

ENVIRONMENTAL SUSTAINABLE DEVELOPMENT: THE DISCREPANCIES

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Abstract

Sustaining environment has been a difficult process over the past years. Malaysia normally restricts challenges on environmental issues. Mostly are caused by economic factor and lack of uniformed environmental management. Evidences of such abuses show some uncertainties in how public agencies dealt with environmental matter. And how the court address the issues is also interesting to note. The court normally encounter the problem of abuse of power via judicial review but on matters touching environment the attitude is irregular. This paper seeks to exhibit how environmental sustainability is practiced in Malaysia as compared to Australia and UK in order to identify the defects that are prevalent.

Key words: justice, sustainability, abuse of power, judicial review

INTRODUCTION

Environmental degradation happens in many forms making sustaining them difficult and sometimes impossible. More often than not destruction to environment is driven by hunger for money. What is regretful is when it is done on larger scale. Indeed most of the damages to the environment arise from the commercial activities. For instance pollution on air, water, noise, land, sound and undesirable chemicals e.g. poisonous gases into the air by factories or death of all fishes in the rivers, come from big industries and factories. Deforestation and telecommunication installation also emerge from practices like logging and mining incidentally for economic gain. All these in absence of good environmental practices will contribute to damaging the environment.

The forest is an integral and vital part of the environment and an important source of food, fuel and material for satisfying the basic needs of the people in the rural areas. In recent years, tropical forest resources have contributed significantly to socio-economic development of many countries (Anon, 1988). But "Deforestation" results in accelerated erosion, in catastrophic floods, dried-up springs, wells and streams, in decreased rainfall, in reservoir sedimentation, in savanna-sation and desertification, in landslides, in loss of species (even mega-extinction), in large releases of carbon dioxide and methane that accelerate global warming, and so forth (L.S. Hamilton, 1990). Development hence did not come without a price. The price to be paid for economy and development is its loss.

FACETS OF ENVIRONMENTAL DESTRUCTION

Environmental destruction does not come out of nowhere. Illegal logging is one of the activities with which profit are reaped at the expense of the environment. The bad impact is significant. In Malaysia, even though no studies have been done on the full environmental impact of forest resources development and conversion of forests for other uses but results from observations are sufficient to indicate potential hazards of mismanagement of the land and natural resources. Forest resources development in Malaysia invariably causes major disruptions to the environment and affects particularly soil stability and fertility and water yield and quality. Studies in the Cameron Highlands showed that conversion of the forests on steep slopes for tea planting and vegetable gardening increased soil losses in the ratio of 1:20:30 respectively. (J.G. Daniel et al, 1974).

A report prepared by the World Conservation Monitoring Centre at Cambridge listed Malaysia as the 10th major rainforest destroyer. According to the statistics of 1991, 19.24 million hectares (or 58.4%) of land in Malaysia are still forested. Of this area, 12.594 million hectares are under Permanent Forest

Estate, while 2.702 million hectares are totally protected. In one area where 4,000 hectares were sampled, the logging damage was "excessive" i.e., only 45 trees per hectare would qualify for future logging (Anon, 1990)

Likewise in telecommunications as the modern life have greatly influence our life; it has also affect the dollar and cent of everyone involved in this economic chain. Construction of telecommunication apparatuses has led to alteration of the earth habitation, alteration of the aquatic habitation, obstruction and alteration of vision, waste and hazardous materials, emission of electromagnetic fields, air pollution, noise pollution and occupational health and safety. Other challenges include multiplicity of regulations and regulatory bodies, judicial bottle-neck, poverty and lack of awareness as well as corruption and insincere governmental policies facing the enforcement of environmental laws in the telecommunications. Operation and maintenance activities of Base Stations and other telecommunications facilities may also result in the generation of electronic wastes like circuit boards from computer and other electronic equipment. The operation and maintenance of backup generators and service vehicles may also result in the generation of used tires, and waste oils and used filters (Environmental, Health, and Safety Guidelines, 2014)

Tourism also contributes to Profit-driven overdevelopment which can harm delicate ecosystems like beaches, wetlands, and rain forests. The physical impacts of mass-market tourism and the destructive influence on local environments and poor development decisions such as extensive building on beaches or bulldozing over wetlands create irreversible damage on planet earth and the big players who make these irresponsible decisions need to be held accountable. Corporate greed is the most immediate threat to the environment. (The travel World, 2012)

The construction of new mega resorts along undisturbed coastal areas and the carbon emissions generated by international air travel also disturbed the environment severely. Lack of planning causes the misuse of resources, whether natural or human. All these impede the effort to sustain the environment.

There are environmental costs for economic growth. Rapid economic growth combined with a rapid population growth has placed great stress on the environment. Damage to the environment will threaten future living standards. The challenge would be, to construct the economic system that is not damaging the environment.

COURTS POWER TO REVIEW

Since this paper focus on abuse of power on the environment, it is necessary to explain first the control on government transgressions via judicial review. Australia has provided a good basis in how to deal with abuse of power of administrative action. In Australia like UK, the common ground for judicial review are illegality, irrationality and ultra vires.

In the context of legality, the reasons for judicial review are to clarify whether the administrative decision is legal, and within the allowed rule. Among the decisions that are issued by the Judicial Review in case of administrative deficiency is illegality, which means that the administrative decision has exceeded the power, or the decision-maker does not have the authority to issue the decision. For example, if the Act stipulates that the Minister of Labour may act within specific conditions only, absence of these conditions, are considered exceeding his authority or rights (John McMillan, 2005).

It is also worth mentioning on how abuses of power in administrative setting are interpreted by the court through judicial review. The grounds for judicial review are normally procedural impropriety. When a procedural decision is made but is not in accordance with the procedures stipulated in the statute, a procedural impropriety has occurred. However, the standard to be applied is generally dependent upon the circumstances and the nature of the matter. Procedural impropriety occurs when there is a lack of proper consultation or where the defendant fails to fulfil a legitimate expectation with regards to the proper procedure that he was expected to comply with.

The term “procedural impropriety” may make an inquirer think, “has the right and proper procedure been observed or complied with?” The raising of such questions with decision-making bodies will help such bodies to ensure that all the steps prescribed by law have been followed before they reached their decisions. However, if the decision-making body did not follow the prescribed procedures it does not mean that the decision they have made is wrong or misleading, for it may just mean that there could have been a different result. Whether the decision is right or wrong under the circumstances, it is the prerogative of the judicial review tribunal to decide.

In common law, the courts can conduct judicial reviews if the actions of administrative authorities are *ultra vires* meaning that the actions are in excess of the authority conferred by law. ‘*Ultra vires*’ is a Latin phrase which simply means “beyond the power”. The role of the courts is to curtail the abuse of power by administrative authorities and to provide protection to the affected parties. The courts check these abuses through cases filed in court on a point of law which includes error of law, unfair process, and unlawful exercise of discretion.

Lord Diplock in *Council of Civil Service Unions & Ors v Minister for Civil Service [1985] AC 374; (1984) 3 All ER 935*, also asserted that the impugned decision can be flawed by procedural impropriety. Lord Diplock’s extended it to other grounds susceptible to judicial review and make it abundantly clear that such a decision is also open to challenge on ground of illegality and irrationality and this permits the court to scrutinize such decision not only for process but also for substance.

The scope in court’s power to review government decision in Australia is evident. Under the Australian Administrative Decision Judicial Review Act 1977 (ADJR), the Act made easier the procedures of review. For example s.5 (1) (c) expose government authorities to judicial review when the person purported to have power did not have the jurisdiction to make the decision. Absence of jurisdiction may include instances such as authorities acting outside his authority, excess of power, illegality, wrong and inadmissible consideration, duties misconceived or acting for unauthorized purpose. The legal principles supporting government actions goes back to constitutional requirement of limited government as constitution did not allocate broad power to the government unless in so far as such power are necessary to defend public interest.

Even though there is no definitive statement to envisage every single exercise of power, in essence there must be authority to act. Government needs power to function. These powers are translated via the legal authority or law. It is this power that needs to be guided to be just. That is why discretionary power is conferred to accommodate actions that are not specified yet assumed to be within power. Courts power is to ensure government’s power are exercised within limits. Only that, in tackling the issues court may adopt certain degree of deference or agreement in determining whether it is lawful or within jurisdiction. As what happened in *Hayden* where the court was not reluctant to interfere in actions that are punitive and coercive involving national security reason. These cases depicted the limited scope of executive power.

The significance of the *A vs Hayden (1984) 156 CLR 532* is that it showed power to act must be authorized. It also showed judicial review though exercised procedurally can limit government power for court depended on the constitution to draw the line between lawful and unlawfulness of government actions. In the *Hayden* case the principle was clear that government even in the pursuit of national security objective do not possess the power to contravene the law. In this case, there was training by secret agent of Australian Secret Intelligence Service (ASIS). They exercise an act to free ‘hostages’ from the hotel. Their acts of wearing the mask and carrying weapon were misaligned and they were alleged for criminal offence. When Victoria state government ask the Commonwealth government to disclose the identities of the participants in the training to Chief Commissioner of Police for Victoria, this was opposed by the plaintiffs. The plaintiffs (the participants of ASIS) sought an injunction to stop the Commonwealth from disclosing their identity on the grounds that in the contract of employment, the Commonwealth has agreed, in the course of duties, to keep their personality confidential. Furthermore, the ASIS training was approved and backed by the Minister. The court by majority refused to grant injunction.

Gibb J held, there is no reason why the commonwealth should not disclose the identities of the participants to the Chief Commissioner of Police. It is fundamental to our legal system that the executive has no power to authorize a breach of law and that is no excuse of the offenders to say that they acted under the order of a superior officer.

Mason J concurred. He said there is an air of unreality about the case, instructing officers under ASIS to participate in bizarre training at the hotel which involved the risk of disturbing peace and commission of criminal offence under the purpose of national security yet refusing to disclose their names to Chief Commissioner of Police so that he can enforce the criminal law properly, was illogical. Using the national security reasons to absolve the Commonwealth from the obligation of the law was also unreasonable. The arrangement of training though done through executive orders must be backed by law. This need to be made clear because the authorities should anticipate that if there are counter-espionage activities involving breach of peace and law, they are likely to attract consequence that flow from such breach.

Murphy J too condemned sharply, the executive power must be exercised in accordance with the constitution. Constitution is not just there to restraint the executive power but to remedy past violation. These have to be constantly reminded since judging from what the plaintiff has said, it seems that the executive is above the constitution, as such executive can order one to kill another even in absence of war. This is incoherent with Rule of law. It is subversive of the constitution. In other countries this is sufficient reason to carry out death squads.

Brennan J also condemned the Commonwealth act which immunises its officers from law suit and without going through parliamentary scrutiny. He said that neither ASIS nor Minister or the executive government could confer on the plaintiff the right to commit offence or immunity from prosecution for the offence committed. The act of unnecessarily dispensing with the law was rooted in the ancient time. The tendencies of prerogatives powers to do away with the laws were unacceptable and dangerous. The last king to dispense the law was James II which then gave rise to the creation of Declaration of Right. It was declared that 'the power of dispensing with laws or execution of the law by Royal authority, as it hath been assumed, is illegal'. No more mark of dispensing the law and power remained after that. The point is that all officers serving the Crown must act according to the law as Griffith CJ said in *Clough v Leavy*; if an act is unlawful -forbidden in law – a person who does it can claim no protection by saying that he acted under the authority of the Crown.

From the above indicators, as long as the flaws relate with misconducts of entire government administration, procedurally nor substantively, they may become subject of judicial review.

AUSTRALIAN APPROACHES TO ENVIRONMENTAL ABUSE

The above illustration has highlighted the working of judicial review in matters relating to abuse of administrative power. This part will extend further the judicial interference in matters touching environmental abuses. Apart from the combatting abuses of power by the authorities as above there are other cases that solely relate with environmental mismanagement. In *Minister for Planning v Coalpac Pty Ltd [2008] NSWLEC 271*, *Coalpac Pty Ltd* ("Coalpac") owned and operated an open cut coal mine near Lithgow in NSW. In September 2006, the Minister for Planning granted project approval for extensions to the mine and rehabilitation activities. The approval permitted an annual production cap of 350,000 tonnes of coal in a year. However, between 7 September 2006 and 6 September 2007, Coalpac produced 635,000 tonnes of saleable coal from the mine and represented the production of 80% more coal than that allowed under the annual cap.

Coalpac pleaded guilty to carrying out development without approval of the Minister pursuant to s.15D (2) of the Environment Planning and Assessment Act 1979 (NSW) ("EP & A Act") (contrary to s125 of EP & A Act). The Maximum fine for an offence under this section of the EP & A Act was \$1.1m.

Coalpac had no record of any prior offences, however the Court determined that the appropriate penalty to impose in this matter was a fine of \$200,000 stating that,

"Notwithstanding the absence of actual environmental harm, there has been damage to the integrity of the planning system. The Defendant acted quite intentionally over a significant period of time, particularly after June 2007, in committing this offence, in order to obtain a financial advantage. Importantly, the Defendant has, as a result, derived gross revenue amounting to millions of dollars."

The court in this case felt that tougher penalties is necessary to deter offenders even in the circumstances that the offence results in no actual environmental harm. This has shown how serious the court are in dealing with environmental abuse.

In *Director-General of the Department of Environment and Climate Change v Hudson [2009] NSWLEC* case, the defendant in this matter Mr Hudson owned a property 60km east of Moree (with his wife) and had authorised the clearing of 486 hectares of native vegetation on the property between 2006 and 2007 for the purposes of "weed management". A prosecution was brought against Mr Hudson for clearing the native vegetation otherwise than in accordance with a development consent or property vegetation plan contrary to s.12 of the Native Vegetation Act 2003 (NSW). A further charge was brought in that Mr Hudson had, without reasonable excuse, failed to comply with a notice requiring him to produce evidence about the commission of the offence (contrary to s.36(4) of the Native Vegetation Act 2003 (NSW)).

Mr Hudson pleaded "not guilty" to the charges on the basis that the clearing had been taken out for the purposes of routine management activities and accordingly permitted under Division 2 or 3 or otherwise excluded by Division 4 of the Act. The court found Mr Hudson guilty and in imposing the sentence, pointed out that the penalty should probably reflect the large area of land cleared, the deliberate nature of the offence, the absence of any contrition or remorse and the need for the penalty to act as both a general and specific deterrent.

The court concluded that as the clearing was carried out as part of the agriculture activities on the land and in that sense was part of a commercial operation (i.e. "motivated by commercial considerations") that a significant fine totalling \$408,000 (for both offences) was appropriate. This decision again highlights the importance monetary sentences adopted by the court as deterrent effect involving the abuse of environment.

Likewise in the case of *Hawkesbury City Council v Johnson [2008] NSWLEC 138* and *Hawkesbury City Council v Johnson (No. 2) [2009] NSWLEC 6*. The decisions in these matters resulted in penalties of over \$30,000 for illegal tree clearing. The landowner, Mr Johnson, and his company, were found guilty of the same offence under s125 of the EP & A Act of an authorised land clearing.

In determining the objective seriousness of the offence, the Judge (Pain J) held that although the defendants relied on advice that the clearing was lawful, they acted recklessly as more should have been done to clarify whether the clearing was lawful before it commenced. The decision demonstrates once again that the Courts are more likely to hand down tougher penalties if the offence results in significant environmental harm.

Similarly in *Garrett v Freeman (No. 5)*; *Garrett v Port Macquarie Hastings Council*; *Carter v Port Macquarie Hastings Council [2009] NSWLEC 1*, the Court delivered sentence against both the Port Macquarie Hastings Council ("the Council") and its Director of Infrastructure Services, Mr Freeman.

Mr Freeman had been charged with two offences under the National Parks and Wildlife Act 1974 in his capacity as "a person concerned with the management of the Council". Mr Freeman was a senior Council employee authorising the construction of road works owned by the Council. The Court found that Mr Freeman had failed to comply with the requirements of the environment assessment for the construction of a road on environmentally sensitive land with the effect that damage was caused to the habitat of certain protected species. The Council, charged in its corporate capacity, pleaded guilty and Mr Freeman pleaded not guilty.

In the penalty judgment, the Court ordered Mr Freeman to personally pay fines in the sum of \$57,000 plus prosecutor's costs in the sum of \$167,500 and the Council were ordered to pay total fines in the sum of \$80,500 plus the prosecutor's costs in the sum of \$194,000.

This case is significant as it not only demonstrates that the Department of Environment and Climate Change's willingness to prosecute an individual for breaching environmental laws in addition to the punitive approach it takes against corporations, but also the fact that the Court placed significant weight on the deterrence effect in its sentencing considerations..

It is clear that big size of fines not only show the Courts desire to deter the commission of similar offences, but also to discipline big corporations to adopt highest care and taking all measures to prevent, incidents of pollution, because if prosecuted and convicted, they are likely to face significant penalties in future.

ENVIRONMENTAL ABUSE IN UNITED KINGDOM

UK likewise Australia adopt the same attitude in terms of protecting the environment by promoting public engagement. In *R (on the Application of Greenpeace Ltd) Secretary of State for Trade and Industry (2007) EWHC 311, (2007) Env LR 29*, Greenpeace initiated a claim for judicial review seeking to quash an order in respect of the Government's decision to support nuclear new build as part of the UK's future energy. In the White Paper *Our Energy Future— Creating a Low Carbon Economy*, the Government indicated that it had decided against supporting the building of new nuclear power stations as part of the UK energy mix, opting instead to concentrate its efforts on encouraging the development of renewable energy sources. The Government also had explicitly stated that: 'Before any decision to proceed with the building of nuclear power stations, there would need to be the fullest public consultation and the publication of a White Paper setting out the Government's proposals.

The Secretary of State promising that it would feature 'extensive public and stakeholder consultation'. In the body of the paper, discussion of nuclear power issues was fairly minimal. The issues sketched out in this regard included the UK's carbon profile, energy security, nuclear proliferation and waste.

In order to progress this proposal a discreet consultation exercise on nuclear new build was instituted, and a White Paper on the specific issues that this raised was promised by the end of 2006. The Review Report intimated that nuclear waste issues were to be resolved on the basis of the then forthcoming Committee on Radioactive Waste Management Report.

The court held that Greenpeace took part in the consultation exercise that generated the Energy Review Report and was, as an organisation, very much against nuclear new build, appalled by the outcome of the process. In response it sought to challenge the Report by way of judicial review. The claim was founded on an alleged breach of legitimate expectation. This was based on the Government's failure to adhere to its own express promise that a change of policy on nuclear new build would only be adopted following 'the fullest public consultation'.

The NGO alleged that the document was flawed in the following important respects: first, it was vague and unclear as to what consultees were being asked to respond to; secondly, it lacked adequate information to enable consultees to respond intelligently; and thirdly, it was incomplete. The latter argument was predicated on the fact that a great deal of the information upon which the Government's decision would ultimately be based was not actually available during the duration of the consultation exercise, only becoming available after the event.

In this case, reading the 2006 'consultation paper' as a whole and in context, Sullivan J agreed with Greenpeace that it constituted an 'issues paper' and was not therefore adequate for purpose. He formed this view for a plethora of reasons. First was the minimal time period allowed for consultation – the Government allotted 12 weeks to the exercise (the minimum period prescribed by the Cabinet Office for such exercises). Sullivan J viewed this as inappropriate given the complex and controversial nature of the issues involved, though this point was not deemed to be conclusive. The second problem he identified was the limited express purpose of the document. Third was the broad nature of the 'key question' posed. Fourth was the fact that it was expressly stated in the paper that it formed 'part of a process' yet a swift conclusion was reached on the nuclear new build issue following this stage of the consultation. Fifth, Sullivan J was concerned by the fact that no 'in principle' question was posed in the document. Sixth, he was concerned by the content of the summary document. Seventh, he was

concerned by the lack of substantive coverage of the nuclear new build issue in both the document and its Annex,10 which Sullivan J referred to as providing mere ‘thumb nail sketches’ of the issues. The information on economic issues was found lacking and the material on waste was found not only to be inadequate but actually misleading. In addition to these specific problems Sullivan J further took the view that the whole consultation process had been lacking in clarity.

As a result of these many and manifest flaws, the consultation was found to be unfair to such an extent that it was seriously flawed. The outcome was also found to be unforeseeable to participants, which was identified as a problematic issue in earlier case law, notably, *R v North and East Devon Health Authority, ex p. Coughlan* (1999) LGR 703, *Edwards v Environment Agency* [2006] EWCA Civ 877 and *R (on the application of Wandsworth LBC) v Secretary of State for Transport* [2005] EWHC 20 (Admin). Taking all of these matters into account, granted a declaration to the effect that there had been a breach of the claimants’ legitimate expectation of the ‘fullest public consultation’; that the consultation had been procedurally unfair; and that therefore the decision favouring nuclear new build was unlawful.

One interesting aspect of the Greenpeace case is the thorough consultation. The courts observations on the magnitude of flaws in a given consultation process. Sullivan J made some interesting remarks about what the common law requires in this regard, emphasising that in cases such as that under consideration, exercises must be geared toward the general public and not simply to expert NGOs and that, as a result, particular care must be taken not to mislead. If there is no space in the consultation process for individual voices, there is a very real danger of tokenism in participation that frustrates the inclusive goals of the participation agenda by simply redrawing the boundaries of the traditional sphere of potential influence beyond the traditional charmed circle of State and industry to include favoured NGOs rather than truly changing the parameters of the process. It is in this context that Sullivan’s view that at common law the term ‘public’ is to be given the broadest possible meaning is to be warmly welcomed, embracing as it does the principle of participation in its fullest form.

In the Greenpeace case at least one of the purposes of the consultation process was arguably to curtail subsequent debate on a number of particularly controversial issues, notably nuclear new build. Such is the scale and complexity of the energy sector and the scope of the consultation paper that it is perhaps inevitable that depth is sacrificed to breadth. As a result, the court was favourably inclined to employing the concept of fairness at common law in order to ensure that the consultation that was undertaken was meaningful.

It identifies the advantages of what it terms ‘public engagement’ as comprising direct benefits in the form of a two-way informed dialogue that could address the concerns raised about consultation by the Greenpeace case, resulting in a more robust energy policy (with like impact on the nuclear power policy element within it) that both engages the public and is owned by it.

The Sustainable Development Commission (SDC) too sounds a cautionary note on the importance of learning from the Energy Policy Consultation and subsequent events:

Recent experience points to the danger of treating public attitudes and the factors shaping them as of secondary significance. Truly sustainable energy policies seem likely to benefit from going with the grain of wider public concerns, rather than rubbing up against them. (SDC, 2006)

It is to be hoped, that this caution will not fall on deaf ears.

MALAYSIAN ENVIRONMENTAL ISSUES

Malaysian approach to protection or conservation of the environment revolves more around fundamental liberties rather than direct punishment for destroying the ecology. The fundamental right enshrined under Article 5(1) of the Federal constitution provides for the right of life; a provision which has (unfortunately) failed to provide more than a semblance of environmental protection (Rozanah Abd Rahman, 1996).

What is shown in the case of *Ketua Pengarah Jabatan Alam Sekitar vs Kajing Tubek (1997) 3 MLJ 23* is not directly related to environmental issues but on right to live in their customary land. The respondent are three of the 10000 natives living in that part of Sarawak where the Bakun hydroelectric project is situated. The respondent claimed that inter alia the project would adversely affect their fundamental right in that their livelihood would suffer from resulting impact on the environment.

The court of appeal held that they and their ancestors have from time immemorial, lived upon and cultivated the land in question. It is common ground that the project will deprive them of their livelihood and their way of life. Their ancestral and customary rights will be extinguished. The state government of Sarawak seeks to deprive the livelihood and the way of life of all those affected by the project. The action however is valid because it was made in accordance with the provision of law. In *Kerajaan Negeri Johor and another vs Adong Bin Kuwau and Ors (1998) 2 MLJ 158*, the people live from the hunting of animals in the jungle and the collection of jungle produce and these are the only source of their livelihood and income. The plaintiffs have rights of free access into Linggiu valley and to harvest the fruits of the jungle. These rights were unchallenged and recognized in law.

The defendants later entered into an agreement with the government of Singapore and built a dam in Linggiu valley. The building of the dam deprived the plaintiffs from the freedom of entering Linggiu valley and consequently of their right to livelihood.

The plaintiff were entitled to be compensated for the deprivation of their livelihood. Where state action has the effect of unfairly depriving a citizen of his livelihood. Adequate compensation is one method of remedying the harm occasioned.

Again the logging issues in the cases below is not straight away related to environmental ruin but rather on absence of licence to log. Under the law no one can take the trees without licence. The National Forestry Act, 1984, clearly provides that the right to all forest produce within a Permanent Reserved Forest or state land belongs to the state authority, and no person can take such forest produce without a licence or a minor licence, or occupy or carry out any activity in a permanent reserved forest without a use permit. Such licences or use permits are issued by the state authority. Contravention of this section would render a person to be liable to a maximum fine of RM500,000 or to imprisonment for a term not less than one year but may extend to 20 years. In addition to the above penalty, the offender may be ordered to pay a maximum sum of 10 times the royalty, premium; 10 times the value of such forest produce and other charges payable.

The applicant, upon being granted a licence, is required to prepare a forest management plan or forest harvesting plan and a reforestation plan, specified by the Director. Under section 24(2) of The National Forestry Act, 1984, failure of the licensee to carry out the plan into effect (without reasonable cause) may result in the revocation of the licence and payment of certain sum of money to the state authority as a penalty.

It is very important to note that a licence is non-transferable and non-assignable except under certain permitted conditions and this can be seen through the Court's decision in several cases.

In the case of *Tan Bing Hock v. Abu Samah, 1 MLJ (1968), p. 221*, the owner of a licence to extract timber from a specified forest area had entered into a contract with the assignee, assigning him the right to extract timber. The contract was in contravention of rule. 2 and 18 of the Forest Rules, 1935, which provides that no licence issued thereunder shall be transferable. It was held by the Court that both parties were in pari delicto (in equal fault) and the assignee could not recover damages from the licensee for breach of such illegal contract.

In *Sundang Timber Co. Sdn. Bhd. v. Kinabatangan Development Co. Sdn. Bhd., 2 MLJ (1977), p. 200*, the licensee, upon being granted a special licence to extract timber, had entered into an irrevocable agency agreement with another person and had given him a power of attorney to operate and manage his business. The Judge ruled that the agreement was in breach of the provisions of the Forest Enactment, 1968, s. 24(6) and was therefore illegal. Consequently, any claim based thereon cannot succeed and was unenforceable.

With regards to the use permit, it must be obtained by a person who intend to occupy or carry out any activity upon any land within a permanent reserved forest, but the use permit does not authorize the holder to take forest produce from a permanent reserved forest unless it contains a provision to allow the holder to do so. The use permit is also non-assignable. In the case of *Leong Poh Chin v. Chin Thin Sin*, 25 MLJ (1959), p. 246, it was held that under ss. 20 and 22 of the Forest Enactment, a person cannot lawfully exercise rights in a reserved forest by virtue of permission granted to someone else.

Thus the environmental issues in Malaysia mostly were anchored around failure to obtain timber license and fundamental liberties, with irregular emphasis on punishing those responsible for harming the environment.

CONCLUSION

Pressure of increasing population, illegal logging and economic dependency of the states on forests and the environment are significant. There are some states which, due to economic constraint, cannot effectively enforce the scheme they make for conservation of their environment because they cannot bear the related expenses. For a successful enforcement of the scheme, an administrative framework comprising enough and well trained personnel will be required, co-operation of concerned parties will have to be taken and research and development institute on sustainable environment will have to be established.

Malaysia on the other hand, despite the sporadic adoption of good environmental practices, still believes in sustainable management of environment. The cases mentioned above regarding the need to have valid logging licenses though not directly related to the environmental issues, has the impact of curbing illegal logging. Malaysia has a commitment to maintain fifty per cent of its land covered with forests. To fulfill the commitment, a considerable area of the forests has been earmarked as reserved forests. In order to control illegal logging activities, at state level as well as at federal level, the penalties are being enhanced. The National Forestry Act, 1984, now has exemplary punishments.

Last but not least, there is environmental cost to environmental loss. Hence the biggest problem is making sure that we actually include all environmental costs in the price of goods and services we use.

Many environmental problems are cumulative and the costs are to future generations and people elsewhere in the world. A big issue is technology. At the moment we rely on technology which is often damaging to the environment. Global warming is something that affects every country. To reduce CO₂ emissions requires global commitments. If one small country reduces pollution, it will make little difference unless the biggest polluters make a commitment to change. The danger is that countries will feel there is a free rider problem – wait for other countries to reduce pollution. Unless global agreements can be garnered, it is unlikely that the problem can diminish.

Apart from the seriousness in the courts fighting environmental crime through stiff punishment, Australia and UK have shown how public engagement can help stop the environmental destruction. How the court reacted to these environmental crime is also to be commended and emulated. Unless the good environmental practices in all spectrum of life are learn by heart by all concerned, hunger for money will continue to drive the greedy corporations and individuals to manipulate the environment at the cost of the whole of mankind. Such being the case environmental sustainable development will merely become a myth incapable of holding much weight.

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