

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

**PRESENTATION:
THE JUDICIARY AND ENVIRONMENTAL JUSTICE**

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The Role of Judiciary in Environmental Cases

- ▶ As described by the recent report ‘Decisions for the Earth’ which was developed by UNDP, UNEP, the World Bank and the World Resources Institute, the process of environmental governance is to do with “how we decide and who gets to decide, often determines what we decide”
- ▶ The interconnectivity and interdependence of environmental governance have far reaching implications for judicial thinking and decision making and consequently, for the development of environmental jurisprudence.
- ▶ Narrowly-defined environmental cases may impact a wider community-a nation, a region, or even the whole world.

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- ▶ The more one reflects on the root causes of environmental pollution and natural resources depletion, the conclusion is inescapable that there is a necessity of a shift in the mindset of judicial thinking on environmental cases.
- ▶ It has been argued that in Malaysia, more laws are not needed and more institutions are not required. Rather, the application of existing laws within existing institutions by applying a new mindset will elevate environmental considerations into the collective judicial consciousness.

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- ▶ What is important is that environmental implications need to be raised to the forefront of judicial decision making.
- ▶ It must be recognised as fundamental to the notion of justice, the notion of the Rule of Law, and the notion of governance.
- ▶ The very essence of the Rule of Law: that all parties are equal before the law and justice must be dispensed without fear or favour, in an even-handed way.
- ▶ It includes the independence of the judiciary, transparency, consistency and accountability in the administration of the law, and the notions of equity, justice and fairness.

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- ▶ In the celebrated Full Bench decision of the Supreme Court of the Philippines in the *Oposa v Factoran* case, it was held that:

“As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as State policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the State a solemn obligation to preserve the first and protect and advance the second, the day would not be far when all else would be lost not only for the present generation, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life.”

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- ▶ The Judiciary as the final arbiter in human affairs has both the responsibility and the duty to dispense justice with due regard to both the Rule of Law and rules of good governance.
- ▶ It has been argued that because environmental law is a comparatively new branch of law, the judiciary is positioned to actively influence the law's normative development.
- ▶ Courts also have played a crucial role in advancing the Principles contained in the International environmental law for example in the Stockholm and Rio Declaration, the Paris Agreement, Minamata Convention on Mercury, Cartagena Convention on Biosafety and etc.

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- ▶ As champions of the rule of law, Malaysian judiciary's has also a unique and critical role in tackling the region's key environmental challenges such as transboundary air pollution, illegal forestry and illegal wildlife trades among ASEAN countries.
- ▶ As such the judiciary plays major roles in interpreting the ASEAN environmental agreements such as the 2002 ASEAN Agreement on Transboundary Haze Pollution; 1985 ASEAN Agreement in Conservation of Nature and Natural Resources; 2005 Agreement on the Establishment of ASEAN Center for Biodiversity; and etc.

What is Environmental Justice?

- ▶ The United States Environmental Protection Agency defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- ▶ The people most effected by environmental degradation are the poor.

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- ▶ There is an urgent need to strengthen the capacity of the poor and their representatives to defend environmental rights, in order to ensure that the weaker sections of society are able to enjoy their fundamental right to live in a social and physical environment that respect and promotes their dignity.
- ▶ The judiciary plays a critical role in the enhancement of public interest in a healthy and secure environment.

Suggestions Creating Environmental Justice

▶ BHURBAN DECLARATION 2012

- ▶ The South Asia Conference on Environmental Justice, held last 24-25 March 2012 at Bhurban, Pakistan brought together chief justices, senior members of the judiciary, and other legal stakeholders in South Asia, to highlight environmental challenges in the sub region, and devise ways to strengthen the implementation of environmental justice and ensure compliance with environmental laws.
- ▶ The recommendations from the conference led to the adoption of a 14-point Bhurban Declaration establishing “green benches” across Pakistan.

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- ▶ Among other things, the Bhurban Declaration 2012 included a promise for an educated judiciary, specialized courts, and various other aspects of environmental justice, some of which are given below:
 - ▶ A promise of collaboration among participant judges and countries to improve the development, implementation, enforcement of, and compliance with environmental laws, as well as to make an action plan to achieve the same.

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- ▶ A declaration to strengthen the existing specialized environmental tribunals, as well as train judges and lawyers on environmental law.
- ▶ A promise to encourage law schools to teach environmental law.
- ▶ A resolve to hold an annual South Asia justices' conference on environmental issues to foster cooperation.

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- ▶ A vow to establish green benches in courts for dispensation of environmental justice and to make necessary amendments or adjustments to the legal and regulatory structures to foster environmental justice.
- ▶ A statement to draft a memorandum of understanding amongst the South Asian judiciary to be sent to judiciaries of South Asia for the adoption of a South Asia convention on environmental justice.

Conclusion

- ▶ In reality the understanding of environmental law in particular by the public is limited. Even though the government claims that environmental protection is important but when conflicts between economic and environmental benefits arise, economic growth is still prioritised. The path for dispensation of environmental justice and to make necessary amendments or adjustments to the legal and regulatory structures to foster environmental justice is wide open for judges to consider. Judges will have to best discuss on their role in safeguarding the environment for the benefit of the present and the future generation of Malaysia.

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