



RESEARCH ARTICLE

Ecotourism: Principles, Policies, and Laws in Malaysia

Nur Khalidah Dahlan¹, Nurwajihah Ajlaa Ali², Hadi Akbar³

^{1,2}Faculty of law, The National University of Malaysia (Universiti Kebangsaan Malaysia), Selangor, Malaysia

³Leave a Nest Malaysia Sdn. Bhd

ARTICLE INFO	ABSTRACT
Received: Oct 18, 2024 Accepted: Dec 24, 2024 Keywords Ecotourism Policies, Legislation and Regulatory Laws Malaysia	Malaysia has a diverse range of natural resources, making ecotourism a highly beneficial, sustainable, and long-term form of tourism. Despite this fact, there are numerous concerns about the future development of ecotourism that should be addressed. Inadequacy of comprehensive legislation and regulatory framework, some inconsistencies, and overlap in rules and regulations between relevant ministries involved, as well as confusion about the meaning of the term ecotourism, are the issues that arose in the tourism field. Therefore, the paper aims to analyse the meaning, principles, and policies within the industry by identifying. Then it explores the regulatory framework, existing rules, and regulations on the said issues. This study utilized a doctrinal research method. Doctrinal methodology involves interpreting legal sources to understand the meaning and scope of legal rules and principles. The researcher analyzes the language, legislative intent, judicial reasoning, and precedent to ascertain the intended interpretation of legal provisions. This study will hope to recommend that there is a need for proper ecotourism legislation and regulatory framework as well as sound management policies in enhancing the development of ecotourism in Malaysia.
*Corresponding Author nurkhalidahdahlan@ukm.edu.my	

INTRODUCTION

The tourism industry has always been the world's largest and fastest-growing industry since its contribution to the national economy is more significant compared to the global average. In 2019, the tourism industry contributed 15.9% to Malaysia's Gross Domestic Product (GDP) worth RM240.2bil (*Malaysian The Star Newspaper, 24 December 2020*). According to reports, the tourism industry employed 277 million people, accounting for 1 out of every 11 jobs, and contributed 9% of global Gross Domestic Product (GDP) (Gaitonde, 2019). In 2020, Malaysia received 4,332,722 international tourist arrivals, down 83.4 percent from the 26,100,784 recorded in 2019. According to Tourism Malaysia website in 2019, the top ten international tourist arrivals to Malaysia were from Singapore (1,545,255), Indonesia (711,723), China (405,149), Thailand (394,413), India (155,883), Brunei (136,020), South Korea (119,750), Japan (74,383), Australia (72,680), and Vietnam (64,184). Not only did Malaysia register negative growth in the number of tourist arrivals, but others neighbouring countries also saw a significant decline in the number of tourists including Thailand, Singapore, Vietnam, and Indonesia. Malaysia's tourist receipts fell 85.3 percent from RM86.14 billion in 2019 to RM12.69 billion in 2020, with an average per capita expenditure totalling RM2,928, an 11.3 percent decrease from RM3,300 in 2019 (www.tourism.gov.my). The closure of Malaysian

borders due to the spread of the novel pandemic COVID-19 is blamed for the massive decrease in international tourist arrivals.

Table 1: Numbers of tourist arrival and receipts

	2019	2020	Percentages Rate
Tourist arrivals	26,100,784	4,332,722	-83.4%
Tourist receipts	RM86.14 billion	RM12.69 billion	-85.3%
Per capita expenditure	RM3,300	RM2,928	-11.3%

Source: Tourism Malaysia. <https://www.tourism.gov.my>

Due to the ongoing closure of international borders, it is prudent for Malaysian tourism industry players to re-strategize their marketing strategies by focusing on ecotourism development. For this reason, Malaysia has launched its 10-year tourism policy, with officials emphasizing the roles of ecotourism in the coming decade to brand Malaysia as the 'Top of the Mind Ecotourism Destination of the World' (Ministry of Tourism, Arts and Culture, 2020). In other words, Malaysia is committed to positioning Malaysia as a premier ecotourism destination by value-adding the tourist experience through product development and differentiation, high-quality interpretation and service quality as well as sustainability certification. These initiatives were also under Malaysia's 2030 objectives as well as the 17 Sustainable Development Goals (SDGs) established by the United Nations (Koswaraputra, 2020).

Globally, ecotourism is recognized by the tourism industry as it is making an important contribution to the socio-economic aspects. According to the United Nations World of Tourism (UNWTO) ecotourism is expected to grow rapidly over the next decade and global spending will increase at a higher rate than the overall growth of tourism. Ecotourism is also projected to grow up to 25% of the global tourism market shortly and generate 470 billion dollars in tourism receipts. Ecotourism generally, caters to tourists who want to experience the natural environment without harming or disturbing it. It usually entails visiting places where flora, fauna, and cultural heritage are the main attractions. Most ecotourism destinations consist of flora and fauna, beaches, forests, jungles, parks, islands, and others. According to the International Ecotourism Society (ITES), ecotourism now is described as "responsible travel to natural areas that conserves the environment and improves the well-being of local people and involves interpretation and education" (ITES, 2015). Also, ecotourism is a form of sustainable tourism that allows visitors to experience and learn about the country's rich biodiversity and natural environment as well as, provides socio-economic advantages to remote and rural people that live close to natural areas (Yeo, 2021).

As for Malaysia, its variety of biodiversity provides hope for the ecotourism sector to move forward, attracting visitors to experience the nation's tourist attractions. In Malaysia, among the ten (10) ecotourism site that were considered as an ecotourism places which are a) Gunung Ledang, Johor, b) Tasik Kenyir, Terengganu, c) Taman Eco Rimba, Kuala Lumpur, d) Lata Berkoh, Pahang, e) Taman Rekreasi Gunung Lang, Perak f) Kuala Selangor Nature Park, Selangor, g) Kulim Geoforest Park, Langkawi h) Taman Negara Kuala Koh, Kelantan, i) Maliau Basin, Sabah, and j) Taman Negara Similajau, Sarawak (Sinar Harian Online Newspaper, 2020). Malaysia has a lot of potential in the ecotourism market, but there are a lot of things to consider. Importantly, the growth of this industry should not come at a cost of the harm it may do to the environment. For instance, ecotourism developments face the risk of losing the very environmental assets on which they depend because they are situated in a fragile ecosystem in a pristine area. However, there are also significant concerns regarding the ecotourism industry such as inadequacy of comprehensive legislation and regulatory framework, some inconsistencies, and overlap in rules and regulations between relevant ministries

involved, as well as confusion about the meaning of the term ecotourism that must address. Therefore, the objectives of this paper are as follows:

1. To explore the principles of ecotourism by identifying its meanings and characteristics.
2. Then, to identify the policies and the role of government in ecotourism development,
3. The third part is to examine the legislation and regulatory framework and its application of laws,
4. To provide suggestions towards the improvements of the rules and regulations regarding ecotourism.

1. THE MEANING AND PRINCIPLES OF ECOTOURISM

Many scholars have written about ecotourism, but there is little agreement on its definition, owing to the numerous forms in which ecotourism activities are offered by a large and diverse range of operators and practiced by a larger range of tourists. As a result, there are many definitions and interpretations regarding the terminology of ecotourism in the literature from many schools of thought either by various international parties or scholars. The very classical definition was taken from the *Oxford English Dictionary*, which defines the word 'ecotour' recorded first in 1973 and followed by the word 'ecotourism' in 1982 which are as follows:

Ecotour: *A tour of or visit of a place of ecological significance, usually with an educational component; a similar tour and visit intended to have an as little negative impact on the ecology as possible; or a similar tour and visit conducted with the explicit aim of assisting conservation efforts.*

Ecotourism: *Tourism to ecologically significant areas (typically exotic and sometimes threatened natural environments), primarily to help conservation efforts and observe wildlife, with specific access to an endangered ecosystem protected to have the least possible negative impact.*

Many scholars, on the other hand, use the definition of ecotourism from the person who first introduced the concept of ecotourism in 1987, Ceballos-Lascurain (Isa, S., Hasbullah, R. & Nizam, M., 2015). According to him, the definition of ecotourism is "traveling to relatively undisturbed or uncontaminated natural areas with the specific objective of studying, admiring, and enjoying the scenery and its wild plants and animals, as well as any existing cultural manifestations (both past and present) found in these areas". To illustrate, ecotourism encompasses a wide range of tourism activities that are not only related to nature but also to the culture of the ecotourism destination, such as aborigine or native village people and local people. One of the earliest concepts of ecotourism comes from the International Ecotourism Society (ITES), which describes ecotourism as responsible travel of natural areas that conserves the environment and supports the well-being of local people (Wood, 2002). According to UNWTO (2002), ecotourism refers to the forms of tourism which have the following characteristics:

1. All nature-based forms of tourism in which the main motivation of the tourists is the observation and appreciation of nature as well as the traditional cultures prevailing in natural areas.
2. It contains educational and interpretation features.
3. It is generally, but not exclusively organized by specialized tour operators for small groups. Service provider partners at the destinations tend to be small, locally owned businesses.
4. It minimizes negative impacts on the natural and socio-cultural environment.
5. It supports the maintenance of natural areas which are used as ecotourism attractions by:
 - a) Generating economic benefits for host communities, organizations, and authorities managing natural areas with conservation purposes.
 - b) Providing alternative employment and income opportunities for local communities.

- c) Increasing awareness towards the conservation of natural and cultural assets, both among locals and tourists.

Source: United Nations World Tourism. <https://www.unwto.org>

Besides that, the *United Nations Environment Programme Divisions of Technology, Industry, and Economics* (UNEP, 2002) defines ecotourism as 'environmentally responsible travel and visitation to relatively undisturbed natural areas, to enjoy and appreciate nature (the scenery, wild plants, and animals), as well as any cultural aspect (both past and present) that promotes conservation, has low negative visitor impact, and provides for beneficially active socio-economic involvement of local communities. This definition was also supported and adopted by some parties including the International Union for the Conservation of Nature and Natural Resources (IUCN) in 1996 (formerly known as IUCN and now known as World Conservation Union).

Ecotourism Australia adopted the definition of ecotourism which is a '*form of environmentally friendly tourism that focuses on visiting natural areas and promotes environmental and cultural awareness, appreciation, and conservation*. While the Global Ecotourism Network (GEN) describes ecotourism as responsible travel to natural areas that protect the environment, support the well-being of local people, and foster awareness and understanding among all participants through interpretation and education (visitors, staff, visited). According to Quebec Declaration (2002), ecotourism embraces the principles of sustainable tourism, where it contributes actively to the conservation of natural and cultural heritage. The Declaration acknowledges that visitors bear responsibility for the environment's long-term viability (Y. Bakov, Davydova & Zolotovskiy, 2019). Hence, ecotourism consists of these three components or dimensions; nature-based, environmentally educated, and sustainably natural assets. Sometimes, the concept of ecotourism also shares many similarities with adventure, green, nature, responsible and sustainable tourism, however, the term ecotourism will be used in this paper since ecotourism includes all of them.

According to Jaini. N et. al. (2019), ecotourism is sustainable tourism focused on natural resources that are responsible for providing experiences and knowledge about environmental concerns that are managed ethically to be more low-impact, non-consumptive, and locally oriented within control, benefits, and scale.

Also, another study by Md. Anowar H et. al. (2011) point out that the main precepts of ecotourism are the conservation of natural and cultural heritage, empowerment, and provision of financial benefits for local communities, minimal environmental impact, environmental and cultural education, and respect for tourists.

Besides, Yuri. B. et. al. (2019) state that ecotourism is a form of tourism that aims to maintain the harmony of man's relationship with nature, establish human responsibility for environmental protection, and provide recreational opportunities for tourists in the natural environment.

Therefore, from all the definitions given, most scholars seem to agree that ecotourism constitutes components as follows:

- a) Contribution to the conservation of biodiversity.
- b) Sustains the well-being of local people.
- c) Includes an interpretation/learning experience (educational).
- d) Involves responsible action on the part of tourists and the tourism industry.
- e) Is delivered primarily to small groups by small-scale businesses.
- f) Requires lowest possible consumption of non-renewable resources.
- g) Stresses local participation, ownership, and business opportunities, particularly for rural people.

In Malaysia's context, the definition of ecotourism is 'tourism experience evolved through collaboration between the government, the private sector, and local communities and include elements of respect for nature, a contribution for conservation, benefit to local people, educational and awareness as well as sustainability on ecological, economic, socio-culture and ethically (National Ecotourism Plan 2016-2025 (Executive Summary), Ministry of Tourism and Culture Malaysia). To summarize, in ecotourism, the prime motivation is the observation and appreciation as well as conservation of natural features and cultural assets.

Issues of Ecotourism

As discussed, ecotourism has its potential however the developments face the risk of losing the very environmental assets on which they depend because they are situated in a fragile ecosystem in a pristine area. Studies also have shown that land-use change and deforestation are associated with significant disturbances in landscape integrity, environmental degradation, and environmentally sensitive areas in Malaysia (J. Bélanger & D. Pilling, 2019). Land degradation, urbanization, watershed pollution, climate change, and interfering alien species have all been described as major drivers of biodiversity loss in Malaysia's terrestrial and aquatic ecosystems. Some of the concerns include the loss of biodiversity and wildlife habitats, as well as the disposal of waste materials in the forest reserve and polluted effluent in areas with little or no ability to absorb them (Yeo, 2021).

There were many reports in the media regarding the offenses committed by the person or entities damaging or harming the biodiversity and wildlife habitats. Among the common offenses is illegal possession of protected wildlife, illegal hunting, illegal logging, forest encroachment, illegal fishing activities, and so on so forth. Illegal wildlife crime is now estimated to be worth more than \$20 billion per year, ranked only behind drugs, weapons, and human trafficking in the criminal value chain. According to a recent study done by World Wildlife Fund-Malaysia, there is an average of 65 fish bombing cases in Semporna, Sabah in 2018 (Vanar, 2019). Fish bombing is an illegal, unreported, and unregulated (IUU) fishing where people catch fish using homemade explosives made from fertilizers mixed with kerosene and ignited with a detonator and fuse. It not only destroys fish habitats and puts visitors in danger, but it also costs lives, as so far three divers were killed while diving near Pulau Kulapuan, Semporna in July 2019.

Another concern regarding the ecotourism industry is that there is still an inadequate regulatory framework governing the ecotourism industry in Malaysia and there were several conflicting laws, policies, rules, and regulations regarding tourism in Malaysia because not only the Ministry of Tourism, Arts and Culture (MOTAC) involved in ecotourism activities and development, but more than five ministries are involved either directly or indirectly (Isa, S., Hasbullah, R. & Nizam, M., 2015). As a consequence, there may be some inconsistencies and overlap in rules and regulations as well as mandates between ministries. In addition, the dispute can also be seen in a few crises, such as the Sabah earthquake in Mount Kinabalu in 2015 (Mount Kinabalu is a popular ecotourism destination), and the Kedah State government's decision to log a large area of forest at Ulu Muda in 2008 without having permission from the Peninsular Malaysia Forestry Department and the federal government. The same thing happened in Kelantan in 2014 when many people believed deforestation was to blame for the worst flood in Malaysian history, the "orange flood". Hence, deforestation remains a serious problem in many parts of the region, resulting in the loss of ecotourism resources.

2. POLICIES AND INSTITUTIONAL STRUCTURES

In Malaysia, there are few ministries and agencies involved in the development of Malaysia's ecotourism industries. Among the prominent policymakers in Malaysia, ecotourism sectors are the) Ministry of Tourism, Arts and Culture (MOTAC), Ministry of Energy and Natural Resources (KeTSA)

(formerly known as Ministry of Natural Resources and Environment (NRE), Economic Planning Unit (EPU), and other ministries and agencies at federal and state level. The MOTAC serves as a single coordinating body for the overall implementation of national ecotourism policies (Jaini N, Robat M, Anuar ANA, Jamaluddin ER, 2019). However, TSA has played a significant role in Malaysia's ecotourism market, as the ministry manages a variety of natural resources such as forests, marine parks, eco-parks, animals, caves, mountains, and the sea. Under this ministry, two active agencies are directly involved in the preservation and conservation of Malaysia's natural environment and heritage, as well as the development of ecotourism activities. These agencies are the Department of Wildlife and Natural Parks known as PERHILITAN and the Forestry Department of Peninsular Malaysia JPSM. Both agencies are under the purview of KeTSA which is involved in preserving and protecting the flora and fauna, forests, and wildlife that are the backbone of ecotourism activities. While in Sabah and Sarawak, there are state government agencies such as the Sabah Forestry Department and Sarawak Forest Department to look after their forests, flora, and fauna. They also collaborate closely with MOTAC on the development and promotion of the ecotourism sector in the states. However, occasionally some inconsistencies and overlap in rules and regulations between relevant ministries involved may occur since the ministries' vision and mission between these ministries are different (Isa, S., Hasbullah, R. & Nizam, M., 2015).

Realizing the importance of the ecotourism industries, the government established the National Ecotourism Plan in 1996. The 1996 National Plan's objective is to assist the Malaysian government at both the federal and state levels in developing Malaysia's ecotourism potential. The plan is intended to serve as an important tool for the protection of Malaysia's natural and cultural heritage, as well as an effective instrument for Malaysia's overall sustainable development and economy. However, this Plan was revised in 2005 to accommodate the progressing development of ecotourism. Later, the National Ecotourism Plan (2016-2025) was launched as part of an ongoing effort to expand the ecotourism sector. It aims to optimize the potential of ecotourism while also ensuring its long-term sustainability. The spirit of the theme is also embodied in this Plan, which aims to improve cultures, opportunities, and economies. This implies that ecotourism is concerned with the outputs, outcomes, and benefits of ecotourism. More importantly, the Plan recognizes the variables involving the inputs of responsible tourism and sustainable development practices and policies.

Generally, this plan will serve as an instrument within the overall sustainable development of Malaysia and the economy and as a tool for the conservation of ecotourism sites in the country to consolidate recent reviews and studies of the National Ecotourism Plan 1996. In addition, this plan also will review the success and shortcomings in the implementation of the National Ecotourism Plan 1996 as well as recommend policies, strategies, and action plans to improve the planning, sustainable management, conservation, financing, promotion, and operation of ecotourism site. Simultaneously, the ecotourism policy was also integrated into The Eleventh Malaysia Plan (2016-2020), a 5-year development plan, which aims in attracting high-yield visitors to boost the tourism industry's contribution to the economy. The strategies include the improvement and development of the ecotourism infrastructure, the expansion of offerings, capacity building, and the implementation of best practices for sustainable tourism development, as well as marketing and promotion (Md Anowar H. Bhuiyan, C. Siwar, Sharuddin M.I., Rabiul. I, 2011). This plan continues in the Twelfth Malaysia Plan since the ecotourism industry is being recognized for its contribution to the economy of Malaysia. All these plans have given a positive development relating to the ecotourism industry in Malaysia. However, to ensure the success of ecotourism plans, coordinated efforts between various levels of government, the private sector, and local communities must be designed and implemented to maximize the economic, socio-cultural, and environmental benefits.

4. ECOTOURISM LAWS

It is also crucial to acknowledge that the policies and guidelines are not 'stand-alone,' as they are too general to have an impact on the actual management of ecotourism industries. Because of this reason, ecotourism should be implemented in combination with other policies, or related ecotourism laws. Malaysia does not have a specific ecotourism law, but relevant laws do exist. These comprise the Federal Constitution of Malaysia which provides for the protection of wild animals and wild birds under the Concurrent List (List III of the Ninth Schedule); the Wildlife Conservation Act 2010 (Act 716) which aims to regulate, protect, conserve, and manage wildlife in Malaysia. It prohibits certain acts during the Wildlife Reserve/Wildlife Sanctuary; the Forestry Act 1984 (Act 313) aims to promote the uniformity of the laws of the States of Malaysia regarding the administration, management, and conservation of forest and as well as forestry development. It criminalizes offenses that contravene the provisions of the forest laws in Malaysia; and the National Parks National 1980 (Act 226) which governs the creation and the maintenance of products and activities of national parks in Malaysia. A piecemeal approach to the ecotourism-related offense may be harmful to conveying the true severity of the offense and result in a less than satisfactory outcome for the offended party. Most likely, the outcome will not adequately represent the victim's total amount of harm. In certain cases, prosecuting cases on multiple counts can be difficult from an investigation and prosecution perspective. Hence, for this paper, the focus of the discussion is on Wildlife Conservation Act 2010 (Act 716), the Forestry Act 1984 (Act 313), and National Parks Act 1980 (Act 226).

4.1 Wildlife Conservation Act 2010 (Act 716)

Malaysia has been engaged in protecting and conserving its animals and wildlife with the passing of the overarching Wildlife Conservation Act 2010 (WCA) (Kamal Halili, H, 2012). This act came into force on 28 December 2010 to prosecute an offense committed under the Act against any violations such as illegal possession of protected wildlife, smuggling, illegal hunting, wildlife poaching, encroachment, and technical offenses. This act is intended to enhance compliance agencies' capacity and power to regulate as well as to provide better wildlife protection, resulting in improved biodiversity conservation (Mohd Azlan J. 2015). PERHILITAN regulates and controls wildlife through the requirement of licenses and permits, which must be obtained by all parties concerned. Simultaneously, the main aim of this act is to protect and conserve wildlife. This Act is also to ensure the gazetted areas of wildlife reserves/ wildlife sanctuaries comply with certain conditions. For instance, section 48 of the Act emphasizes that a person needs to apply for a permit to enter/access wildlife reserves and wildlife sanctuaries. The application to access wildlife reserves and wildlife sanctuaries must be made in writing, stating that the applicant intends to enter the reserve or sanctuary for art, science, or recreation. A person in a wildlife reserve is not allowed to disturb, cut, remove, or take any soil, timber, or vegetation while in a wildlife sanctuary, a person should not take, disturb, damage, or destroy the nest or egg of any animal or bird and disturb, cut, remove, or take any soil, timber, or vegetation (Section 49). Concerning wildlife crimes, according to Mariani Ariffin, (2015), wildlife violations include illegal taking, killing, or injuring of endangered wild animals, trespassing of protected areas, cruelty and other animal protection offenses, illegal poisoning, theft, or forgery, and so on, in addition to unauthorized wildlife trade, which is also connected with illegal commercial trade and smuggling activities. As a result, wildlife conservation enforcement entails taking action to prevent such activities and ensuring that people follow any prohibitions or controls imposed by legislation.

To illustrate this, in 2017, a court proceeding involving the Sumatran Selow, a mammal native to Peninsular Malaysia's mountain forests, resulted in fines of RM1.2 million and 48 months in prison

for two Malaysian males convicted of illegal possession of the animal's head and other parts in a forest reserve in Pahang. In the case of *Public Prosecutor v Tran Van San*¹, where the accused was sentenced to 19 years in jail and an RM850,000 fine after being found guilty of 10 charges since he was found to be in illegal possession of 273 wildlife parts including tigers, leopards, clouded leopards, sun bears, and sambar deer. This case demonstrates several factors, including the creatures that were the focus of the charges against the accused being listed on the International Union for Conservation of Nature (IUCN) Red List, as well as the need for the court to convey a strong message to the public and the message was to ensure that the seriousness of adhering to the aims and objectives when introducing the Wildlife Conservation Act 2010, which is to regulate, protect, conserve, and manage wildlife in Malaysia (Kaur & Sominadu, 2012). In another unreported case by the Ipoh Session Court in 2017, a man was sentenced to an RM100,000 fine and a month of jail and confiscation of his belongings after his arrest for illegally possessing a Malayan Tiger carcass. This crime was compounded by the fact that only an estimated 250 to 340 tigers remained in the country, and that species was under severe threat from poaching. All these cases highlighted and urged the court to show that wildlife crime is serious. WCA has its positive development as environmental law, and it is crucial now since various wildlife species in Malaysia are heavily endangered.

However, in the ecotourism context, the legislative and regulatory framework focussing on ecotourism was still inadequate since the relevant provisions in the WCA are still insufficient even though the WCA has been celebrated to be the most progressive wildlife conservation act in Malaysia. Therefore, there is a call for more legislation and regulation on ecotourism activities including tourism concessions in ecotourism sites. The legislation, as well as its enforcement, should be aligned to reflect current international and national recruitment standards. Self-regulation by local communities with accountability should be nurtured. Other good practices from other countries also can be considered as a benchmark. Hence, enforcing and amending the WCA to fill loopholes is vital to further protect our wildlife conservation, and simultaneously, improve the development of ecotourism in Malaysia.

4.2 Forestry Act 1984 (Act 313)

To begin the discussion, the overview of the constitutional setting of forestry affairs needs to be discussed. The provisions in the Federal Constitution concerning the environment particularly forestry protection and the scope of responsibility shared by the federal and state governments appeared ambiguous (Mohd R. & Yaman A.R., 2000). For instance, under Article 74 (2) of the Federal Constitution, land, and forests are defined as state matters and thus within the jurisdiction of the respective State Governments. The Federal Constitution ensures that all Acts related to the land and forest shall not come into force in a State unless it has been adopted by a law made by the legislature of the State.

As such, each state is empowered to enact laws and formulate related policies independently. The executive authority of the Federal Government only extends to the provision of advice and technical assistance to the States. Here, there were sometimes several conflicting laws, policies, rules, and regulations between the Federal and the States. Forest offenses are essentially actions or omissions that violate the provisions of the country's forest law. Illegal logging and forest encroachment are two of these offenses. Illegal logging is defined as the felling of trees and/or the removal of timber from the forest without a valid license, whereas forest encroachment is defined as any activity that contributes to the destruction of flora and fauna and includes clearing or breaking up any land for cultivation or any other non-forest purposes. The Forestry Act 1984 also emphasized the laws

¹ [2020] 7 MLJ 762.

governing tourism products & activities involving Forest Reserve. Section 32 emphasizes the need for a formal permit to carry out activities in permanent reserved forest prohibited. The said section mention:

(1) Subject to subsection (3), no person shall occupy or carry out any activity upon any land within a permanent reserved forest, unless he is the holder of a use permit.

This section stresses the requirement of a formal permit to carry out activities in permanent reserved forest prohibited and any person who contravenes this provision shall be guilty of an offense and shall on conviction be liable to a fine not exceeding RM50,000 ringgit or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

In addition, for the purpose to conserve the permanent reserved forest no person shall commit an offense of littering in a permanent reserved forest, and is prohibited to dispose of waste disposal in the forest reserve since it damages nature's beauty and leaves a smell. Any person who contravenes, shall be guilty of an offense and shall on conviction be liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding 6 months imprisonment or both (Section 83 (3), Forestry Act 1984).

4.3 National Parks Act 1980 (Act 226)

The National Parks National 1980 (Act 226) governs the creation and the maintenance of products and activities of national parks in Malaysia specifically for cases involving the planning and development of tourism products & activities in the National Park Area. The act provides for the states to establish national parks to be administered by the Department of Wildlife (known as PERHILITAN) and National Parks under the federal government. Section 13 of the Act highlights the need to have a permit to access specially protected areas where no person shall enter or remain in any specially protected area except with a permit issued by the minister. Under this section, the Minister may grant a permit to one or more persons permitting entry to any particular protected place from time to time and may change or revoke any such permission at any time (Section 13 (2), National Park Act 1980). Anyone who enters or remains in any specially protected region except under this section or fails to comply with any condition contained in any such permit may be considered to have committed an offense.

5. INTERNATIONAL DIMENSIONS OF ECOTOURISM

In this discussion, we will look at the international dimension regarding ecotourism in other countries. It is not the intention of this part to delve into provisions governing ecotourism in particular countries, however, a brief mention of the overview and some of the related ecotourism lawsuits (tortious and negligence) that have been reported in those particular countries, etc. For instance, Australia, due to its renowned leadership and rapidly developing ecotourism business, is a great example of ecotourism. It founded the Ecotourism Australia organization in 1991 to promote ecotourism and produce the National Ecotourism Accreditation Program (NEAP) ecotourism standard, which was released in 1996 and later renamed Ecotourism Australia with multiple sorts of certifications (Saraswati Sisriany & Katsunori Furuya, 2020). Ecotourism is essential to Australia because it is a key source of income for rural and remote areas, resulting in increased community benefit and resilience. It creates long-term employment prospects to supplement the agriculture and resource sectors' shrinking labor markets. Ecotourism businesses actively try to protect the natural environments that are vital to their operations.

Whereas, Japan, since 2007, has had a specific ecotourism policy known as the Ecotourism Promotion Act. According to the National Ecotourism Promotion Act, the Ecotourism Promotion Council is in charge of ongoing ecotourism in Japan. Local government officials, civilians, and academics are among the council's members, and the council has linkages to 17 local institutions that conduct ecotourism activities that are suited to the local culture and natural attractions in their zones.

In the United States lawsuit case of *Autery v. the United States*², a black locust tree collapsed on an automobile passing through Great Smoky Mountain National Park (GSMNP), killing one person, and injuring another. The tree was around 50 years old, was 70 feet tall, and fell due to root rot. The Iowa Supreme Court held that the 'discretionary function exception applied to the alleged negligent failure to inspect for hazardous trees. Similarly in the case of *Snider v. the United States of America*³, In 2013, a federal district court restates the reasoning of *Autrey's* case. In this case, Kristy Snider was injured when a dead tree snapped and fell on her while she camped at Fort Supply Lake, a federal park site operated by the Army Corps of Engineers (COE). The event happened in a part of the park where COE rents out private campsites to visitors. Picnic tables, grills, electricity outlets, rest areas, and other utilities were commonly found in the camping area, and the tree that fell on Snider was about 10 feet away from her campsite's picnic table. Snider's complaint that COE 'had a duty to maintain its premises and to repair the dangerous situation induced by its failure to maintain its premises, to warn plaintiffs of the dangerous situation, or to otherwise take due care. COE responded by claiming immunity under the Federal Tort Claims Act's (FCTA) discretionary function exception, claiming that no federal statute, regulation, or policy required it to respond to the threat of hazardous trees any differently than it did. The relevant rule dealing with the maintenance of COE recreation projects, on the other hand, made no provision for a mandatory code of conduct for government employees:

The Secretary of the Army, working via the Chief of Engineers, has made it a policy to manage each project's natural, cultural, and developed resources in the public interest, ensuring safe and healthy recreational activities for the public while protecting and developing these resources (Kozlowski, J.D, 2015).

The federal district court concurred with the plaintiffs' judgment that the conduct complained of, namely neglecting to maintain the park grounds by removing dead trees, is the type of behavior that the discretionary function exemption was intended to protect. As a result, the court determined that COE's alleged negligent failure to maintain the premises by removing dead trees fell under the discretionary function exception. Similarly, the court concluded that the decision of whether or not to issue a warning concerning dead trees was discretionary and immune to the lack of a particular statute, regulation, or policy demanding a warning. Thus, these were an example of cases that can be related to the ecotourism development in the United States.

6. THE LEGAL PROBLEM FACED IN LAW AND ECOTOURISM IN MALAYSIA

One of the legal problems faced in law and ecotourism in Malaysia is the balance between promoting tourism development and ensuring environmental conservation. This issue arises due to the tension between the economic benefits generated by tourism and the potential negative impacts on fragile ecosystems and biodiversity. Here are some specific legal challenges faced in this context:

Firstly, Sustainable Development, to achieve a balance between tourism development and environmental sustainability is a significant legal challenge. The development of ecotourism requires careful planning and regulation to minimize negative impacts, such as habitat degradation, pollution,

² 992 F.2d 1523,1530-3 (11th Cor. 1993)

³ 2013 U.S. Dist. LEXIS 105580

and overexploitation of natural resources. Ensuring that tourism activities adhere to sustainable development principles while still attracting visitors and generating economic benefits is a complex task.

Next, the Protection of Protected Areas. Malaysia has established various protected areas, including national parks, wildlife reserves, and marine parks, to conserve its natural heritage. However, illegal activities such as poaching, encroachment, and unauthorized development can pose threats to these protected areas. Strengthening legal frameworks and enforcement mechanisms to prevent illegal activities and protect these areas is a crucial challenge.

In addition to that, the Community Rights and their Involvement. To balance the rights and interests of local communities with tourism development poses a legal challenge. Ecotourism often takes place in areas inhabited by indigenous communities or local populations who have traditional knowledge and a close relationship with the environment. Ensuring their participation, consultation, and fair benefit-sharing in tourism activities while respecting their cultural rights and preserving their way of life is important but can be legally complex.

Another important aspect is to implement the Environmental Impact Assessment (EIA). Conducting comprehensive and effective Environmental Impact Assessments (EIA) is crucial in minimizing the negative environmental impacts of tourism development. However, ensuring that EIAs are conducted rigorously and transparently, and that the findings are adequately considered in decision-making processes, requires effective legal frameworks and enforcement mechanisms.

Then, the need to focus on the Regulation of Tour Operators and Service Providers. In Malaysia, ensuring that tour operators and service providers in the ecotourism sector adhere to responsible and sustainable practices is essential. This involves establishing and enforcing legal requirements related to licensing, certifications, safety standards, waste management, and responsible visitor behavior. Monitoring compliance with these regulations and taking appropriate enforcement actions can be challenging.

Lastly, to enhance the Intellectual Property and Traditional Knowledge on ecotourism. The use of traditional knowledge, cultural expressions, and intellectual property in ecotourism activities raises legal issues related to ownership, protection, and fair benefit sharing. Preserving the rights of indigenous communities and local populations over their traditional knowledge and cultural expressions while preventing exploitation and misuse by outsiders requires appropriate legal mechanisms and safeguards.

Addressing these legal challenges requires a comprehensive and multidisciplinary approach, involving the collaboration of various stakeholders, including government agencies, indigenous communities, non-governmental organizations, and the tourism industry. It involves the development and enforcement of laws and regulations that promote sustainable tourism practices, protect the environment, uphold community rights, and ensure the long-term viability of ecotourism in Malaysia.

7. METHODOLOGY

A qualitative research method was implemented in preparing this paper. It is based on content analysis method. Doctrinal research method with content analysis is applied in understanding the meaning, issues, policies, and laws of ecotourism. Doctrinal methodology is a research approach

commonly used in legal studies and scholarship. It involves analyzing legal sources, such as statutes, case law, regulations, and legal principles, to derive legal doctrines and principles and understand the legal framework governing a particular subject. This methodology focuses on interpreting and synthesizing existing legal rules and authorities to develop a comprehensive understanding of the law.

The researcher engages in close reading and analysis of legal sources, extracting relevant information, concepts, and legal doctrines. They examine the language, structure, and context of legal texts to identify legal rules, principles, and precedents.

Legal Doctrine Development: Based on the analysis of legal sources, the researcher identifies legal doctrines or principles that are applicable to the research question or legal issue at hand. These doctrines represent the underlying legal principles or rules that guide the interpretation and application of the law.

Doctrinal methodology allows for critical analysis and evaluation of legal doctrines and principles. Researchers may identify inconsistencies, gaps, or ambiguities in the law and propose recommendations for legal reform or improvement.

It is important to note that while doctrinal methodology provides valuable insights into the existing legal framework, it has its limitations. It does not typically involve empirical research or considerations of societal impacts or policy implications. Therefore, combining doctrinal analysis with other research methodologies can provide a more comprehensive understanding of legal issues.

8. RECOMMENDATIONS AND CONSIDERATIONS

The following are some recommendations for the Malaysian government to consider in the development of ecotourism, which is as follows:

- A.** Priority should be given to an effective strategy for regulation and management of ecotourism development through innovative concession approaches and its provision. Propose action plans and new ecotourism initiatives that can be taken by related agencies. Action plans include a management plan to ensure synergy between conservation and ecotourism.
- B.** The legislation, as well as its enforcement, should be modified to reflect current international and national recruitment standards. As a supplement, voluntary codes of conduct and self-regulation by local operators with accountability also need to be promoted.
- C.** It is advised that the Malaysian government, at least as a pilot project, look into more diverse ecotourism initiatives. Invest more in ecotourism and create a pro-business environment for international and local investors.
- D.** A single ministry must serve as the lead agency for all matters relating to ecotourism development and governance. This should, logically, be the Ministry of Tourism, Arts, and Culture (MOTAC) which has the authority to assess ecotourism market demands and develop ecotourism products. This is consistent with Malaysia's Twelfth Economic Plan proposal to streamline ecotourism activities and development by putting it under a single administration, with the MOTAC taking the lead in policymaking of ecotourism management.
- E.** Benchmarking practices by other countries. Benchmarking against countries that have successfully implemented ecotourism development strategies. It is crucial to be able and willing to change and adapt the best practices and policies for better implementation to drive an innovative and strategize governance and administration of the ecotourism sector in the right direction.

F. The Government also needs to consider comprehensive legislation and a sound regulatory framework on ecotourism consisting of all aspects such as management, marketing, product development, certification, concessions, and others.

9. CONCLUSION

Based on the discussion above, the Malaysia Government has enacted laws to ensure the protection and conservation of the animals, flora, and fauna as well as wildlife habitats. Recognizing the value of biodiversity, Malaysia has also continued to improve and enhance established policy, regulatory framework, and institutional structures to protect its natural resource assets. In Malaysia, biodiversity conservation and sustainable use have always been addressed in the sense of long-term planning. Biodiversity conservation has been incorporated into several Malaysian plans as well as national and state policies. Therefore, from the ecotourism perspective, the Government needs to facilitate the development of innovative ecotourism in Malaysia. Hence, proper planning, sound policies, comprehensive laws, synergizing between conservation and ecotourism as well as enforcement, must be diligently implemented by stakeholders in enhancing the development of ecotourism in Malaysia.

ACKNOWLEDGMENTS

The authors acknowledge the Fundamental Research Grant Scheme (FRGS), grant number: FRGS/1/2022/SSI12/UKM/02/11 funded by the Ministry of Higher Education (MOHE), Malaysia.

REFERENCES

- Ariffin, Mariani. 2015. Enforcement Against Wildlife Crimes in West Malaysia: The Challenges. *Journal of Sustainability Science and Management*. Volume 10 Number 1. June 2015. pg. 19. <https://jssm.umt.edu.my/wp-content/uploads/sites/51/2015/06/2.pdf> accessed (4 April 2021)
- Butcher, Jim. 2006. The United Nations International Year of Ecotourism: a critical analysis of development implications. *Progress in Development Studies* 6, 2 (2006) pp. 146-156 Doi: 10.1191/1464993406ps133oa <http://pdj.sagepub.com/content/6/2/146> accessed (5 May 2021)
- Gaitonde, Aruna. 2019. 'Malaysia's eco-tourism thrives with stakeholder participation. Expert Reports. <https://eco-tourism.expert/en/expertise/malaysia-s-eco-tourism-thrives-with-stakeholder-participation> accessed (23 April 2021).
- Ibrahim, Irini. Abdul Aziz, Norazlina. & Abu Hanifah, Norha. 2012. 'The Laws of Wetness: The Legislative Framework in Malaysia Regarding Wetlands Conservation, ASEAN Conference on Environment-Behaviour Studies. Bangkok, Thailand, 16-18 July 2012. <https://www.sciencedirect.com/science/article/pii/S1877042812031989/pdf?md5=72df0ada6695411d1d93282f8b6de61&pid=1-s2.0-S1877042812031989-main.pdf> accessed (22 March 2021).
- Isa, S., Hasbullah, R. & Nizam, M. 2015. Adventure and Ecotourism in Malaysia *Adventure and Ecotourism in Malaysia* (2015), 1-25 <https://www.researchgate.net/publication/301548474> accessed (14 April 2021).
- Jaini N, Robot M, Anuar ANA, Jamaluddin ER. 2019. The Identification of Criteria for Ecotourism Practice in Peninsular Malaysia. *Journal of Hotel and Business Management*. <https://www.semanticscholar.org/paper/The-Identification-of-Criteria-for-Ecotourism-in-Anuar-Jaini/d0a37b3766649beacddf0f26f4d6271c91db884> accessed (20 April 2021).

- Kamal Halili, Hassan. 2015. 'Application of The Wildlife Conservation 2010 (Act 716): The Malaysian Experience. American Journal of Animal and Veterinary Sciences. Volume 10 No. 1, 2015, 43-46 DOI: <https://doi.org/10.3844/ajavsp.2015.43.46> accessed (26 May 2021).
- Kaur, Harsimran and Sominadu, Neha Navalashini. 2021. 10 Years of The Wildlife Conservation Act 2010: How it Has Fared. ECOLOGY UM, Universiti of Malaya, 18 March 2021. <https://www.umlawreview.com/lex-omnibus/10-years-of-the-wildlife-conservation-act-2010-how-it-has-fared> accessed (28 April 2021).
- Kementerian Pelancongan, Seni dan Budaya Malaysia [Ministry of Tourism, Arts and Culture], 'Dasar Pelancongan Negara (DPN) 2020-2030: Ke arah Pengukuhan Industri Pelancongan Negara'. Media Press Release. 23 December 2020, <https://www.tourism.gov.my/media/view/dasar-pelancongan-negara-dpn-2020-2030-ke-arrah-pengukuhan-industri-pelancongan-negara> accessed (22 May 2021).
- Koswaraputra, Dandy. 2020. 'Malaysia rolls out 2020-2030 tourism policy', New Straits Times. 23 December 2020. <https://www.aa.com.tr/en/asia-pacific/malaysia-rolls-out-2020-2030-tourism-policy-plan/2086207> accessed 22 May 2021.
- Koya, Zakiah. 2020. 'Move to revive tourism industry. The Star Online. Thursday 24 December 2020. <https://www.thestar.com.my/news/nation/2020/12/24/move-to-revive-tourism-industry> accessed (2 May 2021).
- Kozlowski, J.D., 2015. No liability Precedent in State Park Settlement. Law Review. <https://www.nrpa.org/parks-recreation-magazine/2015/april/no-liability-precedent-in-state-park-settlement/> accessed (2 June 2021).
- Malaysia's Country Report on the State of Biodiversity for Food & Agriculture, Publication by United Nations <http://www.fao.org/3/CA3487EN/ca3487en.pdf> accessed (22 April 2021).
- Md Anwar H. Bhuiyan, C. Siwar, Sharuddin. & M.I., Rabiul. I. 2011. The Role of Government for Ecotourism Development: Focusing on East Coast Economic Region. Journal of Social Science. 7 (4): 557-564, DOI: <https://doi.org/10.3844/jssp.2011.557.564> accessed (14 April 2021).
- Mohd Azlan J. 2015. 'Wildlife Conservation Legislations in Malaysia: Evolution and Future Needs. pg. 13-22 <https://www.researchgate.net/publication/301883910> accessed (5 May 2021).
- Mohd, Rusli & Yaman, Amat Ramsa. 2000. 'Overview of Forest Law Enforcement in Peninsular Malaysia'. Workshop on Illegal Logging in East Asia. sponsored by World Bank-WWF Alliance in Jakarta, Indonesia, August 27-28, (2000) pg. 1. <http://awsassets.panda.org/downloads/forest-law-enforcement-in-peninsular-malaysia.pdf> accessed (30 May 2021).
- National Ecotourism Plan (Executive Summary) 2016-2025 downloaded from <http://www.motac.gov.my> accessed 23 March 2021.
- National Ecotourism Plan: Ecotourism Guidelines in Malaysia 1996, downloaded from <http://www.motac.gov.my> accessed 23 March 2021.
- National Tourism Policy (Executive Summary) 2020-2030 downloaded from <http://www.motac.gov.my> accessed 23 March 2021.
- Quebec Declaration on Ecotourism, World Ecotourism Summit, Quebec City, Canada, 22 May 2002. <https://www.gdrc.org/uem/eco-tour/quebec-declaration.pdf> accessed (22 May 2021).
- Sisriany, Saraswati & Furuya, Katsunori. 2020. 'Ecotourism Policy Research Trends in Indonesia, Japan, and Australia'. Jurnal Manajemen Hutan Tropika, DOI:10.7226/jtfm. 26.2.178. August 2020, pg. 178-188 <https://journal.ipb.ac.id/index.php/jmht/article/view/29700/20286> accessed (7 Jun 2021).
- Vanar, Mugunathan. 2019. 'WWF Malaysia wants all-out war against fish bombers'. The Star Online, Sunday 7 July 2019. <https://www.thestar.com.my/news/nation/2019/07/07/wwf-malaysia-wants-all-out-war-against-fish-bombers/> accessed (26 April 2021).

- Wood, Megan Eplar. 2002. 'Ecotourism: Principles, Practices & Policies for Sustainability. United Nations Environment Programme. 1st Edition. United Nations Publication 2002. pg. 1-32 <https://www.unep.org/resources/report/ecotourism-principles-practices-and-policies-sustainability> accessed 24 April 2021.
- Y. Bakov. Davydova, Marina. & Zolotovskiy, V্লাidimir. Legal Restrictions in Ecotourism. IV International Scientific and Practical Conference 'Anthropogenic Transformation of Geospace: Nature, Economy, Society' (ATG2019) Volume 1 https://www.researchgate.net/publication/339359625_Legal_Restrictions_in_Ecotourism/link/5e4d3f20a6fdccd965b11101/download accessed (30 April 2021).
- Yeo, Amanda. 2021. 'Ecotourism – opportunity for the tourism sector in Malaysia to revive'. <https://focusmalaysia.my/mainstream/ecotourism-opportunity-for-the-tourism-sector-in-malaysia-to-revive/> accessed (12 April 2021).

CASES

- Autery v. United States* [992 F.2d 1523,1530-3 (11th Cor. 1993)]
Public Prosecutor v Tran Van San [2020] 7 MLJ 762
Snider v. United States of America [U.S. Dist. LEXIS 105580]

Malaysian Statutes / Acts

- Federal Constitution
Forestry Act 1984 (Act 313)
National Parks Act 1980 (Act 226)
Wildlife Conservation Act 2010 (Act 716)