

Construction of Shariah Courthouses Project Expanding Access to Justice in Malaysia

THE CHALLENGE

The Muslim communities of the State of Selangor in Malaysia were facing a unique situation – They did not have separate Shariah Courthouses to resolve disputes in family, property and religious matters. Their cases were heard in the civil court buildings, causing much inconvenience and delays in resolving such cases.



THE PROPOSED SOLUTION

- ✓ Build separate Shariah Court Complex to provide the community with robust resolution of cases in family, property and religious matters through the Shariah Justice system.
- ✓ Build a Headquarter building comprising a Higher Shariah court, and a Shariah court of Appeals in the center of the State, and nine Lower Shariah courthouses, one in each district, on Waqf land provided by the State.
- ✓ The construction price was fixed under an Istisna'a contract, to be completed in a time span of two years. The project was to be financed by the IDB's Awqaf Fund, Unit Investment Fund (UIF), and IDB Treasury.



- IDB entered into a Mudaraba Agreement with a leading trustee company in Malaysia, Amanah Raya Berhad (ARB), which would act as the Mudarib and co-financier for the project. IDB and ARB invested US\$ 24 million each towards the total construction costs. From IDB, the project was financed only by the Treasury Department.
- A turnkey contract for construction of the project outputs had been awarded by the State Government of Selangor on direct negotiation basis to a prequalified "category A" contractor, which executed a number of government projects earlier.
- The contractor hired the same company, which provided the design of the buildings to perform project supervision as well as act as consultancy firm. This raises concerns of conflict of interests and independence of consultants.

THE IMPLEMENTATION

- Nine out of the 10 Shariah courthouses have been built.
- The number of Shariah cases resolved has increased from 15,000 in 2010G to 20,000 in 2015G, a 33% increase after the project.
- The implementation took 6 years and 10 months, mainly due to land availability, location and design approval issues.
- The buildings were not insured, as they did not have a certificate of fitness.
- The Mudarib carried no supervision and monitoring during the construction, which was a breach of agreement.
- Many design and poor quality of construction issues were identified, including: (a) lack of access for disabled people, (b) unsafe staircases, (c) roof leakages, (d) frequent air-conditioner breakdowns, (e) pre-mature cracks in building, and (f) sound system breakdown in court. Besides, the prisoner retention rooms were not operational, thus undermining the safety at the courthouses.

FINDINGS

LESSONS

- ✓ When the financing of a project comes from the IDB's Treasury Department, it is vital to involve the relevant Department in IDB's Operations Complex in project supervision during the implementation period.
- ✓ Conducting a capacity assessment of the Mudarib to ascertain the technical ability of the contractors to implement a project is necessary for proper implementation of the project.
- ✓ Resolving land, project location and design approval issues prior to tendering and contracting for construction are key pre-requisites to avoid significant project implementation delay.
- ✓ The supervision firm shall always be hired by the executing agency, and not by the contractor, to ensure independence and avoid possible conflict of interest.