

## Regulatory Framework for Land-Use and Consumer Protection on Inland Water Resources Towards Sustainable Development

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**Abstract:** Inland water is one of the components in the environment. The inland water is very precious to every single creature in this world, especially to the consumer of the inland water resources. Therefore, it is very vital to take extra care to all of the environmental components which includes the inland water. A good environmental management will ensure the inland water is maintained properly as well as a good protection to the consumer in consuming the inland water. A good environmental management derives from the concept of sustainable development. Therefore, this study will examine the used the regulatory framework for land use and consumer protection on inland water resources in relation to the sustainable development from Malaysian legal perspectives, identify actions and cases which deal with sustainable development from Malaysian legal perspectives and lastly, discussing the regulatory framework as a means for sustainable development.

**Key words:** Consumer protection, inland water resources, regulatory framework for land-use, sustainable development, legal, Malaysia

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### INTRODUCTION

Inland water is one of the components in the environment. The inland water is very precious to every single creature in this world (Jahi, 2001, Razman and Azlan, 2009; Razman *et al.*, 2009a), especially to the consumer of the inland water resources. Therefore, it is very vital to take extra care to all of the environmental components which includes the inland water. A good environmental management will ensure the inland water is maintained properly as well as a good protection (Razman *et al.*, 2010a; Sulaiman and Razman, 2010a, b) to the consumer in consuming the inland water. Environmental management can be divided into two parts.

The 1st part is the environmental management through non-legal approaches and the 2nd part is the environmental management through legal means (Jahi, 2001; Jamaluddin, 2001).

The environmental management through non-legal approaches can be done through education, research, monitoring, public policies, guidelines and development plans (Jamaluddin, 2001). On the other hands, the environmental management through legal approaches can done through the implementation of the

legislations (Razman *et al.*, 2010b) that being enacted by legislative bodies in the country (Jamaluddin, 2001). Both environmental management, the non-legal approaches and the legal approaches derives from the concept of sustainability.

### SUSTAINABLE DEVELOPMENT

The concept of sustainable development has been defined by the World Commission on environment and development as development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. The above-said concept covers two essential scopes, i.e., environment and social aspects. This concept of sustainable development has been highlighted in the 1992 United Nations Conference on sustainable development in Rio de Janeiro as the results, Agenda 21 and Rio declaration has been established.

According to Sands (1995, 2003), Agenda 21 emphasises the following matters which include sustainable human settlement, population, consumption pattern, poverty and human health. On the other hand, Mensah (1996) stated that the Rio declaration addresses

on mankind entitlements and rights which include health and productive life. Basically, this concept of sustainable development has been an element in the international legal framework since, early as 1893. According to the case of United States of America vs. Great Britain (1893) 1 Moore's Int. Arb. Awards 755, well known as Pacific Fur Seals Arbitration where in this case the United States of America has stated that a right to make sure the appropriate and lawful use of seals and to protect them for the benefit of human beings from meaningless destruction (Razman *et al.*, 2009b, 2010c, Emrizal and Razman, 2010).

Sands (1995) indicated that this concept of sustainable development is perhaps the greatest contemporary expression of environmental policy, commanding support and presented as a fundamental at the Rio Summit, Rio declaration on environment and development in year, 1992. According to Article 33 of the Lome Convention 1989 states that in the framework of this convention, the protection and the enhancement of the environment and natural resources, the halting of deterioration of land and forests, the restoration of ecological balances, the preservation of natural resources and their rational exploitation are basic objectives that the African-Caribbean-Pacific (ACP) states concerned shall strive to achieve with community support with a view to bring an immediate improvement in the living conditions of their populations and to safeguarding those of future generations (Razman *et al.*, 2009c; Emrizal and Razman 2010; Emrizal *et al.*, 2011).

#### **REGULATORY FRAMEWORK FOR LAND-USE AND CONSUMER PROTECTION ON INLAND WATER RESOURCES IN MALAYSIA**

Discussion and analysis of the regulatory framework for land-use and land conservation is important for this study in order to arrest the problems which contribute to the environmental problems to the consumer specifically on inland water resources and subsequently to find ways and means to protect the consumer. Indiscriminate use of land for agricultural gain has been identified as the main perpetrator for soil erosion which results in the delivery of sediment into receiving water bodies. In addition in a way, it is also contribute problems to the consumer on inland water resources. Basically, there are two Malaysian laws that cover on the subject-matters. These include the National Land Code, 1965 and the Land Conservation Act, 1960.

#### **NATIONAL LAND CODE, 1965**

The National Land Code, 1965 (Act 56) (the Code) is a fairly comprehensive code that has uniform laws on

areas such as land tenure, registration of titles relating to land, transfer of land, leases and charges in respect of land and easements and other rights and interests in land. Chapter 2 of the code provides for the classification and use of land viz. land above the shore-line is classified as town land, village land or country land.

A category of land use includes agriculture, building and industry land. Agriculture is defined as the cultivation of any crop (including trees for the purpose of their produce), market gardening, the breeding and keeping of honey-bees, livestock and reptiles and aquaculture. Building includes any structure erected on land, whilst land categorised for industrial purposes must meet the implied conditions provided under section 117, e.g., used for or in connection with manufacturing, smelting, production or distribution of power, etc., purposes.

River is also defined in the Code and means any river, stream, creek or other natural water-course and any tributary, distributary or artificial deviation thereof. According to section 3 of the Interpretation Acts, land includes:

- The surface of the earth and all substances forming that surface; the earth below the surface and all substances therein
- All vegetation and other natural products whether or not requiring the periodical application of labour to their production and whether on or below the surface
- All things fastened to the earth or permanently fastened to anything attached to the earth whether on or below the surface
- Land covered by water

State land covers all land in the state including so much of the bed of any river as is within the territories of the state other than:

- Alienated land
- Reserved land
- Mining land
- Any land which under the provisions of any law relating to forests (whether passed before or after the commencement of this Act) is for the time being reserved forest

Section 115 of the code provides for implied conditions for agricultural lands which requires for the land to be continuously cultivated including maintained and cultivated according to the rules of good husbandry. Apart from paddy cultivation based on section 119 of the National Land Code, 1965, the Code is silent on the type of crops allowed for cultivation on agricultural land. In other words, farmers may choose any type of crop or crop

mix for cultivation on their designated agricultural land unless the state authority exercises its discretion over section 121 to impose conditions on land categorised as agriculture such as:

- Requiring the cultivation of a particular crop or any class or description of crops
- Prohibiting the cultivation of a particular crop or any class or description of crops
- Fixing the dates in any year on or before which any work of clearing, cultivation, sowing, manuring or harvesting or any other agricultural activity is to be commenced or completed
- Limiting the maximum area of land which may be occupied by dwelling-house and other buildings

For building and industry categories based on the section 122 of the National Land Code, 1965, the state authority may also impose conditions with respect to:

- The area or proportion of the land to be built upon
- The type, design, height and structure of any building to be erected on the land and the type and quality of the materials to be used in its construction
- The dates on or before which any such building is to be commenced or completed
- The use to which any building is to be put

The National Land Code, 1965 is silent regarding on what is meant by good husbandry practices. Conditions attached to permits may well outline the necessary prerequisite for categorisation of lands. However for the purpose of meeting the objectives of this study, good husbandry practices might need to be explicitly defined in order that indiscriminate agricultural practices will be curbed to further prevent soil erosion.

Additionally, permits issued and premiums imposed by the Land Administrator for requests for the conversion of lands from one category to the other do not suggest that a set of rigorous conditions is exercised when such requests are made. It appears that conversion of land may be a simple, common administrative procedure, thus encouraging farmers to maximise agricultural gain by converting their lands as suggested by this study.

Besides that according to section 425 of the National Land Code, 1965 stipulates that whoever occupy government reserved land illegally shall be guilty as an offence and shall on conviction be liable to a fine not exceeding RM 10,000 or imprisonment a term not exceeding than 1 year or both. The National Land Code,

1965 indicates that small fines and lightly punishment will not help the defaulter to learn the lesson or deter the offender from doing it again.

Therefore, it is beneficial to amend the amount of penalty in order to prevent pollution of rivers. The amount of the penalty should be fine not exceeding RM 500,000 or imprisonment a term not exceeding 5 years or both. The justification of the suggested amount of penalty is that according to section 27 and 29A of the Environmental Quality Act, 1974 provides such penalty on the following offences. The offences are on the matter of discharge or spill any oil or mixture containing oil into Malaysian waters and open burning. These two provisions really help on the pollution on Malaysian waters and haze problem in Malaysia.

As on regards of the quarry activities, the National Land Code, 1965 will come into the picture. In short, quarry activities fall under the category of removal of rock mineral. Section 5 of the code defined rock mineral as any rock, stone, granite, limestone, marble, gravel, sand, earth, laterite, loam, clay, soil, mud, turf, peat, coral, shell or guano within or upon any land and includes also any bricks, lime, cement or other commodity manufactured there-from. Based on the code which read together item two of the state list of the 9th Schedule of the Federal Constitution stated that any removal of rock mineral is required to obtain a permit from the state authority prior the activity commencement.

However, there is no restriction on environmental aspects in the permit, purely the amount of extraction which may be permissible. In the event where the said activities have created problems therefore, the state authority may not approve any new applications on the permits or merely remove and withdraw the approval of the existing permit holders in which within the state authority powers.

### **LAND CONSERVATION ACT, 1960**

The Land Conservation Act, 1960 (Act 385) (LCA) relates to the conservation of hill land and the protection of soil from erosion and the inroad of silt. Soil erosion and the inroad of silt subsequently may cause problems to the consumer on inland water resources. Therefore, soil erosion and the inroad of silt should be taking care of in order to protect the consumer. Section 2 of this Act states that hill land means any land declared to be hill land in accordance with section 3.

This section empowers the Ruler in Council or the Yang di Pertua Negeri in Council of a state to designate

any area of land in that state to be a hill land for the purposes of the Act and under section 8, they can acquire hill land for the purpose of preventing soil erosion. Section 5 prohibits the planting of short-term crops on any hill land unless the Land Administrator consenting to the specified short-term crops has issued an annual permit and that such cultivation will not cause appreciable soil erosion.

The permit may also prescribe the area of land and terms and conditions which the cultivation is permitted. Additionally, section 6 provides that clearing and cultivation of hill land is restricted unless a permit has been issued for the clearing of hill land for the purpose of cultivation or for the clearing or weeding of hill land under lawful cultivation. Under this section if the Land Administrator declines to issue a permit, he shall, on being requested by the applicant issue a certificate providing the nature of the requested permit and grounds for refusal. Under section 8, the Ruler in Council or the Yang di-Pertua Negeri in Council may acquire any hill land for the purpose of preventing soil erosion either by private treaty or under the Land Acquisition Act, 1960. The acquired land shall be deemed to be required for a public purpose. Section 6 provides for certain restrictions on the clearing and cultivation of hill land. If it appears to the Land Administrator that earth, mud, silt, gravel or stone has interfered with any watercourse or cultivation of any other land or that by reason of the steepness of the slope of such land damage is likely to be caused or silt and erosion are going to take place, notice may be issued to show cause against an order prohibiting or requiring the owner or occupier to take a course of action in this context.

The Land Administrator can act under the power conferred by section 14 (powers to make orders and nature of orders) which prohibits the removal of trees, plants, undergrowth, weeds or grass and/or making drains, watercourses, dams and retaining walls specific in strength to the issue or adopt any course of action to control the problem.

The Act defines short-term crops as crops which normally complete their life cycle within two years after planting and includes pineapples, bananas and derris. Section 11 provides for a notice to be served upon the owner or occupier of land to show because why an order should not be placed upon him in accordance with section 14 of the Act. If the owner fails to show cause, an order under section 14 can address the following matters:

- Make an order in writing under his hand prohibiting, either absolutely or to such extent as may be prescribed in the order, interference with or destruction or removal of any trees, plants, under-growth, weeds or grass within or from such parts of the said land as are specified in the order

- With the sanction of the state secretary make an order in writing under his hand requiring the making on the said land of drains and watercourses and the construction thereon of dams and retaining walls of such character and dimensions and in such positions as are specified in the order
- With the sanction of the state secretary make an order in writing under his hand requiring the doing on or in respect of the said land of any act or thing which appears to the Land Administrator likely to prevent and prohibiting the doing or in respect of the said land of any act or thing which appears to the Land Administrator likely to facilitate the passage of earth, mud, silt, sand, gravel or stone from the said land to other land whether owned by any person or not or to any river canal or drain

In essence, the Act operates through a system of permits and orders and a penalty clause under section 18 that imposes a fine not exceeding RM 5,000 and in default of payment, imprisonment of up to 6 months. The Land Conservation Act, 1960 appears to address the main problem contributing to river pollution identified by this study. It confers on the Land Administrator (acting on behalf of the government) measures which are necessary to prevent, reduce and control pollution of the catchment areas and riparian environment.

Invocation of sections 5 and 6 provide the Land Administrator the necessary powers to prevent soil erosion due to indiscriminate cultivation practices of short-term crops on hill land or land-clearing for the purpose of cultivation. Additionally in the event when the owner or occupier fails to comply with the terms or conditions of the issued permit, section 10 empowers the Land Administrator to carry out (remedial) works, the cost of which is recoverable from the offender in order to meet that terms and conditions set out in the permit.

Section 14 also would appear to provide a potentially useful regulatory tool to prevent pollution of rivers in the Cameron highlands. However, the effectiveness of the Act may be weakened by the low level of punishment for the offence of disobeying an order under the Act (RM 5,000 and up to 6 months prison for failure to pay). In addition this Act does not provide a provision on compound offences. Thus, the only platform to take action only through the court of law. Therefore, it is beneficial to amend the amount of penalty in order to prevent pollution of rivers in order to protect consumer and in line with the concept of sustainable development. The amount of the penalty should be fine not exceeding RM 500,000 or imprisonment a term not exceeding 5 years or both. The justification of the suggested amount of penalty is that according to section 27 and 29A of the Environmental Quality Act, 1974 provides such penalty on the following offences. The offences are on the

matter of discharge or spill any oil or mixture containing oil into Malaysian waters and open burning. These two provisions really help on the pollution on Malaysian waters and Haze problem in Malaysia. Besides that this Act should also be amended in order to provide the Act with a provision on compounding offences, i.e., RM 2,000 which similarly applied and consistent with section 45 the Environmental Quality Act, 1974.

### CONCLUSION

In this study, suggests that both the National Land Code, 1965 and the Land Conservation Act, 1960 promote the concept sustainable development in order to prevent soil erosion that cause pollution to rivers. In this manner both the above-mentioned legislation in a way also try to protect consumer on the subject matter of inland water resources.

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