

Don't give Anwar any more 'cherry' court urged
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Former opposition leader Anwar Ibrahim had wrongly named the government as a respondent in his latest attempt to set aside his second sodomy conviction and instead should have named the attorney-general (AG).

Senior federal counsel Awang Armadajaya Awang Mahmud said it was not the government that led the prosecution against Anwar but the AG, who was acting under Article 145(3) as the public prosecutor.

"Hence, as the proper party had not been named, the application by the plaintiff should be struck out," Awang Armadajaya said.

"Anwar's allegations in claiming fraud that led to his conviction are also bordering on sedition as it also questions the courts and the role of AG and this threatens the doctrine of the separation of powers," he argued.

Awang Armadajaya added that Anwar had also not provided sufficient details and information to support his claim of fraud, such as who had allegedly committed it and other particulars.

There was also nothing in his statement of claim to suggest such, the senior federal counsel noted.

Awang Armadajaya also had strong words on the possible suggestion that fraud was committed by lead prosecutor Yusof Zainal Abiden at the High Court in Kuala Lumpur.

In Anwar's case, he said, he was acquitted by the High Court and on the prosecutor's appeal, Anwar was found guilty by the Court of Appeal and this decision was upheld by the Federal Court.

Anwar also had two reviews of his conviction dismissed by the Federal Court, Awang Armadajaya said.

"You cannot let him to have further bites of the cherry. He has already been given that opportunity twice," he said.

Anwar had in April filed an application **to set aside** his second sodomy conviction on the grounds that the court had relied on fraudulent evidence from Mohd Saiful Bukhari Azlan.

Clear triable issues

Anwar's lawyer N Surendran, told the court that it should not allow the government's striking-out application as there were clearly triable issues.

Surendran said the court could not rely on the principles of *res judicata* as this was a new application, where further evidence would be adduced.

He said the allegations of fraud had been pleaded and for the purposes of striking out the plaintiff's claim, they should be presumed true.

He added that his client was making the application under Section 44 of the Evidence Act, where the Act provides that any party to a suit or other proceeding may show that any judgment, which has been proved by the adverse party, was delivered by a court not competent to deliver it or was obtained by fraud or collusion.

"This provision is an exception to the doctrine of *res judicata* as provided by Section 40 of the same Act.

Surendran (*above*) further denied that Anwar's application was an abuse of the court process, frivolous or vexatious.

He maintained that the application was not a challenge to the judicial procedure and should not be regarded as such.

Besides Surendran, lawyers Latheefa Koya and Shahid Adli Kamarudin also appeared for Anwar.

Justice Nik Hasmat Nik Mohamad fixed March 12 to deliver her decision.

Anwar was convicted of sodomy for the second time in March 2015 and sentenced to five years imprisonment. His first conviction for sodomy was in August 2000.

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