

THE MEDICO-LEGAL SOCIETY OF MALAYSIA ***(PERSATUAN PERUBATAN UNDANG-UNDANG MALAYSIA)***

Committee 2012/2013

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Press statement on proposed amendments to law on statutory rape to make imprisonment mandatory

The Medico Legal Society of Malaysia (MLSM) notes the recent press reports indicating that the government will table, at the next Parliament sitting, amendments to the law precluding judges from exercising any discretionary power over the sentencing of statutory rapists and thereby making imprisonment mandatory. The proposal stems from public uproar in the media when the cases of former national bowler Noor Afizal Azizan and electrician Chuah Guan Jiu came to light. They were bound over for five years and three years respectively on a RM25,000 good behaviour bond each after being found guilty of statutory rape. The trial judges in both cases stated, when considering sentencing, that they had taken the "bright futures" of both men into consideration together with the fact the sex acts were "consensual".

Despite public outcry over the perceived lenient sentences received by the two men from the trial judges in their respective cases, MLSM would like to caution against any "knee-jerk" reaction based on media reports of the cases. This is especially so as the full facts of both cases are not in the public domain. The existing law with its discretionary element has worked well for many years and as such MLSM is of the view that there is no need for any amendments. MLSM believes that each case should be dealt with on its own facts and as such it is important to allow trial judges an element of discretion in respect of sentencing. In the event a sentence is thought to be inadequate, there are existing avenues of appeal. This was seen in the case of Chuah Guan Jin mentioned above whose initial binding over sentence by the Sessions Court in Penang was overturned on appeal by the High Court to five years and five and a half years' jail, to be served concurrently, for two counts of statutory rape.

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Making imprisonment mandatory for statutory rape in situations involving sexually active teenagers or youths in what may be considered "youthful indiscretion" may cause "injustice" and the wisdom of such sentencing questioned. Should some of these youths be better off being rehabilitated elsewhere than in prison where there have been many accounts of people coming out of prison "bigger" criminals than before they went in. Would counselling or other forms of "punishment" be more appropriate? MLSM believes that sentencing is best left to the discretion of the judges taking into account the circumstances of each case. Matured judicial assessment is important. We must not allow politicised public reaction to be the foundation of our jurisprudence. In this regard, the proposal by the Government to set up a sentencing council to ensure the streamlining of criminal punishment meted out by the courts is a good idea that should be pursued instead.

The Medico Legal Society of Malaysia

18 December 2012