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Unveiling the Future of Carbon Pricing in Malaysia: An analysis of the legal framework for carbon taxation

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Abstract
The disastrous climate change consequences caused by greenhouse gas (GHG) emissions are very concerning. This paper aims to assess the efficacy of carbon taxation in controlling GHG emissions within Malaysia's strategy for mitigating climate change. Through an in-depth analysis of the legal framework surrounding carbon taxation, the paper provides insights into the prospects and challenges associated with implementing such a mechanism upon comparing it with carbon taxation initiatives globally, concluding that Malaysia should implement a carbon tax system to effectively reduce the country's GHG emissions by adopting a carbon tax legal instrument for a more carbon-responsible future in Malaysia.

Keywords: Carbon Tax; Climate Change; Legal Framework; Greenhouse Gas Emissions.

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1.0 Introduction

The rise in scientific evidence on the potentially disastrous consequences of climate change caused by greenhouse gas (GHG) emissions, particularly carbon dioxide, the predominant GHG, is a significant source of concern (Wong et al., 2019). With this notion in mind, many countries now embrace carbon pricing as their central strategy to mitigate climate change and limit global warming (Khan & Johansson, 2022). As of 2023, out of 75 carbon pricing instruments implemented worldwide, 39 are carbon taxes, contributing to 6% of global GHG emissions. (World Bank Group, 2024). Of these, the majority are implemented at the national level, while the remaining at the subnational level, as illustrated in Table 1. Over 5,000 economists, including 27 Nobel laureates, have publicly endorsed carbon taxation (The Climate Leadership Council & European Association of Environmental and Resource Economists, 2019). The Organisation for Economic Co-operation and Development (OECD) has also strongly recommended that all countries adopt carbon taxation as an effective strategy to mitigate climate change while fostering sustainable development and economic growth. Numerous countries have successfully implemented carbon taxation, leading to changes in human behaviour, reduced climate change concerns and increased government revenue (Mohd Hasnu & Muhammad, 2022).

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A carbon tax sets a monetary value on carbon emissions, usually by imposing a tax on GHG emissions or the amount of carbon in fossil fuels (UNFCCC, n.d.-a). Implementing this measure would increase the cost of carbon emissions, which might discourage the use of fossil fuels. This economic incentive would encourage businesses to switch to cleaner fuels and reduce emissions (O'Ryan et al., 2023). This paper will demonstrate that although carbon taxation has the potential to mitigate GHGs and decelerate climate change, the process of developing and implementing such a tax can be arduous. This paper aims to assess the efficacy of carbon taxation in controlling GHG emissions within Malaysia's strategy for mitigating climate change. The paper also seeks to offer insights into the prospects and obstacles of adopting carbon taxation by thoroughly analysing the legal framework surrounding carbon taxation while comparing such mechanisms with other global carbon taxation initiatives.

Table 1. Carbon Taxation Implementation Scope

Type	National	Subnational
Carbon taxation	31	9

(Source: World Bank Group)

2.0 Literature Review

2.1 The Malaysian Position

Malaysia's carbon emissions contribute only 0.7% of total global emissions. However, its energy intensity, which measures the amount of carbon emissions compared to the country's Gross Domestic Product (GDP), is about 1.6 times greater than the average worldwide (Wong et al., 2019). The high energy intensity is because Malaysia's economy heavily depends on fossil fuels for energy generation. The Asia Foundation (2023) reports that this industry accounts for 75% of the country's overall emissions. Malaysia has only fewer than ten years to accomplish the objective of decreasing the intensity of GHG emissions to GDP by up to 45%, compared to 2005, by the year 2030. Khan et. al. (2023) have asserted that the existing practices do not align with the long-term objectives of reducing emissions, requiring more stringent regulatory measures. Despite the Malaysian government's green technology incentives to encourage companies across sectors and industries to combat environmental degradation, GHG emissions levels continue to increase. Given the constraints of limited finances and knowledge, the incentives offered are not feasible since only a limited number of companies match the eligibility requirements (Mohd Hasnu & Muhammad, 2022).

Malaysia ranks very poorly in the 2024 Climate Change Performance climate policy category, coming in at 59th out of 67 countries. Malaysia is also falling behind its neighbouring countries in terms of developing a carbon pricing policy, according to Germanwatch (2024). Singapore, for example, is the inaugural Southeast Asian country to implement a carbon tax, setting a precedent in the region (National Climate Change Secretariat, 2023). While Singapore's overall carbon emissions are relatively modest, similar to Malaysia's, its per capita emissions are significant. Hence, Singapore devised the carbon tax legislation as an integral part of Singapore's regulatory tools to meet its commitments stipulated in the Paris Agreement (Tseng, 2022).

Therefore, Malaysia must also enforce stringent measures and enact new legislation to minimise carbon emissions and attain future environmental sustainability. Many economists have suggested that the Malaysian government should consider introducing a new tax to generate income and abolish outdated tax incentives (Mohd Hasnu & Muhammad, 2022). Considering the financial needs of the national budget and the present global climate concern, Wong et. al. (2019) suggest that implementing a carbon tax framework in Malaysia should be seen as a first step towards a broader reform of fiscal and climate policy in the future. Some of the notable benefits of carbon taxation include its double dividend impacts, where it promotes environmental effectiveness by reducing emissions and economic efficiency by internalising the social costs of carbon. Furthermore, there is also the potential for revenue generation where such revenues could be distributed back to society to counterbalance carbon tax's possible regressive inflationary impact.

While many countries have implemented carbon taxation, Malaysia has yet to adopt such measures despite the government already declaring its intention to do so in the Twelfth Malaysia Plan (2021-2025) (Economic Planning Unit, 2021). The government has only mentioned the carbon tax broadly, leaving a gap in specific information on its design and implementation. The prospects and challenges of implementing a carbon tax to regulate GHG emissions have also not been fully explored within the context of climate change governance in Malaysia (Mohd Hasnu & Muhammad, 2022).

2.2 The Polluter Pays Principle vis-a-vis Carbon Taxation

Nordhaus (1994) asserts that climate change is widely recognised as a "commons" or collective-action predicament. Zahar (2020) argues that the polluter pays principle (PPP) is the optimal solution. Like other "commons" problems, a particular level of utilisation of the "commons" (the release of a certain amount of GHG into the atmosphere) does not cause any harm. Nevertheless, when using "commons" without limitations, they rapidly decline for everyone, but not before those who unduly use them gain disproportionate benefits. To maintain a sustainable and fair use of the commons, it is imperative to establish "entry fees" and ensure an equitable distribution of entry permits. In line with this, economists argue that GHG emissions will exceed acceptable levels without market intervention because businesses and households lack the incentive to reduce their emissions. They propose adopting the PPP and placing a price on GHG that could be implemented through a carbon tax to mitigate climate change (Ismail, 2022).

The OECD established the PPP as an economic principle in 1972 before gaining recognition as a principle of international environmental law. It garnered global support through Principle 16 of the 1992 Rio Declaration on Environment and Development, an international instrument to facilitate the advancement of sustainable development worldwide. It is an environmental policy principle that assigns liabilities to entities responsible for pollution and requires them to bear financial responsibility for minimising the adverse consequences on human health and the environment (United Nations, 1992). According to Wiesmeth (2021), it is clear that modern industrialised countries have significantly influenced the rise of GHG levels in recent decades and possibly even centuries. Therefore, it is crucial to acknowledge them as the primary culprits of pollution unambiguously, and they should provide financial assistance to the fund designed to assist developing nations in adapting to the effects of climate change. However, Corvino (2023) stressed that considering these irrecoverable expenses is inefficient and unjust when making forward-looking economic choices. They contended that previous events should be consigned to history. Therefore, it is crucial to uniformly implement the PPP for all GHG emitters, regardless of their geographical location.

3.0 Methodology

In this legal-interdisciplinary research, a doctrinal analysis is employed. This approach was chosen as it is the best approach for acquiring knowledge about law, allowing the synthesis of various international and national legal and policy instruments, together with pertinent environmental principles concerning carbon taxation within the framework of climate change mitigation. This method primarily aims to clarify normative criticisms to develop ideas for future initiatives. The sources used for the doctrinal analysis approach in this research include written sources such as statutory legislation, case law, journal articles, and reports obtained through a library-based search. The Online Public Access Catalogue system facilitated the library-based search to locate primary data, including the Federal Constitution, the Environmental Quality Act 1974 (EQA), the United Nations Framework Convention on Climate Change 1992 (UNFCCC), and the Paris Agreement on Climate Change 2015 (Paris Agreement). The secondary data, which includes journal articles and reports, were acquired by searching law databases such as the Malayan Law Journal, ScienceDirect, and other databases such as SAGE, Emerald and others.

Upon identification of relevant primary and secondary data, the comparative method, as well as the interpretative method, are utilised to analyse them. Comparative analysis systematically describes rules, procedures, institutions, and implementations in one or more legal systems. It involves assessing objectively the similarities, differences, and consequences (Van Hoecke, 2016). In this research, comparative analysis is conducted because it aims to compare Malaysia to countries which have already implemented carbon taxation initiatives worldwide, discovering the preferable best practices from these countries. This selection is based on the research objective, which focuses on assessing the feasibility of carbon taxation in regulating GHG emissions and mitigating the impact of climate change. Meanwhile, interpretive analysis concerns the importance of doctrinal research in developing legal doctrines by examining legal rules. If scientific research focuses on empirical examination to determine the validity of research findings, deriving doctrines through analysis tends to rely more on idiosyncratic and argument-based techniques (Chynoweth, 2006). In this research, interpretive analysis is conducted because it aims to interpret existing legal and policy instruments at both international and national levels to bridge the gap between global best practices and Malaysia's localised needs, as well as to establish whether they create an enabling legal environment for designing and implementing a carbon tax in Malaysia.

4.0 Findings

4.1 The Underpinning International Legal Instruments Ratified by Malaysia

To achieve a significant worldwide decrease, all countries must restrict their carbon emissions (Wong et al., 2019). The UNFCCC, to which Malaysia is a party, requires all parties to develop and implement programmes incorporating measures to mitigate climate change while considering their responsibilities and capabilities (UNFCCC, n.d.-b). However, surprisingly, the UNFCCC, the fundamental international legal instrument for tackling climate change, does not consider carbon taxation a tool for achieving cost-effective reductions in GHG emissions.

The landmark Paris Agreement has filled the gap in the UNFCCC, which was embarked upon by the attendance of world leaders at the United Nations Climate Change Conference (COP21) in Paris. This milestone is a crucial instrument that establishes the basis for implementing a carbon tax as a method of pricing carbon, which is essential for achieving cost-effective reductions in GHG emissions. The main goal of the Paris Agreement is to limit the global average temperature increase to no more than 2 degrees Celsius over pre-industrial levels and to strive for even stricter measures to keep it below 1.5 degrees Celsius above pre-industrial levels. To accomplish this, according to Article 4, the Paris Agreement imposes binding commitments on all parties, including the preparation, communication, and maintenance of a nationally determined contribution (NDC) and the implementation of domestic actions to achieve them. Moreover, it requires that parties regularly communicate their NDCs every five years and provide the necessary information to ensure clarity and transparency. Each successive NDC shall build upon the previous one and showcase the utmost ambition, aiming to construct a solid foundation for future goals (United Nations Climate Change, n.d.). Like other countries, Malaysia is committed to meeting its climate target of net-zero emissions by 2050. Additionally, Malaysia aims to decrease the intensity of GHG emissions to its GDP by up to 45% by 2030, compared to the levels recorded in 2005 as outlined in Malaysia's NDC to the goals of the Paris Agreement (Wong et al., 2019).

4.2 The Underpinning Domestic Legal and Policy Instruments

The Federal Constitution of Malaysia guarantees that every individual has the right to life and personal liberty under Article 5(1), except where the law restricts. The Court of Appeal provided clarification of such fundamental liberty, albeit obiter, in the case of Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan 1 MLJ 261, (1996), stating:

"The expression 'life' in Article 5 does not refer to mere existence. It incorporates all those facets that are an integral part of life and those matters that go to form the quality of life itself. Of these are the rights … to receive those benefits that our society has to offer to its members. It includes the right to live in reasonably healthy and pollution-free environment." (Emphasis supplied)

To implement a carbon tax in Malaysia, it is necessary to have a well-defined legal framework to guide and regulate its implementation. Currently, Malaysia lacks dedicated legislation to tackle climate change, resulting in the absence of a climate law that would provide the necessary framework for implementing a carbon tax in the country. While Malaysia has enacted the Environmental Quality Act (EQA) to protect the environment and the Renewable Energy Act 2011, which indirectly supports the reduction of emissions, it is important to note that these laws do not directly relate to climate change (Bernama, 2020). Although the EQA has undergone several amendments, it is silent on climate change or GHG emissions. Despite the urgency and relevance of these global challenges, they remain nonexistent in the Act, as much as they are nonexistent in the Federal Constitution.

Notwithstanding the adoption of the National Policies on Climate Change (Ministry of Natural Resources and Environment Malaysia, 2009), most climate mitigation strategies in Malaysia have not been implemented yet. However, the Malaysian government has declared its intention to implement carbon taxation as part of its Twelfth Malaysia Plan (2021-2025). This initiative aims to encourage desired changes in behaviour among both public and private companies, motivating them to adopt clean energy mechanisms to reduce GHG (Economic Planning Unit, 2021). However, the government only mentioned the carbon tax broadly, lacking specific information on its design and implementation. Therefore, the potential benefits of implementing a carbon tax to regulate GHG emissions have not been fully explored within the context of climate change governance in Malaysia.

5.0 Discussion

5.1 Implementing Carbon Tax in Malaysia: The Prospects

Complementary to other regulatory mechanisms, imposing a carbon tax on activities that generate GHG emissions is crucial for controlling GHG emissions. Therefore, it is not surprising that a growing number of countries are adopting carbon taxes to fulfil their obligations to reduce emissions as outlined in the international climate change regime. Since 1991, Sweden has been at the forefront of global efforts to address climate change by implementing a carbon tax. This demonstrates the increasing importance of environmental policy in the country's political agenda (Hammar & Åkerfeldt, 2010). The initiative aims to foster the development of cleaner fuels while ensuring a stable cost in the energy industry (LSE, 2024). Implementing the carbon tax has resulted in an extra 20% in emissions compared to depending simply on regulations. This allowed the country to successfully meet its emission reduction goal for 2012, as outlined in the Kyoto Protocol.

Meanwhile, Denmark has reached a significant environmental protection milestone by reducing direct and indirect GHG emissions by 27.7% over 12 years, specifically from 2005 to 2017, made possible through a carbon tax. Furthermore, France has made significant progress in implementing a carbon tax to control carbon emissions, leading to a decrease in the rate of carbon emissions. This reduction proves the tax's effectiveness (Mohd Hasnu & Muhammad, 2022). Indeed, Malaysia should take heed of these exemplary instances and implement a carbon tax to demonstrate its acknowledgement of global climate responsibilities. This is because carbon taxation can effectively decrease the release of GHG, stimulate innovation, facilitate a shift towards a low-carbon economy, and ultimately fulfil Malaysia's commitment under the Paris Agreement.

Also, to date, there is still a lack of specific information on carbon tax design and implementation in Malaysia, despite the government's intention to implement it. In this instance, it is crucial to note that in addition to regulating GHG emissions, implementing a carbon tax might also generate sources of income. The revenue generated could help the Malaysian government diversify its sources of national income, which can be allocated to two specific purposes: social protection schemes and environmental incentives. Social protection schemes include insurance, pensions, and compensation (Mohd Hasnu & Muhammad, 2022). Furthermore, the carbon tax might be employed to mitigate regressive taxes, such as the sales tax on food and other essentials, and reduce taxes on individual and corporate profits (Wong et al., 2019). On the other hand, environmental incentives involve providing financial support to promote advancements in renewable energy, energy efficiency, and the better use of natural resources (Mohd Hasnu & Muhammad, 2022).

5.2 Implementing Carbon Tax in Malaysia: The Challenges

Although carbon taxation offers the potential for mitigating GHG emissions and decelerating climate change, designing and implementing this tax can be complex. Despite its advantages, introducing a carbon tax involves several compromises that have sparked political disputes in advanced democracies (Mildenberger et al., 2022). For instance, carbon taxation was rejected in referenda and elections like in Washington State in 2016 and 2018 (Fairbrotherid, 2022), reversed due to political backlash in Australia in 2014(Carattini et al., 2018), and opposed by a significant proportion of the public e.g., the Yellow Vest movement in France (Fairbrotherid, 2022).

Despite the diligent endeavours of the government and various non-profit groups to foster environmental consciousness and protection, environmental issues persist as a significant concern in Malaysia, primarily due to a deficiency in public comprehension of climate change (Mohd Hasnu & Muhammad, 2022). Consequently, there is a dearth of popular backing for adopting a carbon tax. In

light of this, efforts should be made to build public support and awareness of carbon tax policies to increase public understanding and enhance its acceptance for its smooth implementation (Qiao et al., 2024).

The lack of support for carbon taxation is also due to its potential to increase the expenses related to specific economic activities and reduce competitiveness, especially in businesses that heavily depend on the use of fossil fuels. The likely ramifications of this situation encompass the potential for job displacement, a decline in specific economic sectors, and a possible contraction in overall economic growth (O'Ryan et al., 2023). In addition, opponents of carbon taxes argue that they have a regressive impact. Concerns have arisen over the equity of the tax and its effects on households with low incomes or individuals working in low-paying jobs. Raising the cost of fossil fuels imposes a heavier economic burden on individuals, requiring them to dedicate a larger portion of their income to necessary expenses like fuel, electricity, and food (Andersson & Atkinson, 2020). To minimise or avoid such impacts, it is wise to integrate carbon taxes gradually in phases to allow time for its adaptation (Qiao et al., 2024).

Furthermore, it is essential to acknowledge that a given carbon tax may not be sufficient to attain the intended reduction in emissions. In such cases, it might be necessary to raise the price. While the tax rate needs to be sufficiently high to discourage activities that produce excessive GHG emissions, it should not be excessively high to the point where it exacerbates the anticipated impacts (O'Ryan et al., 2023). Therefore, to implement a carbon tax, the government must establish the cost or price for every metric tonne of GHG emissions. However, this task is not without difficulties, as scientists and economists must first reach a consensus on the assumptions to be employed.

6.0 Conclusion & Recommendations

Implementing a carbon tax is an efficient means of decreasing GHG emissions while keeping costs low. While carbon taxes align with the polluter pays principle, Malaysia has not fully utilised the potential of this tax to control GHG emissions. In the absence of a carbon tax in Malaysia, the responsibility of significant GHG emitters in addressing climate change will persistently be disregarded. Therefore, it is recommended that the government design and implement a carbon tax in Malaysia to effectively decrease and discourage investments that result in GHG emissions.

Additionally, by adopting a carbon tax legal instrument that targets major polluters in various sectors of the economy, carbon taxation has the potential to generate additional government revenue. Such a legal instrument can serve as a crucial market and fiscal policy tool in Malaysia's efforts to mitigate climate change which should be seriously considered by the policymakers. Given that the country has less than ten years to accomplish the objective of reducing carbon dioxide emissions by 45% by 2030, it is imperative to take action as soon as possible. Hence, this research contributes to the body of knowledge in providing significant outcomes on government policy that can effectively address climate change by influencing individuals to adopt carbon-neutral investments or, at the very least, cut GHG emissions.

However, as this research is only focused on carbon taxation, it may limit broader generalisations about the wider carbon pricing instruments which could help the country achieve its target under the Paris Agreement to mitigate global warming, such as an emissions trading system. In light of this, further research can be conducted on the legal framework of such alternative carbon pricing instruments in comparison to carbon taxation to ensure a robust regulatory measure for climate change mitigation in Malaysia could be adopted.

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Paper Contribution to Related Field of Study

This research contributes to the chorus of legal interdisciplinary research involving climate governance and sustainable development.

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