DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
GUAMAN NO.: BA-23NCvC-19-03/2021

ANTARA

MAHDZIR BIN MD ISA
(NO. K/P: 610701-02-5699)
(MENDAKWA SEBAGAI PEGAWAI AWAM
PERTUBUHAN IKRAM MALAYSIA
DI BAWAH SEKSYEN 9(C) AKTA PERTUBUHAN 1966) ...PLAINTIF

DAN

MOHD RIDHUAN TEE BIN ABDULLAH
(NO. K/P: 650424-08-5621) ...DEFENDAN

JUDGMENT

Introduction

[1] This case brings before the Court an unfortunate dispute between two influential voices in the realm of Islamic preaching. On the one hand is a prominent organization, dedicated to the propagation of Islamic values. On the other, a renowned preacher, equally committed to the advancement of the faith. One would have expected them to work together for the greater good of the *ummah*. Instead, the former now

stands as the Plaintiff, accusing the latter of defamation, turning what should have been a shared mission into an acrimonious legal contest.

[2] It is against this backdrop that this Court is now called upon to untangle the legal complexities of this dispute and adjudicate on the defamation claim before it.

The Pertinent Issues

[3] The twelve questions as agreed by the parties as the Issues to be Tried are enumerated in Enclosure 67. The twelve questions are as follows:

1. Sama ada suatu pertubuhan yang berdaftar di bawah Akta Pertubuhan 1966 (Disemak-2021) mempunyai *locus standi* untuk membawa dan/atau mengekalkan suatu kausa tindakan fitnah terhadap individu-individu dan/atau pengkritik-pengkritiknya?

2. Sama ada pengaplikasian seksyen 9(c) Akta Pertubuhan 1966 (Disemak-2021) membezakan di antara pertubuhan dan parti politik?

3. Sama ada suatu pertubuhan yang berdaftar di bawah Akta Pertubuhan 1966 (Disemak-2021), yang tidak boleh menyaman atau disaman atas namanya sendiri, mempunyai reputasi yang disyaratkan yang undang-undang fitnah berniat untuk lindungi?

4. Sama ada Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga Defendan tersebut, meskipun tanpa rujukan khusus terhadap ahli-ahli Plaintif, adalah merujuk kepada Plaintif?

5. Sekiranya Plaintif mempunyai *locus standi* untuk membawa kausa tindakan fitnah, dan merujuk kepada Plaintif, sama ada kandungan Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut sama ada diambil daripada keseluruhan konteks adalah merupakan kenyataan yang tidak benar dan/atau bersifat fitnah dan/atau sama ada undang-undang membenarkan ianya dibaca secara terpisah dan berasingan?

6. Sekiranya Plaintif mempunyai *locus standi* untuk membawa kausa tindakan fitnah, dan merujuk kepada Plaintif, sama ada kandungan Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut bertujuan untuk menjatuhkan imej dan/atau reputasi Plaintif dan/atau telah mendedahkan Plaintif kepada kebencian dan/atau cemuhan dan/atau penghinaan dalam minda orang yang munasabah?

7. Sekiranya Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut adalah merujuk kepada Plaintif dan bersifat fitnah, sama ada ketiga-tiga Penulisan tersebut adalah merupakan komen berpatutan (*fair comment*)?

8. Sekiranya Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut adalah merujuk kepada Plaintif dan bersifat fitnah, sama ada ketiga-tiga Penulisan tersebut adalah dilindungi oleh kepentingan bersyarat?

9. Sekiranya Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut adalah merujuk kepada Plaintif dan bersifat fitnah, sama ada Defendan boleh bergantung kepada pembelaan justifikasi?

10. Sama ada tindakan Plaintif terhadap Defendan adalah merupakan suatu penganiayaan, pendakwaan terpilih dan dengan niat jahat (*selective and malicious prosecution*), dan tidak wajar untuk menyekat hak bersuara dan/atau melontarkan pendapat mahupun kritikan oleh Defendan?

11. Sama ada Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut telah diterbitkan oleh Defendan terhadap Plaintif dengan niat jahat (*malice*)?

12. Sama ada Plaintif ada mengalami kerugian dan wajar untuk mendapatkan remedi-remedi yang dipohon termasuklah ganti rugi am dan/atau ganti rugi teruk dan/atau ganti rugi teladan akibat daripada Penulisan Pertama tersebut dan/atau Penulisan Kedua tersebut dan/atau Penulisan Ketiga tersebut?

[4] To all intents and purposes, the above can be reduced into four core issues. These central issues for determination in this action are as follows:

1. Locus Standi: Whether the Plaintiff possesses the requisite locus standi to initiate the present proceedings.

2. Establishment of Defamation: If the answer to the first issue is in the affirmative, whether the Plaintiff has successfully established the tort of defamation.

3. Defences Raised by the Defendant: If the Plaintiff has established defamation, whether the Defendant has successfully invoked any applicable defences, namely justification, fair comment and/or qualified privilege.

4. Quantum of Damages: In the event that defamation is established and the Defendant's defences are unsuccessful, the appropriate quantum of damages to be awarded to the Plaintiff.

Pre-Trial Interlocutory Applications

[5] As is typical in a Writ action, there were a number of interlocutory applications made by the parties prior to the commencement of trial.

[6] One of these interlocutory applications was an application by the Defendant in Enclosure 7 to strike out the Plaintiff’s claim. This Court shall address the question raised in Enclosure 7 in full detail in this judgment

under the first of the four issues outlined in paragraph [4] above, that is, the locus standi point.

[7] Other interlocutory applications include an application to amend the Writ and Statement of Claim (Enclosure 11), an application for interim payment (Enclosure 43) and an application for security for costs (Enclosure 45). Enclosure 11 was allowed but the Notices of Application in Enclosures 43 and 45 were dismissed with costs in the cause.

[8] In addition to the above Notices of Application, the Plaintiff also made an oral application to disallow the admission of the witness statements that was filed out of time by the Defendant but this application was rejected by the court.

The Trial Before this Court

[9] The trial for this matter proceeded over the course of 8 days, on 18 and 19 September, 2023, 8 and 9 November, 2023, 18 and 19 March, 2024 and on 12 and 19 July, 2024.

[10] A total of 13 witnesses testified at the trial. The Plaintiff called 8 witnesses and the Defendant called 5 witnesses.

[11] The witnesses that testified on behalf of the Plaintiff were as follows:

1. Prof Dr Omar bin Yaakob as the Chairman of the Plaintiff's Education Committee (PW-1);

2. Mahdzir bin Md. Isa as the public officer and the former Secretary General of the Plaintiff (PW-2);

3. Teo Ann Siang as a public witness (PW-3);

4. Prof Dato' Dr Hassan Basri bin Awang Mat Dahan as the former Vice Chancellor of *Universiti Sultan Zainal Abidin* (UniSZA) (PW-4);

5. Prof Dr Afandi bin Salleh as an expert witness on the Freemason movement (PW-5);

6. Prof Dr Maszlee bin Malik as the former Minister of Education (PW-6);

7. Ahmad Nabil bin Abd Rani as a public witness (PW-7); and

8. Shahrul Aman bin Mohd Saari as the current Secretary General of the Plaintiff (PW-8).

[12] The witnesses that testified on behalf of the Defendant were:

1. Dr Mohd Fuad bin Mohd Salleh – a pensioner and formerly an associate professor at the Fakulti Perniagaan, Universiti Selangor (UNISEL) (DW-1);

2. Mohd Fadli Ghani – a layperson who read the said Postings (DW-2);

3. Dr Mohd Ridhuan Tee bin Abdullah – an academician, religious preacher and lecturer at the Universiti Sultan Zainal Abidin (UniSZA) and the Defendant in this action (DW-3);

4. Prof Dr Badlihisham bin Mohd Nasir – a professor at the Akademi Tamadun Islam, Fakulti Sains Sosial dan Kemanusiaan, Universiti Teknologi Malaysia, Johor (DW-4); and

5. Dr Kamaruzaman bin Yusoff – a layperson who read the said Postings (DW-5).

[13] The following cause papers and/or documents were filed and/or used during the course of the trial:

1. Amended Writ of Summons dated 24.01.2022 (Enclosure 29);

2. Amended Statement of Claim dated 24.01.2022 (Enclosure 30);

3. Amended Statement of Defence dated 14.02.2022 (Enclosure 37);

4. Amended Reply to the amended Statement of Defence dated 28.02.2022 (Enclosure 42);

5. Bundle of Pleadings marked as “A” (Enclosure 64);

6. Agreed Facts dated 19.01.2023 marked as “J” (Enclosure 66);

7. Issues to be Tried dated 19.01.2023 marked as “K” (Enclosure 67);

8. The Plaintiff’s Summary of Case dated 19.01.2023 marked as “L” (Enclosure 68);

9. The Defendant’s Summary of Case dated 30.01.2023 marked as “M” (Enclosure 71);

10. Common Bundle of Documents (Part A) marked as “B” (Enclosure 74);

11. Common Bundle of Documents (Part B) Volume 1 marked as “C” (Enclosure 75);

12. Common Bundle of Documents (Part B) Volume 2 marked as “D” (Enclosure 76);

13. Common Bundle of Documents (Part B) Volume 3 marked as “E” (Enclosure 77);

14. Common Bundle of Documents (Part B) Volume 4 marked as “F” (Enclosure 78);

15. Common Bundle of Documents (Part C) Volume 1 marked as “G” (Enclosure 79);

16. Common Bundle of Documents (Part C) Volume 2 marked as “H” (Enclosure 80);

17. Common Bundle of Documents (Part C) Volume 3 marked as “I” (Enclosure 81);

18. The Plaintiff’s Expert Witness Affidavit affirmed by Prof. Dr. Mohd Afandi bin Salleh on 12.09.2023 marked as “P7” (Enclosure 83);

19. The Plaintiff’s Witness Statement by Prof. Dr. Omar bin Yaakob dated 18.09.2023 marked as “WSPW-1” (Enclosure 90);

20. The Plaintiff’s Witness Statement by Mahdzir bin Md Isa dated 18.09.2023 marked as “WSPW-2” (Enclosure 85);

21. The Plaintiff’s Witness Statement by Teo Ann Siang dated 19.09.2023 marked as “WSPW-3” (Enclosure 86);

22. The Plaintiff’s Witness Statement by Prof. Dato’ Dr. Hassan Basri bin Awang Mat Dahan dated 08.11.2023 marked as “WSPW-4” (Enclosure 89);

23. The Plaintiff’s Witness Statement by Prof. Dr. Maszlee bin Malik dated 09.11.2023 marked as “WSPW-6” (Enclosure 88);

24. The Plaintiff’s Witness Statement by Ahmad Nabil bin Abd Rani dated 09.11.2023 marked as “WSPW-7” (Enclosure 87);

25. The Plaintiff's Witness Statement by Shahrul Aman bin Mohd Saari dated 18.03.2024 marked as "WSPW-8" (Enclosure 84);

26. The Defendant's Witness Statement by Dr. Mohd Fuad bin Mohd Salleh dated 19.03.2024 marked as "WSDW-1" (Enclosure 94);

27. The Defendant's Witness Statement by Mohd Fadli Ghani dated 19.03.2024 marked as "WSDW-2" (Enclosure 97);

28. The Defendant's Witness Statement by the Defendant dated 12.07.2024 marked as "WSDW-3" (Enclosure 92);

29. The Defendant's Witness Statement by Prof. Dr. Badlihisham bin Mohd. Nasir dated 19.07.2024 marked as "WSDW-4" (Enclosure 96);

30. The Defendant's Witness Statement by Dr. Kamaruzaman bin Yusoff dated 19.07.2024 marked as "WSDW-5" (Enclosure 95);

At the Conclusion of and Post Trial

[14] At the conclusion of the trial on 19 July, 2024, directions were given to the parties to have the Notes of Proceedings transcribed within two months, that is, by 19 September, 2024.

[15] In addition, this Court also gave directions for written submissions and reply, if any, to be filed by 18 October, 2024 and 18 November, 2024 respectively.

[16] The date for clarification was fixed for 2 December, 2024, after which the Court will then inform parties of the date of decision.

[17] The Plaintiff requested for an extension of time to file the Notes of Proceedings on 23 September, 2024 and this Court extended the deadline to file the Notes of Proceedings to 15 October, 2024. As a result of the request having been granted, the dates to file the written submissions and reply submissions were extended to 25 November, 2024 and 24 December, 2024 respectively. A new clarification date was then set for 24 January, 2025.

[18] On 3 January, 2025, the Plaintiff made a further request for another extension of time to file its written submissions, via a letter in Enclosure 115, to 10 January, 2025.

[19] The Defendant made a similar application for an extension of time to file his written submissions to 22 January, 2025. This application was made via a letter dated 14 January, 2025 in Enclosure 116.

[20] This Court acceded to both requests with the submissions in reply extended to 25 February, 2025. However, the date for clarification on 27 February, 2025 was maintained.

[21] The Plaintiff then filed another letter dated 29 January, 2025 for the clarification to be re-scheduled to another date. After considering the

reasons advanced by the Plaintiff, a new date was fixed on 13 March, 2025. On 15 February, 2025, the Plaintiff made another request in a letter in Enclosure 123 requesting the deadline for the filing of the submissions in reply to be extended for a further 3 days, that is, from 25 February, 2025 to 28 February, 2025.

[22] By 13 March, 2025, the following Notes of Proceedings have been filed. The Notes of Proceedings, as transcribed and running into 515 pages, are as follows:

a. Notes of Evidence Volume 1 (Enclosure 111);

b. Notes of Evidence Volume 2 (Enclosure 112);

c. Notes of Evidence Volume 3 (Enclosure 113); and

d. Notes of Evidence Volume 4 (Enclosure 114).

[23] Following clarifications on 13 March, 2025, this Court fixed 29 April, 2025 as the date for decision.

The Plaintiff's Case

[24] The Plaintiff's pleaded case is that the Defendant defamed it by publishing three articles on his personal Facebook account under the name "Mohd Ridhuan Tee Abdullah," namely:

1. The first article published on 15 April 2020 at 5:39 p.m., titled *"IKRAMISASI KETIKA WABAK COVID19 MELANDA"* ("the First Posting");

2. The second article published on 18 April 2020 at 6:38 p.m., titled *"INSAFLAH IKRAM SEBELUM KARAM"* ("the Second Posting"); and/or

3. The third article published on 27 April 2020 at 1:44 p.m., titled *"Kenapa Ikram begitu baik dengan ultra kiasu, Dong Zong?"* ("the Third Posting").

[25] The Plaintiff contended that it has satisfied the legal requirements to establish a claim for defamation against the Defendant on a balance of probabilities, on the following grounds:

1. That the First, Second, and Third Impugned Postings contained defamatory imputations and referred specifically to the Plaintiff;

2. That the said Impugned Postings were published by the Defendant to third parties; and

3. That the Plaintiff suffered reputational harm as a result of the defamatory statements.

[26] The Plaintiff further asserted that the Defendant has failed to establish any of the defences pleaded, namely justification, fair comment, and/or qualified privilege.

[27] In light of the foregoing, the Plaintiff sought the following reliefs:

1. An injunction restraining the Defendant whether by himself, his agents and/or servants from continuing to publish and/or causing to be published defamatory statements or any similar words defamatory to the Plaintiff as per the First Posting and/or the Second Posting and/or the Third Posting orally and/or in writing in the future;

2. An order to direct the Defendant to delete and/or cause to delete the First Posting and/or the Second Posting and/or the Third Posting immediately and permanently;

3. An order to direct the Defendant to publish a statement retracting the First Posting and/or the Second Posting and/or the Third Posting and a full and unconditional apology to the Plaintiff and admission that the three (3) Postings were published with malice, in his Facebook account namely "Mohd Ridhuan Tee Abdullah" and in main local newspapers according to the terms to be agreed by the Plaintiff within 30 days from the date of judgment;

4. General Damages to be assessed by this Court;

5. Aggravated Damages of RM50 million;

6. Exemplary Damages of RM50 million;

7. Interest on the judgment sum calculated at the rate of 8% per annum from the date of judgment up to date of full payment;

8. Costs; and/or

9. Such further or other reliefs as this Court deems fit.

The Case for the Defendant

[28] While admitting that the First, Second, and Third Impugned Postings were published by him, the Defendant's primary contention in this suit is that as a society registered under Societies Act 1966, the Plaintiff has no locus standi to initiate and/or maintain a defamation suit against him.

[29] In the event that this Court rejects the above submission, the Defendant contended in his Defence that:

1. The First, Second, and Third Impugned Postings did not refer to the Plaintiff;

2. The First, Second, and Third Impugned Postings did not bear any defamatory imputations against the Plaintiff; and/or

3. The defences of justification, fair comment, and/or qualified privilege applied in the instant case.

The Law and Applicable Principles

[30] In addressing the issues arising in this suit, the statutory provisions that merit close consideration are section 9(c) of the Societies Act 1966, and sections 8 and 9 of the Defamation Act 1957.

[31] Section 9(c) of the Societies Act 1966 provides as follows:

> (c) a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society;

[32] Sections 8 and 9 of the Defamation Act 1957 state as follows:

> Justification
>
> 8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.
>
> Fair comment

9. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[33] In addition to these statutory provisions, the relevant principles established in case law are equally instructive. These authorities will be referred to in the course of the Court's analysis of each issue.

The Decision of this Court

[34] This Court shall now address each of the essential issues raised in paragraph [4].

The Locus Standi Point

[35] There is no denying that this suit was commenced by a society registered under the Societies Act 1966.

[36] It his submissions after trial, the Defendant raised the preliminary point that as a society registered under the Societies Act 1966, the Plaintiff does not possess the requisite locus standi to initiate and/or maintain a defamation suit against individuals and/or its critics. The Defendant relied primarily on *Lim Lip Eng v Ong Ka Chuan* [2022] 4 AMR 753; [2022] 5 CLJ 847; [2022] 4 MLJ 454; [2022] 5 MLRA 208 ("*Lim Lip Eng*") to substantiate this locus standi point.

[37] It must be pointed out that the Defendant has filed an application to strike out the Plaintiff's claim on 16 August, 2021 (in Enclosure 7) on the same basis as contended in the preceding parapraph, that is, that the Plaintiff has no locus standi to sue the Defendant because a society does not have the capacity to sue for tort of defamation in law.

[38] In the application and hearing before Alice Loke JC (as her Ladyship then was), the Defendant had canvassed the argument that the Plaintiff as a society registered under the Societies Act 1966 is in the same position as that of any political party as the latter is also a society. It was asserted by the Defendant at the said striking out application that the principle precluding a political party from suing in defamation – as decided by the Federal Court in *Lim Lip Eng* – equally applies to the Plaintiff.

[39] Alice Loke JC dismissed the striking out application with costs of RM3,000.00. Her Ladyship did not agree with the Defendant's contention that the decision of the Federal Court in *Lim Lip Eng* applied to the Plaintiff as an entity which is also registered under the Societies Act 1966.

[40] The Defendant appealed against the above decision and the Court of Appeal unanimously dismissed the appeal on 12 October, 2022 with costs in the cause.

[41] For completeness, the Defendant then further filed a notice of motion seeking leave to appeal to the Federal Court on 10 November, 2022 which was subsequently dismissed by the Federal Court unanimously on 8 February, 2023 with cost of RM30,000.00.

[42] This begs the question of whether this Court should, at this stage after trial, once again consider the locus standi point.

[43] This Court is cognizant of the decisions of the Supreme Court and Court of Appeal in *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 AMR 2559; [1995] 3 CLJ 783; [1995] 3 MLJ 189; [1995] 1 MLRA 611 and *Residence Hotels and Resorts Sdn Bhd v Seri Pacific Corp Sdn Bhd* [2016] AMEJ 0795; [2016] 2 MLJ 640; [2016] 5 MLRA 249 respectively, which propounded the res judicata principle.

[44] In *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 AMR 1457; [1997] 2 CLJ 104; [1996] 2 MLJ 57; [1995] 2 MLRA 505 ("*Hartecon*"), the Court of Appeal held at pp 66-67:

> We cannot over emphasize the proposition that once a judge makes a ruling, substantive or procedural, final or interlocutory, it must be adhered to and may not be reopened willy-nilly. One may then ask: how is this approach to be reconciled with the decision in *Harrison*? The answer to that question lies in recognizing that the principle for which that case is authority applies only where it is demonstrated that the court plainly lacked jurisdiction to make the order complained of: provided, of course, that the order in question has not been drawn up and perfected. To extend the scope of that principle would be to effectively demolish the requirements of certainty and finality which are the two pillars on which the judicial process rests."

[45] In view of the above authorities, is the Defendant estopped from raising this locus standi point?

[46] If this Court were to consider this locus standi argument at this stage of the proceedings, after having been considered by Alice Loke JC in an earlier interlocutory application and that decision having been affirmed by the Court of Appeal, would it be a case of this Court disregarding the tenet laid down in *Hartecon*?

[47] It is worth emphasizing that when the High Court considered the Defendant's striking-out application, it did so without the benefit of the full grounds of judgment of the Federal Court in *Lim Lip Eng*. In arriving at its decision, the High Court correctly referred to the Singapore Court of Appeal decision in *Chen Cheng & Anor v Central Christian Church and another appeal* [1996] 1 SLR 313, which held that a society could sue for defamation.

[48] However, the Federal Court in its grounds of judgment in *Lim Lip Eng* at paragraph [38] distinguished the Singapore position in the following terms:

> [38] We understand that in the Singapore Court of Appeal decision of *Chen Cheng v Central Christian Church* [1996] 1 SLR 313, an unincorporated association registered under its Societies Act (Ch 311) has sufficient personality to sue and be sued for defamation. That is because s. 35(b) of its Societies Act provides that every such society may sue or be sued in the name in which it is registered. In clear contrast, our s. 9(c) of the Act 335 provides for that right through the members or office-bearers of the society.

[49] With the benefit of the grounds of judgment by the Federal Court in *Lim Lip Eng*, we are now aware that *Chen Cheng & Anor v Central*

Christian Church cannot be the basis for the proposition that a society can sue for defamation.

[50] When queried by this Court during clarification, counsel for the parties clarified to this Court that by the time this matter went on appeal before the Court of Appeal, the Federal Court in *Lim Lip Eng* had already published its full grounds.

[51] The Defendant has extracted the "Nota Prosiding" of the decision at the Court of Appeal and the said "Nota Prosiding" read as follows:

1. The appeal is only with respect to limb (a) of 018 r 19(1)(a) of the ROC 2012. The argument of the App is that based on *Lim Lip Eng's* case any society registered under the Societies Act 1966 cannot have a reputation and so cannot sue for defamation.

2. We do not read the FC as saying that as the question before the FC was whether a political party could sue for defamation.

3. It was not a question of whether any society registered under the Societies Act could sue for defamation.

4. In any event the Appellant/Defendant is not prohibited from arguing this issue of locus at the trial of the matter.

5. For the moment we are not convinced that this is a fit and proper case where the Plaintiff's action is obviously unsustainable.

6. We would therefore dismiss the appeal with costs in the cause in the High Court below. We affirm the High Court's decision on dismissing the striking out application.

[52] The Court of Appeal in paragraph 4 of the Notes of Proceedings expressly granted approval for the locus issue to be argued “at the trial”.

[53] The Plaintiff reiterated its argument that based on the principle of res judicata, “Defendan telah dihalang/dicegah daripada membicarakan semula isu ini kerana perkara ini telah pun didengar dan diputuskan oleh Mahkamah Tinggi sebelum ini”.

[54] In addition, the Plaintiff reminded this Court that:

> Bahkan, Mahkamah Rayuan juga telah menolak rayuan Defendan dalam isu/perkara yang sama;

and advanced the argument that:

> Nota Prosiding seperti yang dirujuk … hanyalah bersifat “passing remark” sahaja dan bukannya suatu “proper judgment” yang boleh mengikat pihak-pihak.

[55] Last but not least, the Plaintiff repeated the fact that the Federal Court has refused leave for Enclosure 7.

[56] In light of this Court’s reasoning in paragraphs [47] to [49], and bearing in mind that the Court of Appeal had recognised that the

Defendant was not precluded from raising the locus standi issue at trial, this Court will now proceed to consider the Plaintiff's locus standi to maintain this action.

[57] The sole question of law before the Federal Court in *Lim Lip Eng* was:

> Whether a political party can maintain a suit for defamation having regard to the decisions in *Goldsmith & Another v Bhoyrul & Others* [1998] QB 459 and *Rajagopal v Jayalalitha* [2006] 2 MLJ 689.

[58] The Federal Court answered the above question of law in the negative.

[59] As rightly observed by the Court of Appeal at paragraph [51] above, the question of law before the Federal Court "was not a question of whether *any society* registered under the Societies Act could sue for defamation" (emphasis added).

[60] The Federal Court in *Lim Lip Eng* made it clear that a political party does not possess a reputation capable of sustaining an action for defamation, unlike an individual, a corporation, or the Government.

[61] A key point of contention is whether the Federal Court's ruling in *Lim Lip Eng* should be confined to political parties, or whether it extends more broadly to bar all societies registered under the Societies Act 1966 from bringing defamation actions.

[62] In dismissing the Defendant's appeal against his striking-out application, the Court of Appeal expressed the following view:

> We do not read the FC as saying that any society registered under the Societies Act 1966 cannot possess a reputation and, therefore, cannot sue for defamation.

[63] This Court is of the considered opinion that, while the question of law before the Federal Court in *Lim Lip Eng* was directed at political parties, the Court's reasoning was not restricted in its application to political parties alone.

[64] The decision of the Federal Court was premised primarily on the provision in section 9(c) of the Societies Act 1966. This provision applies to *all* societies and not solely to political parties. This is evident from the following passage in the judgment:

> [35] Unlike incorporated bodies or companies which have separate legal identities from its shareholders and its directors, the respondent, a society does not. This is evident when we compare s. 20 of the Companies Act 2016 (Act 777) with s. 9(c) of the Societies Act 1966 (Act 335):
>
> > 20. A company incorporated under this Act is a body corporate and shall:
> >
> > (a) have legal personality separate from that of its members; and

(b) continue in existence until it is removed from the register.

9. The following provisions shall apply to registered societies:

(a) the movable property of a society, ...;

(b) the immovable property of a society ...;

(c) a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society

[65] Emphasis on "a society", as opposed to a political party per se is also apparent in the following paragraphs of the Federal Court's grounds of judgment:

> [36] A company has legal personality and is not only able to possess or own property but more importantly, to sue and be sued in its own name. It therefore has a reputation generally related to its trade or commerce for which it may sue to protect, while a society is dependent on its members even to sue. A society is not, on its own, a legal entity and cannot even sue or be sued in its own name. This is clearly stated under sub-s. 9(c) of the Act 335.
>
> [37] There is similar opinion in Gatley on Libel and Slander (11th edn, Sweet & Maxwell) at p. 251 para. 8.28:

> Where members of an unincorporated group publish a libel each one who authorised or participated in it is personally liable in the normal way. Where the members of such a group are defamed, each has his own action if sufficiently identified by the libel. An action for libel will not lie against an unincorporated association or body of persons in its collective name, for as an entity it can neither publish nor authorise the publication of a libel. Nor can it sue, for it lacks sufficient personality.

[66] In this Court's view, the most compelling indication lies in the Federal Court's treatment of the Singapore Court of Appeal's decision in *Chen Cheng v Central Christian Church*, where the society in question, like the Plaintiff in the present case, was not a political party. The Federal Court distinguished that case in the following terms:

> [38] We understand that in the Singapore Court of Appeal decision of *Chen Cheng v. Central Christian Church* [1996] 1 SLR 313, an unincorporated association registered under its Societies Act (Ch 311) has sufficient personality to sue and be sued for defamation. That is because s. 35(b) of its Societies Act provides that every such society may sue or be sued in the name in which it is registered. In clear contrast, our s. 9(c) of the Act 335 provides for that right through the members or office-bearers of the society.

[67] In view of the above pronouncement by the Federal Court in *Lim Lip Eng*, which is binding on this Court, this Court answers the following first three questions as framed in Enclosure 67, that is:

1. Sama ada suatu pertubuhan yang berdaftar di bawah Akta Pertubuhan 1966 (Disemak-2021) mempunyai locus standi untuk membawa dan/atau mengekalkan suatu kausa tindakan fitnah terhadap individu-individu dan/atau pengkritik-pengkritiknya?

2. Sama ada pengaplikasian seksyen 9(c) Akta Pertubuhan 1966 (Disemak-2021) membezakan di antara pertubuhan dan parti politik?

3. Sama ada suatu pertubuhan yang berdaftar di bawah Akta Pertubuhan 1966 (Disemak-2021), yang tidak boleh menyaman atau disaman atas namanya sendiri, mempunyai reputasi yang disyaratkan yang undang-undang fitnah berniat untuk lindungi?

in the negative.

[68] Based on the above findings, the Plaintiff's claim is dismissed.

Tort of Defamation

[69] In the event that the appellate court overturns this Court's findings on the issue of locus standi, this Court's decision on whether the Plaintiff has successfully established the tort of defamation is as follows.

The Applicable Principles

[70] It is apposite that we take heed of the reminder by the Federal Court in *Lim Lip Eng* that "what amounts to defamation or a defamatory statement is a question of fact". The Federal Court remarked as follows:

> [23] …. Among the recent decisions is one by this court in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v Nurul Izzah Anwar & Anor* [2021] 4 CLJ 327; [2021] MLJU 239 wherein Harmindar Singh Dhaliwal FCJ in para. 19 of His Lordship's judgment had quoted some authorities and concluded, inter alia, an imputation would be defamatory if its effect is to expose the plaintiff, in the eyes of the community, to hatred, ridicule or contempt or to lower him or her in their estimation or to cause him or her to be shunned and avoided by them. His Lordship once again in the recent decision of *Lim Guan Eng v Ruslan Kassim & Another Appeal* [2021] 4 CLJ 155; [2021] 2 MLJ 514 succinctly reiterated the critical elements of defamation at paras. [28] to [30] of the judgment. We endorse those views and in addition cite the helpful comments of K. Kuldeep Singh in "The Tort of Defamation, Concepts and Cases on Libel and Slander in Malaysia and Singapore" 2nd edn, Lexis Nexis p. 1, para [1.1.1] as follows:
>
> > The defamation laws in Malaysia and Singapore do not define the term defamation. Instead from key words found in statute and subsequent case laws we can formulate what the term means.
> >
> > The defamation law uses key terms such as 'Words spoken and published which impute …', 'word calculated to disparage the plaintiff, 'calculated to cause pecuniary damage to the plaintiff; 'materially injure the plaintiff's reputation'. These terms suggest that the plaintiff has been injured or set to be in a loss state in his reputation as a consequence of the defamatory statement.

> Generally, a person is said to be defamed when a defamatory statement, amounts into a publication, where such a statement is untrue and was calculated to injure his or her reputation and thereby exposing him to hatred, contempt or ridicule. The injury that occurs upon the defamed person is known as 'verbal injury' to his reputation.
>
> The law recognises in every man a right to have the estimation in which he stands in the opinion of others to be unaffected by false statements to his discredit.
>
> A key question to be asked is 'Do the words tend to lower the Plaintiff in the estimation of right-thinking members of society generally?' The words should not be regarded as defamatory unless they involve some lowering of the plaintiff's reputation or of the respect with which he is regarded. They must be disparaging of him. They must 'injure' the reputation or is likely to affect a person adversely in the estimation of reasonable people generally. The standard to be applied when determining if the injury was significant must be done after it is viewed through the eyes and ears of right-thinking members of society (otherwise known as the hypothetical reasonable reader).

[71] In *Lim Guan Eng v Ruslan Kassim & Another* Appeal [2021] AMEJ 0200; [2021] 4 CLJ 155; [2021] 2 MLJ 514; [2021] 3 MLRA 207, the proper test in determining whether the impugned words/statements are defamatory was formulated in the following terms:

> [86] The law in respect of what amounts to defamatory matter is well-settled. An imputation would be defamatory if its effect is to expose the

plaintiff, in the eyes of the community, to hatred, ridicule or contempt or to lower him or her in their estimation or to cause him or her to be shunned and avoided by them (see *Dato Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Ano*r [2009] 4 MLRH 48 (*Anwar Ibrahim v. NST*) *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 1 MLRH 153; *JB Jeyaretnam v. Goh Chok Tong* [1984] 2 MLRH 122; *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] 4 MLRH 877; *Chok Foo Choo v. The China Press Bhd* [1998] 2 MLRA 287).

[87] The defamatory nature of the imputation is to be judged by the ordinary and reasonable members of the community or an appreciable and reputable section of the community (see *Jones v. Skelton* [1963] 3 All ER 952; *Peak v. Tribune Co* [1909] 214 US 185; *Hepburn v. TCN Channel Nine Pty Ltd* [1983] 2 NSWLR 682). The ordinary reasonable person has been held to be one of fair average intelligence (see *Slatyer v. Daily Telegraph Newspaper Co Ltd* [1908] 6 CLR 1, who is not avid for scandal (see *Lewis v. Daily Telegraph Ltd* [1964] AC 234) but who may engage in some degree of loose thinking (see *Morgan v. Odhams Press Ltd and Another* [1971] 2 All ER 1156) and reading between the lines (see *Farquhar v. Bottom* [1980] 2 NSWLR 380), but who, at the same time, should not be unduly suspicious (see *Keogh v. Incorporated Dental Hospital of Ireland* [1910] 2 IR 577).

[88] To ascertain the meaning of the statement or publication, the plaintiff can rely on the natural and ordinary meaning or the innuendo meaning. The consideration of the meaning of the offending words involves an objective test (see *Jones v Skelton*). The offending words must be considered in the context of the whole article and not simply on isolated passages (see *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390; *Curistan v Times Newspapers Ltd* [2009] 2 WLR

149). In order to prove his claim in defamation, it is also essential that the offending words are not only defamatory and that they are published but also that they identify him as the person defamed.

[72] In addition to the above cases, reference may also be made to the case of *Raub Australian Gold Mining Sdn Bhd v Hue Shieh Lee* [2019] 2 AMR 525; [2019] 3 CLJ 729; [2019] 3 MLJ 720; [2019] 2 MLRA 345.

The Impugned Postings

[73] In light of the foregoing principles, it is both necessary and appropriate to reproduce and analyse the Impugned Postings which form the subject-matter in this defamation action. These Impugned Postings appear in three articles written by the Defendant.

[74] The first article that was published on 15 April, 2020 at 5.39 pm is entitled: "*IKRAMISASI KETIKA WABAK COVID19 MELANDA*". It reads as follows:

IKRAMISASI KETIKA WABAK COVID19 MELANDA

Tatkala negara sibuk dengan pelbagai strategi untuk mengekang virus COVID19. Tiba-tiba viral pula isu Ikramisasi. Terpanggil saya untuk mengulasnya memandangkan virus ikramisasi ini tidak kurang bahayanya, pantas menyusup.

Nak putuskan virus COVID19, kena jarakkan diri, elakkan jangkitan. Tetapi virus ikramisasi ini lain sikit, makin jarak, makin bahaya, sebab susupannya masuk ke dalam.

Tidak ramai yang tahu ketika PH memerintah, proses ikramisasi begitu aktif berjalan, terutama institusi pendidikan, seperti kolej, universiti, dewan bahasa dan pustaka dan lain-lain.

Ketika PH memerintah, ramai orang politik dan akademik Ikram dibawa masuk dalam institusi-institusi ini. Aktiviti-aktiviti yang berkaitan pengikraman berlaku secara aktif, macam cepatnya COVID19 merebak.

Sebab itu, Tun M ketika menjadi PM, telah dapat menghidu gerakan ini dan segera bertindak ke atas mereka ini. Tun M telah mengambil tindakan yang tepat.

Ketika ultra kiasu Ikram ini berkuasa juga, ‘spy’ mereka diletakkan di sana sini, untuk mengintip sesiapa yang cuba mengganggu-gugat proses pengikraman itu. Sebab itu, semasa mereka memerintah, mereka tidak mesra perkhidmatan awam, kerana perkhidmatan awam didakwa masih bersekutu dengan UMNO. Mereka pasang ‘spy’ dalam perkhidmatan awam. Setelah tidak ada kuasa, baharulah nak tunjukkan mereka ini jaguh perkhidmatan awam.

Tidak cukup dengan itu, sehinggakan group laman sosial dipantau dengan teliti melalui ‘spy’ mereka. Saya masih tidak dapat lupakan perbuatan khianat rakan-rakan Ikram dalam grup whatApps kami, Majlis Persatuan Akademik Malaysia (MAAC). Saya boleh namakan mereka jika mahu.

Segala perkara yang kami dibincangkan dalam whatApps, hatta bahan-bahan yang menjadi gurauan pun akan disimpan dan snapshot untuk dihantar kepada pemimpin-pemimpin mereka yang mempunyai kuasa dalam sesuatu institusi itu.

Tujuannya tidak lain, supaya tindakan dikenakan terhadap kami yang tidak sefahaman dengan Ikram. Begitulah ‘celaka’ nya puak-puak ini.

Di hadapan khalayak, mereka mendakwa, mereka adalah NGO dakwah, menjadikan ukhuwah sebagai teras kegemilangan. Namun, hakikatnya ukhuwah itu entah ke mana. Hanya tempelan untuk mencari pengaruh. Begitulah bahaya proses ikramisasi.

Dahulu, ketika mula mencari dan mendapatkan pengaruh, mereka menyusup masuk ke dalam UMNO dan PAS, termasuk ABIM.

Namun, apabila sudah mendapat kekuatan, mereka bawa ahli-ahli usrah UMNO dan PAS keluar. Kini, setelah kuat, UMNO dan PAS semuanya buruk.

Mereka sanggup bersekongkol dengan ultra kiasu, bagi mendapat dan mengekalkan kuasa.

Mereka menjadi lebih teruk daripada UMNO dan PAS. Sebab itu, sukar untuk saya percaya kepada mereka yang terlibat dalam ikramisasi.

Saya lebih percayakan UMNO dan PAS, walaupun saya bukan ahli kepada parti politik ini. Kenapa saya berkata sedemikian?

Ketika UMNO memerintah, ramai orang-orang Ikram yang diraikan, menjawat jawatan-jawatan tinggi dalam akademik dan pentadbiran Universiti, saya boleh nama satu persatu. Malangnya, bila mereka memerintah, semua orang yang tidak sefahaman dengan Ikram dibuang dan ditukar satu per satu sehingga licin.

Mana ukhuwah teras kegemilangan yang menjadi laungan kamu? Semuanya palsu

Tidakkah perbuatan ini, perbuatan ‘celaka’. Saya minta maaf kerana terpaksa menggunakan bahasa kasar.

Saya telah dianiaya berkali-kali oleh orang-orang Ikram ini, hanya kerana tidak sefahaman.

Saya juga pernah dianiayai oleh segelintir pemimpin UMNO, tetapi saya masih boleh terima, tetapi bukan dengan orang Ikram ini, walaupun tidak semua.

Ikram mendakwa mereka adalah NGO dakwah. Hakikatnya tidak begitu. Sebab itu, kumpulan serpihannya ISMA, mengambil keputusan keluar daripada Ikram.

Strategi Ikram begitu licik, divide and rule, pecah dan perintah. Masuk dalam UMNO, PAS, ABIM lain-lain organisasi, pecahkan, kemudian perintahkan. Hebatkan?

Justeru, saya memohon, supaya proses pembersihan dilakukan ke atas proses pengikraman ini sebelum terlambat. Jika proses pengikraman boleh dilakukan dengan cepat ketika mereka memerintah, kenapa menunggu masa yang lama untuk pembersihan ini dilakukan.

Lantikan-lantikan Ikram ini mesti diputuskan seperti mana kita mahukan putuskan jangkitan COVID19, bagi memastikan ia tidak merebak. Alasannya, apabila virus ini sudah masuk, memang sukar untuk diputuskan kerana kerosakan yang dibawa sudah sampai ke akar umbi.

Saya tidak kata semua orang Ikram itu perlu dibersihkan. Tinggalkanlah mereka yang benar-benar sayangkan agama, bangsa dan negara, yang benar-benar terbuka dan mahu bekerja, bukannya yang berpolitik, penuh kepalsuan.

Satu lagi persoalan yang sering berligar adalah, apakah benar tuduhan Dr Ismadi dalam FBnya, Ikram mempunyai kaitan rapat dengan gerakan Freemasons?

Sepantas kilat, orang kuat Ikram menjawab, jika Ikram dikaitkan dengan Freemasons, mana mungkin Ikram membantu Palestin dalam misi bantuan kemanusiaan?

Saya ingin jelaskan di sini bahawa salah faham khalayak adalah, Freemason merupakan gerakan yang anti Islam dan memperjuangkan Yahudi. Ia adalah tidak benar sama sekali.

Freemason juga berkembang luas di seluruh dunia, termasuk Malaysia. Gerakan ini mengaburi mata dunia melalui kegiatan amal seperti membantu keluarga yang miskin dan menganjurkan pertunjukan amal untuk disedekahkan kepada mereka yang memerlukan.

Gerakan Freemason ini jelas turut memperjuangkan kewujudan negara di bumi Palestin.

Sebab itu, bila ada orang cuba menafikan melalui hujah bahawa Ikram juga merupakan antara pertubuhan yang aktif di Malaysia dalam menyumbang kepada Palestin dan menentang penjajahan haram oleh Zionis Israel, itu tidak menghairankan saya, kerana ini adalah salah satu sifat Freemasons.

Satu lagi sifat freemason adalah, ukhuwwah kelompok mengatasi ummah atau 'jamaah centric'. Ukhuwwah mengatasi kebenaran. Inilah Freemason versi Islam, firqah mun'azilah. Terus terang, ini bukannya cara Islam dalam pembawaan dakwah. Apatah lagi dalam konteks negara kita.

Mohd Ridhuan Tee Abdullah

[75] The second article, published on 18 April, 2020 at 6.38 pm, is entitled: "*INSAFLAH IKRAM SEBELUM KARAM*" and it reads as follows:

INSAFLAH IKRAM SEBELUM KARAM

Setiausaha Ikram katanya mahu menjemput saya (dengan Dr Kamarul) untuk bersemuka, berkaitan dengan artikel saya sebelum ini.
Jawapan saya, jawab dahulu apa yang saya tulis. Musim wabak COVID19 ini, mana ada masa untuk berjumpa. Dah habis wabak nanti, usahkan berjumpa, berlaga pipi pun boleh.

Oleh kerana ajakan ayam tersebut melibatkan kami berdua sahaja, elok saya kira Setiuasaha Ikram, jawab dahulu apa yang dilontarkan oleh Dr Kamarul dalam link di sini, yang perlu dijawab terlebih dahulu.

https://www.facebook.com/kamarul.yusoff.7/posts/3178636992180337

Saya tegaskan di sini, apa yang saya coretkan, adalah apa yang telah saya lalui, bagaimana saya dianiayai oleh pemimpin Ikram itu sendiri. Ini saya katakana perbualan ‘celaka’. Saya tidak tujukan kepada individu. Saya ada bukti-bukti itu semua.

Pengikut-pengikut Ikram, mungkin tidak tahu apa yang berlaku di peringkat atasan, sebab saudara semua telah dibutakan oleh ‘kewarakan’ mereka.

Berkaitan dengan Ikram dan Freemasons, saya hanya timbulkan perkara yang dinyatakan dengan jelas oleh Dr Ismadi. Yang kamu nak terasa pasal apa? Siapa makan cili, dialah terasa pedasnya.

Kepada pengikut-pengikut Ikram yang masih tercari-cari siapakah Ikram sebenarnya, mari ikuti sejarah Ikram ini agar saudara faham. Saya petik apa yang rakan-rakan lain tulis kerana kesulitan masa.

Kepada Setiausaha Ikram, Insaflah Ikram sebelum karam.

Cacatan ini dibuat oleh Mohd Fuad Mohd Salleh.
Dr. Mohd Fuad Mohd Salleh, “Liku-Liku Gerakan Islam Di Malaysia: Satu Catatan Awal”, Imtiyaz Multimedia and Publications, 2015. https://www.researchgate.net/…/Liku-Liku-Gerakan-Islam-di-M…

Untuk maklumat lanjut baca juga di sini, banyak kebenaran dan bukan fitnah…

JAMAAH DALAM JAMAAH
IRC, JIM & IKRAM

Pertemuan membincangkan kertas kerja untuk ahli IRC menyertai UMNO tidak berakhir dengan penolakan kertas kerja berkenaan. Ia berterusan dengan usul dalam kalangan mereka untuk menzahirkan IRC di mata masyarakat. Nama yang telah dicadangkan ialah Jamaah Islam Malaysia (JIM).

JIM telah ditubuhkan pada 27 Julai 1990 dan didaftarkan dengan Pendaftar Pertubuhan (1). Usul diterima majoriti dan Presiden JIM pertama adalah Abu ‘Urwah (Saari Sungip) (2) sehingga tahun 1999 di mana Prof. Madya Dr. Mohd Hatta Shahrom (ketika itu) mengambil tempat sebagai Presiden.

Pada tahun 1999 juga ramai pimpinan JIM menganggotai Parti Keadilan, di antaranya ialah Sahri Bari (bekas Naib Presiden JIM dan bekas pensyarah kejuruteraan di ITM tahun 80-an) yang menjadi EXCO Pemuda Keadilan dan pernah memegang jawatan Setiausaha Agung.

Hj. Saari Sungip menjadi calon Keadilan dalam Pilihan Raya 29 November 1999 di Dewan Undangan Negeri (DUN) Selangor tetapi tewas, kini menjadi ADUN PAS Hulu Kelang setelah menang dalam PRU12 2008.

Sebagaimana nasib kumpulan gerakan Islam lainnya, sama ada di Malaysia ataupun di luar negara, IRC bergolak lagi pada tahun 2009 apabila kepimpinannya yang berada dalam HIS mencadangkan penubuhan IKRAM pada 22 Oktober 2009.

Mengikut kalangan tertentu IKRAM diwujudkan bagi menggabungkan tenaga semua ikhwahnya yang pernah mendapat pendedahan tarbiyyah IRC di luar negara tetapi kini terlibat dalam pelbagai jemaah; ada yang dengan JIM, ada yang dengan ISMA (4) dan ada yang dengan HALUAN.(4)

Agak sukar untuk membuktikan hubungan antara kesemua kumpulan ini kerana pengasas HALUAN, Dato’ Kaya Bakti Ustaz Dahlan bin Mohd Zain lebih dikenali sebagai pengasas ABIM Perlis di tahun 70-an dan 80-an.

Namun berdasarkan kepada penggerak yang ada, ia menunjukkan HALUAN mempunyai hubung-kait dengan IRC. Demi

menggabungkan semua kenalan seniors yang masing-masing membawa uslub yang berbeza, IKRAM dilahirkan.

Namun JIM, HALUAN dan ISMA tetap berasingan. Pada Disember 2011, dalam PPN JIM ke-21, Zaid Kamaruddin mengisytiharkan dalam Muktamar yang berkenaan bahawa JIM akan dibubarkan dan diserapkan ke dalam IKRAM sepenuhnya, tanpa ISMA dan HALUAN.

Sebab utama pembubaran JIM, penubuhan IKRAM dan seumpamanya hanya diketahui oleh pimpinan yang duduk di dalam Tanzim IRC secara rahsia. JIM, IKRAM dan seumpamanya adalah wajihah (front organization) terbuka dalam masyarakat umum sebagaimana yang dirangkumkan dalam masterplan dan grand design IRC sejak tahun 70-an lagi. Bahawa JIM, IKRAM adalah IRC dan daripada kumpulan yang sama tidak dapat dinafikan lagi kerana dalam Muktamar JIM yang terakhir itu ada menyebutkan bahawa……

“Ramai pengasas JIM merupakan bekas pelajar di luar negara. Kita berhimpun membina Jamaah dalam kalangan umat Islam setempat bagi menyempurnakan tanggungjawab bersama. Kemudian kita bina jemaah yang menyatukan pelajar Islam dari Malaysia, IRC, Islamic Representative Council pada bulan April 1974”.

“Kita kembali ke Malaysia pada pertengahan 1970-an. Terus menggerakkan usaha dakwah dan tarbiah terutamanya di kampus-kampus. JIM hanya ditubuhkan pada 27 Julai 1990….IKRAM ditubuhkan pada 22 Oktober 2009”.

Secara ringkas peranan yang dimainkan oleh IRC dalam medan dakwah di Malaysia yang turut mengalami pasang surutnya. IRC sendiri telah mengalami banyak perpecahan dalam kalangan ahli dan penyokongnya : dari IRC kepada Suara Islam di UK dan berlanjutan hingga ke Malaysia, kemudian menjadi IRC di Malaysia, memasuki ABIM dan PAS dan bersendiri di bawah JIM.

Mereka tubuhkan pula IKRAM pada tahun 2009 dan pada bulan Disember 2011 ini membubarkan JIM dan berbondong-bondong memasuki IKRAM pula.

Esok-esok nanti entah apa pula…menganggotai UMNO? Tidak mustahil sama sekali kerana kertas kerja asas sudah ada sejak Februari/Mac 1990 lagi.(6)

Demikianlah yang dapat dinyatakan grand design IRC dalam medan dakwah di Malaysia yang sempat kita bentangkan berdasarkan pengalaman ramai rakan yang pernah bersama-sama mereka untuk penilaian para pembaca. Kami tidak mengulas kesannya ke atas PAS dan ABIM di sini kerana memberikan peluang kepada para pembaca yang budiman untuk menilainya sendiri. Kami hanya membentangkan fakta sahaja.

Sebahagian fakta disokong dengan rujukan yang masih boleh disahkan, sebahagian lagi berdasarkan temubual. Selamat mengulas dan berikanlah ulasan yang berfakta dengan penuh adab berdasarkan pengalaman masing-masing.

(1) JIM dibubar setelah 22 tahun terlibat dakwah. http://www.harakahdaily.net/…/15620-jim-dibubar-setelah-22t….

(2) Ironinya pula dalam tanzim JIM ini, Ustaz Alias Othman yang terkenal sebagai pakar rujuk IRC sejak pertengahan 70-an hingga tertubuhnya JIM, tidak menjadi Presiden JIM, tetapi hanya pernah memegang jawatan Timbalan Presiden JIM. Perkara ini pernah ditanya kepadanya. Jawapannya : “strategi dalam dakwah, syaikh!”

(3) IRC Mesir yang mendaftarkan diri sebagai NGO atas nama “Ikatan Muslimin Malaysia (ISMA)”. Kini ISMA turut dikembangkan di luar negara

(4) Merupakan serpihan daripada IRC UK didaftarkan pada tahun 1988 sebagai sebuah NGO atas nama “Pertubuhan Himpunan Lepasan Institusi-Institusi Pengajian Tinggi Malaysia”. Mempunyai perspektif yang sedikit berlainan daripada modus operandi JIM dan ISMA.

(5) Ada kalangan exIRC yang ditemui menyebut tidak mustahil pada masa akan datang, IKRAM akan menjadi political front yang baru dalam perspektif dakwah di Malaysia. Menurut Ghazali Daud (bukan nama sebenar – untuk melindungi identity subjek), penubuhan IKRAM itu sendiri selain daripada percubaan untuk tujuan wehdah, ia juga berperanan sebagai NGO Islamik alternative kepada yang sedia ada dan barangkali akan mengikut langkah Parti PKS Indonesia yang juga mempunyai persamaan ciri-cirinya dengan IKRAM yang mengambil model al-Ikhwanul Muslimin. Asas manhaj tarbiyyah harakiyyah yang dipegang oleh kalangan

pengasas senior IRC adalah model al-Ikhwan sejak penubuhannya pada tahun 1974 sehingga menjadi JIM, IKRAM, HALUAN dan ISMA di Malaysia.

(6) Sila rujuk LAMPIRAN 3 berkembar.

Islamic Representative Council (IRC) & Suara Islam

Sumber: https://aidcnews.wordpress.com/2015/08/12/irc-jim-ikram/ https://jamaahdalamjamaah.wordpress.com/…/08/12/irc-jim-ik…/

Ralat

Pembetulan daripada ISMA tentang tarikh penubuhan

JIM - daftar 27 Julai 1990, bubar 2013

Ikram - daftar Julai 2010

Ikram dah bergerak 3 tahun lebih baru JIM bubar.

Aset dan harta JIM semua berpindah/diserap ke Ikram.

Ahli dan pimpinan JIM/Ikram sama.

Ikram serap/ambil alih JIM.

ISMA daftar pada Julai 1997 (16 tahun sebelum JIM bubar).

[76] The third article that was published on 27 April, 2020 at 1.44 pm is entitled: "*Kenapa Ikram begitu baik dengan ultra kiasu, Dong Zong?*" and it reads as follows:

Kenapa Ikram begitu baik dengan ultra kiasu, Dong Zong?

BILA sentuh sahaja, nama NGO yang berubah-ubah mengikut keadaan, seperti IRC, JIM dan Ikram kemudian membentuk parti politik, PAN, ada yang melompat. Sedangkan saya menceritakan perkara yang benar. Perkara yang saya lalui sendiri. Kenapa begitu penasaran sekali?

https://www.ismaweb.net/…/kenapa-ikram-begitu-baik-dengan-…/

Jawablah isu yang dibangkitkan. Habis cerita. Jika saya salah kerana menyentuh soal Ikram, yang sepatutnya mengambil tindakan adalah Ikram, bukan orang lain.

Saya bagi satu lagi contoh, yang amat dekat dengan saya, Persatuan Cina Muslim Malaysia (MACMA). Saya adalah antara ahli jawatankuasa penaja MACMA. Kami tubuhkan MACMA dengan ‘darah dan air mata’. Dalam maksud, begitu banyak cabaran dihadapi memastikan MACMA, tegak berdiri agar dapat memudahkan dakwah kepada orang Cina.

Setelah sekian lama memimpin MACMA, saya terpaksa lepaskan kerana tidak mahu dituduh mahu memegang jawatan hingga mati. Namun, setelah pucuk pimpinan MACMA diterajui oleh orang Ikram, keadaan sudah menjadi berubah daripada tujuan asal. MACMA yang pada asalnya, bertujuan untuk mengislamkan Cina, sudah menjadi mencinakan Islam.

Asalnya, mahu berdakwah kepada orang Cina, kini sudah menjadi, lebih Cina daripada China. Proses pencinaan begitu ketara, sedangkan yang memeluk agama Islam melalui MACMA tidak juga banyak kelihatan. NGO seperti PERKIM tetap menjadi pilihan para mualaf, tidak kira bangsa. “Nak masuk Islam di mana? Spontan orang akan menjawab, PERKIM”. Sedangkan PERKIM hanya NGO, bukan badan berotoriti, seperti jabatan agama.

Pernah saya bangkitkan isu MACMA kepada pemimpin Ikram, yang sudah mulai berubah apabila diterajui oleh orang Ikram. Sepantas kilat, pemimpin Ikram itu berkata, apa kamu tahu tentang MACMA, kamu sudah lama meninggalkan MACMA. Kamu tidak tahu lagi pergerakan MACMA hari ini. Saya dinasihatkan supaya mengikuti jejak langkah pemimpin MACMA yang sudah diresapi Ikramisasi.

Kenapa semuanya ini boleh berlaku? Ramai yang masih tidak tahu wajah sebenar Ikram dan penglibatan mereka dalam politik secara halus, bagi menarik sokongan Cina terhadap parti politik yang ditubuhkannya (PAN).

Kalau dahulu IRC menyusup masuk ke dalam PAS, ABIM, UMNO setelah berjaya mencapai cita-citanya, maka berubah namanya menjadi JIM dan seterusnya menjadi Ikram. Kini, mereka menyusup ke dalam PPBM (Bersatu), kerana di situ adalah peluang baharu seperti mereka lakukan ke atas PAS, ABIM dan UMNO. Hasrat Ikram tercapai, pemimpin mereka diangkat menjadi wakil rakyat dan pernah menjadi menteri (kini bekas menteri).

Baik, marilah kita menyorot wajah sebenar Ikram. Ketika negara dibawah kerajaan PH, terdapat beberapa peruntukan yang disalurkan secara langsung kepada sekolah persendirian Cina tanpa melalui Kementerian Pendidikan. Pada 12hb Januari 2019 (Sinar Harian) menyiarkan YB Khairy Jamaluddin mempersoalkan dana sebanyak 12 juta kepada Sekolah Menengah Persendirian Cina (SMPC) dan Kolej Universiti New Era.

Yang peliknya Menteri Kewangan dan Timbalan Menteri Pendidikan yang hadir. Dimanakah Menteri Pendidikan? Bila disiasat, rupa-rupanya peruntukan kepada sekolah swasta Cina bukan dari Kementerian Pendidikan Malaysia tetapi dari dana khas yang disalurkan terus oleh kementerian kewangan seperti yang disiarkan oleh Malaysia Gazzette pada 5hb Februari 2019.

Kenapa Ikram tidak mempersoalkan ketelusan dan integriti pengurusan dan pentadbiran Menteri Kewangan. Kenapa Ikram mempertahankan pandangan Dr Musa Nordin begitu mengritik cara pengendalian Kementerian Kesihatan berkenaan isu COVID 19. Yang manakah lebih serius kesalahan. Yang menarik kenapa wujud dana khas dalam Kementerian Kewangan yang akan digunakan untuk Sekolah Persendirian Cina.

Yang mengejutkan dalam Borneo Online pada 23hb November 2018, kementerian kewangan menerusi bajetnya memperuntukan RM50 juta untuk SJKC dan 12 juta untuk SMPC termasuk di Sabah dan Sarawak. Tetapi dana ini tidak disalurkan kepada Kementerian Pendidikan. Tetapi diberikan secara langsung. Apakah nasib sekolah kebangsaan di Sabah dan Sarawak yang masih belum menerima bekalan elektrik dan bergantung kepada enjin diesel tetapi dianak tirikan. Kenapa Ikram tidak mendesak Menteri Pendidikan ketika itu, supaya lebih tegas agar Kementerian Kewangan tidak campur tangan dalam hal ehwal Kementerian Pendidikan.

Malahan Ikram seolah-olah setuju dengan had bilangan muka surat tulisan khat Jawi di sekolah menerusi satu forum Jawi: Saling

Memahami pada 28hb Disember 2019 bersama dengan Dong Zong. Hubungan Dong Zong dengan Ikram bukan lagi rahsia. Pada 29hb Jun 2019, Ikram Musleh membuat jelajah bersama dengan pelajar-pelajar sekolah dan Dong Zong mengadakan sesi lawatan dalam memupuk hubungan kaum. Kenapa Ikram memilih Dong Zong dalam memupuk hubungan kaum. Kenapa tidak menggunakan saluran PIBG SJKC di bawah kelolaan Kementerian Pendidikan jika benar-benar ingin memupuk hubungan kaum. Bila diteliti, baru tahu hubungan Ikram yang dikenali moderat Islam telah mempunyai hubungan yang agak lama dengan Dong Zong.

Ikram bukan setakat mempunyai hubungan dengan Dong Zong tetapi turut menyokong UEC. Pada 17hb Julai 2018, Ikram sendiri menganjurkan satu forum secara tidak langsung mahu mengiktiraf UEC dan sekolah vernacular. Malahan Ikram turut menyokong penggunaan kepelbagaian bahasa dalam urusan rasmi kerajaan. Di manakah letaknya maruah sekolah kebangsaan dan bahasa negara untuk pembentukan jati diri negara ini.
Ingatan saya, jika hendak berdakwah pun, jangan sampai tergadai prinsip. Negara kita ada Perlembagaan. Itulah pasak hidup bernegara.

Adakah Ikram lebih menyokong agenda bukan Melayu daripada agenda negara? Ini bukan soal kaum tetapi soal negara. Kenapa tokoh-tokoh ilmuwan Ikram membisu apabila agenda negara dirobek untuk kepentingan pihak tertentu. Pandangan Ikram pada 25hb Julai 2018 memang mengejutkan mengenai UEC dan sekolah vernacular yang disiarkan dalam laman webnya.

Ikram tidak bersetuju untuk mewujudkan satu sistem pendidikan kebangsaan dengan menghapuskan sekolah vernacular yang dianggap akan menimbulkan perasaan syak wasangka. Ikram lebih rela sekolah vernakular wujud supaya mereka dibiarkan wujud dalam dunia mereka. Bagaimana asimilasi hendak wujud dengan pandangan sebegini.

Malahan cadangan Ikram adalah menjadikan Bahasa Cina sebagai bahasa pengantar di SJKC dan SMPC. Ini bukan mengintegrasikan masyarakat. Ini memisahkan masyarakat. Akhirnya ramai orang Cina Malaysia tidak boleh berbahasa Melayu. Adakah ini identiti Malaysia yang Ikram kehendaki dalam pandangannya?

Adakah tokoh-tokoh ilmuwan Ikram masih membisu membiarkan Malaysia ke arah pemisahan masyarakat atau segregasi. Kenapa tidak membantah apabila Kementerian Kewangan menghiasi pejabatnya lebih China dari Cina sewaktu sambutan Tahun Baru Cina 2019. Yang mengejutkan penggunaan Bahasa Mandarin lebih utama daripada Bahasa Melayu. Yang menarik Timbalan Menteri Pendidikan lebih berkuasa daripada Menteri Pendidikan dalam soal pendidikan negara terutama kelangsungan hidup sekolah vernakular.

Pada 17hb Disember 2014 dalam sebuah artikel Aliran, Ikram bersama dengan 100 NGO lain telah melibatkan diri untuk pindaan ke atas beberapa perundangan Islam yang dilihat bertentangan dengan prinsip Perlembagaan Persekutuan. Yang menjadi isu adalah kebebasan tidak terikat dengan perundangan Islam yang dilihat tidak selari dengan Perlembagaan Persekutuan.

Antaranya isu transgender dan penghapusan diskriminasi berdasarkan kaum atau ICERD. Adakah Ikram menyokong transgender dalam pindaan perundangan Islam? Di manakah hujahnya Islam membenarkan transgender? Bagaimana pula dengan nasib kaum Bumiputra Sabah dan Sarawak, adakah hak mereka terjaga dengan perlaksanaan ICERD? Adakah Ikram tidak tahu agenda kumpulan tersebut mengenai ICERD.

Satu lagi persoalan yang sedang bermain melalui maklumat yang disampaikan kepada saya, mempersoalkan, apakah padang Sekolah Islam al-Amin yang begitu canggih didanai oleh Ikram sepenuhnya, atau ada agensi kerajaan tertentu pada zaman PH yang membiayainya?

Jika benarlah yang membiayainya adalah ultra kiasu, seperti mana pembinaan Pusat Pendidikan al-Itqan, Pulau Pinang yand didanai sepenuhnya oleh ultra kiasu sebanyak RM15 juta pada 2016 (https://www.roketkini.com/…/sempena-ramadan-sekolah-agama-…/), Ikram terlalu banyak terhutang budi kepada ultra kiasu.

Apakah ini yang menyebabkan Ikram begitu baik dengan parti ultra kiasu selama ini sehingga tidak nampak lagi mana hak dan mana batil. Rupa-rupanya terhutang budi. Nasihat saya jangan sampai tergadai body.

Mengenali parti ultra kiasu ini sekian lama, tidak ada istilah percuma, ada harga yang perlu dibayar. Ikram (atau PAN) sukar untuk melepaskan diri dari persepsi kuat dalam kalangan

masyarakat bahawa mereka adalah “proksi” kepada DAP, meskipun cuba dinafikan oleh pemimpin-pemimpin Ikram. http://tranungkiteoffline.blogspot.com/…/geran-1000-hektar-…

Kita semua tahu parti ultra kiasu tidak pernah berubah pendiriannya terhadap Islam. Isu pengajaran dan pembelajaran jawi sebanyak enam muka surat di sekolah kebangsaan telah menjadi gegak gempita, adalah satu bukti bahawa apa jua perkara berkaitan Islam, tidak akan dipersetujui. Bagaimana ultra kiasu ini boleh begitu lunak dengan Ikram dan abangnya, PAN, jika tidak ada timbal balas yang akan diperolehi?

Sebab itu, nak berdakwah, berdakwahlah, tiada siapa yang menghalang, itu suatu perkara baik, tetapi jangan tergadai prinsip. Bila dah terhutang budi, takut tergadai diri.

Ridhuan Tee Abdullah

The Respective Submissions and Testimonies of the Witnesses

[77] The Plaintiff asserted that it has established, on a balance of probabilities, the three requisite ingredients namely:

(a) the Impugned Postings were defamatory;

(b) the Impugned Postings referred to the Plaintiff; and

(c) the Impugned Postings were published.

[78] The Plaintiff further drew support from the testimonies of its witnesses in support of its contention.

[79] With the exception of PW-5, all of the Plaintiff's witnesses testified that:

- The impugned First, Second, and Third Postings contained defamatory imputations concerning the Plaintiff;

- The impugned Postings referred to the Plaintiff;

- The impugned Postings were published by the Defendant to third parties; and

- As a result of these defamatory statements, the Plaintiff's reputation suffered damage.

[80] PW-5, as an expert witness, testified that in general, the Muslim community has a negative perception of the Freemason movement and any person who joins the movement will be considered as anti-Islam or an agent to destroy Islam. Thus, associating a Muslim or an Islamic organisation with the Freemason movement is defamatory.

[81] As non-members of the Plaintiff, PW-3 and PW-7 testified that the impugned Postings had injured the Plaintiff's reputation in the eyes of the public including the Chinese community.

[82] On the other hand, as the Plaintiff's members, PW-1, PW2, PW-4, PW-6 and PW-8 further testified that the impugned Postings were false and not true among others:

- That the Plaintiff is not an organization with a dangerous ideology and agenda, an organization that has a bad intention towards the country and/or an organization that has a bad intention to disunite the community;

- That the Plaintiff is not an organization which does not support a Muslim or Malay identity in tandem with the country's aspiration;

- That the Plaintiff has nothing to do with the Freemason movement;

- That the Plaintif does not support LGBT and call for amendment of law which are contrary to Islam; and

- That the Plaintiff does not support discrimination on the rights of the natives in Sabah and Sarawak.

[83] PW-1, who served as the Chairman of the Plaintiff's Education Committee, testified that the Defendant's allegations regarding the Plaintiff's stance on the Unified Examination Certificate (UEC) and vernacular schools were false and unfounded. In support of his testimony, PW-1 referred to an article published by the Plaintiff's Education Committee entitled *"UEC Dari Pandangan IKRAM"* dated 25 July 2018.

[84] PW-4, who was the Vice Chancellor of UniSZA at the material time, testified that he had never victimised the Defendant. He further clarified that the incident referred to by the Defendant bore no connection to the Plaintiff, as PW-4 had acted solely in his official capacity as Vice Chancellor of UniSZA, and not in his personal capacity as a leader or member of the Plaintiff.

[85] As for PW-6, who was the former Minister of Education, he testified that he was no longer involved actively in the Plaintiff and did not hold any position within the Plaintiff organization.

[86] PW-8 also testified that the impugned Postings were published maliciously by the Defendant, as evidenced by the number of articles authored by the Defendant that were defamatory of the Plaintiff.

[87] All the Defendant's witnesses testified that the Impugned Postings were not at all defamatory in nature and nothing in the said Impugned Postings reduced and lowered the reputation of the Plaintiff. According to every one of these witnesses, the Impugned Postings contained comments and/or inference made by the Defendant based on the true chronological facts which widely reported earlier in other news, websites and articles.

[88] DW-3, the Defendant in this action, also testified that the Impugned Postings were published by him in the exercise of his right to freedom of speech and/or freedom of opinion, as guaranteed by the Federal Constitution.

[89] It is only natural that witnesses called by the respective parties would testify in a manner favourable to their own case. Ultimately, however, it falls upon the Court to assess the credibility of such testimony, particularly where it is challenged, and to consider any inconsistencies or contradictions that may have arisen during cross-examination.

[90] As this is a defamation suit, it is incumbent on this Court to be mindful of and to adhere to the principles laid down by the courts in paragraphs [70] to [72] above when making a determination as to whether the Impugned Postings in this case amount to defamation or defamatory statements.

[91] This Court does not accept the Defendant's contention that the three Impugned Postings did not refer to the Plaintiff.

[92] It is evident that the articles were written by the Defendant and the articles were published by the Defendant's on the wall of his Facebook account. The Impugned Postings had thus been published to a third person by the Defendant.

[93] Henceforth, the elements of reference to the Plaintiff and publication have been fulfilled.

[94] What remains for determination is whether the Impugned Postings bear defamatory imputations against the Plaintiff.

[95] The Plaintiff alluded to its pleadings and asserted that it has pleaded that all the three Impugned Postings were defamatory towards the Plaintiff

“by reading the whole context of each Posting in their natural and ordinary and/or implied meaning”.

[96] The Plaintiff has pleaded as follows:

> 7. Berkenaan Penulisan Pertama tersebut, Plaintif mengatakan bahawa keseluruhan konteks kenyataan Defendan dalam Penulisan Pertama tersebut adalah merupakan kenyataan yang tidak benar dan/atau bersifat fitnah yang bertujuan untuk menjatuhkan imej dan/atau reputasi Plaintif yang mana daripada sudut semula jadi serta lazim dan/atau tersirat adalah bermaksud dan/atau diniatkan untuk bermaksud dan/atau memberikan kefahaman seperti yang berikut tetapi tidak terhad kepada:
>
> 7.1. Plaintif adalah sebuah pertubuhan yang mempunyai fahaman dan agenda yang bahaya; dan/atau
>
> 7.2. Plaintif merupakan sebuah pertubuhan yang mempunyai niat buruk kepada negara dan/atau ingin memecah belah masyarakat.
>
> ....
>
> 9. Berkenaan Penulisan Kedua tersebut, Plaintif mengatakan bahawa keseluruhan konteks kenyataan Defendan dalam Penulisan Kedua tersebut adalah merupakan kenyataan yang tidak benar dan/atau bersifat fitnah yang bertujuan untuk

menjatuhkan imej dan/atau reputasi Plaintif yang mana daripada sudut semula jadi serta lazim dan/atau tersirat adalah bermaksud dan/atau diniatkan untuk bermaksud dan/atau memberikan kefahaman seperti yang berikut tetapi tidak terhad kepada:

9.1. Plaintif perlu insaf kerana Plaintif adalah sebuah pertubuhan yang mempunyai fahaman dan agenda yang bahaya.

....

11. Berkenaan Penulisan Ketiga tersebut, Plaintif mengatakan bahawa keseluruhan konteks kenyataan Defendan dalam Penulisan Ketiga tersebut adalah merupakan kenyataan yang tidak benar dan/atau bersifat fitnah yang bertujuan untuk menjatuhkan imej dan/atau reputasi Plaintif yang mana daripada sudut semula jadi serta lazim dan/atau tersirat adalah bermaksud dan/atau diniatkan untuk bermaksud dan/atau memberikan kefahaman seperti yang berikut tetapi tidak terhad kepada:

11.1. Plaintif begitu baik dengan ultra kiasu, Dong Zong kerana Plaintif merupakan pertubuhan yang menyokong agenda bukan Melayu berbanding agenda Negara Malaysia.

[97] It is the Plaintiff's case that on a plain reading and ordinary use of language:

- The First Impugned Posting defamed the Plaintiff by alleging that the Plaintiff is an organisation with a dangerous ideology and agenda, an organisation that has a bad intention towards the country and/or an organisation that has a bad intention to disunite the community.

- The Second Impugned Posting defamed the Plaintiff by claiming that the Plaintiff needs to repent from becoming an organisation with a dangerous ideology and agenda.

- The Third Impugned Posting defamed the Plaintiff by accusing that the Plaintiff is an organisation which does not support a muslim or Malay identity in tandem with the country's aspiration.

[98] According to the Plaintiff, by reading the whole context of the First, Second and Third Impugned Postings in their natural and ordinary meaning and/or implied message, "any reasonable man will be let to believe that the Plaintiff's reputation as a *dakwah*, education and welfare movement based on Islamic principles is a farce which will tend to lower the Plaintiff's reputation as a *dakwah*, education and welfare movement based on Islamic principles as well as to expose it to hatred, contempt or ridicule, or to injure its reputation in its office, trade or profession, or to injure its financial credit".

[99] In support of the above contention, the Plaintiff made references to the testimonies of witnesses who testified on behalf of the Plaintiif.

[100] The Plaintiff further pleaded that each Impugned Posting is also to be read in isolation and/or each paragraph is to be considered separately and when approached in this manner, the Impugned Statements are alleged to be defamatory.

[101] The Plaintiff alluded to 13 specific Statements from the First Impugned Posting as what it considered as conveying 17 natural and ordinary and/or implied meanings in paragraphs 8, 8.1, 8.1.1, 8.1.2, 8.2, 8.2.1, 8.3, 8.3.1, 8.4, 8.4.1, 8.5, 8.5.1, 8.6, 8.6.1, 8.7, 8.7.1, 8.7.2, 8.8, 8.8.1, 8.9, 8.9.1, 8.10, 8.10.1, 8.11, 8.11.1, 8.12, 8.12.1, 8.13, 8.13.1, 8.13.2 and 8.13.3 of its Amended Statement of Claim in Enclosure 64.

[102] The 13 Statements from the First Impugned Posting together with the Plaintiff's submissions are as follows:

> "*…..Tiba-tiba viral pula isu Ikramisasi. Terpanggil saya untuk mengulasnya memandangkan virus ikramisasi ini tidak kurang bahayanya, pantas menyusup. Nak putuskan virus COVID19, kena jarakkan diri, elakkan jangkitan. Tetapi virus ikramisasi ini lain sikit, makin jarak, makin bahaya, sebab susupannya masuk ke dalam*."
>
> The Plaintiff is an organisation with a dangerous ideology and agenda; and/or
>
> The Plaintiff is an organisation that has evil intentions towards the country and/or an organisation that intended to disrupt the society.

"*Tujuannya tidak lain, supaya tindakan dikenakan terhadap kami yang tidak sefahaman dengan Ikram. Begitulah 'celaka' nya puak-puak ini*."

The Plaintiff is a damned organisation

"*Di hadapan khalayak, mereka mendakwa, mereka adalah NGO dakwah, menjadikan ukhuwah sebagai teras kegemilangan. Namun, hakikatnya ukhuwah itu entah ke mana. Hanya tempelan untuk mencari pengaruh. Begitulah bahaya proses ikramisasi*."

The Plaintiff is a dangerous organisation because it uses its image as a *dakwah* non-government organization and its slogan of "brotherhood the foundation of glory" as a mere cosmetic to attain influence.

"*Mereka sanggup bersekongkol dengan ultra kiasu, bagi mendapat dan mengekalkan kuasa*."

The Plaintiff is willing to conspire with '*ultra kiasu*' to attain and maintain power.

"*Mereka menjadi lebih teruk daripada UMNO dan PAS. Sebab itu, sukar untuk saya percaya kepada mereka yang terlibat dalam ikramisasi*."

The Plaintiff is worse than UMNO and the Malaysian Islamic Party (PAS) resulting the Plaintiff as untrustworthy.

"*Ketika UMNO memerintah, ramai orang-orang Ikram yang diraikan, menjawat jawatan-jawatan tinggi dalam akademik dan pentadbiran Universiti, saya boleh nama satu persatu. Malangnya, bila mereka memerintah, semua orang yang tidak sefahaman dengan Ikram dibuang dan ditukar satu per satu sehingga licin*."

The Plaintiff is an untrustworthy and a damned organisation because when the Plaintiff is in power and/or if attain power, the Plaintiff will get rid all academicians and universities' administration that not in line with the Plaintiff's stand, in contrast to the treatment given by UMNO to the Plaintiff's members while UMNO is in power.

"*Mana ukhuwah teras kegemilangan yang menjadi laungan kamu? Semuanya palsu Tidakkah perbuatan ini, perbuatan 'celaka'…*"

The Plaintiff's slogan of "Brotherhood, the Foundation of Glory" is false; and/or

The Plaintiff had committed an evil action.

"*Saya telah dianiaya berkali-kali oleh orang-orang Ikram ini, hanya kerana tidak sefahaman*."

The Defendant had been victimized or oppressed by the Plaintiff's members frequently only due to disagreement.

"*Ikram mendakwa mereka adalah NGO dakwah. Hakikatnya tidak begitu*."

The Plaintiff in reality is not a *dakwah (*Islamic missionary*)* movement as alleged by it.

"*Justeru, saya memohon, supaya proses pembersihan dilakukan ke atas proses pengikraman ini sebelum terlambat. Jika proses pengikraman boleh dilakukan dengan cepat ketika mereka memerintah, kenapa menunggu masa yang lama untuk pembersihan ini dilakukan. Lantikan-lantikan Ikram ini mesti diputuskan seperti mana kita mahukan putuskan jangkitan COVID19, bagi memastikan ia tidak merebak. Alasannya, apabila virus ini sudah masuk, memang sukar untuk diputuskan kerana kerosakan yang dibawa sudah sampai ke akar umbi*."

The Plaintiff's members that have been appointed in educational institutions must be removed immediately because they have committed grave damages.

"*Saya tidak kata semua orang Ikram itu perlu dibersihkan. Tinggalkanlah mereka yang benar-benar sayangkan agama, bangsa dan negara, yang benar-benar terbuka dan mahu bekerja, bukannya yang berpolitik, penuh kepalsuan*."

There are members of the Plaintiff who are playing politics and they have no love for the religion, race and the country.

"*Sebab itu, bila ada orang cuba menafikan melalui hujah bahawa Ikram juga merupakan antara pertubuhan yang aktif di Malaysia dalam menyumbang kepada Palestin dan menentang penjajahan*

haram oleh Zionis Israel, itu tidak menghairankan saya, kerana ini adalah salah satu sifat Freemasons."

The Plaintiff is an organisation which has a same attribute with the Freemasons movement ie. is a two-faced attitude because on one hand the Plaintiff active involvement in the Palestinian cause and against the illegal occupation of the Zionist Israel and this two-faced attitude is one of the Freemason movements' characteristics.

"*Satu lagi sifat freemason adalah, ukhuwwah kelompok mengatasi ummah atau 'jamaah centric'. Ukhuwwah mengatasi kebenaran. Inilah Freemason versi Islam, firqah mun'azilah. Terus terang, ini bukannya cara Islam dalam pembawaan dakwah. Apatah lagi dalam konteks negara kita*."

The Plaintiff is an evil organisation which follows the Freemasons movement because bond among members is more important than the truth or the ummah. This is characteristic of Freemasons;

The Plaintiff is the Muslim version of the Freemasons movement which is known as a left out group or in Arabic language known as '*firqah mun'azilah*'.; and/or

The Plaintiff's *dakwah* (Islamic missionary) methodology is not Islamic especially in the Malaysian context.

[103] On the Second Impugned Posting, the Plaintiff pleaded 5 specific Statements which it considered as carrying 6 natural and ordinary and/or implied meanings in paragraphs 10, 10.1, 10.1.1, 10.2, 10.2.1, 10.3, 10.3.1, 10.3.2, 10.4, 10.4.1, 10.5 and 10.5.1 of its Amended Statement of Claim in Enclosure 64.

[104] The 5 Statements from the Second Impugned Posting together with the Plaintiff's submissions are as follows:

"*Oleh kerana ajakan ayam tersebut melibatkan kami berdua sahaja, elok saya kira Setiuasaha Ikram, jawab dahulu apa yang dilontarkan oleh Dr Kamarul dalam link di sini, yang perlu dijawab terlebih dahulu*."

The Plaintiff's invitation to meet the Defendant with regard to the First and Second Posting was not sincere.

"*Saya tegaskan di sini, apa yang saya coretkan, adalah apa yang telah saya lalui, bagaimana saya dianiayai oleh pemimpin Ikram itu sendiri. Ini saya katakana perbualan 'celaka'. Saya tidak tujukan kepada individu. Saya ada bukti-bukti itu semua*."

The Plaintiff is an evil organisation where the Plaintiff's leadership had victimized or oppressed or persecuted the Defendant personally.

"*Pengikut-pengikut Ikram, mungkin tidak tahu apa yang berlaku di peringkat atasan, sebab saudara semua telah dibutakan oleh 'kewarakan' mereka*."

The Plaintiff's followers have been deceived by the leadership who pretended to be pious people; and/or

The Plaintiff's leadership pretended to be pious and holy but acted solely for their own interests.

"*Berkaitan dengan Ikram dan Freemasons, saya hanya timbulkan perkara yang dinyatakan dengan jelas oleh Dr Ismadi. Yang kamu nak terasa pasal apa? Siapa makan cili, dialah terasa pedasnya*"

The Defendant in the First Posting claims he is stating what is obvious in the context of the relationship between the Plaintiff and the Freemason movement.

"*Kepada Setiausaha Ikram, Insaflah Ikram sebelum karam*."

The Plaintiff's Secretary General should repent before it is too late. The word repentance connotes there is a wrongdoing first.

[105] The Plaintiff also submitted that there were 18 specific Statements from the Third Impugned Posting which it considered as conveying 19 natural and ordinary and/or implied meanings and these are pleaded in paragraphs 12, 12.1, 12.1.1, 12.2, 12.2.1, 12.2.2, 12.3, 12.3.1, 12.4, 12.4.1, 12.5, 12.5.1, 12.6, 12.6.1, 12.7, 12.7.1, 12.8, 12.8.1, 12.9, 12.9.1, 12.10, 12.10.1, 12.11, 12.11.1, 12.12, 12.12.1, 12.13, 12.13.1, 12.14, 12.14.1, 12.15, 12.15.1, 12.16, 12.16.1, 12.17, 12.17.1, 12.18 and 12.18.1 of its Amended Statement of Claim in Enclosure 64.

[106] The 18 Statements from the Third Impugned Posting together with the Plaintiff's submissions are as follows:

"*Kenapa Ikram begitu baik dengan ultra kiasu, Dong Zong*"

The Plaintiff supports '*Ultra Kiasu*' namely Dong Zong and this means that the Plaintiff supports a non-Malay agenda which may run contrary to the Islamic or Malay agenda.

"*Ramai yang masih tidak tahu wajah sebenar Ikram dan penglibatan mereka dalam politik secara halus, bagi menarik sokongan Cina terhadap parti politik yang ditubuhkannya (PAN)*"

The Plaintiff established '*Parti Amanah Negara*' (AMANAH) which is also known as PAN; and/or

The Plaintiff is an organisation that is involved in a secret pact to attract supports from the Chinese for AMANAH.

"*Baik, marilah kita menyorot wajah sebenar Ikram. Ketika negara dibawah kerajaan PH, terdapat beberapa peruntukan yang disalurkan secara langsung kepada sekolah persendirian Cina tanpa melalui Kementerian Pendidikan. Pada 12hb Januari 2019 (Sinar Harian) menyiarkan YB Khairy Jamaluddin mempersoalkan dana sebanyak 12 juta kepada Sekolah Menengah Persendirian Cina (SMPC) dan Kolej Universiti New Era. Yang peliknya Menteri Kewangan dan Timbalan Menteri Pendidikan yang hadir. Dimanakah Menteri Pendidikan? Bila disiasat, rupa-rupanya peruntukan kepada sekolah swasta Cina bukan dari Kementerian*

Pendidikan Malaysia tetapi dari dana khas yang disalurkan terus oleh kementerian kewangan seperti yang disiarkan oleh Malaysia Gazzette pada 5hb Februari 2019. Kenapa Ikram tidak mempersoalkan ketelusan dan integriti pengurusan dan pentadbiran Menteri Kewangan."

> The Plaintiff is an evil organization that supports non-Malay and non-Islamic agenda because it failed to question the transparency and integrity of the Ministry of Finance's management and administration with regards to the distribution of funds of RM12 million to the Chinese private schools (SMPC) and the New Era College University without going through the Ministry of Education.

"*Yang mengejutkan dalam Borneo Online pada 23hb November 2018, kementerian kewangan menerusi bajetnya memperuntukan RM50 juta untuk SJKC dan 12 juta untuk SMPC termasuk di Sabah dan Sarawak. Tetapi dana ini tidak disalurkan kepada Kementerian Pendidikan. Tetapi diberikan secara langsung. Apakah nasib sekolah kebangsaan di Sabah dan Sarawak yang masih belum menerima bekalan elektrik dan bergantung kepada enjin diesel tetapi dianak tirikan. Kenapa Ikram tidak mendesak Menteri Pendidikan ketika itu, supaya lebih tegas agar Kementerian Kewangan tidak campur tangan dalam hal ehwal Kementerian Pendidikan*."

> The Plaintiff is an evil organization that supports non-Malay and non-Islamic agenda because the Plaintiff failed to create a political pressure on the Minister of Education at that time to

further the Malay in education. The Defendant also mean that the Ministry of Finance should not interfere in the Ministry's of Education affairs with regard to the the allocation of RM50 million to the Chinese national-type schools (SJKC) and RM12 million to the Chinese private schools (SPMC) including in Sabah and Sarawak without going through the Ministry of Education.

"*Malahan Ikram seolah-olah setuju dengan had bilangan muka surat tulisan khat Jawi di sekolah menerusi satu forum Jawi: Saling Memahami pada 28hb Disember 2019 bersama dengan Dong Zong. Hubungan Dong Zong dengan Ikram bukan lagi rahsia. Pada 29hb Jun 2019, Ikram Musleh membuat jelajah bersama dengan pelajar-pelajar sekolah dan Dong Zong mengadakan sesi lawatan dalam memupuk hubungan kaum. Kenapa Ikram memilih Dong Zong dalam memupuk hubungan kaum. Kenapa tidak menggunakan saluran PIBG SJKC di bawah kelolaan Kementerian Pendidikan jika benar-benar ingin memupuk hubungan kaum. Bila diteliti, baru tahu hubungan Ikram yang dikenali moderat Islam telah mempunyai hubungan yang agak lama dengan Dong Zong. Ikram bukan setakat mempunyai hubungan dengan Dong Zong tetapi turut menyokong UEC. Pada 17hb Julai 2018, Ikram sendiri menganjurkan satu forum secara tidak langsung mahu mengiktiraf UEC dan sekolah vernacular. Malahan Ikram turut menyokong penggunaan kepelbagaian bahasa dalam urusan rasmi kerajaan. Di manakah letaknya maruah sekolah kebangsaan dan bahasa negara untuk pembentukan jati diri negara ini*."

The Plaintiff does not uphold the status and dignity of the national schools and the Malay language in developing a Malaysian identity because the Plaintiff is not only having a cordial relationship with Dong Zong, but further supports the Unified Examination Certificate (UEC) and/or indirectly demanded the recognition of the UEC and/or the vernacular schools and/or the usage of other languages for the government's official matter.

"*Ingatan saya, jika hendak berdakwah pun, jangan sampai tergadai prinsip. Negara kita ada Perlembagaan. Itulah pasak hidup bernegara*."

The Plaintiff is doing *dakwah* by sacrificing its Islamic principles and constitutional guarantees, the foundation of the nation.

"*Adakah Ikram lebih menyokong agenda bukan Melayu daripada agenda negara? Ini bukan soal kaum tetapi soal negara. Kenapa tokoh-tokoh ilmuwan Ikram membisu apabila agenda negara dirobek untuk kepentingan pihak tertentu. Pandangan Ikram pada 25hb Julai 2018 memang mengejutkan mengenai UEC dan sekolah vernacular yang disiarkan dalam laman webnya*."

The Plaintiff is an organization that supports non-Malay and non-Islamic agenda as against the Muslim Malay agenda of the country. The Plaintiff's intellectuals were silent when the Malay Muslim agenda is being destroyed and/or mutilated and

this is for the sake of the interests of certain parties particularly in relation to UEC and/or vernacular schools.

"*Ikram tidak bersetuju untuk mewujudkan satu sistem pendidikan kebangsaan dengan menghapuskan sekolah vernacular yang dianggap akan menimbulkan perasaan syak wasangka. Ikram lebih rela sekolah vernakular wujud supaya mereka dibiarkan wujud dalam dunia mereka. Bagaimana asimilasi hendak wujud dengan pandangan sebegini*."

The Plaintiff is an organisation which does not support a national education system but supports the existence of the vernacular schools.

"*Malahan cadangan Ikram adalah menjadikan Bahasa Cina sebagai bahasa pengantar di SJKC dan SMPC. Ini bukan mengintegrasikan masyarakat. Ini memisahkan masyarakat. Akhirnya ramai orang Cina Malaysia tidak boleh berbahasa Melayu. Adakah ini identiti Malaysia yang Ikram kehendaki dalam pandangannya?*"

The Plaintiff proposed Chinese Language to be the medium of instruction in SJKC and/or SPMC which will result in disunity in the society and the poor command of Malay language among the Chinese.

"*Adakah tokoh-tokoh ilmuwan Ikram masih membisu membiarkan Malaysia ke arah pemisahan masyarakat atau segregasi*."

The intellectuals in the Plaintiff's organization have been silenced towards segregation of people in society because of the action that have been taken.

Kenapa tidak membantah apabila Kementerian Kewangan menghiasi pejabatnya lebih China dari Cina sewaktu sambutan Tahun Baru Cina 2019."

The Plaintiff failed to object when the Ministry of Finance decorates its office in the Chinese style during the Chinese New Year's Celebration in 2019.

"*Pada 17hb Disember 2014 dalam sebuah artikel Aliran, Ikram bersama dengan 100 NGO lain telah melibatkan diri untuk pindaan ke atas beberapa perundangan Islam yang dilihat bertentangan dengan prinsip Perlembagaan Persekutuan. Yang menjadi isu adalah kebebasan tidak terikat dengan perundangan Islam yang dilihat tidak selari dengan Perlembagaan Persekutuan*."

The Plaintiff together with 100 other NGOs were involved in the call for amendment of certain Islamic laws which were said to be contrary to the Federal Constitution amongst others, relating to transgender and/or elimination of racial discrimination and/or International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). This is contrary to the stand taken by the Plaintiff because the Plaintiff never support ICERD in toto or amendments the Islamic law.

"*Antaranya isu transgender dan penghapusan diskriminasi berdasarkan kaum atau ICERD. Adakah Ikram menyokong transgender dalam pindaan perundangan Islam? Di manakah hujahnya Islam membenarkan transgender?*"

The Plaintiff is alleged to have supported transgender rights and called for amendment of law and these amendments are contrary to Islam.

"*Bagaimana pula dengan nasib kaum Bumiputra Sabah dan Sarawak, adakah hak mereka terjaga dengan perlaksanaan ICERD? Adakah Ikram tidak tahu agenda kumpulan tersebut mengenai ICERD*."

The Plaintiff is alleged to have supported International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which would deprive the *bumiputera* of Sabah and Sarawak of their rights.

"*Satu lagi persoalan yang sedang bermain melalui maklumat yang disampaikan kepada saya, mempersoalkan, apakah padang Sekolah Islam al-Amin yang begitu canggih didanai oleh Ikram sepenuhnya, atau ada agensi kerajaan tertentu pada zaman PH yang membiayainya? Jika benarlah yang membiayainya adalah ultra kiasu, seperti mana pembinaan Pusat Pendidikan al-Itqan, Pulau Pinang yand didanai sepenuhnya oleh ultra kiasu sebanyak RM15 juta pada 2016 (https://www.roketkini.com/…/sempena-ramadan-sekolah-agama-…/), Ikram terlalu banyak terhutang budi kepada ultra kiasu*."

The Plaintiff had sacrificed its principles by becoming indebted to '*Ultra Kiasu*' because they are alleged to have financed Al-Amin Islam School's playing field which was similar to the financing of Itqan Education Centre by '*Ultra Kiasu*' for a sum of RM15 million in 2016.

"*Apakah ini yang menyebabkan Ikram begitu baik dengan parti ultra kiasu selama ini sehingga tidak nampak lagi mana hak dan mana batil. Rupa-rupanya terhutang budi. Nasihat saya jangan sampai tergadai body*."

The Plaintiff's has a very close relationship with '*Ultra Kiasu*' to the point it can no longer differentiate between the truth and the falsehood.

"*… Ikram (atau PAN) sukar untuk melepaskan diri dari persepsi kuat dalam kalangan masyarakat bahawa mereka adalah "proksi" kepada DAP, meskipun cuba dinafikan oleh pemimpin-pemimpin Ikram. http://tranungkiteoffline.blogspot.com/…/geran-1000-hektar-…*"

The Plaintiff is a lackey of the Democratic Action Party (DAP).

"*Kita semua tahu parti ultra kiasu tidak pernah berubah pendiriannya terhadap Islam. Isu pengajaran dan pembelajaran jawi sebanyak enam muka surat di sekolah kebangsaan telah menjadi gegak gempita, adalah satu bukti bahawa apa jua perkara berkaitan Islam, tidak akan dipersetujui. Bagaimana ultra kiasu ini boleh begitu lunak dengan Ikram dan abangnya, PAN, jika tidak ada timbal*

balas yang akan diperolehi? Sebab itu, nak berdakwah, berdakwahlah, tiada siapa yang menghalang, itu suatu perkara baik, tetapi jangan tergadai prinsip. Bila dah terhutang budi, takut tergadai diri."

'*Ultra Kiasu*' has a close relationship with the Plaintiff and a political party said to be related to the Plaintiff i.e. '*Parti Amanah Negara*' (AMANAH) because all of them has self-serving interests and the Plaintiff is willing to sacrifice its Islamic principles towards this end.

[107] The crucial question at this juncture is whether the Impugned Postings, Statements, or Words published by the Defendant bear a defamatory meaning.

[108] The Defendant merely asserted that the Impugned Postings "are NOT AT ALL defamatory in nature and nothing in the said Writings reduced and lowered the reputation of the Plaintiff'.

[109] It is not uncommon in defamation claims, as demonstrated in the present case, for a defendant to conflate the stages of analysis by introducing substantive defences prematurely. At this stage, however, the proper inquiry is limited to whether the impugned material is capable of bearing a defamatory meaning, and the Defendant's role is confined to contesting that threshold issue.

[110] Returning to the issue at hand, the Plaintiff contended that the Impugned Postings ought to have been read as a whole and understood in their natural and ordinary meaning and/or implied message. At the

same time, the Plaintiff also advanced the argument that each Impugned Posting should also be considered in isolation, with each paragraph evaluated separately.

[111] Two observations are apposite at this juncture.

[112] First, the Impugned Postings consisted of three lengthy articles. In this regard, when assessing whether the Impugned Postings were defamatory in nature, it was necessary to be mindful of the guidance provided by the Federal Court in *Lim Guan Eng v Ruslan Kassim & Another Appeal*, namely that the allegedly offending statements must be considered within the context of the entire article, and not merely through the lens of isolated passages or words.

[113] Second, it bears reiteration that the defamatory character of an imputation is to be assessed from the perspective of ordinary, reasonable members of the community, or a reputable and appreciable segment thereof. In *Lim Guan Eng v Ruslan Kassim & Another Appeal*, the Federal Court further clarified that such a person is of fair, average intelligence – not avid for scandal, yet capable of engaging in a degree of loose thinking and reading between the lines, though not unduly suspicious.

[114] Applying these guiding principles, this Court is of the considered view that, in determining whether the Defendant's publications were defamatory of the Plaintiff, the Impugned Postings ought to be read as a whole. This holistic approach is to be preferred over a piecemeal or selective reading of words, sentences, or paragraphs in isolation.

[115] Having considered the entirety of the Impugned Postings in their full context, together with the evidence adduced at trial and the applicable legal principles, this Court finds that the Impugned Postings published by the Defendant were defamatory of the Plaintiff. The words and statements, when viewed holistically and through the lens of the ordinary reasonable reader, were capable of and in fact conveyed a defamatory imputation. The defamatory sting of the Impugned Postings is clear and unmistakable. Accordingly, the threshold of defamatory meaning has been unequivocally established.

The Defences

[116] Having found that the Plaintiff has established the essential elements of a defamation claim on a balance of probabilities, the burden now shifts to the Defendant to demonstrate that he is entitled to rely on one or more of the recognised defences available under the law.

[117] The Defendant submitted that the Impugned Postings constituted comments and/or inferences drawn by him based on chronological facts which had been widely reported in other news outlets, websites, and articles prior to his publications. In this regard, the Defendant invoked the defences of justification, fair comment and/or qualified privilege.

Defence of Justification

[118] Section 8 of the Defamation Act 1957 provides that, in an action for libel or slander involving words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail merely because the truth of every charge is not proved, so long as those not proved to be

true do not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges.

[119] In relation to the application of the defence of justification, the High Court in *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors* [1995] CLJU 304; [1996] 1 MLJ 393; [1995] 4 MLRH 877 articulated the following principles:

> First, a defendant must establish the truth of all material statements contained in the words complained of, which may include any defamatory comments therein (see para [26]);
>
> Second, the standard of proof is the balance of probabilities, and the burden of establishing the defence of justification rests squarely on the defendant (see para [27]); and
>
> Third, there is no obligation on the plaintiff to prove the falsity of the defamatory statements; the law presumes such statements to be false (see para [28]).

[120] In *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 AMR 66; [2015] 8 CLJ 477; [2015] 6 MLJ 187; [2015] 6 MLRA 63, the Federal Court held as follows:

> [45] This area of law is well settled. As a matter of general rule, the defence of justification is a complete defence to a defamation action (see *Hasnul Abdul Hadi v. Bulat Mohamed & Anor* [1977] 1 MLRH 508 and *Tun Datuk Patinggi Haji Abdul Rahman Yakub v. Bre Sdn Bhd & Ors*

[1995] 4 MLRH 877; [1996] 1 MLJ 393). The burden is on the defendant to show that the defamatory imputations are substantially true."

[121] Furtherance to the above pronouncement, the Federal Court in *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* [2024] 5 AMR 341; [2024] 6 CLJ 635; [2024] 4MLJ 260; [2024] 5 MLRA 68 further held that:

> [47] … a half-truth statement that presents a false impression and that harms the reputation of a person is no doubt, defamatory. This kind of statement can safely be considered false in the circumstances. In *V Radhakrishna v. Alla Rama* [2019] Cri LJ 302, the Court opined that a half-truth statement can be more dangerous than a total lie. In the case of *Lim Guan Eng v. Utusan Melayu (M) Bhd* [2012] 3 MLRH 124; [2012] 2 MLJ 394; [2012] 2 CLJ 619, it was held by the court that half-truths statement are no truth at all and bear the intention to deliberately mislead and malign unfairly the party referred to in the statement.

[122] The Defendant supported his defence of justification by claiming that the statements published in the Impugned Postings were true based on 32 articles that can be accessed on the internet.

[123] The Plaintiff refuted the above contention and pointed out that of these 32 articles mentioned (and pleaded) by the Defendant, only 27 of them were adduced by the Defendant's witnesses during the full trial. The balance of 5 pleaded articles were not adduced. The Plaintiff conceded to the contents and authenticity of two of the articles (in Part A of the Bundles) were not in dispute. Nevertheless, the Plaintiff submitted that there is nothing in these two articles to show "that the Plaintiff is an

organisation which does not support a Muslim or Malay identity in tandem with the country's aspiration".

[124] As for the remaining articles, it was submitted by the Plaintiff that:

> … the reliance on these 25 Pleaded Articles is totally not sufficient for the Defendant to invoke the defence of Justification because the sources cited by the Defendant such as Ibnu Hasyim, Santau Berapi, Ummah Madani, Sabahkini2.com, Dr. Ismadi and Tranungkite@online are ghost writers and then [SIC] is NO WAY to acsertain [SIC] the truth of the contents. This is admitted by the Defendant himself and the witnesses that he called.

[125] The crux of the Plaintiff's reply to the defence of justification was that it "must fail because if half-truth cannot be a basis of Justification, what more to say if there is no way to ascertain the truth of the statements?".

[126] The Plaintiff submitted that it was wholly untenable for the Defendant to assume that the contents of the 25 Pleaded Articles were true merely because they were accessible on the internet. According to the Plaintiff, the mere availability of material online does not amount to proof of its truth. To accept such a proposition, it was argued, would be to effectively presume that all content published on the internet is accurate and reliable, and such a position is both legally unsustainable and contrary to basic evidentiary principles.

[127] Having considered the evidence adduced, the submissions of the parties, and the applicable legal principles, this Court is not satisfied that the Defendant has discharged the burden of proving the truth of the

defamatory imputations contained in the Impugned Postings. The reliance placed on online articles, many of which emanated from anonymous or unverifiable sources, does not satisfy the threshold of proof required under the law. The truth of the contents of these articles could not be verified. In the absence of credible, independent, and substantiated evidence, the defence of justification cannot be sustained.

[128] Several of the key allegations contained in the Impugned Postings were framed in terms that went beyond any factual reporting and instead amounted to assertions or insinuations of misconduct on the part of the Plaintiff. The Defendant did not call or tender any cogent evidence to prove these serious allegations. In the absence of such proof, the presumption of falsity remains unrebutted. Accordingly, the defence of justification must fail.

Defence of Fair Comment

[129] The defence of fair comment is available to a defendant in an action for libel or slander and is provided in section 9 of the Defamation Act 1957. It states that “a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved”.

[130] The Court of Appeal in *Mohd Rafizi Ramli v Dato’ Sri Dr Mohamad Salleh Ismail & Anor* [2019] AMEJ 1413; [2019] MLJU 1218; [2020] 2 MLRA 334 elaborated on this defence as follows:

[8] In a defence of fair comment, if the primary facts are true, in the absence of malice and/or falsehood, the defence of fair comment should ordinarily succeed. This position will also be consistent with art 10 of the Federal Constitution. Only when the primary facts are not true, other facts which the learned trial judge had admirably deliberated on the elements of fair comment to succeed becomes relevant. The true test of fair comment essentially is 'whether the comment is an honest expression of a genuine opinion' (see *Slim v. Daily Telegraph Ltd* [1968] 2 QB 157; *Chew Peng Cheng v. Anthony Teo Tiao Gin* [2008] 2 MLRH 360). The phrase 'honest expression' and 'genuine opinion' does not relate to 'physical facts' but 'psychological facts'. Psychological facts related to the state of mind of the defendant to find liability or otherwise needs the court to take a holistic view of the case, the law and the Federal Constitution (see *Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2013] 3 MLRA 179).

[9] It is well established that fair and bona fide comments or criticism upon matter of public interest cannot be scandalous or libellous or even warranting criminal defamation, etc for democracy to survive. To put it mildly, punishing persons having some or all virtues of Socrates, Plato, etc to be punished by way of imprisonment or monetary sum, etc will not augur well for accountability, transparency and good governance in matters of public interest. Such persons are truly protected by not only under the law of defamation but also under art 10 of the Federal Constitution which relates to freedom of speech guaranteed by the Federal Constitution (see *Bonnard v. Perryman* [1891] 2 Ch 269; *Cream Holdings Ltd and others v. Banerjee and Another* [2005] 1 AC 253).

...

[11] Fair comment is one of the pillar defence to an action in defamation and this pillar must not be read only with the common law cases but also art 10 of the Federal Constitution which is the supreme law of the land. Common law cases cannot limit the protection given under the Constitution (see *Pegawai Pengurus Pilihan Raya Dewan Undangan Negeri Bagi Pilihan Raya Dun N 27 Amino Agos Suyub v. Dr Streram Sinnasamy & Ors* [2019] 6 MLRA 234; *Macvilla Sdn Bhd v. Mervyn Peter Guan Yin Hui & Anor* [2019] MLRAU 257). Thus, the test in the Malaysian context must be related to malice and/or falsehood. Malice and/or falsehood does not relate to free speech guaranteed under the Federal Constitution. When malice and/or falsehood is established, defamation generally ought to succeed. The facts of this case are not one related to malice and/or falsehood. The learned judge's findings also reflect the same."

[131] The Defendant made reference to section 9 of the Defamation Act 1957 and the case of *Joshua Benjamin Jeyaretnam v Goh Chok Tong* [1989] CLJU 34; [1989] 3 MLJ 1; [1989] 1 MLRA 500.

[132] The Defendant submitted that the Impugned Postings would constitute as fair comment based on the following reasons:

The said Writings, as a whole, are indeed mere comments and inference of facts made by the Defendant concerning the historical facts of the Plaintiff based on the chronological facts which widely reported earlier in the other news, websites and articles and were never intended to attack the Plaintiff.

The comments are indeed matters of public interest and a duty bound of the Defendant since he is undisputedly an academician,

religious preacher and lecturer at Universiti Sultan Zainal Abidin (UniSZA) as well as a well-known public figure in Malaysia.

In facts, a right thinking and fair-minded person would derive to the same conclusion after reading the news, websites and articles referred and relied by the Defendant.

[133] The Defendant further submitted that the said Impugned Postings have a reasonable basis of facts based on the news, websites and articles referred and relied by the Defendant and they accordingly suffice to constitute as fair comment.

[134] The Defendant also asserted that the same legal principle has been adopted by the Court of Appeal in *Abu Hassan bin Hasbullah v Zukeri bin Ibrahim* [2017] AMEJ 1321; [2018] 3 CLJ 726; 2018] 6 MLJ 396; [2017] MLRAU 453 as follows:

[61] Gatley on Libel and Slander, 9th Edition, states as follows:

"To succeed in a defence of fair comment the Defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of." (emphasis added)"

[135] In response to the above contentions, the Plaintiff also referred this Court to the judgment of the Privy Council in *Joshua Benjamin Jeyaretnam v Goh Chok Tong* [1989] CLJU 34; [1989] 3 MLJ 1; [1989] 1 MLRA 500.

[136] The elements for the defence of fair comment, as laid down by the Privy Council, are as follows:

(i) the words complained of are comment, although they may consist or include inferences of fact;

(ii) the comment is on a matter of public interest;

(iii) the comment is based on facts; and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved."

[137] These four elements are for the Defendant to establish, in order to succeed in his defence of fair comment.

[138] The Plaintiff further cited the Federal Court case of *Dato' Sri Dr Mohamad Salleh Ismail & Anor v Mohd Rafizi Ramli* [2022] 4 AMR 695; [2022] 5 CLJ 487; [2022] 3 MLJ 758; [2022] 4 MLRA 718 for the proposition that "the comment must be made based on true facts and not by mere assumption".

[139] In that case, the Federal Court held as follows:

> [45] … However, the substratum of facts relied upon by the respondent in making his comments must be true and existing. It is as what *Joshua Benjamin* (supra) stated, that "a writer may not suggest or invent facts and then comment upon them, on the assumption that they are true". In

other words, a plea of fair comment is not available to the respondent if the respondent invented or created the facts he intended to rely on.

[140] Since the truth of the pleaded articles relied by the Defendant is challenged and has not been established, the Plaintiff submitted that the defence of fair comment should also fail (without a need to scrutinize on the other elements of fair comment).

[141] In light of the foregoing, this Court finds that the Defendant has failed to establish the necessary elements to succeed in his defence of fair comment. While it is accepted that the Impugned Postings pertain to matters of public interest, the Defendant has not proven that his comments were based on true and established facts. As emphasised by the Federal Court in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v Mohd Rafizi Ramli* and the Privy Council in *Joshua Benjamin Jeyaretnam v Goh Chok Tong*, a defendant cannot invent or assume facts and then seek to cloak those assumptions as fair comment.

[142] In this case, since the truth of the alleged substratum of facts relied upon by the Defendant, namely the various articles and online materials, has not been satisfactorily established, the foundation upon which the comments are purportedly made is fatally deficient. Without a proven basis of facts, the defence of fair comment necessarily collapses. Accordingly, this Court finds that the Defendant is not entitled to rely on the defence of fair comment in this action.

Defence of Qualified Privilege

[143] In *S Pakianathan v Jenni Ibrahim & Another Case* [1988] 1 CLJ Rep 233; [1988] 2 MLJ 173; [1988] 1 MLRA 110, the Supreme Court expounded on the defence of qualified privilege as follows:

> [18] However, there are occasions upon which, on grounds of public policy and convenience, a person may, without incurring legal liability, make statements about another which are defamatory and in fact untrue: *Watt v. Longsdon* [1930] 1 KB 130. These occasions are called occasions of qualified privilege. A communication made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty although it contains a criminatory matter which, without this privilege, would be slanderous and actionable: *Harrison v. Bush* [1855] 5 E & B at p 348. The duty may be legal, social or moral, and the person to whom the communication is made must have a corresponding interest or duty to it. The reciprocity is essential: *Adam v. Ward* [1917] AC at p 334.

[144] The test of whether the person making and the person receiving the communication have a corresponding interest in the subject matter was considered by the Court of Appeal in the case of *City Team Media Sdn Bhd & Ors v Tan Sri Datuk Nadraja Ratnam* [2022] CLJU 134; [2022] 2 MLJ 608; [2022] 3 MLRA 515. The Court of Appeal reiterated the principle in the following terms:

> [44] To establish the defence of qualified privilege, the appellants must show that there is a legal, social or moral duty on their part to make or publish the statements and the recipient (the readers) has a

corresponding interest or duty to receive such communication (*Adam v. Ward* [1971] AC 309; *Rajagopal v. Rajan* [1971] 1 MLRA 678; [1972] 1 MLJ 45). It was said in the case of *Abdul Rahman Talib v. Seenivasagam & Anor* [1964] 1 MLRH 296; [1965] 1 MLJ 142 that "the reciprocity is essential". The test is whether the person making and the person receiving the communication have a corresponding interest in the subject matter.

[145] In the case of *Ayob Saud v TS Sambanthamurthi* [1988] 1 MLRH 653; [1989] 1 MLJ 315; [1989] 1 CLJ 321, it was held that:

> [7] … Where a defence of qualified privilege is set up, the burden lies on the defendant to prove that he made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged. (Rajagopal v. Rajam [1971] 1 MLRA 678; [1972] 1 MLJ 45.)

[146] In was argued by the Plaintiff that since the Defendant has failed to plead “the details of the corresponding interest between him and the Facebook readers at large”, the defence of qualified privilege shall fail *in limine*.

[147] In addition, the Plaintiff further submitted that the defence of qualified privilege is not applicable to the Defendant because “the Defendant has no such legal, moral or social duty to publish a one-sided unproven allegations i.e. the First, Second and Third Postings to the Facebook Readers”.

[148] This Court is of the considered view that the Defendant's reliance on the defence of qualified privilege is wholly misconceived and must fail. The Defendant did not plead, let alone prove, any reciprocity of interest or duty between himself and the readers of his Facebook postings, which is a fundamental requirement for the defence to arise. This failure alone is fatal to the defence, as the law clearly demands a corresponding duty and interest between the publisher and the recipient.

[149] The Defendant's attempt to invoke qualified privilege simply on the basis that he is a blogger is untenable. The status of being a blogger does not, without more, confer any special legal, moral or social duty to broadcast defamatory allegations to the general public. Qualified privilege is not a licence to defame under the guise of public communication.

[150] Additionally, the Defendant holds no official standing that would give rise to any such duty. He is not a member of the Plaintiff's organisation, not a member of Parliament or State Legislative Assembly, and not the President of any political party, as confirmed by the Defendant himself during cross-examination. His publications were thus not made pursuant to any recognised duty or privilege.

[151] For all these reasons, this Court finds that the defence of qualified privilege is not available to the Defendant and must be rejected.

Quantum

[152] This Court, having determined that the Plaintiff's defamation claim is substantiated and that the Defendant's defences have failed, must now address the issue of damages.

[153] In addition to seeking injunctive relief, the Plaintiff, in its Amended Statement of Claim, has sought the following damages:

- General Damages;
- Aggravated Damages of RM50,000,000.00;
- Exemplary Damages of RM50,000,000.00; and/or
- Interest on the judgment sum at a rate of 8% per annum from the date of judgment until full payment is made.

[154] The Plaintiff relied on the established principle that libel is actionable per se, that is, damages are presumed without the need to prove actual harm (*MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [1995] 2 AMR 1776; [1995] 2 CLJ 912; [1995] 2 MLJ 493; [1995] 1 MLRA 322 ("*MGG Pillai*")).

[155] The Plaintiff further emphasized that in libel cases, damages should reflect the seriousness of the defamatory act. Citing the *MGG Pillai* case, the Plaintiff noted that key factors in assessing damages include the Plaintiff's status, the gravity of the libel, the Defendant's conduct, and the Defendant's failure to apologize.

[156] Regarding the Defendant's conduct, the Plaintiff argued that the Defendant's actions exacerbated the harm caused by the defamatory statements. The Defendant's refusal to engage in dialogue with the Plaintiff following the publication of the defamatory posts, as well as the

ongoing nature of the defamatory content and the lack of an apology, all contributed to the Plaintiff's entitlement to aggravated damages.

[157] The Plaintiff further asserted its standing, stressing that it is a registered Islamic missionary and welfare organization with substantial domestic and international influence. With over 24,000 members and 116 branches in Malaysia, along with 16 international branches, the Plaintiff averred that its reputation within these communities has been severely impacted by the Defendant's publications.

[158] The Plaintiff contended that the defamatory statements were both false and highly damaging, falsely portraying the Plaintiff as an organization with harmful, anti-national intentions and extremist ideologies.

[159] The Plaintiff also noted that the defamatory posts were widely circulated across social media platforms, including Facebook, and were republished by external news portals. The extensive reach of these posts, along with the public comments they generated, significantly amplified the damage to the Plaintiff's reputation.

[160] The Plaintiff further referenced the evidence presented at trial, which showed a decline in membership and public trust as a direct result of the defamatory posts.

[161] Lastly, the Plaintiff argued that the Defendant "profited" from the defamatory statements by positioning himself as a "hero" for exposing the Plaintiff's supposed "true" nature. The Plaintiff contended that this warranted an award for exemplary damages.

[162] To substantiate its claim for RM200,000,000.00 in general, aggravated, and exemplary damages, the Plaintiff referenced legal precedents, particularly those related to defamation damages awarded in Malaysia.

[163] The Defendant's primary contention was that the Plaintiff "has no requisite reputation that the law of defamation intended to protect."

[164] In the alternative, if this argument were rejected, the Defendant suggested that the Plaintiff's losses should be assessed similarly to those of a corporation.

[165] The Defendant argued that:

- The Plaintiff failed to provide documentary evidence of its loss of income or goodwill;

- The Plaintiff also failed to establish its reputation, as the achievements and reputation referenced were those of other entities or companies; and

- The Plaintiff's own witnesses, PW-2 and PW-8, admitted that the Plaintiff's membership, schools, and institutions grew even after the defamatory posts were published.

[166] In *Lim Lip Eng*, the Federal Court remarked that:

> [89] … MCA as a political party must not be thinned-skinned and must always be open to public criticism.

and

> [116] … a political party with all its resources is well-placed to counter any unflattering comments against it.

[167] It is granted these remarks by the Federal Court were made in relation to a political party and more importantly, the observations were made following a finding that a political party cannot maintain an action in defamation.

[168] The present case is not one that involve criticisms, unflattering comments or benign commentary; rather, they were statements calculated, or at the very least likely, to expose the Plaintiff to public ridicule, contempt, or disrepute.

[169] While the Defendant refused the Plaintiff's overtures for dialogue, this Court believes that with its resources, the Defendant had the opportunity to respond to the defamatory posts.

Conclusion

[170] Based on the authority of the Federal Court in *Lim Lip Eng*, this Court finds that, as a society registered under the Societies Act 1966, the Plaintiff lacks the requisite locus standi to maintain an action for defamation. Accordingly, the Plaintiff’s claim is dismissed.

[171] Had this Court found in favour of the Plaintiff on the issue of locus standi, this Court would have held that the Plaintiff is entitled to damages.

[172] However, this Court finds that the Plaintiff has failed to produce sufficient documentary evidence to substantiate its claims for loss of income or goodwill.

[173] This Court is also not persuaded by the Plaintiff's method of calculating damages based on the number of members and the reputation of the Plaintiff's affiliated organizations. The Plaintiff's assertion that the reputation of each member should be valued at RM5,000.00 is not accepted as a reasonable or appropriate basis for assessment. Furthermore, the Plaintiff's alternative calculation of RM200,000.00 per defamatory posting is similarly unconvincing.

[174] Leaving aside the question of locus standi, and having considered the evidence, the legal authorities, and the submissions of both parties, this Court is of the view that an award of RM150,000.00 for general damages would be appropriate.

[175] Interest on the judgment sum would also be ordered at the rate of 8% per annum from the date of judgment until full payment.

[176] The claims for aggravated and exemplary damages are disallowed.

[177] This Court would also have ordered:

- An injunction restraining the Defendant, his agents, and servants from further publishing or causing to be published any defamatory statements, or any similar defamatory words, in relation to the Plaintiff as contained in the First, Second, and Third Postings; and

- The Defendant to delete, and to procure the deletion of, the First, Second, and Third Postings immediately and permanently.

Costs

[178] Based on the sequence of events that had unfolded, leading to the finding and the dismissal of this action by this Court on the ground of locus standi, this Court is of the view that it is appropriate for each party to bear its/his own costs.

[179] Barring the dismissal of this action on the locus standi point, the Plaintiff's claim would have been allowed with costs.

[180] Nevertheless, given that the damages awarded fall well below the jurisdictional limit of the Sessions Court, this Court would have directed that the Plaintiff recover only fixed costs in accordance with the scale prescribed for trials in the Subordinate Courts pursuant to Order 59 rule 23 of the Rules of Court 2012.

Postscript

[181] This case serves as a poignant reminder that even the most commendable intentions do not grant immunity from the consequences of one's words or actions. While the Plaintiff and Defendant may have differing views, it is this Court's sincere hope that both parties, through this judicial process, will reflect on the importance of fostering unity and understanding within the community. This Court expresses its hope that, moving forward, both parties may find a path toward reconciliation, and

that they will work together for the greater good of the *ummah*, promoting harmony, peace, and collective progress.

Dated: 13 May, 2025

[CHOONG YEOW CHOY]
Judicial Commissioner
High Court of Malaya
Shah Alam

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