

**SPEECH BY THE RIGHT HONOURABLE THE CHIEF JUDGE OF
SABAH AND SARAWAK
AT THE LAUNCHING OF SENTENCING GUIDELINE FOR FOREST
CRIMES IN SABAH**

2 DECEMBER 2021 | SANDAKAN COURTS COMPLEX

SALUTATION

Assalamualaikum and Salam Sejahtera.

1) Y.A Puan Celestina Stuel Galid

Hakim Mahkamah Tinggi Sandakan

2) Y.A Dr. Lim Hock Leng

Hakim Mahkamah Tinggi Tawau

3) YBhg. Datuk Ahmad Terrirudin bin Mohd Salleh

Ketua Pendaftar Mahkamah Persekutuan Malaysia

4) YBrs. Tuan Nixon Kennedy Kumbong

Pendaftar Mahkamah Tinggi Sabah dan Sarawak

5) YBrs. Puan Egusra Ali

Pengarah Mahkamah Negeri Sabah (juga menjalankan tugas-tugas
Pendaftar Mahkamah Rendah Sabah dan Sarawak)

6) YBhg. Datuk Frederick Kugan

Ketua Konservator Hutan, Sabah

7) YBrs. Cik Sophia Lim

Ketua Pegawai Eksekutif WWF

8) YBrs. Tuan Fadzil bin Yahya

Timbalan Ketua Konservator Hutan

9) Encik Roger Chin

Presiden Pertubuhan Undang-Undang Sabah (SLS)

**10) Mr. Aaron Lucoff, Resident Legal Advisor, US Department of
Justice, U.S Embassy Kuala Lumpur;**

Ahli-Ahli Lembaga Pemegang Amanah WWF, Pegawai-Pegawai Kehakiman, Jabatan Perhutanan Sabah, WWF-Malaysia, pihak media serta hadirin dan hadirat sekalian.

Terlebih dahulu, tidak terlambat rasanya untuk saya mengalu-alukan kehadiran tetamu-tetamu dari Jabatan Perhutanan dan WWF ke Mahkamah Sandakan untuk majlis pada hari ini yang terpaksa ditunda beberapa kali sebelum ini disebabkan beberapa kekangan dan masalah yang tidak dapat dielakkan. Alhamdulillah, pada hari ini kita dapat berkumpul bersama-sama dengan penuh kepatuhan kepada SOP agar Majlis ini dapat dijalankan dalam keadaan selamat dan terkawal. Saya akan meneruskan ucapan saya dalam Bahasa Inggeris.

INTRODUCTION

1. The right to a safe, healthy and ecologically-balanced environment is in fact a human right in itself and it entails the duty to protect. Protecting the environment is no doubt everyone's responsibility. Existing environmental laws set out that everyone must contribute to creating

an environment that is safe and secured for the use now and for our future generation.

2. The Judiciary, like other institutions, has a role to play in environmental protection. Once a law is made in Parliament or other legislative bodies, the court's role is to interpret and apply the law. The courts can only apply the law to the facts presented before them and they can only reach their decisions based on facts that have already been established within the four walls of the court rooms.
3. Over time, our criminal courts have been hearing all kinds of cases and these include offences related to the degradation of the environment. These offences are housed under the various statutes, such as the Environmental Quality Act, the Fisheries Act, the Wildlife Act and the Forest Ordinances, to name a few. In this regard, the Malaysian Judiciary's initiatives on enhancing protection began in 2012 when the former Chief Justice, Tun Arifin Zakaria had introduced judicial innovations in environmental justice which included setting up Environmental Courts throughout Malaysia and also organising

environmental related programmes to create awareness amongst Judges and Judicial Officers.

ACTIVE ROLES BY THE COURT

4. On the part of the Sabah and Sarawak Courts, continuous efforts in empowering our Judges and Judicial officers in understanding and dealing with environmental cases are on-going. The Sabah and Sarawak Courts Working Groups on Environment along with similar working groups in West Malaysia were established in 2014 to pursue the Hanoi Action Plan in implementing the Jakarta Common Vision. The Jakarta Common Vision is a document containing common vision and action plan agreed by ASEAN Chief Justices during the Inaugural ASEAN Chief Justices Roundtable on Environment held in 2011 with the aim to upholding the environmental rule of law and advancing environmental protection in the ASEAN region.
5. Since then, both Sabah and Sarawak courts have consistently organised various environmental related activities not only involving

members of the judiciary but other stakeholders and members of the public.

ISSUES ON FOREST CRIMES SURROUNDING THE JUDICIARY

6. I will now turn to the issue on forest crimes, which we are addressing together today here in Sandakan. Indeed Sandakan is the apt place for us to converge to deliberate on a significant aspect of court procedure with regard to sentencing of a forest crime offender. I said so because Sandakan used to be the hub of forest extraction activities in years gone by in this great Borneo state of Sabah.
7. Now, preventing and tackling forest crime is essential for sustaining all life on Earth. Organised crimes and corruption are among the many drivers of biodiversity loss. Addressing them requires concerted action by all parties who treasure our environment. No one holds any monopoly in this selfless and altruistic endeavour, so critical in achieving sustainable development.
8. From the speech delivered by the Chief Conservator of Forests, the efforts put in by the Sabah Forestry Department to improve the quality

of its law enforcement through training of forestry officers in investigations and prosecutions of forest offences must deserve special mention. Indeed efficient investigation and prosecution would pave the way towards securing higher rate of convictions, which can only be achieved through proof beyond reasonable doubt based on the adduced evidence through calling of relevant witnesses.

9. On a related note, I can appreciate the sentiment expressed by the Chief Conservator of Forests on the issue of sentencing in forest crime cases. There appears to be a public perception that sentencing an offender is a whimsical exercise by Judges and Judicial Officers. In fact, there are few reports published internationally describing the sentences imposed in forestry cases in Malaysia have been lenient, or given a relatively minor penalty. It was recommended that “judges understand the severity and consequences of illegal forestry activities in order that their judgements (fines, imprisonment) are severe, and act as a sufficient deterrent.”¹

¹ Jay Blakeney, Overview of Forest Law Enforcement in East Malaysia, a paper presented at a workshop on Illegal Logging in East Asia, sponsored by World Bank - WWF Alliance in Jakarta, Indonesia, August 27-28, 2000.

10. While most can empathise with that, but one must remember that while punishments are defined by law, the measure of what is an appropriate sentence in a given case is left to the discretion of Judges and Judicial Officers. For example, it was not lost on Justice McArdle, who was famously quoted to have said that, *“Anyone can try a case. That is as easy as felling off a log. The difficulty comes in knowing what to do with a man once he has been found guilty.”*²

11. In the case of *R v Ball* (1951) 35 Cr App Rep 164 Hilbery J stated the purpose of punishment as follows:

“In deciding the appropriate sentence, a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular

² <https://famous-trials.com/rosenberg/148-courtdecisionrose/2014-ct1>

criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe.”

12. That said, it must be emphasised that sentencing is very much discretionary which must be exercised judiciously based on established legal principles. A number of factors must be considered – the seriousness of the offence; the degree of harm or damage caused; the degree of culpability of the accused; the mitigating and aggravating factors – these are to be judicially weighed and balanced with a view to achieving a justified and proper sentence.
13. Judge McArdle knew, like judges before him and those who would come after him that passing sentence after finding a person guilty was

no walk in the park. But that said, neither is passing sentence rocket science. It remains, though, a daily challenge for all criminal court judges who are constantly required by law, to exercise their discretion judiciously, not capriciously. So, coming up with a guideline on sentencing is a step in the right direction. Sentencing Guideline will help reduce problem such as disproportionate and unjustified disparities in respect to sentences imposed to offenders who committed same offences in more or less similar circumstances.

14. In 2019, the Sabah Courts had introduced Sentencing Guideline for Wildlife Crime. Some countries like United Kingdom, Malawi and Kenya have introduced their Sentencing Guideline in wildlife and forest crimes which have been the source of reference by other Judiciaries, including Malaysia.

15. Hence the need for the Sabah Sentencing Guideline for Forest Crime. Although not a binding document for sentencing – unlike in the United Kingdom – nevertheless, it provides a consistent approach to sentencing of forests crimes with identification of factors – while not exhaustively listed – but which are peculiar to forests crimes impacting

upon the question of where to 'pitch' a sentence upon conviction. The issuance of this guideline serves as an affirmative approach to promote proportionate and consistent sentencing of forest crime offenders. A crime of this nature has far reaching social repercussions and invariably, *ipso facto*, public interest consideration would take precedence.

APPRECIATION

16. For that noble combined effort of the Working Committee comprising members of the Kota Kinabalu Court Working Group on Environment, officers from the World Wildlife Fund (WWF) Sabah and Forestry Department, who worked tirelessly with all relevant stakeholders – Sabah AGC, DPPs and Sabah Law Society – in developing this guideline, a bouquet of appreciation is very much in order. I hope and I urge that this piece of important work be referred to by Judges and Magistrates in sentencing forest crime cases. In passing, we have in existence, in addition to applying the existing Sentencing Guideline for Wildlife Crime that was launched by my predecessor in 2019 .

CONCLUSION

17. With this guideline, I hope that judges and magistrates would be guided in the discharge of their judicial duties when sentencing forest related cases so that whatever sentences passed will appropriately reflect the severity of the offences committed.

18. Was it not the great Plato, or his great fellow Greek brother Aristotle, who said that justice is giving a man his due. Let us whose duty it is to pass sentence, be properly guided when so doing.

Thank you.

DATED 2 DECEMBER 2021