

SPEECHES DURING THE OPENING OF THE LEGAL YEAR 2015

THE PRESIDENT OF THE LAW SOCIETY

Haji Mohamad Rozaiman bin DSLJ Haji Abdul Rahman

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَابْرَكَاتِهِ

1) PREAMBLE

May it Please Your Lordship:

My Lord, The Honourable Chief Justice, Yang Amat Arif Ketua Hakim Syar'ie, My Learned Friend, The Honourable Attorney General, My Lords and My Lady, Justices of the High Court, The Honourable Justices of the Intermediate Courts, Honourable Registrars of the Supreme Courts and Honourable Magistrates of the Subordinate Courts, My Learned Friends Members of the Bar and Members of the Attorney General's Chambers, Their Excellencies, Distinguished Guests, Ladies and Gentlemen.

2) MEMBERS OF THE BAR

As of 23rd April 2015, there are a total number of thirty-one (31) law firms in Brunei Darussalam. A Total of one hundred and nine (109) advocates are currently issued with a Practicing Certificate by the Supreme Courts. Out of these total advocates, sixty (60) are Bruneian / and or Bruneian Permanent Residents. If compared to year 2014, the increased in the number of Local Advocates indicate an enhanced confidence from the Employment Sector that working in the Private Sector are in pari passu and pari material as beneficial as working in the Government Sector.

3) RULE OF LAW

As President for the Law Society of Brunei Darussalam, I remind myself and my fellow members of the bar to uphold the Rule of Law and the need to discharge our respective roles and responsibilities ably so as to ensure that our legal system worked fairly and expeditiously for the benefit of all citizen and all in the society.

I remind myself that Brunei Darussalam has an Independent Judiciary. The rule of law requires that judges be independent so that they can decide disputes impartially and without interference from any party, including, the Government.

I further remind myself that everyone is equal before the law and equally subject to the law and any citizen can find redress against any other, including the government, for nay act, which involves a breach of the law.

The rule of law produced order and justice in the relationship of man and man, and between man and the state. Equally the rules of law protects the integrity and sovereignty of the state and maintain law and order so as to create and orderly and safe environment where people can live safely, in peace and harmony.

Hence, through the rule of law, a man's access to justice free from any obstacles to an independent judiciary is paramount to ensure that any aggrieved party in any disputes whatsoever can resolve and settle their grievances impartially in an independent judicial system. To this notion, we begged to ask this notion: does Article 84C of the Constitution, where remedy of Judicial Review is not available in Brunei Darussalam, produced order and justice in the relationship of man and man, and between man and the state?

My Lord, in reply, we submit, in upholding the Rule of Law and to produce order and justice it is only appropriate for the Government to consider reinstating powers of Judicial Review back into our Constitution.

4) LAND CODE

The issues surrounding the Land Code remained ubiquitous until today. The Rule of Law provides that the Land Code is the law that governs all Land matter in this country. Hence through the Rule of Law, the authorities dealing with land must take cognizance, abide and fully adhered to the Law that is in place. It is a detriment to the citizen and it is Justice denied when the Rule of law is not applied. It will be coherent to investors and gain their confidence to have clarity on the law pertaining to ownership of Lands in this country. It is our humble views that until such time the laws are amended, accordance with legally binding precedence. A departmental police should not override existing laws and legally binding precedence. It is inappropriate for an authority to implement policy/ies that contravenes the existing law and also not adhering to binding decision decided by the highest court in the land i.e. the Court of Appeal pertaining conflicts on land transactions.

Since March 2012 up till today, the issues arising ownership and transfer of land has remained ambiguous. It is high time to have closure on this issue. Once these matters are resolved, it will help build confidence from investors and stakeholders who can help and supplement the Brunei Government's initiative to diversify its economy from the existing oil and gas infrastructure.

5) BORNEO ADVOCACY TRAINING CENTRE

The Law Society promulgates to ensure that the quality of their advocates/practitioners must continuously be enhanced to a high degree of standard. The reason behind this is to ensure that citizen in this country will get the highest standard of professional advice and representation from their advocates. The Law Society together with the Sabah Law Association and the Advocates Association of Sarawak recently set up the Borneo Advocacy Training Centre (BATC). The International Advocacy Training Council (IATC) recognises the setup of BATC. This was a training to train trainers in the arts of advocacy. Respectable trainers consisting of QC and SC from Australia, Singapore, Hong Kong and Malaysia were

involved giving their expertise on renowned advocacy skills. The first training was held from the 27th – 29th March 2015 in Kota Kinabalu, Sabah. Though this was a programme fully funded by the Law Society, only two (2) advocates and one (1) trainee from Brunei Darussalam participated in this training programme. The course/training programme in BATC will be conducted annually. The aim of this training is to enhance the quality of advocacy amongst practitioners in the Borneo region. I had the privilege to participate in the training held by BATC and I would like to reiterate and invite my fellow members of the Bar to sacrifice your busy schedules to embark and participate in the courses run by the Centre in the near future.

In order that fellow members of the Bar do not miss further advocacy training skills, The Law Society will be embarking on another Advocacy training for both their junior practitioners and senior practitioners during the 4th quarter of the year. The Law Society with the assistance of the Australian Bar Association will be organising an advocacy skills workshop for practitioners in Brunei Darussalam. I will be extending out invitation to our Learned Friends in the Attorney General's Chambers to support and join us in this advocacy workshop. It is my desire as President to see, with continuous advocacy skills training, the Judges and Magistrates will be at ease to witness that the standards of advocacy are increasing amongst both junior and senior advocates in Brunei Darussalam.

1) ACCESS TO COUNSEL

My Lord, I would like to reiterate the issue that was raised in my speech last year pertaining to Access to Counsel/Legal Advice. The Criminal Procedure Code (CPC) warrants for the detention of an accused for FORTY-EIGHT (48) HOURS before either be released on bail or indicated. During these vital hours, there are times an accused person requires and seek Counsel's advice. Presently, there are no provisions in the CPC enabling an accused to have a right to counsel during detention. It is vital and very important for an accused at this stage to know and understand why he/she is being investigated and what rights he can be afforded to. We strongly recommend to My Learned Friend, the Honourable Attorney General, to consider implementing a practice direction or amending, the CPC enabling an accused person to have access to counsel for legal advice and representations, if necessary.

Further, detention of an accused for a period of FOURTEEN (14) DAYS before either be released on bail or indicted provided under Section 22A of the Misuse of Drugs Act, Chapter 27 should as far as possible be exercised sparingly in the absence of provisions on access to counsel. We strongly recommend to My Learned Friend, the Honourable Attorney General to consider reviewing this provision and 'aligning' it similar to the CPC where an accused should only be detained for FORTY-EIGHT (48) HOURS and thereafter be released or indicated.

2) CORPORATE GOVERNANCE

On 15th January 2015, Darussalam Assets Sdn Bhd initiated an awareness conference at the Empire Hotel on Corporate Governance for GLC's. Good Corporate governance allows and creates mechanisms to monitor the actions, decisions and policies of corporations and their

agnets. The Law Society fully supports this initiative and will like to work together with Darussalam Assets Sdn Bhd to help build an excellent foundation of corporate governance for companies in Brunei Darussalam.

3) MISCELLANEOUS

- (i) We congratulate My Lord and the Honourable Chief Registrar for the recent implementation and official launching of the Judicial Case Management System Project (JCMS). We would like to express our sincere appreciation of the training organised by members of the Judiciary that was given to all members of the Law Society before the soft launched of the JCMS project on 23rd March 2015. In tandem with the release of the new Practice Direction 2015, no doubt, My Lord has in mind for the expeditious trial of cases to reduce backlogs of cases. Certainly the availability of JCMS and guidelines provided by the Practice Direction of 2015, we shall endeavour to ensure the time-lines to expedite trial will be adhered strictly. Nevertheless, it is our opinion that the numbers of judicial officers remained small. The elevation of judges and judicial officers will certainly help reduce back-logs of cases due to numerous litigations (both civil and criminal) being filed in both Supreme and Subordinate Courts. It is our humble opinion for My Lord to consider selection recruitment/elevation of Bruneian private practitioners from the Brunei Bar to the Judiciary. The same may apply if My Learned Friend, the Honourable Attorney General any wish to engage practitioners in the prosecution of cases should her chambers require assistance.
- (ii) We also wish to congratulate the Honourable Muhammad Faisal bin Pehin Dato Juragan Laila Diraja Haji Kefli, on his appointment as the Chief Magistrate of the Subordinate Courts. We wish him every success in his future endeavours.

4) CONCLUSION

To conclude, I on behalf of the Law Society would like to express our gratitude to the Honourable Chief Registrar and the officers and staff of the Judiciary for their hard work and preparations they have made to make this ceremony a successful event. One moment during this ceremony that I always to is the see the smiling faces of everyone insinuating: "Yeah" the speeches are over and lets enjoy the gourmet food.

Before we enjoy the gourmet, I also welcome continuous dialogues with officers from the Attorney General's Chambers, Prime Minister's Officer and relevant authorities to discuss on any relevant matters involving issues of law.

My Lord, this end of year also marks the end of my term as President of the Law Society. Let me assure My Lord that during my tenor, the Law Society strive to serve the interest of Justice as required by the "Rule of Law" and precedence and achieving justice for all.