

Appear in Court Thru Video Conferencing System: Recommendation for An Islamic Finance Perspective

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Abstract: *Technologies applied in court is considered as a new type of method to settle dispute. Settlement of any dispute thru technology in court shall benefit all; Judges, Lawyers and parties concerned. Malaysian court especially in Sabah and Sarawak have dealt civil dispute cases thru technology approach. These development shows promising ways to decrease backlog cases that had been experienced in courts throughout the years. Hence, this paper suggested that the technology method apply in civil court particularly in Sabah and Sarawak court should adopted too in the Islamic finance disputes. It is important for everyone's future that we study the current technology in order to develop more effective settlement for Islamic Finance dispute for Malaysia.*

Index Terms: *Technology in court; Video Conference; Islamic Finance; Muamalat Court*

I. COURTROOM TECHNOLOGY: AN OVERVIEW

Courtroom technology is one of the ways in the future to draw attention to particular points, to emphasize certain aspects of the evidence and to make visible that which otherwise might only exist as a mental picture formed when words are spoken by an advocate or witness. According to Narkiewicz (2004), there are three levels of courtroom technology.

The first level of court technology is the technologies that are readily available for rent or purchase by a lawyer if they are not already provided by the court. The first level of court technology equipment can be brought into any courtroom easily and economically, whether the courtroom is equipped for technology or not (so long as there are available electrical outlets). The level 2 technologies include equipment usually found in a high-tech courtroom. Lastly, the level 3 technologies include very high-level technologies that are usually way beyond what the average case would need.

The level 2 court is the highlight of this paper. In which these level 2 types of technology normally involve the following:

- i. Small monitors built into the jury box. Some courtrooms have small flat-panel monitors already installed in the jury box, usually one for every two jurors. (Not applicable in any Asian and English legal system because it is involve with the jury system).
- ii. Electronic white board. This device replaces the traditional blackboard because it can be used as a surface to write on using a marker like device, or it also can be used as a

touch-screen monitor, whereby the computer image is projected onto the electronic white board so the trial attorney can use the marker in the same way a mouse pointer is used to move around through a program. The Smart Board by Smart tech is an example of this.

iii. Integrated lectern. This incorporates most of the equipment any trial lawyer would need but is only found in very high-tech courtrooms. The lectern would include an evidence camera, connections for the lawyer's laptop, a color video printer, a microphone, a VCR, a monitor and a camera for use in video conferences.

iv. Video conferencing equipment. A video conference is a televised telephone call whereby two or more parties can speak in real time and also see each other in real time. It necessarily involves a camera, one or more monitors, microphones for each participant, audio speakers and other necessary equipment. It is necessary to have is a high-speed internet connection or the video, if not the audio will be rough.

According to Borkowski (2004), video appearances can shorten the applicant's waiting period as there may not be a need for the judge to personally appear in their local court location. The result of using such technology is that justice is better served. Video, therefore, eliminates the opportunity for prisoners returning with weapons or other contraband. The legal officer also benefits by avoiding the need to process documentation associated with out-of-jail escorts. When we reduce the number of prisoner escorts over public highways, we in turn reduce risk to the general public and courtroom personnel. In addition to that, circuit court judges need not travel back to a distant courthouse to hand down a sentence; this too can be done by video.

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“Fig”1. video conferencing system

Current video conferencing systems enable lawyers to present evidence to a witness elsewhere while maintaining eye contact. Such systems can also stream courtroom proceedings to a personal computer anywhere in the world. This feature, in conjunction with voice-activated camera switching, allows for visual communication in the virtual courtroom. This could allow family members of victims, perhaps in a foreign country, to view courtroom proceedings without actually being present in the courtroom. Trials of international interest could also be accommodated in this matter. Borkowski also point out that cameras in Canadian courtrooms are not to be used for broadcast purposes but primarily to send images to overflow courtrooms in nearby buildings, particularly for high-profile trials (Borkowski, 2004).

II. THE APPLICATION OF COURT TECHNOLOGY IN MALAYSIA

The video conferencing system applied in Malaysia was not the first court technologies being introduced. In Malaysia, the court technologies are called the ‘E-court’ system. The E-court system had been started implementing since March 2011. The four major systems in the e-court system are Case Management Systems, Community and Advocate Portal Systems, Case Recording Transcription Systems and Tele/Video Conferencing Systems. The existence of this system is to overcome the problems and criticisms often associated with the system practiced by the courts nowadays as many of the cases had been overdue and had long-term trial processes. The existence of this system is expected to be able to manage with the problems often expressed by various complainants and dissatisfaction (Kamal Halili Hassan &MaizatulFarisahMohd Mokhtar, 2011).



“Fig”2. Application of Court Technology in Malaysia.

According to Tun Zaki Tun Azmi (former Chief Justice), the e-court system, which began its implementation on 1 March 2011. Its adopted the ‘green court’ concept using a more user-friendly and computing system. As for its functions, it was similar to the previous electronic registration system (by other agencies) that is easy to reach. The e-court system has been streamlined and divided into four main systems: Tele/Video Conferencing System (TVCS), Case Management System (CMS), Community and Advocate Portal System (CAP) and Case Recording Transcription (CRT). In the CMS there are two main systems that are used, namely e-filing and e-registration systems.

Tele/video conferencing system (TVCS) had been applicable in east Malaysia mainly in Sabah and Sarawak. In respect of the use of TVCS it has benefited the public, lawyers and the courts in terms of costs and time savings due to the vast expanse of the territories. The TVCS is used for court hearing among the judges, lawyers and other persons involved in the session who are at different locations. This means judges and lawyers can save time and moneys travelling to and out of town. Lawyers can appear before a judge via tele/video conferencing in his hometown. TVCS also allows users to share documents, picture file, images etc. among those in remote locations, which constitutes a very vital feature for court hearings. TVCS is also now being used in case management hearings in which lawyers ‘appear’ in court from their offices. This is used mainly for non-contentious cases (Mohamed Nazri Abdul Aziz, 2009).

In the common practice, many lawyers and advocates in Sabah and Sarawak had to spend a lot of time in the road (to reach certain court locations) and yet the court trial is only take place about 30 minutes for a certain case. This difficulty has been solved by the presence of the tele/video conference system; It not only saves time but saves the cost of the parties involved. It is estimated that RM2,945 can be saved from any court trial using this system i.e. saving in terms of transportation fares, accommodation and related allowance claims (Kamal Halili Hassan &MaizatulFarisahMohd Mokhtar, 2011).



Moreover, in lower courts, there were settlements in small claims procedure could not proceed due to the delay of the matter in hearing. Later, the central idea behind the introduction of the 'pre-trial case-management' system was that the justice system was that a concentrated effort to adopt case management practices, rather than merely adding more resources, would reduce the delays and backlogs (ShahrulMizan Ismail, 2016).

III. METHODOLOGY: CURRENT PRACTICE OF VIDEO CONFERENCING IN MALAYSIA COURT

An observation method had been conducted in Sarawak High Court in order to examine the current practice of video conferencing. Findings indicate that an appropriate allocation of time be given to lawyers to appear for their cases. All mention cases to be called first and cases involving arguments and trial to be allocated with suitable times.

With such system lawyers need not have to wait unnecessarily long in courts for their cases to be called. They are only required to attend at the times allocated. Outstation lawyers are given times that are convenient to them in term of in-coming flights. And for those lawyers who may have only one or two cases for that particular day they will be heard first. This also applies to those whose cases are coming up for settlement or adjournment.

To facilitate these, proceedings time is staggered at 9.00am, 10.00am and 11.00 am, and may extend to the afternoon hours for some cases, where necessary. Cases involving summons or notices which are unserved need not be called on the first mention day fixed, instead, new dates will be given. And, if no affidavit of service is filed with the Court one day before the scheduled dates, it will be assumed that the notices or summons have not been served. Where a matter has been fixed for mention for the third time, Counsel would have to appear and explain why it could not be served.

Divorce cases in the High Court are fixed on a particular day each week and are not mixed with other matters at the same time. This is to reduce as much as possible any discomfort a divorcing couple may have. Presently, the hearing for Video Conferencing is only for civil matters such as mentions, interlocutory applications such as injunctions, summary judgement, striking out defense, taxation, appeal before the judge in chamber. Relevant legislations must be in place before the Video Conferencing, it can be used for criminal matters and also for the hearings / trials for civil cases (Nur Khalidah Dahlan 2018).

IV. THE IMPORTANCE OF ISLAMIC FINANCE IN MALAYSIAN SOCIETY

On August 1, 2013, Datuk Seri Najib Tun Abdul Razak, has introduced the Islamic finance market to the world with the iconic brand identity, namely 'Malaysia: PasaranKewangan Islam Dunia'. It marks another important milestone in the development of the Islamic finance industry in Malaysia.

Following the introduction of a new icon, the prime minister invited the global investment community to come and take full advantage of Malaysia's Islamic financial market which is being driven by a comprehensive regulatory

framework, supervision, Sharia and comprehensive legislation. He stated that Malaysia will have more multi-currency transactions across borders being implement in this country due to the regulatory framework, and Shariah law established that provide a conclusive environment to potential users of Islamic finance (Malaysian BeritaHarian, 2013).

Islamic business entities are required to engage themselves in legitimate and lawful business, and to fulfil all obligations and responsibilities. All transactions are based on the concept of honesty, justice and equity. Similarly, the status of the relationship between Islamic banks and their suppliers of funds is dependent on the principles of Shariah used in creating that relationship. Theoretically, this relationship is bounded by three general principles which dominate the economic behavior of Muslims, namely, belief in the Day of Judgment and life in the hereafter, Islamic concept of riches and Islamic concept of success (Kahf& Ahmad, 1980).

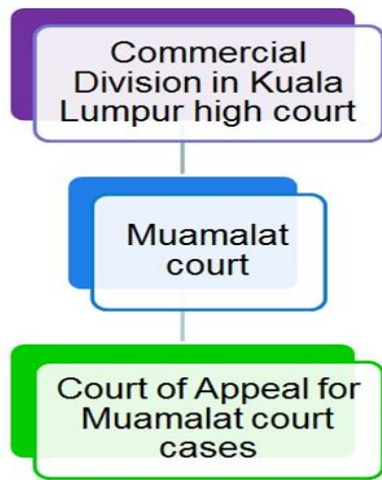
As important as the three general principles which dominate the economic behaviour of Muslim, the significance of Islamic Banking practice is focused on the impact of market driven and fairness towards social action, human perception of the Islamic banking system and development of social institutions. Hence, in which its impact could raise questions in this matter.

V. THE JURISDICTION OF ISLAMIC FINANCE IN MALAYSIAN COURT

The jurisdiction of the Malaysian Shariah Court is limited by the Federal Constitution. In addition, there is no special jurisdiction for issues on Islamic Financial Transactions provided. Referring to the High Court Act 1964, the law civil matters, including matters related to Muamalat and Islamic Finance (Mohamad Azam Hussain, 2005).

In short, all Islamic finance cases will be trial under the Muamalat Court. The Muamalat Court has also similar jurisdiction with any of the High Court in Malaysia under the provisions of the Courts of Judicature Act 1964. There are existence of Court of Appeal for muamalat cases. These Muamalat appeal cases are categorized under the Full Trial Civil Appeals, in collateral with five other sub-categories which are the New Commercial Court Appeals, New Civil Court Appeals, Intellectual Property Appeals and Admiralty Appeals (The Malaysian Judiciary Yearbook, 2014).





“Fig”3.Hierarchy of the Muamalat court (Malaysia)

Besides that, the jurisdiction of the Muamalat court also has to hear the case of specialization in Islamic banking and finance. In these courts, Shariah issues will be referred to the Shariah Advisory Council (SAC) of Bank Negara Malaysia. Reference to the SAC is based on Section 56 of the Central Bank Act, 2009, in which they will be the expert to decide on Shariah issues relating to Islamic banking and finance. Therefore, the establishment of the Muamalat court has made Malaysia the first country to have a court system that is structured to determine the principles of Shariah and legal issues in the field of Islamic finance.

In addition to that, there are also special code for Muamalat case that should be a reference and guidance to the courts and lawyers. It shows that the Muamalat cases should be treated differently from ordinary commercial cases. The classification code may be practical in the High Court in Kuala Lumpur and the Muamalat Courts, but still not effective at any other levels of the state in Malaysia. The special code for all Islamic banking and finance cases that are filed at the Muamalat Court at Kuala Lumpur High Court are Code 22M (previously Code 22A) for civil suits based on writ action and Code 22MF (previously Code 24A) for foreclosure matter and action based on originating summons. This Muamalat Court comprises of one High Court judge, one deputy registrar and one senior assistant registrar. Also, according to Ahmad HidayatBuang (2007), Muamalat court can specify a suitable solution since the core of the matter is the application of laws other than the Shariah in Islamic finance cases.

Due to that, technologies applied in civil court too can be adopted in the Islamic finance disputes. Settlement of any Islamic finance dispute thru technology in court also shall benefit all; Judges, Lawyers and parties concerned. It is important that the current court technology be apply in Islamic finance cases. It can develop more effective settlement for Islamic Finance dispute in Malaysia

VI. CONCLUSION

In conclusion, there are many advantages that can be seen when applying the court technology practice (Case Management Systems, Community and Advocate Portal Systems, Case Recording Transcription Systems and Tele/Video Conferencing Systems). Some of the advantages in applying the court technology is in the aspect of case

settlement. Case settlement is much more efficient than the cases settled by common practice. 65% of cases are settled less than a year. Next advantage is the problem on case delay and case backlog matters can be solved. For example, the need of all the parties involve have to present during the trial can be substitute by

TABLE 1. ADVANTAGES AND CHALLENGES IN PRACTICING COURT TECHNOLOGY.

Advantages / positive impacts	Challenges
<u>Case settlement:</u> Case settlement is much more efficient than the cases settled by common practice. 65% of cases are settled less than a year.	The continuous practice of the parties involved. For example retention of trained staff. This is important because of the need for consistent and authoritative instructions on the preservation or destruction of court case records (both paper and electronic);
<u>Case delay and case backlog:</u> The problem on case delay and case backlog matters can be solved. For example, the need of all the parties involve have to present during the trial can be substitute by applying the video conferencing technology.	The importance of having a high level 'champion' within the courts to promote good practice in records and information management
<u>Sense of trust towards court system:</u> The Malaysian Court system, the practitioners and the society have created a sense of trust in the system due to the usage of ICTs that brought transparency to the overall court system	The need for professionally trained records managers within judiciaries;
	The need for formal training and training materials in judicial records and information management;
	the importance of having expert advice available to those with responsibility for records and information management in the courts.

applying the video conferencing technology. Other than that, the effect of applying technology in the court room had shown promising response from all. The Malaysian Court system, the practitioners and the society have created a sense of trust in the system due to the usage of ICTs that brought transparency to the overall court system (Wan Satirah Wan Haider 2013).

Despite the fact that court technology shall give positive impact to the Malaysian Court System, there are also some challenges to be faced. According to Wan Satirah Wan MohdSaman (2013), the usual main challenges of technological application in court is the continuous practice of the parties involved. For example, retention of trained staff. This is important because of the need for consistent and authoritative instructions on the preservation or destruction of court case records (both paper and electronic); the importance of having a high level 'champion' within the courts to promote good practice in records and information management; the need for professionally trained records managers within judiciaries; the need for formal training and training materials in judicial records and information management; and the importance of having expert advice available to those with responsibility for records and information management in the courts.

However, hope for more effective settlement in Islamic finance disputes in Malaysia will never cease to exist if there are always new and alternative approaches being introduced. Only time will tell that the adopted court technology in Islamic finance disputes will fulfill its potential or not.



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