



Borneo Rainforest Law Conference 2024
“The Air that I Breathe – Right to a Clean Environment”

26 February 2024, 11:30 AM – 1:00 PM

Karen Cheah, President of the Malaysian Bar



POINTS COVERED

- Threat of air pollution on human health.
- Right to clean air as guaranteed by international law.
- Effectiveness of international law – transboundary haze.
- Malaysian laws to combat pollution (Sungai Kim Kim as case study).
- Right to clean environment in the Federal Constitution.

Threat of air pollution on human health

World Health Organization estimates 4.2 million premature deaths caused by ambient (outdoor) pollution in 2019.

89% in low/middle income countries, including Southeast Asian region.

Source: [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health)



Threat of air pollution on human health

Study by the Centre for Research on Energy and Clean Air and Greenpeace Malaysia:

- In 2019, 32,000 avoidable deaths in Malaysia due to air pollution.

Source:

<https://www.greenpeace.org/malaysia/press/49795/the-state-of-air-quality-in-malaysia/>

Table 3: Estimated Annual Premature Deaths in Malaysia as a result of exposure to poor air quality by cause vs. lives saved with air quality in compliance with WHO Guidelines

Annual Premature deaths by Scenario				
Cause	Pollutant	Observed Air Quality in 2019	WHO, 2005	WHO, 2021
Total Deaths		32,531 (19,571 - 49,489)	20,294 (11,990 - 31,117)	10,689 (6,255 - 16,463)
cardiovascular diseases	NO ₂	4,121 (2,326 - 6,807)	4,121 (2,326 - 6,807)	2,620 (1,473 - 4,347)
respiratory diseases		130 (66 - 176)	130 (66 - 176)	82 (42 - 111)
chronic obstructive pulmonary disease		1,458 (461 - 3,302)	688 (225 - 1,504)	272 (91 - 585)
diabetes	PM _{2.5}	1,215 (450 - 2,303)	926 (270 - 2,176)	294 (- - 1,620)
ischaemic heart disease		13,525 (9,233 - 19,173)	7,430 (5,118 -	3,561 (2,466 - 4,976)

			10,439)	
lower respiratory infections		13,945 (3,462 - 33,113)	4,604 (1,265 - 9,804)	1,401 (399 - 2,877)
lower respiratory infections in children		46 (19 - 97)	21 (6 - 62)	5 (- - 34)
lung cancer		1,412 (544 - 2,921)	643 (256 - 1,289)	252 (102 - 498)
non-communicable diseases and lower respiratory infections		28,707 (17,973 - 42,654)	16,471 (10,392 - 24,282)	8,280 (5,250 - 12,148)
stroke		3,417 (1,141 - 7,236)	1,449 (499 - 2,971)	551 (192 - 1,115)

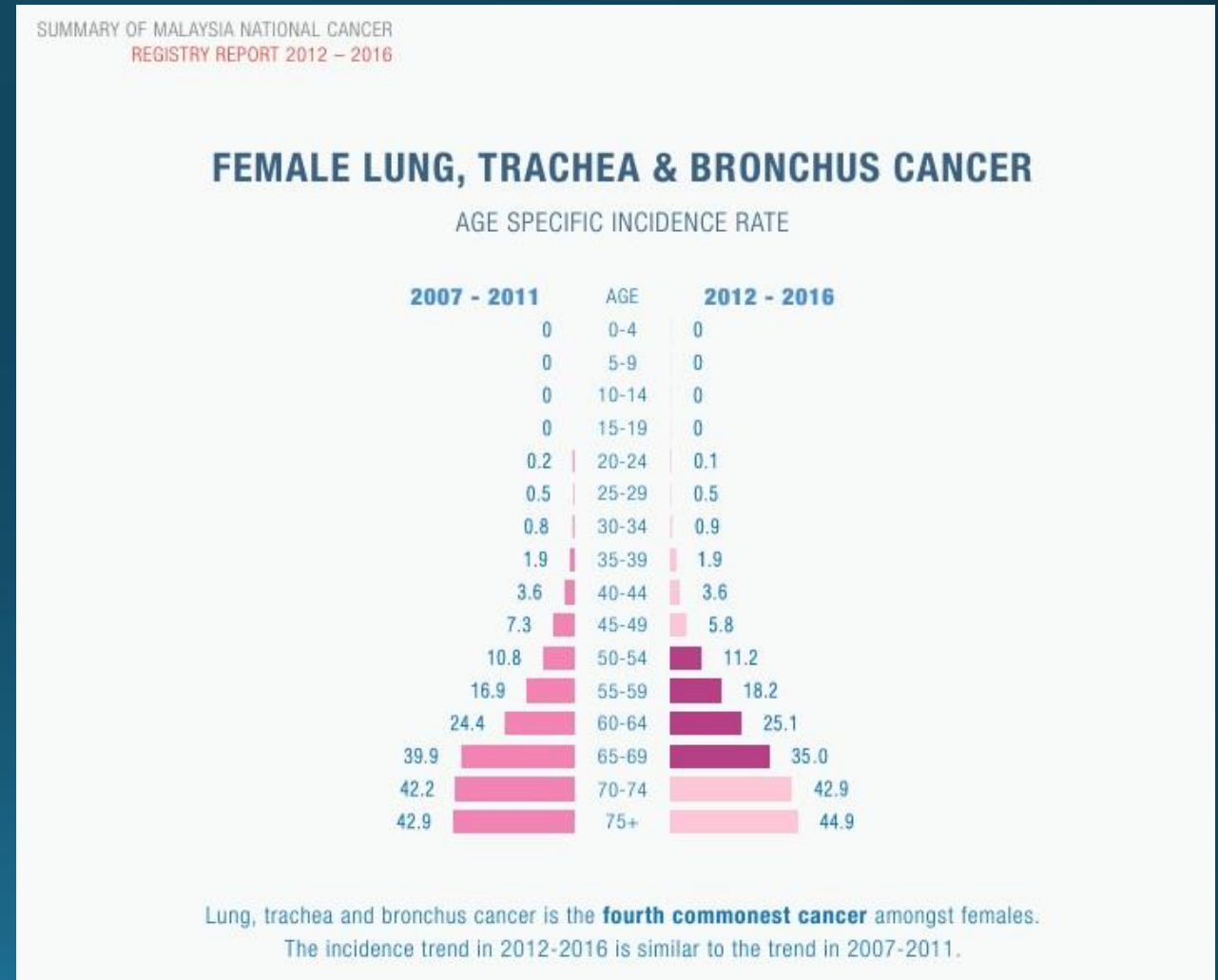
Threat of air pollution on human health

National Cancer Institute, study between 2012 and 2016:

- Lung/Trachea/Bronchus cancer 4th most common cancer among women

Source:

[https://www.moh.gov.my/moh/resources/Penerbitan/Laporan/Umum/2012-2016%20\(MNCRR\)/Summary_MNCR_2012-2016_-_06112020.pdf](https://www.moh.gov.my/moh/resources/Penerbitan/Laporan/Umum/2012-2016%20(MNCRR)/Summary_MNCR_2012-2016_-_06112020.pdf)



Resolution - “The human right to a clean, healthy and sustainable environment”

76th Session of the United Nations’ General Assembly, 28 July 2022 – which adopted Resolution titled “The human right to a clean, healthy and sustainable environment”.

Key paragraphs:

“3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;

4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”

UN SDGs

17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development.

Relevant SDG targets:

- 3.9.1 - substantial reduction in deaths and illnesses from air pollution;
- 7.1.2 - ensure access to clean energy in homes; and
- 11.6.2 - reduce the environmental impact of cities by improving air quality.



United Nations Framework Convention on Climate Change COP 28 Outcome

Outcome of Conference of
Parties (COP) 28:

*Swift, just and equitable
transition away from fossil fuels.*

Concerted effort by international
community to reduce carbon
emissions – for benefit of
environment and human health.



Clear Message by International Law: Combat air pollution

But is this message reflected on the ground?

Transboundary Haze in the ASEAN Region

- Existence of instruments at ASEAN level, eg the ASEAN Agreement on Transboundary Haze Pollution, signed in 2002 and ratified by all ASEAN Members in 2015.
- Effective?
- Enactment of domestic legislation, eg Singapore's Transboundary Haze Pollution Act.
- Penalises and fines "entities" responsible for contributing to haze in Singapore.
- Time for Malaysia to enact Transboundary Haze Act.



Malaysian Laws Against Pollution

- Case study – Sungai Kim Kim pollution incident, on 7 March 2019.
- Dumping of chemical waste into Sungai Kim Kim – release of toxic gases into the air.
- 947 victims required hospitalisation. 111 schools in Pasir Gudang closed.
- Lorry driver who dumped waste fined RM100,000. Company (P Tech Resources Sdn Bhd) fined RM320,000.
- RM6.4 million spent just for rescue, relocation and cleanup.



Malaysian Laws Against Pollution

- Key legislation – Environmental Quality Act 1974.
- Enactment of Environmental Quality (Clean Air) Regulations 2014 under the Act, for offences relating to air pollution.
- Owner or occupier of premises involved in any activity or industry listed in the First Schedule of the 2014 Regulations (including industries such as power plants, waste fuel plants, asphalt mixing plants) shall incorporate measures to reduce the emission of air pollutants to the atmosphere in accordance with the “Best Available Techniques Economically Achievable”.
- All premises required to be equipped with an air pollution control system.
- Other provisions for: monitoring of air pollution control system, maintenance of records, license required to contravene acceptable conditions for emitting emissions into atmosphere, offences and penalties.

Malaysian Laws Against Pollution

- P Tech Resources faced 8 charges under the 2014 Regulations:
 - Regulation 5(1)(b) – carrying out any work on any premises resulting in source of emission;
 - Regulation 5(1)(c) – constructing on land, building or premises resulting in a new source of emission;
 - Regulation 7(3) – failure to operate and maintain an air pollution control system in accordance with sound engineering practice and ensure that all components of the air pollution control system are in good working condition;
 - Regulation 7(4) – failing to ensure that the operation of the air pollution control system is supervised by a competent person;
 - Regulation 9(a) – failing to equip the premises with relevant facilities, equipment or instruments to conduct performance monitoring of the air pollution control system;
 - Regulation 9(b) – failing to conduct performance monitoring of the components of the air pollution control system;
 - Regulation 10(1) – failing to maintain records of manufacturing processes, and of maintenance and performance monitoring of the air pollution control system; and
 - Regulation 16(1) – failing to conduct periodic monitoring.

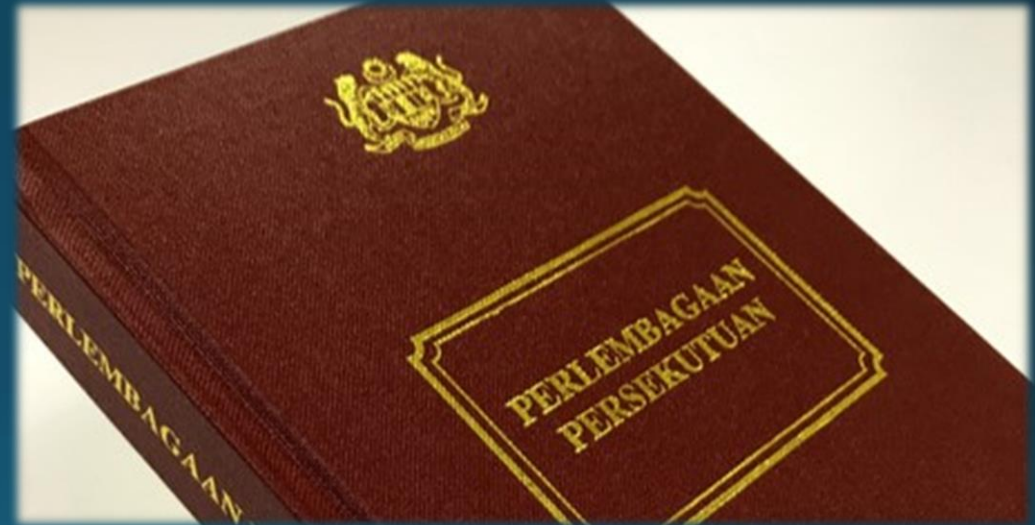
Malaysian Laws Against Pollution

- Prosecution recommended maximum penalty of RM100,000 (pursuant to Regulation 29 of the 2014 Regulations) against P Tech Resources for each of the 8 charges, making a total of RM800,000.
- Sessions Court did not impose maximum penalty, only RM320,000, despite finding of guilt.
- Lessons learned:
 - Zero tolerance approach by authorities and Courts against offenders.
 - Increase severity of punishment in Environmental Quality Act 1974 and relevant Regulations.

Right to Clean Environment in Federal Constitution

- No express reference to “right to clean environment”.
- Amendment of Constitution to include such a right?
- Support by eminent judges for liberal interpretation of Article 5 of Constitution (right to life), to include right to clean environment, or to amend Constitution.
- Decision of Court of Appeal in **Tan Teck Seng v. Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261** on Article 5:

“The expression ‘life’ incorporates all those facets that are integral part of life itself and those matters which go to form the quality of life ... it includes the right to live in a reasonably healthy and pollution free environment”.





Thank you