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Luncheon Talk**

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**Topic: Judicial Reforms by The Malaysian Judiciary**

**By**

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**Distinguished guests, ladies and gentlemen,**

1. It is a great honour to be invited to this event organized by the Malaysian Press Institute. I would like to thank in particular, Datuk

Dr. Chamil Wariya, for giving me the opportunity to showcase how the Malaysian Judiciary had reformed itself for the last 8 years.

2. I propose to start with a brief overview of the Malaysian Court System.

## **Overview**

### **[SLIDE 1]**

3. As can be seen from the slide, our court system can be broadly divided into two tiers. The Superior Courts and the Subordinate Courts.
4. The Superior Courts consist of the High Court, the Court of Appeal and the Federal Court. The appointment and tenure and other matters relating to judges in the Superior Courts are provided for in the Federal Constitution.
5. The highest court is the Federal Court comprising of 16 Judges, which is headed by the Chief Justice. The Federal Court bench would include the President of the Court of Appeal, the Chief Judge of Malaya and the Chief Judge of Sabah and Sarawak. In the Federal Court we sit in a panel of 5 for hearing of appeal proper and a panel of three for hearing of leave application to appeal against the decision of the Court of Appeal in civil matters.
6. The next in the hierarchy is the Court of Appeal. The Court of Appeal was established in 1994 after we abolished appeal to the

Privy Council. The Court of Appeal is headed by the President of the Court of Appeal (the no 2 man in the Judiciary). Presently, we have 28 Judges. The maximum number of judges that can be appointed in the Court of Appeal is 32. The Court of Appeal normally sits in a panel of 3.

7. Then, we have the two High Courts. The High Court of Malaya and the High Court of Sabah and Sarawak. Both the High Courts are headed by a Chief Judge. Presently, there are 51 Judges and 30 Judicial Commissioners in the High Court of Malaya and 9 Judges and 6 Judicial Commissioners in the High Court of Sabah and Sarawak. A Judicial Commissioner has the same powers as a High Court Judge.
8. The maximum number of High Court Judges that can be appointed under the Federal Constitution is 60 for the High Court of Malaya and 13 for the High Court of Sabah and Sarawak. There is no limit for the number of Judicial Commissioners that can be appointed.
9. Below the High Court is the Subordinate Courts, i.e the Sessions Court and the Magistrates' Court. Presently, we have 152 Sessions Courts Judges and 142 Magistrates. The Sessions Court Judges and Magistrates are officers from the Judicial and Legal Service. They are unlike the Superior Court Judges, public servants.
10. Basically, the Subordinate Courts are the trial courts. Any appeal against the decision of the Sessions Court Judges and the Magistrates will be heard by the High Court. Any further appeal

therefrom will be heard by the Court of Appeal. There will be no further appeal to the Federal Court when a matter originates from the Subordinate Court. In that sense, the Court of Appeal stands as the final Court of Appeal when a matter originates from the Subordinate Court.

11. But not all appeals are as a matter of right. In criminal matters, criminal appeals which originates from the Magistrates' Court against the decision of the High Court is by way of leave from the Court of Appeal. But, for criminal cases which originates from the Sessions Courts, any appeal against the decision of the High Court to the Court of Appeal is as a matter of right. As for civil appeals, matters which are below RM 250,000 are heard by way of leave. In simple terms, you must get the permission of the Court of Appeal before an appeal can be filed.
12. In our court system, the High Court plays a dual role i.e. as an appellate court and trial court. It is an appellate court because it hears appeals from the Subordinate Courts. It is also a trial court because it exercises its original jurisdiction by hearing civil and criminal cases. As a trial court- any appeal against the decision of the High Court goes to the Court of Appeal. Further appeal will be heard by the Federal Court. In criminal matters, it is a matter of right. But for civil matters, any appeal is generally by way of leave. You only file your appeal when leave is granted.
13. That is basically the structure of our court system.

## **The Reform**

14. The Judicial Reform of the Malaysian Judiciary was initiated by Tun Zaki when he was appointed as the Chief Justice on 24.10.2008. Not that no reform was done earlier, but the reform that was started by Tun Zaki soon after his appointment has the impact of transforming the Malaysian Judiciary to what it is today.
15. Tun Zaki, at his elevation ceremony as the Chief Justice declared an all out war against delays in settlement of cases and resolved to speed up the justice delivery system. He also resolved to correct the negative perception that had been plaguing the Malaysian Judiciary over the years.

## **[SLIDE 2]**

16. To start with, Tun Zaki informally formed a team. I was fortunate to be in the team. Originally, there were four of us. Tun Zaki, Tun Arifin, Tan Sri James and I. Tun Zaki in his book “ No Nonsense” the authorized biography of Zaki Azmi, the 12<sup>th</sup> Chief Justice of Malaysia” in talking about the reform, he stated that:

**“ I had strong support from my brother judges, Arifin, Raus and James. We worked non-stop 8 am to 6am daily brainstorming over lunch, dinner and tea for solutions to outstanding issues. We also met over weekend, and there was a lot of travelling around the country.**

**Once we decided on something, we would push ahead. We did not wait for the solution to be perfect. When it did not work, we will take a step back and explore other possibilities.”**

17. The initial reform program was aimed at finding the best solution to dispose the old cases and at the same time to expedite the hearing of the new cases. We started the program at the nation’s busiest court i.e The Kuala Lumpur Court Complex, located at Jalan Duta. I was assigned to manage the Commercial Division and the Appellate and Special Powers Division, while Tan Sri James was assigned to manage the Civil Division. Practically, when we were not sitting at Putrajaya, we will be at the Jalan Duta Court Complex, organizing and managing case with the main purpose of clearing the old cases.
18. Within three months, there were signs of success, on what we did in Kuala Lumpur. Realising this, Tun Zaki decided to expand the reform program throughout the Peninsular. To this, he expanded the Reform Team. He formalized the formation of the Managing Judges.

**[SLIDE 3]**

19. The slides shows the pioneer Managing Judges. Tun Arifin, who was the then Chief Judge of Malaya was tasked to manage the Judges in the States of Kelantan, Terengganu and Pahang. Tan Sri James, besides managing the Civil Division of Kuala Lumpur,

was also appointed as the Managing Judge for the state of Penang. As for me, besides Managing the Commercial Division and the Appellate and Special Powers Division, I was also tasked to take charge of the Sessions Court Judges and Magistrates' doing civil cases in Kuala Lumpur and the Courts in Negeri Sembilan, Malacca and Muar. Tan Sri Zulkeifli was tasked with managing the Criminal Division of the Kuala Lumpur and Shah Alam Courts. Tan Sri Hamid was asked to manage the Civil Division of the Shah Alam High Court as well as the Perak state. Tan Sri Suriyadi was put in charge of Kedah and Perlis Courts, while Tan Sri Ramly was tasked with the Johor Bahru Courts.

20. As you can see, the Managing Judges were senior Judges. They were either in the Federal Court and the Court of Appeal. Being senior judges, we have no problems in managing the Judges of the High Court as well as the Sessions Judge and the Magistrates. As Managing Judges, we do not tell the Judges or Magistrates under our care, as to how to decide. Instead, we were tasked to monitor the performance of each judges, to see that judicial time is effectively utilized. In short, to make the judges work.
21. Before the reform, it has somewhat become a norm for judges to hear cases only in the morning. Tun Zaki was fully aware of this fact. He was an active practitioner before he joined the Judiciary.
22. Thus, it was not suprising that when he became the Chief Justice he made an unannounced visit the KL Court Complex in the afternoon. He declared to us during our daily meeting that none of the 74 Courts in the Jalan Duta Court Complex was sitting during

that afternoon. It was the result from that visit that Key Performance Indicators (KPI) was introduced for judges i.e. the number of cases that a judge must hear in a day. At the same time to address the backlog of cases, other inter-related initiatives were introduced:

- i) Fast Tracking cases by dividing them into “Track A” (Affidavit-based and Interlocutory matters) and “Track T” (trial cases)
- ii) Pursuing a strict no postponement policy- We only postpone when there is death or near death situation.
- iii) Computerization of Court Rooms
- iv) Establishing specialist courts in particular the NCC Courts.

### **High Court Commercial Division**

23. To see how the reform was done, I take the Commercial Division of Kuala Lumpur as an example. As stated earlier, I was the Managing Judge. At that time there were 8 judges in that division. As a Managing Judge, the first thing I did was to find out the exact number of cases pending in the Commercial Division. This was done with the help of the Registrars. We physically counted the number of files that we had in that division. We found that we have 6490 cases pending in the Commercial Division of the Kuala Lumpur High Court. **[SLIDE 4]**

24. When I presented the numbers to Tun Zaki, he almost fainted. I remember Tun Zaki telling me that one of the factors that a businessman take into consideration when deciding the location of

his business is the efficiency of the courts and how quickly his case will be heard if there is a need that he goes to court. So he asked me to find out ways to clear all those cases. He gave me two years. I took the challenge, though I was not that confident in doing it due to the size of the backlog.

25. As stated earlier, there were more than 8 judges in the Commercial Division. Each judge has its own mini registry. A case filed in a day is equally distributed between the 8 judges. A file is normally attached to a judge, who would handle the case from the filing date until it was disposed. It is a fact those days that judges tended to deal with the simple aspects of the case first. Normally, interlocutory applications were done first thing in the morning, and trials done in the late morning. By then. Judges have lost their momentum and the hearing will eventually get postponed to another date. That explains the accumulation of old cases as shown in the slide earlier.
  
26. In addressing the problem we introduced the tracking system. To implement the system, we centralised the management of all cases into a central registry known as the Managing Judge Unit. I head the unit with the assistance of a number of registrars. Then we implemented the tracking system where judges were assigned to specific tracks- "A Track" and "T Track". 4 judges were assigned to hear "A Track" cases and another 4 judges were assigned to hear "T Track" cases. For A Track judges, each judge was given a minimum of 8 cases a day, while T Tack judges, each judge was given a minimum of 2 cases a day. To make it work, we adopted a strict no postponement policy.

27. At the same time at the Managing Judge Unit, under the Registrars under my supervision were assigned with the tasks to ensure dormant or inactive files be disposed of administratively.
28. There were protest here and there, but we managed to make everybody, particularly lawyers to toe the line. In fact, the reforms we introduced came as a shock to judges and lawyers. The judges protested in silence, while the lawyers made a lot of noise. But we proceeded with conviction. We made some progress in disposing the old cases, but, unfortunately, not at a speed wanted by Tun Zaki.
29. I remember during one of our management meeting, I asked Tun Zaki for more judges to be stationed at the Commercial Division. I informed the meeting, with the number of old cases that we have and with the new commercial cases that was registered with an average of 400 to 500 cases in a month, I need another 12 judges in the commercial division. It was at that meeting an idea came from Tun Arifin that we should form a New Commercial Court (NCC). He got the idea from Ireland when he was on an official trip there.
30. Immediately, I was asked to chair for the setting-up of the NCC Courts. Within a short span of time, on 1.9.2009 the NCC Courts was jointly launched in Kuala Lumpur by Tun Zaki and Pemudah Chairman Tan Sri Mohd Sidek Hassan who was then the Chief Sectary to the Government. Also present was Pemudah joint Chairman from the private sector, Tan Sri Yong Poh Kon.

31. Basically, what we did was to divide the commercial cases into two categories those registered before 1.9.2009 and those registered on and after 1.9.2009. Pre 1.9.2009 cases were assigned to be heard at the Original Commercial Courts ( we called it OCC) by the existing 8 judges. Another set of judges were allotted cases on and after 1.9.2009 in the newly established NCC Courts.
32. As a start, on 1.9.2009, we appointed two judges to hear cases registered over a 4 month period from September till December. On 1.1.2010, we appointed another two judges to hear cases for the month of January to April. On 1.5.2010, we appointed a third set of judges covering the months of May, June, July and August. And for the following months i.e September, October November and December the cases were registered with the earlier 1<sup>st</sup> set of judges. And the circle continues.
33. When the NCC was fully established we have judges clearing concurrently the old and new cases.
34. For the new cases in the NCC we set the time line of disposal within 9 months of registration. To be able to do that the cases were subjected to vigorous case management. The performance of the judges were regularly monitored. Timelines were the order of the day. For instance, interlocutory application had to be made and disposed of within 4 months from the filing. And any appeals will be heard by the Court of Appeal within 3 months.
35. The result was astonishing. Most of the cases – about 95 to 98% of the NCC cases were disposed within the 9 months. The cases

that exceeded the 9 months were disposed in a year. At the same time the judges in the OCC courts were able to dispose the cases quickly because they were not burdened by new cases. At the end of 2012, there were only 58 cases left in the OCC – out of 6490 that were originally heard when we started the reform programme.

36. At the end of 2012 we closed the OCC courts. What we have now is the New Commercial Court. I am proud to say that as at 31 August 2017 there were only 818 cases pending in the Commercial Court. 711 are 2017 cases. 72 are 2016 cases. Only 35 cases are pre 2016 cases. **[SEE SLIDE 5]**
  
37. I was inform by the Managing Judge of the Commercial Division – 96% of the cases are being disposed within the time line of 9 months. This is a milestone in the history of our judiciary and an achievement to be proud of. Not even Singapore cases can match our performance in disposing commercial cases. Their timeline is 18 months.
  
38. With the success of the NCC Courts, we adopted the same system for other Civil Cases in the High Court and Sessions Court. The setting up of the NCC also paved the way for setting up of the specialised courts namely:
  - (i) NCVC was set up in all states following the same system as the Commercial Division of the Kuala Lumpur High Court
  - (ii) Muamalat Court (2004)
  - (iii) Intellectual Property Court (2007)
  - (iv) Admiralty Court (2010)

(v) Construction Court (2013)

39. All these Courts have the 9 months time line of disposal of the cases. For criminal cases, we have also established special courts namely:

- (i) Environmental Court
- (ii) Special Court for Corruption
- (iii) Coroner Court
- (iv) Anti Profiting Court
- (v) Cybercrime Court
- (vi) Coroner Court, and

And most recently the Special Session Court for Sexual Crimes against minors.

40. For criminal cases we fixed time line of 12 months.

41. In fact within 3 years from time we started the reforms, we succeeded in clearing substantial number of the old cases. Our efforts were well documented and we earned accolades from the World Bank in their report published in year 2011. **(SEE SLIDE 6 & 7)**

42. Our model has been recommended by the World Bank for adoption by the judiciaries dealing with similar problem. **[SEE SLIDE 8]**

43. Our success in clearing the backlog within a short time, was assisted by the implementation of the e-court project in 2009. It

consisted of a case management system, court recording transcription system, queue management and e-filing system.

44. The case management system (CMS) is a customised programme that enable staff to key in and retrieve date on cases, matters or applications filed in courts. So literally, at a press of a button or two, all relevant information on a case or matters appears on the computers. It eliminates the use of hard copy files.
45. The court recording system (CRT) records entire proceedings in the court in an audio-visual format. Judges do not have to record by hand-written notes as previously done. With CRT, the pace of hearing cases doubted, even tripled.
46. The Queue Managing System (QMS) enables lawyers to spend their waiting time more productively. Lawyers attending court for case management and chamber matters were required to key in their case number and in their mobile phone, after which they were free to leave the premises. When the registrar or judge is ready to hear the cases, the lawyers will receive a mobile text alert. During the break, lawyers can attend to other matters.
47. Another technology that speeds up the process of hearing cases is the e-filing system. The system enables lawyers to file their courts documents online. The greatest advantage of this system is the ability to recall any documents filed in court without need of physical file. This speeded up cases, and put to an end of lost or missing files being used as reasons for postponements.

48. The judicial reform stated by Tun Zaki was continued by Tun Arifin. I am thankful that I have inherited the good work done by my two predecessors. Being in the team right from the beginning, I learnt a lot from them. I have learnt what needed to be done further to further improve the Malaysian Judiciary. Thus, since taking office from 1.4.2017, have continued the reform programme. I have in the last four months, when I am not sitting, whenever I have free time, been visiting the courts all over the country. Meeting the judges, getting the feedback and planning on things that needed to be done. Most importantly, to ensure that the judges, and Magistrates are working.
49. From my visits, I am happy to report that almost 100% of cases in the Magistrate Courts and 95% cases in the Sessions Courts both civil and criminal are being disposed off with the time line. For civil cases, the time line is 9 months from the date of registration. For civil cases, the time line is 9 months for Magistrates Court and 12 months for the Sessions Court. **[SEE SLIDES 9 AND 10] [SEE SLIDES 11 AND 12]**
50. In the High Court, 91% of civil cases are being disposed of within 9 months. **[SEE SLIDE 13 ]**. Particularly encouraging as mentioned early 96% of the Commercial Cases as well as other cases in the Specialized Court within the Commercial Division are being disposed within 9 months. As for criminal matters 92% of the overall cases are being disposed within 12 months. **[SEE SLIDE 14]**

51. In the Court of Appeal, cases are almost current. As at 30 September 2017, we have 3743 cases pending. 2982 of these cases are 2017 cases, 709 are 2016 cases. Only 55 cases are pre 2016 cases. **[SEE SLIDE 15]**
  
52. When we compare to what we had in 2010, what we have achieved in terms of backlog of cases is amazing. **[SEE SLIDE 16 ]**
  
53. With regard to the Federal Court, in the last four months we have managed to reduce the number of pending cases to below 1000. As at 30 September 2017, we have 954 cases. 604 are 2017. 291 are 2016 cases. Only 59 cases are pre 2016 cases. **[SEE SLIDES 17 & 18]**

### **What is Next**

54. No doubt we have made good progress thus far. But reform is a continuous process. In short-term, our immediate concern is disposal of old cases which are more than one year or more. Despite our success in disposing the cases within the time line there are still have pre 2016 cases pending in our courts at all level. Comparatively, the number is small but these are cases that give us a bad name. from the statistic we still have pre 2016 cases  
:
  - (a) Magistrates' Court – 182 (civil and criminal)
  - (b) Sessions Court – 854 (civil and criminal)
  - (c) High Court- 1868 (civil and criminal)
  - (d) Court of Appeal - 55

## (e) Federal Court- 59

55. Since taking over, I have been monitoring these cases. The Judges and the Managing Judges had given me assurance that most these cases will be disposed off by the end of this year. There were various reasons why these cases are still pending. We are aware of it are in the midst of finding solutions to it.
56. Since taking over, I have reorganised the Managing Judges. There are now more new faces in the team. By appointing these Managing Judges, we are in fact training them to be future leaders of the judiciary. If you see the original Managing Judges, they ended up as leaders of the Judiciary. Tun Arifin took over as CJ from Tun Zaki. I became OCA before taking over from Tun Arifin. Tan Sri Zul became CJ Malaya and now PCA. Tan Sri James, Tan Sri Hamid, Tan Sri Suriyadi and Tan Sri Ramly were all elevated to the Federal Court.
57. On the long term measure, I intend to concentrate on the capacity building through continuous Training of Judges. Central to the administration of justice is the quality of our judges at all levels. In days long past, the workload of our courts was significantly less than at present. Complexity of cases before are nowhere near as what it is now. Now, it has become an accepted feature of the Judiciary and also an imperative that judges must be of the highest possible standard. It is the hallmark of any judiciary to strive to achieve legal excellence and Malaysia is no exception.

58. Now we have established The Judicial Academy. The Judicial Academy is entrusted with the tasks to ensure judges receive continuous judicial training. We have developed method of judges training the judges. The idea of judges training judges was introduced with a single aim of having judges who are experts in certain field to train their contemporaries. For example the High Court judges are trained by the Federal Court and the Court of Appeal judges. Trainings are conducted during the weekends on topics of intent. This is to avoid cases being adjourned just because, judges are attending courses.
59. For this year alone we have conducted 10 courses with participation of 266 Judges/Judicial Commissioners. The subject matter of the trainings include:
- i) Judgment writing
  - ii) Law on Defamation
  - iii) Course of handling drug trafficking offences (39B DDA)
  - iv) Judge Craft
  - v) Assessment of Damages
  - vi) Evidence

The course structure and modules are rather intensive. It was done in a group of not more than 25 judges. At these courses, Judges and Judicial Commissioners are assigned topics to be presented during these courses. They are sometimes assigned in groups, so that they work together as a team. There are intense discussions on the topic given and real cases were used as an example for deliberation.

## Conclusion

60. Personally, as a member of the reform team from the beginning, I feel a measure of satisfaction on the role I have been privileged to play in this transformation. I can take pride of some of the groundbreaking and revolutionary initiatives the team had introduced over the years to speed up the wheel of justice. These initiatives impacted both the domestic and international communities that we serve.
  
61. At the same time I do acknowledge that judicial transformation is a continuing journey and it needs to take into account the changing needs of the business community and the society. There is need for a constant assessment of what constitutes the backlog and for a methodology to be devised for dealing with it. The judiciary will only serve the public well by providing access to justice and the timely resolution of disputes. Above all, the public must have confidence on the ruling and the decision that we make. This can only be achieved when the decision or ruling made by the judges are free from interference or influence. Justice must not only be done but also seen to be done.
  
62. On that note, I would like to thank everyone for having me here and for listening.