

Study on Human Habitat and Environmental Protection: Focusing on the Criminal Law and the Concept of Sustainability

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Abstract: Criminal law plays an essential role in human habitat and environment protection. The used of the criminal law in human habitat and environmental protection is largely in respond to the inevitability of every human to protect human habitat and environment from being polluted in their surrounding and habitat. Therefore this study examines the used of the criminal law with relation to the human habitat and environmental protection from the national law approach by identifying actions and cases which deal with human habitat and environmental protection. This study is also identifying the relation between the criminal law and the concept of sustainability as a means to protect human habitat and environment.

Key words: Criminal law, concept of sustainability, human habitat, environmental protection, identifying action

INTRODUCTION

Law governs the relationship of the individuals with the State and also with one and another. An easy approach to examine how it operates in the legal system is to classify it in the light of its relationships (Beatrix and Wu, 1991). Law may be classified into two parts. There are Private law and Public law. Private law also known as civil law, governs the relationship between an individual and another individual and as for public law governs the relationship between the State and the individual (Beatrix and Wu, 1991; Sulaiman and Razman, 2010).

Both above-mentioned laws play an important role in relation to human habitat and environmental protection. The development of the law on human habitat and environmental protection is not solely based on private law alone; anyway, public law has also made contribution to serve similar function in protecting the human habitat and environment (Razman and Azlan, 2009; Razman *et al.*, 2010a).

The law of tort is an example of private law. Law of tort is a law that laid down the responsibilities of an individual or group of individuals to ensure that the acts and omissions of their actions will not cause any harm and/or detrimental to other individual or other group of individuals (Sulaiman and Razman, 2010). Failure to comply with these responsibilities, the said individual or

the said group of individuals who suffered injuries, damages and/or losses may bring the claim to the court of law against the party who fails to comply with those obligations (Razman *et al.*, 2009a). In private law which include the law of tort, the party that initiate the legal proceeding is known as Plaintiff and the other party that being sued known as the Defendant (Razman and Shukor, 2001). It is clearly that under the private law which include the law of tort, concerned with the law governs the relationship between individuals.

Next, an example of public law in is the criminal law. Criminal law is a law which states and explains all the acts and omissions which are considered criminal actions. Criminal law laid down all types of acts and omissions that constituted as offences done individuals against the States (Razman and Shukor, 2001). The criminal law aims to combat and punish the criminals (Razman and Shukor, 2001).

In criminal law, the Public Prosecutor who will represent the State to prosecute the individuals that have been accused to commit criminals actions (Razman and Shukor, 2001). There are two main elements of a crime, wrongful act known as *actus reus* and wrongful mind known as *mens rea* (Lee, 1998). Therefore, the Public Prosecutor is required to proof to the Court of Law both of elements beyond reasonable doubt (Lee, 1998; Razman and Shukor, 2001). It is clearly that the criminal

law is a law that regulating and governing of a state and an individual or group of individuals. Thus, criminal law is classified as public law.

PRIVATE AND PUBLIC LAW IN THE CONTECT OF ENVIRONMENTAL PROTECTION

Private and public law play an essential role in the context of environmental protection. Development of laws for environmental protection is not only to public law but also includes private law (Ball and Bell, 1995; Razman *et al.*, 2010b).

Private law also plays an important role in the context of environmental protection. Inter alia, the law of tort. The law of tort can be divided into several sections. There are negligence, nuisance, trespass and strict liability. This is based on the rights, actions and remedies are made by claimants who suffer injury, damage and/or loss. While the public laws that emphases on environmental protection are as follows:

- Environmental Quality Act, 1974 (Act 127)
- Street, Drainage and Buildings, 1974 (Act 133)
- Factories and Machinery Act 1967 (Act 139)
- Town and Country Planning Act, 1976 (Act 172)
- Local Government Act, 1976 (Act 171)
- Occupational Safety and Health Act, 1994 (Act 514)
- National Land Code, 1965 (Act 56)
- Wildlife Protection Act, 1972 (Act 76)
- National Forestry Act, 1984 (Act 313)
- Criminal law through the Penal Code (Act 574)

All the laws mentioned above are laws that are classified as a public law because these laws regulated and governed the relationship between the state and an individual or group of individuals. Therefore, this study examines the used of the criminal law with relation to the human habitat and environmental protection from the national law approach by identifying actions and cases which deal with human habitat and environmental protection. This study is also identifying the relation between the criminal law and the concept of sustainability as a means to protect human habitat and environment.

THE CONCEPT OF SUSTAINABILITY

The concept of sustainability 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 sustainability 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 sustainability has been an element in the international legal framework since early as 1893. According to the case of United States of America v Great Britain in 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, c; 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).

CRIMINAL LAW

Crime is an act or omission of any act against the public. Party has done the act or omission is to be writ to the Court by the State through the Public Prosecutor following the Criminal Procedure. Criminal conviction, the person will be punished in accordance with the provisions of the criminal law statutes (Hussin, 1988; Koh *et al.*, 1989). Statute that provides for the substantive law of criminal law in Malaysia is the Penal Code (Act 574). In the Penal Code it is divided into 23 parts. Only two parts

of the Penal Code (under the part XIV and XVII of the Penal Code) having provisions relating to the control of environmental pollution.

Part XIV of the Penal Code relating to criminal offences involving public health, public safety, public convenience, decency and morality. There are 27 sections that subjected to this part XIV of the Penal Code, starting from section 268 until section 294 of the Penal Code. Meanwhile, under part XVII of the Penal Code is focusing on criminal offenses against property. Sections involved under part XVII of the Penal Code are section 378 until section 462.

THE BURDEN OF PROOF

There is an expression from legal maxim on criminal law that is *actus non fecit reum nisi menssit rea* which means any act committed by an act shall not be convicted unless there is intention of the character of evil intent (Hussin, 1988). Thus the prosecution must prove to the court two important things, first, the existence of the act or omission of acts which are considered under the Penal Code of *actus reus* and the second is the existence of faith based elements of crimes of *mens rea* (Razman and Shukor, 2001). When the prosecution can prove the two items mentioned above, the court will pass sentence on the accused accordingly on the basis of provisions in the Penal Code.

The burden of proof is typically referred to prove a fact or facts (Aun, 1987). According to section 101 Evidence Act, 1950 (Act 56) provides that anyone who wants to give the court any decision of any rights or obligations of law, depending on the existence of the facts that had been claim, must prove that the facts that exist. While section 101 Evidence Act, 1950 (Act 56) is also provided when a person is bound to prove the existence of the facts, it is intended that the burden of proof is to the persons who bring in the facts. In the trial relating to criminal law, the prosecution is responsible for bringing the facts or the facts that prove the accused committed the act or omission of acts which are considered under the Penal Code of *actus reus* and are characterized by the evil intentions of *mens rea*.

Accordingly, the burden of proof in criminal law relating to environmental pollution control is based on the shoulders of the prosecution. The prosecution must prove two important things that the *actus reus* and *mens rea* in addressing issues of environmental pollution. Regarding the *actus reus*, it is not a problem for the prosecution to prove to the court that the accused had violated the provisions of relevant legislative control of environmental pollution with the facts or the facts show

the accused had failed to comply with set standards to prevent pollution environment (Ball and Bell, 1995). As for proof of *mens rea* is quite controversial and problematic issue. Given under criminal law, the prosecution must prove the accused guilty of environmental pollution with the intention of the nature of evil. In other words, the accused must be aware that the act of polluting the environment is an offense that would endanger the public but most cases of pollution caused by negligence, lack of knowledge, lack of capacity, lack of observation or lack of competence by the accused in an action (Wolf and White, 1995; Webb, 1997).

These conditions clearly complicate the prosecution in cases of environmental pollution under the criminal law. Accordingly, the court had taken a resolution that all prosecutions in cases of environmental pollution under the criminal law, elements of proof of *mens rea* that is proof against the accused is guilty of environmental pollution with the intention of the evil nature, no longer needed. Given the cases of environmental pollution under the criminal law is now regarded as a liability where the elements of hard evidence *mens rea* is not necessary. This is clear in the case of *Alphacell v Woodward* in 1972 AC 824 where Lord Wilberforce has pointed out that the cases of environmental pollution under the criminal law which assumed strong element of proof *mens rea* is no longer required.

THE CASE OF WROTHWELL LTD. V YORKSHIRE WATER AUTHORITY (1984) AND ENVIRONMENTAL PROTECTION TOWARDS SUSTAINABILITY

In addition refer to the case *Wrothwell Ltd. v Yorkshire Water Authority* in 1984 Crim LR 43. Facts of the case: States that the accused has discharged waste herbicide to the drain. The management company that accused the impression that the waste discharged into the drains will flow into a public sewage. Instead, the waste is discharged into the drains were flowing into the rivers. Argument of the accused: In the prosecution of criminal law, the prosecution must prove to the court that the two key elements, i.e., the *actus reus* and *mens rea* should exist.

The accused asserted that the prosecution could only prove *actus reus* in view; the accused has discharged waste herbicide to the drain. While the second element of *mens rea* is as the prosecution failed to prove that the accused company management of the view that the waste is discharged into the drains will flow into a public sewage into the river instead. Therefore, the accused has no intentions of evil nature. Argument the

prosecution referred to the decision made by Lord Wilberforce in the case of *Alphacell v Woodward* in 1972 AC 824 where he stressed that cases of environmental pollution under the criminal law which assumed strong element of proof mens rea is no longer required. The court decided in favour to the prosecution's arguments in which the actions made by the accused had caused pollution to the environment even though the accused has no intention to do so.

This case is clearly shown that criminal law as an important tool in protecting human habitat and environment. Based on the above case, the case has highlighted the ability of criminal law to achieve sustainability.

The concept of sustainability focus on the development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. Therefore, the above-mentioned case has protrait the support with a view to bring an immediate improvement in the living conditions of their populations and to safeguarding those of future generations.

CONCLUSION

Criminal law is one of public law that has been used to protect human habitat and environment. When criminal cases have been brought to the court, the traditional basic principles of actus reus and mens rea will be prevailed. However, court cases related to the protection on human habitat and environment under criminal law, the court has taken a resolution that all prosecutions in cases of environmental pollution under the criminal law, elements of proof of mens rea that is proof against the accused guilty of environmental pollution with the intention of the evil nature, no longer needed. Given the cases of environmental pollution under the criminal law is now regarded as a liability where the elements of hard evidence mens rea is not necessary.

This is clear in the case of *Alphacell v Woodward* in 1972 AC 824 where Lord Wilberforce has pointed out that the cases of environmental pollution under the criminal law which assumed strong element of proof mens rea is no longer required.

In conclusion, the above-mentioned discussions have laid down the support with a view to bring an immediate improvement in the living conditions of their populations and to safeguarding those of future generations in order to achieve sustainability in human habitat and environment.

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