

DALAM MAHKAMAH TINGGI MALAYA DI TEMERLOH

DALAM NEGERI PAHANG DARUL MAKMUR

GUAMAN SIVIL NO: CB-21CY-5-04/2022

ANTARA

KERAJAAN NEGERI PAHANG

... PLAINTIF

DAN

SHARIFFA SABRINA BINTI SYED AKIL

(NO. K/P: 620611-07-5536)

... DEFENDAN

ALASAN PENGHAKIMAN

Pendahuluan

[1] Ini adalah permohonan Defendan untuk satu perintah di bawah Aturan 18 kaedah 19 (1) (a), (b) dan (d) Kaedah-kaedah Mahkamah (KKM) 2012 untuk Writ Saman bertarikh 07.04.2022 dan Penyata Tuntutan dibatalkan. Alasan permohonan ini adalah disebabkan saman ini tidak mendedahkan sebarang kausa tindakan yang munasabah. Ia juga disebabkan tiadanya elemen-elemen untuk satu tindakan fitnah.



[2] Di dalam notis permohonan dinyatakan Defendan tidak pernah membuat pernyataan fitnah atau mengacau Plaintiff sehingga Plaintiff terancam atau menjejaskan nama baik dan reputasi Plaintiff. Defendan juga menyatakan bahawa Plaintiff tidak dapat menunjukkan bahawa kenyataan dan penerbitan oleh Defendan telah menjatuhkan reputasi Plaintiff.

[3] Defendan menyatakan bahawa sekiranya ada penerbitan tersebut ia hanyalah merujuk kepada Plaintiff sebagai sebuah Kerajaan Negeri yang seharusnya terbuka kepada kritikan rakyat Malaysia dan ia adalah satu inuendo.

[4] Syariffa Sabrina binti Syed Akil di dalam Affidavit Sokongannya telah menyatakan bahawa Plaintiff tidak mempunyai kausa tindakan kerana di dalam tiga penerbitan yang dikatakan dibuat oleh pihak Defendan tidak pernah menamakan Plaintiff secara langsung atau sebaliknya. Selain daripada itu kenyataan Defendan juga dikatakan dibuat secara am dan tidak pernah ditujukan kepada Plaintiff. Syariffa Sabrina juga menyatakan bahawa asas kepada tuntutan pihak Plaintiff adalah perasaan bimbang terhadap kenyataan yang dikatakan oleh Defendan akan menjejaskan reputasi Plaintiff. Ia tidak mencukupi untuk menjadi asas kepada satu tuntutan fitnah.

[5] Di dalam Affidavit yang sama juga telah dinyatakan bahawa Plaintiff sebagai sebuah Kerajaan Negeri seharusnya terbuka kepada kritikan rakyat Malaysia di dalam jangkaan bahawa kritikan tersebut akan memperbaiki kualiti gerak kerja Kerajaan tersebut. Malahan



ditegaskan di perenggan 10 Affidavit Sokongan tersebut bahawa tindakan fitnah Plaintiff menjejaskan kebebasan suara rakyat Malaysia dan adalah tidak munasabah untuk sesebuah Kerajaan membawa tindakan fitnah terhadap segala komen dan kritikan rakyat Malaysia yang tidak menyenangkan terhadap sesebuah Kerajaan.

[6] Defendan juga di dalam Affidavit Sokongan tersebut menyatakan bahawa segala kenyataan yang dinyatakan dalam pernyataan tersebut adalah berdasarkan kepada fakta yang benar iaitu sejak tahun 1995 hingga kini beberapa kawasan di Negeri Pahang seperti Karak, Mentakab, Cameron Highlands, Raub, Bentong dan Temerloh kerap menjadi lokasi kejadian tanah runtuh dan banjir pada musim hujan. Ia telah menyebabkan kematian dan membahayakan ramai rakyat Malaysia di kawasan tersebut. Defendan menyatakan bahawa ia adalah merupakan isu yang bukannya baharu dan telah diketahui oleh warganegara Malaysia melalui laporan-laporan media masa. Oleh itu penerbitan-penerbitan yang dibuat oleh Defendan adalah suatu yang berdasarkan fakta dan jujur serta munasabah. Defendan juga menyatakan bahawa dia tidak menunjukkan niat jahat dalam pernyataan-pernyataan yang dikatakan dibuat oleh Defendan. Dia juga tidak menghina atau merendahkan maruah Plaintiff. Defendan juga menyatakan bahawa sebagai seorang bekas Pengerusi Pertubuhan Perlindungan Khazanah Alam Malaysia (PEKA) mempunyai tanggungjawab sosial dan moral untuk memberikan kenyataan-kenyataan berkaitan dengan isu alam sekitar.



[7] Sebaliknya di dalam Affidavit Jawapan Plaintiff Setiausaha Kerajaan Negeri Pahang telah menyatakan bahawa Plaintiff mempunyai kausa tindakan yang munasabah terhadap Defendan dan menyatakan bahawa ketiga-tiga penerbitan tersebut perlu dibaca secara keseluruhan. Bagi penerbitan pertama, ia menunjukkan dirujuk kepada Plaintiff. Ia adalah merupakan suatu bentuk fitnah terhadap Plaintiff iaitu Plaintiff adalah merupakan Kerajaan yang tidak bertanggungjawab dengan membenarkan aktiviti-aktiviti pembalakan di kawasan pergunungan Karak seolah-olah tanpa melakukan sebarang pemeriksaan atau menerima Laporan *Environment Impact Assessment* (EIA). Plaintiff juga dikatakan terlibat secara langsung dengan meluluskan kegiatan pembalakan dan penerokaan kawasan dan dikaitkan dengan tindakan Plaintiff mengamalkan rasuah dengan membenarkan aktiviti-aktiviti pembalakan kepada syarikat pembalakan di kawasan Pergunungan Karak tersebut.

[8] Sementara itu bagi penerbitan kedua pula menggambarkan bahawa Plaintiff telah bersekongkol dengan Jabatan Perhutanan Negeri Pahang yang memberikan kenyataan bahawa tiada aktiviti-aktiviti pembalakan di Hutan Simpan Lentang. Plaintiff juga digambarkan telah menipu dan memperdaya rakyat dan masyarakat umum khususnya rakyat Pahang bahawa tiada pembalakan hutan di Negeri Pahang. Di samping itu Plaintiff dikatakan telah menggunakan alasan bencana alam untuk memperdaya rakyat Negeri Pahang bahawa tiada penerokaan atau pembalakan di Hutan Simpan Lentang. Plaintiff digambarkan juga sebagai Kerajaan yang tidak bertanggungjawab dan tidak berintegriti.



[9] Bagi penerbitan ketiga pula dinyatakan bahawa ia adalah satu kiasan bahawa Plaintiff merupakan pihak yang terlibat dalam kegiatan pembalakan dan penerokaan hutan secara haram di Negeri Pahang. Plaintiff telah melindungi syarikat pembalakan untuk melakukan aktiviti-aktiviti pembalakan haram secara berleluasa di kawasan hutan di Negeri Pahang. Di dalam Affidavit Jawapan tersebut juga di perenggan 10 telah dinyatakan bahawa ekor dari penerbitan pertama, kedua dan ketiga tersebut nama baik dan reputasi Plaintiff telah tercemar di khalayak masyarakat umumnya dan secara amnya kepada pengguna media sosial Facebook di mana komen-komen yang dikemukakan dalam media sosial Facebook tersebut mempunyai nada yang membinasakan dan di samping memperkukuhkan penerbitan pertama, kedua dan ketiga oleh Defendan.

[10] Plaintiff juga menyatakan bahawa Defendan diletakkan dalam beban membuktikan kebenaran pernyataan-pernyataan yang diterbitkan tersebut. Plaintiff juga menegaskan bahawa sekalipun rakyat berhak untuk melontar kritikan bagi memperbaiki gerak kerja sebuah kerajaan kritikan tersebut haruslah bersifat benar dan bukan berbaur fitnah. Pada perenggan 11.4 Affidavit Jawapan Plaintiff menyatakan bahawa tindakan Plaintiff ini tidak pernah menjejaskan atau menghadkan kebebasan bersuara rakyat Malaysia dan Plaintiff sentiasa menerima kritikan awam secara terbuka.

[11] Plaintiff juga menyatakan bahawa penerbitan-penerbitan yang dikeluarkan oleh Defendan adalah berbentuk fitnah dan mempunyai niat jahat untuk menjatuhkan nama baik dan reputasi Plaintiff dan Defendan



tidak mempunyai sebarang tanggungjawab sosial dan moral untuk memberikan kenyataan berkenaan di atas reputasinya sebagai bekas Pengerusi PEKA. Malahan segala kenyataan di dalam penerbitan pertama, kedua dan ketiga tersebut adalah palsu dan tidak lebih daripada spekulasi dan pemerhatian peribadi Defendan.

[12] Defendan dalam Affidavit Balasan menyatakan bahawa penerbitan ketiga bukannya merupakan hantaran daripada pihak Defendan, sebaliknya adalah hantaran daripada Akhbar Sinar Harian pada 11.01.2022 daripada satu sesi temuramah dengan Defendan. Ia bukannya diterbitkan oleh pihak Defendan. Malahan sesi temubual tersebut juga tidak berkaitan dengan penerbitan pertama dan kedua. Ia juga bukan ditujukan kepada Kerajaan Negeri Pahang. Ia hanyalah perbincangan umum mengenai isu-isu alam sekitar di Malaysia. Defendan juga menyatakan bahawa dalam hantaran melalui penerbitan tersebut tiada rujukan yang diberikan khusus kepada Plaintiff. Ia tidak sekali-kali menjejaskan reputasi Plaintiff.

Analisa

[13] Adalah menjadi undang-undang yang mantap permohonan untuk membatalkan suatu tindakan di bawah A. 18 k 19 (1) (a), (b) dan (d) KKM 2012 telah dinyatakan oleh Mahkamah Persekutuan dalam kes **Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36** di mana Mahkamah Agong seperti berikut:



“It has been said that so long as the pleadings disclose some cause of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out (see Moore v Lawson 10 and Wenlock v Moloney & Ors 9).”

[14] Mahkamah ini berpendapat bahawa perbincangan berkenaan dengan keadaan di mana sesuatu tindakan itu boleh dibatalkan di bawah A. 18 k 19 (1) (a), (b) dan (d) KKM 2012 telah dibincangkan oleh Mahkamah Atasan yang merupakan sebahagian daripada khazanah undang-undang yang telah mantap dan tidak perlu diperpanjangkan dan diulang di sini. Apa yang menarik dalam kes ini ialah adakah keadaan dalam kes ini mewajarkan tindakan Plaintiff dibatalkan.

[15] Berdasarkan kepada affidavit-affidavit dan hujahan yang dikemukakan oleh Plaintiff dan Defendan, asas utama Defendan memfailkan tuntutan ialah pernyataan-pernyataan yang dibuat oleh Defendan itu bukannya termasuk di bawah tindakan fitnah. Sementara Plaintiff pula menyatakan bahawa pernyataan-pernyataan tersebut adalah fitnah yang menjejaskan reputasi Plaintiff sebagai sebuah Kerajaan. Defendan juga mengutarakan bahawa Defendan mempunyai hak untuk mengemukakan kritikan-kritikan kepada Plaintiff sebagai sebuah Kerajaan yang sewajarnya menerima kritikan daripada rakyat bagi memperbaiki pentadbiran jentera Kerajaan. Plaintiff pula menyatakan bahawa Defendan boleh mengemukakan kritikan-kritikan kepada Plaintiff berdasarkan fakta dan bukannya spekulasi atau fitnah.



[16] Persoalannya ialah adakah isu-isu sama ada kenyataan-kenyataan Defendan adalah merupakan fitnah atau sebaliknya boleh ditentukan pada peringkat ini dengan hanya berdasarkan kepada affidavit-affidavit yang dikemukakan. Adakah tindakan Plaintiff yang dikatakan tidak mempunyai asas untuk mengambil tindakan kepada Defendan boleh diputuskan pada peringkat ini tanpa perbicaraan yang sewajarnya.

[17] Peguam Defendan yang bijaksana di dalam hujahan bertulisnya telah mengemukakan kes **Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli [2022] 3 MLJ 758** bagi menunjukkan elemen-elemen pembelaan komen yang adil (*fair comment*) seperti berikut:

“[55] Finally, I will deal with the issue whether the comment and inferences made by respondent are one which a fair-minded person can honestly made.

[56] In Joshua Benjamin, the Privy Council confirmed the test of ‘fair’ comment at p 4 paras C-D, right:

The trial judge quoted very aptly from the direction given to the jury by Diplock J (as he then was) in Silkin v Beaverbrook Newspapers Ltd at p 749:

The matter which you have to decide and I emphasise this again, because it is so important, is not whether you, any of you, agree with that comment. You may all of you disagree with it, feel that is comment that is not correct. But that is not the test. I will remind you of the test once



more. Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudicial view — could a fair minded man have been capable of writing this?

[57] On this issue, the High Court did not explain its findings that the comment made by the respondent was not one that a fair-minded person could have honestly made based on the facts that were available to him at the time.

[58] In considering this issue, it is relevant to note the circumstances leading to the press conference held by the respondent on 7 March 2012. In 2011, the Auditor General audited the performance of the project. The Auditor General's report was presented to Parliament in October 2011. The failures and the weakness of the project were highlighted in the report. As public funds were involved the report by the Auditor General drew public's attention. The disclosure created grave public concern as it raised the issue of accountability, transparency and good governance in respect of those involved in the affairs of managing public funds. It received wide media coverage and was also subject to much debate in Parliament at the material time.

[59] As I have indicated earlier there was sufficient substratum of facts to warrant the respondent making the impugned statement. In this context, it is relevant to note that it was the finding of the High Court that the respondent had an honest belief that his allegations were true and that that he was performing a public duty in agitating for greater accountability for public funds.



[60] Given all this, in my view, the respondent's conclusion that public fund had been misused as a leverage for the Public Bank's loan was an opinion and inferences that a fair-minded person would have honestly made in the circumstances.

[61] In light of all the above, all the four elements of fair comment as laid down in Joshua Benjamin had been established."

[18] Berkenaan isu sama ada Kerajaan Negeri boleh menjadi Plaintiff dalam kes ini dan mempunyai kausa tindakan terhadap Defendan, Mahkamah ini merujuk kepada keputusan Mahkamah Persekutuan dalam kes **Chong Chieng Jen v. Government Of State Of Sarawak & Anor [2019] 1 CLJ 329** seperti berikut:

"[35] In Malaysia, the right of the Federal Government and the Government of the States to sue is a statutory right. It is specifically provided by Act 359. According to the long title to the Act, it is an Act relating to proceedings by and against the Federal Government and the Government of the States. The right of the Government (and specifically in the context of the present appeal, the right of the State of Sarawak) to sue is provided by s. 3 of Act 359. Section 3 of that Act provides:

3. Subject to this Act and of any written law where the Government has a claim against any person which would, if such claim had arisen between subject and subject, afford ground of civil proceedings, the claim may be enforced by



proceedings taken by or on behalf of the Government for that purpose in accordance with this Act.

[36] *Under s. 3 of the Interpretation Acts 1948 and 1967 [Act 388], the words "written law" means:*

- (a) the Federal Constitution and the Constitutions of the States and subsidiary legislation made thereunder;*
- (b) Acts of Parliament and subsidiary legislation made thereunder;*
- (c) Ordinances and Enactments (including any federal or State law styling itself an Ordinance or Enactment) and subsidiary legislation made thereunder; and*
- (d) any other legislative enactments or legislative instruments (including Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland and Orders in Council and other subsidiary legislation made thereunder) which are in force in Malaysia or any part thereof;*

[37] *The aforesaid definition of "written law" does not include "common law" which under Act 388 means "the common law of England". Thus, the statutory right of the Government to sue in civil proceedings under s. 3 of Act 359 including for defamation is not subject to the common law of England.*

[38] *Act 359 does not preclude the Government from taking civil action for defamation. Indeed, s. 2(2) of Act 359 which defines "Government" to include the Federal Government and the Government of the States, also provides a wide definition of "civil proceedings":*



*"civil proceedings" means any proceeding **whatsoever** of a civil nature before a court and includes proceedings for the recovery of fines and penalties and an application at any stage of a proceeding, but does not include proceedings under Chapter VIII of the Specific Relief Act 1950 [Act 137], or such proceedings as would in England be brought on the Crown side of the Queen's Bench Division;*

(emphasis added)

According to the majority of the Court of Appeal:

The term "civil proceedings" used in section 3 is defined by section 2(2) to mean "any proceeding whatsoever of a civil nature before a court" and the operative words in section 3 are "which would, if such claim had arisen between subject and subject, afford ground for civil proceedings", meaning to say if a claim affords ground for civil proceedings between private individuals, it will afford ground for civil proceedings between the Government and private individuals. Thus, if a claim affords ground for an action in defamation (which is a form of civil action) between private individuals, it will afford ground for an action in defamation between the Government and private individuals. That in our view is the proper construction to be given to section 3 of the Government Proceedings Act and will not in any way result in an absurdity or be in breach of any canon of statutory interpretation.

[39] *We agree. Under s. 3 of Act 359, if an individual makes an allegation critical of a Government, which allegation if made against another individual would afford **ground for that other individual to sue, then the Government may sue in** defamation. We also agree that there is nothing under s. 3, indeed under Act*



359 which could be construed to prohibit or restrict the Government from suing in defamation.”

(ditekankan oleh Mahkamah ini)

[19] Mahkamah ini perlu membezakan keadaan jika Plaintiff memfailkan tindakan fitnah atas kedudukan peribadinya, maka ia sudah pasti akan membolehkan Plaintiff memfailkan tindakan tersebut dan Defendan tidak boleh memohon pembatalan tindakan tersebut di bawah A. 18 k 19 KKM 2012 atas alasan tiada kausa tindakan terhadap Defendan. Ini dinyatakan dalam kes **Lim Guan Eng v. Ruslan Kassim & Another Appeal [2021] 4 CLJ 155** seperti berikut:

“[32] It was therefore unfortunate for the Court of Appeal to make the assumption that it was the plaintiff’s administration that was criticised and not the plaintiff personally. The court found that the plaintiff’s suit was made in his capacity as Chief Minister of Penang and that therefore the claim was made in his official capacity and not by him personally. The court held that since the exception to the Derbyshire principle did not apply to the facts and circumstances of the case, the plaintiff’s claim must be dismissed (at para [48] of the judgment).

[33] With respect, I do not think this was a correct assessment of the facts. The pleadings indicated that the action was brought by the plaintiff personally and not in his official capacity as Chief Minister. It was the plaintiff suing as a private citizen and not by the office of the Chief Minister or the Government of the State of Penang. In other words, the suit was brought as an individual and



not by an organization in the form of the Government or a Government body. The impugned statements had named the plaintiff and specifically referred to his disloyalty to the country both as Chief Minister and as a citizen.

[34] *The sting of the statements was more a criticism of the plaintiff rather than his office or the Penang State Government. He was the one who had the capacity to divulge the secrets. I do not think, therefore, that the plaintiff was disentitled from bringing the action as an individual to protect his reputation (see Knupffer v. London Express Newspaper Limited [1944] AC 116; Goldsmith and Another v. Bhoyrul and Others [1998] QB 459; Lee Hsien Loong v. Singapore Democratic Party and Others [2006] SGHC 220 ("Lee Hsien Loong v. SOP ")).*

[37] *The defendants, however, denied that the words in question either referred to the plaintiffs or would be understood to refer to the plaintiffs. They argued that the article referred "to the entire Government and the system of non-transparent and non-accountable governance" which the dominant ruling party, had built up over the years. It was further argued that the impugned words referred to the ruling party and the Government related to these bodies as independent entities, and not to the plaintiffs in their personal capacity. The defendants cited the case of Derbyshire, supra in support of their proposition that a Government or public body cannot be defamed and, hence, cannot sue for defamation. The defendants contended that since there is authority that a Government cannot sue for defamation, it is*



questionable whether individual members within a Government have locus standi to sue.”

[20] Dalam kes **Utusan Melayu (Malaysia) Bhd v. Dato' Sri Diraja Hj Adnan Hj Yaakob [2016] 5 CLJ 857** dalam menangani permohonan untuk membatalkan tindakan di bawah A. 18 k 19 (1) (b) dan (d) KKM 2012 terhadap satu tindakan saman fitnah Mahkamah Rayuan telah menjelaskan kedudukan berkenaan kausa tindakan dengan menyatakan seperti berikut:

“[32] At this point it is necessary to interpose a note of caution, lest it be misunderstood, that with this decision, it does not necessarily mean that the reputation of the Government or public officials who are maligned by the press or any person for that matter, is without any adequate protection under the law. We wish to state very clearly and firmly that where the right of freedom of speech and expression is abused, the restriction on such freedom is contravened, or where any person by speech or writing seeks to calumniate any public authority or officials with malicious falsehood or false statements, and such abuse, violation or unlawful act constitutes an offence, the person can still be dealt with by criminal prosecutions under the relevant laws such as the Sedition Act 1948, the Penal Code, the Printing Presses And Publications Act 1984 (Act 301) and the Communications and Multimedia Act 1998 (Act 588). The simple and unembellished truth is that the Government through the Public Prosecutor possesses the power to institute criminal prosecutions for the offences under these laws and such prosecutions would in our view be a more appropriate



recourse to take to thwart the menace of malicious defamatory publications or words.

[33] It is also legitimate to have regard at this stage to another recourse that is open to the respondent in order to protect his reputation, which is that considering his position as the Menteri Besar, the respondent, with the entire State machinery and information at his disposal, would be in a position to defend himself by public utterances, explanations or rebuttals and in debate in the legislative body (Derbyshire City Council, supra). The respondent additionally has every right to state his side of the story, he could respond and even react to such article to the appellant. In his public office, the respondent would be expected to convene press conferences to respond precisely to such publications. As a responsible mainstream media organisation, practising its own media ethics with specific ethical principles and media standards, it would be the appellant's duty to publish this reaction or response so that the public can have access to a balanced and fair reporting. With these safeguards securely in place, our decision we should say, is by no means discriminatory and would not fetter, stifle or stultify the exercise of the respondent's right to protect his reputation and his good name. There is therefore sufficient legal mechanism and avenue that would protect the respondent from a series of onslaughts on his reputation through malicious statements or falsehoods relating to the performance of his official functions.

[34] The well-established principle upon which the court acts in exercising its power to strike out pleadings under O. 18 r. 19(1) of



the Rules of Court 2012 is that pleadings may be struck out only and only if the court is satisfied that the claim is on the face of it obviously unsustainable. The burden to prove that the case is plain and obvious rests with the appellant. Thus in the Supreme Court case of Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 it was emphasised that:

The principles upon which the Court acts in exercising its power under any of the four limbs of O. 18 r. 19(1) Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule. This summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable.

[35] Similarly, in Sim Kie Chon v. Superintendent of Pudu Prison & Ors [1985] 2 CLJ 449; [1985] CLJ (Rep) 293, the Supreme Court held that:

On an application to strike out a statement of claim under O. 18 r. 19 of the "Rules of the High Court, the right course for the Court to take is to strike out the claim if it is satisfied that the claim does not disclose a reasonable course of action."

[36] From the pleadings, the respondent has quite clearly pleaded that the article is an attack against him in his capacity as the Menteri Besar of the State of Pahang. The article, moreover, when read as a whole was plainly concerning the respondent as the Menteri Besar of the State of Pahang and his administration. It is merely a published criticism of the respondent's administration directed at him in his official capacity. We indeed consider the



*potential chilling effect on free speech should this appeal be dismissed and the respondent is allowed to commence this defamation suit in his official capacity against critics of his official conduct which is that the upshot of such dismissal would in our view allow persons holding public office to initiate a suit of this nature against any statement critical of them in their office which in consequence "may prevent the publication of matters which it is desirable to make public" and no critical citizen can safely utter anything but faint praise about the public officials (Derbyshire County Council v. Times Newspapers Ltd And Others, supra and New York Times Co v. Sullivan, supra). This will sadly result in political censorship of the most objectionable kind. **It is our judgment, therefore, that the respondent by virtue of his public office, having sued in his official capacity which he may not have expressly described, has no locus standi to do so, but having done so, we are loath to allow the action to proceed any further as such the action must necessarily fail.** This claim plainly comes within such category of claim that we can safely say to be obviously unsustainable. We reach the conclusion stated with little hesitation because there is, as it is obvious to us, the public interest considerations in this case which, on balance, does not favour the right of organs of Government and public officials of the likes of the respondent to sue for defamation as this will inevitably stifle free speech. It must also be emphasised that in our decision, we do not decide on the truth or falsity of the article. We consider this appeal purely on the fundamental question of law emanating from the present action."*

(ditekankan oleh Mahkamah ini)



[21] Dalam hal ini Mahkamah mengambil perhatian bahawa terma kausa tindakan ialah merujuk kepada hak untuk menyaman. Ini dinyatakan oleh Mahkamah Rayuan dalam kes **Eagaivallinayagi Ammal v. Chin Min Hua & Ors [2020] 4 CLJ 64** seperti berikut:

“Cause of action also means 'a right to sue'. There cannot be a 'right to sue' until and unless there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe the right of the defendant against whom the suit is instituted. (See, the ratio of Alauddin Mohd Sheriff J (as he then was) in Padang Serai Kilang Kayu Bhd v. Khor Kia Fong & Ors [1997] 5 CLJ 428; [1998] 1 MLJ 589.”

[22] Penelitian kepada Affidavit Sokongan permohonan ini menunjukkan bahawa Defendan menyatakan pembelaan-pembelaan yang berkaitan dengan saman fitnah yang difailkan oleh pihak Plaintiff di samping mengutarakan hak mereka sebagai warganegara untuk membuat kritikan kepada Kerajaan iaitu Plaintiff dalam kes ini. Sekiranya Plaintiff dibenarkan untuk meneruskan tindakan ini ia akan menghalang hak Defendan sebagai rakyat yang dijamin di bawah Perlembagaan Persekutuan.

[23] Mahkamah berpendapat fakta-fakta tersebut tidak boleh dijadikan alasan untuk membatalkan tindakan ini di bawah A. 18 k 19 KKM 2012. Ini adalah disebabkan ia melibatkan isu undang-undang dan fakta yang hanya boleh diputuskan di peringkat perbicaraan penuh. Plaintiff bukanlah tidak langsung mempunyai kausa tindakan terhadap



Defendan. Walaupun autoriti-autoriti mencadangkan bahawa terdapat dua pendekatan sama ada iaitu ada pandangan yang menyatakan bahawa pihak berkuasa tidak mempunyai kausa tindakan terhadap orang awam dan menggunakan prinsip di dalam kes **Derbyshire County Council** (supra) dan **Utusan Melayu (Malaysia) Bhd** (supra). Sebaliknya ada yang berpandangan bahawa pihak Kerajaan mempunyai reputasi untuk menjadi asas kepada tindakan saman fitnah iaitu dalam kes **Chong Chieng Jen v Government of State of Sarawak & Anor** (supra). Namun Mahkamah ini berdasarkan kepada prinsip duluan kehakiman terikat dengan keputusan Mahkamah Persekutuan dalam kes **Chong Chieng Jen v Government of State of Sarawak** (supra) tersebut.

[24] Mahkamah Persekutuan dalam kes **Lim Lip Eng v. Ong Ka Chuan [2022] 5 CLJ 847** menyatakan seperti berikut:

“[26] At the heart of the present appeal lies a fundamental question: whether the respondent, being a political party has a cause of action in an action for defamation. In our view, the respondent does not have a reputation for which it may maintain an action for damages for defamation. If one turns to the case authorities and look at the matter as a question of principle, the following principles of law are well settled.

[27] First, an individual's name and reputation are inherent to their rights of a dignified life (see Abdul Rahman Talib v. Seenivasagam & Anor [1964] 1 LNS 2; [1965] 1 MLJ 142; and MGG Pillai v. Tan Sri Vincent Tan Chee Yioun & Other Appeals [1995] 2 CLJ



912; [1995] 2 MLJ 493). A corporation's trading reputation is important for its commercial operations and business opportunities (see *South Hetton Coal Company Ltd*, *supra*; *Jameel v. Wall Street Journal Europe SPRL* [2007] 1 AC 359; and *Mak Khuin Weng v. Melawangi Sdn Bhd* [2016] 8 CLJ 831; [2016] 5 MLJ 314; CA). A Government's governing reputation is important to be protected for the maintenance of public trust and the general good of intergovernmental relations and economic benefits (see *Chong Chieng Jen*, *supra*).

[28] No arguments were advanced by the respondent on how a political party, as opposed to an individual, a corporation and a Government, has the requisite reputation which the law of defamation is intended to protect. This, in itself, is a sufficient ground to dispose this appeal. A political party has no requisite reputation to constitute cause of action for defamation. This is borne out when we compare the status of the respondent with say, a company."

(ditekankan oleh Mahkamah ini)

Kes **Lim Lip Eng v. Ong Ka Chuan** (*supra*) ini menegaskan bahawa Kerajaan mempunyai reputasi yang dilindungi oleh undang-undang fitnah. Oleh itu ia mengukuhkan dapatan Mahkamah ini bahawa tindakan ini tidak boleh dibatalkan atas alasan Plaintiff tidak mempunyai kausa tindakan terhadap Defendan.



[25] Bagi melengkapkan penghakiman ini berkaitan dengan kausa tindakan Plaintiff sebagai Kerajaan terhadap Defendan, Mahkamah merujuk kepada satu artikel yang menarik bertajuk **Has The Derbyshire Principle Found Its Way Into Malaysian Jurisdiction [2023] 3 CLJ i** oleh Mohd Taufik Mohd Yusoff yang menyatakan seperti berikut:

“Be that as it may, it is best to let the fate of Chong Chieng Jen be decided in the future. As of now, the decision of Chong Chieng Jen is still a good law until the time where another panel of Federal Court, on the same issue and question, decides otherwise. Until that day comes, despite being part of the English law for 30 years, Derbyshire is nowhere near to our shores.”

[26] Penelitian kepada affidavit-affidavit yang dikemukakan oleh Defendan dan Affidavit Jawapan ia merujuk kepada merit kes yang hanya boleh diputuskan setelah Plaintiff dan Defendan mengemukakan saksi-saksi mereka semasa perbicaraan kelak. Defendan tidak dapat menunjukkan bahawa tindakan Plaintiff adalah tidak berasas bagi mewajarkan tindakan Plaintiff dibatalkan.

Kesimpulan

[27] Berdasarkan kepada alasan-alasan di atas Mahkamah menolak permohonan Defendan untuk membatalkan tindakan ini. Kos dalam kausa.



Bertarikh: 18hb. Mei 2023



(ROSLAN MAT NOR)

**PESURUHJAYA KEHAKIMAN
MAHKAMAH TINGGI MALAYA
TEMERLOH, PAHANG DARUL MAKMUR**

PIHAK-PIHAK:

Bagi Pihak Plaintiff

Sakinah binti Ab Aziz

Tetuan Hidayah Ishak & Partners

Kuantan, Pahang Darul Makmur

Bagi Pihak Defendan

Amanda dan Rajesh Nagarajan

Tetuan Raj & Sach

Kuala Lumpur

