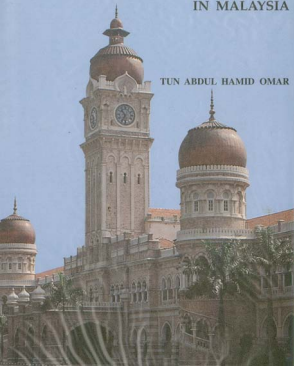


THE JUDICIARY

IN MALAYSIA

TUN ABDUL HAMID OMAR





Preface

I have for many years declined several invitations to write a book on the Malaysian judiciary. However, with the recent restructuring of the judicial system in Malaysia, and the other changes brought about by the Constitution (Amendment) Act 1994, especially the establishment of the Court of Appeal and the re-naming of the highest court in Malaysia as the Federal Court of Malaysia, together with the removal of the judicial powers exclusively vested in the High Court, the growing importance of the Syariah Courts, the increase in the number of judges and judicial commissioners to alleviate the backlog of cases, and the growing importance of the use of Bahasa Malaysia in courts, which have all had significant impact on the judiciary in Malaysia, I was finally persuaded that it was timely for a book to be written on the Malaysian judiciary. The aim of this book, therefore, is to give a comprehensive overview of the development of the Malaysian judiciary over the years and to state the current position of the judiciary in the country.

In the first part of this book, I have attempted to state the early development of the judiciary in Malaysia from its early period before independence, and then to trace its de-

velopment from the time when Malaysia achieved independence, right up to the changes brought about by the Constitution (Amendment) Act 1994. I have also discussed the many changes brought to the judicial system when Malaysia was established, and the subsequent abolishment of appeals to the Privy Council, leading to the establishment of the Supreme Court, as the highest court in the nation.

In Part Two of the book, I discuss the present position of the court structure in the country. In this regard, I have incorporated the changes introduced recently by the Constitution (Amendment) Act 1994 and the Courts of Judicature (Amendment) Act 1994, especially relating to the establishment of the Court of Appeal. Part Three of the book deals with the position of the judges and judicial commissioners in the country. I have attempted to spell out in detail, the law and practice relating to the appointment of judges, their tenure and their powers. The other chapters in the book include a discussion on the Syariah Courts, the use of Bahasa Malaysia in Courts and the Special Court.

In the final part of the book, I discuss some of the landmark decisions of the Federal Court involving constitutional and administrative law issues. In many of these cases, the Federal Court, acting as the guardian of the Constitution, has given effect to the provisions of the Federal Constitution by upholding the fundamental rights of the citizens as enshrined in the Constitution.

Throughout the book, the relevant provisions of the Federal Constitution, the Courts of Judicature Act and the Judges Remuneration Act, together with the other federal laws relating to the judiciary have been incorporated.

The writing of this book is only a humble contribution on my part to fill an important gap in the Malaysian legal literature - a book on the Malaysian judiciary. It is my earnest hope that this book will not only give the reader a comprehensive overview of the Malaysian judiciary, but also an insight into its workings.

I am greatly honoured by the Foreword written by Seri Paduka Baginda Yang di-Pertuan Agong Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman.

There are many who have assisted me in the publication of this book. Justice Dato' Dr Visu Sinnadurai provided me with invaluable assistance, not only in the collection of materials and in proof-reading the text, but also in liaising with the publishers. For his untiring efforts and valuable suggestions, I am most grateful. I would also like to record my appreciation for the assistance rendered to me by the late Mr C K G Pillay.

I have stated the law as of 1st September 1994.

Tun Dato' Seri Abdul Hamid Omar

*Chief Justice's Chambers
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7 September 1994



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