

Court to decide on granting Petros declaration against Petronas' RM7.95-million bank guarantee on Jan 30

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KUCHING: The High Court will decide on Jan 30 next year, whether or not to grant Petroleum Sarawak Bhd (Petros) a declaration on its claim that Petroliaam Nasional Bhd (Petronas)'s call on a RM7.95 million bank guarantee is unconscionable, null and void.

During the proceedings yesterday, Judge Dato Faridz Gohim Abdullah said he would deliver the judgment.

Petronas had called on the bank guarantee after Petros refused to pay for gas supplied in August last year, arguing that Petronas had no valid licence under the Distribution of Gas Ordinance 2016 (DGO) to supply gas in Sarawak.

During the proceedings, the court allowed Petronas and the federal government, represented by Dato Cyrus Das and the Senior Federal Counsel (SFC), to file additional submissions by this Nov 28.

Petros and the Sarawak government were also permitted

to provide a final reply by this Dec 14.

Speaking on behalf of the Sarawak government, State Legal Counsel Dato Sri JC Fong highlighted Petronas' alleged unconscionable conduct.

He said Petronas had refused to comply with a valid state law, the DGO, despite agreeing under the Sarawak Gas Sales Agreement (SGSA) to follow all written laws; prevented other licensed upstream gas producers, such as Petroleum Sarawak Exploration and Production Sdn Bhd, from selling gas to Petros; and continued to deliver gas to Petros after the SGSA had become frustrated, in contravention of the DGO.

Fong emphasised that such actions undermined the DGO, which was enacted under Article 95C of the Federal Constitution based on the Inter-Governmental Committee (IGC) Report, and stressed that the Sarawak government has a duty to ensure compliance with laws passed for the benefit of the people.

"The refusal by Petronas to comply with the licensing



Cyrus (right) speaks to reporters when met after the proceedings.

requirements of the DGO is unconscionable conduct and totally unacceptable," he said.

He added that the Sarawak government supported Petros' claim that Petronas' call on the bank guarantee was deemed

unlawful.

He further argued that once unconscionable conduct had been established, it would render the guarantee call invalid, 'regardless of whether it is on demand guarantee, or conditional, or

unconditional guarantee'.

Petros' lead counsel Tan Sri Cecil Abraham submitted that the DGO, including its 2023 amendments, was within the legislative competence of the Sarawak Legislature.

He refuted Petronas' claim that Petros was launching a collateral attack on the validity and constitutionality of the Petroleum Development Act 1974 (PDA).

Cecil argued that the PDA did not exempt Petronas from complying with state laws like the DGO.

He also noted that after the Gas Supply Act 1993 (GSA) was passed – applicable only to Peninsular Malaysia – any inconsistencies between the PDA and GSA must defer to the GSA.

"If Petronas has to be licensed under section 11 of GSA to supply gas in Peninsular Malaysia, despite the PDA, how can Petronas maintain that it has a more privileged position in Sarawak, that it does need a license in Sarawak?" he argued.

He said Petronas must obtain a licence under the DGO to lawfully

distribute gas in Sarawak.

After the proceedings, Cyrus confirmed that the court had fixed Jan 30 next year for its decision, and noted that both parties had been directed to file a short written note, not exceeding 10 pages, before the judgment.

"Today you have heard the submissions from the plaintiff, followed by the State Legal Counsel and thereafter, the counsel for Petros. That concludes the arguments," he said, reiterating Petros' position that the DGO was valid and the demand on the bank guarantee was also invalid.

"Our case is straightforward: the amounts were owing, there was a regular request for supply, the supply was provided, and payment must follow. That is the core of the dispute."

Meanwhile, when met yesterday, Fong said that the extension would accommodate the opposing party's request to file additional written arguments.

"They want to put in further arguments in writing, and we will be responding on Jan 14, 2026."