

## JUDGMENT Express

[2026] 4 MLRA

Petroleum Nasional Berhad (PETRONAS)  
v. Kerajaan Negeri Sarawak & Anor

491

### PETROLIAM NASIONAL BERHAD (PETRONAS)

v.

### KERAJAAN NEGERI SARAWAK & ANOR

Federal Court, Putrajaya  
Hashim Hamzah CJM  
[Motion No: BKA-1-01-2026(W)]  
30 April 2026

*Civil Procedure: Proceedings — Leave — Application for leave to commence a proceeding in Federal Court against respondents pursuant to arts 4(3), 4(4), and 128(1) Federal Constitution read together with r 30 Rules of the Federal Court 1995 — Whether applicant had successfully shown that leave was necessary and that it had an arguable case against respondents*

This was the Applicant’s application for leave to commence a proceeding in the Federal Court against the State Government of Sarawak, the 1st Respondent, and the Government of Malaysia, the 2nd Respondent, pursuant to arts 4(3), 4(4), and 128(1) of the Federal Constitution (“FC”) read together with r 30 of the Rules of the Federal Court 1995. The gist of the application was that the Legislature of the State of Sarawak (“LSS”) had neither the power nor the competency to enact certain laws to regulate matters under the Federal List.

**Held** (allowing the application for leave):

(1) At the outset, the Applicant had shown through the Petroleum Development Act 1974 (“PDA 1974”) and related agreements with the 1st Respondent that the Applicant had been granted full ownership and the exclusive rights, powers, liberties, and privileges to explore, exploit, win, and obtain petroleum onshore or offshore of Malaysia. The Court was also convinced by the Applicant’s submission that the enactment and the amendment of the impugned laws by the LSS might have some impact on its rights and obligations under the PDA 1974 and the related agreements. The Applicant sought to declare these impugned laws unconstitutional on the ground that the LSS had neither the power nor the competency to make them under the FC. Furthermore, the Applicant’s challenge against the competency of the LSS to enact the impugned laws was clearly reserved for the original jurisdiction of the Federal Court. All of these issues pertaining to the constitutionality of the impugned laws should be fully canvassed before the Federal Court. Hence, the Applicant had successfully shown that leave was necessary and that it had an arguable case against the Respondents. (paras 22-30)

**Case(s) referred to:**

*Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor* [2021] 3 MLRA 384 (folld)

*Mamat Daud & Ors v. The Government Of Malaysia* [1986] 1 MLRA 108 (refd)

*Yeoh Tat Thong v. Government Of Malaysia & Anor* [1973] 1 MLRA 480 (folld)



**Legislation referred to:**

Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023, s 10(1)  
Federal Constitution, arts 4(3), (4), 95C, 128(1), Ninth Schedule, Items 1, 8, 11  
Malaysia Act 1963, s 3  
Petroleum Development Act 1974, ss 2, 3, 4  
Rules of the Federal Court 1995, r 30  
Sarawak Distribution of Gas Ordinance 2016, ss 1(3), 7  
Sarawak Flaring and Venting Rules 2025, rr 3(1), 4(1), 4(5), 8(1)(a)  
Sarawak Interpretation Ordinance 2005, s 3  
Sarawak Land (Carbon Storage) Rules 2022, rr 2, 5(1)  
Sarawak Land Code, ss 2, 227  
Sarawak National Parks and Nature Reserves Ordinance 1998, s 2  
Sarawak Oil Mining Ordinance 1958, s 2

**Counsel:**

*For the applicant: Cyrus Das (Khoo Guan Huat, Azian Mohd Aziz, Grace Teoh Wei Shan, Ahmad Faiz Razali, Khoo Yuan Ping & Alex Ngu with him); M/s Hanafiah Zakaria*

*For the 1st respondent: Saferi Ali (SAG) (JC Fong (SLC), Mohd Adzrul Adzlan (SSC), Khairul Kabir (SC) & Felicity Sharmela Thomas (SC) with him); AG's Chambers (Sarawak)*

*For the 2nd respondent: Ahmad Hanir Hambaly @ Arwi (SFC) (Safiyah Omar (FC), Imtiyaz Wizni Aufa Othman (FC) & Ahmad Ilham Haridz Mohd Padli (FC) with him); AG's Chambers*

**JUDGMENT****Hashim Hamzah CJM:****Introduction**

[1] This is an application for leave to commence a proceeding in the Federal Court pursuant to arts 4(3), 4(4) and 128(1) of the Federal Constitution, read together with r 30 of the Rules of the Federal Court 1995.

[2] Petroleum Nasional Berhad or PETRONAS (“the applicant”) seeks, through this leave application, to initiate a proceeding against the State Government of Sarawak (“the 1st Respondent”) and the Government of Malaysia (“the 2nd Respondent”) by way of petition, to pray for the following declaratory orders, and I quote-

“(a) The Legislature of the State of Sarawak had acted beyond or outside its legislative competency or power to make laws when enacting, modifying, amending, revising, or otherwise making the following laws (or part of



- the laws) and related provisions, and therefore the laws (or part of the laws) and related provisions are invalid, void and unconstitutional:
- (i) the Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023; and
  - (ii) the Sarawak Land (Carbon Storage) Rules 2022;
- (b) the Legislature of the State of Sarawak had acted beyond or outside its legislative competency or power to make laws when enacting, modifying, amending, revising, or otherwise making the following laws (or part of the laws) and related provisions, and therefore the laws (or part of the laws) and related provisions are invalid, void and unconstitutional:
- (i) sections 7, 7A and 8 of the Sarawak Distribution of Gas Ordinance 2016 and related provisions, and to the extent that the Legislature of the State of Sarawak acted beyond or outside its legislative authority under the Borneo States (Legislative Powers) Order and the Notification of Exemption made under the Petroleum Development Act 1974 dated 11 March 1982 and amended on 25 May 2021, the said provisions (or part thereof) and related provisions are invalid, void and unconstitutional;
- (c) the Legislature of the State of Sarawak had acted beyond or outside its legislative competency or power to make laws when enacting, modifying, amending, revising, or otherwise making the following laws (or part of the laws) and related provisions, and therefore the laws (or part of the laws) and related provisions are invalid, void and unconstitutional:
- (i) section 3 of the Sarawak Interpretation Ordinance 2005;
  - (ii) section 2 of the Sarawak Oil Mining Ordinance 1958;
  - (iii) section 2 of the Sarawak National Parks and Nature Reserves Ordinance 1998;
  - (iv) section 2 of the Sarawak Land Code 1958;
  - (v) sections 1(3) and 7 of the Sarawak Distribution of Gas Ordinance 2016;
  - (vi) the Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023;
  - (vii) the Sarawak Land (Carbon Storage) Rules 2022, to the extent that these provisions refer to, define, claim or rely on the definition of “land and lands”, “State land”, “onshore or offshore”, or “onshore land and other offshore land” and “territory of the State” as including the “Continental Shelf”;
- (d) Further and in the alternative, the Legislature of the State of Sarawak had acted beyond its legislative competency or power to make laws when enacting the following laws, or part of the laws and related provisions and



therefore the laws, or part of the laws and related provisions, are invalid, void and unconstitutional;

- (i) section 3 of the Sarawak Interpretation Ordinance 2005, which defines “territory of the State” to include “areas as defined by the Sarawak (Alteration of Boundaries) Order in Council, 1954, to include the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sarawak”;
  - (ii) section 2 of the Sarawak Oil Mining Ordinance 1958, to the extent that it applies the definition of “State land” as defined by the Sarawak Land Code 1958 to include “areas as defined by the Sarawak (Alteration of Boundaries) Order in Council, 1954, to include the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sarawak”;
  - (iii) section 2 of the Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023, to the extent it defines “atmosphere” to include airspace above the land and Sarawak waters as waters above the continental shelf of the coast of Sarawak;
  - (iv) section 2 of the Sarawak Land Code 1958, which defines “State land” to include “the foreshore and beds of the sea within the boundaries of Sarawak as extended by the Sarawak (Alteration of Boundaries) Order in Council, 1954”;
  - (v) sections 1(3) and 7 of the Sarawak Distribution of Gas Ordinance 2016 and related provisions, and to the extent that it applies to offshore, offshore land, or the continental shelf;
  - (vi) rule 2 of the Sarawak Land (Carbon Storage) Rules 2022, to the extent that it relies on Sarawak Land Code 1958 and which defines “abandoned petroleum site” to include “well, subsurface reservoir, cavity or facility on offshore land” and “offshore land” to include the seabed and subsoil in the continental shelf within the boundaries of the State as extended by Sarawak (Alteration of Boundaries) Order in Council, 1954; and
  - (vii) section 2 of the Sarawak National Parks and Nature Reserves Ordinance 1998, to the extent it adopts and relies on the definition of “State land” in s 2 of the Sarawak Land Code 1958; and
- (e) Any written law, subsidiary legislation, instrument, decision or administrative act enacted, made or issued by the Legislature of the State of Sarawak or under the delegation of the Legislature of the State of Sarawak, which gives effect to or relies on the Sarawak (Alteration of Boundaries) Order in Council 1954 [No 839] made under the United Kingdom Colonial Boundaries Act 1895 in any form or manner, is invalid to the extent of the giving of such effect or reliance.”



**Background Facts**

[3] The background facts leading to the present application are as follows.

[4] The Applicant is a corporation incorporated under the Companies Act 1965 (now the Companies Act 2016) and established pursuant to ss 2 and 3 of the Petroleum Development Act 1974 (“PDA 1974”).

[5] By virtue of ss 2 and 3 of the PDA 1974, the entire ownership, rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum, whether onshore or offshore of Malaysia, is vested in the Applicant. For ease of reference, ss 2 and 3 of the PDA 1974 are reproduced below:

“Section 2. Ownership.

- (1) **The entire ownership in, and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia shall be vested in a Corporation** to be incorporated under the Companies Act 1965 or under the law relating to incorporation of companies.
- (2) **The vesting of the ownership, rights, powers, liberties and privileges referred to in subsection (1) shall take effect on the execution of an instrument in the form contained in the Schedule to this Act.**
- (3) The ownership and the exclusive rights, powers, liberties and privileges so vested shall be irrevocable and shall enure for the benefit of the Corporation and its successor.

Section 3. The Corporation.

- (1) Notwithstanding s 22 of the Companies Act 1965, relating to the names of companies, **the Corporation shall be styled as the Petroleum Nasional Berhad or in short form PETRONAS.**
- (2) The Corporation shall be subject to the control and direction of the Prime Minister who may from time to time issue such direction as he may deem fit.
- (3) Notwithstanding the provisions of the Companies Act 1965 or any other written law to the contrary, the direction so issued shall be binding on the Corporation. ”

[Emphasis Added]

[6] The vesting of the applicant’s ownership and the exclusive rights above took effect on 26 March 1975, when the 2nd Respondent and the applicant executed the first vesting agreement, and on 27 March 1975, when the 1st Respondent and the applicant executed the second vesting agreement.

[7] In return for the vesting of the applicant’s ownership and the exclusive rights above, the Applicant shall pay to the 1st Respondent cash payments as



may be agreed between both parties. Section 4 of the PDA 1974 clearly states that-

“Section 4. Cash payment by the Corporation.

**In return** for the ownership and the rights, powers, liberties and privileges vested in it by virtue of this Act, **the Corporation shall make to the Government of the Federation and the Government of any relevant State such cash payment as may be agreed between the parties concerned.**”

[Emphasis Added]

[8] On 27 March 1975, the applicant entered into a cash payment agreement with the 1st Respondent pursuant to the above.

### The Applicant’s Case

[9] In the present case, the gist of the applicant’s application is that the Legislature of the State of Sarawak (“LSS”) had neither the power nor the competence to enact certain laws to regulate matters under the Federal List.

[10] On this, the applicant firstly submitted that-

- (a) the Sarawak Land Code (“SLC”) and the Sarawak Land (Carbon Storage) Rules 2022 (“SLCSR 2022”) concerning the regulation of carbon storage;
- (b) the Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023 (“SERGGEO 2023”) concerning the regulation of greenhouse gas emissions; and
- (c) the Sarawak Flaring and Venting Rules 2025 (“SFVR 2025”) concerning the regulation of flaring and venting of petroleum and gas in Sarawak;

were regulated for the implementation or compliance with international treaties, agreements or conventions, such as the United Nations Framework Convention on Climate Change (“UNFCCC”) and World Bank Zero Routine Flaring Initiative (“WBZRFI”).

[11] The Applicant further submitted that the LSS has no legislative power to regulate the above matters, which fall under Item 1 of the Federal List as follows-

“1. External affairs, including-

- (a) **Treaties, agreements and conventions with other countries** and all matters which bring the **Federation into relations with any other country;**
- (b) **Implementation of treaties, agreements and conventions with other countries;**



- (c) Diplomatic, consular and trade representation;
- (d) International organizations; participation in international bodies and implementation of decisions taken thereat;
- (e) Extradition; fugitive offenders; admission into, and emigration and expulsion from, the Federation;
- (f) Passports; visas; permits of entry or other certificates; quarantine;
- (g) Foreign and extra-territorial jurisdiction; and
- (h) Pilgrimages to places outside Malaysia”.

[Emphasis Added]

[12] Secondly, the applicant submitted that the LSS has no legislative power to regulate-

- (a) sections 1(3) and 7 of the Sarawak Distribution of Gas Ordinance 2016 (“SDGO 2016”);
- (b) section 227 of the SLC;
- (c) rule 5(1) read together with r 2 of the SLCSR 2022;
- (d) section 10(1) of the SERGGEO 2023; and
- (e) rules 3(1), 4(1), 4(5), and 8(1)(a) of the SFVR 2025;

which fall under Items 8 and 11 of the Federal List as follows-

“8. Trade, commerce and industry, including-

- (a) Production, supply and distribution of goods; price control and food control; adulteration of foodstuffs and other goods;
- (b) Imports into, and exports from, the Federation;
- (c) Incorporation, regulation and winding up of corporations other than municipal corporations (but including the municipal corporation of the federal capital); regulation of foreign corporations; bounties on production in or export from the Federation;
- (d) Insurance, including compulsory insurance;
- (e) Patents; designs, inventions; trade marks and mercantile marks; copyrights;
- (f) Establishment of standards of weights and measures;
- (g) Establishment of standards of quality of goods manufactured in or exported from the Federation;



- (h) Auctions and auctioneers;
  - (i) Industries; regulation of industrial undertakings;
  - (j) **Subject to Item 2(c) in the State List: Development of mineral resources; mines, mining, minerals and mineral ores; oils and oilfields; purchase, sale, import and export of minerals and mineral ores; petroleum products; regulation of labour and safety in mines and oilfields;**
  - (k) Factories; boilers and machinery; dangerous trades; and
  - (l) Dangerous and inflammable substances.
11. Federal works and power, including-
- (a) Public works for federal purposes;
  - (b) Water supplies, rivers and canals, except those wholly within one State or regulated by an agreement between all the States concerned; production, distribution and supply of water power; and
  - (c) **Electricity; gas and gas works; and other works for the production and distribution of power and energy”.**

[Emphasis Added]

[13] The Applicant also submitted that the above laws have either directly or indirectly extended the 1st Respondent’s activities beyond the distribution of gas as stipulated under the Borneo States (Legislative Powers) Order 1963 (“BLO 1963”), read together with art 95C of the Federal Constitution.

[14] Thirdly, the applicant submitted that there was an attempt by the LSS to include the continental shelf or offshore as part of the 1st Respondent’s territory through the enactments or amendments to the law, as can be seen in the Sarawak Interpretation Ordinance 2005 (“SIO 2005”), the Sarawak Oil Mining Ordinance 1958 (“SOMO 1958”), the Sarawak National Parks and Nature Reserves Ordinance 1998 (“SNPNRO 1998”), the Sarawak Forests Ordinance 2015 (“SFO 2015”), the SDGO 2016, the SERGGEO 2023, the SLCSR 2022 and the SFVR 2025.

[15] In doing so, the 1st Respondent relied on the Sarawak (Alteration of Boundaries) Order in Council 1954 (“the OIC 1954”), which the applicant submitted was no longer a valid law pursuant to s 3 of the Malaysia Act 1963.

[16] The Applicant had also highlighted that the original term ‘written law’ in the SIO 1953 (which was repealed by the SIO 2005) did not encompass an Order in Council. However, it was amended in 1995 to include Order in Council and remains so in the most recent SIO 2005.



### The 1st Respondent's Contention

[17] On the other hand, the 1st Respondent basically contended that the OIC 1954, which was made pursuant to the UK Colonial Boundaries Act 1895, has never been repealed, amended or modified and is still a good law.

[18] Furthermore, the 1st Respondent also contended that the issue of whether the OIC 1954 has been superseded by the federal law after Malaysia Day is not a question to be determined under art 128 of the Federal Constitution.

### Law and Findings

[19] It is trite that in order to succeed in this leave application, the applicant must satisfy this court that leave is necessary, and the Applicant has an arguable case.

[20] In the case of *Mamat Daud & Ors v. The Government of Malaysia* [1986] 1 MLRA 108, His Lordship Mohamed Azmi SCJ (as he then was) held as follows:

“For the applicants to succeed, they must satisfy the court firstly that **leave is necessary under art 4(4)** and secondly, that they have **an arguable case in that the application is not frivolous.**”

[Emphasis Added]

[21] I have thoroughly examined the relevant cause papers. Without making any determination or findings on the actual merits of the case, I found that the applicant's challenge against the impugned laws falls squarely within the exclusive jurisdiction of the Federal Court since the Applicant had demonstrated that leave is necessary, and that the Applicant has an arguable case against the respondents.

[22] At the outset, the applicant had shown through the PDA 1974 and related agreements with the 1st Respondent that the Applicant had been granted full ownership and the exclusive rights, powers, liberties, and privileges to explore, exploit, win, and obtain petroleum onshore or offshore of Malaysia.

[23] I am also convinced by the Applicant's submission that the enactment and the amendment of the impugned laws by the LSS may have some impact on its rights and obligations under the PDA 1974 and the related agreements.

[24] The Applicant sought to declare these impugned laws unconstitutional on the ground that the LSS has neither the power nor the competency to make them under the Federal Constitution.

[25] There is also the issue of the constitutionality of the impugned laws in relation to the Federal and State Lists in the Federal Constitution and the OIC 1954.



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[26] I agree with His Lordship Azmi LP (as he then was) in the case of *Yeoh Tat Thong v. Government of Malaysia & Anor* [1973] 1 MLRA 480, in which it was held as follows:

“In my view, **cls 3 and 4 of art 4 have reference only to suits where a challenge is made to the validity of primary legislation** on the ground that Parliament has made a law which is on the State list, (see schedule 9 of the Constitution) **or on the ground that a State has made a law which is within the Federal list. It is only in such suits (except where the proceedings are between the Federation and one or more States) that leave under cl 4 is necessary; and in view of art 128 the Federal Court has exclusive jurisdiction to determine such question.** Leave referred to in cl 4 is therefore leave to bring the matter before the Federal Court.”

[Emphasis Added]

[27] Furthermore, the applicant’s challenge against the competency of the LSS to enact the impugned laws (or, in other words, ‘the incompetency challenge’) is clearly reserved for the original jurisdiction of the Federal Court.

[28] This principle was clearly enunciated by Her Ladyship Tengku Maimun CJ (as she then was) in *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor* [2021] 3 MLRA 384 as follows:

“[29] In this regard, the phrases ‘inconsistency challenge’ and ‘incompetency challenge’ are purely convenient nomenclature serving as a means to identify the procedure to mount the different challenges given their nature. As identified earlier, **the High Courts have jurisdiction to hear inconsistency challenges while incompetency challenges are reserved for the original jurisdiction of the Federal Court.** The original jurisdiction of this court is exclusive simply because of the gravity of the allegation that the relevant legislature has no power to make that law...”

[Emphasis Added]

[29] Based on the foregoing reasons, I am of the view that all of these issues pertaining to the constitutionality of the impugned laws should be fully canvassed before the Federal Court.

### Conclusion

[30] In conclusion, the court finds that the Applicant has successfully shown that leave is necessary and that it has an arguable case against the respondents. Therefore, leave is granted to the Applicant to initiate the purported proceeding before the Federal Court.

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