

Understanding the Concept of Legal System and Legal Framework in Relation to the Research



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُونِيسْتِي اِسْلَام اِنْتَارَاڠِينِيَا مِلَيْسِيَا
Garden of Knowledge and Virtue



By

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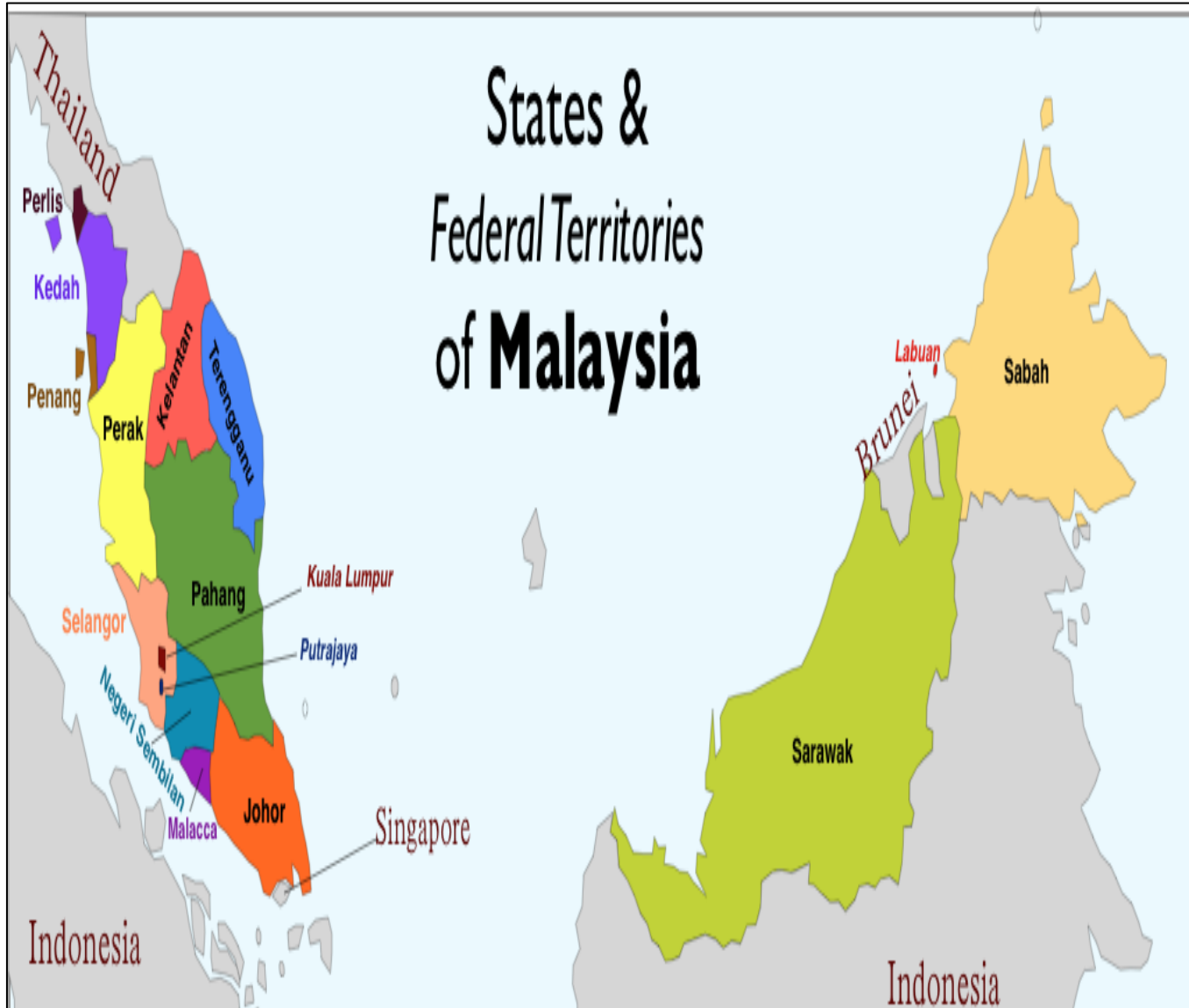
Ahmad Ibrahim Kulliyyah of Laws

IIUM

Topics:

1. The concept of legal system
2. The Division of Law
3. The concept of legal framework

Malaysia as a Federal System of Government



System of Government in Malaysia

Malaysia has a three-tier system of government:

Federal level

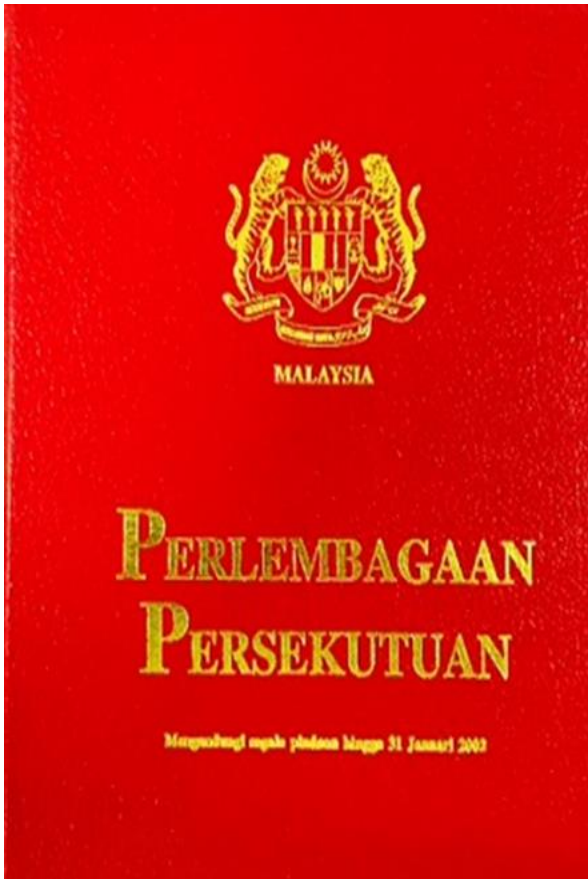


State level



local level

The Constitution



- The Constitution is the supreme law.
- Federal, State and local governments have powers to enact law.
- Parliament & State Legislative Assembly.
- Division of powers Federal & State is based on the Constitution.

- **Example of Federal matters:** Defence, Internal security, finance, defence, trade, education, medicine and health, industries, shipping, electricity, water supply & rivers (except wholly within one state), tourism, treaties with other countries, civil and criminal law, citizenship, .
- **Example of State matters:** Islamic law matters, land matters, forests, local government matters, river (wholly within a state), turtles, historical monuments.
- **Example of concurrent matters:** Social welfare, wild animals, drainage & irrigation, culture, heritage preservation.

Examples of Federal Law Relating to the environment

<ol style="list-style-type: none"> 1. Aboriginal Peoples Act 1954 2. Animals Act 1953 3. Atomic Energy Licensing Act 1984 4. Baselines of Maritime Zones Act 2006; 5. Continental Shelf Act 1966 6. Drainage Works Act 1954 7. Exclusive Economic Zone Act 1984 8. Factories and Machineries Act 1967 9. Fisheries Act 1985 10. Food Act 1983 	<ol style="list-style-type: none"> 11. International Trade in Endangered Species Act 2008 12. Irrigation Areas Act 1953 13. Land Acquisition Act 1960 14. Land Conservation Act 1960 15. Local Government Act 1976 16. Malaysian Maritime Enforcement Agency Act 2004 17. Malaysian Quarantine and Inspection Services Act 2011 	<ol style="list-style-type: none"> 18. Merchant Shipping Ordinance 1952 19. Mineral Development Act 1994 20. National Forestry Act 1984 21. National Heritage Act 2005 22. National Land Code 23. National Parks Act 1980 24. Occupational Safety and Hazardous Act 1994 25. Penal Code 26. Pesticides Act 1974 27. Petroleum Mining Act 1966 	<ol style="list-style-type: none"> 28. Renewable Energy Act 2011 29. Solid Waste and Public Cleansing Management Act 2007 30. Street, Drainage and Building Act 1974 31. Suruhanjaya Perkhidmatan Air Negara Act 2006 32. Sustainable Energy Development Authority Act 2011 33. Town and Country Planning Act 1976 34. Water Act 1920 35. Wildlife Conservation 2010
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- **Example of Legislations**
- Acts are laws enacted by Parliament
- Enactment & Ordinance enacted by state legislative assembly.
- **Examples of Subsidiary Legislations:**
- Bylaws/undang-undang kecil
- Rules, Regulations, Orders



• CASE LAW

944

Current Law Journal

[2014] 4 CLJ

NIK NAZMI NIK AHMAD

v.

PP

COURT OF APPEAL, PUTRAJAYA

MOHAMAD ARIFF YUSOF JCA

MAH WENG KWAI JCA

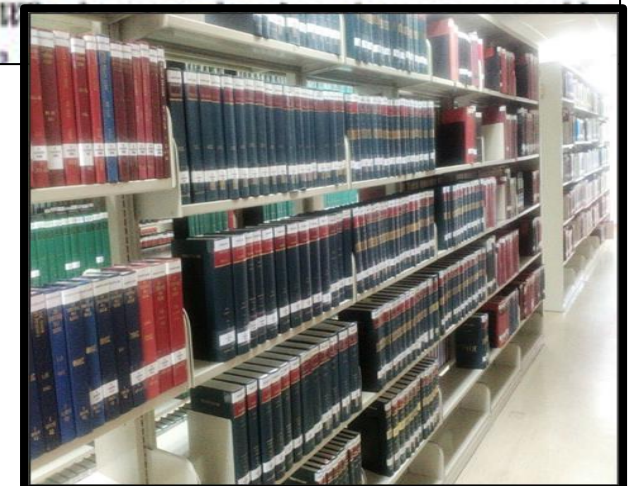
HAMID SULTAN ABU BACKER JCA

[CRIMINAL APPEAL NO: B-09-303-11-2013]

25 APRIL 2014

[2014] CLJ JT(4)

CRIMINAL LAW: Peaceful Assembly Act 2012 - Section 9(1) and 9(5) - Failure by organiser of assembly to give police ten days' notice - Restrictions under s. 9(1) - W restriction on right of citizens to



UNDERSTANDING DIVISION OF LAW RELEVANT TO THE RESEARCH

- Public and Private Law
- Criminal Law and Civil Law/tort
- Domestic Law and International Law

PUBLIC LAW

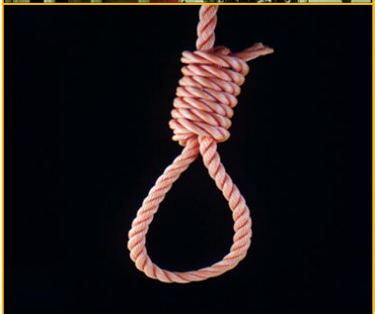
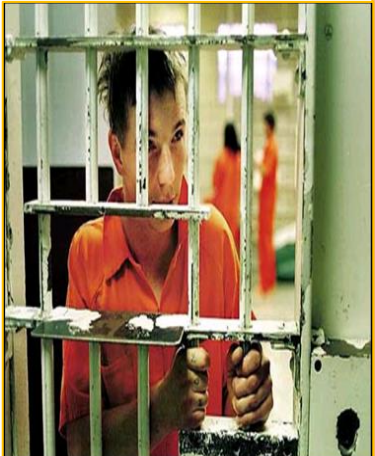
- **Public Law** - laws that deal with the relationship between the state and its citizens.
- Examples of public law : Constitutional Law, **Criminal Law**, and so on.

PRIVATE LAW

- **Private law** deals with the relationship amongst private citizens.
- Examples: civil Law/ **Torts**, Law of Contract, Family Law, and so on.

CRIMINAL LAW

- Criminal Law regulates crime in the society.
- It punishes acts which are harmful to the society.



- Under criminal, the guilty person liable to be punished.
- form of punishment: Fine, jail, death, whipping
- Public prosecutor prosecute the case on behalf of the government in court.
- If PP wins the case, the defendant will be convicted.
- If defendant wins the case, he will be acquitted.
- **Can children committed crime be punished under criminal law?**

CIVIL LAW/TORT

- Civil law/tort deals with the relationship between citizens.
- It provides remedies if right of a citizen is breached.



- If a person suffers injury caused by someone else's actions, he can bring a civil action against that person.
- The person bringing the suit is the 'plaintiff'.
- The person being sued is 'defendant'.
- Remedy: compensation

Criminal cases

Man jailed for causing death of lover's son

NATION

Thursday, 15 Sep 2011

12:00 AM MYT



AMPANG: A construction worker who left his girlfriend's son in a car overnight was sentenced to three years' jail by the Sessions Court here.

Hooi Wai Chor, 35, pleaded guilty to causing the death of 19-month-old Low Hong Jun.

Judge Manira Mohd Nor ordered the sentence to run from the date of arrest on April 21.

DPP Zuraini Ab Hamid prosecuted while counsel Mary Song represented Hooi.

Hooi was charged with committing culpable homicide not amounting to murder for causing the death of Hong Jun in front of his house at Taman Sri Watan, Ampang Jaya, Ampang between 2am and 12pm on April 21 this year.

Teacher pleads not guilty to trafficking in Cambodian maid
He is accused of not paying the maid salary for nine months and eight days. -
The Star/ANN

Sat, Oct 22, 2011

The Star/Asia News Network

KUALA LUMPUR - A tuition teacher claimed trial at an Ampang Sessions Court to a charge of trafficking his 23-year-old Cambodian domestic helper. Lim Chee Chong, 41, who teaches at Pusat Tuisyen Cikgu Sim in Pandan Indah, pleaded not guilty before judge Sarimah Hashim.

He was accused of trafficking Khy Sareth for means of exploitation by not paying her salary for nine months and eight days from Nov 25 last year to Sept 2, amounting to RM5,400 (S\$2,185).

The offence was allegedly committed at No 62, Jalan Pandan Indah 5/18, Taman Pandan Indah in Ampang at 3.45pm on Sept 2.

Lim was charged under Section 12 of the Anti-trafficking in Persons and Anti-smuggling of Migrants 2007 Act.

He faces a maximum 15 years' imprisonment and could be fined upon conviction.

Deputy public prosecutor Zuraini Ab. Hamid offered bail of RM20,000 and asked the court to impound Lim's passport.

However, defence counsel Keppy Wong requested that bail be set at RM3,000 on grounds that his client surrendered himself to the police and had cooperated fully.

"My client has been teaching for 13 years and the offence does not involve physical harm," Wong said.

Sarimah fixed bail at RM20,000 with one surety and ordered Lim to surrender his.

Example of Tort case

Lee Boon Tien & Ors v Hiap Lee (Petrol) Sdn Bhd & Ors [2010] 2 MLJ 836

- **Plaintiff's arguments:**
- Defendant constructed a petrol station in the middle of a residential area;
- the location of the station endangered the health and safety of the plaintiffs and experienced physical and emotional suffering as a result of being constantly exposed to gasoline fumes or petrol smoke;
- the presence of vehicles at the premises caused loud noises which detrimentally affected the plaintiffs;
- Risk of an explosion occurring due to the presence of an underground petrol storage tank at the premises.

- The plaintiffs exhibited a copy of medical report which allegedly proves the detrimental effects experienced by them as a result of being exposed to the petrol vapour and/or fumes .
- The report prepared by Dr Ding from the Puteri Specialist Hospital Johor Bahru states that the patient had 'claimed to have been exposed to petrol fumes. The risk of inhalation of fumes can lead to risk respiratory disorder'.
- Judge finding: Dr Ding did not make an actual diagnosis of the illness suffered by the patient but merely repeated the patient's allegation that she had been exposed to petrol fumes.
- As such, there is no conclusive evidence and/or proof which would substantiate the plaintiffs' allegation that the patient had suffered from illness as a result of being exposed to petrol fumes.
- In any event, the plaintiffs have failed to tender any scientific or conclusive proof that petrol fumes cause giddiness and nausea amongst adults and/or **children** as the plaintiffs have contended.
- There is no scientific or credible medical evidence to substantiate the plaintiffs' allegation of a **cause and effect relationship**.
- **Court concluded:** The report lacks any corroborating details in order to show that there was an emission of poisonous gas and odour as contended by the plaintiffs. there is no scientific proof that transient petrol vapour or fumes causes giddiness and/or nausea amongst adults and/or **children** as alleged by the plaintiffs.

Conclusion: Environmental law can either be criminal law or civil law/tort.



DIFFERENCES BETWEEN DOMESTIC LAW AND INTERNATIONAL LAW



- International law is the law between countries.
- It regulates the relationship between different independent countries.
- Usually in the form of treaties.
- Treaties are formal agreements between countries.
- Thus, a nation can choose not to accept and comply with the rules of a treaty.
- A treaty creates binding legal commitments.
- A country incorporates a treaty by passing domestic legislation that gives effect to the treaty in the national legal system.
- Example: Convention on the Rights of the Child.

Component of Malaysian Legal System : Stakeholders



Component of Legal Framework

- Policy
- Law
- Institution

- **WHAT IS A POLICY?**

- A policy is a document that outlines what a government is going to do and what it can achieve for the society as a whole.
- It also outlines methods and principles that the government will use to achieve its directive.

- **LINK BETWEEN POLICY AND INTERNATIONAL LAW**

- Malaysia's policy and law on children, environment and health were highly influenced by the United Nations conventions.
- Examples:
 - United Nations Conference on the Human Environment 1972
 - Convention on the Rights of Persons with Disabilities

- **LINK BETWEEN POLICY AND DOMESTIC LAW**

- Policy is a broad statement of intent providing guidance for action.
- It outlines what a government is going to do and what it can achieve for the society as a whole. Policies are only documents and not law, but these policies can lead to new laws.
- Laws are set standards, principles, and procedures that must be followed in society.
- Laws are administered through the courts.

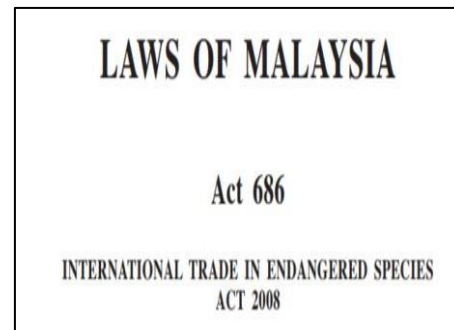
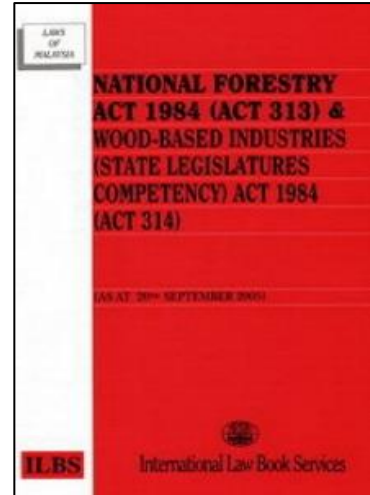
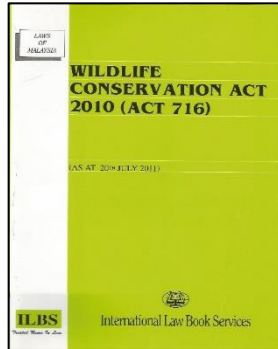
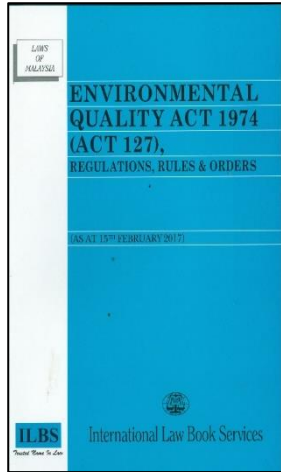
Examples of International Principles that have been applied As National Policies

- **Sustainable Development and the SDG**
- Stockholm Conference in 1972.
- the World Commission on Environment and Development (WCED), also known as the Brundtland Commission 1987
- The Brundtland Commission: “Sustainable development is development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs”.
- 2015: The United Nations Sustainable Development Goals (SDGs) are 17 goals with 169 targets that all 191 UN Member States have agreed to try to achieve by the year 2030.
- SDG is a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity.

SUSTAINABLE DEVELOPMENT GOALS



Law and Regulatory Agencies



- Department of Environment
- Department of Wildlife & National Park
- Forestry Department of Peninsular Malaysia & State Forest Department
- Fisheries Department
- Department of Wildlife and National Parks, Department of Fisheries, Malaysian Timber Industry Board, Department of Agriculture