

SPEECHES DURING THE OPENING OF THE LEGAL YEAR 2015

THE HONOURABLE CHIEF JUSTICE

Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَابْرَكَاتِهِ

The Honourable Attorney General, The Honourable Syar'ie Appeal Judge, President of Brunei Darussalam's Law Society, Members of the Bar, Distinguished Guests, Ladies and Gentlemen, good morning and welcome.

It gives me great pleasure to welcome you this morning to the Opening of the Legal Year 2015. This occasion gives us time to pause from our busy lives and appreciate the importance of the law profession. It also allows us to reflect on the fundamental importance of the rule of law to be applied to all citizens without fear or favour, administered by an independent judiciary and combined with an open and accessible justice system.

1. STATISTICS

Court of Appeal, High Court and Intermediate Court Statistics

As usual, I shall deal with the statistics first.

18 Criminal cases were registered in the High court in 2014 as against 41 in 2013, and 84 Civil cases filed in the High Court in 2014 as against 83 in the previous year.

Civil Appeals from the high court and Intermediate Court to the Court of Appeal in 2014 numbered 15, that being 4 MORE than in 2013; and Criminal Appeals to the Court of Appeal in 2014 were 31 in number, this being 16 MORE than in 2013.

There were 50 Criminal Appeals to the High Court from the Magistrate's Court in 2014 the same as in 2013 and NO Civil Appeal to the High Court from the Magistrate's Court in 2014 compared to 1 Civil Appeal in 2013.

High Court and Intermediate Court civil cases (Chamber Hearings) registered to be heard before the Senior Registrars and Registrars DECREASED from 206 in 2013 to 190 in 2014.

The Intermediate Court had 209 civil matters registered in 2014, this being 8 LESS than in 2013; and 45 criminal matters were registered in 2014, that being 1 LESS than in 2013.

Civil Marriage Registration

In 2014 the Registry of Civil Marriages registered 91 marriages.

Bankruptcy

With regards to Bankruptcy matters, 384 Notices were received in 2014, that being 46 MORE than in 2013; 487 Receiving Orders were made in 2014, that is 432 LESS than in 2013; and 57 Adjudication Orders were made in 2014, that being 10 LESS than the previous year.

Probate and Letters of Administration

In Bandar Seri Begawan, 287 applications for Letters of Administration were registered in 2014, 212 Letter of Administration were granted. 10 applications for Probate were registered and 6 Probate were granted. In Tutong, 46 applications for Letters of Administration were registered in 2014 and 93 Letters of Administration were granted; 2 applications for Probate were registered, 1 Probate was granted. In Temburong, 10 applications for Letter of Administration were registered in 2014 and 4 Letter of Administration were granted.

The Subordinate Court's Statistics

Criminal Cases

In the Magistrate's Court for 2014 for criminal cases, 1506 cases were registered in Bandar Seri Begawan, 264 cases LESS than that in 2013, 619 cases were registered in Kuala Belait, 45 cases MORE than in 2013, 63 cases were registered in Tutong, 19 LESS than in 2013 and no criminal cases were registered in Temburong.

Civil Cases

The figures for civil cases registered in the Magistrates were as follows: in Bandar Seri Begawan, 1330 suits were registered in 2014 as against 895 filed in 2013, in Kuala Belait, 254 suits were registered in 2014 as against 173 filed in 2013 in Tutong, 197 suits registered in 2014 as against 122 filed in 2013 and in Temburong, no civil matters were registered.

Inquests

Figures for Inquests heard in Bandar Seri Begawan were 42 in 2014 as against 19 in 2013. No Inquests were heard in Tutong, Kuala Belait and Temburong Courts in 2014 and 2013.

Applications made under the Lunacy Act

Figures for applications made under the Lunacy Act in Bandar Seri Begawan Court were 66 in 2014 and 61 in 2013, in Kuala Belait Court, 11 applications were made in 2014 compared to 13 in 2013. In Tutong Court and Temburong Court no applications were made for both 2014 and 2013.

Statutory Declarations

The number of Statutory Declarations filed in Bandar Seri Begawan Court were 14,263 in 2014 as against 15,681 in 2013, in Kuala Belait Court, 2,029 in 2014 as against 2,390 in 2013, in Tutong Court 1,025 were filed in 2014 as against 1,141 in 2013 and in Temburong Court, 145 were filed in 2014 as against 201 in 2013.

Total Revenue

The Total Revenue collected in 2014 amounted to B\$4,982,759.38 as compared to B\$5,430,245.55 in 2013.

Juvenile Court

Since its establishment in 2011, the Juvenile Court has been assuming jurisdiction over children below the age of 14 and young persons who are aged 14 or above and below 18. Over the last 12 months, it has continued its effort in delivering juvenile justice and upholding rehabilitation and reintegration philosophy so that these children and young persons will play a constructive role in society in the future.

The Juvenile Court deals with the following cases:

- Juvenile Traffic
- Juvenile Arrest
- Care and Protection Order
- Beyond Parental Control

A Juvenile Traffic Offender refers to a child or a young person alleged to have committed a traffic offence. Juvenile Arrest refer to cases involving juveniles arrested for committing crimes such as theft. Care and Protection Order cases involve children and young persons in need or the Court's protection and intervention as a result of abused or neglected by their parents or guardians. Beyond Parental Control cases enable parents or guardians of children and young persons to lodge complaints against their children as "being beyond their control", for instance, cases where the children and young persons are reported to be violent and involved in drugs activities.

I will now deal with the statistics of the Juvenile Court which are as follows. In 2014, 28 cases were registered in Bandar Seri Begawan, as against 23 registered in 2013, 0 cases were registered in Kuala Belait, as against 3 in 2013, 0 cases were registered in Tutong, as against 1 in 2013, and 0 cases were registered in Temburong in 2014 and 2013.

Of the 28 cases registered in 2014 in Bandar Seri Begawan Juvenile Court, 3 cases were Juvenile Traffic cases and 3 Care and Protection Order cases. These figures indicates a decrease in the total number from its previous years. However, there were 15 Beyond

Parental Control applications in 2014, as against 9 in 2013, and 7 Juvenile Arrest Cases in 2014 as against 5 in 2013.

Based on these statistics, there was a slight increase in the number of cases filed in relation to Juvenile Arrest Cases and Beyond Parental Control since 2013. However, it is still a matter of great concern as these cases involved family institution. I would like to reiterate what I had previously said that family plays an important role in the lives of the children and young persons. Parents should be more involved in the lives of their children in order to instill positive values. A closer bond would enable parents to notice any negative behavior and response. The justice system should be the last resort.

As for Beyond Control cases, these troubled teenagers were exposed to negative influences. For Juvenile Arrest Cases where the Juveniles came from a dysfunctional family, their parents failed to equip them with a normal stable life.

It is then the role of the Juvenile Court to assist these children and young persons in their rehabilitation to identify the causes of offending and social problem. One of the measures available is to take these troubled teenagers away from their usual environment and place them in an approved home in the hope that they will be rehabilitated. The priority is to assist in reintegrating them back in to society in order to lead a normal life as well as to reduce the possibility of reoffending them.

Equipping the Juvenile Court with qualified officers are, therefore, essential because of the complexity of each case. Every Juvenile is different in their characters and development. Once again I would like to stress the important of ongoing specialised training in Juvenile justice for all those involved in the Juvenile Justice System. This includes, but not restricted to, Judicial Officers, Court Staff, Attorney General's Chambers, Police, Social Workers and Counsellors from the Community Development, Unit of Ministry of Culture, Youth and Sports.

I would also like to take this opportunity to thank every stakeholders of the Juvenile Justice system, the officers of the Community Development Unit, Ministry of Culture, Youth and Sports, Officers of the Attorney General's Chambers, Officers of the Royal Brunei Police Force and Panel of Advisers for their continuous support and assistance in upholding the pledge to protect and rehabilitate children and young person so that they can live a fruitful and beneficial life.

Mediation and Small Claims Tribunal

In recent years, mediation has been increasingly advocated as a tool in dispute resolution. It has emerged as perhaps the most predominant Alternative Dispute Resolution (ADR) process which is widely considered and used in common law jurisdictions. The aim of meditation is to end the dispute by focusing on finding a mutually acceptable solution that will bring about the most benefit to the parties.

The Honourable Chief Justice of Singapore, Sundaresh Menon has, on several occasions, highlighted mediation as one of the best ways to increase access to justice. Speaking at the official launching of the Centre for Dispute Resolution on 4th March 2015, he said “Alternative Dispute Resolution (ADR) should be the first step to be seriously considered in any conflict”. I strongly endorse the remarks of the Chief Justice of Singapore. Access to justice should be enhanced by both access to the courts, as well as, access to the mechanism for reaching consensual outcomes outside the courts.

In order to achieve the delivery of accessible and quality justice for all, the Civil Court will be looking into the possibility of introducing court-annexed mediation as an alternative dispute resolution into the Brunei court system. Court annexed mediation refers to the mediation of all civil and commercial cases which are filed in court. If both parties agree, these cases will go through the mediation process before designated judicial officers or assigned mediators. The court annexed mediators can also include experienced lawyers at the bar, law professors, leading the respected businessman and even retired bureaucrats.

The idea behind court-annexed mediated is to encourage early settlement of any dispute between the parties. The process of mediation not only saves times but also costs of a lengthy litigation as it brings the desired solution quicker for the parties in comparison to litigation which may take years before completion. One of the hallmarks of mediation is to preserve relationships between parties, which could otherwise become strained or in some instances, completely destroyed, if parties choose to resolve their dispute through the adversarial judicial process. It allows the parties themselves to determine the outcome they reach, often resulting in a “win-win” situation for both parties.

Another alternative means of mediation is private mediation. Parties to a dispute will have an option to undergo mediation before any lawsuit is filed. I believe early negotiations enhance the chances for settlement, thereby resolving disputes short of trial, and thus avoiding the proceedings that may become contentious and expensive.

Brunei Darussalam has slowly adopt mediations as a tool of dispute resolution. This is evident with the setting up of the Small Claims Tribunal (SCT) on 1st January 2013. It is designed to provide a quick and inexpensive forum to resolve small claims, without the use of lawyers. SCT hear and determine small claims relating to contract disputes over the sale of goods, provision of services, or damage to property up to the amount the \$10,000.

If a party has filed a claim at the SCT, the parties are required to attend a consultation session. At the consultation stage, the Deputy Registrars act a mediators in order to assist parties ot reach a settlement. 6 Tribunal cases were registered in 2014 compared to 5 cases in 2013. Almost half of those cases have been settled through mediation without having gone through adjudication. The remaining cases are either still ongoing or have been withdrawn. The number of settlement reached is one that reflect well on the achievements of the judicial officers at mediating cases.

Mediation has also been adopted in certain High Court cases such as divorce and defamation in which most of those cases have been amicably settled. The effectiveness of mediation rests heavily on mediators. I am pleased to announce that the Judges and the Judicial Officers had undergone a five days mediation training last month. It is hoped that the Judicial Officers will become accredited mediators in the near future.

Court Martial

I will now deal with the Court Martial, Our Judicial Officers are also Judge Advocates. It is the duty of a Judge Advocate to advise the President and Members of the Court Martial on questions of law and procedure which may arise during the course of the trial. Court Martial proceedings are open, and applies the same evidential rules as in criminal proceedings in the Civil Courts. There are a range of penalties available to the Court Martial such as fine, detention, imprisonment, reduction of rank and dismissal from the service of His Majesty.

Two cases were referred to the Judiciary in 2014 by the Royal Brunei Armed Forces requesting for Judge Advocates to assist in Court Martial proceedings. I am pleased to inform that these two cases have been disposed off swiftly in the same year.

One of the cases in 2014 involved three military personnel charged for attempting to seal cable rolls which belonged to their employer, the Royal Brunei Armed Force. Two of the defendants pleaded guilty, whilst the other defendant pleaded not guilty and claimed trial. This was the first time a full trial was conducted by the Court Martial. The defendant was duly convicted and all three defendants were sentenced to imprisonment and early dismissal from their service.

As a result of these cases, there are now more awareness of the Court Martial. The Court Martial has demonstrated that offences committed by military personnel against the Royal Brunei Armed forces, be it military related offence or criminal related offence, will be dealt with firmly.

I would like to take this opportunity to extend my appreciation to the Royal Brunei Armed Forces for their continued cooperation with the Judiciary and assure them our continuous support in assisting to provide court attachments and professional expertise in Court Martial.

In the past, Presidents and members of the Court Martial have attended and observed Court proceedings. I have been informed that this proved to be a useful experience to the officers who served as Presidents and members of the Court Martial. Therefore, I encourage this arrangement to continue.

2. COURT BUILDING

I am glad to report that our Court canteen has resumed its operation since April 2014 last year. The lawyers and members of the public can now enjoy their break, having 'tea or

kopi tarik' with 'mee goreng' or 'soto ayam' or 'nasi goreng belutak'. We can also enjoy the 'nasi campur', my favourite dish 'chicken kurma' and not forgetting our local delicacy 'Ambuyat' (boiled sago-glue).

I am also proud to declare that our toilets are in general, 'sparkling' clean. I hope we set an excellent example to other toilets in this country.

With the assistance of the State Judiciary Department, we have continuously renovate, repair and maintain our Court Building. We are grateful to His Majesty's Government for giving us the necessary budget to look after our Court Building in Bandar Seri Begawan, Kuala Belait, Tutong and Temburong. In Shaa Allah, the new court building in Tutong will be completed by the end of this year.

All these exercises are meant to give excellent services to the public including those who are involved in the administration of justice.

3. PRACTICE DIRECTION 2015

In the Judiciary's effort to make the court more efficient, new Practice Directions have also been issued. In total, I have issued eight Practice Directions that has come into effect as of the 1st April 2015. These Practice Directions cover matters relating to court attendances, adjournments, pre-trial conferences, duty Registrars and Magistrates, filing of documents, request for interpreters and translation of documents. These Practice Directions are applicable to all advocates and solicitors as well as the Public Prosecutor and her officers. It is expected that these Directions are adhered to so as to benefit the legal process. This way, proceedings are not prolonged unnecessarily. The 2015 Practice Directions are also readily accessible on the Judiciary's official website.

4. JUDICIAL CASE MANAGEMENT SYSTEM

The soft launch for the Brunei Judicial Case Management System was successfully held on the 23rd March 2015. With the launch, the Judiciary has introduced, 1, the Electronic-Filing System, 2, a Case Management System and finally, a Queue Management System. It has been an eventful month for my fellow Judges, Judicial Officers and Staffs. We have embarked on a challenging transition period from the traditional way of handling case files into a computerised system. Currently, we are still in the process of uploading cases into the JCMS server, however, cases will continue to be heard as usual.

As we have expected, we have experienced some teething problems which by dealing with them at this early stage will hopefully enable us to further improve the system. I am encouraged to see that our legal practitioners, have been helpful in introducing the JCMS system. With this system in place, the Judiciary will continue to strive to provide better services and access to justice. A JCMS helpdesk is also available to the legal practitioners, the relevant enforcement agencies and the public for queries and trouble shooting.

5. APPRECIATION

I am grateful to the Chief Registrar, the Officers and Staffs of the Judiciary that have worked hard to ensure the smooth running of today's event. My sincere gratitude also goes to the Commissioner of Police and the Royal Brunei Police Force for the guard of honour which I was privileged to inspect this morning.

I am also grateful to the Prime Minister's Office and the State Judiciary Department for their continuous support and co-operation in making sure that the Courts are managed properly.

Finally, on behalf of the Judiciary, I must express my appreciation to all of you who have found the time to attend this annual occasion. Thank you for supporting and showing interest in our judicial system which I believed has served Brunei Darussalam well and will continue to do so in the future. With Allah's blessing, I wish everyone present a happy, healthy and satisfying year ahead.