

**STRENGTHENING CAPACITY FOR ENVIRONMENTAL
LAW IN MALAYSIA'S JUDICIARY:
TRAIN-THE-JUDGES PROGRAM (TTJ)
10 - 13 JULY 2017
ILKAP, BANGI, Malaysia**

PRESENTATION: **ENVIRONMENTAL PROTECTION LAW**

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Environmental Protection Laws

- Environmental protection law is a collective term describing the network of treaties, statutes, regulations, common and customary laws addressing the effects of human activity on the natural environment. The core environmental law regime focuses on the protection of the environment against degradation, contamination and pollution.
- The scope of environmental protection law is huge and includes:
 - Air quality
 - Water quality
 - Waste management
 - Clean-up of contamination
 - Chemical regulation i.e. pesticides and toxic chemicals
 - Management of specific natural resources e.g. forests, wildlife, plants, minerals, or fisheries

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- Scope of environmental law is expanding, thus policy makers must use a range of tools in an integrated manner when dealing with complex environmental issues.
- Successful tools show that environmental law is interdisciplinary and different types of expertise is needed to solve environmental issues (eg. The use of scientific expertise to conduct EIAs)

National v Sub national & International Laws

- National environmental protection laws are important because air and water travel across sub-national borders.
- In many countries, national environmental protection laws are supplemented by sub-national laws or implemented by sub-national entities.
- In Malaysia land and water are under the purview of the states, whose decisions on allocation and management of these resources tend to be politically sensitive issues: the federal government has to tread warily so as not to interfere in state matters.

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- This is particularly the case with the two Borneo states of Sarawak and Sabah in Eastern Malaysia on account of their distinct ethnic identity and the special provisions in the Malaysian constitution when they became members of the Federation in 1963.

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- In the USA, states enforce national air, water and waste management laws but may adopt stringent requirements within their own borders and may regulate environmental problems that is not addressed by the national legislation.
- International law recognises the role of sub national and local government and their contribution in making effective policies through consultation.
- Eg. Convention on Biodiversity (CBD): Subnational Biodiversity Strategies and Action Plans (SBSAP), Local Biodiversity Strategies And Action Plans (LBSAP).

Institutional Arrangements

- Government agencies implement environmental protection laws at the national and subnational levels.
- Government agencies translate statutory mandates into regulatory standards, issue permits and licenses.
- Government agencies holds responsibility for ensuring compliance.

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- Example in some countries (USA and India), citizen suits against polluters or against government agencies are significant enforcement tools.
- An integrated response will need the use of different institutions with the use of a range of environmental protection tools.
 - effective environmental protection occurs when national, sub national and local institutions communicate how they will utilise different tools to respond to a particular environmental problem.

Environmental Protection Tools

- There are a number of tools for policymakers to implement and enforce environmental law:
 - Regulatory tools
 - Economic measures
 - Licensing and permits

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- Public participation
- Environmental impact assessment
- Compliance measures
- Enforcement and remedies

Enforcement Mechanisms

- Certain enforcement mechanisms can be use for environmental protection laws:
 - Control orders
 - Stop orders
 - Preventative orders

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- Remedial orders

- Judicial remedies

- eg. Civil liability, criminal sanctions.

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Global Best Available Techniques (BAT) and Best Environmental Practices (BEP) to Enhance National Environmental Law

- BAT means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for release limitation designed to prevent and, where that is not practicable, generally to reduce releases of chemicals (e.g. polychlorinated dibenzo-p-dioxins and dibenzofurans) and etc.
- BEP means the application of the most appropriate combination of environmental control measures.

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- BAT and BEP subsume the activities under the Stockholm Convention to reduce and ultimately eliminate the unintentionally produced POPs (Persistent Organic Pollutants):
 - The open burning of wastes and landfills;
 - waste incineration;
 - Fossil fuel-fired utilities and industrial boilers; and
 - Metallurgical industry.
- Practical example of successful implementation of BAT/BEP is the Kitakyushu Eco-Town Project in 1997 in Japan which was founded based on basic concept of 'zero-emissions.' This concept is about ultimately reducing waste generation to zero, by taking the 'waste' arising in citizen lifestyles and industrial activities, and utilizing it to greatest extent possible as raw materials in other industries.

Conclusion

- Understanding the various elements of environmental protection law, its tools, enforcement of its legislations and administrative arrangements and the trend towards integrating all its elements will assist in conserving the natural environment.

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