

**PERKIM-GOON LAW ASSOCIATION
SPEECH BY PATRON 27.10.97**

I thank you for inviting me to your AGM. I confess that I have not been here for some time, not because I received no invitation, but because, the timing, somehow, had not been right. When the invitation was during office hours I had cases which I could not possibly postpone without being unfair to parties, witnesses and lawyers. So, having to choose between doing the work that I was paid for and doing something that was voluntary, I chose the former, for obvious reason.

Anyway I do not think you have missed me. You have your able lecturers to teach you and to guide you.

I must also confess that I am out of touch with your association. I don't really know what you have been doing, whether you have been doing enough, for yourselves, for your association or, for that matter, for mankind. I don't know whether you have been doing the right things. But under the guidance of your able and dedicated lecturers, not to mention you Principal and his assistants, I am sure you have.

Even though I have not come here many times, I am happy that some Perkim-Goon students still remember me. Early this month, I was at the London School of Economics and Political Science or L.S.E., as it is popularly known, to send my daughter there. One young man, a student, came and greeted me. He said he had met me when he was a student here, during my visit here. Honestly, I felt very happy, first, to meet someone who knew me and, secondly, to know that there was a former student of Perkim-Goon who had made it to L.S.E. Indeed, I feel obliged to tell you about this incident.

I notice that you have prepared a list of activities that you propose to do during the next one year. Among them are law moots and visit to court. I will tell you about my first moot which was also the first moot for the class, otherwise, at least, I could first observe what others do before doing it myself. That is the price I have to pay for having a name that begins with the letter "Ab..." No one told us what a moot was, what and how we should do. I only saw a notice on the notice board saying that I was to take part in a moot and I was required to argue that "Estoppel can be used not only as a shield but also as a sword."

Honestly, I had sleepless nights. I just could not find any authority to support me. All authorities and textbooks that I referred to said otherwise. In desperation, I made use of an old English case. I argued that on the facts of that case, even though the learned Judge did not say so, in fact he had used estoppel as a sword. And I added quoting Shakespeare in Romeo and Juliet "What is in a name for that which we call rose by any other name would smell just as sweet". I tell you that there was an applause from the floor we I said that.

Of course when it came to the decision, the lecturer who was presiding as a judge said she had not had the opportunity to read that particular judgment and was not prepared to depart from the established authorities which said the otherwise all along. However, I was elated when I saw the marks given to me on the notice board the next day. It was quite high. I am sure it was not for substance but for presentation.

But, let me say this, you can do that in a moot. Please do not try to put forward that kind of argument in court. Even the most patient judge might tell you to go back and read your law.

I would not mind sitting as a judge in your next moot, if you want me to. We can even have it in my court.

I also notice that you would like to visit the courts. Mr. Danny Chee asked me whether I could arrange it. I told him, and I am telling you now, no problem. Tell me what you want to see, criminal trials, civil trials, appeals etc. I will check my court diary and tell you when the show is.

Ladies and gentlemen,

I do not intend to talk to you about things you can find in the textbooks. That you can read yourselves. I prefer to share my experience with you because you can't find it anywhere else.

When I was a student at the University of Singapore, I came to know, as Mr. Thiruma can tell you more about it as he read law at the Inns of Court, that one of the preconditions to pass law examination in U.K. is to attend a certain number of dinners. I thought what a ridiculous thing it was: what has eating got to do with learning the law?

Now, thirty years later, I must confess that I agree that there is wisdom in that seemingly ridiculous practice and condition.

Lawyers are the most exposed among the professionals. I will no elaborate because I do not want to run down other professions. In short, as a lawyer, you meet people. And the kind of people you meet will depend on the kind of practice you do.

It may not matter very much if you are content to be a small-time, backroom lawyer defending petty criminals and issuing notices to tenants of controlled premises. But if you aim to have big multinational companies as your clients, first, you will have to **look smart**, then, to keep them, you will have to **be smart**. To look smart, you should know how and what to dress for what occasion and you should know some table manners and some protocol. Later on you might even get invited to official functions or investiture ceremonies. You can't appear at such functions in sleeveless dress or bare-backs. You can't appear in mini-skirts. I have seen guests attending "black-tie dinners" wearing lounge suit and black necktie. That "black tie" is not black necktie. It is a whole set of dress, which is known as "black tie". At such dinners you are not supposed to

move from one table to another “yam-sengging” with your friends. Indeed you are supposed to be seated until the guest-of-honour leaves. You can’t even smoke before coffee is served. Therefore, I suggest, that, at least once before you go out into the world to practice, that you invite somebody to give you a talk on protocol, table manners and related topics. I think practicing lawyers should attend such talks too. You may also have an annual official dinner, when everybody comes properly dressed.

Ladies and gentlemen,

In your letter to me you mentioned that you wanted me to say something about the use of Bahasa Malaysia in Courts. Actually, the position is very clear. Article 152 of the Federal Constitution provides that Malay language is the national language of the Federation. Section 8 of the National Language Act 1967 provides:

“8. All proceedings (other than the giving of evidence by a witness) in the Supreme, the High Court or any Subordinate Court shall be in the national language:

Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language.”

The Rules of the High Court 1980, Order 92 rule 1 provides:

“Any document required for use in pursuance of these rules shall be in the national language, and may be accompanied by a translation thereof in the English language:

Provided that any document in the English language may be used as an Exhibit, with or without a translation in the national language.”

There is a similar provision in Order 53 rule 5 of the Subordinate Courts Rules 1980.

So, according to our law, the language of the courts is the National language, which is the Malay language. What does that mean? It means that all pleadings, like the statement of claim, the statement of defence, affidavits etc. must be in the Malay. English translation may be enclosed but it is not mandatory. Documents, if they are in English, need not be translated into Malay. But if they are in any other language, they must be translated into Malay. A witness may speak in whatever language he chooses to speak. It will be translated into Malay or English. Notes of evidence, submissions and grounds of judgments are in Malay but it may be partly in Malay and partly in English, or wholly in Malay but not wholly in English.

Judges are usually very pragmatic in their approach. On application, they quite readily allow counsel to submit in English especially where the documents to be referred to are in English, or the facts of the case are complicated or technical, or the case involves very difficult points of law. Indeed at times, the judges themselves would ask counsel to submit in English. In the Subordinate Courts almost all proceedings are in Malay except, of course, that witnesses may speak in whatever language they choose. In the High Courts they are usually partly in Malay and partly in English. How much of each depends on the particular judge and the nature of the case. Most judgments in the High Courts, the Court of Appeal and the Federal Court, are in English.

I write most of my judgments, including difficult and complicated ones, in Malay. Why? First, because that is, by law, the language of the Court.

Secondly, because I want to show that if you know a language well enough, you can write on any subject in that language. If you don't know the language, or if you don't know it well enough, you cannot write in that language, on whatever subject. A language is not a factory product delivered in its final form to the consumers to use. It is created and developed by the consumers themselves, through usage.

Thirdly, I want to dispel the myth that justice can only be done through the use of English. Human civilization did not begin in England. The first law ever written by men was not in English. Common law came to be developed hundreds of years after other laws had developed. Muslim Scholars (they were not called lawyers then) wrote hundreds of books on Islamic law, rules of interpretation, jurisprudence etc. long before Coke. Many of the books are still available today. Justice is not the monopoly of the Common Law. Do not think that only if we use the English language that we can achieve justice and that if we use English there will be no injustice. Whether there is justice or not depends on the law and the people who administer the law, not the language they use. Of course judges alone cannot ensure that justice will be done. Lawyers, prosecutors, police indeed the public have a role to play.

But I also write my judgments in English, mainly to remind others that I can also write in English and that if I usually write in Malay, it is not because I cannot write in English. You can call it "ego".

I must say that a great majority of lawyers now, Malays or non-Malays, are very proficient in Malay. I must admit that, at times, I admire the pleadings they write in Malay in complicated commercial cases. Of course some make mistakes, sometimes, like in one affidavit which says: "... Saya **bernafsu** untuk menjual tanah itu." He means "desirous of selling the land". The correct word is "**berhasrat**". Indeed he can simply say, "Saya **ingin** menjual tanah itu."

Another affidavit reads something like this: "Peguam kedua belah pihak telah **bergaduh** kes ini dalam kamar. Hakim telah memberi keputusan. Selepas itu peguam Defendan memohon untuk **bergaduh selanjutnya** di mahkamah terbuka. Selepas **bergaduh semula** di mahkamah terbuka, hakim mengesahkan keputusannya yang

telah dibuatnya di dalam kamar. Sekarang Defendan membuat permohonan ini pula.” Here we see straight away that the word “**bergaduh**” was wrongly used to mean “argue”. The correct word is “**berhujjah**”. Indeed, in this respect the Malay language is more accurate and more refined than English. In Malay we have “**berhujjah**”, “**bertengkar**”, “**bergaduh**” and lastly “**berperang**”. In English we have “**to argue**”, “**to quarrel**”, “**to fight**” and the word “**war**” has no verb. The word “**berhujjah**” is more refined than the word “**to argue**”. “**Berhujjah**” is only used to refer to academic, scholarly or legal argument. You don’t say “Penumpang dan pemandu teksi itu **berhujjah** mengenai tambang.” But it is correct to say “The passenger and the taxi driver **are arguing** about the fare.” In other words, according to the Malay language, what lawyers should be doing in court is expected to be of a higher class than what taxi drivers do in the street.

So, there is absolutely no reason for anybody to ridicule the Malay language just because some of us, sometimes, make some grammatical mistakes when we use that language. Do you think that when we use English we don’t make grammatical mistakes?

I wish you all a very fruitful, cordial and successful A.G.A. Please do not “**bergaduh**”.

Thank you.

Dato’ Abdul Hamid bin Haji Mohamad,
26.10.97.