

SPEECH

**YANG MULIA
DATO PADUKA HAJI KIFRAWI
BIN DATO PADUKA HAJI KIFLI**

OPENING OF LEGAL YEAR 2004

THURSDAY, 27 MAY 2004

Bismillahir Rahmanir Rahim

Assalamualaikum Warahmatullahi Wabarakatuh

My Lord, Judges of the Supreme Court,

The Honourable PEHIN DATO HAJI ISA BIN PEHIN DATO HAJI IBRAHIM, (his full Malay title: Yang Berhormat Pehin Orang Kaya Laila Setia Bakti Di-Raja Dato Laila Utama Haji Awang Isa Bin Pehin Datu Perdana Manteri Dato Laila Utama Haji Awang Ibrahim)

Mr David Teo

Members of the Bar

Distinguished guests,

Ladies and gentlemen,

It gives me great pleasure to address Your Lordship again on this occasion. We are thankful to Allah Subhanahu Wata'ala for His blessings in making it possible for us to once again be present at this ceremony this morning to

observe a very important legal tradition in Brunei Darussalam and to renew our pledges of cooperation and mutual support for the upholding of the independence of the judiciary and the rule of law.

My Lord

New Legislation

In 2003 and early this year, several new laws have been made. As usual I would like to mention several notable Orders.

1. Legal Profession (Law Society of Brunei Darussalam) Order, 2003

This new law provides for the establishment of a Law Society of Brunei Darussalam. The Law Society is set up mainly to represent, protect and assist members of the Legal Profession and to promote the interests of the Legal Profession. The Law Society with the approval of the Chief Justice may make rules regarding the professional practice etiquette, conduct and discipline of advocate and solicitors.

My Lord

I join Your Lordship in wishing the Law Society of Brunei Darussalam all the best and success in the discharge of their heavy burden.

2. Education Order, 2003

This Order provides for the registration and regulation of all schools and educational institutions and for matters connected therewith.

This Order repeals the Education (Non-Government Schools) Act (Chapter 55), the School Attendance Enactment (Chapter 56 of the Revised Edition) and the General Regulations for Schools, 1939. There are 12 Regulations made under this Order. The Regulations deal with School Associations, Parent-Teacher Association, School Discipline, National Curriculum, Registration of Educational Institutions and Teachers and the Management of Educational Institutions.

3. Infectious Diseases Order, 2003

This Order is introduced to prevent the introduction and spread in Brunei Darussalam, and the transmission from Brunei Darussalam, of infectious diseases and any matters connected therewith.

This Order repeals the Quarantine and Prevention Diseases Act (Chapter 47). This new law should be effective to control the spread of infectious diseases especially SARS and the recent bird flu diseases.

4. Road Traffic (Seat-Belts for Children), Regulations, 2004

These new regulations commenced on 28 January 2004. The regulations make it an offence for any person who, without reasonable excuse, drives a motor vehicle on the road when there is in that vehicle a child who is not using a seat-belt. This offence carries a penalty of a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

5. Immigration Act (Amendment) Order, 2004

The recent Immigration Act (Amendment) Order, 2004 provides for the punishment of whipping in addition to the usual imprisonment or fine for offences of unlawful entry, overstaying and abetting illegal immigrants to contravene the Immigration Act. The punishment of whipping will be imposed on defendants charged and convicted on and after 12 June 2004.

6. Law Revision Exercise

As usual my Chambers has been actively engaged in revising the Laws of Brunei. Since the Opening of the Legal Year last year, a number of Acts have been revised namely the Internal Security Act, Monopolies Act, Brunei Economic Development Board Act, Registration of Adoptions Act, Stamp Act, Electricity Act, Finance Companies Act, Income Tax Act, Census Act and Rules of the Supreme Court.

My Lord

As I have said before, introducing new laws do not solve all problems in life. We still have to enforce them. We have to prosecute or defend the person who allegedly breaks them. We still have to hear and decide and to make sure that justice is done and seen to be done. Those involved, namely enforcement officers, Prosecutors, Lawyers, court interpreters, court administrators and other supporting staff, Magistrates, Registrars and Judges would therefore need to be continuously trained or “refreshed” so that our machinery of justice could function efficiently.

My Lord

I agree with Your Lordship that these officers who are qualified Lawyers are expected to be learned in the law and practice.

I agree with Your Lordship that to be learned in the relevant laws and practice require sheer hard work and full dedication and commitment. It is already difficult to be learned in such relevant laws and practice. I think it would be near

impossible to be learned in every area of the laws. No matter how tough the challenge before us, as I have said before, we should strive hard to remain relevant in the face of the new challenges of this century. New legal areas such as in offshore finance and banking, Islamic/Syariah Law, Islamic banking and financing, cross-border work, intellectual property, electronic commerce, electronic government, World Trade Organisation (WTO) work and legislative drafting are amongst the many emerging new legal areas where legal expertise would have to be acquired. I would like to add to this list the need for lawyers to be knowledgeable in public international law so that they would be able to understand and help especially the politicians to resolve the current problems faced by the world today such as issues of terrorism and human rights. I believe the United Nations has just realized this and recently highlighted this need.

Liberalization of Legal Services

My Lord

The globalization of legal services in international finance and investments has increased the pace and complexity of legal practice. We can see now a growing trend for lawyers

with the right legal skills and experience to become more mobile. Sadly I am only seeing a handful of our local lawyers taking up the opportunities for bigger share of the international legal market. Although I know that some law firms here are practising in offshore legal services offered by the opportunities given to them when the Brunei Offshore International Financial Centre took shape, I am yet to see them venturing outside taking the advantages of the other financial centres around the world. I urge them to take this leap as the only way for the legal service industry to expand in Brunei is for our law firms and our lawyers to expand their services outside especially in the major financial centres of the world as well as venturing into specialized legal services such as international arbitration work.

With the growing demand from more developed countries at the World Trade Organization for the liberalization of legal services and possibly in ASEAN under the liberalization of services negotiation in the coming years, I must urge my fellow legal practitioners that you must see the world as your oysters. You cannot be overly complacent with the domestic needs for legal services and expect that our Legal Profession Act would remain protecting us against foreign

competition. As Brunei wants to become a Trade and Service hub in the region, liberalization in the legal services will be the only way forward.

Transnational Organized Crimes

My Lord

The absence of an appropriate level of governance generates strong potential for countries to be exploited against the threats of money laundering and terrorist financing and to be used as a base for trans-national crimes such as drug trafficking and arms smuggling. In Brunei, we have taken those necessary steps to ensure that we have put that strong governance in place and this is a continuing process. The Government has enacted a wide-reaching legislations to give our security agencies and law enforcement authorities the additional powers they need to detect, prevent and, where possible, prosecute these crimes.

My Chambers is also working continuously with a number of agencies and law enforcement authorities to review our present laws and to propose to the Government to enact new ones in order to ensure that transnational crimes can be detected and the perpetrators prosecuted. Such initiative includes laws to fight human trafficking and people

smuggling. Although Brunei is not considered as a source country for human trafficking and smuggling, the risks of becoming a transit point and a destination country are there. It is for this reason, my Chambers is working very hard with the relevant agencies to draft this new law.

Mutual Legal Assistance in Criminal Matters

My Lord

The greatest challenge for any law enforcement agencies in addressing transnational crimes is that they transcend national borders. The proceeds of crimes in one country such as those from drugs trafficking for instance can be laundered in another country. In order to ensure that these criminals do not benefit from their ill gotten proceeds of crimes by taking advantage of the lack of extra territorial application of laws of most countries, I cannot over emphasize the need for international mutual legal assistance in criminal matters. In this respect, I should mention that a meeting of Attorney Generals of like minded countries in the ASEAN region had just been concluded in Kuala Lumpur to formulate a **treaty arrangement on mutual legal assistance in criminal matters**. With approval of His

Majesty the Sultan and Yang Di-Pertuan, the Brunei Government represented by my Chambers has been party to this negotiation which we hope will be finalized soon. In anticipation of the coming into effect of this treaty, an enabling legislation is being drafted and my chambers is preparing for the setting up of the **mutual legal assistance secretariat**. With the passage of this treaty and the subsequent enabling legislation on mutual legal assistance, we will have every tool it needs to receive legal assistance in criminal matters from countries having such arrangements with us and thereby ensure that crimes would not go unpunished or proceeds of crimes would not be left unforfeited simply because we lacked the necessary jurisdiction.

My Lord

Again I need to repeat what I have said before to remind all of us here that the most perfect laws on paper are useless unless they are enforced fairly, firmly and effectively. I agree with Your Lordship's comments that maintenance of the law and order is a never-ending task. The enforcement officers also need the support of the members of the public by

assisting them in carrying out their difficult task. My Lord, this is the right occasion, as usual to express my gratitude to officers of the Royal Brunei Police Force, Royal Brunei Armed Forces, Royal Custom and Excise Department, the Immigration Department, the Anti Corruption Bureau, the Narcotics Control Bureau, the Internal Security Department and other enforcement agencies for their untiring efforts and dedication in maintaining law and order in sometime difficult circumstances.

My Lord

I think one of the ways to get the public to continue supporting our law enforcement agencies is to make sure that we are always sensitive to the needs of the victims of crime and the victims of abuse of power. The enforcement agencies have to establish procedures in association with prosecuting authorities for the prompt return of property to victims and for prosecutors, in so far as possible, to do away with the need for the actual physical evidence to be produced in court. The enforcement agencies should also ensure that victims of crime are periodically informed of the status of investigations. Prosecutors should also inform

victims of the status of a case from the time of the court appearance to the conclusion of the case. Prosecutors should charge and pursue defendant who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses.

Subject to Your Lordship's consideration, the court should, in so far as possible, establish separate waiting rooms for prosecution and defence witnesses. The court should also consider giving substantial weight to the victim's interests in the speedy return of property before trial in ruling that the admission of photographs of that property as being sufficient evidence.

My personal gratitude also goes to all my officers from the various Divisions in the Chambers namely Criminal Justice, Civil, International Law, Legislative Drafting and Registry for their hard work in carrying out their job that is to maintain and uphold the rule of law.

I would also like to thank all Ministries and Departments in particular the Prime Minister's Office for all their support, help and cooperation.

May it please Your Lordship, this brings me to the end of my address.

I hope the good relations between my Chambers and the Judiciary as well as with the private practitioners will continue in the years to come. We are all responsible to uphold the integrity of our Legal System.

Lastly, I wish Your Lordship and everyone present here this morning a successful and prosperous year.