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***“THE IMPORTANCE OF SUPERIOR COURTS IN A MODERN  
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**SALUTATIONS**

Respected delegates, distinguished guests, ladies and gentlemen,

Assalamualaikum, Peace be upon you, and good afternoon.

**INTRODUCTION**

[1] I would like to begin by extending my sincerest gratitude to Mr Shyam Divan and the LAWASIA organising committee for their kind invitation to address this distinguished gathering. It is a distinct honour to be here in the beautiful and historic city of Hanoi, and to be part of the 38<sup>th</sup> LAWASIA Conference — a forum that continues to be a vital platform for

legal minds across the Asia-Pacific region to connect, converse, and collaborate.

[2] Our legal systems in this region are diverse; a country like Vietnam, our host, has its own unique legal traditions and structure. While our contexts may differ, the fundamental principles that animate the judicial function may offer parallels and, perhaps, some inspiration.

[3] The topic I have been asked to address is “The importance of Superior Courts in a modern society.” This subject, while timeless, has acquired a renewed urgency in our contemporary world. My focus will be on the Malaysian experience and I will structure my speech as follows:

- (i) First, I will contrast the foundational principles of constitutional supremacy and parliamentary supremacy to establish the bedrock of judicial authority in a constitutional democracy.
- (ii) Second, I will briefly trace the historical journey of the Malaysian judiciary, highlighting its resilience in the face of profound challenges.
- (iii) Third, I will delve into the specific functions of our Superior Courts by providing concrete examples of their role in interpreting the Federal Constitution as a living document, upholding fundamental rights, protecting the fabric of society, acting as an arbiter of federalism, and serving as a crucial check on state power.

- (iv) Finally, I will conclude by linking these judicial functions to the broader imperatives of national stability and public confidence.

[4] Through this, I hope to illustrate that modern societies (with their complex tapestries of rapid technological advancement, evolving social norms, and economic pressures) can rely on their Superior Courts to act as a stabilising anchor — an anchor forged in independence, integrity, and an unwavering commitment to the Rule of Law.

[5] As a preliminary point, I will note that at least in the Malaysian context, the term ‘Superior Courts’ denotes the two High Courts. Above them is the Court of Appeal and further above is the Federal Court – as the apex Court.

[6] These three levels of Courts collectively comprise the Superior Courts and as I will highlight in this address, they collectively bear the inherent judicial power as the sole arbiters of the Constitution.

### **Constitutional Supremacy vs Parliamentary Supremacy**

[7] To appreciate the role of Superior Courts in a nation like Malaysia, one must first understand the fundamental distinction between two competing models of governance: Parliamentary supremacy and constitutional supremacy.

[8] Parliamentary supremacy, most famously associated with the United Kingdom, holds that the legislature is the supreme legal authority. It can create or repeal any law, and no other body, including the Judiciary,

can override its legislation. Under this model, the courts' primary function is to interpret and apply the laws passed by Parliament.

[9] Malaysia, however, operates under a system of constitutional supremacy. Our written Federal Constitution is the supreme law of the land. This means that all institutions of the state — the Legislature, the Executive, and the Judiciary — are creatures of, derive their powers from, and are limited by, the Federal Constitution.

[10] This principle is enshrined in Article 4(1) of our Federal Constitution, which declares that any law inconsistent with the Constitution shall be void, to the extent of the inconsistency. As the late Lord President Tun Suffian stated in the seminal case of *Ah Thian*:

“The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of state legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.”<sup>1</sup>

[11] Under this framework, the Superior Courts are vested with a profound responsibility: the power of judicial review. This is the mechanism through which the legality of state action is scrutinised to ensure it conforms to the Constitution.

[12] This power, however, does not imply that the courts themselves are supreme. Rather, the courts act as agents and guardians of the Constitution. When a court strikes down a law for being unconstitutional,

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<sup>1</sup> *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112, at p. 113.

it is not elevating itself above Parliament; it is upholding the supremacy of the Constitution over both.

[13] Tun Suffian himself eloquently clarified this point in one of his treatises when he posed the question: “*If Parliament is not supreme... are the courts then supreme?*” His answer was both “*yes and no.*” Courts are supreme in the sense that they have the duty to invalidate laws that are inconsistent with the Federal Constitution. But they are not supreme as regards laws that are within Parliament’s power and are consistent with the Federal Constitution.<sup>2</sup>

[14] The ultimate authority is, and always must be, the Federal Constitution itself.

### **A Test of Time: The Judiciary’s Journey and Resilience**

[15] The sanctity of this constitutional arrangement was severely tested during the judicial crisis of 1988. Escalating tensions between the Executive and the Judiciary culminated in an amendment to Article 121(1) of the Federal Constitution, which sought to make judicial power contingent on federal law.<sup>3</sup>

[16] This, coupled with the removal of the then Lord President Tun Salleh Abas and other senior judges, dealt a grave blow to judicial independence. For years that followed, in what could be described as a period of judicial winter, the courts grappled with the amendment’s effect, culminating in the

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<sup>2</sup> Tun Mohamed Suffian Hashim, *An Introduction to the Constitution of Malaysia* (3rd edn, Pacifica Publications, 2007), p. 18.

<sup>3</sup> Constitution (Amendment) Act 1988 (Act A704).

Federal Court’s decision in *Kok Wah Kuan*, which held that the courts could only function in accordance with powers assigned to them by Parliament.<sup>4</sup>

[17] However, just as spring follows winter, our Judiciary experienced a renewal of strength and integrity. This judicial renaissance found its clearest expression in a trilogy of landmark cases — *Semenyih Jaya*,<sup>5</sup> *Indira Gandhi*,<sup>6</sup> and *Alma Nudo*<sup>7</sup> — the apex Court judgments which collectively restored the Judiciary’s constitutional role.

[18] Overruling *Kok Wah Kuan*, these cases decisively held that judicial power is inherent, derived from the Constitution itself, and cannot be removed or curtailed even by constitutional amendment. This marked a crucial reawakening, reaffirming the Judiciary as a co-equal and independent branch of government.

[19] This reclamation of judicial power has continued in recent years. In the 2022 case of *SIS Forum*,<sup>8</sup> the Federal Court struck down a state law that purported to grant the Syariah High Court the power to conduct judicial review. The Court held that the power of judicial review is a fundamental aspect of the judicial power of the civil Superior Courts, and cannot be conferred upon state-created Syariah courts, whose jurisdiction is strictly limited by the Constitution.

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<sup>4</sup> *Public Prosecutor v Kok Wah Kuan* [2008] 1 MLJ 1.

<sup>5</sup> *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* [2017] 3 MLJ 561.

<sup>6</sup> *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors* [2018] 1 MLJ 545.

<sup>7</sup> *Alma Nudo Atenza v Public Prosecutor and other appeals* [2019] 4 MLJ 1.

<sup>8</sup> *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356 (for convenience: “*SIS Forum No. 1*”).

[20] This was but one powerful reaffirmation of the Judiciary's role in policing the constitutional boundaries of its own power.

## **Interpreting the Constitution: A Living Document for a Modern Society**

[21] The importance of Superior Courts transcends the mechanical application of law. Their most profound function lies in the interpretation of the Constitution, not as a static text, but as a living document capable of adaptation to meet contemporary challenges.

[22] This requires a broad, purposive, and prismatic approach to ensure that fundamental rights remain meaningful. An illustration of this is the judicial interpretation of the "right to life" under Article 5(1) of the Federal Constitution. Our courts have held that the word 'life' does not mean mere animal existence but incorporates all facets integral to the quality of life, including the right to lawful employment and to live in a reasonably healthy and pollution-free environment.<sup>9</sup>

[23] Upholding fundamental rights such as the freedom of religion, freedom of speech and expression; and the right to property, is the key function of Superior Courts in a modern society.

[24] In the context of freedom of religion within the confines of a country like Malaysia that observes a dual legal system (civil and Syariah), the case of *Rosliza* comes to mind.<sup>10</sup> This case establishes a vital

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<sup>9</sup> *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261 (Court of Appeal), at page 288.

<sup>10</sup> *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181.

jurisdictional distinction between an individual who claims they “never were a Muslim” (*ab initio* cases) and one who seeks to leave the faith claiming to “no longer be a Muslim” (renunciation cases).

[25] While affirming that matters of renunciation fall exclusively within the purview of the Syariah Courts, the Federal Court decisively ruled that determining a person’s foundational legal and constitutional identity—whether they were, in fact, a Muslim to begin with—is the sole jurisdiction of the civil courts.

[26] By meticulously examining the evidence and finding that the plaintiff was an illegitimate child and was never raised as a Muslim, the court acted as the ultimate arbiter of the Federal Constitution, ensuring that an individual not factually or legally professing Islam is not wrongly subjected to the jurisdiction of the Syariah system. This demonstrates the Superior Courts’ function as a fundamental check, safeguarding an individual’s constitutional liberties by preventing the automatic or erroneous imposition of a religious status.

[27] To my mind, the judgment is also entirely consistent with the overarching spirit of Islam that is grounded on peace, patience and compassion and most cardinaly, that there shall be no compulsion in faith which remains – ultimately – a sacred matter purely between the devotee and the Divine.

[28] As regards free speech and expression, the Court of Appeal’s judgment in *Mohd Faizal Musa* is apposite.<sup>11</sup> In this case, the court

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<sup>11</sup> *Mohd Faizal bin Musa v Menteri Keselamatan Dalam Negeri* [2018] 3 MLJ 14.

scrutinized a ministerial order to ban four books on the grounds that they were “likely to be prejudicial to public order.” In rejecting a purely subjective acceptance of the Minister’s reasoning, the court applied an objective test and found the decision irrational and unreasonable, not least because the books had been circulating for years without incident.

[29] The Court of Appeal affirmed earlier cases and held that the Court must examine the actual content of the publications and that any state-invoked danger must be direct and proximate and not “remote, conjectural or far-fetched”.<sup>12</sup>

[30] In doing this, the court performed a function essential to all modern societies. This judgment exemplifies the indispensable role of Superior Courts in upholding the Rule of Law, ensuring that fundamental right and liberties like freedom of expression are not curtailed on unsubstantiated fears, thereby protecting the space for intellectual and creative discourse to flourish.

[31] On the right to property weighed against the might of the State’s wide powers of forfeiture, seizure and compulsory acquisition is concerned, the case of *Raqeem*, to my mind is a good example of how the Superior Courts drew a good balance.<sup>13</sup>

[32] This case concerned the constitutional right to property and the State’s extensive powers to freeze and seize assets under anti-money laundering laws. The Federal Court intervened after state authorities failed

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<sup>12</sup> *Ibid.*, at [33].

<sup>13</sup> *Raqeem Rizqin Enterprise dan lain-lain lwn Ketua Polis Negara dan satu lagi* [2019] 5 MLJ 693.

to either press charges or apply for forfeiture within the mandatory 12-month statutory period, leaving the appellants' assets in indefinite limbo.

[33] In ordering the immediate release of the assets, the court affirmed that such statutory time limits are not mere guidelines but essential legal safeguards. It held that the continued seizure was unlawful and a violation of Article 13 of the Federal Constitution, which guarantees that no person shall be deprived of property "save in accordance with law."

[34] This judgment, in my view epitomises the Superior Courts' vital function in a modern society: enforcing clear legal limits on executive power and ensuring that citizens are not arbitrarily deprived of their property through administrative inaction.

[35] Finally, another area I find to be of crucial importance in the context of how the Superior Court's check State power is in the context of urbanisation which remains a key characteristic of a modern or modernising society. Here, I refer to the judgment of the Federal Court in *Trellises*, which to my mind, is an astute example of how the Superior Courts mediate the core tensions of a modern society, particularly the conflict between rapid urbanization and the fundamental right to a sustainable environment.<sup>14</sup>

[36] In quashing a development order that would have converted a public park, into a high-density private development, the court decisively upheld the legally binding nature of the Kuala Lumpur Structure Plan. It ruled that the Datuk Bandar (Mayor) had acted unlawfully and ultra vires by

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<sup>14</sup> *Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals* [2023] 3 MLJ 829.

disregarding a statutory plan that was the product of public participation, thereby prioritizing long-term, regulated urban planning and environmental preservation over ad-hoc development.

[37] This judgment is also a powerful affirmation of access to justice – another important requirement in a modern society that is governed by Rule of Law. By adopting a liberal interpretation of locus standi and recognizing residents’ associations as “adversely affected” parties with a right to sue, the court dismantled procedural barriers that could have silenced the community’s voice. It confirmed that citizens with a “real and genuine interest” in protecting their public spaces can hold authorities accountable.

[38] The *Trellises* decision showcases the Superior Court’s role in a modern society: ensuring the Rule of Law is not just an abstract principle but a real and concrete mechanism for protecting public rights, preserving the environment, and guaranteeing that the path of development is transparent and legally sound.

[39] I state emphatically that by striking down some of these laws or nullifying executive action as the case might be, the Superior Courts were not overreaching but merely performing their fundamental duty to uphold the constitutional order and to ensure that the Judiciary is not reduced to a mere rubber stamp for the other branches of government.

[40] In upholding fundamental rights, the courts employ the doctrine of proportionality. This principle ensures that any legislative restriction on a constitutional right is not only objectively fair but is also proportionate to the objective sought to be achieved.

[41] For example, most recently in *Amir Hariri*,<sup>15</sup> the Federal Court struck down section 9(5) of the Peaceful Assembly Act 2012 that criminalised the failure to give prior five-day notice for a public assembly. It held that criminalisation was a disproportionate restriction on the constitutional right to assemble peaceably and that it had a chilling effect that amounted to a prohibition rather than a mere restriction on such right.

[42] However, this does not mean the Judiciary or the Superior Courts will strike down every law that places a burden on an accused person.

[43] The courts undertake a careful balancing exercise. In *Ketheeswaran*,<sup>16</sup> the Federal Court examined a provision in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, which allowed the deposition of a trafficked victim to be admitted as prima facie evidence if the victim had already been deported.

[44] While this limited the accused's ability to cross-examine the witness, the Court found the provision to be a proportionate response that balanced the rights of the accused, the plight of foreign victims, and the public interest in prosecuting heinous crimes. The measure was deemed objectively fair in the unique context of human trafficking.

[45] This demonstrates the Judiciary's nuanced role as a thoughtful arbiter, not an automatic nullifier of Parliamentary legislation. This is especially so when we consider that in all constitutional challenges, the Courts respect legislative power by presuming that all legislation is

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<sup>15</sup> *Amir Hariri bin Abd Hadi v Public Prosecutor* [2025] 4 MLJ 807.

<sup>16</sup> *Ketheeswaran a/l Kanagaratnam & Anor v Public Prosecutor* [2024] 1 MLJ 851.

constitutional unless the challenging party can clearly establish its unconstitutionality.

### **Protecting the Fabric of Society: Upholding Equality and Justice**

[46] The Superior Courts are also the vigilant protectors of the social fabric, safeguarding the rights of the marginalised and ensuring the promise of equality is fulfilled. In cases concerning abandoned or stateless children, for instance, the Superior Courts have given a humane and purposive interpretation to our citizenship laws to prevent statelessness, affirming that the Constitution must be interpreted in a way that avoids absurdity and injustice.

[47] In the case of *CCH*,<sup>17</sup> the Federal Court was faced with the case of a newborn child, abandoned at a hospital in Malaysia, whose parents were unknown. The authorities had registered the child as a non-citizen, effectively rendering him stateless.

[48] The Court had to interpret a constitutional provision — section 19B of the Second Schedule—which states that a ‘new born child found exposed’ is to be presumed born to a mother permanently resident in that location. The Court held that the phrase ‘found exposed’ must be read broadly to include abandoned children, thereby ensuring the constitutional mechanism designed to prevent statelessness was not rendered illusory. By applying this presumption, the child was granted citizenship by operation of law, a decision that affirmed the Court’s role in upholding the overarching constitutional intent to avoid statelessness.

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<sup>17</sup> *CCH & Anor v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71

[49] Sadly, the decisions in this field are not always straightforward. In another case, *CTEB*,<sup>18</sup> the Federal Court was divided on the issue of citizenship for a child born overseas to a Malaysian father and a foreign mother, who were not married at the time of his birth. The majority adopted a restrictive interpretation, holding that under section 17 of the Second Schedule of the Federal Constitution, the citizenship of an illegitimate child must follow that of the mother. Since the mother was a foreigner, the child was denied citizenship by operation of law, notwithstanding the undeniable blood-tie to his Malaysian father. It effectively forced the child to bear the consequences of circumstances that were completely beyond his control and dependent entirely on his or her unchangeable fact of birth. The same might not have been the case if he was an illegitimate child born to a Malaysian mother.

[50] The minority of the Court in that case accordingly took the view that such an interpretation was untenable as it created unconstitutional discrimination on the grounds of both gender and legitimacy, contrary to the equality guarantee in Article 8 of the Constitution.

[51] The minority further reasoned that the principle of *jus sanguinis*, or entitlement to citizenship by right of blood, is a fundamental tenet of Malaysian citizenship laws and should not be defeated by a narrow reading of a supplementary provision of the Federal Constitution. The dissenting judges took the view that the provisions of the Federal Constitution on citizenship were intended as a shield to *prevent* statelessness — by allowing a child with an unknown father to gain

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<sup>18</sup> *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236.

citizenship through their mother — not as a sword to *create* statelessness by denying a child their father’s citizenship.

[52] While these differing judicial opinions highlight the ongoing interpretative struggle within the Judiciary to construe the Constitution in a manner that is both legally sound and fundamentally just, it nonetheless displays the crucial role the Superior Courts play regarding fundamental national issues in these modern times.

[53] Another particularly poignant area where the Superior Courts play a stabilising role is in navigating the complexities of Malaysia’s dual legal system – that sees some exclusive application of Syariah law in addition to civil laws.

[54] In the celebrated case of *Indira Gandhi* which was one of the landmark cases in the trilogy I cited earlier, the Superior Courts were confronted with the unilateral conversion of three children to Islam by their father, who had converted without the knowledge or consent of their non-Muslim mother.<sup>19</sup>

[55] The Federal Court, held that the civil courts retained jurisdiction to review the administrative acts of religious authorities. It ruled that the conversion certificates were void because the Registrar of Muallafs (Muallafs is a term referring to those who have converted to Islam from other religions) had acted outside his statutory powers by not ensuring the children were present and had uttered the affirmation of faith.

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<sup>19</sup> *Indira Gandhi*, supra at no. 6.

[56] More fundamentally, the Court interpreted the word “parent” in Article 12(4) of our Constitution purposively to mean both parents, where both are surviving. The unilateral conversion was therefore unconstitutional. This judgment was a testament to the court’s role in protecting the rights of the non-converting spouse and children, ensuring that justice prevails within the family unit.

[57] This protective role extends to ensuring gender equality.

[58] In *Lai Hen Beng* decided recently, the Federal Court struck down section 498 of the Penal Code — a pre-independence law that criminalised the enticement of a married woman.<sup>20</sup>

[59] The Court found the provision to be an archaic and discriminatory law rooted in the idea that women were the property of their husbands. In an exercise of its constitutional power to modify pre-Merdeka laws to bring them into accord with the Constitution, the Court judicially repealed the section and declared it void for violating the constitutional guarantee of gender equality under Article 8(2).

[60] Similarly, our Superior Courts have extended constitutional protection to vulnerable communities. In the landmark case of *Adong bin Kuwau*, the High Court recognised that the customary land rights of our indigenous peoples constituted ‘property’ within the meaning of Article 13 of the Constitution. It held that the state could not extinguish these rights, which are rooted in tradition and custom, without the payment of fair and adequate compensation.<sup>21</sup>

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<sup>20</sup> *Lai Hen Beng v Public Prosecutor* [2024] 1 MLJ 225.

<sup>21</sup> *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor* [1997] 1 MLJ 418.

[61] The above cases are but some examples how the Superior Courts in Malaysia play a fundamental role in the protection and preservation of fundamental rights and liberties of the peoples within its purview.

### **The Arbiter of Federalism**

[62] In a federal system such as Malaysia's, the Superior Courts also perform the vital role of an impartial arbiter, ensuring that both federal and State legislatures act within their respective constitutional domains.

[63] While the lines that separate their jurisdictions have already been drawn in the Federal Constitution, the role of the Court is usually to clarify the extent of that line or if necessary, make a determination of transgression by the trespassing side.

[64] A recent example of this exercise can be seen in the case of *Nik Elin*.<sup>22</sup> There, the Federal Court was petitioned to determine the validity of several criminal provisions in a Kelantan state enactment. Applying the 'pith and substance' doctrine, the Court meticulously analysed each provision and held that sixteen of the eighteen challenged provisions were unconstitutional.

[65] It found that these provisions dealt with matters of general criminal law, which fall under the exclusive legislative power of the Federal Parliament, and not the State Legislature.

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<sup>22</sup> *Nik Elin Zurina bt Nik Abdul Rashid & Anor v Kerajaan Negeri Kelantan* [2024] 2 MLJ 150.

[66] This decision, along with notable earlier ones like *Iki Putra*,<sup>23</sup> was not about the morality of the acts criminalised, but was a profound reaffirmation of the principle of federalism and the constitutional limits placed on legislative power. This judicial oversight is crucial for maintaining stability and legal certainty in a federation.

[67] Similarly, in the second *SIS Forum* case in 2025, the court ruled that a state-issued fatwa (or religious edict) could not apply to a corporate body, as a company is incapable of “professing a religion,” nor could the fatwa direct federal agencies like the Malaysian Communications and Multimedia Commission, as this would be an overreach into the federal domain.<sup>24</sup>

[68] These decisions underscore the Superior Courts’ indispensable role in maintaining the delicate balance of power in a federal structure.

### **The Judiciary as a Check on Overall State Power**

[69] Another crucial role for the Superior Courts in a modern democratic state is to serve as a check on executive and legislative power.

[70] In carrying out this role, however, the Superior Courts or the Judiciary has and must continue to remain mindful of its own constitutional boundaries – in the context of exercising restraint by not straying into matters that are not within its purview.

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<sup>23</sup> *Iki Putra Mubarrak v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 323.

<sup>24</sup> *SIS Forum (M) & Anor v Jawatankuasa Fatwa Negeri Selangor & Ors* [2025] 4 MLJ 625 (for convenience “*SIS Forum No. 2*”).

[71] As noted in the earlier-cited case in *Lai Hen Beng*, the Superior Courts' function is to determine legislative *validity*, not legislative *desirability*. The courts do not substitute their own policy views for those of the legislature; rather, they ensure that all laws comply with the Constitution. This principle is not only about ensuring legality but also about maintaining public confidence that power is not exercised arbitrarily.<sup>25</sup>

[72] This principle is evident in how our Superior Courts have dealt with legislative provisions that seek to undermine the judicial process. In the earlier-cited *Alma Nudo*, the Federal Court struck down a provision in the Dangerous Drugs Act 1952 that permitted a 'presumption upon a presumption', holding that it was a grave departure from the general rule that the prosecution must prove the guilt of the accused beyond reasonable doubt and that the 'presumption upon presumption' had violated the presumption of innocence.<sup>26</sup>

[73] In *Zaidi Kanapiah*, the Court examined a provision in the Prevention of Crime Act 1959 that compelled a Magistrate to issue fixed-period remand orders upon the Executive's application, thereby removing judicial discretion. The minority judgment of the Federal Court, whose reasoning was later adopted as law, held this to be an unconstitutional intrusion into judicial power.<sup>27</sup>

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<sup>25</sup> *Lai Heng Beng*, supra at no. 20, at [102]-[103].

<sup>26</sup> *Alma Nudo*, supra at no. 7.

<sup>27</sup> *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759.

[74] Following this line of reasoning, in cases like *Nivesh Nair*<sup>28</sup> and *Dhinesh Tanaphll*,<sup>29</sup> the Federal Court declared ouster clauses unconstitutional. It held that legislative provisions that attempt to exclude executive actions from judicial review represent an impermissible legislative intrusion into judicial power and an affront to the Rule of Law.

### **Judicial Independence as the Cornerstone of National Stability and Confidence**

[75] The examples from Malaysia illustrate a universal truth: an independent, impartial, and courageous Judiciary is essential to a modern, functioning society. Also an independent Judiciary, in our case the Superior Courts, is the ultimate guarantor of the separation of powers.

[76] By ensuring that no single branch of government oversteps its constitutional boundaries, the Superior Courts prevent the concentration of power and maintain the delicate system of checks and balances that is critical to a modern society and stable democracy.

[77] This stability, in turn, fosters confidence. For investors, both domestic and international, a predictable legal framework upheld by an independent Judiciary is a prerequisite for long-term economic planning. It assures them that contracts will be enforced, property rights will be protected, and disputes will be resolved impartially, according to law.

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<sup>28</sup> *Nivesh Nair a/l Mohan v Dato' Abdul Razak bin Musa, Pengerusi Lembaga Pencegahan Jenayah & Ors* [Case No: 05(HC)-7-01/2020(W)], decided on 25 April 2022].

<sup>29</sup> *Dhinesh Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356.

[78] For the public, a strong Judiciary builds trust in our institutions. It gives citizens the assurance that their fundamental rights will be defended, that the government will be held accountable, and that justice will be administered without fear or favour. Public trust is the very cornerstone of judicial legitimacy. Without it, the Rule of Law weakens and the assurance of justice fades.

[79] To discharge our duties effectively, judicial independence is an absolute necessity. It is not a privilege for judges, but a right and legitimate expectation of the people they are meant to serve.

[80] It is only when the Judiciary is truly independent, and its judges act with unimpeachable integrity, that public confidence in the administration of justice can be sustained.

## **CONCLUSION**

[81] While our legal systems across the Asia-Pacific may differ, the fundamental challenges we face and the principles we strive to uphold are remarkably similar.

[82] I am confident that through forums like this LAWASIA conference, we can learn from one another's experiences, strengthen our collective resolve, and continue to build Judiciaries that are resilient, responsive, and truly serve the needs of our modern societies.

Thank you.