



SPEECH

YBHG. TAN SRI IDRUS BIN HARUN
THE ATTORNEY GENERAL OF MALAYSIA

THE OPENING OF
THE LEGAL YEAR 2023

Date: 9th January 2023 (Monday)

Venue: Putrajaya International Convention Centre (PICC)

May it please Your Honours,

YAA Tun Tengku Maimun Tuan Mat, the Chief Justice of Malaysia;

YAA Tan Sri Abang Iskandar Abang Hashim, acting President of Court of Appeal and the Chief Judge of Sabah and Sarawak;

YAA Dato' Mohammad Zabidin Mohd Diah, acting Chief Judge of Malaya;

Yang Amat Berbahagia Tun Zaki Azmi and Tun Md Raus bin Sharif, Former Chief Justices of Malaysia;

YB Dato' Johari bin Abdul, The Honourable Speaker of the Dewan Rakyat;

The Right Honourable Professor Dr Anwar Usman S.H.,M.H., Chief Justice of the Constitutional Court of Indonesia,

The Right Honourable Dr Andi Samsan Nganro, S.H., M.H., Deputy Chief Justice of the Supreme Court of Indonesia for Judicial Matters;

The Honourable Tuan Ramkarpal Singh a/l Karpal Singh, Deputy Minister in the Prime Minister's Department (Law and Institutional Reforms);

YA Judges of the superior courts and Judicial Commissioners;

The Honourable Sabah State Attorney General and the Sarawak State Attorney General;

The Honourable Presidents of the Malaysian Bar, the Sabah Law Society and the Advocates' Association of Sarawak;

Your Excellencies, Distinguished guests, ladies and gentlemen.

1. It is a great honour and pleasure for me to be here this morning. Firstly, allow me to extend my heart-felt appreciation to the Malaysian Judiciary for a warm welcome to the Opening of the Legal Year 2023.
2. It is a time-honoured tradition that when a new legal year ushers in, we reflect not only on our laurels but also on the progress that we, as part of the administration of the justice system had achieved over the previous years.

YAA, YA, ladies, and gentlemen,

3. In the preceding months, Malaysia witnessed the maturity of her democracy after 6 decades of *Merdeka*. What could have been regarded as a deadlock from a political point of view, illustrates otherwise. The unfolding events surrounding the 15th General Election (GE-15) marked an outstanding constitutional development. Among the most notable events are as follows:

- i. Prior to GE-15, a significant event that greatly shaped the present administration of the country took place. The dissolution of Parliament did not influence the Rulers of the States to dissolve their respective State Legislative Assemblies. This denotes the uniqueness of the federal system that comes to play when States well understood their

independence *vis-à-vis* from the Federal Government as provided under the Federal Constitution pertaining to the dissolution of a State Legislative Assembly;

- ii. During the GE-15, the Malaysian political landscape saw an implementation of transformative changes through some constitutional amendments in which the Attorney General Chambers (AGC) played a pivotal role. In affecting these changes, the AGC was directly involved in drafting some important provisions. On anti-party hopping provisions, AGC was part of the members of *Jawatankuasa Pilihan Khas Menimbang Rang Undang-Undang Perlembagaan (Pindaan) (No.3) 2022 Dan Mengenai Peruntukan Larangan Ahli Dewan Rakyat Bertukar Parti* (Special Select Committee);
- iii. This Special Select Committee comprised among others 10 Members of Parliament (MPs) from government and opposition. Upon deliberate consultation and feedback from stakeholders including the Non-Governmental Organization (NGO), Civil Society Organisation (CSO) and academicians, consensus was reached to encapsulate anti-party hopping provision in Article 49A of the Federal Constitution. This augurs well when the government demonstrates its willingness to

engage with stakeholders. This marks the beginning of good cooperation between parties regardless of their roots for the better sake of our nation in the future;

- iv. A historic constitutional reform via the Constitution (Amendment) (No. 2) Act 2022 [Act A1656] which sought to introduce new Article 119A of the Federal Constitution also took place during the GE-15. Article 119A empowers the Yang di-Pertuan Agong, with the consent of the Conference of Rulers, to exempt the application of automatic registration to any Ruler and his Consort, any heir, and any other persons as electors. This exemption is to be applied onto the amendment made to Article 119 of the Federal Constitution which was introduced in 2019 *via* the Constitutional (Amendment) Act 2019 [Act A1603]. The underlying principle behind this reform is primarily premised on the doctrine that “*Rulers are above politics*” in order to ensure that the Rulers always remain neutral and must be distant from any political issues. As the late HRH Sultan Azlan Shah once commented: “*The rulers have a far wider responsibility in ensuring that the spirit of the Constitution, the philosophy behind the written law, and the interest of the country and the people are safeguarded at all times.*”

YAA, YA, ladies, and gentlemen,

4. In recent years, instability in the political arena had led to changes of government which initiated the inevitable dissolution of the 14th Malaysian Parliament. Be that as it may, the confidence motion had eliminated uncertainty which was perceived to reign in the country post-GE-15. Malaysia needs a strong government now more than ever. A strong government with competent organs is needed to ensure that improvements to the country's justice system would ensue for years to come. For instance, support is required in realising yet another uphill battle to abolish the mandatory death penalty. The amendment bills to amend relevant laws are due to be tabled once again in the coming Parliamentary session due to the dissolution of the 14th Parliament. Support is also needed in amending the Federal Constitution provisions relating to citizenship.

5. It is hoped that our democracy remains intact and could reach greater heights with the formation of the new Government and that the proposed amendments would come to fruition. As pronounced by the late HRH Sultan Azlan Shah at the 11th Tunku Abdul Rahman Lecture

in 1984 that: *“Based on the doctrine of separation of powers, the legislature makes the law, the executive administers the law, and the judiciary adjudicates on disputes which may result from the first and second processes. Basic to this doctrine is the elaborate system of checks and balances whereby it is ensured that power is not concentrated in any one body, but dispersed and mutually checked...”*

YAA, YA, ladies, and gentlemen,

6. At the heart of democracy is ‘judicial independence’. It is the hallmark of constitutional democracy and must be defended. It is guaranteed under our Federal Constitution and Judges’ Code of Ethics 2009. And, it is also the overall theme of two important international instruments that address the issue of judicial interference namely the 1997 Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region and the 2002 Bangalore Principles of Judicial Conducts.

7. Montesquieu¹ who refined and expanded Aristotle’s democratic doctrine of separation of powers² in the 17th century opined that:

¹ Charles Louis de Secondat, Baron Montesquieu, *De l’Esprit des Loix (The Spirit of the Law)*.

² Sam J. Ervin Jr., *Separation of Powers: Judicial Independence*, p.108-109.

“Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers³.” The ‘power of judging’ as identified by Montesquieu is innovatory at that time in the sense that ideally it separates the executive in the past, which consisted of a concentration of nobility with a mix of executive and legislative functions, from the judicial power. This later evolved in the coming century into what we now call ‘*judicial independence*’.

8. Separation of powers, as Montesquieu suggested, does not mean ‘antagonism’ or working in *silo*. It means cooperation or collaboration⁴. I am thus reminded of Lord Wilberforce’s wise words which state, “...*it can be overlooked sometimes by the judiciary that they have to work in harmony with the executive, so as to produce a humane, sensible and practical approach as regards individual citizens...both sides have to recognize the responsibility of the other.*⁵”. This mutual respect as recommended by Lord Wilberforce should also be extended to the relationship with the Bar and all other arms of the government as recommended by Malaysia’s 10th Prime Minister in his inaugural speech to the officers of the Prime Minister’s Office on 29th November 2022⁶.

³ Ibid n. 2.

⁴ Mark H Waddicor, *Montesquieu and the Philosophy of Natural Law*, p 135.

⁵ Lord Wilberforce, *Judging the World – Law and Politics in the World’s Leading Courts*, p 190.

⁶ <https://www.pmo.gov.my/ms/2022/11/penjawat-awam-diseru-bawa-perubahan-kembalikan-malaysia-ke-tahap-gemilang/>

9. I also believe that cooperation and collaboration must also stem from within the machinery of the justice system itself which consists of the Judiciary, the AGC, and the Bar. As the guardian of the Constitution and the sentinel of the people, the Judiciary, the AGC and the Bar, must work hand in hand to uphold justice and the rule of law without fear or favour.

10. The classic example of close cooperation within the administration of the justice system can be seen through the service rendered by *Yayasan Bantuan Guaman Kebangsaan* (YBGK) in providing equal access to justice. As the Chairman of YBGK, I am proud to announce that the beginning of 2022 saw a tremendous improvement in accessibility to YBGK. YBGK's website was updated to ensure easy access for the public. As a result, an increase of 13% in the number of cases represented by YBGK was recorded; from 197,621 in 2021 to 222,361 as of 30 November 2022.

YAA, YA, ladies, and gentlemen,

11. At its inception in 2011, YBGK operated with much reliance on the grant received from the Government amounting to RM5 million. During that inception year, YBGK also received support from the Bar

in the form of an additional fund amounting to RM200,000 as well as expertise, location and staff.

12. In the ensuing years, YBGK continues to rely on the Government grant received annually since its inception. Despite the consistent financial support from the Government received every year, much support is still needed. Reliance on the Government's fund alone cannot sustain the current operation of YBGK, especially in remunerating the members of YBGK who had tirelessly contributed their service in providing access to justice to those in need.

13. As a way forward, it is hoped that our counterpart, the Bar will provide arduous support in finding additional financial resources and sponsorship in order to sustain the operation of YBGK in years to come. I, therefore, wish to record YBGK's appreciation in advance for the support to be extended by the Bar in the near future.

YAA, YA, ladies, and gentlemen,

14. The Federal Constitution acts as our cornerstone in implementing the separation of powers. Therefore, for the year 2023, pursuant to Article 160A of the Federal Constitution, the AGC plans to reprint the

Federal Constitution to incorporate the latest historic constitutional amendments. The AGC also plans to propose to the Government that the prescription of the Federal Constitution in the national language to be the authoritative text in line with Article 160B of the Federal Constitution. These two plans are subject to the approval of the *Yang di-Pertuan Agong*.

15. Further, the AGC also made constant amendments to the current laws to reflect changes and to ensure that the most current and updated version of the laws is made available to the public. In 2022 alone, the AGC has successfully reprinted about 100 laws especially relating to election. The revised and reprinted texts of laws are also available online *via* the Federal Legislation Portal Malaysia.

YAA, YA, ladies, and gentlemen,

16. Over the past year, we have been learning to cope and live with COVID-19. Just as we thought we may have turned the page on the pandemic, the emergence of the new OBB variant has reminded us of how unpredictable life is. Throughout this uncertainty, the AGC has stayed the course and the AGC continued to provide legal support to the Government. We have not allowed the pandemic to slow us down

as we embarked on new initiatives to improve the way we work and the way we do things more effectively and efficiently.

17. With the transition from COVID-19 pandemic to an endemic state and all the hype surrounding the GE-15, I am humbled and pleased to witness how hardworking my officers had been throughout this period of time. My officers had remained steadfast in our line of duty and we have striven to uphold the rule of law, especially in times of need. We take pride in the following notable laurels for the year 2022:

- i. rendering legal opinions and advice on caretaker government and election matters;
- ii. operation of the AGC's *Bilik Gerakan Pilihan Raya* (operations room) throughout GE-15 that acts as, *inter alia*, a centralised repository for legal questions on elections and police reports relating to election-related offences;
- iii. gazetting of 45 Acts and 910 subsidiary legislation in the Federal Gazette managed by the AGC *via* our in-house Federal Legislation Portal;
- iv. participation in the negotiation and conclusion of 22 high impact privatization agreements, involving highways as well as niche services at Government's strategic facilities;

- v. involvement in high-profile cases, some of which are still ongoing; and
 - vi. on the international front, the AGC has been active in defending Malaysia's sovereignty, territorial and economic integrity in international legal disputes worldwide.
18. On this note, I am proud to highlight that the AGC has also conducted several administrative exercises in collaboration with the Chief Registrar's Office to ensure that the human capital in the Judicial and Legal Service remains independent and impartial. The administrative exercises, as at 15th November 2022 include 84 job rotations that involved 416 legal officers and judicial officers in the Judicial and Legal Service from all grades, as well as cadre officers in various Ministries/Agencies and 16 officers in secondment posts. These job rotation exercises in various placements provide opportunities for legal officers to gain experience and acquire knowledge in multiple legal disciplines and judicial skills which is useful and beneficial in their long-term career development.
19. Apart from that, the AGC has been assisting the Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) in coming up with a new law to enable Public Sector Data

Sharing to support the implementation of *MyDigital* initiative. *MyDigital* is a national initiative which symbolises the aspirations of the Government to successfully transform Malaysia into a digitally-driven, high-income nation and a regional leader in the digital economy that is currently utilised in economic and social activities.

20. If I may digress on this point, the legal community is also currently digitally driven, all thanks to the silver lining brought by the COVID-19 pandemic. The implementation of advanced information and communication technologies in conducting cases has now been extended to the Call to the Bar ceremonies, to which the AGC is glad to be part of this remarkable evolution.

21. We pledge to support this continuous effort in ICT development by ensuring on our end, that our system be upgraded from time to time to be on par with the existing progress made. This is to prevent as what the old adage said, "*justice delayed is justice denied*".

YAA, YA, ladies, and gentlemen,

22. While we celebrate the laurels that we achieved in the year 2022, lest we forget the indelible blotch in the history of the Malaysian judiciary. The 1988 judicial crisis had brought darkness upon our glorious

Judiciary. It had led to the adoption of a resolution by the International Commission of Jurists on 20 January 1989 at a meeting in Caracas, Venezuela⁷ which records the concerns of judges and lawyers from around the world about the position of judicial independence in Malaysia⁸. The darkness continued to loom when Article 121(1) of the Federal Constitution was amended in that year⁹.

23. Eventually, after almost 30 years, the balance between the three arms of the government as envisaged in our Constitution was restored through the judgment passed in **Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another Case** [2017] 5 CLJ 526 (FC) and other subsequent cases. We should let the principles originally propounded by the Malaysian apex Court in **Sri Lempah** and reiterated in **Semenyih Jaya** be ingrained in our minds that “*the powers of the executive and the legislature are limited by the Constitution and that the Judiciary acts as a bulwark of the Constitution in ensuring that the powers of the executive and the legislature are to be kept within their intended limit.*”. I must impress therefore that this principle being an important facet of our

⁷ HP Lee, *Constitutional Conflicts in Contemporary Malaysia*, (2nd Edition), p 109, 110.

⁸ [1989] MLJ cxxii.

⁹ Rosli Dahlan & Ho Ai Ting, *Semenyih Jaya: Restoration of Judicial Power in Land Acquisition Cases*, LHAG Legal Herald, November 2017.

constitutional architecture remains binding upon us by virtue of the *stare decisis* doctrine.

24. As a concluding remark, allow me to quote George Santayana, a 20th-century American scholar who once said that “*those who do not remember the past are condemned to repeat the past.*” We shall learn from our history and refrain from once again, descending into disrepute.

25. Finally, I wish all members of the legal fraternity and everyone present today a Happy New Year. May we be able to look forward to a peaceful and harmonious year ahead. As a parting word, I pray for our good health and success, and that we remain guided to the righteous path, to which I quote a humble verse of Quran (1:6) to the effect: “*Guide us to the straight path.*”.

Thank you and stay safe everyone.