3rd ASIAN JUDGES SYMPOSIUM ON LAW, POLICY AND CLIMATE CHANGE

26TH - 27TH SEPTEMBER 2016
ASIAN DEVELOPMENT BANK, MANILA, PHILIPPINES

TOPIC: DAY 2

ADDRESSING CLIMATE CHANGE - EVOLVING LEGAL JURISPRUDENCE IN ASEAN REGION AND ITS CHALLENGES

Speaker: Mr. Justice Richard Malanjum, Chief Judge of the High Court of Sabah and Sarawak, Malaysia and Justice of the Federal Court of Malaysia
Contents

• Reality of climate change
• Impacts on ASEAN region
• Legal jurisprudence
• Challenges
• Conclusion
CO₂ Emissions vs World Population
Southeast Asia CO₂ Emissions Growth Fastest in the World
CO$_2$ Emissions by ASEAN nations

• "The region has experienced rapid economic growth in recent years, and regional greenhouse gas emissions have rapidly increased, at nearly 5 percent per year over the last two decades," the ADB said this week. "In the absence of climate action, the region will be increasingly exposed to hotter temperatures, more destructive storms, greater flooding in some areas, and more droughts in others.” – Bloomberg Market- 14$^{th}$ January 2016
Climate change does not respect national boundaries—need to regulate the causes
Projected Temperature Rise in five ASEAN nations

- Indonesia: 2.1°C (minimum), 3.8°C (maximum)
- Philippines: 1.5°C (minimum), 3.9°C (maximum)
- Singapore: 1.7°C (minimum), 4.4°C (maximum)
- Thailand: 2.1°C (minimum), 4°C (maximum)
- Vietnam: 2°C (minimum), 4°C (maximum)
“Durban Platform for Enhanced Action” that sets the agreed target limit of carbon emission by 2020 to not more than 2º C above the pre-industrial levels. It is generally accepted that life can still be sustained without irreversible damage at that level of temperature increase.

Worse case scenario with a temperature increase by 4.0º C the sea level could increase up to 59cm.

ASEAN cities like Bangkok, Thailand and Jakarta, Indonesia would likely be partly submerged.
Climate Change Vulnerability Mapping for South East Asia

Adversely exposed to sea level rise:

• All regions of the Philippines
• The Mekong Delta region of Vietnam
• The Bangkok region
• All of Cambodia
• North and East Lao PDR
• West and south Sumatra
• Western and eastern Java
Climate Change Vulnerability Mapping for South East Asia
Sea level Rise - impact by climate change
Images on impacts of climate change
Bangkok 2016
Images on impacts of climate change
Jakarta 2016
Images on impacts of climate change
Kuala Lumpur 2016
Climate Change 2014: Impacts, Adaptation and Vulnerability

As a result of global warming, people in Asia would experience:

• heat stress
• extreme precipitation
• inland and coastal flooding
• drought and water scarcity
• risks amplified for those lacking essential infrastructure and services or living in exposed areas
Climate change hits the poor hardest.

Poor people living in tropical countries are more exposed to storms and extreme weather, their housing and infrastructure is weaker, and they have less savings or insurance to fall back on when disaster strikes. Source: Social cost of carbon by region, 2015 (RICE-2015).
Impact of Heat Stress – decrease in productivity

- Singapore: 25%
- Malaysia: 25%
- Indonesia: 21%
- Cambodia: 16%
- Philippines: 16%
- Thailand: 12%
- Vietnam: 12%

Impact on Health

Global warming - Vector-borne diseases such as Zika, dengue and malaria will likely to flourish because:

• **Rising global temperatures** can lengthen the season and increase the geographic range of disease-carrying insects. As temperatures warm up, mosquitoes and other warm-weather vectors can move into higher altitudes and new regions farther from the Equator.

• **Increased rainfall, flooding and humidity** creates more viable areas for vector breeding and allows breeding to occur more quickly as eggs hatch faster in hotter climates.

• **Human migration** exposes people to viruses to which they are not immune. As populations migrate in response to climate change they bring diseases to new regions and urban areas. Infectious diseases spread more quickly in overcrowded urban areas.
Causes of Climate Change

• Human activities - major role either in triggering or accelerating climate change
• Major cause in the rise of global temperature is human-caused greenhouse gas (GHG) emissions by the burning of fossil fuels for rapid industrialization and deforestation
• ASEAN Member States addressing climate change not only on control of GHG emissions but also through the prism of deforestation and the methods employed
Causes of Climate Change

97% of climate papers stating a position on human-caused global warming agree:

Global warming is happening—and we are the cause.
Sources of World’s CO$_2$ Emissions
Deforestation in ASEAN Region

- Southeast Asia region is losing at about 1.2% of its remaining forest area each year.
- Cambodia, Indonesia and the Philippines reporting annual losses of up to 2% over the last five years.
- Malaysia has lost an estimated 14.4% (4.5 million ha) of its forests and tree cover from 2000-2012.
- The culprits are the logging, legal and illegal and land clearing, including the practice of open burning on large scale for the planting of oil palm and other crops.
- Uncontrollable wild fires degrade vast areas, especially in the peatland areas especially during dry seasons.
- Loggings cause the loss of the forests while the open burning for oil palm and other crops and wild fires cause the loss of forests and biodiversity.
Loss of forests

Deforestation causes 15% of global Greenhouse gas emissions

It is estimated that about 50 to 100 Species of animals being lost each day as a result of deforestation.
CO₂ Emissions and Deforestation
Twin impact on climate change
Importance of trees
Evolving Legal Jurisprudence
ASEAN Region on climate change

Points to note

• Developing countries except Singapore
• Diverse political, administration and legal and judicial systems
• On judicial system some adopted the common law system while the others took the civil law system
• Judicial activism – passive as compared in developed nations
• Climate change litigations based on US model- attempting to advance policy – yet to conceive
• More on Europe and Australia climate change -focused almost exclusively on enforcing existing domestic environmental legislations, including by challenging governmental failures at enforcement
Evolving Legal Jurisprudence
ASEAN Region on climate change
ASEAN Nations Approach

• More on Legislative- Executive approach with the courts as interpreters/enforcers of those written laws and regulations

• Reasons:
  – political systems
  – Public awareness
  – Compliance of international obligations
Domestic legislations on climate change in ASEAN Region

• The ASEAN Way - premised on consensual decision-making is based on the principles of sovereignty and non-intervention, has also to a certain extent restricted ASEAN in implementing measures at the national level

• While there are declarations indicating common approach in reality it is absence due to focus on domestic matters over the regional interests, e.g. Singapore Trans-boundary Haze Pollution Act 2014; The Climate Change Act 2009 (Philippines)

• The conflicts at times
Some landmark cases on climate change in ASEAN nations

• Indonesian courts have recognized strict liability for actions that cause a ‘serious threat to the environment’

• The Mandalawangi Landslide Case – applied the precautionary principle – strict liability (Indonesia)

• The Bangkinang Forest Fires Case (2001) - applied the principle of corporate liability (Indonesia)
Some landmark cases on climate change in ASEAN nations

- The expression ‘life’ includes the right to live in a reasonably healthy and pollution free environment - Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261 (Malaysia)
- The importance of EIA - Kajing Tubek & Ors (Malaysia)
- Recognition of native lands – preservation of forests – The Aman case (Indonesia) and the Madeli Bin Salleh case (Malaysia)
- Sensitized Judges and judicial officers – marked increase of sentences imposed for deforestation - ASEAN Chief Justices’ Roundtable on Environment coordinated by ADB
Judges back to Nature
Judges back to Nature
Judges back to Nature
Comparison of penalties imposed
Some landmark cases on climate change in ASEAN nations

• Imported the principle of intergenerational equity into its procedural doctrine, an essential principle for effective climate change governance – The Aposa case (Philippines)

• Philippines is one of the pioneers when it comes to climate change adaptation – The Climate Change Act 2009
Challenges to evolving legal jurisprudence

• Locus standi – ASEAN Member States - two groups – liberal approach (Philippines and Thailand) and restrictive approach (Malaysia)
• The different judicial systems itself – absence of uniformity
• Awareness – attitude and circumstances of the countries – developing nations
• Education of environmental laws – optional subject in law schools
• The conflicts at times on the approaches – regionally and internationally
• ASEAN Judiciary?
Slow Public Awareness

Community resilience requires public awareness about climate change and its impact on extreme weather.
Potential conflicts
Potential conflicts

Philippines won't honour UN climate deal, says president

Duterte says Paris climate pact seeks to dictate to developing countries and limit economic growth, reports Climate Home

"You are trying to stifle us ... you who have reached your peak and spewed a lot of emissions," said president Rodrigo Duterte of the Philippines. Photograph: Toto Lozano / Handout/EPA

The Philippines will not honour commitments it made under the Paris climate change deal, president Rodrigo Duterte has said in a speech.
Conclusion

Legal Jurisprudence in the ASEAN region is evolving notwithstanding the challenges. It may be slowly but surely.