
**JURISDICTIONAL CONFLICTS IN FACING COVID-19 PANDEMIC: AN ANALYSIS OF
HIBAH CASES IN NEGERI SEMBILAN SYARIAH COURTS**

ⁱ Amylia Fuziana Azmi, ⁱ Nik Salida Suhaila Nik Saleh, ⁱ Mohamad Zaharuddin Zakaria³

ⁱ Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai

* (Corresponding author) e-mail: amyli2597@gmail.com

ABSTRACT

In 2020, statistic reveals that a total number of 30 *hibah* cases have been registered in the Negeri Sembilan Syariah Courts. Interestingly, the total number of cases registered this year has decreased as compared to 51 cases for the previous year. This study analyses on the jurisdictions of the Syariah Courts in deciding *hibah* cases in Negeri Sembilan by taking into a consideration the recent outbreak of Covid-19. This study investigates the impacts of the Covid-19 pandemic on the number of *hibah* cases brought before the Syariah Courts in the state of Negeri Sembilan. For this purpose, this study applies a doctrinal legal approach where the data collection is based on a library-based research and the statistical data collected from Negeri Sembilan Syariah Courts. Analysis was done on several important cases concerning the jurisdiction of the courts. This study discovers that the Covid-19 pandemic has an effect on the number of registered and resolved cases pertaining to *hibah* in Negeri Sembilan Syariah Courts. This study recommends that electronic method such as e-proceeding to be fully implemented so as to enable the public to access the court easily. It is hoped that findings of this study will shed light on the issue of jurisdictions concerning *hibah* and beneficial in providing clear and precise information on the jurisdiction of the Syariah Courts in deciding *hibah* matters.

Keywords: *hibah, jurisdiction, online, pandemic, Syariah Courts.*

Introduction

Studies have shown several factors that contribute to the increasing number of frozen assets in Malaysia. Therefore, *hibah* is proposed as an alternative method in distributing wealth in addition to other existing methods. Islam encourages the practice of giving *hibah* based on the relevant authorities according to Al-Quran and As-Sunnah. Thus far, Malaysia has yet to introduce a specific law pertaining to *hibah*. Though the absence of a specific *hibah* law has been addressed by many researchers, this law is yet to be introduced in Malaysia as compared to several laws related to *wasiat*, *zakat* and *wakaf* instruments which have been established in some states. Due to this limitation, there are numerous disputes among heirs and related parties concerning *hibah*. This absence of law has caused a jurisdictional problem as there is a conflict of jurisdiction between the Syariah and Civil Courts. Understandably, under List II of the Ninth Schedule of Malaysian Federal Constitution, gift or *hibah* is listed under the jurisdiction of a state, which belongs to the jurisdiction of the Syariah Courts (Kamarudin & Nor Muhammad, 2018). However, previous research has observed that there is a conflict of jurisdiction between Civil and Syariah Court when dealing with *hibah* matters (Abdul Rashid & Yaakob 2010; Mujani et al., 2011). Therefore, something must be done to transform the understanding of the instrument of *hibah* among the Muslims through effective legislation and enforcement of law.

It is crucial to highlight that Covid-19 has affected many daily and official activities in Malaysia including those at court premises. The Malaysian government has taken some necessary steps in preventing the Covid-19 outbreak from getting any worse. Due to the implementation of Movement Control Order (MCO) on March 18, the usual court operation was suspended, and this has since been conducted online. Covid-19 has also affected the number of registered and resolved cases since all courts are required to adjourn their operations. It was reported by Bernama on Tuesday, 5 May 2020, that the Syariah Courts throughout Negeri Sembilan resumed their operations in stages from 5th to 12th May. However, the operations of all Syariah Courts in Negeri Sembilan are in line with the Conditional Movement Control Order (CMCO) by strictly complying with the stipulated Standard Operating Procedure (SOP), which are limited to certain cases and time. This paper provides some recommendations for resolving the jurisdictional issues in deciding *hibah* matters particularly in facing the outbreak of Covid-19.

Hibah and Its Pillars

Ibn Manzur (2006) defined *hibah* as giving away the property without anything in return and without any specific motive. Further, *hibah* is defined as a contract to transfer ownership of existent and deliverable property between living individuals willingly without any consideration in return whereby the intention and the execution of doing it must be made clearly in the contract language (Al-Zuhayli, 2003). Meanwhile, Muda (2008) defined *hibah* according to the Islamic term as a contract (*aqad*) that entails granting ownership of a property to someone else during the lifetime without any reprisal (*iwad*). This study concludes *hibah* as an act that involves two parties, in which, one party wishes to give away something to the other party freely, or without any consideration in return by the other party.

To simply put, this process is done without any element of force and without asking for anything in return. It is interesting to note that in order to form a valid *hibah*, there are four main pillars that must be fulfilled as mentioned by several researchers in their studies (see for example Muda, 2008; Mohd. Yusof & Ahmad, 2013; Azhar et al., 2014; Zakaria et al., 2017; Azhar & Md. Nor 2019). The pillars to form a valid *hibah* consists of the donor of *hibah* (al-wahib), the donee of *hibah* (al-mauhub lahu), the subject matter for *hibah* (al-mauhub) and the contract of *hibah* (*aqad ijab wa qabul*).

Syariah Courts and Its Jurisdictional Issues

According to Shuaib (2012), Syariah Courts have been established in every state to adjudicate matters pertaining to Islam as granted by the Constitution. The author also viewed that a constitutional amendment of Article 121 (1A) has empowered Syariah Courts in achieving greater autonomy to eliminate the power of Civil Courts to interfere in their jurisdictions. Further, Shuaib et al. (2017) viewed that Malaysia has 14 Syariah Courts system as the Syariah laws and courts differ from one state to another. Based on the amendment to Article 121 (1A) of Federal Constitution in 1988, Article 121 (1A) declares that Syariah Courts have an exclusive jurisdiction to listen to Islamic matters involving Muslims. Thus, Syariah Courts have been given the rights to handle disputes pertaining to Islam and Civil Courts are no longer allowed to interfere with matters listed under the jurisdiction of Syariah Courts. Ibrahim (2000) viewed that the idea of separation of jurisdiction is meant for the purpose of resolving the conflicts of jurisdiction between Syariah and Civil Courts in Malaysia.

It is interesting to note that Article 4 of the Federal Constitution upholds the position of Federal Constitution as the main reference for every citizen in Malaysia. In addition, Article 4 of the Federal Constitution also declares that any law passed after the Independence Day which is inconsistent with the Constitution shall be declared void to the extent of its inconsistency. Further, Article 74 (2) of the Federal Constitution gives power to the State Legislative Assembly to enact its own law pertaining to Islamic matters. Understandably, *hibah* falls within the purview of Islamic matters as it is listed under List II of the Ninth Schedule of Federal Constitution. Therefore, *hibah* falls within the jurisdiction of Syariah Courts. Since Islamic law matters fall within the jurisdictions of the state, each state must come out with their own enactment. To date, *hibah* has no specific law and it is referred to certain provisions from several statutes in Malaysia, namely the Federal Constitution, Administration of Islamic Law Enactments from each state, the Administration of Islamic Law and (Federal Territories) Act, Syariah Court Enactment, Islamic Financial Services Act 2013, National Land Code 1965, Contracts Act 1950 and Civil Law Act 1956.

Although Article 121 (1A) of the Federal Constitution has made it clear that Syariah Courts have an exclusive power and jurisdiction without any interference from Civil Courts, the disputes on the jurisdictions between Syariah and Civil Courts are still unending (see for example, Muhammad Serji, 2017; Nor Muhamad et al. 2019). In fact, there are cases where Syariah Court judges have denied their jurisdiction to listen to cases pertaining to *hibah* (Nor Muhammad, 2008). Che Pa et al. (2016) viewed that the amendment of Article 121 (1A) supposedly should have resolved the conflict of jurisdictions between Syariah and Civil Courts. Thus, the researchers were in the opinion that there should be no further questions whenever it pertains to the jurisdiction of the court involving Muslims in relation to the 26 matters mentioned in the Constitution. Based on the research conducted, however, these jurisdictional conflicts remain unsolved due to the absence of a specific law pertaining to *hibah*. Moreover, *hibah* has been used widely in banking institutions and insurance companies.

Hassan and Mohamad Zaizi (2020) discussed the issues relating to conflicts of jurisdiction, i.e. whether *hibah* should be challenged under Syariah or Civil Court in their research. In addition, the researchers also suggested that the existing legislation, which is observed as not in accordance with the Islamic principles, must be re-evaluated. The issue of conflict of jurisdiction concerning *hibah* can be further understood by referring to the landmark case of *Latifah Mat Zin v. Rosmawati Sharibun & Anor*, where the Court of Appeal held that the Syariah Court shall have the jurisdiction to decide matters regarding *hibah* involving Muslims and denied the jurisdiction of the Civil Court over the disputes based on the reference to Article 121 (1A) of the Federal Constitution. This case went to the Federal Court and the Federal Court judge upheld the decision of its lower court on the exclusive jurisdiction of the Syariah Court. As of now, the jurisdictions of Syariah Courts are only limited to determine the status of the validity of *hibah*, the rate of *hibah* and the withdrawal of *hibah*.

Research Methodology

The present study is categorised as a qualitative type of research work. It applies a doctrinal approach

that seeks to identify and analyse the number of registered and resolved *hibah* cases in the Syariah Courts focusing on the state of Negeri Sembilan. In accomplishing this research objective, the data collection involved the primary and secondary sources. In this paper, the primary data collection sources include Al-Quran, *hadith*, constitution, case law, treaties, and statutory provisions. It is important to highlight that the Federal Constitution and the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003 are the main statutes that becomes primary sources in this research. Meanwhile, secondary data collection sources include journal articles, newspapers, textbooks, seminar papers and dictionaries which were also referred to in order to keep up with the latest information relevant to this topic. The dependant variable in this research is the increasing number of unsolved *hibah* cases in Negeri Sembilan Syariah Courts whereas the independent variables are the outbreak of Covid-19 pandemic, the absence of a specific *hibah* law and the lack of awareness among Muslims about *hibah*.

Novel Coronavirus (Covid-19) and Its Impacts on the Courts in Malaysia

Malaysia is one of the countries affected by the global Coronavirus (Covid-19) pandemic. Due to the outbreak of Covid-19 recently, the government of Malaysia declared the Movement Control Order (MCO) to prevent the outbreak. In more specific, MCO was implemented effectively on 18 March 2020 to curb the spread of the Covid-19 pandemic under the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967. In his study, Hussain (2020) discovered that social distancing is required to be practiced by people to ensure the spread of virus could be stopped efficiently. Thus, many steps were taken by the Malaysian government to break the Covid-19 pandemic which include social distancing, the usage of face masks, hand sanitisers and many more preventive measures. Many countries across the globe are also grappling with the impacts of Covid-19 pandemic. According to Inayah and Surisman (2020), the Covid-19 pandemic has forced many businessowners to stop their operations in Indonesia. Meanwhile, Mardiansyah (2020) observed that Covid-19 outbreak has a huge impacts on all human lives and activities. For example, the governments ruled out that students and workers study and work from home as an effort to halt the spread of Covid-19.

As of 16 September 2020, the Ministry of Health reported that the total number of cases in Malaysia was 10031, with 9235 cases of recovery and discharge, 668 active cases and 128 deaths. Thus, this research is important as it aims to analyse and observe the successful number of resolved *hibah* cases in Negeri Sembilan Syariah Courts during Covid-19 period. Due to the execution of MCO in Malaysia, all court premises were closed and hearings fixed during the MCO period had been adjourned. Like any other premises, court matters have been conducted through online platforms. In order to monitor the operation of the proceedings conducted online, guidelines were issued by the Chief Registrar of the Federal Court of Malaysia on how court matters are to be handled using online e-Filing system. It is important to note that adequate measures have been taken by the judiciary to ensure that the public continue to have access to justice during the pandemic period.

Results and Discussion

Total cases Year	2018	2019	2020
Total number of <i>hibah</i> cases registered in Negeri Sembilan Syariah Courts	30	51	30
Total number of <i>hibah</i> cases resolved in Negeri Sembilan Syariah Courts	25	43	18

*Statistic from Negeri Sembilan Syariah Courts.

The table presents the number of registered *hibah* cases and resolved cases between 2018 and September 2020. In 2018, the number of *hibah* cases registered was 30, with 25 cases registered as being resolved by the courts. Thus, 83% of the cases were successfully resolved by the courts. In the following year, 2019, the number of registered *hibah* cases increased to 51 cases, out of which, 43 cases were resolved by the courts. This contributed to 84% of the cases which have been successfully resolved by the courts. In the current year, the number of *hibah* cases registered has decreased to 30 as compared to 51 cases registered last year. In fact, the number of *hibah* cases resolved was 18, which contributed to only 60% of cases that have been resolved by the courts.

Based on the above statistic, the total percentage of *hibah* cases registered and resolved in 2020 has decreased as compared to the previous years. The outbreak of Covid-19 pandemic has affected the operation of court premises. Thus, this study recommends a few methods to be enhanced by the judiciary particularly by the Syariah Courts in Negeri Sembilan. Similarly, the introduction and application of a specific *hibah* law must be established to facilitate the jurisdictional issues relating to *hibah* in the Syariah Courts. The existence of this specific law would solve the conflict of jurisdictions as between the Syariah and Civil Courts in Malaysia. This must be done immediately to prevent any unforeseeable conflicts in the future.

Conclusion and Recommendations

The growth of *hibah* products in Malaysia has been tremendous in the recent years. *Hibah* has been promoted by many agencies to facilitate the needs of Malaysian Muslims in managing their assets and properties. Generally, it is understood that Syariah Courts have an exclusive jurisdiction to decide on matters pertaining to Islam, including *hibah* as it is listed among the 26 matters in the Federal Constitution. However, the absence of a specific *hibah* law has led to a number of jurisdictional issues involving *hibah* between the Syariah and Civil Courts. Therefore, actions must be taken to resolve this jurisdictional issues in order to uphold the integrity of the Syariah Courts in Malaysia. Due to the MCO which was announced by Malaysian Prime Minister, YAB Tan Sri Dato' Haji Muhyiddin Yasin in March 2020, Malaysian judiciary system in Malaysia is also affected as all hearings have to be adjourned. To solve this issue, the Malaysian judiciary has taken the necessary steps to adapt to this pandemic by implementing remote hearings that are conducted through online platforms. Remote hearing is necessary as it could be accessed easily by the public from any place and at any time. Moreover, this method is inexpensive and it is able to accommodate the public without the need to be physically present in court. Therefore, this study recommends full implementation of electronic platform such as e-proceeding as this method allows the public to easily access the courts. In fact, it is necessary for the judiciary to establish a proper online platform in conducting its operation as it is beneficial to the public in accessing justice regardless of unforeseeable events. Moreover, by conducting its operation via online platforms, Syariah Courts will be able to reduce the increasing number of frozen assets involving Muslims' properties in Malaysia. Hence, it is hoped that findings of this study will benefit the society and the whole Syariah

Court system in Malaysia. This paper recommends that further research to be done on the effectiveness of conducting Syariah Courts hearing using online platforms.

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