As Malaysia tests AI court sentencing, some lawyers fear for justice

By Rina Chandran, Thomson Reuters   12 April 2022

Few cases ruffle Hamid Ismail after nearly two decades as a lawyer, but he was taken aback when a man he defended was sentenced with the help of an artificial intelligence tool in the Malaysian state of Sabah. Ismail knew courts in Sabah and neighbouring Sarawak were testing the AI tool for sentencing recommendations as part of a nationwide pilot, but was uneasy that the technology was being used before lawyers, judges and the public fully understood it. There was no proper consultation, and it is not contemplated in the country's criminal code ."Our Criminal Procedure Code does not provide for use of AI in the courts ... I think it's unconstitutional," he said, adding that the AI-recommended sentence for his client for a minor drug possession charge was too harsh.[…]

World over, the use of Artificial Intelligence in the criminal justice system is growing quickly, from the popular DoNotPay chatbot lawyer to robot judges in Estonia adjudicating small claims, to robot mediators in Canada and AI judges in Chinese courts.

Authorities say AI-based systems make sentencing more consistent and can clear case backlogs quickly and cheaply, helping all parties in legal proceedings to avoid lengthy, expensive and stressful litigation.

Critics warn AI risks entrenching and amplifying bias against minorities and marginalised groups, saying the technology lacks a judge's ability to weigh up individual circumstances, or adapt to changing social customs. "In sentencing, judges don't just look at the facts of the case - they also consider mitigating factors, and use their discretion. But AI cannot use discretion," Ismail claimed. Considering aggravating and mitigating factors "requires a human mind", said Charles Hector Fernandez, a Malaysian human rights lawyer. "Sentences also vary with changing times and changing public opinion. We need more judges and prosecutors to handle increasing caseloads; AI cannot replace human judges,".[…]

Technology does have the potential to improve efficiency in the criminal justice system, said Simon Chesterman, a professor of law at the National University of Singapore. But its legitimacy depends not only on the accuracy of the decisions made, but also the manner in which they are made, he added.

Malaysia's Bar Council, which represents lawyers, has also voiced concern about the AI pilot. When courts in Kuala Lumpur, the capital, started using it in mid-2021 for sentencing in 20 types of crimes, the council said it was "not given guidelines at all, and we had no opportunity to get feedback from criminal law practitioners".[…]