

OPENING OF THE LEGAL YEAR 2021.

SPEECH BY THE PRESIDENT OF THE LAW SOCIETY.

My Lord Chief Justice,

Yang Berhormat Pehin Orang Kaya Laila Setia Bakti Diraja Dato Laila Utama Haji Awang Isa, Special Adviser to His Majesty and Minister at the Prime Minister's Office.

Yang Berhormat Dato Seri Setia Haji Abdul Mokti Bin Haji Mohd Daud, Minister at the Prime Minister's Office

Esteemed members of the judiciary, Chief Judge of the Syar'ie Court, The Honourable Attorney General, fellow counsel and colleagues of the legal profession, distinguished guests, ladies and gentlemen, assalamualaikum and good morning.

We are thankful for the blessings of Allah subahanahu wata'ala for being able to come together on this occasion to mark the opening of this legal year 2021. I am honoured and thankful to my fellow counsel and colleagues in the profession for giving me this opportunity to say a few words on their behalves today.

We wish to express our congratulations to the Honorable Attorney General, our learned colleague, Yang Berhormat Haji Ahmad bin Pehin Orang Kaya Laila Setia Bakti Di-Raja Dato Laila Utama Haji Awang Isa on his appointment last year. The members of the Law Society are particularly proud that a practitioner from private practice should be called upon to fill this position. We have no doubt that the Attorney General will bring patience, experience and objectivity to this role. We would observe that while it is the

first time in Brunei that a private practitioner has received this honour, in neighboring countries, it is not unusual for the Government's highest legal advisor to be taken from practice, indeed, in other countries we have seen that position filled by legal practitioners from the judiciary, business, academia and the legislature. I would submit that it is a demonstration of the health of the system that this important role may be filled by practitioners from other sectors.

The Law Society wishes also to congratulate the appointment of:-

1. the Chief Registrar Justice Haji Abdullah Soefri bin Pehin Orang Kaya Saiful Mulok Dato Seri Paduka Haji Abidin as a Judicial Commissioner of the High Court;
2. Hajah Hazarena binti Pehin Orang Kaya Setia Jaya Dato Paduka Haji Hurairah and Harnita Zelda Skinner, Senior Registrars of the Supreme Court, to sit as Intermediate Court Judges

We wish them all success in their roles, and have no doubt that they will discharge these responsibilities with dedication and fairness befitting the position.

Last year, I addressed this forum on 3 main topics: - Continuity, Challenges and the Rule of Law. I take this opportunity to re-assure My Lord that this years speech is not recycled, though, again as befits the occasion, I must revisit similar topics.

2020.

Last year, I said that we in the Law Society would seek to build on what has gone before and to make what incremental changes we can to improve

things, without seeking to re-think our purpose or mission or how we will go about doing things.

Well before we could go about any of our incremental changes and “business as usual” for 2020, what started in February as a conscious effort to avoid social occasions and gatherings turned, by early March into a full-on closure of the courts, the shutting down of international travel and pretty much, for a time, the suspension of business. To say that last year was disrupted by COVID would be an understatement.

Thankfully though, we may commend the efforts of the authorities, especially the Ministry of Health and the good sense of the population to take quick and firm early action. I am thankful to my colleagues in Council who pressed for strong action early on to ask for the closure of non-essential work in court. We are also grateful to the My Lord Chief Justice, the Chief Registrar and the Judiciary in taking early and immediate steps to avoid crowding and to close the courts for all but essential work early on in March.

As a result, with very few local transmissions, we in Brunei are in a happy position here at the start of 2021 to be able to gather at events such as today and at the very least to be able to continue with business, education and important and necessary activities. Indeed, it is encouraging to see that some sectors of the economy are thriving. We almost take it for granted that we can do simple things such as take a walk, exercise, drive to work, send the children to school and eat in a restaurant. Again, for this we are thankful but should be mindful of the need to not let our guard down.

I would observe that in no small part, we are in this enviable position as a result of trust. Trust on the part of the population that the requirements and

guidelines issued by the medical authorities are right to follow, trust that the science is correct, trust for example that a 14-day quarantine after travel abroad is best for all, trust that our fellow citizens will also do the right thing. Without a good dose of mutual trust, I believe that we as a society would have had to swallow much more bitter medicine down the road.

As I understand it, in other jurisdictions, the impact of COVID on the legal profession and the rule of law has been substantial. Businesses and law firms have been disrupted, work from home is the norm, courts have shut down giving rise to substantial issues such as access to justice and delayed hearings.

What last year has brought us here in Brunei, is a greater reliance on the use of technology, and an object lesson on the ability of the system, the profession and the courts to adapt to changing circumstances.

Being a small bar, for example, we were able to set up a group chat to keep communications channels open between all court counsel on what was a very fluid situation with the courts and court hearings.

Between March and May, when the courts were closed to all non-essential matters, many civil hearings with counsel involved were held on-line and remotely. The issue then was broad-band or the lack of data, and that litigants in person and those in the matters relating to bankruptcy had difficulty accessing the relevant technology.

I must commend the courage and dedication of the court staff and the judiciary and indeed all relevant parties in continuing to hold remand and bail hearings and limited criminal trials in these months. In matters such as these it was important that the machinery of justice continued to operate.

The Council of the Law Society took quite quickly to monthly Zoom meetings instead of meeting in person. Indeed, we have continued to use Zoom as an option for attendance at meetings because of the convenience. One of the things that Council members have become quite proficient at is the “Zoom Dance”. Its quite simple, you point at you ear and shout at the screen “turn on your mike”.

As far as work from home goes, I think in general most law firms have adapted. With the Judicial Case Management System at least, which has been in place for some time, it was possible to continue to undertake court work and to file remotely. I think however in general, perhaps we could all do much more to invest in our relevant systems and practices for the future to allow for greater ability for remote working. This I believe, will become the norm in other places and given the cost and convenience, work from home and remote attendance may well become ingrained in all aspects of legal practice.

Business has had to continue, just as engineering firms have been able to complete complex tasks with remote supervision, transactions in which law firms participated both locally and internationally have had to proceed with the assistance of technology.

At the end of last year, in a historic first, we had a trial relating to a complex contractual dispute, with the Honorable Justice Ramesh sitting in a court room in Singapore, Counsel for both Plaintiff and Defendant in a special court room in Brunei, and witnesses being examined in Malaysia. In general, most reports are that it seemed to have worked. As I understand it, this trial was only possible because parties agreed to hold it in this manner, and without such agreement it would not be possible to have such virtual trials. I appreciate that it may not be possible in all cases, especially where the examination or cross examination of a witness and their demeanor may be important. I think that if these types of trials will become the norm, perhaps we should look into clear guidelines and procedures, such as on how to examine witnesses remotely. For example, one could have witnesses examined in agreed and neutral law firms or court rooms under agreed conditions subject to certain protocols.

One other consequence of the Pandemic that has affected practice is that given that the judicial commissioners were not able to attend in Brunei, and as a result with no early court dates available counsel and parties to litigation have been encouraged to seek alternative means to settle their disputes such as mediation. I for one have found, particularly for example in disputed family matters that mediation may be a better way to resolve issues such as custody and maintenance as opposed to the traditional adversarial nature of litigation. In family matters that especially involve young children it is certainly in the best interests of the child that matters are dealt with in the more amendable and sensitive setting of a mediation. For this the profession would welcome clear rules, procedures and guidelines.

We hope that any issues relating to access to justice as a result of the Pandemic will be minimized and resolved quickly. This would include the ability for accused persons to be able to speak with counsel of choice. We note that some civil matters are not able to be heard because litigants are not able to travel to Brunei, these litigants may not have ready access to technology so it may be necessary to consider how to be able to have these matters heard without too much delay.

Further on a positive note, we are pleased that by all indications we should expect the Court of Appeal to be able to sit sometime this year.

Last year, although we did face some disruption, the Law Society was able to get some of its work done.

We had some useful meetings with the relevant authorities on matters of interest to the profession, such as with the Ministry of Development and the Land Office. Indeed, some of our members are attending a meeting with the Land Office this morning on the practical issues relating to the registration of caveats under the Land Code. This is a useful tool for all conveyancing practitioners and will aid in transparency and the promotion of trust and confidence. We wish to express our thanks to the relevant parties that this part of the relevant legislation has come through.

We also had some helpful and useful meetings with the judiciary and the Attorney General on practice and disciplinary issues, which we hope to continue with in the coming year.

We wish to express our thanks to the Attorney Generals Chambers for organizing's a seminar last year together with the Chartered Institute of Arbitrators on Arbitration. This was a full day course held over Zoom. We

hope to be able to co-organize seminars again this year. Indeed, we hope that the costs of organizing seminars remotely without the need for travel would help to reduce these costs and make them more accessible to all.

The Law Society continued to provide its free legal aid clinic at the end of each month, except when the courts were closed. We also managed to provide some funds to counsel to cover their nominal fees and filing costs who under took bro-bono work in two matters. We hope again to continue with these initiatives in the coming year. We believe that access to advice is important for the machinery of justice and the rule of law.

One final point that I would make about last year is that the Profession welcomes the initiative to see to the settlement of number of outstanding bankruptcy matters. We believe that this can only promote trust in the system and avoids the substantial injustice being suffered by the victims of crime.

My Lord did touch on the trust being a cornerstone of the institution of justice in last years speech, and I hope that you would not mind if I were to discuss this again.

The Rule of Law both encourages trust and requires it.

It need not be an article of faith that good laws and a working and efficient justice system will encourage trust. When contracts are enforced efficiently, members of the public will be confident to invest, knowing that investments will be protected. It is where there is trust that businesses may function and individuals may go about their daily activities without fear of arbitrary rules or procedures, with trust, individuals will be encouraged to put the interest of the community ahead of their self-interest.

We as members of the legal profession must also work to ensure that levels of public trust and confidence in what we do are adequate. Without trust in what we do, we cannot function and discharge our duties as best that we should.

To this end, and in the wider cause of the advancement of the Rule of Law, we look forward to working in the coming year with the Judiciary and the Courts and the Attorney Generals Chambers in this important and testing function with the ultimate aim of bringing a benefit to the community that we all serve.

The Law Society will also seek to continue to support the aims and aspirations of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.

I Thank My Lord Chief Justice, the Chief Registrar and all parties involved for organizing today's ceremony. I wish My Lord Chief Justice, the members of the Judiciary, the Attorney Generals Chambers and my colleagues in the Profession a safe and productive year ahead.

Pg Izad-Ryan PLKDR
Pg Hj Bahrin.
President Law Society.