

**OPENING OF THE LEGAL YEAR ('OLY') 2019**

**SPEECH**

**By**

**The Right Honourable Chief Justice**

**Of The Federal Court Of Malaysia**

**Tan Sri Datuk Seri Panglima Richard Malanjum**

**Delivered at**

**The Putrajaya Marriott Hotel, Putrajaya**

**11 January 2019**

## **Salutations:**

1. A very happy new year and may it be a peaceful year for all of us.
2. Foremost, thank you very much for your presence this morning. We have with us here Minister in the Prime Minister's Department, Datuk VK Liew, the de-facto Minister of Law Malaysia. Despite his schedule he is able to be here with us. It is a reflection of his love for the law and perhaps the saying is now justified: 'once a lawyer always be a lawyer'.
3. I also acknowledge the kind attendance of the Singapore Chief Justice Mr. Sundresh Menon. CJ Menon has been very kind in sharing knowledge and information upon our request in various areas, from effective court administration to new approach in handling family disputes by the Family Court. The

Deputy Chief Justices of the Supreme Court and Constitutional Court of the Republic of Indonesia and their delegation is also with us. Thank you for coming. And thank you for being here Your Excellencies the Ambassadors and foreign diplomats and honourable representatives of various foreign and international missions and organizations.

4. We are also very honoured to welcome the presence of our former Chief Justice Tun Zaki Tun Azmi, former Judges, Members of the Judicial Appointment Commission, Members of the Institutional Reform Committee, Members of the G25, past presidents of the Bar Council, senior members of the Bar and all distinguished guests. My sincere apology if I have missed to specifically mentioned any other guests that should be done so.

5. Mr. Attorney General Malaysia, State Attorney Generals of Sabah and Sarawak respectively, President of the Bar Council, Sabah Law Society and Advocates Association of Sarawak thank you for the kind words and views expressed in your respective speeches a moment ago. We will take note the issues raised and take the necessary actions where appropriate.

6. And while I concur what have been said by my colleagues the President and the Chief Judges, I think I am obliged to explain why the change of format of speakers in this year opening. It is to remind us that Malaysia was formed by originally four sovereign entities in 1963, namely, the Federation of Malaya, Singapore, Sabah and Sarawak although Singapore no more, that I invited the State Attorney Generals of Sabah and Sarawak, the Presidents of the Sabah Law Society and the Advocates Association of Sarawak to

make their respective speeches this morning. And to highlight the point that indeed the Malaysian Judiciary today is managed by a collective leadership I also requested my colleagues to speak on their respective courts of responsibility. Hopefully this trend will continue in the future openings.

7. When the four of us took office in July of last year, there were high expectations on us. There have been numerous calls for reforms. Foremost of these reforms are those proposed by the Institutional Reform Committee ('**IRC**'). As such we wasted no time in implementing reforms as many as we could for the past months.
8. We went for the low hanging fruits first. **Collegiate Self-Governance** was expected instead of the top-down administration typically found in a government department. So today we manage the Judiciary by way

of Collective Management approach. Simply put, neither I nor do any of the Top Four Judges make decisions alone. We discuss and decide together to ensure that the decision is made by a majority and any decision made, is an informed one.

9. Next was the **empanelling of judges** in the Federal Court. The Chief Justice no longer has the sole privilege of selecting judges to hear any given case in the Federal Court. This is to prevent any impression or perception of bias judges selection especially in high profile cases. The empanelling is now done electronically, and randomly by way of **E-Balloting**. We managed to create a software to do the job in enpanelling judges.
10. We heard the grumblings of the Bar that they were not consulted when decisions affecting them were made. We responded as we truly want to uphold the Rule of

Law. Today we have a **Consultative Committee** with members from the three Bars, the Attorney General Chambers and the Judiciary meeting on regular intervals to discuss on matters of mutual interest in the administration of justice and the courts.

11. We noticed the inconveniences of lawyers in coming to courts just to get hearing dates. We saw the congested parking areas. We sympathised the heavy bags the lawyers carried to courts. We responded with the use of technology. We are on the 4<sup>th</sup> Industrial Revolution. We must adapt to be able to compete successfully. Technology is the way to go. So we introduce the **E-review** in case management. At the appellate levels all case managements are now done online. No more lining up by lawyers from 9am onwards. They can do case management from the comfort of their offices or homes. For the other courts the system will be

extended by March this year. Of course in Sabah and Sarawak they have been enjoying it for the past years.

12. We realised that flights tickets were on the increase and so too hotel rates. These can increase the burden of clients and the public. We also noted the traffic jam on the Federal Highway between Kuala Lumpur and Shah Alam. We responded. By the end of this month **Video Conferencing** will be available between Kuala Lumpur, Penang and Shah Alam. It will be expanded to other areas soon. And in the pipeline is the idea of Virtual Court and the use of hologram technology instead of video conferencing. But that will be another day.

13. During our sittings in the Federal Court we observed lawyers dozing off while waiting for their turn to present their cases. We responded with technology through **Queue Management System**. Today lawyers can

enjoy their mee curry or nasi lemak in the canteen without any worry of their turns being missed. They can see from the monitors in the canteen or their mobile phones when their cases are called.

14. We sometimes read the blogs and public comments in the Internet. Sometimes we do not like what we read about the courts and the judges. Believing in the old saying of prevention is better than cure, we took preemptive measures. In addition to judges making their regular assets declarations, we have today provided **Complaint Mechanism** via hotlines and social media to receive public complaints and suggestions on our performance. There is also now a new **Judicial Officers Code of Ethics** similar to the **Judges Code of Ethics** to ensure that our judicial officers keep a high standard of behaviour on and off Bench.

15. And lawyers should no longer be fearful of overlooking to file the defences or affidavits of their cases because there will be **Auto Alert** system to remind them. Judges too can no longer plead amnesia when their pending judgments piled up. The system will alert them and keep reminding them in various colours until they have done their work. This is what we call the **Monitoring** system.

16. So far it has been technology all the way. It is not over yet. Hopefully by June this year the Malaysian Courts will be '**Paper Less**'. Lawyers should no longer be carrying bundles of documents to courts. All files will be in the form of virtual files within the Case Management System (CMS). Imagine coming to court carrying just your tablet.

17. And imagine you are no longer tied up to your office and no monthly rental to pay but able to do your work

anywhere in this world. The tagline will then be 'Now Anywhere Can Work'.

18. The use of Artificial Intelligence (AI) is also in our radar. One item is already in the work. As I speak the **Data Sentencing** feature is being fine-tuned so that judges and judicial officers can use the data to guide them in sentencing process and thus avoid disparity of sentences upon accused persons convicted of similar offences. To sum up the legal profession must embrace technology. There is no option. It is coming soon to the legal profession. Adapt or be dropped.
  
19. We are very conscious that one of the reasons why the public has a negative perception on the courts is that our decisions at times are not in tune with public feelings or the will of the majority. Our response to this is a request for understanding on the functions of the courts. Our court is a court of law and not of the mob.

Let it be remembered that while the legislature is the will of the majority the court must remain the conscience of society so as to ensure that the rights and interests of the minority and the weak are safeguarded. And 'It is one of the most basic rules of justice that however heinous a crime a person is accused of, whatever the rank of the person who testifies against him, he can only be convicted on evidence produced according to the stringent requirements of the law.... it does not mean that a person accused of one of the most serious crimes known to our law is not entitled to equal protection before the law and one of those items of protection to which he is entitled is that his guilt must be proved in accordance with or in a manner required by law. Anything less will not be enough.' per Wan Suleiman SCJ in **Krishnan v Public Prosecutor [1987] 1 MLJ 292** at page 295.

And it should also be noted that “it has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.” per Lord Atkin in **Liversidge v Anderson [1941] 3 All ER 338**.

20. One solemn declaration we make here is to uphold the Rule of Law and our zero tolerance to any form of corruption and judicial interference whether internal or external, political or otherwise, in the execution of our judicial duties. We welcome information if any of such occurring. I can assure you that swift action will be taken in accordance with the law. The Judiciary remains and will remain steadfast in upholding its independence.

21. Being a branch and being independent does not mean that the Judiciary must act at all times as checks on the other branches (the Legislature and the Executive) of the Government. The three branches should work together and respect each other's boundaries.
  
22. Thus, we have taken steps to engage the other branches of the Government and other stakeholders. In order to mitigate any misunderstanding that may arise when the courts grant judicial review against decisions of government departments the Judiciary in collaboration with the Law Faculty of University Malaya authored a book entitled 'Judicial Review Guide for Public Officers'. We are also in discussion with other government departments such as the Prison Department and Welfare Services Department. We are encouraging our judges and judicial officers to consider imposing community services instead of imprisonment to offenders in appropriate cases. In this way not only it

may better rehabilitate the offenders, it is also costs savings for the Prison.

23. The Judiciary is also in working cooperation with institutions of higher learnings. Unless the Law schools start preparing their law graduates for the industry they may end up in the unemployment queue. There are murmurs that many of our fresh law graduates do not meet the expectation of the industry. I think it is the duty of the Bar to remedy such a situation. Chambering must be a period of learning the trade and not time to carry bags and photostating for their masters. Newly admitted lawyers should do as many as possible pro bono works in courts for it will give them the experience and confidence in court later on. Do free legal aid for the unrepresented instead of leaving the senior lawyers merely mourning for the poor souls.

24. Another area which has been the target of negative perception is on performance by the courts. Comments have been made, fairly or unfairly. We have responded to this and will continue to do so. The Judicial Academy of the Judicial Appointment Commission has been organising regular inhouse training for judges in several areas of the law. We are now in discussion to bring in experienced judges from the United Kingdom to share with us their experiences in effective case management. We are also in serious discussion with the Singapore Judiciary in knowledge sharing programme. In March there will be one program being organised with the help of Singapore Judiciary. The Justice Department of the United States of America has been very active too in exposing and training our judges and judicial officers on how to handle 'modern' crimes such as money laundering, crypto currencies fraud, terrorism and human trafficking. The United Nations Development Programme (UNDP) is another

international organisation which has been very helpful to our Judiciary especially in handling public interest litigation. The local universities too are assisting in one way or another. These training take time to mature. Indeed we must remember that Putrajaya was not built in one day!

25. Another issue raised by the IRC is on the appointment of judges and judicial commissioners. However, until the law is amended on the mode of appointment the law must take its own course and be followed. But that does not mean we have done nothing about it. Although it is not provided for in the law at the moment we have taken the liberty to get the three Bars to be actively involved in the form of consultation on potential candidates for judgeship. We are also very receptive to the views of the Bars on judges and officers.

26. One stumbling block in our quest for a truly independent Judiciary that include the subordinate courts is the continuing attachment to our twin, namely the Legal Service. Separation is in the work but I guess we need a good surgeon to do the job because even a separation at the administrative level is still work in progress. I have high confidence that our Attorney General is the fated surgeon.

27. So far the one small step of the Chief Registrar being agreed as the Financial Controller instead of the Chief Secretary, a giant leap for the Judiciary for at least we can now call the tune since we are paying the piper. The next challenge is to seek for block budget annually or for a period of time. With block budget it will make planning for the courts much easier.

28. In order to improve public awareness on the function of the courts and the Constitution we have started a

program in collaboration with the Ministry of Education. The main target are the schools. There is good reason to teach early our young minds about the Constitution and the Rukun Negara.

29. For transparency we have engaged the media on accurate reporting and provide assistance through the Media Centre in Istana Kehakiman to their reporters should they encounter difficulties in understanding the decisions of the courts. In this way erroneous understanding by the public will be minimised. In high profile cases regular bulletin may be issued when the trials are ongoing. This is to minimise any error in the public understanding of the issues involved.

30. And for better access to judgments the Judiciary since last year has been working with the ASEAN Legal Information Centre based in the University of Malaya on the setting up of a Malaysian Judgments Portal. I

am told that it is almost completed and should be publicly available and free of charge by the first quarter of this year. This will be another avenue for the public to access judgments of the courts. Barring any impediment hopefully this Portal may one day be the official repository of courts judgments.

31. All in all, the Judiciary will continue to ensure that timelines in place will be continuously be adhered to so that cases are completed quickly and effectively. In fact, the World Bank recently noted that we have a problem of postponements here causing delay in the speedy resolution of cases. I hope the Bar will cooperate with the courts in addressing this issue.

32. Last but not least, the Judiciary has not forgotten our retired judges. A special Unit has been set up to assist them in any manner possible especially when dealing with the hospitals. We no longer subscribed in them

being given retirement cards. Instead our retired Judges should hold cards indicating their positions last held. In this way they are not just another ordinary retirees.

33. In conclusion, may I once again wish you all a very happy new year. May you remain healthy and prosperous.

34. Thank you for listening.

35. I now declare open the legal year of 2019!