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Repercussions of environmental law breaches

Gan Partnership | Litigation - Malaysia



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Introduction

Environmental issues in Malaysia are abundant, ranging from polluted rivers to de-forestation. Malaysia's need for proper enforcement of environmental laws is dire and needed immediately.

The primary piece of legislation governing Malaysia's environmental policies is the Environmental Quality Act 1974 (Act 127) that seeks to prevent environmental pollution and enforce action against those who act contrary to Act 127. In the case of *Lim Kiat Aik v Public Prosecutor*,⁽¹⁾ the High Court's tenacity in treating environmental offences with due severity was seen through the Court's unwillingness and refusal to grant bail to an offender.

Facts

The applicant in this case was charged under section 124K of the Penal Code alongside three charges under the Environmental Quality Act 1974 for discharging pollutants, and two charges under the Water Services Industry Act 2006 for discharging noxious substances into the sewerage system. The applicant applied for bail on the grounds that the offences he had been charged with were not security offences (under the Security Offences (Special Measures) Act 2012 (SOSMA)). He also claimed that he was of poor health suffering from acute coronary syndrome (ie, heart attacks).

Section 124K of the Penal Code stated that "whoever, by any means, directly or indirectly, commits sabotage shall be punished with imprisonment for life".

Decision

The High Court heavily discussed the case of *PP v Khairuddin bin Abu Hassan & Anor*,⁽²⁾ trying to decide whether or not the sections that charged the accused constituted a security offence. The Court opined that the stance in *Khairuddin* was that SOSMA governed acts of terrorism and was defined under section 130B of the Penal Code.

Section 130B of the Penal Code stated, among other things, that if an action that creates a serious risk to the health or the safety of the public or a section of the public is an act or threat of action. This includes releasing into the environment or any part of the environment or distributing or exposing the public or a section of the public to any:

- dangerous, hazardous, radioactive or harmful substance;
- toxic chemical; or
- microbial or other biological agent or toxin amounts to an act or threat of action.

However, it is worth noting that terrorism comes in many forms. In the words of the Court's judgment:

Disrupting or even poisoning the water supply would be one example and all these actions are taken or threatened by substantial body of persons. All these may fall as 'terrorist attack' or it would rightly come under the definition 'essential service' of s 130A of the Penal Code offences against the state but both, ultimately causing the effect under para (f) of art 149 or para (3) of the SOSMA.

In this case, the act that constituted the offence, namely, discharging pollutants into rivers, had potential to cause water disruption. This was seen by the Court as a dangerous act capable of causing harm to the general public, thus, bringing out the effect averred to under article 149, SOSMA's preamble and the Penal Code.

The Court viewed "an act of terrorism" as not restricted to a terrorist approaching people armed. It was interpreted to mean and include any risks posed to the federation, as well as health risks to the public in light of the covid-19 pandemic. As was seen through the covid-19 pandemic and its effects on the country's economy, the lives lost and the general state of panic, health risks pose as much of a threat as a bombing would and, as such, should not be taken lightly.

The Court also held that the applicant's medical condition was not severe enough for it to be taken into account based on the conduct of the applicant's solicitors. The fact that the solicitor had seen no urgency, and had left the applicant after hearing complaints of his health to notify the prison authorities, demonstrated to the Court the true severity of the applicant's condition. As such, his medical condition was not taken into consideration by the Court.

In light of this, the Court dismissed the application for bail.

Comment

Reading the judgment of the High Court, the offences that the applicant was charged for under section 124K of the Penal Code fell within the definition of "security offences" under the SOSMA. As such, article 149 of the Federal Constitution had application in this case as it concerned an action that has been taken or threatened by a substantial body of persons to prejudice a supply or service to the public. As was shown in this case, the dumping of noxious and toxic substances into public sewerage treatment works was viewed by the Court to be of equivalent danger to the general public.

The highlight of this decision is the Court's strict approach in punishing environmental offenders, calling an environmental offence a security threat, and equating it to an act of terrorism. Only as time passes, will it be known whether the approach taken by the Courts is effective in preventing further instances of river dumping that is prevalent in Malaysia and causes irreparable harm to the people who rely on such rivers, as well as the wildlife in the rivers. To take it one step further, such dumping and pollution, as was demonstrated and explained in *Lim Kiat Aik*, can affect the country's water supply or, at the very least, the water supply of several states.

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Endnotes

(1) [2021] 9 MLJ 633.

(2) [2017] MLJU.