

Bank guarantee challenge dismissed

Petros suffers setback after High Court rules Petronas' RM7.95 mln demand is valid, mulls further legal action

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KUCHING: The High Court here has ruled that Petroliam Nasional Berhad's (Petronas) demand for a bank guarantee of RM7.95 million from Petroleum Sarawak Berhad (Petros) is valid.

Judge, Datuk Faridz Gohim Abdullah held that Petros had failed to prove that the call on the bank guarantee was either unconscionable or unlawful.

On constitutional issues, he explained that these matters fell outside the scope of Petros' originating summons.

Faridz Gohim said questions concerning the constitutionality of the two laws—the federal Petroleum Development Act (PDA) 1974 and Sarawak's Distribution of Gas Ordinance (DGO) 2016—should be determined by the Federal Court.

The court dismissed Petros' originating summons with cost of RM50,000 payable to Petronas.

In a statement issued after the proceedings, Petros said the court's decision does not affect the company pursuing further legal action to clarify its rights under the DGO 2016.

Petros said it would carefully review the written judgment and consider the appropriate legal steps in accordance with the law.

It noted that the case decided yesterday concerned what it described as the "unconscionable call" of a bank guarantee under the Sarawak Gas Sale Agreement (GSA), and that the court's ruling was based solely on technical grounds relating to the guarantee.

The High Court, it stressed, did not make any determination on the legality of the Sarawak



Fong (right) and others exit the courtroom after the proceedings. — Photo by Faisal Ahmad

GSA itself, nor did it rule on the constitutional arguments concerning the DGO 2016.

Petronas had called on the bank guarantee after Petros refused to pay for gas supplied in August 2024, arguing that Petronas had no valid licence under the DGO 2016 to supply gas in Sarawak.

Subsequently, Petros sought a court declaration that Petronas' call on the RM7.95 million bank guarantee was unconscionable, null, and void.

Petronas was represented by

lead counsel Datuk Cyrus Das, assisted by counsels Khoo Guan Huat and Alex Ngu, while Petros and the Sarawak government were represented by counsel Tan Sri Cecil Abraham and State Legal Counsel Dato Sri JC Fong, respectively.

The federal government was represented by Senior Federal Counsel Ahmad Hanir Hambaly.

Met after the proceedings, Cyrus said Petronas will be applying for leave on March 16 to refer the constitutional questions to the Federal Court,

and the application is expected to be opposed.

He said the Sarawak government has also filed its own petition, and both matters will have to be addressed by the apex court.

The constitutional validity of the PDA 1974 and the DGO 2016 will ultimately be decided by the Federal Court, he added.

"Insofar as the constitutional issues are concerned, the judge also decided that they are matters that fell outside the scope of the OS (originating summons) and

that the proper forum for it to be decided on the constitutionality of the two rival laws, so to speak—the PDA74 which is federal law, and the DGO 2016 which is Sarawak law—should be done in the Federal Court."

On Jan 12, Petronas filed a motion in Putrajaya seeking the apex court's determination on the legal position applicable to its operations in Sarawak to ensure compliance with relevant laws and good governance practices.

The Federal Court in Kuala Lumpur then fixed March 16 to

decide whether Petronas should be granted leave to seek clarity on the regulatory framework governing its operations in Sarawak.

The Sarawak government has also filed a petition in the Federal Court seeking a determination on the constitutional validity and continued applicability of several federal petroleum laws to the state.

Deputy Minister in the Premier's Department (Law, MA63 and State-Federal Relations) Datuk Sharifah Hasidah Sayeed Aman Ghazali said the petition was filed to determine the constitutional validity and continued applicability of the Petroleum Development Act 1974, Continental Shelf Act 1966, and Petroleum Mining Act 1966 to Sarawak.

She said the federal Acts adversely affect and deprive Sarawak of its rights to natural resources, including oil and gas, found in the seabed of the continental shelf within the boundaries as extended and defined by the Sarawak (Alteration of Boundaries) Order in Council 1954 and the Sarawak (Definition of Boundaries) Order in Council 1958.

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