

Polluter-pays Principle Application and Results in Malaysia and Singapore

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Abstract

In every country in the globe, waste management has been essential to maintaining the environment. Given that it is merely a trash that individuals dispose of, some countries place less emphasis on managing food waste. However, studies have revealed that the amount of garbage produced daily by the retail industry and other industries is astounding. Government initiatives to date have mainly concentrated on regulating the disposal of solid waste through regulation and public awareness, with relatively little attention paid to food waste. Monitoring, reducing, and controlling waste are not given much attention, especially when it comes to waste particularly food waste. However, the court did not place a strong emphasis on the punishment for food waste. Environmental offenses, notably food waste, are not punished. This paper attempts to discuss the role that courts play in punishing environmental polluters in the Malaysia and Singapore contexts specifically the polluter pays principle, as well as whether or not punishment is ever meted out for food waste, which, given the world's expanding population, is a considerable amount of all waste.

Keywords: Food Waste, Solid Waste, Polluter Pay Principle, Environmental Sustainability, Waste Management

Introduction

According to the generally accepted "polluter pays principle" (PPP), people who cause pollution should be responsible for paying for its removal and mitigation. It is predicated on the notion that if polluters are made financially liable for the damage they create, they will be more motivated to lessen their impact on the environment. Luppi et al (2012) wrote that PPP has been implemented in many nations and has been used to address a variety of environmental challenges, including hazardous waste disposal as well as air and water

pollution. Although PPP is frequently regarded as an effective method for encouraging environmental stewardship, it has several drawbacks.

It can be hard to identify the polluter in some circumstances, which is one of the PPP's main drawbacks. It might be difficult to pinpoint the culprits and assign blame in situations of diffuse pollution, such as pollution from traffic or agricultural. Moreover, the PPP can encourage polluters to hide their actions or engage in unlawful activity in order to avoid accountability. Furthermore, there is a chance that the PPP may be seen as punitive, which could deter companies from investing in eco-friendly products and procedures. Faure (2009) stated that the high expenses of pollution mitigation may also result in higher consumer prices, which would be especially detrimental to low-income groups. Schwartz (2018) overall highlighted that, the PPP can be an effective tool for encouraging environmental responsibility, but because of its limitations, it should be used in concert with other policy tools to maximize its ability to protect the environment.

The Law on Waste Management in Malaysia

There are several laws governing solid waste in Malaysia. They were the Solid Waste and Public Cleansing Management Act of 2007 (Act 672). It is the main piece of legislation controlling solid waste management (SWMA, 2007). It establishes the rules and regulations that govern how solid waste and public cleaning operations are handled in Malaysia. It grants the Solid Waste and Public Cleansing Management Corporation Act 2007's Solid Waste and Public Cleansing Corporation (SWCorp) the authority to oversee, monitor, and enforce solid waste management and public cleansing (SWCorp Act). Street Drainage and Building Act of 1974, Environmental Quality Act of 1974, Local Government Act of 1976, and Town and Country Planning Act of 1976 are further pieces of law that regulate solid waste management.

While the Environmental Quality Act of 1974 and its rules are primarily responsible for regulating waste management legislation in Malaysia. The framework for managing and controlling waste and pollution in the nation is established by this act. The Department of Environment (DOE) is in charge of carrying out the act's provisions, which includes establishing requirements for waste management and managing their enforcement.

The following are some of other most significant rules and laws pertaining to waste management in Malaysia, in addition to the Environmental Quality Act

- Hazardous Waste (Control of Export, Import, and Transportation) Regulations, 1989 on the other hand, oversees Malaysia's control over hazardous waste export, import, and transit.
- The Plastic Bags (Prohibition of Usage) Regulations of 2010 forbid the use of plastic bags in Malaysia, with the exception of certain circumstances such the packaging of food or medical waste.
- Act 720, the Recycling Fund Management Act of 2011, established the Recycling Fund and lays forth guidelines for its administration with the intention of fostering recycling practices in Malaysia.

It has been argued that solid waste management in Malaysia should be handled according to the Malaysian Standards for Management of Solid Waste, which includes collection, transportation, treatment, and disposal (Sreenivasan, et.al, 2012). Overall, Malaysia's waste management laws and regulations strive to safeguard both the environment and human health by making sure that trash is managed and disposed of in an environmentally sound manner, but there are several challenges in putting them into practice (Wee & Abas, 2016).

Lack of coordination and inconsistent implementation are factors that contribute to the issues. Although there is a general law on waste management, it is insufficient to solve the waste problem, as seen in the sequence of events below. This is evident in the way the court decides cases regarding waste issues.

The Trend of Court Case Regarding Waste in Malaysia

Overall, the cases gathered here involve the discharge of waste into inland waters. The issue of food waste littering has not yet been found. What's disturbing is despite food waste accounted to 60% of total waste but no action has been taken to address that thus far. It is found that from the case laws, the court did impose penalties on pollutants, but the judgment did not seem to address the issue of waste problem in particular food waste.

In this regard, Yong, et.al (2019) highlighted that as have been known that Malaysia currently generates 33,130 tonnes of solid trash each day, and by 2030, that number is anticipated to rise to 49,670 tonnes. This is a national concern since all sorts of solid waste generators must use efficient solid waste management to reduce the amount of solid trash they produce. The process of gathering, treating, and discarding solid waste that has served its function or is no longer useful is known as solid waste management.

The monitoring and control mechanism for solid waste considerably improves the solid waste management system. However, the blending of wet waste has made the monitoring of solid waste difficult. With such a large mixture of garbage produced, how can the amount of waste be reduced? Abd Ghafar (2017) emphasised that lack of organization and efficiency plagues the control. Yet again, treating solid waste is emphasized over wet waste, despite the fact that wet waste accounts for the majority of Malaysia's rubbish.

The case laws presented below serve as examples of how the court handled the waste issue, not much is done about it as far as food waste is concern. Although the results are encouraging, they haven't yet addressed the root of the waste issue, which is the everyday overflow of trash that people produce, everything from food waste.

In order to assess the governance model in waste management, the case laws for Malaysia and Singapore are analyzed. This is done to examine and rate the effectiveness of waste management. Even while Malaysia makes an effort to manage the trash issue, the punishment has not yet been able to stop major dumping, which leads to waste pollution. Singapore appears to fare better than Malaysia. One of them is stern enforcement and legislation that combats pollution on all fronts.

The courts' position in Malaysia

The cases involving environmental pollution in Malaysian cases refer to the issue of poor solid waste management but not quite about wet waste. As exemplified in the case of *Pendakwa Raya v L & K Bera Construction Sdn Bhd MLJU 1851*. The respondent's workers were ordered to deposit the industrial solid waste at an unauthorised premise and was charged with section 71(1) of The Solid Waste and Public Cleansing Management Act 2007 (SWMA 2007) governing the management of solid waste in Malaysia. Section 71(1) of the act specifies that any person who causes controlled solid waste to be deposited in a manner that is not in accordance with the provisions of the SWMA 2007 is committing an offense.

It is important to properly dispose of solid waste in order to maintain a clean and healthy environment. Failing to comply with the regulations set forth in the SWMA 2007 can result in penalties, including fines and possible imprisonment. The court found that the prosecution fail to prove the offense under section 71(1) of the Solid Waste and Public Cleansing Management Act 2007. In order for an individual to be found guilty under this section, the prosecution must demonstrate that the individual in question *inter alia* has deposited solid waste not categorized as controlled waste. If these element is not proven, the individual may be acquitted of the charges. What's troubling is that an acquittal does not necessarily mean the defendant is innocent; rather, it simply means the prosecution failed to meet its burden of proof to establish guilt beyond a reasonable doubt.

This case just serves to show that the court emphasizes the technical part more than the pollution offense committed, which the prosecutor has failed to prove. The issue is not whether the laws are thorough enough; rather, it is whether the act of disposing of industrial waste was actually done when the accused is apprehended and evidence is found on them.

Therefore, it can be said that this judgement does not effectively address the problem of poor waste management. Although the definition of controlled solid waste in the Act is less thorough than those in the Dangerous Drugs Act and the Environmental Quality Act, this shouldn't stop the court from carrying out its duty to punish polluters. The only way to protect the environment is to make those who pollute pay for the destruction they cause.

It is encouraging though to find that in the case of *Public Prosecutor v Prolific Yield Sdn Bhd [2021] MLJU 606* the polluters have been punished accordingly. The facts were the respondent is a private limited company which was convicted with two charges under section 16(1) of the EQA 1974 for releasing effluent to the soil exceeding the limit set at 200 mg/l which contravenes Compliance Schedule license number 003448. The Respondent was imposed with the sentences of a fine of RM13,000.00 for the first charge and a fine of RM15,000.00 for the second charge.

Seri Ulu Langat Palm Oil Mill Sdn Bhd [2022] MLJU 1648 is another instance where the polluters received a similar punishment. A Company had been found operating, in breach of the terms and conditions of the licence issued pursuant to s. 18(1A) of the Environmental Quality Act 1974 (the Act), an offence pursuant to s.16(1) of the Act. It was confirmed that the premises had discharged the treated effluent to the environment beyond the prescribed limits.

In the similar vein, a vegetable seller who illegally dumped agricultural waste was fined RM30,000. The same fate also befalls five men for polluting the environment. They were caught to be disposing such waste in an unauthorised premise which is an offence under section 71(1) of SWMA 2007. The prosecution in this case had suggested to the court that the accused be charged in accordance with the severity of their offence as it does not only harms the environment but could also pose a risk to public safety. All of them plead guilty for the charge and were fined for RM92,000.

The judges' perspective on waste management in Singapore

Singapore case is commendable. Even the act of throwing cigarette bud is considered offence of polluting the environment. In the case of *Public Prosecutor v. Yew (1996) 3 S.L.R. 566*, The

respondent had thrown a cigarette butt onto the floor of a shopping center. He did not deny the act, but asserted that the prosecution was further required to show that it was his intention to walk off without properly disposing of the cigarette butt. The court held that the prosecution had only to show that an accused committed the physical act of throwing away voluntarily and deliberately, not by accident. Once the act of throwing was shown to be a deliberate (and not accidental) act, the prosecution need not go further to show the presence of some blameworthy state of mind.

Another case involving throwing cigarette bud is in *Public Prosecutor v. Liang* (1997) 1 S.L.R. 534 case. The accused had even pleaded guilty to one charge of throwing a cigarette butt into a drain. He had committed the same offense four years prior to the instant offense, and that offense had been compounded for S\$200. For this second offense, the prosecution applied for a Corrective Work Order (CWO) which involves work performed under the supervision of a supervision officer and involves the cleaning of a public place since he was a repeated offender. The Magistrate declined the CWO and imposed 300\$ fine. The Prosecution appealed.

The meticulousness of the court is commendable. The Court upheld the appeal and determined that the implementation of section 21A(1) Environmental Public Health (Corrective Work Order) Regulations required either evidence of the commission of prior similar offenses or evidence of a serious littering offense, rather than proof of prior convictions, as a prerequisite for the imposition of a CWO.

Yet another commendable case is the case of *Chandra Kumar v. Public Prosecutor* (1995) 3 SLR 123. The appellant was tailed by enforcement officers while driving a motor vehicle. He dumped a load of wood waste. It is an offense to dump or dispose of any refuse, waste or any other articles from a vehicle in a public place or to use a vehicle for the purposes of such dumping according to section 20(1) of The Environmental Public Health Act 1968, Act 32 (EPA). He was convicted and was fined the maximum of S\$2,000, and the vehicle used was forfeited under section 20(4) EPA.

Conclusion

First of all, you'll see that the punishment did not specifically mention the type of waste. Everything is viewed as garbage, and enterprises like big service providers, multi-national organizations, and mechanical companies rarely face major repercussions for their misdeeds. The law must be strengthened in order to better govern waste management given the current circumstances. Poor waste management is a reflection of bad governance because the populace deserves a higher standard of living through an efficient waste management system and practice that not only enables waste to be recycled for improvement and a healthier life but also helps the country increase wealth while keeping a healthy and safe environment for this generation and those to come.

It is evident that there are significant negative effects on the environment and public health as a result of the failure to segregate at the source wet and dry waste. Food waste and wet waste must be disposed of appropriately to prevent the release of toxic gases, the spread of infectious diseases, and the depletion of natural resources.

The application of the polluter pay concept is one remedy for this issue. This principle encourages people and organizations to accept responsibility for their activities and embrace sustainable practices by holding them accountable for the waste they make. The enforcement of the polluter pay concept and the desire of people and organizations to abide by it, however, are what determine how effective it is.

The failure to segregate food waste and wet waste at the source must be addressed, and sustainable waste management techniques must be promoted. We can significantly contribute to protecting the health and wellbeing of our planet and its inhabitants if we cooperate and hold each other accountable. Ultimately, the PPP can be an effective tool for encouraging environmental stewardship, but because to its limitations, it should be used in concert with other policy tools to maximize its ability to protect the environment.

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References

- Abd Ghafar, S. W. (2017). *Food waste in Malaysia: trends, current practices and key challenges*. Centre of Promotion Technology, MARDI, Persiaran MARDI-UPM.
- Chandra Kumar v. Public Prosecutor [1995] 3 SLR 123
- Luppi, B., Parisi, F., & Rajagopalan, S. (2012). The rise and fall of the polluter-pays principle in developing countries. *International Review of Law and Economics*, 32(1), 135-144.
- Pendakwa Raya v L & K Bera Construction Sdn Bhd MLJU 1851
- Public Prosecutor v Prolific Yield Sdn Bhd [2021] MLJU 606
- Public Prosecutor v. Lim Niah Liang [1997] 1 S.L.R. 534 case
- Public Prosecutor v. Yong Heng Yew [1996] 3 S.L.R. 566,
- Schwartz, P. (2018). The polluter-pays principle. In *Elgar Encyclopedia of Environmental Law* (pp. 260-271). Edward Elgar Publishing.
- Seri Ulu Langat Palm Oil Mill Sdn Bhd [2022] MLJU 1648
- Sreenivasan, J., Govindan, M., Chinnasami, M., & Kadiresu, I. (2012). Solid waste management in Malaysia—A move towards sustainability. *Waste Manag. An Integr. Visions*, 2005(April 2005), 55-70.
- Wee, S., & Abas, M. A. (2016). A review of the public policy for solid waste management in Malaysia: An insight towards sustainable solid waste management. *Australian Journal of Basic and Applied Sciences*, 10(1), 58-64.
- Yong, Z. J., Bashir, M. J., Ng, C. A., Sethupathi, S., Lim, J. W., & Show, P. L. (2019). Sustainable waste-to-energy development in Malaysia: Appraisal of environmental, financial, and public issues related with energy recovery from municipal solid waste. *Processes*, 7(10), 676.