

## **Anwar's unsworn statement now a weighty matter before the Federal Court**

**Malaysian Insider**

**Oct 29, 2014**

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How much weight should be given to a statement from the dock by an accused person in a criminal trial?

This is one of the matters before a five-man bench in the Federal Court, which is now in its second day of hearing Datuk Seri Anwar Ibrahim's appeal against his sodomy conviction.

The significance of this issue lies in the fact that as an unsworn statement, testimony from the dock is not admissible and it also cannot be cross-examined.

Anwar's defence lawyers are arguing that a statement from the dock should be given weightage.

During his sodomy trial at the High Court, Anwar had read a 32-page statement, in which he said the sodomy charge against him was a political conspiracy. The High Court and the Court of Appeal, however, had dismissed it, regarding it as a "bare denial" of the offence.

Anwar's lawyer N. Surendran this morning cited six case laws in support of evidence from the dock. Surendran had been asked yesterday by Chief Justice Tun Arifin Zakaria to produce authorities so that the court could decide on the matter.

The lawyer told the judges that it was for the court to determine the weight to be attached when an accused person gave a statement from the dock.

"We hope the apex court will seize this opportunity to make a clear finding on unsworn statements given from the dock. At present, there is some ambiguity," he told The Malaysian Insider during a break at the hearing today.

Anwar, at his trial had elected to give an unsworn statement, one of the three options available to him.

The other options were to give evidence from the witness box where the prosecution could cross examine him, or to remain silent.

Anwar's statement from the dock contained strong accusations based on the theory of a political conspiracy.

In his statement, Anwar had said the sodomy charge against him was a plot by then deputy prime minister Datuk Seri Najib Razak to end the opposition leader's political

career by sending him to jail.

He had also attacked the complainant, his former aide Mohd Saiful Bukhari Azlan, saying that he was too old and weak to have been able to commit sodomy as alleged.

Anwar had also suggested that Saiful's DNA sample obtained by the chemist did not come from the specimens taken from Saiful's rectum.

The opposition leader also called the trial process flawed and said he had been denied a fair trial.

Surendran yesterday told the court that Saiful had confessed to meeting Najib and senior police officer Datuk Mohd Rodwan Mohd Yusof on June 24, 2008, two days before he was allegedly sodomised by Anwar.

He had also contacted the then Inspector-General of Police on June 25 and after the incident, he met Mohd Ezam Mohd Noor, Datuk Mumtaz Begum Abdul Jaafar and Rahimi Osman – individuals associated with the political party Umno.

Surendran said the Court of Appeal which convicted Anwar of sodomy had completely dismissed his statement on the dock and had instead made adverse comments.

"The Court of Appeal said the trial judge 'could quite properly wonder' why Anwar had made an unsworn statement," he said.

However, Surendran said the trial judge (Datuk Mohamad Zabidin Mohd Diah) made no such finding.

"Instead of considering the weight to be given to the statement, the Court of Appeal adopted an unbalanced view and failed to consider it at all," he said.

Surendran said the trial judge failed to sufficiently evaluate the statement, and should have done so especially because of evidence of a "pre-arranged plan" by Saiful against Anwar.

He said Anwar had answered Saiful's evidence in his statement but the Court of Appeal failed to appreciate that.

Anwar is accused of committing the offence at a unit of the Desa Damansara condominium in Bukit Damansara, between 3.10pm and 4.30pm, on June 26, 2008.

He was sentenced to five years' jail by the Court of Appeal but the prosecution has also cross appealed to enhance the punishment. – October 29, 2014.

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