

The Implications of Audio/Video Conference Systems on the Administration of Justice at the Malaysian Courts

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Abstract

The audio/video conference systems (AVS) enable parties from distinct locations to ‘meet’ synchronously in achieving certain objectives. Medical practitioners, accounting firms, businessmen, to name a few, have long resorted to AVS in their everyday routines. Recently, the courts in many parts of the world, including the Malaysian courts, have started to engage in AVS in solving any disputes. Despite this development, local literature is still scarce on this subject matter, and the adoption of AVS is rather recent in the Malaysian context. Hence, this paper seeks to highlight the implications of such technologies, particularly in enhancing the administration of justice at the Malaysian Courts. The study adopts a qualitative method, engaging in two multiple-embedded case studies involving a High Court in West Malaysia and a High Court in East Malaysia using the instrument of semi-structured interviews. The data generated from the case studies were analysed using the computer-aided qualitative data analysis software ATLAS.ti version 8.4. The study found that there is a huge potential for the Malaysian courts to adopt AVS in solving any disputes, as it would significantly save time, money and resources. Most importantly, AVS is proven to improve people’s access to justice, particularly those in the rural areas. On the other hand, the engagement of the AVS system also posed some challenges such as enhancement of cost and training requirements for the

court personnel as well as for the solicitors. Additionally, there seems to be an inadequate regulatory framework to govern the use of AVS at the Malaysian courts. The significance of this study is that it would assist the courts and the Malaysian Bar in appreciating the implications of the AVS on the administration of justice at the Malaysian Courts. Hence, proper guidelines should be in place for users of AVS for proper usage at the courts. Also, this paper would contribute to the body of local literature on ICT adoption at the courts, in particular on the AVS usage.

Keywords

Audio Conference, Video Conference, Dispute Resolution, Malaysian Judicial System, eCourt, eJustice.

Introduction

The audio/video conference systems (AVS) enable parties from distinct locations to 'meet' synchronously in achieving certain objectives. In this regard, medical practitioners, accounting firms, businessmen, to name a few, have long resorted to AVS in their everyday routines. They hold executive meetings, business agenda and negotiation with clients or patients by taking advantage of the AVS. Recently, the courts in many parts of the world, such as Singapore, Italy, Australia, UK, and including the Malaysian courts, have started to engage in AVS in solving disputes (Schneider, 2013; Braun, 2015).

Nevertheless, there seem to be a critical gap in the literature providing for the AVS systems within the local context of the Malaysian courts. The existing literature pointed out the technical aspects and the advantages and disadvantages of the AVS in various contexts, such as education (Karlsson, Anani and Li, 2009; Tapsis and Tsolakidis, 2014), medical (Chipps, Brysiewicz and Mars, 2012) and engineering (Badry, Abdelrasoul and Sayed, 2019), but little discussion could be found in the context of the courts. Given the scarcity of the literature on the subject matter and limited lessons to learn from the engagement of AVS within the court's context, this study is carried out primarily to address the question of the extent to which ICT, in particular, the AVS have impacted on the administration of justice at the Malaysian courts. Therefore, this paper aims at investigating such implications of AVS on the administration of justice in Malaysia.

This paper begins by conceptualizing the adoption of the information and communication technologies (ICT) for dispute resolution at the Malaysian courts, narrowing down to the AVS system itself. The following part deliberates the methodology undertaken in carrying out this research. Next, the findings of the study are reported relating to the implications

of the AVS on the administration of justice at the Malaysian courts. The paper concludes by summarising the key findings of the research, and the practical implications of the study.

Conceptualising ICT for Dispute Resolution and Audio/Video Conference Systems

This part presents a review of the literature on two main concepts engaged in this study, firstly, ICT for dispute resolution, and secondly, audio/video conference systems at the courts.

ICT for Dispute Resolution at the Malaysian Courts

The implementation of ICT at the courts in Malaysia began as early as 2003 with a pilot project on the case management system as well the court recording and transcription system. However, it did not take off smoothly as planned (Zakaria, 2013). The e-court project only became successful in 2011 with the implementation of the e-court system pilot project at 6 busy courts with the heaviest caseloads in the country, being the Courts at Kuala Lumpur, Shah Alam, Ipoh, Georgetown, Johor Bharu and Putrajaya (Zakaria, 2013). At present, the various ICT applications being adopted at the Malaysian courts include the e-filing system, the case management system, the queue management system, the court recording and transcription, as well as the audio and video conference system (Mohamad, Hamin and Othman, 2012). Recently, the courts have begun to engage in the use of artificial intelligence technology in the sentencing awards in selected case (Miwil, 2020).

The ICT applications at the courts bring about great potential and advantages, as it is advocated that such technologies would lead to an improvement in the quality of the process, and improved transparency of the way the judiciary works (Hamin, Othman & Mohamad, 2010). ICT would also increase in the citizen's level of access to the judiciary and increase in the confidence of the citizens and business in the judicial system (Cerrillo and Fabra, 2009; Walker, 2000). In addition to this, it is also suggested that these technologies will contribute to improve the quality of justice (Carnevali, 2009). On the other hand, ICT at the court also raises some security issues and privacy encroachment risks (Hamin, Othman & Mohamad, 2012), apart from various organizational implications entailing the adoption of such technologies, particularly impacting on the courts (Mohamad, Hamin & Othman, 2019).

Audio/Video Conference Systems

One of the applications being adopted at the courts is the AVS, which enable the parties located at different locations to ‘meet’ synchronously at the same ‘meeting room’. The mechanism of AVS within the court's system essentially works in that the litigating parties to the proceedings and the presiding judge might each be located at different locations, but they ‘meet’ virtually in the AVS meeting room for the proceedings. The summary of this workflow is presented in the following **Figure 1**.

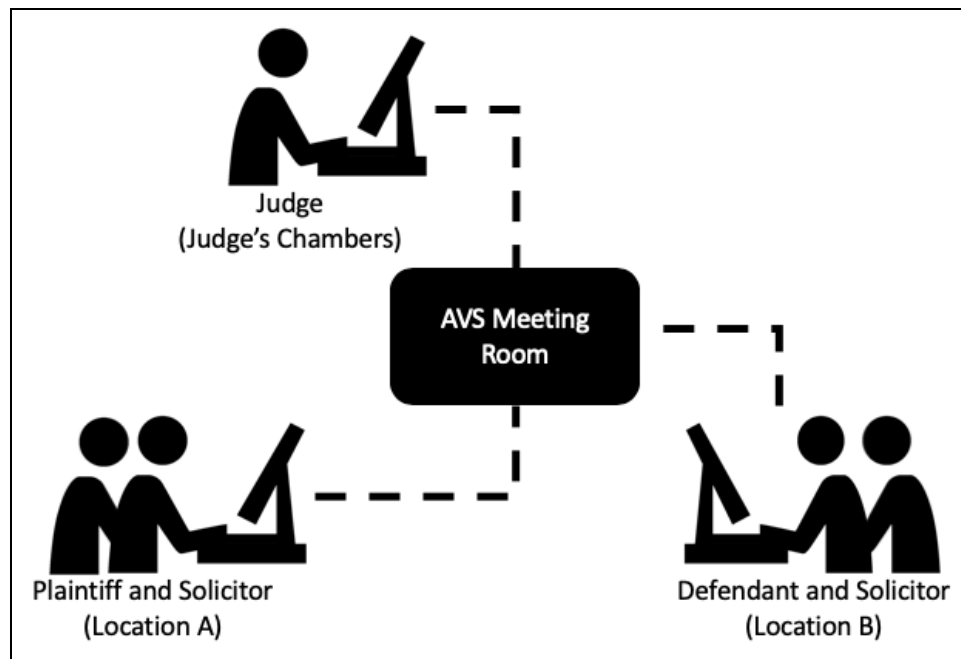


Figure 1 Summary of the workflow of AVS within the court's system

In Malaysia, the relevant legal provision for AVS involving civil cases is Order 1 Rule 4 of Rules of Court 2012 (RC 2012) which that: “Attendance at the court includes the appearance by any person using electronic, mechanical or other means permitted by the Court”. It essentially means that a plaintiff and defendant, together with their respective solicitors may appear in court using the AVS system for the purpose of the proceedings. Such a connection in the AVS meeting room is legally recognized by the said Rules as meeting the attendance of the parties at the courts.

Meanwhile, for criminal cases, Section 272B of the CPC provides that evidence generated through live video or live television links are regarded as part of the evidence. Essentially, this provision allows for the holding of criminal proceedings by using the AVS medium. In such a situation, although the parties are not present at the same court location, the said

provision recognises the parties' appearances as a proper court attendance, provided it is allowed by the presiding judge.

However, the legal framework of AVS in the Malaysian context is considered as minimally regulated, as opposed to the legal framework in the United Kingdom (UK), which appears to be more heavily regulated by the UK Criminal Procedure Rules 2013 and the Criminal Practice Directions 2016. Unlike the Malaysian position, not only does the UK rules provide for the appearance using AVS, or what is commonly known as 'live links', such rules are more elaborate and provide for a lengthier explanation on the technical gaps and the circumstantial irregularities.

Currently, AVS proceedings for criminal matters in Malaysia are only allowed within the courts complex, albeit at different locations. This essentially means that each of the parties involved would need to get themselves present at the nearest courts complex which is equipped with the AVS technology in order to get connected to the proceedings. In contrast to the position in the UK, Section 51 of the Criminal Justice Act 2003 allows for AVS among the presiding judge, the prosecutor and the defence counsel, while the accused remain in the prison complex. Such a provision takes into account the safety requirements of transporting the accused from the prison to the courts complex (McKay, 2017).

It is apparent that the scarcity of resources for AVS technology within the Malaysian court's context and the recent development in the engagement of AVS in the courts have motivated this research primarily to investigate the implications of AVS on the administration of justice at the Malaysian courts.

Research Methodology

This part elaborates the methodology undertaken in carrying out the research. The discussion begins with the research design and approach, the instruments used during data collection, and followed by the data analysis process.

Research Design and Approach

This research drew upon two types of data: primary and secondary data. The primary data was generated using four case studies involving Malaysian courts in Georgetown, Penang and Kota Kinabalu, Sabah. The primary data was then triangulated with the secondary data in the form of literary articles, textbooks, written rules and regulations, practice directions from the Bar, reports and newspapers reports, which revolve around the area of

ICT adoption in the courts particularly the AVS. In this respect, an extensive investigation was carried out using academic online databases, for instance, EbscoHost, LexisNexis, JStor and others. The following Figure 2 summarizes the research design and approach engaged in this study.

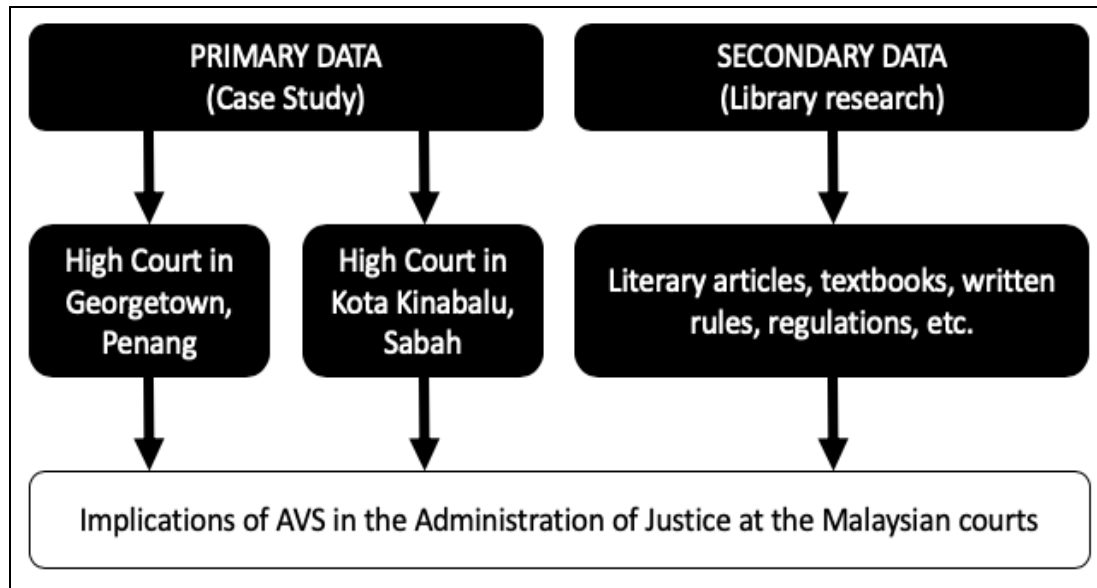


Figure 2 Research design and approach

Data Collection and Instrument

At each of the respective courts chosen as the case studies, four respondents were interviewed using the semi-structured interviews which lasted thirty minutes to one hour for each interview, The respondents were persons involved directly with the implementation of audio/video conference systems at the respective courts. They were purposively sampled based on their occupational roles of the judge, the court administrative officer, the information technology (IT) officer and the lawyer. The study was mainly interested to explore and understand their experiences and perception in engaging in the use of AVS at the courts. Triangulation strategies were carried out in the form of within-case analysis (Athota and Malik, 2019) of each case in Penang and Sabah, and also cross-case analysis (Bruce, Flynn and Stagg-Peterson, 2011) of each occupational roles of the respondents in both Penang and Sabah. In total, primary data in the form of interviews with eight respondents were gathered and digitally recorded, before transcribed for analysis purposes. The numbers and experiences of the respondents are provided in Table 1.

Table 1 Respondents of the study

| | Role | Number of respondent | Years of experience |
|---|--------------------------------|----------------------|---------------------|
| | High Court in Penang | | |
| 1 | • Judge | 1 | Minimum of 10 years |
| 2 | • Court administrative officer | 1 | Minimum of 10 years |
| 3 | • IT officer | 1 | 5-10 years |
| 4 | • Lawyer | 1 | 5-10 years |
| | High Court in Sabah | | |
| 1 | • Judge | 1 | Minimum of 10 years |
| 2 | • Court administrative officer | 1 | Minimum of 10 years |
| 3 | • IT officer | 1 | 5-10 years |
| 4 | • Lawyer | 1 | Minimum of 10 years |
| | TOTAL | 8 | |

Although the number of the respondents were relatively small to achieve large scale generalisations, we hold that the findings could still present valid and reliable insights as to the implications of AVS on the administration of justice in Malaysia.

Data Analysis

For analysis, the transcribed interview data was added to the computer-aided qualitative data analysis software ATLAS.ti version 8.4 for analysis purposes. The list of codes was built deductively and deductively following the researcher’s understanding, developed from the literature review and the data itself (Fereday and Muir-Cohcrane, 2008). The analysed data was then produced in a visual form called ‘networks’ in ATLAS.ti for the visual representation of the analysis (Mohamad, 2014). The following Figure 3 shows the interface of the ATLAS.ti software for this study.

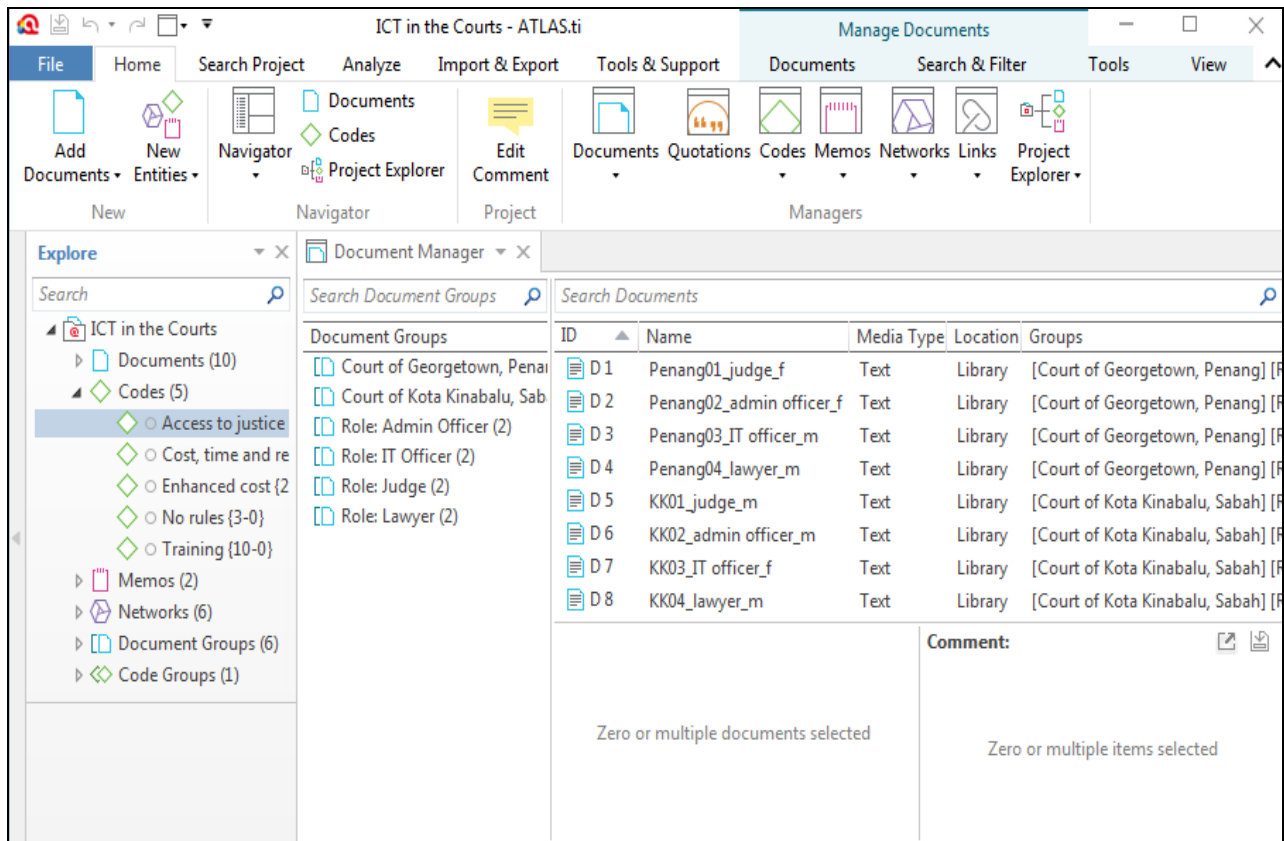


Figure 3 The interface of the ATLAS.ti software for the study

Findings

This part elaborates the findings from the primary and the secondary data with respect to the research question in the study, particularly in examining the implications of AVS to the administration of justice at the Malaysian courts. There are numerous impacts of AVS generated from the study, namely (i) efficient cost, time and resources, (ii) improved access to justice, (iii) enhancement of costs, (iv) de-skilling and re-skilling of the AVS application, and (v) inadequacy of the legal framework governing the AVS implementation at the Malaysian courts.

Efficient Cost, Time and Resources

The findings revealed that the AVS adopted by the Malaysian courts had considerable potentials. AVS was reported to save time, money and resources. Such a finding emphasised the point that a virtual ‘meeting’ room for the parties involved in the proceedings is recognized as a virtual ‘courtroom’ upon which the proceedings could take place albeit the parties being in different locations. Hence, such a finding appears to confirm the literature that not only can AVS connect the parties at different locations, the

parties intending to meet during the trial could save the travelling time, the money spent, and the energy dedicated to travel to the single location of the trial (Dumoulin and Licoppe, 2015; Schneider, 2013). The output generated from Atlas.ti on this finding is produced in Figure 4 below.

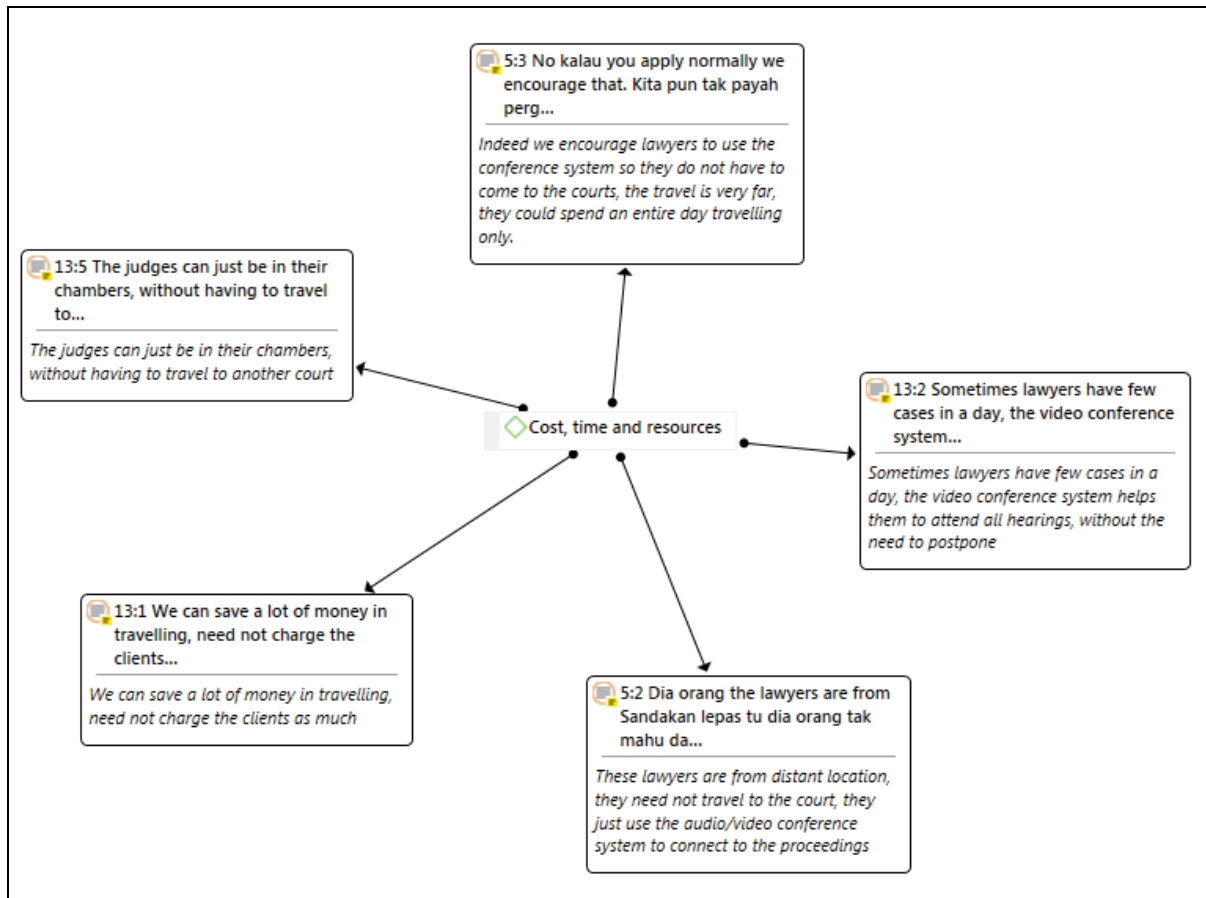


Figure 4 Efficient cost, time and resources following the engagement of AVS

In terms of cost-efficiency or cost-benefit analysis of the AVS for judges and solicitors, findings revealed that judges and solicitors could save costs, which would otherwise be spent on travelling expenses. Accordingly, such travelling costs need not be charged to the clients and this would suggest that greater administration of justice in favour of the clients. In this regard, one of the respondents remarked that:

“We (solicitors) can save a lot of money in travelling and we need not charge the clients as much” (Solicitor, Penang)

Also, in terms of time-efficiency of the AVS, both judges and solicitors agreed that technology could save a lot of time when arranged properly. To this, a respondent remarked that:

“Indeed, we encourage lawyers to use the AVS system so they do not have to come to the courts, the travel is very far, they could spend an entire day travelling only” (Judge, Sabah).

Meanwhile, with regards to saving resources, the AVS has also enabled solicitors to attend a few courts proceedings in a day, given that they do not need to travel as much as before. In turn, there were fewer postponement requests at the courts on the ground that the solicitors need to travel to another court. As remarked by one respondent:

“Sometimes, lawyers have several cases in a day. The (AVS) system helps them to attend all hearings, without the need to postpone (Solicitor, Penang).

Similarly, by engaging in the AVS technology, judges also can hear and preside cases from their very own chambers. A judge remarked that :

“Judges can just be in their chambers, without having to travel to another court” (Judge, Sabah).

The findings from the interviews, and triangulated with the literature, suggest that technological advancements such as the AVS in the present study save time, costs and resources, which in turn, would enhance the administration of justice in the long run. The advantages of the AVS system would essentially benefit the users themselves, being the judges, the solicitors, the court staffs, the clients and the public in general.

Improved Access to Justice

Additionally, the AVS have also improved access to justice in the case of litigants in rural areas. Before the implementation of AVS, the affected litigants might face some difficulties in bringing their disputes because of their distant location from the courts, and other factors such as affordability to travel to the courts. With the implementation of AVS, despite their distances in location, they could all be connected to the court's system. In such a situation, the judge, the lawyer and the litigant could all be seated at different locations but connected to the ‘courtroom’ via the AVS medium, and proceed with the trial proper. The output generated from ATLAS.ti on this finding is produced in Figure 5 below.

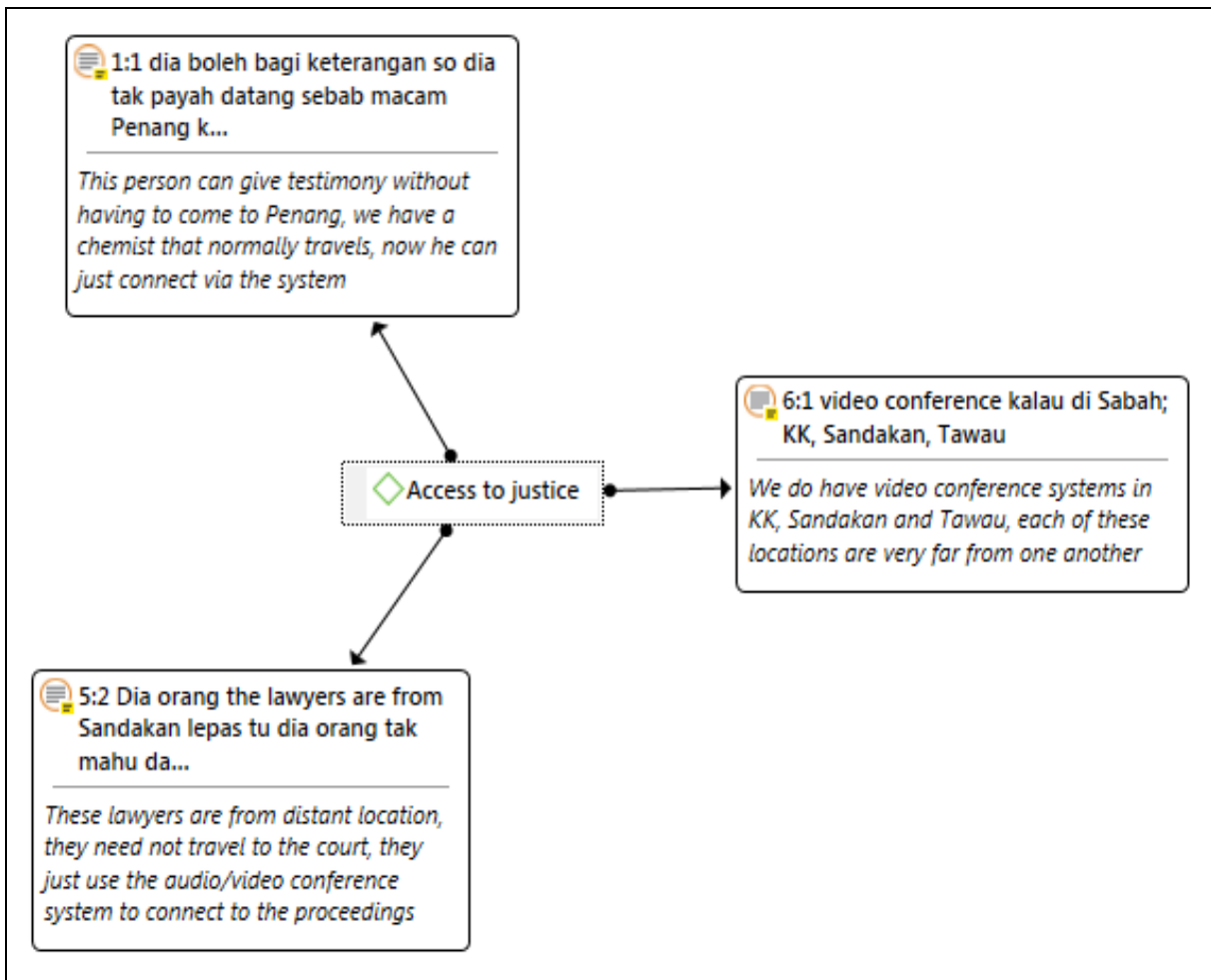


Figure 5 Improved access to justice entailing the AVS

The findings indicated that for the improvement to the access to justice, AVS is perceived as connecting the parties to the proceedings and allowing each party to pursue justice by the court's systems. The AVS inherently improves the access to justice for the parties, particularly those coming from distant locations from one another, particularly in Sabah courts. A respondent in Sabah stated that:

“These lawyers are from distant locations but they don’t have to travel to the courts, they can just use the audio/video conference systems to connect to the proceedings” (Judge, Sabah).

Another respondent explained that:

“We do have video conference systems in Kota Kinabalu, Sandakan and Tawau, each of these locations are very far from one another” (Court administrative officer, Sabah).

Similarly, in Penang courts, the AVS also enable all parties in a case to connect from different locations, thus improving the access to justice. This situation is admitted by one respondent from the Penang court:

“This person can give testimony without having to come to Penang. We have a chemist who normally travels but now he can just connect via the AVS system” (Judge, Penang).

Bearing in mind that technologies such as the AVS are double-edged swords, at one end it promises potentials, at the other end, it brings about some risks. The engagement of AVS could also potentially poses some risks to the administration of justice, such as increasing the setting up costs for the AVS, the de-skilling and re-skilling aspects, as well as the inadequacy of the legal framework regulating the AVS implementation in the Malaysian courts.

Costs of Setting the Technology

The findings revealed that setting up of AVS had entailed quite a considerable cost at the initial stage of installing the technological equipment for the audio and video hardware of AVS. The output generated from ATLAS.ti on this finding is produced in Figure 6 below.

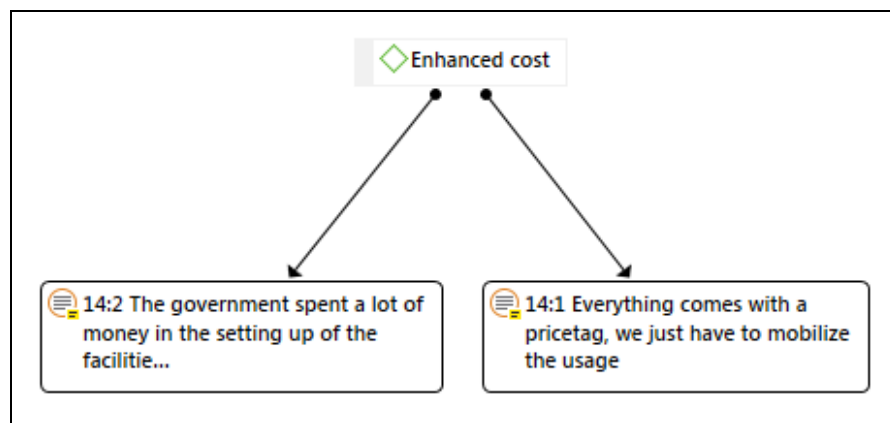


Figure 6 Costs in setting up the AVS

This matter is also admitted a respondent in the following remarks:

“The government spent a lot of money in setting up of the (AVS) facilities”(Judge, Penang).

Another respondent took a similar view and stated that:

“Everything (including AVS) comes with a price tag and, we just need to mobilize the usage of the applications” (IT officer, Sabah).

The findings appears to suggest that the costs of setting up the initial AVS infrastructure had ballooned and impacted on the expenditure of the ICT system. However, considering the potential of the cost-efficiency or the return of investment of the AVS implementation in the long run to solicitors, clients, judges and court staffs, it had proved to be a smart investment by the courts to set up the ICT applications at the courts in general, and the AVS system in particular.

De-skilling and Re-skilling of Users

The findings indicated that the AVS led to the enhancement of the training and re-skilling aspects in part of the individuals involved to operate and adopt the AVS system at the courts (Wong Peck, 2008). These individuals include judges, court registrars and court administrative officers, such as interpreters and bailiffs. Additionally, legal practitioners or practising lawyers were also required to learn the technical aspects of the AVS system, which consequently resulted in the different levels of commitments on the part of lawyers. Such a finding seems to confirm the literature which suggests that when organisations embark upon the usage of information and communication technologies in their work routines, it would become incumbent that training sessions are necessary to teach the users of the system on the work around the technological applications (Plesner, Justesen and Glerup, 2018). The output about the training requirements of the users of the AVS system and generated from ATLAS.ti on this finding is produced in Figure 7 below.

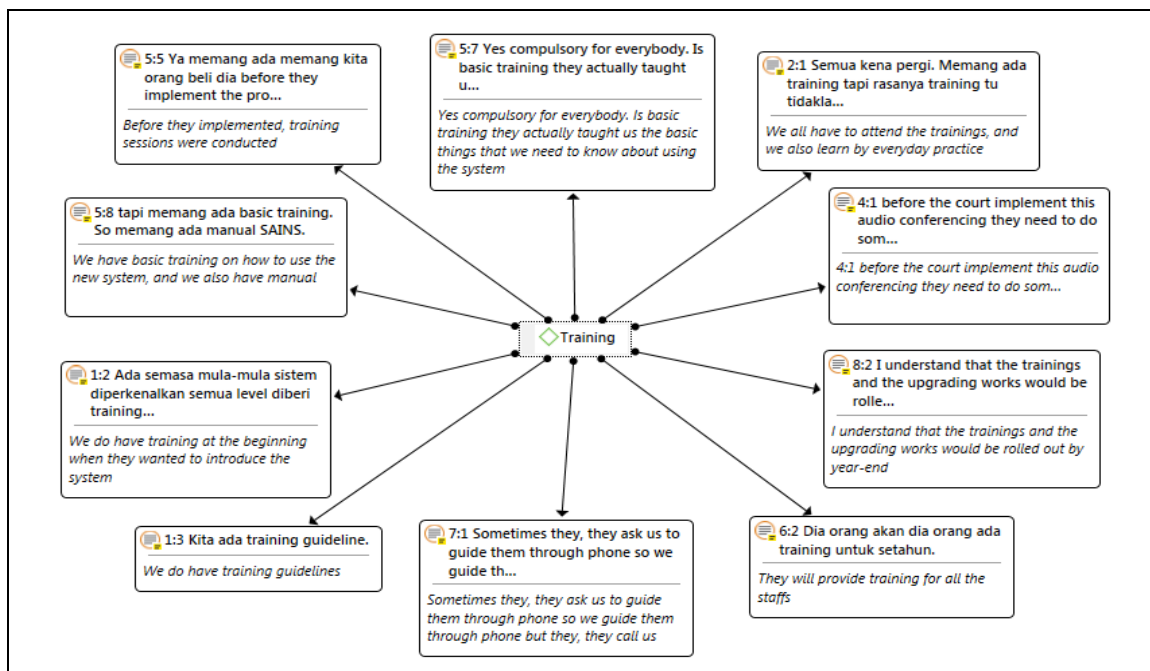


Figure 7 De-skilling and re-skilling of users of the AVS

The findings further indicated that all users involved in the AVS implementation at both courts admitted that they had to undergo some kind of training on how to use the system, which in turn, denoted that they had to de-skill their existing knowledge and re-skill themselves to operate and engage in the proceedings by using the medium of AVS. A respondent explained that:

“We do have some training at the beginning when they wanted to introduce the AVS system” (Judge, Penang)

Another respondent noted that:

“We all have to attend the training, and we also learn by everyday practice” (Court administrative officer, Penang).

A similar response was made by another respondent who stated that:

“Before the court implements this audio conference, they need to carry out training for us”. (Solicitor, Penang)

Similarly, the findings revealed that in the Sabahan courts, the respondents also acknowledged the need for the training which they underwent to prepare themselves to use the AVS system at the courts. Some of the responses from the respondents were as follows:

“Yes, (the training) is compulsory for everybody. It is basic training where they actually taught us the basic things we need to know about using the AVS system” (Judge, Sabah).

“They provide training for all the staffs” (Court administrative officer, Sabah).

“Sometimes they (the users) asked us to guide them through phone, so we guide them through the phone” (IT officer, Sabah).

“I understand that the training and the upgrading works would be rolled out by the year-end” (Solicitor, Sabah).

Hence, the findings seems to indicate that when a new technological application, such as the AVS, being introduced, it would involve the elements of de-skilling upon which court staffs and solicitors would need to unlearn the traditional ways of doing things. At the same time, the users would be required to re-skill, which would require them to learn new things to ensure the smooth implementation of the AVS in the Malaysian courts.

Inadequacy of Legal Framework for AVS

The findings revealed that another drawback of the AVS system is the inadequate legal framework in regulating the use of AVS at both courts in the study. Neither the Rules of the Courts 2012 nor the Criminal Procedure Code adequately provide for the AVS system in the civil as well as the criminal justice systems respectively. The existing rules simply provide for the administrative aspect of court appearances are allowed by the mechanical means. Accordingly, written rules are significant in regulating the use of technologies at the courts. The absence of such rules may lead to incoherent practices and inconsistency in the legal positions in different states (Abdul Ghani, 2006). This output generated from ATLAS.ti on this finding is produced in Figure 8 below.

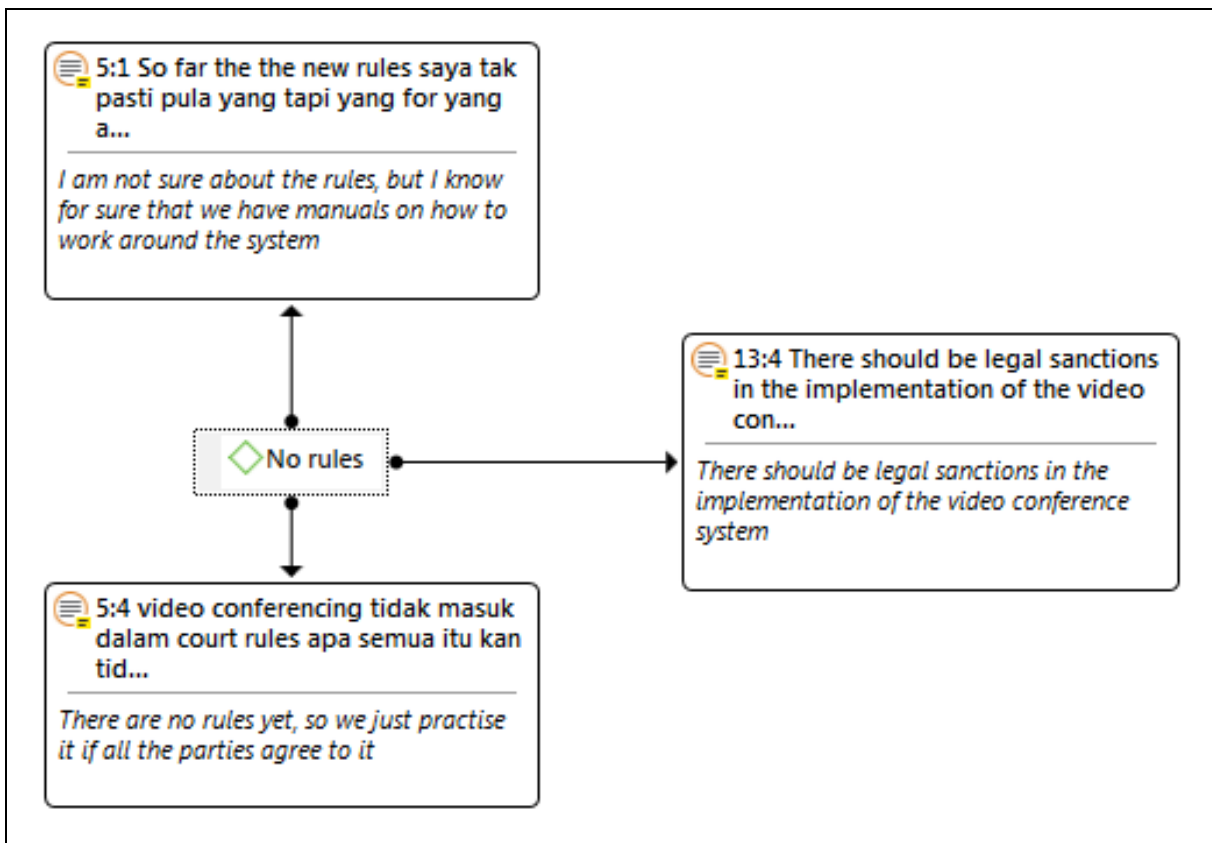


Figure 8 Inadequacy of the legal framework regulating AVS

The findings showed that the present legal provisions are inadequate to regulate the AVS implementation at the Malaysian courts. This matter was remarked by the respondents from both Penang and Sabah below:

“There are no rules yet, so we just practice it if all the parties agree to it” (Judge, Sabah).

In similar vein, another respondent mentioned:

“There should be legal sanctions in the implementation of the video conference system” (Solicitor, Penang).

The findings suggest that specific legal rules need to be in place to properly regulate the implementation of AVS at the courts. Such proper regulation would ensure the systematic practices among the courts in Malaysia, and enhance the legal sanctions for AVS engagement in its entirety.

Conclusion

The study investigated the implementation of the AVS system which was adopted in the Malaysian courts and its impacts on the administration of justice as a whole. It was found that there is huge potential for the Malaysian courts in adopting AVS in solving disputes as it would significantly save time, money and resources. Additionally, the AVS is proven to improve the access to justice for the Malaysians, particularly those in the remote and rural areas. On the other hand, the AVS system was also found to have created some risks such as costs incurred for the installation and maintenance of the technological facilities. Apart from that, training requirements were also needed for the re-skilling of the users of the AVS system. Unlike the UK legal position, the fact that the regulatory framework to govern the use of AVS at the Malaysian courts is inadequate generated the need to bolster such a position, to provide for some legal certainty as well as to mitigate the risks posed by such technology.

The findings have significant implications for various stakeholders. First, given inadequate legal provision to regulate the AVS implementations at the courts, the government should take the necessary measure to address such a legal inadequacy. Second, in light of the usage of AVS at the courts, the judiciary should take active steps to ensure that the inconsistencies in the AVS implementation are reduced and that the AVS are not only facilitating the efficiency of the courts' business but also in promoting the administration of justice at the courts. With this in mind, the judiciary should introduce a comprehensive guideline for the AVS users. In the future, further research could be conducted on the implementation of the AVS at the lower courts in all parts of the country.

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