

Abdul Halim bin Ali Rahman

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 35 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC
19th January 2021

Criminal Law --- under section 34 of Public Order Act, Cap 148 --- sending to a WhatsApp group a WhatsApp message which you knew was likely to cause public alarm --- pleaded guilty --- fine of \$3,000 in default 3 months --- appeal against sentence --- defendant works in Enforcement Agency --- used the style of government platform --- jeopardise credibility and integrity of government platform and to Enforcement Agency --- sentence not excessive --- Appeal dismissed.

Appellant In Person.

DPP Raihan Nabilah binti Hj Ahmad Ghazali for Respondent/Public Prosecutor.

SENTENCE

Hj Abdullah Soefri, JC:

On the 28th September 2020, the Appellant appeared in the Magistrate Court and entered a guilty plea for an offence under section 34 of the Public Order Act which is as follows:

Charge

That you, sometime on the 19th day of May 2020, in Brunei Darussalam, did make a false statement, to wit, by sending to a WhatsApp group a WhatsApp message purporting to be a news article regarding an armed gang robbery, which you knew was likely to cause public alarm, and you have thereby committed an offence under section 34 of the Public Order Act Cap 148.

Penalty

A fine of \$3,000 and imprisonment for 3 years
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The statement of facts which the Appellant has admitted are as follows:

On 19th May 2020 at about 1820 hours, one Tuah bin Md Kunal (the Complainant) received a forwarded WhatsApp message from a friend of his. The said WhatsApp message was composed in the style of a news article purported to have been released by the government newspaper, Pelita Brunei. In the said WhatsApp message, an armed gang robbery was reported to have

occurred at 7 pm on 18th May 2020 in the vicinity of Kg Perpindahan Rataie, Temburong. The said WhatsApp message stated that the victim of the armed gang robbery sustained injuries and all the suspects made away with the victim's money. In the WhatsApp message, the Complainant was named as the eyewitness to the incident.

In his statement to the police, the Defendant admitted that sometime on 19th May 2020, he composed the said WhatsApp message following the sample from a Pelita Brunei news article he had previously read. The Defendant then sent the said called "*Kina Subuk*" which had close to 30 participants. The Defendant admitted that he knew the said WhatsApp message contained false statements but had sent the message out intending for it to be taken as a joke.

The Magistrate below imposes a fine of \$3,000 in default 3 months on 30th September 2020.

In her sentencing, she had taken into account both the mitigating and aggravating factors of the case.

She listed out the aggravating features of the case as follows:

1. The Defendant has constructed the message to make it seem as though this was a real news article that came from Pelita Brunei;
2. The news would have reasonably caused the public of fear for their safety;
3. It would have the effect of undermining the public confidence in the RBPF (Royal Brunei Police Force);
4. Distributing fake news is nothing amusing; and
5. Those committing such action would have to be accountable for the action and the appropriately punished in accordance to the law.

Mitigating Factor

1. First conviction.
2. Plead guilty in the first opportunity.
3. Satisfied that he is remorseful for his action.
4. No suggestion that there was any real public alarm or damages caused as a result of this message.
5. Defendant has a stable job and this conviction would inevitably smear his once clear record, which I am satisfied would be sufficient deterrence on him.
6. Maximum fine is sufficient to deter the Defendant and others from committing the same kind of offence. I would have considered a custodial if there were more aggravating features.

7. Furthermore, DPP submit that given the circumstances of this case which is similar to the previous case that she cited, a fine is appropriate especially since the Defendant has no previous convictions.

Appellant filed the notice of appeal on 1st October 2020. The grounds of appeal are as follows:

1. For the fine to be reduced to be at least the same level as his salary so that it will not affect his job and promised will not re-offend again.
2. By reduction in the fine, it is enough to be a lesson for me.
3. He has commitment.
4. He is married with no children.
5. Wife is working.

The question is whether the fine imposed by the Magistrate is excessive and whether the grounds given by the Appellant are grounds that can justify the reduction in the fine?

The Magistrate has highlighted both the aggravating factors and mitigating facts. It is also highlighted that the Prosecution submitted for fines to be imposed and the learned Magistrate imposed a fine as opposed to custodial.

If we look into the statement of facts of the case, Defendant used a sample the style of Pelita Brunei. Pelita Brunei is a government platform to disseminate information and news. If people used it to spread fake news, the credibility and integrity of the government platform will be questioned and any information and news that are disseminated will be questioned.

The Appellant works in an enforcement agency for 14 years and 12 years in Temburong. By disseminating fake news will not only jeopardise the credibility or integrity of the said enforcement agency but also other agencies.

Looking into the case as a whole, I am satisfied that the maximum fine is justifiable where in fact a short, sharp custodial sentence will be more appropriate for a more deterrent sentence based on the facts of the case.

Having had said the above, the appeal is dismissed and the Magistrate's decision will stand.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner