



**ISTANA ISKANDARIAH
KUALA KANGSAR**

**ADDRESS
BY
HIS ROYAL HIGHNESS
SULTAN NAZRIN MUIZZUDDIN SHAH**

**AT
THE BOOK LAUNCH
“JUSTICE ABOVE ALL:
SELECTED JUDGMENTS OF TUN ARIFIN ZAKARIA
WITH COMMENTARIES”**

**DATE: 18 MARCH 2017 TIME: 10.00 AM
VENUE: ROYALE CHULAN HOTEL, KUALA LUMPUR**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ

Salam Sejahtera.

1. Beta bersyukur ke hadrat ILAHI kerana dengan limpah rahmat daripada Nya juga, Beta dapat berangkat ke Majlis Pelancaran Buku “*Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries.*”

2. Dengan penentuan dan kehendak ILAHI jua, Tun Arifin Zakaria diperkenankan oleh Seri Paduka Baginda Yang di-Pertuan Agong, mengangkat sumpah jawatan sebagai Ketua Hakim Negara pada 12



ISTANA ISKANDARIAH
KUALA KANGSAR

September 2011 mengikut Perkara 122B (1) Perlembagaan Persekutuan.

3. Tun Arifin dilantik sebagai Ketua Hakim Negara ke-13, mengambil alih daripada Tun Zaki Tun Azmi.

Ladies and Gentlemen,

4. I am particularly pleased to be present at this significant event this morning to celebrate the contributions of YAA Tun Arifin Zakaria on the eve of his retirement from his high judicial office, as the Chief Justice of Malaysia.

5. This morning's event provides a timely opportunity to speak about what matters most to judges - that is, their judgments, and the importance of upholding and adhering to the principles of the Rule of Law.

6. Having had the privilege of being born to a judge myself, it would not be an exaggeration for me to say that the office of a judge places upon the holder onerous duties and responsibilities that go beyond those imposed on occupations in other walks of life. As the well-known jurist David Pannick puts it: "Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid: make decisions" (David Pannick, *Judges*, 1987).



7. In making decisions, judges have to give reasons in their written judgments. These written judgments are vital: First, it reflects the transparency and accountability of the decision-making process, an integral component to gaining public confidence; and secondly, it is through these judgments that the law is developed.

8. As common law lawyers, in making their judgements, judges should be well-armed with a strong narrative, in which the justification for the reasoning in their judgments is given pride of place.

9. These qualities are clearly evident in any reading of the judgments of great judges of the past and present. Such judges dominate and define their age, even as they are themselves shaped by it. Some are consummate judicial figures, whose legacy of brilliant judgments will be passed on to the generations that follow. In this regard, we will always be indebted to the lucid reasoning we find in the judgments of Tun Suffian, Tun Azmi, His Royal Highness Sultan Azlan Shah, Justices Eusoffe Abdoolcader, HT Ong, SS Gill, and all our other judicial luminaries.

10. When judges retire, they leave behind a corpus of judgments which will continue to be part of the law - to be applied, analysed and



scrutinized. It is these judgments that secure their place in the legal history of the country.

11. Today in the collection of judgments contained in the book, *Justice Above All*, we get a glimpse of Chief Justice Tun Arifin's contribution to Malaysian jurisprudence.

12. Beyond independence, impartiality and integrity, a judge must also possess a good and sharp mind. If ignorance of the law does not absolve an accused person, then it must be even more compellingly the case that the person sitting in judgment must possess fully, not just the requisite knowledge, but also the sharp faculties and intellect necessary to apply that knowledge properly.

13. Good judgments are the very cornerstone of common law. They provide the foundations and fabric that form and shape it. Judges must thus continually strive to refine their judgments before delivering them. Since their judgments determine not only the outcome of each dispute brought before them, but may also contribute to the development of the future application of the law, there is no room for slack intellectual effort.

14. Even if some may disagree with the reasoning or views of some judges in some cases, the sheer majesty and brilliance of the judgements they regularly deliver, and the coalescence of human



thought and experience that these represent, cannot fail to impress and inspire us.

15. In this light, one might pose the question of what it is that makes a judgment great. And in what context and by what dimensions can we measure and compare such greatness? I would like to quote something my father said at the 11th Tunku Abdul Rahman Lecture at the Malaysian Institute of Management in November 1984. His Royal Highness said, “... *The existence of the courts and judges in every ordered society proves nothing; it is their **quality**, their **independence** and their **powers** which matter ...*”

16. In extending to judges the privilege to serve on the Court, it is taken for granted that among their many qualities is that of wisdom, to ensure that justice and fairness are upheld in all their judgments. But even though as Francis Bacon, the former Lord Chancellor of England, said, “*knowledge is power*,” knowledge and wisdom are not enough. They must always be accompanied by intellectual honesty and above all independence.

17. Although there is undoubtedly value in unanimous opinions, it is critical that judges speak in dissent where necessary. Some judges may hold strong legal and moral convictions, yet fail to articulate their concerns in their judgments. They may remain silent out of deference to



the judgments of others; out of concern that their comments may be dismissed; or out of a misplaced belief that what they might have to say is not that important. But the Bench, and judicial decision-making processes, can easily handle the ramifications of a divergent opinion on any given issue.

18. Sometimes, the brave dissenting voice is transformed into law. A classic case is that of *Brown v Board of Education* 347 US 483 (1954) when the US Supreme Court gave weight to the spirit of Justice Harlan's dissenting voice in *Plessy v. Ferguson* 163 U.S. 537 (1896). As a result, and in a historic judgement, then Chief Justice Warren held that racial segregation in public schools constituted a violation of the US constitutional guarantee of equality of rights.

19. And of course, who can forget Lord Atkin's famous dissent in *Liversidge v Anderson* [1942] AC 206 and Lord Denning's dissenting judgment in *Candler v Crane, Christmas & Co* [1951] 2 KB 164, both of which had far-reaching consequences for the landscape of the law thereafter.

20. As I stated earlier, judges also shoulder a heavy responsibility in discharging their duty to uphold the Rule of Law.

21. It is by their judgments that judges are made accountable for the decisions they have made. It goes without saying that they should be



free to express their reasons as they think fit. In other words, for the Rule of Law to flourish, courts and their participants should be allowed to express a variety of ideas and principles. Every judge should have the opportunity to participate fully, even while the majority decision rules the outcome. This judicial independence in turn helps to ensure that the Rule of Law is fully upheld.

22. It is this adherence to the Rule of Law that should be the compass and leitmotif of all judges in the adjudication of all the matters before them - no matter what the issues are, and no matter whose interests they are deciding. This ensures that justice will always prevail.

23. The character, qualities and independence of the judges themselves also serve to sustain public confidence in the court. The judges are not there simply to decide cases but to decide them as they think the cases should be decided in the true spirit of justice and fairness. Doing the right thing is therefore incumbent on all judges. In fact, it is their supreme duty.

24. We live in challenging times, in which our institutions sometimes seem to be under threat. This makes it all the more crucial that the public's regard for the judiciary should be at its highest and clearest. More than ever, we need courageous and fair-minded judges to instil confidence that the judicial system remains sacrosanct in guarding the rights, interests and liberty of all.



25. The judiciary must thus strive relentlessly to dispense justice in accordance with the Rule of Law. While this is an essential prerequisite for safeguarding civil and political rights and ensuring good governance, it also provides the foundation for economic growth and progress. By providing fair and prompt judicial decisions on matters concerning the enforcement of commercial rights, a well-functioning judicial system helps to promote a competitive and attractive economic climate in the country. This in turn facilitates value-adding capital formation and investment.

26. It is of course by no means the express role of the judiciary to encourage economic growth. But ensuring that our judicial system delivers justice remains a *sine qua non* for maintaining a reputation for fairness and efficiency, and something our judiciary should continually seek to achieve. As our economy and society continue to evolve, the progress being made is thus further strengthened by our maturing judiciary, and by the integrity of the judicial decision-making process.

27. Thus, I return to the question posed earlier of what makes a judgment great. My own belief is that a great judgement is one in which the decision-maker fully understands that he is the guardian of the Rule of Law, and in which his fidelity to its precepts is absolute.



28. In this regard, I would like to end with a quote again from my father, His Royal Highness Sultan Azlan Shah, who, like Tun Arifin, was also the Chief Justice.

I quote:

“The rules concerning the independence of the judiciary... are designed to guarantee that they will be free from extraneous pressures and independent of all authority save that of the law. They are, therefore, essential for the preservation of the Rule of Law.”¹

Ladies and Gentlemen

29. YAA Tun Arifin Zakaria has had a long and illustrious career on the Bench. As a judge he wrote some outstanding judgments, some of which are contained in this new book, *Justice Above All*.

30. The judgments selected for this collection, each accompanied by one or more commentaries by eminent lawyers, should stimulate readers, and challenge the boundaries of their legal imaginations in the most significant way. Tun Arifin’s work encompasses a diverse range of issues. The book will undoubtedly influence thinking on the weighty matters that the judgements address, and contribute in this way towards the further development of Malaysian jurisprudence.

¹ HRH Sultan Azlan Shah in “*Supremacy of Law in Malaysia*” in *Constitutional Monarchy, Rule of Law and Good Governance: Selected Essays and Speeches by HRH Sultan Azlan Shah* , 13-33 at pages 14-15.



ISTANA ISKANDARIAH
KUALA KANGSAR

31. I believe that Tun Arifin's place in history is assured, as it stems from the essential fact that through his lifelong work with the law, Malaysian jurisprudence has grown immensely in size and form. I am certain that this book will have a place of prominence on any bookshelf.

32. Tun Arifin, I wish you a happy retirement.

33. Dengan Kalimah Bismillahi Rahmanir Rahim, Beta dengan sukacitanya melancarkan buku "*Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries.*"