



MWA Mini Forum
On
“Do More to Enforce Environment Laws in Malaysia”

**Understanding the Environmental Laws in
Malaysia - Strengths and Weaknesses**

By
Mr Hon Kai Ping
Member and Ex-Chair Bar Council Malaysia
Environment and Climate Change Committee

Date : 10 March 2020

Agenda

- ▶ **Introduction - Environmental Quality Act 1974 and related Water Services Industry Act Act 655**
- ✓ Preamble & Snapshot of the various sections
- ✓ Related Regulations and Orders EQA 1974
- ✓ Section 121 WSIA 2006
- **Legal Aspects**
- ✓ Enforcement
- ✓ Penalties
- ✓ List of Cases Action Taken
- ✓ Case Studies (photos)
- **Shortcomings and Strengths**
- **Review of EQA 1974**
- **Suggestions to Improve**

Introduction - Environmental Quality Act 1974 and related Water Services Industry Act Act 655

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- ✓ Section 121 WSIA 2006



LAWS OF MALAYSIA

REPRINT

Act 127

ENVIRONMENTAL QUALITY ACT 1974

Incorporation all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

Restrictions on pollution of inland waters

25. (1) No person shall, unless licensed, emit, discharge or deposit any environmentally hazardous substances, pollutants or wastes into any inland waters in contravention of the acceptable conditions specified under section 21.

(2) Without limiting the generality of subsection (1), a person shall be deemed to emit, discharge or deposit wastes into inland waters if—

(a) he places any wastes in or on any waters or in a place where it may gain access to any waters;

(b) he places any waste in a position where it falls, descends, drains, evaporates, is washed, is blown or percolates or is likely to fall, descend, drain, evaporate or be washed, be blown or percolated into any waters, or knowingly or through his negligence, whether directly or indirectly, causes or permits any wastes to be placed in such a position; or

(c) he causes the temperature of the receiving waters to be raised or lowered by more than the prescribed limits.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both and to a further fine not exceeding one thousand ringgit a day for every day that the offence is continued after a notice by the Director General requiring him to cease the act specified therein has been served upon him.

Prohibition of discharge of oil into Malaysian waters

27. (1) No person shall, unless licensed, discharge or spill any oil or mixture containing oil into Malaysian waters in contravention of the acceptable conditions specified under section 21.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both.

Offences by bodies of persons and by servants and agents

43. (1) Where an offence against this Act or any regulations made thereunder has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, or other similar officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he had exercised all such diligence as to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Whenever it is proved to the satisfaction of the court that a contravention of the provisions of this Act or any regulations made thereunder has been committed by any clerk, servant or agent when acting in the course of his employment the principal shall also be held liable for such contravention and to the penalty provided thereof unless he proves to the satisfaction of the court that the same was committed without his knowledge or consent or that he had exercised all such diligence as to prevent the same and to ensure the observance of such provisions: Provided that nothing in this section shall be deemed to exempt such clerk, servant or agent from liability in respect of any penalty provided by this Act or regulations made thereunder for any contravention proved to have been committed by him.

Compounding of offences

45. (1) The Director General or any Deputy Director General, or any other public officer or any local authority to whom the Director General has delegated such power in writing, may compound any offence under this Act or the regulations made thereunder which is prescribed by the Minister to be a compoundable offence by accepting from the person reasonably suspected of having committed the offence a sum of money not exceeding two thousand ringgit.

(2) The Minister may make rules to prescribe the method and procedure for compounding such offences.

“monitoring programme” means all actions taken and equipment used for the purpose of detecting or measuring quantitatively or qualitatively the presence, amount or level of any substance, characteristic or effect;

“occupier” means a person in occupation or control of—

- (a) any premises;
- (b) in relation to premises where different parts of which are occupied by different persons, the respective persons in occupation or control of each part; or
- (c) any vehicle, ship or aircraft;

“oil” means—

- (a) crude oil, diesel oil, fuel oil and lubricating oil; and
- (b) any other description of oil which may be prescribed by the Minister;

“owner” in relation to—

- (a) any premises, means—
 - (i) the registered proprietor of the premises;
 - (ii) the lessee of a lease including a sublease of the premises, whether registered or otherwise;
 - (iii) the agent or trustee of any of the owners described in subparagraphs (i) and (ii) of this definition or where the owner as described in subparagraphs (i) and (ii) cannot be traced or has died, his legal personal representative; or

(iv) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive if the premises were let to a tenant;

(b) any ship, means—

- (i) the person registered as the owner of the ship;
- (ii) in the absence of registration, the person owning the ship;
- (iii) in the case of a ship owned by any country and operated by a company which in that country is registered as the ship's operator, "owner" shall include the country; or
- (iv) the agent or trustee of any of the owners described in subparagraphs (i), (ii) and (iii), or where the owner as described in subparagraphs (i) and (ii) cannot be traced or has died, his legal personal representative;

(c) any vehicle or aircraft, means the person registered as the owner of the vehicle or aircraft;

"pollutants" means any natural or artificial substances, whether in a solid, semi-solid or liquid form, or in the form of gas or vapour, or in a mixture of at least two of these substances, or any objectionable odour or noise or heat emitted, discharged or deposited or is likely to be emitted, discharged or deposited from any source which can directly or indirectly cause pollution and includes any environmentally hazardous substances;

Related Regulations and Orders EQA 1974

- ▶ Mention some below in passing due to time constraint:
- ▶ Environmental Quality (Prescribed Premises)(Scheduled Waste Treatment and Disposal Facilities) Regulations
- ▶ Environmental Quality (Sewage) Regulations 2009
- ▶ Environmental Quality (Control of Pollution from Solid Waste Transfer Station and Landfilling) Regulations 2009
- ▶ Environmental Quality (Industrial Effluent) Regulations 2009
- ▶ Environmental (Scheduled Wastes) Regulations 2005



LAWS OF MALAYSIA

Act 655

WATER SERVICES INDUSTRY ACT 2006

GENERAL OFFENCES AND PENALTIES

Offence of contamination of water

121. (1) A person who contaminates or causes to be contaminated any watercourse or the water supply system or any part of the watercourse or water supply system with any substance—

- (a) with the intention to cause death;
- (b) with the knowledge that he is likely to cause death; or
- (c) which would likely endanger the life of any person,

commits an offence.

(2) A person found guilty of an offence under subsection (1), on conviction—

- (a) where death is the result of the act, shall be punished with death or imprisonment for a term which may extend to twenty years, and where the punishment is not death, he shall also be liable to whipping;
- (b) where death is not the result of the act but the substance which is used to contaminate the watercourse or water supply system or any part of the watercourse or the water supply system is a radioactive or toxic substance, shall be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding five hundred thousand ringgit or to whipping or to all three; or

- (c) in any other case, shall be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.
- (3) It shall not be a defence for the person who is charged with an offence under this section that the licensee who owns the water supply system or who provides the water supply services did not take any action to stop the supply of water as soon as it became aware that the watercourse or the water supply system had been contaminated.

Bar Council wants govt to take firm action against water polluters

Sunday, 16 Jun 2019 01:25 PM MYT
BY AZRIL ANNUAR

Press Release



KUALA LUMPUR, June 16 – Malaysian Bar president Abdul Fareed Abdul Gafoor today urged Putrajaya to take stern enforcement action against culprits behind industrial pollution damaging the environment, saying that environmental rights are part and partial of basic human rights.

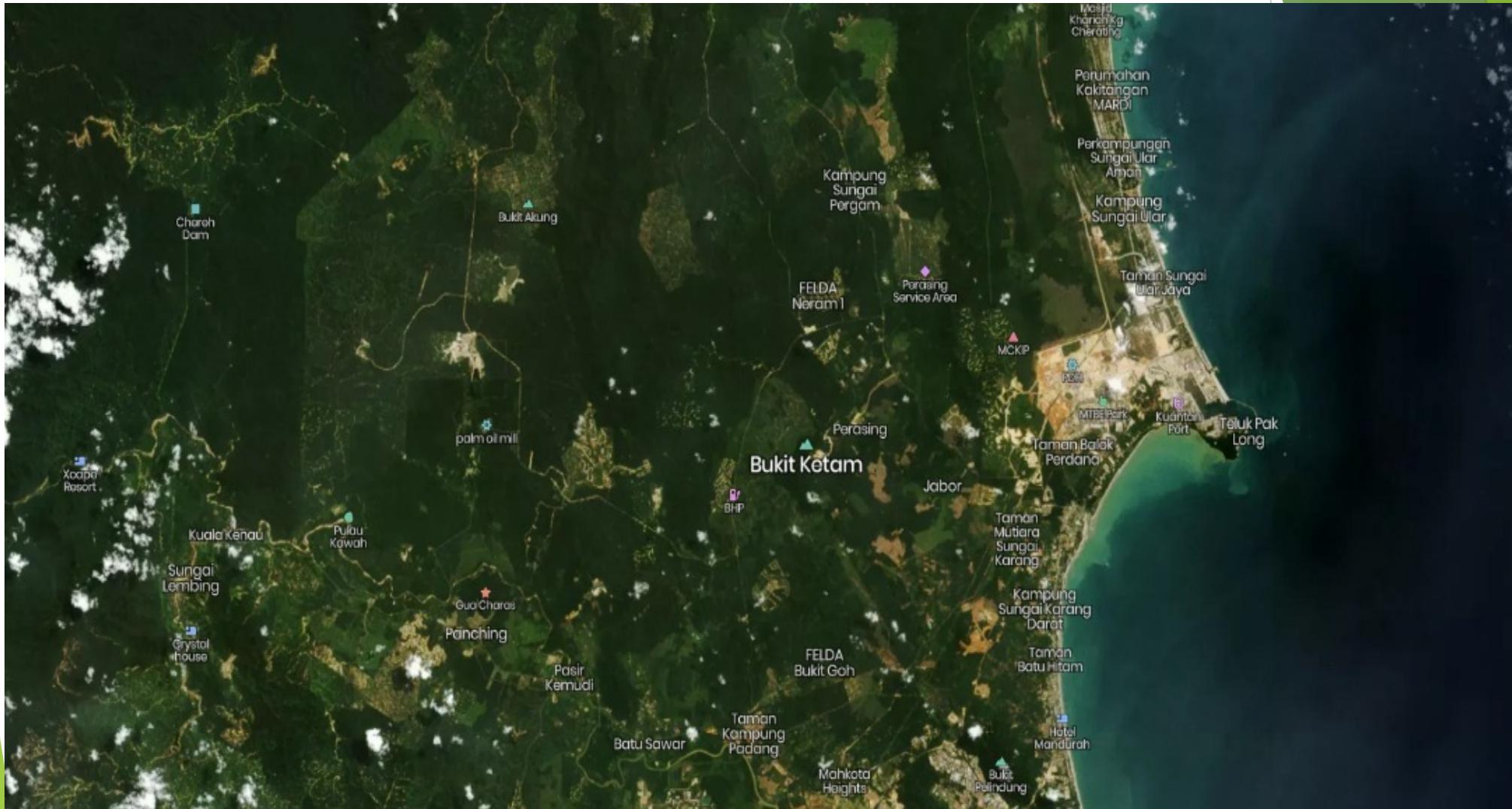
Abdul Fareed pointed out recent cases such as the Sungai Kim Kim pollution in Johor and the Orang Asli Batek tribe in Kelantan suffering from possible water contamination as examples of weak enforcement by the government.

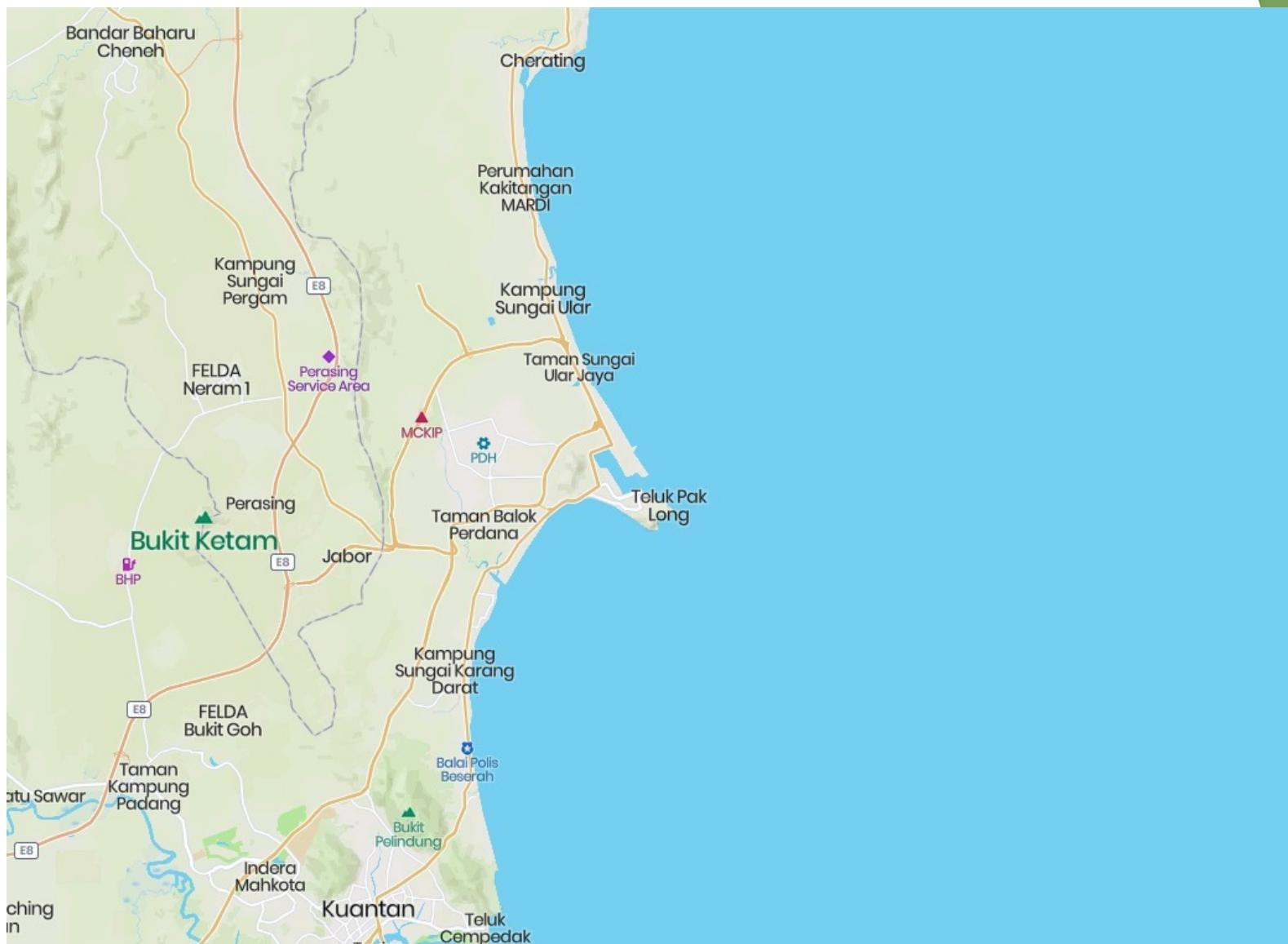
“It is disheartening to note that environmental pollution by industries continues to be prevalent, despite the existence of legislation to counter this menace.

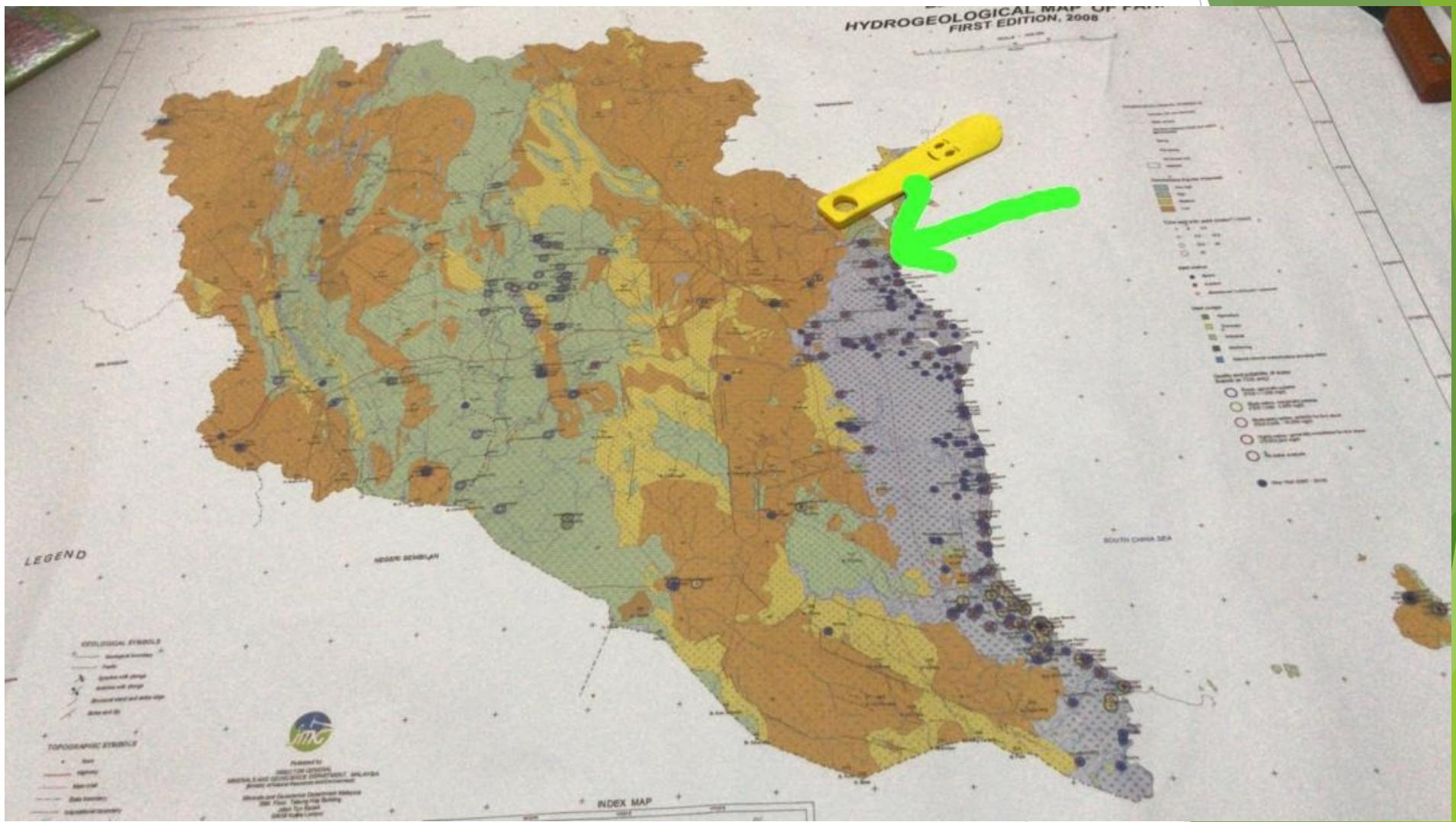
“The Malaysian Bar calls on the government to take immediate action to ensure the effective enforcement of environmental laws in order to curb activities that have adverse and irreversible effects on the environment as well as the health of present and future generations of all Malaysians.

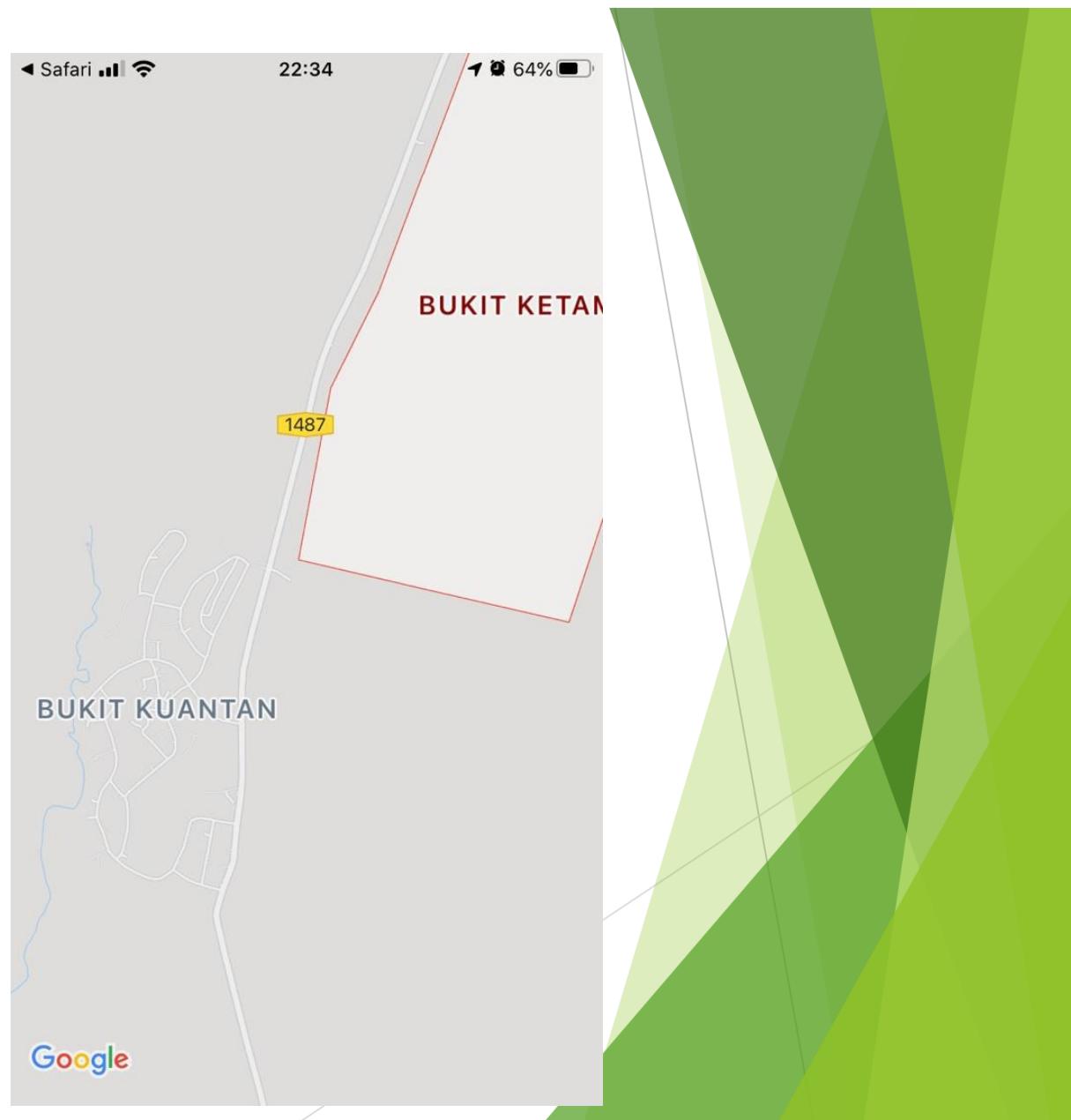
Legal Aspects

- ✓ Enforcement - issues and ineffectiveness
- ✓ Penalties - insufficient deterrent
- ✓ List of Cases Action Taken - (to flash through briefly)
- ✓ Case Studies (photos)





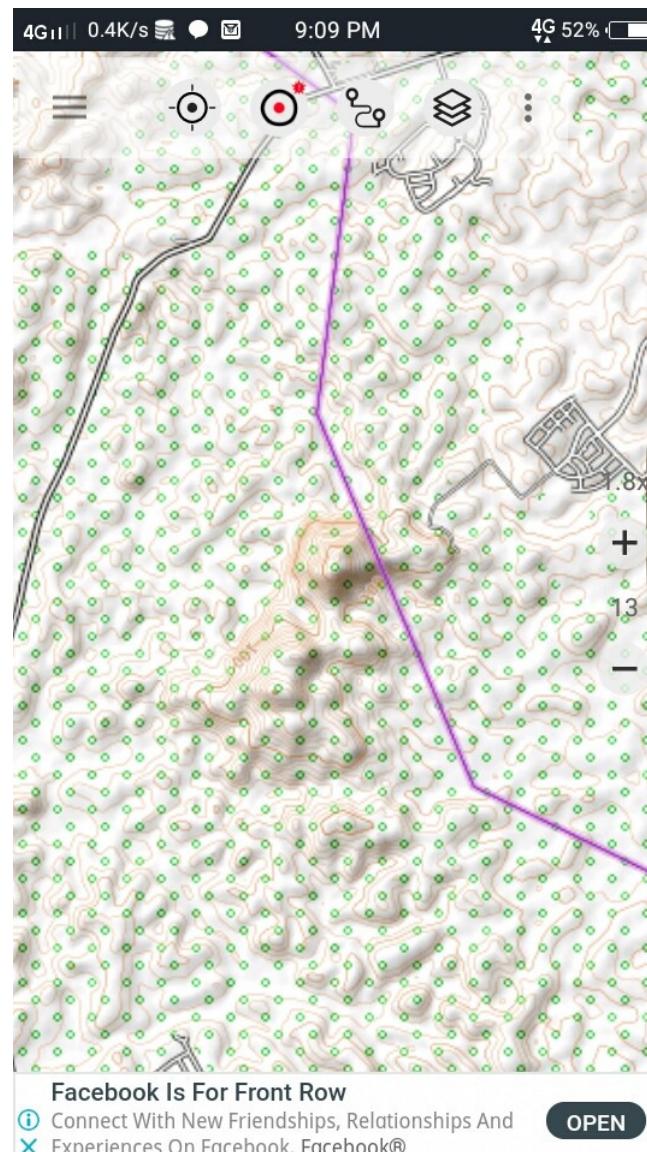






Bukit Ketam

Kuantan Pahang













Shortcomings and Strengths

- ▶ **Shortcomings:** Challenges in obtaining evidence. 110 cases for the whole of 2019. Only 15 on water pollution. Penalties ie fines but no imprisonment.
- ▶
- ▶ Wide discretionary powers given to the authorities. Lack of people empowerment. Law of defamation!?
- ▶
- ▶ **Strengths:** SOP in placed but lack of manpower.

Review of EQA 1974

- ▶ Proposed amendment to the EQA for a new “**Environment Protection Act**”
- ▶
- ▶ With **91** sections instead of the current **51**.
- ▶
- ▶
- ▶ **Key words:** Environmental sustainability, guided self regulation, precautionary principle, Go Green
- ▶ The creation of a more powerful **Environmental Quality Protection Council or Board.**
- ▶
- ▶ **Cover more areas and aspect of development** including land usage, water supply, transport passageway, coastal changes, health risks, water supply, hydrology, climate change, disaster management, economic and social areas!
- ▶
- ▶ New **Climate Change Act**. Like the UK one? Requires the emissions of carbon dioxide and other greenhouse cases be reduced and climate change risks prepared for.
- ▶

Suggestions to Improve

- ▶ Laws: To allow for **mandatory people's committee**. With financial support.
- ▶ Everything available **on line**. Including able to complain on line.
- ▶ Increase of **manpower and budget**.
- ▶ Usage of latest **monitoring technologies**.
- ▶ **Education**.
- ▶ **Transparency**. Example EIA : ECRL: Klang to Mentakab. Can purchase RM1,700 for the EIA Report .
- ▶ Incentives to be given for **Green Technologies** or companies.
- ▶ **Ombudsman**. Professionals to head Important departments who are objective, independent and with integrity.

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grazas

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thank you

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gratias ago

Благодарю вас

谢谢

tack

kiitos

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GRAZIE

gracias

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