

CLOSING REMARKS

BY

**THE HONOURABLE TAN SRI IDRUS BIN HARUN
ATTORNEY GENERAL OF MALAYSIA**

**40th Anniversary of Legal Aid in Malaysia
Forum | ‘Pro Bono Legal Aid – Why Bother about the Poor,
the Oppressed and the Dispossessed’**

DATE : 27 NOVEMBER 2021 (SATURDAY)

TIME : 12.30 PM

**VENUE : RAJA AZIZ ADDRUSE AUDITORIUM,
WISMA BADAN PEGUAM MALAYSIA
(DIGITAL PLATFORM – Broadcast via
Zoom)**

Honourable Justice Datuk Vazeer Alam bin Mydin Meera, Judge of the Court of Appeal,

Mr. AG Kalidas Krishnan, President of the Malaysian Bar,

Distinguished and esteemed panellists of the forum,

Distinguished participants and guests,

Ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuh, and a very good afternoon.

1. I wish to first express my profound gratitude to the Malaysian Bar for inviting me to deliver the closing remarks for this momentous event. It is indeed an honour to be part of this ruby jubilee and I am truly grateful.
2. May I sincerely congratulate the Malaysian Bar for their initiative and outstanding organization of this much needed forum, for which I believe has been a singular success. I am certain that the outcome

of this forum has been both inspiring and insightful to many who are present here today.

3. May I also take this opportunity to thank and acknowledge all the panellists of the forum as well as the moderator for their valuable contributions. Over the course of this forum, we have witnessed an open discussion by this extraordinary group of panellists who have come together to share their perspectives, insights and experiences around issues that have lent their name to the forum itself: ***Pro Bono Legal Aid – concerning the Poor, the Oppressed and the Dispossessed***. Without a doubt, a significant amount of work has definitely gone into each of the panellists' presentations and I thank them for devoting their precious time and expertise to address the issues surrounding the theme of this forum.

Ladies and Gentlemen,

4. The 2030 Agenda for Sustainable Development Goals (SDG) recognizes the need to build and promote a peaceful and inclusive societies for sustainable development that would provide equal access to justice for all. Goal 16 of SDG and its target 3 in particular,

highlights the importance of ensuring “*access to justice for all*” in achieving sustainable development.

5. Access to justice is therefore an indispensable part of a democratic governance and the rule of law. Democratic governance is undermined where access to justice for citizens, irrespective of their background or social class, are stifled or absent. Hence, it is crucial that we work towards a common goal of promoting and creating a sustainable environment of equal access to justice.
6. Access to justice is an important criterion, and a fundamental pillar of our society. To me, it is a measure of how far we have come as a society, how mature we are as a society, how caring and compassionate we are as a society, and we measure that with reference to the accessibility we provide to the man in the street, to the justice system.
7. Having a sustainable environment with equal access to justice requires working with different types of institutions and various key actors and taking account of the linkages between them. One of the primary components in this equation is the presence of an effective legal aid system. A lack of an effective indigent defence services or

legal aid scheme often results in a denial of full access to justice, especially for the poor and marginalized citizens. **Justice Hugo Black** when delivering the United States Supreme Court judgement in the case of *Griffin v. Illinois* said:

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has”.

8. According to the ***United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems***, the universally accepted term of ‘legal aid’ includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witness in the criminal justice process, that is provided at no cost for those without sufficient means or when the interest of justice so require.
9. There is a common voice amongst us that believes no individual should be marginalized and be deprived of their right to legal representation and advice. Our presence here today as well as the manifestation of this forum is a testament of that belief that we do

care about the state of the unfortunate and the disadvantage in our society earlier mentioned, whose plight we need to address.

10. However, in the same breath we all are very much aware that despite unprecedented progress in legal aid, or access to justice, there are still too many things that require our proactive legal fortitude to ensure that the public deserves the necessary legal assistance when required.

11. In his famous book on the Rule of Law, **Lord Bingham** cites what EJ Cohn wrote in 1943, that – ‘***Legal aid is a service which the modern State owes to its citizens as a matter of principle.***’ In this regard, may I assure you that the Attorney General’s Chambers in discharging its duties under Article 145 of the Federal Constitution is always committed to ensure the highest quality of legal advice to the Government to achieve this and that justice is made accessible to those in need in accordance with the provisions of the law.

Ladies and Gentlemen,

12. At present, there are three (3) main legal aid schemes in Malaysia, differing from one another in terms of legal basis, eligibility criterion

and services provided which comes under the auspices of the Legal Aid Department, the Legal Aid Centre and the National Legal Aid Foundation. The government plays a significant role in pushing forward the national legal aid agenda via the Legal Aid Department and the National Legal Aid Foundation, fondly known as YBGK.

13. Currently, the enabling law for the grant of legal aid is the Legal Aid Act 1971 [Act 26]. Since its inception, the provision of Act 26 pertaining to legal aid in Malaysia had been numerously amended with the sole purpose of widening the scope and jurisdiction legal aid dispensed by the Legal Aid Department. The amendments for civil jurisdiction took place in 1972, 1973, 1975, 1982 and 2011, respectively. As for criminal jurisdiction, the amendments were made in 1973 and 1982 whilst for Syariah jurisdiction, the amendments were in 1973 and 2011. Act 26 was also further amended in 2006 and 2017 to include mediation and legal companion services for child victims in sexual related cases as part of the Legal Aid Department's jurisdiction.

14. Though our legal journey is far from reaching its desired destination, the aforementioned statutory evolution of the law on legal aid is evidence that we have constantly endeavoured to improve the

imperfections and continued to accommodate current needs to legal aid. I believe the Legal Aid Department, working in close collaboration with personnel from the Attorney General's Chambers, would continue its commendable work to inspire further legal reforms to expand its current functions and jurisdictions in providing legal aid services to those in need.

Ladies and Gentlemen,

15. I firmly believe that access to justice via legal aid could only be further strengthened and improved by forging partners who are committed to the cause of improving and ensuring better legal aid services to those who require them. Acknowledging the importance of such partnership the national legal aid agenda is further reinforced and strengthened by the birth of YBGK which was incorporated on 25 January 2011.

16. The establishment of YBGK, which began operating in April 2012, was perceived as a breakthrough in the development of legal aid schemes in Malaysia, paving the way for a more robust public-private partnerships in the future provision of legal aid. The YBGK scheme is a comprehensive legal aid scheme that funds lawyers to

do legal aid work in criminal matters for a nominal fee, since providing such assistance is part of their social responsibility. Under this scheme, access to legal assistance and legal representation is provided to all Malaysians, irrespective of their financial means, at police stations, remand hearings and when they are charged in court for bail applications and plea in mitigation.

17. The legal assistance provided by YBGK covers all types of criminal offences, except for those which carry the death penalty as the court provides assigned counsel to the accused. Nonetheless, YBGK provides legal assistance to persons offending section 39B of the Dangerous Drugs Act 1952 [Act 234] even if it carries the death penalty, limited only at the police station and the remand hearing. Since May 2014, YBGK has also extended its services to assist prisoners on death row to prepare their Petition for Clemency. Further thereon, on 9 December 2014, YBGK has decided to extend the eligibility of its services to even minors who are non-citizens.
18. In the early years of operating, YBGK experienced the lack of interest from the Bar to take up this service. However, when payment rates were revised on 1 May 2014, we saw a greater increase in participation from the bar to join as YBGK lawyers, from

697 lawyers in 2012 to **1499** lawyers by December 2014. Currently, the number of YBGK registered lawyers stands double of that figure at **3082** practitioners. I am confident that our legal profession will continue to explore and consider ways and incentives to encourage legal practitioners to provide pro bono legal services. In my capacity as Chairman of YBGK, I welcome any constructive proposals to further achieve this for the sole purpose of improving the efficiency of YBGK's delivery of service to the public.

19. Although there are positive indicators that reveal the effectiveness of the existing public and private partnership, there is still a need to encourage a bigger number of participation amongst private practitioners, particularly the pool of senior practitioners that retain the most experience and legal expertise. If this could be done, then we would see an even more promising future of a more sustainable and efficient legal aid service that could be provided to the ordinary man in need of such service. We must remember that the essence of pro-bono legal services is not just about quantity but their quality is also equally important.

Ladies and Gentlemen,

20. Sufficient resources and adequate funding is always central to ensuring the sustainability of an effective and efficient legal aid service. Having an annual legal aid budget from the public fund is crucial as the national legal aid program is not driven by the donors or the outside needs.

21. Over the years, the number of services provided by YBGK has tremendously grown from **91,544** in 2013 to **215,990** on 2020. This growth resulted in an increase in YBGK expenses from about **RM 2 million** in 2013 to **RM 9.1 million** in 2020. Without the necessary funding it would have been impossible for YBGK to dispense its services to the public.

22. This has been possible due to the Government's willingness to raise the amount of grant allocated to YBGK yearly, within its available resources, to cover those expenses. This is an illustration of the Government's continuous commitment and willingness to acknowledge legal aid services as being an important component to ensuring access to justice and a level playing field to those who are in need of legal redress.

Ladies and Gentlemen,

23. The years 2020 and 2021 have been the years where the world has struggled with the emergence of another radical and formidable adversary in the form of the deadly COVID-19 pandemic. We are, till this very day, struggling to overcome this very pandemic which has drastically affected lives, livelihood and the economy. In the face of such arduous challenge, we cannot allow it to erode our on-going plight in ensuring access to justice for all. It will be for us as officers of justice to remain steadfast and ensure that amidst the COVID-19 pandemic, access to justice to all via legal aid remains visible and available. It is in this difficult times that such unwavering commitment is needed more than ever.

24. It is my ardent hope that today's discussions have opened your minds and hearts that the issue of legal aid is not a crusade of one's resolve but rather it requires the sharing of hands and the cooperation of many to ensure that access to justice for all is not a mere rhetoric. We must confront the reality and the challenges ahead with courage and foresight, united by our ideals and not divided by our differences. I am reminded of what **Martin Luther King** had once said, and I quote – "***Human progress is neither***

automatic nor inevitable, every step towards the goal of Justice requires sacrifice, suffering and struggle, the tireless exertions and passionate concern of dedicated individuals”.

25. The ending of our work here is merely the beginning of our labours. We will be leaving the forum with a tremendous amount of insight from which to draw inspiration — and for further work. In many ways, our efforts and presence here today represents the future. I am pleased to have been part of this group of important actors who will likely drive that future.

26. Let us leave this forum with a renewed determination to collaborate, to share innovative solutions and to live up to the commitments we set for ourselves. I thank you once again and congratulations for a successful forum.

27. With that, I end with *wabillahi taufik wal hidayah, wassalamualaikum warahbatullahi wabarakatuh.*

Thank you.