

OPENING ADDRESS

DELIVERED BY

THE HONOURABLE

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JUDGE OF THE FEDERAL COURT OF MALAYSIA**

ON THE OCCASION OF

**THE COUNCIL OF ASEAN CHIEF JUSTICES (CACJ)
WORKSHOP ON NEW FRONTIERS OF JUDICIAL CASE
MANAGEMENT & BEST PRACTICES**

DELIVERED AT

SAMA-SAMA HOTEL, KLIA, KUALA LUMPUR

ON

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Salutations

My brother and sister judges from the Malaysian Judiciary,
Judges, judicial officers from the ASEAN Judiciaries,
Distinguished guests, ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuh and good morning.

1. I would like to extend a warm welcome to all of you to the Council of ASEAN Chief Justices (CACJ) Workshop on New Frontiers of Judicial Case Management & Best Practices. It is my distinct honour and privilege to deliver the opening address at this gathering of esteemed judicial minds from across the ASEAN region.
2. Your presence here today not only signifies the importance of this workshop but also the collective commitment to advancing judicial excellence and innovation within our region. This workshop offers an invaluable platform for us to convene and exchange our collective wisdom and experiences in the realm of judicial case management. As we grapple with increasing demands on our judicial systems, compounded by the volume and complexity of modern litigation, it is imperative that we explore and adopt innovative practices to enhance the efficacy and accessibility of our case management processes.
3. Throughout history, case management has played a vital role in both civil and criminal litigation. It is a key factor in ensuring efficiency and has become a fundamental part of modern-day legal processes. We must understand that having accessible courts is meaningless if the justice system itself lacks efficiency. This is where effective case management comes into play. By streamlining legal proceedings, it not only reduces the time and financial burdens associated with litigation but also improves access to justice. Effective case management empowers judges to optimize the scarce resource of court time, ultimately curbing delays throughout the judicial system. At the end of it all, this is of paramount significance as delayed justice

erodes the very foundation of the rule of law.

4. Historically, the litigation process operated under traditional adversarial principles, leaving the responsibility for the initiation, conduct, preparation and presentation of litigation entirely in the hands of the parties. Consequently, the parties controlled the pace of litigation, while the court's role remained largely passive. This often resulted in prolonged legal proceedings and significant delays in the delivery of justice. Recognising the need for greater efficiency and fairness, many jurisdictions introduced case management reforms to streamline court procedures, reduce backlogs and enhance the overall administration of justice. Today, case management has evolved into an integral component of judicial systems worldwide, including across the ASEAN region.
5. In the English House of Lords case of ***Ashmore v Corporation of Lloyd's***,¹ Lord Roskill aptly remarked:

"In the Commercial Court and indeed in any trial court it is the trial judge who has control of the proceedings. It is part of his duty to identify the crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of the advisers of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to the uncontrolled use of a trial judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial judge's time as is necessary for the proper determination of the relevant issues."

6. Lord Roskill's observations underscore the importance of judicial

¹ [1992] 1 WLR 446 at 448 (UKHL).

control over proceedings both in their progress towards trial and at trial. This marks a fundamental shift in the responsibility for managing civil litigation from the parties to the courts, and rightfully so. It is the court, not the lawyers or litigants, that should dictate the pace of litigation. From the commencement of litigation to its resolution, any unnecessary delay in the proceedings must be eliminated to facilitate the just and efficient resolution of cases. Steadfast judicial commitment is essential to reducing such delays and, once achieved, maintaining a current docket.

7. The justice system exists for the determination of any dispute that parties bring before it, no matter whether the party is a powerful corporation, the state or an individual. If all who wish to have their disputes resolved by the courts are to be given reasonable access to the system, the courts cannot afford to remain passive observers of parties' actions. Every case that takes too long to try and every case that is not ready to proceed at the appointed time affects other litigants who also seek timely resolution of their disputes.
8. Judges must adopt a proactive case management approach to ensure that parties are well-prepared for trial. A crucial aspect of active case management is setting a strict timetable for procedural steps leading up to trial and for the trial itself. The trial judge should maintain a firm grip on the timetable by actively managing the case to ensure readiness for trial. However, this control should not be at the expense of necessary fairness and flexibility, which are required to serve the interests of justice as the case progresses. The ultimate goal is to bring the case to trial without unnecessary delays, while ensuring equal treatment for all parties.

9. Another pivotal aspect of case management is the early identification of the principal factual and legal issues in dispute between the parties. The judge should take an active role from the outset, distilling the case to its essentials and directing counsel's focus to the issues on which the decision should turn. Once the core issues have been identified, discovery can be restricted to documents relevant to those issues, as may the factual and expert evidence to be called. This streamlined approach ensures that proceedings are focused on resolving the key issues swiftly and cost-effectively.

10. More importantly, case management is also designed to facilitate the settlement of disputes without trial. Parties are certainly not obligated to settle, but if they are amenable to negotiating a settlement, having an environment which supports that goal is crucial. After all, having access to quality civil justice does not necessarily mean justice obtained through a judicial decision, which by its very nature, is often a winner-takes-all outcome.

11. To this end, a symbiotic relationship has emerged between case management and alternative dispute resolution (ADR). In recent years, there has been a growing emphasis on developing ADR methods to encourage the settlement of disputes without trial. For instance, in 2011, the Malaysian Judiciary introduced the mechanism of court-annexed mediation as an alternative to litigation.² This form of mediation is conducted under the supervision of the court in the pre-trial stage of a case, giving the parties an opportunity to explore whether the dispute can be settled amicably before going to trial. It is

² Justice Azahar bin Mohamed, 'Court Reform Programmes: The Malaysian Experience' (2015) 102 *Amicus Curiae* 15 at 21.

a service provided by the Judiciary at no cost to the parties, using judges as mediators to help litigants reach a settlement.

12. Good case management often involves incorporating a mediation “window” into the litigation timetable at an appropriate stage. Judges should carefully assess whether each case warrants mediation during case management and actively participate in the mediation process by leveraging their unique authority to guide parties towards amicable resolutions. Earlier this year, the Right Honourable the Chief Justice of Malaysia, Tun Tengku Maimun binti Tuan Mat, called for greater reliance on mediation to address the burgeoning caseload inundating the Malaysian courts, stressing that cases should go to trial only as a last resort.³
13. While case management is well-entrenched in civil cases, its application in criminal proceedings is a more recent development. This modern necessity stems from the significant changes that criminal trials have undergone over the years. In the past, a long criminal trial lasted one or two weeks; now, it is not uncommon for such trials to extend over several months, if not years.
14. Judicial case management in criminal proceedings demands greater sensitivity. The opportunities for judicial intervention are naturally greater in civil cases than in criminal cases, where the liberty of the accused is at stake and his right to a fair trial is paramount. It is not, however, a concomitant of the entitlement to a fair trial that either or both sides are entitled to take as much time as they like, or for that

³ Speech delivered by the Right Honourable the Chief Justice of Malaysia, Tun Tengku Maimun binti Tuan Mat, at the Opening of the Legal Year 2024 (Putrajaya International Convention Centre, 15 January 2024).

matter, as long as counsel or the accused himself deems appropriate. In *R v Ulcay*,⁴ the English Court of Appeal observed:

“It is however equally elementary that the processes designed to ensure the fairness of his trial cannot be manipulated or abused by the defendant so as to derail it, and a trial is not to be stigmatised as unfair when the defendant seeking to derail it is prevented from doing so by robust judicial control. Such a defendant must face the self-inflicted consequences of his own actions.”

15. As with civil cases, criminal proceedings should be dealt with efficiently, expeditiously and, above all, justly. Each additional day that is unnecessarily consumed, while the trial meanders sluggishly to its eventual conclusion, represents another day of stressful waiting for the remaining witnesses and, more importantly, continuing and increasing distress and anxiety for other accused persons, some of whom are remanded in custody. Thus, it is essential for judges to actively manage criminal cases, ensuring that the proceedings progress in a timely and orderly fashion. Effective criminal case management is not merely a procedural necessity but a fundamental aspect of ensuring that the justice system operates in a fair, humane and compassionate manner.
16. In addition to trial courts, appellate courts have also faced significant pressures due to the rapid growth in the volume of appeals over recent years. This surge has underscored the critical importance of effective judicial case management in appellate proceedings. The efficient management of appellate cases ensures that the appeals process remains fair, timely and just. The implementation of strategic

⁴ [2008] 1 All ER 547 at 555 (UKCA).

measures, such as procedural mechanisms to filter out unmeritorious claims, prioritising cases based on urgency and importance, and establishing specialised panels to handle complex areas of law, can significantly alleviate delays and reduce backlogs. These practices enable appellate courts to allocate resources more effectively, ensuring that justice is administered without undue delay.

17. That said, case management is not solely the responsibility of the court. It is crucial to recognise that the litigants' counsel also plays a vital role in facilitating the administration of justice. This responsibility extends to the whole manner in which a client's case is presented so that the time of the court is not taken up unnecessarily, notwithstanding that the client may wish to chase every rabbit down its burrow. In essence, case management is a collaborative endeavour between the court and the litigants' counsel. The court assumes a proactive role, while counsel works in tandem to facilitate an efficient and effective case management process.

18. As ASEAN Judiciaries transition into the post-COVID era, the adoption of rigorous case management strategies has become more crucial than ever. The pandemic disrupted court operations globally, leading to significant backlogs and delays in proceedings. These unprecedented disruptions exposed the vulnerabilities of traditional court processes, underscoring the need for more resilient and adaptable case management practices. As courts faced an influx of postponed and new cases, the demand for streamlined procedures and innovative solutions became paramount. The implementation of advanced case management strategies, such as leveraging technology for online case managements, virtual hearings, electronic

filings and digital case tracking systems, has proven instrumental in mitigating delays and expediting the resolution of cases.

19. The use of modern technology has now become entrenched in judicial culture. This advancement has enabled courts to manage their dockets more efficiently, thereby ensuring the delivery of timely and fair justice in a post-pandemic world. As we continue to navigate the challenges posed by COVID-19, robust case management remains a cornerstone in our efforts to maintain public trust and confidence in the judicial system.

20. The future of case management is on the brink of significant transformation, driven by technological developments, evolving legal landscapes and the imperative for greater efficiency and accessibility within the judicial system. Across the ASEAN region, courts are swiftly adopting fully digital case management systems, replacing antiquated paper-based processes. These systems seamlessly facilitate case filing, tracking and documentation, markedly improving accessibility for all stakeholders. Online case managements and virtual hearings have become standard features, offering remote access to court proceedings and enhancing flexibility for litigants, lawyers and judges alike. Furthermore, the integration of artificial intelligence is poised to revolutionise case analysis and automation, furnishing judges with data-driven insights for more informed decision-making. This transformative technological shift positions the Judiciary to administer justice more efficiently and equitably in an increasingly digital era.

21. Another pivotal trend reshaping litigation, and consequently, the

landscape of case management, is the escalating complexity of disputes. This is particularly evident in commercial disputes, many of which are already highly complex and sophisticated, and involve voluminous amounts of evidence. However, the phenomenon of “mega-litigation” is no longer confined to high-stakes commercial cases, but has also begun to take hold in other areas like criminal litigation.⁵ To mitigate the impact of mega-litigation on our judicial system, the ASEAN Judiciary must adapt and evolve. This entails adopting more stringent pre-trial case management strategies and exercising greater control over the conduct of trials. Additionally, our courts must expand their arsenal of case management tools and demonstrate a proactive willingness to utilise them effectively.

22. Moreover, the future landscape of criminal case management in the ASEAN region would greatly benefit from incorporating approaches from therapeutic jurisprudence,⁶ which seeks to integrate judicial case management with treatment services, close supervision and immediate responses to criminal behaviour. This method involves a more collaborative style of case management to promote the psychological and physical well-being of offenders, which is the foundation of therapeutic jurisprudence. In this collaborative approach, the judge, prosecution, defence counsel, drug treatment providers and probation representatives work together to monitor and support the treatment process of each offender, aiding in behavioural change. Judges adopting this approach must adjust their judicial style to embrace a new form of “court-craft”, becoming more active,

⁵ Keynote address delivered by the Honourable the Chief Justice of Singapore, Sundaresh Menon, at the Litigation Conference 2024, ‘The Transformation of Litigation and the Litigator of the Future’ (3 April 2024).

⁶ Evan Bell, ‘Judicial Case Management’ (2009) 2 *Judicial Studies Institute Journal* 76 at 85-86.

collaborative and less formal. They must engage in direct communication with litigants, remain attuned to the personal circumstances of those appearing before them and foster positive interactions. This evolution in judicial practice further underscores the importance of adaptable and innovative case management in delivering comprehensive and humane justice.

23. The ASEAN Judiciary must play a leading role in prioritising and refining case management practices to ensure that justice is delivered efficiently, transparently and promptly, thereby contributing to the region's stability and development. Our commitment to upholding the rule of law and dispensing justice without fear or favour is rendered meaningless if there are excessive delays in the justice delivery system. No matter how good our laws or how independent and impartial our judges, justice cannot be achieved if it is too slow or too costly for the public to access.
24. However, it is paramount that fairness is never compromised in the quest for greater efficiency and speed in the disposal of cases. A judge who ignores the modern imperatives of the efficient conduct of litigation may inadvertently work an injustice on one of the parties or on litigants generally. But a judge who applies case management rules too rigidly may overlook the fallible world in which legal disputes arise and must be resolved. It is ultimately a question of balancing the need to dispose of cases expeditiously with that of fairness to prevent miscarriages of justice.
25. I look forward to the insightful discussions and exchanges that will undoubtedly emerge from the sessions lined up for today. Let us

seize this opportunity to learn, collaborate and innovate, paving the way for a more efficient and just judicial system in ASEAN.

26. In closing, I wish us all a productive and enriching workshop.

Thank you.