

## LEGAL IMPACTS OF THE COURT RECORDING AND TRANSCRIPTION (CRT) SYSTEM AT THE MALAYSIAN COURTS

Anis Shuhaiza Md Salleh<sup>1</sup>, Ani Munirah Mohamad<sup>2</sup>, Mohd Zakhiri Md Nor<sup>3</sup>,  
Najah Inani Abdul Jalil<sup>4</sup>

<sup>1</sup>School of Law and Institute for Management and Business Research (IMBRe), Universiti Utara Malaysia, Sintok, Kedah, Malaysia

<sup>2</sup>School of Law and Center for Testing, Measurement and Appraisal (CeTMA), Universiti Utara Malaysia, Sintok, Kedah, Malaysia

<sup>3</sup>School of Law and Legal and Justice Research Center (LJRC), Universiti Utara Malaysia, Sintok, Kedah, Malaysia

<sup>4</sup>School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia

E-mail: [shuhaiza@uum.edu.my](mailto:shuhaiza@uum.edu.my)

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### Abstract

The Court Recording and Transcription (CRT) system is one of the technological applications adopted by the Malaysian courts, primarily to facilitate the recording of the audio and video of the proceedings in the open courts. However, the implementation has not been smooth-sailing. Issues such as lack of legal sanctions and security breach of the CRT system have been reported by the literature. This study was carried out to answer the main research question of: what are the legal impacts of the CRT system at the Malaysian Courts? Engaging in qualitative approach, the study centralised upon multiple embedded case study design involving two courts, one in Penang and another in Alor Star. The instruments administered were semi-structured interviews and open-ended survey questionnaire with a judge and a lawyer at each court. The data was analysed using computer-aided qualitative analysis software ATLAS.ti version 8.4 for the purpose of reporting of the findings. The study primarily found that there are four legal impacts of the CRT system. Firstly, the CRT system impacts upon the evidentiary rules of the Rules of Court 2012, Criminal Procedure Code and Evidence Act 1950. Secondly, there is potential for criminality arising from the adoption of the CRT system, although some respondents tend to downplay the potential crimes. Further, the CRT system also contributes greatly towards the judges' preparation of the notes of submission and fourthly, CRT facilitates in the lawyers' preparation of the submission. The findings are expected to contribute to the body of knowledge in the area of electronic government, court systems, electronic court and electronic justice, as well as theoretical aspects of risks and risk management strategies. Hopefully, this research would be a catalyst for future research on these subject matters.

**Keywords--** Courts, CRT, Court recording and transcription, Legal Impacts

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### INTRODUCTION

It is a truism that information and communication technologies (hereinafter "ICT") have connected people from different parts of the world in many areas of life, such as social, commercial, finance, health and governmental transactions (Al-Amaren, Md Ismail & Md Nor, 2020; Mohamad, Hamin & Othman, 2019). One of the organisations that are increasingly adopting ICT in its operations is the judiciary.

In fact, courts in many parts of the world such as USA, Australia, Singapore, Italy and including Malaysia, have begun to shift from the traditional paper-based system for the recording of the notes of proceedings and evidence in courtroom, to the electronic system for the recording of the proceedings and transcription of the notes of proceedings and evidence (Abdullah, 2011).

Within the context of Malaysia, the system to record the visual and audio of court proceedings is called court recording and transcription (CRT) system. CRT is implemented at the courts of Malaysia at both open courts as well as chambers proceedings.

Practically, the person in charge of the CRT would be the interpreter for the courtroom, who manages and controls the system, while at the same time the presiding judge would also be able to control the recording and sharing of exhibits functions through the CRT application (Abdullah, 2011). At some courts, transcribers are placed to work on the steno machines for the purpose transcribing the court sessions in real-time. At the end

of the court session, the draft transcripts would be ready and made available for each party to peruse and agree on the notes of proceedings. Inherently, the notes of proceedings would be useful for their examination of witnesses as well as their reference for future course of actions (Hamin, Othman & Mohamad, 2011).

The implementation of the CRT system brings about legal and practical uncertainties. First and foremost, the written rules do not adequately provide for its implementation either at the lower courts nor the higher courts.

As it stands, for civil cases, there are no provisions in the Rules of Court 2012 which address the implementation of CRT. For criminal cases, only few sections cover the recognition of mechanical notes of recordings. Inadequate written rules on this issue is largely affecting the proper implementation of CRT at the courts.

The second problem is that, the absence of the required legal sanctions or provisions to regulate CRT in the courts for civil cases further led to the sporadic and inconsistent adoption of such system amongst the courts within the same jurisdiction (Abdul Ghani, 2006).

The argument is that, if the legal provision is not present, then there is no appropriate sanction for the implementation or non-implementation of the CRT system itself at the courts.

The third and final problem is, although the rules provide for the application of CRT in the criminal proceedings, the provisions are inadequate as it only provides for the administrative aspects of the CRT, rather than the management of risks which could entail its adoption, such as security and technical risks within the theoretical lenses of perceived risks.

Henceforth, this research is carried out to address the main research question of: **What are the legal impacts of the CRT system at the Malaysian Courts?** Accordingly, this study seeks to **investigate the legal impacts of the CRT system at the Malaysian Courts**. Hopefully this research would serve as a catalyst for future research on the same subject matter of ICT adoption in the courts and particularly the CRT system in the administration of justice of the courts systems.

### **Conceptualising ICT Adoption in the Courts and the CRT System**

The world nowadays is moving towards borderless and information society almost in every aspect including the court system. ICT and virtual presentation become a medium of communication among people around the globe to expedite the process, bridge the gap and connect people. Now, the court proceedings may no longer be traditionally conducted as they used to be.

There can be online courts, which the physical presence of the users in a proceeding is no longer necessary. Similarly, the filing of physical paper-based documents and evidences are becoming less practiced. All those can be done at a distance and out of working hours by just clicking the specified buttons.

As far as Malaysia is concerned, very careful consideration should be given by Malaysia in navigating the current globalisation particularly in justice management and court system.

Reference (Hamin, Othman & Mohamad, 2012) revealed that there are plenty of applications of ICT in the Courts, which involve pre-trial, during trial and post-trial applications. One of the technological adoptions is the CRT system which is intended to strategically record the court proceedings in dual modes - audio and video. Very often, these two modes would be recorded alongside one another, for the purpose of enriching the audio and video recording of the court proceedings (Hassan, et. al, 2016).

For the audio mode, a number of omnidirectional microphones are placed at different areas in the courtroom, particularly on the judge's bench, the lawyers' desk and the witness' stand. The way it works is that it would direct the recording of the audio from active sounds coming from different angles of the courtroom (Lederer, 2004).

For instance, when a lawyer is arguing his case, the microphone would be focusing on his voice. When another lawyer continues the argument, the same microphone would smartly change its direction to record the active voice from the second lawyer.

In the broader context, literature have suggested that there are numerous impacts of ICT adoption in the courts, including enhancement of delivery of justice to the citizens (Kurmiawan, 2020), improved effectiveness and transparency of the judicial processes (Lederer, 2004), cost and time-effectiveness, as well as saving resources (Saman & Haider, 2013).

### **RESEARCH METHODOLOGY**

This part elaborates the methodology undertaken in carrying out this research, covering the research approach, research design, data collection, data analysis and data validity aspects.

#### **Design and Approach**

The study engaged in purely qualitative methodology, given that it is the proper method to address both the aims and objectives of the study.

The chosen methodology explored a central phenomenon centred on the context of the research, i.e. the implementation of the CRT system in the Malaysian courts (Merriam, 1998; Patton, 2005).

Accordingly, this research employed multiple embedded case study design (Yin 2017), involving two courts, one in Alor Star, Kedah and another one in Penang.

These courts were chosen because they are at the forefront on ICT implementation at the respective courts in the northern region of Malaysia. By studying the practices taken up by Alor Setar and Penang Courts on CRT, the research would be able to achieve its objective appropriately.

#### **Data Collection**

The data collection centralised upon two stages of the study: library based and fieldwork. The first stage of the study involved library-based research for the collection of secondary data and reviewing them.

The data sources for this stage were mostly textbooks, journal articles, newspaper reports, research reports and relevant websites on the problems faced by students in legal writing the problem-solving of law questions. The medium of data sources was from Sultanah Bahiyah Library and online databases subscribed by Universiti Utara Malaysia, particularly Ebscohost, Lawnet, Lexis Nexis, CLJ Law and others, as well as open-access data available online on the subject matters of legal writing and problem solving.

The second stage of the study involved fieldwork for the data collection from the research participants at the two cases chosen for the purpose of the study, being Alor Setar and Penang Courts. Accordingly, two instruments were used in the data collection process, which are semi-structured interview and open-ended survey.

The semi-structured interview was conducted on two participants, being one judge from each case. On the other hand, the open-ended survey was administered on two respondents, being one lawyer from each case. The interview and the survey explored the participants' knowledge and experience in handling the CRT system.

#### **DATA ANALYSIS**

For the analysis stage, the interview data which was collected have been transcribed and loaded into the ATLAS.ti version 8 – the qualitative data analysis software (Friese, 2014; Mohamad, 2014). The data have been analysed in ATLAS.ti using both the deductive and inductive approaches of coding in ATLAS.ti (Fereday & Muir-Cochrane, 2006). The interface of the ATLAS.ti for the study is produced in Figure 1 below.

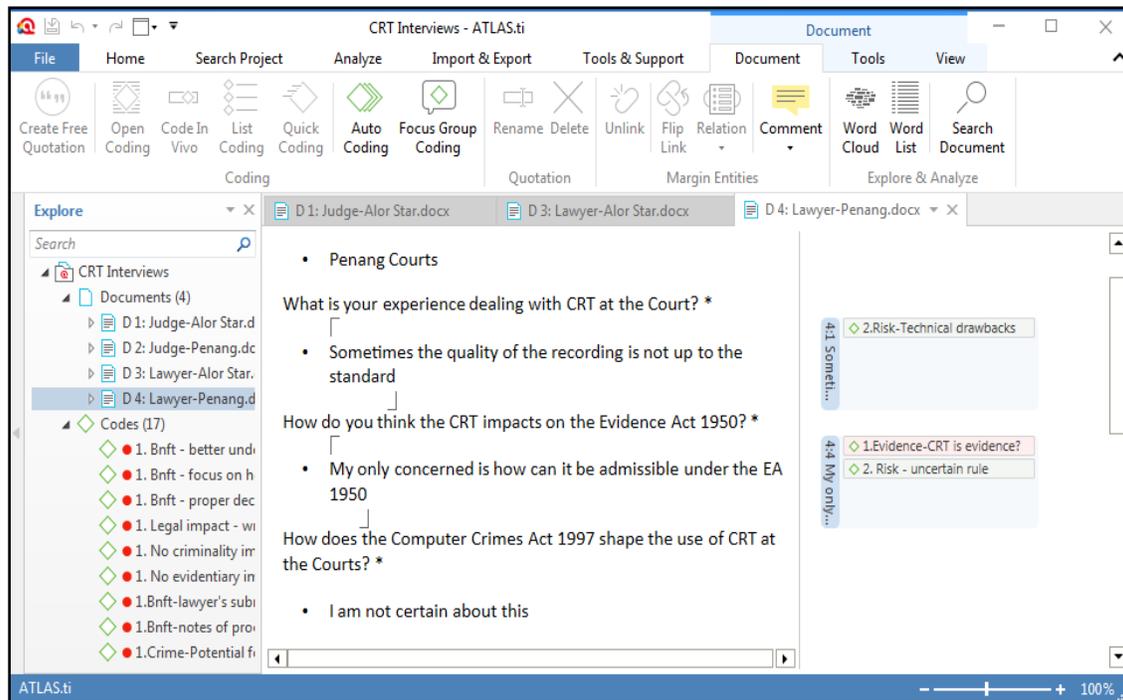


Figure 1. Interface of the ATLAS.ti analysis for the study

**RESULT AND DISCUSSION**

The research emphasizes on the legal impacts of CRT at the Malaysian courts, in particular, the courts in Alor Setar and Penang.

By employing the methodology and data collection methods specified in the early chapter of the research, the research has achieved its objectives accordingly.

It was found that the legal impacts of the CRT system at the Malaysian courts could be divided into four themes, particularly, (1) the CRT system and the evidence rules, (2) the CRT system and the computer crimes, (3) judges’ preparation of the notes of proceedings, and (4) lawyers’ preparation of the submission, as produced in Figure 2 below.

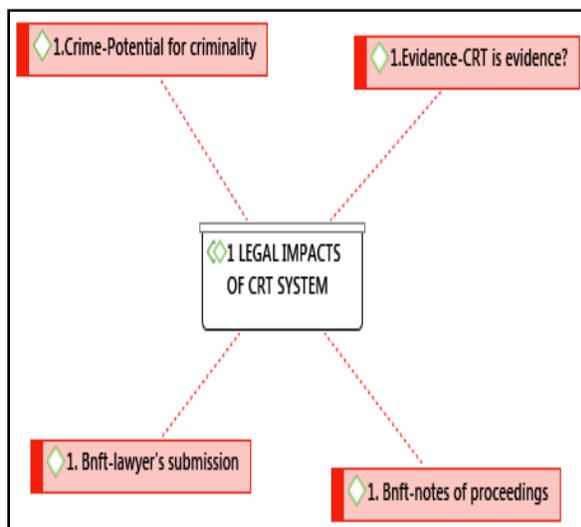


Figure 2. Legal Impacts of the CRT system

Each of the legal impacts are discussed in the following section.

**CRT System and Evidence Rules**

Since CRT recording is in digital format, it could well be recognised as evidence within the ambit of the Evidence Act 1950, the Rules of Court 2012 as well as Criminal Procedure Code.

First and foremost, under the Evidence Act 1950, Sections 90A, 90B and 90C provide for the admissibility of computer-generated evidence. Proving such evidence would require either the testimony or a certificate issued under Section 90A (2) that the document is produced by a computer in its ordinary and general sense. There is no issue that the CRT recording itself, both audio and video versions, would fall within this provision from the Evidence Act 1950.

As for the Rules of Court 2012, one particular provision i.e. Order 70 rule 28 which provides for shorthand note of oral evidence may be taken by way of mechanical means particularly for admiralty proceedings.

This evidences that CRT systems may well be used for recording proceedings. Apart from that, electronic or mechanical court appearances by the parties would also constitute proper attendances by virtue of Order 1 rule 4 of the Rules of Court 2012.

Meanwhile for the Criminal Procedure Code, Chapter XXVA of the Code specifically allows for mechanical recording of the court proceedings in criminal matters – hence showing the recognition of CRT recordings as having evidentiary value in the eyes of the courts.

The data from the interviews supported this finding the CRT system is impacting upon the evidence rules, with statements from the respondents as produced in Figure 3 below.

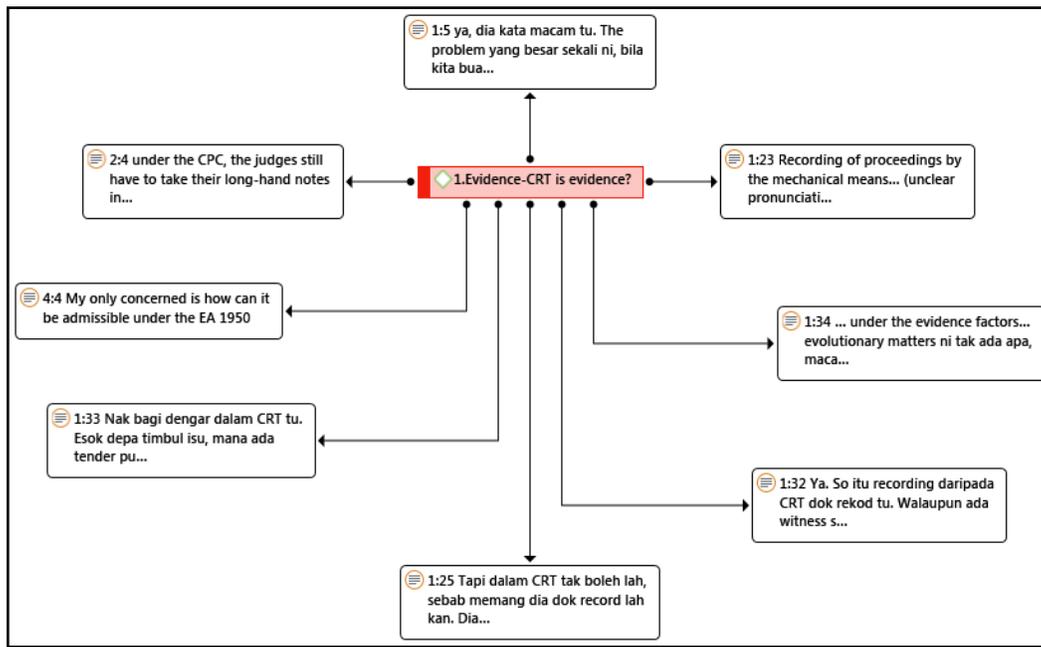


Figure 3. CRT system and the evidence rules

The respondents remarked along the lines of the evidentiary aspects of the CRT recordings as follows:

*"There is the CRT recording, if the witness denies having made the statement, we can always check the recordings for verification."  
"The CRT already recorded the statement, so we can show it to the witness"*

What could be gathered from this finding is that the readiness of Malaysian court towards CRT can be seen when some laws have dealt with it specifically and the courts, practically, have accepted it. Even though it is yet to strictly prohibit judges not to take their long-hand notes while in hearing, practically, most judges are ready to accept CRT recordings as evidenced in court.

**CRT System and Computer Crimes**

The data revealed mixed reactions by the interview respondents as to the potential for criminality resulting from the CRT systems, as produced in Figure 4 below.

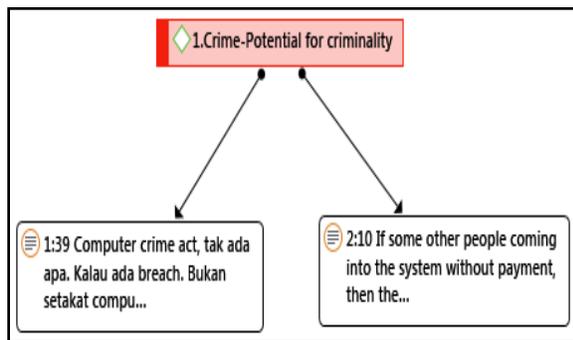


Figure 4. Potential for criminality entailing the adoption of CRT system

As the CRT recordings are in digital formats, hence the storing and processing of the digitized data would be prone to computer related crimes, as well. For instance, unauthorised access into the computer system is an offence outlawed by Section 3 of the Computer Crimes Act 1997. Any attempts by outsiders into the

courts' computer system could be prejudicial to the CRT recordings in the courts' database. One of the respondents remarked:

*"If there is a breach, we have the choice to invoke Computer Crimes Act 1997 or the Penal Code."*

However, another respondent downplayed the potential for criminality of the breach of the system by saying:

*"Because court information is public information, if other people come into the system, it is an issue of payment, which they bypass the payment system to get to the intended information."*

Within the broader context, in communication and technological advancement era, the availability of paper-based documents and physical appearance of parties in a forum seem to be getting less significance all over the world. Instead, the communications, meetings, appearances and exchanging documents are done virtually via internet connection. Undeniably, this also affects the court proceedings in Malaysia where courts are moving forward in accepting virtual based documents and evidences. As such, the government must also be prepared to curb any unauthorised attempt to access the courts' computer system through laws and implementations.

The existence of legal provisions, for instance section 3 of the Computer Crimes Act 1997 to incriminate the act of attempting any unauthorised access to courts' computer system indicates that the readiness in practising CRT and accepting virtual evidences in Malaysia are done cautiously that all possible risks and effects have been taken into consideration. Nevertheless, the definition and application of the provision shall be extended and inclusive to cover any act or attempt which is possible to have unauthorised access to courts' system though the act or attempt may not be possible or foreseen at the time of enactment of the provision.

**Judges' Preparation of Notes of Proceedings**

CRT systems assist the judges in the preparation of the notes of proceedings. Over the years, the written rules of the Malaysian courts have been amended to provide for the CRT system to be in

place. In terms of civil cases, the Rules of Court 2012 does not specifically provide for the implementation of the CRT system in the hearing and the management of the cases. However, the CRT system is still implemented at the courts, giving rise to the legal issue of absence of legal provisions.

For criminal cases, prior to 2012, it was argued that the CRT is outlawed for as it was a requirement that notes of evidence must be taken down by the judge in writing. Nevertheless, in 2012 there was a major amendment to the Criminal Procedure Code that a new Chapter XXVA was inserted to provide for matters relating to recording of proceedings by mechanical means. Sections 272C until 272K address the issue of handwritten notes of evidence by the judge now that the transcription of the mechanical recording of the evidence by the witnesses during trial are admissible and form part of the notes of evidence.

As for the case in the High Court of Sabah and Sarawak, an individual transcriber is placed at each of the courts entrusted to transcribe the proceedings during trial. In such a situation, no recording will be made available to the lawyers although they are electronically stored in the court's database. Instead, the notes of proceeding itself is prepared by the transcriber and given to the lawyers for their approval. Once both parties approve, the court will endorse on the notes of proceeding accordingly.

As for the position in the United Kingdom, the Criminal Procedure Rules 2013 provides that the court may allow sound recording or communication by electronic means to take place during a hearing. The recording or communication tool may be brought in by the parties themselves with the approval of the court or is already part of the court system applications installed in the courtroom. Therefore, this provision implies that the recording of the proceedings in the courtroom may be made by a tool which is already provided or made available in the courtroom and form part of the court technology applications.

On the other hand, if the parties wish to bring in their own recording or communication tools for the purpose of recording of

the proceedings, they may only do so once permission is obtained by the court. Accordingly, the court may give permission for the parties to bring into a hearing for use, or use during a hearing, a device for recording sound. Additionally, the court may also give permission to the parties to communicate by electronic means or publish a sound recording made during a hearing.

In contrast to the legal position in Malaysia, the position in UK is different in the sense that the law allows for private tools to be brought into the courtrooms with the permission of the court to do the recording or the communication of the proceedings. There is not such allowance in the case of the courts of Malaysia.

Another aspect of this technology application in the courts of UK is that it is the duty of the Crown Court to provide or cause to be provided the transcription to the parties concerned if the recording is prepared by the court's recording tools and applications, as provided by Rule 71.9 of the Queen's Bench Guide. Accordingly, Paragraph 7.1.1 of the Queen's Bench Guide provides that there is an established Recording and Transcription Unit at the Court to facilitate and manage this process. Hence, a person who is not a party to the proceedings may not obtain a transcript of a hearing which took place in private without the permission of the court.

What could be concluded is that some aspects need to be improved and strengthened by Malaysian court in adopting CRT. For example, the need to establish a Recording and Transcription Unit at the court as in UK is a good practice to be considered by the Malaysian court. By having a specific Unit, which is responsible to deal with recoding and transcribing, rather than an individual transcriber as currently has been practising in Malaysia, the recording and transcribing processes seemed to be more systematic, reliable and consistent.

The finding upon which the CRT system assists the judges in preparing the notes of proceedings is produced in Figure 5 below.

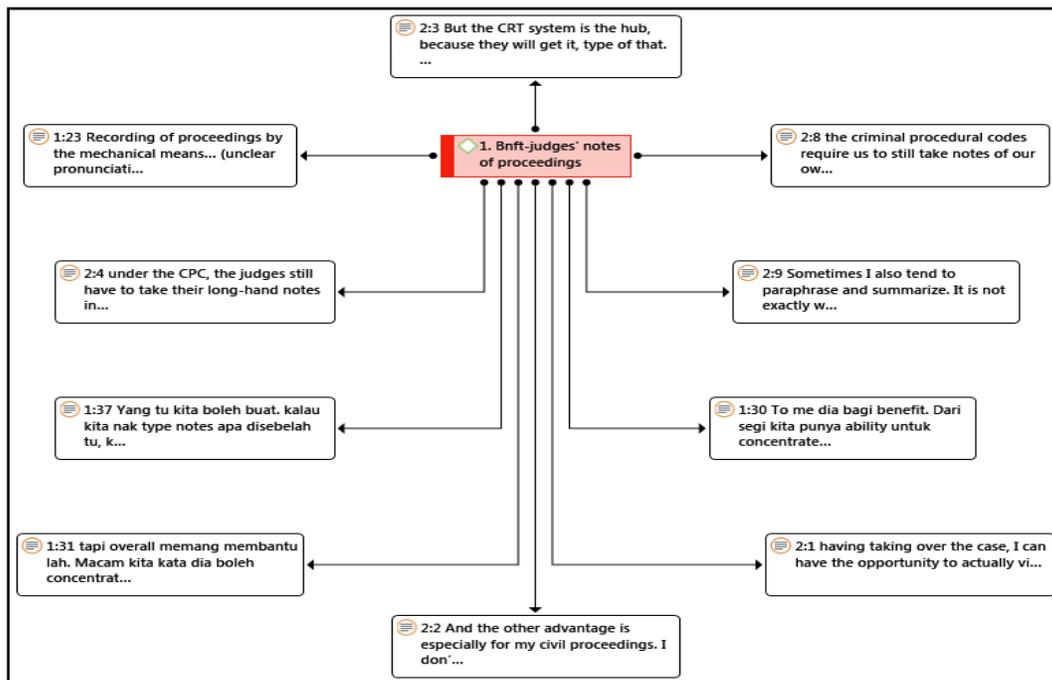


Figure 5. Judges' preparation of notes of proceedings

The judges largely agreed that the CRT system helps with their preparation of the notes of proceedings, as mentioned by the judges as follows:

*"The system is very helpful, judges can now concentrate on the proceedings, rather than having to dictate the proceedings all the time as in the past. After the hearing, we can work on the notes of proceedings by looking into the recordings."*

*"We are unable to write every single word during the proceeding, so we tend to paraphrase and summarise. When we re-look at the notes, we might miss out on some things. So, the CRT helps. With the CRT, we will never miss out on anything anymore."*

*"For criminal proceedings, we still have to take hand-notes. However, we can always double check our notes with the recordings if we ever need to."*

One judge also clarified that the CRT recordings would be very helpful for the judge to watch the recordings for cases upon which he took over the case from another judge, as mentioned by the judge as follows:

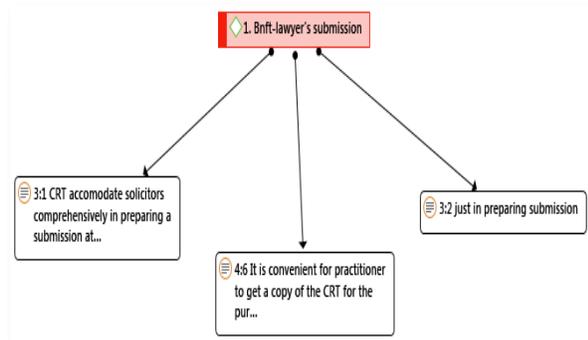
*"Once I took over a case, I have the opportunity to view what was recorded, and have better appreciation of the case."*

Accordingly, by practicing CRT, it does not only lessen the burden of judges in writing and dictating during the proceeding, but the benefits may also be felt when the courts may refer to the recordings in some other time when they wish to. Comparatively, this was none when judges used to dictate and concentrate in writing the proceedings, where they might miss in looking at the demeanor of the parties in the proceedings.

#### Lawyers' Preparation of Submission

The data further revealed that the CRT system assists in the lawyer's preparation of the submission before the courts as produced in **Figure 6** below. According to Federal Court Practice Direction No. 9/2011, the recording of the proceeding capture using the CRT system would be made available to the party requesting it in the form of a compact disc ("CD") at the cost price of RM10.00. The provision of the CDs is centralised at the Chief Registrar's Office and distributable to the respective registries upon request. This recording would later be used by the lawyers in their preparation of the submission.

Accordingly, for cases having been decided at the lower courts and being appealed to the Court of Appeal, the Court of Appeal has issued a Practice Direction No. 2/2011 clarifying that the notes of proceedings and notes of evidence at the High Court in the form of a CD could be presented together with the filing of records of appeal. Although the necessary transcription is still required to be presented in respect of the relevant parts of the recordings, this practice direction is seen as a positive move by the judiciary in better management of ICT applications and tools for the delivery of justice.



**Figure 6.** Lawyer's preparation of submission

This finding is supported by the statements by the lawyers that the CRT system has greatly assisted them in preparing their legal arguments and submission. The remark given by lawyers as follows:

*"CRT accommodates solicitors comprehensively in preparing a submission at the end of every full trials."*

*"It is convenient for practitioners to get a copy of the CRT for the purpose of preparing our submission."*

In general, the benefits of adopting CRT in courts' proceedings are not only felt by the judges but also lawyers who may then refer to the recordings if they need so for the preparation of submission. As there was no such kind of play back reference in the past, where lawyers need to write and concentrate on everything which they considered important at that time, they can now just refer to the recordings for any part which they need for clarification.

#### CONCLUSION

Briefly, it can be summarised that applying the CRT system is a commendable and plausible effort to enhance the legal and judicial systems in Malaysia to be at par with other jurisdictions such as United Kingdom, Singapore, Australia and United States. The application of it, which is relatively new in Malaysia is a good start for a more sophisticated and effective use of ICT in the implementation of e-government. In order to materialise this, technological aspects for the administrative staffs, judges and other courts' users need to be strengthened and improved.

Having carried out the study, particularly for the research question of: What are the legal impacts of the CRT system at the Malaysian Courts? the study primarily found that there are mainly four legal impacts of the CRT system. Firstly, the CRT system impacts upon the evidentiary rules of the Rules of Court 2012, Criminal Procedure Code and Evidence Act 1950. Secondly, there is potential for criminality arising from the adoption of the CRT system, although some respondents tend to downplay the potential crimes. Further, the CRT system also contributes greatly towards the judges' preparation of the notes of submission and the lawyers' preparation of the submission.

In essence, the findings revealed that the use of CRT in courts benefit not only judges and lawyers for easier and speedier management of courts' proceedings but also parties to a dispute or accused persons for a speedier disposal of their case. Undoubtedly, there are still insufficient laws or ambiguous provisions pertaining to the application of ICT and technological advancement in Malaysia, proactive steps need to be taken by lawmaker in formulating new laws to govern ICT application, particularly aspects with no existing legal provisions or insufficient provisions.

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