

SPEECH

YANG BERTHORMAT

DATO SERI PADUKA HAJI KIFRAWI

BIN DATO PADUKA HAJI KIFLI

OPENING OF LEGAL YEAR 2008

TUESDAY, 18 MARCH 2008

Bismillahir Rahmanir Rahim

Assalamualaikum Warahmatullahi Wabarakatuh

Your Royal Highness, My Lord Chief Justice and Judges 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.

A. LAW REVISION

The Attorney General's Chambers has continuously revised the Laws of Brunei to keep them up-to-date. Last year the Chambers had

revised the Road Traffic Act including the 1956 Road Traffic Regulations. And early this year we have revised the Internal Security Act which includes three subsidiary legislations.

Towards the end of last year, the Chambers have also started work again on the revision of Orders made by His Majesty the Sultan and Yang Di-Pertuan under Article 83(3) of the Constitution of Brunei Darussalam. The purpose of this exercise is to give them a Chapter number in the Laws of Brunei. They are now referred to as 'Acts'. We now have the Computer Misuse Act as Chapter 194 and Debtors Act as Chapter 195.

Another effort by the Chambers to tidy up the Laws of Brunei is to remove four legislations which have, over the years, been repealed. They are the –

- Public Officers (Liabilities) Act Chapter 80;
- Bankers' Books (Evidence) Act Chapter 107;
- Exchange Control Act Chapter 141; and
- Probate and Administration Rules made under the Probate and Administration Act Chapter 11.

As regards other Acts which have been repealed and replaced by new Orders, we hope to remove these and at the same time insert the new Orders to become new Acts.

B. LEGISLATION

The Attorney General's Chambers have been busy with the preparation of legislation in the form of new laws or amendments to existing laws.

Since the Legal Year held last year, a total of 82 laws have been made and since the beginning of this year, so far there have been 22 laws made. These laws deal with economic development, education, environment and health, crime prevention and other security matters. As usual I will highlight several of the principal legislations that have been made and an insight of the provisions.

These laws are namely –

1. PASSPORTS ACT (AMENDMENT) ORDER, 2007

This provides for the immigration officer to have the same power of investigation as a police officer under the Criminal Procedure Code.

2. COMPULSORY EDUCATION ORDER, 2007

This provides children above the age of 6 years and below 15 years shall attend regularly as a pupil at a government school unless the child attends a private educational institution and he is exempted by the Minister of Education under this Order or the parents presents a reason for his absence to the satisfaction of the Permanent Secretary of the Ministry of Education.

3. UNDESIRABLE PUBLICATIONS ACT (AMENDMENT) ORDER, 2007

This widens the meaning of 'publication' and amongst other things, to include sound recordings, drawings made by computer-graphics, photographic negative, plate or slides. It also allows the search for and seizure of obscene or objectionable publications.

4. SUNGAI LIANG AUTHORITY ORDER, 2007

This establishes the Sungai Liang Authority as a corporate body to become a 'one-stop agency' to run the Industrial Park at Kampong Sungai Liang. The Minister of Foreign Affairs and Trade, in his

capacity as the Minister responsible for this Order may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, exercise and discharge, all or any of the functions and powers transferred to, conferred on, imposed on, vested in, delegated to or assigned to, under any of the 20 written laws listed in the Fourth Schedule to this Order such as the Electricity Act, Immigration Act, Labour Act and Water Supply Act.

**5. DRUG TRAFFICKING (RECOVERY OF PROCEEDS)
(AMENDMENT) ORDER, 2007; and**

**6. CRIMINAL CONDUCT (RECOVERY OF PROCEEDS)
(AMENDMENT) ORDER, 2007**

The effect of these two amendments is to allow the amount recovered under a confiscation order to be paid into the Criminal Offences Confiscation Fund. Monies in that Fund can be applied, amongst other things, for purposes –

- in promoting or supporting measures that may assist in preventing, suppressing or otherwise dealing with drug trafficking and criminal conduct; and

- in dealing with the consequences of drug trafficking and criminal conduct.

7. INTOXICATING SUBSTANCES ACT (AMENDMENT) ORDER, 2007

This Order requires any person who has been admitted to the Rumah Al-Islah being an approved institution under the Intoxicating Substances Act, to undergo treatment and rehabilitation for a period of one year unless he is earlier discharged by an order of the Minister of Home Affairs.

8. MISUSE OF DRUGS ACT (AMENDMENT) ORDER, 2007

This Order provides that it is an offence for a permanent resident to have smoked, administered to himself or otherwise consumed a controlled drug even though he is outside this country and it is also an offence for any person to manufacture, supply, have in his possession or imports or exports any controlled equipment, controlled material or controlled substance knowing or having reason to believe that they are to be used in or for the manufacture of a controlled drug.

9. MISUSE OF DRUGS ACT (AMENDMENT) ORDER, 2008

This provides for any approved institution under the Misuse of Drugs Act such as the Rumah Al-Islah, being a place for treatment and rehabilitation of drug addicts, to be under the general charge and administration of the Director of Narcotics Control Bureau, which previously was under the Director of Prisons.

10. WILD FAUNA AND FLORA ORDER, 2007

This gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Amongst other things, this Order prohibits the trading, into or from this country, of any specimen of species that is listed in this Order unless the person has a permit or certificate granted under this Order.

11. MEDICINES ORDER, 2007

This regulates the importation, registration, promotion, advertisement, clinical trial, transport, manufacture, storage, dispensing, and sale of medical and cosmetic products. Amongst the offences provided in this Order are as follows –

- No person shall manufacture, sell, supply or import any medicinal product unless that product is registered and that person holds a licence issued under this Order;
- No person shall conduct any clinical trials without prior written approval from the Brunei Darussalam Medicines Control Authority;
- Prohibition on sale of medicinal products from automatic machines;
- False or misleading advertisements and representation;
- No person shall publish or cause to be published any medical advertisement which claims, indicates or suggests that the article advertised will prevent, alleviate or cure any disease or condition specified in the Schedule such as diabetes and asthma or any advertisement referring to any skill or service relating to the treatment of any disease or condition affecting the human body.

12. MARITIME OFFENCES (SHIPS AND FIXED PLATFORMS)

ORDER, 2007

This Order gives effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, all signed at Rome on 10 March 1988. This Order provides the offences committed in respect of a ship or any person on board a ship such as follows –

- a) seizes a ship;
- b) destroys or damages a ship;
- c) places or causes to be placed any device or substance likely to destroy the ship;
- d) destroys or damages the maritime navigation facilities;
- e) delivers false information;
- f) threatens to endanger the safe navigation of any ship;
- g) commits acts of violence on a ship.

This Order also provides offences committed on a fixed platform or any person on a fixed platform such as follows –

- a) seizes or exercises control of a fixed platform;
- b) destroys or damages a fixed platform;
- c) places or cause to placed on a fixed platform a device or substance which is likely to destroy or damage it as to endanger safety;
- d) threatens to endanger the safety of the fixed platform;
- e) commits acts of violence on any person on the fixed platform.

This Order empowers the master of a ship to deliver the person who has committed the offence to an appropriate officer in Brunei Darussalam.

The High Court has jurisdiction to try an offence committed within or outside Brunei Darussalam.

C. UNIVERSITI ISLAM SULTAN SHARIF ALI (UNISSA)

It has been announced in the press that the second local university, UNISSA, will offer Bachelor of Laws course this year. This should be good news for Brunei Darussalam.

For the first time we will be producing our own lawyers. Brunei Darussalam still needs more lawyers. Apart from the usual compulsory basic laws (criminal laws, laws of contract etc), I believe, subjects such as legislative drafting, public international laws, Islamic finance would be offered. The Bachelor of Law course would obviously be tailored to Brunei Darussalam's future requirements.

It is important to note that we need these lawyers to assist in the carrying out of the executive or legislative function of government. The Attorney General's Chambers which has been tasked to assist Government ministries and departments to perform these functions still require not only "general practitioners" but also "specialists" in different areas of the law. Lawyers are also still needed in the Judiciary to do judicial work as Honourable Magistrates, Registrars and Judges. This judicial function is also as important as executive and legal function of the government.

With such limited pool of local lawyers we need to plan carefully as regards the distribution or use of our legally trained manpower. We may need to prioritise in the short term. In the long term, our future

UNISSA local lawyers should be recruited to work for the Attorney General's Chambers, Government ministries and also for the Courts. Our local UNISSA law graduates could also become Administrative Officers. I believe Administrative Officers who have the necessary legal knowledge and management skill would be useful to the public service and thus the good public administration of this country.

The numbers of private practitioners who are citizens / Permanent Residents have increased. Our private lawyers are also providing important legal services for the country. Some of the local UNISSA law graduates might also join the private law firms in the future.

In order to better prepared themselves to deal with the above mentioned challenges in the future, I think it would be useful for some of our local UNISSA law graduates to do their Masters (LLM) abroad such as in the United Kingdom, Australia and may be even in the United States of America like law graduates in some ASEAN countries.

D. THE IMPLEMENTATION OF THE E-REGISTRY SYSTEM

In line with e-government initiatives, the Registries Division of the Attorney General's Chambers is also embarking on its e-journey. The system known as "e-registry system" aims to provide 24/7 capability to the public to access the following services: companies, business names and trademarks.

The system was developed in 2006 and our aim is to implement faster, reliable and efficient registration system of the above services. The "e-registry system" will modernize its present system and business process by providing value-added services and leverage on the use of information technology (IT) and introduce new e-services in alignment with e-government roadmap.

The objectives of e-registry is to maintain an up-to-date registry with accurate and timely information which is accessible throughout the internet, to provide information on registered companies, business names and trademark electronically and to enable on-line payment of fees.

The “e-registry system” will enable the following services to be done on-line –

1. registration of new business names
2. incorporation of new companies
3. registration of trademarks
4. filing of statutory documents pertaining to business-names, companies and trademark.

For business names as you know we have the name search facility at our office whereby the public can search for names that had been registered. However at this moment all names applied for are still subject to the consideration and approval of the Registrar. We are hoping to introduce guidelines on how to do name search using the name search facility.

We have introduced the use of coding for nature of business. We hope this coding will assist the public in choosing their nature of business correctly and will help to reduce the time in making their application. This coding will also ensure that there is uniformity in the description of nature of business and can assist other government

agencies / authorities to consider applications for relevant issuance of business licences / permit. The coding will be revised and updated from time to time. From 1st January 2008 until 11th Mac 2008, the Registry of Business Names processes 1035 names application and issued 728 new business names certificate. Last year, for the same period, the Registry processed 884 names application and issued 638 new business names certificates.

We have also introduced public kiosks to access to our system. The public, the law firms, accountants and secretarial firms had been using these public kiosks. For those who are not computer savvy, our staff are always available to assist the public with their enquiries.

We hope to build a database of businesses and trademarks in Brunei Darussalam in the near future. With e-registry system we are hoping to reduce our use of paper and to become "paperless" office.

E. ENFORCEMENT OF INTELLECTUAL PROPERTY LAWS

The Attorney General's Chambers is also responsible for the administration and jointly responsible for the enforcement of

intellectual property rights along with the police and customs authorities.

The police have long been responsive to complaints lodged by intellectual property right holders and actions have been taken on all complaints.

Sufficient resources have been allocated to combat piracy, in the enactment of appropriate laws and the provisions of dedicated officers in the police force and customs to meet current needs.

However, enforcement capability is unfortunately handicapped, especially in the area of copyright and trademarks, because few right holders are present in Brunei Darussalam, which present evidential and procedural problems to relevant enforcement agencies and prosecutors wishing to initiate appropriate action.

The Attorney General's Chambers have available prosecutors to take proper cases to Court, as have been done in previous cases. The Attorney General's Chambers have also had an open door policy to

rights holders, where a number of rights holders and exclusive licencees have approached to discuss possible actions and remedies. Such discussions not only relate to alleged infringement of physical goods but also of infringement committed over the internet, for eg hosting or providing allegedly infringing electronic copies of copyrighted media.

Parties should however be aware that criminal actions require a high burden of proof and therefore a much higher requirement of evidence than either civil action or border enforcement, which despite being considered effective, has not been utilized by most rights holders or appropriate representatives.

Continuous support and dedication from rights holders or appropriate representatives would be required to stamp out piracy effectively and not merely a short visit or two.

Right holders are encouraged to use border enforcement measures, to deter imports of infringing materials, which are easier to use. A notice in writing to the Controller of Customs is required and security

may be requested for.

F. CONCLUSION

I would like to thank all my officers from the various Divisions in the Chambers namely Criminal Justice, Civil, International Affairs, 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.

I would like to take this opportunity to congratulate the recent appointments of Your Lordship Justice Awang Haji Hairolarni bin Haji

Abdul Majid as a full time High Court Judge; The Honourable Dk Hajah Rostaina binti Pengiran Haji Duraman as the Chief Registrar of the Supreme Court and Judge Dayang Lim Siew Yen as a full time Judge of the Intermediate Court.

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 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.