

SPEECH

YANG BERTAMBAH

DATO SERI PADUKA HAJI KIFRAWI

BIN DATO PADUKA HAJI KIFLI

OPENING OF LEGAL YEAR 2007

TUESDAY, 27 MARCH 2007

Bismillahir Rahmanir Rahim

Assalamualaikum Warahmatullahi Wabarakatuh

My Lord, Judges and Judicial Commissioner of the Supreme Court

President of Brunei Darussalam's Law Society

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 and to renew our usual pledges of cooperation and mutual support for the upholding of the independence of the judiciary and the rule of law.

NEW LEGISLATIONS

In 2006 and early this year, several new laws have been made. As usual I would like to mention several notable Orders.

1. CENTRE FOR STRATEGIC AND POLICY STUDIES ORDER, 2006

This Order establishes the Centre for Strategic and Policy Studies and for matters connected therewith. The functions of the Centre include the advancement and dissemination of knowledge and the promotion of research on Brunei Darussalam and on all matters appertaining to Brunei Darussalam's interests.

2. CIVIL AVIATION ORDER, 2006

This Order repeals the Air Navigation Act and establishes a regulatory framework for monitoring, enhancing and promotion of the safety of civil aviation in accordance with the principles of the Convention on International Civil Aviation.

Generally, this Order deals with the organisation and administration of civil aviation, aircraft, personnel, aircraft operations, air transport, aerodromes, liability and insurance and security of civil aviation.

**3. INTERMEDIATE COURTS ACT (AMENDMENT) ORDER,
2006**

This Order amends the civil jurisdiction of the Intermediate Courts to enable the courts to hear every action in which the amount claimed or value of the subject-matter in dispute is from \$50,000 up to \$100,000 instead of from \$15,000 up to \$100,000.

4. MINOR OFFENCES ACT (AMENDMENT) ORDER, 2006

The power to arrest without warrant any person who has committed any of the offences under section 12 of the Minor Offences Act (that is, with regards to offences in respect of uncleanness in public places and unauthorised dumping), which previously is conferred

only to police officers can now be exercised by a Municipal Inspector, Inspector of Health, any District Officer and any person authorised by him, the Director General of Public Works and any person authorised by him, and the Director of Environment, Parks and Recreation and any person authorised by him.

The penalty for a conviction for a second and subsequent offence under section 12 of the Minor Offences Act, in addition to a fine of \$3,000, shall also be imprisonment for a term not exceeding 3 months.

This Order also confers on any person authorised by the Minister of Home Affairs the power to investigate the commission of offences under the Minor Offences Act and any rules thereunder.

5. SMALL CLAIMS TRIBUNAL ORDER, 2006

This Order establishes the Small Claims Tribunal and provides for its jurisdiction, procedure and practice. The Small Claims Tribunal shall

be a Court of Record consisting of adjudicators and deputy adjudicators. The Small Claims Tribunal can hear and determine claims relating to disputes arising from any contract for sale of goods or the provision of services and any claim in tort in respect of damage caused to any property. The jurisdiction of the tribunal does not extend to a claim which exceeds \$10,000.

**6. TABUNG AMANAH PEKERJA ACT (AMENDMENT)
ORDER, 2007**

This Order is about the status of contributions in the Tabung Amanah Pekerja (Employee Trust Fund) account as savings for retirement. The contributions cannot be used to pay any employer for financial loss incurred as a result of the commission by the employee of an offence under the Penal Code and the account cannot be withheld and credited for payment of any debt or claim.

7. CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER,
2007

This Order amends the definition of “police officer” in the Criminal Procedure Code to include other person invested under any written law with the powers of a police officer.

This Order confers power to “police officer” making an investigation to obtain body samples for forensic analysis if the “police officer” has reasonable cause to believe that the body sample may confirm or disprove the involvement of a person in an offence punishable with imprisonment.

If consent is refused without good cause or cannot be obtained, an order of a magistrate may be obtained for him to provide the body sample required. Where it is shown that consent was refused without good cause, the court may draw such inference from that refusal as it thinks proper.

Any person from whom a body sample is lawfully required who refuses, without reasonable cause, to give a body sample or to allow it to be taken from whom, or who hinders or obstructs the taking of a body sample is guilty of an offence.

This Order further provides a body sample to be taken by a person registered under the Medical Practitioners and Dentists Act, a police officer who has received training for that purposes or any other suitably qualified or trained person who is authorised by the Commissioner of Police for that purpose. These people may use such force that is reasonable necessary for taking the body sample if the person refuses to give his body sample, refuses to allow his body sample to be taken or hinders or obstructs the taking of his body sample.

REVIEW OF ADMINISTRATIVE ACTION

His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam has consented in the past for the making of many laws which are in general for the public interests. In making such laws it is usual for powers to be given to public officers to enable them to implement the laws. It is important that the powers are not abused or wrongly exercised. We have the laws or provisions in the law or usual administrative practice to prevent such abuse or wrongful exercise of powers such as the Prevention of Corruption Act and the Penal Code, provision for appeal either to the court or Minister or in general to His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam or by way of administrative review or inquiry. In some countries, the courts have powers to review administrative actions but such countries usually have an army of lawyers to deal with the complaints (lawyers for the courts, lawyers for the victims or complainants and lawyers for the Government or public authority).

Such adversarial system of judicial review, furthermore, may not be suitable for Brunei Darussalam.

In general, powers should be exercised reasonably and fairly in accordance with the law. By ensuring proper exercise of powers given by the laws, public servants would give better service to the public. This would be consistent with His Majesty's recent national day speech in which His Majesty reminded the Civil Service to improve their performance for the good of the public. My officers are ready to assist those officers who need clarifications as regards powers given to them by the relevant laws.

LAWS WHICH HAVE NOT BEEN IMPLEMENTED

There are still laws which His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam has consented to be made but are still not implemented. This could be due to lack of trained manpower and other teething problems. We need to resolve whatever

stumbling block urgently in the public interests bearing in mind that those laws are meant to promote and protect public health, public safety and the rights of the public to property.

Perhaps this could be the right time to remind the court when the Small Claim Tribunal Order which became law on 22 August 2006 would be implemented.

CHIEF REGISTRAR

I would also like to express my appreciation to the hard-work by the Chief Registrar of the Supreme Court. The Chief Registrar who is the Probate Officer and Official Receiver is also appointed as Judicial Commissioner who has the same powers of a Judge of the Supreme Court to hear criminal and civil cases. The Chief Registrar, therefore, has to deal not only the difficult legal / judicial work but also to the demanding tasks of ensuring that our judicial machinery is running efficiently.

Such tasks include –

- a. to ensure cases are fixed promptly for hearing either by the Registrars or by the appropriate courts and disposed off without undue delay;
- b. that the court-users including victims, defendants, witnesses, lawyers, prosecutors, law enforcement officers, judicial staff and officers are comfortable and well looked after;
- c. that the court facilities and court staff are adequate, reliable and efficient.

I am sure the Chief Registrar require the solid support and the good understanding of his team of Registrars, Chief Magistrate, Interpreters, other court staff and the Judicial Department set up few years ago to assist him in the maintenance of our machinery of justice for the good judicial administration of our courts.

On behalf of the Prosecutors and all enforcement agencies, we undertake to give our full cooperation to the court by making sure that we will investigate and prosecute criminal cases without undue delay.

CAPITAL CASES

The system of two judges hearing a case punishable with death is now becoming a tradition in this country. This system replaced the old procedure of a single judge sitting with assessors who were members of the public and who usually were non-lawyers. These assessors are like members of the jury in other countries. Since the present system has, over the years, gained public confidence we should be slow in replacing such a system of two judges with a single judge. Furthermore, I do not believe we have a serious backlog in the court of capital cases, in particular, and other cases, in general. Only for the last few years the court has to deal with one or two rather

unusually long and complicated High Court cases. The situation, therefore, does not warrant a radical change in our legal system. If necessary, the solution to this is to increase the number of Supreme Court Judges.

ENVIRONMENT

My Lord, over the years we have experienced and seen huge environmental degradation in the world mainly due to human economic activities. In our part of the world, the forces damaging the environment are the same ones that drove the economic miracle that has helped millions of our poor population. Economic growth means more production, more jobs, more food, but it also means more smoke, more logging and more chemicals dumped into the waters. Where Brunei Darussalam is concerned, environmental protection and conservation have been integral components of the State's development process to ensure sustainable development is in line with the long term objective of maintaining a clean and healthy

environment. Policy regarding the environment has been addressed in all the National Development Plans following Brunei Darussalam's independence in 1984 under the long term objectives of *"improvement of the quality of life of the people"* fostering a *"more disciplined, self reliant and caring society"* and maintaining a *"clean and healthy environment"*. The Eighth National Development Plan (2001-2005) had the following initiatives:

- Ensure sustainable utilisation of natural resources;
- Prevent and reduce the negative impacts on the environment arising from increase in population and human activities;
- Ensure a balance between socio-economic development objectives and the importance of maintaining quality and a sustainable environment;
- Enhance the appropriate use of the latest, effective and environmentally friendly technology;
- Strengthen regulation and enforcement measures;
- Enhance public awareness and support; and

- Improve existing facilities and services.

To date, Brunei Darussalam has acceded to several international instruments relevant to the protection of the environment namely, Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal (Basel Convention) on 16 December 2002, Vienna Convention on Protection of the Ozone Layer on 26 July 1990, Montreal Protocol on Substances that Deplete the Ozone Layer on 27 March 1993, Stockholm Convention on Persistent Organic Pollutants on 21 May 2002 and the United Nations Convention to Combat Desertification (UNCCD) in 2002. The Heart of Borneo Declaration signed on 12 February 2007 by Brunei Darussalam, Republic of Indonesia and Malaysia recognized the importance of the Island of Borneo as a life support system. Such sanctuaries would protect the biodiversity rich equatorial rainforest that straddles the shared borders of the 3 countries. It would also play a vital role in protecting all of the island's major water

catchment and it is also hoped that illegal logging and wildlife trafficking will be reduced. The Heart of Borneo initiative is a voluntary trans-boundary cooperation of the three countries combining the stakeholders' interests, based on local wisdom, acknowledgement of and respect for laws, regulations and policies in the respective countries and taking into consideration relevant multilateral environmental agreements, as well as existing regional and bilateral agreements / agreements.

While there is no umbrella legislation dealing with environment, we are pleased to inform that my Chambers is currently working with the various relevant Government agencies in the preparation of legislations to protect, preserve and conserve the environment. There was a slogan in the 1980s on biodiversity loss, that is, "*extinction is forever*". If we do not protect and preserve our environment now, what is there left for our future generations to enjoy? Once lost, it is forever.

My Lord

I would like to thank all my officers from the various Divisions in the Chambers namely Criminal Justice, Civil, International Law, Legislative Drafting and Registry for their hard work.

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

I would also like to thank the Commissioner of Police and his officers as well as the other law enforcement agencies namely the Narcotic Control Bureau, Anti Corruption Bureau, Royal Customs and Excise Department, Immigration Department, Royal Brunei Armed Forces and Internal Security Department for their assistance and cooperation and in their continuing effort in the preservation and the

maintenance of law and order.

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 and the newly established Brunei Law Society 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.