

INTERNATIONAL SHORT COURSE ON “DEMOCRACY, DIGITAL TRANSFORMATION, AND JUDICIAL INDEPENDENCE

DIGITAL TRANSFORMATION AND ITS ROLE IN IMPROVING DEMOCRACY: THE MALAYSIAN JUDICIARY'S PERSPECTIVE

Introduction

[1] First and foremost, on behalf of the Malaysian Judiciary, please accept our appreciation to the Constitutional Court of Indonesia for organizing and hosting this event. We are deeply honored and grateful for the invitation. Indeed, being part of this event is an exceptional opportunity to engage with like-minded professionals, share knowledge, and explore cutting-edge advancements in our field.

[2] In the current digital age, the world is experiencing a profound transformation in the way information is distributed, accessed, and utilized. This shift, known as digital transformation, involves integrating digital technologies to improve efficiency, transparency, and accessibility across diverse sectors, including governance and justice. Such technologies encompass artificial intelligence, big data analytics, cloud computing, blockchain, and more. Embracing this digital evolution offers unprecedented opportunities for progress and innovation, empowering societies to address complex challenges and create a more inclusive, interconnected, and sustainable future.

[3] Digital transformation's primary objective is to optimize procedures, enhance decision-making, and grant citizens convenient access to justice and legal services. Consequently, it holds significant ramifications for democracies worldwide, empowering them to thrive and evolve in the digital era.

[4] Malaysia has long been at the forefront of digital transformation. The Covid-19 pandemic disrupted societal operations, compelling the government to expedite the digitalization of various public services. This proactive approach aimed to mitigate disruptions and enable people to access essential services without jeopardizing public health and safety.

[5] In our presentation today, we will delve into the importance of digital transformation and its role in democracy, with a special focus on the Malaysian Judiciary's standpoint.

[6] Amidst the pervasive influence of technology across all facets of society, the judiciary assumes a pivotal responsibility in upholding the rule of law and safeguarding democratic principles in the face of these transformative advancements.

The Essence of Digital Transformation in Malaysian Judiciary

[7] The advancement of digital transformation in Malaysia is in line with the progression of Industrial Revolution 4.0, aiming to enhance the Court's delivery and service systems. This effort ensures efficiency, transparency, and seamless access to justice, offering the people a more effective and convenient experience.

[8] Over the past decades, the Malaysian Judiciary has taken substantial steps towards digitization as part of our Judicial Transformation, introduced by former Chief Justice Tun Zaki Tun Azmi in 2009. Various initiatives under the e-Court System platform have contributed significantly to this progress. The term “e-Court System” pertains to digital platforms utilized by lawyers, government agencies, courts, and the public for handling court proceedings and documents.

[9] The components of the e-Court System are as follows:

e-Filing System (EFS): A pivotal measure in achieving digitization is the adoption of electronic filing (e-filing) systems. This enables lawyers and litigants to electronically submit court documents, reducing reliance on physical paperwork and significantly enhancing legal process efficiency. It is a web-based platform which give access to its users anywhere and anytime. With this system, users can access information on court proceedings, assigned judges, and the list of documents filed by parties, all conveniently available online. This initiative not only saves time but also reduces administrative burdens and enhances accessibility for all parties involved.

Case Management System (CMS): Digital case management systems offer a unified platform for efficiently managing and monitoring cases from inception to resolution. It ushered in a modern approach to case management and document processing, replacing physical court files with their digital counterparts. This transition has streamlined and digitized the entire process, bringing greater efficiency and convenience to the management of cases and documents. By providing online access to case-related information, updates, and documents, these systems promote transparency and accelerate the resolution of legal matters for judges, lawyers, and litigants alike.

e-Review: e-Review, an integral part of the e-Filing and CMS, enables remote case management, eliminating the need for lawyers' physical presence in court. Aligned with the goal of reducing lawyer attendance, it saves time and costs. Parties can communicate and share information online within the e-Review session, converting these exchanges into official Notes of Proceeding for visibility and record-keeping.

Court Recording System & Voice To Text (RVT): RVT, an advanced recording technology, includes voice-to-text capabilities that automatically transcribe audio files into official notes of proceedings. The digitization has facilitated virtual court proceedings in Malaysia, proving especially valuable during emergencies like the COVID-19 pandemic when physical appearances are challenging. Virtual hearings ensure uninterrupted legal processes and access to justice. Electronic evidence, such as documents, videos, and digital records, can be presented and stored in a structured manner. As a result, judges can make well-informed decisions with ease and precision.

[10] In addition to the components of the e-Court system, the digital transformation initiated by the Malaysian Judiciary includes the following:

e-Courts Portal: The platform offers convenient access to a wealth of legal information and various e-Court services. It allows the public to obtain legal resources, learn about court procedures, and access forms and guidelines with ease.

e-PG: This online platform simplifies guilty pleas for Traffic and Departmental Summons Cases through remote communication technology, as accessible as using a mobile phone. It offers an alternative to the traditional requirement of a physical court appearance for the summoned person, providing convenience and efficiency.

e-Denda: This groundbreaking initiative enables online payment of fines in criminal cases through the E-Courts Portal, by using the Financial Process Exchange (FPX). By implementing this system, members of the public can conveniently settle fines without visiting court payment counters, expediting the process and facilitating the prompt release of the accused.

Artificial Intelligence (AI): AI is employed to analyze data and patterns to determine appropriate sentencing for specific criminal offenses. Since January 2020, the Malaysian Judiciary has been conducting pilot programs for AI sentencing tools in two states, Sabah and Sarawak. Subsequently, from July 2021 to April 2022, these initiatives were extended to Kuala Lumpur and Shah Alam's Sessions as well as Magistrates' courts. The system is designed to aid Sessions' Court Judges and Magistrates in recommending suitable sentences by analyzing the sentencing trends from prior cases.

Currently, the system is accessible exclusively for one offense - possession of drugs under Section 12(2) of the Dangerous Drug Act 1952 (DDA). This offense entails a maximum fine of RM100,000 or up to 5 years of imprisonment, or both. However, the system's scope will soon be extended to include offenses under Section 380 of the Penal Code, specifically related to theft in dwelling houses.

Despite the incorporation of AI in the Malaysian judiciary system, its application in courts is still experimental, and the findings are not yet conclusive for decision-making. The main goal of AI is to promote consistency and fairness in sentencing, discouraging significant disparities for similar offenses. While AI offers recommendations based on specific criteria, the final decision on the most suitable sentence lies with the sentencing court, adhering to established sentencing principles and within the boundaries set by relevant legislations.

It is essential to emphasize that AI complements rather than replaces judges' roles, aiming to enhance justice transparency, consistency in law application, and sentencing parity. This effort is critical to maintaining public confidence in the courts.

[11] In essence, the implementation of an e-Judiciary system in Malaysia fosters the advancement of jurisprudence. Embracing the concept of open justice as the new norm, it signifies a shift away from purely physical court processes. This initiative has garnered widespread positive feedback from all court users.

The Imperative Role of Democracy in the Judiciary

[12] The Malaysian judiciary rests on the foundation of democracy, embodying equality, impartiality, and accountability. Its core responsibility is to uphold the rule of law, deliver justice, and safeguard individual rights and liberties. As the nation embraces digital transformation, the judiciary must uphold democratic values while harnessing technology to enhance its operations.

[13] Judicial digital transformation can have a significant impact on democracy. When implemented thoughtfully and responsibly, digital transformation in the judiciary can positively contribute to the principles of democracy. However, it also presents challenges that need to be carefully addressed to ensure that democratic values are upheld.

[14] Below are several ways in which judicial digital transformation can have a positive impact on democracy:

- a) Enhanced access to justice: Digital transformation can make the judicial process more accessible to citizens by enabling online access to court information, court documents and legal resources. Virtual hearings, electronic filing systems, and online platforms offer convenience and ease of access, reducing the need for physical court appearances and associated costs for individuals and businesses. This heightened accessibility empowers citizens to comprehend the legal system better and participate more actively in legal proceedings.

- b) Transparency and accountability: Incorporating digital technologies can substantially improve the transparency of the Malaysian judiciary, granting public access to court proceedings, judgments, and case information. This enhanced transparency fosters greater accountability among judges and court officers, instilling trust in the judicial system.
- c) Efficiency and Fairness: The integration of digital case management systems and data analytics can enhance the efficiency of case processing, resulting in quicker and more uniform outcomes. A more efficient judiciary contributes to a fairer and more effective justice system.
- d) Easier Collaboration and Knowledge Sharing: Digital tools facilitate seamless collaboration among legal professionals, judges, court officers, and staff. It can facilitate knowledge sharing, leading to greater consistency and quality in legal decisions.

[15] While digital transformation offers numerous benefits, it also brings forth challenges and concerns that must be addressed. The following are the challenges and risks to democracy arising from digital transformation:

- a) Data Privacy and Security: The digitization of court records and processes raises concerns about data privacy and security. As legal information becomes digitized and shared, cybersecurity and data privacy assume paramount importance. Preserving the integrity of judicial decisions necessitates verifying the accuracy and dependability of algorithms and AI-driven tools. Ensuring the protection of sensitive legal information is essential to safeguard individuals' rights and uphold public trust.
- b) Digital Evidence Authentication: Maintaining the authenticity and integrity of digital evidence presented in court is of utmost importance. Judges and legal professionals must be equipped with the necessary skills to evaluate the reliability of digital evidence.
- c) Automation Bias and AI ethics: The use of AI in decision-making process may raise concerns about bias and ethical considerations. It is crucial to ensure that AI systems are fair, transparent and accountable.
- d) Public Trust and Confidence: As the judiciary embraces digital technologies, preserving public trust and confidence in the justice system becomes crucial. It necessitates clear communication and education about the advantages and limitations of digital transformation. Digital transformation demands continuous education and training for judges,

legal practitioners, and court personnel to proficiently navigate the digital landscape. Simultaneously, public awareness campaigns can empower citizens with information on accessing online legal resources, promoting legal literacy, and encouraging active participation in the democratic process.

Conclusion

[16] Digital transformation offers the Malaysian judiciary a distinctive chance to modernize and reinforce its role in upholding democracy and the rule of law. By embracing technology, the judiciary can improve efficiency, transparency, and accessibility while upholding democratic values. However, it must proceed with caution, addressing potential challenges and ensuring that digitalization aligns with democratic principles.

[17] As previously discussed, judicial digital transformation can have substantial effects on democracy, encompassing both positive and negative aspects. To ensure a positive impact, it is imperative to address the challenges and risks, prioritize inclusivity, and steadfastly uphold democratic values of transparency, fairness, and accountability throughout the digitalization process. By doing so, the judiciary can leverage technology to strengthen democracy and promote a just and accessible legal system.

[17] The successful integration of digital technologies by the Malaysian judiciary will lead the way towards a more inclusive, efficient, and democratic legal system. This serves as an exemplary model for other democracies grappling with similar transformative challenges.

[18] Before we conclude, we would like to express our heartfelt gratitude to the team at the Constitutional Court of the Republic of Indonesia for extending the invitation to me and my colleague. Thank you for your warm hospitality and the knowledge shared during this conference.

Thank you.