



## **E-COURT SYSTEM IN THE CIVIL AND SHARIAH COURTS : MALAYSIA PERSPECTIVES**

*Zuhairah Ariff Abd Ghadas & Rabiatal Adawiyah Mohd Ariffin*

Faculty of Law and International Relations, Universiti Sultan Zainal Abidin

---

### **ABSTRACT**

Access to justice have different meaning to different people but generally it refers to a wider social context of the court system and reducing the systemic barriers faced by different members of the community. In many countries, the information and communication technology (ICT) are used for better management of the court systems, such as video conferencing with high-tech video presenters and monitors, recreation of crime scene, electronic filing system, electronic case management and electronic court records management and systematic information storage and retrieval system. In Malaysia, a research highlighted that in 2013, there are five e-Shariah modules which had been applied in 110 Shariah courts in Malaysia and in 102 locations nationwide. The E-Shariah applications are said able to standardize work environment in Shariah courts and link all the business processes on a single channel. One of the facilities of e-Shariah which enhance access to justice is the e-form system whereby people can get the relevant forms of Shariah courts in all 13 states of Malaysia via the e-Shariah portal. The people do not have to go to the courts just to get the form as they can download the forms and submit them via online system provided by the Shariah courts. For the Civil courts, a research highlighted that the complete E-Court system in Malaysia began in March 2011 with four types of mechanism, namely Video Conferencing System, Case Management System, Community and Advocate Portal System, and Court Recording and Transcription System. The e-filing has also been introduced to complement the E-Court system. In Sarawak and Sabah, Malaysia the use of video conferencing system in courts minimized the transportation problems of the people due to the appearance of large land and lack of transport (air transport is the main means of communication but expensive). In a normal system, many advocates in Sabah and Sarawak have to spend time travelling to courts that take a few days while in some cases, the trial may only take less than an hour. Video conferencing system used by the courts not only saves time of the people but also save costs. It is estimated that RM2, 945.00 from each trial can be saved using this system. Video conferencing is also used to protect witnesses in the case of rape or cases involving children. This paper discusses the applications of ICT in both the Shariah and Civil courts in Malaysia.

**Keywords:** ICT, Access to justice, Malaysia

---

### **1.0 INTRODUCTION**

Technology has been seen as a potential facilitator of access to justice, particularly in terms of improving justice sector efficiency. The international diffusion of information systems (IS) within the justice sector raises the important question of how to insure quality performance. The IS literature seemed to focus on general design principles for

the implementation of complex information technology systems that have also been applied to these systems in the justice sector.<sup>1</sup> There is also a growing recognition that both principles relating to the design of information technology systems themselves (“system design principles”), as well as to designing and managing the processes by which systems are created and implemented (“design management principles”) can be critical to positive outcomes. In terms of system design principles, IS scholars have focused on bootstrapping through accessibility and simplicity, adaptability and modularization, while e-justice scholars have focused on the relationship between law and technology (including differences in timing between technological and legal change), and the use of technological and legal installed bases. Both IS and e-justice scholars have also looked beyond system design principles to identify design management principles aimed at minimizing psychological, political, and organizational barriers to success.<sup>2</sup>

## **2.0 MALAYSIA JUDICIARY SYSTEM**

The Malaysian legal system is largely based on the English common law system. This is due to the colonization by the British Empire starting in Penang Island from the year 1786 until the independence of Malaya in 1957. Other than the English laws, the legal system in Malaysia is also affected by many other factors such as the rules of the Malay Sultanates, the local custom, religion, the immigration of various races into Malaya and many more.

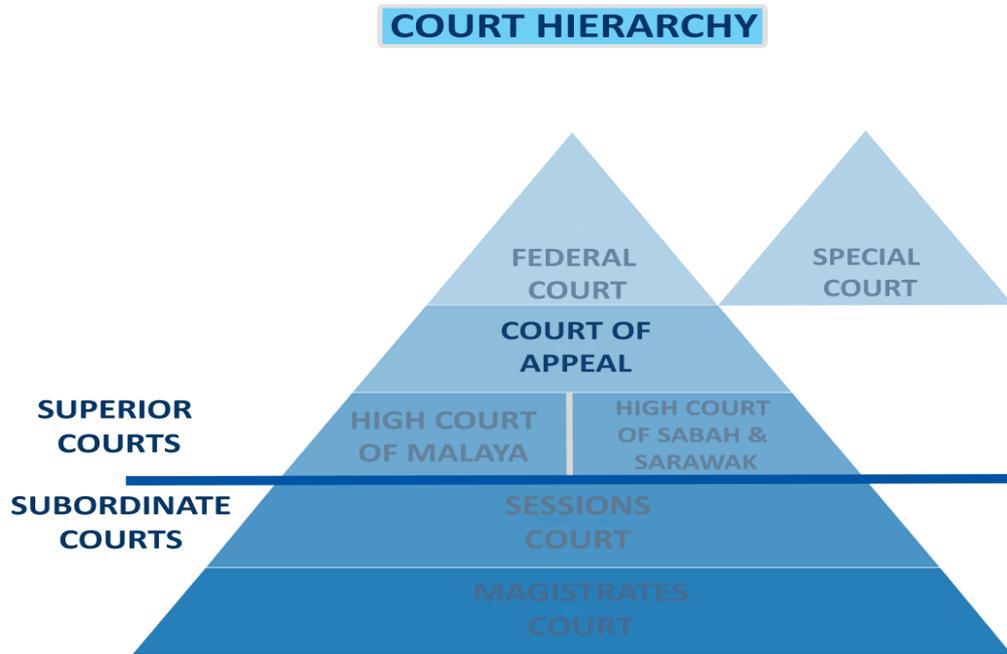
### **2.1 Hierarchy of the Civil Courts**

The jurisdiction and powers of courts under the Malaysian hierarchy of courts are contained in the Court of Judicature Act 1964 (Act 91) for the superior courts (Federal Court, Court of Appeal and High Court) and in the Subordinate Courts Act 1948 (Act 92) for the subordinate courts (Sessions and Magistrate’ courts).

---

<sup>1</sup> Giampiero Lupo and Jane Bailey, 2014, *Designing and Implementing e-Justice Systems: Some Lessons Learned from EU and Canadian Examples*, Laws, No.3, at pp 353–387. Retrieved from <file:///C:/Users/USER/Downloads/laws-03-00353.pdf> on 25 Mac 2019.

<sup>2</sup> Ibid



### 2.1.1 Superior Courts

The Federal Court is the highest court in Malaysia and empowered to determine whether a law made by the Parliament or by the State Legislature is invalid on the ground that the Parliament or State Legislature has no power to make laws, and as to disputes on any question between States or between the Federation and any State. The Federal Court may also hear appeals of civil decisions of the Court of Appeal where the Federal Court grants leave to do so. The Federal Court also hears criminal appeals from the Court of Appeal, but only in respect of matters heard by the High Court on its original jurisdiction.

The Court of Appeal has appellate jurisdiction on both criminal and civil matters. It is the court of the final jurisdiction for cases which began in any subordinate courts. The Court of Appeal hears civil appeals against the decisions of the High Court where against judgement or order made by consent. In cases where the claim is less than RM250000, the judgement or order relates to cost only or against decisions of a judge in chambers on an interpleader summons on undisputed facts, the leave of Court of Appeal must be obtained first.

The High Court has both original and appellate jurisdictions for both civil and criminal matters. The High Court has the jurisdiction to try all civil matters and these include

matters relating to divorce and matrimonial cases, appointment of guardians for infants, granting of probate of wills, bankruptcy and other civil claims where the amount of dispute exceeds RM250000. The High Court also has unlimited jurisdiction on all criminal matters other than matters involving Islamic law and it also has original jurisdiction for criminal cases punishable by death.

## **2.1.2 The Subordinate Courts**

### **Sessions Court**

For civil matters, the Sessions Court may hear all matters where the amount of dispute exceeds RM25000 but does not exceed RM250000 except in matters relating to motor vehicle accidents, landlord and tenant and distress, where the Sessions Court has unlimited jurisdiction. For criminal matters, Sessions Court has the jurisdiction to try all criminal offences other than offences punishable by death and may pass any sentence allowed by law other than the sentence of death.

### **Magistrate's Court**

In its civil jurisdiction, Magistrate's Court shall have jurisdiction to try all actions and suits where the amount of dispute or value of the subject-matter does not exceed RM25000. In criminal matters, the court has the power to try all offences of which the maximum term of imprisonment does not exceed 10 years or which are punishable by fine only, but the court may pass sentences not exceeding 5 years imprisonment, fine not exceeding RM10000, and/or whipping up to 12 strokes. This court can hear the appeal of Penghulu's Court.

### **Penghulu's Court**

Penghulu's Court is one of the subordinate courts in West Malaysia. The Penghulu's Court hear civil matters of which the claim does not exceed RM50 and where the parties are persons of Asian race and speaking and understand the Malay language. While for criminal matters, its jurisdiction is limited to offences of a minor nature charged against a person of Asian race which can be punished with a fine not exceeding RM25.

Civil Courts Malaysia's civil court structure is largely based on a court structure familiar to those from common law jurisdictions. It consists of the Subordinate Courts and the Superior or Appellate Courts. The Superior Courts are made up of the High Court of Malaya, the High Court of Sabah and Sarawak, the Court of Appeal, and the Federal Court. The Federal Court is the highest and final court of appeal. It has appellate jurisdiction to hear appeals from the Court of Appeal; original or federal-state jurisdiction over whether a federal or state legislative body has legitimately made a law within its power; referral jurisdiction to determine constitutional questions referred to it by another court; and advisory jurisdiction to give an advisory opinion on any question referred to it by the Yang di-Pertuan Agong (His Majesty) concerning the effect of any provisions of the Constitution. Prior to 1 January 1985, appeals could be made to the Judicial Committee of the Privy Council. After the abolition of Privy Council appeals, however, the Federal Court became the final court of appeal in the country. The Federal Court consists of a Chief Justice, the head of the Malaysian judiciary; the President of the Court of Appeal; the two Chief Judges of the High Courts in Malaya and Sabah and Sarawak; and, at present, four other Federal Court judges. The Court of Appeal was created in 1994 to act as an appellate court to hear appeals against decisions of the High Courts. It has only appellate jurisdiction. The creation of the Court of Appeal in 1994 reinstated a threelevel system of appeal, lost with the abolition of appeals to the Privy Council, and provided necessary relief for the Federal Court. There are two High Courts of co-ordinate jurisdiction and status: the High Court of Malaya for the states of Peninsular Malaysia and the High Court of Sabah and Sarawak for the Borneo states. There is a Chief Judge that heads each High Court. The separation of the two Courts is partly for practical reasons as the principal registry of the High Court of Malaya is in Kuala Lumpur and the registries for the Borneo states are in the respective states. The independence of the High Court of Borneo is also important symbolically and as matter of principle for the Borneo states, which remain keen to have their own High Court. Both High Courts have general supervisory and appellate jurisdiction, and have unlimited civil and criminal jurisdiction. The Subordinate Courts consist of the Sessions Court, the Magistrates' Court and the Penghulu Court in Peninsular Malaysia. The Sessions Court and the Magistrates' Court have general jurisdiction in both civil and criminal matters. The Sessions Courts has criminal jurisdiction over all offences not punishable by death, and civil monetary jurisdiction over claims between RM 25,000 and RM 250,000 (£1

sterling equals approximately 5 ringgits; \$US1 3 ringgits). Magistrates' Courts deal with minor civil and criminal cases. It may hear disputes for civil claims below RM 25,000 and has criminal jurisdiction over offences that are punishable by a maximum term of imprisonment that does not exceed 10 years or by fine only. The Magistrates' Courts may also hear appeals from the Penghulu Courts. These rural courts are presided over by the Penghulu or village headman and are meant for informal settlement of small village disputes. Syariah Courts In Malaysia, the civil and Syariah courts exist side by side in a dual court structure. The civil courts were established as federal courts to deal with federal matters, whereas the Syariah courts are provided for in the Federal 5 Constitution as state courts that can be established to deal with matters of Islamic law. The understanding of the Syariah courts as subordinate to the civil courts has arguably been altered following the introduction of an amendment to article 121(1A) of the Constitution following the Constitutional Amendment Act 1988. Article 121(1A) now provides that the civil courts 'shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.' The question of whether the Syariah Court has jurisdiction over any particular matter is therefore significant: once an issue is within the jurisdiction of the Syariah Court, by definition, the civil courts' jurisdiction is excluded. It is unclear whether the civil High Courts continue to have the power to intervene as a matter of judicial review. The view that article 121(1A) does not exclude the supervisory review power of the High Court is supported by several commentators, such as Andrew Harding (*Law, Government and the Constitution of Malaysia*, 136-7 (1996)), Thio Li-Ann (in an essay in *Constitutional Landmarks in Malaysia: The First 50 Years*, 197 at 202), and the Malaysian Bar Council (in its Amicus Brief in *Lina Joy*) who argue that article 121(1A) simply states the obvious, i.e. that each court deals with matters within its own jurisdiction, but it does not transfer additional powers to the Syariah courts. Another view is that the very objective of the amendment was to prevent the High Court from having the power of judicial review over the Syariah Court as had happened in certain family law cases: see, e.g. Hassan Saeed, in *Freedom of Religion, Apostasy and Islam* (2004) 149 at 150. The judicial trend recently has appeared to lean towards the latter view. In *Subashini Rajasingam v Saravanan Thangathoray* ([2007] 7 CLJ 584), a case concerning the custody of children when one parent had converted to Islam, the demarcation between the civil and Syariah courts was interpreted to mean that the Syariah courts 'are not lower in status than the civil courts . . . they are of equal

standing under the [Federal Constitution]' (at [23]). This clear separation between the civil and Syariah courts appears to have resulted in an either/or jurisdictional relationship: a matter is either within the jurisdiction of the civil court or the Syariah court; it cannot be under both. The general jurisdiction of the Syariah Court is expressly provided for in the Federal Constitution under article 74(2) and List II, Schedule 9. Syariah courts have jurisdiction over 'Islamic law and personal and family law of persons professing the religion of Islam', which includes, inter alia, matters such as betrothal, marriage, divorce, legitimacy, dowry, maintenance, adoption, succession, and religious endowments. This is consistent with the idea that the Syariah courts are meant to be state courts established to deal with Islamic law 'only over persons professing the religion of Islam' according to List II, Schedule 9. State legislatures are then meant to specify the jurisdiction of the Syariah courts of their particular states, within the general jurisdiction laid down by the Federal Constitution.

### 3.0 RECEPTION OF TECHNOLOGY INNOVATIONS IN MALAYSIA COURTS

In Malaysia, the courts will soon see the use of artificial intelligence, virtual courtrooms and holograms. In the Opening of the Legal Year 2019 which was held on 11 January 2019, the 9<sup>th</sup> Chief Justice of Malaysia, Tan Sri Datuk Seri Panglima Richard Malanjum highlighted <sup>3</sup>:

*"... the legal profession must embrace technology. There is no option. It is coming soon to the legal profession. Adapt or be dropped." ↴*

The Malaysia judiciary adopted technological reforms that have been or will be introduced into the judicial ecosystem known as E-Court system which includes:

- **Video conferencing;**
- **Virtual court** and the use of **hologram technology** in the pipeline for future implementation;
- **E-Filing** where bundle of documents will be stored as virtual files
- **Case management system;** and

---

<sup>3</sup> ] Malaysia - Embracing Technology in The Legal Industry. Retrieved from <http://www.conventuslaw.com/report/malaysia-embracing-technology-in-the-legal/> on 21 July 2019.

- **Data sentencing**, which utilises Artificial Intelligence (“AI”) to guide judges and judicial officers in delivering sentences, in a bid to ensure consistent sentencing for similar offences.
- **Queue Management System (QMS).**
- **Community and Advocate Portal System (CAP).**
- **Case Recording and Transcribing (CRT).**

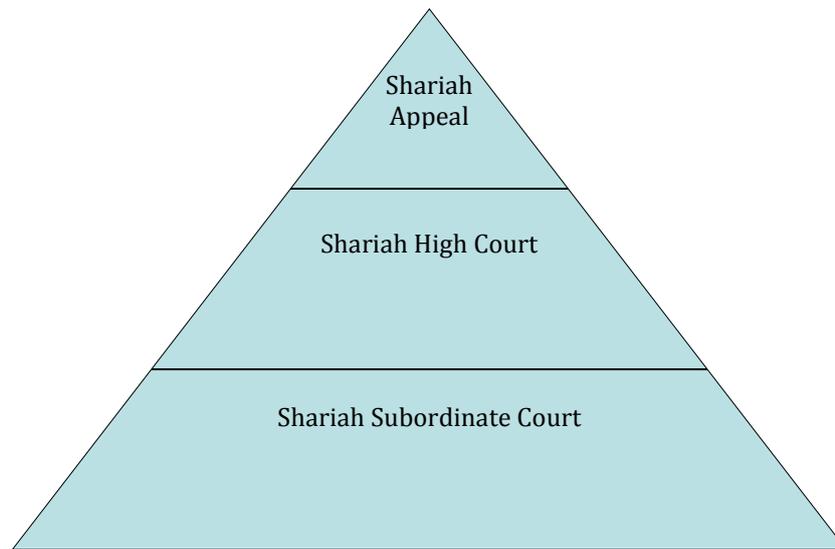
### **Hierarchy of the Shariah Courts**

Under Article 74 of the Federal Constitution, the Islamic law and Islamic matters, including the establishment of Syariah courts, fall under the jurisdiction of the State. According to the State List, the legislative power of the State assembly to legislate on Islamic law and Malay customs is confined to 26 matters:

- a. Succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts;
- b. Wakaf and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State;
- c. Malay customs;
- d. Zakat, Fitrah and Baitulmal or similar Islamic religious revenue;
- e. Mosques or any Islamic public places of worship;
- f. Creation and punishment of offences by persons professing the religion of Islam against precepts of that religion; and
- g. Constitution, organisation and procedure of the Shariah courts.

The State List stipulates that the Shariah court is to have jurisdiction only over persons professing the religion of Islam and in respect only of the above matters. It is also provided that the Shariah court shall not have any jurisdiction in respect of offences unless conferred by federal law.

The hierarchy of Shariah Court are:



All states in Malaysia has Shariah Subordinate courts which have jurisdiction within the local limits of jurisdiction assigned to it and shall be presided over by a Syariah Subordinate Court Judge. The Syariah Subordinate Court shall in its criminal jurisdiction, try any offence committed by a Muslim under this Enactment or any other written law which confers the Syariah Courts jurisdiction to try any offence for which the maximum punishment provided does not exceed three thousand ringgit or imprisonment for a term not exceeding two years or both and in its civil (mal) jurisdiction, hear and determine all such actions and proceedings as the Syariah Subordinate Court is authorised to hear and determine in which the amount or value of the subject-matter in dispute does not exceed one hundred thousand ringgit or is not capable of quantification in monetary terms.

His Royal Highness the Sultan may from time to time by notification in the Gazette extend the jurisdiction of the Syariah Subordinate Court.

Appeal from the Shariah Subordinate courts will be brought to Shariah High Court which shall have jurisdiction throughout the State and shall be presided over by a Shariah High Court Judge. A Syariah High Court shall in its criminal jurisdiction, try any offence committed by a Muslim and punishable under any written law in force in relation to the administration of Islamic law, Islamic family law, syariah criminal procedure, syariah

criminal offences, or under any other written law prescribing offences against precepts of the religion of Islam for the time being in force, and may impose any punishment provided therefore; and in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to-

- a. betrothal, marriage, *ruju'*, divorce, nullity of marriage (*fasakh*), *nusyuz*, or judicial separation (*mufaraqah*) or other matters relating to the relationship between husband and wife;
- b. a disposition of, or claim to, property arising out of the matters set out in subparagraph (a);
- c. the maintenance of dependants, legitimacy, or guardianship or custody (*hadhanah*) of infants
- d. the division of or claims to *harta sepencarian*;
- e. will or death-bed gifts (*marad-al-maut*) of a deceased Muslim;
- f. gifts inter-vivos, or settlements made without adequate consideration in money or money's worth, by a Muslim;
- g. *wakaf* or *nazr*;
- h. division and inheritance of testate or intestate property;
- i. the determination of persons entitled to share in the estate of a deceased Muslim or the shares to which such persons are respectively entitled;
- j. a declaration that a person is no longer a Muslim;
- k. a declaration that a deceased person was a Muslim or otherwise at the time of his death; or
- l. other matters in respect of which jurisdiction is conferred by any written law.

Appeals from the Shariah High Court are brought to the Shariah Appeal court, which is the highest court in Shariah judicial system. Shariah Appeal court shall have jurisdiction to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction. When an appeal from a decision of a Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may on the application of any party grant leave for the determination by itself of any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Syariah High Court has affected the result of the

appeal. When leave has been granted by the Syariah Appeal Court it shall hear and determine the question allowed to be referred for its determination and make such order as the Syariah High Court might have made and as it considers just for the disposal of the appeal.

### **3.1 E- COURT SYSTEM IN THE CIVIL COURTS**

The court system in Malaysia has been introduced to resolve problems of delay and back-log of cases.<sup>4</sup> The electronic based court system emphasized on the use of mechanism which is much faster and efficient. They are six types of e-court mechanism which are presently in practice in Malaysia civil courts:

#### **3.1.1 E-Filing**

E-filing is an electronic system of filing cases online. This system was introduced on March 1, 2011. With the introduction of E-filing system, which discourages the use papers as before, the lawyers or parties involved will have to 'scan' their application papers. Under this system, lawyers will not be charged as it will be handled by the courts through the Bureau of Services until May 31, 2011. This service will be charged through the internet banking system for payment of case filing after such date. The service bureau in the courts will continue to provide service after May 31, 2011 in respect of e-filing, but the service is only available to the public who do not have a lawyer. If e-filing is used directly from a law firm, the firm must pay via e-banking to the bank to be appointed and must also pay an annual fee for the Digital Certificate from the company responsible for managing the system, starting May 31, 2011.

Starting from end of December 2017, all legal firms are required to file their court documents online via <https://efs.kehakiman.gov.my>. The e-filing system allows law firms to file or access case documents at anytime and anywhere. In the rollout of the second phase of the E-Court system from May to July 2018, the e-filing system was upgraded and there are new modules introduced which include Mobile Apps, Practising Certificate Module (system integration with Bar Council), Power of Attorney Module,

---

<sup>4</sup> Kamal Halili Hassan and Maizatul Farisah Mokhtar, 2011, 2nd International Conference on Education and Management Technology, IPEDR vol.13, IACSIT Press, Singapore

and e-Lelong. Furthermore, e-filing also covers criminal matters for Subordinate Courts and High Courts and all filings to Court of Appeal and Federal Court.

### **3.1.2 Video Conferencing System (VCS)**

The Malaysian courts took another leap into the technological phase, with the launching of the audio conference system at the courts in Kuala Lumpur. Audio conference is where the parties relevant to the case would be able to communicate with each other via fixed line or mobile phone without being physically present at one place. This is indeed an initiative by the Malaysian judiciary to further enhance the delivery of the civil justice system in Malaysia.<sup>5</sup> Audio conferencing is a form of meeting where the participants do not have to be in the same place and can simultaneously take part via fixed telephone lines or mobile phones. This system will be convenient for lawyers as it eliminates the waiting period and saves time and costs travelling to court. In addition, VCS is also expected to help reduce litigation costs for clients.

This practice has been applied to the Sabah and Sarawak courts, where they have had the audio conference system up and running since approximately 2 years ago. On top of that, they have also been conducting video conference sessions between selected technology courts within Sabah, as well as within Sarawak, with the option whether to use audio only or coupled with video i.e. a conference session where the parties would 'virtually meet' in audio as well as video where they could see each other, without being physically present at the same place. I was made to understand that the cost for the adoption of such technology is also affordable – at RM50 per conference session of 30 minutes or part thereof.<sup>6</sup>

### **3.1.3 Case Management System (CMS)**

CMS is a case management system developed specifically to improve service efficiency in handling cases in court. Before the system was introduced, the courts dealt with cases using manual system. With this system, management of court cases is more systematic and protected. This system can be accessed by court staff, officers and judges. There is a

---

<sup>5</sup> Dr. Ani Munirah Mohamad Audio Conference vs. Video Conference <https://animunirah.com/2010/10/12/audio-conference-vs-video-conference/>

<sup>6</sup> Dr. Ani Munirah Mohamad Audio Conference vs. Video Conference <https://animunirah.com/2010/10/12/audio-conference-vs-video-conference/>

sub-module in the CMS which are the 'e-filing' and 'e-registration'. In addition, the QMS system (Queue Management System) or better known as the Waiting Queue System is also a sub in the CMS model. The QMS is the most basic systems used in the CMS system that involves the courts and the parties to the dispute (usually involving the solicitors of both parties in a dispute in such cases 1 Corresponding author: Tel: 603-89216362; Faks: 603-89253217 E-mail address: k.halili@ukm.my 240 2011 2nd International Conference on Education and Management Technology IPEDR vol.13 (2011) © (2011) IACSIT Press, Singapore as a reference case, an ex parte and others). This system is fair and systematic (as the case was called by the registration of complete attendance and the presence of the parties involved) and may discipline the lawyers to comply with the time. There is also a sub module called "Personalized My Page" designed to manage all the courts cases in a more systematic manner in that each judge has a personal web page that contains data and information relating to all cases. For example, the number and status of pending cases, decisions yet to be decided, the number of trials completed / not completed, decisions by Court of Appeal not yet obtained, statistical reports and cases that have been completed and archived. In addition, this system also features a "planner" that can be accessed by all staff, court officers and judges. The planner is used to manage cases with reference to the application for a full trial and the date of the cases. The planner incorporates information such as dates and names of operating officers of the court or judges. It is therefore very easy and helpful for the officers of the court to set dates for trial of cases or to view the table of officers and judges depending on their free times. If the officer or the judge involved in a case or cases has emergency matters on the date of trial, then the case can be easily transferred to other officers or judges. In practice, CMS is widely used in case management of cases before trial as a reference case and the application for a full trial. Citing the Commerce Court Complex in Jalan Duta as an example, such cases are handled now before the court officials or the Senior Assistant Registrar (SAR) which were before conducted before a judge. This process has accelerated the process before the trial and is more time saving. These cases were handled only by court officials and lawyers involved in the dispute will only have to appear in a special made cubicle. In this process, most of the times the SAR will first examine the files involved so that when the trial begins, it will save the judges' time and will be easier for the judge to handle the trial. There are eight (8) simple methods used during the process before the trial as managed by the SAR handling the case: • Review

the Planner (check the number of cases that existed at that date); • Check the QMS system (to see the presence of the parties involved); • If the parties were present, they will be called by pressing the "calling" button in the QMS system and after they have entered the room, the "end" button will be pressed; • It continues with the pressing of the "start" button in the QMS system; • The CMS system will subsequently be used in this process beginning with the "updates today minutes"; • The names of the parties who are present will be asked. If the party in attendance to present the case was the same as before, their name already exists in the existing system and the court officials will "key in" by just clicking it, and if the party is new the officer will "key in" the particulars manually; • The case then proceeded as usual; • Upon completion of the case, the SAR will enter the minute i.e the details of the case on that day (sometimes the SAR will straight away enter the minute during the application process, however some SAR record the minute after the completion of the case).

#### **3.1.4 Queue Management System (QMS)**

QMS is an electronic system that arranges the attendance of lawyers. The lawyers will record their presence once they arrive at the court registry. The lawyers will wait for their turn to be called. Those who register first will get the priority by being called into the office (cubicle) first. So to get a call, and the case settled early without a long wait, the parties are encouraged to arrive early to register attendance. The advantage of this system is that cases can begin once the parties record his or her attendance, and not depending on the serial number as done before manually. Court officials or judges would not have to wait too long and can proceed to the next case, whoever is ready. Therefore, there will no longer be a situation where a party who has come earlier but his case is still not called. By using this system, the actual time of attendance by parties involved with the case can also be known. To make it easier for the parties who sometimes have cases in several courts on the same date, a warning system via SMS (short messaging system) is created to remind parties involved in interlocutory 241 trial/applications. This system has to be subscribed and parties are charged at a lower rate. If their case is about to be called, those who subscribed to this system will receive an SMS informing the status of their turn.

### **3.1.5 Community and Advocate Portal System (CAP)**

CAP is a portal system created to enable easy communication between the courts and the public. Short Messaging System (SMS) is established under the CAP. One aim of this system is to notify any change of trial scheduled to lawyers and judges. The system is easy to access and user-friendly.

### **3.1.6 Case Recording and Transcribing (CRT)**

The system of recording evidence of this case was first introduced through a pilot project in September 2004 in two selected courts of the High Court (Civil 1) at Wisma Denmark and the High Court (Commercial 1) at the Sultan Abdul Samad Building. However, this system started in courts all over Malaysia on March 2011 which was launched by Tun Zaki Tun Azmi, the Chief Judge, and costing up to RM100 million. By using this system, judges/magistrates do not have to write the details of the trial because the electronic gadgets record the trial; and it saves time and court processes. A transcriber will take note and this takes over the duties of the judge/magistrate in recording the proceeding. The judge/ magistrate may refer the transcript typed by the transcribers on the computer screen and the benefit is that the judge/magistrate can focus and observe the proceeding better. Parties such as lawyers and prosecutors can get a copy of the recordings in compact disc free of charge for reference purposes. Evidence will be recorded and stored to avoid the risk of loss. This is because the evidence would be referred primarily for appeal cases. In practice, by taking the example of the Court at Jalan Duta Court Complex, in most cases, a total of four cameras are installed in the courts, i.e. for judges, witnesses, the plaintiff and the defendant. However, for special cases or high-profile cases, for example the case of Datuk Seri Anwar Ibrahim and the Teoh Boon Hock case, as many as six cameras were installed. With regard to the transcription method, the management of the CRT system operated by court staff is directed through the direction of the judge or magistrate. In this system, there are three computers used: two computers used for court staff, a major computer operated by the staff of the court (usually a court interpreter 243 or clerk when the court is in session) and another computer acting as "backup" if the main computer has a problem, and third computers used by judges in the handling of the case during the court process. Recording for the transcription is made in the form of video over three minutes until the completion of the trial. It is easy to make a more detailed transcription

with the three-minute recording method. The three minutes recording is only for transcription purpose only. Judges may give instructions to control the content of the recordings. The judge may give directions to the staff who operate this system to make such recordings as 'public' or 'private', to the extent desired. In this situation, if there are any recordings made in the 'private' mode, copy of the recordings that will be given to the parties involved in the case will only in regards to 'public' mode only; to get copy of the "private" mode, the party should apply it from the judge and if allowed, then the copy will be given. In addition, there is the Technology Court which is provided and installed with high-tech systems used in cases involving high technology, for example in the case of submitting evidence related to modern technology. For example, evidence involving high-tech software systems engineering, high-tech audio and visual technology, forensics and others in which the ordinary courts are not able to provide the technology, the technology Court is then used for such purpose.

### **3.2 E-COURT SYSTEM IN THE SHARIAH COURT**

In the Shariah courts, the e-court management system which is used extensively is known as the Shariah Court Case Management System (SPKMS). This system forms a part of the E-Shariah project under one of the seven pilot projects of E-Government application in Malaysia Flagship Multimedia Super Corridor (MSC). It is an integrated case management system that integrates all the processes involved in the handling of cases of the Syariah Court. Electronic network that connects the State Syariah Courts with Department of Syariah Judiciary Malaysia (JKSM) and related agencies created for the purpose of coordination and information sharing. Applications of E-Syariah include E-Syariah Portal, Syariah Lawyers Registration System and Library Management System.

#### **3.2.1 E-Shariah Portal**

The portal will serve as a gateway for providing information to the public and members of the Syariah Court to get the latest information about the rules and procedures of the court. Public could also send online queries to the court via this portal. URL [www.esyariah.gov.my](http://www.esyariah.gov.my). E-Syariah Portal provides information about the court procedures, current rules and case status enquiries.



### 3.2.2 Shariah Court Case Management System (SPKMS)

This web application based system offers facilities such as case registration, proceeding scheduling, receipt collection and production, query, search case information, record judgment decision and statistics and reports. Databases store the information of filed cases, and also to make as reference and checking the cases to avoid the overlap case between the states. Faraid calculation also can be done electronically.



### 3.2.3 Sharie lawyer Management System

The system provides the facility to register a new application or renewal of Sharie Lawyer Practicing Certificate. A database containing the latest information Shariah legal practitioners will be kept for the coordination and monitoring by the authorities.



### 3.2.4 Library Management System

This Web-based application provides a variety of facilities related to the review, orders, returns and acquisition of books and library materials process electronically. Catalogue of materials stored in the JKSM and JKSN library can be accessed and booked for a loan by the Judges and the Registrar of the court.



## 4.0 ISSUES AND CHALLENGES

Wan Shatirah and Abrar Haider (2012) highlighted that there are specific issues and challenges faced in implementing e-court system:

### 4.1 Legal Mandate

The legal mandate for electronic court records management is not CRT first introduced. Criminal Court was in the first instance unable to implement the ERMS in its criminal

cases given the provision of the Criminal Procedure Code to the effect that recording evidence must be in magistrate's handwriting. The Criminal Procedure Code (Revised 1999) Act 593, section 266 provided: "In summon cases tried before a magistrate, the magistrate shall, as the examination of each witness proceeds, make a note of a substance of what the witness deposes, and such note shall be written by the magistrate with his own hand in legible handwriting and shall form part of the record." The problem is now resolved when the new Act (Act 1350(2009) section 272C & 272D under Chapter 25 was amended to the effect that gave permission to allow court proceeding by mechanical means.

#### **4.2 Lack of Human Resource**

In court administration, the large quantity of records and lack of human resource give the utmost challenge to the court officials to handle case management effectively (Hashim 2010). Given such a situation, the need for 9 Journal of e-Government Studies and Best Practices effective records management system is mounting. It drove the Chief Justice to solicit certain budget from the cabinet to establish the system, which was subsequently granted. For the past decades, the civil court faced the severe situation when the records were being taken care of by the senior judicial members themselves who were already burdened with their heavy legal matters workload. In Shariah Court system, the problem is less severe because the central body for Shariah court, the JKSM, has established a new department known as "Records Section" that deals with matters related to records management. A proposal for the post of Records Manager in government agencies has been discussed and passed in the cabinet, but never been implemented until today. Furthermore, court should be empowered to recruit its own staff to fit its needs rather than just continue receiving staff designated by the Public Service Department.

#### **4.3 Inadequate Documentation**

Apparently due to the lack of staff for records management in Civil Court systems, an official validated court records management policy is not available. Circulars and practice directions are not properly compiled. They mainly rely on contract with third party.

## **5.0 CONCLUSION**

The management of court records through electronic means leads to a great impact on the government and citizens as a whole. It preserves the memory of a nation's civilization in judicial matters. By implementing e-courts system, the courts are able to make justice delivery system affordable and cost-effective. This would be beneficial for both improving the court processes and rendering citizen-centric services. E-courts are aimed to make legal processes easier and more user friendly. The key advantages of establishment of E- courts system in Malaysia is enhancing access to justice via justice serving mechanism that is transparent, efficient, affordable, time saving, protects the interests of witnesses, reduces the backlog of pending cases

The tremendous increase of case disposal rate after the electronic system implementation in both Civil and Shariah courts proves great improvement and excellent achievement in judicial service delivery in Malaysia. Malaysian experience has been referred to and modeled upon by many countries aiming to achieve the same level of success in their electronic courts management.

## **REFERENCES**

1. Ani Munirah Mohamad, "Prospects and Challenges Facing E-Court System in Malaysia", [www.allfreeessays.co](http://www.allfreeessays.co) (accessed on 26/3/2019).
2. Australian Industrial Relations Commission: Report by Senior Deputy President Lacy - Singapore Subordinate Courts" online: <http://www.e-airc.gov.au/singaporecourts/> (accessed on 19/4/2011)
3. E-court: The Online justice system – How it Work" online: <http://www.ecourt.co.uk/> (accessed on 19/3/2019)
4. Giampiero Lupo and Jane Bailey, 2014, Designing and Implementing e-Justice Systems: Some Lessons Learned from EU and Canadian Examples, Laws, No.3, at pp 353–387. Retrieved from <file:///C:/Users/USER/Downloads/laws-03-00353.pdf> on 25 Mac 2019
5. Joost Breuker, Abdullatif Elhag, Emil Petkov, and Radboud Winkels, "IT Support for the Judiciary: Use of Ontologies in the e-Court Project", <http://www.intrasoft-intl.com/e-court> (accessed on 25/3/2019).
6. Kamal Halili Hassan and Maizatul Farisah Mokhtar, 2011, 2nd International Conference on Education and Management Technology, IPEDR vol.13, IACSIT Press, Singapore
7. Wan Satirah Wan Mohd Saman and Abrar Haider, 2012, Electronic Court Records Management: A Case Study, Journal of e-Government Studies and Best Practices, <http://www.ibimapublishing.com/journals/JEGSBP/jegsbp.html>