

Environmental Impact Assessment Against Air Pollution: A comparative legal analysis between Iraq and Malaysia

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Abstract: The serious problem of the modern era that threatens humans and environment is pollution. Increasing pollution has prompted countries to take several measures to confront and reduce this pollution. Environmental impact assessment is one of these measures. The administration in Iraq used this measure to preserve its environment. Despite the strength and effectiveness of this tool in reducing air pollution in some countries such as Malaysia, but it was not the same effective and powerful in Iraq. there is a shortage aspect of implementing the EIA procedure in Iraq to tackle problem of air pollution. This article aims to explain the legal analysis of environmental impact assessment concept and evaluate their effectiveness in protecting the air in Iraq. Compared with Malaysia state. This study found that this measure is effective in preserving the environment from pollution if used in an orderly and repeated throughout the work of the industrial project. This study is a qualitative study using the interview and observation tools to reach the results.

Keywords: Air Pollution; Administrative Measures; Environmental Impact Assessment "EIN"

Research objective

The objective of this paper is evaluate the effectiveness of "EIN" as a measure that use to control air pollution issues and protect environment.

Methodology

This study is a social legal research by employing qualitative data. Primary data such as legislation, documents and interviews. secondary data from books, academic journal, internet sources etc.

SOURCES OF AIR POLLUTION IN IRAQ

I. INTRODUCTION

Air pollutants is generally used to refer to any gaseous substances, liquid condensations and solid particles that are released into the air environment and it harms the health of all living creatures including human beings, ecosystem or interest of the natural resources. (Gomes & James, May 14 2014)

Air pollutants may be emitted by stationary, area and mobile sources. The stationary sources will include, among others, utility, manufacturing, institutional and commercial facilities, Examples of such sources include thermal power generating plants, chemical plants, pulp and paper mills, municipal solid waste incinerators, etc. Area sources refer to the various small individual activities like gasoline service stations, motor vehicle paint shops, end-users of solvents, open burning carried out in plantations and forest management activities. Mobile sources generally refer to automobiles, ships and aeroplanes. (Singh, 2011)

Primary pollutants are substances that are emitted into the air directly from sources of pollution whereas secondary pollutants are formed when the primary pollutants reacts chemically with elements present in the air. (Al Jassani, 2011) For example, one of the major components of smog, (Al Jassani, 2011). ozone (O₃), comes from secondary pollutants. It is formed from the reaction of volatile organic compounds (VOCs) with nitrogen oxides (NO_x) in the presence of sunlight. The ozone present in the troposphere or ambient air near to the ground level is unlike that of the useful ozone present in the upper atmosphere or stratosphere. The useful ozone layer acts like a filter to reduce the hazardous ultraviolet light from the sun from reaching the earth. (Al Jassani, 2011).

The intensity or seriousness of the danger people can be exposed to both category of pollutants, primary or secondary, is dependent upon the type of activities they do. The highest concentration of pollutants is likely to be present in urban areas near to industrial areas and highways with very heavy traffic, and the pollutants are in the form of particulate matter, liquid condensations and vapours including a relatively elevated concentration of toxic metals. (Al Hassan, 2012)

Air pollution is the main worry and annoyance in both developed and developing countries. The pollutants released into the air by motor vehicle exhaust, smelters, cement factories, incinerators and other types of factories are metals and metallic compounds and may be in the form of particulate matter, liquid condensations and vapours. (Douabul & et al, 2013)

In Iraq, air pollution caused by motor vehicles, power generating plants, dust storms and heavy industries is also a serious problem. The physical size of Iraq is about 438,000 square kilometres (Demographics of Iraq, April, 2013) and a population of about 36 million and increasing, has placed greater demand on energy, manufactured goods and other necessities. In addition to that, the number of motor vehicles on the road has also increased correspondingly and with it increased air pollution. (Demographics of Iraq, April, 2013)

II. ENVIRONMENTAL IMPACT ASSESSMENT IN IRAQ

Under the Iraqi legal framework, the EIA for industrial projects is only carried out once. If there is no necessity to carry out any follow-up action on the EIA, then the activities of the project can commence. In theory, the MOE is supposed to follow up on the EIA through its representative in the Council of Environmental Protection. However, for some projects the EIA is not required before approvals and permits are granted. For example, oil contracts based on Iraqi model contracts do not require the conclusion of EIAs before approvals and permits are granted. However, in some other countries the EIA is mandatory before approval is given and, in most cases, the

results of the EIA decide the conditions of the approvals and permits. A different set of discrepancies have arisen from the EIA laws advocated by the Iraqi government. Even though it has an unclear legal framework with regards to the requirement of EIA in Public service companies (PSCs) and technical service contracts (TSCs), however it did not clarify the method to be used to carry out and assess the EIA's validity. This has given the International oil companies (IOCs) a free hand to interpret the EIA and to carry it out accordingly. Oil and gas operators are only keen to do business with countries that offer easier ways to doing business. The enactment of strict environmental standards and laws will lead to the loss of business opportunities because oil and gas operators will stay away from such regions. As a result, some countries adopt a less severe environmental legal framework as well as other non-tariff barriers to market entry in their efforts to attract foreign investments. It must be acknowledged that there is a need to balance carefully environmental legislation with ease of doing business in order to promote long-term growth without harming the environment. If the environmental barriers are very restrictive, oil and gas operators will be reluctant to enter the market and as a result this reflects negatively on the environmental aspects of the legislation. The Iraqi government must exercise greater care when awarding contracts and licenses to oil and gas operators. The Iraqi government needs to adopt a more practical approach by balancing environmental concerns with ease of doing business. However, it can be argued that at this stage the Iraqi government is adopting a more lenient approach in the implementation of environmental and other laws to attract investments. Once the investments have reached the targeted level set by the government, it may then strengthen the implementation of the laws that are applicable to the oil and gas operators. This scenario appears to be more plausible because other oil-rich countries in the Gulf and around the world have at a certain point of their development used similar techniques.

III. ENVIRONMENTAL IMPACT ASSESSMENT IN MALAYSIA

The EIA was created by the EQA 1986 (Amending Act A636/85). It is now an important component of the environmental law scene. After the EQA 1974 was enacted, it was subsequently amended in 1985, 1996 and 1998 as a result of the changes in Malaysia's environmental status. The amendment in 1985 was a response to the public's growing concern over the natural environment being damaged by development activities and it was then that the EIA system was introduced and made compulsory for large-scale development projects in order to protect the environment. (Sharom, 2008) In the case of the "Bakun Hydro-Electric Project" this study find that the affected did not object to compensation but "they had been subjected to procedural unfairness in that they had been deprived of their vested right to obtain a copy of the Environmental Impact Assessment ('EIA') of the Project, or to make representation thereon."

The environmental legislation also prescribes that the EIA must be carried out under the provisions of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 during the planning stage of a factory's construction or an expansion project of an existing facility, provided the operation falls within the bench mark of the prescribed activities.

Any proposal to build a new plant or expand an existing facility must undergo a range of environment-related formalities at every stage of the project planning and

construction. The formalities include carrying out an EIA, and obtaining written approvals and licenses. For example, if the new project is the construction of a plant, an EIA is required at the planning stage if it falls within the prescribed activity. If the project is not a prescribed activity, a "site suitability evaluation" is needed. During the construction stage, the provisions of the aforementioned regulations on waste water, air pollutants and scheduled waste specifies that prior written approvals and permissions shall be gotten from the Director General of the DOE.

Similarly in Iraq, its Environmental Requirement for Industrial projects also prescribes that an EIA must be carried out as provided for in the Environmental Protection and Improvement Law 27 of 2009 during the planning stage of the plant's construction or an existing facility's expansion, should the operation fall within the criteria for the prescribed activities (Article (10), Law 27 of 2009).

In addition, the MOE in Iraq requires the builders of projects where an EIA is compulsory to submit the report for approval before the project starts. The purpose of doing so is to identify and grade the effect that the intended project will have on the environment when it is constructed and utilised. Depending on the results of the EIAs, the MOE can grant the environmental approvals. However, some industries may require a licence before operations can commence and they include cement, gas, chemical and petroleum industries. The granting of licences comes with attached conditions such as giving a guarantee that the factory will not pollute the environment and dangerous substances will be properly managed and controlled.

IV. MALAYSIA'S PROCEDURAL REQUIREMENTS FOR ENVIRONMENTAL IMPACT ASSESSMENT

In Malaysia, every proposal for a new development project is obliged to comply with a number of procedures to evaluate the project's impact on the environment prior to its implementation. The procedures are compulsory conditions for the purposes of obtaining permission to operate a project and no new projects can proceed without fulfilling these procedures. The first step is to complete the EIA. If the new project is within one of the 19 categories of prescribed activities under the Environmental Quality (Environmental Impact Assessment) Order 1987, the EIA report must comply with the stipulated procedures and submitted to the Director General of the DOE for approvals. If the proposed project does not require an EIA, a "site suitability evaluation" or "pre-siting evaluation" is needed to evaluate whether the proposed project's site or project is in harmony with other land use in the area and this is particularly crucial in residential zones. The evaluation is still needed even when the proposed site of the project is in an industrial estate. The said procedures are obligatory not only for new projects, but might also be obligatory for expansion of industrial projects and other similar activities. According to the Federal Court, Putrajaya's ruling "Since the project was a special industrial project as stated previously compliance with the mandatory requirements of the relevant statutory provisions was crucial according to specifications required by the Department of Environment (DOE) and the statutory provisions of the Environmental Quality Regulations 1979" The case of "Lok kok beng ". In the case of the development of housing units of Bukit Damansara, Mukim Kuala Lumpur, the court confirmed on appointment of outside experts to assess development impacts and involve the public in decision-making "Dewan Bandaraya Kuala Lumpur should commission independent consultants to study and report on the likely impact of the proposed high density development

in the area. The residents should be permitted participation in such a study and a copy of the report should be made available to the residents” case of “[Yam tunku dato' seri nadzaruddin]”. In the other case, company in the City of Ipoh, case of “[Woon tan kan]” where the Court used foreign experts to identify the hazardous effects of waste resulting from the defendant company.

V. IRAQ'S PROCEDURAL REQUIREMENTS FOR ENVIRONMENTAL IMPACT ASSESSMENT

Iraq, not unlike many other countries, also relies on EIAs to check on unrestricted development at the expense of crucial environmental systems and Iraq has made it compulsory to have EIAs for a range of activities, (Article (10), Law 27 of 2009). The presence of the EIAs do not guarantee the use of environmentally friendly developmental practices. This is because the EIA reports frequently contain substantial flaws, such as a poor impact analysis, lack of mitigation options and pollution control as well as not having any alternative proposals for environmental monitoring programs. Furthermore, most of the factories operate without any approvals of the EIA. The most conspicuous example are brick factories. (Inspector General, 2016)

The EIA not only encompasses the probable environmental impact of the proposed project, for it also evaluates aspects like whether the best potential choices have been chosen for the project and also whether the project has the appropriate pollution control measures.

VI. THE FINDINGS

1. Environmental impact assessment is one of the important administrative legal mechanisms to control air pollution in both countries Iraq and Malaysia.
2. The enactment of strict environmental standards and laws lead to the loss of business opportunities because oil and gas operators will stay away from such regions.
3. As a result of that, some countries adopt a less severe environmental legal framework as well as other non-tariff barriers to market entry in their efforts to attract foreign investments.
4. Also, oil and gas operators are heading to do business with countries that offer facilities to doing business

RECOMMENDATIONS

1- Good strategic planning for preserving the environment and investment requires a balance carefully environmental legislation with ease of doing business in order to promote long-term growth without harming the environment.

2- The Iraqi government can be adopt a more lenient approach in the implementation of environmental and other laws to attract investments. So, The Iraqi government needs to adopt a more practical approach by balancing environmental concerns with ease of doing business.

3- The evaluation (EIA) should be needed even when the proposed site of the factory is in an industrial estate. Also, the procedures (EIA) should be binding on new projects and for expansion of factories and other similar activities in any stage of project working.

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2-The case of “Lok kok beng & ors v. loh chiak eong & anor. Federal Court, Putrajaya. [Civil Appeal no: 02(f)-4-02-2013(p)], on 2 july 2015”. “From a dispute relating to an industrial building project known as "Projek Skim Bangunan Industri Ringan Bersepadu Pencemaran Bebas" in Seberang Perai Tengah, Pulau Pinang. As its name suggests the project was a special industrial project intended to cater for industries that were likely to produce and discharge environmentally hazardous substances and which may pose environmental risks to living organisms as defined in the Environmental Quality Act 1974 (EQA)”.

3-The case of “[Yam tunku dato' seri nadzaruddin ibni tuanku jaafar v. datuk bandar kuala lumpur & anor]. High Court Malaya, Kuala Lumpur,[no: r1-25-108-2001] on 27 july 2005”.

4- The case of “[Woon tan kan & ors. v. asian rare earth sdn. bhd]. High Court Malaya, Ipoh. [Civil Suit no. 185 of 1985] on 11 july 1992”. “Three experts were employed to assist them. The first was the English expert Dr. William Cornell, the second, Dr. Radford from USA and third, Professor Ichikawa from Japan. The three experts all visited the defendant's place. after the plaintiffs residents of Bukit Merah village, sued the defendants(company owner), principally for an injunction to restrain the defendant company (ARE) from operating and continuing to operate its factory, alleging that its activities produced dangerous radioactive gases harmful to Bukit Merah residents..... that an injunction restraining the defendant, by itself, its servants or agents or otherwise from operating its factory, producing, storing, and keeping its toxic and radioactive waste upon its said land in the City of Ipoh. These activities are hereby held to cause the escape of radioactive gases and rays into its neighbouring land occupied by the plaintiffs”.