



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

# Judicial Interest In Environmental Law

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# Role of Judiciary in Environmental Law

- A key mechanism for ensuring legal effectiveness of environmental law and institutional regimes.
- Well prepared and informed of the rapidly expanding environmental law
- Plays a critical role in the implementation and enforcement of environmental law:
  - a. through the successful conclusion of environmental cases providing a strong disincentive to non-compliance of environmental laws.
  - b. enforcement of environmental rights including right to information.
  - c. by providing access to the public and civil society to judicial procedures.
  - d. through coherent networking among judiciaries and exchange of judgments and sharing information on environmental cases and international jurisprudence.

# Environmental Courts

- Land and Environment Court of New South Wales: 1979
- Planning and Environment Court of Queensland : 1990
- New Zealand Environment Court: 1991
- Indian National Environment Tribunal : 1995
- Indian National Environment Appellate Authority : 1997
- The Kenya National Environmental Tribunal : 1999
- Bangladesh Environment Court: 2000
- Thailand: Green Bench in the Supreme Court :2004
- Philippines: environment courts at the provincial and local levels:2008
- Indonesia environment courts at provincial level: 2008
- India National Green Tribunal: 2010

\*ENVIRONMENTAL OMBUDSMAN

# Judicial Notables in Environmental Law

- Philippines Chief Justice Hilario Davide Jr
- Chief Justice Preston - 2006 Telstra Case
- Judge Weeramantry, Judge of the International Court of Justice - Hungarian Dams Case
- Justice Antonio Herman Benjamin, Chair of the International Union for Conservation of Nature World Commission on Environmental Law and Justice of the National High Court of Brazil



# Some Highlights in Environmental Disputes and Court Decisions

- Indian Council for Environmental Legal Action v Union of India AIR 1996 SC – polluter pay principle
- Oposa v Factoran 1993 (Philippines)
- Bangkinang Land Forest Fires Criminal Case (Indonesia)
- Human Rights CaseNo: 31-K/92(Q) (Environment Pollution in Balochistan)
- MC Mehta v Union of India and others, Supreme Court of India, Writ Petition (Civil) No. 860 of 1991
- Leaders Inc v Godavari Marbles (Nepal)
- Jupiter Shipping Pte v. PP (Singapore)

# MALAYSIA

## YAA Tun Arifin bin Zakaria

### Pantun alam sekitar

*Hembus Pawana Bayu Terasa  
Alam Yang Indah Dipandang  
Mata*

*Janganlah Kita Membuang Sisa  
Kelak Binasa Alam Semesta*

*Indah Malam Tanpa Pelita  
Terbang Beramai Si Rama-Rama*

*Janganlah Lupa Peranan Kita  
Persekitaran Indah  
Tanggungjawab Bersama*

- The right to a clean environment should ideally be added to the liberties that Malaysians are expressly guaranteed by the Federal Constitution

- *"....What is most important is I want to create realisation, awareness of the public on environment and the courts through our judgments, through our cases will attract public attention.....illustrates just how misplaced our value system was then, as well as how little exposure and awareness there was amongst our magistrates and judges," he said today, adding that such attitudes have hopefully changed after the introduction of environmental courts, training programmes and national strategy workgroups."*



# Malaysia's Environmental Judiciary

- A total of 42 Sessions Courts and 53 Magistrates' Courts were initially designated as environmental courts handling criminal matters, but the judiciary has since expanded this initiative through the setting up of Special Environmental Courts nationwide to deal with civil environmental cases.
- Mainly cases on non compliance of licences, air pollution, water pollution and industrial effluent.
- Majority of cases are in Johor and Selangor.

YEAR	NO OF CASES
2012	302
2013	338
2014	311
2015	254
2016	195

# Court Cases in May 2017

Source : DOE

DEPARTMENT OF ENVIRONMENT																			
Court Cases From : 01/01/2017 To : 31/06/2017 On Offences Committed Under The Environmental Quality Act, 1974																			
No	States	Type of Offences																	Total of Court Cases
		Licensing			Air Pollution		Water Pollution	Noise Pollution	Scheduled Waste	Environmental Impact Assessment	Other Offences								
		Permitted (EQA) Does Not Comply With Terms of License (Sec.10(1))	Permitted (EQA) Operating Without License (Sec.10(1))	Permitted (EQA) Operating Without License (Sec.10(1)(a))	Open Burning (Sec.20A)	Exceeds Limit Specified (Sec.22(1))	Exceeds Limit Specified From Other Region	Discharge Without Permit/ Limit Specified (Sec.23(1))	Exceeds Limit Specified (Sec.23(1))	Scheduled Waste (Sec.24B)	Environmental Assessment (Sec.24A)	Prohibited (Sec.24(1))	Failure of Duties of Occupier (EQA, Operation, Repair etc.) (Sec.25(1))	Prohibited (Sec.25)	Discharge of Oil, Gas, Mixture or Other (Sec.26(1))	Environmental Quality (Clean Air) Regulation (EQA)	Environmental Quality (Prevent Pollution) (Scheduled Matter) Treatment & Disposal Facilities Regulation (EQA)	Environmental Quality (Industrial Effluent) Regulation (EQA)	
1	JOHOR	0																	0
2	KEDAH																		0
3	KELANTAN																		0
4	MELAKA																		0
5	NEGERI SEMBILAN	1			1		1		1										4
6	PENANG																		0
7	PERAK																		0
8	PERLIS																		0
9	SELANGOR																		0
10	SARAWAK	12		1	1												2	1	16
11	SEREMBAN																		0
12	TERENGGANU																0		0
13	TRINGGEMAL	1			1				0								0		2
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# Landmark Cases in Malaysia

- The Bakun Dam - Kajing Tubek v. Ekran Bhd dan Lain -lain [1996] 2 MLJ 388 dan Ketua Pengarah Jabatan Alam Sekitar v. Kajing Tubek [1997] 3 MLJ 23
- Lizard King Anson Wong's arrest in 2010 that brought about the Wildlife Conservation Act 2010
- Tan Teck Seng v Public Prosecutor
- Asian Rare Earth Case - Woon Tan Kan v. Asian Rare Earth [1992] 4 CLJ 2299
- Public Prosecutor v. Ta Hsin Enterprise Sdn Bhd [1998] 6 MLJ 748
- Ventura Navigation Inc. v. Singapore Authority Lors (1989) 7 MUJ 349

# International Judicial Affiliation

- Asian Judges' Network on Environment (AJNE)
- Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable on Environment
- ASEAN Judicial Working Group on Environment
- ADB Office of the General Counsel (through its Law and Policy Reform Program)



# International Commitment

- The Angkor Statement of Commitment to ASEAN Judicial Cooperation on the Environment which evidences ASEAN judiciaries' dedication to jointly tackle the region's transboundary environmental issues
- A Common Vision on Environment for ASEAN Judiciaries (the Jakarta Common Vision)
- Hanoi Action Plan to Implement the Jakarta Common Vision
- Share information and promote environmental law education and training in law schools and judicial training institutes



# Useful Links

- Department of Environment - [www.doe.gov.my](http://www.doe.gov.my)
- Office of the Chief Registrar, Federal Court of Malaysia - <http://www.kehakiman.gov.my>
- International Court of Justice - <http://www.icj-cij.org>
- Australian Government , Department of Environment and Energy - <http://www.environment.gov.au>
- Weblinks to national websites on Environmental Crimes -[http://ec.europa.eu/environment/legal/liability/national\\_transposing.htm](http://ec.europa.eu/environment/legal/liability/national_transposing.htm)
- Supreme Court of India, The Judgment Information System - [judis.nic.in/supremecourt/chejudis.asp](http://judis.nic.in/supremecourt/chejudis.asp)
- Supreme Court of the Philippines decisions - [sc.judiciary.gov.ph/jurisprudence/](http://sc.judiciary.gov.ph/jurisprudence/)
- UK Courts and Tribunals Judiciary - <https://www.judiciary.gov.uk/judgments/>



Thank You

