

Managing Electronic Records in Malaysian Civil Courts: A Review of Literature

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Abstract

The improvement of records management in Malaysian court has made the transaction of records is integrated from manual to digital or also known as electronic management of records. This article provides an outline of journal, paper, masters and doctoral dissertations that have investigate the aspects of the management of records with an emphasis on digital records in Malaysian and others countries courts. The analysis of review demonstrate that there are a large variety of studies that have been conducted according to the topic of electronic records management in court. This article is an effort in contributing to coalescing efforts and catalysing discussions on these fundamental pillars in order to encourage further research about electronic court records management in Malaysia.

Keywords: Electronic Records Management (ERM), Speedy Judicial Delivery, Case Management, E-Court Malaysia

1. Introduction

A good management of records and information is vital for a good judicial delivery and to ensure the result of each case management can be delivered fast to the community. The conversion from manual to digital records management is caused by time, space and staff energy savings. These discussions have taken place in professional gatherings and in academic publications. The themes have covered everything from Malaysia's development of electronic records management to its current challenges. This article provides a general overview of the studies, starting from electronic records management system (ERMS) but covers more specific examples with regards to managing electronic records in Malaysian civil courts. The discussion on the management of electronic records is more detailed for two reasons. First, studies the implementation of electronic records in courts and the second is the issues arouse in the e-court records field.

2. Literature Review

2.1 Electronic Records Management System (ERMS)

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 (Shafie, 2007; Yusof and Mokhtar 2015; Alshibly, Chiong, and Huazhong 2016). 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. In US, e-mail has overtaken the telephone as the main form business communication Bhatt (2005), but according to Steele (2010) and Bhebe (2015), e-mail is one of the most difficult items to be managed, however they stressed about the importance of e-mail and argued that, in most cases, e-mails contain valuable information about the decision making process. In United States, particularly when the court are affiliated with large numbers of treatment providers communicate frequently with the court via e-mail or similar electronic means (Carey et. al, 2012; Texas Judicial Council, 2015).

From 2009 to 2011, an effort has been put to implement the ERMS for the judicial delivery in Africa. A research project had been conducted by The International Records Management Trust called Aligning Records Management with ICT/E-government and Freedom of Information in East Africa. The research project got funding from the International Development Research Centre (Lowry, 2013). To be meaningful as evidence of a business process, records shall be linked to the context of their creation and use. In order to do this, the records shall be associated with metadata about the business context in which it was created and its point of capture into the system. The digital records management systems should allow only authorized users to access each record and internal integrity should be maintained at all times regardless of the maintenance activities, other user actions and failure of system components (Abdul Halim et.al, 2015).

Nowadays, many information technology systems designed built-in with audit trail characteristic to enable the tracking of the information used within the system. An audit trail is a chronological log of access to a system and a record of additions, changes, and deletions to that system, most often listing the person accessing the system and the time of the access or action (Abdul Halim et.al, 2015). The log is meant to be inalterable. Audit trail can also be referred as records series that consists of system tracking events relating to records in information system used for routine agencies administrative activities. Audit trails are linked to specific records in a system and track such information as the user, date and time of event and also type of event, such as data added, modified or even deleted.

2.2 Legal Requirements of Records Management

Effective management of electronic records depends not only on technology, but also requires an infrastructure of laws and policies (McDonald 2008; Saman & Haider, 2013).

2.2.1 International Standard ISO 15489

Achievement in technology implementation in court is not valid, unless it is legally compliant, that is, it is consistent with all the requirements set up by legal rules and standards. For the sake of quality management, technology implementation needs to conform to ISO

15489 (Record management Standard) which require certain criteria and procedures for which appropriate electronic records maintained (Saman & Haider, 2013).

ISO 15489:2001 is the main and overarching standard for records management, generally accepted and used by nations around the world, together with other national specific records and information statutes, standards and regulations (Hofman, 2008). In 1996, an international committee of Australian Standard on Records Management AS4930 developed the ISO 15489 (Hofman, 2008). It was launched at the ARMA International Conference (Montreal) in 2001 and is supported by the Standards Council of Canada. The Standard was designed to meet the ongoing need for efficient and cost effective best practice recordkeeping in a business environment. It is also used as the basis for other practical guidelines and specifications. It requires records to be created and maintained as a routine part of business activities to be stored on media that ensure their usability, reliability, authenticity, integrity, security and preservation for as long as they are needed, despite any systems changes.

Part 1 of ISO 15489 gives a high level framework for recordkeeping and specifically outlines the benefits of good records management, the legal considerations, the importance of assigning roles and responsibilities for records management, the fundamental principles of a records management program, design of recordkeeping systems, records management processes, auditing and training.

Part 2 of ISO 15489 is a technical report which sets out procedures that enable organizations to implement the principles (Shepherd & West 2003; Saman & Haider, 2013). It serves as a guidance on records management policies and the responsibilities to be defined and assigned, further explanation for developing recordkeeping systems; practical advice on the development of records processes and controls to manage records and records management training in the organization.

The standard is useful because it meets the recordkeeping needs of organizations worldwide, it gives an widely accepted framework to help managers set up and maintain best practice recordkeeping systems, it has a monitoring and auditing framework to enable levels of compliance and accompanying benefits to be benchmarked and assessed. Normally all policies, standards, guidance and tools must be either based on it or are consistent with it.

However, it should be well understood that no one standard that can fit all organizations because “one size does not fit all”. Organizations need to determine which standards best support their business activities and how to integrate them into their processes (Hofman, 2008, Saman & Haider, 2013).

2.2.2 Judicial Delivery

Judiciary is the branch of government which administers justice according to law. (Queensland Parliament, 2015). Judiciary acts as a platform to protect and enforce the rights of the individuals and punish the wrong-doers and the function is called the administration of justice (Barber, 2016). Transparent information system and good records management indirectly hinder the misuse of power or corruption, case postponement and delayed decision in the judicial delivery and management, which also reflects the good image of judiciary system and upholds the rights of individual and society at large (Saman & Haider, 2012).

The judiciary now can track and produces reports and tables to check whether each court is meeting its target of processing all its allotment within nine months of the cutoff date (Zaki, 2012; Zakiyy & Hassan, 2016). To date, every case that enter the court registry must be managed and disposed within certain timelines. Instead, to the solicitors, taking up a case means that they must plan during the pre-trial stage and prepare accordingly for trial. (Zakiyy & Hassan, 2016). Sultan Sharafudin (2016) said 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 favor (Borneo Post Online, 2016).

2.3 Electronic Records Management System (ERMS) in Judicial System

Electronic method guarantees cost reduction in terms of money spent, time and energy used, etc. For instance, transportation costs will reduce drastically; it will enhance reducing use of paper from the moment a case is filed until its disposal; a shorter time will be used in conducting activities in court because most works are done online. Lawyers will no longer have to dissipate energy in going to courts and as well as exchanging processes manually and the legal office could become the e-legal office of the future (Bhatt, 2005; Asonibare & Akaje, 2015). Information and communication technologies (ICTs) have a critical role in court management as well as dispensation of speedy justice (Ibarrola & Liz, 2012; Saman & Haider, 2013).

The electronic filing of cases guarantees better safekeeping and quicker handling, which empowers electronic submission, registration, service notification and access to court's reports. Keeping in mind that to achieve the end goal, Korea needed to modernize its data innovation foundation and change controls to move to paperless methodologies. The e-court has permitted electronic documenting of civil, commercial, administrative and family affairs cases. It has also enabled some judges in Korea to adjudicate up to 3,000 cases a year, manage up to 400 a month and hear up to 100 pleas a month. (The World Bank, 2016 ; Asonibare & Akaje, 2015).

The applications that should exist for courtroom technology include electronic filing, assistance to persons with disability, foreign language translation, multimedia court records, information and evidence retrieval, access to legal materials, high technology information and evidence display systems, teleconferencing, video conferencing, and the public's access to court information via the worldwide web (Gordon et.al, 2011; Afshar & Ahmad, 2015). In this context, (Narkiewicz, 2004; Hamin et. al, 2012; Upward, 2000; Afshar & Ahmad, 2015) explains that courtroom technology is primarily a means of putting evidence before everyone in the courtroom, including the judge, the jurors, the opposing lawyers, the courtroom support staff and even onlookers seated in the courtroom.

2.4 Implementation of E-Court in Malaysia

In Malaysia, electronic records management system (ERMS) in judicial delivery is well-known as E-Court and had been implemented due to a reform that had been designed and implemented by Malaysian Judiciary during the period from late 2008 until early 2011. Zakiyy & Hassan (2015) stated that 2011 was a new reformation for the Malaysian Judiciary. The judicial reform can be put under one of E-Government project that was launched by former Malaysian Prime Minister, Tun Dr Mahathir Mohamad as one of the seven flagships of the Multimedia

Super Corridor (MSC) activity which seeks to make connection less demanding for the public and organizations by upgrading the accessibility of electronic data and report. The Multimedia Super Corridor (MSC Malaysia) was built up in 1996 with the desire of turning into a worldwide center for ICT with sight and sound advancement, operation and benefits and to change Malaysia into a knowledge economy and achieve developed nation status (Vision 2020; Deka et. al, 2012; Roslind. 2009; Bunawan & Haron, 2015).

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 including Malaysia (Afshar & Ahmad, 2015; Halim et al. 2015). By virtue of National Archives Act 2003, the National Archives is vested the power as the legal authority to govern all matters regarding government's official records and archives, including its creation, acquisition, custody, preservation, use and management, of public archives and public records; and for other matters connected therewith. Judicial records are part of the government official records and therefore should comply with the law, rules and regulation by the National Archives. However, there are conflicts of opinion between the authority of National Archives and the judicial personnel regarding the administration of court records particularly on the retention period. The legal practitioners believed that all case files should be preserved permanently, but the archivists opined that most of them should be disposed of, to achieve the recordkeeping goal of economy, efficiency and effectiveness.

In the Court of Appeal, Putrajaya, when Tan Sri Dato' Sri Zaki Tun Azmi, the previous president of Court of Appeal first visited the court of appeal registry on 2nd January 2008, the first place he went was to the file room. On seeing it at first sight, he screamed and wanted something to be done with the horrendous environment. And after the file room reform, files are all in order and can be found easily within 2-3 minutes, and can be handled by 3 staff instead of 12 staff previously. Today, Court of Appeal already employed bar coding system in managing its records (Saman & Haider, 2013; Rahmah 2008).

2.5 Electronic Records Management (ERM) in Judicial Delivery in Malaysia

In the Malaysia's courts Case Management (CM) are now at different phase of the implementation and has different level of achievement (Federal Constitution of Malaysia, 2006; Saman & Haider, 2011). The ERM can provide comprehensive records and it make the records to be retrievable quickly. Availability, comprehensiveness and retrievable case related information ensures a speedy justice be delivered to the parties, as well as the society as a whole (Saman & Haider, 2013) is the most concrete reason why ERM used in court must be complied with the standard of records and its requirements for the management. In Malaysia, ERM or also known specifically as E-Court has been implemented at six courts. The courts are Kuala Lumpur High Court, Shah Alam High Court, Putrajaya High Court, JB High Court, Ipoh High Court and Kuala Terengganu High Court. (Mahwengkai, 2016).

As for the Malaysian position, there are currently four technology applications which are adopted at the High Courts in Kuala Lumpur and in Kuching Sarawak, namely the e-filing system (E-Filing), case management system (CMS), queue management system (QMS) and also court recording and transcription (CRT) (Munirah Mohamad, A., 2014; Saman & Haider, 2012).

2.5.1 E-Filing

E-filing function to enable lawyers, individual or public filed summons. For current practice, this process is applied to all type of records in court such as writ and affidavits. The documents needed are prepared in softcopy and submitted online. If the documents are available in hardcopy, scanning process have to be done in order to enable filing process to be done. A payment of fees is done via internet banking (Zakiyy & Hassan, 2015; Hamin et.al, 2012; Saman & Haider 2011).

2.5.2 Case Management System

Case Management System (CMS) is a system that allows cases be managed electronically, without physical files. For cases that need for a full trial, the preparation for the trial date, including the submission of relevant documents needs to be made through this application. Some other cases that need not to be heard before judges are managed by the Deputy Director using this system and decisions made are recorded immediately in the presence of lawyer of both parties (plaintiff and defendant). Some of the most important measures of CMS have been the tightening up, through the issuance of court directives of timeframes for lawyers' provision of documents essential to decisions on both affidavit and full trial cases (Saman & Haider, 2013).

2.6 Queue Management System Queue Management System

(QMS) is a system that allow the queuing process of daily court transaction, be made automated a when lawyers/counsels register their case number in a kiosk system for daily case management. It is intended to facilitate holding of hearings by registering the arrival of attorneys, on the day the event is scheduled and letting them know where they stand in the queue. Once registered at the court, they can also leave and call in using SMS or texting from their mobile phones to verify the time they must return for the hearing (Saman & Haider, 2013).

2.7 Court Recording and Transcribing (CRT)

Court Recording and Transcribing (CRT) is a smart system to record the whole process of hearing before judges in the open court, so that the whole court proceeding can be stored in audio video format for reference and long term preservation. This application also allows for automated transcription be made easily. One special feature of CRT in Malaysian Court is the use of audio video recording of its full trial proceeding, which is not been practiced in most other countries, including Singapore. This type of recording offers more advantages, such as it allows experts to review the facial expression of the witnesses or the accused while they are giving their testimony.

Since the recording is regarded as public document, lawyers can have a copy of the recording to bring back to their office. If there is any complaint or dissatisfaction on part of the lawyers, they cannot make such complaint anymore alleging misunderstanding occurred during the trial. In the courtroom, when trial proceeds, the court recording & transcribing system is in operation. This audio video recording system allows the proceeding to be recorded fully in audio video format, saved and can retrieved when needed, such as to make a report or case summary. For the purpose of CRT recording, every courtroom is equipped with 4 units of voice

auto detect camera, each one facing to the judge, the witness, the plaintiff counsel and defendant counsel (Saman & Haider, 2013).

2.8 Issues of ERM in Judicial Delivery

Julian et al. (2015), 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 organisations, far from being concerned with meeting the users' needs (Julian et.al, 2015; Balakrishnan, 2008). To be specific, issues of ERMS in judicial delivery can be categorized into three:

2.8.1 Technological issues

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 especially to use the information that has been exchanged (Ataullah 2008; Saman & Haider, 2013).

2.8.2 People issues

Records officers are knowledgeable about how to manage records in-according to their requirement within their lifecycle. However they have to cooperate with information technology staffs and providers in order to provide a good system to simplify the work and make the management become more effective. Records officer need to evaluate and identify the record-keeping and technical requirements, thus select the best system to be used by organization. However, that task is complicated by the fact that technologies (and the threats to them) are still rapidly evolving (Gouanou & Marsh 2004, Saman & Haider, 2013).

3. Analysis of Review

Several observations can be made from the above reviewed literature. Some experts in electronic records management field stated that some digital records cannot be addressed as electronic records management system because it not fulfilled several requirements of electronic records management system such as the functional system. However, due to the name is always being used interchangeably the electronic or digital management of records can be ERMS somehow as long as it has the elements of as has been defined by ARMA, IRMT or any records established institution.

A key issue observed in the studies that covered electronic records is that a number of different terms have been used such as: Electronic Document and Records Management systems (EDRMS), Electronic Document Management Systems (EDMS), Electronic Records Management Systems (ERMS), Enterprise Content Management (ECM), and Integrated Document and Records Management Systems (IDRMS). These terms have been used interchangeably in several academic discussions and it would be helpful to clarify how they are related (Nguyen et al., 2007). In Malaysia, DDMS is one of ERMS software used and certified by Malaysian government. In Malaysia the EDMS also can be introduced as ERMS, for example like DGFlo, since it already known as ERMS although not fulfilled all the requirements yet.

Significant applications systems for managing digital records are not considered knowledgeable supports but rather the records management professionals appropriately use them as tools to address records management challenges.

Another study showed that the implementation of e-Court is an effort to provide service delivery to people and court agencies especially the lawyers. This system allows people to retrieve information and court agencies to access court services through online services. Its implementation has improved the efficiency of governance and court services in Sulaimani (Nawroly et.al, 2016). Moreover, it will be able to facilitate towards the achievement of the economic, reduce load, environment; the initiative has to some extent increase the efficiency of the Court in providing better services to its citizens (Nawroly et.al, 2016).

To be meaningful as evidence of a business process, records shall be linked to the context of their creation and use. The digital records management systems should allow only authorized users to access each record and internal integrity should be maintained at all times regardless of the maintenance activities, other user actions and failure of system components (Abdul Halim et al. 2015). Rapid advances in information technologies (IT) have changed the way businesses are organized (Bahadora et. al, 2015). This change has affected organisations' of all types. IT is integral to routine business, as these technologies assist employees to not only execute business processes but also help them make informed decision based on quality information. In fact, IT has transformed the way data is collected, processed, stored, and aggregated for preparation for accounting and finance related information required by management to control and manage business activities (Bahadora et.al, 2015).

The application of electronic court record system which is designed to facilitate the litigation procedures through the use of modern scientific data to improve the performance of the courts, and the application of electronic litigation, will facilitate litigation procedures, and achieve the features such as improve the speed and accuracy for litigants and lawyers and will shorten the lawyer a lot of unnecessary administrative reviews of the courts and which could be in his office access to the case file, and view it, study and follow-up, leading to the upgrading of its work and improve its performance. This system will prevent prolong the litigation. This prevents the court hearing delayed or deferred, and facilitate querying judicial transactions, and relieve congestion in the courts, also reduces the bickering between adversaries, especially in family cases. (Mohsin & El-Bakry, 2015).

Julian et. al, 2015 stated that at Portugal, New Public Management (NPM) , with different tones across countries according to their administrative and political backgrounds, put service quality and accountability at the core of reforms. As (Bilhim, 2008, Julian et al. 2015) stresses, assessing the performance of public institutions became a key issue to enhance efficiency, effectiveness and citizen trust. By the implementation of ERM in judicial delivery, the importance of providing better services to the users and enhancing citizens' trust are also more and more visible.

4. Conclusion

Electronic court records management in judicial delivery allow for better retrieval and availability of records when needed. The case delay and backlogged can be reduced also when

speedy case management can be produced. There will be a great impact towards society and also government as a whole since court records preserve the memory of a nation's civilization in judicial matters. Court proceedings, evidence, and statutory declarations or also known as affidavits are the example of court records and have to be managed properly because they court records also contain precedents from old cases and even references to the sources of law. Future issues regarding to irretrievability of documents and information can be prevent due to well-managed records in judicial delivery.

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