

Petroleum Act may have no legal basis: SLA

Larry Ralon DE 00 05 2012 3

KOTA KINABALU: The Petroleum Development Act 1974 which assigned all the petroleum rights in the country to Petronas may be unconstitutional, according to the Sabah Law Association (SLA).

Its Constitutional and Administrative Law Issues Subcommittee Chairman, Sukumaran Vanugopal raised this possibility when presenting a talk at a seminar on the Constitution of Malaysia and Sabah at Universiti Malaysia Sabah's (UMS) School of Social Sciences here last week.

In his presentation titled "Formation of Malaysia - The Constitutional Rights of Sabah and Sarawak", he said one of the special rights assigned only to Sabah and Sarawak is on tariff and finance where both states are provided with special sources of revenues.

"But one interesting fact is that the petroleum found within the shores of Sabah no longer belongs to the State. It remains there but the resources would go to the national body Petronas and, in return, under the Petroleum Development Act 1974, Sabah gets five per cent royalty," he said.

However, he said, Article 13-2 of the Federal Constitution stated that no law shall provide for compulsory acquisition or the use of property without adequate compensation.

"(So) the question is if five per cent is an adequate compensation. Secondly, all the petroleum rights have been assigned to Petronas under the Petroleum Development Act 1974 ... therefore what is the constitutional validity of the Petroleum Development Act itself?" asked Vanugopal.

In Sabah, he said, land is a state matter and this includes those under the sea.

"It is a State matter, meaning that only the State Legislative Assembly may decide on it. So what is the validity of such a Federal Act? Can a matter concerning land be dealt with in Parliament ... if the answer is no then this Act is invalid," he said.

Vanugopal also touched on the question of whether the Malaysia Agreement became null and void after the separation of Singapore from Malaysia, saying that it is actually not the case from the legal perspective.

"Legally speaking it is not so. This (Malaysia Agreement) is not a bilateral agreement, where the withdrawal of one contracting party would render the entire agreement null and void," he said.

"But a multilateral agreement between various countries, he said, adding that the Malaysia Agreement does not provide a provision for withdrawal by any party.

And unless the right of withdrawal can be implied upon under this agreement, then there is also a question on the validity of Singapore's withdrawal from Malaysia, he said.