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**ENHANCING SUSTAINABLE SOLID WASTE MANAGEMENT IN
MALAYSIA THROUGH ANTI-LITTERING LAWS**

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Abstract

Environmental protection is an important consideration in the efforts to mitigate environmental degradation of which sustainable solid waste management is a major component. Sustainable solid waste management addresses three important elements in sustainable development, that is, the environment, and economic and social wellbeing. In Malaysia, littering is an environmental problem which has long been an issue in promoting sustainable solid waste management and its prevalence raises the question of the adequacy of existing laws in combating it. This paper examines relevant anti-littering laws in Malaysia and their adequacy as well as discusses related laws in Australia and Singapore. The methods employed are content analysis of primary and secondary data and interviews. The findings show that there is only a general provision related to anti-littering in Malaysia's Solid Waste and Public Cleansing Management Act 2007 (Act 672) and that this is clearly inadequate in solving this issue. Hence, it is proposed that clear and specific provisions on anti-littering should be included in existing law.

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1. Introduction

The massive amount of solid waste being generated daily is a global environmental concern. The inefficient management of solid waste may cause environmental and health adverse impacts (Hwa, 2007).¹ Similarly, its indiscriminate disposal at unauthorized locations could contribute to various environmental and health problems (Olayiwola, Abudulawal, & Adewuyi, 2017). One aspect of solid waste is littering, which is defined as “rubbish such as paper, cans, and bottles left lying in an open or public place” (English Oxford Living Dictionaries, n.d.). Littering is common in Malaysia and constitutes a major issue which can have long-term effects and reflects on the nation’s ineffective waste management laws and measures (Clean Malaysia, 2015). Similarly, it has been highlighted that littering and poor solid waste disposal practices have contributed to the lack of environmental sanitation in Malaysia (Mudin, 2015). There was also a recent incident of killer-litter involving a teenager who was killed after being hit by a chair thrown from the upper floors of a flat (The Straits Times, 2018).

1.1. Relevant anti-litter laws in Malaysia

Solid waste management in Malaysia was previously the responsibility of local and state governments under the Local Government Act 1976 (Act 171) (Solid Waste and Public Cleansing Management Corporation, 2016). The Solid Waste and Public Cleansing Management Act 2007 (Act 672) was enacted in 2007 to regulate solid waste and public cleansing management in Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan. However, not all states in Malaysia have acceded to Act 672 which is currently enforced only in the states of Johor, Kedah, Melaka, Negeri Sembilan, Pahang, Perlis, and the Federal Territories of Kuala Lumpur and Putrajaya. Perak, Selangor, Pulau Pinang, Kelantan, and Terengganu have not implemented it yet and continue to apply the Street, Drainage and Building Act 1974 (Act 133) and the Local Government Act 1976 (Act 171) as well as various other by-laws.

Sabah and Sarawak have different sets of laws governing solid waste management as Act 672 covers only Peninsular Malaysia and the federal territories.² The applicable laws in Sarawak are Natural Resources and Environment Ordinance, 1949 (Cap. 84 (1958 Ed.)), the Local Authorities Ordinance 1996, and the Protection of Public Health Ordinance 1999 while in Sabah the laws are the Local Government Ordinance 1961, the Public Health Ordinance 1960, and some by-laws.

Currently, the Ministry of Urban Well-Being, Housing and Local Government is responsible for solid waste management through its National Solid Waste Management Department Malaysia and the Solid Waste and Public Cleansing Management Corporation (SWCorp). SWCorp has three concession companies under it that is, Alam Flora *Sdn Bhd* (Private Limited), Environment Idaman *Sdn Bhd*, and Southern Waste Management Environment *Sdn. Bhd*. These are the agencies which are involved in solid waste management in states which have acceded to Act 672.

¹ Landfill leachate is noted to have polluted the soil surface and ground waters particularly those located near landfill sites. See Fagbenro (2016). Leachate Pollution and Impact to Environment. Control and Treatment of Landfill Leachate for Sanitary Waste Disposal. Hamidi Abdul Aziz & Salem Abu Amr. The United States of America, Information Science Reference: 173-199. p 174.

² Act 672 and relevant laws in Sabah and Sarawak will need to be amended should the two states decide to adopt the Act. Interview with Dr. Muharrir Kamarudin, Director of Policy and Strategic Division, National Solid Waste Management Department Malaysia, 22 April 2016.

The local authorities in the states which have not acceded to Act 672 are still responsible for solid waste and public cleansing management. As solid waste management is only one of the various functions of the local authorities, it is performed together with other more or less similar functions namely public area cleansing, landscaping, street lighting, and drainage maintenance work (Moh & Latifah, 2014). The power of the local authorities in respect of solid waste management is provided under Local Government Act 1976 in general terms (Local Government Act 1976 (Act 171)). For example, the Petaling Jaya City Council issued compounds the maximum of which is RM1,000 on litterbugs and action may be taken against those who fail to pay under the Collection, Disposal and Clearance of Trash By-Laws (MBPJ) 2007 (Lee Shin Yiing, 2017). This indicates that SWCorp is responsible for anti-littering enforcement in states which have adopted Act 672 while the responsible bodies in the other states are the local authorities.

The term littering is not expressly stated or defined in Act 672. Killer-litter is also not covered in the Act though action may be taken under general provisions in other existing laws such as the Penal Code.³ However, the most relevant provision is section 71(1) of the Act which provides that, “no person shall deposit, separate, store, keep, collect, transfer, transport, treat or dispose of or cause to be or permit to be deposited, separated, stored, kept, collected, transferred, transported, treated or disposed of any controlled solid waste otherwise in accordance with this Act”.

Subsection (8) of the same section provides that “any person who contravenes subsection (1) or (5) commits an offence and shall, on conviction, be liable to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not less than six months and not exceeding five years or to both”. This section can in general cover littering in the sense that the act of depositing any controlled solid waste not in accordance with the Act can constitute the act of littering. Nevertheless, the minimum penalty provided in the provision, that is, ten thousand ringgit is not commensurate with the severity of the offence.

Currently, in respect of anti-litter, the relevant protocols of SWCorp involve:

1. Obtaining a list of locations where littering is frequent or on dumpsites through spying, patrolling, public information, and complaints from other agencies.
2. Assigning enforcement officers to regularly monitor locations where littering offences often occur.
3. Regularly patrolling public attraction areas and areas where littering is often committed.
4. Using the ‘approach and inform’ step where patrolling SWCorp officers approach litterers and inform them of the offence committed and warn them not to repeat the offence. This step constitutes a precautionary measure and notification of offence to the public.
5. Training enforcement assistant officers to provide correct reprimand to littering offenders. If the same person is identified to be guilty of an offence, an offence notification notice may be issued.
6. Distributing leaflets on littering offences to owners of premises and the public in order to provide information on littering offences.

³ The commission of littering which could fall under the Penal Code may depend on the nature of the offence. An example of the relevant provision is section 336 which states that “whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment for a term which may extend to three months or with a fine which may extend to five hundred ringgit or with both”.

7. Implementing a direct approach to parties which have the potential to generate litter such as fast food restaurants and convenience stores. They need to be responsible and active in educating the public on anti-littering.
8. Using the mass media and social media to inform on actions taken and results from anti-litter programmes.
9. Providing a friendly reminder to the public on littering offences in public attraction areas that often become litter disposal sites (SWCorp Malaysia, n.d.).

The protocols stated above show that serious attention is being given to littering. Nevertheless, Act 672 can be significantly strengthened in addressing littering if a legal provision covering those protocols is also included in it.

For states that have not implemented Act 672, littering is covered by the Streets, Drainage and Building Act 1974 (Act 133) which makes it an offence under its section 47(1) (a) which provides that “any person who places, deposits or throws or causes or allows to be placed, deposited or thrown any dust, dirt, paper, ashes, carcasses, refuse, boxes, barrels, bales or other article or thing in any public place...shall be guilty of an offence under this section”. Offences under this section are subject to a fine not exceeding five hundred ringgit and not exceeding one thousand ringgit in second or subsequent convictions. The Streets, Drainage and Building Act 1974 contains specific provision on littering because it covers all matters related to street, drainage and building in local authority areas including littering. On the other hand, Act 672 is a federal law enacted in 2007 which confers executive authority on the federal government for matters concerning controlled solid waste and public cleansing. It only has a broad provision on unauthorized depositing of controlled solid waste which may include littering.

In Sabah,⁴ one of the by-laws specific to anti-litter is the Uniform (Anti-Litter) By-laws 2010. Under its by-law 3, ‘litter’ is defined as “any dust, sand, earth, gravel, clay, stone, cement, paper, ashes, carcase, refuse, leaves and branches, grass, straw, boxes, barrels, bales...or other things, articles or materials”. Offences under these by-laws are provided under by-law 4 for instance, under by-law 4 (a) “any person who places, deposits or throws or causes or allows to be placed, deposited or thrown, any litter in any public place...commits an offence under these by-laws”.

In respect of strata properties, by-law 9 (3) of the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015 provides that “a proprietor shall not throw or allow to fall, any refuse or rubbish of any description on the common property or any part thereof except in refuse bins maintained by him or refuse chutes or in refuse bins in common refuse chambers provided in the building”.

Based on the above, it is clear that there is no specific provision on littering in Act 672. Though its section 71 is on dumping, the penalty provided is considered excessive for littering offences.⁵ As mentioned

⁴ Sabah which is popular for its biodiversity was reported to face littering problem which spoils its environment. See Haijon Gunggut, Chua Kim Hing & Drg Siti Noor Saufidah Ag Mohd Saufi, 'Internalization and Anti Littering Campaign Implementation', (2013) 85 *Procedia - Social and Behavioral Sciences*, p 544.

⁵ Interview with Dato' Dr. Nadzri bin Yahaya, Deputy Secretary General (Natural Resources), Ministry of Natural Resources and Environment Malaysia, Wisma Sumber Asli, Putrajaya, 10 Mac 2017. This issue was also highlighted in an interview with Tuan Romy Norfidzy bin Roslan, Legal Advisor, Solid Waste and Public Cleansing Management

earlier, although SWCorp has implemented protocols for littering which could be regarded as integrated and comprehensive enough to address the issue, a specific provision on littering is still necessary due to its binding effects. Malaysia also does not have specific killer-litter laws.

1.2. Relevant anti-littering laws in Australia and Singapore

This section discusses the relevant littering laws in Australia and Singapore.

1.2.1. Australia

The scope of responsibility of the Australian government is restricted to national legislation, strategies and policy frameworks which are related with waste as well as mechanisms to give effect to commitments under international agreements (Department of the Environment and Energy, Australia, n.d.). Waste management in Australia is mainly the duty of the respective state and territory governments based on legislations and policies applicable in them (Department of the Environment and Energy, Australia, n.d.). In states and territories, waste management is under the responsibility of local governments which play their role within their local areas based on the prescribed regulations and their role includes: to provide household waste collection and recycling services, manage and operate landfill sites, deliver education and awareness programs, and provide and maintain litter infrastructure (Department of the Environment and Energy, Australia, n.d.). Australia has various statutes on waste management generally and solid waste management specifically. There are some laws which are directly related with waste and solid waste management while others relate indirectly with waste and solid waste management.

Littering is also an environmental issue in Australia (Hasham, 2018). It was reported that there was a reduction in litter in Western Australia (Government of Western Australia, n.d.). In respect of littering, there are specific laws and/or provisions on littering in various state and territory laws in Australia.⁶ For instance, Section 103 (1) of the Waste Reduction and Recycling Act 2011 No. 31 (Queensland) Act provides that “a person must not litter at a place”. Subsection (2) states that “for subsection (1), a person litters at a place if the person deposits at the place an amount of waste that is less than 200L in volume”.

According to Section 104 (1) of the Act “a person must not illegally dump waste at a place”. Subsection (2) provides “for subsection (1), a person illegally dumps waste at a place if the person deposits at the place an amount of waste that is 200L or more in volume”. Subsection (3) further states, “however a person who deposits at a place an amount of waste of 200L or more in volume (the relevant waste) does not illegally dump the relevant waste if the person is an occupier of the place; or the person deposits the relevant waste with the consent of an occupier of the place; or the person deposits the waste by placing it in bin or other container provided by an occupier of the place, or by another person with the agreement of an occupier, for the purpose of depositing the relevant waste”. This provision indicates that dumping of

Corporation, Main Office of Solid Waste and Public Cleansing Management Corporation (SWCorp), Kuala Lumpur, 21 June 2016.

⁶ The laws include the Waste Reduction and Recycling Act 2011 No. 31 (Queensland), the Litter Act 2004 (Australian Capital Territory), the Protection of the Environment Operations Act 1997 (New South Wales), the Litter Act (Northern Territory), the Local Nuisance and Litter Control Act 2016 (South Australia), the Litter Act 2007 (Tasmania), the Environment Protection Act 1970 (Victoria), and the Litter Act 1979 (Western Australia).

waste is an offence if it fulfills the required amount of waste besides considering other elements in subsection (3).

Therefore, volume determines whether an act is considered illegal dumping or littering with deposits exceeding 200L constituting the former while lesser amounts are deemed littering. In sum, there is a specific law and/or provision on littering in Australia. This is in tandem with the principle of sustainability where tackling the issue of littering would mitigate the environmental impacts.

1.2.2. Singapore

Singapore's strategy in maintaining a balance between environmental protection and economic development is through collaboration between its environmental agencies and the main economic development and promotion entities (Lai, 2007). In addition, the National Environment Strategy (NEA) employs comprehensive environmental protection measures in accordance with several fundamental strategies such as prevention, enforcement, monitoring, public education, and responsible care in environmental management (Lai, 2007).

The relevant legislations on solid waste management in Singapore include the Environmental Public Health Act (Chapter 95) (EPHA).⁷ EPHA consolidates laws relating to environmental public health and other related matters (Preamble of EPHA), the Environmental Public Health (General Waste Collection) Regulations,⁸ the Environmental Public Health (General Waste Disposal Facility) Regulations 2017,⁹ Environmental Public Health (General Waste Disposal Facility-Exemption) Regulations 2017,¹⁰ and Code of Practice for Licensed General Waste Collectors.

Littering is also an issue in Singapore but this is tackled with strict enforcement of the relevant laws (Boh, 2017). Under EPHA's Section 20 vehicles used to facilitate dumping can be forfeited and a recalcitrant¹¹ punished with a corrective work order. Section 20 (1) states that "any person who (a) dumps or disposes any refuse, waste or any other article from a vehicle in a public place; or (b) uses a vehicle for the purpose of dumping or disposing of any refuse, waste or any other article in a public place, shall be guilty of an offence". Its Subsection (2) further provides that "any vehicle used in dumping or disposing of refuse, waste or any other article in any public place...may be seized by any public officer or any authorised officer..."

⁷ The Environmental Public Health Act (Chapter 95) was copied from the British Statute on waste management and/or public health in 1968, Interview with Dr. Joseph Chun, Adjunct Associate Professor, Faculty of Law, National University of Singapore, 22 September 2015.

⁸ EPHA's subsidiary law.

⁹ Ibid.

¹⁰ Ibid.

¹¹ A habitual litterer.

Besides, there is also a general provision for killer-litter offences¹² under the Singapore Penal Code.¹³ Section 304A of the Penal Code (Chapter 224), provides for the offence of causing death or negligent act which includes the killer litter offences. This section states “whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished (a) in the case of a rash act, with imprisonment for a term which may extend to 5 years, or with fine, or with both; or (b) in the case of a negligent act, with imprisonment for a term which may extend to 2 years, or with fine, or with both”.

In regard to the offence of littering, the only mental element required for an offence under section 18 (1) (a) of EPHA is the basic intention to commit the physical act of depositing, dropping, placing or throwing refuse. In the case of *Public Prosecutor v Yong Heng Yew* [1996] 3 SLR 566, the respondent was charged with an offence under the section with the prosecution arguing that it had been committed by his throwing of a cigarette butt onto the floor in a shopping centre. The respondent did not refute the act, but claimed that the prosecution was further required to show an intention to walk off without properly disposing of the cigarette butt on his part. The respondent was acquitted and discharged. The court allowed the prosecution’s appeal and held that the only mental element required for an offence under section 18 (1) (a) of the Act was the basic intent to commit the physical act of depositing, dropping, placing or throwing refuse. The prosecution was not required to show beyond the intention to walk away without properly disposing of the refuse. It could be inferred therefore that the offence of littering is a strict liability offence. In another case, *Public Prosecutor v Lim Niah Liang* [1997] 1 SLR 534, the court held that evidence of a compounded offence could have been relied upon for the specific purpose of imposing a corrective work under the EPHA. Strict enforcement on anti-littering provisions in Singapore is illustrated by the above reported cases.

2. Problem Statement

Sustainable solid waste management practices relate to three important aspects of sustainable development, that is, the environment, and economic and social wellbeing (United Nations Institute for Training and Research, 2013), and this is indicated by the reduction in waste generation (Bell, McGillivray, & Pedersen, 2013). The issue of littering which has caused environmental impact affects the sustainability of solid waste management in Malaysia. This issue raises questions on the adequacy of existing laws in mitigating the littering problem.

¹²It is said that a killer litter offence is more a public safety offence than waste management offence, Interview with Dr. Joseph Chun, Adjunct Associate Professor, Faculty of Law, National University of Singapore, 22 September 2015. Killer litter in Singapore is described as “stuff that gets tossed out, or falls down from high rise windows, the causes ranging from careless placed flower pots, to silverware or even metal chairs that gets thrown out of the window...besides annoying neighbours and bystanders, killer litter occasionally also kills people”, see Anon. (n.d.) Killer Litter. *Skyscraper Dictionary*. Retrieved from <https://www.skyscraperdictionary.com/?project=killer-litter> (8 October 2018).

¹³ Interview with Dr. Joseph Chun, Adjunct Associate Professor, Faculty of Law, National University of Singapore, 22 September 2015

3. Research Questions

This paper attempts to answer question on whether the existing laws are adequate or not to mitigate the littering problem in Malaysia.

4. Purpose of the Study

This paper studies the relevant littering laws in Malaysia and their adequacy. It also discusses relevant littering laws in Australia and Singapore and see how they can apply to Malaysia in addressing the issue towards enhancing sustainable solid waste management.

5. Research Methods

This paper employs qualitative approach involving interviews and content analysis of primary and secondary data which includes statutes, reported cases, books, journals, and online database.

6. Findings

The above discussion highlights that the provision on anti-littering in the Solid Waste and Public Cleansing Management Act (Act 672) is inadequate and this shows the lack of fulfilment of sustainable solid waste management particularly the environmental element of sustainable development. On the other hand, there are a variety of laws containing littering-related provisions in Australia while Singapore has specific provisions on littering and killer-litter laws and it strictly enforces those laws.

In Malaysia, the only available provision which is closely related to littering is found in section 71 of Act 672 for states that have implemented Act 672 that is, Johor, Kedah, Melaka, Negeri Sembilan, Pahang, Perlis, and the Federal Territories of Kuala Lumpur and Putrajaya. However, the penalty provided under this section is considered excessive because it also covers illegal dumping. Although SWCorp has protocols in regard to littering enhancements to Act 672 are necessary to effectively mitigate the littering problem in Malaysia. Hence, it is recommended that specific provisions for littering should be included in the Act 672 such as those on illegal dumping and littering in Queensland's Waste Reduction and Recycling Act 2011. It is recommended that a provision to allow SWCorp to enforce anti-littering laws with compatible penalties or compound fines be inserted in Act 672. This provision should include dangerous littering which may cause harm to a person, property, or the environment and killer-litter. Specifically, the provision should mention the prohibition of littering and provide a maximum penalty of RM1000 if the offence involves dangerous littering and RM500 for other offences. Dangerous littering can be defined as depositing waste that causes or is likely to cause harm to a person, property, or the environment.

Hence, a provision to make it an offence for a person to litter and to categorize littering as dangerous and non-dangerous could be inserted in Act 672. With this new provision, a clean and green country, like Australia and Singapore which have strict laws on littering, could materialize. The amendment and insertion of anti-littering provision in the existing law will help tackle the littering problem. The process of federalization of solid waste management should also be completed in order to expand the enforcement of

Act 672 to other states to ensure its efficiency in managing solid waste specifically the anti-littering provision.

7. Conclusion

The above discussion indicates that there is a serious littering problem in Malaysia. This has contributed to environmental pollution which is against the principle of sustainability. A legal mechanism is crucial in tackling this problem such as the use of specific laws and provisions in Australia and Singapore and supported by strict enforcement. Accordingly, it is recommended that Act 672 should be strengthened by the inclusion of specific provisions on anti-littering. It is also suggested that the coverage of Act 672 be expanded to other states. Thus, the inclusion of specific provision on littering can be enforced effectively throughout the country based on a uniformed law on solid waste management. This finding serves as a good indicator that improving anti-littering law will assist Malaysia to mitigate environmental problems as in Australia and Singapore and this will consequently facilitate meeting the objectives of the sustainable solid waste management.]

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