

**SPEECH BY THE PRESIDENT OF THE LAW SOCIETY
Mohamad Rozaiman DSLJ Abdul Rahman**

OPENING

Awali Bismillah pembuka bicara,
Pemanis kata dan Selamat Datang,
Selamat Datang,
Ke Upacara Undang-Undang.

Dua tiga kucing berlari,
Manakan sama si kucing belang,
Tak sangka kita berjumpa lagi,
Di majlis Tahun Undang-Undang

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَابْرَكَاتِهِ

1) PREAMBLE

May it Please Your Lordship:

Yang Teramat Mulia Paduka Seri Pengiran Anak Puteri Hajah Mutawakkilah Hayatul Bolkiah ibni Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzadin Waddaulah,

My Lord, The Honourable Chief Justice, Yang Amat Arif Ketua Hakim Syari'e, 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.

I have the honour and privilege for the third year running of addressing Your Lordship at this momentous gathering on the occasion of the opening for the Legal Year 2016.

I am also delighted to acknowledge the presence this morning of our distinguished colleague, Mr Steven Thiru, President of the Malaysian Bar.

2) MEMBERS OF THE BAR

In November 2015, the Law Society held its election of council members. I am pleased to announce the following members who were elected as council members:

Vice President – Mr On Hung Zheng

Secretary – Miss Nur Azizah biniti Ahmad

Treasurer – Mr Pg Izad-Ryan bin PLKDR Pg Hj Bahrain

Members – Madam Hjh Norhashimah binti Haji Taib, Mr Ahmad Basuni bin Haji Abas, Mr Cheok Van Kee, Robin, Mr Lim Rui, Mr Cheok Teing Seng, Jonathan, Miss Too Shu Vun, Mr Tan Tarnng Jaun, Linus and Mr Eric Siow Kin Seong.

As of 4th February 2016, the total number of firms have increased from a total number of thirty-one (31) to thirty-two (32) in Brunei Darussalam. A total of one hundred and ten (110) advocates are currently issued with a Practising Certificate by the Supreme Court. Out of these total advocates, sixty (60) are Bruneian / and or Bruneian Permanent Residents. If compared to year 2014, year 2015, the number of advocates practicing in Brunei Darussalam remained at a standstill. Though they were quite a substantial number of lawyers graduating in 2015, nearly all of them have either joined the government service or GLC's. Let me be the first to tell the upcoming graduates in the legal field, not be afraid to venture and work in the Law Firms. Working in the Law Firms are indeed competitive. However, it is definitely beneficial, fulfilling, more rewarding and you will not lose out in terms of experience!

3) RULE OF LAW

As President for the Law Society of Brunei Darussalam, I remind myself and urged 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.

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, those in authority.

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 those in authority, for any act, which involves a breach of the law.

The rule of law protects the integrity and sovereignty of the state and maintain law and order so as to create an orderly and safe environment where people can live safely, in peace and harmony.

I therefore call upon all of my learned fellow members in the Law Society to uphold an undiminished belief and faith in our present system. As members of the Bar, we must ensure and always strive to maintain our integrity and be proud of what we do. It is not always a matter of dollars and cents and how many cases one can win but more importantly, we must have the feeling of satisfaction that we had achieved something as a result of the fairness in our legal system, the observance of the rule of laws and the never ending arguments on issues of law.

One must not keep track on the numbers of acquittals when defending accused persons or numerous success of a plaintiffs claims or the numerous success in defending a civil claim. As advocates and solicitors, we must also strive to be proud to know that we are practicing in a legal system of which confidence have never been eroded.

We are indeed proud to practice in Your Lordship's courts with learned adversaries, be they fellow members of the Bar or learned DPP's, who:

- a) have steadfastly observe the Rule of Law;
- b) work without fear or favour, where the courts rule for or against our case;
- c) rely and believe in our legal system with the judicial officers always being fair
- d) in giving parties the deserved hearings; and
- e) our desire to ensure that our own integrity shall not waiver in the way we do our
- f) tasks for clients.

All of the above require high standards of honesty, integrity and sense of fair play. I also urge my fellow learned members and remind ourselves that we should never take issues personally and with bitterness against our opponents once we are done with the cases!

4) ACCESS TO JUSTICE.

My Lord, I would like to reiterate the issue that was raised in my speech last year pertaining to Access to Justice. The Criminal Procedure Code (CPC) warrants for the detention of an accused person for FORTY-EIGHT (48) HOURS before either be released on bail or indicted. During these vital hours, there are times an accused person requires and seeks 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.

If we believed in the principles of the Rule of Law, a man's access to justice must be free without any obstacles and hurdles. Last year, it is with sadness to hear at least two cases where person held in the custody of the Royal Brunei Police Force had allegedly committed suicide whilst being detained or remanded in police cells. It is only reasonable for everyman to question: How could this had happened? The Police station should be the safest place in the planet and how could two "innocent" person

committed suicide? If the Criminal Procedure Code contained provisions enabling accused person having immediate access or rights to counsel, this ill-fated incident may not have had happened. We further opined that to eliminate the accusation of being bias, an independent investigation by an independent body must be conducted to determine any failure in procedures and also determine the actual cause of death. It would not be in the interest of justice nor in the interest of all the victims if justice could not be served.

We strongly suggest to My Learned Friend, The Honourable Attorney General, to consider amending the CPC or provide a practice direction to enforcement officials enabling an accused person to have access to counsel for legal advice and representations.

5) FOREIGN DIRECT INVESTMENTS (FDI)

We have heard from the recent titah of His Majesty The Sultan Dan Yang Di Pertuan of Brunei Darussalam highlighting the importance for Brunei Darussalam to diversify its economy and attracting FDI. In the Law Society, we are 100% committed to assist the Government of His Majesty The Sultan Dan Yang Di Pertuan, where necessary, to provide legal advice and opinion on the execution of any FDI plans.

My Lord, there currently exist ample legislations to attract FDI. We opined there must be a “Micro” process examination to further improve procedures and regulations in Brunei Darussalam in order for foreign direct investors to be confident enough to invest their resources in the country.

In an FDI environment, it would not just be foreign money flowing in but expatriates would be coming here to live and work enabling them to manage their investment. As a foreigner, the question posed will be: how easily can a person get legal help and assistance in Brunei? We opined that the absence of judicial reviews in Brunei could pose a problem for potential investors as it takes away the system of checks-and-balances to our judiciary. In the absence of Judicial Review, we have to look for alternative solutions to protect foreign investors in Brunei.

Grey areas in the law at a micro level in our country would not inspire confidence among investors at home or abroad. Judicial reviews enable a review to the way in which a decision has been made, rather than a challenge if the decision made is right or wrong.

When foreign investors come to Brunei, they expect to be protected by the law but without judicial review, there has to be at least other ways to assure them that Brunei has the social, economic, political and religious stability for their investments to thrive in.

The authorities need to find alternatives to establish a framework for a system of checks-and-balances and have a practical approach to how we can complement these FDIs.

The Legal system must inspire confidence among investors and the lack of it would present an incalculable risk that might cause potential foreign investors to shy away. In order for FDI to work, it is important for all processes and regulations in Brunei to be made transparent and consistent, not changing every time there is a change of personnel within the organizations of the authorities. Ministries and departments must work hand in hand with each other and not being silo from one another. The Law and the government policies must not be at loggerheads with each other and there should be a way that people can challenge the legality of it through the proper channels in the judiciary.

My Lord, it is our view that judicial reviews are meant as an avenue to ensure that each function of the authorities is not acting above the limits of their powers and we do not view judicial reviews as a tool to challenge the authorities.

6) 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. As Brunei Darussalam is now embarking and opening its market to attract FDI, 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, the present status quo in relation to ownerships and transfers of land should be maintained in accordance with legally binding precedence.

Since March 2012 till today, the issues arising ownership and transfer of land has remained ambiguous. Ambiguity on issues relating to land transfers and ownerships will turn away investors who wishes to invest in our beloved country. Since March 2012, the Law Society has opened its doors requesting dialogues and fruitful discussions with the relevant authorities. Today, with the recent changes in cabinet Ministers at the Ministry of Development, I am sending an open message (not an s.m.s.) to the relevant authorities and hereby reiterates that the Law Society is humbly requesting for the relevant authorities to invite us in any discussion governing amendments to the Land Code. In response to His Majesty's titah and for the sake of the nation's interest to attract FDI, it is time to move forward and the Law Society wish to work together with the relevant authorities to resolve and settle the issues governing land transfers albeit legal and equitable ownerships, as well as trust deeds and Power of Attorneys. 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.

7) LEGAL AID

My Lord, as you are fully aware, legal aid is only given to criminal cases where a death penalty sentence is being prescribed. In the past, The Law Society had set up legal aid clinics but this is only a short term solution for those requiring legal advice. There are cases where legal representations in the Courts of Law are necessary. A “means test” will be formulated by the Law Society enabling those in dire need of advice and representations to get assistance. At this juncture, the Law Society will be inviting their members to provide legal advice and representations on a case to case basis as part of their Corporate Social Responsibilities (CSR). However, this is only a short term solution. In the long term, it will be necessary My Lord, to consider setting up a “Legal Aid Fund” enabling the full implementation of the legal aid programme. I would like to reiterate the Law Society’s commitment to assist the establishment of a Legal Aid Fund in Brunei Darussalam.

8) SUPPORT OF LOCAL BUSINESSES.

My Lord, in year 2015, the Law Society had and have been working closely to support the initiatives of Peneraju Gagasan Gemilang Untuk Rakyat “PENGGERAK” of the Prime Minister’s Office. Vide PENGGERAK, the Law Society were invited to provide valuable comments and opinions on the Government initiatives to improve their ranking on “Ease of Doing Business” and also on the recent draft Insolvency Order. We thank PENGGERAK for giving us the opportunity to work side by side with them.

Taking on from this example, I would like to take this opportunity to invite GLCs in Brunei Darussalam to continue and support the growth of local businesses. Though law firms in Brunei are being invited to be in the panel of lawyers of the GLCs, it is still astonishing to see foreign law firms are assigned works without the involvement of local law firms. We fully understand that some local law firms do not have the expertise at certain fields but this should not be an excuse for assigning works to established law firms from abroad. They should be an incentive provided by GLCs to get local law firms to work together with the established law firms from abroad.

Similarly, in the conduct of criminal prosecution, section 375 of the Criminal Procedure Code allows criminal prosecution to be conducted by any person so long as the Public Prosecutor or His Majesty gives their consent. In year 2015, we saw a number of cases under the Prevention of Corruption Act being prosecuted by lawyers from a neighboring country. I begged to ask this question, is there not enough sufficient number of Deputy Public Prosecutors at the Attorney General's Chambers to handle these cases or is it because the merits of the case is so complex? If it is the latter, are they insufficient number of criminal litigators in Brunei to be invited to conduct the prosecution on behalf of the Public Prosecutor?

We therefore invite GLC's and the office of the Attorney General to find ways where all parties can have a win-win situation.

9) MISCELLANEOUS.

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. Certainly the availability of JCMS and guidelines provided by the Practice Direction of 2015, we shall endeavor to ensure the time-lines to expedite trial will be adhered strictly. Though, it is still our opinion that the numbers of judicial officers remained small. The recent 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. We hereby congratulate The Honourable, Deputy Chief Registrar, Mr Radin Safiee bin Radin Mas Basiuni, the Honourable Chief Magistrate, Mr. Muhammad Faisal bin Pehin Datu Juragan Laila Di Raja Kol (B) Seri Pahlawan Hj Kefli, The Honourable Senior Magistrate, Mr. Hj Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Badaruddin, The Honourable Senior Registrar, Madam Ramzidah binti Pehin Datu Kesuma Diraja Kol (B) Hj Abdul Rahman, The Honourable Senior Magistrate, Madam Pengiran Masni binti Pengiran Hj Bahar and The Honourable Senior Registrar, Madam Dk Hjh Norismayanti binti Pengiran Hj Ismail on their appointments as Intermediate Court Judges. We wish them success in the dispensation of justice and upholding the Rule of Law.

10) 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.

I also welcome continued dialogues with “PENGGERAK” from the Prime Minister’s Office, Foreign Missions in Brunei Darussalam, officers from the Attorney General’s Chambers and relevant authorities to discuss on any relevant matters involving issues of law. We shall continue to uphold the Rule of Law to ensure justice is served to all.

CLOSING

Saudara saudari berwajah ceria
Hadirnya biskita untuk negara,
Maaf dipinta jika terkasar kata, Tangan dihulur maaf dipinta.

Wahai saudara saudari yang saksama,
Mari mencari intan bersama,
Negara kini penuh cabaran,
Mari pikul amanah bersama.

Tutur bahasa seisi hati,
Sekian disampaikan ucapan ini,
Berakhir lah majlis hari ini,
Dengan Takzim saya berundur diri.