The Journal of Social Sciences Research
ISSN(e): 2411-9458, ISSN(p): 2413-6670
Special Issue. 6, pp: 628-637, 2018
URL: https://arpgweb.com/journal/journal/7/special_issue
DOI: https://doi.org/10.32861/jssr.spi6.628.637

Academic Research Publishing Group

Original Research Open Access

Analysing Punishment of Corporations in Water Pollution Case

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Abstract

For a stiffer penalty, punishment for the environmental violation was generally increased from Malaysian Ringgit 10,000 to Malaysian Ringgit 100,000 and from two years to five years imprisonment twenty years ago. Although the penalties are improved, the cases of environmental pollution and violation are yet increasing. This article examines the trend of punishment for environmental violations that imposed on the corporate entities or corporations. Focusing on the case of water pollution, the observations are made to the penalty's provisions of the Environmental Quality Act 1974 and the penalties imposed through the court judgment against the corporations. For this purpose, cases and charges of water pollution are obtained from the records of Department of Environment Malaysia. Moreover, views of the judges of the Green Court on both laws and judgments relating to penalties are acquired. The study found that: (a) there is a wide gap between the punishment imposed by law and the penalties positioned by court; (b) corporate entities are willing to pay fines; (c) courts are not ready to impose imprisonment for default of payment to the corporations or individuals within the corporations. Though addressing water pollution, the findings should be far-reaching surpassing other types of environmental pollution.

Keywords: Punishment; Corporation; Penalty; Environment; Pollution; Water.

1. Introduction

Environmental issues have been a growing concern of the modern societies and world populations nowadays. Problems of climate change, global warming, extinction of wild life animals, endangered species, depletion of natural resources, pollution, degradation of the ecosystem and other global phenomenon become worsen every day. In the case of pollution, problems are closely tied to the mode of development in developing countries, combining together with industralisation, urban development and mass consumption trends by the companies, plus the operating foreign companies that give little regard for the impact on the local environment (JICA, 2005). It is a typical reaction when blame is put on the one who put profits ahead of protecting the environment, namely the companies or corporations.

Corporations are referring to the industrial players whose industrial activities may cause harm to the environment thus violating the environmental legislations and regulations. Industries like food processing, chemical-based industries, electric and electronic, metal, papers, textile, palm oil, rubber-based products and plastic that involve variety and stages of processes produce by-products and wastes. While corporate entities should have significant roles in protecting the environment by ensuring their activities are not inconsistent with the legislations (Manap *et al.*, 2016), regrettably, the wastes are being disposed of contrary to the environmental laws in order to avoid financial and time cost if disposing legitimately (Lee and Detta, 2009).

It is widely known that environmental problems can be managed, solved or controlled by using science, technology and engineering measures. In addition, legislations also play the role thus making science and non-science are equally vital for environmental management. Consequently, almost all countries in the world own their legal frameworks that come in the forms of guidelines, rules, laws, legislations and regulations for the purpose of controlling pollution and overcoming the environmental problems. Legal approach as a non-science mechanism is also an answer for environmental problems (Wahab and Yaacob, 2014) through the implementation of the legislations (Razman *et al.*, 2011). The goal of the legislations in protecting the environment is closely related to the function of law as an instrument of social engineering (Yaqin, 1996). As proposed by Roscoe Pound's theory, "look at law as a tool rather than an end in itself" (Chand, 1994). In the context of environmental protection, the law is a tool that created to shape the society as well as to regulate the people's behaviour. In order to shape the society's behaviour, the functioning law as a control mechanism is indispensable. The controlling aspect may be executed by imposing sanctions or punishments. This means the law is not merely providing guidelines, determining standards or ensuring the monitoring aspects, but also imposing punishments to penalize the wrongdoers.

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This article analyses the punishments imposed on the corporations for cases of environmental violation in Malaysia. Focusing on water pollution, penalties provisions that contain in the Environmental Quality Act 1974 are analysed. Observations are also made to a number of environmental cases by looking at the penalties imposed by the legislations and the ones determined by the court. It is to note that these cases are involving corporate entities as the culprits, thus excluding the individuals. Interviews had also been carried out to acquire views of the judges on both law and judgment relating to penalty.

2. Principle of Punishment

Punishment comes from the root word of "punish", which means "the infliction or imposition of a penalty as retribution for an offence" (Oxford Dictionaries, 2016). According to A Dictionary of Law (2015), punishment is "a penalty imposed on a defendant duly convicted of a crime by an authorized court" where it "may be specified by a statute as a term of imprisonment or fine…". The definition tells that punishment is a penalty that inflicts on someone who had done wrong; and the penalty may come in the forms of fine or imprisonment that are imposed by court.

Principle of punishment is associated with the aims and objectives of sentencing namely deterrence, retribution, prevention and reformation (Ho, 2007). According to Mah (2000), deterrence means to dissuade the offender from committing offences in the future and to deter potential offenders from committing crime aiming to protect the public interest. This was mentioned in *PP v Loo Chang Hock* [1988] 1 MLJ 316. Retribution gives the notion that a sentence must reflect the community's abhorrence of particular types of crimes. This hope has been expressed by the High Court in *PP v Mohd Amin bin Mohd Razali* [2002] 5 MLJ 406 when it says the sentence passed on the accused persons served the public interest and reflected the public abhorrence of the crime committed by them.

In some occasion, the public can only be protected from the offenders if they are prevented from continuing their lives of crime (Ho, 2007). Prevention therefore is a punishment against the recurrence of an offence with the intention to prevent the offender from committing further crimes against the members of society. This is generally done by way of imprisonment. Reformation or also known as rehabilitation intends to reform an offender from being a criminal to being an honest and responsible person. This principle is considered when the offence is not so serious and the court may consider the interest of the accused, for example, a bond for a good behavior.

Therefore, according to the Honourable Judge Wan Yahya in *Safian b Abdullah & Anor*. [1983] 1 CLJ 324, at 325, punishment, sanction and sentencing should depend "on various considerations of facts and circumstances relating to the offence, the offender and public interest". For the current discussion, the punishment is for deterring and preventing pollution, from being further done by the corporation culprits.

2.1. Punishment of a Corporation

Offence of pollution is not truly criminal in nature but conventionally regarded as quasi-criminal although fines and imprisonment are possible (Loveless, 2008). To relate this with both the harm caused to the environment and the argument that corporations can be the subjects of criminal liability, the punishment of fines as well as imprisonment should become possible for the body corporate. However, as always been argued, the question is who shall be imprisoned on corporation's behalf? Subjecting the corporation to penalty rather than any individual member who may bear the responsibility has a number of advantages, namely (Wilson, 2008):

(a) helps to plug an evidential gap: In *Alphacell v Woodward* [1972] AC 824, it is not to show which company's employees had caused the river to become polluted but what was clear was that the river had become polluted through the defendant company's activities i.e. the company had caused the river to be polluted; and

(b) ensures that the bill for activities causing social harms is picked up by the entity i.e. the corporation which benefits by those activities. This prevents the company from passing the responsibility.

Therefore, the object of punishing companies is to prevent harm, not to apportion blame (Wilson, 2008). Individual can be punished separately on retributive grounds but the company needs to be sanctioned as well for a more effective enforcement. To relate this with the principle of responsibility, people should only be guilty in respect of conduct for which they are responsible (Herring, 2004). In other words, people should not be guilty for the conduct over which they had no control. In the case of corporations, blame and guilty should be posted to both the corporations and the person/s responsible for the pollution. However, in the case of *Pharmaceutical Soc v London & Provincial Supply Assoc* (1880) 5 App Cas 857, the court said that corporations cannot be convicted for an offence which imposes a mandatory penalty of imprisonment.

2.2. Corporation as an Entity

The word company and corporation are commonly used interchangeably. Although having different technical terms, meanings and implications, the words have been identically used when the aim is for business, trade gains and profits. Therefore, the word company implies an association of a number of persons with a common objective, often, but not always, to carry on business for profit (Lee and Detta, 2009). Buckley J. had pointed out in *Re Stanley* [1960] 1 Ch 131, at page 134 that:

…the word company has no strictly technical meaning. It involves two ideas, (a) that the association is of persons so numerous as not to be aptly described as a firm; (b) that the consent of all the other members is not required to the transfer of a member's interest. It may include an incorporated company.

By virtue of section 16(5) of the (Companies Act 1965 (Act 125), 2013) of Malaysia, a company is a 'person' with its own separate entity as consequence of its incorporation. Hence, once a company being registered, it gives rise to a few consequences namely the company as a general rule is responsible for its own debts and contractual obligations; the company is able to contract with anyone including its members; the company must sue and be sued on its own name; the company will not be effected by the death of its members or officers; members have no proprietary interest in the company's asset; and directors of the company are not personally liable for a contract that has been entered into with the company (Rachagan *et al*., 2010).

This principle is known as separate legal entity, the most basic doctrine of company law. The principle was derived from the case of *Salomon v A Salomon & Co* [1897] AC 22 where the House of Lords held that incorporation of a company created a separate person. Even though company is like a natural person, it has no hands and mind to run the business thus cannot act personally. Having said this, the company must act through agent or servant. Here is when the company must be run by its organ namely the directors, through board of directors meeting, and its members, through general meeting. This organ is regarded as the directing mind and will of the company. When the board of director and members act within the powers conferred upon them by the memorandum and articles of association, they are deemed as being the company itself. In short, if a director represents the directing mind and will of the company, his act is regarded as the act of the company. This is recognized as the 'organic theory' which is the extension of the law of agency which emphasised that the acts of the organ are the acts of the company and the state of mind is the state of mind of the company.

2.3. Corporation and Its Liability

As an entity holding its own personality, corporations are subject to the criminal law, contract law and also torts. Corporations can commit crimes either directly or vicariously. Hence criminal liability of a corporation may arise through the operation of: (a) direct liability (or identification principle) – seeks to identify those who control the corporation i.e. the directing mind of the corporation; and (b) vicarious liability - where the company will be made liable for the acts of its employees, in the course of their employment or where the knowledge of an employee will be attributed to the employer.

To be a controlling officer requires more than the exercise of managerial responsibility. It requires the person's concerned to represent the company's directing mind and will in the control of the company's affairs. Under the principle of identification, it is difficult to identify the key person. To do this, the company must identify the persons who are in actual control of the operations; and look at the memorandum or article of association of the company to discover who is entrusted with the exercise of the powers of the company (Molan *et al.*, 2000). The aim is to identify who is the directing mind and will of the corporation. However, in the case of Malaysia, the (Environmental Quality Act 1974 (Act 265), 2015) has clearly identify those can be charged and punished for the environmental offences as mentioned under s 43 of the (Environmental Quality Act 1974 (Act 265), 2015) which are being discussed further.

3. Corporate Liability Under the EQA 1974

In Malaysia, the (Environmental Quality Act 1974 (Act 265), 2015) is the primary legislation that aims to protect the environment. The Act was passed by the Parliament of Malaysia and being used by the Federal Department of Environment (DOE). The Act regulates environmental problems like pollution through many regulations that forms the regulatory framework (Razman *et al.*, 2011). The objective of Environmental Quality Act 1974 (Act 265) (2015) is related to the prevention, abatement, control of pollution and enhancement of the environment in Malaysia. In general, the Act restricts the discharge of wastes into the environment in contravention of the acceptable conditions through pollution licensing.

To specify, section 25 of (Environmental Quality Act 1974 (Act 265), 2015) mentiones the punishmnet for the pollution in inland water with penalty of a maximum RM100,000 or an imprisonment for not more than five years or both. A further fine of RM1,000 each day will be imposed for continous offence commited and after the notice given by the Director General was not complied with. To elaborate this, punishment can be in the forms of fine, imprisonment or both. But, to be imposed against whom, particularly when it involves the corporation?

3.1. Punishment Under the EQA 1974

To further discuss this, it is firstly necessary to consider the word/s used in the (Environmental Quality Act 1974 (Act 265), 2015) as whom to be made liable for the offences relating to prohibition and control of pollution. The main provision relating to the restriction of the pollution of inland water is section 25 (1) which provides: "No persons shall, unless licensed, emit, discharge or deposit any environmentally hazardous substances, pollutants or wastes into any inland waters in contravention of the acceptable conditions…" The explanation can be observed in Table 1 below.

Table-1. Who Should be Made Liable for Prohibition and Control of Pollution

Word/s Used	Elaborations
'person'	No definition is given under the (Environmental Quality Act 1974 (Act 265), 2015) but 'person' is part of the occupier and owner as provided under section 2 of EQA 1974. Moreover, section 3 of the Interpretation Act 1948 & 1967 provides 'person' as includes a body of persons, corporate or unincorporated.
'occupier'	Interpretation under section 2 of the (Environmental Quality Act 1974 (Act 265), 2015):"a person in occupation or control of any premises; or in relation to premises where different parts of which are occupied by different persons in occupation or control of each part; or any vehicle, ship or aircraft"
'owner'	Interpretation under section 2 (Environmental Quality Act 1974 (Act 265), 2015): "In terms of premise: the registered proprietor of the premises; the lessee of a lease including a sub-lease of the premises; the agent or trustee of any of the owners or if the owner above cannot be traced or has died, his legal personal representative; or the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee or as receiver"
	Interpretation under section 2 (Environmental Quality Act 1974 (Act 265), 2015): "in relation to any ship: the person registered as the owner of the ship; in the absence of registration, the person owning the ship; 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 also include the country; or the agent or trustee of any of the owners, or where the owner cannot be traced or has died, his legal personal representative.
	Interpretation under section 2 (Environmental Quality Act 1974 (Act 265), 2015): "in relation to any vehicle or aircraft : the person registered as the owner of the vehicle or aircraft"

The word 'person' has commonly been used several times in the (Environmental Quality Act 1974 (Act 265), 2015) such as in sections 22 (pollution of atmosphere), 23 (noise pollution), 24 (soil pollution), 25 (inland water pollution), 27 (oil spills), 29 (discharge of waste) and 29A (open burning). However, no definition or interpretation of the word is given under the (Environmental Quality Act 1974 (Act 265), 2015). The author therefore looked at the Interpretation Act 1948 & 1967 under section 3 which provides 'person' to include a body of persons, corporate or unincorporate. In other words, "person" who may be guilty of these offences can be an individual or business entities such as partnership, companies etc. Having said this, it seems that the word 'person' is part of the occupier and owner as provided under section 2 of the EQA 1974 (as elaborated in Table 1 above).

The word 'occupier' means a person in occupation or control of any premises. However, in relation to premises where different parts of which are occupied by different persons, it means the respective persons in occupation or control of each part. It can also mean a person in occupation or in control of any vehicle, ship or aircraft. The interpretation can be found under section 2 of EQA 1974. The word 'owner' appeared under section 29B, 31, 32, 33A of the EQA 1974 in relation to prohibition and control of pollution. The definition of the word 'owner' has been divided into three under section 2 of the EQA 1974. First, 'owner' in relation to any premises can mean one of the following; the registered proprietor of the premises; the lessee of a lease including a sublease of the premises, whether registered or otherwise; the agent or trustee of any of the owners or if these owners cannot be traced or has died, his legal personal representative; or 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.

Secondly, the word 'owner' in relation to any ship, means the registered owner of the ship; the person owning the ship (in the absence of registration); 'owner' shall include the country (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); or the agent or trustee of any of the owners. If the owner cannot be traced or has died, his legal personal representative shall be considered the 'owner'. Thirdly, the word 'owner' in relation to any vehicle or aircraft means the person registered as the owner of the said vehicle or aircraft. The word 'person', 'owner' or 'occupier' seem to be used interchangeably in the EQA 1974.

Accordingly, offences by 'person,' 'owner,' or 'occupier' may be committed by an individual, partnership, corporations or other kind of business entities. This means, corporation can be the 'person' being caught for causing pollution.

3.2. Corporate Officials

Another question is in the case of a corporation to be sanctioned, for example with imprisonment, who should then be liable for the imprisonment? Who then should be imprisoned on behalf of the corporation for the wrong done? Under the EQA 1974, corporate officials that may be held liable in cases of environmental harm are the company director and other corporate officials or their agents. This is based on section 43 when the Act is very clear on who should be made liable in the case of environmental crime (Mustafa and Mohamed, 2015). Section 43(1) of EQA 1974 provides that:

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, chief executing officer, 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.

It is clear that for corporation, among the corporate officials who may be liable for corporate crimes are director, chief executive officer (CEO), manager or other similar officer. However, these officials can defend themselves or avoid the liability when proving the offence as committed without his consent. He must also prove that he had exercised all his diligence in order to prevent the commission of the act. Further, subsection (2) of section 43 says:

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.

To elaborate from this provision, if the court satisfies that the offence was committed by a clerk, servant, or agent when acting in the course of his employment, the principal, that is the corporation, shall also be held liable. This is when the operation of vicarious liability applies, where the act was committed by the employees in the course of their employment unless the principal/corporation can prove that the action was committed without his consent and he had exercised his diligence to prevent the act. In other words, the act of clerk, servant or agent can make the company as the principal liable, and such individuals themselves could not be exempted from the liability if it has been proven that the act was committed by them.

Table 2 below is a summary of the individuals relating to the company/corporation who can be made liable for the environmental harm caused.

Table-2. Individuals to be Liable for Corporate Liability in Environmental Harm

Word/s Used	**Provisions Where the Word/s Available under EQA 1974**	**Interpretation**
'director'	S.43(1)(offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974. However, section 4 of the (Companies Act 1965 (Act 125), 2013) provides that 'director' includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director.
'chief executive officer'	S.43(1)(offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974. However, section 2 of the (Capital Market and Services Act 2007 (Act 671), 2015) provides that 'chief executive' in relation to a corporation means the principal executive officer of the corporation for the time being, by whatever name called, and whether or not he is a director.
'manager'	S.43(1)(offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974. However section 4 of the (Companies Act 1965 (Act 125), 2013) provides that, 'manager' in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director.
'other similar officer'	S.43(1)(offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974. However section 4 of the (Companies Act 1965 (Act 125), 2013) provides the interpretation of the word officer only. It provides that 'officer' in relation to a corporation includes— *(a)* any director, secretary or employee of the corporation; *(b)* a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and *(c)* any liquidator of a company appointed in a voluntary winding up.

'clerk'	S.43(2) (offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974.
'servant'	S.43(2) (offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974.
'agent'	S.43(2) (offences by bodies of persons, servants & agents)	No definition or interpretation under section 2 of the EQA 1974. However, section 135 of the (Contract Act 1950 (Act 136), 2014) provides that an agent is a person employed to do any act for another or to represent another in dealing with third person.

The definition of the word "director" under section 34 EQA can be found under section 4 of the (Companies Act 1965 (Act 125), 2013) which includes any person occupying the position of director of a corporation by whatever name called. It also includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director.

The term "chief executive officer" has been included under section 43 of the EQA 1974 through the amendment in 2007. So far, no definition or interpretation is provided for this phrase under the EQA 1974. However, section 2 of the (Capital Market and Services Act 2007 (Act 671), 2015) provides that 'chief executive' in relation to a corporation means the principal executive officer of the corporation for the time being, by whatever name called, and whether or not he is a director. So, it means that he does not necessarily be a director of the said corporation.

Section 4 of the Companies Act also defined the word 'manager' as in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director. This interpretation is similar to the interpretation of the phrase 'chief executive officer' as been provided by the (Capital Market and Services Act 2007 (Act 671), 2015).

For the words "other similar officer" or "officer", no definition is given under the(Environmental Quality Act 1974 (Act 265), 2015). However, section 4 of the (Companies Act 1965 (Act 125), 2013) provides "officer" in relation to a corporation includes any director, secretary or employee of the corporation; a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and any liquidator of a company appointed in a voluntary winding up.

The words 'clerk,' 'servant,' or 'agent' existed under section 43(2) of the (Environmental Quality Act 1974 (Act 265), 2015) as a person who may also commit an offence when acting in the course of employment, whereby the principal, that is the corporation, shall be held liable under the principle of vicarious liability. While these words are not interpreted under the (Environmental Quality Act 1974 (Act 265), 2015), section 135 of the (Contract Act 1950 (Act 136), 2014) defines "agent" as a person employed to do any act for another or to represent another in dealing with third person. In the case of a corporation, as long as it has been evidenced that the agent or clerk and servant are doing an act in the course of the employment that believed to be representing the corporation, the principal (corporation) could be vicariously liable.

This provision tells that, corporation and the list of individuals summarized in Table 2 can both be charged and punished for the pollution caused. When the Act provides so, there should not be a problem in imposing both fines and imprisonment to a corporation because the corporation can be fined and the individual/s that had been the "directing mind" and caused the harm can be locked up. In actual fact, the punishment of imprisonment should be furthered when ones look at the principle of punishment that among others is for deterrence and to educate the wrongdoer. The idea is for the corporation to learn from fault and damage they had caused so that the individuals within the corporation would take further notes for not being the "mind" that causing the harmful act that can damage the environment.

It is very common to see the companies, especially big corporations, to escape from the liabilities just by being compounded or paying the fines. It seems like they can pollute and pay which this could defeat the purpose of having the law as a tool for controlling the behaviours. While the legislation has shown a satisfactory coverage when dealing with punishment of the corporations in the case of environmental pollution when both corporations and "the directing mind" can be sanctioned with fine and imprisonment, its implementation is another concern. Below is the discussion on the implementation of the punishment. This implementation is examined by looking at the court cases and responses of the judges.

4. Court Cases

The authors obtained lists of court cases relating to the offences under the EQA 1974 from the Department of Environment website, http://www.doe.gov.my/portalv1/en/awam/maklumat-umum/paparan-kes-mahkamah (DOE, 2016). From the lists, the authors selected only the relevant cases. Since the focus is inland water pollution which is under the provision of section 25, the cases chosen are offences stated as in violation of such provision. Section 25(3) specifically says:

Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand ringit 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 continues after a notice by the Director General requiring him to cease the act specified therein has been served upon him.

This provision has made clearly that the wrongful act, i.e. to emit, discharge or deposit any environmentally hazardous substances, pollutants or wastes into any inland waters that contravene the acceptable conditions, can bring: (a) a maximum fine of Ringgit Malaysia 100,000 or a maximum imprisonment of five years or both; and (b) a further fine not exceeding Ringgit Malaysia one thousand a day for every day that the offence continues after a notice requiring him to cease the act has been served upon him. Accordingly, the selection of cases from the lists are made on the considerations of: (a) it is a corporation as the wrongdoer; and (b) it is section 25 being the violated provision. The list of cases selected is listed down in Table 3 below.

Table-3. Cases for Violation of Section 25 for years 2013-2015

No.	Company Name	Year	Court/Place	Sentence
1.	Oon Corporation Resources (M) Sdn Bhd	2013	Negeri Sembilan	Fine RM10,000/4 months imprisonment
2.	Platinum Green Chemicals	2013	Negeri Sembilan	Fine RM20,000/8 months imprisonment
3.	Comfort Rubber Gloves Industries Sdn Bhd	2013	Perak	Fine RM8,000/6 months imprisonment
4.	Kim Hin Ceramic (Seremban) Sdn Bhd (Rolnic Seramic Sdn Bhd)	2013	Negeri Sembilan	Fine RM18,000/3 months imprisonment
5.	HL Rubber Industries Sdn Bhd	2013	Negeri Sembilan	Fine RM15,000/3 months imprisonment
6.	PTS Poultry Processing Sdn Bhd	2013	Johor	Fine RM30,000/9 months imprisonment
7.	Rubbercare Protection Product Sdn Bhd	2013	Negeri Sembilan	Fine RM10,000/1 months imprisonment
8.	Sykt A1 Globe Sdn Bhd	2014	Negeri Sembilan	Fine RM15,000/2 months imprisonment
9.	Sykt PK Agro-Industrial Products (M) Sdn Bhd	2014	Negeri Sembilan	Fine RM15,000/3 months imprisonment
10.	Oren Puba Sdn Bhd	2014	Selangor	Fine RM30,000/3 months imprisonment
11.	Bostic Vision Sdn Bhd	2014	Negeri Sembilan	Fine RM10,000/2 months imprisonment
12.	Sykt PK Agro-Industrial Products (M) Sdn Bhd	2014	Negeri Sembilan	Fine RM20,000/5 months imprisonment
13.	Kerabat Processing House (Pedas) Sdn Bhd	2015	Negeri Sembilan	Fine RM25,000/5 months imprisonment
14.	Kerabat Processing House (Pedas) Sdn Bhd	2015	Negeri Sembilan	Fine RM20,000/4 months imprisonment
15.	Kilang Advance Healthcare Products Sdn Bhd	2015	Negeri Sembilan	Fine RM15,000/3 months imprisonment
16.	Kilang Kim Hin Ceramic (Seremban) Sdn. Bhd.	2015	Negeri Sembilan	Fine RM20,000/5 months imprisonment
17.	Natural Oleochemicals Sdn Bhd	2015	Johor	Fine RM50,000
18.	Shoo Woo Electroplating Industries (M) Sdn. Bhd.	2015	Selangor	Charge 1: Fine RM40,000; Charge 2: Fine RM30,000
19.	Chew Chee Keong (Kyros Food Industries Sdn Bhd) *second offence	2015	Kuala Lumpur	Charge 1: Fine RM80,000/4 months imprisonment AND 1 month imprisonment; Charge 2: Fine RM60,000/2 months imprisonment AND 14 days imprisonment run concurrently

Source: (Department of Environment Malaysia, 2016).

Table 3 above shows 19 cases involving 17 companies and 21 charges. The offence was a violation of section 25(1) EQA 1974 that is polluting the inland water, between years 2013 and 2015. Two companies recorded as repeating the same offences while one company (no. 19) was recorded as the second offence. There were 7 cases recorded in 2013, 5 cases in 2014 and 7 cases in 2015, with 13 of them occurred in Negeri Sembilan, 2 cases in Johor, 2 cases in Selangor and 1 case each in Perak and Kuala Lumpur. Looking at the punishment imposed, a maximum fine was RM80,000 while the lowest was RM8,000 with only one case for each. Details of the range of fines imposed by the court are shown in Table 4.

Table-4. Range of Fine

Range of Amount fined (in Ringgit Malaysia)	No. of charges	Percentage (%)
20,000 and below	13	61.9
20,001-40,000	5	23.8
40,001-60,000	2	9.5
60,001-80,000	-	-
80,001-100,000	1	4.7
Total	21	100.0

Table 4 above shows the range of fine based on the number of charges for the offence under section 25 EQA 1974 where the maximum amount is RM100,000. From the data, a large number of companies with 13 charges (61.9%) had been fined with the lowest range i.e. below RM20,000; five charges (23.8%) were imposed within the range of RM20,001-RM40,000; two charges (9.5%) with the amount of RM50,000 and RM60,000; and only one charge (4.7%) was imposed with a fine of RM80,000. Looking at Table 3, the highest two charges of the amount RM60,000 and RM80,000 was imposed on the company that recorded to have committed as the second offence.

Table-5. Imprisonment in Default of Payment

Period of imprisonment	No of charges	Percentage (%)
1 day-12 month (1 year)	18	85.7
12 month 1 day-24 month (2 year)	-	-
24 month 1 day-36 month (3 year)	-	-
36 month 1 day-48 month (4 year)	-	-
48 month 1 day-60 month (5 year)	-	-
Without imprisonment	3	14.3
Total	21	100.0

Table 5 shows the imposition of imprisonment against the companies in the case of default in payment. The summary shows that all companies chose to pay the fine instead of imprisonment. However, referring back to Table 3 above, there was one case where the court imposed imprisonment on the individual in charged (no. 19) with 1 month imprisonment for the first charge, and 14 days for the second charge. Furthermore, looking at the length of imprisonment imposed, except three, the rest 18 charges (85.7%) were imposed with less than 1 year imprisonment that ranged between three to five months.

5. Judges' View Point

The study had also used interview technique with few judges of the Green Court for their view points on the punishment imposed. In general, all judge respondents agreed that judiciary will not interfere with the executive once the Parliament had determined the amount of punishment through the statute. On this point, the judges stressed out that the punishment must be within the law, i.e. within the amount that has been determined by the statute. Therefore, when the amount of fine under the EQA 1974 is cut off at a maximum of Malaysia Ringgit hundred thousand, the court has to determine the fine as minimum as ten cent and as maximum as hundred thousand, and not beyond. In other words, the court has its discretion but within that extent. The range of the punishment however would vary depending on circumstances of the case. There is no standard range of fine determined as the guidelines for the judges.

While commenting on the question why in almost cases the punishment is mild and not even reach half of the amount, the respondents brought in the "function of court" and the principle of "justice". Court and justice are intertwined as there must be justice and justifiable. Severity of punishment does not depend on the amount alone but to be justified together with the act and effect. The act here refers to the environmental harm, whether it is the first or repeating offence; and the effect means the consequences of the act to the society or public. In other words, there must be a balance of weight between the wrong and the punishment imposed. As one judge mentioned:

It is low when we looked at the maximum (amount). But if we looked at the minimum, it is high (enough). So there must be a reason when the negotiator made such provision. To give room to the court to look at the facts of the case, and to judge the aptness of punishment.

Another consideration of court is to look at the admission of the wrongdoer of his wrongful act where in most cases, the punishment would be lessen. According to the judge respondents, almost all culprits in the environmental cases would admit their fault. This probably is the reason for a mild punishment. From the responses of the judges, one can conclude that the punishment for the environmental harm is determined based on the following:

(a) The punishment itself, as mentioned in the statute;
(b) The frequency of the offence, whether it is the first or repeating one;
(c) Its effects, to the society or public;

(d) Principle of justice, by taking into consideration all evidence, admission, appeal, etc.

When being asked about the possibility of sanctioning imprisonment to corporations, all judges admit that imprisonment is impossible for the corporations. Even though it is possible for the individuals within the corporations, there are still some hurdles ahead:

(a) Impossible to imprison a corporation because corporation is just a "body", an artificial "person";
(b) The provision is quite ambiguous and does not make things clear;
(c) It involves the doctrine of separate legal entity where a corporation is distinct from the one who incorporates it which complicate things;
(d) It involve a complex legal issues like lifting a corporate veil principle.

6. Discussion

In response to the rapid economic growth and upsurge in environmental offences, stiffer penalties had been proposed by virtue of the Environmental Quality (Amendment) Act 1996. As far as section 25 is concerned, the penalties was amended and increased for stricter punishments to reflect the seriousness of the offences. Nevertheless, after 20 years of its implementation, the cases of environmental violations are still mounting with a variety of pollution sources (Department of Environment, 2015). For example, river water quality has declined in year 2014 with the percentage of clean rivers have decreased to 52% in year 2014 compared to 58% in year 2013. Meanwhile the percentage of polluted rivers has increased from 5% in year 2013 to 9% in year 2014In the case of rivers, the trend since 2009 until 2014 showed a decreasing number for clean rivers and a fluctuation for slightly polluted and polluted rivers with the increasing trends in 2014.

The EQA 1974 of Malaysia has clearly imposed criminal sanctions for the environmental pollution both for individual and corporate wrongdoers (Mustafa and Mohamed, 2015). While section 25 sanctions the punishment for fines and imprisonment for the "person" of whom can be either the individuals or corporations, section 43 plainly mentions the individuals within the corporation who can be charged for the environmental harm committed by the corporations, subject to certain defence.

Looking at the penalties imposed on the corporations particularly on fines, it shows that majority of companies are still being sanctioned with mild punishment compared to the harm they have committed. Only two cases had been charged with the amount of fine Malaysia Ringgit fifty thousand above; one case was fined with Malaysia Ringgit fifty thousand and without imprisonment, and another one was charged with two charges amounting to Malaysia Ringgit sixty thousand and eighty thousand respectively. Moreover, for this latter case, the punishment can be said as stiffer when it came with imprisonment for default in payment and also imprisonment for the individual who committed the act.

Even so, majority of the companies were imposed below Malaysia Ringgit twenty thousand. Small amount of fines is too light to big company with business mind that aiming just for profit. Without prejudice to the courts' judgment nevertheless, the amount of fines imposed might not be able to deter the company from repeating the same harm. Although the courts had imposed the punishment of fines or imprisonment in default of payment, the company would definitely prefer the fines. It indicates the companies' willingness to pay. Even when we look at the Table above, the data shows a very small number of cases being fined with the bigger amount of more than Malaysia Ringgit fifty thousand when compared to the maximum penalties of one hundred thousand. Low amount of fine would probably be the cause for the company to repeat committing the act especially when the amount is affordable and within their means. Therefore, although the approach of sanctioning imprisonment to the corporations is impossible, there is still an alternative to impose it on the individuals within the corporations as mentioned in Table 2 though it may face some difficulties. This would probably become a lesson not only to the corporations but also to its "directing mind".

To relate the data with the responses of judges, the answer is very clear. The severity of punishment could not be merely judged from the amount of fine but to look from the circumstances of the case without neglecting the function of court in upholding justice. Arguing on this however, severe and higher punishment is possible if prosecution has ready with strong evidence and sound justification. Therefore, having and submitting strong evidence would be a justifiable reason for a severe punishment to be handed down by the court.

7. Conclusion

In recent years, industrial activities continue to become the major contributors towards environmental pollution in Malaysia with the main sources of water pollution are from manufacturing and agro-based industries. Law as a controlling mechanism deters such violation through the environmental legislations and regulations. Hence, the EQA 1974 was formulated in managing the environment. The EQA 1974 has then used criminal sanctions when amending harsher punishment for the environmental offences. This is evidenced when section 25 sanctions the punishment of fines and imprisonment to the "person" of whom can be either the individuals or corporations; while section 43 plainly lists out the officials of corporation or individuals working with the corporation. Despite this, the records still show mild punishment handed down towards the corporations, and from the list, only one had been bestowed with imprisonment. While the severity of punishment could not be judged from the amount of fine imposed, it is the principle of punishment, either as deterrence, retribution, prevention or reformation that must be the ultimate idea in sentencing and handing down the sanction. Although circumstances of the case should be the utmost consideration of the judges in determining the weight of punishment, the outcome of the punishment itself must function as a lesson to the culprits for not repeating the harm again especially when it causes damage the environment and the

public at large. In the context of environmental protection, the law serves to shape the society as well as regulate people's behaviour. To shape the society's behaviour, the functioning law as a control mechanism is effective by imposing appropriate sanctions and punishments. Therefore, the law is not merely providing guidelines, but can act to penalize the wrongdoers so as to be the lesson and to deter them from again committing the same fault. Accordingly, punishment should be the reminder, to reprimand others from doing the same.

Acknowledgement

This article is part of the findings from the research project funded under the Research Acculturation Grant Scheme by the Ministry of Education, Malaysia. Thank you.

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