

# **WELCOME ADDRESS**

**BY**

**THE RIGHT HONOURABLE  
TUN TENGKU MAIMUN BINTI TUAN MAT  
CHIEF JUSTICE OF MALAYSIA**

**7th JOINT JUDICIAL CONFERENCE  
20-22 JULY 2023  
KUALA LUMPUR**

## **Salutation**

(1) My learned brothers:

- The Right Honourable, Dato' Seri Paduka Steven Chong Wan Oon, Chief Justice of Brunei Darussalam;
- The Right Honourable Sundaresh Menon, Chief Justice of Singapore;

(2) Brother and sister Judges from Brunei, Malaysia and Singapore;

- (3) Judicial Officers from Brunei, Malaysia and Singapore;
- (4) Ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuhu and good morning.

## **Introduction**

**[1]** A very warm welcome to the trinary judicial cohorts of Brunei, Malaysia and Singapore to the 7<sup>th</sup> Joint Judicial Conference (“JJC”). On behalf of the Malaysian Judiciary, it gives me great pleasure to welcome everyone to Malaysia. *Selamat Datang!* This year's gathering holds a particular significance, as we reinstate our in-person interactions and conversations, shedding the constraints of screens and virtual interfaces that marked the previous JJC in 2021.

**[2]** Our reunion once again is a living proof of JJC's prominence in fostering reciprocity of insights and perspectives concerning numerous mutual legal issues. This year's theme, **“Criminal Justice System in**

**ASEAN: Moving Towards A More Compassionate Society”** is of no difference as I am sure that delegates are very much looking forward to participating in the issues of common interest affecting the ASEAN region in general and the three jurisdictions in particular.

**[3]** Before we hear our esteemed speakers on the respective topics, I would like to take this opportunity to offer a general perspective on the theme.

### **Criminal Justice System in ASEAN: Moving Towards A More Compassionate Society**

**[4]** The “criminal justice system” is a holistic system which embodies a unifying set of component institutions, processes, and actors (such as the courts, prosecutors, police and prisons) to interact through relational structures and collectively perform societal functions<sup>1</sup>.

**[5]** The judiciary is fundamentally bound by an unwavering aspiration: the relentless pursuit of justice. In this quest, our ultimate objective transcends traditional

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<sup>1</sup> Mayeux, S. (2018). The idea of the criminal justice system. American Journal of Criminal Law, 45(1), 55-94, p.57.

definitions of justice. In the realm of criminal justice in particular, we aim for the realization of a compassionate society—one where the principles of justice are not merely institutional mechanisms, but vital instruments that foster understanding, empathy, and compassion in every judicial determination and action of ours.

**[6]** When we delve into the realm of criminal justice, we encounter common foundational principles that apply across continents, cultures, and legal systems. The criminal justice system, in all its complexity, is ultimately a delicate balancing act. On one side, it weighs the imperative of just punishment, a tangible expression of societal condemnation for acts that disrupt the social order and violate the rights of others. On the other side, it balances the virtue of moral humility, acknowledging that we are dealing with a human institution, inherently fallible and finite.<sup>2</sup>

**[7]** Today we find ourselves at a pivotal moment in the administration of criminal justice as we are witnessing a shift from retributive justice towards restorative justice.

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<sup>2</sup> Shaw, J. J. (2015). Compassion and the criminal justice system: Stumbling along towards a jurisprudence of love and forgiveness. *International Journal of Law in Context*, 11(1), 92-107 p.97.

The potential reasons for this paradigm shift are multidimensional. The evolving discourse on human rights and the propagation of progressive international norms play a significant role in this change. The rise of universal human rights has challenged the preference for collective rights over individual rights, advocating for a more compassionate and humane justice system. This transition does not suggest an absolute shift towards individual rights. The shift indicates a more balanced approach, recognizing the inherent dignity and worth of each individual while still preserving communal harmony.

**[8]** In the context of the ASEAN Region, the transformation reflects and resonates with the aspirations outlined in the ASEAN Community Vision 2025 which underscores a "people-oriented, people-centered ASEAN Community"<sup>3</sup>.

**[9]** Augmented by the ASEAN Community Vision, across numerous jurisdictions in the ASEAN Region there has been concerted efforts to bolster the rights of the accused persons to ensure the preservation of their

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<sup>3</sup> ASEAN Community Vision 2025, ASEAN, 2015.

dignity, humanity, and fundamental freedoms throughout the entirety of the judicial process. This undertaking involves a multitude of components, such as the assurance of the right to a fair trial. Access to competent legal counsel is another crucial right that is being reinforced. Simultaneously, there is an increased recognition of the need to protect the accused from cruel or unusual punishment. This approach acknowledges the principle of proportionality, which mandates that the punishment for a crime should fit the severity of the offence, respecting the inherent dignity of every human being.

**[10]** At its core, these rights underscore the vital tenet that the punitive force inherent in the criminal justice system be exercised judiciously and with restraint. This potent authority should be unleashed only after a rigorous commitment to fair and just procedures, ensuring that every measure of the law is upheld and respected. The process not only protects the rights of the accused but also strengthens the fabric of our justice system, fostering trust and maintaining its credibility.

**[11]** In Malaysia, the criminal justice system is witnessing a remarkable transformation characterized by a more compassionate approach to justice.

**[12]** A significant aspect of this transformation is the reduced reliance on the death penalty. For years, capital punishment was seen as a stern deterrent – yet its effectiveness and ethical implications have been subjected to rigorous debates. Amidst rising global human rights advocacy, Malaysia has reviewed its stance on capital punishment with the Abolition of Mandatory Death Penalty Act 2023 [Act 846] which recently came into force on 4 July 2023<sup>4</sup>, which means that death penalty will not be mandatory and that judges now have the discretionary powers to impose it if the punishment befits the crime, such as in cases of murder, terrorist acts and hostage-taking.<sup>5</sup>

**[13]** Following the amendments made by Act 846, The Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act 2023 [Act 847], was enacted to give the

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<sup>4</sup> P.U.(B) 229.

<sup>5</sup> <https://www.thesundaily.my/>

Federal Court of Malaysia the power to review the death sentence affirmed or passed by the Federal Court before the coming into force of Act 847.

**[14]** The Penal Code (Amendment) (No. 2) Bill 2023, to decriminalise attempted suicide marks another major milestone in the move towards a more compassionate and empathetic society. This transformation in law illustrates a significant change in how societies perceive and handle mental health issues and is in line with the global trend towards the decriminalization of suicide. By decriminalizing suicide attempts, the state acknowledges that such desperate actions often emanate from deep psychological distress and require mental health interventions rather than criminal prosecution. The move to decriminalise suicide leads to the amendments to two other laws, namely, Criminal Procedure Code (Amendment) (No.2) 2023 and Mental Health (Amendment) Bill 2023.

**[15]** The focus on the rights of an accused person is another significant aspect of the administration of criminal justice in Malaysia. In this regard the rudimentary tenets of criminal justice system were never



explicitly penned in the Federal Constitution<sup>6</sup>. In actual fact, on innumerable circumstances it has always fallen upon the shoulder of the Judiciary to interpret the Federal Constitution in enforcing sacred fundamental rights<sup>7</sup>.

**[16]** For example, in the case of *Alma Nudo Atenza*<sup>8</sup>, the Federal Court ruled that the presumption of innocence is implicit in the “right to life” under Article 5(1) of the Federal Constitution<sup>9</sup>. This decision significantly altered the landscape of drug laws in Malaysia by way of a prismatic approach<sup>10</sup>. There, the Federal Court found Section 37A of the Dangerous Drugs Act 1952, that allows the use of double presumptions in proving drug trafficking offence unconstitutional as it violates the requirements of fairness and undermines presumption of innocence embedded in Article 5(1) and Article 8(1) of the Federal Constitution<sup>11</sup>.

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<sup>6</sup> Danjuma, I., & Nordin, R. (2015). The Imposition of Fines by the Law Enforcement Agencies in Malaysia: A Violation of the Rule of Law, 88-95, p.88.

<sup>7</sup> Welcome Address by the Right Honourable Chief Justice of Malaysia, Tun Tengku Maimun Binti Tuan Mat at the 6<sup>th</sup> Joint Judicial Conference [Brunei-Malaysia-Singapore] held virtually on 22 July 2021.

<sup>8</sup> *Alma Nudo Atenza v Public Prosecutor* [2019] 4 MLJ 1.

<sup>9</sup> Kananatu, T. (2022). Framing death penalty politics in Malaysia. *International Journal for Crime, Justice and Social Democracy*, 11(3), 57-66, p.62.

<sup>10</sup> Mahmud, F. M. (2023). A Review of the Malaysian Jurisprudence of Constitutional Interpretation. *IIUM Law Journal*, 31(1), 203-234, p.231.

<sup>11</sup> Antolak-Saper, N., Kowal, S., Lindsey, S., Ngeow, C. Y., & Kananatu, T. (2020). Drug offences and the death penalty in Malaysia: Fair trial rights and ramifications. *Clayton: Monash University*, p.31.

[17] In *Yahya Hussein Mohsen Abdulrab*, it was held by the Federal Court that the right to a fair trial includes the right to competent counsel and that flagrant incompetence of the trial counsel is a breach of fair trial as it did not meet the minimum standard of fairness envisaged in Article 5(1) of the Federal Constitution<sup>12</sup>.

[18] The judicial status quo on the powers of the Public Prosecutor pursuant to Article 145(3) of the Federal Constitution were monumentally altered in the case of *Sundra Rajoo*<sup>13</sup>. The Federal Court in *Sundra Rajoo* held that the Attorney General/Public Prosecutor's prosecutorial discretion is amenable to judicial review, albeit in appropriate, rare and exceptional cases. From a public law perspective, the decision of the Federal Court in *Sundra Rajoo* heralds a renewed emphasis on accountability in public law and reinforces the inviolability of the Rule of Law. The prospect of an Attorney General exercising absolute discretion, unencumbered by checks and balances, is at odds with the spirit and letter of the Rule of Law<sup>14</sup>.

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<sup>12</sup> Ibid.

<sup>13</sup> *Sundra Rajoo Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199.

<sup>14</sup> Kai-Ming, J. W. (2021). The Reviewability of the Attorney General's Prosecutorial Discretion in Malaysia. *Journal of Social Science and Humanities*, 4(4), 01-05, p.3.

**[19]** The decisions emanating from the apex court of Malaysia which I have alluded to, signal a proactive judicial approach towards the ideals of a more compassionate society. Each of these decisions highlight a renewed definition of justice, one that places an unequivocal emphasis on the innate dignity of each individual, the inviolability of fairness, and the fundamental right to equality.

**[20]** Beyond mere judgments, these decisions are significant milestones of an ongoing evolution that reinforces the Malaysian Judiciary's unwavering commitment to upholding and promoting the rule of law, having regard to both fundamental liberties and public interest.

## **Conclusion**

**[21]** In closing, I am confident that the collective wisdom and expertise gathered through this year's JJC will enrich our understanding and help shape the future of our criminal justice systems.

**[22]** Once again, on behalf of the Malaysian Judiciary, I extend a heartfelt welcome to all the judges and judicial officers from Brunei and Singapore. It brings us great joy and pride to host the JJC this year. I hope your time here is filled with wonderful memories.

Thank you.