

TTT Developing Environmental Law Champions Program

‘The Role of the Judiciary in Environmental
Dispute Resolution’

Presenter:

Tan Sri Datuk Seri Panglima Richard Malanjum

Chief Judge of Sabah and Sarawak cum

Federal Court Judge

Federal Court Malaysia

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Introduction

- Practical and non- academic approach
- The Judiciary
 - Third arm of government
 - Determined by Constitution and judicial personnel
- Role – critical role as arbiter and non-arbiter in enforcement of environmental laws – statutory and non-statutory
- Excessive reliance on the Executive through its departmental agencies on environment in enforcement
- Arbitral aspect – criminal, civil and administrative
- Focus on arbitral aspect with reference to Malaysian experience

Introduction

- Environmental courts – a judicial arbiter specializing in adjudicating environmental, resource development, land use, and related disputes – The Encyclopedia of Environmental Law, by Justine Thornton (United Kingdom)
- Recent origin 1972 – Stockholm Declaration
- Japan, Denmark, Ireland
- 1992 Rio Declaration Principle 10
- Aarhus Convention – Article 9

Introduction

- Paris Agreement on Climate Change
- UNEP REPORT- May 2017: Courts Are An 'Important Tool' To Impose Global Warming Laws
- Paris Agreement “enables litigants to construe governments’ commitments and actions as being adequate or inadequate.”
- “The Paris Agreement by its own terms does not provide litigants with a cause of action or impose enforceable limits on member countries’ national emissions”. “But it makes it possible for litigants to place the actions of their governments or private entities into an international climate change policy context.”

Environmental disputes – nature, parties, scope, etc.

- Nature of environmental disputes determines scope and parties
- International and Trans-boundary, Regional and Domestic
- Domestic – judicial and quasi- judicial
 - criminal, civil and administrative
 - State v Individual
 - Individual v Individual
 - State v Environment

Types of environmental dispute resolutions – Conventional and Alternatives

- Conventional
 - Judicial and quasi-judicial
 - Judicial
 - International, Regional and Domestic
- Alternatives
 - ADR

Domestic Judicial Resolution channel on environment

- Conservative and Progressive
 - Reasons-
 - Outlook, mindset, local circumstances, training
 - Examples – ASEAN countries
 - regional and domestic disputes resolution channels
 - the obvious gap
 - Varying degrees and gaps in the development of legal jurisprudence on environmental issues

Local experience in enhancing domestic judicial resolution on environment

- Malaysia – pre September 2012
 - Environmental cases
 - No special court and no judicial training
 - Governed solely by legislations
 - Focus on criminal matters
 - Considered as statutory and petty offences
 - Civil aspect
 - Tortious action
 - Public interest litigation unheard of

Local experience in enhancing domestic judicial resolution on environment

- Civil Court
 - Civil suit
 - For compensation
 - Judicial Review
 - To quash administrative decisions and development plans

Local experience in enhancing domestic judicial resolution on environment

- Malaysia – post September 2012
 - Establishment of Environmental Court – 3.9.2012
 - ASEAN Chief Justice Roundtable on Environment sponsored by ADB
 - Criminal matters before subordinate courts
 - Statutory environmental offences
 - Governing procedural laws – Criminal Procedure Code and added by Practice Direction
 - Civil aspect of environmental matters not included
 - Formation of judicial environmental working group on national and state levels
 - Judicial training on environmental laws
 - Work in progress on civil environmental matters

Local experience in enhancing domestic judicial resolution on environment

- Enhancing awareness and capacity building in environmental matters – the East Malaysia judiciary experience
 - Three stages approach
 - Enhancing awareness among judicial personnel, prosecutors, lawyers and other stakeholders – seminar organized
 - Capacity building training for investigators and prosecutors
 - Needs assessments seminar

Local experience in enhancing domestic judicial resolution on environment

- Seminar on enhancing awareness among judicial personnel, prosecutors, lawyers and other stakeholders
 - Pre- seminar mindset of judicial officers on environmental cases as reflected by the disposal of cases and penalties imposed
 - Use of compound power by enforcement agencies
 - Antiquated legislations on environmental matters

Local experience in enhancing domestic judicial resolution on environment

- Post- seminar on enhancing awareness
 - Priority of environmental cases
 - Enhanced interest
 - Penalties imposed
 - Extra judicial activities

Awareness seminar – 1st approach



Awareness seminar – 1st approach



Unsafe water from the source due to deforestation



Going Extinct?

Sumatran Rhinoceros

- Critically endangered
- Probably only 3 left in Sabah (in captivity), probably none in the wild
- In 1940s, Mr. Banks of Sarawak Museum records that Ulu Trusan had 'traditional' people camping and spearing wild rhinos at every wallow. No record of rhino in Sarawak, probably since 1960s.
- Decline due to poaching
- Being killed for horns



Young Female Rhino Killed in Kalabakan, March 2001

Hunted to the end

Tembadau / Banteng

- Less than 500 left in Sabah
- A few may remain in Sarawak, cited in Caldecott 1988 – NOW?
- Totally protected (Sabah & Sarawak) but being shot for meat and trophies.



A dead female Tembadau - Ulu Segama ?



s with a dead male Tembadau, most probably a Tabin or Ulu Segama Forest Reserve

Long arm of the Law

ESJ thebornepost.com

<http://www.thebornepost.com/2015/05/22/nine-jailed-for-possessing-meat-of-protected-animals/>

Nine jailed for possessing meat of protected animals

KOTA KINABALU: The Magistrates Court here yesterday jailed nine men for separate charges of illegally possessing the meat of protected animals, namely Bearded Pig, Common Palm Civet and Sambar Deer.

The magistrate imposed 28 months jail on two of the accused while the rest received 30 months imprisonment each after they pleaded guilty to their charges under Section 41 (2) of the Wildlife Protection Enactment 1997.

The indictment carries a maximum fine of RM30,000 or a jail term of up to three years, or both, upon conviction.

In the courts verdict, the magistrate held among others that public interest demanded that offenders of this type of offence must be treated severely or rather a severe punishment be given to the offenders.

The court also said that recently there were calls, especially from the voice of the civil society for this sort of cases to be taken with seriousness or in other words this type of cases should be treated as public interest.

It further ruled that these animals exist in the forest in this planet for a purpose and they contribute to the eco-system of this planet.

The magistrate also said that the plea of guilty of the accused persons indeed had saved the courts time and expenses as well as the costs of calling on witnesses.

However, a balance needed to be struck between the accused and the public.

In this case, the court held that the seriousness of the case outweighs the guilty plea of the accused persons.

The court further ruled that this was not just a case of an animal but a creature that the eco-system itself of this planet would need to survive.

Thus, the court must act as the guardian of the commoners or the civil society. As it is often said, the court is always seen as the last hope of the commoners.

The magistrate added that the court must uphold that belief that the commoners hope of securing that justice is done and served.

Two of the accused were arrested for possessing 206 grams of bearded pig also known as wild boar or its scientific name *Sus Barbatus* without a permit at KM64 Jalan Lahad Datu Tungku on February 7, another two accused were caught for illegally having 62 pieces of wild boar meat and five carcasses of Common Palm Civet or its scientific name *Paradoxurus Hermaphroditus* at their car bucket at the same place and day.

Meanwhile, the rest were apprehended at the examination post of the Sepagaya Forest Reserve in Lahad Datu on January 17 for possessing the Sambar Deer, which was kept at the back of their car.

The facts of the case stated that investigations had revealed that the accused persons did not have any licence or permit to be in possession of the animals.

Medicinal?

Porcupines

- Being killed for meat, quills and bezoar stone for Chinese medicine.



淋巴癌, 肝癌, 肺癌, 乳癌, 肺积水, 脑膜炎, 中耳炎, 蚊症, 糖尿病, 咽喉感染, 尿道炎, 子宫癌

良药到, 功效好

<http://superlife9999.blogspot.com/>

猪前
枣



豪猪枣是豪猪体内的一种如结石般的东西。很久以来就在民间被延用和认同是一种能患有绝症者起死回生。往往在生死关头救你一命。有着非常高药性的稀有珍品。

Medicinal?

Pangolin

- Numbers thought to be declining rapidly.
- TRAFFIC report of 22,000 pangolins being killed by just one syndicate in Sabah between 2007-2009.
- Being killed for meat and scales.



Malaysia Experience



Kampung Ambual, Keningau



Urban rubbish



Wildlife extinction?

DO YOU AGREE?

One-fifth of Malaysia's wildlife facing extinction

April 15, 2015

Whatever you choose to do to help save Malaysia's wildlife, you might want to do it now.

FMT LETTERS

<http://www.freemalaysiatoday.com/category/highlight/2015/04/15/one-fifth-of-malaysia-wildlife-facing-extinction/> Page 1 of 6



From Sean Whyte, CEO of Nature Alert

Okay. The cat is out of the bag.

In a report this week the World Bank, no less, has named and shamed Malaysia because at least one-fifth of its wildlife face extinction.

Imagine. Species like the tiger, rhino, elephants, gone forever from Malaysia.

Despite the tragedy of such magnificent species being wiped out by man's greed and extremely poor law

enforcement, what are you going to tell your children and grand children when they ask you, yes you, "why didn't you save them while there was still time?"

Who are you going to blame? How about yourself?

Taking responsibility is not something taken seriously by the Natural Resources and Environment (NRE) Ministry and Perhilitan, as you undoubtedly know, but this does not stop you from taking action, does it?

Do you support proactive NGO's like Malaysia's Friends of the Animals or Malaysia's Friends of the Orangutans? It won't hurt you to offer help of some kind, will it?

Both organisations can be found on Facebook and they need you to start caring and helping because Malaysia's wildlife needs all the help it can get right now.

If you really want to blame anyone for Malaysia's unique and fast-disappearing wildlife, you surely know the Sabah Wildlife Department, the NRE, Perhilitan, and the palm oil industry are all very guilty and thoroughly deserving of whatever criticism you might want to throw at them.

Whatever you choose to do to help save Malaysia's wildlife, you might want to do it now. The extinction alarm bells are ringing loud and clear.

The questions is; will you take action now, while it is fresh in your mind and not too late to save the tigers, elephants, rhinos and other of Malaysia's disappearing wildlife?

With a firm belief in freedom of expression and without prejudice, FMT tries its best to share reliable content from third parties. Such articles are strictly the writer's personal opinion. FMT does not necessarily endorse the views or

Challenges on the judiciary in environmental disputes resolution at domestic level

- Absence of concerted political will on environment – priority to economic development
- Awareness problem among judicial officers, prosecutors, investigating entities, lawyers and the public
- Public interest litigation – rare and weak with non or little judicial activism
- Slow development of legal jurisprudence by the courts on such legal principle as standing
- Infrastructure and costs

ATOMIC ENERGY LICENSING ACT 1984

ATOMIC ENERGY LICENSING ACT 1984

15. (1) Subject to this section, the licensing authority under this Act shall be the Board.

(2) The Board shall grant a general licence to the Director-General of Health to issue separate licences on behalf of the Board to any person applying for a licence to undertake any of the activities referred to in the classification of licences under this Act where such activities are in respect of medical purposes.

ATOMIC ENERGY LICENSING ACT 1984

31. In the performance of its functions under this Part, the appropriate authority may, if it thinks it fit so to do, consult the Director-General of Environmental Quality appointed under section 3(1) of the Environmental Quality Act 1974 on any matter under this Part.

ATOMIC ENERGY LICENSING ACT 1984

32. (1) Any person who is dissatisfied with any decision of the appropriate authority made under this Act may within thirty days after being notified of such decision give notice of appeal

in writing to the Minister in the prescribed manner.

(2) The Minister shall as soon as is practicable cause to be served on the appellant a written notice specifying the date, time and place at which the appeal is to be heard:

Provided that the date so specified shall in no case be earlier than thirty days from the date of service of such notice.

(3) The grounds of appeal shall be submitted to the Minister not less than ten days before the date fixed for the hearing of the appeal.

Challenges on the judiciary in environmental disputes resolution at domestic level

- Slow capacity building both in public and private sectors – affected by either or both factors such as career advancement and monetary
- Legal education on environmental laws - optional
- Expertise problem and costs
- Procedural rules – should address issue of standing
- Wild life, forest and indigenous population in conflicts for resolution by the courts

Challenges on the judiciary in environmental disputes resolution at domestic level

- Inadequacy of legislations both procedural and substantive – scope of jurisdiction and penalties provided
- Use of compounding procedure for criminal offences
- Excessive use of departmental arbiters – conflict of interest
- Mixed environmental and non-environmental issues – which court should deal? Public confusion?
- Resisting judicial environmental bias by judicial arbiters
- Branded as inferior courts
- Access to information

Conclusion



A screenshot of a tweet from Donald J. Trump (@realDonaldTrump) dated 2:15 PM on 6 Nov 2012. The tweet contains the text: "The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive." The tweet has 24,831 retweets and 14,654 likes. The interface shows the user's profile picture, name, and handle, along with a "Following" button and a gear icon for settings. At the bottom, there are icons for reply, retweet, like, and a menu.

Donald J. Trump 
@realDonaldTrump

 **Following**

The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.

RETWEETS: 24,831 LIKES: 14,654

2:15 PM - 6 Nov 2012

   

Conclusion



WE ARE

**THE ONLY SPECIES
WITH THE POWER
TO DESTROY
THE EARTH AND
ALSO THE CAPACITY
TO PROTECT IT.**

- THE DALAI LAMA

www.BestDalaiLamaQuotes.com

Thank you