

## **SPEECH DURING THE OPENING OF LEGAL YEAR 2016**

### **THE HONOURABLE CHIEF JUSTICE**

**Dato Seri Paduka Hj Kifrawi Bin Dato Paduka Hj Kifli**

### **INTRODUCTION**

Your Royal Highness Pengiran Anak Puteri Hj Muta-Wakkilah Hayatul Bolkiah,  
The Honourable Attorney General,  
The Honourable Chief Judge of the Syar'ie Court,  
President of Brunei Darussalam's Law Society, Justices, Judges,  
Members of the Bar, Distinguished Guests, Ladies and Gentlemen,

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَابْرَكَاتِهِ

Good Morning, and Welcome.

On behalf of Brunei Judiciary, I would like to extend a warm welcome to everyone here this morning and convey my gratitude for attending today's ceremony marking the opening of the Legal Year.

The opening of the legal year should be regarded as a gathering to bring together the legal fraternity and everyone concerned with the law, to celebrate liberty and justice and as well, to reaffirm our commitment to continue to uphold the principles of the rule of law and the independence of the judiciary.

While we realize that the effectiveness and quality of any judiciary has been defined and measured mainly with reference to the use and support of IT infrastructure, access to courts and availability of Alternative Dispute Resolution (ADR) however, we believe they are not sufficient measures unless we can be confident that we have secured justice in our courts system which is the ultimate goal and function of the judiciary.

We remind ourselves that ultimately it is the human factors that play the leading role in handing down the process of justice. To this end, we always remind ourselves to strive to better serve and to be fully accountable to the public by being efficient and fair.

It is therefore essential that the members of the Judiciary and the legal fraternity be of utmost competence and carry themselves with unassailable integrity. This is especially true if we, as servants of the law, are to command and maintain public trust and confidence.

## **CONGRATULATIONS**

I am very happy to announce that last year His Majesty The Sultan and Yang Di Pertuan appointed 6 new intermediate court judges to the bench. I believe this is befitting and timely, in order that they be well acquainted with the work in the higher court and to provide them with the effective practical tools and experiences in the process of decision making.

Our congratulations goes out to the Deputy Chief Registrar Radin Safiee bin Radin Mas Basiuni, Chief Magistrate Muhammed Faisal bin Pehin Datu Juragan Laila Di Raja Kol (B) Seri Pahlawan Hj Kefli, Senior Magistrate Hj Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Badaruddin, Senior Registrar Ramzidah binti Pehin Datu Kesuma Diraja Kol (B) Hj Abdul Rahman, Senior Magistrate Pengiran Masni binti Pengiran Hj Bahar and Senior Registrar Dk Hj Norismayanti binti Pengiran Hj Ismail.

Without a doubt, the Judiciary is further strengthened following these appointments.

Also in this auspicious occasion, I would like to congratulate Mr. Rozaiman Dato Seri Laila Jasa Hj Abdul Rahman for his second term appointment as President of the Law Society. Despite his reluctance to be reelected, I am confident he will continue to lead the Law Society with the best intentions and continue the excellent work he had done during the previous term in office. Congratulations are also due to Mr. On Hung Zheng for being elected as Vice President.

## 1. STATISTICS

I do not want to bore you with the Court statistics. As usual, you can find them in our annual legal year program, but for this morning, allow me to highlight some aspects of it.

### **Bankruptcy**

On bankruptcy, with respect to the statistics gathered for the last five years (from 2010 to 2015), there has been a gradual increase in the number of Bankruptcy Notices filed but despite that, the most glaring feature here is the exceptionally high number of rescissions on the receiving Orders and discharges of adjudication orders from 18 in 2010 to 95 in 2015 and 1 in 2010 to 10 in 2015 respectively. What this means is that there have been more judgment debtors who have been able to be released from bankruptcy proceedings than previously before.

It is noted that banks have been actively providing settlement solutions to judgment debtors by consolidating their debts and allowing bridging and restructuring loans. Obviously, the long term policies of the government in credit cards and personal loans have made a considerable impact here.

I would now like to report on the Judiciary's ongoing initiatives.

## 2. COMMERCIAL COURT

We are pleased to announce the establishment of a Commercial Court to be presided over by the Intermediate Court Judges. This project is embarked on by the Judiciary to expedite the hearing of commercial cases. Such cases will be given priority of hearing dates when possible to ensure that they are dealt with in a timely manner.

It is planned that the new Commercial court will hear disputes relating to contracts, the export and import of goods, insurance and re-insurance, banking and financial services, the operation of markets and exchanges and the purchase and sale of commodities. Two new procedures will also be introduced within the Commercial Court which will help expedite matters, namely the Case Management Conference

(CMC) and the option of mediation. Currently there is a panel of eight Intermediate Court Judges and identified Registrars that will hear commercial cases among other cases. It is hoped that this significant number of Judges will help expedite the disposal of cases and shorten the 'queue' for hearing dates.

With the new Commercial Court, the Judiciary will proceed to assess whether the volume of cases will warrant the enhancement of the jurisdiction of the Commercial Court. This will help set further direction for the court to move on. It is planned that the Commercial Court will deal with cases usually fixed before the High Court. It is also proposed that, in the near future, the Commercial Court will hear intellectual property matters and further plans are in the pipeline to assign specialized judges to the Court.

This novel approach in dealing with commercial cases is still very much in its developmental stage. This project will not only test new procedures but will also enable feedback from stakeholders on areas which need to be improved on or added. Nevertheless, we hope that this will be a positive experience that will prove to benefit not only the Court and legal fraternity but also the wider business communities. It is hoped that this will fulfill the country's aspiration to attract more foreign direct investment and create a more conducive business environment and at the same time ensuring that commercial disputes are resolved justly, fairly and efficiently.

The focus on the need to dispose 'commercial cases' efficiently does not mean that criminal cases are less important and should not be given serious attention. The Courts still do have responsibility in disposing criminal cases promptly and fairly so as to ensure those charged in Court are dealt with in accordance with the law, and the rights of the community, in particular, the right to life and the right to property are well protected. We need to have law and order in this country first to enable us to create a more conducive business environment.

### 3. JCMS

By now, members of the legal fraternity are quite familiar with the integration of technology into the Court's system. Electronic Filing, the electronic judicial case management system (JCMS) and the electronic queuing system, collectively known as the "Electronic Judiciary Case Management System" have proven to be effective tools in assisting the judiciary in the administration of justice.

We are happy to report that the feedback since the implementation of these services in March 2015 have been widely positive. Within the Court itself the staff and judicial officers have found it of great use to be able to retrieve files literally at their fingertips and no longer have to wait for files to be delivered and flick through numerous documents. Our main users, the law firms are also positive on the system and we have heard numerous positive comments ranging from spending less time filing at the registries and faster processing times to saving paper.

Access to justice is always a priority in upholding the rule of law, and by ensuring that costs to the user were kept at a minimum has meant that the judiciary is continuing its efforts towards judicial excellence.

The online payment service is another encouraging step towards refining the court's services. This has been a concerted effort between the Judiciary, State Judiciary Department, E-Government National Centre and the Ministry of Finance. Collaborations such as this has been pivotal and have contributed largely to our success. To this we are thankful for everyone's endeavors.

No system is perfect, even when bolstered with technology. We will continue to strive to improve the services and remain optimistic that our services will continue to progress and evolve on the same encouraging path. Reviewing areas such as amendments to the law, fees, policies and practices will be constant to ensure the electronic systems continue to be a convenient and practical tool for all our users.

We are grateful for the support and assistance from the Prime Minister's Office, the Attorney General's Chambers, E-Government National Centre, Enforcement

agencies and the Law Society. We hope to maintain such co-operation through our dialogues and feedback mechanisms that have been put in place to ensure any issues are highlighted and resolved. It cannot be doubted that technology is a useful tool. We are always mindful that the journey is still far but reassure our users that we shall continue to modernize our case management techniques in order to meet everyone's needs.

#### **4. MEDIATION**

Efforts have also been made to make mediation part of the Court process in all aspects of civil matters. The advantages of mediation have been obvious as previously highlighted in last year's Legal Year speech. Mediation will not only be a way to settle civil cases faster but it will cut down the costs of litigation and will also free up the Court's diary for other cases. We have, I believe, talented mediators in our Registrars and Magistrates who I hope will receive their accreditation soon.

##### **Small Claims Tribunal**

As part of the court's efforts to further enhance access to justice, the Small Claims Tribunal will open its doors to the other three districts in 2016. Individuals will be able to have easy access to the Tribunal in filing their claims and have their cases consulted and heard in their respective districts.

A channel of cooperation has also been established between all relevant stakeholders that deal with small claims, namely the Labor Department and Department of Economic Planning and Development. In our Legal Year book, you may see statistics provided from these Departments which highlight their achievements in dealing with small claims. We are proud of their accomplishments in resolving these cases and will continue to work together with them.

Ultimately, the aim of the Small Claims Tribunal is to provide easy access to justice. The Tribunal provides a cheaper, faster and less formal adjudication of cases. The main method of resolving such cases is through Mediation at the Consultation stage and of course, court users will feel more assured knowing that the Mediators who

deal with their cases are accredited. The Court is pleased to report that arrangements have been made for the Assistant Registrars of the Tribunal to obtain accreditation. On the 29<sup>th</sup> January 2016, three Assistant Registrars of the Tribunal underwent assessment for accreditation with the Singapore Mediation Centre and there will be more to follow suit.

### **Manpower**

With all these initiatives that the Court is embarking on, there are some challenges that we are facing especially in the area of manpower. This matter has been brought to the attention of the Law and Welfare Division and PENGGERAK unit of the Prime Minister's Office. We are pleased with their commitments and efforts in resolving these issues and we look forward to these initiatives being realized in the year ahead.

### **Legal Aid**

I will now touch upon the issue of legal aid. Access to the court system is one of the main stays of the rule of law and we believe it goes hand in hand with access to legal representation. We have been successful in creating a pool of senior and experienced members of the bar under the legal aid scheme to represent defendants charged with death penalty offences.

As we are all aware currently, provision of legal aid is subject to certain conditions and legal representation is not appointed as of right. Defendants when applying for legal aid have to undergo an examination of their financial means and if it is assessed that the defendants clearly could not afford their own counsel, legal presentation would be appointed for them by the court.

Based on statistics gathered for the past 10 years, 19 applications were granted for legal aid with a sum of about \$318,170.00 having been paid out to legal representatives under the scheme. This supports the importance of the legal aid scheme as part of the justice system.

Not all capital defendants have the financial means to appoint their own private legal representation. It is therefore of utmost importance that legal aid continues to be part of the legal system so that poor capital defendants are afforded with adequate and qualified legal representation. This will ensure that these defendants are of the same equal footing as a capital defendant who can afford their own private legal representation. Appointed legal representatives should also be adequately remunerated for their services to ensure that they will continue to take on death penalty cases for poor capital defendants.

## **5. JUDICIARY WEBSITE**

As part as our efforts to socialize the services provided by the Courts, we would like to take this opportunity to introduce some new features in the Judiciary's official website. Firstly, we have added to the collection of published judgments online, which now includes judgments from the Intermediate Court and High Court from 2010 onwards. A link has also been added to the Judiciary's website which will take users to the e-Filing portal where they can perform a more refined judgment search.

Secondly, the Judiciary has uploaded e-Leaflets for all court services in the High Court, Intermediate Court and Subordinate Court. These e-Leaflets will enable all court users to have access to information on services provided by the Courts. Such information will be useful to the general public, especially students, who have an interest in the workings of the Court. E-Leaflets will be provided in both Bahasa Melayu and English.

## **6. CONCLUSION**

I would like to express my sincere gratitude and appreciation to the Chief Registrar and all of the Officers and Staff of the Judiciary for their hard work in ensuring the success and smooth running of today's event. I am also grateful 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 would also like to thank the Prime Minister's Office and the State Judiciary Department for their continuous support and co-operation in ensuring the efficient running of the Courts, to the Prisons Department in ensuring the prompt attendance of prisoners to Court and to the various High Commissions and Embassies who have supported us with the provision of Interpreters.