



**THE EFFECT OF THE CURRENT JUDICIAL REFORMS
IN ASEAN COUNTRIES:
FROM THE PERSPECTIVE OF THE MALAYSIAN SUBORDINATE COURTS**

**FADZLIN SURAYA BINTI MOHD SUAH
MAGISTRATE,
MAGISTRATE'S COURT KUALA LUMPUR, MALAYSIA.**

I. INTRODUCTION

The Malaysian Judiciary is now embarking on an extensive reform of its judicial system. Farreaching changes have been introduced to enhance its system of justice.

The primary objectives of these reforms are **“To Dispense Justice Expeditiously and Fairly** and also **To Improve the Image of the Malaysian Judiciary”**.

This paper will mainly focus on judicial reforms in the Malaysian Subordinate Courts initiated by the current Chief Justice Tun Dato' Seri Zaki bin Tun Azmi .

As a background, the Malaysian Judiciary is broadly divided into two i.e. Superior and Subordinate Courts. The Superior Courts consist of the Federal Court, Court of Appeal and the High Court. The Subordinate Courts consist of the Sessions Courts and the Magistrate's Court.

Presently, we have 153 Sessions Courts and 179 Magistrate's Courts stationed all over the country. Both the Sessions and Magistrate's Courts have criminal and civil jurisdiction. The Sessions Courts' criminal jurisdiction is broad. It has jurisdiction to try all offences other than offences punishable by death. It can also pass any sentence allowed by law other than the sentence of death. While for the civil jurisdiction, the Sessions Courts have unlimited jurisdiction to try all actions and suits of civil nature in respect of motor vehicle accidents, landlord and tenant and distress and have jurisdiction to try all other actions and suits of a civil nature where the amount of dispute or the value of the subject matter does not exceed two hundred and fifty thousand ringgit.

For the Magistrate's Court, the criminal jurisdiction is subject to limitations contained in the Subordinate Court's Act. It has jurisdiction to try all offences for which the maximum term of imprisonment provided by the law does not exceed ten years' imprisonment or which are punishable with fine only and offences under S.392 and S.457 of the Penal Code. The



Magistrates may pass any sentence allowed by law not exceeding five years imprisonment, a fine of ten thousand ringgit, whipping up to twelve strokes or any sentence combining any of the sentences aforesaid. For the civil jurisdiction, the Magistrate's Courts have the jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed twenty five thousand ringgit.

Sessions Court Judges and Magistrates are officers of the Judicial and Legal Service. Basically they are public servants.

II. RECENT DEVELOPMENTS & REFORMS

The main developments in the Malaysian Judicial reform are identified and described in Justice James Foong's, FCJ paper. He has highlighted the salient judicial reforms undertaken by the Malaysian Judiciary. This paper will mainly concentrate the reforms in the Subordinate Courts, in particular Kuala Lumpur.

The ultimate problem that we face in the Subordinate Courts is the backlog of cases. To put it in simple words; the number of cases disposed is far more less than the number of cases registered. Thus, reforms are initiated to address this problem. The reforms are inter alia;

Increase in number of Session Court Judges and Magistrates

The number of Judges of the Sessions Courts and Magistrate's Courts in Kuala Lumpur, for example is increased from 35 to 42. The increase of the number of the Sessions Court Judges and Magistrates has managed to not only reducing the backlog of cases but also quicken the disposal of cases.

Setting up of Key Performance Index

The Chief Justice has appointed two Superior Court Judges to manage and supervise the Session Court Judges and Magistrates. The Managing Judges, both from the Federal Court and Court of Appeal are in charged of the criminal cases and civil cases respectively. These Managing Judges have regular meetings with the Session Court Judges and Magistrates. They have set up the Key Performance Index (KPI) for disposal of cases for the Session Court Judges and Magistrates to meet every month. Meetings are held regularly to check the performance of the Session Court Judges and Magistrates. Disposal of cases are closely monitored and the performance of the Session Court Judges



and Magistrates is assessed based on their KPI which will be used when considering their promotions.

Judges from the High Court are also appointed to guide and supervise the Session Court Judges and Magistrates. In Kuala Lumpur civil courts, High Courts Judges of the Appellate and Special Powers Division are appointed to guide to the Session Court Judges and Magistrates. The High Court Judges will have meetings with the Session Court Judges and Magistrates every three months to guide and supervise their performances.

Directives

To ensure that cases that had been fixed are not postponed, the Chief Justice had personally issued a directive, asking all judges including Session Courts Judges and Magistrates to exercise their judicial discretion wisely in dealing with the request for postponement of cases. It has been emphasized that no last minute postponement should be granted except, to use the words of the Court of Appeal Judge, "Postponement will be granted only in cases of death or near death." In fact, the Chief Justice is monitoring the number of postponement granted in the Sessions Court as well as the Magistrate's Court in Kuala Lumpur daily.

Mediation

The importance of Mediation is also recognized. As such, Court assisted Mediation has been introduced in Kelantan, Kuala Lumpur and Sabah and Sarawak where the parties are encouraged to mediate and reach a settlement prior to trial. Thus, cases are disposed off a lot faster and judicial time is not wasted where parties do not have to go through the trial process.

Introduction of Court IT Facilities / e-Court System

The judiciary introduced several systems under the e-Court project aimed at disposing of cases speedily, such as:-

Case Management System (CMS),

Court Recording Transcription (CRT); and

E-Filing.

The objective of the e-court system is to reduce the time taken for hearing cases. The system is designed to ease the setting up, management and coordination of trial period in line with the needs of the parties.



The Court Recording Transcription (CRT) for Commercial Crime cases in the Subordinate Courts has been implemented and utilised.

It is hoped that in the near future, all Courts in West Malaysia would have these facilities. Courts in East Malaysia are equipped with hi-tech IT facilities and the CRT is in full operation. The Criminal Procedure Code and the relevant Rules of Court have also been amended to allow for the CRT in all criminal trials.

III. NEXT STEP: FUTURE REFORMS

The Malaysian Judiciary has also planned and worked on the future reforms. They are :

Further Increase in the number of Sessions Court Judges and Magistrates

There will be a further increase in the number of Sessions Court Judges, both in terms of quantity and quality. The intention of the whole system is to reduce the backlog of cases. Thus, by having more courts, more number of cases will be heard and disposed of speedily.

Revision of the existing jurisdiction of courts

It has been proposed that the monetary threshold of the Subordinate Courts' be increased:-

Sessions Court : From RM 250,000 to RM 1,000,000.

Magistrate's Court : From RM 25,000 to RM 250,000.

With that, amendment to the Subordinate Court's Act will be made. A committee headed by the Chief Judge of Malaya had been appointed by the Chief Justice to study and amend the existing jurisdiction of the Subordinate Courts. The aim is to reduce the number of cases registered in the High Court so that there will be more cases registered in the Subordinate Courts. The revision of the existing monetary jurisdiction will result in more Session Court Judges and Magistrates be appointed. Some may ask why not the number of the Judges in the High Court be increased to clear the backlog in High Courts? The reason is because it is easier to appoint the Sessions Court Judges and Magistrates than the High Court Judges. Other than that, it is also cost effective.

Tracking System in other states

The tracking system has been successfully implemented in the High Court Kuala Lumpur and this system is to be extended in other busy centres such as Shah Alam in Selangor, Pulau Pinang and Johor Bahru in Johor. This system will soon be implemented in the



Subordinate Courts with modifications. With an efficient system, more cases will be disposed.

E-Filing System

The objective of the e-filing system is to develop an e-court system which allows for:-

- a. Electronic lodgment of claims;
- b. Electronic filing of documents relating to that claim by both parties;
- c. Electronic management of documents filed relating to the claim; and
- d. Electronic access to documents in court.

It is proposed that the entire framework of court filing be transformed from a manual based filing to a transaction oriented online filing system. Apart from faster processing time, litigants as well as practitioners will be able to enjoy timely, accurate data and cost savings.

Revision of the Rules of the Court and Criminal Procedure Code

The Chief Justice had appointed a Judge of the Federal Court to head a committee to study the proposal of a combined rules for the High Court and Subordinate Courts. Presently, we have separate rules for both. The aim is to simplify the rules and to come out with new rules which is easier and effective to suit the reforms taken and which will ultimately contribute to the speedy disposal of cases.

Criminal Procedure Code had also been amended recently to enable digital recording made possible. Before the amendment, recording of the notes of evidence by Judges and Magistrates in a criminal trial shall be done by themselves with their own hands in legible handwriting. With this amendment, the recording of the notes of evidence can be by way of digital recording. This had tremendously shortened the trial period and hence more cases are able to be disposed. Further amendment to the Criminal Procedure Code is in the pipeline to further simplify the criminal procedure and to ensure speedy disposal of criminal cases. To this end, a committee had been set up headed by another Federal Court Judge.

IV. THE EFFECTS AND CONSEQUENCES OF THE REFORMS

The reforms introduced have an immediate effect. I will take the Kuala Lumpur Magistrate's Court as an example. The average number of new civil cases registered at the Kuala Lumpur Magistrate's Courts is 800 – 1000 cases daily while the average number



of new cases registered in the criminal courts is 100 cases. There are 12 courts hearing civil matters and 13 courts hearing criminal matters. Looking at the high number of cases registered and the number of courts that we have, there is no doubt that we are facing the problem of disposing these cases. Thus obviously, the cases brought to court will take years to be disposed off. This gives judiciary a bad name.

Hence, reforms are necessary in addressing this problem. This is what the current Chief Justice is doing. The judges, judicial officers, lawyers, the court staff and the public are feeling the heat. However, they are responding very well to the reforms even though a number of them have had made injudicious complaints at the beginning. Nevertheless, with the change of mindset, they have begun to appreciate the reforms introduced. As a result, cases are fixed and disposed a lot faster than before. For example, the number of disposal of civil cases in the Magistrate's Courts has gone up from 1,200 to 2000 cases monthly.

With the reform, applications for last minute adjournment are rarely entertained except in cases where it is impossible for the trial to proceed. While the courts are strict in allowing applications for adjournments or postponements from the parties, the courts are also trying to make sure that the court itself does not adjourn cases. Before this, the courts are also guilty in adjourning cases in a number of instances such the judge or magistrate has taken ill or on leave, or is sent to attend course. A system had been devised to overcome such situation whereby officers from the Chief Registrar's Office will be sent to hear the cases in the Subordinate Courts if the particular Sessions Court Judge or Magistrate of whom parties are to appear before has taken ill or is attending a course, or has taken emergency leave. In this respect, Sessions Court Judges and Magistrates have been instructed to plan their leave in advance so that cases will not be fixed on those dates.

The reforms have given great impact to the whole judiciary. Lawyers are becoming more prepared in conducting their cases. They would have all the witnesses ready on the day of the trial and would assist the court to speed up the trial by preparing the witness statements for the trial.

The most outstanding and admirable effect of the reforms is that the number of disposal of cases has increased and the backlog is clearing! There is hardly any file of pre-2000 cases in any Magistrate's Courts. This far-reaching effect does not only change the public perception but boost up the performance and confidence of the judicial officers.

The setting up of KPI as one of the criteria for promotion is also seen as a brilliant move. Under this system, officers are promoted based on their performance. This gives no room



for officers to waste any judicial time but to really focus on their work. As a result, cases are heard and disposed off speedily. Sessions Court Judges and Magistrates are also more focused and have to work hard to meet the KPI. This has definitely helped to clear the backlog of cases.

V. CONCLUSION

These proposals and reforms are designed to strengthen judicial independence, to enhance the efficient disposal of cases, and to enable the Judiciary to continue to function as a strong and effective Judiciary. The reforms introduced are to strike the right balance between the two maxims, “*Justice delayed is justice denied*” and “*Justice hurried is justice buried.*” If the right balance is achieved, it will undoubtedly uphold the dignity, independence and the integrity of the Malaysian Judiciary. To this end, all parties, particularly the Malaysian Bar and the officers of the Attorney General's Chambers and the public must not only be committed but also cooperate fully. The Judges, the officers and the staff are working very hard to achieve this. It is hoped that with these reforms, Malaysia will have an efficient and well-respected judiciary.