

THE RAMIFICATION OF TECHNOLOGY INITIATIVES IN SYARIAH COURTS

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Abstract: *Case settlement suffered hindrance due to legal technicalities and legal jurisdictions in the Syariah Courts. Thus, technology initiatives were inculcated as administrative reforms in upgrading the quality of services of Syariah Courts in all states. This paper explores these technology initiatives in reducing a backlog of cases by improving and standardizing record management system in the Syariah Courts. A qualitative legal interpretive method was used which focused on the understanding of the contextually reported binding precedents with the review on relevant statutes. The paper concluded with an overview of the ramification of technology initiatives in lieu of legal jurisdictions that are best suited for better adjudication in terms of providing fair and adequate justice to the parties.*

Keywords: *Technology Initiatives, Legal Jurisdictions, Record Management, Syariah Courts, Syariah Laws.*

Introduction

Impasse and friction in the Syariah Courts caused exacerbation to parties in the courts which created further legal quandary. Basically these were due to the lack of standardization in the record management system in the Syariah Courts among states. These settings increased pressure on the courts of law to achieve faster and reliable service of justice with consistent and fair verdict. This paper explores the ramification of technology initiatives installed in the Syariah Courts in improving and standardizing record management system to reduce backlog of cases.

A pertinent platform for management of court records is needed for the integration of Syariah Courts in all states in Malaysia. The most significant purpose of inculcation of technology initiatives in Syariah Courts under the Multimedia Super Corridor (MSC) flagship, referring to Wan, M. S. W. S. & Haider, A. (2012), is e-government initiatives that applied technology initiatives. As a result, e-Syariah was introduced in Syariah Courts in April 2002, followed by

e-Syariah Portal. These were earlier step stones in implementing administrative reforms for purpose of upgrading the quality of services in all Syariah Courts.

This paper concluded with overview of ramification of technology initiatives in providing best suited adjudication avenue amidst states' legal jurisdictions all in the search for fair justice to the parties.

Literature Review

Piling Up of Arrears of Syariah Cases

Previously, piling up of arrears of syariah cases occurred throughout the country resulted from discrepancy in the administration and functioning of Syariah Courts. Decisions by the courts were affected as well even though the main muddle literally being the rate of progress in the workflow of the courts. Society evades from referring their cases to the Syariah Courts. Wan, M. S. W. S. & Haider, A. (2012) stressed that the most significant reason was the inaccessible of finalized details relating to the case when required. As a result, e-Syariah was introduced under e-government in the Multimedia Super Corridor (MSC) flagship, with Syariah Courts as the pilot for e-Syariah project.

Malaysian Twofold Legal Systems

Malaysian twofold legal systems are based on both English common law and Islamic law. Civil Courts have jurisdiction over the majority of laws except the matters concerning Islamic family law. Syariah Courts which are established and regulated by the states have jurisdiction over Islamic family law matters and applies only to Muslims. These generate more problems in the enforcement of laws because the division of jurisdictions between the Civil Courts and Syariah Courts were not strictly applied at times, and most of the times overlapping with one another. In an attempt to steer clear from encroaching in each other sovereignty, it somehow caused controversial and debatable issues.

A significant amendment in 1988 in the Federal Constitution 1957 installed Article 121(1A) which distinctly stated that the Civil Courts have no jurisdiction in matters that fall within the Syariah Courts jurisdiction. The prime key of the amendment in Article 121(1A) was in many ways to avoid in the future any conflict between the decisions of the Syariah Courts and the Civil Courts. Nonetheless, Ahmad Mohamed Ibrahim (1989) purported that it appeared to have caused even more confusion, uncertainty and conflict. Albeit the Federal Constitution 1957 being the supreme law of Malaysia, the conflict of jurisdiction concerning Syariah and Civil Courts are not completely resolved.

Islamic law applies only to Muslim citizens and the power to legislate these matters lies with each state legislature and state Sultan. There are 14 different sets of Islamic laws in Malaysia. In 1984, the Federal Parliament enacted the Islamic Family Law (Federal Territories) Act 1984 (Act 303) for the Federal Territories that was designed to be a model law for the other states. Many of the states have adopted slightly altered versions of this model. Syariah law, therefore, varies from state to state.

In addition, the Federal Constitution clearly designates the separation of power between the Federal and State government. List 1 of Schedule 9 of the Federal Constitution 1957 provides that all matters of civil and criminal law and legal administration fall under the Federal's list.

List 2 on the other hand, provides that Islamic law matters are vested to State governments. As a result, Civil and Syariah Courts become separate independent entities with their own specific jurisdiction as provided by Article 121(1A) of the Federal Constitution 1957. Numerous mediums were inculcated to avoid encroachment by the State laws on the legislative domain of the Federal, or vice versa. Technology initiatives is as one of them.

Keeping Up With the Pace of Technology Advancement

Even though technology relating to records management is improving at rapid pace, court processes and laws are not keeping up with the pace of technology advancement (Wan, M. S. W. S. & Haider, A., 2012). Mostly based on legal predicament, Syariah Courts are not only subjected to the Federal, but also the State and syariah law as well as conform to the guidelines provided by the Ministry of Justice and ISO (International Standards Organization) Regulations. Conflict in practice arose due to the nature and focus of these legislations and the required multi-guidelines.

Different circumstances require different modus operandi and preferences. The courts are given choices to decide the process or procedure best suited them. For instance, in respect of ascertaining legality and validity, some courts prefer the paper-based records (paper version) as the most valid evidence instead of electronic records. On that account, there is no electronic records recorded in the system for future references and this evaded the standardization purposes.

Another instance is documents relating to a case, such as “submission notes”. “Submission notes” are documents intended for the court which summarizes the relevant facts, the law and a proposed analysis on behalf of litigants. “Submission notes” are only kept on physical files, not updated and stored in the electronic system. Thus it only serves as quick retrieval point and not a complete case file.

In a different glance, the form of saving legal documents exposes court records to risks of manipulation. Some of the documents are saved in pdf. format, while others are saved as Microsoft Word documents. In either forms, electronic records can only be regarded as back up or reference point, not as valid official record.

Ethical Standards in the Digital Age

Reamer, F. G. (2017) posits that throughout the years, ethical standards in all fields have matured significantly. Therefore, it is pertinent that legal aspects followed the digital development of conceptual frameworks and protocols. Social workers’ increasing use of digital technology poses novel and unprecedented ethical challenges pertaining to privacy, confidentiality, informed consent, professional boundaries, conflicts of interest, documentation, client abandonment, and professionalism, among others.

Legal Analysis and Framework

Role of Technology Initiatives

The development of technology initiatives usage is prominent within the Malaysian judicial system concerning both the judiciary and court administrators. In essence, they both play a pivotal role in the future direction of the legal system of Malaysia as the world now circulating around technology designs and constructions. Technology initiatives is here to stay and it is of utmost importance that the judiciary and the administrators of justice realize

the role and use of technology initiatives as a multidimensional tool in the effective and efficient administration of justice (Jashpal Kaur Bhatt, 2005).

Syariah Courts

Syariah Courts are managed by each state therefore the state governs its own management. Accordingly, each Syariah Court in Malaysia has distinctive work-flows processes which are different from its other counterparts even though the general dealings are similar. The inconsistency is the fact that Syariah Courts in different states manage similar tasks in different ways. This creates divergence in certain legal aspects.

Consequently, this contributed to the lack of standardization of technologies tools as well as different sets of forms, formats, and write-ups. States do not use standardized record books and case classification numbers. There are many instances of case overlapping (where same cases have been registered in more than one jurisdiction) especially in cases of child custody, divorce, marriage and inheritance where they were filed and registered in different state courts. At most times, these were done deliberately and intentionally for purpose of gaining different judgment. The parties are fiddling with the loopholes in the system to their personal interest.

The Four Sects of Islamic Thought

The cardinal sources of Islamic law are Al-Quran, Hadith and the tradition of the Prophet Muhammad SAW. Schools of Islamic thoughts were founded considerably after the death of the Prophet Muhammad SAW and emerged during the time of the Umayyid Caliphate.

The four major schools of Sunni Islamic legal reasoning and repositories of positive law applicable in Malaysia are Shafie, Hanafi, Maliki and Hanbali. Moreover, these four sects of Islamic thought utilizes qiyas (analogical reasoning) as a method of legal reasoning, ra'y (personal opinion) and istihsan, commonly known as juristic preference, which, in some circumstances, can operate to ameliorate harsh consequences that might otherwise flow from strict legal reasoning, and which is believed by some to be based on principles of equity as interpreted by the jurist (Vejerano, 2010, Ibrahim Ihsan Samad, 2008, Ahmad Rafieuddin, 2008, Mahamassani, S., 2000).

Islamic jurisprudence was interpreted in different ways according to the sects. In reaching the verdict, jurists interpret the Al-Quran and the tradition of Prophet according to their sect taking into consideration other factors such as conscience, culture, welfare of parties and ijtihad (reinterpretation of Islamic law according to prevailing circumstances). As a result, similar cases had been decided differently across the globe, and they are recorded in different places.

Consequently different verdicts have been passed in similar cases in different parts of the world. Due to the disparities in the way states Syariah Courts are being administered, the overall paradigm faces issues relating to data quality, lack of interoperability and information integration.

Thus the major challenge for e- Syariah project is to introduce standardization of process, practice, technology and strategy. E- Syariah initiative has made attempts to streamline work processes in Syariah Courts by categorizing cases for example divorce, child custody, inheritance and crime offences. Each case is treated uniquely to avoid overlapping of cases.

Efficient Service Delivery

In court administration, the large quantity of records and lack of human resource gives the utmost challenge to the court officials to handle case management effectively (Hamzah 2010). Given such a situation, the need for effective records management system is mounting. There is also a pressing need for a clear definition of legal framework (Johare 2007).

Moreover, the increase demands of the public need to be catered to. Any shortcomings resulted from the poor management in public service delivery may lead to the question of integrity of public sector, as well as the issue of survival, respect and vigor as a nation (Wan, M. S. W. S. & Haider, A. 2012).

Technology Initiatives in Syariah Courts

Syariah Courts are constitutionally state courts where the courts are created and regulated by each state laws and under the responsibility of the state authorities. Following this, various technology initiatives were introduced in Malaysia since early 2000 for reasons of:-

- a. maintaining the flow of information from government to citizen and from citizen to government. Under the Multimedia Super Corridor (MSC) flagship, e-Syariah became one of the pilot project.
- b. creating a one-stop center where the Syariah Judiciary Department of Malaysia is responsible for all affairs relating to syariah law enforcement.
- c. integrating records with other departments such as the police, immigration, customs, home ministry and other related departments in identifying potential hazards.
- d. allowing access for Syariah Courts in all states to avoid posing different interpretation or different sources of syariah law (Wan, M. S. W. S. & Haider, A., 2012).
- e. standardizing and stabilizing the work processes and procedures in all Syariah Courts.

Further, an electronic network and communication between all Syariah Courts was established nationwide using the electronic government network called EG*Net (e-Syariah Implementation Synopsis, 2005). Wan, M. S. W. S. & Haider, A. (2012) stated that the technologies purported in Syariah Courts consist of five modules as follows:

- 1) Syariah Court Case Management System, which is an integrated case management system developed fully to accommodate the needs of syariah case management in all Syariah Courts covering states and district.
- 2) Case Files, where cases are provided with a unique case classification number according to the Practice Direction No 1 Year 2000. However, hard copies with paper documents are also being used for legal purposes. It is the legal requirement that hard copy records being maintained for legal reasons, since official seal need to appear on all papers. For example, documents to be officially sealed on paper and manually

signed. At the moment, the relevant laws are being reviewed so as to implement electronic seals. In addition, the laws relating to risk of manipulation of electronic records are also being examined by States and Federal government committees. In the meantime, the courts would use electronic records.

- 3) Syariah Lawyers Management System, which is a system that provides facilities for the registration of new applications or renewal of practicing certificates for Syarie lawyers. It also serves in maintaining a database containing details of registered practicing Syarie lawyers to facilitate coordination by the authorities for better monitoring.
- 4) Office Automation, which is a system that provides facilities such as word processing, spreadsheets and graphic presentations to improve productivity in the office operations of the Syariah Courts. Judges, registrars, and staff are provided with internet and email facility. Schedules for case hearing can be sent to all syariah judges through email.
- 5) Library Management System, a web-based library management system that allows users to conduct electronic searches, borrowing and returning of books and other materials. The catalog of library materials available at the Syariah Judiciary Department of Malaysia Library and the State Syariah Libraries is accessible for bookings and loans to judges and registrars.
- 6) E-Syariah Portal, a portal serves as an information gateway to provide the public and staff of the Syariah Courts with the latest news on court procedures and regulations. Serves as one-stop center for the public to post enquiries online to the courts about Islamic law and its administration (Shariah Judiciary Department of Malaysia, 2006).

The implementation of e-Syariah Portal has opened up new avenue to reform government operations in adopting a customer-focused approach via online service. This and the other four modules improved the record management system in spite of legal jurisdictions and legal interpretation of Islamic jurisprudence.

Table 1: Dimensions of Pre and Post E-Syariah Implementation

No	Dimensions	Pre-implementation	Post-implementation
1	Settlement of case	Less efficient as it took lengthy time to settle a case	65% of cases are settled less than a year
2.	Coordination of time	No time coordination.	Registration of a new case takes approximately 2 minutes

3.	Overlapping of case	Cases of overlapping could not be easily traced	Automatic traced cases of overlapping
4.	Delayed case	No reminder about case delayed	Automatic reminder of case delayed
5.	Case backlog	Difficulty in managing, verifying and checking the case status manually.	No more backlog of cases
6.	Process	Different work process among states caused difficulty	standardize court procedures and work processes
7.	Integration with agencies	None	System is integrated
8.	One-stop centre	different departments dealing with a court case	One-stop centre
9.	Retrieval of old records	Customers had to contact the registrar or store keeper to retrieve records	Records are available

Source: Wan, M. S. W. S. & Haider, A. (2012)

Today the technology initiatives is essential in saving time, manpower and cost, and in implementing cases, administrative management and strategies within the judicial services. The legal office environment has embraced technology initiatives not just to save costs and time but also to give firms a competitive edge and ensuring security as well. The need for technology initiatives will thus involve a discussion of the current problems plaguing the judicial system in Malaysia and a consideration of current judicial practices and trends elsewhere in the world. Jashpal Kaur Bhatt (2005) posited that as Malaysia has inherited the common law system of the British, it will come as no surprise to find that we are facing similar issues and problems in the context of our own judicial system

Conclusion

Technology initiatives have ramified significant benefits to Syariah Courts. These initiatives allow Syariah Courts to unlocked new avenues for court work-flow and work progress as well as records management, which also hinge upon a few administrative issues. Prominent attempts in standardizing courts procedures throughout all Syariah Courts in Malaysia, which is difficult considering Syariah Courts are established and regulated by different states. Prime advantages and benefits of electronic records are the ability to trace particular record, locating materials relating to a particular points of law and retrieve information relating to a particular case.

Syariah cases are under the states' enactments which are different between states. Similar cases bore different judgements because of various ways of interpreting Islamic jurisprudence. Technology initiatives could provide paths to consolidate interpretations as

further nourishment to aid the current hitch. Hence, technology initiatives should be enhanced and boosted in lieu of legal reasoning and interpretations that are best suited to identify and respond to cases. The quest to improve the court's service delivery is an important agenda. Courts of law depend on information that is fast, accessible, extensive and inclusive in procuring a fair justice.

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