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**KEYNOTE SPEECH****REFORMATION OF SYARIAH JUDICIARY INSTITUTION DURING COVID-19  
PANDEMIC**

\*Mohd Na'im Mokhtar

Chief Director / Chief Syarie Judge,  
Jabatan Kehakiman Syariah Malaysia, Kompleks Islam Putrajaya, Presint 3, 62000 Putrajaya,  
Malaysia

**Abstract**

In Malaysia, the pandemic of coronavirus COVID-19 has impacted almost all areas of our life. The administration of the Syariah courts is no exception. The effects of the pandemic have been felt until now. Following the movement control order (MCO) on March 18, all operations at Syariah courts nationwide have been halted. However, it did not stop the administration of JKSM and the Syariah courts which have continuously discussed, using the online platforms, to formulate reforms if the MCO was finally over. If justice delayed is justice denied, the COVID-19 would seem to be a disaster for our judicial system. But eight months into the crisis, there are signs that what is slowing courts overall is actually accelerating reforms in procedures. This is undoubtedly the *hikmah* or the positive side of COVID-19. When the pandemic finally ends, we hope that some of the changes that have been introduced will continue to be endured by the Syariah judicial system, and the efforts for reforms will continue. This speech explains the impact of covid-19 pandemic on Syariah judiciary, particularly on its operation and how has the institution, i.e. the Syariah courts dealt with it and the reforms that are taken in making sure the continuity of its service during the pandemic.

Keywords: COVID-19, Syariah Court, Judicial Developments, Malaysian Experience, Syariah Legal Response

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ  
سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ... وَالسَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ

Assalamualaikum wbt and a very warm and healthy good morning I bid to all of the participants of INSLA 2020.

1. First of all, let us praise the Almighty Allah SWT; because of His Blessing, we are able to attend this highly esteemed International Seminar on Syariah and Law (INSLA 2020). Secondly, may peace be upon Prophet Muhammad SAW who has given us guidance and showed us the light. I would like to begin my speech with a sincere thanks to the Faculty of Syariah and Law of the Universiti Sains Islam Malaysia (USIM) for inviting me to deliver keynote speech in this seminar.

2. In the next few minutes, I hope to contribute by sharing with you the impact of covid-19 pandemic on Syariah judiciary, particularly on its operation and how has the institution, i.e. the Syariah courts dealt with it and the reforms that are taken in making sure the continuity of its service during the pandemic.

Ladies and Gentlemen,

### **Pandemic in Islamic History**

3. As we all know, the world is currently suffering from another respiratory disease episode, following the emergence of the 2019 novel coronavirus infection in Wuhan since December 2019. It then rapidly spread across China and several other countries. The disease is officially known as Coronavirus Disease 2019 (COVID-19). It has claimed the lives of over one million individuals globally.

4. If I may recollect the epidemic and pandemic in the history of Islam. Both are not unprecedented in the history of humankind. There have been several documented epidemics and pandemics. Ibnu Kathir, in his book “al-Bidayah wa al-Nihayah”, indicated that the first disease outbreak faced by the earlier Muslim community in Syam was the Plague of ‘Amwas.

5. The Plague of “Amwas occurred during the Sayyidina Umar al-Khattab’s caliphate. The epidemic had taken many lives of the prominent companions, including Bilal bin Rabah, Abu ‘Ubaidah bin al-Jarrah, Yazid bin Abi Sufyan, Mu’az bin Jabal, his wife and two sons, and others. Imam al-Suyuthi, in his book “Ma Rawahu al-Ma’un fi Akhbari al-Ta’un” (ما رواه الماعون في أخبار الماعون) has recorded several epidemic and pandemic faced by the Muslim community in history, including:

- i. Plague in Kufah in 49 Hijri. The epidemic took the lives of al-Mughirah bin Syu’bah.
- ii. Plague in Basra, known as the plague of al-Jazif, in 64 Hijri. It is said that around 70,000 people died on the first day of the epidemic.

6. And not to forget, the deadliest pandemic recorded in human history, namely The Black Death. The Black Death was a devastating global pandemic of plague that struck Europe and Asia in the mid-1300s. The Black Death has resulted in the deaths of up to 75–200 million people worldwide. The Ottoman Empire likewise suffered the impact of The Black Death.

7. The interesting point that I want to highlight here is about the Ottoman Empire's experiences facing the pandemic series, as noted by the prominent historian, Nukhet Varlik in her book “Plague and Empire in the Early Modern Mediterranean World: The Ottoman Experience, 1347-1600”. She pointed out that the pandemic had pushed the Ottoman Empire to introduce some innovative and reforms in its administration.

8. For example, they developed new regulations for the burial of plague victims. They kept records of the daily death toll. They kept the street clean and relocated some businesses out of cities. They also provided better health services. They introduced a quarantine reform law to cope with epidemics. For that purpose, they set up quarantine stations to control and disinfect individuals and goods that entered its borders. A good point to note here is that it was Abu Ali al-Hussein Ibn Sina (Avicenna) who first came up with the idea of what we called today as quarantine or social isolation. He came up with the method of isolating people for 40 days. He called this method al-Arba'iniya ("the forty") in his book The Canon of Medicine (al-Qanoon fi al-Tibb).

9. Here, we can see that the silver lining or the hikmah of the pandemic is that it has pushed humankind to innovate and reform in many aspects, in order to accommodate themselves into the new situation and norms.

Ladies and Gentlemen,

### **Impact of Pandemic on Syariah Courts**

10. In Malaysia, the pandemic of coronavirus COVID-19 has impacted almost all areas of our life. The administration of the Syariah courts is no exception. The effects of the pandemic have been felt until now. Following the movement control order (MCO) on March 18, all operations at Syariah courts nationwide have been halted. However, it did not stop the administration of JKSM and the Syariah courts which have continuously discussed, using the online platforms, to formulate reforms if the MCO was finally over. I have to say that that was the time when we really utilised our online services, though before that we were constantly told to explore all the online and electronic medium. That was the time when documents in the manual files were not referable and every related works that we have to do has to be kept electronically so it can be accessible.

11. With regards to the operation of the Syariah courts, we do realise that justice delayed is justice denied. JKSM and the Syariah courts have to come out with suitable ways to operate the courts; one of the first ways is by learning from experiences of other countries. Thus, JKSM has organized series of talks with other judicial bodies in other countries, including Indonesia, Brunei, Singapore and Australia. The series were sharing sessions between the countries in finding out the best ways to make sure that the courts stay operating even under the spreading pandemic.

12. During the MCO, all Syariah court staff worked from home. As the first exposure to the new normal, work directives and related instructions were being circulated and implemented using the communication medium, such as telephone, email, or WhatsApp.

13. In the mid of MCO and during conditional movement control order (CMCO) (May 13th – June 9th), some Syariah courts resume its operation in a very limited manner. There was no walk-in client except by prior appointment. The registration of new cases was confined to application for dissolution of marriage involving domestic violence, application for registration of divorces outside the court, injunctions, and any matters of urgency. During this period, the Syariah court's administration was done limitedly, following the SOPs strictly as issued by MKN and directives from JKSM.

14. It was only on June 10 that all Syariah courts in the country are back in full operation in line with the Recovery Movement Control Order (RMCO), ahead of the civil courts, which only resumed its entire operation on July 1.

15. In tandem with the Government measures and SOPs, JKSM has been issuing its administrative directives and SOPs to all Syariah courts from time to time to accommodate and adapt with the current changes, and most importantly to normalize the new normal.

Ladies and Gentlemen,

## Changes and Reforms

16. During MCO's period, apart from many cases that have been postponed, there was also an unusual spike in divorce cases.

a) During the MCO, the Syariah courts only received 11 divorce applications. This minimal number is understandable because, during this period, everybody was stuck at home.

b) During the CMCO, however (4 May-9June), there were 3708 divorce applications filed before the Syariah courts, with an average of 90 cases per day.

c) During the eight days of RMCO, there were 2850 divorce applications with an average of 356 cases per day!

17. As surprising as the figures, these are among the challenges that the Syariah courts have been facing and are still facing during this pandemic. Although quarantine and some restrictions induced by Covid-19 have created, to certain extent, damaging repercussions in court activities, access to justice to the public must not be impeded. Justice delivery is an essential service. Wheels of justice cannot be halted because of the lockdown. Hospitals are open. The same applies to the judiciary. Therefore, a lockdown cannot result in locking the courts altogether. And the only method available for holding court hearings is through remote access by adopting online video technology.

18. There will undoubtedly be real challenges in implementing remote access to Syariah Courts in the duration of the pandemic, particularly in the early stages. On a positive note, many examples have emerged from remote hearings having been conducted successfully by the Syariah courts, even under challenging circumstances. For instance, during the CMCO, Syariah Court of Petaling managed to hold a court hearing through video conferencing for a divorce case. There were also other instances where sulh sessions also were conducted through video conferencing. In addition to that, Syariah courts are also ready to extend its operation after its normal office hour and even for night session for hearing. At the administrative level; meetings, conferences, training courses are mostly done virtually.

19. JKSM, together with several other bodies, has commenced an effort to amend several provisions in the Syariah Court Civil Procedure (Federal Territories) Act 1998. This amendment will introduce reforms and reflect an important aspect of the Syariah courts' dynamic response to the new challenges and many legal issues arising in the context of the current pandemic. The changes will expand the use of technology in all related aspects of operating Syariah courts under the pandemic.

20. Our Prime Minister in last September speaking at the opening of Nusantara Syariah Judicial and Legal Conference (PKPSN 2020) said the use of new technology must be given a priority by the administration of the Syariah Courts. Without technology, the administration of the Syariah judicial system could be hampered and thus, obstruct the implementation of justice, which is one of the core foundations of Islam. Syariah courts are prepared to embrace all new technology into its administration as part of new norms.

Ladies and Gentlemen,

21. Although we are still combating the COVID-19, the pandemic will not definitely stop all the efforts pioneered by JKSM in bringing new reforms in the administration of Syariah courts in Malaysia. Among those reforms are:

- a) To restructure of JKSM and Syariah courts based on the concept of separation of power. This is to be realized by the establishment of Syariah Judiciary Commission;
- b) To rebrand JKSM as an institution managing all affairs relating to Syariah legislation;
- c) To reinforce the coordination and standardization of Syariah laws throughout Malaysia;
- d) To establish Syariah court of appeal at the federal level;
- e) To expand and widen jurisdiction of Syariah court in terms of its criminal and civil jurisdiction;
- f) To review the emolument rate for Syarie judges with by legislating Syari'e Judge Remuneration Act
- g) To enhance the cooperation with ministries and other departments either at the federal or state levels; and
- h) To improve the competency and efficiency of Syariah officers through the establishment of the Syariah Judicial Training Institute.

Ladies and Gentlemen,

### **Conclusion**

22. In conclusion, COVID-19 pandemic is proving to be one of the greatest socio-political levelers in our generation. In this situation, we find ourselves united by the same goal of finding appropriate solutions within our institutional boundaries to uplift our economies and societies.

23. If justice delayed is justice denied, the COVID-19 would seem to be a disaster for our judicial system. But eight months into the crisis, there are signs that what is slowing courts overall is actually accelerating reforms in procedures. This is undoubtedly the hikmah or the positive side of COVID-19. When the pandemic finally ends, we hope that some of the changes that have been introduced will continue to be endured by the Syariah judicial system, and the efforts for reforms will continue.

24. Finally, I would to again express my pleasure and thanks to USIM for giving me this opportunity to share some food for thought in this seminar.

وبالله التوفيق والهداية والسلام عليكم ورحمة الله وبركاته

Thank you very much.