

Public Prosecutor

AND

Hj Abdul Razak bin Haji Awang Damit

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 28 of 2023)**

Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

Date of Judgment: 6th December 2025

Criminal law – Judgment – 3 charges - publishing seditious posts on Facebook – seditious intent – excite disaffection against His Majesty the Sultan and Yang Di-Pertuan or Government or judicial administrations – offense under section 4(1)(c) of the Sedition Act, Cap 24, read with sections 3(1)(a) and 3(1)(c) of the same – trial.

DPP Didi-Nuraza Latiff for Public Prosecutor.

Defendant In Person and Unrepresented.

Cases cited:

Public Prosecutor v Ooi Kee Saik & Ors [1971] 2 MLJ 108

PP v Fan Yew Teng [1975] 2 MLJ 235

PP v Oh Keng Seng [1977] 2 MLJ 206

PP v Param Cumaraswamy [1986] 1 MLJ 512

J U D G M E N T

Pg Hjh Norismayanti, Judge:

Introduction

1. The defendant claimed trial to charges under the Sedition Act, Cap 24, relating to the publication of seditious material against His Majesty the Sultan and Yang Di-Pertuan (hereafter referred to as “His Majesty”) or the Government. These publications were posted on Facebook in 2021, a year marked by significant global challenges. While the defendant does not deny posting the materials on the specified dates, his main defence is that the content were neither seditious nor intended to incite sedition.

The charges

2. The defendant faces three (3) charges¹ under section 4(1)(c) of the Sedition Act, read with section 3(1)(a) and 3(1)(c) of the same, for allegedly publishing seditious publications on his Facebook page “Abdul Radzak”, with seditious intention to excite disaffection against His Majesty or the Government and to excite disaffection against the administration of justice in Brunei Darussalam on the three (3) following occasions:
3.
 - i. Amended 1st charge: for a Facebook publication made on 27th February 2021;
 - ii. Amended 2nd charge: for a Facebook publication made on 8th March 2021;
 - iii. Amended 3rd charge: for a Facebook publication made on 9th March 2021.

Penalty

4. The penalty prescribed under this section 4(1)(c) offense is imprisonment for a term not exceeding 15 years; and an imprisonment term of not less than 3 years and not exceeding 15 years under section 4(3) of the Act where the offense involved seditious intention under section 3(1)(a) of the Act in regard to His Majesty the Sultan and Yang Di-Pertuan or Her Majesty Duli Raja Isteri.

Prosecution’s Case

5. The prosecution called three (3) witnesses to establish a prima facie case. The first witness is an Administrative Officer working at the Prime Minister’s Office (PMO) at the relevant time and the remaining two are police officers involved in the investigation of this case. The burden of proof rests solely on the prosecution to prove that (i) the defendant published a publication; and (ii) the publication was made with a seditious intention within the meaning of section 3 of the Sedition Act, Cap 24. As a background, the case concerns the defendant’s application to travel which were denied by the PMO where an official approval was required during a period when travel restrictions were imposed in Brunei Darussalam to curb the spread of COVID-19. Pursuant to the denied applications, the defendant is alleged to have published Facebook posts with seditious intent against His Majesty or the government.
6. As this case involves issues of publication and seditious intent, it is important to set out the exact definition of the terms in accordance to the Act:

3.1. Seditious offences

Section 4(1) of the Sedition Act provides that subject to subsection (3), “any person who...(C) prints, publishes or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; is guilty of an offence...”

¹ Exhibit P2

3.2 Seditious intent

Section 3(1) of the Act defines a seditious intention as intention –

- (a) to bring into hatred or contempt or to excite disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government;*
- (b) to excite the inhabitants of Brunei Darussalam to attempt to procure the alteration, otherwise than by lawful means, of any matter as established by law in Brunei Darussalam; and*
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Brunei Darussalam.*

Section 3(2) of the Act further provides that in determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

3.3. Publication

Section 2 of the Sedition Act defines "publication" broadly to include all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication. It further describes that "seditious publication" means a publication made with a seditious intent.

Summary of Prosecution Evidence

PW1 - Nurnajihah Kamaliah binti Mohammad Redzuan

7. PW1 is an Administrative Officer Special Grade at the Ministry of Foreign Affairs and had previously worked at the Prime Minister's Office (PMO) as an Administrative Officer Grade I from May 2017 to August 2022. PW1 testified that she was informed of a summons served by the defendant on the then Minister of Home Affairs, Dato Seri Setia Haji Awang Abdul Mokti bin Haji Mohd Daud ("Dato Mokti"), regarding the denial of his exit country application. PW1 further testified that she heard the defendant made comments on his Facebook about the matter and consequently she did a search and found his Facebook account. PW1 took screenshots of the said account between 10th February 2021 and 9th March 2021. It was on the 15th March 2021 that PW1 lodged a police report² against the defendant for Facebook posts under the name "Abdul Radzak" referring to the summons and making critical comments about the Minister and senior PMO officers. She also highlighted the related posts marked as "A" to "H" in the prosecution bundle marked P6.

² Exhibit P5

8. PW1 further explained in her testimony that during the COVID-19 period, all exit applications were subject to approval from the Prime Minister's Office (PMO) and that business travels were limited to once every three (3) months. According to PW1, the defendant's last approved travel application for business purposes was on the 13th December 2020. In view of the guidelines mentioned above, the defendant's six (6) subsequent applications between the 25th December 2020 and 15th January 2021 were all rejected. The defendant's applications made on the 28th February, 3rd April and 4th April 2021 were all queried for supporting documents. It is also PW1's evidence that in relation to the queried application made on the 28th February, she stated the defendant "*was informed that due to the current global pandemic, international travel was restricted depending on the ongoing situation of the pandemic.*" The defendant was "*also informed ... that the Government will continue to assess every application, including those for short term business travels, based on necessity-to-travel in order to manage the real risks of the spread of the virus.*"³
9. In relation to the defendant's rejected applications, PW1 found regular posts on the defendant's Facebook account since 10th February 2021 which she alleged were criticizing the rejections of his exit country applications as unfair and categorized them as "zalim". Based on PW1's evidence, the defendant's Facebook posts reflected the defendant's dissatisfaction on the denied applications.
10. Under cross-examination, PW1 gave evidence that she was one of the officers that were tasked to look at travel applications and the authority to approve or reject applications. PW1 also stated that she was instructed by YB Dato Mokti and Dyg Raheemah (Special Duties Officer at PMO) at the relevant time to lodge the police report. When the defendant asked PW1 if she found any words or statement in the postings that would create ill feelings or hatred to His Majesty the Sultan when they were read, PW1 answered "*Not towards His Majesty or Her Majesty but it may cast some doubts to the government.*"

PW2 – Sgt 4513 Hj Khairul Azman bin Hj Thani

11. PW2 is the recorder of the defendant's statement⁴, which was taken on the 1st April 2021 at about 1300 hours. According to PW2, the statement was signed only after the defendant had read and confirmed its content. Upon printing, the defendant signed at the end of each written answers and appended his signature at the end of the declaration at page 6 of the statement.
12. During cross-examination, PW2 confirmed that all the posts referenced in exhibit P6⁵ originated from the defendant's Facebook account and were all real. When asked whether reading these posts excited feelings of hatred towards His Majesty, Her Majesty or the Government, PW2 responded "I do not have any ill feeling or hatred because I only carry out the investigation through the documents that was given to me." PW2 further explained that the defendant's arrest

³ Paragraph 12 of exhibit P4

⁴ Exhibit P8

⁵ Prosecution's bundle titled "Facebook Posts (Abdul Radzak)"

was on the basis of the documents (the Facebook posts) in question. When questioned about the grounds of the defendant's arrest, PW2 stated that his role was limited to questioning the defendant about the postings, without going in depth into the substantive content. He further testified that at the time, he was not aware of the specific law alleged to have been breached by the defendant.

PW3 – Supt Pg Omarali bin Pg Hj Jamaludin

13. PW3 is the Investigation Officer for this case. In his statement⁶, PW3 states that he was instructed to investigate the report lodge by PW1 on the 15th March 2021 regarding a man that had posted to the social media Facebook regarding a summons made against the Minister YB Dato Mokti as well as other senior government officials from PMO. He also stated that to assist in the investigation, PW1 provided him with several documents on the 16th March 2021. The documents were in the form of screenshots of the Facebook posts made on the defendant's Facebook account between 10th February 2021 to 9th March 2021. PW3 labelled the said documents as "D1.1" to "D1.10".

| Post | Date of posting | Summary of content |
|------|--------------------------------|--|
| D1.1 | 10 th February 2021 | The defendant claimed the reason he summoned the PMO Minister was because he wanted to exercise his basic rights. The post received many comments. |
| D1.2 | 21 st February 2021 | The defendant posted regarding an article published on brudirect.com titled " <i>Jangan Gunakan Jawatan Atau Kuasa Untuk Menzalimi</i> ". |
| D1.3 | 25 th February 2021 | The defendant urged the Brunei citizens to learn about their legal rights and in the same posting also questioned Article 84B of the Constitution that protected the Ministers and public servants from legal proceedings which hindered the citizens from getting justice. |
| D1.4 | 27 th February 2021 | The defendant addressed his posts to his "FB Friends Worldwide" which stated that he was taking legal action against the Minister at PMO regarding an unfair decision about his travel application. It further stated that the purpose of the legal action was to repeal the use of "Tyranny Law" which gave immunity to Ministers and public officers from legal action and thereby putting them "above the Brunei laws". |
| D1.5 | 28 th February 2021 | Consisted of 4 posts, one of which was regarding why Article 84B should be repealed. |
| D1.6 | 3 rd March | Consisted of 3 postings – one post involved the defendant taking an |

⁶ Exhibit P9

| | | |
|-------|----------------------------|---|
| | 2021 | excerpt of His Majesty's <i>Titah</i> related to "kezaliman" from 2017, stating that Article 84B was unacceptable in light of His Majesty's <i>Titah</i> (Royal Decree). |
| D1.7 | 4 th March 2021 | The defendant posted again about tyranny " <i>kezaliman</i> " and the <i>Titah</i> (Royal Decree) mentioned earlier. He requested prayers from his "sahabat2 Facebook" (Facebook friends) for smoothness in his efforts to uphold truth and obtain justice in court on the 8 March 2021. This was related to the summons against a Minister from PMO which he had previously mentioned. |
| D1.8 | 5 th March 2021 | Consisted of 4 posts – one post mentioned that he had helped a UBD lecturer to seek justice at the courts and will initiate legal proceedings against any Minister or senior government officers and UBD Administration that were involved in his unlawful detention. Another posting was again in relation to the summons against a Minister from PMO talking about the tyrannical nature of Article 84B of the Constitution. |
| D1.9 | 5 th March 2021 | Containing 1 post – informing that his summons case was to be heard on the same day at 9.00 a.m. in open court. In a different post, the defendant alleged that the Attorney General's Chamber did not accept His Majesty's <i>Titah</i> as a more superior decree than the Constitution. He repeated his assertion that Article 84B and 84C should be repealed to eliminate oppression in the country. |
| D1.10 | 9 th March 2021 | The defendant posted about how the world is full of slander and signs of the end times. He reiterated that the <i>Titah</i> of His Majesty was not accepted by the representative from AGC in the High Court, and that judges are bound by Article 84B of the Brunei Constitution . The defendant questioned whether justice can be served and whether tyranny will be prevented if Articles 84B and 84C are not repealed, asking if abuses of power can be guaranteed against. |

14. PW3 also verified the truthfulness of the documents by way of checking on the defendant's Facebook account and he confirms that the defendant's Facebook account was similar to the documents that were provided by PW1 and that the defendant Facebook account was open to the public. PW3 finds that based on the Facebook postings, he concluded that the defendant was dissatisfied with the decisions to reject his travel applications during the time when travel restrictions was imposed due to COVID-19. PW3 further concludes that the defendant was against Article 84B and 84C of the Constitution which the latter perceived to allow tyranny in the country and therefore should be repealed. He further connected this to His Majesty's Decree ("*Titah*") whereby Article 84B and 84C were not consistent with the said *Titah*.
15. In his investigation, PW3 found that based on the defendant's posts, the defendant is considered to have committed a seditious offense. PW3 simplified that the defendant was of the view that Articles 84B and 84C of the Constitution must be repealed in order to stop tyranny by

government officials, especially at the PMO, where his applications to travel abroad were denied. He also claims that the *Titah* of His Majesty, which prohibits tyranny were not complied with because of there being Articles 84B and 84C. PW3 finds that the repeated references to tyranny, risk causing disaffection towards His Majesty, the Government, and the administration of justice, potentially undermining trust in the Constitution and the government's handling of the COVID-19 pandemic.

16. PW3 also viewed that the defendant wanted to stimulate the minds of readers and provided a space for interaction with the posts he made. For example, in the defendant's post marked D1.4, he mentioned that he was waiting for comments and emails for relevant evidence for the lawsuit he filed.
17. PW3 further testified that he examined the defendant's police statement⁷ that was recorded by PW2 and found that the defendant had admitted that he has a Facebook account under the name "Abdul Radzak" and that he has more or less than 4,600 "*friends*" and he is the only person who has access to the said account.
18. PW3 also stated that based on facts and the investigation done in the case, he recommended for the defendant to be charged under section 4 of the Sedition Act.

Defence case

19. At the conclusion of the prosecution's case, the court found that the prosecution satisfied the court that there is a case for the defendant to answer. The defendant opted to give evidence under oath and also call witnesses to support his defence.

DW1 – Haji Abdul Radzak bin Haji Awang Damit

20. The defendant, in his defence, relied on his statement submitted⁸ under section 117B of the Criminal Procedure Code. His written statement clearly denies the allegations against him. Regarding the first charge, he denies that his Facebook post constituted incitement of hatred or disaffection toward His Majesty's Government. He argues that the post was made in the spirit of constructive national dialogue and responsible citizenship. He further asserts that his intention was to provide moral and lawful criticism aimed at enhancing governance integrity, consistent with Brunei's Islamic values and constitutional principles. The defendant argues that the post falls within the exceptions outlined in section 3(1)(ii) of the Sedition Act, which exempts publications intended "*to point out errors or defects in the Government or Constitution of Brunei Darussalam as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects.*" Additionally, he relies on section 3(1)(iii) of the Sedition Act, which exempts publications intended "*to persuade the inhabitants of Brunei Darussalam to*

⁷ Exhibit D1

⁸ *Ibid*

attempt to procure by lawful means the alteration of any matter in Brunei Darussalam as by law established.”

21. In relation to the second charge, the defendant denies making statements that would bring hatred or contempt to the judiciary. The defendant clarified that he was not attacking the judiciary as a institution but raised what he believed to be reasonable concerns on judicial accountability. He further argues that his statement falls within the domain of ethical responsibility and lawful speech. He also expressly conveyed his disappointment in the immunity provisions of the Constitution.
22. For the third charge, the defendant contends that his post was deeply rooted in his personal faith and understanding of Syariah. He made no calls for violence, disobedience or divisive action. He never intended his post to promote hostility, ill will or animosity amongst the citizens in Brunei. He contends that his post was grounded in Islamic belief that merely informs of the duty for all Muslims to make a “peaceful and sincerely correction of perceived transgressions, especially where public conduct contradicts religious or ethical obligations.”⁹
23. Under cross-examination, the defendant confirmed that he has a Facebook account under the name of “Abdul Radzak” which is solely under his control and confirms to have published all three Annexes A, B and C concerned. The defendant agreed that there were travel restrictions from December 2020 at the time and the Prime Minister’s Office (PMO) were given the authority to such applications. The defendant however denies that he was aware that business travels were only allowed once every three months, with supporting documents. The defendant nevertheless agrees that it would only be eligible to travel 3 months after although he did state that he was not aware of the three months rules. He subsequently made 5 more applications to travel but all rejected by PMO. The defendant agreed that his first Facebook posting dated 27th February 2021 was made after all his previous applications had been rejected. He also confirmed that he made another application on the 28th February 2021 which he claims was also rejected.
24. Further to his examination, the defendant agreed that he went public every time he was denied approval to travel. Although he was upset of the outcomes, he states that he did not degrade PMO at all and that he was only looking for justice. The defendant further agreed that the suit he filed in the court was resulted from the repeated denials he received from PMO. He explained that the application was not proceeded with as the Attorney General’s Chamber sought immunity for the Minister at PMO. He also denied that his posts represented his own personal reactions rather than constructive criticism.
25. Further along his cross-examination, the defendant confirmed that national unity and trust in the government institutions were needed during the period when he published his posts, Annexes A, B and C. He went on to state “I knew it was highly likely to be rejected.” in reference to his applications to travel. It is his evidence that he did not think that his application was dealt with justly.

⁹ Page 6 of Exhibit D1

26. The defendant further denies that his posts risk the feeling of disaffection and distrust against the government bodies that were trying to manage the pandemic. He also confirms his description of the immunity granted under the constitution as good as tyrannical law. It is his stance that providing immunity under the constitution contradicts Islamic principles and that Articles 84B and 84C of the Constitution should be repealed.
27. The defendant describes the contents of his posts to contain Syariah principles, hadiths and verses that do not entertain immunity. He also disagreed with his use of the terms such tyranny law and "*kekabalan yang menzalimi*" as accusatory. He argues that he uses his Facebook account without hiding his identity and uses it to discuss his problems and does so without the intention to incite hatred against the government, judiciary and especially His Majesty.
28. He also rejects the assertion that public criticism of the constitution and court decisions can influence public perception of the legal system or undermine public confidence in the administration of justice. He further argues that his post regarding the court's decision did not have the potential to shake public trust in the administration of justice.
29. With reference to his post in Annex C where he wrote "*Tercalarlah Titah Kebawah Duli Yang Maha Mulia*", the defendant explained that it was not intended to degrade the judiciary. He made the statement in relation to a statement made by a counsel from the Attorney General's Chamber who stated that His Majesty's Decree did not have relevance in court. It is his position that he has reservations on the use of Articles 84B and 84C of the Constitution because His Majesty's *Titah* suggests that any law that are in contradiction of the Islamic Principles should be aligned. He does not however, have any objections on the court's decision in his case.
30. When questioned about his posts had encouraged public involvement, the defendant explained that he was merely seeking information on relevant evidence that would assist him in a case involving the issue of immunity. He asserts again that he had no seditious intention in asking for people to email him. He maintains that his posts were just a place for him to share his experiences and were purely expressions. He did not frame his posting with an intent to cause public hatred to His Majesty, the government or the judiciary. Further, the defendant also gave evidence that there were no negative comments made on His Majesty, the government or the judiciary in any of his postings as he never mentioned His Majesty or the judiciary was tyrannical.

Evidence of Defence witnesses

31. The defendant called a total of 11 witnesses. All of the witnesses produced written statements¹⁰ in accordance to section 117B of the Criminal Procedure Code. The statements were all similar in nature and every one of the witnesses stated that they have read and reviewed the defendant's Facebook posts (the alleged seditious publications) and affirmed that the "publications did not

¹⁰ Exhibits marked D2 to D11

influence, provoke, incite, or excite..." them against His Majesty or any of His Majesty's institutions.

DW2 - Haji Mohidin bin PDP Haji Othman

32. DW2 testified that he only got to know the defendant in 2024 through attendance at meetings held by the Federation of Brunei Malay Entrepreneurs [*Persatuan Peniaga Peniaga Melayu Brunei (PPPMB)*]. Under cross-examination, he testified to being sympathetic to the defendant's situation of not being approved to travel at the relevant time. He further testified that he has no legal background but understands that sedition is if there is someone incited. He further explains that he did not find the defendant's articles on Facebook interesting but pitied and sympathized with the defendant. He does however, agree that not everyone would interpret the statement the same way.

DW3 - Jefry bin Hj Mohd Daud

33. DW3 testified that he has known the defendant for about 2 to 3 years as members of the same political party known as the National Development Party (NDP). He asserts that he had read the defendant's articles referred at annex A, B and C of the charge. DW3 confirms that he was not influenced or incited by the said postings. Under cross-examination, DW3 states that he has no legal expertise and has no knowledge of the Sedition Act. DW3 however states that he has read the defendant's Facebook posts concerned many times, although he does not remember when he last read it but confirms he was not aware of the postings when they were first published. DW3 also agreed that different people may interpret the same statement differently. Nevertheless, DW3 stated that he did not think it was possible for other people to feel incited or excited by the publications.

DW4 - Major (B) Haji Awang Lamat bin Libut

34. DW4 testified that he is business partners with the defendant in *PPPMB* and has known the defendant for 9 years. Under cross-examination, DW4 claims to have basic knowledge on court martial but is not familiar with the Sedition Act. He first read and reviewed the defendant's relevant Facebook postings in 2023. Further, he agrees that it is fair to state that different people may interpret the Facebook postings differently for himself. He is however sure that it was not possible for others to feel incited or excited by the said postings.

DW5 - Pengiran Ismail bin Pengiran Ali

35. DW5 testified that he also knows the defendant from the NDP and has known him for almost 4 years. Under cross-examination, DW5 confirms that he has read the defendant's Facebook postings for the first time in 2024 and last read it sometime this year. He further testified that he does not know if other people would interpret the Facebook postings differently from him.

DW6 - Berlyanna Indah Yordhana binti Jefry

36. DW6 testified that the defendant is her father's friend and has known him for less than 10 years. She read the defendant's Facebook postings in year 2024 and agreed that she did not read them when they were first published. During DW6's cross-examination, she also disagreed that different people would have different interpretation of the Facebook posts from her interpretation. She adamantly disagrees that other people could feel incited or excited by the defendant's postings and goes on to state it is a "harmless post" and did not provoke any hatred towards His Majesty or related institutions.

DW7 - Haji Aminorashid bin Haji Ghazali

37. DW7 states that he is in business with the defendant and are somehow related. He has known the defendant for over 20 years. He does not recall when he read the defendant's Facebook posts but states he did not read them when the posts first published. When asked "Would you agree that other people may not have the same interpretation as you when they read the Facebook posts?", DW7 answered "Everyone would have a different way of thinking about this. It's a matter of how people look at the matter. For this, I believe people would see that it doesn't influence them."

DW8 - Siti Hasnah Binti Haji Awang Damit

38. DW8 is the defendant's younger sister. During cross-examination, she claims to have read the defendant's relevant Facebook posts when they were first published. She understood the context of the posts and still believes that different people would not have views that are different from hers. In other words, DW8 believes that the public would not be influenced by the defendant's postings. Although DW8 agreed that when the defendant's posts were published, there were public concerns to ensure that everyone was safeguarded from the pandemic, she disagreed with the assertion that the defendant's posts did not promote a sense of support to the government in its efforts to control the outbreak of COVID19. In her re-examination, DW8 added that she did not see any negative response on the defendant's Facebook posts and reconfirmed that she was not incited by the said posts.

DW9 - Pengiran Siti Nur Khatiz'zah binti Pengiran Ismail

39. DW9 is another daughter of Pg Ismail bin Pg Ali (DW5) and they are all involved in the NDP. During her cross-examination, she affirmed that she first read the defendants' posts a few months before the trial. DW9 claims not to understand the posts concerned. She agreed that her evidence that she was not incited or excited by the posts in due to the fact that she did not understand the posts. Under re-examination, DW9 stated that she understood the content of the postings but did not understand the further meaning behind it.

DW10 - Azerinawati binti Hj Ahmad

40. DW10 is another active NDP member and testified that she has known the defendant since 2024. DW10 read the defendant's Facebook posts in 2024 interpreted them as the defendant merely

seeking advice about his rights in relation to permissions to travel out of state. She claims to understand the defendant's posts after reading them twice, and elaborated that she, as a lay person, stated "I do not agree that what he post is considered seditious. I was not affected like this. The post only got 3 shares, 16 comments and 67 views. It is not considered viral at all.". DW10 explained that the figures were in relation to the last posting she saw. She does, however, acknowledge that screenshots of the posts would not be reflected in the figures. DW10 also agreed that not everyone would share the same views stating that everyone has different ways of thinking and understanding.

DW11 - Md Ali bin Abdul Rahman

41. DW11 also knows the defendant from the NDP. In his testimony, he admits that he lacks legal knowledge and has no expertise in Sedition Law. Under cross-examination, he stated that he read the defendant's Facebook posts in 2024 and claims to understand all the posts but did not know or had any knowledge on Articles 81 and 84B of the Constitution. DW11 also testified that although he had read and understood the posts, he was, however, unsure of what the defendant was trying to do. He reiterates that the posts did not influence or incite him or the public but then states that the public may have different views from him.

DW12 - Mohammad Harrith Danial bin Kadir

42. DW12 knows the defendant from early 2025 from their membership in NDP. Under cross-examination, he testified that he understood Annex A to be a question on the different business treatment the defendant received compared to others and Annex B and Annex C to be advice to maintain honesty. He read the postings in 2024 and asserted that he was not influenced in any way. DW12 does, however, agree that other people reading the same posts may interpret them differently.

Considerations and findings

43. The court acknowledges that this case concerns temporary travel restrictions, making it essential to consider the reasons for imposing these restrictions at the relevant time. Specifically, the period in question is February and March 2021. During this period, the world, including Brunei, was still grappling with COVID-19 pandemic. Many countries implemented various measures to contain the pandemic, and one such measure in Brunei, enacted by the Prime Minister's Office (PMO), was the imposition of travel restrictions related to business activities. This case arises from the defendant's unsuccessful travel applications, which led him to post about the matter on Facebook.

44. Based on Section 2 and Section 3(1) of the Sedition Act, seditious publications generally involve content intended to incite hatred, contempt, or to excite disaffection against authorities, often through printing, publishing, or distributing material with such intent. It is alleged that the defendant with seditious intent published seditious material via his Facebook posts, particularly

assertions made on His Majesty's government and senior officers of the PMO as well as the claim that Articles 84B and 84C of the Constitution should be repealed as they tantamount to tyranny law.

45. Having assessed the prosecution's and defence evidence, the court accepts that the defendant was much dissatisfied with the rejections to his travel applications for business purposes made during the relevant period and his dissatisfaction led to him making the posts referred to in Annex A, B and C. According to the evidence of PW1, applications for business travel were limited to once every three (3) months. The defendant's last approved application was on the 13th December 2020. Consequently, the defendant's subsequent six (6) applications all fell within the three (3) months restriction period and were accordingly rejected. Based on PW1's evidence, the court is also satisfied that the defendant was fully aware of this restriction and that the defendant was informed that the government would continue to assess all applications for business travel based on the necessity to travel, with the objective of managing and minimizing the risk of the COVID-19 transmission. In view of the objectives, the court finds the decision rendered by the PMO were guided by the temporary rules enacted for travel restrictions, and the rejections and queries made on the defendant's applications and the assessment made by the PMO were reasonable and justified.

Did the defendant make the Facebook posts contained in Annex A, B and C of the charge sheet?

46. The court accepts that there is no issue that the defendant agreed that he posted the Facebook posts contained in Annexes A, B and C of the charge sheet¹¹. His admission can be found in his police statement marked P8, specifically at question no.20 where he was asked who made the posts on Facebook to which he replied that he did it himself, copied and pasted it.
47. The defendant's main contention is that the three (3) Facebook posts were not seditious in nature and he did not intend to incite or excite hatred on His Majesty or the government. Therefore, it is incumbent for the court to assess the posts in their entirety and whether they fall within section 3(1) of the Act on seditious intention.

Do the defendant's Facebook postings fall under any of the exemptions?

48. It is clear that the defendant's main defence is that his postings were exempt under the Sedition Act. Having considered all facts and circumstances, the court finds that the defendant's posts in Annexes A, B, and C do not qualify for the exemptions under sections 3(1)(i) or 3(1)(iii) of the Sedition Act (Cap. 24). Section 3(1)(i) exempts publications solely intended to demonstrate that His Majesty the Sultan and Yang Di-Pertuan or the Government has been misled or mistaken in any measures, while section 3(1)(iii) exempts those intended to persuade inhabitants to seek lawful alteration of established matters in Brunei Darussalam. A thorough assessment by the court of the posts reveals no such intent, as they instead foster disaffection rather than constructive evaluation.

¹¹ Exhibit P2

49. The post in Annex A mainly discusses the defendant's legal action against a Minister at the Prime Minister's Office and criticizes laws providing immunity to Ministers and government officials. It does not contain any clear claim that His Majesty, the Government, or judiciary was misled or mistaken in measures, as required under section 3(1)(i). Additionally, it does not promote lawful reform under section 3(1)(iii), instead implying systemic flaws without showing any intent to seek correction.
50. The content in Annex B is like Annex A, focusing on similar grievances without alleging mistake or misleading by authorities. No elements suggest an intent limited to the exemptions in sections 3(1)(i) or 3(1)(iii), as the language promotes discontent rather than lawful persuasion or error-pointing.
51. Nearly half of Annex C expresses deceit by entrusted officials, portraying them as traitors who gather wealth while the public suffers, resulting in national disgrace. The latter portion claims His Majesty's Decree was not complied with due to Articles 84B and 84C of the Constitution, which provide immunity to Ministers and government officers, questioning justice and warning of tyranny from abuse. This does not demonstrate mere misleading under section 3(1)(i), as it largely doubts compliance without details on mistaken measures; similarly, it fails section 3(1)(iii) by not confining to lawful alteration advocacy. The overall tone excites disaffection¹² against Government administration, disqualifying exemptions. The court therefore finds that the defendant's posts in Annexes A, B and C do not fall within the exemptions provided under the Sedition Act.

Do the defendant's Facebook posts contain seditious material?

52. In assessing the nature of the defendant's posts, the court has regard to the decision in *Public Prosecutor v Ooi Kee Saik & Ors*¹³ where the Honourable Judge stated:

"...all that the prosecution has to prove is that the words complained of, or words equivalent in substance to those words, were spoken by the accused. Once that is proved the accused will be conclusively presumed to have intended the natural consequences of his verbal acts and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in 3(1) of the Act. It is immaterial whether or not the words complained of could have the effect of producing or did in fact produce any of the consequences enumerated in the section. It is also immaterial whether the impugned words were true or false. And it is not open to the accused to say the he did not intend his words to bear the meaning which they naturally bear."

53. In other words, proof of a mere tendency to produce seditious effects under section 3(1) of the Act suffices for liability, irrespective of actual outcomes, truthfulness, or claimed contrary intent. The judge further describes the meaning of the term 'disaffection' in the context of sedition as follows:

¹² Refer to paragraph 51 below on the meaning of "disaffection" in the context of sedition.

¹³ [1971] 2 MLJ 108 - Tab F of the Prosecution's Bundle of Documents

“In other contexts, the word “disaffection” might have a different meaning, but in the context of the Sedition Act, it means more than political criticism; it means the absence of affection, disloyalty, enmity and hostility. To ‘excite disaffection’ in relation to a Government refers to the implanting or arousing or stimulating in the minds of people a feeling of antagonism, enmity and disloyalty tending to make government insecure.”

54. Applying the above-mentioned decision, once the prosecution establishes that the defendant spoke or in this case published the words complained of, the defendant is conclusively presumed to have intended their natural consequences. This is consistent with section 3(2) of the Sedition Act which provides “... every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.” The court now turns to assess the nature of the defendant’s Facebook posts as provided under Annex A, B and C of the charge sheet.

55. Below is the summary of the defendant’s Facebook posts:

(1) Annex A - Facebook post published on 27th February 2021:

Although the post started with the defendant wanting to establish international standard safe travel health protocols, the defendant then went on to write about taking legal proceedings on a minister from the Prime Minister’s Office for the unfair decisions he claimed were made on his previous online applications. The defendant further intimates that by allowing local traders to travel across the borders daily into Malaysia (exit and entry within 5 hours), it negates the PMO’s reasoning to protect the Brunei public. The defendant then went on to post about his court summons:

“The main outcome of the forthcoming High Court Case Number 03/2021 is to waive the application of Tyranny Law which provide IMMUNITY of Ministers and Civil Servants from ANY legal proceedings making them to be Above the Brunei Laws.”

The defendant further states that the government legal representative from the Attorney General’s Chamber sought to strike out the defendant’s summons on the basis of Article 84B of the Brunei Constitution arguing “IMMUNITY”. He argues that this went against His Majesty’s Decree (*Titah*) to end such “Tyranny practices” in Brunei. He also ended his post by stating for readers to comment and email him with relevant evidence.

(2) Annex B – Facebook post published on 8th March 2021:

The post concerns the outcome of his application before the High Court. In summary, the Attorney General’s Chamber prevailed, while the defendant argued that Articles 84B and 84C of the Constitution should be repealed to end the tyranny (“*kedzaliman*”) in Brunei, in other words, to put a stop to tyranny or cruelty. He also stated that His Majesty’s *Titah* to end tyranny was damaged (“*tercalar*”) and not accepted by the government’s legal representative from the

Attorney General's Chamber to supersede the laws of the Constitution. The excerpt of the post for consideration is as follows:

“Wakil Defendant dari AGC tidak menerima Titah Kehadapan Majlis Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Dan Yang DiPertuan Negara Brunei Darussalam sebagai kuasa yang melebihi dari Undang2 Perlembagaan Negara Brunei Darussalam.

Undang2 Perlembagaan Brunei 84 B dan 84 C patut dihapuskan untuk menghentikan kedzaliman di Bumi Brunei Darussalam. Insya Allah.”

(3) Annex C – Facebook post published on 9th March 2021:

Most of the content focuses on religious justice and the need to ensure fairness in the treatment of people by officials entrusted with such responsibilities. However, the main issue of the content revolves around the defendant's post about Article 84B and 84C of the Constitution. The defendant asserted that the articles gave the Minister and government officers immunity from legal proceedings, raising doubts about the possibility of attaining justice while these articles remain in force. The post ultimately calls for the repeal of these Articles, emphasizing on the occurrence of tyranny, injustice and misuse of power if the said Articles continue to stay in effect. The following excerpt from the post were highlighted by the Prosecution:

“Tercalarlah Titah KDYMM tidak dapat diterima pakai dengan itu Hakim Mahkamah Tinggi TERIKAT TANGAN dengan UNDANG2 PERLEMBAGAAN TAHUN 2004 NOMOR 84 B yang memberikan KEKEBALAN dari sebarang Tindakan Undang2 yang diberikan kepada para Menteri2 dan Pegawai2 Kerajaan, di mana para2 Menteri TIDAK BOLEH dituntut untuk dibicarakan di Mahkamah Tinggi Civil Negara Brunei Darussalam.

Persoalan yang akan menjadi tanda tanya sekiranya UNDANG2 PERLEMBAGAAN BRUNEI TAHUN 2004 NOMOR 84 B DAN NOMOR 84 C ini tidak dicabut, adakah KEADILAN dapat ditegakkan? Adakah KEDZALIMAN tidak akan berlaku? Adakah dijamin mereka2 ini TIDAK AKAN SALAH GUNAKAN KUASA?”

56. The prosecution submits, and the court accepts, that in consideration of the intent of the publications, the court should read the defendant's Facebook postings in their entirety, an approach taken in the case of *PP v Fan Yew Teng*¹⁴ to determine whether they are seditious. This approach was further emphasized in *PP v Oh Keng Seng*¹⁵ which suggests that a speech should be assessed in its entirety to understand if certain phrases are over enthusiastic or genuinely seditious.

Considerations and findings

¹⁴ [1975] 2 MLJ 235 - Tab B of Prosecution's Bundle of Documents

¹⁵ [1977] 2 MLJ 206, Tab C, *ibid*.

57. Having considered the prosecution's submission on the defendant's postings dated 10th February 2021, 21st February 2021, 25th February 2021, 27th February 2021, 28th February 2021, 3rd March 2021, 4th March 2021, 5th March 2021 and the evidence of PW1, PW2 and PW3, the court is of the view that by reading the defendant's postings as a whole provides the court with a better understanding of what the defendant was trying to communicate and achieve. In this regard, the court refers to the evidence of PW2, who introduced evidence of several more postings from the defendant's Facebook account, which are summarized in paragraph 11 of this judgment. After consideration of the defendant's postings as a whole, the court finds that they contain heavy criticisms relating to the alleged unfair treatment he received from the authority, legality, and actions of the Minister and provisions of the Constitution.
58. The court finds that the defendant's Facebook posts clearly show elements of disaffection¹⁶ as evidenced by the following: (i) the defendant publicly alleged government officials, including a minister, of tyranny and unfair treatment; (ii) the defendant described certain laws (Article 84B and 84C of the Constitution) and officials as tyrannical and acting above the law; (iii) the court notes that the defendant encourages citizens to question the legal protections afforded to ministers, thus portraying the government as unjust; (iv) the defendant's posts appear to promote legal action against government ministers and senior officers, which inferred an open confrontation and challenge to authority; (v) the defendant's repeated posts about alleged unlawful detention and tyrannical legal provisions; (vi) the defendant raised religious or Royal Decrees (His Majesty's *Titah*) to dispute existing laws and government actions and (vii) the defendant's repeated public calls for justice, thus implying government-rooted tyranny thereby promoting a hostile description of government institutions.
59. The court finds that the defendant's Facebook posts collectively show a consistent pattern of public criticism that challenges authority, promotes legal confrontation, and portrays government actions and laws as unjust or tyrannical. It is observed that these posts are positioned to excite disaffection against His Majesty's Government and the administration of justice. The fundamental question is whether these elements constitutes seditious intent. The court determines that they do. Under section 3(1) of the Sedition Act, the defendant's conduct aligns with subsections 3(1)(a) and 3(1)(c), as the postings seek to excite disaffection against His Majesty's Government and the administration of justice.
60. The court further finds that the defendant's repeated claims of tyrannical practices by the Prime Minister's Office, coupled with assertions that Articles 84B and 84C of the Constitution embody tyrannical law, as detailed in Annexes A, B, and C of the charges, would naturally excite disaffection toward His Majesty's Government and the administration of justice. This conclusion is based on the established principle that such posts naturally provoke or incite antagonistic feelings among the public, thereby tending to undermine government security, as affirmed in *Public Prosecutor v Ooi Kee Saik & Ors*¹⁷.

¹⁶ Refer to Prosecutor v Ooi Kee Saik & Ors at paragraph 50 above.

¹⁷ Refer to paragraph 50 above.

61. Based on the above findings, pursuant to section 3(2) of the Sedition Act, the defendant is deemed to intend the consequences which would naturally follow from his conduct at the time.

Consideration of the Defence

62. The court has duly considered the defendant's defence in reaching the findings and conclusions stated above. For the avoidance of doubt, the court will now address the key considerations raised by the defence below.

63. Firstly, the defendant, through his statement¹⁸ under section 117B of the Criminal Procedure Code, denies any seditious intent regarding all charges. He asserts that his posts were aimed at encouraging constructive dialogue, providing moral criticism consistent with Islamic values, and promoting lawful improvements in governance. He relies on section 3(1)(ii) of the Sedition Act to justify highlighting defects in government or the constitution, and on section 3(1)(iii) for encouraging lawful reforms. He contends that his criticisms concerning his PMO travel denials, judicial accountability, and constitutional immunity under Articles 84B and 84C falls within these exceptions. For the third charge, he bases his posts on Syariah duties for advocate peaceful correction without inciting violence or division.

64. Under cross-examination, the defendant admitted to publishing Annexes A, B, and C through his "Abdul Radzak" Facebook account. He admitted posting after repeated PMO rejections amid 2020-2021 pandemic restrictions, and publicizing those rejections while pursuing a legal suit halted by the Attorney General's immunity claim. Although he denied knowledge of the three-month travel rules and described the immunity as "tyrannical", contradicting Islamic principles, he raises His Majesty's *Titah* against Articles 84B and 84C, and sought public evidence without hiding his identity. These admissions reveal posts exciting disaffection rather than fitting the exceptions. The court finds that the defendant must show genuine corrective intent through lawful means in order to rely on section 3(2) exceptions and not public antagonism that undermines security during national crises. Since Section 3(2) deems natural consequences seditious acts absent a valid rebuttal, this requirement is unmet here due to repeated confrontational tone of his Facebook posts.

65. The court concludes that there are key discrepancies in the defence's case, and they revolve around several critical points. Firstly, the defendant's so-called "constructive criticism" unjustly characterizes the Prime Minister's Office, the judiciary, and the constitutional safeguards as oppressive authorities, which naturally incites contempt towards the government and the administration of justice under section 3(1)(a) and (c). Secondly, the references to His Majesty's *Titah* used to contest laws without following lawful procedures effectively encourage public distrust instead of providing legitimate avenues for remedy. Lastly, the defendant's continued demands for evidence and justice following official rejections suggest an intent of confrontation rather than constructive dialogue, thereby increasing the risk of social disaffection during a

¹⁸ Exhibit D1

critical period when national unity is essential, such as the ongoing pandemic. The court also agrees with the prosecution that such assertions of tyranny and alleged disregard for His Majesty's Decree from the defendant not only questions the form of the alleged tyranny but also the specific judicial act and also question the integrity of the Constitution and the administration of justice as a whole.

66. The court reiterates that Section 3(1)(a) of the Sedition Act defines seditious intention as including an intention "*to bring into hatred or contempt or to excite disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government.*" The court finds that the defendant's allegations of tyranny against officials (including a minister and government officials), characterization of Articles 84B and 84C of the Constitution as tyrannical and calling into question ministers' protections directly align with this, as they portray government institutions as unjust and above the law. Repeated posts invoking His Majesty's *Titah* to challenge laws, promoting legal action against officials, and implying systemic tyranny further excite disaffection.
67. Lastly, the defendant also claims the right to freedom of speech. However, the Constitution of Brunei does not guarantee any such right. Freedom of speech is not a constitutional right in Brunei. The only limitations on speech allowed are those clearly set out in laws like the Sedition Act. The defendant cannot rely on a general freedom of speech claim because no such right exists under Brunei's Constitution or laws beyond specific exceptions.
68. The court also takes this opportunity to note that the defendant has raised issues that were neither presented during the trial nor related to the prosecution's case or submissions. Additionally, the court encountered difficulties in reviewing the authorities cited by the defendant due to incomplete case citations and the absence of the relevant principles or decisions relied upon. Consequently, the court will disregard any matters irrelevant to the charges before it.

Consideration of defence witnesses' evidence

69. In general, the defendant adduced testimony solely from witnesses who encountered his Facebook posts months, if not years, after their initial publication. In consideration of their evidence, the court pays heed to the decision in *PP v Param Cumaraswamy*¹⁹, where the court held that in determining seditious tendency, the court must consider all surrounding circumstances, including the audience addressed, as language harmless in one setting may provoke in another.
70. The defence witnesses, being personal acquaintances of the defendant, may not have fully grasped the content's potential impact absent the contemporaneous conditions of controlled travel permits and pandemic restrictions. This temporal disconnect diminishes the probative value of their reactions, as courts prioritize evidence reflecting immediate societal responses to social media for assessing relevance and incitement.

¹⁹ [1986] 1 MLJ 512 – Tab D in Prosecution's Bundle of Documents.

71. All 11 witnesses stated the posts did not incite them personally, but most admitted lacking legal knowledge of the Sedition Act and acknowledged varying interpretations among people (e.g. DW2, DW3, DW4, DW7, DW10, DW11, DW12). Many reviewed the posts years after publication (e.g. DW3, DW5, DW6, DW9, DW10, DW11, DW12), reducing relevance to contemporaneous impact. Sympathy influenced views (DW2), and some downplayed reach despite low engagement metrics (DW10), while others adamantly denied harm without broader evidence (DW6). The court therefore finds that the absence of contemporaneous accounts further weakens the reliability of their evidence.
72. Overall, the court finds the testimonies uniform and self-serving, deriving from associates rather than diverse or contemporaneous readers. They fail to rebut the seditious tendency in the content of Annexes A, B, and C, especially given public COVID-19 sensitivities noted by DW8. The court prioritizes publication tendency over isolated non-reactions, rendering this evidence marginal.
73. The court must also address whether these witnesses' perceptions would be different if they lacked a personal relationship with the defendant. Objectivity is fundamental in evidentiary evaluation; familiarity can introduce bias, potentially distorting interpretations of inflammatory material. Absent such connections, independent observers might have viewed the posts differently amid the heightened tensions of restricted movement and public anxiety. There is also the lack of independent witnesses that read his posts during the relevant period to provide evidence of the immediate impact of the posts on them. Such witnesses might recognize the posts' provocative nature more intensely, especially given the platform's role in amplifying discourse during lockdowns.
74. Upon review, the defence witnesses uniformly asserted that the defendant's Facebook posts did not provoke disaffection towards His Majesty or the government. However, their consistent views alone do not suffice to establish the posts' true effect on society, as the court must consider broader contextual and evidential factors beyond personal testimony.
75. The court notes that these witnesses, being personally acquainted with the defendant, may have been influenced by their relationship when forming opinions. Additionally, none provided evidence of having engaged with the posts contemporaneously, lessening the evidentiary value of their recollections for assessing the posts' immediate impact.
76. Considering the posts surfaced during heightened public sensitivity amid the COVID-19 restrictions, when social media was a critical channel for public discourse, the absence of timely evidence reflecting societal reactions weakens the reliability of the evidence to evaluate excitement accurately.
77. The statutory standard under the Sedition Act requires an objective assessment of whether published material tends to incite disaffection among the public. The court considers that the

testimony from a limited group of sympathizers connected to the defendant cannot substitute for such an objective measure or diminish the overall evaluation of the posts' seditious tendency.

78. Based on the considerations and findings detailed in the preceding paragraphs, the court concludes that the defendant has failed to present valid rebuttal evidence sufficient to displace the presumption under section 3(2) of the Sedition Act. While the defence evidence may be internally consistent, it lacks the immediacy, independence, and broader representativeness necessary to effectively challenge the prosecution's case. The testimonies, limited to personal acquaintances without contemporaneous engagement or legal understanding, do not diminish the court's conclusion that the defendant's Facebook publications exhibit a seditious intention, particularly within the heightened sensitivities of the pandemic period, to excite disaffection against His Majesty or Government or the administration of justice.

Final Conclusion

79. Based on a comprehensive assessment of all facts and circumstances presented in the case, including thorough consideration of submissions from both the Prosecution and the Defence, the court is fully satisfied that the Prosecution has proven its case beyond a reasonable doubt. Accordingly, the defendant is found guilty on all three charges brought against him and is hereby convicted as charged.



PG HJH NORISMAYANTI BINTI PG HJ ISMAIL

Judge, Intermediate Court