

REFERENCE SPEECH

BY

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

ON THE OCCASION OF

**REFERENCE PROCEEDING FOR TUN DATO DR MOHAMED
SALLEH ABAS**

14 SEPTEMBER 2022

**FEDERAL COURT 1
PALACE OF JUSTICE**

SALUTATIONS

Yang Amat Berbahagia Tun Raus Sharif,
mantan Ketua Hakim Negara merangkap ahli Suruhanjaya Pelantikan
Kehakiman

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

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 & Sarawak;

Yang Berbahagia Tan Sri Idrus Harun,
Peguam Negara Malaysia;

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;

Yang Berusaha Puan Karen Cheah Yee Lynn,
Yang di-Pertua Majlis Peguam Malaysia yang hadir bersama-sama wakil
Majlis Peguam Malaysia, dan pengerusi serta wakil peguam dari
Persatuan Peguam Negeri Selangor,

Ahli-ahli keluarga Allahyarham Tun Dato' Dr Mohamad Salleh bin Abas;

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

Assalamualaikum warahmatullahi wabarakatuh dan salam sejahtera.

[1] I rise today with honour and privilege to deliver my recitation in the memory of a towering jurist in Malaysian legal history- Allahyarham Tun Dato' Dr Mohamed Salleh Abas. It is indeed a humbling experience for me to deliver this recitation in fondness of Allahyarham Tun Salleh Abas.

[2] This morning is also very meaningful with the presence of Allahyarham's family, 39 of them altogether, to grace this special event in memory of Allahyarham Tun Salleh Abas.

[3] I respectfully endorse and share a similar admiration for Allahyarham Tun Salleh Abas, as eloquently expressed by the Attorney General, Tan Sri Idrus Harun and the President of the Malaysian Bar, Madam Karen Cheah Yee Lynn. Allow me to add my reverence to the recitation.

[4] As we gather today to pay tribute to the memory of Allahyarham Tun Salleh Abas, I would first like to express my deep sorrow for his passing on the 16th of January 2021, at the age of 91, due to COVID-19 complications. On behalf of the Malaysian Judiciary, allow me to express our heartfelt condolences to the family of Allahyarham Tun Salleh Abas.

[5] Allahyarham had an illustrious and glorious career and he brought the Malaysian Judiciary to an exalted status. For his eminence and judicial legacy, his demise reverberates across the nation, as his passing is not only a great loss to the judiciary, but the nation.

[6] Allahyarham Tun Salleh Abas has set many precedents that are still felt to this day. During Allahyarham's tenure as the Lord President, the Malaysian Judiciary was hailed as a model for other countries in terms of independence and credibility.

Distinguished Guests, Ladies and Gentlemen.

[7] Undoubtedly, Allahyarham's immeasurable contribution to the development of the law and the Malaysian legal jurisprudence was grounded by his innate sense of fairness and justice which served him well as a judge and a Lord President. As Tunku Sofiah Jawa beautifully puts it:

“As I mourn the loss of Tun Salleh, I am nevertheless grateful to have had the chance to work with someone who stood up for an institution that protects the fundamental right of every citizen to seek justice when it is under attack; who persevered to uphold justice

through trials and tribulations against his own interest; and having lost that battle, came back standing against the humiliation he had suffered and setting aside his pride to be in service of the law. I can only hope that his tale of moral courage will inspire others in the Commonwealth of Nations and beyond, to follow in his noble footsteps.”¹

[8] Allahyarham’s unwavering respect for the Rule of Law and the independence of the Judiciary is evident from his judgments. The legal principles and canons propounded by Allahyarham still resonate to the present day. These may be noted in among others, *Mamat bin Daud & Ors v Government of Malaysia*², *Government of Malaysia v Lim Kit Siang*³, *Che Omar bin Che Soh v Public Prosecutor*,⁴ *Public Prosecutor v Rajappan*,⁵ *Public Prosecutor v Zainuddin & Anor*,⁶ *Malaysian Bar & Anor v Government of Malaysia*⁷ and *Public Prosecutor v Dato' Yap Peng*⁸.

¹ Tunku Sofiah Jewa. (2021). Tun Salleh Abas: A Defiant Champion of Judicial Independence in Malaysia. *Journal Of The Commonwealth Lawyers Association*, 31(1), pg 22-25.

² [1988] 1 MLJ 119.

³ [1988] 2 MLJ 12.

⁴ [1988] 2 MLJ 55.

⁵ [1986] 1 MLJ 152.

⁶ [1986] 2 MLJ 100.

⁷ [1987] 2 MLJ 165.

⁸ [1987] 2 MLJ 311.

[9] Allahyarham Tun Salleh Abas valiantly defended the role of the judiciary. He reminded that judges ought to observe and respect the concept of Separation of Powers, for judges should not encroach into the domain of the Executive or the Legislative branches of the government. That said, he acknowledged that it is also the role of the judiciary to invalidate any acts of the Executive or the Legislative using prerogative writs or declarations should they transgress their powers beyond the limits granted to them by the Federal Constitution. In *Lim Kit Siang v. Dato Seri Dr Mahathir Mohamad*⁹, he stated thus:

“The Courts have a constitutional function to perform and they are the guardian of the constitution within the terms and structure of the constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review - a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of Judges over legislators but of the constitution over both. The Courts are the final arbiter between the individual and the State and between individuals inter se, and in performing their constitutional role they must of necessity and strictly in accordance with the constitution and the law

⁹ [1987] CLJ Rep 168; [1987] 1 MLJ 383.

be the ultimate bulwark against unconstitutional legislation or excesses in administrative action. If that role of the judiciary is appreciated, then it will be seen that the Courts have a duty to perform in accordance with the oath taken by Judges to uphold the constitution and act within the provisions of and in accordance with the law.”

[10] Indeed, his judgments are peppered with wisdom and prudence. We are eternally indebted to his sense of justice which has left an indelible impression throughout the generations of the legal fraternity.

Ladies and Gentlemen,

[11] The year 1988 will always be remembered as the darkest chapter in the history of the Malaysian Judiciary. A Judiciary, its independence vouchsafed by the Federal Constitution, was stunned by the removal of the Lord President, Allahyarham Tun Salleh Abas. It infamously led to the upheaval of the nation’s judicial system and a shattering blow to the Judiciary and the Constitution.

[12] The 1988 episode should be taken as a lesson to judges that despite attempts to undermine the independence of the Judiciary, judges must, in

all circumstances, be faithful to the Federal Constitution and be resolute in upholding the Rule of Law.

[13] At this juncture, I would like to quote The Hon. Justice Michael Kirby, Commissioner of the International Commission of Jurists and President of the Court of Appeal, as follows:

“Recounting this story again cannot reverse the injustice done to independent judges of courage and conviction. It cannot unmake the history that has been written. It cannot restore confidence in institutions that have been damaged. But it can serve to remind judges and other lawyers of the need for courage in defending time-honoured concepts. It can help to perpetuate the recollection of the integrity of people appointed to judicial office so that their example serves as an inspiration to successors. It can also help to bring home to the impatient, opinionated governments which attack judicial independence that there are people in every land concerned to uphold the principle and to scrutinize departures from it against established international standards.”¹⁰

¹⁰ Kirby, M. (1989). Foreword. In Tun Haji Mohamed Salleh Abas, *May Day For Justice: The Lord President's Version*. (pg. xviii). Magnus Books.

Distinguished Guests, Ladies and Gentlemen.

[14] Allahyarham's love for the judiciary was apparent. Seven months before his passing, we invited Allahyarham Tun Salleh Abas to the Palace of Justice for a Hi-Tea to commemorate him as the Special Feature in the Malaysian Judicial Yearbook.

[15] In one interview with Allahyarham Tun Salleh Abas, he repeatedly said that it has always been his last wish and fervent hope to address the Bench, or at the very least, to have a simple do to mark his departure as the Lord President. For the past few decades since his removal, he said, there was no closure for him as he never got the chance to bid goodbye to the Court staff, the Judiciary and the legal fraternity. The evening ended with a simple send-off ceremony for Allahyarham Tun Salleh Abas.

[16] Little did we know that that evening was our final parting with our last goodbye to Allahyarham Tun Salleh Abas.

[17] As we mourn the loss of Allahyarham Tun Salleh Abas, we are very blessed to have a Lord President who staunchly defended our Federal Constitution and championed the judiciary's independence to his very end. Allahyarham was indeed a great and courageous legal luminary.

[18] It is worth emphasizing that an independent judiciary that is free from any external influences is the life-blood of constitutionalism in a democratic society. This is the foundation of judicial power and the central component of the doctrine of separation of powers.¹¹

[19] Therefore, we dedicate this Reference to Allahyarham's honour. Innalillahi wainna ilaihirojiun (Indeed we belong to Allah, and indeed to Him we will return). As a mark of respect, may I invite all Muslims present to offer Al-Fatihah and for non-Muslims to observe a minute silence. May Allahyarham be placed among those who are guided and rewarded with Jannah.

Thank you.

¹¹ Beauregard v. Canada, [1986] 2 S.C.R. 56