

10-12 September, 2021

Zurich, Switzerland

The Procedural Obstacle to Public Interest Litigation in Malaysia

Gan Chee Keong

Independent Researcher, Malaysia

Abstract:

The purpose of this writing is to examine the procedural obstacle to public interest litigation (“PIL”) in Malaysia by referring to Order 53, rule 2 (4) of Rules of Court 2012 (“ROC”). PIL is essentially a judicial review of executive actions by public-spirited individuals and non-governmental organizations (NGO) in court to vindicate the public interest, which demands that violations of constitutional rights or legal rights should not go unnoticed for the poor, illiterate, the disadvantaged and minorities group. Thus, the traditional rule of *locus standi*, which only permit an aggrieved individual who had personally suffered a legal injury to file a lawsuit for the redress, is now relaxed under PIL. The PIL is particularly significant in relation to the protection of the rights and environmental protection such as the rights to clean air, water and environment, which is not just matters of individual concern, but affect broad sectors of the larger community. In Malaysia, judicial review of executive actions has always been a remedy for an aggrieved individual via the Order 53 ROC. The problem arises when a standing is conferred to a person who is “adversely affected” by the decision of the public decision maker vide rule 2 para (4) of Order 53 ROC of which leave no room for PIL. The standing requirement under Order 53 appears to be a stringent requirement. The Malaysian Court had adopted a rigid approach to the interpretation of the words ‘adversely affected’, which impede the advance of PIL. The method used in the present research is doctrinal legal research that focusing on case law and statutes. From the research conducted, the researcher finds that there are some judges who had adopted a liberal approach in giving meaning of the words “adversely affected” to expand the standing for PIL. This finding indicates that the degree of the role played by PIL is very much dependent on the judicial attitude. In conclusion, there is room for the development of PIL if the liberal approach continues to be perpetuated at the apex level of the Malaysian Court. Accordingly, efforts on the promotion of PIL amongst the judges through conference, training, academic writing could be a way to change the judicial attitude.

Keywords: adversely affected; judicial attitude; locus standi; liberal approach; public interest litigation; rigid approach