



# Climate Change Litigation in the Asia Pacific

Edited by Jolene Lin and Douglas A. Kysar

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# CLIMATE CHANGE LITIGATION IN THE ASIA PACIFIC

This is the first scholarly examination of climate change litigation in the Asia Pacific region. Bringing legal academics and lawyers from the Global South and Global North together, this book provides rich insights into how litigation can galvanize climate action in countries including Pakistan, Indonesia, Malaysia and China. Written in clear and accessible language, the fourteen chapters in this book shed light on the important question of how litigation may unfold as a potential regulatory pathway towards decarbonization in the world's most populous region.

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CLIMATE CHANGE  
LITIGATION IN THE ASIA  
PACIFIC

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# Climate Change Litigation: A Possibility for Malaysia?

MAIZATUN MUSTAFA

## Introduction

Managing climate change impacts is one of the greatest challenges facing the global community at present. The consequences of ongoing human activities that emit anthropogenic greenhouse gases (GHG) are dreadful both in the short and long run as well as on local and international levels.<sup>1</sup> Impacts related to climate change are evident across regions and in various sectors. At the domestic level, climate change-related harm could include impact to human health, agriculture and food security, water supply, or damage to public infrastructure and settlements.<sup>2</sup> The inevitable climate change consequences have raised the question of who should bear the risk of climate harm, is it the industry, the government, or the private individual? A worldwide trend is emerging where governments and entities are blamed for their responsibility in causing the detrimental effects of climate change. Lawsuits have been filed against legislators and policymakers relating to their approach to climate change, in addition to litigations undertaken challenging the validity of a climate change law or seeking to fill any gap within the law. In many situations, climate change policy is shaped when parties continue to turn to the courts in order to protect their interests.<sup>3</sup>

For a developing country such as Malaysia, economic development is often pointed out to be the cause of environmental issues, as well as

<sup>1</sup> M. Mustafa, S. Z. Syed Abdul Kadir, and S. Sufian, "Coping with Climate Change through Air Pollution Control: Some Legal Initiatives from Malaysia" (2012) 33 *International Proceedings of Chemical, Biochemical, and Environmental Engineering* 101, presented at the 2012 International Conference on Environment, Energy and Biotechnology.

<sup>2</sup> Ministry of Natural Resources and Environment, Malaysia, *Malaysia Biennial Update Report to the UNFCCC* (MNRE 2015).

<sup>3</sup> United Nations, *The Status of Climate Change Litigation. A Global Review* (UNEP 2017).

the increase in GHG emissions.<sup>4</sup> International commitment and global pressure have led Malaysia to take some measures, relying on Acts of Parliament and government policies as primary instruments to address climate change.<sup>5</sup> Being a country with strong parliamentary traditions, environmental issues including that pertaining to climate change are governed predominantly by federal law and enforced by related government agencies.<sup>6</sup> In as much as Malaysia is putting serious efforts on combating climate change, litigation has not played a significant role in shaping its climate change policy. As compared to other countries, Malaysia's climate change regulatory instruments have been slower to develop.<sup>7</sup> While litigious culture is not common among Malaysian society, factors such as the state of the judiciary, limited access to justice, limited environmental awareness, and limited recognition of environmental rights have further undermined litigation in the area of environment and climate change.<sup>8</sup> The aims of this chapter are to investigate Malaysia's policy and law relating to climate change and to identify areas of law that can become potential tools directly or indirectly pertinent to climate change litigation. All over the world, litigation has progressively been seen as an effective means in promoting climate change mitigation and adaptation. This chapter is meant to discover whether Malaysia would follow the global trend or whether it is adamant that legal responses to climate change should be based on its local circumstances using different strategies that are not necessarily litigious in nature.

### 8.1 Malaysia's Climate Change Commitments

The status of Malaysia's environmental quality is very much related to its economic growth. A number of economic activities from various sectors have been identified to be the main sources of environmental pollution. Excessive fossil fuel usage and changes in land use are considered to be

<sup>4</sup> Department of Environment Malaysia, *Annual Report* (DOE 2015).

<sup>5</sup> Economic Planning Unit Malaysia, *Eleventh Malaysia Plan 2016–2020* (EPU 2016).

<sup>6</sup> M. Mustafa, *Environmental Law in Malaysia*, 3rd ed. (Kluwer Law International 2016).

<sup>7</sup> United Nations (n 3).

<sup>8</sup> A. Harding, *Access to Environmental Justice: A Comparative Study* (Martinus Nijhoff Publishers 2007); C. K. Gan and others, "An Overview on the Public Interest Litigation in Malaysia: Development and Dilemma under Provision of Remedies for Enforcement of Fundamental Rights" (2016) 7(2) *Mediterranean Journal of Social Sciences* 114; G. S. Nijar, *Public Interest Litigation: A Matter of Justice An Asian Perspective* (ASEAN Law Association, 2006), [www.aseanlawassociation.org/9GAdocs/Malaysia.pdf](http://www.aseanlawassociation.org/9GAdocs/Malaysia.pdf), accessed 1 May 2018.

Table 8.1 GHG emissions by sector in Malaysia

Sectors	Emissions percentage
Energy	76
Waste	12
Industrial processes	6
Agriculture	5
Land use, land use change, and forestry (LULUCF)	1

Source: Ministry of Natural Resources and Environment<sup>9</sup>

the main reasons for the considerable increase in anthropogenic GHG emissions.<sup>10</sup> Table 8.1 below illustrates sectoral sources' percentages of GHG emissions within the energy sector, such as energy industries, transport, manufacturing, and construction, followed by waste, industrial processes, and agricultural sectors.

With 0.4 percent of the world's population, Malaysia's 31 million people accounted for 0.6 percent of the global carbon emissions. Malaysia's carbon emissions growth is one of the fastest, namely by 221 percent from 1990 to 2004.<sup>11</sup> Rapid transformation from an agricultural to an industrialized economy in the last forty years, apart from expansion in industrial and automotive sectors, the overdependence on fossil fuel, unsustainable waste management, and forest conversion, has contributed to the rapid increases in GHG emissions.<sup>12</sup> The International Energy Agency reported that Malaysia's carbon emission was a total of 220 million tonnes for 2015, which was an increase of nearly 300 percent

<sup>9</sup> Ministry of Natural Resources and Environment Malaysia, Malaysia Biennial Update Report to the UNFCCC (n 2).

<sup>10</sup> Ministry of Natural Resources and Environment Malaysia, Malaysia Biennial Update Report to the UNFCCC (n 2); S.N. Salahudin, M. M. Abdullah, and N. Ahmad Newaz, "Emissions: Sources, Policies and Development in Malaysia" (2013) 1(7) International Journal of Education and Research 1.

<sup>11</sup> United Nations Development Programme, *UNDP Human Development Report 2007/2008 Fighting Climate Change: Human Solidarity in a Divided World* (UNDP 2007), [http://hdr.undp.org/sites/default/files/reports/268/hdr\\_20072008\\_en\\_complete.pdf](http://hdr.undp.org/sites/default/files/reports/268/hdr_20072008_en_complete.pdf), accessed 24 August 2018.

<sup>12</sup> Economic Planning Unit Malaysia, *Eleventh Malaysia Plan* (n 5).

'Governments everywhere have failed to take strong enough action to address climate change, and people are increasingly looking to the courts. Most of the litigation is in the United States and Europe, but the Asia Pacific region, which before long will have a majority of the world population, is beginning to see cases, and will soon see many more. This book makes an outstanding contribution by surveying many cases previously all but unknown to the English-speaking world, and, more importantly, identifying the ways that profoundly different legal systems can address one of humanity's greatest challenges.'

**Michael B. Gerrard**, *Columbia Law School, co-editor, Legal Pathways to Deep Decarbonization in the United States and Global Climate Change and U.S. Law*

'An animated collection of essays that opens up the legal mind to the realities and possibilities of the role of courts in addressing climate change, in legal cultures that have traditionally escaped the scholarly gaze.'

**Elizabeth Fisher**, *University of Oxford, author of Environment Law: A Very Short Introduction (2017)*

'This book has initiated a long overdue conversation on climate litigation: the question of the roles of litigation and judicial action can play in the world of climate change. If you are a climate scholar, reading this book would be like inviting an old friend for a long chat you desperately needed.'

**Linda Yanti Sulistiawati**, *Universitas Gadjah Mada, co-Editor, Environmental Rule of Law in Asia (2019)*

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