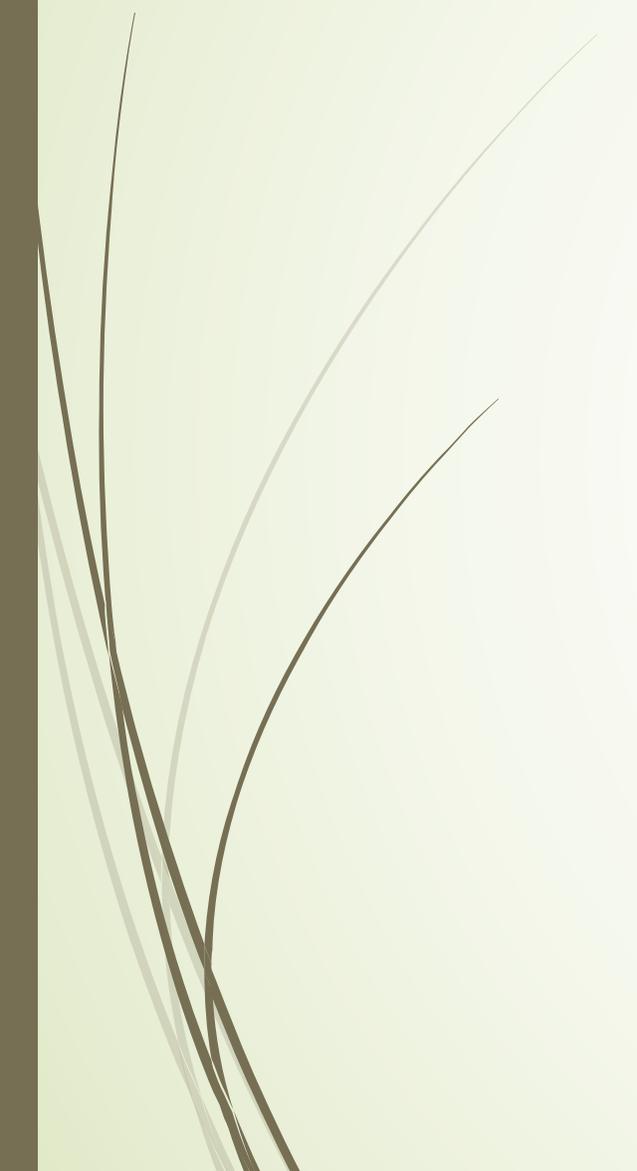




5th Asean Chief Justices' Roundtable on Environment

STATUTORY PENALTIES FOR ENVIRONMENTAL VIOLATIONS



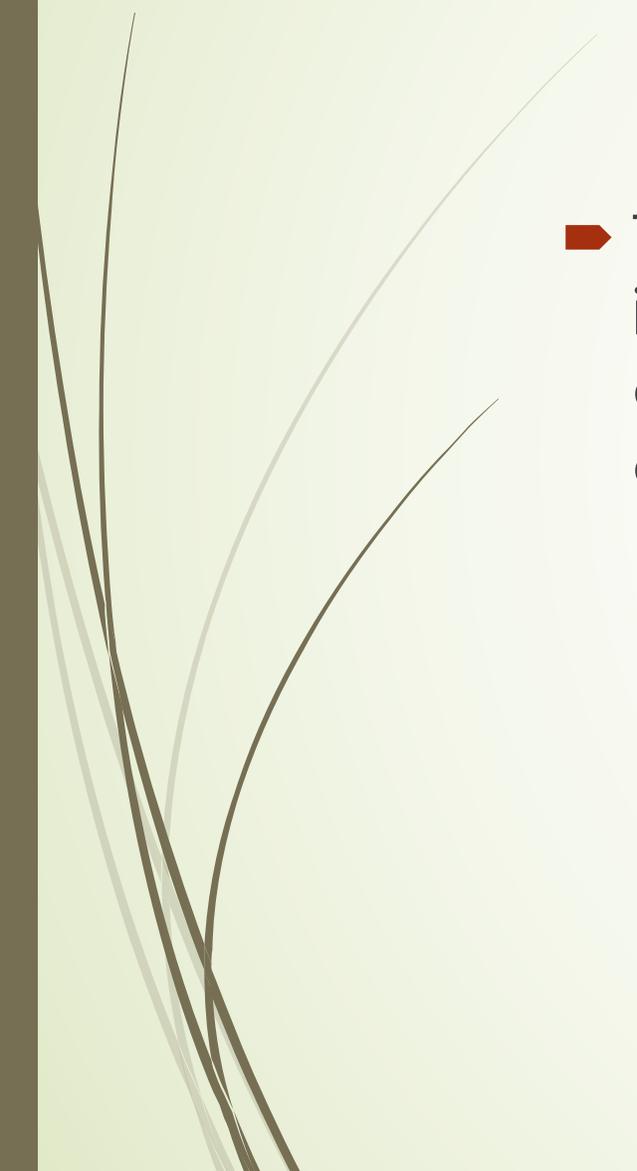


Introduction

- Environmental violations can be defined as illegal actions which directly harm the environment.
- Environmental violations commonly found in Malaysia are illegal logging activities, excessive emission of toxic gas from motor vehicles and industrial activities, and the release of industrial waste into the sea or river.

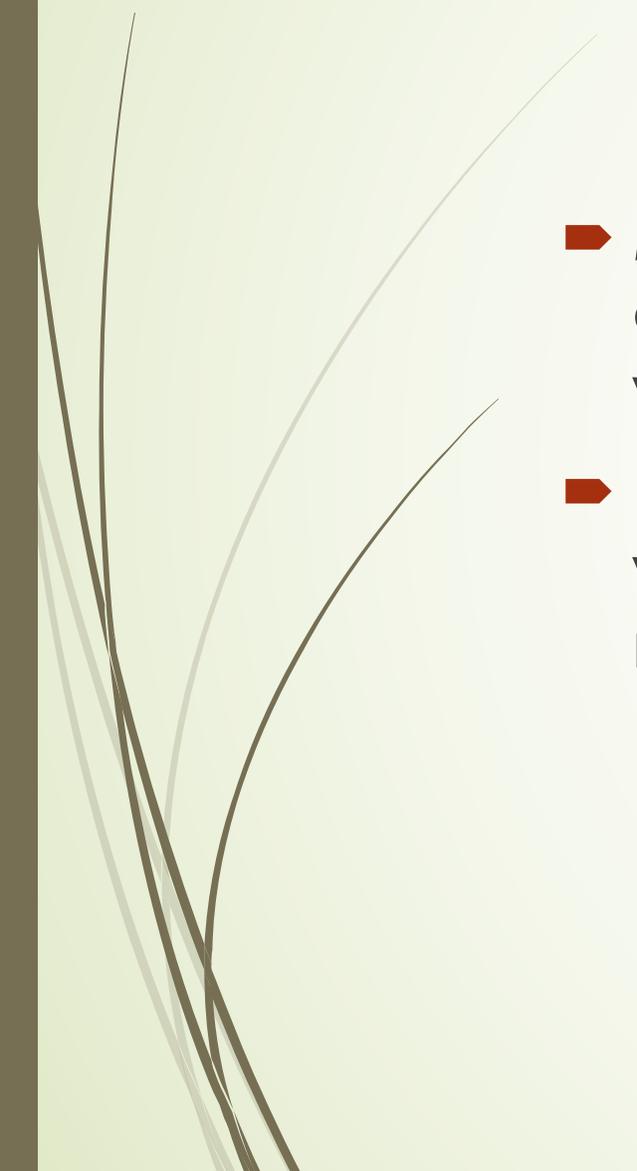


Introduction... Cont.

- ▶ These illegal and deplorable activities had left irreparable impacts on deforestation, pollution of inland and marine waters, soil and coastal erosion as well as air and water pollution.
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Introduction... Cont.

- ▶ Malaysia is home to tropical rainforests which encompass 59% to 70% of Malaysia's total land area, of which 11.6% is pristine.
 - ▶ It also has the world's fifth largest mangrove swamp, which totals over a half a million hectares (over 1.2 million acres).
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Introduction... Cont.

- ▶ Malaysia had been ranked as the world's highest rate of deforestation in the world.
 - ▶ In the year 2000 alone, it was reported that Malaysia's total forest loss amounted to a staggering size of 14.4 percent.
 - ▶ The destruction of forest had grossly affected the biodiversity of flora and fauna habitats.
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Introduction... Cont.

- ▶ One of the factors which contribute to the environmental degradation is irresponsible development.



Legal Framework

- To date, there are no fewer than 40 legislations with numerous regulations, rules and orders enacted for the purpose of environmental protection in Malaysia.



Legal Framework....Cont.

- The first comprehensive legal framework on environmental protection was enacted in 1974 and enforced in 1975, to wit, the Environmental Quality Act 1974 (“EQA 1974”).
- The EQA 1974 which was passed in 1974 is Malaysia’s maiden environmental legislation. It primarily relates to the prevention, abatement, control of pollution and enhancement of the environment.



Legal Framework....Cont.

- ▶ To date, the EQA 1974 had undergone a series of amendments. The most far reaching amendment was carried out in 1996 when it aims to provide a more comprehensive and integrated approach towards environmental protection and pollution control.



Legal Framework....Cont.

- ▶ Other legislations include:
 - ▶ Aboriginal Peoples Act 1954;
 - ▶ National Forestry Act 1984;
 - ▶ Wildlife Conservation Act 2010;
 - ▶ International Trade in Endangered Species Act 2008;
 - ▶ Biosafety Act 2007;
 - ▶ Water Act 1920;
 - ▶ Water Services Industry Act 2006;
 - ▶ Penal Code;



Legal Framework....Cont.

- Exclusive Economic Zone Act 1980;
- Fisheries Act 1985;
- Local Government Act 1976,
- Food Act 1983;
- Atomic Energy Licensing Act 1984
- Merchant Shipping Ordinance 1952;
- Drainage Work Act 1954;
- Atomic Energy Licensing Act 1984.

Statutory Penalties for Environmental Violations

A. Air pollution

No.	Laws	Penal provisions
1.	<p>S. 22 of Environmental Quality Act 1974</p> <p>Restricts the emission or discharge of any waste into the atmosphere without license.</p>	<ul style="list-style-type: none">i. Fine not exceeding RM100,000; orii. Imprisonment for a period not exceeding 5 years or both; andiii. Further fine not exceeding RM1,000 a day for every day that the offence is continued after a notice by the Director General requiring him to cease the act specified therein has been served upon him.

Statutory Penalties for Environmental Violations

A. Open burning

No.	Laws	Penal provisions
1.	S. 29A of Environmental Quality Act 1974 Restricts open burning activities on any premises.	i. Fine not exceeding RM500,000; or ii. Imprisonment for a period not exceeding 5 years or both.

Statutory Penalties for Environmental Violations

B. Water pollution

No.	Laws	Penal provisions
1.	<p>S.25(1) of the Environmental Quality Act 1974</p> <p>Prohibits any person from emitting, discharging or depositing any environmentally hazardous substances, pollutants or wastes into any inland waters.</p>	<p>S.25(3) of the Environmental Quality Act 1974</p> <ol style="list-style-type: none">i. Fine not exceeding RM100,000; orii. Imprisonment for a period not exceeding 5 years or both; andiii. Further fine not exceeding RM1,000 a day for every day that the offence is continued after a notice by the Director General requiring him to cease the act specified therein has been served upon him.

Statutory Penalties for Environmental Violations

B. Water pollution

No.	Laws	Penal provisions
4.	Exclusive Economic Zone Act 1984 Any offences committed under the act.	General penalty clause i. Fine not exceeding RM1,000,000.



Statutory Penalties for Environmental Violations

B. Water Pollution

The case of ***Malaysian Vermicelli Manufacturer (Melaka) Sdn Bhd v PP [2001] MLJU 359***

The Accused was charged under Reg. 8(1)(b) of the Environmental Quality (Sewage and Industrial Effluents) Regulations for discharging effluent into inland waters (the Malacca river) without a license. The illegal action was an offence under s.25(1) of the Environmental Quality Act 1974 (maximum fine RM100,000). The Sessions Court had convicted and sentenced the Accused to a fine of RM75,000 in default of 1 year imprisonment. The High Court affirmed the decision made by the Sessions Court.

Statutory Penalties for Environmental Violations

E. Toxic and Hazardous Waste

No.	Laws	Penal provisions
1.	S.14(1) of the Solid Waste and Public Cleansing Management Act 2007 i. Providing solid waste management; or ii. Managing solid waste management facilities; or iii. Providing public cleansing management without license.	S.14(3) of the Solid Waste and Public Cleansing Management Act 2007 i. Fine not less than RM50,000 and not exceeding RM100,000; or ii. Imprisonment for a term not exceeding 5 years; or iii. Both.

Statutory Penalties for Environmental Violations

F. Deforestation

No.	Laws	Penal provisions
1.	S.15(1) of the National Forestry Act 1984 Prohibits illegal logging.	S.15(2) of the National Forestry Act i. Fine not exceeding RM500,000; and ii. Imprisonment for a term which shall not be less than 1 year but shall not exceed 20 years.

Statutory Penalties for Environmental Violations

G. Wildlife and Animal

No.	Laws	Penal provisions
1.	<p>S.70 of the Wildlife Conservation Act 2010</p> <p>Any person who hunts or keeps the female of a totally protected wildlife without a special permit commits an offence.</p>	<ul style="list-style-type: none">i. Fine not exceeding RM300,000; orii. Imprisonment for a term not exceeding 10 years; oriii. Both.

Statutory Penalties for Environmental Violations

G. Wildlife and Animal

No.	Laws	Penal provisions
2.	<p>S.69 of the Wildlife Conservation Act 2010</p> <p>Prohibits the hunting of immature of any totally protected wildlife.</p>	<ul style="list-style-type: none">i. Fine not exceeding RM200,000; orii. Imprisonment for a term not exceeding 10 years; oriii. Both.



Statutory Penalties for Environmental Violations

G. Wildlife and Animal

No.	Laws	Penal provisions
3.	S.66 of the Wildlife Conservation Act 2010 Any person who operates a zoo, commercial captive breeding, circus or wildlife exhibition without a permit commits an offence.	i. Fine not exceeding RM70,000; or ii. Imprisonment for a term not exceeding 3 years; or iii. Both.



Way forward

- Based on the 11th Malaysia Plan (2016-2020), a total amount of RM15 billion was allocated for the environment sustainability programme.
- In the recent Malaysia's 2016 budget, a total of RM3.8 billion was allocated for various projects and programmes relating to the environmental protection for the year 2016.
- A proactive plan called National Policy on the Environment was introduced to ensure continuous economic, social and cultural progress through environmentally sound and sustainable development.



Way forward....Cont.

- These efforts manifest Malaysia's commitment towards various United Nations conventions relating to the environment as well as ASEAN environmental agreements.
- With the establishment of the Environmental Court on 10 September 2012, the Judiciary also has a significant role to play in protecting and preserving the environment.



Way forward....Cont.

- From Sept 2012 - September 2015, 1,140 cases were registered at the Sessions Courts – and as at 30/9/2015, only 135 cases remained undisposed of.
- Similarly, in the Magistrates Courts, 1,017 cases were registered - and as at 30/9/2015, 36 cases remained on the court register.
- To sum up, 96% of cases registered at the Environmental Courts from Sept 2012 – Sept 2015 have successfully been disposed of; which clearly indicate the effectiveness of the establishment.



Conclusion

- The existing legislation equipped the judges with stringent penalties to combat any environmental violations.
- This reflects the seriousness of the Malaysian government in tackling environmental degradation problems.
- The declining number of cases registered in the Environmental Court proves the increase of awareness amongst the public on the harsh penalties of the law.



Conclusion...Cont.

- ▶ A strong cooperation among ASEAN countries should be strengthened further to create an environmentally sound ASEAN.
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THANK YOU

The Right Hon Tun Arifin Zakaria
Chief Justice of Malaysia