

Success of the Youth Climate Court Malaysia 2024



On the 15th of October 2024, 13 law students from Australia and Universiti Teknologi MARA competed in the inaugural Youth Climate Court (YCC) held at and supported by LAWASIA at its prestigious annual conference in Kuala Lumpur, Malaysia.

Distinguished members including President of LAWASIA Shyam Divan, Justice Brian Preston from the Land and Environment Court New South Wales, Professor Siti Hafsyah Binti Idris, Mathew Baird, Robert White, Dr Judith Preston and Prof Amanda Kennedy were few in the audience witnessing the passionate exchange of arguments of whether or not the hypothetical Serendit Solar Farm project should proceed.

The goal of the YCC was to hear from the perspectives of the younger generation on pressing climate change issues, climate justice and environmental concerns engaging with novel issues and complex legal frameworks. The Proceedings consisted of a hearing before a Tribunal which has been constituted by the Malaysian Government to determine whether the Project meets objectives of Malaysia's sustainable development strategy in the 12th Malaysia Plan, including principles of inter and intra generational equity.

Judith Preston and Robert White, co-organisers of the YCC, gave their opening remarks to kickstart the session emphasising the importance of youth engagement in matters of climate change and climate justice that concern them now and well into the future. Members of the Tribunal, Elizabeth Orr and Atiyah Irdina Binti Awal called for opening statements from each party.

The factual scenario of the YCC is as follows:

In the state of Sabah, Malaysia, Surya Energy Corporation, in partnership with the Sabah State Government, is planning to implement the Serindit Solar Farm, a large-scale solar energy project intended to cover 5,000 hectares within the Padas Forest Reserve. The project promises to significantly boost Malaysia's renewable energy production in line with global efforts to mitigate adverse climate change impacts. It will boost local employment, reap economic benefits, strengthen the State's energy security and assist Malaysia better comply with its obligations under the Paris Agreement.

However, the region is known for its rich biodiversity, home to endangered species and Indigenous and local community groups, whom for generations nurtured their land and maintained inextricable connections to their surrounding environment. The community groups predominantly depend on the resources provided by the Padas Forest for their survival and livelihoods, serving as a medium of sustaining culture and their agrarian

lifestyles. The proposed clearing of large-scale land and natural forest will potentially threaten local wildlife and disrupt ecosystem services.

The students were divided into five parties representing for and against the Serendit Solar Farm projects. An outline of their arguments and the Tribunal's final verdict can be found below:

Submission from the Sabah State Government

The Serindit Solar Farm project offers substantial economic benefits to Sabah, extending beyond clean energy production. By generating 300 MW of renewable energy, this project will create a robust demand for local labor, driving job creation in technical, engineering, construction, and maintenance roles. This is especially significant for Sabah, where job opportunities are limited, making the solar farm a stable employment source in both the construction and operational phases. Additionally, the project spurs indirect economic activity, boosting sectors such as manufacturing, supply chain logistics, and professional services. Beyond employment, the solar farm is poised to foster economic diversification by attracting eco-tourism, sustainable businesses, and green technology industries. As Malaysia moves towards adopting electric vehicles, this renewable energy infrastructure makes Sabah an attractive hub for EV companies and other tech-driven investments.



Submission from Surya Energy Corporation

Surya Energy Corporation, the proponent of the Serindit Solar Farm, outlined how this renewable energy project will unlock significant opportunities for Malaysia. Through a series of case studies and a robust risk mitigation plan, the corporation demonstrated the project's potential to drive sustainable development. Backed by key international environmental law precedents, the solar farm is positioned to reduce Malaysia's greenhouse gas emissions, generate local employment, lower energy costs, and safeguard both local communities and the environment. By prioritizing economic growth, environmental protection, and community well-being, Surya Energy Corporation illustrated how the project aligns with Malaysia's renewable energy policies, promoting both intergenerational and intragenerational equity.

Submissions for Save the Padas Forest Future Farmers

Save the Padas Forest Future Farmers were the first party to argue against the Project stating it to be a 'misfit for its context,' alluding strongly to Australia's *Gloucester v Minister for Planning* case. This is because the Serindit Solar Farm project threatens the Padas Forest, a vital ecosystem that local communities and farmers depend on for their livelihoods, food security, and cultural heritage.

The large-scale deforestation would undermine goals of the 12th Malaysia Plan by damaging the environment, disrupting agricultural practices, and impacting socio-cultural ties locals have with the forest. Local farmers rely on forest resources for subsistence, including food, medicinal plants, and materials necessary for their survival.

The project would violate native customary rights as outlined in Sabah's Forest Enactment and Land Ordinance, and infringe on constitutional rights such as equality and property. Additionally, the project risks harming soil health, water quality, and biodiversity in the region, with consequences for both the local economy and the global climate crisis. The submission emphasizes that any development must adhere to Malaysia's commitments under the Paris Agreement, national policies, and legal obligations, and ensure the rights of indigenous and local communities are protected.

The recommendations include conducting mandatory Environmental Impact Assessments (EIAs), recognizing indigenous rights under international and local law, involving communities in decision-making, and considering alternatives that balance renewable energy goals with environmental preservation. The submission calls for sustainable development guidelines that protect the Padas Forest and the communities that depend on it.

Submissions for Indigenous groups

The indigenous group consisting of the Murut and Dasan Tribes were the second party to argue against the Project stating that it would violate the Padas Indigenous Tribes' right to their traditional lands under Section 15 of the Sabah Land Ordinance and Articles 26 of the United Nations Declaration on the Rights of Indigenous Peoples. The Project also does not adequately uphold the principles of intergenerational and intragenerational equity, particularly for the youth and next generation of the Padas Indigenous Tribes; and is not align with the Malaysian Government's obligation to minimise biodiversity loss in accordance with objective B1 (Conserving Natural Ecosystems) of the Twelfth Malaysian Plan and Article 8 of the United Nations Convention on Biological Diversity.

Submissions for Borneo Network

The Borneo Youth Ecological Network voices concerns over the Serindit Solar Farm's 5,000-hectare deforestation in Padas Forest Reserve, threatening endangered species and Dusun and Murut indigenous communities. The Network stresses that development on indigenous lands requires Free, Prior, and Informed Consent (FPIC) as per Malaysian law and UNDRIP. To meet Malaysia's renewable energy goals without biodiversity loss or rights infringement, the Network proposes alternative sites on degraded lands, brownfields, or using rooftop and floating solar systems.

Submissions for Media

The Media and Justice representative concluded the session by presenting a comprehensive reflection on the submissions from the parties involved and thanking LAWASIA for the opportunity given.

Tribunal Decision

It was for the Tribunal to determine whether the Project meets the objectives of Malaysia's sustainable development strategy in the 12th Malaysia Plan and whether the State government's support for the Project was justified.

The Tribunal is of the view that while the project aims to satisfy many aspects of the sustainable development strategy, and provides obvious benefits, such as implementing sustainable development goals and moving towards a Green Economy, this cannot come at the cost of social inclusivity, and respect for the



livelihood and cultural survival of the indigenous communities and farmers in Sarawak or biodiversity, and the risk posed to habitat of critically endangered species. A balanced approach is required that is mindful of environmental protection and social equity.

Accordingly, the Tribunal directed that Surya Energy Corporation prepare a detailed Risk Management Plan and associated EIA environmental impact assessment, in accordance with s 12 and 12F of the Sabah Environment Protection Enactment 2002, which reflect of the effectiveness of mitigation strategies, including reforestation efforts and selective clearing, minimising deforestation, conservation of ecological sensitivities and that report be prepared following the consultation.

Reflections

The YCC served as a powerful forum to interrogate legal and environmental principles of intra and inter generational equity and what that means for the current generation. It was an opportunity to unravel the complex, polycentric nature of climate change and the real risk of nature being at crossroads with nature which is currently impacting environmental management strategies around the world. Such reflection was instrumental in enlivening discussions around what we prioritize in climate action and encouraging critical thinking and problem solving from the future pioneers of legal innovation in the climate space.

We would like to extend our heartfelt gratitude to Dr Judith Preston, Dr Siti Hafsyah Binti Idris, Prof Amanda Kennedy and Robert White for coordinating and leading the YCC. It was an opportunity for the students to gain mentorship and to engage in cross-cultural communication and research.

On behalf of the 2024 Youth Climate Court Participants,
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