

Lasimbang, Founder and Executive Director of CREATE, led a tour of the Centre and briefly explained its role as an energy provider for communities that still live in remote areas. Then, each group had to present its proposal to both the organisers and CREATE's technology experts for evaluation. Several projects were proposed, including Karen Power Bank, Solar-Hydro Hybrid Power System, Kupa-Kopi Community Centre, Health Vending Machine, Malvin's Motor Services and Timpayasa-Tiku's Grid System. The winning group, which was considered to have the most relevant project proposal, proposed the Karen Power Bank. The group was given a chance to use CREATE facilities to develop its project.

The programme officially ended with a lively certificate presentation ceremony led by Scott Kennedy. In conclusion, the writer believes that the programme was indeed beneficial in many ways; it provided the local people with the opportunity to develop future energy facilities, and all the participants with the valuable experiences of living with indigenous people, learning their needs, participating in contributing back to the rural community, implementing classroom lessons, learning to construct relevant projects for societal development and widening their professional networking. At the same time, the programme succeeded in nurturing a shared concern among participants, despite their diverse backgrounds, towards helping the rural community via the development of a sustainable energy platform.

**Seminar Kebangsaan Mahkamah Syariah: 60 Tahun Pasca Merdeka
(National Seminar on the Syariah Courts: 60 Years after
Independence)
(IAIS Malaysia, 29 August, 2017)**

Tengku Ahmad Hazri

IAIS Malaysia organised the inaugural National Seminar on the Syariah Courts: 60 Years after Independence (SEMAHSYAR, Malay: Seminar Kebangsaan Mahkamah Syariah: 60 Tahun Pasca-Kemerdekaan) to review the accomplishments and shortcomings of the country's Syariah judicial system. The seminar took place at a time when great debate about the Syariah courts is taking place in the country, as part of a wider debate about Islamic law in Malaysia, notably the unresolved issue of overlapping jurisdictions between Syariah and civil courts, as well as human rights criticisms in the application of Islamic law, all issues compounded by recent attempts to expand the sentencing jurisdiction of these courts.

The seminar focused on three things: (1) empowerment of the Syariah courts; (2) empowerment of the Syariah legal profession; and (3) resolving recurrent practical issues. IAIS Founding CEO Mohammad Hashim Kamali in his Preface to the Seminar booklet, observed that “the Syariah courts predate even colonialism. Their survival despite the ravages of colonialism speaks volume about their centrality in society.” Furthermore, Kamali envisaged a “global role for the Syariah courts”.

Towards enhancing the status of Syariah court institutions, the need for standards is imperative. To this end, Ahmad Hidayat Buang in his paper explained that, globally, standards have already been established to evaluate performance of the judiciary across various legal jurisdictions. Such standards should be taken into account when devising projects and agendas towards judicial reform and transformation of the Syariah courts. Such standards consider the credibility of the judiciary among others. They include the Global Measures of Court Performance (part of the International Framework for Court Excellence [IFCE] by the International Consortium for Court Excellence [ICCE]), the Rule of Law Index (by the World Justice Project), and the Islamic State Index. In Malaysia, measures are also provided by MAMPU and the Shariah Index. These criteria take into account many factors.

Specific to Malaysia, the quest towards improvement of the Syariah courts must be carried out with a sound grasp and appreciation of the history and evolution of Islamic legal institutions in the country, which predate independence and, indeed, colonialism. Justice Aidi Moktar of the Syariah Court of Appeal in his Keynote Address, ‘Syariah Court Transformation Plan: Challenges and Recommendations,’ pointed out that Article 121 (1A) of the Malaysian constitution requires not only the civil courts to respect the jurisdiction of the Syariah courts, but also that various institutions and agencies of the government respect the division and separation of jurisdictions. Furthermore, there are also specific areas that need to be attended to, namely Islamic family law and the standardisation of Islamic law among states. He explained how the Syariah courts predate colonialism, but with the advent of the latter, their role became marginal. In 1948, the “eclipse”—as Ahmad Ibrahim described it—of the Syariah courts occurred as they were brought under the civil courts. Then in 1965, with the (then known as) Muslim Courts (Criminal Jurisdiction Act) 1965 (Act 355), the sentencing limit of the courts with regards to offences was capped.

Subsequently, however, developments took place to improve their status. In the 1980s, the government made it mandatory for Syariah court staff to undergo training in Islamic judicial practices. In 1988, a constitutional amendment inserting Article 121 (1A) into the Federal Constitution effectively excluded the civil courts from matters within the jurisdiction of the Syariah courts. In the 1990s, the

Department of Syariah Judiciary (JKSM, Jabatan Kehakiman Syariah Malaysia) was established, new laws introduced relating to transactions, procedure and evidence, among other things. Later, the courts were also restructured as a three-tier hierarchy, involving the Syariah Subordinate Court, Syariah High Court and Syariah Court of Appeal. The Syariah Court was further separated from the State Islamic Religious Councils and Offices of the Mufti in order to facilitate greater fidelity to the separation of powers.

However, Aidi argued that the framers of the constitutional amendment did not anticipate that there would be overlapping jurisdictions between the Syariah and civil courts, or that there would be constitutional issues arising from the application of Islamic law. These issues therefore need to be resolved through a concerted effort from all sections of society—not the judiciary alone—towards a healthy and functional system that respects the boundaries of each constituent for the benefit of all.

The sentencing jurisdiction of the Syariah courts, is currently capped at a standard equivalent to the “inferior courts”, namely the magistrate and sessions courts. The recently proposed amendments to Act 355 (Syariah Courts (Criminal Jurisdiction) Act 1965) seek to upgrade the sentencing jurisdiction of the Syariah courts to a fine up to RM100,000, imprisonment of 30 years and 100 lashes of the whip. However, constitutional law expert Shamrahayu Aziz, in her paper, ‘Enhancing Syariah Court Jurisdiction through Amendment to Act 355: Between Ideal and Reality,’ noted that this will not materialise if there is no uniformity among state governments. The amendment—assuming it is passed as law—will only provide the jurisdictional limit which is then left to the state legislatures to adopt. If the latter is not ready, the Act will not be applied as the law of the state. The varying degrees of readiness between the states will therefore result in different sentencing limits for different states, even for the same offence. The expanded jurisdiction requires an adequate legal framework and infrastructure for it to be workable, including human and administrative resources, adequate procedure and evidence laws.

Musa Awang in his presentation on ‘Syariah Lawyers in Malaysia: Contemporary Realities and the Prospects towards a Syariah Legal Profession Act’ suggested that a uniform law should be adopted to regulate the practice of Syariah lawyers in Malaysia. The fact that Islamic law falls under state jurisdiction under the constitutional framework means that the profession has been incoherently regulated by different sets of laws, including those which pertain to entry qualifications, fees and codes of conducts. Currently, the profession faces several challenges owing to a lack of standardisation. Musa also gave a historical account of the legal profession from the early period of Islamic history both generally and in Malaysia, down to the present. The legal profession has its antecedents in the

practice of agency (*wakalah*) among the Companions, such as to collect taxes and *zakat*, to conduct marriage and to purchase items. Later some knowledgeable Companions interceded on behalf of individuals who were accused of committing offences or crimes.

Mohamed Azam Mohd Adil, in his paper, ‘Amendments to the Law Reform (Marriage and Divorce) Act 1976 (Act 164) and its Implications on the Jurisdiction of the Syariah Courts,’ proposed the formation of a special mediation committee to implement the Law Reform (Marriage and Divorce) Act 1976 (Act 164) and resolve the dilemma that arises when one spouse from a non-Muslim marriage converts to Islam. In such cases, the special committee should consist of experts on both Islamic law and civil law. The formation of the committee is an administrative exercise, and thus requires no amendment of the law or the constitution. However, in allowing Syariah court judges to confer with civil court judges on issues pertaining to civil law but which impinge on Islamic law, amendment to the constitution is required on Articles 122B and 123, as well as on the Courts and Judicature Act 1964. The amendment bill was proposed to address the problem of child custody following the conversion of a spouse from a non-Muslim marriage into Islam. The controversial section 88A of the bill—which requires the child’s religion to remain that of the religion of the couple at the time of the marriage—was finally removed following fierce objections from mostly Muslim groups. The dilemma further complicates issues pertaining to the consequences of conversion on inheritance, rights to matrimonial property and maintenance. The issue also spills over into the problem of conflicting jurisdictions between the civil and Syariah courts. Sometimes, the husband and wife file separate petitions to the Syariah and civil courts, resulting in conflicting court orders. Muslim groups object to two provisions in the bill, one that confers exclusive jurisdiction to the civil court to dissolve the marriage, and one that requires new converts to declare that in the event he dies before his civil marriage is dissolved, that the civil court is vested with the exclusive authority to administer his estate.

Noor Huda Roslan, judge of the Syariah High Court, used her presentation to call for a more concerted effort to empower female Syariah court judges. Such efforts should include ensuring continuity between the more senior judges and the junior ones. There should be platforms by which discussions should be allowed to take place between them so that the senior ones can guide the junior ones. The empowerment of female judges further helps to address the shortage of qualified candidates to fill up posts in the courts. In her presentation, Noor Huda surveyed the scholarly positions on the status of women as judges, both in the works of jurists and in the *fatwas* of religious councils in Malaysia. Classical jurists differed on this subject, with the majority believing it was impermissible

(Shafi'i, Hanbali, etc), some regarding it as permissible with a few exceptions, and yet others allowing it without qualification. In Malaysia, the Fatwa Councils have made it permissible (*harus*).

Azril Amin, presenting on 'Human Rights Issues in the Syariah Courts: An Overview', believes, that human rights are conditioned by cultural specificities. Azril cited with approval the aforesaid remarks by Professor Kamali on the need for a "global role" for Syariah courts by connecting them to the global community. Azril then assessed claims to the universal validity of human rights, as delineated in international human rights instruments, concluding that conceptions of human rights differ across cultures. Recognition for human rights in Islam began as early as the revelation of Islam itself, when the Qur'an granted rights to women and children (including unborn female children, who were often buried alive). Towards empowering institutions entrusted with the implementation of Islamic law, Azril suggested that the status and position of women and children be improved, issues relating to custody of children resolved, the procedural aspects of Shari'ah codified, and issues pertaining to crime attended to. At the same time, various issues with respect to the Syariah courts were also addressed. These included mechanisms for instilling an awareness of human rights issues in the administration of Syariah institutions. The need to revise the limited role of Syariah courts with respect to sentencing for offences was also revised.

**Launch of Burma Human Rights Network Report 'Persecution of Muslims in Burma - Ethnic Cleansing of Rohingya and Growing Persecution of Muslim Citizens in Burma'
(IAIS Malaysia, 26 September, 2017)**

Tengku Ahmad Hazri

On 26 September 2017, IAIS Malaysia organised the launch of the Burma Human Rights Network report, 'Persecution of Muslims in Burma,' along with a panel discussion on the Rohingya crisis. On the panel were Kyaw Win (Executive Director, Burma Human Rights Network), Lilianne Fan (International Director, Geutanyoe Foundation Aceh) and Mohd Azmi Abdul Hamid (Secretary-General, Majlis Perundingan Pertubuhan Islam Malaysia (MAPIM)).

The findings of the report were presented by Kyaw Win. The report reveals the systematic and institutionalised nature of the persecution against the Rohingya and other Muslims in Myanmar, complete with backing by the military, Buddhist religious elites and the civilian government. Although global concern has fixated on the Rohingya community, the available evidence indicates that it