

REPORT BY

**The Right Honourable the Chief Justice of Malaysia,
Tun Tengku Maimun binti Tuan Mat**

at the 9th Council of ASEAN Chief Justices' Meeting

7 October 2021

**Honourable Chair, The Rt. Hon. The Chief Justice of the Republic of
Indonesia, Prof Dr. H.M Syarifuddin,**

Fellow Chief Justices, and Justices from the ASEAN Region,

Distinguished guests and delegates,

Introduction

1. Thank you for this opportunity to present, on behalf of the Malaysian Judiciary, our report on the judicial measures taken in response to the Covid-19 pandemic.

2. In November of last year, on the occasion of the 8th CACJ meeting, we shared the measures we took to maintain access to justice in spite of the pandemic. As such, I rather not repeat the details of my last year's report which is publicly available on the ASEAN Judiciaries Portal.

Summary of the Efforts/Changes in 2020

3. I will however briefly recap on the issues the Malaysian Judiciary faced last year. This is only to the extent to explain our present reforms in some context.

4. Last year, the Government of Malaysia imposed what is called the Movement Control Order or 'MCO' beginning in March up until around May of 2020. The most significant effect of the MCO was that all persons within Malaysia, barring those in the essential services, were confined to their homes except for emergencies and to replenish supplies. The legal profession and the justice system generally were not considered essential services.

5. To this date, the March MCO has remained the strictest form with oscillations between sometimes tight and loose movement restrictions as and when the need arose.

6. The Executive arm of Government, of course, had and still has major issues to deal with such as managing private health while ensuring the growth of the economy. The Judiciary, as an independent arm of the Government, had to deal with its own issues which I identify – on the macrolevel – to be twofold.

7. The first and perhaps the more crucial one in this context is ensuring continuous access to justice. On the criminal side, we had to and still do face issues with ensuring the right to a fair trial realising full well that cases have to go on considering that innocent people might be languishing in prison. Even convicted persons too deserve to be treated with respect and dignity and their appeals heard on time.

8. On the civil side, one major concern is to realise debts and the speedy resolution of commercial disputes. Investors, financiers and business cannot afford to bleed money because disputes take far too long. A slow and inefficient judicial system is the bane of a healthy economy.

9. The second and corollary major aspect is safeguarding judicial independence. In this regard, we had to be able to operate our core working mechanism despite the restrictions on movement. Although at first we had to postpone all criminal cases and only urgent civil cases were heard via an online platform, in the later part of 2020, almost all civil cases could be conducted online – urgent or not. The only catch was that our law did not expressly recognise online hearings and so such hearings were heavily dependent on the consent of parties. This posed much difficulty given that there was an immediate knee-jerk opposition from lawyers to the online platform which was thrust upon them.

10. Thankfully, around the end of 2020, the Malaysian Parliament passed much needed legislation enabling the Judiciary to hear cases online affirmatively and to issue Circulars to resolve any kinks in procedure. Limitation periods were also extended to smooth out the flow for access to justice.

The Malaysian Judiciary in 2021

11. This leads me to my brief report on 2021.

12. We are pleased to announce that beginning January of this year, online hearings have become the norm and that the Malaysian Bar and the public sector lawyers have overcome all fears relating to it.

13. Between January and September of this year, we underwent numerous phases of lockdown again, but this time, the Judiciary was prepared.

14. Specifically, we were put under nationwide lockdown from around the middle of May to the better part of September. While there were some disruptions in the first few weeks of restrictions because the legal profession was excluded at first from the essential services list, we overcame these disruptions through the issuance of circulars.

15. Of note and on the civil side, these circulars emphasised the procedure to be adopted for online hearings. Specifically, they spell out the platforms to be used, such as email, e-Review (our inbuilt real-time online case management platform) and Zoom. These circulars also deal with the following:

- (i) The taking of evidence from witnesses by specifically stating that witnesses may provide testimony via the virtual platform but with the caveat that the reception of evidence is as close as possible to in-Court procedure. Most importantly, it caters to the provision on ‘supervising solicitor’ to prevent coaching and witness tampering and provides alternatives in case such a method is not possible.¹

- (ii) There was a period during which lawyers and litigants could not file certain applications or certain contentious documents or affirm affidavits due to the unavailability of commissioners for oath or access to office space. As such, automatic and blanket extensions of time were granted pending the date access became available.²

¹ Chief Justice’s Practice Direction No. 1 of 2021.

² Chief Justice’s Practice Direction No. 8 of 2021.

- (iii) The prohibition of raising objections on the basis that affidavits were unaffirmed or that documents were filed out of time.

16. These measures and others have proved to be immensely useful in ensuring that trials and appeals can go on and disputes resolved within time. When we first resumed open Court hearings the Judges sat in open Court but parties appeared on the online platform. After the second lockdown was imposed in May of this year, judges were able to conduct hearings from the confines of their own homes. At present, the Government has mostly lifted movement restrictions but having experienced smooth online hearings, most Judges still prefer to hear cases from the safety of their homes.

17. Criminal applications and motions are now by and large, heard online. For criminal appeals, although we have made arrangements for the accused to appear online via video-link directly from prison, things have not exactly been easy. Reason being, many lawyers insist on having the accused appear in person in Court. This causes some stress to the prisons department because they have to ensure that the accused is not Covid-19 positive. And on many occasions, we have had scares where the accused on the initial test is negative but later positive. Cases have been postponed due to this.

18. Another problem we face is that some prisons are simply unable to provide a video platform for the accused to join, for the following reasons: (i) the facilities such as screens and internet are inadequate; (ii) the accused is a foreign national and requires the use of an interpreter to

which he has no access in prison; (iii) even if the prison has adequate facilities, they cannot assist with the online platform due to the spread of the virus in the prisons, rendering the accused inaccessible.

19. Despite these problems, criminal appeals emanating from Sabah and Sarawak, have proceeded smoothly where the accused attend court physically with their lawyers but with the judges sitting online. As I see it, as our criminal justice system slowly adapts itself to the online platform, criminal appeals should proceed more easily at the very least through a hybrid hearing mechanism – partly physical and partly online.

20. Overall, I am pleased to observe that access to justice in Malaysia has not come to a grinding halt and it is reassuring to know that our stakeholders are adapting themselves to these changes rapidly.

21. That is the extent of my report. Thank you for your attention.