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Abstract

Malaysian legal system is derived from the English Common Law tradition and characterised by substantial flexibility. Among the flexibilities is the existence of a special court for Muslims, administering family matters based on Islamic jurisprudence, the Shariah law. Both Civil and Shariah courts in Malaysia stand side by side for more than 50 years. Today, with the application of information and communication technology, both courts has transformed the way they operate in delivering justice to the people. The measures taken to maintain quality, integrity and security of court records facilitate jurists to access complete information on case facts, relevant laws and precedents to decide cases in speedy manner. The most significant benefits of these technologies is the integration of State Shariah Courts in various jurisdictions of Malaysia which provides for the standardisation of practice and technology and at the same time provides jurists a one-stop solution for consultations regarding interpretations of Shariah Law and derivation of precedents in the light of decisions taken before. Here, the role of technology extends from mere record management technology to business intelligent oriented decision support tools.

Keywords

Records management, Court administration, Electronic records management system, Shariah court.

1. Introduction

Courts of law depend on the availability, comprehensiveness and quality of information relating to the case in reaching a conclusive and fair verdict. Courts will not be able to deliver justice in the cases where records are not properly managed; thus, depriving the aim of judicial institutions to bestow legal rights to individuals and society. The objective of speedy justice can only be met if all the records relating to the case are available, retrievable and managed throughout the lifecycle properly. This ensures that all the relevant documentation relating to the case conforms to certain standard of quality and is accessible, available, dependable as and when required. The pervasiveness of information and communication technologies (ICTs) provides new opportunities for court automation and information management in judiciary. At the same time there is increased pressure on the courts of law to embrace technology because

with the increased level of IT literacy and awareness among the general public, there are increased demands on government to provide information to citizen around the clock. Responding to these opportunities and pressures, courts around the globe are embracing information and communication technologies at various levels to provide faster, reliable and consistent service to the society. Records in court system have various dimensions including court proceedings, evidence, and statutory declarations (affidavits). In addition, court records also contain precedents from old cases and even references to the sources of law. This makes information management in general, and record retrieval in particular an intricate task.

This paper presents a case study on IT application in Shariah Courts in Malaysia. It discusses the legal system in Malaysia and attempts made by Malaysian judiciary in the automation of Shariah courts initiatives. This is followed by an explanation of the research methodology and the findings summarized as in the case study. The next section provides with a summary of pre and post implementation of E-Shariah initiative as well as issues and challenges drawn from the case. It concludes with overall overview of the paper and suggestions for improvement to the existing system.

2. Malaysian Legal System

Under the existing legal system, The Malaysian Federal Constitution defines the separation of power between the Federal and state government. Under Schedule 9, List 1, the constitution provides that all matters of civil and criminal law and legal administration fall under the Federal's list, whereas List 2 of the same schedule lists that Shariah or Islamic law matters are vested to state governments. As a result, Civil court and Shariah court become separate independent entities with their own specific jurisdiction as provided by Article 121(1A) of the constitution. Today, both Civil and Shariah Malaysian judiciary systems administration have moved forward especially for the past few years. Traditionally in Malaysian judiciary, whether civil or Shariah, cases have taken long time to decide. In the past, the backlog of Shariah cases is being scorned by the society. As a matter of fact, it took years for a case to settle due to a number of reasons. Among various other reasons such as limited number of judges and Shariah court officials, high volume of Shariah cases, poor infrastructure in place, limited budget allocated for Shariah departments and so on, the most significant reason was the unavailability of complete information relating to the case as and when required. In certain cases, the cases lingered on for more than a year just because of the fact that information available to the judges was incomplete, and they could not arrive at a conclusive decision. As has been noted before that according to Malaysian Federal Constitution, the federal government of Malaysia does not have any direct control over the administration and functioning of Shariah court. On the other hand, state governments are dependant on Malaysian federal government for budget allocations; they find it hard to maintain a standardized policy for the smooth functioning of the Shariah courts. This is why, traditionally, there has been significant discrepancy and mismatch between the way Shariah courts function throughout the country. This discrepancy, however, is restricted to the workflow of the court rather than in the decisions carried out by the courts.

Since early 2000, Malaysian government has been proactive with its various e-government initiatives. These e-government initiatives have been introduced to maintain the steady flow of information from government to citizen as well as from citizen to government. One such initiative was taken in year 2003, when E-Government project was put under the Malaysian

Super Corridor (MSC) flagship application. Under this initiative, Shariah courts was selected to became one of the pilot project named E-Shariah project. With the implementation of E-Shariah, the Shariah Judiciary Department of Malaysia/ *Jabatan Kehakiman Shariah Malaysia* (JKSM) is the department responsible for all affairs relating to Shariah law enforcement including provision of staff, facilities, physical and logistics instruments, procedures and service quality improvement. In consistent with the government's aspiration in ICT development efforts for all sectors in Malaysia, JKSM was given the mandate as the main driving force in realising the 7th E- Government Prime Application, the E-Shariah Project. Its administration has become the reference point not only for Malaysian public organizations (such as the National Registration Department and Police Department) but also by various organizations from overseas interested in learning and sharing experienced gained by the court.

Court records lifecycle management is the centerpiece of E-Shariah initiative. These records are further integrated with other e-government initiatives so as to ensure speedy and effective service for various government department as well as society at large. Using these integrated records, department such as the police, the immigration, the ministry of interior etc are able to identify potential hazards and areas of concern. At the same time, with the availability if information to general public, qadhis around the country are able to access information relating to different cases and observe, comment and understand how different interpretation of different sources of Shariah law have been applied to different cases.

3. Research Methodology

This research aims to explore the implementation of electronic court records management in Malaysian Shariah Courts. The research question is 'How can ICTs allow for better management of court records in Malaysia'. Records management has technical, organizational, social, cultural dimensions. Therefore our knowledge of reality can only be gained through social constructions such as consciousness, shared meanings, documents, tools and other artifacts. This research follows a qualitative interpretive approach with exploratory case study. Interpretive research does not predefine dependant and independent variables but focuses on the complexity of human sense making as the situation emerges. It attempts to realize the phenomena under investigation through the meanings that people attach to them. In this case, it is the way people manage the life cycle of records management in Shariah Courts. Therefore to address the issue at hand an interpretive task provide a rich understanding of the contextually oriented court records management issues than the more conformist positivist approaches.

Qualitative data was collected through interviews, observation and document reviews. The interview questions consist of 21 semi structured questions. Documents were reviewed and workflow was observed to gain an understanding of how records are managed, inspected, stored, retrieved and retired in Shariah Courts. The case study was carried out in Shariah courts in Kuala Lumpur and Putrajaya. It also involved personal observations on how records are managed, inspection of storage facilities and observations on records retrieval procedures. The data collected was analysed using data analysis software that is Nvivo. This software is useful in organising data according to the different themes emerging from the data collected, which supports testing theories or pointing to emergence of new theories. It also helps in

forming relationship between different themes emerging from the interviews to bring about cause and effect analysis.

4. Electronic Courts Management Paradigm

Public sector organizations are obliged to manage their records in line with legislation and organizational policies. Ensuring compliance with records management obligations can be difficult, especially given the explosion of records in electronic form, most notably e-mail, and the devolution of many records management functions throughout the organization. In Malaysia, the public sector is facing pressing challenges to provide efficient service delivery. The increase demands of the public need to be catered. Any shortcomings resulted from the poor management in public service delivery may lead to the question of integrity of public sector, as well as the issue of survival, respect and vigor as a nation. In court administration, the large quantity of records and lack of human resource gives the utmost challenge to the court officials to handle case management effectively (Hamzah 2010). Given such a situation, the need for effective records management system is mounting. There is also a pressing need for a clear definition of legal framework (Johare 2007). Experience by countries in international Records Management Trust (IRMT) research (IRMT 2004) proved that for a system to work with authority, trustworthy and reliability, it needs a strong legal framework of its own.

Effective records management system guarantees the accountability and integrity of a court that provides services to the public at large and serves as strategic resource for government administration (Hassan 2007). A reliable and accurate case file system is fundamental to the effectiveness of day-to-day court operations and fairness of judicial decisions. The maintenance of case records directly affects the timeliness and integrity of case processing. Gouanou & Marsh (2004) posit that in order to minimize the risks and costs of regulatory and legal non-compliance, litigation, discovery, business inefficiency and failure, courts need to remove the human element by automating records management via the technology. This transformation means removing freedom of choice, enforcing electronic record creation; indexation; classification; naming conventions (thesaurus and taxonomies); creation and preservation of meta-data; minimizing duplicate records by creating a central information repository which will also facilitate knowledge and content management; systematically archiving and tracking records and amendments; applying retention schedules to purge redundant ones; but preserving their access logs, audit trails and meta-data. The major issues in implementing electronic records in courts are regarding access, security and interoperability (Manaf & Ismail 2010; Ojo, Janowski & Estevez 2009).

Courts today not only have to comply with regulations, but also have to maintain a balance between operational record keeping requirements, minimizing liability of storing private information, and customer privacy preferences (Ataullah 2008). International Records Management Trust (IRMT, 2004) revealed several key issues identified by legal and judicial record case studies are (1) the need to raise the status and priority of recordkeeping , (2) the need to allocate greater resources to supporting recordkeeping infrastructure, for example, storage facilities and equipment (for paper and electronic records), (3) the need to develop records management policies and standards, for example in relation to access to and long-term preservation of paper and electronic records, (4) the recognition that computerized case management systems have the capacity to improve case flow management and access to

information, but the danger of regarding computerization as a means of solving all management, resource and information problems, (5) the need for an information strategy and business case, based on the requirements of all key stakeholders, before embarking on the computerization of case administration, (6) the value of pilot computerization projects to build confidence and capacity and (7) the importance of standardized formats and templates for common documents.

5. E-Shariah – A Malaysian Case Study

E-Shariah was put in place to replace the manual system of all Shariah courts operation. Before E-Shariah come into operation, all business processes from case registration to case disposal were performed manually. It is not surprising that the system was replete in inefficiency and ineptitude. With the increased number of Shariah cases being registered, the delay in case management became more critical. A single case takes years to be settled, resulting in hardship for the parties involved. The major reason for this delay has been the unavailability of complete information as and when required. In certain cases not only the information is incomplete but had been tempered with as well. With the introduction of e-Shariah, the government aim to reduce the time taken to settle a case and to manage each case and related information more efficiently and systematically (Hamid 2010).

E-Shariah initiative was adopted as one of the Electronic Government flagship applications in Malaysia in March 2002, with a strong support of government, especially by the Malaysian Administration and Modernisation Planning Unit (MAMPU). Although Shariah courts are constitutionally state courts, created and regulated by state laws and under the responsibility of the state authorities, an effort was made by Federal government to standardize the work processes and procedures in these courts. Hence, the Shariah Judiciary Department of Malaysia/ Jabatan Kehaliman Shariah Malaysia (JKSM) was established as a coordinating body of Shariah courts in Malaysia.

With the implementation of E-Shariah, an electronic network and communication between all 110 Shariah courts in 102 locations nationwide is established, using the electronic government network called EG*Net. The technologies in place in Shariah courts under the E-Shariah project consists of five modules as follows:

1) Shariah Court Case Management System (SPKMS), an integrated case management system developed fully to accommodate the needs of Shariah case management in all Shariah courts (states and district). It involve Shariah civil, criminal, appeal and faraid case management

2) Shariah Lawyers Management System, a system that provides facilities for the registration of new applications or renewal of practicing certificates for Syarie lawyers as well as maintaining a database containing details of registered practicing Syarie lawyer to facilitate monitoring and coordination by the authorities

3) Office Automation, a system that provides facilities such as Word Processing, Spreadsheets and Graphic Presentations to improve productivity in the office operations of the Shariah Courts. Judges, Registrars, and staff are provided with internet and email facility. Case hearing schedule is sent to all Syarie judges through email.

4) Library Management System, a web-based library management system that allows users to conduct electronic searches, borrowing and returning of books and other materials. The

catalog of library materials available at the JKSM Library and the State Shariah Libraries is accessible for bookings and loans to Judges and Registrars

5) E-Shariah Portal, a portal serves as an information gateway to provide the public and staff of the Shariah Courts with the latest news on court procedures and regulations. Serves as one-stop center for the public to post enquiries online to the courts about Islamic law and its administration.

E-Shariah applications have been designed to provide for transformation and standardization of work environment in Shariah courts to link all the business processes on a single channel. The idea is to disseminate information on Shariah judicial law and institutions, court procedures and processes can be disseminated to the public through E-Shariah portal. In doing so the government is aiming to provide a simple, fast, accurate and extensive medium to public at large, whereby the digital divide between end users in different part of the nation could also be reduced. Therefore, JKSM as coordinating body to the Shariah court be able to create a new paradigm of work culture that is more efficient in the management of the judicial institutions of Islam in Malaysia.

Traditionally, even though the general dealings in Shariah courts are similar, yet each Shariah court in Malaysia has unique business processes and works differently from its other counterparts. The reason for this discrepancy is the fact that Shariah courts are managed by each state and have their own management. Consequently it is the management of each court that decides how the court is to be administered. Due to this disparity, Shariah Courts in various Malaysian states manage similar tasks in different ways. This is not just limited to the workflow, but this lack of standardization extends to different sets of technologies being used as well as different sets of forms, formats, and write ups. States do not use standardized record books and case classification numbers. There are many instances of case overlapping (where same cases have been registered in more than one jurisdiction) especially in cases of child custody, divorce and inheritance where they were filed and registered in different state courts on purpose. This is due to the fact that people have interpreted Islamic jurisprudence in different ways. The main sources of Islamic law are the Quran and the tradition of the Prophet. In reaching the verdict, jurists interpret the Quran and the tradition of Prophet according to their sect (for example Sunni, Shiah) knowledge and conscience, taking into consideration other factors such as culture, point in time and welfare of parties involved. As a result, for many centuries, similar cases had been decided differently across the globe, and they are recorded in different places. Consequently different verdicts have been passed in similar cases in different parts of the world. In these circumstances, availability of information on interpretations of the Quran and the tradition of the Prophet, previous judgments passed, and Ijtihad (reinterpretation of Islamic law according to prevailing circumstances) is of paramount important. However, due to the disparities in the way states Shariah courts are being administered, the overall paradigm faces issues relating to data quality, lack of interoperability and information integration. Thus the major challenge for E-Shariah project is to introduce standardization of process, practice, technology and strategy.

E-Shariah initiative has made attempts to streamline work processes in Shariah courts. It has categorized cases for example divorce, child custody, inheritence and crime offences. Consequently each case is treated uniquely and there is no overlap. At the same time, court record templates had been standardized and brought down from 104 to 40 gazetted forms only.

Attempts are being made to standardize these procedures throughout Malaysia, however due to the lack of legislations at the Federal as well as State level; this is proving to be extremely difficult. In terms of court records management, at the records creation stage, case files are created in the Shariah Court Case Management System (SPKMS) and given the unique case classification number according to the Practice Direction No 1 Year 2000. However in this transitionary period, apart from managing cases using the Shariah Court Case Management System, hard copies with paper documents are also being used. The reason for managing both hard copy and soft copy records is purely legal. It is the legal requirement that hard copy records being maintained for legal reasons, since official seal need to appear on all papers. For example, for family law cases, the Islamic Family Law (Civil Procedure) Act requires documents to be officially sealed on paper and manually signed. At the moment, the relevant laws are being reviewed so as to implement electronic seals. In addition, the laws relating to risk of manipulation of electronic records are also being examined by States and Federal government committees. Pending the amendment the courts would be able to use one line of records management i.e. electronic records. It should be pointed out that although technology relating to records management is improving at rapid pace, court processes and laws are not keeping up with the pace of technology advancement. Malaysian Shariah courts are subjected to Federal, state and Shariah law as well as conform to the guidelines provided by the ministry of Justice and ISO regulations. Due to the nature and focus of legislations and guidelines, conflict in practice can easily be understood. In these circumstances, it is left to each court to decide what process or procedure they want to follow. For example an interviewee when asked about the legality and validity of electronic and paper-based records, replied "according to our ISO audit report, the paper version is the most valid one".

In the routine case management, records are updated by the judges and their assistants until the case is closed. Some of the documents relating to a case, such as 'submission notes' are only kept on physical files, not in the electronic system. According to researchers' observation, only important information and documents are updated and stored in the system, thus it only serves as quick retrieval point, not a complete case file. In the system itself, some of the documents are saved in pdf. format, while others are saved as Microsoft Word documents, which exposes court records to manipulation risk. In their current form, electronic records can only be regarded as back up or reference point, not as valid official record. However, there are some evident advantages of electronic records, even though their legal value has not been established yet. These benefits are the ability to trace the particular record, the ability to find materials relating to a particular record, and the ability to retrieve information relating to a particular case (for example affidavit, statutory declaration etc). All active physical files are stored in cabinets near to the courtrooms. Upon closure, the files are moved to records center and being taken cared for by the Records Officers. In the records centre, after they reach certain maturity period as stipulated in the Shariah Court Records Retention Schedule, case files have to be disposed of. According to Practice Direction No 3 2006, criminal and civil case files must be kept in the records center for 3 and 7 years respectively (it was 10 years previously). As the population is increasing, so is the case load and with it upcoming pressures on physical storage of court records. An important aspect of court records management would be to alleviate these pressures. People related to court records management are aware with these issues as quite a few of interviewees in this case study commented that "court records are increasing, but storage space remains the same". And with

each new record, it is becoming more and more difficult to manage physical records. JKSM & Shariah courts are the first public organization in Malaysia employing records manager & officers, and having records department in the organization. It is evident that records management is considered extremely important in Shariah Courts; however this initiative has not been backed up by relevant legislations.

E-Shariah has opened up new avenue for court workflow as well as records management in Malaysian Shariah courts. Although there are a number of benefits which hinge upon a few administrative issues, yet there are significant benefits that the use of technology has brought to Shariah courts. The following table summarizes the pre and post E-Shariah implementation:

	Dimensions	Pre-implementation	Post-implementation
1.	Case settlement	Case management is less efficient. It took years to settle a case	Case management is much more efficient. 65% of cases are settled less than a year
2.	Coordination time	No coordination mechanism. Finding the status of the case, retrieving of case records, and who to contact was extremely difficult and time consuming. There was lots of rework involved at the time of registration, when the file was moving from one person to the other. Wastage of time, effort and resources.	Registration of a new case takes approximately 2 minutes, thus case management is efficient. No rework involved as once data is stored electronically; it can be reused for any other purpose desired.
3.	Case overlap	Case overlapping could not be easily traced	Case overlapping is automatically traced
4.	Case delay/ postponement	No automatic reminder about case postponement and delay	Automatic reminder of case postponement
5.	Work process	Work processes were not consistent between courts in different states	E-Shariah, in theory, permits the uniformity of court procedures, work processes and forms. However there is a long way to go to achieve this.
6.	Case backlog	Difficulty in managing, verifying and checking the case status manually.	No more backlog of cases because all cases are assigned / reassigned according to the workload of jurists.
7.	Process interoperability	Different work process among states caused difficulty and bias towards customers.	E-Shariah is attempting to standardize court procedures and work processes to ensure fairness to customers.
8.	Information security	Information security was compromised	Information security is guaranteed
9.	Integration with government agencies	No integration with other agencies	System is integrated with 6 other government agencies, ensuring court decision enforcement and follow up, accurate data available timely
10.	One stop solution	Customer had to contact different department dealing with a court case	One stop solution for paying fee, case registration, administration, follow up.
11.	Old records retrieval	In manual process, records were in store room. Customers had to contact the registrar, store keeper to retrieve records	Records are available at the click of the mouse to authorize users.
12.	Similar cases,	Previously there were similar cases,	Now with this one portal they can access

		dissimilar verdicts	different verdict because of the fact that people have interpreted Islamic jurisprudence in different ways	any number of records of similar cases, and then figure out whose interpretation are they applying & what were they should be given, they can consult different records
13.	Trust in the system		Previously there was lack of public trust in the system because it was causing delay, people were not getting quality service, and people were blaming the legal system.	Use of ICTs has brought transparency to the overall court system

Table 1: Dimensions of Pre and Post E-Shariah Implementation

6. Conclusion

It is evident that with the application of information technology in Shariah courts through E-Shariah initiative, the objective of Malaysian judiciary to provide fair, speedy and transparent justice is achieved. The increase of case disposal rate after the electronic system implementation in Shariah courts provides improvement in judicial service delivery in Malaysia. Malaysian experience has been referred to and is being modeled by many countries around the world. However, E-Shariah initiative is not completely mature as yet; there are a number of issues that need to be resolved. The paramount issue is the disconnection between what technology offers and the state of legislation regulating technologies in the court. It is equally important to enforce standardization of practice and processes throughout the state Shariah courts in Malaysia. Uniform information technology and records management policies need to be spelt out clearly to govern the overall Shariah justice system process.

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