

Emergency Proclamation through Laws Regulation during the COVID-19 Pandemic in Malaysia

Muhammad Naqib Sahrani¹, Nor' Adha Ab Hamid¹, Norziah Othman¹

¹University Islam Selangor, Malaysia

ARTICLE INFO

Article history:

Received Jan 10, 2024

Revised Feb 26, 2024

Accepted Mar 16, 2024

Keywords:

COVID-19 Pandemic,
Laws Regulation,
Emergency Proclamation

Conflict of Interest:

None

Funding:

None

ABSTRACT

The government is making various efforts to break the chain of COVID-19 in Malaysia. The implications of the spread of the COVID-19 pandemic affect not only health but also the social, political, economic, and educational aspects. The transition from the pandemic to the endemic phase saw various regulations and laws being implemented to accommodate the curve of the COVID-19 pandemic infection. This qualitative study uses the method of analysing legal documents, journals, and related articles. The papers reviewed are documents related to the proclamation of emergency in Malaysia and legislative acts related to the COVID-19 pandemic. This paper discusses the actions taken by the government to contain this epidemic through the proclamation of emergency, in addition to the act that Malaysians must obey throughout the pandemic period. Good governance has a positive impact on the people and the country. Various security measures are based on the established problems to avoid any possibility that could affect people's health.

Corresponding Author: Muhammad Naqib Sahrani, Faculty of Syariah and Law & Center for Graduate Studies, Universiti Islam Selangor, Bandar Seri Putra, 43000 Kajang, Selangor. Tel. +6011-15736092. E-mail: naqib.law@gmail.com



© Muhammad Naqib Sahrani, Nor' Adha Ab Hamid, Norziah Othman

This is an open-access article under the CC BY-SA 4.0 international license.

1. Introduction

The COVID-19 pandemic was first detected in Hubei Province, China, at the end of 2019 (Zhu et al., 2020). The world has been shocked by the spread of diseases that can affect the human respiratory system and cause death. The World Health Organization (WHO) has declared the Severe Acute Respiratory Syndrome Coronavirus 2019 (SARS-CoV-2), otherwise known as COVID-19, as a pandemic that should be taken care of worldwide.

The outbreak of this epidemic indirectly has various negative implications for a country in several sectors, such as the economy, education, health, and security of a nation (Izhar et al., 2021). The health system in Malaysia has been put on a high level of wellness to prepare for the threat of this epidemic. A legal provision must be drafted and implemented carefully to ensure compliance with the runs smoothly.

Obeying the government's instructions is essential in managing problems in a country. This is based on the word of Allah SWT, which means:

"O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger if you truly believe in Allah and the Last Day. This is the best and fairest resolution..."

An-Nisa-59, Surah the Women Verse-59

This verse clearly emphasises that the people must obey all instructions issued by *Ulil-Amri*, the Malaysian Government. The Malaysian Government through the Ministry of Health has declared the Movement Control Order (MCO) from 18 March 2020 through the Federal Government Gazette P.U. (A) 87/2020 to contain and break the chain of COVID-19 (Infectious Disease Prevention and Control Order (Declaration of Infectious Local Areas), 2020). The primary purpose of the authorities making the decision involved is to protect and protect the people from a more significant problem: the violent threat of the COVID-19 pandemic.

The Prophet mentioned to SAW that leadership is a heavy responsibility and everyone is a leader according to their respective roles. From Abdullah bin 'Umar RA, from the Messenger of God SAW said (what he meant):

"Each of you is a leader, and you will be held accountable for those you lead; a ruler is a leader and will be accountable to his people; a man is the leader of his family members and will be accountable to his family members; a woman is the leader in her husband's house and will be responsible for her children and her leadership; khadam is entrusted with his master's property and will be held accountable for what is under his trust."

(HR Muslim, no. hadith 3408)

This authentic hadith emphasises that every individual must maintain and implement the trust given (Abd Motalib et al., 2020). The Malaysian government, called Ulil Amri, who rules the country, was also affected by the epidemic by implementing the MCO by closing most commercial sectors, including education (Prevention and Control of Infectious Diseases Act, 1988).

The enforcement of the law needs to be implemented quickly and immediately to avoid more significant harm to Malaysians because of the increasing number of COVID-19 infections. The laws that were enforced throughout the outbreak period, we can indirectly see the seriousness of the Malaysian government in trying to break the chain of COVID-19 among the community in Malaysia.

Emergency Proclamation in Malaysia

Throughout the period of independence until now, there have been eight emergency proclamations that cover the whole country or have been purposefully declared by the *Yang di-Pertuan Agong* (YDPA) to deal with problems that threaten public safety and order as stated in clause (1) Article 150 of Federal Constitution of Malaysia (Jalil, 2021; Federal Constitution of Malaysia, 1963).

The first emergency proclamation declared by the YDPA was in 1964, and it involved a confrontation between Malaysia and Indonesia due to differences in political ideology. On July 27, 1963, the Indonesian government attacked Malaysia by launching the Ganyang Malaysia movement. This conflict became more tense when the Indonesian government violated the ceasefire agreement by sending troops to Labis and Pontian, Johor (Rusli & Mohamed Maiddin, 2022). This confrontation lasted up to 33 months and ended in 1966.

Furthermore, on May 15, 1969, the YDPA declared a nationwide state of emergency due to racial riots. May 13, 1969, was a black point in Malaysian history when a bloody tragedy took place that claimed lives and property (Syaher et al., 2022). Riots broke out due to provocation between the Malays and the Chinese, leading to fights (Haniffa & Othman, 2017). As a result of the tragedy, the Malaysian government has decided to establish 'RELA' under Section 2 Emergency (Essential Powers) Act 1964 (Regulations Relating to the Essential (Volunteer Forces) 1966 Amendment 2005 to be the government's eyes and ears in dealing with security threats.

The first positive case of COVID-19 infection was recorded in Malaysia on January 25, 2020, involving three Chinese nationals who had entered Malaysia through the state of Johor from Singapore on 23 January 2020 (Bernama, 2020a). The situation becomes more worrying when there is a spike in positive cases of COVID-19 recorded every day (Bernama, 2020b). This situation caused consternation among the community in Malaysia, coupled with significant political changes when Tun Dr. Mahathir Mohamad resigned as Prime Minister (Berita Harian, 2020). The political turmoil at the time caused the government to focus less on fighting COVID-19. However, it dissolved when the Yang di-Pertuan Agong appointed Tan Sri Muhyiddin Yassin as the eighth Prime Minister of Malaysia (Halid, 2020).

In 2021, YDPA declared an emergency proclamation through the Malaysian Government Gazette P.U. (A)7/2021 (Proclamation of Emergency, 2021) following the threat of the COVID-19 epidemic that threatens safety, life, the economy and public order. To ensure that the implementation in the face of the COVID-19 pandemic is managed efficiently and effectively, an Emergency Management Technical Committee has been established through the Malaysian Federal Gazette P.U (A) 12/2021 (Emergency (Essential Powers) Ordinance 2021) to take over critical national assets and structuring human resources to manage COVID-19.

Furthermore, to control the curve of this epidemic infection faster and more effectively, a stricter law enforcement action has been gazetted through P.U (A)76/2021 (Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance, 2021), which is the directive immediate closure of business

premises, legal action against employers who refuse to comply with the rules and SOPs set. The maximum compound and jail sentence can be imposed based on the amendment of this Act.

Stricter legislative and enforcement actions through the Malaysian Government Gazette P.U. (A) 77/2021 (Emergency (Employees' Minimum Standards of Housing, Accommodations and Amenities) (Amendment) Ordinance, 2021) to deal with management issues in employee accommodation. The employer must provide a place to live that meets the standards that have been set, bear the cost of accommodation, moving and the cost of workers' health screening, carry out monitoring actions on foreign workers while working at the job premises and after working hours at the place of residence and ensure that the agent of the worker's accommodation centre provides a place stay workers who meet the conditions and public health standards set by the government.

The provisions of the law have been enforced through the Malaysian Government Gazette P.U. (A) 110/2021 (Emergency (Essential Powers) (No. 2) Ordinance, 2021) was explicitly enforced to deal with false news related to COVID-19. Failure to comply with the prescribed rules causes the individual to be fined not more than one hundred thousand Malaysian Ringgit or imprisoned not more than three years or both. Individuals who are found guilty of committing the same offence continuously may be fined not more than one thousand Malaysian Ringgit for each day if the offence continues after conviction.

The COVID-19 pandemic crisis that is hitting is getting more and more under control due to the administration of vaccines in a targeted and phased manner among the community in Malaysia. A law enactment cancelling all Emergency Ordinances has been gazetted through the Warta Kerajaan Malaysia P.U. (A) 313/2022 (Proclamation of Emergency (Revocation), 2022) based on Clause (2B) Article 150 of the Federal Constitution of Malaysia.

Legislative Acts Related to The Covid-19 Pandemic

Good governance has a positive impact on the people and the country. Various security measures are based on the established *maslahah* to avoid all possibilities that may affect people's health (Aris et al., 2022). This coincides with the concept of *maqasid syariyyah* which is the preservation of religion, life, intellect, offspring, and wealth (Mahaiyadin & Samori, 2020). Through the preservation of life as stipulated in *maqasid syariyyah* it is a duty to emphasise the aspects of health, safety, and security. Therefore, *ulil amri, as a government entrusted to administer a country*, needs to provide safety and health guarantees to the people through effective law enforcement.

The Federal Constitution is the highest law in the legal system in Malaysia (Abu Samah et al., 2023). Based on clause 4(1) of the Federal Constitution is the primary law in Malaysia, and any law passed after independence that conflicts with the Federal Constitution of Malaysia is null and void to the extent that it contradicts (Federal Constitution, 1963). Therefore, every enactment that wants to be implemented must be based on the Federal Constitution of Malaysia, so there is no 'ultra vires'.

Freedom of movement is part of human rights. Human rights have been guaranteed in the Fundamental Freedoms Section of the Federal Constitution of Malaysia. However, this fundamental right is not absolute or binding because it is still subject to any law enacted related to public safety and order, health, and punishment (Mohamad Amin, 2020). Therefore, enforcing the MCO introduced by the government is a well-founded action and does not violate human rights, as stated in Clause (2) of the Federal Constitution of Malaysia.

The Prevention and Control of Infectious Diseases Act 1988, or Act 342, is an act that amends and consolidates laws related to the prevention and control of infectious diseases. Act 342 was also enacted to make provisions on other matters related to infectious diseases. It was enacted to reduce the problem of illness and death because of infectious diseases that threaten human health (Mohamad Amin, 2020).

The National Security Council 2016 or Act 776 is an act that provides for the establishment of the National Security Council, the declaration of security areas, and the extraordinary powers of the Security Forces in the security areas in Malaysia (National Security Council Act, 2016). In addition, Act 776 was also enacted to provide for other matters related to national security. This Act was gazetted on 7 June 2016 based on Clause (4A) Article 66 of the Federal Constitution of Malaysia.

Section 4 of Act 776 has allocated four functions of the National Security Council in formulating policies and strategic measures related to national security, monitoring the implementation of policies and strategic measures regarding national security, giving advice on the declaration of security areas, and performing other functions related to national security accordingly. Section 5 of the same Act has empowered the National Security Council beyond any other written law aimed at implementing any necessary or appropriate matters as stated in Section 4. It controls and coordinates operations related to the security country and issues instructions to any government entity in matters related to national security.

The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 or Act 829 is an act that provides for temporary measures to reduce the effects of the 2019 Coronavirus Disease (COVID-19) involving the modification of relevant provisions in the Limitation Act 1953, Limitation

Ordinance (Sabah), Limitation Ordinance (Sarawak), Public Authorities Protection Act 1948, Insolvency Act 1967, Hire - Purchase Act 1967, Consumer Protection Act 1999, Distress Act 1951, Housing Development (Control And Licensing) Act 1966, Industrial Relations Act 1967, the Private Employment Agencies Act 1981, the Land Public Transport Act 2010, the Commercial Vehicles Licensing Board Act 1987, the Courts Of Judicature Act 1964, the Subordinate Courts Act and the Subordinate Courts Rules Act 1955 (Temporary Measures For Reducing The Impact Of Coronavirus Disease 2019 (COVID-19) Act, 2020).

This Act was gazetted on 23 October 2020. It was enacted to assist any party in resolving disputes arising because of the inability to perform any contractual obligations that arise due to measures set, made, or taken under Act 342 through the COVID-19 Mediation Centre (PMC-19) (Abdul Wahab & Abdul Ghani, 2022).

On 13 January 2022, this act was amended through Act A1641, which modifies several terms involving the Housing Development (Control and Licensing) Act 1966 (Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) (Amendment) Act, 2022). Throughout the establishment of PMC-19, 290 cases were referred to PMC-19; of these, 79 cases were resolved with a cumulative dispute value of RM3.8 million. This PMC-19 was officially terminated on 23 October 2023 (Media Statement of the Minister in the Prime Minister's Department (Parliament and Law), 2022).

Conclusion

The Malaysian Government is always committed and earnestly carrying out the responsibility it has been entrusted with to curb the spread of the COVID-19 pandemic. The Malaysian government is making various efforts and taking proactive measures based on the keel of the law to smooth the curve of this epidemic infection by enforcing stricter and faster laws.

Act 342 is Malaysia's primary legislation for stopping and eliminating infectious disease outbreaks. However, this act needs more effective law enforcement support because of the extremely high pandemic-scale infection rates. Declaring a state of emergency during the COVID-19 pandemic aims to contain and lower the infection and fatality rates brought on by this outbreak. Authorities can indirectly support the more effective and efficient implementation and enforcement of laws through the YDPA execution of emergency proclamations and ordinances.

Through stricter and more precise enforcement implemented by the Malaysian government, it is not intended to punish and burden the people. However, the primary purpose is to raise awareness in the community in Malaysia so that they are careful in complying with the instructions that have been issued. Therefore, implementing the emergency proclamation announced by the Malaysian government is a reasonable and well-founded action. This is because the implementation is aimed at protecting the Malaysian community from the violent threat of this epidemic as provided for in the *maqasid syariyyah* which is to preserve life.

References

- Abdul Mutalib, L., Wan Ismail, W. A. F., Baharuddin, A. S., Ismail, A. M., Awang, M. S., Gunardi, S., Salleh, S. F., & Ahmad, M. H. (2020). Analisis Peranan Ulil Amri Dan Pihak Berkuasa Agama Dalam Menentukan Polisi Umum Berkaitan Hukum-Hakam Di Malaysia: Kajian Terhadap Isu-Isu Semasa Pandemik COVID-19: Analysis on the Role of Ulil Amri and Religious Authorities in Determining Public Policies Related to the Syariah Rulings in Malaysia: A Study on Current Issues of the COVID-19 Pandemics. *INSLA E-Proceedings*, 3(1), 235-248.
- Abdul Wahab, N., & Abdul Ghani, N. (2022). Mediasi Sebagai Kaedah Penyelesaian Pertikaian Alternatif: Tinjauan Awal Terhadap Pusat Mediasi COVID-19 (PMC-19). 6th Muzakarah Fiqh & International Conference 2022 (6th MFIFC 2022), 15–26.
- Abu Samah, N. H., Abdul Razak, N. S., Mohd Latifi, N. I., & Abdul Hamid, M. A. (2023). Concept of National Sovereignty in the Federal Constitution of Malaysia: Analysis Based on Siyadah Syariyyah Perspective. 13(1), 1–12.
- Aris, H., Abdul Halim, A., & Muslim, N. (2022). Aplikasi Kaedah Usul Fiqh dalam Memahami Hadith-Hadith Berkaitan Wabak dan Penetapan Langkah Keselamatan. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 7(5), e001527. <https://doi.org/10.47405/mjssh.v7i5.1527>.
- Federal Constitution of Malaysia, 1963.
- Federal Government Gazette. (2020, March 17). Prevention And Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 (P.U. (A) 87). Attorney General's Chambers.
- Federal Government Gazette. (2021, January 12). Proclamation Of Emergency (P.U. (A) 7). Attorney General's Chambers.
- Federal Government Gazette. (2021, January 14). Emergency (Essential Powers) Ordinance 2021 (P.U. (A) 12). Attorney General's Chambers.
- Federal Government Gazette. (2021, February 25). Emergency (Prevention and Control of Infectious Diseases). (Amendment) Ordinance 2021 (P.U. (A) 76). Attorney General's Chambers.

- Federal Government Gazette. (2021, February 25). Emergency (Employees' Minimum Standards of Housing, Accommodations and Amenities) (Amendment) Ordinance 2021 (P.U. (A) 77). Attorney General's Chambers.
- Federal Government Gazette. (2021, March 11). Emergency (Essential Powers) (No. 2) Ordinance 2021 (P.U. (A) 110). Attorney General's Chambers.
- Federal Government Gazette. (2022, October 6). Proclamation Of Emergency (Revocation) 2022 (P.U. (A) 316). Attorney General's Chambers.
- Halid, S. (2020b, February 29). Jatuh bangun politik Muhyiddin. *Berita Harian*. <https://www.bharian.com.my/berita/nasional/2020/02/660659/jatuh-bangun-politik-muhyiddin>.
- Haniffa, M. A. (2012, December 20). Pergaduhan Kaum Di Tanah Melayu Selepas Pendudukan Jepun Hingga Darurat Diisytiharkan. *Sejarah*, 20(20), 97–123. <https://doi.org/10.22452/sejarah.vol20no20.5>.
- Izhar, M. F., Abd Rahman, I., & Aziz, A. (2021, December 1). Covid-19 Pandemic: The Malaysian Government's Approach in Managing National Security. *International Journal of Law, Government and Communication*, 6(26), 23–38. <https://doi.org/10.35631/ijlgc.626003>
- Jalil, F. (2021). Perisytiharan Darurat dan COVID-19. *Kanun: Jurnal Undang-Undang Malaysia*, 33(2), 349–360. Retrieved from <https://jurnal.dbp.my/index.php/Kanun/article/view/8189>.
- Kronologi COVID-19 di Malaysia sehingga 16 Mac 2020. (n.d.). BERNAMA b. https://www.bernama.com/bm/am/news_covid-19.php?id=1821899.
- Mahaiyadin, M. H., & Samori, Z. (2020, September 30). Kawalan Penularan Wabak Merbahaya Menurut Perspektif Siasah Syar'iiyyah. *Journal of Fatwa Management and Research*, 26–48. <https://doi.org/10.33102/jfatwa.vol22no1.322>.
- Mohamad Amin, N. (2020). Perintah Kawalan Pergerakan dan Akta-akta Berkaitan. *Kanun: Jurnal Undang-Undang Malaysia*, 32(2), 341–350. Retrieved from <https://jurnal.dbp.my/index.php/Kanun/article/view/8041>.
- Muhammad Syaher, Syamirul Muhaimin, Aqil Ikhwani, Ahmad Izzuddin, & Deeva Haren A/L Pannirselvam. (2023). Sentimen Perkauman dalam kalangan Rakyat Malaysia Semasa Pemilihan Raya Umum. *Human Sustainability Procedia*, 3(1), 71–84. Retrieved from <https://publisher.uthm.edu.my/periodicals/index.php/hsp/article/view/11957>.
- National Security Council Act, (2016).
- Prevention And Control of Infectious Diseases Act 1988.
- Rusli, N. A. binti, & Mohamed Maiddin, S. H. bin. (2022). Involvement of Foreign Countries in Dealing with the Malaysia-Indonesia Confrontation: Penglibatan Negara Asing dalam Menangani Konfrontasi Malaysia-Indonesia. *Perspektif Jurnal Sains Sosial Dan Kemanusiaan*, 14(1), 41–46. <https://doi.org/10.37134/perspektif.vol14.1.4.2022>.
- Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020.
- Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) (Amendment) Act 2022.
- Tiga warga China sah kes pertama positif koronavirus Di Malaysia. (n.d.). BERNAMA a. https://www.bernama.com/bm/am/news_covid-19.php?id=1809193.
- Tun M letak jawatan Perdana Menteri. (2020a, February 25). *Berita Harian*. <https://www.bharian.com.my/berita/nasional/2020/02/658662/tun-m-letak-jawatan-perdana-menteri>.
- Zhu, N., Zhang, D., Wang, W., Li, X., Yang, B., Song, J., Zhao, X., Huang, B., Shi, W., Lu, R., Niu, P., Zhan, F., Ma, X., Wang, D., Xu, W., Wu, G., Gao, G. F., & Tan, W. (2020, February 20). A Novel Coronavirus from Patients with Pneumonia in China, 2019. *New England Journal of Medicine*, 382(8), 727–733. <https://doi.org/10.1056/nejmoa2001017>.

The Authors:

Muhammad Naqib Sahrani (<https://orcid.org/0009-0003-5357-8092>) is Postgraduate Master's Degree at University Islam Selangor, Bandar Seri Putra, 43000 Kajang, Selangor. E-mel: naqib.law@gmail.com

Nor 'Adha Ab Hamid, is a senior lecturer at University Islam Selangor, Bandar Seri Putra, 43000 Kajang, Selangor. E-mel: noradha@kuis.edu.my

Norziah Othman, is a senior lecturer at University Islam Selangor, Bandar Seri Putra, 43000 Kajang, Selangor. E-mel: norziah@kuis.edu.my