



Laws of the Wild: The Malaysian legal framework on wildlife conservation

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Abstract

Wildlife conservation in Malaysia faces numerous threats, including poaching, trafficking, the impact of climate change, and deforestation. To address these issues, the Wildlife Conservation Act of 2010 has been enacted to regulate, protect, conserve, and manage wildlife in Malaysia. This paper examines the current Malaysian legal framework on wildlife conservation, issues, and challenges. The discussion adopts the doctrinal legal research analysis. The findings of this paper can provide the governments, policymakers, and conservationists to tackle this pressing issue and implement effective solutions to minimise its impact on Malaysia, including enhancing the legal framework, policies, and enforcement procedures.

Keywords: Laws of the Wild; Wildlife ; Conservation; Legal Framework

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1.0 Introduction

Malaysia is recognised as one of the most biodiverse locations in the world. There are over 15,000 species of vascular plants and 152,000 species of animals, making it the 12th most biodiverse place on Earth. (Koshy, 2020). Despite its impressive biodiversity, Malaysia also has one of the highest numbers of endangered species in Asia. Unfortunately, the Sumatran rhinoceros has gone extinct in Malaysia, and the Malayan tiger is currently facing the risk of extinction. Furthermore, recent incidents have occurred, such as the death of a black panther as it was hit by a car while crossing the road. It is important to note that the Malay Peninsula boasts the highest concentration of black panthers worldwide (Liew, 2023). Also, the sun bear involved in the attack on an auxiliary firefighter in Yan weighs approximately 90 kilograms and is considered an endangered species (Ahmad Mukhsein Mukhtar, 2023). According to research conducted in Malaysia, the Gerik-Jeli highway has proven to be a significant obstacle for elephant movements, resulting in an 80% decrease in permeability (Wong et al., 2018). Recent incidents have emphasised the pressing need to focus on wildlife conservation, a valuable asset.

Furthermore, the impact of climate change and severe weather occurrences is already being felt by both humans and wildlife. Additionally, the consequences of climate change pose a significant threat to the wildlife population. One major challenge Malaysian wildlife faces is habitat loss due to deforestation, specifically for palm oil plantations. While these plantations have contributed significantly to Malaysia's economic growth and poverty reduction, they remain the primary cause of habitat loss. Recently, Deputy Prime Minister Datuk Seri Fadillah Yusof announced that "there will be no new land clearing or deforestation for oil palm plantations" (Junaid Ibrahim, 2023). Malaysian authorities have implemented wildlife laws and regulations and actively monitor and curb poaching and illegal wildlife activities. Despite these efforts, thousands of endangered animals continue to be killed, trafficked, and traded in various forms. This paper examines Malaysia's current legal framework regarding wildlife conservation, evaluating its efficacy in light of the Laws of the Wild. Furthermore, this study will address the challenges wildlife conservation faces due to climate change and explore

potential solutions. The objective of this paper is to investigate the adequacy of the current legal framework in Peninsular Malaysia, Sabah, and Sarawak as to its applications concerning wildlife conservation.

2.0 Literature Review

Several studies have already been carried out to explore the issues and challenges of wildlife conservation. Wildlife populations and habitats are under threat from various sources. Climate change is one of this era's most significant threats to wildlife. According to Zeng Y. (2023) climate change creates additional challenges by altering habitats, disrupting migratory patterns, and exacerbating the frequency and intensity of extreme weather events. The impact of climate change is exacerbating the vulnerability of wildlife populations. Elizabeth Mrema, the Executive Secretary of the Convention on Biological Diversity, has emphasised the crucial relationship between climate change and biodiversity loss (IPBES, 2019). In a 2019 report by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), Mrema stated that climate change is a key factor driving biodiversity loss while underscoring the importance of biodiversity in mitigating the impacts of climate change (IPBES, 2019). The research conducted by Schmitz Oswald (2023) suggests that wildlife species play a crucial role in the interaction between biodiversity and climate, making rewilding one of the most effective nature-based climate solutions.

According to Soni (2021) wildlife is at significant risk due to illegal hunting and poaching, apart from climate change. Moreover, according to statistics from the Wildlife and National Parks Department, the department has dealt with 443 cases involving the illicit trade of wildlife on online platforms since 2020 (Ainin & Danial, 2023). Zeng Y. (2023) mentions that conflicts between humans and wildlife often occur as human populations expand and encroach upon natural habitats. Such conflicts can arise when wildlife damages crops, attack livestock, or threatens human safety. For instance, approximately 300 settlers at Sungai Terah Land Rehabilitation Programme (RPT) in South Kelantan Development Authority (Kesedar) suffered losses after three wild elephants destroyed their farms. ("Anxious times for Sungai Terah villagers as wild elephants destroy crops"). In addition, more than 2,000 residents from three Orang Asli settlements - Pos Belatim, Pos Bihai, and Pos Gob- live in fear as wild elephants have encroached on their villages. ("Wild elephant encroaches on three Orang Asli settlements")

Yaakob (2023) highlights the importance of adequate legislation in protecting the forest ecosystem against illegal logging, deforestation, loss of wildlife and biodiversity, uncontrolled land-use changes, and mixed development. Soni (2021) mentions that the exploitation of wildlife for trade and other benefits of humans has resulted in enacting and enforcing various legislations and Acts in almost all the world's countries. Thus, the legislation passed for wildlife conservation in Malaysia varies according to jurisdiction (Harsimran Kaur & Neha Navalashini Sominadu, 2021). According to Mohd-Azlan and Jayasilan (2014) Sarawak must promptly review its Wildlife Protection Ordinance to address any loopholes and enhance the protection of its wildlife, particularly the globally endangered species. According to Water, Land and Natural Resources Minister Dr A. Xavier Jayakumar, after the amendment of the Wildlife Conservation Act 2010, Sabah and Sarawak have been urged to amend their wildlife protection laws to increase punishments for wildlife crimes (Arfa Yunus et al., 2019). Zolkipli Mohamad Aton, the CEO of Sarawak Forestry Corporation (SFC), has highlighted the differences between implementing the Wildlife Conservation Act 2010 in West Malaysia and the Wildlife Protection Ordinance 1998 in Sarawak when these two policies addressed different scenarios and objectives. The Wildlife Conservation Act 2010 aims to regulate, protect, conserve, and manage wildlife, while the Wildlife Protection Ordinance 1998 primarily focuses on preserving wildlife and wildlife sanctuaries. (Lineil, 2023).

3.0 Methodology

This paper adopts qualitative doctrinal legal research as this paper intends to discuss in depth and detail. For this purpose, the discussion adopts the doctrinal content analysis method by examining the primary sources such as the Federal Constitution, Wild Animals and Birds Protection Ordinance 1955, Protection of Wildlife Act 1972, Wildlife Conservation Act 2010, Wildlife Conservation Amendment Act 2022, Wildlife Conservation Enactment (No. 6 of 1997) and Wildlife Protection Ordinance 1998. The national policies referred to are the National Policy on Biological Diversity 1998, National Policy on the Environment 2002, National Policy on Climate Change 2009, and National Policy on Biological Diversity 2016–2025. The secondary data are collected from cases, journal articles, newspaper articles, textbooks, and government reports. In addition, online databases such as Lexis Nexis and Current Law Journal (CLJ) website are used for this purpose. The research methodology employed in this study involved content analysis of primary data and literature reviews of secondary data to provide additional contextual support. This approach aimed to evaluate the protection provided to wildlife conservation under the legal framework in Malaysia. A thorough assessment of both data sets provides a comprehensive understanding of the country's current state of wildlife conservation.

4.0 Findings and Discussion

4.1 Definition of Wildlife and Conservation Activity

According to Usher (1986) wildlife refers to non-domesticated species of plants, animals, and microbes. The term wildlife typically refers to animals, focusing on mammals and birds.

Section 3 of the Wildlife Conservation Act of 2010 defines wildlife as any species of wild animal or wild bird, whether totally protected or protected, vertebrate or invertebrate, live or dead, mature or immature and whether or not may be tamed or bred in captivity. The

Wildlife Conservation (Amendment) Act of 2022 has been updated to include a revised definition of wildlife that now encompasses "totally protected, protected, or controlled" species. Wildlife can be found in many ecosystems, including forests, grasslands, marshes, deserts, and aquatic settings. It consists of both marine and terrestrial creatures. Tigers, elephants, lions, bears, dolphins, whales, eagles, butterflies, and diverse tree, flower, and grass species are a few examples of wildlife.

Wildlife conservation is when humans consciously try to protect plants and other animal species and their habitats (Tidball, 2014). Meanwhile, Section 50(2) of the Wildlife Conservation Act of 2010 defined 'conservation activity' as an activity related to wildlife protection, management, and sustainable use.

4.2 The Status of "Wildlife Conservation" under the Federal Constitution

The Federal Constitution of Malaysia does not explicitly address wildlife conservation as a separate and distinct subject. However, there are provisions within the Constitution that indirectly contribute to the preservation and protection of wildlife in the country. Article 74 of the Federal Constitution states a clear division of powers between the federal and state governments. The Constitution provides the ability to both the federal and state legislatures to pass statutes relating to the protection of wild animals and wild birds, animal husbandry, prevention of cruelty to animals, veterinary services, and animal quarantine under the Concurrent List (List III of the Ninth Schedule). Therefore, legislation enacted for protecting terrestrial wildlife in Malaysia varies according to jurisdiction.

4.3 Overview of Malaysia's Environmental Policy and Legal Framework on Wildlife Conservation

According to McCormick (2001) environmental policy is aimed at managing human activities to prevent, reduce or mitigate the harmful effects on nature and natural resources and ensure that man-made changes to the environment do not have any harmful effects on human beings. Malaysia has implemented environmental policies to address the disparity between economic and social activities and the need for environmental protection. The first National Policy on Biological Diversity was formulated in 1998. In light of current and anticipated challenges, it has become apparent that more than the previously established 1998 policy to protect biodiversity is needed. As such, an updated policy must be implemented to ensure the preservation of our nation's natural resources for years to come. The National Policy on Biological Diversity 2016-2025 provides the direction and framework for conserving and using our biodiversity sustainably in the face of increasingly complex challenges.

Table 1. National Policies Relevant to Wildlife Conservation

Policy document	Wildlife Protection provisions
National Policy on Biological Diversity 1998	Strategy 10: Minimise impacts of human activities on biological diversity. Action plan 7: Adopt measures to alleviate the impact of human activities on the displacement of wildlife
National Policy on the Environment 2002	Strategy 2.2: Natural resource areas, particularly those containing biologically rich habitats and ecosystems, will be established and maintained as zones for the conservation and protection of indigenous flora, fauna, and genetic resources.
National Policy on Climate Change 2009	Principle 1: Conservation of Environment and Natural Resources
National Policy on the Biodiversity 2016-2025	Target 9: By 2025, the extinction of known threatened species has been prevented, and their conservation status has been improved and sustained. Target 10: By 2025, poaching, illegal harvesting and illegal trade of wildlife, fish and plants will be under control and significantly reduced.

(Source: Reorganize from National Policy on Biological Diversity (1998), National Policy on the Environment (2002), National Policy on Climate Change 2009 and National Policy on the Biodiversity (2016-2025))

The federal and state governments have passed several laws and regulations to safeguard Malaysia's environment and wildlife. The Wild Animals and Birds Protection Ordinance 1955 marked the beginning of the development of wildlife legislation in Malaysia. After Malaysia obtained independence, the Protection of Wildlife Act 1972 was implemented. However, the outdated penalties have raised questions about the efficacy of the Protection of Wildlife Act 1972. Therefore, after 38 years, a new Bill was passed by Parliament in August 2010. The Wildlife Conservation Act 2010 was published in the gazette and enforced on December 28, 2010, to enhance and reinforce the wildlife laws in Peninsular Malaysia.

The state of Sabah has implemented a variety of legislative measures aimed at safeguarding its diverse array of flora and fauna, as well as effectively managing its natural environment. These laws have been implemented to ensure the utmost protection and preservation of Sabah's rich biodiversity and promote sustainable practices supporting the continued health and vitality of the region's ecosystems. This includes the Wildlife Conservation Enactment (No. 6 of 1997), which was gazette on 24th December 1997. Section 41 of the Wildlife Conservation Enactment 1997 prohibits the possession of protected animals and animal products unless authorised in writing by the Minister acting on the advice of the Director. Moreover, the section also imposed a fine of not less than fifty thousand

ringgit and not more than two hundred and fifty thousand ringgit and imprisonment for a term not less than one year and not more than five years or both.

Regarding the State of Sarawak, 1998 saw the implementation of the Wildlife Protection Ordinance 1998 by the Sarawak Forestry, which comprises the Sarawak Forest Department and Sarawak Forestry Corporation. This ordinance is an important measure to safeguard and preserve the wildlife in the region. The Ordinance applies only in the state of Sarawak. Its primary objective is to provide better provisions for protecting wildlife, establishing and managing wildlife sanctuaries and all related matters. According to Section 37 (1) of the Wildlife Protection Ordinance 1998, it is illegal for anyone to possess any species of wild mammal, bird, reptile, or amphibian unless they have the appropriate license. Section 37(2) of the Wildlife Protection Ordinance 1998 imposes the penalty of imprisonment for one year and a fine of two thousand ringgit per individual animal and animal part found in his possession.

4.4 The Judicial Interpretation of Wildlife Cases

The relevant provisions of Malaysian wildlife legislation empower the judiciary to impose fines and imprisonment on offenders. This article aims to scrutinise cases before and after implementing the Wildlife Conservation Act of 2010. In addition, the cases in Sabah and Sarawak will be considered.

In *Gek Sing Kaliappan v PP* [1999] 6 MLJ 641, under the Protection of Wildlife Act of 1972, the appellant had pled guilty to three charges of illegally possessing protected snake species. The Magistrates' Court punished the appellant with seven days in jail and RM3,000 in fines for the first and second offences, seven days in prison and RM5,000 in fines for the third offence, with a default term of five months in jail. He then filed an appeal to the High Court. However, the court dismissed the appeal and increased each offence's imprisonment to 14 days.

In *PP V. Nguyen Thi Huong* [2015] 2 CLJ 102, the Vietnamese national respondent pleaded guilty under four charges of smuggling trophies of wild animals protected by the Wildlife Conservation Act 2010. He was sentenced to six months imprisonment for the first charge, three months imprisonment, and a fine of RM20,000 in default, two months imprisonment for the second charge, nine months imprisonment for the third charge, and nine months imprisonment and a fine of RM30,000 in default three months imprisonment for the fourth charge. However, the prosecutor filed an appeal because of inadequate sentences imposed by the Sessions Court. The appeal was allowed. High Court set aside the previous punishment and increased the punishment of the first charge to twelve months imprisonment, six months imprisonment, and a fine of RM40,000 in default, four months imprisonment for the second charge, eighteen months imprisonment for the third charge, and eighteen months imprisonment and a fine of RM50,000 in default five months imprisonment for the fourth charge and all sentences to run concurrently.

The case in question was determined under the Sabah Wildlife Protection Enactment 1997. In the case of *Tijelo Jacquinn Kuin v PP* [2020] 4 CLJ 139, the appellant was charged with possessing sun bear body parts as defined by section 41(1) of the Wildlife Protection Enactment of 1997. After being found guilty, the appellant was sentenced to two years of imprisonment and an RM50,000 fine. Upon appeal, the High Court dismissed the appellant's case and increased the sentence to four years of imprisonment, an RM50,000 fine in default, and 24 months of imprisonment as a deterrent measure.

The following case was decided under the jurisdiction of Sarawak's Wildlife Protection Ordinance 1998. The *Sarawak Forestry Corporation V Rajiman* [2022] MLJU 2010 case involved the defendant's admission of guilt for possessing three pangolins, also known as "Tenggiling," and an additional 2,782 pieces of pangolin scales. The defendant was charged under section 37(2) of the Wildlife Protection Ordinance 1998 and received a sentence of one year imprisonment and a fine of RM 27,850,000.00. The court's decision was by section 29(2) of the ordinance, which provides guidelines for individual animals and animal parts found in the defendant's possession.

4.5 Recent Developments

For the effectiveness of wildlife conservation in Malaysia, after 11 years of enforcement, in October 2021, the Wildlife Conservation Act amendment received a unanimous vote in the Dewan Rakyat. The Wildlife Conservation Amendment Act 2022 was published in the gazette and enforced on February 10, 2022. The Wildlife Conservation Act 2010 amendment was needed to address several issues, primarily enforcement actions. Section 29 (1) of the Wildlife Conservation Act 2010 prohibits "a person possess or keep any snare; or set, place or use any snare for the purpose of hunting any wildlife". Meanwhile, the new amendment to section 29 (1) states that "no person shall possess, keep, set, place or use any snare except for the purposes of carrying out wildlife research or study on any wildlife." In terms of penalties, Section 71 of the Wildlife Conservation Act 2010 imposed a sentence to a fine of not less than thirty thousand ringgit and not more than one hundred thousand ringgit and to imprisonment for a term not exceeding three years for those who imports, exports or re-exports any protected wildlife or any part or derivative of protected wildlife without a special permit. Now, the amendment to the Act involved increasing the maximum fine from RM500,000 to RM1 million, and the maximum jail term is also increased from 10 to 15 years, acting as a deterrent and lesson to offenders (Section 71 of the Wildlife Conservation Amendment Act 2022). Moreover, the amendment also includes new sections, namely, Section 88A and 88B, that provide punishments for those who organise wildlife shows and promote wildlife.

In terms of penalties, the wildlife crime offenders will now face a higher fine of up to RM1 million and jail of fewer than 15 years if one is found guilty under Section 71 of the Wildlife Conservation Act (Amended) 2022 ("Higher penalty of up to RM1mil and jail for wildlife crime offenders"). This particular amendment seeks to impose stricter penalties to serve as a strong deterrent to those involved in smuggling activities. It is important to note that there are significant differences in the penalties for cases decided in Peninsular Malaysia versus those in Sabah and Sarawak. With the amendment of the Wildlife Conservation Act 2010 Amendment Act 2022, there is an urgent need to amend Sabah Wildlife Conservation Enactment 1997 and Sarawak Wildlife Protection Ordinance 1998. Therefore,

it may be advantageous for Sabah and Sarawak to review their respective legislation to ensure alignment with current standards. This could help ensure consistency and fairness in the administration of justice throughout the country.

5.0 Conclusion

This paper has analysed the current state of the Wildlife Conservation Act 2010 and its recent amendment. While the federal government has demonstrated a strong interest in developing various policies and mechanisms for wildlife conservation, it requires state governments' cooperation to ensure the ecosystem's protection. In order to keep up with the current state of wildlife conservation locally and globally, there must be uniformity of laws in both Peninsular Malaysia, Sabah, and Sarawak. The paper's discussion is limited to the applicability of wildlife conservation law in Peninsular Malaysia, Sabah, and Sarawak. It suggests that the legislation in Sabah and Sarawak needs to be amended to be more relevant to the current situation, including increasing penalties for wildlife trafficking. To achieve this objective, governmental entities, policymakers, conservationists, and stakeholders must collaborate and address this pressing issue by implementing practical solutions. This will require enhancing our legal framework, policies, and enforcement procedures. Future research should focus on Malaysian law and international practices in combating environmental crimes, particularly wildlife cybercrime, under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Paper Contribution to Related Field of Study

The present study contributes to the existing literature on the legal framework governing wildlife conservation in Malaysia. It delves into the pertinent issues and challenges, providing valuable insights into the subject matter.

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