

BE-ci 2016 : 3rd International Conference on Business and Economics, 21 - 23 September, 2016

Deforestation and Haze in Malaysia: Status of Corporate Responsibility and Law Governance

Hanim Kamaruddin^{a*}, Rasyikah Md Khalid^b, Dina Imam Supaat^c,
Syahirah Abdul Shukor^d & Normawati Hashim^e

* Corresponding author: Hanim Kamaruddin, hanim@ukm.edu.my

^aFaculty of Law, Universiti Kebangsaan Malaysia, UKM Bangi, Selangor, Malaysia, hanim@ukm.edu.my

^bFaculty of Law, Universiti Kebangsaan Malaysia, UKM Bangi, Selangor, Malaysia, rasyikah@ukm.edu.my

^cFaculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai, Negeri Sembilan, Malaysia, dinasupaat@yahoo.com

^dFaculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai, Negeri Sembilan, Malaysia, syahirah@usim.edu.my

^eFaculty of Law, Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia, busuwati@yahoo.com

Abstract

<http://dx.doi.org/10.15405/epsbs.2016.11.02.34>

Malaysia is endowed with abundant forest resources that covers about 59.5% of total land area. For most part of Malaysia's economy, much importance is placed on the contribution of forest in agronomy development. Due to apparent large scale land clearing that brought grave consequences to the environment, various initiatives to protect forests from misuse, abuse and overexploitation of forest resources, mainly by plantation companies, were implemented. The attribution of haze caused by burning of forests further pushed for appropriate policies and laws to protect atmospheric quality in Malaysia. Local laws on preventing deforestation and haze are mainly provided in the Environmental Quality Act 1974 and National Forestry Act 1984. Efforts to resolve issues of deforestation and its environmental impacts on air quality should re-emphasize the benefits of practicing Sustainable Forest Management (SFM) to limit environmental impacts of forest activities through continuous participation and commitment from stakeholders, such as the plantation companies. The penalties for deforestation offences in current Malaysian laws whilst it is punitive, should be improved by imposing an environmental tax on polluter companies as a corrective and rehabilitative tool, thus affirming the 'polluter pays principle'. Environmental tax law could be utilized, for example, in restoring the affected forest area to its natural and original state. The categories of persons contributing to the Environmental Fund should be reviewed to address impacts from deforestation and haze. The study attempts to enhance and strengthen the role of companies in their corporate legal responsibilities towards deforestation and haze issues in Malaysia.

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Keywords: Deforestation; haze; Malaysia; polluter pays principle; corporate; responsibility.

1. Introduction

Malaysia has experienced loss in forest areas since the 1970's, resulting in fragmentation of forests (NPP, 2010). Rapid changes in the forest area caused by land clearing for palm oil development has risen twofold since 1990 from 2.03 million hectares to 4.44 million hectares in 2007 (Omar, 2012). The challenge of resolving environmental impacts arising from deforestation and haze pollution linked activities in Malaysia involves complexities that are related to corporate social responsibility, national policies and the legal framework. An urgent plea to tie economic growth and development with sustainability aspects is well acknowledged where national economic policies integrates concerns related to sustainable economy. Using tax policies as a measure to deal problems associated with environmental risks and effects, good environmental practices can be encouraged or to discourage and prevent behaviours that may impact the environment. Environmental tax is defined by Organisation for Economic Co-operation and Development (OECD) as *'taxes which have been introduced to achieve a specific environmental objective, and explicitly identified as environmental taxes and taxes which were introduced initially for non-environmental reasons, but which impact on environmental objectives, and which may be increasingly modified or reduced for environmental reason'*. Malaysia has suited environmental policies and laws with environmental taxes in the 1990's but a more aggressive approach came about in 2010 when the country began to enforce commitments as a signatory to the Kyoto Protocol. A comprehensive policy addressing environmental sustainability was introduced in the form of 2002 National Policy of the Environment followed by 2009 National Green Policy. The main taxation laws in Malaysia are the Income Tax Act 1967, Real Property Gains Tax 1976, Promotion of Investments Act 1986 and Stamp Duty Act 1949. Various forms of green incentives for environmental conservation were introduced to encourage key industries to be environmentally friendly include areas connected to renewable energy, conservation of energy, biotechnology, research and development, storage, treatment and disposal of toxic and hazardous wastes, recycling, Green building Index certificate, capital allowances, double deduction and purchase of green technology equipment. This article argues that *'polluter pays principle'* should be implemented towards protecting the environment from deforestation and haze arising from corporate activities and, the categories of persons or subject matter related to Environmental Fund provided in the Environmental Quality Act 1974 (the EQA) should be expanded to specifically cover issues of deforestation and haze in Malaysia.

2. Problem statement

There have been successes in preventing deforestation and haze in Malaysia through reviews of government policies and laws including research efforts and community development programs to alleviate these environmental risks, but the absence of corporate responsibility in ensuring that their activities are not attributable to severe environmental impacts is still evident. This observation is derived from several incidences of forest fires resulting to haze pollution that are linked to plantation practices in Malaysia in recent years mostly concentrated in Sabah and Sarawak.

Environmental tax penalty is found to be non-existent and tax incentives are only available for certain industries such as manufacturing, information technology services, biotechnology, Islamic finance, energy conservation and environmental protection (Deloitte, 2015). It is apparent that deforestation and haze linked activities are not explicitly provided for. In relation, plantation sector that contributes to 10% of Malaysia's GDP (Austin and Baharuddin, 2012) is a fragile and risk prone sector that is connected to deforestation caused by fires, direct or indirectly, that occur in large tracts of plantation concessionaires. Blame has mostly been placed on oil palm companies that have plantations mostly on peatlands (Miettenen, Shi and Liew, 2016) on issues of deforestation and haze in Malaysia. As a UN-REDD programme partner country, Malaysia is committed to reducing emissions from deforestation and to manage sustainably forest cover through adaptation and mitigation strategies. However, the national strategy plan is currently in developing stages for readiness (UN-REDD, 2016).

The legislative requirement to prevent fires or open burning in Malaysia can be found in Section 29A of Environmental Quality Act 1974 that prohibits open burning activities. If open burning occurs on any premises, the owner or occupier of the premise who has control over such premise shall be liable to a fine or to imprisonment or both. Open burning activities as specifically provided for in the Environmental Quality (Declared Activities) (Open Burning) Order 2003, unless they are carried out under proper supervision and control that include:

- a. fires purposely set to plantation lands for disease and pest control,
- b. fires purposely set to carcasses of infected animals or poultry,
- c. fires purposely set to solid or liquid fuels or structures for carrying out research into causes and control of fires, or for training of public, volunteer and industrial fire-fighting personnel in the methods of fighting fires under the direct control and supervision of qualified instructors,
- d. fires purposely set to lands for shifting cultivation,
- e. fires purposely set to paddy stalks, paddy straw and paddy field weeds prior to replanting,
- f. fires purposely set to sugar cane leaves prior to harvesting,
- g. fires purposely set to clear plantation land by smallholders in an area that does not exceed 2 hectares per day for convention to food, fruit and crops,
- h. fires purposely set to pineapple stumps prior to replanting,
- i. fires purposely set to articles as part of religious rites or worshipping activities,
- j. fires purposely set for crematorium,
- k. fires purposely set for camping activities,
- l. fires purposely set as outdoor grills and barbecue and
- m. fire for preparation of food, burning in remote sensing of plantation plant materials for the purpose of land clearing or replanting by small holders and subsistence farmers, burning of leaves, tree branches and yard trimmings, in villages in rural areas and, properly operated industrial flares for combustion of flammable gas.

The guided principles adopted in formulating the 2003 Order are to control open burning activities in plantation practices and waste disposal through better waste management where the open burning is to be strictly controlled, open burning of industrial wastes, construction wastes and at waste dumping site are prohibited, and open burning is not allowed at all to be carried out at any peat soil area (Lee, 2002). Upon evaluation, even with the above legislation, open burning cases are still prevalent. 79 cases of open burning were brought to court from 2011 to June 2016 (DOE, 2016) and many were pointed at palm oil plantation companies that are not covered in the above list of prescribed activities.

The Environmental Fund established in 2014 by virtue of Section 36 B of the Environmental Quality Act 1974 only indicated that funds contributed would come from any person engaged in the oil and gas industry, environmentally hazardous substances or waste. Again, the EQA 1974 is silent on the role of plantation industries that contribute to environmental hazards in its planting processes. Although the zero burning technique has been developed and adopted in Malaysia as part of Good Management Practices (GMP) and guidelines from the Roundtable on the Sustainable Palm Oil (RSPO), open burning activity are still detected in palm oil plantation areas. Hence, the total deterrent of annual open plantation burning practices or usage of fires in the plantation sector remains elusive even with the implementation and enforcement of legislation that are in place. Therefore, there should be an immediate shift in paradigm to address issues related to impacts of deforestation and haze where responsibility of a company is motivated to add value to environmental sustainability development in Malaysia. Thus, by incorporating '*polluter pays principle*' focusing on environmental taxes adoption into key sectors such as plantation and the contribution into the Environmental Fund, these suggestions would appear to improve areas of public policy namely in the environment and the tax system. However, it is noteworthy to highlight that there have been scepticisms on the polluter pays principle to be applied in its entirety to impose liability on the responsible party for harm and damage on the environment (Luppi et al., 2011; Cordato, 2001).

3. Research Questions

The broad objectives of these research questions in this study are to assist the government or relevant agencies to propose changes to the current national policy on the environment and reinforcing responsibility and accountability of companies in preventing deforestation and haze in Malaysia. The specific objectives focus:

1. To identify the present corporate responsibilities provided under the laws and policy in Malaysia for deforestation and haze linked activities.
2. To examine laws and policy on corporate responsibilities focusing on '*polluter pays principle*' imposing mandatory environmental tax regime in the form of penalties, and a mandatory fund contribution as regulatory methods to protect the environment from deforestation and haze.

4. Purpose of the Study

This study aims to enforce and enhance the usage of '*polluter pays principle*' through an environmental tax regime on companies as part of its corporate responsibility in preventing environmental destruction from activities resulting in deforestation and haze pollution. It is further suggested that by contributing to the Environmental Fund will set itself as a legal tool in corporate responsibility and further becomes an integral part in environmental protection. The outcome is to propose an initiative to endorse, implement and enforce green taxes to tackle current environmental problems such as 'diffuse' pollution sources from plantation practices. In addition, these methods would become emerging environmental laws in Malaysia focusing on enhancing environmental accountability and corporate responsibility in Malaysia.

5. Research Methods

This study draws existing data from primary and secondary sources including legal documents, policy documents, case studies, published and unpublished research articles, books, journals, company reports and other environmental tax structures from other countries. Generally, this is a legal study of corporate environmental responsibility in a regulatory framework focusing on environmental tax system and a fund contribution for a sustainable economy.

6. Findings

Environmental tax endorses the '*polluter pays principle*' and is used for several reasons including incorporating the costs of environmental services and damages directly into the prices of goods, providing incentives, raising revenues to improve environmental costs or to overcome environmental challenges. In general, a mixture of cost covering charges, incentive taxes and fiscal environmental taxes are practiced. Taxes can play an important role in achieving cost-effective control on climate change impacts and greenhouse gas emissions. Multiple EU countries have introduced carbon taxes in the 1990s.

An earlier study (EEA, 1996) concluded that environmental taxes are effective, beneficial and incentive taxes are in general environmentally effective when the tax is sufficiently high to stimulate abatement measures. However, there are several political barriers to the introduction of environmental taxes that include perceptions that taxes have to be high if they are to work or, conflict between less tax and maintaining revenues or, existing subsidies and regulations that provide environmentally perverse effects or, other policies and cultures which negate or inhibit environmental taxes.

The 2006 Stern Review of the Economics of Climate Change argued strongly for urgent and immediate action to mitigate the potential costs of climate change. This report played a major influence on the UK Environmental Policy, for example, where a number of tax measures were introduced and

implemented covering areas on landfill, industrial energy use (climate change levy) and extraction of aggregates in quarries. The European Union countries implemented green tax reforms in several ways including restructuring of existing taxes according to environmental criteria or introduction of new environmentally related taxes. In Japan, implementation of tax policies is found in the introduction of carbon tax emissions, fossil fuel taxes, research and development tax credits, petroleum and coal tax to the shipment of crude petroleum, gaseous hydrocarbons or coal from extracting stations or bonded areas and, tax credits for job creation and salary growth.

Malaysia has also given greater consideration to sustainable development in recent years and encouraging Malaysian companies to embrace green technology and policies. Such measures include the introduction of a series of tax incentives to the public and private sectors. Tax incentives are given for example to companies that generate energy from renewable sources and energy conservation. The Green Building Index (GBI) launched in 2009 was developed specifically for the Malaysian tropical climate buildings as a rating tool in the construction industry. There have been other efforts to commit to responsible business strategy and practices using corporate social responsibilities initiatives such as policy frameworks to attach companies to be environmentally aware of the impacts they have on the environment and society. However, these efforts are found to be piecemeal and voluntary limiting to tax incentives and without actual implementation and enforcement of related laws. The taxes only cover the needs of the company but not the public whom are equally affected by the environmental impacts. Such plans to incorporate certified emission reduction units with 'Green Palm Oil' initiative would only be implemented in Malaysia if there is a comprehensive and binding carbon trading and emissions regulation that encourages producers to use sustainable methods.

In relation to the rule of '*polluter pays principle*', the cost of pollution control, prevention and remediation is borne by the entity that profits from the process that caused the pollution. An example of the principle can be found in Section 47 of the EQA that allows the Director General to recover all costs and expenses incurred to remove, disperse, destroy or mitigate pollution from persons responsible in connection therewith. The principle has succeeded as a form of mitigation measure in the rate and quality of effluent charges into watercourses by palm oil producers. The '*polluter pays principle*' concept is further implemented in Section 36A-E of the EQA 1974 that establishes the Environmental Fund. It is administered for the purpose of:

- Conducting, promoting and coordinating research study, environmental audit or any activity as the Minister thinks fit in relation to any aspect of pollution or the prevention thereof;
- Recovering of waste, or removing, dispersing, destroying, cleaning, disposing of or mitigating pollution;
- Preventing or combatting the following occurrences;
 - a. A spillage, discharge or dumping of oil;
 - b. A discharge, deposit, or dumping of environmentally hazardous substances; or
 - c. A discharge, deposit or dumping of waste; and

- Encouraging conservation measures against any damage that may be caused by any of the occurrences spelt above.

The source of funds is obtained from money provided by the Government, donations and contributions received from within or outside Malaysia, cess imposed or collected in accordance with Section 36 of the EQA 1974, or money paid or received in accordance with Section 36D from exploration, extraction, refining, production, bulk movement, distribution or storage of oil, production, bulk movement, distribution or storage of environmentally hazardous substances or bulk movement or storage of waste. In the aim to transform scheduled waste management, the relevant industry is encouraged to minimise waste generation and, the Environmental Fund is used for research to improve management of scheduled waste in Malaysia. This exercise provides an incentive in the form of reduction of cess rate given to industrial sector based on 4R approach i.e. Reduce, Reuse, Recycle and Recovery. Hence, specific focus is given to hazardous waste cess framework that would encourage waste minimization and resource recovery. The proposed framework would include reporting of scheduled waste quantities via notification, scheduled waste reduction, scheduled waste quantities and qualities liable to cess and, cess payment into the company's account waste cess fund, company cess payment status, payment lapse reminder or warning or fines, withholding operating license until all cess payment is cleared and disbursement of fund for research and development. Disbursement of cess fund for scheduled waste management will also be utilised for hazardous waste awareness campaign. In effect, this practice would shift the environmental responsibility from governments to the companies producing waste or pollution.

The laws that govern tax and incentives in Malaysia provides for direct tax incentives grant partial or total relief from income tax payment for a specified period, while indirect tax incentives are in the form of exemptions from import duty, sales tax and excise duty. The major tax incentives for companies investing in the manufacturing sector, high technology companies, specialized machinery and equipment companies, companies that utilise oil palm biomass to produce value-added products and strategic projects are the Pioneer Status and the Investment Tax Allowance that is based on certain priorities, including the level of value-added, technology used and industrial linkages. Small scale companies incorporated in Malaysia with shareholders' fund not exceeding RM500,000 and having at least 60% Malaysian equity are eligible for tax incentives for small scale companies under the Promotion of Investments Act (PIA), 1986 (MIDA, 2016). Companies manufacturing transmission systems, brake systems, airbag systems and steering systems are eligible for better fiscal incentives i.e. Pioneer Status (PS) of 100 per cent fiscal deduction for 10 years or Investment Tax Allowance (ITA) of 100 per cent for five years. Any investments in the assembly or manufacture of hybrid and electric vehicles will be granted:

- 100 per cent ITA or PS for a period of 10 years;
- customised training and R&D grants in addition to the existing grants;
- 50 per cent exemption on excise duty for locally assembled/manufactured vehicles or provision of grant under the Industrial Adjustment Fund (IAF);

- PS of 100 per cent for 10 years or ITA of 100 per cent for 5 years for the manufacture of selected critical components supporting hybrid and electric vehicles

In addition, a person or a company carrying on a plantation activity such as palm oil planting, can claim Capital Allowances and special Industrial Building Allowances under the Income Tax Act 1967 for certain capital expenditure. Capital expenditure which qualifies includes expenditure incurred on for example clearing and preparation of land and planting of crops. Hence, as of date, there is no implementation of environmental taxes in the form of penalties for plantation sector in Malaysia. Mostly are weighted heavily in the form of green incentives to ensure sustainable economic development.

Successful implementation of environmental taxes as a policy instrument can help achieve production and consumption trends with careful design package and implementation. In this case, research is needed in areas such as economic modelling and the evaluation of externalities (EEA, 1996). Malaysia has yet to come up with a policy decision on environmental taxation laws, incentives or penalties, imposed on companies' activities that cause for example, carbon emission from deforestation and haze, or reforestation. Perhaps, it is an opportune time for the Malaysian government to review its taxation system to exert responsibility and accountability on the shoulders of companies to respond to environmental impacts connected to their activities.

Malaysia could consider the various tax regimes from the OECD countries where placing a price on pollution creates opportunities for innovation as companies seek out cleaner alternatives. For example, in Australia where implementation of carbon price mechanism in 2012 led to a fall in carbon emissions from electricity sector in 2013. Several OECD countries such as Australia, Austria, Belgium, Turkey and the UK have introduced a differentiation in their motor fuel tax rates according to sulphur content of the fuels that has given oil companies an incentive to develop few varieties with low sulphur content (OECD, 2008). In green tax policy, the US leads the tax and incentives ranking while France is leading in the imposition of tax penalties (KPMG, 2013). In addition, Singapore occupies first place in the pollution control and ecosystem protection where taxes or penalties are imposed on pollution and land use change. France imposes a general tax in 1999 on pollution activities (Taxe Générale sur les Activités Polluantes or TGAP) on a "pay as you pollute" basis covering the disposal of waste, atmospheric industrial pollution and air traffic noise, washing products and insecticide products for agricultural use (ASD,2016). Similar effort could take in a form of an evaluation process to build into the process of designing and implementing an environmental tax regime that has several stages (EEA, 1996). In summary, the six stages are:

- to identify and define the environmental problem;
- discussing the need for policy intervention and setting objectives;
- designing and assessing effective and efficient options;
- selecting, discussing and adapting instrument chosen;
- introduction of instrument (mix), implementation of control and enforcement; and
- modification of instrument (mix) after evaluation.

It is concluded that a sustainable tax system should be less complex, simple, efficient in relation to administrative and collection process that promotes green innovation and technology (Salihin, 2014).

7. Conclusion

The study attempts to enhance the role of companies in their legal responsibilities towards environmental protection from impacts of deforestation and haze in Malaysia. Whilst efforts to include an environmental tax regime into corporate business structure remains at most a piecemeal strategy, there should be a greater use of the tax system and reinforcing the legal contributions made to the Environmental Fund that should take into consideration issues circling deforestation and haze in Malaysia. Environmental taxes help to implement '*polluter pays principle*' as polluters are made to be accountable for the costs of their polluting activity must be wholly embraced and enforced effectively in the existing legislative framework in Malaysia. Hence, the need to continue to use economic instruments such as a tax system that considers economic, social and environmental sustainability and include both incentives and penalties. In addition, to reinforce vigorously the usage of Environmental Fund and further, by expanding the scope of industries to contribute to the fund for purposes of regenerating forests, and promote corporate green initiatives.

Acknowledgements

The authors would like to thank Universiti Kebangsaan Malaysia(UKM) for Research Grant (GGPM-2016-073) and to all authorities and individuals who have directly or indirectly contributed to this paper.

References

- Abang, S. (2014). *Sustaining the Taxation System Towards a Sustainable Economy*, Malaysian Tax Conference: Sustainable Tax System, Kuala Lumpur, Malaysia, Available at salihin.com.my/Sustainable%20Tax%20System.pdf.
- ASD, 2016. Available at <http://www.asd-int.co.uk/tgap-general-tax-on-polluting-activities.html>. Date of accessed 25 May 2016.
- Austin, O.C. & Baharuddin, A.H. (2012). *Risk in Malaysian Agriculture: The Need for A Strategic Approach and A Policy Refocus*, *Kajian Malaysia*, Vol.30, No.1, 21-50.
- Cordato, R.E. (2001). *The Polluter Pays Principle: A Proper guide for Environmental Policy*, *Institute for Research on the Economics of Taxation*, Washington, USA.
- Deloitte Touche Tohmatsu Limited, (2015). Available at http://www.iberglobal.com/files/2016-2/malasia_deloitte_guide.pdf. Date of accessed 14 January 2016.
- Department of Environment, (2016). Available at <http://www.doe.gov.my/portalv1/en/awam/maklumat-umum/rumusan-kes-mahkamah>. Date of Accessed 15 July 2016.
- Environmental Quality Act 1974.
- Environmental Quality (Declared Activities) (Open Burning) Order 2003.
- European Environment Agency (EEA), (1996). *Environmental Taxes Implementation and Environmental Effectiveness*, Luxembourg.
- KPMG, (2013). *The KPMG Green Tax Index 2013*. Available at <https://home.kpmg.com/xx/en/home/insights/2015/03/green-tax-index-an-exploration-of-green-tax-incentives-and>

penalties.html. Date of Accessed 22 November 2015.

Lee, H.K. (2002). 'Controlling Open Burning, Malaysia's Experience'. *Proceedings of World Conference on Land & Forest Fire Hazards*, Kuala Lumpur, Malaysia.

Luppi, B., Parisi, F. & Rajagopalan, S. (2011). The rise and fall of the polluter pays principle in developing country, *International Review of Law and Economics* 32, 135-144.

Malaysian Investment Development Authority (MIDA). Available at www.mida.gov.my. Date of accessed 27 July 2016.

Miettinen, J., Chi, S., & C.L. Soo. (2016). Land cover distribution in the peatlands of Peninsular Malaysia, Sumatra and Borneo in 2015 with changes since 1990, *Global Ecology and Conservation*, Volume 6, 67-78.

OECD, (2008). *An OECD Framework for Effective and Efficient Environmental Policies*, Meeting of the Environment Policy Committee (EPOC) at Ministerial Level, Environment and Global Competitiveness, Paris. Available at <http://www.oecd.org/env/tools-evaluation/41644480.pdf>. Date of Accessed 11 February 2016.

UN-REDD Programme Collaborative Online Workspace. Available at <http://www.unredd.net/regions-and-countries/asia-pacific/malaysia.html>. Date of Accessed on 11 June 2016.