

SPEECH

YANG BERHORMAT

DATO SERI PADUKA HAJI KIFRAWI

BIN DATO PADUKA HAJI KIFLI

OPENING OF LEGAL YEAR 2009

TUESDAY, 7 APRIL 2009

Bismillahir Rahmanir Rahim

Assalamualaikum Warahmatullahi Wabarakatuh

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

As usual, we are thankful to Allah Subhanahu Wata'ala for His blessings in making it possible for us to renew our usual pledges.

We pledge to cooperate and support the upholding of the independence of the judiciary and the rule of law.

1. LAW REVISION AND REFORM

On the topic of legislation, the continuous revision and updating of the Laws of Brunei is the usual project done by the Attorney General's Chambers. This could explain why the Law Reform Committee mentioned in a recent meeting of the Legislative Council is no longer active. Since the last legal year of 18th March 2008, a further 10 legislation has been revised.

They are the Debtors Act (Chapter 195); the Electronic Transactions Act (Chapter 196); the Anti-Terrorism (Financial and Other Measures) Act (Chapter 197); the Tokyo Convention Act (Chapter 198); the Distress Act (Chapter 199); the Sungai Liang Authority Act (Chapter 200) and the Asian Development Bank Act (Chapter 201); the Yayasan Sultan Haji Hassanal Bolkiah Act (Chapter 166); the Internal Security Regulations (Regulation 1 of Chapter 133) and the Legislative Council and Council of Ministers (Remuneration of Members) Act (Chapter 134).

(a) ATTORNEY GENERAL'S CHAMBERS' WEBSITE

This year, the Chambers have started to make available the Laws of Brunei Darussalam on our website so as to enable the public to have easy access to our laws. Currently, most of the texts of the principal legislation comprising of *Orders* and 'Acts', are now available online and can be downloaded. The website also includes other useful information for example the list of amendments of the laws, subsidiary legislation and the numeral list of Government Gazettes publication in Part II for 2006 up to 2008. I would like to invite those who are present today to check out this website (www.agc.gov.bn). Any comments for possible improvements are most welcomed.

I am also happy to announce that the latest edition (2009) of the books on the Constitution of Brunei Darussalam are available for sale and can be obtained from my Chambers.

(b) NEW LEGISLATION

As a tradition, I take this opportunity to mention several new legislation that have been passed or approved by His Majesty the Sultan and Yang Di-Pertuan since the last legal year.

(i) The **CRIMINALS REGISTRATION ORDER, 2008** which replaces the Fingerprints Enactment, 1956 provides for the creation of a DNA database in addition to the existing register of convicted persons and persons ordered to be banished, expelled or deported from Brunei Darussalam. An authorised officer can take finger impressions and photographs or record any other particulars of any person under arrest or has been convicted of an offence. This Order further provides that a body sample may be taken from a person who has been arrested, convicted of an offence or is serving a term of imprisonment.

(ii) The **CUSTOMS (AMENDMENT) ORDER, 2008** increases the penalty for offences relating to the smuggling of certain

prohibited items namely oil (comprising of gasoline, diesoline and kerosene) and rice, paddy and any of its products. For a first offence, the penalty is a fine of not less than \$10,000 and not exceeding \$500,000, imprisonment for a term not exceeding 3 years or both; and for a second or subsequent offence, a fine of not less than \$20,000 and not exceeding \$500,000, imprisonment for a term not less than 6 months and not exceeding 5 years or both.

(iii) The new **ISLAMIC BANKING ORDER, 2008** which replaces the Islamic Banking Act of Chapter 168, is intended to strengthen the regulatory system towards the operation of Islamic banking business. This Order which is vastly improved from the repealed Islamic Banking Act, is designed to bring Islamic Banking in Brunei in line with conventional banking under the Banking Order 2006. Among the requirements for Islamic Banks in this Order are minimum capital funds, reserve funds, liquid assets, cash balances and assets which Islamic Banks must set up, hold or maintain. Additionally, the aims and

operations of Islamic Banks must not be contrary to syariah law. This will provide greater security for customers and depositors of Islamic Banks and a more robust Islamic Banking system which is now on par with their conventional counterparts.

(iv) Another new law is the **TAKAFUL ORDER, 2008** which is introduced to regulate takaful business in this country. This is a new Order introduced to regulate and control the activities of the Takaful Operators which have been operating takaful businesses in Brunei Darussalam for some time. The provisions of the Order are largely consistent with the Insurance Order, 2006 and were designed to bring takaful business, again, on par with conventional insurance, with the addition that takaful operators must carry out their takaful business in accordance with syariah law. Takaful Operators in Brunei Darussalam provide general takaful and family takaful business. Under the Order only adequately capitalized companies will be allowed to be registered, whereby takaful companies have to satisfy stringent financial requirements such as a deposit with the

Authority of a minimum amount of money and are required to have a fixed minimum paid-up share capital. This is largely important so as to ensure that takaful companies have sufficient assets and liquidity to meet insurance claims made by claimants and in particular ever escalating personal injury claims.

We have seen that the number of legislation in this country has not only increased significantly over the years but they have also been updated frequently in order to be in line with the development of time. In general our enforcement agencies have regularly enforced our laws relating to immigration, customs, corruptions, drug and road traffic. I wish to commend the Tobacco Control Unit of the Department of Health Services, Ministry of Health with the support of the Royal Brunei Police Force for conducting the recent raid on certain restaurants to stop those who did not comply with our Anti Smoking Laws.

Drafting new laws is usually not difficult. It is the ability or capacity to implement the new laws is always the issue that need to be resolved preferably before making the laws. We do not want new laws to be mere empty words in the statute books.

Brunei being a country with small population has certain limitations. As usual the relevant ministries or departments which have to implement the new laws have to be ready with the trained manpower and the necessary infrastructure.

2. DISASTER MANAGEMENT

Early this year we have seen an unprecedented scale of damage to property and landscape due to heavy rainfall in this country. Since the establishment of the National Disaster Centre under the Disaster Management Order, 2005, the Centre has worked very hard in cooperation with other Government agencies to provide the necessary assistance

round the clock to those affected. With proper and strategic planning referred to by the Disaster Management Order 2005 as the "Disaster Management Plan", the National Disaster Management Centre was able to implement the action plan that ensure preparedness and speedy response to the disaster.

3. DOMESTIC VIOLENCE

It is always worth remembering that an effective criminal justice system must command the respect and support of society. One key component of obtaining such support is how it treats the victims of crimes. In many cases, the only contact a member of society has with the criminal justice system is unfortunately when he or she is a victim of crime. It is therefore important that the measures undertaken must be perceived to be adequate whether it is in the form of legislation or administrative measures to protect and cater for the needs of victims. In this regard I wish to highlight the efforts of my

Chambers and the Government in affording recourse under the law for victims of domestic violence.

Statistics provided by the Domestic Violence Unit of the Royal Brunei Police Force show the number of reported cases of domestic violence involving spouses and children to be in 2006-130, 2007-160 and 2008-150. Incidentally, there are also a number of husbands who reported being abused by their wives but the number is relatively small.

Though there is no specific law at present dealing with domestic violence, conducts usually falling within the usual definition of domestic violence such as causing hurt, assault or use of criminal force are offences under the Penal Code.

My Chambers view domestic violence as a serious matter. In this respect, I have directed that where a criminal offence has been committed against the victim, the matter should be brought to court even if there is a letter of withdrawal from the

victim which occurs in most cases. If the victim does not wish to pursue the matter further, the victim may then choose to compound the case with the court's consent.

I am also glad that Magistrates also treat the matter with equal seriousness and the composition is usually allowed subject to the condition that the defendant refrains from further acts of abuse. Bringing the cases to court is undoubtedly time consuming and a strain on the resources of the prosecution and the Judiciary. However I feel that by bringing the abuser to court rather than being given a warning by the Police, he would be aware of the seriousness of his misconduct against the spouse and hopefully he would be deterred from committing further abuse in the future. I note that this approach seems to deter most offenders from being a subsequent appearance in court.

It is recognized however that a case to court is not the answer in every case. If the case proceeds for trial, the victim will have

to undergo the trauma of testifying in court without any guarantee that the abuser be convicted. The abuse may still continue and even worsen if an abuser is charged whether or not a conviction is obtained, as in many cases, the victim and the abuser still live together. Further it may not be in the victim's interest to proceed. The abuser is usually the breadwinner of the family and the victim and the family have no other source of income. What is clearly needed and at the moment still lacking is a mechanism to ensure that the victim is protected from further abuse whilst not treating the matter lightly short of bringing a criminal prosecution.

Upon consultations with the Community Development Department of the Ministry of Culture, Youth and Sports and the Ministry of Religious Affairs, the Attorney General's Chambers is preparing new provisions specifically dealing with domestic violence to complement existing laws.

I hope that this initiative will go a long way to alleviate some of the concerns expressed by the public and ensure that the vulnerable members in our society are adequately protected.

4. ASEAN CHARTER AND HUMAN RIGHTS LAWS

The ASEAN Charter came into force on the 15th of December 2008. Its entry into force marks a new era for ASEAN as it transforms from a grouping of sovereign states to the establishment of an inter-governmental organisation with legal rights and obligations under international law.

The Charter reflects the commitments of member states to develop and strengthen ASEAN thereby to enable it to face the current environmental economic and social challenges, In particular, ASEAN's commitment to realise an ASEAN Community by 2015.

ASEAN would now be more rules based. The Charter has provided for mechanisms to ensure compliance through implementation and monitoring provisions. These provisions include dispute settlement mechanisms related to disputes on to the interpretation or application of the Charter and other ASEAN instruments.

Article 1 of the Charter provides for the purposes of the ASEAN. Among them is maintaining fundamental rights. Article 1 Clause 7 of the Charter provides "To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the member states of ASEAN."

Related to this is the most significant development of the Charter, establishment of an ASEAN Human Rights Body. Its

establishment signifies ASEAN's commitment to issues related to the promotion and protection of human rights.

Brunei Darussalam's Constitution provides that the official religion is the Islamic religion, provided that all other religions may be practiced in peace and harmony. Respect for human rights is one of the fundamental purposes of Islam. Our laws do guarantee basic human rights such as right to life, which is considered inviolable under Islamic Laws, the right to own property, the right to justice and fair trial and most importantly protecting the rights of women and children.

There are available existing legislation which provide for the protection of human rights in general. The existing fundamental law which provides for the protection of human rights in general includes the following –

- Penal Code (Chapter 22)
- Criminal Procedure Code (Chapter 7)
- Children Order
- Women and Girls Protection Act
- Islamic Family Law Order
- Labour Act

5. LEGAL SERVICES

My office had successfully hosted the 12th ASEAN Senior Law Officials Meeting (ASLOM) and the 7th ASEAN Law Ministers Meeting (ALAWMM) in the October 2008. At the ASLOM meeting, Brunei Darussalam presented a paper titled "The Progressive Liberalisation of Trade in Legal Services In ASEAN". The paper discussed the apparently impeding need for a liberalised legal services sector in view of recent developments in ASEAN in particular the ASEAN Economic Blueprint. The ASEAN Senior Law Officials Meeting also agreed further consultations is needed in this matter and the ASEAN Law

Ministers agreed that an ASEAN Law Forum can be held to discuss this very important topic.

Whenever my office is involved in advising on matters related to international trade whether in ASEAN or beyond, liberalisation of legal services has always been an issue that needs to be addressed. As ASEAN is working towards becoming a single market with a freer flow of trade in goods, services and investment across the territories of the member states, this will result in many cross border transactions involving international and multinational service providers and clients. Legal advice on a wide range of legal issues may arise, which may include legal advice under different jurisdictions, depending on which law shall apply within that particular case.

Hence, in trying to assist ASEAN towards achieving the objective to form an ASEAN Economic Community before 2015, we may really have to start considering the possibility of the liberalisation of the legal services sector too.

This would involve the need to study the possibility of making legal commitments to allow foreign lawyers to practice law in Brunei Darussalam. We would also need to ensure that our local lawyers are permitted to practice law in other jurisdictions as well. So far, such commitments are not provided for in the free trade agreements that have been concluded.

We are pleased to report that in February this year we have established dialogue between all of the relevant stakeholders namely, the Law Society, the Judiciary (who is responsible for the admission of legal practitioners in Brunei), the State Judicial Department, the trade department of the Ministry of Foreign Affairs and Trade and we are now collectively studying the modalities of any possible commitments that may need to take place, bearing in mind our obligations under the ASEAN Charter and also the deadline for an open ASEAN Economic Community by 2015. I would like to thank the Law Society, the Judiciary, the State Judicial Department and the Ministry of

Foreign Affairs and Trade for their contributions and efforts in this and we look forward to having a progressive working relationship in this matter.

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, Internal Security Department and

our Fire and Rescue Department (the Department that runs the Disaster Management Centre) for the assistance and cooperation and in the 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 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.