



PRESS RELEASE
27 May 2015

“A Lawyer’s Duties Are Always in the Interest of the Public.”

The Advocates Association of Sarawak issues this press release in response to the recent article in the Borneo Post published on 17 May 2015 entitled “Lawyers Reminded Not To Be Self-Centered” which reported statements allegedly made by Minister in the Prime Minister’s Department Hajjah Nancy Shukri on 16 May 2015. The statements were in respect of the Court of Appeal’s recent acquittal of Mr Bunya Jalong of rape charges allegedly committed in 2011. The Minister’s statements have since been widely circulated in the national media.

The newspaper article reported the Minister as reminding lawyers not to be self-centered when dealing with cases involving minors. She was reported as saying, “When you talk about law, everyone must remember that the law is meant for all of us. Lawyers must not just think of their client, they must take public interest into consideration.” “At the back of your mind, you must have life values”.

The Association, its members and legal practitioners in general are disappointed with the Minister’s statements in the article. They are unfair and sadly evince a fundamental lack of awareness of the role of advocates in any democratic system of justice. More worryingly, such statements only cause confusion in the public’s understanding of our legal system and their expectations of lawyers.

Malaysia practices an adversarial system of law. Two lawyers argue and represent their respective client’s position before a judge or judges who must then decide in favour of one party over the other based on the strength of their facts and the position of the law. In a criminal trial (as opposed to a civil matter), the person whose fate the Court must decide is the one accused by the State of violating the law. He or she must face the full might and resources that the State can bring to bear against him/her in Court. The Accused person is presumed to be innocent until proven guilty and the Prosecution bears the burden to prove guilt beyond a reasonable doubt.

What stand between him and the State are his rights as enshrined in the Federal Constitution and his defense counsel who must seek to enforce his client’s rights. Article 8 of the Federal Constitution provides that every citizen is equal before the law. Every citizen is also offered protection by the law equally. And his defense counsel will fight for him in seeking that equal treatment and protection; putting forward within the strict confines of the law and ethics, the relevant facts, evidence and legal arguments that will persuade the Court to favour his client.

Our society may despise rapists, robbers and murderers but it is not for the lawyer to take it upon himself to decide who is worthy of legal representation and who is not. It is not for the lawyer to play the role of the Judge, to pass judgment or deny a citizen his right to the law’s

protection based on society's stereotypes and prejudices. How else are those who society deems as unpopular to get legal representation if lawyers only act for clients whose views they agree with?

The lawyer who chooses to represent those who our society reviles is not self-centered or devoid of life values. Very much to the contrary, he is selfless. He has the public interest at heart. He plays his role in serving the democratic process and ensuring all citizens up against the State, its machinery and its resources have a chance at a fair hearing. It is his hard work in fighting for his client, laying out a robust defense that will enable judges to execute their duties in investigating the facts and merits of the case, and ultimately ensuring that justice is done.

Each time a lawyer rises in Court to defend an Accused, he demonstrates his commitment to the Rule of Law. He ensures there is due process. It is every lawyer's shared belief that the common good is served when every citizen is guaranteed a fair trial. These are our life values and they are at the forefront of what we do each day.

It is the duty of our elected representatives in the Legislature to pass laws that reflect our society's values. The Courts then ensure that justice is dispensed in accordance with such laws. These roles cannot be reversed. It is neither for the Court nor the defense to play the role of law-maker and make new laws through judicial means. This would be to usurp the role of the Legislature.

Instead of criticizing the legal fraternity, the real agenda today must be to review the laws on sexual offences and to set in motion legislative reforms. Mr Bunya Jalong's acquittal stems from loopholes in our existing laws in relation to the definition of rape and what appear to be inappropriate charges being preferred against the Accused, not from an unethical devious defense mounted by his defense counsel. Both the Court of Appeal and the defense merely executed their duties in accordance with the law as it stands.

If anything, the widespread public outrage at Mr Bunya Jalong's acquittal shows that it is time for legislative reform of rape laws. There are flaws in our laws and we must address them in order to protect children's and victims' rights. The coming reforms, if and when they materialise, must relook the traditional definition of rape as forcible penile penetration and broaden it to cover any act against either male or female that involves any oral, vaginal or anal penetration by any object or body part. It is rape if it occurs without consent.

The Advocates Association of Sarawak invites the Honourable Minister to engage us. We always stand ready to offer our constructive views and feedback on all legal matters of public interest.

Leonard David Shim
President
Central Committee
Advocates Association of Sarawak.