

ADVOCATES ASSOCIATION of SARAWAK
PERSATUAN PEGUAMBELA SARAWAK



THE ADVOCATES ASSOCIATION OF SARAWAK PRESS STATEMENT

Emergency (Essential Powers) (No.2) Ordinance 2021

The Advocates Association of Sarawak (AAS) is alarmed and deeply concerned with the Emergency (Essential Powers) (No.2) Ordinance 2021 (“Ordinance”) which came into operation on the 12th March, 2021 to combat fake news relating to COVID-19 or Emergency Proclamation. The Ordinance appears to erode the Freedom of Speech and Expression as enshrined in Article 10 of the Federal Constitution.

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The wide definition of “fake news” in the Ordinance relates to “any news, information, data and reports which is wholly or partly false relating to COVID 19 and the Emergency Proclamation whether in the forms of features, visuals or audio recordings or in any other form capable of suggesting words or ideas” is far reaching and appears to be indefinite.

The Ordinance appears to criminalise the act of creating, publishing, or disseminating any “fake news” in relation to Covid-19 or the Emergency Proclamation in the country, application of which extends to anyone violating its terms anywhere in the world.

The AAS also notes that the scale of punishment under the Ordinance appears to be unnecessarily and disproportionately severe and excessive in light of the general public facing difficult and uncertain times such as regarding their existing employment as a result of the Covid Pandemic. The Ordinance instead should have allowed for the Courts to exercise its discretion over the amount of fines on a case-by-case basis rather than creating limitations on sentencing with such harsh sentences.

Further, and more alarmingly, the Ordinance also excludes and overrides the provisions of the Evidence Act 1950 in that evidence howsoever obtained is admissible under the Ordinance. This amounts to a desecration of the existing protection granted to the people under the criminal procedures and risks violating the people’s right to a fair trial.

Under the Ordinance, a Police officer is granted with wide powers to gain access to computerized data and seize the same and refusal to give password is categorized as an offence. Any list of documents and things seized howsoever obtained shall be admissible in court as evidence. Such laws appear to disregard the public’s right to privacy and may well be subject to abuse.

We note that the Ordinance bears a resemblance to the Anti-Fake News Act 2018 which was passed by the Government just before GE14 in 2018 and subsequently repealed by the previous Government.

AAS strongly believes that under human rights laws, the government of the day owes an obligation and duty to protect the right to freedom of expression of its citizens. Laws aiming to restrict or curtail this particular right should and can only be imposed if these restrictions are provided by law, written in clear unambiguous terms and language, which leaves little or no doubts on its ambit and application and prohibitions. These laws should only be passed and imposed when it becomes strictly necessary and proportionate to achieve a legitimate aim; protection of national security, public order, public health or morals, or the rights of others.

The Ordinance, sadly, falls short. The lack of clarity from the Ordinance, whereby it fails to set clear and proper requirements to specify the ambit of “fake news”, what amounts to “prohibited content” and that it must be material and cause real harm to legitimate interests, failures of which are antithesis to human rights and democracy.

AAS is concerned that this decision by the government to push through this Ordinance is a step backwards. AAS reiterates that all relevant stakeholders must be consulted before any legislation is introduced during the period of the Emergency Ordinance, especially where fundamental liberties under the Federal Constitution appear to be eroded. AAS calls for the immediate withdrawal and/or review of the Ordinance.

Yours faithfully,



ANTONIO P. K. SIM
President
Advocates Association of Sarawak

17th March, 2021