



Developing Legal Framework for E-Court in Judicial Delivery

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Abstract

E-Court function is to manage electronic records in court. E-Court is expected to give such a lot of help for effective judicial delivery in Malaysia. Thus, by this research the implementation of e-Court is going to be explored in order to improve the system at all courts in Malaysia. This research applied qualitative case study methodology and data collection will be conducted at three units of high courts and will interview the stakeholders of the e-Court system. This is a conceptual paper to explore the implementation of e-Court system in Malaysian Judiciary, investigate judicial delivery issues in Malaysia and to propose a legal framework for e-Court in Malaysian civil courts. The study reviews literature on e-Court system and surveys from Malaysia and others countries. Studies related to this topic were analyzed and discussed throughout the paper in the context of implementation process, the judicial delivery issues and the future legal framework to be proposed.

Keywords: E-Court, electronic records, judicial delivery, legal framework, Malaysian civil court

1. Introduction

Increasing amount of digital records and proliferation of information in the digital environment has caused many countries in the world begun to use digital evidence [1-2]. Currently, there are a lot of systems that can be used to manage e-records with different technologies and philosophies and they are available on the market because they have a very strong demand and high fragmentation of the market. There are many evidences showed by system developer, vendor and manufacturer that the business using a system within the transactions have to strive to find out the best software to use and also understand about the factors affecting the successful of the project implementation [2-3]. Among the countries that develop the e-Court system is United States, United Kingdom, Australia, New Zealand, Singapore and India. E-court has been implemented and practiced in several developed and developing countries in order to ensure the effectivity and efficiency of the countries can be improved.

ICT adoption in all geographies surveys has been done by and it shows that Malaysia is still in transitional stage but already nearly achieve the advance stage [4] such as by having Court Recording and Transcribing (CRT) system, the witnesses can save their time and efforts while giving evidence from remote locations or even overseas, which can improve the delivery of judicial delivery.

From the survey conducted, it can be seen that Malaysia's neighbors such as Singapore, Thailand also in different stages which is Singapore is in advance stage while Thailand is still in constraint stages. In Asia, Singaporean government has the most success story if compared to other countries such as Indonesia, Philippines, Malaysia, Vietnam and also Thailand. Singapore is a bit more advance from others in term of education and computer

literacy, thus it has been able to use IT effectively to streamline business process and improve service delivery. E-Court is supposed to be simplify business processes in court and utilize the technology and system developed. Thus, lawyers can presenting their cases through case management system which is more effective and witnesses are able to give evidence to improve the delivery of justice.

Legal records in judicial delivery is crucial and have to be managed properly according to the requirements of the records management in order to deliver justice for the cases effectively. Malaysian Former Chief Justice introduced the e-Court system in October 2008 along with the "Court Backlog and Delay Reduction Programme" (Court Reform Programme). E-Court system implemented on March 1, 2011 adopted the concept of 'green courts' [5], that is, little or no use of paper [6-8]. E-court system is parallel to e-Government initiative to increase the convenience and accessibility interactions for the information.

Problem Statement

No specific policies or procedures are available in managing electronic court records in the Malaysian Judiciary. A complete and comprehensive policy and/or procedure is vital in order to ensure the authenticity of e-Court records management. Moreover, if any policy is not clear, this can create difficulties for the authorized person. Implementation of system in Malaysia's judicial management still had been frequently criticized because of the slow process of judiciary system in resolving disputes [7, 9]. Datuk Razali Ibrahim said, a total of 51,697 pending cases in the High Court, Sessions Court cases 14,893 and 54,751 cases in the Magistrate's Court [10].

Delays and backlogs of cases is still be a problem to the court even when the usage of technology had been adapted to judicial

management. Disposal of backlogged cases "largely encouraging", but admitted a few that have gone on too long and the backlog of cases and court hearing delays have to a certain extent affected the image of the judiciary, resulting in the public having a negative perception of the courts and feel discouraged to take action in seeking redress and upholding their rights in court [11].

Many parties are still not understand about the e-Court system although the system was implemented to increase the effectiveness of the court. [7, 12]. The unavailability of complete information relating to the case as and when required is the most significant reason of e-Court system implementation. **Error! Bookmark not defined.**

Currently in Malaysia there are still a lot of issues consist of technological and people issues **Error! Bookmark not defined.** 2. arouse in the judicial management. In practice, when most courts start using IT, each of them conforms to different standards and has no uniformity, leading to the problem of interoperability. This is due to lacking of experts in records management within courts administrators. Interoperability refers to is the ability of different IT systems and software applications to communicate to exchange data between them accurately, effectively and specially to use the information that has been exchanged. The lacking will contribute to technological issues [9, 13]. The first hurdle in implementing change in judicial delivery is people issues because currently, most of the court registry are lack of knowledge people in the field of registry office and information management standards [9]. It is hard to retrain people and change their work style in a short time. However, it is vital to enforce them to embrace IT in the administration and work process.

Electronic documents can easily be thrown out of court when so-called 'compliance points' such as no retention schedule, inappropriate security controls, lack of procedural documentation. insufficient control on document input procedures are found to be missing in systems [14-15]. Incidences about court files or records missing, mutilated, stolen, hidden or being misfiled are still a common feature. Case records are still not produced on time when needed by the court justices; as a result adjournments are the order of the day; accused persons are still being incarcerated without trial because case records cannot be found, criminal cases are discontinued and dangerous criminals are set free because case files or records have been lost; and the innocent have been jailed and denied justice because evidence has been tempered with citation [16].

Purpose of Inquiry and Inquiry Questions

This conceptual paper is intended to explore the implementation of ERMS in Malaysian Judiciary, to investigate judicial delivery issues of electronic records management system and to propose recommendations to solve the judicial issues of ERMS in Malaysia. Therefore, the research questions for this paper are:

1. How e-Court is implemented in Malaysian Judiciary?
2. What are the judicial delivery issues of ERMS in Malaysia?
3. Is there an existing framework for e-Court for civil courts in Malaysia?

The answer to the research questions will be based on findings obtained from multiple-unit case study, document analysis and literature review.

Significance and Contribution

This research is significant to the electronic records management discipline by addressing the issues in judicial delivery when using electronic records management system. This study is expected to offer favorable contributions to the body of knowledge for academics and practitioners.

The study is expected to develop a framework in managing electronic records in Malaysian Judicial Delivery. The framework also could be further tested and used by future researchers to study

electronic court records practice in Court setting in other places. This research will contribute to a better understanding for the end-users, researchers and community about the implementation of E-Court for judicial delivery.

The findings also might establish some baselines for future research. In its practical contribution, since no specific legal framework has been developed in Malaysian Civil Court yet, it might help the key stakeholders to improve the judicial delivery, in order to improve public confidence over the court and justice system. For administrators and system developers, this research is expected to promote an improvement in the judicial delivery.

Literature Analysis

This section will explore the implementation process of e-court system and the issues in the judicial delivery. In addition to the review of literature, this section will include a presentation and discussion of the preliminary conceptual framework.

Electronic Records Management System (ERMS)

Information Communication Technology (ICT) has been used by judicial delivery in managing the business activities and the transactions in courts. It results the production of e-records and simplify the decision-making process, formulating policies and support daily activities of judicial delivery. Thus, e-records management is one of the critical issues for public agencies [2]. In organization, ERMS is a platform for effectively managing the e-records which delivers the systematic and structured technological component of a model for e-records management [17].

In order to manage the recordkeeping effectively in an organization, public agencies need a guideline or framework [2]. The most difficult part of the technical implementation is establishing the necessary integration to existing systems to gather the required data. Use open standards such as National Information Exchange Model (NIEM) wherever possible to ensure systems can communicate and exchange data [18].

ERMS has the same concept as manual records, which is the practice of ERMS also have to comply with life cycle concept which is starting from the first process that is creation until the last process that is disposition. ERMS would ensure standardized creation, capture, maintenance and disposition of records and by having standardized processes, the documents can be retrieved easily when needed [7, 19-20]. ERMS has its own disposition schedule, classification system and also indexing or thesaurus. The ERMS will classify its records based on its priority, organization's needs or best practice.

ERMS seems to have similar concept for all over the world but differs in its functions and application in technical part which is the systems themselves. A number of countries adopting the electronic records management systems.

Judicial Delivery

Malaysian judiciary has targeted to process its allotment within nine months of the cut-off date. Currently, by using e-court system, the judiciary can simply trace and produce reports in order to check whether the target is achieved or not [5, 21]. Sultan Sharafuddin ordered Malaysians to respect for the judgments and decisions of the courts depended on public confidence in the integrity and independence of the judges in making decisions without fear or favors [11]. Malaysian civil court system is consisting of two categories which are Superior Courts and Subordinate Courts [22-23]. Common law practices are largely used in court procedures of the Malaysian judicial system [24]. Zakiyy & Hassan [21] proposed to generally pointed out as the main reason for the crisis that affects the judicial systems in most European countries. Citizens feel that courts are inflexible organizations, far from being concerned with meeting the users' needs. [23, 25].

Electronic Records Management (ERM) in Judicial System

The term of 'courtroom technology' can be defined as the technology installed or used in a courtroom by or for counsel or pro se parties [2]. Electronic court is an inventiveness to deliver services to citizens and court agencies and it enables citizen to view information and court agencies by accessing court services through online services [26]. Courtroom technology naturally recommends courtrooms and trials [27] while [2, 28] presume that courtroom technology is used primarily by prosecutors for presentations to the triers of fact either in preparation for or at trial. Electronic method guarantees cost reduction in terms of money spent, time and energy used, etc.

Electronic Records Management (ERM) in Judicial Delivery in Malaysia

In Malaysia, government has taken a proactive approach to ICT adoption in the administration of justice and this country is one of many countries in the world that have begun using digital evidence [1,9]. The digital evidence is admissible as documentary evidence and primary evidence [1]. Malaysian civil courts are among the countries that have practiced "paperless courts" and now the system is better known as "e-courts" [29].

Tun Zaki Tun Azmi, the former Chief Justice of Malaysia introduces e-Court system in October 2008. The system was launched along with the "Court Backlog and Delay Reduction Programme". Zaki [5] and Zakiyy & Hassan [29] aware that in order to reduce the problem of backlog cases, technology is one of the main characters needed. Thus, the issues and problems related with the backlog can be handled carefully and they are no longer haunting Malaysian judiciary system [30]. Nowadays in Malaysia, there are technologies divided into several parts adopted by High Courts in Kuala Lumpur and in Kuching Sarawak. They are namely e-filing system (E-Filing), case management system (CMS), queue management system (QMS), court recording and transcribing (CRT) [31].

Issues of ERM in Judicial Delivery

Case backlogs are one of the most common criticisms of courts. In addition, backlogs are very difficult to administer. The Judiciary needs to ensure Courts meet the fundamental obligations to administer justice in a reasonable time, as delays reduce the efficacy and fairness of the trial process. As such, sufficient time has been set aside to highlight some of these business transforming technologies that are crucial to enhance efficiency in implementation of backlog reduction strategy, including reviewing judicial efficiency improvement and reengineering court processes to streamline and rightsizing the Judiciary in order to facilitate the delivery of greater efficiency and to ensure that the administration of justice is efficient [32].

Backlog cause the records to took years to be settled because of various reasons. Among different reasons, for example, set number of judges and court authorities, high volume of cases, poor framework set up, constrained budgetary assets and so forth. Case delays reduce the efficacy and effectiveness of the trial process, as such, it is critical to all Judicial Officers, including Chief Justices, Judges, Court Registrars as well as judicial stakeholders to review administrative systemic changes within the judicial system, and create an opportunity to speed up the rate at which cases are heard, in order to alleviate backlogs, reducing delays, managing case-loads and accelerate case disposition, to streamline and rightsizing the Judiciary that will directly influence the functioning of courts efficient and to ensure the administration of justice is responsive to the needs of the users. Delays and backlogs of cases is still be a problem to the court even when usage of technology had been adapted to judicial management.

3. Research Methodology

This research falls under qualitative research methodology, applying case study research design. This research is going to be conducted at multiple unit's case study which the locations are Kuala Lumpur High Court, Shah Alam High Court and Putrajaya High Court. Several instruments are going to be used to collect and analyze the data.

Research will be conducted using structured interview, document analysis and analysis of research and data from the literature.

Data Collection and Data Sources

This is a conceptual paper that is based on a review of literature on the topic of electronic court records, electronic records management system, the implementation and the judicial delivery issues when using electronic records system. For data collection process, a qualitative case study method would be conducted to obtain data in the courts. A qualitative method would be used because the method is best-fit to answer the research questions for this research.

The procedures for conducting research would be to create a good interview guide so that all the information needed can be obtained during the interview. The interview guide will be adapted from previous research. That interview guide has been proved that it helps researcher to fulfill the requirement and to obtain the information needed. The target respondents would be purposive sampling because they will be consisted of judges, administrators and system developers of the electronic records management system.

For ethical reasons, permission letters had been sent to courts to inform that the research will be conducted at the courts, the stakeholders will be interviewed and the findings will be used for an academic research. The respondents are being informed that the interview contents will be analyzed and reported into a thesis. They will be asked to read and sign a consent form stating that they willingly to participated in the study.

4. Conclusions

To fulfill the implementation needs of e-Court projects, the history of the system should be revised and understood. The way of the e-Court criticized also should be looked into in order to get the perceptions from end-users. The literature with regards to e-Court implementation is limited.

As many improvement due to implementation of e-Court for judicial delivery have been proved, others research could be done in future in order to recognize the issues, best practice and strategies for the successful implementation. This paper analyses the available literature review and information gathered in order to propose a legal framework for civil judicial delivery in Malaysia. The proposed framework is expected to be further tested and used by future researchers to study electronic court records practice in Court setting in other places. The result of the research is expected to help the key stakeholders to increase effectiveness of judicial delivery, in order to gain public confidence over the court to the Malaysian justice system. For administrators and system developers, this research might promote an improvement in the overall quality of administration of e-court records in Malaysian judicial delivery.

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