

**Speech by Karen Cheah Yee Lynn, President of the Malaysian Bar, at the Reference Proceeding for Tun Dato' Dr. Mohamed Salleh bin Abas on 14 September 2022 (Palace of Justice)**

Yang Amat Arif Tun Tengku Maimun binti Tuan Mat  
Ketua Hakim Negara;

Yang Amat Arif Tan Sri Rohana binti Yusuf  
Presiden Mahkamah Rayuan Malaysia;

Yang Amat Arif Tan Sri Dato' Sri Azahar bin Mohamed  
Hakim Besar Malaya;

Yang Amat Arif Tan Sri Dato' Abang Iskandar bin Abang  
Hashim  
Hakim Besar Sabah dan Sarawak;

Yang Berbahagia Tan Sri Idrus bin Harun  
Peguam Negara Malaysia yang hadir mewakili pihak Jabatan  
Peguam Negara;

Yang Berhormat Datuk Wira Mas Ermieyati binti Samsudin  
Timbalan Menteri di Jabatan Perdana Menteri (Parlimen dan  
Undang-Undang);

Yang Arif-Yang Arif Hakim Mahkamah Persekutuan dan Hakim  
Mahkamah Rayuan;

Yang Berusaha Puan Hasbi binti Hasan  
Ketua Pendaftar Mahkamah Persekutuan Malaysia;

Wakil Majlis Peguam Malaysia, dan Pengerusi serta wakil peguam dari Jawatankuasa Peguam Negeri Selangor;

Ahli-ahli keluarga Allahyarham Tun Dato' Dr. Modamad Salleh Abas;

Dif-Dif kehormat, Tuan-Tuan dan Puan-Puan yang dihormati sekalian;

Saya Karen Cheah Yee Lynn, mewakili Badan Peguam Malaysia dan Majlis Peguam Malaysia.

Yang Amat Arif,  
Izinkan saya meneruskan ucapan saya dalam Bahasa Inggeris.

My Lady,

The distinction of the Reference proceeding this morning is a testament to the high standing and regard to which Allahyarham Tun Dato' Dr. Mohamed Salleh bin Abas is held as a judge and as the 6<sup>th</sup> Lord President of the Federal Court from 2 March 1984 till 11 August 1988.

The last occasion on which we congregated for a Reference proceeding with respect to a former Lord President of the Federal Court was one in honour of Almarhum Sultan Azlan Muhibbuddin Shah, the 5<sup>th</sup> Lord President, held at the Federal Court on 19 November 2014.

May I begin by extending my gratitude for having the honour and privilege to pay tribute and commit to posterity the salutary achievements of the late former Lord President, Tun Dato' Dr. Mohamed Salleh bin Abas.

Reference proceedings are a unique and meaningful occasion. The 3 branches of the legal community – that is to say, those concerned with upholding the rule of law in the administration of justice, namely, the Judiciary, the Attorney General's Chambers and the Bar – gather to collectively recognise and honour a departed member of our community.

My Ladies and My Lords,

Whilst it is unavoidable within the Malaysian historical context that any reference to the late Tun Salleh Abas is inseverable from the dark days of the 1988 Judicial Crisis – very often, the late Tun Salleh Abas' name is synonymous with 'respect, admiration and hope' due to his integrity, and the idealistic principles he held dearly and lived by. His integrity, intellect and stature had a profound impact on our nation.

When I ponder upon the accomplishments of the late Lord President, I am reminded of the Latin phrase *Sic parvis magna* which translates to – from small beginnings come great things.

Son to a sailor and small village trader<sup>1</sup>, the late Tun Salleh Abas was born in Kampung Raja, Besut, in the State of Terengganu on 25 August 1929. He graduated from the University of Wales in July 1954 with a Bachelor of Law degree, read law in Middle Temple and was called to the English Bar in 1955. The late Tun Salleh Abas also held a Masters in International Law and Constitution from the University of London<sup>2</sup>.

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<sup>1</sup> Foreword to 'Mayday for Justice' by Tunku Abdul Rahman Putra Al-Haj:  
<https://anwarite.tripod.com/tunku.htm>

<sup>2</sup> 'Former lord president Tun Salleh Abas dies' by Hafiz Yatim published in The Edge on 16 January 2021: <https://www.theedgemarkets.com/article/former-lord-president-tun-salleh-abas-dies>

In 1955, the same year he was called to the Bar, the late Tun Salleh began his illustrious career in public service as a deputy Public Prosecutor in his home state. In the following years, he was appointed as a magistrate before leaving to become a Senior Federal Counsel with the Attorney General's Chambers, and later became the Legal Adviser to the States of Negeri Sembilan and Malacca. For a decade, he was the Solicitor General before rising to the rank of a Federal Court Judge. The late Tun Salleh was the Chief Judge of Malaya in 1982, when Almarhum Sultan Azlan Shah was appointed as the then Lord President, and 2 years later the late Tun Salleh took over the post of Lord President in 1984.<sup>3</sup>

It is significant to note that during his tenure as Lord President, the constitutional amendment under Act A566 was made on 1 January 1985 to repeal Article 131 of the Federal Constitution. This amendment effectively abolished appeals to the Privy Council<sup>4</sup>. By his own account, the late Tun Salleh had light heartedly expressed in a 2002 interview with Malaysiakini<sup>5</sup> that in retrospect, he had made an indirect contribution to his own dismissal when he made changes to the judiciary a few years earlier by severing the link between the Malaysian judiciary and the London-based Privy Council. In the interview, the late Tun Salleh was quoted as saying: -

*"After my dismissal, I went to London to give some lectures and met a friend who is one of the judges at the House of Lords who told me that my biggest mistake was severing the Privy Council. He said if the council was still the supreme appellate body, I could have been saved. I think he is right,"*

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<sup>3</sup> See information on the Authors of "May Day for Justice" by Tun Salleh Abas with K. Das.

<sup>4</sup> 'The Malaysian Judiciary 2015 Yearbook', page 26:

<https://www.kehakiman.gov.my/sites/default/files/YearBook2015.pdf>

<sup>5</sup> 'They tried bribing me to leave judiciary quietly: Salleh Abas' by Arfaeza A Aziz published in Malaysiakini on 1 July 2002: <https://www.malaysiakini.com/news/12018>

My Lady,

Permit me to thread the calm before the storm. During the years leading up to the 1988 Judicial Crisis, the Malaysian Judiciary had garnered a reputation of independence and impartiality. It was well-respected locally as well as internationally, so much so that the then Prime Minister of Malaysia Tun Dr. Mahathir Mohamad in his speech during the opening ceremony of the ASEAN Law Association General Assembly on 26 October 1982<sup>6</sup> stated, and I quote:

*“I will always respect the Judiciary. We do not expect the courts to be pro or anti Government, only pro the Constitution and pro the law... We shall always respect their judgments...”*

Signs of the series of devastating events that will unfold could be first traced back to 1986 when the Supreme Court decided in the '*Berthelsen case*'<sup>7</sup> that the then immigration Director General was wrong to revoke the work permit of an Asian Wall Street Journal correspondent because he was not given a chance to explain himself when the decision was made.

Subsequently, comments were made against the Judiciary in the 1986 issue of the Time Magazine where the Judiciary was accused of failing to interpret the law pursuant to the intentions of Parliament. Contempt proceedings were then initiated in the High Court by the then leader of the Opposition in defence of the

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<sup>6</sup> 'Mahathir and the judges: The Judiciary during the Mahathir era' – Aliran Monthly, by Charles Hector 2003: <https://aliran.com/archives/monthly/2003a/8g.html>

<sup>7</sup> JP Berthelsen v Director General of Immigration, Malaysia & Ors [1987] 1 MLJ 134

Judiciary. The matter was dismissed upon appeal to the Supreme Court. The late Tun Salleh, who heard the appeal, dismissed it stating astutely that “*there is no call to be overly hypersensitive and to overact impetuously*”.<sup>8</sup>

Unfortunately, derogatory remarks continued to be made by certain members of the Executive against the Judiciary, especially as recorded in the 1987 Hansard where amendments to the Printing Presses and Publications Act and the Police Act were debated in Parliament. The late Tun Salleh Abas as Lord President was patient amidst these open, blatant and vicious attacks on the Judiciary. He went on record on September 1987, to say rather, “*I do not wish to comment. I think the best thing to do now is to keep quiet and let the matter rest.*”<sup>9</sup>

During this turbulent period, the Judiciary upheld the cause of justice without regard to its own interests, uninfluenced by fear or favour. Allow me to highlight three cases that encapsulates the sagacity of the Judiciary.

In the ‘*Aliran Case*’<sup>10</sup>, the Court quashed the minister’s decision in refusing a permit, on grounds that his “*absolute discretion*” under the ***Printing Presses and Publications Act 1984*** had been exercised on irrelevant considerations.

In the ‘*Raja Khalid Case*’<sup>11</sup>, while releasing a detainee under the ***Internal Security Act 1960***, the court affirmed that “*the action of the Crown or its ministers or officials is subject to the supervision of the judges on habeas corpus.*”

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<sup>8</sup> Lim Kit Siang v Dato Seri Dr Mahathir Mohamad [1987] 1 MLJ 383

<sup>9</sup> ‘Court vs State: The Battle of 1988’ – The Sun by Param Cumaraswamy, 7 September 2006.

<sup>10</sup> Persatuan Aliran Kesedaran Negara v Minister of Home Affairs [1988] 1 MLJ 440 (HC)

<sup>11</sup> Re Tan Sri Raja Khalid bin Raja Harun [1988] 1 MLJ 182 (SC)

Again, in the '*Karpal Singh Case*'<sup>12</sup>, the court ordered another detainee's release, finding the minister's detention order under the same Act to have been mala fide.

Whilst these cases are testimony to the fearlessness of the Judiciary in holding even the Government of the day accountable to the rule of law and principles of justice, certain members of the Executive construed them to be illustrations where the court had made or applied law which was not actually required by statute, thereby contradicting or even defying statute. These were the heart of the arguments raised against the Judiciary in Parliament when amendments to Article 121 of the Federal Constitution were debated<sup>13</sup>.

The amendment to Article 121 of the Constitution was designed to undermine judicial power from the courts, and the basic structure of the Federal Constitution.

Through those difficult times, our historical archives indicated that certain members of the Executive feared for their political interests as it corresponded with the UMNO crisis arising from the contest for the UMNO presidency in 1987. An internal fight between two blocks of UMNO members resulted in eleven UMNO members challenging the validity of a party election, which resulted in the High Court declaring UMNO an unlawful society<sup>14</sup>. The plaintiffs appealed to the Supreme Court, and the appeal was fixed to be heard on 13 June 1988 by a full bench of nine Supreme Court Judges. What was at stake was the political

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<sup>12</sup> *Karpal Singh v Menteri Hal Ehwal Dalam Negeri* [1988] 1 MLJ 468 (HC)

<sup>13</sup> Malaysia, Dewan Rakyat, Parliamentary Debates, vol. 2, no. 9, col. 1585 (18 March 1988) (Dato' Seri Dr. Mahathir bin Mohamad, Prime Minister)

<sup>14</sup> *Mohamed Noor bin Othman and On v. Mohamed Yusoff Jaafar and Ors* [1988] 2 M.L.J. 129; affirmed on appeal, sub nom. *Mohamed Noor bin Othman and Ors v. Haji Mohamed Ismail and Ors* [1988] 3 M.L.J. 82, [1988] 2 S.C.R. 219

survival of UMNO as a political party and its future to govern the country.

In the months preceding the 1988 Judicial Crisis, the Executive began taking action against dissidents, using the Internal Security Act. It was a time of uncertainty and trepidation for Malaysians. Fundamental liberties had come under threat and the '*Karpal Singh Case*' mentioned earlier concerning the Internal Security Act 1960 was to be heard before the Supreme Court.

My Ladies and My Lords,

These grim events eventually culminated in two letters that appear to be the beginning and at the heart of the 1988 Judicial Crisis. The late Tun Salleh, assisted by the other three judges, wrote a courageous letter dated 26 March 1988 to the then His Majesty, the King. The contents of the letter expressed their utmost disappointment with accusations hurled against the judiciary by certain members of the Executive, and voiced out their hope that these unfounded allegations be stopped. It was hope that was at the heart of Tun Salleh's letter.

Hope which was later crushed with a second letter dated 5 May 1988 that was sent to the Ruler providing that the late Tun Salleh ought to be removed on grounds of misbehaviour and for being unable to perform his functions as Lord President, that the King was required to appoint a tribunal under Article 125 of the Constitution, and that he was advised to suspend Tun Salleh pending the tribunal's report. The King replied the same day, agreeing to this course of action.



Allahyarham Tun Salleh stood for the high principles of the Rule of Law and the independence of the Judiciary, at great cost to himself, both professionally and personally. This was best displayed by the late Tun Salleh's deliberate decision to withdraw his application for early retirement and the comforts that would follow with the offer of positions and added remuneration. Instead, he chose to await the appointment of a Tribunal and to face the consequences, come what may.

On 13 June 1988, a Tribunal was publicly announced to investigate the late Tun Salleh.

The composition of the tribunal, the secrecy of the proceedings and the constitutionality of the procedures gained criticisms nationally and internationally. In light of this, the late Tun Salleh turned to the courts. His legal team lead by the late Raja Aziz Addruse filed an application for leave to obtain a writ of prohibition in the Kuala Lumpur High Court to stop the Tribunal from proceeding with its work. However, once again the late Tun Salleh was not afforded proper justice from the High Court and was forced to turn to the Federal Court. Incredibly, adding to this struggle for justice, orders were made for the Federal Court's doors to be locked up, the seal of the Federal Court had been secreted away and the staff of the Federal Court were given firm instructions not to be available to assist any of the Federal Court judges!<sup>15</sup>

Nevertheless, faith in the Judiciary was more than justified by the siting of five Federal Court judges despite the ill-intentioned obstacles. That day, Tan Sri Wan Suleiman Pawan Teh , Datuk George Edward Seah Kim Seng, Tan Sri Azmi Kamaruddin, Tan

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<sup>15</sup> See page 226 of "May Day for Justice" by Tun Salleh Abas with K. Das.

Sri Eusoffe Abdoolcader and Tan Sri Wan Hamzah Wan Salleh made the order to stop the Tribunal from submitting any recommendation to His Majesty The Yang Di-Pertuan Agong.<sup>16</sup> Before the order of the Federal Court was served by Raja Aziz and his legal team on the Tribunal at Parliament House, news came that the gates to Parliament House had been locked, with the Tribunal members inside. It was Tan Sri Wan Suleiman Pawan Teh who called the office of the Inspector-General of Police and told a senior officer that a Federal Court Order was about to be served upon persons in Parliament House and there must be no impediment to the service on pain of contempt of court<sup>17</sup>.

The aftermath following the Federal Court's firm defiance against any interference in its own independence that day became an unprecedented blot in our country's judicial history. Two judges were removed from office and the other three were suspended. The Tribunal completed its deliberation and Tun Salleh was formally removed from office on 8 August 1988.

As a result of the injustice done to him by the Executive back in 1988, the strength and impartiality of the Malaysian Judiciary was viewed with misgivings in the subsequent years.

Dr. Martin Luther King Jr. once said *"the arc of the moral universe is long but it bends towards justice"* and in my opinion the Semenyih Jaya<sup>18</sup> case and a flurry of Federal Court decisions recognising the basic structure doctrine, and the recent high profile court proceedings inspired confidence amongst the legal

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<sup>16</sup> See page 228 of "May Day for Justice" by Tun Salleh Abas with K. Das.

<sup>17</sup> See page 229 of "May Day for Justice" by Tun Salleh Abas with K. Das.

<sup>18</sup> Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561

community, as well as members of the public that we are now bending towards justice.

My Ladies and My Lords,

The late Tun Salleh Abas became a politician in 1999 when he won a State Assembly seat in Jertih, Terengganu and was appointed as a member of the EXCO under Datuk Abdul Hadi Awang's cabinet.

From the Malaysian Bar's archives, the late Tun Salleh was a practising advocate and solicitor a period of time, having last held an active practicing certificate in 2020.

He was truly a man of renaissance and have had the distinction of serving in the Judiciary, the Attorney General's Chambers, as well as being a member of the Malaysian Bar. Not many can claim a similar feat. His legacy is in having left an indelible mark and impact on the legal community through his pronounced actions and deeds.

I would like to end with words written by our first Prime Minister Tunku Abdul Rahman Putra Al-Haj on the late Tun Salleh:

*“A man does not climb that long ladder to the pinnacle of our judicial system without proving himself every inch of the way to be upright, and extremely fastidious about his honour. His integrity must have been proven again and again in his judicial actions, his private life and all his work in the public domain. Any man who was any less than that could not have even approached that position which, by its very nature, presupposes character of the greatest probity*

*and rectitude. The very act of appointing such a man means that he is beyond reproach.”<sup>19</sup>*

My Lady,

I seek leave of this Honourable Court to express the sincere condolences of the Malaysian Bar to each family member of the late Tun Salleh present today. We too feel the loss - we feel the loss of a humble yet exceptional Malaysian.

May I now respectfully move for the record of this proceeding to be preserved in the archives of this honourable court, and a copy of it extended to the family of Allahyarham Tun Dato’ Dr. Mohamed Salleh Bin Abas.

I am obliged, My Ladies and My Lords.

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<sup>19</sup> See Foreword of “May Day for Justice” by Tun Salleh Abas with K. Das.