JUDICIAL INFORMATION AND COMMUNICATION TECHNOLOGY: (THE EXPERIENCE OF INDONESIAN CONSTITUTIONAL COURT)¹

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COURT GOVERNANCE

It is widely recognized that the rapid progress of information and communication technology (ICT) nowadays has unavoidably been affecting many aspects of our modern life. It should also change our way of thinking and working in relation to court governance. However, it seems that most legal experts who work in legal institutions and courts still pay less attention to the benefits of ICT for making good judicial governance. It is not exaggeration to say that most legal scholars are poorly trained in administration and management and as the result they tend to ignore the importance of good judicial governance. As a consequence, it influences the performance of legal institutions and courts in bringing justice to the people.

The efforts to bring justice in current modern life which more complex than before require a more efficient system of governance. Efficiency and effectiveness become an important character of modernity and a prerequisite for development in any fields. The key feature of efficiency is nothing but the utilization of modern ICT services that have been rapidly developed from time to time.

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WHY ICT?

Firstly, ICT has now become an icon of modernity in the governance system for all types and fields of organization, including the court. The research and implementation of ICT has been developing very fast which affect all areas of life almost without exception. The working environment of judiciaries is influenced by the development of ICT, including the crimes in society are also affected and facilitated by modern ICT. Therefore, if the legal institutions and court ignore the ICT services, then surely its governance will be obsolete. In turn, the function of law and court will not be able to compete and control the development of crimes level in society.

Secondly, the development of various types and form of legal documents today is very complex and numerous, so that it can no longer be managed by conventional ways. Although there are new waves of deregulation, debureaucracy and privatization of the management of welfare states as a result of the widespread influence of neoliberalism, the amount of regulations which were originally considered to be limited and even reduced in number, but in practice, it has not been reduced at all. Things that have been changing are not about the amount of regulations, but is about the regulator or the agency that makes those rules. Many things that previously regulated by government agencies, they are now regulated by independent commissions. Also, things which once regulated by the state or government, they are now regulated by non-governmental institutions. In fact, today, there is also another phenomenon of development of ideas and practices of the ‘rule of ethics besides the role of ‘rule of law’ in the society.

Thus, the norms that govern human life are actually not reduced at all. Even it is more in numbers and it becomes more complicated. Social symptoms of the growing number and complexity of normative rules have led to what Richard Susskind described in “The Future of Law” (1990) as ‘hyper-regulated societies’. Therefore, there are no legal experts who are able to grasp all types and various areas of legal information. To cope with this, the only way to manage and to control all the legal information efficiently and effectively is by utilizing modern ICT services.
Thirdly, the development of modern ICT will also consequently change the legal position fundamentally. Law as an instrument of justice is certainly continued to enter the world of modern ICT. Most of the legal documents nowadays are more likely to be managed openly and to be uploaded into the virtual world. Those documents are transformed into a commodity of information in various forms, namely: (1) regulations from the highest level as a state constitution to the lowest level of regulations such as local rules in a village; (2) administrative decisions made by state and government officials; (3) court decisions, arbitration and mediation decisions; or (4) contracts and agreements either in private law or public law. All the four forms of legal documents are commonly uploaded into internet. As a result, legal information has developed becoming just a commodity of information that can be exchanged openly. They can serve as an object of transaction between people without any prerequisite to take any course or training in a school of law.

Certainly, there are many obstacles that shall be encountered if we agree to implement the ideas to install an ICT based legal information system as the above mentioned. The first and the main obstacle is that the mind-set among most legal experts and legal officials has to be changed fundamentally that they have to consider governance aspect has pivotal role and that the key point in the system of judicial governance is the issue of legal information. The second obstacle is that there are only small number of legal experts and officials who are used to live and work with ICT. Based on Indonesian experience, sometimes there are judges who do not want to use mobile phone just because they are afraid of and feel disturbed to receive short message (sms) from parties in litigation.

EXPERIENCE OF THE INDONESIAN CONSTITUTIONAL COURT

When we began to establish a new Constitutional Court in Indonesia where I was entrusted to be the first Chief Justice (2003-2008), one of our missions was to create a new modern and trustfull court. For the purpose, we tried to install and implement ICT
system for the governing of the court. The implementation of ICT consists of the systems of information and communication, both for the governance of general administration and judicial administration related to the case management. Some of ICT systems that have been implemented by the Indonesian Constitutional Court, among others, are:

1. Management of information and database

   In the Court, documents consist of two categories of public and confidential ones. All categories of information regarding the court procedures, cases in examination, court schedules, minutes of open sessions, court decisions, profile of judges and other court officials, court organizational structure, financial reports, employees, and others are open for public, and are transparently published on the website (www.mahkamahkonstitusi.go.id). Meanwhile, the documents related to internal use are treated confidential that can only be accessed by judges and the registrars or Clerks by using special password.

2. Center of Information of Law and Regulations

   The Constitutional Court has Center of Information related with laws, regulations, reference of court decisions and special online library. This Center of Information is free of charge and open for public. In examining the cases, all judges and the clerks may access this Center as a source of references. Unfortunately, not all judges are good in English or other foreign languages. Therefore, some of e-papers and e-books written in English, which are available and easily accessible via internet, could not be used properly.

3. Collection of reference materials

   Based on the order from the Chief Justice, the judge assistants search and collect the newest e-book and e-paper related to the matter of cases which are being
examined. Once assessed by the Chief Justice, a collection of paper or specific chapter of a book which is considered important will be codified in the form of a journal that can be used for internal purposes as a material to discuss a case in deliberative meeting of judges. Thus, judges may always follow the development of scientific thought about a specific matter related to a case under review by the Constitutional Court.

4. Archival administration

One of administrative works that receives less attention in judiciary or court is filling system. In the experience of the Indonesian Constitutional Court, all cases documents that have become archives are stored digitally as soft files in the form of chips and compact disk (CD). Meanwhile, the documents in form of hard copy are stored properly at the Indonesian National Archives. Thus, the Constitutional Court does not have to store all the case documents in its own office which will need a huge space and extra energy just to manage the archive of case documents.

5. Court Rulings

Administrative decisions as well as court rulings are immediately and openly published on the website of Constitutional Court no later than 15 minutes after the decision was announced. On the next day, the order together with the legal argument of the rulings is published on at least 5 national newspaper. In addition, summary of the rulings of the Court in English version are sent to the Venice Commission (European Union) to be published on its website, so people from around the world can also access and read the Indonesian Constitutional Court’s rulings. Thus, all decisions of the Indonesian Constitutional Court can be easily and freely accessed by anyone from anywhere and on anytime.

Every ruling of the Court and its attachments are always distributed by the head of registrar in person to any litigants who are present right after the last plenary session is closed by the Chief Justice. This system can be used as a model and an
effort to prevent bad practices in which the full decisions are sometimes being typed after the Court reading the decisions. Such a bad practice may manipulate the editorial decisions that have been written and typed after the official rulings pronounced publicly.

6. Case Registration

The applicants as justice seekers are provided with free alternatives to register their case by conventional way or through online system by completing the form that has been provided and uploading all necessary documents that can support their application. Thus, the process of case registration can be done in a simple, easy, fast, and inexpensive way. Meanwhile, the documents used as evidence that cannot be submitted online, it can be given directly to the Justice in the first session of hearing before the Court. Unfortunately, this online registration system is not utilized optimally and properly by the justice seekers until today. Most of the applicants who live in various regions of Indonesia prefer to come in person to Jakarta where the Constitutional Court located, instead of using the online facility that we have provided.

7. Live video-streaming Session

All hearings, both in panel and plenary sessions, are open to public. All activities during the hearing are directly aired online via live-streaming on court website and the court-TV facilities. For certain cases that attract public attention, both private of public television are allowed to record or to live broadcast of all the activities during the court hearings, because the hearing is officially open to the public. Due to the cases examined by the Constitutional Court do not deal with personal interest, but rather deals with public interest, then broadcasting the hearings by national television or through live video-streaming are considered that it will not detrimental the interest of an individual people, so it is deemed to have a justification to continue this practice by the Indonesian Constitutional Court.
8. Examination through Video Conference

The Constitutional Court has been implementing the mechanism of examinations and hearings through video conference since 2004. Initially, the use of video conference was criticized by some parties as well asked its legal basis by the lawyers who were handling the cases. But today the practice of this ‘long distance hearing’ has been developed and it is appreciated by public. This facility is often used to hear a testimony from the witnesses and an opinion by the experts. Moreover, the applicants who live in varied regions across Indonesia can use these facilities which have been installed in 39 different Law Faculties in all provinces of Indonesia. The Constitutional Court has ever asked experts from various universities, from other countries, and from international organizations such as United Nations (UN) to deliver their opinion about the main issue of the cases that were being examined by the Constitutional Court.

9. Deliberative meeting of Judges

Deliberative meetings of Justice sometimes cannot be attended by all the Justices. Based on the Constitutional Court Act, deliberative meeting is only allowed to take a final decision regarding the case if the meeting is attended by at least seven Justices. In practice, however, although some of Justices cannot be physically present in the deliberative meeting due to an important reason, they can always be asked to give their opinion regarding any issues that require a joint decision, including for making decision of a case, by telephone, video-conference or ‘skype’, text message (SMS/short message service) and ‘Blackberry Messenger’ (BBM). Thus, all judges are mostly considered to be present and participate in a decision-making process in every deliberative meeting of Justices. Physical presence of the judges is considered absolute only in a plenary session that requires at least seven of nine Justices to present in the session.
GLOBAL NETWORK OF LEGAL INFORMATION AND COMMUNICATION SYSTEM

The phenomenon of modern ICT in court is relatively something new for most countries, but in practice it can no longer be avoided. It can be argued that the use of ICT into the court system today is necessary. Therefore, among the highest courts in different countries, it is important to develop a network of cooperation, so they can learn and support one another. Moreover, implementation of modern ICT can positively impact to the systemic integration among countries in the world.

Given the fact that law develop continuously and becomes commodity of information, modern ICT can bring legal information system into global integration which can be communicated in an open access, easy, fast and inexpensive from all over the world. Thus, the need to develop an integrated system of information and global communication will be unavoidable. In this regard, it needs an international initiative for cooperation between Supreme Courts and Constitutional Courts in all countries in order to build one system of legal information and communication of courts.

The U.S. Library of Congress has initiated the development of ‘GLIN’ (Global Legal Information Network) which can be used to build an integrated system of legal information in the entire world. Since the working mechanism of ICT is very neutral, so there should be no objection to all parties and public institutions, business communities as well as state institutions to be voluntary integrate into existing system of GLIN. Using such a practical and pragmatic attitude, the development of a global legal information and communication system can be realized without unnecessary reinvention of the wheel. With an integrated system of legal information and communication, every country can learn from other countries in building and developing the global system and the national system more freely and openly by balancing the ability to create equitable justice and law and order.
Of course, as the above-mentioned, instead of using the GLIN, we can also choose the alternative of establishing a new Global Court Information Network (GCIN). The idea is reasonable enough to consider, because the scope of GLIN is too broad, covering every kinds of informations, and is closely attached to politics in the Congress. Besides, the judicial system has also its own complexity that it requires a more specific legal information network related to the court working system that it is also rational to consider a more special networking of information system among the world’s judicial institutions.

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