hamin (2009) "What's Law Got To Do With It?: The Limits Of The Computer Crimes Act 1997 In Governing Computer Crimes Within The Malaysian Electronic Workplace" 4 MLJ exci.
- Zaki Tun Azmi (His Right Honourable Tun Dato' Seri) (2010) "Using Technology to Improve Court Performance: Malaysia's Experience" Asia Pacific Judicial Reform Forum 2010, Beijing, 25-28 October 2010.