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Defamation

END OF MEGA SUITS IN SIGHT

By: Kuah Guan Oo

KUALA LUMPUR, April 13 (Bernama) - The spate of mega defamation suits that kept the nation agog and newsmen on tenterhooks is likely to come to an end by the new year.

For one thing, the Minister in the Prime Minister's Department, Datuk Dr Rais Yatim, has pledged to table the amendments to the Defamation Act 1957 to Parliament for consideration by the end of the year.

"We will work very hard for the amendments and come out with it at the end of the year. Of course, this is easier said than done," he said in an interview with Bernama.

Newly elected Bar Council president Mah Weng Kwai could not agree more, saying that it would not be an easy job for the draftsmen in the Attorney-General's Chambers to do.

Dr Rais said he is having a series of meetings with these draftsmen to amend the act and set a cap for defamation suits that now run into billions or hundreds of million ringgit.

He had heard from the judiciary, the Bar Council, non-governmental organisations and both ruling and opposition parties on the mega suits and all were in agreement that the mega-mania should end.

Dr Rais, who did his doctoral dissertation on "Rule of Law", said he was the first to propose to amend the act last year but the then Chief Justice, Tun Eusoff Chin, was not in favour of it.

In fact, he was for a review of several other legislations since he was appointed as a minister. Among them are the Printing Presses and Publications Act, the Seditious Act, the Emergency Ordinance, the Internal Security Act and the Civil Law.

He said in amending the Defamation Act, the first consideration is the legal basis or principle to cap the ceiling for damages, so that the quantum is seen as reasonable and not arbitrary.

The second but more important consideration is to give the judges the judicial freedom to assess the damages.

Mah on his part, said lawyers are very reluctant to curtail or set a limit to the discretion of the judge. But for the sake of ending the mega suits, they have asked for a cap on the damages.

Dr Rais said the third consideration is how the limits to be set would compare with the awards given out under the civil law, say, for the loss of a limb.

In assessing the quantum of damages, they would have to look at the actual loss, pecuniary loss, damage to reputation and business of the plaintiff.

"While loss of incomes can be proven with income tax returns, how does one assess damages for loss of reputation," he asked

For a personage like the Prime Minister or cabinet minister, the quantum will of course be higher.

"The damages to be awarded must relate to actual loss," he said, adding that in some cases, a public apology should suffice.

The root cause of the mega suits is that the present defamation law is silent on the amount of damages a litigant can ask for. But until 1996 when there came a string of 10 mega suits, the damages sought did not go into astronomical figures.

The Bar Council president said in the past, litigants mainly claimed for general damages without stating quantum, leaving it to the court to

decide.

Mah, who sees the present situation as ridiculous, said lawyers are responsible because they should have advised their clients on the general damages sought.

"They should exercise restraint and advise their clients on the damages sought or if the client asks for too much," he said.

Apart from general damages, there are the special damages which can be backed by receipts, while special damages are hardly asked for. Costs too can be quantified and they include lawyer's fees, filing charges and so on.

Mah said the amount of general damages sought and awarded should reflect the reality of the Malaysian situation. "How many of us earn a million ringgit a year in this country," he asked.

He commended the Deputy President of Parti Keadilan Nasional, Dr Chandra Muzaffar, for deleting the quantum of RM70 million in general damages sought in his defamation suit against former Assistant Governor of Bank Negara Datuk Abdul Murad Khalid.

Dr Rais said he agreed with Mah's views and praised the Bar Council for owning up that lawyers were responsible for the spate of mega suits.

"It is not easy for them to own up, I appreciate it," he said, adding that he finds most of their proposals practical and that they have the interests of the nation at heart.

The Bar has in its memorandum on the matter asked, among other things, that the defence of qualified privilege be extended to the media in relation to public interest publications about politicians, whether local, national or international so long as it acted reasonably at every stage.

From an exhaustive survey on the changes to defamation laws in the Commonwealth countries, it also noted that the scope of qualified privilege has been extended to provide protection to journalistic sources.

Dr Rais said in reviewing of the laws, the government would not rely on the footprints of legal system of the United Kingdom alone but would also look at the developments in other Commonwealth countries.

In 1984 when the government amended the Civil Law Act to cap compensation for personal injuries to RM10,000, the rationale was to pre-empt a litigious society.

Prime Minister Datuk Seri Dr Mahathir Mohamad said then that the changes were to prevent an undesirable situation where a person could sue anyone, including the doctor who treated him or anyone who helped him while he was injured.

The Bar Council had taken exception to the amendments then because the government had not consulted it prior to the amendments, and the council found shortcomings in the law, like paying RM10,000 for bereavement or loss of a limb.

Dr Rais agreed that the amendments have created fresh problems in that a person with a higher earning capacity would lose out when he is incapacitated due to an accident and so on.

He also agreed with the perception that it was an opportunity missed by the Bar Council and the public at large when they did not pressure the government then to include a cap on defamation suits.

But Mah did not agree that it was a missed opportunity to amend the Defamation Act.

"They were few defamation suits then and they were far in between. The damages asked were also not huge sums," he said.

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