

UNIVERSITI TEKNOLOGI MARA

**THE IMPLICATIONS OF ICT
ADOPTION IN THE MALAYSIAN
CIVIL COURTS: WITH SPECIAL
REFERENCE TO THE LEGAL
POSITION IN ENGLAND AND
WALES**

ANI MUNIRAH BINTI MOHAMAD

PhD

August 2016

UNIVERSITI TEKNOLOGI MARA

**THE IMPLICATIONS OF ICT
ADOPTION IN THE MALAYSIAN
CIVIL COURTS: WITH SPECIAL
REFERENCE TO THE LEGAL
POSITION IN ENGLAND AND
WALES**

ANI MUNIRAH BINTI MOHAMAD

Thesis submitted in fulfilment
of the requirements for the degree of
Doctor of Philosophy

Faculty of Law

August 2016

CONFIRMATION BY PANEL OF EXAMINERS

I certify that a Panel of Examiners has met on 29th of January 2016 to conduct the final examination of Ani Munirah Binti Mohamad on her PhD in Law thesis entitled “The Implications of ICT Adoption in the Malaysian Civil Courts: With Special Reference to the Legal Position in England and Wales” in accordance with Universiti Teknologi MARA Act 1976 (Akta 173). The Panel of Examiners recommends that the student be awarded the relevant degree. The panel of Examiners was as follows:

Ooi Ui Joo, PhD
Associate Professor
Faculty of Law
Universiti Teknologi MARA
(Chairman)

Hartini Saripan, PhD
Senior Lecturer
Faculty of Law
Universiti Teknologi MARA
(Internal Examiner)

Clive Walker, PhD
Professor Emeritus
Faculty of Law
University of Leeds – United Kingdom
(External Examiner)

Abdul Samad Abdul Ghani, PhD
Senior Lecturer
Faculty of Law
Universiti Malaya
(External Examiner)

DR. MOHAMMAD NAWAWI
DATO’ HAJI SEROJI
Dean
Institute of Graduates Studies
Universiti Teknologi MARA
Date: 2nd August, 2016

AUTHOR'S DECLARATION

I declare that the work in this thesis was carried out in accordance with the regulations of Universiti Teknologi MARA. It is original and is the results of my own work, unless otherwise indicated or acknowledged as referenced work. This thesis has not been submitted to any other academic institution or non-academic institution for any degree or qualification.

I, hereby, acknowledge that I have been supplied with the Academic Rules and Regulations for Post Graduate, Universiti Teknologi MARA, regulating the conduct of my study and research.

Name of Student : Ani Munirah Binti Mohamad
Student I.D. No. : 2009298774
Programme : PhD in Law (LW991)
Faculty : Law
Thesis : The Implications of ICT Adoption in the Malaysian Civil Courts: With Special Reference to the Legal Position in England and Wales

Signature of Student :

Date : August 2016

ABSTRACT

The ICT adoption in the Malaysian courts has been problematic and raises several implications, involving both legal and non-legal ones, such as technical, organisational and social. Previous research in Malaysia had not addressed the said implications. Within this context, the central arguments of this research are two-folds: firstly, the implementation of ICT in the Malaysian courts has impacted not only on the users and courts but also raises a variety of legal, technical, organisational and social implications. Secondly, the lack of legal sanctions to most of the existing ICT applications in the Malaysian courts suggests that law will eventually lag far behind technology and will remain so in the near future. Guided by this thesis, this study aims at examining the implications of ICT adoption in the Malaysian courts on the users and the courts; the implications of the ICT adoption on the laws in Malaysia as compared to that in England and Wales; the theories of unified acceptance and use of technology and risks perception in informing the research; and to propose for the strengthening and improving the delivery of the justice system in the Malaysian civil courts through ICT adoption. Adopting a qualitative research, this study engaged both the primary data obtained from five case studies and the secondary data obtained using the doctrinal approach. The evidence from the research is extensively reported in Chapter Five. The doctrinal analysis of the legal implications of the adoption of ICT in the courts in the United Kingdom as well as Malaysia is presented in Chapters Three and Four respectively. The research found that there are various implications of ICT adoption in the Malaysian courts, as well as the courts in England and Wales, involving both legal and non-legal implications. The research further found that the theories of UTAUT and risks perception have rightly mediated the understanding of the researcher of the benefits and risks involved in the adoption of ICT at the courts. And finally, the research also found that the existing laws in Malaysia involving the Rules of Court 2012 and the Criminal Procedure Code would need to be reviewed on the rules encouraging ICT, electronic legal service of court documents, electronic filing by e-mail, court recording, audio and video conference and proper handling of digital signatures. This study will not only contribute to the understanding of the relevant laws surrounding the ICT adoption in the courts but also, to assist the Malaysian judiciary and the Malaysian Bar Council in dealing with the risks entailing such ICT adoption. Future research is suggested to be carried out using a quantitative approach to quantify such implications, the implication of ICT at other public offices such as the prison, and a comparative study to be carried out with other jurisdictions such as Australia, United States and Singapore.