



### Speech by Tan Sri Arifin bin Zakaria, Chief Justice of Malaysia, at the Opening of the Legal Year 2012 (14 Jan 2012)

Thursday, 19 January 2012 08:12:06m



**"As Judges, we are accountable to no one but the law which must be administered without fear or favour, affection or ill will"**

[Salutations]

#### INTRODUCTION

1. On behalf of the Malaysian Judiciary, I would like to extend a warm welcome to all of you to the Opening of the Legal Year 2012. To our honourable guests from Indonesia, Singapore, Brunei and Hong Kong, I thank you all for taking time off from your busy schedule to be with us this morning. We are indeed honoured by your presence. This is the third opening of the legal year since it was resumed in 2010, and the first for me as the Chief Justice. The opening of the legal year will be a permanent feature in our legal calendar, to be held on the second Saturday in January of each year.

Ladies and gentlemen,

#### ENHANCING THE JUDICIAL ADMINISTRATION

2. In my elevation speech not too long ago, I have stated that I will continue to enhance the efficiency of the Judiciary at all levels and to improve the quality of courts' decision. I must admit, these are no easy tasks. Our objective is to transform our Judiciary into a world class Judiciary. To realise this, we require the cooperation from all the stakeholders namely, the Attorney General's Chambers, members of the Bar, government departments and agencies. May I take this opportunity to call upon all of you to give your full support and cooperation.

Ladies and gentlemen,

#### ACHIEVEMENTS IN 2011

3. It is customary for me to provide a brief report on the courts' performance in the year 2011. Let me begin with the Federal Court.

##### The Federal Court

4. The increase in the disposal of cases at the Court of Appeal had resulted in the gain in the number of leave applications and appeals filed at the Federal Court.

5. For leave application, the registration increased by 21%. However, we manage to increase the disposal from 437 in 2010, to 527 in 2011. As at December last year, there were only 419 leave applications pending. Such application can now be disposed off within 6 months from the date of registration.

6. With regard to civil appeal, the registration has also increased by more than 100%. Despite that, we still managed to dispose 85% of the total civil appeals pending in 2011, leaving a balance of only 61 appeals as at December last year. Civil appeal can now be disposed off within 6 months from the date of registration.

7. Similarly criminal appeal had also increased by over 100%. A specialized panel was set up to hear criminal appeals. As a result, we managed to increase the disposal from 186 in 2010 to 235 in 2011. As at December last year, there were only 221 criminal appeals pending. Currently, criminal appeals can be disposed off within 3 months from the date a complete record of appeal is received by us.

8. The increase in the disposal as stated above was achieved through the increase in the number of sittings per month and also increase in the number of days per sitting.

9. Finally, I wish to announce that with effect from January this year, both the criminal and civil appeals in the Federal Court are heard by a quorum of 5 Judges instead of the usual 3. And with effect from March this year leave application will also be heard by a 5 member panel. It is hope that this will help to improve the quality of our judgments and decisions.

##### The Court of Appeal

10. There has been a sharp increase in registration of appeals at the Court of Appeal in both 2010 and 2011 in which a total of 12,000 appeals were registered.

11. Faced with that, the Court of Appeal had implemented several initiatives to expedite the disposal of these appeals. In total, 11,148. At the current rate of disposal the waiting period for appeals in originating from the subordinate courts will be reduced to 6 months and for appeals originating from the High Court to 18 months.

12. The initiatives implemented were:

- i. Increase in the number of sitting;
- ii. Setting up special panel which sits every Thursday to hear IM appeals;
- iii. Increase in the number of panels sitting in a month from 12 to 20; and
- iv. Setting up special panel chaired by Federal Court Judges to hear appeals originating from the subordinate courts.

13. The initiatives implemented have shown positive result. In 2011, a total of 8,064 appeals were disposed off compared to only 5,935 in the previous year.

14. In respect of IM appeals, I am happy to report that in 2011, the Court of Appeal has successfully disposed off 3,638 IM appeals. By July this year IM appeals will be disposed off within 3 months from the date of registration.

15. In 2011, a total of 2,743 Full Trial civil appeals were disposed off. We will continue our effort to clear all pre 2010 Full Trial civil appeals by end of this year.

16. As for criminal appeals, a total of 1,159 criminal appeals were disposed off in 2011, despite that we still have a total of 1,148. At the current rate of disposal the waiting period for appeals in originating from the subordinate courts will be reduced to 6 months and for appeals originating from the High Court to 18 months.

17. NCC and NCVC courts were established to expedite WCC and NCVC cases at the High Court. To ensure that appeals from these courts are disposed off within the timeline, special panels were established. With that, IM appeals from these courts are disposed off within 3 months, while Full Trial appeals within 6 months.

18. For civil leave applications, we are only left with 409 such applications and by July this year, civil leave application may be heard within 3 months from the date of filing.

Ladies and gentlemen,

#### The High Courts And The Subordinate Courts

19. The year 2011 has witnessed a drastic reduction backlog of cases both at the High Courts and the subordinate courts throughout the country.

20. The disposals, in 2011 are as follows:-

- i. the High Courts disposed off more than 100,000 civil cases and 7,000 criminal cases.
- ii. the Sessions Courts disposed off more than 160,000 civil cases and 34,000 criminal cases.
- iii. the Magistrates' Courts disposed off closed to 300,000 civil cases and 130,000 criminal cases.

21. The increase in the number of disposal is attributed to the following initiatives:-

##### A. Set Timeline For Disposal of civil cases namely:

- i - 9 months for NCC and NCVC;
- ii - 9 months for Sessions Court; and
- iii - 6 months for Magistrate's Court.

This timeline was set based on the pilot project in Kuala Lumpur Court.

##### B. Establishment of New Civil Courts (NCVC)

Due to the success of the NCC, New Civil Courts based on NCC model were set up in Kuala Lumpur High Court. This has been extended to other trial centres.

##### C. Joint Committee

For criminal cases, a joint committee between the Bench, the Bar, the AG's Chambers and the Police was established to assist in the speedy disposal of those cases.

##### D. Specialized Courts

Last year, 2 new specialized courts were set up namely, Admiralty Court in Kuala Lumpur High Court and 14 Corruption Courts throughout the country.

Ladies and gentlemen,

#### E-Filing

22. The year 2011 seen the introduction of e-filing and a number of other innovative measures to improve the judicial administration.

23. E-Court or "e-kehakiman" project was launched in December 2009 and was completed in June 2011. With that, all court rooms throughout the country are now fully equipped with Court Recording Transcription system (CRT).

24. One of the key components of the e-court, is e-filing, which was launched in March 2011. E-filing is a facility which enables parties in law suit to file cause papers online without the need to file hard copies. This will save time, cost and eventually will reduce man power. With e-filing, a case may be filed anywhere in the country where the facility is available. A Penang case may be filed from Kuala Lumpur without a need to be physically present in Penang and vice-versa.

25. With the introduction of e-filing, the courts are no longer burdened with the physical processes such as opening files, filing of documents and maintaining a file room as in the past. These documents are now stored in the database.

26. With e-filing, cause papers may be filed electronically from lawyer's office regardless of its locality or it may be done at the service bureau set up at the major courts throughout the country. Unrepresented parties and lawyers who do not have the facility may use the service bureau to carry out this process.

27. The e-filing is designed to improve the court's efficiency and accessibility to the public.

28. The number of legal firms enrolling to the e-filing system has continuously increased. As at December 2011, 17,511 users from the legal firms and government agencies have registered for the e-filing. So far 212,655 documents have been filed online.

Ladies and gentlemen,

#### COURT ANNEXED MEDIATION

29. Mediation now forms a core component in our judicial system. It provides an alternative to parties to resolve their dispute without going through the trial process. Mediation has been practised at all levels of courts including at the appellate level. At the Federal Court, 2 cases had been mediated last year while at the Court of Appeal, a total of 13 cases were settled through mediation. During the same period, 2,276 cases at the High Court and 4,347 cases at the subordinate courts were mediated. Out of all these cases, 50% were successfully settled through mediation.

30. Following the success of mediation conducted by the courts, we have set up a mediation centre in Kuala Lumpur Court Complex. Similar centres were also established in Kota Kinabalu, Kuching, Johor Baharu, Muar, Kuantan and Ipoh and soon in other parts of the country.

31. To further enhance mediation skill, special training was conducted for Judges and officers. Last year, Mr. Justice Gordon J. Low, a Senior Federal Judge of Utah, USA had spent 6 months training our Judges and Officers.

Ladies and gentlemen,

#### EXPEDITING CRIMINAL TRIAL

32. We continue to look for measure to improve criminal trial process which continues to be hampered by too many adjournments. When criminal trial was conducted with the aid of the jury, the hearing was hardly postponed. Once the trial commenced, it will proceed from start to finish in a single session.

33. Nowadays, criminal trials are often postponed more than once before a case is finally disposed off. This is becoming the norm with the exception. Therefore, a criminal trial may take more than a year or even longer. Take for instance, the recently concluded Dato' Seri Anwar Ibrahim's case, the trial was postponed no less than 48 times. The reasons for postponement are many and varied, but the principal reason being lack of free date of lawyers. For instance, in the month of November 2011 alone, 122 criminal trials were postponed in the subordinate courts for the reason that lawyers were engaged in other courts. But, whatever the reason, the court will have to take the blame. I believe, it is in the best interest of all concerned to put an end to this practice. At the initial stage, there might be some obstacles or problems but once we put this into practice throughout the country, things will work out smoothly. Joint committee between the Bench and the Bar has been set up in Kuala Lumpur and Shah Alam to address this issue.

34. In this regard, I would like to draw the attention of all concerned to the Registrar's Circular No.2 of 1976 on the issue of delay in the disposal of criminal cases. In that circular, the then Lord President directed that every effort should be made to continue an unfinished trial on the following and successive days, instead of in instalments spread over a period of weeks and sometimes even months. This circular is still in force and it should as a matter of fact be followed. We should go back to the old practice.

Ladies and gentlemen,

35. Case management has also been introduced in criminal cases at the High Court in Shah Alam and Kuala Lumpur. Through case management, preliminary issues like the making of representation to the Attorney General by the accused, the service of documents by the prosecution, the number of witnesses to be called by both the prosecution and the defence, the estimated time required for trial and the free date of counsel are settled at the management stage, at the end of which, trial date is fixed. Once a trial date has been fixed, no adjournment is to be entertained and the case should proceed to its completion without any postponement.

36. This has produced some positive results in Shah Alam and Kuala Lumpur. The number of postponements has been brought down drastically. We are planning to extend this to other states soon. I hope the criminal practitioners will give us their full cooperation.

Ladies and gentlemen,

Next, let me touch on some of the changes that may come through in 2012.

#### AMENDMENT TO SUBORDINATE COURTS ACT 1948

37. The amendment to the Subordinate Courts Act 1948 was passed by Parliament in September 2010 but yet to be enforced. With the amendment, the civil jurisdiction of the subordinate courts will be increased: Sessions Courts will have jurisdiction to hear cases involving claim not exceeding RM1 million; and Magistrates' Courts will have jurisdiction over civil claim up to RM100 thousand. The Sessions Court will also be conferred power to grant injunction, declaration, specific performance, rescission of contract, cancellation or rectification of instrument in respect of any matter falling within its jurisdiction. This increase in the jurisdiction of the subordinate courts is in line with the decrease in the value of money.

38. In the meeting with members of the Bar Council, some of the members have expressed their reservation about the amendment especially on the powers of the court to grant injunction and other reliefs. I have informed them that the jurisdiction to grant such reliefs mentioned above is restricted to the monetary jurisdiction of the Sessions Court. The Sessions Court will not have jurisdiction over matters arising under the Companies Act 1965 and the National Land Code 1965 or any other laws, which expressly confers jurisdiction on the High Court. I further reassure them that necessary training will be given to the Sessions Court judges. We have also made available the Bench Book for the use of Judges and officers.

39. With this amendment, a large number of cases will go down to the Magistrates' Courts from the Sessions Courts. To cater for this, the number of civil Magistrate's Court will be increased accordingly.

40. The amendment also provides for the creation of the post of Registrar, Deputy Registrar, Senior Assistant Registrar and Assistant Registrar of the subordinate courts, who will be appointed from among officers of the Judicial and Legal Service. With this, we hope to improve the judicial administration in the subordinate courts. This amendment will be brought into force as soon as the additional posts that we have requested for, are approved.

#### COMBINED RULES OF COURTS

41. At the opening of the legal year in 2011, my predecessor, Tun Zaki announced that the Combined Rules of Courts, applicable to civil cases, will be ready by the middle of 2011. It is regrettable that, this deadline has to be moved, yet again. As a matter of fact, the committee is now in the final stages, drafting the relevant provisions. In considering the appropriate filing fees, I am happy to report that the Combined Rules will now have the Malay text as the authoritative text instead of English. This is in line with the National Language Act 1963/67(Revised 1971). I would like to put on record our appreciation to the Drafting Division of the AG's Chambers for its undertaking to prepare the Malay text within a short space of time. The draft Combined Rules once completed, will be circulated to the members of the Bar and the law faculties, other relevant bodies and agencies for their comments before it is finalised. This of course will take some time. I am hopeful that the Combined Rules could be enforced by the middle of this year.

Ladies and gentlemen,

42. Our transformation programmes implemented thus far, has no doubt brought our Judiciary to greater height. Credit must be given to my predecessor Tun Zaki. The World Bank Report released in August 2011 had accorded a high rating for all the efforts and reforms carried out in just within 2 years. Permit me to record a portion of the report:-

*"The present study reviews a reform designed and implemented by the Malaysian Judiciary during the period from late 2008 to early 2011. Although conducted over a very short period, this reform has been able to produce results rarely reached even in programs lasting two or three times as long. It thus provides a counter-example to the common-sense presumption about the possibility of the Judicial improving its own performance. Moreover it did so in a country which faces many of the usual contextual obstacles said to have inhibited from elsewhere."*

43. Recently I received an official request from a consultant company based in US to use our model in the delay and backlog reduction program for a particular Judiciary. We all can take pride in our achievements thus far.

#### Continuing Legal Education

44. Continuing Legal Education for Judges and judicial officers which was started during the tenure of my predecessor will continue to be given emphasis in the coming years. For the record, last year alone, a total of 15 seminars and courses were conducted throughout the country, involving eminent Judges and other professionals. All these were conducted on an ad-hoc basis.

45. We are now in the process of setting up a permanent body to be known as "Akademi Kehakiman" (Judicial Academy) to cater for trainings of Judges and judicial officers. The secretary to the Appointment Commission will serve as the secretariat for the academy. A senior Judge will be appointed to lead the academy.

Ladies and gentlemen,

#### Environmental Court

46. In December 2011, I attended a roundtable conference for ASEAN Chief Justices on environment in Jakarta. The purpose of the conference is to develop a common vision on the approach by Judiciary in shaping the role of law to respond to the environmental challenges that Asian countries face, particularly in relation to environmental crimes and illegal environmental activities.

47. It was informed that specialized crimes and tribunals had been set up in our neighbouring countries. This approach is in tandem with the Johannesburg principles on the rule of law and sustainable development" adopted by 120 judges from around 60 countries during the Global Judges Symposium held in Johannesburg, South Africa, in August 2002.

48. The Johannesburg principles affirmed that an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law. The Judiciary and all its stakeholders are crucial partners for promoting the compliance with, and the enforcement of environmental law.

49. In Malaysia, more than half of our lands are forested area. This is equivalent to about 60% or 19.52 million hectares of forested land. Thus, I believe we have an important role to play.

50. Environmental crime is a threat to our very existence. We must be serious in protecting our mother earth. For that we should not let any lack of sensitivity in the past to continue into the future. The lack of such sensitivity is clearly demonstrated by the following 2 cases. In 2005, a man in Tumpat, Kelantan, was found guilty by the Magistrate's Court for illegal possession of a dead tiger, a protected animal, and walked free after he paid the fine of RM7,000. In contrast, in another case, a man who was convicted for theft of 11 cans of "Tiger beer" and "Guinness Stout" worth RM70 in 2010, was sentenced to five years imprisonment. Clearly our values were misplaced. Surely our tigers are worth more than the 11 cans of beer.

51. On the part of the Malaysian Judiciary, for the immediate future, we will provide more exposure and trainings for our Judges and officers on environmental law. If need be, specialized court will be set up to handle environmental cases so as to create awareness among the members of the public of the importance of the environment.

Ladies and gentlemen,

Next, permit me to say a few words on the integrity and judicial independence.

#### INTEGRITY

52. I would like to take this opportunity to call upon all Judges and officers to continue to maintain the dignity and integrity of their office. We must at all times conduct ourselves in a manner benefitting our position in society. Always bear in mind, that your conduct, be it in your private or official capacity is subject to public scrutiny. In conducting our duties, we must not allow ourselves to be influenced by the introduction of the Audio-Video Recording in court, there has been little complaint about Judges and lawyers misbehaving themselves in court and what is more interesting, any complaint we received can be verified through the recording. This has put a stop to baseless allegation being made against Judges and lawyers.

53. More importantly I wish to remind Judges and officers not to expose yourselves to corrupt practices and do not at any time to abuse your position. As for lawyers, please do not make any wild and baseless accusations against Judges and officers because your words are taken seriously by the public. Such allegations may undermine the integrity of the Judiciary.

#### JUDICIAL INDEPENDENCE

54. Finally, I would like to reaffirm our commitment to the rule of law and independence of Judiciary. Adherence to these two basic principles is of critical importance to the Judiciary in order to gain the respect and confidence of the public. On commitment to the Judiciary, Justice Murray Gleeson, former Chief Justice of Australia, had this to say:

*"Confidence in the Judiciary does not require a belief that all judicial decisions are wise, or all judicial behaviour impeccable, any more than confidence in representative democracy requires a belief that all politicians are enlightened and concerned for the public welfare. What it requires, however, is a satisfaction that the justice system is based upon values of independence, impartiality, integrity, and professionalism, and that, within the limits of ordinary human frailty, the system pursues those values faithfully."*

Courts and judges have a primary responsibility to conduct themselves in a manner that fosters that satisfaction. That is why judges place such emphasis upon maintaining both the reality and the appearance of independence and impartiality. In addition, built into the infrastructure of our institutional arrangements, there are rules and conventions designed to secure and maintain the same confidence."

55. To put it shortly, Judges being human are liable to make erroneous decisions. That is acceptable provided the decision is not tainted with bias or prejudice and is free from any interference. As Judges, we are accountable to no one but the law which must be administered without fear or favour, affection or ill will.

#### CONCLUSION

56. In conclusion, I wish to place on record my heartfelt appreciation to the President of the Court of Appeal, the Chief Judges of Malaya and of Sabah and Sarawak, the Managing Judges and other Judges and judicial commissioners, the officers and staff for all the efforts that have been put in to improve our Judiciary. I am also grateful to the Honourable Attorney General and his officers, the President of the Malaysian Bar, the President of Sabah Law Association and the President of Sarawak Advocates' Association, and all other members, and all government departments and agencies for supporting the Judiciary.

57. With that, on behalf of the Judiciary, I wish you all a Happy New Year and not forgetting a Happy Chinese New Year.

58. Thank you. Wabillahi taufik wal hidayah wassalamualaikum warahmatullahi wabarakaatuh.

DATED: 14 January 2012  
TAN SRI ARIFIN BIN ZAKARIA  
CHIEF JUSTICE  
MALAYSIA

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